



ANIL AGRAWAL AND COMPANY

Chartered Accountants



DISCLAIMER: This newsletter provides information of general nature and is not meant to be a substitute for professional advice. No one should act on such information without appropriate professional advice. Anil Agrawal & Co. accepts no liability with regard to the information herein or any action that may be taken by readers of this newsletter without any professional advice.

Tax [Direct & Indirect] News

Important Due Dates

Due date for preparation and filing of TP Audit report for FY 2013-14 is 30th November 2014

Due date for preparation and filing of Tax Audit report for FY 2013-14 is 30th November 2014

Due date for preparation and filing of annual Income Tax return for FY 2013-14 is 30th November 2014

Mauritius agrees to support Indian government to unearth black money

Mauritius conveyed to the Indian government that it was ready to support its special investigation team to unearth black money. This was conveyed to External Affairs Minister Sushma Swaraj by Minister of Foreign Affairs, Regional Integration and International Trade Arvin Boolell during a meeting here, external affairs ministry spokesperson said. - www.business-standard.com

CBDT Press Release, Dated 17-10-2014- Due date for TDS return Extended

In view of the recent natural calamities in the States of Andhra Pradesh, Jammu & Kashmir, Odisha & Telangana, the Central Board of Direct Taxes has issued an order extending the due date for filing the TDS/TCS Statements for the 2nd Quarter of Financial year 2014-15 by the deductors/collectors in these States. In case of Government deductors/collectors that are mapped to a valid AIN, the due date is extended from 31st October, 2014 to 7th November, 2014. In case of all other deductors/collectors, the due date is extended from 15th October, 2014 to 31st October, 2014.

ALLOWABILITY OF DEDUCTION UNDER SECTION 10A/10AA ON TRANSFER OF TECHNICAL MANPOWER IN CASE OF SOFTWARE INDUSTRY - CIRCULAR NO. 14/2014 [F.NO.178/84/2012-ITA.I], DATED 8-10-2014

In supersession of the Circular No. 12/2014 dated 18th July, 2014, it has now been decided that the transfer or re-deployment of technical manpower from existing unit(s) to a new unit located in SEZ, in the first year of commencement of business, shall not be construed as splitting up or reconstruction of an existing business, provided the number of technical manpower so transferred as at the end of the financial year does not exceed 50 per cent (earlier it was 20%) of the total technical manpower actually engaged in development of software or IT enabled products in the new unit.

Further, in the alternative, if the assessee (enterprise) is able to demonstrate that the net addition of the new technical manpower in all units of the assessee (enterprise) is at least equal to the number that represents 50% of the total technical manpower of the new SEZ unit during such previous year, deduction under section 10A/10AA would not be denied provided the other prescribed conditions are also satisfied.

DVAT CIRCULAR NO. 14 of 2014-15

Commissioner, Value Added Taxes, Delhi has extended the last date of filing of online/hard copy of second quarter return for the year 2014-15, in Form DVAT-16, DVAT-17 and DVAT-48 along with required annexures/enclosures to 10/11/2014. However, the tax due shall continue to be paid in the usual manner as per the provisions of section 3(4) of the Delhi Value Added Tax Act, 2004.

DVAT CIRCULAR NO. 13 of 2014-15

Commissioner, Value Added Taxes, Delhi has extended last date of filing of online return in Form 9 for the year 2013-14, prescribed under Rule 4 of Central Sales Tax (Delhi) Rules, 2005 to 28th November, 2014. The return is to be filed by dealers who have made interstate sale at concessional rates against statutory forms 'C' or stock transferred against 'F' forms or sold the goods against 'H'

SECTION 194LC OF THE INCOME-TAX ACT, 1961 - INCOME BY WAY OF INTEREST FROM INDIAN COMPANY - APPROVAL OF LONG TERM BONDS AND RATE OF INTEREST FOR THE PURPOSE OF SECTION 194LC

CIRCULAR NO.15/2014 [F.NO.133/50/2014-TPL], DATED 17-10-2014

Section 194LC of the Income-tax Act, 1961, introduced by the Finance Act 2102, provided for lower withholding tax at the rate of 5% on the interest payments by Indian companies on borrowings made in foreign currency by such companies from a source outside India. The benefit was available in respect of borrowings made either under an agreement or by way of issue of long term infrastructure bonds. The approval and the conditions were detailed in the CBDT [Circular No.7 of 2012 dated 21st September, 2012](#).

Further, The Finance (No 2) Act, 2014 has amended section 194LC and the concessional rate of withholding tax has been extended to borrowing by way **of any long term bonds, not limited to a long term infrastructure bond**, if the borrowing is made on or after 1st day of October, 2014.

In order to mitigate the compliance burden and hardship, the Central Board of Direct Taxes [with the approval of the Central Government] conveys the approval of the Central Government for the purposes of section 194LC in respect of the issue of long term bond including long term infrastructure bond by Indian companies which satisfy the following conditions:—

- a. The bond issue is at any time on or after 1st day of October, 2014 but before the 1st day of July, 2017.
- b. The bond issue by the Indian company should comply with ECB guidelines and regulations either under the automatic route or under the approval route.
- c. The bond issue should have a loan Registration Number issued by the Reserve Bank of India (RBI).
- d. The term "long term" means that the bond to be issued should have original maturity term of three years or more.

Stock details required along with Q2 Dvat Return

DVAT dealers provide tax rate wise details of closing stock in hand as on 31st march, 2014 in annexure 1D of Q2 DVAT return of 2014-15 to be filed by 25-10-2014.

Service Tax Circular 180 of 14/10/2014

Service Tax applies on service provided by agent/sub-agent, bank to foreign money transfer operator and on currency conversion for payee.

Service Tax Return filing date extended

Due date for filing ST-3 extended from 25th October, 2014 to 14th November, 2014.[Order No. 02/2014-Service Tax, Dated 24th October, 2014].

D-VAT: Whether sale of Microphones shall be subject to levy of VAT at 5% under Schedule III of the DVAT Act or at 12.5% under the Residual Entry?

Held in the case of **M/s Jagdeep & Associates** that the intent of the legislature is to include only those Microphones which are used as IT products and not to include those microphones which are used in auditorium, public gatherings or theatres for addressing public meeting, concerts etc. and those are covered under section 4(1)(e) of the Delhi Value Added Tax Act, 2004 and attract tax @ 12.5% vide Determination order No. No.367/CDVAT/2014/299 dt 30.09.2014.

Hon'ble CESTAT, Delhi in the case of Microsoft Corporation India Pvt. Ltd. vs. Commissioner of Service Tax.

Services provided to Foreign Principals for marketing their products in India qualify as an export of service.

Delhi High Court in its Judgment in M/s Shubham Marketing WP(c) 2214/13

has quashed the penalty order u/s 70(5) of the DVAT Act, 2004 for non submission of stock details of March 2012.

Regulatory (ROC & RBI)

Form DPT-4 has been enabled on MCA website

DPT-4 (Statement regarding Deposits existing commencement of the act) which was earlier required to be filed with form GNL-2, is now available as independent e-forms.

Filing of Form DIR-3C in specified situation

Companies which do not have any of their Directors/Signatory details registered in the MCA21 system and who are desirous of filing DIR-3C Form are requested to get atleast one authorised signatory registered by contacting the concerned Registrar of Companies. Instructions have already been issued to ROCs and RDs in this regard.

Use DIR-3C to intimate DIN of Directors appointed before 30-06-2007. Contact ROC for entering details of such directors if no authorized signatory regd on MCA.

Due date for CLSS 2014 is 15th October 2014

15-10-2014 is Last Date to avail CLSS 2014. File Annual Reports etc to be filed by 30-06-2014 with 25% Additional Fee. No Prosecution/ Disqualification u/s 164(2).

Form ADT-1 has been enabled on MCA website

MCA brought Form ADT-1 for filing w.e.f 20th Oct 2014. From now onwards, ADT-1 should not be filed as attachment to Form GNL-2.

Latest Judicial Pronouncements (International tax)

ON TP

Issue of Shares- Out of TP- Rules Bombay High Court in case of Vodafone

The much-awaited ruling of the Bombay High Court (HC) in the context of the Writ Petition filed by **Vodafone India Services Private Limited** (VISPL or the taxpayer) has been released. The taxpayer had challenged the following transfer pricing (TP) adjustments made by the Revenue:

- a) Alleged undervaluation of shares issued by VISPL in favour of its Associated Enterprise (AE).
- b) Computing of notional interest on such alleged undervaluation of shares, by treating the shortfall as loan advanced by VISPL to its AE.

The taxpayer in the first Writ Petition (WP No.1877 of 2013) challenged these adjustments as being patently illegal and without jurisdiction. This was on the ground that the purported undervaluation could never have been brought under the ambit of taxation by taking course to TP, as the same was on capital account. The HC directed the Dispute Resolution Panel (DRP) to decide the taxpayer's preliminary issue of jurisdiction. Consequent to this direction, the taxpayer made its submissions before the DRP. However, the DRP held the alleged undervaluation of shares as "income" chargeable to tax. Further, it imputed notional interest on such alleged undervaluation by treating it as deemed loan.

Against the said order of the DRP, the taxpayer filed a Second Writ Petition before the HC. In this Second Writ proceeding, the Bombay HC categorically held that issue of shares at a premium by the VISPL in favour of its AE did not give rise to any "income" from an International Transaction, and therefore, there was no need to invoke TP provisions.

ON TP

Yamaha Motor India (P.) Ltd. Vs. Assistant Commissioner of Income-tax, Circle-18 (1), New Delhi [2014] 50 taxmann.com 444 (Delhi - Trib.)

Delhi Tribunal held that OECD guidelines provide that in no case transaction profit method (TNMM/PSM) should be used on enterprises which are less or more successful than the average and where the reasons for success/lack thereof is attributable to commercial factors.

Also held that there is no such condition or prohibition provided in Section 92C as well as Rule 10B that resale price method shall not be applicable in case the assessee company is selling its product to an associated enterprise which in turn sells them to an unrelated party.

ON TP

Mitsubishi Corporation India (P.) Ltd. Vs Deputy Commissioner of Income-tax, Circle -6(1), New Delhi [2014] 50 taxmann.com 379 (Delhi - Trib.)

Delhi Tribunal gave 2 important decisions. One on withholding tax and second on Transfer pricing.

Held that just like in case of payment to Resident, where no disallowance is made u/s 40 (a)(ia) if recipient of income pays taxes on such income and files return of Income, similar treatment shall be given in case of payment to non-resident without withholding of taxes if such non-resident pays taxes on such sum and files return of income . Also, held that relaxation under *second proviso* to Section 40(a)(ia) is to be read into Section 40(a)(i) as well and it was required to be treated as retrospective in effect.

Further held that *Sogo shoshas* entity is a general trading entity with low risk and high-volume business entity and Berry ratio (ratio of gross profit to operating expenses, excluding cost of inventory) is relevant in case an entity does not assume any major inventory risk or does not commit any significant assets for same or does not make any value addition. Also, held that use of Berry ratio as PLI for determination of ALP of transactions between such entities is acceptable.

About Us

We are a partnership CA firm of repute in New Delhi established in year 2003 with extensive cross functional experience of dealing with both multinational and domestic entities. We provide specialized services relating to International and domestic Taxation, Regulatory (ROC and RBI) and Assurance. The firm has been founded by Mr. Anil Agrawal, FCA who is alumni of Ernst & Young and has more than 12 years of experience in the fields of International Taxation and Regulatory matters. Our client comprises of Subsidiaries of foreign cos, Joint Ventures, Indian Corporates, LLPs, Firms, NGOs & HNI's.

We have dedicated team of Chartered Accountants, Company Secretary, Semi qualified and adequate support staff who are competent people with sharp insight and unique skill set. Our Current area of operation is NCR region comprising of Delhi, Gurgaon, Manesar and Noida. Our present multinational clientele includes clients from Turkey, USA, Australia, Dubai, Japan and Netherland.

OUR SPECIALIZATION SERVICE

Income Tax Assessment & Litigation

Transfer Pricing Audit/Assessment & Documentation

International & Domestic Tax Advisory & Compliance

Assurance/ Auditing Service

Expatriate Tax/ NRI Tax Advisory & Compliance

OUR OTHER SERVICES

- **Outsourcing of Accounting & Payroll**
- **DVAT/CST Advisory & Compliance**
- **Service Tax Advisory & Compliance**
- **Valuation Services**
- **FEMA/RBI regulations advisory & compliance**
- **Company law Advisory & Compliance**



ANIL AGRAWAL & COMPANY
Chartered Accountants

**Ro: B-1/609, Janakpuri, Near
District Center New Delhi-110058**

Mob: +91-9899217778

Off: +91-11 64992101

E: anilagrwalnco@gmail.com

W: www.anilagrwalandco.com