



ANIL AGRAWAL AND COMPANY

Chartered Accountants



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Tax [Direct & Indirect] News

File Declaration for Non-filing of TDS statement on TRACES:

Persons who are not required to submit TDS statement for FY 2013-14 and not filed any TDS Statements in FY 2013-14, due to non applicability in any particular quarter, shall have to submit a declaration for Non-Filing on the Traces. For this purpose, one can login to TRACES, navigate to “Statements/ Payments” menu and submit details under “Declaration for Non-Filing of Statements”.

Transfer pricing- CBDT defines wholesale trading; Keeps tolerable limit for ALP unchanged.

TP tolerance range u/s 92C for FY 2013-14 remains unchanged vis-à-vis FY 2012-13, however, notification adds explanation to the term “wholesale trading”; 1% range notified for wholesale traders, 3% to apply for all other taxpayers; ALP condition satisfied where variation between ALP and transaction price does not exceed 1% / 3% of transaction price; Notification explains wholesale trading subject to fulfilling two conditions (i) purchase of finished goods is 80% or more of total cost of trading activities (ii) average monthly inventory of such goods is 10% or less of trading sales.

CBDT extends September 2014 TDS deposit date from 7th to 10th October 2014

CBDT extended due date for filing tax audit report for FY 2013-14

CBDT has extended the due date for filing tax audit report to 30th November 2014 in case of assesses who are required to file TAR u/s 44AB. However, in following cases, there is no extension and hence assessee needs to file its ITR by 30th September, 2014 only:

- a) Where audit report is required to be filed in Form 10 CCB.
 - b) Where accounts are not required for audit u/s 44AB.
 - c) Where accounts are not required to audit u/s 44AD(Example: where income is more than 8%, where taxable income is below threshold limit, as no audit is required)
 - d) In case of a Loss Return of any assessee, whose turnover is less than 1 Cr.
- Further, Interest u/s 234A shall be applicable.

One TDS challan for Payment under different sections and years.

CBDT has allowed single challan for payments under different sections and years.

CBDT criteria for manual selection of cases

CBDT lays down criteria for compulsory manual selection of cases for scrutiny during FY 2014-15; Cases involving addition in excess of Rs. 10 lakhs in earlier year, and primarily all search-seizure-survey and reassessment cases to be picked up; Further includes cases where charitable trusts/institutions are claiming Sec 11/Sec 10(23C) exemption inspite of Sec 12AA registration/Sec 10(23C) approval denial.

ICC recommendation on UN's proposed separate article on technical service

International Chamber of Commerce (ICC) submits recommendations on United Nation (UN)'s proposed separate article on technical services ; ICC advocates net taxation as against gross basis taxation but cautions that broadening PE definition by introducing deemed technical services PE might lead to a huge increase in business compliance burden; Believes that a precise and specific definition of technical services should prevail, recommends reference to Indo-US MOU guidance for developing any special rule.

Government notifies Double Taxation Avoidance Agreement (DTAA) with Bhutan & Colombia, enters revised DTAA / Protocol with Poland

India and Cyprus are negotiating changes to their double taxation avoidance agreement (DTAA), with India insisting on the inclusion of a limitation of benefit (LOB) clause—an issue on which there has been no agreement so far,

Service Tax- Electronic tax payment compulsory

With effect from 1st October, 2014; every assessee is required to pay service tax electronically through internet banking therefore service tax liability for the month of September, 2014 or quarter ending September, 2014 is required to be paid electronically irrespective of the constitution of assessee and quantum of turnover/service tax.

Service Tax- Notification No. 17/2014 - ST dated August 20, 2014 amends Mega Exemption Notification No. 25/2012 – ST dated June 20, 2012

To exempt Services provided by a specified organization related to religious pilgrimage facilitated by Ministry of External Affairs of the Government of India, under bilateral arrangement vide a new entry 5A.

D-VAT Circulars

- a) Commissioner may, after giving to the dealer an opportunity of being heard, may direct the dealer to deposit an amount deemed reasonable, out of the amount under dispute, before such objection is entertained vide Circular No. 10 of 2014-15, File No. F.3(458)/Policy/VAT/2014/335-341 dated 03/09/2014
- b) Department has issued Circular on Reversal of Input Tax Credit under Section 10 of the DVAT Act, 2004 in respect of Credit Note/Debit Note related to discounts vide Circular No. 11, File No: F.3(394)/Policy/VAT/2013/349-356 dated 08.09.2014
- c) D-VAT has extended due date of filing reconciliation return in CST Form-9 for the year 2013-14 to 28th November, 2014 vide Circular No. 13 dated 26/09/2014.
- d) Correction in 2A and 2B under Central Act for the year 2012-2013 is now possible for limited period.

Regulatory [ROC & RBI]

FDI- Issue of equity shares against outstanding dues

Presently, an Indian company under the automatic route may issue shares/convertible debentures to a person resident outside India against lump-sum technical know-how fee, royalty, External Commercial Borrowings (ECBs) and import payables of capital goods by units in Special Economic Zones, subject to certain conditions.

Amendment made:

- a) It has been decided to permit issue of equity shares against any other funds payable by the investee company, remittance of which does not require prior permission from the Government of India, provided the shares are issued in accordance with existing FDI guidelines.
- b) Issue of shares that require Government approval or import dues considered as ECB or trade credit or payable against import of second hand machinery, to continue being dealt in accordance with existing guidelines.

RBI Circular- A great boost to External Commercial Borrowing as RBI permits overseas lender to lend in Indian Rupees vide RBI/2014-15/207 A.P. (DIR Series) Circular No. 25[3].

MCA has amended the Companies (CSR Policy) Rules, 2014

In Rule 4, the overall ceiling on the expenditure on building of CSR Capacity including expenditure on Administrative Overhead cannot exceed 5% of the total expenditure on CSR. The overall expenditure of 5% will now also includes the expenditure on administration of the CSR activities.

Latest Direct Tax Judicial Pronouncements

VODAFONE INDIA SERVICES PVT LTD Vs Union of India [2014] 50 taxmann.com 300 (Bombay) [On TP]

Bombay High court held that in the absence of a charging Section in Chapter X of the Act, it is not possible to read a charging provision into Chapter X of the Act. Even Income arising from International Transaction between AE must satisfy the test of Income under the Act and must find its home in the charging provisions Therefore; no income arises in absence of any charging provision to tax capital account transaction in respect of issue of shares at a premium to the holding company.

Also, held that capital receipts received by the Petitioner on issue of equity shares to its holding company or the alleged short-fall between the so called FMV of its equity shares and the issue price of the equity shares cannot be considered as income.

Assistant Commissioner of Income-tax, Cir. 5 (1), New Delhi Vs Kehin Panalfa Ltd [2014] 49 taxmann.com 244(Delhi- Trib) [On TP]

Assessee-company was engaged in manufacturing auto components. Assessee company entered into a technical collaboration agreement with its AE, 'K', Japan whereby assessee was licensed to manufacture products using technology, know-how and technical assistance of AE - In transfer pricing proceedings, assessee disclosed certain amount paid as royalty to its AE i.e. 'K', Japan - TPO noted that in spite of fact that technical design were provided to assessee by associated enterprise for manufacture of its products in India, yet assessee was selling its products to another associated enterprise, royalty was not required to be paid - TPO thus made addition to assessee's ALP by taking value of royalty payment at nil. Tribunal held that since royalty had been paid since year 1997 and was continuously examined by Assessing Officer, then in absence of any new facts, it could not be concluded that there was no need to pay royalty during assessment years in question.

New Holland Tractors (India) (P.) Ltd Vs Commissioner of Income-tax, Delhi –V [2014] 49 taxmann.com 573 (Delhi)

Where assessee, a subsidiary of US based company, entered into an agreement during relevant year whereby it received certain amount as licence fee for granting right to use technology relating to manufacturing a particular model of tractor for three years, in view of fact that after execution of agreement, no services or know-how was to be supplied during next three years, entire licence fee was to be taxed in assessment year in question even though payment had to be deposited in escrow account and it was only after successful completion of legal formalities and mutual obligations, deposit was to be received and appropriated by assessee

Bank of Tokyo Mitsubishi UFJ Ltd Vs ADIT, Circle-1(1), International Taxation, New Delhi [2014] 49 taxmann.com 441 (Delhi - Trib.) [On PE]

Held that where assessee, a bank incorporated in Japan, paid salaries abroad to its expatriates working in Indian branch constituting PE, in view of fact that said expenditure had been incurred wholly and exclusively for Indian branch and, no part of those expenses could be allocated to any other branch by head office, provisions of section 44C did not apply to said expenditure and thus, assessee's claim for deduction of salary expenses was to be allowed.

Also held that where PE of assessee received interest on deposits kept with HO, it was opined that once interest received by PE was deemed to be income of PE and there was no bar in India-Japan treaty on its taxability, then it could not be excluded from computation of income earned by PE

Further held that MAT provisions are applicable only to domestic companies and not to foreign companies

Director of Income-tax (International Taxation)-II Vs Panalfa Autoelektrik Ltd. [2014] 49 taxmann.com 412 (Delhi)

Commission paid by assessee to its foreign agent for arranging of export sales and recovery of payments could not be regarded as 'fee for technical services' under section 9(1)(vii) and, thus, assessee was not liable to deduct tax at source while making said payment.

Hughes Systique India (P.) Ltd. Vs Deputy Commissioner of Income-tax, Circle-12 (1), New Delhi [2014] 50 taxmann.com 25 (Delhi - Trib.) [On TP]

Held that where TPO made addition to assessee's ALP in respect of software development services rendered to AE by applying external TNMM, in view of fact that in earlier years Tribunal had remanded matter back with a direction that internal CUP was to be applied, in absence of any change in circumstances, following aforesaid of Tribunal, impugned addition was to be set aside.

Also, held that where assessee paid payroll services to foreign AE which was in nature of managerial services, since said payment could not be considered as 'fee for included services' within meaning of article 12(4) of India - US DTAA, it was not chargeable to tax in India and, therefore, assessee was not liable to deduct tax at source while making payments in question.

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

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- **FEMA/RBI regulations advisory & compliance**
- **Company law Advisory & Compliance**



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