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INSIGHT
NEWSLETTER

INCOME TAX

Clarifications on implementation of GAAR provisions under the Income Tax

The General Anti Avoidance Rule (GAAR provisions) shall be effective from the Assessment Year 2018-19 onwards, i.e. Financial Year 2017-18 onwards. The necessary procedures for application of GAAR and conditions under which it shall not apply, have been enumerated in Rules 10U to 10UC of the Income-tax Rules, 1962.The provisions of General Anti Avoidance Rule (GAAR) are contained in Chapter X-A of the Income Tax Act, 1961.

It has been clarified by CBDT, that if the jurisdiction of FPI is finalized based on non-tax commercial considerations and the main purpose of the arrangement is not to obtain tax benefit, GAAR will not apply. GAAR will not interplay with the right of the taxpayer to select or choose method of implementing a transaction. Further, grandfathering* as per IT Rules will be available to compulsorily convertible instruments, bonus issuances or split / consolidation of holdings in respect of investments made prior to 1st April 2017 in the hands of same investor. It has also been clarified that adoption of anti-abuse rules in tax treaties may not be sufficient to address all tax avoidance strategies and the same are required to be tackled through domestic anti-avoidance rules. However, if a case of avoidance is sufficiently addressed by Limitation of Benefits (LoB) provisions in the tax treaty, there shall not be an occasion to invoke GAAR.

It has been clarified that if at the time of sanctioning an arrangement, the Court has explicitly and adequately considered the tax implications, GAAR will not apply to such an arrangement. It has also been clarified that GAAR will not apply if an arrangement is held as permissible by the Authority for Advance Rulings. Further, it has been clarified that if an arrangement has been held to be permissible in one year by the PCIT/CIT/Approving Panel and the facts and circumstances remain the same, GAAR will not be invoked for that arrangement in a subsequent year.

The proposal to apply GAAR will be vetted first by the Principal Commissioner of Income Tax / Commissioner of Income Tax and at the second stage by an Approving Panel headed by a judge of High Court. The stakeholders have been assured that adequate procedural safeguards are in place to ensure that GAAR is invoked in a uniform, fair and rational manner.

Impact of Finance Bill , 2017 on the implementation of GAAR provisions:

The finance minister has not given in to the industry representation for deferring implementation of GAAR provisions. In addition to this, he has proposed a number of specific anti avoidance rules (anti-abuse measures), such as transfer of listed-securities, which have been acquired after October 1, 2004, without payment of securities transaction tax will now not be eligible for long-term capital gain tax exemption. This may impact certain exits through bulk transactions on the stock exchange, while the said shares may have been originally acquired through an off-market transaction. Detailed guidelines in this regard are awaited.

India has taken the next big step in its transfer pricing framework with the Budget ushering in the concept of 'secondary adjustments'.

Continued

EDITORS NOTE

SV insight, this 9th edition focuses on General Anti Avoidance Rule and Budget Hi lights 2017. We do hope that you find the contents are informative.

We welcome suggestions from you for improving the scope and nature of content in order to make it more relevant and useful.

We thank all of you for the encouraging feedback.

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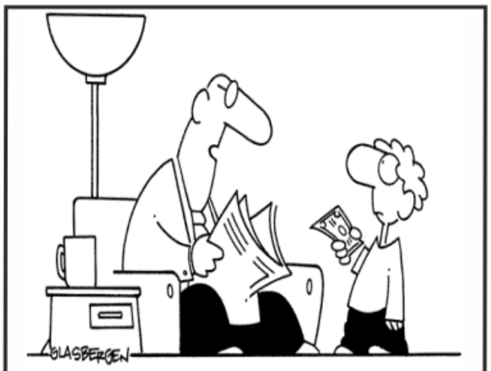
TAX DUE DATES FOR FEBRUARY 2017

Monthly Compliance:

Sl. No	Particulars	Due Date
1	Service Tax Payment	06-Feb-2017
2	Central Excise Payment	06-Feb-2017
3	TDS / TCS Payment/Remittance	07-Feb-2017
4	Central Excise Monthly Return	10-Feb-2017
5	CST Payment	20-Feb-2017
6	VAT Monthly Payment	20-Feb-2017
7	PT Payment - Employees	20-Feb-2017
8	ESIC Payment	21-Feb-2017
9	PF Payment	15-Feb-2017
10	PF Return	25-Feb-2017



Money can't buy happiness.
You also need high-yield stocks,
prime real estate and solid credit rating.

* grandfathering means (exempt someone/some thing from a new law or a regulation)

The move will have implications for MNCs' tax liability and cash flows, say tax experts.

Secondary adjustment:
Simply put, for the purpose of 'secondary adjustments', the taxman is now being empowered to treat any unrepatriated 'primary adjustments' as deemed advance and bring the interest on such advances to tax at the hands of domestic taxpayer.
Globally, countries approach this situation either by treating the amount as deemed dividend or a loan on which notional interest is charged. India has followed the latter approach.

To cite an example, in case of sale of goods where the transaction value is, say, ₹100 but the arm's length price is determined by the tax authorities at, say, ₹120, then the differential of ₹20 is a primary adjustment. If this ₹20 is not brought into India, then secondary adjustment by way of interest on ₹20 will be made.

The Budget has sought to introduce the concept of 'secondary adjustments' only in situations where the 'primary adjustment' is in excess of ₹1 crore.

Transfer pricing refers to pricing of goods and services within an organisation like a parent company to its subsidiary, which determines tax liability of an Indian subsidiary of a foreign company. There is often a dispute between foreign companies and Indian tax authorities in calculating tax liability.

SERVICE TAX

The amendments proposed under Service Tax vide the Union Budget have been divided in 3 categories on the basis of applicability date. Below is a gist of the same :-

Amendments in CENVAT Credit Rules, 2004:

(i) Rule 6: Clause (e) of Explanation I to Rule 6(3) and 6(3A) shall not apply to banks and financial institutions including NBFCs.

(ii) Rule 10: Sub-rule (4) of Rule 10 has been inserted to implement a cap of 3 months for approval of transfer of credit by jurisdictional Dy./Assistant Commissioner from the date of receipt of application by the said authority.

2. Changes applicable w.e.f. the date of receipt of assent of the President

a. **Proposed Amendment: -** Section 121 to the Finance Bill 2017 proposes to omit clause (f) from Section 66D to the Finance Act 1994. Therefore, any process amounting to manufacturing or production will be taxable. However, Notification No 25/2012 ST is also proposed to be amended vide Notification 07/2017 dated 2nd February 2017 through which any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption will become exempted from the payment of Service Tax.

Impact of amendment: - The proposed amendment will make process of manufacturing or production subject to the payment of Service Tax. Parallel exemption is also available under clause (i) to the Serial No 30 of Notification No 25/2012 ST as amended vide Notification 07/2017 dated 2nd February 2017. The tax, if charged by the service provider will be available as the credit for the service recipient without any restriction. Similarly, an activity of manufacturing of alcohol on job work basis for principal manufacturer will still be under the ambit of Service Tax. The amendment will be effective from the date on which Finance Bill will receive the assent of president.

b. Amendment in Rule 2A of Service Tax (Determination of Value) Rules, 2006:

In order to nullify the impact of decision of the Hon'ble Delhi High Court in the case of Suresh Kumar Bansal v. UOI (2016) 70taxmann.com 55 (Delhi), Rule 2A has been amended so as to exclude value of property in land or undivided share of land from the value of service portion in execution of works contract involving transfer of goods and land or undivided share of land, as the case may be. Further, the provisions of abatement related to Construction Service have also been included in the said rule which are applicable as per the timeline of changes to abatement notification with respect to the said service.

c. Amendments in Advance Ruling:

(i) The definition of “Authority” is being given the same meaning as Authority for Advance Ruling provided under Income Tax Act.

(ii) The application fee is being increased to Rs. 10,000/- so as to align it with Central Excise Act.

Continued

(iii) The Authority shall pronounce its ruling within 6 months on the lines of the Central Excise Act.

(iv) The pending applications before the Authority for Advance Rulings (Central Excise, Customs and Service Tax) shall be transferred to the Authority constituted under Section 245-O of the Income Tax Act.

Non-availability of Service Tax exemption as provided w.r.t. R&D Cess:

Due to the proposed repeal of Research and Development Cess Act, 1986, a consequent change is being proposed under Service Tax through which exemption of Service Tax, which was provided for an amount equivalent to R&D Cess paid on import of technology, would not be available on a taxable service involving import of technology on which R&D Cess is not payable.

3. Changes applicable with retrospective effect subject to assent of the President

   a. Exemption for upfront amount for grant of long term lease extended from 01/06/2007:
   Benefit of exemption of Service Tax from one time upfront payment payable for grant of long term lease of industrial plots which was available from 22-09-2016 is being extended to be made available from 01-06-2007.

   b. Exemption to Army, Naval, and Air Force Group Insurance Fund:
   A retrospective exemption is proposed starting from 10-09-2004 and ending on 01-02-2016 for group insurance schemes for life insurance of members of Army, Naval and Air Force.

Highlights of the Budget - 2017

- FY18 budget is focused on improving spending & liquidity needs of rural India. It emphasizes on fiscal prudence, improving the farmers income, stresses on affordable housing for all, providing infrastructure boost and enhancing digitalization.
- The government has set FY18 & FY19 fiscal deficit target at 3.2% & 3 % of GDP respectively. This will reduce the government borrowings and hence would result in reduction in interest rates.
- FM's intent to list Railway PSUs like IRCTC, IRCON and IRFC on stock exchanges will help in improving fiscal health of the government. In addition, government intends to create an integrated public sector 'oil company' which will be able to scale to large international players.
- For 2017-18, the total outlay for Rural, Agriculture and Allied sector is —Rs1.87 lakh crore (24% yoy).
- Given the shift to GST in FY18, estimates of indirect tax collections, although conservative, are largely irrelevant.
- Foreign portfolio investors (category I & II) exempted from capital gains arising from taxation of indirect transfers. Category I FPIs include sovereign wealth funds and central banks while category II includes mutual funds and banks.
- The rebate for the low income earners (under section 87A) is proposed to be reduced to INR 2,500 from the present limit of INR 5,000 and will be available only in case of income up to INR 3.5 lakhs
- Corporate tax rate in case of a domestic company whose total turnover or gross receipts in Financial Year 2015-16 does not exceed INR 500 million reduced to 25%.
- The maximum limit of cash donations deductible under section 80G has been proposed to be reduced to INR 2,000 from INR 10,000
- The time limit for carry forward and utilization of MAT credit has been increased from 10 to 15 years.
- A surcharge of 10% on tax payable is proposed for individuals having an income of INR 50 lakhs to INR 1 crore. The surcharge rate for individuals having income more than ₹ 1 crore remains unchanged.
- Government in order to promote cashless transactions, has restricted cash transaction to below Rs 3 lakh.
- The holding period for computing long term capital gain tax on immovable assets is reduced to 2 years from 3 years in order to encourage mobility of assets.
- The base year for indexation has been shifted to April 1, 2001 from April 1, 1981 for all asset classes including immovable property, which would reduce the capital gain tax liability.
- New Metro Rail Policy will be announced with focus on innovative models of implementation and financing as well as standardization and indigenization of hardware and software.
- The government has increased excise duties on cigarettes across all lengths by —6.2%. This is lower than the average increase in last five years. This bodes well for cigarettes companies like ITC.
- Budget gave some relief to banks, especially to PSU banks, by increasing permitted provisioning for Non-Performing Asset to 8.5% from 7.5%.
- In addition, Budget also proposed interest taxable on actual receipt instead of accrual basis in respect of NPA accounts of all non-scheduled cooperative banks also to be treated at par with scheduled banks.

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Particulars	2016-17E (Rs. In crore)	2017-18E (Rs. In crore)	Growth YOY (%)
Revenue Receipts	14,23,562	15,15,771	6.5%
Capital Receipts	5,90,845	6,30,964	6.80%
Total Receipts	20,14,407	21,46,735	6.60%
Scheme Expenditure	8,69,847	9,45,078	8.60%
Other Expenditure	11,44,560	12,01,657	5.00%
Total Expenditure	20,14,407	21,46,735	6.60%
FiscalDeficit	5,34,274	5,46,532	
Fiscal Deficit (% of GDP)	3.5	3.2	

Sector	
Agriculture	Agriculture credit target increased to Rs 10 lakh crore for FY17-18 from Rs 9 lakh crore in FY16-17. Increased coverage under Fasal Bima Yojana scheme to 40% in FY17-18 and 50% in FY18-19 as compared to 30% in FY16-17, with provision of Rs 9,000 crore for the same. NABARD's Long Term Irrigation Fund, with a corpus of Rs 20,000 crore in FY16-17 will be raised to Rs 40,000 crore in FY17-18. Dairy Processing and Infrastructure Development Fund to be setup under NABARD with initial corpus of Rs 2,000 crore, to be increased to 8,000 crore over 3 years.
Oil & Gas	Basic customs duty on LNG reduced from 5% to 2.5%
Real estate	Under the scheme for profit-linked income tax deduction for promotion ofaffordable housing, nowcarpet area to be considered for low-cost housing instead of built-up area. Long term capital gain taxholding period from transfer of immovable property reduced from 3 to 2 years. The base year for indexation is proposed to be shifted from 1st April 1981 to 1st April 2001 for all classes of assets including immovable property. Pradhan Mantri Awaas Yojana — Gramin allocation increased from Rs. 15,000 crore in FY17 to Rs. 23,000 crore in FY18 with a Target to complete 1 crore houses by 2019. For builders for whom constructed buildings are stock-in-trade, tax on notional rental income will only apply after one year of the end of the year in which completion certificate is received.
Banks & NBFC	Allocation of Rs 10,000 crore in FY18 under Indradhanush roadmap for recapitalisation of PSU banks, against Rs 25,000 crore allocated in FY16-17. Provision for Non-Performing Asset of banks increased from 7.5% to 8.5%, which will reduce banks liability. National Housing Bank will refinance individual housing loans of Rs 20,000 crore in FY18.
Infrastructure	Affordable housing to be given infrastructure status, which will increase credit demand but may reduce margins. Budget allocation for highways increased from Rs. 57,976 crore in FY17 to Rs. 64,900 crore in FY18. It is proposed to feed about 7,000 stations with solar power in the medium term. Second phase of Solar Park development is accounted for additional 20,000 MW capacity.
Consumer Durable	Existing rate of taxation for individual assesses between income of Rs 2.5 lakh to 5 lakh reduced to 5% from the present rate of 10%. Tax saving of Rs 12,500 per annum.

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