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India Tax Konnect

Contents

Editorial

The Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015 (the Bill) has been introduced in the Parliament on 20 March 2015. The Bill provides for separate taxation of any undisclosed income in relation to foreign income and assets. Such income will henceforth not be taxed under the Income-tax Act, 1961 (the Act) but under the proposed new legislation. Strict penalties and prosecution related provisions have been introduced for non-compliance with the provisions of this Bill. The Bill also provides a window for filing a declaration before the specified tax authority within a specified period, followed by payment of tax at the rate of 30 per cent and an equal amount of penalty. Upon fulfilling of these conditions, a person shall not be prosecuted under the Bill and the declaration made by him will not be used as evidence against him. This new law has been introduced to act as a strong deterrent to help curb the menace of black money stashed abroad by Indians.

On the international tax front, the Supreme Court of India in the case of GVK Industries Ltd. observed that 'source state taxation' rule confers primacy to right to tax a particular income or transaction of the state/nation where the source of the said income is located. The doctrine of source rule explains that where business activity is wholly or partly performed is the source state. As a logical corollary, the state concept would also justifiably include the country where the commercial need for the product originated, i.e. where the consultancy is utilised (which in the present case is India). The Supreme Court held that the services provided by a non-resident company as a financial advisor to an Indian company are consulting in nature. The non-resident company had the skill, acumen and knowledge in the specialised field to provide such services. Therefore, such services have been held to be taxable as Fees for Technical Services under the Act.

The Delhi Tribunal in the case of Qualcomm Incorporated dealt with the issue of taxability of royalty paid by non-resident companies to another non-resident company based in the USA. The non-resident companies sold CDMA technology enabled handsets and equipment to Indian companies. The Tribunal observed that when the royalty is for the use of technology in manufacturing, it is to be taxed at the situs of manufacturing the product. Further when the royalty is for use of technology in functioning of the product so manufactured, it is to be taxed at the situs of use. Taxation of royalty shall be in the jurisdiction where the technology is used.

On the transfer pricing front, the Finance (No.2) Act, 2014 introduced the rollback provisions under the Advance Pricing Agreement (APA) programme. The rules have been notified on 14 March 2015 setting out the applicability and the requirement for applying rollback. Further, pre-filing consultation which was mandatory has been made optional. Therefore, going forward an applicant can directly file the main Advance Pricing Agreement application without filing for a pre-filing consultation. The application for rollback was to be filed on or before 31 March 2015 in the case of applications filed before 1 January 2015 as well as in few cases where APA has been entered into before 1 January 2015. However, the deadline for filing application for rollback has been extended to 30 June 2015.

We at KPMG in India would like to keep you informed of the developments on the tax and regulatory front and its implications on the way you do business in India. We would be delighted to receive your suggestions on ways to make this Konnect more relevant.

International tax

Decisions

Financial advisory services provided by a non-resident treated as 'consultancy service' taxable as Fees for Technical Services

The taxpayer, an Indian company entered into an agreement with a French company (Financial advisor) to seek services in preparation of a scheme for raising the finance and tie up for the required loan, for a power project in India. The services included, inter alia, financial structure and security package to be offered to the lender, providing an assessment of export credit agencies world-wide and obtaining commercial bank's most competitive terms, negotiations and documentation with lenders, structuring, negotiating and closing the financing for the project in a coordinated and expeditious manner. As consideration for these services, the French company was to be paid a 'success fee'. The taxpayer approached the concerned Assessing Officer (AO), for issuing a 'No Objection Certificate' (NOC) to remit the said sum. However, the AO refused to issue the NOC. The taxpayer preferred a revision petition before the Commissioner of Income-tax (CIT), under Section 264 of the Act, where the CIT permitted the taxpayer to remit the said sum to the French company by furnishing a bank guarantee for the amount of tax. Subsequently, the CIT revoked the earlier order passed under Section 264 of the Act, and directed the taxpayer to deduct tax and pay the same to the central government as a condition precedent for issuance of the NOC.

The taxpayer filed a writ petition before the High Court. The High Court held that the advice given to procure a loan to strengthen finances may come within 'technical' or 'consultancy' services. The 'Success fee' would thereby come within the scope of technical service under the ambit of Section 9(1)(vii)(b) of the Act. Accordingly, the taxpayer was not entitled to NOC.

The Supreme Court held that French company does not have a place of business in India. Since the taxpayer had not invoked the India-Switzerland tax treaty, the issue before the Supreme Court was whether the 'success fee' is Fees for Technical Services (FTS) under Section 9(1)(vii) of the Act. Perusal of Section 9(1)(vii) of the Act lays down the principle which is basically known as the 'source rule', i.e. income of the recipient is to be charged or chargeable in the country where the source of payment is located, to clarify, where the payer is located. The clause further mandates and requires that the services should be utilised in India. As per the principle of nexus, the nexus of the right to tax is in the source rule. The source rule would apply where business activity is wholly or partly performed in a source state. As a logical corollary, the state concept would also justifiably include the country where the commercial need for the product originated, that is, for example, where the consultancy is utilised.

The expression, 'managerial, technical or consultancy service,' used under Section 9(1)(vii) of the Act, has not been defined in the Act and therefore, in the given factual matrix, the general and common usage of the said words has to be understood at common parlance. French company had the skill, acumen and knowledge in the specialised field i.e. to prepare a scheme for

required finances and tie-up required loans for the project. The nature of services rendered by French company would come within the ambit of the term 'consultancy service'. Therefore, the tax at source should have been deducted on the amount paid as fees and could be taxable under the head 'FTS'.

GVK Industries Ltd. vs. ITO [2015] 54 taxmann.com 347 (SC)

Taxability of royalty paid for CDMA technology enabled in the handsets and equipments sold to Indian companies

The taxpayer, a company incorporated in the USA, is engaged in the business of design, development, manufacture and marketing of digital wireless communication products and services, based on Code Division Multiple Access (CDMA) technology. The taxpayer had four principal business units i.e. Qualcomm CDMA Technologies (QCT), Qualcomm Technologies Licensing (QTL), Qualcomm Wireless & Internet (QWI) and Qualcomm Strategies Initiatives (QST). In the business model adopted by the taxpayer, the licensees typically pay a non-refundable license fee in one or more instalments and ongoing royalty based on the sale of products incorporating or using the licensed property. The AO held that the royalty paid by the non-resident Original Equipment Manufacturers (OEMs) to the taxpayer was taxable in India.

The Delhi Tribunal held that when the royalty is for the use of technology in manufacturing, it is to be taxed at the situs of manufacturing the product. Further when the royalty is for use of technology in functioning of the product so manufactured, it is to be taxed at the situs of use.

The Tribunal held that while FTS is a consideration for the work done, royalty is a consideration for use of an asset: tangible or intangible. The connotations of the expression 'intellectual property' (IP) cover much more ground than 'software' simplicitor and essentially includes use of any patent or patented technology which is embedded in a CDMA handset. Technology for mobile communication viz 'operating systems using CDMA technology' was invented by the taxpayer and the taxpayer owns vital patents in respect of the same. Accordingly, the royalty is for use of such patented technology while the point of its collection, as a measure of convenience and in consonance with the industry practice, is from the manufacturer when the patented product is put into use, by sale. It was necessary to examine whether the use of patent, for which the impugned payments have been made by the OEMs to the taxpayer, was on the manufacturing process of the handsets or in the use of the patented technology embedded in the CDMA handsets. As this aspect of the matter, is a highly technical aspect which may also need expert advice, the Tribunal remitted the matter to the AO for recording

necessary factual findings after obtaining technical reports on the same.

Qualcomm Incorporated vs. ADIT [I.T.A. Nos.: 3701 and 3702/Del/2009, 5343/Del/2010 and 4608/Del/11, AY: 2005-06, 2006-07, 2007-08 and 2008-09] – Taxsutra.com

Amount received by a third party for merely providing seismic survey vessels are in consideration for prospecting, extractions or production of, mineral oils and therefore taxable under Section 44BB of the Act

CGG Services (CGG or the Charterer) is a non-resident company incorporated in France which was hired for carrying out geophysical prospection. CGG entered into three contracts with ONGC for providing personnel and equipment, plan and execute acquisition of 3D seismic data and basic 3D seismic data processing. For providing the services to ONGC, CGG further entered into a Charter Agreement with another French company (the taxpayer), a tax resident of France. As per the Agreement, the taxpayer provided two seismic survey vessels to CGG for carrying out the seismic operations on the offshore of India. The equipment and crew on the vessels were to be provided by taxpayer as per the specifications in the contract. The taxpayer offered the revenues from such leasing of vessels to be taxed under Section 44BB of the Act. The AO held that the equipment (vessel) rental received by the taxpayer are in the nature of royalty and are taxable under Section 9(1)(vi) of the Act. For this purpose, the taxable profit of the taxpayer has been estimated at 25 per cent of gross revenue.

The Delhi Tribunal held that the generation of income (operational income) attracts Section 44BB of the Act, and not the ownership of a ship. Only condition that is manifest in the Section 44BB of the Act is that plant and machinery should have been used, or to be used, in the prospecting for, extraction or production of mineral oils which includes petroleum and natural gas. The agreement was for providing the vessel to CGG (hirer) for the specific purpose of carrying out geophysical prospection, and not for any other purposes like carriage of passengers, goods or livestock etc. Accordingly, these agreements cannot be classified as a time charter simplicitor. Section 44BB of the Act does not distinguish between a main contractor and a sub-contractor. Where the provision does not create any discrimination between the person who actually does the activity of prospecting for or extraction or production, and the person who supplies the plants and machinery, the narrow interpretation of the provision (i.e. restricting the benefit of Section 44BB only to the main contractor) is thus not permitted. Accordingly, the revenues received under the Charter Agreements by the taxpayer from CGG for providing two seismic survey vessels are in consideration for the prospecting, extractions or production of, mineral oils and therefore taxable under Section 44BB of the Act. The nature of receipts on account of provision of supply of vessels on hire basis cannot have character of FTS under the Act.

Louis Dreyfus Armateures SAS vs. ADIT [2015] 54 taxmann.com 366 (Del)

Corporate tax

Decisions

Though most parts of the plant, to be installed outside India, were manufactured outside India but the taxpayer prepared engineering specifications, inspected the final product, etc. of the plant in the 100 per cent Export Oriented Unit and therefore was eligible for 10B deduction

The taxpayer is a company engaged in the business of manufacture, trading and export of engineering goods etc. and also has a 100 per cent Export Oriented Unit (EOU/Unit) located in an Export Processing Zone. In the relevant year, the taxpayer claimed exemption/ deduction under Section 10B on profit from the EOU. The AO, however, held that the taxpayer himself did not manufacture any goods but had removed various parts after testing and disassemble them for the purpose of export. Testing, painting or prepackaging for export cannot be construed as manufacture or assembling activity. Accordingly, the AO did not allow deduction under Section 10B.

The Delhi High Court observed that a reading of the Section 10B of the Act indicates that it is a beneficial provision and has been enacted to give tax concession upto 100 per cent to an EOU engaged in production of articles, things or computer software. The taxpayer had carried out detailed engineering analysis of system design, equipment specifications, development and preparation of engineering drawings and thereafter, approval was taken from the client. At the next stage, the taxpayer issued technical specification and drawings of products for production, which was outsourced to third party vendors. During the course of production by the third parties vendors, process inspection and final inspection was undertaken by the taxpayer and after approval, the goods were dispatched from the vendor's factory to the taxpayer. The goods were then examined at the EOU and goes for in-house fabrication by the taxpayer. Subsequently, the goods were exported from India and erected at the site, tested and then commissioned.

Although, the High Court observed that it is apparent that the taxpayer did not self-manufacture most of the articles which were exported and used for setting up the plant, in Section 10B of the Act, the word 'production' has been used in addition to the word 'manufacture', and also an expanded scope and ambit is envisaged for the said term in the context in Explanation 4 of Section 10B. The tax department had also accepted that in case the plants installed outside India have been completely assembled in the Unit and exported as such, the taxpayer would qualify as manufacturer or a person engaged in production of articles or things. However, the benefit under Section 10B of the Act, as asserted by the tax department, is now denied for what was exported were separated or disassembled parts of the plant. The said fabrication and assembly had to be undertaken in view of size and logistics at the location where the plants had to be upgraded or set up. The reasoning of the tax department is

not acceptable since it deflates the object and purpose of Section 10B of the Act. Export of goods and things can take various forms and Section 10B accepts and admits such interpretation.

Accordingly, the aforesaid activities qualify as manufacture or production of goods by the taxpayer himself and therefore, the taxpayer is entitled to benefit under Section 10B of the Act.

CIT vs. AAR ESS EXIM PVT. LTD. (ITA No. 551/2013 and 553/2013, dated 5 February 2015) – Taxsutra.com

Payment received on account of discounting 'future interest receivables' is taxable in year of receipt and it cannot be deferred in later year till the date of actual collection of interest

During the year under consideration, the taxpayer, a micro finance institution, sells its loan portfolios including the future interest receivable to commercial banks for obtaining capital refinancing funds and derived a gain. The taxpayer offered such gain on proportionate basis out of future receivable interest and amortised the balance amount to later years. The AO held that the entire gains received on sale of portfolio loans are taxable as income during the year.

The Hyderabad Tribunal held that the taxpayer has received the discounted amount as a part of sale consideration and therefore, the gain on the transaction has accrued during the year. Even though, there are certain deposits kept with the banks for the purpose, out of the total portfolio including the future interest, the taxpayer did receive certain amount which is in a way discounted interest on the future receivables. Had the taxpayer been accounting the interest receivables as and when accrued, without sale of the portfolio, it has to be admitted that future interest cannot be taken as income. However, when taxpayer bundles it and sells it as a portfolio for a discount, the amount did accrue and received on the date of entering agreement. Since the transaction happened on 19 March 2009, the entire amount is to be accounted as income on that transaction as a gain in such year.

The principles of bill discounting and accounting entries are similar to the portfolio sale/securitisation of loan portfolios, being the method involved being same, and therefore, the Tribunal upheld the orders of AO and Commissioner of Income-tax (Appeals) [CIT(A)]. Accordingly, the Tribunal held that the amount of discounted future interest received by the taxpayer during the year is taxable in such year.

Asmitha Microfin Ltd. vs. ACIT (ITA No. 137/Hyd/2013) – Taxsutra.com

In the absence of exempt income earned by the taxpayer, the provisions of Section 14A cannot be invoked

During the relevant year, the taxpayer has not made any claim of exempt income in its return of income and therefore contended that no disallowance under Section 14A of the Act can be made. However, the AO made the disallowance under Section 14A read with Rule 8D of the Income-tax Rules, 1962 (the Rules).

The Bangalore Tribunal held that the coordinate bench in the case of Bhuwalka Steel Industries Ltd. (ITA No.349/Bang/2013) had relied upon the decisions of the various High Courts in coming to the conclusion that in the absence of exempt income earned by the taxpayer, the provisions of Section 14A cannot be invoked. In the case of Bhuwalka Steel Industries Ltd., the taxpayer did not earn any exempt income during the relevant year.

The Bangalore Tribunal relied on various decisions {CIT vs. Winsom Textile Industries Ltd. [2009] 319 ITR 204 (P&H), CIT vs. Corrtech Energy Pvt. Ltd. [2014] 223 Taxman 130 (Guj), JCIT vs. Shivam Motors (P) Ltd. (ITA.17/Lkw/2012, dated 12.11.2013) (Lkw), CIT vs. Shivam Motors (P) Ltd.,[ITA No. 88 of 2014, dated 5 May 2014 (All)] and held that the provisions of Section 14A could not be invoked in the present case. The CBDT Circular No.5 of 2014, dated 1 February 2014 which is contrary to these High Court decisions cannot therefore be the basis to sustain the disallowance made by the tax department. Accordingly, the disallowance made under section 14A of the Act was deleted.

Anriya Project Management Services (P) Ltd. vs. DCIT (ITA No. 1799/Bang/2013) (AY: 2009-10)

Transfer pricing

Decisions

Delhi High Court upheld the Revenue's stand of characterising AMP expense as an international transaction subject to transfer pricing. However, overrules principles laid down in the AMP Special bench ruling by holding aggregation approach appropriate for remunerating AMP functions

In 2013, in the case of LG Electronics India Private Limited vs. [2015] 167 TTJ 417 (Del) the Special Bench of the Delhi Tribunal delivered a ruling on the vexed issue of marketing intangibles. Subsequently, there were various conflicting decisions which led to a need for greater clarity and guidance on the issue that incessantly impacted the industry at large. In this regard, recently, the Delhi High Court in the case of Sony Ericsson Mobile Communication India Pvt. Ltd and several other connected matters (taxpayer) upheld that advertisement, marketing and sales promotion (AMP) expense constitute an international transaction subject to transfer pricing. While the High Court upheld the Revenue's jurisdiction to such transactions, it overturned various other aspects of the Special Bench ruling holding the application of such ratios are erroneous and unacceptable. Among its several findings in the case, the High Court held that distribution and marketing are intertwined functions and can be analysed together as a bundled transaction and that segregation of non-routine AMP expenditure using the bright line approach is not appropriate. The High Court also held that separate remuneration for the AMP activities may not be required if such compensation is already provided by way of lower purchase price or reduced payment of royalty.

The comparative findings of the Special Bench and the High Court have been summarised as below:

Issue	Special Bench ruling	High Court ruling
Whether AMP spend construes an international transaction?	AMP expense is an international transaction.	AMP expense is an international transaction as marketing and distribution function performed towards AE.
Whether bright line test is a tool/ method to bifurcate expense into routine versus non-routine?	Bright line expense is a tool to bifurcate AMP expenses into routine and non-routine.	Application of bright line test and concept of segregation of non-routine AMP expense lacks statutory backing.
Whether AMP expense is a brand building service?	Incurrence of non-routine AMP expense constitutes provision of brand building service to the AE	Brand building as equivalent or substantial attribute of AMP would be largely incorrect.
Whether aggregation of transactions permissible?	Purchase of goods and AMP expense are separate transactions and cannot be aggregated.	AMP function can be looked as closely linked to and a part of overall marketing and distribution activity, hence can be aggregated.
Whether set off is permissible?	AMP function is to be separately compensated even if higher profitability is present in the distribution function.	Closely linked transactions set off should be permitted.
Whether economic ownership on intangibles is a reality and relevant for transfer pricing purpose?	Concept of economic ownership rejected.	Concept has given due cognisance.
Whether selling and distribution expense constitute AMP expense?	Selling and distribution expense not a part of AMP expenses.	Selling and distribution expense not a part of AMP expenses.

Sony Ericsson Mobile Communication India Pvt. Ltd vs. CIT (ITA No. 16/2014) – Taxsutra.com

Indian Advance Pricing Agreements - Rollback Rules notified and Pre-Filing Consultation made optional

The Finance (No.2) Act, 2014 introduced the rollback provisions under the Advance Pricing Agreement (APA) programme. The rules have now been notified on 14 March 2015 setting out the applicability and the requirement for applying rollback. Further, pre-filing consultation which was mandatory has been made optional. Therefore, going forward an applicant can directly file the main APA application in the Form No. 3CED without filing for pre-filing consultation.

The salient features of the rollback rules are as below:

- The international transaction proposed to be covered under the rollback is to be the same as covered under the main APA.
- The rollback provisions shall be applied for all the rollback years in which the relevant international transaction has been undertaken.
- The manner in which Arm's Length Price has been determined in relation to an international transaction shall be consistent for all the years covered under the APA including the rollback years.
- To be eligible for the applicability of the rollback provisions, the applicant should have filed Return of Income and Form No. 3CEB (Accountants Report) on or before the statutory due date.
- The rollback provision will not be applicable for a particular year where the Income Tax Appellate Tribunal has passed

an order disposing off the appeal prior to the date of signing of the APA.

- In case the application of the rollback provisions would result in reduction of the income offered to tax or increasing the loss as declared in the Return of Income for a particular year, the rollback provision will not be applicable for that year.
- The application for rollback was to be filed on or before 31 March 2015 in the case of applications filed before 1 January 2015 as well as in few cases where APA has been entered into before 1 January 2015. However, the deadline for filing application for rollback has been extended to 30 June 2015.
- Going forward the application for rollback has to be made (Form No. 3CEDA) along with the main APA application (Form No. 3CED).
- An additional fee of INR5 lakh is to be paid along with the rollback application.
- Important procedural aspects for giving effect to the rollback provisions have also been notified.

Notification on APA rollback rules issued by CBDT vide Notification No. 23/2015 [F.No.142 /14/2014-TPL] dated 14 March 2015

Indirect tax

Service tax - Decisions

Service portion in a composite contract can be vivisected and made taxable even before introduction of category of Works Contract Services (i.e. prior to 1 June 2007)

In the instant case, the issue was whether components of a composite transaction including rendition of service under a works contract can be vivisected and brought within the ambit of existing taxable service category prior to enactment of Works Contract Services (i.e. under Commercial or Industrial Construction Services, Construction of Complex Services, Erection, Commissioning or Installation Services).

The larger bench of CESTAT (in the ratio of 3:2) made the following observations:

- A works contract can be vivisected and the service component can be taxable separately;
- Value of such services can be computed as total contract value less value of sale of goods (as determinable under state sales tax/VAT laws)

Accordingly, the Larger Bench held that service elements in a works contract, in case the same is fairly classifiable under any other service category, would be taxable under such taxable category even prior to introduction of Works Contract Services category.

M/s Larsen and Toubro Limited, M/s Kehems Engg. Pvt. Ltd. vs. CST/ CCE&ST/CCE [2015-VIL-147-CESTAT-DEL-ST-LB]

Circulars/Notifications/Press Releases

New norms/ guidelines issued on conducting of Service tax Audits

Central Board of Excise and Customs prescribed norms for consideration of various parameters to be adopted by the department for conducting Service tax audits (such as risk evaluation criteria, coverage of audit period, deployment of officers, theme-based coordinated audits, audit of multiple locations, etc.)

The guidelines prescribed are summarised below:

- Audit Commissionarate to release annual plan indicating names of the taxpayers to be audited
- Grouping of taxpayers into large, medium and small taxpayers
- Risk evaluation method to be prescribed for selection of taxpayers
- Taxpayers to be accredited on the basis of past records;
- Simultaneous audits of head office and group units in case of large taxpayer units.

Circular No. 995/2/2015-CX, dated 27 February 2015

Central excise - Decisions

CENVAT credit can be claimed for outdoor catering and housekeeping services in certain cases

In the present case, the taxpayer entered into a licence agreement with Suzuki Motors Corporation, Japan, (SMC) under which SMC would provide technology for manufacture of motor vehicles. In terms of the said agreement, the taxpayer were to provide each visiting technical personal of SMC with furnished house ready to use with all the facilities, at the expense of the taxpayer.

The taxpayer had claimed CENVAT credit of service tax paid on the outdoor catering services and housekeeping services relating to the accommodation provided to such technical personnel of SMC. The Central Excise authorities denied the credit on the ground that, such services are in the nature of 'welfare expenses'.

The Delhi Tribunal held that it is an obligation of the taxpayer to provide each visiting personnel of SMC with furnished accommodation with all the facilities including, cooking facility. Therefore, the said services would be covered by the 'activities relating to business' as these activities have nexus with the manufacturing business of the taxpayer. For the purpose of categorising a service as 'input service', it is relevant whether such input service has nexus with the manufacturing business of the taxpayer in contrast to the nexus with the manufacture of the final product in case of input.

Maruti Suzuki India Limited vs. CCE [2015-TIOL-376-CESTAT-DEL]

Customs

Circulars/Notifications/Press Releases

Rules of Origin under Duty Free Tariff Preference Scheme for Least Developed Countries has been notified

With effect from 10 March 2015, Customs Tariff (Determination of Origin of Products under the Duty Free Tariff Preference Scheme for Least Developed Countries) Rules, 2015 were notified.

Notification No. 29/ 2015-Cus (N.T.) dated 10 March 2015

Foreign Trade Policy

Circulars/Notifications/Press Releases

List of mandatory documents prescribed for imports and exports

With effect from 1 April 2015, the Ministry of Commerce and Industry prescribed the following documents as mandatory for import and export of goods:

For Exports	For Imports
Bill of Lading/Airway Bill	Bill of Lading/Airway Bill
Commercial Invoice cum Packing List	Commercial Invoice cum Packing List
Shipping Bill/Bill of Export	Bill of Entry

It has also been specified that for export or import of specific goods, which are subject to any restrictions/policy conditions or require NOC under any statute, the regulatory authority concerned may notify additional documents.

Further, in specific cases of export or import, the concerned regulatory authority may electronically or in writing seek additional documents or information, as deemed necessary to ensure legal compliance.

Notification No. 114/(RE-2013)/2009-2014 dated 12 March 2015

VAT - Decisions

Lease rental received on or after 1 April 2005 taxable under the Delhi Value Added Tax Act, 2004

The issue before the Delhi High Court was whether lease rentals paid on or after 1 April 2005 are taxable under Delhi Value Added Tax Act, 2004 (DVAT Act), when the lease agreement was executed between the parties before 31 March 2005.

The taxpayer was engaged in the business of leasing of machinery and vehicles. Prior to enactment of DVAT Act, leasing transactions were taxed under the Delhi Sales tax on Right to Use Goods Act, 2002 (Right to use Act). The taxpayer contended that DVAT Act would be applicable only to agreements which were executed on or after 1 April 2005 and the agreements executed prior to 1 April 2005 would be governed and charged to tax under the Right to use Act even if the rentals were payable on or after 1 April 2005. The taxpayer further, contended that the taxable event is the transfer of right to use goods and the payment of rental installment does not create a taxable event.

The High Court observed that sale in the form of transfer of right to use goods, would be subject to tax under Section 3 of the DVAT Act to the extent that such right is exercised after 1 April 2005. The expression "to the extent that the right to use goods is exercised" would necessarily refer to and can only refer to installments or lease rentals paid on or after 1 April 2005.

Orix Auto Infrastructure Services Ltd vs. Commissioner, DVAT [TS-53-HC-2015(DEL)-VAT]

Andhra Pradesh & Telangana High Court upholds Works Contract Tax on sub-contractor

In the present case, the issue before High Court was whether the taxpayer was liable to pay VAT on works contract executed which was exempted prior to enactment of AP VAT Act.

The taxpayer is engaged in the execution of works contract. The Government of Andhra Pradesh (State Government) and M/s Krishnapatnam Port Company Ltd. (KPCL) entered into an agreement for building deep water sea port at Krishnapatnam with a concession period of 50 years and KPCL, in turn, awarded works contract for construction, to the taxpayer. The agreement stipulated that the State Government would forego revenue streams from the project as per Andhra Pradesh Infrastructure Development Enabling Act, 2001 (the 2001 Act) which included exemption of sales tax on all inputs required for project construction.

The taxpayer treated the required construction materials as inputs and the same being exempt from tax, it did not disclose the same in the VAT returns for FY 2012-13. However, the authorities issued notice alleging that correct turnover amounts had not been declared in the VAT returns and proposed to recover arrears of tax towards works contract execution. Additionally, during the litigation of issued notices, it was found that the taxpayer had initially not disclosed turnover for 7 financial years (2006-07 till 2012-13) at the time of finalisation of assessment before the assessing authority, and later intimated such undisclosed turnover. Thereafter, the revisional authority issued revised show cause notice and these notices culminated into orders against the taxpayer.

High Court held that on the AP VAT coming into force, KPCL would no longer be entitled to claim exemption from tax as no such power to grant exemption was available to the Government under the AP VAT. The doctrine of promissory estoppel could not be invoked to implement a contractual provision which was contrary to law. Accordingly, the High Court rejected the taxpayer's claim for exemption as a similar relief claimed by KPCL had been denied by the same court.

Navayuga Engineering Co. Ltd. vs. Asst. Commissioner (CT) [TS-680-HC-2014(TEL and AP]

Notifications/Circulars/Press Releases

Rajasthan

Key highlights of the Rajasthan Budget are as under:

- VAT rates for goods falling under Schedule V has been increased from 14 per cent to 14.5 per cent
- WCT TDS rates has been increased to 6 per cent and 7 per cent in case of registered dealers and un-registered dealers, respectively
- Entry Tax exemption granted to 14 commodities and rate has been reduced for 18 products.

Maharashtra

In order to simplify the process of registration under various indirect tax laws, the Commissioner of Sales Tax, Maharashtra has issued a Circular stating that the Maharashtra Government has developed the utility of single application for registration under VAT, CST and PT Act. The facility of single application for online registration under MVAT, CST, PT (both PT RC and PT EC) has been made available from 9 March 2015. However, the facility of uploading of documents is being developed and may be deployed soon.

Trade Circular No. 4T of 2015, dated 9 March 2015

Orissa

With effect from 1 April 2015, the dealers whose gross turn over exceeds INR 1 Crore in any particular year, are required to get their accounts audited in respect of that year as per the provisions of the Orissa VAT Act, 2004.

Notification No III (III)14/2012-2250/CT, dated 11 February 2015

Personal Tax

Decisions/Notifications/Circulars/ Press Releases

Overseas Citizenship of India and Person of India Origin schemes merged

The Government of India promulgated an ordinance to the Citizenship Act, 1955 merging the Overseas Citizenship of India (OCI) and Person of Indian Origin (PIO) schemes.

Under the new scheme, no further PIO cards shall be issued. Existing PIO card holders will enjoy the same benefits as that of OCI card holders. Individuals who were earlier eligible only for a PIO card may now be eligible for an OCI card.

Key Changes

- The PIO card notification has been withdrawn and no new PIO cards will be issued hereinafter.
- All existing PIO card holders have been deemed to be OCI card holders with effect from 9 January 2015 and would be entitled to benefits such as lifelong visas and exemption from police registration in India.
- A minor child whose parents or one of the parents is a citizen of India is now eligible for an OCI card.
- Eligible spouse of foreign origin of an Indian citizen/ OCI cardholder is now eligible for an OCI card subject to prior security clearance from a competent Indian authority.
- Great grandchild of a person eligible for an OCI card is now eligible to apply for an OCI card.

Source: The Citizenship (Amendment) Ordinance, 2015

Employees' Provident Fund Organsation issues clarifications on International Workers and Overseas Citizen of India/ Person of Indian Origin card holders

In October 2008, the Government of India (GOI) made fundamental changes in the Employees' Provident Funds Scheme, 1952 (EPFS) and Employees' Pension Scheme, 1995 (EPS) by bringing International Workers (IWs) under the purview of the Indian Social Security Regime.

In October 2012, the GOI issued a notification to amend the provisions for withdrawal of Provident Fund (PF)/ Pension Fund accumulations in respect of IWs.

In November 2012 the Employees' Provident Fund Organisation (EPFO) issued a circular to its officers for implementation of the aforesaid notification issued by the GOI.

EPFO has now clarified the position on whether OCI/ PIO card holders should be treated as International Workers. Benefits available to International Workers from Social Security Agreement (SSA) and non-SSA countries have also been reiterated by the EPFO.

Key clarifications

- An employee holding a foreign passport/ other than Indian passport and working for an establishment in India, to which the EPF Act applies, will fall under the category of IWs.
- If an IW has contributed for 10 years under EPS, she/ he will be eligible to get a pension benefit under EPS.
- If an IW has not completed 10 years of membership under EPS, she/ he will be eligible to get a pension benefit under EPS provided:

  For employees coming from countries with which India has SSA in force

  - These employees would be eligible to avail the benefit of Totalisation.
  - In case the employees have completed 10 years of eligible service after Totalisation of service in both countries, they would become eligible for monthly pension. However, if the eligible service is less than 10 years even after including Totalisation period, such IWs will be eligible for a withdrawal benefit (lump sum refund).

  For employees coming from countries with which India does not have SSA in force

  - Such IWs cannot avail the Totalisation benefit. These employees would qualify to receive monthly pension if they have completed 10 years of service under EPS.
  - These employees would not be eligible to receive withdrawal benefit (lump sum refund) under EPS.

Source: www.epfindia.com

The Government of India issues notification on reducing the administrative charges under the Employees' Provident Funds Scheme, 1952

In July 1998, the Government of India (GOI) made changes in the Employees' Provident Funds Scheme, 1952 (EPFS) by fixing the administrative charges at the rate of 1.10 per cent (one point one zero per cent) of the monthly pay as defined under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (EPF Act), with effect from 1 August 1998.

Recently, the Ministry of Labour and Employment, Government of India, issued a notification to revise the rate of administrative charges under the EPFS. Key changes are as under and have been effective from 1 January 2015.

Key amendments in the notification

Under employees' provident funds scheme, 1952 (EPFS)

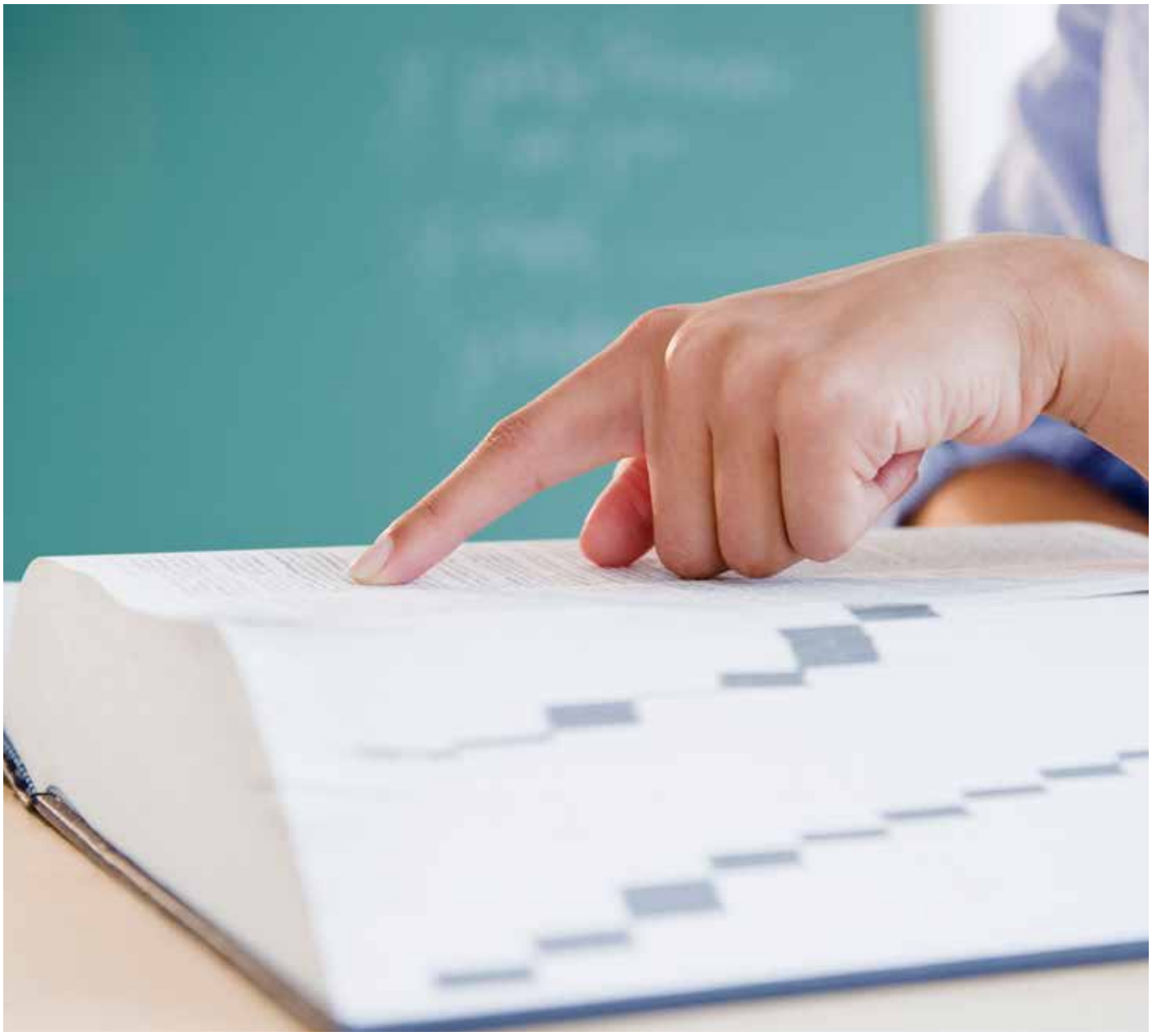
- The administrative charges paid by the employer on a monthly pay (as defined under the EPF Act) has been reduced from 1.10 per cent to 0.85 per cent of the monthly pay of the employee.
- Every establishment covered under the EPF Act has to pay a minimum administrative charge of INR500 per month. For non-functional establishments covered under the EPF Act, having no contributory member, the employer has to pay minimum administrative charges of INR75 per month.

Under employees' deposit linked insurance scheme, 1976 (EDLIS)

- The administrative charges paid by the employer remain unchanged at 0.01 per cent of monthly pay (as defined under the EPF Act) of the employee.
- Every establishment covered under the EPF Act has to pay the minimum administrative charge of INR 200 per month. For non-functional establishments covered under the EPF Act having no contributory member, the employer has to pay minimum administrative charge of INR25 per month.

The revised rate of administrative charges is expected to reduce the employers' burden. The changes aim to reduce compliance cost for both domestic and expatriate employees.

Source: www.epfindia.com



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