

DIRECT TAX – LAW UPDATE

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Announcements of relief measures relating to statutory and regulatory compliance matters across sectors made by Union Finance Minister vide Press Release dated 24.03.2020 in view of COVID-19 outbreak

The outbreak of Novel Corona Virus (COVID-19) across many countries of the world has caused immense loss to the lives of people, and accordingly, it has been termed as pandemic by the World Health Organisation and various Governments including Government of India. Social distancing has been unequivocally accepted to be the best way to contain its spread, leading to announcement of complete lockdown in the country. Keeping in view the challenges faced by taxpayers in meeting the compliance requirements under such conditions, the Union Finance Minister had announced several relief measures relating to statutory and regulatory compliance matters across sectors in view of COVID-19 outbreak on 24.03.2020 vide a press release.

Some of the important features and time limits which get extended by this PRESS NOTE are as under :-

- Due date extension: The last date to file ITRs for FY 18-19, extended to 30th June 2020 instead of 31st March 2020. For delayed payments of tax made till 30th June 2020, penal interest reduced from 12% to 9%.
- Aadhaar-PAN linking due date extended to the 30th June 2020.
- The date for making various investment/payment for claiming deduction under Chapter-VIA-B of IT Act which includes Section 80C (LIC, PPF, NSC etc.), 80D (Mediclaime), 80G (Donations), etc. has been extended to 30th June, 2020. Hence the investment/payment can be made up to 30.06.2020 for claiming the deduction under these sections for FY 2019-20.
- The date for making investment/construction/purchase for claiming roll over benefit/deduction in respect of capital gains under sections 54 to 54GB of the IT Act has also been extended to 30th June 2020. Therefore, the investment/ construction/ purchase made up to 30.06.2020 shall be eligible for claiming deduction from capital gains arising during FY 2019-20
- The date for commencement of operation for the SEZ units for claiming deduction under deduction 10AA of the IT Act has also extended to 30.06.2020 for the units which received necessary approval by 31.03.2020.
- Due dates for issue of notice intimation/notification/approval order/sanction order/filing of appeal/applications/reports any other documents and time limit for completion of proceedings by the authority and any compliance by the taxpayer including investment in saving instruments or investments for roll over benefit of capital gains under Income Tax Act, Wealth Tax Act, Prohibition of Benami Property Transaction Act, Black Money Act, STT law, CTT Law, Equalization Levy law, Vivad Se Vishwas law where the time limit is expiring between 20th March 2020 to 29th June 2020 shall be extended to 30th June 2020.
- It has provided that reduced rate of interest of 9% shall be charged for non-payment of Income-tax (e.g. advance tax, TDS, TCS) Equalization Levy, Securities Transaction Tax (STT), Commodities Transaction Tax (CTT) which are due for payment from 20.03.2020 to 29.06.2020 if they are paid by 30.06.2020. Further, no penalty/ prosecution shall be initiated for these non-payments.
- Under Vivad se Vishwas Scheme, the date has also been extended up to 30.06.2020. Hence, declaration and payment under the Scheme can be made up to 30.06.2020 without additional payment.

In order to give effect to the announcements made by the Union Finance Minister vide Press Release dated 24.03.2020, regarding several relief measures relating to statutory and regulatory compliance matters across sectors in view of COVID-19 outbreak, the govt has brought in an Ordinance on 31.03.2020 which provides for extension of various time limits under the Taxation and Benami Acts. It also provides for extension of time limits contained in the Rules or Notification which are prescribed/issued under these Acts.

- The Ordinance also made the another important announcement with respect to PM CARES FUND as under :-

A special fund "Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES FUND)" has been set up for providing relief to the persons affected from the outbreak of Corona virus. The Ordinance also amended the provisions of the

Income-tax Act to provide the same tax treatment to PM CARES Fund as available to Prime Minister National Relief Fund. Therefore, the donation made to the PM CARES Fund shall be eligible for 100% deduction under section 80G of the IT Act. Further, the limit on deduction of 10% of gross income shall also not be applicable for donation made to PM CARES Fund.

As the date for claiming deduction u/s 80G under IT Act has been extended up to 30.06.2020, the donation made up to 30.06.2020 shall also be eligible for deduction from income of FY 2019-20. Hence, any person including corporate paying concessional tax on income of FY 2020-21 under new regime can make donation to PM CARES Fund up to 30.06.2020 and can claim deduction u/s 80G against income of FY 2019-20 and shall also not lose his eligibility to pay tax in concessional taxation regime for income of FY 2020-21.

The press note dated 24.03.2020 and Ordinance dated 31.03.2020 also contained the similar relief measures with respect to indirect taxes and the same are not dealt with here.

Applications by payee u/s 195 and 197/ 206C(9) for Lower rate or Nil rate of deduction / collection for financial year 2020-21. – CBDT ORDER u/s119 of income Tax Act

1. Due to Outbreak of the Pandemic Covid -19 virus, there is severe disruption in the normal functioning of all including income tax department. The applications filed by the payee for financial year 2020-21 for lower rate of Deduction / Collection u/s 195, 197 /206C (9) for financial year could not be attended by TDS / TCS Officers causing hardship to the Tax Payers. Considering the constraints of the field officers and to mitigate the hardship of tax payees, the CBDT vide order dated 31.03.2020 , has issued the following directions / clarifications exercising its power u/s 119 of the act.
2. The following clarifications are issued.
 - a) All the assesses who have filed application for lower or nil deduction of TDS/TCS on the Traces Portal for F.Y.2020-21 and whose applications are pending for disposal as on date and they have been issued such certificates for FY 2019-20, then such certificates would be applicable till 30.06.2020 of F.Y. 2020-21 or disposal of their applications by the Assessing Officers, whichever is earlier, in respect of the transaction and the deductor or collector if any, for whom the certificate was issued for F.Y. 2019-20.
 - b) In cases where the assessee could not apply for issue of lower or nil deduction of TDS/TCS in the Traces Portal for the FY 2020-21, but were having the certificates for F.Y. 2019-20, such certificate will be applicable till 30.06.2020 of F.Y, 2020-21. However, they need to apply at the earliest giving details of the transactions and the Deductor/Collector to the TDS/TCS Assessing Officer as per procedure laid down in sub-para c) below, as soon as normalcy is restored or 30.06.2020, whichever is earlier.
 - c) In cases where the assessee has not applied for issue of lower or nil deduction of TDS / TCS in the Traces Portal, and he is also not having any such certificate for FY 2019-20, a modified procedure for application and consequent handling by the TDS/TCS Assessing Officer is laid down which is as under .

Application for Lower/Nil Deduction Certificate:

The applicant shall apply for the Lower / Nil deduction / collection certificate under sections 197 / 206C(9) of the Income Tax Act vide an e-mail addressed to the Assessing Officer concerned. The e-mail shall contain data/documents as under:

- Duly filled in Form 13 (Annexure I and/or Annexure III)
- The documents/information as required to be uploaded on TDS-CPC website while filling up of Form 13
- Projected Balance Sheet and P&L account of FY 2020-21
- Provisional Balance Sheet and P&L account of FY 2019-20
- Balance Sheet and P&L account of FY 2018-19
- For 26AS for FY 2019-20 & 2018-19
- ITR pertaining to FY 2018-19

For issue of certificates for lower/ nil deduction of tax under sections 195(2) and 195(3), the process of furnishing of applications will continue to be same with the modification that the applications will be filed via email and certificates will also be issued via email.

Issuance of the Certificate: The certificate(s) shall be issued up to 30.06.2020 or any other date (earlier than 30.06.2020) as specified by the AO. The Assessing Officer shall communicate the issuance of certificate vide mail containing specified information as per format specified. :

d) On payments to Non-residents (including foreign companies) having Permanent Establishment in India and not covered by (a) and (b) above, tax on payments made will be deducted at the rate of 10% including surcharge and cess, on such payments till 30.06.2020 of F.Y. 2020-21, or disposal of their applications, whichever is earlier.

Applications by payee u/s 195 and 197/ 206C(9) for Lower rate or Nil rate of deduction / collection for financial year 2019-20. – CBDT ORDER u/s119 of income Tax Act

Due to Outbreak of the Pandemic Covid -19 virus, there is severe disruption in the normal functioning of all including income tax department. The applications filed by the payee for lower rate of Deduction / Collection u/s 195, 197 /206C (9) for financial year 2019-20 could not be attended in timely manner by TDS / TCS Officers. This may cause genuine hardship to the payees and buyers/licensees/lessees who have raised the invoice in FY 2019-20 but have not received the payment for the same till date. As payees and buyers/licensees/lessees were not able to intimate the rate of deduction/collection on such amount to the payer and seller/licensor/lessor, this has created uncertainty about the rate at which the tax is to be deducted/collected by the payer and seller/licensor/lessor at the time of crediting/debiting the amount in his books of account for FY 2019-20. Considering the constraints of the field officers and to mitigate the hardship of tax payees, the CBDT vide order dated 03.04.2020 , has issued the following directions / clarifications exercising its power u/s 119 of the act.

- In All the cases where assesses (payees or buyers/licensees/lessees) have timely filed application for lower or nil deduction of TDS/TCS on the TRACES Portal for F.Y.2019-20 and such applications are pending for disposal as on date, the applicant shall intimate, vide an e-mail addressed to the Assessing Officer concerned, the pendency of such applications for FY 2019-20 for the lower/nil deduction/collection certificate under sections 195, 197 or 206C(9) of the Income-tax Act along with the required documents and evidences of filing their application in TRACES Portal.
- The Assessing Officer shall dispose of the applications by 27.04.2020 and communicate to the applicant regarding the issuance/rejection of certificate vide email. The certificate issued for lower/nil rate TDS or lower TCS shall be applicable for the amount credited/debited during the FY 2019-20 after the date of making of application u/s 195,197 or 206C(9) but remained unpaid or not received till the date of issuance of the certificate by the Assessing Officer.

Issuance of certificate u/s 195 and 197/ 206C(9) for Lower rate or Nil rate of deduction / collection –Clarification on order dated 31.03.2020 and 03.04.2020 issued u/s119. – CBDT clarification.

Representations have been received, seeking further clarifications on orders dated 31.03.2020 and 03.04.2020 issued under section 119 of the Act by CBDT regarding issuance of certificate for lower rate/nil deduction/collection of TDS/TCS u/s 195,197 and 206C (9) of the Act. The matter has been examined in the Board and following clarifications w.r.t. above are issued vide CBDT Order dated 09.04.2020.:

- Issue of validity period of lower/nil deduction/collection certificates of F.Y. 2019-20:
For the purpose of Para 2 (a) and 2 (b) of the order dated 31.03.2020, the lower/nil deduction/collection certificates will be valid for the particular period for which these were issued for F.Y. 2019-20 and also for further period from 01.04.2020 to 30.06.2020 for F.Y. 2020-21 subject to conditions as mentioned in the order dated 31.03.2020. For example, if a certificate was issued for a period from 01.10.2019 to 15.12.2019, the same shall be valid for F.Y. 2019-20 for the period from 01.10.2019 to 15.12.2019, and for F.Y. 2020-21 the same shall be valid from 01.04.2020 to 30.06.2020 subject to conditions as mentioned in the order dated 31.03.2020.
- Issue of threshold/transaction limit for lower/nil deduction/collection certificates of F.Y. 2019-20:
For the purpose of Para 2 (a) and 2 (b) of the order dated 31.03.2020, threshold/transaction limit mentioned in lower/nil deduction /collection certificate issued for F.Y. 2019-20 will be taken fresh for period from 01.04.2020 to 30.06.2020 for F.Y. 2020-21 and the amount of threshold limit will be the same as was assigned for these certificates for F.Y. 2019-20 subject to other conditions mentioned in the order dated 31.03.2020.
- Issue of approval and communication of lower/nil deduction/collection certificates

Official emails or other electronic communication may be used by field authorities of Income Tax Department for internal approval for issue of lower/nil deduction/collection certificates and for communication of the same.

- Issue of new/different TAN mentioned for lower/nil deduction/collection application for FY 2020-21 or revision of rates mentioned in certificates of FY 2019-20:

In case the payee or buyer/licensee/lessee taxpayer had a certificate for lower deduction for FY 2019-20 and an application has been made for FY 2020-21 for a new / different TAN mentioned in the application, the relaxation as provided in Para 2(a) and 2(b) of the order dated 31.03.2020 shall not apply to such cases and they have to apply afresh as per procedure, mentioned in para (c) of the above mentioned order. Similarly, if the rates of TDS/TCS mentioned in old certificates are higher and the taxpayer wants revision of the rates in view of impact of Covid-19 outbreak on its business, the relaxation as provided in Para 2(a) and 2(b) of the order dated 31.03.2020 shall not apply to such cases and they will have to follow the procedure mentioned in the annexure of the above mentioned order and apply afresh.

Submission of Form 15G and 15H for Financial Year-2020-21 – Order u/s 119 of Income Tax Act

Due to Outbreak of the Pandemic Covid -19 virus, there is severe disruption in the normal functioning of all including functioning of Banks, other Financial institutions etc. In view of such situation there can be instances that some eligible persons may not be able to submit the Form 15G and 15H timely to the Banks, other Institutions etc. This would result into the deduction of TDS by the Banks and other Institutions even where there is no tax liability. To mitigate the genuine hardship of such persons, the CBDT issues following directions/clarifications by exercise of its powers u/s 119 of the Act.

In case if a person had submitted valid Forms 15G and 15H to the Banks or other Institutions for F.Y. 2019-20, then these Form 15G and 15H will be valid up to 30.06.2020 for FY 2020-21 also. It is reiterated that the payer who has not deducted tax on the basis of said Forms 15G and 15H, shall require to report details of such payments/credits in the TDS statement for the quarter ending 30.06.2020 in accordance with the provisions of rule 31A(4)(vii) of the Income-tax Rules, 1962

Clarification regarding short deduction of TDS/TCS due to increase in rates of surcharge by Finance (No.2) Act, 2019

The finance (No 2) Act, 2019 provided for increase in rate of surcharge from 15 % to 25%/37% as the case may be. The Finance (No.2) Bill, 2019 was tabled in Lok Sabha on 5th July, 2019 which was passed by both the houses of Parliament and became Finance (No.2) Act, 2019 which received assent of the President on 1st August, 2019 The enhanced rates of surcharge were applicable from the 1st day of April, 2019 for previous year 2019-20 relevant to assessment year 2020-21

- Several instances have come to the notice of the Central Government wherein deductors/ collectors were held to be an assessee in default for short deduction of TDS/short collection of TCS in cases where final transaction was done before laying of the Finance (No.2) Bill, 2019 in the Parliament, i.e. 5th July, 2019. Since the transaction was completed before the rates of enhanced surcharge were announced, it has been requested that in such cases, deductor or collector should not be held to be an assessee in default under section 201 of the Income-tax Act.
- The above issue has been examined by the Board and in this regard, it is clarified a person responsible for deduction/collection of tax under any provision of the Income-tax Act will not be considered to be an assessee in default in respect of transactions where:
 - ✓ Such transaction has been completed and entire payment has been made to the deductee/payee on or before 5th July, 2019 and there is no subsequent transaction between the deductor/collector and the deductee/payee in the financial year 2019-20 from which the shortfall of tax could have been deducted/collected by the deductor/collector;
 - ✓ TDS has been deducted or TCS has been collected by such deductor/collector on such sum as per the rates in force as per the provisions prior to the enactment of the Act
 - ✓ Such tax deducted or collected has been deposited in the account of Central Government by the deductor/collector on or before the due date of depositing the same
 - ✓ TDS/TCS statement has been furnished by such person on before the due date of filing of the said statement

However, if the person fails to fulfill any of the conditions as laid down above, such a person will, with respect to short deduction/collection, not be eligible for benefit provided under this circular.

- Further, if the deductor/collector has deducted/collected shortfall of tax after 5th of July, 2019 from the transaction(s) made subsequently after the said date, interest, if any, for delay in deduction/collection of such tax shall not be levied.

- The above relaxation does not absolve the deductee/payee to pay proper tax including enhanced surcharge by advance tax or self-assessment tax and file return of income after paying such tax.

TDS on Salaries - Clarification in respect of option under section 115BAC of the Income-tax Act, 1961

The CBDT Vide Circular no – C1 of 2020 dated 13.04.2020 clarified on the issue whether the provisions of section 115BAC of the Act are to be considered at the time of deducting tax on payment of salary made to employees during financial year 2020-21.

- The Finance Act, 2020 w.e.f the assessment year 2021-22, inserted the provision of section 115BAC which provided an option to pay concessional rate of tax subject to the condition that the total income shall be computed without specified exemption or deduction, set off of loss and additional depreciation. It also provided that a person, being an individual or a Hindu undivided family having income other than income from business or profession, may exercise option in respect of a previous year to be taxed under the said section 115BAC along with his return of income to be furnished under –section 139 (1) of the Act for each year.
- Representations expressing concern regarding tax to be deducted at source (TDS) has been received stating that as the option is required to be exercised at the time of filing of return, the deductor, being an employer, would not know if the person, being an employee, would opt for taxation under section 115BAC of the Act or not. Hence, there is lack of clarity regarding whether the provisions of section 115BAC of the Act are to be considered at the time of deducting tax.
- The CBDT vide circular no C1 of 2020 dated 13.04.2020 clarified that an employee, having income other than the income under the head “profit and gains of business or profession” and intending to opt for the concessional rate under section 115BAC of the Act, may intimate the deductor, being his employer, of such intention for each previous year and upon such intimation, the deductor shall compute his total income, and make TDS thereon in accordance with the provisions of section 115BAC of the Act. If such intimation is not made by the employee, the employer shall make TDS without considering the provision of section 115BAC of the Act.
- It is also clarified that the intimation so made to the deductor shall be only for the purposes of TDS during the previous year and cannot be modified during that year. However, the intimation would not amount to exercising option in terms of sub-s 115BAC of the Act and the person shall be required to do so along with the return to be furnished under Section 139 (1) of the Act for that previous year. Thus, option at the time of filing of return of income under Section 139 (1) of the Act could be different from the intimation made by such employee to the employer for that previous year.
- It is further clarified that in case of a person who has income under the head “profit and gains of business or profession” also, the option for taxation under section 115BAC of the Act once exercised for a previous year at the time of filing of return of income under Section 139 (1) of the Act cannot be changed for subsequent previous years except in certain circumstances
- Accordingly, the above clarification would apply to such person with a modification that the intimation to the employer in his case for subsequent previous years must not deviate from the option under section 115BAC of the Act once exercised in a previous year.