

## DIRECT TAX

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### INCOME-TAX (TWENTY-FIRST AMENDMENT) RULES, 2020 - AMENDMENT IN RULE 29B AND SUBSTITUTION OF FORM NO. 15C

#### NOTIFICATION G.S.R. 574(E) [NO. 75/2020/F. NO. 370142/8/2020-TPL], DATED 22-9-2020

In the Income-tax Rules, 1962 (hereinafter referred to as the principal rules), in rule 29B,—

- (a) for the words “banking company”, wherever they occur, the words “banking company or an insurer” shall be substituted;
- (b) after sub-rule (5), the following explanation shall be inserted, namely —

“Explanation.— for the purposes of this rule, “insurer” shall have the same meaning as assigned to it in sub-clause (d) of clause (9) of section 2 of the Insurance Act, 1939 (4 of 1938).”.

Vide above notification, the existing Form 15C has been substituted for new Form 15C.

#### FACELESS APPEAL SCHEME, 2020

#### NOTIFICATION S.O. 3296(E) [NO. 76/2020/F.NO.370142/33/2020-TPL], DATED 25-9-2020

The Income-tax Department vide above notification has launched Faceless Income-tax Appeals. Under Faceless Appeals, all Income-tax appeals will be finalised in a faceless manner under the faceless ecosystem with the exception of appeals relating to serious frauds, major tax evasion, sensitive & search matters, International tax and Black Money Act. It may be noted that Hon'ble PM on 13th August, 2020 while launching the Faceless Assessment and Taxpayers' Charter as part of “Transparent Taxation - Honoring the Honest” platform, had announced launching of Faceless Appeals on 25th September, 2020 on the birth anniversary of Pt. Deen Dayal Upadhyay.

#### NO REQUIREMENT OF SCRIP WISE REPORTING FOR DAY TRADING AND SHORT-TERM SALE OR PURCHASE OF LISTED SHARES

#### PRESS RELEASE, DATED 26-9-2020

There was a report in certain section of media that stock traders/day traders are required to furnish scrip wise details in the return of income for AY 2020-21. The gain from share trading in case of stock traders or day traders is generally categorised as short-term capital gains or business income. This is because their holding period of shares/units in most of the cases is less than one year which is a prerequisite for the gains to be categorised as long-term capital gains. As there is no requirement in the return of income for scrip wise reporting in case of short-term/business income arising from share transactions, these reports are distorted and misleading.

The Finance Act, 2018 allowed exemption to the gains made on the listed shares/specified units up to 31-1-2018 by introducing grandfathering mechanism for computation of long-term capital gains for these shares. The scrip wise details in the return of income for AY 2020-21 is required to be filled up only for the reporting of the long-term capital gains for these shares/units which are eligible for the benefit of grandfathering.

As the grandfathering is to be allowed by comparing different values (such as cost, sale price and market price as on 31-1-2018) for each shares/units, there is a need to capture the scrip wise details for computing capital gains of these shares/units. The scrip wise details are not required in income tax return forms for AY 2020-21 for computation of capital gains/business income from shares/units which are not eligible for grandfathering.

#### GUIDELINES UNDER SECTION 194-O (4) AND SECTION 206C (1-I) OF THE INCOME-TAX ACT, 1961

#### CIRCULAR NO. 17 OF 2020 [F. No.370133/22/2020-TPL], DATED 29-9-2020

Applicability on transactions carried through various Exchanges:

In order to remove difficulties, it is provided that the provisions of section 194-O, and sub-section (1H) of section 206C, of the Act shall not be applicable in relation to,—

- (i) transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing corporation located in International Financial Service Centre;
- (ii) transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC; and

For this purpose,—

- (i) “recognized clearing corporation” shall have the meaning assigned to it in clause (i) of the Explanation to clause (23EE) of section 10 of the Act;
- (ii) “recognized stock exchange” shall have the meaning assigned to it in clause (ii) of the Explanation 1 to sub-section (5) of section 43 of the Act; and
- (iii) “International Financial Services Centre” shall have the meaning assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005.

Applicability on payment gateway:

In order to remove difficulty, it is provided that the payment gateway will not be required to deduct tax under section 194-O of the Act on a transaction, if the tax has been deducted by the e-commerce operator under section 194-O of the Act, on the same transaction.

Applicability of on insurance agent or insurance aggregator:

In order to remove difficulty, it is provided that in years subsequent to the first year, if the insurance agent or insurance aggregator has no involvement in transactions between insurance company and the buyer of insurance policy, he would not be liable to deduct tax under section 194-O of the Act for those subsequent years. However, the insurance company shall be required to deduct tax on commission payment, if any, made to the insurance agent or insurance aggregator for those subsequent years under the relevant provision of the Act.

Calculation of threshold for the financial year 2020-21:

It hereby clarified that,—

- (i) Since the threshold of five lakh rupees for an individual/Hindu undivided family (being e-commerce participant who has furnished his PAN/Aadhaar) is with respect to the previous year, calculation of amount of sale or services or both for triggering deduction under section 194-O of the Act shall be counted from 1st April, 2020. Hence, if the gross amount of sale or services or both facilitated during the previous year 2020-21 (including the period up to 30th Sept 2020) in relation to such an individual/Hindu undivided family exceeds five lakh rupees, the provision of section 194-O shall apply on any sum credited or paid on or after 1st October, 2020.
- (ii) Since sub-section (1H) of section 206C of the Act applies on receipt of sale consideration, the provision of this sub-section shall not apply on any sale consideration received before 1st October 2020. Consequently it would apply on all sale consideration (including advance received for sale) received on or after 1st October 2020 even if the sale was carried out before 1st October 2020.
- (iii) Since the threshold of fifty lakh rupees is with respect to the previous year, calculation of receipt of sale consideration for triggering TCS under sub-section (1H) of section 206C shall be computed from 1st April, 2020. Hence, if a person being seller has already received fifty lakh rupees or more up to 30th September 2020 from a buyer, the TCS under sub-section (1H) of section 206C shall apply on all receipt of sale consideration during the previous year, on or after 1st October 2020, from such buyer.

Applicability to sale of motor vehicle:

The provisions of sub-section (1F) of section 206C of the Act apply to sale of motor vehicle of the value exceeding ten lakh rupees. Sub-section (1H) of section 206C of the Act exclude from its applicability goods covered under sub-section (1F).

In this regard it may be noted that the scope of sub-sections (1H) and (1F) are different. While sub-section (1F) is based on single sale of motor vehicle, sub-section (1H) is for receipt above 50 lakh rupee during the previous year against aggregate sale of good. While sub-

section (1F) is for sale to consumer only and not to dealers, sub-section (1H) is for all sale above the threshold. Hence, in order to remove difficulty it is clarified that,—

- (i) Receipt of sale consideration from a dealer would be subjected to TCS under sub-section (1H) of the Act, if such sales are not subjected to TCS under sub-section (1F) of section 206C of the Act.
- (ii) In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value often lakh rupees or less to a buyer would be subjected to TCS under sub-section (1H) of section 206C of the Act, if the receipt of sale consideration for such vehicles during the previous year exceeds fifty lakh rupees during the previous year.
- (iii) In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value exceeding ten lakh rupees would not be subjected to TCS under sub-section (1H) of section 206C of the Act if such sales are subjected to TCS under sub-section (1F) of section 206C of the Act.

Adjustment for sale return, discount or indirect taxes:

It is hereby clarified that no adjustment on account of sale return or discount or indirect taxes including GST is required to be made for collection of tax under sub-section (1H) of section 206C of the Act since the collection is made with reference to receipt of amount of sale consideration.

Fuel supplied to non-resident airlines:

To remove difficulties it is provided that the provisions of sub-section (1H) of section 206C of the Act shall not apply on the sale consideration received for fuel supplied to non-resident airlines at airports in India.

## **CLARIFICATION OF DOUBTS ARISING ON ACCOUNT OF NEW TCS PROVISIONS**

### **PRESS RELEASE, DATED 30-9-2020**

Finance Act, 2020 amended provisions relating to TCS with effect from 1st October, 2020 to provide that seller of goods shall collect tax @ 0.1 per cent (0.075% up to 31-3-2021) if the receipt of sale consideration from a buyer exceeds Rs. 50 lakh in the financial year. Further, to reduce the compliance burden, it has been provided that a seller would be required to collect tax only if his turnover exceeds Rs. 10 crore in the last financial year. Moreover, the export of goods has also been exempted from the applicability of these provisions.

It may be noted that this TCS shall be applicable only on the amount received on or after 1st October, 2020. For example, a seller who has received Rs. 1 crore before 1st October, 2020 from a particular buyer and receives Rs. 5 lakh after 1st October, 2020 would be required to collect tax on Rs. 5 lakh only and not on Rs. 55 lakh [i.e Rs. 1.05 crore - Rs. 50 lakh (threshold)] by including the amount received before 1st October, 2020.

It may be noted that this TCS applies only in cases where receipt of sale consideration exceeds Rs. 50 lakh in a financial year. As the threshold is based on the yearly receipt, it may be noted that only for the purpose of calculation of this threshold of Rs. 50 lakh, the receipt from the beginning of the financial year i.e. from 1st April, 2020 shall be taken into account. For example, in the above illustration, the seller has to collect tax on receipt of Rs. 5 lakh after 1st October, 2020 because the receipts from 1st April, 2020 i.e. Rs. 1.05 crore exceeded the specified threshold of Rs. 50 lakh.

In order to simplify and ease the compliance of the collector, it may be noted that this TCS provision shall be applicable on the amount of all sale consideration received on or after 1st October, 2020 without making any adjustment for the amount received in respect of sales made before 1st October, 2020. Mandating the collector to identify and exclude the amount in respect of sales made up to 30th September, 2020 from the amount received on or after the 1st of October, 2020 would have resulted into undue compliance burden for the collector and also litigation.

## **SECTION 143, READ WITH SECTIONS 127 AND 153C OF INCOME-TAX ACT, 1961 - ASSESSMENT - ISSUE OF NOTICE - EXTENSION OF TIME-LIMIT FOR COMPULSORY SELECTION OF RETURNS FOR COMPLETE SCRUTINY DURING FINANCIAL YEAR 2020-21**

### **CIRCULAR F. NO. 225/126/2020/ITA-II, DATED 30-9-2020**

Kindly refer to Board's letter dated 17-9-2020 regarding Guidelines for compulsory selection of returns for Complete Scrutiny during the Financial Year 2020-21.

Vide the said letter, the following time-limits were prescribed for completion of certain actions:

- (a) Selection of cases for compulsory scrutiny on the basis of the prescribed parameters shall be completed by 30th September 2020.
- (b) The Survey Cases with impounded materials have to be transferred to the Central Charges under section 127 of the Income-tax Act, 1961 (Act) within 15 days of issue of notice under section 143(2) of the Act.
- (c) Search cases under section 153C of the Act, if lying outside the Central Charges, have to be transferred to the Central Charges under section 127 of the Act within 15 days of issue of notice under section 143(2) of the Act.

Considering the difficulties faced by the field formation due to COVID-19 pandemic and PAN migration related issues, this matter has been reconsidered and it has been decided to extend the date for selection of cases for Compulsory Scrutiny on the basis of prescribed parameters, as communicated vide Board's letter dated 17-9-2020, from 30th September, 2020 to 31st October, 2020.

It is clarified that even though the new statutory time-limit as per the Taxation and other laws (Relaxations and amendment of certain provisions) Act, 2020 for selection of cases for Compulsory Scrutiny on the basis of prescribed parameters was extended to 31st March, 2021, still for the purpose of timely allocation of cases to NeAC, the above time-limit will have to be strictly adhered to, otherwise, the allocation of cases to NeAC will get considerably delayed.

Further, for the same reasons as above in para 4, the cases covered under the scenarios mentioned in Para 2(b) and 2(c) of this letter shall be transferred to the Central Charges by issue of orders under section 127 of the Act, immediately after service of notice under section 143(2) of the Act.

This issue with the approval of Chairman (CBDT).

#### **SECTION 139 OF THE INCOME-TAX ACT, 1961 - RETURN OF INCOME - REVISED RETURN - EXTENSION OF DUE DATE FOR FURNISHING OF BELATED AND REVISED RETURNS FOR ASSESSMENT YEAR 2019-20**

##### **CIRCULAR NO. F. NO. 225/150/2020-ITA-II, DATED 30-9-2020**

The CBDT has further extended the date for furnishing of belated and revised returns for the Assessment Year 2019-20 under sub-sections (4) and (5) of section 139 of the Act respectively from 30th September, 2020 to 30th November, 2020

#### **INCOME-TAX (TWENTY SECOND AMENDMENT) RULES, 2020 - AMENDMENT IN RULE 5, FORM NO. 3CD, FORM NO. 3CEB AND FORM ITR-6; INSERTION OF RULES 21AG, 21AH, FORM NO. 10-IE AND FORM NO. 10-IF**

##### **NOTIFICATION G.S.R. 610(E) [NO. 82/2020/F.NO.370142/30/2020-TPL], DATED 1-10-2020**

CBDT vide above notification has notified changes in Form 3CD, Form 3CEB and Form ITR6. It has amended Rule 5 of the Income Tax Rules and inserted two new Rules: Rule 21AG – Exercise of option under Section 115BAC(5) and Rule 21AH – Exercise of option under Section 115BAD(5). Further following two new forms have also been inserted: Form No 10-IE – Application for exercise/withdrawal of option under Section 115BAC(5)(i) and Form No. 10-IF – Application for exercise of option under section 115BAD(5).

#### **SECTION 92C OF THE INCOME-TAX ACT, 1961 - TRANSFER PRICING - COMPUTATION OF ARM'S LENGTH PRICE - DEEMED ARM'S LENGTH PRICE IN CASE OF VARIATION IN ARM'S LENGTH PRICE DETERMINED UNDER SAID SECTION AND PRICE AT WHICH INTERNATIONAL TRANSACTION OR SPECIFIED DOMESTIC TRANSACTION HAD ACTUALLY BEEN UNDERTAKEN**

##### **NOTIFICATION NO. S.O. 3660 (E) [NO. 83/2020/F. NO. 500/1/2014-APA-II], DATED 19-10-2020**

In exercise of the powers conferred by the third proviso to sub-section (2) of section 92C of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the 'said Act'), read with proviso to sub-rule (7) of rule 10CA of the Income-tax Rules, 1962, the Central Government hereby notifies that where the variation between the arm's length price determined under section 92C of the said Act and the price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed one per cent of the latter in respect of wholesale trading and three per cent of the latter in all other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price for assessment year 2020-21.

Explanation.— For the purposes of this notification, "wholesale trading" means an international transaction or specified domestic transaction of trading in goods, which fulfills the following conditions, namely:—

- (i) Purchase cost of finished goods is eighty per cent. or more of the total cost pertaining to such trading activities; and
- (ii) average monthly closing inventory of such goods is ten per cent. or less of sales pertaining to such trading activities.

## **MINISTRY OF FINANCE EXTENDS THE DATE FOR SUBMISSION OF TAX AUDIT REPORTS AND INCOME TAX RETURNS**

### **PRESS RELEASE, DATED 24-10-2020**

The new dates are as follows:

1. ITR Filing due date for entities subject to Tax Audit (including partners of such entity) for Assessment Year 2020-21 extended to 31st January, 2021
2. ITR Filing due date for International Transactions Tax Payers for AY 2020-21 extended to 31st January 2021
3. ITR Filing due date for other tax payers extended to 31st December, 2020.
4. Tax Audit Report Filing date extended to 31st December, 2020.