

DIRECT TAX – LAW UPDATE

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1. Amendments in TCS Statements under section 206C, rule 31AA and others.

The Central Board of Direct Taxes, in exercise of the powers conferred by section 197 and 206C, vide Notification No--54-2020[F-No-370142-22-2020-TPLJ]-GSR-464-E dated -24.07.2020, gives Income-tax (17th Amendment) Rules, 2020. It will come into force with effect from 01.10.2020. It amends Rule 31AA, 37BC, 37CA, 37I and form 27EQ of income tax rules.

Rule 31AA

It amends Rule 31AA(4) by inserting new clause (vi) and (vii). These two new clauses are inserted in Rule 31AA(4) to provide for particulars under sections 206C(1G) and 206C(1H) in view of the amendments related to TCS provisions being made in the Act by the Finance Act, 2020.

The amendment under section 206C(1G) by the Finance Act, 2020 are as under

- An authorised dealer receiving an amount or an aggregate of amounts of Rs. 7 Lakh or more in a financial year for remittance out of India under the LRS of RBI shall be liable to collect TCS on the amount in excess of Rs. 7 Lakh from a person remitting such amount out of India. The rate of TCS is 5 per cent in the above case. In non-PAN/non-Aadhaar cases, the rate of TCS shall be 10 per cent.
- An authorised dealer receiving an amount or an aggregate of amounts of Rs. 7 Lakh or more in a financial year for remittance out of India under the LRS of RBI and if the remittance is a loan obtained from any financial institution as defined in section 80E, for the purpose of pursuing any education shall be liable to collect TCS on the amount in excess of Rs. 7 Lakh from a person remitting such amount out of India. The rate of TCS is 0.5 per cent in the above case. In non-PAN/non-Aadhaar cases, the rate of TCS shall be 5 per cent.
- A seller of an overseas tour program package who receives any amount from any buyer, being a person who purchases such package, shall be liable to collect TCS. In this case, no threshold limit is provided. Either the authorised dealer or seller to collect TCS based on the medium of remittance in the above case. The rate of TCS is 5 per cent in the above case. In non-PAN/non-Aadhaar cases, the rate of TCS shall be 10 per cent.
- The above TCS provision shall not apply if the buyer is,-
 - (i) liable to deduct tax at source under any other provision of the Act and he has deducted such amount.
 - (ii) the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate, the trade representation of a foreign State, a local authority as defined in Explanation to clause (20) of section 10 or any other person notified by the Central Government in the Official Gazette for this purpose subject to such conditions as specified in that notification.

The amendment under section 206C(1H) by the Finance Act, 2020 are as under

- It is also proposed to amend section 206C to levy TCS on sale of goods. No TCS is applicable in case of export or import of goods. It will apply to Only those seller whose total sales, gross receipts or turnover from the business carried on by it exceed Rs. 10 crore during the financial year immediately preceding the financial year. TCS shall be collected from a buyer from whom consideration of more than Rs. 50 lakh will be received in the previous year. In the case of the sale of goods, the rate of TCS is 0.1 per cent. In non-PAN/non-Aadhaar cases the rate shall be 1 per cent. The provision applies to business entities and not to professionals.
- No TCS is to be collected from the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate, the trade representation of a foreign State, a local authority as defined in Explanation to clause (20) of section 10 or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to conditions as prescribed in such notification.

- No such TCS is to be collected, if the seller is liable to collect TCS under other provision of section 206C or the buyer is liable to deduct TDS under any provision of the Act and has deducted such amount.

Rule 37BC

Presently Rule 37BC provides that the provision of section 206AA does not apply subject to fulfilment of conditions specified therein to (i) interest, (ii) royalty, (iii) fees for technical services and (iv) payments on transfer of any capital asset. There is amendment with effect from 01.04.2020 wherein the exemption on dividend income was withdrawn subsequent to abolishment of Dividend Distribution Tax under section 115-O. The dividend income shall now be taxable in the hands of the recipient. Accordingly, rule 37BC is now being amended to include 'dividend' in the list of payments to which section 206AA shall not apply if the payment is made to a non-resident or a foreign company subject to fulfilment of conditions specified in Rule 37BC

The certain relaxations are provided under Rule 37BC which provides for relaxation from deduction of tax at higher rate under section 206AA. As per section 206AA, if the payee/deductee fails to furnish his valid PAN to the deductor, then the rate of TDS shall be 20 per cent instead of the prescribed rate of TDS in the Income tax Act, 1961 or in the Finance Act for the relevant previous year, if the prescribed rate of TDS is lower than 20 per cent. However there is an exception of Tds under section 194-O. In case tax is required to be deducted under section 194-O (TDS by e-commerce operator) and the payee (e-commerce participants) fails to provide valid PAN to the deductor then the prescribed higher rate of TDS is 5 per cent and not 20 per cent. Section 206AA(7)(ii) provides that the provisions of section 206AA shall not apply to certain payments if the prescribed conditions are satisfied. This relaxation is provided only for non-residents and foreign companies. Accordingly rule 37BC is amended appropriately.

Rule 37CA

Presently Rule 37CA includes the reference of TCS under sub-section (1) and (1C) to section 206C. Since new subsections have now been covered under section 206C, therefore, the reference to sub-section (1) and (1C) have been removed from Rule 37CA and the amended Rule 37CA now covers TCS under section 206C.

Rule 37 I

Presently, Rule 37-I(2) provides that credit of TCS shall be allowed in the year in which the income is offered to tax. This rule is amended to insert a new sub-rule 2A to provide that credit of TCS u/s 206C(1F)/(1G) and (1H) shall be allowed in the year in which tax collection is made.

Form 27EQ

In order to cover all these amendments , existing form 27EQ is replaced with new form 27 EQ.

2. Rule 114AAB: Class or classes of person to whom provisions of section 139A shall not apply

The Central Government in exercise of the powers conferred by Section 139A(8)(d) and section 206AA(7)(ii) of the income tax act and vide Notification No. 58 of 2020/GSR 499(E), dt. 10th August, 2020 gives Income-tax (Nineteenth Amendment) Rules, 2020. It amends Rule 37BC by way of insertion of new sub Rule (3) . It also inserts New Rule 114AAB and inserts new form 49BA.

It inserts following sub rule (3) to rule 37BC of Income tax rules.

“ The provisions of section 206AA shall not apply in respect of payments made to a person being a non-resident, not being a company, or a foreign company if the provisions of section 139A do not apply to such person on account of rule 114AAB”

Section 139A of the Income Tax Act provides that every person specified therein, who has not been allotted a PAN, shall apply to the Assessing Officer for allotment of PAN. However, the amendment made by way inserting new Rule 114AAB which provides that section 139A shall not apply to a non-resident, not being a company, or a foreign company, (hereinafter referred to as the non-resident) who has, during a previous year, made an investment in a specified fund .

The rule 114AAB imposes certain conditions on the non-residents.

- (i) the non-resident does not earn any income in India, other than the income from investment in the specified fund during the previous year;
- (ii) any income-tax due on income of non-resident has been deducted at source and remitted to the Central Government by the specified fund at the rates specified in section 194LBB of the Act; and
- (iii) the non-resident furnishes the following details and documents to the specified fund, namely:—

- (a) name, e-mail id, contact number;
- (b) address in the country or specified territory outside India of which he is a resident;
- (c) a declaration that he is a resident of a country or specified territory outside India; and
- (d) Tax Identification Number in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of which the non resident is identified by the Government of that country or the specified territory of which he claims to be a resident.

The Rule also requires the Specified fund to furnish Form 49 BA being Quarterly statement to be furnished by specified fund in respect of a non-resident referred to in rule 114AAB for the quarter of respective financial year.

The Rule 114AAB defines Specified Fund as under

“specified fund” means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, and which is located in any International Financial Services Centre; and

“International Financial Services Centre” shall have the same meaning as assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005.

Readers are requested to refer to the notification for further details.

3. Section 115 UB – Tax on Income of Investment fund and its unit holders

The CBDT ,in exercise of the powers conferred by section 115UB(7) of the Income-tax Act, 1961 and vide Notification No. 55/2020- Income Tax G.S.R. 469(E) dated 20.07.2020, gives Income-tax (18th Amendment) Rules, 2020. It substitutes new rule 12CB of Income Tax Rules. It also substitutes new form 64C and Form 64D.

Form 64C being Statement of income distributed by an investment fund to be provided to the unit holder under section 115UB of the Income-tax Act, 1961 and Form 64D being Statement of income paid or credited by investment fund to be furnished under section 115UB of the Income tax Act, 1961

As per the new Rule 12CB, the statement of income paid or credited by an investment fund to its unit holder shall be furnished to the unit holder by 30th day of June of the following financial year in Form No. 64C after generating and downloading the same from the designated web portal. Further, the Pr. DGIT (Systems) or DGIT (Systems) shall also specify the procedure for electronic filing of Form No. 64D to the jurisdictional Pr. CIT or CIT by 15th day of June of the following financial year.

4. Extension of Due Date of filing Income Tax Return for Financial year 2018-19

In view of the constraints due to the Covid pandemic & to further ease compliances for taxpayers, CBDT extends the due date for filing of Income Tax Returns for FY 2018-19 (AY 2019-20) from 31st July, 2020 to 30th September, 2020, vide Notification 56/2020 in S.O. 2512(E) dated 29th July, 2020.

A further relaxation from interest under section 234A is provided to those categories of resident Individual assessee who are not required to pay advance tax under section 207(2) being resident senior citizen who does not have income under the head business. A new proviso is inserted in the Notification No. 35/2020 after the second proviso to provide that for the purpose of the second proviso, in case of an individual resident in India referred to in sub-section (2) of section 207 of the Income-tax Act, 1961, the tax paid by him under section 140A of that Act within the due date (before extension) provided in that Act, shall be deemed to be the advance tax.

5. Special Courts -Three courts in Maharashtra for Trial of Income tax offences

The Central Government vide Notification No. 59 of 2020/S.O. 2682(E), dt. 10th Aug., 2020 and in consultation with the Chief Justice of the High Court of Bombay, hereby designates the following courts of Magistrates of First Class as Special Courts under section 280A(1) of the Income-tax Act, 1961 and section 84 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 in the State of Maharashtra, for trial of offences punishable under the Income tax Act, 1961 and other related matters, namely:-

- the 38th Court, Ballard Pier for Mumbai region and 31st Court of Additional Chief Metropolitan Magistrate, Vikhroli for Mumbai including cases at Thane;
- the Court of the Chief Judicial Magistrate, Nagpur for entire Vidarbha region, and

- the Court of 10th Joint Civil Judge Junior Division and Judicial Magistrate First Class (Court No. 8), Pune for Pune region

The Faceless Assessment Scheme

Circular No. 61/2020/F.No. 370149/154/2019-TPL dated 13.08.2020

Finance Minister Nirmala Sitharaman had announced the e-assessment scheme in her budget speech on 5th July 2019. On 12.09.2019 CBDT notified E-Assessment scheme.

Hon'ble Prime Minister Narendra Modi on 13th August, 2020 had lunched "Transparent Taxation-Honouring the honest". CBDT on the same day, issued notification to give effect to faceless assessment. Accordingly, e-assessment scheme will be known as Faceless Assessment Scheme.

The salient features of the Faceless assessment scheme effective from 13th August 2020 are as under:

1. Under the Faceless Assessment Scheme, the assessment will be carried out by a tax officer who may not be from the taxpayer's jurisdiction or location. All communications between the taxpayer and assessing officer to be done through a National e-Assessment Centre ("NEAC").
2. There will be no interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible.
3. Separate faceless teams for conducting assessment to be constituted viz., i) Assessment Unit to perform the function of making assessment which includes identification of issue material for determination of any liability and seeking information, ii) Verification Unit for conducting enquiries / verification ii) Technical Unit for providing technical assistance iii) Review Unit for conducting review of the draft order.
4. The NEAC shall serve a notice u/s 143(2) specifying the issues for selection of the case for assessment;
5. Any case which is selected for scrutiny shall be randomly allocated to specific assessment unit in any one regional assessment Centre ("Assessment Unit").
6. For obtaining further information/ documents/evidence as requested by assessment unit, only NEAC shall issue notice.
7. Before making addition, NEAC shall issue show cause notice.
8. Draft order will be passed wherever modification in the order is prejudicial to the Assessee. Assessee may file submission against draft order.
9. Draft assessment order may be passed in one regional centre, review may be done in another regional centre and final order may be passed in another regional centre all allocated on random basis.
10. After completion of the assessment, the NEAC shall transfer all records to the jurisdictional AO.
11. Faceless income tax appeal will be effective from 25 September 2020. SOP / Procedure to be notified. Appeals to be randomly allotted to any officer in the country

Exception to faceless assessment

- a. Tax matters which are assigned to Central Charges Tax/ international tax charges
- b. Where assessee exercises its opportunity of being heard, its response shall be forwarded by the NEAC to assessment unit. The assessee may also make an application for personal hearing to the CCIT/ DGIT, NEAC who may approve such request for hearing which shall be done exclusively through video conferencing or any other telecommunication application software.
- c. At any point of time during the pendency of proceedings, the PCCIT or PDGIT, if considered necessary to do so, shall with prior approval of board hand over the case to the Jurisdictional AO.

Key Highlights of the Taxpayers Charter

Section 119A of the Act

Section 119A of the Act empowers the CBDT to adopt and declare a Charter and issue such orders, instructions or directions or guidelines to other income-tax authorities, as it may deem fit for the administration of the Charter. In furtherance of such powers, the

Charter has been released on 13 August 2020. The Taxpayers charter issued by the Ministry of Finance lists down the various rights of a taxpayer and the obligations which should be fulfilled by him in relation to his tax liabilities. These rights and obligations when fulfilled, would lead to development of a relationship of mutual trust and respect between the revenue and the taxpayers community.

The various rights that a taxpayer has are listed down in the charter under the following heads:

1. to be treated with fairness and impartiality
2. to be treated as honest and tax compliant unless there is evidence to the contrary
3. for certainty
4. for assistance and information from the Tax Departments
5. to pay no more than the correct amount of tax
6. not to be subject to retrospective taxation
7. to minimize compliance costs
8. to be advised and represented by any person on taxation matters
9. to appeal
10. to privacy and confidentiality of information we hold about you
11. to know what information we hold about you
12. for the licit arrangement of your tax affairs that minimises the tax liability
13. to request a payment plan
14. to complain about our service, behavior and actions

However, the obligations which are expected to be fulfilled have been listed down under the following heads:

1. to be honest
2. to be compliant, and cooperate when you deal with the Tax Departments
3. to keep proper records in accordance with the law
4. to file proper and complete tax documents and effect payments by the statutory due dates
5. to inform the Tax Departments about changes in circumstances
6. to know your tax responsibilities and the consequences for non-compliance