

WIRC of THE ICAI

PHARMA INDUSTRY

TAXATION ISSUES (DIRECT TAX)

CA Subhash Jalan

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DOMESTIC TAXATION

RESEARCH & DEVELOPMENT EXPENDITURES

- Phased out all weighted deductions-due to reduced tax rate regime
- Effective from 01.04.2020, only 100% deduction of all R & D
- Following R&D expenditures are deductible (100%)
 - All revenue expenditures on scientific research *[s.35(1)(i)]*
 - Payment to approved *Research Association, University etc. *[s.35(1)(ii)]*
 - Payment to approved R & D company *[s.35(1)(iia)]*
 - Capital Expenditure on Scientific Research *[s.35(1)(iv)]*
 - Expenditure on In-House **R & D *[s.35(2AB)]*. Now such exp covered u/s 35(1)(i) itself

*must be approved by DSIR and notified in Central Govt's Gazette

**i) cost of land & building – not eligible

ii) R&D expenses includes clinical drug trial, obtaining approval from regulatory authority and filing patent application etc.

- Allocation of R & D expenses being futuristic in nature. Allocation to the existing plants.

CLINICAL TRIAL/ BIO-EQUIVALENCE etc.

- All clinical trial/bio-equivalence related expenditures are deductible
- Deductible whether incurred in India or outside India
- Deductible even if clinical trial result is not successful or abandoned
- Treated as 'Fees for technical services' / 'Fees for included services'
- If expenses incurred in India, TDS @ 10% applicable u/s 194-J
- If expenses incurred outside India, TDS applicable u/s 195 @ depending on tax treaty with respective countries OR domestic rate, whichever is more beneficial to the recipient.
- Subject to 'make available' concept in few tax treaties

MERGERS & ACQUISITION

- Scheme of Arrangement, NCLT Proceedings, Appointed Date, Effective Date
- Loss of amalgamating co to be set-off against profit of amalgamated co [s.72A]
- Transactions during intervening period (Appointed Date & Effective Date)
- Reverse merger -Provisions governing ‘amalgamation’ u/s 2(1B) applies to reverse merger
- ❖ Instances of reverse merger –
 - i. Profit making co. if merged with Loss making co.
 - ii. Holding co. merged with wholly owned subsidiary co.
 - iii. All provisions relating to ‘merger’ will apply to ‘reverse merger’ as well (subject to factual position)
 - iv. Holding co. merging with Subsidiary co., shareholders of parent co. always beneficially held shares of merged co, prohibition contained in sec. 79 does not apply and loss is allowed to be set off.
- GAAR provisions
Sec.95(1) deals with ‘Arrangement’ and ‘Impermissible avoidance agreement’.
- Circular no 7 of 2017 dated 27/01/2017 – FAQ no. 8 states –

Question	Answer
Will GAAR be invoked if arrangement is sanctioned by an authority such as the Court, NCLT or is in accordance with judicial precedents etc.?	Where the Court has explicitly and adequately considered the tax implication while sanctioning an arrangement, <u>GAAR will not apply.</u>

OTHER ISSUES

- Freebees-expenditure deduction-post MCI regulations and CBDT circular of 2012
- Demerger vs. Slump Sale – Factors to decide
- IndAS adjustments – impact on taxation
- CSR related expenses – disallowable u/s 37(1) but Donation deductible u/s 80G
- Out of Court settlement/consent decree claim etc – deductible
- Payment of fine for flouting of EU Competition law –deductible [Mylan Lab. Ltd.'s case]
- Penalty paid outside India-whether falls u/s 37(1) Explanation? [Delhi High Court decision]
- Buy-Back related expenditure – deductible (not capital expenditure)
- MAT provisions
 - Impairment loss actually written off is deductible
 - Profit on sale of shares of WOS [s.47(iv)] is not taxable under MAT also
- TDS 0.1% on purchase of goods [S.194Q – w.e.f. 01.07.2021] [Ease of doing business ??]

Chapter VI-A Deductions

- No extra deduction for new industrial undertaking
- Deduction continues to existing industrial undertakings upto prescribed year/s
- Tax holiday units – Allocation of common or indirect expenses is a challenge
- Contribution to political party or electoral trust- deductible [s.80GGB/80GGC]
- Dividend not taxable-if received from another co and distributed to shareholders [s.80M]

INTERNATIONAL TAXATION

IMPORTANT ISSUES

- POEM risks- key management & commercial decisions [sec. 6(3)]
 - Foreign subsidiaries managed from India may be taxed in India
- Potential Permanent Establishment (PE) Issues
 - in Contract Research and Manufacturing
 - NEPAL – Recent circular on Permanent Establishment
 - To re-look Marketing & Distribution activities
- Branch concept in Other Jurisdiction
 - RBI Regulations (Merchant Export); Bill to Ship to Model
 - Taxation Issues
- Loss on sale of overseas subsidiary's shares by Indian Parent to another group co-allowable 'capital Loss' – subject to business justification and GAAR provisions
- Liquidation Loss of Overseas Subsidiary

MERGER of OVERSEAS SUBSIDIARY into INDIAN PARENT

- Scheme of Arrangement, NCLT Proceedings, Appointed Date, Effective Date
- Transactions during intervening period (Appointed Date & Effective Date)
- Treatment of 'Losses' during said period in the hands of Indian Parent
- Normal taxation vis-à-vis MAT (Book Profit)

WITHHOLDING - TAX (SECTION 195) CORE ISSUES

- Domestic Law or Bilateral tax treaty, whichever is more beneficial
- ‘Make Available’ concept in several tax treaties
- Software payments – Supreme Court’s recent judgment

[Copyrighted/ Licensed Software not Royalty- Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT (dated March 02, 2021)]

- ‘Most Favoured Nation’ clause in few tax treaties
- Foreign tax credit
- India-China tax treaty [unique language in Article 12.4 read with 12.6]
- Dividend Payment to overseas shareholders
- Consequences in case of default u/s 201 / 201(1A)



Thank
you!!