

DEDUCTION, COLLECTION & RECOVERY OF TAX

AMENDMENTS BY THE FINANCE (No.2) ACT, 2014

(a) Tax to be deducted on non-exempt payments made under life insurance policy [Section 194DA]

Effective from: 1st October, 2014

- (i) Under section 10(10D), any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy is exempt subject to fulfillment of conditions specified under the said section.
- (ii) Consequently, the sum received under a life insurance policy which does not fulfill the conditions specified under section 10(10D) is taxable.
- (iii) For ensuring a proper mechanism for reporting of transactions and collection of tax in respect of sum paid under life insurance policies which are not exempt under section 10(10D), new section 194DA has been inserted to provide for deduction of tax at the rate of 2% on any sum paid to a resident under a life insurance policy, including the sum allocated by way of bonus, which are not exempt under section 10(10D).
- (iv) However, tax deduction is required only if the payment or aggregate payment in a financial year to an assessee is ₹ 1,00,000 or more. This is for alleviating the compliance burden on the small tax payers.

Example

Examine the applicability of the provisions for tax deduction at source under section 194DA in the above cases -

- (i) Mr.X, a resident, is due to receive ₹ 4.50 lakhs on 31.3.2015, towards maturity proceeds of LIC policy taken on 1.4.2012, for which the sum assured is ₹ 4 lakhs and the annual premium is ₹ 1,25,000.
- (ii) Mr.Y, a resident, is due to receive ₹ 2.20 lakhs on 31.3.2015 on LIC policy taken on 1.4.2010, for which the sum assured is ₹ 2 lakhs and the annual premium is ₹ 35,000.
- (iii) Mr.Z, a resident, is due to receive ₹ 95,000 on 1.10.2014 towards maturity proceeds of LIC policy taken on 1.10.2010 for which the sum assured is ₹ 90,000 and the annual premium was ₹ 19,000.

Answer

- (i) Since the annual premium exceeds 10% of sum assured in respect of a policy taken on 1.4.2012, the maturity proceeds of ₹ 4.50 lakhs are not exempt under section 10(10D) in the hands of Mr.X. Therefore, tax is required to be deducted @ 2% under section 194DA on the maturity proceeds of ₹ 4.50 lakhs payable to Mr.X.
- (ii) Since the annual premium is less than 20% of sum assured in respect of a policy taken before 1.4.2012, the sum of ₹ 2.20 lakhs due to Mr.Y would be exempt under section 10(10D) in his hands. Hence, no tax is required to be deducted at source under section 194DA on such sum payable to Mr.Y.
- (iii) Even though the annual premium exceeds 20% of sum assured in respect of a policy taken before 1.4.2012, and consequently, the maturity proceeds of ₹ 95,000 would not be exempt under section 10(10D) in the hands of Mr.Z, the tax deduction provisions under section 194DA are not attracted since the maturity proceeds are less than ₹ 1 lakh.

(b) Enabling provision for deductor to file correction statement and for processing of correction statement so filed [Sections 200 & 200A]

Effective from: 1st October, 2014

- (i) Chapter XVII-B imposes an obligation on certain persons to deduct tax on specified payments at the prescribed rates if the payment exceeds specified threshold. The deductor is also required to file a quarterly statement of tax deduction at source (TDS) containing the prescribed details of deduction of tax made during the quarter by the prescribed due date.
- (ii) Currently, a deductor is allowed to file correction statement for rectification/update of the information furnished in the original TDS statement as per the Centralised Processing of Statements of Tax Deducted at Source Scheme, 2013 notified vide Notification No.03/2013 dated 15th January, 2013. However, at present, the Income-tax Act, 1961 does not contain any express provision to enable a deductor to file correction statement.
- (iii) Therefore, in order to incorporate an express provision in the statute, a proviso has been inserted in section 200(3) to provide that the deductor may also deliver to the prescribed authority, a correction statement for –
 - (a) rectification of any mistake; or
 - (b) to add, delete or update the information furnished in the statement delivered under section 200(3)
 in the specified form and manner.
- (iv) Consequently, section 200A(1) has been amended to enable processing of correction statement filed.

(c) Revision of time limit for passing an order under section 201(1) [Section 201(3)]

Effective from: 1st October, 2014

- (i) Section 201(1) provides for passing of an order deeming a payer as assessee in default if he does not deduct or does not pay or after deduction fails to pay the whole or part of the tax as per the provisions of Chapter XVII-B.
- (ii) The time limit for passing of order under section 201(1) for deeming a payer as assessee in default for failure to deduct tax from payments made to a resident is specified in section 201(3).
- (iii) Clause (i) of section 201(3) provides that no order under section 201(1) shall be passed after expiry of two years from the end of the financial year in which the TDS statement referred to in section 200 has been filed.
- (iv) Since the processing of TDS statement is done in a computerized environment and primarily focuses on the transactions reported in the TDS statement filed by the deductor, there is no rationale for not treating the deductor who has filed a TDS statement as an assessee in default after two years, where the TDS default arises as a consequence of transactions not reported in the TDS statement.
- (v) Therefore, clause (i) of section 201(3) which provides time limit of two years for passing order under section 201(1) for cases in which TDS statement have been filed, has been omitted.
- (vi) Under clause (ii) of section 201(3), a time limit of six years from the end of the financial year in which payment is made or credit is given for passing of order under section 201(1) has been provided for cases in respect of which TDS statement has not been filed.
- (vii) However, notice under section 148 may be issued for reassessment up to six years from the end of the relevant assessment year for which the income has escaped assessment.
- (viii) Therefore, section 148 allows reopening of cases of one more preceding previous year than specified under section 201(3)(ii).
- (ix) On account of this difference in time limit, an order under section 201(1) cannot be passed in respect of defaults relating to TDS which comes to the notice during search/reassessment proceeding in respect of previous year which is not covered under section 201(3)(ii) but covered under section 148.
- (x) Therefore, in order to align the time limit provided under section 201(3)(ii) and section 148, the time limit provided under section 201(3)(ii) for passing order under section 201(1) has been extended by one more year.
- (xi) Accordingly, section 201(3) now provides a uniform time limit of seven years from the end of the financial year in which payment is made or credit is given, for deeming a person as an assessee-in-default for failure to deduct the whole or any part of the tax from a person resident in India.

(d) Non-applicability of higher rate of TDS under section 206AA in respect of tax deductible under section 194LC on payment of interest on long-term bonds to non-corporate non-residents and foreign companies

Effective from: 1st October, 2014

- (i) With a view to strengthening the PAN mechanism, section 206AA provides that any person whose receipts are subject to deduction of tax at source i.e. the deductee, shall mandatorily furnish his PAN to the deductor, failing which the deductor shall deduct tax at source at higher of the following rates –

- (1) the rate prescribed in the Act;
- (2) the rates in force; or
- (3) the rate of 20%.

For instance, in case of rental payment for plant and machinery, where the payee does not furnish his PAN to the payer, tax would be deductible @20% instead of @2% prescribed under section 194-I.

- (ii) Further, no certificate under section 197 will be granted by the Assessing Officer unless the application contains the PAN of the applicant.
- (iii) The provisions of section 206AA are also applicable to non-residents where tax is deductible on payments or credits made to them.
- (iv) Section 194LC, inserted by the Finance Act, 2012, provides for a concessional rate of withholding tax @ 5% on interest payment by an Indian company to a non-corporate non-resident or a foreign company. The concessional rate of tax and TDS would be applicable if the borrowing is made in foreign currency between 1.7.2012 and 30.6.2015, from a source outside India, inter alia, by way of issue of long-term infrastructure bonds, as approved by the Central Government in this behalf.
- (v) Though section 194LC provides for a concessional rate of tax @ 5%, in absence of PAN of the non-resident, section 206AA mandates withholding tax at higher rate of 20%. This would have resulted in genuine hardship to the non-corporate non-residents/foreign companies, since they would have had to file a return to claim refund of tax, even though section 115A specifically exempts such assessee from filing return of income where their income comprises solely of specified interest and dividend income [referred to in section 115A(1)(a)], on which tax deductible at source has been deducted and paid to the Government. Hence, these non-residents would have had to obtain PAN for the sole purpose of avoiding the adverse impact of section 206AA.
- (vi) To address this concern, sub-section (7) was inserted in section 206AA by the Finance Act, 2013 to provide that the provisions of section 206AA shall not apply in respect of payment of interest on long term infrastructure bonds, as referred to in section 194LC, to a non-corporate non-resident or to a foreign company.
- (vii) This year, the Finance (No.2) Act, 2014 has expanded the scope of deduction of tax

at a concessional rate of 5% under section 194LC to cover interest payable to a non-corporate non-resident or a foreign company by an Indian company or a business trust on money borrowed by it in foreign currency from a source outside India by issue of any long-term bond, as approved by the Central Government in this behalf, at any time between 1.10.2014 and 30.6.2017.

(viii) Consequently, section 206AA(7) has also been amended to provide that the provisions of section 206AA shall not apply in respect of payment of interest on any long term bond, as referred to in section 194LC, to a non-corporate non-resident or to a foreign company.

e) **Validity of notice of demand till the disposal of appeal by the last appellate authority or disposal of proceedings [Section 220(1A)]**
Effective from: 1st October, 2014

(i) Under section 220(1), any amount specified as payable in a notice of demand under section 156 shall be paid within thirty days of the service of notice at the place and to the person mentioned in the notice.

(ii) If the amount specified in the notice is not paid within the period, the assessee shall be liable to pay simple interest at 1% for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in section 220(1) and ending with the day on which the amount is paid. This is provided for in section 220(2).

(iii) The first proviso to section 220(2) states that where as a result of an order under sections 154/155/250/254/260/262/264/245D(4), the amount on which interest payable under this section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded.

(iv) The liability of the assessee to pay interest is based on the theory of continuity of the proceedings and the doctrine of relation back.

(v) Accordingly, new sub-section (1A) has been inserted in section 220 to provide that where any notice of demand has been served upon an assessee and any appeal or other proceeding, as the case may be, is filed or initiated in respect of the amount specified in the said notice of demand, then such demand shall be deemed to be valid till the disposal of appeal by the last appellate authority or disposal of proceedings, as the case may be, and any such notice of demand shall have effect as provided in section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 [**See Note below**]

(vi) Further, a second proviso has been inserted to section 220(2) to provide that if as a result of order under the sections specified in the first proviso to section 220(2), the amount of interest payable was reduced, and thereafter, as a result of another order under any of the sections given in the first proviso or section 263, the interest payable was increased, the assessee would be liable to pay interest under section 220(2) from the day immediately following the end of the period mentioned in the first notice of demand referred to in section 220(1) till the date on which the amount is paid.

Note - Section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964

Continuation and validation of certain proceedings

(1) Where any notice of demand in respect of any Government dues is served upon an assessee by a Taxing Authority under any scheduled Act, and any appeal or other proceeding is filed or taken in respect of such Government dues, then,-

(a) where such Government dues are enhanced in such appeal or proceeding, the Taxing Authority shall serve upon the assessee another notice of demand only in respect of the amount by which such Government dues are enhanced and any proceeding in relation to such Government dues as are covered by the notice or notices of demand served upon him before the disposal of such appeal or proceeding may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;

(b) where such Government dues are reduced in such appeal or proceeding,-

(i) it shall not be necessary for the Taxing Authority to serve upon the assessee a fresh notice of demand;

(ii) the Taxing Authority shall give intimation of the fact of such reduction to the assessee. Further, where a certificate has been issued to the Tax Recovery Officer for the recovery of such amount, intimation of the fact of reduction shall also be given to him;

(iii) any proceedings initiated on the basis of the notice or notices of demand served upon the assessee before the disposal of such appeal or proceeding may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal;

(c) no proceedings in relation to such Government dues (including the imposition of penalty or charging of interest) shall be invalid by reason only that no fresh notice of demand was served upon the assessee after the disposal of such appeal or proceeding or that such Government dues have been enhanced or reduced in such appeal or proceeding:

(2) No fresh notice of demand shall be necessary in any case where the amount of Government dues is not varied as a result of any order passed in any appeal or other proceeding under any scheduled Act.

(3) The provisions of this section shall have effect notwithstanding any judgment, decree or order of any court, tribunal or other authority.

Example

The Assessing Officer issued a notice of demand under section 156 to Mr.X on 1.10.2014 for payment of ₹ 15 lakhs towards his income-tax liability for the A.Y.2013-14, requiring him to pay the said amount within 30 days.

- (a) Is he required to issue fresh notice of demand and if so, for what amount, in the following two cases (each case has to be considered independently) –
- (i) If the tax demand is reduced to ₹ 12 lakhs by the Commissioner (Appeals) by issue of order under section 250;
 - (ii) If the tax demand is increased to ₹ 20 lakhs by the Appellate Tribunal, by issue of an order under section 254.
- (b) How would the interest liability under section 220(2) be calculated if the tax demand is reduced to ₹ 12 lakhs by the Commissioner (Appeals) by issue of order under section 250 and subsequently increased to ₹ 15 lakhs by the Appellate Tribunal by way of issue of order under section 254?

Answer

- (a) (i) No fresh notice of demand is required to be served on Mr.X. The Assessing Officer is only required to give an intimation of the fact of reduction of demand to ₹ 12 lakhs to Mr.X. The proceedings initiated on the basis of the original notice of demand may be continued in relation to the reduced amount of ₹ 12 lakhs from the stage at which such proceedings stood immediately before disposal of appeal.
- (ii) A fresh notice of demand has to be given only in respect of ₹ 5 lakhs, being the amount of enhancement. Any proceedings in relation to ₹ 15 lakhs covered by the original notice of demand served upon Mr.X may be continued from the stage at which such proceedings stood immediately before disposal of appeal.
- (b) The interest under section 220(2) has to be paid on ₹ 15 lakhs @1% per month or part of the month comprised in the period commencing from 1.11.2014 and ending with the date on which the amount is paid, assuming that Mr. X has not paid any interest so far.

SIGNIFICANT NOTIFICATIONS/CIRCULARS

1. **Time and mode of payment of tax deducted at source under section 194-IA to the credit of Central Government, furnishing challan-cum-statement and TDS Certificate [Rules 30, 31A & 31] [Notification No. 39/2013 dated 31.05.2013]**

New section 194-IA has been inserted by Finance Act, 2013, requiring every transferee responsible for paying any sum as consideration for transfer of immovable property (land, other than agricultural land, or building or part of building) to deduct tax, at the rate 1% of

such sum, at the time of credit of such sum to the account of the resident transferor or at the time of payment of such sum to a resident transferor, whichever is earlier.

Accordingly, the time and mode of, payment of tax deducted at source under section 194-IA, furnishing Challan-cum-statement and TDS Certificate have been provided, by amending Rules 30, 31A & 31, respectively -

- (i) Such sum deducted under section 194-IA shall be paid to the credit of the Central Government within a period of seven days from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No.26QB [Rule 30].
- (ii) The amount so deducted has to be deposited to the credit of the Central Government by electronic remittance within the above mentioned time limit, into RBI, SBI or any authorized bank [Rule 30].
- (iii) Every person responsible for deduction of tax under section 194-IA shall also furnish to the DGIT (Systems) or any person authorized by him, a challan-cum-statement in Form No.26QB electronically within seven days from the end of the month in which the deduction is made [Rule 31A].
- (iv) Every person responsible for deduction of tax under section 194-IA shall furnish the TDS certificate in Form No.16B to the payee within 15 days from the due date for furnishing the challan-cum-statement in Form No.26QB under Rule 31A, after generating and downloading the same from the web portal specified by the DGIT (Systems) or the person authorized by him [Rule 31].

2. **Non-deduction of tax at source on the service tax component comprised in payments made to residents, if the service-tax component is indicated separately [Circular No. 1/2014, dated 13.1.2014]**

The CBDT had issued Circular No.4/2008 dated 28.4.2008 clarifying that tax is to be deducted at source under section 194-I, on the amount of rent paid/payable without including the service tax component. However, this Circular was silent regarding deduction of tax at source on the service tax component of other payments on which TDS provisions are applicable.

Accordingly, in exercise of the powers conferred under section 119, the Board has, vide this Circular, clarified that wherever in terms of the agreement/contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B on the amount paid/payable without including such service tax component.