Income Tax and Corporate Law News

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1. Three words enough to access your tax records - beware

If you are thinking of filing your income tax returns online, think twice. It is very easy for anyone to hack into your account and have access to your income tax details. All a hacker needs to know is

1. Your name
2. Permanent account number (PAN) and
3. Your date of birth.

He first needs to log onto the e-filing website (www.incometaxindiaefiling.gov.in).

After this, all he needs to do is click on the login link and then click on the ‘forgot password’ link that appears. Having clicked on the ‘forgot password’ link, a screen that allows him to change the password appears. There the hacker needs to choose method1.

In order to change the password, the hacker first needs to know the login. The login in this case is the individual’s PAN.

After entering the login data, he needs to enter your name and then finally your date of birth, or date of incorporation in case of a Hindu undivided family (HUF).

This done, he needs to enter the new password twice and click on the reset password button. And, voila, he has hacked your account. It is as simple as that.

After changing the password, he can access the account using the new password and have access to your tax records. This would include information like your gross income for the year, the amount of tax saving investments you made, the amount of tax deducted at source and the tax refund you may get. He would also have access to your phone number and address.

These days, for most financial transactions, right from opening a bank account or a demat account or to invest in a mutual fund, the PAN number needs to be quoted. Along with this the date of birth also needs to mention. So getting hold of these details isn’t a big deal.

If someone knows your PAN and date of birth, he can also create your login. And if you want access to it, you’ll have to hack it. How do you go about doing that? Well, that has been clearly explained above.

What is surprising is how the income tax department can set up a system that’s so easy to hack into.

2. Bank liable to deduct TDS on MICR charges

The Ahmedabad Income-Tax Tribunal has held that where charges are incurred towards MICR facilities regarding identifying, reading and clearing cheques through special kind of machines, the same would be in the nature of fees for technical services (FTS) and would accordingly be liable to deduct tax at source (TDS) under section 194J. In the relevant case, the assessee was engaged in the business of banking activities/services. During verification of the TDS return, the AO observed that the assessee had made payment towards MICR charges to MICR centre managed by State Bank of India without deducting TDS. The tribunal held that the definition of the term FTS is very wide. The services of MICR facilities involve human skills as well as computerised machines and that it is not automatic. In that sense, it is not hiring/leasing or making available the technical equipment working on its own. But it is fully supported by services of personnel and requires human application of mind along with technical equipment. Since other banks pay charges for the MICR facilities through its special machines, the same is in the nature of FTS and therefore, would be eligible to TDS under section 194J.

3. **Way to get benefit from Education**

The Delhi Income-Tax Tribunal has held that no concession would be available to an employee where the perquisite value of free/concessional education exceeds Rs 1,000 per month per child (pmpc). In the relevant case, the assessee, while calculating amount of perquisite value of free/ concessional education facilities deducted Rs 1,000 pmpc in terms of Rule 3(5). The assessing officer (AO) disallowed the claim of the assessee. The tribunal held that Rule 3(5) is an exception to the main rule. While in respect of perquisites of free meals and gifts, universal exemption is granted up to Rs 50 and Rs 5,000, respectively, no such universal concession of Rs 1,000 has been permitted. The benefit has been given only to persons whose cost or perquisite value of free educational facility did not exceed Rs 1,000 pmpc.

4. **Department activities to increase tax collections**

The income tax department is set to act tough on state governments, many of which have been defaulting on deducting tax at source. The department is planning to allot Tax Deduction Account Number (TAN) to all drawing and disbursing officers of all states and central ministries.

TAN is a unique identification number, which is allotted to people who are deducting or collecting tax at source on behalf of the income tax department. It has to be quoted in all TDS/ TCS returns. As in the case of permanent account numbers (PAN) that helps to keep track of all assessees and their returns, TAN is used to keep a tab on all tax dedicators and deductions. If all these officers have a TAN, It would be easier to track collections by state governments through TDS.

Tax officials point out that a large number of states have deducted the tax but have not remitted it to the Centre for the past two to three years. Some others meanwhile have not deducted the tax at all from the salaries and pensions of their employees.

The issue was also taken up at the recent income tax chief commissioner’s conference as a part to strengthen the TDS mechanism. While the exact quantum of such defaults by states is difficult to assess, tax officials say it is a recurring problem and needs to be addressed in order to increase collections through TDS.

The income tax department is also mulling several other measures to strengthen the TDS mechanism in states and increase collections. It is planning to appoint more officers in its Commissionerate to supervise deductions and collections under the system. The department may also start training programmes to sensitise the authorized dedicators in the states to comply with law and improve the TDS collections.

Increasing collections from TDS is a key focus area of the department, especially as it has been relying more on voluntary compliance. As a result of the various steps that have been undertaken, TDS collections increased by 51% in 2007-08 to Rs 1,06,700 crore from a mere 2.36% in 2004-05. The total tax collection in the fiscal stood at Rs 3, 14,486 crore. Similarly, till June this year, tax deducted and collected at source has risen at a rate of 50%.

5. **Energy audit in tea factories**

In the first instance, 15 bought-leaf tea factories in Nilgiris have applied for energy audit under the energy conservation project launched by Tea Board in co-operation with United Nations Development Programme’s Global Environment Facility and implemented by Technology Informatics Design Endeavour (TIDE).

Detailed energy audit is our first step towards conserving thermal and electrical energy in factories. All projects engage accredited energy auditors and regularly monitor the progress of the audit. The project will bear up to 75 per cent of the audit cost as per a slab-spread

Annually, factories in the Nilgiris expend about Rs 41 crore on energy consumption. Most use firewood, but due to restriction in cutting trees up the hills, firewood is coming from the plains. Some 9,000 lorry-loads annually transport firewood amidst complaints of environmental pollution. With suitable modification of the machines and processing systems, it should be possible to save some 20 per cent of the energy cost.

6. **Professional tax may raise to Professionals**

Doctors, lawyers and other professionals —both salaried and self-employed— may now have to pay a higher professional tax.

Acceding a long-pending demand of the state governments, the Centre has decided to raise the ceiling on professional tax from Rs 2,500 to Rs 7,500 per annum. The Union Cabinet is expected to take up the proposal on Thursday.

Professional tax is levied by state governments or local bodies on professions, trades, callings and employment. The power to levy the tax flows from Article 276 of the Constitution that also caps the tax amount. The Centre will amend Article 276 to raise the limit. Although Delhi does not impose the tax, states such as Karnataka, Maharashtra, West Bengal, Andhra Pradesh, Tamil Nadu and Gujarat do so.

The limit was fixed in 1998 at Rs 2,500 per annum. Increase in tax has been a long-pending demand of the states, pointing at rise in income levels in the past few years.

The Centre's reluctance to state governments' demand for a hike in the limit is borne out of the fact that taxpayers who pay professional tax are eligible for a deduction under the Income-Tax Act. So, while the state governments' revenues grow, the Centre loses tax on this count.

However, with the direct tax collections witnessing stupendous growth, state governments had intensified pressure on the Centre. Their argument is that the tax does not have a substantial impact on Centre's total kitty as the collection under this head by states was only Rs 3,500 crore.

Some state governments wanted the limit to be increased to Rs 10,000 per annum, but the Centre has agreed to raise it to Rs 7,500.

No interest tax on lease finance company

Giving relief to companies engaged in leasing and financing business, the Income Tax Appellate Tribunal has ruled that they are *not required to pay interest tax*, applicable to other credit institutions.

Since substantial earnings is made from such (lease financing) activity after employing substantial funds...the assessee would be outside the scope of charging provisions contained in the Act (Interest Tax Act).

The bench has set aside the orders of the Assessing Officer and Commissioner of Income tax Appeals in the case, which held that the company should pay interest tax as it is also engaged in loan advancing and investment activities along with lease financing.

The tribunal also ordered the tax authorities to refund the interest tax paid by the assessee.

The company in its submission before the tribunal had contended that it could not be treated as a finance company as its primary income was from leasing business at around 40 to 45 per cent of the total income.

The company, according to the order, will not be termed as a credit institution and consequently, the interest earned by the assessee would not form part of the chargeable interest.

The Assessing Officer initially had held that the finance company had earned about Rs 10.07 crore out of which Rs 4.08 crore was interest income on which it was required to pay interest tax.

IFRS Section

7. **Understanding the importance of IFRS**

ICAI has announced convergence to IFRS by 2011 and that is not very far away since firms would need to start with an opening IFRS balance sheet as of 1 April 2009. As compared to Canada where 79% of senior management including Audit Committees has formulated a strategic plan to manage IFRS conversions by 2011, India is definitely lagging behind.

The Independent Directors and Audit Committee members should push for clarity on adoption of IFRS of these listed companies. There is the option of getting on to the bus now and figuring the best route. IFRS is principle based vis a vis rule based and hence you can choose principles to your advantage—you need to know what your choices are. India has the benefit of leveraging on global experiences if one wants to be based on which industry you are in. IFRS conversion is not unfortunately just a “switch” or another “MS excel driven” process where overnight you can convert—there are impacts on financials, people and processes and IT systems that need to be considered. It is not another finance project where the CFO and the controllers department can burn midnight oil and produce magic period on period. There are various inputs that would need to be given by operations. The quantum of information processed outside a system has inherent data integrity risks. If you are a CEO or an analyst or investor relations or HR head you need to be able to explain to public and employees, more importantly how numbers stack. You need to address a range of issues from tax structuring to wording your contracts to revisiting your incentives calculation to training people across the company—so this is as much a CEO agenda as a CFO’s.

Here are ten questions/points to attain “IFRS Nirvana”.

1. Determine the scope of companies in your group that would need to converge and
2. Assess what you want to achieve by when and agree with the Audit Committee Chair?
3. Do you want to merge your internal reporting and IFRS to avoid multiple financial closures?
4. Considering that this would be a change in primary GAAP,
5. Do you want to go down the path of systems based conversion?
6. Identify a team and treat this as a project—evaluate how you would bridge any gap in technical skill sets by training or seeking assistance.
7. Evaluate the relevant principles and arrive at the choices after involving the Audit Committee, CEO and CFO.
8. Identify issues that may require large amount of data gathering and evaluate the best method to get it—set separate teams at work on this.
9. Prepare a sample financials for your company and educate the relevant stakeholders on differences.
10. Do an impact assessment not just on financials but also people, processes and IT.

I can hear some of you saying, “This is India and government would take a long time to move any of the IFRS related decisions. We have all the time in the world and I would master this by then—why start now? Many people are laid back expecting convergence to get stuck with regulators or tax authorities or political agencies. If you are taking chances on this it is at your own risk. Canada was in the same complacency boat until it was rocked by the stock exchange announcing a mandatory disclosure on how companies are planning to handle the convergence

Look at this from a cost perspective. If you start late you may find scarcity of technical skill sets and IT implementation partners which would automatically raise your costs on simple law of demand and supply.

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Thank you