INCOME TAX AND CORPORATE LAW UPDATES

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Source: ***Internet, e-mails, Newspapers and FAPCCI Library Books***

TAX LIABILITY FOR AGRICULTURE PRODUCE MARKETING COMMITTEES

The Supreme Court has held that agricultural produce marketing committees are liable to pay income tax rejecting their claim that they were local authorities exempted from the liability by the Income Tax Act. While dismissing a batch of petitions filed by a committee in Delhi, the court clarified that after an amendment to the explanation in the ***Finance Act in 2002***, the committee was not entitled to exemption under ***Section 10(20)*** of the Act.

CBDT EXPANDS DEFINITION OF PROFESSIONALS

The Central Board of Direct Taxes (CBDT) expanded the scope of professional services to cover sportspersons, umpires and referees, making them liable for a higher tax deduction at source (TDS) at the rate of **10% against 1-2%.**

Sportspersons who are amateurs and do not play for commercial gain are exempted from the ambit of this tax. According to the notification, the CBDT has categorized services rendered by sportspersons, umpires and referees, coaches and trainers, team physicians and physiotherapists, event managers, commentators, anchors and sports columnists as professional services.

The professionals were covered by ***Section 194C*** of the Income-Tax Act, which made them eligible for a lower ***TDS rate of 1-2%.*** With this notification, they would now be covered under ***194J of the I-T Act***.

> **★Events★**
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> Study Circle Meeting on '***TDS Provisions under section 194 C and 194 I – Interpretations***' on Tuesday 9th September, 2008 at 04.30 pm at JSK Murthy Hall, FAPCCI, Hyderabad, Andhra Pradesh.
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> ★★★★★★★★★★

I-T MEN CAN'T CHANGE THEIR TAX ASSESSMENT

Tax payers need not pay more if the income-tax officer changes his opinion on their income and asks for more taxes, according to a recent order passed by the Income Tax Appellate Tribunal (ITAT), Mumbai. The ITAT's order was on an appeal filed by Mumbai-based Sudarshan Securities and serves as a reminder to assessing officers that tax cannot be levied at the whims and fancies of tax officers. Sudarshan Securities was taxed 30 per cent of the book profit under Minimum Alternate Tax (MAT). The assessing officer, while passing the order for 1997-98, concluded that the capital gain should be taxed at a concessional rate of 21.5 per cent and the balance at 43 per cent. Later, the assessing officer changed his opinion and held that the entire book profit should be taxed at 43 per cent. The Commissioner (A) also took the same view, citing an amendment in 1989 to the Income Tax Act, which gave it the power to reopen such cases.

Then, Sudarshan Securities, represented by Jignesh R Shah, moved the ITAT. The tribunal ruled against such changes in opinion, which put additional tax burden on the taxpayer. Mr Shah argued that ***section 147 of the Income-tax Act*** is not a weapon in the hands of the assessing officers to use it whenever they feel like changing his opinion and views. The ITAT accepted Mr

Shah's argument and quashed the order of the assessment officer. The Income-tax laws give wide powers to assessing officers for reopening a case if they feel that some income has escaped the tax net. But the department cannot reopen an assessment already made, if the officer has merely changed his opinion after reappraising the very same facts which were available when the original assessment was made, too. In 1989, amendments were introduced to ***section 147 of the Income-tax Act,*** widening the power of the assessing officer to reopen cases, if there is enough ground to suggest that income had escaped the tax net. Even there, reopening a case on the basis of a change of opinion on existing facts are not permitted.

GOVT TO LEVY TAX ON SALARY ARREARS

For lakhs of central government employees looking forward to receiving ***40%*** of the accumulated arrears on their increased salary next month here's a dampener. The government has decided to levy tax on the entire amount of arrears — ***60%*** of which will be paid next year — in the current fiscal itself.

Senior bureaucrats will suffer most as their tax will be topped with a ***surcharge of 10%,*** on income of ***Rs 10 lakh*** and above. A senior finance ministry official said the surcharge to be paid by officers of the rank of joint secretary and above ranges between Rs 24,600 and Rs 52,500. The impact will be less on the lower grades.

Last month, the Centre had announced an average increase of 21% in salaries of its employees. The hikes, effective from January 1, 2006, would burden the exchequer by more than Rs 17,500 crore annually while the arrears alone account for more than Rs 29,000 crore.

COMPANIES BILL GETS CABINET CLEARANCE

Far-reaching changes in the company law to improve investor protection, corporate governance and use of electronic documents would become a reality once the proposed amendments to the companies Bill are carried out.

Changes in the law to this effect were cleared by the Cabinet here on Friday. The proposed amendments would enable incorporation of single-person companies and allow up to 100 partners in partnership firms compared to 20 now.

The amendments mandate that at least 33% of the members on the board of companies should comprise independent directors. The proposed changes would be introduced in Parliament during the forthcoming winter session, science & technology minister Kapil Sibal said after the Cabinet approved the amendments. Briefing newspersons after the meeting, he said the aim of the changes was to overhaul the company law and bring it in line with the times.

"Taxes are what we pay for civilized society." - Oliver Wendell Holmes, Jr., The proposed amendments have been approved by the Cabinet four years after a decision to review the six-decade-old company law was mooted. Many changes are based on the recommendations of the Irani Committee. Amendments to the Companies Bill, 2008, coupled with the new law on ***limited liability partnership (LLP)*** firms would bring about a sea change in the way companies are regulated.

The Bill calls for substantial reduction in government control on the affairs of companies, by promoting an era of self-regulation and shareholder democracy. ***Electronic documentation is being made mandatory in several cases to make information accessible to shareholders.*** With the ministry of corporate affairs high on its e-governance initiative, the new company law promotes easy access of corporate data over the Internet.

In a major boost for individual entrepreneurs to set up their own companies, the proposed law allows formation of one-person companies, a shift that will change the present requirement of at least two persons. Partnerships are set to gain a major advantage with the Bill extending the present threshold of 20 partners to a maximum 100, a move which is likely to promote the setting up of firms with high expertise and domain specialisation. The Bill recognises insider trading by company officials like company CEO, CFO and company secretaries as a criminal liability.

Giving away with the regulatory overlaps coming in the way of operation for companies, the Bill demarcates a jurisdictional domain for legislations such as company law, Sebi Act and Banking Regulation Act. Officials told ET the new company law will apply to all companies while Sebi Act will be applicable to listed companies in matters such as issue and trading of shares and payment of dividend to shareholders. In such cases, special laws such as the Sebi Act will have overriding powers, Mr Sibal said in response to queries.

What Next?

1. Power Point presentation on ***'Tax Audit'.***

2. ***'Tax and Law Updates'*** next Friday

3. Seminar on ***'E-Filing of Tax and Corporate Returns'***

Appointment of managing directors and decisions on internal affairs of companies will be left to shareholders, with the government shunning its regulatory oversight in such matters. The policy adopted under the new law substitutes governmental control in internal corporate processes by shareholder control. Transition of private companies to public companies and vice versa will get easier. To speed up the process of resolving corporate disputes, the Bill provides for setting up special courts to deal with various company law offences. The Bill has introduced a revised framework for regulation of insolvency of a company in cases of its liquidation.

The new law seeks to provide a single forum for approval of mergers and acquisitions. While high courts are responsible for clearing M&As, officials say the new law enables the sectoral regulators to approach courts for enabling hassle-free clearance for companies. The Bill will set up a separate framework for enabling fair valuations of M&As that will require valuations being done by registered valuers

Case Laws

Depreciation Special

Commissioner of Income-tax *vs.* Refrigeration & Allied Industries Ltd

Section 32 of the Income-tax Act, 1961 - Depreciation - Allowance/Rate of - Assessment year 1971-72 - Assessee's claim for depreciation on cold storage machinery was disallowed on ground that plant was not put to use during the year - Plant was not used because of poor potato crop - Whether in section 32(1) there is no requirement that assets should be used for whole of assessment year in question - Held, yes - Whether expression 'used' in section 32(1) includes both passive and active user - Held, yes - Whether in view of fact that machinery was kept in good working condition so that it could be used at any moment and also since all expenses relating to cold storage business were allowed, there was no justification to disallow claim of depreciation - Held, yes

Commissioner of Income-tax *vs.* Kerala Electric Lamp Works Ltd

Section 32 of the Income-tax Act, 1961 - Depreciation - Allowance/rate of - Assessment year 1989-90 - Whether Explanation to section 32 inserted by Finance Act, 2001 with effect from 1-4-2002 has retrospective effect - Held, no - Whether assessment year in question being related to period prior to insertion of Explanation, Assessing Officer was justified in allowing deduction by way of depreciation when assessee did not make any claim or request for allowance of same - Held, no

For Your Information

Direct Tax Collections

	Old	New	Growth %
Corporate Tax Returns	33,766.0	48,450.0	43.49
STT	2,371.8	2,730.0	15.10
Corporate TDS	17,037.0	26,445.0	55.22
FBT	1,000.4	1,339.0	33.85
BCTT	348.0	274.0	(21.26)
Total Direct Taxes Collections	**61,030.0**	**84,409.0**	**38.31**