Income Tax and Corporate Law Updates

Head Lines

1. Interest Rates for Tax Overpayments and Underpayments (October 2008 Quarter)
2. CBDT exempts NRIs' agents from e-filing of tax returns
3. Agents of NRIs exempted from e-filing of returns
4. Fee paid to Canadian co for clinical studies not taxable in India
5. Tax dept must accept companies' audited accounts: Supreme Court

IFRS Section

1. Companies may change pay structure under new accounting norms
2. Impact of IFRS on Technology Companies

Important Case Laws

Income from Salaries *and* ***House Property Special***

1. *Can an employee claim that there is no concession in the matter of accommodation provided to him by his employer and therefore, section 17(2)(ii) is not applicable in his case?*

   Arun Kumar v. Union of India (2006) 155 Taxman 659 (SC)

2. *Can the scholarship granted by an employer to the employee's child be treated as a perquisite in the hands of the employee?*

   CIT, Meerut v. B.L. Garg (2006)

3. *Under what head is income from temporary letting out of property, used normally for business purposes, taxable?*

   CIT v. Kohinoor Tobacco Products (P) Ltd. (2006)

Question and Answer of the Week

1. TDS Liability

Excel Tips of the Week

1. Using custom Excel headers and footers
2. Viewing a list of all the available Excel toolbars
3. Entering fractions and mixed numbers into Excel cells

Source: Internet, e-mails, FAPCCI Library Books and CA Final Books

Interest Rates for Tax Overpayments and Underpayments (October 2008 Quarter)

The IRS has announced the interest rates for tax overpayments and underpayments for the calendar quarter beginning October 1, 2008.

For non-corporate taxpayers, the rate for both underpayments and overpayments will be ***6%.*** For corporations, the overpayment rate will be ***5%.*** Corporations will receive ***3.5%*** for overpayments exceeding ***$10,000***. The underpayment rate for corporations will be ***6%,*** but will be 8% for large corporate underpayments.

CBDT exempts NRIs' agents from e-filing of tax returns

The Central Board of Direct Taxes (CBDT) on Tuesday exempted agents of non-resident Indians from mandatory e-filing of income-tax returns. The board had, in March 2008, notified new return forms for different categories of taxpayers for assessment year 2008-09. The agents have been facing difficulties in electronically furnishing the returns of non-residents as they may have more than one agent. Some non-residents have different agents for different transactions or a person in India may be an agent for more than one non-resident. Such situations are not covered by the existing software, which functions on the principle of one assessee (one PAN) and one return.

Agents of NRIs exempted from e-filing of returns

The Central Board of Direct Taxes (CBDT) on Tuesday exempted agents of non-resident Indians from mandatory e-filing of income tax returns. The board had, in March 2008, notified new forms for different categories of taxpayers for assessment year 2008-09.

It was provided in rule 12 of the I-T Rules, 1962, that a firm required to furnish the return in Form ITR-5 and to whom provisions of section 44AB are applicable, and a company required to furnish the return in Form ITR-6, shall compulsorily furnish the return of income electronically for assessment year 2008-09. However, the agents of non-residents, within the meaning of section 160(1) (i) of the Income Tax Act, are facing difficulties in electronically furnishing the returns of non-residents as they may have more than one agent.

Enclosure to this e-mail:

Tax Calendar / Periodic Obligations

Some non-residents in India have different agents for different transactions or a person in India may be agent for more than one non-resident. Such situations are not covered by the existing software, which functions on the principle of 'one assessee - one PAN - one return'.

Accordingly, CBDT has decided that it will not be mandatory for agents of non-residents, within the meaning of ***section 160(1)(i)*** of the Income Tax Act, to electronically furnish the returns of non-residents for assessment year 2008-09, a statement said.

Fee paid to Canadian co for clinical studies not taxable in India

Fees for clinical bioanalytical studies paid by Indian pharmaceutical companies to foreign research bodies are not taxable in India, the Authority for Advance Rulings (AAR), a quasi-judicial authority, has ruled. AAR gave this ruling on an appeal filed by a Canadian company Anapharm. It said the fees it received from the Indian Pharma companies do not amount to fees for "included services" or "royalties" under article 12 of the India Canada Double Taxation Avoidance Agreement (DTAA).

Tax dept must accept companies' audited accounts: Supreme Court

The Supreme Court has said the Income-Tax Department has to accept the authenticity of the accounts maintained in accordance with the provisions of the Companies Act and certified by the auditors.

The assessing officer cannot go beyond the net profit shown in the profit and loss account, except to examine whether the books of accounts were duly certified by the authorities and properly maintained, the court said.

A bench comprising Justice S H Kapadia and Justice B S Reddy said: "The AO (assessing officer) has to accept the authenticity of the accounts maintained in accordance with the provisions of ***Part II and Part III of Schedule VI to the Companies Act***, which are certified by the auditors and pressed by the company in the general meeting."

"The AO has only the power of examining whether the books of accounts are duly certified by the authorities under the Companies Act and whether such books have been properly maintained in accordance with the Companies Act. The AO does not have the jurisdiction to go beyond the net profit shown in the profit and loss account except to the extent provided in the explanation (appended to ***Section 115J*** of the Income-Tax Act)," it said.

According to explanation of the Act, the "book profit" means the net profit as shown in the profit and loss account prepared under sub-section (2) of the Act. The court said ***Section 115JA*** of the Act, which refers to 'deemed income relating to certain companies' has an overriding effect upon other provisions of the Act.

"The avoidance of taxes is the only intellectual pursuit that carries any reward"

-John Maynard Keynes

IFRS Section

Companies may change pay structure under new accounting norms

AS INDIA Inc gears up for convergence with globally-accepted accounting norms, organisations may restructure the compensation packages of their top brass. Once the international financial reporting standards (IFRS) set in April 2011, changes are expected in the way performance of executives and the company itself is evaluated.

With variable pay structures in vogue, experts feel the new norms may affect the structure of remuneration package of all employees, especially top guns.

Usually a director's remuneration includes, besides salary and other perquisites, commission linked to the performance of his company. Therefore, once a change in the way the performance is evaluated comes in, the remuneration package may get restructured. For instance, out of Rs 44.02 crore that was paid to Reliance Industries chief Mukesh Ambani in 2007-08, Rs 42.75 crore was in the form of commissions. With IFRS norms in place, the way performance of companies and executives are assessed, will undergo a sea change.

According to a major HR consultancy firm, countries which have undergone IFRS convergence saw a complete revamping of the pay structure. A prevalent tendency which emerged was of decreasing weightage for performance variable pay and profit-based bonuses. So a change is imminent in the reward mix used by organisations to compensate senior executives.

Impact of IFRS on Technology Companies

In line with the global trend, the Institute of Chartered Accountants of India (ICAI) has proposed convergence of Generally Accepted Accounting Standards (GAAP) in India with the International Financial Reporting Standards (IFRS) effective April 1, 2011.

Consistent with its previous record of being an early adopter of international best practices, the Indian technology sector has taken the lead with several companies being early adopters of IFRS, three years ahead of the mandatory time for the transition.

In part, this early adoption of IFRS was triggered by a change in the rules of the US Securities and Exchange Commission (SEC), whereby foreign companies listed in the US could replace US GAAP with IFRS.

Accordingly, US listed Indian companies such as Infosys, Satyam Computers and Sify have already filed financial statements prepared in accordance with IFRS with the SEC. There are several other companies which are evaluating this option actively.

Since companies such as Infosys have set the benchmark for industry reporting practices (for example, US GAAP adoption was fairly common in the Indian technology sector, in part, due to reporting practices adopted by Infosys and other large peers), IFRS may soon replace US GAAP as the benchmark within the Indian technology sector.

Similarly, while several European peer group technology companies now solely report using IFRS, several US companies are also likely to present IFRS financial statements as IFRS becomes more common in the US.

The transition to IFRS will improve comparability of reported business performance of Indian technology companies with technology companies globally and will result in greater transparency about company's activities to various stakeholders, that is, investors, customers, etc. The transition will also provide impetus to cross-border acquisitions, enable partnerships and alliances with foreign entities and lower the integration costs.

Experience of technology companies that have transitioned to IFRS shows that sector executives need to analyze the impact IFRS adoption will have on all aspects of their operations, including: accounting policies and procedures; financial reporting and disclosures; information technology (IT) systems and the processes used to accumulate and report financial information, including new or revised IFRS-compliant data and calculations; modifications to business processes and controls supporting those processes, including internal controls to support related certifications of the chief executive officer and chief financial officer; contractual and legal obligations, such as financial covenants and employee incentive plans based in whole or in part on GAAP-reported metrics; training both finance and non-finance staff on changes to policies, procedures, and the new foundation for judgments; and managing communications with the executive team, audit committee, investors, and employees.

Although Indian GAAP is similar to IFRS in certain respects, many differences exist. These can be significant and have enterprise-wide implications. In addition to the several challenges along the path to transition that are applicable to all companies, due to the prevalent nature of certain transactions, technology companies in India face certain additional challenges in the area of revenue recognition, business combination , share-based payments and derivatives and hedging activities.

Case Laws

Income from Salaries and House Property Special

1. Can an employee claim that there is no concession in the matter of accommodation provided to him by his employer and therefore, section 17(2)(ii) is not applicable in his case?

Arun Kumar v. Union of India (2006) 155 Taxman 659 (SC)

Relevant section: 17(2) (ii) read with Rule 3

The Apex Court held that Rule 3 is not arbitrary, discriminatory or ultra vires article 14 of the Constitution or inconsistent with section 17(2) (ii). It is in the nature of 'machinery-provision' and applies only to the cases of 'concession' in the matter of rent in respect of any accommodation provided to the employee by the employer.

Since there is no deeming provision in the Act, it is open to the employee to claim that there is no concession in the matter of accommodation provided by his employer and therefore, his case is not covered by section 17(2) (ii).

2. Can the scholarship granted by an employer to the employee's child be treated as a perquisite in the hands of the employee?

CIT, Meerut v. B.L. Garg (2006)

Relevant sections: 10(16) & 17(2)

The assessee claimed exemption under section 10(16) in respect of the payment made by his employer to his child as scholarship. The Assessing Officer disallowed the assessee's claim, on the ground that the amount given by the employer to the assessee's son as scholarship was a perquisite and liable to be taxed under the head "Salary" under section 17. The Tribunal, however, allowed the assessee's claim holding that payment was made by the employer to the children of the assessee as scholarship and as such, the amount was eligible for exemption under section 10(16).

The High Court observed that from a plain reading of section 10(16), scholarship granted to meet the cost of education is not includible in the total income of the previous year of any person. It was further observed that the Bombay High Court, in CIT v. M.N. Nad Karni (1986) 161 ITR 544, has held that when scholarship was paid entirely gratuitously by the company and in its sole discretion and payment of scholarship amount was never received by the employee but the children concerned, the scholarship amount cannot be treated as a perquisite received by the assessee as contemplated under section 17(2) (iii) (c).

Note – It may be noted that with effect from A.Y.2006-07, fringe benefit tax is payable by the employer on the expenditure incurred or payment made for the purposes of scholarship, irrespective of whether the recipient is an employee or his relative or any other person.

Under what head is income from temporary letting out of property, used normally for business purposes, taxable?

CIT v. Kohinoor Tobacco Products (P) Ltd. (2006)

Relevant sections: 22 & 28

The assessee-company, carrying on bidi manufacturing business, acquired properties (factory buildings, godowns, officer /staff quarters) for its business.

However, owing to labour problems and other factors, the assessee had to temporarily reduce its scale of activities and consequently, let out some of the properties which were not immediately required by it for its business purposes. The assessee showed the rental income from such properties as business income.

However, the Assessing Officer treated the same as income from house property.

The Tribunal held that such income was to be treated as business income.

The High Court observed that the Tribunal had recorded a finding of fact that the properties were let out to keep them in good condition so that they could be used and exploited again for the purposes of assessee's bidi manufacturing business. The assessee's intention was to increase its business again gradually and not to close down its business. Therefore, the rental income was taxable as business income.

Note – As per section 22, the annual value of a property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner shall be chargeable under the head "Income from house property". The only exception is a property occupied by him for the purposes of any business or profession carried on by him. In this case, however, income from letting out of property during the period when they were not immediately required by the assessee for its business purposes (due to temporary scaling down of the business activities of the assessee) has been treated as business income.

Question 'n' Answer

Question: *Our Client is A on which TDS applicable, B is Client of A, We taken a service from B and B raised bill in our Name, But B has paid the amount by A in our behalf and want reimburse from us and raised reimbursed bill in our name with attached A' Bill. Now can we deduct TDS from A or not?*

Answer: *Liability for TDS - Liability of payer* (recent court judgment)

Excel Tips

Using custom Excel headers and footers

To use custom Excel headers and footers:

- Open the File menu.
- Click Page Setup.
- Click the Header/Footer tab.
- From here you can completely customize you headers and footers in Excel.

Viewing a list of all the available Excel toolbars

To view a list of all available Excel toolbars:

- Open the Tools menu.
- Click Customize.
- Click the Toolbars tab.
- From here you can choose any available Excel toolbar.

Entering fractions and mixed numbers into Excel cells

You may have noticed that if you try to enter a fraction in an Excel cell, like ½, Excel will think it is a date and automatically format it as a date. To enter a fraction of mixed number, there is a little trick you need to know. To enter a mixed number:

- Enter the first number.
- Press Spacebar.
- Then enter the fraction.
- To enter a simple fraction:
- Enter the number 0.

- Then enter the fraction into the cell.
- If you don't put the 0 in, Excel will again think that you are entering a date.
- To see the decimal equivalent of a fraction, click on the cell and look on the Formula bar. The fraction will display as decimal form for you!

Thank you