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## RECENT CIRCULARS & NOTIFICATIONS

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***Section 200A of the Income-tax Act, 1961 - Deduction of tax at source - Processing of statement of tax deducted at source - Procedure for regulating refund of excess amount of TDS deducted and/or paid***

**CIRCULAR NO. 2/2011, DATED 27-4-2011**

- 1. THIS CIRCULAR IS RELEVANT FOR CLAIM OF REFUNDS FOR THE PERIOD UPTO 31.3.2010. NOW SECTION 200A AUTOMATICALLY GRANTS REFUND OF EXCESS TDS. THEREFORE THIS CIRCULAR IS NOT RELEVANT FOR REFUND OF EXCESS TDS OF THE PERIOD FROM 1.4.2010 AND ONWARDS.**
2. The Board prescribes the following procedure for regulating refund of amount paid in excess of tax deducted and/or deductible in respect of TDS on **residents** covered under sections 192 to 194LA of the Income-tax Act, 1961. This circular will not be applicable to TDS on non-residents falling under sections 192, 194E and 195. (For TDS deducted upto 31.3.2010)
3. The excess payment to be refunded would be the difference between:
  - (i) the actual payment made by the deductor to the credit of the Central Government; and
  - (ii) the tax deductible at source.
- 3.1** In case such excess payment is discovered by the deductor during the financial year concerned, the present system permits credit of the excess payment in the quarterly statement of TDS of the next quarter during the financial year.
- 3.2** In case, the detection of such excess amount is made beyond the financial year concerned, such claim can be made to the Assessing Officer (TDS) concerned. However no claim of refund can be made after two years from the end of financial year in which tax was deductible at source.
4. However, to avoid double claim of TDS by the deductor as well as by the deductee, the following safeguards must be exercised by the Assessing Officer concerned:
  - 4.1** The applicant deductor shall establish before the Assessing Officer that:
    - (i) it is a case of genuine error and that the error had occurred inadvertently;
    - (ii) that the TDS certificate for the refund amount requested has not been issued to the deductee(s); and
    - (iii) that the credit for the excess amount has not been claimed by the deductee(s) in the return of income or the deductee(s) undertakes not to claim such credit.
  - 4.2** Prior administrative approval of the Additional Commissioner or the Commissioner (TDS) concerned shall be obtained, depending upon the quantum of refund claimed in excess of Rupees One Lakh and Rupees Ten Lakh respectively.

5. In view of provisions of section 200A of the Income-tax Act prescribing processing of statement of TDS and issue of refund with effect from 1-4-2010, this circular will be applicable for claim of refunds for the period upto 31-3-2010.

***Income-tax: Taking opinion of technical experts and bringing on record technical evidence in cases involving complex issues of technical nature and substantial revenue - Directions of the Hon'ble Supreme Court***

**INSTRUCTION No. 5/2011 [F.No. 225/61/2011-IT(A-II)], dated 30-3-2011**

The Hon'ble Supreme Court has made the following observations in an order dated 12-8-2010 in the case of *CIT, Delhi v. Bharti Cellular Ltd.* [2010] 193 Taxman 97 (SC):

*"We are directing CBDT to issue directions to all its Officers, that in such cases, the Department need not proceed only by the contracts placed before the officers. With the emergence of our country as one of the developing countries and with the technological advancement matters such as present one will keep on recurring and hence time has come when Department should examine technical experts so that the matters could be disposed of expeditiously and further it would enable the appellate Forums, including this Court, to decide legal issues based on the factual foundation. We do not know the constraints of the Department but time has come when the Department should understand that when the case involves revenue running into crores, technical evidence would help the Tribunals and courts to decide matters expeditiously based on factual foundation."*

2. The above directions of the Supreme Court may be brought to the notice of all the officers in your region. In view of these directions in all cases that are taken up for scrutiny, the Assessing Officers/Transfer Pricing Officers should frame assessments only after bringing on record appropriate technical evidence that may be required in a case. The process of identification of such cases and initiation of the proceedings to obtain the technical evidence should be taken up well in advance before the date of limitation. The Officer concerned shall bring such cases to the notice of the CCIT/DGIT concerned, who will look into the complexities of the technical issues and monitor the progress of the case and if required assist in obtaining the opinion of the technical experts in the relevant field of expertise and endeavour to arrange for the opinion of the concerned technical expert well within time. Further, the evidence so gathered shall be made available to the assessee and reasonable opportunity provided before the assessment order is passed.

***Regional Rural Banks not eligible for deduction under section 80P***

**CIRCULAR NO. 6/2010 DATED 20.9.2010**

The CBDT has, through this circular, reiterated that Regional Rural Banks are not eligible for deduction under section 80P of the Income-tax Act, 1961 from the assessment year 2007-08 onwards.

This is consequent to the amendment in section 80P by the Finance Act, 2006, providing specifically that w.e.f. 1-4-2007, the provisions of section 80P will not apply to any co-operative bank other than a Primary Agricultural Credit Society or a Primary Cooperative Agricultural and Rural Development Bank. The same has been further clarified by this circular.

***Clarification regarding period of validity of approvals issued under section 10(23C) and section 80G(5) of the Income-tax Act***

**CIRCULAR NO. 7/2010 [F. NO. 197/21/2010-ITA-I], DATED 27-10-2010**

For the removal of doubts, it is clarified that in the case of approvals granted under section 10(23C), any approval issued on or after 1-12-2006 would be a one time approval which would be valid till it is withdrawn.

It is reiterated that any approval under section 80G(5) on or after 1-10-2009 would be a one time approval which would be valid till it is withdrawn.

***Salaried persons entitled to act as Tax Return Preparers***

**NOTIFICATION NO.84/2010 DATED 22.11.2010**

In exercise of the powers conferred under section 139B(1), the CBDT had framed the Tax Return Preparer Scheme, 2006 for the purpose of enabling any specified class or classes of persons in preparing and furnishing their return of income.

“Specified class or classes of persons” means any person, other than a company or a person, whose accounts are required to be audited under section 44AB or under any other law for the time being in force, who is required to furnish a return of income under the Act.

Paragraph 2(f) of the Tax Return Preparer Scheme, 2006 defining a Tax Return Preparer, specifically provided that a person who is in employment and income from which is chargeable under the head “Salaries” shall not be entitled to act as a Tax Return Preparer.

This disqualification has now been removed by amending paragraph 2(f). Consequently, a salaried person is now eligible to act as a Tax Return Preparer.

Henceforth, taking up a salaried employment would not result in withdrawal of certificate given to the Tax Return Preparer. However, it may be noted that as per section 139B(3) of the Income-tax Act, 1961, an employee of the “specified class or classes of persons” is not authorized to act as a Tax Return Preparer. Therefore, employees of “specified class or classes of persons” are not eligible under the Income-tax Act, 1961 to act as Tax Return Preparers. This implies that employees of companies and persons whose accounts are required to be audited under section 44AB or any other law for the time being in force, are eligible to act as Tax Return Preparers.

***Increase in exemption limit for allowance granted to employees working in a transport system to meet their personal expenditure during the course of duty***

**NOTIFICATION NO.85/2010 DATED 22.11.2010**

Section 10(14)(ii) exempts any such allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides, or to compensate him for the increased cost of living as may be prescribed and to the extent as may be prescribed.

Rule 2BB(2) prescribes the allowances for the purposes of exemption under section 10(14)(ii). As per this rule, the exemption allowable in respect of any allowance granted to an employee working in any transport system to meet his personal expenditure during his duty performed in the course of running of such transport from one place to another place (provided he is not in receipt of daily allowance) is 70% of such allowance, subject to a maximum of Rs.6,000 per month.

The monthly limit of Rs. 6,000 has been increased to Rs. 10,000 with retrospective effect from 1<sup>st</sup> September, 2008. Therefore, with effect from 1<sup>st</sup> September, 2008, the exemption would be 70% of such allowance, subject to a maximum of Rs.10,000 per month.

***9.5% notified as the interest rate on RPF, the interest in excess of which would be taxable as salary***

**NOTIFICATION NO. 24/2011 DATED 13.05.2011  
(IN SUPERSESION OF NOTIFICATION NO. 69/2010 DATED 26.8.2010)**

Rule 6 of Part A of the Fourth Schedule to the Income-tax Act, 1961, provides, inter alia, that interest credited on the balance to the credit of an employee participating in a recognized provident fund in so far as it is allowed at a rate exceeding such rate notified by the Central Government, shall be deemed to have been received by the employee in the relevant previous year and shall be included in his total income.

Accordingly, the Central Government has, vide this notification, notified w.e.f. 1<sup>st</sup> September, 2010, in exercise of the powers conferred by Rule 6, 9.5% as the rate of interest on employer's annual contributions in a recognized provident fund.

Therefore, the position of law as it stands now after issue of this notification is that irrespective of the date of credit of interest, whether before or on or after 1.9.2010, only the interest credited on the balance to the credit of the employee in excess of 9.5% shall be included in the total income of the employee. For example, if an employer credits interest @10% for the P.Y.2010-11 and P.Y.2011-12 on the balance standing to the credit of each employee, then the excess interest of 0.5% (10% - 9.5%) would be included in the total income of the employee for the respective years.

***CHANGE IN TDS RULES***

***NOTIFICATION NO. 41/2010***

- (1) All sums deducted in accordance with the provisions of Chapter of TDS by deductors shall be paid to the credit of the Central Government—
- (a) on or before 30th day of April where the income or amount is credited or paid in the month of March; and
  - (b) in any other case, on or before seven days from the end of the month in which the deduction is made.

**(2) The Quarterly returns of TDS and TCS have to be filed by following due date**

| <i>Sl. No.</i> | <i>Date of ending of the quarter of the financial year</i> | <i>Due date</i>                                                                                    |
|----------------|------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| 1.             | 30th June                                                  | 15th July of the financial year                                                                    |
| 2.             | 30th September                                             | 15th October of the financial year                                                                 |
| 3.             | 31st December                                              | 15th January of the financial year                                                                 |
| 4.             | 31st March                                                 | 15th May of the financial year immediately following the financial year in which deduction is made |

***Section 10(10) of the Income-tax Act, 1961 - Gratuity - Exemption limit***

***NOTIFICATION NO. 43/2010***

The Central Government, having regard to the maximum amount of any gratuity payable to employees, hereby specifies ten lakh rupees as the limit for the purpose of the section 10(10) in relation to the employees who retire or become incapacitated prior to such **retirement or die on or after the 24th day of May, 2010** or whose **employment is terminated** on or after the said date.

***Section 194H of the Income-tax Act, 1961 - Deduction of tax at source - Commission or brokerage etc. - Tax deduction at source on commission/supplementary commission received by travel agents from airlines***

***LETTER F.NO. 275/70/2009-IT(B), DATED 22-12-2009***

In the case of Around the World Travels & Tours (P) Ltd. Vs. Union of India report in 141 Taxman 53 (Mad), it was held that **tax should be deducted at source under Section 194H on amount available to agents being difference between airfare fixed by Airlines and price at which agents are enabled to sell tickets**, vide order dated 2nd October, 2009 the High Court of Madras. The above decision of the Madras High Court has been further reinforced by the decision of Hon'ble High Court of Delhi in the case of Commissioner of Income Tax Vs. Singapore Airlines Ltd. & Other Airlines dated 13.04.2009 reported in 180 Taxman 128 (Delhi) in which it has been held that commissions and supplementary commissions received by the travel agents from Airlines are liable to tax deduction at source under Section 194H and in case of default the mandatory interest under Section 201(1A) is leviable. The above decision of High Court is circulated for kind information and necessary action at your end.

***Section 80-IA(4)(i) of the Income-tax Act, 1961 - Deductions - In respect of profits and gains from infrastructure facility - Clarification regarding widening of existing road - Definition of a new infrastructure facility***

***CIRCULAR NO. 4/2010 [F.NO. 178/14/2010-IT(A-I)], DATED 18-5-2010***

References have been received by the Board as to whether widening of existing roads constitutes creation of new infrastructure facility for the purpose of section 80-IA(4)(i) of the Income-tax Act, 1961.

Section 80-IA(4)(i) provides for a deduction to an undertaking engaged in developing, or operating and maintaining, or developing, operating and maintaining any infrastructure facility subject to satisfaction of the conditions laid down in the section. The Explanation to section 80-IA(4)(i) states that for the purpose of this clause, infrastructure facility means inter alia :—

- (a) a road including toll road, a bridge or a rail system;
- (b) a highway project including housing or other activities being an integral part of the highway project;

The issue has been examined by the Board. It has been decided that widening of an existing Road by constructing additional lanes as a part of a highway project by an undertaking would be regarded as a new infrastructure facility for the purpose of section 80-IA(4)(i). However, simply relaying of an existing Road would not be classifiable as a new infrastructure facility for this purpose.