DIRECT TAXES

IMPORTANT NOTIFICATIONS AND CIRCULARS

RELEVANT FOR CA FINAL-DIRECT TAX MAY 2017 EXAMS

COMPILED BY CA MEHUL THAKKER

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IMPORTANT NOTIFICATIONS AND CIRCULARS

A. NOTIFICATIONS

1. METHOD FOR DETERMINING THE AMOUNT OF EXPENDITURE IN RELATION TO INCOME WHICH DOES NOT FORM PART OF THE TOTAL INCOME UNDER RULE 8D

Notification No 43/2016, dated 02-06-2016

As per section 14A(1), for the purposes of computing the total income under Chapter IV of the Income-tax Act, 1961, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income, which does not form part of total income under the Income-tax Act, 1961.

Section 14A(2) provides that the Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under Income-tax Act, 1961 in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure.

Rule 8D prescribes the method for determining the amount of expenditure in relation to income not includible in total income. Since there have been considerable number of disputes on the application of the formula prescribed therein, the Finance Minister had, in para 167 of his Budget Speech [Union Budget 2016-17] proposed to amend Rule 8D to restrict the disallowance to 1% of the average monthly value of investments yielding exempt income, but not exceeding the actual expenditure claimed.

Accordingly, vide this notification, the Central Government has substituted sub-rule (2) and omitted sub-rule (3) of the said Rule 8D. New sub-rule (2) provides that the expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts:

(i) the amount of expenditure directly relating to income which does not form part of total income; and

(ii) an amount equal to 1% of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income:

However, the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee.

2. RELAXATION FROM DEDUCTION OF TAX AT HIGHER RATE UNDER SECTION 206AA

Notification No 53/2016, dated 24-06-2016

Under section 206AA, any person who is entitled to receive any sum or income or amount on which tax is deductible under Chapter XVII-B shall furnish his Permanent Account Number (PAN) to the person responsible for deducting such tax, failing which tax shall be deducted at –

(1) the rate mentioned in the relevant provisions of the Act or
(2) the rate or rates in force or
(3) the rate of 20%

whichever is higher.

The provisions of section 206AA also apply to non-corporate non-residents and foreign companies, on account of which they have to obtain and furnish PAN. Upto 31st May, 2016, the benefit of non-applicability of the provisions of section 206AA was available only in respect of payment of interest on long-term bonds as referred to in section 194LC by an Indian company or a business trust to non-corporate non-residents or foreign companies.

In all other cases, higher rate of tax deduction in cases where PAN was not furnished was attracted even if tax on such income was payable at a lower rate on account of applicability of special provisions of the Act or the relevant double taxation avoidance agreement.

For the purpose of reducing the compliance burden of non-corporate non-residents and foreign companies, sub-section (7) of section 206AA has been substituted with effect from 1st June, 2016 to provide for non-applicability of the requirements contained in section 206AA to a non-corporate non-resident or a foreign company, in respect of any other payment [other than interest on long-term bonds as referred to in section 194LC] subject to such conditions as may be prescribed.

Accordingly, the CBDT has, vide this notification, inserted Rule 37BC to provide that the provisions of section 206AA shall not apply to a non-corporate non-resident, or to a foreign company not having PAN in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset, if the deductee furnishes the following details and documents to the deductor:

- Name, e-mail id, contact number;
- address in the country or specified territory outside India of which the deductee is a resident;
- a certificate of his being resident in any country or specified territory outside India from the Government of that country or specified territory, if the law of that country or specified territory provides for issuance of such certificate;
- Tax Identification Number of the deductee in the country or specified territory of his residence. In case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or specified territory of which he claims to be a resident.

3. CLASS OR CLASSES OF BUYERS WHO ARE NOT REQUIRED TO COLLECT TAX AT SOURCE UNDER SECTION 206C(1D)

Notification No. 75/2016, dated 19-08-2016

Upto 31st May, 2016, section 206C(1D) required collection of tax at source@1% by a seller in respect of cash consideration exceeding Rs. 5 lakh on sale of jewellery or exceeding Rs. 2 lakh on sale of bullion. With effect from 1st June 2016, the scope of section 206C(1D) has been expanded. It now requires collection of tax at source@1% by a seller in respect of cash consideration received on sale of goods (other than bullion or jewellery) or rendering of services, if such consideration exceeds Rs. 2 lakh.

However, as per sub-section (1E) of section 206C, the requirement to collect tax at source under section 206C(1D) in case of receipt of cash consideration on sale of goods (other than bullion or jewellery) or providing of services would not apply to a such class of buyers who fulfill the prescribed conditions.

Accordingly, vide this Notification, the CBDT has inserted a new Rule 37CB to provide that the provisions of section 206C(1D) in relation to sale of any goods (other than bullion or jewellery) or providing any service shall not apply to the following class or classes of buyers —

(i) Government;
(ii) embassies, Consulates, High Commissions, Legation or Commission and trade representation, of a foreign State;
(iii) institutions notified under United Nations (Privileges and Immunities) Act, 1947.

Rescinding of initially notified Income Computation Disclosure Standards (ICDSs) [Notification No S.O. 3078(E) dated 29.9.2016] and Notification of new ICDSs to be applicable from A.Y.2017-18 [Notification No. S.O. 3079(E) dated 29-09-2016]

Section 145 of the Income-tax Act, 1961 provides for the method of accounting. Section 145(1) requires income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” to be computed in accordance with either the cash or mercantile system of accounting regularly employed by the assessee, subject to the provisions of section 145(2). Under section 145(2), the Central Government is empowered to notify in the Official Gazette from time to time, income computation and disclosure standards (ICDSs) to be followed by any class of assessees or in respect of any class of income.

Accordingly, the Central Government had, vide Notification No.S.O.892(E) dated 31.3.2015, in exercise of the powers conferred by section 145(2), notified ten income computation and disclosure standards (ICDSs) to be followed by all assessees, following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head “Profit and gains of business or profession” or “Income from other sources”. This notification was to come into force with effect from 1st April, 2015, to be applicable from A.Y. 2016-17.

However, the Central Government has, vide Notification No.S.O.3078(E) dated 29.9.2016, rescinded Notification No.S.O.892(E) dated 31.3.2015. Simultaneously, vide Notification No.S.O.3079(E) dated 29.9.2016, the Central Government has notified ten new ICDSs to be applicable from A.Y.2017-18.

The newly notified ICDSs have to be followed by all assessees (other than an individual or a Hindu undivided family who is not required to get his accounts of the previous year audited in accordance with the provisions of section 44AB) following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head “Profits and gains of business or profession” or “Income from other sources”, from A.Y.2017-18.

The text of the newly notified ICDSs has been given as Annexure to the December 2016 edition of the Practice Manual on Direct Tax Laws.

Significant changes made in the ICDSs notified on 29.9.2016 (newly notified ICDSs) applicable from A.Y.2017-18 vis-à-vis ICDSs initially notified on 31.3.2015 (since rescinded)

There are no changes in ICDS I: Accounting Policies, ICDS VII: Government Grants and ICDS X : Provisions, Contingent Liabilities and Contingent Assets. The significant changes in the other ICDSs are briefed hereunder. The transitional provisions, however, have been revised in all ICDSs in line with the new implementation date.

ICDS II: Valuation of Inventories

Recognition of standard cost method for measuring cost of inventories: Whereas AS 2 permits standard cost method as one of the techniques for the measurement of the cost of inventories, for convenience if the results approximate the actual cost, there was no enabling clause or para in the initially notified ICDS II permitting adoption of standard cost as a technique for measurement of the cost of inventories.

The newly notified ICDS II permits techniques for the measurement of the cost of inventories, such as the standard cost method or the retail method, to be used for convenience if the results approximate the actual cost. New ICDS II goes on to explain that standard costs take into account normal levels of consumption of materials and supplies, labour, efficiency and capacity utilization. They are regularly reviewed and, if necessary, revised in the light of the current conditions.

Further, where standard costing has been used as a measurement of cost, details of such inventories and a confirmation of the fact that standard cost approximates the actual cost have to be disclosed.

ICDS III: Construction contracts

Recognition of contract revenue and contract costs, associated with construction contracts in progress as on 31.3.2016, on the basis of method regularly followed:

The newly notified ICDS III permits contract revenue and contract costs associated with the construction contract, which commenced on or before 31.3.2016 but not completed by the said date, to be recognised based on the method regularly followed by the person prior to the previous year 2016-17. As per the initially notified ICDSs, such contract revenue and costs in respect of construction contracts in progress as on 31.3.2015 had to be recognized only in accordance with the provisions of the standard.

ICDS IV: Revenue Recognition

Revenue recognition in case of rendering of services: Revenue from service transactions is required to be recognized on the basis of percentage completion method as per ICDS IV. The newly notified ICDS IV, however, permits revenue to be recognized on a straight line basis over a specific period of time, when services are provided by an indeterminate number of acts over such period.

As per the initially notified ICDS IV, “reasonable certainty for ultimate collection” was not a criterion for recognition of revenue from rendering of services. However, the newly notified ICDS IV permits revenue from service contracts with duration of not more than 90 days to be recognised when the rendering of services under that contract is completed or substantially completed.

Point in time when interest would be treated as income chargeable to tax: As per ICDS IV, interest shall accrue on the time basis determined by the amount outstanding and the rate applicable. However, the newly notified ICDS IV goes on to provide that interest on refund of any tax, duty or cess shall be deemed to be the income of the previous year in which such interest is received.

ICDS V: Tangible Fixed Assets

Requirement to mention details of jointly owned tangible fixed assets separately in the tangible fixed assets register dispensed with: The initially notified ICDS V contained a requirement to indicate separately in the tangible fixed assets register, the details of jointly owned tangible fixed assets. However, the requirement to mention these details separately has been dispensed with in the newly notified ICDS V.

ICDS VI: Effects of changes in foreign exchange rates

Requirement of classification of foreign operations as integral or non-integral dispensed with: As per the initially notified ICDS VI, foreign operations had to be classified as either "integral foreign operations" or "non-integral foreign operations". There is no requirement for such classification in the newly notified ICDS VI.

Conversion at last day of the previous year - Non-monetary item being inventory carried at NRV denominated in foreign currency: As per the newly notified ICDS VI, at last day of each previous year, non-monetary item being inventory which is carried at net realisable value denominated in a foreign currency shall be reported using the exchange rate that existed when such value was determined.

ICDS VIII: Securities

In the newly notified ICDS VIII, there are two parts. Part A deals with securities held as stock-in-trade. Part B deals with securities held by a scheduled bank or public financial institutions formed under a Central or a

State Act or so declared under the Companies Act, 1956 or the Companies Act, 2013. Part B has been inserted in the newly notified ICDS VIII.

Scope of definition of "securities" in Part A expanded: The definition of "securities" in Part A of the newly notified ICDS VIII has been expanded to specifically include share of a company in which public are not substantially interested.

Use of "Weighted Average Cost" formula permitted for subsequent measurement of securities held as stock-in-trade (other than unlisted or unquoted securities) referred to in Part A: As per the newly notified ICDS VIII, in a case where the actual cost initially recognised cannot be ascertained by reference to specific identification, the cost of such security shall be determined on the basis of first-in-first-out method or weighted average cost formula. In the initially notified ICDS VIII, only FIFO method was permitted to be used for determining the cost of such security.

Securities referred to in Part B to be classified, recognized and measured in accordance with the extant guidelines issued by RBI: Securities referred to in Part B to be classified, recognised and measured in accordance with the extant guidelines issued by the RBI in this regard. Any claim for deduction in excess of the said guidelines will not be taken into account. To this extent, the provisions of ICDS VI on the effect of changes in foreign exchange rates relating to forward exchange contracts would not apply.

ICDS IX: Borrowing Costs

Specification of minimum period for treating an asset as a qualifying asset for the purpose of computing the amount of borrowing costs to be capitalised: The initially notified ICDS IX did not provide any minimum period for treating an asset as a qualifying asset (except in the case of inventories). This concern has been partially addressed in the newly notified ICDS IX. Explanation to paragraph 6 clarifies that, for the purpose of computing the amount of borrowing costs to be capitalized, in a case where the funds are not borrowed specifically for the purposes of acquisition, construction or production of a qualifying asset, a qualifying asset would be such asset that necessarily require a period of 12 months or more for its acquisition, construction or production.

4. OIL WELLS INCLUDED IN NEW APPENDIX I UNDER MINERAL OIL CONCERNS UNDER "III. PLANT AND MACHINERY" TO BE ELIGIBLE FOR DEPRECIATION@15%

Notification No. 13/2016 dated 03-03-2016

The CBDT has, vide this notification, included Oil wells as entry (c) under sub-item (xii) "Mineral Oil concerns" under item (8) of sub-heading III "Plant and Machinery" in new Appendix I.
The rate of depreciation for oil-wells included as entry (c) is 15%.
The amendment shall come into force on 1st April, 2016.

5. METHOD OF DETERMINATION OF PERIOD OF HOLDING OF CAPITAL ASSETS IN CERTAIN CASES

Notification No. 18/2016, dated 17-03-2016

Section 2(42A) provides for the meaning of the term "short-term capital asset" as a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer. Clause (i) of Explanation 1 to section 2(42A) provides for inclusion/ exclusion of certain periods in respect of specified transactions listed thereunder for the purpose of determination of the period of holding of asset. Clause (ii) of Explanation 1 to section 2(42A) provides that in respect of capital assets, other than those mentioned in clause (i), the period for which the capital asset is held by the assessee shall be determined subject to rules made in this behalf by the CBDT.

Accordingly, the CBDT has inserted new Rule 8AA in the Income-tax Rules, 1962 to provide for method of determination of period of holding of capital assets, other than the capital assets mentioned in clause (i) of the Explanation 1 to section 2(42A). Specifically, in the case of a capital asset, being a share or debenture of a company, which becomes the property of the assessee in the circumstances mentioned in section 47(x), there shall be included the period for which the bond, debenture, debenture-stock or deposit certificate, as the case may be, was held by the assessee prior to the conversion. The said rule shall come into force with effect from 01-04-2016.

Note: Section 47(x) provides that any transfer by way of conversion of bonds or debentures, debenture-stock or deposit certificates in any form, of a company into shares or debentures of that company shall not be regarded as transfer for the purposes of levy of capital gains tax.

6. ATAL PENSION YOJNA' NOTIFIED UNDER SECTION 80CCD(1)

Notification No. 7/2016 dated 19-02-2016

Section 80CCD(1) empowers the Central Government to notify a pension scheme, contribution to which would qualify for deduction in the hands of an individual assessee.

Accordingly, in exercise of the powers conferred by section 80CCD(1), the Central Government has notified the 'Atal Pension Yojana (APY)' as published in the Gazette of India, Extraordinary, Part I, Section 1, vide number F. No. 16/1/2015-PR dated 16th October, 2015 as a pension scheme, contribution to which would qualify for deduction under section 80CCD in the hands of the individual.

7. MONETARY LIMITS OF SPECIFIED TRANSACTIONS WHICH REQUIRE QUOTING OF PAN ENHANCED WITH EFFECT FROM 1STJANUARY, 2016

Notification No. 95/2015, dated 30-12-2015

The Government is committed to curbing the circulation of black money and widening of tax base. To collect information of certain types of transactions from third parties in a non-intrusive manner, it is mandatory under Rule 114B of the Income-tax Rules, 1962 to quote PAN where the transactions exceed a specified limit. To bring a balance between burden of compliance on legitimate transactions and the need to capture information relating to transactions of higher value, Rule 114B has been substituted to enhance the monetary limits of certain transactions which require quoting of PAN.

Sr. No.	Nature of Transactions	Value of Transactions
1.	Sale or purchase of a motor vehicle or vehicle, as defined in the Motor Vehicles Act, 1988 which requires registration by a registering authority under that Act, other than two wheeled vehicles.	All such transactions
2.	Opening an account [other than a time-deposit referred to at Sl. No.12 and a Basic Savings Bank Deposit Account] with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act).	All such transactions
3.	Making an application to any banking company or a co-operative bank to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act) or to any other company or institution, for issue of a credit or debit card.	All such transactions
4.	Opening of a demat account with a depository, participant, custodian of securities or any other person registered under section 12(1A) of the Securities and Exchange Board of India Act, 1992.	All such transactions
5.	Payment to a hotel or restaurant against a bill or bills at any one time.	Payment in cash of an amount exceeding Rs. 50,000.
6.	Payment in connection with travel to any foreign country or payment for purchase of any foreign currency at any one time.	Payment in cash of an amount exceeding Rs. 50,000.
7.	Payment to a Mutual Fund for purchase of its units	Amount exceeding Rs. 50,000.
8.	Payment to a company or an institution for acquiring debentures or	Amount exceeding Rs.

	bonds issued by it	50,000.
9.	Payment to the Reserve Bank of India for acquiring bonds issued by it.	Amount exceeding Rs. 50,000.
10.	Deposit with a banking company or a co-operative bank to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act).	Deposits in cash exceeding Rs. 50,000 during any one day.
11.	Purchase of bank drafts or pay orders or banker's cheques from a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act).	Payment in cash of an amount exceeding Rs. 50,000 during any one day.
12.	A time deposit with, - (i) a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act); (ii) a Post Office; (iii) a Nidhi referred to in section 406 of the Companies Act, 2013; or (iv) a non-banking financial company which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934, to hold or accept deposit from public.	Amount exceeding Rs. 50,000 or aggregating to more than Rs. 5 lakh during a financial year.
13.	Payment for one or more pre-paid payment instruments, as defined in the policy guidelines for issuance and operation of pre-paid payment instruments issued by Reserve Bank of India under the Payment and Settlement Systems Act, 2007, to a banking company or a co-operative bank to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act) or to any other company or institution.	Payment in cash or by way of a bank draft or pay order or banker's cheque of an amount aggregating to more than Rs. 50,000 in a financial year.
14.	Payment as life insurance premium to an insurer as defined in the Insurance Act, 1938.	Amount aggregating to more than Rs. 50,000 in a financial year.
15.	A contract for sale or purchase of securities (other than shares) as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956.	Amount exceeding Rs. 1 lakh per transaction
16.	Sale or purchase, by any person, of shares of a company not listed in a recognised stock exchange	Amount exceeding Rs. 1 lakh per transaction.
17.	Sale or purchase of any immovable property.	Amount exceeding Rs. 10 lakh or valued by stamp valuation authority referred to in section

		50C at an amount exceeding Rs. 10 lakh
18.	Sale or purchase, by any person, of goods or services of any nature other than those specified at Sl. No. 1 to 17 of this Table, if any.	Amount exceeding Rs. 2 lakh per transaction:

Minor to quote PAN of parent or guardian

Where a person, entering into any transaction referred to in this rule, is a minor and who does not have any income chargeable to income-tax, he shall quote the PAN of his father or mother or guardian, as the case may be, in the document pertaining to the said transaction.

Declaration by a person not having PAN

Further, any person who does not have a PAN and who enters into any transaction specified in this rule, shall make a declaration in Form No.60 giving therein the particulars of such transaction.

Non-applicability of Rule 114B

Also, the provisions of this rule shall not apply to the following class or classes of persons, namely:- (i) the Central Government, the State Governments and the Consular Offices; (ii) the non-residents referred to in section 2(30) in respect of the transactions other than a transaction referred to at Sl. No. 1 or 2 or 4 or 7 or 8 or 10 or 12 or 14 or 15 or 16 or 17 of the Table.

Meaning of certain phrases:

Sr. No.	Phrase	Inclusion
(1)	Payment in connection with travel	Payment towards fare, or to a travel agent or a tour operator, or to an authorized person as defined in section 2(c) of the Foreign Exchange Management Act, 1999
(2)	Travel agent or tour operator	A person who makes arrangements for air, surface or maritime travel or provides services relating to accommodation, tours, entertainment, passport, visa, foreign exchange, travel related insurance or other travel related services either severally or in package
(3)	Time deposit	Any deposit which is repayable on the expiry of a fixed period.

8. FURNISHING OF STATEMENT OF FINANCIAL TRANSACTION [RULE 114E]

Notification No. 95/2015, dated 30-12-2015

The statement of financial transaction required to be furnished under section 285BA(1) of the Income-tax Act, 1961 shall be furnished by every person mentioned in column (3) of the Table below in respect of all the transactions of the nature and value specified in the corresponding entry in column (2) of the said Table, which are registered and recorded by him on or after 1st April, 2016.

Sr. No.	Nature and value of transaction	Class of person (reporting person)
(1)	(a) Payment made in cash for purchase of bank drafts or pay orders or banker's cheque of an amount aggregating to Rs. 10 lakh or more in a financial year. (b) Payments made in cash aggregating to Rs. 10 lakh or more during the financial year for purchase of pre-paid instruments issued by Reserve Bank of India under the Payment and Settlement Systems Act, 2007. (c) Cash deposits or cash withdrawals (including through bearer's cheque) aggregating to Rs. 50 lakhs or more in a financial year, in or from one or more current account of a person	A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act)
(2)	Cash deposits aggregating to Rs. 10 lakhs or more in a financial year, in one or more accounts (other than a current account and time deposit) of a person.	(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act); (ii) Post Master General as referred to in the Indian Post Office Act, 1898.
(3)	One or more time deposits (other than a time deposit made through renewal of another time deposit) of a person aggregating to Rs. 10 lakhs or more in a financial year of a person	(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act); (ii) Post Master General as referred to in the Indian Post Office Act, 1898; (iii) Nidhi referred to in section 406 of the Companies Act, 2013;

		(iv) NBFC which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934, to hold or accept deposit from public.
(4)	Payments made by any person of an amount aggregating to- (i) Rs. 1 lakh or more in cash; or (ii) Rs. 10 lakh or more by any other mode, against bills raised in respect of one or more credit cards issued to that person, in a financial year.	A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act) or any other company or institution issuing credit card.
(5)	Receipt from any person of an amount aggregating to Rs. 10 lakh or more in a financial year for acquiring bonds or debentures issued by the company or institution (other than the amount received on account of renewal of the bond or debenture issued by that company).	A company or institution issuing bonds or debentures.
(6)	Receipt from any person of an amount aggregating to Rs. 10 lakh or more in a financial year for acquiring shares (including share application money) issued by the company.	A company issuing shares
(7)	Buy back of shares from any person (other than the shares bought in the open market) for an amount or value aggregating to Rs. 10 lakh or more in a financial year	A company listed on a recognised stock exchange purchasing its own securities under section 68 of the Companies Act, 2013.
(8)	Receipt from any person of an amount aggregating to Rs. 10 lakh or more in a financial year for acquiring units of one or more schemes of a Mutual Fund (other than the amount received on account of transfer from one scheme to another scheme of that Mutual Fund).	A trustee of a Mutual Fund or such other person managing the affairs of the Mutual Fund as may be duly authorised by the trustee in this behalf.
(9)	Receipt from any person for sale of foreign currency including any credit of such currency to foreign exchange card or expense in such currency through a debit or credit card or through issue of travellers cheque or draft or any other instrument of an amount aggregating to Rs. 10 lakh or more during a financial year	Authorised person as referred to in section 2(c) of the Foreign Exchange Management Act, 1999
(10)	Purchase or sale by any person of immovable	Inspector-General appointed under the

	property for an amount of Rs. 30 lakhs or more or valued by the stamp valuation authority referred to in section 50C at Rs. 30 lakhs or more	Registration Act, 1908 or Registrar or Sub-Registrar appointed under that Act
(11)	Receipt of cash payment exceeding Rs. 2 lakh for sale, by any person, of goods or services of any nature (other than those specified at Sl. Nos. 1 to 10 of this rule, if any).	Any person who is liable for audit under section 44AB of the Act

Manner of application of threshold limit:

The reporting person mentioned in column (3) of the Table under sub-rule (2) [other than the person at Sl.No.9] shall, while aggregating the amounts for determining the threshold amount for reporting in respect of any person as specified in column (2) of the said Table,-

(a) take into account all the accounts of the same nature as specified in column (2) of the said Table maintained in respect of that person during the financial year;
(b) aggregate all the transactions of the same nature as specified in column (2) of the said Table recorded in respect of that person during the financial year;
(c) attribute the entire value of the transaction or the aggregated value of all the transactions to all the persons, in a case where the account is maintained or transaction is recorded in the name of more than one person;
(d) apply the threshold limit separately to deposits and withdrawals in respect of transaction specified in item (c) under column (2), against Sl. No. 1 of the said Table.

B. CIRCULARS

9. TAXABILITY OF AWARDS RECEIVED BY A SPORTSMAN

Circular No. 2/2014 dated 20.01.2014

The CBDT had issued Circular No.447 on 22nd January, 1986 clarifying that awards received by a sportsman, who is not a professional, will not be liable to tax in his hands as the award will be in the nature of a gift and/or personal testimonial. This Circular was applicable when the gift was not taxable in the hands of the recipient. Thereafter, in the year 2005, there was a fundamental change in the manner of treatment of gift through insertion of sub-clauses (xiii), (xiv) and (xv) of section 2(24). Corresponding amendments were also made in section 56(2) by insertion of clauses (v), (vi) and (vii), thereby making an amount of money or immovable property received without consideration taxable subject to provisions of these clauses. Consequently, the CBDT has, through this Circular, clarified that Circular No.447 had become inapplicable w.e.f. 1-4-2005, since the statutory provisions have overridden the same.

It may however be noted that, in terms of provisions of section 10(17A), Central Government approves awards instituted by Central Government, State Government or other bodies as also the purposes for rewards instituted by Central Government or State Government from time to time. Tax exemption can be sought by eligible persons in respect of awards or rewards covered by such approvals

10. CLARIFICATION REGARDING TREATMENT OF EXPENDITURE INCURRED FOR DEVELOPMENT OF ROADS/HIGHWAYS IN BUILD-OPERATE-TRANSFER (BOT) AGREEMENTS UNDER THE INCOME-TAX ACT, 1961

Circular No. 09/2014, dated 23.04.2014

The CBDT has, vide this Circular, clarified the tax treatment of expenditure incurred on development and construction of infrastructural facilities like roads/highways on Build- Operate-Transfer (BOT) basis with right to collect toll - whether the same is entitled to depreciation under section 32(1)(ii) or can be amortized by treating it as an allowable business expenditure under the relevant provisions of the Income-tax Act, 1961.

Generally, the BOT basis projects are entered into between the developer and the government or the notified authority, on the following terms:

(i) In such projects, the developer, in terms of concessionaire agreement with Government or its agencies, is required to construct, develop and maintain the infrastructural facility of roads/highways which, inter alia, includes laying of road, bridges, highways, approach roads, culverts, public amenities etc. at its own cost and its utilization thereof for a specified period.

(ii) The possession of land is handed over to the assessee (i.e., the developer) by the Government/ notified authority for the purpose of construction of the project without any actual transfer of ownership. The assessee, therefore, has only a right to develop and maintain such asset. It also enjoys the benefits arising from the use of asset through collection of toll for a specified period, without having actual ownership over such asset. Therefore, the rights in the land remain vested with the Government/notified agencies.

(iii) Since the assessee does not hold any rights in the project except recovery of toll fee to recoup the expenditure incurred, it cannot be treated as an owner of the property, either wholly or partly, for purposes of allowability of depreciation under section 32(1)(ii). Thus, claim of depreciation on tollways is not allowable due to non-fulfillment of ownership criteria in such cases.

(iv) Where the assessee incurs expenditure on a project for development of roads/highways, it is entitled to recover cost incurred towards development of such facility (comprising of construction cost and other pre-operative expenses) during construction period. Further, expenditure incurred by the assessee on such BOT projects brings to it an enduring benefit in the form of right to collect the toll during the period of agreement.

The Supreme Court, in Madras Industrial Investment Corporation Ltd. vs. CIT 225 ITR 802, allowed the spreading over of liability over a number of years on the ground that there was continuing benefit to the company over a period. Therefore, analogously, expenditure incurred on an infrastructure project for development of roads/highways under BOT agreement may be treated as having been made/incurred for the purposes of business or profession of the assessee and same shall be allowed to be spread during the tenure of concessionaire agreement.

In view of the above, the CBDT, in exercise of the powers conferred under section 119, clarifies that the cost of construction on development of infrastructure facility, being roads/highways under BOT projects, may be amortized and claimed as allowable business expenditure under the Act in the following manner:

(i) The amortization allowable may be computed at the rate which ensures that the whole of the cost incurred in creation of infrastructural facility of road/highway is amortised evenly over the period of concessionaire agreement after excluding the time taken for creation of such facility.

(ii) Where an assessee has claimed any deduction out of initial cost of development of infrastructure facility of roads/highways under BOT projects in earlier years, the total deduction so claimed for the assessment years prior to assessment year under consideration may be deducted from the initial cost of infrastructure facility of roads/highways and the cost so reduced shall be amortised equally over the remaining period of toll concessionaire agreement.

The clarification given in this Circular is applicable only to those infrastructure projects for development of road/highways on BOT basis where ownership is not vested with the assessee under the concessionaire agreement.

11. ALLOWABILITY OF DEDUCTION UNDER SECTION 10AA ON TRANSFER OF TECHNICAL

MANPOWER IN THE CASE OF SOFTWARE INDUSTRY

Circular No. 14/2014, dated 8-10-2014

The CBDT had earlier clarified vide Circular No.12/2014 dated 18th July, 2014 that mere transfer or re-deployment of existing technical manpower from an existing unit to a new SEZ unit in the first year of commencement of business will not be construed as splitting up or reconstruction of an existing business, provided the number of technical manpower so transferred does not exceed 20% of the total technical manpower actually engaged in developing software at any point of time in the given year in the new unit.

The limit of 20% was considered inadequate and restrictive and it impacted the competitiveness of Indian Software Industry in global market. Consequently, the matter was re-examined by the CBDT, and in supersession of Circular No.12/2014 dated 18th July, 2014, it has now been decided that the transfer or re-deployment of technical manpower from existing unit to a new unit located in SEZ, in the first year of commencement of business, shall not be construed as splitting up or reconstruction of an existing business, provided the number of technical manpower so transferred as at the end of the financial year should not exceed 50% of the total technical manpower actually engaged in development of software or IT enabled products in the new unit. Alternatively, if the assessee-enterprise is able to demonstrate that the net addition of the new technical manpower in all units of the assessee-enterprise is at least equal to the number that represents 50% of the total technical manpower of the new SEZ unit during such previous year, deduction under section 10AA would not be denied provided the other prescribed conditions are also satisfied. The assessee-enterprise will have the choice of complying with any one of the two alternatives given above to avail the benefit of deduction under section 10AA.
The Circular also clarifies that:

(a) it shall be applicable only in the case of assessees engaged in the development of software or in providing IT enabled services in SEZ units eligible for deduction under section 10AA. .
(b) it shall not apply to the assessments which have already been completed. Further, no appeal shall be filed by the Department in cases where the issue is decided by an appellate authority in consonance with this circular

12. Interest under section 234A not chargeable on self-assessment tax paid before the due date of filing of return of income

Circular No.2/2015, dated 10-2-2015

Interest under section 234A is charged in case of default in furnishing return of income by an assessee. The interest is charged at the specified rate on the amount of tax payable on the total income, as reduced by the amount of advance tax, TDS/TCS, any relief of tax allowed under section 90 and 90A, any deduction allowed under section 91 and any tax credit allowed in accordance with section 115JAA and section 115JD. Since self - assessment tax is not mentioned as a component of tax to be reduced from the amount on which interest under section 234A is chargeable, interest is being charged on the amount of self-assessment tax paid by the assessee even if such tax is paid before the due date of filing of return.

However, it has been held by Hon‟ble Supreme Court in the case of CIT vs Prannoy Roy (2009), 309 ITR 231 that interest under section 234A on default of furnishing return of income shall be payable only on the amount of tax that has not been deposited before the due date of filing of the income-tax return for the relevant assessment year.

Accordingly, the CBDT reviewed the present practice of charging interest and decided that no interest under section 234A shall be charged on self-assessment tax paid by the assessee before the due date of filing of return.

13. ELIGIBILITY FOR GRANT OF ADDITIONAL DEPRECIATION UNDER SECTION 32(1)(IIA) IN THE CASE OF AN ASSESSEE ENGAGED IN PRINTING OR PRINTING AND PUBLISHING

Circular No. 15/2016, dated 19-05-2016

An assessee, engaged in the business of manufacture or production of an article or thing, is eligible to claim additional depreciation under section 32(1)(iia) in addition to the normal depreciation under section 32(1).

Whether or not an assessee engaged in printing or printing and publishing is eligible for grant of additional depreciation under section 32(1)(iia), has been a contentious issue. In other words, whether printing or printing and publishing amounts to manufacture or production of article or thing has been contested in legal forums.

The Kerala High Court, in the case of Mathrubhoomi Printing & Publishing Co.,ITA No 23 of 2015 relying upon the Delhi High Court judgement in the case of Delhi Press Patra Prakashan Ltd.,ITA No 49 of 2016 held that printing and publishing activity is a manufacturing activity and therefore, the assessee is eligible for grant of additional depreciation under section 32(1)(iia).

The CBDT has accepted the judgement of the Kerala High Court and Delhi High Court on this issue. Accordingly, vide this circular, the CBDT has clarified that the business of printing or printing and publishing amounts to manufacture or production of an article or thing and is, therefore, eligible for additional depreciation under section 32(1)(iia).

14. Clarification on applicability of provisions of section 206C(1D) & (1F)

Circular No. 22/2016 dated 08-06-2016 and Circular No.23/2016 dated 24-06-2016

Section 206C of the Income-tax Act, 1961 requires the seller to collect tax at source at the specified rate from the buyer at the time of sale of specified items such as alcoholic liquor for human consumption, tendu leaves etc. It also requires collection of tax at source@1% on sale in cash of bullion exceeding Rs. 2 lakhs and jewellery exceeding Rs.5 lakhs.

The Finance Act, 2016 has expanded the scope of section 206C, with effect from 1st June, 2016, by amending the provisions of sub-section (1D) in order to curb the cash economy and by inserting sub-section (1F) to bring high value transactions within the tax net. Section 206C(1D) has been amended to provide that the seller shall collect tax @1% from the purchaser on sale in cash of any goods (other than bullion or jewellery) or provision of services (other than payment on which tax is deducted at source under Chapter XVII-B) exceeding Rs.2 lakhs. So far as sale of jewellery and bullion is concerned, the provisions of section 206C(1D) prior to its amendment by the Finance Act,2016 shall continue to apply.

Further, sub-section (1F) has been inserted in section 206C to provide that the seller, who receives consideration for sale of a motor vehicle exceeding Rs.10 lakhs, shall collect tax at source @1% of the sale consideration from the buyer.

These amendments in section 206C gave rise to certain issues relating to the scope and applicability of the provisions. Accordingly, the CBDT has, vide Circular No. 22/2016 dated 8.6.2016 and Circular No.23/2016 dated 24.6.2016, clarified the following issues in "Questions & Answers (Q&A)" format.

Question 1

Whether TCS@1% is on sale of motor vehicle at retail level or also on sale of motor vehicles by manufacturers to dealers/ distributors?

Answer

To bring high value transactions within the tax net, section 206C has been amended to provide that the seller shall collect the tax @ 1% from the purchaser on sale of motor vehicle of the value exceeding Rs.10 lakhs. This is brought to cover all transactions of retail sales and accordingly, it will not apply on sale of motor vehicles by manufacturers to dealers/distributors.

Question 2

Whether TCS@1% on sale of motor vehicle is applicable only to luxury cars?

Answer

No, as per section 206C(1F), the seller shall collect tax@1% from the purchaser on sale of any motor vehicle of the value exceeding Rs.10 lakhs.

Question 3

Whether TCS@1% is applicable in the case of sale to Government Departments, Embassies, Consulates and United Nation Institutions, of motor vehicle or any other goods or provision of services?

Answer

Government, institutions notified under United Nations (Privileges and Immunities) Act 1947, and Embassies, Consulates, High Commission, Legation, Commission and trade representation of a foreign State shall not be liable to levy of TCS@1% under sub-section (1D) and (IF) of section 206C.

Question 4

Whether TCS is applicable on each sale of motor vehicle or on aggregate value of sale during the year?

Answer

Tax is to be collected at source@1% on sale consideration of a motor vehicle exceeding Rs.10 lakhs. It is applicable to each sale and not to aggregate value of sale made during the year.

Question 5

Whether TCS@1% on sale of motor vehicle is applicable in case of an individual?

Answer

The definition of "Seller" as given in clause (c) of the Explanation below sub-section (11) of section 206C shall be applicable in the case of sale of motor vehicles also.

Accordingly, an individual who is liable to audit as per the provisions of section 44AB during the financial year immediately preceding the financial year in which the motor vehicle is sold shall be liable for collection of tax at source on sale of motor vehicle by him.

Question 6

How would the provisions of TCS on sale of motor vehicle be applicable in a case where part of the payment is made in cash and part is made by cheque?

Answer

The provisions of TCS on sale of motor vehicle exceeding Rs.10 lakhs is not dependent on mode of payment. Any sale of motor vehicle exceeding Rs.10 lakhs would attract TCS@1%.

Question 7

As per section 206C(1D), tax is to be collected at source@1% if sale consideration received in cash exceeds Rs.2 lakhs whereas as per section 206C(1F), tax is to be collected at source@1% of the sale consideration of a motor vehicle exceeding 10 lakh rupees. Whether TCS will be made under both sub-section (lD) and (IF) of section 206C@2%, where part of the payment for purchase of motor vehicle exceeds Rs. 2 lakhs in cash?

Answer

Sub-section (1F) of section 206C provides for TCS at the rate of 1% on sale of motor vehicle of value exceeding Rs.10 lakhs. This is irrespective of the mode of payment. Thus, if the value of motor vehicle is Rs.20 lakhs, out of which Rs.5 lakhs has been paid in cash and balance amount by way of cheque, the tax shall be collected at source@1% on total sale consideration of Rs.20 lakhs only under sub-section (1F) of section 206C. However, if a vehicle is sold for Rs.8 lakhs and the consideration is paid in cash, tax shall be collected at source@1% on Rs.8 lakhs as per sub-section (1D) of section 206C.

Question 8

Whether tax collection at source@1% under section 206C(1D) will apply in cases where the sale consideration received is partly in cash and partly by cheque and the cash receipt is less than Rs.2 lakh?

Answer

No, TCS will not be levied if the cash receipt does not exceed Rs. 2 lakhs, even if the sale consideration exceeds Rs. 2 lakhs.

Question 9

Whether tax collection at source under section 206C(1D) will apply only to cash component or in respect of whole of sales consideration?

Answer

Under section 206C(1D), tax is required to be collected at source on the cash component of the sale consideration and not on the whole of the sales consideration.

Practical 1

ABC Ltd., a manufacturer of automobiles, sells high value cars (each of value exceeding Rs.10 lakh) and the middle segment cars (each of value between Rs.5 lakh to Rs.10 lakh) to its dealers across the country. Discuss whether the manufacturers are liable to collect tax at source under section 206C.

Also, discuss the liability, if any, of dealers to collect tax at source on sale of these cars to the retail customers, if no part of the consideration is received in cash?

What would be your answer if part of the consideration is received in cash?

Solution

Section 206C(1F) provides for collection of tax at source@1% by the seller from the buyer, at the time of receipt of consideration for sale of motor vehicle, the value of which exceeds Rs. 10 lakhs. CBDT Circular No.22/2016 dated 8.6.2016 clarifies that sub-section (1F) was inserted by the Finance Act, 2016 to cover all transactions of retail sales and accordingly, it will not apply to sale of motor vehicles by manufacturers to dealers.

Hence, car manufacturers are not liable to collect tax at source under section 206C(1F). In respect of sale of high value cars (each of value exceeding Rs. 10 lakhs) by dealers to retail customers, tax has to be collected at source@1% under section 206C(1F), even if no part of the consideration is received in cash.

As regards cars in the middle segment (each of value between Rs. 5 lakhs and Rs. 10 lakhs), no tax has to be collected at source if no part of the consideration is received in cash.

However, if whole or part of the consideration is received in cash, tax has to be collected at source@1% under section 206C(1D) on the cash component of the sale consideration, if the same exceeds Rs. 2 lakhs.

These clarifications have been given by the CBDT vide its Circulars 22/2016 dated 8.6.2016 and 23/2016 dated 24.6.2016.

Readers Note:

15. CLARIFICATION REGARDING ATTAINING PRESCRIBED AGE OF 60 YEARS/80 YEARS ON 31ST MARCH ITSELF, IN CASE OF SENIOR/VERY SENIOR CITIZENS WHOSE DATE OF BIRTH FALLS ON 1ST APRIL

Circular No. 28/2016, dated 27-07-2016

An individual who is resident in India and of the age of 60 years or more (senior citizen) and 80 years or more (very senior citizen) is eligible for a higher basic exemption limit of Rs. 3,00,000 and Rs. 5,00,000, respectively.

The contentious issue is regarding the attainment of the aforesaid qualifying ages for availing higher basic exemption limit in cases of the persons whose date of birth falls on 1st April of calendar year. In other words, the broader question under consideration is whether a person born on 1st April of a particular year can be said to have completed a particular age on 31st March, on the preceding day of his/her birthday, or on 1st April itself of that year.

The Supreme Court had an occasion to consider a similar issue in the case of Prabhu Dayal Sesma vs. State of Rajasthan &, another 1986, AIR, 1948 wherein it has dealt with on the general rules to be followed for calculating the age of the person. The Apex Court observed that while counting the age of the person, whole of the day should be reckoned and it starts from 12 o'clock in the midnight and he attains the specified age on the day preceding, the anniversary of his birthday. In the absence of any express provision, it is well settled that any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birthday.

The CBDT has, vide this Circular, clarified that a person born on 1st April would be considered to have attained a particular age on 31st March, the day preceding the anniversary of his birthday. In particular, the question of attainment of age of eligibility for being considered a senior/very senior citizen would be decided on the basis of above criteria.

Therefore, a resident individual whose 60th birthday falls on 1st April, 2017, would be treated as having attained the age of 60 years in the P.Y.2016-17, and would be eligible for higher basic exemption limit of Rs. 3 lakh in computing his tax liability for A.Y.2017-18.

Likewise, a resident individual whose 80th birthday falls on 1st April, 2017, would be treated as having attained the age of 80 years in the P.Y.2016-17, and would be eligible for higher basic exemption limit of Rs. 5 lakh in computing his tax liability for A.Y.2017-18.

16. DEDUCTION IN RESPECT OF COST OF PRODUCTION ALLOWABLE UNDER SECTION 37 IN THE CASE OF ABANDONED FEATURE FILMS

Circular No. 16, dated 6.10.2015

The deduction in respect of the cost of production of a feature film certified for release by the Board of Film Censors in a previous year is provided in Rule 9A.

In the case of abandoned films, however, since certificate of Board of Film Censors is not received, in some cases no deduction was allowed by applying Rule 9A of the Rules or by treating the expenditure as capital expenditure.

The CBDT has examined the matter in light of judicial decisions on this subject. The order of the Hon'ble Bombay High Court dated 28.1.2015 in ITA 310 of 2013 in the case of Venus Records and Tapes Pvt. Ltd. on this issue has been accepted and the aforesaid disputed issue has not been further contested.

Consequently, it is clarified that Rule 9A does not apply to abandoned feature films and that the expenditure incurred on such abandoned feature films is not to be treated as a capital expenditure. The cost of production of an abandoned feature film is to be treated as revenue expenditure and allowed as per the provisions of section 37 of the Income-tax Act, 1961.

17. SURPLUS ON SALE OF SHARES AND SECURITIES - WHETHER TAXABLE AS CAPITAL GAINS OR BUSINESS INCOME?

Circular No. 06/2016, dated 29-2-2016

Section 2(14) defines the term "capital asset" to include property of any kind held by an assessee, whether or not connected with his business or profession, but does not include any stock-in-trade or personal assets subject to certain exceptions. As regards shares and other securities, the same can be held either as capital assets or stock-in-trade/trading assets or both.

Determination of the character of a particular investment in shares or other securities, whether the same is in the nature of a capital asset or stock-in-trade, is essentially a fact-specific determination and has led to a lot of uncertainty and litigation in the past.

Parameters laid down by CBDT and Courts to distinguish shares held as investments and shares held as stock in trade

Over the years, the courts have laid down different parameters to distinguish the shares held as investments from the shares held as stock-in-trade. The CBDT has also, through Instruction No. 1827, dated August 31, 1989 and Circular No. 4 of 2007 dated June 15, 2007, summarized the said principles for guidance of the field formations.

Principles to determine whether gains on sale of listed shares and other securities would constitute capital gains or business income

Disputes, however, continue to exist on the application of these principles to the facts of an individual case since the taxpayers find it difficult to prove the intention in acquiring such shares/securities. In this background, while recognizing that no universal principle in absolute terms can be laid down to decide the character of income from sale of shares and securities (i.e. whether the same is in the nature of capital gain or business income), CBDT realizing that major part of shares/securities transactions takes place in respect of the listed ones and with a view to reduce litigation and uncertainty in the matter, in partial modification to the aforesaid Circulars, further instructs the Assessing Officers to take into account the following while deciding whether the surplus generated from sale of listed shares or other securities would be treated as Capital Gain or Business Income —

a) Where assessee opts to treat such shares and securities as stock-in-trade: Where the assessee itself, irrespective of the period of holding the listed shares and securities, opts to treat them as stock-in-trade, the income arising from transfer of such shares/securities would be treated as its business income,
b) Listed shares and securities held for a period of more than 12 months: In respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of its transfer, if the assessee desires to treat the income arising from the transfer thereof as Capital Gain, the same shall not be put to dispute by the Assessing Officer. However, this stand, once taken by the assessee in a particular Assessment Year, shall remain applicable in subsequent Assessment Years also and the taxpayers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years;
c) Other cases: In all other cases, the nature of transaction (i.e. whether the same is in the nature of capital gain or business income) shall continue to be decided keeping in view the aforesaid Circulars issued by the CBDT.

Principles listed above not to apply in case of sham transactions

It is, however, clarified that the above shall not apply in respect of such transactions in shares/securities where the genuineness of the transaction itself is questionable, such as bogus claims of Long Term Capital Gain/Short Term Capital Loss or any other sham transactions.

Objective of formulation of principles: Reducing litigation and ensuring consistency

It is reiterated that the above principles have been formulated with the sole objective of reducing litigation and maintaining consistency in approach on the issue of treatment of income derived from transfer of shares and securities. All the relevant provisions of the Act shall continue to apply on the transactions involving transfer of shares and securities

18. LIMITATION FOR PENALTY PROCEEDINGS UNDER SECTION 271D AND 271E – WHETHER TO BE DETERMINED U/S 275(1)(A) OR U/S 275(1)(C)

Circular No.10/2016 dated 26.4.2016

The issue whether the limitation for imposition of penalty under sections 271D and 271E, is determined under section 275(1)(a) or section 275(1)(c), has given rise to considerable litigation.

The Delhi High Court, in CIT v. Worldwide Township Projects Ltd., has considered this issue and observed that is well settled that a penalty under this provision is independent of the assessment. The action inviting imposition of penalty is granting of loans above the prescribed limit otherwise than through banking channels and as such infringement of section 269SS is not related to the income that may be assessed or finally adjudicated. In this view, section 275(1)(a) would not be applicable and the provisions of section 275(1)(c) would be attracted. The judgment has been accepted by the CBDT.

In view of the above, it is a settled position that the period of limitation of penalty proceedings under section 271D and section 271E of the Act is governed by the provisions of section 275(1)(c). Therefore, the limitation period for the imposition of penalty under these provisions would be the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later. The limitation period is not dependent on the pendency of appeal against the assessment or other order referred to in section 275(1)(a).

19. APPLICABILITY OF TDS PROVISIONS ON PAYMENTS BY BROADCASTERS OR TELEVISION CHANNELS TO PRODUCTION HOUSES FOR PRODUCTION OF CONTENT OR PROGRAMME FOR TELECASTING

Circular No. 04/2016, dated 29-2-2016

The issue of applicability of TDS provisions on payments made by broadcasters/ telecasters to production houses for production of content or programme for broadcasting/telecasting has been examined by CBDT.

The issue under consideration is whether payments made by the broadcaster/telecaster to production houses for production of content/programme are payments under a ‘work contract’ liable for tax deduction at source under section 194C or a contract for ‘professional or technical services’ liable for tax deduction at source under section 194J of the Income-tax Act, 1961.

In this regard, the CBDT has clarified that while applying the relevant provisions of TDS on a contract for content production, a distinction is required to be made between:

(i) a payment for production of content/programme as per the specifications of the broadcaster/telecaster; and
(ii) a payment for acquisition of broadcasting/ telecasting rights of the content already produced by the production house.

In the first situation where the content is produced as per the specifications provided by the broadcaster/ telecaster and the copyright of the content/programme also gets transferred to the telecaster/ broadcaster, such contract is covered by the definition of the term Rs.work’ in section 194C and, therefore, subject to TDS under that section. This position clearly flows from the definition of Rs.work’ given in clause (iv)(b) of the Explanation to section 194C and the same has also been clarified vide Q. No. 3 of Circular No. 715 dated 8.8.1995.

However, in a case where the telecaster/broadcaster acquires only the telecasting/ broadcasting rights of the content already produced by the production house, there is no contract for ‘’carrying out any work”, as required in section 194C(1). Therefore, such payments are not liable for TDS under section 194C. However, payments of this nature may be liable for TDS under other sections of Chapter XVII-B of the Act.

20. APPLICABILITY OF TDS PROVISIONS ON PAYMENTS BY TELEVISION CHANNELS AND PUBLISHING HOUSES TO ADVERTISEMENT COMPANIES FOR PROCURING OR CANVASSING FOR ADVERTISEMENTS

Circular No. 05/2016, dated 29-2-2016

The issue of applicability of TDS provisions on payments made by television channels or media houses publishing newspapers or magazines to advertising agencies for procuring and canvassing for advertisements has been examined by the CBDT.

The CBDT noted that there are two types of payments involved in the advertising business:

(i) Payment by client to the advertising agency, and
(ii) Payment by advertising agency to the television channel/newspaper company

The applicability of TDS on these payments has already been dealt with in Circular No. 715 dated 8-8-1995, where it has been clarified in Question Nos. 1 & 2 that while TDS under section 194C (as work contract) will be applicable on the first type of payment, there will be no TDS under section 194C on the second type of payment e.g. payment by advertising agency to the media company.

However, another issue has been raised in various cases as to whether the fees/charges taken or retained by advertising companies from media companies for canvasing/booking advertisements (typically 15% of the billing) is 'commission' or 'discount'. It has been argued by the assessees that since the relationship between the media company and the advertising company is on a principal-to-principal basis, such payments are in the nature of trade discount and not commission and, therefore, outside the purview of TDS under section 194H. The Department, on the other hand, has taken a stand in some cases that since the advertising agencies act on behalf of the media companies for procuring advertisements, the margin retained by the former amounts to constructive payment of commission and, accordingly, TDS under section 194H is attracted.

The issue has been examined by the Allahabad High Court in the case of Jagran Prakashan Ltd. and Delhi High Court in the matter of Living Media Limited and it was held in both the cases that the relationship between the media company and the advertising agency is that of a 'principal-to-principal' and, therefore, not liable for TDS under section 194H. The SLPs filed by the Department in the matter of Living Media Ltd. and Jagran Prakashan Ltd. have been dismissed by the Supreme Court vide order dated 11-12-2009 and order dated 5-5-2014, respectively. Though these decisions are in respect of print media, the ratio is also applicable to electronic media/television advertising as the broad nature of the activities involved is similar.

In view of the above, the CBDT has clarified that no TDS is attracted on payments made by television channels/newspaper companies to the advertising agency for booking or procuring of or canvassing for advertisements. It is also further clarified that 'commission' referred to in Question No.27 of the CBDT's Circular No. 715 dated 8-8-1995 does not refer to payments by media companies to advertising companies for booking of advertisements but to payments for engagement of models, artists, photographers, sportspersons, etc. and, therefore, is not relevant to the issue of TDS referred to in this Circular.

Example

Discuss the following issues in the context of the provisions of the Income-tax Act, 1961, with specific reference to clarification given by the Central Board of Direct Taxes -

(i) Moon TV, a television channel, made payment of Rs. 50 lakhs to a production house for production of programme for telecasting as per the specifications given by the channel. The copyright of the programme is also transferred to Moon TV. Would such payment be liable for tax deduction at source under section 194C? Discuss.

 Also, examine whether the provisions of tax deduction at source under section 194C would be attracted if the payment was made by Moon TV for acquisition of telecasting rights of the content already produced by the production house.

(ii) Mudra Adco Ltd., an advertising company, has retained a sum of Rs. 15 lakhs, towards charges for procuring and canvassing advertisements, from payment of Rs. 1 crore due to Cloud TV, a television channel, and remitted the balance amount of Rs. 85 lakhs to the television channel. Would the provisions of tax deduction at source under section 194H be attracted on the sum of Rs. 15 lakhs retained by the advertising company?

Answer

(i) In this case, since the programme is produced by the production house as per the specifications given by Moon TV, a television channel, and the copyright is also transferred to the television channel, the same falls within the scope of definition of the term ‘work’ under section 194C. Therefore, the payment of Rs. 50 lakhs made by Moon TV to the production house would be subject to tax deduction at source under section 194C.

 If, however, the payment was made by Moon TV for acquisition of telecasting rights of the content already produced by the production house, there is no contract for ‘’carrying out any work”, as required in section 194C(1). Therefore, such payment would not be liable for tax deduction at source under section 194C.

(ii) The issue of whether fees/charges taken or retained by advertising companies from media companies for canvasing/booking advertisements (typically 15% of the billing) is 'commission' or 'discount' to attract the provisions of tax deduction at source has been clarified by the CBDT vide its Circular No.5/2016 dated 29.2.2016.

 The Circular draws reference to the Allahabad High Court ruling in the case of Jagran Prakashan Ltd. and the Delhi High Court ruling in the matter of Living Media Limited. In both the cases, the Courts have held that the relationship between the media company and the advertising agency is that of a 'principal-to-principal' and, therefore, not liable for TDS under section 194H. Though these decisions are in respect of print media, the ratio is also applicable to electronic media/television advertising as the broad nature of the activities involved is similar.

In view of the above, the CBDT has clarified that no liability to deduct tax is attracted on payments made by television channels to the advertising agency for booking or procuring of or canvassing for advertisements.

Accordingly, in view of the clarification given by CBDT, no tax is deductible at source on the amount of Rs. 15 lakhs retained by Mudra Adco Ltd., the advertising company, from payment due to Cloud TV, a television channel