

Points of Grievances/ Difficulties in the Field of Taxation for Union Budget 2023

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Direct Tax related points

1. Off late, due to pronouncement of a Service Tax related judgement by the Honourable Supreme Court of India, Notices are issued by Tax authorities enquiring about expats who are working in India under Secondment. Although the current movement by tax authorities are mainly from an Indirect Tax point of view, this matter has been deliberated by High Courts from Direct Tax point of view also.

Since the matter has both Direct Tax and Indirect Tax angles, we expect a comprehensive joint guideline from CBDT and CBIC covering inter-alia the following points:

- a. The roles a Seconded can undertake with the Indian employer;
- b. Considering the practical situation, a Seconded should be allowed to keep alive his / her home Social Security, which in turn can be paid / reimbursed by the Indian employer;
- c. The Seconded should be allowed keep his home employment alive but in dormant condition;
- d. The home employer should be allowed to pay the salary to the Seconded;
- e. The Indian employer should be allowed to reimburse the salary of the Seconded to its home employer;

f. No RCM GST to be paid on such reimbursement; and

g. No TDS under section 195 of the Income-tax Act, 1961 ('the IT Act') to be deducted on such reimbursement as TDS under section 192 of the IT Act is being deducted by the Indian employer.

2. In TCS return format, challan reference of TDS deducted and deposited by customers under section 194Q of the IT Act is required, which are not available in the hands of the seller. There is also no such mechanism to find out the same from the Income Tax portal. Therefore, the requirement cannot be practically complied within the stipulated time of TCS return.

Therefore, from the TCS return format, challan reference with respect to the deduction by customer under section 194 Q to be removed.

3. After amendment of the law with effect from AY 2021-22, there is an ambiguity on depreciation claim on Goodwill. The amendment contradicts the verdict pronounced by honorable Supreme Court in the matter of Smifs Securities Ltd.

Considering the financial hardship of the taxpayers who have purchased Goodwill, the benefit of deprecation on purchased goodwill may please be allowed.

4. As per the clarificatory guideline with respect to applicability of section 194R of the IT Act on reimbursement of expenditure, if the invoice is in the name ultimate recipient of service, then no TDS deduction is required. However, in a lot of cases, even if the invoices are not in the name of ultimate service recipient, but the cost has been incurred by the intermediary on behest of the ultimate service recipient.

Therefore, considering substance over form, all such expenses must be exempted from the purview of section 194R of the IT Act if the substance can be established from the agreement.

5. For a construction company, where revenue is recognized on Percentage of Completion method and customer deducts TDS based on invoicing, it is not possible to correlate TDS and income. Therefore, for such cases the requirement of matching TDS with income must be done away from the Income Tax Return Form.

Indirect tax related points

1. As per the Notification No 9/2022-Central Tax dated 05th July 2022, a taxpayer can transfer the amount available in Electronic Cash Ledger of one GSTIN to another GSTIN of same person. However, till date there is no mechanism available on the portal to implement the same.

Therefore, the proposed mechanism must be activated forthwith.

2. As per the Notification No. 26/2022- Central Tax dated 26th December, 2022 Rule 37A has been inserted in respect of reversal of input tax credit in case of non- furnishing of corresponding invoices/debit notes in the respective GSTR 3B of the vendors of the Registered Person. However, no mechanism is available in the hands of purchaser to check as to whether that the corresponding invoices/debit notes have been furnished by the vendor in the GSTR3B or not.

Therefore, the mechanism must be provided on the portal and till the time is not provided the application of the relevant portion of the law must be suspended.