

First Batch of Recommendations of the Income-tax Simplification Committee

19 January 2016

**Background:**

The Government had vide a Notification¹ constituted a ten member committee under the chairmanship of Justice R.V.Easwar with the objective of identifying provisions which give rise to litigation, impact ease of doing business, and those which can be simplified in light of existing jurisprudence.

The first batch of recommendations were to be submitted by 31 January 2016.

The first set of recommendations was released on 17 January 2016 for comments from various stakeholders. This batch contains issues which are relatively simpler and which need immediate attention. Complex issues requiring a more exhaustive and deeper review will be dealt with in the later recommendations.

The Committee has divided its recommendations into two broad parts, viz, (i) Recommendations requiring amendments to the Act and (ii) Recommendations which can be implemented

through issue of Circulars/ administrative instructions, etc.

A brief synopsis of the key recommendations of the Committee are given below:

Clarity regarding taxability of gains arising on sale of shares and securities – Capital gains or Business Income

The Committee has suggested that the definition of capital asset be amended to characterise the income from sale of shares as business income/capital gains based upon the tenure of holding.

It is recommended that gains arising from shares which are held for a period of 12 months from date of acquisition (other than those declared as stock-in-trade/trading asset in the return of income) should be taxable under the head "capital gains".

It is further recommended that gains (not exceeding INR 5 lakhs) arising from transfer of shares or securities held by a taxpayer for a period which is less

¹ 500050/112/2015 – dt. 27 October 2015

than twelve months will not be taxed as business income but as capital gains provided the shares were not held as stock-in-trade.

It is recommended that cases which are not covered by the above should continue to be assessed on the basis of existing principles laid down by the courts and CBDT.

Amendments/Clarifications in Section 14A

Under section 14A, any expenditure which is incurred to earn exempt income is to be disallowed. There are several issues surrounding applicability of section 14A which has engaged the attention of Courts. In light of the same, the Committee has suggested the following recommendations:

1. Suitable instructions should be issued by CBDT to the Assessing officer mandating them to adequately record their satisfaction or otherwise in the assessment order while dealing with the applicability of this section.

2. In certain cases, disallowance of interest expense is made section even after the taxpayer is able to demonstrate that borrowings have not been utilised to make investments in earning tax-free income. It is recommended that CBDT issues suitable instructions to the Assessing Officers to resolve the above.

3. The Committee notes that there have been interpretative issues between the tax authorities and the taxpayers for which appropriate amendments as stated under are recommended:

a. Quantification of expenditure attributable to exempt income – The application of Rule 8D should not result in a situation where the quantum of disallowance exceeds the amount of expenditure which is claimed as deductible.

b. Application of section to income which has suffered economic taxation – The Committee notes that for the purposes of section 14A, income is treated as exempt if the same is not includible in the total income of the assessee regardless of the fact that it has suffered economic taxation.

In this regard, the Committee highlights the issue of dividend which suffers economic taxation by way of dividend distribution tax ('DDT') in the company's hands and therefore in an economic sense cannot be construed as exempt income. In view of the above, the Committee recommends to treat the following exempt income as being part of total income of the taxpayer and thus outside the purview of section 14A:

- Share of profit from partnership firm in the hands of partner;
- Dividend income in hands of shareholders;
- Income arising to shareholder on account of buy-back of shares;
- Income arising to a unitholder in respect of units of a Mutual Fund, specified undertaking, specified company;
- Distributed income referred to in section 115TA received from securitisation trust by any person being an investor of the said trust.

Exempting Non-residents having tax identification number (TIN) from applicability of TDS at a higher rate under Section 206AA

The Committee has identified the provisions of Section 206AA as an impediment in terms of ease of doing business, as many non-residents prefer not to do business with Indian residents, if obtaining a PAN is insisted upon.

The Committee notes that the requirement to furnish a PAN should be done away with as provisions of Section 115A of the Act (governing interest, royalty and service income of non-residents) and provisions of Double Tax Avoidance Agreements ('DTAA') already prescribe tax rates applicable to relevant stream of payments. Given the same, the Committee recommends that section 206AA will not apply in a case where the non-resident furnishes his tax identification number which is issued to him by the Government of his home country. The Committee also recommended that section 206AA should not apply to interest payments on long term bonds which are covered under section 194LC.

Proposal to raise threshold limits for TDS and rationalise certain rates for deduction of tax

The Committee has observed that the TDS provisions need to be made more tax friendly as the annual threshold limits in respect of TDS have not been revised in several years. The Committee felt that the TDS rates for certain payments needed to be rationalised on account of the lowering of the average tax rates in case of majority of taxpayers in the Individual and HUF categories.

In view of the above, the Committee has recommended increasing of limits for various TDS provisions and provided for a reduction of withholding tax rates for certain transactions.

Making fresh claim in assessment proceedings

The Committee recommends that the Act should be suitably amended to specifically state that a taxpayer can make claim for any exemption, deduction, set-off or any other relief at the time of assessment proceedings as well and such claim should be regarded as having made in the return of income for the purposes of the Act. Such a provision will help mitigate the rigour arising from certain judicial precedents which limit the ability of a taxpayer to make fresh claims, otherwise than by a revised return.

Rationalisation of Section 50C to provide relief where sale consideration fixed under agreement to sell

The Committee has recommended that section 50C be amended to cover a situation where the date of agreement and date of transfer of immovable property are different. In such a case, the Committee recommended that for the purpose of stamp duty valuation, it should be the date of agreement which should be taken into account and not the date of actual transfer.

Recommendations to Recovery of Demand

The Committee has recommended the following measures in relation to recovery of demand.

- Automatic stay of demand on payment of 7.5% of the demand. The stay shall remain in operation till the first appellate order is passed.
- In case of high pitched assessments, taxpayer should be given the liberty to approach CIT(A) and request for stay without mandatory payment of 7.5% of the demand.
- Recovery of demand arising from the levy of penalty after the order of CIT(A) should be stayed till one month after the disposal of the quantum appeal by the Tribunal

Recovery and Penalty Provisions

Apart from the above, the Committee has recommended various amendments to the recovery and penalty provisions for reducing the hardships caused to the taxpayers. These include reduction of fee under Section 234E from Rs. 200/- per day to Rs. 100/- per day, payment of higher interest to taxpayers in case of delayed refund under section 244A etc.

Miscellaneous

The other recommendations made by the Committee are as under:

- Rationalisation of the provisions for maintenance of books of accounts
- Recommendation to increase the eligibility under the presumptive scheme for small businesses from one crore to two crores
- Insertion of a presumptive scheme of taxation for professionals
- Deferment of ICDS
- Deletion of section 143(1D) for avoiding undesirable delay in issue of refunds

Reforms through administrative instruction

Apart from the above, the Committee has recommended issuing of instructions for resolving the following administrative issues:

- Implementation of IND-AS and their impact on taxable income
- Simplification of Tax Deduction at Source provisions

- Transparency in tax administration and e-Governance
- Adjustments of refunds
- Amendment of return form to provide column for making disclosures.

Our Comments

The Committee has taken note of a wide spectrum of issues which taxpayers are currently grappling with. The initial recommendations made by the Committee to resolve issues which are relatively simpler are very much welcome. It will also be interesting to watch out for the second batch of recommendations which would cover more complex issues.

The above report has been shared in public domain for comments from various stakeholders. One hopes that these beneficial provisions are incorporated in the upcoming Union Budget which will be announced on 29 February 2016.

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