



2024 - 2025

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अहमस्मि योधः!

I am a warrior.



TAX GURJARI

ALL GUJARAT FEDERATION OF TAX CONSULTANTS

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ACTIVITIES AT A GLANCE



ACTIVITIES AT A GLANCE





2024 - 2025

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Message from the President of All Gujarat Federation of Tax Consultants



CA Dr. Vishves Shah

FCA, LLB, M.Com. DISA (ICAI),
Ph.D. in Commerce
SOCIAL AUDITOR

Dear Readers,

I am delighted to connect with you through this edition of Tax Gurjari, a valuable resource for tax professionals navigating the taxation and allied laws world. In today's fast-paced world, the way we practice taxation is undergoing rapid transformation, driven by both technological advancements and the increasing expectations placed on us by our clients and regulatory authorities.

The adoption of technology in tax practice has become not only a tool for convenience but a necessity. From managing client data to performing reconciliations, technology allows us to enhance accuracy and efficiency, especially during the most demanding times of the year, such as the ITR and Tax Audit seasons. However, with limited time available, it becomes crucial for professionals to stay updated on the latest tools and techniques that can streamline processes and help maintain better control over vast amounts of client data. The ability to efficiently reconcile transactions and meet tight deadlines is no longer a luxury but a requirement in today's competitive professional environment.

As we push ourselves to meet these high demands, it is essential to remember the importance of our health. Unfortunately, we have seen several cases where the pressure of workload has led to tragic outcomes - professionals paying the ultimate cost of stress, with incidents of untimely loss of life or the onset of chronic health conditions like high blood pressure, diabetes, and anxiety becoming more common. While we strive to meet the expectations of clients and regulators, we must also prioritize our personal well-being. The balance between professional excellence and self-care is one we cannot afford to overlook.

The articles featured in Tax Gurjari play a pivotal role in helping us upgrade our knowledge and adapt to the continuously changing tax environment. With regulations and tax laws being updated regularly, it is imperative that we remain informed and equipped to manage new challenges. This magazine serves as an important guide to navigating these changes, providing insights that are both practical and forward-thinking.

As tax professionals, society looks to us not only for compliance but also for ethical and responsible financial guidance. We are expected to uphold the highest standards of integrity while delivering on increasingly complex demands from the government and tax departments. This places an even greater responsibility on us to stay ahead of the curve and ensure we meet the expectations of all stakeholders.

I encourage you to make the most of the knowledge shared in this issue and continue to evolve as we face new challenges and opportunities in the tax profession.

CA (Dr.) Vishves Shah

President

All Gujarat Federation of Tax Consultants

16th October, 2024



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From The Table of Chairman



Bharat L. Sheth
Chairman

My Dear Professional Brothers & Sisters,

The first issue of Tax Gurjary was published within 20 days of time after new team has taken charge. The issue contains various articles on direct and indirect taxes. The authors of the articles had taken immense pain to give very informative articles on various subjects. We are thankful to all the authors for sparing time and sharing their valuable views for the benefit of members of AGFTC. We have received very good responses and suggestions from members of AGFTC and readers of this publication. We are thankful to them for valuable feedback.

The Finance Act (No.2) Act 2024 has pronounced very tax payer friendly amnesty in Income tax as well as in Goods and Services Act. We wish that tax payers will take benefits of Vivad se Vishvas Scheme for disputed demands in Income tax. In GST also Section 128A Waiver of Interest or penalty or both relating to demands raised under section 73 (non-fraud cases) for certain tax periods (1-7-2017 to 31-3-2020) will be implemented w.e.f. 1st November 2024. It is a very welcome step for the taxpayers who have made mistake in earlier periods of GST implementation. Demand raised under section 74(Fraud case) will not get benefit under this section. One more welcome steps is introduction of Section 16(5) and 16(6) in GST Act. This amendment was implemented w.e.f. 27-09-2024.

I quotes some interesting Quotes from the book **“100 Witty Quotes by Nani Palkhivala.”**

▣▣▣▣ We have not inherited this earth from our forefathers; we have borrowed it from our children.

▣▣▣▣ Life has taught me that when you have achieved everything that you have aimed for in life, you still feel something missing. To get what one wishes and to enjoy it too is seldom possible..

▣▣▣▣ Education is at the heart of the matter. Literacy is not enough. It is good to have a population which is able to read; but infinitely better to have people able to distinguish what is worth reading.

I would request all my professional brothers and sisters to use the publication in the best possible manner and make their professional journey more effective and successful by taking advantage of the developments and information which have been published in this publication. I am sure that this publication will be very useful and will benefit our members.

Bharat L. Sheth

Chairman

All Gujarat Federation of Tax Consultants

16th October, 2024



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From the Desk of Hon. Secretary



Mrudang H. Vakil

Hon. Secretary

Dear Esteem Members,

It is indeed an honour and privilege to be the Hon. Secretary of AGFTC. It is with absolute humility I pen this message.

The main object of AGFTC is to impart education and to spread the knowledge to the members by organizing various study meetings, conclaves, seminars, and publications. As we entering in to new era of Tax practice where it is completely different compare to which we are used to do in early years. It is now very much important for everyone and to get updated with latest trend of courts, circulars, notifications, and view from experts. To achieve this object, AGFTC is committed and launching second edition of Tax Gurjari 2024-2025.

One recent positive development on the income tax front is proposed simplification of new direct Tax code. The Direct Tax Code 2025 will replace the Income Tax Act of 1961, bringing long-anticipated reforms. This new law will modernize India's tax system by introducing simpler and more transparent tax regulations. After several delays, the government will implement the Direct Tax Code 2025 starting in April 2025, with the financial year 2025-26. This new code simplifies the previous complex laws, reduces litigation, and encourages better compliance. The proposed draft Direct tax code takes a relook at the Income Tax Act in tandem with international best practice. The complexity of the existing Income Tax Act, out-dated provisions, and the need for modern reforms made the Direct Tax Code 2025 essential.

One of the primary goals of the Direct Tax Code 2025 is to increase the number of people paying income tax. Currently, only about 1% of the population contributes to the tax system. With the new code, the government aims to raise this figure to 7.5%, expanding the taxpayer base.

Recently, the governing body of AGFTC and ITBA have received a special invitation from the esteemed CBDT Chairman, Shri Ravi Agarwal, to engage in discussions and careful consideration of the New Direct Tax Code. All stakeholders have been encouraged to share their input by the 15th of this month. This proactive approach is a commendable and progressive move in the right direction. The unique feature of this Journal and one of the reasons is why the Journal is so popular amongst the professionals. It is the endeavour of the Journal Committee to select topics which are contemporary and keep the interest of all professionals practicing in direct tax, indirect tax, allied laws, international tax, etc. The Tax Gurjari committee Team would be very happy to receive your valuable suggestions not only for the topics of Taxes Related issues but also for overall contents of the Journal.

The current month's issue of the Journal is on very important topic of GST and Income Tax implications on recent development under the laws. The subjects are significant for the professionals as there are numerous direct and indirect tax issues when it comes to re-opening of assessment and input credit under GST.

I would like to thank the Tax Gurjari Committee for selecting such an interesting topic and creating a comprehensive design covering various aspects of the subject. I am sincerely grateful to the authors for sharing their expert knowledge and taking the time to do so.

As I sign off on this auspicious day of "Dussehra" I end my communication with a very thoughtful quote:

May all the obstacles and troubles in your path disappear this Dussehra. Let us celebrate the triumph of light over darkness.

Mrudang H. Vakil (Advocate)

Hon. Secretary

All Gujarat Federation of Tax Consultants

16th October, 2024

Section 115TD and Charitable Trusts: Compliance and Implications :



CA Hemali Shah

Introduction

Prior to 2016, a charitable institution registered under the Income-tax Act and having obtained the benefit of exemption over the years could merge with any other charitable or non-charitable institution (especially in states where there was no public trust law) or could convert into a non-charitable organization, etc., without any express tax consequences. There was no provision in the Act to ensure that the corpus and asset base of the trust, accreted over a period of time with the promise of being used for charitable purposes, continued to be utilized for such purposes and were not used otherwise.

To ensure that the intended purpose of the exemption availed by the trust is achieved, a specific provision was introduced in the form of Chapter XII-EB, which imposed an “exit tax” when the organization was converted into a non-charitable organization or merged with a non-charitable organization or did not transfer the assets

to another specified charitable organization. Section 115TD of the Income-tax Act, 1961, was introduced to ensure that trusts and institutions, especially those availing benefits under sections 11 and 12, adhere to the rules and regulations stipulated by the Income Tax Department. It aims to impose tax on the accreted income of trusts or institutions when they cease to exist or lose their charitable status.

Section 115TD: Circumstances for exit tax imposition:

1. Trust is converted into any form which is not eligible for grant of specified registration under section 12AA or 12AB or approval under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10

Trust or an institution shall be deemed to have been converted into any form not eligible for specified registration/approval if :

- (a) The specified registration/approval granted to it has been cancelled; or

- (b) It has adopted or undertaken modification of its objects which do not conform to the conditions of registration and it,—

- (i) has not applied for fresh registration to obtain specified registration in the said previous year; or

- (ii) has filed an application for fresh registration to obtain specified registration but the said application has been rejected; or

- (c) It fails to make an application for approval in accordance with clause (i)/(ii)/(iii) of the first proviso to section 10(23C) or for registration under section 12A(1)(ac)(i)/(ii)/(iii), within the period specified therein, which expires in the said previous year. [Section 115TD(3)]

2. Merger with any other non-charitable institution; or

3. Trust failed to transfer upon dissolution all its assets to any other trust or institution registered under section 12AA or approved u/s 10(23C) within a period of twelve months from the end of the month in which the dissolution takes place.

Consequences of circumstances leading to exit tax :

1. If the aforesaid conditions are fulfilled, then in addition to the income-tax chargeable on the

total income of the institution, the institution shall be charged to tax on its accreted income.

Accreted income is the fair market value (FMV) of assets and liabilities of the trust/institution as on the specified date. In computing FMV of assets, the following assets shall not be included:

- i) Assets acquired directly out of agricultural income referred to in section 10(1).
- ii) Assets acquired between the period beginning from the date on which the trust was created and ending on the date on which registration u/s 12AA became effective, if no benefit under sections 11 and 12 was given during the said period.
- iii) In case of dissolution of the trust, the assets which have been transferred to either a Trust/institution registered u/s 12AA or another institution registered u/s 10(23C) (iv)/ (v)/ (vi)/(via), within a period of 12 months from the end of the month in which dissolution took place.

To Summarize:

a) In case of conversion or merger, the computation formula is as follows:

- ◆ Aggregate fair market value of assets (computed as per the prescribed method under rule 17CB)
- ◆ Less: total liabilities
- ◆ Less: assets acquired out of agricultural income
- ◆ Less: income during the initial period before registration
- ◆ Add: liability related to asset/income referred to in (iii) and (iv) above
- ◆ Accreted income = [(1) – (2) – (3)] – (4) + (5)

b) In case of dissolution, the computation formula is:

Accreted income as per (6) above

- ◆ Less: assets transferred to specified institutions within the specified period
- ◆ Accreted income = [(6) – (7)]

For the above purpose, 'specified date' means,

- ◆ The date of conversion in a case falling under section 115TD(1)(a);
- ◆ The date of merger in a case falling under section 115TD(1)(b); and
- ◆ The date of dissolution in a case falling under section 115TD(1)(c).

2. The tax on the accreted income shall be treated as the final payment of tax in respect of the said income, and no further credit therefor shall be claimed by the institution or by any other person in respect of the amount of tax so paid [section 115TD(6)].

3. No deduction under any other provision of this Act shall be allowed to the institution or any other person in respect of the income which has been charged to tax under section 115TD(1) or the tax thereon [section 115TD(7)].

4. The tax on the accreted income shall be payable by such institution even if no income-tax is payable by it on its total income computed in accordance with the provisions of this Act.

Date of Conversion :

For the aforesaid purposes, 'date of conversion' means,—

- a) The date of the order cancelling the specified registration in a case referred to in section 115TD(3)(i); or
- b) The date of adoption or modification of any object, in a case referred to in section 115TD(3)(ii); or
- c) The last date for making an application for registration under section 12A (1)(ac)(i)/(ii)/(iii) or for approval under clause (i)/(ii)/(iii) of the first proviso to section 10(23C), in a case referred to in section 115TD(3)(iii). [Explanation (i) to section 115TD]

Rate of accreted Income Tax :

Tax on accreted income is to be paid at the Maximum Marginal Rate; this levy is in addition to income-tax chargeable in the hands of the entity and is calculated as below:

Accreted Tax = Accreted Income * Maximum Marginal Rate (39% for AY 2024-25)

Time limit for making payment : The tax on accreted income has to be paid to the credit of the Central Government within 14 days from the time frame tabulated below:

| No | Situation | PY in which accreted Income is taxable | Specified date for computing accreted income | Date of Payment of Tax (max time) |
|----|--|---|---|--|
| 1 | No appeal has been filed against cancellation order | FY in which order is passed by Commissioner cancelling the registration | Date of order of Commissioner cancelling the registration | 74 (60+14) days from the date on which order of Commissioner cancelling the registration is received |
| 2 | Appeal is filed but cancellation of registration is confirmed in appellate proceedings | FY in which appellate order is received | Date of order of Commissioner cancelling the registration | 14 days from the date on which appellate order is received |
| 3 | Has not applied for fresh registration u/s 12AA on modification of objects | FY in which modification of object is done | Date on which modification of object is done | 14 days from the end of the previous year in which modification of object is done |
| 4 | No appeal is filed against order rejecting application | FY in which order is passed by Commissioner rejecting the application | Date on which modification of object is done | 74 days from the date on which order of Commissioner rejecting the application is received |
| 5 | Appeal is filed but rejection of registration is confirmed in appellate proceedings | FY in which appellate order is received | Date of order of Commissioner rejecting the application | 14 days from the date on which appellate order is received |
| 6 | Merger is done | FY in which merge is done | Date of Merger | 14 days from the date of merger |
| 7 | 12 months from end of month in which dissolution take place expires | FY in which 12 months from end of month in which dissolution take place falls | Date of dissolution | 14 days from the date on which said period of 12 months expires |

Consequences offailure to pay:

1. Where the principal officer or the trustee of the institution and the institution fail to pay the whole or any part of the tax on the accreted income referred to in section 115TD(1) within the time allowed under section 115TD(5), he or it shall be:

- a) deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income-tax shall apply; and
- b) liable to pay simple interest @ 1%, such interest shall be payable for every month or part thereof on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

2. Further, in a case where the tax on accreted income is payable under the circumstances referred to in section 115TD(1)(c), the person to whom any asset forming part of the computation of accreted income under section 115TD(2) has been transferred, shall be deemed to be an assessee in default in respect of such

tax and interest thereon and all the provisions of this Act for the collection and recovery of income-tax shall apply. In such a case, the liability of the person shall be limited to the extent to which the asset received by him is capable of meeting the liability. To illustrate, suppose the institution under dissolution (say 'A') transfers 30% of its assets to another institution B. If the institution A fails to transfer upon dissolution all its assets in the manner specified in section 115TD(1)(c), the institution B shall also be deemed to be an assessee in default.

Conclusion :

Section 115TD of the Income Tax Act, 1961, plays a vital role in regulating charitable trusts and institutions in India. By imposing a tax on accreted income, it ensures that tax exemptions are not exploited and that these entities remain focused on their charitable objectives. Charitable trusts and institutions must meticulously adhere to these provisions to preserve their tax-exempt status and avoid the financial strain of accreted income tax. This section has significant implications and presents challenges that may not be fully understood by many organizations.

**Setting Goals is the first step
in turning the invisible
into the visible**



**If you get Tired,
Learn to rest not to quit**



2024 - 2025

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ChatGPT : A Simple Introduction



CA Parag Raval

What is ChatGPT?

ChatGPT is a smart computer program made by a company called OpenAI. It can talk with you like a person, answering questions and having conversations. It's like having a helpful assistant who knows a lot of things!

How Does ChatGPT Work ?

ChatGPT reads the text you give it, thinks about it, and then replies with a sentence that makes sense. It learned how to do this by reading tons of books, websites, and other stuff online.

Benefits of Using ChatGPT

1. **Saves Time** : ChatGPT can quickly help you write things like emails, articles, or even solve problems.
2. **Can Do Many Things**: Whether you need ideas for a project, help with your work, or answers to your questions, ChatGPT can assist.
3. **Always Available**: You can use ChatGPT any time of day or night, even when everyone else is asleep!
4. **Helps You Learn**: If you are trying to understand something new, ChatGPT can explain it in simple words and give you examples.

Drawbacks of ChatGPT

1. **Doesn't Really Understand**: ChatGPT doesn't think like a person. It doesn't actually "know" anything; it just puts words together based on what it has learned.
2. **Can Be Wrong**: Sometimes, ChatGPT might give you an answer that isn't correct, so it's good to double-check its responses.
3. **Limited Creativity**: While it can help with ideas, ChatGPT's ideas are based on what it has read, so they might not be as unique as a human's ideas.

4. **Ethical Concerns**: There are some worries about how AI like ChatGPT might be used, like taking over jobs or creating fake information.

How to Use ChatGPT

You can use ChatGPT by visiting websites like OpenAI's official site or other platforms that offer ChatGPT services. You just need to type your question or request, and ChatGPT will reply to you.

The Importance of Prompts

A prompt is what you type to start a conversation with ChatGPT. The better your prompt, the better the response. For example, if you just type "Tell me something," ChatGPT might give a very general answer. But if you type, "Can you help me write an email to a friend inviting them to a party?" you'll get a more useful response.

Utility for Professionals

For people at work, ChatGPT can be very helpful:

- ◆ **Writing Help** : Whether you need to write emails, reports, or articles, ChatGPT can help you get started or finish faster.

◆ **Idea Generation** : If you're stuck and need fresh ideas, ChatGPT can suggest some to get your creativity flowing.

◆ **Customer Support** : ChatGPT can help businesses by answering basic customer questions, letting human workers focus on more complicated tasks.

• ◆ **Learning Aid**: If you're learning something new at work, you can ask ChatGPT to explain things in simple terms.

How ChatGPT Can Help with Creative Projects.

ChatGPT can be a great assistant when you are working on creative projects like PowerPoint presentations, invitation cards, brochures, and more. Here's how it can help:

1. PowerPoint Presentations

◆ **Content Creation** : ChatGPT can help you write clear and engaging text for your slides. Just tell it the topic and what you want to say, and it can suggest titles, bullet points, and even summaries.

◆ **Structure and Flow** : If you are unsure about how to organize your presentation, ChatGPT can suggest a structure. For example, it can recommend how to introduce your topic, what key points to cover, and how to conclude.

◆ **Design Tips** : While ChatGPT can't create the actual design, it can suggest what kind of images, colours, or layouts might work well for your topic, helping you create a more visually appealing presentation.

2. Invitation Cards

◆ **Wording Assistance** : If you're creating an invitation card for an event like a wedding, birthday party, or meeting, ChatGPT can help you with the wording. Whether you want it to be formal, fun, or friendly, just describe the tone you're going for, and it will generate text that fits.

◆ **Ideas for Themes** : ChatGPT can suggest themes or styles for your invitation card, like choosing colours or designs that match the occasion.

◆ **Personalization** : You can ask ChatGPT to help you add a personal touch to your invitations, like writing a special message for your guests.

3. Brochures

◆ **Crafting Content** : When making a brochure, the text needs to be informative and catchy. ChatGPT can help by writing or refining the text to make it more engaging, whether it's for advertising a product, a service, or an event.

◆ **Organizing Information** : ChatGPT can help you decide how to organize the content in your brochure. For example, it can suggest sections, headings, and bullet points to make the information easy to read and understand.

◆ **Slogan and Tagline Ideas** : Need a catchy slogan or tagline for your brochure? ChatGPT can generate ideas that match your brand or message.

4. Other Creative Projects

◆ **Posters and Flyers** : ChatGPT can assist in writing the key messages, headlines, and details that go on posters and flyers, ensuring they are attention-grabbing and clear.

◆ **Social Media Posts** : If you're promoting something online, ChatGPT can help you craft short, impactful social media posts that align with your goals.

◆ **Event Programs** : If you're organizing an event and need to create a program, ChatGPT can help you outline the schedule, write speaker bios, and format the information.

ChatGPT is like a creative partner that can help you with the writing and planning part of your projects. While it doesn't do the actual designing, it provides the words and ideas that you can use to make your presentations, invitations, brochures, and other projects more impressive and effective. Just give it clear instructions on what you need, and it can help bring your creative vision to life.

Conclusion

ChatGPT is a handy tool that can help you with a lot of different tasks. It's not perfect, but it can make your work easier and faster. Just remember to use it as a helper, not a replacement for your own thinking.

Change in rate of tax in respect of supply of Goods or Services under GST LAW



Bharat L. Sheth
Chairman

Introduction

Provisions of time of supply of goods or services are governed by section 12 and 13 of The Central Goods and Services Act, 2017 respectively; however, in case of change in rate, provisions of time of supply will be governed by section 14 of The Central Goods and Services Act, 2017. Section 14 of The Central Goods and Services Act, 2017, starts with non-obstante clause. The non-obstante clause is a legislative device to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment.

The Hon'ble Supreme Court in Chandavarkar S.R Rao vs. Ashalata S. Guram (1863 4 SCC 447) held that " A clause beginning with the expression ' notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract' is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned in the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be impediment for an operation of enactment."

Section 14 of The Central Goods and Services Tax Act, 2017

Notwithstanding anything contained in section 12 or section 13, the time of supply where there is a change in the rate of Tax in respect of goods or service or both, shall be determined in the following manner, namely

(a) in case the goods or services or both have been supplied before the change in rate of tax,

(i) where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or

(ii) where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or

(iii) where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment;

(b) in case the goods or services or both have been supplied after the change in rate of tax,-

(i) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or

(ii) where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or

(iii) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice:

Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.

Explanation.- For the purposes of this section, “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

EXAMPLES of EXPLANATION/PROVISION

Rate of tax 5% change to 12% w.e.f. 01-01-2023

| Sr. | Cheque received/ RTGS done | Entry in Books | Credited in Bank A/c. | Date of receipt of Payment |
|-----|---|----------------|-----------------------|-----------------------------|
| 1 | 15-01-2023 | 15-01-2023 | 19-01-2023 | 15-01-2023 |
| 2 | 15-01-2023 | 16-01-2023 | 15-01-2023 | 15-01-2023 |
| 1 | 01-01-2023 CHEQUE DATED 31-12-2022 | 01-01-2023 | 12-01-2023 | 12-01-2023 • See proviso |

Let's understand Section 14 of The Central Goods and Services Tax Act, 2017 in tabular format-

| Clause | Supply made | Invoice Issued | Payment received | Time of supply shall be |
|------------|----------------------------------|----------------------------------|----------------------------------|---|
| 14(a)(i) | Before the change in rate of tax | After the change in rate of tax | After the change in rate of tax | Date of issue of invoice or payment received, whichever is earlier. |
| 14(a)(ii) | Before the change in rate of tax | Before the change in rate of tax | After the change in rate of tax | Date of issue of invoice |
| 14(a)(iii) | Before the change in rate of tax | After the change in rate of tax | Before the change in rate of tax | Date of receipt of payment |
| 14(b)(i) | After the change in rate of tax | Before the change in rate of tax | After the change in rate of tax | Date of receipt of payment |
| 14(b)(ii) | After the change in rate of tax | Before the change in rate of tax | Before the change in rate of tax | Date of issue of invoice or payment received, whichever is earlier. |
| 14(b)(iii) | After the change in rate of tax | After the change in rate of tax | Before the change in rate of tax | Date of issue of invoice |

EXAMPLES

Rate of tax 5% change to 12% w.e.f. 01-01-2023

| Sr. | Date of supply | Date of invoice | Receipt of payment | Rate Applicable |
|-----|----------------|-----------------|--------------------|---------------------------------|
| 1 | 15-01-2023 | 15-01-2023 | 22-01-2023 | New rate 12% will be applicable |
| 2 | 15-12-2022 | 15-12-2022 | 15-01-2023 | Old rate 5% will be applicable |
| 3 | 15-12-2022 | 15-01-2023 | 15-12-2022 | Old rate 5% will be applicable |
| 4 | 15-01-2023 | 15-12-2022 | 15-01-2023 | New rate 12% will be applicable |
| 5 | 15-12-2022 | 15-12-2022 | 22-12-2022 | Old rate 5% will be applicable |
| 6 | 15-01-2023 | 15-01-2023 | 15-12-2022 | New rate 12% will be applicable |

MAJORITY RULES

The rate of tax depends on occurrence of 3 events:
1, Supply of Goods and/or Services have been provided
2, Issuance of Invoice and
3, Date of receipt of payment.

If two, out of above three events took place before the changes in rate of tax, the time of supply will fall in the period prior to change in rate of tax i.e., old tax rate will be applicable.

If two, out of above three events took place after the changes in rate of tax, the time of supply will fall in the period after the change in rate of tax i.e., new rate will be applicable.

Departmental Clarification

The Central Board of Excise and Customs New Delhi has issued 2nd edition of Frequently Asked Questions (FAQ) on 31st March 2017. In Chapter 5 (Time of Supply), Question no 10 to 14 deal with this issue.

Q 10. Is there any change in time of supply, where supply is completed prior to or after change in rate of tax?

Ans. Yes. In such cases provisions of Section 14 will apply.

Q 11. What is the time of supply, where supply is completed prior to change in rate of tax?

Ans. In such cases time of supply will be

(i) where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or

(ii) where the invoice has been issued prior to change in rate of tax but the payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or

(iii) where the payment is received before the change in rate of tax, but the invoice for the same has been issued after the change in rate of tax, the time of supply shall be the date of receipt of payment;

Q 12. What is the time of supply, where supply is completed after to change in rate of tax?

Ans. In such cases time of supply will be

(i) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or

(ii) where the invoice has been issued and the payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or

(iii) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice.

Q 13. Let's say there was increase in tax rate from 18% to 20% w.e.f.1.6.2017. What is the tax rate applicable when services provided and invoice issued before change in rate in April 2017, but payment received after change in rate in June 2017?

Ans. The old rate of 18% shall be applicable as services are provided prior to 1.6.2017.

Q 14. Let's say there was increase in tax rate from 18% to 20% w.e.f. 1.6.2017. What is the tax rate applicable when goods are supplied and invoice issued after change in rate in June 2017, but full advance payment was already received in April 2017?

Ans. The new rate of 20% shall be applicable as goods are supplied and invoice issued after 1.6.2017.

Summing up

Section 14 of the Goods and Services Tax Act, 2017 is very important in the cases where there is change in rate of tax. The registered person should take care to determine applicable rate of tax in such circumstances to avoid demand of differential tax, interest and penalty in future.

SPARKS

All the great things are simple and many can be expressed in a single word: freedom, justice, honor, duty, mercy, hope.

-Winston Churchill



An Ounce of Patience is worth more than tons of preaching.

Section 194T: TDS on Payment to Partners by Partnership Firm



CA Parag Raval

Through Finance Bill 2024, the government has introduced certain changes to the Income Tax Act, including the addition of Section 194T, which deals with Tax Deducted at Source (TDS) on payments made to partners by partnership firms. This has increased tax compliance burden on partnership firms. The section aims at bringing payments to the partners of the firm under the purview of TDS.

As per Section 194T, where aggregate amount in the nature of salary, remuneration, commission, bonus or interest credited or paid by partnership firm to the partner is Rs. 20,000/- or more in a financial year, TDS will be deducted @10% of the amount of so paid or credited to the account of the partner.

The amendment is proposed to be made effective from 01/04/2025.

Section 194T

Section 194T is a new provision introduced in the Income Tax Act, 1961, which mandates partnership firms to make TDS from certain payments made to their partners. The section operates under the legal framework of the Income Tax Act and is applicable to all partnership firms, including limited liability partnerships (LLPs).

The scope of Section 194T covers payments made by partnership firms to their partners, including remuneration, interest, commission, and bonuses. These payments are subject to TDS, as they are considered part of the partner's income from the firm.

Broadly following payments would be liable to TDS u/s. 194T :

1. Remuneration to partners by the partnership firm is very common. It is determined based on the partnership deed or mutual agreement between the partners. It is essential for partnership firms to maintain proper documentation regarding the calculation and payment of remuneration to partners.

2. Generally, partnership firms pay interest to partners on their capital contribution. The interest rate and the basis of calculation should be clearly defined in the partnership deed or through mutual agreement.

3. Based on the firm's performance or specific targets achieved, partners may receive commission or bonuses from the firm. This is also liable for TDS u/s. 194T.

Exceptions :

It is important to note that certain payments made by partnership firms to their partners are not covered under the ambit of Section 194T. When a partner withdraws their capital contribution from the firm, it is not considered a payment subject to TDS under Section 194T.

1. Reimbursement for expenses incurred by partners on behalf of the firm is not subject to TDS u/s. 194T.

Whether applicable from AY 2025-26 or AY 2026-27?

As said earlier, the amendment is proposed to be made effective from 01/04/2025. The question may arise:

A. Whether provision of Sec. 194T would be effective from AY 2025-26 (pertaining to FY 2024-25); or

B. Whether it would be applicable from AY 2026-27 (pertaining to FY 2025-26).

Taking clue from the following discussion, it can be concluded that this provision will be applicable only from next FY 2025-26 (AY 2026-27) :

1. If TDS obligation u/s. 194T begins from AY 2025-26 (FY 2024-25), it clearly tantamount to giving retrospective effect to provision of Sec. 194T even before it is made effective. Moreover, this provision would create TDS obligation on transactions already concluded in FY 2024-25 and settled even before the enactment, which does not seem to be the intention of the legislature interpreted from the bare text of the Finance Bill.

2. An useful reference for the above proposition can be made from the clarification issued by the CBDT vide its Circular No. 13 of 2021 dated 30/06/2021 (para 4.2.2) in the context of Sec. 194Q which was made effective from 01/07/2021. In this the CBDT had clarified that where either of the two events had happened before the effective date of the provision (i.e. 01/07/2021), that transaction would not be subjected to the provision of Sec. 194Q of the Act.

TDS Rate

Under Section 194T, the rate of TDS applicable on payments made by partnership firm to their partners is 10%. This rate is consistent with the TDS rates applicable to other types of payments, such as payments made to contractors or professionals.

Threshold Limit

It is important to note that the threshold limit applies to the aggregate of all payments made to a partner, including remuneration, interest, commission, and bonuses. Even if a single payment does not exceed Rs. 20,000/-, TDS must be deducted if the total payments to the partner for the year exceed the threshold.

What if total payments exceed the Threshold?

If the total payments made to a partner in a financial year exceeds Rs. 20,000/- threshold, the partnership firm must deduct TDS at the rate of 10% on the entire amount. For example, if a firm pays a

partner Rs. 50,000/- in a year, it must deduct TDS of Rs. 5,000 (10% of Rs. 50,000/-).

When to make TDS?

Partnership firms must make TDS at the time of making payment to the partner or at the time of crediting the partner's account, whichever is earlier. This means that even if the payment is not physically made to the partner, but the amount is credited to their account in the firm's books, TDS must be deducted.

Timing of TDS Deduction

The timing of TDS deduction is crucial for compliance. Under Section 194T, TDS must be deducted at the earlier of the following two events:

1. Payment of remuneration, interest, commission, or bonus to the partner.
2. Credit of such amounts to the partner's account in the firm's books.

For example, if a firm credits a partner's account with Rs. 75,000/- as remuneration on March 31, 2025, but the actual payment is made on May 10, 2025, TDS must be deducted at the time of crediting the partner's account, i.e., on March 31, 2025.

Conclusion :

Section 194T is a pivotal amendment in the Income Tax Act, aimed at improving tax compliance and broadening the tax base. While it brings about additional compliance requirements and potential liquidity challenges for firms and their partners, it also ensures that income is appropriately taxed at source. Firms need to prepare for this change by setting up adequate systems and processes, obtaining TAN, and ensuring timely TDS deductions and deposits. The administrative load of adhering to section 194T could be influential for small firms. They are required to invest in systems and manpower to manage the additional compliance needs.

**Keep your face always toward
the sunshine and shadows will
fall behind you.**

Insertion of Section 194T

R.W. Section 40(b)(v) of the IT Act: Erosion of simplification....



CA Mitish S. Modi

B.Com (Gold Medalist) LL.B, F.C.A.
Past Chairman – AIFTP (WZ)
Past Chairman –WIRC (Surat Branch)

Section 194T: Statutory Provisions :

Section 194T has been inserted under Chapter VII-B of the Income Tax Act by the Finance (No.2) Act, 2024 w.e.f. 01-04-2025 i.e. from the Asstt.Year: 2025-26 and onwards. The newly inserted provisions of Section 194T of the Act provides for the TDS on payment of salary, remuneration, interest, bonus or commission by partnership firm to its partners. The provisions of Section 194T reads as under:

(1) Any person, being a firm, responsible for paying any sum in the nature of salary, remuneration, commission, bonus or interest to a partner of the firm, shall, at the time of credit of such sum to the account of the partner (including the capital account) or at the time of payment thereof, whichever is earlier shall, deduct income-tax thereon at the rate of ten per cent.

(2) No deduction shall be made under sub-section (1) were such sum or the aggregate of such sums credited or paid or likely to be credited or paid to the partner of the firm does not exceed twenty thousand rupees during the financial year.

On close reading of the Statutory Provisions of Section 194T of the Act, it would be very much clear that payment to partner or to the working partner such as salary, remuneration, commission, bonus or interest may be credited either to the account of the partner including the capital account of the partner will have to be aggregated for the purposes of threshold limit of Rs. 20,000/- during the financial year.

Amendment to the provisions of Section 40(b)(v):

At this juncture, one has to see the limit of aggregate amount of remuneration paid to the working partner/partners (as defined in Explanation 4) as provided under Clause (v) of Sub Section (b) of Section 40 of the Act. The Finance (No.2) Act, 2024 has increased the limit of "remuneration" to the working partner/partners w.e.f. 01-04-2025 i.e. from the Asstt.Year: 2025-26 and onwards. The amended provisions of the increased limit of "remuneration" to the working partner/partners authorized by or in accordance with the terms of the partnership deed, are summarized as under:

| | | |
|-----|--|--|
| (a) | <i>On the first Rs. 600000 of the book profit or in case of a loss</i> | <i>Rs. 3,00,000 or at the rate of 90 per cent of the book profit, whichever is more.</i> |
| (b) | <i>On the balance of the book profit</i> | <i>at the rate of 60 per cent.</i> |

Thus, in effect, the threshold limit of "book profit" (as defined by Explanation 3 to Sec. 40(b)(v)) of Rs. 3,00,000 has been increased to Rs. 6,00,000 for the allowance of the "remuneration" and simultaneously, the threshold limit of allowable remuneration to working partner/partners has been increased from Rs. 1,50,000 to Rs. 3,00,000. Meaning thereby, from the Asstt.Year: 2025-26 and onwards, even in the case of loss or negative income, the partnership firm is entitled to the deduction towards the "remuneration" to the working partner/partners for the amount of Rs. 3,00,000 (which was earlier at Rs. 1,50,000) as business expenditure u/s 37(1) of the Act.

Obligation under the law upon the payer partnership firms:

Pursuance to the newly inserted Section 194T of the Act, the partnership firm has to deduct tax from the payment made to partner for the aggregate amount of Rs. 20,000 or more by way of salary, remuneration, commission, bonus or interest to such partner's account including the capital account. Apparently, the limit of Rs. 20,000 for TDS purposes is very much on lower side or a very meager amount and

therefore, almost in the cases of all the partnership firms making payment such as salary, remuneration, commission, bonus or interest to its partners will be covered by this TDS provisions and resultantly, the firm has to comply with the deduction at the rate of 10% and payment of the same the Government on or before the time limit prescribed time under the relevant provisions of the law. Otherwise, the payer partnership firm will be treated as the assessee deemed to be in default.

Applicability of the provisions of Section 40(a)(ia) of the Act :

On perusal of the statutory provisions of Section 40(a)(ia) of the Act, one will find that the deduction of payments made by any assessee to a resident, claimed as deduction in computing the income chargeable under the head “Profits and Gains of Business or Profession”, on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or after deduction has not been paid on or before the due date specified u/s 139(1) of the Act will not be allowed fully as business expenditure u/s 37(1) of the Act. Section 40(a)(ia) of the Act, having the overriding effect (in so far as the deductions claimed under sections 30 to 38), further provides for disallowance of 30% such sum payable to the resident in case of failure to deduct the tax or after deduction failure to paid in the Government Treasury on or before the due date specified in Sub Section (1) of Section 139 of the Act. However, the payments made by the assessee to non-resident are not covered in so far as the applicability of the provisions of Section 40(a)(ia) are concerned.

Genuine difficulties/hardships to the partnership firms :

There are practical difficulties for the partnership firms, particularly for the small partnership firms, to comply with the TDS provisions u/s 194T of the Act. Looking to the existing business practices and accounting policies adopted in day to day business functioning by the partnership firms, the following situations may arise:

- i) An eligible working partner of the firm may or may not be paid remuneration monthly or on a regular basis
- ii) Many partnership firms have developed the practice to allow the working partner or partners for monthly withdrawals of certain amount and at the end of the relevant financial year, when the “book profit” determined (as per the definition contained in Explanation 3 to Section 40(b)(v) of the Act), the remuneration has been credited to the account of the working partners and for that purposes, the necessary entries in the books of accounts has to be passed.
- iii) Many partnership firms are maintaining two types of accounts of their partners: firstly, Partner's Current A/c and secondly, Partner's Permanent Capital A/c. There are situations that at the end of the financial year, on the basis of the book profit computed, the withdrawals made by the working partner regularly throughout the year, will be booked as remuneration to the working partners fully or in part and accordingly, the books of accounts finalized.

In the above exemplary instances, the new area of litigation may arise to the extent that the AO may treat the withdrawals made by the working partner /partners regularly debited to such partner's Current A/c as salary/remuneration and if, it is Rs. 20,000 or more during the relevant financial year, the AO may invoke the provisions of Section 40(a)(ia) of the Act for making disallowance to the extent of 30% of the amount of salary or remuneration. To be more precise, as per the provisions of Section 200 of the Act, the partnership firm is under the legal obligation not only to deduct the tax at source, but the same has to be deposited with the Government within seven days from the end of the month in which, the sum is deducted or in exception, in the case of month of March, the tax is required to be deposited by 30th April. The Income Tax Act provides that “at the end of the financial year i.e. 31st March” in so far as the

remuneration payable to a working partner, but in practice, the sum of remuneration could not be quantified on 31st March, but finalization of the books of accounts may be done even after 30th April. In nutshell, the “book profit” could not be finalized or determined or quantified even by 30th April and therefore, in my opinion, the partnership firms are not in a position to comply with the TDS provisions u/s 194T of the Act and may be penalized for penal interest and other consequences under the law because newly inserted provisions of 194T of the Act provides for the incidence of TDS “**at the time of credit of such sum to the account of the partner (including the Capital A/c) or at the time of payment thereof, whichever is earlier**”.

It is pertinent to see the effect of Section 194A r.w. 194T of the Act. Section 194A of the Act provides for TDS on payment of interest, without any relaxation/exception to the partnership firm as available to the Individual and HUF. Therefore, even the partnership firms, not required to get its books of accounts audited u/s 44AB of the Act are now required to observe the provisions of TDS u/s 194T of the Act for the payment of salary or remuneration or bonus or commission to the partner or working partners.

It is therefore, advisable to make appropriate modifications or amendments to relevant clauses of the Deed of Partnership in so far as the payments of remuneration to the working partners as well payments made as commission, bonus or interest to the partners are concerned and for that, Supplementary Partnership Deed be prepared / registered and advisable to be submitted along with the return of income filed or on or before the conclusion of the assessment proceedings, if any.

Remedial Provisions :

In view of the second proviso below Clause (ia) (inserted by the Finance Act, 2012 w.e.f. 01-04-2013), where an assessee fails to make TDS for the whole or in part, but the assessee proves that the payee concerned has furnished his return of income u/s 139, taking into account such sum (for which, the assessee has been treated as deemed to be an assessee in default u/s 201(1)) and has paid the tax due on such income and for that, furnishes a certificate to this effect from an accountant defined u/s 288(2) of the Act, then the assessee will not be treated as the assessee in default and the sum being claimed as the business expenditure is fully allowable u/s 37(1) of the Act. For the purposes of remedial solutions from not being treated as the assessee in default, the beneficiary provisions contained in first proviso to Section 201(1) read with Rule 31ACB (Form 26A) (inserted by the Finance Act, 2012 w.e.f. 01-07-2012) can be resorted to by the partnership firms in the eventuality of adverse inferences drawn by the AO for disallowance of the specified payment made to the partner/partners on which, partnership firm fails to make TDS or after making TDS fails to deposit the same with the Government. The recent judgment of the **Hon'ble High Court of Delhi in Pr. CIT Vs. Shivaai Industries Pvt. Ltd. (2024) 470 ITR 564 (Delhi) may be referred. Notably, the appeal filed by the Revenue has been dismissed by the Supreme Court (2024) 470 ITR 566 (SC).**

The small partnership firms are still in hope that the Government will redress this genuine difficulties in making compliance to the TDS provisions.

“जीवन में अपने लक्ष्य के लिए दृढ़ संकल्पित होना आवश्यक होता है, इसी से मानव सफलता पाता है।”

Navigating Buyback Taxation : Impact of the 2024 Amendment on cross border transactions



CA Rushi Shah

Just as individuals experience ups and downs in life, companies, being legal entities, also go through various phases during their lifecycle. From conceptualization to incorporation, and raising funds through multiple modes, a company matures until it reaches a stage of stable sales and profit. When a company begins to meet its funding needs through internal accruals, stakeholders expect to receive rewards for their continued support and association with the company.

Traditionally, a company shares its profits with shareholders in the form of dividends. However, the tax implications of dividend distribution can lead to double taxation. Firstly, the company's business profits are taxed, and secondly, these post-tax

profits, when distributed as dividends, are taxed again in the hands of shareholders. Dividend income is taxable at the applicable slab rates, which can reach as high as 35.88% (30% basic tax, 15% surcharge, and 4% cess) for individual shareholders. This dual-layer of taxation often creates obstacles in the seamless distribution of profits from the company to its shareholders.

| Particulars | Amount |
|---|--------|
| Profit before tax in the hands of Company | 100 |
| Tax in the hands of domestic company at 25% | 25 |
| Profit after tax in the hands of Company | 75 |
| Tax on dividend received by individual shareholder ¹ | 26.91 |
| Profit after tax in the hands of individual shareholder | 48.09 |

Thus, commercial profit earned by a company reaches to an individual shareholder less than a half. Alternatively, the company may explore other options such as capital reduction, buyback, etc. and till September 30, 2024, the buyback has been most popular alternative (specially, IT companies and start-up companies) to reward the shareholders and transfer excessive funds back to the shareholders. This option was not tax effective but also improving various financial parameters such as Earnings Per Share (EPS), Return on capital employed (ROCE), etc., leading to stronger balance sheet and profitability ratios. The buyback route also allows the startups to allow exit of investors from the funds of company itself.

Concept of Buyback under the Companies Act, 2013

As per section 67 of the Companies Act, 2013, a company cannot purchase its own shares except through buyback under section 68. As per section 68 of the Companies Act, 2013, a company can purchase its fully paid-up shares. The Company can purchase its own shares or specified securities out of free reserve, securities premium account or proceeds of issue of any share or specified securities. However, buyback of any kind of shares or other specified securities out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities is restricted. A company can undertake buyback to the extent of 25% of the paid-up equity capital and free reserves. The company needs to maintain debt-equity ratio of 2:1 post buyback.

A Company can undertake buyback through two routes: (i) tender route and (ii) from open market. The open market route can be explored by a listed company through direct purchase from open market. In case of buyback through tender route, the company can declare the buyback price and invite tender from the interested shareholders to participate in the buyback process. The Company can also purchase the specified securities issued to the employees pursuant to scheme of stock option or sweat equity.

The company shall be liable to destroy the shares accepted by the company within a period of 7 days of the last date of completion of the buyback. The Company shall not be entitled to issue the same kind of shares or other securities within a period of six months except by way of a bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

Tax consequences for buyback undertaken before 30 September 2024

As per the provisions of the Income-tax Act, 1961 ('the Act'), the Company undertaking buyback is liable to pay 23.92% on the 'distributed income'. The distributed income is defined as consideration paid by the company on buy-back of shares as reduced by the amount, which was received by the company for issue of such shares. Rule 40BB of the Income-tax Rules, 1962 clarifies determination of amount received in various cases such as bonus shares, shares issued pursuant to amalgamation or demerger, etc.

The amount received by the shareholder on buyback is exempt under section 10(34A) of the Act. Accordingly, the non-resident taxpayers are not liable to any tax consequences in India. However, the tax consequences in the resident country depends upon applicable domestic tax laws.

Tax consequences for buyback undertaken on or after 1 October 2024

The legislature has shuffled the taxability of the buyback transactions undertaken on or after 1 October 2024. As per the Finance (No. 2) Act, 2024, the buyback shall bear following tax consequences on or after 1 October 2024:

- ◆ The amount received by the shareholders on buyback shall be treated as 'dividend' income;
- ◆ The company undertaking buyback shall be responsible to deduct taxes at source under section 194 at the rate of 10% (in case of resident shareholder) and applicable tax rate in the case of non-resident shareholder;
- ◆ The shareholder shall be allowed a capital loss to the extent of cost of acquisition;

◆ The nature of capital loss (short term v. long term) would depend upon the period of holding

The comparative analysis of the provisions is encapsulated in following table:

| Particulars | Before September 30, 2024 | On or after October 1, 2024 |
|---|------------------------------|---|
| Taxability in the hands of the company | 23.92% on distributed income | No tax liability |
| Withholding obligation in the hands of the company | No withholding requirement | TDS at 10% (in case of resident shareholder) and at applicable tax rate (in the case of non-resident shareholder) |
| Capital gain implications in the hands of the shareholder | Exempt | The capital loss shall be allowed in the computation of total income to the extent of cost of acquisition |
| Dividend implications in the hands of the shareholder | Exempt | Taxable at applicable tax rate |

The amendment to Section 2(22)(f) has sparked debates within the tax community due to its departure from traditional interpretations of dividend income. Unlike other clauses in Section 2(22), which link taxability to accumulated profits, Section 2(22)(f) does not impose this requirement, leading to confusion about whether buyback proceeds can be treated as dividend income even in the absence of accumulated reserves.

Similarly, the Supreme Court in the case of **CIT v. G Narsimhan** ruled that when taxing income under sections 2(22)(a) to 2(22)(e), the balance of accumulated profits must be adjusted. For example, if a closely-held company has accumulated profits of 10,00,000 as of October 1, 2024, and lends 8,00,000 to a shareholder on October 2, 2024 (taxable under section 2(22)(e)), the remaining accumulated profit is 2,00,000 (10,00,000 - 8,00,000). If the company then reduces its capital by 5,00,000, the taxable amount for the shareholders under section 2(22)(d) would be the lower of the remaining profits (2,00,000) or the capital reduction amount, which is 2,00,000.

In contrast, section 2(22)(f) does not require the buyback income to be linked to the accumulated profits, which might lead the tax authorities to challenge this approach. However, it is a well-established principle that the same income cannot be taxed twice, similarly notional income cannot be taxed unless it is specifically provided under the Act. Hence, it

may be argued that the taxation of the transactions falling under section 2(22)(a) to (h) should not exceed the balance of accumulated profits.

Taxation of buyback of shares of foreign company held by a resident (Outbound investment)

Section 2(22)(f) classifies “any payment by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 68 of the Companies Act, 2013 (18 of 2013)” as dividend income. Since section 2(22)(f) covers only buyback undertaken pursuant to section 68 of the Companies Act, 2013, the buyback undertaken by the foreign company pursuant to domestic corporate law would not be covered within the scope of section 2(22)(f). Such buyback transactions would be treated as 'capital gain' arising from transfer of capital asset, in the hands of resident shareholder. The classification of the shares as short term or long term assets would determine the tax consequences in the hands of the shareholder.

If the capital gains are taxable in the country where the income originates, shareholders may be able to use the benefits of tax treaties to reduce their tax liability. Any taxes paid in the source country can typically be claimed as a foreign tax credit against taxes due in India. Additionally, it's important to ensure that the buyback price of foreign shares complies with the Foreign Exchange Management Act (FEMA), 1999, and its related regulations.

Taxation of buyback of shares of Indian company held by a non-resident (Inbound investment)

Cross border taxation of a non-resident depends upon the domestic tax provisions of the residence country, source country and double tax avoidance agreement between the residence and source country. While the source country may impose tax under its domestic tax law, the tax relief pursuant to the double tax avoidance agreement would depend upon classification of income, taxation of each class of income, method of elimination of double taxation, etc.

Generally, the capital gain income is governed by Article 13 of the respective treaty dealing with alienation of capital assets, whereas Article 10 deals with dividend income. Article 10 generally defines the term 'dividend'. The scope of dividend income would depend upon the language of respective tax treaty. For an illustration,

| Treaty | Definition of the 'Dividend' income | Comments |
|--------------------|--|--|
| India - Australia | The term "dividends" in this Article means income from shares and other income which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident for the purposes of its tax. | The definition includes 'other income' which are treated as dividend under the domestic law of source country. Since the term 'income' is generally not defined under the treaty, the definition under section 2(24) would be relevant, which includes notional dividend under section 2(22). |
| India- USA | The term "dividends" as used in this Article means income from shares or other rights , not being debt-claims, participating in profits, income from other corporate rights which are subjected to the same taxation treatment as income from shares by the taxation laws of the State of which the company making the distribution is a resident ; and income from arrangements , including debt obligations, carrying the right to participate in profits, to the extent so characterized under the laws of the Contracting State in which the income arises. | Definition includes other rights or other corporate rights or arrangements subject to tax treatment similar to dividend under the domestic laws of source country. The buyback consideration may fit into income from 'arrangement'. However, it leads to conflict of classification between income from arrangement or capital gain arising from alienation of shares. |
| India-UAE | The term "dividends" as used in this Article means income from shares of other rights , not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident. | Definition includes income from other rights or income from corporate rights subject to tax treatment similar to dividend under the domestic laws of source country. |
| India- UK | The term "dividends" as used in this Article means income from shares, or other rights , not being debt-claims, participating in profits, as well as any other item which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident. | However, it leads to a question whether the buyback consideration can be regarded as income from other rights or corporate rights, or capital gain arising from alienation of shares? The definition includes income from other rights or any other item subject to tax treatment similar to dividend under the domestic laws of source country. While the expression 'other item' can be interpreted wide enough to cover the buyback transaction, it leads to a conflict of classification as dividend income or capital gain arising from alienation of shares? |
| India- Netherlands | The term "dividend" as used in this Article means income from shares , "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights participating in profits , as well as income from debt-claims participating in profits and income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident. | The definition includes income from other corporate rights subject to tax treatment similar to dividend under the domestic laws of source country. However, it leads to a question whether the buyback consideration can be regarded as income from corporate rights or capital gain arising from alienation of shares? |

If the buyback transaction is characterized as dividend income under the treaty, it may lead to tax rate at the lower rate of 5%/10% under the tax treaty. This has effect of reducing effective tax cost of the non-resident shareholder.

For an illustration, the tax cost of the buyback consideration paid to a non-resident shareholder would be as under:

| Particulars | Before 30 September 2024 | On or after 1 October 2024 |
|---|--------------------------|----------------------------|
| Profit after tax of an Indian company | 100 | 100 |
| Tax on distributed income ¹ under section 115QA | 19.30 | 0 |
| Profits available to the non -resident shareholder | 80.70 | 100 |
| Taxability in the hands of the non -resident shareholder in India | 0 | 5 ²³ |
| Disposable income in the hands of the non -resident shareholder | 80.70 | 95 |

Thus, the above calculation suggests that the amendment has effect of reducing the tax cost of non-resident shareholders. The amended provisions ease the tax cost of repatriation of profits from India.

Another issue may emerge with respect to deductibility of capital loss arising from buyback transaction. As per section 46A of the Act, the cost of acquisition of shares is allowed as capital loss. The department may contend that if the non-resident shareholder is not liable to pay taxes on capital gain income in the source country, then set off of capital loss arising from buyback transaction should not be allowed as set off. However, section 90(2) of the Act allows the

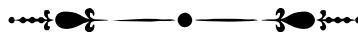
taxpayer to adopt the provisions of the treaty to the extent more beneficial. Hence, the taxpayer may follow the domestic provisions to claim set off against the capital gain income. This would lead to a situation, where the non-resident shareholder may avail the treaty benefit for dividend income but opts to apply the domestic tax provisions for the capital loss. As contrast to normal dividend, the buyback route will allow the non-resident shareholders to generate capital loss to be set off against other capital gain income in India.

Pertinent to note that the buyback of shares held by non-resident shareholders shall be subject to pricing regulations under FEMA Act and applicable rules and regulations.

Conclusion

While the amended tax provisions may appear burdensome for the resident shareholders, however, the buyback of shares held by non-resident shareholders is sweetened. Careful evaluation of the existing shareholding pattern, treaty network, etc. throws opportunity of tax optimization.

Success is focusing the full power of all you are on what you have a burning desire to achieve



“समस्याओं के समाधान खोजने वाला व्यक्ति ही सफलताओं की सत्ता प्राप्त करता है।”

Few Essential Tools For Tax Professionals Improve Efficiency & Accuracy



CA Shridhar Shah

In today's fast-paced digital world, tax professionals need to rely on a variety of tools to manage data, ensure accuracy, and save time. The right tools can simplify complex tasks especially balancing the task of communication and staying organized with focused at work all the times.

In this article, an attempt is made to cover few of the tools with an outline where you can improve your productivity. Many of the readers might be using these tools but if any of the suggestions make you google search (yes, it is search and not google) for further information, do not hesitate and do it in priority.

Let us have a small ride.

1. MICROSOFT EXCEL: THE OXYGEN OF TAX PROFESSIONAL

Microsoft Excel is an industry-standard tool for tax professionals. It is widely used for everything from basic calculations to complex financial analysis. Excel's ability to handle large data, along with its built-in excellent formulas, pivot tables and much more functionalities, makes it indispensable for professionals for their day-to-day life.

Key Features for Tax Professionals:

Formulas: Excel's pre-built formulas like –

1. **SUMIFS** (to get sum of a specific input from entire database like purchase or sales register or cash / bank book or stock statement)

2. **IF** (with nested IF formula to add multiple conditions e.g., nature of transaction or even build simple tax calculator)

3. **VLOOKUP, HLOOKUP & XLOOKUP** (for lookup of a value against given value from another table like value against an invoice number from sales or purchase register)

4. **PROPER** (to proper capitalization of the text from irregular capital letters or all caps letter)

5. **UPPER** (to convert the text in all capital letters from irregular capital letters or small caps letter)

6. **CONCATENATE** (to join string of long texts so

that even management representation letter can be prepared in excel taking values directly from balance sheet / profit & loss account / schedules)

7. **TEXT** (to use date format or number format as text for most of the importing templates for software useful for regular importing capital gain or TDS)

8. **ROUND** (to round off the figures)

9. **ABS** (to get absolute value while preparing turnover from the reports for futures and options or intraday)

10. **MONTH** (to find a month from the transaction date)

Pivot Tables : Summarize large amounts of data quickly. This is useful when preparing so many reports e.g., GSTIN wise comparison of GSTR 2B v/s books or calculation of applicability of TDS u/s 194Q from a purchase register. Sky is limit with use of pivot tables. It can be used for so many cases and it makes calculations very easy. With hands on with modification in tables and pre-prepared templates, one can reduce mistakes and automate the work at a single click.

Conditional Formatting : Highlight key data like abnormal expenses or odd figures or duplicate data. For example, any amount over 10,000 could be marked in red to easily identify significant transactions.

2. GOOGLE SHEETS: CLOUD-BASED SOLUTION FOR YOUR EXCEL NEEDS

Google Sheets is similar to Excel but has the

advantage of cloud storage and real-time collaboration. Multiple people can work on the same document simultaneously, making it ideal for teams of tax professionals or for sharing data with clients or even maintaining our ID password file and return filing trackers which keeps updated regularly and used by team.

Key Features for Tax Professionals:

Real-Time Collaboration: Allows multiple users to edit the same sheet, which is very useful. Also, it saves previous versions so any mistakes can be rectified with review the changes. It can be shared with multiple users with rights management like view only or edit rights.

Example: All team members can use GST returns ID Password file, with view only rights, they will not be able to change data. With shared document with edit rights, each member can update tracker simultaneously and even can see the outstanding work in graphical format too.

Automatic Saving: All changes are automatically saved to Google Drive, reducing the risk of losing important tax data.

Integration with Google Forms: You can create client intake forms in Google Forms and link them directly to Google Sheets. This is useful for collecting client information or creation of client master when onboarding client like PAN, Aadhar, Mobile Number, e-mail ID, GSTIN etc. & even attachments like PAN copy & GST Certificate.

3. GOOGLE KEEP: QUICK NOTE-TAKING AND BASIC TASK MANAGEMENT TOOL

Tax professionals often juggle multiple tasks, from client meetings to tax filing deadlines. Google Keep is a lightweight note-taking app that helps you quickly jot down reminders, to-do lists, or any fleeting thoughts.

Key Features for Tax Professionals:

Task Lists: Create task lists with checkboxes for each client. For example, you can make a list of tasks for filing income tax returns:

- Collect Form 16
- Verify bank details
- Calculate tax due

Labelling and Colour-Coding: Keep your notes organized by labelling them by client or task. You can also assign colour code the notes (e.g., red for urgent tasks).

Voice Notes: If you are in a rush or even driving, you can record voice notes directly into the app, which is handy for busy professionals.

4. ADOBE ACROBAT READER & PRO: MANAGING AND EDITING PDF DOCUMENTS

Most tax-related documents, like invoices, GST returns, and financial statements, are shared in PDF format. Adobe Acrobat is essential tool for all tax professionals. There are many PDF readers available but for few statutory needs like MCA, Adobe is must.

Adobe Reader is free and used for viewing and managing PDF files, applying digital signatures, adding notes and comments in a PDF document, managing versionsetc. Adobe Acrobat Pro is used to edit PDF, create PDF forms, merge PDF files, size reduction of PDF, OCR reading from scanned documents and convert PDF to Word, Excel or Image file, password protect file from viewing or editing or printing etc.

Key Features for Tax Professionals:

Viewing and Annotating PDFs: You can open any PDF document and add comments or highlights. This is useful when reviewing a client's financial documents or a notice from the tax department.e.g., If you receive a tax notice in PDF format, you can highlight the important points and add comments for future reference.

Fillable Forms: Many forms come in fillable PDF formats. Acrobat Reader allows you to directly input data into these forms without the need for printing and scanning.

PDF Merging and Splitting: You can combine multiple documents into one PDF file or split a large PDF into smaller sections or even reduce the PDF size for uploading on portals with limitation of size in uploading a document.

5. GOOGLE DRIVE: SIMPLE AND SECURE CLOUD STORAGE

With tax season comes a lot of documentation—financial statements, supporting documents, calculations, and workings. Google Drive is a secure cloud storage platform where you can store these documents, ensuring they are safe and accessible from anywhere.

Key Features for Tax Professionals:

Storage& Backup: Each Google account comes with 15 GB of free storage which can be bought for a small amount, where you can organize documents as per your need. Entire hard disk or a folder or set of folders can be set for real time synchronization. A backup which can be accessed anytime from anywhere helping out to execute virtual office

Sharing and Permissions: You can share documents with clients or team members, giving them viewing or editing rights. For example, you can share a folder containing a client's tax documents with read-only access through a link or sharing with specific mail ID.

6. MICROSOFT OUTLOOK: OFFLINE EMAIL MANAGEMENT

Tax professionals widely use outlook to manage client communication. One of its key benefits is its offline functionality, which allows you to manage your emails even without an internet connection.

Key Features for Tax Professionals:

Offline Access: Outlook allows you to read, compose, and organize emails even when offline. This is useful during travel or when the internet is unreliable. e.g., If you're traveling to a client's office and lose internet access or even using mail in flight, you can still draft responses to emails and manage your inbox, and once you're back online, Outlook will send everything.

Organizing Emails by Client / Nature: You can create separate folders for each client or even type of communication, ensuring that important tax-related emails are never missed.

7. CHATGPT AND AI TOOLS: MASTER THE ART OF DRAFTING WITH EASE

AI tools like ChatGPT have revolutionized the way tax professionals work by automating many tasks. From drafting emails to answering common tax-related queries, AI can significantly boost your productivity.

Key Features for Tax Professionals:

Quick Research: ChatGPT can provide detailed information on tax laws, compliance regulations, and deadlines. For example, if you need quick clarification on Section 80C deductions, AI can provide the answers instantly.

Drafting Emails and Reports: AI can assist in creating professional client communication or drafting response to a notice or even drafting reminder mails.

Create Notes: ChatGPT can create a brief note from a document or a long report with proper inputs and prompts.

8. GMAIL: TRICKS FOR EFFICIENT COMMUNICATION

Gmail offers several features that can streamline and ease communication. It might need a series of articles but due to limitation of space, sharing only three key features which can help for efficient communication.

Key Features for Tax Professionals:

Scheduled Emails: If you need to remind a client about an upcoming deadline but do not want to send the email right away, you can schedule it for a later date. This is useful for setting reminders for due dates to clients or sending payment due notices in advance.

Read Receipts: This feature lets you know when a client has opened your email, giving you peace of mind that they have received important communication. E.g., When sending out a response to tax notice or working, enable read receipt to confirm the client has opened and seen the message.

Templates: You can save frequently used responses as templates in Gmail. For example, if you often send out similar reminders about upcoming tax deadlines or document requests, you can create a template to save time.

CONCLUSION

With the right tools deployed at the right time and for right purpose, tax professionals can work more efficiently, reduce errors, and provide better service to their clients and at the same time reduce load of repeated tasks.

Incorporating these tools into your daily workflow will not only improve your productivity but also ensure that you stay ahead in this competitive field with maintaining work life balance by sparing some time from repeated tasks and error findings.







Fueling the Future with Kotyark Industries Ltd.

Biodiesel
for a
Sustainable
Tomorrow.



INDIA'S ONLY LISTED PURE PLAY BIODIESEL COMPANY

Join us to learn more about our sustainable energy solutions.

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