



Global Business Tax Alert

Sharp Insights

CBDT issues guidelines for waiver of interest charged in case of failure to deduct tax at source in select circumstances

Issue no: GBTA/29/2017

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Background

- If any person, who is required to deduct tax at source in accordance with the provisions of the Income-tax Act, 1961 ('the Act'), fails to do so, then a simple interest is required to be paid at the rate of 1% for every month or part of a month on the amount of such tax from the date on which such tax was deductible, to the date on which such tax is deducted.
- Currently, there are no provisions under the Act for waiver of the interest even in cases where there is a genuine reason for not deducting tax at source.
- The Central Board of Direct Taxes ('CBDT') has issued guidelines for waiver of interest and in that regard has given powers to the Chief Commissioner of Income-tax ('CCIT')/Director General of Income-tax ('DGIT') to reduce or waive the interest charged under section 201(1A)(i) of the Act in specified cases.

Guidelines for reduction/waiver of interest

- The CCIT/DGIT have been given powers to reduce or waive the interest charged under section 201(1A)(i) of the Act in certain specified cases for the period and to the extent the CCIT/DGIT may deem fit.
- The said relief may be granted only if the principal demand under section 200A, section 201(1) or section 234E of the Act as the case may be, has been fully paid or satisfactory arrangements have been made for the payment of the same.
- The CCIT/DGIT may also impose certain additional conditions for the reduction or waiver of interest as deemed fit.
- The Circular specifies the following class of cases in which reduction or waiver of interest under section 201(1A)(i) of the Act can be considered by the CCIT/DGIT:

- **In case of search and seizure**

During the course of search and seizure under section 132 of the Act, or otherwise, if the books of accounts and other documents necessary for making deduction of tax at source, were seized and thereby the taxpayer is not able to deduct tax at source from any sum credited to any account in his books of accounts.

- **Retrospective amendments or subsequent Supreme Court decisions**

In cases where the tax payer, relying on the decision of jurisdictional High Court, did not deduct tax at source on a particular amount, and subsequently, due to a retrospective amendment of law or a decision of the Supreme Court or a larger bench High Court, tax was held to be deductible or tax deducted was found to be less than the tax deductible on such amount.

- **Payments to non-residents**

Default is on account of non-deduction or a lower deduction of tax under section 195 of the Act in respect of payment made to non-residents with whom India has entered into a Double Taxation Avoidance Agreement ('DTAA') and where:

- A dispute regarding the tax payable in India has been referred to the Competent Authority in India under Mutual Agreement Procedure as per the said DTAA.

- Aforesaid reference has been received by the Competent Authority in India within 2 years of the date on which the notice of demand determining the tax payable was received by the person in default.
 - Dispute has been settled by way of a resolution arrived at under Mutual Agreement Procedure provided in the DTAA.
 - Tax payer has accepted the resolution and has withdrawn the appeal pending on the issue, within a period of 1 month of the date on which the resolution is communicated to him.
- In such situations, even if the interest is already paid by the deductor under section 201(1A)(i) of the Act, the same can still be considered for waiver and can be refunded, subject to the specified conditions being fulfilled.
 - The CCIT/DGIT is required to pass a speaking order in relation to the application for waiver of interest after providing adequate opportunity of being heard to the applicant.
 - Any grievance arising out of the order passed or not passed by the CCIT/DGIT can be examined by the CBDT, which shall then issue suitable directions to CCIT/DGIT for proper implementation of this order. CBDT shall not entertain any review of or appeal against the orders passed on merits.

Conclusion

The guidelines issued for waiver of interest under section 201(1A)(i) of the Act is a welcome move by the CBDT which may provide some relief to tax payers who could not deduct tax at source due to genuine reasons.

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Contacts

Ahmedabad

19th Floor, Shapath - V
SG Highway,
Ahmedabad – 380 015.
Tel: + 91 (079) 6682 7300
Fax: + 91 (079) 6682 7400

Coimbatore

Shanmugha Manram
41, Race Course,
Coimbatore
Tamil Nadu - 641018
Tel: + 91 (0422) 439 2801
Fax: +91 (0422) 222 3615

Kolkata

Bengal Intelligent Park Building
Alpha, 1st floor, Block EP and GP
Sector V, Salt Lake Electronics
Complex,
Kolkata - 700 091.
Tel : + 91 (033) 6612 1000
Fax : + 91 (033) 6612 1001

Bangalore

Deloitte Centre, Anchorage II,
100/2, Richmond Road,
Bangalore 560 025.
Tel: +91 (080) 6627 6000
Fax: +91 (080) 6627 6010

Delhi/Gurgaon

Building 10,
Tower B, 7th Floor,
DLF Cyber City,
Gurgaon 122 002
Tel : +91 (0124) 679 2000
Fax : + 91 (0124) 679 2012

Mumbai

Indiabulls Finance Centre,
Tower 3, 28th Floor,
Elphinstone Mill Compound,
Senapati Bapat Marg, Elphinstone
(W),
Mumbai – 400013
Tel: + 91 (022) 6185 4000
Fax: + 91 (022) 6185 4101

Chennai

No.52, Venkatanarayana Road,
7th Floor, ASV N Ramana Tower,
T-Nagar,
Chennai 600 017.
Tel: +91 (044) 6688 5000
Fax: +91 (044) 6688 5050

Hyderabad

1-8-384 and 385, 3rd Floor,
Gowra Grand S.P.Road,
Begumpet,
Secunderabad – 500 003.
Tel: +91 (040) 6603 2600
Fax: +91 (040) 6603 2714

Pune

106, B-Wing, 7th Floor,
ICC Trade Tower,
Senapati Bapat Road,
Pune – 411 016.
Tel: + 91 (020) 6624 4600
Fax: +91 (020) 6624 4605



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