

Global Tax Update

India

Deloitte Tohmatsu Tax Co.

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1. High Court¹ rules² on powers of the central government to notify ICDS³ to ensure they do not override binding judicial precedents or provisions of the Act⁴

For corporate tax purposes in India, the Act⁵ provides that the taxable income of a taxpayer falling under the “Profits and Gains from Business and Profession” or “Income from Other Sources” heads shall be computed in accordance with either the cash or mercantile system of accounting, whichever is regularly employed by the taxpayer. The Act also empowers the central government⁶ to prescribe standards to be followed in computing such income.

Recently, the CBDT⁷ notified 10 ICDS, covering diverse items like Accounting Policies, Inventories, Revenue Recognition, Tangible Fixed Assets etc. The notified ICDS are applicable from tax year 2016-17 for the computation of income.

Various concerns were being raised by the taxpayers and associations as certain standards were not consistent with judicial precedents or the provisions of the Indian domestic tax law. In this regard, an association⁸ filed a writ petition before the High Court challenging the constitutional validity of the Act and standards.

The High Court in its recent judgment has struck down some ICDS’ and also few paragraphs from other ICDS’ as being ultra vires the provisions of the Act and/or in being contrary to the settled law as laid down by various decisions of the Supreme Court.

Please contact the experts to analyse the impact of the above judgment in your case as this is only a Judgment of a High Court of a state.

For more details please read the document below:
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2. Clarification⁹ on applicability of indirect transfer provisions in case of redemption of share or interest outside India

In 2012, the government had amended the domestic law retroactively to provide that gains from transfer of shares or interest in an entity outside India would be taxable in India if such share or interest derive their value (directly or indirectly) substantially from assets located in India. These provisions are popularly referred to as the “indirect transfer” provisions.

Concerns were raised by investments funds investing in India, including private equity funds and venture capital funds set-up as multi-tier investment structures, about multiple taxation¹⁰ of the same

1 Delhi High Court

2 The Chamber of Tax Consultants & ANR vs. Union of India & ORS [WP.(C) 5595/2017 & CM APL 23467/2017]

3 Income Computation and Disclosure Standards notified u/s. 145(2) of the Income-tax Act, 1961 vide Notification No. 87/2016 dated 29 September 2016

4 Income Tax Act, 1961

5 Section 145(2) of the Income-tax Act, 1961

6 These powers have been delegated to the Central Board of Direct Taxes

7 Central Board of Direct Taxes

8 the Chamber, a voluntary non-profit organisation with tax and legal professionals as its members,

9 Vide Circular No. 28/2017 dated 07 November 2017

10 This multiple taxation arises firstly at the level of the fund in India (on its business income / capital gain); and then at every upper level of investment in the fund chain on subsequent redemption or buy-back.

income at the time of redemption or buy-back outside India.

As per the amendment vide Finance Act 2017, Category I and Category II FPI were exempted from indirect transfer provisions.

The CBDT¹¹ has now clarified that indirect transfer provisions on redemption of shares or interest will not be applicable where:

- Share or interest held indirectly by a non-resident in specified funds, is redeemed in an upstream entity outside India wherein the redemption is consequent to transfer of shares or securities held in India by the specified funds; and
- Such income on transfer of shares/interest is chargeable to tax in India.

It has been further clarified that the above benefit shall be applicable only in cases where:

- The proceeds of redemption or buyback arising to the non-resident do not exceed the pro-rata share of the non-resident in the total consideration realized by the specified funds from the said transfer of shares or securities in India; and
- A non-resident investing directly in the specified funds shall continue to be taxed as per the extant provisions of the Income-tax, 1961 (Act).

3. Deemed Exports¹²

The Goods and Services Tax ('GST') law authorises the Government to notify certain supplies to be treated as Deemed Exports (supplies of goods which do not leave India and the payment for such supplies is received either in Indian rupees/ free foreign exchange). Accordingly, the Central Government has notified certain supplies to be considered as Deemed Supply transactions, subject to fulfilment of certain conditions. Following supply transactions shall be considered as deemed supply:

- Supply of goods by a registered person against Advance Authorisation
- Supply of capital goods by a registered person against Export Promotion Capital Goods ('EPCG') License
- Supply of goods by a registered person to Export Oriented Unit

- Supply of gold by a bank or Public Sector Undertaking¹³ against Advance Authorisation

4. Manual claim of GST Refund¹⁴

In the case of export of goods or services or both without payment of tax under bond or letter of undertaking, GST registrants were earlier required to file an application electronically in FORM GST RFD-01 to claim refund of input tax credit.

The government has allowed exporters to manually file before tax officers, claims for GST refunds as it looks to fast track clearance of dues. Thus, amendment is brought out in the GST Act and format of FORM GST RFD-01A has been prescribed to file such claim.

5. No Tax on advance received in case of supply of goods¹⁵

Earlier¹⁶, Government had abolished payment of GST on advance receipt for supply of goods for small dealers having annual aggregate turnover below INR 15 million.

However, the Notification is further amended and the relief is given to all the registered persons, irrespective of their annual aggregate turnover. Thus, Government has abolished payment of GST at time of advance received in case of supply of goods.

11 vide circular dated 7th November 2017

12 Notification Nos. 48/2017 & 49/2017 - Central Tax dated 18 October 2017

13 specified in Notification No. 50/2017-Customs, dated the 30 June 2017 (as amended)

14 Notification No. 55/2017 - Central Tax dated 15 November 2017

15 Notification No. 66/2017 - Central Tax dated - 15 November 2017

16 as per Notification No. 40/2017 Central Tax dated 13 October, 2017

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