DESAI SAKSENA & ASSOCIATES

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Friday Tax Alert

From:

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CBDT introduces Form No. 12BAA enabling employees to claim tax credit on non-salary income

Background
Section 192 of the Income Tax Act, 1961 ("the Act") provides for withholding of taxes on salary paid/ credited by the employer to its employees. Further, the said provisions also provide for an employee to declare income other than salary (including loss on house property) to the employer. However, incomes such as interest income, rental income, dividend income etc. earned by salaried taxpayers are subject to TDS/TCS provisions. Such non-salary income and TDS/TCS thereon may be deducted at different applicable rates. Hence, any adjustment (excess/shortfall) of taxes on the overall annual income was to be considered by taxpayers at the income-tax return filing stage.

However, **with effect from 1st October 2024**, the said provisions are amended in order to provide relief to salaried taxpayers by allowing consideration of TDS/TCS on non-salary income. The key highlights of this amendment are given below:

1. **Salaried individuals** can claim credit of **TDS/TCS suffered on non-salary income at the tax withholding stage** by declaring its particulars to the employer.
2. Employer should give credit of such TDS/TCS **while computing TDS on salary**.
3. This would ease the cash outflow issues for salaried individuals by **lowering their overall tax burden at the salary tax withholding stage itself**.

Notification No. 112/2024
In order to give effect to the aforementioned amendments, the CBDT has issued **Notification No. 112/2024** & notified **Form No. 12BAA** and also updated the particulars to be furnished by the employer in **Form No. 24Q** and **Form No. 16**.

Newly notified Form No. 12BAA (employee declaration)
1. Further, **Rule 26B** of the Income Tax Rules, 1962 has been amended to provide that in case of **employees having income other than salary, the same needs to be furnished to the employer through the newly notified Form 12BAA**. The employer would consider such details to compute TDS on salary.
2. Details such as the **name of deductor, amount of such other income, amount of tax deducted, etc.** need to be furnished in Form 12BAA by the employee.

Changes to Form 24Q (quarterly salary TDS return)
Form 24Q (Annexure II) has been updated to include reporting of TDS/TCS on non-salary income reported by employees.

Changes to Form 16 (annual salary certificate):
Form 16 - Part B (Annexure-I) has been updated to include details of TDS/TCS as per Form 12BAA. Thereby, the net tax payable on salary could be computed by employer.

DSA Comments
The introduction of Form 12BAA **simplifies the process of claiming tax credits for salaried individuals with multiple streams of income**. This also ensures **accurate TDS computation** at the salary tax withholding stage, reducing the need for employees to claim refunds (if any) later at the tax-return filing stage.

The amendments are timely considering the increased scope of TCS on foreign remittances and luxury purchases as outlined in the Finance Act, 2024. It also brings **additional compliance for employers** to

collate such details from their employees, suitable payroll process changes and readiness as well as appropriate reporting to the tax authorities.

Kolkata ITAT adjudicates that provision of corporate guarantee is an international transaction and restricts the corporate guarantee fees @ 0.50%; upholds retrospective applicability of ruling in case of Redington (India) Limited pronouncing that corporate guarantee falls within the ambit of international transaction

Facts of the case

Graphite India Limited (the taxpayer) is a public limited company that is engaged in the manufacturing and sale of calcined petroleum coke and graphite electrodes.

The taxpayer set up **two wholly owned subsidiaries** in the Netherlands and Germany [i.e., its Associated Enterprises (AEs)] for expansion of business. The **taxpayer provided a corporate guarantee** to its AEs against the working capital loans they availed. The taxpayer, in its own case for AY 2006-07, had **obtained relief from the jurisdictional Income Tax Appellate Tribunal (ITAT) that corporate guarantee was not to be considered as an international transaction** for the purposes of Section 92B of the Act.

In the course of the assessment proceedings, the matter was referred by the Assessing Officer (AO) to the Transfer Pricing Officer (TPO), who did not agree with the approach adopted by the taxpayer and opined that a **corporate guarantee fee @ 3% per annum, basis rates quoted by HSBC Bank, should be charged by the taxpayer as an arm's length price**.

The taxpayer preferred an appeal before the **Commissioner of Income Tax (Appeals) [CIT(A)], who relied on the taxpayer's own case and ruled that corporate guarantee was not an international transaction.** Aggrieved, the Revenue filed an appeal before the ITAT.

Observations of the Kolkata ITAT

1. The taxpayer relied upon the case law of the Hon'ble High Court of Madras in the case of *PCIT vs. M/s. Redington (India) Limited [T.C.A. Nos. 590 & 591 of 2019]* in its own earlier cases wherein **at that point in time, subsequent judgement at the higher appellate forum was not readily availab**le. However, an **order dated 10 December 2020 clearly concludes that corporate guarantee is an international transaction** and would need to be considered for arm's length pricing retrospectively.
2. Corporate guarantee fee offered by **commercial bank would be on the higher side** as compared to a corporate guarantee fee offered by a company to its subsidiaries or AEs. To justify the same, the Hon'ble ITAT relied upon the case of *M/s. Everest Kanto reported in 232 Taxman 307* by the **Hon'ble High Court of Bombay**, which has confirmed that **commission @ 0.50% should be charged as corporate guarantee fee**. Further, reliance has also been placed on several case laws restricting the fee @ 0.50%.

Decision of the Kolkata ITAT

Accordingly, the Hon'ble ITAT adjudicated that the transaction of **corporate guarantee provided by the taxpayer to its AEs shall be an international transaction**. However, the taxpayer was provided a **consequential relief by restricting the corporate guarantee fee @ 0.50% instead of 3%**.

[Graphite India Ltd [TS-458-ITAT-2024(Kol)-TP]

Bangalore ITAT: Adjudicates on application of upper turnover filter for exclusion of certain companies with high turnover failing upper turnover filter.

Facts of the case

Marvell India Private Limited (the taxpayer) is a subsidiary of Marvell Technology Group Limited located in Bermuda and is engaged in the provision of software development services to its AE for which it is compensated on a cost-plus basis.

In the course of the assessment proceedings, the matter was referred by the AO to the **TPO, who did not agree with the turnover filter adopted by the taxpayer** and opined that the following comparable entities having turnover of more than ₹ 200 crores should be considered in the final list of comparable entities:

1. Nihilent Limited;
2. Cybage Software Private Limited;
3. Mindtree Limited;
4. Larsen & Toubro Infotech Limited;
5. Infosys Limited;
6. Persistent Systems Limited;

The taxpayer filed objections before the Dispute Resolution Panel (DRP), which upheld the TPO's order. Aggrieved, the taxpayer filed an appeal before the Banglore ITAT.

Observations of the Banglore ITAT

The taxpayer relied upon its **own case law before the jurisdictional ITAT for Assessment Year (AY) 2015-16 in ITA No. 2577/Bang/2019**, wherein the TPO had himself rejected the companies making losses. This indicates that **TPO had applied a lower turnover limit**.

Further, the Hon'ble ITAT in the same case, referred to the **classification made by Dun & Bradstreet to be more suitable and reasonable for applying an upper turnover limit wherein companies which have a turnover of ₹ 1 crore to 200 crores only should be taken into consideration** for the purpose of making the transfer pricing study. This indicates that companies with turnovers of more than ₹ 200 crores are not comparable with the taxpayer and should be excluded as comparables.

Following established precedence, the Hon'ble ITAT, in the present year under consideration, adopted a **consistent approach given the similarity of facts**. The companies referenced in both, the AO order and the Tribunal's order are identical.

Decision of the Banglore ITAT

In accordance with this consistent methodology, the Hon'ble ITAT excluded the companies which were included by the TPO.

Accordingly, the Hon'ble ITAT adjudicated that the **upper turnover limit should be considered as a criterion for selecting the list of comparable companies**. In light of this, the Hon'ble ITAT **excluded the companies selected by the TPO and consequently, allowed the appeal filed by the taxpayer**.

[Marvell India Pvt Ltd [TS-439-ITAT- 2024(Bang)-TP]