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CHARTERED ACCOUNTANTS



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News Highlights



CBDT sets monetary limits for reduction or waiver of interest u/Sec. 220(2)

The CBDT Circular No. 15/2024, dated November 4, 2024, outlined the monetary limits for the reduction or waiver of interest under Section 220(2), subject to conditions in Section 220(2A).

The monetary limits for considering waivers are:

- Principal Chief Commissioner of Income Tax (Pr. CIT): Up to ₹50 lakhs
- Chief Commissioner of Income Tax/Director General of Income Tax (CCIT/DGIT): Between ₹50 lakhs and ₹1.5 crore
- Principal Chief Commissioner of Income Tax (Pr. CCIT): Above ₹1.5 crore.

CBDT condoned delay in filing income returns for deductions u/s 80P for AY 2023-24

The CBDT had received requests from co-operative societies for a deduction under Section 80P, seeking relief for delays in filing their income tax returns for the Assessment Year 2023-24. The delays are due to the time needed for auditing their accounts as required by state laws. To address these challenges, the CBDT has extended the applicability of Circular No. 13/2023 to the assessment year 2023-24, subject to the conditions specified in the circular.

CBDT issued notification amending Rule 31AA & Rule 37-I u/s 206C

The CBDT issued Notification No. 114/2024 on October 16, 2024, under Section 295 read with Section 206C of



the Income Tax Act, 1961. This notification amended Rule 31AA and Rule 37-I. The amended Rule 31AA requires sellers to submit a quarterly statement detailing the tax collected at source (TCS), while Rule 37-I outlines the provisions for granting credit for the TCS to the buyer. The notification will come into effect from the date of its publication in the Official Gazette.



Indian/Global Updates



Average tax revenues in the OECD remain steady as spending pressures grow

In 2023, the average tax-to-GDP ratio among OECD countries remained largely unchanged at 33.9%, slightly below 2021 and 2022 but above pre-pandemic levels. The ratio increased in 18 countries, decreased in 17, and remained steady in one. Luxembourg, Colombia, and Türkiye saw the largest increases, while Israel, Korea, and Chile experienced the largest declines. Tax-to-GDP ratios ranged from 17.7% in Mexico to 43.8% in France, with the gap between the highest and lowest ratios narrowing since 2019.

The report also highlights the growing use of health taxes (on alcohol, tobacco, and sugary drinks) across OECD countries, generating 0.7% of GDP on average in 2022, though these revenues have declined in proportion to GDP since 2000. Additionally, VAT revenues continued to rise, reaching 20.8% of total tax revenue in 2022. Many countries have adopted

measures to improve VAT collection, including digital reporting and solutions to collect VAT on e-commerce sales, ensuring a level playing field between online and physical businesses.



Transfer Pricing / B E P S



OECD releases information and statistics on Mutual Agreement Procedures and Advance Pricing Arrangements

During the 2023 OECD Tax Certainty Day in Athens, key updates on the Mutual Agreement Procedure (MAP) and Advance Pricing Arrangement (APA) were released. The 2023 MAP statistics cover 140 jurisdictions and highlight a 3.8% decrease in MAP cases, with a 16% drop in transfer pricing cases. Record numbers of cases were closed, but the average resolution time increased to 27.3 months. Notably, 52% of open MAP cases are under two years old, and 24% exceed four years, emphasizing the need for faster resolutions. The 2023 APA statistics, covering 46 jurisdictions, revealed over 4,000 cases in inventory and an average resolution time of 36.8 months. Several jurisdictions received awards for their efforts, including the Netherlands, Australia, Canada, France, and

Japan. Additionally, the OECD released the 2024 update of the Consolidated Information on MAP to enhance stakeholder awareness of the MAP framework across jurisdictions.



Issue of the month

Analysis of the methods for elimination of Double Taxation

Introduction

A country taxes the income of its taxpayers on the basis of two rules i.e. Residence rule and Source rule. However, where a taxpayer is a resident of one country and derives its income from another country, it may result in double taxation of income as the country of residence will apply tax on the basis of Residence rule and another country will apply tax on the basis of Source rule.

Therefore, in order to eliminate the adversity of double taxation, countries enter into a Double Tax Avoidance Agreement ('DTAA') which usually adopt two approaches i.e. unilateral approach and bilateral approach to provide relief to the taxpayers. This article analyzes these approaches and the methods through which relief from double taxation is granted.

Types of Relief

The relief from double taxation can be provided in mainly two ways:

1. Bilateral Relief

Under this approach, the government of two nations enter into DTAA or an agreement between Specified Association(s) of India & foreign country to provide relief against double taxation to the taxpayers by mutually working out the basis on which the relief is to be granted.

Bilateral relief may be granted by either of the following two methods:

- a. Tax Exemption Method
- b. Tax Credit Method

2. Unilateral Relief

Under this approach, the relief against double taxation is provided unilaterally by a country to the



taxpayer for the taxes paid in the other country, where no DTAA has been signed with that country.

India grants unilateral relief through Tax credit method u/s 91 of the Income Tax Act, 1961 (**'the Act'**) to the taxpayers for taxes paid in the country with which no DTAA has been signed.

Methods for elimination of Double Taxation

As discussed above, bilateral relief against double taxation may be granted by using any one of the of two different methods, which are:

I. Tax Exemption Method

Under this method, a particular income is taxed only in the source country and exempted in the country of residence.

Suppose, Mr. A, resident of Country X, derives an income of INR 1,50,000 from Country Y. So, under this method, the amount of INR 1,50,000 shall be taxable only in Country Y and shall be exempt in Country X.

Further, the country of residence may grant exemption to the taxpayer, either under "full exemption method" or "exemption with progression method"

Under the full exemption method, the country of residence does not take into account the income which is taxed in the source country either for the purpose of computation of tax or for determination of tax rates..

Whereas, under the exemption with progression method, country of residence takes into consideration the income from the source country for the purpose of determining the amount of tax on the remaining income / income other than which is exempt.

II. Tax Credit Method

When a particular income is taxable in both the countries i.e. source country and the country of residence, with their respective tax laws, this may result in double taxation due to difference in taxing criteria of the two countries. Hence, to solve this issue, while availing benefit of DTAA, Tax credit method may prove to be handy. Under this method, the country of residence allows the taxpayer, a credit for the tax charged thereon in the country of source.

The credit for taxes could be granted, by the country of residence, in the form of either "full credit" or "ordinary credit".

Under the full credit method, the credit of the entire amount of tax paid outside India is available to the taxpayer.

The following illustration explains how the full credit method works:

Particulars	Scenario A	Scenario B
Income in Country X (A)	2,00,000	2,00,000
Income in Country Y (B)	1,00,000	1,00,000
Global Income (A+B)	3,00,000	3,00,000
Tax rate in Country X	30%	30%
Tax rate in Country Y	25%	35%
Tax to be paid in Country X @ 30% (C)	90,000	90,000

Full Credit of tax paid in Country Y @ 25% (D)	(25,000)	(35,000)
Net tax liability in Country X (C-D)	65,000	55,000

Whereas, under the ordinary credit method, the deduction given by country of residence for the tax paid in the source country is restricted to the extent to which tax is collected on such income in the country of residence.

The following illustration explains how the ordinary credit method works:

Particulars	Scenario A	Scenario B
Income in Country X (A)	2,00,000	2,00,000
Income in Country Y (B)	1,00,000	1,00,000
Global Income (A+B)	3,00,000	3,00,000
Tax rate in Country X	30%	30%
Tax rate in Country Y	25%	35%
Tax to be paid in Country X @ 30% (C)	90,000	90,000
Tax appropriated on foreign Income as per Country X's tax rate (D)	30,000	30,000
Tax appropriated on foreign Income as per Country Y's tax rate (E)	25,000	35,000
Ordinary Credit of tax – Lower of (D) or (E)	(25,000)	(30,000)
Net tax liability in Country X (C-D)	65,000	60,000

OECD's Model Tax Convention on Methods for elimination of double taxation

In its model tax convention, OECD provides Article 23A & 23B which entails the methods for elimination of double taxation. The model convention explains the principle of exemption & the principle of credit and also discusses, in detail, the operation and effect of the above two principles & methods embedded therein.

However, to restrict the number of methods based on each above-mentioned principle, the Articles of the model treaty have been drafted in a manner in which member countries are left free to choose between two methods of elimination of double taxation, i.e. the exemption method with progression (covered in Article 23A) and the ordinary credit method (covered in Article 23 B).

Conclusion

In conclusion, double taxation arises when taxpayers are liable to pay tax in both their country of residence and the country of source. To alleviate this burden of taxpayers, countries may negotiate and use the above-discussed methods to eliminate the chances of double taxation. The OECD's Model Tax Convention also provides a framework for these methods, offering flexibility for countries to choose between exemption with progression method and ordinary credit method.

Legal Corner



In the Income Tax Appellant Tribunal

The Deputy Commissioner of Income Tax ("**DCIT**") vs. HDFC Bank Ltd

Introduction & Brief Facts

HDFC Bank Ltd. ("**the assessee**") is a public limited company primarily engaged in the business of banking and related activities.

For Assessment Year ("**AY**") 2014-15, the assessee filed its return of income on 30th November 2024.

In respect of the above, the case of the assessee was selected for scrutiny & assessment u/s 143(3) of the Income Tax Act, 1961 ("**the act**").

The Learned ("**Ld.**") Assessing Officer ("**AO**") was of the view that the assessee has undertaken specified domestic transaction with its associated enterprises and therefore a reference was made to the Transfer Pricing Officer ("**TPO**") on 29.12.2016.

The assessee filed writ petition before the Honourable ("**Hon'ble**") Bombay High Court seeking quashing of the order making reference to TPO.

The Hon'ble Bombay High Court stayed the assessment proceedings vide order dated 26.06.2017 and subsequently vide order dated 20.12.2018, quashed the reference to the TPO. The Ld. AO then passed assessment order dated 15.02.2019.

The Assessee preferred appeal before the Commissioner of Income Tax Appeals ("**CIT(A)**") against the above assessment order contending that the assessment order was bad in law having been passed after the expiry of prescribed period specified in Section 153(1) of the Act.

Subsequently, the Ld. CIT(A) accepted the aforesaid contention of assessee and allowed the appeal vide order, dated 27.03.2023

Dissatisfied by the aforementioned order the Revenue filed an appeal before Hon'ble ITAT.



Arguments of Assessee

The Ld. counsel for the assessee argued that that the period of limitation for passing order of assessment under Section 143 of the Act for the Assessment Year 2014-15 as specified in Section 153(1) of the Act expired on 31/12/2017. Since the reference to the TPO was quashed by the Hon'ble Bombay High Court, the extended period of limitation available in case of a reference made to TPO in terms of Section 153(4) of the Act was not available to the Assessing Officer. Therefore, the Assessment Order passed on 15.02.019 is barred by limitation.

Further the Ld. counsel for the assessee also mentioned the finding of CIT(A) and argued that CIT(A) had appreciated the facts correctly while holding that the Assessment Order is barred by limitation.

Arguments of the Revenue

The Revenue argued that the CIT(A) erred by ruling that the assessment order was barred by limitation. The Ld. Departmental Representative clarified that once a reference was made to the TPO, the assessment period for the 2014-15 assessment year was extended by 12 months under Section 153(4) of the Act.

The Revenue argued that the proceedings were stayed by the Bombay High Court on June 26, 2016, preventing the TPO and the Assessing Officer from completing their orders.

The Revenue further argued that according to Explanation 1 (ii) to Section 153 of the Act, the period during which an assessment proceeding is stayed by a court order is excluded when calculating the limitation period. After excluding this stay period, the remaining time for the AO to pass the Assessment Order was less than 60 days. Therefore, as per the proviso to Explanation 1 to Section 153, the Assessing Officer had 60 days to complete the assessment. Consequently, excluding the stay period, the assessment order was passed within the prescribed time limit under Section 153(1), Section 153(4), and the proviso to Explanation 1.

Decision of Hon'ble ITAT

After carefully examining all the facts & circumstances of the case, the Hon'ble ITAT ruled in the favour of assessee and dismissed the appeal filed by the Revenue.

The issue before Hon'ble ITAT was that whether extended period of limitation (which is available upon on reference being made to TPO u/s. 92CA) as specified in Sec.153(4) would be available to AO even in a case where aforesaid TPO-reference is quashed by the HC?

The Hon'ble ITAT observed that assessee had challenged the very jurisdiction of the TPO to enter into reference by preferring writ petition before the Hon'ble Bombay High Court seeking, quashing of the reference made under Section 92CA of the Act.

ITAT observed that once the prayer of the Assessee is accepted that the reference made to TPO under Section 92CA of the Act is quashed by the Hon'ble Bombay High Court, the reference made under Section 92CA of the Act becomes a nullity in the eyes of law taking away the jurisdiction of the TPO to enter into reference. That being the case, the Revenue cannot seek benefit of extended time period of 12 months specified under Section 153(4) of the Act for passing the assessment order.

Further Hon'ble ITAT observed that limitation to pass assessment order u/s.153(1) expired on 31.12.2016 (for AY 2014-15), and that HC's interim order granting stay of assessment proceedings was passed after expiry of the period of limitation. Thus, holds that question of exclusion of period during which stay operated, for the purpose of computing limitation, does not arise.

Comments

Section 153 clearly states that where the reference has been made to TPO u/s 92CA, the time limit for completion of assessment shall be extended by an additional 12 months. However, where the reference to TPO itself is considered void then the extended time limit shall not be applicable.

Glossary



Act	Income Tax Act, 1961
A.Y.	Assessment Year
ALP	Arm's Length Price
AO	Assessing Officer
ITAT	Income tax Appellate Tribunal
UK	United Kingdom
BEPS	Base Erosion and Profit Shifting
PCIT	Principal Commissioner of Income Tax
CBDT	Central Board of Direct Taxes
CIT	Commissioner of Income Tax
US	United States
IT	Income Tax
ITR	Income Tax Return
TDS	Tax Deducted at Source
ITO	Income Tax Officer
OECD	Organization for Economic Co-operation and Development
ITR	Income Tax Return
PAN	Permanent Account Number
ITBA	Income Tax Business Application
MNE	Multinational Enterprises
MCAA	Model Competent Authority Agreement
ROI	Return of Income
SLP	Special Leave Petition
SDT	Specified Domestic Transaction

GET IN TOUCH

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