VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

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DIRECT TAX REVIEW
JUNE 2016

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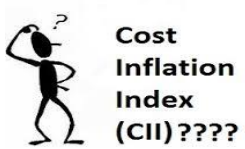
Cost Inflation Index: FY 2016-17



Central Government has notified the Cost Inflation Index for the FY 2016-17 at 1125.

Source: NOTIFICATION NO. SO 1948(E)[NO. 42/2016 (F. NO. 142/5/2016-TPL)], DATED 2-6-2016

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CBDT prescribes due dates for uploading of 15G/15H declarations in E-Filing portal

The due date for quarterly furnishing of 15G/15H declarations by the payer from 1.4.2016 onwards shall be as given below:

S.No	Date of ending of the quarter of the financial year	Due date
1	30th June	15th July of the financial year
2	30th September	15th October of the financial year
3	31st December	15th January of the financial year
4	31st March	30"' April of FY immediately following the FY in which declaration is made.

CBDT has also clarified that payer shall furnish 15G/15H declarations received during the period from 1.10.2015 to 31.3.2016 on e-filing portal in the given format on or before 30th June 2016.

Source: CBDT Notification No. 9/2016 dated 09-06-2016

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CBDT clarifies tax not to be deducted in respect to the payments specified in clause (23DA) u/s 10 received by any securitisation trust

-In exercise of the powers conferred by sub-section (1F) of section 197A of the Income Tax Act 1961, the Central Government hereby notifies that no deduction of tax under Chapter XVII of the said Act shall be made on the payments of the nature specified in clause (23DA) of section 10 of the said Act received by any securitisation trust as defined in clause (d) of the Explanation to section 115TC of the said Act.

Source: CBDT Notification No. 46/2016 dated 17-06-2016

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CBDT exempts TDS on interchange fee charged on credit/debit card transactions

The Central Government hereby notifies that no deduction of tax under Chapter XVII of the said Act shall be made on the payments of the nature specified below, in case such payment is made by a person to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934), excluding a foreign bank, or to any payment systems company authorised by the Reserve Bank of India under Sub-section (2) of Section 4 of the Payment and Settlement Systems Act, 2007 (51 of 2007), namely:

- bank guarantee commission,
- cash management service charges,

- depository charges on maintenance of DEMAT accounts,
- charges for warehousing services for commodities,
- underwriting service charges,
- clearing charges (MICR charges) including interchange fee or any other similar charges by whatever name called charged at the time of settlement or for clearing activities under the Payment and Settlement Systems Act, 2007,
- credit card or debit card commission for transaction between merchant establishment and acquirer bank.

Source: CBDT Notification No. 47/2016/F.No 275/53/2012-IT(B) dated 17-06-2016

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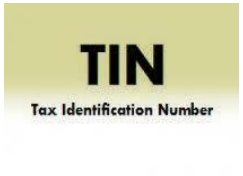
Rule 37BC: Relaxation from deduction of tax at higher rate under section 206AA



In case of non-resident not being a company or a foreign company (hereinafter referred to as the deductee) and is not having PAN number, the provisions of section 206AA shall not apply in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset, if the deductee furnishes the following details and documents to the deductor:

a) name, e-mail id, contact number,
b) address in the country or specified territory outside India of which the deductee is a resident,
c) a certificate of his being resident in any country or specified territory outside India from the Government of that country or specified territory if the law of that country or specified territory provides for issuance of such certificate,
d) Tax Identification Number of the deductee in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or the specified territory of which he claims to be a resident.

Source: CBDT Notification No. 53/2016/F.No 370 142/16/2016-TPL dated 24-06-2016

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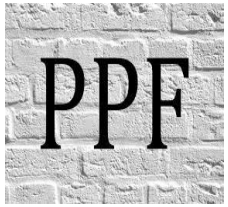
Govt. allows premature withdrawal of PPF for medical emergencies and higher education



The Central Government hereby made some amendments to the Public Provident Fund Scheme, 1968:

A subscriber shall be allowed premature closure of his account or the account of a minor of whom he is the guardian, on a written application to the Accounts Office, on any of the following grounds namely:

- that the amount is required for the treatment of serious ailments or life threatening diseases of the account holder, spouse or dependent children or parents, on production of supporting documents from competent medical authority;
- that the amount is required for higher education of the account holder or the minor account holder, on production of documents and fee bills in confirmation of admission in a recognized institute of higher education in India or abroad.

Provided such premature closure shall be allowed only after the account has completed five financials years.

Provided further that premature closure shall be subject to deduction of such amount which shall be equivalent to1% less interest on the interest rates as applicable from time to time in the table payable on the deposits held in the account from the date of opening of a/c till the date of such premature closure.

Source: Notification [F.NO. 1/04/2016 –NS.II]dated 18-06-2016

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Clarification regarding amendments in section 206C (1F) vide Finance Act 2016

Section 206C (1F) as inserted by Finance Act, 2016 provides that "*Every Person, being a seller, who receives any amount as consideration for sale of motor vehicle of the value exceeding ten lakh rupees, shall, at the time of receipt of such amount, collect from the buyer, a sum equal to one per cent of the sale consideration as income tax".*

Any person who obtains in any sale, the goods of the nature specified in sub-section (I D) or (1 F) of section 206C is a buyer.

The seller for the purpose of TCS shall be:

a) A central Government or a State Government,
b) Any local authority, or corporation or authority established under any Central, State or Provincial Act,
c) Any company, firm or cooperative society,
d) An individual or Hindu undivided family who is liable to audit as per provisions of section 44AB during the financial year immediately preceding the financial year in which the goods are sold or the services are provided.

In regards to this, number of queries has been received by the department. CBDT has given the following clarifications with respect to the above.

- TCS on sale of motor vehicles will cover all transactions of retail sales and will not apply on sale of motor vehicles by manufacturers to dealers/distributors.
- Seller shall collect tax at the rate of 1% from the purchase on sale of every motor vehicle of the value exceeding ten lakh rupees.
- Government, institutions notified under United Nations (Privileges and Immunities) Act 1947, and Embassies, Consulates, High Commission, Legation, Commission and trade representation of a foreign State and shall not be liable to levy of TCS at the rate of 1 % under sub-section (1 D) and (I F) of section 206 C of the Act.

- The limit of 10 lakhs is applicable to each sale and not to aggregate value of sale made during the year.
- The provisions of TCS on sale of motor vehicle exceeding ten lakh rupees are not dependent on mode of payment. Any sale of Motor Vehicle exceeding ten lakhs would attract TCS at the rate of 1%.
- Sub-section (1 F) of the section 206e of the Act provides for TCS at the rate of 1% on sale of motor vehicle of value exceeding 10 lakh rupees. This is irrespective of the mode of payment. Thus if the value of motor vehicle is 20 lakh rupees, out of which 5 lakh rupees has been paid in cash and balance amount by way of cheque, the tax shall be collected at source at the rate of 1 % on total sale consideration of 20 lakh rupees only under sub-section (I F) of section 206e of the Act. However, if a vehicle is sold for 8 lakh rupees and the consideration is paid in cash, tax shall be collected at source at the rate of I % on 8 lakh rupees as per sub-section (l D) of section 206C of the Act.

Source: Circular no 22/2016 dated 08-06-2016

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Clarification regarding amendments in section 206C(1D) vide Finance Act 2016

CBDT has issued Circular no 23/2016 in order to clarify the issue as regards applicability of the provisions relating to levy of TCS where the sale consideration received is partly in cash and partly in cheque. The brief of the same is as under:

a) No TCS if cash receipt is less than 2 lakhs.
b) TCS only on cash component exceeding INR 2 lakhs and not on the whole of sale consideration.

For more details, refer to our newsflash dated 25.06.2016

Source: Circular no 23/2016 dated 24-06-2016

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Clarifications on the Income Declaration Scheme, 2016

CBDT has issued Circular no 24/2016 providing clarifications on various queries. The details of the same are under:

- The declaration under the Scheme shall be valid only when the complete payment of tax, surcharge and penalty is made on or before 30.11.2016. Part payment of tax shall be invalid.
- Where the amalgamated entity or LLP, as the case may be, wants to declare the undisclosed income for the years prior to amalgamation/conversion, then the declaration is to be made in the name of the amalgamated company or LLP.
- Scheme is applicable to every person, whether resident or non-resident.
- In case where search has been conducted in April 2016 but notice u/s 153A has not been served upto 31.05.2016, then the person is not eligible to avail the scheme since time period is not expired.

- It is necessary for the declarant to obtain the valuation report but it is not mandatory for him to attach the same with the declaration made in Form-1. However, the jurisdictional Pr. Commissioner/ Commissioner in order to ascertain the correctness of the value of the Page 3 of 4 asset quoted in Form-1 may require the declarant to file the valuation report before issuing the acknowledgment in Form-2. In such a circumstance, it will be necessary for the declarant to make the report available to the Pr. Commissioner/Commissioner.
- PAN is mandatory for all direct tax purposes. This is also necessary in order to claim the benefits and immunities available under the Scheme.
- A person shall not be eligible for the Scheme in respect of assessment years for which proceeding is pending with Settlement Commission.
- Where the land is acquired by the assessee in any previous year say in 2000 from assessed income and is regularly disclosed in return of income. Subsequently in the year 2014, a building is constructed on the said land and the construction cost is not disclosed by the assessee, then the fair market value of land and building in such a case shall be computed in accordance with Rule 3(2) by allowing proportionate deduction in respect of asset acquired from assessed income.
- Cases where summons under section 131(1A) have been issued by the department or letters for enquiry under NMS (Non-filer Monitoring System) or under section 133(6) are issued but no notice under section 142 or 143(2) or 148 or 153A or 153C [as specified in section 196(e)] of the Finance Act, 2016 has been issued are eligible for the Scheme.
- As clarified vide Explanatory Circular No. 17 dated 20.5.2016, a person shall not be eligible for the Scheme in respect of the assessment year for which a notice under section 142, 143(2) or 148 has been received by him on or before 31.5.2016. In a case where notice has been received after the said date, the assessee shall be eligible to make a declaration under the Scheme for the said assessment year. Such declaration shall be valid if it has not been made by suppression of facts or misrepresentation and the amount payable under the Scheme has been duly paid within the specified time. On furnishing by the declarant the certificate issued by the Pr. Commissioner/Commissioner in Form-4 to the Assessing Officer, the proceedings initiated vide notice under section 142, 143(2) or 148 shall be deemed to have been close.

Source: Circular no 24/2016 dated 27-06-2016

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Government issues more Q&As on Income Declaration Scheme

CBDT has issued Circular no 25/2016 providing more clarifications on various queries received by the department. The details of the same are under

- The information contained in the declaration shall not be shared with any other law enforcement agency in respect of a valid declaration.

- The Scheme provides immunity under the Income-tax Act, 1961, the Wealth-tax Act, 1957 and the Benami Transactions (Prohibition) Act, 1988. Immunity from Benami Transactions (Prohibition) Act is subject to the condition that the property will be transferred to the declarant (being the person who provided the consideration for the property) latest by 30th September, 2017.
- The value of the property for the purposes of declaration in such cases shall be computed as per Rule 3 of the IDS Rules even if such value is lower that the value adopted or assessed/assessable by stamp valuation authority as per section 50C/43CA.
- Credit for tax deducted shall be allowed only in those cases where the related income is declared under the Scheme and the credit for the tax has not already been claimed in the return of income file for any assessment year.
- Once a valid declaration is made and all the taxes as specified in the scheme has been paid, department will not make any enquiry in respect of sources of income, payment of tax, surcharge and penalty.
- The purpose of obtaining information about the nature of undisclosed income as given in the last column of table at point (I) relating to nature of undisclosed income in Annexure to Form-1 is to know whether the undisclosed income is in the form of moveable asset, immovable asset, gold, jewellery or cash. Here, the nature of income need not be confused with the source of income. There is no need to indicate the source of income at all.
- No investigation will be initiated against the seller in respect to any investment made in undisclosed asset.
- In case the value of immovable property is evidenced by registered deed, the value to be taken as per registered deed or market value as on 01.06.2016:

  As per Rule 3 of the IDS Rules, the fair market value of an immovable property shall be the higher of its cost of acquisition and the price that the property shall ordinarily fetch if it is sold in the open market as on 1st June, 2016. The value mentioned in the registered deed shall be relevant for determining the cost of acquisition and the same can be taken as the fair market value only where it is higher than the price that the property shall ordinarily fetch if sold in the open market as on 1st June, 2016.
- Declaration of past undisclosed income in the current year amounts to false verification of return of income which shall attract prosecution under the Income-tax Act.

  If anyone attempts to disclose past undisclosed income in the current year, he will have to explain the source of income and substantiate the manner of earning the said income. In case of disclosure under the Scheme, there is no need to explain the source of income.

  Declaration of past undisclosed income in the current year cannot explain assets acquired in the past or provide any immunity in respect of the same.

- In case a declarant earned undisclosed income of 90 Lakh in FY 2010-11, and out of the same he purchased immovable property for 50 Lakh in FY 2011-12, made expenditure of 20 lakh and balance of 20 is cash in hand as on 01.06.2016 and the FMV of the above immovable property as on 01.06.2016 is 80 lakhs, then the declaration will be as under:
    - 80 lakhs being FMV of immovable property as on 01.06.2016
    - 20 lakhs as cash in hand as on 01.06.2016
    - 20 lakhs being the balance of undisclosed income which is not represented in the form of investment in any asset
- If a person invested his undisclosed income in a house property in any year, which has not been let out and also has another house property from his disclosed resources, which has been claimed as self-occupied property, then only FMV of the undisclosed property as on 01.06.2016 will be declared and no income will be taxed under the head income from house property by deeming it to be let out property as provided u/s 23(4)(b) of the income tax act, 1961.

Source: Circular no 25/2016 dated 30-06-2016

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Uttarakhand hotel can't avail of sec. 80-IC relief merely on basis of NOC from pollution department

Facts of the case

Assessee set up a hotel in city of Dehradun, Uttaranchal. It claimed deduction of its income generated from hotel under section 80-IC. The Assessing Officer

viewed that it is not sufficient that an assessee sets up a hotel to claim deduction but it should also partake of ecotourism. Tribunal held that in absence of definition of ecotourism, hotel eligible for deduction would be hotel situated in State of Himachal Pradesh/Uttaranchal having a valid license on the basis of no objection from Pollution Department.

Ruling of the High Court

The High Court held that "*when the Legislature has deliberately intended ecotourism to be at the heart of its decision to give a deduction. Only hotels, which were setup as ecotourism units or having set up as ecotourism or units, were expanded as such, would be entitled to the benefit of section 80-IC. The soul of the provision is ecotourism. Certainly, the mere procurement of a No Objection from the Pollution Control Board cannot be determinative of a question, whether the hotel fulfills the requirement under section 80-IC. Pollution Control Board actually gives no objection consent to operate in the context of air and water Pollution. By no means, can this be the sole determinant of the question, as to whether the hotel is engaged in ecotourism.*"

Source: Commissioner of Income Tax, Dehradun V Aanchal Hotels(P.) Ltd High Court of Uttarakhand ,[2016] 70 taxmann.com 330 (Uttarakhand) dated 25-06-2016

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No denial of sec. 54F relief due to two houses if taxpayer had partial interest in one of the houses

Facts of the case

The assessee has claimed exemptions u/s 54F on sale of land. The Assessing Officer disallowed the assessee claim on the ground that the assessee owned more than one house on the date of sale of land. CIT (A) upheld the order of AO. Assessee on further appeal to ITAT.

Ruling of the Tribunal

The Tribunal held in favor of the assessee by contending that the another property was conveyed by her mother by means of settlement deed and it was only a partial interest on the property and such partial interest could not be considered to be full ownership for the purpose of denying the exemption under section 54F. The life interest in the property was retained by the assessee mother and was alive at the time of sale of land. Therefore, it cannot be said that the assessee owns a house fully and wholly and is eligible to claim deduction u/s 54F.

Source: Mrs V.R Usha Vs ITO, Chennai

ITAT,[2016] 70 taxmann.com 340 (Chennai Tribunal) dated 30-06-2016

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Penalty is to be imposed for delay in filing of TDS returns even if there is no loss to revenue

Facts of the case

The assessee- College has been deducting tax but had not e-filed TDS statements in time for AY 2008-09 to AY 2012-13. On receiving notice from the department, the assessee college filed the return on 08-02-2013/09-02-2013 but no explanations were offered regarding late filing of return. AO, therefore levied penalty u/s 272A (2)(K). On appeal, assessee offered explanation that prior to joining of a regular Principal in college on 25-1-2010, only officiating Principals had been working, who did not have an idea that e-TDS statements were required to be filed. CIT (A) accepting assessee explanation calculated penalty with effect from 1-4-2010 as regular Principal of college assumed charge of office on 25-1-2010. The Tribunal rejected assesse plea. Assessee on further appeal to High Court.

Ruling of the Tribunal

The Tribunal ruled in favor of the revenue by contending that even if the non-filing of e-TDS statements has not resulted in any loss to the department, but it is non-compliance and therefore penalty is correctly levied. Therefore, no question of law did arise from Tribunal's order and appeal was accordingly dismissed.

Source: Raja Harpal Singh Inter College Vs PCIT

High Court of Allahabad,[2016] 70 taxmann.com 246 (Allahabad) 25-06-2016

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