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PRE-BUDGET MEMORANDUM 2015-16

Procedural Issues

December 2014

Contents

SUMMARY – SIMPLIFICATION OF PROCEDURES – DIRECT TAX

S.no	Issues	Justification
1.	**Perpetuating tax demands for meeting collection targets** Several orders resulting in unrealistic tax demands being passed to meet revenue targets fixed for revenue officials. **Recommend** to reconsider performance parameters for revenue officials to include indicators like quality of the assessment orders.	Uncertainty for the assessees, impairing their financial health and enhance cost of compliance
2.	**Suggestion to map internal processes and monitor performance dashboard** **Recommend** to consider initiating electronic workflow methodologies that aids internal reviews and process improvements.	No process to map internal processes and monitor performance dashboard.
3.	**Need for industry consultation to bring in new tax laws /amendments in existing provisions** Introduction of tax laws or amendments without consultation leads to interpretation and implementation issues. **Recommend** to include all stake holders in advance esp. the industry bodies at the formative stage of the legislation, notification. Proposals in Budget 2014 (high level committee for industry interaction) to be implemented.	Re-gearing the systems to meet the new information / reporting requirements is challenging for taxpayers and cannot be achieved without incurring substantial costs of compliance.
4.	**Lack of automated facilities**	
4.1.	**No automatic generation of Form 27A** Form 27A prepared manually for submission to the TIN centres **Recommend** RPU programme be modified to generate Form 27A during validation of e-TDS return data	Administrative inconvenience
4.2.	**No automated facility for deductor to check the correct PAN** **Recommend** a web site under NSDL to check PAN etc. of the vendors/service providers	Deductor responsible for quoting correct PAN of the vendor /service provider in the TDS return and depends on information provided by the payee.
5.	**Simplification in online procedures**	

5.1.	**Improving navigating facilities in the Return Preparation Utility (RPU)** Process of preparing the correction e-TDS statement gets delayed in the process of tracing vendor records to be corrected **Recommend** RPU to be user friendly with searchable and copying options	Filing correction statement of e-TDS return takes substantial efforts in terms tracing vendor details and effecting changes
5.2.	**Auto computation of interest in TDS returns** RPU for preparing e-TDS return does not include mechanism to auto-compute interest. **Recommend** that RPU be upgraded to include mechanism for auto-computation of interest for delay in deduction/ delay in payment of TDS.	Incorrect computation of interest could lead to issuance of erroneous demand notices at times from the Revenue requiring revision of e-TDS returns
5.3.	**Form 16A not generated for deductees having no PAN** **Recommend** mechanism for deductors to generate Form 16A for deductees without PAN and prescribe certain unique protocol like XXXXX1234X etc.	Form 16A needs to be issued manually to avail tax credit, especially for non-resident deductees
5.4.	**Providing disclosures with online returns** Online format of ITR does not contain provision to include any disclosures or notes in respect of the computation of income. **Recommend** that a separate sheet be inserted in the online form of the income tax return for disclosure or note on the computation of income filed by the assessee.	Additional disclosure of information is required to avoid unnecessary scope for litigation for non-disclosing certain facts on the computation of income and levy of penalty under section 271(1)(c) of the Act.
5.5.	**Issues in obtaining Tax residency certificate** Procedure laid down for securing TRC is adding to needless paperwork without requiring application of mind in most cases. **Recommend** that TRC be issued based on the residential status declared in the Return of Income for the latest previous year and assessees be enabled to download the digitally signed Tax Residency Certificate in Form 10FB from Income Tax website, with an information trigger to the AO.	Administrative difficulties
6.	**Issues in claiming TDS credit**	
6.1.	**Compliance error on the part of the Deductor** **Recommend** that tax returns to allow uploading a statement showing TDS Credits, which are not entered in Form 26AS.	Factors beyond the control of the deductee could lead to litigation and associated inconvenience.
6.2.	**TDS credits following statutory re-organization** Mismatch between the assessee-company reporting the income and the PAN of the company mentioned for TDS credits / challans for remitting tax in case	Can result in a tax demand along with interest u/s 234A, 234B and 234C.

	of reorganization due to difference in date of merger and approval of the same by court. **Recommend** that assessee be allowed to transfer so much pre-paid taxes as are relatable to the transferred business.	
6.3.	**Credit for TDS for the purposes of Section 199** Inability of the deductee to file declaration under Rule 37BA results in denial of tax credits that are relatable to the income assessable. **Recommend** that the person crediting TDS amount through information / data entered his tax return of income be enabled to forego that part of the TDS to another deductee who is assessable for the income.	
6.4.	**Difficulties while making correction in TDS Challan details** Difficulties being faced to get the TAN/PAN details rectified in the TDS challan by the assessing officer. **Recommend** AO to have the appropriate authority to make necessary corrections in the to reflect correct TDS deposit details and request for correction in TAN/ PAN be resolved within 7 working days.	Leads to interest, penalty and prosecution implications, besides litigation costs.
7.	**Changes in Authority of Advance Rulings**	
7.1.	**Single Bench of Authority of Advance Rulings (AAR)** The AAR is burdened with the back log of cases due to single bench at New Delhi. **Recommend** AAR to have multiple benches	Causes delay in the pronouncement of rulings.
7.2.	**Dissenting views of AAR on similar set of facts** **Recommend** AAR to have a larger bench, the decision of which can be binding on the other benches as well.	Creates confusion and uncertainty in the minds of the taxpayer.
8.	**Miscellaneous Applications before ITAT** ITAT orders not implemented within a reasonable time and the time available for filing a Miscellaneous Petition and for the ITAT to pass a rectification order automatically shrinks. **Recommend** ITAT Order be given effect by passing a consequential order within six months.	Not enough time to take recourse to Section 254 for the rectification of any mistake apparent from record.
9.	**Issues with appeal procedure**	

9.1.	**Priority in disposing appeals before Commissioner (Appeals)** Sequence of "hearings" and disposal of appeals influenced by the Demand/ Refund position of the cases. **Recommend** chronological hearing with effective timelines for passing the order.	Increase in pending list of matters
9.2.	**Delays in giving effect to Appellate Orders** **Recommend** amendments to the IT Act to give effect to appellate order within 60-90 days from the date of the receipt of the order	Orders giving effect to the appellate decisions are generally not passed without rigorous follow up by the assesse, adding to the time and effort of the assesse.
9.3.	**No time limit for refund of tax as a consequence of appellate order favourable to the assesse** **Recommend** In line with sec 156 AO should also be bound to grant the refund of tax within 10 days of receipt of the appellate order.	This will also result in saving of interest costs for the Revenue (under section 244A), which is material cost as has been pointed out in the past by the standing committee of the Parliament.
9.4.	**Penalty proceedings u/s 271(1) (c) despite favourable orders** **Recommend** issuance of advising the field officers that penalty proceedings be initiated only in rare circumstances.	
9.5.	**Prolonged litigation for common issues** **Recommend** procedural changes like issuance of a guidance note/ circular with close monitoring.	Administrative inconvenience
10.	**Issues in the functioning of Large Tax Payer Units (LTUs)** Administrative and operational difficulties in LTUs. **Recommend** the issues are addressed and necessary guidance in the conduct of proceedings to reinforce the objectives of tax facilitation as set out in the LTU Charter be issued. Alternatively, it is recommended to abolish the LTUs.	The objective of LTU initiative was to reduce tax compliance cost, cut down drastically on the delays in especially in case of refund/rebate claims etc., in practice the industry finds no perceptible qualitative difference in the service delivery from the LTU unit.
11.	**TDS related issues**	
11.1.	**Application for certificate for deduction at lower rate** Administrative concerns in electronic filing of Form 13 to obtain certificate for lower/ non-deduction of TDS. **Recommend** procedural changes.	Administrative inconvenience.
11.2.	**TDS from manpower supply**	The supply is not in the nature of fees for technical services, requiring deduction of tax at source.

	TDS implication on consideration for mere supply of labour under a labour contract, where the supplier takes no obligations as to the risks of services provided by the personnel deployed. **Recommend** clarification that only section 194C is applicable to payment of consideration for supply of manpower.	With cash-flow challenges due to low margins, the viability of such businesses would suffer, if TDS is deducted @ 10% u/s 194J.
11.3.	**Frequent Issuance of TDS certificates under Form 16A** Form No. 16A required to be issued on a quarterly basis. **Recommend** issue of TDS certificate be removed or made annual.	Leading to substantial administrative inconvenience while adding to the compliance cost.
11.4.	**Lack of guidelines to reply to intimation u/s 156 of the Act** **Recommended** procedural clarification like rectification application u/s 154 be allowed to be filed online and justification report detailing the reasons for the demand be made available immediately after the intimation.	There are no guidelines/mechanism on the procedure to reply to the intimations u/s 156.
11.5.	**PAN of the deductor not appearing in 26AS statement** The 26AS statement contains the details of Name and TAN of the deductor. However the PAN of the deductor is not appearing in the statement currently. **Recommended** that 26AS statement should also incorporate the PAN of the deductor.	It is difficult to match the TDS as per 26AS with the books of the accounts of the companies where the customer details are generally PAN based.
12.	**Requirement of additional disclosure in personal Income Tax Return Forms** Disclosures for individuals holding asset/ signing authority in Bank abroad in personal ITR. **Recommend** exclusions for employees of listed companies with signing authority to operate co bank account/s located abroad	For listed companies in India, such a requirement may not be necessary as these companies abide by various compliance and audit requirements, corporate governance norms etc.
13.	**Issues with transfer of cases and change in tax jurisdictions** **Recommend** that the request for a transfer of a case be disposed off within 3 months. The assessee be allowed to update the information in the PAN by entering the new AO in new jurisdiction along with his notification of change of address.	Administrative inconvenience as the assessee is confronted by notices and even consequences of best judgment assessment under the old jurisdiction.
14.	**Adjustment of refunds without prior intimation** **Recommend** that demand of one year should not be adjusted against the refund due for another year without the prior intimation / consent of the assessee.	The demands adjusted are not notified to the assessee. Even in cases where the demands have been notified, the applications for rectification of mistakes under section 154 are not acted on.

15.	**Delay in issue of refunds to foreign companies with no bank account/presence in India** Foreign companies without permanent establishment in India and have refunds are required to furnish Indian bank account **Recommend** e-format of the income-tax return allow the foreign companies to provide details of foreign bank accounts in the return form. Since the cheques issued are in Indian Currency which are not accepted by all the foreign banks, a facility of remitting refunds through wire transfer be introduced.	Since the foreign companies have no bank accounts in India, it is causing undue hardship to the companies at the time the refunds are processed.
16.	**Delay in processing of NIL/lower withholding applications** Delay in timely processing of applications filed under sections 195(2) and 197 of the Act by the tax authority results in inordinate delay in carrying out the commercial transactions **Recommend** suitable time limits for disposal of such applications, - three months from the end of the month in which the application is made	There is no time limit prescribed for disposal of application u/s 195(2) and 197 of the Act.

1. Perpetuating tax demands for meeting collection targets

Issue

In the recent years, several orders resulting in unrealistic tax demands have been passed. It is understood that such demands are often raised to meet revenue targets fixed for revenue officials. These orders, generally fail to get sustained at the higher appellate forums. However, these orders enhance the uncertainty for the assessees, impair their financial health and enhance their cost of compliance. A vicious circle sets in as the incumbent income-tax authorities, who are required to implement the appellate orders, tend to pass new orders for pending assessments with higher demands to collect afresh or adjust the refunds granted against demands raised and collected in the earlier years. In many cases, the collections against disputed demands are never actually refunded as adjustments are carried out against fresh demands, pursuant to section 245 of the Income-tax Act.

Recommendation

Section 245 of the Income Tax Act should be implemented only after the income-tax authority mentioned in Section 245 seek prior approval of his higher authority, which shall be granted only after recording the reasons. Refunds arising to an assessee shall not be automatically adjusted against pending demands.

Government should reconsider the performance parameters for revenue officials and include indicators like the quality of the assessment orders, sustainability in appellate forums etc.

The CBDT recently has recently through an internal instruction [1] directed the officials to ensure a non-adversarial approach to doing assessments. The instructions also cover aspects such as strict compliance with Instruction 1914 of 1993 (related to granting stay of demands), review of scrutiny assessment orders by supervising officers on a quarterly basis (to ensure quality of assessments), scrutiny of only those aspects based on which the case was selected for assessment (as per the CASS scheme). We recommend that the instructions in this manual should be followed strictly and CBDT should monitor the compliance regularly.

2. Suggestion to map internal processes and monitor performance dashboard

Recommendation

The Department should consider initiating electronic workflow methodologies that aids internal reviews and beings about process improvements. A dashboard maybe designed for effective performance monitoring at its offices and the Department at large e.g. number of pending cases of rectification, legacy refund cases etc.

The Indian IT industry has globally excelled in business process mapping and engineering projects and can work closely with the Department for development of such a system. This is essential to ensure uniform and time-bound implementation while minimizing discretion for officers. It will further limit litigations as the rationale behind particular decisions including judgments maybe informed.

[1] November 7, 2014

The TARC has made detailed recommendations in this regard in their first report dated May 30, 2014. These should be implemented by the Government.

3. Need for industry consultation to bring in new tax laws /amendments in existing provisions

Issue

Introduction of tax laws or amendments to the existing tax laws, issuance of new circulars, notifications, Forms etc. lead to interpretation and implementation issues. Substantial compliance costs are incurred only to get a correct understanding of the legislative intent and it involves consultations with legal counsels, representations through Trade bodies, pursuing litigation etc. Quite often new procedures / Forms applicable to a financial year are issued either at the fag-end of financial year or even after the end of the financial year. Re-gearing the systems to meet the new information / reporting requirements is often challenging for taxpayers and cannot be achieved without incurring substantial costs of compliance. In the Budget 2014, a proposal was made by the Finance Minister in his Budget Speech to set up a high level committee to interact with trade and industry regularly in areas where clarity was required in tax laws. However, this committee is yet to be set up.

Recommendation

All stake holders should be involved in advance esp. the industry bodies at the formative stage of the legislation, notification is required. The proposals made in the Budget 2014 of setting up the high level committee should be implemented forthwith. At the time of introducing the changes, following best practices should be made mandatory:

a. The draft of proposed changes etc. should be made available in the public domain for a reasonable duration for seeking comments, suggestions.

b. Procedural changes like changes in the Forms should be notified well in advance. Any changes in the information called for should be deferred to the next financial year.

c. An estimate of the compliance cost in terms of time and money should be published.

4. Lack of automated facilities

4.1 No automatic generation of Form 27A

Issue

Form 27A is required to be prepared manually for submission to the TIN Centers. The Return Preparation Utility (RPU) developed by NSDL for preparing statement of e-TDS Return does not generate Form No. 27A while validating the e-TDS return data.

Recommendation

The RPU programme be modified to include generation of Form 27A at the time of validating e-TDS return data.

4.2 No automated facility for deductor to check the correct PAN

Issue

Currently, there is no website to validate the PAN of any person. The person responsible for deducting tax at source has to rely on the information / document provided by the payee. Any error by the deductee in providing the information or by the deductor in recording the information in the TDS returns would result in denial of TDS credits.

Recommendation

Since PAN is the critical link for all TDS related matters, a free website under NSDL should be accessible for verification of PAN either on random as well as bulk basis.

5. Simplification in online procedures

5.1 Improving Navigating facilities in the RPU

Issue

Filing of correction statement of e-TDS return takes substantial efforts and time in terms of tracing vendor / payee details and effecting changes.

Recommendation

The Return Preparation Utility (RPU) should be more user friendly for searching and navigating deductee related information. It should be equipped with all the features of a spreadsheet, especially when the deductee information runs into several thousand records. Changes can be easily made if the utility allows sorting the data based on vendor and the copy and paste ("cut and paste") command is allowed to multiple records.

5.2 Auto computation of interest in TDS returns

Issue

Unlike the RPU for preparing income-tax return, the RPU for preparing e-TDS return does not include mechanism to auto-compute interest under section 201(1A)(i)/ 201(1A)(ii) and fee under section 234E of the Act.

Incorrect computation of interest under section 201(1A)(i)/ 201(1A)(ii) and fee under section 234E of the Act by the assessee could lead to issuance of erroneous demand notices at times from the Revenue requiring revision of e-TDS returns.

Recommendation

The RPU should be upgraded to include mechanism for auto-computation of interest for delay in deduction/ delay in payment of TDS by taking into account the date of deduction/ payment of TDS entered into by the deductor in the e-TDS return.

5.3 Form 16A not generated for deductees having no PAN

Issue

All deductors are now mandatorily required to generate and issue Form 16A from TIN-NSDL website as per circular 03/2011 dated 13-May-2011 and 01/2012 dated 09-Apr-2012. Form No. 16A is being generated based on the PAN numbers of the deductees. For a deductee

without PAN, no certificates in Form 16A are generated. The information in Form 16A is provided manually, especially to non-resident deductees.

Recommendation

Mechanism to enable deductors to generate Form No. 16A electronically for deductees without PAN may be prescribed based on certain unique protocol like XXXXX1234X etc. This will also enable to Department to evaluate whether any penalty is leviable on the deductee as per Section 272B of the Act.

5.4 Providing disclosures with online returns

Issue

In the case of electronic filing of returns, there is no scope for making disclosures of material facts until a notice u/s 143(2) is issued by the Assessing Officer to make further enquiries. Assessee with a view to maintain transparency would prefer to make disclosures out of abundant caution or by way of clarification, which is currently not feasible in the electronic filing of returns. This exposes the assessees to risks of re-assessment under section 147 and also levy of penalty u/s 271(1)(c) of the Act.

Recommendation

Provision to append notes or explanatory memorandum should be made to enable a higher level of disclosure of material facts or positions. This will avoid unnecessary scope for litigation for non-disclosure of material facts and levy of penalty under section 271(1)(c) of the Act.

5.5 Issues in obtaining Tax residency certificate

Issue

The Finance Act, 2012 had provided that in order to be eligible to claim relief under the tax treaty, a taxpayer is required to produce a Tax Residency Certificate (TRC) issued by the Government of the respective country or the specified territory in which such taxpayer is resident, containing certain prescribed particulars. There is no prescribed particulars in the TR now and the taxpayer can obtain the TRC as issued by the foreign authorities. The Finance Act, 2013 also introduced a provision to clarify that the taxpayer shall furnish such other information or document as may be prescribed.

The CBDT subsequently issued a notification amending the Income-tax Rules, 1962 (the Rules) prescribing the additional information required to be furnished by non-residents along with the TRC. The details are required to be furnished in Form 10F

- The details specified in the CBDT notification could increase the compliance requirements and issues for deductors. For example, the CBDT notification requires a valid TRC to specify the period for which the certificate is valid. Therefore, while the deductor would like to obtain the TRC at the time of the transaction/ depositing the tax (to ensure that the payee is eligible for the tax treaty benefits), the payee would typically apply for a TRC only after the relevant year.
- Depending on the jurisdiction, obtaining a TRC certificate may also be a time consuming/difficult process. TRC requirement increases the administrative difficulty for non-residents, especially from the perspective of non-residents having very few/ limited transactions connected to India.

- As per the new Rule an Indian resident who wishes to obtain TRC from Indian income tax authorities, is required to make an application in Form No. 10FA to the tax officer, containing prescribed details. However, no time limit for issue of TRC is specified from the date of application by the assessee. Furthermore, the issue of TRC in Form No. 10FB has been left to the discretion of satisfaction of the tax officer, without providing a substantive definition for satisfaction in this regard

Recommendation

- At assessment stage, it is anyway incumbent upon the AO to ascertain complete details before allowing tax treaty benefits. The TRC format specified in the CBDT notification could increase the compliance requirements and issues for deductors. For example, the CBDT notification requires a valid TRC to specify the period for which the certificate is valid. Therefore, while the deductor would like to obtain the TRC at the time of the transaction/deducting the tax (to ensure that the payee is eligible for the tax treaty benefits), it would pose a hardship to the payee to obtain a TRC before the end of the relevant financial year.
- The requirement to obtain TRC may be made mandatory only for cases where the total payment to a non-resident exceeds Rs. 1 crore in a financial year. This would mitigate hardship in respect of small payments.
- Requirement to furnish TRC should be cast upon the payee at the time of the assessment of the payee and the deductor/ payer should not be made liable to collect TRC from the payee at the time of withholding tax.
- The time limit to issue TRC in Form 10FB should be specified and in case the tax officer refuses to issue a TRC, the application of the assessee should be disposed by the tax officer by passing a speaking order and clearly specifying the reasons for rejecting the application of assessee.
- It has not been specified as to who shall sign Form 10F. Hence, it should be clarified who is authorized to sign the form. For example, it may be specified that persons prescribed under Section 140 of the Act for the purpose of signing the return of income would be eligible to sign the said form.

6. Issues in claiming TDS credit

6.1 Compliance error on the part of Deductor

Issue

Form 26AS provides the credit for a financial year based on TDS returns filed by various deductors. There is a substantial dependency on the factors that are beyond the control of the deductee, such as

a) The deductor may not file TDS returns;

b) The deductor may enter an erroneous PAN number, which could result in denial of credit the deductee. In some cases, the TDS credit may be shown against a person who is not the deductee;

c) The deductor may mention a financial year that is different from the financial year in which the deductee reports the income.

Granting a lower TDS credit to the deductee is also resulting in the deductee filing an appeal to secure the TDS claim, which results in additional litigations costs for the appellant, which is avoidable. The appellate authorities / tax administration is also stressed for granting proper TDS credit, particularly for large assessees.

Recommendation

The tax return of income filed electronically by an assessee under section 139 should allow the following:

a) Upload a statement showing TDS Credits, which are not entered in Form 26AS. These would cover cases where physical TDS certificates have been issued or even cases there is evidence that TDS has been deducted. This will enable the assessee to avail proper credit and also provide information to the Department on cases where there is a failure to remit TDS and file TDS returns by the deductor.

b) Upload a Statement foregoing the whole or part of TDS credits for one financial year and assign it to another financial year in which the income is assessable as per the method of accounting followed by the assessee. If the TDS is assigned to an earlier financial year, the Assessing Officer should within 3 months grant the TDS credit along with interest u/s 244A.

6.2 TDS credits following statutory re-organization

Issue

TDS credits and tax payments are recognized based on the PAN number. In case of a re-organization (merger or de-merger), while the appointed date of merger or de-merger is mentioned in the scheme of arrangement, the scheme itself comes into effect only when the Court sanctions it.

On the approval of re-organization by the Court, there will be a mismatch between the assessee-company reporting the income and the PAN of the company mentioned for TDS credits / challans for remitting tax. This can result in AO assessing the transferee company by raising a tax demand along with interest u/s 234A, 234B and 234C whereas the AO assessing the transferor company will be obliged to grant a refund, which the assessee is not entitled to under the law. The situation is not avoided even if the same AO is assessing both the transferor and the transferee companies.

Recommendation

In order to avoid such mismatch, which is currently remaining unresolved even after concluding scrutiny assessments of transferor and transferee companies, assessees should be allowed to transfer so much pre-paid taxes as are relatable to the transferred business. This is tax neutral as the sum total of all pre-paid taxes of the transferor and transferee companies will not alter at all.

6.3 Credit for TDS for the purposes of Section 199

Issue

Rule 37BA[2] envisages a situation where the whole or part of the income on which TDS is deducted is assessable in the hands of a person other than the deductee. In such cases, the deductee is required to file a declaration with the deductor so that the TDS is effected under the PAN of the other deductee who is assessable for the income. An inability of the deductee to file the required declaration results in denial of tax credits that are relatable to the income assessable in the hands of another person.

Recommendation

The person who has been credited the TDS amount through information / data entered his tax return of income should be enabled to forego that part of the TDS to another deductee who is assessable for the income. The particulars which are required for the purposes of Rule 37BA may be incorporated by an assessee while filing his tax return and thereby ensure complete transparency as to the person who is required to report the income and claim the TDS credit.

6.4 Difficulties while making correction in TDS Challan details

Issue

Challan Correction Mechanism provides that the deductor can request the AO, authorized under the departmental OLTAS application to make correction in challan data in bonafide cases, to enable credit of the taxes paid.

Practical difficulties have been faced to get the TAN/PAN details rectified in the TDS challan by the assessing officer. Further, since the OLTAS system does not reflect correct TDS details, tax demand notices/ TDS default notices are issued by the tax department to the concerned deductee or the deductor, as the case may be, resulting in interest, penalty and prosecution implications, besides litigation costs.

Recommendation

The assessing officer should have the appropriate authority to make necessary corrections in the OLTAS systems to reflect correct TDS deposit details. Further, request for correction in TAN/ PAN details in e-payment challans should be resolved within 7 working days from the date of filing request application with the AO.

7. Changes in Authority of Advance Rulings

7.1 Single Bench of Authority of Advance Rulings (AAR)

Issue

The AAR is burdened with the back log of cases as there is only one bench constituted at New Delhi. This causes delay in the pronouncement of rulings of the AAR thereby causing hardship to the taxpayers owing to the inability to conclude cross-border transactions.

[2] In*serted* w.e.f. 1-4-2009

Recommendation

The Finance Minister in his Speech for Budget 2014 has proposed to strengthen the Authority for Advance Rulings by constituting additional benches. We recommend a speedy enactment of the proposal to significantly spread the workload for timely rendition of rulings to the taxpayers in respect of the prospective transactions.

7.2 Dissenting views of AAR on similar set of facts

Issue

There have been instances wherein the AAR has rendered dissenting views on similar set of facts in similar transactions. This creates confusion and uncertainty in the minds of the taxpayer. Despite of the fact that a ruling of the AAR is binding only on the taxpayer seeking it, the same is cited by Revenue as well as assessees as a persuasive value.

Recommendation

The AAR can adopt the model of other judicial forums of having a larger bench, the decision of which can be binding on the other benches as well.

8. Miscellaneous Applications before ITAT

Issue

Section 254 of the Act provides that the ITAT, at any time within four years from the date of order passed by it, can rectify any mistake apparent from record, if the same is brought to its notice by the tax payer or the Assessing Officer. However, very often the ITAT orders are not implemented within a reasonable time and the time available for filing a Miscellaneous Petition and for the ITAT to pass a rectification order automatically shrinks from 4 years. Further, ITAT itself is not required to pass the rectification order in a time bound manner.

Recommendation

The ITAT Order should be given effect by passing a consequential order within six months. It will leave enough time to take recourse to Section 254 for the rectification of any mistake apparent from record.

9. Issues with appeal procedure

9.1 Priority in disposing appeals before Commissioner (Appeals)

Issue

It has been the industry's understanding that the sequence of "hearings" and disposal of appeals before the Commissioner of Income Tax (Appeals) is influenced by the Demand/ Refund position of the cases. Without even specific prayers from the concerned appellants, preference is normally given to appeals in which relief from high demands are sought and the appeals which would result in higher refunds to appellants are normally kept aside, increasing the "pending" list of matters to be heard.

Recommendation

The appeals should be heard and disposed off by applying the following criteria:

(a) On the basis of chronology i.e. the dates on which appeals are filed and not on the basis of demand or refund position.

(b) High demand cases may be heard out of turn, when a specific prayer is made by the appellant and the Commissioner (Appeals) admits the prayer.

(c) Exception to chronology may be made to appeals involving substantially identical issues, which may be heard out of turn so that a batch of appeals gets disposed off simultaneously.

(d) There must also be an administratively set timeline within which appellate orders passed by the CIT(A).

(e) It is found that the CIT(A) infrastructure is wholly inadequate to dispose off appeals in a time bound manner. After the necessary infrastructure is put in place, CIT(A)'s may be urged to record the reasons for delayed disposal beyond 1 year.

9.2 Delays in giving effect to Appellate Orders

Orders giving effect to the appellate decisions are generally not passed without rigorous follow-up by the assessees. This adds to the time and effort of the assessee and the assessee does not get the benefit of the reliefs granted in appellate orders.

Recommendation

An administrative instruction should be issued by CBDT to the effect that "consequential orders to appellate orders should passed within 60 to 90 days from the date of the receipt of the orders". If there are remand issues to be dealt with, the AO should grant an opportunity to the assessee, and unless the delay is attributable to assessee, the consequential order should be passed within the outer limit of 60 to 90 days.

9.3 No time limit for refund of tax as a consequence of appellate order favourable to the assesse

Recommendation

In line with sec 156 which makes it mandatory for the assesse to make a payment of the taxes due within 30 days of the receipt of the notice of demand, the AO should also be bound to grant the refund of tax within 10 days of receipt of the appellate order by him. This will also result in saving of interest costs for the Revenue (under section 244A), which is material cost as has been pointed out in the past by the standing committee of the Parliament.

9.4 Penalty proceedings u/s 271(1) (c) despite favourable orders

Issue

There is an increasing tendency of mechanically initiating penalty proceedings u/s 271(1)(c) in respect of all additions made in the assessment order. Such proceedings are often initiated despite orders of the higher judicial forums supporting the assessees' contentions.

Recommendation

- Guidelines should be issued advising the field officers that penalty proceedings should be initiated only in rare circumstances involving deliberate suppression of material facts that have a bearing on the assessment proceedings etc.
- Interpretation issues or tax positions supported by decision of any appeal forum from ITAT and above, should be kept outside the ambit of the penalty proceedings.

9.5 Prolonged litigation for common issues

Issue

A lot of time, money and efforts of the assessees and Department are expended in litigating various issues, which are generally common in nature within industry segments or classes of assessees.

Recommendation

1. In case of any industry specific issue or any other common contentious issue, a guidance note/ circular should be provided by the CBDT just like the circular on FBT, the handbook on negative list service tax regime, Circular to give to the effect to Rangachary Committee report etc. which would clarify the Department's view on such issues. Such views of the Department should be administered uniformly. Even in cases where the issue is pending before an appellate authority, the stand of the Revenue as per the said Circular should be accepted by the Appellate forum. This will bring clarity and certainty in respect of various issues and reduce litigation.
2. The Department should withdraw its appeals once an issue is clarified through a Circular. The Chief Commissioners should monitor such cases. The recommendations of the CBDT in its Office Memorandum dated November 7, 2014 regarding filing of appeals to the HC/SC should be strictly followed and implementation monitored.

10. Issues in the functioning of Large Tax Payer Units (LTUs)

Issue

The Large Tax Payer Unit (LTU) was established with a view to make available a single window tax facilitation centre to large tax payers. The objective of this initiative was to reduce tax compliance cost, cut down drastically on the delays in especially in case of refund/rebate claims etc., in practice the industry finds no perceptible qualitative difference in the service delivery from the LTU unit.

While some of the initiatives like having a dedicated 'Client Executive' for each large tax payer to act as a single-point-of-contact (across all taxes) and address all administration related matters is appreciated, some of the aspects discussed below related to conduct of proceedings of the large tax payer, are not in line with the LTU Charter.

Some of the difficulties faced by LTUs are summarized below:

- Audits carried out in an aggressive manner, with unreasonable requests such as:
  - Large volume of information /details within a short time frame
  - Investigative nature of verification of details /information submitted
  - Information/details called for without due regard to the volume of transactions involved and without appreciation of the systems /processes involved /followed
  - Non acceptance of scanned/electronic documents and insistence on submission of hard copies
  - Insistence on written confirmations from third parties and non-reliance on third party invoices

- Insistence on bank account statements and requests for one-to-one correlation for all expenses in ledgers
- Insistence on TDS certificates issued to third parties to confirm payments being made,

- Appellate orders giving effect to a refund order for the assesse not given priority while demand notices are raised on assessees at the earliest
- Requests for adjournments on matters seen as an approach of delaying proceedings

Recommendation

It is recommended that the above issues are addressed and necessary guidance is issued in the conduct of proceedings to reinforce the objectives of tax facilitation as set out in the LTU Charter. Alternatively, it is recommended to abolish the LTUs if there cannot be any qualitative difference in the service delivery by the LTUs.

11. TDS related issues

11.1 Application for certificate for deduction at lower rate

Issue

Section 197 contains the provisions of issuance of certificate for lower / non-deduction of tax at source. The application to the Assessing Officer is now required to be made electronically in Form 13. Following concerns are noted in this process:

1. The application requires the details of each payee along with their PAN, TAN and address. This is not practical and is opposed to business requirements. The certificate cannot be used for a payee not mentioned in the application.
2. The certificate is not issued in many cases. Even in cases where the certificate is issued, it is delayed and comes into force only from the latter half of the financial year. Such delays affect the viability of businesses as working capital gets blocked in higher TDS.
3. The application is invariably rejected if it is made by an assessee having taxable income and paying advance tax.

Recommendation

a) An application for certificate u/s 197 should be disposed off within 30 days from the date of application. This is in line with CBDT instructions to adhere to timeline of 30 days for disposal of application u/s 197 of the Act. Considering that the certificate u/s 197 is important from cash flow perspective of the assessee and is valid only for a particular year, it is important that the strict adherence shall be made to CBDT instruction by the tax authorities at the ground level so as to ensure speedy disposal of the applications.

b) If the certificate is issued during a financial year, it should cover transactions which have not already suffered TDS during the FY.

c) Wherever business losses / unabsorbed depreciation is large in comparison to the total income of assessee seeking the certificate u/s 197, a certificate may be issued with a validity for the (3) three financial years. This remove the working capital difficulties experienced by loss incurring entities.

d) The Certificate u/s 197 should be issued to any assessee covered by the provisions of section 115JB and whose total income as per the normal computation is either a loss or nil.

e) Board should consider dispensing off details of the individual payees in the application. Certificate should be a blanket certificate applicable to all payees of the assessee.

f) Deductor should be in a position to check the exempt status online in the NSDL website to prevent excess deduction.

g) The Certificate under section 197 should be allowed in cases of large assessee if the assessee undertakes to pay advance tax to cover the tax liability for the year. This will reduce needless paperwork without impacting the revenue collections. Board may also prescribe other conditions like producing a Bank guarantee, pre-deposit of certain % at the beginning of the FY in an interest bearing escrow account etc.,

11.2 TDS from manpower supply

Issue

Payment made for supply of labour under a labour contract, where the supplier takes no obligations as to the risks of services provided by the personnel deployed, is not in the nature of fees for technical services, requiring deduction of tax at source u/s 194J. However, the same is subject to tax at source @ 10% u/s 194J in some locations.

Assessees who are in the business of supply of manpower earn only a small margin since substantial part of the consideration is paid to the personnel as salary. With cash-flow challenges, the viability of such businesses would suffer, if TDS is deducted @ 10% u/s 194J.

Recommendation

It may be clarified that section 194C is applicable to payment of consideration for supply of manpower.

11.3 Frequent Issuance of TDS certificates under Form 16A

Issue

As per Income Tax (6th Amendment) Rules, 2010 (Notification No. 41 /2010 dated 31-May-2010), Form No. 16A is required to be issued on a **quarterly** basis. This leads to substantial administrative inconvenience, while adding to the compliance cost.

Since, the TDS certificates have to be downloaded from the NSDL database (into which the TDS returns are filed), the need for again issuing TDS certificates is redundant and meets only an empty formality. Further, the Certificate would be required only at the time the payee files his tax return for the assessment year.

Recommendation

- Since all records are being made available at the NSDL TIN website by the deductor, the requirement of issuance of TDS certificates itself may be discontinued with.
- Alternatively, digitally signed Form 16A can be auto-emailed from NSDL site on a quarterly basis to the registered email ID of the deductee maintained in the site.

- Alternatively the deductor should be allowed to issue T.D.S. certificates in Form 16A on an **annual** basis.

11.4 Lack of guidelines to reply to intimation u/s 156 of the Act

Issue

The TDS Central Processing Cell (CPC),having its set-up at Vaishali, Ghaziabad, UP, have launched its website named "TRACES" The TDS CPC is required to process returns as per section 200A of the Income Tax Act, 1961. Intimations u/s 200A are received by the deductor via e-mail which are required to be treated as demand notices u/s 156 of the Act.

There are no guidelines/mechanism on the procedure to reply to the intimations u/s 156. Further, the demand continues to appear in TRACES even after a letter of rectification u/s 154 is filed physically and through e-mail with CPC, Ghaziabad.

Recommendation

- The rectification application u/s 154 should be allowed to be filed online with the requisite supporting attachments. A similar facility is available for seeking rectification of intimations issued u/s 143(1) (a) and this can be extended to TDS Central Processing Cell as well.
- The justification report detailing the reasons for the demand is not made available immediately after the intimation. The same be made available immediately and personnel at CPC/ TDS officer of the assessees should be in a position to help the assessees rectify the issues.

11.5 PAN of the deductor not appearing in 26AS statement

Issue

The 26AS statement contains the details of Name and TAN of the deductor. This addresses the aspect that a deductor could have more than one TAN. However, difficulty is experienced in reconciling / matching the TDS entries in 26AS with the books of the accounts of the deductor where customer details are generally PAN based.

Recommendation

The 26AS statement should also incorporate the PAN of the deductor so that the same can be reviewed and matched with the books of accounts of the deductor.

12. Requirement of additional disclosure in personal Income Tax Return Forms

Issue

The CBDT vide notification No. 14/2012, Dated: March 28, 2012 has prescribed the Income Tax Return forms - ITR 2/3-for the F.Y.2011-12 wherein a resident individual is required to make additional disclosures if he/she holds any assets located outside India or has a *signing authority* in a bank account located outside India.

Normally, a company operates its bank account through its employees who are given the *signing authority*. The above notification requires even an individual-employee who has a *signing authority* to operate company's bank account located outside India, to disclose certain prescribed information pertaining to the overseas account in **his/her** personal Income

Tax Return to be filed for the A.Y.2012-13. The requirement may be an unintended consequence of the said notification but is causing hardships to individuals who have signing authority as employees.

Recommendation

In order to avoid hardship to such employees, it is recommended that an exclusion may please be carved out in respect of **employees of the listed companies** who have *signing authority* on behalf of companies to operate companies' bank account/s located outside India.

13. Issues with transfer of cases and change in tax jurisdictions

Issue

Assessees who re-locate to another city make a request for transfer of cases to the new jurisdictional officer. If the assessees do not hear from the Department within a reasonable period, there is a presumption that the request for transfer has been acceded to and the assessees proceed to file the tax returns under the new jurisdiction. In many cases, scrutiny assessments are also completed by the assessing officers in the new jurisdiction.

With electronic filing of tax return, the jurisdiction gets allocated to the AO who issued the PAN. The assessees are confronted by notices and even consequences of best judgment assessment under the old jurisdiction.

Recommendation

The request for a transfer of a case should be disposed off within 3 months failing which it should be construed that the request has been granted. The assessee should also be allowed to update the information in the PAN by entering the new AO in new jurisdiction along with his notification of change of address.

14. Adjustment of refunds without prior intimation

Issue

The Central Processing Cell is granting refunds claimed in the tax returns by assessees. In certain cases, the refund amount granted is lower than the refund amount claimed as some past demands on the assessee, as notified from the records by the Assessing Officers, are adjusted. The demands as adjusted are not even notified or known to the assessee. Even in cases where the demands have been notified, the applications for rectification of mistakes under section 154 are not acted on.

Recommendation

a) Demand of one year should not be adjusted against the refund due for another year without the prior intimation / consent of the assessee.

b) Where applications for rectification of mistakes apparent from record have been filed and they are not disposed off within six months, there must be a legal presumption that the applications have been allowed.

15. Delay in issue of refunds to foreign companies with no bank account/presence in India

Issue

Foreign companies that have no permanent establishment in India and have refunds arising in India are compulsorily required to furnish Indian bank account details in the income-tax return. Since the foreign companies have no bank accounts in India, it is causing undue hardship to the companies at the time the refunds are processed.

Recommendation

It is suggested that the e-format of the income-tax return form be re-devised to allow the foreign companies to provide details of foreign bank accounts in the return form. In this connection, it is also suggested that, since the cheques issued by the Income-tax department are denominated in Indian Currency which are not accepted by all the foreign banks, a facility of remitting refunds through wire transfer be introduced.

16. Delay in processing of NIL/lower withholding applications

Issue

Delay in timely processing of applications filed under sections 195(2) and 197 of the Act by the tax authority results in inordinate delay in carrying out the commercial transactions. There is no time limit prescribed for disposal of application u/s 195(2) and 197 of the Act.

Recommendation

It is necessary to provide suitable time limits for disposal of such applications, with in- built accountability and strict adherence. The order should be passed within three months from the end of the month in which the application is made.

SUMMARY – SIMPLIFICATION OF PROCEDURES-INDIRECT TAXES

S.no	Issues	Justification
17.	**Requirement to submit documents in hard copies for Service Tax/ Customs** **Recommend** electronic upload of supporting documents by the assessee to minimize interface with the tax department.	Need for improvement in the tax compliance processes.
18.	**Issues with service tax provisions**	
18.1	**Time frame for issuance/ amendment of centralized service tax registration** **Recommend** applications for issuance/ amendment of centralized registration should be granted within 7 days of submission of all requisite details.	The process and time-frame for issuance of a centralized registration as well as amendment to a centralized registration already issued is cumbersome and time consuming.
18.2	**Need to amend Service Tax registration certificate for new services** **Recommend** a single registration for all statistical purposes.	Administrative inconvenience.
18.3	**Due date for payment of Service Tax** Practical difficulties being faced by the assesse to adhere to the stringent timelines for payment of Service Tax (6th of the following month). **Recommend** to extend the due date of payment of service Tax to 15th of the next month.	Results in deposit of short or excess service tax amount which necessitates filing of refund or adjustments in subsequent returns.
18.4	**No provision to mention service category by the service provider** Rule 4A does not mandates mention of the service category leading to varied interpretation and unnecessary litigation. **Recommend** that rule 4A be amended to provide that the description of a service in the invoice shall be the same as the service tax category under which service tax is paid / payable	The service category determined by the service recipient may be different from the service category under which service is provided or service tax is paid by the service provider.
18.5	**Recognition of date of submission of the return as the date of filing** Return accepted by 12-24 hours, leading to rejection of returns uploaded on the penultimate/ last date of submission.	Authorities demand penalty on grounds of delay in filing of return due to non-acceptance by the system.

	Recommend that once a return is uploaded and "submitted" the same should be deemed to be "filed'.	
18.6	**Demonstrating date of receipt of order for filing appeal** Refusal to accept the appeal by CESTAT on grounds of non-availability of satisfactory proof of date of receipt of the order against which the appeal is preferred. **Recommend** a suitable clarification to direct the Registry to accept all the appeals and issue acknowledgement for filing of the same irrespective of satisfactory proof of date of receipt of impugned order being made available at the stage of filing.	Leads to unwarranted delays in filing the appeal and denial of justice.
18.7	**Extension in time limit for filing revised return** The present time frame prescribed for filing revised service tax return viz 90 days from the date of filing of the original return, is not enough as the audited expense and revenue figures including true-ups for income tax and company law reporting are finalized after the said due date. **Recommend** time limit for filing revised return be extended from 90 days to 180 days from the date of filing of original return.	Results in differences in the figures/ turnover reported under different laws.
18.8	**Extension in time limit for determination of input credit attributable to exempted services and payment thereof in case of excess availment** **Recommend** extension of the time limit to 30 September of the following financial year.	The audited values not available within 30th June of the following financial year given due dates for finalization of audited statements.

SIMPLIFICATION OF PROCEDURES-INDIRECT TAXES

17. Requirement to submit documents in hard copies for Service Tax/ Customs

Issue

Various initiatives have been taken to improve the tax compliance processes through the use of information technology. However, there is a need to bring new areas / processes under the ambit of information technology:

a. In case of application for obtaining / amending service tax registration, the assessee is required to submit the hard copy of the supporting documents such as copy of PAN card, lease agreements of premises etc. Even in case of amendments in the existing registration certificate, the assessee has to submit the hard copy of the supporting document.

b. Under the Customs Act, the assessees have to provide regular compliance intimation to the tax department in physical form.

Recommendation

The interface with the tax department can be minimized by allowing the assessee to upload the soft copy of supporting documents and based on the same the approval should be granted by the respective indirect tax department.

18. Issues with Service Tax provisions

18.1 Time frame for issuance/ amendment of centralized service tax registration

Issue

The process as well as time-frame for issuance of a fresh centralized registration certificate as well as amendment to a centralized registration already issued is cumbersome and time consuming.

Mostly due to non-availability of the relevant officers the registration process gets delayed. Coupled with this is the non-acceptance at the ground level the position that a registration is deemed to be granted within 7 days of filing the application [Rule 4(5) of Service Tax Rules].

Recommendation

It is recommended that applications for fresh / amended centralized registration certificate should be granted within 7 days of submission of all requisite details. In the event of absence of the jurisdictional Commissioner, the power to issue the certificate / grant approval on ACES website should be appropriately delegated to avoid delay in issuance of fresh / amended registration certificate. Further, the registration should be deemed to be granted at the end of 7 days subject to all documents being furnished by the assessee.

18.2 Need to amend Service Tax registration certificate for new services

Issue

Service tax registration is a service category based registration. The assessee is required to amend the service tax registration certificate in case he provides new type of service or receives new type of services under the reverse charge mechanism.

Recommendation

The requirement of obtaining registration for providing / receiving specific categories of services should be done away with. A single registration should suffice and if required for statistical purpose, types of services can be identified based on the service tax category codes which can be provided for in the Challans.

18.3 Due date for payment of Service Tax

Currently due date of payment of service tax in government treasury is 6th of the following month. Payment of service tax for March is required to be deposited in the government treasury by 31 March itself.

There are following practical difficulties faced by the assesse to adhere to the stringent timelines for payment of Service Tax:

- The assessee has to reconcile its monthly accounts and compute the service tax liability by 5th of the next month
- In case of service tax liability in the month of March payment, it becomes practically difficult to compute the taxable value for such month as in certain cases the value of services is computed as a percentage of sale and the sale continue till 31st March of the year. Accordingly, the assessees are forced to deposit service tax on ad-hoc basis as actual amount cannot be computed before the close of the sale.
- In case of organizations having multiple branches / locations over the country but paying service tax on a centralized basis, it becomes difficult due to time required in collating and reconciling the necessary data.

Recommendation

- The due date for depositing the monthly service tax liability may be extended to 15th of the next month so that assessee has sufficient time for determining the correct service tax amount to be deposited monthly.
- For deposit of service tax for March, no interest should be charged from the assessee in case at least 80% of the total monthly service tax is deposited basis the estimated value of services

18.4 No provision to mention service category by the service provider

Issue

As per rule 4A of the Service Tax Rules, 1994, it is not mandatory to mention the service category under which service tax being charged by the Service Provider. This leads to interpretation of service category by the service recipient in order to (i) pay the reverse charge of service tax; (ii) avail Cenvat Credit or (iii) claim service tax refunds / exemption. The service category determined by the service recipient may be different from the service category under which service is provided or service tax is paid by the service provider.

Recommendation

The rule 4A of the Service Rules, 1994 should be amended to provide that the description of a service in the invoice shall be the same as the service tax category under which service tax is paid / payable. This would aid the officers and assessee to reduce unnecessary litigation.

18.5 Recognition of date of submission of the return as the date of filing

Issue

Upon uploading the service tax return in Form ST-3 on the ACES website, the current status is reflected as ""submitted" and after 12-24 hours, once the same is accepted, the return status changes to "filed". Where the ST-3 is uploaded on the date of filing of ST-3 the issue of levy of penalty on the ground of delayed filing is faced when when the return is "rejected" post the last date of submission. In these cases, the authorities demand penalty on grounds of delay in filing of return.

Recommendation

It is recommended that once a return is uploaded and "submitted" the same should be deemed to be "filed". Any subsequent rejection should be viewed as correction of defects in a filed return rather than non-filing/ delayed filing of the return.

18.6 Demonstrating date of receipt of order for filing appeal

Issue

When appeals are sought to be filed before the Commissioner (Appeals)/ Customs, Excise and Service Tax Appellate Tribunal ("CESTAT"), in some jurisdictions, the registries refuse to accept the appeal on grounds of non-availability of satisfactory proof of date of receipt of the order against which the appeal is preferred. Such non-acceptance leads to unwarranted delays in filing the appeal.

Recommendation

All appeals should be taken on record, as it sub-serves natural justice. Any doubts on the date of receipt should be clarified by way of a defect memo issued post the date of filing. A suitable clarification may be issued to direct that no appeal should be refused filing on grounds of non-availability of satisfactory proof of date of receipt of impugned order.

18.7 Extension in time limit for filing revised return

Issue

Presently the time limit for filing revised return is 90 days from the date of submission of original return under Rule 7B of the Service tax Rules. However, the audited expense and revenue figures including true-ups for income tax and company law reporting are finalized after the said due date. This results in differences in the figures/ turnover reported under different laws. Further, the issue is more pronounced in cases where the original return is filed well within the prescribed due date.

Recommendation

The time limit for filing revised return be extended to 180 days from the date of submission of original return so that the final turnover figures can be duly reported for service tax purpose.

18.8 Extension in time limit for determination of input credit attributable to exempted services and payment thereof in case of excess availment

Issue

Under Rule 6(3A) sub-clause (c) and (d) of the Cenvat Credit Rule the final amount of input credit attributable to exempted services pertaining to any financial year is required to be determined on or before the 30th June of the following financial year. Where the assessee

has opted not to maintain separate accounts the input credit attributable to exempted service is governed by the formula prescribed. One of the key elements in the formula is the value of exempted services and total services. The audited values towards this is not available within 30th June of the following financial year given due dates for finalization of audited statements.

Recommendation

The time limit should be extended to atleast 30th September of the following financial year.