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The Institute of Chartered Accountants of India

VASAI BRANCH OF WIRC NEWSLETTER

February - March 2022

www.vasai.icai.org

CHAIRMAN'S COMMUNICATION

Dear Members,

As I communicate with all of you after taking the charge as Chairman of Vasai Branch of WIRC of ICAI, I extend my warmest gratitude to all of you for providing me with this opportunity to serve the members and in turn serve the profession. I am thankful to the members of the Managing Committee of Vasai Branch for reposing their faith in me.

The team which has completed its term under the dynamic leadership of CA. Abhishek Tiwari has brought laurels to Vasai Branch in the last one year. The benchmarks set by all Officer Bearers of 2021-2022 are very high and I wish that with support of all the members of our team and the members of Vasai Branch we will try to match it.

February is the month of change and budget lays down the very foundation for the change in tax laws. Importantly, ICAI has changed torch bearers and elected CA. (Dr.) Debashis Mitra as President and CA. Aniket Talati as Vice President of ICAI. At WIRC also, we have a New Chairman - CA. Murtuza Kachwala, Vice Chairman – CA. Yashwant Kasar, Secretary – CA. Shweta Jain and Treasurer - CA Piyush Chandak.

We are glad to inform you that the branch had Felicitated Newly Qualified CA on 16th February in the presence of Chief Guest Adv. Ravi Vyas (Mira Bhayander BJP district president) and CA Sumeet Doshi (Past Chairman – Vasai Branch) enlightens the new member's opportunity after becoming CA.

Results of CA Final, Intermediate/IPCC and Foundation Examination held in December 2021 have been declared. I congratulate all successful candidates, including the rank-holders. However, I would like to convey to all candidates who could not qualify despite their hard work, to plan and study efficiently and work harder, which will eventually help them in achieving success.

The next month is a busy one for Chartered Accountants as there are time barring assessments, advance tax dues and also the fraternity gearing up for Bank Branch Audits. Above all, March is also month of colours and with a hope that we enjoy Holi in eco-friendly manner, I take this opportunity to wish all the members a very Happy Holi.

"If You Are Working On Something That You Really Care About, You Don't Have To Be Pushed. The Vision Pulls You." – ***Steve Jobs***

CA. Sorabh Agrawal
Chairman
Vasai Branch of WIRC of ICAI

MANAGING COMMITTEE

CA. Sorabh Agrawal Chairman	9930357066
CA. Amit Agarwal Vice Chairman	9821374485
CA. Giriraj Bang Secretary	9004465822
CA. Tarun Dhandh Treasurer	9833506461
CA. Shrikrishna Purohit WICASA Chairman	9049224706
CA. Daya Bansal Committee Member	8976074320
CA. Lokesh Kothari Committee Member	8108484120
CA. Aba Parab Committee Member	9892862548
CA. Brajendra Talesara Committee Member	9987506138
CA. Shweta Jain (Secretary – WIRC & Branch Nominee)	9920737198
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President, ICAI

CA. Aniket Talati
Vice-President, ICAI

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CA. Murtuza Kachwala
Chairman - WIRC

CA. Yashwant Kasar
Vice Chairman - WIRC

CA. Shweta Jain
Secretary - WIRC

CA. Piyush Chandak
Treasurer - WIRC

CA. Ketan Saiya
Chairman-(WICASA)

Vasai Branch of WIRC of ICAI
Managing Committee Members 2022 - 23

CA. Sorabh Agrawal
Chairman

CA. Amit Agarwal
Vice Chairman

CA. Giriraj Bang
Secretary

CA. Tarun Dhandh
Treasurer

CA. Shrikrishna Purohit
WICASA Chairman

CA. Daya Bansal
Committee Member

CA. Lokesh Kothari
Committee Member

CA. Aba Parab
Committee Member

CA. Brajendra Talesara
Committee Member

CA. Shweta Jain
Secretary – WIRC & Branch Nominee

CA. Ankit Rathi
RCM & Branch Nominee

CA. Hrudyesh Pankhania
RCM & Branch Nominee

Explanation of Condition V of Section 2(6) of IGST Act, 2017

CA. Amit Harkhani
Mobile No. : 9821668189
E-mail : harkhani123@gmail.com

First we will understand the Definition of Export of Service

Export of Service

As per the Section 2(6) of IGST Act, 2017 "export of services" means the supply of any service when,

- The supplier of service is located in India.
- The recipient of service is located outside India.
- The place of supply of service is outside India.
- The payment for such service has been received by the supplier of service in convertible foreign exchange or **in Indian rupee wherever permitted by RBI (Inserted by IGST Amended Act, 2018)** and.
- **The supplier of service and the recipient of service are not merely establishments of a distinct person.**

Now we moving towards the analysis of **establishments of a distinct person:-**

Explanation 1 & Explanation 2 of the Section 8 of the IGST Act provides for the conditions wherein establishments of a person would be treated as establishments of distinct persons, which is reproduced as under:-

Explanation 1:- Where a **PERSON** has,

(i) An establishment in India and any other establishment outside India.

(ii) An establishment in a State or Union territory and any other establishment outside that State or Union territory.

(iii) An establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.

As per the above Explanation, an establishment of a person in India and another establishment of the said person outside India are considered as establishments of distinct persons.

Explanation 2:- A person carrying on a business through a **branch or an agency or a representational office** in any territory shall be treated as having an establishment in that territory.

Now understand the meaning of **PERSON**:-

As per the Section 2(84) of CGST Act, 2017 PERSON Includes,

(a) An individual.

(b) A Hindu Undivided Family.

(c) A firm.

(d) A Limited Liability Partnership.

(e) **A company.**

(f) An association of persons or a body of individuals, whether incorporated or not, in India or outside India.

(g) Any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013.

(h) **Any body corporate incorporated by or under the laws of a country outside India. (i.e. Foreign Company)**

(i) A co-operative society registered under any law relating to co-operative societies.

(j) Society as defined under the Societies Registration Act, 1860.

(k) A local authority.

(l) Central Government or a State Government.

(m) Trust.

(n) Every artificial juridical person, not falling within any of the above.

Now understand the meaning of Company & Foreign Company as per Company Act, 2013.

Company (Section 2(20) of Company Act, 2013)

"Company" means a company incorporated under this Act or under any previous company law.

Foreign Company (Section 2(42) of Company Act, 2013)

"Foreign company" means any company or body corporate incorporated outside India which

(a) Has a place of business in India whether by itself or through an agent, physically or through electronic mode and

(b) Conducts any business activity in India in any other manner.

QUESTION

Whether the supply of service by a subsidiary/ sister concern/ group concern, etc. of a foreign company in India, which is incorporated under the laws in India, to the foreign company

incorporated under laws of a country outside India, will hit by condition (v) of subsection (6) of section 2 of IGST Act, 2017.

ANALYSIS OF ISSUE

Clause (v) of sub-section (6) of section 2 of IGST Act, which defines "export of services", places a condition that the services provided by **one establishment of a person to another establishment of the same person, considered as establishments of distinct persons as per Explanation 1 of section 8 of IGST Act,** cannot be treated as export. In other words, any supply of services by an establishment of a foreign company in India to any other establishment of the said foreign company outside India will not be covered under definition of export of services.

Further, perusal of the Explanation 2 to section 8 of the IGST Act suggests that if a foreign company is conducting business in India through a branch or an agency or a representational office, then the said branch or agency or representational office of the foreign company, located in India, shall be treated as establishment of the said foreign company in India.

Similarly, if any company incorporated in India, is operating through a branch or an agency or a representational office in any country outside India, then that branch or agency or representational office shall be treated as the establishment of the said company in the said country.

In view of the above, it can be stated that supply of services made by a branch or an agency or representational office of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as "export of services" in view of condition (v) of sub-section (6) of section 2 of IGST Act.

Similarly, any supply of service by a company incorporated in India to its branch or agency or representational office, located in any other country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of services.

From the perusal of the definition of "person" under sub-section (84) of section 2 of the CGST Act, 2017 and the definitions of "company" and "foreign company" under Section 2 of the Companies Act, 2013, it is observed that **a company incorporated in India and a foreign company incorporated outside India, are separate "person" under the provisions of CGST Act and accordingly, are separate legal entities.** Thus, a subsidiary/ sister concern/ group concern of any foreign company which is incorporated in India, then the said company incorporated in India will be considered as a separate "person" under the provisions of CGST Act and accordingly, would be considered as a separate legal entity than the foreign company.

CONCLUSION

1) In view of the above, it is clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate **persons** under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as "merely establishments of a distinct person in accordance with Explanation 1 in section 8".

2) Therefore, supply of services by a subsidiary/ sister concern/ group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a 'company' in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017.

Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of section 8 of IGST Act 2017. Such supplies, therefore, would qualify as 'export of services', subject to fulfilment of other conditions as provided under sub-section (6) of section 2 of IGST Act, 2017.

DISCLAIMER

This is strictly my personal opinion. Above discussion cannot be considered as our professional or legal advice. Users shall consider legal provisions or take advice from consultant before taking action on it.

Deferred Consideration – Merger and Acquisitions

CA Pradeep Sethia
Mobile No. : 9769922207
E-mail : pradeepsethia3@gmail.com

Most deals involving deferred consideration include an upfront payment and then one or more subsequent payments based on achieving certain milestones or financial metrics which are usually profit, EBITDA ('Earnings Before Interest, Taxes, Depreciation, and Amortization'), revenue targets etc. Generally, deferred consideration is used to bridge different perspectives on value and can reduce the risk for buyers by avoiding payment for future performance or events which do not materialize.

Deferred consideration can also encourage the seller's commitment to a successful transition/integration, and it can represent an attractive financing strategy by allowing part of the acquisition to be underwritten by the target's future profits. For sellers, it may ultimately lead to a greater aggregate sales price because the buyer may be willing to pay more when paying only for realized performance.

DIRECT TAX

Under which head consideration shall be taxed?

The issue being sought to be addressed is whether the deferred consideration shall align with 'salary' income under Section 17 of Income Tax Act, 1961 ('the Act'); 'profits and gains' under Section 28 of 'the Act'; or 'Capital Gains' under Section 45 of 'the Act', 1961?

The Hon'ble Madras High Court in *Anurag Jain v. AAR (2009),* has opined that the earn-out component is linked only to the performance of the manager and not directly linked to the performance of the acquired business, therefore the deferred payment would be charged under Section 17 of the Act.

Cases where it is held that deferred payment is taxable in year of transfer of asset:

- In *Ajay Guliya v. ACIT (2012)*, the transferor of shares contended that the pre-decided entire consideration cannot be taxed as it had not accrued in the year of sale, due to waiving off right to the whole consideration unless stipulated conditions are fulfilled. However, the Hon'ble Delhi High Court held that share consideration became conclusive when the Share Purchase Agreement was executed. As the title of shares would not revert to the transferor even upon non-payment of balance consideration - which is depended upon the performance of company, not that of the seller – the whole of consideration is taxable in assessment year of execution of agreement, irrespective of time of receipt of such.
- In *T.A. Taylor (P.) Ltd v. ACIT [2018]* ITAT observed that, in the instant case, there was no deferred consideration mentioned in the slump sale agreement. The ITAT observed that no doubt, release of the escrow amount, is dependent on satisfaction of various responsibilities undertaken by the assessee in relation to the slump sale. Since consideration was clearly mentioned in slump sale agreement, segregation of consideration into two parts could not be a reason to say that capital gain arose only with reference to first part. The ITAT held that entire sale consideration was to be taxed as capital gain.
- On the other hand the *Delhi AAR (Authority for Advance Rulings) in re Moody's Analytics, Inc.*, surmised that where the deferred payment is part of the total purchase price, the entire purchase price will be subject to taxation of Capital Gains under Section 45 of the Act.

Cases where it is held that deferred payment is taxable in year of receipt:

- The Hon'ble Bombay High Court in *CIT v. Hemal Raju Shete, (2016)* gave a contrasting view that computation of Capital Gains will take place when the earn-out payment is made. According to the Hon'ble Court, the amount sought to be taxed failed the test of accrual, i.e., whether the assessee had an unconditional right to the mentioned consideration, and the right was legally enforceable. Since the all-inclusive consideration was the maximum amount payable to the assessee and not an assured consideration, tax could not be levied upon the consideration which the transferor might never be entitled to.
- In case of *Universal Medicare (P.) Ltd. v. Dy. CIT [2020] (ITAT Mumbai)*, it was held that as and when the consideration is accrued to the assessee the same shall be taxed in the year when the same is accrued.

Conclusion

The above analysis says that the earn out considerations have become widely prevalent in the current economic climate by the business entities to cope up with, the disputes which may emanate with respect to the value of consideration for the sale and purchase of the business in M&A transactions, between the buyer and the seller. Today since the market conditions have become more unascertainable, it is anticipated that the earn out considerations would be used more often in the future. Therefore, disputes with regard to taxing of such considerations are bound to occur. Hence, for a country like India which purports to be investor friendly, it is essential to adopt an approach by which rights of a business entity to carry the business smoothly is balanced with the right of the state to collect the tax on capital gains.

Tax Column

CA Jayesh Dadia
Mobile No. : 9820036868
E-mail : jayesh@jdaca.com

I am an individual. I own four residential houses. During the financial year 2021-22 I have sold three residential houses and reinvested the entire capital gain arising from the sale of three different residential houses by acquiring three new residential houses. Since I have sold residential houses and purchased new residential houses, my capital gain should be exempted. However, I was told that under Section 54 of the Income Tax Act, I can invest in only one residential house. Let me know your views and what is the correct law?

You have sold multiple houses and against each capital gain you have purchased three new different houses. In other words, three different long-term capital gains arising from the sale of three independent separate new houses have been reinvested in three independent separate new residential houses. Therefore, you have satisfied all the conditions under Section 54 of the Income Tax Act and accordingly you will be entitled to exemption of all the three capital gains made during the financial year. Section 54 of the Income Tax Act speaks about the long-term capital gain arising on sale of residential houses. Therefore, if you sell one house and the corresponding capital gain you invest in another new house, then you are entitled to deduction under Section 54 of the Income Tax Act.

The concept of one residential house recently introduced in provision of Section 54 of the Income Tax Act refers to one long-term capital gain reinvested in multiple houses. If an assesse make one longterm capital gain, he cannot buy more than one residential house. In your case, you are buying one residential house independently. Therefore, the concept of more than one house is not applicable in your case. The intention of Legislature in Section 54 of the Income Tax Act is very clear about sale of residential house and purchase of new residential house i.e. 'house for house'. This has clearly happened in your case. Therefore, you will be entitled for relief under Section 54 of the Income Tax Act.

I am an individual. I was tested positive for corona virus in the second wave in the month of April 2021. I was very serious and hospitalized. I received substantial financial assistance from my employer and my well-wishers. This is to inquire whether the financial assistance which exceeds ₹ 25 lakhs is taxable in my hands.

The government has issued a press release dated June 25, 2021 providing that taxpayers receiving financial help from their employers and well-wishers for meeting the expenses incurred on treatment of corona virus are entitled to exemption under the Income Tax Act. Therefore, any amount received from your employer or any other person for such treatment would be taxfree. In your case, whatever financial assistance received from the employer is taxfree in your hands. However, where the financial assistance is received from any other person other than employer, such as well-wishers, the exemption amount shall be limited to ₹10 lakhs in aggregate.

I am an employee with a listed company. During the current financial year I fell sick and was hospitalized and was also operated. My employer has borne or reimbursed all the expenses. Is the amount of medical treatment borne or reimbursed by the employer taxable perquisite in my hand?

Certain medical expenditures borne or reimbursed by the employer are not considered to be perquisite and are specifically exempted under Section 17(2) of the Income Tax Act. Under this section, medical treatment provided to an employee or any member of his family, in any hospital approved by the government and expenditure on medical treatment will not be considered as perquisite in the hand of employees. Therefore, in your case, if the medical treatment was given to you in a hospital approved by the central government, the entire medical expenditure borne or reimbursed by your employer will not be taxed in your hand.

I own land. I have given the said land on lease on an annual rental of `30 lakhs. Can I offer this rental income as income from house property? I have also given one residential flat on rent and earned rental income against which I pay the society maintenance charges which are substantially high. Can I get deduction of maintenance charges while calculating the rental income?

Under Section 22 of the Income Tax Act, only income from letting out the building or land appurtenant shall be taxable under the head 'Income from House Property'. In your case, letting out is only of vacant land and therefore rent received from such letting out land is not taxable under the head income from house property and therefore will not get notional deduction of 30 per cent. The rental income on letting out the land will be taxed as 'Income from Other Sources' under Section 23 of the Income Tax Act; taxes levied by any local authorities in respect of property shall be deducted from the gross rental income. The maintenance charges paid to the society cannot be equated with taxes levied by any local authorities. Therefore, you will not be entitled to deduction of society maintenance charges from rental income from flat. However, if the society bifurcates the maintenance charges and discloses particularly the amount of property tax or local taxes, then such amount could be claimed as deduction.

I am in the share trading business. I also invest in units of mutual funds. Some of the investment I hold as stock on which I earn dividend income. Is the dividend income business income and can it be set off against business loss?

Dividend declared by the domestic companies on or after April 1, 2020 is taxable in the hands of recipients, irrespective of the status of the assesse. Dividend income is chargeable to tax under the head 'Income from Other Sources' under Section 56 of the Income Tax Act at the rate applicable to the assesse. Since there is specific provision for taxing dividend income, in my opinion even if you hold shares as stock-in-trade then also the dividend income cannot be treated as business income and will be taxed under the head 'Income from Other Sources'. However, the current year business loss can be set off against the current year's income from other sources. Similarly, dividend received from mutual funds shall be taxed in the hands of recipients under the head 'Income from Other Sources'.

Felicitation of Newly Qualified CA held on 16th February, 2022 at Branch Premises, Bhayandar (West)

Women Day Celebration held on 6th March 2022 at Branch Premises, Bhayandar (West)

Group photo taken at Inauguration session

CA. Sorabh Agrawal (Chairman – Vasai Branch of WIRC) presenting bouquet to CA. Aditi Pai (CFO-Bewakoof Brands Pvt. Ltd)

Office Bearers of Vasai Branch: CA. Amit Agarwal (Vice Chairman), CA. Giriraj Bang (Secretary), CA. Tarun Dhandh (Treasurer) presenting bouquet to CA. Shweta Jain (Secretary – WIRC)

CA. Shrikrishna Purohit (WICASA Chairman) & CA. Aba Parab (Committee Member) presenting bouquet to CA Khushboo Jayraj Bhatt (Speaker)

Group photo taken at the session

Women Turf Tournament held on 5th March 2022 at Kasturi Graden, Bhayandar (West)

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The Institute of Chartered Accountants of India,
Vasai Branch of WIRC
Address: Maxus Mall, B Wing, 7th Floor, Above Maxus Banquet Hall, Temba Road, Bhayandar (West) Thane-401 101.
Contact: 9029868900/ 8655068901/ 8976068902 | Email: vasaibranch@gmail.com | Website: www.vasai-icai.org