KNAV

PARTNERS BEYOND BOUNDARIES

India tax newsletter | February, 2017

In this edition of our thought leadership publication, we have tracked the progress of some significant cases decided by the appellate forums across the country and a few important circulars, notification and press releases issued by the Central Board of Direct Taxes.

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Transfer pricing

Case Law 1: The ACIT Vs. M/s. Patel Engineering Ltd. (ITA No. 3037/MUM/2012)

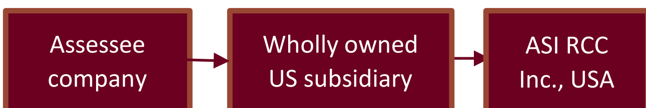
Transaction of buy-back of shares resulting from the investment in shares cannot be treated as a loan transaction and resultantly notional interest cannot be imputed. Recategorization of debt into equity and vice versa is not substantiated by any provisions of the Income tax Act, 1961 ('the Act').

Facts of the case:

The assessee is an Indian company engaged in the business of civil contracting projects like dams, tunnels, industrial complexes, building roads etc. The assessee has a wholly owned subsidiary in the US. During the year under consideration i.e. AY 2006-07, the US subsidiary bought back its shares form the assessee and resultantly the assessee was in receipt of a sum from its wholly owned subsidiary in the US for buy-back of shares held by the assessee. On account of being an international transaction, the Assessing Officer (*'AO'*) referred the matter to the Transfer Pricing Officer (*'TPO'*).
The analysis of the background of the transaction, has been represented in this diagram:

Year 1997 – Inception of the assessee's US operations

Year 1999 – Incorporation of US subsidiary



During the AY 2006-07, ASI RCC Inc., having excess funds, redeemed the shares held by the US subsidiary. On account of availability of funds due to redemption of stock, the US subsidiary used such funds to reduce its share capital and accordingly, bought-back its equity shares held by the assessee.

The TPO considered the entire transaction as a means by which assessee company had provided accommodation to its US subsidiary in the form of providing the fund by way of equity and that such an accommodation was without adequate consideration. The TPO went on to hold that such arrangement on transaction was nothing but interest-free advance of the funds to the US subsidiary and therefore, in an arm's length scenario assessee was entailed to earn interest on the funds provided to its US subsidiary. In essence, the TPO recategorized the equity into debt.

The AO passed an order by making an addition to the returned income in conformity with the adjustment proposed by the TPO. On appeal, the Hon'ble CIT(A) was of the view that the TPO was wrong in assuming the instant transaction as advancement of interest-free loan to the subsidiary. It also erred in the computation of notional interest and that too only for the year under consideration up to the date of remittance, considering that the investment in shares of the subsidiary had been made by the assessee in the past years.

The Hon'ble CIT(A) passed an order in favour of the assessee thereby deleting the addition made by the TPO.

Aggrieved, the revenue filed an appeal before the Hon'ble Tribunal.

Decision of the Hon'ble Tribunal:

The Hon'ble Tribunal took a notice of the assessee's contention that the transaction was clearly of investment in shares, which has been returned on account of buy-back of shares and therefore, it could not have been treated as a loan transaction so as to impute any notional interest thereof.

The assessee placed reliance on the judgement of the Hon'ble Bombay High Court in the case of Besix Kier Dabhol SA (26 taxmann.com 169) (Bom) whereby it was held that interest on debt capital borrowed from shareholders resulting in abnormally high debt-equity ratio, cannot be disallowed in absence of any thin capitalization rule.

The Hon'ble Tribunal was of the view that the nature of the said transaction has been disbelieved by the TPO, who has recharacterized it as provision of loan/fund by the assessee to its subsidiary on interest-free basis in the garb of investment in equity of the subsidiary. In the present case, the Hon'ble CIT(A) has correctly brought out that the transactions of investment and buy-back of shares has been spread over more than one year and that there was no material to suggest that the stated transactions were unreal. The Hon'ble Tribunal disagreed with the stand of the revenue and noted that there was no provision under the Act by which equity could be re-characterized into debt and vice-versa.

In view of the aforesaid reasons, the Hon'ble Tribunal dismissed the revenue's appeal.

KNAV comments:

***When the decision was rendered in the case of Besix Kier Dabhol as well as the case under consideration, there were no thin capitalization rules in force. However, the Finance Bill 2017 has, following the recommendation of BEPS Action Plan 4, proposed to introduce a new section 94B in the Act w.e.f. April 1, 2017 to tackle the issue of thin capitalization and huge debt funding. The said section proposes to restrict the deduction for interest paid/payable by Indian companies or Permanent Establishment ('PE') of foreign companies on debts given/guaranteed by its 'Associated Enterprise' ('AE') to 30% of the Earnings Before Interest, Taxes, Depreciation and Amortization ('EBITDA') of the borrower*.**

Case Law 2: ACIT Vs. Veer Gems (ITA No. 1514/AHD/2012) & Veer Gems Vs. ACIT (CO No. 184/AHD/2012)

As long as the provisions of one of the clauses in section 92A(2) of the Act are not satisfied, even if an enterprise has a 'de facto' participation capital, management or control over the other enterprises, the two enterprises cannot be said to be AEs.

Facts of the case:

The assessee is a partnership firm engaged in the business of manufacture and sale of the polished diamonds. The partners in the firm are three brothers and their close relatives. During the year under consideration, the assessee had entered into certain international transactions with Blue Gems BVBA (*'BVBA'*). BVBA's shareholding was controlled by the fourth brother along with his wife and son.

During the immediately preceding AY, the assessee was an AE of BVBA because in the said assessment year more than ninety percent of the raw materials required by the assessee were supplied by BVBA thereby satisfying the conditions u/s 92A(2)(h) of the Act. However, the same was not the case in the AY under consideration.

The AO, disregarding the facts and submissions made by the assessee, treated BVBA as an AE in the concerned AY on the following grounds:

- Both the companies had common control and management; and
- BVBA was controlled by a relative of the individuals controlling the assessee, and thus they shall be regarded as deemed AEs u/s 92A(2)(j) of the Act.

Therefore, as per the AO's order, the transactions entered between the enterprises were subjected to the arm's length principle as per the transfer pricing provisions. The matter was referred to the TPO, who made a substantial Arms Length Price (*'ALP'*) adjustment.

Aggrieved by the decision of the TPO/AO, the assessee filed an appeal before the Hon'ble CIT(A).

The Hon'ble CIT(A) proceeded to deal with examining the correctness of the ALP adjustment and further held it to be unsustainable on the facts of the case and in law.

The Hon'ble CIT(A) was of the view that as the addition stands deleted on the merits of the case, no discussion was required to be made as to whether BVBA is an AE of the assessee or not as the same is only academic in nature.

The AO, being aggrieved of the deletion of the impugned ALP adjustment based on merits, filed an appeal before the Hon'ble Tribunal.

The assessee being aggrieved that the Hon'ble CIT(A) did not adjudicate on the fundamental question as to whether the assessee and BVBA could at all be said to be AEs, has also filed a cross objection against the same order passed by the learned CIT(A).

Decision of the Hon'ble Tribunal:

The Hon'ble Tribunal having heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position, and stated that in order to invoke the transfer pricing provisions, and deal with the determination of ALP, it is absolutely essential that the international transaction in question must be between the associated enterprises. It was therefore, wholly unreasonable to decline to deal with the issue of whether the assessee and BVBA are associated enterprises, on the ground that, in any event, the ALP adjustment in question is not sustainable in law.

On an analysis of section 92A of the Act, which deals with the meaning of AEs, it is a clear position that in order to be regarded as AEs, the mere fact of participation by one enterprise in the management or control or capital of the other enterprise, or the participation of one or more persons in the management or control or capital of both the enterprises shall not make them AEs, unless the criteria specified in section 92A(2) of the Act are fulfilled. If a form of participation in management, capital or control is not recognized by section 92A(2) of the Act, even if it ends up in *de facto* or even *de jure* participation in management, capital or control by one of the enterprise in the other enterprise, it does not result in the related enterprises being treated as 'associated enterprises'. In essence, section 92A(1) and (2) of the Act, in that sense, are required to be read together.

Section 92A(2)(j) states that two enterprises shall be deemed to be AEs if one enterprise is controlled by an individual, and the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual. On account of the above clause, the revenue contended that the assessee and BVBA are AEs. However, the Hon'ble Tribunal was of the view that in the present case, the assessee is a partnership concern and the assessee firm, therefore, cannot be said to be controlled by an individual, which is a starting point for section 92A(2)(j) of the Act being

invoked.

Therefore, the assessee and BVBA cannot be said to be AEs. Therefore, as these enterprises are not AEs, the ALP adjustments in respect of the transactions between these enterprises were wholly unwarranted.

Also, there were other grounds in the appeal pertaining to certain domestic tax issues which were addressed by the Hon'ble Tribunal.

Thus, the Hon'ble Tribunal approved the deletion of the ALP adjustment and upheld the plea of the assessee in the cross objection.

International tax

Case Law 1: M/s Geo Connect Ltd. Vs. DCIT (ITA No. 1927/DEL/2008)

No tax is required to be deducted on payment to non-residents if the income is not assessable in India.

Facts of the case:

The assessee was operating an outbound call centre in Ghaziabad and was engaged in the telemarketing services on behalf of its clients based in USA. The executives used to make calls to the people in USA for marketing the products of the assessee's clients. The entire process of calling the US persons by the executive involves multiple entities. The call is carried over line provided by Videsh Sanchar Nigam Limited (*'VSNL'*) in India. VSNL carries this call further over an underwater sea cable maintained by VSNL and M/s AT & T, USA (*'AT &T'*) up to the shores of USA. From the shores of USA, the call is connected to the local telephone service provider of USA by M/s IGTL Solutions Inc. (*'IGTL'*). For completing the entire process efficiently, the assessee requires private bandwidth in the underwater sea. The assessee paid International Private Lease Charges (*'IPLC'*) for the private bandwidth to the Kick Communications Private Limited (*'Kick communications'*) who was a reseller of AT &T.

As per the assessee's contention, the said payments to Kick communications was not assessable in India and hence, no tax was deducted by the assessee on payment to Kick communications.

However, per section 9(1)(i) of the Act and Article 12 of the Double Taxation Avoidance Agreement (*'DTAA'*), the AO contended the said payments as 'royalty' and disallowed the payment of IPLC u/s 40(a)(i) of the Act due to non-deduction of tax at source. The AO contended that the assessee took the physical existence of the cable for establishing services rendered outside India by a non-resident. However, the AO took the view that the service was not in physical sense but it was service provided on a physical cable.

Aggrieved by the decision, the assessee preferred appeal before the Hon'ble CIT(A). The Hon'ble CIT(A) concurred with the decision of AO but however, held the remittance to be in the nature of 'fees for technical service' by relying on the decision in case of Hutchinson Telecom East Ltd. Vs. ACIT [2007] 16 SOT 404 (Kol).The Hon'ble Kolkata Tribunal had held that since the services were provided with the use of technology and without which it was not possible for BSNL to continue with its business. Payments made by Hutchinson to BSNL were in the nature of the technical services, and were subject to deduction of tax at source (*'TDS'*) u/s 194J of the Act.

Aggrieved by the decision of the Hon'ble CIT(A), the assessee preferred an appeal before the Hon'ble Tribunal.

Decision of the Hon'ble Tribunal:

The Hon'ble Tribunal reversed the decision of the Hon'ble CIT(A) and laid down following points to distinguish the decisions of the AO and Hon'ble CIT(A).

The payments made to the non-resident parties were towards commercial services rendered by them outside the Indian territory and the consideration paid was not covered u/s 9(1)(i) of the Act i.e. there is no business connection since the payments were made for bandwidth charges for completion of international leg of the call *(i.e. outside India)*.

Further, the control of equipment was with the non-resident parties and they have not leased the equipment i.e. under water sea cable to the assessee. Therefore, it cannot be said that the payment by the assessee was for the use of under water sea cable. Also, the non-resident companies have not provided use of any process, which are of patentable nature having exclusive ownership rights. The assessee was only concerned with the transmission of call data beyond the boundaries of India to the person in USA. Also, the Hon'ble Tribunal relied on the decision of Delhi Tribunal in the case of Bharti Airtel Ltd. V. ITO.

In view of the above facts in hand, provisions of section 9(1)(vi) of the Act, DTAA and the decisions, the Hon'ble Tribunal held that the payments made by the assessee are not in the nature of Royalty either under domestic laws or DTAA. The Hon'ble Tribunal also held the non-deduction of tax on payment to non-resident u/s 195 of the Act cannot hold the assessee in default for non-deduction of tax at source since the provisions to deduct tax on payment to non-resident were amended later. Therefore, at the time of payment to non-resident, there was no obligation to deduct tax in the hands of the assessee.

Lastly, the Hon'ble Tribunal relied on the decision rendered by the Hon'ble Delhi High Court in the case of CIT V. Bharti Cellular Ltd. The Hon'ble Delhi Tribunal held that the technical services must be rendered by human element and it does not include any service provided by machine or robots. The call connectivity and transmission services have been held as not involving human intervention by this Hon'ble High Court and therefore, any payment made for such services shall not be regarded as 'Fees for technical

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services'. Also, no technical knowledge was made available to the assessee and therefore, the Hon'ble Tribunal held that payment for the services of call transmission through dedicated bandwidth provided by the non-resident companies cannot be termed as 'Fees for Technical Services.'

Also, there were other grounds in the appeal pertaining to certain domestic tax issues which were addressed by the Hon'ble Tribunal.

Thus, the assessee's appeal was allowed and expenditure in respect of payment of IPLC was allowed in full.

Domestic tax

Case Law 1: Shri Devendra J. Mehta Vs. ACIT (ITA No. 55/RJT/2016)

For the purpose of stamp duty valuation u/s 50C of the Act, the date of the agreement is irrelevant in the absence of any consideration paid on or before the date of agreement.

Facts of the case:

The assessee in this case entered into an agreement for sale of land in the AY 2008-09 for a consideration of INR 5,045,000. The assessee received the payment after about 8-9 months from the date of agreement. The assessee handed over the possession of the land to the transferee in the AY 2008-09 itself. However, the sale deed had been registered in the AY 2011-12 and thus, the assessee had offered the long term capital gains (*'LTCG'*) for taxation in the AY 2011-12.

Further, stamp duty on the said transfer amounting to INR 247,000, was paid originally, which was then revised to INR 2,132,000.

During the course of assessment, the AO noticed that as per the revised stamp duty valuations, value of the land was INR 43,500,000, whereas the assessee had only taken INR 5,045,000 *(the consideration received by him)* while computing capital gains. The assessee explained that during the pendency of agreement before registration of sale deed, the Government had revised circle rate for the purpose of charging stamp duty. However, this revision had not authorized the assessee to charge higher sale consideration. Thus, the assessee claimed that the LTCG should be computed taking into account the rates of AY 2008-09 itself.

However, the AO invoked section 50C of the Act and accordingly calculated LTCG.

Aggrieved, the assessee preferred appeal before the Hon'ble CIT(A) before which it raised the following contentions:

- Due to the revision of circle rates by the Government, it should be concluded that the rates available in the AY 2008-09 ought to be adopted for the purpose of calculating value of the property.
- Secondly, the AO ought to have made a reference to a Departmental Valuation Officer (*'DVO'*) u/s 50C(2) of the Act to ascertain fair market value(*'FMV'*) of the property in the year in which the assessee had entered into agreement for the sale of the property.
- Lastly, the agreement was entered into in the AY 2008-09 and further, the possession of the land had also been handed over to the transferee in the same year. Therefore, the transfer had taken place in the AY 2008-09 and LTCG ought to be computed and subsequently taxed in the same AY.

However, the Hon'ble CIT(A) rejected the assessee's contention and upheld AO's order, noting that the assessee himself had offered the LTCG in AY 2011-12.

Aggrieved, the assessee preferred appeal before the Hon'ble Rajkot Tribunal.

Decision of the Hon'ble Tribunal:

The Hon'ble Tribunal first addressed the contention of the assessee that the transfer had taken place in AY 2011-12, and thus the LTCG should be chargeable to tax in the same AY.

The Hon'ble Tribunal noted that section 2(47) of the Act included part performance of the agreement in the ambit of the definition of 'transfer', when the part performance had been done in accordance with section 53A of the Transfer of Property Act, 1882 (*'TPA'*). Section 53A of the TPA is a beneficial provision providing protection to the transferee to retain his possession which was taken in part performance of the contract.

However, the Hon'ble Tribunal also noted the amendment which had been effected in the Registration and Other Related Laws Amendment Act, 2001. The amendment provided that in case of a contract which is compulsorily registerable under section 17(1A) of the Registration Act, 1908, if the transferee failed to register such contract, then, he would not be able to protect his possession or claim any benefit conferred by section 53A of the TPA.

The Hon'ble Tribunal explained that in other words, validity of unregistered agreement is not denied for the purpose of adducing it as evidence for obtaining the benefit flowing from such contract. But for the purpose of protecting the possession, un-registered contract could not be enforced.

Thus, on the basis of the above, the Hon'ble Tribunal concluded that a transfer within the meaning of section 2(47) of the Act, would be complete only when the possession can be protected.

Thus, the Hon'ble Tribunal held that the transfer in the present case is completed only in the AY 2011-12, when the agreement had been registered and thus, the capital gains tax should be levied on the assessee in the AY 2011-12.

The Hon'ble Tribunal then addressed the first and second contention of the assessee, that the rates in the AY 2008-09 should be taken into consideration and further, the AO should refer to the DVO to value the land.

With regard to this contention, the Hon'ble Tribunal noted that the assessee's case does not fall under the

proviso to section 50C of the Act, which allows the valuation of the property as on the date of agreement to be taken into consideration for the purpose of computing capital gains, but only when part of the consideration is paid on or before the date of agreement. Thus, since in the assessee's case the whole consideration had been paid 8-9 months after the date of agreement, the property rates prevalent in the year of agreement, i.e. AY 2008-09 would not be taken into consideration for the purpose of computing capital gains in the case of the assessee.
Further, the Hon'ble Tribunal opined that by virtue of the agreement to sell some right is given to the transferee by the transferor. The Hon'ble Tribunal thus held that the agreement is an encumbrance on the property and considering this aspect, the AO should have remitted the issue to the file of DVO for determining FMV on the date of transfer of land.

The Hon'ble Tribunal rendered the decision partly in favour of the assessee stating that the DVO will determine the FMV of the property on the date of sale deed, keeping in mind the encumbrance over the property by virtue of the agreement.

Case Law 2: Agarwal Yuva Mandal (Kerala) Vs. Union of India and Principal Commissioner of Income tax (WP (C).No. 26779 of 2016 (V))

Intimation u/s 143(1) of the Act is covered under the scope of section 264 of the Act, and thus enables the Commissioner of Income tax ('CIT') to revise the same.

Facts of the case:

The assessee is a society registered under the Travancore Cochin Literary Scientific and Charitable Societies Registration Act, 1955. For AY 2013-14, the assessee filed return disclosing taxable income. The assessee received a notice u/s 143(1) of the Act disallowing certain claim of expenses and consequently, was assessed to a tax liability. The assessee filed an objection to the proposed assessment but received no response. The assessee subsequently filed a revised return. This was followed by a reminder letter from the AO for non-payment of tax dues. The assessee clarified the contents of the income tax return. The assessee thereafter filed a revision petition u/s 264 of the Act, which deals with the power of CIT to revise orders. This petition was declined by the Principal CIT.

Aggrieved assessee filed a writ petition before the Hon'ble Kerala High Court.

Before the Hon'ble High Court, the assessee submitted that it was not afforded any opportunity of being heard. The assessee contended that the AO did not consider the revised return and its clarifications on the income and expenditure. The assessee argued that it was prejudiced as the Principal CIT rescinded to entertain the revision petition. The revenue, on the other hand contended that intimation u/s 143(1) could not be considered as an order, and thus could not be revised u/s 264 of the Act. The assessee as well as the revenue relied upon plethora of judicial pronouncements.

Thus, the question under consideration was whether intimation u/s 143(1) of the Act is covered under the ambit of the word 'order' as laid down u/s 264 of the Act and consequently, whether the said intimation could be revised u/s 264 of the Act.

Decision of the Hon'ble High Court:

The Hon'ble High Court observed that there had been some changes in the statutory format over a period of time and section 143 of the Act had undergone certain changes w.e.f. June 1, 1999. The Hon'ble High Court noted that the statute used the word 'intimation' and not 'order'. The Hon'ble High Court further noticed that the AO was empowered to pass an order u/s 143(3) of the Act after conducting enquiry in terms of section 143(2) of the Act. The Hon'ble High Court opined that in light of change in the statutory provision, one has to consider the scope and effect of the revisionary powers u/s 264 of the Act.

The Hon'ble High Court referred to judicial precedence in this regard and opined that the revisionary powers conferred u/s 264 of the Act are very wide.

The Hon'ble High Court noted the principle laid down in the case of Parekh Brothers Vs. CIT [15 Taxman 539 (Ker)]. In the said case, the question which was considered was whether section 264 of the Act can be invoked for the purpose of making a claim of deduction under section 35B of the Act. The question that was raised in the said case was that 'Independent of the notice issued under section 143(1)(a) of the Act, if there was a failure on the part of the petitioner in making a claim for deduction, whether it was possible for the Commissioner to grant one more opportunity in the matter'. The Hon'ble High Court held that even if no such claim has been made earlier, such a claim can be entertained by the Commissioner u/s 264 of the Act.

Relying on the above, the Hon'ble High Court held that that although not as a challenge to notice issued u/s 143(1) of the Act, when the petitioner has filed a revised return and has sought for interference by the Commissioner, it is necessary that the claim has to be considered in accordance with law.

The Hon'ble High Court thus directed the CIT to reconsider the matter in accordance with law.

Case Law 3: DSP Merill Lynch Ltd. Vs. DCIT (WP No. 2858 of 2016)

Issue of notice to reopen assessment beyond the time limit prescribed u/s 147 of the Act is only valid if the prescribed conditions thereunder are fulfilled.

Summary of the case:

- The assessee company provided compensation plans to its employees by way of Employee Stock Option Plan ('*ESOP*') under which its employees were granted equity shares of its associate listed company in USA.
- The shares were granted for 'nil' consideration to its employees and the grant of shares would be vested in its employees at the end of four years of continuous service.
- Further, the assessee amortized the employment

compensation expenses.

- However, these amortized amounts were written back in the books of the assessee at the end of four years. These amounts were never offered for tax by the assessee.
- The entire scheme of ESOP i.e. complete details of the manner and method of accounting and offering for tax, the cost of the shares granted and vested was disclosed in the income tax return and Form 3CEB.
- On examining the Form 3CEB, the AO forwarded the Form 3CEB to the TPO to examine the quantification of ALP. The fact that the AO referred the matter to TPO would presuppose that the AO would have examined the claim made by the assessee and was satisfied that the claim made was allowable.
- After the end of four years, the AO issued a notice u/s 148 of the Act to reopen the assessment.
- Aggrieved by this, the assessee filed a writ petition in the Hon'ble High Court contending that any assessment cannot be reopened after the end of four years unless the specific conditions mentioned under *Explanation 1* to section 147 of the Act were satisfied.
- One of the conditions to reopen the assessment after the expiry of four years is that the income escaping assessment should be by failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. However, in the current case, the assessee not only disclosed fully and truly all material facts but also the same facts were well examined by the AO.

Therefore, *prima facie* on the date of issuing of the notice, the AO could not have any reason to believe that income chargeable to tax has escaped assessment and notice is without jurisdiction.

Recent important circulars, notification and press release issued by the Central Board of Direct Taxes ('*CBDT*')

1. Circular No. 4/2017 dated January 20, 2017 – Temporary suspension of Circular No. 41/2016 regarding Indirect transfer provisions under the Act

In pursuance of several representations made by various FPIs, FIIs, VCFs and other stakeholders stating their concerns that the circular No. 41/2016 dated December 21, 2016 does not address the issues of multiple taxation of the same income, the CBDT vide this circular has kept in abeyance the operation of the Circular No. 41/2016 dated December 21, 2016

A link for the same is provided herewith:
http://www.incometaxindia.gov.in/communications/circular/circular4_2017.pdf

2. Circular No. 5/2017 dated January 23, 2017 - Clarifications on Circulars No. 21/2015 and 8/2016

The CBDT vide Circular No. 21/2015 stated certain monetary limits whereby appeals/SLPs should not be filed in cases where the tax effect does not exceed the stipulated monetary limits. It also listed down certain cases where adverse judgements should be contested on the basis of merits notwithstanding the said monetary limits. However, on account of erroneous interpretation, the CBDT vide this circular clarified that appeals should not be filed by the department in violation of the instructions mentioned in the circulars and in relation to the appeals of such nature that are already filed, the same shall be withdrawn.

A link for the same is provided herewith:
http://www.incometaxindia.gov.in/communications/circular/circular5_2017.pdf

3. Circular No. 6/2017 and Press Release dated January 24, 2017 - Guiding principles for determination of Place of Effective Management ('*PoEM*') of a company

On December 23, 2015, the CBDT had issued the draft guiding principles for determination of PoEM of a company. The CBDT has issued the much-awaited final guiding principles vide Circular No. 6 dated January 24, 2017. The final guidelines further elucidate, the various principles laid down by the draft guidelines as well as list down illustrations for better understanding of the guidelines.

The links for the press release as well as the final guiding principle have been provided herewith:
http://www.incometaxindia.gov.in/communications/circular/circular06_2017.pdf
http://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/588/CBDT-Guiding-Principles-determination-Effective-Management-POEM-Company-24-1-2017.pdf

4.Circular No. 6/2017 dated January 24, 2017 – Corrigendum to Circular No. 1/2017 dated January 2, 2017 on TDS u/s 192 of the Act

The CBDT vide this circular amended certain provisions specified in Circular No. 1/2017 dated January 2, 2017 which contained the rates of deduction of income tax from the payment of income chargeable under the head 'Salaries' during the financial year 2016-17 and explains certain related provisions of the Act and Income-tax Rules, 1962.

A link for the same is provided herewith:
http://www.incometaxindia.gov.in/communications/circular/corrigendum01_2017.pdf

5. Circular No. 7/2017 and Press Release dated January 27, 2017 – Clarifications on implementation of General Anti Avoidance Rules ('*GAAR*') provisions under the Act

The existing provisions of the GAAR introduced by the Finance Act, 2013 are contained in Chapter X-A *(consisting of section 95 to 102)* and section 144BA of the Act.

Initially, GAAR provisions were to come into effect from April 1, 2016. However, the implementation was deferred and accordingly, the provisions of Chapter X-A of the Act relating to GAAR will come into force from April, 1, 2017.

The CBDT has, in this regard, issued a clarification vide

Circular no. 7 of 2017 and Press Release dated January 27, 2016.

The links for the circular as well as the press release have been provided herewith:
http://www.incometaxindia.gov.in/communications/circular/circular7_2017.pdf
http://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/588/CBDT-Guiding-Principles-determination-Effective-Management-POEM-Company-24-1-2017.pdf

6. Press Release dated February 1, 2017 – Salient Direct tax proposals in Union Budget 2017

The Union Budget 2017 was laid before the Parliament on February 1, 2017 by the Hon'ble Finance Minister of India. The salient features of Direct Tax proposals are summarised in the said Press Release.

A link for the same is provided herewith:
http://www.incometaxindia.gov.in/Lists/Press%20Releases/Attachments/591/Press-Release--Summary-of-Tax-Proposals-in-Part-B-01-02-2017.pdf

7. Notification No. 9/2017 dated February 9, 2017– Income tax (2nd Amendment) Rules, 2017

The CBDT vide this notification seeks to amend Rule 114 and 114A whereby an application for PAN and TAN respectively can be made by specified class of persons through a common application form notified by the Central Government in the Official Gazette.

A link for the same is provided herewith:
http://www.incometaxindia.gov.in/communications/notification/notification9_2017.pdf

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