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Gopal Chopra & Associates
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Winnings from online gaming in India

Through the Finance Act 2023, the Government has introduced Section 115BBJ which lays down provisions w.re.to taxation of winnings from online games and section 194BA which pertains to TDS applicable on the net winnings. Therefore, from 1.4.23, net winnings from online gaming will be taxed at 30%.

Person responsible for paying to any person any income by way of winnings from any online game will have to ensure that tax is deducted on the net winnings in his user account, at the end of the financial year. Where there is a withdrawal from user account during the financial year, the income-tax shall be deducted from net winnings at the time of withdrawal and from the remaining net winnings in the user account at the end of the financial year.

The manner of computation of net winning has now been prescribed in Rule 133 of the Income-tax Rules 1962, vide CBDT notification no. 28/2023 dated 22nd May 2023. Furthermore, in exercise of the power conferred by sub-section (3) of section 194BA of the Income Tax Act, the CBDT has also issued guidelines for removal of difficulties in winnings from online gaming vide Circular No. 5 dated 22nd May 2023.

Inclusion of International credit card payments under Liberalized Remittance Scheme (LRS)

The Central Government vide Notification No. G.S.R. 369(E) dated 16th May, 2023 notified the Foreign Exchange Management (Current Account Transactions) (Amendment) Rules, 2023 whereby use of International Credit Card for making payment by a person towards meeting expenses while such person is on a visit outside India will now be covered under the RBI's Liberalized Remittance Scheme (LRS) and attract 20% Tax Collected at Source (TCS) from July 1, 2023. The taxpayer can claim credit for the TCS levied at the time of paying tax on his regular income. Before the amendment in the LRS, the TCS of 5 per cent was applicable on foreign outward remittances above Rs.7 lakh and international credit card spends were excluded from the applicability of LRS limit.

Amid concerns over the applicability of Tax Collection at Source (TCS) to small transactions under the Liberalized Remittance Scheme (LRS) from July 1, 2023, the Ministry of Finance clarified that to avoid any procedural ambiguity, any payments by an individual using their international Debit or Credit cards up to Rs.7 lakh per financial year would be excluded from the LRS limits and hence, would not attract any TCS. Existing beneficial TCS treatment for education and health payments would also continue.

Under the LRS, all resident individuals, including minors, are allowed to freely remit up to a maximum of USD 2.50 lakh per annum for any permissible current or capital account transaction or a combination of both, without the authorization of the Reserve Bank of India (RBI). Prior approval of RBI would be required for remittances exceeding the limit.

Individuals can avail of foreign exchange facility for the following purposes within the LRS limit of USD 2.5 lakh on financial year basis:

- Private visits to any country (except Nepal and Bhutan)
- Gift or donation
- Going abroad for employment
- Emigration
- Maintenance of close relatives abroad
- Travel for business, or attending a conference or specialized training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up
- Expenses in connection with medical treatment abroad
- Studies abroad
- Any other current account transaction

The Scheme is not available to corporates, partnership firms, HUFs, Trusts etc.

Investors who would not come under Angel Tax Net

Angel tax is the tax levied when an unlisted company issues shares to an investor at a price that is more than its fair market value. Before the Government's Budget 2023, only investments by resident investors over and above the fair market value were liable to angel tax. However, Finance Act 2023 lays down provisions to extend the angel tax to investments by non-resident investors (except in DPIIT recognized startups), as of April 1, 2024.

The Government vide Notification No. 29/2023 dated 24th May 2023, notified classes of investors who would not come under the Angel Tax provision, and these are as follows:

(i) Government and Government related investors such as central banks, sovereign wealth funds, international or multilateral organizations or agencies including entities controlled by the Government or where direct or indirect ownership of the Government is seventy-five percent or more;

(ii) Banks or Entities involved in Insurance Business where such entity is subject to applicable regulations in the country where it is established or incorporated or is a resident;

(iii) Any of the following entities, which is a resident of any specified country or territory and such entity is subject to applicable regulations in the country where it is established or incorporated or is a resident :–

(a) entities registered with Securities and Exchange Board of India as Category-I Foreign Portfolio Investors;
(b) endowment funds associated with a university, hospitals or charities;
(c) pension funds created or established under the law of the foreign country or specified territory;
(d) Broad Based Pooled Investment Vehicle or fund where the number of investors in such vehicle or fund is more than fifty and such fund is not a hedge fund or a fund which employs diverse or complex trading strategies.

A total of 21 nations are identified as the 'specified nations' in the Notification, investments from which in Indian start-ups will be exempted from Angel Tax. The list of twenty-one nations include Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Iceland, Israel, Italy, Japan, Korea, New Zealand, Norway, Russia, Spain, Sweden, United Kingdom and the United States.

Tax exemption for Leave Encashment raised to Twenty-five lakh rupees

The Government vide CBDT Notification No. 31/2023 dated 24th May 2023 increased the tax exemption on leave encashment on retirement of non-government salaried employees from ₹3 lakhs to ₹25 lakhs. As per the notification the leave encashment exemption will apply in respect of the period of earned leave at the employee's credit at the time of their retirement, whether superannuation or otherwise, in relation to employees who retire. The increase in the tax-free limit applies only to leave encashment at the time of retirement and will come into effect from 1st April, 2023.

Concessional rate of tax on certain new manufacturing co-operative societies.

As per newly inserted section 115BAE in Income Tax Act 1961 vide Finance Act 2023, a concessional rate of tax of 15% will be levied on new manufacturing co-operative societies that are formed or registered on or after April 1, 2023 and begin manufacturing operations before March 31, 2024, subject to satisfaction of certain conditions namely:

a. The business of the cooperative society is not formed by splitting up, or the reconstruction of a business already in existence and does not use any machinery or plant previously used for any purpose.
b. The assessee is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing
c. The total income of the assessee has been computed without taking advantage of any specified deductions, any set off of any loss carried forward or depreciation from any earlier assessment year and without claiming depreciation if any.

Tax on dividends, royalty and technical service fees in the case of non-residents & foreign companies.

Income of Non-residents that is taxable in India is income that accrues or arises or is deemed to accrue or arise in India or is received or deemed to be received in India.

Section 115A of the Income-tax Act 1961 specifies the tax rates at which different streams of income are taxable in the hands of non-residents. Tax on income from royalty or fees for technical services in the hands of non-residents (not being a company) or a foreign company, is increased from 10% to 20% by the Finance Act 2023 w.e.f 1.04.2024.

Further Amendments in Rules on Companies Name Removal

The Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 had been amended last month vide Ministry of Corporate Affairs Notification dated 17.4.23. The Rules have been further amended vide Companies (Removal of Names of Companies from the Register of Companies) Second Amendment Rules, 2023 notified on 10th May, 2023.

According to the amendment, the following are the important changes to be kept in mind:

a) The company shall not file an application for removal of name, unless it has filed overdue financial statements and overdue annual returns, up to the end of the financial year in which the company ceased to carry its business operations;
b) In case a company intends to file the application for removal of name after the action under section 248(1) has been initiated by the Registrar, it shall file all pending financial statements and all pending annual returns, before filing the application;
c) Further, once the notice of strike off under section 248(5) has been issued by the Registrar for publication in Official Gazette pursuant to the action initiated under section 248(1), a company shall not be allowed to file the application for removal of name.

Key Incentives for GIFT City IFSC

Gujarat International Finance Tec-City (GIFT City) is a smart city which is also India's first International Financial Services Center (IFSC), apart from having a domestic finance centre (DFC) and other social and civic infrastructure.

Tax Incentives:

- 100% tax exemption for 10 consecutive years out of 15 years for Units in IFSC
- Dividend income distributed by Company in IFSC to be taxed in the hands of the shareholder.
- Reduced rate of MAT/AMT @ 9% of book profits
- Interest income paid to non- residents
- Monies lent to IFSC units not taxable
- Long Term Bonds & Rupee Denominated Bonds listed on IFSC exchanges taxable at lower rate of 4%
- Transfer of specified securities listed on IFSC exchanges by a non-resident or Category III AIF located in IFSC not treated as transfer and Gains accruing not chargeable to tax in India

Some key policy announcements by the Union Budget 2023 w.re.to Gift City are:

- Delegation of powers under the Special Economic Zones (SEZ) Act 2005 to International Financial Services Centres Authority (IFSCA), to avoid dual regulation
- Single window for registration by multiple authorities – IFSCA, SEBI, RBI, GSTN, IRDAI and SEZ authorities.
- Permitting acquisition financing by offshore IFSC Banking Units in (IBU) of foreign banks
- Establishing a subsidiary of EXIM bank in GIFT-IFSC,
- Recognizing Offshore derivative instruments (ODIs) as valid contracts and tax relaxation
- The tax benefit period for relocation of funds to GIFT City- IFSC is extended from March 31, 2023 to March 31, 2025

RBI Initiative

Vide RBI/2023-24/21 A.P. (DIR Series) Circular No.03 dated April 26, 2023, Resident Individuals may also open a Foreign Currency Account (FCA) in IFSCs, for making certain permissible investments under the Liberalized Remittance Scheme (LRS), subject to certain conditions.

Thank You

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