

CORPORATE UPDATE

For Client Circulation Only

No. 06/2006

17th July, 2006

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INCOME TAX

I. Issue of TDS Certificate in cases of Truck / Goods carriage operators

According to the provisions of section 203 of the Income Tax Act, 1961 read with rule 31 of the Income Tax Rules, every person responsible for deducting tax at source (TDS) is required to issue a TDS Certificate to the persons from whose income the tax has been deducted.

However, the CBDT has observed that in the case of truck/goods carriage operators, where tax is deducted u/s 194C from the payment made by the consignee, the TDS certificate is either not issued within prescribed time or the certificate is issued in the name of the consignor. As a result the truck operator is unable to claim credit for the TDS.

Due to the above, the CBDT has reiterated in its circular no. 6/2006, dated 23.06.2006 that where the truck or other goods-carriage operator is booked by the consignor but the payment is made by the consignee on delivery of goods, the consignee is required to issue TDS Certificate to the truck / goods-carriage operators within the prescribed time and in favour of such truck / goods carriage operators.

II. Long Term Capital Gains - Exemption

Section 54EC of the Income Tax Act, 1961 provides capital gain exemption on transfer of long term capital asset to the extent of investment of such gains in 'long term capital asset' within a period of six months from the date of transfer. This section was amended by Finance Act, 2006 w.e.f 01.04.2006 redefining 'long term capital asset' to include only notified bonds of Rural Electrification Corporation Ltd. (REC) and National Highways Authority of India (NHAI). Prior to this amendment, bonds issued by National Bank for Agriculture and Rural Development (NABARD) and National Housing Bank (NHB) and Small Industries Development Bank of India (SIDBI) were also included.

Consequent to the amendment in Finance Act, 2006, issue of old bonds was closed on 29.03.2006. Bonds of NHAI and REC under the amended provisions of section 54EC have been now notified by the Central Govt. vide notification no. S.O. 963 (E) and S.O. 964 (E) dated 29.06.2006.

Due to the non availability of these bonds for a period of 3 months some persons could not avail of benefit under section 54EC, and for some other persons the effective time available for making the investment became less than six months. With a view to removing the hardship caused to taxpayers, the CBDT has now ordered that the limitation of six months for making the investment under section 54EC of capital gains arising from the transfer of a long term capital asset, is extended:-

- (i) upto 30th September, 2006 in case of persons where the long term capital asset was transferred between 29.09.2005 and 31.12.2005 (both dates inclusive);
- (ii) upto 31st December, 2006 in case of persons where the long term capital asset was transferred between 01.01.2006 and 30.06.2006 (both dates inclusive).

SERVICE TAX

I. A critical note on recent changes in Export of Services Rules, 2005

1. In the Corporate Update of April, 2006, it was indicated in terms of the amendments to Export of Services Rules, 2005, some of the services which earlier qualified as "export" of services prior to 19th April, 2006 may not qualify as "export" on or after 19th April, 2006, **in case such services are "not delivered outside India and are not used outside India"**.
2. Some of the services which may not continue to enjoy the benefit of export of services as published before in the Corporate Update of April, 2006 included the following:

Taxable services rendered in India on behalf of a foreign principal/client/main contractor etc. such as :

- (a) Repair and maintenance etc.
- (b) After sales services;
- (c) Supervisory or other taxable services.

The above services which will be rendered in India cannot, in our opinion, be deemed to be delivered outside India either physically or electronically and hence may be subject to service tax.

3. Further, doubts may arise in respect of some services "delivered outside India" whether they are "used outside India".

For example, when "due diligence services" are delivered outside India to a non-resident on a proposal involving investment in India, a doubt may arise whether such services are "used outside India" especially when the non-resident may, based on such services, make investments in India. Similarly, when an Indian Agent renders certain marketing assistance

to a foreign seller, even though the services may be delivered outside India, a similar doubt arises whether such services are “used outside India” especially when the non-resident seller, based on such services, may procure orders from Indian customers.

4. The above issues have been examined at length and the considered opinion in such cases is that once the services are “delivered outside India” it must be deemed to be “used outside India” irrespective of whether such services enable the service receiver to have business/commercial transaction in India.
5. It is important to remember that in order to claim the benefit of export of services, the relevant conditions prescribed must be fulfilled. It will, therefore, be necessary that in each case, the facts of the transactions must be ascertained for ensuring whether the prescribed conditions are satisfied or not.

The above may accordingly be kept in view for claiming exemption from service tax on “export”. In case of doubt, a reference may be made to us for clarification.

DATES TO REMEMBER

S.No.	Particulars	Due Date
1	Deposit of e-TDS Statements for salary for the quarter ending 31.03.2006	31 st July, 2006
2	Filing of income tax return for financial year 2005-06 by all non-corporate assesses who are not required to get their accounts audited	31 st July, 2006
3	Deposit of Service tax by Corporates for the month of July, 2006	5 th August, 2006
4	Deposit of TDS for the month of July, 2006	7 th August, 2006