BUDGET PRIMER
2013-14

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SKP Wish List

Domestic Tax

Personal taxation:

Considering the rise in cost of living and inflationary trend, the monetary limits for exemptions from salaries be suitably enhanced. The exemption for transport allowance be increased from ₹ 800 per month to ₹ 2,500 per month. Similarly, the exemption for medical expenses be increased from ₹ 15,000 per annum to ₹ 25,000 per annum.

- Standard deduction should be reintroduced for salaried tax payers.
- Deduction for repayment of principal sum as well as interest on capital borrowed for one self-occupied house should be allowed at actual without any monetary limit.
- Deduction under section 80TTA should be allowed also for interest on fixed deposits, subject to the overall limit of ₹ 10,000.

Corporate taxation:

- Similar to the provisions of the Companies Act, 1956, depreciation on assets costing less than ₹ 5,000/- should be allowed at 100%.
- Section 72A provides for carry over of losses from amalgamating / demerged company to the amalgamated / resulting company. At present, the benefit of section 72A is not available to service sector. The benefit of section 72A should be extended to service sector also.
- The new Companies Bill contains requirements of providing for expenditure on Corporate Social Responsibility ('CSR'). Express provisions should be inserted in the ITA allowing deduction for expenditure incurred to fulfill CSR obligations.
- Expenditure incurred on raising share capital should be allowed as a deduction.
- Expenditure incurred from the date of incorporation to the date on which the tax payer is ready to commence his business (date of set up) is not allowed as revenue expenditure. It is felt that expenditure incurred prior to the date of set up should be considered as eligible for deduction over a period of 5 years on straight line basis.
- Deduction for employees' contribution to welfare funds should be treated at par with employer's contribution to welfare funds and allowed as a deduction if the same is deposited within the due date of filing the return of income.

Capital gains:

- In case of development agreements, the liability to pay capital gains tax arises on transfer of possession of land to the developer whereas the consideration is received subsequently. This requires the tax payer to deposit the capital gains tax out of its own funds. It may be provided that the capital gains need to be paid only in the year of receipt of sale consideration from the developer.
- Provision for conversion of LLP into partnership firms should be clarified. The intention of the Government is to consider conversion of a partnership firm into an LLP as tax neutral. However, at present, the ITA does not contain any provisions stating that such a conversion will be tax neutral. Suitable provisions clarifying the intention of the Government should be introduced.
- Exemption under section 54EC is allowed for investment in specified bonds within 6 months from the date of the transaction. The investment in specified bonds has a ceiling limit of ₹ 50 lacs per financial year. This gives an unfair advantage to tax payers undertaking transactions from October to March since such tax payers may invest a total amount of ₹ 1 crore by spreading it over more than one financial year. Hence, it needs to be clarified as to whether the investment in specified bonds should be restricted to ₹ 50 lacs per transaction. Separately, the ceiling limit of ₹ 50 lacs should be raised to ₹ 1 crore.

more to come in the next issue...

Penalty for Concealment – A Tightrope Walk!

The Income-tax Act, 1961 ('ITA') provides that if person has concealed his income or has furnished inaccurate particulars of his income, he shall be liable to a penalty of 100% to 300% of the amount of tax sought to be evaded.

The expressions of 'concealment of income' and 'furnishing inaccurate particulars of income' have given rise to immense litigation. Under the ITA, the onus is on the tax payer to justify why penalty should not be levied. Common defenses taken by the tax payer are that the disallowances by tax authorities are due to difference in interpretation of law and that the tax payer did not deliberately intend to evade tax.

One commonly understands that penalty should be levied only where the tax avoidance is intentional. However, the Supreme Court of India in one case held that deliberate attempt to avoid tax is not necessary for levy of penalty. Subsequent to this judgment, whenever any disallowances were made during assessment proceedings, the tax authorities have been initiating penalty proceedings, in almost all the cases. Thereafter, in another case, the Supreme Court held that if the disclosures made in the return of income are correct and complete, disallowances arising in assessment proceedings do not automatically make the tax payer liable for penalty.

In another recent case, the Supreme Court waived the penalty on the ground that there was a human error on the part of the tax payer in ignoring the disallowance reported in the Tax Audit Report. Conversely, where the tax payer did not disallow certain amounts through oversight, the High Court upheld the imposition of penalty. In one case, the tax payer contended that particular item of income received by him was not taxable but paid the tax due on it on his own account and explained his position through a note to the computation of income. The Tribunal held that since the ITA specifically provided that the income in question was taxable, penalty ought to be imposed.

Thus, the legal position on levy of penalty remains ambulatory. The dividing line between the Court judgments for and against the tax payer is often very thin and the tax payer is subject to lengthy litigation proceedings to obtain relief from penalty proceedings. The return of income for corporate tax payers and other specified tax payers is required to be submitted electronically and is an 'annexure-less' return. Hence, the question for consideration is how does the tax payer ensure that correct and complete disclosures are made in the return of income.

Since the Finance Bill 2013 will be presented on 28th February 2013, the Government of India may consider the following steps to bring more clarity in law regarding penalty proceedings.

a) The law should lay down minimum monetary limits for initiation of penalty proceedings so that small tax payers are spared from penalty proceedings. Eg. the law may provide that where aggregate disallowances do not exceed 10% of total income or ₹ 10,00,000 (₹ 1 mn), penalty proceedings should not be initiated.

b) The terms "concealment" and "furnishing of inaccurate particulars of income" suggest deliberate or willful conduct. The law must clarify the meaning of the term 'concealment' and 'furnishing of inaccurate particulars' citing instances which will and which will not amount to concealment of income or furnishing inaccurate particulars of income

c) For disallowances arising on account of retrospective amendments in law or subsequent Court rulings, penalty should not be levied.

d) If a particular claim in the return of income has been made on the basis of an opinion from an expert, penalty should not be levied.

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