

NEWSLETTER

November 2015

MVDCO ADVISORY SERVICES



CONTENTS

Income Tax	2
FEMA	4
Audit	6
Balance Fund	9
WILL	11



INCOME TAX

Ansal Land Mark Township - Delhi High Court

The Second proviso to Section 40(a)(ia) was introduced by Finance Act 2012 which states that the TDS shall be deemed to be deducted and paid by a deductor if resident recipient has disclosed the amount in his return of income and paid tax thereon. The question is **whether this proviso is retrospective in nature** or not?

The High Court held as follows:

Section 40(a)(ia) was introduced by the Finance Act 2004 which was aimed at disallowing expenditure in a situation where corresponding income remained untaxed due to tax withholding lapse by the assessee. Hence, this provision is to compensate any loss of revenue in case the deductor has not deducted tax on the

amount paid to the deductee and in turn, the deductee also has not offered to tax the income embedded in such amount. This is per se is not a penalty provision. The penalty for tax withholding lapse is separately provided in Section 271C of The IT Act and therefore an assessee

could not be penalized under section 40(a)(ia) when there was no loss of revenue. The High Court affirmed the ratio laid down by Agra Tribunal and held that the said proviso is declaratory and curative in nature and has retrospective effect from the day Section 40(a)(ia) was introduced ie. 1st April 2005.

INCOME TAX *(cont.)*

Simplification of procedure for furnishing NIL withholding tax declarations – Forms 15G/15H:

Tax Payees seeking no deduction of tax from certain income are required to furnish Form 15G/15H to the payer as per the provisions of Section 197A of The Income Tax Act.

Under the simplified procedure, tax payees have the option to furnish declarations in Form 15G/15H in paper format or electronic form. The payer is required to assign a Unique Identification Number (UIN) to each declaration and include the said UIN in the quarterly TDS Return. Physical furnishing of declarations to the tax authority is not required. It will only form part of the quarterly TDS Statements. The payers are however required to preserve the declarations for 7 years from the end of the financial year in which the declaration is received. The above procedure will take effect from 1st October 2015.

Foreign Direct Investment (FDI) reporting on the e-Biz platform:

All the reporting **pertaining to transfer** of shares, convertible debentures, partly paid shares and warrants from a person Resident in India to a person Resident outside India or vice-versa in **Form FC-TRS** (Foreign Currency Transfer of Shares) **can be filed online on the eBiz platform of the Government of India**. This online filing facility is additional facility and the manual system will continue till further notice.

Review of existing FDI Policy on Partly Paid Shares and Warrants:

The Government has reviewed the provisions of the existing FDI Policy on the subject and has **decided to allow partly paid shares** and warrants which are issued in accordance with the provisions of The Companies' Act, as eligible capital instruments for the purpose of FDI Policy.

Preference shares and convertible debentures shall continue to be required to be fully paid and should be mandatorily and fully convertible.

Clarification on FDI Policy on facility sharing arrangement between group Companies:

Facility sharing arrangement between group Companies **through leasing/sub-leasing arrangement** for larger interest of business **will not be treated as "Real Estate business"** as defined under the FDI Policy provided such arrangements are at Arms' Length in accordance with the Income Tax Act and **annual lease rent earned by the lessor Company does not exceed 5% of its total revenue**.

Processing and settlement of import related payments facilitated by Online Payment Gateway Service Providers (OPGSPs):

To facilitate e-commerce, RBI has decided to permit AD category-I banks to offer facility of payment for imports by entering into standing arrangements with OPGSPs subject to the following conditions:

- The facility shall only be available for import of goods and software of value not exceeding US \$ 2,000
- The balances held in Import Collection Account shall be remitted to the respective overseas Exporters' account immediately on receipt of funds from importer and in no case later than 2 days from the date of credit to the collection account;
- The bank should obtain a copy of Invoice and Airway bill from the OPGSP containing the name and address of the beneficiary as evidence of import.

FEMA *(cont.)*

- The permitted Credits and Debits in OPGSP account is as follows:

Permitted Credits	Permitted Debits
Collection from Indian importer for online purchases from overseas exporters electronically through credit card, debit card and ne banking	Payment to overseas exporter
Charge back from overseas exporters	Payment to Indian importer for returns and refunds
	Payment of commission to OPGSP

Audit

Internal Financial Controls as required by Companies Act 2013

The Companies Act, 2013 ("Act") has introduced many new reporting, disclosure and compliance requirements for the statutory auditors/ board of directors. One of the important requirements is laying down of Internal Financial Control ("IFC") policies and procedures adopted by the management and its reporting and disclosure by Auditors and Management with respect to its adequacy and operating effectiveness.

A. Internal Financial Control ("IFC")- Meaning and Perspective:

The Act has significantly expanded the scope of internal controls to be considered by the management of companies to cover all aspects of the operations of the company.

Each organisation needs to develop an Internal Control framework that supports evaluation of and provides assurance on existence, adequacy and effectiveness of internal controls throughout the periods.

Section 134(5)(e) of the Act explains the meaning of the term, IFC as "the policies and procedures adopted by the Company for ensuring the orderly and efficient conduct of its business, including adherence to the Company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information.

Definition of Internal Control as per the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"):

Internal control is a process, effected by an entity's board of directors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives relating to operations, reporting, and compliance.

B. IFC- Reporting Responsibilities:

- **Reporting by Statutory Auditors [under the Section 143(3)(i) of the Act]:**

Statutory auditor shall state in his audit report whether the company has adequate internal financial controls (IFCs) system in place and the operating effectiveness of such controls.

- **Responsibility of Board of Directors [under section 134 (5)(e) of the Act]:**

Director Responsibility Statement shall state that the directors, in case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Audit (cont.)

Further Rule 8(5)(viii) of the Companies (Accounts) Rules, 2014 requires the Boards' Report of **all companies** to state the details in respect of adequacy of IFCs with reference to the Financial Statements("FSs").

- **Clause 49 of Listing agreement require certification by CEO and CFO:**

Certification of CEO and CFO shall state that they accept responsibility for establishing and maintaining internal control for financial reporting and they have evaluated the effectiveness of Internal Control system of the company pertaining to financial reporting and they have communicated deficiencies in the design or operation of such control and the steps that they have taken to rectify the same.

- **Audit Committee [Section 177 (4)(vii) of the Act]:**

Every **Audit Committee** shall act in accordance with the terms of reference specified in writing by the Board which shall inter alia include **evaluation of internal financial controls** and risk management system of financial statements to be validated by an independent directors.

- **Responsibility of Independent Directors [Schedule IV (II)(4) of the Act]:**

Independent Directors shall satisfy themselves on the integrity of financial information and that of financial controls.

- **Summarized Disclosure and reporting requirements:**

Governing Act / Rules	Public Listed Company	Specified Public Unlisted Company	Private Ltd Company
Director Responsibility Statement (134)	√	-	-
Auditor Report (143)	√	√	√
Audit Committees (177)	√	√	-
Independent director (Schedule IV)	√	√	-
Rule 8(5)(viii) of Companies Account Rules, 2014 – BOD Report – Financial Statement	√	√	√

C. Effective date:

As per the communication from Ministry of Corporate affairs, the reporting on IFCs shall mandatorily commence from financial years starting on or after 1 April, 2015. However, entities are encouraged to do earlier reporting.

D. Consequences of Non Compliance:

As per section 134 (8) of the Act, If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

E. Our view on Auditor's reporting requirement on IFC:

Auditor's Responsibility:

Auditor needs to obtain reasonable assurance to state whether an adequate internal financial controls system was maintained and whether such internal financial control system operated effectively in the company in all material respects with respect to **financial reporting only**.

"IFCs over financial reporting" shall mean "A process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of FSs for external purposes in accordance with generally accepted accounting principles. A company's internal financial control over financial reporting includes those policies and procedures that:

- pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of FSs in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorisations of management and directors of the company; and
- provide reasonable assurance regarding prevention or timely detection of unauthorised acquisition, use, or disposition of the company's assets that could have a material effect on the FSs."

The section has cast onerous responsibilities on the statutory auditors because reporting on IFCs is not covered under the Standards on Auditing issued by the ICAI and also because of the fact that no framework has been prescribed under the Act and the Rules thereunder for the evaluation of IFCs.

ICAI has brought out **Guidance Note ("GN") on Audit of Internal Financial Controls Over Financial Reporting** to properly understand and perform the various aspects of this reporting responsibility. The GN covers aspects such as Scope of reporting on IFCs under the Act, essential components of internal controls, Technical guidance on audit of IFCs and Implementation guidance on audit of IFCs.

Balance Fund

What's a Fund :

A fund is a combination of stock component, a bond component and, sometimes, a money market component, in a single portfolio.

What's a Balanced Fund all about:

- A balance fund is a mix of both in equity and debt keeping risk under control.
- A balance fund reduces volatility in investment and gives constant returns.
- Investing in balanced funds is Not risk free as their predominant focus is on equities. Returns are lower as compared to pure equity schemes.
- These funds are also called hybrid equity-oriented funds.

First-time investors who do not want to actively manage their portfolio and have low risk-taking capacity can go for balanced funds as stocks are traded at elevated valuations.

- A good balanced fund can make your experience of investing in equities less painful by reducing volatility in returns.

How does it all works

- A fund provides a ready portfolio of two main asset classes, equity and debt, and obviate the need to buy separate equity and debt funds.
- Not only this, the all-important job of asset allocation are taken care by a **Fund Manager**.
- Asset allocation involves maintaining the equity-debt ratio at a desired level. In this, you keep booking profit in asset that is doing better and investing that money in the other asset so that the ideal portfolio composition is not disturbed.

Taxation a Bigger reason to invest in Balanced Fund

There was a time when these funds invested half the money in equities and half in debt. This changed after the 2006 Budget mandated that a fund had to invest at least 65% assets into stocks if it is to be treated as an equity fund. So,

- These funds now keep at least 65% money in equities, this is important as long-term gains (after one year) from equity funds are not taxed while long-term gains from debt (that too after three years) are taxed at 20%.

Balance Fund *(cont.)*

- Short-term gains from debt funds are added to the income and taxed according to the person's tax slab.
- Despite the high equity exposure, these funds have shielded investors better than pure equity funds when stock markets have been under pressure.

Some of the Best Balanced Funds suggested by Economic Times

- Tata Balanced Fund
- ICICI Pru Balanced Fund
- HDFC Prudence Fund
- HDFC Balanced Fund
- Birla SL 95

Balanced Funds Offer Stability, Tax Advantage in Choppy Times!!

Meaning of Will

- Will means a legal declaration of the intention of a testator with respect to his property, which he desires to be carried into effect after his death.
- The person making a Will is called testator.
- Thus broadly speaking, Will is a document by which the testator lays down as to how his property should be distributed after his death.
- The persons upon whom the property is distributed are called the beneficiaries/ legatees.
- The persons, whom the testator appoints to carryout the aforesaid distribution of his property, are called Executors.

I. Why make a Will:

Considering the erratic & tense life style resulting in untimely death, it is imperative that every adult executes his / her Will. Main reasons for making a Will are:

1. through Will, the testator can provide for distribution of his assets as per his own desire & considering special needs of family member e.g. handicapped child, spouse, aged parents, widowed daughter etc. so that their financial needs are taken care of.
2. avoid disputes over his property after death which result in criminal waste of time & money.
3. In absence of Will, property will be inherited by legal heirs in accordance with the law of inheritance applicable to him. The said law determines legal heirs & their share, irrespective of whether such heirs deserve any share or not
4. Tax planning can be done through Will.

II. Laws governing Will:

The Indian Succession Act, 1925 governs the Wills made by persons other than Muslims. Wills by Muslims are governed by Mohammadan Law.

Succession to the property of Hindu, dying without Will, is governed by the Hindu Succession Act, 1956; incase of other than Hindu & Muslims, the Indian Succession Act, 1925 applies.

III. Common features of & relevant terms applicable to Will:

1. Will is revocable during the life time of testator. He can change Will any number of times during his lifetime.
2. Will takes effect only after the death of testator. So Will operates from the date of death of testator.
3. Probate: It is a certificate issued by competent civil court certifying that the Will is genuine & the last Will of testator.
4. Succession Certificate: It is a certificate issued by competent civil court in respect of properties of person who has died intestate ie. without making a Will.

IV. Legal requirements of Will:

1. Except in case of Muslims, Will has to be in writing. Muslim can make oral Will.
2. It can be on a plain paper. Stamp paper is not required. It should be simple to understand & not vague.
3. It should be in the language known to testator. If the testator is illiterate, a person (other than witnesses) should explain the content of Will to the testator in presence of witnesses & this fact of explanation should be recorded in Will.
4. It should be signed at the end by testator in the presence of two witnesses; preferably every page should be signed by testator.

It is advisable to have a doctor as one of the witnesses.

5. The attesting witness (or his / her spouse) cannot be beneficiary of Will.
6. The executors of the Will should preferably be younger & capable of executing the terms of Will.
7. Registration of Will: Registration is not compulsory. But registration proves genuineness. Once a Will is registered, then revocation thereof as well as new Will should also be registered.