INTERNATIONAL JOURNAL OF RESEARCH IN COMPUTER APPLICATION & MANAGEMENT

IJRCM

A Monthly Double-Blind Peer Reviewed (Refereed/Juried) Open Access International e-Journal - Included in the International Serial Directories

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A STUDY OF AVAILABLE BENEFITS TO PROVIDE EASE OF DOING BUSINESS

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ABSTRACT

As per Union Finance Act, 2016, the government has added a section 80-IAC and amended many other sections for the purpose of providing an incentive to the new businesses under clause 41 of finance bill, 2016. With effect from financial year 2016-17 and assessment year 2017-2018, this benefit will be available. This section has been considered as a big push to the idea of 'start-up India Action Plan'. Under this section, new corporate form of business houses having a total capital up to 25 crores has been given a tax holiday for three years within the period of 5 consecutive years succeeding the year of incorporation of company. Apart from this incentive, the government has provided many other benefits under the recent finance acts. The aim of government is to provide various taxes related exemptions and rationalization of taxation system to create employment promote investment and facilitate business growth. This paper has tried to explain the main incentives available for setting up business in India.

KEYWORDS

tax, patent, tax regime, rationalization, exemption.

1. INTRODUCTION

As per Union Finance Act, the government has added a section 80-IAC for the purpose of providing an incentive to the new businesses under clause 41 of finance bill, 2016. With effect from financial year 2016-17 and assessment year 2017-2018, this benefit will be available. This section has been considered as a big push to the idea of 'start-up India Action Plan'. Under this section, new corporate form of business houses having a total capital up to 25 crores has been given a tax holiday for three years within the period of 5 consecutive years succeeding the year of incorporation of company. Apart from this tax holidays, the government of India have proposed many other tax incentives and reforms to provide ease of setting up the business and promote the foreign investment and create gainful employment opportunities to everyone.

2. IMPORTANCE OBJECTIVE OF THE STUDY

With a view to providing an impetus to start-ups and facilitate their growth in the initial phase of their business, it is proposed to provide a deduction of one hundred percent of the profits and gains derived by an eligible start-up from a business involving innovation development, deployment or commercialization of new products, processes or services driven by technology or intellectual property. This research paper has tried to explain the available benefits and conditions in detail. Through this research paper it has been tried to focus on the government of India's plans towards the digital India and make in India.

3. RESEARCH METHODOLOGY

For the purpose of above study, the finance act of 2016 and 2017 were thoroughly studied and data was collected. Further other acts were also referred for the purpose of better clarification. A research completely based on printed source of data collected from the website of minister of finance was conducted.

4. REVIEW OF LITERATURE

4.1 START-UP

Start-up means a company or a limited liability partnership business which fulfils the following conditions, namely:

a. They are engaged in a business which involves innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property;
b. it is incorporated on or after the 1st day of April, 2016 but before the 1st day of April, 2019;
c. the total turnover of its business does not exceed twenty-five crore rupees in any of the previous years beginning on or after the 1st day of April, 2016 and ending on the 31st day of March, 2021; and
d. it holds a certificate of eligible business from the Inter-Ministerial Board of Certification as notified in the Official Gazette by the Central Government;
e. it is not formed by splitting up, or the reconstruction, of a business already in existence:
f. It is not formed by the transfer to a new business of machinery or plant previously used for any purpose.
g. Where in the case of a start-up, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business.
h. total turnover of its business does not exceeds Rs. 25 crores in any of the following five financial years i.e., FY 2016-17 To FY 2020-21(Note: under finance act this time has been changed from Financial year 2016-17 to Financial year 2022-23 i.e. seven years.)
i. Separate Accounts are required for Eligible Business.
j. Accounts are required to be audited by a Chartered Accountant.
k. To furnish Audit Report in Form No. 10CCB, along with Return of Income

4.2 LIMITED LIABILITY PARTNERSHIP

limited liability partnership" means a partnership referred to in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009) which states that LLP is a partnership firm being a body corporate formed and registered under the LLP Act, 2008.

4.3 ELIGIBLE BUSINESS

Eligible business" means a business which involves innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property;

4.4 COMPANY

Company" means a company formed and registered under this Act or an existing company as defined in clause (ii).
Existing company" means a company formed and registered under any of the previous companies laws specified below: -
(a) Any Act or Acts relating to companies in force before the Indian Companies Act, 1866 (10 of 1866), and repealed by that Act;
(b) The Indian Companies Act, 1866 (10 of 1866);
(c) The Indian Companies Act, 1882 (6 of 1882);
(d) The Indian Companies Act, 1913 (7 of 1913);
(e) The Registration of Transferred Companies Ordinance, 1942 (54 of 1942); and
(f) Any law corresponding to any of the Acts or the Ordinance aforesaid and in force.

5. BENEFITS AVAILABLE TO START-UPS

5.1 TAX HOLIDAY FOR 3 YEARS

With a view to providing an impetus to start-ups and facilitate their growth in the initial phase of their business, it is proposed to provide a deduction of one hundred percent of the profits and gains derived by an eligible start-up from a business involving innovation development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.

The benefit of hundred percent deductions of the profits derived from such business shall be available to an eligible start-up which is setup before 01.04.2019.

Further, in order to promote the start-up ecosystem in the country, it is envisaged in 'start-up India Action Plan' to establish a Fund of Funds which intends to raise Rs 2500 crores annually for four years to finance the start-ups.

5.2 EXEMPTIONS FROM CAPITAL GAIN TAX

The existing provisions of section 54GB provide exemption from tax on long term capital gains in respect of the gains arising on account of transfer of a residential property, if such capital gains are invested in subscription of shares of a company which qualifies to be a small or medium enterprise under the Micro, Small and Medium Enterprises Act, 2006 subject to other conditions specified therein.

With an objective to provide relief to an individual or HUF willing to setup a start-up company by selling a residential property to invest in the shares of such company, it is proposed to amend section 54GB so as to provide that long term capital gains arising on account of transfer of a residential property shall not be charged to tax if such capital gains are invested in subscription of shares of a company which qualifies to be an eligible start-up subject to the condition that the individual or HUF holds more than fifty percent shares of the company and such company utilizes the amount invested in shares to purchase new asset before due date of filing of return by the investor.

The existing provision of section 54GB requires that the company should invest the proceeds in the purchase of new asset being new plant and machinery but does not include, inter-alia, computers or computer software.

With a view to avoid the incidence of the aforesaid condition on start-ups where computers or computer software form the core asset base owing to nature of business activity, it is proposed to amend section 54GB so as to provide that the expression "new asset" includes computers or computer software in case of technology driven start-ups so certified by the Inter-Ministerial Board of Certification notified by the Central Government in the official Gazette.

These amendments will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

5.3 TAX INCENTIVE FOR EMPLOYMENT GENERATION

The existing provisions of Section 80JJAA provide for a deduction of thirty percent of additional wages paid to new regular workmen in a factory for three years. The provisions apply to the business of manufacture of goods in a factory where 'workmen' are employed for not less than three hundred days in a previous year. Further, benefits are allowed only if there is an increase of at least ten percent in total number of workmen employed on the last day of the preceding year.

With a view to extend this employment generation incentive to all sectors, it is proposed to provide that the deduction under the said provisions shall be available in respect of cost incurred on any employee whose total emoluments are less than or equal to twenty-five thousand rupees per month. No deduction, however, shall be allowed in respect of cost incurred on those employees, for whom the entire contribution under Employees' Pension Scheme notified in accordance with Employees' Provident Fund and Miscellaneous Provisions Act, 1952, is paid by the Government.

It is further proposed to relax the norms for minimum number of days of employment in a financial year from 300 days to 240 days and also the condition of ten per cent increase in number of employees every year is proposed to be done away with so that any increase in the number of employees will be eligible for deduction under the provision. It is also proposed to provide that in the first year of a new business, thirty percent of all emoluments paid or payable to the employees employed during the previous year shall be allowed as deduction. This amendment will take effect from 1st April, 2017 and will accordingly apply in relation to assessment year 2017-18 and subsequent assessment years.

5.4 EXEMPTION FROM DIVIDEND DISTRIBUTION TAX (DDT) ON DISTRIBUTION MADE BY AN SPV TO BUSINESS TRUST

In respect of taxation of business trusts comprising of Real Estate Investment Trust (REITs) and Infrastructure Investment Trust (Invits) regulated by SEBI a specific taxation regime has been incorporated in the Act. Under this regime, the multiple taxation due to interposition of business trust will be avoided. Under the SEBI regulation, these business trusts can hold the income generating asset either directly or through a Special Purpose Vehicle (SPV). The SPV can be a company or an LLP.

Under SEBI Regulation, SPV is defined to mean any company or LLP in which REIT holds or proposes to hold controlling interest which is not less than fifty percent of the equity share capital or interest. The SPV should hold at least 80% of the assets in properties and not invest in other SPV.

The existing tax regime provides that in case of REITs, the income by way of interest paid by SPV being a company to REIT is given pass through i.e. it is not taxed at the level of REIT but in the hands of respective investors of REIT. The rental income from directly held assets by REIT is also allowed a pass through. In respect of assets held through an SPV, if SPV is a company then the company pays normal corporate tax and thereafter when the income is distributed to the REIT being a shareholder, it suffers DDT which is paid by the SPV and thereafter the income is exempt both in the hands of REIT and also its investors. In case of Invits, there is a similar regime with only exception being that there is no pass through for Invits holding income generating assets directly as normally such large infrastructure projects are not held directly in the trust but are held through an SPV.

As an incentive in the case of sponsor (the person setting up trust), capital gain arising at time of swap of its shareholding in SPV for units of business trust is deferred both under normal provisions and from applicability of MAT. Such gains get taxed only after actual sale of units. It has been represented by the stake-holders that levy of dividend distribution tax at the level of SPV when it distributes its current income to the business trust makes the business trust structure tax inefficient and adversely impacts the rate of return for the investor. This is more so, as under SEBI regulations both the SPV and business trust are obligated to distribute 90% of their operating income to the investors, whereas in case of normal real estate company, there is no requirement of such annual distribution of dividends. It has been represented that because of the additional levy of DDT and associated tax inefficiency, these initiatives have not yet taken off.

In order to further rationalize the taxation regime for business trusts (REITs and Invits) and their investors, it is proposed to provide a special dispensation and exemption from levy of dividend distribution tax. The salient features of the proposed dispensation are: —

(a) Exemption from levy of DDT in respect of distributions made by SPV to the business trust;

(b) Such dividend received by the business trust and its investor shall not be taxable in the hands of trust or investors;

(c) the exemption from levy of DDT would only be in the cases where the business trust either holds 100% of the share capital of the SPV or holds all of the share capital other than that which is required to be held by any other entity as part of any direction of any Government or specific requirement of any law to this effect or which is held by Government or
Government bodies; and

(d) the exemption from the levy of DDT would only be in respect of dividends paid out of current income after the date when the business trust acquires the shareholding referred in (c) above in the SPV. The dividends paid out of accumulated and current profits up to this date shall be liable for levy of DDT as and when any dividend out of these profits is distributed by the company either to the business trust or any other shareholder.

The amendment will take effect from 1st June, 2016.

5.5 MODIFICATION IN CONDITIONS OF SPECIAL TAXATION REGIME FOR OFFSHORE FUNDS SECTION 9A

Section 9A of the Act provides for a special regime in respect of offshore funds. It provides that in the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund. Further, an eligible investment fund shall not be said to be resident in India merely because the eligible fund manager undertaking fund management activities on its behalf is located in India. The benefit under section 9A is available subject to the conditions provided in sub-sections (3), (4) and (5) of this section.

The sub-section (3) of section 9A provides for the conditions for the eligibility of the fund. These conditions, inter-alia, are related to residence of fund, corpus size, investor base, investment diversification and payment of remuneration to fund manager at arm's length. In respect of residence of the fund, the condition is that the fund has to be resident of a country or territory with which India has entered into a Double Taxation Avoidance Agreement (DTAA) or Tax Information Exchange Agreement (TIEA).

In respect of activities of fund, there is a restriction that the fund shall not carry on or control and manage, directly or indirectly, any business in India or from India and shall neither engage in any activity which constitutes a business connection in India nor have any person acting on its behalf whose activities constitute a business connection in India other than the activities undertaken by the eligible fund manager on its behalf.

Representations had been received stating that there are many instances where a fund may not qualify as a tax resident of a country on account of domestic tax laws or legal framework of the country. The global structure of these funds had been based on applicable legal and regulatory framework of their country of incorporation and cannot be modified in respect of any investment made in a particular country. Examples of large pension funds or mutual funds from USA or SICAVs (open ended collective investment schemes) from Luxembourg had been cited. It has been stated that India would still be able to collect information regarding fund under the applicable DTAA or TIEA as under the agreements with many of the countries, information can be exchanged in respect of persons who may not be resident of the country. It had been further represented that the conditions relating to restriction on fund carrying on business or controlling fund managing business in India or from India restricts the flexibility of operation for funds and focus should be on nature of activities undertaken in India.

In order to rationalize the regime and to address the concerns of the industry, it is proposed to modify these conditions to provide that the eligible investment fund for purposes of section 9A shall also mean a fund established or incorporated or registered outside India in a country or a specified territory notified by the Central Government in this behalf. It is also proposed to provide that the condition of fund not controlling and managing any business in India or from India shall be restricted only in the context of activities in India.

The amendments will take effect from 1st April, 2017 and shall apply to the assessment year 2017-18 and subsequent assessment years.

5.6 INTRODUCTION OF PRESUMPTIVE TAXATION SCHEME FOR PERSONS HAVING INCOME FROM PROFESSION

The existing scheme of taxation provides for a simplified presumptive taxation scheme for certain eligible persons engaged in certain eligible business only and not for persons earning professional income. In order to rationalize the presumptive taxation scheme and to reduce the compliance burden of the small tax payers having income from profession and to facilitate the ease of doing business, it is proposed to provide for presumptive taxation regime for professionals.

In this regard, new section 44ADA is proposed to be inserted in the Act to provide for estimating the income of an assessee who is engaged in any profession referred to in sub-section (1) of section 44AA such as legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette and whose total gross receipts does not exceed fifty lakh rupees in a previous year, at a sum equal to fifty percent of the total gross receipts, or, as the case may be, a sum higher than the aforesaid sum earned by the assessee. The scheme will apply to such resident assessee who is an individual, Hindu undivided family or partnership firm but not Limited Liability partnership firm. Under the scheme, the assessee will be deemed to have been allowed the deductions under section 30 to 38. Accordingly, the written down value of any asset used for the purpose of the profession of the assessee will be deemed to have been calculated as if the assessee had claimed and had actually been allowed the deduction in respect of depreciation for the relevant assessment years. It is also proposed that the assessee will not be required to maintain books of account under sub-section (1) of section 44AA and get the accounts audited under section 44AB in respect of such income unless the assessee claims that the profits and gains from the aforesaid profession are lower than the profits and gains deemed to be his income under sub-section (1) of section 44ADA and his income exceeds the maximum amount which is not chargeable to income-tax.

These amendments will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year and subsequent years.

5.7 INCREASE IN THRESHOLD LIMIT FOR AUDIT FOR PERSONS HAVING INCOME FROM PROFESSION

Under the existing provisions of section 44AB of the Act every person carrying on a profession is required to get his accounts audited if the total gross receipts in a previous year exceed twenty five lakh rupees. In order to reduce the compliance burden, it is proposed to increase the threshold limit of total gross receipts, specified under section 44AB for getting accounts audited, from twenty five lakh rupees to fifty lakh rupees in the case of persons carrying on profession.

These amendments will take effect from 1st April, 2017 and will, accordingly, apply to the assessment year 2017-18 and subsequent assessment years.

5.8 INCREASING THE THRESHOLD LIMIT FOR THE MAINTAINANCE OF BOOKS OF ACCOUNTS IN CASE OF INDIVIDUALS AND HINDU UNDIVIDED FAMILY

The existing provisions of clause (i) and clause (ii) of sub-section (2) of section 44AA of the Act cast an obligation on every person carrying on business or profession [other than those mentioned in sub-section (1) such as legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette] to maintain such books of accounts and documents in the previous year to enable the Assessing Officer to compute his total income in accordance with the provisions of Act, provided that the income and total sales or turn over or gross receipts, etc specified in said clauses exceeds rupees one lakh twenty thousand and rupees ten lakh, respectively.

In order to reduce the compliance burden, it is proposed to amend the provisions of section 44AA to increase monetary limits of income and total sales or turn over or gross receipts, etc specified in said clauses for maintenance of books of accounts from one lakh twenty thousand rupees to two lakh fifty thousand rupees and from ten lakh rupees to twenty-five lakh rupees, respectively in the case of Individuals and Hindu undivided family carrying on business or profession. This amendment will take effect from 1st April, 2018 and will, accordingly, apply in relation to the assessment year 2018-19 and subsequent years.

5.9 EXCLUSION OF CERTAIN SPECIFIED PERSON FROM REQUIREMENT OF AUDIT OF ACCOUNTS UNDER SECTION 44B

The existing provision of section 44AB of the Act, inter-alia provides that every person carrying on the business is required to get his accounts audited if the total sales, turnover or gross receipts in the previous year exceeds one crore rupees. The threshold limit for applicability of presumptive taxation in case of eligible business carried on by eligible person under section 44AD was increased to two crore rupees from one crore rupees with effect from 1st April, 2017 relevant to Assessment year 2017-18 by Finance Act, 2016. Further vide press release dated 20th June, 2016, it was clarified that if an eligible person opts for presumptive taxation scheme as per section 44AD(1) of the Act, he shall not be required to get his accounts audited if the total turnover or gross receipts of the relevant previous year does not exceed two crore rupees.

In light of the above legislative changes and to reduce the compliance burden of the small tax payers and facilitate the ease of doing business, it is proposed to amend the section 44AB to exclude the eligible person, who declares profits for the previous year in accordance with the provisions of sub-section (1) of section 44AD and his total sales, total turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year, from requirement of audit of books of accounts under section 44AB.

This amendment will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years.

5.10 RATIONALIZATION OF SECTION 211 AND SECTION 234 C RELATING TO ADVANCE TAX

Section 211 of the Act provides for installments of advance tax and due dates for depositing the same. Clause (b) of sub-section (1) of the said section provides that an eligible assessee engaged in an eligible business referred to in section 44AD is liable to pay advance tax in a single installment on or before the 15th of March every financial year.

Vide Finance Act 2016; presumptive taxation regime has been extended to professionals also. Hence, it is proposed to amend the said clause (b) to provide that the assessee who declares profits and gains in accordance with presumptive taxation regime provided under section 44ADA shall also be liable to pay advance tax in one installment on or before the 15th of March. It is also proposed to make consequential amendments in sub-section (1) of section 234C to provide that in respect of an assessee referred to in section 44ADA, interest under the said section shall be levied, if the advance tax paid on or before the 15th March, is less than the tax due on the returned income. Vide Finance Act, 2016; tax on certain dividends received from domestic companies is to be levied under section 115BBDA of the Act with effect from the 1st April, 2017, if such income exceeds ten lakh rupees. However, in view of the uncertain nature of declaration and receipt of dividend incomes, an assessee liable to pay advance tax may not be able to correctly determine such liability within the payment schedule as specified under section 211 and shall, therefore, incur levy of interest on deferment of advance tax as specified under clauses (a) or (b) of section 234C (1). It is hence proposed to provide that that if shortfall in payment of advance tax is on account of under-estimation or failure in estimation of income of the nature referred to in section 115BBDA, the interest under section 234C shall not be levied subject to fulfillment of conditions specified therein.

These amendments will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years.

5.11 EXTENDING THE BENEFIT OF INITIAL ADDITIONAL DEPRECIATION UNDER SECTION 32(1)(iia) FOR POWER SECTOR

Under the existing provisions of section 32(1)(iia) of the Act, additional depreciation of 20% is allowed in respect of the cost of new plant or machinery acquired and installed by certain assessees engaged in the business of generation and distribution of power. This depreciation allowance is over and above the deduction allowed for general depreciation under section 32(1) (ii) of the Act.

Under the existing provisions, the benefit of additional depreciation is not available on the new machinery or plant installed by an assessee engaged in the business of transmission of power. In order to rationalize the incentive of power sector, it is proposed to amend this section so as to provide that an assessee engaged in the business of transmission of power shall also be allowed additional depreciation at the rate of 20% of actual cost of new machinery or plant acquired and installed in a previous year.

This amendment will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent assessment years.

5.12 TAXATION OF INCOME FROM "PATENTS"

In order to encourage indigenous research & development activities and to make India a global R & D hub, the Government has decided to put in place a concessional taxation regime for income from patents. The aim of the concessional taxation regime is to provide an additional incentive for companies to retain and commercialize existing patents and to develop new innovative patented products. This will encourage companies to locate the high-value jobs associated with the development, manufacture and exploitation of patents in India. The Organization for Economic Cooperation and Development (OECD) has recommended, in Base Erosion and Profit Shifting (BEPS) project under Action Plan 5, the nexus approach which prescribes that income arising from exploitation of Intellectual property (IP) should be attributed and taxed in the jurisdiction where substantial research & development (R&D) activities are undertaken rather than the jurisdiction of legal ownership only.

Accordingly, it is proposed to insert new section 115BBF to provide that where the total income of the eligible assessee income includes any income by way of royalty in respect of a patent developed and registered in India, then such royalty shall be taxable at the rate of ten per cent (plus applicable surcharge and cess) on the gross amount of royalty. No expenditure or allowance in respect of such royalty income shall be allowed under the Act.

For the purpose of this concessional tax regime an eligible assessee means a person resident in India, who is the true and first inventor of the invention and whose name is entered on the patent register as the patentee in accordance with Patents Act, 1970 and includes every such person, being the true and the first inventor of the invention, where more than one person is registered as patentee under Patents Act, 1970 in respect of that patent. These amendments will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-18 and subsequent years.

6. CONCLUSION

As explained above, we can see that the government of India is providing many incentives for new undertakings. The upcoming time will test the usefulness and fruitfulness of these incentives. But these steps were considered to be very necessary for the purpose of creating an easy tax regime for the purpose of promotion of investment, employment and business growth.

REFERENCES

1. LLP Act, 2008
2. The Companies Act, 1956.
3. The Companies Act, 2013.
4. Union Finance Act, 2016
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