

DIRECT TAX

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Computation methodology prescribed - Tax on income out of excess employer contribution to specified funds – Section 17(2)(viiia) of the Act

NOTIFICATION G.S.R. 155(E) [NO. 11/2021/F. NO. 370142/52/2020-TPL], DATED 5-3-2021

The Central Board of Direct Taxes vide Notification G.S.R. 155[E] dated 05.03.2021, in exercise of the powers conferred by Section 17 (2) (viiia) read with section 295 of the Income-tax Act, gives the Income-tax (1st Amendment) Rules, 2021. It amends the income tax rules by insertion of new Rule 3B. It come into force from the 1st day of April, 2021.

The new rule 3B Inserted as under –

“3B. Annual accretion referred to in the sub-clause (viiia) of clause (2) of section 17 of the Act. — For the purposes of sub-clause (viiia) of clause (2) of section 17 of the Act, annual accretion by way of interest, dividend or any other amount of similar nature during the previous year (hereinafter in this rule referred to as the current previous year) to balance to the credit of the fund or scheme referred to in sub-clause (vii) of clause (2) of section 17 of the Act shall be the amount or aggregate of amounts computed in accordance with the following formula, namely:—

$$TP = (PC/2) * R + (PC1 + TP1) * R$$

Where,

TP= Taxable perquisite under sub-clause (viiia) of clause (2) of section 17 of the Act for the current previous year;

TP1 = Aggregate of taxable perquisite under sub-clause (viiia) of clause (2) of section 17 of the Act for the previous year or years commencing on or after 1st day April, 2020 other than the current previous year (See Note);

PC= Amount or aggregate of amounts of principal contribution made by the employer in excess of Rs. 7.5 lakh to the specified fund or scheme during the previous year;

PC1= Amount or aggregate of amounts of principal contribution made by the employer in excess of Rs. 7.5 lakh to the specified fund or scheme for the previous year or years commencing on or after 1st day April, 2020 other than the current previous year (See Note);

$R = I / F_{avg}$;

I=Amount or aggregate of amounts of income accrued during the current previous year in the specified fund or scheme account;

$F_{avg} = (\text{Amount or aggregate of amounts of balance to the credit of the specified fund or scheme on the first day of the current previous Year} + \text{Amount or aggregate of amounts of balance to the credit of the specified fund or scheme on the last day of the current previous year}) / 2$.

Explanation. — For the purposes of this rule, “specified fund or scheme” shall mean a fund or scheme referred to in sub-clause (vii) of clause (2) of section 17 of the Act.

Note: Where the amount or aggregate of amounts of TP1 and PC1 exceeds the amount or aggregate of amounts of balance to the credit of the specified fund or scheme on the first day of the current previous year, then the amount in excess of the amount or aggregate of amounts of the said balance shall be ignored for the purpose of computing the amount or aggregate of amounts of TP1 and PC1.”

Extension of Various limitation dates relating to assessments, reassessments, imposition of penalty etc.

Notification no. 10/2021 in S.O. 966 (E) dated 27/02/2021

Section 3 (1) the Taxation and other laws (Relaxation and Amendment of Certain Provisions) Act 2020 had extended various dates to 31 march 2021 which were falling between the period of 20 march 2020 to 31 December 2020.

CBDT vide notification no 10 / 2021 dated 27.02.2021 further extends various limitation dates.

- a) Date for passing of assessment or reassessment orders under the IT Act, that are getting time barred on 31st March, 2021 due to extension of limitation date by the notification dt 31st December, 2020 has been extended to 30th April, 2021.
- b) Date for passing assessment or reassessment orders (not covered by (a) above), that are getting time barred on 31st March, 2021, as per time limit specified in section 153 / 153B of the Income-tax Act, has been extended by 6 months i.e. to 30th September, 2021.
- c) Date for passing of penalty orders extended to 30th June, 2021. Date for issue of notice & passing of orders by Adjudicating Authority under the Benami Act extended to 30th September, 2021.

RESIDENTIAL STATUS Section 6 - RESIDENTIAL STATUS OF CERTAIN INDIVIDUALS UNDER THE ACT

CIRCULAR NO. 2 OF 2021 [F. NO. 370142/18/2020-TPL], DATED 3-3-2021

Due to the declaration of the lockdown and suspension of international flights owing to the outbreak of COVID-19, many NRIs had to prolong their stay in India. Consequently, their stay has exceeded beyond the period of their visit and thus they may be regarded as resident/not ordinarily resident. The Central Board of Direct Taxes (CBDT) has recently issued CIRCULAR NO. 2 OF 2021 [F. NO. 370142/18/2020-TPL], DATED 3-3-2021 to provide relaxation in the methodology of computing the 'number of days' of stay in India for the purpose of section 6 of the IT Act

The Central Board of Direct Taxes (CBDT) has received various representations requesting for relaxation in the determination of residential status for the previous year 2020-21 from individuals who had come on a visit to India during the previous year 2019-20 and intended to leave India but could not do so due to the suspension of international flights. The matter has been examined by the Board and following facts have emerged and same is discussed at length in the aforesaid circular.

- Short stay will not result in Indian residency
- Possibilities of dual non-residency in case of general relaxation
- Tie breaker rule as per Double Taxation Avoidance Agreement (DTAA):
- Employment income taxable only subject to conditions as per DTAA:
- Credit for the taxes paid in other country:
- International Experience

The CBDT also discussed that OECD as well as most of the countries have clarified that in view of the provisions of the domestic income tax law read with the DTAA's, there does not appear a possibility of the double taxation of the income for PY 2020-21. It was clarified that the possibility of double taxation does not exist as per the provisions of the Income-tax Act, 1961 read with the DTAA's. However, in order to understand the possible situations in which a particular taxpayer is facing double taxation due to the forced stay in India, it would be in the fitness of things to obtain relevant information from such individuals. After understanding the possible situations of double taxation, the Board shall examine that, -

- (i) whether any relaxation is required to be provided in this matter; and
- (ii) if required, then whether general relaxation can be provided for a class of individuals or specific relaxation is required to be provided in individual cases.

The circular also provides that if any individual is facing double taxation even after taking into account the relief provided by the relevant Double Taxation Avoidance Agreement (DTAA), he/she may furnish the specified information by 31st March, 2021. The information has to be submitted in Form -NR and is to be submitted electronically to the Principal Chief Commissioner of Income-tax (International Taxation)

Reader may refer to full text of the Circular

• INCOME ESCAPING ASSESSMENT- Section 148 - INSTRUCTION REGARDING SELECTION OF CASES INSTRUCTION F. NO. 225/40/2021/ITA-II, DATED 4-3-2021

1. The Central Board of Direct Taxes, in exercise of its powers under section 119 of the Income-tax Act, 1961, with an objective of streamlining the process of selection of cases for issue of notices under section 148 of the Act, hereby directs that the following categories of cases be considered as 'potential cases' for taking action under section 148 of the Act by 31.03.2021 for the A.Y 2013-14 to A.Y 2017-18 by the Jurisdictional Assessing Officer (JAO):

- i. Cases where there are Audit Objections (Revenue/Internal) which require action under section 148 of the Act;
 - ii. Cases of information from any other Government Agency/Law Enforcement Agency which require action under section 148 of the Act;
 - iii. Potential cases including:—
 - (a) Reports of Directorate of Income-tax(Investigation),
 - (b) Reports of Directorate of Intelligence & Criminal Investigation,
 - (c) Cases from Non-Filer Management System(NMS) & other cases as flagged by the Directorate of Income-tax(Systems) as per risk profiling;
 - iv. Cases where information arising out of field survey action, requiring action under section 148 of the Act.
 - v. Cases of information received from any Income-tax authority requiring action under section 148 of the Act with the approval of Chief Commissioner of Income Tax concerned.
2. No other category of cases, except the above, shall be considered for taking action under section 148 of the Act by the JAO.
3. It is clarified that action under section 148 of the Act shall be taken by the Assessing Officer in respect of the above categories of cases after forming a reasonable belief that income chargeable to tax has escaped assessment and 'reasons to believe' shall be recorded and required sanction as per section 151 of the Act shall be obtained before issuing notice under section 148 of the Act.
4. These instructions shall not be applicable to the Central charges and International Taxation charges for which separate instructions are being issued

• **Deadline for filing under VsV extended to March 31**

The CBDT vide notification no 09/2021 in S.O. 964(E) dated 26/02/2021 extended the deadline for filing declarations and making payment under direct tax dispute resolution scheme Vivad Se Vishwas (VsV) till March 31 and April 30 respectively. As per a CBDT's notification, the date for payment of tax without additional interest under VSV changed to April 30, 2021.

INCOME OF FOREIGN INSTITUTIONAL INVESTORS FROM SECURITIES OR CAPITAL GAINS ARISING FROM THEIR TRANSFER - TAXABILITY OF - CLARIFICATION ON CONTINUATION OF CONCESSIONAL RATE OF TAX ON CERTAIN INTEREST INCOME ON FPIs – Section 115AD r.w.s.194-LD

PRESS RELEASE, DATED 17-3-2021

Section 115AD of the Income-tax Act, 1961 (the 'Act') inter alia contains provisions for taxation of income of FPIs. Proviso to section 115AD(1)(i) provides that the tax shall be chargeable at the concessional rate of 5% on interest income referred to in section 194-LD.

There are reports in certain section of media that the said concessional tax rate of 5% has been withdrawn. It is hereby clarified that there is no change in the said proviso even after amendment of section 115AD vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and the concessional rate of tax of 5% shall continue to be applicable for interest income referred to in section 194-LD of the Act.

Statement of financial transaction containing information relating to capital gains on transfer of listed securities or units of Mutual Funds, dividend income, and interest income shall be furnished by specified persons

Notification no 16/2021 dated 12 March 2021

The Central Board of Direct Taxes vide notification no 16/2021 dated 12 march 2021, In exercise of the powers conferred by section 285BA read with section 295 of the Income- tax Act, 1961, gives the Income-tax (4th Amendment) Rules, 2021.

CBDT notifies, a statement of financial transaction containing information relating to capital gains on transfer of listed securities or units of Mutual Funds, dividend income, and interest income shall be furnished by specified persons at such frequency, and in such manner, as may be specified by the Principal Director General of Income Tax

It amends Rule 114E and inserts new sub rule 5A. The nature of Transactions and specified person are given below.

Sl. No.	Nature of transaction	Class of person (reporting person)

(1)	(2)	(3)
1.	Capital gains on transfer of listed securities or units of Mutual Funds	<p>(i) Recognised Stock Exchange;</p> <p>(ii) depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996);</p> <p>(iii) Recognised Clearing Corporation;</p> <p>(iv) Registrar to an issue and share transfer agent registered under sub-section (1) section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).</p>
2.	Dividend income	A company
3.	Interest income	<p>(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);</p> <p>(ii) Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898).</p> <p>(iii) Non-banking financial company which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934 (2 of 1934), to hold or accept deposit from public.</p>

Readers are requested to refer to full text of notification