



DTRTI NEWSLETTER

Issue No.1/Chennai

June 8, 2018

ABOUT DTRTI, CHENNAI

DTRTI Chennai was created in 2003 having jurisdiction over Tamilnadu and Kerala. It has been functioning from its swanky new premises located at III Floor, Tower 1 of BSNL Building, 16, Graemes Road, Chennai-600006 from April, 2017. It has 5 MSTUs attached to it at Kochi, Trivandrum, Trichy, Coimbatore and Madurai.

The Institute is headed by the Additional Director General. Presently, the ADG is assisted by an Additional/Joint Director, faculty members consisting of 2 Deputy/Assistant Directors, 4 Addl. Asst. Directors, 4 Inspectors of Income tax and supporting staff.

MESSAGE OF DR. P.S. PUNIHA, PRINCIPAL DIRECTOR GENERAL, NADT, NAGPUR



DTRTI, Chennai has introduced a 'Weekly News letter' for benefit of all officers and officials of the department. It is a part of training outreach initiative of the DTRTI, Chennai.

Learning and upgradation of skills is a collaborative and immersive process; it is not only limited to the training programmes, but it is a constant and a daily endeavour.

I am sure that the 'Weekly News letter' of the DTRTI, Chennai would be an important source of learning for all and it would also serve as a platform for fruitful exchange of innovative ideas.

I take pleasure in introducing you to the new initiative of the DTRTI, Chennai and I hope that all of you would read, absorb and use the knowledge and experiences shared with you through the 'Weekly News letter'.

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The journey of a thousand miles begins with a single step – Lao Tzu

IT WORLD THIS WEEK

HYBRID MISMATCH TAX RULES OF AUSTRALIA

On 23 May 2018, the Australian Government introduced into Parliament the Australian implementation of the Organization of Economic Co-operation and Development's Action 2 Neutralising the Effect of Hybrid Mismatch Arrangements, in Treasury Laws Amendment (Tax Integrity and Other Measures No.2) Bill 2018 (the Bill). The Bill contains the measures previously announced in the 2015/16 Budget and included in draft law released in November 2017 and March 2018.

What's new in the Bill?

In comparison to the March 2018 draft law, there have not been substantive changes and by and large, the changes implemented merely fine tune the mechanics of the law. However, there has been a material change to the integrity measure contained within the hybrid mismatch rules.

Integrity measures: subdivision 832-J

The stated purpose of the integrity measures is to prevent multinational groups from being able to enter into arrangements designed to circumvent the hybrid mismatch rules using interposed conduit type entities that pay effectively no tax to invest into Australia, as an alternative to investing directly into Australia via traditional hybrid instruments or entities.

- The integrity measure will apply where Australia makes a deductible interest (or equivalent) payment to an entity in a jurisdiction interposed between Australia and the ultimate parent jurisdiction.
- In the previous draft law, for the rule to apply, the entity in the interposed jurisdiction was required to be subject to a tax rate of 10% or less. Under the Bill, this test has been changed to require that the payment is subject to foreign income tax in one or more foreign countries and the highest rate at which the payment is subject to foreign tax is 10% or less.
- As per the previous law, it was not reasonable to conclude that the scheme was designed to produce an Australian deduction and a 10% or less foreign tax rate. Under the Bill, the "design test" has been replaced with a "principal purpose" test. It is now a condition for the integrity rule to apply that the scheme was entered into for a principal purpose or for more than one principal purpose that includes a purpose of obtaining an Australian deduction and enabling foreign tax to be imposed on the payment at a rate of 10% or less.
- In considering the application of the principal purpose test, the Bill specifically requires consideration to be given to the source of funds provided by the interposed foreign entity to Australia and whether the interposed foreign entity engages in substantial commercial activities in carrying on a banking, financial or other similar business.

The best preparation for tomorrow is doing your best today – H. Jackson Brown, Jr.

OFFICER FOR THE WEEK



SHRI SUSHIL KHUMAR, IRS, PR. CCIT (TN & P)

PROFILE OF THE OFFICER

Shri Sushil Khumar is an IRS officer of 1983 batch. After undergoing training in NADT, Nagpur he was posted to Bihar & Jharkhand region. He was ADIT(Inv) in Ranchi from 1989 to 1992 & uncovered Fodder Scam in 1992 before he was promoted as JCIT. He served in Chennai for a period of around 14 years. It was during his tenure as Addl.CIT (Admn.) that the Wanaparthi Block was re-built to cater to the needs of the expansion of the Department. The 7 storeyed structure accomodates many Circles & Wards of the I.T. Dept. He was also instrumental in modernizing the IT canteen which includes steam cooking.

Later he served in Kolkata, Mumbai and Hyderabad where he got elevated as CCIT in September 2016. He came back to Chennai in June 2017. The officers and staff of Income Tax Department at Chennai were so overwhelmed to have him here again amongst them, fondly remembering his staff-friendly approach when he was serving as Addl. Commissioner of Income Tax(Hqrs) (Admnistration), during his earlier tenure in Chennai.

At present he is holding the charges of Principal Chief Commissioner of Income Tax, Tamilnadu & Puducherry and Chief Commissioner of Income Tax - 1, Chennai. He believes in data-driven monitoring mechanism which he has been successfully implementing in augmenting the tax collections of the region.

FIVE POSERS TO THE OFFICER

1. What are the 3 important leadership principles you followed which contributed to your success?

Ans.

- Garner respect
- Respect others
- Take people along.

2. What would you say has been the greatest accomplishment and failure and what you learnt from them?

Ans.

Accomplishment: Ushering in data driven administration and building a team.

Failure: Not doing more on improving infrastructure.

3. What are your suggestions for developing next generation of leadership in the department?

Ans. Have a human face, trust others, support all and work to your conscience.

4. What should be the vision for the department for the next 5 years?

Ans. A friendly tax regime where the taxmen and the taxpayers are partners.

5. What qualities do you think will make an officer successful in the Department?

Ans. Proficiency, ability to communicate, understanding view point, quick decision and effective action under varying conditions.

Start by doing what's necessary, then do what's possible; and suddenly you are doing the impossible - Francis of Assisi

SECTION FOR THE WEEK

SECTION 68 - CASH CREDITS

Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature & source of such sum so credited; and
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10

ADDITIONS U/S 68

An A.O may be able to make an effective & sustainable addition under section 68 of the Act if he/she is clearly & unambiguously able to understand what is the initial onus on the assessee under this section, when this onus shifts on the A.O, what steps should the A.O take to discharge this onus and how the A.O should shift the onus back to the assessee by confronting him with the evidences.”

How the burden of proof is discharged:

The expression “the assessee offers no explanation” means where the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by him. The initial onus is on the assessee to establish the source of that money and to prove that it does not bear the nature of income. The assessee’s explanation must have the three ingredients :

- i. Identity of the creditor ,
- ii. Creditworthiness of the creditor, i.e his capacity to advance the money , &
- iii. Genuineness of the transactions.

Once assessee has proved the above 3 ingredients simultaneously & furnished evidence to establish prima facie the aforesaid, assessee has discharged his onus and the onus now shifts on the A.O. Thus, the burden of proof is fluid for the purposes of s. 68.

The explanation offered by the assessee should be carefully examined by the A.O to ascertain whether all the ingredients of the onus have been proved by the assessee. If the explanation is reliable or acceptable, then the A.O cannot unreasonably reject it and hold that it was income.

However, if explanation is unconvincing & deserves to be rejected, AO can reject it by giving a detailed reasoning in the asst. order after giving due opportunity to assessee. Once onus has shifted to AO, it will be difficult to sustain an addition if made at this stage without any further efforts on part of AO.

It is pertinent to note here that it is not the duty of the A.O to locate the exact source of the cash credits. The burden to identify the source lies upon the assessee who is required to explain the genuineness of the credit entry.

All we have to decide is what to do with the time that is given to us – Gandalf The Grey

JUDGEMENT FOR THE WEEK



Mere Furnishing of Identity of Shareholders is not Sufficient to Discharge Onus u/s 68: Madras HC

In *B.R Petrochem Pvt Ltd v. ITO*, the division bench of the Madras High Court held that mere furnishing of identity of shareholders by the assessee would not be sufficient to discharge their onus u/s. 68 of the IT Act. While confirming the addition made against the assessee, the bench ruled that the assessee must prove the genuineness and credit worthiness of creditors in order to shift the burden to the department.

AO enquired about the genuineness of share capital of Rs. 50 Lakhs received by the assessee. Though the assessee had given the names & addresses of the contributors, they failed to prove the source & credit worthiness of the creditors. AO found that the assessee has not discharged the onus of proof mandated u/s. 68, made addition.

However, the first appellate authority deleted the addition by relying upon the Delhi High Court decision in *CIT Vs. Sophia Finance Limited*. On departmental appeal, the ITAT reversed the order and sustained the addition made by the AO.

Before the High Court, assessee contended that in view of the decisions of the apex Court in *CIT Vs. Lovely Exports* and *CIT Vs. Steller Investment*, no addition could be made invoking S. 68 of the Act in cases of contributions to share capital and that the Department was free to proceed against the share holders itself in cases where the genuineness of the transaction was in question. The division bench comprising of Justice Huluvadi G Ramesh and Justice Anita Sumant observed that s.68 of the IT Act is a provision that enables the assessment of any sum found credited in the books of an assessee where no satisfactory explanation is offered by the assessee to explain the same.

It was observed that the Courts, in a catena of decisions, have consistently held that the three guiding principles in the context of section 68 would be the establishment of the identity and credit worthiness of the creditor and the genuineness of the transaction. "In the present case, only the first of the three conditions has been established by the assessee. Neither the credit worthiness nor the genuineness stand explained. The stand of the assessee to the effect that any transaction styled as a contribution to share capital would stand excluded from the purview of Section 68 is too wide to be accepted. The language of Section 68 does not admit of such an interpretation. In fact, it would indicate the opposite in so far as the opening words of the section are 'Where any sum is credited in the books of an assessee....'"

Dismissing assessee's appeal the bench sustained the additions for the reason that assessee failed to establish the genuineness of the cash contributions as well as the capacity of the persons to have made such contributions.

TRAINING NETWORK RELATED NEWS

- Orientation Course for newly promoted ITOs (from 23.04.2018 to 14.06.2018) at Chennai
- One day Course on Rajbasha Karyashala for ITOs on 06/06/2018 at Chennai was received with overwhelming response from participants as for the first time Guest Faculties were sourced from Hindi Teaching Scheme (South), Department of Official Languages.
- The orientation program "Uttarayan 2018" for the newly promoted ACITs was inaugurated on 01/06/2018 at NADT, Nagpur by Shri T.S.Krishnamurthy, IRS (Retd.) Former CEC.

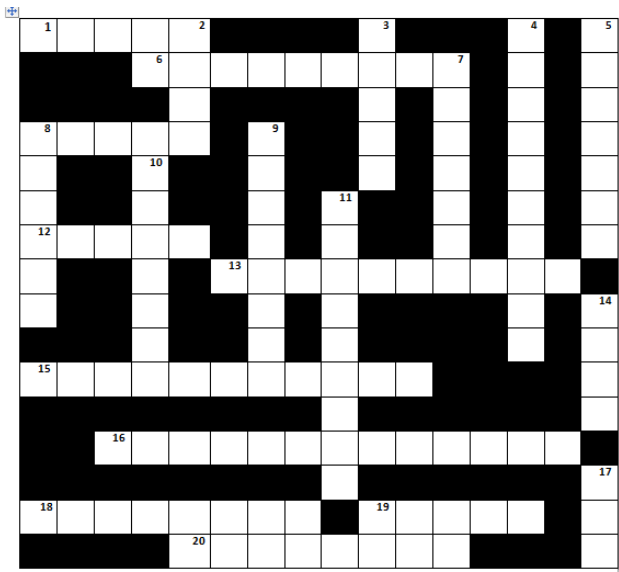
YOUR OPINION MATTERS...

"Can we build a truly tax compliant society?"
Please e-mail your opinions (**not more than 100 words**) to chennai.adg.dtrti@incometax.gov.in

The best opinion will be rewarded and published in the next issue.

The problem is not the problem; the problem is your attitude about the problem- Captain Jack Sparrow

LEARN THE SUBJECT – “DIGITAL FORENSICS” THROUGH A CROSSWORD



ACROSS:

1. The software and user's data stored on servers at a remote location is called _____ Computing (5)
6. Numerical values that represent a string of text (search term), generated by hashing functions (algorithms) (4,5)
8. Objects on which data can be stored. Includes hard drives, thumb drives, CD/DVD, floppy discs, SIM cards from mobile devices, memory cards for cameras, etc. (5)
12. A duplicate copy of some digital media created as part of the forensic process (5)
13. A procedure that converts plain text into symbols to prevent anyone but the intended recipient from understanding the message (10)
15. Clusters of a media partition not in use for storing any active files are called _____ space. They may contain pieces of files that were deleted from the file partition but not removed from the physical disk (11)
16. _____ uses techniques to communicate information in a way that is hidden (13)
18. Data, frequently embedded within a file, that describes a file or directory, which can include the locations where the content is stored, dates and times, application specific information, and permissions. Examples: Email headers and website source code contain this (8)

19. Hardware and/or software methods of preventing modification of content on a media storage unit like a CD or thumb drive is termed as Write _____ (5)

20. A copy or duplicate of a recording or data that can be used for subsequent processing and/or analysis. Also called an image (4,4)

DOWN:

2. Information in analog or digital form that can be transmitted or processed (4)
3. The unused space at the end of a file in a file system that uses fixed size clusters (5)
4. The instructions written in a programming language used to build a computer program. (6, 4)
5. _____ data is information that lies in areas not generally accessible to the user. This data lies in areas not allocated to active files (7)
7. Digital media seized for investigation is usually referred to as an _____ (7)
8. Portable data storage devices that provide communications, digital photography, navigation systems, entertainment, data storage, & personal info management are termed as _____ devices (6)
9. A verifiable procedure for sanitizing a defined area of digital media by overwriting each byte with a known value; this process prevents cross-contamination of data is called _____ Wipe (8)
10. _____ media is used within the fields to refer to the physical medium (such as a hard drive) or data storage device (7)
11. User defined section of electronic media. It can be used to separate and hide information on a hard drive (9)
14. Analysis of a piece of digital media from within itself is termed as _____ Analysis; often used to acquire data from RAM where this would be lost upon shutting down the device (4)
17. A record of actions, events, and related data is termed as a _____ File (3)

**Please e-mail your answers to chennai.adg.dtrti@incometax.gov.in.
And the first correct entry will be rewarded.
Answers will follow in the next issue.**

Published by: Team DTRTI, Chennai