INDORE BRANCH OF CIRC OF ICAI

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Chairman's Communiqué

CA. Anand Jain
Chairman,
Indore Branch of ICAI of CIRC

Dear Members,

As we step into the promising avenues of a new year, I am honored to extend my warmest greetings to each esteemed member of the ICAI family.

The past year was a testament to our resilience, adaptability, and unwavering commitment to excellence amidst unprecedented challenges. Despite the uncertainties, our collective efforts propelled us forward, showcasing the unwavering spirit and dedication of our fraternity.

The accountancy profession plays a pivotal role in driving economic growth and fostering financial stability. Our unwavering commitment to maintaining the highest standards of professionalism and integrity has been instrumental in navigating through turbulent times.

Looking ahead, we stand at the cusp of exciting opportunities and transformative changes. Technological advancements, evolving regulatory landscapes, and shifting global dynamics demand our continuous learning and proactive engagement. As professionals, it's imperative to embrace innovation, upskill ourselves, and remain at the forefront of these transformative changes.

The ICAI is steadfast in its commitment to supporting our members by providing a robust platform for learning, networking, and professional development. We will continue to enhance our resources, facilitate knowledge sharing, and foster an environment conducive to growth and excellence.I encourage each one of you to actively participate, collaborate, and contribute to the vibrant tapestry of our profession. Together, let us chart a course that not only meets the challenges ahead but also propels us towards newer heights of success and accomplishment.

As we embark on this new chapter, let us reinforce our dedication to ethical practices, uphold the principles of our noble profession, and strive for excellence in all our endeavors.

I wish you all a prosperous and fulfilling year ahead.

Warm regards,

CA. Anand Jain
Chairman,
Indore Branch of ICAI of CIRC

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ANALYZING THE TAXABILITY OF ONLINE GAMING VIS-A-VIS FINANCE BILL, 2023

A conspicuous intention with poor implementation

Introduction The Income Tax Act of 1961, since its inception, has subjected winnings from lotteries, horse races, card games, and more to taxation. Section 115BB of the IT Act mandates separate taxation for these winnings. Additionally, Section 194B imposes a tax withholding obligation at the source.

The Finance Bill of 2023 proposes specific measures pertaining to tax deductions (Section 194BA) and the taxability of online games (Section 115BBJ), recognizing the unique nature and growing popularity of online gaming. This paper will discuss various implications of these newly enacted laws.

Relevant sections

According to Section 115BBJ of the IT Act, income tax is due at a rate of 30% on the amount of net winnings from an online game when the assessee's total income includes any winnings from such a game. It is recommended that distinct standards be established for calculating net winnings. Once implemented, this provision will take effect on April 1, 2024.

It is suggested that the term "online game" be defined as a game that is accessible via a computer or a telecommunications device and is made available online. The scope of this description could presumably encompass any online game.

Section 194BA imposes TDS at the end of the Financial Year ("FY") on user accounts containing net winnings from online games. The event of deduction is initiated either at the time of withdrawal or on the remaining balance at the end of the fiscal year. A user account is any account of a user registered with an online gaming intermediary. When rewards are delivered in kind rather than currency, the payer is responsible for ensuring that the recipient has paid their fair share of taxes. This clause will take effect on July 1, 2023, once implemented.

Be mindful that until June 30, 2023, Section 194B of the IT Act will continue to require the source deduction of tax from online gaming winnings. Currently, it is intended to implement the Rs. 10,000 thresholds outlined in Section 194B on a fiscal year basis in order to trigger the tax deduction liability. In contrast, the new section 194BA mandates a tax deduction on net gains from online games without a threshold.

Classification of online gaming income

The proposed amendment is structured to tax "net winnings" from online gaming. Net winnings are not specified at this time, but it is anticipated that rules will be announced in due time to specify how net winnings are calculated. It is essential to remember that online gaming profits are not a brand-new source of taxable income. In accordance with Section 2(24)(ix), the definition of "income" includes all winnings from lotteries, crossword puzzles, racing, card games, and other forms of wagering or betting. Therefore, income from such an activity is expressly considered the assessee's income. According to Section 56(2)(ib), which stipulates that income described in Section 2(24)(ix) is subject to tax under the head "Income from Other Sources" (or "IFOS"), the aforementioned winnings were formerly subject to tax. Consequently, online gaming profits would also be classified as IFOS. Currently, Section 115BB taxes gaming winnings, including online game winnings, at a flat rate of 30%. In light of the unique characteristics of online gaming, the proposed Section 115BBJ proposes to tax online gaming earnings separately. The tax rate, which is 30%, remains unchanged. The exclusion of profits from online games from the scope of Section 115BB has also been proposed as a consequential modification. Claiming a tax deduction for incurred expenditures At this time, it would be essential to ascertain whether any costs associated with online gaming can be deducted. In accordance with Section 58 of the IT Act, certain expenses cannot be deducted when calculating taxable income under the header "IFOS." According to Section 58(4), winnings from lotteries, crossword puzzles, races, card games, and other forms of wagering or betting of any kind or nature are not deductible for any expenses or allowances related to such income.

Given the precise criterion established by Section 58(4) of the IT Act, the authors are of the opinion that it may be difficult to claim deductions for expenses incurred in calculating winnings from online gambling. Since Section 58(4) does not apply and the proposed Section 115BBJ commences with a non-obstante clause, one could argue that the restriction is irrelevant and that any deduction permitted for calculating "net winnings" would be permitted. To better comprehend the legislative intent behind establishing a taxing mechanism for online games while maintaining the

TCS on Credit Card Payments: Impact on International Transactions & How to Navigate Changes

With the recent amendments in the Foreign Exchange Management Act (FEMA), international credit card spending now falls under the Reserve Bank of India's (RBI) Liberalised Remittance Scheme (LRS). This change has brought a significant impact on the tax liabilities and expenses of individuals using credit cards for transactions outside India. In this comprehensive guide, we will discuss the implications of these changes, the reasoning behind them, and how you can plan your spending and trips accordingly.

Understanding the Liberalised Remittance Scheme (LRS)

Before delving into the changes in credit card payments, it is essential to understand the LRS. The LRS is a scheme by the RBI that allows Indian residents, including minors, to remit up to $250,000 per financial year (April – March) for any permissible current or capital account transactions. Under this scheme, any additional remittance beyond the said limit would require prior approval from the RBI.

Foreign Exchange Management Act (FEMA) Amendments

The Finance Ministry, in consultation with the RBI, has amended the Foreign Exchange Management (Current Account Transactions) Rules, 2000. These amendments, effective from May 16, 2023, have resulted in the inclusion of international credit card payments under the LRS. The primary implication of this change is that credit card spending in foreign currency will now be a part of the LRS's annual limit of $250,000 per person. Additionally, these transactions will be subject to Tax Collected at Source (TCS).

Changes to TCS Rates

The Union Budget 2023-24 has increased TCS rates for foreign remittances under the LRS from 5% to 20% (except for education and medical purposes). This new rule will be effective from July 1, 2023. TCS is a type of tax collected by the seller of selected goods and services from the buyer, and in the context of foreign remittance transactions, this tax is collected when individuals send money abroad.

Impact of TCS on Foreign Remittance Transactions

The increased TCS rates will affect different types of transactions under the LRS, including:

1. Private visits to any country (except Nepal and Bhutan)
2. Gifts or donations
3. Going abroad for employment
4. Emigration
4. Maintenance of close relatives abroad
5. Travel for business, conferences, specialized training, or medical expenses
6. Expenses related to medical treatment abroad
7. Studies abroad
8. Any other current account transaction

As a result of these changes, individuals using international credit cards for transactions during their

travels outside India must be aware of the restrictions and monetary caps imposed on certain identified transactions. The prior consent requirement will only apply if these limits are breached.

How the New TCS Rule Impacts Credit Cardholders

The new TCS rule has several implications for individuals using international credit cards for transactions outside India:

Increased TCS Rates for Overseas Tour Packages

From July 1, 2023, TCS rates on remittances for booking overseas travel packages will increase from the existing 5% to 20%. This change means that if you purchase an overseas tour package from an international travel agent in foreign currency using your credit card, you will have to pay a TCS of 20% from July 1, 2023. This also applies if you purchase foreign currency individually from an authorized dealer for your foreign trip.

Impact on Cash Flow and Budgeting The upfront TCS of 20% on tour packages will increase the cash outflow for individuals planning foreign trips. If the user does not have an adequate tax liability to offset the TCS, they will have to file for a refund, which could take several months and severely impact their cash flow. Therefore, it is essential to factor in this condition when budgeting for your next foreign trip.

Compliance Burden and Operational Nuances

The responsibility of collecting TCS will fall on the authorized dealer, i.e., the bank that issued the credit card. The bank will collect an additional 20% from the credit cardholder to deposit the same as TCS, which can be adjusted against any income tax liability for that financial year. This process may involve additional compliance and operational nuances, including pop-up messages on the nature of the transaction and automatic triggering of TCS collection.

Navigating the Changes: Tips for Credit Cardholders

To minimize the impact of the new TCS rule on your international transactions, consider the following tips:

1. Plan your spending carefully: Be aware of the LRS limits and TCS rates to avoid breaching the caps and incurring additional tax liabilities.
2. Budget for TCS: When planning your foreign trips, factor in the 20% TCS on tour packages and other transactions.
3. Monitor your LRS usage: Keep track of your remittances under the LRS to ensure you do not exceed the annual limit of $250,000.
4. Consider alternative payment methods: Evaluate other money transfer instruments and explore their tax implications to minimize your tax liabilities. Final Thoughts

The recent changes in credit card payments and TCS rates under the LRS have significant implications for individuals using international credit cards for transactions outside India. While these changes aim to curb tax evasion and increase accountability, they also come with increased compliance burdens and operational challenges. To navigate these changes, credit cardholders must plan their spending and foreign trips carefully, budget for TCS, and explore alternative payment methods.

Requirement of

E-WAY BILL

cannot be escaped by undervaluing goods

Radha Fragrance Vs Union Of India (Allahabad High Court)

The Hon'ble Allahabad High Court in M/s. Radha Fragnance v. Union of India and Others [Writ Tax No. 427 of 2019 dated February 14, 2023] affirmed the order of detention of goods and imposition of tax and penalty, on the grounds that the assessee was transporting huge quantity of goods without e-way bill by reducing the value of goods below the threshold limit. Held that, it is only to protect small trade where the value is minimal that the necessity of downloading e-way bill is dispensed, however, the same does not allow the assessee to undervalue goods so as to escape it from bringing to the notice of the Revenue Department by uploading the same on the Web-Portal.

Facts:

M/s. Radha Fragnance ("the Petitioner") is in the business of manufacturing and sale of Pan Masala and Chewing Tobacco ("the Goods"), who had received orders for supply of the Goods from two registered dealers namely M/s ASP Enterprises and M/s Alliance Trading Company and was sending the goods through four tax invoices.

The goods in transit from State of Haryana to Jharkhand were intercepted on February 4, 2019 by Revenue Department ("the Respondent") wherein, the tax invoices were produced by the driver of the vehicle for the Goods and during verification it was found that goods were not accompanied with E-way Bill as per Rule 138 of the Central Goods and Services Tax Rules, 2017 ("the CGST Rules"), as the value of goods were claimed to be below INR 50,000/. The Respondent, on inspection, found that the total value of the Goods came to INR 15,36,000/- and after allowing discount of 25% and excluding tax and Cess, the basic value came to INR 6,12,766/- while the value on both the invoices was declared collectively INR 69,600/-.

Subsequently, a Show Cause Notice in Form MOV-07 was issued on February 6, 2019 ("the Impugned SCN"), for which a reply was filed on February 13, 2019 mentioning that, tax invoices in respect of tobacco were misplaced by the driver and could not be produced at the time of interception of goods. However, an Order-in-Original dated February 14, 2019 ("the OIO") under Section 129 of the Central Goods and Services Tax Act, 2017 ("the CGST Act") read with Section 20 of the Integrated Goods and Services Tax Act, 2017 ("the IGST Act") was passed, rejecting the explanation submitted by the Petitioner and directed the Petitioner to deposit Integrated Goods and Services Tax ("IGST") to the extent of Rs.7,27,235/- and penalty of the same amount. Consequently, the Petitioner filed an appeal wherein, the OIO was confirmed vide Order-in-Appeal dated March 2, 2019 ("the OIA").

Being aggrieved, this petition has been filed.

Issue: Whether in the garb of certain protection given under Rule 138 dispensing requirement of E-Way bill for goods valuing below Rs.50,000/-, a dealer who is a manufacturer, can be allowed to send his goods to different consignees undervaluing the goods and the Tax Authorities not to proceed taking action under the Act?

Held: The Hon'ble Allahabad High Court in Writ Tax No. 427 of 2019 held as under:

- Observed that, the Respondent, on fair valuation, found that the Goods, which were in transit accounted for INR 7,12,766/- while the proper disclosure was not made by the Petitioner and it was on this undervaluation of goods that the Respondent proceeded and imposed IGST and penalty.
- Stated that, the very purpose of downloading e-way bill is that every goods, which are in transit, is recorded in the Web Portal and the Respondent has a clear picture of the goods which are manufactured and sold by the dealers either Inter-State or Intra-State.
- Further stated that, it is only to protect small trade where the value is minimal that the necessity of downloading e-way bill is dispensed, however, the same does not allow the Petitioner to undervalue goods, so as to escape it from bringing to the notice of the Respondent by uploading the same on the Web-Portal.
- Noted that, the Petitioner had started its business in 2018, and had carried 11 transactions and none of the transactions were ever reported on the Web Portal and no E-Way bill was downloaded. Meaning thereby that all the transactions made by the Petitioner was below INR 50,000/-.
- Opined that, if the Petitioner is permitted, it will harm the business world and lead to a parallel economy and the very purpose of enactment of GST would be frustrated.
- Further noted that, one of the consignee of the Petitioner was actually registered as 'Works Contract and Suppliers of Services' and not in the business of trading. In the garb of technicalities, no benefit can be given to a dealer who has intentionally undervalued its goods to escape from the eyes of law.
- Held that, the Petitioner had grossly undervalued the Goods to avoid downloading e-way bill and bringing the transaction on record so as to escape payment of due tax.
- Further held that, the actions of the Respondent in detaining the Goods and imposing tax and penalty, needed no interference as the Petitioner cannot be permitted to take shelter of the fact that no e-way bill is required in case of goods valued less than INR 50,000/-.

Relevant Provisions: Section 129 of the CGST Act:

"Detention, seizure and release of goods and conveyances in transit-

1. Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—
   a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;
   b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;
   c upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed: Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

3. The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).
4. No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.
5. On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.
6. Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3): Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less: Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer." Rule 138(1) of the CGST Rules:

"138. Information to be furnished prior to commencement of movement of goods and generation of e-way bill.-

(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees-

(i) in relation to a supply; or

(ii) for reasons other than supply; or

(iii) due to inward supply from an unregistered person,

shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal: Provided that the transporter, on an authorization received from the registered person, may furnish information in Part A of FORM GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal: Provided further that where the goods to be transported are supplied through an ecommerce operator or a courier agency, on an authorization received from the consignor, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency and a unique number will be generated on the said portal:

Provided also that where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment:

Provided also that where handicraft goods are transported from one State or Union territory to another State or Union territory by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

Explanation 1.

For the purposes of this rule, the expression "handicraft goods" has the meaning as assigned to it in the Government of India, Ministry of Finance, notification No. 56/2018-Central Tax, dated the 23rd October, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1056 (E), dated the 23rd October, 2018 as amended from time to time.

Explanation 2.

For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged [illegible] document and shall exclude the value of exempt [illegible] where the invoice is issued in respect [illegible] taxable supply of goods. "

Celebration of Republic Day

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