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Rajive Chawla
President, FSIA



Sangeet Kr Gupta
Hon. Consultant, FSIA

Tax related news

1. Sales tax Surcharge (5% on VAT)

- a. This change is in Sales tax.
- b. This is applicable on all registered dealers (except the dealers under presumptive taxation scheme / compounding scheme)
- c. This surcharge (mentioned by Govt as “additional tax”) is 5%
- d. This 5% is on the VAT other wise calculated.
- e. There will be no change on the CST on declared goods
 - i. For the CST items of 4%, rate remains 4%.
 - ii. There is no change please.
- f. However where the CST is itself not 4%, but at say, 5% or 12.5%, there the surcharge on sales tax shall be leviable.
- g. The Central Govt, CST act, section 14 governs this. Certain goods have been declared to be of special importance in inter-State trade. Some of these include :
- h. **Almost all varieties of Iron and Steel like**
 - i. Ingots, slabs , rounds, rods, squares, angles, channels, tees,
 - ii. discs, rings, forgings and steel castings ;
 - iii. tool, alloy and special steels of any of the above categories ;
 - iv. steel melting scrap in all forms including steel skull, turnings and borings ;
 - v. steel tubes both welded and seamless, of all diameters and lengths,
 - vi. → Applicable for all FSIA members, who are either make Steel (Sales), or Steel components (their Purchase).
- i. **Almost all varieties of Man-made fabrics**



vii. → Applicable for all FSIA members, who are into Readymade Garments manufacturing / trading business.

j. So, Friends, again, no change for many of your sales and purchases.

Legal Source :

Section 15 of CST Act

Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State

Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:

*(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed four percent of the sale or purchase price thereof, [***];*

2. Supplementary bills

- a. We at FSIA recommend that, if you changed the rate in your ERP softwares late, and could not charge the new rate w.e.f. 1.4.2010, then you should issue “Supplementary bill” to your customers immediately.
- b. Else
 - i. Government will charge you the difference during the assessment.
 - ii. And your customer will not pay you at that time.
- c. So, bill your customer the difference now.

3. Penal TDS – if your vendor doesn't have the PAN

- a. New change
- b. Change your ERP software quickly.
- c. Change is :- if your deductee does not give his valid PAN number to the deductor, the deductor shall deduct TDS at 20%.
- d. **This is a new “deterrent” penalty**
- e. **FSIA editorial team :**
 - i. **Caution on side of your vendors :** Suppose your vendor does not give you a PAN, then you have to deduct TDS of 20%. Else, you yourself will be held “assessee in default”, and will have to pay to the Govt from your own pocket.



Read this again

TDS is 20% (on all) - if you don't have a “PAN”

4. TDS of 20% on your Foreign Payee too, – if he does not have a PAN in India

- a. Many of our FSIA members today have joint ventures in India, or abroad.
- b. Many of us have taken Copyrights, technical collaboration, royalty agreements with some principal in say Germany, USA or Japan.
- c. Now, we have been deducting TDS at the rate prescribed under DTAA or the prescribed rates, in past.
- d. So, tell your foreign partners quickly.
- e. Change is :- if your deductee does not give his valid PAN number to the deductor, the deductor shall deduct TDS at 20%.
- f. For details, you may refer section 206AA of the income tax act, (this is new amendment and effective w.e.f 1.4.2010) . Excerpts are as under :



Requirement to furnish Permanent Account Number.

206AA. (1) Notwithstanding anything contained in any other provisions of this Act, any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIIB (hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (hereafter referred to as deductor), failing which tax shall be deducted at the higher of the following rates, namely:—

- (i) at the rate specified in the relevant provision of this Act; or
- (ii) at the rate or rates in force; or
- (iii) at the rate of twenty per cent.

.....

.....

(5) The deductee shall furnish his Permanent Account Number to the deductor and both shall indicate the same in all the correspondence, bills, vouchers and other documents which are sent to each other.

(6) Where the Permanent Account Number provided to the deductor is invalid or does not belong to the deductee, it shall be deemed that the deductee has not furnished his Permanent Account Number to the deductor and the provisions of sub-section (1) shall apply accordingly.

5. Query = Can the Govt charge them 20% TDS ?

- a. Is the Govt not bound by the DTAA ???

For example in the DTAA between India and Germany, it says :

Article 12(2).”..... However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, or fees for technical services, the tax so charged **shall not exceed 10 per cent of the gross amount of the royalties or the fees for technical services**.....”

The department feels that the non-quoting of PANs by deductees is creating problems in the processing of returns of income and in granting credit for tax deducted at source, leading to delays in issue of refunds.

The above provisions will be applicable to all assesses. The intent of the legislature is clear from the Memorandum to the Finance Bill, which **specifically provides that these provisions will also apply to the NON-RESIDENTS.**

The aforesaid legal position has again been reiterated by CBDT through its Press Note dated 20th January, 2010 which states: "A new provision relating to tax deduction at source under the Income Tax Act 1961 will become applicable with effect from 1st April, 2010.

Tax at higher of the prescribed rate or 20 per cent will be deducted on all transactions liable to TDS, where the Permanent Account Number of the deductee is not available. The law will also apply to all non-residents in respect of payments/remittances liable to TDS.

The issue is particularly important to non-residents because in most of the cases their **income is generally taxable @10 per cent (in case of most DTAA countries)** while in the absence of PAN, tax will be deducted @20 per cent.

The problem may be looked at from another angle. Taxability of non-residents in India is subject to the provisions contained in the Double Taxation Avoidance Agreement entered into by government of India with other countries.

After introduction of Section 206AA, a question arises whether the tax required to be withheld will be as per the rate mentioned in the DTAA or as per Section 206AA?

In this respect, the decision of the Hon'ble Bombay High Court in the case of CIT vs Siemens Aktiengesellschaft, [310 ITR 320] is worth consideration. In the said case, it was held that by an unilateral amendment in the domestic law, it is not possible to tax income which otherwise was not subject to tax under the tax treaty.

Here, we at FSIA have an opinion that, since Section 206AA has been inserted by a unilateral amendment, it cannot override the rates prescribed in the tax treaty.

Nevertheless, there is a possibility that after section 206AA comes into force, i.e. w.e.f. 01.04.2010, the income of non-residents could be subjected to higher rate of TDS @20 per cent if PAN is not available. And the first level assessing officer may take this plea.

In such cases, in order to claim refund of excess TDS deposited, the non-residents will have to file their return of income in India. This will be a cumbersome procedure.

The procedure for obtaining PAN **is simple, inexpensive and quick**. Non-residents can apply through the local embassy / consulate of India. Applications can also be filed, paid for or tracked online through the Internet.

Non-residents are **strongly advised to obtain Permanent Account Number** (PAN) before receiving any income from India.

We at FSIA help desk can help the members get the same for their Non resident employees, consultants, collaborators and JV partners etc.

For queries, suggestions and feedback , you can e-mail us at :

<p><u>Sangeet Kumar Gupta</u> FCA, ICWA, PGDMM, B.Com(Hons) Honorary Consultant, Faridabad Small Industries Association 93126-08426 groupmlg@eth.net Camp Off : SCF no 70, Sector-16A Market, Faridabad FSIA Off : FSIA Park, Opp. Plot No.23, Sector-24, Faridabad- 121005</p>	
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