AKSHAY SHAH
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HAPPY NEW YEAR!

TAXTIME

NEWSLETTER

DIRECT TAX NEWS

IN A STICKY SITUATION: SEBI'S SPECIAL SITUATIONS FUND MAY RUN INTO TAX WALL

The introduction of a new sub-category for investments in stressed assets through alternative investment funds (AIFs) will bring in a new set of investors and create a more efficient market for buying distressed assets, but may run into tax hurdles, said market players. On Tuesday, the Securities and Exchange Board of India (Sebi) board amended the AIF regulations to introduce a Special Situations Fund (SSF), a sub-category under Category I AIF, which can invest in certain kinds of 'stressed assets'.

This includes stressed loans available for acquisition in terms of the Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021, or as part of a resolution plan approved under the Insolvency and Bankruptcy Code, 2016. It also includes security receipts issued by asset reconstruction companies (ARCs), securities of companies in distress, and any other asset/security as may be prescribed by the Sebi board from time to time.

AIFs have a minimum ticket size of ₹ 1 crore and offer investors access to sophisticated strategies across different asset classes. The RBI's (Transfer of Loan Exposures) Directions, 2021, is aimed at ensuring proper credit-risk pricing, better identifying stress in the banking system, and re solution of stressed-loan exposures.

SSFs will be exempt from investment concentration norms in a single investee company and there will be no restriction on investing their investible funds in unlisted or listed securities of the investee company. The minimum corpus requirement is ₹ 100 crore

There are already three mutual fund schemes under the thematic category, which have already been providing opportunities to take calculated risks by investing in special situations. The recent market rally has also worked for investors by investing in special situations, said experts. Experts believe the taxation for these funds is not favourable at present. This may deter foreign investors with deep pockets from investing.

The tax rate for business income is 42.7 per cent after surcharge and cess. The assets of AIFs have crossed the ₹ 5 trillion mark this year as an increasing number of wealthy investors scout for alternatives to derisk their portfolios and maximise returns.

UNPAID TAX ON SELF-DECLARED SUPPLIES : ADMITTED LIABILITY

Unpaid tax on self-declared supplies by a GST assesee will be considered as admitted liability, government sources said on Thursday. Accordingly, recovery can be initiated for that.

For such recovery, however, any apprehension of unauthorised visits of GST officials to premises is 'unfounded'. These explanations have come at a time when some changes in CGST (Central Goods & Services Tax) Act are coming into effect from January 1.

One such change is amendment in Section 75 (12) of the CGST Act. An explanation has been added here which says: "the expression 'self-assessed tax' shall include the tax payable in respect of details of outward supplies furnished under Section 37, but not included in the return furnished under Section 39."

Explaining this, a senior Finance Ministry official said that the tax on self-declared supplies by the registered person in GSTR-1, which has not been paid through GSTR-3B, will be considered as his self-assessed (and admitted) liability and can be recovered. "This explanation is also in line with the legal position taken by Courts in some cases," he said.

The law prescribes a registered person to declare his supply in return form, GSTR-1 and accordingly pay his tax liability with the filing of return form GSTR-3B. This helps the recipient to avail input tax credit (ITC) on supplies declared by his suppliers in their GSTR-1 and in respect of which tax has been paid. However, if a supplier does not discharge his entire liability, then not only the recipient of supply gets affected as they will not avail ITC for supply where supplier has not paid tax, but the government too gets lower tax revenue. "In many cases, the recipient may already have settled the payment for the supply too," the official said, while adding that this explanation has been added to explicitly clarify the legal intent so that recipients are not made to suffer due to non-compliance on part of the suppliers.

He further mentioned that due opportunity would be provided to taxpayers to explain the difference in GSTR-1 and GSTR-3B in cases where bona-fide errors are committed in reporting details of outward supplies in GSTR-1. Another change is related with 100 per cent invoice matching. This means an assessee will get ITC only to the extent of invoices matched. The measure aims to curb fake invoices as in a number of cases ITC has been availed in respect of supplies undeclared by their suppliers and on which tax has not been paid.

STATES PRESS HARD FOR GST COMPENSATION BEYOND JUNE 2022

Many of States used their pre-Budget consultation session with the Finance Minister to press for extending the GST compensation regime for some more time.

GST compensation is given to States for revenue shortfall resulting from subsuming of local taxes such as VAT in the uniform national tax Goods and Services Tax. This mechanism is to end in June 2022. States also asked the Centre to take a higher share of funding in centrally sponsored schemes; the Union government's share varies from 50 per cent to 90 per cent (the maximum for the North-East States mainly).

Tamil Nadu Finance Minister P Thiaga Rajan said he demanded extension of the GST compensation cess regime for at least two years because of Covid-19. He also made a case for raising the share of the Union government in the centrally-sponsored schemes.

Echoing this, Kerala Finance Minister K N Balagopal said his State wanted the GST compensation regime extended by five years. Many States made this demand and also flagged the issue of delay in releasing the GST compensation, the Minister.

Rajasthan Education Minister Subhash Garg said extension of the compensation cess window till 2026-27 is a valid demand and the Centre should consider it. He also sought a reduction in the import duty on gold and silver from 10 per cent to 4 per cent.

TODAY'S QUOTE

No matter how hard the past, you can always begin again

— Buddha

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