



TAXTIME

NEWSLETTER

DIRECT TAX NEWS

NEED I-T DEPT NOD FOR TRANSFER OF SHARES TO ADANIS



In another move to delay transfer of ownership of 29.8 per cent of shares to the Adanis, the promoters of NDTV have claimed that the transfer will require the approval of the Income Tax authorities.

The promoters, Radhika and Prannoy Roy, notified the exchanges that the equity shares held by their holding company RRPR were provisionally attached by the authorities as part of reassessment proceedings. Therefore, RRPR has informed Adani-owned Vishvapradhan Commercial Ltd (VCPL) that the move to exercise the right to convert warrants into equity shares of RRPR will require approval and clarification by I-T authorities.

The promoters also cited a July 20, 2022 order of the Securities Appellate Tribunal (SAT), which said: "The intent and language of the loan agreement and call option agreements read with the SAT Regulations make it clear that there is no direct or indirect control of NDTV by VCPL.

The transaction structure does not lead to a conclusion that VCPL has acquired direct or indirect control over NDTV." Therefore, I-T authorities will be required to clarify whether in light of the SAT order the provisional attachment will continue to operate on RRPR's equity shares held in NDTV, the promoters said.

According to the promoters, Radhika and Prannoy Roy may individually require independent approval, under Section 281 of the I-T Act.

EXPERTS RAISE SEVERAL RED FLAGS AROUND SECTION 194R OF THE INCOME TAX ACT



Section 194R of the Income Tax Act, 1961, which makes it necessary to deduct 10 per cent tax at source on the value of any benefit or perquisite received by a resident Indian, was introduced by the government to widen the tax base and reduce tax evasion in the country. Experts, however, have flagged several complications around it.

"The threshold prescribed under section 194R does not sync with threshold prescribed under section 56," said an expert. Under section 56, if the receipt of benefits by an individual or a Hindu Undivided Family (HUF) exceeds Rs 50,000 in a year, they are liable to pay a tax on it. However, under section 194R, the limit is Rs 20,000.

"At the very instance, this would lead to tax outflow which is actually exempt in the hands of the recipient," they added.

GST COUNCIL TO TAKE UP PROPOSAL TO IMPLEMENT SC RULING REMOVING IGST ON OCEAN FREIGHT



The GST Council, at its next meeting, is expected to take up a proposal to implement the Supreme Court ruling on IGST (Integrated Goods and Service Tax) on ocean freight. The meeting is to take place in Madurai but the date is yet to be set.

The apex court had upheld the Gujarat High Court ruling and struck down the levy of IGST on transportation of goods by vessel from a place outside India to a place in India. The same ruling also observed on the non-binding nature of GST Council recommendations on the Centre and the States.

"There is no thinking on filing a review petition. Accordingly, the GST Council will take up a proposal to issue a circular quashing the provision of levying IGST on ocean freight," a senior Finance Ministry official said.

Further, the circular is also likely to talk about refunds. Last month, relying on the Supreme Court order, the Gujarat High Court ordered refund of IGST within six weeks along with interest.

NO INDISCRIMINATE PROSECUTION OF DIRECTORS, CAUTION NEW CBIC GUIDELINES



Prosecution in the case of Goods & Services Tax (GST)-related violations will not be initiated against all the directors of a public limited company but against persons involved in day-to-day operations or those believed to have active involvement in the alleged offence, Central Board of Indirect Taxes & Custom (CBIC) has said.

CBIC has issued instructions that define prosecution as “institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender”. Section 132 of the Central Goods and Services Tax Act, 2017 codifies the offences under the Act which warrant institution of criminal proceedings and prosecution. These include evasion, or misuse of ITC (Input Tax Credit), or fraudulently obtained refund beside others. According to the latest instructions, prosecution should not be initiated merely because a demand has been confirmed in the adjudication proceedings nor should it start in cases of technical nature, or where additional claim of tax is based on a difference of opinion regarding interpretation of law.

Further, the evidence collected should be adequate to establish beyond reasonable doubt that the person had guilty mind, knowledge of the offence, fraudulent intention or in any manner possessed mens rea (wrongful intent) for committing the offence.

“It follows, therefore, that in the case of public limited companies, prosecution should not be launched indiscriminately against all the Directors of the company, but should be restricted to only persons who oversaw day-to-day operations of the company and have taken active part in committing the tax evasion etc. or had connived at it,” instruction said.

It prescribed that prosecution should normally be launched where amount of tax evasion, or misuse of ITC, or fraudulently obtained refund in relation to offences specified law is more than ₹5 crore.

However, the said monetary limit will not be applicable in cases of habitual evaders and arrest cases. Principal Commissioner/ Commissioner should give an offer to the person to compound the prosecution.

All prosecutions where the sanction is accorded after the date of instruction shall follow these instructions irrespective of the date of offence. Also, where complaints have not been filed and sanctions received before instruction, the sanctioning authority shall re-consider the sanction in light of these instructions.

SC GIVES FINANCE MINISTRY 30 MORE DAYS FOR OPENING OF GST PORTAL



The Supreme Court on Friday gave the finance ministry further extension of 30 days for opening of the GST common portal. It also directed the GSTN to open the portal for 60 days from October 1 till December 31 so as to “give full effect” to its July 22 order that had allowed taxpayers to claim accumulated ITC accrued in the pre-GST indirect tax regime in 60 days ending October 31.

A Bench led by Justice SA Nazeer accepted the finance ministry plea that sought extension of time. “In view of criticality of revenue collection for the government... only emergency changes in the IT system are carried out and in general deploying new functionality such as TRAN-1 is avoided (period of 7th to 24th every month IT changes are avoided). This leaves GSTN with deployment window from 25th of a month to 6th of every month in every cycle,” the ministry stated.

MOST FOREIGN JURISDICTIONS REPLY TO PANDORA QUERIES



The Financial Intelligence Unit (FIU), a key unit of the multi-agency probe into the 2021 global offshore investigation called the Pandora Papers, has received responses from its counterparts in over three-fourths of the requests it sent to 33 foreign jurisdictions.

Officials said that using the network of FIUs in mostly the offshore havens mentioned in The Indian Express investigation (October 4-16, 2021), the FIU sent out 160 requests to foreign jurisdictions and has received responses in 125 cases so far.

The wide scope of the Pandora Papers probe of the FIU is evidenced from the fact that a total number of 482 “subjects” or individuals and legal entities (including offshore companies) have been covered in these bilateral requests for information.

It is learnt that “sizeable” and “additional” information have been received by India from other FIUs regarding the 482 subjects mentioned in the Pandora Papers

The fresh information includes details of existing and additional foreign bank accounts; investments in shares by offshore entities; confirmation of the Beneficial Owners (BOs) and Settlers of Offshore Trusts, and investments in shares and immovable properties made by the individuals named in the Pandora Papers.

The individuals include both Indian residents as well as Non Resident Indians (NRIs).

The FIU has been dispatching the details in individual cases to the Central Board of Direct Taxes (CBDT) and the Enforcement Directorate (ED) to accelerate their Pandora Papers probes.

As reported earlier, cooperation between FIUs in the Pandora Papers probe is being done under the aegis of the Egmond Group, an umbrella organisation that brings FIUs of 167 countries together with the aim of facilitating a secure exchange of “financial intelligence to combat money laundering and terrorist financing.”

The offshore data in the Pandora Papers contained details about 29,000 offshore companies, registered by 14 companies located in different tax havens.

TODAY'S QUOTE

Sometimes you just have to go with the flow and always trust that God is going to catch you when you fall.

- Amber J. Graham

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