

TAXTIME

NEWSLETTER

DIRECT TAX NEWS

RETROSPECTIVE TAX: AFTER CAIRN, OTHER COMPANIES QUEUE UP TO SETTLE DISPUTES



After UK-based Cairn Energy PLC, about a dozen other firms affected by India's retrospective taxation rule will file application with the income tax (I-T) authorities in the next few days to initiate settlement of their tax disputes ahead of the November 16 deadline, sources aware of the matter told FE.

Vedanta, a related party in the Cairn tax dispute, would also file application to withdraw from litigation soon, they added. Vodafone, another major firm embroiled in the tax dispute, would file later as its case falls under a separate section of the tax dispute resolution notification, which came nearly two weeks after the first one which covered all others.

According to the rules, the initial submission of an undertaking to withdraw all pending legal proceedings has to be done in 45 days from the day of the notification. The tax refunds process could take 2-3 months time thereafter.

In order for the government to revoke the tax demand and refund the amounts collected sans interest, the party concerned will have to indemnify the Indian government against any future claims, withdraw all pending litigation in domestic courts and arbitration under bilateral investment treaties filed abroad and ensure that cases filed by any "separate interested parties" including beneficial owners are withdrawn.

APPLICABILITY OF SECTION 194A ON COMPENSATORY INTEREST PAYMENT

Recently Bombay High Court in the case of Sainath Rajkumar Sarode v.State of Maharashtra [2021] 131 taxmann.com 332 (Bombay) analysed the applicability of provisions of section 194A of Income-tax Act, 1961 on payment of interest by builder on account of failure to handover possession of flat to assessee. It held that -

"Where on builder's failure to handover possession of flat to assessee, Real Estate Regulatory Authority directed builder to refund advance amount paid by assessee with compensatory interest. Such compensatory interest falls outside the purview of section 194A and section 2(28A). In present case, the amounts payable being in effect a refund of the amounts paid by the assessee to the builder, along with compensatory interest thereon, it is in nature of a judgment debt or akin to a judgment debt, payment of which cannot establish debtor-creditor relationship nor is the payment made by the builder to the petitioners one of discharge of any pre-existing obligation, so as to attract section 2(28A).

In view of the above, builder was not obligated to deduct TDS under section 194A and, thus, builder was directed to pay to the assessee the amount so deducted from the instalment."



ROMANIA UPDATES LIST OF LARGE TAXPAYERS REQUIRED TO PREPARE TRANSFER PRICING DOCUMENTATION



The Romanian National Tax Agency published a new order on October 29 that updates the list of large taxpayers, which, under Romanian law, are managed by a separate department (large taxpayer office) and are subject to special provisions requiring them to prepare transfer pricing documentation.

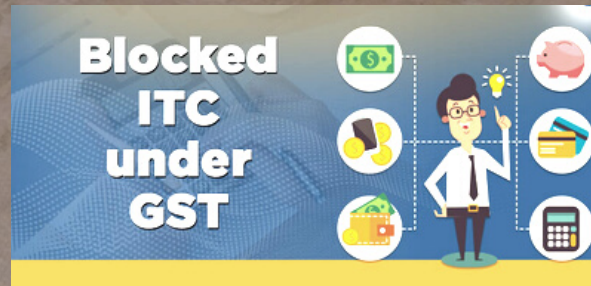
The provisions of the new order no. 1721 maintain the criteria previously in force for determining whether a taxpayer is classified as large. However, updates were made to the list due to changes in which taxpayers meet the criteria.

Determining large taxpayer status involves considering a set of general and specific cumulative criteria that are related to the taxpayer's global financial indicators, tax weight, type of activity, organisational structure, investments made in the last three years, or membership in a group.

According to these criteria, there are currently 2,940 taxpayers which are classified as "large" until December 31. Starting from January 2022, the updated list now includes 3,364 taxpayers – a 15 percent increase.

The architecture of the criteria is centered around the systemic weight that these companies carry in the Romanian tax ecosystem. Public records estimate that large taxpayers generated over 40 percent of tax revenues in 2018

GOVT FRAMES NORMS TO DISALLOW DEBIT FROM ELECTRONIC LEDGER FOR GST ASSESSEES



The Finance Ministry has come out with detailed guidelines for disallowing debit of electronic credit ledger under GST rules. Rule 86A of GST Rules 2017 prescribes that in case Input Tax Credit

is availed fraudulently, the assessee can be denied debit of amount equivalent to such credit from the electronic cash ledger. There is also a provision that such restriction will cease to have effect one year from date of imposition of restrictions.

As on date, an officer — not below that rank of Assistant Commissioner — must have 'reasons to believe' that credit of input tax available in the electronic credit ledger is either ineligible or has been fraudulently availed by the registered person before disallowing the debit. Now, the guidelines provide five grounds and any one or more than can be applied for 'reasons to believe'.

First, ITC is availed by a non-existent entity or one which is not conducting any business. Second, ITC has been availed without receiving goods or services or both. Third, ITC is availed but tax is not paid. Fourth, the registered person availing is found to be non-existent or not doing any business. And fifth, credit is availed without any invoice, debit note or other valid document. The procedure will involve ascertain of the allegation bases on material evidence, application of mind by the officer to record reasons to believe and finally disallowing debit of amount.

GOVT MULLING LEVY OF I-T, GST ON CRYPTOS; BILL IN WINTER SESSION



A comprehensive Bill on crypto will detail the taxation. The Bill is expected to be introduced in the the Winter Session of Parliament, starting later this month.

Meanwhile, the Standing committee on Finance will initiate detailed discussions on crypto assets at its November 15 meeting. The intent to tax is expected to be mentioned in the legislation, and then provisions will be added in the Finance Bill to facilitate imposition of direct tax. For tax on transaction service, the Goods and Services Tax Council will take a final call.

Just before the Budget Session earlier this year, the government had released a list of Bills including one titled 'The Cryptocurrency and Regulation of Official Digital Currency Bill, 2021'. Its purpose was to "create a facilitative framework for creation of the official digital currency to be issued by the Reserve Bank of India. The Bill also seeks to prohibit all private cryptocurrencies in India. However, it allows for certain exceptions to promote the underlying technology of cryptocurrency and its uses." The Bill appeared to be based on the recommendations of the SC Garg Committee formed by the Centre. The Committee had recommended banning cryptocurrencies but instead creating an official digital currency.

TODAY'S QUOTE

*"The best preparation for Tomorrow is
doing your best Today."*

-H. Jackson Brown, Jr.

DISCLAIMER

This publication contains information for general guidance only. The contents are solely for information and knowledge purpose. It does not constitute any professional advice or recommendation. The contents are gathered from different newspaper and websites as mentioned in 'Source of content'. We do not accept any responsibility and liabilities for any loss or damage of any kind arising out of any information in this publication nor for any actions taken in reliance thereon. This is a private circulation for clients and professionals only.

Source of Content

<https://epaper.thehindubusinessline.com/>
<https://epaper.thehindu.com/>
<https://economictimes.indiatimes.com/epaper-print-edition/>
<https://www.gst.gov.in/newsandupdates/read/509>
<https://www.tax-news.com/>
<https://www.financialexpress.com/todays-paper/>
<https://mnetax.com/romania-updates-list-of-large-taxpayers-required-to-prepare-transfer-pricing-documentation-46154>

AKSHAY SHAH

Email: ca.akshah@gmail.com

Contact No.: 9958975768

Website: www.jainshah.com