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Newsflash: No TDS on GST component comprised in the payments made to residents

CBDT Circular No. 23 of 2017 dated 19 July 2017

1.0 Brief Background

In the pre- GST era, the Central Board of Direct Taxes (CBDT) had issued Circular No. 1/2014 dated 13.01.2014 clarifying that tax is not required to be deducted under Chapter XVII-B of the Income-tax Act, 1961 on Service Tax component comprised in the payments made to residents wherever in terms of the agreement or contract, the Service Tax portion is shown separately.

Under the GST regime - effective 1 July 2017, issue arose as to whether payer should deduct tax at source on the amount inclusive of GST or exclusive of GST. While the inclusion of GST component would have led to a higher amount of tax being deducted, the exclusion would have meant lesser deduction of tax.

2.0 New CBDT Circular- Tax would be deducted on the payment exclusive of GST

To clarify this aspect, the CBDT has recently issued a new circular stating that the payer shall deduct tax at source on the amount without including GST component, wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is shown separately.

GST for these purposes shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax.

Further, it has been clarified that any reference to 'service tax' in an existing agreement or contract which was entered prior to 01.07.2017 shall be treated as 'GST on services' with respect to the period from 1 July 2017 onward till the expiry of such agreement or contract.

3.0 Our comment

The CBDT has basically applied the spirit of earlier circular dated 13.01.2014. In this sense, it shows consistency and uniformity in the approach. However, like earlier circular, this circular is silent on the issue as to whether tax should be deducted on a GST exclusive basis while making payment to a non-resident and thus it needs to be analyzed separately.



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