

Income Tax Updates (Feb.2021)

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I. Relaxation in respect of remuneration by eligible investment fund to eligible fund managers:

The CBDT in Circular No.1 of 2021 dated 15th January, 2021 considered the difficulty faced by the fund in respect of remuneration paid to fund manager being less than the amount prescribed in sub-rule (12) of rule 10V of the Income-tax Rules, 1962 vide notification No.29/2020 dated 27.5.2020 w.e.f.1st April, 2019. As the notification was issued after the end of the financial year 2019-20, it could not be complied with. Finance (No 2) Act, 2019, *inter alia*, amended clause (m) of sub-section (3) of section 9A of the Income-tax Act, 1961 (the Act) w.e.f. 1-4-2019 to provide for payment of remuneration by an eligible investment fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf to be not less than the amount calculated in such manner as may be prescribed. The Board, in exercise of powers conferred under section 119 of the Act, has decided to provide that for the financial years 2019-20 and 2020-21 in cases where the remuneration paid to the fund manager is lower than the amount of remuneration prescribed under sub-rule (12) of rule 10V of the Rules, but is at arm's length, it shall be sufficient compliance to clause (m) of sub-section (3) of section 9A of the Act. However, in respect of remuneration to be paid to the fund manager for the financial year 2021-22, it shall be in accordance with sub-rule (12) of rule 10V of the Rules and the application for lower remuneration in terms of 2nd proviso for this year, if any, may be filed not later than 1st February, 2021.

II. Faceless Penalty Scheme, 2021 notified: The Central Government in exercise of the powers conferred by section 274(2A) vide Notification S.O.118 (E) dated 12th January, 2021 has notified the Faceless Penalty Scheme. The following are the significant features of the Scheme:

- (1) For the purposes of this Scheme, the Board may set up \hat{o}
 - (i) a National Faceless Penalty Centre to facilitate the conduct of faceless penalty proceedings in a centralised manner and vest it with the jurisdiction to impose penalty in accordance with the provisions of this Scheme;
 - (ii) Regional Faceless Penalty Centres, as it may deem necessary, to facilitate the conduct of faceless penalty proceedings, which shall be vested with the jurisdiction to impose penalty in accordance with the provisions of this Scheme;
 - (iii) penalty units, as it may deem necessary, to facilitate the conduct of faceless penalty proceedings, to perform the function of drafting penalty orders, which includes identification of points or issues for imposition of penalty under the Act, seeking information or clarification on points or issues so identified, providing opportunity of being heard to the assessee or any other person, analysis of the material furnished by the assessee or any other person, and such other functions as may be required for the purposes of imposing penalty;
 - (iv) penalty review units, as it may deem necessary, to facilitate the conduct of faceless penalty proceedings, to perform the functions of review of draft penalty order, which includes checking whether the relevant material evidence has been brought on record, whether the relevant points of fact and law have been duly incorporated in the draft order, whether the issues on which penalty is to be imposed have been discussed in the draft order, whether the applicable judicial decisions have been considered and dealt with in the draft order, checking arithmetical correctness of computation of penalty, if any, and such other functions as may be required for the purposes of review, and specify their respective jurisdiction.

(2) All communication among the penalty unit and penalty review unit or with the assessee or any other person, as the case may be, or any income-tax authority or the National Faceless Assessment Centre, with respect to the information or documents or evidence or any other details as may be necessary for the purposes of imposing penalty under this Scheme, shall be through the National Faceless Penalty Centre.

(3) Words and expressions used herein and not defined but defined in the Act shall have the meaning respectively assigned to them in the Act.

(4) The penalty under this Scheme shall be imposed in respect of such territorial area, or persons or class of persons, or income or class of income or cases or class of cases, or penalties or class of penalties as may be specified by the Board.

(5) The penalty in a case shall be levied under this Scheme as per the following procedure, namely:—

- (i) where any income-tax authority or the National Faceless Assessment Centre has, in a case,ô
 - (a) initiated penalty proceedings and issued a show-cause notice for imposition of penalty; or
 - (b) recommended initiation of penalty proceedings,it shall refer such case, in the form specified in clause (viii) of paragraph 12, to the National Faceless Penalty Centre;
- (ii) the National Faceless Penalty Centre shall in a case, where reference has been received as per clause (i), assign such case to a specific penalty unit in any one of the Regional Faceless Penalty Centres through an automated allocation system;
- (iii) where in a case assigned to a penalty unit, initiation of penalty proceedings has been recommended, such unit, after examination of the material available on record, may decide to,ô
 - (a) agree with the recommendation and prepare a draft notice calling upon the assessee or any other person, as the case may be, to show cause as to why penalty should not be levied under the relevant provisions of the Act; or
 - (b) disagree with the recommendation, for reasons to be recorded in writing, and send such draft notice or the reasons, as the case may be, to the National Faceless Penalty Centre;
- (iv) the National Faceless Penalty Centre shall upon receipt of the draft notice or reasons referred to in clause (iii) from the penalty unit,ô
 - (a) serve the show-cause notice, as per the draft referred to in sub-clause (a) of clause (iii), upon the assessee or any other person, as the case may be, specifying the date and time for filing a response; or
 - (b) not initiate penalty in cases referred to in sub-clause (b) of clause (iii);
- (v) where in the case assigned to a penalty unit, penalty proceedings are already initiated, such unit shall prepare a draft notice calling upon the assessee or any other person, as the case may be, to show cause as to why penalty should not be levied under the relevant provisions of the Act and send such notice to the National Faceless Penalty Centre;
- (vi) the National Faceless Penalty Centre shall serve the show-cause notice, as per draft referred to in clause (v), upon the assessee or any other person, as the case may be, specifying the date and time for filing a response;
- (vii) the assessee or any other person, as the case may be, shall file a response to the show-cause notice, referred to in sub-clause (a) of clause (iv) or in clause (vi), within the date and time specified therein, or such extended date and time as may be allowed on the basis of an application made in this behalf, with the National Faceless Penalty Centre;

- (viii) where response is filed by the assessee or any other person, as the case may be, the National Faceless Penalty Centre shall send such response to the penalty unit, and where no such response is filed, inform the penalty unit;
- (ix) the penalty unit may make a request to the National Faceless Penalty Centre for, -
 - (a) obtaining further information, documents or evidence from any income-tax authority or the National Faceless Assessment Centre; or
 - (b) obtaining further information, documents or evidence from the assessee or any other person; or
 - (c) seeking technical assistance or conducting verification;
- (x) the National Faceless Penalty Centre shall, upon receipt of request, referred to in sub-clauses (a) or (b) of clause (ix), issue appropriate notice or requisition to the income-tax authority or the National Faceless Assessment Centre or the assessee or any other person, as the case may be, to submit such information, documents or evidence, as may be specified by the penalty unit, specifying the date and time for furnishing a response;
- (xi) the income-tax authority or the National Faceless Assessment Centre or the assessee or any other person, as the case may be, shall furnish a response to the notice or requisition, as referred to in clause (x), within the date and time specified therein, or such extended date and time as may be allowed on the basis of an application made in this behalf, to the National Faceless Penalty Centre;
- (xii) where a request for conducting of certain enquiry or verification or seeking technical assistance has been made by the penalty unit, the National Faceless Penalty Unit shall send such request to the National Faceless Assessment Centre specifying a date and time for submitting a report;
- (xiii) where response to notice referred to in clause (x) is filed by the income-tax authority or the National Faceless Assessment Centre or the assessee or any other person, as the case may be, the National Faceless Penalty Centre shall send such response to the penalty unit, and where no such response is filed, inform the penalty unit;
- (xiv) where a report in response to request referred to in clause (xii) is received by the National Faceless Penalty Centre, it shall send such report to the penalty unit, and where no such report is received, inform the penalty unit;
- (xv) the penalty unit shall, after considering the material on record including response furnished, if any, as referred to in clauses (viii) and (xiii) or report, if any, as referred to in clause (xiv), propose for,--
 - (a) imposition of the penalty and prepare a draft order for such imposition of penalty; or
 - (b) non-imposition of the penalty,for reasons to be recorded in writing and send the proposal along with such draft order or reasons, as the case may be, to the National Faceless Penalty Centre;
- (xvi) the National Faceless Penalty Centre shall examine the proposal, as referred to in clause (xv), in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool, whereupon it may decide, -
 - (a) in a case where imposition of penalty has been proposed, to pass the penalty order as per draft order referred to in sub-clause (a) of clause (xv), and serve a copy thereof upon the assessee or any other person, as the case may be; or
 - (b) in a case where non-imposition of penalty has been proposed, not to impose penalty under intimation to the assessee or any other person, as the case may be; or
 - (c) assign the case to a penalty review unit in any one of the Regional Faceless Penalty Centres

through an automated allocation system, for conducting review of such proposal;

- (xvii) the penalty review unit shall review the proposal of penalty unit, as referred to in clause (xv), whereupon it may concur with, or suggest modification to, such proposal, for reasons to be recorded in writing, and intimate the National Faceless Penalty Centre;
- (xviii) where the penalty review unit concurs with the proposal of penalty unit, the National Faceless Penalty Centre shall follow the procedure laid down in sub-clause (a) or sub-clause (b) of clause (xvi);
- (xix) where the penalty review unit suggests modification to the proposal in sub-clause (a) or sub-clause (b) of clause (xv), the National Faceless Penalty Centre shall assign the case to a specific penalty unit, other than the penalty unit referred to in clause (xv), in any one of the Regional Faceless Penalty Centres through an automated allocation system;
- (xx) where the case is assigned to a penalty unit, as referred to in clause (xix), such penalty unit, after considering the material on record including suggestions for modification and reasons recorded by the penalty review unit,
 - (a) in a case where the modifications suggested by the penalty review unit are prejudicial to the interest of assessee or any other person, as the case may be, as compared to the proposal of the penalty unit under clause (xv), shall follow the procedure laid down in clauses (v) to (xiv) and prepare a revised draft order for imposition of penalty; or
 - (b) in a case where the modification are not prejudicial to the interest of assessee or any other person, as the case may be, shall prepare a revised draft order for imposition of penalty; or
 - (c) may propose non-imposition of penalty, for reasons to be recorded in writing, and send such order or reasons to the National Faceless Penalty Centre;
- (xxi) upon receipt of revised draft order from the penalty unit, as referred to in clause (xx), the National Faceless Penalty Centre shall pass the penalty order as per such draft and serve a copy thereof upon the assessee or any other person or not impose penalty under intimation to the assessee or any other person, as the case may be;
- (xxii) where in a case, as referred to in sub-clause (a) or (b) of clause (i), the National Faceless Penalty Centre has passed a penalty order, or not initiated or imposed penalty, as the case may be, it shall send a copy of such order or reasons for not initiating or imposing penalty to the income-tax authority, referred to in clause (i) or the National Faceless Assessment Centre, as the case may be, for such action as may be required under the Act.

Notwithstanding anything contained in (i) to (xxii) above, the Principal Chief Commissioner or the Principal Director General, in charge of the National Faceless Penalty Centre, may at any stage of the penalty proceedings, if considered necessary, transfer such proceedings to the income-tax authority or the National Faceless Assessment Centre having jurisdiction over the assessee or any other person, in whose case the penalty proceedings are initiated, with the prior approval of the Board.

(6) With a view to rectifying any mistake apparent from the record the National Faceless Penalty Centre may, by an order to be passed in writing, amend any order passed by it under this Scheme.

An application for rectification of mistake, as referred to in sub- paragraph (1), may be filed with the National Faceless Penalty Centre by the, ô

- (a) assessee or any other person, as the case may be; or
- (b) penalty unit, which prepared the order; or
- (c) penalty review unit, which reviewed the order; or
- (d) income-tax authority; or

(e) National Faceless Assessment Centre.

(7) Appellate proceedings: An appeal against a penalty order made by the National Faceless Penalty Centre under this Scheme shall lie before the Commissioner (Appeals) having jurisdiction over the jurisdictional income-tax authority or before the National Faceless Appeal Centre, as the case may be; and any reference to the Commissioner (Appeals) in any communication from the National Faceless Penalty Centre shall mean such jurisdictional Commissioner (Appeals) or the National Faceless Appeal Centre, as the case may be.

(8) Exchange of communication exclusively by electronic mode: For the purposes of this Scheme,--

- (a) all communications between the National Faceless Penalty Centre and the assessee or any other person, as the case may be, or his authorised representative, shall be exchanged exclusively by electronic mode; and
- (b) all internal communications between the National Faceless Penalty Centre, National Faceless Assessment Centre, Regional Faceless Penalty Centres, any income-tax authority, the penalty unit or the penalty review unit shall be exchanged exclusively by electronic mode.

(9) The Board shall establish suitable facilities for video conferencing including telecommunication application software which supports video telephony at such locations as may be necessary, so as to ensure that the assessee, or his authorised representative, or any other person is not denied the benefit of this Scheme merely on the ground that such assessee or his authorised representative, or any other person does not have access to video conferencing at his end.

III. Extension of time limits: The CBDT has extended the due dates for filing ITRs. The Press Release dated 30th December, 2020 is referred to in this write up as that would be easy to grasp for readers instead of making reference to -due dates and relevant statutory provisions referred to in Notification No. 93/2020 dated 31st December, 2020. Considering the problems being faced by the taxpayers, it has been decided to provide further time to the taxpayers for furnishing of Income-tax Returns, tax audit reports and declaration under Vivad Se Vishwas Scheme. Further, in order to provide more time to taxpayers to comply under various ongoing proceedings, the dates of completion of proceedings under various Direct Taxes & *Benami* Acts have also been extended. These extensions are as under:

- a. The due date for furnishing of Income-tax Returns for the Assessment Year 2020-21 for the taxpayers (including their partners) who are required to get their accounts audited and companies [for whom the due date, as per the provisions of section 139(1) of the Income-tax Act, 1961, was 31st October, 2020 and which was extended to 30th November, 2020 and then to 31st January, 2021] has been further extended to 15th February, 2021.
- b. The due date for furnishing of Income-tax Returns for the Assessment Year 2020-21 for the taxpayers who are required to furnish report in respect of international/specified domestic transactions [for whom the due date, as per the provisions of section 139(1) of the Income- tax Act, 1961, was 30th November, 2020 and which was extended to 31st January, 2021] has been further extended to 15th February, 2021.
- c. The due date for furnishing of Income-tax Returns for the Assessment Year 2020-21 for the other taxpayers [for whom the due date, as per the provisions of section 139(1) of the Income- tax Act, 1961, was 31st July, 2020 and which was extended to 30th November, 2020 and then to 31st December, 2020] has been further extended to 10th January, 2021.
- d. The date for furnishing of various audit reports under the Act including tax audit report and report in respect of international/specified domestic transaction for the Assessment Year 2020-21 has been further extended to 15th January, 2021.

- e. The last date for making a declaration under Vivad Se Vishwas Scheme has been extended to 31st January, 2021 from 31st December, 2020.
- f. The date for passing of orders under Vivad Se Vishwas Scheme, which are required to be passed by 30th January, 2021 has been extended to 31st January, 2021.
- g. The date for passing of order or issuance of notice by the authorities under the Direct Taxes & *Benami* Acts which are required to be passed/issued/made by 30th March, 2021 has also been extended to 31st March, 2021.

Further, in order to provide relief for the third time to small and middle class taxpayers in the matter of payment of self-assessment tax, the due date for payment of self-assessment tax date is hereby again being extended. Accordingly, the due date for payment of self-assessment tax for taxpayers whose self-assessment tax liability is up to Rs. 1 lakh has been extended to 15th February, 2021 for the taxpayers mentioned in (a) and (b) above and to 10th January, 2021 for the taxpayers mentioned in (c) above.

IV. Direction from CBDT to field officers for levy of penalty under section 271 AAD: The CBDT in its letter F.No.414/02/2021 dated 11th January, 2021 has directed a request that w.e.f.1st April, 2020 section 217AAD has been amended. As per this provision if during any proceeding under this Act, it is found that in the books of account maintained by any person, there is a false entry or an omission of any entry or an omission of any entry relevant for evading tax liability, the Assessing Officer may direct that such person shall pay by way of penalty, a sum equal to the aggregate amount of such false or omitted entry. It is further provided that the **Assessing Officer may also direct any other person who causes to make a false entry or omits or causes to omit any entry, shall pay by way of penalty** a sum equal to the aggregate amount of such false or omitted entry. The section further explains that "false entry" includes use or intention to use (a) forged or falsified documents such as false invoice or in general, a false piece of documentary evidence; or (b) invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of goods or services or both; or (c) invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist. The penal provisions have to be invoked in all such cases listed above, wherever the provisions are attracted.