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To,  
The Honorable Finance Minister,  
Ministry of Finance  
Government of India

Dated: 05-09-2023

Subject: Reconsideration | Budget 2023 Changes | Increase in rate of TDS for payments made under section 115A

Respected Ma'am

We hope that this letter finds you in good health. While we deeply appreciate the government's efforts to ensure macro-economic stability, and fiscal stability policies to ensure economic growth, we being a Chartered Accountancy firm assisting foreign companies to establish their base in India and to manage their legal compliances in India, would like to bring to your attention concerns regarding the recent amendment in section 115A of the Income Tax Act, 1961. We believe that the new amendment made in the Finance Act, 2023 may inadvertently put an unnecessary legal compliance burden on the foreign companies that are dealing with Indian businesses, which in turn may hamper the inflow of crucial foreign technology and services in India.

With the enactment of the Finance Act 2023, section 115A of the Income Tax Act stands amended that, inter-alia, provides that the

*"(1) Where the total income of-*

...

*(b) a non-resident (not being a company) or a foreign company, includes any income by way of royalty or fees for technical services...*

...

*(B) the amount of income-tax calculated on the income by way of fees for technical services, if any, included in the total income, at the rate of twenty per cent."*

To put it forward, the rate of TDS that an Indian party has to deduct for any payments made for fees for Technical Services from non-resident parties has increased from 10% to 20%. Considering the financial loss that may accrue to the foreign companies arising due to this amendment, it is highly expected, and a prudent business practice, that these companies may consider opting for the application of benefits provided under Double Taxation Avoidance Agreements (DTAA) which India had entered into with their respective governments, since the rates prescribed under such agreements for the said services are much lower than the new rates, ranging from 10 to 15%.

Sub-section 5 of section 115A, also provided the exemption to the non-residents and the foreign companies from the requirement of mandatory filing of their Income Tax Return (ITR) u/s 139(1), where the Income of such persons comprise only of the said income and the TDS has been deducted on such income at the rates specified in the section. Insertion of this sub-section was hailed as a bold move to promote the ease of doing business in the country and to simplify the legal compliances.

IT IS PERTINENT TO NOTE THAT, no such exemption from return filing is available where the tax has been deducted in accordance with the provisions of DTAA. Other things being the same for the

foreign entity, such foreign companies and national are being put in a disadvantaged situation, merely based on the fact that TDS has been deducted under DTAA and not as per section 115A.

The new amendment has indirectly created unnecessary legal compliance on the part of such persons to file their ITR in India, even though they don't have any other income in India, and all the tax on such Income has duly been deducted and paid to the Government of India.

It is therefore humbly requested to the Hon'ble Ministry to kindly look into the matter and provide relief concerning the exemption from the mandatory requirement of filing of ITR where the tax has been deducted as per the provisions of DTAA, on the similar lines as it is provided under the provisions of Section 115A(5).

Our concerns stem from the potential negative impact of this new tax policy on both domestic and foreign businesses operating in India. The policy, as it currently stands, poses significant challenges that could impede innovation, disrupt business models, and hinder the overall economic progress that India aspires to achieve.

Foreign investment has played a pivotal role in driving technological advancements and job creation in India. The influx of foreign technology and expertise has not only enriched our domestic industries but has also positioned India as a global hub for innovation. However, the new tax policy's implications on the cost of doing business and the taxation of foreign entities could deter potential investors and collaborators from considering India as a favorable destination for their ventures.

Furthermore, many industries that rely heavily on technology and digital services might face undue burdens under the new tax policy. These industries are essential for the growth of our economy, and any hindrance to their development could have far-reaching consequences. We must consider the delicate balance between fiscal goals and fostering an environment that encourages entrepreneurship, technological advancement, and foreign direct investment.

In light of these concerns, we respectfully urge the Ministry of Finance to reconsider the amendments made in the Act. Alternatively, the Hon'ble Ministry may also look into the consideration of exempting the foreign nationals and companies from filing ITR in India, where all the due TDS has been deducted and paid to the Government of India and there is no other tax liability in India to be paid by such persons.

We sincerely appreciate your dedication to the welfare of our nation and your commitment to driving economic growth. We believe that by working together and addressing these concerns, we can create a policy framework that fosters a conducive environment for domestic industries and foreign technology to flourish in India.

Thank you for your attention to this matter. We look forward to the opportunity to engage in a constructive dialogue and collaborate towards a better future for our great nation.

Thanks and Regards  
  
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