Non-resident without permanent establishment in India not liable for TCS

Exemption will also help tour operators selling overseas tour packages

OUR BUREAU
New Delhi, August 18

The Income Tax Department has said that the provision related with Tax Collected at Source (TCS) will not be applicable on buyers who are non-resident Indians (NRI) and not having permanent establishment (PE) in India. This will also help tour operators selling overseas tour packages to such non-resident buyers.

The Central Board of Direct Taxes (CBDT) has notified the exemption with effect from August 17. It will suppress previous notifications issued in March this year. Income Tax Act defines non-resident Indian as an individual, being a citizen of India or a person of Indian origin but who is not a "resident". Further, an individual is said to be resident in India in any previous year, if he is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more.

TCS and TDS are two means for collecting income tax on transaction. While in TCS, it is the responsibility of the receiver to collect tax and deposit it with the government, TDS rules implies tax to be deducted by the givers and deposited with the government. Decoding the present notification, Aravind Srivatsan, Tax Leader, Nangia Andersen LLP, says Finance Act 2020 introduces Section 206C(1G) effective October 2020 to keep a tab on forex spends by persons who are residents of India . The provision requires TCS applying 5 per cent on the underlying value by an authorised dealer on monies received for remittance out of India under LRS (Liberalised Remittance Scheme) of RBI and domestic tour operators on monies received for overseas tour package for consideration in excess of ₹7 lakh.

Exclusion provided to NRIs

Services of domestic tour operators whose services were increasingly being used by non-residents faced the dilemma of collecting such TCS and administering provisions of this section, and meanwhile, the non residents faced the dilemma of dealing with the inability to claim credit for TCS since they had no obligation to file tax returns in India. Accordingly as part of post pandemic relief a notification was issued on March 31, 2022 providing exclusion to non-residents visiting India.

"Now with August notification, issued in suppression of the earlier notification, the scope of exemption has been broad based to also exempt collection of TCS from non-residents who do not have a PE in India, which could include corporate and professional firms who were availing of such services," Srivatsan explained.

IT dept exempts non-resident corporate entities, cos from TCS

OUR CORRESPONDENT

NEW DELHI: The income tax department has exempted non-resident corporate entities and firms not having a permanent establishment or a fixed place of business in India from 5 per cent TCS on foreign remittances and tour packages.

The Central Board of Direct Taxes (CBDT) has notified changes to I-T rules and expanded the scope of exemption (that was previously available only to non-resident individuals) under section 206(1G) of the I-T Act.

Section 206C(1G) was introduced by Finance Act, 2020, effective October 2020 to keep a tab on forex spends by persons resident in India. The provision requires tax to be collected at source (TCS) at the rate of 5 per cent on foreign remittances of Rs 7 lakh or more under the Liberalized Remittance Scheme (LRS) of RBI.

The TCS was to be deducted by domestic tour operators on money received from non-resident Indians visiting India and booking their overseas tour package from the country.

AMRG & Associates Director (Corporate & International Tax) Om Rajpurohit said by expanding the scope of the exemption (that was previously available only to non-resident individuals) under section 206(1G) from an 'Individual' to a 'Person', the CBDT has effectively also exempted the corporate entities, firm, LLP, etc. that are not residents and do not have a permanent establishment from TCS obligations, which appeared to be discriminatory against other categories of persons.

TCS was to be deducted by domestic tour operators on money received from non-resident Indians visiting India & booking their overseas tour packages

"This will result in a lower compliance burden for non-residents and gather more confidence in the Indian tax laws that accommodate the foreign entities," Rajpurohit added.

Yeeshu Sehgal, Head of Tax Markets, AKM Global, said the LRS scheme of RBI by its nature is only available to the resident individuals including minors up to USD 2,50,000 per financial year (April-March).

"Tax Collected at Source is at the rate of 5 per cent on any amount or aggregate of amounts being remitted outside India under LRS was effective from October 2020. The exclusion for non-resident buyers (whether buying overseas tour programme packages or sending money outside India) who do not have a Permanent Establishment (PE) in India for the applicability of section 206C(1G) shall ease the procedural barriers for such non-residents with no PE in India and remove ambiguities on the same," Sehgal added.

Aravind Srivatsan, Tax Leader, Nangia Andersen LLP, said domestic tour operators who were increasingly being used by non-residents had the dilemma of collecting such TCS and administer the provisions of this section, the non-residents meanwhile had the dilemma of dealing with inability to claim credit for TCS since they had no obligation to file tax returns in India. Accordingly, as part of post pandemic relief a notification was issued on 30th March, 2022 providing exclusion to non-residents visiting India.

"Now with this notification, issued in suppression of the earlier notification, the scope of exemption has been broad based to also exempt collection of TCS from non-residents who do not have a PE in India, which could include corporate and professional firms who were availing of such services," Srivatsan said.