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OPINION

A number of clients have requested for an opinion in respect of certain queries arising out of “*Calendar for compliance and TDS rates for FY 2009-10*”, which was forwarded to all the clients. The queries raised may broadly be stated as follows:

- (i) Whether the revised TDS rates for payment to contractors and TDS on Hire / Rentals, are effective from 1.10.2009.
- (ii) Whether surcharge and education cess should not be deducted with immediate effect, from non-salary payments being made to residents (Individuals as well as domestic companies).
- (iii) Whether Nil rate of TDS, in the case of a transporter, is applicable up to 31.3.2010 only.

In order to answer the aforesaid queries, it will be necessary to refer to the relevant provisions of the Finance (No.2) Act, 2009, which has become operative from 19.8.2009, as the Finance (No.2) Bill, 2009, after being passed by both the Houses of the Parliament, was assented to, by the President on 19.8.2009. The same are discussed as follows :

1. Section 1(2) of the Finance (No.2) Act, 2009

As per section 1(2) of the Finance (No.2) Act, 2009, save as otherwise provided in this Act, sections 2 to 84 shall be deemed to have come into force on the 1st day of April, 2009.

2. Section 2(5) of the Finance (No.2) Act, 2009

As per section 2(5) of the Finance (No.2) Act, 2009, in cases in which tax has to be deducted under sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, at the rates in force, the deduction shall be made at the rates specified in Part II of the First Schedule and shall be increased by a surcharge, for purposes of the Union, calculated in cases wherever prescribed, in the manner provided therein.

3. Section 2(6) of the Finance (No.2) Act, 2009

As per section 2(6) of the Finance (No.2) Act, 2009, in cases in which tax has to be deducted under sections 194C, 194E, 194EE, 194F, 194G, 194H, 194-I, 194J, 194L, 196A, 196B, 196C and 196D, of the Income-tax Act, the deduction shall be made at the rates specified in those sections and shall be increased by a surcharge, for purposes of the Union in the case of every company, other than a domestic company, calculated at the rate of two and one-half per cent of such tax, where the

income or the aggregate of such incomes paid or likely to be paid and subject to deduction exceeds one crore rupees.

From the aforesaid provisions of section 2(6), it may be seen that surcharge at the rate of 2.5 per cent of the TDS will be added only in case of payments to be made to a foreign / non-domestic company and that too if the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction, exceeds one crore rupees. Further, there is no other provision in the Finance (No.2) Act, 2009, which affects the levy of surcharge in respect of TDS. Therefore, in view of the provisions of section 1(2) of the Finance (No.2) Act, 2009, the provisions of the aforesaid section 2(6) shall be deemed to have come into force on 1.4.2009 and accordingly, no surcharge will be added to TDS in respect of payments to residents.

4. **Section 61 of the Finance (No.2) Act, 2009**

Vide section 61 of the Finance (No.2) Act, 2009, section 194C of the Income-tax Act, has been substituted with effect from 1.10.2009.

Thus, the provisions of the newly substituted section 194C will apply from 1.10.2009 only, and not earlier. Thus, the changes in the rates of TDS and other provisions of section 194C, have come into effect from 1.10.2009, only.

5. **Section 62 of the Finance (No.2) Act, 2009**

As per section 62 of the Finance (No.2) Act, 2009, clauses (a), (b) and (c) of section 194-I, have been substituted by new clauses (a) and (b), with effect from 1.10.2009.

Therefore, the changes in the rates of TDS under section 194-I, have come into effect from 1.10.2009 only.

6. **Conclusion**

In the light of the discussion in the aforesaid paras, the said queries are answered as follows :

- (i) As regards the revised TDS rates in respect of payments to contractors and payments by way of hire charges / rentals falling under sections 194C and 194-I of the Act, respectively, the same will be applicable from 1.10.2009.

In this context, it may be added that sections 194C and 194-I of the Act, have been substituted by the Finance (No.2) Act, 2009, with effect from 1.10.2009 only, and therefore, the revised rates of TDS thereunder, will be applicable from 1.10.2009, only.

However, as regards the surcharge, the same will not be required to be added to TDS right from the 1st day of April, 2009, viz. 1.4.2009.

Same will be the position as regards addition of education cess to TDS. In other words, education cess will also not be required to be added to TDS, with effect from 1.4.2009

- (ii) No surcharge and education cess will be required to be added to TDS in respect of payments to resident tax-payers, with immediate effect, that is with effect from 19.8.2009, the date on

which the Finance (No.2) Bill, 2009, was assented to, by the President and the same became the Finance (No.2) Act, 2009.

It may be clarified here that as regard salary payments, only education cess will be added to the TDS. It must be stated here that it is in order to ease the computation of TDS that the addition of surcharge and education cess on TDS, has been removed on all non-salary payments made to resident tax-payers.

As regards addition of education cess to the TDS, in respect of salary payments, the same is provided keeping in view the convenience of the middle and lower level salaried employees.

- (iii) Nil rate of TDS in the case of a transporter will be applicable if he quotes his PAN, in other words, if he provides his PAN to the payer of income / tax-deductor. In this regard, a transporter is provided further relief to the extent that if he does not provide his PAN to the tax-deductor, then the normal rates of TDS will apply in respect of payments to him till 31.3.2010. However, if the aforesaid default continues even after 31.3.2010, TDS at the penal rate of 20 per cent will be charged in respect of all payments to the transporter.

All the aforesaid queries stand answered, accordingly.

Place : Pune

(S.K. Tyagi)

Date : 22.9.2009

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