

## Other Relevant Provisions relating to Foreign Investment

### TAXATION OF ROYALTY OR FEES FOR TECHNICAL SERVICES RECEIVED BY A FOREIGN COMPANY OR NON-RESIDENT NON-CORPORATE ASSESSEE UNDER SECTION 115A -

Under domestic law, the royalties/technical fees payable to non-residents having a permanent establishment in India are taxed on net basis. On the other hand, the royalties/technical fees payable to non-residents not having a permanent establishment in India are taxed on gross basis. Concessional tax rates, as given below, apply if the agreement relates to a matter included in industrial policy or the agreement has been approved by the Government of India:

- For contracts entered on or after June 1, 2005...10%
- For contracts entered into after May 31, 1997 but before June 1, 2005...20%
- For contracts entered into on or before May 31, 1997...30%
- *Applicability of section 44DA* : Section 44DA of the Act provides that income by way of royalty or fees for technical services received by non-residents and foreign companies from the Government or an Indian concern under an agreement made after March 31, 2003, will be computed on a net basis, i.e., after allowing all expenses under the chapter of P/G/B/P and taxed at the regular tax rate, i.e., 40 per cent, if the following conditions are satisfied:

-such non-resident carries on business in India through permanent establishment or performs professional services from fixed place of profession in India, and

-the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed place of profession, as the case may be.

- Section 44DA also provides that with respect to the above mentioned income, no deduction shall be allowed in respect of:
  - -any expenditure or allowance which is not wholly or exclusively incurred for the business of such permanent establishment or fixed place of profession in India; and
  - -amounts paid by the permanent establishment to the head office or to any of its other office except reimbursement of actual expenses.
- Further, the foreign company/non-resident will have to comply with the following requirements:
  - maintain prescribed books of account in accordance with section 44AA of the Income-tax Act, 1961.
  - get the books of account audited; and
  - furnish audit report in the prescribed form.

TAXATION OF INTEREST IN THE HANDS OF FOREIGN COMPANIES UNDER SECTION 115A - Where the foreign company or a non-resident earns any income by way of interest received from the Government or an Indian concern on moneys borrowed by the Government/Indian concern in foreign currency, then the income-tax payable by the foreign company/non-resident, shall be 20 per cent of the amount of interest.

TAX ON LONG-TERM CAPITAL GAINS ARISING FROM TRANSFER OF UNITS PURCHASED IN FOREIGN CURRENCY UNDER SECTION 115AB - Where overseas financial organisations earn any income by way of long-term capital gains arising from the transfer of units purchased in foreign currency, the income-tax payable shall be at the rate of 10 per cent of the long-term capital gains.

*Explanation*

- (a) 'Units' means unit of a mutual fund or of the Unit Trust of India.
- (b) Overseas financial organisation means any fund, institution, association or body, whether incorporated or not, established under the laws of a company outside India and which has entered into an arrangement for investment in

India with any public sector bank or public financial institution or mutual fund. Such arrangement should be approved by the SEBI.

TAX ON INCOME FROM BONDS OR GLOBAL DEPOSITORY RECEIPTS PURCHASED IN FOREIGN CURRENCY OR CAPITAL GAIN ARISING FROM THEIR TRANSFER UNDER SECTION 115AC -

(i) Where a non-resident including foreign company earns any income by way of interest on bonds of an Indian company issued in accordance with such scheme as the Central Government may by notification in the Official Gazette, specify in this behalf, or on bonds of a public sector company sold by the Government, and purchased by him in foreign currency; or

(ii) Where non-resident including foreign company earns any income by way of long-term capital gains arising from the transfer of bonds or, as the case may be, Global Depository Receipts purchased by him in foreign currency, then the income-tax payable shall be as follows:

- (i) 10 per cent of income earned by way of interest as referred in (i) above
- (ii) 10 per cent of the long-term capital gain referred in (ii) above

TAX ON INCOME OF FOREIGN INSTITUTIONAL INVESTORS FROM SECURITIES OR CAPITAL GAINS ARISING FROM THEIR TRANSFER UNDER SECTION 115AD –

Where the Foreign Institutional Investors earn income by way of interest on securities other than units as referred in section 115AB or income by way of short-term or long-term capital gains arising from the transfer of the above securities, then the amount of tax payable shall be as follows:

- (i) 20 per cent of income earned by way of interest on securities
- (ii) 10 per cent of income by way of long-term capital gain
- (iii) 30 per cent of income by way of short-term capital gain
- (iv) Short-term capital gain covered by section 111A
  - 10 per cent for the assessment year 2008-09
  - 15 per cent for the assessment year 2009-10

The rates mentioned above shall be increased by the Surcharge (where applicable), Education cess and Secondary Higher Education cess.

