



To,

4th December, 2014

**Mr. Jayant Sinha,
Honorable Minister of State for Finance,
Ministry of Finance,
North Block,
New Delhi - 110001**

Dear Sir,

Subject: IVCA's Humble Request for Removal of Procedural difficulties and delays in obtaining nil / lower tax withholding certificates under Section 197 of the Income Tax Act, 1961

By way of an introduction, the Indian Private Equity & Venture Capital Association (“**IVCA**”) is a member-based organization that seeks to promote the development of venture capital and private equity investment in India. Such funds have invested nearly \$100 billion in India in the last 15 years and are a potential source of significant long-term , stable capital in the years to come.

These funds contribute to economic growth, employment, entrepreneurial development and good governance amongst Indian investee companies.

This is to bring to your kind attention an issue which has been plaguing the private equity sector and the non-resident investor community for some time now. Several procedural difficulties and delays are being encountered by non-resident taxpayers in the process of obtaining nil/ lower tax withholding certificates under Section 197 of the Income Tax Act, 1961 (“**the Act**”). This is despite assurances from the Government of India that the focus of all Governmental departments/ authorities, including the Income Tax Department, would be to avoid unnecessary hurdles and consequential delays in granting approvals under the laid down policies.

Tax Residency Certificates establish non-residents are tax residents of Mauritius

Non-residents based in Mauritius are in particular subjected to scrutiny and investigation by the Income Tax authorities, despite possessing valid tax residency certificates issued by the Government of Mauritius which clearly establish that such non-residents are tax residents of



Mauritius, and are thereby entitled to the benefits of the Double Taxation Avoidance Agreement between India and Mauritius (“DTAA”).

Indian Supreme Court validated the entitlement to the benefits of the DTAA for tax residents of Mauritius

The Hon’ble Supreme Court of India has in the case of *Azadi Bachao Andolan* validated the entitlement to the benefits of the DTAA for tax residents of Mauritius who hold a valid tax residency certificate issued by the Mauritian Government.

Extensive scrutiny is jeopardizing the viability of perfectly genuine commercial transactions causing irreparable damage to investor sentiment.

However, while processing applications for issuance of certificates under Section 197, the assessing authorities at the ground level are continuing their practice of subjecting non-residents based in Mauritius to extensive scrutiny, and often ask for voluminous details in a piecemeal manner, many of which seem to have no bearing on the issue at hand.

Such procedural delays and roadblocks often jeopardize the viability of perfectly genuine commercial transactions, and cause unnecessary hardship to the parties involved besides causing irreparable damage to investor sentiment.

Purpose of Certificate Under Section 197 is to facilitate transactions

It is also pertinent to note that the purpose of obtaining a certificate under Section 197 is to facilitate the transaction in question, and to remove uncertainty regarding the withholding tax obligation of the payer. The certificate does not in any way impinge on the power of the Assessing Officers to scrutinize the transaction in detail during the assessment proceedings relating to the recipient, for the purpose of determining the income taxable in the hands of such recipient.

CBDT’s 30 day limit needs to be adhered to

Further, the Central Board of Direct Taxes (“CBDT”) has issued **Instruction No. 1/2014 [F.NO.275/03/2014-IT(B)]** dated 15-1-2014, specifically directing jurisdictional assessing officers to process applications for lower or no deduction of tax at source under Section 197 of the Act, within a **timeline of 30 days**.

The aforesaid instruction is reproduced below for ready reference:

“INSTRUCTION NO.1/2014 [F.NO.275/03/2014-IT(B)] DATED 15-1-2014

As per the Citizens Charter the time line prescribed for a decision on application for no deduction of tax or deduction of tax at lower rate is **one month**. Instances have been brought to the notice of the Board, about considerable delay in issuing the lower/non deduction certificate under section 197 by the jurisdictional Assessing Officers.

2. I am directed to say that the commitment to tax payers as per the Citizens Charter must be scrupulously adhered to by the Assessing Officers and all applications for lower or no deduction of tax at source filed u/s 197 of the Income-tax Act, 1961 must be disposed of within the stipulated time frame as above.

3. This may be brought to the notice of all officers in the field for compliance.”

Despite the aforesaid instruction, which is binding on the Departmental authorities, non-resident investors, particularly those based in Mauritius, are facing procedural difficulties and delays in obtaining the certificates under Section 197 at the ground level.

Detailed Questionnaires Result in Hurdles for genuine investors.

Our Association has learnt that instead of issuing the said certificates within the prescribed timeline of 30 days, the jurisdictional Assessing Officers are issuing detailed questionnaires asking for numerous details, and are prolonging and complicating a fairly simple process, resulting in avoidable hurdles for genuine investors.

Lack of Uniformity of Approach

Further, there is no uniformity in the approach of various tax officers working in different jurisdictions all over the country. While certain jurisdictions/ officers are seemingly reluctant to issue such certificates and therefore subject applicants to avoidable queries and processes, officers in other jurisdictions may have a different approach, which may promote jurisdiction/ range shopping.

We humbly request your office to issue necessary directions to the CBDT to call for information from different ranges all over the country, with regard to the time taken to process the applications under Section 197, the procedures/ processes adopted by the field formations in this regard, the documents / information sought from the applicants, etc.

The information will clearly reveal gross anomalies across various jurisdictions, in the timelines and procedures for issuing certificates under Section 197 of the Act, indicating that there is no clarity and uniformity of approach of the income tax authorities while processing these applications.



IVCA's Humble Request that IT Authorities Adhere to CBDT Instructions

We humbly seek your kind intervention in the matter:to issue necessary directions to ensure that the Income Tax authorities adhere to the instructions issued by the CBDT, and do not subject genuine investors to protracted investigation and procedural delays.

We would also request that **detailed guidelines** may be issued by the CBDT to the field formations, particularly with regard to the Indo-Mauritian DTAA, laying down the procedure to be adopted by the Income Tax authorities while processing applications under Section 197 of the Act, the information that may be sought from the applicants, etc

Such guidelines will ensure that the process of obtaining a Section 197 certificate does not pose a hindrance or disincentive for genuine investors.

Thanking you in anticipation and assuring you of our fullest cooperation,

Respectfully,

Arvind Mathur
President
+919818934615