



To,

17th February, 2017

Mr. Anand Jha
Commissioner of Income Tax (IT & CT)
Ministry of Finance, Government of India
North Block,
New Delhi 11001.

Re: Key suggestions from the private equity and venture capital sector

Respected Sir,

At the outset, the Indian Private Equity and Venture Capital Association ('IVCA') and its members wish to sincerely thank the Government for a very growth oriented and reformist Budget 2017. We wholeheartedly welcome these initiatives of the Government.

On a perusal of the Finance Bill, 2017 ('the Finance Bill'), we invite your kind attention to some of the clarifications relevant to the private equity and venture capital ('VC/PE') sector that arise from the amendments proposed in the Finance Bill. On behalf of the IVCA, we hereby submit the following:

Note: 1) Clarification and modifications sought on Tax withholding under section 194LBB

We humbly request you to consider the above suggestions, which will provide further certainty on the tax proposals in the Finance Bill to the VC/PE sector.

We will like to discuss the above in person and request if you can give us a time of your convenience to meet on in the week of 20th February 2017.

Look forward to hearing from you.

Kind regards,
Respectfully,

Rajat Tandon
President, IVCA
98100 90194

cc: Aakriti Bamniyal, AVP, IVCA, 97 1111 0011; Yogesh Arora 95 400 84999

Note: 1

1. Tax withholding under section 194LBB

Background

One of the issues on which certain representations have been made in the past relates to exemption from withholding tax obligations any accrual/distribution of income by an Alternative Investment Fund to investors who qualify for an exemption under section 10 of the Income-tax Act, 1961 (the Act).

- 1.1 Section 194LBB requires every AIF to deduct 10% tax on credit / payment of income (other than business income) to its unit holders, being residents of India.
- 1.2 Section 197A(1A) provides that no deduction of tax shall be made for paying any income of the nature referred to in section 192A, section 193, section 194A, section 194DA, section 194- I and section 194K on the basis of a declaration in writing in duplicate in the prescribed form, provided the tax on the estimated total income for the recipient will be nil.
- 1.3 Circular no 4/2002 dated 16 July 2002 has listed certain bodies/ associations who can file prescribed self-declaration under section 197A(1A). These are bodies/associations whose income is unconditionally exempt under section 10 and who are statutorily not required to file return of income as per section 139, since their income is anyway exempt under the Act.
- 1.4 It is pertinent to note that the payment/ credit of income under section 194LBB of the Act is not covered within the purview of section 197A(1A) of the Act and hence, technically, bodies/associations whose income is unconditionally exempt under section 10, who are investors in AIFs, may not be eligible to make a self-declaration for receiving income from AIFs without attracting the 10% deduction of tax.
- 1.5 We therefore seek a suitable amendment/ clarification to provide for an exemption from tax withholding under section 194LBB payments/ credits of income by an AIF to such institutions.

Suggestion:

The aforesaid amendment/ clarifications may be provided in one of the following ways:

- 1.6 Include section 194LBB of the Act in section 197A(1A) of the Act so that bodies/associations whose income is unconditionally exempt under section 10 can make a self-declaration for receiving income from AIFs without deduction of tax.
- 1.7 Notify bodies/associations whose income is unconditionally exempt under section 10 under section 197A(1F) of the Act so that such bodies/associations can receive specified payments without any tax withholding under Chapter XVII.
- 1.8 Issue a general circular that clarifies that Chapter XVII should not apply on payments to bodies/associations whose income is unconditionally exempt under section 10.