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QUOTE OF THE MONTH

Don't always think,
What people will think,
Then you will overthink!!!!

- DRUVI C SHAH
SRO0768313

Before doing anything in our life, do we ask ourselves…If we will like it or not, hmm not really na!!! The first thing that we mostly think is what will people think!!! Indirectly we try to fulfill people around us expectations more than our own dreams…The smallest dream from wearing what we want to – to the biggest dream of doing the job of your choice everything depends on what will people around think! it be friends, family or anyone!! For Once just don't think I mean don't over-think and do what you want to do and not what people around want you to do!! We get only one life, live the way you want and say bye bye overthinking.

How Tax Haven Countries Are Used For Tax Evasion

- CA. Pushp Kumar Sahu MRN : 460422

- Uday Kumar Sahu CRO0752200

CA. Pushp Kumar Sahu

There was a great need and importance to stop malicious practices of tax evasion. To combat the same, government of various countries have come forward to act accordingly and has formed and amended their treaties and agreements with other countries in order to protect the economy and revenue interest of their country.

In the year 2015 OECD (Organization for economic co-operation and development) has published the report with introduction of BEPS (Base erosion and profit shifting). These are commonly known as Action plans which were issued with an intention to curb the tax evasion practices, improving transparency and tax certainty.

Till date 15 Action plan has been introduced so far,

As the name i.e. BEPS itself defines that refers to tax planning strategies that exploits gaps and mismatches in tax rules to make profits disappear for tax purposes or to shift profits to locations where there is little or no real activity but the taxes are low which results in little or no tax, in other words tax evasion through proper tax planning by using the tax haven countries.

Now coming on to main topic i.e. how tax havens have been used as a device for tax evasion,- Most of the companies majorly MNCs set up their subsidiary companies in the tax haven countries so that they can shift out their profits in such countries so as to avoid paying tax or pay tax at lower rates as compared to other countries where tax rates are high. They carry maximum of their sales transaction through tax havens and try to incur huge expenditure in the country where tax rates are high so that they can lower their profits and can avoid to pay tax.

But in today's scenario tax evasion practice has created challenges for the developing nations for example India.

Tax evaders setup their companies in tax haven countries like Singapore, Switzerland etc.

Let us better understand the mechanism by way of example;

- Suppose there were two associated Companies namely **Laxminarayan and sons Ltd** (Holding co. registered in india) and the other one is **Pushp kumar sahu and associates** (Subsidiary Company) incorporated in Singapore. Both are associated enterprises within the meaning of section 92A of Income Tax Act, 1961
- Holding company i.e. Laxminarayan and sons ltd shifts it major revenue or in other words place it's international sale transactions through it's subsidiary company so that profit can be shifted to other company which results in lower tax liability, as tax rates are higher in India as compared to Singapore.
- Morover, both the companies have planned to present maximum profits in Singapore and less profits in India by applying following tax planning like,
- Pushp kumar sahu and associates will provide loan to Laxminarayan and sons ltd at high rates so that the said holding co. will have more debit expenses which will ultimately result in decrease in profits and on the other hand subsidiary co. will enjoy more profits in the form of earned interest from it's holding co. thus resulting in low tax or zero tax.

This type of practice has been eradicated and countered by the government of India by introducing the section 94B in the Income tax Act, 1961 in lines of the Action plan 6 of BEPS Report given by OECD.

KNOWLEDGE SECTION - HOW TO GAIN FROM GRANDFATHERING PROVISIO ON LTCG

- GAUTAM NAYAK

The FM had announced that gains up to 31 January 2018 would be grandfathered.

When the exemption for long-term capital gains (LTCG) on the sale of listed shares was done away with by the 2018 Budget, along with the introduction of a 10% tax on such gains, the then finance minister Arun Jaitley announced that gains up to 31 January 2018 would be grandfathered. This meant that the extent of such gains up to that date would not be taxed. An example of how this would work was also given by the finance minister in his budget speech.

Such benefits to gains accrued up to 31 January 2018 was achieved by providing that if a taxpayer had acquired the shares before 31 January 2018, he/she could substitute the fair market value (FMV) of the shares as of 31 January 2018 for his/her actual cost, while computing the gains. As illustrated by the finance minister, if an equity share is purchased six months before 31 January 2018 at `100 and the highest price quoted on 31 January 2018 in respect of this share is `120, there will be no tax on the gain of `20 if this share is sold after one year from the date of purchase. However, any gain in excess of `20 earned after 31 January 2018 will be taxed at 10%, if this share is sold after 31 July 2018.

Unfortunately, however, many investors may not get the full benefit of this grandfathering, if there are corporate actions by the company after 31 January 2018. Taking the above example, with the difference that there was a bonus issue in the ratio of 1:1 by the company in June 2018, and both the original and the bonus shares are sold for `75 each. If the bonus issue had not taken place, the sale price would have been `150, and since the market value as on 31 January 2018 was `120, the taxable capital gains would have been `30.

However, after the bonus issue post January 2018, only the original share was held as on 31 January 2018, and therefore only that qualifies for substitution of the cost of `120. Moreover, the provision states that you cannot have a loss arising due to such substitution of cost. So, the taxpayer can opt out of such cost substitution, and from the sale price of `75, deduct the actual cost of `100, to arrive at a capital loss of `25. Since the cost of the bonus share is to be taken as nil, and as the bonus share was issued after 31 January 2018, one cannot substitute the fair market value as

on 31 January 2018. Therefore, the entire sale proceeds of `75 of the bonus share would be taxed as capital gain, the total capital gain, therefore, being `50. Thus, the issue of bonus shares post 31 January 2018 has worked to the detriment of the shareholder, as he/she is taxed on a gain of `50 (effectively without the benefit of grandfathering), as against the intended taxation of gain of only `30 as intended by the grandfathering provisions.

A similar issue arises in case of other corporate actions such as receipt of shares on demerger or merger of companies after 31 January 2018, where the benefits of grandfathering are effectively denied to the new shares, though one adopts the cost of the old shares, if one goes by the strict language of the provisions. It would be possible for a taxpayer, at least in cases of merger or demerger, to contend that since the cost being adopted is that of the earlier shares which were held on 31 January 2018, the benefit of 31 January 2018 cost substitution should be available in such cases. In case of share split (sub-division into lesser face value) also, it should be possible for a taxpayer to claim that the benefit of substitution of 31 January 2018 FMV should be available. The matter may, however, be disputed by the tax authorities, leading to possible litigation.

To avoid unnecessary litigation, in all fairness, it is necessary that the Central Board of Direct Taxes (CBDT) should come out with a clarification that the benefit of grandfathering of capital gains would also be available in cases of such corporate actions of bonus, split, mergers and demergers which have or will take place after 31 January 2018. This alone will ensure that taxpayers get the full benefit of the grandfathering of the capital gains as promised by the finance minister in his Budget speech, without having to struggle to get this promised benefit.

News Updates in ICAI Website

Foreign language will help CAs network with international clients

c-Puniti.Pandey
@timesgroup.com

The Institute of Chartered Accountants of India (ICAI) is aiming to teach Spanish, German, Japanese, Business English and French to its members and students for which it is organising online beginners' level courses. The initiative is being taken forward in collaboration with the language and cultural centres of foreign embassies in India.

Explaining the motive behind the decision, Debashis Mitra, president, ICAI, says, "Conducting foreign languages classes is a dedicated move to help students acquire additional linguistic skills. This will make them aware of the culture and language of various jurisdictions under the Champion Sector mandate."

Emphasising on how the professionals will be benefitted in the era of globalisation, he adds, "Today where there is delimitation of jurisdiction, acquiring foreign languages will help CA students and members to overcome language barrier and thereby have enhanced professional opportunities. Knowledge of foreign languages will enhance skill-sets of CA students and members and enable them to work efficiently with global companies investing in India or open gateway of professional opportunities overseas." Learning a new language and culture will help in understanding different businesses better. "To practice the profession in a foreign land, one needs to understand the framework, which differs from country to country but understanding the other country's language will help our professionals to network with other professionals and enhance their acceptability in those areas."

Since last two years ICAI in collaboration with Instituto Cervantes for Spanish language, Alliance Francaise for French Language, Japan Foundation for Japanese Language and British Council for Business English Language is organising foreign language courses, he adds.

EVENTS - JUNE, 2022

OUTDOOR SPORTS

INDOOR SPORTS

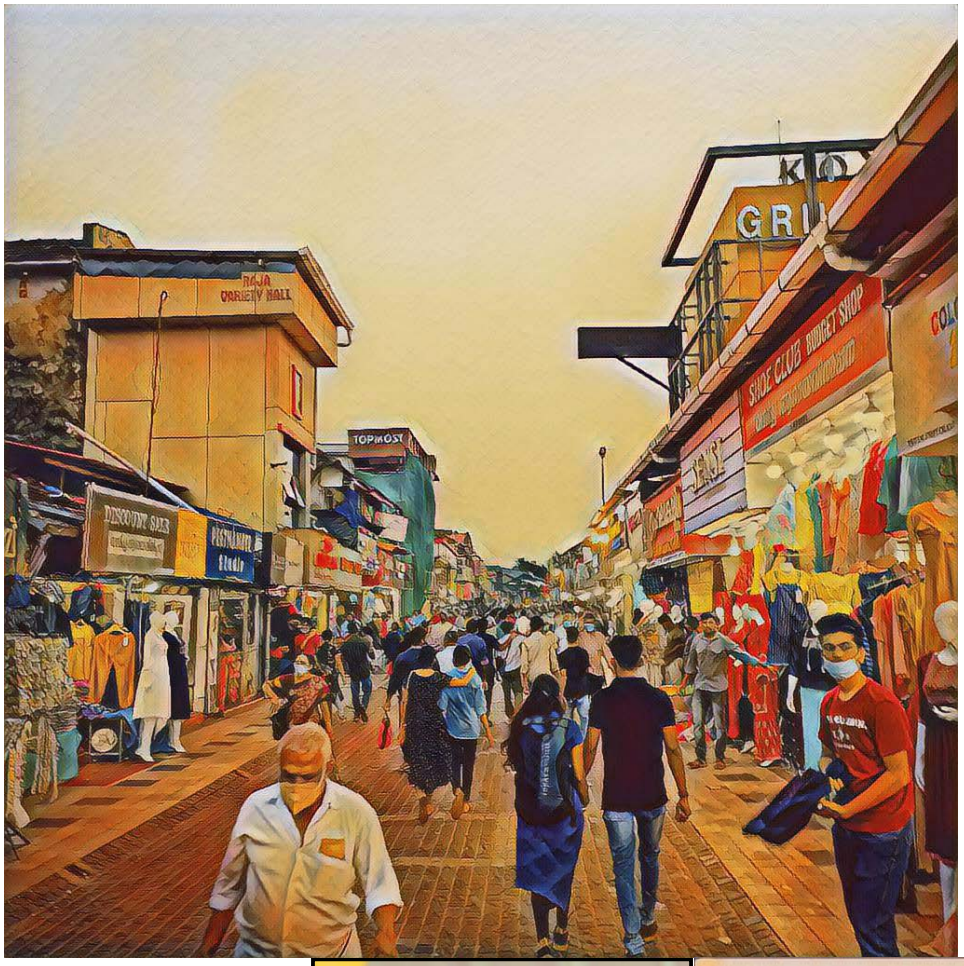
Blood Donation Campaign

Environment Day

Branch Formation Day

Seminar on ITR Filing

ART CORNER



MUBARAK SHANI