

Central Board of Direct Taxes tightens disclosure guidelines

The Central Board of Direct Taxes (CBDT) has widened the scope of details required to be provided in the transfer pricing report, which includes issue of shares to its overseas related entities, such as group companies.

Form 3CEB, which is the transfer pricing documentation report, now requires a company to disclose details of "international related party transactions of purchase or sale of marketable securities or issue of equity shares". The revised form was recently notified by CBDT. The transfer pricing report in the revised form, certified by a chartered accountant, is to be filed by a company along with its tax return. For the financial year ended March 31, 2013, the due date for such filing is September 30. If a tax payer is required to file Form 3CEB, the due date is November 30, 2013.

This new disclosure requirement, in light of the huge demand raised on Shell India for undervaluing the issue of shares to its overseas group companies, has caused a stir in corporate and professional circles. In 2009, Shell India issued shares to two overseas companies at par value of Rs 10 each. A few months ago, the tax department held that the value of each share was Rs 183. The short receipt, which aggregated to Rs 15,200 crore, was held to be taxable in the hands of Shell India.

One of the arguments raised by Shell India in its defence is that issue of shares results in a capital receipt and thus cannot be taxed. As of now, the matter is pending before the Bombay high court.

The Finance Act, 2012, had amended the definition of an international transaction with retrospective effect from April 1, 2002, to include capital financing. However, tax experts state that even if issue of shares by an Indian company to an overseas related party is an international transaction, it should not give rise to 'chargeable income' in the hands of the Indian company and there should be no transfer pricing adjustment and consequential tax demand.

Recently, the Hyderabad Income Tax Appellate Tribunal (ITAT) took a similar stand in the case of Vijay Electronics. The Hyderabad ITAT held that capital investments (issue of shares) do not create chargeable income and cannot be brought within the scope of transfer pricing provisions.

"A change in disclosure requirements of Form 3CEB is an indication that litigation will increase as tax authorities may take steps to scrutinize and tax all Shell-type transactions. The matter can now be resolved only at the judicial level," sums up an advocate.

(Times of India)