Taxman Will Need Approval for Unrecognised Startups' Scrutiny

Angel Tax Breather CBDT exempts startups that are already recognised by DPIIT

Our Bureau

New Delhi: Scrutiny of startups not recognised by the Department for Promotion of Industry and Internal Trade on the angel tax issue will be conducted only after sanction from higher authorities, the apex body for direct taxes said.

The move follows finance minister Nirmala Sitharaman's assurance in her budget speech that the Central Board of Direct Taxes (CBDT) will take steps to address issues faced by startups.

"Special administrative arrangements shall be made by CBDT for pending assessments of startups and redressal of their grievances. It will be ensured that no inquiry or verification in such cases can be carried out by the assessing officer without obtaining approval of his supervisory officer," she had said.

The government subsequently exempted domestic investments in startups approved by DPIIT from angel tax.

However, startups had concerns over assessments already underway. CBDT's fresh directive to its field officers seeks to address these concerns.

The order makes it clear that tax officers will not carry out any verification of issues raised with startups recognised by DPIIT facing 'limited scrutiny' and summarily accept their contention.

"Startups recognised by DPIIT where case is selected under 'limited scrutiny' with single issue of application of Sec 56 (2) (viib) - No verification on such issues will be done by the AOs during the proceedings u/s 143(3)/147 and the contention of such recognised startup companies on the issue will be summarily accepted," it said.

'Clarification is for tax assessments at officer level and not for handling appeals at CIT (A) stage'

In cases where a recognised startup is selected under 'limited scrutiny' with multiple issues or under 'complete scrutiny' including the issue under Section 56 (2)(viib), tax officials will not pursue the issue of applicability of angel tax in assessment proceedings.

For inquiry or verification regarding other issues in such cases, officers will need approval from supervisory officers.

In the case of unrecognised startups, assessing officers will need approval from supervisory officers to pursue any inquiry or verification under the angel tax provision.

Startups and some angel investors had come under the scanner after the companies issued shares at prices that were said to exceed their fair market value, with the difference considered taxable as income from other sources.

This provision, dubbed angel tax, was brought in by then finance minister Pranab Mukherjee in 2012 to prevent money laundering via this route. But it impacted investments by angel investors in startups. Tax experts said the clarification brings relief for recognised startups.

"While the recognised startups stand relieved, the ones that are yet to receive a nod from the DPIIT may still have to face the inquiry from tax officers and the procedure to be followed by the tax officers in such cases would be crucial to note," said Rakesh Nangia, managing partner at Nangia Advisors (Andersen Global).

They also pointed out that this clarification is limited to tax assessments.

"This clarification is for tax assessments by tax officers and not for handling appeals at CIT (A) stage," said Amit Maheswari, partner at Ashok Maheshwary & Associates LLP.

ANGEL TAX

Summary relief for recognised start-ups

Assessing officer will need nod from supervisors to pursue others' cases

FE BUREAU
New Delhi, August 8

IN WHAT WOULD bring clarity to the start-ups that have been served with notices by the income-tax department under the so-called angel tax provision, the Central Board of Direct Taxes on Thursday said the department would 'summarily accept' contention of start-ups recognised by the Department for Promotion of Industry and Internal Trade (DPIIT), if the notices pertained only to the angel tax section.

The angel tax, under Section 56(2)(viib) of the Income Tax Act, 1961, is typically an impost on the extra capital raised by an unlisted firm through the issue of shares over and above their fair market value. According to the Act, the excess capital so raised is treated as income and taxed accordingly. While the section is primarily aimed at curbing money laundering, it had troubled start-ups and their investors.

Further, the Board said that those DPIIT-recognised start-ups which have received notices related to multiple issues including the angel tax, the issue of applicability of angel tax will not be pursued during the assessment proceedings. The assessing officer (AO) will conduct inquiries and verification into other issues only after obtaining approval of the supervisory officer.

As for the third category of notices, which were served on start-ups not recognised by DPIIT and are concerned with multiple sections of the law including angel tax, the AO will proceed only after a nod from supervisory officer, the CBDT said.

"While the recognised start-ups stand relieved, the ones that are yet to receive a nod from the DPIIT may still have to face the inquiry, and the procedure to be followed by the tax officers in such cases would be crucial to note," Rakesh Nangia, managing partner at Nangia Advisors (Andersen Global), said.

In June, the government had said that 672 start-ups had been issued letters of exemption from angel tax. To be eligible for relief, start-ups have to register with DPIIT and submit an undertaking, saying they are not investing in specified segments that are usually suspected to be used for money laundering unless these investments are made "in the ordinary course of business".

For instance, these start-ups can't invest in realty; loans and advances; shares and securities; a motor vehicle, aircraft, yacht or any other mode of transport, the actual cost of which exceeds ₹10 lakh and jewellery, etc. However, if a start-up's usual business model involves investment in jewellery (jewellery start-ups, for example), it can invest in it.

As many as 16,116 start-ups are already registered with DPIIT and many more are now expected to get registered.

Earlier this year, the government had relaxed norms for start-ups to be exempted from angel tax by raising the funding cap by unlisted firms or individuals in a start-up to ₹25 crore from ₹10 crore. Further, investments by listed companies having a net worth above ₹100 crore or annual turnover of ₹250 crore were also exempt from tax.

However, while these measures provided protection from future income tax notices, the clarity on the fate of start-ups that had already come under the department's radar was missing.

"This clarification will help start-ups, which are facing questioning in their assessments and will also give a clear direction to assessing officers on what to do in such cases," Amit Maheshwari, partner at Ashok Maheshwary & Associates said.

Taxman to accept tax break claims of startups

Gireesh Chandra Prasad
gireesh.p@livemint.com
NEW DELHI

The taxman has been told to accept, without verification, claims made by some registered startups for exemption from a rigorous anti-evasion provision in the tax law.

According to the Central Board of Direct Taxes (CBDT)'s instructions to field officers, the claims of startups registered with the government regarding exemption from taxation of the premium they receive on share sale will not be verified if eligibility for this concession is the only issue for which their tax returns are picked up for 'limited scrutiny.'

The instruction came this week, said a person familiar with the development, who spoke on condition of anonymity.

The department for promotion of industry and internal trade (DPIIT), which recognizes startups, had in February announced exemption from taxation of the share premium startups realize in excess of fair market value, subject to riders. That concession was later given effect under income tax rules.

The latest instruction to field officers is to ensure that genuine startups do not get caught up in red tape and actually benefit from the concession.

The move seeks to streamline the assessment and scrutiny of new age enterprises and to enhance ease of doing business.

CBDT also told field officers that if a registered start up is chosen for limited scrutiny for a number of issues or for a complete scrutiny, their claims about eligibility for angel tax exemption will not be verified. However, the assessing officers can verify other claims after getting approval from a superior officer. In the case of un-registered startups, the assessing officer can verify the claims of angel tax exemption with permission from a superior officer, said the instruction.

Experts said the CBDT instruction that officers will have to summarily accept the contentions of the startup on valuation of its shares will provide the relief intended to be provided to startups.

"While the recognized startups stand relieved, the ones that are yet to receive a nod from the DPIIT may still have to face the inquiry from tax officers and the procedure to be followed by the tax officers in such cases would be crucial to note," said Rakesh Nangia, managing partner at consultancy firm Nangia Advisors (Andersen Global).

"The CBDT instruction will be of help to all startups that have received a limited scrutiny notice for FY17 in September 2018," said Sachin Taparia, founder and chairman of LocalCircles, a community social media platform, which lobbied for relief from angel tax for startups.

RAMESH PATHANIA/MINT

The move seeks to streamline assessment and scrutiny of new-age enterprises and to enhance ease of doing business.

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Angel tax: CBDT comes out with assessment process for start-ups

SHISHIR SINHA

New Delhi, August 9

The Central Board of Direct Taxes has come out with a detailed procedure for assessment of start-ups having angel tax exemption.

This procedure is a logical move to the notification issued by the tax body in March, which reiterated that the 'provisions of Clause (viiB) of Sub Section (2) of section 56 of the Income Tax Act shall not apply to consideration received by a start-up company provided it is recognised by the Department for Promotion of Industry and Internal Trade (DPIIT) and aggregate amount of paid up share capital and share premium of the startup after issue or proposed issue of share, if any, does not exceed, ₹25 crore."

This was preceded by a notification by the DPIIT in February.

There have been instances that notices issued before the notification gazetted or even after that are yet to be disposed of. Keeping that in mind, the tax body has now categorised start-ups into three categories for assessment purposes.

Three categories

The first category comprises start-ups recognised by the DPIIT. These will be limited scrutiny' cases with single application of Section 56(2)(viib). No verification on such issues will be done by the tax officer and the contention of such recognised start-up companies will be summarily accepted.

The second category covers recognised start-up cases selected under limited scrutiny with multiple issues or under complete scrutiny including the issue under Section 56(2)(viib). Here the issue of applicability of this section will not be pursued during the assessment proceedings and inquiry or verification with regard to other issues in such cases will be carried out by a tax official, only after obtaining approval of the supervisory officer.

The third category is of start-ups which have not got DPIIT approval and the case is selected for scrutiny on the grounds of applicability of Section 56(2)(viib) or any other issue. Here, inquiry or verification will be carried out by a tax official, as per due procedure only after obtaining approval of its supervisory officer.

Angel tax is levied on the capital raised via the issue of shares by unlisted companies from an Indian investor if the share price of issued shares is seen in excess of the fair market value of the company. The excess realisation is considered as income and, therefore, taxed accordingly under Section 56(2)(viib).

According to Rakesh Nangia, Managing Partner, Nangia Advisors (Andersen Global), allaying the concerns of the start-up community, the government had exempted investments made by domestic investors in the companies approved by the DPIIT from angel tax.

However, start-ups had concerns over the assessment proceeding already underway. To ease things for start-up companies, the CBDT has further clarified the procedure to be followed by tax officers while handling the assessment proceeding of such start-ups.

Directions of the CBDT that the tax officer will have to summarily accept the contentions of the start-up on valuation of its shares shall provide the relief intended to be provided to the start-ups.

"While the recognised start-ups stand relieved, the ones that are yet to receive a nod from the DPIIT may still have to face inquiry from tax officers and the procedure to be followed by the tax officers in such cases would be crucial to note," he said.

Relief for startups: CBDT lays out plan for pending angel tax assessment cases

NEW DELHI: Giving a relief to startups, the government has laid out a procedure to address pending angel tax assessments under which action would be taken only after approval of a supervisory officer.

The Central Board of Direct Taxes (CBDT), in a circular, said that no verification will be done by an assessing officer if a startup has been recognised by the Department for Promotion of Industry and Internal Trade (DPIIT) and the case is selected under limited scrutiny.

Similarly, it said the applicability of angel tax would not be pursued during the assessment proceedings and "inquiry or verification with regard to other issues in such cases shall be carried out by the assessing officer only after obtaining approval of his/her supervisory officer".

If a startup is not recognised by the DPIIT, then too the inquiry would be carried out after the approval of a supervisory officer.

The circular followed the announcement made by Finance Minister Nirmala Sitharaman in Budget.

She proposed a host of incentives, including a special arrangement for resolution of pending assessments of income tax cases, with a view to encouraging startups.

"To resolve the so-called 'angel tax' issue, the startups and their investors who file requisite declarations and provide information in their returns will not be subjected to any kind of scrutiny in respect of valuations of share premiums," she had said.

The issue of establishing the identity of the investor and source of his/her funds will be resolved by putting in place a mechanism of e-verification.

Commenting on the issue, Amit Maheshwari, Partner,

Ashok Maheshwary & Associates LLP said that CBDT has come out with a framework to tackle pending tax assessments.

This clarification will help startups which are facing questioning in their assessments and will also give a clear direction to assessing officers on what to do in such cases, he said.

"Contention of startups having DPIIT recognition will be accepted on section 56(2)(viib) of Income tax act and therefore, there would not be any tax adjustment additions on this account," he said.

He added that startups which do not have DPIIT recognition will still have to substantiate the valuations of the assessing office, if they question them.

"However, as a safeguard this enquiry/verification will be after obtaining prior approval from the supervisory officer," he added.

Nangia Advisors (Andersen Global) Managing Partner Rakesh Nangia said, "Directions of the CBDT that the tax officer will have to summarily accept the contentions of the startup on valuation of its shares shall provide the relief intended to be provided to the startups."

While the recognised startups stand relieved, the ones that are yet to receive a nod from the DPIIT may still have to face the inquiry from tax officers and the procedure to be followed by the tax officers in such cases would be crucial to note, Nangia added.

An angel investor puts funds in a startup when it is setting up its business. Normally, about 300-400 startups receive angel funding in a year. Their investment in a unit ranges between Rs 15 lakh and Rs 4 crore.

After claims being made by several startups that they were receiving tax notices under section 56(2)(viib) of the Income Tax Act, 1961 to pay taxes on angel funds received by them, the DPIIT in consultations with CBDT resolved the issue.

Section 56(2)(viib) of the I-T Act provides that the amount raised by a startup in excess of its fair market value would be deemed as income from other sources and would be taxed at 30 per cent. Touted as an anti-abuse measure, this section was introduced in 2012. It is dubbed as angel tax due to its impact on investments made by angel investors in startup ventures. More than 540 startups have received an exemption from angel tax so far. PTI

TAX OFFICIALS TO GO EASY ON STARTUPS

CBDT says, DPIIT recognised startups will not undergo verification by an assessing officer in respect of Section 56(2) (viib) which is Angel Tax

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I-T assessment norms relaxed for start-ups

INDIVJAL DHASMANA
New Delhi, 8 August

The income tax (I-T) department has relaxed its assessment and scrutiny norms for start-ups.

In a circular it directed its officers not to raise additional tax demands for start-ups recognised by the Department for Promotion of Industry and Internal Trade (DPIIT).

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TAX DISPUTE LIMITS HIKED FOR FILING APPEALS BY I-T DEPT

This will be done in cases where scrutiny is limited to Section 56 (2) (viib) of the Income Tax Act, or what is called in popular parlance angel tax.

Angel tax refers to income tax payable on capital raised by unlisted firms by issuing shares where the share price is considered more than the fair market value.

"No verification on such issues will be done by the AOs (assessing officers) during the proceedings and the contention of such recognised start-up companies on the issue will be summarily accepted," the circular said.

In cases where start-ups are recognised by the DPIIT but scrutiny involves wider issues, the I-T Department has asked its field formations not to pursue the issue of the angel tax during the assessment proceedings.

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I-T assessment...

So far as other issues are concerned, the AO can go ahead with his or her inquiry or verification after the approval of supervisory officers. In a situation where start-ups are not recognised by the DPIIT, assessing officers have been asked to seek the approval of their supervisory officers to go for inquiry or verification about any issue.

"This clarification will help start-ups that are facing questioning and will also give a clear direction to assessing officers on what to do in such cases," Amit Maheshwari, partner Ashok Maheshwary & Associates, said.

Rakesh Nangia, managing partner at Nangia Advisors (Andersen Global), said while the recognised start-ups were relieved, the DPIIT might still have to face inquiries from tax officers and the procedure to be followed by tax officers would be crucial.

After protests by start-ups, the government had raised the threshold for availing of angel tax exemption for these companies, besides widening their definition. Consideration of shares issued or proposed by start-ups has been hiked to ₹25 crore from ₹10 crore for getting exemption from the angel tax. Also, consideration received by eligible start-ups for shares issued or proposed to be issued to a listed company having

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