

**NEVER STOP
LEARNING
BECAUSE LIFE
NEVER STOPS
TEACHING**



Central India CA Students Association
Indore Branch of CIRC of ICAI

NEWSLETTER

SEPTEMBER 2024 | Digital Edition

Chairman Message



Dear CA Students,

Warm greetings to all of you!

I hope this message finds you in good health and high spirits. As we step into the month of September, we enter one of the most critical periods for our profession—the audit season. This time of the year is not only a significant milestone for practicing Chartered Accountants but also an invaluable learning opportunity for you as aspiring professionals.

I would like to take this opportunity to remind you of the importance of being well-prepared and equipped with the necessary knowledge and skills as we approach the audit season. It is essential to stay updated on the latest guidelines, standards, and best practices in auditing to ensure the highest quality of service to our clients.

Last month, in August, we organized a successful Tax Audit Seminar that was well-received by our members and students alike. The seminar brought together experienced practitioners and industry experts who shared invaluable insights on tax audit processes, compliance requirements, and practical tips to navigate challenges effectively. We believe that initiatives like these empower you to enhance your understanding and readiness for real-world scenarios.

As we move forward, I encourage all of you to actively participate in upcoming workshops, seminars, and training sessions that will be organized by our branch. These programs are designed to foster your professional growth and prepare you to excel in the dynamic field of auditing.

Let's make the most of this audit season together, and continue our journey of learning and excellence in our profession.

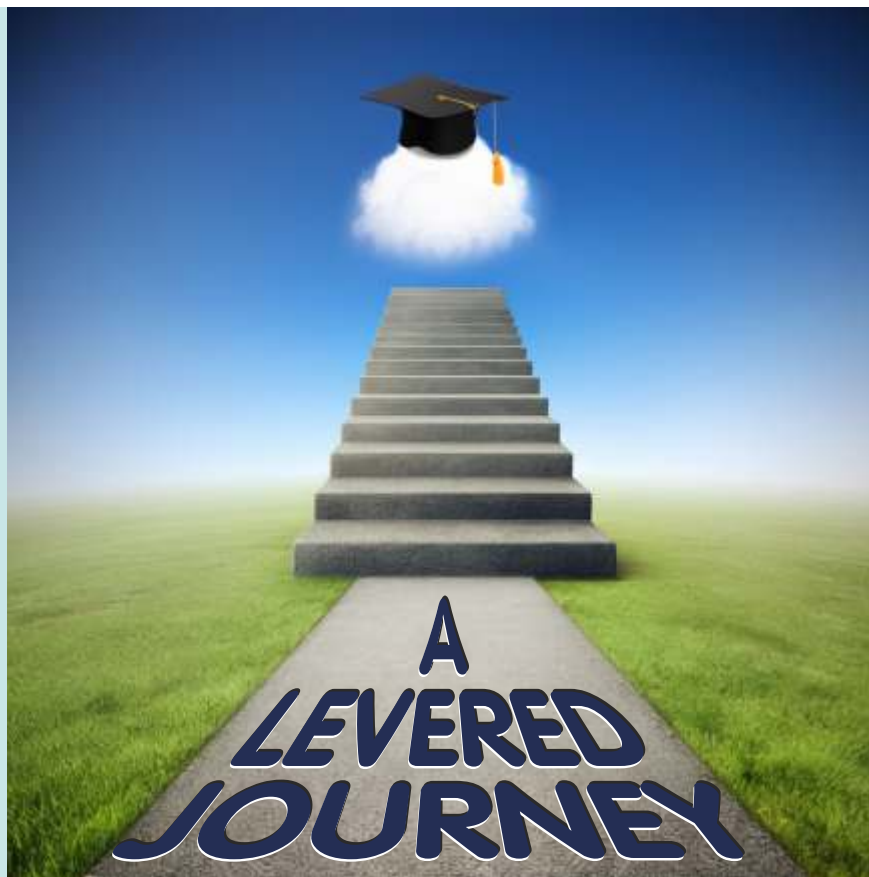
Wishing you all the best for your preparations and endeavors.

Warm regards,

CA. Atishay Khasgiwala

Chairman,

CICASA Indore.



Every person whether he is a school kid , a college student or a professional, each of us having a journey during that period which provide us with some insights of life, and in each of that journey life wants us to take risk. If we connect risk in life with finance it can be then termed as Debt, a Debt which provide a person source of finance to do his task but its also a risk if the things does not work out properly then it's the biggest liability on a person.

Many of us had taken risks in life to bring the best of ourself that is as taking debt for finance which is risky but can produce a lot of benefits for a person. In finance taking Debt and continuing task on own funds and debt is called Leverage. No matter whatever you are , what you achieved in life there is no point in anyone's life without taking risk.

Even for investing in stock market or in anything there is always a risk taker who through his analysis make investment. A person who belongs to a middle class family takes risk to upgrade his status, a person who is a daily wage labour takes steps to earn which he could afford once. Even a scammer takes risk to make a successful scam.

Hence life is a journey which sometimes makes you to take risk to upgrade yourself we have to just believe in god and to keep our intention clean then god will handle your risk himself to make you successful.

THANK YOU.....



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DEEMED DIVIDEND: Understanding Section 2(22) of the Income-tax Act, 1961 and Its Implications



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Introduction :

Section 2(22) of the Income-tax Act, 1961 (the Act), deals with Dividends. Sub-clause € of section 2 sub-section (22) of the Act includes payments made by a private company by way of advance or loan to a shareholder who owns at least 10 per cent of the voting power or to any shareholder who has a substantial interest (20 per cent or more at any time during the relevant financial year) in the said concern or payment on behalf of a shareholder such payment would be deemed as dividend. The relevant extract of the sub-section is hereunder –

“any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) [made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which such shareholder has a substantial interest (hereafter in this clause referred to as the said concern)] or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits.”

Prior to the amendment vide Finance Act 2020, the

Company declaring dividends was required to pay tax on such amounts which were distributed as dividends under section 115-O of the Act and the recipients were exempt from tax under section 10(34) of the Act. However, Dividend Distribution Tax (DDT) was abolished with effect from 1 April 2020 and the incidence of taxability was passed to the recipient of such dividends.

Essentially, the legislature whilst explaining the rationale behind abolition of DDT under section 115-O of the Act clearly said that dividend is income in the hands of the shareholders and not in the hands of the company. Further, it also pertinent to note that the Legislature has also specified that the DDT was reintroduced vide Finance Act, 2003 merely for administrative convenience as it was easier for the Legislature to collect tax at a single point i.e., from the company on behalf of the shareholders.

Judicial Precedents

It is pertinent to note that not all advances or loans would fall under the ambit of the said clause. The word 'advance' used along with the word 'loan' means such advance that has an obligation of repayment. Therefore, trade advance, being in the nature of a commercial transaction, will not be covered within the ambit of the provision of section 2(22)€ of the Act. The said position was also affirmed by the Hon'ble Supreme Court in the case of Principal Commissioner of Income-tax (Central) v. Dwarka Prasad Aggarwal[i].

Further and rightly so, the Hon'ble Calcutta High

Court in case of Principal Commissioner of Income-tax v Suprabha Industries Ltd[ii] held that in case where an assessee had secured loan from its group company and repaid with interest during the same financial year, the provisions of section 2(22)€ of the Act would be wholly inapplicable in the loan transaction and the question of deemed dividend arising therefrom does not arise. The said position was also upheld by Hon'ble Supreme Court[iii].

It is a settled legal position that where pursuant to family settlement, the individual parties to the family arrangement receive certain amount and assets from a company in which such individuals have substantial interest, provisions of section 2(22)€ of the Act can't not be applied to the amount so received.

There are many transactions between a company and directors of the company and not all fall within the ambit of 2(22)€ of the Act, therefore, it would be pertinent for the Companies to ensure that the loans/ advances given to a director or Key Managerial Personnel are in the nature of commercial parlance. Reference in this regard is drawn in the case of Smt. Jamuna Vernekar v. Deputy Commissioner of Income-tax, Circle 12(5), Bangalore[iv] wherein the court held that advances received by a director of the company for construction of building on plot owned by him

And such advance was later adjusted towards security deposit and rent payable to director, it would be a commercial transaction and would be outside purview of section 2(22)€ of the Act.

It would be apposite for the Indian company to withhold tax under section 194 of the Act where provisions of section 2(22)€ of the Act are triggered. Failure to withhold tax by the Indian company, the Indian company could be liable to pay penalty of 100% of the withholding tax amount.

Conclusion :

There is a fine line between the transactions that would fall under the ambit of section 2(22)€ of the Act and that would fall outside the provisions of the said section. Therefore, the transactions/ structuring that takes place between the company and the directors must be done in such a manner that the provisions of the said clause does not get triggered, where the same gets triggered one must ensure that necessary taxes have been withheld to ensure that there is no penalty implications and tax leakages.

- [i] S.L.P. (CIVIL) NO(S). 28223 OF 2018
- [ii] 136 taxmann.com 259
- [iii] SLP (CIVIL) Diary No. 30687 of 2023
- [iv] 432 ITR 146



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