

PRESUMPTIVE TAX PROVISIONS

Certain provisions have been incorporated in the Income-tax Act whereby the total income of certain non-resident assesses is computed on the basis of certain percentage of their gross total receipts. This estimated income approach is expected to reduce areas of uncertainty and resultant tax litigation. However, a non-resident assesses has the option to maintain books of account and get his books of account audited u/s 44AB (“Tax Audit”) and offer lower profits and gains for taxation in India than the profits and gains estimated under Sections 44BB and 44BBB on presumptive basis.

Special provisions applicable to non-residents for computing their income under the head “Business Income”

Shipping Business (Sections 44B & 172)

Section 44B contains special provisions for computing profits and gains of shipping business of a non-resident assesses. In the case of non-residents, such profits and gains will be taken at an amount equal to 7.5% (seven and a half per cent) of the amount paid or payable to the non-resident or to any other person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any Indian port as also of the amount received or deemed to be received in India on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.

Section 172, which is a complete code in itself, contains provisions for taxation of occasional shipping business of non-residents in respect of profits made by them from carriage of passengers, livestock, mail or goods shipped at a port in India.

Business of Providing Services and Facilities in Connection with Exploration etc. of Mineral Oils (Section 44BB)

Section 44BB contains special provisions for computation of taxable income of a non-resident assesses engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire, used or to be used, in the prospecting for, or extraction or production of, mineral oils. It provides that 10% of the amount paid or payable to, or the amount received or receivable by, the assesses for provision of such services or facilities or supply of plant and machinery shall be deemed to be the taxable income of such non-resident assesses.

Business of Operation of Aircraft (Section 44BBA)

Section 44BBA contains special provisions for computing profits and gains of the business of operation of aircraft of non-residents. It provides for determination of the income of non-resident taxpayers on presumptive basis at a fat rate of 5% of the amount received or receivable for carriage of persons, livestock, mail or goods from any place in India or the amount received or deemed to be received within India on account of such carriage from any place outside India.

Profits and Gains of Foreign Companies Engaged in the Business of Civil Construction or Erection of Plant and Machinery or Testing or Commissioning thereof, in Connection with certain Turnkey Power Projects (Section 44BBB)

Section 44BBB provides that, notwithstanding anything to the contrary contained in Sections

28 to 44AA of the Income-tax Act, the income of foreign companies who are engaged in the business of civil construction or erection or testing or commissioning of plant or machinery in connection with a turnkey power project shall be deemed at 10 per cent of the amount paid or payable to such assesses or to any person on his behalf, whether in or out of India. For this purpose, the turnkey power project should be approved by the Central Government. It has also been clarified that erection of plant or machinery or testing or commissioning thereof will include laying of transmission lines and systems.

Taxation of Non-Resident's Royalty Income or Fees for Technical Services (Section 44DA)

Royalties and fees for Technical Services received from the Government or an Indian concern by a Non-Resident or a foreign company in pursuance of an agreement entered into after 31-3-2003 shall be computed under the head "Business Income" in accordance with the provisions of the Income Tax Act i.e. after allowing deduction for various permissible expenses and allowances.

Section 44DA does not Permit Deduction of following Expenses

- (i) Expenditure which is not wholly and exclusively incurred for the business of such permanent establishment or fixed place of profession in India, and
- (ii) Amounts reimbursed by permanent establishment to its head office or to any of its other offices (Other than, reimbursement of actual expenses).

Restriction on Deduction of Head Office Expenses (Section 44C)

Section 44C is intended to be made applicable only in the cases of those non-residents who carry on business in India through their branches.

The deduction in respect of head office expenses will be limited to:

- a) An amount equal to 5 per cent of the "adjusted total income" for the relevant year: or
- b) The actual amount of head office expenditure attributable to the business in India, whichever is least.