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Need to issue clarification for deduction of tax from salaries where employee opts for Section 115BAC



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The Finance Act, 2020 has inserted a new section 115BAC giving an option to individuals and HUF to opt for lower rate of tax and forgo various exemptions and deductions including standard deduction. This option can be exercised by such individual or HUF at the time of filing the return. However, this has created a dilemma for the employer who has to deduct tax at source under Section 192 on month to month basis at the average rate of tax computed on the basis of rates in force. In case this provision is to be strictly interpreted and read with section 2(9), first proviso and eleventh proviso to this sub section 2(9) and Part III of Finance Act, 2020, then it will transpire that the employer has not been given an option to deduct tax at source by computing tax as per the reduced rate of tax. In section 2(9), it has been clearly stated that tax under section 192 shall be deducted at the rates in force which is stated in Part III i.e. the normal rate applicable to an individual and not the lower rate provided in section 115BAC. In the first proviso to said section 2(9), it has been stated that liability to pay advance tax in respect of income to which Chapter XII applies shall be computed in accordance with the rate specified in the relevant section. This new section 115BAC of lower rate of tax on individual and HUF subject to foregoing the exemptions and deductions falls in this Chapter XII. It may be further relevant to point out that in the 11th proviso to this section 2(9) of Finance Act, there is mention to include surcharge on the advance tax computed in accordance with the lower rate under this new section 115BAC. Accordingly, while there is a reference to pay advance tax at the rate prescribed in section 115BAC, there is no reference to deduct tax at source at the rate prescribed in section 115BAC.

This leads to interpretation that the employer has not been given an option to deduct tax at source by computing tax by applying this new lower rate of tax under section 115BAC. However, this will create an anomaly. In many cases, the income computed by employer and reported in 26AS

will not match with the income declared by the employee in case such employee has opted for new rates. Further, there may be cases where tax deducted will be higher than the tax payable causing undue paper work besides blocking of the money of the employees.

In view of the above, it is important that a clarification be issued immediately and the employer be required to obtain a declaration in the beginning of the year itself as to whether the employee will like to opt for new rates of tax specified in section 115BAC by forgoing the exemptions and deductions and in case of such employees who opt for new tax rates, the employer be required to deduct tax at source as per the new tax rates.

The CBDT every year issues a detailed circular on the deduction of tax at source. This circular is issued late in the financial year. Considering the above issues, it will be ideal if CBDT issues this circular at the earliest or otherwise issue clarification so as to address the dilemma of the employer.