

CNK & Associates LLP

News Flash

CBDT acknowledges delay in issue of certificates for NIL/lower deduction or collection of income-tax for Financial Year 2020-21; issues order to reduce hardships of assessees

The Central Board of Direct Taxes (CBDT), India's apex tax administration body, has issued an order under section 119 of the Income-tax Act, 1961 (the Act) dated 31 March 2020, acknowledging that COVID-19 virus has disrupted the functioning of the income-tax department. As a result, tax officers have faced constraints in disposing applications for issue of certificates for lower or nil rate for withholding tax (TDS) / collection of tax (TCS) for the Financial Year 2020-21. In order to mitigate the hardships of the concerned assessee (i.e. payees, buyers, taxpayers, etc.), the CBDT has issued following directions/clarifications:

Sr. No.	Situation	Direction / Clarification provided
1.	Assessee who: <ul style="list-style-type: none">- has obtained the requisite certificate(s) for FY 2019-20; and- has filed application(s) on TRACES portal for FY 2020-21 which is pending for disposal.	The certificate issued for FY 2019-20 will be applicable for FY 2020-21 till: <ul style="list-style-type: none">- 30 June 2020; or- disposal of application by assessing officer; whichever is earlier, in respect of the transaction and the deductor or collector for whom the certificate was issued for FY 2019-20.
2.	Assessee who: <ul style="list-style-type: none">- has obtained the requisite certificate(s) for FY 2019-20; and- could not file application(s) on TRACES portal for FY 2020-21.	The certificate issued for FY 2019-20 will be applicable for FY 2020-21 till 30 June 2020. However, the assessee needs to apply at the earliest giving requisite details of transactions and deductor/collector to the tax officer as per the prescribed procedure ¹ as soon as normalcy is restored or 30 June 2020, whichever is earlier.
3.	Assessee who: <ul style="list-style-type: none">- has not obtained the requisite certificate(s) for FY 2019-20; and- could not file application(s) on TRACES portal for FY 2020-21.	A modified procedure ¹ for application and consequent handling by the tax officer has been prescribed.
4.	Payment to non-residents (including foreign companies) having permanent establishment (PE) in India (not covered by situation 1 and 2 above)	Tax is to be deducted at the rate of 10% (inclusive of surcharge and cess) on payments made till 30 June 2020 for FY 2020-21, or till disposal of their applications, whichever is earlier.

¹ The applications, with the requisite documentation, have to be filed via email and certificates will also be issued via email with a validity up to 30 June 2020 or earlier.

CNK Comments:

This is a welcome and timely announcement by the CBDT before the start of FY 2020-21. Due to disruption in business operations, assesseees were concerned that their cash flow / funds could get blocked in form of higher taxes due to non-issue of NIL/lower tax certificates on a timely basis. The CBDT order seeks to allay such concerns. The order will especially assist assesseees who have been provided lower / NIL rate tax certificates without any transaction limits or upper cap (party-wise or not).

The order however does not specifically discuss the situation where the certificate of FY 2019-20 contains a transaction limit / upper cap (party-wise or not) for applicability of the NIL/lower tax certificate.

Therefore, so long as the transaction limit/ upper cap (party-wise or not) is not exhausted as per the certificate of FY 2019-20 the benefit of lower rate would continue to be available till 30 June 2020. However, in cases where transaction limit/ upper cap (party-wise or not) has been exhausted as per the certificate of FY 2019-20 as on 31 March 2020 the present order is silent as to whether the benefit of NIL/lower rate of tax would be available.

In such cases, it may be possible to argue that since the order has been issued by the CBDT under section 119 of the Act for mitigating hardships, the same should be interpreted beneficially. Accordingly, a view may be taken that the said transaction limit / upper cap provided in the certificate of FY 2019-20 would equally apply up to 30 June 2020.

One hopes that the CBDT will issue a suitable clarification to this effect to reduce the possibility of future litigation on this issue.

On a related note, one also hopes that the software of the income-tax department is suitably updated to capture the NIL/lower rate as provided in the certificates of FY 2019-20 considered as extended pursuant to this order while processing the TDS/TCS returns filed by assessee for Quarter 1 of FY 2020-21 (1 April 2020 to 30 June 2020). Otherwise, notices of short-deduction/non-deduction of tax may be issued to the deductors/collectors resulting in unwarranted correspondence and possible litigation with the income-tax authorities.

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This e-publication is published by CNK & Associates, LLP, Chartered Accountants, India, solely for the purposes of providing necessary information to employees, clients and other business associates. This publication summarises the CBDT's order in disposing applications for issue of certificates for lower or nil rate for withholding tax (TDS) / collection of tax (TCS) for the Financial Year 2020-21. Whilst every care has been taken in the preparation of this publication, it may contain inadvertent errors for which we shall not be held responsible.

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