Business Standard

Self-reporting of income estimates and advance tax liability

The draft, which contemplates the addition of Rule 39A to the I-T rules, has rekindled the debate over legitimate concerns of transparency vis-a-vis the potential for adverse consequences on taxpayers

Sayan Ghosal October 01, 2017 Last Updated at 20:46 IST

The recent introduction of a draft notification to create a self-reporting mechanism for estimates of current income, tax payments and advance tax liability for companies or persons liable for audits under Section 44AB of the Income Tax Act has not been met with much enthusiasm from corporates.

The Central Board of Direct Taxes (CBDT) draft, which contemplates the addition of Rule 39A to the Income Tax Rules, has also rekindled the debate over legitimate concerns over transparency vis-a-vis the potential for adverse consequences such as enhanced compliance and greater scrutiny on taxpayers.

"The proposed mechanism appears as an attempt to better capture and monitor taxpayer data trends and tax estimates by the government," says Garima Pande, partner, business tax services, EY India.

Ashish Sodhani, senior associate, Nishith Desai Associates, also draws attention to the press release issued by the government in this regard. It also stresses on the importance of continuous flow of tax revenues through the year. However, he notes that there are several other methods by which such estimates and objectives can be achieved. "Is it necessary to harass the taxpayer to go through the process of filing yet another form which, in reality, does not help the taxpayer in any way but only increases his burden and cost?" he asks.

According to Shalu Kedia, associate director, Nangia & Co, an assessee is already required to pay advance taxes (usually in multiple instalments), based on expected income. "Interest is levied for any shortfall in the payment of advance tax liability at the time of filing return of income," adds Kedia. The proposed self-reporting mechanism now attempts to enhance this requirement by comparing such payments to advance taxes paid in the preceding year, among other requirements of providing detailed income estimates, previous tax payments, gross receipts, etc. (See box: Form 28AA declarations).

The introduction of the proposed reporting system as being based on a 'voluntary compliance basis', but using 'shall' in the body of the proposed Rule is another feature that has been criticised by businesses. Several experts say the scheme is not actually intended to be discretionary. Use of the 'voluntary compliance' phrase only denotes that the requirement is not based on the prerequisite of an initial notice by the tax authorities. Similar references to this can be found in other income tax declaration forms, add experts.

On a more positive note, Sodhani says if the intent is actually to keep the mechanism 'voluntary', the word 'shall' may be interpreted to mean that if an entity voluntarily wishes to file the form, it shall furnish an intimation of estimated income and payment of taxes. "No doubt, the language is different from the stated intent. We will have to only wait and watch what the final rules state, to understand if the system will be voluntary or mandatory," he adds.

ISSUES AND CONCERNS

DECLARATIONS TO BE MADE IN FORM 28AA OF THE DRAFT PROPOSAL

- Incomes from salary, house property, business or profession, etc.
- Capital gains
- Losses to be set off and other deductions
- Total income tax payable
- Deemed tax payable
- Credit and tax relief provided
- TDS/TCS
- Advance Tax, MAT/AMT
- Gross receipts/ turnover
- Depreciation and profit before tax

CONCERNS WITH THE FINE PRINT

- Nature of declaration – 'Voluntary' in nomenclature alone
- Additional compliance requirement
- Chance of higher scrutiny by tax authorities
- Low threshold: Applicable to all to entities falling under Section 44AB of the I-T Act

Another added concern with the more enhanced declarations proposed in the self-reporting mechanism is added scrutiny by the tax authorities. The fear is of an enhanced tax-inspector raj, due to the additional information provided and comparisons to the preceding year. Some say this might allow action to be initiated after gauging trends on a real-time basis.

Considering the final computation of income at the close of the financial year could vary significantly from the estimates filed for six/nine months, the variance could become a matter of discussion during assessment proceedings, notes Kedia. "We are surely moving fast towards tax transparency but additional compliance on India Inc may not go down well, when corporates are already struggling with GST and Ind-AS compliances," she says.

Although the draft proposal excludes small players who opt for the presumptive (advance) taxation scheme, experts are also critical about the inclusion of all entities that are subject to auditing — annual turnover of Rs 1 crore for companies and Rs 50 lakh for persons. This, they say, is still a low threshold and brings the burden of the self-reporting requirement to a large segment of taxpayers.

Similar concerns have been raised over the requirement to file subsequent declarations to the tax authorities, if the income estimate in the first declaration is less than the corresponding income in the preceding year by five per cent or Rs 10 lakh, whichever is higher. Some even go as far as to say that this has the potential of opening the doors to multiple such yearly declarations to be made compulsory for all entities in the future.