Updated guidelines for approval of in-house R&D centres and submission of report under section 35(2AB)

In brief

The Department of Scientific and Industrial Research (DSIR) has recently updated the guidelines for approval of in-house research and development (R&D) centres and submission of prescribed report under section 35(2AB) of the Income-tax Act, 1961 (the Act).

Section 35(2AB) of the Act provides weighted tax deduction of 150%[1] of expenditure incurred by a specified company[2], on scientific research (not being expenditure in the nature of cost of any land or building) in the in-house R&D centres as approved by the prescribed authority[3].

The extant guidelines issued in 2014[4] are now updated in July 2017 with certain additional conditions as discussed below:

In detail

Ineligible expenditure

The following capital expenditure on R&D have now been listed as ineligible expenditure for weighted deduction under section 35(2AB) of the Act:

- Expenditure reported as Capital Work in Progress (CWIP)
- Vehicle purchased for reference and testing purpose

Policy and procedure for approval

As per the guidelines, specified companies are eligible to claim weighted deduction of capital investments on R&D centre of more than Rs. 10 million (excluding expenditure on land and building) in the preceding financial year of application for section 35(2AB) approval. Such specified companies are as under:

a. not having DSIR recognised R&D centre, but have applied for section 35(2AB) approval

b. having R&D centres already recognised by DSIR, but have applied for section 35(2AB) approval

The guidelines have been updated to provide following details while making application for approval

1. request for claim of expenditure under a cover letter
2. complete details of capital equipment investment on R&D of more than Rs. 10 million (excluding expenditure on land and building).

The new guidelines can be accessed from the following link:

http://www.dsir.gov.in/#files/12plan/bird-crf/FI_G_2016_E.html

Key takeaways

- The Karnataka High Court (HC) has dealt with a case[5] where DSIR had, *inter-alia,* approved CWIP expenses as eligible for weighted deduction. The HC held that action of assessing officer to deny deduction of already approved expenses by DSIR is beyond jurisdiction.
- The updated guidelines seeks to negate the view of HC. As a corollary, the weighted deduction of CWIP expenditure should be available to specified company in the year of capitalisation.
- These updated guidelines issued in July 2017 are silent on its effective date (i.e. whether they are applicable for claims to be made for assessment year 2017-18). A clarificatory circular from authorities would help to clear the ambiguity.

- Separately, it may be noted that Central Board of Direct Taxes had already amended Rule 6[6] of the Income-tax Rules, 1962 prescribing the revised forms to be filled by the specified companies and DSIR for the purpose of above provisions.

[1] 200% upto AY 2017-18
[2] engaged in the business of bio-technology, manufacture or production of any article/thing (other than those specified in the Eleventh Schedule)
[3] the Secretary, DSIR
[4] refer to our news alert dated 24 June 2014
[5] writ petition No. 7004 of 2014 (T-IT)
[6] *vide* Income-tax (10th Amendment) Rules, 2016 effective from 1 July 2016

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