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# A Study on Tax Planning Tools to Create Value of Public Sector Enterprises

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**ABSTRACT:** The concept of taxation laws is to realise the revenue by way of tax to the maximum and while the trust of the taxpayer is to how to minimise the tax burden to the minimum. The perceptions of the taxpayer and the tax collector are different in realizing the objectives. Tax planning is a device carried out by a taxpayer to pay his tax liabilities and to meet obligations in accordance with relevant provisions of the Income Tax Act. Tax Planning helps a person to claim exemptions, deductions, and allowances. While tax planning is aimed to reduce the tax liability to the minimum, tax evasion is the avoidance of tax illegally. The tax department goes heavily on tax evaders. Public Sector Enterprises (PSEs), Central Public Sector Enterprises (CPSEs) and Public Sector Banks (PSBs) are classified under Public Sector Undertakings (PSUs). The Indian Income Tax Act, 1961 defined Public Sector Company under Section 2(36A) as any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 2(45) of the Companies Act, 2013. Tax planning in Public Sector Enterprises is aimed at obtaining the long-run benefits substantially to achieve social and economic payback. This study has been undertaken to analyse various provisions of the Income Tax Act focused on Corporate tax planning process and tax reduction measures for the Assessment Year 2023-2024.

**KEYWORDS:** Tax planning, Public Sector Undertaking, Companies Act, Income Tax Act, Assessment Year.

## I. INTRODUCTION

Tax planning accelerates the development of Public sector companies by generating funds for investment in desired sectors of our country and promotes professionalism. The main objectives of Public Sector Enterprises through tax planning include Reduction of tax liability, Minimization of litigation, Productive investment, Healthy growth of the economy and Economic stability. Tax planning is a measure to the economic consciousness of the taxpayer to provide the ways and means of productive investment of earnings which would eventually benefit by minimizing the tax burden. Tax laws are designed to provide avenues for the prosperity and development of the economy. The generation of black money darkens the horizons of the national economy leading the nation to avoidable economic destruction; tax planning is the generator of the white economy. The tax planning thereby creates economic stability for the nation of the public enterprises and its people by even distribution of economic resources.

### Importance of the study:

This paper provides an insight of tax planning of the public sector enterprises by considering some significant factors.

- Location of Business
- Nature and size of the business
- Form of business organizations and pattern of its ownership.
- Specific management decisions
- Financial management decisions
- Employees' remuneration
- Mergers/Amalgamation of companies
- Double taxation relief
- Advance ruling

### Objectives:

1. To provide a thorough review of tax planning by corporates in India.



2. To analyse various tax planning avenues for corporates.

## II. LOCATION OF BUSINESS

The selection of the location is very important for the purposes of tax planning for availing the tax incentives. The Public Sector Enterprises through tax planning aim in reducing regional imbalances in the growth of our country by availing exemptions that are exempt from tax and deductions under chapter VIA from the Gross Total Income. In order to encourage entrepreneurs a special provision section 10AA is introduced to give tax benefits for a newly established unit i.e., a unit established on or after the 1st day of April, 2006 in Special Economic Zone, wherein they are entitled to claim exemption from total income subject to satisfying following conditions, the assessee starts to manufacture or produce goods or articles or providing any services during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2006, the newly established unit is not formed by the splitting up, or the reconstruction, of an already existing business and is not formed by the transfer old machinery to a new business.

Deduction –

for the First five assessment years, a deduction of the whole of the profits derived from the Export business, of such articles or things or from services for a period of five consecutive assessment years and, for sixth to tenth assessment year, fifty percent of the profits derived for next five assessment years and from eleventh year to a fifteenth assessment year, the deduction is allowed to the extent of 50% of the profit derived only if the company has debited to the profit and loss account of the previous year an equivalent amount and credited to Special Economic Zone Re-investment Allowance Reserve Account.

In case of certain industrial undertakings, they can claim a deduction from Gross Total Income with regard to their profits and gains under section 80IB subject to the conditions being satisfied other than infrastructure development undertakings include the following namely an Industrial undertaking engaged in the shipping business, Companies engaged in Industrial research, Production of mineral oils, undertaking involved in developing and building housing projects as works contract, Business involving processing, preservation, and packaging of fruits or vegetables or integrated handling, storage and transportation of food grains units, undertaking getting profits from the business of the hospital.

**Nature of business:** Income of venture capital fund or company is exempted from income tax under section 10 (23FB). In order to augment capital investment Section 35 ABB provides a deduction for telecommunication services for the expenditure being capital and is spent towards acquiring any right to operate telecommunication services. The amount of deduction is allowed in equal installments over a period beginning from the year in which the payment is made and ending in the year in which the tenure of the license comes to an end.

The other provisions providing incentives linking to the nature and size of the business include section 80 IC Profits and gains from certain industrial undertakings located in the specified category of States, wherein the business is involved in substantial expansion or production of articles in the States of Sikkim, Himachal Pradesh or Uttarakhand and North-Eastern States. The deduction allowed is 100% of such profit derived from the eligible business for a period of 3 consecutive assessment years. Section 80LA provides for a deduction from the gross total income of an assessee including any income of a scheduled bank and having an Offshore Banking Units in a special economic zone or, a foreign bank and having Offshore Banking Units in a special economic zone or a unit of International Financial Services Centre, there shall be entitled to a deduction from such income 100% of such income for 5 consecutive assessment years beginning with the assessment year relevant to the year in which the above said units obtained the permission from the appropriate authority and 50% of income for the next

### Form of business organizations and pattern of its ownership:

Since tax liabilities are based on the type of assessee and residential status, apart from the considerations like requirement of finance, resources, personal liability of the owner and level of operation and quantum of profit. Tax planning through tax incentives play important role while selecting a suitable form of organisation for a new business. A decision can be taken by comparing tax liability under different organisation forms i.e., One person company vs. Sole proprietorship, Limited liability partnership vs. Company. The tax advantages of LLP as against a company are: i) Partners liability is limited to his agreed contribution. ii) partner is not liable for the unauthorized acts of other partners and there is no joint liability created by other partners wrongful acts or misconduct. iii) While Minimum alternate tax is applicable for a company, Alternate minimum tax is applicable in case of LLP. iv) LLP can adopt cash system of accounting whereas a company adopts mercantile system of accounting.



**Specific management decisions:** While arriving at specific managerial decisions involving make or buy, own or lease, repair or replacement due considerations must be given to tax implication as this will certainly influence the decision. The following is detail explanation:

*Make or Buy:* When a decision has been called to make or buy, he must take into consideration, there will be fewer outflows due to deductions under income tax on depreciation/interest and tax advantage, if any available due to location of manufacturing unit in a particular area. So the company would benefit only when it is eligible to claim the above said tax advantages and accordingly the decision must be taken i.e., to make or to buy. For example, a car manufacturing enterprise involving thousands of different parts or components are assembled to make a car. It is quite natural that every component or part of a car cannot be manufactured by one company. Since part manufacture involves cost, time, energy, and different kinds of technology and expertise.

Therefore, in such cases the company purchases parts from outside agencies. But where the cost involved in purchasing from the outside market is high, and then the company might go in for in house production.

It should also be noted that the cost incurred in making a product and buying a product both involves incurring revenue expenditure. Therefore, taxes saved in both cases are the same. It comes into picture only when there is a need for extension or establishment of new unit to manufacture that new component. Tax considerations should be taken into consideration if the decision to manufacture a part or component involves setting up a separate industrial unit than tax incentives available u/s 10AA, 10B, 32, 80IA and 80IB should be considered. and provision under section 50 should take into consideration, if the enterprise is taking a decision to buy the parts and not to continue manufacturing of the parts, the company must keep in mind the due provision of sec 50 that provides for when a capital gain arises.

*Own or Lease:* The availability of funds of a company plays a vital role in taking a decision to Own or Lease an asset. The important factors that must be taken into consideration by the management relevant to a decision on owning an asset involves huge amount of capital expenditure, benefit of depreciation, danger of outdated or obsolescence and with respect to the decisions involving leasing will not involve in incurring huge capital investment and only lease rentals can be claimed as deduction as against depreciation in case of owning an asset. The company carrying business of seasonal products or an intention to carry on business for specified short duration leasing decision is advised as against owning.

*Repair, replace, renewal or renovation:* The main tax consideration which one has to keep in mind is whether expenditure on repair, replacement or renewal is deductible as revenue expenditure u/s 30, 31, or 37(1). If the expenditure is deductible as revenue expenditure under these sections, then cost of financing such expenditure is reduced to the extent of tax saved On the other hand if such expenditure is not allowed as deduction u/s 30, 31 or 37(1) then it may be capitalized and on the amount so capitalized depreciation is available if certain conditions of the due provisions are satisfied.

### III. FINANCIAL MANAGEMENT DECISIONS

Financial management decisions of Public Sector Enterprises include the composition of capital structure, i.e. Equity capital or Preference share capital or Debt. The factors affecting the decision on composition of capital depends on risk, cost and control and tax implications are to be taken into consideration. Interest paid to debenture holders is a deductible expense while dividend paid to shareholder is not allowed as a deduction in the hands of the company since it is taxable in the hands of a shareholder.

*Employees' remuneration:* Tax planning with respect to employees' remuneration includes optimum combination of allowances and perquisites depending upon individual requirement of each employee taking into consideration present take home pay and future benefits of different items in salary structure. Two important factors are to be focused while tax planning for employees' remuneration namely deductibility of remuneration paid to employees and if not eligible for deduction, then the taxable income under the head Business or Profession of the company shall be more. When the remuneration is received by the employees the tax liability should be minimum by claiming various benefits under the Income tax Act.

Individual has an option to pay lower rate of income tax subject to conditions fulfilled from the assessment year 2021-22 under section 115BAC. Mergers/Amalgamation of companies: Sec 2(1B) refers to the amalgamation subject to the conditions namely the amalgamated company owns and in possession of all properties and liabilities of the amalgamating company as a part of amalgamation process and or companies immediately before the amalgamation becomes the property and liabilities of the amalgamated company by virtue of amalgamation and shareholders of the amalgamating company shall become shareholders of amalgamated company. It should be noted that shareholders of an



amalgamating company holding not less than three-fourths in value of the shares in the amalgamated company shall become shareholders of the amalgamated company.

The amalgamated company formed under the scheme of amalgamation, having satisfied the conditions set forth under section 72A is eligible to carry forward and set off loss. The amalgamated company can also claim to carry forward and set off unabsorbed depreciation. The expenses incurred under the scheme of amalgamation or demerger by the Indian corporate is allowed as a deductible expense in five successive years in five equal installments under section 35DD. Even the capital expenditure incurred towards amalgamation or demerger qualifies as deduction.

**Double taxation relief:** Double taxation is a relief from the tax liability to an assessee whose income is taxed twice i.e., income earned in a country of residence is different from where the income is generated. In case of individual having residential status being resident and ordinarily resident and in case of company resident, they are liable to income tax for the income derived from Indian income and as well as foreign income derived during the previous year. A situation in which the same income with regard to which two or more taxes may need to be paid for is known as double taxation. Normally this kind of situation arises because various provisions of Indian Income tax Act are similar to that of provisions of foreign countries Income tax Act. Indian income irrespective of whatever the residential status during the relevant assessment year is taxable in India alone and while foreign income is not chargeable to tax in the hands of residential status being non- resident.

In order to avoid double taxation of income the provisions of section 90 and section 91 have been introduced. Section 90 provides for the Central Government entering into agreements to provide relief known as bilateral and section 91 provides for tax relief where there is no agreement entered by the Central Government known as unilateral. The agreements entered into by the Central Government with other countries under section 90 are known as Double Tax Avoidance Agreements (DTAA). The Government of India with an objective for avoidance of double taxation has entered into comprehensive agreements with 85 countries. The benefit of tax relief under section 90 is provided by wholly avoidance of that part of the tax that is taxed twice or allowing partial amount of income tax to be paid. Section 91 provides a unilateral tax relief by Indian government to resident individuals whose income includes income accrued or arisen outside India during the relevant previous year. It should be kept in mind that Sec 91 relief is available only if Government of India has not entered into agreement in which the income accrues. Every person as defined under section 2(31) may take the benefit of double taxation relief provided if that person or company as the case may be is a resident of India in the previous year under the provisions of Income Tax Act Sec 6. Relief under section 91 is calculated on the basis of the lowest of the following i.e., amount of tax liability calculated at the Indian rate of tax and the tax computed at the rate of the other country on the doubly taxed income.

#### **Advance ruling:**

Sections 245N to Sec 245V of the Income Tax Act deals exclusively advance rulings to non-residents. A body namely Board of Advance Rulings is set up under the Act specifically to give advance rulings to non-residents on the tax implications of their transactions in India. The prime objective of setting up the Board was to avoid unnecessary litigation and to clarify any non-resident about the tax implications relating to the transactions taken up or proposed to be taken up.

Section 245N of the Income-tax Act, 1961 defines to mean 'Board of advance rulings' the determination by the authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant with respect to the question of law or fact and in relation to the tax liability of a non-resident when the transaction is arising with a resident applicant, in respect to an issue pending before any Income-tax authority or the Appellate Tribunal relating to the computation of total income.

Thus, the Board of Advance rulings can rule to a transaction entered into or proposed to enter by a non-resident with respect subject matter being question of law or fact. By obtaining such a ruling, a non-resident entity could know the tax implications of a transaction that it proposes to enter with a resident of India. A non-resident who proposes to enter a transaction or has already entered into a transaction in India, a resident who proposes to enter into such transaction with the non-resident party, Central Government may, by notification in the Official Gazette, specify such class or category of persons being resident. (Public Sector Undertakings have been notified *vide Notification No. 725(E)* dated 3rd August, 2000 (refer to 245 ITR (St.) 5).

When the applicant, i.e., non-resident or a resident as the case may be in the prescribed form has made an application, the Board for advance rulings shall cause a copy of thereof such application to Commissioner and may call for such records as it deems fit from Commissioner. The Board, after examination of records call for, either allows or rejects



application. The rejection of application cannot be made unless an opportunity has been provided to the applicant. It is pertinent to note that the Board for Advance rulings will not entertain the applicant where it involves the ascertainment of fair market value of any property; relating to a transaction or the question involving in the application involves the ascertainment of fair market value of any property; relating to a transaction or issue which seems to be taken for the tax avoidance and any matter is pending (except in case of resident applicant) for adjudication by such Authority of income tax or Income tax appellate tribunal or High court or Supreme court as the case may be.

The ruling marked by Board for Advance Ruling shall be obligatory on the applicant who had sought it and in respect of the specific transaction in relation to which the ruling is sought. The advance ruling shall be binding on the jurisdictional CIT and the income-tax authorities subordinate to the CIT.

The paper concludes that every public sector enterprise must exercise tax planning to maximize their income by taking benefits of various income tax provisions and in turn contributing to the growth of our country.

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