A “TAX” IS A “FINE” FOR DOING WELL

A “FINE” IS A “TAX” FOR DOING “WRONG”.

Tax Planning - Legislative Right
What is the relation?

Income Tax Dept.  Tax Payer

Income Tax Act
Income Tax Rules
CBDT Circular / Notification/ Instruction
Jurdicial Pronouncements
Retrospective amendments

Increase in tax collection
Reduce tax burden

A presentation by Niranjan Swain, OPGCL,Bhubaneswar
What is Tax Planning?

- Exercise carried out by a tax payer to meet his tax obligations in a proper, systematic and orderly manner
- availing
  - all permissible exemptions,
  - deductions and
  - relief under the statute as may be applicable in its case
- not taking form of “colourable devices” and
- having no intention to deceit the legal spirit behind the tax law
OBJECTIVE OF TAX PLANNING

Reducing tax incidence

Avoiding litigation

Productive investment

Progressive economy
Tax Planning

[McDowell & Co. Ltd. v. CTO [1985] 154 ITR 148 (Supreme Court)]

- Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid payment of tax by resorting to dubious methods
What is Tax Avoidance?

- Planning to reduce or negating tax liability legally permissible ways
- Takes into account loopholes of law
- Tax hedging within frame work of law
- Intentional tax planning before actual tax liability

It has legal sanction
- The line of demarcation between tax planning and tax avoidance is very thin and blurred.
What is Tax Avoidance?

Criteria to define tax avoidance

- (1) use of colorable devices;
- (2) instances where doctrine of substance is defeated;
- (3) defeating the genuine spirit of law;
- (4) mis-representation or twisting of facts;
- (5) taking only strict interpretation of law and suppressing the legislative intent behind it.

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What is Evasion?

- Tax liability is illegally avoided
- Attempted with help of unfair means/methods
- Tax omission
- Unlawful
- Punishable under law
- Intentional
Tax Planning

- Tax planning should not be done with an intent to defraud the revenue; though all transactions entered into by an assessee taken individually could be legally correct, yet on the whole these transactions may be devised to defraud the revenue.

- Thus, planning for tax should be correct both in *form and substance*.
Areas of Tax Planning

- Management Decisions
- Tax Computation
- Tax Compliance
- Tax Payments

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What the job of Tax Planner?

- Determination of most tax effective structure.
- Taking full advantage of tax opportunities and reliefs.
- Achieving the optimum capital or revenue tax treatment.
- Reducing tax on disposals and maximising relief on acquisitions.
- Making the most of tax opportunities specific to your industry.
- Meeting the rigorous demands of compliance including corporation tax self assessment.
- Acting on your behalf in discussions with the tax authorities.
# Tax Planning – Salary

## Component Break Up

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A</strong></td>
<td><strong>Basic</strong></td>
</tr>
<tr>
<td><strong>B</strong></td>
<td><strong>Supplementary Allowances</strong></td>
</tr>
<tr>
<td><strong>Components of Supplementary Allowance</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>HRA</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Medical Reimbursements</strong></td>
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<tr>
<td></td>
<td><strong>LTA</strong></td>
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<td></td>
<td><strong>Children Education</strong></td>
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<td></td>
<td><strong>Children Hostel Subsidy</strong></td>
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<tr>
<td></td>
<td><strong>Conveyance Allowance</strong></td>
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<tr>
<td></td>
<td><strong>Professional Development Allowance</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Balancing Figure</strong></td>
</tr>
<tr>
<td><strong>C</strong></td>
<td><strong>Retirement Benefits</strong></td>
</tr>
<tr>
<td><strong>D</strong></td>
<td><strong>Performance Pay</strong></td>
</tr>
<tr>
<td></td>
<td><strong>CTC</strong></td>
</tr>
</tbody>
</table>
### Salary – Structures - Pictorial Structure

<table>
<thead>
<tr>
<th>Benefits</th>
<th>Market Structure Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic Pay</td>
<td>40% TFP (Total Fixed Pay which does not include Variable Pay)</td>
</tr>
<tr>
<td>Retireals</td>
<td>Provident Fund - 12% of Basic</td>
</tr>
<tr>
<td>Supplementary Allowance</td>
<td>Gratuity - 4.81% of Basic</td>
</tr>
<tr>
<td>Performance Pay</td>
<td>CTC - (Basic + Retireals + Variable Pay)</td>
</tr>
<tr>
<td></td>
<td>As per CTC</td>
</tr>
<tr>
<td></td>
<td>E6 - 19%</td>
</tr>
<tr>
<td></td>
<td>E5 - 18%</td>
</tr>
<tr>
<td></td>
<td>E4 - 16%</td>
</tr>
<tr>
<td></td>
<td>E3 - 15%</td>
</tr>
<tr>
<td></td>
<td>E2 - 12%</td>
</tr>
<tr>
<td></td>
<td>E1 - 8%</td>
</tr>
</tbody>
</table>
Tax Planning – Salary Income

- Consolidated Salary Vs. Break up salary
- Deduction vs. Exemption
- HRA Vs. Accommodation / Self Leasing
- Commuted pension vs. Uncommuted Pension
- Contribution to PF, Gratuity, Pension etc.
- Medical Allowances, Reimbursements and facilities.
- Education Allowances, Reimbursements and Facilities.
- Tax free perquisites - benefits
- Provision of – Computes / laptops, Vehicles / movable assets / Electronics assets etc.
- Tax Relief u/s 89.

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OPGCL, Bhubaneswar
Tax Planning – House Preoperty Income

- House Property Income Vs. Business Income
- Self Occupies Vs. Let Out / Deemed Let Out
- Registered Owner Vs. Deemed Owner
- Deduction u/s 23 – On Payment
- Deduction u/s 24 – Source of Borrowing
- Purchase of House in name of Spouse / Transfer of House to Spouse / Gift to Spouse
- Transfer of House Property to spouse without consideration.

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Areas of Tax Planning?

- Selection of type of industry, location of industry etc.
- Corporate mergers / amalgamations.
- Procurement / acquisitions of Fixed assets.
- Make or buy,
- own or lease,
- retain or replace,
- export or domestic sale,
- shut down or continue,
- expand or contract.
Areas of Tax Planning?

- Claiming appropriate exemptions.
- Claiming deductions under respective heads of income.
- Revenue and Capital
- Booking of Expenses in appropriate Head of Accounts.
- Capitalization of Assets.
- Claiming deduction in respect of Depreciation / addl. depreciation etc.
- Advantage of unabsorbed depreciation.
- Bad Debts – Tax Benefits
Areas of Tax Planning?

Compliance with the provisions of:
- u/s 40(a)/ 40(a)(i) / 40(a)(ia) – TDS
- Income Tax -40(a)(ii)
- Perquisite Tax –40(a)(v)

Compliance with the provisions of:
- Payment to Relative – 40 A(2)
- Cash Payment – 40 A(3)
- Provision of Gratuity -40A(7)
- Contribution to Non Statutory Fund-40 A(9)

Compliance with the provisions of:
- Un paid Liabilities – 43B

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Areas of Tax Planning?

- Computation of Business / Profession Income – Special Provisions
- Planning for carry forward and setoff of losses
- Claiming Chapter VI A deductions.
Areas of Tax Planning – Capital Gain

- Short Term Vs. Long Term
- Capital Gain – Block of Assets
- Stamp Duty Valuation
- Obligation of Purchaser to deduct tax at source.
- Deduction u/s 54 ......

Tax Computation
### Areas of Tax Planning – Capital Gain

<table>
<thead>
<tr>
<th>Section</th>
<th>Gain eligible for claiming exemption</th>
<th>Re-invested Asset for Exemption</th>
</tr>
</thead>
<tbody>
<tr>
<td>54</td>
<td>LT capital gain arising on transfer of residential house property.</td>
<td>Gain to be re-invested in purchase or construction of residential HP.</td>
</tr>
<tr>
<td>54B</td>
<td>Long-term or short-term capital gain arising on transfer of agricultural land.</td>
<td>Gain to be re-invested in purchase of agricultural land.</td>
</tr>
<tr>
<td>54EC</td>
<td>Long-term capital gain arising on transfer of any capital asset.</td>
<td>Gain to be re-invested in bonds issued by NHAI or by REC.</td>
</tr>
<tr>
<td>54F</td>
<td>Long-term capital gain arising on transfer of any capital asset other than residential house property.</td>
<td>Net sale consideration to be re-invested in purchase or construction of residential house property.</td>
</tr>
<tr>
<td>54D</td>
<td>Gain arising on transfer of land or building forming part of industrial undertaking which is compulsorily acquired by Government</td>
<td>Gain to be re-invested to acquire land or building for industrial purpose.</td>
</tr>
</tbody>
</table>

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## Areas of Tax Planning – Capital Gain

<table>
<thead>
<tr>
<th>Section</th>
<th>Gain eligible for claiming exemption</th>
<th>Asset in which the capital gain is to be re-invested to claim exemption</th>
</tr>
</thead>
<tbody>
<tr>
<td>54G</td>
<td>Gain arising on transfer of land, Gain to be re-invested to acquire building, plant or machinery in order to shift an industrial undertaking from urban area to rural area.</td>
<td></td>
</tr>
<tr>
<td>54GA</td>
<td>Gain arising on transfer of land, Gain to be re-invested to acquire building, plant or machinery in order to shift an industrial undertaking from urban area to any Special Economic Zone.</td>
<td></td>
</tr>
<tr>
<td>54GB</td>
<td>Long-term capital gain arising on transfer of residential property (a house or a plot of land). The transfer should take place during 1st April, 2012 and 31st March 2017.</td>
<td>The net sale consideration should be utilised for subscription in equity shares in an “eligible company”.</td>
</tr>
</tbody>
</table>

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Areas of Tax Planning – Other Sources

Gift up to Rs.50,000/-
- Gift in cash/cheque/draft
- Gift – immovable property
- Gift of Movable Property

Exemptions: Received from
- Relatives
- On the occasion of marriage of individuals
- By way of will/inheritance
- Contemplation of death of payer
- Local authority
- Charitable Institution registered u/s 12AA
- Fund/Foundation/University – Sec 10(23)(C)
Available deduction while computing Taxable Income.

<table>
<thead>
<tr>
<th>SEC</th>
<th>Applicability</th>
<th>Nature of Payment</th>
<th>Amount of Deduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>80C</td>
<td>Individuals</td>
<td>Investments</td>
<td>Max. - Rs. 1.50 lakhs</td>
</tr>
<tr>
<td>80CCC</td>
<td>Individuals</td>
<td>LIC or Other Insurance Pension Plan</td>
<td>Max. Rs. 1.00 lakhs</td>
</tr>
<tr>
<td>80CCD</td>
<td>Individuals</td>
<td>Contribution to approved Pension Plan</td>
<td><strong>80CCD(1):</strong> Employee’s contribution 10% of salary (for other than employee, 10% of gross total income) or Rs. 100,000 which ever is lower. <strong>80CCD(2):</strong> Employers contribution up to 10% of salary. Additional Contribution – Rs. 0.50 lakhs</td>
</tr>
</tbody>
</table>

**80CCE-** Total of 80C + 80CCC+80CCD = Rs.1.50 lakhs + Addl. Contribution Rs.0.50 lakhs u/s 80CCD
### Available deduction while computing Taxable Income.

<table>
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<tr>
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<th>Nature of Payment/Receipt</th>
<th>Amount of Deduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>80CCG</td>
<td>Resident Individuals</td>
<td>Investments in notified equity shares</td>
<td>50% of amt invested subject to maximum of Rs.25000 for 3 consecutive A/Y.</td>
</tr>
<tr>
<td>80TTA</td>
<td>Individuals</td>
<td>Interest on deposits in saving a/c</td>
<td>Interest income or Rs.10000 whichever is less</td>
</tr>
<tr>
<td>80D</td>
<td>Individuals</td>
<td>Mediclaim policy or contribution to central govt health scheme or preventing health check-up</td>
<td>Group 1(Assessee, Spouse, Dependent Child):Rs.25,000(including Preventive health check-up)</td>
</tr>
</tbody>
</table>
### Available deduction while computing Taxable Income.

<table>
<thead>
<tr>
<th>SEC</th>
<th>Applicability</th>
<th>Nature of Payment/Receipt</th>
<th>Amount of Deduction</th>
</tr>
</thead>
</table>
| 80DD  | Resident Individuals   | Expenditure on handicapped dependants                          | **If General: Rs.75,000**  
|       |                        |                                                                  | **If Severe Disability: Rs.1,25,000**                     |
| 80DDB | Resident Individuals   | Expenditure on specified diseases                              | **General**: Actual or Rs.60,000 whichever is less.  
|       |                        |                                                                  | **Senior Citizen**: Actual or Rs.80,000 whichever is less. |
| 80E   | Individuals            | Interest on Loan taken for Higher Education of self or relative.| Any amount paid                                           |
Available deduction while computing Taxable Income.

<table>
<thead>
<tr>
<th>SEC</th>
<th>Applicability</th>
<th>Nature of Payment/Receipt</th>
<th>Amount of Deduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>80G</td>
<td>Individuals</td>
<td>Donation</td>
<td>1. <em>Unrestricted</em> – 100% or 50% of donation. 2. <em>Restricted</em> – Max. Limit upto 10% Adjusted Total Income</td>
</tr>
<tr>
<td>80GG</td>
<td>Individuals</td>
<td>Rent Payment (if no HRA)</td>
<td>Maximum upto Rs.24,000.</td>
</tr>
<tr>
<td>80GGC</td>
<td>Resident Individuals</td>
<td>Donation to Political Party or Electoral Trust.</td>
<td>Actual Amount <em>(Contribution by way of cash is not eligible)</em></td>
</tr>
<tr>
<td>80U</td>
<td>Handicapped Resident Individuals</td>
<td>Not Applicable</td>
<td>General: Rs.75,000, Severe Disability: Rs.1,25,000</td>
</tr>
</tbody>
</table>
Areas of Tax Planning – Other Areas

- Disclose all incomes
- Avoid Concealment of facts
- Avoid attraction of Penalty

Tax Computation
Tax Planning - Compliances

- Maintenance of Accounts
- Audits / Tax Audits
- Certifications / Audit certificates
- Filing returns / forms promptly.
- Compliance with various provisions of TDS/TCS.
- Filing Quarterly & Annual returns of TDS.
- Reply to the Tax Authorities
Areas of Tax Planning?

Tax Payments

- Payment of Advance Tax as per the stipulated schedule.
- Availing Tax Credit
- Carry forward of Tax Credit
- Avoidance of Interest
- Avoidance of penalty
- Avoidance of Prosecutions
- Claim of Refund