

Article

Securitisation Tax Rules: Uncertainty still prevails



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Background for rules relating to securitisation trusts

Clause 30 of the Finance Bill, 2013 (now Act) inserted a new Chapter XII-EA consisting of new sections 115TA, 115TB and 115TC in the Income Tax Act with regard to special provisions relating to tax on distributed income by securitisation trusts.

Section 115TA – 115TC (along with the explanations) of the chapter provided for the Income Tax Authorities to prescribe two set of rules. One, section 115TA sub-section (3) states that –

(3) The person responsible for making payment of the income distributed by the securitisation trust shall, on or before the 15th day of September in each year, furnish to the prescribed income-tax authority, a statement in the prescribed form and verified in the prescribed manner, giving the details of the amount of income distributed to investors during the previous year, the tax paid thereon and such other relevant details, as may be prescribed.

Second, the explanation (d) to the Chapter provided for the meaning to securitisation trusts, as below –

(d) "securitisation trust" means a trust, being a—

(i) "special purpose distinct entity" as defined in clause (u) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992), and the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and regulated under the said regulations ; or

(ii) "special purpose vehicle" as defined in, and regulated by, the guidelines on securitisation of standard assets issued by the Reserve Bank of India,

which fulfils such conditions, as may be prescribed.'

First of the two rules

The first set of rules in relation to the statement providing details of the income distributed and tax paid thereon have been notified by the Department of Revenue (Central Board of Direct Taxes) on 4th September, 2013¹.

¹ Rule 12BA inserted vide Income Tax (15th Amendment) Rules, 2013

http://law.incometaxindia.gov.in/DIT/File_opener.aspx?page=NOTF&schT=&csId=8228c479-dac5-4f7a-8810-8af2e3975335&NtN=&yr=ALL&sec=&sch=&title=Taxmann%20-%20Direct%20Tax%20Laws



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Under Rule 12BA, the statement of income distributed income has to be furnished by the securitisation trust in Form 63AA and is to be duly verified by an accountant. Among the basic details required of the securitisation trust, the Form has 2 very significant details requirement. The form requires the securitisation trust to confirm whether it is regulated by Securities Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulation, 2008 or whether the securitisation trust is regulated by the Reserve Bank of India guidelines on securitisation of standard assets.

The form requires the securitisation trust to confirm if they are regulated by either of the regulators. The issue here is what if the securitisation trust does not fall under either of the regulations? Will the securitisation trust be still bound by the requirements under the rule or the conclusion is to be drawn that there cannot be a securitisation trust which is not regulated by either of the entities. If one has to take a liberal view on the issue, form only requires the trust to confirm if there is a regulatory body under whose periphery it falls, it does not prohibit a securitisation trust which is not regulated by either of the bodies.

The requirement for furnishing such a statement was on or before 15th September each year, as provided in Chapter XII-EA. Hence the rules were notified timely.

Where are we now?

However, the bigger concern is rules relating to securitisation trust to fulfill certain conditions that were to be later prescribed for the securitisation trusts to fall under the provisions of the Chapter.

What is surprising is that the authorities have not yet come out with these rules which seem the backbone of the very Chapter; without which it can be argued that the machinery itself is not complete. Currently there are no conditions prescribed for the securitisation trusts to fall under the provisions of this Chapter and applicable rules thereof. On the other hand it surely cannot be assumed that there shall be no conditions applicable to such securitisation trusts to fall under the periphery of such rules.

These rules have been the much awaited rules, which the department has not yet considered notifying while the Chapter has come into effect from 1st June, 2013. In absence of rules providing for the conditions applicable to securitisation trusts for the Chapter to become applicable to '*such trusts*' the worst apprehensions of the industry may come true as the whole chapter would become inoperative.



Conclusion

Between the rules on the reporting requirement and the operative rules, the latter rules were not only much awaited but also are the base on which the entire Chapter shall function. While the securitisation trusts are continuing to fulfill the requirements of the Chapter in absence of the conditions, the lurking uncertainty has certainly not come to rest as yet. Stuck between Scylla and Charybdis, are we waiting for another roller-coaster?