

## Cos get relief from cross-border taxation

*Supreme Court Stays All Actions By I-T Department On The Basis Of The Karnataka High Court Order*

*M Padmakshan MUMBAI*

IN A major relief to corporates who regularly make crossborder payments, the Supreme Court has stayed the order by the Karnataka High Court, issued a couple of months ago, that these companies have to deduct tax from all cross-border payments. The apex court gave the ad-interim order on December 18, 2009, on a special leave petition filed against the Karnataka High Court order in the CIT v/s Samsung Electronics case.

The Karnataka High Court's order, dated October 29, 2009, stirred a controversy, as it held that if the tax payer thought the nature of payments did not require deduction of tax, he should approach the assessing officer for a certificate to that effect. In short, tax should be deducted from all payments to non-residents, if the tax payer did not have a certificate from the department. Among the parties affected by the Karnataka High Court order, include a host of electronic companies like Samsung. The Supreme Court has stayed till further order on all actions by the I-T department on the basis of the Karnataka High Court order.

The high court had observed that the tax payers do not have sufficient expertise to decide whether the nature of the payment to non-resident calls for deduction of tax. The department's view on this issue was if the tax payer had not deducted tax, while making the payment to the non-resident, he is liable for action under the Section 201 of the I-T Act dealing with non-payment of income and interest thereon. With this order from the apex court, the I-T department has to wait till the Supreme Court takes a final decision on the issue.

While the high court order was a shot in the arm for the I-T department, the corporates making cross-border transactions are of the view that if one goes by the high court order, tax has to be deducted from even the payment for imports and exports.

### NEW ORDER

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