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CONTENTS

SERVICE TAX

A-TO-Z OF SWACHH BHARAT CESS

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Introduction:

With a view to source funds for Swachh Bharat initiative, Section 119 of Finance Act, 2015 is introduced which provides for levy of Swachh Bharat Cess (SBC) on value of all taxable services at a rate of two percent. Though it was told initially that levy is going to be only on specified luxury services,but eventually it is notified with effect from 15.11.2015 on value of all taxable services at the rate of half percent. The levy is introduced at the unexpected timeand in a haste manner giving not more than one week time for the trade to adapt it.Many issues popped up and CBEC has released FAQs to clarify some of them. Let us have a look at various aspects of this levy.

Levy and Collection of SBC:

SBC is leviable on value of all taxable services at the rate of 0.5%. Unlike EC and SHEC, though it is named as 'Cess', it is not a cess on service tax amount. It is an additional tax on value of all taxable services. It is not applicable to services which are not taxable under Finance Act, 1994 and those which are exempted by notifications issued there under.

Invoicing& Tax Payment:

SBC needs to be shown separately in the invoice after service tax amount. Further, whatever the SBC amount charged during the month or quarter shall be paid by 5th/6th of the immediately following monthin cash without adjusting against CENVAT Credit. The accounting codes notified are as under;

Swachh Bharat Cess (Minor Head)	Tax Collection	Other Receipts (Interest)	Penalties	Deduct Refunds
00-44-00-506	00441493	00441494	00441496	00441495

Cum-Tax Calculations:

In certain agreements, the services provider agrees for provision of services for a consideration which is inclusive of all taxes. In such a case, the service provider discharges service tax in the method as specified in Section 67(2) of Finance Act, 1994 that is popularly known as cum-tax method. That is to say, if the contract value is Rs 10 Crore, then service tax shall be calculated as 10 Crore * 14/114.

Sub-section (5) of Section 119 of Finance Act, 2015 which provides for levy of SBC, expressly provides that the provisions of Finance Act, 1994 and rules made thereunder are applicable to levy and collection of SBC. Accordingly Section 67(2) is equally applicable to SBC also. Therefore even after the introduction of SBC, such service tax payable of 14% has to betaken as 14.5% and accordingly the obligation of SBC has to be met.

Reverse charge/Joint Charge:

It has been clarifiedthat reverse charge and joint charge mechanism is applicable even for collection and payment of SBC also in the same manner as applicable to service tax.

For example, in case of legal services, it is service receiver liability to pay entire service tax amount to Government. In case of such services, service receiver himself is responsible to pay entire SBC amount (0.5%) to Government.

In case of works contract services, the responsibility to pay service tax is equally divided between service provider and service receiver. In such cases, 0.25% out of 0.5% of SBC will be collected and paid by service provider and it is the responsibility of service receiver to pay the balance 0.25% directly to Government.

Abatements:

It has been clarified that in case of services for which abatements are applicable, similar to service tax, SBC shall be computed on net taxable value after deducting the abatement portion.

For example, in case of renting of hotel rooms, service tax is applicable only on 60% of the gross amount charged towards the accommodation. Balance 40% is the abated amount which is not subject to service tax. Suppose if the amount charged towards such accommodation is Rs. 10,000/- then in such cases, similar to service tax, SBC shall be calculated on 60% of the gross amount charged i.e. Rs. 6000/- (10,000x60%).

It has also been clarifiedthat SBC is calculated in similar manner in case of valuation of works contract and Restaurant services as provided respectively under Rule 2A and Rule 2C of the ServiceTax(Determination of Value)Rules, 2006.

Applicability of SBC to services taxable at Special rates:

Certain services as given under sub-rules to Rule 6 of the Service Tax Rules, 1994 are taxable at special rates at the option of service provider. It has been clarified that special rate of SBC for these services shall be calculated using the following formula. The applicable rates after applying the formula are given as annexure to this paper.

$$\boxed{\text{SBCSplrate} = \text{ST Spl rate} \times \frac{(0.5\%)}{(14\%)}}$$

Point of Taxation:

As stated above, SBC is a new levy of tax effective from 15.11.2015 onwards. It has been clarified in the FAQs issued by CBEC that Rule 5 of Point of Taxation Rules, 2011 is applicable to determine the taxability. Accordingly, no SBC is applicable when amount is received before 15.11.2015 and invoice for the same is raised either before 15.11.2015 or within 14 days after levy i.e. 29.11.2015. It is not relevant when the service is provided.

In all cases where payments are received after 15.11.2015, even if invoices are issued before 15.11.2015, SBC is applicable in terms of this rule. The impact of this rule is that SBC is applicable to all cases where services are provided and invoices issued but amounts are outstanding as on 15.11.2015.In view of this, SBC becomes applicable even to cases where services are provided much before SBC is notified but amount towards taxable service is outstanding as on 15.11.2015.

In the opinion of paper writer, applicability of this Rule 5 to cases of new levy is doubtful as the same appears to be in conflict with Section 67A which provides that the rate, value and exchange as prevailing at the time when service is provided or agreed to be provided but the rule completely ignores the time when service is provided but considers only the payment towards taxable services.

It is doubtful whether charging section 66B is applicable in cases where are provided before the levy is introduced. On a similar issue under law prevailing prior to 01.07.2012, in the case of Reliance Industries Ltd vs. CCE,2008(10)STR243(Tri-Ahmd) wherein it was held that services rendered prior to introduction of levy on a particular activity is not liable to service tax. Thus ambiguity is prevailing on applicability of SBC for services provided before 15.11.2015 but payments are received afterwards.

SBC whether eligible as CENVAT Credit:

No specific amendments are made in CENVAT Credit Rules, 2004 to expressly facilitate service receiver to take CENVAT Credit of SBC. Further it has been clarified in the FAQs that service receiver cannot avail CENVAT Credit of SBC as the said tax is not integrated in the CENVAT chain.

However sub-section (5) of Section 119 of Finance Act, 2015 which provides for levy of SBC, expressly provides that the provisions of Finance Act, 1994 and rules made thereunder are applicable to levy and collection of SBC. CENVAT Credit is an aspect related to collection of SBC and on this count, CENVAT Credit Rules, 2004 may even be applicable to SBC.

In the case of CCE vs. Shree Renuka Sugars Ltd,2015-TIOL-1478-HC-KAR-CX wherein it was considered whether sugar cess levied on imported sugar under Sugar Cess Act, 1982 is eligible for CENVAT Credit. Under Sugar Cess Act, 1982 also, provisions of Central Excise Act, 1944 and rules made thereunder are made applicable for levy and collection of sugar cess. In such scenario, the Karnataka High Court held that even in the absence of specific provisions in CENVAT Credit Rules, 2005 about sugar cess, it is nothing but excise duty under Rule 3 of the CENVAT Credit Rules, 2004 and accordingly eligible for CENVAT Credit.

Applying the same analogy to SBC, it appears that a service receiver is eligible for CENVAT Credit of SBC even in the absence of specific provisions in CENVAT Credit Rules, 2004 in this regard.

However, those assessees adopting conservative approachhave to be very cautious in availing the credit post implementation of SBC as it may be possiblethat some of the vendors do not disclose service tax and SBC component separately in their invoices which might lead to availment of SBC. Hence, the assessee has to be very cautious and avail only such component pertaining to service tax as credit and not the SBC.

SBC discriminates SEZs and EOUs/other exporters:

Exemption of services procured by SEZs towards exports are guided by Notification No 12/2013-ST dated 01.07.2013. SEZs are entitled to either ab-intio exemption or exemption by refund of service tax paid on services used for export upon satisfaction of certain conditions as laid down in the said notification. This exemption notification is given to SEZs under Section 93(1) of Finance Act, 1994.

It has been clarified that all the exemptions provided under Section 93(1) of Finance Act, 1994 are equally applicable to SBC also. On this count SEZs technically becomes eligible to procure domestic services without paying any SBC or eligible for refund if it is paid.

On the other hand EOUs and other major exporters are entitled to get refund of service tax paid on domestic services used for export under Rule 5 of CENVAT Credit Rules, 2004. As discussed above, it has been clarified that CENVAT Credit of SBC is not available. In such scenario, refund of SBC under this Rule 5 is not available. Thus this would lead to a scenario where SEZs are entitled to claim exemption of SBC on their input services used on export but on the other hand EOUs and other major exporters are not entitled to similar exemption benefit and their exports has to bear the burden of SBC.

In the opinion of the paper writers, it may not be the legislative intent to relieve SEZs from SBC especially in the circumstances where CBEC has expressly clarified that SBC is not eligible for CENVAT Credit and what is not allowed under CENVAT Credit route is generally not allowed under refund or exemption route. Therefore Government is required to clarify this issue at the earliest to avoid litigation.

Conclusion:

Introduction of SBC is one more example of how tax laws are enforced in our country without giving any importance for deliberation with trade and tax experts to understand and address the potential issues that may arise. Levy is enforced in less than one week time after its notification without even seeking views of trade bodies or making proper study on various aspects. Much ambiguity is built up in form of CBEC clarifications on eligibility of CENVAT Credit and applicability to services provided before levy but payments are received after the levy become effective. Before parting, recalling this quote- “Death, taxes and childbirth! There’s never any convenient time for any of them”. We have no option but to simply accept them.

Annexure:

Table showing the SBC rates for services taxable at Special Rates:

Rule	Service	Special rate of ST	Special SBC rate	Rate incl. SBC
7	Air travel agent services	Domestic bookings—0.7% International bookings— 1.4%	0.025% 0.05%	0.725% 1.45%
7A	Insurance Services with premium towards investment not indicated separately	First Year—3.5% Subsequent Years—1.75%	0.125% 0.0625%	3.625% 1.8125%
7B	Money Changing Services:			
	1.Currency exchanged is upto Rs. 1 lakh	Higher of 0.14% of gross currency exchanged or Rs. 35	Higher of 0.005% or Rs. 1.25	Higher of 0.145% or Rs. 36.25
	2.Currency exchanged is between Rs. 1 to 10 lakhs	Rs. 140 plus 0.07% of currency exchanged in excess of Rs. 1 lakh	Rs 5 plus 0.0025%	Rs. 145 plus 0.0725%
	3.Currency exchanged is above Rs. 10 lakhs	Rs.770 plus 0.014% of currency exchanged in excess of Rs. 10 lakhs	Rs. 27.5 plus 0.0005%	Rs.797.5 plus 0.0145%

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INCOME TAX

DEPRECIATION UNDER IT ACT - SOME INTERESTING ISSUES

Contributed by CA Ram Prasad

Section 32 of the Income Tax Act, 1961 provide deduction for depreciation on assets used for the business or profession. Depreciation is calculated with reference to actual cost either by SLM (undertaking engaged in generation or generation and distribution of power) or WDV method. As per Explanation 5 to Section 32 allowance of depreciation is mandatory in computing total income of the assessee.

Appendix I, Income Tax Rules provides for rate of depreciation in respect of block of assets (WDV method). Income Tax Act provides for depreciation on block assets. Section 2 defines block of assets. As per said section block of assets means a group of assets falling within a class of assets comprising-

(a) tangible assets, being buildings, machinery, plant or furniture;

(b) intangible assets, being know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature,

in respect of which the same percentage of depreciation is prescribed ;

Depreciation rates are provided for tangible assets like building, plant and machinery and as well as intangibles like know -how. patents, copyrights etc.

Some interesting issues on Depreciation:-

- Is Mobile Phone a Capital asset and amount incurred on it eligible for deprecation?

  To answer the question first we need to understand how the Mobile Phone is classified. Two classifications are possible. One classification could be as Plant and Machinery and other classification as a computer (based on functions it performs).

  We analyse first view i.e whether Mobile Phone be classified as Plant and Machinery. The word "Plant" defined in section 43(3). According to it plant includes ships, vehicles, boats, scientific apparatus and surgical equipment.

  This is inclusive definition and not exhaustive definition. In the ordinary sense Mobile Phones can't termed as Plant.

  The term "Machinery" is not defined in the Act. So Mobile Phone can't be a machinery.

  Let's analyse second view i.e whether Mobile Phone be classified as Computer. This view is based on argument that Mobile Phone can send and receive emails, display spread sheets, video calls and process data like computer. However, department has not accepted this view.

Depreciation is a measure of wearing out, obsolescence due to technological changes and passage of time. Usage of Mobile varies from person to person based on business or work carried by the person. If a person's work is heavily depend upon usage on Mobile, it depreciates faster than usual. This view was supported in Kusum Jain Vs ITO (ITAT- Chandigarh).

There is still ambiguity whether the amount incurred on purchase of Mobile Phone qualifies as capital expenditure. A clarification in this regard either by way of amendment or circular would do a lot good.

- Whether ATM (Automatic Teller Machine) is a Computer and hence eligible for higher depreciation of 60%?

  As per Information Technology Act, 2000 the term " Computer" includes "Computer Network". The term "Computer Network" means inter-connection of one or more computers through use of satellite, microwave, terrestrial line or other communication media and terminals or a complex consisting of two or more inter-connected computers whether or not the inter-connection is continuously maintained.

  In Dy CIT Vs Global Trust Bank Ltd it was held that ATM is a computerized telecommunication device that allows bank customers to access bank at places other than normal bank without necessity to visit bank in person. The ATM machines are computerized machines which not only allow the customers to withdraw money but they can check the account balance, pay bills, purchase goods and services, and, therefore, unless it is computerized and linked with the main server, it is not possible to operate the ATM.

  This view was also supported in NCR Corp (p) Ltd Vs Asst CIT and Saraswat Infotech Ltd Vs Asst CIT.

  However contrary view was taken by ITAT Mumbai in Venture Infotek Global (p) Ltd. In this case it was held that POS terminals and ATM cannot be called as computers.

- Whether natural pond which is specifically designed for rearing prawns be classified as "Plant"?

  It was held in Asst CIT Vs Victory Aqua Farm Ltd Supreme Court held that since ponds were specially designed for rearing or breading of prawns they have to be treated as tools of the business and the depreciation was admissible on these ponds. So these ponds are plants and they are eligible for depreciation under the Income Tax Act at the rates applicable to Plant and Machinery.

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AUDITING

WHAT MAKES A SUCESSFUL INTERNAL AUDITOR IN 21ST CENTURY

Contributed by CA Sandeep |

Overview

Audits are first and foremost intended to give comfort to shareholders or investors on the integrity and quality of a company's financial statements. - Audit engagement leaders are often required to carry out a number of business duties at any one time, which can impact strongly on an engagement. It is therefore essential that they are surrounded by experts who are at least as specialised as the people they are auditing. The snowballing amount of new regulations, the increasing complexity of accounting standards, stronger competition, the pressure to reduce audit fees, peer review, and the dangerous sophistication of audit fraud have made it exponentially more difficult to successfully perform audit engagements.

The role of the auditors needs to evolve in a number of ways

- Judgment on the value of an asset, transaction or product in an international context (as is the case with transfer pricing) should be presented in a full and transparent manner
- Vague, ambiguous, abstract language should be avoided in disclosure statements and good governance reporting should be encouraged

- Skills should go beyond mechanically applying the new accounting rules, with new assessments, checks and judgments inevitably creating a need for new skills training is not only critical, it is the prime tool that larger firms are using to attract the best talent.

The most effective auditor of the future possesses wide range of non-technical attributes in addition to deep technical expertise.Advancement of the audit function as it accelerates requires portfolio of skills which determine professional success. Technical skills remain absolutely necessary, but they are no longer sufficient on their own.

Based on the research it indicates that many senior audit executives place growing value on attributes such as business and risk acumen, analytical skills and communication savvy. These insights requires further inquiry what method do the best audit communicator commonly use; what exactly does business acumen consists of in practice. On the basis of the recent studies it indicates business acumen qualifies as a crucial audit professional to possess, professional auditors indicates that this general attribute area consists of numerous equally important dimensions including :

- A service orientation
- Ability to recognize and respond to diverse thinking styles, learning styles and cultural qualities
- Desire for knowledge
- Persuasiveness
- Non-technical attributes has been recognized as competitive differentiators – soft skills are the new hard skills.

Future role of Internal Audit's

Internal audit would submit the annual audit plan to the audit committee, once approved; the document would guide the function's activities during the subsequent twelve months. In today's context the audit plan can change in the middle of the year, although these changes rarely qualify as complete overhauls, they still require sudden shifts and high degree of flexibility.

The pace of change also has intensified as the business world has grown more global and more interdependent. Regulatory change, economic headwinds and the inter connectivity of business requires most companies to operate in a more agile manner so they can quickly escape threat and exploit opportunities. This dynamic forces internal audit – which is responsible for providing assurance internal controls, risk management and corporate governance as well as consulting services to the business – to remain vigilantly informed of the latest global developments affecting the company and of how the company intends to respond to external drivers of change.

Audit professionals are expected to operate with the same agility that their companies need to exhibit amongst ongoing external volatility. On a professional level, this agility has two dimensions,

- The intellectual ability required to constantly absorb new information and
- The flexibility that enables them to switch priorities and projects quickly and comfortably in response to rapidly changing business conditions.

Seven effective process for Success

If internal auditors are to help improve the company, their most important capability may getdown to understanding the reality that the world and its companies are changing constantly and quickly as new risks can emerge virtually overnight. Given the pace and magnitude of change, agility and flexibility are far from the only attributes leading audit professional seek. Other highly valued non-technical capabilities include the following:

Integrity

Personal integrity is a must have quality at all levels of the audit function. Auditors have a professional mandate to exhibit integrity as well as trust, independence, objectivity and similar qualities in all of their work. When hiring, developing, and promoting internal audit professionals, Partners and their Managers evaluate the degree to which the internal auditors demonstrate the ability to fulfill the mandate. Integrity requires confidence, as well as balance.

Building relationships

Cultivating trust and respect with other professionals throughout the business is one of the most pervasive objective across all the internal audit function. Developing healthy relationship with all the levels of business is a long process. Countless hours are invested building trust throughout the Organization. Effective relationship building requires several others attributes, including business acumen, knowledge of the Company and its risks, persuasion and empathy. Internal auditors should start thinking from the management perspective for better understanding of the business and related issues.

Fostering this credibility helps

- Reduce resistance during the audit process
- Increase the speed and volume of information that business partners can deliver in response to internal audit requests
- Encourage the business to understand and embrace internal audit's consultative role.

Partnering

Effective partnering requires the ability to spot and share best practices, inspiring partners to adopt best practices, requires change management skills. Change management requires an understanding of the current state of a business process as well as clear guidance to business partners regarding how they can think through the system processes and people changes they need to institute to achieve a best practice state. Partnering helps in understanding who the project leaders are, where are they spending their money on, their top risks and their emerging risks, these are important for the audit plan because this is a proactive risk coverage and the business leaders see tremendous value addition by improving the operational efficiencies, identifying potential risks and ultimately making the Organisation a better one.

At the same time it is also important to stay balanced between providing customer service and meeting all regulatory requirements.

Communications

The nature of organizational communications is changing rapidly, effective communications is a valuable internal audit attribute. Emergence of ever increasing supply of organizational data and information, this transformation places fresh demand on internal audit professionals. People need to maintain an ongoing and two-way dialogue, both formally and informally with the rest of the company. Effective communication skills extend beyond well written reports and verbal communication skills.

Preparation of audit report requires a sharp written skill that conveys a crystal clear message in as few, well chosen words as possible. Some audit reports are too lengthy therefore it is advisable to read the draft audit report aloud to more easily identify to present crucial information more efficiently and in a more compelling fashion.

There also exists an increasingly valuable and often overlooked communication skill, internal auditors should focus on sharpening and this is referred as “visual analytics”. As the use of continuous auditing and monitoring grows steadily, internal audit functions have massive amounts of information to support their conclusions and guidance. The visual presentation of powerful analytics insights remains neglected facet of the internal audit functions communication capabilities.

Teamwork

The highly integrated nature of the business processes internal audit examines requires intensive collaboration among the auditors with different areas of technical expertise. The same partnering attributes that internal auditors apply while serving their customers also help foster better relationships with internal audit colleagues. This is very crucial and that's why audit manager identify teamwork as a top competency. Different areas of expertise typically resides in several different internal auditors who must collaborate to deliver seamless service. The ability to thrive on a team requires emotional intelligence supported by sharp business acumen as a key components of this attribute set.

Diversity

Stronger teamwork can be achieved through diversity. Changing demographics and the accelerating pace of globalization require internal audit functions to influence and consult with a larger variety of ages, cultures, and subcultures within their companies. It is essential to manage diversity in a comprehensive sense – one that also addresses different thinking and learning styles. Diversity of thought, experience and generational differences are also critical. Auditors could work with different generations and must learn how to flex their styles to communicate with each person they interact with to recognize those differences.

Continuous learning

Auditors must have a passion for truly understanding the business and a knack for remaining inquisitive within environments that can change from time to time. The passion for continuous education should sustain throughout one's career. The need for this continuous learning gene makes perfect sense given the accelerating pace of business change. This is accomplished through a combination of formal training and development programs, certification, rotational assignments, self-guided learning and voracious reading. There is so much one need to learn simply from a business standpoint, never mind from a technical standpoint, and never mind from a leadership or interpersonal standpoint.

Internal audit function must possess a combination of broad and deep capabilities they will include technical skills, to update the existing technical skills and acquire new technical skills. If an internal auditor has to succeed in this profession in the future they need to be active, flexible, resilient, ethical, empathetic and diverse learners as well.

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INDUSTRIAL DISPUTE ACT

ID ACT - DO WE NEED PERMISSION FROM GOVERNMENT TO RETRENCH?

Contributed by SV Ramachandra Rao

Most of the Industrial Establishments are not required to take permission from Government to retrench or closing down of the establishment as per the provisions of the Industrial Disputes Act. Yet many of us express our inability in this regard referring the ID Act. Similarly the other block in our minds is about a workman working two hundred forty days. Does the two hundred forty days working give permanent employment status to a workman in an industrial establishment? Certainly not. In this paper, an attempt has been made to place the subject in context alongside supporting judicial pronouncements and to bring out some of the salient features of the Industrial Disputes Act in this regard.

Chapter V-A and V-B of Industrial Disputes Act deals with the procedure to be followed with regard to the workmen who are in continuous service for one year in the industrial establishment for lay-off, retrenchment and closure. If a workman worked for two hundred forty days in the preceding twelve months, it is deemed that he or she is in continuous service for one year. Thus the concept of two hundred forty days working is to determine continuous service of a workman and providing necessary safe guards to the workmen working in certain industrial establishments.

Let us look at the issue of termination of employment of an industrial workman covered under ID Act and applicability of 'Chapter V-A & V-B' of the Act.

Chapter V-A and V-B of ID Act deals with the procedure and compensation payable for lay- off, retrenchment and closure. Interestingly these chapters are applicable only to a certain category of industrial establishments and other categories of industrial establishments are not covered under these chapters. It is applicable only to Factories, Mines and Plantations. That is to say irrespective of the number of employees employed in other industrial establishments, such as hospitals, hotels, retail sector, IT and ITES, shops and establishments etc., they are not covered under the provisions of these chapters even though they are covered under ID Act.

Even within the factories, the industrial establishments which are of a seasonal character or in which work is performed intermittently are not covered under these chapters. In India, most of the agro based industries such as cotton, tobacco, jute, silk and woolen textiles, sugarcane and vegetable oil industries are seasonal industries, as they are based on agricultural raw material. This industry is very significant in our country as it contributes 14% to the total industrial production and provides employment to 35 million people. The Supreme Court in the matter between Haryana Seeds Development Corporation Vs Presiding Officer (1997 LLR 806) held that termination of the workers in a seasonal establishment will not amount to retrenchment.

Thus, the application of Chapter V-A & V-B is restricted to non seasonal factories, mines and plantations employing 100 or more workman on an average in the preceding twelve months. Some State Governments such as Utter Pradesh, Rajasthan, and Andhra Pradesh amended the ID Act such that Chapter V-B is applicable only to industrial establishments that employ 300 or more workmen.

There has been a debate on the computation of number of workmen in an industrial establishment. It has been held by the Hon'ble Bombay High Court in the matter of Dyes and Chemicals Workers Union Vs Bombay Oil Industries Limited 2001 LLR 602 that only persons fulfilling the criteria as per the definition of 'workman' will be included for computing the number of employees under section 25K of the Industrial Disputes Act. That is to say, the persons discharging supervisory and management functions are excluded for the purpose of computation of number of workmen employed. The other question that arose was as to whether workmen engaged through contractors or workmen engaged as badili or casual should be included for the purpose of computation of number of workmen of the industrial establishment or not. The Bombay High Court in the matter of Maharashtra General Kamgar Union Vs Indian Gum Industries 2000 (86) FLR 533 held that neither contract labour nor the mathodhi workers will be taken into account to determine the strength of the workmen for seeking closure of an establishment. Thus for determination of strength of workmen of an industrial establishment, only the workmen who are on the rolls of the establishment should be taken into account.

From the above discussion, it is obvious that the application of the provisions of Chapter V-A & V-B and 'retrenchment' are applicable only to a small section of major industrial establishments and are not applicable to most of the medium and small factories and other industrial establishments. Therefore, it is for us to plan and organize our work and manpower deployment rather than lamenting for changes in the Act and looking to the Government.

The Industrial Disputes Act has excluded the below mentioned categories of 'terminations' from the definition of retrenchment.

1. Termination of the service of the workman as a result of the non-renewal of contract of employment.

2. Termination of the service of a workman on the ground of continued ill health.

While endorsing that the terminations in the above category do not fall under 'retrenchment' under the ID Act, the courts have further extended it to include other categories as well, some of which are as under. The Supreme Court in the matter between Punjab State Electricity Board Vs Darbara Singh (2006 LLR 68 SC) confirmed that non-renewal of contract of service will not fall under the provisions of retrenchment. Where engagement of a workman was for a specific period, as such his termination will be excluded from the provisions of section 2(oo)(bb) of ID Act and no retrenchment compensation will be payable on his termination even when he was worked for 240 days.

It has also been held that the termination of a trainee does not fall under the definition of retrenchment. The Delhi High Court in the matter of R. Kartik Ramachandran Vs Presiding Officer, Labour Court (2006 LLR 358) held that compliance of section 25 F of the I D Act will not be necessary on termination of a trainee.

When it comes to casual workmen, the Supreme Court in the matter between Batala Coop Sugar Mills Ltd Vs Sowaran Singh (2005 LLR 1211 SC) held that a casual workman on daily wages for a specific period and for specific work, will not fall under the ambit of retrenchment.

Project based employment termination at the end of the project also does not fall under the category of retrenchment. The Punjab & Haryana High Court (2010 LLR 482) held that even when the workman working on a project was not given contractual appointment, his termination would not be retrenchment when the contract comes to an end.

From the above reading it is amply clear that it is the requirement of management to perform the function of forecasting, assessing manpower requirements and inducting manpower in different categories to meet specific requirements of the industrial establishment from time to time. The Industrial Disputes Act has given ample scope to the industrial organizations to do this. Hence, HR professionals have a major role to play in categorizing the manpower requirements and planning to take them as per those requirements.

The other exclusion mentioned above is that of termination of service of a workman on the ground of continued ill health. The Delhi High Court (2007 LLR 303) in the matter of J B Kumar Vs Brijesh Sethi held that termination for continued ill-health of an employee is excluded from retrenchment. However, it is held that discharge for continuous ill health must be supported with sufficient evidence. (Somasundaram Vs Labour Court, Coimbatore, 2010 LLR 919 Mad HC)

It is commonly stated by most of the Managements as well as HR Professionals that termination of an employee is not possible once he has completed two hundred forty days of work in an organization in view of the provisions of the Industrial Disputes Act. On the other hand, trade union representatives time and again demand and insist that the workman should be taken on the permanent rolls of the company as he or she has worked for more than two hundred forty days. There are also a number of occasions where managements have voluntarily decided to take these employees on its rolls.

It is not true to state that when a workman works for two hundred forty days he automatically gains the status of a permanent workman. The Industrial Disputes Act laid down certain procedures that are to be followed for termination of a workman who has worked in an industrial establishment for two hundred forty days or more. However, these procedures have no universal application to all the industrial establishments covered under the Act.

The act never conferred the status of permanency simply because a workman worked for 240 days or more in the preceding twelve months. The Supreme Court in the case between Hindustan Aeronautics Ltd Vs Dan Bahadur Singh (AIR 2006 SC 2733) held that the completion of 240 days' work does not confer right for regularization and again the same was reiterated in the matter of Gangadhar Pillai Vs Siemens Ltd (2007 1 SCC 533).

Thus it is very clear that all terminations do not fall under the category of retrenchment and all industrial establishments are not covered under Chapters V-A & V-B. Similarly, working in an establishment for two hundred forty days does not confer permanent status to a workman. Hence it is our duty to understand the applicability of various provisions of the Act and take decisions accordingly.

This article is contributed by SV Ramachandra Rao. The author can be reached at svrr@resourceinputs.com

FEMA

RECENT CHANGES IN FDI REGULATIONS

Contributed by CA Murali Krishna G |

In continuation of its thrust on liberalising the economy, bringing more funds into India and creating employment, the Central Government has announced key amendments in the FDI policy. The amendments have been announced by Press Release dated 12th November, 2015 followed by Press Note No. 12/2015, dated 24th November, 2015

To further boost this entire investment environment and to bring in foreign investments in the country, the Government has brought in FDI related Reforms and liberalisation touching upon 15 major Sectors of the Economy. The salient measures are:

I. Limited Liability Partnerships, downstream investment and approval conditions.
ii. Investment by companies owned and controlled by Non-Resident Indians (NRIs)
iii. Establishment and transfer of ownership and control of Indian companies
iv. Agriculture and Animal Husbandry
v. Plantation
vi. Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities
vii. Defence
viii. Broadcasting Sector
ix. Civil Aviation
x. Increase of sectoral cap
xi. Construction development sector
xii. Cash and Carry Wholesale Trading / Wholesale Trading (including sourcing from MSEs)
xiii. Single Brand Retail Trading and Duty free shops
xiv. Banking-Private Sector; and
xv. Manufacturing Sector

The Crux of these reforms is to further ease, rationalise and simplify the process of foreign investments in the country and to put more and more FDI proposals on automatic route instead of Government route where time and energy of the investors is wasted. It is one more proof of minimum government and maximum governance. Further refining of foreign investments in key Sectors like Construction where 50 million houses for poor are to be built. Opening up the manufacturing Sector for wholesale, retail and E-Commerce so that the Industries are motivated to Make In India and sell it to the customers here instead of importing from other countries. The proposed reforms also enhance the limit of Foreign Investment Promotion Board (FIPB) from current Rupees Three thousand crores to Five thousand crores. The proposal also contains many other long pending corrections including those being felt by the limited liability partnerships as well as NRI owned Companies who seem motivated to invest in India. Few other proposals seek to enhance the sectoral Caps so that foreign investors do not have to face fragmented ownership issues and get motivated to deploy their resources and technology with full force.

With this round of Reforms, the Government has demonstrated that India is unstoppable on the path of Economic Development. Prime Minister has reiterated that Economic Wellbeing of the people of India is the main Task before him. It is also clear that India is a Country which is more than ready to integrate with the Global Economy because it feels that the Fruits of Development will reach to the common man only if there is Development. Above all every citizen in all nooks and corners must have a stake.

Details of these changes are given in the following paragraphs.

1. Radical Changes in FDI Regime in Construction Development Sector

Following changes have been made in the FDI policy on Construction Development sector:

I. Conditions of area restriction of floor area of 20,000 sq. mtrs in construction development projects and minimum capitalization of US $ 5 million to be brought in within the period of six months of the commencement of business, have been removed.

ii. Each phase of the construction development project would be considered as a separate project for the purposes of FDI policy.

iii. A foreign investor will be permitted to exit and repatriate foreign investment before the completion of project under automatic route, provided that a lock-in-period of three years, calculated with reference to each tranche of foreign investment has been completed. Further, transfer of stake from one non-resident to another non-resident, without repatriation of investment will neither be subject to any lock-in period nor to any government approval. Nonetheless, exit is permitted at any time if project or trunk infrastructure is completed before the lock-in period.

iv. FDI is not permitted in an entity which is engaged or proposes to engage in real estate business, construction of farm houses and trading in transferable development rights (TDRs). Real Estate Business will mean as 'dealing in land and immovable property with a view to earning profit therefrom and does not include development of townships, construction of residential/ commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships. Further, earning of rent/ income on lease of the property, not amounting to transfer, will not amount to real estate business.'

v. Condition of lock-in period will not apply to Hotels &Tourist Resorts, Hospitals, Special Economic Zones (SEZs), Educational Institutions, Old Age Homes and investment by NRIs.

vi. 100% FDI under automatic route is permitted in completed projects for operation and management of townships, malls/ shopping complexes and business centres. Consequent to foreign investment, transfer of ownership and/or control of the investee company from residents to non-residents is also permitted. However, there would be a lock-in-period of three years, calculated with reference to each tranche of FDI, and transfer of immovable property or part thereof is not permitted during this period.

vii. "Transfer", in relation to FDI policy on the sector, includes,-

(a) the sale, exchange or relinquishment of the asset ; or

(b) the extinguishment of any rights therein ; or

(c) the compulsory acquisition thereof under any law ; or

(d) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882) ; or

(e) any transaction, by acquiring shares in a company or by way of any agreement or any arrangement or in any other manner whatsoever, which has the effect of transferring, or enabling the enjoyment of, any immovable property.

2. Foreign Investment in Defence Sector up to 49% Under Automatic Route

As per extant FDI policy in the Defence Sector, foreign investment up to 49% is permitted under Government approval route. Foreign investment above 49% is also permitted, subject to approval of Cabinet Committee on Security (CCS) on case to case basis, wherever the investment is likely to result in access to modern and 'state-of-art' technology in the country. Portfolio investment and investment by FVCIs is restricted to 24% only. In this regard, the following changes have inter-alia been brought in the FDI policy on this sector:

I. Foreign investment up to 49% will be under automatic route.
ii. Portfolio investment and investment by FVCIs will be allowed up to permitted automatic route level of 49%.
iii. Proposals for foreign investment in excess of 49% will be considered by Foreign Investment Promotion Board (FIPB).
iv. In case of infusion of fresh foreign investment within the permitted automatic route level, resulting in change in the ownership pattern or transfer of stake by existing investor to new foreign investor, Government approval will be required.

3. New Sectoral Caps & Entry Routes in Broadcasting Sector

FDI policy on Broadcasting sector has also been amended. New sectoral caps and entry routes are as under:

Sector/Activity	New Cap and Route
6.2.7.1.1 (1) Teleports(setting up of up-linking HUBs/Teleports); (2) Direct to Home (DTH); (3) Cable Networks (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability); (4) Mobile TV; (5) Headend-in-the Sky Broadcasting Service(HITS)	100% (Up to 49% -Automatic route Beyond 49% - under Government route)
6.2.7.1.2 Cable Networks (Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs))	49% Government route

6.2.7.2 Broadcasting Content Services
6.2.7.2.1 Terrestrial Broadcasting FM (FM Radio),

6.2.7.2.2 Up-linking of 'News & Current Affairs' TV Channels
6.2.7.2.3 Up-linking of Non-'News & Current Affairs' TV Channels 100%

Down-linking of TV Channels Automatic route

4. Full Fungibility of Foreign Investment Permitted in Banking- Private Sector

Government has decided to introduce full fungibility of foreign investment in Banking-Private sector. Accordingly, FIIs/FPIs/QFIs, following due procedure, can now invest up to sectoral limit of 74%, provided that there is no change of control and management of the investee company.

5. 100% Foreign Investment Permitted in Coffee/Rubber/Cardamom/Palm Oil & Olive Oil Plantations

As per the present FDI policy on the Plantation sector, only tea plantation is open to foreign investment. In line with this sector, the government has decided to open certain other plantation activities namely; coffee, rubber, cardamom , palm oil tree and olive oil tree plantations also for 100% foreign investment. Foreign investment in the plantation sector would henceforth be under automatic route.

6. Investment by Companies/Trusts/Partnerships Owned & Controlled by NRIs on Non-Repatriation Basis to be Treated as Domestic Investment

Non-Resident Indians (NRIs) have special dispensation for investment in construction development and civil aviation sector. Further, investment made by Non-Resident Indians under schedule 4 of FEMA (Transfer or issue of Security by Persons Resident Outside India) Regulations is deemed to be domestic investment at par with the investment made by residents. In order to attract larger investments, which are possible through incorporated entities only, the special dispensation of NRIs has now been also extended to companies, trusts and partnership firms, which are incorporated outside India and are owned and controlled by NRIs. Henceforth, such entities owned and controlled by NRIs will be treated at par with NRIs for investment in India.

7. Permitting Manufacturers to Undertake Wholesale and/or Retail, Including Through E-Commerce Without Government Approval

It has been decided that a manufacturer will be permitted to sell its product through wholesale and/or retail, including through e-commerce without Government approval.

8. Review of FDI Policy Conditionalities for Single Brand Retail Trading and Permitting 100% FDI in Duty Free Shops

(i) Extant FDI policy on SBRT mandates that sourcing of 30% of the value of goods purchased would be reckoned from the date of receipt of FDI. It has now been decided that sourcing requirement has to be reckoned from the opening of first store. Further, it is seen that in certain high technology segments, it is not possible for retail entity to comply with the sourcing norms. To provide opportunity to such single brand entities, it has been decided that in case of 'state-of-art' and 'cutting-edge technology' sourcing norms can be relaxed subject to Government approval.

(ii) FDI policy on the SBRT provides that, retail trading, in any form, by means of e-commerce, would not be permissible. It has been decided that an entity which has been granted permission to undertake SBRT will be permitted to undertake e-commerce activities.

(iii) It has been clarified that Indian brands are equally eligible for undertaking SBRT. It has been decided that certain conditions of the FDI policy on the sector namely; products to be sold under the same brand internationally and investment by non-resident entity/ entities as the brand owner or under legally tenable agreement with the brand owner, will not be made applicable in case of FDI in Indian brands.

(iv) An Indian manufacturer is permitted to sell its own branded products in any manner i.e. wholesale, retail, including through e-commerce platforms. For the purposes of FDI Policy Indian manufacturer would be the investee company, which is the owner of the Indian brand and which manufactures in India, in terms of value, at least 70% of its products in house, and sources, at most 30% from Indian manufacturers. Further Indian brands should be owned and controlled by resident Indian citizens and/or companies, which are owned and controlled by resident Indian citizens.

Opening of Duty Free Shops for 100% FDI under Automatic Route

100% FDI is now permitted under automatic route in Duty Free Shops located and operated in the Customs bonded areas.

9. Permitting Same Entity to Carry Out Both Wholesale and Single Brand Retail Trading

As per the FDI policy, in wholesale cash & carry activities, 100% foreign investment is permitted under the automatic route. FDI policy on this sector further provides that a wholesale/cash & carry trader cannot open retail shops to sell to the consumer directly. It has now been decided that a single entity will be permitted to undertake both the activities of single brand retail trading (SBRT) and wholesale with the condition that conditions of FDI policy on wholesale/ cash & carry and SBRT have to be complied by both the business arms separately.

10. 100% FDI in LLPs Permitted Under Automatic Route

FDI policy on Limited Liability Partnerships (LLP) has been amended to provide that investments in LLPs will not require Government approval. 100% FDI is now permitted under the automatic route in LLPs operating in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions. Further, the terms 'ownership and 'control' with reference to LLPs have also been defined.

Downstream Investment

It has been decided that in line with companies, an LLP having foreign investment will be permitted to make downstream investment in another company or LLP in sectors in which 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions. Further, for the purposes of FDI policy, the term 'internal accruals' has also been defined.

11. Opening up of FDI in Regional Air Transport Service

As per the present FDI policy, foreign investment up to 49% is allowed in Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline (SOP). It has now been decided that Regional Air Transport Service (RSOP) is will also be eligible for foreign investment up to 49% under automatic route.

12. Enhancing Foreign Equity Caps in Non-Scheduled Air Transport, Ground Handling Services, Satellites- establishment and operation and Credit Information Companies

Foreign Equity caps of certain sectors viz. Non-Scheduled Air Transport Service, Ground Handling Services, Satellites- establishment and operation and Credit Information Companies have now been increased from 74% to 100%. Further, sectors other than Satellites- establishment and operation have been placed under the automatic route.

13. Companies without Operations Not to Require Government Approval for FDI for Undertaking Automatic Route Sector Activities

Approval requirements in respect of companies under operation have also been relaxed. It has now been decided that for infusion of foreign investment into an Indian company which does not have any operations and also does not have any downstream investments, Government approval would not be required, for undertaking activities which are under automatic route and without FDI-linked performance conditions, regardless of the amount or extent of foreign investment.

14. Establishment and Transfer of Ownership and Control of Indian Companies

As per the FDI policy establishment and ownership or control of the Indian company in sectors/activities with caps requires Government approval. This provision has now been amended to provide that approval of the Government will be required if the company concerned is operating in sectors/ activities which are under Government approval route rather than capped sectors. Further no approval of the Government is required for investment in automatic route sectors by way of swap of shares.

15. Simplification of Conditionalities

Certain conditions of FDI policy on Agriculture and Animal Husbandry, and Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities have been simplified.

16. Raising the Threshold Limit for Approval by Foreign Investment Promotion Board

As per the FDI policy Foreign Investment Promotion Board (FIPB) considers proposals having total foreign equity inflow up to Rs. 3000 crore and proposals above Rs. 3000 crore are placed for consideration of Cabinet Committee on Economic Affairs (CCEA). In order to achieve faster approvals on most of the proposals, it has been decided that the threshold limit for FIPB approval may be increased to 5000 crore.
Above amendments to the FDI Policy are meant to liberalise and simplify the FDI policy so as to provide ease of doing business in the country leading to larger FDI inflows contributing to growth of investment, incomes and employment.

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TECHNICAL SESSIONS:

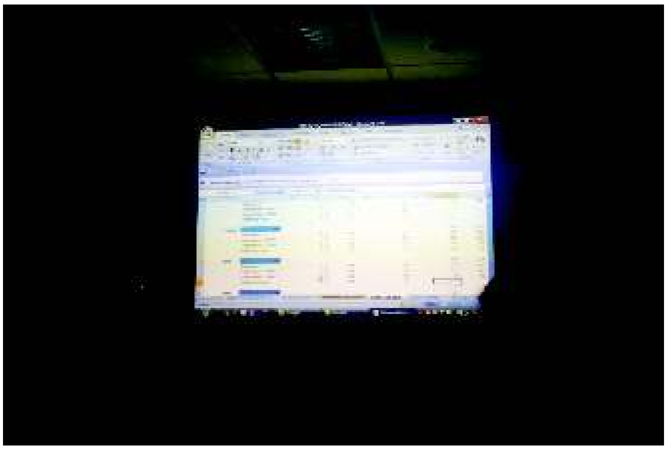
S.No.	Event	Date	Speaker	Venue
1	Valuation under Central Excise	11/12/2015	CA Manindar	SBS - Hyd
2	Overview on Working Capital and its management	18/12/2015	CA Rajesh D	SBS - Hyd
3	Changing professional opportunities – What MNCs are expecting	08/01/2016	CA Murali Krishna G	SBS - Hyd

Note:

The timings for the above events shall be from 17:30 hrs to 19:30 hrs. We request the recipients of "SBS Wiki" who are interested to attend the above events to send confirmation of your participation 2 days in advance to make appropriate arrangements and sharing of the relevant material, if any.

12th Annual Continuing Education Program- Valuation under Service Tax - CA Manindar

Usage of Excel in Forensic Accouting (Conducted by CIT of ICAI,Pune) - CA Saran Kumar



Preparation Of Activity Based Budgeting - CMA Vajralingam

Usage of Excel in Forensic Accouting (Conducted by CIT of ICAI, Ranchi) - CA Saran Kumar

Hyderabad: 6-3-900/6-9, #103 & 104, Veeru Castle, Durganagar Colony, Panjagutta, Hyderabad, Telangana
Kurnool: No. 302, 3rd Floor, V V Complex, 40/838, R.S. Road, Near SBI Main Branch, Kurnool, Andhra Pradesh
Nellore: 16-6-259, 1st Floor, Near Santi Sweets Opp: SBI ATM, Vijayamahal Centre, SPSR Nellore, Andhra Pradesh
Tada: 8-3-425/2, Flat No. 202, 2nd Floor, Bigsun Avenue, Near SRICITY, TADA, SPSR Nellore Dist, Andhra Pradesh
Visakhapatnam: # 39-20-40/6, Flat No.7, Sai Yasoda Apartments, Madhavadhara,Visakhapatnam (Urban),Vizag, Andhra Pradesh
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