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CONTENTS

INTERNATIONAL TAXATION

AN OVERVIEW OF INDIA - MAURITIUS – DTAA - PROTOCOL

Contributed by CA Suresh Babu S

Background:

Ever since the Entry into force of Indo-Mauritius treaty in 1983, there has been a lot of hue and cry on the Capital gains exemption and the treaty shopping being planned around it. The government has been proposing several initiatives including Circular No. 789, dated 13-4-2000 and Circular No. 1/2003, dated 10-2-2003 (specifying the mode of proof of residence of an entity in Mauritius -TRC). However, the government has finally come up with a Press Note referring to the Protocol amending the prevailing residence based tax regime under the India-Mauritius DTAA and gives India a source based right to tax capital gains which arise from alienation of shares of an Indian resident company acquired by a Mauritian tax resident.

Protocol:

The Central Board of Direct Taxes (CBDT), the apex administrative body of direct taxes in India, has issued a press release dated 10 May 2016, on signing of the protocol amending the tax treaty between India and Mauritius. In the past there had been media reports, of talk between the two governments to revise the tax treaty. The protocol was signed by both countries on 10 May 2016 at Port Louis, Mauritius. The key features of the protocol are as under-

Capital gains taxation:

With effect from Financial Year (FY) 2017-18 (tax year 1 April 2017 to 31 March 2018), India shall have taxation rights on capital gains arising from alienation of shares of an Indian resident company, acquired on or after 1 April 2017.For shares acquired prior to 1 April 2017, the exemption from tax in India as currently available would continue to apply.

Transition Period:

For a transition period of 1 April 2017 to 31 March 2019, the tax rate will be limited to 50% of the domestic tax rate of India, subject to the fulfilment of the Limitation of Benefits (LOB) article as introduced by the Protocol.Taxation in India at full domestic tax rate will take place from FY 2019-20 onwards.

Limitation of benefits:

A Mauritius resident (including a shell/ conduit company) will not be eligible for the benefit of 50% reduction in tax rate during the transitory period if it fails to fulfil the main purpose test and the bonafide business test.

A resident is deemed to be a shell/ conduit company, if its total expenditure on operations in Mauritius is less than INR 2.7 million (Mauritian Rupees 1.5 million) in the immediately preceding 12 months

Interest taxation :

The Protocol revises the tax rate on interest arising in India to Mauritius resident banks to state that such streams of income shall be subject to withholding tax in India at the rate of 7.5% in respect of debt claims and loans made after March 31, 2017. At present such streams of income are exempt from tax in India under the India-Mauritius DTAA

Exchange of Information:

The Protocol also provides for updation of Exchange of Information Article as per international standard, provision for assistance in collection of taxes, source-based taxation of other income, amongst other changes.

Impact of this protocol on the India-Singapore DTAA:

Article 6 of the protocol to the India-Singapore DTAA states that the benefits in respect of capital gains arising to Singapore residents from sale of shares of an Indian Company shall only remain in force so long as the analogous provisions under the India-Mauritius DTAA continue to provide the benefit.

Now that these provisions under the India-Mauritius DTAA have been ammended, a concern that arises is that while the Protocol in the Mauritius DTAA contains a grandfathering provision which protects investments made before April 01, 2017, it may not be possible to extend such protection to investments made under the India-Singapore DTAA.

Consequently, alienation of shares of an Indian Company (that were acquired before April 01, 2017) by a Singapore Resident after April 01, 2017, may not necessarily be able to obtain the benefits of the existing provision on capital gains as the beneficial provisions under the India-Mauritius DTAA would have terminated on such date.

Fees for Technical Services:

The Protocol has introduced a provision relating to taxation of fees for technical services, largely on similar lines as in various other treaties entered into by India. Fees for technical services arising in India and paid to a resident of Mauritius may be taxed in India, but the tax cannot exceed 10% of the gross amount of fees for technical services if the beneficial owner of the fees for technical services is a resident of Mauritius

Other Income:

As per the treaty, income not expressly dealt with by any other provision of the treaty is taxable in the country of residence of the recipient of income. The Protocol has amended the treaty to provide that such income may also be taxed in the country in which the income arises. In other words, any income arising in India to a Mauritius resident would be subject to tax in India, unless it is expressly dealt with by a specific provision of the treaty.

PE:

The Protocol has widened the scope of the term permanent establishment (PE) to include the activity of furnishing of services, including consultancy services. Such activities would constitute a permanent establishment if the activities continue for a project (or two or more related projects) for a period aggregating to more than 90 days within any 12-month period.

Exchange of Information:

The Protocol modifies the existing provisions in the treaty relating to Exchange of Information and assistance in tax collection.

Concluding Remarks:
Future Impact on Investments:

As mentioned above, while investments in shares of an Indian Company made before April 01, 2017 shall receive the benefit of the erstwhile provisions of the India-Mauritius DTAA, such benefits shall be curtailed for investments made during the Transition Period. Such investments shall be subject to tax in India at the rate of 50% of the tax rate prevailing in India provided the investments are realized before March 31, 2019. All investments made after April 01, 2017 which are also realized after March 31, 2019 shall be subject to full taxation as per the domestic tax rate in India.

However, investments that are made through hybrid instruments such as compulsory convertible debentures may still be eligible to claim residence-based taxation as the Press Release only refers to allocation of taxation rights in respect of shares and the Protocol restricts the shift to source based taxation only to such transactions.

Thus though this should be looked at as a positive initiative by the government there might be a lot of dent to the future investments to India.

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AUDIT

CORPORATE GOVERNANCE AND INTERNAL AUDIT

Contributed by CA Sandeep Das

What is corporate governance?

The IIA definition of corporate governance, included within the International Standards is Governance is the combination of processes and structures implemented by the board in order to inform, direct, manage and monitor the activities of the organisation towards the achievement of its objectives.

Although there is no universally accepted definition, the first version of the UK Corporate Governance Code was produced in 1992 by the Cadbury Committee. Sir Adrian Cadbury defines *corporate governance as "corporate governance is the system by which companies are directed and controlled"*.The proper corporate governance structure specifies the distribution of rights and responsibilities among the different parties in the organization; this includes the board, managers, shareholders and other stakeholders. It will also lay down the rules and procedures for decision-making within the organization.

Boards of directors are responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place. The responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The board's actions are subject to laws, regulations and the shareholders in general meeting.

Corporate governance is therefore about what the board of a company does and how it sets the values of the company, hence the process of managing corporate governance is usually handled by a board of directors.

Need for Corporate governance for the following reasons:

- Changing Ownership structures
- Wide spread of shareholders
- Higher expectations of society from the corporates
- Corporates scams or scandals
- Hostile take overs
- Significant increase in the compensation of Top management
- Globalisation

Corporate Governance from India's perspective

Objectives of Corporate governance
:
The Indian Companies Act of 2013 introduced some progressive and transparent processes which benefit stakeholders, directors as well as the management of companies. Investment advisory services and proxy firms provide concise information to the shareholders about these newly introduced processes and regulations, which aim to improve the corporate governance in India. Corporate advisory services are offered by advisory firms to efficiently manage the activities of companies to ensure stability and growth of the business, maintain the reputation and reliability for customers and clients.

Corporate governance was guided by Clause 49 of the Listing Agreement before introduction of the Companies Act of 2013. As per the revised Clause 49, SEBI has also approved certain amendments in the Listing Agreement so as to improve the transparency in transactions of listed companies and giving a bigger say to minority stakeholders in influencing the decisions of management. These amendments have become effective from 1st October 2014.

Importance of Corporate governance in India

The Indian Companies Act of 2013 introduced innovative measures to appropriately balance legislative and regulatory reforms for the growth of the enterprise and to increase foreign investment, keeping in mind international practices. A company that has good corporate governance has a much higher level of confidence amongst the shareholders associated with that company. Active and independent directors contribute towards a positive outlook of the company in the financial market, positively influencing share prices. Corporate Governance is one of the important criteria for foreign institutional investors to decide on which company to invest in.

Principles of Corporate Governance:

Transparency: It is the foundation of corporate governance; which helps to develop a high level of public confidence in the corporate sector. In the context of corporate governance; it implies an accurate, adequate and timely disclosure of relevant information about the operating results etc. of the corporate enterprise to the stakeholders.

Accountability: It implies the responsibility of the Chairman, the Board of Directors and the chief executive for the use of company's resources (over which they have authority) in the best interest of company and its stakeholders.

Independence: Good corporate governance requires independence on the part of the top management of the corporation so that it can take all corporate decisions based on business prudence.

Stakeholder expectations of internal audit

Recent events have highlighted the critical role of directors in promoting good corporate governance. In particular, boards are charged with ultimate responsibility for the effectiveness of their organisations' internal control systems. These events have highlighted the key role that internal audit can play in supporting the board in ensuring adequate oversight of internal controls and the effectiveness of corporate governance.

How an organisation designs and practices the principles of effective governance vary depending on the size, complexity, and life cycle maturity of the organisation, its stakeholder structure or legal and cultural requirements.

The head of internal audit should work with the board and the executive management team, as appropriate; to determine how governance should be defined for internal audit purposes and the extent and expectations of internal audit assurance and consultancy needed to satisfy the internal audit charter.

Role of Audit Committee

The Internal audit is an independent and objective source of advice and assurance, separate from the management of a company, when outlining the role of the audit committee in respect to internal audit, the key is to establish the principle that the committee should monitor the independence and objectivity of the internal audit function in order to enable it to provide the support needed by the board.

The main role and responsibilities of the audit committee should be set out in written terms of reference and should include:

- to monitor and review the effectiveness of the company's internal audit function; to review and monitor the internal audit function's independence and objectivity and the effectiveness of the internal audit process, taking into consideration relevant professional standards;
- to review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process, taking into consideration relevant professional and regulatory requirements.
- Overseeing of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.
- To investigate any activity within its terms of reference
- To seek information from any employee
- To obtain outside legal or other professional advice

Role of Internal Audit

The definition of internal auditing and International Standards identifies that internal audit has a role to play in evaluating and helping to improve governance processes. The internal auditor should, atleast annually, carry out an assessment of the overall effectiveness of the governance, risk and control frameworks of the organisation.

The International Standards make specific reference to assessing and making recommendations for:

- promoting appropriate ethics and values within the organisation
- ensuring effective performance management and accountability
- communicating risk and control information
- coordinating the activities of the board, external and internal auditors and management, and communicating what they do

The internal audit charter should make reference to the scope of the work of internal audit and this should include corporate governance activities and processes.

Responsibility

The ultimate responsibility for corporate governance in most organizations lies directly with the board of directors. Internal auditors are charged with ensuring that corporate processes and associated controls are functioning as intended. They also can determine if a process of the corporation could be improved and could save the corporation money or could become more efficient. Ensuring that resources of the corporation are used effectively is a major role of internal auditors.

Fraud

One of the most important tasks of the internal auditor is the detection of fraud. Left alone, fraud can cause a corporation millions of dollars in lost revenue, and also can affect a corporation's public image. The boards of directors of many corporations depend solely on the internal audit team to reveal instances of fraud and abuse.

Type of Internal Audits

Different types of internal audits can be performed throughout the year. They may focus on financial controls, operating controls or and information technology controls. A board of directors may decide to test in all of these areas, or it may focus on only one.

Time Frame

The internal audit function in most corporations is a year-round process conducted by employees. Typically, an audit manager drafts an annual audit plan, and the board of directors approves the plan. Most corporate audits are focused and scheduled according the level of risk. Higher-level risk areas often receive the most attention from the internal audit function in order to ensure that corporate governance objectives are being met.

The internal audit activity must assess and make appropriate recommendations for improving the governance process in its accomplishment of the following objectives:

- Promoting appropriate ethics and values within the organisation.
- Ensuring effective organizational performance management and accountability.
- Communicating risk and control information to appropriate areas of the organisation
- Coordinating the activities ofand communicating the information among the board, external and internal auditors and management.

Auditing governance – recommended approach

I) Develop framework for oversight and accountability by defining roles and responsibilities of the of the Board and executive officers.

II) Value addition by organizing the Board, board shall consists of Directors who will contribute to its effectiveness with attention to competencies, independent, objective and sound judgment.

III) Mechanism shall be developed by the Board to assess its members to ensure that directors, individually and collectively have the necessary competencies and other attributes.

IV) Efforts shall be made to improve board's performance continuously for which board shall have the processes to improve its performance and that of its committees.

V) The board shall actively promote ethical and responsible behavior and decision making which includes laws, regulation and ethical standards.

VI) A sound mechanism shall be developed by the Company to determine any potential conflict of interest.

VII) The board shall supervise the strategy development process, resulting strategy and plan for its implementation.

VIII) Evaluate the Organization performance by the Board in the best interest of the Company and its shareholders.

IX) The board should approve the significant transactions ensuring that they are supportive of the organisations strategic direction.

X) The board shall oversee and evaluate the activities of the Internal and External auditors.

The key factor for internal audit is to determine how it has factored in the governance in its audit plans, the priority it assigns to the various governance elements, and the appropriate framework, methodology and measures to auditing governance elements. In a well regulated Organization the more focused approach is expected on governance.

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DIRECT TAXES

INCOME DECLARATION SCHEME (2016)

Contributed by CA Ramprasad

Chapter IX of the Finance Bill, 2016 introduced the Income Declaration Scheme, 2016("scheme"). It shall come into force from 1st day June, 2016.

Salient Features of the Scheme:-

- All persons who have not declared income correctly up to Financial Year 2015-16can come forward and declare such undisclosed income(s);
- Where income chargeable to tax is in the form of investment in any asset, the cost of acquisition of such asset shall be deemed to be Fair Market Value (FMV) taken into account for the purpose of this scheme[1]
- No deduction in respect of expenditure or allowance shall be allowed against the income in respect of which declaration under the scheme is made;
- The Scheme will remain in force from 1st June, 2016 to 30th September, 2016 for filing of declarations. The payment of taxes, surcharge and penalty must be made by 30th November, 2016;
- Declaration can be filed online or with the Jurisdictional Principal Commissioner of the Income-tax;
- Assets specified in the declaration shall be exempt from Wealth Tax;
- No scrutiny and enquiry under the Income Tax Act or Wealth Tax in respect of such declarations;
- Immunity from prosecution under the Income Tax Act ,Wealth Tax Act and Benami Transactions (Prohibition) Act,1988 subject to transfer of asset to actual owner;
- Only one declaration can be made under the scheme by a person. The application may be made of his own or as a representative assessee in respect of income of any other person;
- Income declared under the scheme is subject to tax @ 45% (30% tax+7.5% surcharge(Krishi Kalyan Cess)+7.5% Penalty);
- Amount of tax paid (i.e. 45%) shall not be refundable;

In the following cases the benefit of this scheme is not available:-

- Where notice have been issued under section 142(1)/143(2)/148/153A/153C;
- Where a search or survey has been conducted and the time for issuance of notice under the relevant provisions of the Act has not expired;
- Where the information is received under an agreement with the foreign countries regarding such income;
- Cases covered under the Black Money Act, 2015;
- Persons notified under Special Court Act, 1992;
- Cases covered under Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967,the Prevention of Corruption Act, 1988.

[1]*The Finance Bill 2016 originally introduced provides that the FMV on the date of commencement of the scheme shall be deemed to be undisclosed income. However, the bill passed by the LokSabha provides the cost of acquisition as FMV for the purpose of the scheme.*

Other Points:

Where a declaration under the scheme has been made by misrepresentation or suppression of facts, such declaration shall be treated as void.

In case where any declaration has been made but no tax and penalty referred to the scheme has been paid within in the time specified (on or before 30th November, 2016) the undisclosed income shall be chargeable to tax under the Income-tax Act in the previous year in which such declaration is made.

Consequences of non-declaration:-

Where income has accrued or arisen or any asset has been acquired out of such income prior to commencement of the scheme and no declaration in respect of such income is made under the scheme such income shall be deemed to have accrued or arisen or received or the value of asset acquired out of such income shall be deemed to have made in the year in which notice under section 142/143(2)/148/153A/153C of the Act is issued by the Assessing Officer and the provisions of the Act shall apply.

Undisclosed Income:-

Income which is chargeable to tax under the Income Tax Act for the Financial Year (s)up to 2015-16 but not charged due to the fact that-

- No return has furnished under section 139(1);
- Income has not been disclosed in the return of income;
- Such income escaped assessment by reason of omission or failure on the part of the person to furnish the return or disclose fully and truly all the material facts necessary for the assessment or otherwise;

Where undisclosed income is represented by cash (including bank deposits), bullion, investment in shares or any other assets but –

- In respect of which no return under Wealth Tax Act ,1957 has furnished;
- Which have not been shown in the return of net wealth furnished by him for relevant assessment year or years;
- Value of the above has been undervalued in the return furnished for relevant assessment year or years.

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SERVICE TAX

FREQUENTLY ASKED QUESTIONS - SERVICE TAX ON OCEAN FREIGHT

Contributed by CA Harsha & CA Manindar

Service tax on ocean freight is made effective from 01.06.2016. Since, this being a new levy, we have come up with a list of frequently asked questions to gear up to this levy and pay the appropriate taxes without attracting interest and penalties at a later point of time. Hence, we request you to go through the below FAQ's and comply with this new levy.

FAQ 1:In the opening paragraph, it was stated that the service tax on ocean freight was a new levy. What is the taxability of such transaction till 31.05.2016?

Response:

The services of transportation of goods by a vessel from a place outside India to the customs station of clearance in India is covered vide Entry (p)(ii) of Section 66D of the Finance Act, 1994. Since the said services are covered by the negative list, there is no service tax on such activity.

FAQ 2: When the service was covered under the negative list, why is there a levy of service tax on such transaction from 01.06.2016?

Response:

The entry vide which the services were covered under the negative list were omitted vide Section 149 of Finance Act, 2016. Hence, the service tax on such transactions shall be attracted with effective from 01.06.2016.

FAQ 3: We have heard that the entry (p) (ii) in the Section 66D (negative list) is deleted and consequently an exemption for the same services were provided by amending Notification No 25/2012-ST dated 20.06.2012. So, in light of such exemption entry, is there any liability on such ocean freight?

Response:

The entry (p)(ii) of Section 66D of the Finance Act, 1994 deals with transportation of goods by vessel and aircraft from a place outside India to customs station of clearance in India. After the removal of the said entry from the negative list, an exemption is granted *only to transportation of goods from a place outside India to customs station of clearance in India carried by an aircraft. Hence, only services provided by aircraft are exempted post 01.06.2016 vide Entry 53 of Notification No 25/2012-ST dated 20.06.2012.* Hence, the services provided by vessel shall be subjected to service tax since the exemption is only for the transportation done by aircraft.

FAQ 4:If service tax is levied on the ocean freight, the service provider charges the same and collects from the service receiver. Why should the service receiver should know about this levy?
Response:

Normally, the service provider is the person responsible for payment of tax as per Section 68(1) of the Finance Act, 1994. However, if the services are consumed in taxable territory and the location of service provider is non-taxable territory and location of service receiver is taxable territory as per the Place of

Provision of Service Rules, 2012, then the service receiver shall be the person responsible to pay service tax on such transactions as per Section 68(2) read with Rule 2(1)(d) of Service Tax Rules, 1994 read with Entry 10 of Notification No 30/2012-ST dated 20.06.2012.

Hence, service receiver has to pay service tax when the services are consumed in the taxable territory, location of service provider is non-taxable territory and location of service receiver is taxable territory.

FAQ 5: We are manufacturer engaged in manufacture of excisable goods. For such manufacture, we procure raw materials, inputs and other items from a seller located outside India, let us say China. We book the services of vessel for transportation of such goods from China to India and the freight has to be paid in US$ to the shipping company, who is also located in China. In this case, whether we are responsible to pay service tax on such freight paid to shipping company?

Response:

As stated in FAQ 4, the service receiver (the manufacturer) shall pay the service tax only if the consumption of service is taxable territory, the location of service provider is non-taxable territory and the location of service receiver is taxable territory.

Since, the goods are destined from China to India, the place of consumption of service as per Rule 10 of Place of Provision of Service Rules, 2012 shall be India (taxable territory). Further, the shipping company is located in China (that is to say the location of service provider is non-taxable territory) and the manufacturer is located in India (that is to say the location of service receiver is taxable territory).

Since all the conditions are satisfied, the manufacturer has to pay service tax on such ocean freight to the credit of central government.

FAQ 6: In the above question, if the shipping company happens to be an Indian entity, still service tax is required to be paid by the service receiver?

Response:

As stated in response to FAQ 5, there shall be obligation on service receiver only if all the three conditions satisfy cumulatively. In the instant case, the location of the service provider is India that is taxable territory (since the shipping entity is an Indian entity), one of the conditions fails and accordingly there shall not be any liability on service receiver. Hence, the service provider that is the shipping company should charge service tax and collect the same from the service receiver.

FAQ 7: Normally, the freight incurred on the importation of goods is included in the value of goods for the purposes of calculation of customs duty. Hence, with effective from 01.06.2016, there shall be two taxeson the freight expenses that is customs duty and service tax. Please clarify.?

Response:

In this regards, it is important to understand the judgment pronounced by Honourable Mumbai CESTAT in the case of United Shippers Limited vs Commissioner of Central Excise, Thane-II [2015] 57 taxmann.com 429 (Mumbai-CESTAT). The assessee involved therein has provided transportation services by barges from mother vessel to jetty and the revenue has saddled the assesse with service tax on such services under the head 'Cargo Handling Services'.

The Tribunal vide Para 5.2 and 5.3 of the judgment has held that the question of providing any service shall come into picture only once the importation of goods is completed. When the goods are transported from mother vessel to jetty, the import transaction has not been completed as per Garden Silk Mills Limited vs Union of India 1999 taxmann.com 696 (SC) and hence there cannot be any service tax impact on such activity/transportation charges. Further, the Tribunal also held that for this reason itself the valuation rules under Customs are specifically amended to include the barge charges for the purposes of payment of customs duty.

Hence, relying on the above judgment, there cannot be any service tax on ocean freight since such service is provided pre-importation, part of import activity and is subject to customs duty.Thus there exists ambiguity over validity of present levy of service tax on ocean freight.

On the other hand the Delhi Tribunal in the case of Oracle India Pvt Ltd vs. CCus, 2015-TIOL-1766-CESTAT-Del, wherein one of the issues considered relates the applicability of customs duty on license fee paid as a condition of sale towards import of software media packs. The appellant in fact has paid service tax on the license fee considering it as imported service. In this context, the tribunal held that there is no provision warranting exclusion from assessable value for customs purposes, on the ground that service tax has become chargeable on such license fee under a different statute.

Thus there are conflicting views on the issue of applicability of service tax when a particular service transaction forms part of import activity and is considered for valuation for Customs purposes. Recently, the Authority for Advance Ruling in the case of Berco Undercarriages India Private Limited [2016] 68 taxmann.com 380 (AAR-New Delhi) considered the issue relating to applicability of service tax under reverse charge mechanism on foreign C&F Agent services considering it as an imported service. The cost towards these services are actually included in the value of imported goods and accordingly subjected to customs duties and .It has been held that Held that in the absence of any law pertaining to exemption of service tax on the value of services which forms part of the value of imports, there shall be a liability towards service tax on same value. Accordingly, stated that service tax is required to be paid on the imported C&F Agent services. Hence, taking clue from the above judgments it can be inferred that service tax shall be payable on such freight expenses even though customs duty is being paid on the same amount.

Assuming that the service tax is payable (leaving the wisdom delivered in United Shippers Limited), since service tax is being paid, whether transportation expenses can be excluded for the purposes of payment of customs duty? The answer would be in negative, since there is no exemption in this regard. The TRU Circular F No 334/8/2016-TRU dated 29.02.2016 has clarified that the service tax paid on such freight shall not form part for the assessment of customs duty, but not stated that customs duty is not required to be paid on such transportation expenses. In fact there is no corresponding provision under Customs Act, 1962 even to exclude service tax component of ocean freight incurred from the value of imported goods. In view of this, one may go on to question the exclusion of service tax component also.

To summarise, as per the law stands on the date of this paper, both customs duty and service tax are required to be paid on the transportation expenses.

FAQ 8: Whether service tax has to be paid on the entire freight amount or is there any abatement specified?

Response:

An abatement of 70% on the gross amount charged/paid has been provided vide Entry No 10 of Notification No 26/2012-ST dated 20.06.2012. The abatement comes with a condition that cenvat credit of input and capital goods used for providing taxable service shall not be taken. Hence, service tax has to be paid on 30% of the gross amount charged/paid to the shipping vendor.

When service tax is required to be paid by service receiver under reverse charge, an abatement of 70% can be claimed as the overseas service providers are in general not entitled to avail any credit.

FAQ 9: I have ordered goods from China by entering into an agreement with the Chinese Shipping company. As per the agreement, the goods should be unloaded at the Indian port within 3 days from the date of availability of berth. If the goods are not unloaded within 3 days, demurrage charges shall be applicable for such delay and payable to the foreign vendor. Since, the obligation to pay service tax rests on me under revers charge mechanism, whether service tax has to be paid on the demurrage charges also?

Response:

Yes, service tax has to be paid on the demurrage charges also. Any amount that becomes realisable on account of demurrage or by any other name called shall be included in the value of taxable services as per Rule 6(X) of Service Tax (Determination of Value) Rules, 2006. Hence, service tax has to be paid on such demurrage charges paid to the foreign vendor under reverse charge mechanism in light of the said rules. The abatement of 70% can be availed on the demurrage charges also as these charges are naturally bundled under Section 66F(3) and are essentially forms part of ocean transport cost.

FAQ 10: I am a manufacturer/service provider liable to pay service tax on ocean freight under reverse charge. What is the due date for payment of such tax?

Response:

As per Rule 7 of Point of Taxation Rules, 2011, the point of taxation for services falling under reverse charge mechanism shall be the date of payment to the vendor. However, if the payment is not made within 3 months from the date of invoice, then the point of taxation shall be date immediately following the said period of 3 months.

For example, if the date of invoice of the vendor is 10.07.2016 and assuming the payment is made on 25.07.2016, then the service tax shall be payable by 06.08.2016. However, if the payment is made on 31.12.2016, then the service tax shall be payable by 06.11.2016 (since 3 months gets exhausted by 10.10.2016).

FAQ 11: I have received services of transportation prior to 01.06.2016. An invoice to this extent has been issued by the service provider. However, the payment is still outstanding as on 01.06.2016. I am a person responsible to pay freight under reverse charge. In such a case, is service tax required to be paid on such freight?

Response:

As per Rule 5 of Point of Taxation Rules, 2011, the service which is taxed for the first time, then, no tax is payable if invoice has been issued and payment has been received/made before such service becomes taxable.

In the instant case, an invoice has been issued prior to taxable date, however, payment has not been made. Hence, service tax is required to be paid on all instances where invoice is issued and payment is not made as on 01.06.2016.

FAQ 12: I have remitted an advance to the foreign shipping vendor for the services to be provided by him post 01.06.2016. He has sent me an invoice for the services to be provided on 13.06.2016. I am a person responsible to pay service tax on freight under reverse charge. In such a situation, is service tax required to be paid on the advance paid prior to 01.06.2016?

Response:

As per Rule 5 of Point of Taxation Rules, 2011, the service which is taxed for the first time, then, no tax shall be payable, if the payment has been received/paid before the service becomes taxable and invoice has been issued within 14 days from the date when the service is taxed for the first time.

In the instant case, an invoice has been issued by service provider by 13.01.2016, which is within 14 days from 01.04.2016 and hence there shall be no service tax impact on such advance paid prior to 01.06.2016.

FAQ 13: Whether the service tax paid on the ocean freight is eligible as input service for the manufacturer or service provider, as the case may be?

Response:

The service tax paid on the ocean freight is eligible as cenvat credit, since the definition of the 'Input Service' as per Rule 2(l) of Cenvat Credit Rules, 2004 specifically covers 'inward transportation of inputs and capital goods'. Hence, cenvat credit of service tax paid under reverse charge shall stand eligible.

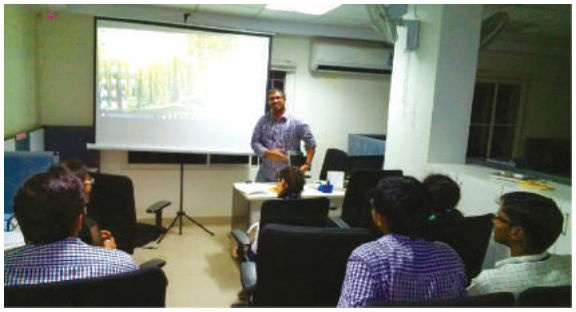
This article is contributed by CA Sri Harsha & CA Manindar, Partners of SBS and Company LLP, Chartered Accountants. The authors can be reached at harsha@sbsandco.com & manindar@sbsandco.com

TECHNICAL SESSIONS:

S.No.	Event	Date	Speaker	Venue
1	Introduction to Standards of Internal Audit	10/06/2016	CA MHS Bhyrav	SBS - Hyd
2	A Peak into MSME Advantages	17/06/2016	CA Rajesh D	SBS - Hyd
3	An overview of Data Analaytics	24/06/2016	CA Saran Kumar U	SBS - Hyd
4	Indian Constitution vis-à-vis Indirect Taxes	01/07/2016	CA Manindar K	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 two days in advance to make appropriate arrangements. The relevant material will be hosted at slideshare shortly after the session. The link to download is *http://www.slideshare.net/Team-SBS*



Detailed Analysis on Place of Provision of Service Rules, 2012 - CA Harsha Vardhan k

Internal financial Control over Financial Reporting - CA Sandeep Das

Basics of FEMA act, 1999 - CA Murali Krishna G - ICAI Hyd. Branch

Basic structure of Service Tax Law - CA Harsha Vardhan K - ICAI Hyd. Branch

Service and declared Services - CA Harsha Vardhan K - ICAI Hyd. Branch

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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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