LALIT BAJAJ & ASSOCIATES

Connection

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Just to Remind You

- Aug 5 - Payment of Service Tax of July by companies
- Aug 7 - Payment of TDS/ TCS deducted/collected in July
- Aug 15 - e-Payment of PF for July
- Aug 21 - Payment of ESI for July
- Aug 31 - Filing of IT Returns by Individuals/ HUF (Without Audit)

Inside this issue:

GREEN AUDIT

What is a Green Audit?

It is an inspection carried out by the auditor to assess and ascertain the impact of the company's activities on the environment which may be caused due to a particular product or process.

Example: A pharmaceutical company disposes the wastages of its production process into a nearby lake.

Green audit will point out such activities and bring them to the notice of those concerned with the company

Why is a green audit required?

The rationale behind Green Audit is to urge the companies to use the environmental resources more judiciously and to keep a check on the production and disposal activities or any other activity that causes harm to the environment in any way. The green audit report would give its reader a true picture of the company's activities in relation to the maintenance of ecological standards.

Green Audit: A must for big projects

The environment ministry has made it compulsory for large projects to include environmental compliance in their corporate audits and report deviation, if any to the company's board of directors as well as public. Without it, the ministry will not give the mandatory environmental clearance for the project.

It will be mandatory for all central public sector units, coal-based thermal power plants above 500 megawatts, integrated steel plants above one million tonnes per annum (MTPA), cement plants above three MTPA capacities and petroleum refining industry to have such regulations in place before they apply for environmental clearances.

The new government notification also makes it mandatory for the corporate to designate officials at all levels that can be held responsible for violation of environmental laws and clearances.

Compliance of Environmental laws

Organizations have a legal and moral duty to comply with environmental laws and regulations. The complexity of legal requirements regarding environmental protection is indeed a significant challenge for organizations. The first difficulty comes from finding out what laws and regulations have been actually applied; followed by the need to understand how they apply and what needs to be done to comply and ensure compliance on an ongoing basis.

Compliance of environment laws under Green Audit should cover the following –

- National Environment Laws, Rules and Regulations;
- Notifications issued by the Government and the agencies under them;
- Standards issued by responsible bodies such as those for Environment Impact Assessments (EIA), ISO 14001 for Environment Management System, pollution control orders and standards issued by oversight and implementation bodies such as CPCB etc.;
- Sanctions and permits issued in respect of the entity by the regulatory bodies concerned;
- EIA reports, reviews by independent organizations, company's environment policy etc.

The future of audit sees a big part of Green Audit forming a component of it. As it may not be scaled on a statutory grounds, but forms a core part on company's morale and in a way it will be company's way of giving it back to the society.

Credit Default Swap (CDS)

Credit default swap (CDS) is a financial swap agreement that that the seller of the CDS will compensate the buyer in the event of a loan default. The buyer of the CDS makes a series of payments to the seller and, in exchange, receives a payoff if the loan defaults. With a view to providing market participants a tool to transfer and manage credit risk associated with corporate bonds, Reserve Bank of India (RBI) has introduced single name CDS on corporate bonds. Banks can undertake transactions in such CDS, both as market-makers as well as users. Introduction of CDS were held off again in 2008 with global credit crisis after a RBI took decision to postpone initially in 2003. However, RBI has come with prudential guidelines on this in 2011 as tool to hedge a Banking Book or Trading Book exposure. However, CDS are still not fully operational in Indian Market mainly because of unawareness of the term in common banking parlance. However, it's not difficult to understand the term CDS which is explained below in following paragraph with example:

Let's say there is a Pension fund organization (ABC) which is looking for investment of pension funds to give appropriate returns to their beneficiary and there is another manufacturing company (XYZ) looking for funds to expand their operations. However, as company ABC have all retirement funds it cannot invest in highly risky projects or company and put money on stake. On the other hand company XYZ needs fund and have to assure the company ABC that it will be able to survive in the coming future and will provide the returns as guaranteed and accordingly, it gets rated from one of credit rating agencies. However, the company XYZ got rating of let's say "A" but company ABC has mandate to invest only in "AAA" rated companies or Bonds but wants to invest in company XYZ as its giving lucrative returns. Accordingly, company ABC approached insurance company or Banks to insure the loan or investment in corporation XYZ in return of some premium or fees. Hence, pension fund is assured of the return of at least 10% (11% from corporation to XYZ-1% to insurance firm or Bank). So in the worst case scenario if corporation XYZ defaults or goes bankrupt pension fund is assured of minimum return of at least 10%. This is called Credit Default Swap in simpler words.

Due date of Return Filing extended to 31st August 2012

Order under Section 119 of the Income Tax Act. 1961.

On consideration of the reports of disturbance of general life caused due to failure of power and further in consideration of the fact that the e-filing of returns for a specified category of individuals and HUF has been made mandatory, the Central Board of Direct Taxes, in exercise of powers conferred under section 119 of the Income Tax Act, 1961, has extended the 'due date' of filing of returns of income for the Assessment Year 2012-13 to 31st August 2012 in respect of assessees who are liable to file such returns by 31st July 2012 as per provisions of section 139 ofIncome Tax Act, 1961.

MCA extends the last date for filing Form 23B

MCA vide General Circular no. 14/2012 dated 21st June 2012 & General Circular no. 19/2012 dated 27th July 2012 imposed fees on some e-forms which includes, inter alia, Form 23B to be filed by Statutory Auditors of the Company. MCA has now vide General Circular no. 22/2012 dated 3rd August 2012 has deferred the fees on Form 23B for one week and the fees shall now be applicable from 12th August 2012. Accordingly, if you have not filed Form 23B for audit assignment received in 2011 for audit of period 2011-12, you will have to pay 9 times additional fees, if you file the form after 12th August, 2012.

Filing of Balance Sheet and Profit & Loss A/c

For XBRL Mode:

Ministry of Corporate Affairs via its General Circular No: 16/2012 dated 06.07.2012 declared the following criteria for the companies to file their financial statements in XBRL mode:

- All listed companies and their Indian subsidiaries,
- All companies having a paid up capital of Rs 5 Crores or more, and
- All companies having a turnover of Rs 100 Crores or above
- All companies who were required to file their financial statements for FY 2010-11

However banking companies, insurance companies, power companies and non-banking finance companies are exempted from XBRL filing till further orders.

All companies referred to in above para will be allowed to file their financial statements in XBRL mode without na additional fees/ penalty upto 15th November 2012 or within 30 days from the date of their AGM, whichever is later.

For Non-XBRL Mode:

Notification no. S.O-447 (E) dated 28.02.2011 on revised schedule VI is effective from 1st April 2011. The current year filing is based on revised schedule VI is due for filing. The revised form 23AC & 23ACA is under finalization and will be notified shortly on MCA website.

All companies who are required to file non XBRL eform 23AC and 23ACA as per revised schedule VI be allowed to file their financial statements without any additional fee/ penalty upto 15th September 2012 or within 30 days from the date of their AGM, whichever is later

"Last date for filing financial statements in XBRL mode is 15th November or 30 days from AGM whichever later"

MCA Notification on Investor Education

The Ministry of Corporate Affairs has notified that Investor Education and Protection Fund (Uploading of information regarding unpaid and unclaimed amounts lying with companies) Rules, 2012, has mandated every company to file e-Form 5INV containing the information of unclaimed and unpaid amounts as referred to in sub-section (2) of section 205C of the Companies Act, 1956.

This information is required to be filed every year within a period of 90 Days after the holding of Annual General Meeting or the date on which it should have been held as per the provisions of section 166 of the Act, and every year thereafter till completion of the seven years' period.The information is to be filed in Form 5-INV as per the above mentioned rules; and thereafter an excel sheet containing detailed investor wise details is to be filed separately. The eForm, the excel template and detailed steps are provided in the IEPF application link on the portal www.iepf.gov.in.

Clarification on Point of Taxation Rules

Consequent to the changes introduced at the time of Budget 2012 in the Point of Taxation Rules, 2011, together with revision of the service tax rate from 10% to 12% and the subsequent changes that have been made effective from 01.07.2012, the following clarifications have been desired:

- Point of taxation and the rate applicable in respect of continuous supply of services at the time of change in rates effective from 01.04.2012;
- Applicability of the revised rule 2A of the Service Tax (Determination of Value) Rules, 2006 to ongoing works contracts for determination of value when the value was being determined under the erstwhile Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007; and
- Applicability of partial reverse charge provisions in respect of specified services.

The issues have been examined. The continuous supply of services was governed by rule 6 until 31.03.2012. The rule started with the wordings "notwithstanding anything contained in rules 3, 4 …" Therefore, the point of taxation in respect of services provided in terms of the said rule on or before 31.03.2012 would remain unaffected by rule 4.

To clarify the matter further, if the invoice had been issued or payment received in respect of such services on or before 31.03.2012, the point of taxation would stand determined under rule 6 accordingly and shall not alter due to the subsequent changes in the Point of Taxation Rules, 2011 that became effective only from 1.4.2012.

However the position has undergone a change at the time of transition towards the Negative List and the introduction of other accompanying changes in Service Tax (Determination of Value) Rules, 2006 and partial reverse charge. At the said time rule 6 stood omitted and the point of taxation was required to be determined ordinarily in such cases under the main rule i.e. rule 3. This rule is, however, overridden by rule 4 when there is a change in effective rate of tax. The "change in effective rate of tax" has been defined in clause (ba) of rule 2 to include a change in the portion of value on which tax is payable.

To illustrate, the following would be changes in effective rate of tax:-

- the change in the portion of total value liable to tax in respect of works contract other than original works (from @ 4.8% earlier to @ 12% on 60% of the total amount charged, or effectively @ 7.2% now).
- exemption granted to certain works contracts w.e.f. 1st July 2012 which were earlier taxable.
- taxability of certain works contracts which were hitherto exempted.
- change in the manner of payment of tax from composition scheme under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 to payment on actual value under clause (i) of rule 2A of the Service Tax (Determination of Value) Rules, 2006.

However, the following will not be a change in effective rate of tax:-

- works contracts earlier paying service tax @ 4.8% under Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 and now required to pay service tax @12% on 40% of the total amount charged, keeping the effective rate again at 4.8% (as only the manner of expression has been altered).
- works contracts which were outside the scope of taxation (and not merely exempted) but have become now taxable e.g. construction of residential complex comprising of 2 to 12 residential units, construction of buildings meant for use by NGOs etc. (Rule 5 of the Point of Taxation Rules, 2011 shall apply to such services.)

Thus the point of taxation for services provided in respect of taxable works contracts in progress on 01.07.2012 would need to be determined under rule 4 of the Point of Taxation Rules unless there is no change in effective rate of tax.

It is further clarified that the provisions of partial reverse charge would also be applicable in respect of such services where point of taxation is on or after 01.07.2012 under the applicable rule in respect of the service provider.

Export of Services

If service is exported, there is no service tax liability. If the services are exported, the Cenvat credit is not required to be reversed. Assessee can utilise credit for payment of service tax on other services. However, if this is not possible, he can get refund.

Basic principle of taxation is that 'goods and services should be exported, taxes are not to be exported'. Another principle is that service tax can be levied only if service is provided or received or consumed in India.

Meaning of 'export of Service' has been defined in Export of Service Rules.

The new rules make it clear that exemption from services/rebate of service tax and excise duty paid is admissible only if there is 'export of service' as defined in these rules. Mere receipt of payment in free foreign exchange will not be sufficient to treat the service as 'export service'.

Meaning of Export of taxable service

Rule 3 of Export of Service Rules classifies the taxable services in four categories - (i) Immovable property is situated abroad (ii) Service performed outside India (iii) Recipient is located outside India (iv) Services which not be treated as 'export of services' under any situation.

Requirement to treat the service as 'export of service' are different for each category.

Common conditions

Following conditions are common in respect of all taxable services - (a) The service should be delivered outside India and used outside India and (b) Payment for such service provided outside India is received by the service provider in convertible foreign exchange

The condition (a) above was applicable even prior to 19-4-2006 in case of services falling under rule 3(i) and 3(ii). However, in case of services falling under third category i.e. rule 3(iii), the condition was applicable only when recipient of service had establishment or place of business in India.

Meaning of 'delivered outside India' – The words 'delivered outside India' are likely to create litigation. 'Giving' is complete only when someone 'takes' it. Similarly, 'delivery' is complete only when someone 'receives' it. Otherwise it is just throwing. Since the person receiving the service is outside India, 'delivery' is complete only when he gets it.

It should be noted that the words used are 'delivered outside India' and not 'performed outside India'. Thus, actual (physical) performance outside India is not required.

In reverse direction, if Indian manufacturer pays some amounts to foreign exporter (for commission or technology transfer etc.), department treats it as 'service received in India' (import of service) and asks Indian exporter to pay service tax under 'reverse charge' u/s 66A. If that service is said to be 'received in India', then correspondingly, in other direction, the service of Indian service provider is 'delivered outside India'. Department cannot apply one criteria for 'import of service' and entirely reverse criteria for export of service.

Hence, so long as service receiver is abroad and he gets the service by any mode (by e-mail, electronic transfer, fax, post, courier or any other mode), it can be said to be 'delivered outside India'.

Immovable property situated abroad

In case of first category, the service will be treated as 'export of taxable service' only if the immovable property is situated abroad [rule 3(i) as substituted w.e.f. 19-4-2006. Earlier it was rule 3(1)].

Services performed outside India

In case of some specified services, the service will be treated as 'export of service' if it is at least partly performed outside India [rule 3(ii) as substituted w.e.f. 19-4-2006. Earlier it was rule 3(2)].

The common conditions applicable to all services as per rule 3(2) (as explained above) are also applicable. As per rule 3 (2), the service has to be delivered outside India and used outside India. Further, Payment should be received in foreign exchange.

Even if such a taxable service is partly performed outside India, it shall be considered to have been performed outside India. Thus, part performance of service in India will be permissible. Since no percentage has been specified, it should be sufficient if just 1% of service is provided outside India and balance is provided from India.

However, payment should be received in foreign exchange. Thus, services of courier who deliver mail abroad will not be 'export of service' if they do not get paid in foreign exchange.

Service provided from India, but recipient of service outside India

Remaining services, which fall in third i.e. residual category, will be treated as 'export of service' if recipient is located outside India. The service can be provided from India [rule 3(iii) as substituted w.e.f. 19-4-2006. Earlier it was rule 3(3)].

The common conditions applicable to all services as per rule 3(2) (as explained above) are also applicable. As per rule 3 (2), the service has to be delivered outside India and used outside India. Further, Payment should be received in foreign exchange.

Services which will never be treated as 'export of service'

Following two services i.e. (i) Air transport of passengers embarking for international travel (zzzo) and (ii) Transport by cruise ships (zzzv), will not be treated as 'Export of Service' at all under any situation.

These services will also not be treated as 'service provided from outside India and received in India' under any situation.

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Relaxation for compulsory e-filing of return of income for AY 2012-13

Relaxation from compulsory e-filing of return of income for assessment year 2012-13 - for representative assesses of non-residents and in the case of private discretionary trusts –reg

Rule 12 of the Income-tax Rules, 1962 mandates that an individual or Hindu undivided family, if his or its total income or the total income in respect of which he is or it is assessable under the Act, during the previous year, exceeds ten lakh rupees, shall furnish the return electronically for the assessment year 2012-13 and subsequent assessment years.

It has been brought to the notice of the Board that the agents of non-residents, within the meaning of section 160(1)(i) of the Income –tax Act, are facing difficulties in electronically furnishing the returns of non-residents. This is because there may be more than one agent of the non-resident in India for different transactions or a person in India may be an agent of more than one non-resident. Such situations are not covered by the existing e-filing software which functions on the principle of one assessee-one PAN-one return.

It has also been brought to the notice of the Board that 'private discretionary trusts' having total income exceeding ten lakh rupees are facing problems in filing their return of income electronically in cases where they are filing their return in the status of an individual. This is because status of a private discretionary trust has been held in law as that of an 'individual'. The existing e-filing software does not accept the return of a private discretionary trust in the status of an 'individual'.

Accordingly it has been decided by the Board that:

- it will not be mandatory for agents of non-residents, within the meaning of section 160(1)(i) of the Income –tax Act, if his or its total income exceeds ten lakh rupees, to electronically furnish the return of income of non-residents for assessment year 2012-13;
- it will not be mandatory for 'private discretionary trusts', if its total income exceeds ten lakh rupees, to electronically furnish the return of income for assessment year 2012-13.