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LALIT BAJAJ & ASSOCIATES

CONNECTION

JUNE 2012

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JUST TO REMIND YOU

- **June 5 - Payment of Service Tax of May by Companies**
- **June 7 - Payment of TDS deducted in May**
- **June 15 - Payment of Advance Tax Companies (15%)**
- **June 30 - Submission of MAVT returns for March 2012 along with annexures**

GOING ABROAD FOR WORK? HOW TO AVOID DOUBLE TAXATION

As more and more Indian companies go global, many employees find themselves being sent overseas for business. Their assignments could be long term or short term.

In case of long-term assignments, employees are generally transferred to overseas entities. However, the employer and the employee face a challenge in case of short-term work-related visits and business travel vis-a-vis taxability overseas.

While countries follow their own tax regime for taxing income, many countries retain the right to tax an individual on income for employment exercised in that country. Therefore, business visits need to be carefully planned and monitored based on the domestic tax laws of the foreign country as well as the relevant tax treaty.

Tax treaties provide relief from taxation in respect of short-term assignments by way of a short stay exemption, wherein an individual may claim exemption in a foreign country if certain conditions are met. India has entered into tax treaties with many countries, most of which contain a specific provision for short stay exemption, under which individuals can claim exemption from taxation of salary overseas.

Let's consider an example of an employee working with an Indian company who visits Canada for employment. The remuneration derived by the employee, being a resident of India, in respect of the Canadian employment, shall be taxable only in India if he is present in Canada for a period not exceeding 183 days in the relevant fiscal year. Secondly, his remuneration should be paid by, or on behalf of an employer who is not a resident of Canada; and thirdly, such remuneration should not be borne by a permanent establishment or a fixed place, which the Indian employer has in Canada.

If all the aforesaid conditions are met, then the individual will not be subject to tax in Canada on his remuneration received from the Indian employer and will be taxed only in India. Thus, short stay exemption is an important concession, whereby the same income avoids double taxation in two countries. However, it is important to note that the conditions under the relevant tax treaty should be examined carefully as there are variations in the same.

For example, in case of India-Sweden tax treaty or India-Austria tax treaty, the first condition of 183 days is to be read in the context of any 12 month period commencing or ending in the fiscal year concerned which, in effect, is different from the condition provided in India-Canada tax treaty discussed above.

In the event, the conditions discussed above for claiming short stay exemption are not satisfied, the income would be taxable both in India as well as overseas. In such a case, the employee can explore the possibility of claiming credit for taxes paid overseas in India, subject to the provisions of the relevant tax treaty.

PERSON CARRYING ON AGENCY BUSINESS OR EARNING COMMISSION SHOULD REVISE THEIR RETURN FOR AY 2011-12, IF ORIGINAL RETURN FILED U/S 44AD

In the Finance Bill 2012 section 44AD has been amended retrospectively w.e.f A.Y. 2011-12 to the effect that presumptive scheme under the said section is not applicable to:

- Persons carrying on profession as referred to in section 44AA(1) or
- Persons earning income in the nature of commission or brokerage income or
- Persons carrying on any agency business.

The said amendment has been made with retrospective effect from A.Y. 2011-12. Retrospective amendment is either made to validate an earlier levy or to make clear the legislative intent.

Professionals are not covered under the presumptive scheme of section 44AD that was very much clear from the definition of eligible business as the word specially business was mentioned therein and business cannot include professions.

However, whether agency business or income from commission was covered under presumptive scheme under section 44AD or not, it was not clear from the wording of section 44AD and definition of eligible business contained in the explanation to the said section as word business has only been mentioned in the definition of eligible business and agency business could have been interpreted as business by any rational person.

Therefore there must have been certain cases where the assessees carrying on some agency business or earning income from commission may have filed their return of income under the presumptive income scheme of section 44AD. In such cases if such assessee's (carrying on agency business or earning income from commission) turnover or income exceeds the limits prescribed u/s 44AA then such assessee would be required to maintain regular books of accounts and he should have filed his return of income as per balance sheet and books of accounts.

Therefore such assessee should revise his return of income and file his return in accordance with his books of accounts and balance sheet, as such assessee carrying on agency business is not covered u/s 44AD.

Thus after the retrospective amendment in section 44AD w.e.f A.Y. 2011-12, the assessees carrying on agency business or earning income from commission should revise their return of income of A.Y. 2011-12, if they have filed their return of income presuming them to be covered under section 44AD.

> "Person carrying on agency business or earning commission should revise their return for AY 2011-12, if original is filed u/s 44AD"

INACCURATE TDS RETURNS MAY ATTRACT PENALTY UPTO RS. ONE LAKH

Attempting to raise revenue, the government has targeted Tax Deducted at Source (TDS) and proposed penal provisions for inaccurate details and ensuring filing of corrective returns from July 1. From July 1, government may impose penalty of Rs 10,000 and Rs 1,00,000 for inaccurate TDS returns and also for corrective filings after proposed amendments in the Finance Bill is cleared.

Presently, there is no penal provision for mistakes in both first and corrective TDS filings if wrong details had been provided. Penal provisions have already been introduced for late filing of returns.

The tax department believes quantum of wrong inputs are large and most of them are not cases of unwilling mistakes.

TDS returns are filed quarterly and incorrect PAN number, amount deducted and details are among the wrong inputs.

BENEFIT OF 'NIL' VALUE U/S 23(2) AVAILABLE TO HUF ALSO

Provisions of section 23(2), make it clear that benefits of relief in respect of self-occupied property is available only to owner who can reside in his own residence, that means, benefit of relief is available to self-occupied property only to an individual assessee and not to an imaginary assessable entity/fictional entity such as a partnership firm. Various High Court decisions denying relief under section 23(2) to partnership firms cannot be invoked to deny relief to a HUF since unlike a firm which is a fictional entity and cannot physically reside and so cannot claim benefit of provision, HUF cannot be held to be a fictional entity.

A Hindu Undivided Family is nothing but a group of individuals related to each other by blood relations, or in a certain manner; a Hindu Undivided Family can be seen being a family of a group of natural persons; there is no dispute that said family can reside in house, which belongs to Hindu Undivided Family; a family cannot consist of artificial persons; under section 13 of General Clauses Act, words in singular shall include plural and vice versa; therefore, word 'owner' would include 'owners' and words 'his own' would include 'their own'; there is nothing, therefore, in words used in section 23(2), which excludes application of such provision to HUF, which is a group of individuals related to each other

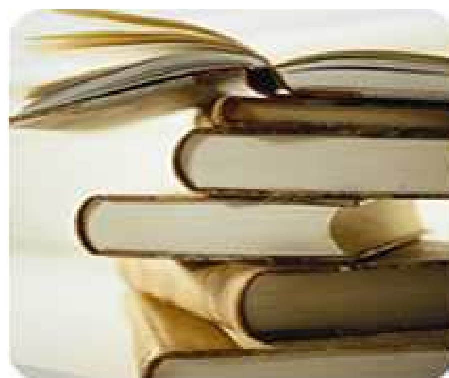
COST AUDIT REPORTS IN XBRL

> "File Cost Audit Report and Compliance Report for the year 2011-12 (including the overdue reports) using XBRL."

It has been decided by the "Ministry of Corporate Affairs" to mandate the cost auditors and companies to file Cost Audit Reports (Form-I) and Compliance Reports (Form-A) for the year 2011-12 onwards (including the overdue reports relating to any previous year) by using the XBRL taxanomy. These reports, required to be filed in XBRL format, would be based on the Taxonomy on XBRL being developed for the formats (Form-I & Form-A) given in the following rules:

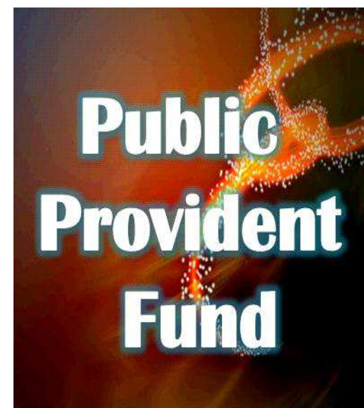
- Companies (Cost Accounting Records) Rules, 2011
- Cost Accounting Records (Petroleum Industry) Rules 2011
- Cost Accounting Records (Electricity Industry) Rules 2011
- Cost Accounting Records (Sugar Industry) Rules 2011
- Cost Accounting Records (Fertilizer Industry) Rules 2011
- Cost Accounting Records (Pharmaceutical Industry) Rules 2011
- Companies (Cost Audit Report) Rules 2011

Hence, all cost auditors and companies, which are laible to file Cost Ausit Reports (Form-I) and Compliance Reports (Form-A), are requested to file their reports with the Central Government after 30th June 2012, in the XBRL Mode by which time the relevant taxanomy together with Form-I & Form-A in XBRL format is likely to be ready and notified.



SUMMARY OF REVISED PPF SCHEME

- Interest on Public Provident Fund (PPF) is 8.6 % w.e.f. 01/12/2011.
- An individual can open a PPF account in his own name. He can also open an additional account on behalf of a minor of whom he is a guardian. He can subscribe any amount in multiple of Rs. 5/- but not less than Rs. 500/- and not more than Rs. 1,00,000/- in a year in each of his account. *The deposits in excess of Rs. 1,00,000/- made during the year will not carry any interest and will not be eligible for rebate.*
- An individual can open only one account in his / her name either in post office or in bank. If two accounts are opened by the subscriber in his / her name by mistake, the 2nd account will be treated as irregular and will not carry any interest.
- The account can be closed after completion of 15 full financial years or the expiry of 15 years from the close of the financial year in which the initial subscription was made. This is, of course optional , and the subscriber can continue the account even after the period of 15 years for any number of further blocks of 5 years by exercising an option in Form 'H'.
- A subscriber can take a loan from the fund in case of need. The first loan can be taken in the 3rd year of opening the account.
- A subscriber can make one time withdrawal during any year. The first withdrawal can be made at any time after the expiry of full 5 financial years from the end of the year in which the initial subscription was made. The amount of withdrawal will be limited to 50 % of the balance at credit at the end of the 4th year immediately proceeding the year in which the amount is withdrawn or at the end of the preceding year, whichever Is lower.
- A subscriber may nominate 1 or more persons to receive the amount standing to his credit in the event of his death. No nomination can, however, be made in respect of an account opened on behalf of the minor. In the event of death of the subscriber, the amount standing to his credit can be repaid to his nominee or legal heir, as the case may be, even before the expiry of 15 years.
- Subscriptions to PPF qualify for deduction from the taxable income of the subscriber for income tax purpose like contributions to Provident Fund, Life Insurance, etc.
- The interest credited to the fund is totally exempt from Income Tax and Wealth Tax.
- Condone in default in payment of subscriptions in the PPF account is permissible by charging the subscribed fee along with arrears of subscriptions.
- If the subscriber dies and there is no nomination at the time of death, the balance in the account, if it is up to Rs. 1,00,000/-, will be paid by the accounts office to the legal heirs of the deceased on receipt of application in Form 'G' supported with necessary documents without the production of succession certificate. If the balance is more than Rs. 1,00,000/- , the production of succession certificate will be necessary.



"Exemption available per individual u/s 80C of IT Act is Rs. 100,000/-"

SERVICE TAX—LATEST UPDATES

The Finance Bill 2012 received accent of President of India on 28.5.2012, and became Finance Act, 2012

CENTRAL EXCISE

Circular No. 962/05/2012-CX New Delhi, dated the 28th March, 2012 seeks to remove the restriction on the utilization of the cenvat credit accruing subsequent to the last date of the month or quarter in which the arrears under Section 11A of the Central Excise Act, 1944. Arise.

Circular No. 963/06/2012-CX dated the, 29th March, 2012 seeks to clarify that in case of excise free supply to Mega Power Project (provisionally certified) under Notification No. 12/2012-CE dated 17.3.2012, the CEO of the project must furnish a Fixed Deposit Receipt (FDR) for an amount equal to the Central Excise duty payable for a term of thirty six months or more. Such FDRs can be submitted by the Project Director at regular intervals as and when the clearances take place. However, each FDR has to be for a period of thirty six months or as stipulated in the notification.

Circular No.964/07/2012-CX dated 2nd April, 2012 seeks to clarify that structural components of Boiler System which are to be used essentially as a part of Boiler System are covered by the definition of inputs under Rule 2 (k)(iii) of the CENVAT Credit rules, 2004 (i.e. all goods for generation of electricity & steam) and therefore eligible to Cenvat Credit. However

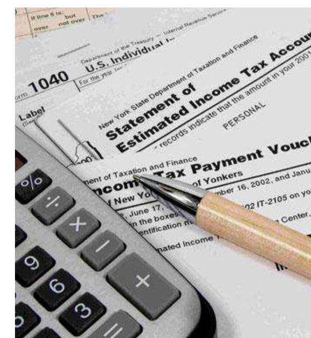
Circular No 966/09/ 2012-CX the 18th May 2012 restricts the above clarification by stating that while CENVAT Credit is available in respect of parts of Boiler, the same is not admissible in respect of the structural components used for laying of foundation or making of structures for support of capital goods/ Boiler.

Circular No. 965/08/2012-CX dated the 17th April, 2012 seek to clarify that exemption from payment of duty in cash to industrial units in the State of Jammu & Kashmir shall be available for a period of ten year from the date of commencement of commercial production in the case of new units and from the date of commencement of commercial production from the expanded capacity in the case of existing units.

Notification No. 25/2012-Central Excise seek to exempt from whole of excise duty Footwear, gaiters and the like; parts of such article of CTH 64 when consumed within the factory of their production in the manufacture of goods being Footwear and hawai chappal (other than of leather), that is to say, chappals known commercially as hawai chappals, of retail sale price not exceeding Rs. 500 per pair. The earlier limit was Rs. not exceeding Rs. 250 per pair.

Notification No. 27/2012-Central Excise, Dated 30/05/2012 has rescinded , inter alia, the following 2 notifications:

- Notification No. 18/2012-Central excise dated 17-03-2012 which prescribes the peak rate of duty ranging from 6%, 12% and 14% for 88 products. These products will now be governed by Tariff Rate, if not otherwise covered by any other specific notification.
- Notification No. 23/2012-Central excise dated 08-05-2012 which exempts articles of jewelry from whole of excise duty. With the rescission of this notification, the original notification 12/2012 CE dated 17-03-2012



comes into effect once again. This original notification no. 12/2012 CE was retrospectively amended to provide for removal of duty @ 1% of articles of jewellery by the Fifth Schedule to Finance Act 2012. However, this amendment is not yet reflected in the notification 12/2012 dated 17-03-2012.

SERVICE TAX

Circular No.154/5/ 2012 – ST Dated: 28th March 2012 clarifies that in respect of services covered by clauses (g), (p), (q), (s), (t), (u), (za) and (zzzzm) of clause (105) of section 65 of the Finance Act, 1994 the point of taxation for invoices issued on or before 31st March 2012, shall be the date of payment.

Further Circular No. 158/9/ 2012 – ST dated 08-05-2012 clarifies that the invoices issued before 1st April 2012 may reflect the previous rate of tax (10% and cess). In case of need, supplementary invoices may be issued to reflect the new rate of tax (12% and cess) and recover the differential amount. In case of reverse charge the service receiver pays the tax and takes the credit on the basis of the tax payment challan. Cenvat credit can be availed on such supplementary invoices and tax payment challans, subject to other restrictions and conditions as provided in the Cenvat Credit Rules 2004.

The definition of "service" has been amended so as to include one more restriction to it. Now in order to qualify as a service , the activity should pass a crucial test that such service does not merely constitute a transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution. This is going to be a highly litigating legal bone of contention.

Service Tax (Compounding of Offences) Rules, 2012 have been notified vide Notification No. 17/2012 - Service Tax Dated 29th May, 2012 for compounding of offences u/s 89(1) of the Finance Act 1994 either before or after the institution of prosecution.

Service Tax (Settlement of Cases) Rules, 2012 have been notified vide Notification No. 16/2012 - Service Tax Dated 29th May, 2012 for settling disputed service tax and interest payable thereon.

DELAY IN FILING OF RETURN DUE TO VIRUS ATTACK ON DATA HELD TO BE A VALID GROUND

In the instant case, the assessee had given reasons for delay in filing the return of income that it was preparing its accounts through computer and the computer got corrupted due to viruses and in spite of continuous efforts by the technical personnel to retrieve the data in time for filing the return of income, problem persisted in the system.

The entire data for the two months period, February and March, 2008, had to be re-entered into the computer system again. Thus, there was a delay of 74 days in filing the return of income which was beyond the control of assessee.

It was held that there was a reasonable cause for filing the return of income belatedly and this was beyond the control of the assessee. Hence, deduction under Sec. 80-IC not to be denied by invoking provisions of Section 80AC - ITO v. S. VENKATAIAH [2012] 22 taxmann.com 2 (Hyderabad - ITAT)

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KNOWLEDGE TO FIGHT………………

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LALIT BAJAJ & ASSOCIATES

Office No.: 32 Nityanand Nagar - III
25/27 S N Road, Near Railway Station
Andheri (East), Mumbai - 400 069
Maharashtra, India
Phone: +91 - 22 - 26845133

Office No.: 5, Barsana,
Salasar Brij Bhoomi,
Near Maxus Mall,
Bhayander (W), Thane - 401105
Maharshtra, India
Phone: +91 - 22 - 28180400
Fax: +91 - 22 - 28040048
E-mail: admin@bajajit.com

AMENDMENTS PROPOSED IN PROVISIONS RELATING TO GAAR

The following government amendments have been proposed in the provision relating to General Anti-Avoidance Rules (GAAR) contained in the Finance Bill 2012.

- To remove onus of proof from the tax-payers to the Revenue Department before any action can be initiated under GAAR.
- To provide that both resident and non-resident can approach the Authority for Advance Ruling (AAR) for a ruling as to whether any arrangement to be undertaken is permissible or not under the GAAR provisions
- To provide more time to both tax-payers and the tax-administration to address all related issues, it is proposed to defer the applicability of GAAR provisions by one year i.e. with effect from financial year 2013-14

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