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CHARTERED ACCOUNTANTS
Audit Consulting Tax IFRS Valuation

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Safe Harbour Rules – Transfer Pricing

Introduction –

Income tax law requires that income arising from an international transaction and specified domestic transactions (viz. sale, services, purchase, leasing, borrowing etc) between associated enterprises (related parties) shall be computed having regard to the arm's length price (i.e as if price between unrelated parties).

Although various methods were prescribed by income tax law, there have been significant disputes between the dept and the assessee on computation and determination of "Arm's Length Price".

In order to reduce increasing number of transfer pricing audits and prolonged disputes, CBDT has finally come out with notification dt. 18th September, 2013 on Safe Harbour Rules. A "safe harbor" is defined in the Income Tax Law as circumstances in which the Tax Authority shall accept the transfer price declared by the taxpayer. Although Safe Harbour is technically not a "Arm's Length Price", but it certainly a "Compromise price"

Details of Notification –

- It provides for Safe Harbours for various sectors viz. Software development services (IT services) and Information Technology Enabled services (ITES), Knowledge processes outsourcing services (KPO services), Specified contract research and development services wholly or partly relating to software development.
- It provides minimum operating profit margins (Operating Profit / Operating Expenses) that a taxpayer is expected to earn for above mentioned transaction.
- It provides for OP / OL ratio in the range of 20% to 30% (for IT Industry) depending on the classification of the category.
- These provisions are applicable from AY 2013-14 (i.e. FY 2012-13) and for 4 succeeding years.

Scheme of Safe Harbour Rules –

- This facility of Safe Harbour Rules is applicable only to "Eligible Assessee" i.e. an assessee with insignificant risks.
- For determining that the eligible assessee is having insignificant risk, following factors are to considered –
 - the foreign principal performs most of the economically significant functions involved, including the critical functions
 - the capital and funds and other economically significant assets including the intangibles required, are provided by the foreign principal
 - the eligible assessee works under the direct supervision of the foreign principal
 - the eligible assessee does not assume or has no economically significant realised risks,
 - the eligible assessee has no ownership right, legal or economic, on any intangible generated
- Adequate documentation for support of the above shall be required.

Procedural aspects and steps -

- Step 1 = Assessee to conduct Transfer Pricing study (incl FAR analysis) to determine whether it is having insignificant risks
- Step 2 = Determine the category of the service viz. Contract research and development service or IT enables services of KPO Services stc.
- Step 3 = Apply the appropriate mark up (OP / OE ratio) relevant to the category so selected.
- Step 4 = file the return and Audit Report for the relevant year after considering mark up as stated in step 3.
- Step 5 = make an application to Assessing Officer for allowing benefit of Safe Harbour Rules.

Validity of Safe Harbour Option -

The Rules provide for a time bound procedure for determination of the eligibility of the taxpayer and of the international transactions for Safe Harbour Rules. Assessing Officer (AO) shall verify whether the assessee exercising option is an eligible assessee or not and in case of doubt may make reference to Transfer Pricing Officer (TPO) for determination of eligibility. TPO shall pass an order determining the validity of the option exercised by the taxpayer within a period of two months from the end of the month in which reference received from the AO. Further, the taxpayer shall have a right to file an objection with the Commissioner against adverse order regarding the eligibility of taxpayer/international transaction. If the AO or TPO or commissioner, as the case may be does not make any reference or pass an order, within specified time then the option for safe harbour exercised by assessee shall be treated as valid.

Concluding remarks -

- ✓ The notification of the safe harbour rules is a welcome development towards minimising transfer pricing disputes and improving the overall investment climate in India from a tax perspective.
- ✓ The increase in application term of SHRs to five years with the discretion granted to taxpayer to choose a period of his choice shall provide long-term certainty and flexibility to taxpayers.
- ✓ However, Taxpayers opting for the safe harbor shall still be required to maintain the mandatory prescribed transfer pricing documentation and also file the Accountant's report in Form 3CEB.
- ✓ In the Indian context, where a number of taxpayers find themselves in the challenging position of documenting and defending their transfer pricing issues as controversy is on the rise due to increasingly well-staffed tax authorities applying more sophisticated and sweeping transfer pricing tools, specifically targeted safe harbor rules can provide certainty that the taxpayer's transfer prices will be accepted, provided they have met the eligibility conditions of, and complied with, the safe harbour provisions.

Direct Taxation Updates

Compulsory scrutiny of Income Tax Returns during FY 2013-14

CBDT has issued circular for compulsory scrutiny of certain Income Tax Returns during FY 2013-14. Following are the brief particulars / categories who will be subjected to such compulsory scrutiny –

- International Transactions (Transfer pricing) over prescribed threshold limits.
- Trusts claiming exemption u/s 11 or 10(23c)
- Entities receiving donations from abroad over prescribed limits
- Cases where information is received other Govt Departments / Authorities
- Cases where additions were made in earlier years over prescribed limits
- All assessments relating to survey

Amendment in reporting requirements for payments to Non-residents

Provisions w.e.f. 1st October, 2013, have been made to provide for –

The person responsible for making any payment to a non-resident, not being a company or to a foreign company shall furnish the information in:

(i) Part A of Form No. 15CA – if the amount of payment does not exceed 50,000 and the aggregate of such payment made during the financial year does not exceed 2,50,000.

(ii) Part B of Form No. 15CA – if the payment is not chargeable to tax and is of the nature provided in the specified list.

(iii) Part C of Form 15CA for other than payments specified in (i) & (ii) above after obtaining the certificate in

Form No. 15CB from an accountant or a certificate from the Assessing Officer under Section 197 or an order from the Assessing Officer under Section 195(2) or 195(3).



"I found the problem. We earn money 5 days a week, but we spend money 7 days a week."



"Our books are balanced. 50% of our numbers are real and 50% are made up."

Indirect Taxation Updates

Vat on Builders and Developers (New FAQ)

Govt of Maharashtra has issued fresh FAQ's for Builders and Developers. It has now been agreed principal that the Vat liability is on builders w.e.f. 20th June, 2006. To bring in simplicity in calculations, Govt came out with following three options –

- **Option 1** – Sales price may be determined after deducting from the Agreement value; the value of land, labour, chargers for planning, designing, architects fees, hire charges of machinery etc. The tax is computed on the value arrived as above. The tax computed is further reduced after considering the tax paid on the purchases of building material (i.e. input tax credit).
- **Option 2** – First land land value is reduced from Agreement Value and then further standard deductions (@ 30%) as provided in the Table shall be allowed towards labour charges. On balance, the tax is computed after applying the schedule rate of tax on sales price so arrived. The tax computed as above is reduced after considering the tax paid on the purchases of building material (i.e. input tax credit).
- **Option 3** – Under this, tax @ 5% of Agreement Value is payable. Further, agreements made on or after 1st April 2010 the applicable tax rate is fixed at 1% of the agreement value.

However, on the scrutiny of the books of accounts of certain developers, it has been observed by the Dept that many developers have collected taxes from their customers but have failed to discharge their tax liability by depositing the collected tax into the Government Treasury.

Since the law has become clear on this issue, Govt has come out with new FAQ and has directed Builders / Developers to immediately discharge their dues without further delay.

MVat - Compounding of Offences and related fees

Section 74(3)(f) provides that if a dealer fails without cause, to furnish any return by prescribed date and manner shall on conviction, be punished with simple imprisonment for a term which may extent to six months and with fine. The dealer under the circumstances may make an application with a request to compound the offence.

The Govt has now provided that –

- Where a dealer has filed return late and made payment of taxes dues along with the late fee then Prosecution show cause notice shall not be issued.
- Where dealer has failed to file the return within prescribed time and dept has issued a show cause notice for prosecution, then the offence may be compounded at the request of dealer subject to condition that dealer has filed the return for the period under default along with the payment of tax due as per return and late fee.

- In cases where the complaint has already been filed with the Judicial Magistrate, then such offence shall be compounded subject to permission of concerned Judicial Magistrate and payment of prescribed fees (min. Rs. 5,000, Rs. 15,000 or Rs. 25,000 for six monthly, quarterly and monthly filers respectively). Further Add Commissioner of Sales Tax may reduce or enhance these fees.

Service Tax Exemption for Education Services

CBEC has clarified that following Education services are in negative list (and hence not taxable) –

“services by way of –

- pre-school education and education upto higher secondary school or equivalent;
- education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;
- education as a part of an approved vocational education course;”.

Further, vide notification No.25/2012-ST dated 20th June, 2012 it has exempted following auxiliary services relating to education.

“Services provided to an educational institution in respect of education exempted from service tax, by way of,-

- auxiliary educational services; or
- renting of immovable property;”.

“Auxiliary educational services” means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge–enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution.

In addition to the services mentioned in the definition of “auxiliary educational services”, other examples would be hostels, housekeeping, security services, canteen, etc

Seven Chakras of Human Body – In Hindu metaphysical tradition and other belief systems **Chakra** are points in the human body that are centres of life force.

They are **Muladhara** – ovaries / prostate, **Swadhisthana** - last bone in spinal cord, the coccyx, **Manipura** - navel area, **Anahata** - heart area, **Vishuddha** - throat and neck area, **Ajna** - pineal gland or third eye, and **Sahasrara** - Crown Chakra (top of the head; 'soft spot' of a newborn).

The openness and flow of energy through our *chakras* determines our state of health and balance. All meditation and yoga systems seek to balance out the energy of the *chakras* by purifying the lower energies and guiding them upwards.

Deposit Schemes for NRI's

Features of various Deposit Schemes available for Non-Resident Indians (NRI's)

(Based on RBI FAQ as updated on September 13, 2013)

Particulars	FCNR (B) A/c Foreign Currency Account	Non-Resident A/c (External) Rupee Account	NRO Account
Joint Account	In the name of Non-residents provided they are of Indian nationality or origin	In the name of Non-residents provided they are of Indian nationality or origin	May be held jointly with residents
Currency in which account is denominated	Any permitted currency i.e. a foreign currency which is freely convertible	Indian Rupees	Indian Rupees
Repatriability	Repatriable	Repatriable	Not repatriable except for the following: i) current income ii) up to USD 1 (one) million per financial year (April-March), for any bonafide purpose, out of the balances in the account,
Type of Account	Term Deposit only	Savings, Current, Recurring, Fixed Deposit	Savings, Current, Recurring, Fixed Deposit
Operations by Power of Attorney in favour of a resident by the non-resident account holder	Operations in the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments or remittance to the account holder himself through normal banking channels.	Operations in the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments or remittance to the account holder himself through normal banking channels.	Operations in the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments in rupees, remittance of current income to the account holder outside India or remittance to the account holder himself through normal banking channels

			Remittance is subject to the ceiling of USD 1 (one) million per financial year.
Loans in India to Account Holder / Third party	Permitted without any ceiling subject to usual margin requirements.	Permitted without any ceiling subject to usual margin requirements.	Permitted, subject to conditions
Foreign currency loans in India	Permitted without any ceiling subject to usual margin requirements.	Permitted without any ceiling subject to usual margin requirements.	Not Permitted
Purpose of Loan in India	<p>i) Personal purposes or for carrying on business activities</p> <p>ii) Direct investment in India on non-repatriation basis by way of contribution to the capital of Indian firms / companies</p> <p>iii) Acquisition of flat / house in India for his own residential use.</p>	<p>i) Personal purposes or for carrying on business activities</p> <p>ii) Direct investment in India on non-repatriation basis by way of contribution to the capital of Indian firms / companies</p> <p>iii) Acquisition of flat / house in India for his own residential use.</p>	Personal requirement and / or business purpose.
Loans outside India to Account Holder / Third party	Permitted	Permitted	Not Permitted
Purpose of Loan - Abroad	Fund based and / or non-fund based facilities for bonafide purposes.	Fund based and / or non-fund based facilities for bonafide purposes.	Not permitted.

Brief Aspects of "WILL" *

What is will ?

By definition, 'Will' means a legal declaration of the intention of a testator with respect to his property, which he desires to be carried into effect, after his death. Will includes codicil.

'Codicil' means an instrument made in relation to Will and explaining, altering or adding to its dispositions and is deemed to form part of the Will

Who can make the will ?

Since will is necessarily "wish" of the person for making arrangement of his property after his death, anybody owning the property can make the will, provided that, he / she is -

- Of sound mind, and
- Not a minor

As a rule, there is basic assumption that the person making the will is of sound mind, unless and until, the contrary is established.

Even persons who are deaf or dumb or blind can make Will provided they are aware what they do. Further person who is ordinarily insane, may make his Will during the interval in which he is of sound mind.

What are essential Characteristics of Will ?

Following are the essential characteristics of will.

- (a) It must be in writing and executed by a person competent to make Will
- (b) It must be attested as required by law
- (c) It should be related to the properties of the testator, which he wishes to bequeath.
- (d) The declaration must be to the effect that it operates after the death of Testator and is revocable during his life time.

What are different Types of Wills ?

Will can be Privileged Will (applicable only for specified persons for whom requirement of will to be in writing and attestation is relaxed) or Unprivileged Will.

Privileged Will can be made only by a soldier being employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or any mariner being at sea.

Unprivileged Will is Will made by the persons other than stated above. Such Wills are required to be in writing, signed by testator and attested by the two witnesses (except those made by Mohammedans).

What are Essential clauses of Will ?

1. Name: The name and description like age, religion, community etc. of the testator.
2. Revocation of earlier Wills: A declaration that the present Will is his last Will and testament and that he revokes all other earlier Wills, codicils.
3. Appointment of Executors: An executor is a person named by the testator in the Will to whom the testator has confided the execution of Will. If legacy or bequest is given to executor it should be mentioned in the Will that he would be entitled to legacy even if he does not accept to act as the executor of the Will unless there is any contrary intention.
4. Direction to pay dues if any
5. Legacies and Bequest: This is important clause in the Will, because under these clauses the testator makes the disposition of his property. He can make requests to future person also.
6. Residue clause: It is always advisable to have Residue Clause disposing of the residue (i.e., remaining property belonging to the testator at the time of the death which is not specifically disposed) of the testator's property. If there is no residue clause such remaining property Will go to the legal heir of the testator. Even the legacy which lapse go back to intestacy if there is no residue clause.
7. Testimonium Clause: The testimonium clause is as "in witness whereOF I said _____ have hereunto set and subscribed my hand at _____ on this __ day of _____ 20__."
8. Execution Clause: This is the last clause of the Will which begins with "Signed and acknowledged by the within named Testator as his last Will and Testament". The Testator should sign the execution clause in the presence of two witnesses who should also subscribe their signatures as witness in the presence of the Testator. The witness and/or his spouse cannot be made beneficiary under the Will as any bequest in their favour would be void. However validity of the Will and all other bequests made under it continue to remain valid. In such a case the indisposed portion of the bequeathed property shall devolve as per the law of inheritance. These provisions are not applicable to Hindu, Sikh, Jain or Buddhist. It is preferable to have a doctor to certify that testator is of sound mind and under no influence of alcohol when he made the Will.

Other Important points

Preparation of a Will does not require any specific legal language. Further, Will need not be stamped or registered. Registration of Will is optional. However a registered Will has certain advantages. A Will can be revoked at any time by the testator during his life time.

It is important to note that the attesting witnesses need not know the content of the Will.

* (based on WIRC Referencer)



Due date Calender for October to December 2013



Income Tax -

- 7th October – Payment of TDS for the Month of September, 2013
- 15th October – Filing of TDS Return for Quarter ending 30th September, 2013
- 7th November - Payment of TDS for the Month of October, 2013
- 30th November – Submission of Transfer Pricing Audit Report
- 7th December - Payment of TDS for the Month of November, 2013
- 15th December – Payment of Advance Income Tax Instalment for FY 2013-14



VAT / Profession tax -

- 21st October – Filing of Vat Return by Monthly / Quarterly / half yearly filers
- 31st October – Filing of Profession tax Return by Monthly filers
- 21st November – Filing of Vat Return by Monthly filers
- 30th November – Filing of Profession tax Return by Monthly filers
- 30th November – Online submission of Vat Audit Report (Form 704)
- 21st December – Filing of Vat Return by Monthly filers
- 31st December – Filing of Profession tax Return by Monthly filers



Service Tax -

- 5th October – Payment of Service tax by Monthly / Quarterly
- 25th October – Filing of half Yearly Return by All Assessee
- 5th November – Payment of Service Tax (other than Individual and Partnership Firms)
- 5th December – Payment of Service Tax (other than Individual and Partnership Firms)

Company Law Returns -

- October – Submission of Form 23AC (Balance Sheet) & 23ACA (Profit Loss) within 30days from date of AGM. Submission of CS Compliance Certificate.
- November – Submission of Annual Return within 60 days from date of AGM.

Tax Free Bonds Issue -

- **Housing and Urban Development Corporation -**

- Description - Public issue of tax free bonds in the nature of secured, redeemable, non-convertible debentures, aggregating to Rs 750 crore with an option to retain oversubscription upto the shelf limit (i.e. Rs 4809.20 crore)
- Issue close date - 14-10-2013
- Face Value - Rs. 1000
- Tenor - 10 years (Series 1) / 15 Years (Series 2) / 20 years (Series 3)
- Interest payment - Annual for all
- Interest rates - 8.39% / 8.76% / 8.74%

- **Indian Infrastructure Finance Company -**

- Description - India Infrastructure Finance Company proposes to raise upto Rs 500 crore with an option to retain over subscription upto Rs 2,000 crore aggregating to Rs 2,500 crore through tax free bonds issue of secured redeemable non-convertible debentures.
- Issue close date - 31-10-2013
- Face Value - Rs. 1000
- Tenor - 10 years (Series 1) / 15 Years (Series 2) / 20 years (Series 3)
- Interest payment - Annual for all
- Interest rates - 8.26% / 8.63% / 8.75%

Do you know ?

- **E-Insurance** - Insurance Regulatory Development Authority has formally launched Insurance Repository System - First of its kind in the world. Insurance Repository system will enable policy holders to buy and keep insurance policies in dematerialized or electronic form (e-Policies). e-Policies will eliminate paper and associated risks of storage and loss and provide convenience and safety to the customer. It will also make it a economical proposition for Insurance companies to issue and service e policies as compared to traditional paper policies.
- **Gift** - Gift from near relatives is exempt from Income tax without any limit. But Gift from non-relative over Rs. 50,000 may be taxable.
- **Interest on Fixed Deposit with Banks** - Interest on Fixed Deposit with Banks is fully taxable, even if bank has not deducted TDS. Deduction up to Rs. 10,000 p.a. u/s 80TTA of the Income Tax Act is available for interest on saving account and not on interest on FD with bank.

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