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## SKP Wish List

### Indirect Tax

#### Service Tax

- ◆ The valuation aspects of reimbursable expenditure should be reviewed particularly in the light of the High Court's decision in the case of **Intercontinental Consultants and Technorats Pvt Ltd vs Union of India, ST 2012-HC-DELHI** wherein the High Court has held rule 5(1) of Service Tax (Determination of Value) Rules, 2006 ie service tax being applicable on reimbursement of expenditure to be ultra vires section 66 and 67 of the Finance Act, 1994.
- ◆ Further, post July 1, 2012, post introduction of additional services under reverse charge mechanism, there are interpretational issues among trade circles with regard to whether particular service will come under various reverse charge services given under Notification 30/2012. Hence, guidelines / clarifications are expected in this direction. For example supplying manpower for housekeeping would get covered under manpower service or cleaning services.
- ◆ As per Rule 9 of Place of Provision of Services Rules, 2012, place of provision of specified services shall be the location of service provider. It would be better to have clarifications on Rule 9 of Place of Provision of Services Rules, 2012 to avoid future litigations / controversies. For example Rule 9 is not applicable in case of intermediary services provided in relation to goods. Hence, there is no parity between intermediary services in relation to goods and services.
- ◆ If service providers do not realize the payment, there are no specific provisions for bad adjustments and to claim the refund / make adjustment of service tax already paid on accrual basis. Therefore, Rule 6(3) of Service Tax Rules, 1994 should be duly amended.

- ◆ In relation to filing of service tax return post July 2012, directions / guidelines should be given with prescribed formats.
- ◆ As said by Finance Minister P Chidambaram, he would outline amendments to the Constitution on the Goods and Services Tax (GST) in upcoming Budget if there is consensus among states on the issue. Further, after miss out number of deadlines, strong roadmap of GST should be come up to mitigate the complexities of various indirect taxes.

#### Central Excise

- ◆ The Supreme Court in the case of CCE vs. SKF India Ltd. (2009 (239) ELT 385) has held that the interest is payable on payment of differential duty on account of revision of prices subsequent to removal of goods. Therefore, provisions should be amended that no interest would be payable on account of differential duty paid/payable because of any price revision subsequent to the removal of goods.

#### Cenvat Credit Rules, 2004

- ◆ With the introduction of "Negative list based taxation", service tax is leviable on all the services except those specified in the negative list. On same line, definition of "input services" should be redrafted as "credit of all input services received by service providers except specified services"
- ◆ According to section 66D, negative list of services, *inter alia* include "any process amounting to manufacture or production of goods". This may lead to reversals of cenvat credit as per Rule 6 of Cenvat Credit Rules, 2004. Therefore, definition is expected to have suitable amendment so as to avoid future intricacies and eliminate this flaw in the law.

*more to come in the next issue...*

# Budget 2013 - Service Tax on Cross-Border

## Transactions

Budget 13-14 will be presented in the backdrop of the most uncertain global economic situation and the government is in desperate need to increase its revenue to bring down the fiscal deficit. Hence, steps may be taken to widen tax base and hike in tax rate.

**Pre 1 July 2012**, the service tax implications of cross border transactions were governed by Export and Import of Service Rules which classifies the taxable services based on Location of the property (Category I), Performance of service (Category II), Residual (Category III)

Further, **post 01 July 2012** there is paradigm shift in the provisions relating to Service Tax. A new Rule 'Place of Provision of Service (POPS) Rules, 2012' is introduced which replaces the said Export and Import of Service Rules. POPS Rules has moved Service Tax from origin based consumption tax to destination based consumption tax. POPS Rules is a welcome move to integrate multiple taxes in India and introduce Goods and Service Tax (GST).

POPS Rules states that generally the place of provision of service shall be the location of service receiver, whereas for certain services the place of provision of service shall be based on performance of services, location of immovable property, location of events, location of provider of service.

However, after introduction of POPS Rules, there exists lot of ambiguity wrt to taxability of services which may lead to more lawsuits and controversies in future. Some of the instances are enlisted below:

- ◆ When a service provider located outside India is providing online information and database access or retrieval services to receiver in India, the same was taxable. As per POPS Rules for the said service, the place of provision of service shall be location of service provider. Since the service provider in present case is outside India, no Service Tax is applicable. If we

consider a reverse way, wherein the service provider is in India and the receiver is outside India, then according to earlier provisions Service Tax was not applicable since the same qualified for exemption under Export of Services Rules, however as per the POPS Rules, the transaction will now be taxable.

- ◆ When a service provider located in India is providing stock broking services to Foreign Institutional Investors (FII), the service was not subject to Service Tax if the performance was outside India. However, this condition was difficult to fulfil as the stock brokers were performing activities in India. Under the POPS Rules, for the same service, the place of supply of the service is the location of the recipient. In this case, as recipients are located outside India, Service Tax may not be applicable on the transaction.
- ◆ If the service provider and receiver both are outside India, then based on the earlier provisions Service Tax was not applicable. However, in light of POPS Rules, which taxes transactions based on the consumption of service, the transaction shall be taxable if the place of provision of service is in India, irrespective of the fact that service provider and receiver both are outside India. The payment mechanism and also who shall be liable to pay tax are still unclear.

Therefore, government is expected to bring down more parity / clarity on the burning issues as narrated above in the upcoming budget and also this would be valuable to avoid future litigations / controversies. Separately, the roadmap for GST is also on the frontage, since the states and the central government have recently converged to a new model whereby GST may be introduced in phases like VAT.

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