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VAISH ASSOCIATES ADVOCATES
Corporate, Tax and Business Advisory Law Firm

From the Editor's Desk...

Dear Reader,

Based on the recommendations of the Empowered Group of Ministers, the Ministry of Finance has issued Notification no. 9/2009 dated March 3, 2009 providing for exemption of service tax (by way of refund) on all services provided to SEZ Developers/ Units in relation to their authorised operations, within or outside SEZ. Earlier, the Revenue had taken a stand that services consumed outside SEZ would not qualify for exemption from service tax irrespective of the fact that such services were meant for carrying out the authorized operations by the SEZ Developers/ Units.

Though there seems to be a marked shift in the approach of the Ministry of Finance, yet the intended implementation is somewhat not in sync with the spirit of the SEZ Act. Accordingly, the SEZ Developers/ Units would first have to pay the service tax and then claim refund from the jurisdictional excise commissionerate. Moreover, the Notification does not provide any time-bound disposal of refund applications.

This has far reaching implications insofar as the scheme of SEZ is concerned. The SEZ Policy treats the SEZs as deemed foreign territory for the purposes of trade operations, duties and tariffs. The extant notification requires the SEZ Developers/ Units to get themselves registered with the jurisdictional excise commissionerate. Further, the SEZ Act seeks to provide the benefit of service tax in the form of exemption (i.e., not levying the service tax at source, as is the case of central excise or customs duty).

This has triggered a debate whether an exemption by way of refund is exemption *simpliciter* or an exemption from payment of service tax. Last but not the least, the present Notification would entail more paper work, blockage of funds and increased transaction costs.

Yours truly,

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Inside...

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INCOME TAX

Whether AAR ruling is final? What are "auxiliary services" that rule out PE in India?

U.A.E. Exchange Centre Ltd. v. UOI and Anr. Delhi HC

The UAE Exchange Centre Ltd. (the "Centre" or the "petitioner"), a limited liability company incorporated in the UAE, with its head office at Abu Dhabi, was engaged, *inter alia,* in offering remittance services for transferring of monies from UAE to various places in India. In order to facilitate the same, the Centre had opened liaison office(s) in India on January 1, 1997 with the approval of the Reserve Bank of India ("RBI"), which permitted the Centre to undertake only the following activities:

(i) responding to enquiries from correspondent banks with respect to drafts issued;

(ii) undertaking reconciliation of bank accounts held in India with correspondent banks under Drafts Drawing Arrangement;

(iii) acting as a communication centre receiving computer advices of mail transfer from UAE and transmitting to the Indian correspondent banks;

(iv) printing drafts and dispatching the same to the addressees; and

(v) following up with the Indian correspondent banks.

The RBI specifically prohibited the liaison office(s) from charging any commission or fee or from receiving or earning any remittances from any activity undertaken by them.

Any person in UAE desiring to remit funds to his relative/ dependent in India would hand over his or her funds for remittance to the Centre at any of its outlets/ camps in UAE. Each such transaction constitutes a separate contract between the remitter and the Centre. Upon funds being collected, the Centre makes an electronic remittance of the funds on behalf of its customers. In respect of the same, the Centre collects a fixed charge of Dirhams 15 in UAE, irrespective of whether the payment was remitted through wire transfer or indirectly from the liaison office.

So far as its taxability was concerned, the Centre, moved an application under section 245-Q(1) of the Income-tax Act, 1961 (the "Act") seeking an advance ruling from the Authority for Advance Rulings, New Delhi (the "AAR"). The AAR ruled that the Centre had "business connection" in India in terms of section 9(1)(i) of the Act and, accordingly, its income was liable to tax in India.

AAR also held that the liaison office constituted fixed place permanent establishment ("PE") under the Indo-UAE Double Tax Avoidance Agreement ("DTAA") and the exclusion from the ambit of PE in case of activities of "preparatory or auxiliary" character was not available to the liaison office since its activities were not of such character. Based on the said AAR ruling dated May 26, 2004, the Revenue issued notice under section 148 of the Act in respect of assessment years 2000-01 to 2003-04.

The said ruling rendered by the AAR as well as the subsequent notice under section 148 issued pursuant thereto was challenged by the Centre in the writ petition filed by the Centre before the Delhi High Court.

The Centre submitted that it does not carry on any business/ trade in India and therefore, its activities in India cannot be construed as "business connection" within the meaning of section 5(2)(b) or section 9(1)(i) of the Act. The Centre further contended that the said activities of the Centre did not constitute a PE in India in terms of the DTAA.

In response, the Revenue raised a preliminary objection as to the maintainability of the writ petition and against the desirability of the intervention of the High Court on the ground that in terms of section 245-S an advance ruling pronounced by the AAR is binding on the applicant as well as the Revenue. Accordingly, it was contended that the High Court ought not to exercise its extraordinary jurisdiction under Article 226 of the Constitution.

On the merits, the Revenue, relying heavily on the AAR ruling, reiterated that the activities of the Centre had a "real and intimate" connection with business activity of the petitioner in UAE and, hence, there was business connection in terms of section 9(1)(i) read with section 5(2)(b) of the Act as well as the same constituted PE of the Centre in India.

On the preliminary objection, the Court held that while an AAR ruling is binding on the applicant and the Revenue, such a ruling does not exclude the jurisdiction of the Courts either expressly or by implication since there is no provision which gives finality to

such ruling. The Court, accordingly, held that notwithstanding section 254-S of the Act, the Courts would have jurisdiction to entertain writ under Article 226 of the Constitution as the Act does not provide for any adequate remedy to mitigate or deal with the grievance of a party aggrieved by a ruling of the AAR. The Court further observed that the writ jurisdiction could be exercised provided the impugned ruling/ decision suffers from errors of jurisdiction or errors apparent on the face of record. The Court was of the view that the AAR ruling suffered from the aforesaid defects, while dealing with the merits of the ruling and adjudicated the writ petition of the Centre.

On merits, the Court observed that the Centre is offering remittance services to its NRI customers in UAE. The contracts pursuant to which funds are handed over by the NRI customers to the Centre in UAE are entered into between the petitioner and the customer (remitter) in UAE against a one time fee of Dirhams 15. The transmission, in India, took place either by telegraphic transfer through normal banking channels via banks in India or are by involving the liaison office(s) of the petitioner in India, which in turn, download the information and particulars necessary for remittance by using computers in India which are connected to the servers in UAE, by drawing cheques on banks in India in couriering/ dispatching the same to the beneficiaries of the NRI remitter in India.

Referring to the only activity of the liaison offices of the Centre in India which is to download information which is contained in the main servers located in UAE based on which cheques are drawn on banks in India whereupon the said cheques are couriered or dispatched to the beneficiaries in India, keeping in mind the instructions of the NRI remitter, the Court held that such activity was auxiliary in character. In terms of article 5(3) of the Indo-UAE DTAA, the activities carried out by a non-resident assessee through a fixed place of business do not constitute a PE of such assessee if the activities are of a "preparatory and auxiliary" character. The Court held that the term "auxiliary" refers to activities that are undertaken to aid or assist the main activities of the assessee in UAE. In such a case, the Court held, it is not relevant whether the activities in India were required to complete the transaction in UAE. The real test is the true nature of the activities undertaken in India.

The Court further pointed out that the AAR engaged itself in the question whether the said activities constituted "business connection" for the purposes of sections 5 and 9 of the Act, which the Court held was not a question to be gone into in the light of the DTAA, which made any income of a non-resident taxable in India only if the activities of such non-resident constituted PE in India. The Court further clarified that article 5(3)(e) of the DTAA did not permit making a value judgment as to whether the transaction would or would not have been complete till the role played by liaison offices in India was fulfilled.

In light of the aforesaid, the Court held that the activity carried on by the liaison offices in India did not, in any manner, whatsoever, contribute directly or indirectly to the earning of profits or gains by the petitioner in UAE since every aspect of the transaction, including earning of the commission for such services, was concluded in UAE. The activity performed by the liaison office(s) in India was only supportive of the transaction carried on in UAE.

Therefore, the Court, holding that the Centre did not have a PE in India, quashed the impugned ruling of the AAR and ordered the Revenue respondent to consider withdrawal of the notices under section 148 of the Act if the only ground available for reopening the assessments of earlier years was the impugned ruling rendered by the Authority.

The above decision of Delhi High Court is an important decision on the finality of a ruling rendered by the AAR as well as what the term "preparatory and auxiliary" under the DTAA signifies. It is likely to have far reaching implications, as this is likely to give rise to serious amount of litigation challenging the AAR rulings. Needless to mention, this decision will provide respite to the assessees who have had adverse rulings from the AAR.

Credit of TDS under section 199 of the Income-tax Act

The Central Board of Direct Taxes (CBDT) has introduced rule 37-BA [Credit for tax deducted at source (TDS) for the purposes of section 199] and rule 37-I [Credit for tax collected a source for the purposes of sub-section (4) of section 206C] to the Income-tax Rules, 1962 (the "Rules").

Rule 37-BA, *inter alia,* provides that –

- Credit for TDS shall be given to the person to whom payment/ credit has been made ('Deductee') on the basis of information furnished by Deductor to the tax authority or the person authorized by such authority (viz., NSDL, etc.).

- The Rules further provides that if such income is assessable in the hands of other person (in representative capacity, by reason of clubbing or some other specified reasons) then the credit for TDS may be availed by such other person, provided that –
  - Deductee files following details and declaration with Deductor:
    - Name, address, PAN of the person to whom credit is to be given;
    - Payment or credit in relation to which credit is to be given; and
    - Reasons for giving credit to such person.

    +
  - In the TDS return, Deductor furnishes details of such other person.

    Further, Deductor will be required to keep such declaration in his safe custody.
- Deductor shall issue the TDS certificate in the name of the person in whose name TDS return has been filed.
- Deductee/ such other person may claim credit for TDS during the assessment year when such income is assessable. In case such income is assessable over a period more than one assessment year then proportionate TDS credit shall be allowed across those years.
- TDS Credit shall be granted on the basis of –
  (I) the TDS return furnished by Deductor; and
  (ii) information in the return of income in respect of the claim for the credit.

Rule 37-I provides that –

- TCS Credit shall be given to the person from whom the tax has been collected, on the basis of the TCS return filed by the collector.
- TCS credit shall be given for the assessment year for which such income is assessable to tax. However, if the lease or license is relatable to more than one year, TCS credit shall be proportionately allowed across those years.
- TCS Credit shall be granted on the basis of –
  (i) TCS Return furnished by the collector; and
  (ii) the information in the return of income in respect of the claim for such credit.

The new rules 37-BA and 37-I shall come into force w.e.f. April 1, 2009.

[Source: CBDT Notification no. 28/2009 dated March 16, 2009]

SEBI/ CORPORATE LAWS

Mandatory Disclosure of Shares Pledged by Promoters

With effect from January 28, 2009 ("Effective Date") the Securities and Exchange Board of India ("SEBI") has inserted regulation 8A to the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1992, making it mandatory for the promoter or the promoter group ("Promoters") to disclose the detail of pledge of shares held by them in the concerned listed company. The disclosure requirements may be broadly categorized as under:

- **Initial disclosure by the Promoters:** To be made by the Promoters to the Listed Company within seven (7) working days from the Effective Date.
- **Event-based disclosures by the Promoters:** To be made by the Promoters to the Listed Company within seven (7) working days from the date of creation of pledge of shares. Disclosure is also required to be made within seven (7) working days of invocation of pledge of shares.
- **Periodic disclosure by the listed company:** The listed company shall disclose to the stock exchanges within seven (7) working days from the date of receipt of such information from the Promoters, if the aggregate number of shares pledged by the Promoters during any quarter, together with the shares already pledged, exceeds the lower of: (i) 25,000 shares; or (ii) 1% of the total shareholding or voting rights in the listed company.

SEBI has prescribed separate formats for making disclosures. Following this amendment, the formats of disclosure under clause 35 and clause 41 of the listing agreement have also been amended. It is relevant to note that in terms of the amendments in clause 35 and clause 41 of the listing agreement, the companies are required to disclose details not only with respect to the shares pledged but also in respect of the shares on which any encumbrance have been created by them.

[Source: Notification No. LAD-NRO/GN/2008-2009/33/15022 dated January 28, 2009]

Amendments to SEBI (Disclosure and Investor Protection) Guidelines, 2000

SEBI has amended SEBI (Disclosure and Investor Protection) Guidelines 2000 ("DIP Guidelines"). Highlights of the amendments are as under:

Validity of SEBI Card extended to one year

- The validity period of the observations issued by SEBI has been enhanced from the existing period of three months to twelve months. Before opening of the issue, every issuer shall be required to file an updated offer document with SEBI, highlighting all changes made in the document.

Timeline for completion of Bonus Issue reduced

- The timeline for completion of bonus issues has been reduced, and where no shareholders' approval is required as per the articles of association of the issuer, the bonus issue shall be completed within fifteen days from the date of the approval by the board of directors of the issuer. However, where shareholders' approval is required, the bonus issue shall be completed within sixty days from the date of the meeting of board of directors wherein bonus was announced subject to shareholders' approval.

Revised Timeline for announcement of the IPO Floor Price/ Price Band

- The DIP Guidelines have been amended to permit the issuer making an initial public offer (IPO) to announce the floor price or price band after the date of registration of the red herring prospectus with the Registrar of Companies (ROC), atleast two working days before the issue opening date. Further, where the floor price or price band is announced after the date of registration of the red herring prospectus with the ROC, every issuer shall ensure wide dissemination of the floor price or price band through various means, including newspaper advertisement.

Enhancement of upfront amount payable on allotment of warrants

- The upfront amount payable in the event of warrants being allotted on preferential basis has been enhanced from 10% to 25% of the price fixed.

Relaxation from Takeover Code disclosures where Board of Directors of Target Company is superseded notwithstanding Competitive bids

- The issuers who have been granted exemption from compliance with any one or more of the provisions of Chapter III, regulation 29A of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("Takeover Code") shall be exempted from certain provisions of Chapter XIII of the DIP Guidelines subject to making certain disclosures.

Other miscellaneous amendments

- Certain amendments have been made in the DIP Guidelines to consider relaxation from strict enforcement of requirements of rule 19(2)(b) of the Securities Contracts Regulation Rules, 1957 in case of proposal for listing of equity shares with differential rights offered through rights or bonus issue or warrants issued along with non-convertible debentures through qualified institutional placement.

- Certain clarifications regarding lock-in requirements of instruments allotted on preferential basis have been made in clause 13.3.1(c) and (d) of the DIP Guidelines.

[Source: Circular No. SEBI/CFD/DIL/DIP/ 34/2009/24/09 dated February 24, 2009]

Amendments to Takeover Code

Relaxation from the strict compliance of provisions of Chapter III of Takeover Code

SEBI has amended Takeover Code by introducing regulation 29A, which provides relaxation from strict compliance of the provisions of Chapter III of Takeover Code on an application made by the target company. Such relaxation may be granted by SEBI subject to the following:

- The Board of Directors of the target company is removed by the Government or any other regulatory authority and other persons have been appointed to hold the office of Director(s) for orderly conduct of the affairs of the target company;

- Such newly appointed directors have devised a plan for transparent, open, and competitive process for continued operation of the target company in the interests of all

stakeholders in the target company, and such plan does not further the interests of any particular acquirer.

- ✧ The conditions and requirements of the competitive process are reasonable and fair.
- ✧ The process provides for details, including the time when the public offer would be made, completed and the manner in which the change in control would be effected.

Restriction on subsequent Competitive Bids

- ✧ Regulation 25(2B) has also been inserted whereby no public announcement for a competitive bid shall be made after an acquirer has already made the public announcement pursuant to relaxation granted by SEBI in terms of regulation 29A of Takeover Code.

Extant SEBI Notification can be downloaded from **www.sebi.gov.in**

[Source: Notification No. LAD/NRO/GN/2008-09/34/154082 dated February 13, 2009]

FEMA/ RBI/ FDI

Guidelines for Downstream Investment by Investing Indian Companies 'Owned or Controlled by Non Resident Entities'

RBI has issued revised Policy for downstream investments. The downstream investment by companies 'owned' or 'controlled' by non- resident entities would be required to follow the same norms as in case of direct foreign investment. The Policy for downstream investment has been issued different categories of companies, namely– (a) operating companies; (b) operating-cum-investing companies; and (c) investing companies. The salient features of the revised Policy are as follows:

1. **Only operating companies:** Foreign investment in such companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps with regard to the sectors in which such companies are operating.
2. **Operating-cum-investing companies:** Foreign investment into such companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps with regard to the sectors in which such companies are operating. Further, the subject Indian companies into which downstream investments are made by such companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps in regard of the sector in which the subject Indian companies are operating.
3. **Investing companies:** Foreign investment in Investing Companies will require the prior Government/ FIPB approval, regardless of the amount or extent of foreign investment. The Indian companies into which downstream investments are made by such investing companies would have to comply with the relevant sectoral conditions on entry route, conditionalities and caps in regard of the sector in which the subject Indian companies are operating.
4. For companies which do not have any operations and also do not have any downstream investments, for infusion of foreign investment into such companies, Government/ FIPB approval would be required, regardless of the amount or extent of foreign investment. Further, as and when such company commences business(s) or makes downstream investment it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.
5. For operating-cum-investing companies and investing companies (Para 2 and 3) and for companies as per para 4 above, downstream investments can be made subject to the following conditions:

   (a) Such company is to notify SIA, DIPP and FIPB of its downstream investment within 30 days of such investment even if equity shares/CCPS/CCD have not been allotted along with the modality of investment in new/existing ventures (with/ without expansion programme);

   (b) downstream investment by way of induction of foreign equity in an existing Indian Company to be duly supported by a resolution of the Board of Directors supporting the said induction as also a shareholders agreement if any;

   (c) issue/ transfer/ pricing/ valuation of shares shall be in accordance with applicable SEBI/ RBI guidelines;

(d) Investing companies would have to bring in requisite funds from abroad and not leverage funds from domestic market for such investments. This would, however, not preclude downstream operating companies to raise debt in the domestic market.

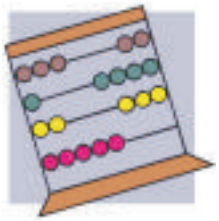
These guidelines will be effective from February 25, 2009. Further details can be had from www.dipp.nic.in

[Source: Press Note No 4 (2009 Series) - DIPP, February 25, 2009]

Guidelines for Calculation of Total Foreign Investment [Direct and Indirect Foreign Investment in an Indian Company]

Direct Foreign Investment

✧ All investment directly by a non-resident entity into the Indian company would be counted towards foreign investment.



Indirect Foreign Investment

1. The foreign investment through the investing Indian company would not be considered for calculation of the indirect foreign investment in case of Indian companies which are 'owned and controlled' by resident Indian citizens and/ or Indian companies which are owned and controlled by resident Indian citizens;
2. For cases where condition given in point 1 above is not satisfied or if the investing company is owned or controlled by 'non resident entities', the entire investment by the investing company into the subject Indian Company would be considered as indirect foreign investment;
3. However, as an exception, the indirect foreign investment in 100% owned subsidiaries of operating-cum-investing/ investing companies, will be limited to the foreign investment in the operating-cum-investing/ investing company. For the purposes of explanation, it is clarified that this exception is being made since the downstream investment of a 100% owned subsidiary of the holding company is akin to investment made by the holding company and the downstream investment should be a mirror image of the holding company;
4. The total foreign investment would be the sum total of direct and indirect foreign investment;
5. The above methodology of calculation would apply at every stage of investment in Indian Companies and thus to each and every Indian Company.

Consequential Amendment to Policy for Downstream Investment

1. Based on the above methodology for calculation of total foreign investment in Indian companies, it can be observed that the hitherto existing policy on downstream investment (i.e., policy for only operating companies, operating-cum-investing companies, investing companies and for holding companies without any downstream investment and operations) calls for amendments.

   Accordingly, amendments to Press Note 3 of 1997, Press Note 9 of 1999, entry 10 under Press Note 2 of 2000, entry 18 under Press Note 4 of 2006 as amended by the Press release dated November 13, 2006, and entry 24 of Press Note 7(2008) have been separately notified.
2. Any foreign investment already made in accordance with the guidelines in existence prior to issue of this Press Note would not require any modification to conform with these guidelines. All other investments, past and future, would come under the ambit of these new guidelines.

These guidelines will be effective from February 13, 2009.

[Source: Press Note No 2 (2009 Series) - DIPP, February 13, 2009]

Guidelines for Transfer of Ownership or Control of Indian Companies in Sectors with Caps from Resident Indian Citizens to Non-Resident Entities

At present, the transfer of shares from residents to non-residents, including acquisition of shares in an existing company, is under the automatic route, subject to the sectoral policy on FDI. RBI has now formulated the guidelines for transfer of ownership or control of Indian companies in sectors with caps from resident Indian citizens to non-resident entities which are enumerated below:

1. In sectors with caps, including *inter-alia* defence production, air transport services, ground handling services, asset reconstruction companies, private sector banking, broadcasting, commodity exchanges, credit information companies, insurance, print media, telecommunications and satellites, Government approval/FIPB approval would be required in all cases where:

   a. An Indian company is being established with foreign investment and is owned by a non-resident entity; or

b. An Indian company is being established with foreign investment and is controlled by a non-resident entity; or

c. The control of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares to non-resident entities through amalgamation, merger, acquisition etc.; or

d. The ownership of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares to non-resident entities through amalgamation, merger, acquisition, etc.

2. It is clarified that these guidelines will not apply for sectors/activities where there are no foreign investment caps, that is, 100% foreign investment is permitted under the automatic route.

These guidelines will be effective from February 13, 2009.

[Source: Press Note No 3 (2009 Series) - DIPP, February 13, 2009]

RBI extends the Date for completing the Buyback/ Prepayment of FCCBs to December 31, 2009

RBI had issued A. P. (DIR Series) Circular No.39 dated December 8, 2008 with regard to buyback/ prepayment of Foreign Currency Convertible Bonds (FCCBs). In terms of Para 7 of the above circular, the entire procedure of buyback should be completed by the Indian companies by March 31, 2009.

The RBI has now decided to extend the date for completing the entire procedure for buyback of FCCBs from March 31, 2009 to December 31, 2009.

[Source: RBI A.P. (DIR Series) Circular No. 58 dated March 13, 2009]

No Customer charges for use of ATMs for cash withdrawal w.e.f. April 1, 2009

Last year, the RBI had issued Notification no. RBI/2007-2008/260 dated March 10, 2008 regarding charges for use of ATMs for cash withdrawals and balance enquiries. In terms of the said Notification, with effect from April 1, 2009 there would be no charges levied for use of other bank ATMs for cash withdrawals.

EXCISE & SERVICE TAX

Rate of Excise Duty reduced from 10% to 8%

Effective from February 24, 2009, the rate of excise duty has been reduced from 10 percent to 8 percent.

[Source: Notification No. 4 /2009 – CX dated February 24, 2009]

Rate of Service Tax reduced from 12% to 10%

Effective from February 24, 2009, the service tax rate has been reduced from 12% to 10%.

[Source: Notification No. 8 /2009 – ST dated February 24, 2009]

No Service Tax on Road Construction

Central Board of Excise and Customs ("CBEC") vide Circular No. 110 of 2009 has clarified that construction of roads is not a taxable services, though repair, management and maintenance of roads will attract service tax.

Commercial or industrial construction service [section 65(105)(zzq)] specifically excludes construction or repairs of roads. However, management, maintenance or repair provided under a contract or an agreement in relation to properties, whether immovable or not, is leviable to service tax under section 65(105)(zzg) of the Finance Act, 1994. There is no specific exemption under this service for maintenance or repair of roads, etc.

Further, the CBEC has clarified as to what types of activities would constitute 'construction of road' as against the activities which should fall under the category of maintenance or repair of roads. While resurfacing, renovation, re-laying, filing of potholes and strengthening would be treated as repair and maintenance service, laying of new roads, widening of narrow roads to boarder roads and changing of road surface would be treated as construction of roads.

[Source: Circular No. 110/04/2009 –ST dated February 23, 2009]

Service Tax implications on the activity of Screening Films in Movie Theatres

CBEC has issued a clarification as to whether the activity of screening of film supplied by a film distributor would fall under any of the taxable services and accordingly, whether the theatre owners are required to pay service tax on amount received by them from distributors.

CBEC has clarified that screening of a movie is not a taxable service except where the distributor leases out the theater and the theater owner gets a fixed rent. In such a case, the service provided by the theater owner would be categorized as 'Renting of immovable property in furtherance of business or commerce' and the theater owner would be liable to pay tax on the rent received from the distributor.

[Source: Circular No. 109/03/2009- ST dated February 23, 2009]

Imposition of Service Tax on Developers/ Builders/ Promoters

Doubts have arisen regarding the applicability of service tax in a case where developers/ builders/ promoters enter into an agreement, with the ultimate owner for selling a dwelling unit in a residential complex at any stage of construction (or even prior to that) and who make construction linked payment.

The Department has clarified that any service provided by seller of a residential complex in connection with the construction of residential complex till the execution of such sale deed would be in the nature of 'self-service' and consequently would not attract service tax. Further, if the ultimate owner enters into a contract for construction of a residential complex with a promoter/ builder/ developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity would not be subjected to service tax, because this case would fall under the exclusion provided in the definition of 'residential complex'. However, in both these situations, if services of any person like contractor, designer or a similar service provider are received, then such a person would be liable to pay service tax.

[Source: Circular No. 108/02/2009 – ST dated January 29, 2009]

Clarification regarding 'Commission' received by Managing Directors/ Directors

The matter regarding levy of service tax on 'Commission' received by the Directors of the company under the taxable service category 'Business Auxiliary Service' has been examined. CBEC is of the view that where the companies make payment to their officials, such as Managing Directors/ Directors, terming the same as 'Commissions' and such payment may be over and above the salary and other remunerations. However, so long as the activities performed are duties within the framework of the terms of employment, the amount paid by an employer to an employee, even if it is termed as commission, would not be treated as 'commission' mentioned under the definition of business auxiliary service and service tax would not be leviable on such amount.

SPECIAL ECONOMIC ZONES

Service Tax Exemption on Services provided in relation to Authorized Operations in Special Economic Zones (SEZs)

CBEC has issued Notification No. 9/2009-ST dated March 3, 2009 which provides for refund of service tax, paid by a SEZ Unit/ Developer on all the (input) taxable services specified in section 65(105) of the Finance Act, 1994 received by such SEZ Unit/ Developer for use in their authorized operations. Hitherto, SEZ Units/ Developers were exempt from payment of service tax on taxable services received for authorized operations and 'consumed within the SEZ' in terms of Notification No. 4/2004 –ST dated 31 March 2004, which now stands superseded by the present Notification. The salient features are as follows:

- The refund of service tax can be claimed only after payment of the service tax by the SEZ Unit/ Developer to the service provider. No CENVAT Credit can be claimed by the SEZ Unit/ Developer with regard to such input services.
- The SEZ Unit/ Developer would have to follow the prescribed procedure to claim the refund of such service tax.
- The service tax refund claim shall be accompanied, *inter alia,* by a copy of the list of specified services required in relation to the authorised operations in the SEZ, as approved by the Approval Committee. In view of this, it would be a pre-condition to get the list of specified services (in relation to the authorized operations) approved by the Approval Committee.
- The refund can be claimed by the SEZ Unit/ Developer ordinarily within 6-months from the date of payment of service tax.
- The benefit under the Notification can be claimed w.e.f March 3, 2009.

[Source: Notification No. 9/2009-ST dated March 3, 2009]

IMPORTANT DATES WITH REGULATOR (S)

COMPLIANCE CHECKLIST

March - April, 2009

Sr. No	PARTICULARS	Sections/ Rules Clauses, etc	Acts/Regulations, etc.	Compliance Due Date	To whom to be submitted
A.	**INCOME TAX**				
1	TDS from Salaries for the previous month	Section 192	Income-tax Act, 1961	April 7, 2009	Income-tax Authorities
2	TDS on to Contractors/ Advertising/ Professional Service Bill/ Rent/ Commission or Brokerage in the previous month	Section 194C Section 194I Section 194J Section 194H	Income-tax Act, 1961	April 7, 2009	Income-tax Authorities
3	Quarterly Return for tax deducted on payments (other than salary) to non-resident(s)	Section 200(3), Rule 31A	Income tax Act, 1961 and Income-tax Rules, 1962	April 14, 2009	Income-tax Authorities
4	Issue certificate in prescribed form for TDS during financial year ending March 31, 2009, for salary payments	Section 203, Rule 31	Income tax Act, 1961 and Income-tax Rules, 1962	April 30, 2009	Income-tax Authorities
B.	**CENTRAL EXCISE & SERVICE TAX**				
5	Pay service tax in Form TR-6, collected during the previous month or quarter	Rule 6	Service Tax Rules, 1994	March 31, 2009	Service Tax Authorities
6	Submission of CENVAT Return for March 2009	Rule 9(7)	CENVAT Credit Rules, 2004	April 10, 2009	Excise Authorities
7	Half yearly Return of service tax paid during the half year ending March 31, 2009	Rule 7	Service Tax Rules, 1994	April 25, 2009	Service Tax Authorities
8	Half yearly return of CENVAT Credit for the half year ended March 31, 2009.	Clause 9(9)	CENVAT Credit Rules, 2004	April 30, 2009	Excise Authorities
C.	**STOCK EXCHANGE(S)**				
9	Submission of statement of shareholding pattern as at the end of the quarter ended March 31, 2009	Clause 35	Listing Agreement	April 21, 2009	Stock Exchange(s)
D.	**LABOUR LAWS**				
10	Payment of monthly Provident Fund dues	Para 38 of Employees Provident Funds Scheme, 1952	Employees Provident Funds and Miscellaneous Provisions Act, 1952	April 15, 2009	Provident Fund Authorities
11	Monthly return of Provident Fund for the previous month for international workers	Para 36 of Employees Provident Funds Scheme, 1952	Employees Provident Funds and Miscellaneous Provisions Act, 1952	April 15, 2009	Provident Fund Authorities
12	Monthly return of Provident Fund for the previous month for employees (other than international workers)	Para 38 of Employees Provident Funds Scheme, 1952	Employees Provident Funds and Miscellaneous Provisions Act, 1952	April 15, 2009	Provident Fund Authorities

VAISH ACCOLADES

- The Government of India, Ministry of Corporate Affairs has appointed **Mr. O. P. Vaish, Senior Advocate** (Founder, Vaish Associates, Advocates) as one of the Directors on the Board of **Maytas Infra Limited.**

- **Mr. O. P. Vaish** was invited to address one day *Directors' Orientation Program* on *"Corporate Governance"* on March 25, 2009 organized by the Institute of Company Secretaries of India –Northern India Regional Council jointly with National Foundation for Corporate Governance (NFCG). His topic was *"Changing Paradigm in Corporate Governance and Corporate Ethics –Recent cases"*.

- **Ajay Vohra** was invited to be expert faculty to address on '*Various Issues on Income Tax*' on February 8, 2009 at the 7th Residential Refresher Course organized by the Kanpur Chartered Accountants' Society at Mussoorie.

- **Ajay Vohra** was invited to be the expert faculty at Certificate Course on Valuation on the subject '*Corporate Restructuring –Legal Implications*' organized by ICAI on January 10, 2009 at SCOPE Complex, Lodi Road, New Delhi.

- **Hitender Mehta** was invited to deliver a key note address on *"Special Economic Zones"* on February 25, 2009 on the occasion of launch of textiles sector specific SEZ being developed by Ishan Developers and Infrastructure Limited at Amritsar.

- **Hitender Mehta** was invited to be a Principal Speaker at two days conference on *"Governance"* organized by National Law University, Jodhpur on March 19-20, 2009. His topic was *"Corporate Governance & Role of Legal Professionals"*.

- **Hitender Mehta** was invited to be a Guest Speaker on *"Special Economic Zones"* at one day seminar on *"Contemporary Corporate Issues"* held on March 14, 2009 organized by Jaipur Chapter of the Institute of Company Secretaries of India (ICSI).

- **Rohit Garg** contributed an article titled '*Transfer Pricing-some issues*' in February 2009 issue of '*The Chartered Accountant*', a monthly journal of the Institute of Chartered Accountants of India (ICAI).

CSR Project –Anemia Eradication Program

- The Anemia eradication drive was started in July 2008 by **Vaish Associates Public Welfare Trust** in Collaboration with MCD, Blood Bank, Lady Irwin College and Inner Wheel Club of Delhi Midtown. Approx. 500 students from four MCD Schools of Jaunapur, Gadaipur and Mandi (near Mehrauli), New Delhi were tested for their hemoglobin (HB) levels and Iron and Nutritional Supplements were given to them along with awareness talks for children and teachers.

- A retest was done for the anemic children in the month of February 2009. A marked improvement was seen in these children. To celebrate the same an Anemia Eradication Project, a program was organized at the MCD School, Jaunapur on February 26, 2009. On this occasion, 35 Children where felicitated for having HB levels 12 and above. Parents were also called on this occasion where Dr. Sahi gave a talk on anemia along with an awareness play by the students of Lady Irwin College.

The Government appointed Directors of Maytas Infra Limited, Mr. O. P. Vaish and Mr. Ved Jain, during a press conference at Hyderabad on Thursday, March 19, 2009

The Hindu Business Line - Friday, March 20, 2009

NLU Jodhpur Conference on Governance: Mr. Hitender Mehta addressing. Sitting (L to R): Mr. D. D. Rathi, Director & CFO, Grasim Industries, Dr. Justice Vineet Kothari, Judge, Rajasthan High Court, Mr. Justice N. N. Mathur, Vice Chancellor, NLU Jodhpur, Mr. D. R. Mehta, Former Chairman, SEBI, Mr. Dinesh Kothari, Educationist

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