PRE-BUDGET MEMORANDUM 2009

Indirect Taxes

THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA, NEW DELHI

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INTRODUCTION

1.1 The Council of the Institute of Chartered Accountants of India considers it a privilege to submit this Pre-Budget Memorandum to the Government. The memorandum contains suggestions for the consideration of the Government while formulating the tax proposals for the year 2009-2010.

1.2 The Indian economy suffered a slow down during the first quarter of 2008-09. The real GDP growth in the first quarter of 2008-09 decelerated to 7.9% from 9.2% in the corresponding period of the preceding year. Industrial activity in the first and second quarters of 2008-09 has shown mixed developments with indication of a moderation in pace diffusing across the sector. During April-08, index of industrial production rose by 4.9% as against 10% in the same period of 2007-08. Manufacturing output growth, electricity generation and mining activity slowed to 5.2%, 2.3% and 4.1% respectively from 10.6%, 8.3% and 4.9% in the corresponding period of last year. The six infrastructure industries, which together comprise 27% of the IIP, posted a growth of 3.4% during April-August, 2008 as against 7.1% a year ago. The service sector with double digit growth (10.2% in April-June 2008 on top of 10.6% in April – June 2008) remained the leading sector of the Indian economy. Services now account for nearly 60% of GDP. BOP data for the first quarter of 2008-09 indicate a widening of merchandise trade deficit, a sustained increase in invisibles, some ebbing of net inflows and a lower accretion of reserves. India's merchandise exports during April-June 2008 increased by 22.2% in US dollar terms as compared with 20.7% in the corresponding period of the previous year. Merchandise imports payments rose by 33.3% as against an increase of 21.1% in the corresponding period of last year. Net capital inflows amounted to US $ 13.2 billion during the first quarter of 2008-09 as compared with US $17.3 billion a year ago. Reflecting the movements in current and capital accounts of the BOP, the accretion of foreign reserves amounted to US $ 2.2 billon during April-June 2008 as against US $ 11.2 billions a year ago.

1.3 Inflation, measured by variations in the wholesale price index (WPI) on a year-on-year basis, increased to 11.4 per cent as on October 4, 2008 from 7.8 per cent as at end-March 2008 and 3.2 per cent a year ago. Inflation, based on the consumer price index (CPI) for industrial workers, showed a sharp increase to 9.0 % on a year-on-year basis in August 2008 from 7.3 % a year ago. Year-on-year inflation based on the CPI for agricultural labourers and rural labourers increased to 11.0 % each in September 2008 from 7.9 % and 7.6%, respectively, a year ago. Inflation based on the CPI for urban non-manual employees rose to 8.5 % in August 2008 as compared with 6.4 % in the corresponding period of the previous year. The divergence between the inflation rates based on the WPI and CPIs is explained largely by the steep rise in prices of fuel items and metals which have a much higher weight in the WPI than in the CPIs.

1.4 Revenue receipts of the Central Government amounted to 26.8% of the budget estimates during April-August 2008 as compared with 33.7% in the corresponding period a year ago. As a proportion to the BE, tax and non-tax revenue receipts were 24.7% and 37.7 % , respectively, as compared with 24.6 % and 78.4 % a year ago. Total expenditure at 37.2 % of the BE was lower than 39.9 % a year ago. The gross fiscal deficit (GFD) and revenue deficit increased to 87.7 % and 177.4 % of the BE, respectively, during April-August 2008 compared with 68.5 % and 74.9 % in the corresponding period last year. A notable feature of deficit financing this year so far has been the turnaround in mobilisation from small savings deposits and certificates after a decline in the previous year.

1.5 During the first nine months of 2008, the slowdown in global growth spread across developed economies in an environment of heightened uncertainty. Global economic prospects have been dampened by the weakening of the US economy, the wider repercussions of the ongoing financial market crisis and volatility in the energy, food and commodity prices. Concerns about the emergence of protectionist pressures and the possibility of disorderly adjustments to the financial turmoil also carry downside risks to the outlook. According to the World Economic Outlook (WEO) of the IMF released in October 2008, global real GDP growth on a purchasing power parity basis is expected to decelerate from 5.0 per cent in 2007 to 3.9 per cent in 2008 and further to 3.0 per cent in 2009.

1.6 Globally, inflation has softened in several countries (US, Japan and emerging economies in Asia, Latin America and Africa.) in recent months. There has been an overall decrease in prices of food, crude oil and metals since July 2008 which has contributed to the easing in consumer price inflation in India. There has also been a downturn in energy prices in the recent months since the record levels reached in July 2008 with the prospect of a general slowdown in global economic growth. Strains in global financial markets have increased significantly in the third quarter of 2008. Equity markets have weakened significantly as valuations reflected disappointing earnings data in the financial and other cyclical sectors. Pressures in inter-bank money markets, which had persisted since May 2008, began to intensify further during the third quarter of 2008. In response to the rapidly unfolding international financial turmoil, there are continuing measures from monetary policy authorities for active liquidity management.

1.7 In the overall assessment, global economic conditions have worsened and the future path of their evolution has turned highly uncertain. The broadening slowdown of economic activity in the advanced economies is beginning to impact the macroeconomic prospects of emerging economies, with those reliant on exports and on international financial markets for external financing needs likely to be the most vulnerable. Inflation remains elevated and a key risk to global economic prospects. While commodity prices have been coming off their recent heights and are expected to soften further by the futures markets, the pass-through of the recent prolonged escalation is still seeping into headline inflation and may keep it firm at current levels in the near-term. At the current juncture, the deepening of the financial crisis could impact the weakening macroeconomic outlook in advanced economies with second round effects across the rest of the world. Domestically, lowering inflation as soon as feasible to tolerable levels and anchoring inflation expectations remains a key concern. The momentum in industrial and service sector activity is somewhat moderated in relation to the recent high growth phase of 2005-08. The expected improvement in agricultural output should augment aggregate supply and assuage the inflationary pressures. While the financial system in India has so far been reasonably insulated from the carnage in international financial markets, cataclysmic events including the sheer spread of the turmoil and the type of financial institutions that have plunged under, regardless of reputation or size, warrants an intensified watchfulness with a readiness to act swiftly to cushion the economy and the domestic financial system from external shocks.

1.8 In this macro-economic scenario, the Institute submits its Pre-Budget Memorandum for the kind consideration of the Government before finalizing the Budget Proposals for the year 2009-10. Separate memoranda are being submitted in respect of Direct Taxes and Indirect Taxes.

1.9 Suggestions in the Pre-Budget Memorandum – 2009 on service tax have been given in the following pages.

Pre-Budget Memorandum – 2009

Indirect Taxes

Executive Summary

1. Import of Services - Service received outside India and paid for by an Indian Company

   The language of section 66A may be modified so as to avoid double taxation and to reflect the intention of the statute to apply service tax in India on the services received in India on the basis of the destination based consumption tax principle and simultaneously a circular clarifying the position may be issued.

2. VAT, Service Tax & CENVAT

   In case where the total value of a service or sale includes a specific percentage (say 10% of the total value of goods or services as the case may be) only one of the taxes, service tax, VAT or excise duty, as may be applicable to the principal item should be levied.

   It may be clarified that if on a transaction, service tax is levied, the same should not be subject to levy of VAT and vice-versa.

3. Recording of Statement

   As far as possible, recording of statements should be avoided and assessees should be asked to submit specific responses to the specific questions of the Department. In case the statement is required to be recorded, a copy of the same, duly signed by both the tax payer and the officer recording the statement, should be provided to the tax payer immediately after the recording the statement.

4. Taxable Category : Club or Association

   It may be clearly provided in the law that Chambers of Commerce, Trade and Industry associations are not liable to pay service tax on subscription amount, membership fees and all other services of general nature (other than commercial activities or letting out of premises) and the Cooperative Housing Societies may be liable to pay service tax on the common use facilities for which amounts are recovered from members. If the co-operative societies engage in any other activities like letting out of premises and like, service tax could be applied as it would apply to any other such service provider.

5. Commercial and Industrial Services / Works Contract Services / Management, Maintenance or Repair Services

Instead of specifically listing few infrastructure projects which are exempted for the purpose of levy of service tax, it could be provided that the notified categories of infrastructure projects would be eligible for exemptionIt may also be clarified as to which particular activities are covered within the scope of the infrastructure activities.

6. Rental Services

Significant amount of Cenvat and service tax is incurred in constructing property, rebate may be provided in respect of rental service category. Alternatively, deemed credit towards service tax and Cenvat actually paid or at a specified percentage may be allowed by way of Cenvat credit against rental service.

7. Service tax payable by service recipient

Rebate may be provided in respect of the services provided by the insurance agents to insurance companies, especially, considering the fact that the benefit of Cenvat Credit in respect of costs incurred by service provider is also lost.

It may also be clarified that the insurance company / recipient of the service is required to discharge service tax on its own and the same is not required to be deducted while making payment of commission to the service provider.

8. Payment of service tax – adjustment of excess payment

   Adjustment of excess or short payment of service tax may be permitted within the same financial year. Particularly, keeping in view the fact that service tax is required to be paid within 5 days from the end of the month and often, a service provider makes payment without having complete information in respect of the payments received at all its locations.

9. Filing of Returns

   The requirement of filing of NIL returns may be done away with. Also, it may be clarified as to whether an assessee who is wholly exempt from payment of service tax e.g. a service provider who does not exceed the threshold is required to file Nil service tax returns.

10. Revision of Returns

    The time limit for revision of returns may be extended to 7 months from the end of the financial year as accounts under the Companies Act are required to be audited and finalized within 6 months from the end of the year.Additional period of one month would thus be available for revision of returns.

11. Cenvat Credit - Capital Goods & Inputs

    The list of "capital goods" and "inputs" eligible for service tax may be redefined to include all the goods. The items excluded should be enumerated making a negative list of items. Similarly, there is need to clarify that items like dumpers, motor vehicles, etc. which are used for the purpose of business ought to be eligible for Cenvat credit especially, for those providing works contract or construction of commercial and residential properties.

12 Input Service

A clarification may be issued elucidating the scope of the definition of input services.

13. Service tax – advance payment - Cenvat Credit

It may be clarified that the service tax paid on advance payment is also immediately allowable as Cenvat credit.

14. Cenvat credit Rule 6(3) and Rule 6(5)

Include “works contract service” in the list.

15. Cenvat credit in respect of service tax paid - manufacturer of goods

Clarification may be issued to the effect that a manufacturer is eligible for Cenvat credit in respect of all input services used by the manufacturer in respect of its business activities.

16. Service Tax - Valuation Rules

It may be clearly specified, whether the reimbursement of expenses is to be included or excluded in determining the value of service tax and whether Cenvat credit in respect of the same is allowed as the field formations take very narrow view in this regard and do not allow input tax credit in respect of various services (e.g. air travel) for which reimbursement is claimed.

Another difficulty which arises is in relation to sharing of common expenses. It becomes extremely difficult to apply the provisions in practice and there is need to clarify the position as to whether and if so, how, service tax is to be applied.

17. Export of Services – Chartered Accountants’ services

This may be included in the third category, which is based on the location of recipient of service.

18. Condition to determine export – “use”

Requirement of proof of “use” outside India may be done away with. Other conditions like location of recipient outside India, receipt of payment from outside India in foreign currency are adequate to prove export of service.

19. Commercial Training or Coaching Service

A circular may be issued clarifying whether institutions which provide coaching which is mandatory for one to be eligible to appear for qualifying examination for grant of degree or diploma shall be covered under the category *of* Commercial Training or Coaching Service. Further, there may be a clarification on the issue as to which degrees or diplomas are recognized under the law for the time being in force.

Other Suggestions

20. Rate of Tax

It is suggested that Government may continue with the reduced rates of excise duty and service taxin order to help economy continue to respond favourably to the economic slow down

It is also suggested that administration may be further strengthened to improve collection of taxes.

21. Reforms - GST 2010

It is suggested that Government may continue its work towards introduction of Goods and Service Tax (GST) from 2010.

22. Technology

Government is requested to continue taking initiatives in the technology arena.

23. Archaic Laws - Taxes

It is suggested that Government may undertake a study to identify and weed out archaic laws imposing taxes and duties which generate very minimal revenue but are a burden for trade and industry.

SERVICE TAX

1. Import of Services - Service received outside India and paid for by Indian Company

Issue

Explanation 1 to section 66A(2) of the Finance Act, 1994 provides that a branch or agency outside India is to be regarded as "business establishment" (presumably, this term has been used interchangeably with permanent establishment). However, under reverse charge mechanism, there is lack of clarity in the field formations as to taxability in India, of the services procured from outside India for use in the projects/activities carried on outside India and for which payment is made by Indian Company from India.

The intention of Legislature appears to apply service tax in India on the services received in India on the basis of the destination based consumption tax principle. However, this fact should also be taken into consideration that the services received outside India for projects/activities carried on outside India would attract local tax (VAT, GST, as the case may be). Therefore, charging service tax on the same tax in India would result in double taxation which certainly should not be the intention of the statute.

Suggestion

The language of section 66A may be modified to reflect the intention of the statute and simultaneously a circular clarifying the position may be issued so that all the field formations are made aware of the position and litigation could be avoided.

2. VAT, Service Tax & CENVAT

Issue

It is often found that due to lack of clarity, businesses often charge both VAT and service tax on the same amount. For instance, when a domestic appliance is sold, service tax is levied on the installation charges. The said installation charges are also included while computing VAT on the appliance. Consequently, the installation charges are subject to levy of both service tax and VAT. Further, complication is added by the fact as to whether VAT is to be included for computing service tax or service tax is to be included for computing VAT?

In principle, if VAT has been levied on a particular amount, the same amount should not be subject to levy of service tax and vice versa. Similar situation arises with regard to certain services whose value is included in the value while determining excise duty.

Suggestion

It may be clarified that in case where the total value of a service or sale includes a specific percentage (say 10% of the total value of goods or services as the case may be) only one tax, service tax, VAT or excise duty, as may be applicable to the principal item, whether goods or services, should be applied. This would avoid cascading and litigation and bring in fair degree of clarity and certainty.

2.1.2 Issue

Similar situation also arises in case of IPRs as also software where both service tax and VAT are leviable.

Suggestion

It may be clarified that if on a transaction, service tax is levied, the same should not be subject to levy of VAT and vice-versa.

3. *Recording of Statement*

Issue

It has been practically experienced that whenever the officers record statements, a copy of the same is not provided to the person whose statement is recorded.

Further, very often, statements are recorded in respect of routine matters for which a declaration or even a signed statement could be provided by the concerned person.

Suggestion

As far as possible, recording of statements should be avoided and assessees should be asked to submit specific responses to the specific questions of the Department.

In case, the statement is required to be recorded, a copy of the same, duly signed by both the tax payer and the officer recording the statement, should be provided to the tax payer immediately after the recording the statement. Very often, the statements are written in hand and then typed. The use of computer systems can quicken the process. The statement can be immediately printed, signed and handed over.

4. Taxable Category : Club or Association

Issue

There is an ambiguity that in which category the services provided by the following should be covered:-

- Chambers of Commerce & Trade and Industry Associations
- Cooperative Housing Societies – A form adopted in the Western part of the country where there is concept of flats

Chambers of Commerce, Trade and Industry Associations collect fee/subscription and perform activities facilitating entire trade, commerce or industry; they act as a channel between the Government/Governmental bodies, industry and people at large. In general, their activities relate to the cause of trade in general and specific sectors which they represent, in particular. Such bodies do not provide services which ordinarily, a club or association would provide. Further, majority of these chambers/industry associations are constituted under the law like Companies Act, Charitable Trusts Act, Societies Act. On that ground also, they cannot be regarded as clubs and associations sought to be covered under this category. Their activities are charitable in nature. The intent of the Legislature would have not been to cover such entities within this category.

Similarly, in the western part of the country, the property on which the building is constructed is owned by the Society which is required to be formed in terms of the local laws if there are 10 or more members and each member, as a result of his holding shares in the Society, is entitled to a specific residential area (referred to as flats) in the building. The property is maintained by the society and all the common expenses like electricity, water charges, etc. are paid by the society and, thereafter, recovered from the members. Such recovery is on the basis of per flat or specific area. The society is really a collective body of members, acting for and on behalf of the members who comprise it, as each one cannot individually make such payments. They are not providing services per se to the members. It is quite different from the resident Welfare associations which are generally found in the northern part of the country. These housing societies are really not providing any service as such.

Suggestion

It may be clearly provided in the law that Chambers of Commerce, Trade and Industry associations are not liable to pay service tax on subscription amount, membership fees and all other services of general nature (other than commercial activities or letting out of premises) that they provide and that the Cooperative Housing Societies formed under the State's Cooperative Societies Act, are not liable to pay service tax on the common use facilities for which amounts are recovered from members. If the co-operative societies engage in any other activities like letting out of premises and like, service tax could be applied as it would apply to any other such service provider.

In case this suggestion is not accepted, it may be clarified that the charges which society pays towards taxes, rates, duties and like and which are to be recovered from members are to be excluded for determining the value of service.

5. Commercial and Industrial Services / Works Contract Services / Management, Maintenance or Repair Services

Issue

Commercial or industrial service and works contract service are specifically exempted services provided in respect of road, airport, railways, transport terminals, bridges, tunnels and dams i.e. it covers only few categories of infrastructure projects and not the other similar projects. However, such an exhaustive list is not provided in respect of management, maintenance or repair services.

Further, various terms are also not specifically defined. For example what meaning is to be assigned to "railways" and whether it includes "metro". This leads to different interpretations, uncertainties and increased costs of infrastructure.

Suggestion

It is suggested that instead of specially listing few infrastructure projects which are exempted for the purpose of levy of service tax, it could be provided that the notified categories of infrastructure projects would be eligible for exemption. In this way, various categories of projects could be notified from time to time. Further, there is need to clarify as to whether "Metro" is covered in the meaning of the term "railway".

It may also be clarified as to what activities are covered within the scope of the infrastructure activities e.g. whether construction of a canal while *constructing road is covered, whether creation of parking space or side wall are covered.*

6. Rental Services

Issue

A person providing property on rent often incurs huge Cenvat and service tax on the goods procured and services provided by the person undertaking the construction. However, since immovable property comes into existence which is not liable to CENVAT or Service tax, Department has clarified that input tax credit thereon is not available. This leads to breaking of chain and cascading of taxes.

Suggestion

Definition of input service covers the input services in relation to setting up , modernization, renovation, repair of a premises of a service provider and accordingly, it may be clarified that service tax and CENVAT paid for such services is available as input service. Further, the fact that significant amount of Cenvat and service tax is incurred in constructing property, rebate may be provided in respect of rental service category. Alternatively, deemed credit towards service tax and Cenvat actually paid or at a specified percentage be allowed by way of Cenvat credit against rental service.

7. Service tax payable by service recipient

7.1.1 Issue

There are various categories especially, insurance auxiliary services where service tax is payable by the recipient of service, the insurance company. However, considering the fact that many of the service providers would be below the threshold, the incidence of service tax becomes quite substantial as the benefit of threshold is not available when service tax is computed by the recipient.

Suggestion

Option may be provided to the service provider to pay service tax. Alternatively, rebate may be provided in respect of the services provided by the insurance agents to insurance companies, especially, considering the fact that the benefit of Cenvat Credit in respect of costs incurred by service provider is also lost.

7.1.2 Issue

In many cases, insurance companies deduct service tax from the commission payable to the service provider. In fact, this amount is clearly not deductible as service tax on the value of service that is provided by the service provider and is to be borne by the service recipient. If this is clarified, then the issue about the service providers being eligible for exemption and like would not arise.

Suggestion

It may be clarified that the insurance company / recipient of the service is required to discharge service tax on its own and the same is not required to be deducted while making payment of commission to the service provider.

Also, rebate may be considered in determining rate applicable in such cases. In the alternative, option may be provided to provider of service to pay service tax itself.

8. Payment of service tax – adjustment of excess payment

Issue

The law provides for adjustment of excess service tax paid (Rule 6). However, few conditions make it practically very difficult to avail of the benefit.

Suggestion

Adjustment of excess or short payment of service tax may be permitted within the same financial year. This is necessary particularly, in view of the fact that service tax is required to be paid within 5 days from the end of the month and often, a service provider, makes payment without having complete information in respect of the payments received at its all locations which can sometimes result in excess or deficit. Alternatively a facility like account current as applicable to central excise may be extended.

9. Filing of Returns

Issue

As per the current provisions, a NIL return is also required to be filed by every assessee. This leads to huge paper work and also penal proceedings if the assessees do not file NIL returns in time. Further, there is no clarity as to whether a NIL return is required to be filed by an assessee who is eligible to exemption.

Suggestion

The requirement of filing of NIL returns may be done away with. Also, it may be clarified as to whether an assessee who is wholly exempt from payment of service tax e.g. a service provider whose taxable turnover does not exceed the threshold limit is required to file Nil service tax returns.

10. Revision of Returns

Issue

The time limit for revision of return provided in Rule 7B is little short, as often issues come up when the accounts are finalized for the purpose of Companies Act at which time audit is also carried out.

Suggestion

The time limit for revision of returns may be extended to 7 months from the end of the financial year as accounts under the Companies Act are required to be audited and finalized within 6 months from the end of the year and period of additional one month would thus be available for revision of returns.

11. Cenvat Credit - Capital Goods & Inputs

Issue

The definition of "capital goods: is primarily the one applicable to manufacturer and restricts the benefit of Cenvat credit to the plant, machinery, equipment, etc. used for manufacture or providing service and like as per the specific tariff entries. Capital goods like furniture, computers, etc. are not eligible for Cenvat credit. This leads to cascading of taxes. In fact, in a tax system where the tax is levied on goods and services, Cenvat credit ought to be broad based covering all items used by the assessee for the purpose of business with a specific negative list of items like petrol on which input tax credit may not be allowed.

Suggestion

*It is suggested that the list of "capital goods" and "inputs" eligible for service tax may be redefined to include all the goods used for the purpose of business other than************(items on which Cenvat credit is not desired to be allowed).*

Similarly, there is a need to clarify that items like dumpers, motor vehicles, etc. which are used for the purpose of business ought to be eligible for Cenvat credit especially, for those providing works contract or construction of commercial and residential properties.

12 Input Service

Issue

Significant litigation is arising as regards allowability of Cenvat credit in respect of various input services. Despite the fact that the scope of definition of "input service" is fairly wide and covers all business related activities. However, this definition is being applied by the field formations in a narrow sense and hence the matters are in litigation.

Suggestion

The scope of input services may be clarified which ought to be fairly broad as is the provision i.e. of expenses incurred wholly and exclusively for the purpose of business.

13. Service tax – Advance payment - Cenvat Credit

Issue

Service tax is payable even in cases where service has not yet been rendered but the proposed service recipient has paid money in advance. However, when the claim for Cenvat credit comes up, field formations deny the Cenvat credit on the ground that the Cenvat credit can be allowed only when the services are used for the purpose of providing output service and in case of advance payments, the service cannot be said to be used for providing output service.

Suggestion

There is an anomaly and in this regard it may be clarified that the service tax paid in advance payment, is allowable as Cenvat credit. It is requested that the said clarification, if introduced, should be brought with the immediate effect.

14. Cenvat Credit Rules, 2004 - Rule 6(3) and Rule 6(5)

Issue

These rules provide for list of specific services in respect of which 100% credit is allowed. The list includes 16 categories of services. Works contract service was subsequently added and has remained to be included in this category although commercial or industrial construction service is included in the list.

Suggestion

It is suggested to include "works contract" service in the list.

15. Cenvat credit in respect of service tax paid - Manufacturer of goods

Issue

So far as manufacturer of goods is concerned, field formations are taking view that the Cenvat credit is allowable on services used or in relation to the manufacture.

Suggestion

Clarification to the effect that a manufacturer is eligible for Cenvat credit in respect of all input services used by the manufacturer in respect of its business activities.

16. Service Tax - Valuation Rules

Issue

These rules are extremely difficult to apply in practice especially, those where there is clear reimbursement of expenses. Also, there is no provision for passing on the benefit of Cenvat Credit where a party seeks reimbursement.

Suggestion

It may be clearly specified, without so many conditions, as to whether the reimbursement of expenses is to be included or excluded in determining the *value for service tax and whether Cenvat credit in respect of the same is allowed. Field formations take very narrow view and do not allow input tax credit in respect of various services (e.g. air travel) for which reimbursement is claimed. In such cases, the mechanism to pass on the Cenvat credit is also required so as to avoid cascading.*

Another difficulty which arises is in relation to sharing of common expenses. Here again, it becomes extremely difficult to apply the provisions in practice and there is a need to clarify the position as to whether and if so, how, service tax is to be applied.

17. Export of Services – Chartered Accountants' services

Issue

Services provided by Chartered Accountants are included in the category where the export is determined on the basis of place of performance of services.

Suggestion

This may be included in the third category, which is based on the location of recipient of service.

18. Condition to determine export – "use"

Issue

While applying the recipient based criteria, one of the conditions is that the service should be used outside India. Practically, it is very difficult to prove the place where the service is actually used and this leads to significant uncertainty and double taxation in some situations.

Suggestion

Requirement of proof of "use" outside India may be done away with. Other conditions like location of recipient outside India, receipt of payment from outside India in foreign currency are adequate to prove export of service.

19. Commercial Training or Coaching Service

Issue

This category provides for exclusion of establishments issuing certificate or diploma or degree or any educational qualification recognized by law for the time being in force. Disputes are arising as to whether institutions which provide coaching which is mandatory for one to be eligible to appear for qualifying examination for grant of degree or diploma are eligible to be excluded or not. Disputes are also arising as to which degrees or diplomas are recognized under the law for the time being in force.

Suggestion

The issue may be clarified through a Circular.

OTHER SUGGESTIONS

20. Rate of Tax

Recognising the need to respond to the global economic conditions, Government reduced the rate of excise duty to 10 % and then to 8 %. The rate of Service Tax was also reduced from 12% to 10 %. We congratulate Government for taking such a timely action.

It is expected that continuation of these rates will help economy continue to respond favourably to the economic slow down and it is suggested that the rate may not be increased although there may be pressure on account of deficit.

It is suggested that administration may be further strengthened to improve collection of taxes. Moreover, it is a proven fact that reduced rates lead to improved compliance. Many countries of the world have also responded to economic slowdown by reducing rates of indirect taxes (for instance, UK - which reduced rate of VAT to 15 % from 17.5%) since indirect taxes affect almost every constituent of the country.

21. Reforms - GST 2010

It is suggested that Government may continue with the reform process and work towards introduction of Goods and Service Tax (GST) from 2010. We would be very delighted to provide support and assistance to Government in this regard.

22. Technology

We would also like to place our sincere appreciation for the initiatives taken by Government in the technology arena which we believe will go a long way in enhancing compliance being a great measure for trade facilitation. It is suggested that more of such initiatives should be taken.

23. Archaic Laws - Taxes

It is suggested that Government may undertake a study to identify and weed out archaic laws imposing taxes and duties which generate very minimal revenue but are a burden for trade and industry. In fact, often, businesses end up with non-compliance due to lack of knowledge and information. ICAI would be delighted to partner with Government in such a study which will go a long way in making the regime more tax payer friendly.