Damania & varaiya

CHARTERED ACCOUNTANTS

News Letter

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The Black Money Act ('BMA')

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015

The Black Money Act (BMA) received President's consent on 26th May 2015. Accordingly, Government notified Tax Compliance Scheme (TC Scheme) to declare undisclosed foreign assets and make payment of tax and penalty.

Key Features:

- The compliance window is open for three months viz. from 1st July 2015 to 30th September 2015. During this period, a person may make declaration of undisclosed assets located outside India.
- On or before 31st December 2015, tax calculated @ 30% on the undisclosed assets amount and an equal amount of penalty needs to be paid.
- The TC Scheme would not be available for income in relation to any year for which:
    - Any assessment proceedings are going on before tax officers;
    - Search/Survey proceedings are carried out for which time limit for issue of notice of assessment has not lapsed;
    - Any information about such asset has been received by the competent authority under the tax treaty on or before 30th June 2015.

Rules for Valuation of foreign asset:

- The valuation date for the purpose of determining FMV of the foreign asset shall be:
    - For assets declared under TC Scheme - 1st July 2015 and
    - For any other assets - 1st April of the relevant previous year
- Conversion of foreign currency into Indian currency shall be done at "RBI Reference Rate" on the valuation date.
- The FMV of the foreign asset shall be taken at higher of cost of acquisition and the price of the asset on the valuation date. Methods to determine the price is summarized as below:

Sr. No.	Type of Asset	Method to determine price
1.	Quoted Shares and Securities	Average of the lowest and highest traded price on an overseas established securities market.
2.	Unquoted Equity Shares in a Company and members interest in non-corporate entities such as partnership firm, LLP, etc.	To be computed using the prescribed formula, largely based on Net Asset Value (NAV) principles. Certain assets to be valued as per the valuation rules prescribed under BMA while computing NAV.
3.	Bank Account	Sum of all deposits made in the account from the date of opening of bank account. Where a bank deposit is made from earlier withdrawals from the account, the same shall not be considered.
4.	Any other asset	Price that asset would fetch if sold in open market on the valuation date.

Consequence of a valid declaration:

- The amount declared under TC Scheme shall not be included in the total income of the declarant under the Income Tax Act for any assessment year.
- The declarant shall not be liable to pay any Wealth Tax for any prior years in respect of such foreign assets.
- The declaration shall not be admissible as evidence against the declarant for the purpose of any proceeding relating to penalty or prosecution under the Income Tax Act, Wealth Tax Act, Foreign Exchange Management Act, The Companies' Act or The Customs Act.

Invalid Declaration:

- The declaration shall be considered as invalid if the declarant fails to pay the entire amount of tax and penalty thereon on or before the 31st December 2015 or if there is misrepresentation of suppression of facts or information in the declaration.

Other Key Points:

- Where tax and penalty is paid on the FMV, such FMV will be considered to be cost of acquisition of such foreign asset for the purpose of calculating Capital Gains. However, the period of holding of such asset shall start only from the date of declaration of asset for the purpose of determining whether it is Long Term or Short Term Capital Gains.
- Mere disclosure of foreign asset in Foreign Asset schedule (FA schedule) of the tax return shall not mean that the source of investment of such asset is explained. The asset shall be considered as unaccounted unless the source of such investment forms part of computation of total income as per tax return.
- If an undisclosed foreign asset was sold and the entire sale proceeds were deposited in a foreign bank account, the FMV of that asset shall be nil as per the valuation rules. In order to avoid any inquiry in future about that foreign asset, it is suggested to declare all undisclosed foreign assets, even if the FMV of such foreign asset is Nil.
- No credit of foreign taxes paid shall be allowed against the tax and penalty payable at the time of declaration in respect of undisclosed assets acquired out of undisclosed foreign income chargeable to tax in India.

Compiled by: CA Malay Damania, Partner

Manual Scrutiny of Service Tax Returns

Central Board of Excise & Customs-Servicetax wings (Government of India) have issued circular dt. 30th June 2015 lying down in details scope of detailed manual scrutiny of Service tax returns of assesses where total service tax paid (actual payment plus cenvat) for F.Y. 2014-15 is below Rs. 50 lakh. Such detailed scrutiny will begin with effect from 1st August 2015.

Highlights of the Circular:

1. **Preliminary Online Scrutiny:**

   Initially, preliminary online scrutiny of returns will be carried out to ensure completeness of the returns, arithmetic correctness, timely payment, timely submission of returns and identify non-filers and stop filers.

2. **Selection of cases:**

   After the online scrutiny and on the basis of findings thereof, the Additional / Joint Commissioner in change of Division, would finalise the list of returns to be taken up for detailed manual scrutiny.

3. **Scope of scrutiny:**

   The purpose of detailed manual scrutiny inter alia is to ensure correctness of value of taxable services, effective rate of tax, admissibility of exemption, abatement, correct availment and utilization of cenvat credit etc. Reliance will be placed inter alia on agreements /contracts and invoices.

4. **Methodology:**

   i. The assessee will be given at least 15 days notice
   ii. To begin with, the returns for F.Y. 2013-14 will be taken for detailed scrutiny
   iii. In the course of manual scrutiny, the information furnished in service tax returns will be reconciled with:

a) Return of Income
b) Form 26AS
c) Any third party information available

Conclusion:

From the circular and the annexures thereto, it seems that the departmental officers have been instructed to carryout thorough scrutiny of returns and the financial records of the assesses & detect concealment, and/or wrong utilisation of cenvat credit if any. The officers shall verify returns of income, VAT returns, agreements and financial records.

Compiled by: CA Rajeev Varaiya, Partner

GOODS & SERVICE TAX (GST)

Presently in India, Goods & Service Tax (GST) is the most talked about topic in industries circle. The Union Finance Ministry has been trying hard for several years, to bring it in force. The Hon. Finance Minister in his budget speech of 2015 announced that it would come in force from 1st April 2016.

I What is GST?:

GST as simply stated, is a comprehensive tax on supply of taxable goods and services at national level. GST is tax on goods & services whereby every person is liable to pay tax on his output and is entitled to get credit of tax paid his input.

II Why GST?:

Currently, goods & services are subjected to different levies as under:

- **Under the Central statutes:**

  i. Additional & special additional Custom duty (in lieu of Excise duty)
  ii. Central Excise duty
  iii. Service tax
  iv. Central Sales tax

- **Under the state statutes:**

  i. State VAT
  ii. Purchase tax
  iii. State entry tax
  iv. Other levies such as luxury tax, entertainment tax, lottery tax etc.

Levy of various taxes as above result in:

i. Double taxation due to cascading effect;
ii. Increased cost to end user;
iii. Complication in compliance & litigation;

iv. Low GDP;

v. Lower competitive strength;

Introduction of GST would result in elimination of above various types of taxes and bring into force comprehensive, single tax on supply of goods & services (barring exemptions) at every stage i.e. on the principle of tax on value addition at every stage.

III Key Advantages of GST:

1. Reduction in multiplicity of taxes
2. Reduction in cascading effect
3. Ease of administration
4. Ease of compliance
5. Eventually increase in GDP
6. Increase in tax collection due to wide tax base & better compliance

IV Coverage of GST:

1. GST is proposed to apply on all goods & services except:
   a) Alchohol for human consumption (State excise & VAT will apply)
   b) Petroleum products (---------------- do ----------------)
   c) Tobacco products (---------------- do ----------------)
   d) Exempted items
   e) Exports
2. GST is proposed to apply to:
   I import of goods & services
   II Stock transfer of goods & services.

Following taxes may continue:

- Stamp duty
- Electricity duty
- Basic custom duty on import

V Features of GST:

i. GST is proposed to have two components:

1. SGST i.e. State GST
2. CGST i.e. Central GST

SGST & CGST both will apply on any transaction of supply of (taxable) goods & services taking place within a state.

ii. Interstate supply of goods & services will be subject to IGST i.e. integrated (GST). Import of goods would also be subject to GST

GST paid on input will be eligible for set off.

It is proposed that interstate supply of goods would be subject to additional 1% tax (apart from IGST) to be recovered by origin state. This additional 1% will not be eligible for set off.

VI Constitutional amendment Bill:

This bill has been introduced mainly to:

i. Authorise states to tax services
ii. Authorise centre to tax goods
iii. Set up GST Council which will lay down basic frame work of GST
iv. Decide dispute settlement mechanism

Way forward:

Introduction of GST calls for concerted efforts by Centre and States as well as positive political will. Robust infrastructure system at all levels is a must for smooth functioning of the system.

Let us wait & watch how the things move.

Note:

So far GST bill has not been introduced. Information given above is derived from various Govt. reports, statements of persons connected with GST Committee & other sources.

Compiled by: CA Rajeev Varaiya, Partner

ISSUES AND CHALLENGES IN ADOPTION OF IND AS 115- " Revenue from Contracts with customers"

Revenue is one of the most important financial statement measures for both preparers and users of the financial statements. Accounting Standard (AS) 9 on Revenue Recognition does not provide comprehensive guidance for certain aspects resulting in diversity in practices under Indian GAAP. Adoption of Ind AS 115, Revenue from Contract with Customers, provides comprehensive principles for recognising revenue, which will affect mostly all entities that apply Ind AS. Companies will be required to closely analyse their business practices within the revenue cycle to identify and evaluate potential GAAP differences.

✦ Transfer of control:

Under Ind AS 115, revenue is recognised when a customer obtains *control* of a good or service, whereas **under Indian GAAP, revenue is recognised when there is a transfer of risk and reward.** The underlying principal for recognising revenue under Ind AS 115 is obtaining control by customer over goods or services. A control is said to have been transferred, when customer has the ability to direct the use of and obtain the benefits from goods and services. Transfer of control is neither same as transfer of risks and rewards nor similar to the culmination of an earnings process as understood today. **Entities will be required to apply the new guidance to determine whether revenue should be recognised 'over time' or 'at a point in time'.** So as the first step, an entity will have to first determine whether control is transferred over time. If the answer to this question is negative, only then revenue will be recognised at a point in time, or else it will be recognised over time.

✦ Revenue recognition - The five-step approach:

The core principle of Ind AS 115 is that an entity will recognise revenue to depict the transfer of goods or services to customers at an amount that the entity expects to be entitled to in exchange for those goods or services. This core principle is described in a five-step model framework:

Step 1: Identify the contract(s) with the customer

Step 2: Identify the separate performance obligations in the contract

Step 3: Determine the transaction price

Step 4: Allocate the transaction price to separate performance obligations

Step 5: Recognise revenue when (or as) each performance obligation is satisfied

Application of this guidance will depend on the facts and circumstances present in a contract with a customer and will require the exercise of judgment.

The above approach would require change in mind set to migrate from an evaluation of Risk and rewards under existing guidance to an evaluation of Transfer of control under new standard.

✦ Performance obligation:

Performance obligations are promise to transfer goods or services to a customer. These could be implicit, explicit or may arise from customary business practices. Identification of performance obligation is very critical to measurement and timing of revenue recognition. Understanding what a customer expects to receive as a final product is necessary to assess whether goods or services should be combined and accounted as a single performance obligation or separate elements. Some contracts contain a promise to deliver multiple goods or services, but the customer is not purchasing the individual items. Rather, the customer is purchasing the final good or service which is the aggregate of those individual items. The judgment, based on proper application of the principles envisaged in Ind AS 115, will determine whether a contract involves a single or multiple performance obligations. Until now there has been limited guidance in this area of multiple elements or performance obligations under Indian GAAP. **Under Ind AS, entities will have to necessarily determine whether there are multiple promises in a contract and whether those promises are distinct.** The consideration will then be allocated to multiple components and revenue is recognised when those distinct goods or services are delivered. It is also to be noted that separate performance obligations may be identified based on promises in a contract which may be explicit or implicit including based on past customary business practices.

✦ **Variable consideration:**

Entities may agree to provide goods or services for consideration that varies upon certain future events which may or may not occur. For examples quantity and cash discounts, refund rights, rebates, performance bonuses/incentives, penalties, sales returns, etc. Sometimes this is also driven by some past practice of an entity or a particular industry for example a history of giving discounts or concessions after the goods/services are sold. **Variable consideration is a wide term and includes all types of positive and negative adjustments to the revenue.** Under the current accounting practice, it is very ~~not un~~common to defer the revenue until the contingency is resolved. However under Ind AS, if the consideration is variable, then an entity will need to estimate this variability at the inception of the contract subject to certain constraints–that is there should not be a significant revenue reversal in the future, which will be reassessed at each reporting period. Some of these concepts are new for us, as entities will have to estimate not only downward but also upward adjustments to revenue, something what we are not used to. Also, this could result in earlier recognition of revenue as compared to current practice. This could affect entities in industries where variable consideration is presently not recorded until all contingencies are resolved. **Upon adoption of Ind AS 115**, generally **all positive and negative adjustments to variable consideration** discussed above **will be presented as an adjustment to revenue** as opposed to costs presently done for certain areas.

✦ **Allocation of transaction price based on relative standalone selling price:**

Currently entities that sell multiple goods or services in a single arrangement (for example, sale of equipment with two year maintenance services contract) may be following different accounting practices under ~~the~~ Indian GAAP. **Under Ind AS 115,** these **entities must first evaluate whether the sale of equipment and services are two separate performance obligations, and if yes, then allocate the consideration to each of the distinct goods or services based on their relative standalone selling price.** This allocation is based on the price an entity will charge a customer on a standalone basis for each good or service sold separately. Entities will first consider observable data to determine the standalone selling price. In absence of such observable data, an entity will need to estimate the standalone selling price (cost plus profit margin is an acceptable approach). Some entities may also need to determine the standalone selling price of goods or services that previously did not required this assessment. Allocation of the transaction price to multiple performance obligations can be a matter involving significant estimate and judgment and requires a careful analysis of this aspect as a part of the transition to Ind AS.

✦ Time value of money:

Some contracts provide the customer or an entity with a significant financing benefit (explicitly or implicitly). This is because performance by an entity and payment by its customer might occur at significantly different times. In such situations, **under Ind AS, an entity will have to adjust the transaction price for the time value of money if the contract includes a significant financing component.** The standard provides certain exceptions to applying this guidance and a practical expedient which allows entities to ignore time value of money if the time between transfer of goods or services and payment is less than one year. Presently, under Indian GAAP, such financing benefit is not identified and separated. This aspect will impact entities which have significant advance or deferred payment arrangements.

✦ Presentation and Disclosure:

Ind AS includes **more guidance on gross versus net presentation** (including items such as excise duty, other charges, etc). Some of this could change the presentation of revenue upon adoption of Ind AS. **Extensive disclosures** are required **to provide greater insight into both, revenue that has been recognised and revenue that is expected to be recognised in the future** from existing customer contracts. Quantitative and qualitative information will have to be provided about the significant judgments and changes inthose judgments made while recording revenue.

✦ Key impact of Ind AS 115:

Entities will report profits in a different way and profit reporting patterns will change.

In case of long term contracts, contracts period surpass one accounting period, and accordingly reporting revenues in incorrect accounting periods might cause wrong taxation, different reporting to stock exchange and authorities.

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