



Ghalla & Bhansali
Chartered Accountants

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TIMES**



STRICTLY FOR PRIVATE CIRCULATION TO CLIENTS

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Due Dates of February – 2009

<u>Date</u>	<u>Activity</u>
05	: Service Tax payment for month ended January.
05	: Excise Payment for Month of January.
07	: TDS/TCS Payment /Filing 15H/27C
10	: Submission of Monthly Stock & Book Debts Statements to Bankers.
10	: Excise Returns for month of January.
15	: PF Payment for January.
21	: VAT payment & Filing of VAT Return for month of January.
21	: TDS payment under MVAT
21	: ESIC Payment for January.
30	: Issue of TDS / TCS Certificate for January in form 16A / 27D
30	: PT (Employees) Monthly Payment for month of January

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1. INCOME TAX

1.1 Enhanced Depreciation on New Commercial Vehicles

The CBDT has amended the Table to the New Appendix-I, prescribing the rates at which depreciation is admissible. Now, new commercial vehicles which are acquired on or after the 1st day of January, 2009 but before the 1st day of April, 2009 and are put to use before the 1st day of April, 2009 for the purposes of business or profession, will get 50% depreciation. Here commercial vehicles includes almost all the vehicles except maxi-cab, motor-cab, tractor & road roller. (CBDT Notification NO. 10/2009 –Dated: January 19, 2009).

"maxicab" means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward;

"motorcab" means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward;

2. SERVICE TAX

2.1 Imposition of Service Tax on Builders

Construction of residential complex was brought under service tax w.e.f. 01.06.2005. From that day two contrary views prevailed.

One view stated that once an agreement of sale is entered into with the buyer for a unit in a residential complex, he becomes the owner of the residential unit and subsequent activity of a builder for construction of residential unit is a service of 'Construction of Residential Complex' to the customer and hence service tax would be applicable to it.

The other view stated that where a buyer makes construction linked payment after entering into agreement to sell, the nature of transaction is not a service but that of a sale. Such transaction is completed only after complete construction of the residential unit. Till completion of construction activity, the property belongs to the builder or promoter and any construction service provided for that construction will be in the nature of self service. Hence it would not attract service tax.

The matter is now resolved by the Department by issuing Circular No. **108/02/2009-ST dated January 29, 2009** that

The initial agreement between the promoters / builders / developers and the ultimate owner is in the nature of 'agreement to sell. Such a case, as per the

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Provisions of the Transfer of Property Act, does not by itself create any interest in or charge on such property. The property remains under the ownership of the seller (in the instant case, the promoters/builders/developers). It is only after the completion of the construction and full payment of the agreed sum that a sale deed is executed and only then the ownership of the property gets transferred to the ultimate owner. Therefore, any service provided by such seller 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 services of any person like contractor, designer or a similar service provider are received by the developer / builder/ promoter, then such a developer/builder/ promoter would be liable to pay service tax.

3 VALUE ADDED TAX

3.1 VAT Updates

3.1.1 Extention of VAT Audit Date For F.Y. 2007-08

As you all are aware that for financial year 2007-08 VAT Audit report format was amended. Considering the difficulties about the details to be provided in the new VAT Audit Report, various representations were made. Considering these representations a relief was granted by giving an option to the dealer that the dealer can now file the VAT Audit report either in the old format or in the new amended form. During this whole exercise, a lot of time was wasted, hence various authorities had sought for extention of VAT Audit due date for financial year 2007-08.

Considering the representations made by various trade bodies, Commissioner of Sales Tax has given a conditional concession for submission of Audit Report in respect of the period 2007-08 up to 2nd March, 2009.

The condition which the dealer needs to fulfill is that the dealer should be registered with the Sales Tax department and must be availing the e-services like—

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a) Filing of Return

b) Submission of applications for declaration forms etc.

If any dealer is availing any of the above mentioned services then that dealer needs to submit a copy of an acknowledgement of enrolling the dealer with Sales Tax Dept regarding any above mentioned services.

For those dealers who are going to file the VAT Audit report without acknowledgement for online registration with Sales Tax Dept, the due date is 31st January, 2009.

3.1.2 E-filing of VAT and CST returns for all the dealers

Considering the overwhelming response by the dealers to e-filing of returns from all over the State, Commissioner of Sales Tax has decided to extend applicability of filing of electronic returns to all the registered dealers in Maharashtra under MVAT and CST Act, irrespective of the periodicity of return, from the 1st October, 2008 onwards.

3.1.3 Rate of Tax on Medicine Dealer under Composition enhanced to 6% from existing 5%.

Vide notification no. VAT.1507/CR-55/Taxation-1, a medicine dealer who has opted under composition scheme and 75% of the total turnover consists of goods chargeable under 4% VAT, will now have to pay tax at enhanced rate of 6% instead of 5% which was there earlier.

3.1.4 Online Application for CST Declaration Forms

As a move towards e-governance, with effect from 02.02.09 it is mandatory for all registered dealers to make an online application for obtaining CST declarations. For making such online application the dealer has to register himself on www.mahavat.gov.in.

After submitting the application for CST declarations online, the same would be accessed by the concerned Sales Tax Officer In-charge and on verification of the details the concerned officer should issue declaration in another 10 days by post or courier. Any request for early issuance of declaration shall not be entertained.

It has now been administratively decided that no fees shall be charged for issuance of any declarations and delivery of forms.

4 ACCOUNTING STANDARD

4.1 AS – 16 : BORROWING COSTS

Objective of this Standard

This Standard deals with accounting of borrowing costs, and explains when the same should be capitalized

This Standard does not apply to :

Cost of owners' equity, including preference share capital.

Important definitions

- ❖ Borrowing costs are interest and other costs incurred by an enterprise in connection with the borrowing of funds.
- ❖ A qualifying asset is an asset that necessarily takes a substantial period of time to get ready for its intended use or sale.

Generally a period of twelve months is considered as substantial period of time unless a shorter or longer period can be justified on the basis of facts and circumstances of the case. In estimating the period, time which an asset takes, technologically and commercially, to get it ready for its intended use or sale should be considered.

Some examples of Borrowing Costs

- a) interest and commitment charges on bank borrowings and other short-term and long-term borrowings;
- b) amortisation of discounts or premiums relating to borrowings;
- c) amortisation of ancillary costs incurred in connection with the arrangement of borrowings;
- d) finance charges in respect of assets acquired under finance leases or under other similar arrangements; and
- e) exchange differences arising from foreign currency borrowings to the extent that they are regarded as an adjustment to interest costs.

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For calculating the above amount, the interest rate for the local currency borrowings should be considered as that rate at which the enterprise would have raised the borrowings locally had the enterprise not decided to raise the foreign currency borrowings. If the difference between the interest on local currency borrowings and the interest on foreign currency borrowings is equal to or more than the exchange difference on the amount of principal of the foreign currency borrowings, the entire amount of exchange difference shall be eligible for capitalization under borrowing cost.

Some examples of Qualifying Assets and Non-qualifying Assets

- ❖ manufacturing plants, power generation facilities, inventories that require a substantial period of time to bring them to a saleable condition, and investment properties.
- ❖ Other investments, and those inventories that are routinely manufactured or otherwise produced in large quantities on a repetitive basis over a short period of time, **are not qualifying assets.**
- ❖ Assets that are ready for their intended use or sale when acquired also **are not qualifying assets.**

When Should borrowing Costs be Capitalised?

Borrowing Costs should be capitalized to their respective qualifying Assets, when all the following three conditions are fulfilled. If any of the condition is not followed, they should be written off in the Profit or Loss Account.

3 conditions necessary for capitalization:

- a) expenditure for the acquisition, construction or production of a qualifying asset is being incurred;
- b) borrowing costs are being incurred; and
- c) activities that are necessary to prepare the asset for its intended use or sale are in progress.

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What if funds are bought generally and not for any specific qualifying asset? How will the borrowing costs be determined for each specific qualifying asset?

1. To the extent that funds are borrowed specifically for the purpose of obtaining a qualifying asset, the amount of borrowing costs eligible for capitalisation on that asset should be determined as the actual borrowing costs incurred on that borrowing during the period less any income on the temporary investment of those borrowings.
2. To the extent that funds are borrowed generally and used for the purpose of obtaining a qualifying asset, the amount of borrowing costs eligible for capitalisation should be determined by applying a capitalisation rate (interest rate) to the expenditure on that asset. The capitalisation rate should be the weighted average of the borrowing costs applicable to the borrowings of the enterprise that are outstanding during the period, other than borrowings made specifically for the purpose of obtaining a qualifying asset.

Commencement of Capitalisation

Once all the above three conditions are satisfied, interest capitalization should commence.

Suspension of Capitalisation

Capitalisation of Borrowing costs should be suspended during extended periods in which active development is interrupted. However when substantial technical and administrative work is being carried out or/and if there is temporary delay which is a necessary part of the process of getting an asset ready for its intended use or sale, the capitalisation need not be suspended.

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Cessation of Capitalisation

Borrowing cost incurred after the qualifying asset is ready for its intended use or sale should not be capitalised. If only a part of a qualifying asset is ready to be used while the other parts are still under construction, capitalisation of borrowing costs in relation to a part should cease when substantially all the activities necessary to prepare that part for its intended use or sale are complete.

Disclosure

The financial statements should disclose the accounting policy adopted for borrowing costs and the amount of borrowing costs capitalised during the period.

IMPORTANT LINKS

- | | |
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| <ul style="list-style-type: none">• Security Exchange Board of India
http://www.sebi.gov.in/• Reserve Bank Of India
http://www.rbi.org.in/• Central Board of Excise and Customs
http://www.cbec.gov.in/• Company Law Board
http://clb.nic.in/• Ministry of Corporate Affaires
http://www.mca.gov.in/• Ministry of Finance
http://www.finmin.nic.in/ | <ul style="list-style-type: none">• Institute of Company Secretaries of India
http://www.icsi.edu/• Institute of Cost and Work Accountants of India
http://myicwai.com/• Institute of Chartered Accountants of India
http://www.icai.org/• Income Tax Department
http://www.incometaxindia.gov.in/• Maharashtra Value Added Tax
+ http://www.mahavat.gov.in |
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5 CORPORATE LAW

5.1 Limited Liability Partnership –An Over View

In India business is traditionally carried on in different status such as sole proprietor, partnership firms or companies (either public or private limited). These types of business structures have their individual advantages and disadvantages. For example, a partnership firm provides flexibility in internal organization, right to participate in the management, with no public disclosures, whereas in the case of a company, the advantages include liability of shareholders being limited, perpetual succession and unlimited members (in case of public company). However by taking clue from countries such as the UK and the US, and the recommendations of the various corporate law reforms committees the eagerly awaited Limited Liability Partnership Bill, (LLP) 2008, has been passed by Parliament and has now become a Act.

Now forming Limited Liability Partnership is no more a dream for Indian businessman. From 01/04/2009, Indian businessmen / Professionals will able to form LLP or covert their existing Partnership Firms or Companies to LLP. LLP allows its partners to manage business in the form of that of a traditional partnership while limiting their liability to the extent of their individual capital contributions. LLP has given an alternative to entrepreneurs who will able to carry on business without the corporate governance issues of a company and without being exposed to personal liability for other members' acts and omissions.

Every LLP is required to have at least Two Designated Partners (DP), of which one should be resident in India, who will to be responsible for ensuring compliance with the provisions of the Act and the LLP agreement entered into between the LLP and its partners and among the partners themselves.

LLP has been introduced in order to adopt a corporate form, which combines the organizational flexibility of a partnership firm coupled with the advantage of limited liability for its partners. However provisions for LLP and its Partners are still to be notified / enacted.

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Main provisions of the LLP Act are as follows.

- * The LLP is a body corporate and a legal entity separate and distinct from its partners.
- * Any two or more individual or body corporate or even LLP can form an LLP with no restriction with regards to maximum number of partners.
- * The LLP have a perpetual succession.
- * The mutual rights and duties of partners of LLP inter se and those of the LLP and its partners are governed by a Limited Liability Partnership Agreement and provisions of the Act.
- * The capital contribution of the partners can be in the form of tangible, moveable, immovable or intangible property or contracts for services performed or to be performed.
- * The LLP is liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP. No partner is liable on account of the independent or unauthorized actions of other partners or their misconduct.
- * The provisions of the Indian Partnership Act, 1932, shall not apply to LLP.
- * The LLP Act contains provisions for converting other entities, such as partnership firms, unlisted companies and private companies, into an LLP

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Key Difference area of Different forms of Business Structures

Entities/ Characteristic	Sole Proprietorship	Traditional Partnership	Company	LLP
Ownership	Always 1 person	At least 2 persons or legal entities subject to 10 in case of banking business or 20 in case of other business	At least 2 persons or legal entities subject to 50 in case of Pvt. Ltd Company	At least 2 persons or legal entities with no maximum limits
Personal Liability of Member	Unlimited personal liability for the obligations of the business	Joint and several also personal liability	No personal liability of individual director or member [except in some exceptional situations.	No personal liability of partner, except in case of fraud.].
Formation Documents	No Documents	Partnership Deed	MOA/AOA	Limited Liability Partnership Agreement
Management of the Business	Sole proprietor manages the business	All the partners have equal management rights, unless they agree otherwise	Board of Directors has overall management responsibility and officers have day-to-day responsibility	All partner manages the business, subject to any limitations of the Limited Partnership Agreement
Capital Contributions	Sole proprietor contributes whatever capital needed	partners contribute money or services to the partnership	Shareholders to purchase shares in the company, either equity or preference	Partners contribute money or services to the limited partnership
Represented by	Sole proprietor	Partners	Board of directors	Designated Partners
Perpetual Succession	No	No	Yes	Yes
Remuneration	Entire Profit belongs to owner	As Per Partnership Deed	Restrictions on remuneration to director only in case of public limited company	No remuneration to partner, unless otherwise provided for in LLP agreement.
Governing Body	N.A	Registrar of Firms	Registrar of Companies	Registrar of Companies
Meetings	N.A	Partners can decide when and how to meet	Minimum number of Board and General meetings as per Companies Act.	No specific provision for regular meeting of Partners unless provided for in LLP Agreement

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Entities/ Characteristic	Sole Proprietorship	Traditional Partnership	Company	LLP
Governing Act	N.A	Indian Partnership Act,1932	Companies Act,1956	Limited Liability Partnership Act,2008
Minimum Capital	Any amount	Any amount of initial contribution as agreed by partners	Minimum 1 Lakh in case of Private Company and 5 lakhs in case of Public Company	Any amount of initial contribution as agreed by partners
Audit	Only if Turnover exceeds 40 lakhs (Under Income Tax Act,1961)	Only if Turnover exceeds 40 lakhs (Under Income Tax Act, 1961)	Compulsory Statutory Audit under Companies Act,1956 and also if Turnover exceeds 40 lakhs (Under Income Tax Act, 1961)	If turn over exceeds 40 lakhs or Contribution exceeds 25 lakhs Audit (Under LLP Act,2008)