# PRE-BUDGET MEMORANDUM - 2008

## 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 2008-2009.

1.2 The Indian economy recorded an impressive performance during the first quarter of 2007-08. The real GDP growth in the first quarter of 2007-08 decelerated slightly to 9.3% from 9.6% in the corresponding period of the preceding year. Industrial production remained buoyant during the first five months of 2007-08. During April-August, 2007, index of industrial production rose by 9.8% as against 11% in the same period of 2006-07. The manufacturing sector with a growth of 10.3% (12.2% a year ago) continued to be the main driver of the industrial activity. Real GDP growth originating from the ‘agriculture and allied activities’, at 3.8% in the first quarter of the year 2007-08 was much better than 2.8% growth achieved during the corresponding period of 2006-07. Strong improvement in Rabi output in 2006-07, above average and reasonably well-distributed rains and reasonably high level of reservoir have improved the outlook for agriculture for the year 2007-08. The positive prospects augur well for the economy in terms of both aggregate supply conditions and food prices which, until early 2007, were the main drivers of inflation. The services sector with double digit growth (10.6% in April – June, 2007 on top of 11.6% in April – June, 2006) remained the leading sector of the Indian economy. Service now accounts for nearly 60% of GDP. India’s BOP position has remained comfortable during 2007-08 so far. While merchandise trade deficit has widened, sustained buoyancy in invisibles and sizeable net capital inflows have more than made for increasing trade deficit. India’s merchandise exports during April – June, 2007 increased by 17.8% in U.S. dollar terms as compared with 23.7% in the corresponding period of the previous year. Merchandise imports payment rose by 21.3% as against an increase of 22.9% in the corresponding period last year. Net capital inflows also remained buoyant. Reflecting the movements in current and capital accounts of the BPO, the accretion of foreign exchange reserves amounted to US $ 11.2 billions during April – June, 2007 as against US $ 6.4 billions a year ago.

1.3 While there is a pick-up in the momentum of growth which also appears to be spreading across all constituent sectors, there are several factors that pose risks to the outlook of growth. These include, infrastructural bottlenecks, high inflation rate of assets especially housing prices, continuous and volatile increase in crude oil prices in the international market, widening trade deficits turbulent global financial market, increasing value of rupee having its impact on exporters and unfolding of the US sub prime mortgage crises. All these factors warrant close monitoring for sustaining the growth process with a tolerable level of inflation.

1.4 There has been improvement in Central Government finances, benefiting from higher tax collections and expenditure management through control over non-plan expenditure. During April-August 2007, revenue receipts of the Union Government as proportion of the budget estimates improved to 26.7% from 26.4%. Total expenditure at 36.8% of the B.E. was higher than 35.5% of the B.E. in April-August, 2006.

1.5 So far the revenue deficit and the fiscal deficit are concerned, as proportion to the Budget estimate they increased respectively to 122.9% and 67.6% in April – August, 2007 as compared to 93.7% and 61% in the corresponding period last year. However, the government hopes to make good the situation by the end of the financial year.

1.6 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 2008-09. Separate memoranda are being submitted in respect of Direct Taxes and Indirect Taxes.

1.7 Suggestions in the Pre-Budget Memorandum – 2008 on service tax have been given in the following pages.

# SERVICE TAX

## A. CHANGES IN TAXABLE SERVICES

### 1. Renting of immovable property

Renting, letting, leasing or licensing of specified immovable property has been made liable to service tax.

The service tax is levied on provision of service by service provider to service recipient for consideration. Clarification may be issued on the service element involved in renting or letting of immovable property so that service tax should be levied on that portion of renting or letting only.

In case of lending service under banking and financial service, interest on loan is specifically excluded from valuation of taxable service. Further, interest on overdraft facility, cash-credit facility and bill discounting etc. is also exempted vide Notification No. 29/2004-ST, dated 22/9/2004.

> Hence deduction/abatement/exemption/exclusion for return on investment made in immovable property may be allowed.

Renting of immovable property by religious body is not liable to tax. The same treatment may also be granted to education body or non-profit making organisation also as the object of such bodies is to generate funds by exploiting the immovable property for the purpose of achieving object of the body i.e. propagation/spread of education, or any other social object.

> Considering the policy of the Government towards primary and secondary education (new education cess of 1%) and social upliftment, education bodies and social bodies should be excluded from the levy of service tax under this category.

Further, in case of this service certain issues with regard to the premises to be registered may also arise. There could be a case where the assessee may have rented his properties situated at four different places which fall under the jurisdiction of separate commissionerates but his office or residence would be at a fifth place. Secondly, in the case of rental income, generally, money is received pursuant to an agreement. However, as and when service tax becomes applicable invoice may have to be issued pursuant to rule 4A of Service Tax Rules, 1994. These invoices may be prepared from the fifth place i.e. his office or residence. In such a scenario as per Rule 4(3A) of the Service Tax Rules, 1994 all premises from where services are provided needs to be registered. Thus, in this case all the four premises would have to be registered though they are in the possession of the lessees who may have themselves registered the premises for providing their services. In the event the assessee wishes to register the fifth location then it may be considered as registration pursuant to centralized billing requiring permission from Commissioner of Central Excise.

Hence it is hereby suggested that considering the unique nature of the service the registration rules may be diluted to provide that:

(i) the units which are rented would not be considered as premises from where services are provided; and

(ii) the premises where records are kept and bills are issued could be registered without it being considered as registration pursuant to centralized billing or accounting thus dispensing with the permission from Commissioner of Central Excise.

2. Service element in specified works contract

In this category, the service element included in following works contract have been covered:-

- Erection, commissioning and installation of plant, machinery, equipment etc.

- Commercial and industrial construction
- Construction of residential complex
- Completion and finishing, repairs, renovation, alternation and restoration of commercial and industrial construction and residential complex.

Also an optional composition scheme has been notified under which service tax is to be levied @ 2% of the total value of works contract.

> It is suggested the such optional composition scheme may also be extended to other types of works contract such as repairs and maintenance of goods or equipments, processing of goods, photography etc., which are already taxed under Service Tax Law and where VAT is levied on value of goods involved in the execution of such works contract.

3. Exemption to resident welfare association

Service provided by resident welfare association under the category of 'club or association' for consideration not exceeding Rs 3,000/- is exempted from whole of tax.

The expression "resident welfare association" is not defined in the Notification. The said expression may be defined in the Notification.

Exemption limit of Rs 3,000/- per month may be made applicable to each residential unit instead of per member as the member owning more than one residential units will be at disadvantageous position.

4 Definitions of "support services of business or commerce" and "management or business consultant"

Definitions of "support services of business or commerce" and "management or business consultant" are vague. The said definitions are reproduced as under:

“Support services of business or commerce” means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationships management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing”-Section 65 (104c)

“Management or business consultant” means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organisation or business in any manner and includes any person who renders any advice, consultancy or technical assistance, in relation to financial management, human resources management, marketing management, production management, logistics management, procurement and management of information technology resources or other similar areas of management” - Section 65(65)

Both the aforesaid definitions are very vague. Professionals and department interpret these definitions in different ways, which leads to litigation. Law should be made simple to avoid litigation.

5. Law may be enacted to determine the person liable to pay service tax in case of goods transport agent

The law should be amended to make service recipient liable to pay service tax when a consignor or consignee (who is making payment of freight to goods transport agent) is a specified category of person.

Alternatively, law may be simplified by making goods transport agent liable to pay service tax when the person making payment to goods transport agent is a individual, proprietorship or partnership firm, not registered under any law for the time being in force. In all other cases, service recipient shall deposit the service tax.

6. Construction of commercial and industrial complex and residential complex

The Government has notified an optional composition scheme vide Notification No.32/2007/STdated 22.5.2007 under which service tax is levied @ 2% of the total value of works contract, if such contract is subjected to VAT under the State VAT Act.

It is suggested that the benefit of the scheme may be extended to all sorts of contracts unconditionally, including contracts for construction of commercial and industrial complex and residential complex, erection and installation, repair and maintenance etc., with material (including value of material supplied by the service receiver), even if not subjected to VAT.

Power Project may also be included in the exclusion list of definition of commercial or industrials construction services given in clause (25b) of Section 65 of the Finance Act, 1994.

7. Certain changes in the categorization of services – Mandap keeper services to fall under rule 3(1)(i) instead of rule 3(1)(ii) and Practicing chartered accountants, cost accountants and company secretaries to fall under rule 3(1)(iii) instead of rule 3(1)(ii).

Mandap Keeper Services [clause (m) of section (105) of section 65] has been included in rule 3(1)(ii) of the Export of Services Rules, 2005 according to which services shall be considered as exported if the services are wholly or partly performed outside India. However, mandap keeper services involve letting out a "mandap" (immoveable property) for organizing an official, social or business function. Mandap keeper services are services relating to immoveable property.

Thus, the mandap keeper's services must be included in rule 3(1)(i) alongwith other services relating to immoveable property.

Similarly, it is also suggested that services provided by Practising Chartered Accountants, Practising Cost Accountants and Practising company Secretaries [clauses (s), (t) and (u) of sub-section (105) of section 65 respectively] being professional services must be categorized under rule 3(1)(iii) along with other professional services such as management consultants, consulting engineers, etc. according to which the services are considered as exported if recipient of the service is located outside India.

8. The following new category of services may be included in the categories of taxable services

- Advocate (for appearance in High Court, Supreme Court and for Taxation Matters, other than the appearance in pursuance of notices)

  Following subject to lower rate of tax:-

- Doctors (except practicing in Government and Charitable Hospitals)-
- Hospitals & Nursing Home (other than Government and Charitable Hospitals and except the life saving drugs and diagnostic).
- Private Colleges.
- Private School having fee above Rs 1 lakh per year.
- Electronic Weighing Bridges.

## B. <u>CHANGES IN CENVAT CREDIT RULES, 2004</u>

1. Allowability of proportionate cenvat credit

Rule 6(3) is amended to provide for an option to general insurance service providers providing taxable as well as exempted insurance schemes to avail

CENVAT Credit on all inputs/input services and reverse CENVAT Credit on a proportionate basis (proportionate to the value of exempted services), without maintaining separate accounts for inputs and input services used for rendering taxable services (proportionate theory based on turnover of taxable and exempted services).

Such option of availment of proportionate CENVAT credit is not available to other service providers or manufacturer-cum-service providers or trader-cum-service providers, who provide both taxable as well as exempted services (trading of goods etc). The restriction provided in Rule 6(3)(c) for utilization of CENVAT credit to the extent of 20% of output service tax is not rational and having no nexus to the input services utilized in providing taxable or exempted services.

It is therefore suggested that the scheme of proportionate availment of CENVAT Credit as available to General Insurance service providers may be extended to all service providers.

Further it is also suggested that, new taxable services namely "renting of immovable property" and "service element involved in works contract" may be included in Rule 6(5) of CENVAT Credit Rules, 2004 [other services are similar to the nature of services referred to in rule 6(5)], so that full CENVAT credit of service tax paid on such services would be available if such services are not exclusively used in or in relation to manufacturing of exempted goods or providing exempted services.

2. Scope of definition of "capital goods" may be enlarged

Cenvat Credit of duty paid on motor vehicle may be extended to construction and other allied services also.

3. Definition of “input service”

Definition of “input service” provided in CENVAT Credit Rules, 2004 is very vague and leads to different interpretation. It does not address the following issues:

(a) Whether input credit on services used indirectly for providing output services, can be availed?

(b) In case the intention of law is to give the credit on input services used indirectly, then the extent/level of such indirect relation permitted by law between input service and output service is not provided. For example; credit on services used and consumed in administrative office relating to premises from where taxable services are provided, rent a cab services used for providing conveyance facility to employees of the company.

For manufacture of excisable goods, such definition permits the Cenvat of services used directly as well as indirectly for the manufacture of final product. However problem mentioned in point (b) above is being faced by the manufacturer of excisable goods also.

Further, there is ambiguity in the definition with regard to the nature of services covered in the definition of ‘input services’.

It is suggested that definition of input services be redrafted to address the above issues.

4. Input credit on service tax paid on advance payments

As per the provisions of section 67 of the Finance Act, 1994, w.e.f 13.05.2005, every service provider is liable to pay service tax on advance received for service to be provided. Further as per Rule 4A of Service-tax Rules 1994, service provider is required to issue invoice within 14 days of receipt of such payment. In such a case, if service tax has been paid on advance payment in respect of services yet to be provided by the service recipient, the issue arises whether credit of service tax paid on such services would be available as input credit to the service recipient after making such advance payment along with service tax.

It is a disputed question because though section 67 and rule 6 has been amended but a corresponding amendment has not been made in Cenvat Credit Rules, 2004. As per the definition of 'input services' as defined in Rule 2(l) of CENVAT Credit Rules 2004, input service means any service used by a provider of taxable service for providing an output service. The service in respect of which the service provider wishes to avail credit is yet to be provided, in such case, the basic condition i.e. services should be used for providing taxable service, remains unsatisfied.

In such a situation, the assessee would not be eligible for CENVAT Credit in respect of service tax paid on advance payment made to the service provider.

> However, on principle of equity and natural justice, credit should be allowed after making advance payment along with service tax leviable thereon. This is an important issue. Law should be amended to extend the benefit of CENVAT credit in respect of service tax paid on advance payments to service provider.

## C. CHANGES IN ADMINISTRATIVE PROVISIONS

### 1. Revised Return - (Rule 7B)

Rule 7B is inserted to allow an assessee to rectify mistake and file revised return within 60 days from the date of filing of the original return.

The limit of 60 days may be increased to one year.

The literal meaning of the rule provides that revised return is to be filed within 60 days from the date of submission of return i.e. If the return for half year October, 06 to March, 07 is filed on 20th April, 2007 (due date is 25th April, 2007) then 60 days will be counted from 20th April, 2007 and not from due date. Thus the date of filing revised return will vary in each case depending upon the date of filing of original return.

It is therefore suggested that the period for filing revised return should be counted from the due date of submission of half yearly return in Form ST-3.

It may be clarified that whether delayed return filed with the newly prescribed penalty not exceeding Rs 2,000/- would also be eligible for revision, if any mistake or omission has occurred therein.

2. Penalty for delay in filing return (section 70)

It may be provided that no penalty should be imposed on delayed filing of returns having 'NIL' service tax liability.

3. Registration (Rule 4)

The facility to obtain the registration certificate online through the nodal agency like UTI (as in the case of PAN for Income-tax purpose) may be extended in case of service tax as well.

The power of centralized registration may be delegated to the jurisdictional Assistant/Deputy Commissioner.

4. Return (Rule 7)

Facility to file the E-return with online registration at site may be granted as in the case of Income-tax return.

The last date for filing of return for the half year ended on $31^{st}$ March may be extended from $25^{th}$ April to $31^{st}$ May.

Further, annual returns instead of half yearly returns may be prescribed though taxes could be paid on a quarterly/monthly basis. Annual return would also ensure that the return is in line with the accounts of the assessee. It would also eliminate a lot of paper work and reduce the time of the department and the assessee.

5. Changes required in return format

Notification no. 27/2007 C.E. (N.T.) dated 12.05.2007 provides that credit of secondary and higher education cess (S & HE cess) can be used for S & HE cess only and same manner is to be followed for education cess. The relevant extract of said notification are reproduced hereunder:

In the CENVAT Credit Rules, 2004, in rule 3,

"(ii) in sub-rule (7), in clause (b),-

(d) for the proviso, the following provisos shall be substituted, namely:-

"Provided that the credit of the education cess on excisable goods and the education cess on taxable services can be utilized, either for payment of the education cess on excisable goods or for the payment of the education cess on taxable services:

Provided further that the credit of the Secondary and Higher Education Cess on excisable goods and the Secondary and Higher Education Cess on taxable services can be utilized, either for payment of the Secondary and Higher Education Cess on excisable goods or for the payment of the Secondary and Higher Education Cess on taxable services".

However, return format ST-3 does not provide the necessary columns to ensure the compliance of aforesaid provisions. Format of ST-3 provides a common column for availment and utilization of credit in respect of S & HE Cess and E. Cess. Thus, it does not ensure that credit in respect of S & HE Cess is utilized by assessee for discharging the liability in respect of S & HE Cess only, and same is being followed in respect of credit of E. Cess. This issue may be addressed.

6. Adjustment of excess payment (Rule 6)

Sub-rule (4A) and sub-rule (4B) of rule 6 provide that where an assessee has paid any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, then excess amount paid can be adjusted against service tax liability for the succeeding month or quarter subject to certain conditions.

It is provided that excess amount can be adjusted against tax liability of succeeding month or quarter. The dictionary meaning of expression 'succeeding' is to come next after something; to follow. Thus excess amount can be adjusted only against next month or quarter and not after that. Normally, an excess payment is noticed during the course of audit or finalisation of accounts and at a much later point of time after making the excess payment.

Hence it is suggested that the expression 'succeeding month or quarter' may be replaced by 'succeeding months or quarters' or 'subsequent months or quarters".

Further, the monetary limit of Rs. 50,000/- may be removed. Since the amount paid is excess amount which is not a service tax, it is not clear as to what remedies are available to the assessee to claim such excess amount. Section 11B of the Central Excise Act which is made applicable to service tax provides for refund of tax and not excess amount.

Also, in cases where the excess payment made for particular month or quarter is more than Rs.50,000/- say Rs.60,000 then adjustment is possible only for Rs.50,000/- and it is not clear as to what would happen to balance amount of excess payment as no remedy is available for claiming refund of such excess amount.

Hence it is hereby suggested that the rule may be amended to allow adjustment-

(i) against any subsequent period's liability; and

(ii) without a monetary limit of Rs. 50,000/-

7. Deletion of the word "quarterly or" in rule 6(5)

In Rule 6(5) which provides for filing a reconciliation statement in Form ST-3A alongwith the returns in case of provisional assessment the words "quarterly or" may be deleted since returns have to be submitted only half-yearly under the present dispensation.

8. Higher and Secondary Education Cess

A new cess called 'Higher and Secondary Education Cess' has been levied @ 1% on service tax leviable on taxable services with effect from 11.5.2007. This cess is calculated in addition to Education Cess of 2%. Thus the calculation will 12%+2%+1%, thus creating three layers of tax with different account codes, which will be very complex and tedious.

Therefore it is suggested that the entire education cess may be calculated at 3% i.e. 12%+3% in two layers.

9. Basic exemption limit

The basic exemption limit for small service providers has been increased from Rs.4,00,000/- to Rs.8,00,000/- under Notification No. 6/2005.

It is suggested that in view of the nation moving towards Goods and Services Tax in the financial year 2010-11, the exemption limit of Rs.8,00,000 may be further increased to Rs.10,00,000 to have some parity with the exemption granted to small scale industries under Central Excise Act, 1944 (increased to Rs.1.50 crores from Rs.1.00 crore)

10. Relaxation in case of mandap and shamiana service provider

The mandap and shamiyana service provider are already under the net of service tax. However, some relaxation is given to mandap contractors and pandal and shamiana contractors who are providing the service of caterer. In other words if the said contractor is providing food alongwith all other material of mandap or pandal and shamiana, and has mentioned in the bill the said fact, then they will get the abatement of 30% under the Notification 1/2006. However the benefit of the said notification is restricted to some of the contractors and the majority of the contractors are not able to get the benefit of this notification as they are not providing any food while providing their main service. About 90% of the members are unable to get the benefit of this notification as they are only providing the services of either mandap or pandal and shamiana only. Thus it has become very much difficult for them to survive in the competition as the major service providers are not into the service of providing the food with their regular services.

So to remove the disparity and discrimination among the service providers of the same head, the abatement of 30% should be available without any condition under the said notification or include the service of mandap and pandal and shamiyan service under the category of work service contract as they are fulfilling all the conditions specified in the category and be allowed to pay the service tax at concessional rate of 2%;

11. Composition Scheme - Undue advantage for specified works contractors

(i) Scheme may be manipulated by service providers

As per rule 3(1) of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, notwithstanding anything contained in section 67 of the Act and rule 2A of the Service (Determination of Value) Rules, 2006, the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to two per cent. of the gross amount charged for the works contract.

Notification 1/2006 dated 01.03.2006, inter alia, provides the abatement of 67% for construction services. As per said notification, the contractor is required to pay service tax on 33% of gross amount charged by such contractor. Further, in the said notification, it has been clarified that “the gross amount charged” shall include the value of goods and materials supplied or provided or used by the provider of taxable service for providing the taxable service.

Thus, the contractor, for availing said abatement, has to include the cost of all goods and material used by him (whether provided by contractee or by the contractor himself) in determining “the gross amount charged” for availing the benefit of said abatement.

However, under the composition scheme, it has not been clarified whether the term “the gross amount charged” would include the value of material supplied by the contractee. Contractor can avail the benefit of composition scheme provided under Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 even by supplying a small quantity of goods or material to avail the benefit of composition scheme.

Therefore, for the purpose of the composition scheme, necessary amendment should be made to ensure that the material supplied by the contractee would also become part of “the gross amount charged”.

(ii) Benefit of composition scheme may be extended to other service provider covered under Notification No. 1/2006

Works contracts covered by “services in the execution of works contract” are availing the following additional advantage in comparison to other service provider which are availing abatement under Notification No. 1/2006 or are availing no abatement:

Under the composition scheme, service provider is liable to pay 2% on gross amount against the normal rate of 12%. In other words, they are paying service tax only on 1/6th part of the value i.e. they are availing approximately 83.33% of abatement on gross amount, which is presently not availed by any other category of works contracts.

Thus, the benefit of the composition scheme should be extended to other works contracts. However, rate of tax may be varied between 2 to 10 % depending upon nature of services considering the value of the material generally used in each particular category of other services.

12. Abatement granted under Notification No. 1/2006 S.T.

The cenvat credit on input services may be allowed under the said notification after the issue of Master Circular No. 96/7/2007-ST dated 23.08.2007 by which the sub-contactors are also made liable for payment of service tax, to enable the main contractor to avail the cenvat credit of the same.

13. Extension of date for payment of service tax

With effect from 1.4.2005 the due dates for payment of service tax has been pre-poned from 25th of the following month / quarter to 5th/6th of the following month / quarter. However, the assessees find it very difficult to comply with this due to the following:

(i) Capturing the data and information of collections for each month involves substantial time. In order to arrive at the service tax payable it would generally take 10 days and hence the information would be available only by (say) 12th of the following month / quarter. This problem would be accentuated in the case of a multi-location company having a centralized registration or companies with huge volumes, say, courier agency, banks, etc..

(ii) Capturing the available input credit i.e. service tax on the expense payments also takes substantial time. This has to be done offline on payment basis as against the figures in the accounts which are accounted on mercantile or due basis.

Hence the assesees would require adequate time to compute and pay their service tax.

It is hereby suggested that the due dates for payment of service tax (except March) be postponed from $5^{th}/6^{th}$ of the following month / quarter to $15^{th}$ of the following month/quarter. Further, in case of payments for the month / quarter ending March, the payment maybe made in two instalments as suggested in the table below. The due dates could thus be summarized as under :

| Status of payer | Period | Due date |
|---|---|---|
| Companies | All months except March | $15^{th}$ of the following month |
| | $1^{st}$ March – $15^{th}$ March | $25^{th}$ March |
| | $16^{th}$ March – $31^{st}$ March | $15^{th}$ April |
| Other than Companies | All quarters except January – March | $15^{th}$ of the month following the relevant quarter |
| | $1^{st}$ January – $15^{th}$ March | $25^{th}$ March |
| | $16^{th}$ March – $31^{st}$ March | $15^{th}$ April |

14. Late payment interest

The rate of interest for late payment of service tax is 13% at present, where as the rate for late payment of income tax is 9% at present. So as to remove the disparity, the rate should be similar.

15. Miscellaneous

The power to issue summons to the parties should be restricted to the officer not below the rank of Assistant Commissioner as the said powers are being misused by the lower authority.

There should be online registration facility available.

There should be specific guideline which is to be followed for e-filing of returns. At the same time the said facility should be available offline and after filling up the details the said return should be submitted online.

## D. CHANGES IN THE EXPORT OF SERVICES RULES, 2005

Export of Service Rules - Rule 3(2) may be amended to delete the words “provided from India” in Rule 3(2)(i)

The change made on 1.3.2007 in Export Rules by substituting the words “provided from India and used outside India” in place of “delivered outside India and used outside India” is very much welcome. However, Rule 3(2) requires further fine tuning. As regards the first condition i.e. Rule 3(2)(i), the words “provided from India” can result in some anomaly. To illustrate, a Chartered Accountant’s service would be considered as exported under Rule 3(1), if the services are performed wholly or partly outside India. However, under the amended Rule 3(2)(i), the condition that the service must be ‘provided from India’ should also be satisfied. This condition would not operate if a Chartered Accountant wholly performs his services abroad. It is submitted that the ultimate objective of exempting only those services which are consumed outside India would be adequately met by the condition that the service should be used outside India.

Hence, it is hereby suggested that the words “provided from India” may be deleted in Rule 3(2)(i).