

INDIRECT TAX: SERVICE TAX**MAJOR CHANGES IN SERVICE TAX BY FINANCE ACT, 2015****1. CHANGE IN SERVICE TAX RATE****(a) Service Tax Rate (With effect from 1st June 2015)**

The rate of Service Tax is being increased from 12% plus Education Cesses i.e. 12.36% to 14%. The 'Education Cess' and 'Secondary and Higher Education Cess' shall be subsumed in the revised rate of Service Tax. Accordingly, an amendment is being made in section 66B, sections 95 and section 140 of the Finance Act. The 'EC' and SHEC will continue to be levied in Service Tax till the time revised rate comes into effect.

(b) Swachh Bharat Cess (Yet to be notified)

Central Government has been empowered to impose a Swachh Bharat Cess on all or any of the taxable services at a rate of 2% on the value of such taxable services. This cess shall be levied from such date as may be notified by the Central Government after the enactment of the Finance Bill, 2015.

2. AMENDMENTS IN EXEMPTIONS

(a) Service provided by way of transportation of a patient in an ambulance. (With effect from 1st April 2015)

(b) Service by way of admission to a museum, national park wildlife sanctuary, tiger reserve or zoo. (With effect from 1st April 2015)

(c) Service by way of right to admission to:

i) exhibition of cinematography film, circus, dance, or theatrical performance including drama or ballet;

ii) recognized sporting event;

iii) award function, concert, pageant, musical performance or any sporting event other than a recognized sporting event, where the consideration for admission is not more than 500/- per person. (With effect from 1st June 2015)

iv) Exemption to job work on processing of liquor for human consumption withdrawn.

3. AMENDMENTS IN NEGATIVE LIST

(a) Process amounting to manufacture or production of goods excludes alcoholic liquor for human consumption

(b) Betting, gambling and lottery shall not include the activity specified in Explanation 2 to the definition of service.

(c) It is pertinent to mention that no date has been notified for levying service tax on all services by Government (as enacted in Finance act, 2015). The same shall be notified in due course of time. Presently, only support services by Government are in the ambit of service tax.

4. AMENDMENTS IN SERVICE TAX RULES 1994

- (a) With effect from 1st March 2015, in respect of any service provided under aggregator model, the aggregator, or any of his representative office located in India or an agent of aggregator, is being made liable to pay Service Tax if the service is so provided using the brand name of the aggregator in any manner. In this regard appropriate amendments have been made in rule 2 of the Service Tax Rules, 1994.

Rule 2(1)(aa) - 'Aggregator' means a person, who owns and manages a web based software application and by means of the application, and communication device, enables a potential customers to connect with persons providing service of a particular kind under the brand name or trade name of the aggregator.

- (b) With effect from 1st March 2015, rule 4 has been amended by inserting Rule 4(9) to provide that the CBEC shall, by way of an order will specify the conditions, safeguards and procedure for registration in service tax. In this regard Order No. 1/15-ST, dated 28.2.2015 has been issued, prescribing documentation, time limits and procedure for registration. It has also been prescribed that henceforth registration for single premises shall be granted within two days of filing the application.

- (c) **Rule 4C, 5(4) and 5(5):**

The provision for issuing digitally signed invoices is being added along with the option of maintaining of records in electronic form and their authentication by means of digital signatures. The conditions, safeguards and procedure in this regard shall be specified by the CBEC. The changes are applicable with effect from 1st March 2015.

- (d) In respect of services given below in table the service provider has been allowed to pay service tax at an alternative rate subject to the conditions as prescribed under rule 6 (7), 6(7A), 6(7B) and 6(7C) of the Service Tax Rules, 1994.

- i) Air Travel Agent (Domestic Booking)
- ii) Air Travel Agent (International Booking)
- iii) Life Insurance Service
- iv) Money Changer Service
- v) Lottery distributor and selling agent

This change will come into effect from the date of notification in the official gazette i.e 1st June, 2015.

5. AMENDMENTS IN ABATEMENT (With effect from 1st April 2015)

- (a) The taxable portion of service of transportation by rail, road and vessel shall be 30% subject to a uniform condition of non-availment of CENVAT Credit on inputs, capital goods and input services.
- (b) The taxable portion of value of air transport of passenger for higher classes shall be 60% as against economy class for which Service Tax is payable on 40% of the value.

- (c) Abatement is withdrawn for services provided in relation to chit and Service Tax is payable by chit fund foremen on the full consideration received by way of fee, commission or any such amount with a facility to avail CENVAT Credit on the same.

6. AMENDMENTS IN REVERSE CHARGE/PARTIAL REVERSE CHARGE

- (a) In relation to manpower supply and security services provided by an individual, HUF, or partnership firm to a body corporate, only service receiver to pay service tax as against present system of partial reverse charge. (With effect from 1st April 2015)
- (b) In respect of service provided or agreed to be provided by a mutual fund agent or distributor, to a mutual fund or asset management company, the service receiver will be liable to pay service tax under reverse charge. (With effect from 1st April 2015)
- (c) In respect of service provider or agreed to be provided by selling or marketing agent of lottery tickets to a lottery distributor or selling agent, the service receiver will be liable to pay service tax under reverse charge. (With effect from 1st April 2015)
- (d) in respect of any service provided or agreed to be provided by a person involving an aggregator in any manner, the service receiver will be liable to pay service tax under reverse charge. (With effect from 1st March 2015)

7. AMENDMENTS IN CENVAT CREDIT RULES

- (a) Earlier CENVAT credit to service receiver under partial reverse charge was eligible only if payment of service has been made to service provider. Now with effect from 1.4.2015 Rule 4(7) has been amended to allow CENVAT Credit of Service Tax paid under partial reverse charge by the service receiver without linking it to the payment to the service provider.
- (b) Rule 6(3) of Cenvat Credit Rules (i.e non maintenance of separate books of accounts) has been triggered with. Now reversal of cenvat credit under the Rules shall be 6% of exempted goods plus 7% of exempted services. Earlier, it was 6% for both (exempted goods as well as exempted services).

DIRECT TAX: INCOME TAX

Important Case laws

1. Issue of intimation under section 143(1) cannot amount to completion of assessment under section 139(5) disabling assessee from filing a revised return - **Tata Metaliks Ltd. v. CIT [2014] 368 ITR 643 (Calcutta High Court).**
2. Rental income taxable as business income if main object of company as per MOA is to earn income by letting out properties - **Chennai Properties & Investments Ltd. v. CIT [SC] [Appeal nos. 4491 to 4494 of 2004 – order dated April 9, 2015]**
3. Where Assessing Officer could not find any deficiency in assessee's books of account and could not prove that assessee's computation of section 14A disallowance for earning exempt income was incorrect, assessee's claim was to be allowed. - **DCIT v. DBH International (P.) Ltd. [2015] 55 taxmann.com 424 (Delhi ITAT)**
4. Where Assessing Officer of 'B', 'P' and 'MB' did not record any satisfaction that some money, bullion, jewellery or books of account or other documents found from these persons belonged to assessee, initiation of proceedings under section 153C on assessee was void ab initio. - **Tanvir Collections (P.) Ltd. v. ACIT [2015] 168 TTJ 145 (Delhi ITAT)**
5. When construction/acquisition of new facility is abandoned at the work-in-progress stage, the expenditure does not result in an enduring advantage and such expenditure, when the same is written off, has to be allowed under section 37. - **M/s Binani Cement Ltd., Kolkata v. CIT [ITA no. 265 of 2009] [Calcutta High Court]**
6. In computing the “average value of investment”, only the investments yielding non-taxable income have to be considered and not all investments. - **ACB India Ltd. v. ACIT [ITA no. 615/2004] (Delhi High Court).**
7. If the assessee does not ask for reasons and file objections before the AO, he is not entitled to challenge the reopening proceedings. - **Anil Kumar Chaudhary v. ITO [ITA no. 4328/Del/2011] (ITAT Delhi).**
8. Where there were no findings by revenue that assessee trust was indulging in any activity other than promoting education and there were no conclusive findings to prove that trustees had siphoned out undisclosed income of trust, Commissioner was not justified in withdrawing registration granted under section 12A(a) by invoking provisions of section 12AA(3) - **Sri Balaji Educational & Charitable Public Trust v. C I T, Central-III, Chennai [2015] 57 taxmann.com 145 (Chennai - Trib.)**

9. Section 254 of the Income-tax Act, 1961 - Appellate Tribunal - Powers of (Second proviso to sub-section (2A)) - Whether insertion of expression 'even if delay in disposing of appeal is not attributable to assessee' in third proviso to section 254(2A) by virtue of Finance Act, 2008, violates non-discrimination clause of Article 14 of Constitution of India - Held, yes - Whether object that appeals should be heard expeditiously and that assesses should not misuse stay orders granted in their favour by adopting delaying tactics is not at all achieved by above provision as it stands; on contrary, clubbing together of 'well behaved' assesses and those who cause delay in appeal proceedings is itself violative of Article 14 of Constitution and has no nexus or connection with object sought to be achieved - Held, yes - Whether, therefore, said expression is, to be struck down - Held, yes - Pepsico Foods (P) Ltd. v. Assistant Commissioner of Income Tax 57 Taxmann.com 337 (Delhi HC).

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Newsletter

May 2015 Issue

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