

INDIRECT TAXES UPDATE -30

SERVICE TAX

Representational Services provided by Chartered Accountants, Cost Accountants and Companies Secretaries liable to service tax w.e.f. 1st May, 2011

With effect from 01.05.2011, *Notification 25/2006 ST dated 13.07.2006* exempting the representational services provided by the practicing Chartered Accountants, Cost Accountants and Companies Secretaries to a client in their professional capacity has been rescinded vide *Notification No. 32/2011 ST dated 25.04.2011*. Thus, the services in respect of representing the client before any statutory authority in the course of proceedings initiated under any law for the time being in force, by way of issue of notice which were hitherto exempted would be liable to service tax with effect from 01.05.2011. Service provided prior to 01.05.2011 would continue to be exempted under the old notification.

It may be advisable to ascertain the services already provided and ensure the billing is completed to avoid disputes at a later point of time.

The inclusion of representational services within the scope of the legal consultancy services vide Budget 2011-12 may have prompted such withdrawal of the exemption enjoyed by other professionals who are providing similar services. This may also lead to a situation where all services provided would probably be liable to service tax and eligible credits could be availed without any restrictions.

[Notification No. 32/2011 ST dated 25.04.2011]

New services and amendments in the existing services to be effective from 1st May, 2011

The new services introduced by the Finance Act, 2011 and the amendments made in the existing services vide the Finance Act, 2011 would be effective from 01.05.2011.

[Notification No. 29/2011 ST dated 25.04.2011]

Services provided by clinical establishments or doctors to be exempt from service tax w.e.f. 1st May, 2011

With effect from 01.05.2011, taxable services provided by a clinical establishment or by a doctor, not being an employee of a clinical establishment, who provides services from such premises for diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine would be exempted from service tax.

[Notification No. 30/2011 ST dated 25.04.2011]

Hotel accommodation with tariff less than Rs.1,000 per day exempt from service tax w.e.f. 1st May, 2011

With effect from 01.05.2011, short-term accommodation provided by hotel, inn etc. under section 65(105)(zzzzw) of the Finance Act, 1994 with the declared tariff of less than Rs.1000 per day would be exempted from the whole of the service tax.

Here, "declared tariff" includes charges for all amenities provided in the unit of accommodation like furniture, air-conditioner, refrigerators etc., but does not include any discount offered on the published charges for such unit.

[Notification No. 31/2011 ST dated 25.04.2011]

Preschool coaching and training and coaching leading to grant of a certificate/diploma/degree/educational qualification recognised by any law exempt from service tax w.e.f. 1st May, 2011

With effect from 01.05.2011, the following services provided by any commercial coaching or training centre have been exempted from service tax

- (i) any preschool coaching and training;
- (ii) any coaching or training leading to grant of a certificate or diploma or degree or any educational qualification which is recognised by any law for the time being in force.

[Notification No. 33/2011 ST dated 25.04.2011]

Abatement of 70% for AC restaurants and 50% for short-term hotel accommodation to be available w.e.f. 1st May, 2011

Notification No. 1/2006 ST dated 01.03.2006 has been amended to grant abatements of the gross amount charged in respect of certain services in the following manner:

- (i) 70% in case of services provided by a restaurant, having the facility of air-conditioning in any part of the establishment, at any time during the financial year, which has licence to serve alcoholic beverages, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises;
- (ii) 50% in case of services provided by a hotel, inn, guest house, club or campsite in relation to providing of accommodation for a continuous period of less than three months.

The abatements would be available with effect from 01.05.2011.

[Notification No. 34/2011 ST dated 25.04.2011]

Special rate of service tax leviable on life insurance increased from 1% to 1.5% w.e.f 1st May, 2011

The special option available to an insurer carrying on life insurance business vide sub-rule (7A) of rule 6 of the Service Tax Rules, 1994 has been amended. The option allows

the insurer to pay service tax at a specified rate of the gross premium charged instead of paying normal service tax @ 10% towards discharge of service tax liability.

With effect from 01.05.2011, the insurer carrying on life insurance business would have the option to pay service tax on the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service. In all other cases, the insurer may pay service tax @ 1.5% (1% till 30.04.2011) of the gross amount of premium charged from a policy holder.

However, such option would not be available if the entire premium is only towards risk cover in life insurance.

[Notification No. 35/2011 ST dated 25.04.2011]

New services introduced vide the Finance Act, 2011 classified under the category relating to immovable property under the Export of Services Rules, 2005 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006

With effect from 01.05.2011, new services notified through the Finance Act, 2011 have been classified under rule 3(1)(iii) and rule 3(iii) of the Export of Services Rules 2005 and the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 respectively. In other words, under both the Export and Import Rules, the new services would fall under the category relating to immovable property. The new services are services provided by AC restaurants having licence to serve liquor and short-term accommodation provided by hotels, inns etc.

[Notification Nos. 36 and 37 /2011 ST dated 25.04.2011]

Visa facilitators not liable to service tax

Service provided by a visa facilitator, in the form of assistance to individuals directly, to obtain a visa, does not fall under any of the taxable services under section 65(105) of the Finance Act, 1994. Hence service tax is not attracted. Visa facilitators collect certain statutory charges like visa fee, certification fee, attestation fee, emigration fee, etc. from the visa applicant, which are remitted to the respective authorities, and in addition collect service charges for themselves as remuneration for the assistance provided by them to obtain the visa.

It has been clarified that assistance provided by a visa facilitator, for obtaining visa, to a visa applicant or for foreign employer does not fall within the scope of supply of manpower service or business auxiliary service as visa facilitator does not act on behalf of the embassies, as agents of the principal. Such services can also not be classified as business support services as the visa applicant pays the service charge on his own meaning such service charge is not borne by any business entity.

However, service tax would be leviable on any service provided other than assistance directly to individuals for obtaining visa, falling under the description of any taxable service, as classifiable under the appropriate heading. For example, where visa facilitators also act as agents of recruitment or of foreign employer, service tax would be

leviable to the extent under the service of 'supply of manpower'. Where the visa facilitator renders visa assistance to individuals who are employed in a business entity and the service charges are paid by the business entity on behalf of those individuals, to the visa facilitator, service tax would be leviable under 'business support service'.

[Circular No. 137/6/2011 ST dated 20.04.2011]

Accounting Codes allotted for the new taxable services introduced vide the Finance Act, 2011

Office of the Principal Chief Controller of Accounts, CBEC has allotted Heads of Account under the Major Head "0044-Service Tax" in respect of the new taxable services. Following Accounting Codes have been prescribed for the purpose of payment of service tax:

Sl. No.	Taxable Services	Accounting Code		
		Tax Collection	Other Receipts	Deduct Refunds
(1)	(2)	(3)	(4)	(5)
1.	Service provided by a restaurant having air-conditioning and license to serve alcoholic beverages in relation to serving of food or beverage, including alcoholic beverages or both, in its premises [Finance Act 1994, Section 65(105) (zzzzv)]	00441067	00441068	00441069
2.	Service provided by a hotel, inn, guest house, club or campsite in relation to providing of accommodation for a continuous period of less than three months[Finance Act 1994, Section 65(105) (zzzzw)]	00441070	00441071	00441072

- (i) The sub-head "other receipts" is meant for interest, penalty, leviable on delayed payment of service tax.
- (ii) The sub-head "deduct refunds" is not to be used by the assessee, as it is meant for the Revenue/Commissioner rates while allowing refund of tax.
- (iii) Primary education cess on all taxable services will be booked under 00440298 and Secondary Higher Education Cess will be booked under 00440426.
- (iv) If NSDL have issued any dummy codes for revenue collection and interest/penalty for the above services, all these dummy codes should be treated as void and may be

replaced by the correct account codes as stated above.

- (v) Description of taxable services provided at column (2) of the table for ease of reference, does not restrict the scope of the taxable service.

[Circular No. 136/5/2011 ST dated 20.04.2011]

Service Tax Audit Manual 2011 for the use of Departmental Officers approved by the Board

The existing Service Tax Audit Manual, which is in use since 2003 has been updated by the Working Group set up by the Board in 2009. The manual prepared by the Working Group was discussed in Board meetings for considering the various amendments and proposals to be included in the manual. The Board has since approved the Service Tax Audit Manual 2011 and the same will be circulated by the Directorate General of Audit. It has been directed that all service tax audits should henceforth be carried out in accordance with the principles laid down in the said Manual and the extant prevalent instructions. This Manual is for the use of departmental officers only.

[Circular No. 135/4/2011 ST dated 19.04.2011]

Service tax exemption applies to Education Cess and Secondary and Higher Education Cess as well

It has been clarified that since Education Cess is levied and collected as percentage of service tax, when and wherever service tax is NIL by virtue of exemption, Education Cess would also be NIL. According to section 95(1) of Finance (No.2) Act, 2004 and section 140(1) of Finance Act, 2007, Education Cess and Secondary and Higher Education Cess are leviable and collected as service tax, and when whole of service tax is exempt, the same applies to education cess as well.

The field formations have been directed not to initiate proceedings to recover the education cess, where 'whole of service tax' stands exempted under the notification. Also, where education cess has been refunded to exporters along with service tax, by virtue of exemption notifications where 'whole of service tax' is exempt, the same need not be recovered.

The clarification has been issued as the Tribunal has given an order in the matter of *M/s. Balasore Alloys Ltd. Vs CCE, Customs and Service Tax, BBSR-I (2010-TIOL-1659-CESTAT-KOL)* which is inconsistent with the intention of the Government to exempt education cess in addition to service tax, where 'whole of service tax' stands exempted.

[Circular No. 134/3/2011 ST dated 08.04.2011]

Exemption to transport of goods by the Government railways extended till June, 2011

Service tax levy on transport of goods by the Government railways and transport of goods by rail otherwise than in containers would be applicable from July 1, 2011 instead of April 1, 2011. Consequently, exemption for transport of notified goods like defence military equipments, railways equipment/materials, postal mail bags by rail etc. and abatement of 70% of the gross amount charged for transport of goods by the Government railways and transport of goods by rail otherwise than in containers would also be effective from July 1, 2011.

[Notification No. 19-21/2011 ST dated 30.03.2011]

Scope of exemption granted vide Notification No 19/2009 ST dated 07.07.2009 expanded

Notification No 19/2009 ST dated 07.07.2009 exempted the banking and financial services provided to a Scheduled bank, by any other Scheduled bank, in relation to inter-bank transactions of purchase and sale of foreign currency. With effect from 01.04.2011, *Notification No. 27/2011 ST dated 31.03.2011* has amended the said notification so as to expand the scope of the exemption by exempting such services provided to any bank, including a bank located outside India, or money changer, by any other bank or money changer.

[Notification No. 27/2011 ST dated 31.03.2011]

Export and Import Rules amended

Second proviso to rule 3(1)(ii) of the Export of Services Rules, 2005 lays down that where management, maintenance or repair service, technical testing and analysis agency's service and technical inspection and certification service provided in relation to any goods or material or any immovable property, as the case may be, situated outside India at the time of provision of service, through internet or an electronic network including a computer network or any other means, then such taxable service, whether or not performed outside India, would be treated as the taxable service performed outside India.

The said proviso has been amended so as to exclude the technical testing and analysis agency's service from the purview of the said proviso.

Similarly, the technical testing and analysis agency's service has also been removed from the purview of second proviso to rule 3(ii) of the Taxation of Services (Provided From Outside India and Received in India) Rules, 2006.

[Notification No. 22-23/2011 ST dated 31.03.2011]

Service Tax (Determination of Value) Rules, 2006 amended

Rule 2B of the Service Tax (Determination of Value) Rules, 2006 has been amended to substitute the words "reference rate for that currency for that day" with the words "reference rate for that currency at that time".

[Notification No. 24/2011 ST dated 31.03.2011]

Composition rate in relation to purchase or sale of foreign currency changed

The composition rate in relation to purchase or sale of foreign currency, including money changing, which was reduced from 0.25% to 0.10% vide *Notification No. 03/2011-ST dated 01.03.2011* has further been changed as follows:-

- (a) 0.1% of the gross amount of currency exchanged for an amount upto Rs.100,000, subject to the minimum amount of Rs. 25; and
- (b) Rs.100 and 0.05% of the gross amount of currency exchanged for an amount exceeding Rs.100,000 and upto Rs. 10,00,000; and
- (c) Rs.550 and 0.01% of the gross amount of currency exchanged for an amount exceeding Rs. 10,00,000, subject to maximum amount of Rs. 5000.

[Notification No. 26/2011 ST dated 31.03.2011]

CENTRAL EXCISE

Quarterly return for assesses paying nominal duty of 1%

Rule 12 of the Central Excise Rules, 2002 has been amended to prescribe a quarterly return of production and removal of goods for assesseees who avail exemption under *Notification No. 01/2011-CE dated 01.03.2011* and does not manufacture any other excisable goods. The return will have to filed within ten days after the close of the quarter to which the return relates.

[Notification No. 08/2011-CE (NT) dated 24.03.2011]

Special provisions relating to job work in case of articles of jewellery extended to articles of goldsmiths' or silversmith's wares

The special provisions relating to job work in case of articles of jewellery (falling under heading 7113 of the Central Excise Tariff) prescribed under 12AA of the Central Excise Rules, 2002 have been extended to articles of goldsmiths' or silversmiths' wares (falling under heading 7113 of the Central Excise Tariff). Consequent amendments have been made in definition of manufacturer/producer in relation to articles of jewellery under rule 2(naa) and rule 4(1) of the CENVAT Credit Rules, 2004. Heading 7114 covers articles of goldsmiths' and silversmiths' wares and parts thereof, of precious metal or of metal clad

[Notification No. 08-09/2011-CE (NT) dated 24.03.2011]

Coal mines with centralized billing/accounting exempt from central excise registration

Mines engaged in the production/manufacture of coal, peat, coke tar distilled from coal falling under chapter heading 2701, 2702, 2703, 2704 and 2706 have been exempted from obtaining registration where the producer or manufacturer of such goods has a centralized billing or accounting system in respect of such goods produced by different mines and opts for registering only the premises or office from where such centralized

billing or accounting is done.

[Notification No. 10/2011-CE (NT) dated 24.03.2011]

Packing material includes labels for the purpose of Notification No. 8/2003 CE dated 01.03.2003

Small scale exemption is not available in case of goods which bear a brand name or trade name, whether registered or not, of another person. However, the exemption would be available even if the goods bear the trade name or brand name of another person if goods are in the nature of packing materials and are meant for use as packing material by or on behalf of the person whose brand name they bear. *Notification No. 8/2003 CE dated 01.03.2003* has been amended to clarify that “packing material” includes labels.

[Notification No. 28/2011-CE dated 24.03.2011]

CUSTOMS

Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 amended

Rule 16A of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 relating to recovery of amount of drawback where export proceeds are not realised has been amended to provide that where sale proceeds are not realised by an exporter within the period allowed under the Foreign Exchange Management Act, 1999, but such non-realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes off the requirement of realization of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer, the amount of drawback paid to the exporter or the claimant shall not be recovered.

[Notification Nos. 30/2011 Cus. (NT) dated 11.04.2011]

The newly introduced provisions of ‘self-assessment’ in customs have been explained vide *Circular No. 17/2011 Cus. dated 08.04.2011*.

The complete text of the above circulars and notifications are available at www.cbec.gov.in.

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