

SERVICE TAX

Draft Circular on chargeability of service tax on staff benefits and employment related transactions– CBEC invites comments/suggestions

CBEC has issued a draft circular on July 27, 2012 to clarify certain issues relating to chargeability of service tax on staff benefits and employment related transactions arising out of operationlization of Negative list. Comments and suggestions have been invited from Chambers, trade, industry and field formations on the draft circular by 24th August, 2012. The following issues have been clarified:

Scope of Manpower Supply

- After the introduction of Negative list, the definition of manpower supply has no relevance and is need to be understood in natural meaning - one person provides another person service of individuals, who are contractually employed by the provider of the service.
- Superintendence or control on the manpower employed must be of the recipient.
- Cases of secondment of staff of an organization to a subsidiary company or an associate company will be covered by the definition of manpower as the contractual employment continues to be with the parent company.

In the case of Joint Employment

- Sharing of cost of employment between one or more employer will not be liable to service tax as it would fall in the exclusion clause of the definition of service. However staff engaged by one employer and shared with other for a consideration will fall under the ambit of manpower supply.
- Recoveries of salary of staff shared on an agreed basis on actuals will not be liable to service tax as it is merely a case of cost reimbursement.

Services of a Director

- Before the introduction of Negative list, services provided by a directors on the board of a company were not taxable. However after the operationalisation of Negative List, services of directors on the board of a company have become taxable.

- When director receives payment in his personal capacity, then it is liable to tax in the hands of the director. However, where the fee is charged by the entity appointing the director and is paid to such entity, the services will be deemed to be supplied by such an entity and not by the individual director.

Thus in the case of Govt. nominees, the services will be deemed to be provided by the Govt. and liable to be taxed on reverse charge basis as support services provided by the Government to business.

Facilities provided by employer to employees

- Facilities provided by employer to employees for a consideration or deduction of amount from salary etc. will fall under the definition of “service”. CENVAT credit for inputs and input services used to provide such services will be eligible and the said goods or services would now not be construed to be for personal use or consumption of an employee *per se* and rather will be a constituent to the taxable service provided to an employee. The status of the employee would be as a service recipient rather than as a mere employee when consuming such output service. The valuation of such service so provided by the employer to the employees will be determined as per the relevant rules.
- However facility provided to all the employees free of charges shall not be considered as an activity for consideration thus will not fall under the definition of “service”
- Services provided by the employer to the employees which are covered under the negative list or are exempted from service tax will not be liable to service tax.

Treatment of reimbursements made by the employer to the employee

- The reimbursement of expenditure incurred on behalf of the employer in course of employment will not amount to service as provision of service by an employee to the employer in the course of or in relation to his employment is excluded from the definition of the “service”.

It has been clarified that the provisions relating to treatment of supplies and reimbursements as applicable to current employees will equally apply in case of ex-employees/pensioners as well.

[Draft Circular F. No 354/127/2012-TRU dated 27.07.2012]

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