

INDIRECT TAXES UPDATE – 155

SERVICE TAX

Certain services exempted when provided by Government or a local authority

Central Government vide *Notification No. 22/2016-Service Tax, dated April 13, 2016* has provided the following amendments in *Notification No. No.25/2012-Service Tax, dated the 20th June, 2012* i.e. under Mega Exemption:

Insertion/ Amendment* of Entry No.	Exemption of certain services provided by Government or a local authority:
39*	To any function entrusted to a municipality under article 243W of the Constitution.
54	To another Government or local authority.
55	By way of issuance of passport, visa, driving license, birth certificate or death certificate.
56	When the gross amount charged for such services does not exceed Rs. 5,000. However, in case where continuous supply of services then gross amount charged does not exceed Rs. 5,000 in a financial year.
57	Tolerating non-performance of a contract where consideration is in the form of fines or liquidated damages is payable.
58	Services required under any law for- <ul style="list-style-type: none">• registration or• testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large.
59	By way of assignment of right to use natural resources to an individual farmer for the purposes of agriculture.
60	By governmental authority also by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution.
61	Assignment of right to use any natural resource where such right to use was assigned before the 1 st April, 2016. This exemption shall apply only to service tax payable on one time charge payable, in full upfront or in installments.
62	Allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the financial year 2015-16 on payment of license fee or spectrum user charges.
63	Deputing officers after office hours or on holidays for inspection or

container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges (MOT).

For Entry No. 54 & 56:

These entries will not apply to the following services specified under clause (a) of Negative List:

- Speed Post
- Express parcel
- Postal & Rural life insurance

[Notification No. 22/2016-Service Tax, dated April 13, 2016]

Comments: ICAI in its [Post Budget Memorandum 2016](#) has suggested providing an exhaustive list of services provided by government which would NOT be liable to Service Tax. 'Existence of exemption is evidence of levy, and these exemptions provide insight into the interpretation about the extent of taxability of various activities of the Government. Unless an activity falls squarely within the language of each of these exemptions, the liability remains. This exemption has ensured that many services of government would not be liable to service tax.

[Inclusion of interest amount or other consideration payable to Government or a local authority by a business entity](#)

Clause (iv) of Rule 6(2) of Service Tax (Determination of Value) Rules, 2006 provides for exclusion of interest on delayed payment of any consideration for the provision of services or sale of property (movable or immovable) while determining the value of taxable services.

Central Government vide *Notification No. 23/2016-Service Tax, dated April 13, 2016* has inserted proviso under the said clause to state that the above exclusion shall not apply to any service provided by Government or a local authority to a business entity where payment for the service is allowed to be deferred on payment of interest or any other consideration.

[Notification No. 23/2016-Service Tax, dated April 13, 2016]

Comments: This is a remarkable amendment (considering reality) with potentially far reaching implications. Rules cannot travel beyond the Act and Rule 6(2) merely declares what does not fall within the operation of Section 67. Now, payment of interest entitles deferment of payment for the service is attempted to be includible in the taxable value of service. Whether interest is a consequence for deferment or interest secures deferment needs to be analyzed. In any case, service tax being applicable under reverse charge on services by Government, valuation implication requires closer attention with respect to the 'object' of payment of interest.

Point of Taxation under reverse charge when services are provided by Government or local authority to any business entity

The following proviso has been inserted under Rule 7 (i.e. point of taxation in case of reverse charge) of Point of Taxation Rules, 2011 vide *Notification No. 24/2016-Service Tax, date: April 13, 2016* which shall come into force from the date of its publication in the Official Gazette:

In case where the services are provided by the Government or local authority to any business entity then the point of taxation shall be the earlier of the dates on which-

- any payment is demanded in part or full as specified in the invoice, bill, challan or any other document issued or
- payment for such services is made.

[Notification No. 24/2016-Service Tax, date: April 13, 2016]

Comments: This notification makes an exception to the Point of Taxation where liability arises on 'earlier of' payment or accrual for services by Government. Given that tax is payable on reverse charge, it is important to monitor the occurrence of earlier of these two events – payment or accrual. This would avoid the pain of paying the tax even though payment is delayed for months / years.

Clarification levy of Service Tax on the services provided by Government or a local authority to business entities

Central Government (TRU) vide *Circular No. 192/02/2016-Service Tax, dated April 13, 2016* has provided following clarifications for various issues related to levy of service tax on the services provided by Government or Local Authority to business entities:

- It clarifies that taxes, cesses or duties levied are not consideration for any service provided and hence not leviable to Service Tax.
- Fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to Service Tax.
- Activities undertaken by Government or a local authority against a consideration constitute a service and the hence liable to Service Tax.
- Various illustration explaining how the CENVAT Credit is to be availed on Service Tax paid for assignment of right to use natural resources have also been provided under the said circular.

[Circular No. 192/02/2016-Service Tax, dated April 13, 2016]

Comments: It is interesting to note that this Circular attempts to provide a rationale for exclusion of certain activities from the imposition of tax. But, as stated earlier, 'existence of exemption is evidence of levy', and such circulars opens up attempts to extrapolate this rationale to other 'pari materia' cases

leading to disputes. Readers are advised caution while extending the explanations available in this circular. Provisions of law override such expositions.

CENVAT CREDIT RULES

Amendments made in Rule 4 of CENVAT Credit Rules, 2004

CBEC vide Notification No. 24/2016-Central Excise (N.T.), dated April 13, 2016 has provided following amendments in Rule 4(7) (Conditions for allowing CENVAT Credit) of CENVAT Credit Rules, 2004:

- The manufacturer or the service provider shall not take CENVAT credit after 1 year of the date of issuance of invoice/ bill/ challan except in case of services provided by Government, local authority or any other person by way of assignment of right to use any natural resource.
- CENVAT Credit of service tax shall be spread evenly over a period of 3 years on the one-time charges payable in full up front or in installments for the service of assignment of the right to use any natural resource by the Government, local authority or any other person. Earlier vide Notification No. 13/2016-Central Excise (N.T.) dated, March 01, 2016, the CENVAT Credit had to be spread over the period for which the right to use was assigned.

[Notification No. 24/2016-Central Excise (N.T.), dated April 13, 2016]

Comments: ICAI in its [Post Budget Memorandum 2016](#) has suggested that when ST is collected on whole amount in one shot, credit also should be allowed on the whole amount as it is a revenue expenditure. This would also be in line with uniformity and fairness.

Partial effect has been given by spreading over 3 years.

Source: www.cbec.gov.in

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Secretary

Indirect Taxes Committee The Institute of Chartered Accountants of India

ICAI Bhawan A-29, Sector -62, NOIDA (U.P.) India

Website: www.idtc.icai.org