

POST-BUDGET MEMORANDUM 2016

Indirect Taxes



**THE INSTITUTE OF CHARTERED ACCOUNTANT OF
INDIA
*NEW DELHI***



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POST-BUDGET MEMORANDUM-2016

INTRODUCTION

1.0 The Council of the Institute of Chartered Accountants of India considers it a privilege to submit this Post-Budget Memorandum to the Government of India.

1.1 In this memorandum, we have suggested certain amendments to the proposals contained in the Finance Bill, 2016 which would help the Government to achieve the objective of simple unambiguous laws, ease of doing business, dispute avoidance and resolution. Some measures in line with movement towards GST have also been suggested.

1.2 We have noted that a few of the suggestions given by the Committee in the pre-budget representation been acted upon. In formulating our suggestions in regard to the Finance Bill 2016, the Indirect Taxes Committee of the ICAI has considered, the objectives stated above and the practical difficulties/hardships faced by taxpayers and professionals in application of the Indirect Tax Laws.

1.3 We look forward to contributing in the drafting of simple, transparent, & fair IDT laws in India.

1.4 In case any further clarifications or data is considered necessary, we shall be pleased to furnish the same. The contact details are:

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POST BUDGET MEMORANDUM, 2016

The suggestions are bifurcated into the following parts:

- A. Rectifications to Avoid Dual Benefits
- B. Measures to augment revenue
- C. To promote ease of doing business
- D. Causing undue hardship to the assesseees
- E. Difficulty in implementing the proposals
- F. Creating interpretational issues
- G. Clarifications Sought



RECITIFICATION TO AVOID DUAL BENEFITS

1. Credit Available vs Credit Taken – Rule 6 of CENVAT Credit Rules

One of the options of reversal Rule 6(3) provides that a manufacturer/ provider of output service manufacturing/ providing taxable as well as exempted goods/ services may pay an amount equal to 6% of value of the exempted goods and 7% of value of the exempted services subject to a **maximum of the total credit available** in the account of the assessee at the end of the period to which the payment relates. This may not be the intention of the law.

However, para h(iii) of Annexure II of F. No. 334/8/2016-TRU dated 29th February 2016 provides (a) pay an amount equal to 6% of value of the exempted goods and 7% of value of the exempted services, subject to a **maximum of the total credit taken** or (b) pay an amount as determined under sub-rule (3A).

Suggestion

*The intent of the law in this option is to pay an amount equal to 6% of value of the exempted goods and 7% of value of the exempted services, subject to a **maximum of the total credit taken and not total credit available. The amendment maybe made.***

2. Capital Goods of Rs.10, 000 be considered as input.

Suggestion

Appropriate amendment be brought that dual benefit i.e. CENVAT & depreciation cannot be claimed by the Industry.



MEASURES TO AUGMENT REVENUE

3. Focus on Assesseees outside the Tax Net

The tax payer who is registered is subjected to periodic returns, visits, multiple audits and extended scrutiny. Many assesseees in the unorganised sectors like the iron and steel articles, plastic household goods, works contractors, interior decorators among others are able to operate with impunity due to sufficient controlled, continuous focus on them not in place. This erodes the competitiveness of the compliant while such persons work totally in the black money / parallel sector. This would also be an important move to smoothly graduate into the GST regime.

Suggestion

- *Sufficient officers say -15% of the total be allocated to unearth these assesseees.*
- *The efforts be made in controlled environment where the really small duty/ tax payer is not hassled while those who need to pay the duty/ tax be brought to mainstream.*
- *The systems to be transparent and have built in accountability. To include checks to avoid connivance and graft.*

4. Annual Return under Service Tax

Notification No. 19/2016-Service Tax, Dated: March 01, 2016:

“Every assessee shall submit an **annual return** for the financial year to which the return relates, in such form and manner as may be specified in the notification in the Official Gazette by the Central Board of Excise and Customs, **by the 30th day of November of the succeeding financial year**” The annual return may be revised within 1 month from the date of submission.



Suggestion

Unless the annual returns are certified by the Chartered Accountants, it would only be an additional and new compliance. If certified then the need for audit as well as the visits/ audit by officers of the revenue would reduce. Tax revenues would also get to be buoyant when the reconciliations are done. This was the experience under Income Tax earlier. ICAI has IDT in its curriculum from 1996. It has trained several thousand professionals who have learnt and are practicing in the area of indirect taxes.



TO PROMOTE EASE OF DOING BUSINESS

5. Increase in limitation period for recovery of service tax to 30 months

Finance Bill, 2016 vide Clause 149 proposes to amend Section 73 of Finance Act, 1994 to provide that the limitation period for recovery of service tax not levied or paid or short-levied or short paid or erroneously refunded, for cases not involving fraud, collusion, suppression etc. is to be enhanced by 1 year, that is, from present limit of 18 months to 30 months. The limit of 18 months was earlier revised from 12 months on 28.05.2012.

Further, w.e.f 1st April 2016, a new Rule 7(3A) has been inserted in the Service Tax Rules, 1994 to provide for filing of annual return by 30th November of the succeeding financial year.

Presently, Rule 7(1) of the Service Tax Rules, 1994 provides for submission of half yearly Service Tax return by 25th of the month following particular half year.

Therefore, the maximum period of 43 months demand can be made even for bona fide actions, which is not reasonable. It would also breed further inefficiencies and hardship on the service providers.

Suggestion

- *The erstwhile time limit of 6 months for issuance of notice be restored where tax is not collected due to the inherent fact that the taxes cannot be collected after the year is over.*
- *Further, the time limit for taking CENVAT credit as well as refunds be increased to 6 months from the last date of filing annual returns.*

6. Krishi Kalyan Cess (KKC)

Suggestion

CENVAT Credit Rules, 2004 be suitably amended to provide for credit availability of KKC seamlessly for payment of Excise or Service Tax dues.



7. Taxability of Transportation of Goods by a Vessel

The transportation of services by vessel from a place outside India up to the customs station of clearance in India will be liable to service tax.

Rule 10(2) of Customs Valuation (Determination of value of imported goods) Rules, 2007 provides for inclusion of the cost of transport of the imported goods to the place of importation;

- (b) And the cost of transport is not ascertainable, such cost shall be twenty per cent of the free on board value of the goods. Thus, freight paid in case of transportation by vessel is already included in the cost of imported goods and as a reason, custom duty gets paid on the same. Now Customs Duty as well as Service tax would be paid on the same transaction leading to double taxation.

Suggestion

- *In order to avoid dual taxation under Customs as well as Service Tax the omission proposed from Negative list be rescinded which would also be in line with proposed GST structure.*
- *Alternatively, entry 20 of Mega Exemption notification be suitably amended to include the transportation of goods by a vessel therein.*

8. Increase in limitation period for recovery of Central Excise & Customs to 2 years

Finance Bill, 2016 vide Clause 117 & 140 has amended Section 28A of Customs Act 1962 & Section 11A of Central Excise Act 1944 to extend the period of limitation from 1 year to 2 years.

Suggestion

The erstwhile time limit of 6 months for issuance of notice from the last date for filing of the annual returns be restored/ fixed.



9. Amendment in time limit of filing application for the claim of Rebate under Service Tax

Section 93A of Finance Act provides that such rebate shall be filed within the period of one month from the date of commencement of the Finance Act.

Suggestion

Extend the time limit to 6 months from proposed 1 month.

10. Excise duty levy on articles of jewellery excluding silver jewellery, other than studded with diamonds/other precious stones.

Notification no. 12/2016 CE dated 01.03.2016 provides excise duty 1% is leviable provided no CENVAT Credit is taken. Alternatively the excise duty @ 12.5% can be paid with CENVAT facility.

Suggestions

Issue FAQs for providing clarity to the industry, professionals and officers. To see that this sector joins the mainstream smoothly. (Suggested awareness material being submitted separately)

11. Setting up of Export Warehouse at any place in India

The Finance Bill 2016 seeks to omit section 9 of the Customs Act, 1962, to do away with the prior-condition of declaring a place as Warehousing Station for setting up private warehouse and to enable exporters to set up warehouse anywhere in India.

Suggestion

It be made possible to set up export warehouse at any place in India. CBEC may instead prescribe certain pre-conditions, as it may deem fit, regarding the place / location where such export warehouse can be set up by limiting this facility to only notified places in India is only acting as bottleneck in the smooth flow of exports.



12. Rates of Duty Drawback

Customs and Central Excise Duties and Service Tax Drawback Rules, 1995 provide for drawback of input taxes paid by an exporter at rates prescribed from time to time.

The rate of Service Tax was raised from 12.36% to 14.5% last year and now to 15%. FM has indicated that the depth and width of the drawback rates would be increased.

Suggestion

All Industry Duty Drawback rates may be increased appropriately. It would also take forward the "Make in India" initiative of Government of India.



CAUSING UNDUE HARDSHIP TO THE ASSESSEES

13. Taxability of Transportation of Passengers by a Stage Carriage (w.e.f. 01.06.2016)

Notification No. 08/2016-ST dated 1st March 2016 provides for abatement @ 60% to service of transportation of passengers, with or without accompanied belongings, by a stage carriage w.e.f. 01.06.2016 with a condition of non-availment of CENVAT Credit thereon.

Suggestion

Input Service as well as Capital goods credit should be extended as a measure of uniformity and fairness. Capital goods credit on Motor Vehicle and other capital goods also to be allowed just like credit on "wagons".

14. Taxability of transport of passengers by ropeway, cable car or aerial tramway (01.04.2016)

Notification No. 9/2016-Service Tax dated 01.03.2016 has withdrawn the exemption provided to services relating to Transport of passengers, with or without accompanied belongings, by ropeway, cable car or aerial tramway.

Suggestion

Full credit of Capital goods, input and input services to be available as a measure of uniformity and fairness.

15. Taxability of Services provided by Government

All services provided by the Government or local authority to a business entity, except the services that are specifically exempted, or covered by any another entry in the Negative List, shall be liable to service tax w.e.f. 01.04.2016. Business entity receiving such service would be person liable to pay service tax under reverse charge.



Suggestion

An exhaustive list of government services be provided which would NOT be liable to Service Tax such as fees, levies, amounts paid for sovereign functions etc.

16. Penalty for delay in filing service tax returns

Notification No. 19/2016-Service Tax dated 01.03.2016 has amended Rule 7C of Service Tax Rules to provide the following:

- (i) For delay in filing ST-3 returns, late fee of Rs.500 upto 15 days and Rs.1000 beyond 15 days but not later than 30 days. Delay beyond 30 days Rs.1000 plus Rs.100 per day maximum of 20,000.
- (ii) Where the annual return is filed by the assessee after the due date, the assessee shall pay to the credit of the Central Government, an amount calculated at the rate of Rs. 100 for the period of delay in filing of such return, subject to a maximum of Rs. 20,000.

Suggestions

- *The provisions be modified to grant relief when delay is due to justifiable reasons/ nil returns.*
- *The maximum penalty/late fee be reduced to Rs 5,000/- for delay in filing of returns.*

17. Swachh Bharat Cess not integrated with CENVAT Credit Scheme

Swachh Bharat Cess has been made applicable w.e.f 15th November 2015 @ 0.5% on value of all taxable services.

Suggestion

SBC be integrated in the CENVAT Credit chain as Legislative intent provided in CBEC FAQs is contrary to scheme of CCR as also not in line with the seamless credit philosophy of GST.



18. Amendment to Rule 6 of sub rule 3(AB) of CENVAT Credit Rules, 2004

In Rule 6 of the CCR, a sub-rule 3(AB) is proposed to be introduced. The impact of the above clause is that whether an assessee had opted for separate accounting method or sub-rule (3A) method in the year 2015-16, he would get credit according to the provisions of sub-rule (3A) as they were applicable for the year 2015-16.

Suggestion

The above clause be made applicable only to those assesseees who were following sub-rule (3A) method in the year 2015-16. The clause may read like this –

“Assessee who has opted to pay an amount under clause (ii) ~~or clause (iii)~~ of sub-rule (3) in the financial year 2015-16, shall pay the amount along with interest or take credit for the said financial year in terms of clausesof sub-rule (3A), as they prevail on the day of publication of this notification and for this purpose these provisions shall be deemed to be in existence till the 30th June, 2016.”

19. Provision to maintain separate accounts for Reversal of CENVAT Credit

Rule 6 of CENVAT Credit Rules, 2004 provides a manufacturer or provider of output service involved in production/ provision of taxable as well as exempted products/ services then such manufacturer or output service provider has presently an option to maintain separate accounts for the receipt, consumption and inventory of inputs & the receipt and use of input services, utilized for manufacture/ provision of taxable as well as exempted products/ services.

Now CBEC vide *Notification No. 13/2016-Central Excise (N.T.) dated 01.03.2016* said option of maintaining separate books of accounts **seems** to have been done away with.

Suggestion

The option to maintain separate records for receipt/ usage of input/ input services for manufacture/ provision of taxable as well as exempted products/



services be restored as it is the most accurate. This also forwards of principal of matching and revenue recognition norms worldwide.

20. Provision for Bad Debts

W.e.f 01.04.2011, payment of service tax has been shifted from receipt basis to accrual basis in case receipts of the service provider exceed 50 Lakh in the preceding financial year vide Point of Taxation Rules, 2011. In this system, there are no provisions for bad debt adjustments and the service providers are forced to pay service tax out of their own pockets if they fail to realize the consideration from the clients.

Suggestion

Rule 6(3) of the Service Tax Rules, 1994 be suitably amended to allow suo-moto credit of service tax paid in the event of bad debts.

21. Accumulated balances of E Cess and SHE Cess be allowed for utilisation

FA 2015, due to change in the output tax structure, where E Cess and SHE Cess were done away, and input balance of these cesses could not be used to some extent. This is an unfair tax position.

Suggestion

These balances be allowed to be adjusted with any component of respective output liability of the manufacturers and service providers. The necessary changes in the CCR should be made for this.

22. Amendment in time limit of Filing application for the claim of Rebate under Service Tax

Notification No. 41/2012-ST dated 29.06.2012 has granted rebate of service tax paid on the taxable services which are received by an exporter of goods and used for export of goods, subject to the extent and manner specified.



Finance Bill, 2016 vide clause 157 has proposed to amend section 93A with retrospective effect. Further an application for the claim of rebate of service tax would be made within the period of one month from the date of commencement of the Finance Act, 2016.

Suggestion

Time limit for making an application for the claim of rebate of service tax be extended to 3 months from proposed 1 month.

23. RMC manufactured at site

Until now Concrete Mix only was exempt, if manufactured at site of construction for use in construction work at such site. Now extended to RMC.

Suggestion

The exemption to Ready-mix Concrete (RMC), manufactured at the site of construction for use in construction work at such site be given retrospectively under Section 11C.

24. Retrospective amendment to six notifications issued under section 25 of the Customs Act, 1962

Finance Bill 2016 vide its clause 136 proposes to amend notifications issued under Section 25 of the Customs Act 1962 dealing with exemption to goods when imported against advance licence. It has been proposed to rectify errors in all the 6 Section 25 customs duties exemption Notifications pertaining to duty free clearances of imported inputs required for manufacture and export of the resultant finished goods. In each of the 6 Notifications in the preamble unintentionally exemption was available to duties as applicable under Sections 3, 8 and 9A in the Customs Tariff Act, 1975 i.e. with absence in the respective exemption notifications of '8B' till 17-01-2014 and '8C' from 11-05-2002 till 31-03-2015.

Section 8 of the Act deals with emergency powers of Central Government to increase or levy export duties. The Section 8 has no place as far as inputs exempt imports for export production are



concerned. Section 8B pertains to powers to impose safeguard duty from which imported inputs are required to be exempted in terms of the relevant Foreign Trade Policy from time to time.

In the absence of '8B' in the preamble to all the 6 notifications (Second Schedule) Only exporters operating under the Foreign Trade Policy dispensation had to either pay 8B safeguard duties or appeal against its imposition or recovery, if applicable even if the otherwise fully exempt inputs were consumed for manufacturing for export. Other exporters operating under the 100% EOU and similar schemes plus the SEZ scheme were enabled to avail 8B safeguard duty exemption by virtue of provisions in the Section 8B itself.

Clause 136 proposes to validate retrospective amendment to the preamble to insert in all 6 Notifications '8B' in place of inapplicable '8' enabling dropping of demands, if pending, or refund of safeguard duty, if already paid/deposited.

Suggestion

Section 8C like Section 8B be incorporated in all the duty exemption notifications issued on or after 11-05-2002 till 31-03-2015 with retrospective effect validating legislation and the selective unintended discrimination against exporters under the FTP Schemes be removed and stands rectified.

25. Indirect Tax Dispute Resolution Scheme

Finance Bill 2016 has brought in a welcome Indirect Tax Dispute Resolution Scheme, 2016.

Some of the shortcomings, which could limit its success, are as under:

- The quantum of the cases pending at the Appellate Level and before Courts are far higher than those pending at Commissioner (Appeals) levels.
- The benefit of reduced penalty of 15%/ 25% is already available under the Indirect Tax provisions in fraud cases at the level of



SCN/ OIO respectively, if duty/ tax liability is paid along with interest and specified reduced penalty within 30 days of the receipt of SCN/ OIO.

- Under the similar Scheme provided in the Income Tax Act, there is a proposal to waive penalty in all cases where disputed tax amount is below Rs. 10 lakhs. Further, under DT DRS Scheme, 2016, interest shall be payable on disputed tax till the date of assessment or re-assessment as the case may be. IDT is an indirect tax and therefore tax would not have been collected is a vital fact to be kept in mind.
- Cum-duty/tax benefit not available

Further some issues which lack clarity are:

- Whether adjustment possible for the amount paid during the course of investigation or as mandatory pre-deposit @ 7.5% at Commissioner (Appeals) level, in terms of Section 35F of the Central Excise Act, 1944 – Applicable to Service tax vide Section 83 of the Finance Act, 1994 and to Customs vide Section 129E of the Customs Act, 1962;
- What will happen to the proceedings initiated simultaneously against Co-Appellants – Whether there would be closure of proceedings against co-Noticees as well once the proceedings against the main Noticee have been closed;
- Whether 25% of the penalty imposed in the Impugned Order would mean sum total of the penalties, which may be imposed under different Sections simultaneously;
- IDT DRS Scheme, 2016 excludes from its purview the cases where the Impugned Order is in respect of search and seizure proceeding. But does that mean a complete bar for those cases also where search and seizure might be a part of the total case along with other matter of disputed tax liability etc.



Suggestion

- *The proposed penalty of 25% be reduced to 10%.*
- *The scheme be modified appropriately to incorporate changes to cover the pending appeal cases of second appellate authority.*
- *The scheme incorporate the benefits of interest and penalty extended under income tax.*
- *Necessary clarification be issued to make unclog not only the first Appellate authority but also the Tribunals/ Courts.*



DIFFICULTY IN IMPLEMENTING THE PROPOSALS

26. Exemption to rehabilitation of existing slum dwellers

Notification No. 9/2016-Service Tax dated 01.03.2016

Suggestion

In order to ensure that exemption can be utilized for the benefit of all the slum-dwellers, the words "In-situ" be omitted from this exemption.

27. Trading and non-services are considered as exempted services

Notification no 13/2016 CE provides that exempted services as defined in clause (e) of rule 2 shall include an activity, which is not a service as defined in section 65B(44) of the Finance Act, 1994.

Suggestion

Remove the explanation 3 to Rule 6(1) of CENVAT Credit Rules, which provides trading or Non-Service being considered as exempted service for Rule 6 computation.

28. Revision of Returns under Central Excise

Suggestion

The time limit for revision of central excise returns be made to 90 days from submission of return in line with service tax provisions.

29. Rule 7 of CENVAT Credit Rules 2004 - CENVAT Credit distribution by Input Service Distributor (ISD) to Job-worker/Outsourced manufacturing unit-Ambiguity in the coverage of Outsourced unit - Explanation 4 of the substituted Rule 7:

The explanation appears to limit coverage to assessee liable to pay excise duty on advalorem basis only i.e.

- (i) A job worker, who is liable to pay excise duty on the value determined under Rule 10A of the Central Excise Valuation Rules



- (ii) A contract manufacturer, who manufactures goods for ISD bearing the brand name of ISD and is liable to pay excise duty on value determined under Section 4A of the Central Excise Act.

Suggestion

A suitable amendment may be made in Explanation 4 to cover the outsourced manufacturing units liable to pay excise duty other than at nil rate. An amendment may be made in Rule 2(m) of the Credit Rules to include an office of an assessee having outsourced manufacturing units.

30. Power to Grant exemption of duty: Section 25 of Customs Act 1962

At present, every notification issued under section 25(1) or section 25(2A) shall, -

- unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette;
- also be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi

Finance Bill, 2016 vide clause 116 has proposed to amend section 25(4) to provide that Every notification issued under sub-section (1) or sub-section (2A) shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette.

Further, section 25(5) is also sought to be omitted which states that 'Notwithstanding anything contained in sub-section (4), where a notification comes into force on a date later than the date of its issue, the same shall be published and offered for sale by the said Directorate of Publicity and Public Relations on a date on or before the date on which the said notification comes into force.

Suggestion

The amendment be made in such a manner whereby the notification comes into effect from the date next to the date of its publication in official Gazette.



CREATING INTERPETITIONAL ISSUES

31. Taxability of Right to use “Radio Frequency Spectrum”

Finance Bill, 2016 vide its Clause No. 147 proposes to amend Section 66E of Finance Act, 1994, enlisting Declared Services to include the right to use the radio-frequency spectrum and subsequent transfers thereof as Declared Services. The very same activity is being claimed by State Governments as liable under VAT and before High Courts. Entry would add to the disputes on count of double taxation.

Suggestions

- *Constitutional validity for levying tax on right to use the radio-frequency spectrum and subsequent transfers thereof be checked as it is covered under Article 366(29A)(d) of The Constitution of India 1949.*
- *Further when ST 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.*

32. Conflict between Section 67A & Rule 5 of Point of Taxation Rules, 2011

Finance Bill, 2016 vide Clause 148 has proposed to amend Section 67A to provide that the time or point in time with respect to the rate of service tax will be as per Point of Taxation Rules, 2011.

Rule 5 of Point of Taxation Rules, 2011 has been amended vide *Notification No. 10/2016-ST dated 1st March 2016* to provide that the said rule applies also in cases of new levy.

The explanations added to Rule 5 of Point of Taxation Rules, 2011 raise a fundamental question as to whether a service which has already been provided prior to introduction of levy could be taxed on raising of invoice or receiving payment subsequently. One needs to distinguish between the taxable event (event deciding taxability) *vis-à-vis* a payment event (event deciding timing of payment). Further, in the case of *Collector of C. Ex Hyderabad Vs Vazir Sultan Tobacco Co Ltd 1996 (83) E.L.T. 3 (SC)*, it was held that manufacturing is a taxable



event whereas payment of excise duty is at the time of the removal of goods, therefore in a case where goods have been manufactured at the time when they were not excisable, there cannot be a duty liability at the time of removal of such goods.

Thus, the date of provision of service gets completely ignored because of above amendment creating a conflict between Section 67A(1) and 67A(2).

Further, Explanation 2 read along with clarification implies that in case of services which are being taxed for the first time, tax would be payable even in case the payment is received after the date on which such service is being taxed despite the fact that services are rendered and invoice the same is issued when they were not liable to tax.

Suggestion

- *Suitable amendments be made in Rule 5 so as to ensure that no tax is required to be paid on that portion of services which is liable to tax for the first time and the services are rendered during the period they were not so liable for which invoice is also raised prior to notified date. Due weightage be given to date of rendering the service for the purpose of taxation of new services.*
- *Correspondingly, suitable amendments be made in Rule 7 also which provides for Point of Taxation in case of payment under Reverse Charge Mechanism.*
- *The new levies like SBC, KKC etc. be treated as change in effective rate of tax rather than being treated as services taxed for the first time.*



CLARIFICATIONS SOUGHT

33. Clarification regarding words 'failed to pay amount collected as service tax' under interest on delayed payment of service tax

Notification No. 13/2016-Service Tax, dated: March 01, 2016 has provided that with effect from the date of assent of the President, the rate of interest for delayed payment of any amount as service tax would be as under:

S.	Situation	Rate of simple interest p.a.
1.	<u>Collection of any amount as service tax</u> but failing to pay the amount so collected to the credit of the Central Government on or before the date on which such payment becomes due.	24 %
2.	Other than in situations covered under 1 above.	15 %.

Suggestion

The interest rate @ 15% be uniformly applied on delayed payment of duty/tax across all indirect taxes without any exceptions.

We feel that higher rate of interest @ 24% would apply in those cases where provision of Clause (d) of section 89(1) of Finance Act, 1994 applies. Suitable explanation be provided to the words 'collection of any amount as service tax', as to when the amount would be treated as collection of service tax.



34. Restoration of certain exemptions withdrawn last year for projects, contracts in respect of which were entered into before withdrawal of the exemption

Finance Bill, 2016 vide Clause 156 proposes to insert a new Section 102& 103 in Finance Act 1994 to provide the following:

102(1) No service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of—

- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession;
- (b) a structure meant predominantly for use as—
 - (i) an educational establishment;
 - (ii) a clinical establishment; or
 - (iii) an art or cultural establishment;
- (c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act, under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all the material times.

103. (1) No service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of services provided by way of construction, erection, commissioning or



installation of original works pertaining to an airport or port, under a contract which had been entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date, subject to the condition that Ministry of Civil Aviation or, as the case may be, the Ministry of Shipping in the Government of India certifies that the contract had been entered into before the 1st day of March, 2015.

Suggestion

- *The words 'and on which appropriate stamp duty, where applicable, had been paid before that date' be omitted from proposed section 102(1) and section 103(1) in the Finance Act, 1994 as the party issuing the contract is government itself.*
- *It is suggested that the condition of certification by Ministry of Civil Aviation or the Ministry of Shipping be done away with. Alternatively, condition of certification by respective ministries wherever applicable be provided.*
- *It is suggested that suitable amendments be made so as to make sub-contractors, developer or labour contractor also eligible to claim refund of service tax paid on such exempted services if service tax paid.*
- *Further, it be clarified whether refund of service tax amount also includes refund of Swachh Bharat Cess.*

35. Exemption to Services by way of construction, erection etc. of low cost houses

Notification No. 9/2016-ST, dated 1st March, 2016 has **w.e.f. 01.03.2016**

Suggestion

- *Suitable clarification be issued to remove the ambiguity in regards to exemption to the builder, contractor or sub-contractor.*
- *Exemption be granted in this regard to all categories, whether public or private in order to provide cost effective housing to the citizens of the country.*
- *Further, the term "Competent Authority" be appropriately explained to clearly bring out the implication of the exemption.*



36. Clarification on brand name in case of SSP Exemption to services provided by Mutual Fund Agent/ distributor to asset management company

The services provided by Mutual Fund Agents are representing Mutual Fund Companies and hence these services may fall under Brand Name or Trade Name. However, it should be noted that the service of the agent and the mutual funds are different.

Suggestion

Appropriate clarification be issued with respect to services provided by mutual fund agents/distributor to a mutual fund in order to enable them to be eligible for exemptions as per Notification 33/2012.

37. Taxability of Services provided by Government

Finance Act (No. 20), 2015 had substituted the words 'support services' provided by Government or a local authority to a business entity by the words 'any services' under Negative List. Now all services provided by the Government or local authority to a business entity, except the services that are specifically exempted, or covered by any another entry in the Negative List, shall be liable to service tax w.e.f. 01.04.2016.

Suggestion

It is suggested that an exhaustive list of government services be provided which would be liable to Service Tax or list to which it does not apply.