

POST-BUDGET MEMORANDUM 2017

Indirect Taxes



THE INSTITUTE OF CHARTERED ACCOUNTANT OF INDIA
NEW DELHI



INTRODUCTION

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.

In this memorandum, we have suggested certain amendments to the proposals contained in the Finance Bill, 2017 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.

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 2017, 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.

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

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, 2017

1. Amnesty Scheme / Dispute Resolution

A suitable amnesty scheme must be thought of for all Central Laws and State Laws which have been merged in GST in 'one go' to reduce existing litigation. The scheme must be well thought out since most schemes have failed for the following key reasons, among others:

- a. The procedure is cumbersome;
- b. There is no clarity on many issues at the drafting stage itself;
- c. The dealers are not certain that similar or same issues will be raked up for subsequent / past years;
- d. The payment terms are not addressed to the liking of a bonafide tax payer;
- e. The payment of taxes, interest and penalties fixed under the scheme are not worthwhile to consider and may be pursuing litigation is a better option.

Keeping the above factors in mind if a uniform amnesty scheme can be drawn up across laws and across all States and Union territories with a view to minimizing existing litigations. Other issues should be borne in mind while drafting such a scheme:

- a. It must be simple to understand;
- b. All types / classes of litigations must be covered;
- c. All types / classes of taxes under the Union / State Laws must be covered;
- d. All appeals filed by the State / Centre must be unilaterally withdrawn as a one-time measure of building trust;
- e. Any person who has opted to pay taxes under the scheme must not be subjected to any further revision, review, reference or any other proceedings in future, for the same year;
- f. Tax credits, if any, in the hands of the dealer (under the respective existing statutes) must be permitted to set off against the taxes, interest and penalties under the scheme;
- g. Taxes, interest, penalties paid under protest by an assessee more than what is payable under the scheme must be refunded within 30 days of filing the relevant applications together with appropriate orders;
- h. Penalties levied must be fully waived off if the disputed taxes are remitted within 3 months from the date of introduction of the scheme;
- i. Interest must not exceed 10% of the taxes payable;



- j. Litigations relating to input tax credits must be fully allowed and refunded within 30 days from the date of filing any such application;
- k. Withdrawal of applications / orders must not be insisted, upon filing of any such application under the scheme. However, such person must file the relevant withdrawal application within a period of 30 days from the date of filing such applications.

An order accepting the application must be passed in every case not later than 30 days from the date of filing any such applications.

2. Life insurance to members of the Army, Navy and Air Force

Central Government vide *Notification No. 7/2017-Service Tax dated 2nd February 2017* has provided that services provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds by way of life insurance to members of the Army, Navy and Air Force under the Group Insurance Schemes of the Central Government are exempted from service tax vide *new entry 26D* inserted in Mega Exemption notification. 25/2012 (w.e.f. 02.02.2017)

Further a new section 105 has been proposed to be inserted vide clause 127 of the Finance Bill 2017 to provide that services provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds by way of life insurance to members of the Army, Navy and Air Force under the Group Insurance Schemes of the Central Government are proposed to be exempted from service tax retrospectively during the period commencing from the 10.09.2004 [date on which life insurance service became leviable to service tax] and ending with the 01.02.2016 (both days inclusive).

The conjoint reading of the two amendments leads to the conclusion that there would be no exemption for the intervening period of 1 year from 02.02.2016 to 01.02.2017, which does not seem to be the intention of the Legislature.

Suggestion:

It is suggested that appropriate amendment be made in clause 127 of the Finance Bill, 2017 to exempt the above services provided during the period from 1.02.2016 to 1.02.2017 as well.

3. Services rendered by tour operators

Presently, clause (i) of Entry No.11 of *Notification No.30/2012 ST dated 20th June, 2012* grants abatement of 90% for services rendered by tour operator in relation to a tour, only for the purpose of arranging or booking accommodation for any person. One of the conditions for availing the abatement is that the invoice, bill or challan issued indicates that it is towards the charges for such accommodation. Further, for services rendered by a tour operator in relation to tours other than the ones covered in clause (i), abatement of 70% has been granted under clause (ii) of Entry 11.

Central Government vide *Notification No. 4/2017 ST dated 12th January, 2017* has w.e.f. 22nd January, 2017 has now merged the two separate abatements into one and a total of 40%



abatement would now be granted in relation to services provided by a tour operator. Further, the conditions for availing the abatements have also been modified to the effect that now the abatement would be available when the bill issued for this purpose indicates that it is inclusive of charges of accommodation and transportation required for such a tour and the amount charged in the bill is the gross amount charged for such a tour including the charges of accommodation and transportation required for such a tour.

Issue:

The new scheme of abatement for tour operators altogether ignores the scenario where the tour operator solely provides services relating to arranging or booking of accommodation and the bill issued is inclusive of the charges for such accommodation. It is worthwhile to mention here that tour operators mostly issue aggregate bills (inclusive of service charges and accommodation charges) as industry practice and the amount paid to the provider could not be recovered as pure agent from the recipient. Therefore, in such case, the service provider will be deprived of the legitimate abatement since he will not be able to charge any amount for transportation resulting into violation of the condition for availing abatement.

This again does not seem to be the intention of the Government as such a move will ultimately put tour operators who are merely booking hotel accommodation at a disadvantageous position vis a vis tour operators who provide both booking of accommodation and transportation services.

Suggestion:

- *It is suggested that suitable 70-85% of abatement be restored in respect of all services provided by tour operator, whether related to accommodation booking or package tour or non-package tour solely providing services of booking **or** arranging accommodation for any person, with the total prohibition of availing any kind of CENVAT Credit on capital goods, inputs and input services.*
- *Further, exemption to all intermediaries tour operators up to the point of provision of service to end consumer be included under serial number 29 of mega exemption notification.*

4. Exemption in respect of the amount of viability gap funding (VGF) for the services of transport of passengers, by air, embarking from or terminating in a Regional Connectivity Scheme (RCS) airport.

Under the Regional Connectivity Scheme (RCS), exemption from service tax is provided in respect of the amount of viability gap funding (VGF) payable to the selected airline operator for the services of transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in a Regional Connectivity Scheme (RCS) airport, for a period of 1 year from the date of commencement of operations of the Regional Connectivity Scheme (RCS) as notified by Ministry of Civil Aviation vide new entry S. No. 23A inserted in Mega



Exemption notification.25/2012 vide Notification No. 7/2017-Service Tax dated 2nd February 2017 w.e.f. 02.02.2017.

Issue

It is important to be noted here that as the initial cost of operating at a RCS Airport may be more and the take-offs from and to such Airports may take additional time to grow in numbers which might result into initial losses. Thus, in order to achieve break even more time may be required and hence the exemption benefit be provided to airline operators accordingly.

Suggestion:

It is therefore suggested that the time of exemption granted be extended to 5 years as compared to present exemption period of 1 year from the date of commencement of operations of the Regional Connectivity Scheme (RCS).

5. Rule 2A of the Service Tax (Determination of Value) Rules, 2006: Value of service portion in execution of works contract.

Clause 128 of Finance Bill, 2017 has retrospectively amended Rule 2A of the Service Tax (Determination of Value) Rules, 2006 so as to clarify that value of service portion in execution of works contract involving transfer of goods and land or undivided share of land, as the case may be, shall not include value of property in such land or undivided share of land. *(to be effective from the date of enactment of the Finance Bill, 2017)*

In view of the said amendment, the recent Delhi High Court judgment in case of *Suresh Kumar Bansal v. UOI 2016 (43) ST5R 3 (Del.)* no longer holds good. In this case the High Court held that service tax cannot be charged in respect of composite contracts for purchase of units in a complex, entered into by the buyers with the builder, in view of the absence of the specific machinery provisions for the valuation of the same.

Suggestions:

- *It is suggested that specific guidelines for determining the valuation of land be prescribed so as to avoid discretion to the departmental officials. Such prescription may be the guideline value adopted for stamp duty registration purposes or any other appropriate method of valuation. This may be considered and suitable insertion by way of proviso or explanation may be made to the amendment so as to have uniformity in the valuation of land and not to give room for any litigation.*
- *With regard to the small service providers rendering services up to 50 lakhs, they be permitted to remit a composite tax at 2% percentage without any input tax credit. This may bring more service providers into the tax net and pave the way for widening the tax base and to have more assesses in the GST regime since there are many number of small players.*



6. Rule 10 of the CENVAT Credit Rules, 2004 provides for transfer of CENVAT credit in different cases.

Rule 10 of the CENVAT Credit Rules, 2004 provides for transfer of CENVAT credit in different cases. In this regard, a new sub-rule (4) has been inserted vide *Notification No. 04/2017-C.E.(NT)*, dated 2nd February, 2017 so as to provide that w.e.f. 02.02.2017 transfer of CENVAT Credit by the jurisdictional Dy./Assistant Commissioner of Central Excise, will be allowed within 3 months [further extendable by 6 months] from the date of receipt of application from the manufacturer or service provider in this regard, subject to the fulfillment of the conditions prescribed under Rule 10 (3).

Issue

The time limit of 3 months [further extendable by 6 months] may be required for administrative reasons etc. by jurisdictional Dy./Assistant Commissioner of Central Excise. However, denial of credit during this period might lead to working capital issues, blocking of credit etc. which needs to be provided for.

Suggestion:

- *It is suggested that there be made available a facility of allowing provisional credit upto 75% for adjustment immediately on receiving the request for the transfer. In cases where any excess claim of CENVAT Credit is observed, such excess claims be made to be remitted with applicable interest.*