

## *Impact on Service tax: Budget-2016*

Important changes in Service tax by Finance Bill 2016 and related notifications are encapsulated with comparison from existing provisions with possible impact.

### **1. Krishi Kalyan Cess**

Particulars	Krishi Kalyan Cess	Swachh Bharat Cess
Rate	0.50% of Value	0.50% of Value
Cenvat	Allowed	No Cenvat
Applicable Date	01-Jun-16	15-Nov-15

### **2. Sectoral Changes**

#### **2.1. Construction**

- Service provided to **Government, a local authority or a governmental authority** of the nature of Construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration is exempted u/n 25-2012-ST.
- Exemption revoked: w.e.f. 01-Apr-15
- **Retrospective Exemption: 01-Apr-15 to 29-Feb-16**
- Subject to:
  - Contract entered before 01-Mar-15
  - Appropriate stamp duty (if any) paid before 01-Mar-15
  - Refund claim of tax deposited filed within 6 months of assent s.t. unjust enrichment
- Exemption restored till 31-Mar-2020
- **Re-Exempted Exemptions**
  - Civil structure or any other original works meant predominantly for a non-industrial or non-commercial use or non-business or non-professional use
  - A structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment

- A residential complex predominantly meant for self-use or the use of their employees or other persons specified in the *Explanation 1 to 65B(44)[MP, MLA...]*

Service provided for **ports, and airports** is also restored w.e.f. 01-Apr-2015

- **Date of Applicability: FB-2016 Enactment**
- **Additional Exemptions: w.e.f. 01-Mar-16** Construction, erection etc. of a civil structure or any other original works pertaining to **PMAY Schemes**:
  - “In-situ Rehabilitation of existing slum dwellers using land as a resource through private participation” (PMAY)
  - “Beneficiary-led individual house construction / enhancement” component (PMAY)
  - Low cost houses up to a carpet area of 60 sq.m per house in a housing project approved.
- **Exemption** for construction, repair, maintenance etc. of canal, dam or other irrigation works

	<b>01-07-12 to 29-01-14</b>	<b>w.e.f. 30-01-14</b>
Service to Entities Setup by Act	Exempted	Exempted
Service to entities setup by government	Taxable (Retrospective exemption proposed FB-2016)	Exempted

- Refund of tax so collected on application within 6 months of Assent s.t. provisions of unjust enrichment **w.e.f. FB-2016 Enactment**

Construction of a Complex {Value of land is included in the amount charged}	Till 31-03-16		W.e.f. 01-04-16
	<i>Abatement</i>	<i>Effective Rate</i>	<i>Eff. Rate</i>
<b>Residential Unit</b> : Carpet area <= 2000 sq ft. and amt charged < 100 lacs	25%	3.625%	4.35% (abatement 30%)
<b>Others (incl. commercial)</b>	30%	4.350%	

## 2.2. Information Technology software

- CEX/ CVD payable on media + recorded IT software on basis of Retail Sales Price (**RSP**) w.e.f. 21-Dec-10
- **Supply of customized software + recorded IT Software –No RSP**

- Issue of double taxation - CEX/CVD + Service Tax
- **CVD/CEX** on Medium with recorded IT software+ Freight + insurance
- **Service Tax** on Balance (Value of IT Software)
- **Date of Applicability: 01-Mar-2016**

### 2.3. Legal Consultancy Services

Service by	Taxability	Criteria	Remarks
Legal Service by Individual advocate/ Partnership firm of advocates (other than Sr. Adv.- <b>w.e.f. 01-Apr-16</b> )	Exempted	To an Ind. Adv or Partnership firm of Adv. providing legal services	
		To <u>Non-Business Entity</u>	
	To Business entity with a turnover <= 10 lac in Previous year		
	Taxable	Business entity with a turnover >10 lac in Previous year	Liability under reverse charge of Service Recipient
Sr. Advocate ( <b>w.e.f.01-Apr-16</b> )	Taxable	Activity relating to industry/commerce/ business/profession	No Reverse Charge

### 2.4. Education

- W.e.f. Enactment- Existing exemption u/s 66D (Negative List) is repealed and exemption u/n 25/2012 from date of FB-2016 enactment is proposed.
- IIM Courses- 2 year MBA, Fellowship and 5 year integrated courses exempted

### 2.5. Services provided by Government

- **W.e.f. 01-Apr-16 Any services** provided by government will be taxable except as exempted otherwise. Consequently notification 30-2012-ST is also amended and therefore ALL services provided by government to business entities will be covered under reverse charge.
- "Government" defined as *Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include any entity, whether created by a statute or otherwise, the*

accounts of which are not required to be kept in accordance with article 150 of the Constitution or the rules made thereunder.

## 2.6. Transportation

- **Earlier Provision:** Transport of goods by shipping vessel/ aircraft from Place outside India upto Customs station for clearance

Nature of Carrier	Vessel	Aircraft
Earlier Provision	NT-u/s 66D	NT u/s 66D
Budget provision	Taxable	Exempted u/n 25/2012
Reverse Charge	Under POT-Business Entity liable Credit available s.t. CCR	NA

- **Date of Applicability: 1-Jun-16**

## 2.7. Goods Transport Agency

W.e.f. 01-Apr-16

Transport of	Effective Rate
Household goods- 40% taxable	5.800%
Other Goods-30% taxable	4.350%

## 2.8. Stage Carriage -Passenger Transport

- **Existing Provision:** Not taxable u/s 66D
- **Budget Provision:** Exemption to Non-AC carriage u/n 25/2012
- 40% taxable in case of AC Carriage state transport
- Cenvat allowed of input service
- **Date of Applicability: Post Enactment, 01-06-2016**

## 2.9. Mutual fund agents

- **Earlier provision:** Exemption revoked on services by following agents {as tax is was levied on reverse charge w.e.f. 01-Apr-15}:
  - Mutual fund agent to a mutual fund or asset management company;
  - Distributor to a mutual fund or asset management company;
- **Budget provision:** Reverse charge Revoked-Agents liable again

- **Date of Applicability: 01-Apr-16**

## 3. Cenvat Credit

### 3.1. Reversal of Credit

- Restructuring of Rule 6 of CCR,2004 providing **proportionate reversal of cenvat credit** when used in exempted goods / services and taxable goods/services
- No Cenvat of Input/ input Services used in Exempted goods/services.
- Exclusive provider of exempted goods/ services shall pay the whole amount of credit on input/input services.
- Failure to prior intimation of exercise of option-pay 15% p.a. interest on monthly proportionate reversal –CEX officer may permit.
- Banks / Financial Institutions allowed reversing credit in respect of exempted services on actual basis in addition to the option of 50% reversal.

<b>Manufacturer-Dutiable and Exempted Goods OR Provider-Taxable and Exempted Services (Options w.e.f. 01-Apr-16)</b>		
<b>Option-1</b>		
Inputs/Input services used for both classes (taxable and exempted)	6% of Value of Exempted Goods 7% of Exempted Services	Credit reversal s.t. maximum of total credit taken
<b>Option-2</b>		
Inputs/Input services used exclusively for	Exempted goods/services	No Credit
	Taxable goods/services	Full Credit
Common Credit	Monthly Reversal	EG+ES / Total Turnover (EG+ES+DG+TS)
Adjustment till 30-Jun on basis of yearly details		

### 3.2. Input Service Distributor

ISD to distribute Cenvat credit in respect of service tax paid on input services to it's **a)** manufacturing units or **b)** units providing output service or c) to outsourced manufacturing units subject to following conditions:

- Credit attributable to a particular unit(s) shall be attributed to that unit(s)
- Credit attributable to all units shall be attributed to all units.

Credit shall be distributed pro rata on basis of turnover.

### 3.3. *Cenvat Miscellaneous*

- No Cenvat on Capital goods used for manufacture of exempted goods or provision of exempted service for two years from date of commencement of commercial production or provision of service.
- Filing of refund claim under Rule 5 in case of export of service **within one year** of:
  - Receipts Service rendered and then amount received
  - Receipt where service completed before receipts

## 4. *Penalty Provisions*

- Existing Penalty for non-tax payment:
  - Without any intent to evade tax - Max. upto 10% of tax u/s 76.
  - With intent to evade tax – Penalty imposed - 15% to 100% as per stated conditions with conclusion of proceedings.
- New Proposal- U/s 78A for closure of penalty proceeding against co-noticees like director etc. when proceedings closed u/s 76 and 78.

## 5. *Procedural Amendments*

### 5.1. *One Man company*

- Quarterly payment of tax
- Tax on receipt basis where value of service in PY < 50 lacs
- Quarterly payment of tax extended to HUF
- Applicable w.e.f. 01-Apr-16

### 5.2. *Point of Taxation*

- Rule-making power U/s Sec 67A for determining:
  - Rate of service tax
  - Value of taxable service
  - Rate of exchange

**W.e.f. FB-2016 Enactment:** 67A

- **W.e.f. 01-Mar-2016**, new levy of services treated at par with taxation of new services.

### 5.3. Returns

- Presently half yearly returns
- **w.e.f. 01-Apr-16** additional annual return by assessee above a certain threshold by 30-Nov for each FY.

### 5.4. Adjudication

- Time limit for issuance of SCN u/s 73 in bonafide cases increased from 18 months (*1-Jul-12 amendment*) to 30 months **w.e.f. FB-2016 Enactment**

### 5.5. Monetary limit for prosecution

- Sec 89 provides for imprisonment in following offences
  - Knowingly evades payment of Service tax
  - Availment and utilization of cenvat credit without actual receipt of service or goods
  - Maintain false books of account or failure to supply information or supplies false information
  - Failure to pay amount collected as service tax beyond the period of six months from the date on which such payment becomes due
- **W.e.f. FB-2016 Enactment** limit for prosecution increased from 50 lacs to **200 lacs**.

### 5.6. Interest on delayed payment

- **Provisions w.e.f. 01-Oct-14:** Variable interest rate

Delayed payment from due date	Rate	Rate for SSP
Upto 6 months	18%	15%
6 mths to one year	24%	21%
More than one year	30%	27%

- **Proposed Provisions: w.e.f. FB-2016 Enactment**
  - Tax collected but not deposited - 24%
  - Tax not collected -15%
- **Note:** Small service provider(SSP) whose, a) value of taxable services provided in financial year(s) covered under notice or b) during last preceding FY <=60 lacs, allowed 3% concession in interest.

## 5.7. Export

- Services used beyond factory gate for export of goods allowed as refund u/n 41/2012-ST read with 1/2016-ST.

Retrospective benefit extended w.e.f. 01-07-12

## 6. Indirect Tax dispute Resolution Scheme,2016

### 6.1. Salient Features

- Scheme provides for filing declaration w.r.t. OIO under challenge before Comm(A)
- **Indirect tax dispute-** Dispute pending before Comm(A) as appeal on 01-Mar-16
- Designated authority (DA) : Officer not below rank of Assistant Commissioner
- Acknowledgement and Order of Discharge as per form specified.

### 6.2. Timelines

Timeline to follow	
Appeal filed before	01-Mar-16
Scheme w.e.f.	01-Jun-16
Filing Declaration till	31-Dec-16
Ack. by DA	Not yet specified
Tax + Interest+25% penalty in OIO	Within 15 days of Ack.
Intimation to DA of Payt.	Within 7 days of Payt.
Order of Discharge	Within 7 days of payt. proof

### 6.3. Orders not covered

#### Nature of OIO not covered under scheme

- (a) Search and seizure
- (b) Prosecution for any offence instituted before 01-06-2016
- (c) Narcotic drugs or other prohibited goods
- (d) Offence punishable under the IPC, Narcotics Act,1875 or Prevention of Corruption Act, 1988
- (e) Detention order under Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974.(COFEPOSA)



### **6.4. Order-of-discharge-Conclusive**

- Appeal before Comm.(A) disposed
- Immunity from all proceedings under the Act
- Matter cannot be reopened before any authority/court
- OID is not deemed to be on merits and has no binding effect
- No refund- of amount deposited

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