



## ALERT

# Service Tax

## Service Tax on Services Provided by Government or Local Authority

- 1) Before 1<sup>st</sup> April 2016, all services, except following services, provided by Government (Central or State) and local authority were covered under negative list of services U/s 66D of the Finance Act 1994, accordingly all services other than following services were not liable for service tax.
  - a) Services provided by the Department of Post by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government (Hereinafter called as "Specified Postal Services"
  - b) Service in relation to Aircraft and vessel, inside and outside the precincts of a port or an airport (Hereinafter called as "Aircraft or Vessel Services"
  - c) Transport of Goods or Passengers (Transportation Services) or
  - d) Support Services provided to business entity.
- 2) Government have notified vide Notification no 17 of 2016 dated 1<sup>st</sup> March 2016 that all the services, provided by Government or local authority, to business entity, will be out of above referred negative list and liable for service tax with effect from 1<sup>st</sup> April 2016. Now all services other than Specified Postal Services, Aircraft and Vessel Services and Transport services, provided to BUSINESS ENTITY will now liable for service tax with effect from 1<sup>st</sup> April 2016 onwards.
- 3) Following services provided by government or local authority is liable to service tax under forward charges and accordingly Government or local authority will recover service tax from service recipient including business entity.
  - a) Renting of Immovable Property.
  - b) Specified postal Services
  - c) Transportation Services.
  - d) Aircraft and Vessel Services.

**Any Services, other than above services, provided by government or local authority, to a business entity would liable for reverse service tax.** So Business entity is require to discharge service tax under reverse service charge mechanism on the amount paid for services rendered by Government or local authority.

4) Point of taxation for discharge of Reverse service tax by business entity in respect of services provided by Government or local authority would be earliest of followings:

- a) On Due date of Payment as specified in any documents issued by Government or local authority demanding such payment
- b) Payment of such services.

So time of completion of service is not relevant in case of reverse service tax payable on services provided by Government or local authority.

5) However following services provided by Government or local authority is exempt from service tax as it is included in the mega exemption notification no 25 of 2012 duly amended.

- a) Service provided by Government or local authority to other Government or local authority except specified Postal service, Aircraft and Vessel Services and Transportation Services.
- b) Services provided by Government or local authority to a business entity whose turnover in preceding year is less than Rs 10Lacs (Ten Lacs). This exemption is not applicable to Specified Postal Services, Aircraft and Vessel Services or Transportation Services or renting of immovable property service.
- c) Service provided by Government or local authority by way of issuance of visa, passport, driving license, birth Certificate or death certificate.
- d) Service Value of Service rendered by Government or local authority, does not exceed Rs 5,000/- for such service. In respect of Continuous Supply of Service, limit of Rs 5,000/- is to be considered for whole financial year. This limit of Rs 5,000/- is not applicable to Specified Postal Services, Aircraft and Vessel Services and Transportation Services provided by Government or local authority.
- e) Service Value in the form of Liquidated damages or fines payable for service rendered by way of tolerating non-performance of contract by Government or Local authority. So liquidated damages or fines levied for delayed performance of Contract or Non-performance of contract is not liable for Service tax.

**f) Services provided Government of local authority by way of**

- ✓ Registration under any law for time being in force.
- ✓ Testing, Calibration, Safety Check or Certificate relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force.
- g) Services provided by Government or local authority by way of assignment of rights to use natural resources to an Individual farmer for the purpose of agriculture.
- h) Service provided by Government, local authority or government authority in relation of any function entrusted to a Municipality under article 243W of the Constitution of India.
- i) Service provided by Government, local authority or government authority in relation of any function entrusted to a Panchayat under article 243 G of the Constitution of India.

- j) One time charge payable, either fully upfront or in installments, for Service provided by Government or local authority by way of assignment of right to use any natural resources where such rights were assigned before 1<sup>st</sup> April 2016.
- k) Service provided by Government or local authority by way of allowing business entity to operate as a telecom service provider or use radio frequency or spectrum during the financial year 2015-16 on payment of spectrum fees or license user charges.
- l) Services provided by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import or export cargo on payment of Merchant overtime Charges.

**6) Cenvat Credit of Reverse service tax paid on service provided by government or local authority:**

Reverse Service tax paid on input service received from government or local authority (except service provided by way of assignment of right to use natural resources) will be allowed immediately on payment of reverse service tax but subject to other CENVAT Credit rules

Reverse service tax paid on one time charges payable, fully upfront or in installments, for the service of assignment of the right to use natural resources by Government or Local authority or any other person, shall be spread over in three years in equal installment. In case this assignment of rights are further sold by person to any other person, than the balance cenvat to the extent of service tax payable on consideration receivable on further assignment of rights of natural resources will be immediately available to the seller.

7) It was clarified by the CBEC as under:

- a) Taxes, duties and cesses levied are not consideration (Service charges) for rendering particular service hence not liable for service tax. They have included excise duty, customs duty, Service Tax, State VAT, CST, income tax, wealth tax, stamp duty, taxes on professions, trades, callings or employment, Octroi, entertainment tax, luxury tax and property tax as taxes, duties and Cess.
- b) Fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not liable for Service Tax.
- c) Any activity undertaken by the Government or local authority against consideration will constitutes services and consideration paid for the same will be liable for service tax. It is immaterial whether such activities are undertaken as a statutory or mandatory requirement under the law. Service Tax is leviable on any payment, in lieu of any permission or license granted by the Government or a local authority.
- d) Interest or delayed amount payable on deferred payment of service charges for service rendered by Government or local authority is part of consideration and accordingly liable for service tax.

## Services by way of Transportation of Goods by vessel

- 1) Services by way of transportation of goods by a vessel (Ocean Freight) are covered under clause (p) of the negative list existing till 31<sup>st</sup>May 2016 and accordingly not liable for service tax.
- 2) Due to deletion of the entry related to Ocean freight from Negative list, above services will be liable for service tax with effect from 1<sup>st</sup>June 2016 onwards.
- 3) As per Place of Provision rules, In case of transportation of goods, place of provision will be the destination for such transportation.

So Ocean freight related to Import will be liable for service tax and Ocean freight related to export will not be liable for service tax.

- 4) In case location of service provider in respect of ocean freight is in India, than that service provider will collect service tax from service recipient by way of forward charge. But in case location of service receiver in respect of ocean freight is out of India, than service recipient is required to discharge service tax liability under reverse service charge.
- 5) Ocean freight is eligible for abatement of 70% from the total freight and liable to service tax only on 30% of the total freight.
- 6) Above provision applies in respect of service charges pertaining to Ocean freight only. Other charges levied or collected from client along with Ocean freight would require separate consideration for the purpose of service tax.

### **Damania & Varaiya**

14/2, Mahalaxmi Industrial Estate,  
Dainik Shivner Marg,  
Lower Parel, Mumbai – 400013.  
Tel No. : +91-22-6149 1000  
Branch-Pune

