

Analysis of
SERVICE TAX
Provisions

Introduced by Finance Bill 2017



**A P R A &
ASSOCIATES**
CHARTERED ACCOUNTANTS

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1 CHANGES W.E.F. 02 FEBRUARY 2017

1.1 EXEMPTION RELATED TO INDIAN INSTITUTE OF MANAGEMENT (IIMs)

Earlier, Notification No. 09/2016-ST dated 01.03.2016 amended the Mega Exemption Notification no. 25/2012-ST to insert the exemption, under entry 9B, for services provided by IIMs by way of two-year full time residential Post Graduate Programmes (PGP) in Management for the Post Graduate Diploma in Management (PGDM).

IIMs also conducts non-residential PGP-PGDM programmes. These programmes were continued to be taxed under Service Tax. Now, to extend the benefit of exemption to such programmes, the word 'residential' was omitted by virtue of Notification no. 07/2017-ST. Thus, exemption is now available for both residential and non-residential two-years full time PGP-PGDM programmes.

1.2 EXEMPTION RELATED TO REGIONAL CONNECTIVITY SCHEME FOR SELECTED AIRLINE OPERATORS

The Notification no. 07/2017-ST has inserted entry no. 23A in Notification no. 25/2012-ST to provide exemption for the services provided to the Government by way of transport of passengers, with or without accompanied belongings, by air, embarking from or terminating at a Regional Connectivity

Scheme (RCS) airport, for a period of one year from the date of commencement of operations of the Regional Connectivity Scheme (RCS) as notified by Ministry of Civil Aviation, against consideration in form of Viability Gap Funding (VGF).

1.3 EXEMPTION RELATED TO LIFE INSURANCE BUSINESS

By virtue of new entry 26D in Mega Exemption notification no. 25/2012-ST, 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 is being exempted from service tax.

1.4 AMENDMENT IN CENVAT CREDIT RULES, 2004

- **Changes w.r.t. Banks and financial institutions including NBFCs**

Explanation-I (e) applicable to sub-rule 3 and 3A of Rule 6 of CENVAT Credit Rules, 2004 is being amended so as to exclude banks and financial institutions including NBFCs engaged in providing services by way of extending deposits, loans or advances from its ambit. It has been provided in the said explanation that value for the purpose of reversal of common input tax credit taken on inputs and input services used in providing taxable and exempted services, shall not include the value of service by way of extending deposits,

loans or advances against consideration in the form of interest or discount. By virtue of this amendment, value of such services provided by banks and financial institutions including NBFCs will be considered for the purpose of calculation of proportional reversal under Rule 6 of CENVAT Credit Rules, 2004.

- **Changes w.r.t. transfer of CENVAT Credit**

Rule 10 of CENVAT Credit Rules, 2004 provides for transfer CENVAT Credit in case of shift or transfer of factory/business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of business to a joint venture.

A new sub-rule 4 is being inserted in Rule 10 of the *ibid* so as to provide that transfer of CENVAT Credit by the jurisdictional Dy./Assistant Commissioner of Central Excise, shall be allowed within 3 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).

2 CHANGES W.E.F. THE DATE ON WHICH FINANCE BILL, 2017 RECEIVES ASSENT OF THE PRESIDENT

2.1 CHANGES IN VALUATION RULES

In the matter of **Suresh Kumar Bansal v. Union of India [2016] 70 taxmann.com 55 (Delhi)**, the Hon'ble High Court of Delhi held that service tax cannot be charged in absence of any machinery in the statute to segregate the value of land/goods in computing the value of 'under-construction flats' purchased for a composite price. To put end to the litigation in this issue, the Finance Bill, 2017 proposed to amend the Service tax (Determination of Valuation) Rules w.e.f. from 01 July 2010 i.e. since the inception of taxability of residential/commercial units.

The Finance Bill, 2017 provided a mechanism to exclude the value of goods, land or undivided portion of land from the consideration for such units. However, if such value of goods, land or undivided portion of land cannot be excluded from the consideration, then the alternative option as available under Notification No. 26/2012 is also made available under valuation provisions.

2.2 SHIFTING OF MANUFACTURING OF GOODS FROM NEGATIVE LIST TO MEGA EXEMPTION

The Negative List entry in respect of “services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption”, is proposed to be omitted. However, the same entry is being placed in exemption notification No. 25/2012-ST. Consequently, the definition of ‘process amounting to manufacture’ [clause (40) section 65B] is also proposed to be omitted from the Finance Act, 1994 and is being incorporated in the general exemption notification.

Entry No. 30 of Mega Exemption i.e. Notification No. 25/2012-ST is proposed to be substituted with a new entry vide Notification No. 07/2017-ST dated 2nd February 2017. Proposed entry reads as under:

“30. Services by way of carrying out,-

(i) any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption; or

(ii) any intermediate production process as job work not amounting to manufacture or production in relation to –

(a) agriculture, printing or textile processing;

(b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling

under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);

(c) any goods excluding alcoholic liquors for human consumption, on which appropriate duty is payable by the principal manufacturer;

or

(d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;”

Consequent to above, definition of “process amounting to manufacture or production of goods” has been proposed to be incorporated in clause (ya) of paragraph 2 of the notification which reads as under:

“(ya) “process amounting to manufacture or production of goods” means a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 (1 of 1944), or the Medicinal and Toilet Preparation (Excise Duties) Act, 1955(16 of 1955) or any process amounting to manufacture of

opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force;”.

2.3 AMENDMENTS TO PROVIDE BENEFITS OF CERTAIN EXEMPTION FROM RETROSPECTIVE EFFECT

2.3.1 Exemption related to Life Insurance Business

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 is being exempted from service tax under Mega Exemption notification w.e.f. 02 February 2017. Further, a retrospective exemption is also proposed to be provided under the Finance Bill, 2017 starting from 10 September 2004 and ending to 01 February 2016. However, the exemption is not available for the period 02 February 2016 to 01 February 2017.

Refund of Service tax which has been collected shall be granted provided that claim of refund of service tax shall be made within a period of Six months from the date on which the Finance Bill, 2017 receives the assent of the President.

2.3.2 Exemption related to one time upfront amount payable for grant of long-term lease

Benefit of the exemption notification No. 41/2016-ST dated 22.09.2016 is being extended with effect from 01 June 2007, the date when the services of renting of immovable property became taxable. Notification No.41/2016-ST dated 22.09.2016, exempts one time upfront amount (called as premium, salami, cost, price, development charges or by whatever name) payable for grant of long-term lease of industrial plots (30 years or more) by State Government industrial development corporations/undertakings to industrial units from Service Tax.

2.4 AMENDMENTS IN ADVANCE RULING

- Section 96A of the Finance Act, 1994 is amended to provide that the Authority for Advance Ruling shall be the authority as defined in Section 28E of the Customs Act, 1962. Whereas, the authority under Section 28E of the Customs Act, 1962 is the authority for Advance Ruling as constituted under Section 245-O of the Income Tax Act, 1961.
- Section 245P of the Income-tax Act, 1961 provides that no proceeding before, or pronouncement of advance ruling by the Authority for Advance Ruling would be invalidated on the ground merely due to any vacancy or defect in the constitution of the Authority. In view of the same, Section 96B relating to vacancies not to invalidate proceedings is being omitted.

- Section 96C is being amended so as to increase the application fee for seeking advance ruling from rupees two thousand five hundred to rupees ten thousand on the lines of the Income Tax Act.
- Section 96D is being amended so as to extend the existing time limit of ninety days to six months by which time the Authority shall pronounce its ruling, on the lines of the Income Tax Act.
- A new section 96HA is being inserted so as to provide for transferring the pending applications before the Authority for Advance Rulings (Central Excise, Customs and Service Tax) to the Authority constituted under section 245-O of the Income-tax Act from the stage at which such proceedings stood as on the date on which the Finance Bill, 2017 receives the assent of the President.

2.5 CHANGES W.R.T. RESEARCH AND DEVELOPMENT CESS

- Research and Development Cess Act, 1986 (32 of 1986) is proposed to be repealed.
- Notification No. 14/2012-ST dated 17-03-2012 exempts the taxable service involving import of technology from so much of the service tax leviable thereon as is equivalent to the amount of cess payable on the said import of technology under the Research and Development Cess Act, 1986. Consequently, with effect from the enactment of the Finance

Bill, 2017, the exemption from service tax under notification No. 14/2012-ST would be not available to a taxable service involving import of technology on which Research and Development Cess is not payable. Full service tax along with cesses (Swachh Bharat Cess and Krishi Kalyan Cess) would be applicable to such taxable service.