

# Bimal Jain

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Dear Professional Colleague,

## **Finance Bill, 2016 enacted: Significant changes in Service Tax, effective from May 14, 2016**

The Hon'ble Finance Minister Shri.ArunJaitley presented the Union Budget for 2016-17 on February 29, 2016 in the Lok Sabha. On May 5, 2016, the Lok Sabha passed the Finance Bill, 2016 and later on May 11, 2016, the Finance Bill, 2016 was passed by the Rajya Sabha. Now, the Hon'ble President has given assent to the Finance Bill, 2016 on Saturday, May 14, 2016. Accordingly, the Finance Bill, 2016 now becomes the Finance Act, 2016 (28/2016).

With the enactment of the Finance Bill, 2016, there are many changes in Service tax that will become effective from May 14, 2016 and June 1, 2016. However, it is to be noted here that new cess namely 'Krishi Kalyan Cess' ("**KKC**"), to be levied at 0.5% on the value of all taxable services, will become effective only from June 1, 2016. Thereby, effective rate of Service tax going to be increased from 14.5% to 15%.

## **CHANGES IN SERVICE TAX EFFECTIVE FROM MAY 14, 2016:**

We are summarizing herewith the changes in Service tax, which are effective from May 14, 2016 for easy digest:

### **A: Changes under various Sections under the Finance Act, 1994 ("the Finance Act")**

- **Section 65B(11):** Definition of the term "approved vocational education course", is deleted with the deletion of Section 66D(l) of the Finance Act. It is incorporated in the Mega Exemption Notification No. 25/2012-ST dated June 20, 2012 ("**the Mega Exemption Notification**") and to be read with relevant Entry therein.

- **Section 65B(44): Change in definition of 'Service':**

Explanation 2(ii)(a) in Section 65B(44) of the Finance Act, is amended so as to clarify that any activity carried out by a lottery distributor or selling agents of the State Government under the provisions of the Lotteries (Regulation) Act, 1998 (17 of 1998), are liable to Service tax.

- **Section 66D(l): Deletion of Education Services**

Specified education services viz. services by way of pre-school education, higher secondary school education or equivalent, education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force, education as a part of an approved vocational education course, covered under Section 66D(l) of the Finance Act, stands deleted from the Negative List of services.

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However, corresponding exemption is to be read in the Mega Exemption Notification, duly amending the definition of “educational institutions” to include an institution providing such services as was specified in Section 66D(I) of the Finance Act (Read with Notification No. 9/2016-ST dated March 1, 2016 vide which changes have been made in the Mega Exemption Notification).

- **Section 66E:** After clause (i), clause (j) is inserted to include “assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof” under the list of Declared services. Meaning thereby, assignment by Government of the right to use the spectrum as well as subsequent transfers of assignment of such right to use is a ‘Declared service’ leviable to Service tax and not sale of intangible goods.

Period Gap for taxability for interim period: It may be noted that effective from April 1, 2016, the liability to pay Service tax on any service provided by Government or a Local Authority to Business Entities is on the service recipient except (1) renting of immovable property, and (2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of Section 66D of the Finance Act. However, the stated amendment in Section 66E of the Finance Act to be effective from May 14, 2016 leads to dispute for taxability for the interim period i.e. from April 1, 2016 to May 14, 2016.

**For detailed analyses on ‘Any services’ provided by Government or Local authority to a Business Entity chargeable to Service tax under Reverse Charge w.e.f. April 1, 2016, please watch video presentation at:**

<https://www.youtube.com/watch?v=AB0LpVkuoUY>

- **Section 67A:** Section 67A is amended to obtain specific rule making powers in respect of the Point of Taxation Rules, 2011 to determine the time or the point in time with respect to the rate of Service tax. (Corresponding amendments carried out in the Point of Taxation Rules, 2011 also).
- **Section 73:** Section 73 is amended to extend 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., by one year, i.e., from 18 months to 30 months. 5 year limitation period in case of fraud etc., has not been changed.

**For detailed analyses on applicable period of limitation for issuing SCNs in non-fraud cases for past period i.e. impugned period including period prior to May 14, 2016, please watch video presentation at:**

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- **Section 75:**

There is change in the rate of interest on delayed payment of Service tax, in the following manner:

Serial No.	Situation	Rate of simple interest per annum
1.	Collection of any amount as Service tax 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 serial number 1 above.	15%

In case of assessee, whose value of taxable services in the preceding year/years covered by the notice is less than Rs. 60 Lakhs, the rate of interest on delayed payment of Service tax will be reduced by 3%. Hence, it would be 21%/ 12% per annum in above stated cases respectively.

Further, for the amount collected in excess of the tax assessed or determined – Section 73B of the Finance Act, 15% per annum rate of interest would be applicable as against 18%. (Read with the Notification No. 13 & 14/2016 – ST dated March 1, 2016)

***For detailed analyses on applicable rate of interest for belated payment of Service tax for the period prior to May 14, 2016 and when 24% or 15% rate of interest applicable for delayed payment of Service tax, please watch video presentation at:***

<https://www.youtube.com/watch?v=pWBMo4v54cc>

- **Section 78A:** An explanation is inserted to provide that penalty proceedings under Section 78A (Penalty for offences by director, etc., of company) shall be deemed to be closed in cases where the main demand and penalty proceedings have been closed under Section 76/ Section 78 of the Finance Act.
- **Section 89:** Section 89 (Offence and Penalties), is amended to enhance the monetary limit for imprisonment provisions to Rs. 2 crores from Rs. 50 lakhs.
- **Section 90:** Sub-section (2) to Section 90 of the Finance Act is deleted to restrict the power to arrest only to situations where the tax payer has collected the Service tax but

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not deposited it with the exchequer, and threshold amount of such tax collected but not deposited, now increased to Rs. 2 crore as against Rs. 50 lakhs.

- **Section 91:** Section 91 is amended to delete reference of Section 89(1)(i) of the Finance Act under Sub-Section (1) and to delete Sub-Section (3) thereof, again to restrict the power to arrest only to situations where the tax payer has collected the Service tax but not deposited it with the exchequer, and threshold amount of such tax collected but not deposited, now increased to Rs. 2 crore as against Rs. 50 lakhs .
- **Section 93A:** Section 93A is amended so as to allow rebate by way of notification as well as rules.

## **Retrospective effect to Notification No. 01/2016-ST dated February 3, 2016**

Notification No. 41/2012- ST dated the June 29, 2012 was amended vide Notification No.1/2016-ST dated February 3, 2016 so as to, *inter alia*, allow rebate of Service tax on services used beyond the factory or any other place or premises of production or manufacture of the goods, for export of the said goods. The said amendment is being given retrospective effect from the date of application of the parent notification, i.e., from July 1, 2012.

Time period of one month from the date on commencement of the Finance Bill, 2016, is allowed to the exporters whose claims of rebate were earlier rejected in absence of amendment carried out vide Notification No. 1/2016-ST dated February 3,2016, to file an application for claim of rebate of Service tax.

- **New Section 101: Retrospective Service tax exemption to canal, dam or other irrigation works**

Definition of “Governmental authority” as contained under the Mega Exemption Notification was amended with effect from January 30, 2014. Earlier where as both conditions of Government control/equity and setting up under State/Union law were required, w.e.f. January 30, 2014, either setting up under law is required or Government control/equity for functions under Article 243W of Constitution are required, so as to qualify as Government Authority, by ‘and’ being substituted by ‘or’.

Consequently, services provided by way of construction, erection, maintenance, or alteration etc., of canal, dam or other irrigation works provided to entities set up by Government but not necessarily by an Act of Parliament or a State Legislature were exempted w.e.f. January 30, 2014 [Entry No. 12(d) of the Mega Exemption Notification]. However, services provided prior to January 30, 2014 to such bodies remained taxable.

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Now, a new Section 101 is inserted to provide Service tax exemption to canal, dam or other irrigation works with retrospective effect in the following manner:

- a) The benefit of exemption is extended to the said services provided during the period from July 1, 2012 to January 29, 2014;
- b) Refund of Service tax paid on the said services during the period from July 1, 2012 to January 29, 2014, shall also be allowed in accordance with the law including the law of unjust enrichment;
- c) Application for refund may be allowed to be filed within a period of 6 months from the date on which the Finance Bill, 2016 receives the assent of the President (i.e. May 14, 2016)

- **New Section 102 - Restoration of certain exemptions withdrawn w.e.f April 1, 2015**

Exemption from Service tax on 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:

- (i) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
- (ii) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
- (iii) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to Section 65B(44) of the Finance Act.

was withdrawn with effect from April 1, 2015 vide Notification No. 6/2015-ST dated March 1, 2015 [Entry No. 12(a), (c) & (f) of the Mega Exemption Notification].

Now, a new Section 102 is inserted to provide restoration of Service tax exemption for the services provided under a contract which had been entered into prior to March 1, 2015 and on which appropriate stamp duty, as applicable, had been paid prior to that date.

- New Entry 12A inserted in the Mega Exemption Notification to restore such exemption till 31.03.2020 [Read with Notification No. 9/2016-ST dated March 1, 2016];

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- The services provided during the period from April 1, 2015 to February 29, 2016 under such contracts are also being exempted from Service tax;
  - Refund of Service tax paid on the said services during the period from April 1, 2015 to February 29, 2016, shall also be allowed - same provisions as discussed, supra, in Section 101.
- **Section 103: Restoration of certain exemption withdrawn on Airport or port w.e.f April 1, 2015**

Exemption from Service tax on services by way of construction, erection, commissioning or installation of original works pertaining to an airport, port was also withdrawn with effect from April 1, 2015 [Entry No. 14 of the Mega Exemption Notification].

Now, a new Section 103 is inserted to provide restoration of Service tax exemption for the services provided under a contract which had been entered into prior to March 1, 2015 and on which appropriate stamp duty, as applicable, had been paid prior to that date, subject to production of certificate from the Ministry of Civil Aviation or Ministry of Shipping, as the case may be, to that effect.

- Vide corresponding amendment in the Mega Exemption Notification [New Entry 14A], such exemption is being restored till 31.03.2020 [Read with Notification No. 9/2016-ST dated March 1, 2016];
- The services provided during the period from April 1, 2015 to February 29, 2016 under such contracts are also being exempted from Service tax;
- Refund of Service tax paid on the said services during the period from April 1, 2015 to February 29, 2016, shall also be allowed - same provisions as discussed, supra, in Section 101.

## **B: Changes in the Mega Exemption Notification amended vide Notification No. 9/2016-ST dated March 1, 2016**

New definitions provided for certain terms in paragraph 2:

- Clause (ba): “approved vocational education course”;
- Clause (oa): “educational institutions”

[Read with change in Negative List of services i.e. deletion of Section 66D(l) of the Finance Act]

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*Hope the information will assist you in your Professional endeavors. In case of any query/ information, please do not hesitate to write back to us.*

Thanks & Best Regards

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