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## **Video Presentation: Open Issues on Changes in Service Tax, Excise, Customs Duty vide Union Budget 2016**

The Union Budget, 2016, proposing flurry of changes in Indirect Taxes, has been a talk of the town since the day of its presentation. 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).

Numbers of measures have been introduced, few of which are welcome changes for the Trade & Economy, but few of them are not in line with 'Make in India' and 'Ease of Doing Business' initiatives. Even the positive changes being relished by Trade & Industry is embraced with many open issues and doubts which can be very critical if not analysed.

We are summarising herewith broader changes in the arena of Indirect Taxes, majorly Service tax coupled with analyses of the two sides of the Union Budget, 2016 along with highlighting some of the key areas requiring immediate attention of the Board:

### **Rationalisation of rate of interest on delayed payments – 15%/ 24% per annum**

Interest rates on delayed payment of Service Tax/ Excise Duty across all Indirect taxes is made uniform at 15% per annum, except in case of Service tax collected but not deposited with the Central Government, in which case, the rate of interest will be 24% per annum from the date on which the Service tax payment becomes due. But what would be the applicable rate of interest for belated payment of Service tax for the period prior to enactment of Finance Bill, 2016 and when 24% or 15% rate of interest applicable for delayed payment of Service tax?

### **Retrospective Service tax exemption allowed on certain contracts**

The Government has introduced three new Sections under Service tax, namely Sections 101, 102 and 103 in the Finance Bill, 2016, so as to restore certain exemptions where were withdrawn in the previous years, in the following manner:

Section 101 - Retrospective Service tax exemption to 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 [Entry No. 12(d) of the Mega Exemption Notification No. 25/2012-ST dated June 20, 2012 ("**Mega Exemption Notification**")].

Section 102 - Restoration of certain exemptions on services provided to the Government, a Local authority or a Governmental authority under Entry No. 12(a), (c) & (f) of the Mega Exemption Notification, withdrawn w.e.f April 1, 2015.

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Section 103 - Restoration of certain exemption withdrawn on Airport or port under Entry No. 14 of the Mega Exemption Notification w.e.f April 1, 2015.

However, such restoration of exemptions for contracts (under Section 102 and 103) which had been entered into prior to March 1, 2015 is subject to condition of payment of appropriate stamp duty, as applicable, prior to that date. What will happen when only part of the stamp duty is paid? Whether benefit of exemption would be available?

## **Krishi Kalyan Cess on all taxable services w.e.f. June 1, 2016 – Impact on “Make in India” and “Start-up India” drive**

Pursuing with an objective to finance and promote initiatives to improve agriculture and farmer welfare, the Government announced a new cess namely ‘Krishi Kalyan Cess’ (“**KKC**”), to be levied at 0.5% on the value of any or all the taxable services w.e.f June 1, 2016.

- ‘KKC’ though said to be Cenvatable in the hands of service providers, but appropriate amendments also required in the Cenvat Credit Rules, 2004
- KKC viz-a-viz Make in India: The manufacturers paying KKC on their input services would not be in a position to avail Cenvat credit of the same and thus would form part of their cost, leading to increase in prices to that extent.
- KKC viz-a-viz Ease of doing business: Paying Service tax at 15% may not be a problem, but maintaining separate accounts for Service tax and various Cesses, their records & computation, followed by corresponding Cenvat provisions is somewhat a cumbersome task.

## **Increase in limitation period for issuing SCN – Against “Ease of doing business”**

The Union Budget, 2016 has proposed to increase limitation of the time period for issuing SCN under the Service tax, Central Excise and the Customs in non-fraud cases from 18 months to 30 months in Service tax and from one year to two years under Excise & Customs.

- In this Era of automation when there is compulsory e-filing of returns & numbers of Commissionerates have been increased, there is no requirement of extended time period for issuing SCN.
- Considering the high numbers of cases pending under the Indirect tax since many years, time limit needs to be strengthen for adjudication of cases rather than liberty of extended time for issuing SCNs.
- Rate of interest on delayed refund should have been increased to make at par with rate of interest on delayed payment of duties/ taxes, rather than extension of the time period for issuance of SCN - Non fraud cases

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Relaxation in time limit for issuing SCNs in non-fraud cases is likely to go detrimental to ease of doing business initiative giving unwanted contradictory message of lethargic system to the budding start up entrepreneurs and outside World.

## **Service tax leviable under Reverse Charge on any services provided by Government or Local Authority to a Business Entity w.e.f April 1, 2016: Alarming Bell**

The liability to pay Service tax on any service provided by Government or a Local Authority to Business Entities is on the service recipient under Reverse Charge w.e.f. April 1, 2016 except in case of (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, 1994. But what will be the fate of following types of Governmental services:

- Services rendered as a sovereign right by Government/ various Public Authorities (set up by Government) which cannot be substituted by any private party. For example, there are various types of Statutory charges and fees e.g. ESI inspection, PF inspection, Motor Vehicles Registration charges, Motor Vehicles Inspection charges, fees payable to Registrar of Companies for filing statutory forms, Building inspection etc.;
- A Business Entity is also required to pay fees for getting various authorisations, permissions, licenses etc., for various purposes like import and export etc.;
- Even, the Government collects big chunk of money by allocation of coal blocks/grant of mining license, telecom spectrum etc. which are in the nature of payment of royalty to Government for use of natural resources;
- Even though certain exemptions have been prescribed under the Mega Exemption Notification vide Notification No. 22/2016-ST dated April 13, 2016, but whether the same is lucid enough to clear the mist of doubts?

## **Reverse Charge - POT & Applicability of KKC**

A proviso has been inserted in Rule 7 of the Point of Taxation Rules, 2011 (“**the POTR**”) to provide that where there is change in the liability or extent of liability of Service Tax to be paid under Reverse Charge, date of issuance of invoice shall be the POT when service has been provided and the invoice issued before the date of such change (i.e. only payment has not been made as on such date).

This indeed is a good change as far as liability of service receiver under reverse charge is concerned. But what about the cases when liability to pay Service tax is on the service provider? What would be its implication on service receiver and service provider after introduction of KKC?

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To know more and take deeper dive into such other alarming provisions/ changes in the Union Budget 2016, please watch the **latest video by Mr. Bimal Jain on Theme presentation on "Open Issues at Interactive Session on Changes in Service Tax, Excise, Customs Duty vide Union Budget 2016"** at PHD House, New Delhi in first workshop series of Annual Workshop Series held on April 21, 2016:

[https://www.youtube.com/watch?v=4INH\\_uuLsuo](https://www.youtube.com/watch?v=4INH_uuLsuo)



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

Thanks & Best Regards

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