BUDGET ANALYSIS - 2017

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02.02.2017

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PREPAREDNESS FOR GST

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Preparedness for GST

- The Finance Minister confirmed the status of preparedness for implementation of GST and moving towards a new indirect tax regime. It was declared and stated that:
  - the government has been relentlessly ushering for implementation of GST and that it is the top priority for the government.
  - the GST Council has finalised its recommendations on almost all the issues based on consensus, basis 9 meetings held by the Council.
  - preparation of IT system for GST is also on schedule and there shall be an extensive reach-out effort towards trade and industry w.r.t. GST starting 1st April, 2017 for awareness regarding the new taxation system.
  - the Centre, through Central Board of Excise & Customs, shall continue to strive to achieve the goal of implementation of GST as per schedule without compromising the spirit of co-operative federalism.
  - Implementation of GST is likely to bring more taxes both to Central and State Governments because of widening of tax net.

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AMENDMENTS IN FINANCE ACT, 1994

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Service of "Process amounting to manufacture" – S. 65B(40)

- Non-levy of service Tax on *"process amounting to manufacture"* has been moved from Negative list to Mega Exemption Notification.
  - Clause (f) of Section 66D of the Act [Negative List] is omitted
  - Exemption Entry is being incorporated in the Entry 30(i) of mega exemption notification , which read as *[N.No. 7/2017-ST dt. 02.02.2017]*.

    "*services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption".*

- Effective: when Finance Bill receives President's assent

- Impact: No practical impact as on date

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Authority for Advance Ruling (AAR)

- **AAR of Central Excise, Customs and Service Tax is merged with AAR of Income Tax**
- **All pending cases shall be transferred to AAR (Income Tax)**

- Clause (d) of Section 96A of the Finance Act, 1994 is being amended to substitute the definition of the term "*Authority"*. The old definition of the term "Authority" reads as ~~Authority for Advance Rulings, constituted under sub-section (1) , or authorised by the Central Government under sub-section (2A), of section 28F of the Customs Act, 1962~~. "Authority" means the Authority for Advance Rulings as defined in clause (e) of Section 28E of the Customs Act, 1962.
- A corresponding amendment is also being made in the Customs Act, 1962 so as to substitute the definition of "Authority" to mean Authority for Advance Ruling as constituted under section 245-O of the Income Tax Act, 1961.

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Contd…

- Section 96B of the Finance Act, 1994 has been omitted. The section reads as follows – ~~**Vacancies, etc. not to invalidate proceedings**. "No proceeding before, or pronouncement of Advance Ruling by, the authority under this chapter shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the Constitution of the Authority."~~ [Corresponding Section of IT Act, 1961- section 245P]
- Sub-section (3) of Section 96C of the Finance Act, 1994 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, 1961.
- Sub-section (6) of section 96D of the Finance Act, 1994 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, 1961.

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Contd…

- A new section 96 HA 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, 1961. The new section reads as follows- Transitional provisions- "On and from the date on which the finance bill 2017 receives the assent of the president, every application and proceeding pending before the erstwhile authority for advance rulings (Central Excise, Customs and Service Tax) shall be transferred to the Authority from the stage at which such application or proceeding stood as on the date of such assent."

- Effective: when Finance Bill receives President's assent

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Retrospective Amendment: Long Term Lease of Industrial Plots

Background

- One time upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for grant of
- Long Term Lease (30yers or more) of Industrial Plots
- by a State Government industrial development corporation or undertaking
- to industrial units
- was exempted w.e.f. 22.09.2016 vide N. No. 41/2016-ST dated 22.09.2016

Amendment proposed in Finance Bill,2017

- The above said service is exempted retrospectively w.e.f. 1st June, 2007
- Thus, benefit of the exemption is being extended with effect from 01.06.2007, the date when the services of renting of immovable property became taxable.
- Refund shall be made of all such service tax which has been collected, but which would not have been so collected, had sub-section (1) been in force at all material times.
- application for claim of refund shall be made within six months from the date on which finance bill, receives the assent of the President

- Date of implementation: when Finance Bill receives President's assent

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Retrospective Amendment: Specified Insurance Funds

- A new section 105 has been inserted in the Finance Act, 1994
- No tax shall be levied on
  - services provided by
  - Army, Naval and Air Force Group Insurance Funds
  - by way of life insurance
  - to members of the Army, Navy and Air Force, respectively,
  - under the Group Insurance Schemes of the Central Government,
  - during the period 10th day of September, 2004 - 1st day of February, 2016 [seems printing error should be 01.2.17] (both days inclusive).
- Refund shall be made of all such service tax which ahs been collected, but which would not have been so collected, had sub-section (1) been in force at all material times.
- application for claim of refund shall be made within six months from the date on which finance bill, receives the assent of the President

- Date of implementation: when Finance Bill receives President's assent

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Relief to Specified Insurance Funds for Armed Forces

<u>Exempted vide Entry No. 26D w.e.f. 02.02.2017</u>

- Exemption is provided on such service by way of Entry No. 26D.

"26D. Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government;";

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Repeal of R&D Cess Act

Background

- R& D cess is payable on import of technology under the Research and Development Cess Act, 1986.
- Service Tax on Import of Technology is exempted equivalent to the amount of R & D cess paid under Notification no. 14/2012- ST.

Amendment

- Research and Development Cess Act, 1986 is proposed to be repealed with effect from 1st April, 2017.
- Thus, with effect from the enactment of the Finance bill, 2017, the exemption from service tax under notification no. 14/2012-ST would not be available.
- Service tax along with cesses (Swachh Bharat Cess and Krishi Kalyan Cess) would be applicable on import of technology.

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Impact Analysis

Example

Value of import – Rs. 1,00,000/-

	Position before Repeal of R&D Cess (Rs.)	Position after repeal of R&D Cess (Rs.)
R & D Cess	5,000	-
Service Tax (14,000-5,000)	9,000	14,000
K.K.Cess	500	500
S.B.Cess	500	500
Total Service Tax (inclusive of cess)	10,000 (9,000+500+500)	15,000
Credit availability [ST (Mfr)/ ST + KK Cess (Service Prov.)]	9,000/ 9,500	14,000/ 14,500
Benefit	**--**	**Rs. 5,000**

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Exemption w.r.t. Regional Connectivity Scheme

Background:

(i) Regional Connectivity Scheme (RCS): Regional Connectivity Scheme is a plan envisaged by the Government of India to bolster air connectivity in small town cities. The objective behind this scheme is to provide airline connectivity between regional airports.

(ii) How it functions: The operation of the Scheme is proposed to be through a market mechanism where operators will assess the different routes; submit proposals on providing connectivity on such routes while committing to operating market conditions. The operator may opt for VGF, if required.

(iii)Viability Gap Funding (VGF): Viability Gap Funding is a funding mechanism whereby a grant is provided to support projects that are economically justified but not financially viable.

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Exemption w.r.t. Regional Connectivity Scheme. Contd…

Exemption vide Entry 23A (w.e.f. 02.02.2017):

- Exemption of Service Tax on Viability Gap Funding payable by Government to the airline operator operating under the Regional Connectivity Scheme.
- The exemption will be available for a period of one year from the date of commencement of operations of Regional Connectivity Scheme airport.

"23A. 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 Airport, against consideration in the form of Viability Gap Funding (VGF): Provided that nothing contained in this entry shall apply on or after the expiry of a period of one year from the date of commencement of operations of the Regional Connectivity Scheme Airport as notified by the Ministry of Civil Aviation.";

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Non-Residential Post Graduate Programme by IIMs

Amendment in Entry 9B of Mega Exemption Notification

- Vide Notification No. 7/2017 dated 2nd February 2017, changes has been made in respect of Entry 9B of Notification No. 25/2012 dated 20.06.2012.
  - *"9B. Services provided by the Indian Institutes of Management, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme,-*
  - *(a) two year full time* ~~***residential***~~ *Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT), conducted by Indian Institute of Management;"*
- The Notification has been amended so as to omit the word 'residential' appearing in the entry. The exemption remains same in all other aspects.

Impact:

- The benefit of this exemption has now been extended to two year non-residential programmes as well and is no longer limited to residential programmes.

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Amendment in Rule 2A

SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006

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Valuation of service portion in execution of works contract

- Rule 2A of Service Tax (Determination of value) Rules, 2006, as inserted w.e.f. 01.06.2007, has been amended for the period from 01.07.2010 to 30.06.2012 (both days inclusive) –

"**2A. Determination of value of services involved in the execution of a works contract:**

(1)…

(i) Value of works contract service determined shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods ***or in goods and land or undivided share of land, as the case may be,*** involved in the execution of the said works contract.

…

(2) Where the value has not been determined under sub-rule (1) and the gross amout charged includes the value of goods as well as land or undivided share of land, the service tax shall be payable on twenty-five percent of the gross amount charged for the works contract, subject to the following conditions, namely:-

(i) the CENVAT Credit of duty paid on inputs or capital goods or the CENVAT Credit of service tax on input services, used for providing such taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004 ;

(ii) the service provider has not availed the benefit under the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2003-Service Tax, dated the 20th June, 2003 [G.S.R.503(E), dated the 20th June, 2003].

Explanation.—For the purposes of this sub-rule, the gross amount charged shall include the value of goods and materials supplied or provided or used for providing the taxable service by the service provider.".

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Contd…

- Rule 2A of Service Tax (Determination of value) Rules, 2006, as substituted w.e.f. 01.07.2012, has been amended for the period from 01.07.2012 onwards –

"2A. Determination of value of service portion in the execution of a works contract.-

(i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods ***or in goods and land or undivided share of land, as the case may be*** transferred in the execution of the said works contract.

(ii)…

(A)…

[01.07.2012 to 28.02.2013]

Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on twenty five per cent. of the total amount charged for the works contract.

[01.03.2013 to 07.05.2013]

Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent. of the total amount charged for the works contract:

Provided further that in case of works contract for construction of residential units having carpet area up to 2000 square feet or where the amount charged per residential unit from service recipient is less than rupees one crore and the amount charged for the works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on twenty-five per cent. of the total amount charged for the works contract.

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Contd…

[08.05.2013 to 31.03.2016]

Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent. of the total amount charged for the works contract:

Provided further that in case of works contract for construction of residential units having carpet area up to 2000 square feet and where the amount charged per residential unit from service recipient is less than rupees one crore and the amount charged for the works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on twenty-five per cent. of the total amount charged for the works contract.

[w.e.f. 01.04.2016]

Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent. Of the total amount charged for the works contract.

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Contd…

- Further, all the actions taken under the provision of Rule 2A have been validated by way of section 128(2) of Finance Bill, 2017.
- Also, section 128(3) of the Bill grants power to the Central Government to make retrospective amendments.
- **The said section also provides that any act or omission would not be treated as an offence, if it was not an offence under the un-amended Rule 2A.**

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Background of the Amendment

- Prior to the said amendment:
  - Rule 2A of the Service Tax (Determination of value) Rules, 2006, as it stood prior to 01.07.2012, provided for valuation of works contract, to only exclude the value of transfer of property in goods.
  - Abatement was provided in respect of Builders transactions vide notification 26/2012-ST.
- In this regard, the levy of service tax in case of composite works contract was challenged and the Delhi High Court in the case of **Suresh Kumar Bansal, W.P. (C) 2235 of 2011** ruled as follows:
  - The provisions of Rule 2A of the Service Tax (Determination of value) Rules, 2006, as it stood prior to 01.07.2012, did not provide for exclusion of the value of land and thus did not provide for complete machinery to tax composite works contract, in order to tax only the service portion.
  - Machinery provision for exclusion of all components other than service components was required to be provided by way of Act / Rules. The abatement notification providing for the same cannot substitute the lack of machinery provision to ascertain the value of services.

Athena Analysis

- This amendment:
  - seeks to cure the defect pointed out in the judgment by Delhi High Court in **Suresh Kumar Bansal, W.P. (C) 2235 of 2011**,
  - by providing for the exclusion of land / Undivided share of interest in land
  - so that the levy only remains on the service portion.
  - also provides alternative presumptive rates of service tax under the valuation rules, which were earlier provided under the abatement notification.
- The said amendment has **following major impacts**:
  - The Government would not have to refund the Service Tax paid by the buyers, as was ordered in the judgment of Suresh Kumar Bansal;
  - Demand can now be raised in cases of the assessees who did not discharge their liability of levy of service tax on composite works contract.
  - Builders can right royally claim deduction of value of land from their turnover – Delhi builders (where land value if very high) are greatly benefitted.

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AMENDMENTS IN CENVAT CREDIT RULES, 2004

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CENVAT REVERSAL BY BANKING AND FINANCIAL INSTITUTIONS

Background:

- Earlier banking companies and financial institutions (including NBFC's) are required to reverse 50% credit under rule 6(3B) of the Cenvat Credit Rules.
- In last budget(2016), they have been provided an option to reverse the credit as per rule 6(1), 2 and 3 in addition of the option of 50% reversal.
- The term "value", for the purpose of computation of eligible cenvat credit under rule 6(3) and 6(3A), defined under explanation 1 of rule 6 provides the exclusion as under:
- e. *"shall not include the value of services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;"*

Amendment in Budget 2017(vide notification no. 4/2017 – C. E (N.T.))

- The value defined under explanation 1 of rule 6 ,
- *"Provided that this clause shall not apply to a banking company and a financial institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans or advances."*

Impact

- Interest or discount, charged by Banking Institutional shall form the part of value of exempted service while computing eligible credit under Rule 6(3).

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TRANSFER OF CENVAT CREDIT IN CASE OF MERGER ETC.

Background:

- In case of merger, amalgamation etc. the unutilized credit can be transferred in resulting entity under rule 10 of CENVAT credit rules.
- Earlier, there was no requirement to file application to the department regarding transfer of credit

Amendment :

- The transfer of credit shall be allowed by the dy./asst. commissioner of Central excise within 3 months of receipt of application and such period can be extended to the maximum of 6 months.
- The amended sub rule 4 of the rule 10 are as follows:

"(4) Subject to the provisions contained in sub-rule (3), the transfer of the CENVAT Credit shall be allowed within a period of three months from the date of receipt of application by the Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be:

Provided that the period specified in this sub-rule may, on sufficient cause being shown and reasons to be recorded in writing, be extended by the Principal Commissioner of Central Excise or Commissioner of Central Excise, as the case may be, for a further period not exceeding six months."

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RECENT AMENDMENTS IN SERVICE TAX LAW

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ONLINE INFORMATION AND DATABASE ACCESS OR RETRIEVAL SERVICES

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Meaning

- Online information and database access or retrieval services (hereinafter referred to as "**Online information**" services) means services which can be provided only with the aid of information technology over the internet. The nature of such service is that it requires minimal human intervention and its supply is essentially automated. Further, it has been extracted below:

  "(ccd) "online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology and includes electronic services such as,-

  - *advertising on the internet;*
  - *providing cloud services;*
  - *provision of e-books, movie, music, software and other intangibles via telecommunication networks or internet;*
  - *providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;*
  - *online supplies of digital content (movies, television shows, music, etc.);*
  - *digital data storage; and*
  - *online gaming;"*

Levy of Tax

Background

- Service Tax is payable on services provided in Taxable Territory. *[Section 66B]*
- Place of Provision in case of online service was "location of service provider". *[Rule 9 of POP Rules]*
- Thus, no service tax was payable on online information services provided by the person located outside India.

Position w.e.f. 1st December, 2016 *(Amended vide N.No.46/2016-ST dt. 09.11.2016)*

- Place of Provision in case of online information service is "location of service recipient". *[Rule 9(b) of POP Rules omitted – General Rule 3 shall apply]*. *Rule 9(b) reads as follows:*

  ~~***"9. Place of provision of specified services***~~

  ~~*(b) Online information and database access or retrieval services…"*~~

- Place of Provision in case of online information service shall be "location of service recipient" even location of service recipient could not be determined [Proviso to Rule 3 of POP Rules Amended]
  - Provided that in case [***of services other than online information and data base access or retrieval services, where***] the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

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Exemption Entry Nullified

Background:

- Entry 34(a) of Notification no. 25/2012 dated 20-06-2012 ("Mega exemption notification")
- Provides exemption to
- services provided by a service provider located in a non taxable territory to the
  - (a) government, local authority, governmental authority **or an individual for any purpose other than commerce, industry or any other business or profession**.
  - (b) entities registered under section 12AA of the Income Tax Act, 1961 for the purpose of charitable activities

Position w.e.f. 1st December, 2016 ***(Amended vide N.No.47/2016-ST dt. 09.11.2016 and N.No. 5/2017-ST dt. 30.01.2017)***

- A proviso has been inserted in entry 34 stating that ***"such exemption shall not be applicable on online information and data base access or retrieval services received by person specified in clause (a) or clause (b)"***.
- Thus, any online information service provided by person located outside India to government, local authority, governmental authority or an individual or entities specified in clause (b) is taxable even if provided for any purpose other than commerce, industry or any other business or profession.

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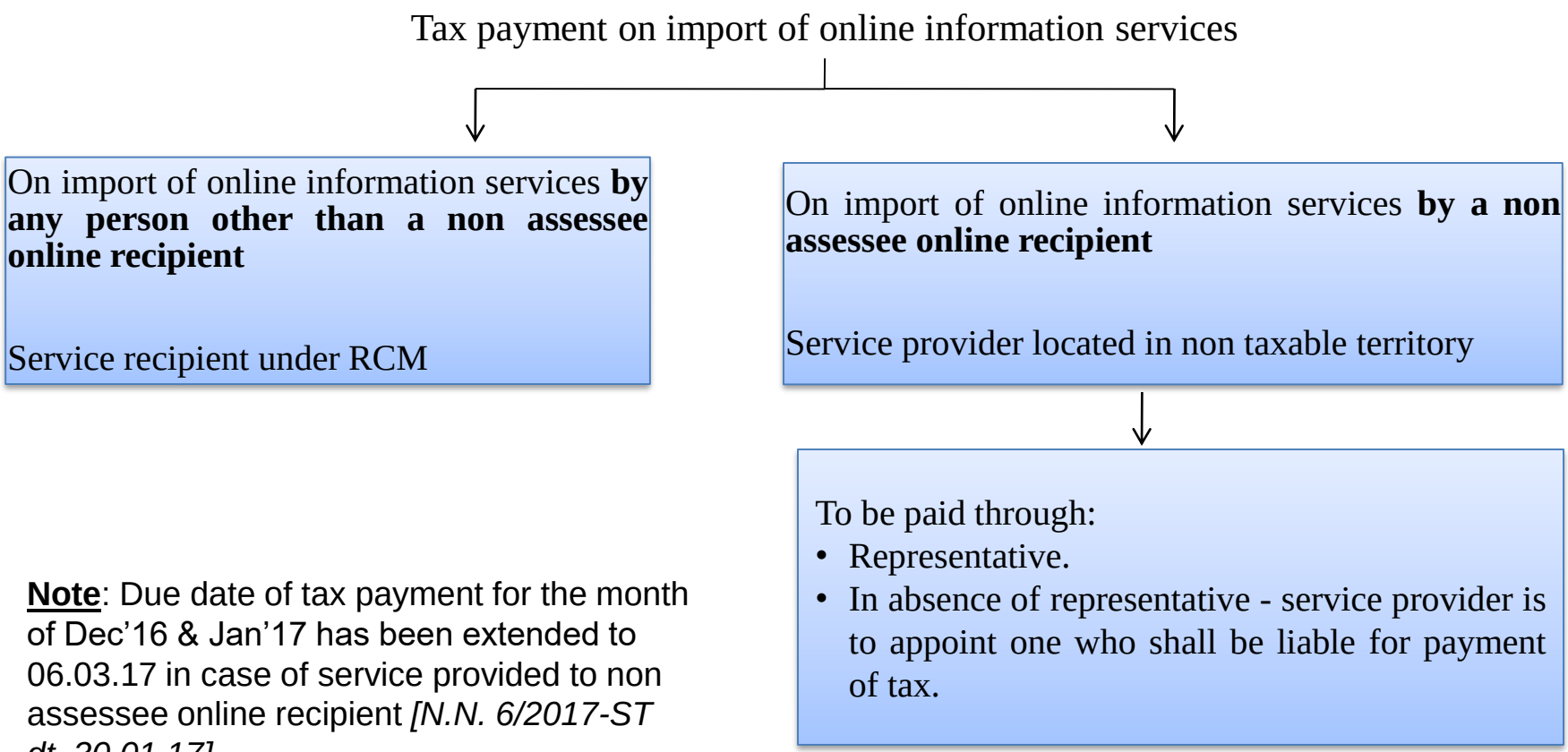
Liability to Pay Tax [R. 2(1)(d)]



Note: Due date of tax payment for the month of Dec'16 & Jan'17 has been extended to 06.03.17 in case of service provided to non assessee online recipient *[N.N. 6/2017-ST dt. 30.01.17]*

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Contd….

- Rule 2 (d)(i)(G) of Service Tax Rules, 1994:
  - in relation to any taxable services provided by any person located in a non-taxable territory,
  - the recipient of such services shall be liable for paying service tax.
- Notification no. 48/2016: online information services are to be excluded from the taxable services covered under Rule 2 (d)(i)(G) of Service Tax Rules, 1994.
- Insertion of entry H in Rule Rule 2 (d)(i)
  - online information services
  - provided by any person located in a non-taxable territory
  - to a person located in the taxable territory other than non-assessee online recipient
  - Person liable to pay shall be recipient of such service.
  - The entry reads as follows:

    "(H) in relation to services provided or agreed to be provided by way of online information and database access or retrieval services, by any person located in a non-taxable territory and received by any person in the taxable territory other than non-assessee online recipient, recipient of such service;";
- In case of online information received by non assessee online recipient the tax is to be paid by the service provider located outside India. (Detail in next slide)

Non-Assessee Online Recipient

- Notification no.48/2016: inserts the definition of non-assessee online recipient under Rule 2 (1) of Service Tax Rules, 1994.
- The definition covers:
  - Government, a local authority, a governmental authority or an individual
  - receiving online information services
  - in relation to any purpose other than commerce, industry or any other business or profession,
  - located in taxable territory.
- The relevant definition reads as follows:

"(ccba) "non-assessee online recipient" means Government, a local authority, a governmental authority or an individual receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory;

Explanation.- For the purposes of this clause, "governmental authority" means an authority or a board or any other body :

i. set up by an Act of Parliament or a State legislature; or

ii. established by Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;";

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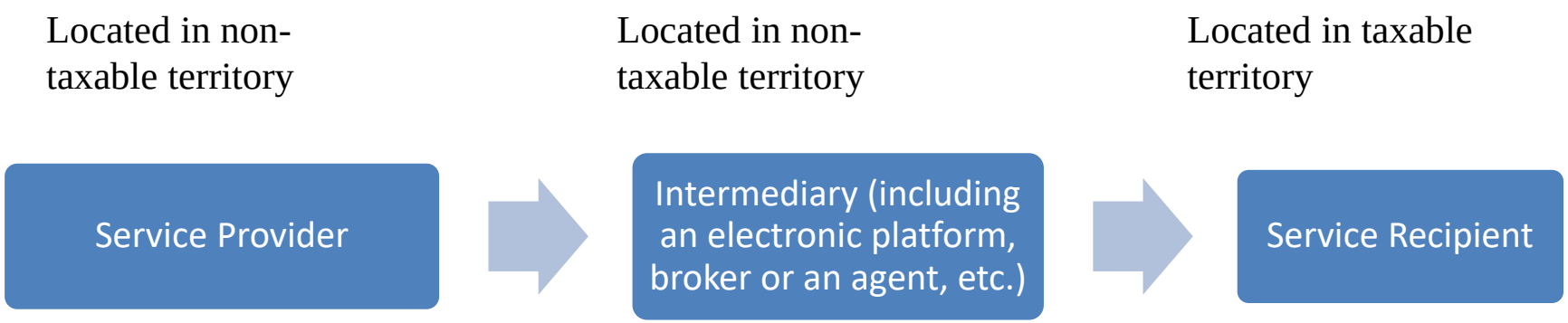
Service provided by intermediary

In case where intermediary arranges or facilitates the provision of service but doesn't provide the main service on his own account:



It shall be deemed that intermediary has received services from service provider in non-taxable territory and provides such service to non-assessee online recipient except where:

- Invoice, etc issued by intermediary clearly identifies the service, its supplier in non-taxable territory and service tax registration of supplier in taxable territory.
- Intermediary bears no responsibility in collection or processing of payment in any manner.
- Intermediary does not authorize delivery.
- General terms and conditions of supply are set by the service provider and not the intermediary

Conditions to identify location of service recipient

- The following set of conditions have been laid down, and the fulfillment of any of the two shall deem a person to be service recipient of online information services located in the taxable territory. They are as follows:
  - *a) the location of address presented by the service recipient via internet is in taxable territory;*
  - *b) the credit card or debit card or store value card or charge card or smart card or any other card by which the service recipient settles payment has been issued in the taxable territory;*
  - *c) the service recipient's billing address is in the taxable territory;*
  - *d) the internet protocol address of the device used by the service recipient is in the taxable territory;*
  - *e) the service recipient's bank in which the account used for payment is maintained is in the taxable territory;*
  - *f) the country code of the subscriber identity module (SIM) card used by the service recipient is of taxable territory;*
  - *g) the location of the service recipient's fixed land line through which the service is received by the person, is in taxable territory:*

When contracting parties are in non-taxable territory.

SERVICE TAX ON GOODS TRANSPORTATION BY VESSELS - W.E.F. 22.01.2017.

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Exemption Removed

Background:

- POP in case of transportation of goods shall be the place of destination of goods. *[Rule 10 of POP Rules]*
- Entry 34(a) of Notification no. 25/2012 dated 20-06-2012 ("Mega exemption notification") provides exemption to
- services provided by a service provider located in a non taxable territory to the
  - (c) person located in a non-taxable territory

Position w.e.f. 22th January, 2017 *(Amended vide N.No. 1/2017-ST dt. 12.01.2017)*

- A proviso has been inserted in entry 34 stating that ***"such exemption shall not applied to services by way of transportation of goods by a vessel from a place outside India upto the custom station of clearance in India***

Impact:

- services in relation to transportation of goods by vessels
- from outside India ***upto the custom station of clearance in India***
- ***Provided by person located outside India***
- Services received by persons located in non taxable territory
- Shall be taxable

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Liability to Pay Tax [R. 2(1)(d)]

- **Person in-charge of the Vessel or agent appointed by him under Customs Act**
- **are liable to pay service tax.**

Notification No. 02/2017 – ST, iinserted clause 'EEC' in Rule 2 sub rule (1) (d) of Service Tax Rules, 1994. The said clause states that person liable for paying service tax:

- in relation to services provided or agreed to be provided
- **by** a person located in non-taxable territory
- **to** a person located in non-taxable territory
- by way of transportation of goods
- by a **vessel** from a place outside India
- up to the customs station of clearance in India,
- the person in India who complies with sections
  - **29** (Arrival of vessels and aircrafts in India),
  - **30** (Delivery of import manifest or import report), or
  - **38** (Power to require production of documents and ask questions)
  - read with section **148** (Liability of agent appointed by the person in charge of a conveyance) of the Customs Act, 1962 (52 of 1962)
- with respect to such goods

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Amendment in Reverse Charge Notification

W.E.F. 22nd January 2017 *[N.No. 03/2017-ST dt. 12.01.17]*:

- Sub-clause (vii) inserted in paragraph I, after the sub-clause (vi)**,**
- "(vii) provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India;";
- In the Table, in paragraph II, after Sl. No. 11, the following, Sl. No. 12 has been inserted,

"12.	**in respect of services provided or agreed to be provided by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India**	**NIL**	**100%"**

- Further after Explanation III, following Explanation has been inserted,

Explanation IV.- For the purposes of this notification, in respect of services provided or agreed to be provided by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, person liable for paying service tax other than the service provider shall be the person in India who complies with sections 29, 30 or 38 read with section 148 of the Customs Act, 1962 (52 of 1962) with respect to such goods.

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CHANGES EFFECTING “TOURS AND TRAVELLING” INDUSTRY

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Abatement for 'Tour Operator Service' restricted

Not. No. 04/2017-ST; W.E.F. 22nd January 2017 – amending Not. No. 26/2012

- The notification simplifies as also restricts abatement available with respect to 'tour operator services'. The notification imposes a liability of Service Tax on **60% of charges collected by tour operator subject to the following conditions**.
- Conditions:
  - CENVAT credit on inputs and capital goods used for providing the taxable service, has **not been taken** under the provisions of the CENVAT Credit Rules, 2004.
  - The **bill** issued for this purpose indicates
    - that it is inclusive of charges of accommodation and transportation for such a tour
    - the amount charged in the bill is the gross amount charged for such a tour
      - including charges of accommodation and transportation required for such a tour

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Abatement for 'Tour Operator Service' Before Amendment

Nature of Service	Taxable Portion	Condition
~~Services by a tour operator in relation to,-~~ ~~i. a package tour~~	~~25~~	~~(i) CENVAT has not been taken under the provisions of the CENVAT Credit Rules, 2004.~~ ~~(ii) The bill issued for this purpose indicates that it is inclusive of charges for such a tour.~~
~~ii. a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour~~	~~10~~	~~(i) CENVAT has not been taken under the provisions of the CENVAT Credit Rules, 2004.~~ ~~(ii) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation.~~ ~~(iii) Exemption shall not apply in cases where the invoice, bill or challan issued by the tour operator, does not include the cost of such accommodation.~~
~~iii. any services other than specified at (i) and (ii) above.~~	~~40~~	~~(i) CENVAT has not been taken under the provisions of the CENVAT Credit Rules, 2004.~~ ~~(ii) The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour.~~

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Abatement for 'Tour Operator Service' After Amendment

Nature of Service	Taxable Portion	Condition
Services by a tour operator	60	(i) CENVAT has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The bill issued for this purpose indicates that it is inclusive of charges of accommodation and transportation required for such a tour and the amount charged in the bill is the gross amount charged for such a tour including the charges of accommodation and transportation required for such a tour.".

*In effect, the liability shall be on the rise.

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Service provided involving “Aggregator”

Background:

- Service Tax is payable by an aggregator - in respect of any service provided or agreed to be provided by a person involving an aggregator in any manner
- The term “aggregator” is defined under Service Tax Rules as under:
  - ‘(aa) “aggregator” means a person, who owns and manages a web based software application, and by means of the application and a communication device, enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the aggregator;’

Proviso inserted in definition of Aggregator w.e.f. 22.01.2017 [N.N. 02/2017-ST dt. 12.01.17]

“Provided that aggregator shall not include such person who enables a potential customer to connect with persons providing services by way of renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes subject to following conditions, namely:-

(a) the person providing services by way of renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes has a service tax registration under provision of these rules; and

(b) whole of the consideration for services provided by such service provider is received directly by such service provider and no amount, which forms part of the consideration of services of such service provider, is received by the aggregator directly from either recipient of the service or his representative.”;

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Contd…

- Referring to above amendment, it is evident that:
  - the parliament did not seek to tax services provided by an **aggregator**
  - for specified services, i.e., renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes
  - who merely connects the potential customer and the service provider without charging any fee
  - either from the customer or from the service provider
  - it is also conditional that the service provider is duly registered under Service Tax for provision of the specified services. In case the property is not registered, the online service provider may be held liable.

- E.g., Listing websites, who do not charge a fee from hotel/ commercial properties or from the occupier shall not be liable for any service tax as an aggregator. However, those charging a fee shall fall under the ambit.

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Services to Banking Company

Entry 29, of Mega Exemption Notification No. 25/2012 dated 20-06-2012

29. Services by the following persons in respective capacities-

(g) ~~Business facilitator or a business correspondent to a banking company with respect to Basic Savings Bank Deposit Account covered by Pradhan Mantri Jan Dhan Yojna in the banking company's rural area branch, by way of account opening, cash deposits, cash withdrawals, obtaining e-life certificate, Aadhar seeding~~

Amended Entry 29 w.e.f. 12th January, 2017 ***(Amended vide N.No.1/2017-ST dt. 12.1.2017)***

29. Services by the following persons in respective capacities-

(g) Business facilitator or a business correspondent to a banking company with respect to accounts in its rural branch.

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