IMPORTANT AMENDMENTS MADE IN DIRECT TAXES AND INDIRECT TAXES BETWEEN 01.05.2009 TO 31.10.2009

Students may note that the Study Material for Direct Tax Laws and Indirect Tax Laws contain all the relevant amendments made by the Finance (No. 2) Act, 2009. Further, circulars/notifications issued up to 30.04.2009 and Budget notifications have also been incorporated therein. The following are the amendments which have been made between 01.05.2009 to 31.10.2009. It may be carefully noted that for the students appearing in May 2010 exams, the amendments made by the notifications, circulars and other legislations up to 31.10.2009 are relevant.

DIRECT TAXES/DIRECT TAX LAWS

I CIRCULARS

1. Circular No. 4/2009, dated 29.6.2009

Section 195 mandates deduction of income tax from payments made or credit given to non-residents at the rates in force. The Reserve Bank of India has also mandated that except in the case of certain personal remittances which have been specifically exempted, no remittance shall be made to a non-resident unless a no objection certificate has been obtained from the Income Tax Department. This was modified to allow such remittances without insisting on a no objection certificate from the Income Tax Department, if the person making the remittance furnishes an undertaking (addressed to the Assessing Officer) accompanied by a certificate from an Accountant in a specified format. The certificate and undertaking are to be submitted (in duplicate) to the Reserve Bank of India / authorised dealers who in turn are required to forward a copy to the Assessing Officer concerned. The purpose of the undertaking and the certificate is to collect taxes at the stage when the remittance is made as it may not be possible to recover the tax at a later stage from non-residents.

There has been a substantial increase in foreign remittances, making the manual handling and tracking of certificates difficult. To monitor and track transactions in a timely manner, section 195 was amended vide Finance Act, 2008 to allow CBDT to prescribe rules for electronic filing of the undertaking. The format of the undertaking (Form 15CA) which is to be filed electronically and the format of the certificate of the Accountant (Form 15CB) have been notified vide Rule 37BB of the Income-tax Rules, 1962.

The revised procedure for furnishing information regarding remittances being made to non-residents w.e.f. 1st July, 2009 is as follows:-

(i) The person making the payment (remitter) will obtain a certificate from an accountant (other than employee) as defined in the Explanation to section 288 in Form 15CB.

(ii) The remitter will then access the website to electronically upload the remittance details to the Department in Form 15CA (undertaking). The information to be furnished in Form 15CA is to be filled using the information contained in Form 15CB (certificate).

(iii) The remitter will then take a print out of this filled up Form 15CA (which will bear an acknowledgement number generated by the system) and sign it. Form 15CA (undertaking) can be signed by the person authorised to sign the return of income of the remitter or a person so authorised by him in writing.

(iv) The duly signed Form 15CA (undertaking) and Form 15CB (certificate), will be submitted in duplicate to the Reserve Bank of India / authorized dealer. The Reserve Bank of India /

authorized dealer will in turn forward a copy of the certificate and undertaking to the Assessing Officer concerned.

(v) A remitter who has obtained a certificate from the Assessing Officer regarding the rate at or amount on which the tax is to be deducted is not required to obtain a certificate from the Accountant in Form 15CB. However, he is required to furnish information in Form 15CA (undertaking) and submit it along with a copy of the certificate from the Assessing Officer as per the procedure mentioned from Sl.No.(i) to (iv) above.

2. Circular No. 5/2009, dated 2.7.2009

The CBDT has issued this circular in supercession to all circulars and instructions issued by it relating to the procedure for representation before the Board for Industrial and Financial Reconstruction (BIFR) and the Appellate Authority for Industrial and Financial Reconstruction (AAIFR). This circular prescribes the following procedure to be followed before the BIFR and AAIFR in respect of granting income-tax reliefs/concessions to be given to sick companies for its rehabilitation under the Sick Industrial Companies (SICA) Act, 1985.

(i) The Director General Income Tax (Administration), [DGIT (Admn.)] will be the Nodal agency for co-ordination between the BIFR and the CBDT and between the AAIFR and the CBDT.

(ii) It will be the responsibility of DGIT (Admn.) to represent the CBDT before BIFR and AAIFR in every case in which income-tax reliefs is sought under the Draft Rehabilitation Scheme or in the Sanctioned Scheme circulated by BIFR/AAIFR.

(iii) The DGIT (Admn.) will consider each case of income-tax reliefs/concessions under the Direct Tax Laws on merits of each individual case for the purpose of consent as contemplated in section 19(2) of the SICA, 1985. In cases where the company and the Assessing Officer have quantified the income-tax reliefs, the DGIT (Admn.) will communicate the consent or denial of consent to BIFR at the time of hearing itself after obtaining the approval of CBDT. Where the information from the company and the Assessing Officer is incomplete, the DGIT (Admn.) will obtain the necessary information from the concerned parties and put up the file for the consideration of CBDT and subsequently intimate the BIFR.

(iv) It is the responsibility of DGIT (Admn.) to obtain the approval of CBDT in every case in which income-tax relief/concessions is sought and to communicate the approval of CBDT to BIFR and the concerned Assessing Officer. The decision thus communicated by the DGIT (Admn.) on behalf of the CBDT is binding on all Assessing Officers.

(v) The Assessing Officer should give the income-tax reliefs to sick companies only after obtaining the approval as mentioned above. In cases where BIFR/AAIFR is taking a different view from that of the CBDT, it will be the responsibility of DGIT (Admn.) to file appeal before the appellate authority (AAIFR) or before the Delhi High Court, as the case may be. It is also hereby clarified that in cases where the sick companies file appeals against the order of BIFR/AAIFR in any of the High Court other than Delhi High Court, it will be the responsibility of concerned Chief Commissioner of Income Tax (Administration) to defend the case in the respective High Court.

3. Circular No. 7/2009 dated 22.10.2009

The CBDT has, through this circular, withdrawn the following circulars:

a) Circular No. 23 issued on 23rd July 1969 regarding taxability of income accruing or arising through, or from, business connection in India to a non-resident, under section 9 of the Income-tax Act, 1961.

b) Circulars No. 163 dated 29th May, 1975 and No.786 dated 7th February, 2000 which provided clarification in respect of certain provisions of Circular No 23 dated 23rd July, 1969.

II NOTIFICATIONS

1. Notification No. 67/2009 dated 9.9.2009

The Central Government has, vide notification no.67/2009 dated 9.9.2009, specified the cost inflation index (CII) for the financial year 2009-10. The CII for F.Y. 2009-10 is 632.

S. No.	Financial Year	Cost Inflation Index
1.	1981-82	100
2.	1982-83	109
3.	1983-84	116
4.	1984-85	125
5.	1985-86	133
6.	1986-87	140
7.	1987-88	150
8.	1988-89	161
9.	1989-90	172
10.	1990-91	182
11.	1991-92	199
12.	1992-93	223
13.	1993-94	244
14.	1994-95	259
15.	1995-96	281
16.	1996-97	305
17.	1997-98	331
18.	1998-99	351
19.	1999-2000	389
20.	2000-01	406
21.	2001-02	426
22.	2002-03	447
23.	2003-04	463
24.	2004-05	480
25.	2005-06	497
26.	2006-07	519
27.	2007-08	551

28.	2008-09	582
29.	2009-10	632

2. Notification No. 70/2009, dated 22.9.2009

The CBDT has, in exercise of the powers conferred by section 139(1B), made an amendment in the notification of the Government of India relating to qualifications of an e-Return intermediary. The qualifications of an e-Return Intermediary, as amended, are detailed hereunder -

(1) An e-Return Intermediary shall have the following qualifications, namely:-

(a) it must be a public sector company as defined in section 2(36A) of the Act or any other company in which public are substantially interested within the meaning of section 2(18) of the Act and any subsidiary of those companies; or

(b) a company incorporated in India, including a bank, having a net worth of rupees one crore or more; or

(c) a firm of Chartered Accountants or Company Secretaries or Advocates, if it has been allotted a permanent account number; or

(d) a Chartered Accountants or Company Secretaries or Advocates or Tax Return Preparers, if he has been allotted a permanent account number; or

(e) a Drawing or Disbursing Officer (DDO) of a Government Department.

(2) The e-intermediary shall have at least class II digital signature certificate from any of the Certifying authorities authorized to issue such certificates by the Controller of Certifying authorities appointed under section 17 of the Information Technology Act, 2002.

(3) The e-intermediary shall have in place security procedure to the satisfaction of e-Return Administrator to ensure that confidentiality of the assessees information is properly secured.

(4) The e-intermediary shall have necessary archival, retrieval and, security policy for the e-Returns which will be filed through him, as decided by e-Return Administrator from time to time.

(5) The e-intermediary or its Principal Officer must not have been convicted for any professional misconduct, fraud, embezzlement or any criminal offence.

INDIRECT TAXES/INDIRECT TAX LAWS

A. EXCISE

1. Notification No. 14/2009 CE (NT) dated 10.06.2009 has amended rule 6 of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 so as to cast a responsibility on the said Assistant or Deputy Commissioner of Central Excise of ensuring that the goods received are used by the manufacturer for the intended purpose. This has been done by substituting the words “The said Assistant Commissioner or Deputy Commissioner shall ensure that the goods received are used by the manufacturer for the intended purpose and where the subject goods are not used” for the words “Where the subject goods are not used”.

2. Notification No. 15/2009 CE (NT) dated 10.06.2009 has amended Notification No. 32/2006 CE (NT) dated 30.12.2006, which prescribes withdrawal of facilities or imposition of restrictions on a

manufacturer, first stage or second stage dealer, or an exporter involved in any of the prescribed contraventions, in the following manner:

(i) Facilities may be withdrawn or restrictions may be imposed on a manufacturer, first stage or second stage dealer, or an exporter involved in removal of inputs as such on which CENVAT credit has been taken, without paying an amount equal to credit availed on such inputs in terms of sub-rule (5) of rule 3 of the CENVAT Credit Rules, 2004. This has been done by inserting clause (g) after clause (f) in paragraph 1 of the notification.

(ii) Two more restrictions have been imposed if a manufacturer is prima facie found to be knowingly involved in committing the prescribed offences, namely:

(a) the assessee may be required to maintain records of receipt, disposal, consumption and inventory of the principal inputs on which CENVAT credit has not been taken.

(b) the assessee may be required to intimate the Superintendent of Central Excise regarding the receipt of principal inputs in the factory on which CENVAT credit has or has not been taken, within a period specified in the order and the said inputs shall be made available for verification upto the period specified in the order.

This has been done by inserting clause (iii) and clause (iv) after clause (ii) in paragraph 2, in sub paragraph (1).

(iii) After explanation II, Explanation III has been inserted, which provides that "principal inputs", means any input which is used in the manufacture of final products where the cost of such input constitutes not less than 10% of the total cost of raw materials for the manufacture of unit quantity of a given final products.

3. Notification No. 21/2009 CE (NT) dated 20.08.2009 has notified a public sector company as class of persons for the purpose of the sub-clause (iii) of section 23A(c) of the Central Excise Act, 1944. A "public sector company" shall have the same meaning as is assigned to it in clause (36A) of section 2 of the Income-tax Act, 1961.

4. Notification No.22/2009 CE (NT) dated 07.09.2009 has inserted a second proviso after the first proviso in rule 3(7)(a) of the CENVAT Credit Rules, 2004. The second proviso lays down that the CENVAT credit in respect of inputs and capital goods cleared on or after 07.09.2009 from an export-oriented undertaking or by a unit in electronic hardware technology park or in a software technology park, as the case may be, on which such undertaking or unit has paid –

A. excise duty leviable under section 3 of the Excise Act read with serial number 2 of the Notification No. 23/2003 CE, dated 31.03.2003; and

B. the education cess and the secondary and higher education cess on the excise duty referred to in (A),

shall be the aggregate of –

I. that portion of excise duty referred to in (A), as is equivalent to -

i. the additional duty leviable under section 3(1) of the Customs Tariff Act, which is equal to the duty of excise under section 3(1)(a) of the Excise Act;

ii. the additional duty leviable under section 3(5) of the Customs Tariff Act; and

II. the education cess and the secondary and higher education cess referred to in (B).

5. Circular No. 889/09/2009 CX dated 21.05.2009 provides that the judgements of Hon'ble Supreme Court in the case of U.O.I Vs. Rajasthan Spinning & Weaving Mills and Commissioner of Customs & Central Excise Vs. Lanco Industries Ltd. in Civil Appeal No.3525 of 2009 arising out of S.L.P

(Civil) No.4078 of 2008 have clarified that when the conditions spelled out under section 11AC of the Central Excise Act, 1944 are fulfilled, there is no discretion to reduce the mandatory penalty equal to duty even though the duty is paid before the issue of show cause notice.

6. Circular No. 890/10/2009 CX dated 03.06.2009 has been issued to settle the classification dispute relating to coconut oil sold in small packs say of 50 ml or 100 ml. The two contending classifications are: Chapter 15 covering various types of vegetable oil including coconut oil and Chapter 33 covering cosmetics including hair oil. When the coconut oil is sold in small containers, following indications have been found on containers or labels.

   A. 'hair oil'

   B. 'edible oil'

   C. 'pure coconut oil' or 'coconut oil'

   When 'hair oil' is printed on the container/label, there is no dispute and it is classified as 'hair oil' under chapter 33. Disputes arise in respect of other two categories ('edible oil', 'pure coconut oil' or 'coconut oil'). Department contends that coconut oil falling under these two categories are meant for sale as 'hair oil', therefore, it shall be classified as 'hair oil' underChapter 33. The manufacturers plead that as they are not printing the specific use of such oil as 'hair oil' it should be classified as 'vegetable oil' under Chapter 15, irrespective of the fact that consumer may use it as 'hair oil'.

   The circular explains that the Chapter Note 2 of Chapter 33 prescribes a condition that Heading No.3305 (which covers hair oil also) applies to products put up in packing of a kind sold by retail for such use. Thus, if a particular packing of coconut oil is generally sold in retail as hair oil, in that case, the said product would be classified under heading 3305.

   Further, the Section Note 2 to Section VI also provides that goods classifiable in Heading 3305 by reason of being put up for retail sales are to be classified in the said heading and in no other heading of the schedule. This Section Note further supports the interpretation that though a product is capable of being classified under more than one heading, even then because of the nature of its retail packing, which is indicative of its use as hair oil, the classification under heading 3305 would get priority.

   However, if the same coconut oil is packed in say 1 litre or 2 litre packages, which are generally used by consumers for edible purposes (even though some customers may use it as hair oil), it would be classified under Chapter 15.

   Hence, the classification of coconut oil would depend upon the fact as to how the majority of the customers use the said product. Therefore, if coconut oil is packed in packages which are generally meant for sale in retail as hair oil, in that case the said product would be classified as hair oil under Heading 3305, even though few consumers may use it as edible oil.

   Thus, the circular settles that coconut oil packed in containers upto 200 ml may be considered as generally used as hair oil and shall be classified under Heading 3305.

7. Circular No. 898/18/09 CX dated 15.09.2009 has clarified that the benefit of reduced penalty under provisos to section 11AC is not available at appeal stage, i.e. the reduced penalty cannot be paid within 30 days of the communication of the order in Appeal. The circular explains that in order to avail the benefit of 25% penalty, the duty, interest and penalty are required to be paid within 30 days of communication of the order passed by the adjudicating authority. Further, the reading of proviso (4) would also support this interpretation because the said proviso stipulates that wherever duty amount is increased at any appellate stage, in that case in order to avail the benefit of 25 % penalty, the assessee is required to pay differential amount within 30 days of the

passing of the order by the appellate authority. A combined reading of all the four provisos would, therefore, make it clear that the benefit of 25% penalty is applicable only when the assessee has paid duty, interest and the reduced penalty within 30 days of communication of the order passed by the adjudicating authority. However, if the penalty amount is increased at the appellate stage, in that case the 25% of differential amount of penalty can be paid within 30 days of communication of said appellate order.

8. Circular No. 900/20/2009 CX dated 06.10.2009 has been issued to permit bringing of duty-paid packing materials into export warehouse under Rule 20 of Central Excise Rules. Para 7.2 of the Board's Circular No. 581/18/2001-CX dated 29.06.01 provides that duty paid goods are not permitted to be brought into the warehouse. However, it is a fact that number of times packing material in small quantity is required at a short notice and the supplier may not be interested to follow the detailed procedure of removal of goods without payment of duty. Therefore, it has been decided that duty paid packing material can be brought into the export warehouse, but exporter would not be allowed to claim export benefit like rebate for the duty paid on the said packing material.

   In view of above, in the above referred Circular, after para 7.2, following is inserted,-

   "However, an exporter desirous of bringing duty paid packing material required for packaging of other material in the warehouse, may submit a written request to the jurisdictional AC/DC of the Division, who may grant the permission for a period of one year at a time. The exporter will maintain proper account of such goods and shall not claim any export benefit like rebate of duty paid on the said material."

9. Circular No. 902/22/2009 CX dated 20.10.2009 has been issued with regard to assessable value in respect of goods manufactured on job work basis. Some manufacturers of motor vehicles were getting complete motor vehicles manufactured by sending the chassis of the motor vehicles to independent body builders for building the body as per the design/specification of the manufacturer. The practice followed was that the chassis was transferred to the body builder on payment of appropriate central excise duty on stock transfer basis and was not sold to them. The body builder avails the CENVAT credit of the duty paid on the chassis and cleared the same on payment of duty to the Depot/Sales Office/Distributer of the motor vehicle manufacturer. The duty was discharged by the body builder on the assessable value comprising the value of chassis and the job charges. The Depot/Sales office of the motor vehicle manufacturer sold the vehicles at a higher price than the price on which duty had been paid.

   As per rule 10A (ii) of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 the assessable value for the purpose of charging central excise duty, in the cases where the job-worker transfer the excisable goods to the Depot/Sale office/Distributer and/or any other sale point of the principal manufacturer, shall be the transaction value on which goods are sold by the principal manufacturer from such a place. Accordingly, after the insertion of Rule 10A, the practice of discharging the duty on cost construction method by the body builder is not legally correct. Therefore, the circular clarifies that wherever goods are manufactured by a person on job work basis on behalf of a principal, then value for the purpose of payment of excise duty may be determined in terms of the provisions of Rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 subject to fulfilment of the requirements of the said rule.

10. Circular No. 903/23/2009 CX dated 20.10.2009 has clarified that textile quilted products like quilts, quilted bed spreads, etc. will be classified under heading 9404 and not under heading 5811 as heading 5811 covers quilted textile products which are further used in the manufacture of quilts, quilted bedspreads, etc. while it is heading 9404 which covers the final finished products like quilts and other articles of bedding and furnishing.

The HSEN to Chapter Heading 5811 reads as follows:

'These materials are commonly used in the manufacture of quilted garments, bedding or bedspreads, mattress pads , clothing, curtains, place-mats, underpads (silencers) for table linen etc.

The heading does not cover:

a. Plastic sheets quilted, whether by stitching or heat sealing to a padded core (generally Chapter 39);

b. Stitches or quilted textile products in which the stitches constitute designs giving them the character of embroidering;

c. Made up goods of this Section;

d. Articles of bedding or similar furnishing of Chapter 94 padded or internally fitted.'(emphasis supplied).

The made up goods are defined by Section Note 7 of Section XI.

In this context, the term 'used in the manufacture' is important to note. It means that heading 5811 covers only materials which are further used in making of quilted final products like bedding or bedspreads. Further HSEN to this Chapter Heading also state that the heading does not cover made up goods of this Section (Section Note 7) and articles of bedding or similar furnishing of Chapter 94 which are padded or internally fitted. Thus, the articles of bedding and furnishing fall in Chapter 94.

The HS explanatory notes to Chapter 9404 clarify that the heading covers:

'A. Mattresses supports,...

B. Articles of bedding and similar furnishing which are sprung or stuffed or internally fitted with any material (cotton, wool, horsehair, down, synthetic fibers etc or are of cellular rubber or plastics (whether or not covered with woven fabrics, plastics. etc). For example:

    1. Mattresses, including mattresses with a metal frame:

    2. Quilts and bedspread (including counterpanes and also quilts for baby - carriages) eiderdowns and duvets (whether of down or any other filling/mattress protectors, bolsters, pillows/cushions, pouffes, etc.'

Quilts, quilted bedspread etc. are articles of bedding and are covered under the Explanation (B) (2) as mentioned above.

11. Circular No. 904/24/09 CX dated 28.10.2009 has clarified that in view of the amendment made by the Finance Act, 2008 in the definition of excisable goods, bagasse, aluminium/zinc dross and other such products termed as waste, residue or refuse which arise during the course of manufacture and are capable of being sold for consideration would be excisable goods and chargeable to payment of excise duty.

It is further clarified that in case the rate of duty in respect of such products is Nil in the tariff or they are exempt from duty in terms of any exemption notification, and if CENVAT credit has been taken on the inputs which are used for manufacture of dutiable and exempted goods, then in terms of rule 6 of CENVAT Credit Rules, 2004, the assessee is required to reverse the proportionate credit or pay 5% amount.

Excisability of bagasse and similar waste products arising during the course of manufacture has been under dispute for a long period of time. There are number of Tribunal's judgments that being waste, these are not excisable products. Departmental appeal in respect of excisability of

bagasse in one such case i.e Balrampur Chinni Mills Ltd. is reportedly still pending in the Supreme Court. Generally, the courts have been taking a view that the waste or refuse or residue arising during the course of manufacture cannot be treated as excisable goods even if such waste fetches some price in the market. However, all these matters pertain to the period prior to 2008.

In the budget of 2008, the definition of "excisable goods" in clause (d) of Section 2 of the Central Excise Act, 1944 was amended by adding an explanation that for the purposes of this clause, "goods" include any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.

B. CUSTOMS

1. Notification No. 124/2009 Cus. (NT) dated 20.08.2009 has notified

   (i) a public sector company

   (ii) a resident who proposes to import goods claiming for assessment under heading 9801 (items eligible for project import) of the First Schedule to the Customs Tariff Act, 1975

   as class of persons for the purpose of the sub-clause (iii) of section 28E(c) of the Customs Act,1962.

   "Public sector company" shall have the same meaning as is assigned to it in clause (36A) of section 2 of the Income-tax Act, 1961. "Resident" shall have the same meaning as is assigned to it in clause (42) of section 2 of the Income-tax Act, 1961.

C. SERVICE TAX

Notification No. 26/2009 ST dated 19.08.2009 has notified 01.09.2009 as the date on which the services introduced by the Finance (No. 2) Act, 2009 would become effective. Further, the amendments made in the existing services vide the Finance (No. 2) Act, 2009 would also become effective from 01.09.2009.

Exemptions

1. Notification No. 31/2009 ST dated 01.09.2009 has exempted the taxable service provided by a sub-broker, to a stock-broker as defined in clause (101) of Section 65 of the Finance Act,1994, in relation to sale or purchase of securities listed on a registered stock exchange from the whole of the service tax leviable thereon.

2. Notification No. 32/2009 ST dated 01.09.2009 has exempted the taxable service provided by any person, to a client as defined under business auxiliary service in relation to the manufacture of pharmaceutical products, medicines, perfumery, cosmetics or toilet preparations containing alcohol, which are charged to excise duty under Medicinal and Toilet Preparations (Excise Duties) Act, 1955 from the whole of the service tax leviable thereon.

3. Notification No. 33/2009 ST dated 01.09.2009 has exempted the taxable service provided to any person in relation to transport of goods by rail from the whole of the service tax leviable thereon provided, nothing contained in this notification shall apply to any service provided or to be provided, by any person other than government railway, in relation to transport of goods in containers by rail.

   In other words, the exemption has been granted to service provided or to be provided, by government railway, in relation to transport of goods in containers by rail.

4. Notification No. 39/2009 ST dated 23.09.2009 exempts the taxable service under the category of business auxiliary service provided by a person (service provider) to any other person (service receiver) during the course of manufacture or processing of alcoholic beverages by the service provider, for or on behalf of the service receiver, from so much of value which is equivalent to the

value of inputs, excluding capital goods, used for providing the same service, subject to the following conditions, namely:-

(a) that no Cenvat credit has been taken under the provisions of the Cenvat Credit Rules, 2004;

(b) that there is documentary proof specifically indicating the value of such inputs; and

(c) where the service provider also manufactures or processes alcoholic beverages, on his or her own account or in a manner or under an arrangement other than as mentioned aforesaid, he or she shall maintain separate accounts of receipt, production, inventory, despatches of goods as well as financial transactions relating thereto.

Here, 'input' and 'capital goods' shall have the meaning as is assigned to them under rule 2 of the CENVAT Credit Rules, 2004.

5. Notification No. 40/2009 ST dated 30.09.2009 has amended Notification No.17/2009 ST dated 07.07.2009 which exempts certain specified taxable services received by an exporter and used for export of goods. The following service (inserted at point no. 17 in the original notification) received by an exporter and used for export of goods has also been exempted vide this notification:

17.	(zzzzl)	Service provided for transport of export goods through national waterway, inland water and coastal shipping.	i. The exporter shall- 1. produce the Bill of Lading or a Consignment Note or a similar document by whatever name called, issued in his name; 2. produce evidence to the effect that the said transport is provided for export of relevant goods.

Other amendments

6. Notification No. 9/2009 ST dated 03.03.2009 was issued to provide refund of service tax paid on taxable services specified in section 65(105) of the Finance Act, 1994 which are provided in relation to the authorised operations (as defined under SEZ Act, 2005) in a Special Economic Zone (SEZ), and received by a developer or units of a SEZ, whether or not the said taxable services are provided inside the SEZ.

Notification No. 15/2009 ST dated 20.05.2009 has been issued to amend the aforesaid Notification 9/2009 ST dated 03.03.2009 to provide unconditional exemption to services consumed within the SEZ without following the refund route thus dispensing with the requirement of first paying the tax by the service provider and then claiming the refund thereof by developer/unit. The exemption by way of refund would be limited to situations only when taxable services provided to SEZ are consumed partially or wholly outside SEZ.

This has been done by making the following amendments in Notification No. 9/2009 ST dated 03.03.2009:

A. Conditions (a) to (f) mentioned in paragraph 1 for claiming the exemption have been amended in the following manner:

(i) The condition (c) for claiming the exemption has been substituted with the following condition:

"the exemption claimed by the developer or units of special economic zone shall be provided by way of refund of service tax paid on the specified services used in relation

to the authorised operations in the special economic zone except for services consumed wholly within the special economic zone;"

(ii) The condition (d) for claiming the exemption has been substituted with the following condition:

"the developer or units of special economic zone claiming the exemption, by way of refund in accordance with clause (c), has actually paid the service tax on the specified services;"

(iii) Another condition (g) has been added after condition (f) for claiming the said exemption. The new condition (g) reads as follows:

"(g) the developer or unit of a special economic zone shall maintain proper account of receipt and utilisation of the taxable services for which exemption is claimed."

B. The manner of giving exemption mentioned in paragraph 2 has been amended. In paragraph 2, for the words, "shall be subject to the following conditions", the words, ",except for services consumed wholly within the Special Economic Zone, shall be subject to the following conditions" shall be substituted.

7. Notification No. 27/2009 ST dated 20.08.2009 has notified a public sector company as class of persons for the purpose of the sub-clause (iii) of section 96A(b) of the Finance Act, 1994. A "public sector company" shall have the same meaning as is assigned to it in clause (36A) of section 2 of the Income-tax Act, 1961.

8. Notification No. 25/2009 ST dated 19.08.2009 has substituted the explanation in rule 3 of the Export of Services Rules, 2005 with the following explanation:

"For the purposes of this rule "India" includes the installations, structures and vessels in the continental shelf of India and the exclusive economic zone of India."

9. The Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 and the Export of Services Rules, 2005 have been amended vide Notification No. 37/2009 ST dated 23.09.2009 and Notification No. 38/2009 ST dated 23.09.2009 so as to categorise the new taxable services introduced vide the Finance (No. 2) Act, 2009 under Rule 3. Taxable services have been categorised as under:

Sl. No.	Taxable service	Sub-clause of section 65(105)	Export of Services Rules, 2005	Taxation of Services (Provided from Outside India and Received in India) Rules, 2006
1.	Cosmetic and plastic surgery service	zzzzk	*Category 2 [Rule 3(1)(ii)]	Category 2 [Rule 3(ii)]
2.	Service provided in relation to transport of coastal goods and goods transported through inland water including	zzzzl	*Category 2 [Rule 3(1)(ii)]	Category 2 [Rule 3(ii)]

	National Waterways			
3.	Legal consultancy service	zzzzm	*Category 1 [Rule 3(1)(i)] and Category 3 [Rule 3(1)(iii)]	Category 1 [Rule 3(i)] and Category 3 [Rule 3(iii)]

Note – (1) Category 1 [Rule 3(1)(i)] – For services under this category, criterion of services being in relation to an immovable property situated outside India is prescribed.

(2) Category 2 [Rule 3(1)(ii)] – For services under this category, criterion of services as are performed outside India is prescribed.

(3) Category 3 [Rule 3(1)(iii)] – For services under this category, criterion of location of recipient of service outside India is prescribed.

10. Notification No. 34/2009 ST dated 01.09.2009 has amended Notification No. 1/2006 ST dated 01.03.2006 granting abatement of 70% to the service provided or to be provided, by any person other than government railway, in relation to transport of goods in containers by rail so as to rename the service as transport of goods in containers by rail.

11. Circular No. 115/09/2009 ST dated 31.07.2009 has clarified the following two issues:

Issue: Whether service tax is payable on commission paid to Managing Director/Directors (whole time, or Independent) by the company under business auxiliary service?

Clarification: Some Companies make payments to Managing Director/Directors (Whole-time or Independent), terming the same as 'commissions'. The said amount paid by a company to their Managing Director/Directors (Whole-time or Independent) even if termed as commission, is not the 'commission' that is within the scope of business auxiliary service and hence service tax would not be leviable on such amount.

Issue: Whether service tax is payable by Independent Directors who are part of the Board of Directors under management consultant's service?

Clarification: The Managing Director/Directors (Whole-time or Independent) being part of Board of Directors perform management function and they do not perform consultancy or advisory function. The definition of management consultant service makes it clear that what is envisaged from a consultant is advisory service and not the actual performance of the management function. The payments made by Companies, to Directors cannot be termed as payments for providing management consultancy service. Therefore, it is clarified that the amount paid to Directors (Whole-time or Independent) is not chargeable to service tax under the category 'Management Consultancy service'. However, in case such directors provide any advice or consultancy to the company, for which they are being compensated separately, such service would become chargeable to service tax.

12. Circular No. 116/10/2009 ST dated 15.09.2009 has clarified the following issue:

Issue: Whether service tax is leviable on construction of canals for Government projects?

Clarification: As per section 65(25b) of the Finance Act, 1994 "commercial or industrial construction service" is chargeable to service tax if it is used, occupied or engaged either wholly or primarily for the furtherance of commerce or industry. As the canal system built by the Government or under Government projects, is not falling under commercial activity, the canal system built by the Government will not be chargeable to service tax. However, if the canal

system is built by private agencies and is developed as a revenue generating measure, then such construction should be charged to service tax.

13. Circular No. 117/11/2009 ST dated 31.10.2009 has clarified that service tax will not be leviable on services provided by a tour operator in connection with Haj & Umrah pilgrimage. The amount charged to the pilgrims in India undertaking Haj and Umrah pilgrimage, is for services provided by the Government of Saudi Arabia and the tour takes place outside India. As per Rule 3(1)(ii) of the Export of Services Rules, 2005, (Circular No. 111/05/2009 ST dated 24.02.2009), the service in respect of tour operator is export if such service is performed outside India. It is also provided therein that where such taxable service is partly performed outside India, it shall be treated as performed outside India.

    Therefore, it is clarified that service tax is not chargeable on the services provided in respect of tour undertaken for carrying out Haj and Umrah Pilgrimage in Saudi Arabia by Indian pilgrims considering these as export of service, provided they fulfill the other conditions of export as provided in Export of Service Rules.

Note: The Budget Notifications issued on 07.07.2009 are given in the Supplementary Study Paper 2009. Further, they have also been incorporated in the Study Material of Indirect Tax Laws (Edition 2009). Therefore, the same have not been given here again.