Budget 2014 – Impact (Indirect taxes)

A Way Forward

20 August 2014

Building a better working world

Contents

Consequence of changes in PPS Rules

Intermediary to include ‘intermediary of goods’

Position before amendment

- As per Rule 3 of the PPS Rules, i.e. the default rule, the place of provision of service is the location of service recipient. However, there are exceptions to this rule
- As per one of exceptions - Rule 9 - in case of services provided by an <u>intermediary,</u> the place of provision of service is the location of service provider
  - ‘Intermediary’ has been defined to cover an agent or any other person, who arranges or facilitates a <u>provision of service</u> between two or more persons
  - Accordingly, where a person was engaged in facilitating/ arranging activity in relation to goods, the services were not covered under the definition of intermediary and Rule 9 was not applicable

Intermediary to include ‘intermediary of goods’ (contd.)

Amendment

- With effect from 1 October 2014, the definition of intermediary has been amended as follows:

  “Intermediary’ means a ‘broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the ‘main service’) <u>or supply of goods</u> between two or more persons, but does not include a person who provides the main service <u>or supplies the goods on his own account</u>”

- Therefore, with effect from 1 October 2014, a person facilitating or arranging supply of goods will qualify as an intermediary

Intermediary to include ‘intermediary of goods’ (contd.)

Impact of the amendment

- Till date the impact of the concept of ‘intermediary’ has been limited
- Post the amendment, the impact of the amendment will be significant since intermediary in relation to goods are more pervasive e.g.
  - Commission agents
  - Procurement agents
  - Stock brokers
- Significant ambiguity around the concept of intermediary exists. Does it include:
  - Marketing companies
  - Collection companies
- Education Guide provides that call centers ‘providing services on their own account’ do not qualify as intermediary

EY

Place of provision for Repair Services

Position before amendment

- Rule 4 of the PPS Rules provides that place of provision of performance based services is the location where services are performed.

- Further, second proviso to Rule 4(a) of PPS Rules provides that this rule was not applicable on repair, reconditioning or re-engineering services carried out on goods temporarily imported in India for re-export

- Accordingly, place of provision for such repair, reconditioning or re-engineering services was determined as per Rule 3 of the PPS Rules

Amendment

- The second proviso to rule 4(a) has been amended to prescribe that 'repair services' shall be excluded from Rule 4(a) if the goods imported for repair are exported after repair and <u>without being put to any use</u>

Place of provision for Repair Services (contd.)

Amendment

- Further, it has been clarified that the exclusion will not apply to goods that arrive in the taxable territory in the usual course of business

Impact of the Amendment

- The earlier rule covered activities of repair, reconditioning or re-engineering but the amendment has restricted the exclusion to repairs
- Place of provision for repair services in respect of goods that arrive in India and are put to use would be covered under Rule 4 and would be subject to service tax e.g.
  - Containers arriving in India in the course of international trade
  - Aircraft arriving in India
  - Goods imported for exhibitions, sporting events etc.

Other changes in PPS Rules

Position before amendment

- Rule 9 of PPS Rules provides that place of provision of specified services shall be the location of the service provider. Service consisting of hiring of means of transport, up to a period of one month is one of the specified services

Amendment

- Rule 9 is being amended to provide that service consisting of hiring of vessels (excluding yachts) and aircraft is excluded from Rule 9

Impact of the amendment

- Hiring of vessels, or aircraft, irrespective of whether short term or long term, will be covered by the default rule i.e., the place of location of the service receiver

- Hiring of yachts would however continue to be covered by Rule 9

Consequence of setting timeline of 6 months for taking credit

Consequence of setting timeline of 6 months for taking credit

Position before amendment

- Till date the Cenvat Credit Rules, 2004 (CCR) do not provide that CENVAT credit on inputs and input services must be availed by a specified date
- Provisions relating to availment of CENVAT credit of excise duty / service tax paid on inputs/ input services are as follows:
  - CENVAT credit on inputs may be availed by the manufacturer or service provider on receipt of goods at factory or premises
  - CENVAT credit on input services may be availed on or after the day on which the bills or invoices / challans are received

Consequence of setting timeline of 6 months for taking credit

Amendment

- Limitation period for claiming CENVAT credit has been introduced
  - CENVAT credit of inputs and input services are now required to be availed within 6 months from the date of invoice / challan
  - This change is effective from 1 September 2014

Impact of the Amendment

- Limiting the time period for availment of credit would adversely impact the input credits
- Ambiguity on whether the limitation will apply to inputs and input services (or their invoices) received prior to 1 September 2014
  - To avoid litigation assessee should avail any pending credits before the said date

Consequence of setting timeline of 6 months for taking credit (contd.)

- Ambiguity also exists on whether an assessee can reclaim credit if invoice for input service is paid after 3 months

  - Requirement to pay an amount equal to the cenvat credit availed if input service invoice not paid within 3 months
  - Amount reversed can be taken as credit when the input service invoice is paid

EY

Constant change in SEZ exemption

Constant change in SEZ exemption

List of SEZ exemption notifications issued till date:

S No.	Notification No.	Date of issuance
1	Notification No. 17/2002-ServiceTax	21 November 2002
2	Notification No. 4/2004-ServiceTax	31 March 2004
3	Notification No. 9/2009-Service Tax	3 March 2009
4	Notification No. 17/2011-Service Tax	1 March 2011
5	Notification No. 40/2012-Service Tax	20 June 2012
6	Notification No. 12/2013 - Service Tax	1 July 2013

Constant change in SEZ exemption

<u>Changes to claim *ab-initio* exemption – Position before amendment</u>

- Hitherto SEZ exemption was being availed under Notification 12/2013-ST dated 1 July 2013. Under this notification, for availing *ab-initio* exemption on services received, the SEZ unit is required to follow prescribed procedure

  - Obtain an approval for input services required for authorised operations
  - Furnish a declaration in Form A-1 with the SEZ authorities
  - Post obtaining verified Form A-1, file an authorization in Form A-2 with the jurisdictional service tax authorities along with copy of Form A-1

- However, the date from which exemption would be applicable i.e. from date of notification or the date of issuance of Form A-1 or the date of issuance of Form A-2 was not prescribed

Constant change in SEZ exemption

Amendment

- In the Budget 2014, the date from which the exemption will apply has been specified
- Form A-2 is required to be issued within 15 days from the receipt of verified Form A-1 by service tax authorities
- Further, the date from which exemption / authorisation would be valid is:
  - Date of verification of Form A-1 by SEZ authorities, provided endorsed Form A-1 is furnished within 15 days of its verification to service tax authorities;
  - Date of submitting Form A-1 to the service tax authorities, in case endorsed Form A-1 is submitted beyond 15 days from verification

Constant change in SEZ exemption

Date of verification of Form A-1	Date of filing Form A-2	Date of availing exemption
12 July 2014	25 July 2014 (i.e. within 15 days from approval of Form A-1)	12 July 2014
12 July 2014	1 August 2014 (i.e. after 15 days from approval of Form A-1)	1 August 2014

- Pending issuance of Form A-2, SEZ Unit will be entitled to avail upfront exemption on the basis of Form A-1 furnished to service provider

- However, copy of A-2 should be furnished to service provider within 3 months from the date of receipt of specified services, else, the service provider shall be liable to pay service tax on the services

Constant change in SEZ exemption

Issues/ impact of the Amendment

- The earliest date of exemption would be date of verification of Form A-1 by the specified officer of SEZ. Amendment does not consider the situation where there is a time lag in obtaining Form A-1 from the specified officer of SEZ
  - Thus, the SEZ unit shall be adversely impacted even when the delay in furnishing of Form A-1 is beyond its control

- In case of delay by the jurisdictional tax authorities in providing Form A-2 beyond 3 months, the service provider who has taken the exemption based on the verified Form A-1 would be liable to deposit service tax along with interest

- The amended provisions of service tax exemption should be applicable where Form A-1 has been applied on or after 11 July 2014. However, it is not clear whether the amended provisions should apply for Form A-2 which have not been issued till date

- Checks should be built to ensure that Form A-2 is received from the SEZ unit within 3 months or service tax along with interest can be recovered from the SEZ unit

Constant change in SEZ exemption

Clarificatory changes in SEZ Notification

Position before amendment

- *Under SEZ exemption Notification 40-2012,* ab-initio exemption was available if services were 'wholly consumed' for authorized operations. The term 'wholly consumed' was defined in the notification
- *Subsequently, under Notification 12-2013,* ab-initio exemption was available if the services were 'used exclusively' for authorized operations. Prior to the amendment, term 'exclusively used' was not defined

Amendment in the Budget

- It has been provided that a service shall be treated as exclusively used for SEZ operations if:
  - The recipient of service is a SEZ unit or developer;
  - Invoice is in the name of such unit/developer; and
  - Service is used only for furtherance of authorized operations in the SEZ

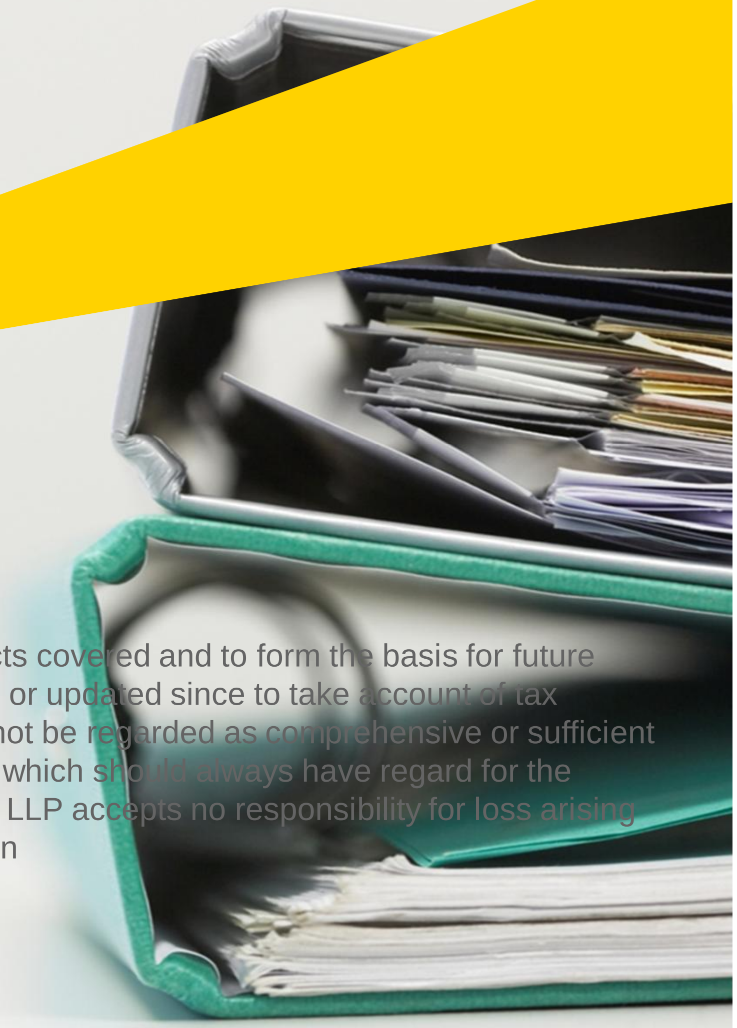
Constant change in SEZ exemption

Impact of the amendment

- The provisions clarify what constitutes exclusively used services by SEZ units to avail *ab-initio exemption*

- However, ambiguity may continue regarding a service which is ‘only’ used for authorized operations

Thank You



EY

Building a better working world