# ***SUMMARY OF IMPORTANT CHANGES IN SERVICE TAX MADE/PROPOSED BY BUDGET 2015-16***

## I. Changes in Finance Act, 1994

***To be effective from a date to be notified by the Central Government after the enactment of the Finance Bill, 2015:-***

### 1. Service Tax Rate

- The rate of Service Tax is proposed to be increased from 12% to 14% by way of an amendment in Section 66B of the Finance Act, 1994.

- The 'Education Cess' and 'Secondary and Higher Education Cess' are proposed to be subsumed/incorporated in the revised rate of Service Tax by omitting the Sections 95 of the Finance Act, 2004 and 140 of the Finance Act, 2007, levying Education Cess and Secondary and Higher Education Cess on taxable services.

**Impact/Comments:** Due to increase in rate all services attracting service tax are going to be expensive. From movie outings, hotel stays, gym memberships, club memberships, salons, spas, radio cab rides, to buying a house are all set to cost more. Many of the products are also going to become expensive as there are hundreds of services involved before the goods come to the market, such as, storage, transportation, advertising and other administrative services. Since, service tax is an indirect tax, the burden is borne by the poor as well as rich sections of the society equally. Hence, this increase in rate will adversely affect the poor section.

### 2. Amendments in the Negative List (Section 66D)

- **Entry No. (j)** - The existing entry covering *"admission to entertainment event or access to amusement facility"* is proposed to be omitted, making the activity taxable. Consequently, the definitions of "amusement facility" [Section 65 B (9)] and "entertainment event" [Section 65B (24)] shall also be omitted.

➢ **Entry No. (f)-** Clause (f) of the 66 D has been amended to exclude the "services provided by way of any processes which is amounting to manufacture of alcoholic liquor for human consumption". Accordingly the definition of the word "process amounting to manufacture" has been amended.

**Impact/Comments:** Alcoholic liquor for human consumption is a state subject covered under Entry 84 of List II of the Schedule VII of the Constitution liable to state excise duty. When the respective states are already collecting a tax on the same, the decision of the Central Government to collect service tax on the same activity is uncalled for. Further, how a process amounting to manufacture and liable to state excise duty can be called a service liable to service tax.

➢ **Entry No. (a)(iv)-** In the existing clause, "support service" proposed to be substituted with "any service". Consequently, the definition of "support service" vide Section 65B(49) is being omitted and "Government" has been defined vide proposed Section 65B(26A) to mean *'the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with article 150 of the Constitution or the rules made thereunder'*.

## 3. Other Amendments

***(To be effective on the date of enactment of the Finance Bill, 2015)***

### 3.1 Lottery distributor or selling agent –

➢ The Explanation 2 to section 65B(44) of the Finance Act, 1994 has been proposed to be amended to bring '*Service in relation to promotion, marketing, organizing, selling of lottery or facilitating in organizing lottery* *of any kind by a lottery distributor or selling agent'* in the ambit of service tax.

- The expressions 'lottery distributor or selling agent' has been defined in Section 65 B (31A) to mean '*any person appointed or authorized by State for the purposes of promoting, marketing, selling or facilitating in organising lottery of any kind, in any manner, organised by such State in accordance with the provisions of Lotteries Regulations Act, 1998'*.

**3.2 Foreman of chit fund –**

- The Explanation 2 to section 65 B (44) of the Finance Act, 1994 has been proposed to be amended to bring *'Service by a foreman of chit fund for conducting or organizing a chit in any manner'* in the ambit of service tax.

- The expressions 'foreman of chit fund' has been defined in Section 65 B (23A) as *'foreman of chit fund shall have the same meaning as is assigned to the term "foreman" in clause (j) of section 2 of the Chit Funds Act, 1982'*.

**3.3** **Section 66F (1)** prescribes that unless otherwise specified, reference to a service shall not include reference to any input service used for providing such services. An illustration is proposed to be incorporated in this section to clarify the scope of this provision. As illustrated, agency services provided a Bank to RBI is input services used by RBI for provision of its main service. Accordingly, banks providing agency service to or in relation to services of RBI, are liable to pay Service Tax on the agency services so provided by virtue of the existing section 66F (1).

**3.4** Definition of Consideration in Clause (a) of the explanation **to Section 67** has been proposed to be amended to include:

- Any reimbursable expenditure or cost incurred by the service provider and charged in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;

- Amount retained by the distributor or selling agent of lottery from gross sale amount of lottery ticket, or, as the case may be, the discount received, that is the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such tickets.

**Impact/Comments:** This amendment is mainly proposed to overcome the decision of Hon'ble Delhi High Court in case of M/s. Intercontinental Consultants where the Hon'ble Delhi High Court has ruled out that rule 5(1) of the Service Tax (Determination of Value) Rules, 2005 as ultra vires the Finance Act, 1994 which provided for inclusion of reimbursable expenses in the value of taxable service. Now the power to tax such reimbursable expenses are being provided in the Finance Act, 1994 itself.

### 3.5 Section 73 -

- A new sub-section (1B) is proposed to be inserted to provide that recovery of the Service Tax amount self-assessed and declared in the return but not paid shall be made under section 87, without service of any notice under sub-section (1) of section 73; and

- Sub-section (4A) that provides for reduced penalty if true and complete details of transaction were available on specified records is proposed to be omitted.

**3.6 Sections 76 and Section 78** is proposed to be amended to rationalize the provisions relating to penalties which is summarized as follows:

| Section | involving fraud or collusion or willful misstatement or | Normal Penalty | If paid within 30 days | If paid within 30 days from | If the service tax amount gets reduced |
|---|---|---|---|---|---|

| | **suppression of facts** | | **from SCN** | **OIO** | **in any appellate proceeding** |
|---|---|---|---|---|---|
| 76 | Yes | 10% | Nil | 25% of Penalty | penalty amount shall also stand modified accordingly |
| 78 | No | 100% | 15% | 25% of Service tax demanded | |

**3.7 Section 78B -** This new section is being proposed for fixing the effective date for the new penal provision as under:-

- For the cases, where No SCN is served upto the enactment of Finance Bill 2015 - Amended provisions of sections 76 and 78 shall apply.

- For the cases where SCN has been served but the order is not passed as on the date of enactment Finance Bill 2015 - Amended provisions of sections 76 and 78 shall apply.

- For the cases covered under the benefit of the provision of section 73(4A) upto the enactment of Finance Bill 2015 - eligible for penalty at 50% of the service tax even after the enactment.

**3.8 Section 80** which provides for waiver of penalty in certain circumstances is proposed to be omitted.

**3.9 Section 86 -** Appeal for the rejection of the rebate of the input service claimed was before the CESTAT; however with this proposed amendment that matters involving rebate of service tax shall be dealt with Central Government in terms of Section 35EE of the Central Excise Act. The cases filed before the CESTAT for the between 2012 and this enactment would be transferred from CESTAT to Revision Authority.

**3.10** Certain changes have been made in the provisions relating to Settlement Commission. These provisions, contained in the Central Excise Act, 1944, are made applicable to Service Tax, through section 83 of the Finance Act, 1994.

## II. Swachh Bharat Cess

*[To be effective from a date to be notified by the Central Government after the enactment of the Finance Bill, 2015]*

- An Additional cess, to be called the Swachh Bharat Cess, proposed to be imposed as service tax on all or any of the taxable services at the rate of 2% on the value of such services for the purposes of financing and promoting Swachh Bharat initiatives.

**Impact/Comments:** A cess is generally calculated on tax. However the amendment proposed levies the cess on value of taxable services. If implemented, the total rate of service tax would be 16%, which shall not be healthy for the trade and industry. The whole burden of this cess will ultimately be borne by the common man and inflationary trends might set in.

## III. Amendments in the Mega Exemption Notification [25/2012-ST]

*[To be effective from 1st Day of April, 2015, unless otherwise provided]*

### 1. New Entries proposed to be inserted in the notification :

- **Sl. No 2 -**Hitherto, any service provided by way of transportation of a patient to and from a clinical establishment by a clinical establishment is exempt from Service Tax. The scope of this exemption is being widened to include all ambulance services.

- **Sl. No 26A-** Life insurance service provided by way of Varishtha Pension Bima Yojna.

- **Sl. No 43-** Service provided by a Common Effluent Treatment Plant operator for treatment of effluent.

- **Sl. No 44-** Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labeling of fruits and vegetables.

- **Sl. No 45-** Service provided by way of admission to a museum, zoo, national park, wild life sanctuary and a tiger reserve is being exempted. These services when provided by the Government or local authority are already covered by the Negative List. Definitions of national park, tiger reserve, wildlife sanctuary, and zoo have also been inserted for this purpose.

- **Sl No 46-** Service by way of right to admission to,-

  **a.** Exhibition of cinematographic film, circus, dance, or theatrical performances including drama or ballet.

  **b.** Recognized sporting events.

  **c.** Concerts, pageants, award functions, musical performances or sporting events not covered by S. No. ii, where the consideration for such admission is upto Rs. 500 per person.

Definition of recognised sporting event has also been inserted for this purpose.

## 2. Entries proposed to be removed from the notification resulting in withdrawal of exemption:

- **S. No. 12** - Exemption presently available on specified services of construction, repair, maintenance, renovation or alteration service provided to the Government, a local authority, or a governmental authority ( vide S. No. 12 of the notification No. 25/12-ST ) shall be limited only to:-

  **a.** a historical monument, archaeological site or remains of national importance, archeological excavation or antiquity;

**b.** Canal, dam or other irrigation work; and

**c.** Pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.

- **S. No 14** - Exemption to construction, erection, commissioning or installation of original works pertaining to an airport or port is being withdrawn. The other exemptions covered under S.No. 14 of notification No. 25/12-ST shall continue unchanged.

**Impact/comments:** Withdrawal of exemption pertaining to an airport or port is quite absurd as the service tax shall be collected from the government and paid back to the government. This is really a revenue neutral exercise. However, the contractor will now be able to take cenvat credit of certain input services which was otherwise not available to him earlier.

- **S. No. 16 -** Exemption to services provided by a performing artist in folk or classical art form of (i) music, or (ii) dance, or (iii) theater, will be limited only to such cases where amount charged is upto Rs 1, 00,000 for a performance (S. No 16 of notification No. 25/12-ST).

**Impact/comments:** This restriction of exemption upto Rs. 1 lac in case of artists is going to confuse both the artists as well as department. For example, suppose the total consideration in a particular year of an artist is Rs. 25 lacs. In case of one of his performance, he charged Rs. 2 lac. Now the department may take a view that he needs to take registration and pay service tax against performance of Rs. 2 lac. Whether the basic exemption limit of Rs. 10 lacs will apply only in cases where consideration charged is more than Rs 1 lac or the total consideration of the artist during the year will be taken into account (which in this case is Rs. 25 Lacs).

- **Sl. No 20 & 21 -** Exemption to transportation of food stuff by rail, or vessels or road will be limited to milk, salt & food grains including rice and pulses, flour. Transportation of agricultural produce is separately exempt, and this exemption would continue.

**Impact/comments:** Limiting the exemption only to milk, salt & food grains, will result in increase in the cost of other essential food items, again inviting inflationary trends.

- **Sl. No 29 -** Exemptions are being withdrawn on the following services:

  **a.** Services provided by a mutual fund agent to a mutual fund or assets management company,
  **b.** Distributor to a mutual fund or AMC,
  **c.** Selling or marketing agent of lottery ticket to a distributor.
  **d.** Departmentally run public telephone;
  **e.** Guaranteed public telephone operating only local calls;
  **f.** Service by way of making telephone calls from free telephone at airport and hospital where no bill is issued.

- **Sl. No 30 -** Consequent to imposition of Service Tax levy on service by way of manufacture of alcoholic liquor for human consumption, an amendment is being made in the entry at S. No. 30 of notification No. 25/12-ST to exclude carrying out of intermediate production process of alcoholic liquor for human consumption on job work from this entry. [ *This shall be effective from date to be notified by the Central Government after the enactment of the Finance Bill, 2015]*

## IV. Changes in Notification No. 26/2012-ST (Abatement Notification)

*[To be effective from 1st Day of April, 2015]*

**1.** Taxable value towards goods transport agency services has been enhanced from 25% to 30%. (Serial No. 7)

**2.** Taxable Value towards transport of goods in a vessel from one port in India to another has been enhanced to 40% from 30%.

**3.** Taxable value for transport of passengers by air, with or without accompanied in other than economy class has been increased to 60% from 40% (Serial No.5)

**4.** Abatement in case of 'Transport of goods by Rail' & 'Transport of passengers, with or without accompanied belongings by rail' shall be allowed on the condition that CENVAT on inputs, capital goods and input services has not been taken under the provisions of the CENVAT Credit Rules,2004.

**5.** Abatement is being withdrawn from services provided in relation to chit. Consequently, Service Tax shall be paid by the chit fund foremen on the full consideration received by way of fee, commission or any such amount. They would be entitled to take Cenvat Credit.

## V. Changes in Notification No. 30/2012-ST (Reverse Charge Mechanism)

*[To be effective from 1st Day of April, 2015]*

### 1. Changes in existing entries -

- Manpower supply and security services when provided by an individual, HUF, or partnership firm to a body corporate are being brought to **full reverse charge**. Presently, these are taxed under partial reverse charge mechanism.

### 2. New Services brought under reverse charge –

- Services provided or agreed to be provided by a mutual fund agent or distributor, to a mutual fund or asset management company, where in mutual fund or asset Management Company is liable for payment of service tax to the extent of 100%.

- Services provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent, wherein the Organizer is liable for service tax.

- Service provided or agreed to be provided by a person involving an aggregator in any manner wherein the recipient of the service is liable to pay service tax.

## VI. Changes in the Service Tax Rules,1994

**1. Rule 2(d)(i) -** in relation to service provided or agreed to be provided by a person involving an aggregator in any manner, the aggregator of the service or any of his representative office located in India, is being made liable to pay Service Tax. Definition of aggregator has also been inserted as follows: *'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' [This is effective from 1st March, 2015]*

**Impact/comments:** To bring clarity on the levy of service tax on certain formats in the e-commerce space, this change has been made. This would mean that cab services like Uber, which acts as a transport app service provider by online aggregation of luxury cab operators, and travel portals like TripAdvisor would now be taxed. The rules have been so framed that if the aggregator does not have any presence, including that by way of a representative, in such cases the aggregator shall have to appoint an agent who will have to pay the tax on behalf of the aggregator.

**2. Rule 4 -** Registration process for Service Tax has been simplified and amended vide Order No. 1/15-ST, dated 28.2.2015, effective from 1.3.2015. Following are the key instructions specified in the said order *[This is effective from 1st March, 2015]*:

- Requirement of PAN No. is mandatory for registration;
- Registration for single premises shall be granted within two days of filing the application.
- Applicant shall quote the email address and mobile number. Further, existing registrants who have not submitted this information are required to file an amendment application by 30-4-2015.
- Documentation required to be submitted along with registration certificate has also been specified.

**Impact/Comments:** This is a welcome change and a large number of assessees, both potential and existing, shall benefit. However, it remains to be seen how much of it is practically implemented at the ground level.

**3. Rule 4, 4A and 5 -** A provision for issuing digitally signed invoices is being added along with the option of maintaining of records in electronic form and their authentication by means of digital signatures. The conditions and procedure in this regard shall be specified by the CBEC.

**4. Rule 6(6A) -** Service tax self-assessed and declared in the return under section 87 is being omitted consequent to the amendment in section 73 for enabling such recovery. *[This shall be effective from the date of enactment of Finance Bill, 2015].*

**5. Rule 6 (7), 6(7A), 6(7B) and 6(7C) -** In respect of certain services the service provider has been allowed to pay service tax at an alternative rate subject to the conditions as prescribed under rule 6 (7), 6(7A), 6(7B) and 6(7C) of the Service Tax Rules, 1994. Consequent to the upward revision in Service Tax rate, the said alternative rates shall also be revised proportionately as tabulated below *[This shall be effective from the date of enactment of Finance Bill, 2015]*:

| Air Travel Agent | New Rate |
|---|---|
| Domestic bookings of passage for travel by air | 0.7% of the basic fare |
| International bookings of passage for travel by Air | 1.4% of the basic fare |

| Insurer Carrying on Life Insurance Business | New Rate |
|---|---|
| First year | **3.5%** of the gross amount of premium charged |
| Subsequent Year | **1.75%** of the gross amount of premium charged |

| Sale/purchase of foreign currency including money changing | New Rate |
|---|---|
| Upto Rs.100,000 | **0.14%** of the gross amount of currency exchanged Or **Rs.35** whichever is higher |
| Exceeding Rs.1,00,000 and upto Rs.10,00,000 | **Rs.140 + 0.07%** of the (gross amount of currency Exchanged - Rs.1,00,000) |
| Exceeding Rs.10,00,000 | **Rs.770 + 0.014%** of the (gross amount of currency Exchanged - Rs.10,00,000) Or Rs.7,000/- whichever is lower |

| Services of promotion, marketing or organising/assisting in organising lottery | New Rate |
|---|---|
| Where the guaranteed lottery prize payout is > 80% | **Rs.8,200/-** on every Rs.10 Lakh (or part of Rs.10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw. |
| Where the guaranteed lottery prize payout is < 80% | **Rs.12,800/-** on every Rs.10 Lakh (or part of Rs.10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw. |

## VII. Change in Cenvat Credit Rules, 2004

*[To be effective from 1st Day of March, 2015 unless otherwise specified]*

1. **Rule 4(7)** is being amended to allow Cenvat Credit of Service Tax paid under partial reverse charge by the service receiver without linking it to the payment to the service provider. *[This shall be effective from 1.04.2015]*.

2. **Rule 4** is being amended to provide that the period for taking Cenvat Credit is extended from six months from the date of invoice to **one year from the date of invoice**.

**Impact/Comments:** This much needed change has been made by the government after receiving representations from trade and industry that allowing only 6 months for taking Cenvat Credit was not practical.

3. **Rule 4** has been amended to provide for Cenvat credit in respect of receipt of inputs/ capital goods directly by job worker when such goods are sent directly on direction of manufacturer or the provider of output service.

4. **Rule 4(5)(a)** has been amended to provide for Cenvat credit on inputs even if inputs are directly sent to job worker. The goods sent to job worker can be moved to another job worker as well. However, it shall be ensure that the goods are received back by the manufacturer within 180 days from the date of sending such goods. In case the goods are sent to job worker premises without first receiving into factory by manufacturer, then 180 days shall be counted from date of receipt of goods by job worker.

5. **Rule 5** has been amended to provide that the 'Export goods' means any goods which are to be taken out of India to a place outside India for the purpose of claiming the refund.

**6.** **Rule 6** has been amended to provide that the exempted goods shall include even non-excisable goods and the value of invoice shall be considered for ascertaining the eligible/ineligible Cenvat credit.

**7.** **Rule 14** has been amended to provide for penal provisions even if Cenvat credit has been taken but not utilised. In Rule 14 it has been provided that all credits taken during a month shall be deemed to have been taken on the last day of the month and the utilisation thereof shall be deemed to have occurred in the following manner, namely: - (i) the opening balance of the month has been utilised first; (ii) credit admissible in terms of these rules taken during the month has been utilised next; (iii) credit inadmissible in terms of these rules taken during the month has been utilised thereafter.

**Impact:** The Hon'ble Supreme Court in the case of **Union of India & Ors. vs. M/S Ind-Swift Laboratories Ltd.** had held that that interest will be payable on irregular credit availed even not utilized. Subsequently, rule 14 was amended to substitute the word 'or' with 'and' w.e.f. 01.04.2012 making both irregular availment and utilisation necessary to attract interest and penalty. Now, again, rule 14 is being amended to provide that the opening balance of cenvat credit shall be automatically deemed to be utilised first. Hence, in cases where the cenvat has been taken but not utilised due to interpretational issues, the assessee shall not be able to plead that such Cenvat was only availed and not utilised. He will be liable to interest and penalty considering such availment of credit as irregular availment and utilisation.

## VIII. Changes through Notifications issued under powers given in the Finance Act, 1994

### 1. Advance Ruling [Section 96A (b) (ii)] (w.e.f. 01.03.2015)-

The facility of Advance Ruling is being extended to all resident firms by specifying such firms under section 96A (b) (iii) of the Finance Act, 1994. [Notification No. 9/2015 dated 1.03.2015].

## 2. Amendment in Notification No. 31/2012-ST (w.e.f 01.04.2015)

Goods transport agency service provided for transport of export goods by road from the place of removal to an inland container depot, a container freight station, a port or airport is exempt from Service Tax vide notification No. 31/12-ST dated 20.6.2012. Scope of this exemption is being widened to exempt such services when provided for transport of export goods by road from the place of removal to a land customs station (LCS).

## 3. Notification No. 42/12-ST dated 29.6.2012 rescinded

Existing exemption, to the service provided by a commission agent located outside India to an exporter located in India is being rescinded with immediate effect. This exemption has become redundant in view of the amendments made in law in the previous budget, in the definition of "intermediary" in the Place of Provision of Services Rules, making the place of provision of a service provided by such agents as outside the taxable territory.