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AMENDMENTS

APPLICABLE FOR NOVEMBER 2011 EXAMS

Notification No.85/2010 dated 22.11.2010

Increase in exemption limit for allowance granted to employees working in a transport system to meet their personal expenditure during the course of duty

Section 10(14)(ii) exempts any such allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides, or to compensate him for the increased cost of living as may be prescribed and to the extent as may be prescribed.

Rule 2BB(2) prescribes the allowances for the purposes of exemption under section 10(14)(ii). As per this rule, the exemption allowable in respect of any allowance granted to an employee working in any transport system to meet his personal expenditure during his duty performed in the course of running of such transport from one place to another place (provided he is not in receipt of daily allowance) is 70% of such allowance, subject to a maximum of ` 6,000 per month.

The monthly limit of ` 6,000 has been increased to ` 10,000 with retrospective effect from 1st September, 2008. Therefore, with effect from 1st September, 2008, the exemption would be 70% of such allowance, subject to a maximum of ` 10,000 per month.

Notification No.84/2010 dated 22.11.2010

Salaried persons entitled to act as Tax Return Preparers

In exercise of the powers conferred under section 139B(1), the CBDT had framed the Tax Return Preparer Scheme, 2006 for the purpose of enabling any specified class or classes of persons in preparing and furnishing their return of income. "Specified class or classes of persons" means any person, other than a company or a person, whose accounts are required to be audited under section 44AB or under any other law for the time being in force, who is required to furnish a return of income under the Act.

Paragraph 2(f) of the Tax Return Preparer Scheme, 2006 defining a Tax Return Preparer, specifically provided that a person who is in employment and income from which is chargeable under the head "Salaries" shall not be entitled to act as a Tax Return Preparer. This disqualification has now been

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removed by amending paragraph 2(f). Consequently, a salaried person is now eligible to act as a Tax Return Preparer.

Consequential amendment has been made in Paragraph 11(1)(xii), which provided for withdrawal of certificate given to the Tax Return Preparer in case he, after issue of Tax Return Preparer Certificate to him, takes up an employment, income from which is chargeable under the head "Salaries". Henceforth, taking up a salaried employment would not result in withdrawal of certificate given to the Tax Return Preparer.

However, it may be noted that as per section 139B(3) of the Income-tax Act, 1961, an employee of the "specified class or classes of persons" is not authorized to act as a Tax Return Preparer. A combined reading of section 139B(3) with the amended Tax Return Preparer Scheme, 2006 reveals that employees of companies and persons whose accounts are required to be audited under section 44AB or any other law for the time being in force, are eligible to act as Tax Return Preparers.

Notification No. 18/2011 dated 5.4.2011

Notification of return forms for A.Y.2011-12

The CBDT has notified the new income-tax return forms for the Assessment year 2011-12. Rule 12 of the Income-tax Rules, 1962 has been amended in respect of the following :-

(1) Reference to return of fringe benefits has been removed.

(2) Form Saral-II (ITR-1) has been substituted by the Form "SAHAJ" (ITR-1), which would be applicable for individuals, whose total income includes income chargeable under the head –
   (i) "Salaries" or income in the nature of family pension under section 57(iia); or
   (ii) "Income from house property", where the assessee does not own more than one house property and does not have any brought forward loss under the head; or
   (iii) "Income from other sources", except winnings from lottery or income from race horses.

(3) The return of income in case of a person being an individual and HUF deriving business income and such income is computed on presumptive basis under section 44AD and section 44AE to be in Form SUGAM (ITR-4S) and be verified in the manner indicated therein.

SAHAJ and SUGAM Forms notified by CBDT are the simplest, technology enabled and taxpayer friendly return forms. These have been designed to facilitate error free and faster digitization. This is expected to curtail processing cycle and expedite issue of refunds.

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Notification No. 24/2011 issued in supersession of Notification No. 69/2010 dated 26.8.2010

9.5% notified as the interest rate on RPF, the interest in excess of which would be taxable as salary

Rule 6 of Part A of the Fourth Schedule to the Income-tax Act, 1961, provides, inter alia, that interest credited on the balance to the credit of an employee participating in a recognized provident fund in so far as it is allowed at a rate exceeding such rate notified by the Central Government, shall be deemed to have been received by the employee in the relevant previous year and shall be included in his total income.

Accordingly, the Central Government has, vide this notification, notified w.e.f. 1st September, 2010, in exercise of the powers conferred by Rule 6, 9.5% as the rate of interest on employer's annual contributions in a recognized provident fund. In effect, the Notification No. 69/2010 dated 26.8.2010, notifying the rate of interest as 8.5% w.e.f. 1st September, 2010, has been superseded by this notification.

This implies that interest credited on the balance to the credit of the employee in excess of 9.5% (and not 8.5% as earlier notified to be effective from 1.9.2010) shall be deemed to have been received by the employee in the previous year and shall be included in the total income of the employee. Prior to 1.9.2010, in any case, the interest credited in excess of 9.5% was deemed to be the income of the employee.

Therefore, the position of law as it stands now after issue of this notification is that irrespective of the date of credit of interest, whether before or on or after 1.9.2010, only the interest credited on the balance to the credit of the employee in excess of 9.5% shall be included in the total income of the employee. For example, if an employer credits interest @10% for the P.Y.2010-11 on the balance standing to the credit of each employee, then the excess interest of 0.5% (10% - 9.5%) would be included in the total income of the employee for that year.

NOTE: Although the abovesaid amendment is applicable for AY 2011-12 but issued on May 13, 2011, which is not covered by CA Institute of guideline stating amendments issued 6 months prior to month of examination are relevant for exams. In view of the same it is advisable to answer the question assuming interest rate @ 8.5% till 31-08-2010 and thereafter 9.5%. Further, give a note at the end of your answer stating the amendment & impact thereof.

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Exemption to packaged or canned software from service tax on specified taxable service when excise/customs duty paid

Prior to amendment

The taxable service of providing the right to use the packaged/canned software, pre-packed in retail packages intended for single use has been exempted from the service tax under 'information technology software services' subject to the following conditions:-

1. the document providing the right to use such software is packed along with the software.
2. (a) In case of import: The importer has paid the custom duty on the entire amount received from the buyer.
   (b) In case of domestic production: The manufacturer/duplicator/the person holding the copyright to software has paid the excise duty on the entire amount received from the buyer.
3. the benefit under the following notifications has not been availed:-
   · Notification No. 17/2010 CE dated 27.02.2010
   · Notification No. 31/2010 Cus dated 27.02.2010
   [Notification No. 02/2010 ST dated 27.02.2010 and Notification No. 17/2010 ST dated 27.02.2010]

Amendment made by Notification No. 51-53/2010-S.T. dated 21-12-2010

Notification No. 02/2010 and 17/2010 have been rescinded by Notification No. 51/2010 and 52/2010 respectively. Further, Notification No. 53/2010-S.T. has been issued to exempt the service of providing the right to use the packaged or canned software (hereinafter referred to as 'said goods') under 'information technology software services' from the whole of service tax, subject to the condition that-

(i) the value of the said goods domestically produced/imported, for the purposes of excise duty or countervailing duty (if imported) has been determined on the basis of MRP valuation (i.e. under section 4A of the Central Excise Act, 1944) and

(ii) (a) In case of domestic production: the appropriate duties of excise on such value have been paid by the manufacturer, duplicator or the person holding the copyright to such software, as the case may be, in respect of software manufactured in India; or
(b) In case of import: the appropriate duties of customs including the additional duty of customs on such value, have been paid by the importer in respect of software which has been imported into India.

(iii) a declaration made by the service provider on the invoice relating to such service that no amount in excess of the retail sale price declared on the said goods has been recovered from the customer.

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Meaning of important terms

(i) Appropriate duties of excise

It means the duties of excise leviable under section 3 of the Central Excise Act, 1944 and a notification, for the time being in force, issued in accordance with the provision of sub-section (1) of section 5A of the said Central Excise Act; and

(ii) Appropriate duties of customs

It means the duties of customs leviable under section 12 of the Customs Act, 1962 and any of the provisions of the Customs Tariff Act, 1975 and a notification, for the time being in force, issued in accordance with the provision of section 25(1) of the said Customs Act.

Withdrawal of exemption to the practicing Chartered Accountant, practicing Company Secretary and practicing Cost Accountant representing the client before any statutory authority in the course of proceedings initiated under any law

Prior to amendment

Earlier, the taxable services provided or to be provided by a practicing Chartered Accountant/ practicing Company Secretary/ practicing Cost Accountant in his professional capacity, to a client, relating to representing the client before any statutory authority in the course of proceedings initiated under any law for the time being in force, by way of issue of notice, were exempt from the whole of service tax leviable thereon vide Notification No. 25/2006 ST dated 13.07.2006.

Amendment made by Notification No.32/2011—ST dated 25.04.2011

With effect from 01.05.2011, the said exemption stands withdrawn. It implies that the representational services provided by practicing Chartered Accountants, practicing Cost Accountants and practicing Companies Secretaries are liable to service tax.

NOTE: This amendment is effective from May 1, 2011. In case of numerical question you are advised to answer the questions on the basis of old provision i.e. services of CA representing client is exempt from service tax. In case of theory questions, state both the provisions with effective date.

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Exemption to preschool coaching and training and coaching leading to grant of a certificate/diploma/degree/educational qualification recognised by any law

With effect from 01.05.2011, the following services provided by any commercial coaching or training centre have been exempted from service tax:-

(i) any preschool coaching and training;

(ii) any coaching or training leading to grant of a certificate or diploma or degree or any educational qualification which is recognised by any law for the time being in force.

[Notification No. 33/2011 ST dated 25.04.2011]

NOTE: This amendment is effective from May 1, 2011. In case of numerical question you are advised to answer the questions on the basis of old provision In case of theory questions, state both the provisions with effective date.

Determination of value of service in relation to money changing [Rule 2A]

Rule 2B inserted after rule 2A provides the manner of determination of the value of taxable service for the banking and other financial services so far as it pertains to purchase or sale of foreign currency, including money changing. The value of service shall be determined as follows:-

(a) For a currency, when exchanged from, or to, Indian Rupees (INR)

For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency.

Example I: US$ 1,000 are sold by a customer at the rate of Rs. 45 per US$.

RBI reference rate for US$ is Rs. 45.50 for that day.

Value of taxable service= (RBI reference rate for \$ – Selling rate for \$) × Total units

= Rs. (45.50 - 45) × 1,000

= Rs. 0.50 × 1,000

The taxable value shall be Rs. 500.

Example II: INR 70,000 is changed into Great Britain Pound (GBP) and the exchange rate offered is Rs. 70, thereby giving GBP 1000.

RBI reference rate for that day for GBP is Rs. 69.

The taxable value shall be Rs. 1,000.

(b) Where the RBI reference rate for a currency is not available

Where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money.

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(c) Where neither of the currencies exchanged is Indian Rupee
Where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.
The aforementioned amendment shall come into force on 01.04.2011.
[Notification No. 02/2011-ST dated 01.03.2011 as amended by Notification No. 24/2011 dated 31.03.2011]

Value of taxable service for the telecommunication service [Explanation to rule 5(1)]

Following explanation to rule 5(1) has been inserted vide Notification No. 02/2011-ST dated 01.03.2011 to provide clarification regarding the value of taxable service under telecommunication service:-
For the removal of doubts, it is hereby clarified that for the telecommunication service [Section 65(105)(zzzx)], the value of the taxable service shall be the gross amount paid by the person to whom telecom service is provided by the telegraph authority.

Clarification
In this regard, DOF No. 334/3/2011-TRU dated 28.02.2011 clarifies that in case of service provided by way of recharge coupons or prepaid cards or the like, the value shall be the gross amount charged from the subscriber or the ultimate user of the service and not the amount paid by the distributor or any such intermediary to the telegraph authority.

Excess payment of service tax [Sub-rule (4B)]

Prior to amendment

In case the service provider has made excess payment, the same may be utilized for the payment of service tax for the subsequent month liability subject to certain conditions as prescribed under various clauses of sub-rule (4B) of rule 6.
Clause (iii) of the said sub-rule stipulates that the adjustment of excess amount paid shall be subject to maximum of Rs. 1,00,000/- for a relevant month or quarter, as the case may be, in cases where the excess payment is not due to delayed receipt of details of payments towards taxable services.

Amendment made by Notification No. 03/2011-ST dated 01.03.2011

With effect from 01.04.2011, the aforesaid limit of Rs. 1,00,000 has been increased to Rs. 2,00,000.

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Recovery of the amount of service tax short paid/not paid under self-assessment [Sub-rule (6A)]

With effect from 01.04.2011, sub-rule (6A) has been inserted vide Notification No. 03/2011-ST dated 01.03.2011 which provides as follows:-
Where an amount of service tax payable has been self-assessed under sub-section (1) of section 70 of the Act, but not paid, either in full or part, the same, shall be recoverable alongwith interest in the manner prescribed under section 87 of the Act.

Special rate of service tax in case of sale/purchase of foreign currency including money changing amended [Sub-rule (7B)]

Prior to amendment

Sub-rule (7B) to rule 6 provided that person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, provided by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorized money changer, referred to in section 65(105)(zm) and section 65(105)(zzk) as amended had the option to pay an amount calculated at the rate of 0.25% of the gross amount of currency exchanged towards discharge of his service tax liability instead of paying service tax @ 10%.
However, such option shall not be available in cases where the consideration for the service provided or to be provided is shown separately in the invoice, bill or, as the case may be, challan issued by the service provider [Proviso to sub-rule (7B)].

Amendment made by Notification No. 26/2011-ST dated 31.03.2011

With effect from 01.04.2011, sub-rule (7B) to rule 6 has been amended to provide as follows:-
Person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, provided by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorized money changer, referred to in section 65(105)(zm) and section 65(105)(zzk) as amended had the option to pay an amount at the following rates instead of paying service tax @ 10%:-

S.No.	For an amount	Service tax shall be calculated at the rate of
1.	Upto Rs. 100,000	0.1 % of the gross amount of currency exchanged or Rs. 25 whichever is higher
2.	Exceeding Rs. 1,00,000 and upto Rs. 10,00,000	Rs. 100 + 0.05 % of the gross amount of currency exchanged
3.	Exceeding Rs. 10,00,000	Rs. 550 + 0.01 % of the gross amount of currency exchanged or Rs. 5,000 whichever is lower

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However, the person providing the service shall exercise such option for a financial year and such option shall not be withdrawn during the remaining part of that financial year [Proviso to sub-rule (7B)].

Special rate of service tax leviable on life insurance increased from 1% to 1.5% [Sub-rule (7A)]

Prior to amendment

An insurer carrying on life insurance business liable for paying the service tax has the option to pay an amount calculated @ 1% of the gross amount of premium charged by such insurer towards the discharge of his service tax liability instead of paying service tax@ 10%.
Such option was not available in cases where:-
· the entire premium paid by the policy holder is only towards risk cover in life insurance; or
· the part of the premium payable towards risk cover in life insurance is shown separately in any of the documents issued by the insurer to the policy holder.

Amendment made by Notification No. 35/2011 ST dated 25.04.2011

With effect from 01.05.2011, the insurer carrying on life insurance business would have the option to pay service tax on the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service. In all other cases, the insurer may pay service tax @ 1.5% of the gross amount of premium charged from a policy holder.
However, such option would not be available if the entire premium is only towards risk cover in life insurance.

Service tax exemption applies to Education Cess and Secondary and Higher Education Cess as well

It has been clarified that since Education Cess and Secondary and Higher Education Cess are levied and collected as percentage of service tax, when and wherever service tax is NIL by virtue of exemption, Education Cess and Secondary and Higher Education Cess would also be NIL.
According to section 95(1) of the Finance (No.2) Act, 2004 and section 140(1) of the Finance Act, 2007, Education Cess and Secondary and Higher Education Cess are leviable and collected as service tax, and when whole of service tax is exempt, the same applies to education cess and secondary and higher education cess as well.
[Circular No. 134/3/2011 ST dated 08.04.2011]

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Rate of interest for amount collected of service tax in excess increased by 5% per annum [Section 73B]

Earlier, the rate of interest notified by the Central Government under section 73B was 13% per annum vide Notification No. 8/2006 dated 19.04.2006.

Amendment made by Notification No. 15/2011 dated 01.03.2011

With effect from 01.04.2011, the said notification has been amended to increase the rate of interest to 18% per annum.

Rate of interest for delayed payment of service tax increased by 5% per annum [Section 75]

Earlier, the rate of interest notified by the Central Government under section 75 was 13% per annum vide Notification No. 26/2004 dated 10.09.2004.

Amendment made by Notification No. 14/2011 dated 01.03.2011

With effect from 01.04.2011, the said notification has been amended to increase the rate of interest to 18% per annum.