TDS ON SERVICETAX TO BE DEDUCTED ON ALL PAYMENTS EXPCEPT RENT

As per Indian tax laws, at the time of making an payment the receiver of service is required to do 2 things,

a) **Pay service tax on services received.**
b) **Deduct TDS on payment made**

However a confusion which has arose is whether TDS on service tax is also liable to be deducted or TDS on service tax is not liable to be deducted. In other wise, should TDS be deducted on the amount inclusive of service tax or should TDS be deducted on amount exclusive of service tax.

The above confusion can be explained with the help of an example. For eg.,

Value of services (excluding service tax)	**Rs.1,00,000**
Service tax on Rs.1,00,000 @ 12.36%	**Rs.12,360**
Total	**Rs.1,12,360**
TDS	**??????**

TDS is to be deducted at the time of making the payment. However the confusion here is that whether TDS should be deducted on Rs.1,00,000(Amount exclusive of ST) or Rs.1,12,360(Amount inclusive of ST).

TDS on Service tax-Logical explanation

Logically speaking, TDS is to be deducted from income of the recipient. Service tax is not an Income of the service provider as the service provider would be collecting service tax from the service receiver and depositing this amount with the govt. So, the service tax collected is not an income of the service provider and the service provider is merely acting as an agent of Govt.

So, the Logically TDS should not be deducted from the amount inclusive of Service tax (i.e.,Rs.1,12,360) and should be deducted on the amount exclusive of service tax(i.e., Rs.1,00,000)

TDS on Service tax-Govt. view point

The CBDT vide Circular no.4/2008 dated 08-05-2008, announced that at the time of payment of rent, TDS should be deducted on the amount exclusive of service tax as the landlord is only acting as a collecting agent for Govt. for collecting service tax. Therefore TDS on rent should be deducted on the amount without including service tax.

Based on the view point of the CBDT, the whole Industry stopped deducting TDS on service tax and started deducting TDS exclusive of service tax.

However, 2 months later vide Letter F.No.275/73/2007-IT(B) dated 30-06-2008. It was announced that the exemption from deducting TDS on Service tax is only under section 194I for the rent paid. And therefore TDS on service tax is liable to be deducted on all payments other than for rent paid.

Deduction of TDS on service tax amount may be logically invalid but sadly the view point of the Govt. is that TDS on service tax should also be deducted (Excl. Rent) and we all will have to follow the same as this is the law of land.

Regards,

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C/o. Ca club India