Income Tax

Capital Gains

1. Section 47 – Exempt transfers

(xiii) Any transfer by way of conversion of bonds mentioned in section 115AC into shares or debentures of any company.

(xviii) any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government

2. Reverse Mortgage

2.1 Section 10(43) – Exemption of receipts from reverse mortgage

Any amount received by an individual as a loan, either in lump sum or in instalment, in a transaction of reverse mortgage

3. Cost Inflation Index

8-9
582

4. Section 49(2A) – Cost in case of conversion of Securities

Where the capital asset, being a share or debenture of a company, became the property of the assessee by way of conversion of debenture/bonds into shares, conversion of deposit certificate into debenture as referred to in section 47(x) / 47(xa), the cost of acquisition of the asset to the assessee shall be deemed to be that part of the cost of debenture, debenture-stock, bond or deposit certificate in relation to which such asset is acquired by the assessee

5. Section 111A – Tax on Short term capital gains in certain cases

(i) The provisions of this section shall apply for computation of tax on short term capital gain arising from the transfer of an equity share in a company or a unit of an equity oriented fund**Error! Bookmark not defined.**. If the transaction of sale of such equity share or unit has suffered securities transaction tax, then the tax payable on the total income will be aggregate of:

(a) Income tax payable on the total income as reduced by such STCG, had the total income so reduced, been his total income.

(b) Income tax @ 15% on such STCG.

Business Profession

1. Section 43(6) – Calculation of the WDV

Adjustment of actual cost where income was exempt from tax

If an assessee was not required to compute his total income for the purposes of this Act for any previous year or years preceding the relevant previous year:

(i) the actual cost of an asset shall be adjusted by the amount attributable to the revaluation of such asset, if any, in the books of account;

(ii) the total amount of depreciation on such asset, provided in the books of account of the assessee in respect of such previous year or years preceding the relevant previous year shall be deemed to be the depreciation actually allowed; and

(iii) the depreciation actually allowed under point (ii) shall be adjusted by the amount of depreciation attributable to such revaluation of the asset.

2. Section 35 (1)(iia) – Deduction for donation for Scientific Research to a Company

If any sum is paid to a Company which is to be used by it for scientific research and fulfills the following conditions, then weighted deduction of 125% of the sum paid would be allowed.

(i) The company is registered in India and has as its main object the scientific research and development,

(ii) Is approved by the prescribed authority in the prescribed manner, and fulfils such other conditions as may be prescribed.

A company which has been approved for the purposes of section 35(1)(iia) would not be eligible to claim deduction under section 35(2AB).

3. Section 35D - Amortisation of preliminary expenses

(ii) The prescribed expenses must be incurred before the commencement of business. However, in case of extension of an existing undertaking or setting up of new undertaking such expenditure may be incurred after commencement of business.

4. Section 36(1)(xii) – Miscellaneous expenditure by Corporations

Any expenditure (not being in the nature of capital expenditure) incurred by a corporation or a body corporate, by whatever name called, constituted or established by a Central, State or Provincial Act for the objects and purposes authorised by the Act under which such corporation or body corporate was constituted or established. The corporation or the body corporate should have been notified by the Central Government for the purpose.

The National Dairy Development Board established for the development of dairy and other agriculture based allied industries and biological has been notified, subject to the following conditions, namely :

(i) The expenditure, claimed as deductible under the Income-tax Act, 1961 is incurred for the objects and purposes authorized by the National Dairy Development Board;

(ii) Such expenditure is not in the nature of capital expenditure;

(iii) Such expenditure is not eligible for deduction under any other provision of the Act; and

(iv) A separate account of the expenditure claimed under the said clause is maintained by the National Dairy Development Board.

5. Section 36(1)(xv) / (xvi) – Deduction for STT / CTT

The STT / CTT paid by the assessee in respect of the taxable securities / commodities transactions entered into in the course of his business during the previous year. The income arising from such taxable securities / commodities transactions should be included in the income under the head Profits and gains of business or profession.

6. Section 40(a) - Expenses specifically disallowed in case of all assessee

(ii) Any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source would be disallowed, if tax has not been deducted or, after deduction, has not been paid:

(a) in a case where the tax was deductible and was so deducted in March, on or before the due date specified for filing the return of income in section 139(1); or

(b) in any other case, on or before 31 March of the previous year;

However, if tax has been deducted in any subsequent year, or has been deducted in the month of March but paid after the return filing date or deducted during any other month of the previous year but paid after 31 March of the previous year, the expenditure shall be allowed as a deduction in such subsequent previous year in which such tax has been paid.

(iii) The provision disallowing STT has been withdrawn. Section 36(1)(xv) has been introduced w.e.f. AY 2009-10 for allowance of STT and CTT.

7. Section 40A(3) - Payment in cash exceeding Rs. 20,000

(i) If the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque or account payee bank draft, exceeds Rs. 20,000, no deduction shall be allowed in respect of such expenditure.

If an allowance has been made on accrual basis for any expenditure and subsequently during any previous year the assessee makes payment in respect thereof, otherwise than by an account payee cheque or account payee bank draft, the payment so made shall be deemed to be business income of the subsequent year if the payment or aggregate of payments made to a person in a day, exceeds Rs. 20,000.

However, no disallowance shall be made and no payment shall be deemed business income where a payment or aggregate of payments made to a person in a day, otherwise than account payee cheque, exceeds Rs. 20,000, in the circumstances mentioned in Rule 6DD, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors. Rule 6DD provides that the following categories of payments would not attract the provisions of section 40A(3)

(*a*) where the payment is made to

(*i*) the RBI, the SBI, any co-operative bank or land mortgage bank;

(*iv*) any primary agricultural credit society or any primary credit society;

(*v*) the LIC.

(*b*) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender;

(*c*) where the payment is made by

(*i*) any letter of credit arrangements through a bank, (*ii*) a mail or telegraphic transfer through a bank;

(*iii*) a book adjustment from any account in a bank to any other account in that or any other bank;

(*iv*) a bill of exchange made payable only to a bank;

(*v*) the use of electronic clearing system through a bank account;

(*vi*) a credit card;

(*vii*) a debit card.

(*d*) where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee;

(*e*) where the payment is made for the purchase of

(*i*) agricultural or forest produce; or

(*ii*) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or

(*iii*) fish or fish products; or

(*iv*) the products of horticulture or apiculture, to the cultivator, grower or producer of such articles, produce or products;

(*f*) where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products;

(*g*) where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;

(*h*) where any payment is made to an employee of the assessee or the heir of any such employee, on or in connection with the retirement, retrenchment, resignation, discharge or death of such employee, on account of gratuity,' retrenchment compensation or similar terminal benefit and the aggregate of such sums payable to the employee or his heir does not exceed fifty thousand rupees;

(*i*) where the payment is made by an assessee by way of salary to his employee after deducting the income-tax from salary in accordance with the provisions of section 192 of the Act, and when such employee

(*i*) is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship and

(*ii*) does not maintain any account in any bank at such place or ship;

(*j*) where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;

(*k*) where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person;

(*1*) where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.

8. Section 44 AB - Audit of accounts of certain persons

(i) The assessee shall get his accounts of the P.Y. audited by, an accountant and furnish the same with audit report within 30th September of the A.Y.

Assessment Procedure

1. Section 139(1) Explanation : Due dates for Return

Assessee	Due date
Company Assessee	30th September of A.Y.
Non-company assessee whose accounts are to be audited under any law or in case of co-operative society or in case of a working partner of a firm whose accounts are required to be audited under any law	30th September of A.Y.
Any other assessee	31st July of A.Y.

2. Section 139(9) - Defective Return

If the AO considers that the return filed by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within 15 days from the date of such intimation or within such extended period as may be allowed by the AO

If the defect is not rectified within the aforesaid period, the return shall be considered as an invalid return and accordingly the assessee will be deemed to have furnished no return. However, after the expiry of the aforesaid period but before the assessment is made, if the assessee rectifies the defect, the AO is empowered to condone the delay. In that case return will be treated as a valid return.

According to the Explanation given to 139(9) in the following cases return shall be considered as defective return. It is to be noted the given circumstances are only illustrative in nature and not exhaustive.

(i) Annexures, Statements and columns in the return form for each head of income or computation, GTI and Total Income is not filled up.

(ii) Return not accompanied by TDS or TCS certificate / statement for tax deducted or collected at source, Advance Tax and Self Assessment tax challan. However, if TDS / TCS certificate is not accompanied with the return although an amount has been claimed as TDS TCS, the return shall not be regarded as defective where such TDS certificate could not be furnished for the reason it was not provided by the payer and such certificate is produced within 2 years from the end of the relevant assessment year as referred to in section 155(14)

3. Section 140A - Self Assessment

The assessee is required to:

(i) Calculate tax payable on the basis of the return to be furnished u/s 115WD/115WH/139/142/148/153A after taking into account the amount of tax, if any, already paid under any provision of Act, TDS, TCS, relief under section 90 or 91 or 90A or 115JAA.

The following categories of taxpayers are mandatorily required to electronically pay taxes

(i) a company; and

(ii) a person (other than a company), to whom provisions of section 44AB of the Income-tax Act, 1961 are applicable.

The payment of tax electronically has been defined to mean payment of tax by way of:

(i) internet banking facility of the authorized bank; or

(ii) credit or debit cards.

An assessee can make electronic payment of taxes also from the account of any other person. However, the challan for making such payment must clearly indicate the Permanent Account Number (PAN) of the assessee on whose behalf the payment is made. It is also clarified this would also apply to TDS and TCS, Interest and Penalty.

4. Section 142(2A) - Special Audit

(v) U/s 142(2A) the AO is empowered to direct an assessee to get his accounts audited by a C.A. nominated by the CCIT or CIT. Such power can be exercised only with the prior approval of CCIT or CIT. The fact that accounts of the assessee is already been audited, shall not stand in the way of making such order.

The expenses of, and incidental to, such audit (including the remuneration of the Accountant) shall be determined by the CCIT in accordance with such guidelines as may be prescribed and the expenses so determined shall be paid by the Central Government. The report of such audit shall be furnished by the assessee to the AO in Form 6B within the period specified or extended on application or suo-moto. However, the total period taken should not exceed 180 days from the date of order. Failure to comply with direction u/s 142(2A) may result in best judgement assessment u/s 144, penalty u/s 271(1)(b) and or prosecution u/s 276D.

5. Section 143(1) – Summary Assessment

(i) Where a return has been made under section 139, or in response to a notice under section 142(1), such return shall be processed in the following manner, namely:

(a) the total income or loss shall be computed after making the following adjustments:

(i) any arithmetical error in the return; or

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return.

(iii) An incorrect claim apparent from any information in the return shall mean a claim, on the basis of an entry, in the return:

A. of an item, which is inconsistent with another entry of the same or some other item in such return;

B. in respect of which the information required to be furnished to substantiate such entry has not been so furnished; or

C. in respect of a deduction or value of fringe benefits, where such deduction or value exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction.

(b) the tax and interest, if any, shall be computed on the basis of the total income computed under clause (a);

(c) The amount computed under clause (b) shall be adjusted by any TDS / TCS, any advance tax paid, any relief allowable under section 90 / 90A / 91, rebate allowable, any self assessment tax and any amount paid otherwise by way of tax or interest and thereupon the sum payable by, or the amount of refund due to, the assessee shall be determined;

(d) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and

(e) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:

(ii) An intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax or interest is payable by, or no refund is due to, him;

(iii) No such intimation can be sent after the expiry of 1 year from the end of the FY in which the return was made.

(iv) In cases where no sum is payable or refundable and where no adjustment has been made, the acknowledgement of the return shall be deemed to be the intimation.

6. Section 143(2) - Service of notice for Regular assessment

(i) An AO is required to serve a notice u/s 143(2) to an assessee in a case where a return has been filed u/s 139 or in response to a notice u/s 142(1), if he considers it necessary or expedient to ensure that assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner. This notice requires the assessee, on specified date, either to attend his office or to produce or cause to be produced there, any evidence on which he may rely in support of the return.

(ii) The notice has to be served on the assessee within 6 months from the end of the financial year in which the return is filed.

7. Section 147 - Income Escaping Assessment

If the AO has reason to believe that any income chargeable to tax has escaped assessment, he may assess or reassess such income, other than the income involving matters which are the subject-matter of any appeal or revision, which is chargeable to tax and has escaped assessment.

8. Section 149 - Time Limit for Issue of 148 Notice

Upto 4 years	4 – 6 years
Assessment can be : (i) Re-opened only by an AO of the rank of AC/DC with the prior approval of Jt. CIT Section 151**Error! Bookmark not defined.**. (ii) Re-opened whatever be the amount of income escaping assessment.	Assessment can be : (i) Re-opened only by an AO of the rank of AC/DC with the prior approval of CIT or CCIT. Section 151. (ii) Re-opened only if, the income which has escaped assessment is Rs. 100,000 or more for that year.

The AO in terms of section 151, prior to issue of notice under section 148 is required to obtain approval from the JCIT, CIT or the CCIT as the case may be. It is now clarified that the JCIT, CIT or the CCIT being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself.

9. Section 156 - Notice of Demand

(i) When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed, the AO shall serve upon the assessee a notice of demand, specifying the sum so payable.

If any sum is payable by the assessee under section 143(1), the intimation shall be deemed to be a notice of demand

10. Section 153 – Time limit for completion of assessment

(vii) In computing the period of limitation the following period has to be excluded :

(a) Time taken in reopening the proceeding or giving an opportunity to the assessee u/s 129.

(b) The period during which the assessment proceeding is stayed by an order or injunction of Court.

(c) The period commencing from the date on which the AO intimates the Central Government or the prescribed authority, the contravention by the scientific research association, news agency, association or institution or fund or trust and the trade union or association and ending with the date on which the order withdrawing the approval or rescinding the notification, is received by the AO.

(d) The period starting from the date on which the AO directs the assessee to get his accounts audited u/s 142(2A) and ending with the last date on which the assessee is required to furnish a report of such audit.

(e) The period (not exceeding 60 days) starting from the date on which the AO received the declaration u/s 158A(1) [repetitive appeals] and ending with the date on which the order u/s 158A(3) is made.

(f) If an application is made before I.T. Settlement Commission u/s 245C is rejected or not allowed to be proceeded with by the Commission, the period starting from the date on which such application is made and ending with the date on which the order of rejection u/s 245D(1) is received by CIT.

(g) The period commencing from the date on which an application is made before the Authority for Advance Rulings ending with the date on which the order rejecting the application is received by the Commissioner; or

(h) The period commencing from the date on which an application is made before the Authority for Advance Rulings and ending with the date on which the advance ruling pronounced by it is received by the Commissioner.

(viii) If after extending the time, the period available to the AO for making an order is less than 60 days, then the remaining period shall be extended to 60 days.

If a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section to the AO for making an order of assessment, reassessment or re-computation, after the exclusion of the period under section 245HA(4), shall be not less than 1 year. If such period of limitation is less than 1 year, it shall be deemed to have been extended to 1 year. Further, this provision shall also apply for the purposes of determining the period of limitation under sections 149, 153B, 154, 155, and for the purposes of payment of interest on refund under section 244A

11. Section 251 - Powers of CIT(A)

The CIT(A) shall fix up a date for hearing of the appeal and send notice to the assessee requiring him or his authorised representative to be present for hearing of the case. The CIT(A), where it is possible, may hear and decide such appeal within a period of one year from the end of the F.Y. in which such appeal is filed before him and shall pass necessary orders u/s 250. He has the following powers :

(i) In an appeal against an assessment order, he may confirm, reduce, increase or annul the assessment.

(ii) In an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment.

12. Section 268A - Filing of appeal or application for reference by income-tax authority

(i) Pursuant to a direction by the CBDT, an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, it shall not preclude such authority from filing an appeal or application for reference on the same issue in the case of:

(a) the same assessee for any other assessment year; or

(b) any other assessee for the same or any other assessment year.

(ii) Notwithstanding that no appeal or application for reference has been filed by an income-tax authority pursuant to the direction of the CBDT, it shall not be lawful for an assessee, being a party in any appeal or reference, to contend that the income-tax authority has concurred in the decision on the disputed issue by not filing an appeal or application for reference in any case.

13. Orders of ITAT

(i) The ITAT after giving both the parties reasonable opportunity of being heard shall pass such order u/S 254 as it thinks fit. On all questions of facts, the order passed u/s 254 by the ITAT on appeal shall be final and binding on the assessee and the department.

(ii) Where a stay order has been passed, the ITAT shall dispose off the appeal within 180 days from the date of such order.

If such appeal is not so disposed of within 180 days, the Appellate Tribunal may, on an application made in this behalf by the assessee and on being satisfied that the delay in disposing of the appeal is not attributable to the assessee, extend the period of stay, or pass an order of stay for a further period or periods as it thinks fit. However, that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed 365 days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed.

If such appeal is not so disposed of within the period allowed or extended, the order of stay shall stand vacated after the expiry of such period or periods.

(iii) If such appeal is not so disposed of within 180 days or within the extended period which shall not, in any case, exceed 365 days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee.

Deductions

1. Section 80C – Deposits in tax savings scheme

(a) in an account under the Senior Citizens Savings Scheme Rules, 2004;

(b) a 5 year time deposit in an account under the Post Office Time Deposit Rules.

If any amount, including interest accrued thereon, is withdrawn by the assessee from his account under Senior Citizens Savings Scheme or Post Office Time Deposit, before the expiry of the period of 5 years from the date of its deposit, the amount so withdrawn shall be deemed to be the income of the previous year in which the amount is withdrawn and shall be liable to tax as income of such previous year.

However, the amount liable to tax shall not include the following:

(i) any amount of interest from the account under Senior Citizens Savings Scheme or Post Office Time Deposit, which has already been included in the total income;

(ii) any amount received by the nominee or legal heir of the assessee, on the death of such assessee. However, if any accrued interest, was not included in the total income of the assessee prior to the death, then it shall be taxable in the hands of the legal heir.

2. Section 80D - Deduction in respect of health insurance premia

(i) The benefit is available to an individual or a HUF.

(ii) If the assessee has paid any sum otherwise than by way of cash in the P.Y. out of his taxable income to effect or to keep in force an insurance, in case of an individual either on himself or his family and in case of a HUF on the health of any member of such HUF, shall be eligible for deduction.

(iii) The deduction shall be:

- In case of an individual, aggregate of the following:
  - (a) The amount paid for the health insurance of the assessee or his family as does not exceed in the aggregate Rs. 15,000;
  - (b) The amount paid for the health insurance of the parent or parents of the assessee as does not exceed in the aggregate Rs. 15,000.
- In case of a HUF the amount paid for the health insurance of any member of the HUF as does not exceed in the aggregate Rs. 15,000.

(iv) If the health insurance is taken on the lives of senior citizen[1], the deduction shall stand increased to Rs. 20,000.

[1] Senior citizen means an individual resident in India who is of the age of 65 years or more at any time during the relevant previous year.

3. Section 80 IB(9) - Refining of Mineral Oil

(i) The deduction is available to the following assessees:

- Undertaking engaged in the business of refining of mineral oil, on or after 1.10.98.
- To an undertaking engaged in the business of commercial production or refining of mineral oil, on or after 1.4.97. However, where the undertaking is located in North - Eastern Region, it has to begin Commercial Production before 1.4.97.

(ii) In case of an undertaking which begins refining of mineral oil on or after 1.4.2009, it has to fulfill the following conditions:

- it is wholly owned by a public sector company or any other company in which a public sector company or companies hold at least 49% of the voting rights;
- it is notified by the Central Government in this behalf by 31.5.2008; and
- it begins refining not later than the 31.3.2012.

(iii) The amount of deduction shall be 100% of the profits and gains from such business for a period of seven consecutive years beginning from the A.Y. relevant to the P.Y. in which the undertaking commences the commercial production or refining of mineral oil.

4. Section 80(11C) - Hospital in an area other than the excluded area Error! Bookmark not defined.

(i) Undertaking deriving profits from the business of operating and maintaining a hospital located anywhere in India other than the excluded area[2].

(ii) The hospital is constructed[3] and has started or starts operations between 1.4.2008 and 31.3.2013. The construction of the hospital is in accordance with the regulations or bye-laws of the local authority; and

(iii) The hospital has at least 100 beds for patients.

(iv) The amount of deduction shall be 100% of the profits and gains of such business, for a period of 5 consecutive assessment years.

(v) The assessee furnishes along with the return of income, a report of audit by an accountant, certifying that the deduction has been correctly claimed

5. Section 80ID Deduction in respect of profits and gains from business of hotels and convention centres in specified area.

(i) The deduction under this section is available to an assessee:

(a) engaged in the business of hotel[4] located in the specified area[5], if such hotel is constructed and starts functioning at any time during 1.4.2007 and 31.3.2010; or

(b) engaged in the business of building, owning and operating a convention centre, located in the specified area, if such convention centre is constructed at any time during 1.4.2007 and 31.3.2010.

(c) engaged in the business of hotel located in the specified district[6] having a World Heritage Site, if such hotel is constructed and has started or starts functioning at any time during the period 1.4.2008 to 31.3.2013.

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[2] Excluded area shall mean Greater Mumbai, Kolkata, Chennai, Hyderabad, Bangalore, Ahmedabad, Secunderabad, Delhi and the districts of Faridabad, Gurgaon, Gautam Budh Nagar, Ghaziabad, Gandhinagar.

[3] A hospital shall be deemed to have been constructed on the date on which a completion certificate in respect of such construction is issued by the local authority concerned.

[4] Hotel means a hotel of two-star, three-star or four-star category as classified by the Central Government;

[5] Specified area means the National Capital Territory of Delhi and the districts of Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad

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Determination of Book Profits

Book profit means the net profit (subject to adjustments as below) as shown in the P.L. Account for the relevant P.Y. prepared according to the provisions of Part II and III of the Schedule VI of the Companies Act.

Net Profit shall be increased by the following, if these have been debited to the P.L. Account :

(i) Income tax paid or payable and the provision therefore[7].

(viii) The amount of deferred tax and the provision therefore

Thereafter the following amounts shall be reduced from the net profit to arrive at the book profit :

(vi) The amount of deferred tax, if any such amount is credited to the profit and loss account**Error! Bookmark not defined.**.

Non Residents

Section 115AD - Tax on income from Bonds or Shares arising to foreign institutional investors. Purchased in foreign currency and listed in recognised stock exchange in India

The above Securities do not include units referred to in Section 115AB.

Nature of Income	Tax Rate
Income as STCG from such Securities covered by section 111A	15%
Income as STCG from such Securities (not covered by section 111A)	30%

Dividend Distribution Tax

1. Section 115-O – Tax on distributed profits of the Domestic companies Error! Bookmark not defined.

(i) This section overrides all other provisions of the Act. If for any assessment year, any amount is declared, distributed or paid by a domestic company by way of dividends (whether interim or otherwise) whether out of current or accumulated profits it shall pay an additional income-tax on the dividends (being called the Corporate Dividend Tax) at the rate of 15%.

For the purpose of calculating the CDT, the above said amount of Dividend declared, distributed or paid shall be reduced by the amount of dividend, if any, received by the distributing domestic company during the financial year. However, the following conditions have to be satisfied in this regards:

(a) such dividend is received from its subsidiary[8];

(b) the subsidiary has paid CDT on such dividend; and

(c) the domestic company is not a subsidiary of any other company.

However, the same amount of dividend shall not be taken into account for reduction more than once.

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[6] Specified districts means the following districts of the respective states Agra (UP), Jalgaon / Aurangabad (Maharashtra), Kancheepuram / Thanjavur / Nilgiri (Tamil Nadu), Puri (Orissa), Bharatpur (Rajasthan), Chhatarpur / Raisen / Bhopal (MP), Bellary (Karnataka), South 24 Parganas(excluding areas falling within the Kolkata / Darjeeling (WB), Chamoli (Uttarakhand), Gaya (Bihar), Panchamal (Gujarat), Kamrup / Goalpara / Nagaon (Assam), North Goa / South Goa (Goa)

[7] The amount of income-tax shall include CDT / IDT, any interest charged under this Act, Surcharge, Education Cess and Secondary and Higher Education Cess on income-tax.

[8] *A* company shall be a subsidiary, if other company holds more than 50% in nominal value of the equity share capital of the company.

TDS

1. Section 203AA - Furnishing of statement of tax deducted, etc.

(i) The NSDL, shall, by 31 July after the end of each financial year prepare and deliver to the payee a statement[9] in form 26AS specifying the amount of tax deducted or paid and other particulars.

(ii) The provisions for issuance of TDS certificate by the payer has been extended for the taxes deducted till 31.3.2010. Thus the provisions of section 203AA would be operative for taxes deducted on or after 1.4.2010.

2. Section 191 - Direct payment

Income in respect of which provision is not made for TDS at the time of payment, and in any case where TDS has not been effected, tax shall be payable by the assessee direct.

If any person, including the principal officer of a company who is required to effect TDS (including the employer paying tax on behalf of the employee u/s 192(1A)), does not deduct, or after so deducting fails to pay, or does not pay, the whole or any part of the tax, as required by or under this Act, and where the assessee has also failed to pay such tax directly, then, such person shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default, in respect of such tax.

3. Section 199 - Credit for Tax deducted

(i) Any TDS effected and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.

(ii) Any tax paid by the employer on non monetary perquisite in terms of section 192(1A) to the Central Government shall be treated as the tax paid on behalf of the relevant employee.

4. Section 201 : Consequence of failure to deduct or pay tax

If any person, including the principal officer of a company who is required to effect TDS (including the employer paying tax on behalf of the employee u/s 192(1A)), does not deduct, or after so deducting fails to pay, or does not pay, the whole or any part of the tax, as required by or under this Act, and where the assessee has also failed to pay such tax directly, then, such person shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default, in respect of such tax.

However, no penalty shall be charged under section 221 from such person, if the AO is satisfied that such person, had good and sufficient reasons for failure to deduct and pay such tax.

5. Section 193 - Interest on Securities

TDS not to be deducted in the following cases:

(i) any interest payable on any security issued by a company, where such security is in dematerialised form and is listed on a recognised stock exchange in India in accordance with SCRA.

6. Section 194C - Payment to Contractors and sub-contractors

(i) Any person responsible for paying any sum to any resident contractor for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and the contractee (Central/State Government, local authority, company, firm, corporation under any Act, or co-operative society, trust, society, university, individual, HUF or an AOP or a BOI whether incorporated or not) shall, deduct tax either at the time of credit of

[9] To be operative for taxes deducted on or after 1.4.1020. As section 203 for issuance of TDS certificate would be operative for taxes effected till 31.3.2010.

such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode whichever is earlier.

7. Section 194J

In relation to the sports activities of the following persons would be treated as Professional Services for the purpose of section 194J

(i) Sports Persons,

(ii) Umpires and Referees,

(iii) Coaches and Trainers,

(iv) Team Physicians and Physiotherapists,

(v) Event Managers,

(vi) Commentators,

(vii) Anchors and

(viii) Sports Columnists.

Search and Seizure

1. Section 292C - Presumption as to assets, books of account, etc

If any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 or survey under section 133A, it may, in any proceeding under this Act, be presumed:

(i) That such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) That the contents of such books of account and other documents are true; and

(iii) That the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

(iv) If any books of account, other documents or assets have been delivered to the requisitioning officer in terms of section 132A, then, the presumption shall apply as if such books of account, other documents or assets which had been taken into custody by any officer or authority under any law in force from the person(s) referred to in section 132A, had been found in the possession or control of that person in the course of a search under section 132.

2. Special Procedure for Assessment of Search Cases

1. Section 153A – Assessment in case of search or requisition

(vi) If any proceeding initiated or any order of assessment or reassessment made this section has been annulled in appeal or any other legal proceeding, the assessment or reassessment proceeding which has abated, shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. However, such revival shall cease to have effect, if such order of annulment is set aside - Section 153A(2).

(a) This provision overrides the provisions of section 153(1) prescribing the time limit for completion of assessment or re-assessment.

(b) Section 153(4) overrides all other provisions of section 153, 153A(2) and 153B(1). The order of assessment or reassessment, relating to any assessment year, which stands revived under section, shall be made within the following period whichever expires later:

(a) 1 year from the end of the month of such revival; or

(b) within the period specified for completion of assessment or re-assessment under section 153; or

(c) section 153B.

2. Section 153B - Time-limit for completion of assessment

(ii) In computing the period of limitation the following period has to be excluded:

The period commencing from the date of annulment of a proceeding or order of assessment or reassessment referred to in section 153A(2) till the date of the receipt of the order setting aside the order of such annulment, by the Commissioner.

Fringe Benefits

1. Section 115WB - Fringe benefits

(i) Fringe benefits means any consideration for employment provided by way of:

(a) any privilege, service, facility or amenity, directly or indirectly, provided by an employer, whether by way of reimbursement or otherwise, to his employees (including former employees);

(b) any free or concessional ticket provided by the employer for private journeys of his employees or their family members;

(c) any contribution by the employer to an approved superannuation fund for employees; and

(d) any specified security[10] or sweat[11] equity shares allotted or transferred, directly or indirectly, by the employer free of cost or at concessional rate to his employees (including former employee or employees).

(ii) The fringe benefits shall be deemed to have been provided by the employer to his employees, if the employer has, in the course of his business or profession (including any activity whether or not such activity is carried on with the object of deriving income, profits or gains) incurred any expense on, or made any payment for, the following purposes, namely:

(a) entertainment;

(b) provision of hospitality of every kind by the employer to any person, whether by way of provision of food or beverages or in any other manner and whether or not such provision is made by reason of any express or implied contract or custom or usage of trade. However, it shall not include:

A. any expenditure on, or payment for, food or beverages provided by the employer to his employees in office or factory;

B. any expenditure on or payment through paid vouchers which are not transferable and usable only at eating joints or outlets;

C. any expenditure on or payment through non-transferable pre-paid electronic meal card usable only at eating joints or outlets and which fulfils such other conditions as may be prescribed.

(iii) employees welfare. However, any of the following expenditures shall not be considered as expenditure for employees welfare:

(a) fulfil any statutory obligation; or

(b) mitigate occupational hazards; or

(c) provide first aid facilities in the hospital or dispensary run by the employer; or

(d) provide creche facility for the children of the employee; or

(e) sponsor a sportsman, being an employee; or

(f) organise sports events for employees.

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[10] Specified Security means the securities as defined in SCRA and, where employees' stock option has been granted under any plan or scheme therefore, includes the securities offered under such plan or scheme

[11] Sweat equity shares means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called

2. Section 115WC - Value of fringe benefits Error! Bookmark not defined.

(i) The value of fringe benefits shall be the aggregate of the following:

Sl No.	Expenditure on	Value of Fringe benefits
1	Free or concessional ticket for private journeys [115WB(1)(b)]	Cost at which the benefit is provided by the employer to the public as reduced by the amount, if any, paid or recovered from his employees. However, in a case where the expenses are included in any other following clause the balance of the total expenses shall be considered in this clause.
2	Specified security and sweat equity	The fair market value of the specified security or sweat equity shares, on the date on which the option[12] vests with the employee as reduced by the amount actually paid by, or recovered from, the employee in respect of such security or shares.
3	Contribution to any approved superannuation fund [115WB(1)(c)]	Amount of contribution, which exceeds Rs. 1 lakh in respect of each employee.
4	Entertainment 115WB(2)(A)	20% of expense
5	Hospitality (B)	20% of expense (5% if the employer is in the business of (a) hotel (b) carriage of passengers or goods by aircraft (c) carriage of passengers or goods by ship)
6	Conference (C)	20% of expense
7	Sales promotion including publicity (D)	20% of expense
8	Employees welfare (E)	20% of expense
9	Conveyance (F)	20% of expense (5% if the employer is in the business of (a) construction (b) manufacture or production of pharmaceuticals / software)
10	Hotel, boarding and lodging (G)	20% of expense (5% if the employer is in the business of (a) manufacture or production of pharmaceuticals / software (b) carriage of passengers or goods by aircraft (c) carriage of passengers or goods by ship)
11	Repair, running, fuel and maintenance of motor cars (including depreciation) (H)	20% of expense (5% for transport company)
12	Repair, running, fuel and maintenance	20% of expense (Nil for airlines)

12 Option means a right but not an obligation granted to an employee to apply for the specified security or sweat equity shares at a predetermined price

	of aircraft (including depreciation) (I)	
13	Telephone expenses (J)	20% of the expense
14	Festival celebrations (L)	20% of the expense
15	Use of health club, sports and similar facilities (M)	50% of the expense
16	Use of club facilities (N)	50% of the expense
17	Gifts (O)	50% of the expense
18	Scholarship to children (P)	50% of the expense
19	Tour and travel (including foreign travel) (Q)	5% of the expense

3. Section 115WD. Return of fringe benefits

(i) Every employer who during a previous year has paid or made provision for payment of fringe benefits to his employees, shall, on or before the due date[13], furnish a return of fringe benefits to the AO.

4. Section 115WKB - Deemed payment of tax by employee Error! Bookmark not defined.

(i) Where an employer has paid any FBT with respect to allotment or transfer of specified security or sweat equity shares, and has recovered such tax subsequently from an employee, it shall be deemed that the FBT so recovered is the tax paid by such employee in relation to the value of the fringe benefit provided to him only to the extent to which the amount thereof relates to the value of the fringe benefit provided to such employee.

(ii) This provision overrides all other provisions of the Act. If the FBT recovered from the employee is deemed to be the tax paid by such employee, such employee shall not be entitled to claim:

(a) any refund out of such payment of tax; or

(b) any credit of such payment of tax against tax liability on other income or against any other tax liability.

[13] If the employer is a company or a person whose accounts are required to be audited, shall be 30 September of the assessment year.

In case of any other employer, shall be 31 July of the assessment year.

Penalty & Prosecution

1. Section 271(1) – Penalty for concealment of income

An order imposing a penalty shall not be made unless the assessee has been given an opportunity of being heard.

If the AO or the CIT (A) or the CIT, in the course of any proceedings under the Act, is satisfied[14] that a person has committed the following acts, he may impose penalty as mentioned therein:

2. Section 273AA - Power of Commissioner to grant immunity from penalty

(i) A person may make an application to the Commissioner for granting immunity from penalty, if:

(a) he has made an application to the Settlement Commission and the proceedings for settlement have abated under section 245HA; and

(b) the penalty proceedings have been initiated under this Act.

(ii) Application to the Commissioner cannot be made where penalty is imposed subsequent to abatement.

(iii) The Commissioner may, grant to the person immunity from the imposition of any penalty. However, he should be satisfied that the person has, after the abatement, co-operated with the income-tax authority in the proceedings before him and has made a full and true disclosure of his income and the manner in which such income has been derived.

(iv) The immunity granted shall stand withdrawn, if such person fails to comply with any condition subject to which the immunity was granted. Thereupon the provisions of this Act shall apply as if such immunity had not been granted.

(v) If the Commissioner is satisfied that the person had, in the course of any proceedings (after abatement) concealed any particulars material to the assessment from the income-tax authority or had given false evidence the immunity granted may be withdrawn at any time. Thereupon such person shall become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

3. Section 278AB - *Power of Commissioner to grant immunity from prosecution*

(i) A person may make an application to the Commissioner for granting immunity from prosecution, if he has made an application to the Settlement Commission and the proceedings for settlement have abated under section 245HA.

(ii) Application to the Commissioner cannot not be made after institution of the prosecution proceedings subsequent to abatement.

(iii) The Commissioner may, grant to the person immunity from prosecution. However, he should be satisfied that the person has, after the abatement, co-operated with the income-tax authority in the proceedings before him and has made a full and true disclosure of his income and the manner in which such income has been derived.

If the application for settlement had been made before 1.6.2007, the Commissioner may grant immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force.

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[14] If any amount is added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment and the said order contains a direction for initiation of penalty proceedings under section 271(1)(*c*), such an order of assessment or reassessment shall be deemed to constitute satisfaction of the Assessing Officer for initiation of the penalty proceedings.

(iv) The immunity granted shall stand withdrawn, if such person fails to comply with any condition subject to which the immunity was granted. Thereupon the provisions of this Act shall apply as if such immunity had not been granted.

(v) The immunity granted to a person may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of any proceedings, after abatement, concealed any particulars material to the assessment from the income-tax authority or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the proceedings.

Miscellaneous

1. Section 2(*1A*) – Definition of Agriculture Income

Agricultural income means:

(i) any rent or revenue derived from land[15] which is situated in India and is used for agricultural purposes;

(ii) Any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income.

(iii) any income derived from such land by:

(a) agriculture; or

(b) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or

(c) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in point (b) above ;

(iv) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in point (b) and point paragraphs (c) above, is carried on. However, any income derived from any building or land arising from the use of such building or land for any purpose (including letting for residential purpose or for the purpose of any business or profession) other than agriculture falling under point (a) or point (b) shall not be agricultural income.

The building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind, by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building.

2. Section 2(15) – Charitable Purpose

Charitable purpose to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

However, advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity.

It is clarified that charitable purpose does not include any purpose the whole or substantially the whole of which is of a religious nature.

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15 The land is either assessed to land revenue in India or is subject to a local rate. If the land is not so assessed to land revenue or not subject to a local rate, it should not be situated:

(*a*) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than 10,000 according to the last preceding census of which the relevant figures have been published before the first day of the previous year ; or

(b) in any area within such distance, not being more than 8 Kms, from the local limits of any municipality or cantonment board, as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette.

3. Section (26AAA) – Exemption of income to a person domiciled in Sikkim

Any income which accrues or arises to a Sikkimese[16] , from any source in the State of Sikkim or by way of dividend or interest on securities, shall be fully exempt from tax.

However, in case of a Sikkimese woman who, on or after 1.4.2008, marries a non Sikkimese individual shall not be eligible for exemption.

4. Section 88E – Rebate for STT paid

This section shall be withdrawn w.e.f. AY 2009-10.

5. Section 282A - Authentication of notices and other documents

(i) All notices or other documents issued by any income-tax authority shall be signed in manuscript by that authority.

(ii) Every notice or other document to be issued, served or given for the purposes of this Act by any income-tax authority, shall be deemed to be authenticated if the name and office of a designated income-tax authority is printed, stamped or otherwise written thereon.

6. Section 292BB - Notice deemed to be valid in certain circumstances

(i) If an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act. The assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was:

(*a*) not served upon him; or

(*b*) not served upon him in time; or

(*c*) served upon him in an improper manner;

(ii) However, if the assessee has raised such objection before the completion of such assessment or reassessment the aforesaid deeming fiction shall not apply.

16 Sikkimese shall mean an individual, whose name is recorded in the register maintained under the Sikkim Subjects Regulation, 1961 or an individual, whose name is included in the Register of Sikkim Subjects or any other individual, whose name does not appear in the Register of Sikkim Subjects, but it is established beyond doubt that the name of such individual's father or husband or paternal grandfather or brother from the same father has been recorded in that register.

Tax rates

Resident woman (who is below 65 years at any time during the previous year)

Net income range	Income tax rates	Surcharge	Education Cess
Upto Rs. 1,80,000	Nil	Nil	Nil
Rs. 1,50,001 – 3,00,000	10% of (total income minus Rs. 1,80,000)	Nil	3% of income tax
Rs. 3,00,001 – 5,00,000	Rs. 12,000 + 20% of (total income minus Rs. 3,00,000)	Nil	3% of income tax
Rs. 5,00,001 and above	Rs. 52,000 +30% of (total income minus Rs. 5,00,000)	Nil	3% of income tax
Above Rs. 10,00,000	Rs. 2,02,000 + 30% of (total income minus Rs. 10,00,000)	10% of income tax	3% of income tax and surcharge

Resident senior citizen (who is 65 years or more at any time during the previous year)

Net income range	Income tax rates	Surcharge	Education Cess
Upto Rs. 2,25,000	Nil	Nil	Nil
Rs. 2,25,001 – 3,00,000	10% of (total income minus Rs. 2,25,000)	Nil	3% of income tax
Rs. 3,00,001 – 5,00,000	Rs. 7,500 + 20% of (total income minus Rs. 3,00,000)	Nil	3% of income tax
Rs. 5,00,001 and above	Rs. 47,500 +30% of (total income minus Rs. 5,00,000)	Nil	3% of income tax
Above Rs. 10,00,000	Rs. 1,97,500 + 30% of (total income minus Rs. 10,00,000)	10% of income tax	3% of income tax and surcharge

For any other Individual, every HUF/AOP/BOI/artificial juridical person

Net income range	Income tax rates	Surcharge	Education Cess
Upto Rs. 1,50,000	Nil	Nil	Nil
Rs. 1,50,001 – 3,00,000	10% of (total income minus Rs. 1,50,000)	Nil	3% of income tax
Rs. 3,00,001 – 5,00,000	Rs. 15,000 + 20% of (total income minus Rs. 3,00,000)	Nil	3% of income tax
Rs. 5,00,001 and above	Rs. 55,000 +30% of (total income minus Rs. 5,00,000)	Nil	3% of income tax

Above Rs. 10,00,000	Rs. 2,05,000 + 30% of (total income minus Rs. 10,00,000)	10% of income tax	3% of income tax and surcharge

(i) Surcharge is 10% of income tax if net income of an individual, HUF/AOP/BOI, exceeds Rs. 10,00,000. In case of a artificial juridical person, surcharge is 10% of income tax, even if net income is less than Rs. 10,00,000.

(ii) In case of the aforesaid person having a net income exceeding Rs. 10,00,000, the net amount payable as income tax and surcharge shall not exceed the total amount payable as income tax on total income of Rs. 10,00,000 by more than the amount of income that exceeds Rs. 10,00,000.

Partnership firms

A firm is liable to tax @ 30%. If the total income > Rs. 1 crore, surcharge shall be levied @ 10% on income tax. Education cess is 3% of income tax and surcharge.

If the net income exceeds Rs. 1 crore, the net amount payable as income tax and surcharge shall not exceed the total amount payable as income tax on total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore.

Companies

Company	Income tax rates	Surcharge	Education Cess
Domestic Company	30%	10% (If income > 1 crore)	3%
Foreign Company	40%	2.5% (If income > 1 crore)	3%

If the net income exceeds Rs. 1 crore, the net amount payable as income tax and surcharge shall not exceed the total amount payable as income tax on total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore.

Co-operative Societies

Upto Rs. 10,000	10%
Rs. 10,000 – Rs. 20,000	20%
Rs. 20,000 and above	30%

Surcharge is not applicable. Education cess is 3% of income tax.

Local authorities

Local authorities are taxable @ 30%. Surcharge is not applicable. Education cess is 3% of income tax.

Indirect Taxes

Excise

1. Rule 9 - Registration

(iii) Separate registration is required in respect of separate premises. However, in cases where two or more premises of the same factory (where processes are interlinked) are separated by public road, railway line or canal, the Commissioner of Central Excise subject to proper accountal of the movement of goods from one premise to other may allow single registration.

However, if such person manufactures or carries on trade in yarns or fabrics or readymade garments and has more than one premises requiring registration, he may obtain a single registration for all such premises, which fall within the jurisdiction of one Commissioner. The applicant, while making application, shall declare the details of all such premises in the application form.

Further, if a person manufactures Compressed Natural Gas, and has more than one premises requiring registration, which fall within the jurisdiction of one Chief Commissioner, he may obtain a single registration for all such premises with any of the Commissioner falling within the jurisdiction of the said Chief Commissioner. He shall submit the details of all such premises along with the application for registration. He shall be required to give prior intimation shall be given before starting any additional premises subsequent to obtaining such registration. If the assessee is registered under the existing provision, he may apply for fresh registration or file amendment to the registration.

2. Section 2(d) – Excisable goods

Goods are not defined in the CE Act but the Act defines "Excisable Goods". It means goods specified in the First and Second Schedule to CETA, as being subject to a duty of excise and includes salt. *Goods includes, 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.*

3. Special Provisions for payment of Duty on Pan Masala

Section 3A – Power of Central Government to charge excise duty on production capacity basis for notified goods

(i) This section overrides section 3. The Central Government if is of the opinion that it is necessary to safeguard the interest of revenue, it shall notify goods of any specified description (notified goods). Excise duty on such notified goods shall levied and collected in accordance with this section.

The Central Government has notified that pan masala, except the pan masala containing not more than 15% betel nut and pan masala containing tobacco, commonly known as gutkha, manufactured with the aid of packing machine and packed in pouches.

(ii) The Central Government shall frame the rules to:

(a) provide the manner for determination of the annual capacity of production of the factory, in which such goods are produced. Such annual capacity shall be deemed to be the annual production of such goods by such factory.

However, if a factory producing notified goods is in operation during a part of the year only, the annual production thereof shall be calculated on proportionate basis of the annual capacity of production; or

(b) specify the factor relevant to the production of such goods and the quantity that is deemed to be produced by use of a unit of such factor; and

(c) provide for the determination of the annual capacity of production of the factory in which such goods are produced on the basis of such factor. Such annual capacity of production shall be deemed to be the annual production of such goods by such factory.

In case where the factor relevant to the production is altered or modified at any time during the year, the annual production shall be re-determined on a proportionate basis having regard to such alteration or modification.

(iii) The provisions of this section shall not apply to goods produced or manufactured, by a 100% EOU and brought to any other place in India.

For the purposes of section 3 of the CTA the duty of excise (being CVD) leviable on the notified goods shall be deemed to be the duty of excise leviable on such goods under the First Schedule and the Second Schedule to CETA.

7.8.1 Pan Masala Packing Machines (Capacity Determination And Collection of Duty) Rules, 2008.

7.8.1.1 Declaration to be filed by the manufacturer

(i) A manufacturer of notified goods shall, within 10 days from the notification shall file a declaration in Form 1. The declaration shall be filed with the AC/DC with a copy to the Superintendent. A new manufacturer shall file such declaration at least 15 days prior to the commencement of commercial production of notified goods in his factory.

In case a manufacturer wishes to make any changes in the declaration filed and approved shall file a fresh declaration to this effect at least 15 days in advance to the AC/DC.

The declaration shall contain the following:

(a) the number of single track packing machines available in his factory and the number of packing machines, which are installed in his factory;

(b) the number of multiple track or multiple line packing machine, which besides packing the notified goods in pouches, perform additional processes involving moulding and giving a definite shape to such pouches with a view to distinguish the brand or to prevent the counterfeiting of the goods, etc;

(c) the number of multiple track or multiple line packing machine, which are incapable of performing additional processes specified in (b);

I. the number of multiple track or multiple line packing machines out of (b) and (c), which are installed in his factory;

(d) the number of multiple track or multiple line packing machines out of (c), which he intends to operate in his factory for production of notified goods

(e) the name of the manufacturer of each of the packing machine, its identification number, date of its purchase and the maximum packing speed at which they can be operated for packing of notified goods of various retail sale prices;

(f) description of goods to be manufactured including whether pan masala or gutkha or both are to be manufactured, their brand names, etc;

(g) retail sale prices of the pouches to be manufactured during the financial year;

(h) the plan and details of the part or section of the factory premises intended to be used by him for manufacture of notified goods of different retail sale prices and the number of machines intended to be used by him in each of such part or section.

(ii) The AC/DC shall determine and pass order concerning the annual capacity of production of the factory within five working days. If the manufacturer does not receive the approval within 5 working days, the approval shall be deemed to have been granted.

7.8.1.2 Calculation of number of machines

(i) The number of operating packing machines during any month shall be equal to the number of packing machines installed in the factory during that month.

(ii) The machines which the manufacturer does not intend to operate shall be uninstalled and sealed by the Superintendent and removed from the factory premises under his physical supervision. If it is not feasible to remove such packing machine out of the factory premises, it shall be uninstalled and sealed by the Superintendent of Central Excise in such a manner that it cannot be operated.

(iii) In case a manufacturer commences manufacturing of goods of a new retail sale price during the month on an existing machine, it shall be deemed to be an addition in the number of operating packing machine for the month.

7.8.1.3 Payment of Duty and Interest

(i) The monthly duty payable on notified goods shall be paid by the 5th day of same month and an intimation in Form - 2 shall be filed with the Superintendent before the 10th day of the same month.

In case of increase in the number of operating packing machines in the factory during the month on account of addition or installation of packing machines, the differential duty amount, if any, shall be paid by the 5th day of the following month.

If the manufacturer fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount along with the interest @13%p.a. on the outstanding amount, for the period starting with the first day after due date till the date of actual payment of the outstanding amount.

(ii) In case a manufacturer permanently discontinues manufacturing of goods of existing retail sale price or commences manufacturing of goods of a new retail sale price during the month, the monthly duty payable shall be recalculated pro-rata on the basis of the total number of days in that month and the number of days remaining in that month counting from the date of such discontinuation or commencement. The duty liability for the month shall not be discharged unless the differential duty is paid by the 5th day of the following month and in case the amount of duty so recalculated is less than the duty paid for the month, the balance shall be refunded to the manufacturer by the 20th day of the following month.

If a manufacturer ceases to work in respect of all the machines installed in the factory and who has filed an intimation with the AC/DC, with a copy to the Superintendent , the duty payable by him for the month shall be calculated pro rata on the basis of the total number of days in the said month and total number of days before the date of receipt of said intimation with the AC / DC. The duty paid for the month in accordance with the notification shall be adjusted towards the duty so calculated and on such adjustment, if there is any excess payment, it shall be refunded to the manufacturer by the 20th day of the following month and deficiency, if any, shall be payable by him by the 5th day of the following month.

A manufacturer, who ceases to operate his factory for one or two shifts only, shall not be deemed to have ceased to work.

(iii) If there is revision in the rate of duty, the monthly duty payable shall be recalculated pro-rata on the basis of the total number of days in that month and the number of days remaining in that month counting from the date of such revision. The duty liability for the month shall not be discharged unless the differential duty is paid by the 5th day of the following month and in case the amount of duty so recalculated is less than the duty paid for the month, the balance shall be refunded to the manufacturer by the 20th day of the following month.

(iv) In case it is found that a manufacturer has manufactured goods of those retail sale prices, which have not been declared by him or has manufactured goods in contravention of his declaration regarding the plan or details of the part or section of the factory premises intended to be used by him for manufacture of notified goods of different retail sale prices and the number of machines intended to be used by him in each of such part or section, the rate of duty applicable to goods of highest retail sale price so manufactured by him shall be payable in respect of all the packing machines operated by him for the period during which such manufacturing took place.

(v) In case a manufacturer does not pay the duty payable, and continues to operate any packing machine, he shall be liable to pay the duty for the remaining months of the financial year based on the number of operating packing machines declared in the month for which duty was last paid by him or the total number of packing machines found available in his premises at any time thereafter, whichever is higher.

(vi) In case a factory did not produce the notified goods during any continuous period of fifteen days or more, the duty calculated on a proportionate basis shall be abated in respect of such period. The manufacturer of such goods files an intimation to this effect with the AC/DC with a copy to the Superintendent, at least 7 days prior to the commencement of said period, who on receipt of such intimation shall direct for sealing of all the packing machines available in the factory for the said period, in the manner that these cannot be operated during the said period. During such period, no manufacturing activity, whatsoever, in respect of notified goods shall be undertaken and no removal of goods shall be effected by the manufacturer.

When the manufacturer intends to restart his production of notified goods, he shall inform to the AC/DC of the date from which he would restart production, whereupon the seal fixed on packing machines would be opened under the physical supervision of Superintendent.

7.8.1.4 Retail sale price to be declared on the package

(i) Every manufacturer shall declare the retail sale price of the notified goods on the package of such goods.

(ii) Retail sale price means the maximum price at which the specified goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like and the price is the sole consideration for the sale.

(a) If on the package, more than one retail sale price is declared, the maximum of such retail sale prices shall be deemed to be the retail sale price.

(b) If the goods are cleared in wholesale packages containing a number of standard packages with retail sale price declared on them, then, such declared retail sale price shall be taken into consideration for determining the rate of duty.

(iii) If the manufacturer fails to declare the retail sale price before removing the goods from the place of manufacture or declares a retail sale price which is not the retail sale price as required to be declared under the provisions of these rules or tampers with, obliterates or alters the retail sale price declared on the package of such goods after their removal from the place of manufacture, then, such goods shall be liable to confiscation.

The retail sale price of such goods shall be ascertained by the AC/DC in the following manner:

(a) If the manufacturer has manufactured and removed identical goods, within a period of one month, before or after removal of such goods, by declaring the retail sale price, then, the said declared retail sale price shall be taken as the retail sale price of such goods.

(b) If the retail sale price cannot be ascertained in terms of (a), the retail sale price of such goods shall be ascertained by conducting the enquiries in the retail market where such goods have normally been sold at or about the same time of the removal of such goods from the place of manufacture. For the purpose market inquiries shall be carried out on sample basis

If more than one retail sale price is ascertained under (a) or (b), then, the highest of the retail sale price, so ascertained, shall be taken as the retail sale price of all such goods. en retail sale price is required to be ascertained based on.

(c) Where a manufacturer alters or tampers the retail sale price declared on the package of goods after their removal from the place of manufacture, resulting into increase in the retail sale price, then such increased retail sale price shall be taken as the retail sale price of all goods removed during a period of one month before and after the date of removal of such goods.

However, where the alteration or tamper of the MRP results into more than one MRP, then, the highest of such MRP shall be taken as the MRP of all such goods.

7.8.1.5 Addition or removal of packing machines and other restrictions

(i) In case of addition or installation or removal or uninstallation of a packing machine in the factory during the month, the number of operating packing machine for the month shall be taken as the maximum number of packing machines installed on any day during the month.

In case of non-working of any installed packing machine during the month, for any reason whatsoever, the same shall be deemed to be operating packing machine for the month.

(ii) In case a manufacturer does not intend to further operate a packing machine, he shall intimate the same to the AC/DC, at least 7 days in advance. Thereafter it shall be uninstalled and sealed by the Superintendent and removed from the factory premises under his physical supervision.

In case it is not feasible to remove such packing machine out of the factory premises, it shall be uninstalled and sealed by the Superintendent in such a manner that it cannot be operated.

(iii) In case a manufacturer wants to add or install a packing machine in his premises, he shall give a notice to this effect at 7 days in advance to the AC/DC. The AC/DC shall allow the addition or installation, as the case may be, under the physical supervision of Superintendent.

(iv) No manufacturer shall be allowed to keep in his factory any stock of packing material for goods of those retail sale prices which have not been declared by him.

(v) No manufacturer shall be allowed to trade in notified goods of retail sale prices not declared by him in, from his factory premises.

(vi) In case a manufacturer permanently discontinues manufacture of goods of existing retail sale prices, he shall declare the balance stock of notified goods of existing retail sale prices and their packing material on the day he discontinues manufacturing of goods of existing retail sale prices.

7.8.1.6 Rebate of duty on Exports of Goods

Central Government has granted rebate of duty on the excisable goods, on their exportation out of India, to any country except Nepal and Bhutan. The following conditions has been specified:

(i) the duty has been paid on the excisable goods under section 3A of the Central Excise Act;

(ii) no rebate of duty paid on the materials used in such excisable goods shall be claimed;

(iii) the excisable goods shall be exported directly from a factory or a warehouse;

(iv) the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or warehouse or within such extended period as the Commissioner may allow;

(v) the claim or the supplementary claim for rebate of duty, as the case may be, shall be lodged with the AC/DC having jurisdiction over the factory of manufacture or warehouse, together with the proof of due exportation, within the time limit specified in section 11B (6 months from the date of exportation);

(vi) the market price of the excisable goods at the time of exportation is, not less than the amount of rebate of duty claimed;

(vii) the amount of rebate of duty admissible is not less than Rs. 500;

(viii) if the excisable goods are not exported or the proof of export thereof is not furnished within the prescribed time-limit, the application for refund being made by the exporter, shall be cancelled;

(ix) the procedure as laid down in Rule 18 shall be followed*;*

(x) the exporter shall also indicate the number of pouches of excisable goods exported in the invoice, ARE 1 and any other document used for export

7.8.1.7 Extent of rebate

The rebate shall be the amount being Monthly, average rate of rebate per pouch. The rebate shall however not exceed amount of rebate per pouch.

Monthly, average rate of rebate per pouch shall be calculated as under:

D / Q

D = Total duty paid for a month for the packing machines used for manufacture of Pan Masala or Gutkha of the Retail Sale Price which has been exported

Q = Total quantity of pouches manufactured from said machines in the month

For the purposes of determining D and Q, all packing machines used for manufacture of goods of said Retail Sale Price which has been exported, shall be taken into account whether the goods manufactured from said machines have been cleared for export or for other clearances.

Maximum amount of rebate per pouch

<u>Duty payable per machine per month on deemed basis as per the rules</u>

Total number of pouches deemed to be produced per machine as per rule 5 of the said rules.

Cenvat credit not admissible

No CENVAT credit of duty paid on any input, capital goods or input services used for manufacture of the notified goods shall be taken and the full amount of duty payable would be paid in cash only.

7.8.1.8 Penalty for contraventions, etc.

(i) Subject to the provisions of section 11AC of the Act, if any manufacturer produces or removes notified goods in contravention of any provision of these rules, then all such goods shall be liable to confiscation. The manufacturer shall be liable to a penalty not exceeding 100% of the duty leviable on the notified goods in respect of which aforesaid contravention has been committed.

(ii) If it is found that goods have been cleared from a unit which is not registered with the jurisdictional CEO, then its duty liability for the period till it was not registered, shall be determined as if the goods manufactured by the unit were not eligible for levy and assessment under these Rules.

7.8.2. Packing Machine based Rate of Duty prescribed for manufacture of Pan Masala

Manufactured with the aid of packing machine and packed in pouches having retail sale prices as specified.

The factor relevant to the production of notified goods shall be the number of packing machines in the factory of the manufacturer. The goods shall be deemed to have been manufactured or produced with the aid of a packing machine, if they are cleared from a factory where a packing machine is installed, irrespective of whether it is in use or not, or is in working condition or not.

.		Rate of duty per packing machine per month (Rs. in lakh)		The quantity shall be deemed to be produced by use of one operating packing machine per month
S. No	Retail sale price (per pouch)	Pan masala	Pan masala containing tobacco (Gutkha)	Number of pouches per operating packing machine per month
1.	Up to Rs. 1.00	9.25	12.50	37,44,000
2.	From Rs. 1.01 to Rs. 1.50	14	19	37,44,000
3.	From Rs. 1.51 to Rs. 2.00	18	24	35,56,800
4.	From Rs. 2.01 to Rs. 3.00	26	36	35,56,800
5.	From Rs. 3.01 to Rs. 4.00	34	47	34,44,480
6.	From Rs. 4.01 to Rs. 5.00	43	59	34,44,480
7.	From Rs. 5.01 to Rs. 6.00	51	70	34,44,480
8.	Above Rs.6.00	50 + 8.36 (P - 6), Where P represents retail sale price of the pouch	69 + 11.45 * (P - 6), where P represents retail sale price of the pouch	33,69,600

Illustration - The rate of duty per packing machine per month for a gutkha pouch having retail sale price of Rs. 8.00 (i.e. 'P') shall be = Rs. 69 + 11.45*(8-6) lakhs = Rs. 91.90 lakhs

If there are multiple track or multiple line packing machine which besides packing the specified goods in pouches, perform additional processes involving moulding and giving a definite shape to such pouches with a view to distinguish the brand or to prevent the counterfeiting of the goods, etc., two such tracks or lines shall be deemed to be one individual packing machine for the purposes of calculation of the duty liability. In case of multiple track or multiple line packing machine which are incapable of performing such additional processes, each such track or line shall be deemed to be one individual packing machine for the purposes of calculation of the duty liability.

Further, for such machines which are incapable of performing additional processes, one such track or line shall be deemed to be one individual packing machine for the purposes of calculation of the number of pouches per operating packing machine per month.

4. Section 5B - Non-reversal of CENVAT credit

(i) Where an assessee has paid duty of excise on a final product and has been allowed CENVAT of corresponding inputs, capital goods or services, but subsequently the process of making the said product is held by the court as not chargeable to excise duty, the Central Government may, by notification, order for non-reversal of such credit allowed to the assessee subject to such conditions as may be specified in the said notification.

(ii) The order for non-reversal of credit shall not apply where an assessee has preferred a claim for refund of excise duty paid by him.

(iii) The Central Government may also specify in the notification referred to above for non-reversal of credit, if any, taken by the buyer of the said product.

(iv) Notification issued under the powers of Section 5B

(a) If an assessee has paid duty of excise on metallised plastic film, falling under Chapter 39 (hereinafter referred to as final product),the CENVAT credit taken or utilized, of the duty or tax or cess paid on inputs, capital goods and input services used in the making of the said final product, shall not be required to be reversed. This notification would operate irrespective of the fact that the process of metallization of duty-paid film was held as not amounting to manufacture by the Supreme Court in the case of M/s Metlex(I) Pvt. Ltd. v CCE. The benefit is subject to the following conditions, namely:

(i) the said non-reversal shall be allowed only for the CENVAT credit taken upto the 12th February,2004.

(ii) the said non-reversal shall be allowed only when excise duty has been paid on removal of the said final product.

(iii) the said assessee shall not prefer a claim of refund of the excise duty paid by him on the said final product:

Further the CENVAT credit, if any, taken by the buyer of the said final product, made and cleared upto the 12th February,2004 shall not be required to be reversed.

5. Rule 9A – Information relating to principal inputs

(i) A manufacturer of final products shall furnish to the Superintendent, annually by 30th April of each Financial Year, a declaration in Form ER 5, in respect of each of the excisable goods manufactured or to be manufactured by him, the principal inputs[17] and the quantity of such principal inputs required for use in the manufacture of unit quantity of such final products.

(ii) If a manufacturer of final products intends to make any alteration in the information so furnished, he shall furnish information to the Superintendent together with the reasons for such alteration before the proposed change or within 15 days of such change in Form ER-5.

(iii) A manufacturer of final products shall submit, within 10 days from the close of each month, to the Superintendent, a monthly return in Form ER 6, in respect of information regarding the receipt and consumption of each principal inputs with reference to the quantity of final products manufactured by him.

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[17] 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.

(iv) The Central Government has notified that assessees, who have paid excise duty less than Rs. 100 lakhs during the preceding financial year, shall not be required to furnish declaration or monthly return.

6. Rule 12 - Filing of return

(i) Every assessee being a manufacturer shall submit to the Superintendent a monthly return, of production and removal of goods and other relevant particulars, within ten days after the close of the month to which the return relates. However, where an assessee is availing of the exemption under a notification based on the value of clearances in a financial year or is a manufacturer of yarns or fabrics or readymade garments, shall file a quarterly return, within twenty days after the close of the quarter to which the return relates.

In case of an assessee, manufacturing pan masala, shall also file, along with the return, a statement summarizing:

(a) the purchase invoices for the month with the names and addresses of the suppliers of betel nut, tobacco and packing material along with the quantity of the said goods purchased; and

(b) the sales invoices for the month with the names and addresses of the buyers, description, quantity and value of goods sold by the assessee.

When the goods are not sold from the factory, the address of the premises to which the goods are dispatched from the factory shall also be provided.

The proper officer may on the basis of information contained in the return filed by the assessee, and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee on the goods removed. Every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer.

(ii) Every assessee shall submit to the Superintendent, an Annual Financial Information Statement for the preceding financial year to which the statement relates in duplicate in form ER 4 by 30th day of November of the succeeding year.

However, the Central Government has notified that following assessee shall be exempt from filing Annual Financial Information Statement:

(a) Indian Ordnance Factories, Department of Defence Production, Ministry of Defence;

(b) Assessee who paid excise duty less than Rs. 100 lakhs during the financial year.

(iii) Every assessee shall submit to the Superintendent, an Annual Installed Capacity Statement in Form ER–7 declaring the annual production capacity of the factory for the financial year to which the statement. Such statement shall be filed by 30th day of April of the succeeding financial year.

7. Rule 17 - Removal of goods by a 100% EOU for DTA

(i) Where any goods are removed from a 100% EOU for DTA. Such removal shall be made under an invoice. **The duty leviable on such goods shall be paid by utilizing the CENVAT credit or by crediting the duty payable to the account of the Central Government in the manner specified in rule 8**.

Duty on clearances of goods to DTA from EOU, STP, EHTP etc. shall be 25% of the basic customs duty plus excise duty payable on like goods.

(ii) EOU can obtain inputs on payment of excise duty. They can avail CENVAT credit of such inputs and utilise it for payment of duty for goods cleared in DTA[18]. Goods may also be procured without payment of duty by producing CT – 3 certificate to the seller.

(iii) The unit shall submit a monthly return in form ER-2 to the Superintendent, within ten days from the close of the month to which the return relates, in respect of the goods removed to DTA.

The proper officer may on the basis of information contained in the return filed by the unit, scrutinise the correctness of the duty assessed by the assessee on the goods removed. For the purpose the PO shall follow the guidelines prescribed by the Board.

(iv) Every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer.

(v) Debonding from the 100% EOU (STP / EHTP)

The proper officer may allow the user industry to clear any of goods for being taken outside the premises of such user industry to any other place in India, as the case may be, in accordance with the FTP:

(a) Such clearance of capital goods may be allowed on payment of an amount equal to the excise duty leviable on such goods on either on the depreciated value thereof and at the rate in force on the date of payment of such duty or on the transaction value, whichever is higher. The depreciation shall be allowed at the rate of 20% per annum of the original value in respect of computer and computer peripherals items and 10% per annum in case of other capital goods.

The depreciation shall be allowed for the period from the date of commencement of commercial production of the user industry or the date of receipt of goods in the user industry, whichever is later, till the date of payment of duty.

(b) Clearance of goods other than above may be allowed on payment of excise duty leviable on such goods, on the full value at the time of their clearance from the factory of manufacture and at the rates in force on the date of payment of such excise duty.

(c) As per Rule 3(1)(xi)[Proviso] CENVAT credit shall be allowed of the amount equal to central excise duty paid on the capital goods at the time of debonding of the unit.

8. Section 11D - Duties of excise collected from the buyer to be deposited with the central government

(i) This section overrides other provisions of the act including the orders or directions of Tribunal or Court.

(ii) Every person who has collected any amount from the buyer representing excise duty shall deposit it to the credit of Central Government.

(iii) Every person, who has collected any amount in excess of the duty assessed or determined and paid on any excisable goods or has collected any amount as representing duty of excise on any excisable goods which are wholly exempt or are chargeable to nil rate of duty from any person in any manner, shall forthwith pay the amount so collected to the credit of the Central Government.

CBEC has observed that the scheme of the law is that manufacturers shall not collect amounts falsely representing them as Central Excise duty and retain them, thus, unjustly benefiting themselves. However, in case of payments made under rule 6 of the CCR, section 11D of the Act is not applicable since the amount of 10% has already been paid to the revenue and no amount is retained by the assessee.

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[18] CBEC circular no 799/32/2004-CX dt 23/9/04

CBEC has clarified[19] that as long as the amount of 10% is paid to the Government in terms of Rule 6 of the CCR, the provisions of section 11D shall not apply even if the amount is recovered from the buyers. However, it may be noted that the CENVAT credit of the said amount of 10% cannot be taken by the buyer since such payment is not a payment of duty in terms of rule 3(1) of the CENVAT Credit Rules, 2004. Therefore, the said 10% amount should be shown in the invoice as "10% amount paid under Rule 6 of the CENVAT Credit Rules, 2004.

(iv) This deposit(s) shall be adjusted against the duty payable by the manufacturer on final assessment. If any surplus arises after final assessment it would either be credited to the fund or refunded to the applicant u/s 11B as the case may be.

9. Section 11DD – Interest on the amounts collected in excess of duty

(i) Every person who has collected any amount in excess of the duty assessed, from the buyer of such goods or from any person or where a person has collected any amount as representing duty of excise on any excisable goods which are wholly exempt or are chargeable to nil rate of duty, the person representing excise duty, shall, in addition to the amount of duty so collected shall be liable to pay interest @ 15% p.a. from the first day of the month following the month in which the amount ought to have been paid upto the date of payment of duty.

(ii) In cases where the duty become payable consequent to an order by CBEC and such amount of duty is voluntary paid in full within 45 days from the date of such order, no interest shall be payable. The assessee should have waived his right to appeal against such payment. However, where any of the above conditions are not met, interest shall be payable on the whole of the amount, including the amount already paid.

(iii) Where duty determined to be payable is increased or further increased by the Commissioner (Appeals), CESTAT Tribunal or by the Court, the interest shall be payable on such increased or further increased amount of duty. If the duty payable is reduced by the said authorities, the interest shall be computed on the reduced amount.

10. Section 11B – Refunds

Section amended to cover refund of excise duty, interest on such duty and any other duty.

11. Section 35B - Appeals to the Appellate Tribunal

CESAT stands for Customs Excise Service Tax Appellate Tribunal. It is constituted for settling the disputes related to Central Excise and Customs and the Service Tax. The legislation setting up of CESAT was made in 1980 and implemented from 11.10.82.

It comprises of both technical and judicial members. Technical members are senior officers like Commissioners of Central Excise and Customs. Presently it has 4 regional benches situated in Delhi, Calcutta, Madras and Bombay. There are 4 special benches situated in New Delhi. The special benches dealing exclusively with appeals relating to rate of duty or valuation of goods in Central Excise and Customs. Whereas the regional benches deal with rest of the cases. CESAT is presided over by a President with one or more Vice President.

(i) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal within 3 months from the date on which the order sought to be appealed against is communicated to the other party preferring the appeal -

(a) a decision or order passed by the Commissioner as an adjudicating authority;

(b) an order passed by the Commissioner (A).

[19] Circular No. 870/08/2008-CX dt 16 May 2008

(c) The Committee of Commissioners if is of opinion that an order passed by the Commissioner (A) is not correct, may direct any CEO to appeal on behalf of the Department to the Appellate Tribunal against such order.

If the CCC differs in its opinion regarding the appeal against the order of the Commissioner (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional CC who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper, direct any Central Excise Officer to appeal to the Appellate Tribunal against such order**.**

(d) an order passed by the CBEC.

12. Section 35F - PreDeposit of Duty

(i) Where an order pertains to any duty demanded[20] or penalty, then the person desirous of appealing, shall deposit with the adjudicating authority such amount.

(ii) Section 35FF provides that if an amount deposited by the appellant in pursuance of an order passed by the Commissioner (Appeals) or the Appellate Tribunal (hereinafter referred to as the appellate authority), under section 35F, is required to be refunded consequent upon the order of the appellate authority and such amount is not refunded within three months from the date of communication of such order to the adjudicating authority, unless the operation of the order of the appellate authority is stayed by a superior court or tribunal, there shall be paid to the appellant interest @ 13% p.a. after the expiry of three months from the date of communication of the order of the appellate authority, till the date of refund of such amount.

(iii) However, Commissioner(A) / Appellate Tribunal on application is authorised, to waive such condition of pre-deposit, if it is satisfied that such a deposit would result in undue hardship. On receipt of a stay petition the Commissioner(A) / Appellate Tribunal shall, where it is possible to do so pass an order within 30 days from the date of filing of stay petition.

13. Section 35E - Powers of CBEC or Commissioner to pass certain orders

(i) The Committee of Chief Commissioners (CCC) may, of its own motion, call for and examine the record of any order passed by the Commissioner. The CCC may, direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal against such order, on the points as may be specified by the CBEC in its order.

If the CCC differs in its opinion as to the legality or propriety of the decision or order of the Commissioner of Central Excise, it shall state the point or points on which it differs and make a reference to the Board. The Board after considering the facts of the decision or order, if is of the opinion that the decision or order passed by the Commissioner is not legal or proper, may, by order, direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order, as may be specified in its order.

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[20] Duty Demanded shall include:

(i) amount determined under section 11D;

(ii) amount of erroneous CENVAT credit taken;

(iii) amount payable under rule 6 of CENVAT Credit Rules, 2004;

(iv) interest payable under the provisions of this Act or the rules made thereunder.

14. SSI Exemption Notification

1. Calculation for 400 lakhs

Following clearances shall not be considered for calculating the turnover of Rs. 400 lakhs:

(a) clearances of excisable goods without payment of duty:

1. to a unit in a free trade zone; or
2. to a unit in a special economic zone; or
3. to a hundred percent. export-oriented undertaking; or
4. to a unit in an Electronic Hardware Technology Park or Software Technology Park; or
5. supplied to the UN or an international organization for their official use or supplied to projects funded by them.

(b) clearances bearing the brand name[21] or trade name of another person, which are ineligible for the grant of this exemption as mentioned later.

(c) clearances of the specified goods which are used as inputs for further manufacture of any specified goods within the factory of production of the specified goods; and

(d) Clearances enjoying exemption under notification 214/ 86, 83/94 and 84/94.

2. Calculation of 150 lakhs

Following clearances shall not be considered for calculating the turnover of Rs. 150 lakhs:

(a) clearances, which are exempt from the whole of the excise duty leviable thereon (other than an exemption based on quantity or value of clearances) under any other notification or on which no excise duty is payable for any other reason;

(b) clearances of the specified goods which are used as inputs for further manufacture of any specified goods within the factory of production of the specified goods; and

(c) clearances bearing the brand name or trade name of another person, which are ineligible for the grant of this exemption.

3. Branded Goods

(vii) In respect of the following goods even though bearing brand name at the time clearance, the benefits of SSI notification can be availed:

(a) Where the specified goods are in the nature of packing materials, namely, printed cartons of paper or paper board, metal containers, HDPE woven sacks, adhesive tapes, stickers, PP caps, crown corks, metal labels. **However, the exemption in respect of these goods, shall be restricted to Rs. 90 lakhs for the remaining part of the financial year 2008-09**.

[21] brand name or trade name means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person;

Cenvat Credit Rules

1. Clarifications from CBEC[22] on Rule 6 of the CCR

Whether an assessee availing option Rule 6(3)(i) [pay 10% or 8%] or Rule 6(3)(ii) [pay quantification based formula] is allowed to take CENVAT Credit of duty paid on inputs and input services which are used for both dutiable and exempted goods or services.

Yes, credit on such inputs and input services is allowed. However, an assessee following option (i) or (ii) under rule 6(3) shall not be allowed to take CENVAT credit of duty paid on those inputs and input services which are used exclusively for the manufacture of exempted goods or provision of exempted services

Further, for the purpose of the calculation of amount under formula, the total CENVAT credit taken on inputs and input services does not include excise duty paid on inputs or service tax paid on input services which are used exclusively for the manufacture of exempted goods or provision of exempted services.

Whether an assessee availing option (i) in respect of certain exempted goods/services can also avail option (ii) in respect of other exempted goods or services simultaneously?

An assessee opting for either of the option is required to avail the said option for all the exempted goods manufactured by him and all the exempted services provided by him and the option once exercised during a financial year (F.Y.) cannot be withdrawn during the remaining part of the FY. Therefore, the same assessee cannot avail both option (i) and option (ii) simultaneously during a financial year.

Assessee opting for option (i) is required to pay an amount equivalent to 10% of value of exempted goods or 8% of value of exempted services. What is the scope of term "value" for the said purpose.

Value of the exempted goods is the transaction value as determined in terms of section 4 of the Central Excise Act, 1944 or value determined under section 4A. However, in case of goods chargeable to specific rate of duty, the value, shall be the transaction value to be determined under section 4. Value of the exempted service is the gross amount charged for providing the exempted service [without abatement].

Whether input services distributor can also opt for option (i) or option (ii)?

As ISD does not provide any service, and is like a trader, the question of availing either of the options would not arise.

Whether credit in respect of specific input services (as mentioned in Rule 6) would be required to be taken into account for determination of amount payable as per formula provide in rule 6(3A).

No, the credit attributable to services mentioned in sub-rule (5), shall not be taken into account for determination of amount under rule 6(3A).

2. Rule 15A – Penalty for miscellaneous acts

Rule 15A – Any person who contravenes any provisions of the CCR and for which no separate penalty has been provided, shall be liable to a penalty upto Rs. 5 lakhs.

3. Rule 9A – Information relating to principal inputs

(i) A manufacturer of final products shall furnish to the Superintendent, annually by 30th April of each Financial Year, a declaration in Form ER 5, in respect of each of the excisable goods manufactured or to be manufactured by him, the principal inputs[23] and the quantity of such principal inputs required for use in the manufacture of unit quantity of such final products.

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22 Circular No. 868/6/2008-CX dt 9 May 2008

23 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.

(ii) If a manufacturer of final products intends to make any alteration in the information so furnished, he shall furnish information to the Superintendent together with the reasons for such alteration before the proposed change or within 15 days of such change in Form ER-5.

(iii) A manufacturer of final products shall submit, within 10 days from the close of each month, to the Superintendent, a monthly return in Form ER 6, in respect of information regarding the receipt and consumption of each principal inputs with reference to the quantity of final products manufactured by him.

(iv) **The Central Government has notified that assessees, who have paid excise duty less than Rs. 100 lakhs during the preceding financial year, shall not be required to furnish declaration or monthly return**.

4. Section 11DDA - Provisional attachment to protect revenue

(i) During the pendency of any proceeding under section 11A or section 11D, the Central Excise Officer is of the opinion that for the purpose of protecting the interests of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner, attach provisionally any property belonging to the person on whom notice is served under section 11A / 11D, in accordance with the rules made in this behalf under section 142 of the Customs Act.

(ii) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order of provisional attachment.

However, the Chief Commissioner may, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years:

(iii) If an application for settlement of case made to the Settlement Commission, the period commencing from the date on which such application is made and ending with the date on which an order is made shall be excluded from the specified period.

Guidelines for attachment of property[24]

(i) The proceedings for provisional attachment can be initiated only after issue of Show Cause Notice (SCN) under Section 11A or 11D of the Act.

(ii) Where the proceedings are pending before the CEO he shall prepare a proposal for attachment and forward the same to the jurisdictional Commissioner of Central Excise for his approval. In cases where the proceedings are pending before such Commissioner of Central Excise, in which case he shall himself make the order of attachment

(iii) It is important to note that there should be sufficient justification to hold a view that the provisional attachment of property is necessary to protect the interests of revenue.

(vi) The following types of offences committed by a manufacturer or an exporter may be considered for provisional attachment of property:-

(a) Removal of goods without the cover of an invoice and without payment of duty;

(b) Removal of goods without declaring the correct value for payment of duty, where a portion of sale price, in excess of invoice price, is received by him or on his behalf but not accounted for in the books of account;

(c) Taking of CENVAT Credit without the receipt of goods specified in the document based on which the said credit has been taken;

24 Circular No. 874/12/2008-CX dt 30 June 2008

(d) Taking of CENVAT Credit on invoices or other documents which a person has reason to believe as not genuine;

(e) Issue of excise duty invoice without delivery of goods specified in the said invoice;

(f) Claiming of refund or rebate in a fraudulent manner such as on invoice or other documents which a person has reason to believe as not genuine.

(vii) The provisional attachment of property shall be resorted to only in a case where the duty or CENVAT Credit alleged to be involved in the above specified offences is more than Rs.25 lakhs.

(viii) Period of Attachment:

(a) The order of provisional attachment of property shall be operational for a period of six months from the date on which the order is served on the noticee. However, the Chief Commissioner of Central Excise may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, but the total period of extension shall not, in any case, exceed two years.

(b) The order of provisional attachment shall cease to have effect if the noticee pays the entire duty amount along with interest.

(ix) **Types of property which can be attached**:

(a) Personal property of a sole proprietor or of partners of a firm shall not be attached. Personal property means any movable or immovable property which is in the personal use of the sole proprietor or partner. However, immovable property/ properties which is / are used for any commercial purpose may be provisionally attached.

(b) Movable property should be attached only if the immovable property available for attachment is not sufficient to protect the interests of revenue.

It should also be ensured that such attachment does not hamper normal manufacturing activities of the assessees. This would mean that raw materials and inputs required for production or finished goods should not be attached by the Department.

(xi) The provisional attachment of the property of the concerned person by arrest or distrain shall be made after sunrise and before sunset and not otherwise.

(xiii) Where a notice has been served on a person for provisional attachment, the said person or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the written permission of the Commissioner of Central Excise.

(xiv) Where the property to be provisionally attached consists of the share or interest of the concerned person in property belonging to him and another as co-owners, the provisional attachment shall be made by a notice to the concerned person prohibiting him from transferring the share or interest or charging it in any way.

Customs

1. Section 28BA – Provisional attachment

Similar to section 11DDA of the Central Excise. However, the following guidelines have been issued by the CBEC for directing provisional attachment[25]

(i) The following types of cases may be considered for provisional attachment of property:-

(a) Import or export of goods, including an attempt thereof, involving evasion of duty or grant of ineligible export incentives including drawback;

(b) Claim for or grant of refund of Customs duty in a fraudulent manner, fraudulent availment of or attempt to fraudulently avail of drawback or other export incentives or any exemption from duty.

(ii) The provisional attachment shall be resorted to only in a case where the duty or export incentives including drawback, alleged to be involved in the above specified offences is more than Rs.25 lakhs.

(iii) Period of Attachment :

(a) The order of provisional attachment of property shall be operational for a period of 6 months from the date on which the order is served on the noticee. However, the Chief Commissioner of Customs may, extend the aforesaid period by such further period or periods as he thinks fit, but the total period of extension shall not, in any case, exceed two years.

(b) The order of provisional attachment shall cease to have effect if the noticee pays the entire duty amount along with interest.

(iv) Types of property which can be attached:

(a) Personal property of a sole proprietor or of partners of a firm, importer or exporter shall not be attached. Personal property means any movable or immovable property which is in the personal use of the sole proprietor or partner or importer or exporter. However, immovable property/ properties which is/ are used for any commercial purpose may be provisionally attached.

(b) Movable property should be attached only if the immovable property available for attachment is not sufficient to protect the interests of revenue.

It should also be ensured that such attachment does not hamper normal business of manufacturer importer/ exporter or assessee. This would mean that raw materials and inputs required for production or finished goods, in case of manufacturer importer/ exporter should not be attached.

(v) The provisional attachment of the property of the concerned person by arrest or distrain shall be made after sunrise and before sunset and not otherwise.

(vi) Where a notice has been served on a person for provisional attachment, the person on whom such notice has been served or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the written permission of the Commissioner.

If a provisional attachment has been made, any private transfer or delivery of the property attached or of any debt, dividend or other moneys contrary to such provisional attachment, shall be void as against all claims enforceable under the provisional attachment.

(vii) If the property to be provisionally attached consists of the share or interest of the concerned person in property belonging to him and another as co-owners, the provisional attachment shall be made by a notice to the concerned person prohibiting him from transferring the share or interest or charging it in any way.

[25] Circular No. 10/2008-Customs dt. 30th June, 2008

Service Tax

1. Exemptions from Service tax

(i) Central Government has exempted[26] fully the taxable service provided by a person, having his place of business, fixed establishment, permanent address or usual place of residence, in a country other than India, and which is received by a hotel located in India, in relation to booking of an accommodation in the said hotel. The exemption is for such a customer, who has his place of business, fixed establishment, permanent address or usual place of residence, in a country other than India.

(ii) Central Government has exempted[27] the following taxable services received by an exporter and used for export of goods, from the whole of the service tax

(a) Services under clause (zn), to any person by a port or any person authorised by the port for export of said goods;

(b) Services under clause (zzl) to any person by other port for export of said goods;

(c) Services under clause (zzp) provided to an exporter in relation to transport of export goods directly from the place of removal, to inland container depot or port or airport, as the case may be, from where the goods are exported;

(d) Services under clause (zzzd) being specialized cleaning services namely disinfecting, exterminating, sterilizing or fumigating of containers used for export of said goods provided to an exporter;

(e) Services under clause (zza) provided for storage and warehousing of said goods;

(f) Services under clause (zzzp) provided to an exporter in relation to transport of export goods directly from the place of removal to inland container depot or port or airport, as the case may be, from where the goods are exported;

(g) Services under clause (f) provided by a courier agency to an exporter in relation to transportation of time-sensitive documents, goods or articles relating to export, to a destination outside India;

(h) Services under clause (h) provided by a custom house agent in relation export goods exported by the exporter;

(i) Services under clause (zm) provided in relation to collection of export bills and services provided in relation to export letters of credit such as advising commission, advising amendment, confirmation charges.

Further, services of purchase or sale of foreign currency, including money changing provided to an exporter in relation to export goods. However, the exporter shall produce evidence to prove that the services are in relation to goods exported[28].

(j) Services under clause (zzb) provided by a commission agent, located outside India, and engaged under a contract or agreement or any other document by the exporter in India, to act on behalf of the exporter, to cause sale of goods exported by him.

(k) Services under clause (zzk for purchase or sale of foreign currency, including money changing provided to an exporter in relation to export goods. However, the exporter shall produce evidence to prove that the services are in relation to goods exported[28].

(l) **Services under clause (zzzzj) provided in relation to supply of tangible goods for use, without transferring right of possession and effective control of tangible goods, provided to an**

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26 Notification No. 14/2008 dated 1st March, 2008

27 Notification No.41/2007-Service Tax dated 6 October 2007

28 Inserted by Notification No.24/2008-Service Tax dt 10th May 2008

exporter in relation to goods exported by the exporter. However, the exporter shall produce evidence to prove that the services are in relation to goods exported[28].

2. Clause (g) - To a client by a consulting engineer

Services to any person, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering including the discipline of computer hardware engineering.

It has been clarified that services provided by a consulting engineer in relation to advice, consultancy or technical assistance in the disciplines of both computer hardware engineering and computer software engineering shall also be classifiable under this sub-clause.

3. Clause (n) - To any person by a tour operator

Services in relation to a tour. **Tour operator means any person engaged in the business of planning, scheduling, organising or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicles Act**.

Package tour means a tour in which the provision for transportation and accommodation for stay of the person undertaking the tour has been afforded by the tour operator.

Tour does not include a journey organised or arranged for use by an educational body, other than a commercial training or coaching centre, imparting skill or knowledge or lessons on any subject or field.

4. Clause (zh) - To a customer by a commercial concern

Services in relation to on-line information and database access or retrieval or both in electronic form through computer network, in any manner.

(i) E-commerce transactions are not covered under the service tax net. Further, interconnection charges paid by one ISP to another ISP are not liable to service tax.

(ii) As cyber café's provide only the infrastructure they are not liable to pay service tax. However, services provided by ISP to cyber café's are taxable and the ISP will pay the tax on charges realized from the cyber café.

(iii) It has been clarified that Telecommunication Service shall fall under the category of online information and database access and /or retrieval services.

5. Clause (zm) - To a customer by a banking company or a financial institution including a NBFC

Services to any person, by a banking company or a financial institution including a non-banking financial company, or any other body corporate or commercial concern, in relation to banking and other financial services.

(i) Banking and other financial services means-

The following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate, namely:

(a) financial leasing services[29] including equipment leasing and hire- purchase;

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[29] financial leasing means a lease transaction where -

(i) contract for lease is entered into between two parties for leasing of a specific asset;

(ii) such contract is for use and occupation of the asset by the lessee;

(b) merchant banking services;

(c) **securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing**;

6. Clause (zm) - To a customer by a banking company or a financial institution including a NBFC

Services to any person, by a banking company or a financial institution including a non-banking financial company, or any other body corporate or commercial concern, in relation to banking and other financial services.

(i) Banking and other financial services means-

The following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate, namely:

(a) financial leasing services[30] including equipment leasing and hire- purchase;

(b) merchant banking services;

(c) **securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing**;

(d) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services;

(e) advisory and other auxiliary financial services including investment and portfolio research and advice, on mergers and acquisitions and advice on corporate restructuring and strategy;

(f) provision and transfer of information and data processing and

(g) banker to an issue services. Banker to an issue means a bank included in the Second Schedule to the RBI carrying on the activities relating to an issue including acceptance of application, application money, allotment money and call money, refund of application money, payment of dividend and interest warrants; and

(h) other financial services, namely, lending, issue of pay order, demand draft, cheque, letter of credit and bill of exchange, transfer of money including telegraphic transfer, mail transfer and electronic transfer, providing bank guarantee, overdraft facility, bill discounting facility, safe deposit locker, safe vaults, operation of bank accounts.

(i) Foreign exchange broking and purchase or sale of foreign currency, including money changing provided by a foreign exchange broker or an authorised dealer in foreign exchange or an authorised money changer, other than those covered above.

Purchase or sale of foreign currency, including money changing includes purchase or sale of foreign currency, whether or not the consideration for such purchase or sale, as the case may be, is specified separately.

As per Rule 6(7B)[31] As regards foreign exchange broking services the provider of service shall have an option to pay service tax of an amount calculated @ 0.25% of the gross amount of currency exchanged towards discharge of his service tax liability instead of paying service tax at

(iii) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and

(iv) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment

30 financial leasing means a lease transaction where -

(i) contract for lease is entered into between two parties for leasing of a specific asset;

(ii) such contract is for use and occupation of the asset by the lessee;

(iii) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and

(iv) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment

31 Inserted vide Notification No.19/2008-Service Tax dt 10th May 2008

the rate specified. Such an 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:

Illustration

Buying rate $US 1 = Rs.38, selling rate $US 1 = Rs.40

(i) Person exchanged $100 for equivalent rupees

Transaction value = Rs.3800 (Rs.38 x 100)

Service tax payable = Rs.9.5 (0.25% x 3800)

(ii) Person exchanged equivalent rupees for $100

Transaction value = Rs.4000 (40 x 100)

Service tax payable = Rs.10 (0.25% x 4000).

(**ix) Taxable service provided in relation to chit[32], shall be exempt from so much of the service tax leviable, as in excess of the amount of service tax calculated on 70% of the gross amount charged from the recipient of services for such services[33].**

However, the exemption shall be available only if the following conditions are met:

(a) no credit of duty paid on inputs or capital goods or credit of service tax on inputs services has been taken under the provisions of the Cenvat Credit Rules; and

(b) such person has not availed exemption for value of goods supplied under other exemption notification.

7. Clause (zzk) – To a customer by foreign exchange broker

Services rendered to any person, by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorised money changer, other than a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern referred to in sub-clause (*zm*). Foreign exchange broker includes any authorised dealer of foreign exchange.

As per Rule 6(7B) As regards foreign exchange broking services the provider of service shall have an option to pay service tax of an amount calculated @ 0.25% of the gross amount of currency exchanged towards discharge of his service tax liability instead of paying service tax at the rate specified. Such an 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:

Illustration

Buying rate $US 1 = Rs.38, selling rate $US 1 = Rs.40

(i) Person exchanged $100 for equivalent rupees

Transaction value = Rs.3800 (Rs.38 x 100)

Service tax payable = Rs.9.5 (0.25% x 3800)

(ii) Person exchanged equivalent rupees for $100

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[32] Chit means a transaction whether called chit, chit fund, chitty, kuri, or by any other name by or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of periodical installments over a definite period and that each subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to the prize amount.

[33] Notification No. 27/2008-Service Tax dt 27th May 2008 as amended by Notification No 1/2006-ST, dt. 1st March, 2006

Transaction value	**=**	**Rs.4000 (40 x 100)**
Service tax payable	**=**	**Rs.10 (0.25% x 4000).**

8. Clause (zr) - To any person by a cargo handling agency

Services in relation to cargo handling services.

(i) Cargo handling service means loading, unloading, packing or unpacking of cargo and includes:

(a) cargo handling services provided for freight in special containers or for non-containerised freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport, and cargo handling service incidental to freight; and

(b) service of packing together with transportation of cargo or goods, with or without one or more of other services like loading, unloading, unpacking, but does not include, handling of export cargo or passenger baggage or mere transportation of goods.

9. Clause (zzb) – To a client in relation to business auxiliary service

Services in relation to business auxiliary services. Illustrations of services that are covered under this category viz. evaluation of prospective customers, processing of purchase orders, customer management, information and tracking of delivery schedules, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, managing distribution & logistics.

(i) Business auxiliary service means any service provided by any person in relation to the following which shall includes services as a commission agent, but does not include any activity that amounts to “manufacture” within the meaning of section 2(f) of the Central Excise Act[34]:

(a) promotion or marketing or sale of goods produced or provided by or belonging to the client; or

(b) promotion or marketing of services provided by the client

(c) service in relation to promotion or marketing of service provided by the client” includes any service provided in relation to promotion or marketing of games of chance, organised, conducted or promoted by the client, in whatever form or by whatever name called, whether or not conducted online, including lottery, lotto, bingo;

10. Clause (zzh) – To any person by technical testing and analysis agency

Services in relation to technical testing and analysis.

(i) Technical testing and analysis means any service in relation to physical, chemical, biological or any other scientific testing or analysis of goods or materials or information technology software or any immovable property. It includes testing and analysis undertaken for the purpose of clinical testing of drugs and formulations; but does not include testing or analysis for the purpose of determination of the nature of diseased condition, identification of a disease, prevention of any disease or disorder in human beings or animals.

11. Clause (zzi) – To any person by technical inspection and certification agency

Services in relation to technical inspection and certification of any item including immovable property.

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34 'information technology service means any service in relation to designing, or developing of computer software or system networking, or any other service primarily in relation to operation of computer systems.

(i) **Technical inspection and certification means inspection or examination of goods or process or material or information technology software or any immovable property to certify that such goods or process or material or information technology software or immovable property qualifies or maintains the specified standards, including functionality or utility or safety or any other characteristics or parameters, but does not include any service in relation to inspection and certification of pollution levels**.

12. Clause (zzp) - To a customer, by a goods transport agency

Services to any person in relation to transport of goods by road in a goods carriage[35].

(iv) CBEC has clarified[36] that in cases where liability for tax payment is on the consignor or consignee, a declaration by the goods transport agency in the consignment note issued, to the effect that neither credit on inputs or capital goods used for provision of service has been taken nor the benefit of notification No. 12/2003 has been taken by them may suffice for the purpose of availment of abatement by the person liable to pay service tax whether the consignor or consignee.

(v) CBEC has clarified[37] the following in relation to GTA services:

(a) The service provided by GTA is a single composite service which may include various intermediary and ancillary services such as loading/unloading, packing/unpacking, transshipment, temporary warehousing. Whether the intermediary or ancillary activities is to be treated as part of GTA service and the abatement should be extended to the charges for such intermediary or ancillary service?

The intermediary services are not provided as independent activities but are the means for successful provision of the principal service, namely, the transportation of goods by road. The contention that a single composite service should not be broken into its components and classified as separate services is a well-accepted principle of classification. A composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service and accordingly classified. Thus, if any ancillary/intermediate service is provided in relation to transportation of goods, and the charges, if any, for such services are included in the invoice issued by the GTA, and not by any other person, such service would form part of GTA service and, therefore, the abatement of 75% would be available on it.

(b) GTA providing service in relation to transportation of goods by road in a goods carriage also undertakes packing as an integral part of the service provided. Whether in such cases service provided is to be classified under GTA service

Transportation is not the essential character of cargo handling service but only incidental to the cargo handling service. Where service is provided by a person who is registered as GTA service provider and issues consignment note for transportation of goods by road in a goods carriage and the amount charged for the service provided is inclusive of packing, then the service shall be treated as GTA service and not cargo handling service.

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35 goods carriage has the meaning assigned to in the Motor Vehicles Act

36 Departmental letter F.No.B1/ 6 /2005-TRU dt. 27 July, 2005

37 Circular No. 104/ 07 /2008-ST dt 6th August, 2008

(c) Whether time sensitive transportation of goods by road in a goods carriage by a GTA shall be classified under courier service and not GTA service?

So long as the entire transportation of goods is by road and the person transporting the goods issues a consignment note, it would be classified as 'GTA Service'.

13. Clause (zzzze) – To any person in relation to information technology

Services provided to any person, by any other person in relation to information technology[38] software for use in the course, or furtherance, of business or commerce, including:

(i) development of information technology software,

(ii) study, analysis, design and programming of information technology software,

(iii) adaptation, upgradation, enhancement, implementation and other similar services related to information technology software,

(iv) providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specifications for a database design, guidance and assistance during the startup phase of a new system, specifications to secure a database, advice on proprietary information technology software,

(v) acquiring the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products,

(vi) acquiring the right to use information technology software supplied electronically.

14. Clause (zzzzf) – To any person in relation to management of investment of LIC

Services to a policy holder, by an insurer carrying on life insurance business, in relation to management of investment, under unit linked insurance business, commonly known as Unit Linked Insurance Plan (ULIP) scheme.

(i) management of segregated fund of unit linked insurance business by the insurer shall be deemed to be the service provided by the insurer to the policy holder in relation to management of investment under unit linked insurance business; and

(ii) the gross amount charged by the insurer from the policy holder for the said services provided or to be provided shall be equivalent to the difference between:

(a) premium paid by the policy holder for the Unit Linked Insurance Plan policy; and

(b) the sum of premium paid for or attributable to risk cover, whether for life, health or other specified purposes, and the amount segregated for actual investment.

(**iii) In addition to the amount referred to in clause (ii), the gross amount charged shall include any amount charged subsequently, whether or not periodically, by the insurer from the policy holder in relation to management of investment under unit linked insurance business**.

Illustration

Total premium paid for the Unit Linked Insurance Plan policy = Rs.100

[38] Information technology software means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment

Risk premium = Rs. 10

Amount actually invested = Rs. 85

Gross amount charged for the service provided = Rs. 5 [100-(10+85)];

15. Clause (zzzzg) – To any person by a recognized stock exchange in relation to securities

Services to any person, by a recognised stock exchange in relation to assisting, regulating or controlling the business of buying, selling or dealing in securities and includes services provided in relation to trading, processing, clearing and settlement of transactions in securities.

16. Clause (zzzzh) - To any person by a recognized stock exchange in relation to goods or contracts

Services to any person, by a recognised association or a registered association in relation to assisting, regulating or controlling the business of the sale or purchase of any goods or forward contracts and includes services provided in relation to trading, processing, clearing and settlement of transactions in goods or forward contracts.

17. Clause (zzzzi) – To any person by a clearing house

Services to any person, by a processing and clearing house in relation to processing, clearing and settlement of transactions in securities, goods or forward contracts including any other matter incidental to, or connected with, such securities, goods and forward contracts.

Processing and clearing house means any person including the clearing corporation authorised or assigned by a recognised stock exchange, recognised association or a registered association to perform the duties and functions of a clearing house in relation to:

(i) **the periodical settlement of contracts for, or relating to, the sale or purchase of securities, goods or forward contracts and differences thereunder;**

(ii) **the delivery of, and payment for, securities, goods or forward contracts;**

(iii) **any other matter incidental to, or connected with, securities, goods and forward contracts**.

18. Clause (zzzzj) – To any person in relation to supply of tangible goods

To any person, by any other person in relation to supply of tangible goods including machinery, equipment and appliances for use, without transferring right of possession and effective control of such machinery, equipment and appliances.

The Central Government[39] has exempted fully the taxable service of supply of a goods carriage, without transferring right of possession and effective control of such goods carriage, provided by any person to a goods transport agency for use by the said goods transport agency to provide any service, to a customer in relation to transport of goods by road in the said goods carriage.

19. Valuation of taxable services

(i) The value of any taxable service with reference to its value shall:

(a) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

39 Notification No. 29/2008 – Service Tax dt 26th June 2008

(b) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;

(c) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

Consideration includes any amount that is payable for the taxable services provided or to be provided.

Money includes any currency, cheque, promissory note, letter of credit, draft, pay order, travellers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value.

Gross amount charged includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes, book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.

20. Section 68 - Payment of service tax

(i) Every person providing taxable service to any person shall pay service tax by way of GAR - 7 challan by the 6th day of the month, if the duty is deposited electronically through internet banking; and by the 5th day of the month, in any other case, immediately following the calendar month in which the payments are received, towards the value of taxable services.

However, where the assessee is an individual or proprietary firm or partnership firm, the service tax shall be paid by the 6th day of the month if the duty is deposited electronically through internet banking, or, in any other case, the 5th day of the month, immediately following the quarter in which the payments are received, towards the value of taxable services.

In case 5th of the relevant month is public holiday, service tax may be paid on the next working day[40].

An assessee, who has paid service tax of Rs. 50,00,000 or above in the preceding financial year or has already paid service tax of Rs. 50,00,000 in the current financial year, shall deposit the service tax liable to be paid by him electronically, through internet banking[41].

If the transaction of taxable service is with any associated enterprise, any payment received towards the value of taxable service, in such case shall include any amount credited or debited, as the case may be, to any account, whether called 'Suspense account' or by any other name, in the books of account of a person liable to pay service tax.

[40] Circl. No. 63/12/2003 – ST dt 14/10/03

[41] Notification No. 27/2006-ST dated 21.9.2006

21. Section 71 – Tax Return preparer Scheme

(i) The Board may, frame a Scheme for the purposes of enabling any person[42] or class of persons to prepare and furnish a return under section 70, and authorise a Service Tax Return Preparer[43] to act as such under the Scheme. The Scheme shall provide for the following:

(*a*) the manner in which and the period for which the Service Tax Return Preparer shall be authorised;

(*b*) the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Service Tax Return Preparer;

(*c*) the code of conduct for the Service Tax Return Preparer;

(*d*) the duties and obligations of the Service Tax Return Preparer;

(*e*) the circumstances under which the authorisation given to a Service Tax Return Preparer may be withdrawn;

(*f*) any other matter which is required to be, or may be, specified by the Scheme for the purposes of this section.

(ii) A Service Tax Return Preparer shall assist the person or class of persons to prepare and furnish the return in such manner as may be specified in the Scheme framed under this section.

42 Person means, who is required to furnish a return required to be filed under section 70.

43 Service Tax Return Preparer means any individual, who has been authorised to act as a Service Tax Return Preparer under the Scheme framed;

22. Section 73C – Provisional attachment to protect revenue in certain cases

Similar to section 11DDA of CEA.

Service Tax (Provisional Attachment of Property) Rules, 2008[44]

(i) If the AC / DC, during the pendency of any proceeding under section 73 or section 73A of the Act, deems fit, then for the purpose of protecting the interest of revenue, shall forward proposal for provisional attachment of property, to the Commissioner. It shall to a person to a person on whom a notice has been served under section 73(1) or section 73A(3).

(ii) The Commissioner, on receipt of proposal, or on his own, if he is satisfied that circumstances of case justify provisional attachment, may cause service of a notice on such person for provisional attachment. The notice shall contain reasons for initiating action under these rules and the details of property to be attached provisionally. An opportunity shall be given to such person to make submissions in this regard, within 15 days of service of such notice.

(iii) The Commissioner based on the submissions made, may pass an order in writing to attach provisionally any property belonging to such person. However, no order shall be issued to attach the personal property[45] of Proprietor or Partners or Directors, as the case may be.

(iv) The provisional attachment of property shall be to the extent it requires to protect the interest of revenue. The value of property attached shall be of value as nearly as may be equivalent to that of the amount of pending revenue[46] against such person.

(v) The movable property belonging to such person shall be attached only if the immovable property available for attachment is not sufficient to protect the interest of revenue. CBEC has clarified[47] that such attachment does not hamper normal business of the assessees. This would mean that inputs required for provision of a service should not be attached by the department.

(vi) Where a property has been provisionally attached, the said person or his representative shall not mortgage, lease, transfer, deliver or deal with the attached property in any manner except with the previous approval of the Commissioner.

(vii) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order of provisional attachment. The Chief Commissioner may, for reasons to be recorded in writing, extend the aforesaid period by such further period as he thinks fit. The total period of extension shall not in any case exceed two years.

(viii) Every such provisional attachment shall cease to have effect when the said person pays the pending revenue alongwith interest thereon.

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[44] Notification No. 30/2008-Service Tax dt. 1st July, 2008

[45] Personal property means any movable or immovable property belonging to a proprietor or partner or director, which is not in relation to business activity.

[46] Pending revenue means any service tax that has not been levied or paid or has been short-levied or paid or erroneously refunded in respect of which a notice has been served under section 73(1) or section 73A(3).

(ix) CBEC has clarified[47] that

(a) The following types of offences committed by a service provider on an exporter may be considered for provisional attachment of property:

I. Provision of a taxable service without the cover of an invoice or any other document, as prescribed, and without payment of tax;

II. Provision of a taxable service without declaring the correct value for payment of service tax, where a portion of value of taxable service, in excess of invoice price, is received by him or on his behalf but not accounted for in the books of account.

III. Taking of CENVAT credit without the receipt of goods or services specified in the document based on which the said credit has been taken;

IV. Taking of CENVAT credit on invoices or other documents which a person has reasons to believe as not genuine;

V. Issue of service tax invoice or any other document, without providing or to be providing a taxable service, as specified in the said invoice or other document;

VI. Claiming of refund or rebate in a fraudulent manner such as on invoice or other documents which a person has reason to believe as not genuine.

(b) The provisional attachment of property shall be resorted only in a case where the service tax or CENVAT credit alleged to be involved is more than Rs. 25 lakh.

(c) The provisional attachment of the property of the concerned person by arrest or distrain shall be made after sunrise and before sunset and not otherwise.

(d) After provisional attachment of the property, the CEO shall prepare an inventory of the property attached and specify in it the place where it is lodged or kept and shall hand over a copy of the same to defaulter or the person from whose charge the property is distrained.

23. Section 77 - Penalty for contravention of any provision for which no penalty is provided

(i) Any person, who is liable to pay service tax, or required to take registration, fails to take registration shall be liable to pay a penalty which may extend to Rs. 5,000 or Rs. 200 for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;

(ii) Any person, who fails to keep, maintain or retain books of account and other documents as required under these provisions, shall be liable to a penalty which may extend to Rs. 5,000;

(iii) A person who fails to:

(a) furnish information called by an officer under these provisions; or

(b) produce documents called for by a CEO in accordance with these provisions; or

(c) appear before the CEO, when issued with a summon for appearance to give evidence or to produce a document in an inquiry, shall be liable to a penalty which may extend to extend to Rs. 5,000 or Rs. 200 for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance;

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[47] Circular No. 103/ 06 /2008-ST dt. 1 July 2008

(iv) **A person who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to Rs. 5,000;**

(v) **A person who issues invoice, with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to Rs. 5,000**

(vi) **Any person, who contravenes any of the provisions for which no penalty is separately provided, shall be liable to a penalty which may extend to Rs. 5,000**.

24. Section 78 - Penalty for suppressing value of taxable service

(i) It any service tax has not been levied or paid or has been short levied or short paid or erroneously refunded (short payment), due to fraud or mis-representation or willful mis-statement, suppression of facts, or contravention of any of the provisions, with intent to evade payment of service tax, the person, liable to pay the service tax or erroneous refund, as determined under section 73(2), shall also be liable to pay a penalty, which shall be 100% but not more than 200% of the amount of service tax not so levied or paid or short-levied or short-paid or erroneously refunded.

However, if such service tax as determined under section 73, and the interest payable thereon under section 75, is paid within 30 days from the date of communication of the order of the CEO, the amount of penalty shall be 25% of the service tax so determined. This benefit of reduced penalty shall be available if the amount of aforesaid penalty has also been paid within the period of said 30 days.

(ii) If service tax determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or the Court, then, the service tax, as reduced or increased, shall be taken into account for determining the penalty.

(iii) In cases where the service tax determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, the Court, then, the benefit of reduced penalty shall be available, if the amount of service tax so increased, the interest payable thereon and 25% of the consequential increase of the penalty have also been paid within 30 days of the communication of the order by which such increase in the service tax takes effect.

(iv) **If penalty is payable under this section, the provisions of section 76 shall not apply.**

25. Section 86 - Appeals to Appellate Tribunal

(i) Any assessee aggrieved by an order passed by a Commissioner of Central Excise, or an order passed by a Commissioner (Appeals), may appeal to the Appellate Tribunal against such order.

(ii) The Committee of Commissioners may, if it objects to any order passed by the Commissioner of Central Excise (Appeals) under section 85, direct any CEO to appeal on its behalf to the Appellate Tribunal against the order.

If the CCC differs in its opinion against the order of the Commissioner, it shall state the point or points on which it differs and make a reference to the Board. The Board shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner is not legal or proper, direct the Commissioner to appeal to the Appellate Tribunal against the order.

(iii) The Commissioner may, if he objects to any order passed by the Commissioner of Central Excise (Appeals), direct the CEO to appeal to the Appellate Tribunal against the order.

If the CCC differs in its opinion against the order of the Commissioner(Appeals), it shall state the point or points on which it differs and make a reference to the Chief Commissioner. The jurisdictional Commissioner shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner(Appeals) is not legal or proper, direct any CEO to appeal to the Appellate Tribunal against the order

(iv) Every appeal shall be filed within 3 months of the date on which the order sought to be appealed against is received by the assessee, the CBEC or by the Commissioner.

(v) A memorandum of cross-objections may be filed within 45 days of the receipt of notice of appeal and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified.

(vi) The Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period if it is satisfied that there was sufficient cause for delay.

(vii) An appeal to the Appellate Tribunal shall be in the prescribed form and be accompanied by a fee.

26. *Rules for services provided from outside India*

These rules may be called the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006.

(a) Rule 3 - Taxable services provided from outside India and received in India

(i) Subject to section 66A of the Act, the taxable services provided from outside India and received in India shall, in relation to taxable services:

Category of service	
Clause (d) - To a policy holder or any person by an insurer including reinsurer carrying on general insurance business Clause (p) - To a client by an architect Clause (q) - To a client by an interior decorator Clause (v) - To a client by a real estate agent Clause (zzq) - To any person being construction services Clause (zzza) - To any person in relation to site formation and clearance, excavation and earthmoving and demolition and such other similar activities Clause (zzzb) - To any person in relation to dredging Clause (zzzc) - To any person other than by an agency under the control of, or authorised by, the Government, in relation to survey and map-making Clause (zzzh) - To any person in relation to construction of complex Clause (zzzr) – To any person in relation to auction of property Clause (zzzy) - To any person, by any other person in relation to mining of mineral, oil or gas Clause (zzzz) - To any person, by any other person in relation to renting of immovable property for use in the course or furtherance of business or commerce Clause (zzzza) - To any person in relation to the execution of a works contract	Such taxable services as are provided in relation to an immovable property which is situated in India

Other Services not relating to immovable property

Clause (a) - To an investor, by a stock-broker Clause (f) - To a customer by courier agency Clause (h) - To a client by a custom house agent Clause (i) - To a shipping line by a steamer agent Clause (j) - To a client by a clearing and forwarding agent Clause (l) - To a customer by an air travel agent Clause (m) - To a client by a Mandap keeper Clause (n) - To any person by a tour operator Clause (o) - To any person by a rent-a-cab scheme operator Clauses (s, t, u) - To a client, by a practicing CA / CO / CS respectively Clause (w) - To a client by a security agency Clause (x) - To a client by a credit rating agency Clause (y) - To a client by a market research agency Clause (z) - To a client by an underwriter Clause (zb) - To a customer by a photography studio or agency Clause (zc) - To a client by any commercial concern Clause (zi) - To a client by a video production agency Clause (zj) - To a client by a sound recording studio or agency Clause (zn) - To any person by a port or any person authorised by the port Clause (zo) - To a customer by an authorised service station Clause (zq) - To a customer, by a beauty parlour Clause (zr) - To any person by a cargo handling agency Clause (zt) - To a customer by a dry cleaner Clause (zu) - To a client by an event manager Clause (zv) - To any person by a fashion designer Clause (zw) - To any person by a health club and fitness center Clause (zza) - To any person by a storage or warehouse keeper Clause (zzc) – To any person by a commercial training or coaching centre Clause (zzd) – To a customer by a commissioning or installation agency Clause (zzf) – To any person, by an internet café **Clause (zzg) – To a customer for maintenance or repair** **Clause (zzh) – To any person by technical testing and analysis agency** **Clause (zzi) – To any person by technical inspection and certification agency**	Such services as are performed in India. However, if such a taxable service is partly performed in India, it shall be treated as performed in India and the value of such taxable service shall be determined under section 67. **Such services are provided in relation to any goods or material or any immovable property, as the case may be, situated in**

Clause (zzj) – To a customer by an authorised service station Clause (zzm) - To any person, by airports authority, in an airport or a civil enclave Clause (zzn) - To any person, by an aircraft operator, for transport of goods by aircraft Clause (zzo) - To an exhibitor, by the organizer of a business exhibition Clause (zzp) - To a customer, by a goods transport agency Clause (zzs) - To any person by an opinion poll agency Clause (zzt) - To a client by an outdoor caterer Clause (zzv) - Survey and exploration of mineral Clause (zzw) - To a client, by a pandal or shamiana contractor including a caterer Clause (zzx) - To a customer by a travel agent Clause (zzy) - To any person, by a member of a recognised or a registered association Clause (zzzd) - To any person in relation to cleaning activity Clause (zzze) - To its members by any club or association in relation to provision of services, facilities or advantages for a subscription or any other amount Clause (zzzf) - To any person in relation to packaging activity Clause (zzzp) – To any person in relation to transport of goods in containers by rail **Clause (zzzzg) – To any person by a recognized stock exchange in relation to securities** **Clause (zzzzh) - To any person by a recognized stock exchange in relation to goods or contracts** **Clause (zzzzi) – To any person by a clearing house**	**India at the time of provision of service, through internet or an electronic network including a computer network or any other means, then such taxable service, whether or not performed in India, shall be treated as the taxable service performed in India**

Clause (zzzzj) – To any person in relation to supply of tangible goods

Such taxable service shall be treated as taxable service provided from outside India and received in India subject to the condition that the tangible goods supplied for use are located in India during the period of use of such tangible goods by such recipient.

(ii) In relation to taxable services other than those covered above:

Clause (e) - To a client, by an advertising agency Clause (g) - To a client by a consulting engineer Clause (k) - To a client by a manpower recruitment agency Clause (r) - To a client by a management consultant Clause (za) - To a client by a scientist or technocrat or any institution or organization Clause (b/c/zd/ze/zf/zg) To a subscriber, by the telegraph authority – Facsimile, Leased circuit, Telegraph service, Telex service, Telephone & Pager service Clause (zk) - To a client by a broadcasting agency or organization Clause (zm) - To a customer by a banking company or a financial institution Clause (d) - To a policy holder or any person by an insurer including reinsurer carrying on general insurance business Clause (zl) - To a policy holder or any person by an intermediary / insurance agent Clause (zx) - To a policy holder or any person by an insurer including reinsurer carrying on life insurance business Clause (zy) - To a policyholder / insurer including reinsurer by an / intermediary / insurance agent Clause (zz) - To a customer by a rail travel agent Clause (zzb) – To a client in relation to business auxiliary service Clause (zze) – To a franchisee by the franchisor Clause (zzr) - To any person, by the holder of intellectual property right Clause (zzu) - To any person by a programme producer Clause (zs) - To a customer by a cable operator Clause (zzzc) - To any person other than by an agency under the control of, or authorised by, the Government, in relation to survey and map-making other than for immovable property Clause (zzz) - To any person in relation to transport of goods other than water, through pipeline or other conduit Clause (zzzg) - To any person in relation to mailing list compilation and mailing Clause (zzzi) - To any person in relation to sale or purchase of securities Clause (zzzj) - To any person in relation to securities Clause (zzzk) - To any person, in relation to automated teller machine Clause (zzzl) - To a banking company or a financial institution Clause (zzzm) - To any person in relation to sale of space or time for advertisement Clause (zzzn) – To any body corporate or firm in relation to such sponsorship Clause (zzzq) - To any person in relation to support services of business or commerce	Received by a recipient located in India for use in relation to business or commerce

Clause (zzzr) – To any person in relation to auction of property, other than immovable property Clause (zzzs) - To any person in relation to managing the public relations of such person Clause (zzzt) - To any person in relation to ship management service Clause (zzzu) - To any person, in relation to internet telephony Clause (zzzw) - To any person in relation to credit card, debit card, charge card or other card service Clause (zzzx) – Telecommunication services Clause (zzzzb) - To any person in relation to development and supply of content for use in telecommunication services, advertising agency services and on-line information and database access or retrieval services Clause (zzzzc) - To any person in relation to asset management including portfolio management and all forms of fund management Clause (zzzzd) - To any person, by any other person in relation to design services	

Rule 4 – Registration

The recipient of taxable services provided from outside India and received in India shall make an application for registration.

Rule 5 - Taxable services not to be treated as output services

The taxable services provided from outside India and received in India shall not be treated as output services for the purpose of availing credit of duty of excise paid on any input or service tax paid on any input services under CENVAT Credit Rules, 2004.

(i) **Export of Services Rules 2005**

(i) They shall come into force on the 15th March 2005.

Clause (a) - To an investor, by a stock-broker Clause (f) - To a customer by courier agency Clause (h) - To a client by a custom house agent Clause (i) - To a shipping line by a steamer agent Clause (j) - To a client by a clearing and forwarding agent Clause (l) - To a customer by an air travel agent Clause (m) - To a client by a Mandap keeper Clause (n) - To any person by a tour operator Clause (o) - To any person by a rent-a-cab scheme operator Clauses (s, t, u) - To a client, by a practicing CA / CO / CS respectively Clause (w) - To a client by a security agency Clause (x) - To a client by a credit rating agency Clause (y) - To a client by a market research agency Clause (z) - To a client by an underwriter Clause (zb) - To a customer by a photography studio or agency Clause (zc) - To a client by any commercial concern Clause (zi) - To a client by a video production agency Clause (zj) - To a client by a sound recording studio or agency Clause (zn) - To any person by a port or any person authorised by the port Clause (zo) - To a customer by an authorised service station Clause (zq) - To a customer, by a beauty parlour Clause (zr) - To any person by a cargo handling agency Clause (zt) - To a customer by a dry cleaner Clause (zu) - To a client by an event manager Clause (zv) - To any person by a fashion designer Clause (zw) - To any person by a health club and fitness center Clause (zza) - To any person by a storage or warehouse keeper Clause (zzc) – To any person by a commercial training or coaching centre Clause (zzd) – To a customer by a commissioning or installation agency Clause (zzf) – To any person, by an internet café **Clause (zzg) – To a customer for maintenance or repair** **Clause (zzh) – To any person by technical testing and analysis agency** **Clause (zzi) – To any person by technical inspection and certification agency**	Such services are performed outside India. However, if such a taxable service is partly performed outside India, it shall be considered to have been performed outside India The services provided shall be treated as export if such service is provided from India and used outside India, and payment is received by the service provider in convertible foreign exchange **Such services are provided in relation to any goods or materialor any immovable property, as the case may be, situated outside India at the time of provision of**

Clause (zzj) – To a customer by an authorised service station Clause (zzm) - To any person, by airports authority, in an airport or a civil enclave Clause (zzn) - To any person, by an aircraft operator, for transport of goods by aircraft Clause (zzo) - To an exhibitor, by the organizer of a business exhibition Clause (zzp) - To a customer, by a goods transport agency Clause (zzs) - To any person by an opinion poll agency Clause (zzt) - To a client by an outdoor caterer Clause (zzv) - Survey and exploration of mineral Clause (zzw) - To a client, by a pandal or shamiana contractor including a caterer Clause (zzx) - To a customer by a travel agent Clause (zzy) - To any person, by a member of a recognised or a registered association Clause (zzzd) - To any person in relation to cleaning activity Clause (zzze) - To its members by any club or association in relation to provision of services, facilities or advantages for a subscription or any other amount Clause (zzzf) - To any person in relation to packaging activity Clause (zzzp) – To any person in relation to transport of goods in containers by rail **Clause (zzzzg) – To any person by a recognized stock exchange in relation to securities** **Clause (zzzzh) - To any person by a recognized stock exchange in relation to goods or contracts** **Clause (zzzzi) – To any person by a clearing house**	**service, through internet or an electronic network including a computer network or any other means, then such taxable service, whether or not performed outside India, shall be treated as the taxable service performed outside India**

Category of service	**Export of service shall mean**
Clause (d) - To a policy holder or any person by an insurer including reinsurer carrying on general insurance business Clause (p) - To a client by an architect Clause (q) - To a client by an interior decorator Clause (v) - To a client by a real estate agent Clause (zzq) - To any person being construction services Clause (zzza) - To any person in relation to site formation and clearance, excavation and earthmoving and demolition and such other similar activities Clause (zzzb) - To any person in relation to dredging	Such taxable services as are provided in relation to an immovable property which is situated outside India The services provided shall be treated as export if such service is

Clause (zzzc) - To any person other than by an agency under the control of, or authorised by, the Government, in relation to survey and map-making Clause (zzzh) - To any person in relation to construction of complex Clause (zzzr) – To any person in relation to auction of property Clause (zzzy) - To any person, by any other person in relation to mining of mineral, oil or gas Clause (zzzz) - To any person, by any other person in relation to renting of immovable property for use in the course or furtherance of business or commerce Clause (zzzza) - To any person in relation to the execution of a works contract	delivered outside India and used in business or for any other purpose outside India, and payment is received by the service provider in convertible foreign exchange

Clause (zzzzj) – To any person in relation to supply of tangible goods

Such taxable service shall be treated as taxable service is provided to a recipient located outside India, then such taxable service shall be treated as export of taxable service subject to the condition that the tangible goods supplied for use are located outside India during the period of use of such tangible goods by such recipient.

(ii) In relation to taxable services other than those covered above:

Clause (e) - To a client, by an advertising agency Clause (g) - To a client by a consulting engineer Clause (k) - To a client by a manpower recruitment agency Clause (r) - To a client by a management consultant Clause (za) - To a client by a scientist or technocrat or any institution or organization Clause (b/c/zd/ze/zf/zg) To a subscriber, by the telegraph authority – Facsimile, Leased circuit, Telegraph service, Telex service, Telephone & Pager service Clause (zk) - To a client by a broadcasting agency or organization Clause (zm) - To a customer by a banking company or a financial institution Clause (d) - To a policy holder or any person by an insurer including reinsurer carrying on general insurance business Clause (zl) - To a policy holder or any person by an intermediary / insurance agent Clause (zx) - To a policy holder or any person by an insurer including reinsurer carrying on life insurance business Clause (zy) - To a policyholder / insurer including reinsurer by an / intermediary / insurance agent Clause (zz) - To a customer by a rail travel agent Clause (zzb) – To a client in relation to business auxiliary service Clause (zze) – To a franchisee by the franchisor Clause (zzr) - To any person, by the holder of intellectual property right Clause (zzu) - To any person by a programme producer Clause (zs) - To a customer by a cable operator Clause (zzzc) - To any person other than by an agency under the control of, or authorised by, the Government, in relation to survey and map-making other than for immovable property Clause (zzz) - To any person in relation to transport of goods other than water, through pipeline or other conduit Clause (zzzg) - To any person in relation to mailing list compilation and mailing Clause (zzzi) - To any person in relation to sale or purchase of securities Clause (zzzj) - To any person in relation to securities Clause (zzzk) - To any person, in relation to automated teller machine Clause (zzzl) - To a banking company or a financial institution Clause (zzzm) - To any person in relation to sale of space or time for advertisement Clause (zzzn) – To any body corporate or firm in relation to such sponsorship Clause (zzzq) - To any person in relation to support services of business or commerce Clause (zzzr) – To any person in relation to auction of property, other than immovable property	Refer Bullets below

Clause (zzzs) - To any person in relation to managing the public relations of such person Clause (zzzt) - To any person in relation to ship management service Clause (zzzu) - To any person, in relation to internet telephony Clause (zzzw) - To any person in relation to credit card, debit card, charge card or other card service Clause (zzzx) – Telecommunication services Clause (zzzzb) - To any person in relation to development and supply of content for use in telecommunication services, advertising agency services and on-line information and database access or retrieval services Clause (zzzzc) - To any person in relation to asset management including portfolio management and all forms of fund management Clause (zzzzd) - To any person, by any other person in relation to design services	

services which are provided and used in or in relation to commerce or industry and the recipient of such services is located outside India. However, if such recipient has any commercial or industrial establishment or any office relating thereto, in India, such taxable services provided shall be treated as export of services only if:

(a) order for provision of such service is made by the recipient of such service from any of his commercial or industrial establishment or any office located outside India;

(b) service so ordered is delivered outside India and used in business outside India; and

(c) payment for such service provided is received by the service provider in convertible foreign exchange;

Taxable services which are provided and used, other than in or in relation to commerce or industry, if the recipient of the taxable service is located outside India at the time when such services are received.

(iii) Any service, which is taxable, may be exported without payment of service tax.

(iv) Where any taxable service is exported, the Central Government may, by notification, grant rebate of service tax paid on such taxable service or service tax or duty paid on input services or inputs, as the case may be, used in providing such taxable service.