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Classes for TAX (CA-IPCC) & IDT (CA-FINAL)

IMPORTANT AMENDMENTS APPLICABLE FOR CA-IPCC NOV 12 EXAM

1. **N/N 07/2012 dated 14.02.2012**: The interest received on tax free, secured, redeemable, non-convertible bonds of RECL would be exempt from tax u/s 10(15) provided:
   - The tenure of the bonds shall be 10 or 15 years;
   - It shall be mandatory for the subscriber to furnish their PAN to the issuer

2. **N/N 09/2012**: Classes of person exempt from filing of return of income:
   An individual whose total income does not exceed Rs. 5L shall ***not*** be required to furnish the ROI u/s 139(1) for the AY 2012-13,in case the total income consist of only income chargeable to income tax under the head:
   (1) Salaries; and/or
   (2) Interest income from a saving bank account, not exceeding Rs. 10,000.
   (3) Employee has received Form 16 from his employer.
   (4) Employee has received salary only from one employer.
   (5) He has reported his PAN to the employer.
   (6) His total tax liability for the AY is discharged only through TDS and the same is deposited by the employer to the credit of CG.
   (7) He has not claimed any refund of taxes due to him in respect of income relating to that AY for which exemption is claimed.

3. **Sec 10(46)**: Any specified income arising to a authority/commission which has been constituted with the object of regulating or administering any activity for the benefit of the general public and is not engaged in any commercial activity and notified by the CG.
   Accordingly, the CG has notified that the incomes arising to the Competition Commission of India (CCI), a commission established under the Competitions Act, 2002 shall not be chargeable to tax:
   i. Amount received in the form of government grants;
   ii. Fee received under the Competition Act, 2002; and
   iii. Interest income accrued on government grants/ on fee received as above.
   Further, CCI must file its ROI in accordance with Sec 139(4C).

4. **Limits for exemption of interest on Post Office Savings Bank Account:**
   The interest on Post Office Savings Bank Account which was so far fully exempt would henceforth be exempt from tax for any assessment year only to the extent of:
   (i) Rs. 3,500 in case of an individual account.
   (ii) Rs. 7,000 in case of a joint account.

5. **Increase in limit for subscription to public provident fund**
   The maximum limit for subscription by an individual to the PPF A/c has been increased to Rs. 1,00,000 p.a. (Earlier it was Rs. 70,000)

6. W.e.f. 01.04.2012 Rate of service tax restored to 12% - **N/N 02/2012 – ST dated 17.03.2012**

7. **Amendment in Point of Taxation Rules:** Individual/partnership firms with aggregate value of taxable services of ***Rs. 50L or less in the previous financial year*** are allowed to pay service tax on ***PAYMENT BASIS*** in current financial year upto a total of Rs. 50L, at the option of service provider. **[Fourth proviso to sub-rule (1) inserted]**

8. Restrictions in Rule 6(4A) omitted thereby allowing *unlimited amount of permissible adjustment* of excess service tax paid

Prior to amendment

Earlier the excess amount of service tax paid on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification was allowed subject to the following conditions:-

(a) The excess payment shall be utilized for the payment of service tax for the subsequent month liability subject to maximum of Rs. 2,00,000/- for a relevant month or quarter, as the case may be.

(b) The excess amount paid by a registered assessee, on account of delayed receipt of details of payments towards taxable services may be adjusted without monetary limit.

(c) The adjustment shall be intimated to the jurisdictional superintendent of Central Excise within 15 days from such adjustment.

After the amendment

All the three aforesaid conditions [mentioned in point (a) to (c) above] have now been dispensed with. Consequently, sub-rule (4) now provides as under:-

The adjustment of excess amount paid, under sub-rule (4A), shall be subject to the condition that the excess amount paid is on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification.

9. Changes in the composition rates

A. In case of insurer carrying on life insurance business

	Rate of service tax	
	Prior to amendment (Till 31.03.2012)	**After amendment (With effect from 01.04.2012)**
First Year	1.5% of the gross amount of premium charged	3% of the gross amount of premium charged
Subsequent year	1.5% of the gross amount of premium charged	1.5% of the gross amount of premium charged

B. In case of sale/purchase of foreign currency including money changing

S.No.	For an amount	Rate of service tax	
		Prior to amendment (Till 31.03.2012)	**After amendment (With effect from 01.04.2012)**
1.	Upto Rs. 100,000	**0.1%** of the gross amount of currency exchanged or **Rs. 25** whichever is higher	**0.12%** of the gross amount of currency exchanged or **Rs. 30** whichever is higher
2.	Exceeding Rs. 1,00,000 and upto Rs. 10,00,000	**Rs. 100 + 0.05 %** of the gross amount of currency exchanged	**Rs. 120 + 0.06 %** of the gross amount of currency exchanged
3.	Exceeding Rs. 10,00,000	**Rs. 550 + 0.01 %** of the gross amount of currency exchanged or **Rs. 5,000** whichever is lower	**Rs. 660 + 0.012 %** of the gross amount of currency exchanged or **Rs. 6,000** whichever is lower

C. In case of Distributor or Selling Agents of Lotteries

Guaranteed lottery prize payout	Amount of service tax payable on every Rs. 10 Lakh (or part of Rs. 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw	
	Prior to amendment (Till 31.03.2012)	**After amendment (w.e.f. 01.04.2012)**
More than 80%	Rs. 6,000/-.	Rs. 7,000/-
Less than 80%	Rs. 9000/-	Rs. 11,000/-

AMENDMENTS IN THE POINT OF TAXATION RULES, 2011

[Notification No. 04/2011- ST dated 17.03.2012] **effective from 01.04.2012**

1. Date of payment [Rule 2A]

Rule 2A has been inserted to define the date of payment.
For the purposes of these rules, "date of payment" shall be:-
(a) date on which the payment is entered in the books of accounts

or

(b) date on which payment is credited to the bank account of the person liable to pay tax

Whichever is earlier.

(A) <u>Date of payment in case of change in effective rate of tax or a new levy between the above two dates</u>

In case,

(i) there is a change in effective rate of tax or when a service is taxed for the first time during the period between such entry in books of accounts and its credit in the bank account;

(ii) the bank account is credited **after four working days** from the date when there is change in effective rate of tax or a service is taxed for the first time; and

(iii) the payment is made by way of an instrument which is credited to a bank account,

Then, the date of payment shall be the ***<u>date of credit in the bank account</u>*** instead of the date of recording of payment in the books of accounts.

<u>Analysis</u>:

Since rate of service tax has been changed from 10% to 12% with effect from 01.04.2012,

(i) In case where service has been provided before 01.04.2012 and the cheque etc. has been received upto 31.3.2012, applicable rate of service tax would be 10% provided cheque is credited in the bank account by April 4, 2012. Otherwise, the date of payment would be date of credit in the bank account [viz after April 4, 2012] and consequently, new rate of 12% would be applicable.

(ii) In case where date of issuance of invoice and receipt of payment by cheque/ demand draft etc. is before 01.04.2012, applicable rate of service tax would be 10% provided cheque/ demand draft etc. is credited in the bank account by April 4, 2012. Otherwise, the date of payment would be date of credit in the bank account [viz. after April 4, 2012] and consequently, new rate of 12% would be applicable.

<u>(However, the above provision will have no impact where invoice is the basis for point of taxation.)</u>

2. (a) Amendments in Rule 3 relating to determination of point of taxation

Prior to amendment

In case the invoice is not issued within 14 days of the completion of the provision of the service, the point of taxation shall be date of such completion.

After the amendment
The time-limit has been increased for issuance of invoice from 14 days to 30 days (45 days in case of banks and financial institutions providing banking and other financial services)

(b) Point of taxation in case where payment upto Rs. 1,000 received in excess of the invoiced amount: Wherever the provider of taxable service receives a payment up to Rs. **1,000** in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined on the basis of invoice or completion of service, whichever is earlier, rather than payment.

Purpose of the aforesaid provision:-
Such provision is expected to **address the accounting problems** faced by service providers in telecommunications, credit card businesses who regularly receive minor excess payments from their customers.

3. **Rule 5 relating to payment of tax on new services substituted with the new rule**
Rule 5 has been substituted with a new rule which provides as follows:- Where a service is taxed for the first time, then,—
(a) No tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;
(b) No tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within 14 days** of the date when the service is taxed for the first time.

**It is important to note that time-period available in case of new levy for the issuance of the invoice has still been restricted to 14 days as against normal time-period for issuance of invoice been extended to 30 days.

4. **Deletion of Rule 6 relating to determination of point of taxation in case of continuous supply of service**
Since the essence of the rule applicable in case of continuous supply of service is the same as the main rule-rule 3, the separate rule for continuous supply of service has been omitted and merged with the main rule.

5. **Rule 7 substituted with a new rule**
Prior to amendment
Earlier, Rule 7 provided that in the following cases, subject to specified conditions, date of receipt of consideration would be the point of taxation:-
(a) Person liable to pay service tax under reverse charge mechanism
(b) Export of services
(c) Individuals or proprietary firms or partnership firms providing the 8 specified services**

Further, in case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be:-
(a) the date of credit in the books of account of the person receiving the service or
(b) date of making the payment
whichever is earlier.

After the Amendment
The category (b) above, has been shifted from the Point of Taxation Rules, 2011 to the Rule 6 of the Service Tax Rules, 1994 (i.e. old receipt basis). Provided that no service tax shall be payable in case of export if payment is received in CFE within the time allowed by RBI.

Further, the benefit of payment of service tax on receipt basis earlier provided to eight specified services in category (c) has also been withdrawn. However, in case of **individuals and partnership**

firms whose aggregate value of taxable services provided from one or more premises is Rs. 50 lakh or less in the previous financial year, service tax on taxable services provided or to be provided by him up to a total of Rs. 50 lakh in the current financial year is payable on receipt basis (provided in Rule 6 of Service Tax Rules, 1994).

New rule 7 reads as under:-
Notwithstanding anything contained in these rules, the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under Sec 68(2), shall be the date on which payment is made:

However, where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist:
Further, in case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier.

<u>Note</u> (Imp):** CBEC vide **Circular No. 154/5/2012 – ST dated 28.03.2012** has clarified that, in respect of the specified eight services, for invoices issued <u>on or before 31st March 2012</u>, the point of taxation shall be the date of payment.

*Further, Board has clarified vide **Circular No. 158/9/2012 ST dated 08.05.2012** that the rate of service tax prevalent on the date when point of taxation occurs is the rate of service tax applicable on any taxable service. Therefore, in the abovementioned cases where the point of taxation is the date of payment, service tax should be charged @12% on these services, if the payment is received on or after 1st April, 2012 even though the invoices have been issued before 1st April, 2012.*

It has also been clarified that the ***<u>supplementary invoices</u>*** may be issued to reflect the new rate of tax, if required to ***<u>recover</u>*** the differential amount and that ***<u>CENVAT credit can be availed</u>*** on such supplementary invoices and tax payment challans (in case of reverse charge).

6. **Determination of point of taxation in other cases [Rule 8A inserted]**
The Central excise officer can conduct best judgment assessment to determine the point of taxation where the tax-payer is unable to furnish one or more of the details needed i.e. date of payment or date of invoice or both to determine point of taxation.

III. EXEMPTIONS / WITHDRAWAL OF EXEMPTIONS

1. **First clearances up to Rs. 10 lakh, for the purposes of small service providers' exemption, to be in terms of invoices and not mere payments received**
With effect from 01.04.2012, *Notification No. 6/2005 dated 01.03.2005* grating exemption to small service providers has been amended recognizing that the first clearances up to Rs. 10 lakh will be in terms of invoices and not mere payments received. This amendment has been carried out to align the said exemption with the Point of Taxation Rules, 2011.

Prior to amendment	After the amendment
"aggregate value not exceeding Rs. 10,00,000" **means** the sum total of first consecutive **payments received** during a FY towards the gross amount, charged by the service provider towards taxable services till the aggregate amount of such payments is equal to Rs. 10 lakh	"aggregate value not exceeding Rs. 10,00,000" **means** the sum total of value of taxable services charged in the first consecutive **invoices issued or required to be issued**, as the case may be, during a financial year **but does not include value charged in invoices** issued towards exempt Services.

[Notification No. 05/2012-ST dated 17.03.2012]

IV. CLARIFICATIONS

1. **Service tax is not chargeable on delayed payment charges collected by Stock Brokers**

CBEC has clarified that delayed payment charges received by the stock brokers are not includible in taxable value as the same are not the charges for providing taxable services.

It may be noted that the Board has stated that this principle will also apply to other service providers.

However, delayed payment charges would not be includible in 'gross value charged' only if these charges are shown separately in the account statement/invoice/bill etc.

PRACTICAL QUES ON COMPUTATION OF SERVICE TAX LIABILITY

Ques: M/s Smart Laboratories Ltd. is engaged in providing various types of technical testing and analysis services. The following are the receipts for the services rendered-

Particulars	Receipts (Rs.)
Testing and analysis of agricultural products and foods	7,500
Testing of Blood sample of cow for identification of disease.	4,000
Testing for side effects of certain drugs	4,500
Testing for fertility of soil	16,000
Testing for toxicity in the toys for children	500
Test on concrete and other building materials	6,500
Complete Medical Test of Mr. Mehta for diagnosis of Dengu.	2,500
Testing of composition and purity of minerals	5,000

On the basis of the above information, compute the value of taxable services.

Ans: **Computation of value of taxable services:-**

Particulars	Receipts (Rs.)
Testing for side effects of certain drugs	4,500
Testing for toxicity in the toys for children	500
Complete Medical Test of Mr. Mehta for diagnosis of Dengu	Exempt
Testing of composition and purity of minerals	5,000
Testing and analysis of agricultural products and foods	7,500
Testing of Blood samples of cow for identification of disease (Exempt)	Exempt
Testing for fertility of soil	16,000
Test on concrete and other building materials	6,500
Value of taxable services	**40,000**

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