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Dear Professional Colleague,

'Any services' provided by Government or Local authority to a Business Entity chargeable to ST under Reverse Charge w.e.f. April 1, 2016: Related Changes/ Clarification

The Central Government has issued 3 important Notifications, dated April 13, 2016 to limit the scope of the Governmental services, which have been brought to Service tax under Reverse Charge w.e.f. April 1, 2016. However, before dwelling into the exemption list and other related amendments, we are discussing hereunder the gist of Service tax leviability on Governmental services and the cloud of issues awaiting such exemptions:

Background:

Effective from April 1, 2016, under clause (iv) of Section 66D(a) of the Finance Act, 1994 ("**the Finance Act**"), the words 'support services' have been substituted by the words 'any service' thereby, , any services provided by the Government or Local authority to a Business Entity [Section 109(1) of the Finance Act, 2015 read with Notification No. 06/2016-ST dated February 18, 2016] is made chargeable to Service tax. However, the services provided by Government or Local authority to a Business Entity having turnover up to Rs. 10 lakh in the preceding Financial Year remains exempt [New entry inserted vide after Entry No. 47 in the Mega Exemption Notification No. 25/2012- ST dated June 20, 2012 ("**the Mega Exemption Notification**") amended vide Notification No. 07/2016-ST dated February 18, 2016].

Amendment in the Reverse Charge Notification: The Union Budget, 2016 vide **Notification No. 18/2016-ST dated March 1, 2016**, has amended Reverse Charge Notification No. 30/2012-ST dated June 20, 2012 ("**the Reverse Charge Notification**"), to delete the words "by way of support services" appearing at Sl. No. 6 of the Table in the said notification with effect from April 1, 2016.

Corresponding changes in the Service Tax Rules, 1994 ("**the Service Tax Rules**") & the Finance Act: Corresponding changes have also been made in Rule 2(1)(d)(i)(E) of the Service Tax Rules and Section 65B(49) of the Finance Act containing definition of the term 'support services' is also deleted.

Thus, the liability to pay Service tax on any service provided by Government or a Local Authority to Business Entities is on the service recipient under Reverse Charge w.e.f. April 1, 2016 except in case of (1) renting of immovable property, and (2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of Section 66D of the Finance Act.

Taxability of all Governmental services under Reverse Charge raised an alarming bell owing to its wide ramifications:

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Given that the definition of the term 'service' under Section 65B(44) of the Finance Act is wide enough to cover any activity carried out by a person for another for consideration, it was being envisaged that effective from April 1, 2016, all Governmental services would be exigible to Service tax. Accordingly, a debate was kindled in the Trade and Industry regarding fate of the following types of Governmental services:

- Services rendered as a sovereign right by Government/ various Public Authorities (set up by Government) which cannot be substituted by any private party. For example, there are various types of Statutory charges and fees e.g. ESI inspection, PF inspection, Motor Vehicles Registration charges, Motor Vehicles Inspection charges, fees payable to Registrar of Companies for filing statutory forms, Building inspection etc.;
- A Business Entity is also required to pay fees for getting various authorisations, permissions, licenses etc., for various purposes like import and export etc.;
- Even, the Government collects big chunk of money by allocation of coal blocks/grant of mining license, telecom spectrum etc. which are in the nature of payment of royalty to Government for use of natural resources.

Having said that, 'ANY service' provided by provided by Government or Local Authority to a Business Entity, it appeared that all such services which are in the nature of sovereign rights would also come under the purview of Service tax. However, the same was creating havoc amongst the people considering the fact that almost every day, we receive one or other type of Government services on which the service recipient is now liable to pay Service tax.

Amendment in the Mega Exemption Notification to exempt certain services provided by Government or a local authority to a Business entity

In order to put rest to the much-debated issue of taxability of all Governmental services, the Central Government vide **Notification No. 22/2016-ST dated April 13, 2016**, has amended the Mega Exemption Notification to amend/insert the Entries in the following manner:

Relevant Entry	Particulars of Exemption
Exemption Amended	
Entry No. 39	After the words "Services by, the words "Government, a local authority or" shall be inserted. The amended Entry No. 39 reads as under: <i>"Services by <u>Government, a local authority or</u> governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution."</i>

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New Exemptions Provided	
Entry No. 54	Services provided by Government or a local authority <u>to another Government or local authority</u> . Provided that nothing contained in this Entry shall apply to services specified in sub-clauses (i),(ii) and (iii) of Section 66D(a) of the Finance Act
Entry No. 55	Services provided by Government or a local authority by way of <u>issuance of passport, visa, driving licence, birth certificate or death certificate</u>
Entry No. 56	Services provided by Government or a local authority where <u>the gross amount charged for such services does not exceed Rs. 5000/-</u> . ➤ This exemption is not applicable to services specified in sub-clauses (i), (ii) and (iii) of Section 66D(a) of the Finance Act; ➤ In case of continuous supply of service, the exemption shall apply only where the gross amount charged for such service does not exceed Rs. 5000/- in a Financial Year.
Entry No. 57	Services provided by Government or a local authority by way of <u>tolerating non-performance of a contract</u> for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract
Entry No. 58	Services provided by Government or a local authority by way of- (a) <u>registration required under any law</u> for the time being in force; (b) <u>testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law</u> for the time being in force
Entry No. 59	Services provided by Government or a local authority by way of <u>assignment of right to use natural resources to an individual farmer</u> for the purposes of agriculture
Entry No. 60	Services by Government, a local authority or a governmental authority by way of any <u>activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution</u>
Entry No. 61	Services provided by Government or a local authority by way of <u>assignment of right to use any natural resource where such right to</u>

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	<p><u>use was assigned by the Government or the local authority before the April 1, 2016:</u></p> <p>Provided that the exemption shall apply <u>only to Service tax payable on one time charge payable</u>, in full upfront or in instalments, for assignment of right to use such natural resource</p>
Entry No. 62	<p>Services provided by Government or a local authority by way of allowing a business entity <u>to operate as a telecom service provider or use radio frequency spectrum during the financial year 2015-16</u> on payment of licence fee or spectrum user charges, as the case may be.</p> <p>(It may be noted here that the Union Budget, 2016, under Section 66E of the Finance Act, after clause (i), clause (j) is inserted to include “assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof” under the list of Declared services. But such changes shall be effective from the date of enactment of the Finance Bill, 2016 (“FB, 2016”), leading to dispute for taxability for the interim period i.e. from April 1, 2016 to date of enactment of FB, 2016</p>
Entry No. 63	<p>Services provided by Government by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation <u>to import export cargo on payment of Merchant Overtime charges (MOT)</u>.</p>

To access full Notification, please click on the link below:

<http://www.a2ztaxcorp.com/wp-content/uploads/2016/04/Notification-No.-22.pdf>

Amendment in Valuation Rules to include in value of taxable services, payment of interest/ other consideration payable on Governmental services whose payment is allowed to be deferred on such payment of interest/ other consideration

In terms of Rule 6(2)(iv) of the Service Tax (Determination of Value) Rules, 2006 (“**the Valuation Rules**”), the value of any taxable service shall not include interest on delayed payment of any consideration for the provision of services or sale of property, whether moveable or immovable.

Now, the Central Government vide **Notification No. 23/2016-ST dated April 13, 2016**, has inserted following proviso to Rule 6(2)(iv) of the Service Tax Valuation Rules:

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“Provided that this clause shall not apply to any service provided by Government or a local authority to a business entity where payment for such service is allowed to be deferred on payment of interest or any other consideration.”

To access full Notification, please click on the link below:

<http://www.a2ztaxcorp.com/wp-content/uploads/2016/04/Notification-No.-23.pdf>

Point of Taxation (“POT”) under Reverse Charge in case of Governmental services

The Central Government vide **Notification No. 24/2016-ST dated April 13, 2016**, has amended Rule 7 of the Point of Taxation Rules, 2011 to provide that in case of services provided by the Government or local authority to any business entity, the POT shall be the earlier of the dates on which -

- a) **Any payment, part or full**, in respect of such service **becomes due**, as specified in the invoice, bill, challan or any other document issued by the Government or local authority demanding such payment; or
- b) **Payment** for such services is made.

To access full Notification, please click on the link below:

<http://www.a2ztaxcorp.com/wp-content/uploads/2016/04/Notification-No.-24.pdf>

Amendment in the Cenvat Credit Rules, 2004 (“the Credit Rules”)

The Credit Rules have been amended vide **Notification No. 24/2016 CE (NT) dated April 13, 2016**. Consequently, the Cenvat credit of the Service tax on one time charges (whether paid upfront or in installments) paid in a year, may be allowed to be taken evenly over a period of 3 (three) years. [Rule 4(7) of Credit Rules as amended].

However, the Service tax paid on spectrum user charges, license fee, transfer fee charged by the Government on trading of spectrum would be available in the year in which the same is paid. Likewise, Service tax paid on royalty in respect of natural resources and any periodic payments shall be available as credit in the year in which the same is paid. The existing eighth proviso in sub-rule (7) of Rule 4 of the Credit Rules is being omitted.

Amendments have also been made in the Credit Rules, so as to allow Cenvat credit to be taken on the basis of the documents specified in sub-rule (1) of Rule 9 of the Credit Rules, even after the period of 1 year from the date of issue of such a document in case of services provided by the Government or a local authority or any other person by way of assignment of right to use any natural resource [Fifth Proviso to sub-rule (7) of Rule 4 of the Credit Rules]

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To access full Notification, please click on the link below:

<http://www.a2ztaxcorp.com/wp-content/uploads/2016/04/Excise-Notification-No.-24.pdf>

Clarification on taxability of Governmental services & Illustration explaining how the Cenvat credit is to be availed on Service tax paid for assignment of right to use natural resources

The Central Board of Excise and Customs (“**the CBEC**”) vide **Circular No. 192/02/2016-ST dated April 13, 2016 (“the Circular”)** has issued a detailed clarification on issues regarding levy of Service tax on the services provided by Government or a Local authority to Business Entities. In first part, the Circular covers clarification on the amendments made in the Mega Exemption Notification (supra) and also provides that taxes, cesses or duties levied are not consideration for any particular service as such and hence not leviable to Service tax:

“Taxes, cesses or duties levied are not consideration for any particular service as such and hence not leviable to Service Tax. These taxes, cesses or duties include excise duty, customs duty, Service Tax, State VAT, CST, income tax, wealth tax, stamp duty, taxes on professions, trades, callings or employment, octroi, entertainment tax, luxury tax and property tax....”

Further, the Circular also provides an illustration explaining how the Cenvat credit is to be availed on Service tax paid for assignment of right to use natural resources.

To access full Circular, please click on the below:

<http://www.a2ztaxcorp.com/wp-content/uploads/2016/04/clarification-on-services-provided-by-government-or-local-authority-to-business-entity-service-tax-circular-dt-13-april-2016.pdf>

Our Comments:

Indeed, the stated Notifications will assist in clearing the mist surrounding the taxability of Governmental services, which has been a much-debated and fearing issue having wide implications, among the Trade and Industry. However, it may be noted that on perusal of the stated amendments, still complete clarity/relief is not granted to Business Entities on following queries:

- Whether Business Entities would be required to take registration and file Service Tax Returns, claiming exemption for every small Governmental services of less than Rs. 5,000/- like payment of small ROC fees etc;
- Whether proper documentation to substantiate the exemption availed, would also be required to maintain;

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- Neither of the stated Notifications have been made applicable w.e.f April 1, 2016 i.e. these notification would be applicable w.e.f. April 13, 2016. What about the Governmental services rendered during the interim period i.e. from April 1, 2016 to April 13, 2016?

Videos on Union Budget, 2016:

Important changes in the arena of Indirect Tax - Service Tax & Excise

Reactions on Union Budget 2016 by Bimal Jain

Important Union Budget, 2016 changes in Indirect Taxes effective from April 1, 2016:

Service Tax & Cenvat Credit Rules, 2004

Central Excise & Customs

Hope the information will assist you in your Professional endeavours. In case of any query/ information, please do not hesitate to write back to us.

Thanks & Best Regards

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