

2016

Union Budget 2016

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An overview of changes brought under Union Budget
2016, presented as on February 29, 2016



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UNION BUDGET 2016: KEY CHANGES IN SERVICE TAX

Amidst huge expectations, the Hon'ble Finance Minister Shri. Arun Jaitley presented the third full-year Budget of the Hon'ble Prime Minister Shri. Narendra Modi's Government on February 29, 2016, Monday. The Budget 2016, a big test for Shri. Jaitley, is a tough balancing act between the fiscal consolidation and much-needed spending to revive growth in the economy. With an eye on supporting the small tax-payer and the small investor, the Minister announced a slew of schemes, and exemptions.

In his Budget speech, Shri. Jaitley has said that the Government shall also endeavour to continue with the ongoing reform programme and ensure the passage of the Constitutional amendments to enable the implementation of the Goods and Services Tax ("GST"), the passage of Insolvency and Bankruptcy law and other important reform measures, which are pending before the Parliament.

We are sharing with you the key highlights of the Union Budget 2016 in the arena of Indirect Taxes:

CHANGES UNDER SERVICE TAX

A. Enabling provision for levy of "KrishiKalyan Cess" (w.e.f 01.06.2016):

- An enabling provision is being made to empower the Central Government to impose a KrishiKalyan Cess on any or all the taxable services at a rate of 0.5% on the value of any or all taxable services.
- The proceeds from this Cess would be utilized for the purposes of financing and promoting initiatives to improve agriculture or for any other purpose relating thereto.
- Credit of this Cess shall be allowed after due amendment yet to be made in the Central Credit Rules, 2004 to be used for payment of the proposed Cess on the service provided by a service provider.
- The provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder, including those relating to refunds and exemptions from tax, interest and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the KrishiKalyan Cess on taxable services, as they apply in relation to the levy and collection of tax on such taxable services.

B. Changes In Chapter V of the Finance Act, 1994 ["the Finance Act"] (Will come into force when the Finance Bill, 2016 is enacted unless otherwise stated):-

I. Changes in relation to the Negative List – Section 66D of the Finance Act:-

- **Section 66D(I): Proposed to be deleted**



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Presently, specified education services viz. services by way of pre-school education, higher secondary school education or equivalent, education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force, education as a part of an approved vocational education course, are covered under Section 66D(l) of the Finance Act. These services are proposed to be deleted.

However, corresponding exemption is inserted in the Mega Exemption Notification by amending the definition of “educational institutions” to include an institution providing such services as was specified in Section 66D(l) of the Finance Act [Read with Notification No. 9/2016-ST dated 01.03.2016 vide which changes have been made in the Mega Exemption List of Services in the Mega Exemption Notification].

- **Section 66D(o)(i): Proposed to be deleted w.e.f. 01.06.2016**

Presently, Section 66D(o)(i) of the Finance Act covers “service of transportation of passengers, with or without accompanied belongings, by a stage carriage”, which is proposed to be deleted w.e.f 01.06.2016. Corresponding to this deletion, new entry No. 23(bb)] has been inserted in the Mega Exemption Notification to exempt services by a stage carrier other than air-conditioned stage carriage. [Read with Notification No. 9/2016-ST dated 01.03.2016 vide which changes have been made in the Mega Exemption List of Services in the Mega Exemption Notification]

Further, Service tax is proposed to be levied on service of transportation of passengers by air conditioned stage carriage, @ 40% after abatement of 60% (as applicable to transportation of passengers by contract carriage) without input tax credit, with effect from 01.06.2016 [Read with Notification No. 08/2016-ST dated 29.02.2016 vide which changes have been made in the Abatement Notification]

- **Section 66D(p)(ii): Proposed to be deleted w.e.f. 01.06.2016**

Presently, Section 66D(p)(ii) of the Finance Act covers “services by way of transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance”, which is proposed to be deleted w.e.f 01.06.2016.

Corresponding to this deletion, new entry [No. 53] has been inserted in the Mega Exemption Notification to such services by an aircraft. [Read with Notification No. 9/2016-ST dated 01.03.2016 vide which changes have been made in the Mega Exemption List of Services].

However, the services provided by vessels would be taxable and the domestic shipping lines registered in India will pay service tax under forward charge while the services availed from foreign shipping line by a business entity located in India will get taxed under reverse charge at the hands of the business entity. The service tax so paid will be available as credit with the Indian manufacturer or service provider availing such services

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(subject to fulfillment of the other existing conditions). It is clarified that service tax levied on such services shall not be part of value for custom duty purposes.

In addition, Cenvat credit of eligible inputs, capital goods and input services is being allowed for providing the service by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India as export of services. Consequential amendments are being made in Cenvat Credit Rules, 2004.

II. **Other Important Changes in the Finance Act:-**

• **Changes in Section 65B of the Finance Act:**

- Section 65B(11) of the Finance Act is proposed to be deleted containing the definition of the term "approved vocational education course", with the deletion of Section 66D(l) of the Finance Act.

It shall be incorporated in the Mega Exemption Notification with insertion of corresponding exemption thereunder.

- Section 65B(44) of the Finance Act provides definition of the term 'service'. Explanation 2(ii)(a) in Section 65B(44) of the Finance Act, is being amended so as to clarify that any activity carried out by a lottery distributor or selling agent of the State Government under the provisions of the Lotteries (Regulation) Act, 1998 (17 of 1998), are liable to Service tax.
- Section 65B(49) of the Finance Act containing definition of the term 'support services' has been deleted w.e.f 01-04-2016 vide **Notification No. 15/2016 – ST dated 01.03.2016.**

• **Changes in 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. Meaning thereby, assignment by Government of the right to use the spectrum as well as subsequent transfers of assignment of such right to use is a 'service' leviable to Service tax and not sale of intangible goods.

The liability to pay Service tax on any service provided by Government or a local authority to business entities shall be on the service recipient. Consequently, Reverse charge Notification No. 30/2012-ST is being amended so as to delete the words "by way of support services" appearing at Sl. No. 6 of the Table in the said notification with effect from 01.04.2016. Further, 01.04.2016 is being notified as the date from which the words "by way of support services" shall stand deleted from paragraph 1, clause A (iv), item (C) of Reverse Charge Notification No. 30/2012-ST. The above changes shall come into effect from the 01.04.2016.

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It is being provided that Cenvat credit of Service tax paid on amount charged for assignment by Government or any other person of a natural resources such as radio-frequency spectrum, mines etc. shall be spread over the period of time for which the rights have been assigned. It is also being provided that where the manufacturer of goods or provider of output service further assigns such right to use assigned to him by the Government or any other person, in any financial year, to another person against a consideration, balance Cenvat credit not exceeding the Service tax payable on the consideration charged by him for such further assignment, shall be allowed in the same financial year. It is also being provided that Cenvat credit of annual or monthly user charges payable in respect of such assignment shall be allowed in the same financial year.

- **Changes in Section 67A of the Finance Act:**

Section 67A is proposed to be amended to obtain specific rule making powers in respect of Point of Taxation Rules, 2011. (Corresponding amendments carried out in the Point of Taxation Rules, 2011, which would come into force w.e.f. the date of enactment of the Finance Bill, 2016).

The Point of Taxation Rules, 2011 (“POTR”) have been framed under provisions of clause (a) and (hhh) of sub-section (1) of section 94, now specific powers is also being obtained under Section 67A to make rules regarding point in time of rate of service tax. Thus, any doubt about the applicability of Service tax rate or apparent contradiction between section 67A and POTR would be taken care of. Therefore, consequent modifications have been done in POTR.

Rule 5 of POTR applies when a new service comes into the service tax net. Further, in rule 5 of POTR, it is provided that in two specified situations the new levy would not apply. Another Explanation is being inserted therein stating that in situations other than those specified where new levy or tax is not payable, the new levy or tax shall be payable. The above changes shall come into effect from 01.03.2016.

- **Changes in Section 73 of the Finance Act:**

Section 73 is proposed to be amended to extend the limitation period for recovery of Service tax not levied or paid or short levied or short paid or erroneously refunded, for cases not involving fraud, collusion, suppression etc., by one year, i.e., from 18 months to 30 months. 5 year limitation period in case of fraud etc., has not been changed.

- **Changes in Section 75 of the Finance Act:**

There is change in the rate of interest on delayed payment of Service tax, in the following manner:

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Serial No.	Situation	Rate of simple interest
1.	Collection of any amount as Service tax but failing to pay the amount so collected to the credit of the Central Government on or before the date on which such payment becomes due.	24%
2.	Other than in situations covered under serial number 1 above.	15%

In case of assesseees, whose value of taxable services in the preceding year/years covered by the notice is less than Rs. 60 Lakhs, the rate of interest on delayed payment of Service tax will be 12%.

Further, for the amount collected in excess of the tax assessed or determined – Section 73B of the Finance Act, 15% rate of interest would be applicable as against 18%.

(Read with the Notification No. 13 & 14/2016 – ST dated 01.03.2016)

- **Changes in Section 78A of the Finance Act:**

Explanation is proposed to be inserted to provide that penalty proceedings under Section 78A (Penalty for offences by director, etc., of company) shall be deemed to be closed in cases where the main demand and penalty proceedings have been closed under Section 76/ Section 78 of the Finance Act.

- **Changes in Section 89 of the Finance Act:**

Section 89 of the Finance Act (Offence and Penalties), is proposed to be amended to enhance the monetary limit for filing complaints for punishable offences to Rs. 2 crores from Rs. 50 lakhs.

- **Changes in Section 90 of the Finance Act:**

Sub-section (2) to Section 90 of the Finance Act is proposed to restrict the power to arrest only to situations where the tax payer has collected the Service tax but not deposited it with the exchequer, and amount of such tax collected but not paid exceeds Rs. 2 crore (as provided under amended Section 89).

- **Changes in Section 91 of the Finance Act:**

Section 91 of the Finance Act is proposed to be amended to delete reference of Section 89(1)(i) of the Finance Act under Sub-Section (1) and to delete Sub-Section (3) thereof, again to restrict the power to arrest only to situations where the tax payer has collected the Service tax but not deposited it with the exchequer, and amount of such tax collected but not paid exceeds Rs. 2 crore (as provided under amended Section 89).

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- **Changes in Section 93A of the Finance Act:**

Section 93A of the Finance Act, is proposed to be amended so as to enable allowing of rebate by way of notification as well as rules. Application for rebate may be allowed to be filed within a period of 1 month from the date on commencement of the Finance Bill, 2016.

- **New Section 101 inserted to allow retrospective Service tax exemption to canal, dam or other irrigation works:**

Definition of “Governmental authority” as contained under the Mega exemption Notification was amended with effect from 30.01.2014. Earlier where as both conditions of Government control/equity and setting up under State/Union law were required, w.e.f. 30.01.2014, either setting up under law is required or Government control/equity for functions under Article 243W of Constitution are required, so as to qualify as Government Authority, by ‘and’ being substituted by ‘or’.

Consequently, services provided by way of construction, erection, maintenance, or alteration etc. of canal, dam or other irrigation works provided to entities set up by Government but not necessarily by an Act of Parliament or a State Legislature were exempted w.e.f. 30.01.2014 [Entry No. 12(d) of the Mega Exemption Notification]. However, services provided prior to 30.01.2014 to such bodies remained taxable.

Now, a new Section 101 is proposed to be inserted to provide Service tax exemption to canal, dam or other irrigation works with retrospective effect in the following manner:

- a) The benefit of exemption is proposed to be extended to the said services provided during the period from the 01.07.2012 to 29.01.2014;
- b) Refund of Service tax paid on the said services during the period from 01.07.2012 to 29.01.2014, shall also be allowed in accordance with the law including the law of unjust enrichment;
- c) Application for refund may be allowed to be filed within a period of 6 months from the date on which the Finance Bill, 2016 receives the assent of the President.

- **New Section 102 inserted to allow restoration of certain exemption withdrawn w.e.f 1-4-2015:**

Exemption from Service tax on services provided to the Government, a local authority or a Governmental authority by way of construction, erection, commissioning etc. of:

- (i) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

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- (ii) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
- (iii) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to Section 65B(44) of the Finance Act.

was withdrawn with effect from 01.04.2015 [Entry No. 12 of the Mega Exemption Notification].

Now, a new Section 102 is proposed to be inserted to provide restoration for the services provided under a contract which had been entered into prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date.

- Vide corresponding amendment in the Mega Exemption Notification [New Entry 12A], such exemption is being restored till 31.03.2020 [Read with Notification No. 9/2016-ST dated 01.03.2016 vide which changes have been made in the Mega Exemption List of Services];
 - The services provided during the period from 01.04.2015 to 29.02.2016 under such contracts are also proposed to be exempted from Service tax;
 - Refund of Service tax paid on the said services during the period from 01.04.2015 to 29.02.2016, shall also be allowed - same provisions as discussed, supra, in Section 101.
- **New Section 103 inserted to allow restoration of certain exemption withdrawn on Airport or port w.e.f 1-4-2015:**

Exemption from Service tax on services by way of construction, erection, commissioning and installation of original works pertaining to an airport, port was withdrawn with effect from 01.04.2015 [Entry No. 14 of the Mega Exemption Notification].

Now, a new Section 103 is proposed to be inserted to provide restoration for the services provided under a contract which had been entered into prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date, subject to production of certificate from the Ministry of Civil Aviation or Ministry of Shipping, as the case may be, to that effect.

- Vide corresponding amendment in the Mega Exemption Notification [New Entry 14A], such exemption is being restored till 31.03.2020 [Read with Notification No. 9/2016-ST dated 01.03.2016 vide which changes have been made in the Mega Exemption List of Services];

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- The services provided during the period from 01.04.2015 to 29.02.2016 under such contracts are also proposed to be exempted from Service tax;
- Refund of Service tax paid on the said services during the period from 01.04.2015 to 29.02.2016, shall also be allowed - same provisions as discussed, supra, in Section 101.

C. Changes in the Mega Exemption List of Services Vide Notification No. 9/2016-ST dated 01.03.2016 amending Notification No. 25/2012-ST dated 20.06.2012 (Effective From 01.04.2016 unless otherwise stated):

- **Entry No. 6(b) & (c):** Exemption Withdrawn

Entry No. 6(b) & (c) has been amended to withdraw exemption in respect of the following:

- ✓ Services provided by a senior advocate to an advocate or partnership firm of advocates and to a person other than a person ordinarily carrying out any activity relating to industry, commerce or any other business or profession; and
- ✓ A person represented on an arbitral tribunal to an arbitral tribunal

Hence, Service tax in the above instances would be levied under forward charge. However, legal services provided by a firm of advocates or an advocate other than senior advocate is being continued i.e. under Reverse Charge. [Read with Notification No. 18/2016 – ST dated 01.03.2016, amending the Reverse Charge Notification]

- **Entry No. 13:** Scope expanded to also cover the following:

Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of:

- (ba) a civil structure or any other original works pertaining to the 'In-situ rehabilitation of existing slum dwellers using land as a resource through private participation' under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers;
- (bb) a civil structure or any other original works pertaining to the 'Beneficiary led individual house construction / enhancement under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana'.

- **Entry 14(a):** Exemption to construction, erection, commissioning or installation of original works pertaining to monorail or metro is being withdrawn.

However, the said services, where contracts were entered into before 01.03.2016, on which appropriate stamp duty, was paid, shall remain exempt.

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- **Entry 16:** The threshold exemption limit of consideration charged for services provided by a performing artist in folk or classical art form of (i) music, or (ii) dance, or (iii) theatre, has been extended from Rs. 1 lakh to Rs. 1.5 Lakhs per performance (except brand ambassador).
- **Entry No. 23(c) deleted:** Exemption to services for transport of passengers, with or without accompanied belongings, by ropeway, cable car or aerial tramway is being withdrawn.
- **New Entries inserted to exempt the following:**
 - a) **Entry 9B w.e.f. 01.03.2016:** Services provided by the Indian Institutes of Management (IIM), as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme, -
 - (a) two year full time residential Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT), conducted by Indian Institute of Management;
 - (b) fellow programme in Management;
 - (c) five year integrated programme in Management;
 - b) **Entry 9C:** Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under Skill Development Initiative (SDI) Scheme;
 - c) **Entry 9D:** Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Gramin Kaushalya Yojana under the Ministry of Rural Development by way of offering skill or vocational training courses certified by National Council For Vocational Training;
 - d) **Entry 12A and 14A w.e.f. 01.03.2016:** Restoration of certain exemptions withdrawn last year for projects, contracts in respect of which, contract were entered into before withdrawal of the exemption. [Refer changes discussed supra under newly proposed Section 102 and Section 103 of the Finance Act, for details];
 - e) **Entry 14 (ca):** Services by way of construction, erection, commissioning, installation of original works pertaining to low cost houses up to a carpet area of 60 sq.m per house in a housing project approved by the competent authority

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under the “Affordable housing in partnership” component of PMAY or any housing scheme of a State Government;

- f) **Entry No. 23(bb):** Service of transportation of passengers, with or without accompanied belongings, by a stage carriage, was in the Negative list of services vide Section 66D(o)(i) of the Finance Act. With the proposed deletion of said entry under the Negative List, a new entry is being inserted under the Mega Exemption Notification so as to exempt services by a stage carriage other than air conditioned stage carriage;
 - g) **Entry No. 26(q):** Services of general insurance business provided under ‘Niramaya’ Health Insurance scheme launched by National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999 (44 of 1999);
 - h) **Entry No. 26C:** Services of life insurance business provided by way of annuity under the National Pension System regulated by Pension Fund Regulatory and Development Authority of India (PFRDA) under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013);
 - i) **Entry No. 49:** Services provided by Employees’ Provident Fund Organisation (EPFO) to persons governed under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952);
 - j) **Entry No. 50:** Services provided by Insurance Regulatory and Development Authority of India (IRDA) to insurers under the Insurance Regulatory and Development Authority of India Act, 1999 (41 of 1999);
 - k) **Entry No. 51:** Services provided by Securities and Exchange Board of India (SEBI) set up under the Securities and Exchange Board of India Act, 1992 (15 of 1992) by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market;
 - l) **Entry No. 52:** Services provided by National Centre for Cold Chain Development under Ministry of Agriculture, Cooperation and Farmer’s Welfare by way of cold chain knowledge dissemination;
 - m) **Entry No. 53 w.e.f 01.06.2016:** Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India.
- New definition provided for certain terms in paragraph 2 relating to definition of –
 - a) (ba) w.e.f. the date when the Finance Bill, 2016 receives the assent of the President “approved vocational education course” means, -

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- (i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961 (52 of 1961); or
 - (ii) a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship
- b) (zdd) “senior advocate” has the meaning assigned to it in Section 16 of the Advocates Act, 1961 (25 of 1961).
- Definition of “educational institutions” provided under clause (oa) will be substituted with the following w.e.f. the date when the Finance Bill, 2016 receives the assent of the President:
 - “(oa) “educational institution” means an institution providing services by way of:
 - (i) pre-school education and education up to higher secondary school or equivalent;
 - (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
 - (ii) education as a part of an approved vocational education course;”

D. Changes in Service Tax Rules, 1994 Vide Notification No. 19/2016-ST dated 01.03.2016(Effective From 01-04-2016 Unless Otherwise Stated):-

➤ Under Rule 2 of the Service Tax Rules, 1994:

- Rule 2(1)(d)(i)(D)(II) is being modified so that legal services provided by a senior advocate shall be on forward charge [Read with corresponding changes in Entry No. 6(b) &(c) of the Mega Exemption Notification, discussed supra];
- Rule 2(1)(d)(EEA) making service recipient, that is, mutual fund or Asset Management Company as the person liable for paying Service tax is being deleted. Meaning thereby, services provided by mutual fund agents/distributor to a mutual fund or asset management company are being put under forward charge;
- Rule 2(1)(d)(i)(E), which provides for liability of service receiver to pay Service tax under Reverse Charge in relation to support services provided or agreed to be provided by Government or Local authority with certain exceptions. Earlier vide Notification No. 05/2015-ST dated March 1, 2015, it was provided that the word “support” from the sub-rule shall be deleted from the date as the Central Government may notify, by notification in the Official Gazette.

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Consequently, vide **Notification No. 17/2016 – ST dated 01.03.2016**, 01.04.2016 is being notified as the date from which the word “support” shall stand deleted from Rule 2(1)(d)(i)(E) of Service Tax Rules, 1994 so as to provide that the liability to pay Service tax on any service provided by Government or local authorities to business entities shall also be on the service recipient on Reverse Charge Basis.

➤ **Under Rule 6 of the Service Tax Rules, 1994:**

- **Rule 6(1):** Following benefits presently available to individual or proprietary firm or partnership firm, are being extended to One Person Company (OPC) whose aggregate value of taxable services provided from one or more premises is up to Rs. 50 lakhs in the previous financial year:
 - a) Quarterly payment of Service tax and
 - b) Payment of Service tax on receipt basis
- **Rule 6(7A):** The Service tax liability on single premium annuity (insurance) policies is being rationalised and the effective alternate Service tax rate (composition rate) is being prescribed at 1.4% of the total premium charged, in cases where the amount allocated for investment or savings on behalf of policy holder is not intimated to the policy holder at the time of providing of service.

➤ **Under Rule 7 of the Service Tax Rules, 1994:**

- Service tax assessee above a certain threshold limit shall also submit an annual return for the financial year, in such form and manner as may be specified by the CBEC, by the 30th day of November of the succeeding financial year;
- The Central Government may, subject to such conditions or limitations, specify by notification, an assessee or class of assesses who may not be required to submit the annual return

➤ **Under Rule 7B of the Service Tax Rules, 1994:**

- Sub-Rule 2 has been inserted to provide that an assessee, who has filed the annual return by the due date, may submit a revised return within a period of 1 month from the date of submission of the said annual return.

➤ **Under Rule 7C of the Service Tax Rules, 1994:**

- Sub-Rule 2 has been inserted to provide that where the annual return is filed by the assessee after the due date, the assessee shall pay to the credit of the Central Government, an amount calculated at the rate of Rs. 100 per day for the period of delay in filing of such return, subject to a maximum of Rs. 20,000/-.

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E. Changes in Reverse Charge Mechanism Vide Notification No. 18/2016-ST dated 01.03.2016 amending Notification No. 30/2012-ST Dated 20.06.2012 (Effective From 01.04.2016):-

- In Paragraph I, in clause (A), sub-clause (ib) is omitted to provide that services provided by mutual fund agents/distributor to a mutual fund or asset management company are being put under forward charge;
- In Paragraph I, in clause (A), sub-clause (ic) is substituted by “*provided or agreed to be provided by a selling or marketing agent of lottery tickets in relation to a lottery in any manner to a lottery distributor or selling agent of the State Government under the provisions of the Lottery (Regulations) Act, 1998 (17 of 1998)*”, to bring in line with changes made in section 65B(44) of the Finance Act;
- In Paragraph I, in clause (A), sub-clause (iv), item (B) has been substituted to provide that legal services provided by a senior advocate shall be on forward charge.
- Under sub clause (iv) in Item C, the term ‘support’ has been omitted for services provided or agreed to be provided by Government or Local authority from a date to be notified by the Central Government.

Corresponding changes have also been made in Table contained under Paragraph II.

- S. No. 6 of Table contained under Paragraph II is amended to delete the words “*by way of support services*”, to provide that the liability to pay Service tax on any service provided by Government or local authorities to business entities shall also be on the service recipient on Reverse Charge Basis.

F. Changes In Abatement Vide Notification No. 8/2016-ST dated 01.03.2016 amending Notification No. 26/2012-ST dated 20.06.2012 (Effective From 01.04.2016):-

- S. No. 2 amended: Presently, Service tax is payable on 30% of the value of service of transport of goods by rail without Cenvat credit on inputs, input services and capital goods. Thus, abatement of 70% is presently available in respect of the said service. It is now proposed to continue with the same level of abatement with Cenvat credit of input services for transport of goods by rail (other than “transport of goods in containers by rail by any person other than Indian Railway”).
- S. No. 2A inserted: A reduced abatement rate of 60% with credit of input services is being prescribed for transport of goods in containers by rail by any person other than Indian Railway;
- S. No. 3 amended: Presently, Service tax is leviable on 30% of the amount charged for the service of transport of passengers by rail, without Cenvat credit of inputs, input services and capital goods. Thus, abatement of 70% is presently available in respect of

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the said services. It is proposed to continue with the same level of abatement with Cenvat credit of input services for the said service;

- S. No. 7 amended:Presently, S. No. 7 contains abatement for “services of goods transport agency in relation to transportation of goods”. It is now substituted for “services of goods transport agency in relation to transportation of goods other than used household goods”;
- S. No. 7A inserted:Abatement on transport of used household goods by a goods transport agency is provided at the rate of 60% without availment of Cenvat credit on inputs, input services and capital goods by the service provider (as against abatement of 70% allowed on transport of other goods by GTA);
- S. No. 8 again inserted:Services provided by foreman to a chit fund under the Chit Funds Act, 1982 are proposed to be taxed at an abated value of 70% [i.e., with abatement of 30%], subject to the condition that Cenvat credit of inputs, input services and capital goods has not been availed;
- S. No. 9A amended:Service tax is proposed to be levied on service of transportation of passengers by air conditioned stage carriage @ 40% after abatement of 60% (as applicable to transportation of passengers by contract carriage) without input tax credit, with effect from 01.06.2016 [Read with changes proposed in Section 66D(o)(i) of the Finance Act, discussed supra];
- S. No. 10 amended:At present, Service tax is leviable on 30% of the value of service of transport of goods by vessel without Cenvat credit on inputs, input services and capital goods. Thus, abatement of 70% is presently available in respect of the said service. It is now proposed to continue with the same level of abatement with Cenvat credit of input services for the said service;
- S. No. 11 amended:
 - ✓ In cases where the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour, abatement of 90% is available with specified conditions;
 - ✓ However, this abatement of 90% cannot be claimed in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation;
 - ✓ There is no change in the rate of abatement or the conditions required to be fulfilled for claiming the said abatement;

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- ✓ Abatement rates in respect of services by a tour operator in relation to a tour other than the above, is being rationalised from 75% and 60% to 70%. Consequently, the definition of “package tour” as provided under clause ‘b’ in Paragraph 2, is being omitted.
- S. No. 12 amended: At present, two rates of abatement have been prescribed for services of construction of complex, building, civil structure, or a part thereof- (a) 75% of the amount charged in case of a residential unit having carpet area of less than 2000 square feet and costing less than Rs 1 crore, and (b) 70% of the amount charged in case of other than (a) above, both subject to fulfilment of certain conditions prescribed therein.

Now, a uniform abatement at the rate of 70% is now being prescribed for services of construction of complex, building, civil structure, or a part thereof, subject to fulfilment of the existing conditions.;

- Insertion of Explanation ‘BA’ after paragraph B: At present, there is abatement of 60% on the gross value of renting of motor-cab services, provided no Cenvat credit has been taken. It is being made clear by way of inserting an explanation that cost of fuel should be included in the consideration charged for providing renting of motor-cab services for availing the abatement.

G. Miscellaneous Clarifications

- **Incentives received by Air Travel Agents from CCRS**: It is clarified that incentives received by the Air Travel Agents (“ATA”) from the Companies providing Computer Reservation System (“CCRS”) are for using the software and platform provided by the CCRS like Galileo, Amadeus, etc. The CCRS are providing certain incentives either for achieving the targeted booking of air tickets or for loyalty for booking of air tickets using their software system. Thus, Service tax is leviable on the service provided to CCRS by the ATA for promoting the service provided by CCRS to Airlines.
- **Service provided by Container Train Operators**: Abatement Notification No. 26/2012-ST dated 20.06.2012 has been amended to provide that transport of goods by rail (other than transport of goods in containers by any person other than Indian Railway) shall be eligible for abatement at the rate of 70% with credit of input services and transport of goods in containers by any person other than Indian Railway shall be eligible for abatement at the rate of 60% with credit of input services.

It is also clarified that service provided by the Indian Railways to Container Train Operators (CTOs) of haulage of their container train (rake of wagons with containers) is a service of “Transport of Goods by Rail” and is, therefore, eligible for abatement at the rate of 70% with credit of input services.

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- **Service provided by ILMs:** The Institutes of Language Management (“ILMs”) provides services to the educational institutions, which helps such educational institutions in providing services specified in the Negative List of services. It is clarified that services provided by the ILMs are not eligible for exemption under Section 66D (I) of the Finance Act or under Sl. No. 9 of the Notification No. 25/2012-ST dated 20.06.2012.
- **Notification No. 11/2016-ST dated 01.03.2016: Information Technology Software:** With effect from 21.12.2010, media falling under Chapter 85 with recorded Information Technology Software has been notified under Section 4A of the Central Excise Act, 1944. Accordingly, Central Excise duty/CVD is to be paid on the value of such media with recorded Information Technology Software and the assessable value of such media is required to be determined on the basis of the retail sale price (RSP) affixed on the package of such media under the Legal Metrology Act, 2009 (1 of 2010) or the rules made thereunder.

In respect of transactions involving supply of such media bearing RSP, not amounting to sale/deemed sale, Service tax is being exempted. Thus, only Central Excise duty is levied on such transactions.

In certain situations like delivering customised software on media, such media with recorded Information Technology Software, is not required to bear the RSP when supplied domestically or imported. Difficulties are being experienced in the assessment of such media to Central Excise duty/CVD besides giving rise to the issue of double taxation – levy of Central Excise duty/CVD as well as service tax. In order to resolve the issue, media with recorded Information Technology Software which is not required to bear RSP, is being exempted from so much of the Central Excise duty/CVD as is equivalent to the duty payable on the portion of the value of such Information Technology Software recorded on the said media, which is leviable to service tax. In such cases, manufacturer/importer would therefore be required to pay Central Excise duty/CVD only on that portion of value representing the value of the medium on which it is recorded along with freight and insurance. The exemption is subject to the fulfilment of certain conditions. Thus, the levy of Central Excise duty/CVD and service tax will be mutually exclusive. (Refer Notification No. 11/2016-CE and 11/2016-Customs, both dated 01.03.2016).

H. CUSTOMS, EXCISE AND SERVICE TAX DISPUTE RESOLUTION SCHEME 2016

- In order to reduce litigation and an environment of distrust in addition to increasing the compliance cost of the tax payers and administrative cost for the Government, the Customs, Excise and Service Tax Dispute Resolution Scheme 2016 (“the **Dispute Resolution Scheme 2016**”) has been introduced.

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- All the appeals pending before the Commissioner (Appeals) as on 01.03.2016 under the Central Excise Act, 1944 or the Customs Act, 1962 or the Finance Act, 1994 are eligible for settlement under the Dispute Resolution Scheme. However, if the impugned order is in respect of certain specified cases cannot be settled under the Dispute Resolution Scheme, 2016.
- Further, the cases of eligible assesseees can be concluded by paying disputed tax along with interest and penalty equal to 25% of the penalty imposed under the impugned order. The eligible assesseees are required to make declaration for settlement after enactment of the Finance Act 2016 between 01.06.2016 and 31.12.2016.

I. Amendment in the Cenvat Credit Rules, 2004 (“the Credit Rules”) vide Notification No. 13/2016-Central Excise (N.T) dated 01.03.2016 (Applicable w.e.f. 01.04.2016 unless otherwise stated):

- **Changes in Rule 2(a) of the Credit Rules – Definition of ‘capital goods’:**
 - Wagons of sub heading 8606 92 of the CETA and equipment and appliance used in an office located within a factory are being included in the definition of Capital goods so as to allow Cenvat credit on the same;
 - Cenvat credit on inputs and capital goods used for pumping of water, for captive use in the factory, is being allowed even where such capital goods are installed outside the factory.
- **Changes in Rule 2(e) of the Credit Rules – Definition of ‘exempted service’:**
 - Service by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India is being excluded from the definition of “exempted service”. This would allow shipping lines to take credit on inputs and input services used in providing the said services.
- **Changes in Rule 2(k) of the Credit Rules – Definition of ‘inputs’:**
 - All capital goods having value up to Rs. 10,000 per piece are being included in the definition of inputs. This would allow an assessee to take whole credit on such capital goods in the same year in which they are received.
- **Changes in Rule 3(4) of the Credit Rules w.e.f 01.03.2016:**
 - The 5th proviso to Rule 3(4) of the Credit Rules is being amended so as to provide that Cenvat credit of any duty specified in sub-rule (1) except NCCD cannot be utilized for payment of NCCD leviable under Section 136 of the Finance Act, 2001 on any product (Presently, the 5th proviso to Rule 3(4) provides that Cenvat credit of

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any duty except NCCD cannot be utilized for payment of NCCD on goods falling under tariff items 8517 12 10 and 8517 12 90 [mobile phones]);

- The Credit Rules are being amended to provide that Cenvat credit cannot be utilised for payment of Infrastructure Cess leviable under sub-clause (1) of clause 159 of the Finance Bill, 2016. Further, no credit of this Cess would be available under the Credit Rules.
- **Changes in Rule 4 of the Credit Rules:**
 - Rule 4(5)(b): Manufacturer of final products is being allowed to take Cenvat credit on tools of Chapter 82 of the CETA in addition to credit on jigs, fixtures, moulds & dies, when intended to be used in the premises of job-worker or another manufacturer, who manufactures the goods as per specification of manufacturer of final products. It is also being provided that a manufacturer can send these goods directly to such other manufacturer or job-worker without bringing the same to his premises;
 - Rule 4(6): Presently, the permission given by an Assistant Commissioner or Deputy Commissioner to a manufacturer of the final products for sending inputs or partially processed inputs outside his factory to a job-worker and clearance there from on payment of duty is valid for a financial year. It is being provided that the same would be valid for 3 financial years;
- **Changes in Rule 6 of the Credit Rules:**
 - Rule 6(1): is being amended to first state the existing principle that Cenvat credit shall not be allowed on such quantity of input and input services as is used in or in relation to manufacture of exempted goods and exempted service. The rule then directs that the procedure for calculation of credit not allowed is provided in sub-rules (2) and (3), for two different situations;
 - Rule 6(2): is being amended to provide that a manufacturer who exclusively manufactures exempted goods for their clearance up to the place of removal or a service provider who exclusively provides exempted services shall pay (i.e. reverse) the entire credit and effectively not be eligible for credit of any inputs and input services used;
 - Rule 6(3): is being amended to provide that when a manufacturer manufactures two classes of goods for clearance upto the place of removal, namely, exempted goods and final products excluding exempted goods or when a provider of output services provides two classes of services, namely exempted services and output services excluding exempted services, then the manufacturer or the provider of the output service shall exercise one of the two options, namely, (a) pay an amount equal to

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6% of value of the exempted goods and 7% of value of the exempted services, subject to a maximum of the total credit taken or (b) pay an amount as determined under sub-rule (3A);

- The maximum limit prescribed in the first option would ensure that the amount to be paid does not exceed the total credit taken. The purpose of the rule is to deny credit of such part of the total credit taken, as is attributable to the exempted goods or exempted services and under no circumstances this part can be greater than the whole credit;
- Rule 6(3A): is being amended to provide the procedure and conditions for calculation of credit allowed & credit not allowed and directs that such credit not allowed shall be paid, provisionally for each month. The four key steps for calculating the credit required to be paid are :-
 - (a) No credit of inputs or input services used exclusively in manufacture of exempted goods or for provision of exempted services shall be available;
 - (b) Full credit of input or input services used exclusively in final products excluding exempted goods or output services excluding exempted services shall be available;
 - (c) Credit left thereafter is common credit and shall be attributed towards exempted goods and exempted services by multiplying the common credit with the ratio of value of exempted goods manufactured or exempted services provided to the total turnover of exempted and non- exempted goods and exempted and non-exempted services in the previous financial year;
 - (d) Final reconciliation and adjustments are provided for after close of financial year by 30th June of the succeeding financial year, as provided in the existing rule;
- New sub-rule (3AA) is being inserted to provide that a manufacturer or a provider of output service who has failed to follow the procedure of giving prior intimation, may be allowed by a Central Excise officer, competent to adjudicate such case, to follow the procedure and pay the amount prescribed subject to payment of interest calculated at the rate of 15% per annum;
- New sub-rule (3AB) is being inserted as transitional provision to provide that the existing Rule 6 of the Credit Rules would continue to be in operation upto 30.06.2016, for the units who are required to discharge the obligation in respect of financial year 2015-16;
- Rule 6(3B): is being amended so as to allow banks and other financial institutions to reverse credit in respect of exempted services on actual basis in addition to the option of 50% reversal;

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- Explanations 3 and 4 are being inserted in Rule 6(1) so as provide for reversal of Cenvat credit on inputs/input services which have been commonly used in providing taxable output service and an activity which is not a “service” under the Finance Act;
- Sub-rule (4) is being amended to provide that where the capital goods are used for the manufacture of exempted goods or provision of exempted service for two years from the date of commencement of commercial production or provision of service, no Cenvat credit shall be allowed on such capital goods. Similar provision is being made for capital goods installed after the date of commencement of commercial production or provision of service;
- **Changes in Rule 7 of the Credit Rules:**
 - Rule 7 of the Credit Rules dealing with distribution of credit on input services by an Input Service Distributor is being completely rewritten to allow an Input Service Distributer to distribute the input service credit to an outsourced manufacturing unit also in addition to its own manufacturing units;
 - Presently, Rule 7 provides that credit of Service tax attributable to service used by more than one unit shall be distributed pro rata, based on turnover, to all the units. It is now being provided that an Input Service Distributor shall distribute Cenvat credit in respect of Service tax paid on the input services to its manufacturing units or units providing output service or to outsourced manufacturing units subject to the conditions specified therein;
- **Insertion of Rule 7B in the Credit Rules:**
 - Rule 7B is being inserted in Credit Rules, so as to enable manufacturers with multiple manufacturing units to maintain a common warehouse for inputs and distribute inputs with credits to the individual manufacturing units. It is also being provided that a manufacturer having one or more factories shall be allowed to take credit on inputs received under the cover of an invoice issued by a warehouse of the said manufacturer, which receives inputs under cover of an invoice towards the purchase of such inputs. Procedure applicable to a first stage dealer or a second stage dealer would apply, mutatis mutandis, to such a warehouse of the manufacturer.
- **Changes in Rule 9 of the Credit Rules:**
 - Presently, an invoice issued by a manufacturer for clearance of inputs or capitals goods is a valid document for availing Cenvat credit. It is being provided that an invoice issued by a service provider for clearance of inputs or capital goods shall also be a valid document for availing Cenvat credit;

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- **Changes in Rule 9A of the Credit Rules:**

- Rule 9A of the Credit Rules is being amended to provide for filing of an annual return by a manufacturer of final products or provider of output services for each financial year, by the 30th day of November of the succeeding year in the form as specified by a notification by the Board;

- **Changes in Rule 14 of the Credit Rules:**

The existing sub- rule (2) of Rule 14 prescribes a procedure based on FIFO method for determining whether a particular credit has been utilized. The said sub-rule is being omitted. Now, whether a particular credit has been utilised or not shall be ascertained by examining whether during the period under consideration, the minimum balance of credit in the account of the assessee was equal to or more than the disputed amount of credit.

