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Dear Professional Colleague,

Services by Senior Advocates to Business Entities brought under Reverse Charge

Vide the Union Budget, 2016, Service tax on Senior Advocates providing services to a Business Entity was brought under 'Forward charge' w.e.f. April 1, 2016. However, Service tax on services provided by individual Advocates and firm of Advocates (other than Senior Advocates) to Business Entity continued to be under 'Reverse charge'.

Such amendment created hue and cry amongst the Senior Advocates, who approached the Hon'ble High Court of Gujarat, Calcutta, Allahabad & Delhi and also got the stay, on operation of stated amendment.

Now, the Central Government has issued 3 notifications dated June 6, 2016 in this regard to provide as under:

Notification No. 32/2016 – ST dated June 6, 2016 (“Notification No. 32”): Exempts legal services provided by Senior Advocates to Business Entities with a turnover up to Rs. 10 Lakhs in preceding Financial Year

The Central Government vide Notification No. 32 has substituted Entry No. 6(c) of the Mega Exemption Notification No. 25/2012-ST dated June 20, 2012 (“the **Mega Exemption Notification**”), to exempt the services provided by a Senior Advocate by way of legal services to:

- Any person other than a Business Entity; or
- A Business Entity with a turnover up to Rs. 10 Lakhs in the preceding Financial Year.

Erstwhile Entry No. 6(c) of the Mega Exemption Notification	Substituted Entry No. 6(c) of the Mega Exemption Notification
<i>6. Services provided by: (c) a senior advocate by way of legal services to a person other than a person ordinarily carrying out any activity relating to industry, commerce or any other business or profession</i>	<i>6. Services provided by: (c) a senior advocate by way of legal services to- (i) any person other than a business entity; or (ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;</i>

Notification No. 33/2016–ST dated June 6, 2016 (“Notification No. 33”): Services by Senior Advocates to Business Entities would be taxable under Reverse Charge

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The Central Government vide Notification No. 33 has amended Rule 2(1)(d) of the Service Tax Rules, 1994 (**“the Service Tax Rules”**), to bring the services provided by Senior Advocates under Reverse Charge Mechanism. It is further provided that in case of representational services by Senior Advocates, where the contract for provision of such service has been entered through another Advocate/ Firm of Advocates, and the Senior Advocate is providing such services, the recipient of such services, i.e. the Business Entity who is litigant/ applicant/ petitioner, would be liable to pay Service tax.

Relevant sub-clauses of Erstwhile Rule 2(1)(d) of the Service Tax Rules	Relevant sub-clauses of Rule 2(1)(d) of the Service Tax Rules, as substituted/inserted
<i>(D) in relation to service provided or agreed to be provided by,- (I)....., or (II) a firm of advocates or an individual advocate other than a senior advocate by way of legal services</i>	<i>(D) in relation to service provided or agreed to be provided by,- (I)....., or (II) an individual advocate or a firm of advocates by way of legal services <u>other than representational services by senior advocates</u></i>
	After item (D), the following item is inserted, namely:- <i><u>“(DD) in relation to service provided or agreed to be provided <u>by a senior advocate by way of representational services</u> before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including <u>where contract for provision of such service has been entered through another advocate or a firm of advocates</u>, and the senior advocate is providing such services, the recipient of such services, which is the <u>business entity who is litigant, applicant, or petitioner, as the case may be</u>”</u></i>

Notification No. 34/2016–ST dated June 6, 2016 (“Notification No. 34”): 100% liability on service recipient to pay Service tax on services of Senior Advocates

The Central Government vide Notification No. 34 has amended the Reverse Charge Notification No. 30/3012-ST dated June 20, 2012 (**“the Reverse Charge Notification”**) to include the above mentioned changes in Paragraph I thereunder. Further, in Paragraph II, in

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the Table, S. No. 5 has also been substituted to stipulate payment of tax by the recipient of the services provided by Senior Advocates under Full Reverse Charge i.e. 100% to be paid by the service recipient:

Erstwhile S. No. 5 of the Reverse Charge Notification	Substituted S. No. 5 of the Reverse Charge Notification
<i>In respect of services provided or agreed to be provided by a firm of advocates or an individual advocate <u>other than a senior advocate</u> by way of legal services</i>	<i>In respect of services provided or agreed to be provided by an individual advocate or firm of advocates by way of legal services, <u>directly or indirectly</u>"</i>

Furthermore, after Explanation II, Explanation III has been inserted to provide that the Business Entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of the Reverse Charge Notification.

Our Comments:

Bringing back the services of Senior Advocates under Reverse Charge must have brought a sign of relief amongst the Senior Advocates. However, the language used in the Notifications falls short of absolute clarity as to the real status of the services other than Representation services provided/ agreed to be provided by the Senior Advocates either directly to clients being a Business Entity or to another advocate or firms of advocates using the services for ultimate benefits of the clients.

Further, the above mentioned Notifications are effective from June 6, 2016, which again poses a question on liability to pay Service tax on the services provided by Senior Advocates during the period from April 1, 2016 to June 5, 2016, when Forward Charge levy on Senior Advocates was effective but stay was granted by the various Hon'ble High Courts. It would be prudent if the Board issues some clarification in this regard.

To access full Notifications please click on the given link: <http://www.a2taxcorp.com/wp-content/uploads/2016/06/Senior-Advocate-Notifications.pdf>

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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