PAPER – 4: TAXATION

PART – I: STATUTORY UPDATE

Significant Notifications and Circulars in income-tax and indirect taxes issued between 1st May, 2015 and 30th April, 2016

A. INCOME TAX

I. NOTIFICATIONS

1. Notification of Cost Inflation Index for Financial Year 2015-16 [Notification No. 60/2015, dated 24.7.2015]

Clause (v) of Explanation to section 48 defines "Cost Inflation Index", in relation to a previous year, to mean such Index as the Central Government may, by notification in the Official Gazette, specify in this behalf, having regard to 75% of average rise in the Consumer Price Index (Urban) for the immediately preceding previous year to such previous year.

Accordingly, the Central Government has, in exercise of the powers conferred by clause (v) of Explanation to section 48, specified the Cost Inflation Index for the financial year 2015-16 as 1081.

S. No.	Financial Year	Cost Inflation Index	S. No.	Financial Year	Cost Inflation Index
1.	1981-82	100	19.	1999-2000	389
2.	1982-83	109	20.	2000-01	406
3.	1983-84	116	21.	2001-02	426
4.	1984-85	125	22.	2002-03	447
5.	1985-86	133	23.	2003-04	463
6.	1986-87	140	24.	2004-05	480
7.	1987-88	150	25.	2005-06	497
8.	1988-89	161	26.	2006-07	519
9.	1989-90	172	27.	2007-08	551
10.	1990-91	182	28.	2008-09	582
11.	1991-92	199	29.	2009-10	632
12.	1992-93	223	30.	2010-11	711
13.	1993-94	244	31.	2011-12	785
14.	1994-95	259	32.	2012-13	852
15.	1995-96	281	33.	2013-14	939
16.	1996-97	305	34.	2014-15	1024
17.	1997-98	331	35.	2015-16	1081
18.	1998-99	351			

© The Institute of Chartered Accountants of India

2. Basis for determining the period of stay in India for an Indian citizen, being a member of the crew of a foreign bound ship leaving India [Notification No. 70/2015, dated 17.8.2015]

Section 6(1) of the Income-tax Act, 1961 provides that an individual is said to be resident in India in any previous year, if he—

(a) is in India in that year for a period or periods amounting in all to 182 days or more; or

(c) having within the four years preceding that year been in India for a period or periods amounting in all to 365 days or more, is in India for a period or periods amounting in all to 60 days or more in that year.

However, where an Indian citizen leaves India as a member of crew of an Indian ship or for the purpose of employment outside India, he will be resident only if he stayed in India for 182 days during the previous year.

Thus, under section 6(1), the conditions to be satisfied by an individual to be a resident in India are provided. The residential status is determined on the basis of the number of days of his stay in India during a previous year.

However, in case of foreign bound ships where the destination of the voyage is outside India, there is uncertainty regarding the manner and the basis of determining the period of stay in India for an Indian citizen, being a crew member.

To remove this uncertainty, Explanation 2 has been inserted to section 6(1) to provide that in the case of an individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the prescribed manner and subject to the prescribed conditions.

Accordingly, the CBDT has, in exercise of the powers conferred by Explanation 2 to section 6(1) read with section 295, vide this notification, with retrospective effect from 1st April, 2015, inserted Rule 126 in the Income-tax Rules, 1962, to compute the period of stay in such cases.

According to Rule 126, in case of an individual, being a citizen of India and a member of the crew of a ship, the period or periods of stay in India shall, in respect of an eligible voyage, not include the period commencing from the date entered into the Continuous Discharge Certificate in respect of joining the ship by the said individual for the eligible voyage and ending on the date entered into the Continuous Discharge Certificate in respect of signing off by that individual from the ship in respect of such voyage.

The Explanation to this Rule defines the meaning of the following terms:

Terms	Meaning
Continuous Discharge Certificate	This term has the meaning assigned to it in the Merchant Shipping (Continuous Discharge Certificate-cum-Seafarer's Identity Document) Rules, 2001 made under the Merchant Shipping Act, 1958.

© The Institute of Chartered Accountants of India

Eligible voyage	A voyage undertaken by a ship engaged in the carriage of passengers or freight in international traffic where- (i) for the voyage having originated from any port in India, has as its destination any port outside India; and (ii) for the voyage having originated from any port outside India, has as its destination any port in India.

3. Certain districts of Bihar notified as backward areas under the first proviso to section 32(1)(iia) and section 32AD(1) [Notification No. 71/2015, dated 17.8.2015]

In order to encourage the setting up of industrial undertakings in the backward areas of the States of Andhra Pradesh, Bihar, Telangana and West Bengal, section 32AD(1) provides for a deduction of an amount equal to 15% of the actual cost of new plant and machinery acquired and installed in the assessment year relevant to the previous year in which such plant and machinery is installed, if the following conditions are satisfied by the assessee–

(a) the assessee sets up an undertaking or enterprise for manufacture or production of any article or thing on or after 1st April, 2015 in any backward area notified by the Central Government in the State of Andhra Pradesh or Bihar or Telangana or West Bengal; and

(b) the assessee acquires and installs new plant and machinery for the purposes of the said undertaking or enterprise during the period between 1st April, 2015 and 31st March, 2020 in the said backward areas.

Further, in order to encourage acquisition and installation of plant and machinery for setting up of manufacturing units in the notified backward areas of the States of Andhra Pradesh, Bihar, Telangana and West Bengal, first proviso has been inserted to section 32(1)(iia) to allow higher additional depreciation at the rate of 35% (instead of 20%) in respect of the actual cost of new machinery or plant (other than a ship and aircraft) acquired and installed during the period between 1st April, 2015 and 31st March, 2020 by a manufacturing undertaking or enterprise which is set up in the notified backward areas of these specified States on or after 1st April, 2015.

Accordingly, the Central Government has, vide this notification, notified the following 21 districts of the State of Bihar as backward areas under the first proviso to section 32(1)(iia) and section 32AD(1).

S. No.	District	S. No.	District
1.	Patna	12.	Samastipur
2.	Nalanda	13.	Darbhanga
3.	Bhojpur	14.	Madhubani
4.	Rohtas	15.	Purnea

© The Institute of Chartered Accountants of India

5.	Kaimur	16.	Katihar
6.	Gaya	17.	Araria
7.	Jehanabad	18.	Jamui
8.	Aurangabad	19.	Lakhisarai
9.	Nawada	20.	Supaul
10.	Vaishali	21.	M uzaffarpur
11.	Sheohar		

4. News agency notified for the purpose of section 10(22B) [Notification No. 72/2015, dated 24.8.2015]

Section 10(22B) provides that any income of a news agency set up in India solely for collection and distribution of news as the Central Government may notify shall be exempt, subject to the condition that such news agency applies its income or accumulates it for application solely for collection and distribution of news and does not distribute its income in any manner to its members.

Accordingly, the Central Government has, through this notification, specified the Press Trust of India Limited, New Delhi as a news agency set up in India solely for collection and distribution of news, for the purpose of section 10(22B) for three assessment years 2016-17 to 2018-19. The income of such news agency will not be included in computing the total income of a previous year of such agency, for three years, provided it applies its income or accumulates it for application solely for collection and distribution of news and does not distribute its income in any manner to its members.

5. Exemption in respect of transport allowance under Rule 2BB extended to deaf and dumb employees [Notification No. 75/2015, dated 23.09.2015]

The CBDT has, in exercise of the powers conferred by section 295 read with section 10(14), amended Rule 2BB which, *inter alia,* provides the limit of exemption of up to ₹ 1,600 p.m., in respect of transport allowance granted to an employee and up to ₹ 3,200 p.m., for an employee who is blind or orthopedically handicapped, with disability of lower extremities, to meet his expenditure incurred thereof, for the purpose of commuting between the place of his residence and the place of his duty.

Consequent to the amendment made vide this notification, the exemption up to ₹ 3,200 p.m. in respect of transport allowance can be claimed by a blind *or deaf and dumb* or orthopedically handicapped employee with disability of lower extremities to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty.

6. Monetary limits of specified transactions which require quoting of PAN enhanced with effect from 1st January, 2016 *[Notification No. 95/2015, dated 30-12-2015]*

© The Institute of Chartered Accountants of India

The Government is committed to curbing the circulation of black money and widening of tax base. To collect information of certain types of transactions from third parties in a non-intrusive manner, it is mandatory under Rule 114B of the Income-tax Rules to quote PAN where the transactions exceed a specified limit. To bring a balance between burden of compliance on legitimate transactions and the need to capture information relating to transactions of higher value, Rule 114B has been substituted to enhance the monetary limits of certain transactions which require quoting of PAN.

S. No.	Nature of transaction	Value of transaction
1.	Sale or purchase of a motor vehicle or vehicle, as defined in the Motor Vehicles Act, 1988 which requires registration by a registering authority under that Act, other than two wheeled vehicles.	All such transactions
2.	Opening an account [other than a time-deposit referred to at Sl. No.12 and a Basic Savings Bank Deposit Account] with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act).	All such transactions
3.	Making an application to any banking company or a co-operative bank to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act) or to any other company or institution, for issue of a credit or debit card.	All such transactions
4.	Opening of a demat account with a depository, participant, custodian of securities or any other person registered under section 12(1A) of the Securities and Exchange Board of India Act, 1992.	All such transactions
5.	Payment to a hotel or restaurant against a bill or bills at any one time.	Payment in cash of an amount exceeding ₹ 50,000.
6.	Payment in connection with travel to any foreign country or payment for purchase of any foreign currency at any one time.	Payment in cash of an amount exceeding ₹ 50,000.
7.	Payment to a Mutual Fund for purchase of its units	Amount exceeding ₹ 50,000.
8.	Payment to a company or an institution for	Amount exceeding ₹ 50,000.

© The Institute of Chartered Accountants of India

	acquiring debentures or bonds issued by it.	
9.	Payment to the Reserve Bank of India for acquiring bonds issued by it.	Amount exceeding ₹ 50,000.
10.	Deposit with a banking company or a co-operative bank to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act).	Deposits in cash exceeding ₹ 50,000 during any one day.
11.	Purchase of bank drafts or pay orders or banker's cheques from a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act).	Payment in cash of an amount exceeding ₹ 50,000 during any one day.
12.	A time deposit with, - (i) a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act); (ii) a Post Office; (iii) a Nidhi referred to in section 406 of the Companies Act, 2013; or (iv) a non-banking financial company which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934, to hold or accept deposit from public.	Amount exceeding ₹ 50,000 or aggregating to more than ₹ 5 lakh during a financial year.
13.	Payment for one or more pre-paid payment instruments, as defined in the policy guidelines for issuance and operation of pre-paid payment instruments issued by Reserve Bank of India under the Payment and Settlement Systems Act, 2007, to a banking company or a co-operative bank to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act) or to any other company or institution.	Payment in cash or by way of a bank draft or pay order or banker's cheque of an amount aggregating to more than ₹ 50,000 in a financial year.
14.	Payment as life insurance premium to an insurer as defined in the Insurance Act, 1938.	Amount aggregating to more than ₹ 50,000 in a financial year.
15.	A contract for sale or purchase of securities	Amount exceeding ₹ 1 lakh

© The Institute of Chartered Accountants of India

	(other than shares) as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956.	per transaction
16.	Sale or purchase, by any person, of shares of a company not listed in a recognised stock exchange.	Amount exceeding ₹ 1 lakh per transaction.
17.	Sale or purchase of any immovable property.	Amount exceeding ₹ 10 lakh or valued by stamp valuation authority referred to in section 50C of the Act at an amount exceeding ₹ 10 lakh
18.	Sale or purchase, by any person, of goods or services of any nature other than those specified at Sl. No. 1 to 17 of this Table, if any.	Amount exceeding ₹ 2 lakh per transaction:

Minor to quote PAN of parent or guardian

However, where a person, entering into any transaction referred to in this rule, is a minor and who does not have any income chargeable to income-tax, he shall quote the PAN of his father or mother or guardian, as the case may be, in the document pertaining to the said transaction.

Declaration by a person not having PAN

Further, any person who does not have a PAN and who enters into any transaction specified in this rule, shall make a declaration in Form No.60 giving therein the particulars of such transaction.

Non-applicability of Rule 114B

Also, the provisions of this rule shall not apply to the following class or classes of persons, namely:-

(i) the Central Government, the State Governments and the Consular Offices;

(ii) the non-residents referred to in section 2(30) in respect of the transactions other than a transaction referred to at Sl. No. 1 or 2 or 4 or 7 or 8 or 10 or 12 or 14 or 15 or 16 or 17 of the Table.

Meaning of the following phrases

	Phrase	Inclusion
(1)	Payment in connection with travel	Payment towards fare, or to a travel agent or a tour operator, or to an authorised person as defined in section 2(c) of the Foreign Exchange Management Act, 1999

© The Institute of Chartered Accountants of India

(2)	Travel agent or tour operator	A person who makes arrangements for air, surface or maritime travel or provides services relating to accommodation, tours, entertainment, passport, visa, foreign exchange, travel related insurance or other travel related services either severally or in package

7. 'Atal Pension Yojna' notified under section 80CCD(1) *[Notification No. 7/2016 dated 19-02-2016]*

Section 80CCD(1) empowers the Central Government to notify a pension scheme, contribution to which would qualify for deduction in the hands of an individual assessee.

Accordingly, in exercise of the powers conferred by section 80CCD(1), the Central Government has notified the 'Atal Pension Yojana (APY)' as published in the Gazette of India, Extraordinary, Part I, Section 1, vide number F. No. 16/1/2015-PR dated the 16th October, 2015 as a pension scheme, contribution to which would qualify for deduction under section 80CCD in the hands of the individual.

8. Oil wells included in New Appendix I under Mineral Oil concerns under "III. Plant and Machinery" to be eligible for depreciation@15% *[Notification No. 13/2016 dated 03-03-2016]*

The CBDT has, vide this notification, included Oil wells as entry (c) under sub-item (xii) "Mineral Oil concerns" under item (8) of sub-heading III "Plant and Machinery" in new Appendix I.

The rate of depreciation for oil-wells included as entry (c) is 15%.

The amendment shall come into force on 1st April, 2016.

9. Method of determination of period of holding of capital assets in certain cases [Notification No. 18/2016, dated 17-03-2016]

Section 2(42A) provides for the meaning of the term "short-term capital asset" as a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer. Clause (i) of Explanation 1 to section 2(42A) provides for inclusion/ exclusion of certain periods in respect of specified transactions listed thereunder for the purpose of determination of the period of holding of asset. Clause (ii) of Explanation 1 to section 2(42A) provides that in respect of capital assets, other than those mentioned in clause (i), the period for which the capital asset is held by the assessee shall be determined subject to rules made in this behalf by the CBDT.

Accordingly, the CBDT has inserted new Rule 8AA in the Income-tax Rules, 1962 to provide for method of determination of period of holding of capital assets, other than the capital assets mentioned in clause (i) of the Explanation 1 to section 2(42A). Specifically, in the case of a capital asset, being a share or debenture of a company, which becomes

© The Institute of Chartered Accountants of India

the property of the assessee in the circumstances mentioned in section 47(x), there shall be included the period for which the bond, debenture, debenture-stock or deposit certificate, as the case may be, was held by the assessee prior to the conversion. The said rule shall come into force with effect from 01-04-2016.

Note: Section 47(x) provides that any transfer by way of conversion of bonds or debentures, debenture-stock or deposit certificates in any form, of a company into shares or debentures of that company shall not be regarded as transfer for the purposes of levy of capital gains tax.

10. Investment in Stock certificate as defined in the Sovereign Gold Bonds Scheme, 2015 notified as eligible form of investment by a charitable trust [Notification No. 21/2016, dated 23-03-2016]

Section 11(2)(b) provides that where 85% of the income is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided, inter alia, the money so accumulated or set apart is invested or deposited in the forms or modes as specified in section 11(5).

Rule 17C provides for the various forms or modes of investment or deposits by a charitable or religious trust or institution. The CBDT has, vide this notification, amended Rule 17C to include Investment in "Stock Certificate" [as defined in clause (c) of paragraph 2 of the Sovereign Gold Bonds Scheme, 2015, published in the Official Gazette vide notification number G.S.R. 827(E), dated 30th October, 2015] as an eligible form/mode of investment.

II. CIRCULARS

1. Tax not to be deducted from payments made to Corporations whose income is exempt under section 10(26BBB) [Circular No. 7/2015, dated 23-04-2015]

The CBDT had earlier issued Circular No. 4/2002 dated 16.07.2002 which laid down that there would be no requirement for tax deduction at source from payments made to such entities, whose income is unconditionally exempt under section 10 and who are statutorily not required to file return of income as per the section 139.

Section 10(26BBB), inserted by the Finance Act, 2003 w.e.f. 01.04.2004, exempts any income of a corporation established by a Central, State or Provincial Act for the welfare and economic up liftment of ex-service-men being the citizen of India. The corporations covered under section 10(26BBB) are also statutorily not required to file return of income as per the section 139.

© The Institute of Chartered Accountants of India

Now, the CBDT has, vide this circular, clarified that since corporations covered under section 10(26BBB) satisfy the two conditions of Circular No. 4/2002 i.e., unconditional exemption of income under section 10 and no statutory liability to file return of income under section 139, they would also be entitled for the benefit of the said circular.

Hence, there would be no requirement for tax deduction at source from the payments made to such corporations since their income is anyway exempt under section 10.

2. Deduction in respect of cost of production allowable under section 37 in the case of Abandoned Feature Films [Circular No. 16/2015, dated 6.10.2015]

The deduction in respect of the cost of production of a feature film certified for release by the Board of Film Censors in a previous year is provided in Rule 9A.

In the case of abandoned films, however, since certificate of Board of Film Censors is not received, in some cases no deduction was allowed by applying Rule 9A of the Rules or by treating the expenditure as capital expenditure.

The CBDT has examined the matter in light of judicial decisions on this subject. The order of the Hon'ble Bombay High Court dated 28.1.2015 in ITA 310 of 2013 in the case of *Venus Records and Tapes Pvt. Ltd.* on this issue has been accepted and the aforesaid disputed issue has not been further contested.

Consequently, it is clarified that Rule 9A does not apply to abandoned feature films and that the expenditure incurred on such abandoned feature films is not to be treated as a capital expenditure. The cost of production of an abandoned feature film is to be treated as revenue expenditure and allowed as per the provisions of section 37 of the Income-tax Act, 1961.

3. Interest from non-SLR Securities of Banks: Whether chargeable under the head "Profits and gains of business or profession" or "Income from other sources"? [Circular No. 18, dated 2.11.2015]

The issue addressed by this circular is whether in the case of banks, expenses relatable to investment in non-SLR securities need to be disallowed under section 57(i), by considering interest on non-SLR securities as "Income from other sources."

Section 56(1)(id) provides that income by way of interest on securities shall be chargeable to income-tax under the head "Income from Other Sources", if the income is not chargeable to income-tax under the head "Profits and Gains of Business and Profession".

The CBDT has examined the matter in light of the judicial decisions on this issue. In the case of CIT v. Nawanshahar Central Cooperative Bank Ltd. [2007] 160 Taxman 48 (SC), the Apex Court held that the investments made by a banking concern are part of the

© The Institute of Chartered Accountants of India

business of banking. Therefore, the income arising from such investments is attributable to the business of banking falling under the head "Profits and Gains of Business and Profession".

4. Allowability of Employer's Contribution to funds for welfare of employees paid after the due date under the relevant Act but before the due date of filing of return of income under section 139(1) [Circular No.22/2015 dated 17-12-2015]

Under section 43B of the Income-tax Act, 1961, certain deductions are admissible only on payment basis. The CBDT has observed that some field officers disallow employer's contributions to provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, by invoking the provisions of section 43B, if it has been paid after the 'due dates' as per the relevant Acts.

The CBDT has examined the matter in light of the judicial decisions on this issue. In the case of *Commissioner vs. Alom Extrusions Ltd, [2009] 185 Taxman 416,* the Apex Court held that the deduction is allowable to the employer assessee if he deposits the contributions to welfare funds on or before the 'due date' of filing of return of income.

Accordingly, the settled position is that *if the assessee deposits any sum payable by it by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, on or before the 'due date' applicable in his case for furnishing the return of income under section 139(1) of the Act, no disallowance can be made under section 43B of the Act.*

It is further clarified that this Circular does not apply to claim of deduction relating to employee's contribution to welfare funds which are governed by section 36(1)(va) of the Income-tax Act, 1961.

5. Applicability of provisions for deduction of tax at source under section 194A on interest on fixed deposit made in the name of the Registrar General of Court or the depositor of the Fund on directions of Courts [Circular No.23/2015, dated 28-12-2015]

Section 194A stipulates deduction of tax at source (TDS) on interest other than interest on securities if the aggregate of amount of such interest credited or paid to the account of the payee during the financial year exceeds the specified amount.

In the case of UCO Bank in Writ Petition No. 3563 of 2012 and CM No. 7517/2012 vide judgment dated 11/11/2014, the Hon'ble Delhi High Court has held that the provisions of section 194A do not apply to fixed deposits made in the name of Registrar General of the Court on the directions of the Court during the pendency of proceedings before the Court. In such cases, till the Court passes the appropriate orders in the matter, it is not known who the beneficiary of the fixed deposits will be. Amount and year of receipt is also unascertainable. The Delhi High Court, thus, held that the person who is ultimately granted the funds would be determined by orders that are passed subsequently. At that

© The Institute of Chartered Accountants of India

stage, undisputedly, tax would be required to be deducted at source to the credit of the recipient. The High Court has also quashed Circular No.8/2011.

The CBDT has accepted the aforesaid judgment. Accordingly, it is clarified that interest on FDRs made in the name of Registrar General of the Court or the depositor of the fund on the directions of the Court, will not be subject to TDS till the matter is decided by the Court. However, once the Court decides the ownership of the money lying in the fixed deposit, the provisions of section 194A will apply to the recipient of the income.

6. Applicability of TDS provisions on payments by broadcasters or Television Channels to production houses for production of content or programme for telecasting *[Circular No. 04/2016, dated 29-2-2016]*

The issue of applicability of TDS provisions on payments made by broadcasters/ telecasters to production houses for production of content or programme for broadcasting/ telecasting has been examined by CBDT.

The issue under consideration is whether payments made by the broadcaster/telecaster to production houses for production of content/programme are payments under a 'work contract' liable for tax deduction at source under section 194C or a contract for 'professional or technical services' liable for tax deduction at source under section 194J of the Income-tax Act, 1961.

In this regard, the CBDT has clarified that while applying the relevant provisions of TDS on a contract for content production, a distinction is required to be made between:

(i) a payment for production of content/programme as per the specifications of the broadcaster/telecaster; and

(ii) a payment for acquisition of broadcasting/ telecasting rights of the content already produced by the production house.

In the first situation where the content is produced as per the specifications provided by the broadcaster/ telecaster and the copyright of the content/programme also gets transferred to the telecaster/ broadcaster, such contract is covered by the definition of the term 'work' in section 194C and, therefore, subject to TDS under that section. This position clearly flows from the definition of 'work' given in clause (iv)(b) of the *Explanation* to section 194C and the same has also been clarified vide Q. No. 3 of Circular No. 715 dated 8.8.1995.

However, in a case where the telecaster/broadcaster acquires only the telecasting/ broadcasting rights of the content already produced by the production house, there is no contract for ''carrying out any work", as required in section 194C(1). Therefore, such payments are not liable for TDS under section 194C. However, payments of this nature may be liable for TDS under other sections of Chapter XVII-B of the Act.

7. Applicability of TDS provisions on payments by television channels and publishing houses to advertisement companies for procuring or canvassing for advertisements *[Circular No. 05/2016, dated 29-2-2016]*

© The Institute of Chartered Accountants of India

The issue of applicability of TDS provisions on payments made by television channels or media houses publishing newspapers or magazines to advertising agencies for procuring and canvassing for advertisements has been examined by the CBDT.

The CBDT noted that there are two types of payments involved in the advertising business:

(i) Payment by client to the advertising agency, and

(ii) Payment by advertising agency to the television channel/newspaper company

The applicability of TDS on these payments has already been dealt with in Circular No. 715 dated 8-8-1995, where it has been clarified in Question Nos. 1 & 2 that while TDS under section 194C (as work contract) will be applicable on the first type of payment, there will be no TDS under section 194C on the second type of payment e.g. payment by advertising agency to the media company.

However, another issue has been raised in various cases as to whether the fees/charges taken or retained by advertising companies from media companies for canvasing/booking advertisements (typically 15% of the billing) is 'commission' or 'discount'. It has been argued by the assessees that since the relationship between the media company and the advertising company is on a principal-to-principal basis, such payments are in the nature of trade discount and not commission and, therefore, outside the purview of TDS under section 194H. The Department, on the other hand, has taken a stand in some cases that since the advertising agencies act on behalf of the media companies for procuring advertisements, the margin retained by the former amounts to constructive payment of commission and, accordingly, TDS under section 194H is attracted.

The issue has been examined by the Allahabad High Court in the case of *Jagran Prakashan Ltd.* and Delhi High Court in the matter of *Living Media Limited* and it was held in both the cases that the relationship between the media company and the advertising agency is that of a 'principal-to-principal' and, therefore, not liable for TDS under section 194H. The SLPs filed by the Department in the matter of *Living Media Ltd.* and *Jagran Prakashan Ltd.* have been dismissed by the Supreme Court *vide* order dated 11-12-2009 and order dated 5-5-2014, respectively. Though these decisions are in respect of print media, the ratio is also applicable to electronic media/television advertising as the broad nature of the activities involved is similar.

In view of the above, the CBDT has clarified that no TDS is attracted on payments made by television channels/newspaper companies to the advertising agency for booking or procuring of or canvassing for advertisements. It is also further clarified that 'commission' referred to in Question No.27 of the CBDT's Circular No. 715 dated 8-8-1995 does not refer to payments by media companies to advertising companies for booking of advertisements but to payments for engagement of models, artists, photographers, sportspersons, etc. and, therefore, is not relevant to the issue of TDS referred to in this Circular.

© The Institute of Chartered Accountants of India

8. Surplus on sale of shares and securities - whether taxable as capital gains or business income? *[Circular No. 06/2016, dated 29-2-2016]*

Section 2(14) defines the term "capital asset" to include property of any kind held by an assessee, whether or not connected with his business or profession, but does not include any stock-in-trade or personal assets subject to certain exceptions. As regards shares and other securities, the same can be held either as capital assets or stock-in-trade/trading assets or both.

Determination of the character of a particular investment in shares or other securities, whether the same is in the nature of a capital asset or stock-in-trade, is essentially a fact-specific determination and has led to a lot of uncertainty and litigation in the past.

Parameters laid down by CBDT and Courts to distinguish shares held as investments and shares held as stock in trade

Over the years, the courts have laid down different parameters to distinguish the shares held as investments from the shares held as stock-in-trade. The CBDT has also, through Instruction No. 1827, dated August 31, 1989 and Circular No. 4 of 2007 dated June 15, 2007, summarized the said principles for guidance of the field formations.

Principles to determine whether gains on sale of listed shares and other securities would constitute capital gains or business income

Disputes, however, continue to exist on the application of these principles to the facts of an individual case since the taxpayers find it difficult to prove the intention in acquiring such shares/securities. In this background, while recognizing that no universal principle in absolute terms can be laid down to decide the character of income from sale of shares and securities (i.e. whether the same is in the nature of capital gain or business income), CBDT realizing that major part of shares/securities transactions takes place in respect of the listed ones and with a view to reduce litigation and uncertainty in the matter, in partial modification to the aforesaid Circulars, further instructs the Assessing Officers to take into account the following while deciding whether the surplus generated from sale of listed shares or other securities would be treated as Capital Gain or Business Income —

a) Where assessee opts to treat such shares and securities as stock-in-trade: Where the assessee itself, irrespective of the period of holding the listed shares and securities, opts to treat them as stock-in-trade, the income arising from transfer of such shares/securities would be treated as its business income,

b) Listed shares and securities held for a period of more than 12 months: In respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of its transfer, if the assessee desires to treat the income arising from the transfer thereof as Capital Gain, the same shall not be put to dispute by the Assessing Officer. However, this stand, once taken by the assessee in a particular Assessment Year, shall remain applicable in subsequent Assessment Years also and the taxpayers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years;

© The Institute of Chartered Accountants of India

c) Other cases: In all other cases, the nature of transaction (i.e. whether the same is in the nature of capital gain or business income) shall continue to be decided keeping in view the aforesaid Circulars issued by the CBDT.

Principles listed above not to apply in case of sham transactions

It is, however, clarified that the above shall not apply in respect of such transactions in shares/securities where the genuineness of the transaction itself is questionable, such as bogus claims of Long Term Capital Gain/Short Term Capital Loss or any other sham transactions.

Objective of formulation of principles: Reducing litigation and ensuring consistency

It is reiterated that the above principles have been formulated with the sole objective of reducing litigation and maintaining consistency in approach on the issue of treatment of income derived from transfer of shares and securities. All the relevant provisions of the Act shall continue to apply on the transactions involving transfer of shares and securities.

B. INDIRECT TAXES

Significant Notifications and Circulars issued between 1st May, 2015 and 30th April, 2016[1]

Chapter-1: Basic Concepts of Indirect Taxes

Unit-2: Central Excise Duty

Following amendments have been made under the central excise law[2]

1. Higher threshold exemption (SSI exemption) for jewellery manufacturers: With effect from 01.03.2016, excise duty of 1% (without CENVAT credit) or 12.5% (with CENVAT credit) has been levied on articles of jewellery [excluding silver jewellery, other than studded with diamonds/other precious stones]. The SSI exemption for such jewellery manufacturers would be upto ₹ 6 crore in a year with an eligibility limit of ₹ 12 crore in the preceding year. Thus, a jewellery manufacturer will be eligible for exemption from excise duty on first clearances upto ₹ 6 crore during a financial year, if his aggregate domestic

[1] *Notification Nos. 13-16 ST all dated 19.05.2015* notifying June 1, 2015 as the effective date of certain amendments made by the Finance Act, 2015 and Budget 2015 Notifications have already been included in the Supplementary Study Paper-2015 as also incorporated in the November, 2015 Edition of the Study Material of Paper 8: Indirect Tax Laws. Therefore, the same have not been given again in this Statutory Update.

[2] It may be noted that the procedures under central excise have been discussed in detail at the Final level. At the level of Intermediate (IPC), only a bird's eye view of the significant procedures under central excise has been given to familiarize the students with the basic aspects of such procedures.

© The Institute of Chartered Accountants of India

clearances during preceding financial year did not exceed ₹ 12 crore.

Notification No. 8/2003 CE dated 01.03.2003 has been amended vide *Notification No. 8/2016 CE dated 01.03.2016* to carry out the above amendment.

[Effective from 01.03.2016]

2. Where the duplicate copy of the invoice meant for transporter is digitally signed, a hard copy of the same which is self-attested by the manufacturer is used for transport of goods. Such manual attestation of the transporter's copy of invoice has been done away with vide *Notification No. 8/2016 CE (NT) dated 01.03.2016*.

[Effective from 01.03.2016]

3. In place of Annual Financial Information Statement [ER-4], an Annual Return will have to be filed by central excise assessees by 30th November of the succeeding year*[Notification No. 8/2016 CE (NT) dated 01.03.2016]*.

[Effective from 01.04.2016]

4. Interest payable on delayed payment of excise duty has been reduced from 18% to 15% vide *Notification No. 15/2016 CE (NT) dated 01.03.2016*.

[Effective from 01.04.2016]

5. It may be noted that last example on page 1.33 of the Study Material of Part-II: Indirect Taxes of Paper 4: Taxation [September, 2015 Edition] would be read as under:-

The Central Government has fixed tariff values for readymade garments under Chapter 61 and 62 as 60% of the retail sale price of the readymade garments.

Chapter-2: Basic Concepts of Service Tax

1. 0.5% Swachh Bharat Cess to be levied on value of all or any of taxable services from November 15, 2015 [Section 119 of the Finance Act, 2015]

Section 119 of the Finance Act, 2015 empowered the Central Government to impose a Swachh Bharat Cess (SBC) on all or any of the taxable services at a rate of 2% on the value of such taxable services. This cess was to be levied from such date as may be notified by the Central Government.

The following amendments have been made in this regard:

(i) The levy of SBC has become effective from 15th November, 2015 *[Notification No. 21/2015 ST dated 06.11.2015].*

(ii) W.e.f. 15.11.2015, all taxable services have been exempted from payment of such amount of SBC, which is in excess of SBC calculated at the rate of 0.5% of the value of taxable services. Thus, effectively, the rate of SBC becomes 0.5% and new rate of service tax plus SBC becomes 14.5%.

© The Institute of Chartered Accountants of India

SBC will not be leviable on services which are exempt from service tax under sub-section (1) of section 93 of the Finance Act, 1994 (general exemption) or sub-section (2) of section 93 of Finance Act, 1994 (special order)[3] or otherwise not leviable to service tax under section 66B of the Finance Act, 1994 ***[Notification No. 22/2015 ST dated 06.11.2015].***

(iii) Value of taxable services for the purposes of SBC will be the value as determined in accordance with the Service Tax (Determination of Value) Rules, 2006. Further, the same will be leviable only on the abated value of taxable service as per *Notification No. 26/2012 ST dated 20.06.2012* ***[Notification No. 22/2015 ST dated 06.11.2015*** amended by ***Notification No. 23/2015 ST dated 12.11.2015].***

(iv) Provisions of reverse charge as contained in *Notification No. 30/2012 ST dated 20.06.2012* will be applicable for the purposes of SBC *mutatis mutandis* ***[Notification No. 24/2015 ST dated 12.11.2015].***

(v) W.e.f. 15.11.2015, alternative rate for payment of SBC in case of air travel agents, life insurance, foreign exchange and lottery will be service tax liability multiplied by 0.5 divided by 14. This has been done by inserting a new sub-rule (7D) in rule 6 of the Service Tax Rules, 1994 – *Discussed in detail in Chapter 6: Service Tax Procedures.*

(vi) SBC paid on specified services used in an SEZ will be entitled for refund under *Notification No. 12/2013 ST dated 01.07.2013 – Discussed in detail in Chapter 5: Exemptions and Abatements.*

(vii) Separate Accounting Codes have been allotted for SBC vide ***Circular No. 188/7/2015 ST dated 16.11.2015***.

2. Any service provided by the Government or local authority to a business entity taxable from April 1, 2016 [Section 66D(a)(iv)& 65B(49)]

(i) Services provided by Government or a local authority, excluding certain services, were covered in the Negative List of services vide clause (a) of section 66D. The excluded services were specified under sub-clauses (i) to (iv) of clause (a).

(ii) Sub-clause (iv) covered support services provided by the Government or local authority to business entities thereby making the same liable to service tax.

(iii) The Finance Act, 2015 had amended the said sub-clause (iv) by substituting the words "support services" with the words "any service" to exclude all services

[3] inserted by ***Notification No. 05/2016 ST dated 17.02.2016***

© The Institute of Chartered Accountants of India

provided by the Government or local authority to a business entity from the Negative List.

(iv) Consequently, the definition of "support service" as provided under section 65B(49) had also been omitted vide the Finance Act, 2015.

(v) The said amendments, however, did not become effective with the enforcement of the Finance Act, 2015 and were to become effective from a date to be notified later on.

(vi) Now, the effective date has been notified as 1st April, 2016 vide *Notification Nos. 6/2016 ST dated 18.02.2016 & 15/2016 ST dated 01.03.2016*. Therefore, from 01.04.2016, all the services provided by Government or Local Authority to a business entity have become taxable.

(vii) Further, service tax on these services was made payable under reverse charge. The said amendment has also become effective from 01.04.2016 - *Discussed in detail in Chapter 6: Service Tax Procedures.*

(viii) Simultaneously, services provided by Government or a local authority to a business entity with a turnover up to ₹ 10 lakh in the preceding financial year have been exempted from service tax. *[Amendments in exemptions have been discussed in detail in Chapter 5: Exemptions and Abatements.]*

[Effective from 01.04.2016]

(ix) CBEC has issued *Circular No. 192/02/2016 ST dated 13.04.2016* to clarify the following aspects pertaining to the taxation of services provided by Government to business entities:

Sl. No.	Issue	Clarification
1.	Services provided by Government or a local authority to another Government or a local authority	Such services have been exempted vide *Notification No. 25/2012 ST dated 20.6.2012* as amended by *Notification No. 22/2016 ST dated 13.4.2016*. However, the said exemption does not cover services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994.
2.	Services provided by Government or a local authority to an individual who may be carrying out a profession or business	1. Services by way of grant of passport, visa, driving license, birth or death certificates have been exempted vide *Notification No. 25/2012 ST dated 20.6.2012 as amended by Notification No. 22/2016 ST dated 13.4.2016.* 2. Further, for services provided upto a

© The Institute of Chartered Accountants of India

		taxable value of ₹ 5000/-, Sl. No. 5 below may please be seen.
3.	Service tax on taxes, cesses or duties	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.
4.	Service tax on fines and penalties	1. It is clarified that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to service tax. 2. Fines and liquidated damages payable to Government or a local authority for non-performance of contract entered into with Government or local authority have been exempted vide *Notification No. 25/2012 ST dated 20.6.2012* as amended by *Notification No. 22/2016 ST dated 13.4.2016*.
5.	Services provided in lieu of fee charged by Government or a local authority	1. It is clarified that any activity undertaken by Government or a local authority against a consideration constitutes a service and the amount charged for performing such activities is liable to service tax. It is immaterial whether such activities are undertaken as a statutory or mandatory requirement under the law and irrespective of whether the amount charged for such service is laid down in a statute or not. As long as the payment is made (or fee charged) for getting a service in return (i.e., as a *quid pro quo* for the service received), it has to be regarded as a consideration for that service and taxable irrespective of by what name such payment is called. It is also clarified that service tax is leviable on any payment, in lieu of any permission or

© The Institute of Chartered Accountants of India

		license granted by the Government or a local authority. 2. However, services provided by the Government or a local authority by way of: (i) registration required under the law; (ii) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under the law, have been exempted vide *Notification No. 25/2012 ST dated 20.6.2012* as amended by *Notification No. 22/2016 ST dated 13.4.2016*. 3. Further, services provided by Government or a local authority where the gross amount charged for such service does not exceed ₹ 5000/- have been exempted vide *Notification No. 25/2012 ST dated 20.6.2012* as amended by *Notification No. 22/2016 ST dated 13.4.2016*. However, the said exemption does not cover services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994. Further, in case of continuous service, the exemption shall be applicable where the gross amount charged for such service does not exceed ₹ 5000/- in a financial year.
6.	Services in the nature of allocation of natural resources by Government or a local authority to individual farmers	Services by way of allocation of natural resources to an individual farmer for the purposes of agriculture have been exempted vide *Notification No. 25/2012 ST dated 20.6.2012* as amended by *Notification No. 22/2016 ST dated 13.4.2016*. Such allocations/auctions to categories of persons other than individual farmers would be leviable to service tax.
7.	Services in the nature of change of land use, commercial building approval, utility services	Regulation of land-use, construction of buildings and other services listed in the Twelfth Schedule to the Constitution which have been entrusted to Municipalities under

© The Institute of Chartered Accountants of India

	provided by Government or a local authority	Article 243W of the Constitution, when provided by Governmental authority are already exempt under *Notification No. 25/2012 ST dated 20.6.2012*. The said services when provided by Government or a local authority have also been exempted from service tax vide *Notification No. 25/2012 ST dated 20.6.2012* as amended by *Notification No. 22/2016 ST dated 13.4.2016*.
8.	Services provided by Government, a local authority or a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution	Such services have been exempted vide *Notification No. 25/2012 ST dated 20.6.2012* as amended by *Notification No. 22/2016 ST dated 13.4.2016*.
9.	When does the liability to pay service tax arise upon assignment of right to use natural resource where the payment of auction price is made in 10 (or any number of) yearly (or periodic) instalments under deferred payment option for rights assigned after 01.4.2016?	Rule 7 of the Point of Taxation Rules, 2011 has been amended vide *Notification No. 24/2016 ST dated 13.04.2016* to provide that in case of services provided by Government or a local authority to any business entity, the point of taxation shall be the earlier of the dates on which: (a) any payment, part or full, in respect of such service becomes due, as indicated in the invoice, bill, challan, or any other document issued by Government or a local authority demanding such payment; or (b) such payment is made. Thus, the point of taxation in case of the services of the assignment of right to use natural resources by the Government to a business entity shall be the date on which any payment, including deferred payments, in respect of such assignment becomes due or when such payment is made, whichever is earlier. Therefore, if the assignee/allottee opts for full upfront payment then service tax would

© The Institute of Chartered Accountants of India

		be payable on the full value upfront. However, if the assignee opts for part upfront and remainder under deferred payment option, then service tax would be payable as and when the payments are due or made, whichever is earlier.
10.	How to determine the date on which payment in respect of any service provided by Government or a local authority becomes due for determination of point of taxation?	The date on which such payment becomes due shall be determined on the basis of invoice, bill, challan, or any other document issued by the Government or a local authority demanding such payment [Point of Taxation Rules, 2011 as amended by *Notification No. 24/2016 ST dated 13.4.2016*].
11.	Whether service tax is payable on the interest charged by Government or a local authority where the payment for assignment of natural resources is allowed to be made under deferred payment option?	Rule 6(2)(iv) of the Service Tax (Determination of Value) Rules, 2006 has been amended vide *Notification No. 23/2016 ST dated 13.4.2016* so as to provide that interest chargeable on deferred payment in case of 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, shall be included in the value of the taxable service.
12.	When and how will the allottee of the right to use natural resource be entitled to take CENVAT credit of service tax paid for such assignment of right?	The CENVAT Credit Rules, 2004 have been amended vide *Notification No. 24/2016 CE(NT) dated 13.4.2016*. 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 CENVAT Credit Rules, 2004 as amended]. 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. Amendments have also been made in CENVAT Credit Rules, 2004 so as to allow CENVAT credit to be taken on the basis of the documents specified in sub-rule (1) of rule 9 of CENVAT Credit Rules, 2004 even after the period of 1 year from the date of issue of such a document in case of services provided by the

© The Institute of Chartered Accountants of India

		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 CENVAT Credit Rules, 2004].
13.	On basis of which documents can CENVAT credit be availed in respect of services provided by Government or a local authority?	CENVAT credit may be availed on the basis of challan evidencing payment of service tax by the service recipient [Clause (e) of sub-rule (1) of rule 9 of CENVAT Credit Rules, 2004].

Note: Amendments relating to point of taxation, valuation of taxable service, exemptions and CENVAT credit referred to in the above table have been discussed in detail in Chapter 3: Point of Taxation, Chapter 4: Valuation of Taxable Service, Chapter 5: Exemptions and Abatements and Chapter 7: CENVAT Credit respectively.

3. All testing and ancillary activities to testing rendered during testing of seeds are covered in the negative list and are thus, not liable to service tax

Issue: Whether all activities incidental to seed testing are leviable to service tax and only the activity in so far it relates to actual testing has been exempted in the negative list under section 66D(i) of the Finance Act, 1994?

Clarification: Seed is not covered under the definition of agriculture produce. All services relating to agriculture by way of agriculture operations directly relating to production of agriculture produce including testing are covered in section 66D(i). Testing and certification can be done as per the Act and rules made thereunder in this regard. Testing cannot stand in isolation of certification and other ancillary activities. Testing cannot be random; somebody has to register for testing. If certificate is not received and seeds are not tagged, testing is irrelevant. Therefore, all processes are a part of the composite process and cannot be separated from testing.

Agricultural operations have not been defined in the Chapter V of the Finance Act, 1994 but an inclusive and indicative list of such operations has been given in section 66D(i) namely, cultivation, harvesting, threshing, plant protection or testing. The exemption is thus, not limited to only these specified operations. The word 'seed' from testing in agricultural operations was deleted vide the Finance Act, 2013 so as to broaden the scope of coverage of the negative list entry and to cover any testing in agricultural operations in negative list, which are directly linked to production of agriculture produce and not to limit its scope only to seeds.

In view of the above, it has been clarified that all testing and ancillary activities to testing such as seed certification, technical inspection, technical testing, analysis, tagging of seeds, rendered during testing of seeds, are covered within the meaning of 'testing' as

© The Institute of Chartered Accountants of India

mentioned in section 66D(d)(i) of the Finance Act, 1994. Therefore, such services are not liable to service tax under section 66B of the Finance Act, 1994.

[Circular No.189/8/2015 ST dated 26.11.2015]

4. Applicability of service tax on the services received by apparel exporters in relation to fabrication of garments: The terms of agreement and scope of activity undertaken by the service provider would determine the nature of service being provided which would vary from case to case.

Issue: Whether services received by apparel exporters from third party on job work is a service of manpower supply, which neither falls under the negative list nor is specifically exempt and thus, liable to service tax?

OR

Whether services received by them is of job work involving a process amounting to manufacture or production of goods, and thus, would fall under negative list and hence would not attract service tax?

Clarification: The CBEC has clarified as under:

Manpower supply service: The nature of manpower supply service is quite distinct from the service of job work. The essential characteristics of manpower supply service are that the supplier provides manpower which is at the disposal and temporarily under effective control of the service recipient during the period of contract. Service provider's accountability is only to the extent and quality of manpower. Deployment of manpower normally rests with the service recipient. The value of service has a direct correlation to manpower deployed, i.e., manpower deployed multiplied by the rate. In other words, manpower supplier will charge for supply of manpower even if manpower remains idle.

Job work: On the other hand, the essential characteristics of job work service are that service provider is assigned a job e.g. fabrication/stitching, labeling etc. of garments in case of apparel. Service provider is accountable for the job he undertakes. It is for the service provider to decide how he deploys and uses his manpower. Service recipient is concerned only as regard the job work. In other words service receiver is not concerned about the manpower. The value of service is function of quantum of job work undertaken, i.e. number of pieces fabricated etc. It is immaterial as to whether the job worker undertakes job work in his premises or in the premises of service receiver.

Therefore, the exact nature of service needs to be determined on the facts of each case which would vary from case to case. The terms of agreement and scope of activity undertaken by the service provider would determine the nature of service being provided.

It may be noted that every job work is not covered under the negative list. Only if the job work involves a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944, would it be covered under negative list in terms of Section 66D(f) read with section 65B(40) of the Finance Act, 1994.

© The Institute of Chartered Accountants of India

The issue of applicability of service tax will accordingly be decided taking into account the nature of agreement/contract and the service being provided.

[Circular No.190/9/2015 ST dated 15.12.2015]

5. Incentives received by air travel agents from computer reservation system companies (CCRS) are liable to service tax

Air travel agents (ATA) receive incentives from the companies providing computer reservation system (CCRS) like Galileo, Amadeus, etc. The CCRS do not charge any amount for providing access to their internet system for booking of air tickets by the ATAs. Rather, 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.

It has been clarified that incentives received by the ATAs 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 these incentives either for achieving the targeted booking of air tickets or for loyalty for booking of air tickets using their software system. Thus, the service provided by CCRS is to the Airlines and ATA is promoting the service provided by CCRS to Airlines. Thus, the service provided by the ATAs to CCRS is neither covered in the negative list (section 66D of the Finance Act, 1994) nor exempt by a notification. Therefore, service tax is leviable on the same.

[DOF No. 334/8/2016 TRU dated 29.02.2016]

6. Services provided by Institutes of Language Management (ILMs) are liable to service tax

Institutes of Language Management (ILMs) are engaged by various schools/institutions to develop knowledge and language skills of students. The services provided by the ILMs are not covered by section 66D (l) of the Finance Act, 1994 or Entry 9 of *Notification No. 25/2012 ST* as they are not providing pre-school education or education up to higher secondary school (or equivalent) or education for obtaining a qualification recognized by law. It is the schools/colleges/institutions (in which the students take admissions) which provide such education. The ILMs provides services to such educational institutions, which helps such educational institutions in providing services specified in the negative list. Thus, it is clarified that services provided by ILMs are not eligible for exemption under section 66D (l) of the Finance Act, 1994 or under Sl. No. 9 of *Notification No. 25/2012 ST*.

[DOF No. 334/8/2016 TRU dated 29.02.2016]

Chapter-3: Point of Taxation

(i) When there is a change in the service tax liability or extent of liability of the service recipient, date of issuance of invoice to be the POT under rule 7, if service has been provided and the invoice issued before date of such change, but payment has

© The Institute of Chartered Accountants of India

not been made as on such date [Rule 7]

A third proviso has been inserted in rule 7 vide *Notification No 21/2016 ST dated 30.03.2016.* The new proviso lays down that where there is change in the liability or extent of liability of a person required to pay tax as recipient of service notified under section 68(2) of the Finance Act, 1994, in case service has been provided and the invoice issued before the date of such change, but payment has not been made as on such date, the point of taxation shall be the date of issuance of invoice.

[Effective from 30.03.2016]

(ii) In case of services provided by Government to business entities, POT under rule 7 will be the date on which payment becomes due or the date when payment is made, whichever is earlier [Rule 7]

A fourth proviso has been inserted after third proviso in rule 7 vide *Notification No. 24/2016 ST dated 13.04.2016* to lay down that in case of services provided by the Government or local authority to any business entity, the point of taxation will 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.

[Effective from 13.04.2016]

Chapter-4: Valuation of Taxable Service

1. In case of service provided by Government to a business entity, interest chargeable on deferred payment to be included in the value of the taxable service [Rule 6(2)(iv) of the Service Tax Determination of Value Rules, 2006]

Rule 6(2) of the Service Tax (Determination of Value) Rules, 2006 enlists the various costs/payments etc. that are not included in the value of any taxable service. Interest on delayed payment of any consideration for the provision of services or sale of property, whether movable or immovable is one such payment which is not included in the value of the taxable service in terms of clause (iv) of the sub-rule (2) of rule 6.

A proviso has been inserted in rule 6(2)(iv) vide *Notification No. 23/2016 ST dated 13.4.2016* to lay down that the said clause will 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. In other words, the interest chargeable on deferred payment in case of 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, will be included in the value of the taxable service.

[Effective from 13.04.2016]

© The Institute of Chartered Accountants of India

Chapter-5: Exemptions and Abatements

Exemptions

I. MEGA EXEMPTION NOTIFICATION AMENDED

Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012* has been amended vide *Notification No. 9/2016 ST dated 01.03.2016,* unless specified otherwise. The amendments are discussed in the following two broad categories:

(A) New exemptions/scope of existing exemptions enhanced

(B) Exemptions withdrawn/restricted

(A) NEW EXEMPTIONS/SCOPE OF EXISTING EXEMPTIONS ENHANCED

(i) Specified services provided by the Indian Institutes of Management (IIM) exempted

Ministry of Human Resource Development (MHRD), vested with the power to recognise educational courses for the purpose of recruitment to posts under Government of India, has clarified that the Post Graduate Programmes in Management and Fellowship Programmes conducted by IIMs are equivalent to MBA and Ph.D degrees, respectively, (as also clarified by associations like Association of Indian Universities, Inter–University Board of India etc.).

In view of this, a new entry 9B has been inserted to the mega exemption notification exempting the 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 IIM;

(b) fellow programme in Management;

(c) five year integrated programme in Management.

CBEC has clarified vide *DOF No. 334/8/2016-TRU dated 29.02.2016* that since exemption given to the above programmes of IIMs is clarificatory in nature, liability to pay service tax in respect of the said programmes for the past period will also become infructuous.

[Effective from 01.03.2016]

(ii) Services by assessing bodies empanelled centrally by DGT, Ministry of Skill Development & Entrepreneurship under SDI scheme exempted

A new Entry 9C has been inserted to exempt the services of assessing bodies empanelled centrally by Directorate General of Training (DGT), Ministry of Skill Development and Entrepreneurship (MSDE) by way of assessments under Skill Development Initiative (SDI) Scheme.

© The Institute of Chartered Accountants of India

Ministry of Skill Development & Entrepreneurship (MSDE) coordinates the various skill development efforts fragmented across the country, for building the vocational and technical training framework, skill up-gradation, building of new skills, and innovative thinking not only for existing jobs but also jobs that are to be created. SDI Scheme is launched by MSDE.

DGT, MSDE empanels assessing bodies to assess the competencies of the persons trained under SDI Scheme. Such assessment is done by assessors of high competence, repute and integrity – sector wise and area wise.

[Effective from 01.04.2016]

(iii) Services provided by way of skill/vocational training by DDU-GKY training providers exempted

A new Entry 9D has been inserted to exempt the services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU-GKY) under the Ministry of Rural Development (MoRD) by way of offering skill or vocational training courses certified by National Council For Vocational Training.

Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU-GKY) is the skilling and placement initiative of the Ministry of Rural Development (MoRD), Government of India, for poor and disadvantaged rural youth. The skill training is imparted under said program by the Project Implementation Agencies which are organisations from specific sector industries, education and training or NGOs who have a reputation in delivering skilling, training and development programs. They are responsible for carrying out skill gap assessment, enrollment, training, counselling, placement, post placement support, career progression and other services.

[Effective from 01.04.2016]

(iv) Threshold limit of consideration charged per performance in folk or classical art forms of music/ dance/ theatre raised from ₹ 1,00,000 to ₹ 1,50,000

Earlier, exemption granted vide Entry 16 to services provided by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, was available only where amount charged was upto ₹ 1,00,000 for a performance.

With effect from 01.04.2016, the threshold exemption limit of consideration charged for services provided by a performing artist in folk or classical art forms of music, dance or theatre, has been increased from ₹ 1,00,000 to ₹ 1,50,000 per performance.

It may be noted that said services provided by an artist as brand ambassador will continue to remain taxable as before.

[Effective from 01.04.2016]

(v) General insurance provided under Niramaya Health Insurance Scheme exempted

Entry 26 exempts services of general insurance business provided under specified schemes.

A new clause (q) has been inserted in the said entry to exempt services of general insurance business provided under Niramaya Health Insurance Scheme implemented by National Trust*

© The Institute of Chartered Accountants of India

**a Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.*

Niramaya Health Insurance Scheme: In order to provide an affordable health insurance facility to persons with developmental disabilities viz, autism, cerebral palsy, mental retardation & multiple disabilities, Niramaya Health Insurance Scheme is launched by National Trust, in collaboration with private/ public insurance companies.

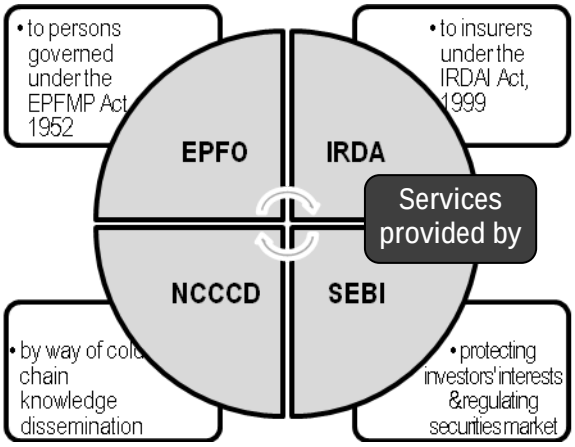
[Effective from 01.04.2016]

(vi) Annuity under the National Pension System (NPS) exempted

A new Entry 26C has been inserted to exempt the services of life insurance business provided by way of annuity under the NPS regulated by Pension Fund Regulatory and Development Authority of India (PFRDA) under the Pension Fund Regulatory and Development Authority Act, 2013.

[Effective from 01.04.2016]

(vii) Services by specified bodies exempted



New Entries 49 to 52 have been inserted to exempt the services provided by the following bodies:

(a) Services provided by Employees Provident Fund Organisation (EPFO) to persons governed under the Employees Provident Funds and Miscellaneous Provisions (EPFMP) Act, 1952.

(b) Services provided by Insurance Regulatory and Development Authority of India (IRDA) to insurers under the Insurance Regulatory and Development Authority of India (IRDAI) Act, 1999.

(c) Services provided by Securities and Exchange Board of India (SEBI) set up under the Securities and Exchange Board of India Act, 1992 by way of protecting the

© The Institute of Chartered Accountants of India

interests of investors in securities and to promote the development of, and to regulate, the securities market.

(d) Services provided by National Centre for Cold Chain Development (NCCCD) under Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination.

[Effective from 01.04.2016]

(viii) Yoga included in the definition of charitable activities

Services by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities are exempt from service tax vide Entry 4.

The definition of 'charitable activities', *inter alia,* includes activities relating to advancement of religion or spirituality. Now yoga has also been included therein vide *Notification No. 20/2015 ST dated 21.10.2015*. Thus, services relating to advancement of yoga provided by charitable entities registered under section 12AA of the Income-tax Act, 1961 will not be liable to service tax e.g., service tax will not be payable on fee charged for yoga camps conducted by charitable trusts.

[Effective from 21.10.2015]

(ix) Services provided by (i) business facilitator/business correspondent with respect to Basic Savings Bank Deposit Accounts covered by Pradhan Mantri Jan Dhan Yojana and (ii) an intermediary to business facilitator/business correspondent with respect to such services, exempt from service tax

With a view to promote financial inclusion, Entry 29 has been amended vide *Notification No. 20/2015 ST dated 21.10.2015* to exempt the services provided by a business facilitator or a business correspondent to a banking company with respect to Basic Savings Bank Deposit Accounts covered by Pradhan Mantri Jan Dhan Yojana (PMJDY) by way of account opening, cash deposits, cash withdrawals, obtaining e-life certificates and Aadhar seeding, in the rural area branches of banking companies, from service tax. Further, the services provided by any person as an intermediary to a business facilitator or a business correspondent with respect to the above mentioned services, have also been exempted from service tax.

For this purpose, Basic Savings Bank Deposit Account has been defined to mean a Basic Savings Bank Deposit Account opened under the guidelines issued by Reserve Bank of India relating thereto.

[Effective from 21.10.2015]

Business facilitator/Business correspondent/Bank mitras

Business facilitator or Business correspondent popularly known as Bank Mitra represents a bank. It enables a bank to expand its outreach and offer limited range of banking services at low cost, particularly where setting up a brick and mortar branch is not viable.

© The Institute of Chartered Accountants of India

Scope of activities of Bank Mitra include creating awareness about savings and other products and education and advice on managing money and debt counselling, identification of potential customers, collection and preliminary processing of various forms for deposits including verification of primary information/ data, filling of applications/ account opening forms, collection and payment of small value deposits and withdrawals, receipt and delivery of small value remittances/ other payment instructions, furnishing of mini account statements and other account information, etc.

(x) Services provided by Government or a local authority to a business entity with a turnover up to ₹ 10 lakh in preceding FY exempted

A new entry 48 has been inserted vide *Notification No. 07/2016 ST dated 18.02.2016* to exempt the services provided by Government or a local authority to a business entity with a turnover up to ₹ 10 lakh in the preceding financial year.

[Effective from 01.04.216]

(xi) Specified services provided by Government or a local authority exempted

The following services rendered by Government or a local authority have been exempted vide *Notification No. 22/2016 ST dated 13.04.2016*:

1. Services in relation to any function entrusted to a municipality under article 243W of the Constitution

Hitherto, services by a Governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution were exempt from service tax vide Entry 39.

The aforesaid entry has been amended to extend the said exemption to services provided by the Government or a local authority too.

[Effective from 13.04.2016]

2. Services provided to another Government or local authority

A new entry 54 has been inserted to exempt the services provided by Government or a local authority to another Government or local authority.

Exemption not available with respect to specified services provided by Department of Posts, services in relation to an aircraft or a vessel and, transport of passengers or goods

However, the exemption is not available with respect to following services provided by Government or a local authority as specified in sub-clauses (i),(ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994:

(i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government;

(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

© The Institute of Chartered Accountants of India

(iii) transport of goods or passengers.

[Effective from 13.04.2016]

3. Services provided by way of issuance of passport, visa, driving licence, birth certificate or death certificate

A new entry 55 has been inserted to exempt the services provided by Government or a local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate.

[Effective from 13.04.2016]

4. Services where gross amount charged does not exceed ₹ 5000

A new entry 56 has been inserted to exempt the services provided by Government or a local authority where the gross amount charged for such services does not exceed ₹ 5000/-.

Threshold limit not applicable to specified services provided by Department of Posts, services in relation to an aircraft or a vessel and transport of passengers or goods.

However, aforesaid threshold limit of ₹ 5000/- will not be applicable with respect to following services provided by Government or a local authority, as specified in sub-clauses (i),(ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994:

(i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government;

(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(iii) transport of goods or passengers.

Threshold limit in case of continuous supply of services

In case where continuous supply of service* is provided by the Government or a local authority, the exemption shall apply only where the gross amount charged for such service does not exceed ₹ 5000/- in a financial year.

**as defined in clause rule 2(c) of the Point of Taxation Rules, 2011*

[Effective from 13.04.2016]

5. Services by way of tolerating non-performance of a contract

A new entry 57 has been inserted to exempt the services provided by Government or a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract.

[Effective from 13.04.2016]

© The Institute of Chartered Accountants of India

6. Services of registration, testing, calibration, safety check/certification relating to protection/safety of workers, consumers or public at large, required under any law

A new entry 58 has been inserted to exempt the services provided by Government or a local authority by way of-

(a) registration required under any law for the time being in force;

(b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force.

[Effective from 13.04.2016]

7. Right to use natural resources assigned before 1st April, 2016

A new entry 61 has been inserted to clarify that services provided by Government or a local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Government or the local authority before 1st April, 2016 are exempt from service tax.

However, said exemption shall apply only to service tax payable on one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource.

Assignment of right to use natural resources to an individual farmer for the purposes of agriculture exempt

Services provided by Government or a local authority by way of assignment of right to use natural resources to an individual farmer for the purposes of agriculture are exempted from service tax, even when assigned on or after 1st April, 2016. This exemption has been granted by inserting a new entry 59.

[Effective from 13.04.2016]

8. Services in relation to any function entrusted to a Panchayat under article 243G of the Constitution

A new entry 60 has been inserted to exempt the services by Government, a local authority or a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.

[Effective from 13.04.2016]

9. Services of inspection, container stuffing etc. in relation to import export cargo after office hours or on holidays

A new entry 63 has been inserted to exempt the services provided by Government by way of deputing officers after office hours or on holidays for inspection or

© The Institute of Chartered Accountants of India

container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges (MOT).

[Effective from 13.04.2016]

(B) EXEMPTIONS WITHDRAWN/RESTRICTED

(i) Exemption in respect of services provided by a senior advocate to an advocate or partnership firm of advocates and person represented on an arbitral tribunal to an arbitral tribunal withdrawn

With effect from 01.04.2016, clause (b) and clause (c) of Entry 6 have been substituted to withdraw the exemption hitherto available in respect of the services provided by a senior advocate to an advocate or partnership firm of advocates & to a business entity with a turnover up to ₹ 10 lakh in the preceding financial year and services provided by a person represented on an arbitral tribunal to an arbitral tribunal.

Senior advocate has the meaning assigned to it in section 16 of the Advocates Act, 1961 which, *inter alia,* provides that an advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability standing at the Bar or special knowledge or experience in law he is deserving of such distinction. Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.

The comparative position prior to and post amendment in Entry 6 has been illustrated in the following table:

Services provided by	Whether exempted from service tax?	
	Prior to amendment	Post amendment
An arbitral tribunal to - (i) any person other than a business entity; or (ii) a business entity with a turnover up to ₹ 10 lakh in the preceding financial year.	✓	✓
A partnership firm of advocates or an individual advocate other than senior advocate by way of legal services to- (i) an advocate or partnership firm of advocates providing legal services ; (ii) any person other than a business entity; or (iii) a business entity with a turnover up to ₹ 10 lakh in the preceding financial year.	✓	✓

© The Institute of Chartered Accountants of India

A senior advocate by way of legal services to an advocate or partnership firm of advocates providing legal services.	✓	✗
A senior advocate by way of legal services to a person other than business entity, i.e. a person ordinarily carrying out any activity relating to industry, commerce or any other business or profession.	✓	✓
A senior advocate by way of legal services to a business entity with a turnover up to ₹ 10 lakh in the preceding financial year.	✓	✗
A person represented on an arbitral tribunal to an arbitral tribunal.	✓	✗

[Effective from 01.04.2016]

(ii) Exemption to transportation of passengers by ropeway, cable car or aerial tramway withdrawn

With effect from 01.04.2016, clause (c) to Entry 23 has been omitted to withdraw the exemption hitherto available to transportation of passengers, with or without accompanied belongings by ropeway, cable car or aerial tramway.

[Effective from 01.04.2016]

II. OTHER EXEMPTIONS

1. Services provided by BIRAC approved bio-incubators to incubatees also exempted

Notification No. 32/2012 ST dated 20.06.2012 exempts all taxable services provided by TBI/ STEP recognised by NSTEBD, Department of Science & Technology from service tax provided such TBI/ STEP have fulfilled the conditions prescribed in the said notification.

With effect from 01.04.2016, such exemption has also been extended to all taxable services provided by bio-incubators recognized by the BIRAC, under Department of Biotechnology, Government of India provided such bio-incubators have also fulfilled the aforesaid conditions. This amendment has been made vide *Notification No. 12/2016 ST dated 01.03.2016.*

TBI stands for Technology Business Incubators

STEP stands for Science and Technology Entrepreneurship Parks

© The Institute of Chartered Accountants of India

NSTEBD stands for National Science and Technology Entrepreneurship Development Board

BIRAC stands for Biotechnology Industry Research Assistance Council

[Effective from 01.04.2016]

2. Refund of Swachh Bharat Cess to SEZ units/developers

Notification No. 12/2013 ST dated 01.07.2013 exempts services received by a unit located in Special Economic Zone (SEZ) or a Developer of SEZ - which are used for the authorized operations - from whole of service tax leviable thereon. Exemption is *ab-initio* where services are used *exclusively* for the authorized operations and exemption is claimed. However, where *ab-initio* exemption is admissible but not claimed, refund of service tax is allowed. *Notification No. 02/2016 ST dated 03.02.2016* has amended the said notification to provide that alongwith service tax, refund of Swachh Bharat Cess is also available in such case.

Further, *Notification No. 12/2013 ST* provides that refund of service tax is also allowed in case where specified services are not *exclusively* used for the authorized operations. Service tax paid on the specified services that are common to the authorised operation in an SEZ and the operation in domestic tariff area [DTA unit(s)] is distributed amongst the SEZ Unit/Developer and the DTA unit(s) in the manner as prescribed in rule 7 of the CENVAT Credit Rules, 2004. The amount of service tax so distributed to SEZ Unit/Developer is available as refund [hereinafter referred as (A)]. *Notification No. 02/2016* has amended the said notification to provide that refund of Swachh Bharat Cess in such case will be determined as follows:

$$= \frac{(A) \times \text{Effective rate of Swachh Bharat Cess}}{\text{Rate of service tax}}$$

$$= \left(\frac{(A) \times 0.5}{14} \right)\%$$

[Effective from 03.02.2016]

3. Definition of specified services under *Notification No. 41/2012 ST dated 29.06.2012* amended

Notification No. 41/2012 ST dated 29.06.2012 grants rebate of service tax to the exporters of goods, on the "specified services" used in the export of such goods. Clause (i) of definition of specified services has been amended vide *Notification No. 01/2016 ST dated 03.02.2016* in the following manner:

Prior to Amendment	After the Amendment
"Specified services" means- (i) in the case of excisable	"Specified services" means- (i) in the case of excisable goods, taxable

© The Institute of Chartered Accountants of India

goods, taxable services that have been used beyond the place of removal, for the export of said goods.	services that have been used beyond factory or any other place or premises of production or manufacture of the said goods, for their export.

Consequently, definition of 'place of removal' has been omitted in the said notification.

[Effective from 03.02.2016]

4. Services provided under the Power System Development Fund Scheme of the Ministry of Power exempted from service tax

Exemption from service tax has been granted vide *Notification No. 17/2015 ST dated 19.05.2015* to taxable services provided under the Power System Development Fund Scheme of the Ministry of Power by way of-

(A) re-gasification of Liquefied Natural Gas (LNG)* imported by the Gas Authority of India Limited (GAIL);

(B) transportation of the incremental Re-gasified Liquefied Natural Gas (RLNG) (e-bid RLNG) to specified power generating companies or plants

subject to fulfillment of certain conditions prescribed in the exemption notification.

However, the exemption shall not be available if such RLNG and LNG are used for generation of electrical energy by captive generating plant as defined in section 2(8) of the Electricity Act, 2003.

Further, the exemption shall be valid only till 31.03.2017.

[Effective from 19.05.2015]

**Re-gasification is a process of converting Liquefied Natural Gas (LNG) back to natural gas at atmospheric temperature. Generally, natural gas is liquefied for ease of transportation.*

Abatements

1. Abatement *Notification No. 26/2012 ST dated 20.06.2012* has been amended vide *Notification No. 8/2016 ST dated 01.03.2016* unless otherwise provided as under:

Description of taxable service	% of abatement		Effective date	Change in conditions, if any
	Prior	After		
Transport by rail or vessel				
Transport of goods by rail* *(other than service specified below)*	70	70	*01.04.2016*	*Condition providing that for claiming the abatement, CENVAT credit on input services*
Transport of goods in	70	*60*	*01.04.2016*	

© The Institute of Chartered Accountants of India

containers by rail by any person other than Indian Railways				*used for providing the taxable service should not have been taken under the provisions of CENVAT Credit Rules, 2004, has been done away with. Thus, now CENVAT credit on input services can be taken alongwith the abatement benefit.*
Transport of passengers, with or without accompanied belongings by rail	70	70	*01.04.2016*	
Transport of goods in a vessel	70	70	*01.04.2016*	
Services of Goods Transport Agency				
Services of goods transport agency in relation to transportation of goods *other than used household goods*	70	70	*01.04.2016*	Condition for availing abatement is unchanged whether the GTA service has been provided in relation to transportation of used household goods or any goods other than the same.
Services of goods transport agency in relation to transportation of used household goods	*70*	*60*	*01.04.2016*	
Other Services				
Services provided by a foreman of chit fund in relation to chit	*Nil*	*30*	*01.04.2016*	*CENVAT credit on inputs, capital goods and input services, used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004*
Services by a tour operator in relation to,- *(i) a tour, only for the purpose of arranging or booking accommodation for any person*	90	90	*01.04.2016*	No change in conditions

© The Institute of Chartered Accountants of India

*(ii) a tour other than (i) above***	75/60	*70*	*01.04.2016*	No change in conditions

Note – The amendments made in the abatement notification are given in bold.

**DOF No. 334/8/2016 TRU dated 29.02.2016 has 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 and tax treatment accordingly, that is, for abatement at the rate of 70% with credit of input services.*

***Consequently, with effect from 01.04.2016, definition of 'package tour' has been omitted.*

Cost of fuel to be included in consideration charged, for availing abatement for renting of motor cab service

For the purposes of abatement with respect to renting of motor cab service, the amount charged shall be the sum total of the amount charged for the service including the fair market value of all goods (including fuel) and services supplied by the recipient(s) in or in relation to the service, whether or not supplied under the same contract or any other contract.

However, the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

[Effective from 01.04.2016]

2. 70% abatement available on ancillary services provided by a GTA in the course of transportation of goods

It has been clarified that ancillary services such as loading/ unloading, packing/unpacking, transshipment, temporary storage etc., would form part of the goods transport agency's (GTA) service if such services are provided by a GTA in the course of transportation of goods and the charges for such services are included in the invoice issued by the GTA, and not by any other person. Thus, abatement of 70%, applicable to GTA service, would also be available to the ancillary services. In other words, a single composite service need not be broken into its components and need not be considered as constituting separate services, if it is provided as such in the ordinary course of business. Thus, a composite service should be treated as a single service based on the main or principal service.

It has also been clarified that in cases where GTA undertakes to deliver goods at a destination within a stipulated time, it should be considered as services of GTA in relation to transportation of goods. Thus abatement of 70% will be applicable if the entire transportation of goods is by road and the GTA issues a consignment note, by whatever name called.

[Circular No. 186/5/2015 ST dated 05.10.2015]

© The Institute of Chartered Accountants of India

Chapter-6: Service Tax Procedures

1. Following amendments have been made in Service Tax Rules, 1994 vide *Notification No. 19/2016 ST dated 01.03.2016,* unless specified otherwise:

(i) Service tax on legal services provided by senior advocate to be paid under forward charge [Rule 2(1)(d)(i)(D)(ii)]

Prior to 01.04.2016, rule 2(1)(d)(i)(D)(II) laid down that in relation to service provided by an individual advocate or a firm of advocates by way of legal services, to any business entity located in the taxable territory, the recipient of such service is the person liable to pay service tax.

Rule 2(1)(d)(i)(D)(II) has been amended to provide that in relation to service provided by a firm of advocates or an individual advocate other than a senior advocate by way of legal services, the recipient of such service will be the person liable to pay service tax. Thus, in case of legal services provided by a senior advocate service tax would be payable under forward charge. It may be recalled that with effect from 01.04.2016, exemption available on services provided by a senior advocate to an advocate or partnership firm of advocates has been withdrawn *[Refer Chapter 5: Exemptions and Abatements]*.

Consequential amendments have also been made under *Reverse Charge Notification No. 30/2012 ST dated 20.06.2012* vide *Notification No. 18/2016 ST dated 01.03.2016.*

[Effective from 01.04.2016]

(ii) Service tax levy shifted from reverse charge to forward charge in case of services provided by mutual fund agents/distributors to a mutual fund/asset management company [Rule 2(1)(d)(i)]

In Union Budget, 2015, as a policy decision to prune exemptions, the exemption to services provided by mutual fund agents/distributors to a mutual fund or an asset management company was withdrawn. However, these services were put under reverse charge liability, i.e., the Mutual Fund or the Asset Management Company were made liable to pay service tax for the services received from such agents/distributors. Item (EEA) was inserted in rule 2(1)(d)(i) to provide that in relation to service provided by a mutual fund agent or distributor to a mutual fund or asset management company, the recipient of the service will be the person liable to pay service tax.

Rule 2(1)(d)(i)(EEA), however, has been deleted this year to the effect that such services have now been put under forward charge, i.e. the mutual fund agents/distributors (service provider) have been made liable to pay service tax. The small sub-agents down the distribution chain will still be eligible for small service provider exemption [threshold turnover of ₹ 10 lakh/year].

Consequential amendment has also been made under Reverse Charge *Notification No. 30/2012 ST dated 20.06.2012* vide *Notification No. 18/2016 ST dated 01.03.2016.*

[Effective from 01.04.2016]

© The Institute of Chartered Accountants of India

(iii) Facility of (a) quarterly payment of service tax and payment of service tax on receipt basis extended to OPC having service turnover upto ₹ 50 lakh in the previous financial year and (b) quarterly payment of service tax extended to HUF [Rule 6(1)]

The concept of One Person Company (OPC) in India was introduced through the Companies Act, 2013 to support entrepreneurs who on their own are capable of starting a venture by allowing them to create a single person economic entity with limited liability. OPC has been defined in section 2(62) of the Companies Act, 2013.

The benefits of quarterly payment of service tax and payment of service tax on receipt basis, which are available to individual and partnership firms, have been extended to OPC whose aggregate value of services provided from one or more premises is up to ₹ 50 lakh in the previous financial year.

Further, the benefit of quarterly payment of service tax has also been extended to HUF.

Rule 6 which deals with the payment of service tax and prescribes relaxation for individual or proprietary firm or partnership firm, has been amended accordingly.

[Effective from 01.04.2016]

(iv) Composition rate in case of single premium annuity policies to be 1.4% of the single premium charged [Rule 6(7A)]

Sub-rule (7A) of rule 6 provides an option to an insurer carrying on life insurance business to pay tax:

(i) on the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service;

(ii) in all other cases, 3.5% of the premium charged from policy holder in the first year and 1.75% of the premium charged from policy holder in the subsequent years;

towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66B of the Finance Act, 1994.

A new clause (ia) has been inserted in sub-rule (7A) of rule 6 to rationalise the service tax liability on single premium annuity (insurance) policies other than the ones covered in clause (i) above (i.e. in cases where the amount allocated for investment or savings in behalf of policy holder is not intimated to the policy holder at the time of providing of service). Now, the effective alternate service tax rate (composition rate) in case of such single premium annuity policies would be 1.4% of the single premium charged from the policy holder.

[Effective from 01.04.2016]

© The Institute of Chartered Accountants of India

(v) Composition rates fixed for swachh bharat cess for air travel agents, life insurance, foreign exchange and lottery [New sub-rule (7D) of rule 6]

Sub-rules (7), (7A), (7B) and (7C) of rule 6, provide for alternative rates of service tax in case of four services namely, service of booking of tickets for travel by air provided by an air travel agent, life insurance service, purchase or sale of foreign currency including money changing and promotion, marketing, organising/assisting in organising lottery.

A new sub-rule (7D) has been inserted in rule 6 vide *Notification No. 25/2015 ST dated 12.11.2015* to fix the alternative rate for swachh bharat cess (SBC) for these services which is service tax liability computed on the basis of alternative rates provided under sub-rules (7), (7A), (7B) or (7C), as the case may be, multiplied by 0.5 and dividing the product by 14. The said option once exercised, will apply uniformly in respect of such services and cannot be changed during a financial year under any circumstances.

[Effective from 15.11.2015]

(vi) Provisions introduced for filing of Annual Returns [Rule 7]

Rule 7 prescribes the provisions for filing returns. The following amendments have been made in rule 7:

(a) A new sub-rule (3A) has been inserted in rule 7 to provide that notwithstanding anything contained in sub-rule (1), every assessee will submit an annual return for the financial year to which the return relates by the 30th day of November of the succeeding financial year. The form and manner of filing the return will be specified in the notification by the CBEC.

(b) Sub-rule (4) of rule 7, which empowers the CBEC to extend the due date for filing of ST-3 returns under circumstances of special nature, has been amended to provide that CBEC may also extend the due date for filing of such Annual Return under circumstances of special nature.

(c) Another new sub-rule (3B) has been inserted in rule 7 to provide that the Central Government may, subject to such conditions or limitations, exempt an assessee or class of assessees from filing such annual return.

[Effective from 01.04.2016]

(vii) Annual return filed by the due date may be revised within 1 month from the date of its submission [Rule 7B(2)]

Rule 7B prescribes the provisions for revision of ST-3 returns. A new sub-rule (2) has been inserted in rule 7B to provide that an assessee who has filed the Annual Return under sub-rule (3A) of rule 7 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.

[Effective from 01.04.2016]

© The Institute of Chartered Accountants of India

(viii) Delayed filing of Annual Return to attract a late fee of ₹ 100 per day for the period in default subject to a maximum of ₹ 20,000 [Rule 7C(2)]

Rule 7C prescribes the amount to be paid for delay in furnishing ST-3 returns. A new sub-rule (2) has been inserted in rule 7C to provide that where the Annual Return under sub-rule (3A) of rule 7 is filed by the assessee after the due date, the assessee will have to pay to the credit of the Central Government, an amount calculated at the rate of ₹ 100 per day for the period of delay in filing of such return, subject to a maximum of ₹ 20,000.

[Effective from 01.04.2016]

2. Service tax payable by the recipient of service in relation to ALL services provided by Government to business entities (except specified services) from April 1, 2016

In relation to certain support services provided or agreed to be provided by Government or local authority to any business entity located in the taxable territory, the person liable to pay service tax was the recipient of service.

However, consequent to the amendment made by the Finance Act, 2015 in section 66D(a)(iv) of Finance Act, 1994, all services provided by Government/local authority to a business entity had been removed from the negative list and not just support services. Therefore, rule 2(1)(d)(i)(E) had been amended to provide that in case of all taxable services (and not just support services) provided or agreed to be provided by Government/ local authority (excluding certain specified services) to any business entity located in the taxable territory, service tax would be payable by recipient of such service.

However, the amendment in the negative list did not become effective with the enforcement of the Finance Act, 2015 and was to be become effective from a date to be notified later on. Thus, the amendment in rule 2(1)(d)(i)(E) was also not made effective.

Now, since the amendment in the negative list has become effective from 01.04.2016, the amendment in the rules has also become effective from 01.04.2016 vide *Notification No. 17/2016 ST dated 01.03.2016*.

Similarly, the amendment in the *Reverse Charge Notification No. 30/2012 ST dated 20.06.2012* has also become effective from 01.04.2016 vide *Notification No. 16/2016 ST dated 01.03.2016*.Further, a consequential amendment has also been made under the said notification vide *Notification No. 18/2016 ST dated 01.03.2016.*

[Effective from 01.04.2016]

3. *Notification No. 24/2015 ST dated 12.11.2015* provides that provisions of reverse charge notification (i.e. *Notification No. 30/2012 ST dated 20.06.2012)* will be applicable for the purpose of SBC *mutatis mutandis.*

Chapter 7: CENVAT credit

1. The following amendments have been made in CENVAT Credit Rules, 2004 [CCR] vide *Notification No. 13/2016 CE (NT) dated 01.03.2016* unless specified otherwise:

© The Institute of Chartered Accountants of India

(i) Scope of definition of capital goods widened [Rule 2(a)]

The scope of definition of capital goods has been widened to include within its ambit the following goods:

(a) Wagons falling under sub-heading 8606 92 of the Central Excise Tariff

(b) Equipment or appliance used in an office located within a factory - It may be noted that CENVAT credit will be allowed only on those equipment or appliance which are used in an office located within the factory and not outside the factory.

(c) Capital goods used outside the factory of the manufacturer of the final products for pumping of water, for captive use within the factory.

[Effective from 01.04.2016

(ii) Scope of definition of inputs widened [Rule 2(k)]

The scope of definition of inputs has been widened to include within its ambit the following goods:

(a) All goods used for pumping of water for captive use.

(b) All capital goods which have a value up to ₹ 10,000 per piece – Thus, on such capital goods, whole credit can be taken in the same year in which they are received. Consequential amendment has been made in the definition [item (C)] to provide that input excludes those capital goods whose value exceeds ₹ 10,000 per piece.

[Effective from 01.04.2016]

(iii) Services by way of sale of dutiable goods on commission basis is sales promotion and thus, an eligible input service [Rule 2(l)]

Circular No. 943/04/2011 CX dated 29.04.2011 clarified that credit is admissible on the services of sale of dutiable goods on commission basis. Also, the Punjab and Haryana High Court in the case of *Commissioner v. Ambica Overseas 2012 (25) STR 348 (P& H)* held that credit would be allowed on sales commission. However, the Gujarat High Court in the case of *Commissioner v. M/s. Cadila Healthcare Ltd. 2013 (4) STR 3 (Guj.)* held that commission agent is directly concerned with the sales rather than sales promotion and as such the services provided by such commission agent would not fall within the purview of the main or inclusive part of the definition of input service as laid down in rule 2(l) of the Rules.

In order to settle the controversy, an explanation has been inserted in the definition of input service under rule 2(l) vide *Notification No. 2/2016 CE (NT) dated 03.02.2016* to clarify that sales promotion includes services by way of sale of dutiable goods on commission basis.

[Effective from 03.02.2016]

© The Institute of Chartered Accountants of India

(iv) Restriction on ship breaking units to avail only 85% CENVAT credit of CVD done away with [Rule 3(1)(vii)]

Proviso to clause (vii) of rule 3(1) restricted CENVAT credit of CVD (leviable under section 3(1) of the Customs Tariff Act) paid on ships, boats and other floating structures for breaking up [Entry 8908 00 00 of the Customs Tariff], to the extent of 85%.

The said proviso has been omitted vide *Notification No. 1/2016 CE (NT) dated 01.02.2016* with retrospective effect from 01.03.2015. Thus, ship breaking units would be entitled to avail 100% credit of the CVD paid with effect from 01.03.2015.

[Effective from 01.03.2015]

The rationale of the amendment has been explained in *Circular No. 1014/2/2016 CX dated 01.02.2016.* In order to understand the reason for deletion of the proviso, it is necessary to first understand the rationale behind its inclusion.

Proviso to rule 3(1)(vii) was inserted vide *Notification No. 3/2011 CE (NT) dated 01.03.2011*. In the breaking of ships, products of section XV (base metals and articles of base metal) are obtained which are deemed to be manufactured as provided in section note 9 of Section XV of the First Schedule to the Central Excise Tariff Act, 1985. On the other hand, a number of used serviceable articles such as pumps, air conditioners, furniture, kitchen equipment, wooden panels etc. are also generated. These are generally sold as second hand goods by ship breaking units but no excise duty is payable as they do not emerge from a manufacturing process. At the same time, ship breaking units were allowed to avail full credit of additional duty of customs paid on the ship when it was imported for breaking. This anomaly was resulting in excess utilization of CENVAT credit. Rule 3 was accordingly amended to prescribe that CENVAT credit shall not be allowed in excess of 85% of the additional duty of customs paid on ships, boats etc. imported for breaking.

Further, amendment in rule 6 was carried out in Budget of 2015, to provide that credit would be required to be reversed even for non-excisable goods produced as by-products in the process of manufacture of excisable goods. This amendment brought non-excisable goods and exempt goods at par and no credit is now available on either of them.

Thus, there arose a conflict regarding reversal of credit in relation to non-excisable goods which emerge during breaking of ship viz. whether restriction/reversal of credit needs to be done under proviso to rule 3(i)(vii) or under rule 6. To resolve the conflict, the provision restricting CENVAT credit to 85% under proviso to rule 3(i)(vii) has been deleted.

Consequently, ship breaking units would be entitled to avail 100% credit of the CVD paid with effect from 01.03.2015 but would also be required to follow provisions of rule 6 with effect from 01.03.2015. This beneficial amendment of deleting proviso to rule

© The Institute of Chartered Accountants of India

3(i)(vii) has been done retrospectively with effect from 01.03.2015, that is the date from which reversal of CENVAT credit for non-excisable goods was provided in rule 6.

(v) Swachh Bharat Cess cannot be paid by utilizing CENVAT credit of any other duty

A proviso has been inserted in rule 3(4) vide *Notification No. 2/2016 CE (NT) dated 03.02.2016* to lay down that the CENVAT credit of any duty specified in rule 3(1) will not be utilised for payment of the Swachh Bharat Cess.

[Effective from 03.02.2016]

(vi) CENVAT credit of only NCCD to be utilised for payment of the NCCD payable on all goods [Rule 3(4)]

National Calamity Contingent duty (NCCD) is presently leviable under section 136 of the Finance Act, 2001 on pan masala, tobacco products, crude petroleum, mobile phones and motor vehicles. Rule 3(4) allows credit of only NCCD to be utilised for payment of the NCCD payable on tariff items 8517 12 10 and 8517 12 90 [mobile phones]. Thus, there was no restriction on utilization of credit of other duties allowable under rule 3(1) for payment of NCCD levied on other goods, namely, pan masala, tobacco products, crude petroleum, and motor vehicles.

However, with effect from 01.03.2016, rule 3(4) has been amended 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.

[Effective from 01.03.2016]

(vii) Jewellery manufacturer (excluding manufacturer of plain silver jewellery) with turnover upto ₹ 12 crore in preceding year eligible to avail 100% CENVAT credit on capital goods in the year of purchase [Rule 4(2)(a)]

As per explanation to rule 4(2)(a) read with third proviso to the said rule, an assessee whose aggregate value of clearances of all excisable goods for home consumption in the preceding financial year does not exceed ₹ 4 crores (computed in accordance with SSI notification), can take 100% CENVAT credit on capital goods in the financial year when the same are received by him.

With effect from 01.03.2016, excise duty has been imposed on articles of jewellery [excluding silver jewellery, other than studded with diamonds/ ruby/ emerald/ sapphire] with a higher threshold exemption upto ₹ 6 crore in a year and eligibility limit of ₹ 12 crore. Consequently, the explanation to rule 4(2)(a) has been amended to provide that a manufacturer of such jewellery will be allowed to take 100% CENVAT credit on capital goods in the year of purchase, if his aggregate value of clearances of all excisable goods for home consumption in the preceding financial year, did not exceed ₹ 12 crore.

[Effective from 01.03.2016]

© The Institute of Chartered Accountants of India

(viii) CENVAT credit allowed on tools of Chapter 82 of the Central Excise Tariff sent to another manufacturer or job-worker for production of goods [Rule 4(5)(b)]

Earlier, rule 4(5)(b) extended the CENVAT credit in respect of jigs, fixtures, moulds and dies sent by manufacturer of final products to:-

(a) another manufacturer for the production of goods, or

(b) a job worker for the production of goods on his behalf

according to his specifications.

Rule 4(5)(b) has now been amended to allow a manufacturer of final products to take CENVAT credit on tools of Chapter 82 of the Central Excise Tariff in addition to credit on jigs, fixtures, moulds and dies, when the same are sent to another manufacturer or a job-worker for production of goods as per his specifications.

A manufacturer has also been allowed to take credit on such goods when the same are sent directly to the premises of another manufacturer or job-worker without bringing them to his own premises.

[Effective from 01.04.2016]

(ix) Permission given for sending inputs/partially processed inputs outside factory to a job-worker and clearance therefrom on payment of duty to be valid for 3 financial years [Rule 4(6)]

Earlier, under rule 4(6), the permission given by an Assistant/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 therefrom on payment of duty was valid for a financial year.

Sub-rule (6) of rule 4 has been amended to provide that the said permission would be valid for three financial years.

[Effective from 01.04.2016]

(x) Service tax paid on assignment charges of a natural resource to be allowed as CENVAT credit spread evenly over a period of 3 years [Rule 4(7)]

(1) Time limit of one year for availing credit on input service not to apply in case of services provided by way of assignment of right to use any natural resource: Rule 4(7) has been amended to provide that 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, CENVAT credit can be taken on the basis of the documents specified in rule 9(1) even after the period of 1 year from the date of issue of such a document *[Notification No. 24/2016 CE (NT) dated 13.04.2016]*.

[Effective from 13.04.2016]

© The Institute of Chartered Accountants of India

(2) *Notification No. 24/2016 CE (NT) dated 13.04.2016* has inserted two provisos in rule 4(7) as under:

(a) CENVAT credit of service tax paid in a financial year, on the onetime charges payable in full upfront or in instalments, for the service of assignment of the right to use any natural resource by the Government, local authority or any other person, will be spread evenly over a period of three years.

(b) Where the manufacturer of goods or output service provider, as the case may be, further assigns such right assigned to him by the Government or any other person, in any financial year, to another person against consideration, such amount of balance CENVAT credit as does not exceed the service tax payable on the consideration charged by him for such further assignment, shall be allowed in the same financial year.

[Effective from 13.04.2016]

(xi) Rule 6 simplified and rationalized [Rule 6]

Significant amendments have been made in rule 6 by re-drafting sub-rules (1), (2), (3), (3A), (3B) and (4), inserting new sub-rules (3AA) and (3AB) and amending sub-rule (7). Each of such amendments is discussed hereunder:

Substituted sub-rule (1)

(1) No CENVAT credit allowed on inputs/input services used in manufacture of exempted goods/for provision of exempted services: CENVAT credit will not be allowed on:-

(i) such quantity of input used in or in relation to the manufacture of exempted goods or for provision of exempted services

or

(ii) input service used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services

The credit which is not allowed will be calculated and paid in terms of the provisions of sub-rule (2) or sub-rule (3), as the case may be.

Exception - Jewellery job-worker: CENVAT credit on inputs will not be denied to a job worker referred to in rule 12AA of the Central Excise Rules, 2002 (jewellery job worker), on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule [Proviso to sub-rule (1)].

Since, as per rule 12AA, the liability of payment of duty has been cast on the principal manufacturer, goods are cleared by a job-worker without payment of

© The Institute of Chartered Accountants of India

duty. However, CENVAT credit on the inputs used in the manufacture of such goods is not denied by virtue of the proviso to rule 6(1) mentioned above.

(2) Exempted goods/final products include non-excisable goods: For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 include non-excisable goods cleared for a consideration from the factory [Explanation 1].

Value of non –excisable goods for the purpose of this rule, will be the invoice value. If such invoice value is not available, the value will be determined by using reasonable means consistent with the principles of valuation contained in the Central Excise Act, 1944 and the rules made thereunder [Explanation 2].

It is to be noted that the above explanations are applicable only to rule 6. By virtue of the said Explanation, inputs and input services used in the manufacture of non-excisable goods also attract the reversal provisions under rule 6. To illustrate, if a manufacturer uses common inputs and input services to manufacture dutiable and non-excisable goods, credit on input or input services used in the manufacture of non-excisable goods will have to be reversed in accordance with the provisions of rule 6.

(3) Exempted service includes an activity which is not a service: For the purposes of this rule, exempted services as defined in clause (e) of rule 2 include an activity, which is not a 'service' as defined in section 65B(44) of the Finance Act, 1994 [provided that such activity has used inputs or input services][4] [Explanation 3].

Value of such an activity as specified above in Explanation 3, will be the invoice/agreement/contract value. If such value is not available, the value will be determined by using reasonable means consistent with the principles of valuation contained in the Finance Act, 1994 and the rules made thereunder [Explanation 4].

It is to be noted that the above explanations are applicable only to rule 6. By virtue of the Explanation 3, inputs and input services used in the provision of any activity which is not a service under 65B(44) of Finance Act, 1994 (e.g. providing service without any consideration) will also attract the reversal provisions under rule 6. For example, if a service provider uses common inputs and input services for provision of a taxable service and an activity which is not a service, credit on input and input services used in the provision of the activity not amounting to service will have to be reversed in accordance with the provisions of rule 6.

---

[4] inserted vide *Notification No. 24/2016 CE (NT) dated 13.04.2016*

© The Institute of Chartered Accountants of India

It is worthwhile to note here that since exempted service *inter alia* means services on which no service tax is leviable under section 66B of Finance Act, 1994, credit on inputs or input services used in provision of non-taxable services is also required to be reversed under rule 6.

[Effective from 01.04.2016]

Substituted sub-rule (2)

CENVAT credit on inputs/input services used exclusively in manufacture of exempted goods/provision of exempted services to be reversed: A manufacturer who exclusively manufactures exempted goods for their clearance upto the place of removal or a service provider who exclusively provides exempted services has to pay (i.e. reverse) the whole amount of credit of input and input services. Thus, in effect, such manufacturer or service provider will not be eligible for credit of any inputs and input services.

[Effective from 01.04.2016]

Substituted sub-rule (3)

(1) Option to pay 6% of the value of exempted goods or 7% of exempted services or reverse proportionate credit

(a) A manufacturer who manufactures two classes of goods, namely:

(i) non-exempted goods removed;

(ii) exempted goods removed,

or

(b) an output service provider who provides two classes of services, namely:

(i) non-exempted services;

(ii) exempted services,

has to follow any one of the following options applicable to him, namely :-

(i) pay an amount equal to 6% of value of the exempted goods and 7% of value of the exempted services[5] subject to a maximum of the sum total of opening balance of the credit of input and input services available at the beginning of the period to which the payment relates and the credit of input and input services taken during that period *[Notification No. 13/2016 CE (NT) dated 01.03.2016 read with Notification No. 23/2016 CE (NT) dated 01.04.2016];*

[5] Pursuant to the increase in service tax rate from 12% to 14% from June 1, 2015, rate of reversal for exempted services under erstwhile rule 6(3) had also been increased from 6% to 7% from 01.06.2015 vide *Notification No. 14/201 CE (NT) dated 19.05.2015.*

© The Institute of Chartered Accountants of India

OR

(ii) pay an amount as determined under sub-rule (3A).

(2) Duty paid on exempted goods to be reduced from 6% amount: If any duty of excise is paid on the exempted goods, the same will be reduced from the amount payable under clause (i). For example, goods cleared under *Notification No. 1/2011 CE dated 01.03.2011* are exempted goods in terms of rule 2(d) of CCR and excise duty @ 2% is paid on such goods. Therefore, such 2% duty will be reduced from 6% amount [First proviso to sub-rule (3)].

(3) Amount payable to be 7% of the exempted value of taxable service in case of partial exemption on the condition of non-availment of credit: If any part of the value of a taxable service has been exempted on the condition that no CENVAT credit of inputs and input services, used for providing such taxable service, will be taken then the amount specified in clause (i) will be 7% of the value so exempted. For example, 60% abatement is available on radio taxi services if CENVAT credit on inputs, input services and capital goods, used for providing the said taxable service, is not taken. Therefore, 7% amount will be payable on the value of exempted service i.e., 60% of the gross amount charged for the said service. In other words, the amount required to be paid shall be 4.2% (7% of 60) of the full value of the radio taxi service [Second proviso to sub-rule (3)].

(4) Amount payable to be 2% of the exempted value in case of transport of goods/passengers by rail: In case of transportation of goods or passengers by rail, the amount required to be paid under clause (i) will be an amount equal to 2% of value of the exempted services [Third proviso to sub-rule (3)].

(5) Option exercised applicable for all exempted goods or exempted services and whole financial year: If the manufacturer of goods or the output service provider, avails any of the option under this sub-rule, he will have to exercise such option for all exempted goods manufactured by him or, as the case may be, all exempted services provided by him, and such option cannot be withdrawn during the remaining part of the financial year [Explanation 1].

(6) No CENVAT credit can be taken on the duty or tax paid on any goods and services that are not inputs or input services [Explanation 2].

(7) As per Explanation 3, for the purposes of this sub-rule and sub-rule (3A)-

(a) Non-exempted goods removed means the final products excluding exempted goods manufactured and cleared upto the place of removal.

(b) Exempted goods removed means the exempted goods manufactured and cleared upto the place of removal.

© The Institute of Chartered Accountants of India

(c) Non-exempted services means the output services excluding exempted services.

[Effective from 01.04.2016]

Substituted sub-rule (3A)

There had been a controversy with respect to the expression "Total CENVAT credit taken on input services" (denoted as P or G) used in the formula prescribed under erstwhile sub-rule (3A) of rule 6. The Department was of the opinion that since the rule uses the term "total CENVAT credit taken on input services", entire CENVAT credit (including the CENVAT credit on input services which are used exclusively in the manufacture of dutiable goods or provision of taxable output services) taken by the assessee need to be considered for the purpose of reversal. Assessees on the other hand contended that the reversal formula would cover only the CENVAT credit on common input services for which separate accounts cannot be maintained. Department's stand led to far more reversal of CENVAT credit than the credit attributable to the input services used in exempted services or exempted goods.

There were divergent views of the various Benches of CESTAT on this issue. The Chennai Bench of CESTAT while delivering an interim stay order in the case of *Sify Technologies 2014-TIOL-60-CESTAT-MAD* took a *prima-facie* pro-assessee view and granted stay against the recovery of demand. Tribunal held that the formula as prescribed needs to be applied only to CENVAT credit availed on common input services. However, Mumbai Bench of CESTAT while passing stay order in the case of *Thyssenkrupp Industries (I) Pvt. Ltd. vs. CCE, Pune 2014 (310) ELT 317 (Tri.-Mumbai)* took a prima facie view that the prescribed formula in rule 6(3A) for reversal needs to be applied to CENVAT credit on all the input services taken during the year by the assessee and not to the CENVAT credit of only common input services availed by him.

A new formula has now been prescribed under the amended sub-rule (3A) to rectify the above-mentioned anomaly. The new formula is in line with the overall objective of rule 6 which seeks to disallow the credit on inputs and input services used exclusively in the manufacture of exempted goods or provision of exempted services and does not envisage reversal of credit taken on inputs or input services which are used exclusively in manufacture of dutiable goods or provision of taxable services. Thus, the new formula requires reversal of credit only in respect of common inputs and input services which are used in manufacture of both dutiable and exempted goods or for provision of taxable and exempted services.

The provisions of the new sub-rule (3A) are discussed hereunder:

Procedures and conditions for reversing proportionate credit For determination of amount required to be paid under clause (ii) of sub-rule (3), the

© The Institute of Chartered Accountants of India

manufacturer of goods or the output service provider will follow the following procedure and conditions, namely :-

(a) the manufacturer of goods or the provider of output service shall intimate in writing to the Superintendent of Central Excise giving the following particulars, namely :-

(i) name, address and registration number of the manufacturer of goods or provider of output service;

(ii) date from which the option under this clause is exercised or proposed to be exercised;

(iii) description of inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services and description of such exempted goods removed and such exempted services provided;

(iv) description of inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services and description of such non-exempted goods removed and non-exempted services provided;

(v) CENVAT credit of inputs and input services lying in balance as on the date of exercising the option under this condition;

Formula to determine amount to be reversed proportionately

(b) The manufacturer or the output service provider will determine the credit required to be paid, out of the total credit of inputs and input services taken during the month, denoted as T, in the following sequential steps and provisionally pay every month, the amounts determined under sub-clauses (i) and (iv), namely:-

(i) the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services shall be called ineligible credit, denoted as A, and shall be paid;

(ii) the amount of CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services shall be called eligible credit, denoted as B, and shall not be required to be paid;

(iii) credit left after attribution of credit under sub-clauses (i) and (ii) shall be called common credit, denoted as C and calculated as,-

$$C = T - (A + B)$$

© The Institute of Chartered Accountants of India

Explanation.-Where the entire credit has been attributed under sub-clauses (i) and (ii), namely ineligible credit or eligible credit, there shall be left no common credit for further attribution.

(iv) the amount of common credit attributable towards exempted goods removed or for provision of exempted services shall be called ineligible common credit, denoted as D and calculated as follows and shall be paid-

$$D = (E/F) \times C$$

Where E is the sum total of –

(a) value of exempted services provided; and

(b) value of exempted goods removed,

during the preceding financial year.

Where F is the sum total of-

(a) value of non-exempted services provided,

(b) value of exempted services provided,

(c) value of non-exempted goods removed, and

(d) value of exempted goods removed,

during the preceding financial year.

However, where no final products were manufactured or no output service was provided in the preceding financial year, the CENVAT credit attributable to ineligible common credit shall be deemed to be 50% the common credit;

(v) remainder of the common credit shall be called eligible common credit and denoted as G, where,-

$$G = C - D$$

Explanation.- For the removal of doubts, it is hereby declared that out of the total credit T, which is sum total of A, B, D, and G, the manufacturer or the provider of the output service shall be able to attribute provisionally and retain credit of B and G, namely, eligible credit and eligible common credit and shall provisionally pay the amount of credit of A and D, namely, ineligible credit and ineligible common credit.

(vi) where manufacturer or the provider of the output service fails to pay the amount determined under sub-clause (i) or sub-clause (iv), he shall be liable to pay the interest from the due date of payment till the date of payment of such amount, at the rate of 15% per annum;

© The Institute of Chartered Accountants of India

(c) The manufacturer or the output service provider will determine the amount of CENVAT credit attributable to exempted goods removed and provision of exempted services for the whole of financial year, out of the total credit denoted as T (Annual) taken during the whole of financial year in the following manner, namely :-

(i) the CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of exempted goods removed or for provision of exempted services on the basis of inputs and input services actually so used during the financial year, shall be called Annual ineligible credit and denoted as A (Annual);

(ii) the CENVAT credit attributable to inputs and input services used exclusively in or in relation to the manufacture of non-exempted goods removed or for the provision of non-exempted services on the basis of inputs and input services actually so used shall be called Annual eligible credit and denoted as B (Annual);

(iii) common credit left for further attribution shall be denoted as C (Annual) and calculated as-

$$C\ (Annual) = T\ (Annual) - [A\ (Annual) + B\ (Annual)]$$

(iv) common credit attributable towards exempted goods removed or for provision of exempted services shall be called Annual ineligible common credit, denoted by D (Annual) and shall be calculated as, -

$$D\ (Annual) = (H/I) \times C\ (Annual)$$

Where H is sum total of-

(a) value of exempted services provided; and

(b) value of exempted goods removed;

during the financial year.

Where I is sum total of

(a) value of non-exempted services provided,

(b) value of exempted services provided,

(c) value of non-exempted goods removed; and

(d) value of exempted goods removed;

during the financial year.

(d) The manufacturer or the output service provider shall pay on or before the 30th June of the succeeding financial year, an amount equal to difference between the total of the amount of Annual ineligible credit and Annual ineligible common credit and the aggregate amount of ineligible credit and ineligible

© The Institute of Chartered Accountants of India

common credit for the period of whole year, namely, [{A (Annual) + D(Annual)} – {(A+D) aggregated for the whole year)}], where the former of the two amounts is greater than the later.

(e) Where the amount under clause (d) is not paid by the 30th June of the succeeding financial year, the manufacturer of goods or the provider of output service, shall, in addition to the amount of credit so paid under clause (d), be liable to pay on such amount an interest at the rate of 15% per annum, from the 30th June of the succeeding financial year till the date of payment of such amount.

(f) The manufacturer or the provider of output service, shall at the end of the financial year, take credit of amount equal to difference between the total of the amount of the aggregate of ineligible credit and ineligible common credit paid during the whole year and the total of the amount of annual ineligible credit and annual ineligible common credit, namely, [{(A+D) aggregated for the whole year)} – {A(Annual) + D(Annual)}], where the former of the two amounts is greater than the later.

Other conditions

(g) The manufacturer of the goods or the provider of output service shall intimate to the jurisdictional Superintendent of Central Excise, within a period of 15 days from the date of payment or adjustment, as per the provisions of clauses (d), (e) and (f) , the following particulars, namely :-

(i) details of credit attributed towards eligible credit, ineligible credit, eligible common credit and ineligible common credit, month-wise, for the whole financial year, determined as per the provisions of clause (b);

(ii) CENVAT credit annually attributed to eligible credit, ineligible credit, eligible common credit and ineligible common credit for the whole of financial year, determined as per the provisions of clause (c);

(iii) amount determined and paid as per the provisions of clause (d), if any, with the date of payment of the amount;

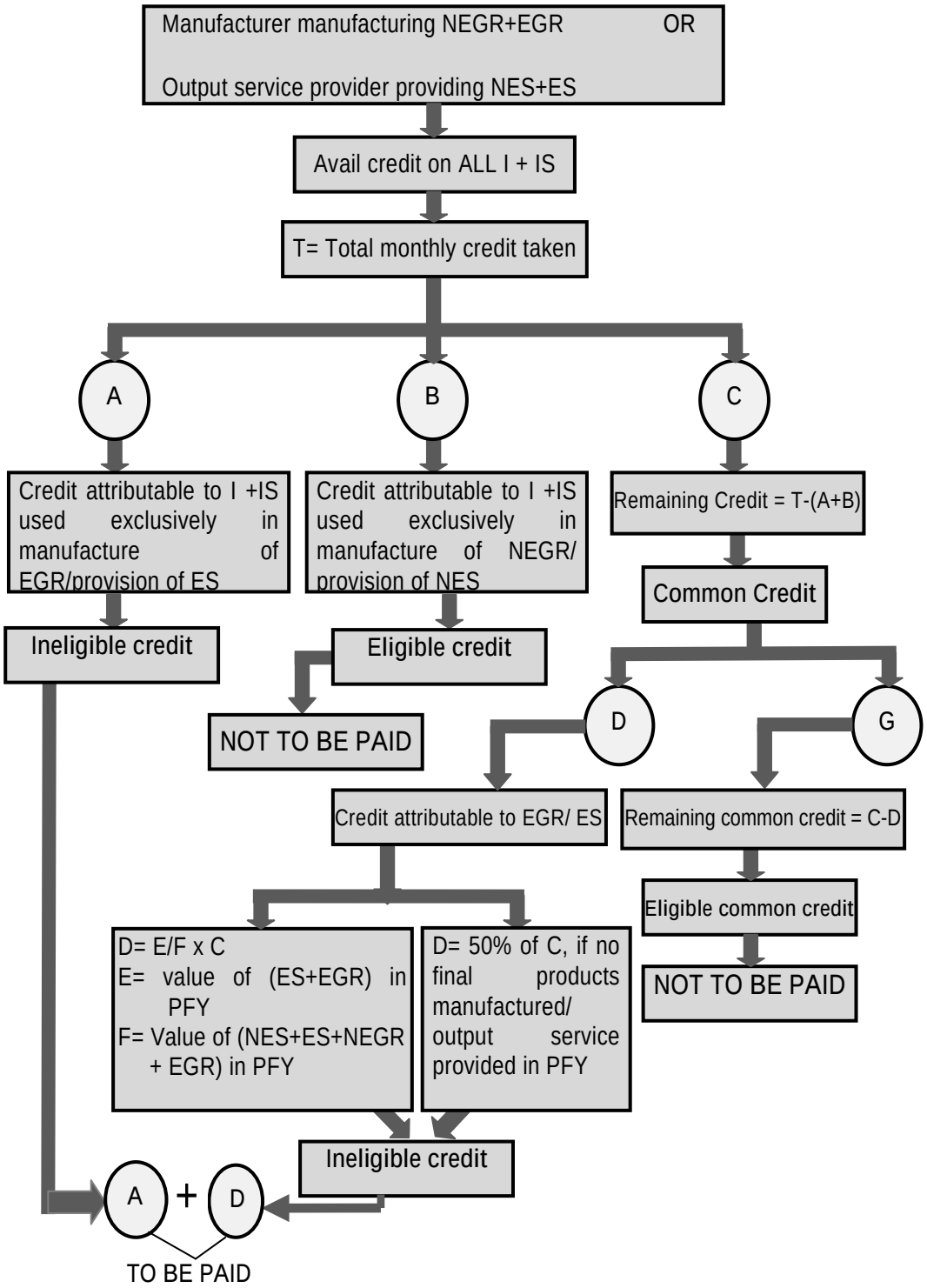
(iv) interest payable and paid, if any, determined as per the provisions of clause (e); and

(v) credit determined and taken as per the provisions of clause (f), if any, with the date of taking the credit.

[Effective from 01.04.2016]

The above provisions of sub-rule (3A) have been summarised in the following diagram:

© The Institute of Chartered Accountants of India



© The Institute of Chartered Accountants of India

At the end of the year actual amounts of A + D will be computed for the whole year in the similar manner as described above by taking annual figures of T B & C and H [value of ES + EGR during the FY] & I [Value of NES + ES + NEGR + EGR during the FY] in place of E & F.

Shortfall, if any, will be paid by 30th June of the SFY failing which interest @ 15% will be payable from 30th June of SFY till the date of payment of such amount.

Excess amount paid, if any, can be taken as credit. If the amount to be paid provisionally is not paid by the due date of payment, interest @ 15% will be payable from the due date of payment till the date of payment of such amount.

NEGR	:	Non exempted goods removed
EGR	:	Exempted goods removed
NES	:	Non exempted services
ES	:	Exempted service
I	:	Inputs
IS	:	Input Services
PFY	:	Preceding Financial Year
FY	:	Financial Year
SFY	:	Succeeding Financial Year

New sub-rule (3AA)

Central Excise Officer can allow proportionate reversal of CENVAT credit under sub-rule (3)(ii) even if prior intimation not given: A manufacturer or an output service provider who has failed to exercise the option under sub-rule (3) and follow the procedure of giving prior intimation provided under sub-rule (3A), may be allowed by a Central Excise Officer, competent to adjudicate such case, to follow the procedure and pay the amount under sub-rule (3)(ii). The amount will be calculated for each of the months, *mutatis-mutandis* in terms of sub-rule (3A)(c), with interest calculated at the rate of 15% per annum from the due date for payment of amount for each of the month, till the date of payment thereof.

[Effective from 01.04.2016]

New sub-rule (3AB)

Transitional provision: Sub-rule (3AB) has been inserted as a transitional provision to provide that the existing rule 6 of CCR would continue to be in

© The Institute of Chartered Accountants of India

operation upto 30.06.2016, for the units who are required to discharge the obligation in respect of financial year 2015-16.

[Effective from 01.04.2016]

Substituted sub-rule (3B)

Banks/other financial institutions can either reverse CENVAT credit in terms of sub-rules (1), (2) or (3) OR reverse 50% of the credit availed every month: A banking company and a financial institution including a non-banking financial company, engaged in providing services by way of extending deposits, loans or advances, in addition to options given in sub-rules (1), (2) and (3), will have the option to pay for every month an amount equal to 50% of the CENVAT credit availed on inputs and input services in that month.

Therefore, the new sub-rule allows banks and other financial institutions to reverse credit in respect of exempted services on actual basis in addition to the only option of 50% reversal which was available earlier.

[Effective from 01.04.2016]

Substituted sub-rule (4)

CENVAT credit not allowed on capital goods used exclusively in manufacture of exempted goods/provision of exempted services for 2 years from commencement of commercial production/provision of services: No CENVAT credit will be allowed on capital goods used exclusively in the manufacture of exempted goods or in providing exempted services for a period of two years from the date of commencement of the commercial production or provision of services, as the case may be.

Where capital goods are received after the date of commencement of commercial production or provision of services, as the case may be, the period of two years will be computed from the date of installation of such capital goods.

However, this provision does not apply to capital goods used in the manufacture of final products or in providing output services which are exempt on the basis of the value or quantity of clearances made or services provided in a financial year.

[Effective from 01.04.2016]

(xii) Reversal of credit not required in case of ethanol produced from molasses generated from cane crushed in the sugar season 2015-16 [Rule 6(6)]

The provisions of sub-rules (1), (2), (3) and (4) of rule 6 would not apply to ethanol produced from molasses generated from cane crushed in the sugar season 2015-16 i.e. 1st October, 2015 onwards, for supply to the public sector oil marketing companies, namely, Indian Oil Corporation Ltd., Hindustan Petroleum Corporation Ltd. or Bharat Petroleum Corporation Ltd., for the purposes of blending with petrol,

© The Institute of Chartered Accountants of India

under *Notification No.12/2012 CE dated 17.03.2012*. This has been done by inserting clause (ix) in sub-rule (6).

In case of such removal, though ethanol is removed without payment of duty, CENVAT credit on inputs/capital goods/input services used in the manufacture of ethanol can be availed. Further, where common inputs/input services are used to manufacture ethanol and other dutiable final product, reversal of credit or payment of amount on removal of ethanol will not be required.

The above amendment has been made vide *Notification No. 21/2015 CE (NT) dated 07.10.2015*.

[Effective from 01.10.2015]

(xiii) Manner of distribution of credit by input service distributor [Substituted rule 7]

Rule 7 dealing with distribution of credit on input services by an Input Service Distributor has been 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. Consequential amendment has also been made in the definition of input service distributor in rule 2(m).

The provisions of amended rule 7 are explained hereunder:

The input service distributor shall distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or unit providing output service or an outsourced manufacturing units subject to the following conditions, namely :—

(a) the credit distributed against a document referred to in rule 9 does not exceed the amount of service tax paid thereon

(b) the credit of service tax attributable as input service to a particular unit shall be distributed only to that unit

(c) the credit of service tax attributable as input service to more than one unit but not to all the units shall be distributed only amongst such units to which the input service is attributable and such distribution shall be *pro rata* on the basis of the turnover of such units, during the relevant period, to the total turnover of all such units to which such input service is attributable and which are operational in the current year, during the said relevant period

(d) the credit of service tax attributable as input service to all the units shall be distributed to all the units *pro rata* on the basis of the turnover of such units during the relevant period to the total turnover of all the units, which are operational in the current year, during the said relevant period

© The Institute of Chartered Accountants of India

(e) outsourced manufacturing unit shall maintain separate account for input service credit received from each of the input service distributors and shall use it only for payment of duty on goods manufactured for the input service distributor concerned

(f) credit of service tax paid on input services, available with the input service distributor, as on the 31st of March, 2016, shall not be transferred to any outsourced manufacturing unit and such credit shall be distributed amongst the units excluding the outsourced manufacturing units

The provision of this clause will, *mutatis-mutandis*, apply to any outsourced manufacturer commencing production of goods on or after the 1st of April, 2016.

(g) provisions of rule 6 will apply to the units manufacturing goods or provider of output service and will not apply to the input service distributor.

For the purposes of this rule –

(i) "Unit" includes the premises of a provider of output service or the premises of a manufacturer including the factory, whether registered or otherwise or the premises of an outsourced manufacturing unit [Explanation 1].

(ii) Total turnover will be determined in the same manner as determined under rule 5. The turnover of an outsourced manufacturing unit shall be the turnover of goods manufactured by such outsourced manufacturing unit for the input service distributor [Explanation 2].

(iii) "Relevant period" shall be -

(a) if the assessee has turnover in the financial year preceding to the year during which credit is to be distributed for month or quarter, as the case may be, the said financial year; or;

(b) if the assessee does not have turnover for some or all the units in the preceding financial year, the last quarter for which details of turnover of all the units are available, previous to the month or quarter for which credit is to be distributed [Explanation 3].

(iv) "Outsourced manufacturing unit" means a job-worker who is liable to pay duty on the value determined under rule 10A of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 on the goods manufactured for the input service distributor or a manufacturer who manufactures goods, for the input service distributor under a contract, bearing the brand name of such input service distributor and is liable to pay duty on the value determined under section 4A of the Central Excise Act, 1944 [Explanation 4].

[Effective from 01.04.2016]

© The Institute of Chartered Accountants of India

(xiv) Manufacturers with multiple manufacturing units enabled to maintain a common warehouse for inputs and distribute inputs with credits to the individual manufacturing units [New rule 7B]

A new rule 7B has been inserted to prescribe the provisions relating to "Distribution of credit on inputs by warehouse of manufacturer".

The new rule lays down that a manufacturer having one or more factories, will be allowed to take credit on inputs received under the cover of an invoice issued by a warehouse of the said manufacturer, who receives inputs under cover of documents specified under rule 9, towards the purchase of such inputs. Procedures applicable to a first stage dealer or a second stage dealer would apply, *mutatis mutandis*, to such a warehouse of the manufacturer *[Notification No. 13/2016 CE (NT) dated 01.03.2016 read with Notification No. 23/2016 CE (NT) dated 01.04.2016].*

[Effective from 01.04.2016]

(xv) Invoice issued by a service provider for clearance of inputs/capital goods also to be an eligible document under rule 9 [Rule 9(1)(a)(i)]

Prior to 01.04.2016, only an invoice issued by a manufacturer for clearance of inputs or capitals goods could be a valid document for availing CENVAT credit under rule 9(1)(a)(i). Rule 9(1)(a)(i) has been amended to provide that an invoice issued by a service provider for clearance of inputs or capitals goods will also be a valid document for availing CENVAT credit.

[Effective from 01.04.2016]

(xvi) Certificate issued by an Appraiser of Customs to be a valid document under rule 9 for goods imported through authorised courier [Rule 9(1)(d)]

Prior to 31.12.2015, certificate issued by an appraiser of customs was a valid document for availing credit in respect of goods imported through a Foreign Post Office in terms of rule 9(1)(d).

Clause (d) of sub-rule (1) of rule 9 has been amended vide *Notification No. 27/2015 CE (NT) dated 31.12.2015* to provide that a certificate issued by an appraiser of customs will also be a valid document for availing CENVAT credit in respect of goods imported through an authorized courier registered with the Principal Commissioner of Customs or the Commissioner of Customs in-charge of the customs airport.

[Effective from 31.12.2015]

2. Refund application for CENVAT credit under rule 5 in case of export of services to be filed within 1 year from the date of (a) receipt of payment, if provision of service has been completed prior to receipt of such payment or (b) issue of invoice, if payment has been received in advance prior to the date of issue of the invoice *[Notification No. 27/2012 CE (NT) dated 18.06.2012]*

© The Institute of Chartered Accountants of India

Rule 5 of CENVAT Credit Rules, 2004 allows refund of CENVAT credit subject to the procedure, safeguards, conditions and limitations prescribed under *Notification No. 27/2012 CE (NT) dated 18.06.2012*

The said notification has been amended vide *Notification No. 14/2016 CE (NT) dated 01.03.2016* to provide that the refund application in the Form A along with the documents specified therein and enclosures relating to the quarter for which refund is being claimed will be filed as under:

(i) in case of manufacturer, before the expiry of the period specified in section 11B of the Central Excise Act, 1944;

(ii) in case of service provider, before the expiry of one year from the date of –

  (a) receipt of payment in convertible foreign exchange, where provision of service had been completed prior to receipt of such payment; or

  (b) issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice.

[Effective from 01.03.2016]

3. No refund of CENVAT credit under rule 5B to service providers providing manpower supply/ security services - *Notification No. 12/2014 CE (NT) dated 03.03.2014*

Rule 5B of the CENVAT Credit Rules, 2004 provides that service providers, rendering notified reverse charge services, being unable to utilise the CENVAT credit availed on inputs and input services for payment of service tax on such output services, shall be allowed refund of such unutilised CENVAT credit.

In this regard, earlier following partial reverse charge services were notified vide *Notification No. 12/2014 CE (NT) dated 03.03.2014*:

(i) renting of a motor vehicle designed to carry passengers on non-abated value, to any person who is not engaged in a similar business;

(ii) supply of manpower for any purpose or security services; or

(iii) service portion in the execution of a works contract

Since with effect from 01.04.2015, service tax with respect to supply of manpower for any purpose or security services is payable on the basis full reverse charge, service providers of said services will no longer be eligible for refund of CENVAT credit. Further, application in Form A for claiming refund has also been suitably modified.

The above amendment has been made vide *Notification No. 15/2015 CE (NT) dated 19.05.2015.*

[Effective from 01.04.2015]

© The Institute of Chartered Accountants of India

4. Withdrawal of Circulars/Instruction on excisability of bagasse, aluminium/ zinc dross

Circular No. 904/24/09 CX dated 28.10.2009 clarified that in case the rate of duty in respect of bagasse, aluminium/zinc dross and other waste products arising during the course of manufacture and capable of being sold is NIL in the tariff or they are exempt from duty in terms of any exemption notification, and if CENVAT credit has been taken on the inputs which are used for manufacture of dutiable and exempted goods, then in terms of rule 6 of the CENVAT Credit Rules, 2004, the assessee is required to reverse the proportionate credit or pay 6% amount. The said circular has been withdrawn in the light of certain recent legal judgments.

It may also be noted that rule 6 of the CENVAT Credit Rule (CCR), 2004 was amended with effect from 01.03.2015 by inserting explanation 1 and explanation 2 in sub-rule (1) of rule 6. These explanations continue in the present rule 6 also. Consequently, bagasse, dross and skimmings of non-ferrous metals or any such by product or waste, which are non-excisable goods and are cleared for a consideration from the factory need to be treated like exempted goods for the purpose of reversal of credit of input and input services, in terms of rule 6 of the CENVAT Credit Rules, 2004.

[Circular No. 1027/15/2016 CX dated 25.04.2016]

Students may note that for November, 2016 examinations, notification/circulars issued till 30.04.2016 are relevant. Given above are the notifications/circulars issued between 01.05.2015 and 30.04.2016 which are relevant for November, 2016 examination. Students are required to go through these notifications/circulars carefully as they need to be applied while answering the questions in November, 2016 examination.

PART – II: QUESTIONS AND ANSWERS

QUESTIONS

Residential Status and Scope of total income

1. (a) Mr. Alok is an Indian citizen and a member of the crew of a Singapore bound Indian ship engaged in carriage of passengers in international traffic departing from Mumbai port on 6th June, 2015. From the following details for the P.Y.2015-16, determine the residential status of Mr. Alok for A.Y.2016-17, assuming that his stay in India in the last 4 previous years (preceding P.Y.2015-16) is 400 days and last seven previous years (preceding P.Y.2015-16) is 750 days:

Particulars	Date
Date entered into the Continuous Discharge Certificate in respect of joining the ship by Mr. Alok	6th June, 2015

© The Institute of Chartered Accountants of India

Date entered into the Continuous Discharge Certificate in respect of signing off the ship by Mr. Alok	9th December, 2015

(b) Mr. Shravan, a citizen of India and an employee of Central Government, left India for the first time on 11.02.2015 due to his transfer to Australia for an assignment. He did not visit India any time during the previous year 2015-16. From the following particulars of his income for the Financial Year 2015-16, compute his gross total income for A.Y. 2016-17:

S.No.	Particulars	₹
(i)	Salary	6,10,000
(ii)	Foreign Allowance (paid by the Government for rendering services in Australia)	4,55,000
(iii)	Interest on fixed deposit from bank in India	1,10,000
(iv)	Income from agriculture in Malaysia	3,50,000
(v)	Income from house property in Malaysia	2,25,000

Income which do not form part of total income

2. Discuss the taxability or otherwise of the following under the Income-tax Act, 1961:

(i) Agricultural income of ₹ 2, 00,000 earned by Ms. Dolly, a non-resident from land in Kanchipuram, Tamil Nadu.

(ii) Amount of ₹ 5,00,000 withdrawn by Mr. Rajesh, a resident individual, from Public Provident Fund as per relevant rules.

(iii) Mr. Abhi received ₹ 1,30,000 on 31.03.2016 towards maturity proceeds of life insurance policy issued on 1.4.2012. The annual premium and capital sum assured are ₹ 23,000 and ₹ 1,20,000, respectively.

(iv) Mr. Dinesh received ₹ 5,60,000 as partner share in the income of limited liability partnership.

(v) ₹ 3,50,000, received by Mr. Rohan from Central Government as compensation on account of disaster.

Income from Salaries

3. State the taxability or otherwise of the following perquisites and compute the total value of taxable perquisites, in the hands of Mr. Sarthak, employed with Assam Tea Limited as Chief Compliance Officer, for the previous year 2015-16, assuming that his basic salary is ₹ 60,000 p.m.

(i) Mr. Sarthak paid ₹ 6,000 p.m. to his domestic servant, which is entirely reimbursed by his employer.

© The Institute of Chartered Accountants of India

(ii) Air-conditioner purchased 3 years back for ₹ 50,000 has been given to the servant of Mr. Sarthak free of cost.

(iii) The estimated value of medical facility given to his family in a hospital maintained by the company is ₹ 85,000.

(iv) Free education was provided to his two children Avani and Aarav in a school maintained and owned by the company. The cost of such education for Avani is computed at ₹ 950 per month and for Aarav at ₹ 1,250 per month. No amount was recovered by the company for such education facility from Mr. Sarthak.

(v) Telephone provided at the residence of Mr. Sarthak and the bill aggregating to ₹ 27,000 paid by the employer.

Income from house property

4. Mrs. Lalita, a resident individual, owns a house in San Diego, U.S.A and a two storey house in Lucknow. Compute her income from house property from the following details for the previous year 2015-16:

I. House at San Diego

- Rent @ $ 3,500 per month.
- Municipal taxes paid $ 2,100

The value of one dollar is to be taken as ₹ 65.

II. House at Lucknow:

- Ground floor is used for her residence
- First floor is let out at a monthly rent of ₹ 13,500.
- Standard rent for each floor is ₹ 15,000 per month
- Fair rent for each floor is ₹ 12,500 per month.
- Municipal taxes paid ₹ 8,000.
- Repayment of housing loan of ₹ 85,000 including interest of ₹ 40,000.

Profits and gains of business or profession

5. (a) Mr. Varun is engaged in the business of manufacturing of spare parts. From the following details, compute the depreciation allowable as per the provisions of the Income-tax Act, 1961 for the assessment year 2016-17:

		(₹ in lacs)
(i)	Opening WDV of block (15% rate)	49
(ii)	New machinery purchased on 18-11-2015	18
(iii)	Machinery imported from California on 21-5-2015. This machine had been used only in California earlier and	12

© The Institute of Chartered Accountants of India

the assessee is the first user in India.

(iv) New computer installed in manufacturing unit on 15-7-2015 6

(b) Discuss the deductibility or otherwise of the following expenditure incurred by Purnit Agro Industries, while computing its business income for the year ended 31-03-2016:

(i) Revenue expenditure of ₹ 5,65,000 on scientific research related to its business.

(ii) Land & Building acquired for scientific research (cost of land is ₹ 9,50,000) in September 2015 for ₹ 22,00,000.

(iii) Contribution to the account of employees as per pension scheme referred to in section 80CCD amounted to ₹ 45,00,000. Amount above 10% of the salary of employees is ₹ 6,80,000.

(iv) Tax on non-monetary perquisites provided to the employees, borne by the employer ₹ 5,50,000.

Capital Gains

6. Mr. Sutanu is a proprietor of Purple Enterprises, which has two units, X and Y. The Balance Sheet as on 31.3.2015 is as under:

Liabilities	Unit X (₹)	Unit Y (₹)	Assets	Unit X (₹)	Unit Y (₹)
Own Capital	25,72,500	10,27,500	Building	22,00,000	11,00,000
Revaluation Reserve	5,00,000	-	Machinery	5,00,000	6,00,000
Bank loan	4,40,000	8,60,000	Debtors	3,25,000	2,40,000
Trade creditors	1,37,500	4,12,500	Other assets	6,25,000	3,60,000
Total	36,50,000	23,00,000	Total	36,50,000	23,00,000

He transferred on 1.4.2015 his Unit X by way of slump sale for a total consideration of ₹ 50 lacs. Unit X was started in the year 2005-06. The expenses incurred for this transfer were ₹ 68,000.

Other information:

(i) Revaluation reserve is created by revising upward the value of the building of Unit X.

(ii) No individual value of any asset is considered in the transfer deed.

(iii) Other assets of Unit X include patents acquired on 13.5.2013 for ₹ 2,50,000 on which no depreciation has been charged.

Cost Inflation Index: F.Y. 2005-06: 497, F.Y. 2015-16: 1081

Compute the capital gain for the assessment year 2016-17.

© The Institute of Chartered Accountants of India

Income from Other Sources

7. Mrs. Rupali, has furnished the following information pertaining to the year ended 31.3.2016:

   (i) She bought 100 equity shares of a listed company from a friend for ₹ 80,000. The value of shares in the stock exchange on the date of purchase was ₹ 1,55,000.

   (ii) On her 25th wedding anniversary, she received cash gift of ₹ 1,01,000 from her friend Ms. Anjali.

   (iii) On the above occasion, she also received a platinum ring worth ₹ 2,50,000 from her brother living in Singapore.

   (iv) She got cash gifts in aggregate of ₹ 25,000 from her four friends on the occasion of her daughter's wedding on 11.11.2015.

   (v) She also received ₹ 49,000 as gift by way of cheque from her maternal uncle, on her daughter's wedding.

   Determine the amount chargeable to tax in the hands of Mr. Rupali under the head "Income from other Sources" for the A.Y. 2016-17.

Income of Other Persons included in assessee's Total Income

8. The following are the details of the transactions pertaining to Mr. Sangram, Mrs. Sangeeta (wife) and their two minor sons Master Aayu and Avi for the previous year 2015-16.

   (a) Master Aayu earned ₹ 51,000 by investing ₹ 3,25,000 in a business. The said amount i.e., ₹ 3,25,000, was received as a gift from his father Mr. Sangram.

   (b) Mr. Sangram had a fixed deposit of ₹ 2,00,000 in Canara Bank. He instructed the bank to credit the interest on the deposit @ 9% from 1-4-2015 to 31-3-2016 to the savings bank account of Mr. Babloo, son of his brother, to help him in his education.

   (c) Master Avi derived an income of ₹ 35,000 through an activity involving application of his skill and talent.

   (d) Mr. Sangram gifted a flat to Mrs. Sangeeta on April 1, 2015. During the previous year 2015-16, Mrs. Sangeeta "Income from house property" (computed) was ₹ 5,12,000.

   (e) Mr. Sangram holds 75% share in a partnership firm. Mrs. Sangeeta received a remuneration of ₹ 32,500 from the firm for designing the webpage of the firm. Mrs. Sangeeta possesses no technical or professional qualification.

   During the year, Mr. Sangram got a monthly pension of ₹ 50,000. He had no other income. Mrs. Sangeeta received salary of ₹ 12,000 per month from a part time job.

   Discuss the tax implications of each transaction and compute the total income of Mr. Sangram, Mrs. Sangeeta and their minor sons.

© The Institute of Chartered Accountants of India

Set off and Carry Forward of Losses

9. Compute the Gross Total Income of Mr. Hariharan for the assessment year 2016-17 from the following particulars:

Particulars	Amount (₹)
Income from business before adjusting the following items:	3,45,000
(a) Business loss brought forward from assessment year 2013-14	65,000
(b) Current depreciation	32,500
(c) Unabsorbed depreciation of earlier year	1,95,000
Income from house property (Gross Annual Value)	5,23,000
Municipal taxes paid	28,000
Mr. Hariharan sold a plot at Kanpur on 30th October, 2015 for a consideration of ₹ 9,32,000, which had been purchased by him on 25th November, 2012 at a cost of ₹ 7,18,000	
Long-term capital loss on sale of shares sold through recognized stock exchange (STT paid)	58,000
Long-term capital gain on sale of debentures	88,000
Dividend on shares held as stock in trade	28,000
Dividend from a company carrying on agri business	25,000
During the previous year 2015-16, Mr. Hariharan has repaid ₹ 3,46,000 towards housing loan from a scheduled bank. Out of ₹ 3,46,000, ₹ 2,16,000 was towards payment of interest and rest towards principal payment.	
Cost inflation indices: F.Y. 2012-13: 852 & F.Y.2015-16: 1081.	

Deductions from Gross Total Income

10. Compute the total income of Mr. Chankaya for the assessment year 2016-17 from the followings details of payments/investments he made during the financial year 2015-16:

    (i) Payment made towards mediclaim premium of ₹ 21,000 to insure his health and ₹ 24,000 to insure the health of his father, aged 65 years, not dependent on him, by a mode other than cash.

    (ii) He spent ₹ 5,000 for the preventive health-check up of his wife and ₹ 5,000 for the preventive check up of his father.

    (iii) He has incurred an expenditure of ₹ 80,000 for the medical treatment of his mother, being a person with severe disability.

    (iv) Deposit of ₹ 1,00,000 in public provident fund.

    (v) Deposited ₹ 80,000 in tax saver deposit in the name of major son in a nationalized bank.

© The Institute of Chartered Accountants of India

(v) Contributed ₹ 1,50,000 to the National Pension System of the Central Government.

(vi) Paid ₹ 45,000 towards premium on life insurance policy of his married daughter (Sum Assured ₹ 5,50,000). The policy was taken on 01.05.2012.

(iii) Contributed ₹ 12,000 to Prime Minister's National Relief Fund.

(iv) Donated ₹ 22,000 to a Government recognized institution for scientific research by a cheque.

His gross total income is ₹ 8,40,000 for the previous year 2015-16. Assume that the gross total income of Mr. Chankaya comprises of only income under the head 'Income from house property' and interest on bank fixed deposit.

Computation of Total Income of an individual

11. CA Suraj Chawla (resident in India) aged 53 years is a practicing member. He maintains his accounts on cash basis. His income and expenditure account for the year ended March 31, 2016 reads as follows:

Expenditure	₹	Income	₹	₹
Salary to staff	8,05,000	Fees earned:		
Stipend to articled assistants	33,000	Audit	8,85,200	
Incentive to articled assistants	10,000	Taxation services	6,28,800	
Office rent	94,000	Consultancy	5,22,000	20,36,000
Printing and stationery	4,200	Dividend on shares of Indian companies (gross)		10,155
Meeting, seminar and conference	28,400	Income from Unit Trust of India		8,400
Repairs, maintenance and petrol of car	26,600	Profit on sale of shares (STT paid)		25,200
Subscription and periodicals	25,000	Honorarium received from various institutions for valuation of answer papers		26,300
Postage, telegram and fax	22,000	Rent received from residential flat let out		1,04,000
Depreciation	31,500			
Travelling expenses	50,500			
Municipal tax paid in respect of house	1,800			

© The Institute of Chartered Accountants of India

property				
Net profit	10,78,055			
	22,10,055			22,10,055

Other information:

(i) Depreciation debited to income and expenditure account is as per the rates of Income-tax Rules, 1962.

(ii) ₹ 2,050, interest paid on loan taken from LIC on the security of his Life Insurance Policy and utilised for repair of computer, has been debited to the drawing account of Mr. Suraj.

(iii) Repairs and maintenance of car includes ₹ 1,900 for the period from 1.10.2015 to 30.09.2016.

(iv) Salary include ₹ 33,000 to a computer specialist in cash for assisting Mr. Suraj in one professional assignment.

(v) Incentive to articled assistants represent amount paid to two articled assistants for passing IPCC Examination at first attempt.

(vi) Medical Insurance Premium on the health of self, wife, married daughter and dependent brother of ₹ 15,000, 11,000, 12,000 & 8,000, respectively. He also incurred medical expenditure of ₹ 80,000 on health of father, 82 years old. He made all these payments in a mode other than cash except medical premium of his wife.

(vii) The period of holding of shares is 6 months from the date of acquisition.

(viii) The travelling expenses includes expenditure incurred on foreign tour of ₹ 25,000 which was within the RBI norms.

Compute the total income and tax liability of CA. Suraj Chawla for the Assessment year 2016-17.

Provisions concerning Advance Tax and Tax Deducted at source

12. State in brief the applicability of tax deduction at source provisions, the rate and amount of tax deduction in the following cases for the financial year 2015-16:

(a) Rent of ₹ 1,65,000 paid by a partnership firm having sales turnover of ₹ 25,00,000 and net loss of ₹ 15,000 for use of plant and machinery.

(b) Payment of ₹ 59,000 made by an Indian newspaper agency on 21-09-2015 to Chris Gayle, a West Indies cricket player non-resident in India, for contribution of articles in relation to the sport of cricket.

(c) Winnings by way of jackpot in a horse race ₹ 1,80,000 paid to Mr. Ramesh, a resident.

© The Institute of Chartered Accountants of India

(d) Two individual payments of ₹ 28,000 (on 1.6.2015) and ₹ 37,000 (on 21.9.2015) made towards advertisement to X Ltd.

Provisions for filing of Return of Income

13. State whether filing of income-tax return is mandatory for the assessment year 2016-17 in respect of the following cases:

(a) A university have total income of ₹ 35 lacs without giving effect to exemption under section 10(23C). Its total income is, however, nil.

(b) A Limited Liability Partnership (LLP) having business loss of ₹ 1,30,000.

Computation of excise duty

14. Tirupati Ltd. sold a special machine, manufactured by it to Gupta Ltd. at a price of ₹ 5,00,000 (excluding taxes and duties). Further, cash discount @ 2% on price of machinery (viz. ₹ 5,00,000) has been allowed to the customer. Following additional amounts were also charged from Gupta Ltd.:

S.No.	Particulars	₹
(i)	Transit insurance shown separately in the invoice	9,500
(ii)	Outward freight beyond place of removal	17,000
(iii)	Packing charges	5,000
(iv)	Extra charges for designing the machine	45,000

Calculate assessable value of the machine and excise duty payable thereon if excise duty rate and State VAT rate is 12.5% and 5% respectively.

Computation of export duty

15. Lalit Export House exported some goods to Germany. The assessable value of the goods exported is ₹ 80,00,000. The shipping bill was presented electronically on 20.03.2016. However, the proper officer passed order permitting clearance and loading of goods for export on 09.04.2016. Compute the export duty payable by it if the rate of export duty was 10% on 20.03.2016 and 8% on 09.04.2016.

Computation of central sales tax

16. Bajrangi Ltd.'s total inter-State sales for the financial year 2015-16 is ₹ 40,00,000 (inclusive of central sales tax). In this regard following additional information is available:

S. No.	Particulars	₹
(i)	Freight (₹ 50,000 is not shown separately on invoices)	2,00,000
(ii)	Goods sold to Mr. Vibishan on 05.05.2015 and returned on 22.10.2015.	35,000
(iii)	Mr. Bharat, a buyer to whom goods were dispatched on	40,000

© The Institute of Chartered Accountants of India

	04.04.2015, rejected such goods. The said goods were received back on 24.11.2015.	

Determine the taxable turnover and CST payable by Bajrangi Ltd. for financial year 2015-16, assuming that all the transactions were covered by valid "C" forms and sales tax rate within the State is 5%.

Computation of VAT liability

17. Ashish Manufacturers purchased raw material in Delhi worth ₹ 1,00,00,000 (excluding VAT) and manufactured finished goods worth ₹ 1,80,00,000 from such raw material in the month of January, 2016. It transferred these finished goods to its branch in Haryana on February 15, 2016 so that the goods can be sold from there. Thereafter, it received an order from Mr. A for the said finished goods in Haryana on February 20, 2016 and hence sold the said goods to Mr. A from Haryana branch. Compute:

    (i) amount of input tax credit available for the month of February, 2016

    (ii) net VAT payable for the month of February, 2016, and

    (iii) balance input tax credit carried forward to next month, if any.

    Input VAT rate is 12.5% and output VAT rate is 4%.

Basic concepts of service tax

18. With reference to service tax law as contained in Finance Act, 1994, discuss whether any 'consideration' is involved in following cases:

    (i) Gifts received from friends at the time of farewell party.

    (ii) Grant given to a researcher to carry out any research of his choice. However, the researcher will have to provide IPR rights of the outcome of such research activity.

    (iii) Donations given to a charitable trust with the condition that in every program organized by such trust, the name of the donor will be displayed on the stage.

    (iv) Services are provided by X to Y. However, payment for the services is made by Z, a debtor of Y, on the instructions of Y.

Point of taxation

19. Mr. Rohan provides the following details relating to taxable service provided by him in the current financial year 2015-16. The aggregate value of services provided by Mr. Rohan in the preceding financial year was ₹ 80 lakh.

S. No.	Particulars	Date
(i)	Date of completion of service	05.06.2015
(ii)	Date of issue of invoice	01.07.2015
(iii)	Receipt of payment	20.08.2015

© The Institute of Chartered Accountants of India

Determine the point of taxation in the above case.

Will your answer be different if the aggregate value of services provided by Mr. Rohan in the preceding financial year was ₹ 40 lakh?

Computation of service tax liability

20. Determine the service tax liability with respect to each of the following independent services provided:

Particulars	₹
Fees charged for yoga camp conducted by a charitable trust	5,00,000
Amount charged by Bank Mitrs for the services provided to a bank with respect to Basic Savings Bank Deposit Accounts covered by Pradhan Mantri Jan Dhan Yojana (PMJDY)	1,00,000
Amount charged by cord blood banks by way of preservation of stem cells	50,000
Service provided by commentators to a recognized sports body	5,20,000

Note: Ignore the small service provider's exemption under *Notification No. 33/2012 ST dated 20.06.2012* while computing service tax liability and service tax has been charged separately, wherever applicable.

21. Chirag Ltd. furnishes the following details pertaining to January, 2016:

(i) Collected ₹ 1,00,000 from clients for pre-recruitment screening.

(ii) Arranged domestic help for friends & relatives, free of cost. The value of similar services when provided to other customers is ₹ 80,000.

(iii) Collected ₹ 10,00,000 from a warehouse of agricultural produce for labour provided for loading and unloading.

(iv) Advance amounting to ₹ 3,00,000 received from prospective employers for conducting campus interviews in colleges to be held in February, 2016. However, such campus interviews could not be conducted due to student's strike in those colleges. Hence, the advance received was later on returned to the employers.

Notes:

1. Chirag Ltd. is not eligible for the small service provider's exemption.
2. All above amounts are inclusive of service tax, wherever applicable.

Compute the value of taxable services rendered and the total service tax payable.

Exemptions under service tax

22. Universal Techo Ltd. imported a taxable service involving transfer of technology for ₹ 10,00,000 (exclusive of service tax and R & D cess) from USA in the month of

© The Institute of Chartered Accountants of India

December, 2015. The exporter raised an invoice for the same on 01.01.2016. Universal Techo Ltd. paid the said amount on 28.02.2016. The Research and Development cess (R & D cess) of ₹ 50,000 leviable on such import of technology was paid by Universal Techo Ltd. on 22.02.2016. Universal Techo Ltd. has maintained proper records which show the linkage between the invoice raised for the service and R&D cess payment challan.

Briefly answer the following with respect to the abovementioned details:

(i) Who is liable to pay service tax?

(ii) What is the point of taxation?

(ii) What is the amount of service tax that is payable on the said taxable service?

Payment of service tax at alternative rates

23. XYZ Ltd. is engaged in providing services of booking of tickets for travel by air. It discharges its service tax liability at special rates provided under rule 6(7) of the Service Tax Rules, 1994. Compute its service tax liability for the month of January, 2016 with the help of following particulars furnished by it:

Particulars	Basic fare as per rule 6(7) of Service Tax Rules, 1994 (₹)	Other charges and fee (₹)	Taxes (₹)	Total value of tickets (₹)
Domestic Bookings	1,15,400	11,200	5,260	1,31,860
International Bookings	4,00,200	22,150	13,380	4,35,730

XYZ Ltd. wants to pay service tax at the general rate in respect of bookings done by it during February. Can it do so? Explain.

Registration under service tax

24. ABC Designers Ltd., a company providing architectural services, has its branches in various cities across the country from where architectural services are provided to the clients. Its Head Office is located at New Delhi. ABC Designers Ltd. wants to apply for service tax registration. In what ways can ABC Designers Ltd. obtain registration? Explain.

CENVAT credit

25. ABC Co. Ltd. is engaged in the manufacture of excisable goods. It procured the following items during the month of February, 2016. Determine the amount of CENVAT credit available by giving necessary explanations for treatment of various items.

© The Institute of Chartered Accountants of India

Items	Excise duty paid (₹)
Electrical transformers falling under Chapter 85 of the Excise Tariff	22,000
Moulds and dies	1,30,000
Pollution control equipment	20,000
Trucks used for the transport of raw material falling under tariff heading 8704	54,000
Capital goods used outside the factory for generation of electricity for captive use within the factory	20,000
Refractories	5,000

SUGGESTED ANSWERS/HINTS

1. (a) As per section 6, an individual is treated as resident if:

- he has stayed for 182 days in India during the previous year or
- he has stayed for 60 days in the current previous year and 365 days in total during the four preceding previous years.

However, where an Indian citizen leaves India as a member of crew of an Indian ship or for the purpose of employment outside India, he will be resident only if he stayed for 182 days during the previous year.

Explanation 2 has been inserted by the Finance Act, 2015 in section 6(1) to provide that in the case of an Individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the prescribed manner and subject to the prescribed conditions.

Accordingly, the CBDT has prescribed the manner of determination of period of stay. For the purposes of section 6(1), in case of an individual, being a citizen of India and a member of the crew of a ship, the period or periods of stay in India shall, in respect of an eligible voyage, not include the period -

- beginning on the date entered into the Continuous Discharge Certificate in respect of joining the ship by the said individual for the eligible voyage and
- ending on the date entered into the Continuous Discharge Certificate in respect of signing off by that individual from the ship in respect of such voyage.

Eligible voyage refers to a voyage undertaken by a ship engaged in the carriage of passengers or freight in international traffic where –

© The Institute of Chartered Accountants of India

(i) for the voyage having originated from any port in India, has as its destination any port outside India; and

(ii) for the voyage having originated from any port outside India, has as its destination any port in India.

In this case, the voyage is undertaken by an Indian ship engaged in the carriage of passengers in international traffic, originating from a port in India (i.e., the Mumbai port) and having its destination at a port outside India (i.e., the Singapore port). Hence, the voyage is an eligible voyage for the purposes of section 6(1).

Therefore, the period beginning from 6th June, 2015 and ending on 9th December, 2015, being the dates entered into the Continuous Discharge Certificate in respect of joining the ship and signing off from the ship by Mr. Alok, an Indian citizen who is a member of the crew of the ship, has to be excluded for computing the period of his stay in India.

Accordingly, 187 days [25+31+31+30+31+30+9] have to be excluded from the period of his stay in India. Consequently, Mr. Alok's period of stay in India during the P.Y.2015-16 would be 179 days [i.e., 366 days – 187 days]. Since his period of stay in India during the P.Y.2015-16 is less than 182 days, he is a non-resident for A.Y.2016-17.

Note - Since the residential status of Mr. Alok is "non-resident" for A.Y.2016-17 consequent to his number of days of stay in P.Y.2015-16 being less than 182 days, his period of stay in the earlier previous years become irrelevant.

(b) As per section 6(1), Mr. Shravan is a non-resident for the A.Y. 2016-17, since he was not present in India at any time during the previous year 2015-16.

As per section 5(2), a non-resident is chargeable to tax in India only in respect of following incomes:

(i) Income received or deemed to be received in India; and

(ii) Income accruing or arising or which is deemed to accrue or arise in India.

In view of the above provisions, income from agriculture in Malaysia and income from house property in Malaysia would not be chargeable to tax in the hands of Mr. Shravan, assuming that the same were received in Malaysia.

Income from 'Salaries' payable by the Government to a citizen of India for services rendered outside India is deemed to accrue or arise in India as per section 9(1)(iii). Hence, such income is taxable in the hands of Mr. Shravan, an Indian citizen, even though he is a non-resident.

© The Institute of Chartered Accountants of India

However, allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering service outside India is exempt under section 10(7). Hence, foreign allowance of ₹ 4,55,000 is exempt under section 10(7).

Gross Total Income of Mr. Shravan for A.Y. 2016-17

Particulars	₹
Salaries	6,10,000
Income from other sources (Interest on fixed deposit in India)	1,10,000
Gross Total Income	7,20,000

2. (i) Agriculture Income from land situated in India is exempt under section 10(1), both in the case of residents and non-residents. Therefore, agriculture income of ₹ 2,00,000 from land in Kanchipuram, Tamil Nadu would be exempt in the hands of Ms. Dolly, a non-resident.

(ii) Amount withdrawn from Public Provident Fund is exempt under section 10(11). Therefore, amount of ₹ 5,00,000 withdrawn by Mr. Rajesh from Public Provident Fund in accordance with rules would not be chargeable to tax.

(iii) Section 10(10D)(d) exempts, any sum received under a life insurance policy, other than any sum received under an insurance policy issued on or after 1.4.2012 in respect of which the premium payable for any of the years during the term of the policy exceeds 10% of the capital sum assured.

Therefore, ₹ 1,30,000 received by Mr. Abhi towards maturity proceeds of the life insurance policy would be chargeable to tax, since ₹ 23,000, being the amount of annual premium exceeds ₹ 12,000, being 10% of capital sum assured i.e., ₹ 1,20,000.

(iv) Section 10(2A) provides that partner's share in the total income of a firm is exempt in his hands. The term "firm" includes a limited liability partnership and "partner" includes a partner of a limited liability partnership.

Therefore, ₹ 5,60,000, being Dinesh's share of profit in the limited liability partnership would not be chargeable to tax in his hands.

(v) As per section 10(10BC), any amount received or receivable as compensation by an individual or his/her legal heir on account of any disaster from the Central Government, State Government or a local authority is exempt from tax, except to the extent such individual or legal heir has already been allowed a deduction under this Act on account of such loss or damage caused by such disaster.

© The Institute of Chartered Accountants of India

Thus, ₹ 3,50,000, being the amount of compensation received from Central Government on account of disaster would be exempt under section 10(10BC) in the hands of Mr. Rohan, assuming that the same has not been allowed as deduction under any other provision of the Act.

3. Computation of value and taxability of perquisites provided by Assam Tea Limited to Mr. Sarthak

<table>
<tr><th>S. No.</th><th>Particulars</th><th>Value of Taxable perquisite (₹)</th></tr>
<tr><td>(i)</td><td>Any sum paid by the employer in respect of any expenditure actually incurred by the employee in respect of any obligation which but for such payment, would have been payable by the assessee, would be chargeable to tax as perquisite [Section 17(2)(iv)].
Thus, in this case, since it becomes an obligation on Mr. Sarthak to pay salary to his servant even if it is not reimbursed by his employer, ₹ 72,000 (₹ 6,000 x 12), being the amount of salary of servant reimbursed by his employer would be chargeable to tax in his hands.</td><td>72,000</td></tr>
<tr><td>(ii)</td><td>The value of benefit to the employee arising from the transfer of any movable asset (air conditioner, in this case) belonging to the employer directly or indirectly to the employee or any member of the household shall be actual cost to the employer as reduced by 10% of such cost for each completed year during which such asset was put to use by the employer and as further reduced by the amount, if any paid or recovered from the employee, being the consideration for such transfer[6].
“Member of household” shall include spouse, children and their spouses, parents, servants and dependents[7] .
Computation of value of perquisite
<table>
<tr><th>Particulars</th><th>₹</th></tr>
<tr><td>Original cost</td><td>50,000</td></tr>
<tr><td>Depreciation on SLM basis for 3 years @10% i.e. ₹ 50,000 x10% x 3</td><td>15,000</td></tr>
<tr><td>Perquisite value</td><td>35,000</td></tr>
</table>
</td><td>35,000</td></tr>
</table>

[6] Rule 3(7)(viii)
[7] Explanation to Rule 3

© The Institute of Chartered Accountants of India

	Thus, ₹ 35,000, being the value of perquisite of transferred movable asset i.e., air-conditioner to the servant of Mr. Sarthak would be chargeable to tax in his hands.	
(iii)	Medical facility to employee's family in a hospital maintained by the employer is not a taxable perquisite. Regardless of the estimated value of benefit arising from such facility to the employee, it is exempt from tax[8]. Therefore, the value of perquisite is Nil.	Nil
(iv)	Where the educational institution is owned by the employer, the value of perquisite in respect of free education facility shall be determined with reference to the reasonable cost of such education in a similar institution in or near the locality. However, there would be no perquisite if the cost of such education per child does not exceed ₹ 1,000 per month[9]. Therefore, there would be no perquisite in respect of cost of free education provided to his child Avani, since the cost does not exceed ₹ 1,000 per month. However, the cost of free education provided to his child Aarav would be taxable, since the cost exceeds ₹ 1,000 per month. The taxable perquisite value would be ₹ 15,000 (₹ 1,250 × 12). *Note – An alternate view possible is that only the sum in excess of ₹ 1,000 per month is taxable. In such a case, the value of perquisite would be ₹ 3,000.*	15,000
(v)	Telephone provided at the residence of the employee and payment of bill by the employer is a tax free perquisite[10].	Nil
Total Value of Perquisite		1,22,000

4. Computation of Income from House Property of Mrs. Lalita for the A.Y. 2016-17

Particulars	₹	₹
I. House property in San Diego		
GAV– Rent received[11] ($ 3,500 p.m. x ₹ 65 per USD x 12 months)	27,30,000	
Less: Municipal taxes paid ($ 2,100 x ₹ 65 per USD)	1,36,500	
Net Annual Value (NAV)	25,93,500	

[8] Clause (i) of first proviso to section 17(2)
[9] Rule 3(5)
[10] Proviso to Rule 3(7)(ix)
[11] Rent received taken as GAV in the absence of other information

© The Institute of Chartered Accountants of India

Less: Deduction under section 24			
- 30% of NAV		7,78,050	18,15,450
II. House property in Lucknow (Let-out portion - First Floor)			
Expected rent (lower of standard rent and fair rent)			
Standard Rent (₹ 15,000 x 12)	₹ 1,80,000		
Fair rent (₹ 12,500 x 12)	₹ 1,50,000	1,50,000	
Actual rent received (13,500 × 12)		1,62,000	
Gross Annual Value (higher of Expected rent and actual rent)		1,62,000	
Less: Municipal taxes paid (50% of ₹ 8,000)		4,000	
Net Annual Value (NAV)		1,58,000	
Less: Deduction under section 24			
30% of NAV	₹ 47,400		
Interest on housing loan (50% of ₹ 40,000)	₹ 20,000	67,400	90,600
Income from House property in Lucknow (Self-occupied portion - Ground Floor)			
Annual Value		Nil	
Less: Deduction under section 24			
Interest on housing loan (50% of ₹ 40,000)		20,000	(-) 20,000
Income from house property			18,86,050

5. (a) Computation of depreciation under section 32 for A.Y.2016-17

Particulars	₹	₹
Normal Depreciation		
Depreciation@15% on ₹ 61,00,000, being machinery (put to use for more than 180 days) [Opening WDV of ₹ 49,00,000 + Purchase cost of imported machinery of ₹ 12,00,000]	9,15,000	
Depreciation @7.5% on ₹ 18,00,000, being new machinery put to use for less than 180 days	1,35,000	
	10,50,000	
Depreciation@ 60% on computers purchased ₹ 6,00,000	3,60,000	14,10,000

© The Institute of Chartered Accountants of India

Additional Depreciation (Refer Note below)		
Additional Depreciation@10% of ₹ 18,00,000 [being actual cost of new machinery purchased on 18-11-2015]	1,80,000	
Additional Depreciation@20% on new computer installed in manufacturing unit [20% of ₹ 6,00,000]	1,20,000	3,00,000
Total Depreciation		17,10,000

Note:-

The benefit of additional depreciation is available to new plant and machinery acquired and installed in manufacturing undertakings. Accordingly, additional depreciation is allowable in the case of any new machinery or plant acquired and installed by an assessee engaged, *inter alia,* in the business of manufacturing of spare parts, at the rate of 20% of the actual cost of such machinery or plant.

Therefore, new computer installed in manufacturing unit is eligible for additional depreciation@20%.

Since the new machinery was purchased only on 18.11.2015, it was put to use for less than 180 days during the previous year, and hence, only 10% (i.e., 50% of 20%) is allowable as additional depreciation in the A.Y. 2016-17. The balance additional depreciation would be allowed in the next year.

However, additional depreciation shall not be allowed in respect of, *inter alia*, any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person. Therefore, additional depreciation is not allowable in respect of imported machinery, since it was used in California, before its installation by Mr. Varun

(b) (i) The entire revenue expenditure of ₹ 5,65,000 on scientific research related to the business of the company qualifies for deduction under section 35(1)(i).

(ii) As per section 35(1)(iv) read with section 35(2), if any capital expenditure (other than expenditure on acquisition of land) is incurred on scientific research related to the business carried on by the assessee, the whole of such capital expenditure is allowable as deduction in the previous year in which it is incurred.

Therefore, ₹ 12,50,000 (i.e. ₹ 22,00,000 – ₹ 9,50,000, being the cost of land) is allowable as deduction for the A.Y.2016-17. It is assumed that the scientific research is related to the business of Purnit Agro Industries.

(iii) The employer's contribution to the account of an employee under a pension scheme referred to in section 80CCD, upto 10% of salary of the employee in the previous year, is allowable as deduction under section 36(1)(iva) while computing business income.

Disallowance under section 40A(9) would be attracted only in respect of the

© The Institute of Chartered Accountants of India

amount in excess of 10% of salary. Accordingly, ₹ 38,20,000 would be allowed as deduction under section 36(1)(iva) and ₹ 6,80,000 would be disallowed as per section 40A(9).

(iv) The tax of ₹ 5,50,000 borne by the employer on non-monetary perquisites provided to the employees is disallowed under section 40(a)(v).

6. Computation of capital gains on slump sale of Unit X

Particulars	₹
Sale value	50,00,000
Less: Expenses on sale	68,000
Net sale consideration	49,32,000
Less: Net worth (See Note 1 below)	24,63,125
Long-term capital gain	24,68,875

Notes:

1. Computation of net worth of Unit X of Purple Enterprises

Particulars	₹	₹
Building (excluding ₹ 5 lakhs on account of revaluation)		17,00,000
Machinery		5,00,000
Debtors		3,25,000
Patents (See Note 2 below)		1,40,625
Other assets (₹ 6,25,000 – ₹ 2,50,000)		3,75,000
Total assets		30,40,625
Less: Creditors	1,37,500	
Bank Loan	4,40,000	5,77,500
Net worth		24,63,125

2. Written down value of patents as on 1.4.2015

Value of patents:	₹
Cost as on 13.5.2013	2,50,000
Less: Depreciation @ 25% for Financial Year 2013-14	62,500
WDV as on 1.4.2014	1,87,500
Less: Depreciation for Financial Year 2014-15	46,875
WDV as on 1.4.2015	1,40,625

For the purposes of computation of net worth, the written down value determined as per section 43(6) has to be considered in the case of depreciable assets. The problem has been solved assuming that the Balance Sheet values of ₹ 5 lakh and

© The Institute of Chartered Accountants of India

₹ 17 lakh (₹ 22 lakh – ₹ 5 lakh) represent the written down value of machinery and building, respectively, of Unit X determined as per section 43(6).

3. Since the Unit is held for more than 36 months, capital gain arising would be long term capital gain. However, indexation benefit is not available in case of slump sale.

7. Computation of amount chargeable to tax under the head "Income from other sources" in the hands of Mrs. Rupali for A.Y. 2016-17

	Particulars	₹
(i)	Since shares are included in the definition of "property" and difference between the purchase value and fair market value of shares exceeds ₹ 50,000 i.e., ₹ 75,000 (₹ 1,55,000 – ₹ 80,000), the difference would be chargeable to tax under section 56(2)(vii)	75,000
(ii)	Any sum of money received by an individual on the occasion of the marriage of the individual is exempt. This provision is, however, not applicable to a cash gift received on the occasion of wedding anniversary. The gift of ₹ 1,01,000 received from a non-relative is, therefore, chargeable to tax under section 56(2)(vii) in the hands of Mrs. Rupali.	1,01,000
(iii)	The provisions of section 56(2)(vii) are not attracted in respect of any sum of money or property received from a relative. Thus, the gift of platinum ring received from her brother is not taxable under section 56(2)(vii), even though jewellery falls within the definition of "property".	Nil
(iv)	To be exempt from applicability of section 56(2)(vii), the property should be received on the occasion of the marriage of the individual, not that of the individual's son or daughter. Therefore, this exemption provision is not attracted in this case. Any sum of money received without consideration by an individual is chargeable to tax under section 56(2)(vii), if the aggregate value exceeds ₹ 50,000 in a year. Since, the aggregate value of cash gifts received by Mrs. Rupali exceeds ₹ 50,000 during the previous year 2015-16, the cash gifts aggregating ₹ 25,000 received from her four friends would be chargeable to tax in her hands.	25,000
(v)	The provisions of section 56(2)(vii) are not attracted in respect of any sum of money or property received from a relative. Since maternal uncle is a relative, the amount of ₹ 49,000 received by way of cheque from him would not be chargeable to tax in her hands.	Nil
Amount chargeable to tax under the head "Income from other Sources"		2,01,000

© The Institute of Chartered Accountants of India

8. Computation of total income of Mr. Sangram, Mrs. Sangeeta and their minor son for the A.Y. 2016-17

Particulars	Mr. Sangram (₹)		Mrs. Sangeeta (₹)	Master Avi (₹)
Salary income (of Mrs. Sangeeta)		-	1,44,000	-
Pension income (of Mr. Sangram) (₹ 50,000×12)		6,00,000		
Income from House Property *[See Note (3) below)*		5,12,000	-	-
Income from other sources				
Interest on Mr. Sangram's fixed deposit with Canara Bank (₹ 2,00,000×9%) *[See Note (1) below]*	18,000		-	-
Remuneration received by Mrs. Sangeeta from a partnership firm, in which Mr. Sangram has substantial interest *[See Note (2) below]*	32,500	50,500	-	-
Income before including income of minor son under section 64(1A)		11,62,500	1,44,000	-
Income of the Master Aayu from the investment made in the business out of the amount gifted by Mr. Sangram *[See Note (4) below]*		49,500	-	-
Income of the Master Avi through an activity involving application of his skill and talent *[See Note (5) below]*		-	-	35,000
Total Income		12,12,000	1,44,000	35,000

Notes:

(1) As per section 60, in case there is a transfer of income without transfer of asset from which such income is derived, such income shall be treated as income of the transferor. Therefore, the fixed deposit interest of ₹ 18,000 transferred by Mr. Sangram to Mr. Babloo shall be included in the total income of Mr. Sangram.

(2) As per section 64(1)(ii), in case the spouse of the individual receives any amount by way of income from any concern in which the individual has substantial interest (i.e. holding shares carrying at least 20% voting power or entitled to at least 20% of the profits of the concern), then, such income shall be included in the total income of

© The Institute of Chartered Accountants of India

the individual. The only exception is in a case where the spouse possesses any technical or professional qualifications and the income earned is solely attributable to the application of her technical or professional knowledge and experience, in which case, the clubbing provisions would not apply.

In this case, the remuneration of ₹ 32,500 received by Mrs. Sangeeta from the partnership firm has to be included in the total income of Mr. Sangram, as his wife does not possess any technical or professional qualification for earning such remuneration and Mr. Sangram has substantial interest in the partnership firm as he holds 75% share in the firm.

(3) According to section 27(i), an individual who transfers any house property to his or her spouse otherwise than for adequate consideration or in connection with an agreement to live apart, shall be deemed to be the owner of the house property so transferred. Hence, Mr. Sangram shall be deemed to be the owner of the flat gifted to Mrs. Sangeeta and hence, the income arising from the same shall be computed in the hands of Mr. Sangram.

Note: The provisions of section 56(2)(vii) would not be attracted in the hands of Mrs. Sangeeta, since she has received immovable property without consideration from a relative i.e., her husband.

(4) As per section 64(1A), the income of the minor child is to be included in the total income of the parent whose total income (excluding the income of minor child to be so clubbed) is greater. Further, as per section 10(32), income of a minor child which is includible in the income of the parent shall be exempt to the extent of ₹ 1,500 per child.

Therefore, the income of ₹ 51,000 received by Master Aayu from the investment made out of the sum gifted by Mr. Sangram shall, after providing for exemption of ₹ 1,500 under section 10(32), be included in the income of Mr. Sangram, since Mr. Sangram's income of ₹ 11,62,500 (before including the income of the minor child) is greater than Mrs. Sangeeta's income of ₹ 1,44,000. Therefore, ₹ 49,500 (i.e., ₹ 51,000 – ₹ 1,500) shall be included in Mr. Sangram's income. It is assumed that this is the first year in which clubbing provisions are attracted.

Note – The provisions of section 56(2)(vii) would not be attracted in the hands of the Master Aayu, since he has received a sum of money exceeding ₹ 50,000 without consideration from a relative i.e., his father.

(5) In case the income earned by the minor child is on account of any activity involving application of any skill or talent, then, such income of the minor child shall not be included in the income of the parent, but shall be taxable in the hands of the minor child.

© The Institute of Chartered Accountants of India

Therefore, the income of ₹ 35,000 derived by Master Avi through an activity involving application of his skill and talent shall not be clubbed in the hands of the parent. Such income shall be taxable in the hands of the minor son.

9. Computation of Gross total income of Mr. Hariharan for the A.Y 2016-17

	Particulars	₹	₹
I.	Income from house property		
	Gross Annual Value	5,23,000	
	Less: Municipal taxes paid	28,000	
	Net Annual Value (NAV)	4,95,000	
	Less: Deductions under section 24		
	(a) 30% of NAV	1,48,500	
	(b) Interest on housing loan (whole of the amount paid towards interest allowed as deduction, since property is let-out)	2,16,000	1,30,500
II.	Income from business		
	Income from business	3,45,000	
	Less : Current year depreciation under section 32(1)	32,500	
		3,12,500	
	Less: Set-off of brought forward business loss of A.Y. 2013-14 under section 72	65,000	
		2,47,500	
	Less: Unabsorbed depreciation set-off *[See Note 3]*	1,07,000	1,40,500
III	Capital gains		
	Long term capital gain on sale of debentures	88,000	
	Less: Unabsorbed depreciation set-off *[See Note 3]*	88,000	Nil
	Short term capital gain on sale of land *[See Note 2]*	2,14,000	2,14,000
IV	Income from other sources		
	Dividend on shares (whether held as stock-in-trade or from a company carrying on agricultural operations) – exempt under section 10(34)	-	Nil
Gross total income			4,85,000

Notes:

(1) Loss from an exempt source cannot be set-off against gains from a taxable source. Since long-term capital gains on sale of listed equity shares through a recognized

© The Institute of Chartered Accountants of India

stock exchange is eligible for exemption under section 10(38), consequently, long-term capital loss on sale of listed equity shares, being loss from an exempt source, cannot be set-off against long-term capital gains on sale of debentures.

(2) Since land is held for a period of less than 36 months, the gain of ₹ 2,14,000 arising from sale of such land is a short-term capital gain.

(3) Brought forward unabsorbed depreciation can be adjusted against any head of income except salaries. However, it is more beneficial to set-off unabsorbed depreciation first against long-term capital gains, since it is taxable at a higher rate of 20% (the other income of the assessee falling in the 10% slab rate). Therefore, unabsorbed depreciation is first set-off against long-term capital gains to the extent of ₹ 88,000. The remaining unabsorbed depreciation is adjusted against business income to the extent of ₹ 1,07,000.

In the alternative, the balance of unabsorbed deprecation ₹ 1,07,000 may also be set-off against income from house property or short-term capital gain, in which case, the net income from house property would be ₹ 23,500 or short-term capital gain would be ₹ 1,07,000. The gross total income would, however, remain unchanged.

10. Computation of total income of Mr. Chankaya for the A.Y.2016-17

Particulars	₹
Gross total income	8,40,000
Less: Deductions under Chapter VI-A (See Working Note below)	4,09,000
Total Income	4,31,000

Working Note:

Computation of Deductions under Chapter VI-A

Particulars	₹	₹
(i) Deduction under section 80C		
- Deposit in public provident fund	1,00,000	
- Deposit of ₹ 80,000 in tax saver deposit in the name of major son in a nationalized bank – Fixed deposit in the name of son does not qualify for deduction under section 80C	-	
Premium on life insurance policy of his married daughter – Full amount is eligible for deduction under section 80C (since premium paid does not exceed 10% of sum assured)	45,000	
	1,45,000	

© The Institute of Chartered Accountants of India

(ii)	Deduction under section 80CCD(1)		
	Contribution to NPS of the Central Government, ₹ 1,00,000 [₹ 1,50,000 – ₹ 50,000, being deduction under section 80CCD(1B)], restricted to ₹ 84,000 being 10% of Gross total Income i.e., ₹ 8,40,000	84,000	
		2,29,000	
	As per section 80CCE, aggregate deduction under section 80C and 80CCD(1) cannot exceed		1,50,000
(iii)	Deduction under section 80CCD(1B)		50,000
	The deduction under section 80CCD(1B) would not be subject to overall limit of ₹ 1.50 lakh under section 80CCE. Therefore, it is more beneficial for Mr. Chankaya to claim deduction under section 80CCD(1B) first in respect of contribution to NPS. Thereafter, the remaining amount of ₹ 1,00,000 can be claimed as deduction under section 80CCD(1), subject to a maximum limit of 10% of Gross Total Income i.e. ₹ 84,000.		
(iv)	Deduction under section 80D		
	(i) (a) Medical insurance premium for self	21,000	
	(b) Preventive health check up ₹ 5,000 for wife restricted to ₹ 4,000 (₹ 25,000 - ₹ 21,000, since maximum allowable deduction is ₹ 25,000)	4,000	
		25,000	
	(ii) (a) Health Insurance premium for his father	24,000	
	(b) Preventive health check up ₹ 5,000 restricted to ₹ 1,000 (₹ 5,000 - ₹ 4,000), since maximum allowable deduction in respect of preventive health check up under section 80D is ₹ 5,000[12].	1,000	
		25,000	
	Whole of the amount of ₹ 25,000 allowed as deduction, since maximum allowable deduction is ₹ 30,000, where the parent is a senior citizen.		
	Total of (i) and (ii)		50,000

[12] In the alternative, preventive health check-up of ₹ 5,000 of his father can be claimed, in which case, no deduction would be allowed in respect of the expenses on preventive health check-up of wife, since the aggregate deduction for preventive health check-up cannot exceed ₹5,000. In such case also, the total deduction under section 80D would be ₹ 50,000

© The Institute of Chartered Accountants of India

(v)	Deduction under section 80DD		
	Deduction of ₹ 1,25,000 in respect of expenditure on medical treatment of his mother, being a person with severe disability would be allowed irrespective of the fact that amount of expenditure incurred is ₹ 80,000		1,25,000
(vi)	Deduction under section 80G		
	Contribution of ₹ 12,000 to PM's National Relief Fund, eligible for 100% deduction		12,000
(vii)	Deduction under section 80GGA		
	Payment of ₹ 22,000 to a Government recognized institution for scientific research - Eligible for deduction under section 80GGA since the payment is made by way of cheque		22,000
Total Deductions under Chapter VI-A			4,09,000

11. Computation of Total Income and tax liability of CA. Suraj Chawla for Assessment Year 2016-17

Particulars	Working Note Nos.	₹
Income from House Property	1	71,540
Profit and gains of Business or Profession	2	9,36,750
Short-term capital gains	3	25,200
Income from other sources	4	26,300
Gross Total Income		10,59,790
Less: Deduction under Chapter VI-A	5	45,000
Total Income		10,14,790
Tax on total income		
Total Income		10,14,790
Less: Short-term capital gains (See Note 9 below)		25,200
Normal Income		9,89,590
Tax on normal income		1,22,918
Tax on short-term capital gains @15%		3,780
		1,26,698
Add: Education cess @ 2% and SHEC @ 1%		3,801
Total tax liability		1,30,499
Total tax liability (rounded off)		1,30,500

© The Institute of Chartered Accountants of India

Notes :

		₹	₹
(1)	Income from House Property		
	Gross Annual Value	1,04,000	
	Less: Municipal taxes paid by owner	1,800	
	Net Annual Value (NAV)	1,02,200	
	Less: Deduction under section 24 @ 30% of NAV	30,660	71,540
	Rent received has been taken as the Gross Annual Value in the absence of other information relating to Municipal Value, Fair Rent and Standard Rent.		
(2)	Income under the head "Profits & Gains of Business or Profession"		
	Net profit as per Profit & Loss Account		10,78,055
	Add: Expenses debited to the Profit & Loss Account but not allowable		
	(i) Salary paid to computer specialist in cash disallowed under section 40A(3), since such cash payment exceeds ₹ 20,000	33,000	
	(ii) Municipal Taxes paid in respect of residential flat let out	1,800	34,800
			11,12,855
	Less: Expenses allowable but not debited to profit and loss account		
	Interest paid on loan taken from LIC used for repair of computer		2,050
			11,10,805
	Less: Income credited to Profit & Loss Account but not taxable under this head:		
	(i) Dividend on shares of Indian companies	10,155	
	(ii) Income from UTI	8,400	
	(iii) Profit on sale of shares	25,200	
	(iv) Honorarium for valuation of answer papers	26,300	
	(v) Rent received from letting out of residential flat	1,04,000	1,74,055
			9,36,750
(3)	Capital gains:		
	Short term capital gain on sale of shares		25,200
(4)	Income from other sources:		
	Dividend on shares of Indian companies 10,155		

© The Institute of Chartered Accountants of India

	Less: Exempt under section 10(34)	10,155	Nil	
	Income from UTI	8,400		
	Less: Exempt under section 10(35)	8,400	Nil	
	Honorarium for valuation of answer papers		26,300	26,300
(5)	Deductions under Chapter VI-A :			
	Deduction under section 80D (Medical Insurance Premium)			

Policy holder	Amount of Premium (₹)	Amtount eligible for deduction (₹)	
Self	15,000	15,000	
Wife *(See note below)*	11,000	Nil	
Married daughter *(See note below)*	12,000	Nil	
Dependent brother *(See note below)*	8,000	Nil	
		15,000	15,000
Deduction under section 80D (Medical Expenditure)			
Medical expenditure incurred on the health of Father is allowed as deduction to the maximum of ₹ 30,000, since he is a very senior citizen.			30,000
It is assumed that father is resident in India and no payment has been made to keep in force an insurance on his health.			
Total deduction under Chapter VI-A			45,000
Note – Premium paid to insure the health of brother is not eligible for deduction under section 80D, since brother is not included in the definition of family. Premium paid to insure the health of wife is not eligible for deduction since payment is made in cash. Premium paid to insure the health of married daughter is not eligible for deduction as she is not dependent on Mr. Suraj.			

(6) ₹ 25,000 expended on foreign tour is allowable as deduction assuming that it was incurred in connection with his professional work. Therefore, it requires no further treatment, since the same has already been debited to Income & Expenditure A/c.

(7) Incentive to articled assistants passing IPCC examination in their first attempt is deductible under section 37(1).

(8) Repairs and maintenance paid in advance for the period 1.4.2016 to 30.9.2016 i.e. for 6 months amounting to ₹ 950 will be allowed since Mr. Suraj is following the cash system of accounting.

© The Institute of Chartered Accountants of India

(9) Since securities transaction tax has been paid on the shares and the period of holding of these shares is less than 12 months, the profit arising there from is a short-term capital gain chargeable to tax at 15% under section 111A.

(10) Since depreciation debited to income and expenditure account is as per the Income-tax Rules, 1962, no adjustment for the same has been made.

12. (a) As per section 194-I, tax is to be deducted at source @ 2% on payment of rent for use of plant and machinery, only if the payment exceeds ₹ 1,80,000 during the financial year.

Since rent of ₹ 1,65,000 paid by a partnership firm does not exceed ₹1,80,000, tax is not deductible.

(b) Section 194E provides that the person responsible for payment of any amount to a non-resident sportsman for contribution of articles relating to any game or sport in India in a newspaper has to deduct tax at source @ 20%. Further, since Chris Gayle, a cricket player of West Indies team is a non-resident, education cess @2% and secondary and higher education cess @1% on TDS should also be added.

Therefore, tax to be deducted = ₹ 59,000 x 20.60% = ₹ 12,154.

(c) Under section 194BB, tax is to be deducted at source, if the income arising by way of winning a jackpot in horse races exceeds ₹ 5,000. The rate of deduction of tax at source is 30%. Since, the winnings are paid to a resident, education cess@2% and secondary and higher education cess@1% has not been added to the tax rate of 30%.

Hence, tax to be deducted = ₹ 1,80,000 x 30% = ₹ 54,000.

(d) Advertising is included in the definition of "work" under section 194C. Under section 194C, the provisions for tax deduction at source would not be attracted if the amount paid to a contractor does not exceed ₹ 30,000 in a single payment or ₹ 75,000 in the aggregate during the financial year.

Therefore, provisions for deduction of tax at source under section 194C are not attracted in respect of payment of ₹ 28,000 on 1.6.2015 to X Ltd. However, payment of ₹ 37,000 on 21.9.2015 to X Ltd. would attract TDS @2%, since it exceeds ₹ 30,000.

Hence, tax to be deducted = ₹ 37,000 x 2% = ₹ 740

13. (a) As per section 139(4C), a university referred to in section 10(23C), should file the return of income if its total income exceeds the basic exemption limit without giving effect to the provisions of section 10.

Since the total income of the university before giving effect to the exemption under section 10, exceeds the basic exemption limit of ₹ 2,50,000, it has to file its return of income for the A.Y. 2016-17.

© The Institute of Chartered Accountants of India

(b) As per third proviso to section 139(1), every company or firm shall furnish on or before the due date the return in respect of its income or loss in every previous year. Since LLP is included in the definition of "firm" under the Income-tax Act, 1961, it has to file its return mandatorily, even though it has incurred a loss.

14. Computation of assessable value and excise duty payable

Particulars	₹
Price of machinery	5,00,000
Add: Packing charges [Note 1(i)]	5,000
Extra design charges [Note 1(i)]	45,000
Total	5,50,000
Less : 2% cash discount on price of machinery [₹ 5,00,000 x 2%] [Note 1(iv)])	10,000
Assessable value	5,40,000
Excise duty @ 12.5%	67,500

Notes:

1. While computing assessable value:-
   (i) packing charges and extra designing charges have been included as such payments are 'in connection with sale'.
   (ii) transit insurance shown separately in the invoice has not been included as it is a part of transportation cost.
   (iii) outward freight has not been included as it is incurred for transporting the goods beyond the place of removal.
   (iv) cash discount has been allowed as deduction as it has been passed on to the buyer.
2. State VAT does not affect excise duty payable.

15. Computation of export duty

Particulars	Amount (₹)
Assessable value of the export goods	80,00,000
Export duty @ 8% [Refer Note below]	6,40,000

Note: In case of goods entered for export, the rate of duty shall be the rate in force on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation.

© The Institute of Chartered Accountants of India

16. Computation of Bajrangi Ltd.'s taxable turnover and CST payable

Particulars	₹	₹
Total inter-State sales		40,00,000
Less: Freight shown separately in the invoices [Freight not shown separately in invoices is not deductible]	1,50,000	
Goods returned by Mr. Vibishan [deductible as returned within 6 months]	35,000	
Goods rejected by Mr. Bharat after 6 months [deductible although returned after 6 months, as it is a case of an un-fructified sale]	40,000	2,25,000
Turnover (including CST)		37,75,000
Taxable turnover (rounded off) [₹ 37,75,000 × 100/102]		37,00,980
CST @ 2% [₹ 37,75,000 × 2/102]		
Since transactions are covered by valid 'C' Form, CST is 2% or sales tax rate within the State (5%), whichever is lower, i.e., 2%		
CST payable (rounded off)		74,020

17. Computation of VAT payable and input tax credit for February, 2016

Particulars	₹
Output VAT payable (Note-1)	Nil
Less: Input tax credit $\left[1,00,00,000 \times \frac{(12.5-2)}{100}\right]$ (Note-2)	10,50,000
Net VAT payable	Nil
Balance input tax credit carried forward to next month	10,50,000

Notes:

1. Inter-State stock transfers do not involve sale and, therefore they are not subject to VAT. Further, CST is not payable as there was no pre-existing agreement for the sale of the goods so transferred.
2. In case of stock transfer of finished goods, input tax paid (on inputs used in manufacture of such finished goods) in excess of 2% is available as input tax credit.

18. 'Consideration' means everything received or recoverable in return for a provision of service. It includes monetary payment and any consideration of non- monetary nature or deferred consideration as well as recharges between establishments located in a non-taxable territory and taxable territory. In the backdrop of this definition, given situations are examined hereunder:

(i) No, as in this case, gifts are given out of free will and not in lieu of any provision of service.

© The Institute of Chartered Accountants of India

(ii) Yes. Though grants given for a research where the researcher is under no obligation to carry out a particular research is not a consideration, grant given with counter obligation on the researcher to provide IPR rights on the outcome of research undertaken with the help of such grants is a consideration for the provision of service of research.

(iii) Yes. Donations to a charitable organization are not consideration unless charity is obligated to provide something in return. Since in this case, donations are given to the charitable trust with the condition that in every program organized by such trust, the name of the donor will be displayed on the stage, the donations would amount to consideration.

(iv) Yes. The consideration for a service may be provided by a person other than the person receiving the benefit of service as long as there is a link between the provision of service and the consideration. Since in the given case, payment for the service is made by Z, a debtor of service receiver Y, on the instructions of Y, the payment will be treated as consideration of service provided by X to Y.

19. As per rule 6 of the Service Tax Rules, 1994, in case of individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is ₹ 50 lakh or less in the previous financial year, the service provider has the option to pay tax on taxable services provided or agreed to be provided by him upto a total of ₹ 50 lakh in the current financial year on receipt basis. Since in the present case, aggregate value of services provided by Mr. Rohan in the preceding financial year was ₹ 80 lakh, he cannot exercise the said option.

Resultantly, he is required to pay service tax in accordance with Point of Taxation Rules, 2011 (POTR). As per rule 3 of the POTR, if the invoice is issued within 30 days of the completion of the provision of the service, point of taxation is:-

(i) date of issue of invoice (01.07.2015), or

(ii) date of receipt of payment (20.08.2015),

whichever is earlier.

Thus, point of taxation, in the given case, is date of invoice, i.e., 01.07.2015.

However, if the aggregate value of services provided by Mr. Rohan in the preceding financial year was ₹ 40 lakh, he has the option to pay tax on taxable services provided or agreed to be provided by him upto a total of ₹ 50 lakh in the current financial year on receipt basis. In that case, point of taxation will be 20.08.2015.

20. Computation of service tax liability

Particulars	Amount charged (₹)	Service tax liability (₹)
Fees charged for yoga camp conducted by a charitable trust [Note-1]	Nil	Nil

© The Institute of Chartered Accountants of India

Amount charged by Bank Mitrs for the services provided to a bank with respect to Basic Savings Bank Deposit Accounts covered by Pradhan Mantri Jan Dhan Yojana (PMJDY) [Note-2]	Nil	Nil
Amount charged by cord blood banks by way of preservation of stem cells [Note-3]	Nil	Nil
Service provided by commentators to a recognized sports body [Note-4]	5,20,000	5,20,000×14.5% =75,400

Notes:

As per Mega Exemption *Notification No. 25/2012 ST dated 20.06.2012:*

1. Services by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities are exempt from service tax. Activities relating to advancement of yoga are, *inter alia,* included in the definition of charitable activities.
2. Services provided by a business facilitator/a business correspondent (populalrly known as Bank Mitrs) to a banking company with respect to Basic Savings Bank Deposit Accounts covered by Pradhan Mantri Jan Dhan Yojana (PMJDY) are exempt from service tax.
3. Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation are exempt from service tax.
4. Services provided to a recognized sports body by an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from service tax. Thus, services provided by commentators are taxable.

21. Computation of value of taxable service and service tax payable by Chirag Ltd. for January, 2016

Particulars	₹
Amounts collected from clients for pre-recruitment screening	1,00,000
Domestic helps arranged for friends & relative for free [Note-1]	Nil
Amount collected from a warehouse of agricultural produce for labour provided for loading and unloading [Note-2]	10,00,000
Advances received from prospective employers for conducting campus interviews in colleges to be held in February, 2016 [Note-3]	3,00,000
Value of taxable service including service tax	14,00,000
Value of taxable service (₹ 14,00,000 × 100/114.5) [rounded off]	12,22,707
Service tax (₹ 12,22,707× 14.5/100) [rounded off]	1,77293

Notes:

1. Free services are not liable to service tax as there is no consideration involved.

© The Institute of Chartered Accountants of India

2. Since labour supplied to a warehouse for loading and unloading of agricultural produce can neither be considered as supply of farm labour nor loading, unloading of agricultural produce, such service is not covered in the negative list of services and hence, is taxable [Section 66D of the Finance Act, 1994].

3. Since services agreed to be provided are also chargeable to service tax, advance received will also be liable to service tax. Such advance received from prospective employers will be taxable at the time when it is received irrespective of the fact that no campus interviews were subsequently conducted and advances received were returned to employers.

22. (i) In case where the taxable services are provided by any person located in a non-taxable territory and are received by any person located in the taxable territory, person liable to pay service tax is the recipient of such service under reverse charge mechanism. Thus, in the given case, Universal Techo Ltd. is liable to pay service tax on the taxable service imported by it.

(ii) As per the Point of Taxation Rules, 2011, the point of taxation in respect of the persons required to pay tax under reverse charge mechanism is the date on which payment is made provided payment is made within a period of 3 months of the date of invoice. However, if the payment is not made within a period of three months of the date of invoice, point of taxation will be the first day that occurs immediately after the expiry of said three months.

Since in the given case, Universal Techo Ltd. has made the payment within 3 months from the date of the invoice, the point of taxation is the date of payment i.e., 28.02.2016.

(iii) The amount of R&D cess payable is allowed as a deduction from the service tax payable on the taxable service involving the import of technology provided:-

(i) said amount of R&D cess is paid at the time or before the payment for the service subject to a maximum of 6 months from the date of invoice and

(ii) records of R&D cess are maintained for establishing the linkage between the invoice and the R&D cess payment challan.

Since both the aforesaid conditions are fulfilled, Universal Techo Ltd. is eligible for said exemption. Therefore, service tax payable by Universal Techo Ltd. would be computed as under:

Particulars	(₹)
Service tax (₹ 10,00,000 × 14.5%)	1,45,000
Less: Research and development cess paid	50,000
Net service tax liability	95,000

© The Institute of Chartered Accountants of India

23. Computation of service tax liability of XYZ Ltd. for January, 2016:

Particulars	₹
Basic fare in case of domestic bookings	1,15,400
Service tax @ 0.7% [A] Refer Note 1	807.80
Basic fare in case of international bookings	4,00,200
Service tax @ 1.4% [B] Refer Note 1	5,602.8
Total service tax [A] + [B] (rounded off)	6,411
Add: Swachh Bharat Cess (₹6,411 × 0.5/14) [rounded off]	229
Total Service tax payable	6,640

Notes:

1. Rule 6(7) of Service Tax Rules, 1994 provides an option to an air travel agent to pay service tax at special rates of 0.7% and 1.4% of 'basic fare' in case of domestic and international bookings for air travel respectively.
2. Since the given basic fare is in terms of rule 6(7) of Service Tax rules, 1994, service tax has been computed as a percentage of such basic fare only and other charges, fee and taxes have been ignored.

   The option once exercised, applies uniformly in respect of all the bookings for air travel made by the air travel agent and cannot be changed during a financial year under any circumstances. Therefore, XYZ Ltd. cannot pay service tax @ 14.5% for the month of February, 2016 and will have to discharge its service tax liability for the said month by paying service tax at the special rates mentioned above. However, it can change the option and pay service tax at the general rate from the next financial year.

24. As per rule 4 of Service Tax Rules, 1994, where a person, liable for paying service tax on a taxable service provides such service from more than one premises or offices and has centralised billing/accounting system in respect of such service, and such centralised billing/accounting systems are located in one or more premises, he may, at his option, register such premises or offices from where centralised billing/accounting systems are located.

   However, if such assessee does not have any centralized billing/accounting systems, he shall make separate applications for registration in respect of each of such premises or offices to the jurisdictional Superintendent of Central Excise. It may be noted that registration for a single premises is applied by making an online application at ACES website of CBEC.

   Therefore, since ABC Designers Ltd. provides architectural services from different branches spread across the country, it can opt for centralized registration if it has centralized billing/accounting system located at one or more of its centres. However, if it

© The Institute of Chartered Accountants of India

does not have any centralized billing/accounting systems, it shall have to obtain separate registration for each of its centres.

25. Computation of CENVAT credit available to ABC Co. Ltd.

Particulars	₹
Electrical transformers falling under Chapter 85 of Excise Tariff (Note-1)	22,000
Moulds and dies (Note-1)	1,30,000
Pollution control equipment (Note-1)	20,000
Trucks used for the transport of raw material falling under tariff heading 8704 (Note-2)	Nil
Capital goods used outside the factory for generation of electricity for captive use within the factory (Note-1)	20,000
Refractories (Note-1)	5,000
Total excise duty paid on the eligible capital goods	1,97,000
CENVAT credit available = 50% of excise duty paid on capital goods (Note-3)	98,500

Notes:

1. As per the definition of capital goods following goods are, *inter alia,* eligible capital goods for the purposes of claiming CENVAT credit:-
   (a) all goods falling under Chapter 85,
   (b) moulds and dies,
   (c) pollution control equipment,
   (d) refractories
   (e) capital goods used outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory.
2. Motor vehicles used in the factory of the manufacturer are eligible as capital goods provided they do not fall under tariff headings 8702, 8703, 8704 and 8711. Therefore, the trucks used for the transport of raw material falling under tariff heading 8704 are not eligible capital goods.
3. CENVAT credit of only upto 50% of the excise duty paid is available in respect of the eligible capital goods in the year of purchase.

© The Institute of Chartered Accountants of India