

News Weekly

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Services Offered

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Accounting Services
Income Tax
Service Tax
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Highlights of the Week

Income Tax

- ☞ No TDS on acquisition on software –section 194J
- ☞ Concessional rate of taxation in Long term capital gain in case of Non Resident Investors.
- ☞ Share Premium in Excess of Fair Market value to be treated as Income.
- ☞ New Deduction in respect of Investment in equity shares. This amendment takes effect from April 1, 2013.
- ☞ TCS on cash sales of Bullion and Jewellery will increase to Rs. 5Lacs from 2 Lacs.
- ☞ TCS @ 1% will applicable on sale of Certain Minerals.
- ☞ Rationalisation of TDS and TCS provisions.
- ☞ Proposed provision of tax deduction on transfer of Immovable properties has been withdrawn.
- ☞ Security Transaction Tax (STT) on unlisted equity sold as part of an initial public offer and exemption from long term capital gains.

Service Tax

- ☞ Section 66B of the finance act, 1994 - charge of service tax on and after finance act, 2012 - exemption to specified services
- ☞ Other amendments and Judicial Pronouncements on Service Tax

Important Date

Event Date	ACT	Applicable Form	Obligation
25.06.2012	D-VAT	Form 16 and CST1	E-Return of VAT for May
30.06.2012	D-VAT	DVAT-51	All quarters of 2011-2012
30.06.2012	Income Tax	Form No. 26QAA	Return by Banks for interest upto Rs.5000 for Mar Quarter

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INCOME TAX

NO TDS ON ACQUISITION OF SOFTWARE-194J

Notification No. 21/2012

The Central Government hereby notifies that no deduction of tax shall be made on the following specified payment under section 194J of the Act,:

Payment by a person(hereafter refer to as the transferee) for acquisition of software from another person, being a resident, (hereafter referred to as the transferor), where-

- I. the software is acquired in a subsequent transfer and the transferor has transferred the software without any modification,
- II. tax has been deducted-
 - a) under section 194j on payment for any previous transfer of such software; or
 - b) under section 195 on payment for any previous transfer of such software from a non-resident, and
- III. The transferee obtains a declaration from the transferor that the tax has been deducted either under sub-clause (a) or (b) of clause (ii) along with the permanent account number of the transferor.

This notification shall come in to force from 1st day of July, 2012.

TRANSFER PRICING FOR “SPECIFIED DOMESTIC TRANSACTION

Effective from April 1, 2013, if the aggregate value of “specified domestic transaction” exceeds INR 50 million in a year, Taxpayers will now have to:

- **Documentation:** maintain mandatory documentation as required U/s 92 D read with rule 10 D
- **Compliance:** file Form 3CEB along with their tax return. (sec 92 E)
- **Methods:** follow the five transfer pricing methods for determining arm’s length price. (sec 92 C)
- **Scrutiny:** Be subject to scrutiny by the TPO (Sec 92 CA)
- **Penal Provision:** be subject to penal provisions as provided U/s 271AA, 271G, 271BA and 271(1)(c)

As per the proposed provisions, the following domestic transactions would be classified as “Specific Domestic

Transaction” and shall be subject to TP regulation (Sec 92BA):

- Any expenditure in respect of which payment has been made or is to be made to a person referred to in clause (b) of sub-section (2) of section 40A;
- Taxpayers operating in Special Economic Zones (under Section 10AA of ITA); and
- Taxpayers claiming deductions for undertaking specified business activities [under Section 80A, 80-IA etc. of ITA]

Securities Transaction Tax (STT) on unlisted equity sold as part of an initial public offer and exemption from long-term capital gains

Securities Transaction Tax (STT) is levied, among others, on sale or purchase of an equity share which is entered through a recognized stock exchange. STT therefore applies to listed securities. Income arising from long term capital gain on sale of an equity share in a listed company which is chargeable to STT is exempt from tax under section 10(38) of the Income-tax Act.

Through an amendment in the Finance Act, 2012, the benefit of tax exemption of long term capital gains has been extended to an investor who off-loads his shareholding as part of an initial public offer before listing of the company subject to payment of STT at the rate of 0.2 per cent on the transaction. For this purpose, the Finance Bill has been amended so as to provide for levy of STT on the sale of unlisted equity shares under an offer for sale as part of an initial public offer and shares of the company are subsequently listed on the stock exchange.

This amendment will take effect from 1st July, 2012 and will accordingly apply to any transaction made on or after that date.

SUPPLEMENTARY MEMORANDUM EXPLAINING THE OFFICIAL AMENDMENTS MOVED IN THE FINANCE BILL, 2012 AS REFLECTED IN THE FINANCE ACT, 2012

CIRCULAR NO. 3/2012, DATED 12-6-2012

CONCESSIONAL RATE OF TAXATION ON LONG TERM CAPITAL GAIN IN CASE OF NON-RESIDENT INVESTORS

Currently, under the Income-tax Act, a long term capital gain arising from sale of unlisted securities in the case of Foreign Institutional Investors (FIIs) is taxed at the rate of 10% without giving benefit of indexation or of currency fluctuation. In the case of other non-resident investors, including Private Equity investors, such capital gains are taxable at the rate of 20% with the benefit of currency fluctuation but without indexation.

In order to give parity to such non-resident investors, the Finance Act reduces the rate of tax on long term capital gains arising from transfer of unlisted securities from 20% to 10% on the gains computed without giving benefit of currency fluctuations and indexation by amending section 112 of the Income-tax Act.

This amendment will take effect from 1st April, 2013 *[Clause 43 & First Schedule]*

NEW DEDUCTION IN RESPECT OF INVESTMENT IN EQUITY SHARES

As per section 80CCG in the Income-tax Act. The provision provides for a one-time deduction of 50 per cent of the amount invested in listed equities by a new retail investor, being a resident individual whose annual income is

SHARE PREMIUM IN EXCESS OF FAIR MARKET VALUE TO BE TREATED AS INCOME

In the Finance Bill, 2012, it had been proposed [section 56(2), as sub-clause [(viib)] that in case of a company, not being a company in which the public are substantially interested, which receives, in any previous year, from any person being a resident, (i) It has now been further provided that such excess share premium is included in the definition of "income" under sub-clause (xvi) of clause (24) of section 2.

(ii) Considering that the proposed amendment may cause avoidable difficulty to investors who invest in start-ups where the fair market value may not be determined accurately, it is proposed to provide an exemption to any other class of investors as may be notified by the Central Government.

These amendments will take effect from 1st April, 2013

[Clauses 21, 3]

TAX COLLECTION AT SOURCE (TCS) ON CASH SALE OF BULLION AND JEWELLERY

The Finance Bill, 2012, proposed to provide that the seller of bullion or jewellery shall collect tax at source (TCS) at the rate of 1 per cent of sale consideration from every buyer of bullion and jewellery in cash if the sale consideration exceeds

below Rs. 10 lakh. The aggregate deduction shall be subject to a limit of Rs. 25,000 (corresponding to an investment limit of Rs. 50,000) and the investment shall have a lock-in period of 3 years. The modalities of this provision shall be in accordance with a scheme to be notified by the Central Government in this behalf. (effect from 1st April, 2013)

TCS ON SALE OF CERTAIN MINERALS

The Finance Bill, 2012, proposed to provide that tax at the rate of 1% shall be collected by the seller from the buyer of the following minerals:

(a) coal (b) lignite; and (c) Iron ore.

The section has been amended to provide that the seller of these minerals shall not collect tax if the buyer declares that these minerals are to be utilized for the purpose of generation of power. This amendment will take effect from 1st July, 2012.

Rs. 2 lakh, has been increased to Rs. 5 lakh. The threshold limit for TCS on cash purchase of bullion is retained at Rs. 2 lakh. Further, it has also been provided that bullion shall not include any coin or any other article weighing 10 grams or less.

This amendment will take effect from 1st July, 2012

WITHDRAWAL OF TDS ON TRANSFER OF CERTAIN IMMOVABLE PROPERTIES

The finance bill, 2012 (clause 73 of the finance bill) proposed to provide for deduction of tax at the rate of 1% of the amount paid or payable for transfer of certain immovable properties. Considering the additional compliance burden on the transferee, the proposed provision of tax deduction on transfer of immovable properties has been withdrawn in the finance act, 2012 by dropping this clause from the finance bill, 2012.

COMPULSORY FILING OF INCOME TAX RETURNS BY RESIDENTS IN RELATION TO ASSETS LOCATED OUTSIDE INDIA

Under section 139 of the Income-tax Act, every resident is required to file a return of income if his income exceeds the maximum amount which is not chargeable to tax. The Finance Bill, 2012 had proposed to make it mandatory for every resident, to file a return of income, if he has assets (including any financial interest in any entity) located outside India or signing authority in any account located outside India, irrespective of the fact whether his income exceeds the exemption limit or not. The intention is to have information available regarding global assets of a resident since the income from such assets is taxable in India.

As a category of residents are called "not ordinarily resident" and the income of a "not ordinarily resident" individual from assets located outside India is not taxable in India, it has been clarified that the provision for compulsory filing of income tax return in relation to assets located outside India would not apply to a person, who is "not ordinarily resident". This amendment will take effect retrospectively from 1st April, 2012 and will, accordingly apply in relation to assessment year 2012-13 and subsequent assessment years.

RATIONALISATION OF TDS PROVISIONS

Under the existing provisions of Chapter XVII-B of the Act, tax is required to be deducted (TDS) from certain payments. There are situations where collection of tax by way of TDS may cause genuine hardship to the deductee. In order to reduce the hardship and compliance burden in these cases, it has been provided that no deduction of tax shall be made from such specified payment to such institution, association or body or class of institutions, associations or bodies as may be notified by the Central Government in the Official Gazette.

SERVICE TAX

CLARIFICATION OF RATE OF TAX

1. The rate of service tax has been restored to 12% w.e.f. 1st April 2012.

2. The rate of service tax prevalent on the date when the point of taxation occurs is rate of service tax applicable on any taxable service. In case of the 8 specified services and services wherein tax is required to be paid on reverse charge by the service receiver the point of taxation is the date of payment. Circular No 154/5/2012 – ST dated 28th March 2012 has also clarified the same. Thus in case of such 8 specified services provided by individuals or proprietary firms or partnership firms and in case of services wherein tax is required to be paid on reverse charge by the service receiver, if the payment is received or made, as the case maybe, on or after 1st April 2012, the service tax needs to be paid @12%.

3. The invoices issued before 1st April 2012 may reflect the previous rate of tax (10% and cess). In case of need, supplementary invoices may be issued to reflect the new rate of tax (12% and cess) and recover the differential amount. In case of reverse charge the service receiver pays the tax and takes the credit on the basis of the tax payment challan. Cenvat credit can be availed on such supplementary invoices and tax payment challans, subject to other restrictions and conditions as provided in the Cenvat Credit Rules 2004.

JUDICIAL PRONOUNCEMENTS ON SERVICE TAX

In case the capital goods have been used for about seven years and thereafter sold by the party, the entire of duty which was availed as a cenvat credit is not required to be reversed by the party but the duty payable on the depreciated value or transaction value of machine is required to be reversed. *CCE Vs. Raghav Alloys Ltd 2012(26) STR 87 (P&H)*.

NEGATIVE LIST APPLICABLE FROM 1ST JULY, 2012

Central Government vide **Notification No. 19/2012-ST dated 05.06.2012** has announced date of introduction of most awaited Negative List approach in Service Tax. The new scheme of taxation will apply w.e.f. 01.07.2012. Hence from **1st July, 2012** service tax would apply on all services except those mentioned in either Negative List or in Mega Exemption Notification No. 12/2012-ST dated 17.03.2012.

VALUE OF SERVICES IN CASE OF WORK CONTRACT:-

- ❖ Pay service tax on Value of services after deducting value of goods from the gross value.
- ❖ Pay service tax at composite rate
 1. In case of original work, pay service tax on 40% value,
 2. In case of maintenance or repair or reconditioning or restoration or servicing of any goods, pay service tax on 70% value,
 3. In case of all other works contract, pay Service tax on 60% value.

Service provider is also eligible to avail CENVAT Credit of input services and capital goods [Notification No. 11/2012-ST](#)

CHANGES IN RULE 6 (INCLUSION OR EXCLUSION OF CERTAIN VALUES FROM TAXABLE VALUE):-

- a. Amount realised as demurrage related to taxable services shall be included.
- b. Interest on delayed payment shall be excluded.
- c. Taxes levied by any Government on any passenger travelling by air shall be excluded.
- d. Accidental damages due to unforeseen actions not relatable to the provision of service shall be excluded.
- e. Subsidies and grants disbursed by the Government, not directly affecting the value of service shall be excluded

POWER BACK UP CHARGES COLLECTED IS OUT OF THE PURVIEW OF SERVICE TAX

In general course, service provider under an agreement to provide service of maintenance provides power back up facility to the parties under agreement. Service provider collects charges for providing power backup facilities by using DG Sets owned by them, during the time regular supply from electricity board is not available.

Since, Transaction involved only sale of electricity and therefore the value of electricity sold cannot be part of value of Management, Maintenance and Repairs service.

Honourable bench gave the judgement that Sale of electricity cannot be part of taxable service and hence Service Tax cannot be levied on such sale and recovery proceedings stayed.

RATE OF COMPOSITION IN CASE OF ACTIVITY AT A RESTAURANT OR AS OUTDOOR CATERING

- ☞ In case of Restaurant, pay service tax on 40% value.
- ☞ In case of Outdoor Catering, pay service tax on 60% value.

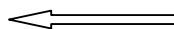
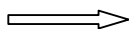
In both the cases, service provider is eligible to avail CENVAT Credit of inputs (except goods classifiable under Chapters 1 to 22 of CETA), input services and capital goods.

NON-TAXABILITY OF TRAINING TO EMPLOYEES OF THE BUYER CONCERN IN RELATION TO GOODS SOLD:

Organizations in the normal course of business provide training to their employees may be in-house or by hiring any training institute. for organizing such training sessions, employer's may or may not charge to their employees.

In case employers provide any free training themselves, no service tax is chargeable. However, if an employer hires an outside commercial training or coaching center for imparting some training to its employees, then the payment made by the said employer to such coaching center will be chargeable to Service Tax *Circular no. 59/8/2003 dated 20th June, 2003.*

However, training provided to the employees of the buyer concern in lieu of consideration by the seller of goods in relation to goods sold shall not be taxable on the basis of examination of the definition of Commercial Coaching and Training Service as provided in Section 65(105)(zcc) of the Finance Act'1994



SECTION 66B OF THE FINANCE ACT, 1994 - CHARGE OF SERVICE TAX ON AND AFTER FINANCE ACT, 2012 - EXEMPTION TO SPECIFIED SERVICES
NOTIFICATION NO. 25/2012-ST, DATED 20-6-2012
[SUPERSESSION OF NOTIFICATION NO. 12/2012 - ST, DATED 17-3-2012]

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:—

S.No. Corresponding amendments as per New Notification No. 25/2012-ST

1. Services provided by-

- (a) an arbitral tribunal to -
 - (i) any person other than a business entity; or
 - (ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;
- (b) an individual as an advocate or a partnership firm of advocates 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 rupees ten lakh in the preceding financial year; or
- (c) a person represented on an arbitral tribunal to an arbitral tribunal.

2. Services provided to or by an educational institution in respect of education tax, by way of,-

- (a) auxiliary educational services; or
- (b) renting of immovable property

For the purpose of notification, “**auxiliary educational services**” means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge – enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution.

3. Services provided to a recognized sports body by-

- (a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body;
- (b) Another recognized sports body.

4. Services by way of sponsorship of sporting events organized-

- (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;
- (b) by Association of Indian Universities, Inter-University Sports Board, School Games

- Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
- (c) by Central Civil Services Cultural and Sports Board;
- (d) as part of national games, by Indian Olympic Association; or
- (e) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme.
5. **Services provided to the Government, a local authority or a governmental authority by way of erection, construction, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -**
- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
- (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
- (c) a structure meant predominantly for use as
- (i) an educational,
- (ii) a clinical, or
- (iii) an art or cultural establishment;
- (d) canal, dam or other irrigation works;
- (e) pipeline, conduit or plant for
- (i) water supply
- (ii) water treatment, or
- (iii) sewerage treatment or disposal; or
- (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the *Explanation 1* to clause 44 of section 65 B of the said Act.
6. **Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;**
- (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;
- (c) a building owned by an entity registered under section 12AA of the Income Tax Act 1961 (43 of 1961) and meant predominantly for religious use by general public;
- (d) a pollution control or effluent treatment plant, except located as a part of a factory; or
- (e) a structure meant for funeral, burial or cremation of deceased.
7. **Services by way of construction, erection, commissioning, or installation of original works pertaining to,-**
- (a) an airport, port or railways, including monorail or metro;
- (b) a single residential unit otherwise than as a part of a residential complex;
- (c) low- cost houses up to a carpet area of 60 square meters per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
- (d) post- harvest storage infrastructure for agricultural produce including a cold storages for

- such purposes; or
(e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.
8. **Transport of passengers, with or without accompanied belongings, by-**
(a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Baghdogra located in West Bengal;
(b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or
(c) ropeway, cable car or aerial tramway.
9. **Services provided to Government, a local authority or a governmental authority by way of -**
(a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or
(b) repair or maintenance of a vessel or an aircraft.
10. **Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution –**
(a) as a trade union;
(b) for the provision of carrying out any activity which is exempt from the levy of service tax; or
(c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.
11. **Services by the following persons in respective capacities–**
(a) sub-broker or an authorised person to a stock broker;
(b) authorised person to a member of a commodity exchange;
(c) mutual fund agent to a mutual fund or asset management company;
(d) distributor to a mutual fund or asset management company;
(e) selling or marketing agent of lottery tickets to a distributor or a selling agent;
(f) selling agent or a distributor of SIM cards or recharge coupon vouchers;
(g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or
(h) Sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt.
12. **Services received from a provider of service located in a non-taxable territory by -**
(a) Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;
(b) an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or
(c) a person located in a non-taxable territory.

13 **In addition to the exempted services mentioned in the earlier notification, following new services has been inserted in the mega exemption list of services:**

1. Services of public libraries by way of lending of books, publications or any other knowledge- enhancing content or material.
2. Services by Employees State Insurance Corporation to persons governed under the Employees Insurance Act, 1948 (34 of 1948).
3. Services by way of transfer of a going concern, as a whole or an independent part thereof.
4. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.
5. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.
6. Services provided to the United Nations or a specified international organization;

