

SIGNIFICANT CHANGES IN SERVICE TAX LAW EFFECTIVE FROM JUNE 1, 2016

Krishi Kalyan Cess

An additional cess of 0.5% has been imposed as service tax on the value of all the taxable services for the purposes of financing and promoting initiatives to improve agriculture. Such cess shall be on the taxable value of service and is in addition to the existing service tax of 14% and swacch bharat cess of 0.5%. So the effective rate of service tax including the cesses would be 15%.

The provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder, including those relating to refunds and exemptions from tax, interest and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Krishi Kalyan Cess (KKC) on taxable services, as they apply in relation to the levy and collection of tax on such taxable services under the said Chapter or the rules made thereunder, as the case may be.

Unlike Swacch Bharat Cess, KKC is cenvatable. However, such credits can be utilised for payment of only KKC. Hence, only a service provider is eligible to take Cenvat of such cess, whereas it is a cost to a manufacturer. The consequential amendment in the Cenvat credit Rules are made vide notification No.28/2016 CE (NT) dated May 26, 2016.

Following table shows the applicability of KKC under various circumstances:

Service Provided	Invoice Raised	Payment Received	Applicability of KKC
Before June 1	Before June 1	Before June 1	Not applicable
Before June 1	Before June 1	After May 31	Applicable
Before June 1	After May 31	Before June 1	Not applicable
Before June 1	After May 31	After May 31	Applicable

Case 1: Service is provided before June 1, invoice is raised and payment received before June 1 – KKC would not be applicable and total tax payable would be 14.5%

Case 2: Service is provided before June 1, invoice is raised after June 1 but payment received before June 1 – KKC would not be applicable and total tax payable would be 14.5%. However, if the invoice is not raised within 14 days from June 1, KKC would be applicable and the total tax payable in such a case could be 15%

Case 3: Service is provided before June 1, invoice is raised after June 1 but the payment received after June 1 – KKC would be applicable and total tax payable would be 15%

Therefore, in all such cases wherein bill like your mobile, internet, rent etc., has been issued before June 1 – it is advisable to make the payment before June 1 itself to avoid KKC. If the payment is made after June 1 – KKC is applicable.

Case 4: Service is provided before June 1, invoice is raised before June 1 but the payment received after June 1 – KKC would not be applicable and total tax payable would be 14.5%

Note: In case of part payment received or part invoice issued – each of the above case would be individually applicable. Therefore for part payment received before June 1 – KKC would not be applicable and for payment received after June 1 – KKC would be applicable.

Note: Service provider cannot simply mention 15% tax on the invoice and he would be required to mention the breakup of the invoice in order to enable the receiver of service to take the credit of KKC.

Omission of stage carriage service from negative list:

Service of transportation of passengers by a stage carriage accompanied with or without belongings is removed from the negative list. However, non-air conditioned stage carriage is now covered under the exemption. Consequently air conditioned stage carriage would become a taxable service.

Abatement with regards to air conditioned stage carriage service is discussed further in the document.

Omission of transportation of goods by an aircraft or vessel from negative list:

Service of transportation of goods by an aircraft or vessel from a place outside India upto the customs clearance in India is removed from the negative list. However, services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India is now covered under the exemption. Consequently, such services by a vessel would become a taxable service.

Exemption to services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India

Dispute Resolution Scheme

Indirect tax Dispute Resolution Scheme, 2016, wherein a scheme in respect of cases pending before Commissioner (Appeals), the assessee, after paying the duty, interest and penalty equivalent to 25% of duty, can file a declaration, is being introduced. In such cases the proceedings against the assessee will be closed and he will also get immunity from prosecution. However, this scheme will not apply in certain specified type of cases.

The scheme is applicable to declarations made upto December 31, 2016.

**SIGNIFICANT CHANGES IN SERVICE TAX LAW EFFECTIVE FROM MAY 14, 2016
(DATE OF THE FINANCE BILL, 2016 GETTING ENACTED)**

Education services:

Services by way of:

1. pre-school education and education up to higher secondary school or equivalent;
2. education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
3. education as a part of an approved vocational education course;

hitherto was in the negative list, hence not taxable under service tax. The current Finance Bill proposes to remove the above services from the negative list. However, the services provided by educational institutions to its students, faculty and staff was already covered under SI No. 9 of mega exemption notification 25/2012 ST.

Consequently the definition of the term Approved vocational education course appearing in the statute has been omitted and inserted in the mega exemption notification.

Change in explanation to definition of service in connection with lottery

Transaction in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind on behalf of State Government has been excluded from “transaction in money or actionable claim”. Thereby such activity would get covered under the definition of the term “service” and accordingly taxable.

Scope of declared services widened:

Assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof is proposed to be declared as a service under section 66E of the Finance Act, 1994 so as to make it clear that assignment by Government of the right to use the spectrum as well as subsequent transfers of assignment of such right to use is a service leviable to service tax and not sale of intangible goods. (as clarified in TRU letter - ST)

We will have to wait and see whether the State VAT departments accept this proposition of not taxing the right to use such intangible goods under respective state VAT laws.

Power to make Point of Taxation Rules:

Section 67A is proposed to be amended to obtain specific rule making powers in respect of Point of Taxation Rules, 2011. Point of Taxation Rules, 2011 is being amended accordingly.

Period of limitation:

The limitation period for recovery of service tax not levied or paid or short- levied or short paid or erroneously refunded, for cases not involving fraud, collusion, suppression etc. is proposed to be enhanced by one year, that is, from eighteen months to thirty months by making suitable changes to section 73 of the Finance Act, 1994.

Change in rate of interest on delayed payment of service tax:

The prevailing rate of interest for delayed payment of service tax was as under;

SI No.	Period of delay	Rate of interest
1	Up to six months	18 per cent
2	More than six months and up to one year	18 % for the first six months of delay and 24 % for the delay beyond six months
3	More than one year	18 % for the first six months of delay; 24 % for the period beyond six months up to one year and 30 per cent. for any delay beyond one year

The proposed rate of interest for delayed payment of service tax is as under:

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

In case the amount of service tax is collected in excess and not remitted to the department, then the rate of interest has been increased from 15% to 18%.

Penalty proceedings on directors etc.,

It is proposed to provide that penalty proceedings under section 78A shall be deemed to be closed in cases where the main demand and penalty proceedings have been closed under section 76 or section 78, by making suitable changes to section 78A by addition of an explanation.

Revision in the monetary limit for filing complaints for punishable offences:

The base amount involved in any of the offences as mentioned below :-

- a. Knowingly evades payment of tax,
 - b. Avails and utilises credit of taxes without actual receipt of services,
 - c. Maintains false books of accounts,
 - d. Collects any amount as service tax but fails to remit
- has been increased from Rs.50,00,00/- to Rs.2,00,00,000/-

Power to arrest:

The power to arrest in service tax law is proposed to be restricted only to situations where the tax payer has collected the tax but not deposited it with the exchequer, and amount of such tax collected but not paid is above the threshold of Rs 2 crore. Sections 90 and 91 of the Finance Act, 1994 are being amended accordingly.

Rate of Rebate:

The rate of rebate granted where any goods or services are exported, the central government may grant rebate of service tax paid on taxable services which are used as input services, shall be the rate specified in the notification in the official gazette or rules made thereunder.

Service Tax exemption to canal, dam or other irrigation works with retrospective effect:

No service tax shall be levied or collected in respect of taxable services provided to an authority or a board set up by an act of parliament or state legislature or established by government to carry out functions entrusted to a municipality by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of canal, dam or other irrigation works for the period from July 1, 2012 to January 29, 2014. In case any service tax has already been collected refund for the same shall be made provided that the application for the claim shall be made within 6 months from the date on which Finance Bill receives the assent of the President.

Restoration of certain exemptions withdrawn last year for projects, contracts in respect of which were entered into before withdrawal of the exemption:

No service tax shall be levied or collected during the period from April 1, 2015 to February 29, 2016 in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of –

- a. Civil structure or any other original works used for other than commerce, industry or any other business or profession;
- b. Structure meant predominantly for use as-

- (i) An educational establishment
- (ii) A clinical establishment or,
- (iii) An art or cultural establishment;

c. A residential complex meant for self-use or for the use of their employees or other persons as specified in explanation 1 to clause(44) of section 65B of the said act, Provided that the contract is entered into before March 1, 2015 and appropriate stamp duty has been paid before that date.

In case any service tax has already been collected refund for the same shall be made provided that the application for the claim shall be made within 6 months from the date on which finance bill receives the assent of the President.

The said services were earlier exempt but withdrawn w.e.f April 1, 2015 now restored.

Special provision for exemption of certain cases relating to construction of Airport or Port

No service tax shall be levied or collected during the period from April 1, 2015 to February 29, 2016 in respect of taxable services provided by way of construction, erection, commissioning, installation of original works pertaining to airport or port, under a contract entered before March 1st, 2015 with payment of appropriate stamp duty. Provided that Ministry of Civil aviation or Ministry of shipping certifies that the contract had been entered before March 1, 2015.

In case any service tax has already been collected refund for the same shall be made provided that the application for the claim shall be made within 6 months from the date on which finance bill receives the assent of the President.

SIGNIFICANT CHANGES IN CENTRAL EXCISE LAW EFFECTIVE FROM MAY 14, 2016 (DATE OF THE FINANCE BILL, 2016 GETTING ENACTED)

Amendment to section 11A: Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded

In the following circumstances the period of limitation of 1 year has been increased to 2 years:

1. In case of duty of excise not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty serve a notice within 2 years (earlier 1 year) requiring the assessee to show cause.
2. Where the assessee either on his own ascertainment or on the basis of the ascertainment by the Central Excise Officer pays the duty along with interest and intimates the officer of such payment, then the Officer shall not service any notice on the assessee. However if the Officer is of the opinion that the amount paid by assessee is short then he may issue a notice to the assessee. The 2 years (earlier 1 year) period shall be computed from the date of receipt of intimation.
3. Where the service of notice is stayed by an order of the court or tribunal, the period of such stay shall be excluded in computing the period of 2 years (earlier 1 year).
4. In cases involving fraud, collusion etc., the Central Excise Officer shall determine the amount of duty within 2 years (earlier 1 year) from the date of the notice, where it is possible to do so.

Amendment to Section 37B: Instructions to Central Excise Officers

Section 37B is being amended so as to empower the CBEC Board **for implementation of any other provision of the said Act** in addition to the powers to issue orders, instructions and directions for the purposes of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods.

Third Schedule to the Central Excise Act, 1944:

The following goods are additionally covered under Third Schedule which are generally valued under MRP based valuation under Section 4A of the Act:

1. Soap, other than for toilet use, whether or not containing medicament or disinfectant; (Soaps for toilet use was already covered in the Third Schedule even prior to this amendment)
2. Soap, in or in relation to the manufacture of which no process has been carried on with the aid of power or of steam; and
3. Laundry soaps produced by a factory owned by the Khadi and Village Industries Commission or any organisation approved by the said Commission for the purpose of manufacture of such soaps
4. Synthetic detergents - Sulphonated castor oil, fish oil or sperm oil
5. Aluminium foil (whether or not printed or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm
6. Wrist wearable devices (commonly known as smart watches)
7. Accessories of vehicles (including chassis fitted with engines) under Chapter 87 excluding vehicles falling under headings 8712, 8713, 8715 and 8716. Parts, components and assemblies were already covered
8. Accessories of goods falling under tariff item 8426 41 00, headings 8427, 8429 and subheading 8430 10. Parts, components and assemblies were already covered

THE ABOVE AMENDMENTS HAVE BEEN FURNISHED TO OUR CUSTOMERS FOR GENERAL UNDERSTANDING. IN VIEW OF THE INTRICACIES INVOLVED IN THE AMENDMENTS, THEY ARE REQUESTED TO TAKE SPECIFIC PROFESSIONAL ADVICE BEFORE ACTING ON ANY MATTER. WHILE DUE CARE HAS BEEN TAKEN IN PREPARING THIS DOCUMENT, INADVERTENT INACCURACIES CANNOT BE RULED OUT. THIS DOCUMENT IS NOT EXHAUSTIVE. THE CONTENTS OF THIS DOCUMENT IS NOT TO BE CONSIDERED AS LEGAL OR PROFESSIONAL ADVICE.