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Indirect Tax Alert

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Finance Act, 2015 - Changes in Indirect taxes

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Hon'ble President has given assent to Finance Bill, 2015 on 14 May 2015. Important changes in Indirect Tax are summarized below:

Service Tax

Following changes effective from 14 May 2015

- Definition of 'Government' introduced to address interpretational issues arising under the negative list and exemption notification
- Suitable amendments made to provide that activities undertaken by chit fund foremen and lottery distributors and selling agents are taxable
- Definition of consideration amended by inserting an explanation to include:
 - all reimbursable expenditure/ cost incurred by service provider, except as may be prescribed; and
 - amount retained by distributor or selling agent of lottery being the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such tickets
- Unpaid amount of service tax declared in the return will be recovered without issuance of show cause notice
- Appeal against order of Commissioner (Appeals) in cases involving service tax rebate to be referred to Central Government (and not to Tribunal). Further, all pending service tax rebate cases filed from 17 July 2012 and pending before the Tribunal to be transferred to Central Government
- Penalty provisions pertaining to cases not involving fraud, collusion substituted:
 - Penalty not to exceed 10% of service tax amount
 - Penalty not applicable where service tax and interest paid within thirty days of issuance of notice and proceedings would be deemed concluded in respect of such payments
 - Reduced penalty at 25% of penalty imposed, provided service tax and interest and reduced penalty paid within thirty days of issuance of order
 - If on appeal, penalty amount is enhanced, then benefit of reduced penalty of 25% would be available if the amount is paid within thirty days of the appellate order
- Penalty provisions pertaining to cases involving fraud, collusion etc substituted:
 - Penalty to be levied at 100% of service tax amount. However, in cases where details are recorded in specified records from the period between 8 April 2011 to 14 May 2015, then penalty to be levied at 50% of service tax amount
 - Reduced penalty at 15% of service tax amount applicable provided service tax, interest and reduced penalty paid within thirty days of issuance of notice

- Reduced penalty at 25% of the service tax amount provided service tax, interest and reduced penalty paid within thirty days of issuance of order
- If on appeal, service tax amount gets modified, then the amount of penalty and interest also stands modified
- If on appeal, penalty or service tax amount is enhanced, then benefit of reduced penalty of 25% would be available if the amount is paid within thirty days of the appellate order
- If on appeal, service tax amount gets modified, then benefit of reduced penalty of 25% of penalty imposed provided service tax, interest and reduced penalty paid within thirty days of appellate order
- Transition provisions introduced in connection with aforesaid new penalty provisions
- Beneficial provision of paying reduced penalty upto 25% of tax amount (during audit / investigation) in cases involving fraud, collusion done away with
- Provisions granting waiver from penalty when there was reasonable cause for failure omitted

Following changes will be effective from date to be notified

- Rate of service tax increased from 12% to 14%
- ECess and SHE Cess subsumed in the revised rate of service tax
- **Swachh Bharat Cess** : Central Government empowered to impose Swachh Bharat Cess on taxable services at the rate of 2% on value of services

Following further changes will be effective from date to be notified

- Exemption will be extended to the following services by way of admission to:
 - Exhibition of cinematographic film, circus, dance or theatrical performance including drama or ballet
 - Recognized sporting event
 - Award function, concert, pageant, musical performance, or any sporting event other than a recognised sporting event, where consideration for admission is not more than INR 500 per person
- Exemption withdrawn on intermediate production process of alcoholic liquor for human consumption

Changes in the Negative List

Following changes will be effective from date to be notified

- Access to amusement facility will attract service tax
- Admission to entertainment events will attract service tax

- Any process carried out to manufacture or produce alcoholic liquor for human consumption will attract service tax; and
- Services, including support services, rendered by Government or local authority to a business entity will attract service tax

Customs Duty

Changes in Customs Act, 1962

Following changes will be effective from 14 May 2015

- In cases not involving fraud or collusion or willful misstatement or suppression of facts or contravention of any provisions of the Act or Rules with the intent to evade payment of duty, penalty will not be levied and proceedings will be deemed to be concluded if the amount of duty along with interest thereon is paid within thirty days from the date of receipt of notice
- Mandatory penalty in cases involving fraud or collusion or willful misstatement or suppression of facts or contravention of any provisions of the Act or Rules with the intent to evade payment of duty, reduced from 25% to 15%, if duty along with interest is paid within thirty days from receipt of notice
- In cases where notice for recovery of duties and interest is served and the order determining duty has not been passed before the date of enactment of the Finance Bill, 2015, proceedings will be deemed to be concluded if the amount of duty along with interest and penalty is paid within thirty days from date of enactment of the Bill
- Penalty in respect of improper importation or exportation of goods liable for confiscation will be as under:
 - 10% of duty involved or INR 5,000, whichever is higher
 - Penalty to be restricted to 25% of such penalty so determined, if duty along with interest is paid within thirty days of communication of order
- Provisions relating to Settlement Commission not applicable to any proceeding referred back to adjudicating authority by any Court, Appellate Tribunal or any other authority for fresh adjudication

Miscellaneous Changes

Offence of making false declaration / documents under Customs will be treated as a scheduled offence under the Prevention of Money Laundering Act, 2002.

Central Excise Duty

Changes in Central Excise Act, 1944

Following changes will be effective from 14 May 2015

- Provision relating to recovery of duties:
 - Special treatment of cases where there is existence of fraud, collusion, etc. but the transactions are recorded in the specified records has been dispensed with
 - Relevant date for invoking extended period of limitation where return has been filed would be the date when the return has been filed and not the due date of filing return
 - Relevant date for invoking extended period of limitation where only interest is recoverable, has been prescribed to be date of payment of duty to which such interest relates
 - Provision related to recovery of duty is proposed to be made inapplicable where duty amount in dispute is shown as payable in the periodic returns filed by the assessee. The manner in which recovery of disputed duty would be made in such cases will be prescribed
- Penalty provisions pertaining to cases not involving fraud, collusion, etc. introduced as under:
 - Penalty not exceeding 10% of the duty determined or INR 5,000, whichever is higher would be payable
 - Penalty would not be payable where duty and interest are paid before issuance of show cause notice or within 30 days of issuance of show cause notice
 - Reduced penalty at 25% of penalty imposed, provided demanded duty, interest and reduced penalty are paid within 30 days of communication of order
 - If on appeal, duty amount gets increased, benefit of reduced penalty (25% of penalty imposed) would be available provided duty, interest and reduced penalty are paid within 30 days of communication of appellate order
 - Proceedings in pending show cause notices can be closed on payment of duty and interest within 30 days from 14 May 2015

- Proceedings in pending show cause notices which are adjudicated after 14 May 2015 can be closed on payment of duty, interest and 25% of the penalty imposed within 30 days of communication of adjudication order
- Penalty provisions pertaining to cases involving fraud, collusion, etc. proposed to be amended as under:
 - Penalty equal to duty determined would be imposed
 - Reduced penalty at 15% of the duty demanded, provided that duty, interest and penalty are paid within 30 days of communication of notice
 - Reduced penalty at 25% of duty determined, provided duty, interest and reduced penalty are paid within 30 days of communication of order
 - If on appeal, duty amount gets increased, then benefit of reduced penalty (25% of duty determined) available provided duty, interest and reduced penalty are paid within 30 days of communication of appellate order
 - If the duty amount gets modified in any appellate proceeding, then the penalty amount would also get modified accordingly
 - Proceedings in pending show cause notices can be closed on payment of duty, interest and penalty @ 15% of the duty within 30 days of 14 May 2015
 - Proceedings in pending show cause notices which are adjudicated after 14 May 2015 can be closed on payment of duty, interest and reduced penalty @ 25% of the duty within 30 days of communication of the adjudication order
 - Cases where no show cause notice has been issued prior to 14 May 2015, shall be governed by the new penal provisions as elucidated above

Notification issued allowing credit of Education Cess and Secondary and Higher Education Cess for payment of Excise Duty (effective 30 April 2015).

- Credit of ECess and SHE Cess paid on inputs or capital goods received in the factory of manufacture of final product on or after 1 March, 2015 can be utilized for payment of the duty of excise
- Credit of ECess and SHE Cess included in the balance fifty per cent cenvat credit on capital goods received in the factory of manufacture of final product in financial year 2014-15 can be utilized for payment of the duty of excise
- Credit of ECess and SHE Cess paid on input services received by manufacturer of final product on or after 1 March, 2015 can be utilized for payment of the duty of excise

Glossary

ECess: Education Cess

SHE Cess: Secondary and Higher Education Cess

Upcoming Dbriefs - Register

Changing Landscape for Financial Service Industry (FSI) Treasury: Liquidity, Funds Transfer Pricing (FTP), and BEPS.

Tuesday, 19 May, 11:30 AM – 12:30 PM IST

The FSI treasury requirements have been changing rapidly since the financial crisis and the pronouncement of Basel III. Where is it all headed in Asia Pacific and what are the implications to be aware of in the region? Gain insights into these developments across Asia Pacific and discover how they impact the financial services firms. For more information, visit the [Dbriefs](#) page.



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