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**Service Tax Update – Pertaining to services provided by Government or Local Authority**

19 February 2016

**Background**

Section 66D of the Finance Act, 1994 ('Act') provides for Negative List of services, which are not exigible to service tax.

As per Section 66D(a) of the Act, any services provided by Government or a local authority would fall under the Negative list except for the following services, to the extent that they are not covered elsewhere:

- 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;
- services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- transport of goods or passengers; or
- 'support services', other than services covered above, provided to business entities.

Vide Finance Act, 2015, the expression 'support services' was substituted by the expression 'any service'. However, the Government had not provided the date from which such amendment would be effective

**Impact of Notification 06/2016-Service Tax dated February 18, 2016:**

Effective April 1, 2016, any services provided by the Government or a local authority would be exigible to service tax (except services covered elsewhere under the Negative list or exempted vide any Notification).

**Impact of Notification 07/2016-Service Tax dated February 18, 2016:**

As discussed above, all the services (except services covered elsewhere under the Negative list or exempted vide any Notification) provided by the Government or local authority shall become taxable w.e.f. April 1, 2016. The Central Government has simultaneously issued the captioned Notification which amends Notification No. 25/2012- Service Tax

dated June 20, 2012 (Mega Exemption Notification) effective from April 1, 2016, which provides exemption in respect of the services provided by the Government or a local authority, to a business entity with a turnover up to Rs. 10 lakhs in the preceding financial year.

**Dhruva Comments:**

Prior to the issuance of the aforesaid Notifications, only specified services, including 'support services of business or commerce' provided to business entities, by the Government or local authority were taxable. 'support services of business or commerce' were defined to mean *"services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, Operational or administrative assistance in any manner, formulation of customer service and pricing policies, infrastructural support services and other transaction processing"*.

The aforesaid definition was very vague in its application. The language was therefore amended to cover 'any service' provided by the Government or local authority, except those specified under the Negative list or specifically exempted.

The ramification of this notification is likely to be significant. Government issues different type of licenses, permission, grant rights etc. against consideration. one will have to evaluate whether such licenses, permission, grant of rights etc. would now become exigible to service tax. There could be instances where grant of such rights etc. may be provided without any consideration in exchange for development, construction operation etc. In such cases, it would be relevant to examine how such activities get taxed in light of Valuation Rules.

It may be noted that the liability to pay service tax in such case is on the recipient of the service i.e. the

business entity receiving the service. The term 'business entity' has been defined *"to include an association of persons, body of individuals, company or firm but does not include an individual"*. In view of the aforesaid amendment, business entities would have to determine whether the services provided are liable to be taxed or not, and accordingly pay service tax under reverse charge mechanism. However, individuals receiving services will not be liable to pay service tax under reverse charge.

Further, a marginal relief has been provided vide Notification No. 07/2016, which grants exemption in respect of services provided by the Government or a local authority, to a business entity with a turnover up to Rs. 10 lakhs in the preceding financial year. It is though expected that these limits will get revised if the Government increases the threshold limit for payment of service tax to Rs. 25 Lacs as contemplated in the Budget of 2016.

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