Tax News

PKF SRIDHAR & SANTHANAM
Chartered Accountants

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INCOME TAX

Reminder for April 2012

Action Due	Due Date
TDS for March 2012	30-04-12
PF for March 2012	15-04-12 *(*)*
ESI for March 2012	21-04-12

(*) As 15th is a Sunday so PF can be deposited by Monday

SERVICE TAX

Action Due	Due Date
Service tax return for 2nd half (Oct-Mar)	25-04-2012

INCOME TAX

ITAT Judgments **Liaison office of a foreign company can become a PE:**	In this case, it was held that where activities carried on by liaison office were not confined only to fliaison work, but functions such as identifying new customers, pursuit and follow-up of customer, price negotiation and finalization, securing orders, processing of orders, etc, were also being performed, it could be said that liaison office had been carrying on commercial activities, and it was a Permanent Establishment, as defined under article 5 of DTAA. *Jebon Corp India vs CIT [2012] 19 taxmann.com 119 (Karnataka).*
Time Limitation on raising a tax demand:	The non-resident assessee, a US based NGO engaged in relief work in India, failed to deduct tax at source from the salary paid to its expat employees for FY ending before April 1, 2007. The issue was, whether the amended provisions of Sec 201, by Finance Act 2009, enable Revenue to overcome the limitation of initiating proceedings, and raise a tax demand in this case. The AO pointed out that u/s 201(1) of the Act, order can be passed at any time on or before 31st March, 2011 in respect of financial years expiring before 1st April, 2007. The assessee contended that in view of the decision of the High Court in *CIT Vs. NHK Japan Broadcasting Corporation (2008-TIOL-266-HC-DEL-IT)*, the initiation of proceedings was time barred. The Tribunal held that: • The issue is whether the AO was competent to initiate proceedings u/s 201(1)/201(1A) of the Act in the year 2009 for the three financial years 2002-03 to 2004-05.

	• The High Court in its decision dated 15.4.2010 in Hutchison Essar Telecom Ltd. held that the proceedings under section 201/201(1A) of the Act, can be initiated only within three years from the end of the assessment year or within four years from the end of the relevant financial year. • In absence of any time frame in the statute, reasonable time limit of 4 years from the end of relevant financial years is to be considered for time limitation. Hence the Revenue cannot raise a demand in this case. *2012-TIOL-155-ITAT-DEL*.
Time Limitation on raising a tax demand:	The non-resident assessee, a US based NGO engaged in relief work in India, failed to deduct tax at source from the salary paid to its expat employees for FY ending before April 1, 2007. The issue was, whether the amended provisions of Sec 201, by Finance Act 2009, enable Revenue to overcome the limitation of initiating proceedings, and raise a tax demand in this case. The AO pointed out that u/s 201(1) of the Act, order can be passed at any time on or before 31st March, 2011 in respect of financial years expiring before 1st April, 2007. The assessee contended that in view of the decision of the High Court in *CIT Vs. NHK Japan Broadcasting Corporation (2008-TIOL-266-HC-DEL-IT)*, the initiation of proceedings was time barred. The Tribunal held that: • The issue is whether the AO was competent to initiate proceedings u/s 201(1)/201(1A) of the Act in the year 2009 for the three financial years 2002-03 to 2004-05. • The High Court in its decision dated 15.4.2010 in Hutchison Essar Telecom Ltd. held that the proceedings under section 201/201(1A) of the Act, can be initiated

	only within three years from the end of the assessment year or within four years from the end of the relevant financial year. • In absence of any time frame in the statute, reasonable time limit of 4 years from the end of relevant financial years is to be considered for time limitation. Hence the Revenue cannot raise a demand in this case. *2012-TIOL-155-ITAT-DEL*.
Financial Lease or Operating Lease:	The assessee bank had leased out a boiler to the lessee company and had claimed depreciation on it, treating the transaction as an operating lease. The issue was - when the lessee chose the equipment to be leased, paid for insurance and taxes, and agreed to buy the asset at the end of the non-cancellable lease period, then, can the lessor be allowed to have the benefit of depreciation by claiming it to be an operating lease. The Special Bench held that: • As per Guidance note on Accounting for Leases, 'Finance lease' means, 'a lease under which the present value of the minimum lease payments at the inception of the lease exceeds or is equal to substantially the whole of the fair value of the leased asset. 'Operating lease' has been defined to mean, 'A lease other than a finance lease'. • In this case, the lease is not cancellable prior to the expiry period of seven years. The cost of repairs and insurance is to be borne by the lessee. Sum total of the lease rentals payable by the lessee recovers the amount invested by the lessor, plus interest. There is a clause that after the expiry of seven years period, the boiler will be sold to the lessee at predetermined value. It is the lessee who has to bear the loss due to obsolescence. All the risks and rewards vest with the lessee.

	Considering all these factors, it can be concluded that this is a case of finance lease, and not operating lease. • In a finance lease, the role of the lessor is only to provide finance. The real owner of the leased property is the lessee. Thus no depreciation can be allowed to the assessee-lessor. *2012-TIOL-150-ITAT-MUM-SB*
Is Leasehold right in a property similar to capital asset:	The assessee, alongwith his friend, had acquired from a trust, the lease hold rights for 99 years in a house property in Kolkata. This property was collectively purchased by three entities. The registered sales deed was a tripartite agreement between (a) the owner trust, (b) the lessees, i.e. the assessee and his friend, and (c) the purchasers. Under the said agreement, the owner transferred all its rights, title and interest, in the said property for a consideration to the lessees. The lessees gave up all their rights and interests in the said property to the purchasers, for a consideration. The issue was - whether the consideration received on surrender of such rights by the assessee-lessee, attracts provisions of Sec 50C. It was held by the Tribunal that Section 50C is applicable where the consideration received or accrued, as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value assessed by any State Government authority for the purpose of payment of stamp duty in respect of such transfer. A leasehold right in a capital asset cannot be equated with the capital asset, hence, when a leasehold right in "land or building or both" is transferred, the provisions of Section 50C cannot be invoked. *2012-TIOL-147-ITAT-KOL.*
Negative Net Worth for determining capital gains in case of a slump sale:	The assessee transferred its "Power Transmission Business" (PTB) to KEC Int'l on the basis of Scheme u/s 391 to 394 of the Companies Act, 1956, duly approved by the Bombay High Court. As per the Scheme, the assessee transferred its business as a going concern, by transferring all the assets and liabilities of PTB. The assessee claimed this transaction as a slump sale u/s 50B of the Act. In the audit report, the net worth of the undertaking was negative Rs. 157 crore. As such, the entire sale consideration of Rs.143 crore was treated as long term capital gain by the assessee in its return of income.

	The AO held that PTB was not sold at an arm's length. Considering the negative net worth of the assessee-company, the AO determined that the total consideration received was Rs.300 crore (Rs. 143 cr + Rs. 157 cr) on slump sale, which was to be treated as long term capital gains on slump sale. On appeal by the assessee, the CIT(A) accepted the contention that where the liabilities are more than the assets as computed u/s 50B, for the purpose of computing capital gain u/s 48, the net worth would be considered as Nil. On appeal by the Department, the Tribunal held that: The AO was not right in adding the amount of liabilities, reflected in the negative networth of the assessee, to the sale consideration for determining the capital gains on account of slump sale. The CIT(A) was also not correct in concluding that the negative networth of Rs.157 crore should be ignored for determining the capital gains in case of a slump sale. The networth will be negative Rs.157 crore and not zero. Resultantly, the amount of capital gain chargeable to tax will be Rs 300 crore and not Rs 143 crore as declared by the assessee. *2012-TIOL-145-ITAT-MUM-SB.*
Provisions of Sec 40(a)(ia) come into play only when assessee claims an expenditure under Sections 30 to 38	Assessee, a firm of solicitors and advocates, made payments to various lawyers for their professional services, but did not deduct tax at source under section 194J. The AO was of the view that the assessee was under statutory obligation to deduct tax at source under section 194 J, and since the assessee failed to perform this obligation, such payments were to be disallowed under section 40(a)(ia). The CIT(A) endorsed the AO's action. The Tribunal held that: Sec 40(a)(ia) seeks to restrict the deductions which are otherwise permissible under section 30 to 38 of the Act. A disallowance can be made only for amounts which are sought to be deducted under these sections. Unless a deduction is claimed by the assessee under sections 30 to 38, the disallowance under section 40(a)(ia) cannot come into play at all. *2012-TIOL-142-ITAT-KOL.*
Trading undertaken by SEZ Unit for re-export	Assessee firm was engaged in the business of trading and manufacturing of precious

of imported goods, eligible for Sec 10AA benefits	stones, diamond and studded gold jewellery. The assessee had units at Bombay and Surat and a Head Office at Jaipur. The assessee claimed deduction u/s 10AA in respect of profits from the Surat Unit as this unit was engaged in the business of precious and semi precious stones. The AO observed that deduction u/s 10AA was available only in case the assessee was engaged either in manufacturing or production of article or things, and not for services. Services had not been defined in the Income tax Act. The definition of service as provided in clause 2(z) of SEZ Act could not be imported. Only the definition of manufacture given in Section 2(z) of SEZ Act was imported in Section 10AA of the Act. The CIT(A) directed the AO to allow deduction u/s 10AA of the Act. Upon appeal by the Revenue, the Tribunal held that: Sec 51 of the SEZ Act mentions that notwithstanding anything inconsistent therewith contained in any other law, the provision of SEZ Act will prevail. Thus the word services as mentioned in Section 10AA cannot be construed inconsistent with the definition of services given in the SEZ Act. Under the SEZ act, 'trading' is included in services, provided the trading is export of imported goods. Thus, the assessee is entitled to deduction u/s 10AA of the Act. *2012-TIOL-137-ITAT-JAIPUR.*
Head office expenses	In the case of Citibank , the ITAT held that: • Sec. 44C is applicable to scrutinize claims in respect of general administrative expenses incurred for head office of a non-resident assessee, when such expenditure is said to be related to the assessee's business in India. • Since foreign companies operate through branches in India and sometimes try to reduce incidence of tax in India by inflating their claims in respect of the head office expenses, therefore Sec. 44C imposed a ceiling/restriction on head office expenses. However, where expenditure is incurred exclusively for the branch, Sec. 44C has no application.

	• The DR has stated that there are certain expenses viz., premises rent, staff related activities, equipment rent, depreciation etc., which could not be considered as expenditure incurred exclusively for Indian business purposes. However, DR has also filed certificate of assessee bank from its Financial Controller as well as the C.A, stating inter alia that, expenses for the assessee's Hong Kong branch were actual expenses incurred. Thus, it is held that CIT(A) is not justified to make disallowance on the ground that said expenses are covered by provisions of Sec. 44C.
Gain/loss on Forward Contracts	Assessee bank entered into forward contract with clients to buy or sell foreign exchange at an agreed price on a future date for hedging against possible future financial loss on account of fluctuation in the exchange rate. The assessee claimed loss on evaluation of unmatured forward foreign exchange contracts. The Tribunal held that deduction is allowable under Income Tax Act in respect of those liabilities which crystallized during the previous year. A contingent liability depends purely on happening or not happening of an event. However, as in the present case, if an event has already taken place, that is, contract to meet the liability has already been entered into, and only consequential effect of the same is to be determined, then, it cannot be said that it is in the nature of contingent liability. Therefore anticipated losses, on account of obligation as on 31 st March, that can be determined with reasonable accuracy, being in the nature of expenditure/accrued liability, have to be taken into account. Hence, the matter was restored to AO to consider the liability which has accrued as per Accounting Policy consistently followed by the assessee, and accordingly allow the claim.
Interest on IT Refund	During the previous year, the assessee, a non-resident, received interest on income-tax refund arising from excess payment of taxes relating to business income. Assessee

	claimed that said interest income had to be taxed under Article 11(2) of India-USA DTAA at 15%. However, the AO applied 40% rate of tax, treating the interest earned as business income attributable to a PE in India. The Tribunal held that interest on income-tax refund is to be taxed at rate of 15% under Article 11(2) and not at rate of 40% under Article 11(5) (as business profits). *Bechtel International Inc v. ADIT [2012] 19 taxmann.com 179 (Mumbai - ITAT).*
Tax treatment of Usance Interest	In this case, the interest on cash credit availed (usance interest) for purchasing the raw material, and the price of raw material, were reflected in separate invoices. It was clear that: a) there was no relation between interest amount and price of raw materials purchased, and b) the interest amount was related only to the period for which the purchase price of raw material was due. So, it was held that usance interest was included in the 'debt incurred' within meaning of section 2(28A), and was deemed to accrue or arise in India under section 9(1)(v). *Uniflex Cables Ltd v. DCIT [2012] 19 taxmann.com 315 - ITAT Mumbai.*
ADVANCE RULING **Taxability of transactions of shares**	RST, a German company held 99.99% shares in its Indian public limited company as subsidiary, the balance being held by six other companies as nominees of the German company so as to comply with the requirement of the Companies Act which fixes the minimum number of shareholders of a public limited company at seven. RST received a proposal of buy back of shares from the Indian company. It filed for a ruling from the AAR as to whether the proposed transaction would be exempt from capital gains taxation u/s 47(iv), about applicability of MAT and also whether any withholding was necessary. The AAR ruled that: • As per the provisions of section 153, even if the other six shareholders of the

	subsidiary company are the nominees of the applicant, it cannot be concluded that the applicant is holding 100% of the shares in the subsidiary. • If the other six members are treated as not having independent existence, it would mean that the subsidiary would become an illegal entity in the face of Sec 49(3) of the Companies Act. • The Companies Act and the Income-tax Act recognize holding of shares by a nominee. But that does not mean that the nominee holds the shares benami for the company. That would offend the Benami Transactions (Prohibition) Act, 1988. • As per section 47(iv), to avail the benefit, a company must hold 100% shares in a subsidiary Indian company, either directly or through its nominees. Therefore, the benefit of Section 47 (iv) cannot be given to the applicant. Hence, the proposed buyback of shares would not be exempt. • Section 115JB is applicable to a company incorporated outside India. Hence, section115JB has no application in this case, since the subsidiary company is incorporated in India. • The applicant is not entitled to receive the amount on buy-back of shares without any deduction of tax at source. *2012-TII-12-ARA-INTL.*

SERVICE TAX

IMPORTANT NOTIFICATIONS / CIRCULARS **Amendment to Point of Taxation Rules, 2011**	The Point of Taxation Rules, 2011 , have been amended, and will come into effect from April 1, 2012. Some of the key amendments are given below. The detailed amended rules can be referred in the Notification. • A clause is inserted in rule 2, which states that "change in effective rate of tax" shall include a change in the portion of value on which tax is payable, as specified in the Official Gazette. • Clause 'c' is modified by including services provided on a 'recurrent' basis for a period exceeding three months, with periodic payments, in addition to the 'continuously' provided services, within the purview of the clause. • A clause is inserted in rule 2, which states that the date of payment shall be the earlier of the dates on which the payment is entered in the books of accounts or is credited to the bank account of the person liable to pay tax, provided certain conditions are met. The conditions are defined in detail in the circular. • In rule 3, if the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules,1994, the point of taxation shall be the date of completion of provision of the service. • In rule 5, when a service is taxed for the first time, then, (a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable; (b) no tax shall be payable if the payment has

	been received before the service becomes taxable and invoice has been issued within fourteen days of the date when the service is taxed for the first time. *Notification no. 4/2012 dated 17th March 2012*
Amendment in Service Tax rules	Several amendments have been made in the Service Tax Rules, 1994, via this notification. Some of the key amendments are as follows: • In rule 4A of the principal rules, in sub-rule (1), 14 days is replaced by 30 days. • In case the taxable service provider is a banking company or a financial institution including a non-banking financial company, the period within which the invoice, bill or challan, as the case may be is to be issued, shall be forty five days. • When the provider of taxable service receives an amount upto Rs. 1500 in excess of the amount indicated in the invoice, and he has opted to determine the point of taxation based on the option as given in Point of Taxation Rules, 2011, no invoice is required to be issued to such extent. • In case of individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is Rs. 50 lakh or less in the previous financial year, the service provider shall have the option to pay tax by the dates specified in this sub-rule with respect to the month or quarter, as the case may be, in which payment is received. • Details of all the amendments are in *Notification No.3/2012 - Service Tax.*
Exemption to specified taxable services by way of abatement from taxable value	The Central Government has allowed abatement of the excess service tax calculated under section 66B of the Finance Act, over and above the service tax calculated on value based on percentages given in Table below:

Sl.No.	Description of taxable service	Percentage of the value of the service	Conditions
(1)	(2)	(3)	(4)
1	Financial leasing services including equipment leasing and hire purchase	10	Nil.
2	Transport of goods by rail	30	Nil.
3	Transport of passengers, with or without accompanied belongings by rail	30	Nil.
4	Supply of food or any other article of human consumption or any drink, in a premises, including hotel, convention center, club, pandal,shamiana or any place specially arranged for organizing a function	70	CENVAT credit on any goods classifiable under chapter 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986) used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004.
5	Transport of passengers by air, with or without accompanied belongings	40	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
6	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes.	60	Same as above.
7	Transport of goods by road by Goods Transport Agency	25	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.
8	Services provided in relation to chit	70	Same as above.
9	Renting of any motor vehicle designed to carry passengers	40	Same as above.

10	Transport of goods in a vessel from one port in India to another	50	Same as above.
11	(i)Services provided or to be provided to any person, by a tour operator in relation to a package tour	25	(i) 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. (ii) The bill issued for this purpose indicates that it is inclusive of charges for such a tour.
	(ii)Services provided or to be provided to any person, by a tour operator in relation to a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour	10	(i) 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. (ii) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation. (iii) This exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation.
	(iii) Services, other than services specified in (i) and (ii) above, provided or to be provided to any person, by a tour operator in relation to a tour	40	(i) 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. (ii)The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour.

Notification No. 13/2012- Service Tax

Exemption from whole of the service tax	The Central Government has exempted several taxable services from the whole of the service tax leviable under section 66 B of the Finance Act. Some of them are given below. For exact details, please refer to the notification.

	• Services provided to the United Nations or a specified international organization. • Health care services by a clinical establishment, an authorised medical practitioner or para-medic • Services by a veterinary clinic in relation to health care of animals or birds • Services by an entity registered under section 12AA of the Income tax Act, 1961 by way of charitable activities. • Services by a person by way of renting of precincts of a religious place meant for general public or for conduct of any religious ceremony; • Services provided by advocates • Services of technical testing or analysis of newly developed drugs and vaccines on human participants by a clinical research organisation approved by the Drug Controller General of India • Services by way of training or coaching in recreational activities relating to arts, culture or sports; • Services provided to an educational institution by way of catering under any centrally assisted mid day meals scheme sponsored by Government, or by way of transportation of students/ staff. • Services provided to a recognised sports body by an individual as a player, referee, umpire, coach or manager for participation in a tournament or championship organized by a recognized sports body. • Services by way of sponsorship of tournaments or championships organized by a national sports federation, where the participating teams or individuals represent any district, state or zone; • Services provided to the Government or local authority by way of erection, construction, maintenance, repair, alteration, renovation or restoration of a civil structure meant predominantly for a non-industrial or non-commercial use, or a historical monument, or an educational, clinical, or a cultural establishment, or a residential complex predominantly meant for self-use. • Services provided by way of erection, construction, maintenance, repair, alteration,

	renovation or restoration of road, bridge, tunnel, or terminal for road transportation for use by general public, pollution control or effluent treatment plant, except located as a part of a factory, or an electric crematorium; • Services by way of erection or construction of original works pertaining to airport, port or railways, single residential unit otherwise as a part of a residential complex, low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority. • Temporary transfer or permitting the use or enjoyment of a copyright relating to original literary, dramatic, musical, artistic works or cinematograph films; • Services by a performing artist in folk or classical art forms of music, or dance, or theatre, excluding services provided by such artist as a brand ambassador; • Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India; • Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a room below rupees one thousand per day or equivalent; • Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and which has a licence to serve alcoholic beverages; • Services by way of transportation by rail or a vessel from one port in India to another of certain goods like petroleum and petroleum products, relief materials meant for victims of natural or man-made disasters, defence or military equipments, postal mail, newspaper or magazines registered with Registrar of Newspapers, railway equipments or materials, agricultural produce, foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages, chemical fertilizer and oilcakes. • Services provided by a goods transport agency by way of transportation of fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage etc. • Services by way of giving on hire to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers, etc. • Services by way of motor vehicle parking to general public. • Services provided to the Government or a local authority by way of repair of a ship, boat or

	vessel, effluents and sewerage treatment, waste collection or disposal, storage, treatment or testing of water for drinking purposes, or transport of water for drinking purposes; • Services of general insurance business provided under certain schemes. • Services provided by an incubatee up to a total business turnover of fifty lakh rupees in a financial year subject to certain conditions. • Service by an unincorporated body or an entity registered as a society to own members by way of reimbursement of charges or share of contribution as a trade union, for certain services. • Services by the following persons in respective capacities - (a) a sub-broker or an authorised person to a stock broker; (b) an authorised person to a member of a commodity exchange; (c) a mutual fund agent or distributor to mutual fund or asset management company for distribution or marketing of mutual fund; (d) a selling or marketing agent of lottery tickets to a distributer or a selling agent; (e) a selling agent or a distributer of SIM cards or recharge coupon vouchers; or (f) a business facilitator or a business correspondent to a banking company or an insurance company in a rural area; • Carrying out an intermediate production process as job work in relation to agriculture, printing or textile processing, jewellery etc. • Services by an organiser to any person in respect of a business exhibition held outside India. • Services by way of making telephone calls from departmentally run public telephones, guaranteed public telephones operating only for local calls, or free telephone at airport and hospitals where no bills are being issued. • Services by way of slaughtering of bovine animals; • Services received from a service provider located in a non- taxable territory. For the purpose of this notification, some definitions of services as mentioned above are given in this notification. Please refer *Notification No.12/2012-Service Tax dated 17th March 2012*.
Notification no. 36/2004 dated 31st Dec. 2004 has been superceded	The Central Govt has issued a notification to supercede the notification No. 36/2004-Service Tax by notifying certain taxable services and the extent of service tax payable thereon. Some of these services are (please refer to the Notification to get the exact details):

	• Services provided by an insurance agent • Services provided by a goods transport agency • Services provided by an advocate • Services provided by way of renting or hiring any motor vehicle designed to carry passengers The extent of service tax payable by the person who receives the service and the person who provides the service for the taxable services specified in the first part above, shall be as specified in the following Table, namely:-

Table

Sl.No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
1	in respect of services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	Nil	100%
2	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	Nil	100%
3	in respect of services provided or agreed to be provided by way of sponsorship	Nil	100%
4	in respect of services provided or agreed to be provided by an arbitral tribunal	Nil	100%
5	in respect of services provided or agreed to be provided by individual advocate	Nil	100%
6	in respect of services provided or agreed to be provided by way of support service by Government or local authority	Nil	100%
7	(a) in respect of services provided or agreed to be provided by way of renting or hiring any motor vehicle designed to carry passenger on abated value. (b) in respect of services provided or agreed to	Nil 60%	100 % 40%

	be provided by way of renting or hiring any motor vehicle designed to carry passenger on non abated value.		
8.	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose	25%	75 %
9.	in respect of services provided or agreed to be provided by way of works contract	50%	50%
10	in respect of any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory	Nil	100%

This notification shall come into force from the date on which section 66B of the Finance Act, 1994 comes into effect. *Notification No.15/2012-Service Tax.*

Exemption to taxable service involving import of technology	The Central Government has exempted the taxable service involving import of technology, leviable under section 66B of the Act, as is equivalent to the amount of cess payable on the said import of technology under the provisions of section 3 of the Research and Development Cess Act, 1986 (32 of 1986), subject to certain conditions specified in the notification. This notification shall come into force from the date on which section 66B of the Finance Act, 1994 comes into effect *Notification No.14/2012 - Service Tax*
Amendment in Service Tax (Determination of value) Rules 2006	Central Government has amended the Service Tax (Determination of Value) Rules, 2006. These rules, called the Service Tax (Determination of Value) Amendment Rules, 2012, shall come into force from the date on which section 66B of the Finance Act, 1994 comes into effect. The amendment relate mainly to the rules pertaining to work contracts. For other clauses please refer *Notification no. 11/2012 - Service Tax dated 17th March 2012.*
Amendment to Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007	The Central Government has amended the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, applicable from 1st day of April 2012, by substituting "four per cent.", by "4.8 per cent.", in rule 3, in sub-rule (1). *Notification no. 10/2012, dated 17th March 2012.*
Amendment in definition of Aggregate value in notification 6/2005 dated 1st March 2005	Through this notification, the definition of Aggregate value has been amended (Notification 6/2005 , exempts taxable services of aggregate value not exceeding four lakh rupees, changed to ten lakhs

	through subsequent notifications, in any financial year from the whole of the service tax leviable thereon under section 66 of the said Finance Act) : "aggregate value" means the sum total of value of taxable services charged in the first consecutive invoices issued or required to be issued, as the case may be, during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66 of the said Finance Act under any other notification This notification shall come into force on the 1st day of April, 2012. *Notification no.5/2012 dated 17th March 2012.*
Condition for exemption of certain services related to air transport of passengers	With effect from 1st April 2012, by omitting the notification number 26/2010-Service Tax, dated the 22nd June, 2010, the Central Government, exempted the taxable service specified in clause 65(105)(zzzo) of the Finance Act,i.e. air transport of passengers, from service tax that is in excess of the service tax calculated on a value which is equivalent to 40% of the value of the taxable service by such service provider This notification shall not apply in cases where the CENVAT credit of duty on inputs or capital goods, used for providing such taxable service, has been taken under the provisions of the CENVAT Credit Rules, 2004. *Notification no. 6/2012 dated 17th March 2012.*
CESTAT JUDGMENTS **Ship management servi1ces**	Appellant was rendering manpower supply services to various shipping companies and was in receipt of sums of money towards the wages/salaries of the officers and crew members so supplied in addition to service charges for the service rendered. The department was of the view that this service was liable to be taxed under the category of "Manpower Recruitment or Supply Agency Service" for the period prior to 01.05.2006 and under the category of "Ship Management Services" w.e.f 01.05.2006. CESTAT held that: • It is clear that the manpower supplied remained employees of the appellant and the appellant received consideration for the services so rendered, both by way of emoluments of the employees and also consideration for the services rendered. Thus, the activity undertaken by the appellant was covered under the definition of 'Manpower Recruitment and Supply Agency Services'. • The very fact that the appellants have collected the Service Tax from their customers

	without remitting the same to the exchequer clearly shows that they were fully aware of their service tax liability. • Prima facie, the appellants are liable to discharge the Service Tax liability under the category of 'Manpower Recruitment or Supply Agency Service'." *2012-TIOL-358-CESTAT-MUM.*
Conditions for abatement of service tax	The appellant was registered as a Service Tax assessee under the category of 'Commercial and Industrial Construction'. It had entered into contracts with various clients for setting up of power plants at various sites which involved supply of goods as well as supply of services. The appellant availed abatement of 67% of the total contract value and paid service tax only on 33% of the contract value in terms of notification no. 15/2004-ST dated 10.09.2004. and notification no. 1/2006-ST dated 01.03.2006. Both these notifications provided abatement to the extent of 67% subject to the condition that CENVAT credit of duty on inputs or capital goods or on input service used for providing such taxable services was not taken under the provisions of CENVAT Credit Rules, 2004. It was found that for the period October 2005 till September 2009 the appellant had taken CENVAT credit on inputs or input services in respect of some contracts, and, therefore, it appeared that it was not eligible to avail the above abatement. The CESTAT held that : • The notification does not stipulate that in all contracts, the condition of non-availment of CENVAT credit should be satisfied uniformly without exception. Therefore, in respect of a contract where the assessee has not taken input credit prior to 01.03.2006 and input/input service tax credit on or after 01.03.2006, the assessee would be rightly entitled for the benefit while in contracts where it had taken the CENVAT credit, it would not be allowed the benefit. • There is nothing in these notifications which prevents an assessee from not availing CENVAT credit and paying service tax on 100% of the contract value in

	respect of one particular contract, and availing abatement and not availing CENVAT credit in another contract. • The benefit of these notifications can be availed by any assessee irrespective of the fact whether he is centrally registered or not. *2012-TIOL-348-CESTAT-MUM.*
Business Auxilliary and Business Support Services	The Revenue had raised a service tax demand on the applicant - J.M. Financial Services P. Ltd. - for the following fees/expenses it had recovered from its clients: • **IPO Financing Fees -** Applicant was financing its clients through its NBFC sister concerns and shared the interest income earned by these NBFCs, on revenue sharing basis. The department was of the view that the said activity was covered under the 'Business Auxiliary Services' as the applicant was promoting the business of these NBFC's by introducing its corporate clients to them. It was held that, as per the MOU, the applicant was to compensate the NBFC's, if any demand arose. So, the applicant was not a commission agent, but was doing business with these NBFC's on principal to principal basis and sharing their profits. Therefore, the applicant was not rendering any 'Business Auxiliary Service'. • **Processing fee -** The applicant collected money on behalf of the company who issued IPOs and deposited it in a designated bank. The bank earned interest on the deposit and shared the interest with the applicant. The department was of the view that this activity was promotion of the business of the banks, and so service tax was payable under 'Business Auxiliary Services'. It was held that, the interest income which the bank shared with the applicant was not because applicant was promoting or marketing any of the banks' services as the bank was selected by the company coming out with the IPO. Therefore, the applicant was not liable to pay service tax. • **Recovery of Common expenses**- These expenses were recovered by the

	applicant from the co-user of the premises on actual basis. As the applicant was incurring these expenses on behalf of the co-user, the department was of the view that the applicant was providing infrastructural support service which was covered under 'Business Support Services'. It was held that these activities were not covered under 'Business Support Services' as the applicant was paying the expenses incurred by it on all the premises and thereafter recovered from the co-user on actual usage basis, therefore no service was rendered. So the applicant was not liable for any service tax. *2012-TIOL-325-CESTAT-MUM*.

OUR OFFICES

Head Office	Branches:	Branches:
KRD Gee Gee Crystal, 7th floor, No.91/92 Dr. Radhakrishnan Salai, Landmark: Sri Krishna Sweets, Mylapore, Chennai - 600 004 Phone # + 91 44 28112985/86/87/ Fax # + 91 44 2811 2989 Email : taxation@pkfindia.in	**Bangalore** T8 & T9, Third Floor,' GEM PLAZA, No 66, Infantry Road Bangalore 560 001 Tele Fax : (+91) 080 25590553 Email : bangalore@pkfindia.in	**Mumbai** No.406, Madhava Building 4th floor, Bandra Kurla complex Bandra (E), Mumbai – 400 051 Phone : +91-22-26591730 / 26590040 Email : mumbai@pkfindia.in
Branches: **Delhi** No. 512, Chiranjiv Towers, 5th Floor, Nehru Place, New Delhi 110 049 Phone : +91 11 40543689 Email: delhi@pkfindia.in	**Branches :** **Hyderabad** 2nd Floor, Kiran Arcade, Door No 1-2-272-273/6, Mchno:100 Sarojini Devi Road, Hyderabad - 500 003 Phone: (+91) 040-27819743, Mobile No :+91-9490189743 Email: viswanadh.k@pkfindia.in	**Branches :** **Coimbatore** No.38/1, Raghupathy Layout, Coimbatore 641 011. Phone: (+91) 422 2449677 Mobile: +91-94430 49677 Email: shankar@pkfindia.in

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