


INDIA BUDGET 2006



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BEFORE

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CONSULTANT



WITH A
HEART

OF A FRIEND



FINANCE ACT, 2006

HIGHLIGHTS & COMMENTS



}} *This Budget, Mr. Speaker, is an attempt to lay down a path in which growth and equity will reinforce each other and build a new India.* }}
}}
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Dear Friends,

We have pleasure in laying in your hands our exclusive intensive analysis of the Union Budget.

In a mix of proposals to please the average citizen and industry, Finance Minister P. Chidambaram presented India's national budget for 2006-07 on 28th February, 2006 that keeps personal and corporate tax rates unchanged and hikes developmental outlays with an eye on the coming assembly poll in five states.

The Finance Minister has sought to make the Industry happy on the ground that "there are no negatives this time".

Although the budget may not be that hitting, when we analyses the provisions of direct and indirect taxes in depth, we find that there is lot more burden on the community than what has been made out in the budget speech of the Finance Minister. However, the bottom line is whether the said funds so collected (rather generated) reach their correct and desired destination.

The talks on the floor were to encourage the young people so that the country can be in their safe hands. The FM also remarkably noted that "***the young people of India are building castles; it may appear that those castles are in the air***". But as Henry David Thoreau said: "*If you have built castles in the air, your work need not be lost; that is where they should be. Now put the foundations under them.*"

Let us see, how much the FM gets what he desires.

The copy is also available on our website <http://www.amcount.com> In keeping in with the internet age, we have decided not to continue with the booklet form. In case you still need it you may drop a mail to me.

Thanking you and assuring you of our best services at all times.

For Smart Consultants Private Limited.

**Anand Mehta
(Director)**

FINANCE BILL, 2006

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INCOME-TAX

Sr. No.	Subject
A1	Trust-Anonymous Contribution
Introduced	
Sec.	+/- w.e.f.
115BBC/ 2(24) / 13(7) / 10(23C)	- A.Y. 07-08

Highlights

1. Exemption is available at present in respect of incomes of certain bodies and institutions like University, educational institutions, etc.
2. It is now proposed that anonymous donations received by such institutions, etc. will be taxable and no exemption would be available to such donations.

Comments

1. In order to tax the anonymous donations, amendment is made in s. 10(23C), 11 and s. 2(24). In order to tax the said amounts, s. 115BBC is also introduced to the effect.
2. By virtue of the said amendments, the income from voluntary contribution in the form of anonymous donations is proposed to be taxed.
3. As such, the institutions which receive the donations without recording the name, address and such other particulars of the donor will be liable to tax on the said amounts at the maximum marginal rates and they will not be granted any exemption to the extent of such donations.
4. However, the said donations will not be taxed in respect of following the trust/institutions created and established
 - a. wholly for religious purposes
 - b. partly for religious and partly for charitable purposes

5. As such, the religious donations are still kept out of the purview of tax net and only the charitable organizations are affected.

6. The said amendment is proposed by taking clue from decision in case of Charitable Foundation (2005) 146 taxman 569 (Delhi).

Sr. No.	Subject
A2	Banking Co-operative Soc.
Amended	
Sec.	+/- w.e.f.
2(24)(viiia) / 80-P	- A.Y. 07-08

Highlights

1. The co-operative banks enjoy exemptions from income tax on the grounds of mutuality and hence they do not pay tax on their income.
2. The amendment is proposed in order to tax the income of the co-operative banks and deny the exemptions to them.

Comments

1. The exemption to the income is denied since it is felt that the co-operative banks are operating at par with the commercial banks, who do not enjoy any tax benefits.
2. By virtue of the said amendment, the banks will not be able to claim the applicability of principles of mutuality.

Sr. No.	Subject
A3	Exemption - MLA
Amended	
Sec.	+/- w.e.f.
10(17)(iii)	+ 07-08

Highlights

1. Under the existing provisions, the constituency allowances received by the MPs are exempt from tax. The MLAs are also receiving constituency allowance. However, the said amounts received by the MLAs are liable to tax.
2. It is therefore proposed that the constituency allowance received by the MLAs would be treated at par with that of MPs and the same would be exempt.

Comments

The constituency allowance received by MLAs is proposed to be exempt from tax.

Sr. No.	Subject
A4	Exemption – Time limit for a pplication
	Introduced
Sec.	+/- w.e.f.
10(23C)	- 1.6.2006

Highlights

1. Under the existing provisions, there is no lime limit for university, institution, etc. to make application for grant of exemption u/s. 10(23C).
2. It is therefore proposed to put a time limit for making the application.

Comments

It is proposed that w.e.f. 1.6.2006, the application for grant of exemption should be filed at any time during the financial year during which the income is sought to be exempt.

Sr. No.	Subject
A5	Exemption – Infrastructure Company, etc.
	Withdrawal
Sec.	+/- w.e.f.
10(23G)	- A.Y. 07-08

Highlights

1. The infrastructure capital fund/company is granted exemption from dividend, interest and LTCG from investment in any enterprise engaged in the infrastructure business specified in s. 80-IA(4), business of SEZ, housing project and hotel project.
2. This exemption is now proposed to be removed

Comments

1. The exemption was intended to ensure low cost of raising capital for thrust area projects during an era of high tax rates. The tax rate as well as interest rate for borrowing of funds have since come down, reducing the over all cost of such projects.
2. Exemption for dividends distributed by domestic companies is already available under section 10(34). Long term capital gain from transaction on which securities transaction tax has been paid are also exempted u/s. 10(38). It is therefore proposed to withdrawn exemption u/s. 10(23G) so as to make income from existing as well as future investment in eligible business taxable.

Sr. No.	Subject
A6	Exemption-LTCG
	Amended/Introduced
Sec.	+/- w.e.f.
10(38)	+ 1.6.2006

Highlights

1. Presently, the LTCG arising out of Equity-oriented funds are exempt from tax. The equity-oriented funds are defined to mean where more than 50% of investible funds are invested in

equity shares of the domestic company.

2. It is now proposed that the equity-Oriented funds shall mean and include such funds where the proceeds of funds to the extent of 65% or more are invested in the equity shares of the domestic companies.

Comments :

1. Although the equity oriented funds are investing in the equity shares in a proportion more than 50%, the amendment will result in more funds available to the stock market even in a slack period and hence will help the stock market to maintain the bullish trend to some or the other extent.

2. The issue arises as to whether the investment measurement needs to be seen when the person invested in such equity oriented funds or when he exits them.

Sr. No.	Subject
A7	Deduction - Timely return of income
Amended	
Sec.	+/- w.e.f.
10B/80AC	- 1.4.2006

Highlights

1. Presently, the assessee is granted deductions in respect of its profits from the undertaking without any stipulation of filling the return of income.

2. It is henceforth proposed that the said deduction would not be allowed if the assessee does not file the return of income in time.

Comments

1. In an attempt to make the assessee file their return of income and make effective compliance, it is proposed that the following deductions/ exemptions will be withdrawn if the return of income

claiming such exemption is not filed in time.

a) U/s. 10B - 100% export oriented undertaking.

b) U/s. 80-IA - infrastructure development.

c) U/s. 80-IAB - SEZs

d) U/s 80-IB - Industrial undertaking other than (b)

e) U/s 80-IC - generation, distribution of transmission of power.

2. The said amendment is proposed possibly taking the clue from the decision in the case of DCIT v. Lab India Instruments P Ltd. [93 ITD 120 (Pune.)]

Sr. No.	Subject
A8	Expense on Exempt Income
Amended	
Sec.	+/- w.e.f.
14A	A.Y. 07-08

Highlights

1. As per the present law, the deduction is not allowed in respect of expenditure if the same is incurred for earning exempt income.

2. It is now proposed that the Assessing Officer will have to determine the expenditure in relation to the exempt income and the method for computing such expenditure is also to be notified.

Comments

1. For determining the expenditure attributable to the exempt income, it is also proposed that if the Assessing Officer is not satisfied with the correctness of the claim of expenditure on exempt income, he will have to determine such expenditure in accordance with the method to be notified.

2. It appears that the said amendment is proposed to curb the

tendency of the assessee to claim that there is no expense claimed in relation to the exempt income.

Sr. No.	Subject
A9	Premiums paid for employees
Introduced	
Sec.	+/- w.e.f.
17(2)/36(1)	+ A.Y. 07-08

Highlights

1. At present,
 - a) Any premium paid by the employer towards medical hospitalization premium on the health of the employee is exempt from tax as the same is not treated as perquisites. However, such insurance should be under the scheme framed by the Central Government.
 - b) Similarly, the employer is allowed deduction in respect of the insurance premium on the health of the employee if the same is paid by cheque under the scheme framed by the General Insurance Corporation of India and approved by Central Government.
2. As a rationalization measure, it is proposed that such benefits may be granted in case if the schemes are approved by the Insurance Regulatory Authority.

Comments

The said amendment is proposed as a rationalization measure (to boost the privatization of the insurance industry) and in order to grant the employer and employee the benefit of aforesaid deduction even in respect of the scheme framed by other private insurance companies.

Sr. No.	Subject
A10	Securities-Derivatives
Introduced	
Sec.	+/- w.e.f.
43(5)	- 1.4.2006

Highlights

1. At present, although there are no provisions treating the trading in derivatives in recognized stock exchange to be speculative, yet there are controversial views on the subject.
2. The proposed amendment hence covers the derivative transactions within the ambit of the speculative transactions.

Comments

Henceforth, as a result of the proposed amendment, derivative transactions shall be treated as speculative transactions.

Sr. No.	Subject
A11	Deduction-Interest on loans
Amended	
Sec.	+/- w.e.f.
43B	- A.Y. 89-90

Highlights

1. Under the existing provisions, interest on any loan or borrowing from scheduled banks and institutions is allowed as deduction if the same is actually paid before the due date of filing return of income. If the interest is paid in any of the subsequent year, deduction is allowed in the year in which payment is made.
2. In several cases, conversion of outstanding interest into loan or advance by the bank or institution is treated as deemed payment of interest and hence claimed as allowable in the year of conversion.
3. It is now proposed that the deduction in respect of interest shall

be allowed only if the interest is actually paid and conversion of outstanding interest into loan or advance will not be treated as deemed payment of interest.

Comments

1. The proposed amendment is brought since the assesseees were claiming the deduction on conversion of interest into loan and thus sought the deduction even if the said interest is not paid. Such views were delivered in several cases like DCIT v. Eicher Tractors Ltd [79 TTJ 158(Del)], Eicher Motor s Ltd v. DCIT [82 TTJ 61 (Ind)]. The proposed amendment is brought to curb this lacuna and henceforth allow the deduction only if the interest is actually paid and not otherwise.

2. This amendment is stated to be clarificatory only and therefore the same has been proposed to be made effective from assessment year 1989-90 in respect of financial institutions and from assessment year 1997-98 in respect of scheduled banks.

3. However, no stipulation is made for ensuring allowance of interest in the year of payment. Thus, it appears that when such converted interest into loan or advance is re-paid, it would not be allowed as a deduction.

Sr. No.	Subject	
A12	Capital Gains-Exemption	
	Amended/Introduced	
Sec.	+/-	w.e.f.
54EC	-	A.Y. 07-08

Highlights

1. Presently, the capital gains are exempt in case if the assessee makes investments in the specified bonds:

- a. NABARD
- b. NHAI
- c. REC

- d. NHB
- e. SIDBI

2. It is proposed that exemption will now be allowable only in respect of investments in the bonds issued by the following organizations.

- a. NHAI
- b. REC

Comments

1. The scope of investment for claiming the exemptions from capital gains tax is reduced.

2. This proposed amendment is brought since it has been felt by the legislature that the other organizations have been able to mobilize sufficient funds and hence they do not require any further funds for their projects.

Sr. No.	Subject	
A13	Capital Gains Exemption	
	Withdraw	
Sec.	+/-	w.e.f.
54ED	-	A.Y. 07-08

Highlights

1. The provisions of s. 54ED allowed exemption from capital gains tax on transfer of listed securities, units of mutual fund, etc. if the investment is made in the equity shares forming part of the eligible issue of capital.

2. The said exemption is now withdrawn.

Comments

The exemption is now withdrawn In view of the exemption already available to the long-term capital gains u/s. 10(38) on transfer of such securities.

Sr. No.	Subject	
A14	Deduction -Fixed Deposits	
	Introduced	
Sec.	+/-	w.e.f.
80-C	+	A.Y. 07-08

Highlights

1. An individual/HUF is granted deduction u/s. 80-C in respect of certain investments/incomes.
2. It is now proposed that u/s. 80-C, investment made in fixed deposit with scheduled bank for tenure of at least 5 years will also be eligible for deduction.
3. The deduction would be subject to existing ceiling limit of Rs. 1,00,000/-.

Comments

1. The scope of the opportunities of deductions available to the assessee u/s. 80-C is expanded to include the investment in FDRs.
2. This is a welcome step since the fixed deposits are a most liquid and safe investment. Further, the investments in FD were, of late, a neglected mode of investment. Hence, the said amendment is proposed to enhance the investments in the bank FDs.
3. However, there is no clarity as to what would be the effect if there is a pre-mature liquidation of the said fixed deposits.

Sr. No.	Subject	
A15	Deduction - Pension funds	
	Amended	
Sec.	+/-	w.e.f.
80CCC	+	A.Y. 07-08

Highlights

1. Presently, the assessee can invest in pension funds upto Rs. 10,000/- and the same will be eligible for deduction from the gross total income.
2. However, the said investment is covered within the overall limit of Rs. 1,00,000/- together with deduction u/s. 80-C.
3. It is now proposed to enhance the said limit of Rs. 10,000 to Rs. 1,00,000/-.

Comments

1. The said amendment brings the investment in pension funds at par with the other investments in s. 80-C.
2. The effect is that now the assessee can invest its entire money in the pensions funds only; within the overall limit of Rs. 1,00,000/-.

Sr. No.	Subject	
A16	Deduction -- IT Park	
	Amended/Introduced	
Sec.	+/-	w.e.f.
80-IA(4)(iii)	+	A.Y. 07-08

Highlights

1. Under the existing provision, deduction u/s. 80-IA(4) in respect of profit of industrial undertaking engaged in various activities is allowed if the said units are set up/notified within the specified time limit.
2. The said time limits are extended further as follows:

Nature of dedn.	Present time limit	Extended time limit
I-T Park	31.03.2006	31.03.2009
Generation of power	31.03.2006	31.03.2009
Transmission of electricity	31.03.2006	31.03.2010
Transmission lines-repairs	31.03.2006	31.03.2010

Comments

The extension of the time limit is a welcome step for the undertakings engaged in the eligible business.

Sr. No.	Subject	
A17	DTAA on case to case basis	
	Amended/Introduced	
Sec.	+/-	w.e.f.
90A	+	1.6.2006

Highlights

A new provision is introduced whereby any specified association in India may enter into agreement with any specified association outside India and Central Government is empowered to make necessary provisions to adopt or implement the agreement w.r.t. grant of double tax relief, avoidance of double tax, exchange of information for avoidance of income-tax or recovery of tax.

Comments

The provisions seek to empower the central government to make necessary modifications in the Act to accommodate and the implement the agreement between the associations of two countries.

Sr. No.	Subject	
A18	Transfer Pricing-SEZ	
	Amended	
Sec.	+/-	w.e.f.
92C	-	A.Y. 07-08

Highlights

1. The provisions of transfer pricing states that if the income of the assessee is enhanced by the Assessing Officer on account of valuation under the transfer pricing methods, the deduction u/s. 10A and 10B shall not

be allowed on the amount so enhanced.

2. It is now proposed to include, in the said list of disallowance, the provisions of s. 10AA

Comments

The exemption granted to SEZs u/s. 10AA is henceforth made ineligible for deduction to the extent income of the assessee is enhanced by virtue of the transfer pricing provisions.

Sr. No.	Subject	
A19	MAT	
	Amended/Introduced	
Sec.	+/-	w.e.f.
115JAA/ 115JB	+/-	A.Y. 07-08

Highlights

There are several amendments brought in provisions relating to MAT.

Particulars	Presently	Proposed amendment
Book Profit	--	<ul style="list-style-type: none"> ➤ To include LT gains. ➤ To reduce depreciation on revalued amount of assets.
Rate	Presently 7.5% of Book profit	Now 10% of book profit
MAT Credit	Carry forward for 5 years	<ul style="list-style-type: none"> ➤ Carry forward for 7 years ➤ Treated as advance tax.

Comments

While the provisions relating to MAT credit are welcome and positive amendments, the other provisions hit the bottoms since the assessee is liable

to higher tax on the higher amounts of book profit due to the said amendments.

Sr. No.	Subject	
A20	FBT – Rate Amended/Introduced	
Sec.	+/-	w.e.f.
115WC	+	A.Y. 07-08

Highlights

The Finance Bill has proposed reduction in the FBT rates as well as exclusion of certain expenses from the purview of FBT:

Nature of expense	Present	Proposed
Free samples to doctors	20	NIL
Expense on brand ambassador / celebrity endorsement	20	NIL
To and fro from residence to office	20	NIL
Tour and travel (incl. foreign travel)	20	5
Contri. To approved super annuation fund (Rs. 1 lakh per empl.)	100	NIL
Hospitality Expense (Airline and shipping)	20	5
Payment to any person of repute for Sales Promotion	20	5

Comments

1. The industry had expectations that the FBT itself would be done away with.
2. However, instead of the same, the FM has granted some marginal relief in the taxability of some of the expenses. *“Well, something is at least better than nothing”* as is rightly said.

3. To that extent the circular brought out by the CBDT on 23.08.2005 as regards the FAQs on FBT stands modified.

Sr. No.	Subject	
A21	Return – 1 by 6 scheme Amended	
Sec.	+/-	w.e.f.
139	+	A.Y. 06-07

Highlights

The provisions relating to one by six scheme requiring persons satisfying certain conditions to compulsorily file their returns of income even though they do not have any income – are now done away with.

Comments

The provisions of one by six scheme are removed.

Sr. No.	Subject	
A22	PAN in specified cases Introduced	
Sec.	+/-	w.e.f.
139A	-	1.6.2006

Highlights

1. As per new proposed provision, the Central Government is empowered to specify class of persons who may be compulsorily required to apply for the permanent account number. Such class of persons will have to apply to the Assessing Officer for allotment of PAN.

2. The Assessing Officer may also allot on his own, PAN, having regard to the nature of transactions as may be specified by the rules to be framed by CBDT.

Comments

1. The provisions of allotment of PAN without application enables the department to bring the persons within

the tax net even if he has not made any application in this regard.

2. The proposals is introduced to enhance the tax payer base.

Sr. No.	Subject	
A23	Tax return preparers	
	Introduced	
Sec.	+/-	w.e.f.
139B	+	1.6.2006

Highlights

1. It is proposed to facilitate specified class of people to furnish their returns through authorized tax return preparers.

2. The scope of the work of tax return preparers, the rules and regulations will be notified.

Comments

This is another attempt of the department to facilitate bulk filling of the return. Let us hope the same proves successful this time.

Sr. No.	Subject	
A24	Credit of tax	
	Amended	
Sec.	+/-	w.e.f.
140A/ 234A-B-C	+	A.Y. 07-08

Highlights

1. Presently, in absence of the specific provisions, the Assessing officers grant the MAT credit at the final stage i.e. after working the interest liability or on the date of passing the assessment order. As a result, there is huge interest liability created u/s. 234B

2. To overcome the said lacuna, it is proposed that the self assessment tax is now to be calculated after reducing the MAT credit, tax paid as per s. 90A, 91, etc.

3. Similar deductions are also made available while computing interest u/s. 234A/B/C.

Comments

1. The deduction of MAT credit is allowed in accordance with the judicial pronouncements in the case of Synthetic Industrial Chemicals [90 ITD 851 (Cochin)] and Philips India Ltd. [92 ITD 441 (Chd.)].

2. Henceforth, the assessee will also be liable to interest u/s. 234A/B/C on the reduced amount after allowing the tax paid in foreign countries, MAT credits, etc.

Sr. No.	Subject	
A25	Time to issue notice	
	Introduced	
Sec.	+/-	w.e.f.
142/143	-	--

Highlights

1. At present, no notice u/s. 142(1) can be issued after the end of relevant assessment year.

2. The proposed amendment States that the Assessing Officer is empowered to issue notice u/s. 142(1) even after the end of the assessment year. (Retrospective amendment w.e.f. 1.4.1990)

3. The Assessing Officer is also empowered to issue notice u/s. 143(2) after a period of 12 months in case of re-opened assessments u/s. 148.

Comments

4. The above amendments have been brought to overcome the decisions of Special bench of Tribunals.

5. In the case before Special bench in the case of Motorola 95 ITD 269 (Del), it was held that the Assessing Officer is not entitled to issue notice u/s. 142(1) after the end of assessment year and hence the assessments

carried out after the said period are invalid. The proposed amendment states that the Assessing Officer is empowered to issue notice even after end of the assessment year is valid. This amendment is brought to safe guard the past assessments and to avoid them being quashed merely on such procedural defaults of the Assessing Officer.

6. Similarly, Delhi Special Bench in the case of Raj Kumar Chawla has held that the notice u/s. 143(2) is required to be issued even in respect of the assessments carried out by issue of notice u/s. 148. The proposed amendment overrules the said decisions by holding that notice issued after the end of 12 months is valid notice.

Sr. No.	Subject	
A26	Assessment-time limit	
	Introduced	
Sec.	+/-	w.e.f.
153	-	A.Y. 04-05

Highlights

- Under the existing provisions, assessment order is to be passed within a period of 2 years from the end of the assessment year. Thus, the assessment order would get time barred in the month of March.
- It is now proposed that the assessment should be completed with 21 months.

Comments

- Presently, since the assessments are completed in the month of March, the recovery of tax, pursuant to such assessment order, normally spill over to next financial year.
- In order to ensure recovery of the tax demand arising out of the assessment order in the same financial year, the amendment has sought to

reduce the time limit for completion of assessment and reassessments under Income Tax Act and Wealth Tax Act to 21 months instead of 2 years.

3. On similar lines, time limits for completion of assessment proceedings set aside by appellate authorities and those pursuant to search actions are also reduced by 3 months.

Sr. No.	Subject	
A27	TDS default-interest	
	Introduced	
Sec.	+/-	w.e.f.
201(1A)	-	1.6.2006

Highlights

- As per the existing law, if an assessee does not deduct the tax, or after deducting the same fails to deposit, he is liable to pay simple interest at 12% p.a. on the amount of TDS / TCS, from the date on which such tax is deductible to the date on which such tax is actually paid.
- However, so far there was no stipulation for payment of such interest.
- To curb the said lacuna, it is proposed that such interest has to be paid before furnishing the quarterly statement of TDS / TCS.
- Failure to make such payment will make the person as assessee in default and consequent actions may be taken against him.

Comments

The amendment is proposed in order to ensure the timely payment of interest failure of which could result in penalty proceedings.

Sr. No.	Subject	
A28	TDS-Penalties	
	Introduced	
Sec.	+/-	w.e.f.
Several	-	A.Y. 07-08

Highlights

1. Penalty on failure to collect tax
(S. 271CA w.e.f. A.Y. 07-05)

It is proposed to levy of penalties for default in relation to collection of tax at sources. Inter alia, if a person who is liable to collect the tax, fails to collect the whole or any part thereof, then such person shall be liable to pay, by way of penalty, a sum equal to the amount of such tax.

2. Failure to quote correct TAN:
(S. 272BB (1A w.e.f. 1.6.2006)

Under the existing provisions, if an assessee who is liable to deduct or collect tax at source failed to obtain the TDS/TCS account number, he is liable for penalty of Rs. 10,000/-. It is proposed that failure to quote correct TDS/TCS account number in challans, certificates, etc. would also render the assessee liable to penalty of Rs. 10,000/-.

Comments

The provisions of penalty are introduced to enable effective and conscious compliance of the provisions.

B. SECURITIES TRANSACTION TAX

Sr. No.	Subject	
B1	Securities Transactions Tax	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
98	-	01.06.2006

Highlights:

1. Sec 98 thereof has been amended by Sec 124 of Finance Bill, 2005 to increase the rates.

Comments:

It was anticipated that once the market accepts the tax, the rate will go up.

Delivery Based Transactions - payable by buyer and seller		
2	0.2%	0.025%
Non-delivery Based Transactions - payable by seller		
3	0.0133%	0.017%
Derivatives-Options & Futures - Payable by Seller		
4	0.2%	0.25%
Units in Equity Oriented Fund - Payable by Seller		

Sr.	From	To
1	0.1%	0.125%

C. SERVICE TAX

Sr. No.	Particulars
C1	Act
C2	Rules
C3	Items Covered
C4	Exemption
C5	Rate
C6	Other Changes

Sr. No.	Subject	
C1	Service Tax - Act	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
As under	+/-	As Under

Highlights:

Finance Act, 1994 is being amended.

1. **Section 65** clarify that taxable services includes any service provided or to be provided by any unincorporated association or body or persons to its member for valuable consideration.
2. **Section 66A** provide for levy service tax under reverse charge method on taxable service provided from outside India to recipient in India
3. **Section 67** provide for determination of value of service tax as under
 - a. in case of provision of service is for consideration of money then taxable value will be gross amount charged
 - b. in case of provision of service for not

wholly or partly consist of money, than taxable value will be such an amount in money in addition of service tax charged, is equivalent to the consideration

c. in case where the provision for service is for unascertained consideration, than taxable amount will be determined in prescribed manner

4. **Section 73(1A)** has been inserted. It Provide for conclusion of adjudication proceeding in respect of any person to whom a notice is served under the u/s 73(1) and who has voluntarily deposited the service tax demanded in full and the interest payable thereon and penalty equal to 20% specified in notice or the service tax so accepted.

5. **Section 73A** : It has been inserted to provide for deposits of excess amount collected to the credit of the central government. It also provide for issue of show cause notice in case of non payment of service tax. It also provide that the amount paid shall be adjusted against the service tax payable by person on assessment or any other proceeding and any surplus amount left after the adjustment shall either transferred to Consumer Welfare Fund or refunded to person who has born the incidence of such amount.

6. **Section 73B** : It provide for where any amount has been collected in excess of determined/paid, than

such person is liable to pay interest on whole amount including the amount already paid at such rate not below the 10% pa and not exceeding 24% pa on such amount. However no such interest is payable where amount payable is voluntarily paid in full, without reserving any right to appeal against the order under which liability arisen with in 45 days from date of issue of order.

7. **Section 73C:** Its provide for provisional attachment of any property by central excise officer during the pendency of proceedings u/s 73 or 73A. Every such provisional attachment shall ceases to have effect after expiry of 6 months from the date of the order. It may extend to 2 year.

8. **Section 73D :** Its provides for publishing the name of any person and particulars of any proceeding in relation to such person, in public interest after the expiry of time for presenting the appeal u/e 85/86.

9 . **Section 76** It provides that failure to pay service tax by due date will attract penalty at the rate of Rs.200 for every day of failure or at the rate of 2% of the tax per month, whichever is higher..

Comments :

9. **Section 83** Reference to section 11 and 11D of CEA, 1944 in omitted. New section 83 provide for recovery of any amount due to the central government by different method.

10. **Section 94 :** It is amended to empower the Central government to make rule for i) Valuation (ii) Provisional attachment of property (iii) Publication of the name of nay person with relation to any

proceedings (iv) Recovery of any amount due to the governments

11. **Section 87 :** It provides that central government recover any amount due to him any of the following manner

- a) It may deduct or require any other officer to deduct the so payable from any money owing to such person which under the control of excise/custom officer,
- b) It may issue the notice to any person from whom money is due to such person to pat to the central government with in time specified in notice
- c) It may distains any property belonging to such person until amount is paid or it may sold the property for recovery of amount.
- d) It may get certificate sign by such person and send it to the collector of the district in which such person owns any property /resided/carry on business

12. **Section 96C:** it is being amended to give power to authority for Advance Rulings in respect of determination of the liability to pay service tax.

The reference to "**commercial concern**" in relation to following services, are being substitute with "**Person**".

- a. Advertising agency Services
- b. Transport of goods by air services
- c. Banking and other financial services
- d. Courier services
- e. Credit rating services
- f. Dry cleaning services
- g. Transports of goods by road services
- h. Manpower recruitment or supply services
- i. Market research services

- j. Photography services
- k. Programmed production for TV or radio services
- l. Sound recording and ancillary services
- m. Convention services
- n. On-line information and database access or retrieval services
- o. Business auxiliary services
- p. Commercial or industrial construction services

Comments :

1. Clubs or association are treated as a Person separate and different from its members for the purpose of levy of service tax.
2. At present, only rule provide for the taxing services provided by non resident in hand of recipient. Now it is brought it into act itself
3. Section 73 provides wide power in hand of service tax authority to attach any property even during the pendency of proceeding
4. At present penalty has been levied only on per day basis , now it is proposed to link with the service tax amount and higher of the two shall be payable . In other words there will be now defaulter will have double burden by way of interest as well as penalty.
5. As present, service provided without consideration is not liable to service tax. After the proposed amendment free services will also be liable to service tax .Barter of services/services render at concession rate may also come under tax net..
6. Presently service provided by Commercial concern is taxable. As result an individual rendering services not as a commercial

organization was not liable to service tax .Now individual rendering taxable services shall also became liable to service tax

7. As result, director receiving commission from the company may also be liable to service tax

Sr. No.	Subject	
C2	Service Tax – Rules	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
As under	+/-	1.03.06

Highlights:

2. **Rule 4(5A)** require that where there is any change in any information or details furnished by an assesses in form ST -1 at time of obtaining registration or he intend to furnish any additional information or details , such information or changes shall be intimated , in writing , to central excise officer within 30 days of such change.

3. **Rule 4(8)** provide that on receipt the application for the cancellation certificate ,the central excise officer shall endure that the assesses has paid all monies due to central government under the Act, rule, and notification thereupon cancel the registration certificate

4. **Rule 5(3)** make it obligatory to preserve the records related to service tax for the period of at least 5 years immediately from the financial year to which said record pertain.

5. **Rule 5(4)** make it obligatory to make available the record for inspection and examination to central excise officer.

Sr. No.	Subject	
C3	Service Tax – Items Covered	
	<i>Amended</i>	
Sec. As Under	+ / - -	w.e.f. notified

Highlights:

Service Tax levied extends to 15 new services: -

- a. Service provided by a Registrar to an Issue;
- b. Service provided by a Share Transfer Agent;
- c. Automated Teller Machine operations, maintenance or management;
- d. Service provided by a recovery agent;
- e. Sale of space or time for advertisement, other than in print media;
- f. Sponsorship services provided to any body corporate of firm, other than sponsorship of sports events;
- g. Transport of passengers embarking on international journey by air, other than economy class passengers;
- h. Transport of goods in containers by rail by any person, other than Government railway;
- i. Business support services;
- j. Auctioneers' service, other than auction of property under directions or orders of a court of law or auction by the Central Government;
- k. Public relations service;
- l. Ship management service;
- m. Internet telephony service;
- n. Transport of persons of cruise ship;
- o. Credit card, debit card, charge card or other payment card related services.

3. Scope of service tax

expanded with respect to following existing services: -

- a. **Banking and Other financial Services:** to include transfer of money through different mode such as telegraphic transfer, mail, electronic transfer by any person, service provider as banker to an issue
- b. **Management Consultancy Services:** to include management in different area such as finance, human resource, marketing, production logistics, Information technology resources etc
- c. **Life Insurance services/General Insurance services/Insurance auxiliary services/** : to include service provided to policy holder or any person by any insurer or re-insurer
- d. **Repairs and maintenance services:** renamed as management, maintenance or repairs and to include management of movable property
- e. **Consultancy engineering services:** to include engineering consultancy services provided by any firm or body corporate
- f. **Business auxiliary services:** to include computerized data processing
- g. **Erection, commissioning or installation structure:** to Include erection and installation of structures whether pre-fabricated or not.

Technical testing and analysis services: its include clinical testing of drugs and formulation but excludes testing or analysis for the purpose of determination of

nature of diseased condition,
identification of diseases ,
prevention of diseases

Sr. No.	Subject	
C4	Service Tax – Exemption/Abatement	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
As under	+	01/03/2006

Highlights:

1. **Notification No.4/2006** : In case of financial leasing services including leasing and hire purchase 90% abatement is allowed on interest

2. **Notification No.6/2006** : Exemption for service tax has been provided to testing and other services provided in relation to water quality testing by government owned state and district level laboratories

3. **Notification No.7/2006** : Service provided by reserve bank of India has been exempted form service tax,

Sr. No.	Subject	
C5	Service Tax – Rate	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
As under	-	Enhancement of finance bill

Highlights:

The rate of service tax is being increase from 10% to 12% .The education cess of 2 % remain the same

Sr. No.	Subject	
C6	Service Tax – Other Changes	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
As under	-	A.Y. 06-07

Highlights:

Notification 1/2006 : It provides exemption to certain percentage of the value of the service. The tables given below give percentage of the value of the services which taxable.

Description of taxable service	%
Mandep keeper	60%
Tour by tour operator	40%
Service provided in relation to tour i.e. solely arranging or booking accommodation for any person	10%
Holding of a convention, where service provided include catering service	60%
Erection, Commissioning or installation, under contract of supplying a plant and machinery or equipment	33%
Transport of goods by road in a goods carriage	25%
Commercial or industrial construction services	33%
Catering	50%
Construction of complex	33%

Comments:

1. In case of mandap keeper exemption is availed only if it is also provide catering service
2. Incase of service provide in relation to tour, exemption will not availed if bill/invoice does not include cost of accommodation
3. In case of catering, exemption allowed only if the outdoor caterer also provides the food and the invoice, bill or challans issued indicates that it is inclusive of charges for supply of food.

Following notification of service tax exemption are being withdrawn w.e.f 1/03/06.

1. Notification No.3/94: in relation to

- general insurance company
2. Notification No.59/98: in case of services provided by Chartered accountant/cost accountant/company secretary
 3. Notification No.8/2003: call centre or medical transcription centre
 4. Notification No.11/2003: Repairs and maintenance provided under maintenance contract or arrangement
 5. Notification No.16/2004: ERP software system provided by management consultant
 6. Notification No.19/2004: catering service provided on rail way train by outdoor caterer.
 7. Notification No.21/2004: catering services provided within premises of an academy institute or medical establishment by outdoor caterer

Comments:

1. Service of call centre and medical transcription centre also covered
2. All type of services provided by the chartered accountant/ cost accountant/ company secretary in professional capacity are covered
3. Re-insurance premium and all business for which premium booked outside the India also covered under general insurance services