



# news flash

August 2012



## Service Tax - Directors' Services

### **New System of Service Tax**

The Finance Act, 2012 has introduced the taxation of services based on the negative list which is a paradigm shift from the earlier system where only the specified services were subject to tax. Therefore, now all services except those specifically set out in the negative list will be subject to taxation.

Though, the new system of taxation of services based on the negative list is welcome, it broadens the service tax base, rendering under its ambit, services which were earlier not taxable and also creates uncertainty on whether some activities can actually be called a 'service'. One such activity being an executive director of a company.

### **Notifications – Directors' Services**

The Ministry of Finance by its notification no. 30/2012 dated 20 June 2012 notified certain services as taxable service and the extent of service tax payable thereon by the person liable to pay service tax. However, the said notification did not state the services provided or agreed to be provided by a director of a company to that company as a taxable service. Subsequently, the Ministry of Finance issued notification no. 45/2012 dated 7 August 2012 amending the 20 June 2012 notification, thereby making the services provided or agreed to be provided by a director of a company to that company, taxable.

Further, vide notification no. 46/2012 also dated 7 August 2012, the Ministry of Finance has clarified that the service tax will be payable by the company under the reverse charge mechanism in relation to the service provided or agreed to be provided by a director of such company to that company. Therefore, the liability to pay service tax will be on the service recipient i.e. the company.

### **Whole-time/ Executive Directors**

The Notification does not address the issue when a director is also an employee of the company. The service tax regime is clear that a service provided by an employee to the employer in the course of or in relation to his employment is excluded from the definition of service and is therefore not taxable. Accordingly, a view can be taken that the services provided by a whole-time or executive director especially if he has entered into an employment agreement being in the nature of employment will not be subject to service tax.

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## Impact of the Notifications

Pursuant to the notifications the amount of fees, commission, etc., paid to independent directors and non-executive directors by company will be subject to service tax. The liability to pay service tax in such a case will be on the service recipient, i.e. the company.

## Disclaimer

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