

Budget 2012: Why has FM been so unkind to CAs? – Apr 10, 2012

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By S Sivakumar, CA

THE Board has come out with a controversial **Circular bearing no. 154/5/2012 dated March 28, 2012**, 'clarifying' certain issues related to Point of Taxation Rules, arising out of the increase in the service tax rate to 12.36% effective from April 1, 2012.

Here is an extract of the relevant paras from this Circular:

Quote:

Representations have been received, in respect of the specified eight services, requesting clarification on determination of point of taxation in respect of invoices issued on or before 31st March 2012 where the payment has not been received before 1st April 2012.

The issue has been examined. For invoices issued on or before 31st March 2012, the point of taxation shall continue to be governed by the Rule 7 as it stands till the said date. Thus in respect of invoices issued on or before 31st March 2012 the point of taxation shall be the date of payment.

Unquote:

The sum and substance of this Circular is that, Chartered Accountants (like me) are required to pay service tax, at the enhanced rate of 12.36% even when we have raised invoices on or before March 31, 2012 at the then existing rate of 10.3%. This view is sought to be justified on the basis of Rule 7 of the Point of Taxation Rules, 2011, which states, inter alia, that the point of taxation in respect of the specified service providers like CAs, architects, etc. would be the date of receipt.

However, the Board would not seem to have appreciated the fact that, the purpose of Rule 7 was to provide a relief to the service provider in as much as, service providers like CAs were required to discharge their service tax liability only on receipt of their fees. Now, the same Rule 7 is being used to create a huge problem for the CA community.

Most of us, CAs, raise invoices for our audit and other services for the year, on or before March 31, 2012. This is a rule that is followed almost without any exception, as our clients would insist on having our invoices on or before March 31, 2012, in order to ensure that, the invoices are booked and the requisite tax deduction is also effected. Having booked our invoices, there is no way that, the clients would agree to pay an additional 2.06% service tax, when the payments are released.

In effect, this would mean that, CAs would have to shell out the additional service tax liability of 2.06% from their pockets.

This would not negatively affect the other professionals like Company Secretaries, Architects, Interior Decorators, etc., as much as it does to the CAs, as the concept of raising annual bills based on yearly services etc. is followed largely, only by the CA fraternity. In contrast, most other professionals follow the billing methodology based on completing of individual assignments or activities and to this extent, are much less affected.

Can the CA fraternity appeal to the Hon'ble CBEC, thro' TIOL, to allow CAs to pay service tax @ 10.3% so long, as the invoices have been raised on or before March 31, 2012, given the fact that, unlike the other

service providers who are allowed to pay service tax on receipt basis, CAs are required to raise invoices for annual services on or before March 31, 2012?

Before parting ...

The additional service tax burden of 2.06% on the annual audit fee, etc. could be a huge problem for the CA fraternity, as most clients might not want to share this burden, as stated above, especially as invoices would already have been issued by the CAs as of March 31, 2012.

In terms of another obnoxious Budget proposal, CAs, along with the other service providers like Company Secretaries, Architects, etc., would have to necessarily shift to the accrual basis, if their turnover was more than Rs 50 lakhs during the previous year. This would put the large CA firms in trouble. The CA profession is beset with a lot of bad debts, in terms of non-payment of fees by our clients. The benefit of working under the current system of paying service tax on the basis of receipts would no longer work for the large CA firms. A lot of confusion in the maintenance of the books etc. is also to be expected, as, under the income tax law, these large CA firms would still go under the cash basis.

I can't help wondering if, CAs who are also lawyers, who handle litigation related matters before the Department, Tribunals, etc. would be better off, shifting to the legal profession. In terms of the Budget proposal, Lawyers would not be required to charge service tax now, with the service recipients being required to pay service tax on the reverse charge mechanism. As CAs, we do not have this benefit, despite that, we might be handling litigation before the Tribunals.

I don't know, if over a period of time, some clients would find it economically beneficial to hire Advocates rather than CAs, to handle litigation matters, given the service tax related issues? Are CAs who handle tax litigation being given a step-motherly treatment vis-à-vis their Advocate Brethren?

Yet another non-service tax proposal which would hit CAs really hard is the proposal to increase the compulsory tax audit coverage to Rs 100 lakhs, from the current limit of Rs 40 lakhs, under Section 44AD of the Income tax Act, 1961. The limit for the compulsory tax audit of professionals has also been increased from Rs 15 lakhs to Rs 25 lakhs. While this move would be good from the tax payers' point of view, the small time CAs would suddenly find their professional income coming down drastically, as the tax audit is a major area of practice for the small time CAs.

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