

**PRESS INFORMATION BUREAU
GOVERNMENT OF INDIA**

**CLARIFICATIONS REGARDING SERVICES PROVIDED BY WAY OF ASSIGNMENT OF
SPECTRUM**

New Delhi, April 14, 2016
Chaitra 25, 1937

Any service provided by the Government or a local authority to a business entity has been made taxable with effect from 1st April 2016. Prior to this, only support services provided by Government to business entities were taxable. In order to clarify doubts raised by members of Industry and Trade Associations, a detailed Circular No. 192/02/2016-Service Tax dated 13 April 2016 has been issued. The Circular addressed to the field formations of the Central Board of Excise and Customs (CBEC) explains in a Q&A form the various provisions of the notifications issued in this regard. The Circular can be accessed at <http://www.cbec.gov.in/resources/htdocs-servicetax/st-circulars/st-circulars-2016/st-circ-192-2016.pdf>

One of the issues raised by the telecom service providers (TSP) was whether Service Tax is payable, on instalments due after 1.4.2016, for spectrum assigned/auctioned to them in the past. It has been clarified that service tax payable, whether in full upfront or in instalments, for assignment of right to use such spectrum has been exempted from service tax. Furthermore, services provided by Government by way of allowing a TSP to operate as a telecom service provider or use radiofrequency spectrum during the financial year 2015-16 on payment of licence fee or spectrum user charges, has been specifically exempted from service tax. By these measures, Government has ensured that there is no new tax liability on the TSPs in respect of the services provided in the past.

Under the existing auction system of assigning spectrum, Government has provided the option of either making full upfront payment, or 25%/33% part upfront payment initially and thereafter making payment in equal number of instalments, under the deferred payment option. A concern of the TSPs related to this was that there was a lack of

clarity as to when the liability to pay service tax in respect of the service by way of assignment of spectrum would arise, in cases where the assignee chooses to make payment of the auction price in instalments under the deferred payment option over a period of 10 years- at the time when a letter is issued by the government communicating the full auction price payable or when the part upfront amount and the instalments are required to be paid as per the deferred payment option plan. There were apprehensions that liability to pay the entire service tax payable on the full auction price at the time of assignment would severely jeopardise their finances. This has been addressed by the Government by making amendments in the Point of Taxation Rules so as to prescribe that service tax would be payable when the payments, whether full upfront or part under the deferred payment option, become due or are made, whichever is earlier. As a result, if a TSP opts for the deferred payment option, then the liability to pay service tax arises on the date on which the part payment or instalments become due as specified in any invoice, bill, challan or any other document.

Finally, the issue of distributing the input tax credit of service tax paid in respect of the services of the assignment of spectrum over the period of assignment, that is 20 years, was another big concern of the TSPs. This has been addressed by the Government by effecting changes in the Cenvat Credit Rules and allowing the credit of service tax paid on one time charges for assignment, i.e. the auction price, to be taken evenly over a period of 3 years. Moreover, the credit of Service Tax paid on spectrum user charges, license fee, transfer fee charged by the Government on trading of spectrum would be fully available in the year in which the same is paid. The Circular dated 13 April 2016 shows by way of illustrations how input tax credits can be taken.

The above principles laid down for Assignment of spectrum would also apply in case of assignment of any other natural resource by Government or a local authority by auction or otherwise.
