

## Summary of Notifications, Circulars from 16<sup>th</sup>September 2014 to 15<sup>th</sup>October 2014

### A. EXCISE

#### 1. Guidelines regarding Structure, Administrative set up and Functions of Audit Commissionerates

Central Board of Excise & Customs (CBEC) vide *Circular No. 985/09/2014-CX, Dated: September 22, 2014* has issued guidelines to be followed while finalizing the location and organizational structure of Audit Commissionerate and its subordinate offices, subject to deviations needed to cater to the local requirements. Although the reorganization of formations under CBEC will take effect from 15th October 2014, to avoid inconvenience to the existing Central Excise and Service Tax assesseees, they will continue to be mapped in ACES to the existing location codes (Commissionerate, Division and Range). New location codes would be informed to the assesseees via email after the migration to new formations. The same can also be ascertained through "know your location code" on ACES website and filling of the registration number.

The detailed guidelines can be viewed at [www.cbec.gov.in](http://www.cbec.gov.in)

[*Circular No. 985/09/2014-CX, Dated: September 22, 2014*]

#### 2. CBEC clarifies Central Excise Audit is statutorily effective

In case of *M/s Travelite (India) [2014-TIOL-1304-HC-DEL-ST]*, Delhi High Court quashed the audit under Rule 5A(2) of Service Tax Rules and CBEC Circular dated January 1, 2008 as ultra vires due to lack of statutory backing under Finance Act, 1994. This raised the doubts regarding powers of a Central Excise officer to conduct an audit. It has been clarified by CBEC vide *Circular No. 986/10/2014-CX., Dated: October 9, 2014* that the aforesaid judgment did not deal with the issue of audit in Central Excise and there is sufficient statutory backing vide Section 37(2)(x) and rule 22 of the Central Excise Rules, 2002 for an audit to be conducted by the Central Excise Officers.

[*Circular No. 986/10/2014-CX., Dated: October 9, 2014*]

### B. SERVICE TAX

#### 1. Levy of service tax on activities involved in relation to inward remittances from abroad to beneficiaries in India through Money Transfer Service Operators (MTSO)

Circular No.180/06/2014-ST, Dated: October 14, 2014supersedes Circular No. 163/14/2012-ST, dated 10.7.2012 and clarifies service tax applicability for the scenario where the Indian bank or financial institution provides services on principal to principal basis to the foreign bank/entity, on its own account, and thus the service is covered by the general rule, i.e. rule 3 of the Place of Provision of Service Rules, 2012.

The entire sequence of transactions in remittances of money from overseas through the MTSO route is as under:

- Step 1: Remitter located outside India (say 'A') approaches a Money Transfer Service Operator (MTSO)/bank (say B) located outside India for remitting the money to a beneficiary in India; 'B' charges a fee from 'A'.
- Step 2:'B' avails the services of an Indian entity (agent) (say 'C') for delivery of money to the ultimate recipient of money in India (say 'E'); 'C' is paid a commission/fee by 'B'.
- Step 3:'C' may avail service of a sub-agent (D). 'D' charges fee/commission from 'C'.
- Step 4:'C' or 'D', as the case may be, delivers the money to 'E' and may charge a fee from 'E'.

Following has been clarified in the circular:

S. No.	Issues	Clarification
1.	Whether service tax is payable on remittance received in India from abroad?	No service tax is payable <i>per se</i> on the amount of foreign currency remitted to India from overseas. As the remittance comprises money, it does not in itself constitute any service in terms of the definition of 'service' as contained in clause (44) of section 65B of the Finance Act 1994.
2.	Whether the service of an agent or the representation service provided by an Indian entity/ bank to a foreign money transfer service operator (MTSO) in relation to money transfer falls in the category of intermediary service?	Yes. The Indian bank or other entity acting as an agent to MTSO in relation to money transfer, facilitates in the delivery of the remittance to the beneficiary in India. In performing this service, the Indian Bank/entity facilitates the provision of Money transfer Service by the MTSO to a beneficiary in India. For their service, agent receives commission or fee. Hence, the agent falls in the category of intermediary as

		defined in rule 2(f) of the Place of Provision of Service Rules, 2012.
3.	Whether service tax is leviable on the service provided, by an intermediary/agent located in India (in taxable territory) to MTSOs located outside India?	<p>Service provided by an intermediary is covered by rule 9 (c) of the Place of Provision of Service Rules, 2012. As per this rule, the place of provision of service is the location of service provider. Hence, service provided by an agent, located in India (in taxable territory), to MTSO is liable to service tax.</p> <p>The value of intermediary service provided by the agent to MTSO is the commission or fee or any similar amount, by whatever name called, received by it from MTSO and service tax is payable on such commission or fee.</p>
4.	Whether service tax would apply on the amount charged separately, if any, by the Indian bank/entity/agent/sub-agent from the person who receives remittance in the taxable territory, for the service provided by such Indian bank/entity/agent/sub-agent	Yes. As the service is provided by Indian bank/entity/agent/sub-agent to a person located in taxable territory, the Place of Provision is in the taxable territory. Therefore, service tax is payable on amount charged separately, if any.
5.	Whether service tax would apply on the services provided by way of currency conversion by a bank /entity located in India (in the taxable territory) to the recipient of remittance in India?	Any activity of money changing comprises an independent taxable activity. Therefore, service tax applies on currency conversion in such cases in terms of the Service Tax (Determination of Value) Rules. Service provider has an option to pay service tax at prescribed rates in terms of Rule 6(7B) of the Service Tax Rules 1994.
6.	Whether services provided by sub-agents to such Indian Bank/entity located in the taxable territory in relation to money transfer is leviable to service tax?	Sub-agents also fall in the category of intermediary. Therefore, service tax is payable on commission received by sub-agents from Indian bank/entity.

[Circular No.180/06/2014-ST, Dated: October 14, 2014]

## **C. CUSTOM**

### **1. Hosur and Modinagar notified as Inland Container Depots**

Central Board of Excise & Customs has notified Modinagar (Uttar Pradesh) & Hosur (Tamil Nadu) as Inland Container Depots for unloading of imported goods and loading of export goods.

*[Notification No. 86/2014-Cus(N.T.), Dated: September 18, 2014 & Notification No. 88/2014-CUS.(N.T.), Dated: September 26, 2014]*