

# What's New

## News Flash



August 2016

### ***CBEC clarifies applicability of service tax on freight forwarders on transportation of goods***

The Central Board of Excise and Customs has recently issued a circular<sup>1</sup> pertaining to applicability of service tax on freight forwarders on transportation of goods from India. The circular clarifies the distinction between 'principal to principal' and 'principal to agent' contracts, and the consequent taxability of these contracts. The summary of the clarification is as under:

A freight forwarder acts as an 'agent' of the airline/ shipping line in a scenario where it does not bear any actual liability towards transportation; any legal proceedings will have to be instituted by the shippers against the airline/ shipping line. Where a freight forwarder acts as an agent of the airline/ shipping line (i.e. where a Master Airway Bill/ Bill of Lading is issued by the airline/ shipping line in the name of the shipper), the freight forwarder will qualify as an '*intermediary*' as defined under rule 2(f) of the Place of Provision of Services Rules. Accordingly, the services of the freight forwarder would be subject to service tax in India. However, the services provided by airline/ shipping line would not be subject to service tax in India if the destination is outside India, as it would be treated as provided outside India as per rule 10 of the Place of Provision of Services Rules.

With respect to contracts where the freight forwarder acts as a 'principal' to both, the airline/ shipping line and the shipper, it is the freight forwarder who negotiates the rates with the shippers. Here, all the risk and liability for the transportation and legal proceedings that may ensue are the responsibility of the freight forwarder. In such a scenario, the freight forwarder will be treated as having provided services of transport of goods by air/ sea; such services will not be subject to service tax if the destination is outside India, as it would be treated as being provided outside India under rule 10 of the Place of Provision of Services Rules.

#### **PwC Comments:**

This clarification has been provided in respect of outbound freight. However, similar principles will apply for inbound freight as well. This clarification resolves a long standing litigation wherein the service tax authorities sought to levy service tax on the spread earned by freight forwarders acting on a principal to principal basis with airlines/ shipping line and the shippers.

<sup>1</sup> Circular no. 1977/2016 - service tax dated 12 August 2016

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