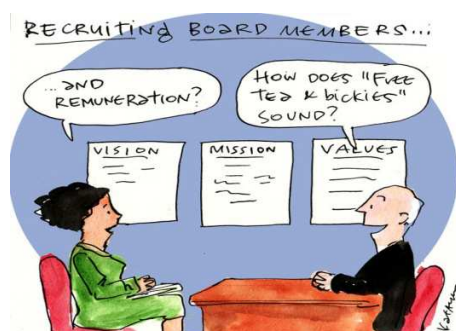


SERVICE TAX ON REMUNERATION TO DIRECTORS

Service tax is payable on services provided by directors to a company w.e.f. 1-7-2012. Reverse charge provisions have been made applicable to the remuneration paid by a company to its directors.

1. Taxability

Various monetary benefits received by Directors are becoming a contentious issue under service tax provisions. As per the definition of "Service", the services provided by an employee to the employer in the course of or in relation to his employment would not attract Service Tax.



Service tax is payable on services provided by non-executive, nominee and independent directors to a company w.e.f. 1-7-2012. Service tax is not payable in the case of Managing Director or whole-time director or executive director, if the director is in employment of the company.

Another important aspect that needs to be understood is that for being considered as an employee, a director need not work for whole day, even part time employees are employees and therefore on such consideration received for part time work, the reverse charge mechanism would not be applicable.

It has been a practice in organizations to book expenses on accrual basis, even when the same are not paid for a long time. This has no major issue under the Income Tax Act, except the TDS applicability. However, if such expense relates to services of a director, then the company should keep in mind the aspect of point of taxation. Accordingly, if payment is not made to directors within 6 months, then service tax becomes payable immediately as per the Rule 7 of the Point of Taxation Rules, 2011.

2. How to value?



Service tax should be paid @ 12.36% on gross value of services not by making back calculations.

Service tax will be payable on sitting fees paid to directors for attending meetings of the Board and Committees of the Board, travelling expenses and incidental expenses for attending meetings of the Board and their Committees, and on commission or other remuneration paid, if any.

3. Reverse Charge Mechanism



REVERSE CHARGE IN SERVICE TAX APPLICABLE WEF 01.07.12

As per Rule 2(1)(d)(EE) of the Service Tax Rules inserted w.e.f. 7-8-2012 and Notification No. 30/2012-ST, dated 20-6-2012 amended w.e.f. 7-8-2012, a company receiving services of its directors is liable to pay service tax under reverse charge mechanism.

Just Check if you have queries on the following points;

The provisions do not distinguish between whole-time director or part time director. Then why reverse charge mechanism would not apply in case of a whole-time director?

Companies pay remuneration to Managing Director, whole-time director and executive director by way of commission, stock options, performance related bonus, etc., and not through monthly salary. Whether service tax be payable in such cases?

Would service tax be payable if stock options are offered to non-executives and non-whole-time directors?

How such stock options should be valued?

In addition to attending meetings of Board and Committees of Board, sometimes directors are required to travel for attending meetings, sales conferences, etc., in connection with business of the company. Would service tax be payable on such expenses?

Total value of our taxable services including remuneration paid to non-executive directors is less than Rs. 10 lakhs per annum. Is the company liable to pay service tax?

Would the company be liable to pay service tax under reverse charge mechanism when the Director is acting as management consultant and raising separate invoice for the same?

The company has sufficient Cenvat credit available. Can the service tax payable on director's remuneration be paid through Cenvat credit?

Can a company take Cenvat credit of service tax paid under reverse charge?

What would be the eligible document for availing of Cenvat credit?