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E-BOOK

On

Swachh Bharat Cess
(SBC)

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Sd/-

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1. Introduction

- 1.1 In the Budget 2015, the Central Government introduced a new Cess to be called “**Swachh Bharat Cess**”. The statutory authority for new levy is contained in Section 119 (Chapter VI) of the Finance Act, 2015. It was imposed for the purpose of financing and promoting Swachh Bharat Initiatives or for any purpose relating thereto.
- 1.2 The **Section 119 of the Finance Act, 2015** read as under:-
- (1) *This Chapter shall come into force on such date as the Central Government) by notification in the Official Gazette, appoint.*
 - (2) *There shall be levied and collected in accordance with the provisions of this Chapter, a cess to be called the **Swachh Bharat Cess**, as service tax on all or any of the taxable services at the rate of two per cent. on the value of such services for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto.*
 - (3) *The Swachh Bharat Cess leviable under sub-section (2) shall be in addition to any cess or service tax leviable on such taxable services under Chapter V of the Finance Act, 1994, or under any other law for the time being in force.*
 - (4) *The proceeds of the Swachh Bharat Cess levied under sub-section (2) shall first be credited to the Consolidated Fund of India and the Central Government may, after due appropriation made by Parliament by law in this behalf, utilise such sums of money of the Swachh Bharat Cess for such purposes specified in sub-section (2), as it may consider necessary.*
 - (5) *The provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder, including those relating to refunds and exemptions from tax, interest and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Swachh Bharat Cess on taxable services, as they apply in relation to the levy and collection of tax on such taxable services under Chapter V of the Finance Act, 1994 or the rules made thereunder, as the case may be.*
- 1.3 *Vide* notification No.21/2015-ST, dated 06.11.2015, the Government appointed 15.11.2015 as a date from which the provisions of Chapter VI of the Finance Act, 2015 would come into effect. In other words, the levy of SBC became effective from 15.11.2015.
- 1.4 As per the provisions of the Section 119 of the Finance Act, 2015, the Government has prescribed a rate of SBC @ 2% on the value of all or any of the taxable services. However, *vide* notification No. 22/2015-ST, dated 06.11.2015, the Government prescribed effective rate of SBC at 0.5% of the value of all or any of the taxable services.

Swachh Bharat Cess (SBC)

- 1.5** By exempting SBC in excess of 0.5%, the effective rate of the SBC has been fixed at 0.5% and it is to be collected on the same value of taxable service which is taken for calculation of applicable service tax. In other words, with effect from 15.11.2015, the effective rate of Tax on Services became 14.5% (i.e. 14% Service Tax + 0.5% SBC). With imposition of KrishiKalyan Cess with effect from 1.6.2016, the effective rate of tax on Services now is 15% (i.e. 14% Service Tax + 0.5% SBC + 0.5% KKC)
- 1.6** Since SBC is a new levy imposed under the Act (i.e. Chapter VI of Finance Act 2015) different from the Finance Act, 1994 for service tax, SBC should be charged separately on the invoice, and should be deposited to the Government account using separate accounting code as given below:-

<i>Swachh Bharat Cess (Minor Head)</i>	<i>Tax Collection</i>	<i>Other Receipts</i>	<i>Penalties</i>	<i>Deduct Refunds</i>
0044-00-506	00441493	00441494	00441496	00441495

2. Summary of Legal Provisions at a Glance

The various legal provisions applicable to SBC are summarized in the **Table-I** given below:-

Table-I

Sr. No.	Section/Rules/Notification	Subject matter
1.	Section 119 of the Finance Act, 2015	<i>Statutory provisions for levy of Swachh Bharat Cess</i>
2.	Notification No.21/2015-ST, dated 06.11.2015	<i>It appoints 15.11.2015 as the date on which provisions of Section 119 of the Finance Act, 2015 shall come into force.</i>
3.	Notification No.22/2015-ST, dated 06.11.2015	<i>It prescribed effective rate of Swachh Bharat Cess at 0.5% of the value of all or any of the taxable services.</i>
4.	Notification No.23/2015-ST, dated 12.11.2015	<i>It specifies that Swachh Bharat Cess shall be calculated on abated value.</i>
5.	Notification No.24/2015-ST, dated 12.11.2015	<i>It provides that notification No. 30/2012-ST, dated 20.06.2012, which deals with reverse charge mechanism where service tax is to be paid by the service receiver, is also applicable to SBC.</i>
6.	Notification No.2/2016-CE (N.T) dated 03.02.2016	<i>It amends CENVAT Credit Rules, 2004 to provide that accumulated credit of CENVAT cannot be used for payment of SBC.</i>

3. *Other Important Aspects of SBC*

- 3.1 SBC is also to be paid in cases where liability of payment of service tax is on the service receiver. *Vide* notification No. 24/2015-ST, dated 12.11.2015, the Government has prescribed that the **Notification No.30/2012 - Service Tax, dated 20.06.2012 is also applicable for the purposes of SBC.**
- 3.2 There are several taxable services where optional method of payment of service tax is available in terms of Rule 6 of Service Tax Rules, 1994. These are available in respect of,-
- (i) services of booking of tickets for travel by air (Ref: Sub-Rule (7) of Rule 6)
 - (ii) life Insurance (Ref: Sub-Rule (7A) of Rule 6),
 - (iii) purchase&sale of Foreign Currency including money changing (Ref: Sub-Rule (7B) of Rule 6); and
 - (iv) distributor or selling agent of promotion, marketing organizing or in any other matter assisting in organising lottery (Ref: Sub-Rule (7C) of Rule 6).

Vide notification No. 25/2015-ST, dated 12.11.2015, the Government has amended the Service Tax Rules, 1994 and added another sub-rule (7D) to the Rule 6 of the Service Tax Rules, 1994. This sub-rule (7D) provides that where person liable to pay service tax in respect of taxable services mentioned above has opted for payment in term of aforesaid rules, then in such cases, SBC is to be calculated by way of multiplying total service tax liability by 0.5 and dividing the product by 14, during any calendar month or the quarter, as the case may be. This notification has also been made effective with effect from 15.11.2015.

- 3.3 Another important issue relating to SBC is regarding availability of CENVAT credit of SBC and also payment of SBC out of accumulated CENVAT credit. *Vide* notification No. 2/2016-CE (NT) dated 03.02.2016, the Government has amended the CENVAT Credit Rules providing that credit of any duty specified in sub-rule (1) of Rule (3) of CENVAT credit Rules cannot be utilized for the payment of SBC. Further, CENVAT credit of SBC is not available as it is not a specified duty eligible for CENVAT Credit in the CENVAT credit Rules, hence no credit can be availed of SBC.
- 3.4 Since SBC is not part of CENVAT Chain, SBC is not required to be paid where a service provider, who is engaged in providing both taxable & exempted services and has opted for not to maintain separate accounts, is required to reverse 7% of value of exempted services.

4. **FAQ Issued by CBEC to clarify the issues relating to Swachh Bharat Cess**

The CBEC published F.A.Q, to clarify or answer all probable questions relating to SBC. The **FAQ** issued by CBEC are as under:-

Q.1. What is Swachh Bharat Cess (SBC)?

Ans. It is a Cess which shall be levied and collected in accordance with the provisions of Chapter VI of the Finance Act, 2015, called Swachh Bharat Cess, as service tax on all the taxable services at the rate of 0.5% of the value of taxable service.

Q.2. What is the date of implementation of SBC?

Ans. The Central Government has appointed 15th day of November, 2015 as the date from which provisions of Swachh Bharat Cess will come into effect (notification No.21/2015-Service Tax, dated 6th November, 2015 refers).

Q.3. Whether SBC would be leviable on exempted services and services in the negative list?

Ans. Swachh Bharat Cess is not leviable on services which are fully exempt from service tax or those covered under the negative list of services.

Q.4. Why has SBC been imposed?

Ans. SBC has been imposed for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto.

Q.5. Where will the money collected under SBC go?

Ans. Proceeds of the SBC will be credited to the Consolidated Fund of India, and the Central Government may, after due appropriation made by Parliament, utilise such sums of money of the SBC for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto.

Q.6. How will the SBC be calculated?

Ans. SBC would be calculated in the same way as Service tax is calculated. Therefore, SBC would be levied on the same taxable value as service tax.

Q.7. Whether SBC would be required to be mentioned separately in invoice?

Ans. SBC would be levied, charged, collected and paid to Government independent of service tax. This needs to be charged separately on the invoice, accounted for separately in the books of account and paid separately under separate accounting code which would be notified shortly. SBC may be charged separately after service tax as a different line item in invoice. It can be accounted and treated similarly to Education cesses.

Q.8. Whether separate accounting code will be there for Swachh Bharat Cess?

Ans. Yes, for payment of Swachh Bharat Cess, a separate accounting code would be notified shortly in consultation with the Principal Chief Controller of Accounts. These are as follows:-

Swachh Bharat Cess (Minor Head)	Tax Collection	Other Receipts	Penalties	Deduct Refunds
0044-00-506	00441493	00441494	00441496	00441495

Q.9. What would be effective rate of service tax and SBC post introduction of SBC?

Ans. Effective rate of service tax plus SBC, post introduction of SBC, would be [14% + 0.5%].

Q.10. Whether SBC is a 'Cess' on tax' and we need to calculate SBC @ 0.50% on the amount of service tax like we were earlier doing for calculating Education Cess and SHE Cess?

Ans. No, SBC is not a cess on Service Tax. SBC shall be levied @ 0.5% on the value of taxable services.

Q.11. Whether SBC is levied on all or selected services?

Ans. The Central Government was empowered to impose SBC either on all or some of the taxable services. Vide notification No 22/2015-ST, dated 6-11-2015, Government has notified that SBC shall be applicable on all taxable services except services which are either fully exempt from service tax under any notification issued under section 93(1) of the Finance Act, 1994 or are otherwise not leviable to service tax under section 66B of the Finance Act, 1994.

Q.12. How will the SBC be calculated for services under reverse charge mechanism?

Ans. In case of reverse charge under section 68(2) of the Finance Act, 1994, the liability has been shifted from service provider to the service recipient. As per section 119 (5) of the Finance Act, 2015, the provisions of Chapter V of the Finance Act, 1994, and the rules made thereunder are applicable to SBC also. Thus, the reverse charge under section 68(2) of the Finance Act, 1994, is made applicable to SBC.

In this context, to clarify, Government has issued notification No. 24/2015-Service Tax dated 12th November, 2015 to provide that reverse charge under notification No.30/2012-Service Tax dated 20th June, 2012 shall be applicable for the purpose of levy of Swachh Bharat Cess mutatis mutandis.

Q.13. How will SBC be calculated for services where abatement is allowed?

Ans. *Taxable services, on which service tax is leviable on a certain percentage of value of taxable service, will attract SBC on the same percentage of value as provided in the notification No. 26/2012-Service Tax, dated 20th June, 2012. So, this notification would apply for SBC also in the same manner as it applies for service tax.*

For example, *in the case of GTA, [Service Tax + SBC]% would be (14% Service Tax + 0.5% SBC) X 30% = 4.35% (4.20%+0.15%)*

Q.14. Whether Cenvat Credit of the SBC is available?

Ans. *SBC is not integrated in the Cenvat Credit Chain. Therefore, credit of SBC cannot be availed. Further, SBC cannot be paid by utilizing credit of any other duty or tax.*

Q.15. What would be the point of taxation for Swachh Bharat Cess?

Ans. *As regards Point of Taxation, since this levy has come for the first time, all services (except those services which are in the Negative List or are wholly exempt from service tax) are being subjected to SBC for the first time. SBC, therefore, is a new levy, which was not in existence earlier. Hence, rule 5 of the Point of Taxation Rules would be applicable in this case. Therefore, in cases where payment has been received and invoice is raised before the service becomes taxable, i.e. prior to 15th November, 2015, there is no liability of Swachh Bharat Cess. In cases where payment has been received before the service became taxable and invoice is raised within 14 days, i.e. upto 29th November, 2015, even then the service tax liability does not arise. Swachh Bharat Cess will be payable on services which are provided on or after 15th Nov, 2015, invoice in respect of which is issued on or after that date and payment is also received on or after that date. Swachh Bharat Cess will also be payable where service is provided on or after 15th Nov, 2015 but payment is received prior to that date and invoice in respect of such service is not issued by 29th Nov, 2015.*

Q.16. How would the tax (Service Tax and SBC) be calculated on services covered under Rule 2A, 2B or 2C of Service Tax (Determination of Value) Rules, 2006.?

Ans. *The tax (Service Tax and SBC) on services covered by Rule 2A, 2B or 2C of Service Tax (Determination of Value) Rules, 2006, would be computed by multiplying the value determined in accordance with these respective rules with [14% + 0.5%]. Therefore, effective rate of Service Tax plus SBC in case of original works and other than original works under the works contract service would be 5.8% [(14% + 0.5%)*40%] and 10.15% [(14% + 0.5%)*70%] respectively. Similar, would be the tax treatment for restaurant and outdoor catering services.*

Q.17. How would the tax be calculated on restaurant services covered under Service Tax (Determination of Value) Rules, 2006.?

Ans. Swachh Bharat Cess would be calculated on the value arrived at in accordance with the Service Tax (Determination of Value) Rules, 2006. For example, the effective Swachh Bharat Cess in respect of services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, having the facility of air-conditioning or central air-heating in any part of the establishment, would be 0.5% of 40% of the total amount, i.e., 0.2% of the total amount. The cumulative service tax and Swachh Bharat Cess liability would be [14% ST + 0.5% SBC] of 40% of the total amount, i.e., 5.8% of the total amount charged.

Q.18. Whether SBC would be applicable on services covered by Rule 6 of Service Tax Rules (i.e. air travel agent, life insurance premium, purchase and sale of foreign currency and services by lottery distributors/selling agents)

Ans. Sub-rule (7D) to rule 6 has been inserted vide notification 25/2015-Service Tax, dated 12th November, 2015 so as to provide that the person liable for paying the service tax under sub-rule (7), (7A), (7B) or (7C) of rule 6 of Service Tax Rules, shall have the option to pay SBC as determined as per the following formula:-

Service Tax liability [calculated as per sub-rule (7), (7A), (7B) or (7C)] X 0.5%/14%

The option under this sub-rule once exercised, shall apply uniformly in respect of such services and shall not be changed during a financial year under any circumstances.

Q.19. How would liability be determined in case of reverse charge services where services have been received prior to 15.11.2015 but consideration paid post 15.11.2015?

Ans. In respect of reverse charge mechanism, SBC liability is determined in accordance with Rule 7 of Point of Taxation Rules, as per which, point of taxation is the date on which consideration is paid to the service provider. Thus, SBC liability in such case will be 0.5% X Value of taxable service.

Q.20. Does a person providing both exempted and taxable service and reversing credit @ 7% of value of exempted service under Rule 6 of Cenvat Credit Rules, does he need to reverse the SBC also?

Ans. As SBC is not integrated in the Cenvat Credit chain and reversal under Rule 6 is payment of amount equal to 7% of the value of exempted services, hence, reversal of SBC is not required under Rule 6 of Cenvat Credit Rules, 2004.

5. Text of relevant Notifications

5.1 Text of notification No.21/2015-Service Tax, dated 06.11.2015

[Issued from F.No. 354/129/2015 – TRU]

In exercise of the powers conferred by sub-section (1) of section 119 of the Finance Act, 2015 (20 of 2015), the Central Government hereby appoints the **15th day of November, 2015** as the date with effect from which the provisions of Chapter VI of the said Act, shall come into force.

5.2 Text of notification No.22/2015-Service Tax, Dated 06.11.2015

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) read with sub-section (5) of section 119 of the Finance Act, 2015 (20 of 2015), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby **exempts all taxable services from payment of such amount of the Swachh Bharat Cess leviable under sub-section (2) of section 119 of the said Act, which is in excess of Swachh Bharat Cess calculated at the rate of 0.5 percent. of the value of taxable services:**

Provided that Swachh Bharat Cess shall not be leviable on services which are exempt from service tax by a notification issued under sub-section (1) of section 93 of the Finance Act, 1994 or otherwise not leviable to service tax under section 66B of the Finance Act, 1994.

This notification shall come into force from the 15th day of November, 2015.

Amendment vide Notification No.05/2016-ST dated 17.02.2016

In this notification, amendment has been carried out vide Notification No.05/2016-ST dated 17.02.16 which is as under: -

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), read with sub-section (5) of section 119 of the Finance Act, 2015 (20 of 2015), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification No. 22/2015-Service Tax dated the 6th November, 2015, published vide G.S.R. 843 (E), dated the 6th November, 2015, namely:-

In the said notification, in the first proviso, for the words, brackets and figure notification issued under sub-section (1), the words, brackets and figures notification or special order issued under sub-section (1) or as the case may be under sub-section (2) shall be substituted.

Note: The principal notification was published in the Gazette of India Extraordinary, dated the 6th November 2015 vide number G.S R 843 (E) dated the 6th November, 2015 and was last amended by notification No. 23/2015-Service Tax, dated the 12th November, 2015 published vide number G.S.R 853 (E), dated the 12th November 2015.

Note: *Impact of this notification is that services exempt under adhoc exemption granted under Section-93(2) are also exempt from Swachh Bharat Cess.*

5.3 Text of notification No.23/2015-Service Tax, Dated 12.11.2015

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) read with sub-section (5) of section 119 of the Finance Act, 2015 (20 of 2015), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 22/2015-Service Tax, dated the 6th November, 2015, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide number G.S.R. 843 (E), dated the 6th November, 2015, namely:-

In the said notification, after the proviso, the following shall be inserted, namely:-

Provided further that Swachh Bharat Cess shall be leviable only on that percentage of taxable value which is specified in column (3) for the specified taxable services in column (2) of the Table in the notification No. 26/2012-Service Tax, dated 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide number G.S.R. 468 (E), dated the 20th June, 2012.

Explanation.- It is hereby clarified that value of taxable services for the purposes of the Swachh Bharat Cess shall be the value as determined in accordance with the Service Tax (Determination of Value) Rules, 2006.”

5.4 Text of notification No.24/2015-Service Tax, dated 12.11.2015

In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994) read with sub-section (5) of section 119 of the Finance Act, 2015 (20 of 2015), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby provides that notification No. 30/2012 - Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 472 (E), dated the 20th June, 2012 shall be applicable for the purposes of Swachh Bharat Cess mutatis mutandis.

Note: *Impact of this notification is that in case of services where service tax is to be paid by the service receiver, the SBC shall also be paid by Service Receiver.*

5.5 Text of Notification No.25/2015-Service Tax, dated 12.11. 2015

In exercise of the powers conferred by sub-section (1) read with sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax Rules, 1994, namely: -

1. (1) These rules may be called the Service Tax (Second Amendment) Rules, 2015.
(2) They shall come into force on the 15th day of November, 2015.
2. In the Service Tax Rules, 1994, in rule 6, after sub-rule (7C), the following sub-rule shall be inserted, namely:-

(7D) The person liable for paying the service tax under sub-rule (7), (7A), (7B) or (7C) of rule 6, shall have the option to pay such amount as determined by multiplying total service tax liability calculated under sub-rule (7), (7A), (7B) or (7C) of rule 6 by 0.5 and dividing the product by 14 (fourteen), during any calendar month or quarter, as the case may be, towards the discharge of his liability for Swachh Bharat Cess instead of paying Swachh Bharat Cess at the rate specified in sub-section (2) of section 119 of the Finance Act, 2015 (20 of 2015) read with notification No. 22/2015-Service Tax, dated the 6th November, 2015, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 843 (E), dated the 6th November, 2015, and the option under this sub-rule once exercised, shall apply uniformly in respect of such services and shall not be changed during a financial year under any circumstances.

- This notification shall come into force from the 15th day of November, 2015.

5.6 Text of Notification No.02/2016-Central Excise (N.T.), dated 3.2.2016

[Issued from F. No. 332/18/2015-TRU]

G.S.R.---(E).- In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely :

1. (1) these rules may be called the CENVAT Credit (Second Amendment) Rules, 2016.
(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the CENVAT Credit Rules, 2004 (here-in-after referred to as the said rules), in rule 2, in clause (l), after sub-clause (C), the following *Explanation* shall be inserted, namely: -

Explanation- For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis.

3. In the said rules, in rule 3, in sub-rule (4), after the sixth proviso, the following proviso shall be inserted, namely: -

"Provided also that the CENVAT credit of any duty specified in sub-rule (1) shall not be utilised for payment of the Swachh Bharat Cessleviable under sub-section (2) of section 119 of the Finance Act, 2015 (20 of 2015):".
