

## Swachh Bharat Cess – Is it 'Swachh' way of introducing a new tax?

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*“Taxes are the life-blood of any government, but it cannot be over-emphasized that the blood is taken from the arteries of the taxpayers and, the transfusion has to be accomplished in accordance with the principles of justice and fair-play” - Nani Palkhivala*

The above quote is an apt description of India’s taxation regime, where levy is introduced first and the manner of implementation and related issues, are sought out later.

In the past, Government has often been criticised for introducing taxes in a callous manner, without any guidance to the industry to acclimatise to the levy. Such a behaviour not only acts as a hindrance to the economy but also adds to the woes of taxpayer community by creating avoidable uncertainties. The recently imposed Swachh Bharat Cess ('Cess') is an apt example.

Cess, though introduced with the noble objective to fund the Clean India initiative, is an additional levy at the rate of 0.50 percent on the provision of taxable services. Unlike other cess, like sugar cess or education cess, which are levied at first point or are creditable in nature, Cess is a levy on value of all services, except those specifically exempted. Cess, made effective from November 15, 2015, effectively increases the rate of service tax to 14.5 percent. One also wonders that from June 2015 only, the government increased the rate of service tax from 12.36 percent to 14 percent. The taxpayers’ life could have been much simpler if the rate of service tax was made 14.50 percent at that time.

The imposition of Cess came as one of the proposals in the Union Budget 2015. As a result of the representations made by the industry, the dignitaries of Ministry of Finance repeatedly clarified that it is being deferred and if made applicable, it will be levied on select services only. At same breath, one is impelled to wonder whether there was at-all a need of introducing Cess, given the fact that the indirect tax collections of the government have witnessed a stupendous growth of 35.90 percent in the first seven months of the current Financial Year vis-à-vis the last year, achieving 59.2 percent of the budget estimate. The government could have very well-funded the expenditures towards Clean India initiative from its burgeoning tax kitty.

Needless to say, the industry needs time to equip and prepare itself for the change whenever a new tax is imposed. For the reasons unknown, the government seemed to be in a rush to implement the Cess. Further, there lies no rationale in introducing the levy mid-of the month. The industry was given only 8 days (including two weekends and Diwali holidays) or effectively 3-4 working days to gear up itself to cope up with this change.

One fine day i.e. November 6, Cess was notified to be made effective from November 15. Adding to this plight, no clarity was provided on the manner of applicability of Cess and related issues. The industry was left to make its own interpretations and, ensure its compliance (such as impact on abatement, reverse charge payments, disclosures etc.). To help the stakeholders with the perplexing questions, Government came up with a public notice on November 12, giving clarity on some of the issues on the applicability of Cess. Subsequently on November 13, the necessary amendments in Service Tax Notifications and Rules were notified. Strangely, the public notice issued on November 12, clarifying various aspects of the levy, did not hint that the Notifications were to follow. While the public notice and Notifications clarified most of aspects of the levy, there were grey areas that were still left unaddressed (such as creditability or its reporting requirements). Finally, on November 14, FAQs on Cess were issued which threw light on some more issues.

The above chain of events is reflective of seriousness of the Government in introducing a levy which (as per records) is expected to fetch an additional revenue of INR 3,800 crores for current year and INR 10,000 crore for a full Financial Year. The industry (to be impacted) was left clueless on several issues relating to Cess until November 12 and 14 (when the public notice and FAQs were issued).

One may not be wrong to question the Government for creating this chaos. All this could have been avoided if Cess would have been introduced from beginning of the month (November or December) and a suitable clarification would have been issued at least a week before the commencement of levy.

As noted in reply to question number 14 of the FAQs, no credit of Cess is available to the recipient of service. Cess would surely cause the detested cascading effect of much more than 0.50 percent as it will be levied on all input services as well as output services of a business entity. A seamless credit chain is the **essence of an efficient Indirect Tax system lies in seamless credit chain and Cess is inherently against this fundamental principle** and would result in negative repercussions on the feeble economy. For the same reasons, Cess is expressly against the principles of Goods & Service Tax, proposed to be introduced by the Government.

Lastly, Cess is a compulsory and involuntary exaction, made for a public purpose without conferment of any special benefit on the payer. It is improper for the government to burden the industry with new innovative taxes like Cess for fulfilment of one of its goals. The government's goals need to be met by its existing tax and other revenues only which are already on an upswing.

To conclude, while the object of Cess is laudable, it is the responsibility of the Government to fund all its expenditures from the existing kitty of taxes. If at all, a new levy has to be enforced, there has to be a matured way of introducing it. The introduction and the manner of implementation of a new tax like Cess has not only complicated the existing tax structure but has also left a bad taste for the taxpayer who is hopeful of 'Ease of Doing Business' in India.