

Service tax on commission paid to Managing Director/Directors by the company

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Circular No. 115/09/2009-ST, dated 31-7-2009

Below mentioned issues have been referred to the Board seeking clarifications,-

- (i) applicability of service tax under 'Business Auxiliary service' on commission paid to Managing Director / Directors (whole time, or Independent) by the company,
- (ii) applicability of service tax on Independent Directors who are part of the Board of Directors under 'Management Consultant service'.

2. Both the matters have been examined by the Board and the clarifications are as under, -

- (i) Some Companies make payments to Managing Director/Directors (Whole-time or Independent), terming the same as 'Commissions'. The said amount paid by a company to their Managing Director/Directors (Whole-time or Independent) even if termed as commission, is not the 'commission' that is within the scope of business auxiliary service and hence service tax would not be leviable on such amount.
- (ii) The Managing Director / Directors (Whole-time or Independent) being part of Board of Directors perform management function and they do not perform consultancy or advisory function. The definition of management consultant service makes it clear that what is envisaged from a consultant is advisory service and not the actual performance of the management function. The payments made by Companies, to Directors cannot be termed as payments for providing management consultancy service. Therefore, it is clarified that the amount paid to Directors (Whole-time or Independent) is not chargeable to service tax under the category 'Management Consultancy service'. However, in case such directors provide any advice or consultancy to the company, for which they are being compensated separately, such service would become chargeable to service tax.

3. In view of the above, it is clarified that remunerations paid to Managing Director / Directors of companies whether whole-time or independent when being compensated for their performance as Managing Director/Directors would not be liable to service tax.

Pending issues may be resolved in line with the above.