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Indian Service Tax

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On 12 January the Indian Government issued a notification withdrawing the exemption from service tax for the transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.

The change came into effect on the 22 January 2017 with the result that a service tax is now imposed on all import freight/hire at a rate of 4.5%.

It is understood the tax has been levied on imported cargoes since June 2016 but, prior to the exemption being withdrawn, the tax applied to cargoes that were imported on a FOB basis and ships chartered by importers domiciled in India.

The Managers are seeking advice on the nature of the tax and will update this advice, but it is also understood:

- (i) The person in India who complies with the Indian Customs Act with respect to the imported goods is the person that is liable to pay the service tax, which is likely to be the vessels agent; and
- (ii) The tax is not subject to any double taxation agreements.

The consequence of the change is that if not placed in funds by their principals vessel agents may now seek to be secured against any service tax liabilities before clearing vessels to sail. Whether this is a cost that is, under existing charters, for owners or charterers will depend on the charterparty terms and nature of the tax. However, commentators, including BIMCO, appear to be of the view the tax is *"on the increase in value of imported goods based on the transportation cost for the ocean transport and is..., cargo-related as opposed to ship-related."* and, therefore, likely to be a cost for charterers. Members negotiating new fixtures that do or may involve discharge of goods in India are advised to keep the risk of a service tax charge in mind.

Members with questions on this issue should contact their normal contacts at the Club.

Update

Since the Club published the below commentary the uncertainty surrounding the amendments to the Finance Act 1994 ("Service Tax") that came into effect on the 22 January 2017 have largely been clarified.

Whilst there may still be uncertainty surrounding the applicable tax rates, It is now understood that:

- » No Service Tax is leviable if the bill of lading is of date prior to 22 January 2017;
- » For bills of lading dated from 21 January to 23 April there is a possibility that the tax might be levied on a ship's agent even if the vessel arrived at the discharge port after the 23 April; and
- » After 23 April 2017 the liability for service tax is on the importer.

Further update

On the 1 July 2017 India replaced the indirect tax structure and introduced a new Goods and Service tax regime based on the principle of destination based consumption taxation. The liability for GST remains with the importer of the goods, with no GST applicable to foreign shipping companies. A rate 5% applies to goods transported by ship, payable by the receiver.

