

General Circular No. 24/2012

F.No.14/33/2012-CL. VII
Government of India
Ministry of Corporate Affairs

5th Floor, A-Wing,
Shastri Bhawan, New Delhi
9th August, 2012

To,

All Regional Directors
All Registrars of Companies
The Institute of Company Secretaries of India
The Institute of Chartered Accountants of India
✓ The Institute of Cost Accountants of India

Sub: Applicability of Service Tax on commission payable to Non-Whole Time Directors of a company under section 309(4) of the Companies Act, 1956 – approval of Central Government under section 309/310 of the Companies Act – regarding.

The Finance Act 2012 has introduced Service Tax which is applicable to anyone who provides a Service not covered under the negative/exempted list and if the value of annual revenue is more than Rs. 10 lakh. The Non-Whole Time Directors of the Company are presently not covered under the exempted list and as such, the sitting fee/ commission payable to them by the company is liable to Service Tax.

If such Service Tax is paid by the company, it will be deemed to be a part of remuneration under section 198 of the Act and would accordingly increase the remuneration amount of such Non-Whole Time Directors. This remuneration could then exceed the limit of 1% profit [u/s 309(4)] of the company when the company has a Managing /Whole Time Directors/ Managers or 3% of the profit [u/s 309(4)] of the company if the company does not have a Managing/ Whole Time Directors/ Managers, as the case may be. As per existing provisions of the Companies Act, 1956, this would require prior approval of Central Government u/s 309 and 310 of the Act.



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It has now been decided that any increase in remuneration of Non-Whole Time Director(s) of a company solely on account of payment of service tax on commission payable to them by the company shall not require approval of Central Government under section 309 and 310 of the Companies Act even if it exceeds the limit 1% or 3% of the profit [u/s 309(4)] of the company, as the case may be, in the financial year 2012-13.



9-8-2012

(L. K. Trivedi)

Under Secretary to the Govt. of India

Copy to: Director General, Confederation of Indian Industry, New Delhi with reference to his letter dated 10th July, 2012