

Parliament amends the ESC Act broadening the tax net

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Economic Service Charge (Amendment) Act, No. 7 of 2017, enacted consequent to the respective proposals made in the Budgets 2016 and 2017, provides for amendment of certain provisions of the Economic Service Charge Act, No. 13 of 2006 ("ESC Act"). The majority of these amendments took effect on 1 April 2016. Specific amendments pertaining to the ESC Act took effect on 24 November 2016 and 1 April 2017.

The legal consequences of such amendments and the respective effective dates are as follows:

1. Relevant turnover

The basis adopted in ascertaining the relevant turnover, in respect of which ESC is charged, has been changed with effect from 1 April 2016. Accordingly, effective from that date, the relevant turnover for a quarter is simply the turnover from any trade, business, profession or vocation of that quarter, irrespective of whether there is no taxable income from that source in the year of assessment preceding to the year of assessment within which such quarter falls; or whether there is any exempt income in the year of assessment within which such quarter falls.

The effect of the amendment is that the "relevant turnover" for any quarter of any year of assessment will be the "turnover of that quarter" within the meaning of the ESC Act for that year of assessment.

2. ESC rate

The ESC rate has been raised from 0.25% to 0.5% of the relevant turnover effective from 1 April 2016.

Accordingly, the manner of application of the rate has been revised as follows:

- a) On 10% of the relevant turnover from the retail sale of petrol, diesel or kerosene – 0.5%
- b) On any other relevant turnover (i.e., other than turnover referred to in (a) above) – 0.5%

3. Ceiling on ESC payment (i.e., the maximum liability)

Prior to this amendment, the maximum liability of ESC payable by any person or partnership has been Rs. 30 million per quarter (or Rs. 120 million for any year of assessment). Effective from 1 April 2016, this ceiling has been removed.

Accordingly, in relation to any quarter commencing on or after 1 April 2016, ESC is payable without any upper limit on the quantum computed based on the relevant turnover.

4. Set off of ESC against the income tax payable

ESC paid is allowed to be set off against income tax payable. Such set off is applicable only within a respective period specified.

With regard to any quarter ended prior to 1 April 2016, such set off of ESC paid by any person for that quarter could be made against the income tax payable by him for the year of assessment within which such quarter falls. Any balance of such ESC could be apportioned to the next four (4) consecutive years of assessment, and set off against income tax payable for the respective year. This four year period could span even beyond 1 April 2016.

The present amendment allows any such balance to be apportioned over the next two (2) years following the year of assessment. This balance is derived after setting off any ESC paid for any quarter commencing on or after 1 April 2016 against income tax payable for the year of assessment within which such quarter falls.

5. Threshold

The threshold for ESC liability, which was Rs. 50 million per quarter, has been lowered to Rs. 12.5 million per quarter effective from 1 April 2017.

As such, effective from the quarter commencing from 1 April 2017, ESC will be chargeable if the relevant turnover per quarter exceeds Rs. 12.5 million.

6. ESC on retail sale of petroleum products

Retail sale of petrol, diesel or kerosene is liable to ESC on concessionary terms, if the aggregate turnover from such items including lubricants and others exceeds the threshold of Rs. 50 million for any quarter of the year of assessment commencing on 1 April 2016 or Rs. 12.5 million for any quarter of any year of assessment commencing on or after 1 April 2017.

If the relevant turnover exceeds the respective thresholds, ESC is calculated on one tenth (1/10th) of the relevant turnover from the retail sale of petrol, diesel or kerosene, effective from 1 April 2016.

ESC on other relevant turnover (i.e., from lubricants and others) is computed on the basis of their actual turnover.

7. ESC paid in advance

ESC is charged in advance on the import of certain specified articles based on their Cost, Insurance and Freight ("CIF") value without considering any threshold. These articles and respective effective dates are as follows:

- a) Articles liable to Special Commodity Levy under Act, No. 48 of 2007, with effect from 1 April 2016
- b) Gold or other precious metals, with effect from 24 November 2016
- c) Motor vehicles, with effect from 1 April 2017.

CIF values of respective articles are as certified by the Director General of Customs. The advance payment of ESC made at the Customs in relation to those articles by any person (i.e., importer) can be set off against the actual ESC liability by him for the year of assessment during which such an advance is made.

Any excess of the advance ESC cannot be refunded, but can be credited against income tax payable by such person.

8. Definition of "person"

The Central Bank of Sri Lanka has been included within the meaning of "person" for ESC purposes effective from 1 April 2017. Accordingly, the exemption from ESC accorded to Central Bank has been withdrawn and made liable to ESC.

As per the IRD notification, any person or partnership who or which failed to pay the due amount of ESC in view of insufficient legislative arrangements is required to pay Economic Service Charge immediately; so that any possible legal action could be avoided.

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