

**A note to our clients and associates on Service Tax on Legal Consultancy Service  
with effect from September 1, 2009**

We wish to inform our clients and associates that Legal Consultancy Service in India (hereinafter "the Service") has been brought under ambit of service tax in the Union Budget 2009-10. The Service would be subjected to service tax at the rate of 10.30% with effect from September 1, 2009.

In this regard, Section 65(105)(zzzzm) of the Finance Act, 1994 (hereinafter, "the Finance Act") defines Service, as under:

*"Taxable service means service provided or to be provided to a business entity, by any other business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner.*

*Provided that any service provided by way of appearance before any court, tribunal or authority shall not amount to taxable service.*

*Explanation - For the purposes of this sub-clause, "business entity" includes an association of persons, body of individuals, company or firm, but does not include an individual."*

The definition aims at taxing services provided or to be provided to a business entity, by any other business entity. For the purpose of this service, business entity is defined to include the following:

- an association of persons;
- body of individuals;
- company; or
- firm.

Service tax is not payable on any service provided:

- by way of appearance before a court, tribunal or authority;
- to an individual.

In terms of Section 67 of the Finance Act, service tax is payable on gross value of taxable service, i.e. the gross amount charged by service provider for taxable service provided (or to be provided), which would include any amount received towards taxable service i.e. before (advance payments), during or after provision of such service.

In terms of Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006, where any disbursement, expenditure or cost is incurred by a service provider in the course of providing taxable service, all such disbursement, expenditure or cost shall be treated as consideration for taxable service provided (or to be provided) and included in value for the purpose of charging service tax on the said service.

Accordingly, with effect from September 1, 2009, K&S Partners would charge service tax, presently payable @ 10.30%, on all invoices for services rendered (except appearances in Court or to individuals) and disbursements incurred in rendering such services.