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F.No.500/148/2013-FTD-I  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes  
(Foreign Tax & Tax Research Division)

Room No 907, 9<sup>th</sup> Floor, 'C' Wing,  
Hudco Vishala Building,  
14, Bhikaji Cama Place,  
New Delhi - 110 066,  
Dated the 9<sup>th</sup> April, 2013

**Subject:- Exemption of TDS and Services Taxes on Payments to Foreign Publishers for e-Books, e-Journals and Bibliographic and Factual Databases Accessible Online- reg.**

The undersigned is directed to refer to above mentioned subject and enclose herewith a copy of letter dated 21<sup>st</sup> February, 2013 issued by Dr. D.K. Raut, Director, National Medical Library, Ansari Nagar, Ring Road, New Delhi for necessary action.

2. It is requested that opinion of your Ministry on the above subject may be intimated to this division.

Encl:- As above



(Satya Pal Kumar)  
Telefax: 26199027

Under Secretary (Coordination)  
Ministry of Human Resource Development  
Shastri Bhavan, New Delhi

Under Secretary (Coordination)  
Ministry of Health and Family Welfare  
Nirman Bhavan, New Delhi.

Copy to Dr. D.K. Raut, Director, National Medical Library, Ansari nagar, Ring Road, New Delhi - 110029 w.r.t. their letter D.30012/1/2011-Liby (Per-Electronic) dated 21<sup>st</sup> February, 2013 for information.

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F.No. D. 30012/1/2011- Liby (Per - Electronic)  
NATIONAL MEDICAL LIBRARY  
Directorate General of Health Services  
Ansari Nagar, Ring Road,  
New Delhi - 110029  
Tel: 26589085/26589128/Fax: 26589489

Dated: 21/2/2011

Dear sir,

**Sub.: Exemption of TDS and Services Taxes on Payments to Foreign Publishers for e-Books, e-Journals and Bibliographic and Factual Databases Accessible Online**

As you are aware, that there are a number of Govt.-funded library consortia in India, including ERMED (Electronic Resources in Medicine), UGC-INFONET Digital Library Consortium, NLIST and INDEST-AICTE Consortium that licence online e-books, e-journals and online bibliographic databases from foreign publishers for colleges, universities and other institutions of higher learning. As on now, more than 4,500 institutions are getting access to e-resources through these consortia and annual expenditure on subscription to e-resources is estimated to be Rs. 500.00 crores.

I would like to draw your kind attention to amendments introduced in the Union Budget 2012 - 2013, that has effectively blurred the distinction between licensing "copyright" and buying a "copyrighted material" that, in turn, has resulted in a chaotic situation for libraries, library consortia, and scholarly publishing industry. As such, there is a great deal of confusion whether TDS and service taxes are applicable on e-books, e-journals and other online databases or not. Relevant details and background information is given below.

**Tax Deduction at Source (TDS)**

It may kindly be noted that until Union Budget 2012-13, the Indian law had recognized the distinction between "copyright" and "copyrighted material" and accordingly treated them separately. Payment for licensing copyright from authors to publisher was considered as royalty / payment which attracted TDS and buying electronic version of copyrighted books / journal (copyrighted material) by institutions and individuals are considered as purchase of commodity service falling under VAT or service tax. Ironically, while printed books and journals are free from taxes, their electronic versions attract TDS as well as service tax as they are categorized under online data access and information retrieval services.

This confusion seems to have started with the software industry with several conflicting rulings by Tax Tribunals and High courts. It may be noted that under the Copyright Act, software and computer literary databases are grouped under Literary Works. In order to bring clarity to conflicting court rulings, the Government has amended the law treating both "copyright" and "copyrighted material" alike in the current year budget and thus bringing the purchase of copyrighted material also under the provision of TDS deduction. Kindly see Appendix I, particularly explanation 4, 5 and 6 added as amendment in the budget.

This amendment has adversely affected the process of purchase/subscription of e-content by libraries and library consortia from foreign publishers since TDS is now applicable for all payments to be made for subscription to electronic journals and online bibliographic and factual databases by foreign publishers. Applicable rates for deduction are 10% if the publisher has obtained PAN registration from Indian Tax authorities and 20% if the publisher fails to produce PAN. Since, scholarly journals are proprietary in nature with well-established niche market, their publishers are not ready for deduction of TDS. Moreover, it would be chaotic for foreign publishers, with their multi-national presence, to manage this order of tax complexities of deductions by their customers in India and claiming back from their respective Governments. Furthermore, several scholarly journals are published by scholarly societies like American Chemical Society, American Physical Society, etc. who are exempted from tax liability in their

own country, these publishers will not be able to claim it back from their respective Governments under Double Taxation Avoidance Treaty (DTAA). Moreover, smaller publishers, are not willing to undergo the hassle of PAN registration in India and subjecting themselves to TDS deductions and claims, instead they prefer not to provide access to their resources to institutions and libraries, if TDS is to be deducted. It may be noted that a typical large university library subscribes to online journals from several hundred foreign publishers and all Indian libraries put together subscribes to e-journals from more than a thousand publishers. It is impossible for either the libraries or subscription agents to convince thousands of foreign publishers about our laws and make them agreeable to these deductions. The order-payment transaction is already proving to be chaotic beyond control. Even institutions that are Associate Members of UGC-INFONET Digital Library Consortium and INDEST-AICTE Consortium are insisting on deducting TDS resulting on disruption of consortia services. It is feared that the foreign publishers may resort to increasing subscription rates for their e-content by 20-25% which will, in effect, affect libraries in all Govt. / Govt-aided institutions of higher education.

### Service Tax

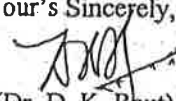
Online Data Access and Information Retrieval in India was brought under the purview of Service Tax in 2001, under Section 65(105)(zh) of Finance Act, 1994 as amended from time to time. However, service tax on import of services was introduced in 2006 under Section 66A of Chapter V of Finance Act, 1994, read with Rules [Taxation of Services (Taxation of Services (Provided from Outside India and received in India) Rules, 2006. The service tax is payable in the hands of recipient of the service (customer) and not the provider of the service (publisher). As such, the service tax has implications on educational institutions as user of service. Ironically, while there is no service tax on printed books and journals, their electronic versions would attract service tax. Till date, most of the academic and research libraries are not paying service taxes with a presumption that Govt. / Govt.-aided academic institutions are exempted from paying service taxes.

It may be noted that the Union Budget 2012-13 has introduced negative list wherein e-journals, e-books, bibliographic and factual databases is not covered explicitly. As such it is presumed that e-journals and e-books would continue to attract service tax. However, some of the tax experts are of the opinion that e-resources including full-text e-journals, e-books and online bibliographic and factual databases are exempted from service tax under mega exemption notification no. 25/2015-ST dated 20-06-2012 (clause 9) that exempts "all services, including a) auxiliary; and b) renting of immovable property, provided to or by an education institution". (Appendix II).

As such, it is requested that this issue may please be addressed immediately and steps may be taken to exempt e-journals, e-books and online bibliographic and factual databases and other educational materials of academic and research value from service taxes and TDS.

Thanking you,

Your's Sincerely,

  
(Dr. D. K. Raut)  
Director

National Medical Library,  
Ansari Nagar, Ring Road,  
New Delhi - 110029

Shri Sumit Bose  
Secretary  
Department of Revenue  
Ministry of Finance, Govt. of India  
North Block, New Delhi - 110 001