

SERVICE TAX

1. Rate of service tax is proposed to be raised from 5% to 8%. In case of existing taxable services, this increased rate will be effective from the date of enactment of the Finance Bill, 2003.

New services brought under service tax levy:

2.1 It has been proposed in the Finance Bill to extend the levy of service tax to following new services,-

- a) Commercial vocational institutes, coaching centers and private tutorials.
- b) Technical testing and analysis (excluding health and diagnostic testing); technical inspection and certification service.
- c) Maintenance and repair services
- d) Commissioning and installation services.
- e) Business auxiliary services, namely business promotion and support services including customer care services (excluding any information technology service).
- f) Internet café
- g) Franchise services

2.2 Service tax will be levied @ 8% on these services and will come into effect from the date to be notified by the Government in this regard.

Extension of existing taxable services (to be effective from a date to be notified)

3.1 The service tax on specified banking and other financial service is proposed to be extended to cover forex exchange broking by any person. At present, the levy is limited to only such foreign exchange broking services provided by banking company or a financial institution including non banking financial institution or a body corporate. This extension will also come into force from a notified date.

3.2 The service tax on authorised automobile service station is proposed to be extended to service provided in relation to multi utility vehicles (maxi cab). Hitherto, the levy was limited to authorized repair services in relation to motor car and two wheeled motor vehicle. Further, definition of motor car has been incorporated in the act to clarify any doubt about the scope of levy in the past.

3.3 The service tax on port services is proposed to be extended to all ports. Hitherto, this levy was limited to only major ports

(For details regarding the scope of the levy, clause 151 of the Finance Bill, 2002 may be referred to).

4. Certain changes have been made in service tax legislation (Chapter V of the Finance Act, 1994), which would come into force from the date of enactment of Finance Bill. These are summarized below.

4.1 A new section 65A has been inserted to specify norms for classification of taxable services under section 65 of the Finance Act, 1994. The basic principles of classification of a taxable service, which *prima facie* is classifiable in two or more categories, would be as follows. (i) A taxable service would be classified in the category which provides the most specific description; (ii) In case the taxable service is a composite service consisting of combination of services, such taxable service will be classified in the category which gives it the essential character; (iii) Where a taxable service can not be classified in above manner, such taxable service will be classified in the category which occurs first in clause 104 of section 65 (i.e. definition of taxable service) among those categories which equally merit consideration.

4.2 Section 67 is proposed to be amended to specifically provide that in case of service provided by the authorized service station, cost of any consumable sold during the course of providing taxable service will not form part of value of such taxable service. This amendment is only clarificatory in nature.

4.3 Section 73 has been amended so as to provide for suo-moto dropping of proceeding and non issuance of show cause in a case where the amount of services tax short paid or not paid is paid voluntarily along with interest thereon by the assessee, except cases covered under section 73 (1) A of Finance Act, 1994. These provisions will not apply to such cases where the duty becomes

payable or ought to have been paid before the date on which Finance Bill, 2003 receives the assent of the President.

4.4 Section 78 has been amended so as to make following changes,-

(a) To do away with the requirement of taking prior approval of the Commissioner of Central Excise for imposing penalty in cases where the value of taxable service involved exceeds Rs two lakh. Accordingly, the Assistant Commissioner/ Deputy Commissioner of Central Excise would henceforth adjudicate penalty upto any limit of the value of taxable service without seeking prior approval of the Commissioner of Central Excise.

(b) In cases covered under section 78 (suppression of value), where service tax is paid by the assessee along with interest, within thirty days of communication of adjudication order, the penalty would be 25% of the service tax involved, provided the said amount of penalty is also paid within the said period of thirty days.

4.5 Section 83 is being amended so as to make applicable section 11C and 12 of the Central Excise Act, 1944 to the Service Tax.

4.6 Section 85 is proposed to be amended to specifically provide for filing of appeal against any order denying refund claim.

4.7 Section 94 is proposed to be amended to empower the Government to prescribe the manner of availing credit of service tax on all input services and central excise duties on input goods, used in the course of providing output services. Hitherto, the power was limited only to prescribe the manner of availing credit only on such services where both the input and output services fall within the same category of taxable service.

4.8 Section 95 has been amended to empower the Government to issue orders for removal of difficulties arising in the implementation of new services within a period of 2 years from the date of imposition of service tax on new services.

4.9 A new Chapter "VA" has been inserted in the Finance Act, 1994 to provide for advance ruling in service tax. These provisions are similar to the provisions contained in the Central Excise Act and Customs Act.

(For all above amendments refer to clause 151 of the Finance Bil, 2003.)

5. Validation of service tax collection on GTO service and Clearing and Forwarding Services: Section 68 and 70 have been amended retrospectively and a new section 71A has been inserted in Finance Act 1994 for the period beginning from 16th day of July, 1997 and ending with 16th day of Oct, 1998 to validate the collection of service tax from the service receiver in case of services provided by goods transport operators and clearing and forwarding agents. It may be recalled that certain amendments were made in section 65 and 66 vide Finance Act, 2000. The amendments proposed now are in continuation to the earlier amendments. Consequent to these amendments, the assessee in these cases (i.e service receiver of GTO and C & F services) will file fresh return within six months from the date of enactment of the Finance Bill (Refer clause 144 of Finance Bill, 2003) in the manner to be prescribed (Manner of filing the return in such case will be prescribed on enactment of the Finance Bill). **(Refer clause 150 of Finance Bill, 2003).**

6. Exemption to GTO services in certain cases: Notification No. 43/97 ST, dated 5th November 1997 has been amended with retrospective effect from the 16th November, 1997 to 1st June, 1998 so as to provide that the following categories of service receiver would also be exempt for payment of service tax w.e.f 16.11.1997:

- (a) small scale industries registered with the State Government;
- (b) a company which is solely and exclusively a trading company and is also registered as a private limited company;
- (c) a person registered with Sales tax authority and whose turnover had exceeded Rs 50 lakhs in the preceding financial year **(Refer clause 152 of Finance Bill, 2003).**

6.1 In this regard refer to earlier instructions F. No. 351/91/97-TRU dated 3.12.97 and F. No. 351/91/97-TRU dated 9.2. 98. Pending show cause notices/proceedings or any refund claim arising on this account, may be decided accordingly on enactment of Finance Bill 2003.

7. Exemption from service tax, given to hotels in cases where catering service is also provided along with mandap services, vide Notification No. 12/2001-ST, dated 20.12. 2001 has been extended beyond 31.3.2003, without any time limit. This exemption was to lapse on 31st March 2003. (Notification No. 3 /2002-ST dated 1.3.2003 refers).

8. Notification No. 6/99-ST dated 9.4.97 has been rescinded. This notification exempted the taxable service for which payment was received in foreign convertible currency provided such foreign exchange was not repatriated outside India. Consequently, service tax would be leviable on all such taxable service irrespective of whether the payment of taxable service is received in foreign exchange or not. (Notification No. 2/2003-ST dated 1.3.2003 refers).

9. Service Tax Credit Rules 2002, have been amended to make following changes,-

- (i) Output service provider shall be allowed to take credit of the tax paid on the input services only after he makes the payment for the value of input service and the service tax payable thereon as indicated in invoice or bill or challan of input service provider;
- (ii) Restrict the utilization of service tax credit, only to the extent such credit as is available on the last day of a month, for payment of service tax relating to the month or in case where the assessee is an individual or proprietary firm or partnership firm, to the extent such credit is available on the last day of the quarter for payment of service tax relating to the quarter;
- (iii) To allow transfer of utilised credit, in case the service provider shifts his establishment on account of sale, merger, amalgamation, lease or transfer of establishment provided there is a specific provision for transfer of liabilities to such transferred, sold, merged or amalgamated establishment. (Notification No. 1 /2003-ST refers)

10. Commissioners of Central Excise are requested to examine carefully the new provisions, especially those relating to new services. Further, they may also undertake a survey to ascertain specifically, the number of new assesses likely to come under each of the new taxable service and broad revenue estimate of new services.

11. Any problems likely to arise in the implementation of the proposed levy may be brought to the notice of TRU along with their suggestions to resolve the problem. If any legislative changes are required to be made in the definitions of new services, either to clarify the scope or to remove any inconsistency, the same may be communicated so as to reach latest by the 31st of March, 2003. The details of the survey conducted may please be sent so as to reach latest by the 15th of April, 2003.