

EXPLANATORY NOTES - SERVICE TAX

The following changes are being proposed in the Finance Bill, 2007. [refer clause 125 of the Finance Bill, 2007]

(I) Secondary and Higher Education Cess:

A cess @ 1% is being imposed on services liable to service tax. It shall be levied on the service tax payable on such services. The cess paid on inputs services shall be available as credit for payment of cess on output services. It will come into force from the date of enactment of the Finance Bill, 2007.

(II) Section 65 is being amended to:

(A) specifically include and define the following services in the list of taxable services, namely:

- (i) telecommunication services;
- (ii) mining services;
- (iii) services provided in relation to renting of immovable property, other than residential properties and vacant land, for use in the course or furtherance of business or commerce;
- (iv) services component of a works contract, other than works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams;
- (v) development and supply of content service for use in telecommunication services, advertising agency services and on-line information and database access or retrieval services;
- (vi) asset management including portfolio management and all forms of fund management service provided by any person, except a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern;
- (vii) design services, other than interior decorator's service and fashion designing service.

(B) specify or expand, as the case may be, the scope of the existing taxable services as follows:

- (a) Sale of space or time for advertisement service, to specifically include sale of space in business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes;
- (b) Rent-a-cab service to include renting of motor vehicles capable of carrying more than twelve passengers for hire or reward, excluding such motor vehicle or maxicab rented to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre;

- (c) Mandap keeper service to specifically include services provided by mandap keepers in relation to use of mandap for organising marriage functions;
- (d) Pandal or Shamiana service to specifically include services provided by pandal or shamiana contractor in relation to use of pandal or shamiana for organising marriage functions;
- (e) Event Management service to specifically include event management services provided in relation to organising marriage functions;
- (f) Manpower recruitment or supply service to clarify that manpower recruitment or supply agency service includes services in relation to pre-recruitment screening, verifying the credentials and antecedents of the candidate, and authenticity of documents submitted by the candidates;
- (g) Banking and other financial services,
 - to replace the words “any other person” with “commercial concern” in the definition of taxable service of banking and other financial services [section 65(105)(zm)] and definition of banking and other financial services [section 65(12)],
 - to delete reference to the exclusion of cash management, and
 - to clarify that a transaction shall be treated as a financial lease, if the following conditions are fulfilled:-
 - (i) a contract for leasing of a specific asset is entered into between two parties,
 - (ii) the contract is for use and occupation of the specific asset,
 - (iii) the lease payments are calculated so as to cover the full cost of the asset together with the interest charges, and
 - (iv) the lessee is entitled to own or has the option to own, the asset at the end of the lease period after making the lease payment;
- (h) Management consultant’s service,
 - to rename the service as management or business consultant’s service, and
 - to explicitly include business consultancy in the definition itself;
- (i) Consulting engineer’s service to delete the reference to exclusion of consultancy in computer hardware engineering and to specifically include consultancy in the discipline of computer hardware engineering;
- (j) Management, maintenance or repair service to clarify that “goods” includes computer software;

(C) define the following terms in relation to respective taxable services, namely:

- (i) design services;
- (ii) development and supply of content;
- (iii) renting of immovable property;
- (iv) telecommunication service;

(D) omit sub-clauses (b), (c), (zd), (ze), (zf) and (zg) of clause (105) and clauses (60) and (104) of section 65 relating to following taxable services, namely:

- (i) telephone connection,
- (ii) pager,
- (iii) leased circuit,
- (iv) communication through telegraph,
- (v) communication through telex, and
- (vi) facsimile communication,

in view of the merger of various telecommunication related services, under a single taxable service, namely “telecommunication service” and comprehensive definition of “telecommunication service”.

All the above mentioned amendments in section 65 will come into effect from a date to be notified after the enactment of the Finance Bill, 2007.

(III) Exemptions from service tax:

(1) The threshold level of service tax exemption for small service providers has been increased from the present level of Rs.4 lakh to Rs.8 lakh with effect from 01.04.2007, provided that the aggregate value of taxable services rendered by such provider of taxable service from one or more premises, does not exceed Rs. 8 lakh in the preceding financial year.

[refer notification No. 4/2007-Service Tax dated 01.03.2007]

Consequent upon increase in threshold limit of exemption from Rs. 4 lakh to Rs. 8 lakh, notification No.26/2005-Service Tax dated 07.06.05 and notification No.27/2005-Service Tax dated 07.06.05 have been amended to raise the limit for obtaining service tax registration from Rs. 3 lakh to Rs. 7 lakh.

[refer notification No. 5/2007-Service Tax dated 01.03.2007, notification No. 6/2007-Service Tax dated 01.03.2007, and notification No. 7/2007-Service Tax dated 01.03.2007]

These changes will come into effect from 1st April, 2007.

(2) Exemption from service tax is being provided to services provided by resident welfare associations to their members, where the monthly contribution does not exceed Rs. 3000/- per month.

[refer notification No. 8/2007-Service Tax dated 01.03.2007]

(3) Exemption from service tax is being provided to-

(i) all taxable services provided by Technology Business Incubators (TBI) / Science & Technology Entrepreneurship Parks (STEP), recognised by National Science & Technology Entrepreneurship Board of Department of Science & Technology, also known as “incubators”, and

[refer notification No. 9/2007-Service Tax dated 01.03.2007]

(ii) taxable services upto Rs. 50 lakh in a financial year provided by incubatee entrepreneur who is located within the premises of an incubator where the total business turnover of the incubatee entrepreneur does not exceed Rs. 50 lakh in a financial year / preceding financial year. Exemption is available to an incubatee for a period of three years w.e.f. the date of signing an agreement with the incubator.

[refer notification No. 10/2007-Service Tax dated 01.03.2007]

These exemptions will come into effect from 1st April, 2007.

(4) Exemption from service tax is being provided to technical testing and analysis services provided in relation to testing of newly developed drugs including vaccines and herbal remedies on human participants by a clinical research organisation approved to conduct clinical trials by the Drugs Controller General of India.

[refer notification No. 11/2007-Service Tax dated 01.03.2007]

(5) Exemption from service tax is being provided to services provided in relation to delivery of content of cinema in digital form after encryption, electronically.

[refer notification No. 12/2007-Service Tax dated 01.03.2007]

The above exemptions [except (1) and (3)] will come into effect from 1st March, 2007.

(IV) Other Changes in the Finance Act, 1994:

(1) Section 66 is being amended to omit references to sub-clauses (b), (c), (zd), (ze), (zf) and (zg) of clause (105) of section 65 and to include the individually specified services [This change will come into effect from a date to be notified after enactment of the Finance Bill, 2007];

(2) Section 70 is being amended to provide filing of return after the due date with prescribed late fee;

(3) Section 83 is being amended to extend the applicability of certain sections of Central Excise Act, 1944, to service tax matters, namely-

- (i) section 14AA, which empowers the jurisdictional Commissioner of Central Excise to order for cost audit of central excise assessee by a cost accountant to study abnormal utilization of CENVAT credit, and
 - (ii) section 38A, which provides for protection, by way of savings, of pending actions under Rules and notifications that are repealed, rescinded or amended, actions (like investigation, issue of show cause notice, adjudication etc.) under the provisions that existed prior to the said changes;
- (4) Section 86 is being amended to empower the Central Board of Excise & Customs to constitute a committee of-
- (i) two Chief Commissioners to review the adjudication order passed by a Commissioner of Central Excise, and
 - (ii) two Commissioners to review the order passed by a Commissioner of Central Excise (Appeals);
- (4) Section 94 is being amended to empower the Central Government to make rules for specifying late fee for furnishing delayed return; and
- (5) Section 95 is being amended to empower the Central Government to issue orders for removal of difficulty in respect of implementing, classifying or assessing the value of any taxable service incorporated by the Finance Act, 2007 upto one year from the date of enactment of the Finance Bill, 2007.
- (6) Section 96A is being amended to insert an Explanation in clause (b) of section 96A relating to definition of 'applicant' so as to clarify that in the 'joint venture in India' at least one of the participants or partners or equity holders shall be a non-resident.

The changes mentioned above [except (1)] will come into force from the date of enactment of the Finance Bill, 2007.

(V) Changes in the Service Tax Rules, 1994:

- (1) Rule 4 is being amended to modify Form ST-1 and Form ST-2 so as to dispense with the requirement of submission of original registration certificate to the department at the time of intimation of any changes;
- (2) Rule 6 is being amended to insert sub-rules (4A) and (4B) to extend the facility of self-adjustment of excess service tax paid, to all service tax assessee, subject to specified limitations and conditions;
- (3) Rule 7B is being inserted to allow an assessee to rectify mistakes and file revised return within 60 days from the due date for filing of original return;

(4) Rule 2(1)(d)(vii) is being amended so that service tax under reverse charge mechanism in relation to sponsorship service is required to be paid if the recipient of service is located in India.

[refer notification No.1/2007-Service Tax dated 01.03.2007]

The above changes [except (4) which will come into effect from 1st April, 2007] will come into effect from 1st March 2007.

(VI) Changes in the CENVAT Credit Rules, 2004:

(1) Rule 6(3) is being amended to provide an option to general insurance service providers providing taxable as well as exempted insurance schemes to utilise CENVAT credit proportionate to the inputs and input services used in providing taxable services. This change will come into effect from 1st April, 2007.

(2) Rule 9 is being amended to insert sub-rule (11) to allow an assessee to rectify mistakes and file revised return within 60 days from the due date for filing of original return. This change will come into effect from 1st March, 2007.

[refer notification No.10/2007-Service Tax dated 01.03.2007].

(VII) Changes in the Export of Services Rules, 2005:

(1) Rule 3 is being amended to-

(i) substitute the words 'delivered outside India and used outside India' with the words 'provided from India and used outside India' in sub-rule (2); and

(ii) to clarify that that both rule 3(1) and 3(2) are to be satisfied for provision of service to be treated as export of services.

[refer notification No. 2/2007-Service Tax dated 01.03.2007].

The above changes will come into effect from 1st March 2007.