

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

D.O.F.NO.334/4/2006-TRU

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NEW DELHI, the 28th February, 2006.

Dear Chief Commissioner/Commissioner,

The Finance Minister has introduced the Finance Bill, 2006 in the Lok Sabha on 28th February, 2006. Changes in service tax have been made vide Clause 68 of the Finance Bill, 2006 and through notification Nos. 1 to 7/2006- Service Tax, all dated 1st March, 2006. Details of the changes are explained in the Explanatory Notes. For complete details, clause 68 of the Finance Bill, 2006, notifications and Explanatory Notes may be referred to. Salient features of the changes are discussed hereinafter:

1.2 Significant changes are being proposed in a number of provisions of the Finance Act, 1994 and Service Tax Rules, 1994. Some of the existing notifications have been rescinded and new notifications issued. Notifications relating to abatements are being consolidated into a single notification and reissued.

- The rate of service tax is being increased from 10% to 12%. The increase in service tax rate will be applicable from the date of enactment of the Finance Bill, 2006.
- Service tax is being proposed on fifteen individually specified services and the scope of certain existing services is being extended or clarified. These proposals will come into effect from a date to be notified after enactment of the Finance Bill, 2006.
- Certain other changes relating to the Finance Act, 1994 will come into effect from the date of enactment of the Finance Bill, 2006.
- Changes have also been proposed in Service Tax Rules, 1994. The procedural changes will come into effect from 1.3.2006.

(2) RATE OF SERVICE TAX:

The rate of service tax is being increased from 10% to 12%. [section 66 refers]

(3) TAXABLE SERVICES:

3.1 Taxable services are defined under clause (105) of section 65 of the Finance Act, 1994. Classification of taxable services is determined according to the sub-clauses of clause (105) of Section 65. Section 65A provides for principles of classification of taxable services.

3.2 Often services provided consist of more than one service. In such cases, it is important to decide, for the purpose of classification of services, whether each element of the transaction should be treated separately or as a single composite transaction, albeit, made up of two or more separate services. A composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service and accordingly classified. The decision is to be made on question of facts and law. It will not make a difference if the tax rates of the components are the same as that of the principal service. The problem may arise when some elements are taxable and others are exempt. While taking a view, both the form and substance of the transaction are to be taken into account. The guiding principle is to identify the essential features of the transaction. The

method of charging does not in itself determine whether the service provided is a single service or multiple services.

3.3 For the sake of clarity and ease of classification, certain categories of services are clubbed together and a new service category created. Some of the newly specified services may also contain services which are presently covered under some of the existing services. The scope and coverage of individual service should be interpreted strictly in accordance with the statutory provisions. This aspect needs to be kept in mind while classifying the taxable services.

3.4 Following services are specifically included in the list of taxable services:

- 1) Service provided by a Registrar to an Issue; [sub-clause (zzzi) of section 65(105) refers]
- 2) Service provided by a Share Transfer Agent; [sub-clause (zzzj) of section 65(105) refers]
- 3) Automated Teller Machine operations, maintenance or management; [sub-clause (zzzk) of section 65(105) refers]
- 4) Service provided by a recovery agent; [sub-clause (zzzl) of section 65(105) refers]
- 5) Sale of space or time for advertisement, other than in print media; [sub-clause (zzzm) of section 65(105) refers]
- 6) Sponsorship services provided to any body corporate or firm, other than services in relation to sponsorship of sports events; [sub-clause (zzzn) of section 65(105) refers]
- 7) Transport of passengers embarking on international journey by air, other than in economy class ; [sub-clause (zzzo) of section 65(105) refers]
- 8) Transport of goods in containers by rail provided by any person other than Government railway; [sub-clause (zzzp) of section 65(105) refers]
- 9) Business support services; [sub-clause (zzzq) of section 65(105) refers]
- 10) Auctioneers' service, other than in relation to auction of property under directions or orders of a court of law or auction by the Government; [sub-clause (zzzr) of section 65(105) refers]
- 11) Public relations service; [sub-clause (zzzs) of section 65(105) refers]
- 12) Ship management service; [sub-clause (zzzt) of section 65(105) refers]
- 13) Internet telephony service; [sub-clause (zzzu) of section 65(105) refers]
- 14) Transport of persons by cruise ship; [sub-clause (zzzv) of section 65(105) refers]
- 15) Credit card, debit card, charge card or other payment card related services. [sub-clause (zzzw) of section 65(105) refers]

3.5 **REGISTRAR TO AN ISSUE:** A person engaged by a body corporate and provides various services in respect of sale or purchase of securities. These services include collection of application forms, keeping of records, and assisting in allotment of securities. The service providers are required to be registered under SEBI Rules. The details may be obtained from the website of SEBI viz. sebi.gov.in.

3.6 **SHARE TRANSFER AGENT:** A person who provides service to a body corporate. The services include maintenance of the record of holders of securities and dealing with all matters connected with transactions or redemption of securities. The service providers are required to be registered under SEBI Rules. The details may be obtained from the website of SEBI viz. sebi.gov.in.

3.7 **ATM OPERATIONS, MAINTENANCE OR MANAGEMENT:** ATMs (Automated Teller Machines) may be owned by banks and other financial institutions who outsource a number of activities related to ATMs such as operations, maintenance or management of hardware and software, cash replenishment etc. In other cases, there is comprehensive outsourcing of entire ATM related services. Such outsourced services are taxable under this category. Some of the specific areas of outsourcing are mentioned in the definition of ATM operations, maintenance or management.

3.8 **RECOVERY AGENT:** Services provided for recovery of any sums due to a commercial or business entity are covered under this category. Under Securities and Reconstruction of Financial Assets and Enforcement of Security Act, 2002 and the relevant rules made there under, banks and other financial institutions appoint recovery agents.

3.9 SALE OF ADVERTISING SPACE OR TIME: Sale of media in television and radio by a broadcasting agency or organization is taxable under Section 65(105)(zk). Services provided by advertising agencies are taxable under Section 65(105)(e).

This entry proposes to levy service tax on sale of time or space for advertisement, excluding sale of space for advertisement in print media. Sale of advertising time in television and radio by any person other than broadcasting agency or organization is also covered under this sub-clause. Some of the other modes of advertisement covered under this mode are internet advertisement, advertisement on buildings, vehicles, etc., advertisement in motion pictures, television serials, video and music albums, mobile phones, ATMs, films and television serials (known as product placement). It may be noted that advertisement in print media is excluded.

3.10 SPONSORSHIP SERVICE: Body corporate or firms involved in business or commerce sponsor events with an intent to obtain commercial benefit or bringing their name or products or services in public image to public attention by associating with a popular or successful event. This is an alternate form of advertisement. Consideration is normally paid in return for naming of the event after the sponsor or displaying the sponsoring company's logo or trading name or giving the sponsor exclusive or priority booking rights. Service tax is leviable only when the sponsor is any body corporate or firm. Sponsorship of sports events is excluded from the scope of this levy. Proposal is also to collect service tax under reverse charge method from the recipient of service namely the body corporate or firm who sponsors the event. It may be noted that the organizers of events are not liable to pay service tax under sponsorship service.

3.11 AIR TRANSPORT OF PASSENGERS EMBARKING FOR INTERNATIONAL TRAVEL: Liability to pay service tax is on the aircraft operator who is the service provider. Economy class passengers are excluded from the levy of service tax under this sub-clause. Transit passengers not leaving the customs area will not be covered under this sub-clause.

3.12 TRANSPORT OF GOODS IN CONTAINERS BY RAIL: The proposed levy is on transport of goods in containers by rail. Service provided by Indian Railways is excluded. Suitable abatement for the amount paid by such service providers to railways for haulage services will be prescribed separately. The levy will, therefore, be restricted only to that portion of the consideration received and retained by the service provider for the services provided. The details will be separately notified after enactment of the Finance Bill, 2006.

3.13 BUSINESS SUPPORT SERVICES: Business entities outsource a number of services for use in business or commerce. These services include transaction processing, routine administration or accountancy, customer relationship management and tele-marketing. There are also business entities which provide infrastructural support such as providing instant offices along with secretarial assistance known as "Business Centre Services". It is proposed to tax all such outsourced services. If these services are provided on behalf of a person, they are already taxed under Business Auxiliary Service. Definition of support services of business or commerce gives indicative list of outsourced services.

3.14 AUCTIONEERS' SERVICES: A seller of property normally enters into an agreement with an auctioneer to conduct the auction for a consideration. However, services provided in relation to auction of property under direction or orders of a Court of Law or auction by the Government are not taxable.

3.15 PUBLIC RELATIONS SERVICE: Public relation agencies are engaged to provide services relating to image or communication management. These services are proposed to be taxed. The term "public relations" is defined.

3.16 SHIP MANAGEMENT SERVICE: Owners or operators of ships enter into an agreement with ship managers for provision of a wide range of services in respect of running and operations of ships. Indicative list of services provided under this category are mentioned under the definition of "ship management service".

3.17 **INTERNET TELEPHONY SERVICE:** Presently internet telephony services are taxable under “Online information and data base access and or retrieval services”. Proposal is to create a separate service under the name ‘Internet Telephony Service’.

3.18 **TRANSPORT BY CRUISE SHIPS:** Services provided to any person embarking from any port in India for transport by cruise ships is proposed to be taxed.

3.19 **CREDIT CARD RELATED SERVICES:** Credit card services are presently taxable under banking and other financial services. The proposal is to tax comprehensively all services provided in respect of, or in relation to, credit card, debit card, charge card or other payment card in any manner. The major services provided in relation to such services are specifically mentioned under the definition “credit card, debit card, charge card or other payment card service”.

3.20 **Amendment to Section 65:** An Explanation has been inserted after clause 121 of Section 65. The purpose of this explanation is to make it clear that service provided by an unincorporated association or body of persons such as club or association to its members is treated as a taxable service. In other words, clubs or associations are treated as a person separate and different from their members for the purpose of levy of service tax.

3.21 The above changes will come into effect from a date to be notified after the enactment of the Finance Bill, 2006.

4. **SCOPE OF CERTAIN EXISTING SERVICES IS BEING EXTENDED OR CLARIFIED AS FOLLOWS:**

- 1) The references to ‘commercial concern’, in relation to seventeen taxable services, are being substituted with ‘person’, so as to expand the scope of the service provider in the said services. By this amendment, service tax is leviable on the taxable services provided by a person and not necessarily by a commercial concern;
- 2) Banking and other financial services, to include-
 - (i) services in relation to transfer of money through different modes by any person;
 - (ii) services provided as banker to an issue;
- 3) Management consultancy service, to specifically include consultancy in different areas of management;
- 4) General insurance service, to include service provided to a policy holder or any person by an insurer, including a re-insurer;
- 5) Life Insurance service, to include service provided to a policy holder or any person by an insurer, including a re-insurer;
- 6) Insurance auxiliary service concerning general insurance business, to include service provided to a policy holder or any person or an insurer, including a re-insurer;
- 7) Insurance auxiliary service concerning life insurance business, to include service provided to a policy holder or any person or an insurer, including a re-insurer;
- 8) Maintenance or repair service, to be renamed as “management, maintenance or repair” service, and to include management of movable property;
- 9) Erection, commissioning or installation service, to include erection, commissioning or installation of structures, whether or not pre-fabricated;
- 10) Consulting engineer service, to include engineering consultancy services provided by any firm or body corporate;
- 11) Business auxiliary service, to include computerized data processing;
- 12) Technical testing and analysis service, to clarify that-
 - (i) it includes clinical testing of drugs and formulations; and
 - (ii) excludes testing or analysis for the purpose of determination of the nature of diseased condition, identification of a disease, prevention of any disease or any disorder in human beings or animals.

5.1 In Management consultancy services, different areas of management consultancy are specifically mentioned.

5.2 Exemption provided to re-insurance vide Notification No. 3/94-Service Tax dated 30.6.1994 has been withdrawn. To make it explicit, it is mentioned that insurer includes re-insurer.

5.3 Maintenance or repair service is renamed as "Management, maintenance or repair service" and management of movable properties is also covered under this service.

5.4 "Erection, commissioning or installation service" is amended to cover erection, commissioning or installation of pre-fabricated structures.

5.5 Consulting engineer's service is amended to specifically include service provided by any firm or body corporate.

5.6 Information technology service is explained under business auxiliary service. Presently, maintenance of computer software and computerized data processing is covered under the scope of information technology service for the purpose of classification under business auxiliary service. It is proposed to exclude the said service from the scope of information technology service under business auxiliary service. As a consequence of this change, maintenance of computer software and computerized data processing shall not be treated as information technology service under business auxiliary service.

5.7 A clarificatory Explanation has been added to technical and testing analysis service. It is proposed to clarify that clinical testing of drugs and formulations is taxable and diagnostic testing and analysis is not taxable under this service.

5.8 The above changes will come into effect from a date to be notified after the enactment of the Finance Bill, 2006

6. **THE FOLLOWING EXEMPTIONS ARE WITHDRAWN WITH EFFECT FROM 1.3.2006 :**

- 1) The exemptions in relation to general insurance where-
 - (i) Premium is received from re-insurance both domestic and overseas;
 - (ii) All business for which premium is booked outside India;
- 2) Exemption for services, other than accounting, auditing, and statutory certification services, provided by a practicing chartered accountant, company secretary or cost accountant in his professional capacity. Consequently all services provided by such persons in their professional capacity become taxable;
- 3) Exemption for taxable services provided by a Call Centre or a Medical Transcription Centre;
- 4) Exemption for taxable service provided in relation to Enterprise Resource Planning (ERP) software system provided by a management consultant in connection with the management of any organization;
- 5) Exemption for catering services provided on a railway train by an outdoor caterer;
- 6) Exemption for catering services provided within the premises of an academic institution or medical establishment by an outdoor caterer.

Refer notification no. 2/2006-Service Tax dated 01.03.06.

7.1 **NEW EXEMPTIONS FROM LEVY OF SERVICE TAX:**

- 1) Exemption from service tax has been provided to financial leasing services including equipment leasing and hire-purchase, both for principal and interest portion of the installments paid. The amount of interest is calculated as 90% of the difference between the installment paid towards the payment of the lease amount and the principal amount in such installment. (Notification No.4/2006-Service Tax dated 1.3.2006)
- 2) Exemption from service tax has been provided to testing and analysis services provided in relation to water quality testing by Government owned State and District level laboratories. (Notification No.6/2006-Service Tax dated 1.3.2006)
- 3) Exemption from service tax has been provided to all taxable services provided by Reserve Bank of India. (Notification No.7/2006-Service Tax dated 1.3.2006)

7.2 The above mentioned exemptions will come into effect from 1st March, 2006.

8. **AMENDMENTS IN THE ACT:**

(1) Finance Act, 1994 is being amended to: -

- (a) substitute references to 'commercial concern', in relation to seventeen taxable services, with 'person', so as to expand the scope of the service provider in the said services; [This change will come into effect from a date to be notified after the enactment of the Finance Bill, 2006]
- (b) clarify that taxable service includes any service provided or to be provided by an unincorporated association or body of persons to its members. Club or association in such cases is treated as a separate person from its members. (Explanation to section 65); [This change will come into effect from a date to be notified after the enactment of the Finance Bill, 2006]
- (c) omit the Explanation at the end of section 65(105) providing levy of service tax on taxable services provided from outside India to a recipient in India. Separate provision is being inserted to levy service tax on service provided from outside India to a recipient in India under reverse charge method; [This change will come into effect from a date to be notified after the enactment of the Finance Bill, 2006]
- (d) increase the rate of service tax from 10 per cent. to 12 per cent. and to include the individually specified services [section 66];
- (e) insert section 66A to levy service tax under reverse charge method on taxable services provided from outside India to a recipient in India;
- (f) substitute the existing section 67 with a new section 67 to provide for determination of value of taxable service. At present, service tax is charged on the gross amount received. The proposed section provides determination of taxable value in cases where the consideration received for taxable services provided is not wholly in money terms and the consideration received is in money terms but not known explicitly. Separate valuation rules are proposed for this purpose.
- (g) provide for conclusion of adjudication proceedings in respect of a person who has voluntarily deposited the service tax demanded along with interest and penalty equal to 25 per cent. of the service tax specified in the demand notice [section 73(1A)];
- (h) (i) provide for voluntary payment by an assessee of any amount collected in excess of the service tax leviable but not deposited with the Central Government or recovery of such excess amount. It may be noted that any amount collected as service tax, whether or not legally required to be paid, is to be deposited with the Government under this Section. This section is applicable not only to a person liable to pay service tax but also to any person, even if he is not an assessee;
(ii) provide for voluntary payment or recovery of any amount representing service tax, that has been collected by a person but not deposited with the Central Government [section 73A];
- (i) enable the Central Government to collect interest on the amount referred to in section 73A [section 73B];
- (j) provide for provisional attachment of property by the Central Excise Officer during the pendency of any proceedings under section 73 or section 73A [section 73C];
- (k) provide for publishing the name of any person and particulars of any proceedings in relation to such person, in public interest [section 73D];
- (l) substitute section 76 with a new section 76 for providing imposition of penalty for failure to pay service tax by the due date. It may be noted that penalty for delayed payment is also linked to the amount due;
- (m) omit reference to section 11 and section 11D of the Central Excise Act, 1944 in section 83 of the Finance Act, 1994, in view of separate recovery provisions for service tax inserted in the said Finance Act;
- (n) provide for recovery of any amount of service tax due to the Central Government [section 87];
- (o) empower the Central Government to issue orders for removal of difficulty in case of classifying, assessing the value of, or implementing any taxable service [section 95];
- (p) empower the Authority for Advance Rulings to determine the liability to pay service tax [section 96C].

The above changes [except (1)(a), (1)(b) and (1)(c)] will come into force from the date of enactment of Finance Bill, 2006.

9. AMENDMENTS IN THE SERVICE TAX RULES, 1994

Rule 4(5A) makes it obligatory on the part of the assessee to intimate any change in information submitted at the time of registration within thirty days of such changes.

Rule 4(8) provides for cancellation of registration certificate where the assessee makes an application for cancellation. It may be noted that the cancellation of registration may be done when the assessee applies for cancellation on his own or surrender his certificate under Rule 4(7) and not in other cases. It may be noted that there is no statutory requirement for the assessee to make any application for cancellation in every case.

Rule 5(3) makes it obligatory for an assessee to preserve records at least for a period of five years.

Rule 5(4) makes it obligatory for an assessee to make available records maintained by him to a Central Excise Officer for the purpose of inspection or examination. However, such inspection or examination can be undertaken only after the written approval of the jurisdictional Assistant/Deputy Commissioner. It may also be noted that the assessee is required to make available the records in his registered premises.

10. General:

10.1 Changes explained above are not exhaustive and are only for the purpose of providing guidance. Explanations are not to be treated as part of the statutory provisions and do not over ride them. The statutory provisions and the relevant notifications have to be read carefully for interpreting the law.

10.2 I would request you to kindly go through the Finance Bill, 2006, amendments in the Rules and notifications carefully and to bring to our notice at the earliest any omissions/errors that might have crept in. It is also felt desirable to have interactive sessions with the field officers and trade and industry associations for their views, comments and suggestions, if any. In particular, views and suggestions are invited on the draft Service Tax (Determination of Value) Rules, 2006 and draft Taxation of Services (provided from outside India and received in India) Rules, 2006 placed on CBEC website.

10.3 Any problems of implementation may kindly be brought to our notice. A survey may be conducted to assess the potential service providers of the newly introduced services and their revenue potential. Reports to this effect may be sent by 15.3.2005 and 31.3.2005.

10.4 If there is any doubt or difficulty on any point, you are requested to bring it immediately to my notice or to the notice of Shri R. Sriram, Deputy Secretary (TRU) Tel: 23092634 (email – **tru.finmin@gmail.com**) Copies of the FM's speech, notifications, Finance Bill, 2006, explanatory notes etc, are forwarded. These will also be available on the CBEC website soon after the conclusion of FM's speech.

With regards,

Yours sincerely,

(R. Sekar)

To
All Chief Commissioners/Director General (All)
Commissioners of Central Excise and Service Tax (All)