

**Government of India
Ministry of Finance
Department of Revenue
Tax Research Unit

D.O.F. No. 334/1/2007-TRU.

R. Sekar,
Joint Secretary (TRU),
Tel.: 23093027
Fax: 23093037
e-mail: jstru.sekar@gmail.com

New Delhi, 28th February, 2007.

Dear Chief Commissioner / Commissioner,

The Finance Minister has introduced the Finance Bill, 2007 in the Lok Sabha on 28th February, 2007. Changes relating to service tax are in,-

- (i) Clause 125 of the Finance Bill, 2007, and
- (ii) notification Nos. 1 to 12/2007-Service Tax, and notification No. 10/2007-Central Excise (NT) all dated 1st March, 2007.

Changes are being proposed in a number of provisions of the Finance Act, 1994, Service Tax Rules, 1994, CENVAT Credit Rules, 2004 and Export of Services Rules, 2005. Details of the changes are explained in the Explanatory Notes.

INCREASE IN THRESHOLD EXEMPTION LIMIT FOR SMALL SERVICE PROVIDERS

2. The threshold limit of service tax exemption for small service providers is being increased from the present level of Rs.4 lakhs to Rs.8 lakhs with effect from 01.04.2007, by amending notification No.6/2005-Service Tax, dated 01.03.05 vide notification No. 4/2007-Service Tax, dated 01.03.07.

3. Consequent upon the increase in the threshold exemption limit from Rs. 4 lakh to Rs. 8 lakh, the limit for obtaining service tax registration has also been increased from Rs. 3 lakh to Rs. 7 lakh by amending notification Nos. 26/2005-Service Tax and No.27/2005-Service Tax, both dated 07.06.05 vide notification Nos. 5, 6 & 7/2007-Service Tax, dated 01.03.07.

WIDENING OF SERVICE TAX BASE

4. In continuation of the policy of widening of the service tax base, the Finance Bill, 2007 proposes to,-

- Levy service tax on more services,
- Expand or clarify the scope of existing services, and
- Carve out separate services from the existing services and specify them as separate taxable services.

5. Services of same category are grouped together and defined as a separate taxable service. Newly specified services may contain part or whole of existing individually specified taxable services. The scope and coverage of taxable services should, therefore, be interpreted for classification purposes strictly in accordance with the statutory provisions existing during the material point of time.

6. Following services are specifically included in the list of taxable services:

- (i) Service provided by a telegraph authority in relation to telecommunication service [sub-clause (zzzx) of section 65(105) refers];
- (ii) Service provided in relation to mining of mineral, oil or gas [sub-clause (zzzy) of section 65(105) refers];
- (iii) Service provided in relation to renting of immovable property for use in the course or furtherance of business or commerce [sub-clause (zzzz) of section 65(105) refers];
- (iv) Service provided in relation to the execution of a works contract [sub-clause (zzzza) of section 65(105) refers];
- (v) Service provided in relation to development and supply of content for use in telecom services, advertising agency services and on-line information and database access or retrieval services [sub-clause (zzzzb) of section 65(105) refers];
- (vi) 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, in relation to asset management including portfolio management and all forms of fund management [sub-clause (zzzzc) of section 65(105) refers]; and
- (vii) Service provided in relation to design services [sub-clause (zzzzd) of section 65(105) refers].

6.1 **TELECOMMUNICATION SERVICE:** Following telecommunication related services, which are presently specified as separate taxable services, namely:

- (i) telephone connection [sub-clause (b) of section 65(105)]

- (ii) pager [sub-clause (c) of section 65(105)]
- (iii) leased circuit [sub-clause (zd) of section 65(105)]
- (iv) communication through telegraph[sub-clause (ze) of section 65(105)]
- (v) communication through telex[sub-clause (zf) of section 65(105)]
- (vi) facsimile communication[sub-clause (zg) of section 65(105)]

are being merged under the proposed “telecommunication service” [sub-clause (zzzx) of section 65(105)], and the term “telecommunication service” [section 65(109a)] is being defined comprehensively. Specific inclusion and exclusion of telecom services may be seen in the definition.

6.1.1 Services provided by the telegraph authority to any person in relation to telecommunication are covered under this service. It may be noted that the present condition namely, recipient of service needs to be a subscriber, under telecommunication related services has been changed under the proposed Telecommunication Service. Telecommunication Service includes services provided to any person and not confined only to subscriber.

6.2 **MINING SERVICE** [section 65(105)(zzzy)]: Presently, geological, geophysical or other prospecting, surface or sub-surface surveying or map-making services relating to location or exploration of deposits of mineral, oil or gas are leviable to service tax under “survey and exploration of mineral service” [section 65(105)(zzv)]. Services such as-

- site formation and clearance, and excavation and earth moving, drilling wells for production / exploitation of hydrocarbons (development drilling)
- well testing and analysis services
- sub-contracted services such as deploying workers and machinery for extraction / breaking of rocks into stones, sieving, grading, etc.
- outsourced services,

provided for mining are individually classified under the appropriate taxable service. Services provided in relation to mining of mineral, oil and gas are comprehensively covered under this proposed service. With this, services provided in relation to both exploration and exploitation of mineral, oil or gas will be comprehensively brought under the service tax net.

6.2.1 The trend is to outsource part or whole of the mining activities. Since exploration and mining of mineral, oil or gas are comprehensively brought under the service tax, field formations may undertake necessary action.

6.3 RENTING OF IMMOVABLE PROPERTY SERVICE: Renting of immovable property for use in the course or furtherance of business or commerce [section 65(105)(zzzz)] is the taxable service. Renting includes letting, leasing, licensing or other similar arrangement. The contract is for right-to-use an immovable property for a consideration. Immovable properties excluded from the scope of this service are:

- residential properties
- residential accommodation such as hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities
- vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes
- vacant land, whether or not having facilities clearly incidental to the use of such vacant land
- land used for educational, sports, circus, entertainment and parking purposes

Similarly, renting of immovable property in the following cases is also excluded from the scope of this taxable service, namely:-

- (i) renting of immovable property by a religious body
- (ii) renting of immovable property to a religious body,
- (iii) renting of immovable property to an educational body, other than commercial training or coaching centre

Commercial coaching or training centre is defined under section 65 (27).

6.3.1 Where renting of immovable property is a single composite contract involving part of property for use in commerce or business and part of it for residential / accommodation purposes, for the purpose of levy of service tax under this sub-clause, entire property under the contract is treated as property for use in commerce or business and accordingly the total value of the contract shall be the taxable value.

6.4 SERVICE INVOLVED IN THE EXECUTION OF A WORKS CONTRACT [section 65(105)(zzzza)]: VAT / sales tax is leviable on transfer of property in goods involved in the execution of a works contract. The proposed taxable service is to levy service tax on services involved in the execution of a works contract. It may be noted that under this service only the following works contracts wherein transfer of property in goods involved in execution of such works contract is leviable to VAT / sales tax, are covered, namely:-

- (i) works contract for carrying out erection, commissioning or installation
- (ii) works contract for commercial or industrial construction

- (iii) works contract for construction of complex
- (iv) works contract for turnkey projects including Engineering Procurement and Construction or Commissioning (EPC) projects.

6.4.1 Works contract in respect of specified infrastructure projects namely roads, airports, railways, transport terminals, bridges, tunnels and dams are specifically excluded from the scope of the levy.

6.4.2 Taxable value under this service is that part of the value of the works contract which is relatable to services provided in the execution of a works contract. Such value is to be determined on actual basis based on the records maintained by the assessee. However, it is proposed to give an option to an assessee to opt for a composition scheme. Under the composition scheme, the assessee is required to pay 2% of the total value of the works contract as service tax. Assessee opting for the composition scheme is not entitled to avail CENVAT credit of capital goods, inputs and input services required for use in the works contract. Valuation of works contract and details of the composition scheme will be notified separately.

6.5 DEVELOPMENT AND SUPPLY OF CONTENT SERVICE [section 65(105)(zzzzb)]: Content developed for use in telecommunication, advertisement and internet or websites are leviable to service tax presently under “business support service”. It is proposed to separately specify services provided by content developers in relation to development and supply of content for use by telecommunication service providers, advertising agencies and on-line information and database access or retrieval services such as internet or website service providers under this service. The term “development and supply of content” is defined separately [section 65(36c)]

6.6 ASSET MANAGEMENT INCLUDING PORTFOLIO MANAGEMENT AND ALL FORMS OF FUND MANAGEMENT SERVICE [section 65(105)(zzzzc)]: Asset management including portfolio management and all forms of fund management, provided by a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern is leviable to service tax under banking and other financial service[section 65 (105)(zm)]. Similar services are also provided by individual service providers especially to high net worth individuals. This taxable service proposes to cover separately, similar services provided by person, other than those already covered under banking and other financial services.

6.7 DESIGN SERVICES [section 65(105)(zzzzd)]: Services in relation to conceptualizing, outlining, creating the designs and preparing patterns for costumes, apparels, garments, clothing accessories, jewellery or any other articles intended to be worn by human beings are leviable to service tax under fashion designing service [section 65(105)(zv)] and services in relation to planning, design or beautification of spaces is leviable to service tax under interior decorator’s service [section 65(105)(q)]. Design services, other than the above specifically mentioned taxable services, like furniture

design, aesthetic design, consumer or industrial products, logos, packaging, production of three dimensional models, etc. will be taxable under this category.

7. AMENDMENTS:

7.1 SALE OF SPACE OR TIME FOR ADVERTISEMENT [Section 65(105)(zzzm)]: Definition of the term “Book” is being amended so as to exclude business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes from the scope. Consequently sale of space for advertisement in such publications will also be leviable to service tax under this service.

7.2 RENT-A-CAB SERVICE [Section 65(20)]: Definition of “cab” has been amended so as to include motor vehicles capable of carrying more than twelve passengers for hire or reward. However, motor vehicle capable of carrying more than twelve passengers and 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, is specifically excluded from the scope of the term “cab”. Commercial coaching or training centre is already defined under section 65 (27).

7.2.1 Effect of this proposed change are-

- Renting of motor vehicles capable of carrying more than twelve passengers for hire or reward will be leviable to service tax.
- Maxicab and motor vehicles capable of carrying more than twelve passengers for hire or reward rented to an educational body is not leviable to service tax. It may be noted that for the purposes of levy, educational body does not include commercial training or coaching centre defined under section 65(27).
- Motorcab, even if it is rented to an educational body is leviable to service tax.

Ambulances are not meant for carrying passengers for hire or reward. Hence, the question of levy does not arise.

7.3 MANDAP KEEPER SERVICE [Section 65(66) and 65(67)] and **PANDAL OR SHAMIANA SERVICE** [Section 65(77a)]: Explanation under these taxable services has been added stating that social function appearing in these taxable services includes marriage functions;

7.4 EVENT MANAGEMENT SERVICE [Section 65(40)]: Definition of event management is amended so as to specifically include marriage event within the scope of this service.

7.5 MANPOWER RECRUITMENT OR SUPPLY SERVICE [Section 65(105)(k)]: Explanation is added to clarify that manpower recruitment or supply agency service includes services in relation to pre-recruitment screening, verifying the credentials of the candidate, authenticity of documents submitted by the candidates and verification of antecedents. Amendment is for the purpose of clarification.

7.6 BANKING AND OTHER FINANCIAL SERVICE:

- (i) The words “any other person” is substituted with “commercial concern” in the definition of taxable service of banking and other financial services [section 65(105)(zm)] and also in the definition of banking and other financial services [section 65(12)],
- (ii) At present cash management is specifically excluded from the scope of this service. Specific exclusion of cash management is being omitted. Consequently, cash management services will be leviable to service tax under this service. Cash management services includes services of collection of receivables, execution of payment, management of liquidity and providing customized Management Information System (MIS) reports, provided by banks to clients such as corporate clients, and
- (iii) The term “financial leasing” is explained as a lease transaction fulfilling the following conditions, namely:-
 - (a) a contract for leasing of a specific asset is entered into between two parties,
 - (b) the contract is for use and occupation of the specific asset,
 - (c) the lease payments are calculated so as to cover the full cost of the asset together with the interest charges, and
 - (d) the lessee is entitled to own or has the option to own, the asset at the end of the lease period after completing the lease payment;

7.6.1 International Accounting Standards Committee defines financial lease as “lease that transfers substantially all the risks and rewards incidental to ownership of an asset, title may or may not eventually be transferred”. Financial lease is a way of purchasing an asset with the help of the loan and the lessee uses the asset. Risks and rewards incidental to ownership of an asset is also with the lessee. All lease transactions particularly sale and lease back transactions are to be examined carefully on the basis of this clarification.

7.7 MANAGEMENT CONSULTANT’S SERVICE:

- (i) Renamed as management or business consultant’s service [Section 65(105)(r)], and

- (ii) to explicitly include business consultancy in the definition itself [Section 65(65)].

7.8 CONSULTING ENGINEER'S SERVICE [Section 65(105)(g)]:

Presently computer hardware engineering consultancy is specifically excluded from this service. Specific exclusion of computer hardware engineering consultancy is being omitted. Consequently, computer hardware engineering consultancy will be leviable to service tax under this service.

7.9 MANAGEMENT, MAINTENANCE OR REPAIR SERVICE:

Section 65(64) Amended to clarify that “goods” for the purposes of this service includes computer software. Consequently, maintenance or repair of computer software will be leviable to service tax under this category. It may be noted that development of computer software is distinct from maintenance or repair of computer software and development of computer software continues to be not leviable to service tax being an “information technology service”.

8. NEW EXEMPTIONS FROM LEVY OF SERVICE TAX:

8.1 Resident Welfare Associations (RWA) are associations where membership is restricted to only members of the residential complex. RWAs provide various services to their members such as maintenance of common area, facilitating payments etc. For this purpose, each member is required to make monthly contribution of specified amount. Exemption from service tax is being provided to services provided by RWAs to their members, where the monthly contribution of a member does not exceed Rs. 3000/- per month [notification No. 8/2007-Service Tax dated 01.03.2007].

8.2 The Department of Science and Technology assists Technology Business Incubators (TBI) and Science and Technology Entrepreneurship Parks (STEP), also known as incubators, to promote clusters of technology based small entrepreneurs. Incubators work with young entrepreneurs who want to develop and commercialise innovative ideas. The scheme is operationalised by the Department of Science and Technology through National Science and Technology Entrepreneurship Development Board.

8.2.1 Notification No. 9/2007-Service Tax dated 01.03.2007 exempts all taxable services provided by incubators from levy of service tax. The exemption will be available from 01.04.2007.

8.2.2 The incubator who intends to avail service tax exemption is required to furnish information in the format specified in the notification to the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before he

starts availing the exemption. They are also required to furnish the details of incubatees to whom they are providing assistance.

8.3 Service tax exemption is also provided to incubatees. Incubatees are entrepreneurs working with the incubator to develop their ideas into a commercially viable venture. Incubatees are required to sign an agreement with incubator. Every incubatee who signs an agreement with the incubator is entitled to service tax exemption subject to the following conditions:

- (i) the incubatee should be located within the premises of an incubator
- (ii) The total business turnover of the incubatee should not have exceeded Rs.50 lakhs during the preceding financial year
- (iii) The total business turnover of the incubatee remains within Rs.50 lakhs (incubatee is not eligible for service tax exemption once he crosses Rs. 50 lakh business turnover)
- (iv) The exemption is available to an incubatee only for a period of three years. Period of three years is computed from the date of signing the agreement with an incubator

The exemption will be available from 01.04.2007.

8.4 Clinical trial of new drugs undertaken by Clinical Research Organisation (CRO) is presently leviable to service tax under technical testing and analysis service [section 65(105)(zzh)]. Clinical trial of new drugs and the organisations undertaking clinical research are approved by the Drugs Controller General of India. Exemption from service tax is being provided to technical testing and analysis service provided in relation to testing and analysis of newly developed drugs on human participants by a CRO. New drugs include vaccines and herbal remedies. [Notification No. 11/2007-Service Tax dated 01.03.2007].

8.5 In digital cinema, cinematograph film is transferred to a magnetic tape and thereafter converted into digital form. Digitised content of the cinema after encryption is stored in servers and transmitted to servers located in the cinema hall. Transmission is either through satellite or other wired or wireless mode. Digital cinema projector in the theatre decodes the signal and exhibits the cinema on the screen.

8.5.1 Producer or distributor of a cinematograph film, who has the right to authorise any other person to exhibit the cinema, enters into an agreement with the digital cinema service provider for delivery of the content of the cinema, as per his instruction, in digitised and encrypted form to the cinema theatre owner for exhibition.

8.5.2 Exemption from service tax is being provided to services provided by the digital cinema service provider to the producer or distributor in relation to the delivery of

content of cinema in digital form after encryption electronically. Exemption is not available if the content is delivered to the theatre for exhibition by any physical means. Transmission will be electronic either by wire or wireless means. Scope of the terms “cinematograph film” and “cinema theatre” are explained in the notification. [notification No. 12/2007-Service Tax dated 01.03.2007].

8.6 The above exemptions [except 8.2 and 8.3] will come into effect from 1st March, 2007.

9. AMENDMENTS IN THE ACT:

9.1 The following telecommunication related services are presently specified as separate taxable services, namely:-

- (i) telephone connection [sub-clause (b) of section 65(105)]
- (ii) pager [sub-clause (c) of section 65(105)]
- (iii) leased circuit [sub-clause (zd) of section 65(105)]
- (iv) communication through telegraph[sub-clause (ze) of section 65(105)]
- (v) communication through telex[sub-clause (zf) of section 65(105)]
- (vi) facsimile communication[sub-clause (zg) of section 65(105)]

Since the proposed telecommunication service includes telecommunication related taxable services separately defined at present, the above mentioned services are not required to be defined separately any more. Section 66 is being amended to omit reference to sub-clauses (b), (c), (zd), (ze), (zf) and (zg) of clause (105) of section 65. Till telecommunication service is separately notified as a taxable service under sub-clause (zzzx) of clause (105) of section 65 after enactment of the Finance Bill, 2007, the above mentioned services continue to be classifiable as per the existing classification of taxable services.

9.2 At present filing of a return after the due date is treated as a violation and is liable for penal action. It is proposed to prescribe a specified amount of late fee linked to period of delay for filing of return after the due date. The assessee is required to pay the amount prescribed depending upon the period of delay. For this purpose, section 70(1) is being amended. After the proposed amendment in section 70(1) comes into force, appropriate rules will be notified indicating the conditions and the amount to be paid for delayed filing of return.

9.3 Section 14AA of Central Excise Act, 1944 empowers the Commissioner of Central Excise to order for cost audit by a Cost Accountant to study the abnormal utilisation of CENVAT credit. Section 83 is being amended to extend the applicability of this section for service tax purposes also.

9.3.1 Section 38A of Central Excise Act, 1944 provides protection by way of savings for all pending actions under rules and notifications that are repealed, rescinded or amended. Section 83 is being amended to extend section 38A provisions for service tax matters also.

9.4 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
- (ii) two Commissioners to review the order passed by a Commissioner of Central Excise (Appeals)

9.5 Section 95 is being amended to empower the Central Government to issue orders for removal of difficulty in case 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.

9.6 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.

9.7 The changes mentioned above [except 9.1] will come into force from the date of enactment of the Finance Bill, 2007.

10. **AMENDMENTS IN THE SERVICE TAX RULES, 1944:**

10.1 While intimating any change in information furnished at the time of obtaining registration certificate, the assessee is required to submit the original registration certificate. It is proposed to dispense with the requirement of submission of original registration certificate to the department at the time of intimation of any changes. As per the amended provisions, the assessee is required to submit only a self-certified copy of the registration certificate. Rule 4, Form ST-1 and ST-2 are being suitably amended for this purpose. Department will issue the amended registration certificate after cancelling the original registration certificate issued earlier.

10.2 At present, self-adjustment of excess service tax paid is available only to those who have centralised registration and that also only if the adjustment is on account of delayed receipt of details from the branch offices. It is proposed to extend self-adjustment of excess service tax paid to all assessees subject to the following conditions:

- Self-adjustment of excess credit is allowed on account of reasons other than interpretation of law, taxability, classification, valuation or applicability of any exemption notification.

- Excess amount paid and proposed to be adjusted should not exceed Rs.50,000 for the relevant month or quarter.
- Adjustment can be made only in the succeeding month or quarter.
- The details of self-adjustment should be intimated to the Superintendent of Central Excise within a period of 15 days from the date of adjustment.

However, assesseees who have centralised registration can adjust the excess service tax paid on their own without any monetary limit provided the excess amount paid is on account of delayed receipt of details of payments from branch offices.

10.3 Rule 7B is being inserted to allow an assessee to rectify mistakes and file revised return within 60 days from the date of filing of the original return;

10.4 Rule 2(1)(d)(vii) is being amended so that service tax is required to be paid under reverse charge method in relation to sponsorship service only if the recipient of service is located in India. In other words, if the recipient of sponsorship service is located outside India, in such cases, service tax is required to be paid by the service provider and not by the recipient. This change will come into effect from 1st April, 2007.

The above changes (except 10.4) will come into effect from 1st March, 2007.

11. AMENDMENTS IN THE CENVAT CREDIT RULES, 2004:

11.1 Rule 6(3) is being amended to provide an option to general insurance service providers providing taxable as well as exempted insurance schemes and do not maintain separate input / input services credit accounts to utilise CENVAT credit proportionate to the inputs and input services used in providing taxable services. The scheme is optional and is effective from 1st April, 2007. It may be noted that the scheme is applicable only to general insurance services referred to in section 65(105)(d).

11.2 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 date of filing of original return. This change will come into effect from 1st March, 2007.

12. AMENDMENTS IN THE EXPORT OF SERVICES RULES, 2005:

12.1 Rule 3 is being amended with effect from 1st March, 2007, 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) 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.

13. **GENERAL:**

13.1 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.

13.2 I would request you to kindly go through the Finance Bill, 2007, 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.

13.3 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 15.03.2007 and 31.03.2007.

13.4 If there is any doubt or difficulty on any point, you are requested to bring it immediately to my notice (email – **jstru.sekar@gmail.com**) 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)