

EXPLANATORY NOTES – SERVICE TAX

A. The following changes are being proposed in the Finance (No.2) Bill, 2009 [refer clause 112 of the Finance (No.2) Bill, 2009].

(I) Section 65 is being amended to :

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

- (i) Service provided in relation to transport of coastal goods and goods through National Waterways and Inland Water,
- (ii) Service provided in relation to transport of goods by rail,
- (iii) Cosmetic and plastic surgery service,
- (iv) Legal consultancy service.

(The above changes will come into effect from a date to be notified, after the enactment of the Finance Bill, 2009).

(b) extend or modify the scope of certain services, namely:-

- (i) Business auxiliary service [Section 65 (19)], so as to provide that only those processes which result in the manufacture of excisable goods (as defined in the Central Excise Act) are excluded from the purview of Business auxiliary service.
- (ii) Information technology service [Section 65 (105) (zzzze)], to replace the word, 'acquiring', with the word, 'providing' [appearing in serial number (iv) and (v) of the definition].The amendment is being given retrospective effect from 16.05.2008.
- (iii) Stock-broker service [Section 65 (101)], to exclude sub-broker from its ambit. As a result sub-brokers will be outside the ambit of service tax.

(The above changes will come into effect from a date to be notified, after the enactment of the Finance Bill, 2009).

(II) Section 66 pertaining to “charge of service tax” is being amended, to include the services which are individually specified, for inclusion in the list of taxable service.

(III) Section 84 is being amended, to abolish the revision procedure prescribed in Section 84. Revision of orders by the Commissioner is being replaced, with the filing of departmental appeals before the Commissioner of Central Excise (Appeals), similar to the Central Excise provisions. Consequential changes are effected in Section 86. A saving clause is being provided, to protect the pending cases.

- (IV) Section 94 is being amended, to empower the Central Government, to frame rules with respect to the place of supply of taxable services, and the relevant date for determination of service tax.

(The above changes will come into effect from the date of enactment of the Finance Bill, 2009).

B. Amendments in the Rules and existing Notifications:

- (I) The scope of notification No.1/2002-ST dated 01.03.2002 is being enlarged, by extending the applicability of service tax provisions to installations, structures and vessels in the entire Continental Shelf of India and Exclusive Economic Zone of India[refer notification No. 21/2009-ST dated 07.07.2009].
- (II) Explanation provided in the Works Contract Rules, 2007 is being modified, so as to allow the benefit of optional composition scheme, only for such works contracts, where the taxpayer declares the entire value of goods (whether supplied under any other contract for a consideration or otherwise) and services used in the execution of the works contract, as the 'gross value' charged for the works contract. This restriction would not apply to the current works contracts where either the execution has commenced or any payment been made on or before 07.07.2009 [refer notification No.23/2009-ST dated 07.07.2009].
- (III) Rule 6(3) of the Cenvat Credit Rules, 2004 is being amended, to reduce the amounts to be paid on clearances of exempted goods and on provision of exempted services, from 10% to 5% in case of Central Excise and from 8% to 6% in case of service tax respectively [refer notification No.16/2009-CE(N.T.) dated 07.07.2009].
- (IV) Rule 3(5B) of the Cenvat Credit Rules, 2004 is being amended, so as to provide that a service provider shall pay back the amount of credit taken on inputs/capital goods fully written off[refer notification No. 16/2009-CE(N.T.) dated 07.07.2009].

(The above changes would come into effect immediately).

C. Exemptions:

- (I). Exemption from service tax is being provided, to inter-state or intra-state transportation of passengers, in a vehicle bearing 'contract carriage permit', with specified conditions [refer notification No. 20/2009-ST dated 07.07.2009].
- (II). Exemption from service tax (leviable under "club or association" service) is being provided, to the Federation of Indian Export Organizations (FIEO) and specified Export Promotion Councils, on the membership or any other fee collected by

them. This exemption is valid up to 31.03.2010[refer notification No.16/2009-ST dated 07.07.2009]

- (III). Exemption from service tax (leviable under “banking and other financial services” or “foreign exchange broker” services) is being provided, to inter-bank purchase and sale of foreign currency between scheduled banks [refer notification No.19/2009-ST dated 07.07.2009].
- (IV). Refund Scheme for Exporters:

Notification No.41/2007-ST dated 06.10.2007 provides for refund of service tax paid on services, which though not in the nature of input services, are relatable to export goods. The scheme is being revamped, to ensure speedier grant of refunds, to the exporters. The salient features of the new scheme, being notified under two notifications, No.17/2009-ST and No.18/2009-ST, both dated 07.07.2009, are as follows:

- (a) Under notification No.18/2009-ST dated 07.07.2009, two taxable services, namely, ‘transport of goods by road’ and ‘commission paid to foreign agents’ have been exempted from the levy of service tax, if the exporter is liable to pay service tax on reverse charge basis. The present cap of 10% on commission agency charges has been retained, and the exporter will have to pay service tax on the amount of commission which is in excess of 10%.
- (b) Superseding notification No.41/2007-ST dated 06.10.2007, a revised refund scheme is being brought into effect under notification No.17/2009-ST dated 07.07.2009. The salient features of this scheme are:-
- ‘Terminal handling charges’ is being added in the list of eligible services.
 - The time period for filing refund claim is being increased to one year from the date of export. The condition for filing refund claims once in a quarter is also being dispensed with. Now the exporter can file a refund claim anytime after export.
 - A simplified format is being prescribed for filing refund claims.
 - Many of the conditions that were imposed under the previous scheme have been deleted.
 - Self certification is being introduced to ensure speedier sanction and disbursement of refunds. In case, where the total refund claim does not exceed 0.25% of the total f.o.b. value of the exports under a claim, a self-certification by the exporter on the invoice, bill or challan, to the effect that: (a) the eligible services have been received by the exporter; (b) the service tax payable thereon has been reimbursed by the exporter, and (c) such services have been used for the export, would be

sufficient. The refunds shall be granted within one month without any pre-audit.

- In cases, where the amount of refund claim exceeds 0.25% of the f.o.b. value of exports, the invoice, bill or challan submitted by the exporter should be certified by the Chartered Accountant, who audits his annual accounts. On the basis of such certification, the refund claim shall be sanctioned by the department within one month, without any pre-audit.

(All these exemptions would come into effect immediately).

D. Giving retrospective effect to certain exemptions:

(I) The exemption given vide notification number 1/2009 dated 05.01.2009 to persons providing specified services to goods transport agency is being given retrospective effect from 1st day of January, 2005.

(This exemption will come into effect the date of enactment of Finance Bill, 2009).