

F. No. B3/7/2003-TRU

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

Subject: Imposition of Service Tax on new services consequent to enactment of Finance Bill, 2003-reg.

1. APPOINTMENT OF EFFECTIVE DATE FOR THE NEW SERVICES

It may be recalled that the Finance Act, 2003 has made provisions to levy service tax, from a date to be notified later on, on the following new services,-

- **Commercial training & coaching center**
- **Technical testing & analysis; technical inspection and certification**
- **Maintenance and repair service**
- **Commissioning and installation**
- **Business auxiliary services**
- **Internet café**
- **Franchise service**

Further, it was also provided in the Finance Act to extend the scope of services already covered under the tax net in case of,-

- **port services** (which were earlier limited to major ports) to cover all ports under the service tax net;
- **authorised automobile service** was brought under the tax net with effect from 16.7.2001. However, it was restricted only to motorcars and two wheeled motor vehicles. Buses, trucks, maxi cabs etc were not covered. Provision have been made to widen the scope of authorized automobile service to cover all such vehicles;
- **foreign exchange broking service** provided by any body corporate or non-banking financial company was covered under the tax net in the category of banking and other financial service with effect from 16.7.2001. Provisions have been made to extend the scope of the tax to include the service provided by all foreign exchange brokers (including moneychangers and forex dealers).

As per the provisions of the Finance Act, the above levies or extensions of levies are to come into effect from a date to be appointed by the Central government. **In this regard, vide notification No.7/2003-Service Tax, date 20th June 2003, the government has appointed 1st July, 2003, as the date from which the levy of Service tax on the above services would come into effect.**

2. EXEMPTIONS AND CLARIFICATIONS

2.1 BUSINESS AUXILIARY SERVICE:

2.1.1 Call centers and medical transcription centers:

Business auxiliary services provided by call centers (i.e. commercial concern which provides assistance, help or information, through telephone, on behalf of another person) and medical transcription centers (i.e. commercial concern which transcribes medical history, treatment, medical observations and the like) have been fully exempted from levy of service tax w.e.f. 1st July, 2003, vide notification No. 8/2003-Service Tax, dated 20th June, 2003.

2.1.2 Commission agent:

As per the definition of business auxiliary services, services as commission agent are considered business auxiliary services. However services of commission agents have been exempted from service tax w.e.f. 1st July, 2003 vide notification No.13/2003-Service Tax dated 20th June 2003. Commission agent has been defined in the notification, as a person who causes sale or purchase of goods, on behalf of another person for a consideration, which is based on the quantum of such sale or purchase. It may be noticed that the exemption under this notification is for a commission agent while the services of a consignment agent remain taxable under the category of Clearing and Forwarding services. It may be appreciated that the nature of service provided by a Consignment agent is different than that provided by a commission agent. A consignment agent's job is to receive the goods from the principal and dispatch them on the directions of the principal, whereas a commission agent's job is to cause sale/purchase on behalf of another person. Thus, the essential difference is that a commission agent sells or purchases on behalf of the principal while consignment agent receives and dispatches the goods on behalf of a principal. It is possible that a person may be a consignment agent as well as a commission agent. Such a person would already be covered in the category of Clearing and Forwarding agent and would be liable to pay service tax in that category. In other words, the present exemption is available only to such commission agent who is not a consignment agent.

2.1.3 Certain doubts have been raised in case of business auxiliary services. In this regard the following is clarified,-

- While it is not possible to give an exhaustive list of business auxiliary services, the following are illustrations of services that are covered under this category viz. evaluation of prospective customers, processing of purchase orders, customer management, information and tracking of delivery schedules, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, managing distribution & logistics. The services provided in relation to getting a customer, verification of prospective customer, processing of purchase order etc would also be covered under service tax, as the law specifically provides for inclusion of such services as business auxiliary support services.
- As regards the question whether insurance agents, C&F agents working on commission basis fall under the definition of business auxiliary service, it is clarified that they do not, as they are specifically covered within the definition of other specified taxable services, namely the Insurance service and C&F Service respectively. Under Section 65A of Finance Act 1994, it has also been provided that in case of overlap, a service would be classified under the head, (a) which provides most specific description, (b) in case of a composite service having combination of different taxable services, the service which give them their essential character and (c) in case the test of (a) and (b) does not resolve, the service which comes earlier in the clauses of Section 65, i.e. the service that was subjected to service tax earlier. Since Insurance services and C&F Services are more specific description and were also subjected to service tax prior to imposition of tax on business auxiliary service, the insurance agents, C&F agents working on commission basis would fall under those respective categories. From this, it follows that a particular service can be taxed only under one head of service.
- As per the definition of business auxiliary services, information technology service is outside the purview of business auxiliary service. In the explanation appended to the definition in the Act itself, it has been clarified that information technology service means any service in relation to designing, developing or maintaining of computer software or computerized data processing or system networking or any other service primarily in relation to operation of computer systems. In this regard, it is clarified that only if the output service provided by a service provider is in the nature of the above operations, such exclusion would operate. The mere fact that a personal computer or a laptop has been used for providing the service does not, *ipso facto*, make the service an information technology service. Similarly, the fact that any of the IT services mentioned in the explanation has been used by the service provider as an input service does not

automatically make the output service an IT service. Therefore, in such cases, individual service has to be examined with reference to the explanation provided to the definition of business auxiliary service and only such output services which qualify to be IT services in terms of the said explanation shall remain excluded from taxable service under the heading business auxiliary service.

2.2 VOCATIONAL TRAINING AND COACHING CENTERS:

2.2.1 Commercial coaching and training services provided by institutes that prepare applicants for Board examinations and competitive exams like entrance examinations for Indian Institute of Technology-Joint Entrance Examinations/Pre Medical Tests, Civil Services exams etc. are chargeable to service tax. However, services in relation to commercial coaching and training, provided by, -

- a. vocational training institute;
- b. computer training institute; and
- c. recreational training institute;

have been exempted from service tax w.e.f. 1st July, 2003 vide Notification No.9/2003-Service Tax dated 20th June 2003. Therefore, vocational coaching and training services provided by typing and shorthand institutes, TV/ vehicle repair training institutes, tailoring institutes, industrial training institutes, foreign language institutes, computer-training centers, hobby classes, institutes teaching martial arts, painting, dancing etc would not be chargeable to service tax. This exemption would remain in force upto 29th February 2004.

2.2.2 Institutes like the Institute of Chartered Accountants of India some time hire the services of other institutes to impart some part of training (like language or computer training) to the students undertaking courses for obtaining recognized degrees/diplomas (like Chartered Accountancy) from their institute. Whereas institutes the Institute of Chartered Accountants of India will not be chargeable to service tax because they confer qualifications recognized by law, the institutes or centers providing such part of training may be otherwise under service tax net. Vide notification No. 10/2003-Service Tax dated 20th June, 2003, exemption has been provided w.e.f. 1st July, 2003 to such services rendered by commercial training or coaching centers from service tax which form an essential part of the course or curriculum leading to issuance of recognized certificate, diploma, degree or any other educational qualification. The exemption is subject to the condition that the receiver of such service (for example, student) makes payment for the entire course or curriculum to the institute or establishment issuing such certificate, diploma etc. and not to the commercial coaching or training center.

2.2.3 Certain doubts have been raised in case of commercial coaching and training. In this regard, the following is clarified,-

- Whether service tax is leviable on postal coaching: It is clarified that service tax is leviable on any coaching or training provided by an institution on commercial basis. Therefore, the coaching provided by postal means would also be covered under the service tax and the charges, including the postal charges collected for rendering this service would be subjected to service tax.
- Whether service tax is leviable on institutes providing commercial coaching in addition to recognized degree courses: Some institutes like colleges, apart from imparting education for obtaining recognized degrees/diploma/certificates, also impart training for competitive examinations, various entrance tests etc. It is clarified that by definition, such institutes or establishments, which issue a certificate, diploma or degree recognized by law, are outside the purview of "commercial training or coaching institute". Thus, even if such institutes or establishments provide training for competitive examinations etc., such services rendered would be outside the scope of service tax.
- Whether individuals going to houses to impart tuition/coaching would be chargeable to service tax: It is clarified that service tax is on institutions/establishments. Therefore, only those service providers are covered under the service tax who have some establishment

for providing commercial coaching or training i.e. institutional coaching or training. Thus, individuals providing services at the premises of a service receiver would not be covered under service tax. However, if coaching or training center provides commercial coaching by sending individuals to the premises of service receivers, such services would be chargeable to tax, as in this case, the individuals are rendering services on behalf of an institution.

- Whether free summer training/ in house training provided by employers to their employees are covered under service tax net: It is clarified that in case employers provide any free training themselves, no service tax is chargeable. However if an employer hires an outside commercial coaching or training center for imparting some training to its employees, then the payment made by the said employer to such coaching center will be chargeable to service tax.

2.3 MAINTENANCE AND REPAIR SERVICES:

2.3.1 Maintenance contracts entered into before 1st July 2003:

There are cases where maintenance contracts are entered into for a period of more than one year. Vide notification No.11/2003- Service Tax, dated 20th June 2003 for maintenance contracts entered into prior to 1st July, 2003, exemption has been provided to that part of the value of the service for which bill/invoices have been raised and the amount has actually been received prior to the 1st July, 2003. For such contracts, all subsequent payments or payments made against invoice issued subsequent to the 1st July 2003 will be chargeable to service tax. Similar will be situation for payments made for continuing services.

2.3.2 Certain doubts have been raised in case of maintenance and repair services as to whether service tax on maintenance and repair would be charged in cases where during the guarantee period, the services are provided to the buyer of the goods while the payments for the same are received from the supplier of the goods. In this regard it is clarified that irrespective of the fact that the receiver of the service is different from the person making payments for such services, the service tax is leviable on the services provided towards maintenance and repair. Therefore, for the services provided during the warranty period by the dealer or any other authorized person, service tax would also be leviable on any amount received by such dealer or such other authorized person from manufacturer of such goods.

2.4 FRANCHISE SERVICE:

Franchise service is a service provided by franchisor to a franchisee. Section 65 of the Finance Act 1994, (sub section 47) defines franchise as a specific type of agreement. This agreement has various ingredients, which have been specified in the said definition. For removal of doubt it is clarified that unless all the ingredients mentioned at (i) to (iv) of the said sub section are satisfied, the agreement can not be called as franchise agreement. These ingredients are,-

- (i) the franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be, is involved;
- (ii) the franchisor provides concepts of business operation to franchisee, including know how, method of operation, managerial expertise, marketing techniques or training and standards of quality control except passing on the ownership of all know how to franchisee;
- (iii) the franchisee is required to pay to the franchisor, directly or indirectly, a fee; and
- (iv) the franchisee is under an obligation not to engage in selling or providing similar goods or services or process, identified with any other person.

For example, the mere fact that a principal manufacturer has allowed production of goods bearing his brand name by another person under 'License Production Agreement', does not make the agreement a Franchise Agreement. A franchise agreement also includes the franchisee being

obliged to follow the concept of business operation, managerial expertise, market techniques etc. of the franchisor and is under an obligation not to engage in selling, producing or providing similar goods or services, identified with any other person. Therefore, in the absence of such ingredients, a mere licensed production cannot be called as a franchise agreement and accordingly the license fees paid for such license production cannot be charged to service tax.

2.5 TECHNICAL INSPECTION AND CERTIFICATION SERVICES:

A doubt has been raised whether certification given in respect of immovable property should fall under the purview of 'technical inspection and certification services'. In this regard it may be recalled that earlier, CBEC vide its order No. 1/1/2002, dated 26.02.2003, issued under Section 37B (of the Central excise Act as made applicable to service tax) had clarified that certification given under authority of any code or statute can not be considered as a consulting engineer service. However, the new service included in 2003 budget, namely 'technical inspection and certification services' would cover certification of all types including that of immovable property. Therefore, it is clarified that such services become taxable from the notified date.

2.6 COMMISSIONING AND INSTALLATION SERVICES:

Certain doubts have been raised in case of commercial coaching and training. In this regard, the following is clarified,-

- In case of commissioning and installation it has been pointed out that in case of turnkey project, the contract may be indivisible and no separate value could be assigned to commissioning or installation of goods. Doubts have also been raised as to what would be the value of taxable service. It is submitted that it has been provided in law that service tax is leviable on erection and commissioning charges only and not on the material and goods supplied. However, it is upto the service provider to show the break-up of commissioning or installation charges. In case service provider shows consolidated charges, service tax would be leviable on such consolidated amount.
- A doubt has been raised as to whether charges for erection of plant are covered under the service tax or only commissioning and installation charges. It is clarified that the law specifically provides for taxation of commissioning and installation of plant, machinery or equipment. Thus all activities other than the commissioning and installation of the plant/machinery/equipment *per se*, will not be chargeable to service tax.

2.7 MANDAP KEEPER SERVICE:

Religious places like parish hall, temples etc provide services as mandap keeper for hosting of social and religious functions. Though such services are liable to service tax under the mandap keeper services, vide notification No.14/2003-Service Tax, 20th June, 2003 services provided by the religious centers as mandap keeper in their precincts have been exempted from service tax.

2.8 CREDIT OF SERVICE TAX PAID ON TELEPHONES:

In regard to credit of service tax on telephone connection, queries have been raised as to whether service tax credit would be admissible on telephone sets installed only in the business premises. The answer is in the affirmative, and credit will be allowed only on telephone sets installed in the business premises. Mobile phones are not covered.

2.9 MISCELLANEOUS ISSUES:

2.9.1 In case of authorized service stations, maintenance or repair services, commissioning and installation services and photography services it has been provided in the law that the cost of goods and material shall not form part of the value to be subjected to service tax, if evidence (like

sale invoice/bill) shows that these goods were sold. Such dispensation has, however, not been provided for other services like commercial coaching and training centers, telecom services. In this regard, a general exemption under Notification No. 12/2003-service Tax, dated 20th June, 2003 has been issued exempting that part of the value of all taxable services from service tax, which represents the cost of goods or material sold by the service provider to the receiver of such services during the course of provision of the taxable services. This exemption would be available only in cases where the sale of such goods is evidenced and the sale value is quantified and shown separately in the invoice. It is also clarified that in case of commercial training and coaching institutes, the exclusion shall apply only to the sale value of standard textbooks, which are priced. Any study material or written text provided by such institute as a part of service which does not satisfy the above criteria will be subjected to service tax.

2.9.2 In case of a non-resident service provider who does not have any office in India, the service receiver in India is liable to pay service tax. A doubt has been raised as to how such receiver would avail the service tax credit. As per the existing law, in such cases service receiver is required to take registration, to pay service tax and to comply with other procedural formalities. As there is no bar under service tax law on the service tax payer to take the same amount back as credit, the service receiver after having paid the service tax on behalf of the non-resident service provider, can take credit of the same on the basis of document/ bill/invoice under which he paid the service tax.

2.9.3 Though the new rate of service tax of 8% came into force from 14th May, 2003 on existing 51 services, and would come into effect from 1st July, 2003 in case of new services and extensions of services, in certain cases service providers have reportedly collected service tax @ 8% on such services, even prior to these specified dates. In such cases, unless the amount is refunded back to service receiver, the service provider is required to deposit amount equal to such duty collected in excess of that is leviable, as per the provisions of the service tax law.

3. The contents of this circular may be given wide publicity so that no difficulty is faced by the trade as well as the departmental officers in their observance and implementation. Apart from issuance of trade notice, wide publicity in the form of press releases and advertisement may also be given. Meetings/Seminars/ Consultations with the trade may be conducted to clarify the new provisions and clarifications relating thereto. Any difficulty faced by the trade in observance, by the officers in implementation or other issues pertaining to the new levies may be brought to the notice of the undersigned. However, references for clarifications pertaining to existing services may be made to Member (Service Tax) or to CX-4 Section.