

Circular No. 80/10/2004-ST  
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Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Excise & Customs)

### **Issues pertaining to Service Tax – regarding the Finance Bill,2004**

The Finance Bill (No.2), 2004 has been enacted on 10.09.2004. With the enactment of the Finance Bill, The following new services have come under the service tax levy,-

- Business exhibition services
- Airport services
- Transport of goods by air
- Survey and exploration of minerals
- Opinion poll services
- Intellectual property services (other than copyrights)
- Forward contract services
- Pandal or shamiana services
- Outdoor catering services
- TV and radio programme production services
- **Construction services (commercial and industrial buildings or civil structures)**
- Travel agents (other than air/rail travel agents)
- The following taxable services get expanded to include,-
- Commission and installation service to include erection service
- Stock brokers to include sub-brokers
- Cable operators to include multi system operators
- Business auxiliary service to include activities relating to procurement of inputs, production of goods (not amounting to manufacture) or provision of services on behalf of a client.

Financial services to include some more specified financial services. Such services provided by non-banking financial company, body corporate or any other commercial concern are also being subjected to service tax.

- Tour operators to include such package tour operators who organize tours involving different modes of transport.

- The risk cover in life insurance becomes subject to levy of service tax.

The rate of service tax on all taxable services, including the new and expanded services becomes 10%.

The education Cess of 2% of the service tax would be leviable on taxable services.

**The scope of these changes is explained in the following paragraphs.**

**Education Cess on taxable services:**

Education cess on taxable services is imposed under section 91 read with section 95 of the Finance (No.2) Act, 2004. The cess would be 2% of the service tax levied and collected. Therefore, fully exempted taxable services would not be subjected to cess. In case of a partial exemption, say by way of abatement, the cess would be calculated on the net tax paid and not on the entire amount of tax that would have been payable, but for the exemption.

**Business exhibition services.**

4.1 Business exhibition service is a service rendered to an exhibitor by an organizer of a business exhibition that intends to market, promote, advertise or show case products or services for growth in business of the producers or providers of such products or services. Thus, organizers of events such as trade fairs, road shows, fashion shows, display show-cases kept in airports, railway stations, hotels etc. would be covered under this new levy. A display of consumer goods in shops or shopping centers for customers to select and purchase would normally not attract any service tax, as normally no separate charges are collected by the shop-keepers for displaying such goods. However, in case an amount is collected for merely displaying an item, the same would be chargeable to service tax.

4.2 While event management service (a currently taxable service) also relates to organizing such events, but in that case, the services are rendered to the organizer by an event manager in relation to planning, promoting, organizing etc. Thus, an organizer of a business exhibition is not covered under Event Management Services, but would be covered under the new levy of "Business Exhibition Services". Similarly, while services rendered in relation to a circular, label, documents, hoardings or any other audio visual representation of a product or service falls under "advertisement services", the services relating to actual exhibition or display of the product or services would fall under the category of "Business Exhibition Services".

**Airport services:** Services provided in an airport or civil enclave, to any person by Airports Authority of India (AAI), a person authorized by it, or any other person having charge of management of an airport are taxable under this category. This includes variety of services provided to airlines, as well as for cargo and passenger handling such as security, transit facilities, landing charges, terminal navigation charges, parking and housing charges and route navigation facility charges. It would be on the gross amount chargeable by AAI or other such authorized person. Thus, charges such as royalty, license fees etc. collected by AAI from other service providers at the airport such as ground handling, security, common user terminal services etc. are chargeable to service tax. However, in case a part of airport/ civil enclave premises is rented / leased out, the rental/lease charges would not be subjected to service tax, as the activity of letting out premises is not rendering a service.

**Transport of goods by air:** Services provided by an aircraft operator (i.e. commercial concern like an airlines) in relation to transport of goods by an aircraft falls under this category. Thus, in addition to the actual air-freight charges, all charges collected towards storing, handling, loading/unloading (done in relation to air transportation of cargo) by an

airlines are also chargeable to this levy.

**Survey and exploration of minerals:** The service tax would be leviable when the service of survey and exploration of minerals is provided by any person to a customer. The survey and exploration may result in locating ores, crude etc. Subsequent to survey and exploration, the mineral is extracted and transported for refining, processing and production. The service tax under this category would be limited to the services rendered in relation to survey and exploration only and not on the activity of actual extraction after the survey and exploration is complete. The transport, refining, processing or production of the extracted products would also be out of the ambit of service tax. Activities such as seismic survey, collection/ processing/interpretation of data and drilling or testing in relation to survey and exploration would, however, fall within the ambit of taxable service.

**Opinion poll services:** Services provided by an opinion poll agency (i.e. any person providing that service) in relation to opinion polls are taxable under this category. Opinion poll means securing information on public opinions regarding social, economic, political and other issues. The term "securing" would include activities like selecting the target groups, preparing questionnaires, gathering opinions from such target groups, collating their responses, drawing conclusions or analyzing trends and preparing reports based thereon. A similar service i.e. "market research agency service" is taxable since 1998. However, that service includes conducting of market research in relation to products, services and utilities. Opinion polls conducted to secure information on economic issues do not include such market researches about specific products, services or utilities. Therefore, obtaining opinion of general public on economic issues like price rise, reaction of people to certain government or corporate policies etc., would fall under the category of opinion poll services while information gathered in relation to specific products, services etc. would fall under "market research agency service".

#### **Intellectual property services (other than copyrights):**

9.1 Intellectual property emerges from application of intellect, which may be in the form of an invention, design, product, process, technology, book, goodwill etc. In India, legislations are made in respect of certain Intellectual Property Rights (i.e.IPRs) such as patents, copyrights, trademarks and designs. The definition of taxable service includes only such IPRs (except copyright) that are prescribed under law for the time being in force. As the phrase "law for the time being in force" implies such laws as are applicable in India, IPRs covered under Indian law in force at present alone are chargeable to service tax and IPRs like integrated circuits or undisclosed information (not covered by Indian law) would not be covered under taxable services.

9.2 A permanent transfer of intellectual property right does not amount to rendering of service. On such transfer, the person selling these rights no longer remains a "holder of intellectual property right" so as to come under the purview of taxable service. Thus, there would not be any service tax on permanent transfer of IPRs

9.3 In case a transfer or use of an IPR attracts cess under Section 3 of the Research and Development Cess Act, 1986, the cess amount so paid would be deductible from the total service tax payable. (refer notification No.17/2004-ST, dated 10.09.2004).

**Forward contract services:** As per the provisions of Forward Contract (Regulation) Act,

1952, a forward contract is a contract for delivery of goods, which is not a ready delivery contract. For commodities notified under the Act, forward contracts can be entered into only through members of association recognized under that Act. For other commodities, future trading can be done through associations registered with Forward Market Commission. The levy of service tax under this category is on the services provided by members of such associations (commonly called as commodity exchanges) to any person in relation to forward contracts. Pandal or shamiana services and Outdoor catering services

11.1 A person providing services, directly or indirectly, in connection with preparation, arrangement, erection or decoration of a pandal or shamiana (i.e. a place specially prepared for organizing official, social or business functions) is a "pandal or shamiana contractor". Service provided by him in any such manner, including that of a caterer is liable to service tax under the category of "Pandal or Shamiana Contractor service".

11.2 Similarly, catering services provided by a caterer at a place other than his own place is taxable as "outdoor catering service".

11.3 The following abatement/exemptions have been allowed in respect of,-

**(A) Outdoor caterer:**

50% abatement, when bill includes charges for food also (refer notification no. 20/04-ST, dated 10.09.2004) Full exemption, to caterers providing service in academic institutions, medical establishments or railway trains (refer notification no.19 & 21 /04-ST, both dated 10.09.2004)

(B) Pandal Shamiana: 30% abatement, when bill includes charges for food also (refer notification no.22/04-ST, dated 10.09.2004)

11.4 It is clarified that pandal/shamiana services provided for pure religious ceremonies or congregation, for example, for worship of Gods/ Goddesses, are not liable to service tax. It is also clarified that in case a café, hotels, restaurants etc. delivers food to home and no charge, other than that for the cost of the foods, is charged (i.e. free home delivery) no service tax is leviable.

TV and radio programme production: Services provided by a TV or radio programme producer have been brought under the purview of taxable service. Any programme produced (or any service rendered in connection of producing such programme) by a commercial programme producer, for telecasting/ radio transmission by a broadcaster would fall under this category of taxable service including cases where a programme is sold to the broadcaster. However, a service rendered by an employee of the service receiver (i.e. the broadcaster) or by an amateur photographer who, say, shoots a footage for himself, would not be charged to service tax.

**Construction services (commercial and industrial buildings or civil structures)**

13.1 Services provided by a commercial concern in relation to construction, repairs, alteration or restoration of such buildings, civil structures or parts thereof which are used, occupied or engaged for the purposes of commerce and industry are covered under this new levy. In this case the service is essentially provided to a person who gets such

constructions etc. done, by a building or civil contractor. Estate builders who construct buildings/ civil structures for themselves (for their own use, renting it out or for selling it subsequently) are not taxable service providers. However, if such real estate owners hire contractor/ contractors, the payment made to such contractor would be subjected to service tax under this head. The tax is limited only in case the service is provided by a commercial concern. Thus service provided by a laborer engaged directly by the property owner or a contractor who does not have a business establishment would not be subject to service tax.

**13.2** The leviability of service tax would depend primarily upon whether the building or civil structure is "used, or to be used" for commerce or industry. The information about this has to be gathered from the approved plan of the building or civil construction. Such constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable, being non-commercial in nature. Generally, government buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally government constructions would not be taxable. However, if such constructions are for commercial purposes like local government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to service tax.

13.3 In case of multi-purpose buildings such as residential cum commercial construction, tax would be leviable in case such immovable property is treated as a commercial property under the local/ municipal laws.

13.4 The definition of service specifically excludes construction of roads, airports, railway transport terminals, bridge, tunnel, long distance pipelines and dams. In this regard it is clarified that any pipeline other than those running within an industrial and commercial establishment such as a factory, refinery and similar industrial establishments are long distance pipelines. Thus, construction of pipeline running within such an industrial and commercial establishment is within the scope of the levy.

13.5 The gross value charged by the building contractors include the material cost, namely, the cost of cement, steel, fittings and fixtures, tiles etc. Under the Cenvat Credit Rules, 2004, the service provider can take credit of excise duty paid on such inputs. However, it has been pointed out that these materials are normally procured from the market and are not covered under the duty paying documents. Further, a general exemption is available to goods sold during the course of providing service (Notification No. 12/2003-ST) but the exemption is subject to the condition of availability of documentary proof specially indicating the value of the goods sold. In case of a composite contract, bifurcation of value of goods sold is often difficult. Considering these facts, an abatement of 67% has been provided in case of composite contracts where the gross amount charged includes the value of material cost. (refer notification No.15/04-ST, dated 10.09.2004) This would, however, be optional subject to the condition that no credit of input goods, capital goods and no benefit (under notification no. 12/2003-ST) of exemption towards cost of goods are availed.

Extension of service tax on installation and commissioning, to erection services: Service tax was levied on commissioning and installation of plant, machinery and equipment w.e.f. 1.7.2003. The general practice is that "erection, commissioning and installation" are contracted as a composite package. There have been a number of doubts and

queries regarding the distinction between erection and commissioning/installation. Erection would refer to the civil works to installation/commissioning of a plant or machinery. In this year's budget, the scope of service tax under installation and commissioning is being extended to include erection also. Erection involves civil works, which would otherwise fall under the category of construction services. However, in case of a composite contract for erection, commissioning and installation, the erection charges would be taxed as part of this category of service.

Extension of service tax on air travel agents and rail travel agents to other travel agents: At present, service tax is leviable on air travel agents and rail travel agents. Travel agents of other modes of transport (road, water) are not covered under service tax. The scope of service tax has been extended to include all travel agents. The taxable service is the service provided by travel agent in relation to the booking of passage for travel by modes other than air and road. The value of taxable service would be the commission/fee charged by the travel agent from the customer.

**Sub-brokers:** Services provided by brokers, sub-brokers to investors in connection with sale and purchase of securities listed on recognized stock exchanges would be subjected to service tax.

Extension of service tax on cable operators to Multi system operators (MSOs): In cable TV services, broadcast channels transmit television signals to multi system operators (MSO) who further send them to the cable operator. The services provided by the MSOs to the cable operators have been made taxable.

**Expansion of Business auxiliary service.**

18.1 The scope of an existing taxable service (i.e. Business Auxiliary Service) has been expanded to include activities relating to procurement of inputs, production of goods (not amounting to manufacture) or provision of services on behalf of a client. The tax is leviable only when the service provider is a commercial concern.

18.2 The pre-budget definition of Business auxiliary Service covered services, which relate to the sale and marketing side of a business. However, the auxiliary services which relate to procurements, inventory, production (or provision in case of services) were not covered. The present definition intends to bring all business auxiliary services relating to procurement, inventory and production under service tax. Thus, the procurements of input, capital goods or input services as defined in the CENVAT Credit Rules, by a commercial concern for a client i.e. a person producing goods or providing services would be now taxable under this category. Similarly, if a commercial concern produces goods on behalf of the client or provides service on behalf of a client, such activities would come under the scope of this service, unless the activity of service provider amount to manufacture in terms of the central excise law. The aim of all such activities is production of goods or provision of services, the whole or part of which is being carried out by the service provider (i.e. the agent) on behalf of the client. Such activities include procurements, productions or service providing activities done for the client.

18.3 The service tax is, however, being restricted to only those cases where the service provider is a factory governed by the Factories Act, 1948, a company established by or under the Companies Act, 1956 or a corporation or a body corporate established by or

under any law, partnership firms (whether or not registered), societies registered under Societies Registration Act, 1860 or under any law and any co-operative society established by or under any law. However, services in relation to agriculture, printing, textile processing and education would remain exempt even if provided by such service providers. (refer Notification no.14/04-ST, dated 10.09.2004)

### **Expansion of banking and other financial services**

19.1 The existing taxable service i.e., "banking and other financial services", has been expanded both in terms of its coverage and the types of service providers. Financial services would now also include specified financial services, namely, lending, issue of pay order, demand draft, cheque, letter of credit, bill of exchange, providing a bank guarantee, overdraft facility, bill discounting, safe deposit lockers, or safe vaults and operation of bank accounts. The interest amount would, however, remain excluded from the purview of service tax. In addition to banking company, financial institution including a non-banking financing company, body corporate and any other commercial concern providing financial services will also be covered.

19.2 The "interest on loans" has been specifically excluded by way of amendment to the provisions relating to valuation (S.67). All such interests that are in the nature of interests on loans would thus remain excluded from taxable value. Further, clarifications on these issues would be issued shortly.

19.3 Collection and other bank charges in relation to taxes / duties collected on behalf of the Union/State Governments and Union Territories have been exempted from service tax. (refer notification No. 13/04-ST, dated 10.09.2004)

Extension of tour operator service to package tour operators using different modes of transport: At present, tour operator service covers package tour operators also. However, under the present definition, such package tours attract service tax only if such tours involve modes of transport other than road (say a combination of air-rail-cab travel). The definition of tour operator has been suitably expanded. While the existing levy on tour operators engaged in operating tours in tourist vehicles remains as such, in case of a package tour (which are planned, scheduled, organized or arranged by tour operators), the scope of the levy is being extended by removing the limitation regarding transportation by tourist vehicles only. Such tourist operators would be subjected to service tax irrespective of the mode of transport used during such tours. The abatements (notification no.39/97-ST) in case of package tour operators (providing transportation and accommodation) would remain at 60%.

### **Life Insurance services:**

21.1 In Budget 2004, it has been decided to levy service tax on that portion of the service which pertains to risk element. The levy would not be applicable to such premium of the existing policies, which were paid before the new levy comes into force.

21.2 It has been provided that in the case of composite policies (risk plus saving) life insurer can at his option pay 1% of the total premium towards discharge of service tax liability. This shall not be applicable in case an insurance policy is towards risk only or where the premium gives details of risk premium and other premium separately. (refer notification No. 11/04-ST, dated 10.09.2004). However, those insurance companies who

want to pay tax on risk premium as certified by the Appointed Actuary on a company basis can do so. The insurance companies may be allowed to pay monthly service tax provisionally, based on estimates. The monthly estimated (i.e. provisional) duty payment for the entire company would be based on a provisional certificate issued by the Appointed Actuary, subject to final certification at the end of the year. At the end of the financial year, when the sum at risk is calculated and certified by the Actuary, the liabilities would be finalized and the companies would pay the balance tax or adjust the excess tax paid.

Vocational and Recreational Coaching Institute: Vocational and recreational training institutes have been exempted from service tax. (refer notification No.24/04-ST, dated 10.09.04)

**Service tax on IT industry:**

Taxable services provided in respect of Enterprise Resource Planning (ERP) software systems by a management consultant for management of any organization has been exempted. (refer Notification no. 16/04-ST, dated 10.09.2004).

23.5 Notification no. 8/2003-ST exempts services provided by call centres. For this notification, call centres mean a commercial concern which provides assistance, help or information, through telephone on behalf of another person. The definition of call centres has been modified as "a commercial concern which provides assistance, help or information or contacts current or prospective customers for sales, telemarketing, payments through telephone, lease lines, satellite links, mail fax, web chat and using information systems for monitoring and recording information on behalf of another person". (refer to notification No. 12/04-ST, dated 10.09.2004)

Restriction on availment of credits and exemptions towards goods sold, in cases where abatements are allowed.

24.1 In cases of specified services, like tour operators, rent-a-cab, mandap-keeper providing catering services, erection, commissioning and installation etc., abatements are allowed to neutralize the cost of materials/goods supplied or used during the course of provision of service. These abatements were allowed when cross credit of excise duty and service tax was not available. Service tax like Cenvat is basically a value added tax which is operated through credit mechanism. It is being provided that in all such cases, the abatement would be conditional, subject to non-availment of input goods and capital goods credit under the new Cenvat Credit Rule, 2004 and also non availment of benefit under notification no 12/2003-ST. (refer notification No. 12/04-ST, dated 10.09.2004) The credit of input services would, however, be available.

24.2 Exemption no. 12/2003-ST provides that the value of goods and materials sold by the service provider during the course of providing service shall remain excluded from value of taxable service subject to production of documentary proof of value of such sale. It is being provided that benefit of abatement would not be available to any service provider availing this concession. Also, this concession would be subject to condition that either no CENVAT credit has been availed on such goods or if already availed, it is reversed prior to the sale of such goods. ( refer notification No. 12/04-ST, dated 10.09.2004)

**Withdrawal of exemption to engineering consultancy services in relation to computer software.:**

The exemption to services provided by a consulting engineer in relation to computer software (notification No. 4/99-ST) has been withdrawn (refer notification no. 23/04-ST, dated 10.09.2004).

**Transport of goods by road by a goods transport agency:** In pursuance to an agreement between the Government and representatives of the transport industry, a Committee has been set up to look into appropriate mechanism/modalities for collection and payment of service tax by commercial concerns and the rules/notifications will be finalized in consultation with the Committee. The Committee would give its report within two months. In terms of the agreement, the tax would be levied and collected in a manner to be notified. No tax would, therefore, be payable by the goods transport agency till such time government comes out with the relevant rules/ notifications prescribing the modalities for levy and collection.

Many of the services covered under fresh levies may include activities that were taxable earlier under different category of taxable services. While the classification of a taxable service would be in terms of section 65A of the Finance Act, 1994, it should be ensured that there is no double taxation and a service is taxed only once under the appropriate category.

Notification Nos 18 and 25/04-ST dated 10.9.2004 have been issued so as to exempt the payments received by the service provider before 10th September, 2004 in respect of new services and expanded services.

The CENVAT Credit Rules, 2004 have been issued allowing credit across goods and services (refer Notification No.23/04-CE(NT), dated 10.09.2004).

The above changes may be immediately brought to the notice of the field formations and the trade. All possible assistance and facilitation may be provided to providers of such services who have been subjected to the above changes, so that the implementation of these new levies or other changes is smooth and the tax payers do not face any problem in this regard.

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