

F.No.B1/ 6 /2005-TRU

Subject : Budget 2005 -2006, Issues pertaining to Service Tax

In the Budget for 2005-2006, proposals were incorporated to levy service tax on nine new services and to expand the scope of twelve existing taxable services [refer clauses (a) and (b) of section 88 of the Finance Act, 2005]. Certain other important legislative changes have also been made relating to,-

- (a) taxable services received from abroad;
- (b) linking payment of service tax with receipt of payment for the taxable services provided or to be provided; and
- (c) issue of show cause notices and adjudication.

2. The Finance Act, 2005 (hereinafter referred as the Finance Act) has come into force with effect from 13th May, 2005. Provisions relating to levy of service tax on new services and proposed expansion in the scope of existing services made by amending sections 65 and 66 of the Finance Act, 1994 have been made effective from 16th June, 2005 (refer notification No. [15/2005](#)-Service Tax dated 7/6/2005). Certain other amendments relating to service tax in the Finance Act, 1994 are effective from the date of enactment of the Finance Act.

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

4. New services

5. Transport of goods through pipeline or other conduit [see sub-clause (zzz) of section 65(105) of the Finance Act, 1994]

5.1 Transportation of goods, other than water, through pipeline or conduit is generally employed to transport petroleum and other petroleum products, natural gas, LPG, chemicals, coal slurry and other similar products. Such transport services are liable to service tax under sub-clause (zzz) of section 65(105) of the Finance Act, 1994. Consideration for the said transportation service provided may be payable periodically or from time to time. The service provider is required to pay service tax as and when payment is received for the services provided or to be provided.

6. Site formation and clearance, excavation, earth moving and demolition services

6.1 Any service provided or to be provided to any person, by any other person, in relation to site formation and clearance, excavation and earthmoving and demolition and such other similar activities is leviable to service tax under sub-clause (zzza) of section 65(105) of the Finance Act, 1994. "Site formation and clearance, excavation and earthmoving and demolition" has been defined in clause (97a) of section 65 of the Finance Act, 1994.

6.2 The definition of site formation and clearance, excavation and earthmoving and demolition is an inclusive definition and the activities specifically mentioned are indicative and not exhaustive. Prior to construction of buildings, factory or any civil structure, activity of mining or laying of cables or pipes, preparation services of site formation and clearance, excavation and earthmoving or leveling are normally undertaken for a consideration to make the land suitable for such activities. Such services include blasting and rock removal work, clearance of undergrowth, drilling and boring, overburden removal and other development and preparation services of mineral properties and sites, and other similar excavating and earthmoving services. Demolition of structures, buildings, streets or highways is also undertaken for a consideration as a preparatory activity for subsequent construction activity or for clearing the site for any other

purpose. All such activities fall within the scope of this service.

6.3 However, site formation and clearance, excavation and earthmoving and demolition services when provided in relation to agriculture, irrigation, watershed development and drilling, digging, repairing, renovating or restoring of water sources or water bodies are specifically excluded and not within the scope of this service.

6.4 Notification 17/2005-ST dated 7/6/2005 exempts this service provided in the course of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams, major and minor ports.

7. Dredging services

7.1 Any service provided or to be provided to any person, by any other person, in relation to dredging is leviable to service tax under sub-clause (zzzb) of section 65(105) of the Finance Act, 1994. 'Dredging' has been defined under clause (36a) of section 65 of the Finance Act, 1994.

7.2 This taxable service covers dredging which is generally undertaken for removal of material such as silt, sediments, rocks etc. of rivers, ports, harbour, backwater or estuary for providing adequate draught for ships and other vessels and to maintain shipping channels. Service tax is leviable only on dredging of river, port, harbour, backwater or estuary and dredging in any other cases does not attract service tax. The definition of dredging is an inclusive definition and the activities specified are only indicative and not exhaustive.

8. Survey and map making

8.1 Any service provided or to be provided to any person, by any other person, other than by an agency under the control of, or authorised by, the Government, in relation to survey and map-making is taxable under sub-clause (zzzc) of section 65(105) of the Finance Act, 1994. 'Survey and map-making' has been defined under clause (104b) of section 65 of the Finance Act, 1994.

8.2 This service covers geological, geophysical, geochemical and other prospecting services by studying the properties of the earth and rock formation and structures. It also includes services providing information on sub-surface earth formations by different methods such as seismographic, gravimetric, magnetometric methods or other sub-surface surveying methods.

8.3 Further, it covers surface surveying, services of gathering information on the shape, position or boundaries of a portion of earth's surface by methods such as transit, photogrammetric, or hydrographic, for the purpose of preparing maps. It also includes surveying or collection of data by satellites.

8.4 'Survey and exploration of minerals', which is a taxable service under sub-clause (zzv) of section 65(105) since 2004, covers specified services rendered in relation to location or exploration of deposits of mineral, oil or gas. The new taxable service of 'survey and map-making' classifiable under sub-clause (zzzc) of section 65(105) of the Finance Act, 1994, covers other such activities excluding "survey and exploration of minerals" classifiable under sub-clause (zzv) of section 65(105) since 2004 .

8.5 Map making consists of preparation or revision of maps of all kinds such as topographic, hydrographic, roads, planimetric, cadastral, city maps etc. using various information sources.

8.6 However, survey and map-making services rendered by an agency under the control of the Government or authorised by the Government, such as 'Survey of India' are specifically excluded and are outside the scope of this service.

9. Cleaning services

9.1 Any service provided or to be provided to any person, by any other person, in relation to cleaning activity is taxable under sub-clause (zzzd) of section 65(105) of the Finance Act, 1994. "Cleaning activity" has been defined under clause (24b) of section 65 of the Finance Act, 1994.

9.2 Generally contracts / agreements are entered into for cleaning of commercial complexes such as multiplexes, shopping complexes, office complexes, industrial buildings etc. The contracts / agreements may be in writing or may be unwritten. The gross amount charged for such cleaning would be leviable to service tax. This taxable service includes,-

(i) specialized cleaning services such as disinfecting and exterminating, sterilization of objects, etc. Such cleaning services would be taxable when performed for commercial or industrial buildings and their premises, factories, plant and machinery, tank or reservoir of such buildings;

(ii) Disinfecting, exterminating insects, rodents and other pests and fumigation services in respect of specified premises would be liable to service tax. In respect of multi-storeyed commercial buildings, window cleaning is a specialized service. Window cleaning services, including exterior window cleaning using swing stages would be liable to service tax;

(iii) Floor cleaning and waxing, wall cleaning etc. performed on the premises of commercial or industrial buildings;

(iv) Specialized cleaning services such as cleaning services for computer rooms, cleaning of machinery or plant, reservoirs and tanks of commercial or industrial buildings, furnace and chimney cleaning services and similar services.

9.3 However, such cleaning services in relation to agriculture, horticulture, animal husbandry or dairying would be excluded from the purview of service tax. Further, such cleaning services in respect of non-commercial buildings and premises thereof would not be covered within the purview of service tax under this category.

10. Membership of Clubs or Associations

10.1 Any service provided or to be provided to its members by any club or association in relation to provision of services, facilities, or advantages for a subscription or any other amount is taxable under sub-clause (zzze) of section 65(105) of the Finance Act, 1994. "Club or association" has been defined under clause (25a) of section 65 of the Finance Act, 1994.

10.2 Various clubs or associations provide services, facilities or advantages to their members for a subscription or a charge. This taxable service covers within its ambit the charges recovered by such clubs or associations for membership and providing various services. However, exclusions have been made in respect of specific clubs or associations which will not be covered within the ambit of clubs or associations for the purpose of levy of service tax.

10.3 These exclusions cover any body established or constituted by or under any law, trade unions, clubs or association formed for promotion of agriculture, horticulture or animal husbandry, clubs or association which are non profit making bodies and are engaged in any activity which are in the nature of public service and are of a charitable, religious or political nature, clubs or associations associated with press or media.

10.4 Legally, bodies which are established or constituted "under a statute" are different from bodies which are "formed and registered" under a statute. Companies and Societies registered under the respective Acts are merely bodies "formed and registered" under these Acts and cannot be treated as "established or constituted" under these Acts. Therefore companies or societies would fall outside the scope of clause (25 a)(i) of Section 65 of Finance Act. In other

words, any body formed and registered as a company or society which provides services, facilities or advantages for a subscription or any other amount to its members is liable to pay service tax under section 65(25a) of the Finance Act, 1994.

10.5 Taxable services are defined as services provided to members by clubs or associations in relation to provision of services, facilities or advantages for a subscription or any other amount. Facilities or advantages are provided to members in return for a subscription or other consideration. The scope of the term any other amount is the amount paid by members, apart from membership fee or recurring subscription fee, such as amounts paid for provisions of services to the guests of a member, amount paid for get-togethers and functions charged over and above the subscription amount. This will also be liable to service tax. However, amount charged by club to its members for sale of items such as food or beverages would not be taxable provided the documents evidencing such sale are available.

10.6 Any additional fee should be treated in the same way as subscription. Life membership fees must be treated in the same way as subscription. In certain professions, persons cannot practice unless they are registered with a statutory body and have paid fees which are prescribed by law. In such cases, the organization is not providing any service in the course of its business and it is merely carrying statutory functions. Since no service is provided, the question of levy of service tax does not arise. However, if there is no statutory requirement, service tax is liable to be paid.

11. Packaging services

11.1 Any service provided or to be provided to any person, by any other person, in relation to packaging activity is taxable under sub-clause (zzzf) of section 65(105) of the Finance Act, 1994. "Packaging activity" has been defined under clause (76b) of section 65 of the Finance Act, 1994.

11.2 This taxable service would cover packaging activity undertaken by a person for any other person. These kinds of packaging services may be done for pharmaceuticals (aseptic packaging), fragile goods, heavy machinery and hardware, using variety of automated or manual packaging techniques, including blister forming, and packaging, shrink or skin wrapping, form filling and sealing, pouch filling, bottling or aerosol packaging. This service also includes labeling or imprinting of the package. However, packaging activity which amounts to manufacture within the definition of section 2(f) of Central Excise Act, 1944 would not be liable to service tax. Service tax would be leviable on the gross amount charged for rendering the packaging services.

12. Mailing list compilation and mailing

12.1 Any service provided or to be provided to any person, by any other person, in relation to mailing list compilation and mailing is taxable under sub-clause (zzzg) of section 65(105) of the Finance Act, 1994. "Mailing list compilation and mailing" has been defined under clause (63a) of section 65 of the Finance Act, 1994.

12.2 Business establishments such as banks, insurance companies, companies listed on stock exchanges, real estate agents and other similar commercial entities engage the services of persons who compile and provide lists of names, addresses and other information from telephone directories, internet or any other source of information for the benefit of the business. Some agencies also provide services of sending documents, materials, information or any other goods by addressing, stuffing, sealing, metering or mailing the envelope or packet for or on behalf of the client. Such services are taxable under this category of service. Mail order business companies may engage the services of mailing companies to despatch goods to customers. Such mailing companies are also covered under this service.

13. Construction of Residential Complexes

13.1 Any service provided or to be provided to any person, by any other person, in relation to construction of complex is taxable under sub-clause (zzzh) of section 65(105) of the Finance Act, 1994. "Construction of complex" has been defined under clause (30a) of section 65 of the Finance Act, 1994. 'Residential complex" has been defined under clause (91a) of section 65 of the Finance Act, 1994.

13.2 Construction of new building or civil structures used for commercial or industrial purposes and repair, alteration or restoration activities of such buildings or civil structures is liable to service tax since 2004. In this year's budget the construction of new residential complex or a part thereof is also covered under service tax. The term of "construction of complex" is defined under section 65 (30a) of the Finance Act 1994. It covers,-

- construction of a new residential complex
- completion and finishing services in relation to a residential complex, whether or not new
- repair, alteration, etc. in relation to residential complex, whether or not new.

13.3 This service would generally cover construction services in respect of residential complexes developed by builders, promoters or developers. Such residential complexes are normally constructed after obtaining approval of the statutory authority for their layout. For the purpose of this levy, residential complex means,-

- (i) a building or buildings located within a premises;
- (ii) total number of residential units within the said premises are more than twelve;
- (iii) having common area;
- (iv) having common facilities or services; and
- (v) layout of the premises has been approved by the appropriate authority.

Common area would include roads, staircases and other similar areas where residents of the residential complex have easement rights. The list of facilities prescribed is merely illustrative and not exhaustive. Some residential complexes may also contain other facilities such as market or shopping complex, schools, security, banks, gymnasium, health club, sports facilities, power back up and the like.

13.4 However, residential complex having only 12 or less residential units would not be taxable. Similarly, residential complex constructed by an individual, which is intended for personal use as residence and is constructed by directly availing services of a construction service provider, is also not covered under the scope of the service tax and not taxable.

13.5 Post construction, completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry and similar services done in relation to a residential complex, whether or not new, would be included as part of the construction activity of residential complexes for the purpose of levy of service tax.

13.6 The taxable service is the service provided in relation to construction of a residential complex. Service tax would be payable only on the gross amount charged by the service provider for the construction service provided and it would not include the cost of land and stamp duty paid for registration of land. However, notification No. [18/2005](#) –ST dated 7/6/05 provides option to avail abatement and pay service tax only on 33% of the gross amount charged, subject to fulfillment of conditions specified in the notification.

13.7 Repair, alteration, renovation or restoration of residential complexes would also be liable to service tax. Such services provided in relation to residential complexes which are in existence before the levy has come into force and are not new would also be liable to be taxed.

Existing taxable services whose scope has been expanded

14. Commercial or Industrial Construction Service

14.1 Construction of new buildings or civil structures used for commercial or industrial purposes and repair, alteration or restoration activities of such buildings and civil structures was already liable to service tax since 2004. In this year's budget, such construction service has been renamed as 'commercial and industrial construction service' under section 65(25b) of the Finance Act 1994 and renovation of a commercial or industrial building or civil structure has now been specifically included within the purview of service tax.

14.2 Post construction completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, especially if undertaken as an isolated or stand alone contract, are also specifically included. Thus post construction completion and finishing services are specifically included in the definition of commercial or industrial construction services.

14.3 Construction of pipeline or conduit has been included within the purview of service tax. Thus, the construction of long distance pipeline which was earlier excluded from the coverage of construction services would now be liable to service tax. Repair, alteration, renovation or restoration of pipeline or conduit would now be liable to service tax. This levy would also be applicable for such activities performed on the old pipeline or conduits constructed before this levy has come into force.

14.4 At present, services rendered for construction of commercial or industrial buildings is taxable. However, construction of roads is not liable to service tax. A point has been raised that if a commercial complex is constructed which also contains roads whether the value of construction of roads would be liable to service tax.

14.5 If the contract for construction of commercial complex is a single contract and the construction of road is not recognized as a separate activity as per the contract, then the service tax would be leviable on the gross amount charged for construction including the value of construction of roads.

14.6 When services provided under a contract consist of a number of different elements, a view has to be taken on the basis of the facts and circumstances of each case as to whether the service provider has made a single overall supply or a supply of different services which are to be treated differently.

15. Erection, commissioning or installation services

15.1 Erection, commissioning or installation of plant, machinery or equipment is already covered under service tax. The scope of this taxable service has been expanded by including specified installation services such as installation of electrical and electronic devices including their wirings

and fittings, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work, and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases and travelators [refer clause (39a) of section 65].

16. Maintenance or repair service

16.1 Maintenance or repair services are liable to service tax under section 65(105)(zzg) of the Finance Act 1994. "Maintenance or repair" is defined under section 65(64) of the Finance Act, 1994.

16.2 Prior to 16/6/2005, such services covered maintenance or repair or servicing of any goods or equipment, excluding motor vehicles. However, since 16/6/2005, services relating to maintenance or management of immovable property (such as roads, airports, railways, buildings, parks, electrical installations and the like) have also been covered under the purview of service tax. Such services would be taxable when provided under a contract or an agreement by any person or by a manufacturer or any person authorized by a manufacturer.

16.3 Maintenance is to keep a machine, building etc. in a good condition by periodically checking and servicing or repairing. While repair is a one time activity, maintenance is a continuous process of which repairing may be incidental or ancillary.

16.4 Prior to 16/6/2005, maintenance or repair carried out under a maintenance contract or agreement was covered under service tax. Repair or servicing carried out under a contract other than a maintenance contract or agreement was not covered within the purview of service tax. Maintenance or repair, including reconditioning or restoration or servicing of any goods or equipment, except motor vehicle (which is taxable under the category of authorized service station), undertaken as part of any contract or agreement (not necessarily maintenance contract or agreement) is now liable to service tax under this category of taxable service. To attract service tax under this category, the contract or agreement need not necessarily be a maintenance contract / agreement.

17. Broadcasting services

17.1 In the case of radio or TV broadcasting services, the services are subject to tax where the services are effectively used and enjoyed. Multi System Operators (MSOs) are permitted to receive signals from the broadcasting agencies on payment of prescribed amount. Cable operators transmit programmes to customers through cable network after receiving signals from the multisystem operators (MSOs). Prior to 16/6/2005, service tax was leviable on services provided by cable operators to their customers and multisystem operators to cable operators. In this year's budget, the charges recovered by the broadcasting agencies from the multisystem operator for providing the signals have been specifically made liable to service tax. This completes the service tax chain from the customer to the broadcaster.

17.2 In view of the advent of set top boxes, the customers can now access the signals directly without the interface of MSO and cable operators. Service tax is leviable on provision of direct to home (DTH) signals by the broadcasting agencies to the customers. The liability for payment of service tax in case of broadcasting agencies or organizations having their head office outside India would be on the branch office, subsidiary or any representative or any agent appointed by such agency or organization in India.

18. Sound Recording

18.1 Recording of sound on a magnetic storage device and its editing were already covered under the ambit of service tax. This taxable service has been expanded to include recording of sound on any media or device such as digital recording and also include services rendered in

relation to recording of sound or any audio post production activity.

19. Video-tape production

19.1 Service tax is already leviable on recording of any programme, event or function on a magnetic tape and includes its editing by a video production agency. This taxable service has been expanded to include recording of any programme, event or function on any media or device such as digital recording and includes services relating thereto and video post-production services.

20. Authorised Service Station

20.1 Prior to 16/6/2005, the definition of authorized service station covered only service or repair of motor cars, two-wheeled and light motor vehicles by service stations or centres authorized by the manufacturers. A number of motor vehicle manufacturers provide a scheme by which the old vehicles are sold to the customers after reconditioning or restoration. For this purpose, old vehicles are reconditioned or restored by such authorized service stations or centres. Such reconditioning or restoration of an old vehicle was not explicitly covered as a taxable service. Amendments have been made to specifically include reconditioning or restoration of motor cars, two-wheeled and light motor vehicles carried out by the authorized service stations or centers under this service tax.

20.2 Taxable services rendered by authorized service stations in relation to motor cars or two-wheeled motor vehicles was covered under clause (zo) of section 65 (105), while such taxable services performed in relation to light motor vehicles were covered under clause (zzj) of section 65 (105). Amendments have been made in clause (zo) so that taxable services rendered by authorized service stations in respect of motor cars, light motor vehicles or two-wheeled motor vehicles would now be taxable under this clause. Consequently, clause (zzj) has been omitted.

21. Beauty Parlour Service

21.1 Amendments have been made in the definition of 'beauty treatment' so as to cover comprehensively all services provided by beauty parlours including hair cutting, hair dressing and hair dyeing within the purview of service tax.

22. Manpower Recruitment Service

22.1 Prior to 16/6/ 2005, service tax was leviable on services provided by manpower recruitment agencies in relation to recruitment of manpower. Amendments have been made to levy service tax on temporary supply of manpower by manpower recruitment or supply agencies.

22.2 A large number of business or industrial organizations engage the services of commercial concerns for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks. Services rendered by commercial concerns for supply of such manpower to clients would be covered within the purview of service tax.

22.3 In these cases, the individuals are generally contractually employed by the manpower supplier. The supplier agrees for use of the services of an individual employed by him to another person for a consideration. The terms of the individual's employment may be laid down in a formal contract or letter of appointment or on a less formal basis. What is relevant is that the staff are not contractually employed by the recipient but come under his direction.

22.4 Service tax is to be charged on the full amount of consideration for the supply of manpower , whether full-time or part-time. The value includes recovery of staff costs from the recipient e.g. salary and other contributions. Even if the arrangement does not involve the recipient paying these staff costs to the supplier (because the salary is paid directly to the individual or the

contributions are paid to the respective authority) these amounts are still part of the consideration and hence form part of the gross amount.

22.5 Gem and Jewellery Export Promotion Council have represented seeking clarification that hiring of skilled artisans for making jewellery does not constitute supply of manpower taxable under "manpower recruitment services". When the artisans are hired by any organisation or business, directly, without engaging the services of any other person in any manner, in such cases, the artisans are contractually employed by the company. There is no intermediary and hence no consideration is paid to or payable to any intermediary. The service tax would be leviable only when the services of a person are engaged for recruitment or supply of artisans.

23. Franchise Service

23.1 Prior to 16/6/2005, franchise services were liable to service tax only when the agreement between the franchisor and the franchisee satisfies all of the following conditions [as mentioned in section 65(47)]:

(i) Franchisor grants representational right to franchisee to sell or manufacture goods or provide service identified with the franchisor;

(ii) Franchisor provides expertise in business operation, know how, quality control etc. to the franchisee;

(iii) Franchisee pays fees to the franchisor;

(iv) The franchisee is under an obligation not to engage in selling goods or providing services identified with any other person.

23.2 To make the coverage of franchise service more comprehensive, effective from 16/6/2005, amendments have been made to define "franchise" as an agreement by which the franchisor grants representational rights to franchisee to sell or manufacture goods or provide service or undertake any process identified with the franchisor, by any symbol such as a trade mark, service mark, trade name or logo. No other condition is required to be fulfilled for levy of service tax.

23.3 In view of the amended definition, License Production Agreements where principal allows production of goods bearing his brand name by another person would be covered under the purview of service tax under this category. Similarly, if rights are granted for rendering services identified with the principal on his behalf, such services by the principal to the service recipient would be taxable. Details of franchisees may be obtained from Yellow Pages, website <http://franchiseindia.com/> and other advertisements. Field formations may undertake a survey and suitably advise the potential tax payers.

24. Business Auxiliary Service

24.1 One of the taxable activities prior to amendment by Finance Act, 2005 under business auxiliary service was 'production of goods on behalf of the client'. The activities that amount to manufacture within the Central Excise Act were not covered within the scope of the taxable service. Amendments have been made to define this taxable activity as 'production or processing of goods for, or on behalf of, the client'. The condition that only such activities would be liable to service tax which do not amount to manufacture under Central Excise Law would, however, continue.

24.2 A point was raised whether 'production of goods on behalf of the client' covers situations where the service provider undertakes job work for the client. In view of the amendment, production or processing (not amounting to manufacture) done either for the client or on behalf of the client would be liable to service tax.

24.3 Another taxable activity covered under business auxiliary service is 'procurements of goods or services, which are inputs for the client'. In this case, the term 'inputs' had not been specifically defined in the Finance Act, 1994. The scope of the term input has been clarified by defining input (under Explanation in section 65(19) of the Finance Act, 1994) for the purpose of this taxable activity as 'inputs' means all goods or services intended for use by the client. Thus, services rendered for procurement of any goods or services intended for use by the client would be taxable. This definition of input is different from the definition of input under Cenvat Credit Rules.

24.4 Services provided by commission agents are specifically included within the scope of business auxiliary service. However, the term 'commission agent' was not defined in the Finance Act, 1994. Definition of 'commission agents' has been provided in Explanation (a) in section 65 (19) of the Finance Act.

25. Outdoor Catering Service

25.1 Service tax is already leviable on the services provided by an outdoor caterer. Prior to 16/6/05, outdoor caterer was defined as a caterer providing catering services "at a place other than his own". Doubts were expressed about the scope of the term "at a place other than his own" where the caterer provides catering service from a premises provided by the recipient of the service, on rent. In such cases, whether the place is to be treated as the place owned by the caterer and therefore the services are not subject to service tax or the place is to be treated as not owned by the caterer and therefore subject the services to service tax. To remove the doubt, the present definition of "outdoor caterer" has been modified so as to provide that "outdoor caterer" includes caterer engaged in providing services in connection with catering at a place provided by way of tenancy or otherwise by the person receiving such services.

Important Legislative Changes

26.1 An Explanation has been inserted in section 65(105) of Finance Act, 1994 as follows:

"Explanation.- For the removal of doubts, it is hereby declared that where any service provided or to be provided by a person, who has established a business or has a fixed establishment from which the service is provided or to be provided, or has his permanent address or usual place of residence, in a country other than India and such service is received or to be received by a person who has his place of business, fixed establishment, permanent address or, as the case may be, usual place of residence, in India, such service shall be deemed to be taxable service for the purposes of this clause".

26.2 According to rule 2(1)(d)(iv) of Service Tax Rules, 1994 taxable services received from a non-resident were taxable in the hands of the recipient receiving such taxable services in India. The explanation pertains to provision of taxable services by a person who belongs in a country other than India and received by a person in India. In other words, the service provider does not belong to India and the service recipient belongs to India. In such cases, the recipient of taxable services himself is treated as the provider of the taxable services and the services are taxed in the hands of the recipient

26.3 For this purpose, the service provider should have established his business or has a fixed establishment from which the service is provided or has his permanent address or usual place of residence in a country other than India. Consequently, the recipient of service should have his place of business, fixed establishment, permanent address or usual place of residence in India. The business establishment is the principal place of business, usually head office or headquarters or the seat from which business is run. There can be only one such place. A business may have headquarters in one country but branches in many other countries. A company may be incorporated in one country but does the business entirely from a head office in another country. In such cases, business establishment is treated to be in a country where the

business is entirely done from the head office.

26.4 A fixed establishment is an establishment other than the business establishment. It should have both the technical and human resources necessary for providing or receiving services permanently present. A business may have several fixed establishments including a branch. If there is no business or other fixed establishment in any country and the business is a limited company or a other corporate body, it belongs wherever it is legally constituted.

26.5 Individuals receiving services are treated as belonging in the country where they have their usual place of residence. An individual has only one usual place of residence at any point in time. Individuals are normally resident in the country where they have set up home with their family and are in full time employment. If either the provider of services or recipient of services have establishments in more than one country, the establishment most directly connected with the particular service would be the deciding factor. These provisions are intended to take care of taxable services where the service provider is located outside India and the recipient of service is located in India.

26.6 Rule 2(1)(d)(iv) of Service Tax Rules, 1994 has been amended in view of the above Explanation vide notification No. [23/2005](#)-Service Tax, dated 7th June, 2005.

26.7 Charging service tax from the recipient when the service is provided by a non-resident is a well accepted international practice. This was enunciated in Rule 2(1)(d)(iv). In this year's budget, for removal of doubts, suitable explanation has been made in section 65(105) of the Finance Act in this regard (as reproduced in para 26.1).

26.8 In cases where services are provided by a service provider who is situated outside India to the recipient of such service who is based in India, such services would be taxable at the hands of the recipient. In such cases, the service is deemed to be provided by the service recipient having his place of business or place of permanent establishment in India. However, notification no 25/2005-ST dated 7/6/2005 exempts taxable services received and consumed outside India by an individual, not in the course of commerce or industry or any other business.

27. Amendments have been made in section 65(105), section 67 and rule 6 of Service Tax Rules, 1994 to link payment of service tax with the receipt of payment for the taxable services provided or advance payment received towards taxable services to be provided in future. When payments relating to taxable services are received during the course of provision of service, service tax is liable to be paid to the extent of receipt of payment. In other words, a person is liable to pay the tax as soon as the consideration towards the taxable services is received.

27.1 In case of continuous supply of services (such as construction services) which are provided for a period of time and the consideration (payment), the whole or part of it, is determined as payable, periodically from time to time, the services are treated as provided separately and successively each time the payment is due or each time the payment is received by, the service provider.

27.2 However, when advance payment is received for a service which is non-taxable at the time of receipt of payment but becomes taxable during the course of provision of service, such payments would have to be apportioned appropriately between the two periods and that part of service provided on or after the service becomes taxable service, is only liable for service tax. Similarly, when payment is received in advance for services to be provided but subsequently the services are not actually provided, then in such cases service tax paid is liable to be refunded.

28. Prior to amendment of sections 69 and 70 by the Finance Act, 2005, only the 'person liable to pay the service tax' was required to get registered with the Department and required to submit periodical returns submit statutory returns. Thus, a person who was not liable to pay service tax was not required to get registered with the Department. It was felt that in certain instances,

though the person may not be liable to pay service tax, for the sake of accountability, such person needs to get registered with the Department.

28.1 Amendments have been made in sections 69 and 70 to incorporate the enabling provisions for registration and filing of return by Input Service Distributors and small service providers whose aggregate value of taxable service exceeds Rs. 3 lakhs per annum. Rule making power in this regard has also been taken under section 94 of the Finance Act.

Amendments in Service Tax Rules

29. An assessee has to register all locations from where taxable services are provided, or opt for one single registration. Amendments have been made to Rules 4(002) and 4(3) of the Service Tax Rules, 1994 to facilitate more than one centralized registration, i.e. more than one office of an assessee such as his zonal or regional office depending upon their centralized billing or accounting systems.

29.1 In view of the amendment, if a bank has its head office at Mumbai and regional offices at Bhopal, Jaipur and Bangalore and the bank has centralized billing or centralized accounting facilities available at each of these regional offices, then the bank, at its option, can get each of these regional offices registered (and not only the Mumbai office) for the purpose of discharging the service tax liability.

29.2 The centralized registration granted to such premises or offices prior to 1.4.2005 would not be affected by this amendment unless an assessee at his option wants an amendment to the registration scheme opted by him.

29.3 If an assessee does not have a centralized billing or centralized accounting system, he would be required to get each of his premises registered for discharging the service tax liability.

29.4 Prior to the amendment, the Commissioner of Central Excise was empowered to grant registration in cases of centralized accounting system, provided he is satisfied that such registration would not be detrimental to the interest of revenue. This led to procedural difficulties as the Commissioner of Central Excise found it difficult to grant centralized registration to service providers who had their sub-ordinate offices outside his jurisdiction, while at the same time ensuring that the interest of revenue is safeguarded.

29.5 Now the authority to grant such centralized registration has been clearly spelt out. The Commissioner of Central Excise would grant centralized registration only if all the premises or offices, including the premises or office from where centralized accounting or centralized billing is done and all its sub-ordinate offices (for which such centralized accounting or centralized billing is done) are located within the jurisdiction of such Commissioner of Central Excise. If these offices or premises are outside the jurisdiction of Commissioner of Central Excise but within the jurisdiction of Chief Commissioner of Central Excise, in those cases, the jurisdictional Chief Commissioner would grant centralized registration. Further, if these offices or premises fall within the jurisdiction of more than one Chief Commissioner of Central Excise, the centralized registration would be granted by the Director General of Service Tax, Mumbai.

30. Miscellaneous Issues

30.1 A threshold exemption scheme has been introduced in this year's budget (effective from 1.4.2005) exempting from service tax aggregate value of taxable services not exceeding four lakh rupees received by the service provider during a financial year. A point has been raised whether payments received after 1.4.2005 towards the services provided prior to 1.4.2005 would be included while computing this threshold value of Rs. 4 lakhs.

30.1.1 The exemption is related to first payments received in a financial year irrespective of the

actual date of provision of services. Thus, the payments received after 1.4.2005 even if they relate to taxable services provided prior to 1.4.2005, will be taken into account for the purpose of computation of the threshold limit.

30.2 At present exemption from the gross amount charged (abatement) has been prescribed for certain taxable services such as construction and transport of goods by road. However, abatement scheme is not applicable to other than specified taxable services.

30.2.1 A point has been raised about application of abatement scheme in case of single provision of service which consists both category of taxable services, in such cases, what portion of the gross contract would get the benefit of abatement.

30.2.2 In all such cases, it is required to take a view as to whether the taxable service provided is a single service or multiple supply of services and thereafter classify the service provided as per the provisions of section 65A of the Finance Act, 1994 which lays down principles for classification of services. The benefit for abatement would be extended only if the taxable service is classifiable under the category for which abatement scheme is applicable.

31. Goods Transport Agency

31.1 An abatement of 75% in taxable service of goods transport by road is available on the condition that the goods transport agency has not availed credit on inputs and capital goods used for providing taxable service and has also not availed benefit of notification No. [12/2003](#)-Service Tax dated 20.6.2003 (vide Notification No. [32/2004](#)-Service Tax, dated 3.12.2004). It has been requested that in cases where liability for tax payment is on the consignor or consignee, the procedure as to how it should be confirmed by such consignor or consignee that the goods transport agency has not availed credit or benefit of notification No. [12/2003](#)-Service Tax may be prescribed. In such cases it is clarified that a declaration by the goods transport agency in the consignment note issued, to the effect that neither credit on inputs or capital goods used for provision of service has been taken nor the benefit of notification No. [12/2003](#)-Service Tax has been taken by them may suffice for the purpose of availment of abatement by the person liable to pay service tax.

32. Exemption to gem and jewellery sector

32.1 Notification No. [21/2005](#)-Service Tax, dated 7.6.2005 exempts the taxable services of "production or processing of goods for, or on behalf, of a client" referred to in sub-clause (v) of clause (19) of section 65 of the Finance Act, 1994, provided by a commercial concern, in the course of manufacture of cut and polished diamonds and gem stones or plain and studded jewellery of gold and other precious metals. However, other taxable services, such as, supply of manpower, banking and other financial services, other business auxiliary services, provided in the course of manufacture of cut and polished diamonds and gem stones or plain and studded jewellery of gold and other precious metals, are leviable to service tax and no exemption for these services is provided. All taxable services received from abroad by an Indian recipient in relation to these goods are held to be liable to be taxed under "Reverse Charge" norms.

33. Taxable Services received from abroad

Taxable services received from abroad by a person belonging to India are taxed in the hands of the Indian recipient. Relevant provisions are section 65(105) of the Finance Act, 1994 and rule 2(1)(d)(iv) of the Service Tax rules. In such cases, the Indian recipient of taxable services is deemed to be the service provider.

34. Exemption to shipping industry

34.1 Indian Ship Owners Association sought exemption from the levy of service tax on all taxable

services received and consumed outside India by the shipping sector. Notification No. [22/2005-ST](#), dated 7.6.2005 exempts only certain specified taxable services provided by a non-resident person, outside India and consumed outside India in the course of sailing of a ship. For this purpose, the ship should have been registered as an Indian ship under the Merchant Shipping Act, 1958 or registered under the Coasting Vessels Act, 1838 or Inland Vessels Act, 1917. In the case of chartered ship, it should have been licensed under the Merchant Shipping Act, 1958. The ships so registered or licensed should be owned or chartered by a citizen of India or a company or a body established by or under any Central or State Act, which has its principal place of business in India or a cooperative society which is registered under the Cooperative Societies Act or any other law relating to cooperative societies.

34.2 The exemption is applicable only to those specified taxable services provided in relation to handling of ships in a port outside India or handling or storage of goods carried in a ship in a port outside India or any other services related to handling of ships or goods carried in a ship. The scope of the term 'non-resident person' has been explained in the notification.

34.3 It may be noted that there is a distinction between a vessel and a ship. Vessel includes any ship, boat, sailing vessel or other description of vessel used in navigation. However, ship does not include a sailing vessel. Barges and rigs are only sailing vessels and do not fall under the category of ships. The term ship is defined in the Merchant Shipping Act, 1958. The exemption is applicable only to ships and not for vessels other than ships. Vessels going outside the country for dry-docking (maintenance or repairs) are not eligible for the exemption.

34.4 In the case of chartered ships, ships are used by the charterer but not owned by the charterer. Indians, chartering ships, are required to take licenses, unless specifically exempted, under section 406 of the Merchant Shipping Act, 1958. Vessels registered under the Coasting Vessels Act, 1838 or Inland Vessels Act, 1917 are also authorized to touch any ports in neighbouring countries. The benefit of exemption is available in such cases also.

34.5 It may be noted that the service tax is leviable on taxable services, other than specifically mentioned in the notification, received by the Indian shipping companies from abroad, under the reverse charge method from the Indian recipient of taxable services.

35. To avail relief from service tax on export of taxable services, taxable services exported are to be delivered outside India and used outside India and payment for the services exported should have been received by the service provider in convertible foreign currency. Amendments to this effect have been made in sub-rules (1) and (2) of rule 3 of Export of Services Rules, 2005. Newly introduced services have also been categorized for the purposes of export of services. Notification No. [28/2005-ST](#) dated 7/6/05 amends Export of Service Rules accordingly.

36. Service providers who have opted for centralized registration may, at times, have difficulty in accurately computing their tax liability by the due date of payment. Facility has been extended to such service providers to make suo moto adjustments of the excess amount paid, if any, and utilize the excess amount for payment of service tax for the subsequent period. Rule 6 of the Service Tax Rules, 1994 is amended for this purpose vide notification No. 23/2005-ST dated 7/6/2005.

37. The above explanation of various changes and provisions of law is only for purpose of guidance to facilitate understanding and implementation of various provisions. It is not a part of the law and does not override it. Adequate care may be taken to carefully read the relevant provisions of law.

38. 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.

R. Sekar
Joint Secretary (TRU)

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