

## **EXPLANATORY NOTES - SERVICE TAX**

*The following changes are being proposed in the Finance Bill, 2008 [refer clause 85 of the Finance Bill, 2008].*

### **(I) Section 65 is being amended to:**

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

- (i) information technology software service,
- (ii) management of investment under Unit Linked Insurance Plan (ULIP) service,
- (iii) stock exchange service,
- (iv) recognised association or registered association commonly known as commodity exchange service,
- (v) processing and clearinghouse service,
- (vi) supply of tangible goods for use service;
- (vii) internet telecommunication service. Consequently, reference to services provided in relation to internet telephony, being covered as part of internet telecommunication service, shall be omitted.

(B) amend the following taxable services, consequent upon levy of service tax on information technology software service, namely:-

- (i) Business auxiliary service [section 65(19)], so as to omit the reference to exclusion of information technology service;
- (ii) Consulting engineer service [section 65(105)(g)], so as to omit the exclusion of computer software engineering consultancy and provide that services provided by a consulting engineer in relation to advice, consultancy or technical assistance in the disciplines of both computer hardware engineering and computer software engineering shall also be classifiable under this service;
- (iii) Technical testing and analysis service [section 65(106)] so as to specifically include testing or analysis of information technology software;
- (iv) Technical inspection and certification service [section 65(108)] so as to specifically include inspection, examination and certification of information technology software;

(C) specify or expand, as the case may be, the scope of the existing taxable services as follows:

- (i) Banking and other financial services [section 65(12)] so as to levy service tax on purchase or sale of foreign currency, including money changing by an authorized dealer and authorized money changer;

- (ii) Foreign exchange broker services provided by individual [section 65(105)(zzk)] so as to levy service tax on purchase or sale of foreign currency, including money changing by an authorized dealer and authorized money changer;
- (iii) Business auxiliary service [section 65(19)] so as to clarify as a removal of doubt, that “service in relation to promotion or marketing of service provided by the client” includes any service provided in relation to promotion or marketing of games of chance, organized, conducted or promoted by the client;
- (iv) Cargo handling service [section 65(23)] so as to specifically include services of packing together with transportation of cargo or goods, with or without one or more other services like loading, unloading, unpacking;
- (v) Tour operator’s service [section 65(115)] so as to include any person engaged in the business of operating tours in a contract carriage and to provide that “tour” does not include a journey organized or arranged for use by an educational body imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre;
- (vi) Renting of immovable property so as to clarify as a removal of doubt, that renting of immovable property service includes allowing or permitting the use of space in an immovable property, irrespective of the transfer of possession or control of the immovable property;

(D) define the following terms in relation to respective taxable services, namely:

- (i) associated enterprise,
- (ii) information technology software,
- (iii) internet telecommunication service,
- (iv) processing and clearinghouse;

(E) substitute the words “client” and “customer” with the words “any person” in respect of 39 specified taxable services;

**(II) Section 66 pertaining to “Charge of service tax” is being amended to include the services which are individually specified as taxable services in this year’s Finance Bill**

All the above mentioned amendments in section 65 and section 66 will come into effect from a date to be notified after the enactment of the Finance Bill, 2008.

**(III) Exemptions from service tax:**

(1) The annual threshold limit of service tax exemption for small service providers has been increased from the present level of Rs.8 lakh to Rs.10 lakh with effect from

01.04.2008, provided that the aggregate value of taxable services rendered by such provider of taxable service from one or more premises, does not exceed Rs.10 lakh in the preceding financial year.

*[refer notification No. 8/2008-Service Tax, dated 01.03.2008]*

Consequent upon increase in threshold limit of exemption from Rs.8 lakh to Rs.10 lakh, notification No.26/2005-Service Tax dated 07.06.05 and notification No.27/2005-Service Tax dated 07.06.05 have been amended to raise the limit for obtaining service tax registration from Rs.7 lakh to Rs.9 lakh.

*[refer notification No. 9/2008-Service Tax,  
No. 10/2008-Service Tax, and  
No.11/2008-Service Tax, all dated 01.03.2008]*

These changes will come into effect from 1<sup>st</sup> April, 2008.

(2) Exemption from service tax is being provided to the taxable service provided by a person, located outside India, in relation to booking of an accommodation for a customer, located outside India, in a hotel located in India.

*[refer notification No. 14/2008-Service Tax, dated 01.03.2008]*

(3) Exemption from service tax is being provided to the extent of 75% of the gross amount charged as freight for services provided by a goods transport agency (GTA) in relation to transport of goods by road in a goods carriage, unconditionally. Consequently,-

- (i) GTA service [section 65(105)(zzp)] is being excluded from the scope of output service under rule 2(p) of the CENVAT Credit Rules, 2004, and
- (ii) the entry at Sr.No.6 pertaining to abatement of 75% to GTA service in notification No.1/2006-ST, dated 01.03.06 is being omitted;

*[refer notification No. 13/2008-Service Tax,  
No. 10/2008-Central Excise (N.T.) and  
No. 12/2008-Service Tax, all dated 01.03.2008]*

The exemptions mentioned above [except (1)] will come into effect from 1<sup>st</sup> March, 2008.

#### **(IV) Other Changes in the Finance Act, 1994:**

(1) Section 66 is being amended to include the individually specified services [This change will come into effect from a date to be notified after enactment of the Finance Bill, 2008];

(2) Section 67 is being amended to provide that “gross amount charged” shall include any amount credited or debited, as the case may be, to any account, whether called “Suspense account” or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise;

(3) Section 71 is being inserted so as to empower the Board to frame a Scheme by notification in the Official Gazette to enable preparation and filing of service tax returns through a person or class of person known as Service Tax Return Preparer authorized to act for the said purpose;

(4) Section 72 is being inserted so as to authorize the Central Excise Officer to make assessment on the basis of best judgment after allowing assessee to represent his case where assessee has failed to make service tax returns or assess the tax;

(6) Section 77 is being substituted so as to provide specific penalty for specific contraventions;

(7) Section 78 is being amended to provide that in case where penalty for suppressing value of taxable service under section 78 is imposed, penalty for failure to pay service tax under section 76 shall not apply;

(8) Section 86(2) is being amended to provide that in case the Committee of Chief Commissioners of Central Excise differs in its opinion regarding the legality and propriety of the order of the Commissioner of Central Excise, it shall refer the matter to the Board;

(9) Section 86(2A) is being amended to provide that in case the Committee of Commissioners differs in its opinion regarding the legality and propriety of the order of the Commissioner (Appeals), it shall refer the matter to the jurisdictional Chief Commissioner;

(10) Section 94 is being amended to provide that the rules for framing the Scheme for filing service tax returns through a Service Tax Return Preparer shall be laid before each House of Parliament;

(11) Section 95 is being amended to empower the Central Government to issue orders for removal of difficulty in respect of implementing, classifying or assessing the value of any taxable service incorporated by the Finance Bill, 2008 upto one year from the date of enactment of the Finance Bill, 2008.

The changes mentioned above [except (1)] will come into force from the date of enactment of the Finance Bill, 2008.

**(V) A Scheme for resolution of disputes relating to Service Tax arrears pending as on 01.03.2008 and involving amount not exceeding Rs.25,000, to be called the Service Tax Dispute Resolution Scheme, 2008 is being introduced. The Scheme is valid during 1<sup>st</sup> July, 2008 to 30<sup>th</sup> September, 2008.**

*[refer Chapter VI of the Finance Bill, 2008]*

**(VI) Changes in the Service Tax Rules, 1994:**

(1) Rule 6 is being amended to insert sub-rule (1A) to extend the facility to pay service tax in advance to all taxable persons. Service tax paid in advance is allowed to be self-adjusted towards service tax liable to be paid for the subsequent period;

(2) Rule 6(4B)(iii) is being amended to allow self-adjustment of excess service tax paid upto Rs.1 lakh for a relevant month or quarter, as the case may be, instead of the earlier limit of Rs.50,000;

(3) Rule 7B is being amended to allow an assessee to rectify mistakes and file revised return within 90 days, instead of the earlier limit of 60 days, from the due date for filing of original return;

(4) Rule 7C is being amended to empower the Central Excise Officer to reduce or waive the penalty for delayed filing of return, where the gross amount of service tax payable is nil.

*[refer notification No.4/2008-Service Tax, dated 01.03.2008]*

The above changes will come into effect from 1<sup>st</sup> March 2008.

**(VII) Changes in the CENVAT Credit Rules, 2004:**

(1) Rule 2(p) is being amended to exclude from the scope of “output service”, the taxable service provided by a goods transport agency in relation to transport of goods by road in a goods carriage, referred to in sub-clause (zzp) of clause (105) of section 65 of the Finance Act, 1994;

(2) Rule 3 is being amended to allow capital goods outside the premises of the provider of output service without any time restriction, if the same is for providing output service;

(3) Rule 6 is being amended to provide the following options to a provider of output services, using common inputs or input services for providing taxable as well as exempted services and opting not to maintain separate accounts, namely:-

(i) either reverse the credit attributable (to be worked out in a manner prescribed in the rule) to the inputs and input services used for providing exempted service, or

(ii) pay 8% amount of the value (to be determined in accordance with section 67 of the Finance Act, 1994) of the exempted service;

(4) Rule 7A is being inserted to prescribe a procedure to enable the provider of output services to take credit on inputs and capital goods on the basis of an invoice, bill or challan issued by its other office;

(5) Rule 15A is being inserted to provide for general penalty upto Rs.5,000/- in case of contravention of any of the provisions of the CENVAT Credit Rules, 2004, for which no specific penal provision exists.

*[refer notification No.10/2008-Central Excise (N.T.), dated 01.03.2008]*

The changes mentioned in,-

- (i) (1) and (5) will come into effect from 1<sup>st</sup> March, 2008, and
- (ii) (2), (3) and (4) will come into effect from 1<sup>st</sup> April, 2008.

**(VIII) Change in the Export of Services Rules, 2005:**

Rule 3(1)(ii) is being amended to provide that where the taxable services referred to in sub-clauses (zzg), (zzh) and (zzi) of section 65(105), are provided remotely through internet or an electronic network including a computer network or any other means in relation to any goods or material or any immovable property, as the case may be, situated outside India at the time of provision of service, then such taxable service, whether or not partly performed in India, shall be treated as performed outside India and treated as export of service.

*[refer notification No. 5/2008-Service Tax, dated 01.03.2008].*

The above change will come into effect from 1<sup>st</sup> March 2008.

**(IX) Change in the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006:**

Rule 3(ii) is being amended to provide that where the taxable services referred to in sub-clauses (zzg), (zzh) and (zzi) of section 65(105), are provided remotely through internet or an electronic network including a computer network or any other means in relation to any goods or material or any immovable property, as the case may be, situated in India at the time of provision of service, then such taxable service, whether or not partly performed outside India, shall be treated as performed in India and leviable to service tax under reverse charge method.

*[refer notification No. 6/2008-Service Tax, dated 01.03.2008].*

The above change will come into effect from 1<sup>st</sup> March 2008.

**(X) Change in the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007:**

Rule 3(1) is being amended to enhance the rate prescribed for optional scheme for payment of service tax for works contract service from the present rate of 2% of the total value of the contract to 4% of the total value of the contract.

*[refer notification No. 7/2008-Service Tax, dated 01.03.2008].*

The above change will come into effect from 1<sup>st</sup> March 2008.

**(XI) Service Tax (Publication of Names) Rules, 2008:**

Service Tax (Publication of Names) Rules, 2008 have been notified so as to prescribe rules for publication of names and particulars of specified persons who have intentionally evaded or failed to pay service tax.

*[refer notification No. 15/2008-Service Tax, dated 01.03.2008].*

The said rules will come into effect from 1<sup>st</sup> March 2008.