

## **Clarification reg. ST on Distribution/screening of films/movies**

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### **Taxability on Screening of films**

There has always been a debate on levy of services tax on distributors/sub-distributors of film and exhibitors of movies. Different types of view are given based on the nature and particulars of contracts entered by distributors/sub-distributors with exhibitors for screening any movie.

Earlier, this issue was being dealt by Circular no. 109/03/2009 dated 23<sup>th</sup> February, 2009, in which it was clarified that screening of movie is not a taxable service under the Revenue Sharing Arrangement except where the distributor takes on lease the theater for exhibiting the movie and the theater owner gets a fixed rent, the same will be taxed under the head 'renting of immovable property service'.

Now, on 13<sup>th</sup> December, 2011, CBEC came with new clarification through Circular no. 148/17/2011 - ST that said exemption shall not be applicable was not universal and service tax can be levied on the basis of arrangement between distributor/sub-distributor/area distributor and exhibitor/theater owner and shall be dealt on case to case basis.

Before getting into the details, let's understand the basic facts and nature/types of arrangements which are generally practically applied for screening any movie/film;-

**Types of arrangement:** - There may be following type of arrangements;

**(A) If the arrangement is on Principal to principal basis and:**

- (i) **If the copyright is temporarily transferred:** in cases, where the producer of the film who owns the intellectual rights of the film, temporarily transfers the rights to a person (normally distributor or any other person) who directly or indirectly enters into an agreement with the exhibitor [normally theater owner] for screening of the film.

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- (ii) **If the copyright is not transferred**: in cases if the copyright are not transferred, the theater owner either (i) screen the movie for fixed number of days under a contract and share the revenue from sales of tickets or (ii) let out the theater to the distributor for a fixed sum of money.

**(B) If the arrangement under Unincorporated Partnership/Joint Venture /collaboration basis**

Under this arrangement, the distributors and theatre owner conduct business on sharing profit/revenue basis. In this arrangement a new entity emerges with the character of a person which is different from the distributor or theatre owner.

Unincorporated joint venture, not operating on principal-to-principal basis, will exist only if the arrangement entered into between the two independent persons is also recognized as a person. It may be noted that the word "person" has not been defined in the Finance Act, 1994. As per Sec 3(42) of General Clauses Act, 1897 "person shall include any company or association or body of individuals, whether incorporated or not". In this regard attention is invited to explanation to Sec 65 of the Finance Act, 1994 wherein the taxable service includes any taxable service provided or to be provided by any unincorporated association or body of persons to a member thereof.

Such a joint venture is also recognized as a legal & juristic entity in the nature of a partnership of the constituent companies by the hon'ble Supreme Court of India in the case of New Horizons [1995 SCC (1) 478; 1994 -TMI – 83686] wherein it was held that *"the expression 'joint venture' connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. It requires a community of interest in the performance of the subject-matter, a right to*

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*direct and govern the policy in connection therewith, and duty, which may be altered by agreement, to share both in profit and losses.* The independence of joint venture as a separate legal entity, away from its constituent members, has further been fortified in the case of **M/s Gammon India Ltd. Vs Commissioner of Customs, Mumbai, 2011-TMI - 204309** wherein the Hon'ble Supreme Court categorically denied the benefit of exemption to the JV as the impugned goods were directly imported by constituent member.

Thus, where the distributor or sub-distributor or area distributor enters into an arrangement with the exhibitor or theatre owner, with the understanding to share revenue/profits and not provide the service on principal-to-principal basis, a new entity emerges, distinct from its constituents. As the new entity acquires the character of a "person", the transactions between it and the other independent entities namely the distributor / sub-distributor / area distributor and the exhibitor etc will be a taxable service. Whereas, in cases the character of a "person" is not acquired in the business transaction and the transaction is as on principal-to-principal basis, the tax is leviable on either of the constituent members based on the nature of the transaction and as per rules of classification of service as embodied under Sec 65A of Finance Act, 1994.

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### After New Clarification:-

| Type of Arrangement  | Movie exhibited on whose account  | Service Tax Implication  |
|--|---|--|
| Principal –to – Principal Basis  | Movie being exhibited by theatre owner or exhibitor on his account – i.e. The copyrights are temporarily transferred.   | Service tax under copyright service to be provided by distributor or sub-distributor or area distributor or producer etc, as the case may be         |
|  | Movie being exhibited on behalf of Distributor or Sub-Distributor or Area Distributor or Producer etc – i.e. no copyrights are temporarily transferred.   | Service Tax under Business Support Service / Renting of Immovable Property Service, as the case may be, to be provided by Theatre Owner or Exhibitor |
| Arrangement under unincorporated partnership/ joint/ collaboration basis | Service provided by each of the person i.e. the 'new entity'/ Theater Owner or Exhibitor / Distributor or Sub-Distributor or Area Distributor or Producer etc, as the case may be, is liable to Service Tax under applicable service head |  |

Hence, the taxability of service tax on screening of film shall be decided based on the nature and type of arrangement and accordingly, service tax shall be paid under respective head of taxable service.

With Best Regards,

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