

**ANALYSIS OF COPY RIGHT SERVICE U/S 65 (105) (zzzzt)**

**A. Date of Applicability:**

Levied wef 01.07.2010 by notification No. 24/2010-ST dated 22.06.2010

**B. List of Applicable Notifications and Circulars:**

<b>S.NO.</b>	<b>NOTIFICATION</b>	<b>HEADING</b>	<b>In Finance Bill 2012 &amp; NN 12/2012 ST dated 17.03.2012</b>
<b>GENERAL EXEMPTION</b>			
1.	Notification No. 16/2002-ST, dated 2-8-2002	Services to UN Agencies	Covered by S. No. 1 of NN 12/2012 ST dated 17.03.2012
2.	Notification No. 12/2003-Service Tax dated 20.06.2003 effective from 01.07.2003	Exemption as to value of goods or material sold by service provider	
3.	Notification No.17/2011 ST dated 01.03.2011(previous notification 09/2009 ST dated 03.03.2009 & Notfn.No4/2004-ST dated 31.03.2004)	Exemption to services provided to a developer of SEZ or a unit of SEZ	
4.	Notification No. 6/2005-ST, dated 1-3-2005. Last Amended by Notification No. 8/2008-ST dated 01.03.2008	Exemption up to Rs.10 Lac (Exemption to Small Scale Service Providers)	
5.	Notification No.09/2007 ST dated 01.03.2007	Exemption to taxable services provided by TBI and STEP	
6.	Notification No.10/2007 ST dated 01.03.2007	Exemption to taxable services provided by entrepreneurs located within the premises of	

		TBI or STEP	
7.	Notification No. 33/2007-ST dated 23.05.2007	Exemption to services provided to Foreign Diplomatic Missions or Consular Post in India	Covered by clause (c) of section 66D (i.e., negative list)
8.	Notification No. 34/2007-ST dated 23.05.2007	Exemption to services provided for personal use of a family member of Diplomatic Agent or Career Consular Officers posted in Foreign Diplomatic Mission/Consular Post in India	
9.	Notification No. 11/2010 S.T., dated 27.02.2010	Exemption for services provided for transmission of electricity.	Covered by clause (k) of section 66D (i.e., negative list)
10.	Export of service (Rule 4 of Export of Services Rules,2005)	Any service which is taxable under clause 105 of Section 65 may be exported without payment of service tax.	After Finance Bill 2012 receives the assent of the President, export rules shall be rescinded and Place of Provision of Services Rules, 2012 shall be notified.
<b>SPECIAL EXEMPTION</b>			
1.	Notification No. 36/2010 - Service Tax dated 28.06.2010	Exemption to certain taxable services wrt advance payment before 01.07.2010	
<b>Abatement</b>			
1.	NIL		

<b>S. NO.</b>	<b>CIRCULAR NO</b>	<b>HEADING</b>
1.	D.O.F. No. 334/1/2010-TRU. DATED 26.02.2010	Briefing of changes brought by FA, 2010
2.	D.O.F. No. 334/3/2010-TRU. DATED 01.07.2010	Issuance of notifications after enactment of the Finance Act, 2010

### **C. Taxable Services**

#### **D.O.F. No. 334/1/2010-TRU, dated 26-2-2010**

#### **Annexure-A**

#### **Scope and the background of the new services included in the List of Taxable Services**

7. Services related to two types of copyrights hitherto not covered under existing taxable service 'Intellectual Property Right (IPR)', namely, that on (a) cinematographic films and (b) sound recording.

7.1 The right to temporarily transfer or permit the use of Intellectual Property Rights (IPR), namely, trademarks, designs and patents was brought under tax net in 2004. However, one of the IPRs, i.e. copyright has been specifically kept out of the purview of the tax with an intent to encourage authors and artists, as it involves creative works, such as literary work, musical work and artistic work. In Budget 2008, Information Technology (IT) Software Service was also brought under tax net, which apart from involving development; up-gradation, assistance etc. also covered the IPR aspect i.e. right to use the information technology.

**7.2 The provisions of copyright are incorporated in the Indian Copyright Act, 1957. As per section 13 of the said Act, the copyright subsists in the following classes of work:**

- (a) Original literary, dramatic, musical and artistic works;**
- (b) Recording of cinematographic films;**
- (c) Sound recordings.**

7.3 The first category of copyright has been kept out of the tax net while the second and third categories of copyrights are being made taxable under this service. A cinematographic film means any work of visual recording on any medium (emphasis added) produced through a process from which a moving image may be produced. The same may be accompanied with sound reproduction also. Both the recording of the cinematographic film and the accompanying sound track are the property of the producer, who can temporarily transfer it or permit its use by another person for a consideration. It is this activity, which is being taxed under this service. It would have an impact on the royalty payments on both imported and indigenously produced films when the producer/right holder allows such use to another person, say the distributor.

7.4 Similarly, song, its music, lyrics and composition also enjoy the copyright protection to its owner who can commercially exploit it in the manner stated above. Normally, the copyright of music vests in the composer and the copyright of music recorded vests in the producer of the sound recording. It is possible that a lyricist or a singer may hold copyright for the words of a song or the song itself. Merely allowing that song to be recorded is a copyright, which would fall under category (a) of section 13 of the Copyright Act and thus would not be subject to service tax. However, after the performer has transferred his rights to a sound recording company, the sound recording company acquires the copyright mentioned in category (c) of section 13 supra. It is the transfer or allowing use of this right, which would be subjected to tax under the new service.

7.5 As such, depending upon the nature and conditions of the contract, companies distributing music, owners of copyright of cinematographic films etc. would be prospective taxpayers. It may be noted that this taxable service will not cover individual artists, composers, performers etc. as their copyrights fall under clause (a) of Sec. 13 of the Copyright Act.

#### **1. Definition and Scope of the service:**

“Taxable service” means any service provided or to be provided to any person, by any other person, for –

(a) Transferring temporarily; or

(b) Permitting the use or enjoyment of,

Any copyright defined in the Copyright Act, 1957 (14 of 1957), except the rights covered under sub-clause (a) of clause (1) of section 13 of the said Act. [Section 65(105) (zzzzt)]

**Key ingredient of above definition:**

- I. Taxable services provided **by any person**.
- II. Taxable services provided **to any person**.
- III. Taxable services provided for –
  - (a) Transferring temporarily; or
  - (b) Permitting the use or enjoyment of,  
Any copyright defined in the Copyright Act, 1957 (14 of 1957)
- IV. **Excludes** the rights covered under sub-clause (a) of clause (1) of section 13 of the said Act. Section 13(1)(a) covers the rights in respect of **original literary, dramatic, musical and artistic works**.

However it is interesting to note that, in respect of copy right services, NN 12/2012 ST dated 17.03.2012 provides exemption in respect of rights covers by sub-clause (a) and (b) of section 13 of the said Act. **Thus, from the date when NN 12/2012 ST dated 17.03.2012 comes into effect rights in respect of cinematograph films shall also be exempt.**

**2. Services generally exempted by issuing various exemption notifications:**

- I. **Services to UN Agencies:** Services provided to United Nations or an International Organizations are exempt. [Notification No. 16/2002-ST, dated 2-8-2002]
- II. **Exemption to value of goods & material sold by service provider:** In exercise of the powers conferred by section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby **exempts so much of the value of all the taxable services, as is equal to the value of goods and materials sold by the service provider to the recipient of service**, from the service tax leviable thereon under section (66) of the said Act, subject to condition that there is documentary proof specifically indicating the value of the said goods and materials. [Notification No. 12/2003-Service Tax dated 20.06.2003 effective from 01.07.2003]

**III. Exemption to services provided to a developer of SEZ or a unit of SEZ:**

Exempts the taxable services specified in clause (105) of section 65 of the Finance Act, chargeable to tax under section 66 or section 66A of the Finance Act, **received by a Unit located in a Special Economic Zone (hereinafter referred to as SEZ) or Developer of SEZ for the authorised operations**, from the whole of the service tax, education cess and secondary and higher education cess leviable thereon. (Refer notification for details)

[Notification No.17/2011 ST dated 01.03.2011(previous notification 09/2009 ST dated 03.03.2009 & Notification No4/2004-ST dated 31.03.2004)]

**IV.** As per NN 6 dated 01.03.05 last amended by NN 5 dated 17.03.12, assessee is not required to pay service tax in current financial year for first consecutive invoices issued or required to be issued up to Rs.10 lac if, inter alia, aggregate value of taxable services **RENDERED** in the preceding financial year does not exceed Rs.10 lac.

**V. Exemption to taxable services provided by TBI and STEP:** All taxable services, provided by a Technology Business Incubator (TBI) or a Science and Technology Entrepreneurship Park (STEP) recognized by the National Science and technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Govt. of India from the **whole of the service tax** leviable thereon subject to certain conditions and procedures. ( Refer notification for details)  
[Notification No.09/2007 ST dated 01.03.2007]

**VI. Exemption to taxable services provided by entrepreneurs located within the premises of TBI or STEP:** All taxable services, provided by an entrepreneur located within the premises of a Technology Business Incubator (TBI) or a Science and Technology Entrepreneurship Park (STEP) recognized by the National Science and technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Govt. of India from the **whole of the service tax** leviable thereon subject to certain conditions and procedures. ( Refer notification for details) [Notification No.10/2007 ST dated 01.03.2007]

**VII. Exemption to services provided to Foreign Diplomatic Missions or Consular Post in India:** All services provided by any person, for the official use of a Foreign Diplomatic Mission or Consular Post in India are exempted from service tax subject to certain conditions and procedures. (Refer notification for details)  
[Notification No. 33/2007-ST dated 23.05.2007]

**VIII. Exemption to services provided for personal use of a family member of Diplomatic Agent or Career Consular Officers posted in Foreign Diplomatic Mission/Consular Post in India:** All services provided by any person, for personal use of family member of Diplomatic Agents or Career Consular officers posted in a Foreign Diplomatic Mission or Consular Post in India are exempted from service tax subject to certain conditions and procedures. (Refer notification for details)  
[Notification No. 34/2007-ST dated 23.05.2007]

**IX. Exemption for services provided for transmission of electricity:**  
In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided to any person, by any other person for transmission of electricity, from the **whole of service tax** leviable thereon under section 66 of the said Finance Act. [Notification No. 11/2010 S.T., dated 27.02.2010]

**X. Export of service:** Any service which is taxable under clause 105 of Section 65 may be exported without payment of service tax.  
(Rule 4 of Export of Services Rules, 2005)

**3. Services specially exempted by issuing various exemption notifications:**

I. In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services specified in clause (A) of section 76 of the Finance Act, 2010 (14 of 2010) other than services referred to in clause (zzc) and (zzzz) of sub-section (105) of section 65 of the Finance Act from so much of the service tax leviable thereon under section 66 of the Finance Act as is in excess of the service tax calculated on a value which is equivalent to the amount of advance payment received before the said appointed date.

Explanation.- For the purpose of this notification,

(i) "appointed date" means the 1st day of July, 2010;

(ii) "advance payment" means consideration received for the said taxable services to be provided.

[Notification No. 36/2010 - Service Tax dated 28.06.2010]

**Letter D.O. F. No. 334/3/2010-TRU, dated 1-7-2010 (Extracts)**

**2. Services provided or payments made prior to the effective date:**

2.1 Vide Finance Act, 2010, eight new services were added to the list of taxable services while the scopes of nine existing services were modified. As these changes become effective from 1-7-2010, activities that are covered under taxable service categories due to above additions or modifications, would start attract service tax from this date. **It is however, possible that a part or full payment of the consideration for such services provided after the appointed date has already been received prior to that date, i.e. advance payments. The examples are : where a domestic air journey performed after 1st July 2010, but the ticket is issued on payment prior to such date or where a construction activity falls within the taxable service only after the said date but the payment (full or in part) has been made before this date. While legally tax is payable on such amounts received, it has been decided to specifically exempt service tax on that partial or full amount which is received by the service provider/person liable to pay the tax (and not by an agent, who in turn transfers such amount to such person after this date) before 1-7-2010, pertain to a service which has become taxable on account of the provisions of the Finance Act, 2010 and is provided on or after 1-7-2010.** Any amount received after 1-7-2010 by the service provider/person liable to pay the tax would be subjected to tax. (Refer Notification No. 36/2010-Service Tax dated the 28th June 2010 as corrected vide corrigendum dated 29th July, 2010).



**D. Rate of Tax & Accounting Code:**

<b>S.No.</b>	<b>Particulars</b>	<b>Rate of Tax</b>	<b>Accounting Code</b>
1.	Service Tax (ST)	10% of the value of Services	00440613
2.	Interest/Penalty (ST)	As levied or applicable	00440614
3.	Education Cess (EC)	2% of the service tax Payable	00440298
4.	Interest/Penalty (EC)	As levied or applicable	00440299
5.	Secondary and Higher Education Cess (SHEC)	1% of the service tax Payable	00440426
6.	Interest/Penalty (SHEC)	As levied or applicable	00440427
7.	Other – Penalty/interest	As levied or applicable	00440614

(Rate of tax is effective from 24.02.2009 (See Notification No. 08/2009 S.T., dated 24.02.2009))

**E. Valuation**

Provisions related to valuation of any taxable services are given in Section 67 read with SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006.

(Disclaimer: The above write up has been drafted as per various provisions of Finance Act 1994, notifications issued thereunder and relevant case laws etc. The write up may not be entirely correct for reader to reader due to different interpretations by different readers. The readers are advised to take into the consideration the prevailing legal position before acting on any of the comments in this write up. Readers are also requested to convey the correct position as per their interpretation of the provisions of Finance Act 1994, notifications issued thereunder and relevant case laws etc. which shall be most welcome for correcting this write up. We shall not be responsible for any loss caused based on this interpretation.)

**With Warm Regards,**

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