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Circular No. ____/____/ 2011 – ST,

F.No.354/27/2011-TRU,

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Subject: – Clarification on levy of service tax on distributors-sub-distributors of films & exhibitors of movie – regarding.

1. Representations requesting clarification on taxability of consideration earned by the distributors/sub-distributors/area distributors of Indian & Foreign films in the form of ‘revenue share’ from the exhibitors of the movie, and on revenue retained as percentage by the exhibitors of the movie from the sale of tickets have been received from certain sections of service providers in the light of recent changes in the law and CBEC Circular No. 109/03/2009 dated 23.02.2009 issued under F. No. 137/186/2007-CX.4.

2. These representations have been examined. Subsequent to CBEC Circular No. 109/03/2009 dated 23.02.2009, temporary transfer or 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 were made taxable w.e.f. 01.07.2010 under the sub-clause (zzzzt) of Sec 65(105) by the Finance Act of 2010. Also, for the words ‘operational assistance for marketing’, the words ‘operational or administrative assistance in any manner’ were substituted in the clause (104c) of Sec 64 of the Act by the Finance Act, 2011, w.e.f. 01.05.2011.

3. The normal business practice in the industry is that the producer of the film, who owns the intellectual property 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. There are also other variant modes of transaction in the industry.

4. In the cases where distributor transfers the rights to sub-distributor, area distributor, exhibitor or theatre owner, the distributor is liable to collect the service tax under copyright service & deposit it to the government exchequer. Similarly when the sub-distributor or area distributor etc further transfers the rights to any person, he is also liable to collect the service tax under copyright service & deposit it to the government exchequer.

5. In cases where no such copyrights are transferred by the distributor or sub-distributor or area distributor to the exhibitor or theatre owner, the same is not chargeable to service tax under Copyright Services. However the business transaction needs to be examined for levability of service tax under other heads. Depending upon the arrangement whether the theatre owner has merely let out its premises to the distributor or is also involved in giving support services for the business of the distributor, there can be a case of levability of service tax on the remuneration retained by such theatre owner under “Business Support service” or “Renting of Immovable Property”. The definition of

“Business Support service” has been amended in Budget 2011 to include “operational or administrative assistance in any manner” in its definition.

6. It is being represented that in certain situation the distributor and the theatre owner conduct business together and hence no service tax is leviable. Where the distributor or sub-distributor or area distributor enters into an agreement with the exhibitor or theatre owner, a new entity may emerge, distinct from its constituents. If it acquires the character of a “person”, then the transactions between it and the other independent entities namely the distributor and the exhibitor may be a taxable service. Revenue sharing will exist only if the arrangement entered into between the two independent persons is also recognized as a person. It may be noted that though the word “person” has not been defined in the Finance Act, 1994 it 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. If the character of “person” is not acquired by the arrangement then the two entities are in a business transaction with each other in their respective capacities. Any of the entities, be the constituent members or the newly created distinct entity or otherwise, if provides any taxable service as defined in the Finance Act, 1994, as amended, is liable to discharge appropriate service tax under relevant entry. Service Tax, levied under Sec 66 of the Finance Act, is on rendition of services which are classified under Sec 65(105) of the Act. The liability is fastened on a person, hence it is important to discern whether a service has been rendered, and then identify the person on whose liability is it to collect and pay it to the government.

7. To sum-up the above, the arrangements entered into by the distributor or sub-distributor or area distributor etc and the exhibitor or theatre owner etc in exhibiting the film produced by the producer, the original copyright holder, the arrangements and their respective service tax classification is tabulated as under:

Type of Arrangement	Movie exhibited on whose account	Appropriate Service Tax Classification
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
Profit / Revenue Sharing	Service provided by each of the person i.e. the ‘new entity’ [if it acquires the character of ‘person’] / 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 respective service head	

8. It is understood that the Circular dated 23.02.2009 has been misinterpreted to exclude all 'revenue sharing' arrangements from the levy of service tax. Even though the arrangement entered into by the two entities is on 'revenue share' basis, the nature of service provided by the theatre owner to the distributor does not change owing to operation on revenue share basis. The nature of arrangement entered amongst them is not a determining factor for leviability of service tax. Remuneration or payment arrangements on basis of fixed or revenue sharing or profit sharing or hybrid versions of these may exist. However, the nature of transaction determines the leviability of service tax. Each case may be looked into on its merits and decision be taken on case to case basis.

9. The arrangements mentioned in this Circular will apply *mutatis mutandis* to similar situations across all the services taxable under the Finance Act.

10. The clarification given in the CBEC Circular No. 109/03/2009 dated 23.02.2009 stands amended to the extent it is contrary to the present Circular.

11. Chambers, trade, industry and field formations are requested to go through the Circular and offer their comments, views and suggestions. In order to provide wide publicity to the proposed Circular, this is also being posted on the CBEC website, www.cbec.gov.in and it is requested that comments, views and suggestions on the same may be forwarded to the undersigned on or before **23rd September 2011**.

(Samar Nanda)
Under Secretary (TRU)
Tel/Fax: 011-23092037
Email: samar.nanda@nic.in

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