

CIRCULAR NO 155/6/ 2012–ST

Dated: April 9, 2012

Subject : - **Clarification on Point of Taxation Rules** - regarding.

1. Notification No. 2/2012 - Service Tax dated the 17 th March 2012 has rescinded Notification No. No. 8/2009 - Service Tax, dated the 24th February, 2009, thus restoring the effective rate of service tax to 12% wef 1 st April 2012. Further the Notification No. 26/2010-Service Tax, dated the 22 nd June, 2010 has been superseded by Notification No. 6/2012 - Service Tax dated the 17 th March, 2012, wef 1 st April 2012.

2. It has been brought to the attention of the Board that some airlines are collecting differential service tax on tickets issued before 1 st April 2012 for journey after 1 st April 2012, causing inconvenience to passengers. Representations have also been received in this regard. The position of law in the above respect is clear and is detailed below.

3. Rule 4 of the Point of Taxation Rules 2011 deals with the situations of change in effective rate of tax. In case of airline industry, the ticket so issued in any form is recognised as an invoice by virtue of proviso to Rule 4A of Service Tax Rules 1994. Usually in case of online ticketing and counter sales by the airlines, the payment for the ticket is received before the issuance of the ticket. Rule 4(b)(ii) of the Point of Taxation Rules 2011 addresses such situations and accordingly the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier. Thus the service tax shall be charged @10% subject to applicable exemptions plus cesses in case of tickets issued before 1 st April 2012 when the payment is received before 1 st April 2012.

4. In case of sales through agents (IATA or otherwise including online sales and sales through GSA) the payment is received by the agent and remitted to airlines after some time. When the relationship between the airlines and such agents is that of principal and agent in terms of the Indian Contract Act 1872, the payment to the agent is considered as payment to the principal. Accordingly as per Rule 4(b)(ii), the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier. Thus the service tax shall be charged @10% subject to applicable exemptions plus cesses in case of tickets issued before 1 st April 2012 when the payment is received before 1 st April 2012 by the agent.

5. However, to the extent airlines have already collected extra amount as service tax and do not refund the same to the customers, such amount will be required to be paid to the credit of the Central Government under Section 73A of the Finance Act 1994 (as amended).

6. Trade Notice/Public Notice may be issued to the field formations accordingly.

7. Please acknowledge the receipt of this circular. Hindi version to follow.

F. No 334/1/2012- TRU

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