

**--COPY OF--**

**Draft Circular-F. No.354 /146/2012**

**Date: 27/09/2012**

**Subject: Draft circular — service tax — transport of passengers by air — regarding.**

Representation has been received seeking clarification regarding certain doubts which arise during the course of levy and collection of service tax on transport of passengers by air.

2. The issues have been examined and the guidance is as follows:

Issue (a) : Whether service tax of 4.944% (60% abatement) will apply to related charges such as reconfirmation fee, upgrade fee, date change, additional collection, etc., levied by airlines to passengers?

Clarification: These charges could be levied in either of the following manners: (a) as a consolidated charge without any break-up; (b) with break-up for individual services or at a point later to the initial booking. In case of (a) above the provisions of section 66F will apply and the service that imports the essential character will determine the applicability of both the Place of Provision of Services (POP) Rules as well as abatement. In the case of (b) above, the individual components will need to be analyzed on their respective merits.

Various charges collected by airlines from a passenger can be broadly put into two categories: (a) charges which are directly related to the journey; and (b) charges which are not so related. Charges which are directly related will be covered by abatement. Re-confirmation fees, date-change fee, upgrade fee, preferred seat charges, additional collection in the nature of differential ticket fare towards the journey and unaccompanied minor charges are directly related charges. For the charges which are not directly related to the particular journey, abatement is not available. Sky-meal-on-order and escort charges are not directly related to the journey.

Issue (b): Whether abatement meant for transport of passenger by air service, is applicable for excess baggage charges?

Where a passenger embarks on an international journey, excess baggage charges are not leviable to service tax as the place of provision of such service will be outside India under Rule 10 of POP Rules. However, in the case of journey within the taxable territory, excess baggage charge is leviable to service tax without abatement. Similar will be the tax treatment for pet charges.

Issue (c) : When a passenger puts a ticket for refund, whether full rate of 12% will apply to cancellation fee, refund fee, no show fee, since the passenger is not availing air transportation service?

Clarification : In terms of section 66B of the Finance Act, 1994, service tax is leviable on service provided or agreed to be provided. Thus service tax becomes payable when a booking is made, i.e. when the service is agreed to be provided, the subsequent cancellation of the ticket does not take it outside the purview of tax absolutely.

However, Rule 6(3) of the Service tax Rules, 1994, provides that where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason, the assessee may take credit of such excess service tax paid by him, if the assessee,— (a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or (b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued.

Thus the amount retained by the airlines in the event of cancellation of ticket, out of the original fare will remain liable to be taxed as originally taxed and hence is entitled to abatement applicable in this regard. However, if the ticketed amount is fully refunded to the passenger, but no-show (late cancellation charges) or cancellation fee is separately collected through an invoice or bill, abatement will not be applicable. Here, cancellation fee takes the nature of administrative charge.

Issue (d) : (i) whether service tax will apply on related fees/charges on journeys starting outside India, even if the transaction for related charges is made in India? ; (ii) Whether service tax will apply on related fee charges on journeys starting in India, even if the transaction for related charges is made outside India?

Clarification: According to Rule 11 of Place of Provision of Services Rules, 2012, the place of provision of a passenger transportation service is the place where the passenger embarks on the conveyance for a continuous journey. Therefore, if place of embarkation of passenger is located within the taxable territory, service tax is leviable on the gross amount payable for such continuous journey, irrespective of where the ticket is booked and where fees/charges are collected. If the place of embarkation of a passenger on a continuous journey falls outside the taxable territory, service tax is not leviable, irrespective of where the tickets are booked and where fees/charges are collected. However, as mentioned at (a) above, only such charge will be determined under Rule 11 of POP as are directly related to the continuous journey. The POP of other charges will be judged on their own merits.

3. Field formations, business and industry chambers are requested to offer their comments, views and suggestions on the draft circular. It is requested that comments, views and suggestions may be forwarded to the undersigned on or before 15th October, 2012. The same also may be e-mailed to [jm.kennedy@nic.in](mailto:jm.kennedy@nic.in)

(J.M.Kennedy)

Director, TRU

Tel/Fax: 011-23092634