

D.O.F.No.334/03/2010-TRU

New Delhi, Dated July 1, 2010

Subject: Issuance of notifications after enactment of the Finance Act, 2010

The Finance Bill 2010 was enacted on 8th May 2010. Section 76 and 77 of the Finance Act, 2010 (14 of 2010) pertain to service tax issues. Certain new taxable services were introduced and certain changes in the scope of the existing taxable services (under section 65, with consequential changes in section 66 of the Finance Act, 1994) were made under section 76 of this Act. The provisions of section 76 (A) & (B) (except retrospective provisions relating to commercial coaching and training and renting of immovable property services) were to come into effect from a date to be notified, which is also known as appointed date. This date has been notified to be the 1st day of July 2010 (Refer Notification No.24/2010-Service Tax dated the 22nd June 2010).

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 01.07.2010, 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 01.07.2010, pertain to a service which has become taxable on account of the provisions of the Finance Act, 2010 and is provided on or after 01.07.2010. Any amount received after 01.07.2010 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).

3. Transport of passenger by Air service:

3.1 As stated in the Letter D.O.F.No.334/1/2010- TRU, dated 26th February 2010, in Budget 2010, service tax on transport of passengers by air was extended to cover all domestic and international air passengers embarking in India with effective tax rates as given below:

(a) ten percent (current rate of service tax) of the gross value of the ticket or **rupees one hundred per journey**, whichever is less, for passengers travelling in any class, within India;

(b) ten percent (current rate of service tax) of the gross value of the ticket or **rupees five hundred per journey**, whichever is less, for passengers embarking in India for an international journey in economy class:

The aforesaid rates are subject to non-availment of CENVAT credit. (Refer Notification No.26/2010-Service Tax dated 22nd June 2010). All charges except statutory levies (levied under a law for time being in force), if any mentioned in a ticket is to be taken as 'gross value of the ticket' for this purposes.

3.2 Exemption from service tax has also been provided on journeys to and from North-Eastern States (i.e. Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura) from the service tax (Refer Notification 27/2010 - Service Tax date 22nd June 2010). Considering that Bagdogra airport, though located in West Bengal being the gateway airport for Sikkim, has also been accorded this benefit.

3.3 Doubts have been raised that in case a ticket covers more than one domestic journey/flight/sector (say Mumbai-Delhi-Mumbai), whether Rs. one hundred would be charged for each journey/flight/sector (i.e. in the aforementioned example one for Delhi-Mumbai flight and one for Mumbai-Delhi flight) or would it be charged once for the entire ticket. In this regard, it is clarified that since the taxable activity relates to 'embarkation in India for domestic journey...', each time such embarkation in India takes place the tax is chargeable. In other words tax would be separately chargeable for each journey/flight/sector. In this regard the clarifications issued vide circular No. 96/7/2007-ST dated 23.07.2007 has no application as the said circular did not cover situations of multiple embarkations in India. Similarly, in round trip tickets involving multiple journies/flights/sectors with one of the sector involving embarkation or disembarkation at North-Eastern States /Bagdogra, the journey/flight/sector that involves embarkation or disembarkation at North-Eastern States /Bagdogra would alone be covered under aforesaid exemption.

3.4 Since the scope of air transport of passenger service has been modified vide Finance Act, exemption, which were available earlier to crew of the aircraft operator, and international transit passengers by way of definition in the Act have been retained vide Notification (Refer Notification No.25/2010-Service Tax).

3.5 The scheme of tax on passengers embarking in India for an international journey in higher classes (i.e. other than economy class) remains unchanged.

3.6 As per the provisions of Rule 4A of the Service Tax Rules, 1944, invoice/ bill/ challan is required to be issued by the provider of taxable service within 14 days of the provision of the taxable service or the receipt of the consideration. In case of air-travel, the airlines or the agent may not issue a separate invoice to the passenger but may issue

the ticket showing the price of such ticket as well. In such a case, the requirement of an invoice would cast an additional compliance burden on the service provider. Hence the said rule is amended to provide that in case of this taxable service, the ticket (in any form, including electronic form whatever may be the name) showing the name of the passenger, description of the journey (details like place of embarking and disembarking, class of travel, flight number, etc.,) and the amount of service tax collected would be deemed to be the invoice/ bill /challan for the purposes of the rule (Refer Notification No.39 / 2010-Service Tax as corrected vide corrigendum dated 30 th July 2010).

4. Port and Airport Service

4.1 In the Finance Bill, 2010, with intent to ease the classification disputes, the definitions of port, other port and airport services were amended to comprehensively cover under their ambit, all services provided within an airport or a port or other port irrespective of whether or not such activities are authorised by the authorities or whether or not they are otherwise classifiable as distinct taxable services. In effect all services that are wholly rendered within the prescribed area of the port or other port or an airport, are to be classified within the ambit of ‘port services’ or ‘airport services’.

4.2 During the post budget interactions with the stakeholders, apprehensions were expressed that that the change may have certain unintended effects and certain services (including certain essential services) hitherto exempted, may attract service tax unintentionally. Further, it was also pointed that the abatements and exemptions presently available under individually defined taxable services would get denied when provided within airport or port merely as they would now be taxable under newly introduced taxable services.

4.3 In order to address these genuine concerns, the following measures have been taken,-

1. Certain basic activities undertaken within airports and ports have been kept out of the tax by exempting them. (Refer Notification No.31/2010 - Service Tax dated the 22nd June 2010);
2. Service tax paid on certain taxable services that are used in relation to or for export of goods are eligible for refund under Notification No. 17/09-ST. Presently, the list of eligible services under the said notification includes port service but does not include ‘airport service’. In order to correct the anomaly, the said notification has been amended to include ‘airport service’ in the list of eligible services under the said refund scheme (Refer Notification No. 37/2010-Service Tax, dated the 28th June 2010).
3. Commercial and Industrial construction service in relation to airport is excluded from service tax, in the definition itself. As such services would now be classified as ‘airport service’ when provided wholly within the airport, exclusion has been now provided by way of an exemption notification (Refer notification No. 42/2010-Service tax, dated the 28 th June, 2010)

4. Construction of ports was not excluded under the erstwhile definition from exclusion similar to that was available for airports. To bring parity in this matter, commercial and industrial construction service provided within the port area, in relation to construction, repair, alteration, renovation of wharves, quays, docks, stages, jetties, piers and railways is exempt from the whole of service tax (Refer Notification No. 38 /2010-Service Tax, dated the 28th June 2010).
5. Currently abatements are available to certain services such as 'Renting of a cab', 'Erection, Commissioning & Installation Service', 'Goods Transport Agency service' and 'construction services'. Similar abatements would be available to such services, when provided wholly within an airport or a port or other port, under the new definition of airport or port or other port services. (Notification No. 40/2010-ST dated 28th June, 2010 as corrected by corrigendum dated 30th June, 2010 and notification no. 43/2010-ST, dated 28th June, 2010 refers)
6. Exemptions/exclusions are available to warehousing of agriculture products and cold storage facilities under 'Storage & Warehousing Service, transport of export goods in an aircraft by an aircraft operator and site formation and clearance, excavation and demolition services etc. when provided in the course of construction Port or airport. These benefits would continue to be available when such services are provided wholly within port/airport and are classified under port/ airport service (Refer Notification No. 41/2010-ST, dated 28th June, 2010 refers).

4.4 All other services carried out within a port or other port or an airport would be subjected to service tax under the category of port/other port/airport services.

5. Sponsorship Service

As per the provisions of the Finance Act, 2010, the definition of existing taxable service, namely 'the Sponsorship Service' was amended to remove the exclusion available for sponsorship pertaining to sports. The measure was taken to prevent exclusion benefiting certain sponsored sports events, which are organized by private organizations or business entities as commercial ventures. However exemption is provided for sponsorship services with reference to certain sports championships or tournaments, such as national tournament (Refer Notification No. 30/2010 - Service Tax dated 22nd June, 2010).

6. Construction services:

6.1 In the Finance Act, changes have been made in the construction services, both commercial construction and construction of residential complex, using 'completion certificate' issued by 'competent authority'. Before the issuance of completion certificate if agreement is entered into or any payment is made for sale of complex or apartment in residential complex, service tax will be leviable on such transaction since the builder provides the construction service. Completion certificate issued by a Government authority was prescribed as demarcation by introducing an Explanation in the Finance Act. During the post budget discussions, it was pointed that practice regarding issuance of completion certificates varies from state to state. Considering the practical difficulties,

the scope of the phrase 'authority competent' to issue completion certificate has been widened by issuing an order for removal of difficulty (Refer M.F.(D.R) Order No.1/2010 dated 22nd June 2010). Completion certificate issued by an architect or chartered engineer or licensed surveyor can be now taken to determine the service tax liability.

6.2 After the Budget was introduced views were expressed that the tax liability on construction sector has been tightened at a time when the sector was recovering after recession. After considering the issue, abatement available for construction of industrial or commercial complex and also residential complex has been prescribed as seventy five per cent. This means now tax incidence will be the rate of service tax applied on twenty five per cent of gross value of commercial or residential complex or unit, broadly representing the service component in the construction, subject to conditions (Refer Notification 29/2010-Service Tax, dated 22nd June 2010). Importantly seventy five percent abatement will be applicable only if the gross value of commercial or residential complex or unit includes cost of land. Otherwise the existing rate of abatement of 67% would continue to apply.

6.3 Exemption has been provided for construction of residential complex service, when the same is rendered as part of Jawaharlal Nehru national Urban Renewal Mission (JNNURM) and Rajiv Awaas Yojana (Refer Notification No.28/2010- Service Tax, dated 22nd June 2010). These are flagship schemes of the Government of India to provide shelter for the poor and the disadvantaged and hence taxable service of construction of complex in the context of these two development schemes have been kept out of the ambit of service tax.

7. Transport of Goods by Rail

7.1 Service tax on transport of goods by railways was introduced vide Finance (No.2) Act, 2009, to bring parity between all modes of transportation of goods. The levy is not yet operational and this levy will now take effect from January 2011 (refer Notification No.33/2010- Service Tax, No.34/2010- Service Tax, No. 35/2010- Service Tax all dated 22nd June 2010).

8. Transmission of Electricity:

8.1 Vide Budget notification 11/2010-ST, dated 27th February 2010, transmission of electricity was exempted from service tax. Subsequent to post budget discussions, taxable service provided by a distribution licensee or a distribution franchisee authorised to distribute power under the Electricity Act, 2003 for distribution of electricity is also exempt from levy of service tax (Refer Notification No.32/2010-Service Tax dated 22 nd June 2010).

9. Certain issues arising out of the budgetary changes and the post-enactment legislations (especially taxes pertain to real estate sector) may not have been covered in this communication. While some of the requests/ suggestions are under examination, I look forward to receive your valuable feedback and suggestions on any other unresolved

issues. Kindly send them to me, or to Mr. J.M. Kennedy, Director (TRU) or Mr. Samar Nanda, Technical Officer (TRU) within a fortnight so that all such issues can be taken up and clarified wherever needed.

**Gautam Bhattacharya,
Joint Secretary, TRU**