

**-COPY OF-
SERVICE TAX CIRCULAR
NO.126/8/2010 – ST
Dated: August 10, 2010**

Subject: Service tax on commission received by Primary Dealers dealing in Government Securities – regarding.

A representation has been received seeking clarification whether service tax is leviable on the underwriting commission received by the Primary Dealers for the auction of Government Securities.

2. The matter has been examined. Underwriting service is taxable by virtue of section 65 (105) (z) of the Finance Act, 1994. In the definition of taxable service, two technical terms are mentioned, namely 'underwriting' and 'underwriter'. The term 'underwriting' [section 65 (117) of the Finance Act, 1994] has the meaning assigned to it in clause (g) of rule 2 of the Securities and Exchange Board of India (Underwriters) Rules, 1993, which reads as follows:

“underwriting means an agreement with or without conditions to subscribe to the securities of a body corporate when the existing shareholders of such body corporate or the public do not subscribe to the securities offered to them.”

3. The term “underwriter” as in section 65(116) of the Finance Act, 1994, has been borrowed from rule 2 (f) of the Securities and Exchange Board of India (Underwriters) Rules, 1993, which reads as follows:

“underwriter means a person who engages in the business of underwriting of an issue of securities of a body corporate.”

It is thus clear that under the above definitions 'underwriter' or 'underwriting' is about dealing in securities of a body corporate.

4. The related issue requiring resolution is whether dealing in government securities amounts to dealing in securities of a body corporate, particularly since government securities are issued by the Reserve bank of India, which is a 'body corporate' in terms of section 3 (2) of the RBI Act, 1934.

5. Government securities are sovereign securities having zero default risk. Reserve Bank of India only manages the issue and also auction of Government Securities on behalf of the Government of India. In effect, Primary Dealers registered with the RBI (as opposed to registration with the Securities Exchange Board of India) deal in Government Securities, issued by the RBI on behalf of the Government of India, as a part of the central Government's market borrowing program. The general practice is that the RBI invites bids from the Primary Dealers, who in their bids indicate the amount to be

underwritten and the underwriting fee expected by them. RBI examines these bids and decides the amount to be underwritten and underwriting fee to be paid to a Primary Dealer. Underwriting Fee is also known as Underwriting Commission in common parlance. Thus the conclusion drawn is that government securities are not securities of a body corporate.

6. As the service tax law stands today, service tax liability does not arise on Underwriting Fee or Underwriting Commission received by the Primary Dealers during the course of the dealing in Government Securities.

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

8. Please acknowledge the receipt of this circular. Hindi version follows.

F.No.332/13/2010-TRU

(J. M. Kennedy)
Director, TRU