

service provided.

## ANNEXURE

Three digit Code	Taxable Service / Others
001	Stock broker [Section (105)(a)]
002	Telecommunication Service [Section (105)(zzzx)]
003	General insurance [Section (105)(d)]
004	Advertising agency [Section (105)(e)]
005	Courier agency [Section (105)(f)]
006	Consulting engineer [Section (105)(g)]
007	Custom house agent [Section (105)(h)]
008	Steamer agent [Section (105)(i)]
009	Clearing and forwarding agent [Section (105)(j)]
010	Manpower recruitment agent [Section (105)(k)]
011	Air travel agent [Section (105)(l)]
012	Mandap keeper [Section (105)(m)]
013	Tour operator [Section (105)(n)]
014	Rent-a-cab scheme operator [Section (105)(o)]
015	Architect [Section (105)(p)]
016	Interior decorator [Section (105)(q)]
017	Management or Business consultant [Section (105)(r)]
018	Chartered accountant [Section (105)(s)]
019	Cost accountant [Section (105)(t)]
020	Company secretary [Section (105)(u)]
021	Real estate agent [Section (105)(v)]
022	Security agency [Section (105)(w)]
023	Credit rating agency [Section (105)(x)]
024	Market research agency [Section (105)(y)]
025	Underwriter [Section (105)(z)]
026	Scientific or technical consultancy [Section (105)(za)]
027	Photography [Section (105)(zb)]
028	Convention [Section (105)(zc)]
029	On-line information and database access or retrieval [Section (105)(zh)]
030	Video tape production [Section (105)(zi)]
031	Sound recording [Section (105)(zj)]
032	Broadcasting agency or organization [Section (105)(zk)]
033	Insurance auxiliary services concerning general insurance business [Section (105)(zl)]
034	Banking and other financial services [Section (105)(zm)]
035	Port [Section (105)(zn)]
036	Authorized service station [Section (105)(zo)]
037	Beauty treatment [Section (105)(zq)]
038	Cargo handling [Section (105)(zr)]
039	Cable operator [Section (105)(zs)]
040	Dry cleaning [Section (105)(zt)]
041	Event management [Section (105)(zu)]
042	Fashion designing [Section (105)(zv)]
043	Health club and fitness [Section (105)(zw)]
044	Life insurance in relation to risk cover [Section (105)(zx)]
045	Insurance auxiliary services concerning life insurance business [Section (105)(zy)]
046	Rail travel agent [Section (105)(zz)]

051	Franchise [Section (105)(zze)]
052	Internet café [Section (105)(zzf)]
053	Management, maintenance or repair [Section (105)(z zg)]
054	Technical testing and analysis [Section (105)(zzh)]
055	Technical inspection and certification [Section (105)(zzi)]
056	Foreign exchange broker [Section (105)(zzk)]
057	Other port [Section (105)(z zl)]
058	Airport [Section (105)(zzm)]
059	Transport of goods by aircraft [Section (105)(zzn)]
060	Business exhibition [Section (105)(z zo)]
061	Transport of goods by road [Section (105)(z zp)]
062	Commercial or industrial construction [Section (105)(z zq)]
063	Intellectual property [Section (105)(z zr)]
064	Opinion poll [Section (105)(z zs)]
065	Outdoor caterer [Section (105)(z zt)]
066	Programme producer [Section (105)(z zu)]
067	Survey and exploration of mineral [Section (105)(z zv)]
068	Pandal or shamiana [Section (105)(z zw)]
069	Travel agent [Section (105)(z zx)]
070	Forward contract [Section (105)(z zy)]
071	Transport of goods other than water through pipeline or other conduit [Section (105)(z zz)]
072	Site formation and clearance, excavation and earthmoving and demolition and such other activities [Section (105)(z zza)]
073	Dredging [Section (105)(z zzb)]
074	Survey and map-making [Section (105)(z zzc)]
075	Cleaning activity [Section (105)(z zzd)]
076	Club or association [Section (105)(z zze)]
077	Packaging activity [Section (105)(z zzf)]
078	Mailing list compilation and mailing [Section (105)(z zzg)]
079	Construction of complex [Section (105)(z zzh)]
080	Registrar to an issue [Section (105)(z zzi)]
081	Share transfer agent [Section (105)(z z zj)]
082	Automated teller machine operations, maintenance or management [Section (105)(z zzk)]
083	Recovery agent [Section (105)(z zzl)]
084	Sale of space or time for advertisement [Section (105)(z zzm)]
085	Sponsorship [Section (105)(z zzn)]
086	Transport of passenger embarking in India for international journey by air [Section (105)(z zzo)]
087	Transport of goods in containers by rail [Section (105)(z z zp)]
088	Support services of business or commerce [Section (105)(z z zq)]
089	Auctioneers [Section (105)(z z zr)]
090	Public relations [Section (105)(z z zs)]
091	Ship management [Section (105)(z z zt)]
092	Internet telephony [Section (105)(z z zu)]
093	Transport by cruise ship [Section (105)(z z zv)]
094	Credit card, debit card, charge card or other payment card [Section (105)(z z zw)]
095	Mining [Section (105)(z z zy)]
096	Renting of immovable property [Section (105)(z z zz )]
097	Services involved in the execution of works contract [Section (105)(z z zza)]
098	Development and supply of content [Section (105)(z z zzb)]
099	Asset management service by individuals [Section (105)(z z zzc)]

ircular No

999

Miscellaneous

(G.G. Pai)  
Under Secretary (Tax Research Unit)

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(Department of Revenue)

New Delhi, the 22<sup>nd</sup> May, 2007  
1 Jyaistha, 1929 (Saka)

**Notification No. 29/2007-Service Tax**

G.S.R. (E).— In exercise of the powers conferred by clause (aa) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax (Determination of Value) Rules, 2006, namely:-

1. (1) These rules may be called the Service Tax (Determination of Value) (Amendment) Rules, 2007.  
(2) They shall come into force with effect from the 1<sup>st</sup> day of June, 2007.
2. In the Service Tax (Determination of Value) Rules, 2006, after rule 2, the following rule shall be inserted, namely:-  
"2A. Determination of value of services involved in the execution of a works contract:  
(1) Subject to the provisions of section 67, the value of taxable service in relation to services involved in the execution of a works contract (hereinafter referred to as works contract service), referred to in sub-clause (zzzza) of clause (105) of section 65 of the Act, shall be determined by the service provider in the following manner:-  
(i) Value of works contract service determined shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract.

*Explanation.*- For the purposes of this rule,-

(a) gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include,-

- (i) labour charges for execution of the works;
- (ii) amount paid to a sub-contractor for labour and services;
- (iii) charges for planning, designing and architect's fees;
- (iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
- (v) cost of consumables such as water, electricity, fuel, used in the execution of the works contract;
- (vi) cost of establishment of the contractor relatable to supply of labour and services;
- (vii) other similar expenses relatable to supply of labour and services; and
- (viii) profit earned by the service provider relatable to supply of labour and services;

(ii) Where Value Added Tax or sales tax, as the case may be, has been paid on the actual value of transfer of property in goods involved in the execution of the works contract, then such value adopted for the purposes of payment of Value Added Tax or sales tax, as the case may be, shall be taken as the value of transfer of property in goods involved in the execution of the said works contract for determining the value of works contract service under clause (i).

[F. No. B1/7/2007-TRU]

(G.G. Pai

Under Secretary to the Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary vide notification No. 12/2006-Service Tax, dated the 19<sup>th</sup> April, 2006, vide number G.S.R. 228 (E), dated the 19<sup>th</sup> April, 2006, and were last amended vide notification No. 24/2006-Service Tax, dated the 27<sup>th</sup> June, 2006, vide number G.S.R. 383(E), dated the 27<sup>th</sup> June, 2006.

**F. No. B1/16/2007-TRU**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Tax Research Unit**

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New Delhi, the 22<sup>nd</sup> May, 2007

To,

Director General (All)  
 Chief Commissioner of Central Excise (All)  
 Chief Commissioner of Central Excise & Customs (All)  
 Commissioners of Service Tax (All)  
 Commissioners of Central Excise & Customs (All)

Madam / Sir,

Subject: Post Budget 2007-08 notifications to give effect to the provisions of the Finance Act, 2007 - regarding.

The Finance Bill, 2007 received the assent of the President of India on the 11<sup>th</sup> May, 2007 and the corresponding Act is published in the Gazette of India dated 12<sup>th</sup> May, 2007 as Act No.22 of 2007.

2. Certain provisions relating to the levy of service tax in the Finance Act, 2007 shall come into force from a date to be notified. For this purpose, notifications No.23/2007 to 32/2007-Service Tax, all dated 22<sup>nd</sup> May, 2007 have been issued.
3. Seven services which are specifically mentioned in the category of taxable services and amendments made relating to existing taxable services shall come into effect from the 1<sup>st</sup> June, 2007. In other words, changes made in the Budget 2007-08 relating to scope and coverage of taxable services will be effective from 01.06.07 [Notification No.23/2007-Service Tax dated 22.05.07].
4. Section 65 defines taxable services and various terms used in relation to taxable services. Section 66 is the charging section and provides for levy of service tax on taxable services. These two sections have been amended in the Finance Act, 2007 and these amendments shall come into effect from 01.06.07 [Notification No.23/2007-Service Tax dated 22.05.07].
5. Seven services which are specifically mentioned in the category of taxable services are:
  - (i) Service provided by a telegraph authority in relation to telecommunication service [sub-clause (zzzx) of section 65(105)];
  - (ii) Service provided in relation to mining of mineral, oil or gas [sub-clause (zzzy) of section 65(105)];
  - (iii) Service provided in relation to renting of immovable property for use in the course or furtherance of business or commerce [sub-clause (zzzz) of section 65(105)];
  - (iv) Service provided in relation to the execution of a works contract [sub-clause (zzzza) of section 65(105)];
  - (v) Service provided in relation to development and supply of content for use in telecom services, advertising agency services and on-line information and database access or retrieval services [sub-clause (zzzzb) of section 65(105)];
  - (vi) Service provided by any person, except a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern, in relation to asset management including portfolio management and all forms of fund management [sub-clause (zzzzc) of section 65(105)]; and
  - (vii) Service provided in relation to design services [sub-clause (zzzzd) of section 65(105)].
6. Following amendments have been made relating to existing taxable services:
  - (i) Exclusion of business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes from the scope of the definition of "Book" under sale of space or time for advertisement service [section 65(105)(zzzm);

- (ii) Inclusion of motor vehicles capable of carrying more than twelve passengers for hire or reward, other than such motor vehicle and maxicab rented to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre, within the definition of "cab" under rent-a-cab service [Section 65(20)];
- (iii) Insertion of explanation under mandap keeper service [section 65(66) and 65(67)] and pandal or shamiana contractor service [section 65(77a)] stating that social function appearing in these two taxable services includes marriage functions also;
- (iv) Inclusion of marriage event within the scope of event management service [section 65(40)];
- (v) Insertion of explanation under manpower recruitment or supply service [section 65(105)(k)] to clarify that manpower recruitment or supply agency service includes services in relation to pre-recruitment screening, verifying the credentials of the candidate, authenticity of documents submitted by the candidates and verification of antecedents;
- (vi) Banking and other financial services:
- Substitution of the words "any other person" with "commercial concern" in the definition of taxable service of banking and other financial services [section 65(105)(zm)] and also in the definition of banking and other financial services [section 65(12)],
  - Inclusion of cash management services within the scope by deleting the specific exclusion [section 65(12)], and
  - Insertion of explanation to explain the term "financial leasing" [section 65(12)];
- (vii) Renaming of management consultant's service as management or business consultant's service [section 65(105)(r)], and inclusion of business consultancy in the definition itself [section 65(65)];
- (viii) Inclusion of exclusion of computer hardware engineering consultancy under consulting engineer service by deleting the specific exclusion [section 65(105)(g)];
- (ix) Clarification that "goods" for the purposes of this service includes computer software under management, maintenance or repair service [section 65(64)].

#### Amendment to Rules:

7. In view of the merger of various telecommunication related taxable services into "telecommunication service", notification no. 36/2004-Service Tax dated 31.12.04 and Rule 2(1)(d)(i) of the Service Tax Rules, 1994 have been amended so as to substitute the reference to various telecommunication related taxable services, namely telephone connection, pager, leased circuit, communication through telegraph, communication through telex and facsimile communication, with the merged "telecommunication service" [Notification No.27/2007-Service Tax dated 22.05.07 & Notification No.28/2007-Service Tax dated 22.05.07]. Amendment is consequential.

7.1 Export of Services Rules, 2005 and the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 have been amended so as to categorise the newly specified taxable services under Rule 3 [Notification No.30/2007-Service Tax dated 22.05.07 & Notification No.31/2007-Service Tax dated 22.05.07]. Taxable services have been categorised as under:

Sr. No.	Name of Taxable Service	Sub-clause of section 65(105)	Export of Services Rules, 2005	Taxation of Services (Provided from Outside India and Received in India) Rules, 2006
1.	Telecommunication service	zzzx	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]
2.	Mining of mineral, oil or gas	zzzy	Category 1 [Rule 3(1)(i)]	Category 1 [Rule 3(i)]
3.	Renting of immovable property	zzzz	Category 1 [Rule 3(1)(i)]	Category 1 [Rule 3(i)]
4.	Works contract service	zzzza	Category 1 [Rule 3(1)(i)]	Category 1 [Rule 3(i)]
5.	Development and supply of content	zzzzb	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]
6.	Asset management	zzzzc	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]
7.	Design services	zzzzd	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]

Exemption from service tax:

8. Notification No.24/2007-Service Tax, dated 22.05.07 exempts taxable service provided by any person in relation to renting of immovable property from service tax equivalent to service tax payable on the amount of property tax, actually paid by the service provider to the local authority. In other words, service tax is payable on the rental amount received less the actual amount of property tax paid.

8.1 However, any amount such as interest, penalty paid to the local authority by the service provider on account of delayed payment of property tax or any other reasons can not be treated as property tax for the purpose of this exemption and hence, deduction of such amount from the gross amount charged shall not be allowed.

8.2 If property tax is paid for a period which is different from the rental period, property tax proportionate to the rental period shall be calculated and the amount so calculated shall be excluded from the rental amount received for the purpose of levy of service tax.

8.3 There may be a situation where property tax is paid after the payment of service tax on the rental. As a result, deduction of property tax paid from rental could not be availed of at the time of payment of service tax. In such cases, Rule 4C of the Service Tax Rules, 1994 provides self-adjustment of excess service tax paid without any limit [Notification No.24/2007-Service Tax, dated 22.05.07].

8.4 Construction of ports is specifically exempted from levy of service tax under commercial or industrial construction service [section 65(25b)] vide notification No.16/2005-Service Tax, dated 07.06.05. Construction of ports under the newly introduced commercial or industrial construction service provided in relation to the execution of works contract under section 65(105)(zzzza) has also been exempted. Accordingly, notification No.16/2005-Service Tax, dated 07.06.05 has been rescinded and a combined notification No.25/2007-Service Tax dated 22.05.07 has been issued exempting commercial or industrial construction service, and services provided in relation to the execution of works contract, provided to any person by any other person in relation to construction of a port or other port. However, services such as completion and finishing, repair, alteration, renovation, restoration, maintenance or repair provided in relation to existing port or other port shall be outside the scope of this exemption and hence, leviable to service tax.

#### Optional Composition Scheme for Works Contract:

9. Services provided in relation to the execution of a works contract [section 65(105) (zzzza)] is a taxable service. Works contract for the purposes of levy of service tax has been defined to mean a contract wherein:

- (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
- (ii) such contract is for the purposes of carrying out, -
  - (a) erection, commissioning or installation,
  - (b) commercial or residential construction and related completion and finishing services, and
  - (c) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.

9.1 Works contract is a composite contract for supply of goods and services. A composite works contract is vivisected and,-

- (i) VAT / sales tax is leviable on transfer of property in goods involved in the execution of works contract [Art.366(29A)(b) of the Constitution of India], and
- (ii) service tax will be leviable on services provided in relation to the execution of works contract.

9.2 Service tax is chargeable on the gross amount charged by the service provider for the taxable services provided (section 67). In the case of works contract, the taxable value of services is to be determined by vivisecting the composite works contract. Rule 2A of Service Tax (Determination of Value) Rules, 2006 [Notification No.29/2007-Service Tax dated 22.05.07], provides that value of works contract service shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract. Thus, wherever the service provider maintains records, the value of services shall be the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the works contract.



9.3 Wherever VAT/ sales tax on transfer of property in goods involved in the execution of works contract is paid on actual value, the same value is also taken for the purpose of determining the value of works contract service. In other cases, value of works contract service shall be determined based on the actuals. It has also been explained that value of works contract service shall include:

- (i) labour charges for execution of the works;
- (ii) amount paid to a sub-contractor for labour and services;
- (iii) charges for planning, designing and architect's fees;
- (iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
- (v) cost of consumables such as water, electricity, fuel, used in the execution of the works contract, the property in which is not transferred in the course of execution of a works contract;
- (vi) cost of establishment of the contractor relating to supply of labour and services;
- (vii) other similar expenses relating to supply of labour and services; and
- (viii) profit earned by the service provider relating to supply of labour and services;

9.4 If the gross amount charged for the works contract is inclusive of VAT or sales tax, the value for the purposes of service tax shall be computed as follows:

[Gross amount charged – (Value of transfer of property in goods involved in the execution of works contract and VAT or sales tax paid, if any, on the said transfer of property in goods involved in the execution of the said works contract)].

9.5 As a trade facilitation measure and also for ease of administrative convenience, the service provider has been given an option to adopt the composition scheme for payment of service tax on works contract service. The Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 has accordingly been notified vide notification No.32/2007-Service Tax dated 22.05.07.

9.6 The scheme provides that the service provider shall have an option to pay an amount equivalent to two per cent. of the gross amount charged for the works contract instead of paying service tax at the rate specified in section 66. Gross amount charged for the works contract shall not include VAT or sales tax paid on transfer of property in goods involved in the execution of the said works contract. The provider of taxable service opting to pay service tax under the said composition scheme is not entitled to take CENVAT credit of duty on inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

9.7 The provider of taxable service who opts to pay service tax under these rules shall exercise such option in respect of a works contract prior to payment of service tax in respect of the said works contract and the option so exercised shall be applicable for the entire works contract and cannot be withdrawn until the completion of the said works contract.

9.8 Presently, erection, commissioning or installation service [section 65(105)(zzd)], commercial or industrial construction service [section 65(105)(zzq)] and construction of complex service [section 65(105)(zzzh)] are separate taxable services.

9.9 Various trade and industry associations have raised apprehension in respect of classification of a contract either under the newly introduced works contract service or under erection, commissioning or installation and commercial or residential construction services.

9.10 Contracts which are treated as works contract for the purpose of levy of VAT / sales tax shall also be treated as works contract for the purpose of levy of service tax. This is clear from the definition under section 65 (105)(zzzza).

10. Changes explained above are not exhaustive and are only for the purpose of providing guidance. Explanations are not to be treated as part of the statutory provisions and do not override them. The statutory provisions and the relevant notifications have to be read carefully for interpreting the law. Any problems of implementation may kindly be brought to our notice.

With regards,

Yours sincerely,

(R. Sekar)  
Joint Secretary (TRU)

**F. No. B1/16/2007-TRU**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Tax Research Unit**

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New Delhi, the 22<sup>nd</sup> May, 2007

To,

Director General (All)  
 Chief Commissioner of Central Excise (All)  
 Chief Commissioner of Central Excise & Customs (All)  
 Commissioners of Service Tax (All)  
 Commissioners of Central Excise & Customs (All)

Madam / Sir,

Subject: Post Budget 2007-08 notifications to give effect to the provisions of the Finance Act, 2007 - regarding.

The Finance Bill, 2007 received the assent of the President of India on the 11<sup>th</sup> May, 2007 and the corresponding Act is published in the Gazette of India dated 12<sup>th</sup> May, 2007 as Act No.22 of 2007.

2. Certain provisions relating to the levy of service tax in the Finance Act, 2007 shall come into force from a date to be notified. For this purpose, notifications No.23/2007 to 32/2007-Service Tax, all dated 22<sup>nd</sup> May, 2007 have been issued.
3. Seven services which are specifically mentioned in the category of taxable services and amendments made relating to existing taxable services shall come into effect from the 1<sup>st</sup> June, 2007. In other words, changes made in the Budget 2007-08 relating to scope and coverage of taxable services will be effective from 01.06.07 [Notification No.23/2007-Service Tax dated 22.05.07].
4. Section 65 defines taxable services and various terms used in relation to taxable services. Section 66 is the charging section and provides for levy of service tax on taxable services. These two sections have been amended in the Finance Act, 2007 and these amendments shall come into effect from 01.06.07 [Notification No.23/2007-Service Tax dated 22.05.07].
5. Seven services which are specifically mentioned in the category of taxable services are:
  - (i) Service provided by a telegraph authority in relation to telecommunication service [sub-clause (zzzx) of section 65(105)];
  - (ii) Service provided in relation to mining of mineral, oil or gas [sub-clause (zzzy) of section 65(105)];
  - (iii) Service provided in relation to renting of immovable property for use in the course or furtherance of business or commerce [sub-clause (zzzz) of section 65(105)];
  - (iv) Service provided in relation to the execution of a works contract [sub-clause (zzzza) of section 65 (105)];
  - (v) Service provided in relation to development and supply of content for use in telecom services, advertising agency services and on-line information and database access or retrieval services [sub-clause (zzzzb) of section 65(105)];
  - (vi) Service provided by any person, except a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern, in relation to asset management including portfolio management and all forms of fund management [sub-clause (zzzzc) of section 65(105)]; and
  - (vii) Service provided in relation to design services [sub-clause (zzzzd) of section 65(105)].
6. Following amendments have been made relating to existing taxable services:
  - (i) Exclusion of business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes from the scope of the definition of "Book" under sale of space or time for advertisement service [section 65(105)(zzzm)];

- (ii) Inclusion of motor vehicles capable of carrying more than twelve passengers for hire or reward, other than such motor vehicle and maxicab rented to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre, within the definition of "cab" under rent-a-cab service [Section 65(20)];
- (iii) Insertion of explanation under mandap keeper service [section 65(66) and 65(67)] and pandal or shamiana contractor service [section 65(77a)] stating that social function appearing in these two taxable services includes marriage functions also;
- (iv) Inclusion of marriage event within the scope of event management service [section 65(40)];
- (v) Insertion of explanation under manpower recruitment or supply service [section 65(105)(k)] to clarify that manpower recruitment or supply agency service includes services in relation to pre-recruitment screening, verifying the credentials of the candidate, authenticity of documents submitted by the candidates and verification of antecedents;
- (vi) Banking and other financial services:
  - a. Substitution of the words "any other person" with "commercial concern" in the definition of taxable service of banking and other financial services [section 65(105)(zm)] and also in the definition of banking and other financial services [section 65(12)],
  - b. Inclusion of cash management services within the scope by deleting the specific exclusion [section 65(12)], and
  - c. Insertion of explanation to explain the term "financial leasing" [section 65(12)];
- (vii) Renaming of management consultant's service as management or business consultant's service [section 65(105)(r)], and inclusion of business consultancy in the definition itself [section 65(65)];
- (viii) Inclusion of exclusion of computer hardware engineering consultancy under consulting engineer service by deleting the specific exclusion [section 65(105)(g)];
- (ix) Clarification that "goods" for the purposes of this service includes computer software under management, maintenance or repair service [section 65(64)].

#### Amendment to Rules:

7. In view of the merger of various telecommunication related taxable services into "telecommunication service", notification no. 36/2004-Service Tax dated 31.12.04 and Rule 2(1)(d)(i) of the Service Tax Rules, 1994 have been amended so as to substitute the reference to various telecommunication related taxable services, namely telephone connection, pager, leased circuit, communication through telegraph, communication through telex and facsimile communication, with the merged "telecommunication service" [Notification No.27/2007-Service Tax dated 22.05.07 & Notification No.28/2007-Service Tax dated 22.05.07]. Amendment is consequential.

7.1 Export of Services Rules, 2005 and the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 have been amended so as to categorise the newly specified taxable services under Rule 3 [Notification No.30/2007-Service Tax dated 22.05.07 & Notification No.31/2007-Service Tax dated 22.05.07]. Taxable services have been categorised as under:

Sr. No.	Name of Taxable Service	Sub-clause of section 65(105)	Export of Services Rules, 2005	Taxation of Services (Provided from Outside India and Received in India) Rules, 2006
1.	Telecommunication service	zzzx	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]
2.	Mining of mineral, oil or gas	zzzy	Category 1 [Rule 3(1)(i)]	Category 1 [Rule 3(i)]
3.	Renting of immovable property	zzzz	Category 1 [Rule 3(1)(i)]	Category 1 [Rule 3(i)]
4.	Works contract service	zzzza	Category 1 [Rule 3(1)(i)]	Category 1 [Rule 3(i)]
5.	Development and supply of content	zzzzb	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]
6.	Asset management	zzzzc	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]
7.	Design services	zzzzd	Category 3 [Rule 3(1)(iii)]	Category 3 [Rule 3(iii)]

Exemption from service tax:

8. Notification No.24/2007-Service Tax, dated 22.05.07 exempts taxable service provided by any person in relation to renting of immovable property from service tax equivalent to service tax payable on the amount of property tax, actually paid by the service provider to the local authority. In other words, service tax is payable on the rental amount received less the actual amount of property tax paid.

8.1 However, any amount such as interest, penalty paid to the local authority by the service provider on account of delayed payment of property tax or any other reasons can not be treated as property tax for the purpose of this exemption and hence, deduction of such amount from the gross amount charged shall not be allowed.

8.2 If property tax is paid for a period which is different from the rental period, property tax proportionate to the rental period shall be calculated and the amount so calculated shall be excluded from the rental amount received for the purpose of levy of service tax.

8.3 There may be a situation where property tax is paid after the payment of service tax on the rental. As a result, deduction of property tax paid from rental could not be availed of at the time of payment of service tax. In such cases, Rule 4C of the Service Tax Rules, 1994 provides self-adjustment of excess service tax paid without any limit [Notification No.24/2007-Service Tax, dated 22.05.07].

8.4 Construction of ports is specifically exempted from levy of service tax under commercial or industrial construction service [section 65(25b)] vide notification No.16/2005-Service Tax, dated 07.06.05. Construction of ports under the newly introduced commercial or industrial construction service provided in relation to the execution of works contract under section 65(105)(zzzza) has also been exempted. Accordingly, notification No.16/2005-Service Tax, dated 07.06.05 has been rescinded and a combined notification No.25/2007-Service Tax dated 22.05.07 has been issued exempting commercial or industrial construction service, and services provided in relation to the execution of works contract, provided to any person by any other person in relation to construction of a port or other port. However, services such as completion and finishing, repair, alteration, renovation, restoration, maintenance or repair provided in relation to existing port or other port shall be outside the scope of this exemption and hence, leviable to service tax.

#### Optional Composition Scheme for Works Contract:

9. Services provided in relation to the execution of a works contract [section 65(105) (zzzza)] is a taxable service. Works contract for the purposes of levy of service tax has been defined to mean a contract wherein:

- (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
- (ii) such contract is for the purposes of carrying out, -
  - (a) erection, commissioning or installation,
  - (b) commercial or residential construction and related completion and finishing services, and
  - (c) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.

9.1 Works contract is a composite contract for supply of goods and services. A composite works contract is vivisected and,-

- (i) VAT / sales tax is leviable on transfer of property in goods involved in the execution of works contract [Art.366(29A)(b) of the Constitution of India], and
- (ii) service tax will be leviable on services provided in relation to the execution of works contract.

9.2 Service tax is chargeable on the gross amount charged by the service provider for the taxable services provided (section 67). In the case of works contract, the taxable value of services is to be determined by vivisecting the composite works contract. Rule 2A of Service Tax (Determination of Value) Rules, 2006 [Notification No.29/2007-Service Tax dated 22.05.07], provides that value of works contract service shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract. Thus, wherever the service provider maintains records, the value of services shall be the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the works contract.

9.3 Wherever VAT/ sales tax on transfer of property in goods involved in the execution of works contract is paid on actual value, the same value is also taken for the purpose of determining the value of works contract service. In other cases, value of works contract service shall be determined based on the actuals. It has also been explained that value of works contract service shall include:

- (i) labour charges for execution of the works;
- (ii) amount paid to a sub-contractor for labour and services;
- (iii) charges for planning, designing and architect's fees;
- (iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
- (v) cost of consumables such as water, electricity, fuel, used in the execution of the works contract, the property in which is not transferred in the course of execution of a works contract;
- (vi) cost of establishment of the contractor relatable to supply of labour and services;
- (vii) other similar expenses relatable to supply of labour and services; and
- (viii) profit earned by the service provider relatable to supply of labour and services;

9.4 If the gross amount charged for the works contract is inclusive of VAT or sales tax, the value for the purposes of service tax shall be computed as follows:

[Gross amount charged – (Value of transfer of property in goods involved in the execution of works contract and VAT or sales tax paid, if any, on the said transfer of property in goods involved in the execution of the said works contract)].

9.5 As a trade facilitation measure and also for ease of administrative convenience, the service provider has been given an option to adopt the composition scheme for payment of service tax on works contract service. The Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 has accordingly been notified vide notification No.32/2007-Service Tax dated 22.05.07.

9.6 The scheme provides that the service provider shall have an option to pay an amount equivalent to two per cent. of the gross amount charged for the works contract instead of paying service tax at the rate specified in section 66. Gross amount charged for the works contract shall not include VAT or sales tax paid on transfer of property in goods involved in the execution of the said works contract. The provider of taxable service opting to pay service tax under the said composition scheme is not entitled to take CENVAT credit of duty on inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

9.7 The provider of taxable service who opts to pay service tax under these rules shall exercise such option in respect of a works contract prior to payment of service tax in respect of the said works contract and the option so exercised shall be applicable for the entire works contract and cannot be withdrawn until the completion of the said works contract.

9.8 Presently, erection, commissioning or installation service [section 65(105)(zzd)], commercial or industrial construction service [section 65(105)(zzq)] and construction of complex service [section 65(105)(zzzh)] are separate taxable services.

9.9 Various trade and industry associations have raised apprehension in respect of classification of a contract either under the newly introduced works contract service or under erection, commissioning or installation and commercial or residential construction services.

9.10 Contracts which are treated as works contract for the purpose of levy of VAT / sales tax shall also be treated as works contract for the purpose of levy of service tax. This is clear from the definition under section 65 (105)(zzzza).

10. Changes explained above are not exhaustive and are only for the purpose of providing guidance. Explanations are not to be treated as part of the statutory provisions and do not over ride them. The statutory provisions and the relevant notifications have to be read carefully for interpreting the law. Any problems of implementation may kindly be brought to our notice.

With regards,

Yours sincerely,

(R. Sekar)  
Joint Secretary (TRU)

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(Department of Revenue)

New Delhi, the 22<sup>nd</sup> May, 2007  
1 Jyaistha, 1929 (Saka)

**Notification No. 32/2007-Service Tax**

G.S.R. (E).— In exercise of the powers conferred by sections 93 and 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.— (1) These rules may be called the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007.  
(2) They shall come into force with effect from the 1<sup>st</sup> day of June, 2007.
2. Definitions.— In these rules, unless the context otherwise requires,-
  - (a) "Act" means the Finance Act, 1994 (32 of 1994);
  - (b) "section" means the section of the Act;
  - (c) "works contract service" means services provided in relation to the execution of a works contract referred to in sub-clause (zzzza) of clause (105) of section 65 of the Act;
  - (d) words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.
3. (1) Notwithstanding anything contained in section 67 of the Act and rule 2A of the Service (Determination of Value) Rules, 2006, the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to two per cent. of the gross amount charged for the works contract.  
*Explanation.*- For the purposes of this rule, gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid on transfer of property in goods involved in the execution of the said works contract.
  - (2) The provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.
  - (3) The provider of taxable service who opts to pay service tax under these rules shall exercise such option in respect of a works contract prior to payment of service tax in respect of the said works contract and the option so exercised shall be applicable for the entire works contract and shall not be withdrawn until the completion of the said works contract.

[F. No. B1/7/2007-TRU]

(G.G. Pai)  
Under Secretary to the Government of India



[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(Department of Revenue)

New Delhi, the 22<sup>nd</sup> May, 2007  
1 Jyaistha, 1929 (Saka)

**Notification No. 32/2007-Service Tax**

G.S.R. (E).— In exercise of the powers conferred by sections 93 and 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.— (1) These rules may be called the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007.
- (2) They shall come into force with effect from the 1<sup>st</sup> day of June, 2007.

2. Definitions.— In these rules, unless the context otherwise requires,-

- (a) "Act" means the Finance Act, 1994 (32 of 1994);
- (b) "section" means the section of the Act;
- (c) "works contract service" means services provided in relation to the execution of a works contract referred to in sub-clause (zzzza) of clause (105) of section 65 of the Act;
- (d) words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. (1) Notwithstanding anything contained in section 67 of the Act and rule 2A of the Service (Determination of Value) Rules, 2006, the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to two per cent. of the gross amount charged for the works contract.

*Explanation.*- For the purposes of this rule, gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid on transfer of property in goods involved in the execution of the said works contract.

(2) The provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

(3) The provider of taxable service who opts to pay service tax under these rules shall exercise such option in respect of a works contract prior to payment of service tax in respect of the said works contract and the option so exercised shall be applicable for the entire works contract and shall not be withdrawn until the completion of the said works contract.

[F. No. B1/7/2007-TRU

(G.G. Pai  
Under Secretary to the Government of India

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(Department of Revenue)

New Delhi, the 22<sup>nd</sup> May, 2007  
1 Jyaistha, 1929 (Saka)

**Notification No. 29/2007-Service Tax**

G.S.R. (E).— In exercise of the powers conferred by clause (aa) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax (Determination of Value) Rules, 2006, namely:-

1. (1) These rules may be called the Service Tax (Determination of Value) (Amendment) Rules, 2007.  
(2) They shall come into force with effect from the 1<sup>st</sup> day of June, 2007.
2. In the Service Tax (Determination of Value) Rules, 2006, after rule 2, the following rule shall be inserted, namely:-  
"2A. Determination of value of services involved in the execution of a works contract:  
(1) Subject to the provisions of section 67, the value of taxable service in relation to services involved in the execution of a works contract (hereinafter referred to as works contract service), referred to in sub-clause (zzzza) of clause (105) of section 65 of the Act, shall be determined by the service provider in the following manner:-  
(i) Value of works contract service determined shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract.

*Explanation.*- For the purposes of this rule,-

(a) gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include,-

- (i) labour charges for execution of the works;
- (ii) amount paid to a sub-contractor for labour and services;
- (iii) charges for planning, designing and architect's fees;
- (iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
- (v) cost of consumables such as water, electricity, fuel, used in the execution of the works contract;
- (vi) cost of establishment of the contractor relating to supply of labour and services;
- (vii) other similar expenses relating to supply of labour and services; and
- (viii) profit earned by the service provider relating to supply of labour and services;

(ii) Where Value Added Tax or sales tax, as the case may be, has been paid on the actual value of transfer of property in goods involved in the execution of the works contract, then such value adopted for the purposes of payment of Value Added Tax or sales tax, as the case may be, shall be taken as the value of transfer of property in goods involved in the execution of the said works contract for determining the value of works contract service under clause (i).

[F. No. B1/7/2007-TRU]

(G.G. Pai)

Under Secretary to the Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary vide notification No. 12/2006-Service Tax, dated the 19<sup>th</sup> April, 2006, vide number G.S.R. 228 (E), dated the 19<sup>th</sup> April, 2006, and were last amended vide notification No. 24/2006-Service Tax, dated the 27<sup>th</sup> June, 2006, vide number G.S.R. 383(E), dated the 27<sup>th</sup> June, 2006.

TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(Department of Revenue)

New Delhi, the 22<sup>nd</sup> May, 2007  
1 Jyaistha, 1929 (Saka)

**Notification No. 29/2007-Service Tax**

G.S.R. (E).— In exercise of the powers conferred by clause (aa) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax (Determination of Value) Rules, 2006, namely:-

1. (1) These rules may be called the Service Tax (Determination of Value) (Amendment) Rules, 2007.  
(2) They shall come into force with effect from the 1<sup>st</sup> day of June, 2007.
2. In the Service Tax (Determination of Value) Rules, 2006, after rule 2, the following rule shall be inserted, namely:-  
"2A. Determination of value of services involved in the execution of a works contract:  
(1) Subject to the provisions of section 67, the value of taxable service in relation to services involved in the execution of a works contract (hereinafter referred to as works contract service), referred to in sub-clause (zzzza) of clause (105) of section 65 of the Act, shall be determined by the service provider in the following manner:-  
(i) Value of works contract service determined shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract.

*Explanation.*- For the purposes of this rule,-

(a) gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include,-

- (i) labour charges for execution of the works;
- (ii) amount paid to a sub-contractor for labour and services;
- (iii) charges for planning, designing and architect's fees;
- (iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
- (v) cost of consumables such as water, electricity, fuel, used in the execution of the works contract;
- (vi) cost of establishment of the contractor relatable to supply of labour and services;
- (vii) other similar expenses relatable to supply of labour and services; and
- (viii) profit earned by the service provider relatable to supply of labour and services;

(ii) Where Value Added Tax or sales tax, as the case may be, has been paid on the actual value or transfer of property in goods involved in the execution of the works contract, then such value adopted for the purposes of payment of Value Added Tax or sales tax, as the case may be, shall be taken as the value of transfer of property in goods involved in the execution of the said works contract for determining the value of works contract service under clause (i).

[F. No. B1/7/2007-TRU

(G.G. Pai

Under Secretary to the Government of India

Note: The principal rules were published in the Gazette of India, Extraordinary vide notification No. 12/2006-Service Tax, dated the 19<sup>th</sup> April, 2006, vide number G.S.R. 228 (E), dated the 19<sup>th</sup> April, 2006, and were last amended vide notification No. 24/2006-Service Tax, dated the 27<sup>th</sup> June, 2006, vide number G.S.R. 383(E), dated the 27<sup>th</sup> June, 2006.

TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

08-Mar-07

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(Department of Revenue)

New Delhi, the 22<sup>nd</sup> May, 2007  
1 Jyaishta, 1929 (Saka)

**Notification No. 28/2007 – Service Tax**

G.S.R. (E).— In exercise of the powers conferred by sub-sections (1) and (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax Rules, 1994, namely :-

1. (1) These rules may be called the Service Tax (Fourth Amendment) Rules, 2007.
- (2) They shall come into force on the 1<sup>st</sup> day of June, 2007.

2. In the Service Tax Rules, 1994 (hereinafter referred to as the said rules), in rule 2, in sub-rule (1), in clause (d), in sub-clause (i), for the words "a telephone connection or pager or a communication through telegraph or telex or a facsimile communication or a leased circuit", the words "telecommunication service" shall be substituted.

3. In the said rules, in rule 6, after sub-rule (4B), the following sub-rule shall be inserted, namely:-

"4C. Notwithstanding anything contained in sub-rules (4), (4A) and (4B), where the person liable to pay service tax in respect of services provided or to be provided in relation to renting of immovable property, referred to in sub-clause (zzzz) of clause (105) of section 65 of the Act, has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, on account of non-availment of deduction of property tax paid in terms of notification No.24/2007-Service Tax, dated the 22<sup>nd</sup> May, 2007, from the gross amount charged for renting of the immovable property for the said period at the time of payment of service tax, the assessee may adjust such excess amount paid by him against his service tax liability within one year from the date of payment of such property tax. The details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of fifteen days from the date of such adjustment."

[F. No. B1/5/2007-TRU]

(G.G. Pai)

Under Secretary to the Government of India

Note.- The principal rules were notified vide notification no. 2/94-Service Tax, dated the 28th June 1994 and published in the Gazette of India, Extraordinary vide number G.S.R.546 (E), dated the 28th June 1994 and were last amended vide notification No. 20/2007-Service Tax, dated the 12<sup>th</sup> May, 2007 vide G.S.R. 349(E), dated the 12<sup>th</sup> May, 2007.

The fate of progressive patients

The main issue in high risk superficial disease is that the natural (untreated) history over 3 years will see a greater than 70% recurrence rate, and a 30-50% risk of progression in cases of CIS.

Provided a good TUR and good histology; Whenever in doubt: second look.

Conclusion 1: Prognostic risk groups can be defined even without markers:

A second look TUR in T1 TCC: why (Jakse et al, Eur Urol 2004)

-No tumour on reTUR: 100% organ preservation  
- Upstaging and change of treatment in 10 (24%)  
Out of 42 patients who underwent a second TUR (for high grade pT1 +/- CIS)

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (I)]

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(Department of Revenue)

New Delhi, the 22<sup>nd</sup> May, 2007  
1 Jyaistha, 1929 (Saka)

**Notification No. 28/2007 – Service Tax**

G.S.R. (E).— In exercise of the powers conferred by sub-sections (1) and (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax Rules, 1994, namely :-

1. (1) These rules may be called the Service Tax (Fourth Amendment) Rules, 2007.  
(2) They shall come into force on the 1<sup>st</sup> day of June, 2007.
2. In the Service Tax Rules, 1994 (hereinafter referred to as the said rules), in rule 2, in sub-rule (1), in clause (d), in sub-clause (i), for the words "a telephone connection or pager or a communication through telegraph or telex or a facsimile communication or a leased circuit", the words "telecommunication service" shall be substituted.
3. In the said rules, in rule 6, after sub-rule (4B), the following sub-rule shall be inserted, namely:-  
"4C. Notwithstanding anything contained in sub-rules (4), (4A) and (4B), where the person liable to pay service tax in respect of services provided or to be provided in relation to renting of immovable property, referred to in sub-clause (zzzz) of clause (105) of section 65 of the Act, has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, on account of non-availment of deduction of property tax paid in terms of notification No.24/2007-Service Tax, dated the 22<sup>nd</sup> May, 2007, from the gross amount charged for renting of the immovable property for the said period at the time of payment of service tax, the assessee may adjust such excess amount paid by him against his service tax liability within one year from the date of payment of such property tax. The details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of fifteen days from the date of such adjustment."

[F. No. B1/5/2007-TRU]

(G.G. Pai)

Under Secretary to the Government of India

Note.- The principal rules were notified vide notification no. 2/94-Service Tax, dated the 28th June 1994 and published in the Gazette of India, Extraordinary vide number G.S.R.546 (E), dated the 28th June 1994 and were last amended vide notification No. 20/2007-Service Tax, dated the 12<sup>th</sup> May, 2007 vide G.S.R. 349(E), dated the 12<sup>th</sup> May, 2007.

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(Department of Revenue)

New Delhi, the 22<sup>nd</sup> May, 2007  
1 Jyaishta, 1929 (Saka)

**Notification No. 23/2007-Service Tax**

G.S.R. (E).— In exercise of the powers conferred by clause (A) and clause (B) of section 135 of the Finance Act, 2007 (22 of 2007), the Central Government hereby appoints the 1<sup>st</sup> day of June, 2007, as the date on which the provisions of the said clauses of section 135 of the Finance Act, 2007 (22 of 2007) shall come into force.

[F. No. B1/16/2007-TRU]

(G.G. Pai)  
Under Secretary to the Government of India



**F. No. 332/35/2006 – TRU**  
**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Tax Research Unit**

**Dated : August 1, 2006**

**Subject:** Clarification on applicability of service tax on real estate developers / builders – Regarding.

Please refer to your letter dated 21.06.06 on the above subject.

2. I have been directed to state the following relating to levy of service tax on "construction of complex" service falling under section 65(105)(zzzh) and "commercial or industrial construction" service falling under section 65(105)(zzq) of the Finance Act, 1994:

Sr. No.	Issue	Legal Position
1.	Is service tax applicable on Builder, Promoter or Developer who builds a residential complex with the services of his own staff and employing direct labour or petty labour contractors whose total bill does not increase 4.0 lacs in one F/Y?	<p>In a case where the builder, promoter or developer builds a residential complex, having more than 12 residential units, by engaging a contractor for construction of such residential complex, the contractor shall be liable to pay service tax on the gross amount charged for the construction services provided, to the builder / promoter / developer under 'construction of complex' service falling under section 65(105)(zzzh) of the Finance Act, 1994.</p> <p>If no other person is engaged for construction work and the builder / promoter / developer undertakes construction work on his own without engaging the services of any other person, then in such cases in the absence of service provider and service recipient relationship, the question of providing taxable service to any person by any other person does not arise.</p> <p>Service tax exemption for small service providers upto an aggregate value of taxable services of Rs. 4 lakh provided in any financial year vide notification No. 6/2005-Service Tax dated 01.03.05 is applicable for 'construction of complex' service also.</p>
2.	Again will service tax be applicable on the same, in case he constructs commercial complex for himself for putting it on rent or sale?	Commercial complex does not fall within the scope of "residential complex intended for personal use". Hence, service provided for construction of commercial complex is leviable to service tax.
3.	Will the construction of an individual house or a bungalow meant for residence of an individual fall in purview of service	Clarified vide F. No. B1/6/2005-TRU dated 27.07.05, that residential complex constructed by an individual, intended for personal use as residence and constructed by directly availing services of a construction service provider, is not liable to service

	tax, is so, whose responsibility is there for payment?	tax.
4.	Is payment of service tax a responsibility of service provider or of whom the service is provided?	<p>As per section 68 of the said Act, in case of 'construction of complex' service falling under section 65(105)(zzzh) and 'commercial or industrial construction' service falling under section 65(105)(zzq) of the said Act, every person providing taxable service to any person shall be liable to pay service tax.</p> <p>As per section 66A of the said Act, if the service is provided from outside India to a person in India, then in such cases service tax is required to be paid by the recipient of such service.</p>
5.	If it is applicable on the Real Estate Developers, a detailed guideline of tax calculation and date from which it will be applicable. If it is from retrospective effect, and the service provider has left the work and no payment is due for him, who will pay?	Notification No. 1/2006-Service Tax dated 01.03.06 provides for levy of service tax on 33% of the gross amount charged for the services provided or to be provided, subject to fulfillment of the conditions specified in the said notification. Service tax is leviable on,- (i) 'commercial or industrial construction' service falling under section 65(105)(zzq) with effect from 10.09.04, and (ii) 'construction of complex' service falling under section 65(105)(zzzh) with effect from 16.06.05.

3. For any further clarifications, you may contact the jurisdictional officers with relevant facts, for appropriate guidance.

**(G.G. Pai)**  
**Under Secretary (TRU)**

Notification	New Delhi, the 1 <sup>st</sup> March, 2006.
No. 1/2006-Service Tax	10 Phalgun, 1927 (Saka)

G.S.R. (E). — In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of the description specified in column (3) of the Table below and specified in the relevant sub-clauses of clause (105) of section 65 of the Finance Act, specified in the corresponding entry in column (2) of the said Table, from so much of the service tax leviable thereon under section 66 of the said Finance Act, as is in excess of the service tax calculated on a value which is equivalent to a percentage specified in the corresponding entry in column (5) of the said Table, of the gross amount charged by such service provider for providing the said taxable service, subject to the relevant conditions specified in the corresponding entry in column (4) of the Table aforesaid:

Table

S. No	Sub-clause of clause (105) of Section 65	Description of taxable service	Conditions	Percentage
(1)	(2)	(3)	(4)	(5)
1.	(m)	(1) The use of mandap, including the facilities provided to the client in relation to such use and also for the catering charges.  (2) Taxable service provided by a hotel as mandap keeper in such cases where services provided include catering services, that is, supply of food alongwith any service in relation to use of a mandap.	This exemption shall apply only in such cases where the mandap keeper also provides catering services, that is, supply of food and the invoice, bill or challan issued indicates that it is inclusive of the charges for catering service.  The invoice, bill or challan issued indicates that it is inclusive of charges for catering services. <i>Explanation.-</i> The expression "hotel" means a place that provides boarding and lodging facilities to public on commercial basis.	60  60
2.	(n)	(a) Services provided in relation to a tour, by a tour operator, - (1) where the tour operator provides a package tour;  (2) where the services provided are other than in relation to a package tour.	The bill issued for this purpose indicates that it is inclusive of charges for such a tour.  The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour.	40

			<i>Explanation.-</i> The expression "package tour" means a tour in which the provisions for transportation and accommodation for stay of the person undertaking the tour has been afforded by the tour operator.	
		(b) Services provided in relation to a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour.	(i) The invoice, bill or challan issued indicates that it is towards charges for such accommodation, and (ii) this exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator to the client only includes the service charges for arranging or booking accommodation for any person in relation to a tour and does not include the cost of such accommodation.	10
3.	(o)	Renting of a cab.	-	40
4.	(zc)	Holding of a convention, where service provided includes catering service.	The gross amount charged from the client is inclusive of the charges for the catering service.	60
5.	(zzd)	Erection, commissioning or installation, under a contract for supplying a plant, machinery or equipment and erection, commissioning or installation of such plant, machinery or equipment.	This exemption is optional to the commissioning and installation agency. <i>Explanation.-</i> The gross amount charged from the customer shall include the value of the plant, machinery, equipment, parts and any other material sold by the commissioning and installation agency, during the course of providing erection, commissioning or installation service.	33
6.	(zzp)	Transport of goods by road in a goods carriage.	-	25
7.	(zzq)	Commercial or industrial construction service.	This exemption shall not apply in such cases where the taxable services provided are only completion and finishing services in relation to building or civil structure, referred to in sub-clause (c) of clause (25b) of section 65 of the Finance Act. <i>Explanation.-</i> The gross amount charged shall include the value of goods and materials supplied or provided or used by the provider of	33

			the construction service for providing such service.	
8.	(zzt)	Catering.	This exemption shall apply in cases where,- (i) the outdoor caterer also provides food; and (ii) the invoice, bill or challan issued indicates that it is inclusive of charges for supply of food.	50
9.	(zzw)	Services in relation to pandal or shamiana in any manner, including services rendered as a caterer.	This exemption shall apply only in cases where,- (i) the pandal or shamiana contractor also provides catering services, that is, supply of food; and (ii) the invoice, bill or challan issued indicates that it is inclusive of charges for catering service.	70
10.	(zzzh)	Construction of complex.	This exemption shall not apply in cases where the taxable services provided are only completion and finishing services in relation to residential complex, referred to in sub-clause (b) of clause (30a) of section 65 of the Finance Act. <i>Explanation.-</i> The gross amount charged shall include the value of goods and materials supplied or provided or used for providing the taxable service by the service provider.	33

Provided that this notification shall not apply in cases where, -

- (i) the CENVAT credit of duty on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of the CENVAT Credit Rules, 2004; or
- (ii) the service provider has availed the benefit under the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2003-Service Tax, dated the 20<sup>th</sup> June, 2003[G.S.R. 503 (E), dated the 20th June, 2003].

*Explanation.* - For the purposes of this notification, the expression "food" means a substantial and satisfying meal and the expression "catering service" shall be construed accordingly.

[F. No. 334/3/2006-TRU]

(G. G. Pai)

Under Secretary to the Government of India

# Service Tax free

Notification	New Delhi, the 1 <sup>st</sup> March, 2006.
No. 1/2006-Service Tax	10 Phalgun, 1927 (Saka)

G.S.R. (E). — In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of the description specified in column (3) of the Table below and specified in the relevant sub-clauses of clause (105) of section 65 of the Finance Act, specified in the corresponding entry in column (2) of the said Table, from so much of the service tax leviable thereon under section 66 of the said Finance Act, as is in excess of the service tax calculated on a value which is equivalent to a percentage specified in the corresponding entry in column (5) of the said Table, of the gross amount charged by such service provider for providing the said taxable service, subject to the relevant conditions specified in the corresponding entry in column (4) of the Table aforesaid:

Table

S. No	Sub-clause of clause (105) of Section 65	Description of taxable service	Conditions	Percentage
(1)	(2)	(3)	(4)	(5)
1.	(m)	(1) The use of mandap, including the facilities provided to the client in relation to such use and also for the catering charges.	This exemption shall apply only in such cases where the mandap keeper also provides catering services, that is, supply of food and the invoice, bill or challan issued indicates that it is inclusive of the charges for catering service.	60
		(2) Taxable service provided by a hotel as mandap keeper in such cases where services provided include catering services, that is, supply of food alongwith any service in relation to use of a mandap.	The invoice, bill or challan issued indicates that it is inclusive of charges for catering services. <i>Explanation.-</i> The expression "hotel" means a place that provides boarding and lodging facilities to public on commercial basis.	60
2.	(n)	(a) Services provided in relation to a tour, by a tour operator, - (1) where the tour operator provides a package tour; (2) where the services provided are other than in relation to a package tour.	The bill issued for this purpose indicates that it is inclusive of charges for such a tour. The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour.	40

			<i>Explanation.-</i> The expression "package tour" means a tour in which the provisions for transportation and accommodation for stay of the person undertaking the tour has been afforded by the tour operator.	
		(b) Services provided in relation to a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour.	(i) The invoice, bill or challan issued indicates that it is towards charges for such accommodation, and (ii) this exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator to the client only includes the service charges for arranging or booking accommodation for any person in relation to a tour and does not include the cost of such accommodation.	10
3.	(o)	Renting of a cab.	-	40
4.	(zc)	Holding of a convention, where service provided includes catering service.	The gross amount charged from the client is inclusive of the charges for the catering service.	60
5.	(zsd)	Erection, commissioning or installation, under a contract for supplying a plant, machinery or equipment and erection, commissioning or installation of such plant, machinery or equipment.	This exemption is optional to the commissioning and installation agency. <i>Explanation.-</i> The gross amount charged from the customer shall include the value of the plant, machinery, equipment, parts and any other material sold by the commissioning and installation agency, during the course of providing erection, commissioning or installation service.	33
6.	(zsp)	Transport of goods by road in a goods carriage.	-	25
7.	(zsq)	Commercial or industrial construction service.	This exemption shall not apply in such cases where the taxable services provided are only completion and finishing services in relation to building or civil structure, referred to in sub-clause (c) of clause (25b) of section 65 of the Finance Act. <i>Explanation.-</i> The gross amount charged shall include the value of goods and materials supplied or provided or used by the provider of	33

			the construction service for providing such service.	
8.	(zzt)	Catering.	This exemption shall apply in cases where,- (i) the outdoor caterer also provides food; and (ii) the invoice, bill or challan issued indicates that it is inclusive of charges for supply of food.	50
9.	(zzw)	Services in relation to pandal or shamiana in any manner, including services rendered as a caterer.	This exemption shall apply only in cases where,- (i) the pandal or shamiana contractor also provides catering services, that is, supply of food; and (ii) the invoice, bill or challan issued indicates that it is inclusive of charges for catering service.	70
10.	(zzzh)	Construction of complex.	This exemption shall not apply in cases where the taxable services provided are only completion and finishing services in relation to residential complex, referred to in sub-clause (b) of clause (30a) of section 65 of the Finance Act. <i>Explanation.-</i> The gross amount charged shall include the value of goods and materials supplied or provided or used for providing the taxable service by the service provider.	33

Provided that this notification shall not apply in cases where, -

- (i) the CENVAT credit of duty on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of the CENVAT Credit Rules, 2004; or
- (ii) the service provider has availed the benefit under the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2003-Service Tax, dated the 20<sup>th</sup> June, 2003[G.S.R. 503 (E), dated the 20th June, 2003].

*Explanation.* - For the purposes of this notification, the expression "food" means a substantial and satisfying meal and the expression "catering service" shall be construed accordingly.

[F. No. 334/3/2006-TRU]

(G. G. Pai)

Under Secretary to the Government of India



## SERVICE TAX - HIGHLIGHTS

New Services, to attract the levy of service tax from 16<sup>th</sup> June 2005.

Changed definitions too, to take effect from 16<sup>th</sup> June 2005.

Notifications 15 to 28 ST Dated 07.06.2005 have been issued.

### Notification 15/2005

Appoints 16<sup>th</sup> June 2005 as the date from which the amended provisions of section 65 will come into effect. Effect : The new services will attract service tax from 16<sup>th</sup> June 2005. The amendments made in various definitions (expansion of the scope of certain existing services, etc.) would also come into effect from 16<sup>th</sup> June 2005.

### Notification 16/2005.

Provides for exemption in respect of commercial construction service, is such service is in relation construction of a port.

### Notification 17/2005.

Service tax has been imposed on site formation and clearance, excavation, earthmoving, demolition and similar services. By this Notification, exemption from service tax has been provided, if such services are rendered in relation to construction of roads, airports, railways, transport terminals, bridges, tunnels, dams and ports. It may be observed that under the definition of construction services, the services in relation to the above spheres are excluded from the ambit of the definition itself.

### Notification 18/2005.

Service tax is imposed on construction of complexes (residential construction). This notification provides that service tax can be paid on 33 % of the gross amount, if

- No Cenvat credit of duties paid on inputs and capital goods is availed;
- The benefit of Notification 12/2003 is not availed. (billing the sale value of materials separately);
- This is not applicable, if the service is in the nature of finishing services alone (glazing, pastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services). It may be noted that if the services are in the nature of such finishing services, service tax has to be paid either on the gross amount or the benefit of Notification 12/2003 can be claimed.

(This Notification is similar to Notification 15/2004, providing payment of service tax on 33 % of the gross amount, in case of commercial construction service)

### Notification 19/2005.

This notification amends several other notifications.

The definition of the term "commission agent" available in Notice (providing for exemption for commission agents for agricultural production) deleted. This is not required, in as much as the term "commission" included as an Explanation under the definition of Business Auxiliary Services.

Notification 14/2004 provides for exemption under the category of ce Auxiliary services, in respect of the following services.

- a) procurement of goods or services, which are inputs for the client
- b) production of goods on behalf of the client;
- c) provision of service on behalf of the client; or
- d) a service incidental or auxiliary to any activity specified in (a) to

This exemption is not applicable to

- i) a factory registered under or governed by the Factories Act, 1948);
- (ii) a company established by or under the Companies Act, 1956 (1
- (iii) a partnership firm, whether registered or not registered;
- (iv) a society registered under the Societies Registration Act, 1860 (or under any law corresponding to that Act in force in any part of India)
- (v) a co-operative society established by or under any law;
- (vi) a corporation established by or under any law; or
- (vii) a body corporate established by or under any law,

This Notification is amended to the following effect.

- Consequent to the expansion of the definition of business au the exemption is extended to "production or processing of go behalf of the client.
- The exemption is restricted only if the specified services are agriculture, printing, textile processing or education.

This amendment is very significant. Individuals providing tax under BAS were claiming this exemption. Hereafter the e

**applicable only if the service is in relation to agriculture, printing, textile processing or education.**

Notification 15/2004 provides that in case of construction service, service tax can be paid on 33 % of gross amount, subject to the conditions specified therein. This notification is being amended to the following effects.

This exemption is made applicable to commercial or industrial construction, to keep in pace with the expanded scope of this service.

This is not applicable, if the service is in the nature of finishing services alone (glazing, pastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services). It may be noted that if the services are in the nature of such finishing services, service tax has to be paid either on the gross amount or the benefit of Notification 12/2003 can be claimed.

Notification 24/2004 provides for exemption to vocational training institutes and recreational training institutes. It has now been specifically provided that this exemption is not applicable to "computer training institutes" which term has also been defined by way of an Explanation.

Notification 8/2005 provides for exemption in respect of certain services falling under BAS, if the client pays appropriate duty of excise on his final products. Consequent to the expansion of the scope of service (production or processing of goods for, or on behalf of the client), consequential amendments are made in the Notification, to cover such expanded services also.

**Notification 20/2005.**

This Notification rescinds several Notifications.

Notification 6/2001 providing for exemption in respect of still photography, is being withdrawn.

Notification 7/2001 providing for exemption to individual professional videographer is being withdrawn.

Notification 11/2002 providing for exemption to hair dyeing services performed by beauty parlours is being withdrawn.

Notification 18/2003 providing for exemption to commissioning and installation services performed by agencies, which are not commercial concerns, is being withdrawn.

**Notification 21/2005**

This notification provides for exemption in respect of BAS (production or processing of goods for, or on behalf of the client) if the service is rendered during the course of manufacture of (a) cut and polished diamonds and gem stones; and (b) plain and studded jewellery of gold and other precious metals.

**Notification 22/2005**

This notification provides for exemption in respect of the following custom house agent, steamer agent, clearing and forwarding agent, (major ports and other ports), cargo handling, warehouse keeper, repair, technical inspection and certification if the services are provided by a resident person outside India and consumed outside India, in the course of a ship. (For more details, the Notification may be referred to).

**Notification 23/2005**

Amends the Service Tax Rules, 1994.

As per Rule 2 (1)(d)(v) if the person providing service is non resident outside India or does not have an office in India, the person receiving service is liable for payment of service tax. This provision is amended in Explanation inserted in Section 65. (making the persons having residence / business / etc. as liable for payment of service tax, if the service is provided outside India and consumed outside India).

As per Rule 4 A, invoice has to be raised by the service provider, with a copy of the invoice to be submitted to the tax authority. It has now been provided that the invoice shall be raised after 14 days of the expiry of the period, as recognized.

In case of centralized registration, if any excess payment is made for a period, such excess payment can be adjusted against future liabilities.

**Notification 24/2005**

This is consequential in nature and is not very much relevant.

**Notification 25/2005**

Provides for exemption to services rendered to individuals, outside India, if the service is not used by such individual in relation to commerce / industry / business.

In other words, as per the Explanation inserted in section 65, service tax is not levied on services rendered to individuals, outside India, if the service is not used by such individual in relation to commerce / industry / business. The legislative competence of the Government to levy service tax on services rendered outside India, is not in doubt.

This is not applicable, if the service is in the nature of finishing services (glazing, pastering, painting, floor and wall tiling, wall covering and papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services). It may be noted that if the services are in the nature of such finishing services, service tax has to be paid either on the gross amount or the benefit of Notification 12/2003 can be claimed.



**Notification 26 & 27 / 2005**

Input service distributors shall get themselves registered on or before 30 days from 15<sup>th</sup> June.

Any provider of taxable service, whose turnover has crossed three lakhs shall also get himself registered.

Input service distributors shall file half yearly return. (Format is yet to be prescribed).

**Notification 28/2005.**

Export of service Rules amended to include the new services also.

Additional conditions imposed. (Delivery of service outside India and use outside India and receipt of consideration in convertible foreign exchange).

**Notification 28/2005 CE**

Amends Cenvat Credit Rules, 2004.

TR 6 challan, for payment of service tax on GTA is prescribed as a document for availing credit.

## RESIDENTIAL COMPLEX CONSTRUCTION

**Date of Introduction:** 16.06.2005 vide Notification NO.15/2005 dated 07.06.2005

**Definitions:** "residential complex" means any complex comprising of—

(i) a building or buildings, having more than twelve residential units;

(ii) a common area; and

(iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person. Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this clause, —

(a) "personal use" includes permitting the complex for use as residence by another person on rent or without consideration;

(b) "residential unit" means a single house or a single apartment intended for use as a place of residence; (section 65(91a))

"construction of complex" means — construction of a new residential complex or a (a) part thereof; or completion and finishing services in relation (b) to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or repair, alteration, renovation or restoration (c) of, or similar services in relation to, residential complex; (section 65(30a))

"taxable service" means any service provided or to be provided to any person, by any other person, in relation to construction of complex; (section 65(105)(zzzh)) **Value of Taxable**

**Service:** The value of taxable service shall be the gross amount charged by the service provider for providing such service and the money value of any other consideration ( if any) received for providing such service. The value of taxable service shall be determined as per the provisions made under section 67 of the Finance Act, read with Service Tax (Determination of Value ) Rules, 2006 **Who is responsible to pay Service Tax:** The service provider is

responsible to pay service tax. However, in cases, where the provider of taxable service is located **outside** India and the recipient of service is located **in** India, the recipient of service is responsible for payment of service tax. The responsibility to pay service tax under such situations is determined by the provisions made under section 66A of the Finance Act, 1994,

read with Taxation of Services (Provided from outside India and received in India) Rules, 2006 **Scope of Service:** Any service provided or to be provided to any person, by any other person, in relation to construction of complex is taxable under sub-clause (zzzh) of section 65(105) of the Finance Act, 1994. "Construction of complex" has been defined under clause (30a) of section 65 of the Finance Act, 1994. "Residential complex" has been defined under clause (91a) of section 65 of the Finance Act, 1994.

Construction of new building or civil structures used for commercial or industrial purposes and repair, alteration or restoration activities of such buildings or civil structures is liable to service tax since 2004. In this year's budget the construction of new residential complex or a part thereof is also covered under service tax. The term of "construction of complex" is defined under section 65 (30a) of the Finance Act 1994. It covers,

construction of a new residential complex;

This service would generally cover construction services in respect of residential complexes developed by builders, promoters or developers. Such residential complexes are normally constructed after obtaining approval of the statutory authority for their layout. For the purpose of this levy, residential complex means,

- (i) a building or buildings located within a premises;
- (ii) total number of residential units within the said premises are more than twelve;
- (iii) having common area;
- (iv) having common facilities or services; and
- (v) layout of the premises has been approved by the appropriate authority. Common area would include roads, staircases and other similar areas where residents of the residential complex have easement rights. The list of facilities prescribed is merely illustrative and not exhaustive. Some residential complexes may also contain other facilities such as market or shopping complex, schools, security, banks, gymnasium, health club, sports facilities, power back up and the like.

However, residential complex having only 12 or less residential units would not be taxable. Similarly, residential complex constructed by an individual, which is intended for personal use as residence and is constructed by directly availing services of a construction service provider, is also not covered under the scope of the service tax and not taxable.

Post construction, completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry and similar services done in relation to a residential complex, whether or not new, would be included as part of the construction activity of residential complexes for the purpose of levy of service tax.

The taxable service is the service provided in relation to construction of a residential complex. Service tax would be payable only on the gross amount charged by the service provider for the construction service provided and it would not include the cost of land and stamp duty paid for registration of land. However, notification No. 18/2005 -ST dated 7/6/05 provides option to avail abatement and pay service tax only on 33% of the gross amount charged, subject to fulfilment of conditions specified in the notification.

Repair, alteration, renovation or restoration of residential complexes would also be liable to service tax. Such services provided in relation to residential complexes which are in existence before the levy has come into force and are not new would also be liable to be taxed. (Ref: Board's Circular No. F.No.B1/ 6 /2005-TRU dated 27.07.2005)

### General Exemptions:

Sr.No.	Notification No.	Nature of exemption
1	16/2002	Services provided to United nations or any International Organisation
2	12/2003	Exemption to value of goods and material sold during the cour providing taxable service, subject to conditions laid down in notification.
3	4/2004	Service provided to a developer of Special Economic Zone or Unit loci in SEZ
4	6/2005	Exemption from service tax for taxable services upto gross value of R lakhs, in case of service providers whose gross turnover for the prece financial year was less than Rs. 4 lakhs ( w.e.f 01.04.2005)

<b>Service Tax Notifications of Year 2005</b>
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Notification No.28/2005-ST, dated 07-06-2005	Export of Services (Amendment) Rules, 2005
Notification No.27/2005-ST, dated 07-06-2005	Service Tax (Registration of Special Category of Persons) Rules, 2005
Notification No.26/2005-ST, dated 07-06-2005	Specifies the following person or class of persons who shall make an application for registration under the provisions of the sub-section (2) of section 69 of the Finance Act, 1994
Notification No.25/2005-ST, dated 07-06-2005	Exempts any taxable service provided to an individual by a service provider, where the said taxable services are received and consumed outside India, by such individual, not in the course or furtherance of commerce or industry or any other business
Notification No.24/2005-ST, dated 07-06-2005	Amends notification No. 36/2004-Service Tax, dated the 31st December, 2004
Notification No.23/2005-ST, dated 07-06-2005	Service Tax (Fifth Amendment) Rules, 2005
Notification No.22/2005-ST, dated 07-06-2005	Exempts the taxable services specified in sub-clauses (h), (i), (j), (zn), (zr), (zza), (zzg), (zzi) and (zzi) of clause (105) of section 65 of the Finance Act provided by a non-resident person outside India and consumed outside India, in the course of sailing of a ship subject to certain conditions
Notification No.21/2005-ST, dated 07-06-2005	Exempts the taxable service of production or processing of goods for, or on behalf of, the client, referred to in sub-clause (v) of clause (19) of section 65 of the said Finance Act, provided by a commercial concern, in the course of manufacture of (a) cut and polished diamonds and gem stones; or (b) plain and studded jewellery of gold and other precious metals.
Notification No.20/2005-ST, dated 07-06-2005	Rescinds notification Nos. 6/2001-Service Tax, dated the 9 <sup>th</sup> July, 2001, 7/2001-Service Tax, dated the 9 <sup>th</sup> July, 2001, 11/2002-Service Tax, dated the 1 <sup>st</sup> August, 2002, 18/2003-Service Tax, dated the 21 <sup>st</sup> August, 2003.
Notification No.19/2005-ST, dated 07-06-2005	Amends notification numbers 13/2003-Service Tax, dated the 20 <sup>th</sup> June, 2003, 14/2004-Service Tax, dated the 10 <sup>th</sup> September, 2004, 15/2004-Service Tax, dated the 10 <sup>th</sup> September, 2004, 24/2004-

Notification No.18/2005-ST, dated 07-06-2005	Partially exempts the taxable service provided to any person by any other person, in relation to construction of complex
Notification No.17/2005-ST, dated 07-06-2005	Exempts the site formation and clearance, excavation and earthmoving and demolition and such other similar activities provided to any person by any other person in the course of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams, ports or other ports, from the whole of service tax leviable.
Notification No.16/2005-ST, dated 07-06-2005	Exempts the commercial or industrial construction service provided to any person by a commercial concern in relation to construction of port or other port, from the whole of service tax.
Notification No.15/2005-ST, dated 07-06-2005	appoints the 16th day of June, 2005 as the date on which the provisions of the said clauses of the Finance Act, 2005 shall come into force
Notification No.14/2005-ST, dated 13-05-2005	Amends notification no 12/2005 service tax dated 19th April,2005.
Notification No.13/2005-ST, dated 02-05-2005	Amends notification No. 3/2000-Service Tax, dated the 6th July, 2000
Notification No.12/2005-ST, dated 19-04-2005	Rebate of the whole of the duty paid on excisable inputs or the whole of the service tax and cess paid on all taxable input services
Notification No.11/2005-ST, dated 19-04-2005	Rebate of the whole of the service tax and cess paid on all taxable services exported in terms of rule 3 of the said rules, to any country other than Nepal and Bhutan
Notification No.10/2005-ST, dated 03-03-2005	Rescinds notifications 21/2003-Service Tax and 28/2004-Service Tax.
Notification No.09/2005-ST, dated 03-03-2005	Export of Services Rules, 2005.
Notification No.08/2005-ST, dated 01-03-2005	Exempts certain services from Service Tax
Notification No.07/2005-ST, dated 01-03-2005	Service Tax (Fourth Amendment) Rules 2005.
Notification No.06/2005-ST, dated 01-03-2005	Exempts Taxable services of total value below 4lac rupees in any financial year
Notification No.05/2005-ST, dated 01-03-2005	Amends notification no. 36/205 -Service Tax dated 31-12-2004
Notification No.04/2005-ST, dated 01-03-2005	Amends notification no. 15/2004 -Service Tax dated 10-09-2004
Notification No. 03/2005-ST, dated 14-02-2005	Service Tax (Third Amendment) Rules 2005.
Notification No. 02/2005-ST, dated 14-02-2005	Amends the Service Tax Rules 1994
Notification No. 01/2005-ST, dated 14-01-2005	Amends the Service Tax Rules 1994



Notification  
No. 4/2005-Service Tax

New Delhi, dated 1<sup>st</sup> March, 2005.  
10 Phalgun, 1926 (Saka)

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 15/2004-Service Tax, dated the 10th September, 2004 which was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 589 (E), dated the 10th September, 2004, namely:-

In the said notification, the following *Explanation* shall be added at the end, namely:-  
*'Explanation.- For the purposes of this notification, the "gross amount charged" shall include the value of goods and materials supplied or provided or used by the provider of the construction service for providing such service.'*

[F. No. 334/1/2005-TRU]

(V. Sivasubramanian)  
Deputy Secretary to the Government of India

Note.- The principal notification No. 15/2004-Service Tax, dated the 10th September, 2004 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 589 (E), dated the 10th September, 2004.

Notification

No. 5/2005-Service Tax

New Delhi, dated 1<sup>st</sup> March, 2005.

10 Phalgun, 1926 (Saka)

G.S.R. (E).- In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendment in notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 36/2004-Service Tax, dated the 31st December, 2004 which was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 849 (E), dated the 31st December, 2004, namely:-

In the said notification, after sub-paragraph (iv) of paragraph (A), the following sub-paragraph shall be inserted, namely:-

“(v) in relation to business auxiliary service of distribution of mutual fund by a mutual fund distributor or an agent, as the case may be;”.

2. This notification shall come into force on the 1st day of April, 2005.

[F. No. 334/1/2005-TRU]

(V. Sivasubramanian)  
Deputy Secretary to the Government of India

Note.- The principal notification No. 36/2004-Service Tax, dated the 31st December, 2004 was published in the Gazette of India, Extraordinary, dated the 31st December, 2004 *vide* number G.S.R. 849 (E), dated the 31st December, 2004.

Notification  
No. 6/2005-Service Tax

New Delhi, dated 1<sup>st</sup> March, 2005.  
10 Phalguna, 1926 (Saka)

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding four lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66 of the said Finance Act:

Provided that nothing contained in this notification shall apply to,-

- (i) taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or
- (ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994.

2. The exemption contained in this notification shall apply subject to the following conditions, namely:-

- (i) the provider of taxable service has the option not to avail the exemption contained in this notification and pay service tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year;
- (ii) the provider of taxable service shall not avail the CENVAT credit of service tax paid on any input services, under rule 3 or rule 13 of the CENVAT Credit Rules, 2004 (herein after referred to as the said rules), used for providing the said taxable service, for which exemption from payment of service tax under this notification is availed of;
- (iii) the provider of taxable service shall not avail the CENVAT credit under rule 3 of the said rules, on capital goods received in the premises of provider of such taxable service during the period in which the service provider avails exemption from payment of service tax under this notification;
- (iv) the provider of taxable service shall avail the CENVAT credit only on such inputs or input services received, on or after the date on which the service provider starts paying service tax, and used for the provision of taxable services for which service tax is payable;
- (v) the provider of taxable service who starts availing exemption under this notification shall be required to pay an amount equivalent to the CENVAT credit taken by him, if any, in respect of such inputs lying in stock or in process on the date on which the provider of taxable service starts availing exemption under this notification;
- (vi) the balance of CENVAT credit lying unutilised in the account of the taxable service provider after deducting the amount referred to in sub-paragraph (v), if any, shall not be utilised in terms of provision under sub-rule (4) of rule 3 of the said rules and shall lapse on the day such service provider starts availing the exemption under this notification;
- (vii) where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services; and
- (viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed rupees four lakhs in the preceding financial year.

3. For the purposes of determining aggregate value not exceeding four lakh rupees, to avail exemption under this notification, in relation to taxable service provided by a goods transport agency, the payment received towards the gross amount charged by such goods transport agency under section 67 for which the person liable for paying service tax is as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994, shall not be taken into account.

*Explanation.*- For the purposes of this notification,-

- (A) "brand name" or "trade name" means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, logo, label, signature, or invented word or writing which is used in relation to such specified services for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified services and some person using such name or mark with or without any indication of the identity of that person;
- (B) "aggregate value not exceeding four lakh rupees" means the sum total of first consecutive payments received during a financial year towards the gross amount, as prescribed under section 67 of the said Finance Act, charged by the service provider towards taxable services till the aggregate amount of such payments is equal to four lakh rupees but does not include payments received towards such gross amount which are exempt from whole of service tax leviable thereon under section 66 of the said Finance Act under any other notification.

4. This notification shall come into force on the 1st day of April, 2005.

[F. No. 334/1/2005-TRU]

(V. Sivasubramanian)  
Deputy Secretary to the Government of India

Notification  
No. 7/2005-Service Tax

New Delhi, dated 1<sup>st</sup> March, 2005.  
10 Phalgun, 1926 (Saka)

G.S.R. (E).- In exercise of the powers conferred by sub-sections (1) and (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax Rules, 1994, namely :-

1. (1) These rules may be called the Service Tax (Fourth Amendment) Rules, 2005.  
(2) They shall come into force on the 1st day of April, 2005.
2. In the Service Tax Rules, 1994, (hereinafter referred to as the said rules), in rule 2, in sub-rule (1), in clause (d), after sub-clause (v), the following sub-clause shall be inserted, namely:-  
“(vi) in relation to business auxiliary service of distribution of mutual fund by a mutual fund distributor or an agent, as the case be, the mutual fund or asset management company, as the case may be, receiving such service;”
3. In the said rules, in rule 4,-
  - (i) for sub-rules (2), (3) and (3A), the following sub-rules shall be substituted, namely:-  
“(2) Where an assessee is providing a taxable service from more than one premises or offices and has centralized billing systems or centralized accounting systems in respect of such service, and such centralized billing or centralized accounting systems are located in one or more offices or premises, he may, at his option, register such premises or offices from where such centralized billing or centralized accounting systems are located.  
(3) The registration under sub-rule (2), shall be granted,-
    - (a) by the Commissioner of Central Excise or the Chief Commissioner of Central Excise, as the case may be, in whose jurisdiction all the premises or offices providing taxable service and the premise or office from where centralised billing or centralised accounting is done, are located; and
    - (b) in cases other than (a) above, by such authority, as may be specified by the Board:

Provided that nothing contained in this sub-rule shall have any effect on the registrations granted to the premises or offices having such centralized billing or centralized accounting systems, prior to 1st day of April, 2005.

  
(3A) Where an assessee is providing a taxable service from more than one premises or offices, and does not have any centralized billing systems or centralized accounting systems, as the case may be, he shall make separate applications for registration in respect of each of such premises or offices to the jurisdictional Superintendent of Central Excise.”
4. In the said rules, in rule 4A, in sub-rule (1),-
  - (i) after the words “Every person providing taxable service shall”, the words “, not later than fourteen days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier,” shall be inserted;

(ii) for the words "in respect of taxable service", the words "in respect of such taxable service" shall be substituted.

5. In the said rules, in rule 6, for sub-rule (1), the following sub-rule shall be substituted, namely:-

"(1) The service tax shall be paid to the credit of the Central Government by the 5<sup>th</sup> of the month immediately following the calendar month in which the payments are received, towards the value of taxable services:

Provided that where the assessee is an individual or proprietary firm or partnership firm, the service tax shall be paid to the credit of the Central Government by the 5<sup>th</sup> of the month immediately following the quarter in which the payments are received, towards the value of taxable services:

Provided further that notwithstanding the time of receipt of payment towards the value of services, no service tax shall be payable for the part or whole of the value of services, which is attributable to services provided during the period when such services were not taxable: ★

Provided also that the service tax on the value of taxable services received during the month of March, or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by the 31st day of March of the calendar year."

[F. No. 334/1/2005-TRU]

(V. Sivasubramanian)  
Deputy Secretary to the Government of India

Note.- The principal rules were notified vide notification No. 2/94-Service Tax, dated the 28th June 1994 and published in the Gazette of India, Extraordinary vide number G.S.R.546 (E), dated the 28th June 1994 and were last amended vide notification No. 3/2005-Service Tax, dated the 26th February, 2005 which was published vide number G.S.R. 107(E), dated the 26th February, 2005.

Notification  
No. 8/2005-Service Tax

New Delhi, dated 1<sup>st</sup> March, 2005.  
10 Phalgun, 1926 (Saka)

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of production of goods on behalf of the client referred in sub-clause (v) of clause (19) of section 65 of the said Finance Act, from the whole of service tax leviable thereon under section 66 of the said Finance Act:

Provided that the said exemption shall apply only in cases where such goods are produced using raw materials or semi-finished goods supplied by the client and goods so produced are returned back to the said client for use in or in relation to manufacture of any other goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as amended by the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005), on which appropriate duty of excise is payable.

*Expalantion.*- For the purposes of this notification,-

- (i) the expression "production of goods" means working upon raw materials or semi-finished goods so as to complete part or whole of production, subject to the condition that such production does not amount to "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944);
- (ii) "appropriate duty of excise" shall not include 'Nil' rate of duty or duty of excise wholly exempt.

[F. No. 334/1/2005-TRU]

(V. Sivasubramanian)  
Deputy Secretary to the Government of India

3rd March, 2005

**Notification No. 9/2005-Service Tax**

In exercise of the powers conferred by sub-section (1) and sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.- (1) These rules may be called the Export of Services Rules, 2005.  
(2) They shall come into force on the 15th day of March, 2005.
2. Definitions.- In these rules, unless the context otherwise requires,-
  - (a) "Act" means the Finance Act, 1994 (32 of 1994);
  - (b) "input" shall have the meaning assigned to it in clause (k) of rule 2 of the CENVAT Credit Rules, 2004;
  - (c) "input service" shall have the meaning assigned to it in clause (l) of rule 2 of the CENVAT Credit Rules, 2004.
3. Export of taxable service.- The export of taxable service shall mean,-
  - (1) in relation to taxable services specified in sub-clauses (d), (p), (q), (v) and (zzq) of clause (105) of section 65 of the Act, such taxable services as are provided in relation to an immoveable property which is situated outside India;
  - (2) in relation to taxable services specified in sub-clauses (a), (f), (h), (i), (j), (l), (m), (n), (o), (s), (t), (u), (w), (x), (y), (z), (zb), (zc), (zi), (zj), (zn), (zo), (zq), (zr), (zt), (zu), (zv), (zw), (zza), (zzc), (zzd), (zzf), (zzg), (zzh), (zzi), (zzj), (zzl), (zzm), (zzn), (zzo), (zzp), (zss), (zzt), (zzv), (zzw), (zzx) and (zzy) of clause (105) of section 65 of the Act, such services as are performed outside India:

Provided that if such a taxable service is partly performed outside India, it shall be considered to have been performed outside India;

- (3) in relation to taxable services, other than,-
  - (i) the taxable services specified in sub-clauses (a), (f), (h), (i), (j), (l), (m), (n), (o), (p), (q), (s), (t), (u), (v), (w), (x), (y), (z), (zb), (zc), (zi), (zj), (zn), (zo), (zq), (zr), (zt), (zu), (zv), (zw), (zza), (zzc), (zzd), (zzf), (zzg), (zzh), (zzi), (zzj), (zzl), (zzm), (zzn), (zzo), (zzp), (zzq), (zss), (zzt), (zzv), (zzw), (zzx) and (zzy); and
  - (ii) the taxable service specified in sub-clause (d) as are provided in relation to an immoveable property,  
of clause (105) of section 65 of the Act,-
    - (i) such taxable services which are provided and used in or in relation to commerce or industry and the recipient of such services is located outside India:

Provided that if such recipient has any commercial or industrial establishment or any office relating thereto, in India, such taxable services provided shall be treated as export of services only if-

- (a) order for provision of such service is made by the recipient of such service from any of his commercial or industrial establishment or any office located outside India;
- (b) service so ordered is delivered outside India and used in business outside India; and
- (c) payment for such service provided is received by the service provider in convertible



Notification  
No. 8/2005-Service Tax

New Delhi, dated 1<sup>st</sup> March, 2005.  
10 Phalguna, 1926 (Saka)

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of production of goods on behalf of the client referred in sub-clause (v) of clause (19) of section 65 of the said Finance Act, from the whole of service tax leviable thereon under section 66 of the said Finance Act:

Provided that the said exemption shall apply only in cases where such goods are produced using raw materials or semi-finished goods supplied by the client and goods so produced are returned back to the said client for use in or in relation to manufacture of any other goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as amended by the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005), on which appropriate duty of excise is payable.

*Expalantion.*- For the purposes of this notification,-

- (i) the expression "production of goods" means working upon raw materials or semi-finished goods so as to complete part or whole of production, subject to the condition that such production does not amount to "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944);
- (ii) "appropriate duty of excise" shall not include 'Nil' rate of duty or duty of excise wholly exempt.

[F. No. 334/1/2005-TRU]

(V. Sivasubramanian)  
Deputy Secretary to the Government of India

3rd March, 2005

**Notification No. 10/2005-Service Tax**

In exercise of the powers conferred by section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby rescinds the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), as specified in column (2) of the Table below, except as respects things done or omitted to be done before such rescission, namely:-

Table

S. No.	Notification No. and date
(1)	(2)
1.	21/2003-Service Tax, dated the 20 <sup>th</sup> November, 2003 which was published in the Gazette of India, Extraordinary, <i>vide</i> number G.S.R. 897(E), dated the 20 <sup>th</sup> November, 2003.
2.	28/2004-Service Tax, dated the 17 <sup>th</sup> September, 2004 which was published in the Gazette of India, Extraordinary, <i>vide</i> number G.S.R. 616(E), dated the 17 <sup>th</sup> September, 2004.

2. This notification shall come into force on the 15th day of March, 2005.

F. No. B2/4/2004-TRU

V. Sivasubramanian  
Deputy Secretary to the Government of India

19th April, 2005

**Notification No. 11/2005-Service Tax**

in exercise of the powers conferred by rule 5 of the Export of Service Rules, 2005 (hereinafter referred to as the said rules), insofar as it relates to export of taxable services to the countries other than Nepal and Bhutan, the Central Government hereby directs that there shall be granted rebate of the whole of the service tax and cess paid on all taxable services exported in terms of rule 3 of the said rules, to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter,-

**2. Conditions and limitations:-**

- (a) that the taxable service has been exported in terms of rule 3 of the said rules and payment for export of such taxable service has been received in India in convertible foreign exchange;
- (b) that the service tax and cess, rebate of which has been claimed, have been paid on the taxable service exported;
- (c) the amount of rebate of service tax and cess admissible is not less than five hundred rupees; and
- (d) that in case,-
  - (i) the service tax and cess, rebate of which has been claimed, have not been paid; or
  - (ii) the taxable service, rebate on which has been claimed, has not been exported,

the rebate paid, if any, shall be recoverable with interest as per the provisions of section 73 and section 75 of the Finance Act, 1994 (32 of 1994) as if no service tax and cess have been paid on such taxable service.

**3. Procedure:-**

- (i) claim of rebate of service tax and cess paid on all taxable services exported shall be filed with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be;
- (ii) such application shall be accompanied by,-
  - a. documentary evidence of receipt of payment against taxable service exported and for which rebate is claimed, payment of service tax and cess on such taxable service exported;
  - b. a declaration that such taxable service, rebate of service tax and cess paid on such service is claimed, has been exported, in terms of rule 3 of the said rules, along with the documents evidencing the export of such taxable service;
- (b) The jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, if satisfied that the claim is in order, shall sanction the rebate either in whole or in part.

*Explanation*, - "service tax and cess" for the purposes of this notification means,-

- (a) service tax leviable under section 66 of the Finance Act, 1994; and
- (b) education cess on taxable services levied under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004).

F. No. B2/4/2004-TRU

V. Sivasubramanian  
Deputy Secretary to the Government of India

**Annexure****FORM ASTR-1****(Application for filing a claim of rebate of service tax and cess paid on taxable services exported)****(PART A: To be filled by the applicant)**

Date

✓  
Madam/Sir,

I/We.....(name of the person claiming rebate) holding service tax registration No. ...., located in..... (address of the registered premises) hereby declare that I/We have exported .....service (name of the taxable service) under rule 5 of the Export of Service Rules, 2005 to .....(name of the country to which service has been exported), and on which service tax amounting to ..... (amount in rupees of service tax) and education cess amounting to ..... (amount in rupees of cess) has been paid.

2. I/We also declare that the pay

19th April, 2005

**Notification No. 12/2005-Service Tax**

In exercise of the powers conferred by rule 5 of the Export of Service Rules, 2005 (hereinafter referred to as the said rules), the Central Government hereby directs that there shall be granted rebate of the whole of the duty paid on excisable inputs or the whole of the service tax and cess paid on all taxable input services (herein after referred to as 'input services'), used in providing taxable service exported in terms of rule 3 of the said rules, to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter,-

**2. Conditions and limitations:-**

- (a) that the taxable service has been exported in terms of rule 3 of the said rules and payment for export of such taxable service has been received in India in convertible foreign exchange;
- (b) that the duty, rebate of which has been claimed, has been paid on the inputs;
- (c) that the service tax and cess, rebate of which has been claimed, have been paid on the input services;
- (d) the total amount of rebate of duty, service tax and cess admissible is not less than five hundred rupees;
- (e) no CENVAT credit has been availed of on inputs and input services on which rebate has been claimed; and
- (f) that in case,-
  - (i) the duty or, as the case may be, service tax and cess, rebate of which has been claimed, have not been paid; or
  - (ii) the taxable service, rebate for which has been claimed, has not been exported; or
  - (iii) CENVAT credit has been availed on inputs and input services on which rebate has been claimed,

the rebate paid, if any, shall be recoverable with interest as per the provisions of section 73 and section 75 of the Finance Act, 1994 (32 of 1994) as if no service tax and cess have been paid on such taxable service.

**3. Procedure:-**

3.1 Filing of declaration.- The provider of taxable service to be exported shall, prior to date of export of taxable service, file a declaration with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, describing the taxable service intended to be exported with,-

- (a) description, quantity, value, rate of duty and the amount of duty payable on inputs actually required to be used in providing taxable service to be exported;
- (b) description, value and the amount of service tax and cess payable on input services actually required to be used in providing taxable service to be exported.

3.2 Verification of declaration.- The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall verify the correctness of the declaration filed prior to such export of taxable service, if necessary, by calling for any relevant information or samples of inputs and if after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is satisfied that there is no likelihood of evasion of duty, or as the case may be, service tax and cess, he may accept the declaration.

3.3 Procurement of input materials and receipt of input services.- The provider of taxable service shall,-

- (ii) receive the input services required for use in providing taxable service to be exported and an invoice, a bill or, as the case may be, a challan issued under the provisions of Service Tax Rules, 1994.

#### 3.4 Presentation of claim for rebate.-

- (a) (i) claim of rebate of the duty paid on the inputs or the service tax and cess paid on input services shall be filed with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, after the taxable service has been exported;
- (ii) such application shall be accompanied by, –
- invoices for inputs issued under Central Excise Rules, 2002 and invoice, a bill, or as the case may be, a challan for input services issued under Service Tax Rules, 1994 in respect of which rebate is claimed;
  - documentary evidence of receipt of payment against taxable service exported, payment of duty on inputs and service tax and cess on input services used for providing taxable service exported, rebate of which is claimed;
  - a declaration that such taxable service, has been exported in terms of rule 3 of the said rules, along with documents evidencing such export.
- (b) The jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, having regard to the declaration, if satisfied that the claim is in order, shall sanction the rebate either in whole or in part.

#### *Explanation 1.*- "service tax and cess" for the purposes of this notification means,-

- service tax leviable under section 66 of the Finance Act, 1994; and
- education cess on taxable service levied under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004).

#### *Explanation 2.*- "duty" for the purposes of this notification means, duties of excise leviable under the following enactments, namely:-

- the Central Excise Act, 1944 (1 of 1944);
- the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);
- the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);
- National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by section 169 of the Finance Act, 2003 (32 of 2003), section 3 of the Finance Act, 2004 (13 of 2004) and further amended by clause 123 of the Finance Bill, 2005, which clause has the force of law by virtue of the declaration made under the Provisional Collection of Taxes Act, 1931 (16 of 1931);
- special excise duty collected under a Finance Act;
- additional duty of excise as levied under section 157 of the Finance Act, 2003 (32 of 2003);
- Education Cess on excisable goods as levied under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004); and
- the additional duty of excise leviable under clause 85 of the Finance Bill, 2005, which has the force of law by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931).

**(Application for filing a claim of rebate of duty paid on inputs, service tax and cess paid on input services)**

(PART A: To be filled by the applicant)

Date.....  
Place.....

To,  
Assistant Commissioner of Central Excise/Deputy Commissioner of Central Excise .....  
(full postal address).

Madam/Sir,  
I/We.....(name of the person claiming rebate) holding service tax registration No. ...., located in..... (address of the registered premises)

hereby declare that I/We have exported .....service (name of the taxable service) under rule 5 of the Export of Service Rules, 2005 to ..... (name of the country to which service has been exported), and service tax amounting to ..... (amount in rupees of service tax) and education cess amounting to ..... (amount in rupees of cess) has been paid on input services and duty amounting to ..... (amount in rupees of duty) has been paid on inputs.

2. I/We also declare that the payment against such service exported has already been received in India in full..... (details of receipt of payment).

3. I/We request that the rebate of the duty, service tax and cess on inputs and input services used in providing taxable service exported by me/us in terms of rule 3 of the Export of Service Rules, 2005 may be granted at the earliest. The following documents are enclosed in support of this claim for rebate.

- 1.
- 2.
- 3.

**Declaration:**

- (a) We hereby certify that we have not availed CENVAT credit on inputs and input services on which rebate has been claimed.
- (b) We have been granted permission by Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, vide C. No. \_\_\_\_\_, dated \_\_\_\_\_ for working under notification No. \_\_\_\_\_, dated \_\_\_\_\_.

(Signature and name of the service provider or his authorised agent with date)

(PART B: To be filled by the sanctioning authority)

Date of receipt of the rebate claim: \_\_\_\_\_

Date of sanction of the rebate claim: \_\_\_\_\_

Amount of rebate claimed: Rs. \_\_\_\_\_

Amount of rebate sanctioned: Rs. \_\_\_\_\_

If the claim is not processed within 15 days of the receipt of the claim, indicated briefly reasons for delay.

Place:

Date: Signature of the Assistant Commissioner/ Deputy Commissioner of Central Excise.

2nd May, 2005

**Notification No. 13/2005-Service Tax**

G.S.R. (E).- In exercise of the powers conferred by section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 3/2000-Service Tax, dated the 6th July, 2000 which was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 588 (E), dated the 6th July, 2000, namely:-

In the said notification, after the words "Seed Crop Insurance", the words "or the Farm Income Insurance Scheme" shall be inserted.

F. No. B-1/4/2005-TRU

(V. Sivasubramanian)  
Deputy Secretary to the Government of India

Note:- The principal notification No. 3/2000-Service Tax, dated the 6th July, 2000 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 588 (E), dated the 6th July, 2000.



13th May, 2005

**Notification No. 14/2005-Service Tax**

In pursuance of rule 5 of the Export of Services Rules, 2005, the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 12/2005-Service Tax, dated the 19th April, 2005 which was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 240 (E), dated the 19th April, 2005, namely:-

In the said notification, in *Explanation 2*,-

- (i) in item (d), for the portion beginning with the words and figures "clause 123 of the Finance Bill, 2005" and ending with the words and figures "Provisional Collection of Taxes Act, 1931 (16 of 1931)" the words and figures "section 123 of the Finance Act, 2005 (18 of 2005)" shall be substituted;
- (ii) in item (h), for the portion beginning with the words and figures "clause 85 of the Finance Bill, 2005" and ending with the words and figures "Provisional Collection of Taxes Act, 1931 (16 of 1931)" the words and figures "section 85 of the Finance Act, 2005 (18 of 2005)" shall be substituted.

F. No. B2/4/2004-TRU

(V. Sivasubramanian)  
Deputy Secretary to the Government of India

Note:- The principal notification No. 12/2005-Service Tax, dated the 19th April, 2005 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 240 (E), dated the 19th April, 2005.

7th June, 2005

**Notification No. 15/2005-Service Tax**

In exercise of the powers conferred by clause (a) and clause (b) of section 88 of the Finance Act, 2005 (18 of 2005), the Central Government hereby appoints the 16th day of June, 2005 as the date on which the provisions of the said clauses of the said Act shall come into force.

F. No. B1/6/2005-TRU

Ajay  
Under Secretary to the Government of India

7th June, 2005

**Notification No. 16/2005-Service Tax**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the commercial or industrial construction service, referred to in sub-clause (zzq) of clause (105) of section 65 of the Finance Act, provided to any person by a commercial concern in relation to construction of port or other port, from the whole of service tax leviable thereon under section 66 of the said Finance Act.

2. This notification shall come into force on the 16th day of June, 2005.

F. No. B1/6/2005-TRU

Ajay  
Under Secretary to the Government of India

7th June, 2005

**Notification No. 17/2005-Service Tax**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the site formation and clearance, excavation and earthmoving and demolition and such other similar activities, referred to in sub-clause (zzza) of clause (105) of section 65 of the Finance Act, provided to any person by any other person in the course of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams, ports or other ports, from the whole of service tax leviable thereon under section 66 of the said Finance Act.

2. This notification shall come into force on the 16th day of June, 2005.

F. No. B1/6/2005-TRU

Ajay  
Under Secretary to the Government of India

7th June, 2005

## Notification No. 18/2005-Service Tax

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided to any person by any other person, in relation to construction of complex, referred to in sub-clause (zzzh) of clause (105) of section 65 of the Finance Act, from so much of the service tax leviable thereon under section 66 of the said Finance Act, as is in excess of the service tax calculated on a value which is equivalent to thirty-three per cent. of the gross amount charged from any person by such service provider for providing the said taxable service:

Provided that this exemption shall not apply in such cases where –

- (i) the credit of duty paid on inputs or capital goods used for providing such taxable service has been taken under the provisions of the CENVAT Credit Rules, 2004; or
- (ii) the service provider has availed the benefit under the notification of the Government of India, in the Ministry of Finance, (Department of Revenue) No. 12/2003-Service Tax, dated the 20th June, 2003 [G.S.R. 503 (E), dated the 20th June, 2003]; or
- (iii) the taxable services provided are only completion and finishing services in relation to residential complex, referred to in sub-clause (b) of clause (30a) of section 65 of the Finance Act.

Explanation.- For the purposes of this notification, the "gross amount charged" shall include the value of goods and materials supplied or provided or used for providing the said taxable service by the said service provider.

2. This notification shall come into force on the 16th day of June, 2005.

F. No. B1/6/2005-TRU

(17)

(Ajay)

Under Secretary to the Government of India

A1

T. K.

7th June, 2005

## Notification No. 19/2005-Service Tax

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby directs that the following notifications of the Government of India in the Ministry of Finance (Department of Revenue) as specified in column (2) of the Table below, shall be amended or further amended, as the case may be, in the manner specified in the corresponding entry in column (3) of the said Table, namely:-

Table

S.No.	Notification number and date	Amendments
(1)	(2)	(3)
1.	13/2003-Service Tax, dated the 20 <sup>th</sup> June, 2003 [G.S.R. 504 (E), dated the 20 <sup>th</sup> June, 2003]	In the said notification, in the <i>Explanation</i> , clause (i) shall be omitted.
2.	14/2004-Service Tax, dated the 10 <sup>th</sup> September, 2004 [G.S.R. 588 (E), dated the 10 <sup>th</sup> September, 2004]	In the said notification, - (i) in clause (b), for the words "production of goods on behalf of the client;", the words "production or processing of goods for, or on behalf of, the client;" shall be substituted; (ii) for the words "from the whole of the service tax", the words "and provided in relation to agriculture, printing, textile processing or education, from the whole of service tax" shall be substituted; (iii) the proviso shall be omitted.
3.	15/2004-Service Tax, dated the 10 <sup>th</sup> September, 2004 [G.S.R. 589 (E), dated the 10 <sup>th</sup> September, 2004]	In the said notification, - (i) for the words "construction service", occurring at two places, the words "commercial or industrial construction service" shall be substituted; (ii) in the proviso, for clause (ii), the following shall be substituted, namely:- " (ii) the commercial concern has availed the benefit under the notification of the Government of India, in the Ministry of Finance, (Department of Revenue) No. 12/2003-Service Tax, dated the 20th June, 2003 [G.S.R. 503 (E), dated the 20th June, 2003]; or (iii) the taxable services provided are only completion and finishing services in relation to building or civil structure, referred to in sub-clause (c) of clause (25b) of section 65 of the Finance Act, 1994."
4.	24/2004-Service Tax, dated the 10 <sup>th</sup> September, 2004 [G.S.R. 598 (E), dated the 10 <sup>th</sup> September, 2004]	In the said notification, - (i) in the opening paragraph, the following proviso shall be inserted at the end, namely:- "Provided that nothing contained in this

		(ii) in the <i>Explanation</i> , after clause (ii), the following clause shall be inserted, namely:- '(iii) "computer training institute" means a commercial training or coaching centre which provides coaching or training relating to computer software or hardware.'
5.	8/2005-Service Tax, dated the 1 <sup>st</sup> March, 2005 [G.S.R. 142 (E), dated the 1 <sup>st</sup> March, 2005]	In the said notification,-  (i) for the words "production of goods on behalf of the client", the words "production or processing of goods for, or on behalf of, the client" shall be substituted;  (ii) in the proviso, for the words "produced", occurring at two places, the words "produced or processed" shall be substituted;  (iii) in the <i>Explanation</i> , in clause (i),- (a) for the words "production of goods", the words "production or processing of goods" shall be substituted; (b) for the words "production" occurring at two places, the words "production or processing" shall be substituted.

2. This notification shall come into force on the 16th day of June, 2005.

F. No. B1/6/2005-TRU

Ajay  
Under Secretary to the Government of India

Note:

- (1) The principal notification 13/2003-Service Tax, dated the 20<sup>th</sup> June, 2003 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 504 (E) dated the 20<sup>th</sup> June, 2003 and was last amended *vide* notification No. 8/2004-Service Tax, dated the 9<sup>th</sup> July, 2004 [G.S.R. 434 (E) dated the 9<sup>th</sup> July, 2004];
- (2) The principal notification 14/2004-Service Tax, dated the 10<sup>th</sup> September, 2004 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 588 (E) dated the 10<sup>th</sup> September, 2004;
- (3) The principal notification 15/2004-Service Tax, dated the 10<sup>th</sup> September, 2004 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 589 (E) dated the 10<sup>th</sup> September, 2004 and was last amended *vide* notification No. 4/2005-Service Tax, dated the 1<sup>st</sup> March, 2005 [G.S.R. 138 (E) dated the 1<sup>st</sup> March, 2005];
- (4) The principal notification 24/2004-Service Tax, dated the 10<sup>th</sup> September, 2004 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 598 (E) dated the 10<sup>th</sup> September, 2004;
- (5) The principal notification 8/2005-Service Tax, dated the 1<sup>st</sup> March, 2005 was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 142 (E) dated the 1<sup>st</sup> March, 2005

7th June, 2005

**Notification No. 20/2005-Service Tax**

In exercise of the powers conferred by section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby rescinds the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), as specified in column (2) of the Table below, except as respects things done or omitted to be done before such rescission, namely:-

**Table**

S.No.	Notification No. and date
(1)	(2)
1.	6/2001-Service Tax, dated the 9 <sup>th</sup> July, 2001 [G.S.R. 516 (E), dated the 9 <sup>th</sup> July, 2001]
2.	7/2001-Service Tax, dated the 9 <sup>th</sup> July, 2001 [G.S.R. 517 (E), dated the 9 <sup>th</sup> July, 2001]
3.	11/2002-Service Tax, dated the 1 <sup>st</sup> August, 2002 [G.S.R. 539 (E), dated the 1 <sup>st</sup> August, 2002]
4.	18/2003-Service Tax, dated the 21 <sup>st</sup> August, 2003 [G.S.R. 676 (E), dated the 21 <sup>st</sup> August, 2003]

2. This notification shall come into force on the 16th day of June, 2005.

F. No. B1/6/2005-TRU

Ajay  
Under Secretary to the Government of India



7th June, 2005

**Notification No. 22/2005-Service Tax**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services specified in sub-clauses (h), (i), (j), (zn), (zr), (zza), (zzg), (zzi) and (zzl) of clause (105) of section 65 of the Finance Act provided by a non-resident person outside India and consumed outside India, in the course of sailing of a ship which is,-

- (a) registered as an Indian ship under the Merchant Shipping Act, 1958 (44 of 1958);
- (b) registered under the Coasting Vessels Act, 1838 (19 of 1838);
- (c) registered under the Inland Vessels Act, 1917 (1 of 1917); or
- (d) chartered and licenced under the Merchant Shipping Act, 1958,

and such ship is owned or chartered, as the case may be, by,-

- (i) a citizen of India;
- (ii) a company or a body established by or under any Central Act or State Act which has its principal place of business in India; or
- (iii) a co-operative society which is registered or deemed to be registered under the Co-operative Societies Act, 1912 (2 of 1912), or any other law relating to co-operative societies for the time being in force in any State,

from the whole of service tax leviable thereon under section 66 of the said Finance Act:

Provided that the said exemption shall apply only in such cases where the said taxable services are provided in relation to,-

- (a) handling of ships in a port outside India;
- (b) handling or storage of goods carried in a ship in a port outside India; or
- (c) any other services related to the handling of ships or goods carried in a ship.

*Explanation.*- For the purposes of this notification, "non-resident person" means a person, who has established a business or has a fixed establishment from which the service is provided or to be provided, or has his permanent address or usual place of residence, in a country other than India.

2. This notification shall come into force on the 16th day of June, 2005.

[F. No. B1/7/2005-TRU]

Ajay  
Under Secretary to the Government of India

7th June, 2005

**Notification No. 23/2005-Service Tax**

In exercise of the powers conferred by sub-sections (1) and (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Service Tax Rules, 1994, namely :-

1. (1) These rules may be called the Service Tax (Fifth Amendment) Rules, 2005.  
(2) They shall come into force on the 16th day of June, 2005.
2. In the Service Tax Rules, 1994, (hereinafter referred to as the said rules), in rule 2, in sub-rule (1), in clause (d),-
  - (i) for sub-clause (iv), the following sub-clause shall be substituted, namely:-

"(iv) in relation to any taxable service provided or to be provided by a person, who has established a business or has a fixed establishment from which the service is provided or to be provided, or has his permanent address or usual place of residence, in a country other than India, and such service provider does not have any office in India, the person who receives such service and has his place of business, fixed establishment, permanent address or, as the case may be, usual place of residence, in India;"
  - (ii) in sub-clause (v), in item (b), for the words "established by or under", the words "formed or registered under" shall be substituted.
3. In the said rules, in rule 4A, in sub-rule (1), after the second proviso, the following proviso shall be inserted, namely:-

"Provided also that where any payment towards the value of taxable service is not received and such taxable service is provided continuously for successive periods of time and the value of such taxable service is determined or payable periodically, an invoice, a bill, or as the case may be, a challan shall be issued by a person providing such taxable service, not later than fourteen days from the last day of the said period."
4. In the said rules, in rule 6, after sub-rule (4), the following sub-rule shall be inserted, namely:-

"(4A) Notwithstanding anything contained in sub-rule (4), where an assessee has opted for registration under sub-rule (2) of rule 4 of these rules and has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, for the reason of not receiving details of payments received towards the value of taxable services at his other premises or offices, the assessee may adjust such excess amount so paid as service tax by him against his service tax liability for the subsequent period and the details of such adjustment shall be intimated to the jurisdictional Superintendent of Central Excise within a period of fifteen days from the date of such adjustment."

F. No. B1/6/2005-TRU

Ajay  
Under Secretary to the Government of India

Note.- The principal rules were notified *vide* notification No. 2/94-Service Tax, dated the 28th June 1994 and published in the Gazette of India, Extraordinary *vide* number G.S.R.546 (E), dated the 28th June 1994 and were last amended *vide* notification No. 7/2005-Service Tax, dated the 1st March, 2005 which was published *vide* number G.S.R. 141(E), dated the 1st March, 2005.

7th June, 2005

**Notification No. 24/2005-Service Tax**

In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 36/2004-Service Tax, dated the 31st December, 2004 which was published in the Gazette of India, Extraordinary, *vide* number G.S.R. 849 (E), dated the 31st December, 2004, namely:-

In the said notification, -

- (i) in paragraph (A), in sub-paragraph (iv), in item (b), for the words "established by or under", the words "formed or registered under" shall be substituted;
- (ii) for paragraph (B), the following paragraph shall be substituted, namely:-

"any taxable service provided or to be provided by a person, who has established a business or has a fixed establishment from which the service is provided or to be provided, or has his permanent address or usual place of residence, in a country other than India, and such service provider does not have any office in India."

2. This notification shall come into force on the 16th day of June, 2005.

F. No. B1/6/2005-TRU

Ajay  
Under Secretary to the Government of India

Note.- The principal notification No. 36/2004-Service Tax, dated the 31st December, 2004 was published in the Gazette of India, Extraordinary, dated the 31st December, 2004 *vide* number G.S.R. 849 (E), dated the 31st December, 2004 and was last amended *vide* notification No. 5/2005-Service Tax, dated the 1<sup>st</sup> March, 2005 [G.S.R. 139 (E) dated the 1<sup>st</sup> March, 2005];

7th June, 2005

**Notification No. 25/2005-Service Tax**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts any taxable service provided to an individual by a service provider, where the said taxable services are received and consumed outside India, by such individual, not in the course or furtherance of commerce or industry or any other business, from the whole of service tax leviable thereon under section 66 of the Finance Act.

2. This notification shall come into force on the 16th day of June, 2005.

F. No. B1/6/2005-TRU

(Ajay)  
Under Secretary to the Government of India

7th June, 2005

**Notification No. 26/2005-Service Tax**

In exercise of the powers conferred by sub-section (2) of section 69 of the Finance Act, 1994 (32 of 1994), the Central Government hereby specifies the following person or class of persons who shall make an application for registration under the provisions of the said sub-section, namely:-

(i) an input service distributor; and

(ii) any provider of taxable service whose aggregate value of taxable service in a financial year exceeds three lakh rupees.

*Explanation 1.*- For the purposes of this clause, where a provider of taxable service provides one or more taxable services from one or more premises, the aggregate value of all such taxable services and from all such premises and not separately for each services or each premises shall be taken into account for computation of aggregate value of taxable service.

*Explanation 2.*- For the purposes of this notification,-

(a) "input service distributor" has the meaning assigned to it in clause (m) of rule 2 of the CENVAT Credit Rules, 2004;

(b) "aggregate value of taxable service" means the sum total of first consecutive payments received during a financial year towards the gross amount, as prescribed under section 67 of the said Finance Act, charged by the service provider towards taxable services but does not include payments received towards such gross amount which are exempt from the whole of service tax leviable thereon under section 66 of the said Finance Act under any notification other than Notification No. 6/2005-Service Tax, dated the 1<sup>st</sup> March, 2005 [G.S.R. 140 (E), dated the 1<sup>st</sup> March, 2005].

2. This notification shall come into force on the 16th day of June, 2005.

F. No. B1/6/2005-TRU

(Ajay)  
Under Secretary to the Government of India

7th June, 2005

**Notification No. 27/2005-Service Tax**

In exercise of the powers conferred by sub-sections (1) and (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.- (1) These rules may be called the Service Tax (Registration of Special Category of Persons) Rules, 2005.  
  
(2) They shall come into force on the 16th day of June, 2005.
2. Definitions.- In these rules, unless the context otherwise requires,-
  - (a) "Act" means the Finance Act, 1994 (32 of 1994);
  - (b) "aggregate value of taxable service" means the sum total of first consecutive payments received during a financial year towards the gross amount, as prescribed under section 67 of the Act, charged by the service provider towards taxable services but does not include payments received towards such gross amount which are exempt from the whole of service tax leviable thereon under section 66 of the Act under any notification other than Notification No. 6/2005-Service Tax, dated the 1<sup>st</sup> March, 2005 [G.S.R. 140 (E), dated the 1<sup>st</sup> March, 2005];
  - (c) "input service distributor" shall have the meaning assigned to it in clause (m) of rule 2 of the CENVAT Credit Rules, 2004.
3. Registration.- (1) The input service distributor shall make an application to the jurisdictional Superintendent of Central Excise in such form as may be specified, by notification, by the Board, for registration within a period of thirty days of the commencement of business or the 16th day of June, 2005, whichever is later.  
(2) Any provider of taxable service whose aggregate value of taxable service in a financial year exceeds three lakh rupees shall make an application to the jurisdictional Superintendent of Central Excise in such form as may be specified, by notification, by the Board, for registration within a period of thirty days of exceeding the aggregate value of taxable service of three lakh rupees.  
(3) The provisions of sub-rules (2) to (7) of rule 4 of Service Tax Rules, 1994 shall be applicable to the persons or class of persons who make an application for registration under the provisions of these rules, with such modifications and alterations as may be prescribed by the Board.
4. Furnishing of returns.- The input service distributor shall furnish a return to the jurisdictional Superintendent of Central Excise in such form and at such frequency as prescribed under sub-rule (10) of rule 9 of CENVAT Credit Rules, 2004.

F. No. B1/6/2005-TRU

(Ajay)  
Under Secretary to the Government of India

7th June, 2005

**Notification No. 28/2005-Service Tax**

In exercise of the powers conferred by sub-sections (1) and (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules to amend the Export of Services Rules, 2005, namely :-

1. (1) These rules may be called the Export of Services (Amendment) Rules, 2005.
- (2) They shall come into force on the 16th day of June, 2005.
2. In the Export of Services Rules, 2005, in rule 3,-
  - (i) in sub-rule (1),-
    - (a) for the word, brackets and letters "and (zzq)", the brackets, letters and word ", (zzq), (zzza), (zzzb), (zzzc) and (zzzh)" shall be substituted;
    - (b) the following proviso shall be inserted at the end, namely:-  
"Provided that for the purposes of this sub-rule, any taxable services provided shall be treated as export of services only if-
      - (a) such service is delivered outside India and used in business or for any other purpose outside India; and
      - (b) payment for such service provided is received by the service provider in convertible foreign exchange.";
  - (ii) in sub-rule (2),-
    - (a) for the word, brackets and letters "and (zzy)", the brackets, letters and word ", (zzy), (zzzd), (zzze) and (zzzf)" shall be substituted;
    - (b) after the first proviso, the following proviso shall be inserted, namely:-  
"Provided further that for the purposes of this sub-rule, any taxable services provided shall be treated as export of services only if-
      - (a) such service is delivered outside India and used in business or for any other purpose outside India; and
      - (b) payment for such service provided is received by the service provider in convertible foreign exchange.";
  - (iii) in sub-rule (3),-
    - (a) in clause (i), for the word, brackets and letters "and (zzy)", the brackets, letters and word ", (zzy), (zzza), (zzzb), (zzzd), (zzze), (zzzf) and (zzzh)" shall be substituted;
    - (b) in clause (ii), for the brackets and letter "(d)", the brackets, letters and word "(d) and (zzzc)" shall be substituted.

[F. No. B1/6/2005-TRU]

(Ajay)  
Under Secretary to the Government of India

Note.- The principal rules were notified *vide* notification No. 9/2005-Service Tax, dated the 3rd March 2005 and published in the Gazette of India, Extraordinary *vide* number G.S.R.151 (E), dated the 3rd March 2005.

## RESIDENTIAL COMPLEX CONSTRUCTION

**Date of Introduction:** 16.06.2005 vide Notification NO.15/2005 dated 07.06.2005

**Definitions:** "residential complex" means any complex comprising of—

- (i) a building or buildings, having more than twelve residential units;
- (ii) a common area; and
- (iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person. Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this clause, —

(a) "personal use" includes permitting the complex for use as residence by another person on rent or without consideration;

(b) "residential unit" means a single house or a single apartment intended for use as a place of residence; (section 65(91a))

"construction of complex" means — construction of a new residential complex or a (a) part thereof; or completion and finishing services in relation (b) to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or repair, alteration, renovation or restoration (c) of, or similar services in relation to, residential complex; (section 65(30a))

"taxable service" means any service provided or to be provided to any person, by any other person, in relation to construction of complex; (section 65(105)(zzzh)) **Value of Taxable Service:** The value of taxable service shall be the gross amount charged by the service provider for providing such service and the money value of any other consideration ( if any) received for providing such service. The value of taxable service shall be determined as per the provisions made under section 67 of the Finance Act, read with Service Tax (Determination of Value ) Rules, 2006 **Who is responsible to pay Service Tax:** The service provider is responsible to pay service tax. However, in cases, where the provider of taxable service is located **outside** India and the recipient of service is located **in** India, the recipient of service is responsible for payment of service tax. The responsibility to pay service tax under such situations is determined by the provisions made under section 66A of the Finance Act, 1994, read with Taxation of Services (Provided from outside India and received in India) Rules, 2006 **Scope of Service:** Any service provided or to be provided to any person, by any other person, in relation to construction of complex is taxable under sub-clause (zzzh) of section 65(105) of the Finance Act, 1994. "Construction of complex" has been defined under clause (30a) of section 65 of the Finance Act, 1994. "Residential complex" has been defined under clause (91a) of section 65 of the Finance Act, 1994.

Construction of new building or civil structures used for commercial or industrial purposes and repair, alteration or restoration activities of such buildings or civil structures is liable to service tax since 2004. In this year's budget the construction of new residential complex or a part thereof is also covered under service tax. The term of "construction of complex" is defined under section 65 (30a) of the Finance Act 1994. It covers,

construction of a new residential complex;

completion and finishing services in relation to a residential complex, whether or not new; repair, alteration, etc. in relation to residential complex, whether or not new.

This service would generally cover construction services in respect of residential complexes



- (i) a building or buildings located within a premises;
- (ii) total number of residential units within the said premises are more than twelve;
- (iii) having common area;
- (iv) having common facilities or services; and
- (v) layout of the premises has been approved by the appropriate authority. Common area would include roads, staircases and other similar areas where residents of the residential complex have easement rights. The list of facilities prescribed is merely illustrative and not exhaustive. Some residential complexes may also contain other facilities such as market or shopping complex, schools, security, banks, gymnasium, health club, sports facilities, power back up and the like.

However, residential complex having only 12 or less residential units would not be taxable. Similarly, residential complex constructed by an individual, which is intended for personal use as residence and is constructed by directly availing services of a construction service provider, is also not covered under the scope of the service tax and not taxable.

Post construction, completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry and similar services done in relation to a residential complex, whether or not new, would be included as part of the construction activity of residential complexes for the purpose of levy of service tax.

The taxable service is the service provided in relation to construction of a residential complex. Service tax would be payable only on the gross amount charged by the service provider for the construction service provided and it would not include the cost of land and stamp duty paid for registration of land. However, notification No. 18/2005 –ST dated 7/6/05 provides option to avail abatement and pay service tax only on 33% of the gross amount charged, subject to fulfilment of conditions specified in the notification.

Repair, alteration, renovation or restoration of residential complexes would also be liable to service tax. Such services provided in relation to residential complexes which are in existence before the levy has come into force and are not new would also be liable to be taxed.

(Ref: Board's Circular No. F.No.B1/ 6 /2005-TRU dated 27.07.2005)

### General Exemptions:

Sr.No.	Notification No.	Nature of exemption
1	16/2002	Services provided to United nations or any International Organisation
2	12/2003	Exemption to value of goods and material sold during the course of providing taxable service, subject to conditions laid down in the notification.
3	4/2004	Service provided to a developer of Special Economic Zone or Unit located in SEZ
4	6/2005	Exemption from service tax for taxable services upto gross value of Rs. 4 lakhs, in case of service providers whose gross turnover for the preceding financial year was less than Rs. 4 lakhs ( w.e.f 01.04.2005)

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**NOTIFICATION NO 15/2004-Service Tax**

**NOTIFICATION NO**

**15/2004-Service Tax, Dated: September 10, 2004**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service provided by a commercial concern to any person, in relation to construction service, from so much of the service tax leviable thereon under section 66 of the said Act, as is in excess of the service tax calculated on a value which is equivalent to thirty-three per cent. of the gross amount charged from any person by such commercial concern for providing the said taxable service:

Provided that this exemption shall not apply in such cases where -

- i. the credit of duty paid on inputs or capital goods has been taken under the provisions of the Cenvat Credit Rules, 2004; or
- ii. the commercial concern has availed the benefit under the notification of the Government of India, in the Ministry of Finance, (Department of Revenue) No. 12/2003-Service Tax, dated the 20th June, 2003 [G.S.R. 503 (E), dated the 20th June, 2003].

[F.No. B2/8/2004-TRU]

(V. Sivasubramanian)

Deputy Secretary to the Government of India

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**Circular No. F.No.B2/8/2004-TRU**

**F.No.B2/8/2004-TRU**

Government of India  
Ministry of Finance  
Department of Revenue  
(Tax Research Unit)

\*\*\*\*\*

New Delhi , dated 10<sup>th</sup> September, 2004

To,  
The Chief Commissioners of Central Excise and Service Tax (ALL)  
The Director Generals (ALL)  
The Commissioners of Central Excise and Service Tax (ALL),  
The Commissioners of Service Tax

Madam

/

Sir,

Subject : Issues pertaining to Service Tax - regarding

1. The Finance Bill (No.2), 2004 has been enacted on 10.09.2004. With the enactment of the Finance Bill,

A. The following new services have come under the service tax levy,-

- I. Business exhibition services
- II. Airport services
- III. Transport of goods by air
- IV. Survey and exploration of minerals
- V. Opinion poll services
- VI. Intellectual property services (other than copyrights)
- VII. Forward contract services
- VIII. Pandal or shamiana services
- IX. Outdoor catering services
- X. TV and radio programme production services
- XI. Construction services (commercial and industrial buildings or civil structures)
- XII. Travel agents (other than air/rail travel agents)

B. The following taxable services get expanded to include,-

- I. Commission and installation service to include erection service
- II. Stock brokers to include sub-brokers
- III. Cable operators to include multi system operators
- IV. Business auxiliary service to include activities relating to procurement of inputs, production of goods (not amounting to manufacture) or provision of services on behalf of a client.
- V. Financial services to include some more specified financial services. Such services provided by non-banking financial company, body corporate or

any other commercial concern are also being subjected to service tax.

- VI. Tour operators to include such package tour operators who organize tours involving different modes of transport.
- C. The risk cover in life insurance becomes subject to levy of service tax.
- D. The rate of service tax on all taxable services, including the new and expanded services becomes 10%.
- E. The education Cess of 2% of the service tax would be leviable on taxable services.
2. The scope of these changes is explained in the following paragraphs.
3. **Education Cess on taxable services:** Education cess on taxable services is imposed under section 91 read with section 95 of the Finance (No.2) Act, 2004. The cess would be 2% of the service tax levied and collected. Therefore, fully exempted taxable services would not be subjected to cess. In case of a partial exemption, say by way of abatement, the cess would be calculated on the net tax paid and not on the entire amount of tax that would have been payable, but for the exemption.
4. **Business exhibition services**
- 4.1** Business exhibition service is a service rendered to an exhibitor by an organizer of a business exhibition that intends to market, promote, advertise or show case products or services for growth in business of the producers or providers of such products or services. Thus, organizers of events such as trade fairs, road shows, fashion shows, display show-cases kept in airports, railway stations, hotels etc. would be covered under this new levy. A display of consumer goods in shops or shopping centers for customers to select and purchase would normally not attract any service tax, as normally no separate charges are collected by the shop-keepers for displaying such goods. However, in case an amount is collected for merely displaying an item, the same would be chargeable to service tax.
- 4.2** While event management service (a currently taxable service) also relates to organizing such events, but in that case, the services are rendered to the organizer by an event manager in relation to planning, promoting, organizing etc. Thus, an organizer of a business exhibition is not covered under Event Management Services, but would be covered under the new levy of 'Business Exhibition Services'. Similarly, while services rendered in relation to a circular, label, documents, hoardings or any other audio visual representation of a product or service falls under 'advertisement services', the services relating to actual exhibition or display of the product or services would fall under the category of 'Business Exhibition Services'.
5. **Airport services:** Services provided in an airport or civil enclave, to any person by Airports Authority of India (AAI), a person authorized by it, or any other person having charge of management of an airport are taxable under this category. This includes variety of services provided to airlines, as well as for cargo and passenger handling such as security, transit facilities, landing charges, terminal navigation charges, parking and housing charges and route navigation facility charges. It would be on the gross amount chargeable by AAI or other such authorized person. Thus, charges such as royalty, license fees etc. collected by AAI from other service providers at the airport such as ground handling, security, common user terminal services etc. are chargeable to service tax. However, in case a part of airport/ civil enclave premises is rented / leased out, the rental/lease charges would not be subjected to service tax, as the activity of letting out premises is not rendering a service.
6. **Transport of goods by air:** Services provided by an aircraft operator (i.e. commercial concern like an airlines) in relation to transport of goods by an aircraft falls under this category. Thus, in addition to the actual air-freight charges, all charges collected towards storing, handling, loading/unloading (done in relation to air transportation of cargo) by an

airlines are also chargeable to this levy.

7. **Survey and exploration of minerals:** The service tax would be leviable when the service of survey and exploration of minerals is provided by any person to a customer. The survey and exploration may result in locating ores, crude etc. Subsequent to survey and exploration, the mineral is extracted and transported for refining, processing and production. The service tax under this category would be limited to the services rendered in relation to survey and exploration only and not on the activity of actual extraction after the survey and exploration is complete. The transport, refining, processing or production of the extracted products would also be out of the ambit of service tax. Activities such as seismic survey, collection/ processing/interpretation of data and drilling or testing in relation to survey and exploration would, however, fall within the ambit of taxable service.
8. **Opinion poll services:** Services provided by an opinion poll agency (i.e. any person providing that service) in relation to opinion polls are taxable under this category. Opinion poll means securing information on public opinions regarding social, economic, political and other issues. The term 'securing' would include activities like selecting the target groups, preparing questionnaires, gathering opinions from such target groups, collating their responses, drawing conclusions or analyzing trends and preparing reports based thereon. A similar service i.e. 'market research agency service' is taxable since 1998. However, that service includes conducting of market research in relation to products, services and utilities. Opinion polls conducted to secure information on economic issues do not include such market researches about specific products, services or utilities. Therefore, obtaining opinion of general public on economic issues like price rise, reaction of people to certain government or corporate policies etc., would fall under the category of opinion poll services while information gathered in relation to specific products, services etc. would fall under 'market research agency service'.
9. **Intellectual property services (other than copyrights):**
  - 9.1 Intellectual property emerges from application of intellect, which may be in the form of an invention, design, product, process, technology, book, goodwill etc. In India, legislations are made in respect of certain Intellectual Property Rights (i.e. IPRs) such as patents, copyrights, trademarks and designs. The definition of taxable service includes only such IPRs (except copyright) that are prescribed under law for the time being in force. As the phrase 'law for the time being in force' implies such laws as are applicable in India, IPRs covered under Indian law in force at present alone are chargeable to service tax and IPRs like integrated circuits or undisclosed information (not covered by Indian law) would not be covered under taxable services.
  - 9.2 A permanent transfer of intellectual property right does not amount to rendering of service. On such transfer, the person selling these rights no longer remains a 'holder of intellectual property right' so as to come under the purview of taxable service. Thus, there would not be any service tax on permanent transfer of IPRs
  - 9.3 In case a transfer or use of an IPR attracts cess under Section 3 of the Research and Development Cess Act, 1986, the cess amount so paid would be deductible from the total service tax payable. (refer notification No.17/2004-ST, dated 10.09.2004).
10. **Forward contract services:** As per the provisions of Forward Contract (Regulation) Act, 1952, a forward contract is a contract for delivery of goods, which is not a ready delivery contract. For commodities notified under the Act, forward contracts can be entered into only through members of association recognized under that Act. For other commodities, future trading can be done through associations registered with Forward Market Commission. The levy of service tax under this category is on the services provided.

members of such associations (commonly called as commodity exchanges) to any person in relation to forward contracts.

11. **Pandal or shamiana services and Outdoor catering services**

**11.1** A person providing services, directly or indirectly, in connection with preparation, arrangement, erection or decoration of a pandal or shamiana (i.e. a place specially prepared for organizing official, social or business functions) is a 'pandal or shamiana contractor'. Service provided by him in any such manner, including that of a caterer is liable to service tax under the category of 'Pandal or Shamiana Contractor service'.

**11.2** Similarly, catering services provided by a caterer at a place other than his own place is taxable as 'outdoor catering service'.

**11.3** The following abatement/exemptions have been allowed in respect of ,-

**(A) Outdoor caterer:**

1. 50% abatement, when bill includes charges for food also (refer notification no. 20/04-ST, dated 10.09.2004)
2. Full exemption, to caterers providing service in academic institutions, medical establishments or railway trains (refer notification no.19 & 21 /04-ST, both dated 10.09.2004)

**(B) Pandal Shamiana:** 30% abatement, when bill includes charges for food also (refer notification no.22/04-ST, dated 10.09.2004)

**11.4** It is clarified that pandal/shamiana services provided for pure religious ceremonies or congregation, for example, for worship of Gods/ Goddesses, are not liable to service tax. It is also clarified that in case a café, hotels, restaurants etc. delivers food to home and no charge, other than that for the cost of the foods, is charged (i.e. free home delivery) no service tax is leviable.

12. **TV and radio programme production:** Services provided by a TV or radio programme producer have been brought under the purview of taxable service. Any programme produced (or any service rendered in connection of producing such programme) by a commercial programme producer, for telecasting/ radio transmission by a broadcaster would fall under this category of taxable service including cases where a programme is sold to the broadcaster. However, a service rendered by an employee of the service receiver (i.e. the broadcaster) or by an amateur photographer who, say, shoots a footage for himself, would not be charged to service tax.

13. **Construction services (commercial and industrial buildings or civil structures)**

**13.1** Services provided by a commercial concern in relation to construction, repairs, alteration or restoration of such buildings, civil structures or parts thereof which are used, occupied or engaged for the purposes of commerce and industry are covered under this new levy. In this case the service is essentially provided to a person who gets such constructions etc. done, by a building or civil contractor. Estate builders who construct buildings/ civil structures for themselves (for their own use, renting it out or for selling it subsequently) are not taxable service providers. However, if such real estate owners hire contractor/ contractors, the payment made to such contractor would be subjected to service tax under this head. The tax is limited only in case the service is provided by a commercial concern. Thus service provided by a laborer engaged directly by the property owner or a contractor who does not have a business establishment would not be subject to service tax.

**13.2** The leviability of service tax would depend primarily upon whether the building or civil

structure is 'used, or to be used' for commerce or industry. The information about this has to be gathered from the approved plan of the building or civil construction. Such constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable, being non-commercial in nature. Generally, government buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally government constructions would not be taxable. However, if such constructions are for commercial purposes like local government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to service tax.

**13.3** In case of multi-purpose buildings such as residential cum commercial construction, tax would be leviable in case such immovable property is treated as a commercial property under the local/ municipal laws.

**13.4** The definition of service specifically excludes construction of roads, airports, railway transport terminals, bridge, tunnel, long distance pipelines and dams. In this regard it is clarified that any pipeline other than those running within an industrial and commercial establishment such as a factory, refinery and similar industrial establishments are long distance pipelines. Thus, construction of pipeline running within such an industrial and commercial establishment is within the scope of the levy.

**13.5** The gross value charged by the building contractors include the material cost, namely, the cost of cement, steel, fittings and fixtures, tiles etc. Under the Cenvat Credit Rules, 2004, the service provider can take credit of excise duty paid on such inputs. However, it has been pointed out that these materials are normally procured from the market and are not covered under the duty paying documents. Further, a general exemption is available to goods sold during the course of providing service (Notification No. 12/2003-ST) but the exemption is subject to the condition of availability of documentary proof specially indicating the value of the goods sold. In case of a composite contract, bifurcation of value of goods sold is often difficult. Considering these facts, an abatement of 67% has been provided in case of composite contracts where the gross amount charged includes the value of material cost. (refer notification No.15/04-ST, dated 10.09.2004) This would, however, be optional subject to the condition that no credit of input goods, capital goods and no benefit (under notification no. 12/2003-ST) of exemption towards cost of goods are availed.

**14. Extension of service tax on installation and commissioning, to erection services:**

Service tax was levied on commissioning and installation of plant, machinery and equipment w.e.f. 1.7.2003. The general practice is that 'erection, commissioning and installation' are contracted as a composite package. There have been a number of doubts and queries regarding the distinction between erection and commissioning/installation. Erection would refer to the civil works to installation/commissioning of a plant or machinery. In this year's budget, the scope of service tax under installation and commissioning is being extended to include erection also. Erection involves civil works, which would otherwise fall under the category of construction services. However, in case of a composite contract for erection, commissioning and installation, the erection charges would be taxed as part of this category of service.

**15. Extension of service tax on air travel agents and rail travel agents to other travel agents:**

At present, service tax is leviable on air travel agents and rail travel agents. Travel agents of other modes of transport (road, water) are not covered under service tax. The scope of service tax has been extended to include all travel agents. The taxable service is the service provided by travel agent in relation to the booking of passage for travel by

- modes other than air and road. The value of taxable service would be the commission/fee charged by the travel agent from the customer.
16. **Sub-brokers** : Services provided by brokers, sub-brokers to investors in connection with sale and purchase of securities listed on recognized stock exchanges would be subjected to service tax.
17. **Extension of service tax on cable operators to Multi system operators (MSOs)** : In cable TV services, broadcast channels transmit television signals to multi system operators (MSO) who further send them to the cable operator. The services provided by the MSOs to the cable operators have been made taxable.
18. **Expansion of Business auxiliary service**
- 18.1** The scope of an existing taxable service (i.e. Business Auxiliary Service) has been expanded to include activities relating to procurement of inputs, production of goods (not amounting to manufacture) or provision of services on behalf of a client. The tax is leviable only when the service provider is a commercial concern.
- 18.2** The pre-budget definition of Business auxiliary Service covered services, which relate to the sale and marketing side of a business. However, the auxiliary services which relate to procurements, inventory, production (or provision in case of services) were not covered. The present definition intends to bring all business auxiliary services relating to procurement, inventory and production under service tax. Thus, the procurements of input, capital goods or input services as defined in the CENVAT Credit Rules, by a commercial concern for a client i.e. a person producing goods or providing services would be now taxable under this category. Similarly, if a commercial concern produces goods on behalf of the client or provides service on behalf of a client, such activities would come under the scope of this service, unless the activity of service provider amount to manufacture in terms of the central excise law. The aim of all such activities is production of goods or provision of services, the whole or part of which is being carried out by the service provider (i.e. the agent) on behalf of the client. Such activities include procurements, productions or service providing activities done for the client.
- 18.3** The service tax is, however, being restricted to only those cases where the service provider is a factory governed by the Factories Act, 1948, a company established by or under the Companies Act, 1956 or a corporation or a body corporate established by or under any law, partnership firms (whether or not registered), societies registered under Societies Registration Act, 1860 or under any law and any co-operative society established by or under any law. However, services in relation to agriculture, printing, textile processing and education would remain exempt even if provided by such service providers. (refer Notification no.14/04-ST, dated 10.09.2004)
19. **Expansion of banking and other financial services**
- 19.1** The existing taxable service i.e., 'banking and other financial services', has been expanded both in terms of its coverage and the types of service providers. Financial services would now also include specified financial services, namely, lending, issue of pay order, demand draft, cheque, letter of credit, bill of exchange, providing a bank guarantee, overdraft facility, bill discounting, safe deposit lockers, or safe vaults and operation of bank accounts. The interest amount would, however, remain excluded from the purview of service tax. In addition to banking company, financial institution including a non-banking financing company, body corporate and any other commercial concern providing financial services will also be covered.
- 19.2** The 'interest on loans' has been specifically excluded by way of amendment to the provisions relating to valuation (S.67). All such interests that are in the nature of interest



on loans would thus remain excluded from taxable value. Further, clarifications on these issues would be issued shortly.

**19.3** Collection and other bank charges in relation to taxes / duties collected on behalf of the Union/State Governments and Union Territories have been exempted from service tax. (refer notification No. 13/04-ST, dated 10.09.2004)

20. **Extension of tour operator service to package tour operators using different modes of transport** :

At present, tour operator service covers package tour operators also. However, under the present definition, such package tours attract service tax only if such tours involve modes of transport other than road (say a combination of air-rail-cab travel). The definition of tour operator has been suitably expanded. While the existing levy on tour operators engaged in operating tours in tourist vehicles remains as such, in case of a package tour (which are planned, scheduled, organized or arranged by tour operators), the scope of the levy is being extended by removing the limitation regarding transportation by tourist vehicles only. Such tourist operators would be subjected to service tax irrespective of the mode of transport used during such tours. The abatements (notification no.39/97-ST) in case of package tour operators (providing transportation and accommodation) would remain at 60%.

21. **Life Insurance services** :

**21.1** In Budget 2004, it has been decided to levy service tax on that portion of the service which pertains to risk element. The levy would not be applicable to such premium of the existing policies, which were paid before the new levy comes into force.

**21.2** It has been provided that in the case of composite policies (risk plus saving) life insurer can at his option pay 1% of the total premium towards discharge of service tax liability. This shall not be applicable in case an insurance policy is towards risk only or where the premium gives details of risk premium and other premium separately. (refer notification No. 11/04-ST, dated 10.09.2004). However, those insurance companies who want to pay tax on risk premium as certified by the Appointed Actuary on a company basis can do so. The insurance companies may be allowed to pay monthly service tax provisionally, based on estimates. The monthly estimated (i.e. provisional) duty payment for the entire company would be based on a provisional certificate issued by the Appointed Actuary, subject to final certification at the end of the year. At the end of the financial year, when the sum at risk is calculated and certified by the Actuary, the liabilities would be finalized and the companies would pay the balance tax or adjust the excess tax paid.

22. **Vocational and Recreational Coaching Institute** : Vocational and recreational training institutes have been exempted from service tax. (refer notification No.24/04-ST, dated 10.09.04)

23. **Service tax on IT industry:**

Taxable services provided in respect of Enterprise Resource Planning (ERP) software systems by a management consultant for management of any organization has been exempted. (refer Notification no. 16/04-ST, dated 10.09.2004).

**23.5** Notification no. 8/2003-ST exempts services provided by call centres. For this notification, call centres mean a commercial concern which provides assistance, help or information, through telephone on behalf of another person. The definition of call centres has been modified as 'a commercial concern which provides assistance, help or information or contacts current or prospective customers for sales, telemarketing, payments through telephone, lease lines, satellite links, mail fax, web chat and using information systems for monitoring and recording information on behalf of another person'. (refer to notification No. 12/04-ST, dated 10.09.2004)

24. **Restriction on availment of credits and exemptions towards goods sold, in cases where abatements are allowed**
- 24.1** In cases of specified services, like tour operators, rent-a-cab, mandap-keeper providing catering services, erection, commissioning and installation etc., abatements are allowed to neutralize the cost of materials/goods supplied or used during the course of provision of service. These abatements were allowed when cross credit of excise duty and service tax was not available. Service tax like Cenvat is basically a value added tax which is operated through credit mechanism. It is being provided that in all such cases, the abatement would be conditional, subject to non-availment of input goods and capital goods credit under the new Cenvat Credit Rule, 2004 and also non availment of benefit under notification no 12/2003-ST. (refer notification No. 12/04-ST, dated 10.09.2004) The credit of input services would, however, be available.
- 24.2** Exemption no. 12/2003-ST provides that the value of goods and materials sold by the service provider during the course of providing service shall remain excluded from value of taxable service subject to production of documentary proof of value of such sale. It is being provided that benefit of abatement would not be available to any service provider availing this concession. Also, this concession would be subject to condition that either no CENVAT credit has been availed on such goods or if already availed, it is reversed prior to the sale of such goods. ( refer notification No. 12/04-ST, dated 10.09.2004)
25. **Withdrawal of exemption to engineering consultancy services in relation to computer software**: The exemption to services provided by a consulting engineer in relation to computer software (notification No. 4/99-ST) has been withdrawn (refer notification no. 23/04-ST, dated 10.09.2004).
26. **Transport of goods by road by a goods transport agency**: In pursuance to an agreement between the Government and representatives of the transport industry, a Committee has been set up to look into appropriate mechanism/modalities for collection and payment of service tax by commercial concerns and the rules/notifications will be finalized in consultation with the Committee. The Committee would give its report within two months. In terms of the agreement, the tax would be levied and collected in a manner to be notified. No tax would, therefore, be payable by the goods transport agency till such time government comes out with the relevant rules/ notifications prescribing the modalities for levy and collection.
27. Many of the services covered under fresh levies may include activities that were taxable earlier under different category of taxable services. While the classification of a taxable service would be in terms of section 65A of the Finance Act, 1994, it should be ensured that there is no double taxation and a service is taxed only once under the appropriate category.
28. Notification Nos 18 and 25/04-ST dated 10.9.2004 have been issued so as to exempt the payments received by the service provider before 10<sup>th</sup> September, 2004 in respect of new services and expanded services.
29. The CENVAT Credit Rules, 2004 have been issued allowing credit across goods and services (refer Notification No.23/04-CE(NT), dated 10.09.2004).
30. The above changes may be immediately brought to the notice of the field formations and the trade. All possible assistance and facilitation may be provided to providers of such services who have been subjected to the above changes, so that the implementation of these new levies or other changes is smooth and the tax payers do not face any problem in this regard.

(Gautam Ray)  
Joint Secretary (TRU)  
10.09.2004