

Government of India
Ministry of Finance
Department of revenue
Tax Research Unit

Gautam Bhattacharya
Joint Secretary (Tax Research Unit-II)
Telephone No. 011-23093027
Fax No. 011-23093037
e-mail. g.bhattacharya@nic.in

D.O.F. No.334/1/2010-TRU
New Delhi, dated 26th February 2010

Dear Madam/Sir,

Subject: Changes proposed in service tax law and procedure in Union Budget
2010-11 - regarding

The Finance Minister has introduced the Finance Bill, 2010, in the Lok Sabha on 26th February 2010. Clause 75 and 76 of the said Bill covers the legislative changes relating to Chapter V of the Finance Act, 1994 (i.e. Service Tax). While some fresh exemptions from service tax have been granted, some existing exemptions have either been withdrawn or modified. All these changes have been notified under notification nos. 2/2010-ST to 17/2010-ST all dated 27th February 2010. While most of the legislative changes in the Finance Act, 1994 would come into force from a date to be notified after the enactment of the Finance Bill, 2010, the notifications (except notification nos. 7/2010-ST, 8/2010-ST and 9/2010-ST which would come into effect from 01.04.2010) would become effective from 27th February 2010. We have attempted to bring all the important changes pertaining to service tax relevant at this stage to your notice through this letter and its Annexures. Upon enactment of the Finance Bill, 2010, when the legislative provisions come into effect, another communication would be sent to you explaining the changes in detail and addressing the doubts and queries raised by you and the trade in the intervening period. To avoid repetition, no separate Explanatory Notes are being issued for service tax.

2. **NEW SERVICES INCLUDED IN THE LIST OF TAXABLE SERVICES**

2.1 Eight services, hitherto not included separately within the list of taxable services, are being included in the said list through appropriate amendments in sub-section 105 of Section 65 of the Finance Act, 1994. One of them, namely promotion, marketing etc. of lottery and similar games of chance presently figures as part of Business Auxiliary Service (BAS). This is now being introduced as an independent entry in the list of taxable services. Consequential amendments have been made in the definition of the BAS.

2.2 The new services are,-

- Services of promoting, marketing or organizing of games of chance, including lottery [Section 65 (105) (zzzzn)].

- Health services, namely:
 - health check up undertaken by hospitals or medical establishments for the employees of business entities^{##}; and
 - health services provided under health insurance schemes offered by insurance companies^{##}.

[Section 65 (105) (zzzzo)]

[^{##}The tax on these health services would be payable only to the extent payment for such medical check up or preventive care or treatment etc. is made directly by the business entity or the insurance company to the hospital or medical establishment].

- Services provided for maintenance of medical records of employees of a business entity [Section 65 (105) (zzzpz)].
- Services of promoting of a 'brand' of goods, services, events, business entity etc [Section 65 (105) (zzzqq)].
- Services of permitting commercial use or exploitation of any event organized by a person or organization [Section 65 (105) (zzzrz)].
- Services provided by Electricity Exchanges [Section 65 (105) (zzzss)].
- Services related to two types of copyrights hitherto not covered under existing taxable service 'Intellectual Property Right (IPR)', namely, those on (a) cinematographic films; and (b) sound recording [Section 65 (105) (zzztt)].
- Special services provided by a builder etc. to the prospective buyers such as providing preferential location or external or internal development of complexes on extra charges [Section 65 (105) (zzzuz)].

2.3 The scope of these services and other significant details are enclosed in **Annexure A**. The tax on these services would come into effect from a notified date after the enactment of the Finance Bill, 2010. It is requested that during this interim period, the relevant information for each of the aforementioned services such as revenue and taxpayer potential, issues that require further clarification, anticipated legal or implementation problems that are likely to be faced, may please be gathered and inputs of significance, if any, may be brought to the notice of Tax Research Unit latest by the second week of March, 2010.

3. ALTERATION OR EXPANSION IN THE SCOPE OF EXISTING SERVICES

3.1 In the case of following existing taxable services, the scope has been altered either to expand their scope or to remove certain difficulties that have been faced during tax implementation. These changes are as follows,-

- The scope of the taxable service 'Air Passenger Transport Service' [section 65 (105) (zzzo)] is being expanded to include domestic journeys, and international journeys in any class.
- Presently the taxable service, 'Information Technology Software Service' [section 65 (105) (zzzze)] is subjected to tax only in cases where such IT software is used for furtherance of business or commerce. The scope of the taxable service is

- being expanded to tax such service even if the service provided is used for purposes other than business or commerce.
- An Explanation is being added in the definition of the taxable service 'Commercial Training or Coaching Service' [section 65 (105) (zcc)] to clarify that the term 'commercial' appearing in the relevant definitions, only means that such training or coaching is being provided for a consideration, whether or not such training or coaching is conducted with a profit motive. This change is being given retrospective effect from 01.07.2003.
 - In the definition of the taxable service 'Sponsorship Service' [section 65 (105) (zzzn)], the exclusion relating to sponsorship pertaining to sports is being removed.
 - In the definition of the taxable services 'Construction of Complex service' [section 65 (105) (zzzh)], and 'Commercial or industrial construction service' [section 65 (105) (zzq)], it is being provided that unless the entire consideration for the property is paid after the completion of construction (i.e. after issuance of completion certificate by the competent authority), the activity of construction would be deemed to be a taxable service provided by the builder/promoter/developer to the prospective buyer and the service tax would be charged accordingly.
 - Amendments are being made in the definition of the taxable service 'Renting of immovable property' [section 65 (105) (zzzz)] to,-
 - (i) provide explicitly that the activity of 'renting' itself is a taxable service. This change is being given retrospective effect from 01.06.2007; and
 - (ii) provide that renting of vacant land, where the agreement or contract between the lessor and lessee provides for undertaking construction of buildings or structures on such land for furtherance of business or commerce during the tenure of the lease, shall be subjected to service tax.
 - The definitions of the taxable services, namely the 'Airport Services' [section 65 (105) (zzm)], the 'Port Services' [section 65 (105) (zn)] and the 'Other Port Services' [section 65 (105) (znl)] are being amended to provide that,-
 - (a) all services provided entirely within the airport/port premises would fall under these services; and
 - (b) an authorization from the airport/port authority would not be a pre-condition for taxing these services.
 - An explanation is being added in the definition of the taxable service 'Auctioneer's Service' [section 65 (105) (zzzt)] to clarify that the phrase 'auction by government' means an auction involving sale of government property by any auctioneer and not when the government acts as an auctioneer for sale of the private property.
 - The definition of the taxable service 'Management of Investment under ULIP Service' [section 65 (105) (zzzt)] is being amended to provide that the value of the taxable service for any year of the operation of policy shall be the actual amount charged by the insurer for management of funds under ULIP or the maximum amount of fund management charges fixed by the Insurance Regulatory & Development Authority (IRDA), whichever is higher.
- 3.2 The scope of modifications in the aforesaid taxable services and other significant details pertaining to amendments being made in the Finance Act, 1994 are enclosed in **Annexure 'B'**. These modifications would come into effect from a notified date after the enactment of the Finance Bill, 2010. It is requested that during this interim period, the impact of the above changes, issues that require further clarification, anticipated legal or implementation

problems may please be assessed and inputs in this regard may be brought to the notice of Tax Research Unit latest by the second week of March, 2010.

4. **OTHER AMENDMENTS TO THE FINANCE ACT, 1994**

4.1 Finance Act, 1994 is being amended to,-

- a) insert an explanation in sub-section (3) of Section 73 to clarify that no penalty shall be imposed where service tax along with interest has been paid before issuance of notice by the department. This would be effective from the date of enactment of the Finance bill, 2010; and
- b) provide definition of the term 'business entity' so as to include an association of persons, body of individuals, company or firm but to exclude an individual. This would be effective from a notified date after the enactment of the Finance bill, 2010

4.2 For other editorial changes being made in the Finance Act, 1994, please refer to the Finance Bill, 2010.

5. **EXEMPTIONS**

5.1 The following exemptions from service tax are being provided with effect from 27th February, 2010, namely,-

- Statutory taxes charged by any government (including foreign governments, where a passenger disembarks) on air passenger would be excluded from taxable value for the purpose of levy of service tax under the Air Passenger Transport Service. (Notification No.15/2010-ST, dated 27th February, 2010 refers).

- Exemption from service tax is being provided to services relating to 'Erection, Commissioning or Installation' of,-
 - o Mechanized Food Grain Handling Systems etc.;
 - o Equipment for setting up or substantial expansion of cold storage; and
 - o Machinery/equipment for initial setting up or substantial expansion of units for processing of agricultural, apiary, horticultural, dairy, poultry, aquatic, marine or meat products.(Notification No.12/2010-ST, dated 27th February, 2010 refers).

- Packaged I.T. software, pre-packed in retail packages for single use, is being exempted from service tax leviable under IT Software Service, subject to specified conditions. These conditions include that either the customs duty (in case of import) or excise duty (in case of domestic production) has been paid on the entire amount received from the buyer (Notification No.17/2010-ST and No.2/2010-ST, both dated 27th February, 2010 refer).

- At present, exemption from service tax is available to transport of fruits, vegetables, eggs or milk by road by a goods transport agency. The scope of exemption is being expanded by including food grains and pulses in the list of exempted goods (Notification No.4/2010-ST, dated 27th February, 2010 refers).

- Exemption from service tax is being provided to Indian news agencies under 'Online Information and Database Retrieval Service' and 'Business Auxiliary

Service' subject to specified conditions (Notification No.13/2010-ST, dated 27th February, 2010 refers).

- Exemption from service tax is being provided to the 'Technical Testing and Analysis Service' and 'Technical Inspection and certification service' provided by Central and State seed testing laboratories, and Central and State seed certification agencies (Notification No.10/2010-ST, dated 27th February, 2010 refers).
- Exemption from service tax is being provided to the transmission of electricity (Notification No.11/2010-ST, dated 27th February, 2010 refers).

6. WITHDRAWALS OR AMENDMENTS TO EXISTING EXEMPTIONS

6.1 The following changes have been brought about in the existing exemptions,-

- a) Exemption from service tax on service provided in relation to 'Transport of Goods by Rail' by notification No.33/2009, dated 1st September, 2009 is being withdrawn (Notification No.7/2010-ST, dated 27th February, 2010 refers). The exemption provided to certain specified goods transported by rail vide Notification No. 28/2009-ST, dated 31st August, 2009, which was subsequently withdrawn vide notification No. 36/2009-ST dated 9th September, 2009, has been restored. (Notification No. 8/2010-ST, dated 27th February, 2010 refers). An abatement of 70% of the gross value of the freight charged on goods (other than exempted goods) is being provided vide notification No. 9/2010-ST dated 27th February, 2010 by adding the service of 'Transport of goods by rail' in notification No. 1/2006-ST dated 01.03.2006. All these changes will also come into effect from 01.04.2010.
- b) The exemption from service tax on 'Commercial training or coaching service' extended to vocational training institutes vide notification No. 24/2004-ST dated 10.09.2004 is being limited by introducing a new definition of vocational training institutes. Service tax exemption will be available only to industrial training institutes or industrial training centres affiliated to National Council of Vocational Training (NCVT) and offering courses in the designated trades covered under Schedule I of the Apprentices Act, 1961. The List figuring under Schedule I of the Act covers engineering as well as non-engineering skills/trades (Notification No.3/2010-ST, dated 27th February, 2010 refers).
- c) Exemption from service tax, presently available to Group Personal Accident Scheme provided by Govt. of Rajasthan to its employees, under General Insurance Service is being withdrawn (Notification No.5/2010-ST, dated 27th February, 2010 refers).
- d) Notification No.1/2002-ST dated 01.03.2002 is being superceded by Notification No.14/2010-ST, dated 27th February 2010 to provide that the construction and operation of installations, structures and vessels for the purposes of prospecting or extraction or production of mineral oils and natural gas in the Exclusive Economic Zone and the Continental Shelf of India and supply of any goods connected with these activities would be within the purview of the provisions of Chapter V of the Finance Act, 1994. Similar changes have been made in the definition of the term 'India' appearing in the Export of Services Rules, 2005 and Taxation of Services (Provided from Outside India & Received in India) Rules, 2006. (Notification No.6/2010-ST and Notification No.16/2010-ST, both dated 27th February, 2010 refers).

6.2 The revenue impact of these withdrawals and amendments [especially those mentioned under S. Nos. (1) and (2)] is significant. In the case of service tax on railway freight, a period of one month (i.e. upto 31.03.2010) has been provided for the railways to adjust freight rates, accounting system etc. During this period the jurisdictional officers should contact the local railways officials to finalize the modalities to operationalize this levy. Similarly, a quick survey should be conducted to ascertain the number of commercial coaching and training centres, which hitherto were availing the exemption and would now fall under the tax net. For finding out the eligible vocational training courses listed under of the Apprentices Act, 1961, please look at the web site of the Directorate General of Employment and Training, Ministry of Labour (dget.nic.in). Immediate steps should be taken to identify and allot registration to such institutes. Broad estimation of the numbers of the new taxpayers, revenue potential must be carried out and the legal/administration issues, if any, should be identified.

7. AMENDMENT TO EXPORT OF SERVICE RULES, 2005

7.1 Export of Service Rules, 2005 have been amended as follows:

- The taxable service, namely 'Mandap Keeper Service' has been shifted from the list under rule 3(1) (ii) [i.e. performance related services] to the list under rule 3(1)(i) [immovable property related services] and three taxable services, namely 'Chartered Accountant Services', 'Cost Accountant Services' and 'Company Secretary's Services', have been shifted from the list under rule 3(1) (ii) [i.e. performance related services] to the list under rule 3(1)(iii) [residual category of services]. Notification No.6/2010-ST, dated 27th February 2010 refers. Identical changes have been made under the Taxation of services (Provided from Outside India and Received in India) Rules, 2006 as well (Notification No.16/2010-ST, dated 27th February 2010 refers);
- The condition prescribed under rule (2) (a) i.e. 'such service is provided from India and used outside India' has been deleted (Notification No.6/2010-ST, dated 27th February 2010 refers).

6.1 These changes have been carried out keeping in view certain difficulties that were faced by the trade while following the aforesaid rules.

8. AMENDMENT TO NOTIFICATION NO. 5/2006-CE(NT) ISSUED UNDER RULE 5 OF THE CENVAT CREDIT RULES, 2004

8.1 It may be recalled that a number of representations were received from exporters, especially the exporters of services regarding difficulties being faced in availing the benefit of refund of accumulated credit under the scheme prescribed under Notification No. 5/2006-CE (NT) dated 14.03.2006, issued under rule 5 of the CENVAT Credit Rules, 2004. While certain issues germinated from the wordings used in the provisions of the notification or interpretation of such provisions, other issues were more in the nature of administrative difficulties in operating the scheme. As an immediate measure, CBEC issued a clarificatory circular No. 120/01/2010-ST, dated 19.01.2010. It was however felt that a permanent solution would require supplementing the clarification with certain amendments to the notification, part of which had to be 'retrospective' in nature. Accordingly, Notification No. 5/2006(CE) (NT) has been amended vide Notification No. 7/2010-CE (NT), dated 27th February 2010. This mainly deals with the

procedure that needs to be adopted in case of the new refund claims. However, to resolve the disputes arising on account of the wordings/ illustration provided in the notification, the same is being amended retrospectively (w.e.f. 14.03.2006) (Clause 73 of the Finance Bill, 2010 refers) so as to resolve the disputes in respect of pending cases as well. Therefore to visualize the entire revamped and simplified refund scheme, both the amending notification and the Finance Bill provision must be read in conjunction. A note on the issue is enclosed as **Annexure C**.

9. It may be noted that this d.o. letter does not set out the changes in an exhaustive fashion. It gives a broad view of the changes made in the service tax law and procedure in Budget 2010. It should not be used for interpreting any provisions in the case of any ambiguity. The wordings used in the statutory provisions and the notifications alone have legal standing. Therefore, they must be read carefully for interpretation, tax compliance and tax administration purposes.

10. Although all efforts have been made to draft the statutory provisions in the Finance Bill and the notifications correctly, it is possible that some errors, inconsistencies, omissions may have escaped our notice inadvertently. I shall be extremely thankful if you could point out such errors to me or to my colleagues immediately so that the same can be rectified. Further, please do not hesitate to contact us in case of any doubt, difficulty, and suggestion relating to interpretation or implementation of the provisions mentioned above. For this, you may contact either me or my colleagues,-

- Shri Roopam Kapoor (OSD-TRU)
Tel; 23095590, e-mail: roopamkapoor@gmail.com
- Shri J.M.Kennedy (Director-TRU)
Tel: 23092634, e-mail: jm.kennedy@nic.in
- Shri Samar Nanda (TO-TRU)
Tel; 23092037, e-mail:samarnanda@gmail.com

11. I take this occasion to thank the Hon'ble Ministers, the Secretary Revenue and other senior officers of the Ministry of Finance, the Chairman and the Members of (CBEC) for their guidance, direction and support. Member (Budget) was kind enough to participate with us throughout the budget exercise at the shop floor level and no amount of thanks can reciprocate that. I thank all my colleagues in the department, whether posted in the Board's office or in the field formations as well as the trade representatives who gave us useful inputs and suggestions. Finally, my personal thanks to all the colleagues, officers and the staff members of TEAM-TRU for giving me advice, help and support especially during certain tiring, agonizing and frustrating moments.

Wish you a very Happy Holi and with regards,

Yours sincerely,

(Gautam Bhattacharya)

To

All Chief Commissioner/Directors General
All Commissioners of Central Excise
All Commissioners of Central Excise & Customs
All Commissioners of Service Tax

Scope and the background of the new services included in the List of Taxable Services

1. Services of promoting, marketing or organizing of games of chance, including lottery.

1.1 Lotteries are conducted by various State Governments and are regulated by a Central legislation, i.e. the Lotteries (Regulation) Act, 1998. The said Act provides the conditions, restrictions and prohibitions pertaining to organization of lotteries conducted by the State Governments. Section 4 of the said Act enjoins upon the State Governments to print lottery tickets bearing the imprint and the logo to ensure authenticity of the lottery ticket. It also provides that 'the State Government shall sell tickets either itself or through distributors or selling agents'.

1.2 The State Governments appoint distributors to advertise, promote and sell lottery tickets. Besides the State Governments organizing lotteries, some other games of chance are also being organized. The services provided for promotion or marketing or organizing such games of chance are now being covered by introducing a separate taxable service to cover the services in connection with games of chance, organized conducted or promoted by the client, in whatever form or by whatever name called (such as lottery, lotto) under the 'Games of chance' service. The tax would be applicable also to such games conducted online. Consequently, the Explanation appearing under 'Business Auxiliary Service' is being deleted.

2. Health services undertaken by hospitals or medical establishments for the employees of business organizations and health services provided under health insurance schemes offered by insurance companies.

2.1 With the change in the style of functioning of the business organizations, health check up is a routine facility provided by the employers to their employees. The main purpose is to ensure that the productivity of the organization is not adversely affected due to ill health of its employees. Such activities, commonly known as corporate health check up schemes, are undertaken by designated hospitals in order to detect any medical indicator or to ensure timely diagnosis of any disease so that prophylactic measures can be taken. In such cases, the hospital providing these services charge the employer i.e. the business organization and it constitutes expenditure for the latter. In certain cases (for example, in case of flight crew) pre-flight check ups are conducted not only to test the fitness levels but also to rule out the possibility of the flying crew being under intoxication. Such health check up schemes are being brought within the ambit of service tax under the new service.

2.2 A large number of health insurance schemes are being offered by the insurance companies under which charges for hospitalization, surgery, post-surgical nursing etc. are generally paid by the insurance company. Such insurance policies, which fall under the category of general insurance service, are already taxable. Under general insurance service, an insurance company is a service provider to its clients. Under the proposed new service, tax is also being imposed on the medical charges paid by the insurance companies to the hospitals

on behalf of a business entity for its employees. As such, the insurance company would be the service receiver and the tax paid by the hospital would be available to the insurance companies as credit.

2.3 The tax on the above mentioned health services would be payable only if and to the extent the payment for such medical check up or treatment etc. is made directly by the business entity or the insurance company to the hospital or medical establishment. Any additional amount paid by the individual (i.e. the employee or the insured, as the case may be) to the hospital would not be subjected to service tax. This is to ensure that an individual is not required to pay a tax for which he cannot take credit.

3. Services provided for maintenance of medical records of employees of a business entity

3.1 World over, business organizations maintain medical histories of their employees which are used not only for medical purposes but also for finding the suitability of a person for a particular job or for promotion etc. Increasingly, this activity is being outsourced for a consideration. Such records are either maintained by certain designated hospitals or even by independent record keepers for a charge. This activity is now being brought under service tax.

4. Promoting a 'brand' of goods, services, events, business entity etc.

4.1 Commercial advertisement has taken different shapes and forms. Apart from the advertisements in print and visual media and sponsorship, one of the recent trends is to advertise a brand (i.e. of goods, services, events, business houses bearing a particular brand name or house name) usually by using a celebrity (such as sportsperson, film stars, etc.) to associate him/her with the brand. The intended impression that is created in the minds of customers or users is that the products and services of that brand have the level of excellence comparable to that of the celebrity. Unlike in case of advertisements using models, a brand ambassador works under a contract of a reasonably long period, where under he is not only required to advertise the goods or service in different media but also to attend promotional, product launching events, make appearances in public activities related to the brand or the brand holder or use such goods or services in public. The contractual amounts are substantial and it may not only involve an individual celebrity but a group of celebrities such as a cricket team or the actors of a successful film.

4.2 It is important to note that promotion or marketing of sale of goods produced, provided or belonging to a client and promotion or marketing of services provided by the client are already covered under Business Auxiliary Services (BAS). Such activities would continue to remain classified under BAS. The difference between the services classifiable under BAS and the newly proposed service is that the latter has a wider coverage in the sense that mere promotion of a brand would attract tax under this service even if such promotions cannot be directly linked to promotion of a particular product or service. Many companies/corporate houses (for example Sahara, ITC or Tatas) are associated with a range of activities including production/marketing/sale of goods, provision of services, holding of events, undertaking social activities etc. If the brand name / house mark etc. is promoted by a celebrity without reference to any specific product or services etc., it is difficult to classify it under BAS. Such activities, like mere establishing goodwill or adding value to a brand would fall under this newly introduced service.

5. Services of permitting commercial use or exploitation of any event organized by a person or an organization.

5.1 Like intellectual property rights there are certain personal rights such as, right to privacy, easement right, right to secrecy. With expansion in the field of information technology and broadcasting sector, many individuals or organizations offer to share/part with these rights for a consideration. A corporate sponsored cricket match or company sponsored music concert; film award events; celebrities' marriages; beauty contests are some of such private functions, which a large number of viewers like to see on TV or media. In such cases, companies, broadcasting agencies and video producers are given right to capture these events or programmes for their commercial exploitation in future. Often such commercial exploitation results in provision of another taxable service such as broadcasting service or programme production service. The proposed service now seeks to tax the amount received by the person or organization, who permits the recording and broadcasting of the event from the broadcaster, or any other person, who seeks to commercially exploit the event. In many cases, the credit of the tax paid would be available to the receiver of the service.

6. Services provided by Electricity Exchanges

6.1 Under 'Forward Contract Service', tax is payable by exchanges who offer assistance in sale of goods or forward contracts in commodities. However, only forward contracts covered by the Forward Contract (Regulation) Act, 1952 are covered in the scope of taxation. In the recent past, exchanges have been set up for transactions in electricity. The Central Electricity Regulatory Commission authorizes such exchanges. Since electricity exchanges are not covered by Forward Market Regulations, such transactions are not covered under the commodity exchange taxation. The proposed new service seeks to tax the charges recovered for services in relation to assisting, regulating, controlling the business of trading, processing and settlement pertaining to sale or purchase of electricity by the associations authorized by Central Electricity Regulatory Commission.

7. Services related to two types of copyrights hitherto not covered under existing taxable service 'Intellectual Property Right (IPR)', namely, that on (a) cinematographic films and (b) sound recording.

7.1 The right to temporarily transfer or permit the use of Intellectual Property Rights (IPR), namely, trademarks, designs and patents was brought under tax net in 2004. However, one of the IPRs, i.e. copyright has been specifically kept out of the purview of the tax with an intent to encourage authors and artists, as it involves creative works, such as literary work, musical work and artistic work. In Budget 2008, Information Technology (IT) Software Service was also brought under tax net, which apart from involving development, up-gradation, assistance etc. also covered the IPR aspect i.e. right to use the information technology.

7.2 The provisions of copyright are incorporated in the Indian Copyright Act, 1957. As per section 13 of the said Act, the copyright subsists in the following classes of work:

- (a) Original literary, dramatic, musical and artistic works;
- (b) Recording of cinematographic films;
- (c) Sound recordings.

7.3 The first category of copyright has been kept out of the tax net while the second and third categories of copyrights are being made taxable under this service. A cinematographic film means any work of visual recording on **any medium** (emphasis added) produced through a process from which a moving image may be produced. The same may be accompanied with sound reproduction also. Both the recording of the cinematographic film and the accompanying sound track are the property of the producer, who can temporarily transfer it or permit its use by another person for a consideration. It is this activity, which is being taxed under this service. It would have an impact on the royalty payments on both imported and indigenously produced films when the producer/right holder allows such use to another person, say the distributor.

7.4 Similarly, song, its music, lyrics and composition also enjoy the copyright protection to its owner who can commercially exploit it in the manner stated above. Normally, the copyright of music vests in the composer and the copyright of music recorded vests in the producer of the sound recording. It is possible that a lyricist or a singer may hold copyright for the words of a song or the song itself. Merely allowing that song to be recorded is a copyright, which would fall under category (a) of section 13 of the Copyright Act and thus would not be subject to service tax. However, after the performer has transferred his rights to a sound recording company, the sound recording company acquires the copyright mentioned in category (c) of section 13 supra. It is the transfer or allowing use of this right, which would be subjected to tax under the new service.

7.5 As such, depending upon the nature and conditions of the contract, companies distributing music, owners of copyright of cinematographic films etc. would be prospective taxpayers. It may be noted that this taxable service will not cover individual artists, composers, performers etc. as their copyrights fall under clause (a) of Sec. 13 of the Copyright Act.

8. Special services provided by builder etc. to the prospective buyers such as providing preferential location or external or internal development of complexes on extra charges.

8.1 Construction of commercial or industrial structures was brought under service tax net in 2004 while construction of residential complexes became a taxable service in 2005. The scope of the existing services includes construction, completion and finishing, repairs, alterations, renovation or restoration of complexes. It has been reported that in addition to these activities, the builders of residential or commercial complexes provide other facilities and charge separately for them and these charges do not form part of the taxable value for charging tax on construction. These facilities include,-

- (a) prime/preferential location charges for allotting a flat/commercial space according to the choice of the buyer (i.e. Direction- sea facing, park facing, corner flat; Floor- first floor, top floor, Vastu- having the bed room in a particular direction; Number- lucky numbers);
- (b) internal or external development charges which are collected for developing/maintaining parks, laying of sewerage and water pipelines, providing access roads and common lighting etc; (c) fire-fighting installation charges; and (d) power back up charges etc.

8.2 Since these charges are in the nature of service provided by the builder to the buyer of the property over and above the construction service, such charges are being brought under the new service. Charges for providing parking space have been specifically excluded from the scope of this service. Development charges, to the extent they are paid to State Government or local bodies, will be would be excluded from the taxable value levy. Further, any service provided by Resident Welfare Associations or Cooperative Group Housing Societies consisting of residents/owners as their members would not be taxable under this service.

Alteration and expansion in the scope of existing services and other significant changes in the Finance Act, 1994

1. Services provided in an airport or port

1.1 Two services, namely 'port services' and the 'airport services' were introduced in Budgets 2001 and 2004 respectively. The services provided by minor ports covered under 'other ports' became taxable from 2003. The purpose behind creating these services was that since a number of activities are undertaken within the premises of ports and airports, it would be easier to consolidate all such services under one head.

1.2 It was reported that divergent practices are being followed regarding classification of services being performed within port/airport area. In some places, all services performed in these areas [even those falling within the definition of other taxable services] are being classified under the port/airport services. Elsewhere, individual services are classified according to their individual description on the grounds that the provisions section 65 A of Finance Act, 1994 prescribes adoption of a specific description over a general one.

1.3 Further, both the definitions use the phrase 'any person authorised by port/airport'. In many ports/airports there is no procedure of specifically authorizing a service provider to undertake a particular activity. While there may be restriction on entry into such areas and the authorities often issue entry-passes or identity cards, airport/port authorities seldom issue authority/permission letters to a service provider authorising him to undertake a particular task. Many taxpayers have claimed waiver of tax under these services on the ground that the port/airport authority has not specifically authorised them to provide a particular service.

1.4 In order to remove these difficulties, the definitions of the relevant taxable services are being amended to clarify that all services provided entirely within the port/airport premises would fall under these services. Further, specific authorisation from the port/airport authority would now not be a pre-condition for the levy.

2. Auctioneer's service

2.1 Auctioneer's service was introduced in 2006 and is applicable to any service provided in relation to auction of property whether moveable or immovable, tangible or intangible. However, the service, by definition excludes 'auction by government'. This phrase has given rise to confusion. In certain cases, the property belonging to or vested in the Central or the State governments (such as goods confiscated by Customs department) are sold in an auction that is conducted by private organizations. Conversely, in certain cases government bodies, such as Tobacco Board' conducts auction of properties that belong to private individuals or organizations.

2.2 In order to avoid the confusion, it is being clarified through an explanation that the phrase 'auction by government' appearing in the taxable service, namely

'Auctioneer's service' means an auction where government property is being auctioned and not when the government acts as an auctioneer for the private goods.

3. Unit Linked Insurance Plans

3.1 Tax on insurers issuing Unit Linked Insurance Plans (ULIP) was imposed w.e.f. 1-06-2008. The taxable service is the "Management of investment, under unit linked insurance business, commonly known as Unit linked Insurance Plans (ULIP) scheme" by an insurer carrying life insurance business.

3.2 ULIPs are broadly similar to the mutual funds, except that they are required to segregate a certain part of the premium towards the life insurance of the plan holder. Further, unlike in the mutual fund industry, where the funds are managed by an independent Asset Management Company (which is a separate legal entity), in case of ULIP the funds are managed by the insurance company itself. Thus, it is difficult to ascertain the component of the total charges that is attributable to the management of investment.

3.3 Accordingly, for the purpose of valuation for charging of service tax, an Explanation was prescribed which in brief, explained that the taxable value for the purpose of this service is the difference between the (a) premium paid by the policy holder for the Unit Linked Insurance Plan policy; and (b) the sum of premium paid for or attributable to risk cover, whether for life, health or other specified purposes, and the amount segregated for actual investment. In other words the differential amount was considered as the charges for asset management.

3.4 It is however a fact that the amount appropriated by the insurance company is not only asset management but for various activities, such as,-

- a) Premium Allocation Charge: is an upfront deduction from the policy premium, which is generally more than 10% in the first year of ULIP, and continues to be very high for the initial three years. This amount is used for following purposes:
 - i) Initial expenses in marketing the issue, including commission paid to distributors.
 - ii) Cost of conducting medical check up of the ULIP holder and other miscellaneous charges.
- b) Policy administration charges; monthly charges for managing the paperwork and other formalities for the insurance, and are not related to asset management. It is chargeable to service tax under insurance services.
- c) A number of other charges are also charged by the insurance companies, which, *inter alia*, include, policy surrender charges, switching charges, partial withdrawal charges, miscellaneous charges etc.
- d) Fund management charges: This is the amount charged by the insurance company for managing the investible funds, which is intended to be taxed under this service. This amount has been capped for ULIPs by Insurance Regulatory and Development Authority (IRDA) at 1.5% of the gross yield for schemes below 10 years, and 1.25% for schemes above 10 years.

3.5 Since the charge pertaining to asset management alone should form the value for taxable purpose, the explanation provided under the definition of the taxable service is being suitably amended to provide that the value of the taxable service for any year of the operation of policy shall be the actual amount charged by the insurer for management of funds under ULIP or the maximum amount of fund management charges fixed by IRDA, whichever is higher.

3.6 The method of computation for monthly payment of tax by such service providers, would be prescribed at the appropriate time.

4. Transport of passengers by air service:

4.1 The taxes on transport of passengers traveling by air were in operation in the past. These were not in the nature of service tax but operated through separate legislations. Inland Air Travel Tax [@ 15%] was levied on domestic travel in 1989. Foreign Travel Tax [@ Rs. 500 per trip, except to neighboring countries for which the rate was Rs. 150 per trip] was levied on international travel in 1979. These taxes were withdrawn in the interim Budget 2004. In 2006, tax was imposed on international air travel by a passenger embarking in India and traveling in higher [other than economy] classes. This tax continues.

4.2 The taxable service is being suitably amended to extend this levy to cover all domestic and international air passengers embarking in India. The modalities of working out the tax amount including exemptions, abatement etc. would be prescribed at the appropriate time.

5. Expansion of the scope of IT Software Service

5.1 In Budget 2008, services provided in relation to Information Technology (IT) Software, such as development, designing, programming, up-gradation of IT software, providing advice, consultancy and assistance on the matters of IT software and providing right to use IT software, whether supplied on a media or electronically, were brought in the ambit of service tax. However, the tax was limited to cases where such IT software was to be used in the course or furtherance of business or commerce. In other words, these activities are taxable only when the receiver of service exploits them for commercial or business purposes.

5.2 The definition of this taxable service is being suitably amended to extend this levy to cover the aforesaid IT software services provided in all cases i.e. whether or not used in the course or furtherance of business or commerce.

6. Redefining the scope of commercial training and coaching service

6.1 Commercial training and coaching service was introduced in Budget 2003 with a view to tax the mushrooming coaching institutes and training centres which either provide coaching classes for examinations or unrecognized courses in various areas such as, management, marketing, engineering etc. The schools, institutes, colleges and universities providing courses that lead to award of recognized diplomas/degrees and sports education were kept out of tax net. These include universities created under a Central or State Act, institutes recognized by UGC as universities or deemed universities, institutes granted recognition professional councils like AICTE, Medical Council of India, Bar Council of India etc. To distinguish the former types of institutes/centres from the latter, the word

'commercial' was used in the definitions of 'Commercial training and coaching', 'Commercial training and coaching centres' and 'taxable service'.

6.2 The use of the word 'commercial' in these definitions has led to certain unintended consequences. A view has been taken that the term 'commercial' appearing in various definitions implies that the institute must be run with a profit motive to fall under the taxable service. A number of taxpayers resisted paying tax on this ground. In order to clarify the legislative intent, the definition of the taxable service is being suitably amended, through insertion of an Explanation, to clarify that the word 'commercial' means any training or coaching that is provided for a consideration irrespective of the presence or absence any profit motive. This amendment is being carried out retrospectively (from July 2003) so as to resolve the disputes pending at different levels of the dispute settlement system.

7. Expanding the scope of Sponsorship Service

7.1 Business entities often associate their brand names, products or services by sponsoring popular or successful events with intent to obtain commercial benefits of spreading their name, goodwill or reputation to public. It is a form of advertisement. Sponsorship service was brought under tax net in Budget 2006. However, sponsorship of sports events was kept out of the purview of the taxation with a view to encourage sports activity and to provide an avenue for funding sports events.

7.2 Corporate involvement in certain sports such as cricket, golf and tennis has grown rapidly in the recent years and there is a substantial increase in sports events organized by private organizations or business entities. Further, the concept of owning and forming sports clubs that hire the services of sports persons has made many such events highly commercial and profitable activities. The advertisements through sponsorship of such events have created a disparity, as unlike advertisements displayed otherwise, advertisement (through sponsorship) when associated with sports, does not attract service tax.

7.3 Therefore, the exclusion available for sponsorship pertaining to sports is being removed by suitable amendment. Suitable exemption to certain categories of sports events would be considered at the appropriate time.

8. Service tax on construction services

8.1 The service tax on construction of commercial or industrial construction services was introduced in 2004 and that on construction of complex was introduced in 2005.

8.2 As regards payment made by the prospective buyers/flat owners, in few cases the entire consideration is paid after the residential complex has been fully developed. This is in the nature of outright sale of the immovable property and admittedly no service tax is chargeable on such transfer. However, in most cases, the prospective buyer books a flat before its construction commencement/completion, pays the consideration in instalments and takes possession of the property when the entire consideration is paid and the construction is over.

8.3 In some cases the initial transaction between the buyer and the builder is done through an instrument called 'Agreement to Sell'. At that stage neither the

full consideration is paid nor is there any transfer in ownership of the property although an agreement to ultimately sell the property under settled terms is signed. In other words, the builder continues to remain the legal owner of the property. At the conclusion of the contract and completion of the payments relating thereto, another instrument called 'Sale Deed' is executed on payment of appropriate stamp duty. This instrument represents the legal transfer of property from the promoter to the buyer.

8.4 In other places a different pattern is followed. At the initial stage, instruments are created between the promoter and all the prospective buyers (which may include a person who has provided the vacant land for the construction), known as 'Sale Of Undivided Portion Of The Land'. This instrument transfers the property right to the buyers though it does not demarcate a part of land, which can be associated with a particular buyer. Since the vacant land has lower value, this system of legal instrumentation has been devised to pay lesser stamp duty. In many cases, an instrument called 'Construction Agreement' is parallelly executed under which the obligations of the promoter to get property constructed and that of the buyer to pay the required consideration are incorporated.

8.5 These different patterns of execution, terms of payment and legal formalities have given rise to confusion, disputes and discrimination in terms of service tax payment.

8.6 In order to achieve the legislative intent and bring in parity in tax treatment, an Explanation is being inserted to provide that unless the entire payment for the property is paid by the prospective buyer or on his behalf after the completion of construction (including its certification by the local authorities), the activity of construction would be deemed to be a taxable service provided by the builder/promoter/developer to the prospective buyer and the service tax would be charged accordingly. This would only expand the scope of the existing service, which otherwise remain unchanged.

9. Renting of immovable property service

9.1 This service was introduced in 2007 with a view to tax the commercial use of immovable property hired on rent. The tax on rent paid is available as input credit if the commercial activity involves provision of taxable service or manufacture of dutiable goods. However, the Hon'ble High court of Delhi in its order dated 18.04.2009 in the case of Home Solutions Retail India Ltd. & Others vs. UOI has struck down this levy by observing that the renting of immovable property for use in the course of furtherance of business or commerce does not involve any value addition and therefore, cannot be regarded as service. Apart from the revenue loss caused to the exchequer, the judgement has placed the landlords in a very precarious situation. In view of this judgement, the commercial tenants have stopped them reimbursing the tax element. However, the landlords are receiving regular demand notices from the department issued to protect government's revenue for the interim period.

9.2 In order to clarify the legislative intent and also bring in certainty in tax liability the relevant definition of taxable service is being amended to clarify that the activity of renting of immovable property *per se* would also constitute a taxable service under the relevant clause. This amendment is being given retrospective effect from 01.06.2007.

10. Renting of vacant land

10.1 Under the definition of taxable service pertaining to renting of immovable property, the renting of vacant land used for agriculture, farming, forestry, animal husbandry, mining, education, sports, circus, entertainment and parking purposes, is excluded from the purview of service tax. Further, '*vacant land*', *whether or not having facilities clearly incidental to the use of such vacant land* has also been excluded from the tax net.

10.2 It has been reported that in many states, the local industrial corporations or PSUs or even private organizations rent vacant land on a long term leases with an explicit understanding that lessee would construct factory or commercial building on that land. In such cases the ownership of the land is not transferred to the lessee and thus it is a service provided by the lessor to the lessee. The situation is similar to renting out a constructed structure for commercial purposes except that at the time of executing the lease agreement the land is in a vacant state and that later the lessee constructs commercial structure thereon after executing the lease deed. Such lease agreements escape service tax because of the exclusion mentioned above.

10.3 Suitable amendment in the definition of taxable service relating to renting to immovable property is being made so as to provide that tax would be charged on rent of a vacant land if there is an agreement or contract between the lessor and lessee that a construction on such land is to be undertaken for furtherance of business or commerce during the tenure of the lease.

Refund of accumulated Cenvat credit to Exporters : Amendments in Notification No. 5/2006-CE (NT)

Representations had been received by the Board that refund of accumulated CENVAT credit to the exporters of services and other service providers like call centers and BPO's were getting delayed and most of them are ultimately getting rejected,-

- (i) On account of difference in perception/interpretation between the department and the export of services as to whether their actives fall under the purview of 'export of service at all';
- (ii) Difference in wordings used in Notification No. 5/2006-CE (NT) dated 14.03.2006, issued under Rule 5 of CENVAT Credit Rules, 2004 as regards the definitions of terms such as 'inputs'/ 'input services'
- (iii) The procedural requirements prescribed under the notification and illustrations given therein were causing difficulties both in terms of delays and filing of incorrect/incomplete refund forms.

02. The issue was discussed both with the departmental officers as well as the trade and as an immediate solution, Circular No. 120/01/2010-ST dated 19th January, 2010 was issued.

03. To give legal backing to the above said circular, leading to faster and fair settlement of the refunds claims, changes have been effected in Notification No. 5/2006-CE (NT). Some of the changes have been made retrospective so that the pending cases are also covered. Other changes are being brought in prospectively, and are aimed at assisting the Departmental officers in faster processing of refund claims. The retrospective amendments are contained in clause 73 of the Finance Bill, 2010 while the prospective changes are contained in Notification no.7/2010-Central Excise (Non Tariff) dated the 27th February, 2010. Both these documents may be carefully read together for appreciating the full impact of the changes. The salient features of these changes are as follows:-

Retrospective changes effected from 14.03.2006 (i.e. from the date of issue of notification)

- 1) The words "in relation to" have been added in main condition (a) of the Notification.
- 2) The word "in" contained in main condition (b) of the said Notification has been replaced with "for".

The above two changes ensure that the provisions of the refund notification and the CENVAT Credit Rules are aligned and that refund is granted on all goods or services on which CENVAT can be claimed by the exporter of goods or services.

- 3) The illustration given in condition 5 of the Appendix to the Notification has been deleted. This ensures that refund of CENVAT credit which has been availed in the period prior to the quarter/ period for which the refund has been claimed is also eligible for refund. The refund claims should be calculated only on the basis of

the ratio of the export turnover to the total turnover of the claimant. Thus, if the CENVAT credit available to the exporter at the end of the quarter, or month, as the case may be, is Rs. 1 crore, and the ratio of export to total turnover during the quarter is 50%, then Rs. 50 lakh should be refunded to the exporter. The essence of the changes is that refund shall be available for all goods, or input services, on which CENVAT is permissible and should be processed accordingly. Further, refund of CENVAT should not be linked to CENVAT taken in a particular period only.

Prospective changes

1. The conditions A and B given in the Annexure to the Notification are being deleted, and the details required to be given under these conditions, along with certain additional details, are to be furnished by the claimant in a table, which has been prescribed in condition A. The table should be certified by a person authorized by the Board of Directors (in the case of a limited company) or the proprietor/partner (in case of firms/partnerships) if the amount of refund claimed is less than Rs.5 lakh in a quarter. In case the refund claim is in excess of Rs.5 lakh, the declaration should also be certified by the Chartered Accountant who audits the annual accounts of the exporter for the purposes of Companies Act, 1956 (1 of 1956) or the Income Tax Act, 1961 (43 of 1961), as the case may be. This verification is aimed at reducing the checking of voluminous records which is required to be done by the officers processing the refund claims and ensure faster processing of refund claims.

2. Consequential changes by introducing the words "in relation to" and "for" in the Annexure to the Notification have been brought to bring them in line with the amendments made in the main conditions of the Notification.

Soham Modi

From: "sudhir v.s" <vssudhir@gmail.com>
Date: 21 March, 2011 6:31 PM
To: <undisclosed-recipients:>
Attach: Invitation for Seminar.pdf
Subject: Service Tax Seminar Invitation

Dear Sir/Madam,

Many of you may be aware that this budget has brought a sea change in the service tax as far as the **point of payment of service tax** is concerned and also the **availment of CENVAT credit**, which is effective from 01.04.2011. We, M/s Hiregange & Associates felt there is a need for a detailed understanding of these concepts, how it would impact practically for our clients and Chartered Accountants and hence we have organised a full day seminar at Hotel Aditya Park, Ameerpet on 26th March 2011.

The details of the seminar and the registration details is attached. We restricted the participants to 50 to make the seminar interactive.

○ Please feel free to call upon me or my office for any clarification or assistance in this regard.

--
Sudhir V S
Partner
Hiregange & Associates
Chartered Accountants
"Basheer Villa" H. No. 8-2-268/1/16/B,
2nd Floor, Sriniketan Colony,
Road No. 3, Banjara Hills,
Hyderabad - 500 034
9908113787
www.hiregange.com

707
SV
450000

23-Mar-11

RENT RECORD

Building Name	RM Mansion		Area	18000 Sft	Floor / Off No.	Ground,1st&2nd	PT Paid By	Owner
Name of Tenant	M/s Holool (Exensys)		Dt of occupation	01.09.2005	Maint. by	Tenant	Manit. Amou	NIL
Rent Paid to	Syed Mehdi & Razia Bano		Deposit	405000	Lease expires on	31.08.2010	Lease Period	5 Years
Lease Agr	Executed		Last Agr Dt	23.08.2005	Rent increase @	6% Every Year	Next increase	01.09.2009
Rent Payment	Next month		Service Tax %	10.3%	TDS %	10%		
Total TDS amount for FY 2008-09			TDS received	Yes / No	Other		Other	
Month	Gross Rent	Service Tax	TDS	Net Rent	Paid on	Amount	Cheque No	Remarks/Due
					05.12.08	140518	404859/60	-140518
Oct-08	147926	18284	22855	143355	23.12.08	140518	393126/405536	2837
Nov-08	147926	18284	22855	143355	29.01.09	140518	405611/12	2837
Dec-08	147926	18284	22855	143355	19.11.09	140518	141553	2837
Jan-09	147926	18284	22855	143355	12.01.10	140518	170406	2837
Feb-09	147926	18284	22855	143355	09.02.10	140294	316210	3061
Mar-09	147926	15236	22855	140308	09.03.10	140294	495019	14
Apr-09	147924	15236	22854	140306	08.04.10	148354	411282	-8048
May-09	147924	15236	22854	140306	19.05.10	148354	663834	-8048
Jun-09	147924	15236	22854	140306				140306
Jul-09	147924	15236	22854	140306				140306
Aug-09	147924	15236	22854	140306				140306
Sep-09	156799	16150	24225	148724				148724
Oct-09	156799	16150	15680	157269	19.11.09	140518	141552	16751
Nov-09	156799	16150	15680	157269	17.12.09	140518	475434/35	16751
Dec-09	156799	16150	15680	157269	12.01.10	140518	170405	16751
Jan-10	156799	16150	15680	157269	09.02.10	140294	316211	16975
Feb-10	156799	16150	15680	157269	09.03.10	140294	495018	16975
Mar-10	156799	16150	15680	157269	08.04.10	148354	411283	8915
Apr-10	156799	16150	15680	157269	19.05.10	148354	563835	8915
May-10	156799	16150	15680	157269				
Jun-10	156799	16150	15680	157269				
Total	3195166	344338	416743	3122761		2278736		844025

[Handwritten signature]

Building Name	The MayFlower, P & T Colony							
Name of Tenant	Tempest Advertising Pvt. Ltd.							
Month	Rent	Service Tax	TDS	Total Receivable		SM	RB	Total Received
Oct-08	23000	2843	3554	22289	01.10.08	11144	11144	22288
Nov-08	23000	2843	3554	22289	07.11.07	11144	11144	22288
Dec-08	23000	2843	3554	22289	08.12.08	11144	11144	22288
Jan-09	23000	2843	3554	22289	07.01.09	11144	11144	22288
Feb-09	23000	2843	3554	22289	04.02.09	11144	11144	22288
Mar-09	23000	2369	3554	21816	06.03.09	11144	11144	22288
Apr-09	23000	2369	3554	21816	07.04.09	10908	10908	21816
May-09	23000	2369	3554	21816	08.05.09	10908	10908	21816
Jun-09	23000	2369	3554	21816	01.06.09	10908	10908	21816
Jul-09	23000	2369	3554	21816	08.07.09	10908	10908	21816
Aug-09	23000	2369	3554	21816	08.08.09	10908	10908	21816
Sep-09	23000	2369	3554	21816	11.09.09	10908	10908	21816
Oct-09	23000	2369	2300	23069	09.10.09	10908	10908	21816
Nov-09	23000	2369	2300	23069	10.11.09	11500	11500	23000
Dec-09	23000	2369	2300	23069	10.12.09	11570	11570	23140
Jan-10	23000	2369	2300	23069	11.01.10	11535	11535	23070
Feb-10	23000	2369	2300	23069	09.02.10	11535	11535	23070
Mar-10	23000	2369	2300	23069		0	0	0
Apr-10	26450	2724	2645	26529	07.04.10	23070	23070	46140
May-10	26450	2724	2645	26529	05.05.10	11535	11535	23070
Jun-10	26450	2724	2645	26529				0
	493350	53184	64377	482157		223965	223965	447930

Blod

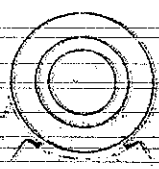
RENT RECORD

Building Name	RM Mansion	Area	18000 Sft	Floor / Off No.	Ground, 1st & 2nd	PT Paid By	Owner	
Name of Tenant	M/s Holool (Exensys)	Dt of occupation	01.09.2005	Maint. by	Tenant	Manit. Amount	NIL	
Rent Paid to	Syed Mehdi & Razia Bano	Deposit	405000	Lease expires on	31.08.2010	Lease Period	5 Years	
Lease Agr	Executed	Last Agr Dt	23.08.2005	Rent increase @	6% Every Year	Next increase Dt	01.09.2009	
Rent Payment	Next month	Service Tax %	10.3%	TDS %	10%			
Total TDS amount for FY 2008-09		TDS received	Yes / No	Other		Other		
Month	Gross Rent	Service Tax	TDS	Net Rent	Paid on	Amount	Cheque No	Remarks/Due
					05.12.08	140518	404859/60	-140518
Oct-08	147926	18284	22855	143355	23.12.08	140518	393126/405536	2837
Nov-08	147926	18284	22855	143355	29.01.09	140518	405611/12	2837
Dec-08	147926	18284	22855	143355	19.11.09	140518	141553	2837
Jan-09	147926	18284	22855	143355	12.01.10	140518	170406	2837
Feb-09	147926	18284	22855	143355	09.02.10	140294	316210	3061
Mar-09	147926	15236	22855	140308	09.03.10	140294	495019	14
Apr-09	147924	15236	22854	140306	08.04.10	148354	411282	-8048
May-09	147924	15236	22854	140306	19.05.10	148354	663834	-8048
Jun-09	147924	15236	22854	140306				140306
Jul-09	147924	15236	22854	140306				140306
Aug-09	147924	15236	22854	140306				140306
Sep-09	156799	16150	24225	148724				148724
Oct-09	156799	16150	15680	157269	19.11.09	140518	141552	16751
Nov-09	156799	16150	15680	157269	17.12.09	140518	475434/35	16751
Dec-09	156799	16150	15680	157269	12.01.10	140518	170405	16751
Jan-10	156799	16150	15680	157269	09.02.10	140294	316211	16975
Feb-10	156799	16150	15680	157269	09.03.10	140294	495018	16975
Mar-10	156799	16150	15680	157269	08.04.10	148354	411283	8915
Apr-10	156799	16150	15680	157269	19.05.10	148354	663835	8915
May-10	156799	16150	15680	157269				
Jun-10	156799	16150	15680	157269				
Total	3195166	344338	416743	3122761		2278736		844025

Building Name	Soham Mansion		Area	1500 Sft	Floor / Off No.	II nd Floor	PT Paid By	Owner
Name of Tenant	M/s National Insurance Co. Ltd.		Dt of occupation	18.02.2006	Maint. by	Owner	Manit. Amount	750
Rent Paid to	Syed Mehdi & Razia Bano		Deposit	NIL	Lease expires on	17.02.2016	Lease Period	10 Years
Lease Agr	Executed		Last Agr Dt	18.02.2006	Rent increase @	25% Every 5 Year	Next increase Dt	18.02.2011
Rent Payment	Succeeding month		Service Tax %	12.36%	TDS %	15.45%		
Month	Gross Rent	Service Tax	TDS	Net Rent	Paid on	Amount	Cheque No	Bal.due at month end.
Oct-08	14500	1792	2240	14052	03.10.08	12259.75	995044	-12260
Nov-08	14500	1792	2240	14052	06.11.08	12259.75	995143	-10468
Dec-08	14500	1792	2240	14052	15.12.08	12260	164327	-8676
Jan-09	14500	1792	2240	14052	06.01.09	12260	164403	-6884
Feb-09	14500	1792	2240	14052	10.02.09	12259.75	164582	-5091
Mar-09	14500	1494	2240	13753	02.03.09	12259.75	164663	-3299
Apr-09	14500	1494	2240	13753	31.03.09	12259.75	824100	-1806
May-09	14500	1494	2240	13753	05.05.09	12260	824228	-313
Jun-09	14500	1494	2240	13753	03.06.09	38331	824329	-24890
Jul-09	14500	1494	2240	13753	03.06.09	13753.25	824325	-24890
Aug-09	14500	1494	2240	13753	03.07.09	13754	824444	-24891
Sep-09	14500	1494	2240	13753	02.09.09	13753.25	824654	-24891
Oct-09	14500	1494	1450	14544	09.09.09	13753.25	824686	-24891
Nov-09	14500	1494	1450	14544	09.10.09	13753.25	824773	-24101
Dec-09	14500	1494	1450	14544	03.11.09	14798	824872	-24355
Jan-10	14500	1494	1450	14544	12.12.09	11513	825008	-21325
Feb-10	14500	1494	1450	14544	07.01.10	12260	825094	-19041
Mar-10	14500	1494	1450	14544	04.02.10	12259.75	825226	-16758
Apr-10	14500	1494	1450	14544	05.03.10	12259	825357	-14473
May-10	14500	1494	1450	14544	29.03.10	12260	825466	-12190
Jun-10	14500	1494	1450	14544	07.05.10	12260	565942	-9906
	14500	1494	1450	14544	03.06.10	12260	566016	-7623
	304500	32857	39933	297424	0	305047	15326682	
Prepared by	Jai Kumar							



2007
A Shakti
Sir Nadi M...
you open a request
on this
K...
[Signature]



**OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & CUSTOMS
HYDERABAD-II COMMISSIONERATE,
SERVICE TAX CELL : SHAKKAR BHAWAN, L.B. STADIUM ROAD
BASHEERBAGH: HYDERABAD-500 004**

C. No. IV/16/497/2010 -- S. Tax (Gr. III)

Dated: 26-11-2010

E-Mail: ankush.ankusharora@gmail.com

Sir,

Sub: Service Tax - Clarification sought by Shri Ankush Arora - Regarding
[Signature]

Please refer to your e-mail dated 10-11-2010.

2. From your e-mail it appears that sale deed was registered in August / September, 2008. The sale deed must have been registered for certain amount of value. There would be no Service Tax on the value mentioned in the sale deed. As the sale deed was executed, Service Provider - Recipient relationship is created between the builder and yourself and consequently Service Tax liability arises.

3. In view of the position explained above the builder is liable to pay Service Tax in your case on 33% of all the amount received from you in excess of the sale deed value at the rate of tax prevailing on the date of each payment. This position holds good till 30-06-2010. For any payment made subsequently (i.e. after 01-07-2010). Service Tax is payable by the builder on 25% of the amount received from you at the applicable rate of tax.

As our stand is to pay S.T on the amounts received after 1/7/10 @ 2.575%. we need to be uniform. However in case this customer is willing to pay prior to that date (3.06.10), you can collect the same and pay us 73A [Remittance of amounts not be collected]

Yours faithfully,

Sd/-xx
(K. PADMAVATHY)
ASSISTANT COMMISSIONER
SERVICE TAX

After amendment, we have to file ST-3 as well.

V...
(Sudhish...)

file in service tax opinions file

Soham Modi

From: "Nirav Modi" <nmodi@elogictech.com>
Date: 26 March 2010 12:13
To: "Shreya Mody" <shreyamody@gmail.com>
Cc: <soham@modiproperties.com>
Attach: tenant letter.doc; rent dept letter.doc
Subject: FW: Service Tax
 FYI

From: sudhir v.s [mailto:vssudhir@gmail.com]
Sent: Friday, March 26, 2010 8:25 AM
To: Nirav Modi_Fortune Ford
Cc: sivaji ganesh
Subject: Re: Service Tax

Dear Mr. Nirav

Please find the attached letter, check the factual points and alter accordingly if required.

As far as applicability of penalty it is very remote chance as the law itself is not clear in this aspect.

Thanks & Regards

On Thu, Mar 25, 2010 at 10:48 AM, Nirav Modi_Fortune Ford <n.modi@fortuneford.com> wrote:

Dear Mr. Sudhir,

As discussed on phone, please send me draft of letter I should send to Service Tax department in response to their phone calls asking for payment of service tax.

Also, please send draft of letter to be sent to tenants asking them to pay service tax plus interest for last year.

Thanks and Best Regards,

Nirav Modi

--
 Sudhir V S
 Partner
 Hiregange & Associates
 Chartered Accountants
 #315, Bhanu Enclave,
 Adj ESI Hospital, Erragadda,
 Hyderabad - 500038
 9908113787
www.hiregange.com

TO BE PRINTED ON THE LETTER HEAD OF THE COMPANY AFTER VERIFYING
THE FACTS

To,
Tenant

Dear Sir/Madam,

Sub: Applicability of Service Tax Renting

Ref: to our lease agreement

You are in occupation of our Commercial property located at _____,
since _____

1. With this regard, we wish to inform that the service of renting of immovable property is proposed to be taxed by the Finance Bill 2010. This is proposed to be done with retrospective effect from 1st June 2007. The taxable service definition given under section 65(105)(zzzz) of the Finance Act, 1994 is proposed to amend as under

"Any service provided or to be provided "to any person, by any other person, by renting of immovable property or any other service in relation to such renting, for use in the course of or, for furtherance of, business or commerce.";

2. Hence from the above definition, it is clear that service tax would be applicable on the immovable rented to you.
3. Service tax is a consumption based indirect tax and hence the same has to be reimbursed by the service recipient to the service provider. Our agreement also specifically indicates that service tax would be extra. (to check in the agreement)

4. We had earlier approached for payment of service tax on the same, but you had denied payment in view the Judgment of Delhi High court in case of Home Solution Retail Limited. (to check whether asked) Since the matter was pending before Honorable Supreme Court we also did not pressurize on the same.

5. Now since renting of immovable property is taxable from 01.06.07 overriding the decision of Delhi High Court the decision of Supreme Court will not serve any purpose. Therefore we request you to remit the service tax amount of Rs. ____ on the rentals of Rs. ____ from the period ____ to ____ and interest of Rs. ____.

Thank You

Yours truly

For Land lord

Date:

To,

The superintendent of Service Tax
Hyderabad – __ Commissionerate
Hyderabad

Dear Sir

Sub: Submission of certain information in relation to renting of immovable property.

Ref: your telephonic conversation on _____

1. We own immovable property, which are rented out for the commercial purpose. In this regard, we had earlier disclosed non-payment of service tax in our letter dated ____ since the issue of applicability of service tax on rent was pending before the courts and tenant denied payment of service tax.
2. We understand that the Finance Bill 2010 has proposed to amend the definition of the renting of immovable property to include per say renting of immovable property also in the tax net with a retrospective effect from 01.06.2007. However since the said definition becomes effective only after the enactment of the finance bill 2010 as on today only the present definition is applicable, where there is no service tax liability.
3. Service tax is consumption based indirect tax, to be reimbursed by the recipient of the service (tenant) to the service provider (landlord), therefore we are writing to our tenants to pay service tax on the same. On collection of the service tax amount we shall duly remit the same to the department.
4. We are herewith providing the details of the rents collected by us for the period ____ to ____ is as under:

We shall be glad to provide any further information or explanation in this regard. Kindly acknowledge the receipt of the same.

Thanking You

Yours Truly.



Aug 1 09

**From,
Shreya Samir Mody,
301, Jyoti Chambers,
372, Narsi Natha Street
Masjid Bunder,
Mumbai – 400 009**

**To,
The Assistant Commissioner of Service Tax,
Division – I,
1st Floor, Old customs house,
S.B.S. Road,
Mumbai – 400 023**

Dear Sir

Sub: Reply to your letter.

Ref: Your letter No. F. No. V/STC/Dn-I/Gr-VIIA/RIS/NPST/09/1851

We are in receipt of your above referred letter. As we had mentioned in our earlier letter, we are of the view that we are not liable to service tax. However we would like to revert for the points raised by you.

1. Service tax being a central levy shall be the same through out India (except J&K) that mean to say if something is taxable in Delhi, the same has to be taxable in Mumbai also and vice versa. Further if a service is taxable in the hands of 'X' then it should be also taxable in the hands of 'Y' and vice versa (belonging to same class). Therefore ratio of the decision Hon'ble Delhi High Court dated 18-04-2009 in the case of M/s Home Solution Retail India Ltd v/s Union of India would be applicable to the whole of India although may not be binding on us.
2. The fact that the department has already filed Special Leave Petition (SLP) before the Apex Court against the above mentioned order of the Hon'ble Delhi High Court, and the SLP has been admitted but no stay has been granted by the Apex court in this regard. That means the decision is still valid as on date. Since the SLP has been admitted that will not take away the applicability of the ratio unless the same is specifically stayed, wherein the department has failed to

obtain one. Therefore this may not be the ground for us to make the payment of service tax.

3. Above all, we also want bring to your notice that it has become practically impossible for us to collected the service tax from our tenants, who are resisting to pay tax on the above grounds.

With all the above, we are not in a position to pay service tax till the disposition of the SLP pending with the Supreme Court, accordingly we request to keep this issue in abeyance till the final order.

We hope our understanding is correct. We shall be glad to provide any further information or explanation in this regard. Kindly acknowledge the same and do the needful.

Thanking You,

Yours truly,

From: "Soham Modi" <soham@modiproperties.com>
To: "Shankar Reddy" <asr.agm@modiproperties.com>
Sent: Monday, August 31, 2009 2:42 PM
Attach: Letter for rent mody (F).doc
Subject: Fw: FW: Service Tax

From: Nirav Modi
Sent: Thursday, August 27, 2009 1:28 PM
To: Bashir ; Soham Modi
Subject: FW: FW: Service Tax

FYI

Nirav

From: sudhir v.s [mailto:~~ss~~sudhir@gmail.com]
Sent: Tuesday, August 25, 2009 6:41 PM
To: Nirav Modi
Cc: shreyamody@gmail.com
Subject: Re: FW: Service Tax

Dear Mr. Modi

I regret for the delay, i think it has missed my mind too, sorry for the same

Please find the attached letter. As per our telecon, you may correspond with the tenants also

Hope this meet your requirement

Thanks & Regards

On 8/24/09, Nirav Modi <n.modi@fortuneford.com> wrote:

Dear Mr. Sudhir,

Please send me the letter at the earliest. I had mentioned that my sister is going out of town and I needed it urgently. I was out of town and was assuming that this would have been sent by now. I now see that it has got missed. Please send it urgently.

Thanks,

01/Sep/2009

Nirav

From: sudhir v.s [mailto:yssudhir@gmail.com]
Sent: Monday, August 10, 2009 5:01 PM
To: Nirav Modi
Cc: shreyamody@gmail.com
Subject: Re: FW: Service Tax

Dear Mr. Modi

I will draft a letter for the same and shall send u in a day or two

Thanks & Regards

On 8/10/09, Nirav Modi <n.modi@fortuneford.com> wrote:

Dear Mr. Sudhir,

My sister who also owns a part of the building intimated the Service Tax department based on our discussions.

They have given her a notice as enclosed.

I have also intimated department and have stopped paying service tax based on my tenants having stopped paying me.

What is your suggestion now? Please let me know.

Best Regards,

01/Sep/2009

Nirav Modi

From: Shreya Mody [mailto:shreyamody@gmail.com]
Sent: Thursday, August 06, 2009 4:32 PM
To: RAMTeCH, Hyd - Admin
Cc: Nirav; Soham Modi
Subject: Service Tax

Dear Sonali,

Here is the letter sent to me by the Service Tax Department. Please pay the service tax due to avoid interest and penalty.

Thanks and Regards,

Shreya

--
Sudhir V S
Partner
Hiregange & Associates
Chartered Accountants
#315, Bhanu Enclave,
Adj ESI Hospital, Erragadda,
Hyderabad - 500038
9908113787

--
Sudhir V S
Partner
Hiregange & Associates
Chartered Accountants
#315, Bhanu Enclave,

01/Sep/2009

Adj ESI Hospital, Erragadda,
Hyderabad - 500038
9908113787

Shanker Reddy

From: "Soham Modi" <soham@modiproperties.com>
To: "Shankar Reddy" <asr.agm@modiproperties.com>
Sent: Wednesday, August 12, 2009 5:49 PM
Subject: Fw: Service Tax

From: Nirav Modi
Sent: Tuesday, August 11, 2009 1:32 PM
To: 'Shreya Mody'
Cc: soham@modiproperties.com
Subject: RE: Service Tax

(Shreya modi@gmail.com)

Dear Shreyaben,

I have been a little handicapped of late because both my laptop and phone conked off at the same time. Though I didn't lose data, I don't have most contact numbers handy, which has made my life a little ☹ more disorganized.

Soham called me and told me that we should pay as the High Court judgment is flimsy and is not applicable to us. Now that you have notice, I agree that it may be prudent to pay. I spoke to service tax consultant who said that he will draft a letter and give it back in a day or two. He said that the Notice is not correct because the Delhi High Court judgment has applicability for rest of India. However, he said that in case we can pay, we should pay under protest. He said that this matter will definitely go to Supreme Court. If Supreme Court decides in our favor, if it is paid under protest, it will be refunded to us. If the judgment is against us, then we will have to pay all arrears with interest. Safest would be to collect and pay. He also advised that we should forward our letter to Service Tax department and their notice again to tenants and based on this, ask them to pay.

Admin

Service Tax - Inl

From: "Soham Modi" <soham@modiproperties.com>
To: "Admin" <admin@modiproperties.com>
Sent: Wednesday, June 10, 2009 9:58 AM
Subject: Fw: Opinion and letter formats for Service Tax on rental properties

From: "Nirav Modi" <n.modi@fortuneford.com>
Sent: Tuesday, June 09, 2009 9:48 AM
To: <hyd2_pec@vsnl.net>; "sivaji ganesh" <sivaji11175@yahoo.co.in>
Cc: "Shreya Mody" <shreyamody@gmail.com>; "Soham Modi" <soham@modiproperties.com>; <accounts@fortuneford.com>
Subject: FW: Opinion and letter formats for Service Tax on rental properties

> Sivaji,

>

> Here's what you need to do regarding service tax payment.

>

> Pramod Modi:

> **HDFC Bank:** Do not pay service tax and send intimation letter

> **Neoteric / Ramtech / JTM Mobile / Idea Cellular:** If they are paying

> service

> tax, pay the same but with Protest letter, if they are not paying, do not

> pay service tax and send intimation letter.

>

> Ashish Modi:

> **VIL / Axis Bank / Sundar Switchgear:** Do not pay service tax and send

> intimation letter

>

> Nirav Modi:

> **LIC:** Pay service tax but with protest letter (I assume that LIC is still

> paying)

> **HDFC / Premier Engg / Premier Electricals / Gloster Cables:** Do not pay

> service tax and send intimation letter

>

> Please make the drafts and send it to me by email for approval. I must

> have

> already sent you the Intimation and Protest letter drafts but I will send

> it

> again just in case in my next email.

>

> Best Regards,

>

> Nirav

>

>

> -----Original Message-----

> **From:** sudhir v.s [mailto:vssudhir@gmail.com]

> **Sent:** Monday, June 08, 2009 4:58 PM

10-Jun-09

>> From: şudhir v.s [mailto:vssudhir@gmail.com]
>> Sent: Tuesday, May 26, 2009 8:23 PM
>> To: n.modi@fortuneford.com
>> Subject: Re: Opinion and letter formats for Service Tax on rental
> properties

>> Dear Mr. Modi

>> Please find the attached opinion, letter for protest, letter for
> intimation
>> and our offer for review of Service Tax

>> Hard Copy along with the Bill shall follow, Kindly confirm the address in
>> the opinion for courier.

>> Thanks & Regards

>> On 5/26/09, Nirav Modi <n.modi@fortuneford.com> wrote:

>> Dear Mr. Sudhir,

>> As discussed during our meeting on 23rd May, 2009 I request you to send
>> me
>> your advise, draft formats and opinion on applicability of Service Tax on
>> rental properties. I would also like to have practical suggestions on
>> what
>> position we should take as landlords and as tenants and the pros and cons
> of
>> each position.

>> Please make your invoice in favor of Fortune Automobiles India Private
>> Limited. Look forward to your response.

>> Best Regards,

10-Jun-09

>>
>> Nirav Modi
>>
>> Director
>>
>> Fortune Ford
>>
>> 98488 12000
>>
>>
>>
>>
>> --
>> Sudhir V S
>> Partner
>> Hiregange & Associates
>> Chartered Accountants
>> #315, Bhanu Enclave,
>> Adj ESI Hospital, Erragadda,
>> Hyderabad - 500038
>> 9908113787
>>
>>
>
>
> --
> Sudhir V S
> Partner
> Hiregange & Associates
> Chartered Accountants
> #315, Bhanu Enclave,
> Adj ESI Hospital, Erragadda,
> Hyderabad - 500038
> 9908113787
>

> To: n.modi@fortuneford.com
> Subject: Re: Opinion and letter formats for Service Tax on rental
> properties
>
> Dear Mr. Modi
>
> You can pay for one under protest and anothe non payment. However make
> sure you properly intimate the same to department.

> Thanks and Regards.

> On 6/6/09, Nirav Modi <n.modi@fortuneford.com> wrote:

>> Dear Mr. Sudhir,

>>

>>

>>

>> Based on our discussion, I would like to try and avoid paying service tax

> by

>> giving intimation to the Department.

>>

>>

>>

>> However, I have 3 tenants

>>

>> 1. HDFC Bank which pays me lump sum amount and our agreement mentions

>> that service tax or any other tax would be my responsibility

>> 2. LIC which continues to pay me service tax

>> 3. Gloster who have stopped paying service tax.

>>

>>

>>

>> Can I stop payment with intimation with respect to 1 property and

>> continue

>> to pay under protest in another case?

>>

>>

>>

>> Let me know your views so that I can immediately intimate the Service Tax

>> department accordingly.

>>

>>

>>

>> Best Regards,

>>

>>

>>

>> Nirav Modi

>>

>>

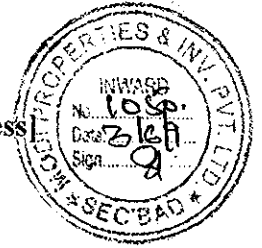
>>

>>

>>

10-Jun-09

[To be printed on the letter pad after considering the factual correctness]



Date:

To,
The Superintendent of Service Tax

Dear Sir,

Sub: Intimation of non-payment of service tax in case of renting of immovable property.

Ref: Service Tax Registration number.....

1. We are a engaged in the activity of And..... In addition to the above, we have let out the property to organizations engaged in commerce or industry. We have merely let-out the property without any other service or facilities.
2. Renting of Immovable property service was made effective from 01.06.2007 and amendments was made in the 2008 budget too and various clarifications were also issued to clarify regarding the scope of the taxable service but the legal position as to validity was not/ is not clear.
3. However in view of the Delhi High Court decision in case of Home Solutions 2009 (14) S.T.R. 433(Del.), which had given a verdict stating that mere renting of immovable property is not covered under 'renting of immovable property service'.
4. Therefore we understand that service tax is not applicable on us for mere renting of immovable property, therefore we wish to stop collecting the service tax from the tenants and also payment to the department.

This is for your kind information and records. Please acknowledge the receipt of this communication.

Thanking you,

Yours faithfully
For

Authorized Signatory

[To be printed on the letter pad after considering the factual correctness]

To,
The Superintendent of Service Tax

Date:

Dear Sir,

Sub: Payment of service tax under Protest - Rental of Immovable Property Service.

Ref: Service Tax Registration number.....

1. We are aengaged in the activity of And..... In addition to the above, we have let out the property to organizations engaged in commerce or industry.
2. Renting of Immovable property service was made effective from 01.06.2007 and amendments was made in the 2008 budget too and various clarifications were also issued to clarify regarding the scope of the taxable service but the legal position as to validity was not/ is not clear.
3. There is no service provider service receiver relation and the control and possession of the immovable property is parted by the owner to the tenant and the tenant uses it without the services of the landlord.
4. Further the amount received as rent is not towards any service but is collected as a consideration for letting out of building. No human effort, skill or advise is involved in the letting out of property.
5. Further we wish to submit that the renting is a state subject, as it requires registration in case of long term agreements. We further understand when a transaction is a subject matter of state subject; the same cannot be taxed by the Central Government.
6. Further rent is an Income and being taxed under Income Tax as it should be in almost the same manner. Rent as understood for centuries is a return on capital for the capital employed.
7. Further Recently Delhi High Court in the case of Home Solutions 2009 (14) S.T.R. 433(Del.) has given a verdict that mere renting of immovable property is not a taxable service covered under "renting of immovable property service".
8. Therefore we wish to mention that we would be paying service tax on rental of immovable property service under protest for all future payments and the previous payment may also be construed as having been paid under protest.

This is for your kind information and records. Please acknowledge the receipt of this communication.

Thanking you,

Yours faithfully
For

Authorized Signatory

Confidential

26.05.2009

To,
Mr. Nirav Modi,
Fortune Automobiles India (P) Ltd,
6-3-569/2, Rockdale,
Somajiguda,
Hyderabad – 500 082

Dear Sir,

Sub: Opinion on Applicability of Service Tax- Rental of Immovable Property Service.

Ref: Our discussion in your office on 23rd May 09 and your mail dated 26th May 2009 sent in this regard.

BACKGROUND:

- a. Fortune Automobiles India (P) Ltd., (herein after referred to as FAIPL) is a company registered under the companies Act.
- b. FAIPL is engaged in selling of Automobiles and also servicing the same, they are the authorized service provider for Ford.
- c. FAIPL is paying rent for its showroom, where the land lord is charging service tax. However the credit of the same is availed in small proportion.
- d. In addition to above there are some of the properties owned by FAIPL's interested parties and its group.
- e. Such properties have been let for the commercial purpose and they were collecting service tax on the same and have been remitting to the government periodically.
- f. Recently Delhi High Court in the case of Home Solutions 2009 (14) S.T.R. 433(Del.) has given a verdict on renting of immovable property service.
- g. No agreement/s was/were provided for our perusal.

QUERIES:

In the light of the above background, LL wishes to understand the current legal position post decision of Delhi High Court and the steps to be taken in future in the following alternatives:

As a landlord

1. In case where the tenant has no objection for making the payment of service for current period and also for future payment. (Maybe able to avail the credit)
2. In case the tenant has resistance to make the payment of service tax.
3. In case the agreed rent is inclusive of all taxes and levies as applicable.

As a Tenant

1. When full or partial credit is available.
2. When no credit is available.

OPINION:

We provide our opinion to the best of our knowledge and belief based on the information and records provided with the interpretation of the provisions of Service Tax Law (Finance Act), Notifications and Circulars issued there under and relevant reported decisions if any examined in the context of the case. The opinion would be restricted to the queries posed.

Any change in facts of the case or the amendment or change in the law would require our opinion to be reviewed upon specific and independent request for the same in future.

STATUTORY PROVISION

The statutory provisions as to Renting of Immovable Property Service, which require to be examined, are the given context is discussed in Annexure- A to this opinion. It is important to note that Annexure A forms important part of our opinion.

DISCUSSION OF THE ISSUE AND CONCLUSION THEREON

1. The category of renting of immovable property service was introduced under service tax from 01.06.2007. This was introduced to expand the base of coverage of levy and TRU letter 334/1/2007 provided the philosophy for introduction was to tax renting of immovable property for use in the course or furtherance of business or commerce.
2. What was taxable under the category was service provided or to be provided **in relation to renting of immovable property and not the very act of renting of immovable property itself**. This aspect seemed to have been ignored totally by the department and efforts had been to collect service tax on the rental income.
3. Doubts existed about the taxability as there was no service provider and service receiver relation with them but the control and possession of the immovable property is parted by the owner to the tenant and the tenant uses it without any other services from the landlord being received. Further the amount received as rent is not towards any service but is collected as a consideration or compensation for allowing the use of the of building and the same is in the nature of return on capital.
4. Further in the mean time large numbers of writ petitions were filed in various high courts challenging the constitutional validity of the Central Government seeking to levy service tax on renting/leasing of immovable property. The board has filed a transfer petition in the Honorable Supreme Court of India for transfer of writs filed with the high courts and presently pending before the Supreme Court.
5. Therefore as the matter required clarity, landlords were paying the same some of them **under protest** as the same is subject to outcome of the case before Supreme Court. The collection from the tenants and payment to government could be on provisional basis and if the case is decided in assessee's favour, refund route is available as illegally collected tax cannot be retained by the government.

6. This scenario has however took a new colour as the Delhi High Court in Home Solution Retail India Ltd Vs UOI (2009 (14) S.T.R. 433(Del.) has allowed a writ petition challenging the levy of service tax on rental income arising from letting out of immovable property. It is pertinent to note that the High Court has not looked into issues of legislative competence to levy service tax and rather dealt with the matter pertaining to levy of service tax on pure renting of immovable property as distinguished from services in relation to renting of immovable property.
7. The High Court in the case of Home Solution Retail India Ltd Vs Union of India (2009 (14) S.T.R. 433(Del.) analyzed the issue as to the levy of service tax on rental income and drew a distinction between “service in relation to renting of immovable property” and “renting of immovable property” and held that renting in itself would not amount to provision of taxable service and held both notification 24/2007 ST and circular 98/1/2007 ST to be ultra vires to the act as far as requirement for levy of service tax.

Extract of para 36 of judgment

36. In view of the foregoing discussion, we hold that Section 65(105)(zzzz) does not in terms entail that the renting out of immovable property for use in the course or furtherance of business of commerce would by itself constitute a taxable service and be exigible to service tax under the said Act. The obvious consequence of this finding is that the interpretation placed by the impugned notification and circular on the said provision is not correct. Consequently, the same are ultra vires the said Act and to the extent that they authorize the levy of service tax on renting of immovable property per se, they are set aside

8. The concept of the phrase “services in relation to” has also been discussed to mean services relating to renting of a property, being liable to service tax. This however, did not mean a transaction in the nature of transfer of property is taxable. The High Court has clearly held that service tax is a tax on value

addition made by the service provider and in case of mere letting out of property, there would be no value addition for the purpose of charging service tax. This view was supported by the Honorable Supreme Court Decision in the case of All India Federation of Tax Practitioners 2007 (7) STR 625 SC. Landlords may examine whether they are providing only the premises or are providing other services in addition to the provision of space.

9. In the landmark judgment involving the All India Federation of Tax Practitioners, the Hon'ble Supreme Court discussed, in detail, the concept of service tax being a value added tax. In Para 17 of this judgment, the Apex Court has stated that "service tax is a value added tax which in turn is a general tax which applies to all commercial activities involving production of goods and provision of services". To what extent the latest decision of the Delhi HC would hold water when the case goes to the Hon'ble Supreme Court, in the light of its decision rendered in the All India Federation of Tax Practitioners case, would remain to be seen
10. It was alleged before the HC that by virtue of the said notification and the circular a completely erroneous interpretation was placed on Section 65(90a) and Section 65 (105) (zzzz) of the Finance Act, 1994. It was further alleged that because of this incorrect interpretation, service tax was sought to be levied on the renting of immovable property as opposed to service tax on a service provided "*in relation to the renting of immovable property*". An alternate plea was also made before the HC that the levy of service tax under the provisions of Sections 65(90a), 65(105)(zzzz) and 66 of the Finance Act, 1994, insofar as they relate to the levy of service tax on renting of immovable property would amount to a tax on land and would therefore fall outside the legislative competence of Parliament inasmuch as the said subject is covered under Entry 49 of List I of the Constitution of India and would fall within the exclusive domain of the state legislature. Unfortunately the Delhi HC did not deal with the alternate plea
11. Whether renting of immovable property for use in the course or furtherance of business or commerce by itself is a service, has also held that any service connected with the renting of such immovable property would fall within the ambit of Section 65(105)(zzzz) and would be exigible to service tax. Of course, the HC

has specifically held in Para 35 of its order that if there is some other service, such as air conditioning service that is provided along with the renting of immovable property, then it would fall within Section 65(105)(zzzz).

12. Further the decision rendered by the Honorable High Court cannot be considered as law of land as article 226 of the Constitution puts some restrictions and by virtue of the same, agreement entered into in respect of premises located outside the jurisdiction of Delhi High Court will not be covered. Further the Court has not considered constitutional aspects while rendering the said decision and finally this decision is appealable before Supreme Court and the time available is 90 days and further 90 days is also available under law (Condonation).
13. However this decision indicates that there are two aspects of the levy of ST on Immovable Property which are certainly questionable. In our opinion the main question of whether “rent” is a service or any value add is provided is very pertinent.
14. **In conclusion we opine that though the doubt on the taxability is cleared by the Delhi decision, the likely route of appeal which would be followed it is that the revenue may continue to dispute the same. Further we can safely opine that the scale now has tilted in favour of the tax payer substantially but not fully. Since the matter is not beyond dispute the decision to pay or not depends on the risk appetite of the landlord.**

Suggested Practical Approach – Landlord

In case where the tenant has no objection for making the payment of service for current period and also for future payment.

15. In such case where there is no problem of collection of service tax from the customer, since the law is not very clear, the landlord may collect such service tax and pay it to the department as required. However as a matter of abundant caution the payment can be made under protest, which enable the tenant to take the refund without any limitation as to the period, if credit is not being availed.

In case the tenant has resistance to make the payment of service tax.

16. In such case where the tenant is not paying service tax, the landlord is obligated to treat the rent so received as cum tax and make appropriate payment to department. The cost of such failure is interest of 13% p.a. Therefore considering cost of interest the landlord can take an independent decision, whether to make the payment or stop the same.

17. In case to opt for payment, it is very important to make the same under protest. On the other hand if no payment is sought to be made, the landlord is advised to intimate to the department the fact of non-payment. In such a case it would be important to safeguard his interest that he obtains an undertaking or letter of Indemnity from the tenant for recover of the rent and interest if liability were to arise later.

In case the agreed rent is inclusive of all taxes and levies as applicable.

18. In such case the incidence and burden both lies with the landlord, the rent so received has to consider as cum-tax and the liability has to be determined accordingly. The cost of such failure is interest of 13% p.a. Therefore considering cost of interest the landlord can take an independent decision, where to make the payment or stop the same. Further action as suggested above.

Suggested Practical Approach – Tenant

When full or partial credit is available

19. In case the credit is allowed and utilisable, the service tax charged by landlord can be availed as credit.

When no credit is available

20. In case where no credit is available the service so paid would be a cost to the tenant on the other hand if the liability arises on a future date the interest would be the additional cost. The tenant can take an independent examination of the cost and arrive at the decision. In case he opts for making the payment, he can insist that landlord makes the payment under protest and on the other hand if he

does not intend to pay he can ask the landlord to intimate the same to the department. If landlord insists he may provide the undertaking.

We hope our opinion and further clarification are adequate for the purpose for which it is sought. Please feel free to get back for any further clarification in this regard. Thanking You,

Yours Truly,

**For Hiregange & Associates
Chartered Accountants**

**Sudhir V S
Partner**

Note: Our opinion is based on facts and assumptions indicated by you. No assurance is given that the revenue and statutory authorities/courts will concur with the opinion expressed herein. In view of our having opined based on the existing provisions of law and its interpretation, which are subject to change from time to time, we do not assume any responsibility to update the views consequent to such changes. We shall not be liable to you for any claims, liabilities or expenses relating to this opinion except to the extent of fees relating to this assignment, as finally judicially determined to have resulted primarily from bad faith or intentional misconduct.

Annexure A

Service Tax Law

1. Levy and collection of Service Tax is governed by the provisions of Chapter V of Finance Act, 1994 covering sections 64 to 96. Section 66 read with Section 68 and 65 (105) of Finance Act, 1994, provides for charging Service Tax on specified person providing taxable service to any person at the rates set out therein in such manner as may be prescribed. Therefore the levy of service tax requires that:
 - a. There should be a Specified PERSON;
 - b. The person should be rendering specified SERVICE;
 - c. The service should be a specified TAXABLE SERVICE;
 - d. The service should be rendered to specified PERSON.

2. Taxable service is defined in section 65(105) of the said Act. The said provision specifies various categories of services starting from clause (a) ending at clause (zzzz) having 114 clauses covering 106 categories. This includes six more categories of services added to the service tax net; some of them totally new and some of them carved out of the existing taxable or exempt services. To tax a service, the service has to be classified in any one of those clauses.

3. Section 65 A (1) requires that the services which are considered to be taxable services should be classified in terms of the sub-clauses of section 65(105).

4. While considering the appropriate classification as said above, if there is a difficulty due to reasons of any service being capable of being categorized under more than one category, or composite service being provided, then the classification should be made in accordance with the provisions of Section 65A(2) the summary of which is as follows:
 - a) Classification has to be made under the category, which is more specific rather than a general category of service.
 - b) If a service is consisting of combination of different category of services, which cannot be classified based on the specific rule, it has to be classified under the category of service, which gives them the essential character.

- c) If the classification cannot be made using either of the above principles, then the classification has to be made under the category which appears first in the category listed under Section 65(105) of Finance act, 1994.
5. In the case of *Dr. Lal Path Lab P. Ltd. Vs CCE, Ludhiana* the Delhi Tribunal held that in Classification of Services under the Rules of Classification, item covered by specific entry in the tax code not to be taken out and taxed under other entry. Bringing services under general entry owing to exemption under specific entry not sustainable. What is specifically kept out of a levy by the legislature cannot be subjected to tax by the revenue administration under another entry. [2006 (4) STR 527 (Tri. -Del.)]
6. Further the services set out in the sub-clauses were made effective at different point of time. The classification would help us to know effective date from which the levy of service tax is attracted for the specified activity.

Renting of Immovable Property Service:

7. As per sec 65(105)(zzzz), a taxable service is the service provided or to be provided to any person, by any other person in relation to renting of immovable property for use in the course or furtherance of business or commerce.

Explanation 1. — For the purposes of this sub-clause, “immovable property” includes —

- (i) building and part of a building, and the land appurtenant thereto;
- (ii) land incidental to the use of such building or part of a building;
- (iii) the common or shared areas and facilities relating thereto; and
- (iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate,
but does not include —
 - (a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;
 - (b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;
 - (c) land used for educational, sports, circus, entertainment and parking purposes; and

- (d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

Explanation 2. — For the purposes of this sub-clause, an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce;

8. Sec (90a) “renting of immovable property” includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include —

- (i) renting of immovable property by a religious body or to a religious body;
or
(ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre.

Explanation. — For the purposes of this clause, “for use in the course or furtherance of business or commerce” includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings;

J

Hiregange & Associates
Chartered Accountants

315, Bhanu Enclave, Adj. ESI Hospital,
Erragadda, Hyderabad - 500 038.
Tel : 040-32996404, Telefax : 040-23701964
E-mail : mhiregange@hotmail.com
Website : www.hiregange.com

Confidential

26.05.2009

To,
Mr. Nirav Modi,
Fortune Automobiles India (P) Ltd,
6-3-569/2, Rockdale,
Somajiguda,
Hyderabad – 500 082

Dear Sir,

Sub: Opinion on Applicability of Service Tax- Rental of Immovable Property Service.

Ref: Our discussion in your office on 23rd May 09 and your mail dated 26th May 2009 sent in this regard.

BACKGROUND:

- a. Fortune Automobiles India (P) Ltd., (herein after referred to as FAIPL) is a company registered under the companies Act.
- b. FAIPL is engaged in selling of Automobiles and also servicing the same, they are the authorized service provider for Ford.
- c. FAIPL is paying rent for its showroom, where the land lord is charging service tax. However the credit of the same is availed in small proportion.
- d. In addition to above there are some of the properties owned by FAIPL's interested parties and its group.
- e. Such properties have been let for the commercial purpose and they were collecting service tax on the same and have been remitting to the government periodically.
- f. Recently Delhi High Court in the case of Home Solutions 2009 (14) S.T.R. 433(Del.) has given a verdict on renting of immovable property service.
- g. No agreement/s was/were provided for our perusal.

QUERIES:



In the light of the above background, LL wishes to understand the current legal position post decision of Delhi High Court and the steps to be taken in future in the following alternatives:

As a landlord

1. In case where the tenant has no objection for making the payment of service for current period and also for future payment. (Maybe able to avail the credit)
2. In case the tenant has resistance to make the payment of service tax.
3. In case the agreed rent is inclusive of all taxes and levies as applicable.

As a Tenant

1. When full or partial credit is available.
2. When no credit is available.

OPINION:

We provide our opinion to the best of our knowledge and belief based on the information and records provided with the interpretation of the provisions of Service Tax Law (Finance Act), Notifications and Circulars issued there under and relevant reported decisions if any examined in the context of the case. The opinion would be restricted to the queries posed.

Any change in facts of the case or the amendment or change in the law would require our opinion to be reviewed upon specific and independent request for the same in future.

STATUTORY PROVISION

The statutory provisions as to Renting of Immovable Property Service, which require to be examined, are the given context is discussed in Annexure- A to this opinion. It is important to note that Annexure A forms important part of our opinion.

DISCUSSION OF THE ISSUE AND CONCLUSION THEREON



1. The category of renting of immovable property service was introduced under service tax from 01.06.2007. This was introduced to expand the base of coverage of levy and TRU letter 334/1/2007 provided the philosophy for introduction was to tax renting of immovable property for use in the course or furtherance of business or commerce.
2. What was taxable under the category was service provided or to be provided in **relation to renting of immovable property and not the very act of renting of immovable property itself**. This aspect seemed to have been ignored totally by the department and efforts had been to collect service tax on the rental income.
3. Doubts existed about the taxability as there was no service provider and service receiver relation with them but the control and possession of the immovable property is parted by the owner to the tenant and the tenant uses it without any other services from the landlord being received. Further the amount received as rent is not towards any service but is collected as a consideration or compensation for allowing the use of the of building and the same is in the nature of return on capital.
4. Further in the mean time large numbers of writ petitions were filed in various high courts challenging the constitutional validity of the Central Government seeking to levy service tax on renting/leasing of immovable property. The board has filed a transfer petition in the Honorable Supreme Court of India for transfer of writs filed with the high courts and presently pending before the Supreme Court.
5. Therefore as the matter required clarity, landlords were paying the same some of them **under protest** as the same is subject to outcome of the case before Supreme Court. The collection from the tenants and payment to government could be on provisional basis and if the case is decided in assessee's favour, refund route is available as illegally collected tax cannot be retained by the government.



6. This scenario has however took a new colour as the Delhi High Court in Home Solution Retail India Ltd Vs UOI (2009 (14) S.T.R. 433(Del.) has allowed a writ petition challenging the levy of service tax on rental income arising from letting out of immovable property. It is pertinent to note that the High Court has not looked into issues of legislative competence to levy service tax and rather dealt with the matter pertaining to levy of service tax on pure renting of immovable property as distinguished from services in relation to renting of immovable property.
7. The High Court in the case of Home Solution Retail India Ltd Vs Union of India (2009 (14) S.T.R. 433(Del.) analyzed the issue as to the levy of service tax on rental income and drew a distinction between “service in relation to renting of immovable property” and “renting of immovable property” and held that renting in itself would not amount to provision of taxable service and held both notification 24/2007 ST and circular 98/1/2007 ST to be ultra vires to the act as far as requirement for levy of service tax.

Extract of para 36 of judgment

36. In view of the foregoing discussion, we hold that Section 65(105)(zzzz) does not in terms entail that the renting out of immovable property for use in the course or furtherance of business of commerce would by itself constitute a taxable service and be exigible to service tax under the said Act. The obvious consequence of this finding is that the interpretation placed by the impugned notification and circular on the said provision is not correct. Consequently, the same are ultra vires the said Act and to the extent that they authorize the levy of service tax on renting of immovable property per se, they are set aside

8. The concept of the phrase “services in relation to” has also been discussed to mean services relating to renting of a property, being liable to service tax. This however, did not mean a transaction in the nature of transfer of property is taxable. The High Court has clearly held that service tax is a tax on value



addition made by the service provider and in case of mere letting out of property, there would be no value addition for the purpose of charging service tax. This view was supported by the Honorable Supreme Court Decision in the case of All India Federation of Tax Practitioners 2007 (7) STR 625 SC. Landlords may examine whether they are providing only the premises or are providing other services in addition to the provision of space.

9. In the landmark judgment involving the All India Federation of Tax Practitioners, the Hon'ble Supreme Court discussed, in detail, the concept of service tax being a value added tax. In Para 17 of this judgment, the Apex Court has stated that "service tax is a value added tax which in turn is a general tax which applies to all commercial activities involving production of goods and provision of services". To what extent the latest decision of the Delhi HC would hold water when the case goes to the Hon'ble Supreme Court, in the light of its decision rendered in the All India Federation of Tax Practitioners case, would remain to be seen
10. It was alleged before the HC that by virtue of the said notification and the circular a completely erroneous interpretation was placed on Section 65(90a) and Section 65 (105) (zzzz) of the Finance Act, 1994. It was further alleged that because of this incorrect interpretation, service tax was sought to be levied on the renting of immovable property as opposed to service tax on a service provided "*in relation to the renting of immovable property*". An alternate plea was also made before the HC that the levy of service tax under the provisions of Sections 65(90a), 65(105)(zzzz) and 66 of the Finance Act, 1994, insofar as they relate to the levy of service tax on renting of immovable property would amount to a tax on land and would therefore fall outside the legislative competence of Parliament inasmuch as the said subject is covered under Entry 49 of List I of the Constitution of India and would fall within the exclusive domain of the state legislature. Unfortunately the Delhi HC did not deal with the alternate plea
11. Whether renting of immovable property for use in the course or furtherance of business or commerce by itself is a service, has also held that any service connected with the renting of such immovable property would fall within the ambit of Section 65(105)(zzzz) and would be exigible to service tax. Of course, the HC



has specifically held in Para 35 of its order that if there is some other service, such as air conditioning service that is provided along with the renting of immovable property, then it would fall within Section 65(105)(zzzz).

12. Further the decision rendered by the Honorable High Court cannot be considered as law of land as article 226 of the Constitution puts some restrictions and by virtue of the same, agreement entered into in respect of premises located outside the jurisdiction of Delhi High Court will not be covered. Further the Court has not considered constitutional aspects while rendering the said decision and finally this decision is appealable before Supreme Court and the time available is 90 days and further 90 days is also available under law (Condonation).
13. However this decision indicates that there are two aspects of the levy of ST on Immovable Property which are certainly questionable. In our opinion the main question of whether "rent" is a service or any value add is provided is very pertinent.
14. In conclusion we opine that though the doubt on the taxability is cleared by the Delhi decision, the likely route of appeal which would be followed it is that the revenue may continue to dispute the same. Further we can safely opine that the scale now has tilted in favour of the tax payer substantially but not fully. Since the matter is not beyond dispute the decision to pay or not depends on the risk appetite of the landlord.

Suggested Practical Approach – Landlord

In case where the tenant has no objection for making the payment of service for current period and also for future payment.

15. In such case where there is no problem of collection of service tax from the customer, since the law is not very clear, the landlord may collect such service tax and pay it to the department as required. However as a matter of abundant caution the payment can be made under protest, which enable the tenant to take the refund without any limitation as to the period, if credit is not being availed.



In case the tenant has resistance to make the payment of service tax.

16. In such case where the tenant is not paying service tax, the landlord is obligated to treat the rent so received as cum tax and make appropriate payment to department. The cost of such failure is interest of 13% p.a. Therefore considering cost of interest the landlord can take an independent decision, whether to make the payment or stop the same.
17. In case to opt for payment, it is very important to make the same under protest. On the other hand if no payment is sought to be made, the landlord is advised to intimate to the department the fact of non-payment. In such a case it would be important to safeguard his interest that he obtains an undertaking or letter of Indemnity from the tenant for recover of the rent and interest if liability were to arise later.

In case the agreed rent is inclusive of all taxes and levies as applicable.

18. In such case the incidence and burden both lies with the landlord, the rent so received has to consider as cum-tax and the liability has to be determined accordingly. The cost of such failure is interest of 13% p.a. Therefore considering cost of interest the landlord can take an independent decision, where to make the payment or stop the same. Further action as suggested above.

Suggested Practical Approach – Tenant

When full or partial credit is available

19. In case the credit is allowed and utilisable, the service tax charged by landlord can be availed as credit.

When no credit is available

20. In case where no credit is available the service so paid would be a cost to the tenant on the other hand if the liability arises on a future date the interest would be the additional cost. The tenant can take an independent examination of the cost and arrive at the decision. In case he opts for making the payment, he can insist that landlord makes the payment under protest and on the other hand if he



Opinion – Service Tax

Hiregange & Associates
Chartered Accountants

does not intend to pay he can ask the landlord to intimate the same to the department. If landlord insists he may provide the undertaking.

We hope our opinion and further clarification are adequate for the purpose for which it is sought. Please feel free to get back for any further clarification in this regard. Thanking You,

Yours Truly,

For Hiregange & Associates
Chartered Accountants



Sudhir V S
Partner

Note: Our opinion is based on facts and assumptions indicated by you. No assurance is given that the revenue and statutory authorities/courts will concur with the opinion expressed herein. In view of our having opined based on the existing provisions of law and its interpretation, which are subject to change from time to time, we do not assume any responsibility to update the views consequent to such changes. We shall not be liable to you for any claims, liabilities or expenses relating to this opinion except to the extent of fees relating to this assignment, as finally judicially determined to have resulted primarily from bad faith or intentional misconduct.

Annexure A

Service Tax Law

1. Levy and collection of Service Tax is governed by the provisions of Chapter V of Finance Act, 1994 covering sections 64 to 96. Section 66 read with Section 68 and 65 (105) of Finance Act, 1994, provides for charging Service Tax on specified person providing taxable service to any person at the rates set out therein in such manner as may be prescribed. Therefore the levy of service tax requires that:
 - a. There should be a Specified PERSON;
 - b. The person should be rendering specified SERVICE;
 - c. The service should be a specified TAXABLE SERVICE;
 - d. The service should be rendered to specified PERSON.

2. Taxable service is defined in section 65(105) of the said Act. The said provision specifies various categories of services starting from clause (a) ending at clause (zzzzj) having 114 clauses covering 106 categories. This includes six more categories of services added to the service tax net; some of them totally new and some of them carved out of the existing taxable or exempt services. To tax a service, the service has to be classified in any one of those clauses.

3. Section 65 A (1) requires that the services which are considered to be taxable services should be classified in terms of the sub-clauses of section 65(105).

4. While considering the appropriate classification as said above, if there is a difficulty due to reasons of any service being capable of being categorized under more than one category, or composite service being provided, then the classification should be made in accordance with the provisions of Section 65A(2) the summary of which is as follows:
 - a) Classification has to be made under the category, which is more specific rather than a general category of service.
 - b) If a service is consisting of combination of different category of services, which cannot be classified based on the specific rule, it has to be classified under the category of service, which gives them the essential character.



- c). If the classification cannot be made using either of the above principles, then the classification has to be made under the category which appears first in the category listed under Section 65(105) of Finance act, 1994.
5. In the case of *Dr. Lal Path Lab P. Ltd. Vs CCE, Ludhiana* the Delhi Tribunal held that in Classification of Services under the Rules of Classification, item covered by specific entry in the tax code not to be taken out and taxed under other entry. Bringing services under general entry owing to exemption under specific entry not sustainable. What is specifically kept out of a levy by the legislature cannot be subjected to tax by the revenue administration under another entry. [2006 (4) STR 527 (Tri. -Del.)]
6. Further the services set out in the sub-clauses were made effective at different point of time. The classification would help us to know effective date from which the levy of service tax is attracted for the specified activity.

Renting of Immovable Property Service:

7. As per sec 65(105)(zzzz), a taxable service is the service provided or to be provided to any person, by any other person in relation to renting of immovable property for use in the course or furtherance of business or commerce.

Explanation 1. — For the purposes of this sub-clause, "immovable property" includes —

- (i) building and part of a building, and the land appurtenant thereto;
- (ii) land incidental to the use of such building or part of a building;
- (iii) the common or shared areas and facilities relating thereto; and
- (iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate, but does not include —
 - (a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;
 - (b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;
 - (c) land used for educational, sports, circus, entertainment and parking purposes; and



- (d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

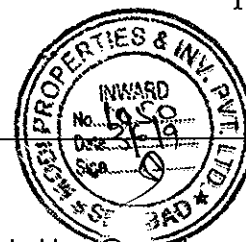
Explanation 2. — For the purposes of this sub-clause, an immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce;

8. Sec (90a) "renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include —

- (i) renting of immovable property by a religious body or to a religious body;
or
(ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre.

Explanation. — For the purposes of this clause, "for use in the course or furtherance of business or commerce" includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings;





Soham Modi

From: "Nirav Modi" <n.modi@fortuneford.com>
Date: 27 May 2009 12:48
To: "Soham Modi" <soham@modiproperties.com>; "Bashir" <bashirbabukhan@gmail.com>; <shreyamody@yahoo.com>; <hyd2_pec@vsnl.net>
Attach: intimation-May09-rent.doc; protest-May09-rent.doc; fortune-may09-rental_opinionF.doc
Subject: FW: Opinion and letter formats for Service Tax on rental properties
 FYI

Nirav

From: sudhir v.s [mailto:vssudhir@gmail.com]
Sent: Tuesday, May 26, 2009 8:23 PM
To: n.modi@fortuneford.com
Subject: Re: Opinion and letter formats for Service Tax on rental properties

Dear Mr. Modi

Please find the attached opinion, letter for protest, letter for intimation and our offer for review of Service Tax

Hard Copy along with the Bill shall follow, Kindly confirm the address in the opinion for courier.

Thanks & Regards

On 5/26/09, **Nirav Modi** <n.modi@fortuneford.com> wrote:

Dear Mr. Sudhir,

As discussed during our meeting on 23rd May, 2009 I request you to send me your advise, draft formats and opinion on applicability of Service Tax on rental properties. I would also like to have practical suggestions on what position we should take as landlords and as tenants and the pros and cons of each position.

Please make your invoice in favor of Fortune Automobiles India Private Limited. Look forward to your response.

Best Regards,

Nirav Modi

Director

Fortune Ford

98488 12000

3/6/09

--

Sudhir V S

Partner

Hiregange & Associates

Chartered Accountants

#315, Bhanu Enclave,

Adj ESI Hospital, Erragadda,

Hyderabad - 500038

9908113787

Date: 21.08.2007

To
Modi Properties & Investments (P) Ltd.
5-4-187/3&4, Soham Mansion,
M.G. Road,
Secunderabad.

Sub: Service Tax Issue relating to rent for
commercial premises - reg.

In connection with the above matter you have in brief
have sought opinion on:

- a) whether or not service tax is leviable on rent paid by
tenant to the landlord; and
- b) whether or not such service tax paid by the tenant is
allowable for setoff.

The statutory provisions as to service tax are contained
in Chapter V of the Finance Act, 1994 and Chapter VI A of
the Finance Act, 2003 as amended from time to time. The
Finance Act, 2007 has inter-alia, added certain services as
taxable services. The relevant clause under which the
renting of immovable property has been made taxable is
Clause 65(105)(zzzz). The operative date of this clause is
w.e.f from 01-06-2007. The said clause is reproduced herein
below for ready reference and to understand the
applicability of service tax.

65(105): "taxable service" means any service provided (or
to be provided)

(zzzz): to any person, by any other person in relation
to renting of immovable property for use in
the course of furtherance of business or
commerce.

Explanation 1. - For the purposes of this sub-clause,
"immovable property" includes-

- (i) building and part of a building, and the land
appurtenant thereto;
- (ii) land incidental to the use of such building or
part of a building;
- (iii) the common or shared areas and facilities
relating thereto; and



- (iv) in case of a building located in a complex or any industrial estate, all common areas and facilities relating thereto, within such complex or estate,

but does not include-

- (a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;
- (b) vacant land, whether or not having facilities clearly incidental to the use such vacant land;
- (c) land used for educational, sports, circus, entertainment and parking purposes; and
- (d) building used solely for residential purposes and building used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday a accommodation, tents, camping facilities.

Explanation 2.- For the purposes of this sub-clause, an immovable property partly use in the course or furtherance of business or commerce and partly residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce;

Section 65(90a) defines the term "renting of immovable property". The definition is reproduced herein below:

[(90a) "renting of immovable property" includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include-

- (i) renting of immovable property by a religious body or to a religious body; or
- (ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre.



Explanation.- For the purpose of this clause, "for use in the course or furtherance of business or commerce" includes use of immovable property as factories, office buildings, warehouse, theatres, exhibition halls and multiple-use buildings;]

Your tenant HDFC Bank Ltd is paying rent in respect of an immovable property situated at Usha Krian Complex, S.D. Road, Secunderabad. It is **prima facie** evident that the immovable property is for use in the course or furtherance of business or commerce. In view of this fact **I am of the considered opinion that renting of immovable property is a taxable service attracting charge of service tax u/s 66.** The present rate of service tax is 12% of the value of the taxable service plus education and secondary higher education cess of 3% thereon. The effective rate of service tax is thus 12.36% of the value of the taxable service.

The next issue with regard to 'setoff' of service tax paid is governed by Cenvat Credit Rules, 2004. Under Rule 3, a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT) of the service tax leviable u/s 66 of the Finance Act on any input service received by it. In simply language the service tax paid on input services is called 'input' and service tax payable on the taxable service provided is called 'output'.

'**Input service**' means any service used by provider of taxable service for providing an output service. [Rule 2(1)].

'**Output service**' means any taxable service provided by the provider of taxable service, to a customer, client, subscribe, policy holder, or any other person, as the case may. [Rule 2(p)].

In the instant situation, the service tax paid by HDFC Bank Ltd to the landlord shall be construed as 'input' and subject to other compliances of the provisions of Cenvat Credit Rule, 2004 can be claimed as setoff (i.e., Cenvat Credit) against the service tax payable on taxable service rendered by HDFC Bank Ltd.

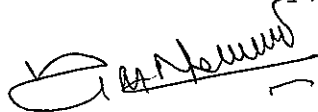
The working example of the Cenvat Credit is given below. It is assumed that HDFC Bank renders services which are taxable services on which service tax is payable i.e., 'output'.

Service Tax payable for services rendered by HDFC Bank Ltd. is say	50000.00
Less: Cenvat Credit for service tax paid on rents	10000.00
Net Service tax payable	40000.00

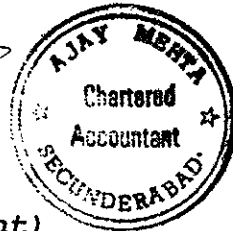
In view of the above provisions of the Service Tax and Cenvat Credit Rules, I am of the considered opinion that the landlord is a person rendering a taxable service that of renting of immovable property. The service tax paid to the landlord can be claimed setoff by the tenant against the service tax payable on the taxable service rendered by it.

Thanking You,

Yours faithfully,



Ajay Mehta
(Chartered Accountant)



Business Line

Business Daily from THE HINDU group of publications
Saturday, May 26, 2007

ePaper

Commercial Classifieds
Buy, sell, or rent commercial property nationwide.

Industrial Land & Factory
World Class Industrial Estates, Factories in Thailand by Hemaraj

Ads by Google

- Home
- News Update

Opinion - Taxation
Service tax on rentals

Stories in this Section
'Subsidies have not helped popularise solar power'

News

Arvind P. Datar

Prime homilies

- Front Page
- Corporate
- Markets
- Info-Tech
- Marketing
- Money & Banking
- Agri-Biz & Commodities
- Industry & Economy
- Logistics
- Government
- Opinion
- Variety
- Corporate Results
- Columns
- States
- Web Extras
- Index
- Archives

The constitutional validity of the levy of service tax on rent payable for lease of commercial immovable property is highly doubtful.

What is ICT's contribution to economic growth?

Has Saudi oil production peaked?

One of the most inequitable provisions in this year's Budget is the levy of service tax on rent payable for lease of commercial immovable property. This provision comes into force from June 1, 2007. The landlord now has to pay property tax to the local municipality, income-tax on the rental income, and the tenant will now have to pay service tax on the rent paid to the landlord. There is no service tax on immovable property used for religious and educational purposes.

Depreciation doubts

Taxing changes from June 1

Service tax on rentals

Endorsements: The taxman's doosra

Profits can improve universities

It has also been made clear that service tax is payable for rents paid for factories, warehouses, theatres and exhibition halls. With service tax plus educational cess at 12.36 per cent, every tenant will now pay service tax equivalent to six weeks of rent.

Validity doubtful

Features

- Investment World
- eWorld
- Brand Line
- Mentor
- Life
- Canvas
- Praxis
- Urban Pulse
- Brand Quest
- The New Manager

The constitutional validity of the levy of service tax on rentals on such immovable property is highly doubtful. Entry 49 of List-II of the Seventh Schedule refers to tax on land and building. It has been held that this tax can be levied on the mere existence of the land or building. It has been further held that all entries must be given widest possible interpretation.

If there is no "service" provided by the landlord, there would be no scope for levy of service tax on the rentals and such a tax would come within the scope of Entry 49. A tax on land and building would also include a tax on the rent payable for such land and building. A few years ago, service tax was levied on *kalayana mandapams/mandap-keepers* (marriage halls). This was challenged on the ground that only State governments had the legislative competence to levy tax and such tax amounted to "tax on land and building".

Stocks

- Quotes
- SE Diary
- Scoreboard
- Open-End Mutual Fund

Cross Currency

- Rates

Shipping

- Ports

Archives

- Yesterday
- Datewise
- Resources
- In Focus
- In Depth

Google

Search

Group Sites

- The Hindu
- The Hindu ePaper
- Business Line
- Business Line ePaper
- Sportstar
- Frontline
- The Hindu eBooks
- The Hindu Images

The Supreme Court rejected this contention in *Tamil Nadu Kalyana Mandapam Association vs Union of India (2004 5 SCC 632)*. The court pointed out that, in the case of a *mandapam*, it is not just renting of premises for a few hours. A *mandap*-keeper provides lighting arrangements, furniture, fixtures, floor coverings, and so on. He also advises the quality of service that can be provided. In the case of star hotels, there are wide varieties of services which will provide necessary effect and ambience. A *mandap*-keeper also provides services relating to decoration and organising the *mandap*. The nature of the contract is not a mere transfer of immovable or movable property.

A different situation

In the case of renting of immovable property, the situation is different. Mere renting of office space does not involve any service apart from handing over vacant possession of the property. However, if a lease deed also requires landlord to provide services such as maintenance and upkeep of the property, certainly this component can be subject to service tax. Unfortunately, there is a deduction of 60 per cent on the amount paid for use of a *kalyana mandapam* or hotel. For renting of immovable property, the only deduction is the property tax paid. Notification 24/2007-ST dated May 22, 2007, points out that if the rent is Rs 1 lakh and the property tax is Rs 2,000, service tax will have to be paid on Rs 98,000.

In *Gujarat Ambuja Cements Ltd vs Union of India (2005 4 SCC 214)*, the Supreme Court pointed out that legislative competence has to be determined by the object of the levy and not the incidence thereof. Even though a liberal interpretation must be given to taxing entries, no tax can be levied on a subject matter which is not included in that particular entry. If, in substance, tax is not referable to a field given to the State (or Centre), the court will not allow the statute to intrude upon that field.

In *Bharat Sanchar Nigam Ltd vs Union of India (2006 3 SCC 1)*, the Supreme Court was concerned with the question of whether provision of mobile phone connection amounted to a sale or a service or both. If it was a sale, the State Government could tax it; if it was a service, then the Central Government could alone levy service tax.

If the transaction had the characteristics of both sale and service, the court held that the contract should be capable of being segregated in two distinct components. The service component could be taxed by the Centre while the sale component could be taxed by the State Government. In other words, the contract must have two distinct taxable events. If the contract cannot be segregated or the parties did not have any intention of creating any separate rights, then it was not open to the State Government to create a notional sale and levy tax thereon.

Fillip to evasion

Apart from the constitutional validity, the levy of such tax is bound to encourage rampant tax evasion. Rentals will now be paid up to Rs 8 lakh which is the exemption limit for service tax and the remaining component will be simply collected in cash. It is also possible that in the case of multi-storied buildings, rentals may be paid by different companies, each within the ceiling limit of Rs 8 lakh. One more doubt is whether the exemption of Rs 8 lakh will be available to each co-owner if the building is owned by more than one person. Over the last few years, there has been an increasing tendency to indiscriminately levy tax on contracts rather than tax on services.

(The author is a senior advocate of the Madras High Court.)

More Stories on : Taxation | Real Estate & Construction

Article E-Mail :: Comment :: Syndication :: Printer Friendly Page



Mutual Fund Investments are subject to market risks.
Please read the offer document of the schemes carefully before investing.

[Click here to know more](#)

www.infra-nfi.com

Ads by Goooooate

The Hindu Group: Home | About Us | Copyright | Archives | Contacts | Subscription
Group Sites: The Hindu | The Hindu ePaper | Business Line | Business Line ePaper | Sportstar | Frontline | The Hindu eBooks | The Hindu Image

Copyright © 2007, The Hindu Business Line. Republication or redissemination of the contents of this screen are expressly prohibited without the permission of The Hindu Business Line