

**F. No. B1/16/2007-TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
New Delhi**

Dated 22nd May, 2007

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

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

2. Certain provisions relating to the levy of service tax in the Finance Act, 2007 shall come into force from a date to be notified. For this purpose, Notifications No. 23/2007 to 32/2007-Service Tax, all dated 22nd May, 2007 have been issued.
3. Seven services which are specifically mentioned in the category of taxable services and amendments made relating to existing taxable services shall come into effect from the 1st June, 2007. In other words, changes made in the Budget 2007-08 relating to scope and coverage of taxable services will be effective from 01.06.07 [Notification No. 23/2007-Service Tax dated 22.05.07].
4. Section 65 defines taxable services and various terms used in relation to taxable services. Section 66 is the charging Section and provides for levy of service tax on taxable services. These two Sections have been amended in the Finance Act, 2007 and these amendments shall come into effect from 01.06.07 [Notification No. 23/2007-Service Tax dated 22.05.07].
5. Seven services which are specifically mentioned in the category of taxable services are :
 - (i) Service provided by a telegraph authority in relation to telecommunication service [sub-clause (zzzx) of Section 65(105)];
 - (ii) Service provided in relation to mining of mineral, oil or gas [sub-clause (zzzy) of Section 65(105)];
 - (iii) Service provided in relation to renting of immovable property for use in the course or furtherance of business or commerce [sub-clause (zzzz) of Section 65(105)];
 - (iv) Service provided in relation to the execution of a works contract [sub-clause (zzzza) of Section 65(105)];
 - (v) Service provided in relation to development and supply of content for use in telecom services, advertising agency services and on-line information and database access or retrieval services [sub-clause (zzzzb) of Section 65(105)];
 - (vi) Service provided by any person, except a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern, in relation to asset management including portfolio management and all forms of fund management [sub-clause (zzzzc) of Section 65(105)]; and
 - (vii) Service provided in relation to design services [sub-clause (zzzzd) of Section 65(105)].
6. Following amendments have been made relating to existing taxable services :
 - (i) Exclusion of business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes from the scope of the definition of "Book" under sale of space or time for advertisement service [Section 65(105)(zzzm)];
 - (ii) Inclusion of motor vehicles capable of carrying more than twelve passengers for hire or reward, other than such motor vehicle and maxicab rented to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre, within the definition of "cab" under rent-a-cab service [Section 65(20)];
 - (iii) Insertion of explanation under mandap keeper service [Section 65(66) and 65(67)] and pandal or shamiana contractor service [Section 65(77a)] stating that social function appearing in these two taxable services includes marriage functions also;

- (iv) Inclusion of marriage event within the scope of event management service [Section 65(40)];
- (v) Insertion of explanation under manpower recruitment or supply service [Section 65(105)(k)] to clarify that manpower recruitment or supply agency service includes services in relation to pre-recruitment screening, verifying the credentials of the candidate, authenticity of documents submitted by the candidates and verification of antecedents;
- (vi) Banking and other financial services :
 - a. Substitution of the words “any other person” with “commercial concern” in the definition of taxable service of banking and other financial services [Section 65(105)(zm)] and also in the definition of banking and other financial services [Section 65(12)],
 - b. Inclusion of cash management services within the scope by deleting the specific exclusion [Section 65(12)], and
 - c. Insertion of explanation to explain the term “financial leasing” [Section 65(12)];
- (vii) Renaming of management consultant’s service as management or business consultant’s service [Section 65(105)(r)], and inclusion of business consultancy in the definition itself [Section 65(65)];
- (viii) Inclusion of exclusion of computer hardware engineering consultancy under consulting engineer service by deleting the specific exclusion [Section 65(105)(g)];
- (ix) Clarification that “goods” for the purposes of this service includes computer software under management, maintenance or repair service [Section 65(64)].

Amendment to Rules :

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

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

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

Exemption from Service Tax :

8. Notification No. 24/2007-Service Tax, dated 22.05.07 exempts taxable service provided by any person in relation to renting of immovable property from service tax equivalent to service tax payable on the amount of property tax, actually paid by the service provider to the local authority. In other words, service tax is payable on the rental amount received less the actual amount of property tax paid.
- 8.1 However, any amount such as interest, penalty paid to the local authority by the service provider on account of delayed payment of property tax or any other reasons can not be treated as property tax for the purpose of this exemption and hence, deduction of such amount from the gross amount charged shall not be allowed.
- 8.2 If property tax is paid for a period which is different from the rental period, property tax proportionate to the rental period shall be calculated and the amount so calculated shall be excluded from the rental amount received for the purpose of levy of service tax.
- 8.3 There may be a situation where property tax is paid after the payment of service tax on the rental. As a result, deduction of property tax paid from rental could not be availed of at the time of payment of service tax. In such cases, Rule 4C of the Service Tax Rules, 1994 provides self-adjustment of excess service tax paid without any limit [Notification No. 24/2007-Service Tax, dated 22.05.07].
- 8.4 Construction of ports is specifically exempted from levy of service tax under commercial or industrial construction service [Section 65(25b)] vide Notification No. 16/2005-Service Tax, dated 07.06.05. Construction of ports under the newly introduced commercial or industrial construction service provided in relation to the execution of works contract under Section 65(105)(zzzza) has also been exempted. Accordingly, Notification No. 16/2005-Service Tax, dated 07.06.05 has been rescinded and a combined Notification No. 25/2007-Service Tax dated 22.05.07 has been issued exempting commercial or industrial construction service, and services provided in relation to the execution of works contract, provided to any person by any other person in relation to construction of a port or other port. However, services such as completion and finishing, repair, alteration, renovation, restoration, maintenance or repair provided in relation to existing port or other port shall be outside the scope of this exemption and hence, leviable to service tax.

Optional Composition Scheme for Works Contract :

9. Services provided in relation to the execution of a works contract [Section 65(105) (zzzza)] is a taxable service. Works contract for the purposes of levy of service tax has been defined to mean a contract wherein :
 - (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
 - (ii) such contract is for the purposes of carrying out, -
 - (a) erection, commissioning or installation,
 - (b) commercial or residential construction and related completion and finishing services, and
 - (c) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.
- 9.1 Works contract is a composite contract for supply of goods and services. A composite works contract is vivisected and,-
 - (i) VAT/sales tax is leviable on transfer of property in goods involved in the execution of works contract [Art. 366(29A)(b) of the Constitution of India], and
 - (ii) service tax will be leviable on services provided in relation to the execution of works contract.

- 9.2 Service tax is chargeable on the gross amount charged by the service provider for the taxable services provided (Section 67). In the case of works contract, the taxable value of services is to be determined by vivisectioning the composite works contract. Rule 2A of Service Tax (Determination of Value) Rules, 2006 [Notification No. 29/2007-Service Tax dated 22.05.07], provides that value of works contract service shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract. Thus, wherever the service provider maintains records, the value of services shall be the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the works contract.
- 9.3 Wherever VAT/sales tax on transfer of property in goods involved in the execution of works contract is paid on actual value, the same value is also taken for the purpose of determining the value of works contract service. In other cases, value of works contract service shall be determined based on the actuals. It has also been explained that value of works contract service shall include :
- (i) labour charges for execution of the works;
 - (ii) amount paid to a sub-contractor for labour and services;
 - (iii) charges for planning, designing and architect's fees;
 - (iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
 - (v) cost of consumables such as water, electricity, fuel, used in the execution of the works contract, the property in which is not transferred in the course of execution of a works contract;
 - (vi) cost of establishment of the contractor relating to supply of labour and services;
 - (vii) other similar expenses relating to supply of labour and services; and
 - (viii) profit earned by the service provider relating to supply of labour and services;
- 9.4 If the gross amount charged for the works contract is inclusive of VAT or sales tax, the value for the purposes of service tax shall be computed as follows :
- [Gross amount charged – (Value of transfer of property in goods involved in the execution of works contract and VAT or sales tax paid, if any, on the said transfer of property in goods involved in the execution of the said works contract)].
- 9.5 As a trade facilitation measure and also for ease of administrative convenience, the service provider has been given an option to adopt the composition scheme for payment of service tax on works contract service. The Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 has accordingly been notified vide Notification No. 32/2007-Service Tax dated 22.05.07.
- 9.6 The scheme provides that the service provider shall have an option to pay an amount equivalent to two per cent. of the gross amount charged for the works contract instead of paying service tax at the rate specified in Section 66. Gross amount charged for the works contract shall not include VAT or sales tax paid on transfer of property in goods involved in the execution of the said works contract. The provider of taxable service opting to pay service tax under the said composition scheme is not entitled to take CENVAT credit of duty on inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.
- 9.7 The provider of taxable service who opts to pay service tax under these rules shall exercise such option in respect of a works contract prior to payment of service tax in respect of the said works contract and the option so exercised shall be applicable for the entire works contract and cannot be withdrawn until the completion of the said works contract.

- 9.8 Presently, erection, commissioning or installation service [Section 65(105)(zzd)], commercial or industrial construction service [Section 65(105)(zzq)] and construction of complex service [Section 65(105)(zzzh)] are separate taxable services.
- 9.9 Various trade and industry associations have raised apprehension in respect of classification of a contract either under the newly introduced works contract service or under erection, commissioning or installation and commercial or residential construction services.
- 9.10 Contracts which are treated as works contract for the purpose of levy of VAT/sales tax shall also be treated as works contract for the purpose of levy of service tax. This is clear from the definition under Section 65(105)(zzzza).
10. Changes explained above are not exhaustive and are only for the purpose of providing guidance. Explanations are not to be treated as part of the statutory provisions and do not over ride them. The statutory provisions and the relevant Notifications have to be read carefully for interpreting the law. Any problems of implementation may kindly be brought to our notice.

Sd/-
(R. SEKAR)
Joint Secretary (TRU)
