

SYNOPSIS OF SERVICE TAX PROPOSALS OF FINANCE BILL, 2010

Every year as the day of presentation of General Budget in Lok Sabha draws near, the heartbeats of a large number of people increase due to anxiety & eagerness to know what the Finance Minister has in his kitty for them. The aforementioned feelings of apprehension continue until the completion of presentation of General Budget. With the passage of substantial time and after listening/watching and reading the in-depth analysis of relevant proposals, people in general are able to gauge the precise impact of the various relevant proposals of Finance Minister.

However, with a view to keep to my professional fraternity ahead than other competing professionals, a modest attempt has been made by the author in the ensuing paragraphs to give an overall and properly configured analysis of the different service tax proposals made in Finance Bill 2010.

In order to properly comprehend all Service Tax changes in their true perspective, following classification shall be highly useful: -

- A. Changes which are effective from 27th day of Feb, 2010;
- B. Changes which are effective from 1st day of April, 2010;
- C. Changes which are effective from the date of enactment of the Finance Bill, 2010;
- D. Changes which are effective from the date notified after the enactment of the Finance Bill, 2010.

A. CHANGES WHICH ARE EFFECTIVE FROM 27TH DAY OF FEB, 2010

(I) NEW EXEMPTIONS/CONCESSIONS GRANTED

1. Exemption to transportation of "food grains or pulses" by road services

Notification No.33/2004 dated 03.12.2004 exempts the "Transportation of Goods by Road Services" if provided for transporting fruits, vegetables, eggs or milk. The said notification has been amended vide Notification 04/2010 dated 27.02.2010 to extend the benefit of notification to "*food grains and pulses*". In simple words, w. e. f. 27.02.2010, transportation of food grains and pulses shall not be subject to service tax under the category of "Transportation of Goods by Road Services".

2. Exemption to certain Service provided by a Central or State Seed Testing Laboratory and Central or State Seed Certification Agency

Notification No. 10/2010 dated 27.02.2010 exempts the following taxable services provided by a Central or State Seed Testing Laboratory and Central or State Seed Certification Agency notified under the Seeds Act, 1966 to any person which falls under the category of:

- (i) Technical Testing and Analysis Services;
- (ii) Technical Inspection and Certification of Seeds.

3. Exemption to any services used for transmission of electricity

By virtue of Notification No.11/2010 dated 27.02.2010 .any service provided for distribution/transportation of electricity has been exempted.

4. Exemption to erection, commissioning or installation of certain equipment

Notification 12/2010 dated 27.02.2010 exempts the following services from service tax payable under the category of "Erection, Commissioning or Installation Services":-

- (i) erection, commissioning or installation of mechanised food grain handling systems;
- (ii) erection, commissioning or installation of equipment for setting up or substantial expansion of cold storage;
- (iii) installation and commissioning of machinery or equipment for initial setting up or substantial expansion of units for processing agricultural, apiary, horticultural, dairy, poultry, aquatic and marine products and meat.

5. Exemption to News agencies in relation to "On-line Information and Database Access or Retrieval Services" and "Business Auxiliary Services"

An exemption has been provided vide Notification No.13/2010 dated 27.02.2010 to taxable services provided in relation to "On-line Information and Database Access or Retrieval Services" and "Business Auxiliary Services" provided by news agency subject to satisfaction of three specified conditions.

6. Taxes levied by any Government on any passenger travelling by air is not subject to service tax

Rule 6(2) of Service Tax (Determination of Value) Rules, 2006 provides the item which does not form part of "value of taxable services". Following clause has been inserted after clause (iv) of rule 6(2) of said rules vide Notification No.15/2010 dated 27.02.2010:

"(v) the taxes levied by any Government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger."

Thus, it is clarified that taxes levied by any government shall not be subject to service tax if the same has been shown separately on ticket issue to passenger.

7. Exemption to Packed or canned software, intended for single use and packed accordingly

Notification No.02/2010 and 17/2010 both dated 27.02.2010 exempts services of providing packaged or canned software, intended for single use and packed accordingly covered under clause (v) of definition of "Information Technology Software Services" which read as:

"providing the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products", subject to the following conditions, namely:-

- (i) Document providing the right to use such software, by whatever name called, if any, is packed along with the software; and

(ii) The manufacturer, duplicator, the person holding the copyright to software or importer has paid the appropriate duties of excise/custom on the entire amount received from the buyer; and

(iii) The benefit under notification No. 31/2010– Customs dated the 27th of February, 2010 is not availed of by the importer- **(Notification No. 17/2010-Service Tax, dated 27.02.2010)**
or

the benefit under notification No. 17/2010– Central Excise, dated the 27th February ,2010 is not availed of by the manufacturer, duplicator or the person holding the copyright to software-**(Notification No. 2/2010-Service Tax, Dated 27.02.2010)**

(II) AMENDMENTS / WITHDRAWAL OF EXEMPTIONS

1. Exemption provided to “vocational training institute” has been restricted under Commercial Training or Coaching Services

Heitherto exemption was available vide Notification 24/2004 dated 10.09.2004 in respect of vocational training or coaching provided by “vocational training institute”. The said notification provided the meaning of “vocational training institute” as under:

“Vocational Training Institute” means a commercial training or coaching centre which provides vocational training or coaching that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching.”

The above wide definition of Vocational Training Institute” has been substituted with the following restricted definition:-

“vocational training institute” means an Industrial Training Institute or an Industrial Training Centre affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under Schedule I of the Apprentices Act, 1961(52 of 1961).

2. Exemption withdrawn in respect of General insurance services provided by Government of Rajasthan to its employees

Notification No. 01/2000 dated 09.02.2000 provides exemption to the taxable services provided by Government of Rajasthan to its employees in relation to general insurance business under Group Personal Accident Scheme. Now, the said exemption is discontinued by withdrawing the Notification No. 01/2000 dated 09.02.2000 vide Notification No.05/2010 dated 27.02.2010.

(III) AMENDMENT IN RULES

1. Re-classification of certain Services in Export of Service Rules, 2005 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006

The following table highlights the changes effected in the categorization of certain taxable services vide. Notification No.06/2010 and Notification 16/2010 both dated 27.02.2010:

Taxable Category	Classification prior to 27.02.2010	Classification w. e. f. 27.02.2010
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Mandap Keeper's Services	Performance based Services (Rule 3(1)(ii) of export rules and Rule 3(ii) of import rules)	Immovable property based services (Rule 3(1)(i) of export rules and Rule 3(i) of import rules) However, when services provided does not relate to immovable property, Recipient based Services (Rule 3(1)(iii) of export rules and Rule 3(iii) of import rules)
Practising Chartered Accountant's Services	Performance based Services (Rule 3(1)(ii) of export rules and Rule 3(ii) of import rules)	Recipient based Services (Rule 3(1)(iii) of export rules and Rule 3(iii) of import rules)
Practising Company Secretary's Services		
Practising Cost Accountant's Services		

Liberalization of Export of Service Rules, 2005

Notification No.06/2010 dated 27.02.2010 has deleted the condition specified in clause (a) of Rule 3(2) of Export of Services Rules 2005.i.e. "Such service is provided from India and used outside India.". The said condition caused confusion among the practitioners, tax payers, tax authorities and even courts, despite the clarificatory circular issued by Service tax department. The said clause, prima facie, appears to contrary to conditions provided in rule 3(1)(i) and 3(1)(iii) of Export of Service Rules, 2005. After deletion of said clause, only condition that is required to be fulfilled is that "Payment for such service is received by the service provider in convertible foreign exchange"

2. Change in definition of India provided in Export of Service Rules, 2005 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006

Notification No.06/2010 and Notification 16/2010 both dated 27.02.2010 amends the definition of India as given under export rules and import rules. Prior to such amendment, it reads as under:

"India" includes the installations, structures and vessels in the continental shelf of India and the exclusive economic zone of India.

After amendment by aforesaid notification, it read as under:

"India" includes the installations structures and vessels located in the continental shelf of India and the exclusive economic zone of India, ***for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.***"

(IV) CENVAT CREDIT RULES

1. Benefit of CENVAT Credit on Computer and computer peripherals

Prior to Notification No. 06/2010 C.E dated 27.02.2010, second proviso to rule 3(5) of CENVAT credit Rules, 2004 provided that if the capital goods, on which CENVAT Credit has been taken,

are removed after being used, then the manufacturer or the provider of output service shall be required to pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by 2.5 per cent for each quarter of a year or part thereof from the date of taking the CENVAT Credit.

The aforesaid proviso has been amended to provide special benefit if computer or computer peripherals are removed after usage. The reduction shall be made as under:

for each quarter in the first year @ 10%
for each quarter in the second year @ 8%
for each quarter in the third year @5%
for each quarter in the fourth and fifth year @1%

However, it is worth mentioning that reduction percentage for capital goods other than computer or computer peripherals shall remain same.

2. Increment in Penalty under rule 15 of CENVAT Credit Rules, 2004

Notification No. 06/2010 C.E (N.T.) dated 27.02.2010 has substituted Rule 15 of CENVAT Credit Rules, 2004. Prior to such substitution, a penalty of Rs.2000/- could be imposed if CENVAT credit in respect of input services was **taken** wrongly or in contravention of any of the provisions of these rules in respect of any input service is taken. However, now, after substitution of new rule, penalty shall be imposed as under:

A penalty not exceeding the amount of Service Tax ought to be evade/short paid

Or

Rs.2000/-, *whichever is higher.*

Further the words “**takes**” has been replaced by the words “**takes or utilizes**”.

(V) OTHERS

1. Extends the provision of Finance Act, 1994 to specified area for specified purpose

Notification No.1/2002 dated 01.03.2002 extended the provisions of Chapter V of the Finance Act (32 of 1994) to the designated areas in the Continental Shelf and Exclusive Economic Zone of India.

Now, Notification No. 14/2010 dated 27.02.2010 rescinds the aforesaid notification and extends the provisions of chapter V of Finance Act, 1994 to following specified area and purpose:

Sl. No	The areas in the Continental Shelf and the Exclusive Economic Zone of India	Purpose
(1)	(2)	(3)
1.	Whole of continental shelf and exclusive	Any service provided for all activities

	economic zone of India	pertaining to construction of installations, structures and vessels for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply there of.
2.	The installations, structures and vessels within the continental shelf and the exclusive economic zone of India, constructed for the purposes of prospecting or extraction or production of mineral oil and natural gas	Any service provided or to be provided by or to such installations, structures and vessels and for supply of any goods connected with the said activity.

B. CHANGES WHICH ARE EFFECTIVE FROM 1ST DAY OF APRIL, 2010

(I) AMENDMENTS / WITHDRAWAL OF EXEMPTIONS

1. Reintroduction of "Transportation of goods by rail services"

On 06-07-2009 at the time of presentation of union budget for the financial year 2009-10, it was proposed to levy service tax from notified date on goods transported by railways *including Government railways*, whether in containers or otherwise. It was also assured that **suitable abatement and exemption** to specified goods would be provided through issuance of notification at the appropriate time.

In order to implement abatement & exemption, notification were issued in the first instance. Subsequently in very short span of time these notifications were overturned vide notification no. 33/2009 dated 01.09.2009, exemption was provided to rail transportation services.

Now, rail transportation services are again made subject to service tax w.e.f.01.04.2010 by rescinding the aforesaid exemption notification vide Notification No.07/2010 dated 27.02.2010. Further Notification No.08/2009 dated 27.02.2009 has been issued to give exemption to rail transportation services provided in relation to transport of the goods specified in said notification.

Further Notification No.01/2006 dated 01.03.2006 has been amended vide Notification no. 09/2010 dated 27.02.2010 to provide abatement of 70% to "Transportation by Goods Rail Services" under said notification.

C. CHANGES WHICH ARE EFFECTIVE FROM THE DATE OF ENACTMENT OF THE FINANCE BILL, 2010

1. Amendment in Section 73(3):

According to new explanation 2 to section 73 if a person pays service tax along with interest, before issuance of show cause notice, on self-assessment basis or on the basis of tax ascertained by Central Excise Officer, then **no penalty**, under the provisions of the Finance Act,

1994 or any Rules, made thereunder, such as Cenvat Credit Rules 2004, shall be imposed on that person.

Thus, the department cannot impose penalty under sections 76 & 77 of the Finance Act, 1994 or under Rule 15/15A of Cenvat Credit Rules, 2004.

2. Amendment in Section 95

Sub-section (1G) & (1F) have been added to section 95. The aforementioned sub-sections empower the Central Government, for a period of one year, to issue any order, not inconsistent with the provision of this chapter to remove any difficulty in respect of taxable services incorporated by the Finance Act, 2010.

3. Retrospective Amendment in Notification No.05/2006 – CE (NT) dated 14.03.2006

Notification No.05/2006 –CE(NT) dated 14.03.2006 provides the procedure and conditions for claiming refund of CENVAT credit availed in respect of inputs and input services used for providing export of services and manufacturing goods for export. 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 activities 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.

The words "in relation to" have been added in main condition (a) of the Notification. And 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.

Further 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.

D. CHANGES WHICH ARE EFFECTIVE FROM THE DATE TO BE NOTIFIED AFTER THE ENACTMENT OF THE FINANCE BILL, 2010.

(I) NEW SERVICES: The following table gives a bird's eye view of the new taxable services:-

	Name of Taxable Service	Salient feature(s)
1	Services of Promoting/Marketing/Organizing of Games of Chance	After the amendment these services will be removed from the purview of "Business Auxiliary Services" and brought within the ambit of newly named services.
2	Health Services undertaken by hospitals or medical establishments for the employees of business organizations & health services provided under health insurance schemes offered by insurance companies	The tax on these health services will be payable only if and to the extent the payment for such medical check up or treatment etc is made directly by business entity or the insurance company to the hospital or medical establishment.
3	Maintenance of Medical Records of Employees Services	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	Promotion of Brand Services	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 of Any Event	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.
6	Electricity Exchange Services	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	Copyrights Services	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.	The charges in respect of prime/preferential location 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); the 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; fire-fighting installation charges; and power back up charges etc. 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

(II). ENHANCEMENT OF SCOPE OF EXISTING TAXABLE SERVICES

1. PORT SERVICES – SECTION 65(105)(zn); and AIRPORT SERVICES – SECTION 65(105)(zzm)

The respective definitions of above mentioned taxable services are to be amended to provide that all taxable services provided entirely within the port/airport would fall under these services and an authorization from the airport/port authority would not be a pre-condition for taxing these services.

2. AUCTIONEER’S SERVICES – SECTION 65(105)(zzr)

Auction by Government” to mean auction of government property

An explanation is being added to clarify that the phrase ‘auction by government’ means an auction involving sale of government property by any auctioneer and when the government acts as an auctioneer for sale of the private property, the same shall be subject to Service Tax.

3. MANAGEMENT OF INVESTMENT UNDER ULIP – SECTION 65(105)(zzzf):

Valuation of taxable service

Since the charge pertaining to asset management alone should form the value for taxable purpose, an explanation provided under the definition of the taxable service is being suitably amended to provide that 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**.

4. TRANSPORT OF PASSENGERS BY AIR SERVICES – SECTION 65(105)(zzzo)

Travel by airline (both in domestic as well as international) in any class subject to service tax

With this amendment, whether a person travels through airline within India or outside India, in business class or in economy class, Service tax shall be applicable.

5. INFORMATION TECHNOLOGY SOFTWARE SERVICES (ITSS)- SECTION 65(105)(zzze)

Services provided other than for business or commerce also included

Presently, Information Technology Services are taxable only when the service recipient intends to use such services for commercial or business purposes. However, the scope of these taxable services is proposed to be expanded to tax all such services even if the services provided are used for purposes other than business or commerce.

6. COMMERCIAL OR TRAINING COACHING SERVICES – SECTION 65(105)(zzc):

Scope of term ‘Commercial’ - Profit motive no longer a criteria for determining taxability – Retrospective amendment w.e.f. 01.07.03

An Explanation is being added in the definition of the taxable service ‘Commercial Training or Coaching Service’ 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. In other words, profit motive is inconsequential. In simple words, organizations set up with no profit motive shall be liable to pay Service Tax on Commercial Training or Coaching Services if such training/coaching is provided for consideration. With this explanation Circular No. 107/01/2009 dated 28.01.2009 has now taken a legal shape.

7. SPONSORSHIP SERVICES – SECTION 65(105)(zzn):

Sponsorship of sports events liable to Service Tax

In the definition of ‘sponsorship service’ the exclusion relating to sponsorship in respect of sports is removed.

8. COMMERCIAL OR INDUSTRIAL CONSTRUCTION SERVICE/CONSTRUCTION OF COMPLEX SERVICE – SECTION 65(105)(zzq)/(zzzh)

Explanation inserted to cover agreements entered into during the course of construction

An Explanation is to be inserted which provides that unless the entire consideration for the property is paid by the prospective buyer or on his behalf 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. Readers will appreciate that the enlargement of scope is in addition to new service i.e. 'Special Services provided by Builders, etc.' as discuss in para D (I) above.

9. RENTING OF IMMOVABLE PROPERTY SERVICE – SECTION 65(105)(zzzz)

Renting in itself is taxable

This service was introduced w.e.f. 01.06.2007 with a view to tax the activity of renting of immovable property for use in the course or furtherance of business or commerce. However, the Hon'ble High court of Delhi in the case of Home Solution Retail India Ltd. & Others vs. UOI held that renting per se cannot be regarded as service and hence, no service tax could be levied on the activity of renting itself. The Finance Bill, 2010 seeks to amend the taxable clause in order to overcome the interpretation placed by the Hon'ble Delhi High Court. The new clause explicitly provides that the activity of 'renting' itself is a taxable service. The amendment has been given retrospective effect from 01.06.2007.

Further, it has also been proposed to levy service tax on renting of vacant land, where there is an agreement or contract between the lessor and lessee for undertaking construction of buildings or structures on such land for furtherance of business or commerce during the tenure of the lease. Earlier, renting of vacant land was specifically excluded from the levy of service tax.

CONCLUSION:-

Readers will appreciate that looking into the fact that Goods & Service Tax (GST) is going to be enrolled in the next Financial Year, only two changes so far as Statutory Provisions is concerned has been brought. The Finance Minister has not made substantial changes in the statutory provisions but at the same time he has not lost any opportunity to collect the revenue wherever possible either by expanding the scope of existing services or introducing the new services. It is understood too as there was pressure to restrict the deficit financing in order to curtail the already high inflation rate.