



## **Finance Bill, 2010 – Proposed Provisions relating to Service tax**

### **a. Exemption Provisions**

- 1) Tax levied by any government on any passenger travelling by air, if shown separately on the ticket or invoice issued to passenger is to be excluded from taxable value for levy of service tax.
- 2) Exemption from service tax is being provided from services relating to ‘Erection, Commissioning or Installation’ of-
  - (a) Mechanized Food Grain Handling Systems etc.;
  - (b) Equipment for setting up or substantial expansion of cold storage; and
  - (c) Machinery/equipment for initial setting up or substantial expansion of units for processing of agricultural, apiary, horticultural, dairy, poultry, aquatic, marine or meat products.
- 3) Packaged or canned I.T. software, intended for single use with the license for right to its use, is being exempt from service tax, subject to certain conditions.
- 4) At present exemption from service tax is available to GTA for transportation of fruits, vegetables, eggs or milk by road. The scope of exemption is being expanded to include ‘food grains and pulses’ in the list of exempted goods.
- 5) Exemption from service tax is being provided to ‘Indian news agencies’ under ‘Online Information and Database Retrieval Service’ subject to specified conditions.
- 6) Exemption from service tax is being provided from ‘Technical Testing and Analysis Service’ and ‘Technical Inspection and certification service’ provided by Central/State seed testing laboratories, and Central/State seed certification agencies.
- 7) Exemption from service tax is being provided to the transmission of electricity.

The above changes will come into effect from 27-2-2010.

### **b. Scope of certain services enlarged or restricted:-**

<b>Section &amp; clause</b>	<b>Name of taxable service</b>	<b>Proposed amendment</b>	<b>Effect of amendment</b>
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65(19) (ii)	Business Auxiliary Service (BAS) – Promotion or Marketing of services provided by the client	Explanation under clause (ii) shall be omitted.	Promotion or Marketing of games of chances organized or conducted is excluded from the scope being made taxable as separate category
65(25b)	Commercial or Industrial Construction	The name of “Commercial or Industrial Construction Service” is replaced with “Commercial or Industrial Construction”	The word “service” has been removed from the name.
65(82)	Port Service	Port Service has been redefined.	Definition has widened to include any service rendered within a port in any manner.
65(105) (zn)	Taxable Service of Port	Taxable Service means any services provided to any person by any other person in relation to <b>port services in a port</b> , in any manner.	Any service when the same is rendered wholly within the port is covered by the new definition.
65(105) (zzc)	Commercial Training or Coaching Center	Explanation inserted w.e.f. 1/7/2003 to clarify that any center or institute who is providing coaching <b>for consideration</b> is included, irrespective of the fact that such center or institute is trust or society not having any motive of earning profit.	Scope is widened to include even a trust or society with or without profit motive.
65(105) (zzm)	Airport Services	Services provided by <b>any other person</b> in any airport is covered.	Person providing service need not to be authorized by the airport authority.
65(105) (zzq)	Commercial or Industrial construction	Explanation inserted: Construction of a new building by the builder which is intended for sale shall be deemed to be service provided to the buyer. <b>Except</b> where no sum is received from the buyer before completion of the building.	Builders who are taking payment from the buyers linked with the construction are covered under the definition and they have to pay service tax on entire value.
65(105) (zzzh)	Construction of complex	Explanation inserted: Construction of a new building by the builder which is intended for sale shall be deemed to be service provided to the buyer. <b>Except</b> where no sum is	Builders who are taking payment from the buyer linked with the construction are covered under the definition and they have to pay service tax on entire value.

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		received from the buyer before completion of the building.	
65(105) (zzzn)	Sponsorship service	Recipient of service <b>substituted to any person</b> in place of ‘any body corporate or firm’.	1) Scope of Sponsorship service widened to include any person. 2) Sponsorship of sports is also covered now.
65(105) (zzzo)	Airport Service		1) Service provided for domestic journey is covered. 2) All classes are covered. Earlier economy class was excluded.
65(105) (zzzr)	Auction of Property service	Expl. inserted to define “auction by the govt.”	Clarificatory in nature
65(105) (zzzz)	Renting of Immovable Property	Definition of taxable service amended w.r.e.f 1/06/2007. Any service provided to any person by any other person ‘by renting of immovable property’ or any other service ‘in relation to such renting’.  Clause (v) inserted in Expl. 1. to include vacant land in definition of immovable property.	<b>Judgment of Delhi High Court overruled.</b> Renting of immovable property or any other service in relation to such renting is taxable w.r.e. from 1/06/2007. Vacant land given for construction of building or temporary structure is included in the definition of immovable property.
65(105) (zzzze)	Information Technology Software Service	Definition amended – the words “for use in the course, or furtherance of business or commerce” are omitted.	All information technology software service is taxable whether or not used for business or commerce.
65(105) (zzzzf)	Insurance Auxiliary Service	Clause (ii) & (iii) of the Expl. has been substituted by clause (ii). Amount on which service tax is leviable shall be higher of : (a) Max. amt. fixed by IRDA (b) Fund Mgt. charges charged by the insurer.	The calculation of the amount on which service tax is leviable is simplified.

**(c) New Services:**

- 1) Service provided to any person by any other person, by granting the right or by permitting commercial use or exploitation of any event including event relating to art, entertainment, business, sports or marriage organized by such other person.[Section 65 (105)(zzzzr)]

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- 2) The existing taxable service ‘Intellectual Property Right (IPR)’ excludes copyright from its scope. Now Copyrights on (a) cinematographic films and (b) sound recording is brought under the ambit of service tax. However, copyright on original literary, dramatic, musical and artistic work would continue to remain outside the scope of service tax. [Section 65 (105)(zzzzt)]
- 3) Service tax on the following health services [Section 65 (105)(zzzzo)]:
  - (a) health check up or preventive care undertaken by hospitals or medical establishments for the employees of business entity where the payment is made by such business entity directly to such hospital;
  - (b) health services (health check up or treatment) provided under health insurance schemes offered by insurance companies where the payment is made by insurance co. directly to such hospital.
- 4) Service provided for storing, keeping or maintaining of medical records of employees of a business entity. [Section 65 (105)(zzzzp)]
- 5) Service provided by Electricity Exchanges. [Section 65 (105)(zzzzs)]
- 6) Certain additional services provided by a builder to the prospective buyers such as providing preferential location or external or internal development of complexes **on extra charges**. However, service of providing vehicle-parking space would still be outside the net of service tax. [Section 65 (105)(zzzzu)]
- 7) Service of promoting or marketing of a brand of goods, services, events of a business entity by appearing in advertisement and promotional event or carrying out any promotional activity [Section 65 (105)(zzzzq)]
- 8) The promotion, marketing or organizing of games of chance, including lottery Bingo or Lotto conducted through internet or other electronic network is being introduced as a separate service. [Section 65 (105)(zzzzn)]

Consequently, the Explanation in Business Auxiliary Service is deleted.

The above changes will come into effect from a date to be notified, after the enactment of Finance Bill, 2010.

**d) Withdrawal or Amendments in Exemptions:**



- 1) Exemption from service tax on 'Service provided in relation to transport of goods by rail' is being withdrawn. The levy will come into effect from 01.04.2010. However for certain goods exemption is provided in N. No. 02/2010 dated 27-2-10.
- 2) Exemption from service tax, presently available to Group Personal Accident Insurance Scheme provided by Govt. of Rajasthan to its employees, under General Insurance Service is being withdrawn.
- 3) The exemption from service tax on 'Commercial training or coaching service' is being restricted to 'vocational training courses' in the designated Trades notified under the Apprentices Act, 1961. Definition of vocational training is narrowed.

The above changes, except at S. No.1, will come into effect immediately.

**e) Amendments in the Act:**

Chapter V of the 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 under this sub-section.
- b) Provide definition of the term 'business entity' to include an association of persons, body of individuals, company or firm but not an individual.

The above changes at (a) will come into effect from date of enactment of the Finance Bill, 2010 and (b) from date to be notified after the enactment of Finance Bill, 2010.

**f) Amendments in Rules and Notifications:**

- 1) Export of Services Rules, 2005 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 are being amended so as to move some of the specified taxable services from one category to another.
- 2) In the Export of Services Rules, 2005, the condition prescribed i.e. 'such service is provided from India and used outside India' is deleted.
- 3) Notification No. 1/2002-ST dated 01.02.2002 is being superseded by another notification No. 14-2010 to provide that all services provided for all activities

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pertaining to 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 for supply of any goods connected with said activity would be within the purview of the provisions of service tax.

- 4) Notification No. 5/2006-CE (NT) is being amended and given partial retrospective effect to remove the bottlenecks in refund of accumulated CENVAT credit to the exporters allowed in respect of input and input services used in the manufacture of final product which are cleared for export or in providing output services which has been exported without payment of service tax.

The above changes will come into effect immediately.



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