

Service Tax on new services – TRU issues clarifications but strictly for departmental consumption

TIOL-DDT 168

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Friday

Better late than never. After nearly five months of presenting the Budget, TRU has now issued a detailed clarification on the changes made in the Budget 2005-06 relating to the levy of service tax on the new services and expanding the scope of existing services, along with the changes in the service tax rules and the legislative changes. But for some strange reasons the TRU did not want to make public its instructions; they are meant strictly **for departmental use**.

The TRU letter to the field ends sardonically,

The above explanation of various changes and provisions of law is only for purpose of guidance to facilitate understanding and implementation of various provisions. It is not a part of the law and does not override it. Adequate care may be taken to carefully read the relevant provisions of law.

In effect the letter is only an exercise in futility and can best be ignored.

The letter aims at clarifying the changes relating to the following apart from the new services:

- a. taxable services received from abroad;
- b. linking payment of service tax with receipt of payment for the taxable services provided or to be provided; and
- c. issue of show cause notices and adjudication

DDT, having raised the issue relating to the issue of Show Cause Notice earlier, eagerly searched for the clarification.

But in the entire 38 paragraphs, nowhere any clarification was found on the issue of who has to issue and adjudicate show cause notices.

May be, we will have to wait for another clarification.

Regarding the new services, there is hardly anything clarified other than reproducing what is defined under the relevant sections and clauses. Highlights of the TRU letter are:-

1. Transport of goods through pipeline or other conduit:

Consideration for the transportation service provided may be payable periodically or from time to time. The service provider is required to pay service tax as and when payment is received for the services provided or to be provided.

2. Site formation and clearance, excavation, earth moving and demolition services:

The service provided in relation to agriculture, irrigation, watershed development and drilling, digging, repairing, renovating or restoring of water sources or water bodies are **specifically excluded and not within the scope of this service**.

Service provided in the course of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams, major and minor ports is exempted

3. Dredging services: Service tax is leviable only on dredging of river, port, harbour, backwater or estuary and **dredging in any other cases does not attract service tax. May be the dredging of Sethusamudram is not covered as it involves dredging of SEA.**

4. Survey and map making:

The new service does not cover “survey and exploration of minerals” . Service rendered by agency under the control of Government of India or authorised by the Government, such as ‘Survey of India’ are specifically excluded.

5. Cleaning services:

Services in relation to agriculture, horticulture, animal husbandry or dairying would be excluded from the purview of service tax. Further, such cleaning services in respect of **non-commercial buildings** and premises thereof would not be covered within the purview of service tax under this category. So no tax on cleaning of residential buildings.

6. Membership of Clubs or Associations:

apart from membership fee or recurring subscription fee, such as amounts paid for provisions of services to the guests of a member, amount paid for get-

together and functions charged over and above the subscription amount will also be liable to service tax. However, amount charged by club to its members for sale of items such as food or beverages would not be taxable provided the documents evidencing such sale are available. Any additional fee should be treated in the same way as subscription. Life membership fees must be treated in the same way as subscription.

7. Packaging services:

packaging activity which amounts to manufacture within the definition of section 2(f) of Central Excise Act, 1944 would not be liable to service tax. Service tax would be leviable on the gross amount charged for rendering the packaging services.

8. Construction of residential complexes:

residential complex constructed by an individual, which is intended for personal use as residence and is constructed by directly availing services of a construction service provider, is not covered under the scope of the service tax and not taxable.

Broad confusions/ Board Confucius

Reconditioned cars – liable to tax:

In this year's budget, the scope of authorized service station was expanded to include reconditioning or restoration of old vehicles and now Board has totally misunderstood its own law. The Board letter says, "A number of motor vehicle manufacturers provide a scheme by which the old vehicles are sold to the customers after reconditioning or restoration. For this purpose, old vehicles are reconditioned or restored by such authorized service stations or centres." Now Board says this is liable for Service Tax. The service centre buys an old car from somebody, reconditions it and sells it to somebody else. If I buy such a reconditioned car, what is the service I am getting from the agency? I am simply buying a car! The Board says this attracts Service Tax! Pray, how the value of service is going to be calculated?

Manpower recruitment – value includes salaries:

Board clarifies that the salaries paid direct to the hired workers is also includible in the value of taxable services. For how long? If I have an agreement with the agency to supply me workers and I pay him for hiring me the workers and I pay the workers, how can the payment made the workers be taxable? What happens if the worker runs away after I paid the tax (in advance)?

Indian Service Tax abroad?

The Board letter clarifies that if the service provider does not belong to India and the service recipient belongs to India, the recipient of taxable services himself is treated as the provider of the taxable services and the services are taxed in the hands of the recipient – even if the service is rendered abroad. If you get your clothes laundered abroad during a visit, don't tell your Service Tax officer about it; he will demand tax from you. Money Laundering is a better option. The Board very graciously informs that service received by an individual abroad is exempted. Is it taxable in the first place for Board to exempt? Does the jurisdiction of the Government of India go beyond the Indian shores? How about posting some Service Tax officers abroad to find out if any Indian is receiving services there?

Goods Transport- good clarification

Service Tax paid on goods transport is allowed as credit only if the transporter has not taken credit or availed exemption under Notification No. 12/2003. Now how in the world is a manufacturer who hires a lorry supposed to know whether the transporter has taken credit or not? This has been the question agitating all concerned for the last seven months. Now Board clarifies that a declaration can be obtained on the consignment note to that effect from the transport agency. But mind you these instructions are strictly for departmental use and if you have come to know about them, please don't reveal this national secret either to the transporter or the manufacturer.

But the doubt remains – what is the document for taking credit. If it is the Challan, is it mandatory that Service Tax has to be paid only by Challan? Board is blissfully silent!

Source: TRU's letter F.No.B1/ 6 /2005-TRU dated 27th July 2005

which the Board is shy to release to the Public. Board should seriously consider declaring the Tariff, the Act, the Rules and the Notifications as top secret documents never to be revealed to troublesome assesseees, nousey journalists and anti social (read anti Board) advocates. The best way to run the Board is to suppress information.

Unfortunately CBEC has to function in India where there are still irritating concepts like accountability, democracy, press, courts .

Vishesh Krishi Upaj Yojana benefits for export of Cashew

DGFT has clarified that export of Cashew covered under ITC(HS) Code 080131, 080132 & 20081910 shall be entitled for Vishesh Krishi Upaj Yojana benefits in respect of exports made between 4.1.2005 and 26.4.2005 .

[CIRCULAR NO. 18/\(RE-2005\)/2004-2009, Dated: July 28, 2005](#)

DEPB Credit – HOP amended

The DGFT has amended the Handbook Of Procedure regarding claiming of DEPB credit. For clearances from DTA to SEZ the claim can be made by the DTA or SEZ from the DGFT or Development Commissioner. Application for grant of credit shall be made in the 'Ayaat Niryaat form' along with the following documents:

- (1) Bank receipt (in duplicate)/demand draft evidencing payment of application fee in terms of Appendix 21B.
- (2) A copy of bill of exports issued by Customs in the SEZ.
- (3) A copy of invoice showing FOR value of supply, DEPB entitlement on such supply and total value realized from such sale.
- (4) Bank certificate of realization in the form given in Appendix 22B.
- (5) In case an SEZ unit opts to apply for the DEPB benefit for such supplies received

[PUBLIC NOTICE NO. 34 \(RE-2005\) /2004-2009, Dated: July 27, 2005](#)

DUE DATE FOR FILING IT RETURNS EXTENDED TO 31ST AUGUST FOR MAHARASHTRA AND GUJARAT ONLY

Central Board of Direct Taxes has clarified that the due date for filing of returns for non-company assesseees whose accounts are not required to be audited under the Income Tax Act is 31st July, 2005 which being a Sunday, returns filed on 1st August, 2005 shall be deemed to have been filed by the due date.

Considering the disruption caused by heavy rains, the due date for filing of returns has been extended to 31st August, 2005 for assesseees in the States of Gujarat and Maharashtra only. Others should file the returns by 1st August. This date will most probably be extended on the 1st August 2005. But DDT's advice is file that return latest by Monday.

Until Monday with more DDT

Have a nice Weekend.

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