'Renting of immovable property' is already taxed; Will Budget 2008 levy tax on 'renting of movable property'?

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RENTING movable property service:

There are many firms operating in the country, which give on rent machinery items like cranes, dumpers, other earth moving equipment and other handling equipment, generators, costly photographic equipment used in cinematography etc. The period of renting of such items normally for short term, which vary from months to few days and sometimes even on hourly basis. This kind of hiring of equipment falls under the category of **"Operating lease"** , which can be defined as :

Operating lease is a contract between the lessor and lessee such that the cost of the asset is not fully recovered from a single lessee. This means that the period of the lease will be shorter since the lessor will recover the cost of the asset from multiple lessees. Repair and maintenance of the asset is the lessor's responsibility. This kind of lease operates differently when compared to "Financial lease" both in actual operation as well as in accounting treatment given to the rentals received. Though the definition of Banking and other Financial services mentionsÂ Â financial leasing services, including equipment leasing and hire-purchase - it is doubtful, whether it includes "operating lease" also under its ambit, Â because of the stress given on the term "financial leasing" in the definition. As operating lease is a short term renting of equipment, the government can consider bringing it under service tax net, as a separate service.

TOUR OPERATOR SERVICE :

Hope the Government removes reference to "Tourist Vehicle" from the definition:

Finance Act, 94 defines Tour Operator as follows:

"tour operator" means any person engaged in the business of planning, scheduling, organising or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a **tourist vehicle** covered by a permit granted under the Motor Vehicles Act, 1988 (59 of 1988) or the rules made thereunder;

Though many an attempt has been Â made by the departmental officers to rope inÂ transport operators/bus operators operating regular point to point transport of passengersÂ between different citiesÂ or towns under contract carriage permit issued by RTAs , under " Tour Operator" service, all such cases ended in failure, since theÂ definition hasÂ reference to "tourist vehicle" andÂ almost in all cases , theÂ partiesÂ won the cases against department citing only one reason that their vehicle is not a " Tourist Vehicle" as defined atÂ clause (43) of section 2 of the Motor Vehicles Act 1988 . This further, compounded by the fact that , Motor Vehicle RulesÂ framed by the State Governments , do not contain any reference to the term " tourist vehicle" in the rules framed by it and the rules do not distinguish tourist vehicles from other vehicles run on contract carriage permit.

If the government's intention is to rope in persons operating point-point service also under the "tour operator service",Â the reference to "tourist vehicle "in the definition is requiredÂ to be removed.

Tax the Legal services, but not Medical Services:

The government should consider taxing "Legal Service" especially Tax Consultants, so that some revenue will chip- in by way of service tax, even though the revenue lost a case.Â On seeing the enormous money earned by the corporate hospitals, and certain medical specialists, the government may be tempted to levy service tax on Health Services. But, service tax being an indirect tax, the burden of tax will have to be born by the common man, which will increase already increasing cost of medical care in the county. Â India, being a welfare State cannot afford to levy tax on "Health Services"

GTA service :

It is high time for the Government to lay at rest all controversies surrounding the GTA service by making suitable amendments to input service definition given in Cenvat credit Rules. It is also suggested, that Government may consider increasing abatement given to GTA service, and make the service as non-cenvattable.

Section 66 A :

The Government may consider bringing in all the services covered under SECTION 66A - services received from outside India - may be grouped in to a separate service and may be included under clause (105) of section 65 as separate service. This will facilitate easy classification and assessment.

of the quantum of penalty this particular Section seeks to levy. The Appellate forums are flooded with appeals contesting levy of penalty under Section 76. The Government may consider removing this controversial penalty clause, considering the fact that no such penalty is imposed under Central Excise Act.Â Under Central Excise Act, delayed payment would only attract interest, and not any penalty.Â Finance Act, 94 has a penalty clause under Section 78, which is akin to Section 11 AC of Central Excise Act.. So, the penalty under Section 76, appears to be unreasonable.

(The views expressed are personal of the author)