

EXPLANATORY NOTES - SERVICE TAX

The following changes are being proposed in the Finance Bill, 2006. [refer clause 68 of the Finance Bill, 2006]

(I) Rate of service tax

The rate of service tax is being raised from 10% to 12%. The increase in rate shall come into effect from the date of enactment of the Finance Bill, 2006.

(II) Section 65 is being amended as follows:

(A) Following services are proposed to be specifically included and defined in the list of taxable services, namely:

1. Services provided by Registrar to an Issue
2. Services provided by Share Transfer Agent
3. Services in relation to Automated Teller Machine operations, maintenance or management
4. Services provided by Recovery agents
5. Sale of space or time for advertisement service, excluding sale of space for advertisement in print media and sale of time slots by a broadcasting agency or organisation
6. Sponsorship service, excluding sponsorship in relation to sports events
7. Scheduled or non-scheduled air transport service of any passenger embarking in India for international journey, in any class other than economy class
8. Transport of goods in containers by rail provided by any person, other than Government railway (Indian Railways)
9. Business support services
10. Auctioneers' service
11. Public relations service
12. Ship management service
13. Internet telephony service
14. Transport by cruise ship
15. Credit card, debit card, charge card or other payment cards related service.

(B) The scope of the following existing taxable services is proposed to be specified or expanded, as the case may be, as follows:

(1) The references to 'commercial concern', in relation to following taxable services, are being substituted with 'person' so as to enlarge the scope of service provider:

- (a) Advertising agency services
- (b) Transport of goods by air services
- (c) Banking and other financial services
- (d) Courier services
- (e) Credit rating services
- (f) Dry cleaning services
- (g) Transport of goods by road services
- (h) Manpower recruitment or supply services
- (i) Market research services
- (j) Photography services
- (k) Programme production for TV or radio services
- (l) Security and investigation services
- (m) Sound recording and ancillary services

- (n) Convention services
- (o) On-line information and database access or retrieval services
- (p) Business auxiliary services
- (q) Commercial or industrial construction services

(2) Following taxable services are proposed to be amended as follows:

Sr. No.	Name of taxable service	Purpose of amendment
1.	Banking and other financial services.	To include services such as: (i) transfer of money through different modes, such as telegraphic transfer, mail transfer and electronic transfer, by any person, and (ii) services provided as banker to an issue.
2.	Management consultancy services.	To specifically mention, consultancy in different areas of management such as financial management, human resources management, marketing management, production management, logistics management, procurement and management of information technology resources, or other similar areas of management.
3.	General insurance services and Life insurance services.	To include, services provided to a policy holder or any person by an insurer, including a re-insurer.
4.	Insurance auxiliary services concerning general insurance business and Insurance auxiliary services concerning life insurance business.	To include services provided to a policy holder or any person or an insurer, including a re-insurer.
5.	Maintenance or repair service.	To rename as "management, maintenance or repair" service and to include management of movable property.
6.	Erection, commissioning or installation service.	To include erection, commissioning or installation of structures, whether pre-fabricated or otherwise.
7.	Consulting engineer's service.	To include engineering consultancy services provided by any firm or body corporate.
8.	Business auxiliary service.	To include computerized data processing.

(C) Following terms have been defined in relation to respective taxable services, namely:

- (i) auction of property;
- (ii) automated teller machine;
- (iii) automated teller machine operations, maintenance or management service;
- (iv) banker to an issue;
- (v) credit card, debit card, charge card or other payment card service;
- (vi) customs airport;
- (vii) international journey;
- (viii) internet;
- (ix) internet telephony;
- (x) issue;
- (xi) passenger;
- (xii) public relations;
- (xiii) registrar to an issue;
- (xiv) share transfer agent;

- (xv) ship management service;
- (xvi) sponsorship;
- (xvii) support services of business or commerce;

(D) Existing definitions are substituted with the following definitions, namely:

- (i) aircraft operator, to include transport of goods or passengers by any person;
- (ii) 'maintenance or repair' by 'management, maintenance or repair', to include management of movable property;

(E) Reference to credit card services under the definition of banking and other financial services is omitted, in view of specific individually created credit card, debit card, charge card or other payment card service under taxable services;

(F) The explanation occurring at the end of clause (105) is omitted;

(G) To clarify by way of explanation in clause (106) that technical testing and analysis, -

- (a) includes clinical testing of drugs and formulations; and
- (b) excludes testing or analysis for the purpose of determination of the nature of diseased condition, identification of a disease, prevention of any disease or any disorder in human beings or animals;

(H) To clarify by way of an explanation after clause (121) that taxable service provided or to be provided by any unincorporated association or body of persons to a member thereof for cash, deferred payment or any other valuable consideration shall be treated as services provided by any person to any other person.

All the above mentioned amendments in section 65 will come into effect from a date to be notified after the enactment of the Finance Bill, 2006.

(III) Following service tax exemptions are being withdrawn:

1) Notification No. 3/94-Service Tax dated 30.6.94 is being amended to withdraw the exemptions in relation to general insurance where, -

- (i) Premium is received from re-insurance both domestic and overseas;
- (ii) All business for which premium is booked outside India.

[refer notification No. 3/2006-Service Tax dated 1.3.2006]

2) Notification No.59/98-Service Tax dated 16.10.1998 is being rescinded to withdraw exemption for services, other than accounting, auditing, and statutory certification services, provided by a practicing chartered accountant, company secretary or cost accountant so as to levy service tax on all services provided or to be provided by such person in his professional capacity.

[refer notification No. 2 /2006-Service Tax dated 1.3.2006]

3) Notification No. 8/2003-Service Tax dated 20.6.2003 is being rescinded to withdraw the exemption for taxable services provided by a Call Centre or a Medical Transcription Centre

[refer notification No. 2 /2006-Service Tax dated 1.3.2006]

4) Notification No.11/2003-Service Tax dated 20.6.2003 is being rescinded to withdraw the exemption provided on maintenance or repair services provided under a maintenance contract or agreement entered into prior to 01.07.03 since the notification has outlived its utility.

[refer notification No. 2/2006-Service Tax dated 1.3.2006]

5) Notification No. 16/2004-Service Tax dated 10.09.2004 is being rescinded to withdraw the exemption for taxable service provided in relation to Enterprise Resource Planning (ERP) software system provided by a management consultant in connection with the management of any organization.

[refer notification No. 2/2006-Service Tax dated 1.3.2006]

6) Notification No. 19/2004-Service Tax dated 10.09.2004 is being rescinded to withdraw the exemption for catering services provided on a railway train by an outdoor caterer.

[refer notification No. 2 /2006-Service Tax dated 1.3.2006]

7) Notification No. 21/2004-Service Tax dated 10.09.2004 is being rescinded to withdraw exemption for catering services provided within the premises of an academic institution or medical establishment by an outdoor caterer.

[refer notification No. 2/2006-Service Tax dated 1.3.2006]

8) Thirteen specific notifications providing partial exemption from service tax leviable on specified taxable services are being rescinded vide notification no. 2/2006-Service Tax dated 1.3.2006 and a consolidated notification is being issued.

[refer notification No. 1 /2006-Service Tax dated 1.3.2006].

The above mentioned changes will come into effect from 1st March, 2006.

(IV) Exemptions from service tax:

1) Exemption from service tax has been provided to financial leasing services including equipment leasing and hire-purchase, on that portion of the taxable value comprising of ninety per cent. of an amount representing as interest i.e. the difference between the installment paid towards repayment of the lease amount and the principal amount in such installment paid;.

[refer notification No. 4/2006-Service Tax dated 1.3.2006].

2) Exemption from service tax is being provided to testing and analysis services provided in relation to water quality testing by Government owned State and District level laboratories.

[refer notification No. 6/2006-Service Tax dated 1.3.2006].

3) Exemption from service tax is being provided to taxable services provided or to be provided to any person by the Reserve Bank of India.

[refer notification No. 7/2006-Service Tax dated 1.3.2006].

The above mentioned changes will come into effect from 1st March, 2006.

(V) Other Changes in the Finance Act, 1994:

(1) Section 66 is being amended to increase the rate of service tax from 10 per cent. to 12 per cent. and to mention specifically included services in the list of taxable services.

(2) Section 66A is being inserted to levy service tax on taxable services provided or to be provided by a person, who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and received by a person who has his place of business, fixed establishment, permanent address or usual place of residence, in India under reverse charge method.

(3) The existing section 67 (which provides for valuation of taxable services for charging service tax) is being substituted with a new section 67 to provide for determination of value of taxable service in cases where the consideration for the provision of service is in money, or where the consideration is not wholly or partly consisting of money or where the consideration is not ascertainable.

(4) Section 73 (which provides for recovery of service tax) is being amended to provide for conclusion of adjudication proceedings in respect of a person to whom a notice is served under the proviso to sub-section (1) of section 73 and who has voluntarily deposited the service tax demanded in full and the interest payable thereon under section 75 and penalty equal to twenty five per cent. of the service tax specified in the notice.

(5) Section 73A is being inserted to,-

(i) provide for voluntary payment by an assessee of any amount collected in excess of the service tax leviable but not deposited with the Central Government or recovery of such excess amount, and

(ii) provide for voluntary payment or recovery of any amount as representing service tax, that has been collected by a person but not deposited with the Central Government.

(6) Section 73B is being inserted to enable the Central Government to collect interest on the amount as determined under sub-section (4) of section 73A at such rate not below 10% and not exceeding 24% per annum, as may be notified by the Central Government.

(7) Section 73C is being inserted to provide for provisional attachment by the Central Excise Officer of any property belonging to the person on whom notice is served under sub-section (1) section 73 or sub-section (3) of section 73A, during the pendency of such proceedings.

(8) Section 73D is being inserted to provide for publishing the name of any person and any other particulars relating to any proceedings under the provisions of Chapter V of the Finance Act, 1994 in relation to such person, in public interest, in such manner as may be prescribed.

(9) Section 76 (which provides for penalty for failure to pay service tax) is being substituted with a new section 76 to provide that penalty at the rate of two hundred rupees for every day of failure to pay service tax or at the rate of two per cent. of the tax per month, whichever is higher, shall be imposed for failure to pay service tax by the due date.

(10) In section 83, the reference to section 11 and section 11D of the Central Excise Act, 1944 is being omitted, in view of appropriate provisions for recovery any amount (viz. section 87 and section 73A) which are being inserted vide this Finance Bill.

(11) Section 87 is being inserted to provide for recovery of any amount due to the Central Government by any one of the following modes, namely:-

(i) the Central Excise Officer may deduct or may require any other Central Excise Officer or any officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the said Central Excise Officer or any officer of customs, or

(ii) the Central Excise Officer may require any other person from whom money is due or may become due to such person, or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central Government so much of the money as is sufficient to pay the amount due from such person, or

(iii) the Central Excise Officer may, on an authorization by Commissioner of Central Excise, in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid, or

(iv) the Central Excise Officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in

which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

(12) Section 94 is being amended so as to empower the Central Government to make rules for:

- (i) valuation of taxable services under section 67;
- (ii) prescribing the manner of provisional attachment of property during the pendency of any proceedings under section 73 or section 73A to protect revenue, under section 73C;
- (iii) prescribing the manner of publication of the name of any person and any other particulars in relation to any proceedings in respect of such person under section

73D;

- (iv) prescribing the manner of recovery of any amount due to the Central Government under section 87.

(13) Section 95 is being amended to empower the Central Government to issue orders for removal of difficulty in case of classifying, assessing the value of, or implementing any taxable service incorporated by the Finance Act, 2006 upto one year from the date of enactment of the Finance Bill, 2006.

(14) Section 96C is being amended to empower the Authority for Advance Rulings to determine the liability to pay service tax.

The changes mentioned above (except the levy on certain services specified in the list of taxable services in section 66, which shall come into effect from a date to be notified after the enactment of the Finance Bill, 2006) will come into effect from the date of enactment of the Finance Bill, 2006.

(VI) Changes in the Service Tax Rules, 1994:

(1) Rule 4 is being amended to insert,-

- (i) sub-rule (5A) requiring an assessee to intimate any change in information submitted to the Central Excise Officer at the time of registration, within 30 days of the said change, and
- (ii) sub-rule (8) to provide for cancellation of registration certificate by the concerned Superintendent of Central Excise, where an assessee makes an application for cancellation of the said registration certificate.

(2) Rule 5 is being amended to insert,-

- (i) sub-rule (3) to make it obligatory for an assessee to preserve records related to service tax for a period of at least five years immediately after the financial year to which the said records pertain, and
- (ii) sub-rule (4) to make it obligatory for an assessee to make available the records pertaining to service tax, to a Central Excise Officer, for the purpose of inspection and examination.

[refer notification No. 5/2006-Service Tax dated 1.3.2006]

The above changes will come into effect from 1st March, 2006.