

Government of India
Ministry of Finance
Department of Revenue
Tax Research Unit

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D.O.F.No.334/03/2010-TRU
New Delhi, dated 1st July 2010

Dear Madam/ Sir,

Subject: Issuance of notifications after enactment of the Finance Act, 2010:

The Finance Bill 2010 was enacted on 8th May 2010. Section 76 and 77 of the Finance Act, 2010 (14 of 2010) pertain to service tax issues. Certain new taxable services were introduced and certain changes in the scope of the existing taxable services (under section 65, with consequential changes in section 66 of the Finance Act, 1994) were made under section 76 of this Act. The provisions of section 76 (A) & (B) (except retrospective provisions relating to commercial coaching and training and renting of immovable property services) were to come into effect from a date to be notified, which is also known as appointed date. This date has been notified to be the 1st day of July 2010 (Refer Notification No.24/2010-Service Tax dated the 22nd June 2010).

2. Services provided or payments made prior to the effective date;

2.1 Vide Finance Act, 2010, eight new services were added to the list of taxable services while the scopes of nine existing services were modified. As these changes become effective from 01.07.2010, activities that are covered under taxable service categories due to above additions or modifications, would start attract service tax from this date. It is however, possible that a part or full payment of the consideration for such services provided after the appointed date has already been received prior to that date, i.e. advance payments. The examples are: where a domestic air journey performed after 1st July 2010, but the ticket is issued on payment prior to such date or where a construction activity falls within the taxable service only after the said date but the payment (full or in part) has been made before this date. While legally tax is payable on such amounts received, it has been decided to specifically exempt service tax on that partial or full amount which is received by the service provider/ person liable to pay the tax (and not by an agent, who in turn transfers such amount to such person after this date) before 01.07.2010, pertain to a service which has become taxable on account of the provisions of the Finance Act, 2010 and is provided on or after 01.07.2010. Any amount received after 01.07.2010 by the service

provider/ person liable to pay the tax would be subjected to tax. (Refer Notification No.36/2010-Service Tax dated the 28th June 2010 as corrected vide corrigendum dated 29th July, 2010).

6. Construction services:

6.1 In the Finance Act, changes have been made in the construction services, both commercial construction and construction of residential complex, using 'completion certificate' issued by 'competent authority'. Before the issuance of completion certificate if agreement is entered into or any payment is made for sale of complex or apartment in residential complex, service tax will be leviable on such transaction since the builder provides the construction service. Completion certificate issued by a Government authority was prescribed as demarcation by introducing an Explanation in the Finance Act. During the post budget discussions, it was pointed that practice regarding issuance of completion certificates varies from state to state. Considering the practical difficulties, the scope of the phrase 'authority competent' to issue completion certificate has been widened by issuing an order for removal of difficulty (Refer M.F.(D.R) Order No.1/2010 dated 22nd June 2010). Completion certificate issued by an architect or chartered engineer or licensed surveyor can be now taken to determine the service tax liability.

6.2 After the Budget was introduced views were expressed that the tax liability on construction sector has been tightened at a time when the sector was recovering after recession. After considering the issue, abatement available for construction of industrial or commercial complex and also residential complex has been prescribed as seventy five per cent. This means now tax incidence will be the rate of service tax applied on twenty five per cent of gross value of commercial or residential complex or unit, broadly representing the service component in the construction, subject to conditions (Refer Notification 29/2010-Service Tax, dated 22nd June 2010). Importantly seventy five percent abatement will be applicable only if the gross value of commercial or residential complex or unit includes cost of land. Otherwise the existing rate of abatement of 67% would continue to apply.

6.3 Exemption has been provided for construction of residential complex service, when the same is rendered as part of Jawaharlal Nehru national Urban Renewal Mission (JNNURM) and Rajiv Awaas Yojana (Refer Notification No.28/2010- Service Tax, dated 22nd June 2010). These are flagship schemes of the Government of India to provide shelter for the poor and the disadvantaged and hence taxable service of construction of complex in the context of these two development schemes have been kept out of the ambit of service tax.

9. Certain issues arising out of the budgetary changes and the post-enactment legislations (especially taxes pertain to real estate sector) may not have been covered in this communication. While some of the requests/ suggestions are under examination, I look forward to receive your valuable feedback and suggestions on any other unresolved issues. Kindly send them to me, or to Mr. J.M.

Kennedy, Director (TRU) or Mr. Samar Nanda, Technical Officer (TRU) within a fortnight so that all such issues can be taken up and clarified wherever needed.

Regards,

Yours sincerely,

-signed-

(Gautam Bhattacharya)

To

All Chief Commissioners / Directors General
All commissioners of service Tax
All commissioners of Central Excise
All commissioners of Central excise and Customs