

INDIRECT TAXES UPDATE - 3

Exemption to advance received prior to 01.07.2010 towards new services and existing services whose scope have been widened vide the Finance Act, 2010

Advance payments received prior to 01.07.2010 towards eight new services introduced by the Finance Act, 2010 have been exempted from payment of service tax. Similarly, advances received prior to 01.07.2010 towards activities brought into service tax net on account of expansion of scope of existing services vide the Finance Act, 2010 have also been exempted from payment of service tax. However, such an exemption would not be available to commercial training or coaching services and renting of immovable property service.

For example, service tax would not be payable in case of a domestic air journey performed after 01.07.2010 if the payment for the ticket of such journey has been made prior to 01.07.2010. However, this exemption would be available only if the advance 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 01.07.2010.

Notification No.36/2010 ST dated 28.06.2010 as corrected vide corrigendum dated 29.07.2010

Service tax paid on service provided by airports authority to an exporter for export of goods eligible for refund

Service tax paid on certain taxable services that are used in relation to or for export of goods are eligible for refund under *Notification No. 17/09 ST dated 07.07.2009*. The said Notification covers port service within its ambit but does not include 'airport service'. Such anomaly has been corrected by amending the said Notification so as to include 'airport service' in the list of eligible services under the said refund scheme.

Notification No. 37/2010 ST dated 28.06.2010

Exemption to commercial or industrial construction of wharves, quays, docks etc. within the port

With effect from 01.07.2010, commercial or industrial construction when provided wholly within the port or other port, for construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways has been exempted from service tax.

Notification No. 38/2010 ST dated 28.06.2010

Air ticket to be considered a valid invoice/bill/challan under rule 4A of the Service Tax Rules, 1994

Rule 4A of the Service Tax Rules, 1994 has been amended to provide that in case of aircraft operation services, the ticket (in any form, including electronic form whatever may be the name) showing the name of the passenger, description of the journey and the amount of service tax collected would be deemed to be the invoice/ bill /challan for the purposes of the rule. The ticket would be a valid invoice/ bill /challan even if it does not contain registration number of the service provider or the classification of the service received or address of the

service receiver.

As per the provisions of rule 4A of the Service Tax Rules, 1944, invoice/ bill/ challan is required to be issued by the provider of taxable service within 14 days of the provision of the taxable service or the receipt of the consideration. In case of air-travel, the airlines or the agent may not issue a separate invoice to the passenger but may issue the ticket showing the price of such ticket as well. In such a case, the requirement of an invoice would cast an additional compliance burden on the service provider. Therefore, the above amendment has been made in the said rule.

Notification No.39/2010 ST dated 28.06.2010 as corrected vide corrigendum dated 30.06.2010

Abatements available to specified services to continue when provided wholly within a port/airport

The following services when provided wholly within an airport or a port or other port will continue to be eligible for the abatements available to them under *Notification No.1/2006 ST dated 01.03.2006*:

- (a) Renting of a cab
- (b) Erection, Commissioning & Installation Service
- (c) Goods Transport Agency service
- (d) Commercial or Industrial construction
- (e) Construction of complex
- (f) Transport of goods by rail

Definitions of port, other port and airport services were amended vide the Finance Act, 2010 so as to provide *inter alia* that all services provided entirely within the airport/port premises would be classified under these services. This would have led to the situation where abatements and exemptions presently available under individually defined taxable services would get denied when provided within airport or port merely as they would now be taxable under newly introduced taxable services. This Notification has been issued to take care of such situations.

Notification No. 40/2010 ST dated 28.06.2010 as corrected by corrigendum dated 30.06.2010 and Notification No. 43/2010 ST dated 30.06.2010

Exemptions available to cargo handling agency and storage or warehouse keeper in respect of agricultural produce, air transport of export goods etc. to continue when provided wholly within port/airport

With effect from 01.07.2010, the following services when provided wholly within the port or other port or airport have been exempted from payment of service tax:

- (i) taxable service provided by a cargo handling agency in relation to, agricultural produce or goods intended to be stored in a cold storage;
- (ii) taxable service provided by storage or warehouse keeper in relation to storage and

warehousing of agricultural produce or any service provided for storage of or any service provided by a cold storage;

(iii) taxable service in relation to transport of export goods in an aircraft by an aircraft operator;

(iv) taxable service of site formation and clearance, excavation and earthmoving and demolition and such other similar activities.

Exemptions to these services are already available under their respective category. The above exemption has been provided in view of the classification of these services getting changed when provided wholly within a port or an airport.

Notification No. 41/2010-ST, dated 28.06.2010

Commercial or Industrial Construction provided wholly within the airport exempt from service tax

With effect from 01.07.2010, commercial or industrial construction when provided wholly within the airport has been exempted from payment of service tax.

The definition of commercial or industrial construction *inter alia* excludes services of such kind provided in respect of airports. On account of the amendment in the definition of airport service, commercial or industrial construction when provided wholly within the airport would be classified as airport service. Therefore, the exclusion to such construction has been provided by way of the above exemption notification.

Notification No. 42/2010-ST dated 28.06.2010

Accounting Codes for new taxable services prescribed

Circular No.124/6 /2010-TRU dated 29.06.2010 has specified accounting codes for the taxable services introduced vide the Finance Act, 2010. Heads of Account under the Major Head "0044-Service Tax" in respect of the new taxable services have been allotted by the Office of the Principal Chief Controller of Accounts, CBEC.

The above notifications/circulars are available at www.cbec.gov.in