

## 106. TOUR OPERATOR'S SERVICES

(A) **Date of Introduction:-** 01/09/1997 vide Notification No. 37/97-S.T., dated 22/08/1997.

(B) **Definition and scope of service:-**

**"Taxable Service"** means any service provided or to be provided to any person, by a tour operator in relation to a tour.

[Section 65 (105) (n) of Finance Act, 1994 as amended]

**"Tour"** means a journey from one place to another irrespective of the distance between such places.

[Section 65(113) of Finance Act, 1994 as amended]

**"Tourist Vehicle"** has the meaning assigned to it in clause (43) of section 2 of the Motor Vehicles Act 1988 (59 of 1988).

[Section 65(114) of Finance Act, 1994 as amended]

**"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 or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicles Act, 1988 (59 of 1988) or the rules made thereunder;

Explanation:- For the purposes of this clause, the expression "tour" does not include a journey organised or arranged for use by an educational body, other than a commercial training or coaching centre, imparting skill or knowledge or lessons on any subject or field.

[Section 65(115) of Finance Act, 1994 as amended]

(C) **Rate of Tax & Accounting Code:-**

	<b>Rate of Tax</b>	<b>Accounting Code</b>
Service Tax	10% of the value of services	00440063
Education Cess	2% of the service tax payable	00440298
Secondary and Higher Education cess	1% of the service tax payable.	00440426
Other - Penalty/interest	As levied or applicable	00440064

(Rate of tax is effective from 24.02.2009.)

( D ) **Classification of Taxable Services:-**

- (1) The classification of taxable services shall be determined according to the terms of the sub-clauses (105) of section 65;
- (2) When for any reason, a taxable service is prima facie, classifiable under two or more sub-clauses of clause (105) of section 65, classification shall be effected as follows :-
  - (a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;
  - (b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, in so far as this criterion is applicable;
  - (c) when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merits consideration.

**(Sec.65A of Finance Act,1994)**

**(E) Valuation of taxable services for charging Service tax:-**

- (1) Service tax chargeable on any taxable service with reference to its value shall,—
  - (i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;
  - (ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;
  - (iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.
- (2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.
- (3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.
- (4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

**Explanation:-** For the purposes of this section,—

- (a) **“consideration”** includes any amount that is payable for the taxable services provided or to be provided;
- (b) **“money”** includes any currency, cheque, promissory note, letter of credit, draft, pay order, travellers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value;

(c) **"gross amount charged"** includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and 'book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.

**(Sec.67 of Finance Act,1994)**

**Inclusion in or Exclusion from value of certain expenditure or cost:-**

(1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.

**[Rule 5(1) of Service Tax (Determination of Value) Rules,2006]**

(2) The expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:-

- (i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;
- (ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;
- (iii) the recipient of service is liable to make payment to the third party;
- (iv) the recipient of service authorizes the service provider to make payment on his behalf;
- (v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;
- (vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;
- (vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
- (viii)** the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

**[Rule 5(2) of Service Tax (Determination of Value) Rules,2006]**

**(F) Clarifications issued by the Board/Ministry:-**

**Extension of tour operator service to package tour operators using different modes of transport-** At present, tour operator service covers package tour operators also. However, under the present definition, such package tours attract service tax only if such tours involve modes of transport other than road (say a combination of air-rail-cab travel). The definition of tour operator has been suitably expanded. While the existing levy on tour operators engaged in operating tours in tourist vehicles remains as such, in case of a package tour (which are planned, scheduled, organized or arranged by tour operators), the scope of the levy is being extended by removing the limitation regarding transportation by tourist vehicles only. Such tourist operators would be subjected to service tax irrespective of the mode of transport used during such tours. The abatements in case of package tour operators (providing transportation and accommodation) would remain at 60%. [Vide CBE &C Circular No. 80/10/2004-S.T., dated 17.09.2004-2004 (172) E.L.T. (T3)].

**Tour operators-** Abatement of 60% for period from 1.4.2000 to 4.2.2004- Central Government issued Notification No. 15/cx, dated 4.4.2007 under section 11c of the Central Excise Act, 1944, exempting levy of service tax, for the period from 1.4.2000 to 4.2.2004, on 60% of the gross amount charged for taxable services provided by tours operators, operating under a contract carriage permit issued by the appropriate transport authority, for transport of passengers from one place to another (other than services provided in relation to package tours).

Representations were received from transport operators/ bus owners operating regular point to point transport of passengers between different cities or towns under contract carriage permit issued by the appropriate transport authority that they had been asked to pay service tax on 100% of the gross amount charged by them with effect from 1.4.2004, whereas service should be charged only on the commission earned. Notification No. 2/2004-S.T., dated 5.2.2004 was issued prescribing abatement of 90% from gross value in respect of taxable service other than packaged tours. Abatement of 60% from gross value has been available since 9.7.2004 vide Notification No. 8/2004-Service Tax, dated 9.7.2004 and not prior to that date.

The Central Government has decided to extend the benefit of abatement of 60% from gross value in respect of the above mentioned taxable services to the past period also i.e. from 1.4.2000 to 4.2.2004.

[Based on Press Release dated 4.4.2007 issued by Ministry of Finance- 2007 (6) S.T.R. (C17)].

**Tour operators- Abatement of 75% on package tours from 23.8.2007-** The Central Government has increased the rate of abatement to 75% for the purpose of levy of service tax on taxable services provided by tour operators in relation to package tours. To this effect, the Central Government has issued notification No. 38/2007-S.T. dated 23.8.2007 amending Notification no. 1/2006-S.T., dated 1.3.2006.

Services provided by tour operators, in relation to a tour, are leviable to service tax under Tour Operators service. At present, tour operators, providing package tour which includes provision of transportation, accommodation for stay, is liable to pay service tax on 40% of the gross amount charged for such tour. In other

words, 60% of the gross amount charged is provided as abatement for the purpose of levy of service tax.

The Indian Association of Tour Operators (IATO) requested to increase the rate of abatement on package tour services provided by tour operators. The suggestion has been recommended by Ministry of Tourism. The request of the Indian Association of Tour Operators was examined by the Advisory Committee on Service Tax Abatement and the Committee has recommended to prescribe the rate of abatement of 75% on package tours where the gross amount charged includes cost of accommodation, food, transport arrangement, tourist guide, entry to monuments and other similar categories of expenditure.

The recommendation of the Committee was accepted by the Government and a notification prescribing abatement rate of 75% of services provided by tour operators in relation to a package tour wherein cost of accommodation, food, transport arrangement, tourist guide, entry to monuments and other similar services are included as part of the package tour has been issued. As a result of this Notification, the tour operator is required to pay service tax only on 25% of the gross amount charged on such package tour.

For details notification no. 38/2007- S.T, dated 23.8.2007 may be referred to.

[ CBE & C Press Release dated 23.8.2007].

#### **Tour Operator Service- Budget changes 2008-09**

- (1) Services provided in relation to a journey from one place to another in a tourist vehicle having contract carriage permit is leviable to service tax under tour operator service. Tour in a vehicle covered by the following categories of permits granted under the Motor Vehicles Act (MVA), 1988 and rules made thereunder are clearly leviable to service tax under tour operators service:
  - (i) Contract Carriage permit granted under section 74 of the MVA, 1988 and authorization certificate issued under Motor Vehicles (All India Permit for Tourist Transport Operators) Rules, 1993; and
  - (ii) Permit granted under section 88(9) in accordance with the provisions of section 74 of the MVA, 1988 in respect of tourist vehicles, for the purpose of promoting tourism.

Since the permits under the above two categories are granted only for tourist vehicle, service tax is leviable if the tour is provided in the above categories of vehicles. Field formations may verify the nature of permits issued to the vehicles from the transport authorities and collect service tax from vehicles having the above two types of permits.

- (2) Section 65(115) defining tour operator is being amended so as to include services provided in relation to a journey from one place to another, generally known as point-to-point tour, in a vehicle having contract carriage permit, even if the vehicle does not meet the criteria specified for tourist vehicles. With this amendment, journey from one place to another conducted in a vehicle having contract carriage permit shall be leviable to service tax under tour operator. Service tax is not leviable under tour operator service only if the tour is conducted in a vehicle having stage carriage permit. Field formations may collect data from transport authorities regarding details of contract carriage permits issued.
- (3) It may be noted that services provided in relation to journey from one place to another conducted to a tourist vehicle having contract permit for use by educational

bodies shall be excluded from the scope of the taxable service. Educational bodies do not include commercial training or coaching centres.

[Vide M.F. (D.R) Letter D.O.F.No. 334/1/2008-S.T., dated 29.2.2008].

**Exemption to booking of accommodation in hotel-** Taxable service provided by a person located outside India, in relation to booking of an accommodation in a hotel located in India for a customer located outside India, is being exempted from levy of service tax (Notification no. 14/2008-S.T dated 1.3.2008).

[Vide M.F. (D.R) Letter D.O.F.No. 334/1/2008-S.T., dated 29.2.2008].

**Contract carriages exempted in specified cases.-** Private bus operators, who operate buses on specific inter-State or intra-State routes, are required to pay service tax as they ply their buses having 'contract carriage permits' and thus fall within the definition of tour operators. On the other hand the State Undertakings run buses, which run on the same route carrying passengers, are not subjected to service tax as these buses bear 'stage carriage permit'. In order to bring parity between the two, the services provided by the tour operators undertaking point-to-point transportation of passengers in a vehicle bearing contract carriage permit is being fully exempted from service tax, provided such transportation is not in relation to tourism or conducted tours, or charter or hire. (Notification No. 20/2009-S.T., dated 7.7.2009 refers).

[Based on M.F. (D.R) Letter D.O.F.No. 334/13/2009-TRU., dated 6.7.2009].

**Exemption to Haj & Umrah pilgrimage under Export of Services Rules, 2005 clarified.-** On a reference received by the Board the matter regarding leviability of service tax on tour operator service in connection with Haj & Umrah Pilgrimage was examined.

The amount charged to the pilgrims in India undertaking Haj and Umrah pilgrimage, is for services provided by the Government of Saudi Arabia and the tour takes place outside India. As per Rule 3(1)(ii) of the Export of Services Rules, 2005, (Circular No. 111/05/2009-S.T. dated 24.2.2009), the service in respect of tour operator is export if such service is performed outside India. It is also provided therein that where such taxable service is partly performed outside India, it shall be treated as performed outside India. Therefore, it is clarified that service tax is not chargeable on the services provided in respect of tour undertaken for carrying out Haj and Umrah pilgrimage in Saudi Arabia by Indian pilgrims considering these as export of service, provided they fulfill the other conditions of export as provided in Export of Service Rules.

[Based on CBE & C Circular No. 117/11/2009-S.T., dated 30.10.2009-2009 (16) S.T.R. C17].

## **(G) Exemption & Exclusion:**

### **1. Exemption to Small Scale Service Providers:-**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby

exempts taxable services of aggregate value not exceeding **Ten lakh\*** rupees in any financial year from the whole of the service tax leviable thereon under section 66 of the said Finance Act:

Provided that nothing contained in this notification shall apply to,-

- (i) taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or
- (ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules,1994.

2. The exemption contained in this notification shall apply subject to the following conditions, namely:-

(i) the provider of taxable service has the option not to avail the exemption contained in this notification and pay service tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year;

(ii) the provider of taxable service shall not avail the CENVAT credit of service tax paid on any input services, under rule 3 or rule 13 of the CENVAT Credit Rules, 2004 (herein after referred to as the said rules), used for providing the said taxable service, for which exemption from payment of service tax under this notification is availed of;

(iii) the provider of taxable service shall not avail the CENVAT credit under rule 3 of the said rules, on capital goods received in the premises of provider of such taxable service during the period in which the service provider avails exemption from payment of service tax under this notification;

(iv) the provider of taxable service shall avail the CENVAT credit only on such inputs or input services received, on or after the date on which the service provider starts paying service tax, and used for the provision of taxable services for which service tax is payable;

(v) the provider of taxable service who starts availing exemption under this notification shall be required to pay an amount equivalent to the CENVAT credit taken by him, if any, in respect of such inputs lying in stock or in process on the date on which the provider of taxable service starts availing exemption under this notification;

(vi) the balance of CENVAT credit lying unutilised in the account of the taxable service provider after deducting the amount referred to in sub-paragraph (v), if any, shall not be utilised in terms of provision under sub-rule (4) of rule 3 of the said rules and shall lapse on the day such service provider starts availing the exemption under this notification;

(vii) where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services; and

(viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed rupees **\*ten lakhs** in the preceding financial year.

3. For the purposes of determining aggregate value not exceeding **ten\***lakh rupees, to avail exemption under this notification, in relation to taxable service provided by a goods transport agency, the payment received towards the gross amount charged by such goods transport agency under section 67 for which the person liable for paying service tax is as specified under subsection (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994, shall not be taken into account.

*Explanation.*- For the purposes of this notification,-

- (A) "brand name" or "trade name" means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, logo, label, signature, or invented word or writing which is used in relation to such specified services for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified services and some person using such name or mark with or without any indication of the identity of that person;
- (B) "aggregate value not exceeding **\*ten lakh rupees** means the sum total of first consecutive payments received during a financial year towards the gross amount, as prescribed under section 67 of the said Finance Act, charged by the service provider towards taxable services till the aggregate amount of such payments is equal to ten lakh rupees but does not include payments received towards such gross amount which are exempt from whole of service tax leviable thereon under section 66 of the said Finance Act under any other notification.
4. This notification shall come into force on the 1st day of April, 2005.

**[Notification No. 6/2005-ST, dated 1-3-2005. \*Amended by Notfn.No. 8/2008-ST dated 01.03.2008]**

## **2. Services to UN Agencies**

Services provided to United Nations or an International Organizations are exempt.

**[Notification No. 16/2002-ST, dated 2-8-2002]**

**3. Export of service:** Any service which is taxable under clause 105 of Section 65 may be exported without payment of service tax.

**( Rule 4 of Export of Services Rules,2005)**

## **4. Exemption to services provided to a developer of SEZ or a unit of SEZ:-**

Exempts the taxable services specified in clause (105) of section 65 of the said Finance Act, which are provided in relation to the authorized operations in a Special Economic Zone, and received by a developer or units of a Special Economic Zone, whether or not the said taxable services are provided inside the Special Economic Zone, from the whole of the service tax leviable thereon under section 66 of the said Finance Act subject to certain conditions. ( Refer notification for details)

**[Notification No. 09/2009ST dated 03.03.2009 (Prior to 03.03.2009 Notfn.No4/2004-ST dated 31.03.2004)]**

**5. Exemption to value of goods & material sold by service provider:** In exercise of the powers conferred by section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts so much of the value of all the taxable services, as is equal to the value of goods and materials sold by the service provider to the recipient of service, from the service tax leviable thereon under section (66) of the said Act, subject to condition that there is documentary proof specifically indicating the value of the said goods and materials.

**(Notification No. 12/2003-ST dated 20.06.2003 effective from 01.07.2003)**

**6. Exemption to taxable services provided by TBI and STEP:** All taxable services, provided by a Technology Business Incubator (TBI) or a Science and Technology Entrepreneurship Park (STEP) recognized by the National Science and technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Govt. of India from the whole of the service tax leviable thereon subject to certain conditions and procedures. ( Refer notification for details)

**(Notification No.09/2007 ST dated 01.03.2007)**



**7. Exemption to taxable services provided by entrepreneurs located within the premises of TBI or STEP:** All taxable services, provided by an entrepreneur located within the premises of a Technology Business Incubator (TBI) or a Science and Technology Entrepreneurship Park (STEP) recognized by the National Science and technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Govt. of India from the whole of the service tax leviable thereon subject to certain conditions and procedures. ( Refer notification for details)

**(Notification No.10/2007 ST dated 01.03.2007)**

**8. Exemption to services provided to Foreign Diplomatic Missions or Consular Post in India:** All services provided by any person, for the official use of a Foreign Diplomatic Mission or Consular Post in India are exempted from service tax subject to certain conditions and procedures. (Refer notification for details)

**(Notification No. 33/2007-ST dated 23.05.2007)**

**9. Exemption to services provided for personal use of a family member of Diplomatic Agent or Career Consular Officers posted in Foreign Diplomatic Mission/Consular Post in India:** All services provided by any person, for personal use of family member of Diplomatic Agents or Career Consular officers posted in a Foreign Diplomatic Mission or Consular Post in India are exempted from service tax subject to certain conditions and procedures. (Refer notification for details)

**(Notification No. 34/2007-ST dated 23.05.2007)**

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