

53. INFORMATION TECHNOLOGY SOFTWARE SERVICES

(A) Date of Introduction: 16.05.2008 vide Notification No. 18/2008-S.T., dated 10.05.2008

(B) Definition and scope of service:

“Information technology software” means any representation of instruction, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment.

(Section 65 (53a) of Finance Act, 1994 as amended)

“Taxable Service” means any service provided or to be provided to any person, by any other person in relation to information technology software, including,-

- (i) development of information technology software,
- ii) study, analysis, design and programming of information technology software,
- (iii) adaptation, upgradation, enhancement, implementation and other similar services related to information technology software,
- (iv) providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specification for a database design, guidance and assistance during the start up phase of a new system, specifications to secure a database, advice on proprietary information technology software,
- (v) providing the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products,
- (vi) providing the right to use information technology software supplied electronically.

(Section 65 (105) (zzzze) of Finance Act, 1994 as amended)

(C) Rate of Tax & Accounting Code:

	Rate of Tax	Accounting Code
Service Tax	10% of the value of services	00440452
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	00440450

(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:

Scope of Information Technology Software services.-

(1) Information Technology (IT) software service includes,-

- . Development (study,analysis, design and programming) of software.
- . Adaptation, up-gradation, enhancement, implementation and other similar services in relation to IT software.
- . Provision of advice and assistance on matters related to IT software, including.

- (i) Conducting feasibility studies on the implementation of a system,
- (ii) Providing specifications for a database design,
- (iii) Providing guidance and assistance during the start up phase of a new system,
- (iv) Providing specifications to secure a database, or providing advice on proprietary IT software.

. Acquiring the right to use,-

- (i) IT software for commercial exploitation including right to reproduce, distribute and sell,
- (ii) Software components for the creation of and inclusion in other IT software products,
- (iii) IT software supplied electronically.

(2) Software consists of carrier medium such as CD, Floppy and coded data. Software are categorized as “normal software’ and ‘specific software’. Normalized software is mass market product generally available in packaged

form off the shelf in retail outlets. Specific software is tailored to the specific requirement of the customer and is known as customized software.

- (3) Packaged software sold off the shelf, being treated as goods, leviable to excise duty @ 8%. In this budget, it has been increased from 8% to 12% vide notification No. 12/2008 C.E., dated 1.3.2008. Number of IT services and IT enabled services (ITeS) are already livable to service tax under various taxable services:

. Consulting engineer's service- advice, consultancy or technical assistance in the discipline of hardware engineering [section 65(105)(g)].

. Management or business consultant's service-procurement and management of information technology resources [section 65(65)].

. Management, maintenance or repair service-maintenance of software, both packaged and customized and hardware [section 65(64)].

. Banking and other financial services- 'provision and transport of information and data processing' [Section 65(12)]

. Business support service- various outsourced IT and IT enabled services [section 65(105)(zzzq)]

. Business auxiliary service- services provided on behalf of the client such as call centres [section 65(19)]

- (4) IT software services provided for use in business or commerce are covered under the scope of the proposed services. Said services provided for use, other than in business or commerce, such as services provided to individuals for personal use, continue to be outside the scope of service tax levy. Service tax paid shall be available as input service under Cenvat Credit Scheme.

- (5) Software and upgrades of software are also supplied electronically, known as digital delivery. Taxation is to be neutral and should not depend on forms of delivery. Such supply of IT software electronically shall be covered within the scope of the proposed service.

- (6) With the proposed levy on IT software services, information technology related services will get covered comprehensively.
- (7) Following consequential amendments in other taxable services are also being made:

. At present, 'Information Technology service' is specifically excluded from the scope of Business auxiliary service [section 65(105)(zzb)]. Consequent on the proposed IT software service, information technology services get covered comprehensively for the purpose of levy of service tax and, therefore, specific exclusion of 'Information technology service' under Business auxiliary service is being deleted.

. To include 'testing and analysis of IT software' services under Technical testing and analysis service [section 65(105)(zzh)].

. To include 'Certification of IT software' services under Technical inspection and certification service [section 65(105)(zzi)].

. To clarify as removal of doubts that 'Management, maintenance or repair of properties' includes Management, maintenance or repair of IT software [section 65(105)(zzg)]. Maintenance of packaged software (being goods) is also leviable to service tax under the said service.

. Services provided in relation to advice, consultancy and assistance on matters related to IT software shall be leviable to service tax under the IT software service. Consulting engineer's service [section 65(105)(g)] in the discipline of compute hardware engineering is leviable to service tax whereas consulting engineer's service in the discipline of computer software engineering is not leviable to service tax by way of specific exclusion. Specific exclusion of 'consultancy in the discipline of computer software engineering' from the scope of 'consulting engineer's service' is not necessary and, therefore, being deleted.

. To clarify that a consultancy service, covering both hardware and software consultancy, shall be classifiable under 'Consulting engineer's service'.

[Based on M.F. (D.R) Letter D.O.F.No. 334/1/2008-TRU, dated 29.2.2008].

Budget 2009-10 changes.- A correction has been carried out in the definition of the taxable service by replacing the word 'acquiring' by the word 'providing', considering the fact that it is the providing of 'right to use' and not the acquiring of 'right to use' is a taxable service. This amendment would have retrospective effect from 16.5.2008, where the service came in to effect.

[Based on M.F. (D.R) Letter D.O.F.No. 334/13/2009-TRU, dated 07.07.2009].

Expansion of the scope of IT software service by Budget 2010-11-

- (1) In Budget 2008, services provided in relation to Information Technology (IT) software, such as development, designing, programming, upgradation of IT software, providing advice, consultancy and assistance on the matters of IT software and providing right to use IT software, whether supplied on a media or electronically, were brought in the ambit of Service tax. However, the tax was limited to cases where such IT software was to be used in the course or furtherance of business or commerce. In other words, these activities are taxable only when the receiver of service exploits them for commercial or business purposes.
- (2) The definition of this taxable service is being suitably amended to extent this levy to cover the aforesaid IT software services provided in all cases i.e. whether or not used in the course or furtherance of business or commerce.

[Based on M.F. (D.R) Letter D.O.F.No. 334/1/2010-TRU, dated 26.2.2010].

(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 as amended by Notification No. 15/2009ST dated 20.05.2009

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)
