

CORPORATE UPDATE

FOR CLIENT CIRCULATION ONLY

No. 04/05

24th May, 2005

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INCOME TAX

I. Finance Act, 2005

Finance Act, 2005 was enacted by the Parliament on 13.05.2005. The Finance Act as finally enacted, incorporates certain changes from the proposals as contained in the Finance Bill, 2005 in regard to Income Tax. Following are the gist of the changes:-

(I) Section 10A

The sunset clause proposed to be inserted u/s 10A of the Income Tax Act, 1961 in respect of exemption available to undertakings engaged in manufacture or production of articles or things or computer software for export, after 31st March, 2009 in Special Economic Zones (SEZ) has been deleted. The implication of this change is that an undertaking in SEZ will

continue to enjoy the benefit under the section.

(II) Section 80C

The proposed condition to pay contribution towards LIC premium, PF and other specified investments out of "income chargeable to tax" for claiming deduction u/s 80C, has been removed.

(III) Individual / HUF Tax Rates

Exemption limit for resident women taxpayers has been raised from Rs.1,25,000/- to Rs.1,35,000/-. The exemption limit for senior citizens has been raised from Rs.1,50,000/- to Rs.1,85,000.

The new/revised tax structure applicable to individuals and HUF is as follows:-

<p>(a) In case of women resident in India (below 65 years):-</p> <table border="0"> <thead> <tr> <th style="text-align: left;">Income</th> <th style="text-align: left;">Tax</th> </tr> </thead> <tbody> <tr> <td>• up to Rs.1,35,000/-</td> <td>Nil</td> </tr> <tr> <td>• Rs.1,35,001/- to Rs.1,50,000/-</td> <td>10%</td> </tr> <tr> <td>• Rs.1,50,001/- to Rs.2,50,000/-</td> <td>20% + 1,500</td> </tr> <tr> <td>• Above Rs.2,50,000/-</td> <td>30%+ 21,500</td> </tr> </tbody> </table> <p>(b) In case of Senior Citizens, resident in India (65 years & above)</p> <table border="0"> <thead> <tr> <th style="text-align: left;">Income</th> <th style="text-align: left;">Tax</th> </tr> </thead> <tbody> <tr> <td>• up to Rs.1,85,000/-</td> <td>Nil</td> </tr> <tr> <td>• Rs.1,85,001/- to Rs.2,50,000/-</td> <td>20%</td> </tr> <tr> <td>• Above Rs.2,50,001/-</td> <td>30%+ 13,000</td> </tr> </tbody> </table> <p>(c) In case of Individuals & HUF other than those covered in (a) or (b) above:-</p> <table border="0"> <thead> <tr> <th style="text-align: left;">Income</th> <th style="text-align: left;">Tax</th> </tr> </thead> <tbody> <tr> <td>• up to Rs.1,00,000/-</td> <td>Nil</td> </tr> <tr> <td>• Rs.1,00,001/- to Rs.1,50,000/-</td> <td>10%</td> </tr> <tr> <td>• Rs.1,50,001/- to Rs.2,50,000/-</td> <td>20%+5,000</td> </tr> <tr> <td>• Above Rs.2,50,000/-</td> <td>30%+25,000</td> </tr> </tbody> </table>	Income	Tax	• up to Rs.1,35,000/-	Nil	• Rs.1,35,001/- to Rs.1,50,000/-	10%	• Rs.1,50,001/- to Rs.2,50,000/-	20% + 1,500	• Above Rs.2,50,000/-	30%+ 21,500	Income	Tax	• up to Rs.1,85,000/-	Nil	• Rs.1,85,001/- to Rs.2,50,000/-	20%	• Above Rs.2,50,001/-	30%+ 13,000	Income	Tax	• up to Rs.1,00,000/-	Nil	• Rs.1,00,001/- to Rs.1,50,000/-	10%	• Rs.1,50,001/- to Rs.2,50,000/-	20%+5,000	• Above Rs.2,50,000/-	30%+25,000	<p>II. <u>Fringe Benefit Tax Scheme</u></p> <p>The revised provisions of the New Chapter XII-H on <u>Income Tax on Fringe Benefits</u> pursuant to the various amendments made in the Finance Bill, 2005 are enumerated by way of a note annexed at page no. 7.</p> <p>III. <u>Banking Cash Transaction Tax (BCTT)</u></p> <p>The revised provisions (in brief) of Banking Cash Transaction Tax pursuant to the various amendments made in the Finance Bill, 2005 are enumerated below:-</p> <ul style="list-style-type: none"> ➤ Applicable from 1st June 2005; ➤ BCTT rate has been retained at 0.1% of the value of transaction; ➤ No BCTT on withdrawals from savings bank account; ➤ BCTT to apply only in respect of accounts maintained with scheduled banks; ➤ BCTT is applicable on encashment of term deposits (by way of maturity or otherwise). However BCTT is not applicable if the amount of term deposit is credited to any account with the bank; ➤ Purchase of bank draft, banker's cheque and other financial instruments on payment of cash, excluded from the levy of BCTT;
Income	Tax																												
• up to Rs.1,35,000/-	Nil																												
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<p>➤ Limit of withdrawals on a single day permissible without levy of BCTT raised to :-</p> <ul style="list-style-type: none"> • Rs.25,000/- in case of individuals & HUF • Rs.1,00,000/- in case of accounts maintained by person's other than Individuals and HUF (i.e company firms, AOP's etc.) <p>➤ The scheduled banks responsible, for collection and deposit of tax, to the credit of Central Government;</p> <p>➤ Separate provisions enacted for filing of return, payment of tax, levy of penalties & interest, assessments & appeals under BCTT scheme.</p> <p style="text-align: center;">SERVICE TAX</p> <p><u>Service Tax - Rebate On Export Of Services</u></p> <p>1. The Central Government exercising its powers under Rule 5 of the Export of Services Rules, 2005, [copy published in our earlier issue for the month of April 2005] has issued notifications for granting rebate of service tax and cess.</p>	<p>1.1 Notification No.11/2005 - Service tax dated 19th April 2005 – Rebate of service tax and cess paid on all taxable services exported in terms of rule 3 of the aforesaid Rules (Refer Page No. 16 for a copy of the notification).</p> <p>1.2 Notification No.12/2005 - Service tax dated 19th April 2005 – Rebate of duty paid on excisable inputs or service tax and cess paid on all taxable input services, used in providing taxable service exported in terms of rule 3 of the said Rules (Refer Page No. 19 for a copy of the notification).</p> <p>1.3 The above mentioned rebates are granted subject to conditions, limitations and procedures as given in these notifications.</p> <p>1.4 Any service, which qualifies for export of services in terms of rule 3 of Export of Services Rules 2005, may be exported without payment of service tax as provided in Rule 4 thereof. However, where service tax is paid on such export of services, notification no.11/2005 dated 19.4.2005 provides for procedure for claiming of rebate of service tax and cess so paid.</p>
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FEMA

Project Offices – Intermittent remittances and Foreign Currency Accounts in India

The Reserve Bank of India (RBI) has issued Circular No. 44 dated 17.05.2005, liberalizing the regulations as applicable to project offices, in respect of intermittent remittances and opening of Foreign currency accounts in India. The circular also lays down specific reporting requirements by the Project Offices to the Authorised Dealers. The said circular is reproduced below for information:

RBI/2004-05/471

A.P. (DIR Series) Circular No. 44

May 17, 2005

To
All Banks Authorised to Deal in Foreign Exchange
Madam / Sirs,

Project Offices—Intermittent remittances and Foreign Currency Accounts in India

1. Attention of Authorised Dealer (AD) banks is invited to Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000; Notification No. FEMA 22/2000-RB dated May 3, 2000 and Foreign Exchange Management (Remittance of Assets) Regulations, 2000; Notification No. FEMA 13/2000-RB dated

May 3, 2000, as amended from time to time, as well as AP (DIR Series) Circular no. 37 dated November 15, 2003.

2. At present, AD banks are required to obtain Reserve Bank approval for opening of foreign currency accounts of the Project Offices set up in India by foreign companies. In order to further liberalise the procedure for Project Offices, it has been decided to allow Authorised Dealers to open foreign currency accounts for the Project Offices (established under the general/specific approval of Reserve Bank), as well as to permit intermittent remittances by Project Offices without Reserve Bank approval subject to the conditions stipulated hereunder.

2.1 Opening of Foreign Currency Account:

The concerned branch of the AD may open **non-interest** bearing Foreign Currency Account for Project Offices in India subject to the following:

- a) The Project Office has been established in India, with the general/ specific permission of Reserve Bank, having the requisite approval from the concerned Project Sanctioning Authority,
- b) The contract under which the project has been sanctioned, specifically provides for payment in foreign currency,
- c) Each Project has only one Foreign Currency Account.
- d) The permissible debits and credits in the account shall be as under:

<p>❖ Debits:</p> <ul style="list-style-type: none"> • Payment of project related expenditure. <p>❖ Credits:</p> <ul style="list-style-type: none"> • Foreign currency receipts from the Project Sanctioning Authority, and • Remittances from parent/group company abroad or bilateral/multilateral international financing agency. <p>e) The responsibility of ensuring that only the approved debits and credits are allowed in the Foreign Currency Account shall rest solely with the concerned branch of the AD. Further, the Accounts shall be subject to 100 percent scrutiny by the Concurrent Auditor of the respective AD banks.</p> <p>f) The Foreign Currency account may be closed at the completion of the Project.</p> <p>2.2 Intermittent remittances: AD branch may permit intermittent remittances by Project Offices pending winding up / completion of the project provided they are satisfied with the bonafides of the transaction and subject to the following:</p> <p>❖ The Project Office submits an Auditors'/Chartered Accountants' Certificate to the effect that sufficient provisions have been made to meet the liabilities in India including Income-Tax etc.</p> <p>❖ An undertaking from the Project Office that the remittance will not, in any way, affect the completion of the</p>	<p>Project in India and that any shortfall of funds for meeting any liability in India will be met by inward remittance from abroad</p> <p>2.3 Reporting requirements:</p> <p>The foreign company establishing a Project Office in India is to furnish a report through the concerned AD branch, to the concerned Regional Office of Reserve Bank of India under whose jurisdiction the Project Office is set up, incorporating the following details :</p> <p>(a) Name and address of the Foreign Company,</p> <p>(b) Reference Number and date of letter awarding the contract referred to in clause (ii) of Regulation 5 of Notification No. FEMA 22/2000-RB dated May 3, 2000,</p> <p>(c) Particulars of the authority awarding the projects/contract,</p> <p>(d) The total amount of contract,</p> <p>(e) Address /e-mail address,/telephone number/fax number of the Project Office,</p> <p>(f) Tenure of Project Office ,</p> <p>(g) Brief details of the Project undertaken,</p> <p>(h) AD branch with whom the account has been opened and the foreign currency in which the account is opened,</p> <p>(i) An undertaking to the effect that the Project Office is eligible to avail of the General Permission under Regulation 5(ii) to RBI Notification No 22 / 2000-RB dated 3rd May, 2000 read with Notification No. FEMA 95 dated July 2, 2003 showing the reason thereof.</p>
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<p>This Report shall be forwarded through the AD branch to the concerned Regional Office of the Reserve Bank of India within 2 months of establishment of the Project Office.</p> <p>2.4 The Project Office shall also submit to the AD branch on an <u>annual basis</u>, a Certificate from a Chartered Accountant showing the Project Status and certifying that the accounts of the Project Office has been audited and the activities undertaken are in conformity with the General/Specific permission given by the Reserve Bank.</p> <p>3. Inter Project transfer of funds will be permitted with the prior permission of the concerned Regional Office of the Reserve Bank under whose jurisdiction the Project Office is situated.</p> <p>4. In case of disputes between the Project Office and the project sanctioning authority or other Government/Non-Government agencies etc., the balance held in such account shall be converted into INR and credited to a special account which shall be dealt with as per the settlement of the dispute.</p> <p>5. Project Offices not falling under the General Permission granted vide the Notification mentioned in paragraph 3 may approach the respective Regional Offices under whose jurisdiction it is situated for necessary approvals.</p> <p>6. The above instructions come into force with immediate effect</p>	<p>7. ADs may bring the contents of this Circular to the notice of their constituents and customers concerned.</p> <p>8. The directions contained in this circular have been issued under Sections 10 (4) and 11 (1) of the Foreign Exchange Management Act 1999 (42 of 1999) and is without prejudice to permissions / approvals, if any, required under any other law.</p> <p style="text-align: right;">Yours faithfully, (F.R. Joseph) Chief General Manager</p> <p style="text-align: center;">*****</p> <p style="text-align: center;"><u>DATES TO REMEMBER</u></p> <p>1. The last date for deposit of TDS deducted on amounts paid / credited on 31st March, 2005 is 31st May, 2005.</p> <p>2. For corporate assesses, the first installment of advance tax for the financial year 2005-06 is due to be deposited on or before 15th June, 2005.</p> <p>3. The last date for filing of annual TDS returns relating to financial year 2004-05 , in Form No. 26 & 24, is 30th June, 2005.</p>
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(Cont. from page no. 2 - Fringe Benefit Tax Scheme)

NOTE ON FRINGE BENEFIT TAX (FBT) SCHEME

APPLICABILITY AND OVERVIEW

- Applicable from 1st April 2005

- Fringe benefits not to include benefits on which tax is paid by the employees u/s 17(2) of the Income Tax Act, 1961. Perquisites on which employees will be liable to pay tax are given on page no. 15.

- Under FBT scheme, tax shall be charged from the *employers* in respect of (i) **fringe benefits provided or (ii) deemed to have been provided**, directly or indirectly to employees or their family members (employees to include former employees).

- Employer, for levy of FBT includes
 - Company;
 - Firm;
 - Association of persons;
 - Local Authority;
 - Any other artificial jurisdictional person

- Employer, for levy of FBT not to include:-
 - Individuals;
 - HUF; and
 - Domestic and Charitable trusts.

- Rate of tax on fringe benefits as valued, shall be 30% plus surcharge & education cess at the rates applicable. The effective FBT rates for different assesses is given in the table below:-

Type of Assessee	Effective FBT Rate	Basis of Tax Rate
Domestic Companies & firms	@ 33.66%	30% plus surcharge @10 % plus education cess @ 2%
Foreign Companies	@ 31.365%	30% plus surcharge @2.5 % plus education cess @ 2%
Co-operative societies	@ 30.6%	30% plus education cess @ 2%
Local Authorities	@ 30.6%	30% plus education cess @ 2%

- FBT is applicable even if the employer is not liable to pay Indian Income Tax viz
 - Loss making companies & other employers;
 - Tax holiday units;
 - Foreign companies;
 - Companies entitled to treaty exemptions;
 - Liaison offices.

- FBT is applicable irrespective of any monetary ceiling on the amount of benefits provided or tax payable

- FBT is applicable irrespective of the number of employees engaged by the employer

FRINGE BENEFITS - MEANING

➤ Fringe Benefit means to include:-

S.No.	Nature of Expense	Taxable Value of Fringe Benefit (based on %age of expense)
1.	Any privilege, service, facility or amenity, directly or indirectly provided by an employer, whether by way of reimbursement or otherwise to his employees	Actual Cost
2.	Free or concessional ticket provided by the employer for private journeys of his employees or their family members	Cost at which such benefit is provided by the employer to the general public less amount recovered from the employee
3.	Contribution by the employer to an approved superannuation fund for the employees	Actual amount of contribution

➤ Fringe benefits will be **deemed to be provided** by the employer, if the employer **in the course of his business or profession** incurs any expense on or makes any payment under the certain specified categories (16 such categories have been specified). In the course of business or profession shall include even activities which are not carried on with the object of deriving income, profits or gains

➤ The 16 specified categories of expenses to be deemed as fringe benefit (along with the taxable value) & effective tax rate are as below:-

S.No.	Nature of Expense	Taxable Value of Fringe Benefit (based on %age of expense)	Effective Tax Rate (ETR) including surcharge and education cess [33.66%]¹ of the value of fringe benefit]
1.	Entertainment	20%	6.732%
2.	Provision of Hospitality – of every kind, whether by way of provision for food or beverages or in any other manner whatsoever excluding:- <i>(i) expenditure on or payment for food or beverages provided by the employer to his employees in office or factory;</i> <i>(ii) any expenditure on or payment through paid vouchers which are not transferable and usable only at eating joints or outlets</i>	20% <i>However in case of employers engaged in the business of hotel, value of benefit shall be 5%</i>	6.732%
3.	Conference excluding:- fee for participation by the employees in any conference.	20%	6.732%

¹ ETR calculated for companies & firms only. ETR may be calculated for other assesses on the basis of effective FBT rates given in the table on page.8.

	<i>Expln: any expenditure on conveyance, tour and travel (including foreign travel), on hotel or boarding and lodging in connection with any conference shall be deemed to be expenditure incurred for the purpose of conference</i>		
4.	Sales promotion, including publicity <i>excluding:- certain categories of expenditure on advertising eg. Ads in print or electronic media, or on buses, trains, press conferences, business convention, participation, fairs etc.</i>	20%	6.732%
5.	Employee Welfare <i>Expln: any expenditure incurred or payment made to fulfill any statutory obligation or mitigate occupational hazards or provide first aid facilities in the hospital or dispensary run by the employer shall not be considered as expenditure for employees welfare</i>	20%	6.732%
6.	Conveyance, tour and travel including foreign travel	20% <i>However in case of employers engaged in the business of</i> <i>(a) Construction;</i> <i>(b) manufacture or production of pharmaceuticals;</i> <i>(c) manufacture or</i>	6.732%

		<i>production of computer software, the value of benefit shall be 5%</i>	
7.	Use of hotel, boarding and lodging facilities	20% <i>However in case of employers engaged in the business of manufacture or production of (a) pharmaceuticals or; (b) computer software, the value of benefit shall be 5%</i>	6.732%
8.	Repair, running (including fuel) & maintenance of motor cars and amount of depreciation thereon	20% <i>However, in case of employers engaged in the business of carriage of passengers or goods by motor car, the value of benefit shall be 5%</i>	6.732%
9.	Repair, running (including fuel) & maintenance of aircrafts and amount of depreciation thereon	20% <i>However, in case of employers engaged in the business of carriage of passengers or goods by aircraft, the value of benefit shall be taken as NIL.</i>	6.732%

10.	Use of telephone (including mobile phone), <i>excluding:- expenditure on leased telephone lines</i>	20%	6.732%
11.	Maintenance of any accommodation in the nature of guest house <i>excluding:- accommodation used for training purposes</i>	20%	6.732%
12.	Festival Celebrations	50%	16.83%
13.	Use of health club and similar facilities	50%	16.83%
14.	Use of any other club facilities	50%	16.83%
15.	Gifts	50%	16.83%
16.	Scholarships	50%	16.83%

PAYMENT OF TAX

- FBT has to be discharged by way of Advance Tax on a quarterly basis
- Due Dates for payment of advance tax

Installment	Quarter	Due date
First	April to June	15 th July
Second	July to September	15 th October
Third	October to December	15 th January
Fourth	January to March	15 th March

- Simple interest (@ 1% per month) shall be payable on the amount of short/ non payment of advance tax liability computed as per FBT provisions

RETURN

- Every employer who has paid or made provision for payment of fringe benefit is required to furnish an **Annual Return** of fringe benefits within due dates in prescribed form and verified in prescribed manner

- Due dates for filing FBT Return

<i>Nature of Assessee</i>	<i>Due Date</i>
Companies	31 st October of the assessment year
Persons (other than a company) whose accounts are required to be audited	31 st October of the assessment year
Other employers viz. firms, AOP etc	31 st July of the assessment year

- Loss making companies and even employers who are otherwise not liable to file their income tax returns, have to file FBT Return in case they have paid or made any provision for payment of fringe benefit to its employees.

ASSESSMENT PROCEDURES, INTEREST AND PENALTIES ETC.

- Separate provisions enacted for filing of return, assessments and appeals under FBT scheme.

- Penalties and interest are applicable for any default in payment of tax, filing of return and failure to comply with assessment & appellate procedures laid down under the FBT scheme.

OTHER POINTS

- FBT is not an allowable expense for calculating income under the head “profits and gains of business and profession” (*section 40(a)*)

- Employees not to pay tax on such fringe benefits

- Perquisites which shall continue to be taxed in hands of the employee under section 17(2) are:-
 - Rent Free Accommodation (perquisite valuation rules have been revised);
 - Amounts paid by employers, in respect of an obligation which is otherwise payable by the employee;
 - Amounts paid by an employer, directly or through a fund to affect an assurance on the life of the employee or a contract for annuity, other than payments made to recognized PF, approved superannuation fund or deposit linked insurance fund. However contribution by the employer, to an approved superannuation fund shall be covered under Chapter XII-H;
 - Domestic Help viz. servant, gardner etc.;
 - Utilities viz. gas, electricity, water;
 - Free or concessional education;
 - Concessional or interest free loan;
 - Use and transfer of moveable assets.

(Cont. from page no. 3 – Service Tax – Rebate on Export of Services)

19th April, 2005

Notification No. 11/2005-Service Tax

In exercise of the powers conferred by rule 5 of the Export of Service Rules, 2005 (hereinafter referred to as the said rules), insofar as it relates to export of taxable services to the countries other than Nepal and Bhutan, the Central Government hereby directs that there shall be granted rebate of the whole of the service tax and cess paid on all taxable services exported in terms of rule 3 of the said rules, to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter,-

2. Conditions and limitations:-

- (a) that the taxable service has been exported in terms of rule 3 of the said rules and payment for export of such taxable service has been received in India in convertible foreign exchange;
- (b) that the service tax and cess, rebate of which has been claimed, have been paid on the taxable service exported;
- (c) the amount of rebate of service tax and cess admissible is not less than five hundred rupees; and
- (d) that in case,-
 - (i) the service tax and cess, rebate of which has been claimed, have not been paid; or
 - (ii) the taxable service, rebate on which has been claimed, has not been exported,

the rebate paid, if any, shall be recoverable with interest as per the provisions of section 73 and section 75 of the Finance Act, 1994 (32 of 1994) as if no service tax and cess have been paid on such taxable service.

3. Procedure:-

- (i) claim of rebate of service tax and cess paid on all taxable services exported shall be filed with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be;
- (ii) such application shall be accompanied by,—
 - a. documentary evidence of receipt of payment against taxable service exported and for which rebate is claimed, payment of service tax and cess on such taxable service exported;
 - b. a declaration that such taxable service, rebate of service tax and cess paid on such service is claimed, has been exported, in terms of rule 3 of the said rules, along with the documents evidencing the export of such taxable service;
- (b) The jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, if satisfied that the claim is in order, shall sanction the rebate either in whole or in part.

Explanation,- “service tax and cess” for the purposes of this notification means,-

- (a) service tax leviable under section 66 of the Finance Act, 1994; and
- (b) education cess on taxable services levied under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004).

F. No. B2/4/2004-TRU

V. Sivasubramanian

Deputy Secretary to the Government of India

FORM ASTR-1

(Application for filing a claim of rebate of service tax and cess paid on taxable services exported)

(PART A: To be filled by the applicant)

Date.....

Place.....

To,

Assistant Commissioner of Central Excise/Deputy Commissioner of Central Excise
.....(full postal address).

Madam/Sir,

I/We.....,(name of the person claiming rebate) holding service tax registration No., located in..... (address of the registered premises) hereby declare that I/We have exportedservice (name of the taxable service) under rule 5 of the Export of Service Rules, 2005 to(name of the country to which service has been exported), and on which service tax amounting to (amount in rupees of service tax) and education cess amounting to (amount in rupees of cess) has been paid.

2. I/We also declare that the payment against such service exported has already been received in India in full..... (details of receipt of payment).

3. I/We request that the rebate of the taxable service exported by me/us in terms of rule 3 of the Export of Service Rules, 2005 may be granted at the earliest. The following documents are enclosed in support of this claim for rebate.

- 1.
- 2.
- 3.

(Signature and name of the service provider or his authorised agent with date.)

(PART B: To be filled by the sanctioning authority)

Date of receipt of the rebate claim: _____

Date of sanction of the rebate claim: _____

Amount of rebate claimed: Rs. _____

Amount of rebate sanctioned: Rs. _____

If the claim is not processed within 15 days of the receipt of the claim, indicate briefly reasons for delay:

Place:

Date: Signature of the Assistant Commissioner/ Deputy Commissioner of Central Excise.

19th April, 2005

Notification No. 12/2005-Service Tax

In exercise of the powers conferred by rule 5 of the Export of Service Rules, 2005 (hereinafter referred to as the said rules), the Central Government hereby directs that there shall be granted rebate of the whole of the duty paid on excisable inputs or the whole of the service tax and cess paid on all taxable input services (herein after referred to as 'input services'), used in providing taxable service exported in terms of rule 3 of the said rules, to any country other than Nepal and Bhutan, subject to the conditions, limitations and procedures specified hereinafter,-

2. Conditions and limitations:-

- (a) that the taxable service has been exported in terms of rule 3 of the said rules and payment for export of such taxable service has been received in India in convertible foreign exchange;
- (b) that the duty, rebate of which has been claimed, has been paid on the inputs;
- (c) that the service tax and cess, rebate of which has been claimed, have been paid on the input services;
- (d) the total amount of rebate of duty, service tax and cess admissible is not less than five hundred rupees;
- (e) no CENVAT credit has been availed of on inputs and input services on which rebate has been claimed; and
- (f) that in case,-
 - (i) the duty or, as the case may be, service tax and cess, rebate of which has been claimed, have not been paid; or
 - (ii) the taxable service, rebate for which has been claimed, has not been exported; or
 - (iii) CENVAT credit has been availed on inputs and input services on which rebate has been claimed,

the rebate paid, if any, shall be recoverable with interest as per the provisions of section 73 and section 75 of the Finance Act, 1994 (32 of 1994) as if no service tax and cess have been paid on such taxable service.

3. Procedure:-

3.1 Filing of declaration.- The provider of taxable service to be exported shall, prior to date of export of taxable service, file a declaration with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, describing the taxable service intended to be exported with,-

- (a) description, quantity, value, rate of duty and the amount of duty payable on inputs actually required to be used in providing taxable service to be exported;
- (b) description, value and the amount of service tax and cess payable on input services actually required to be used in providing taxable service to be exported.

3.2 Verification of declaration.- The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall verify the correctness of the declaration filed prior to such export of taxable service, if necessary, by calling for any relevant information or samples of inputs and if after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is satisfied that there is no likelihood of evasion of duty, or as the case may be, service tax and cess, he may accept the declaration.

3.3 Procurement of input materials and receipt of input services.- The provider of taxable service shall,-

- (i) obtain the inputs required for use in providing taxable service to be exported, directly from a registered factory or from a dealer registered for the purposes of the CENVAT Credit Rules, 2004 accompanied by invoices issued under the Central Excise Rules, 2002;
- (ii) receive the input services required for use in providing taxable service to be exported and an invoice, a bill or, as the case may be, a challan issued under the provisions of Service Tax Rules, 1994.

3.4 Presentation of claim for rebate.-

- (a) (i) claim of rebate of the duty paid on the inputs or the service tax and cess paid on input services shall be filed with the jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, after the taxable service has been exported;
- (ii) such application shall be accompanied by, –

- a. invoices for inputs issued under Central Excise Rules, 2002 and invoice, a bill, or as the case may be, a challan for input services issued under Service Tax Rules, 1994 in respect of which rebate is claimed;
 - b. documentary evidence of receipt of payment against taxable service exported, payment of duty on inputs and service tax and cess on input services used for providing taxable service exported, rebate of which is claimed;
 - c. a declaration that such taxable service, has been exported in terms of rule 3 of the said rules, along with documents evidencing such export.
- (b) The jurisdictional Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, having regard to the declaration, if satisfied that the claim is in order, shall sanction the rebate either in whole or in part.

Explanation 1.- “service tax and cess” for the purposes of this notification means,-

- (a) service tax leviable under section 66 of the Finance Act, 1994; and
- (b) education cess on taxable service levied under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004).

Explanation 2.- “duty” for the purposes of this notification means, duties of excise leviable under the following enactments, namely:-

- (a) the Central Excise Act, 1944 (1 of 1944);
- (b) the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);
- (c) the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);
- (d) National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by section 169 of the Finance Act, 2003 (32 of 2003), section 3 of the Finance Act, 2004 (13 of 2004) and further amended by clause 123 of the Finance Bill, 2005, which clause has the force of law by virtue of the declaration made under the Provisional Collection of Taxes Act, 1931 (16 of 1931);
- (e) special excise duty collected under a Finance Act;

- (f) additional duty of excise as levied under section 157 of the Finance Act, 2003 (32 of 2003);
- (g) Education Cess on excisable goods as levied under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004); and
- (h) the additional duty of excise leviable under clause 85 of the Finance Bill, 2005, which has the force of law by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931).

F. No. B2/4/2004-TRU

V. Sivasubramanian

Deputy Secretary to the Government of India

FORM ASTR-2

(Application for filing a claim of rebate of duty paid on inputs, service tax and cess paid on input services)

(PART A: To be filled by the applicant)

Date.....

Place.....

To,

Assistant Commissioner of Central Excise/Deputy Commissioner of Central Excise
.....(full postal address).

Madam/Sir,

I/We.....,(name of the person claiming rebate) holding service tax registration No., located in..... (address of the registered premises) hereby declare that I/We have exportedservice (name of the taxable service) under rule 5 of the Export of Service Rules, 2005 to(name of the country to which service has been exported), and service tax amounting to (amount in rupees of service tax) and education cess amounting to (amount in rupees of cess) has been paid on input services and duty amounting to (amount in rupees of duty) has been paid on inputs.

2. I/We also declare that the payment against such service exported has already been received in India in full..... (details of receipt of payment).

3. I/We request that the rebate of the duty, service tax and cess on inputs and input services used in providing taxable service exported by me/us in terms of rule 3 of the Export of Service Rules, 2005 may be granted at the earliest. The following documents are enclosed in support of this claim for rebate.

- 1.
- 2.
- 3.

Declaration:

- (a) We hereby certify that we have not availed CENVAT credit on inputs and input services on which rebate has been claimed.
- (b) We have been granted permission by Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, vide C. No. _____, dated _____ for working under notification No. _____, dated _____.

(Signature and name of the service provider or his authorised agent with date)

(PART B: To be filled by the sanctioning authority)

Date of receipt of the rebate claim: _____

Date of sanction of the rebate claim: _____

Amount of rebate claimed: Rs. _____

Amount of rebate sanctioned: Rs. _____

If the claim is not processed within 15 days of the receipt of the claim, indicated briefly reasons for delay.

Place:

Date: Signature of the Assistant Commissioner/ Deputy Commissioner of Central Excise.
