

# CORPORATE UPDATE

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## FINANCE ACT, 2006

The Finance Act, 2006 (No. 21 of 2006) received the assent of the President on 18<sup>th</sup> April, 2006. Consequently, all the changes proposed by Finance Bill, 2006 relating to direct and indirect taxes become effective from 01.04.2006, save as otherwise provided in the Act.

## INCOME TAX

### I. Amendments in Section 80C consequent to passing of Finance Act, 2006

The proposal in the Finance Bill, 2006 relating to inclusion of investment in term deposits of a scheduled bank for deduction u/s 80C of the Income Tax has been amended by the Finance Act, 2006. As per the amended Section 80C, deduction from gross total income is available in respect of amounts paid for term deposit:-

- (a) for a fixed period of not less than five years with a scheduled bank; and
- (b) which is in accordance with a scheme framed and notified, by the Central Govt. in the official gazette for the purpose of this clause.  
The Central Govt. is yet to come out with the specified scheme.

## **II. Form 24Q Amended**

Form No. 24Q for submitting the quarterly e-tds statements for tax deducted on payment of "salary" has been amended vide notification no. 119 dated 12<sup>th</sup> May, 2006.

The format of Annexure II to Form 24Q has been amended by the said notification. Now details regarding TDS for the whole Financial year are also required to be given in Annexure II in the e-tds statement furnished for last quarter of the Financial year. And details of TDS for relevant quarter will be given in Annexure I in the e-tds statement of relevant quarter.

## **SERVICE TAX**

### **I. Enhancement in the Rates of Service Tax**

1. The Finance Bill ,2006 got the Presidential assent on 18 th April 2006.The revised rate of service tax @ 12.24% (including education cess of 2% ) shall therefore be applicable on all taxable services rendered on or after 18 th April,2006.

## II. New Services Covered

Following 15 new services are covered under the service tax net, with effect from 1<sup>st</sup> May 2006 vide notification no. 15/2006 –Service Tax dated 25 th April,2006:-

1. Service provided by a Registrar to an issue;-in relation to an issue of securities.
2. Service provided by a Share Transfer Agent-in relation to maintenance of record ,transfer and redemption of securities
3. Automated Teller Machine operations, maintenance or management; cash processing ,reconciliation and value added services
4. Service provided by a recovery agent; in relation to recovery of any sums due to a banking Company or a financial Institution
5. Sale of space or time for advertisement, other than in print media and sale of time slots by a broadcasting agency or organisation;
6. Sponsorship services provided to any body corporate or firm, other than services in relation to sponsorship of sports events;
7. Transport of passengers embarking on international journey by air, other than in economy class;
8. Transport of goods in containers by rail provided by any person other than Govt. Railways;
9. Business support services;-to mean support services provided in relation to business or commerce and to include evaluation of prospective customers, telemarketing, processing of purchase orders and fulfillment services ,information and tracking of delivery schedules ,managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support service and pricing policies.
10. Auctioneer's service in relation to auction of property-movable or immovable, tangible or intangible, other than in relation to auction of property under directions or orders of a court of law or auction by the Govt.;
11. Public relation service to include among others Corporate image building, media relations, brand launch and support.
12. Ship management service to include among others supervision and maintenance of ship, negotiation of contracts for bunker fuel, insurance, salvage and other claims, arrangements for loading and unloading.
13. Internet telephony service to support communications using transmission control protocol or Internet protocol suite.
14. Transport of persons by cruise ship; and
15. Credit card, debit card, charge card or other payment card related services.

**III. Enlargement of Scope of existing Services**

Scope of the following services have been extended / enlarged from 1<sup>st</sup> May ,2006 vide Notification no. 15/2006 –Service Tax dated 25 th April,2006: -

Sr. No.	Name of taxable service	Purpose of amendment
i.	Banking and other financial services.	To include services such as: (i) transfer of money through different modes, such as telegraphic transfer, mail transfer and electronic transfer by any person, and (ii) services provided as banker to an issue
ii.	Management consultancy services.	To specifically mention, consultancy in different areas of management such as financial management, human resources management, marketing management, production management, logistics management, procurement and management of information technology resources, or other similar areas of management.
iii.	General insurance services and Life insurance services	To include, services provided to a policy holder or any person by an insurer, including a re-insurer.
iv.	Insurance auxiliary services concerning general insurance business and insurance auxiliary services concerning life insurance business	To include services provided to a policy holder or any person or an insurer, including a re-insurer
v.	Maintenance or repair service	To be renamed as “management, maintenance or repair” service and to include management of movable property.
vi.	Erection, commissioning or installation service	To include erection, commissioning or installation of structures, whether prefabricated or otherwise.
vii.	Consulting engineers service	To include engineering consultancy services provided by any firm or body corporate.
viii.	Business auxiliary service	To include computerized data processing.

#### **IV. Introduction of New Section 66A**

As per Section 66A newly introduced by the Finance Act,2006.

- (1) Where any service specified in Clause ( 105) of Section 65 is :-
  - (a) provided or to be provided by a person who has established a business or has fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence ,in a country other than India; and
  - (b) is received by a person (hereinafter referred to as the recipient) who has his place of business, fixed establishment or ,permanent address or usual place of residence in India.

Such service shall for the purposes of this section, be taxable service and such taxable service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this Chapter shall apply.

As per explanation 1 to the above said section "A person carrying on business through a branch or agency in any country shall be treated as having a business establishment in that country".

The above new Section 66A has been introduced in lieu of explanation to Section 65 (105), of the Finance Act, 1994 and consequently explanations to said clause have been omitted.

The scope of a deemed service provider has been further widened by the inclusion of the said explanation as above to Section 66A inasmuch as branch or agency shall now be covered under the new Section 66A.

## V. Amendment to Export of Services Rules, 2005

The Export of Services Rules, 2005 were notified by the Central Govt. in 2005, governing the exemption on export of taxable services. These rules define the export of taxable services in three categories. The gist of the Export of Services Rules, 2005 and its subsequent amendments were published in the Corporate Update – February 2005 and June 2005 issue.

With the introduction of new services under the service tax net by the Finance Act, 2006, the Export of Services Rules required amendment. This amendment has been brought about on 19.4.2006 vide notification no. 13/2006. The salient features of the amendment are as under:

(i) The new services introduced by the Finance Act, 2006 have been categorized in the three categories as under:

- Auctioneer services: Category I;
- Transport of goods in containers by rail: Category II;
- Rest of the new services: Category III

*(For the list of new services introduced vide Finance Act, 2006, refer point no.II)*

However, the following services are excluded from the purview of Export of Services Rules, 2005:

- Services provided by an aircraft operator to any passenger embarking in India for international journey, and
- Services provided to any person in relation to transport of such person by a cruise ship.

(ii) The rules as amended specifically provide that the services to qualify as export should satisfy the following conditions:

- (a) The services should be delivered outside India and used outside India and
- (b) the payment is received in convertible foreign exchange.

While the condition at (b) above does not create any difficulty, the conditions at (a) above has far reaching implications.

A separate note on major changes in Export of Services Rules, 2005 is given in Appendix on page no. 13..

**VI. Newly introduced Taxation of Services (Provided from Outside India and Received in India) Rules, 2006**

Mirroring the Export of Services Rules, 2005, Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 have been introduced, vide under these rules, the import of services have been classified under 3 categories, in the same manner as under the Export of Service Rules, 2005.

The recipient of taxable services provided from outside India and received in India shall make an application for registration and shall pay tax as a deemed service provider ,provided the person providing service does not have a place of business ,fixed establishment or permanent address or usual place of residence in India . The taxable services provided from outside India and received in India shall not be treated as output service for the purpose of availing credit of duty of excise paid on any input or service tax paid on any input services under CENVAT Credit Rules ,2004.

**VII. Newly introduced Service Tax (Determination of Value) Rules, 2006**

The Finance Act, 2006 has introduced new section 67 for determination of value of taxable service. According to the said section, where service tax is chargeable on any taxable service with reference to its value, then such value shall –

- (i) in a case where the provision of service is for consideration in money, be the gross amount charged by the service provider for such service
- (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 as with the addition of service tax charge 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.

In the context of Section 67 (1)(iii), Service tax (Determination of Value) Rules 2006 has been notified vide notification no. 12/2006-ST dated 19 th April 2006. As per Rule 3 of the said Rules:

The value of taxable service, where the consideration received is not wholly or partly consisting of money, shall be determined in the following manner:

- (a) the value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person in the ordinary course of trade and the gross amount charged is the sole consideration.
- (b) Where the value cannot be determined in accordance with clause (a) ,the service provider shall determine the equivalent money value of such consideration which shall in no case be less than the cost of provision of such taxable service

Further, where the Central Excise Officer is satisfied that the value so determined by the service provider is not in accordance with the provisions of the Act or these Rules, he shall issue a notice to such service provider to show cause why the value of such taxable service for the purpose of charging the service tax should not be fixed at the amount specified in the notice.

*Inclusion of costs /reimbursements:*

As per Rule 5 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 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. However, 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 taxable services .As per the illustrations given in the notification it

is clear that those expenditure incurred to effectively perform the provision of service by the service provider shall be part of the consideration and service tax is levied thereon.

*Import of services*

Actual consideration charged for the services shall be the value of taxable service received under the provisions of section 66A. In case where services are partly performed in India, the value of taxable services shall be the total consideration paid by the recipient of such services including the value of service partly performed outside India.

**VIII. Amendments to Rule 2 & Rule 6 (Service Tax Notification 17/2006ST) dated 25<sup>th</sup> April, 2006**

Rule 2 of the Service Tax Rules has been amended to define the person liable for paying service tax in case of general insurance business as the insurer or re insurer and in case of sponsorship service as the person who receives the sponsorship service.

Thus, in case of sponsorship, the recipient becomes the deemed service provider and is liable to pay service tax.

Further, Rule 6(7) has been amended to provide that in relation to services provided by an Air Travel Agent, the Air Travel Agent, shall have an option to pay service tax @ 0.6% of the basic fare in case of domestic travel and 1.2% of basic fare in case of international travel, as against the earlier rates of 0.5% and 1.0% respectively.

**IX. Interest on amounts collected in excess (Service Tax Notification 8/2006ST dated 19<sup>th</sup> April, 2006)**

For delay in deposit of the amount collected in excess or otherwise payable, interest has been fixed at 13% per annum.

**X. Credit of Service Tax**

New Section 93A has been inserted in Finance Act, 2006. The newly inserted section 93A empowers the Central Government to grant rebate of Service tax paid on input services used in manufacturing or processing of goods and provision of services, which are exported. The extent and manner of rebate shall be prescribed separately.

It is further provided that if any rebate has been allowed under the said section and sale proceeds in respect of goods/services exported are not received by exporter in India within the time allowed by RBI such rebate shall be deemed never to have been allowed and Central Government may recover or adjust the same in such manner as may be prescribed.

The rule – making power of the Central Govt. has been enlarged under section 94 of the Finance Act, 1994, empowering the Govt. to make rules for “rebate of service tax paid or payable on the taxable services used as input services in the manufacturing or processing or goods exported out of India”.

**FEMA**

Reserve Bank of India (RBI) has vide its circular no. 29 AP(DIR Series) dated 27 March, 2006 has liberalized the Overseas Investment Policy, wherein only a company incorporated in India, or a body created under an Act of Parliament or a partnership firm registered under Indian Partnership Act, 1932, or any other notified entity was eligible to invest in a JV/WOS abroad.

It has now been decided by the RBI to allow proprietary / unregistered partnership firms who are star exporters with a proven track record and have a consistently high export performance to set up a JV/WOS outside India with its prior approval. Proprietary / unregistered partnership firms satisfying the eligibility criteria as laid down below may submit an application in form ODI to the RBI, through their Authorised Dealer bank. Authorised Dealer banks may accordingly, forward such investment proposals from the eligible parties, with their comments / recommendations, to the RBI for consideration. Approval of such investment would be subject to the usual reporting mechanism.

**Criteria for considering investment proposals outside India by established proprietorship or unregistered partnership exporter firms**

- i) The Partnership / Proprietorship firm is a DGFT recognised Star Export House (export exceeding Rs.15 crore) per annum.
- ii) The Authorised Dealer bank is satisfied that the exporter is KYC (Know Your Customer) compliant, is engaged in the proposed business and has turnover as indicated.
- iii) Exporter has proven track record i.e. export outstanding does not exceed 10 per cent of the average export realisation of preceding three years.
- iv) The exporter has not come under adverse notice of any Government agency like Enforcement Directorate, CBI and does not appear in the exporters' caution list of the RBI or in the list of defaulters to the banking system in India.
- v) The amount of investment outside India does not exceed 10 per cent of the average of three year export realisation or 200 per cent of the net owned funds of the firm, whichever is lower.

## DATES TO REMEMBER

1. The last date for filing of TDS/TCS returns for quarter ending 31<sup>st</sup> March, 2006 is 15<sup>th</sup> June, 2006.
2. The due date for deposit of the first installment of advance fringe benefit tax for the quarter ending 30<sup>th</sup> June, 2006 is 15<sup>th</sup> July, 2006.
3. The due date for filing TDS/TCS statements (whether in computer media or in paper format) for the quarter ending 30<sup>th</sup> June, 2006 is 15<sup>th</sup> July, 2006.
4. The due date for deposit of service tax for non-corporate assessees for the quarter ending 30<sup>th</sup> June, 2006 is 15<sup>th</sup> July, 2006.
5. The due date for deposit of Service tax for corporate assessees for month ending 31<sup>st</sup> May, 2006 is 5<sup>th</sup> June, 2006.
6. The last date for filing Income tax return for Financial year 2005-06 by all non-corporate assessee, who are not required to get their accounts audited, is 31<sup>st</sup> July, 2006.

**APPENDIX**

**A Brief Note on  
Major changes in Export of Services Rules, 2005**

1. The taxable services for the purpose of Export of Services Rules, 2005 have been classified into three categories as under:
  - 1) Services provided in relation to immovable property which is situated outside India;
  - 2) Services provided where the place of performance is outside India; anda
  - 3) Services other than those specified in categories 1 & 2 above and received by a person outside India.
  
2. A statement showing the conditions applicable for taxable services to qualify as export of services upto 18th April, 2006 and changes made therein from 19<sup>th</sup> April, 2006 is attached. **(ANNEXURE I)**
  
- 3.1 As may be seen from the statement, where services falling under category 3 were rendered to a recipient located outside India and used in or in relation to commerce or industry, such services qualified as export of services upto 18<sup>th</sup> April, 2006.
  
- 3.2 The Export of Services (Amendment) Rules, 2006 introduced with effect from 19<sup>th</sup> April, 2006 have amended this provision as under:

With effect from 19<sup>th</sup> April, 2006 the taxable services falling under category 3, will qualify as export of services only if the following conditions are fulfilled:

- (1) that such services are delivered outside India and used outside India; and
- (2) payment for such services is received by the service provider in convertible foreign exchange.

The services covered in category 3 of Export of Services Rules are attached as **ANNEXURE-II**.

3.3 In terms of the above amendments, some of the services which earlier qualified as "export" of services prior to 19<sup>th</sup> April, 2006 may not qualify as "export" **in case such services are not delivered outside India and are not used outside India.**

3.4 The categories which may be affected by the above amendment may include the following:

Taxable services rendered in India on behalf of a foreign principal/client/main contractor etc. such as :

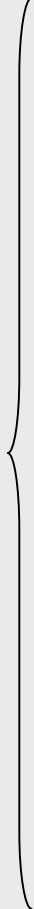
- (a) Repair and maintenance services;
- (b) After sales services;
- (c) Supervisory or other taxable services.

3.5 It will, therefore, be necessary to review the facts of each individual case so as to determine whether the services are delivered outside India and used outside India and thus qualify as “export”.

3.6 Incidentally, it may be mentioned that the above change will also affect the incidence of service tax on services rendered by our organization to clients abroad.

ANNEXURE I

**Conditions to be met for qualifying as “export”  
under Export of Services Rules  
Upto 18<sup>th</sup> April, 2006**

S.No.	Category 1	Category 2	Category 3
1.	Service are delivered outside India;	 <p style="text-align: center;">Same as in category 1</p>	(A) Service is provided to a recipient located outside India;  <p style="text-align: center;"><b>OR</b></p> (B) When the recipient has an office in India and if the order is placed by the recipient from outside India on fulfillment of same conditions as applicable to Category 1 or category 2.
2.	Services are used in business or any other purpose outside India		
3.	Payment for such services is received in convertible foreign exchange		

ANNEXURE II**List of services covered in category 3 of  
Export of Services Rules**

- 1) to a subscriber by a Telegraph Authority in relation to Telephone connection(b)
- 2) to a Telegraph Authority in relation to pager( c)
- 3) to a client by an advertising agency (e)
- 4) to a client by a consulting Engineer(g)
- 5) to a client by a Manpower Recruitment or supply Agency (k)
- 6) to a Client by a Management Consultant (r)
- 7) to a Client by a scientist or technocrat (za)
- 8) to a subscriber ,by the telegraph authority in relation to a leased circuit (zd)
- 9) to a subscriber by telegraph authority in relation to a communication through telegraph (zf)
- 10) to a subscriber by telegraph authority in relation to a communication through telex (zf)
- 11) to a subscriber by telegraph authority in relation to fax communication (zf)
- 12) to a customer by any person in relation to online information or data base access (zh)
- 13) to a Client by a broadcasting Agency (zk)
- 14) to a policy holder or any person by an actuary or intermediary or insurance agent(zl)
- 15) to a customer by a banking and financial institution including NBFC(zm)
- 16) to any person by a cable operator(zs)
- 17) to a policy holder or any person in relation to risk of cover in life insurance(zx)
- 18) to a policy holder or any person in relation to insurance auxiliary services in life insurance(zy)
- 19) to a customer by a rail travel agent in relation to booking of passage (zz)
- 20) to a client by any person in relation to business auxiliary service (zzb)
- 21) to a franchisee, by the franchiser in relation to franchisee (zze)
- 22) to a customer by a foreign exchange broker (zzk)
- 23) to any person by the holder of intellectual property right (zzr)

- 24) to any person by any other person in relation to transport of goods other than water through pipeline or other conduit(zzz)
- 25) to any person by any other person in relation to mailing list compilation and mailing(zzzg)
- 26) to any person by registrar to an issue(zzzi)
- 27) to any person by share transfer agent (zzzj)
- 28) to any person in relation to automated teller machine operations, maintenance or management service (zzzk)
- 29) to a banking Company or financial institution in relation to recovery of any sums due to such institution (zzzl)
- 30) to a person by any other person ,in relation to sale of space or time for advertisement excluding in print media (zzzm)
- 31) to any body corporate or firm ,by any person receiving sponsorship (zzzn)
- 32) to any person by any other person in relation to support services of business (zzzp)
- 33) to any person in relation to managing the public relations of such person (zzzs)
- 34) to any person under a contract or an agreement ,by any other person in relation to ship management service (zzzt)
- 35) to any person by any other person in relation to internet telephony (zzzu)
- 36) to any person by any other person in relation to credit card, debit card, charge card or other payment card service ,in any manner; (zzzw)