

CORPORATE UPDATE

FOR CLIENT CIRCULATION ONLY

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CONTENTS

• Income Tax	1
• Service Tax	1-6
• Fema	6-8
• Date to Remember	8

INCOME TAX

Tatkal Pan

It is now possible to apply for PAN through Internet and pay Rs. 60+Service Tax, as applicable, through a nominated credit card. In such cases Tatkal, PAN will be communicated though e-Mail in 5 working days. The PAN card will, however, be printed and forwarded only after supporting documents and photograph are received by M/s. NSDL. Failure to send supporting documents and photograph within stipulated time may result in cancellation of PAN so allotted. At present this facility is available through M/s NSDL (www.tin.tin.nsd.com) only, though very soon M/s. UTISL (www.utisl.co.in) will also offer a similar facility.

SERVICE TAX

I. New Services Introduced

Vide the Finance (No. 2) Act, 2004, 13 new services were brought under the Service Tax net. Chart giving brief definitions, nature of service and taxable amounts of these new services is attached separately in a word file.

II. Expansion of Existing Services

1. The existing taxable service i.e., "banking and other financial services", has been expanded both in terms of its coverage and the types of service providers. Financial services would now also include specified financial services, namely, lending, issue of pay order, demand draft, cheque, letter of credit, bill of exchange, providing a bank

<p>guarantee, overdraft facility, bill discounting, safe deposit lockers, or safe vaults and operation of bank accounts. The interest amount would, however, remain excluded from the purview of service tax. In addition to banking company, financial institution including a non-banking financing company, body corporate and any other commercial concern providing financial services will also be covered.</p> <p>2. In Finance Act 2004, it has been decided to levy service tax on that portion of the service which pertains to risk element. The levy would not be applicable to such premium of the existing policies, which were paid before the new levy comes into force.</p> <p>It has been provided that in the case of composite policies (risk plus saving) life insurer can at his option pay 1% of the total premium towards discharge of service tax liability. This shall not be applicable in case an insurance policy is towards risk only or where the premium gives details of risk premium and other premium separately. (refer notification No. 11/04-ST, dated 10.09.2004). However, those insurance companies who want to pay tax on risk premium as certified by the Appointed Actuary on a company basis can do so. The insurance companies may be allowed to pay monthly service tax provisionally, based on estimates. The monthly estimated (i.e.</p>	<p>provisional) duty payment for the entire company would be based on a provisional certificate issued by the Appointed Actuary, subject to final certification at the end of the year. At the end of the financial year, when the sum at risk is calculated and certified by the Actuary, the liabilities would be finalized and the companies would pay the balance tax or adjust the excess tax paid.</p> <p>3. <u>Extension of service tax on installation and commissioning, to erection services:</u> Service tax was levied on commissioning and installation of plant, machinery and equipment w.e.f. 1.7.2003. The scope of service tax under installation and commissioning is extended to include erection also. Erection involves civil works, which would otherwise fall under the category of construction services. However, in case of a composite contract for erection, commissioning and installation, the erection charges would be taxed as part of this category of service.</p> <p>4. <u>Extension of service tax on air travel agents and rail travel agents to other travel agents:</u> At present, service tax is leviable on air travel agents and rail travel agents. The scope of service tax has been extended to</p>
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<p>include all travel agents. The taxable service is the service provided by travel agent in relation to the booking of passage for travel by modes other than air and road. The value of taxable service would be the commission/fee charged by the travel agent from the customer.</p> <p>5. <u>Sub-brokers:</u> Services provided by brokers, sub-brokers to investors in connection with sale and purchase of securities listed on recognized stock exchanges would be subjected to service tax.</p> <p>6. <u>Extension of service tax on cable operators to Multi system operators (MSOs):</u> In cable TV services, broadcast channels transmit television signals to multi system operators (MSO) who further send them to the cable operator. The services provided by the MSOs to the cable operators have been made taxable.</p> <p>7. <u>Business Auxiliary Service:</u> The scope of Business Auxiliary Service has been expanded to include activities relating to procurement of inputs, production of goods (not amounting to manufacture) or provision of services on behalf of a client. The tax is leviable only when the service provider is a commercial concern. The present definition intends to bring all business auxiliary services relating to procurement, inventory and production under service tax. Thus, the</p>	<p>procurements of input, capital goods or input services as defined in the CENVAT Credit Rules, by a commercial concern for a client i.e. a person producing goods or providing services would be now taxable under this category. Similarly, if a commercial concern produces goods on behalf of the client or provides service on behalf of a client, such activities would come under the scope of this service, unless the activity of service provider amount to manufacture in terms of the central excise law. The aim of all such activities is production of goods or provision of services, the whole or part of which is being carried out by the service provider (i.e. the agent) on behalf of the client. Such activities include procurements, productions or service providing activities done for the client.</p> <p>The service tax is, however, being restricted to only those cases where the service provider is a factory governed by the Factories Act, 1948, a company established by or under the Companies Act, 1956 or a corporation or a body corporate established by or under any law, partnership firms (whether or not registered), societies registered under Societies Registration Act, 1860 or under any law and any co-operative society established by or under any law. However, services in relation to agriculture, printing, textile processing and education would remain exempt</p>
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<p>even if provided by such service providers. (refer Notification no.14/04-ST, dated 10.09.2004)</p> <p>8. <u>Extension of tour operator service to package tour operators using different modes of transport:</u> 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 (notification no.39/97-ST) in case of package tour operators (providing transportation and accommodation) would remain at 60%.</p> <p>III. Exemptions provided to service providers</p> <p>1. Taxable services provided by an aircraft</p>	<p>operator to any person in relation to transport of export cargo by aircraft has been exempted from the whole of the service tax leviable thereon (refer Notification No. 28/04-ST dated 10.09.04)</p> <p>2. Collection and other bank charges in relation to taxes / duties collected on behalf of the Union/State Governments and Union Territories have been exempted from service tax. (refer notification No. 13/04-ST, dated 10.09.2004)</p> <p>3. Vocational and recreational training institutes have been exempted from service tax. (refer notification No.24/04-ST, dated 10.09.04)</p> <p>4. Taxable services provided in respect of Enterprise Resource Planning (ERP) software systems by a management consultant for management of any organization has been exempted. (refer Notification no. 16/04-ST, dated 10.09.2004).</p> <p>5. Notification no. 8/2003-ST exempts services provided by call centres. For this notification, call centres mean a commercial concern which provides assistance, help or information, through telephone on behalf of another person. Call Centre has been notified as "a</p>
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<p>commercial concern which provides assistance, help or information or contacts current or prospective customers for sales, telemarketing, payments through telephone, lease lines, satellite links, mail fax, web chat and using information systems for monitoring and recording information on behalf of another person". (refer to notification No. 12/04-ST, dated 10.09.2004)</p> <p>6. In cases of specified services, like tour operators, rent-a-cab, mandap-keeper providing catering services, erection, commissioning and installation etc., abatements are allowed to neutralize the cost of materials/goods supplied or used during the course of provision of service. These abatements were allowed when cross credit of excise duty and service tax was not available. The abatement would be conditional, subject to non-availment of input goods and capital goods credit under the new Cenvat Credit Rule, 2004 and also non availment of benefit under notification no 12/2003-ST. (refer notification No. 12/04-ST, dated 10.09.2004) The credit of input services would, however, be available. Exemption no. 12/2003-ST provides that the value of goods and materials sold by the service provider during the course of providing service shall remain excluded from value of taxable service subject to production of documentary proof of value</p>	<p>of such sale. It is being provided that benefit of abatement would not be available to any service provider availing this concession. Also, this concession would be subject to condition that either no CENVAT credit has been availed on such goods or if already availed, it is reversed prior to the sale of such goods. (refer notification No. 12/04-ST, dated 10.09.2004)</p> <p>7. Exemption from service tax is provided to value of taxable service provided to a customer, by a banking company or a financial institution including non-banking financial company or any other body corporate or commercial concern in relation to – (a) overdraft facility; (b) Cash credit facility; or (c) discounting of bills, bills of exchange or cheques, as is equivalent to the amount of interest on such overdraft, cash credit or discount (Refer notification No.29/2004-05 dated 22.9.2004).</p> <p>IV. Exemption Withdrawn</p> <p>Withdrawal of exemption to engineering consultancy services in relation to computer software.:</p> <p>1. The exemption to services provided by</p>
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a consulting engineer in relation to computer software (notification No. 4/99-ST) has been withdrawn (refer notification no. 23/04-ST, dated 10.09.2004).

2. The exemption on taxable services provided by insurer on life insurance business to a policy holder in relation to life insurance business has been withdrawn (refer notification no.23/04-ST dated 10.9.2004).

V. SERVICE TAX CREDIT

1. The credit of service tax paid on input services was allowed only for payment of service tax on output services and the excise duty paid on inputs and capital goods was allowed only for payment of excise duty on final products. It was announced by the Finance Minister in the Budget speech, that credit of input tax would be extended across goods and services.
2. Accordingly, a provider of taxable service shall be allowed credit for duty paid on input service received by output service provider. Such output service provider is also allowed to take credit for excise duty paid on inputs or capital goods used in providing output service.

The Government has issued CENVAT Credit Rules 2004 to provide inter set-off between service tax and excise duty.

The said rules are in supersession of the CENVAT Credit Rules, 2002 and the Service Tax Credit Rules, 2002.

4. For details, CENVAT Credit Rules, 2004 may be referred to. We may be contacted for any clarification if required in this regard.

FEMA

A.P. (DIR Series) Circular No.15 dated October 1, 2004

Conversion of External Commercial Borrowing and Lumpsum Fee/Royalty into Equity

General permission has now been given for conversion of ECB into equity subject to the following conditions:

- (i) The activity of the company is covered under the Automatic Route for FDI or it had obtained Government approval for foreign equity in the Company.
- (ii) The foreign equity after such conversion of debt into equity is within the sectoral cap, if any,

<p>(iii) Pricing of shares is as per SEBI and erstwhile CCI guidelines/regulations in the case of listed/unlisted companies as the case may be.</p> <p>(iv) Compliance with the requirements prescribed under any other statute and regulation in force.</p> <p>This conversion facility is available for all ECBs availed either with the general or specific permission of Reserve Bank. This would also be applicable to ECBs irrespective of whether due for repayment or not, as well as secured/unsecured loans availed from non-resident collaborators. However, import payables, deemed as ECBs would not be eligible for conversion into equity/preference shares.</p> <p>Details of issue of shares against conversion of ECB has to be reported to the concerned Regional Office of RBI in form FC-GPR and to the Department of Statistical Analysis and Computer Services, RBI, Mumbai, in Form ECB-2.</p> <p>A.P. (DIR Series) Circular No.16 dated October 4, 2004</p> <p><u>FEMA – Foreign Direct Investment in India – Transfer of Shares/Convertible Debentures by way of Sale – Simplification of Procedures</u></p>	<p>The Government has now dispensed with the requirement of obtaining prior approval of FIPB in respect of transfer of shares/convertible debentures by way of sale from residents to non-residents (including transfer of subscriber's shares) of an Indian company in sectors other than financial service sector provided the following conditions are complied with:</p> <p>a) The activities of the investee company are under the automatic route under FDI policy (vide Annexure B to Schedule 1 to RBI Notification No. FEMA 20/2000-RB dated May 3, 2000 as amended from time to time) and transfer does not attract the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.</p> <p>b) The non-resident shareholding after the transfer, complies with sectoral limits under FDI policy.</p> <p>c) The price at which the transfer takes place is in accordance with the pricing guidelines prescribed by SEBI/RBI.</p> <p>In case of transfer of shares by way of sale under private arrangement, it does not require prior approval of Reserve Bank subject to compliance of terms and conditions as provided in this circular.</p>
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**A.P. (DIR Series) Circular No.17
dated October 16, 2004**

**Issue of Bank Guarantee in Favour of
Foreign Airlines/IATA**

Presently Indian agents of foreign airlines who are members of International Airport Association (IATA), are required to take prior approval of the Reserve Bank for arranging to issue bank guarantees in favour of the foreign airline companies/IATA, in connection with their ticketing business. It has since been decided to delegate the powers to the AD banks to issue such guarantees in favour of foreign airline companies or IATA on behalf of IATA approved travel agents.

DATE TO REMEMBER

The last date of deposit of the next installment of advance tax for the Financial Year 2004-05 in respect of all assesseees is 15th December, 2004.