

113. TRAVEL BY AIR SERVICES

(A) Date of Introduction: 01.05.2006 vide Notification No. 15/2006-S.T., dated 24.04.2006

(B) Definition and scope of service:

“Aircraft operator” means any person which provides the service of transport of goods or passengers by aircraft;
(Section 65(3b) of Finance Act, 1994 as amended)

“Airport” has the meaning assigned to it in clause (b) of section 2 of the Airports Authority of India Act, 1994 (55 of 1994);
(Section 65(3c) of Finance Act, 1994 as amended)

“Customs airport” means an airport appointed as such under clause (a) of sub section (1) of Section 7 of the Customs Act, 1962 (52 of 1962)
(Section 65(35a) of Finance Act, 1994 as amended)

“International journey”, in relation to a passenger, means his journey from any customs airport on board any aircraft to a place outside India;
(Section 65(56a) of Finance Act, 1994 as amended)

“Passenger” means any person boarding an aircraft in India for performing domestic journey or international journey;
(Section 65(77c) of Finance Act, 1994 as amended)

“Taxable Service” means any service provided or to be provided to any passenger, by an aircraft operator, in relation to scheduled or non-scheduled air transport of such passenger embarking in India for domestic journey or international journey;
(Section 65 (105) (zzzo) 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	00440362
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	00440363

(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:

C.B.E & C's Master Circular No. 96/7/2007-ST dt. 23.08.2007 relevant to this service

Ref. code	Issue	Clarification
(1)	(2)	(3)
086.01/ 23.8.07	An international journey commencing from an Indian airport involves stopover/ transfer at intermediate airports outside India before reaching the destination (say Mumbai-Dubai-London-New York). Whether service tax would be liable in such case on the value indicated in the ticket for the entire journey or only on that part of the value attributable to the first sector (Mumbai-Dubai) of the journey?	Aim of the passenger is to travel from Mumbai to New York. Actual destination of the international journey is the criterion to decide the value of the service (in this case, New York). Stopover/ transfer at intermediate airports, being merely incidental and part of the main journey, is of no relevance or consequence for levy of service tax under section 65(105)(zzzo) read with section 66. Service tax in such cases is leviable on the total consideration of a single composite service relating to the entire journey, i.e., value indicated on the ticket for the entire journey.
086.02/ 23.8.07	An international journey (say Delhi-Mumbai-London) includes travel in a domestic sector (Delhi-Mumbai) as part of the international journey. Whether service tax is liable on the value of whole journey or after excluding the value attributable to the domestic sector from the total value of the ticket?	In this case, the journey is a single composite journey. The aim of the passenger is to travel from India to a place outside India. Part of the travel in the domestic sector cannot be segregated from the single journey. Service tax is, therefore, leviable on the total value of the ticket treating the domestic sector as integral part of the international journey without excluding the value attributable, if any, to travel in the domestic sector.
086.03/ 23.8.07	An international journey commences from an airport outside India and completed at an airport outside India but including a sector wherein the passenger disembarks and subsequently	In this case, the journey being a single one and the aim of the passenger is not to travel from India to a place outside India. Service tax is not leviable under section 65(105)(zzzo).

	embarks at an Indian airport as part of international journey (say Sydney-Mumbai-Dubai-Singapore-Sydney). Whether service Tax is liable for Mumbai-Dubai sector only or on the total value of the ticket?	
086.04/ 23.8.07	Whether ticket issued outside India for an international journey commencing from India (say Delhi-London) is liable to service tax?	Service Tax is payable by the service provider, namely aircraft operator, for the taxable service provided. Place of purchase/ issue of ticket is of no relevance or consequence to determine the levy of service tax under section 65(105)(zzzo) read with section 66. Service tax is leviable as long as the passenger embarks in India for an International journey, in any class other than economy class.
086.05/ 23.8.07	Whether service is liable on the total value of ticket or only half the value of the ticket in the case of round trip/ return ticket (say Delhi-London-Delhi)?	Service tax is leviable on the total value of the ticket.

International Air Travel- Inclusion of YQ and YR charges clarified- The Central Board of Excise & Customs (CBEC) has clarified the issue of Inclusion of YQ and YR charges in taxable value of services provided by aircraft operator to passenger embarking in India for international journey.

In its letter F.No. 341/52/2006-TRU, dated 18.9.07, issued to the Chairman, Board of Airline Representative in India, the Board has clarified that YQ and YR charges collected by the Airlines from the passengers are includible in the value of taxable service provided by aircraft operator to passenger embarking in India for international journey.

The clarification reads as under-

"As per Section 67 of the Finance Act, 1994, value of a taxable service shall be the gross amount charged by the service provider for the services provided and includes any amount received towards the taxable service before, during or after provision of such service. Provisions relating to determination of the value of taxable service contained in service Tax (Determination of Value) Rules, 2006 are clear and unambiguous. As YQ and YR charges are integral part of the consideration received for the services provided, method of vivisecting may not be of any relevance as long as the amount is in the nature of the consideration paid for the services provided".

(Based on <http://servicetaxdelhi.gov.in> dt.24.09.2007)

Budget Changes 2010-11- The taxes on transport of passengers travelling by air were in operation in the past. These were not in the nature of service tax but operated through

separate legislations. Inland Air Travel Tax [@15%] was levied on domestic travel in 1989. Foreign Travel tax [@ Rs. 500 per trip, except to neighbouring countries for which the rate was Rs. 150 per trip] was levied on international travel in 1979. These taxes were withdrawn in the interim Budget 2004. In 2006, tax was imposed on international air travel by a passenger embarking in India and travelling in higher [other than economy] classes. This tax continues.

2. The taxable service is being suitably emended to extend this levy to cover all domestic and international air passengers embarking in India. The, modalities of working out the tax amount including exemptions, abatement etc. would be prescribed at the appropriate time.

M.F. (D.R.) letter DOF.No. 334/1/2010-TRU dated 26.02.2010

(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 four lakh rupees but does not include payments received towards such gross amount which are exempt from whole of service tax leviable thereon under section 66 of the said Finance Act under any other notification.

4. This notification shall come into force on the 1st day of April, 2005.

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

2. Services to UN Agencies

Services provided to United Nations or an International Organizations are exempt.
[Notification No. 16/2002-ST, dated 2-8-2002]

3. Export of service: Any service which is taxable under clause 105 of Section 65 may be exported without payment of service tax.
(Rule 4 of Export of Services Rules,2005)

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

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

{ Notification No. 09/2009ST dated 03.03.2009 (Prior to 03.03.2009 Notfn.No4/2004-ST dated 31.03.2004)}

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

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

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

(Notification No.09/2007 ST dated 01.03.2007)

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

(Notification No.10/2007 ST dated 01.03.2007)

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

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

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

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