

## 56. INSURANCE BUSINESS SERVICES (GENERAL INSURANCE)

(A) **Date of Introduction:** 01.07.1994 (Notification No. 1/94-S.T., dated 28.06.1994)

(B) **Definition and scope of service:**

**"Taxable Service"** means any service provided or to be provided to a policy holder or any person, by an insurer, including re-insurer carrying on general insurance business in relation to general insurance businesses;

[Section 65 (105) (d) of Finance Act, 1994 as amended]

**"General Insurance Business"** has the meaning assigned to it in clause (g) of section 3 of General Insurance Business (Nationalisation) Act, 1972 (57 of 1972);

[Section 65 (49) of Finance Act, 1994 as amended]

**"Insurer"** means any person carrying on the general insurance business or life insurance business and includes a re-insurer";

[Section 65 (58) of Finance Act, 1994 as amended]

**"Policy Holder"** has the meaning assigned to it in clause (2) of section 2 of the Insurance Act, 1938 (4 of 1938);

[Section 65 (80) 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	00440005
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	00440006

( 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:**

Re-insurance Commissioner not liable to Service Tax :- In terms of Section 101A(Part IV-A) of the Insurance Act, 1938, every insurer dealing in insurance business is required to re-insure a specified percentage of sum assured with another insurance company.

2. The insurance company pays premium to the reinsuring company for this service. However, a part of such premium is deducted and kept by the insurance company for meeting the administrative expenditure. In other words, the insurance company and the re-insurance company jointly bear the expenses for running the insurance / reinsurance business. This shared expense is commonly known as 'commission' though strictly it is not in the nature of a commission. It may be pertinent to mention that the customer / beneficiary deals only with the insurance company and may not even be aware of the role of re-insurer and the backroom operations between the insurance company and the reinsurer.

3. As per the provision of the Finance Act, 1994, insurance as well as reinsurance are subject to Service Tax. The Board has received representations that notices have been issued demanding service tax on the amounts deducted by the insurance company (in other words paid by the reinsurance company) on the ground that it is the consideration for the insurance company providing Business Auxiliary Service (BAS) to the re-insuring company. The notices alleged that the insurance companies are promoting the business of re-insurers thereby providing them the BAS.

4. The issues has been examined. As explained in para 2 above, the arrangement between the insurance company and the reinsurer is only sharing of expenses and there is no service provided by the insurance company to the re-insurer for a consideration. Since the policy holder may not even be aware of the operations of the re-insurer, it cannot be said that the payment made by the re-insurer to the insurance company is for its business promotion or a service on behalf of the re-insuring

company (i.e. Business Auxiliary Service). In fact, it is the reinsurer which provides insurance service to the insurance company. As both the insurance company and reinsurer pay service tax on the entire amount of premium charged by them, the question of charging service tax under any other taxable service does not arise.

[ Based on C.B.E.& C. circular 120 (a)/2/2010 S.T. dt.16.4.2010.]

**(G) Exemption & Exclusion:**

**1. Services to UN Agencies**

Services provided to United Nations or an International Organizations are exempt.

[Notification No. 16/2002-ST, dated 2-8-2002]

**2. 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)

**3. 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)}

**4. 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)

**5. 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)

**6. 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)

**7. 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)

**8. 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)

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