

**APRA & Associates**

**Highlights of Union Budget 2010**

**Service Tax Amendments at a Glance**

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The Finance Minister Mr. Pranav Mukherjee presented the Finance Bill -2010 on 26<sup>th</sup> February 2010. The highlights relating to Service Tax area are as below:-

### **Rate of Service Tax**

Rate of service tax remains unchanged. It will be levied @ 10% on Taxable Services.

#### **A. Introduction of new taxable services under the tax net**

**The following eight new services has been introduced in the Finance Bill-2010** (*Applicable from the date of notification after passage of Finance Bill 2010*)

1. **Game of chance Services:** Services of promotion, marketing, organizing or assisting in organizing games of chance, including lottery, Bingo or Lotto; {Earlier these services covered under the 'Business Auxiliary Services' specified under Explanation to clause (ii).} Lotteries are conducted by various State Governments and are regulated by a Central legislation, i.e. the Lotteries (Regulation) Act, 1998. The said Act provides the conditions, restrictions and prohibitions pertaining to organization of lotteries conducted by the State Governments. Section 4 of the said Act enjoins upon the State Governments to print lottery tickets bearing the imprint and the logo to ensure authenticity of the lottery ticket. It also provides that 'the State Government shall sell tickets either itself or through distributors or selling agents'.

The State Governments appoint distributors to advertise, promote and sell lottery tickets. Besides the State Governments organizing lotteries, some other games of chance are also being organized. The services provided for promotion or marketing or organizing such games of chance are now being covered by introducing a separate taxable service to cover the services in connection with games of chance, organized conducted or promoted by the client, in whatever form or by whatever name called (such as lottery, lotto) under the 'Games of chance' service. The tax would be applicable also to such games conducted online.

2. **Services by hospital, nursing home or multi specialty clinic**

- a) on health check up or preventive care of the employees of business entities; and
- b) A large number of health insurance schemes are being offered by the insurance companies under which charges for hospitalization, surgery, postsurgical nursing etc. are generally paid by the insurance company. Such insurance policies, which fall under the category of general insurance service, are already taxable. Under general insurance service, an insurance company is a service provider to its clients. Under the proposed new service, tax is also being imposed on the medical charges paid by the insurance companies to the hospitals on behalf of a business entity for its employees. As such, the insurance company would be the service receiver and the tax paid by the hospital would be available to the insurance companies as credit.

The tax on the above mentioned health services would be payable only if and to the extent the payment for such medical check up or treatment etc. is made directly by the business entity or the insurance company to the hospital or medical establishment. Any additional amount paid by the individual (i.e. the employee or the insured, as the case may be) to the hospital would not be subjected to service tax. This is to ensure that an individual is not required to pay a tax for which he cannot take credit.

3. **Services of storing, keeping or maintaining of medical records of employees of a business entity.**

4. **Services of promoting or marketing of a 'brand 'of goods, services, events or endorsement of name , including a trade name , logo or house mark of a business entity.**

Commercial advertisement has taken different shapes and forms. Apart from the advertisements in print and visual media and sponsorship, one of the recent trends is to advertise a brand (i.e. of goods, services, events, business houses bearing a particular brand name or house name) usually by using a celebrity (such as sportsperson, film stars, etc.) to associate him/her with the brand. The intended impression that is created in the minds of customers or users is that the products and services of that brand have the level of excellence comparable to that of the celebrity. Unlike in case of advertisements using models, a brand ambassador works under a contract of a reasonably long period, where under he is not only required to advertise the goods or service in different media but also to attend promotional, product launching events, make appearances in public activities related to the brand or the brand holder or use such goods or services in public. The contractual amounts are substantial and it may not only involve an individual celebrity but a group of celebrities such as a cricket team or the actors of a successful film.

It is important to note that promotion or marketing of sale of goods produced, provided or belonging to a client and promotion or marketing of services provided by the client are already covered under Business Auxiliary Services (BAS). Such activities would continue to remain classified under BAS. The difference between the services classifiable under BAS and the newly proposed service is that the latter has a wider coverage in the sense that mere promotion of a brand would attract tax under this service even if such promotions cannot be directly linked to promotion of a particular product or service. Many companies/corporate houses (for example Sahara, ITC or Tatas) are associated with a range of activities including production/marketing/sale of goods, provision of services, holding of events, undertaking social activities etc. If the brand name / house mark etc. is promoted by a celebrity without reference to any specific product or services etc., it is difficult to classify it under BAS. Such activities, like mere establishing goodwill or adding value to a brand would fall under this newly introduced service

5. **Services of permitting commercial use or exploitation of any event organized by a person or organization including the event related to art, entertainment, business, sports or marriage.**
  
6. **Services of electricity exchange in relation to trading, processing, clearing or settlement of electricity related contracts.** Under 'Forward Contract Service', tax is payable by exchanges who offer assistance in sale of goods or forward contracts in commodities. However, only forward contracts covered by the Forward Contract (Regulation) Act, 1952 are covered in the scope of taxation. In the recent past, exchanges have been set up for transactions in electricity. The Central Electricity Regulatory Commission authorizes such exchanges. Since electricity exchanges are not covered by Forward Market Regulations, such transactions are not covered under the commodity exchange taxation. The proposed new service seeks to tax the charges recovered for services in relation to assisting, regulating, controlling the business of trading, processing and settlement pertaining to sale or purchase of electricity by the associations authorized by Central Electricity Regulatory Commission.
  
7. **Services of transfer or use of copyright for cinematographic films and sound recording.**
  
8. **Services of builder for providing preferential location or development of such complex but does not include service of providing vehicle-** parking space. Construction of commercial or industrial structures was brought under service tax net in 2004

while construction of residential complexes became a taxable service in 2005. The scope of the existing services includes construction, completion and finishing, repairs, alterations, renovation or restoration of complexes. It has been reported that in addition to these activities, the builders of residential or commercial complexes provide other facilities and charge separately for them and these charges do not form part of the taxable value for charging tax on construction. These facilities include,-

(a) prime/preferential location charges for allotting a flat/commercial space according to the choice of the buyer (i.e. Direction- sea facing, park facing, corner flat; Floor- first floor, top floor, Vastu- having the bed room in a particular direction; Number- lucky numbers);

(b) internal or external development charges which are collected for developing/maintaining parks, laying of sewerage and water pipelines, providing access roads and common lighting etc; (c) fire-fighting installation charges; and (d) power back up charges etc.

Since these charges are in the nature of service provided by the builder to the buyer of the property over and above the construction service, such charges are being brought under the new service. Charges for providing parking space have been specifically excluded from the scope of this service. Development charges, to the extent they are paid to State Government or local bodies, will be would be excluded from the taxable value levy. Further, any service provided by Resident Welfare Associations or Cooperative Group Housing Societies consisting of residents/owners as their members would not be taxable under this service.

**B. Scope of few existing services has been extended / modified in the Finance Bill -2010 (to be applicable from the date of notification after passage of Finance Bill 2010)**

1. **Sponsorship Services:** To include service provided to 'any person' including services in relation to sponsorship of sports events. Till date the services provided in relation to sports events were excluded from the taxable service.
2. **Air Travel Services:** To include domestic journeys and international journey in any class. However till date the international travel by Economy Class was not a taxable service. However with the changes in budget, charges in relation of all class will become taxable.
3. **Commercial Training or Coaching Services:** To include any training or coaching provided for a consideration whether or not for a profit. However till date only the commercial training or coaching centre were covered.
4. **Construction of complex services and commercial or industrial construction service:** To include service tax on construction activity unless the entire consideration being paid by the buyer after completion of construction. However till date contractors engaged in construction of residential complex and taking money in installments were not taxable. As regards payment made by the prospective buyers/flat owners, in few cases the entire consideration is paid after the residential complex has been fully developed. This is in the nature of outright sale of the immovable property and admittedly no service tax is chargeable on such transfer. However, in most cases, the prospective buyer books a flat before its construction commencement/completion, pays the consideration in instalments and takes possession of the property when the entire consideration is paid and the construction is over.

In some cases the initial transaction between the buyer and the builder is done through an instrument called 'Agreement to Sell'. At that stage neither the full consideration is paid nor is there any transfer in ownership of the property although an agreement to ultimately sell the property under settled terms is signed. In other

words, the builder continues to remain the legal owner of the property. At the conclusion of the contract and completion of the payments relating thereto, another instrument called 'Sale Deed' is executed on payment of appropriate stamp duty. This instrument represents the legal transfer of property from the promoter to the buyer.

In other places a different pattern is followed. At the initial stage, instruments are created between the promoter and all the prospective buyers (which may include a person who has provided the vacant land for the construction), known as 'Sale Of Undivided Portion of The Land'. This instrument transfers the property right to the buyers though it does not demarcate a part of land, which can be associated with a particular buyer. Since the vacant land has lower value, this system of legal instrumentation has been devised to pay lesser stamp duty. In many cases, an instrument called 'Construction Agreement' is parallelly executed under which the obligations of the promoter to get property constructed and that of the buyer to pay the required consideration are incorporated.

These different patterns of execution, terms of payment and legal formalities have given rise to confusion, disputes and discrimination in terms of service tax payment.

In order to achieve the legislative intent and bring in parity in tax treatment, an Explanation is being inserted to provide that unless the entire payment for the property is paid by the prospective buyer or on his behalf after the completion of construction (including its certification by the local authorities), the activity of construction would be deemed to be a taxable service provided by the builder/promoter/developer to the prospective buyer and the service tax would be charged accordingly. This would only expand the scope of the existing service, which otherwise remain unchanged

5. **Renting of immovable property:** This service was introduced in 2007 with a view to tax the commercial use of immovable property hired on rent. The tax on rent paid is available as input credit if the commercial activity involves provision of taxable service or manufacture of dutiable goods. However, the Hon'ble High court of



Delhi in its order dated 18.04.2009 in the case of Home Solutions Retail India Ltd. & Others vs. UOI has struck down this levy by observing that the renting of immovable property for use in the course of furtherance of business or commerce does not involve any value addition and therefore, cannot be regarded as service. Apart from the revenue loss caused to the exchequer, the judgement has placed the landlords in a very precarious situation. In view of this judgement, the commercial tenants have stopped them reimbursing the tax element. However, the landlords are receiving regular demand notices from the department issued to protect government's revenue for the interim period.

In order to clarify the legislative intent and also bring in certainty in tax liability the relevant definition of taxable service is being amended to clarify that the activity of renting of immovable property per se would also constitute a taxable service under the relevant clause. This amendment is being given retrospective effect from 01.06.2007.

#### **Renting of vacant land**

Under the definition of taxable service pertaining to renting of immovable property, the renting of vacant land used for agriculture, farming, forestry, animal husbandry, mining, education, sports, circus, entertainment and parking purposes, is excluded from the purview of service tax. Further, 'vacant land', whether or not having facilities clearly incidental to the use of such vacant land has also been excluded from the tax net.

In certain cases, corporations or PSUs or even private organizations rent vacant land on a long term leases with an explicit understanding that lessee would construct factory or commercial building on that land. In such cases the ownership of the land is not transferred to the lessee and thus it is a service provided by the lessor to the lessee. For That suitable amendment in the definition of taxable service relating to renting to immovable property is being made so as to provide that tax would be charged on rent of a vacant land if there is an agreement or contract between the lessor and lessee that a construction on such land is to be undertaken for furtherance of business or commerce during the tenure of the lease.

6. *Information Technology Software Services:* The said services has

been extended to cover all cases of use of Information Technology Software.

7. **Auctioneer's Services:** Auctioneer's service was introduced in 2006 and is applicable to any service provided in relation to auction of property whether moveable or immovable, tangible or intangible. However, the service, by definition excludes 'auction by government'. This phrase has given rise to confusion. In certain cases, the property belonging to or vested in the Central or the State governments (such as goods confiscated by Customs department) are sold in an auction that is conducted by private organizations. Conversely, in certain cases government bodies, such as 'Tobacco Board' conducts auction of properties that belong to private individuals or organizations.

In order to avoid the confusion, it is now clarified through an explanation that the phrase 'auction by government' appearing in the taxable service, namely 'Auctioneer's service' means an auction where government property is being auctioned and not when the government acts as an auctioneer for the private goods.

8. **Airport service, Port service and other Port service:** Any service provided wholly within the airport/port premises covered irrespective of category. In addition the Authorization of service is not required from airport/ port authorities.
9. **Management of investment under ULIP services:** - Value of taxable service to either be actual amount charged by insurer from policy holder or maximum amount fixed by IRDA as fund management charges, whichever ever is higher .Prior to this, value of taxable service was computed as difference between the premium paid for ULIP reduced by risk premium and amount for aggregated investment.

### **C. Withdrawal of Notification**

Earlier vide Notification No. 01/2000-ST dated 09.02.2000, the Government had provided the exemption to services provided by the Government of Rajasthan under the Group Personal Accident Scheme, to its employees in relation to General insurance Business from the whole of the Service Tax.

However w.e.f. 27.02.2010, the said exemption has been withdrawn and service provided as mentioned above shall become taxable and Rajasthan Government will have to pay tax as per the applicable rate.

*(Changes effected via Notification No. 05/2010 dated 27<sup>th</sup> February, 2010)*

### **D. Other Changes in Taxable Services vide Finance Bill-2010 (Amendments effective from 27.02.2010)**

#### **(1) Amendments under the Information Technology Software Services**

The person engaged in software's were not clear about the taxability under the sales tax or under the Service Tax, hence the department has issued the clarification as below:

The amendments are effected in relation to item (v) of clause (zzzze) of sub-section 105 of section of the said Finance Act. The said sub clause (v) covers the Acquiring the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of an inclusion in other information technology software product.

However the Government of India has exempted the taxable service as referred under the said sub clause (v) in relation to **packaged or canned software, intended for single use and packed accordingly**, from the whole of service tax. However the following conditions shall be fulfilled :-

(i)the document providing the right to use such software, by whatever name called, if any, is packed along with the software;

(ii)the manufacturer, duplicator, or the person holding the copyright to software has paid the appropriate duties of excise on the entire amount received from the buyer; and

(iii) the benefit under notification No. 17/2010– Central Excise, dated the 27February ,2010 is not availed of by the manufacturer, duplicator or the person holding the copyright to software.

**(Changes effected via Notification No. 02/2010 dated 27<sup>th</sup> February, 2010)**

## **(2) Amendments under the Commercial Training or Coaching Services**

The Central Government has provided exemption vide Notification 24/2004-ST dated 10.09.2004 to taxable services provided in relation to **Commercial Training or Coaching Services to the Vocational Training Institutes**

The Vocational Training Institute as defined in Explanation (i) to Notification were

(i) "vocational training institute" means a commercial training or coaching centre which provides vocational training or coaching that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching;

However with this Finance Bill-2010, the above said *Explanation* for (i) and the definition shall be substituted as below:-

(i) vocational training institute” means an Industrial Training Institute or an Industrial Training Centre affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961(52 of 1961).

**(Changes effected via Notification No. 03/2010 dated 27<sup>th</sup> February, 2010)**

### **(3) Transport of Goods by Road Services**

Earlier under the Notification No. 33/2004, the Government has exempted the services provided by the Goods Transport Agency to a customer, in relation to transport of

fruits, vegetables, eggs or milk by road in a goods carriage, from the whole of service tax leviable thereon under section 66 of the said Act.

However under the current Finance Bill the Government has also exempted the services provided by Goods Transport Agency in relation to transport of ‘food grains or pulses’ along with eggs and milk and specified that for the words “eggs or milk”, the words “eggs, milk, food grains or pulses” shall be substituted.

Thus Transport of food grains or pulses by Road will also be exempted from levy of Service Tax.

**(Changes effected via Notification No. 04/2010 dated 27<sup>th</sup> February, 2010)**

### **(4) Exemption to Central or State Seed Testing Laboratory and Certification Agency;**

By the said Notification the Government has exempted the taxable service provided by a Central or State Seed Testing Laboratory and Central or State Seed Certification Agency notified under the Seeds Act, 1966 (54 of 1966) to any person, in relation to technical testing and analysis as referred to in sub- Clause (zzh) of clause (105) of section 65 of the Finance Act, and technical inspection and certification of seeds as referred to in sub-clause (zzi) of clause (105) of section 65 of the Finance Act, from the whole of the service tax leviable thereon under section 66 of the Finance Act.

Thus the services provided by the Central and State seed testing and certification agency has been exempted form the levy of service tax by the said Notification.

**(Changes effected via Notification No. 10/2010 dated 27<sup>th</sup> February, 2010)**

**(5) Service tax on Transmission of Electricity**

Under the said Notification the Government has exempted the taxable service Provided to any person, by any other person for transmission of electricity, from the whole of service tax leviable thereon under section 66 of the said Finance Act.

Thus the Government has brought down the long awaited dispute between department and assessee ,where the assessee was held liable to discharge service tax on the transmission of electricity services. The Central Excise and Customs Department has started issuing notices to the state utility for paying service tax on transmitting and distributing electricity. Thus with the said Notification the debate will come down and there will be no service tax on electricity transmission charges and Electricity will not be costlier.

**(Changes effected via Notification No. 11/2010 dated 27<sup>th</sup> February, 2010)**

**(6) Exemption in respect of Erection, Commissioning and Installation Services.**

The Government has made changes in Taxable services of Erection, Commissioning and Installation Services. It was specified that services of erection, Commissioning and Installation provided in relation to following services shall be exempted:-

- (i) erection, commissioning or installation of mechanised food grain handling systems;
- (ii) erection, commissioning or installation of equipment for setting up or substantial expansion of cold storage;
- (i) installation and commissioning of machinery or equipment for initial setting up or substantial expansion of units for processing agricultural, apiary, horticultural, dairy, poultry, aquatic and marine products and meat.

**(Changes effected via Notification No. 12/2010 dated 27<sup>th</sup> February, 2010)**

**(7) Exemption to on-line information and database access or retrieval services and business auxiliary services to Indian News Agency**

In the said notification the department has the taxable service provided in relation to **on-line information and database access or retrieval services and business auxiliary services** as specified in sub-clauses (zh) and (zzb) of clause (105) of section 65 of the Finance Act, by any Indian news agency, **from the whole of service tax leviable thereon** under section 66 of the Finance Act. However the below mentioned conditions shall be fulfilled in order to get the exemption from service tax;

- a) If such new agency is notified as a news agency set up in India solely for collection and distribution of news:

Provided that this exemption shall be available only to news agencies which are specified

under clause (22B) of section 10 of the Income Tax Act, 1961 (43 of 1961);

and,

b) such news agency applies its income or accumulates it for collection and distribution of news and does not distribute its income in any manner to its members.

**(Changes effected via Notification No. 13/2010 dated 27<sup>th</sup> February, 2010)**

**(8) Exemption to Areas of continental shelf and exclusive economic zones of India**

The government has extended the provision of Chapter V of the Finance Act, 1994 to the areas specified in the notification to continental shelf and exclusive economic zones of India for the purpose specified in the Notification

(1) In relation to whole of continental shelf and exclusive economic zone of India;

Any service provided for all activities pertaining to construction of installations, structures and vessels for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply there of.

(2) In relation to the installations, structures vessels within the continental shelf and the exclusive economic zone of India, constructed for the purposes of prospecting or extraction or production of mineral oil and natural gas;

Any service provided or to be provided by or to such installations, structures and vessels and for supply of any goods connected with the said activity.

**(Changes effected via Notification No. 14/2010 dated 27<sup>th</sup> February, 2010)**

**(9) Service Tax on imported packaged or canned software**



As mentioned in Notification No. 05/2010-ST above , the person engaged in software's were not clear about the taxability under the sales tax or under the Service Tax, hence the department has issued the clarification in the following form in respect of imported software,

The item (v) of clause (zzzze) of sub-section 105 of section of the said Finance Act were mentioning that Acquiring the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of an inclusion in other information technology software product were taxable under the IT services. However the Government of India has exempted the taxable service as referred under the said sub clause **for packaged or canned software, intended for single use and packed accordingly**, from the whole of service tax, subject to the following conditions, namely:-

- (i) the document providing the right to use such software, by whatever name called, if any, is packed along with the software;
- (ii) the importer has paid the appropriate duties of customs on the entire amount received from the buyer; and
- (iii) the benefit under notification No. 31/2010– Customs dated the 27th of February, 2010 is not availed of by the importer

**(Changes effected via Notification No. 17/2010 dated 27<sup>th</sup> February, 2010)**

**Amendments Effective from 01.04.2010**

**(1) Taxability of Transport of goods by Rail by Government Railways**

Under the said Notification the Government has withdrawn the Notification No. 33/2009-ST dated 01.09.2009. Under the said Notification the Government had provided the

exemption in relation to services provided to any person by Government railways in relation to transport of goods in containers by rail as specified in clause ( zzzp) of clause (105) of section 65 of the Finance Act. Thus with the said changes, the Government railways will also have to pay taxes on the said services.

**(Changes effected via Notification No. 07/2010 dated 27<sup>th</sup> February, 2010)**

**(2) Exemption to goods transported via Rail**

Here under the assessee has been provided exemption from service tax when the specified goods has been transported by way of rail referred to in sub-clause (zzzp) of clause (105) of section 65 of the Finance Act, from the whole of the service tax leviable thereon under section 66 of the Finance Act. The description of goods is specified in column (2) of the Table forming part of the Notification.

**(Changes effected via Notification No. 08/2010 dated 27<sup>th</sup> February, 2010)**

**(3) Transport of Goods by Rail and not necessarily in Containers**

With the said Notification, the department has clarified that for the ‘Transport of Goods in containers by Rail’ to ‘Transport of goods by Rail’ shall be substituted. Thus by the said changes it is clarified that , it is not necessary that the abatement will be available as specified in Notification No. 20/2006-ST dated 25<sup>th</sup> April 2006 , only when the goods are transported in containers. The goods sent by Rail other than by way of Containers will also be eligible for abatement.

**(Changes effected via Notification No. 09/2010 dated 27<sup>th</sup> February, 2010)**

**E. Amendment in Determination of Value Rules 2006**

The department has amended the Determination of Value Rules 2006. Till date there are

numerous cases which are pending before numerous Tribunals in response to Show Cause Notices issued by department in relation to valuation of services . The Department has issued SCN with the base that value of services shall include the gross amount collected by assessee. However the assessee contended that there are few services where it is obligatory for the assessee to charge legal taxes levied by Government. Like in case of Air Taxes levied on Air Travel Agent while booking Air Tickets , Transactional Taxes on sale and Purchase of Shares levied on Brokers etc.

In order to bring down the open cases , the Government has made changes (Determination of Value) Rules, 2006 vide the said Notification. Thus the exclusion clause as mentioned in Rule 6(2) of the Determination of value Rules 2006 will also have sub clause (v) which is as below

(v) the taxes levied by any Government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger.”

Thus with the said changes it is clarified that service provider is not required to charge service tax on air taxes if shown separately in the Invoice.

**(Changes effected via Notification No. 15/2010 dated 27<sup>th</sup> February, 2010)**

## **F. Amendment in Export and import of services**

### **(1) Amendments in Export of Services Rules-2005**

Under the said Notification the Government has modified the export of Services Rules, 2005

In the said Rules the changes has been made in Rule 3.

Under the Rule 3(1) (i), the services are treated as export, if the provision of such services as are provided in relation to an immovable property situated outside India.

The department has also included in Rule 3(1)(i), the services mentioned under clause

(m) , which is ‘Mandap Keepar Services’. Thus the services of Mandap Keepar shall be treated as exported if such services are provided in relation to property situated outside India. Earlier these services were covered under Rule 3(1)(ii). Hence the sub clause (m) has been omitted from Rule 3 (1)( ii).

Also the service mentioned in sub clauses of (s), (t),(u) relating to (i) Chartered Accountant (ii) Cost accountant (iii) Company secretary respectively has also been omitted from the clause 3(1)(ii). The services mentioned under the said clause were treated as exported if partly performed outside India.

However with the said changes the services would be treated as exported when provided in relation to business or commerce, be provision of such services to a recipient located outside India and when provided otherwise , be provision of such services to a recipient located outside India at the time of provision of such service. Hence the service earlier falling under clause 3(1)(ii) will automatically fall under clause 3(1)(iii).

In addition the clause 3(2) (a) has been omitted. Under the said clause it was mentioned that services shall be treated as exported if ‘such services are provided from India and used outside India.’ Hence with the withdrawal of said clause, it is not necessary services shall be provided from India and used outside India. If the services are provided from out of India situated office of Indian entity to out of India situated office of service receiver or by out of India situated office of Indian Company to Indian office of outside situated service receiver ( provided the Agreement is between Indian Company and company located outside India) shall also be treated as export of services.

In addition the Explanation specified in clause (b), the following explanation shall be substituted

*Explanation.-* For the purposes of this rule “India” includes the installations structures and

vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.”.

**(Changes effected via Notification No. 6/2010 dated 27<sup>th</sup> February, 2010)**

**(2) Amendments in import of Services Rules-2006**

Under the said Notification the Government has modified the import of Services Rules, 2006

In the said Rules the changes has been made in Rule 3

Under the Rule 3(1) (i), the services shall be treated as import , if the provision of such services as are in relation to an immovable property situated in India.

The department has also included the services covered under clause (m) , which is Mandap Keeper Services under the said sub clause(i) . Thus the services of Mandap Keeper shall be treated as imported if such services are provided in relation to property situated in India. Accordingly the sub clause (m) has been omitted from Rule 3 (1)( ii).

Also the service mentioned in sub clauses of (s), (t),(u) relating to Chartered Accountant, Cost accountant and Company secretary respectively has also been omitted from the clause 3(1)(ii). As the said service were treated as import if partly performed in India. However with the said Changes the services would be treated as imported when provided in relation to business or commerce and provision of such services is to a recipient located in India and when provided otherwise, be provision or such services to a recipient located in India at the time of provision of such service. Hence the service earlier falling under clause 3(1)(ii) will automatically fall under clause 3(1)(iii).

In addition Rule 2 clause (e) shall be substituted as below

(e) “India” includes the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting

or extraction or production of mineral oil and natural gas and supply thereof.

**(Changes effected via Notification No. 16/2010 dated 27<sup>th</sup> February, 2010)**

### **G. Certain changes in Act & Rules**

1. *Penalty:* No penalty shall be imposed if service tax along with interest has been paid before issuance of notice under section 73(3).  
*(effective from the passage of Finance Bill 2010)*
  
2. *Refunds:-* Some provisions have been made to simplify the refund process. The amendments have been made retrospectively effect in order to give a legal backing to circulars issued in this regard.  
*(effective with immediate effect)*