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HIGHLIGHTS OF FINANCE BILL, 2010

Changes in service tax can be broadly classified into four categories namely: -

1. Changes which are effective from 27th day of Feb, 2010;
2. Changes which are effective from 1st day of April, 2010;
3. Changes which are effective from the date of enactment of the Finance Bill, 2010;
4. Changes which shall be effective from the notified date after the enactment of the Finance Bill, 2010.

A. Changes which are effective from 27th day of Feb, 2010

I NEW EXEMPTIONS/CONCESSIONS GRANTED

1. Exemption to transportation of "food grains or pulses" by road services

Notification No.33/2004 dated 03.12.2004 exempts the "Transportation of Goods by Road Services" if provided for transporting fruits, vegetables, eggs or milk. The said notification has been amended vide Notification 04/2010 dated 27.02.2010 to extend the benefit of notification to *"food grains and pulses"*. In simple words, w. e. f. 27.02.2010, transportation of food grains and pulses shall not be subject to service tax under the category of "Transportation of Goods by Road Services".

The term 'foodgrains' and 'pulses' has not been defined, therefore the meaning of the said terms as understood in common parlance/dictionary meaning as the case may be has been mentioned as under:

"In common parlance food grains means food stuff prepared from the starchy grains of cereal grasses".

"Pulses means some seeds which can be cooked and eaten. For eg. Peas, beans and lentils" – Co COBUILD Dictionary

2. Exemption to certain Service provided by a Central or State Seed Testing Laboratory and Central or State Seed Certification Agency

Notification No. 10/2010 dated 27.02.2010 exempts the following taxable services provided by a Central or State Seed Testing Laboratory and Central or State Seed Certification Agency notified under the Seeds Act, 1966 to any person:

(i) Technical Testing and Analysis Services;
(ii) Technical Inspection and Certification of Seeds.

3. Exemption to any services used for transmission of electricity

Notification No.11/2010 dated 27.02.2010 exempts taxable service provided for transmission of electricity. In other words, any service provided for distribution/transportation of electricity shall be exempt in view of said notification.

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4. Exemption to erection, commissioning or installation of certain equipment

Notification 12/2010 dated 27.02.2010 exempts the following services from service tax payable under the category of "Erection, Commissioning or Installation Services":-

(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;

(iii) 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.

5. Exemption to News agencies in relation to "On-line Information and Database Access or Retrieval Services" and "Business Auxiliary Services"

An exemption has been provided vide Notification No.13/2010 dated 27.02.2010 to taxable services provided in relation to "On-line Information and Database Access or Retrieval Services" and "Business Auxiliary Services" provided by news agency if following conditions are satisfied:

(i) Such news agency is notified as a news agency set up in India solely for collection and distribution of news;

(ii) Such news agency is specified under clause (22B) of section 10 of the Income Tax Act, 1961 (43 of 1961); and,

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

6. Taxes levied by any Government on any passenger travelling by air is not subject to service tax

Finance Bill, 2010 proposes to extend the scope of taxable services "Transport of passenger by Air Services" by covering the services of domestic as well as international transportation of passenger by air by any class. Therefore, central government has considered it appropriate to clarify that taxes levied by any government (any Indian or foreign government, in case of international journey) shall not form part of value of taxable services.

Rule 6(2) of Service Tax (Determination of Value) Rules, 2006 provides the item which does not form part of "value of taxable services". Following clause has been inserted after clause (iv) of rule 6(2) of said rules vide Notification No.15/2010 dated 27.02.2010:

"(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, it is clarified that taxes levied by any government shall not be subject to service tax if the same has been shown separately on ticket issued to passenger.

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7. Exemption to Packed or canned software, intended for single use and packed accordingly

Notification No.02/2010 and 17/2010 both dated 27.02.2010 exempts services of providing packaged or canned software, intended for single use and packed accordingly covered under clause (v) of definition of "Information Technology Software Services" which read as:

"providing 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 and inclusion in other information technology software products", subject to the following conditions, namely:-

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

(ii) The manufacturer, duplicator, the person holding the copyright to software or importer has paid the appropriate duties of excise/custom 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- (**Notification No. 17/2010-Service Tax, dated 27.02.2010) or**

(iii) The benefit under notification No. 17/2010– Central Excise, dated the 27th February ,2010 is not availed of by the manufacturer, duplicator or the person holding the copyright to software-(**Notification No. 2/2010-Service Tax, Dated 27.02.2010)**

II AMENDMENTS / WITHDRAWAL OF EXEMPTIONS

1. Exemption provided to "vocational training institute" has been restricted

Training or coaching in any subject or field is subject to service tax under the category of "Commercial Training or Coaching Services". Notification 24/2004 dated 10.09.2004 exempts the commercial training or coaching services provided by "vocational training institute". The said notification provided the meaning of "vocational training institute" as under:

"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;

Aforesaid definition gave the very wide meaning to words "vocational training institute". Scope of exemption has been restricted by substituting the said definition given in Notification 24/2004 dated 10.09.2004 vide Notification No.03/2010 dated 27.02.2010. The new definition is as under:

"vocational training institute" means an Industrial Training Institute or an Industrial Training Centre affiliated to the National Council for Vocational

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Training, offering courses in designated trades as notified under the Apprentices Act, 1961(52 of 1961).

Change of definition of "vocational training institute" will have following implication:

(i) Various institutes, which were covered by wide definition, will now be liable to pay service tax as coverage has been restricted to institutes which satisfies both the following conditions:

- It is an Industrial Training Institute or an Industrial Training Centre affiliated to the National Council for Vocational Training; *and*
- It offers courses in designated trades as notified under the Apprentices Act, 1961(52 of 1961). [Name of eligible vocational training course listed under Apprentices Act, 1961 are available at web site of Director General of Employment and Training, Ministry of Labour (dget.nic.in).

Note- The list figuring under Schedule 1 of the Apprentices Act, 1961 covers engineering as well as non-engineering skills/trades. The term 'designated trades' has been defined under the said Act as under-

"Sec 2 (e) 'designated trade' means any trade or occupation or any subject field in engineering or technology or any vocational course which the Central Government, after consultation with the Central Apprenticeship Council, may, by notification in the Official Gazette, specify as a designated trade for the purposes of this Act".

(ii) "Vocational training institute" was defined in general manner; therefore, interpretation of definition was subject matter of litigation. Now, this amended definition will also minimize the litigation over the interpretation of definition.

2. Exemption withdrawn in respect of General insurance services provided by Government of Rajasthan to its employees

Notification No. 01/2000 dated 09.02.2000 provides exemption to the taxable services provided by Government of Rajasthan to its employees in relation to general insurance business under Group Personal Accident Scheme. Now, the said exemption is discontinued by withdrawing the Notification No. 01/2000 dated 09.02.2000 vide Notification No.05/2010 dated 27.02.2010.

III AMENDMENT IN RULES

1. Re-classification of certain Services in Export of Service Rules, 2005 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006

Under Export of Service Rules, 2005 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 (herein after referred to export rules and import rules respectively) all taxable services have been classified on the basis of following criterions:

(i) Immovable property based services;
(ii) Performance based services; and

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(iii) Recipient based services.

Aforesaid rules provide different sets of conditions for import/export of taxable services falling under each of the aforesaid criterions. Therefore, classification of services under these rules is extremely important. Notification No.06/2010 and Notification 16/2010 both dated 27.02.2010 amends the export rules and import rules respectively changing the classification of following services as per following details:

Taxable Category	**Classification prior to 27.02.2010**	**Classification w. e. f. 27.02.2010**
Mandap Keeper's Services	**Performance based Services** (Rule 3(1)(ii) of export rules and Rule 3(ii) of import rules)	**Immovable property based services** (Rule 3(1)(i) of export rules and Rule 3(i) of import rules) **However, when services provided does not relate to immovable property, Recipient based Services** (Rule 3(1)(iii) of export rules and Rule 3(iii) of import rules)
Practising Chartered Accountant's Services	**Performance based Services** (Rule 3(1)(ii) of export rules and Rule 3(ii) of import rules)	**Recipient based Services** (Rule 3(1)(iii) of export rules and Rule 3(iii) of import rules)
Practising Company Secretary's Services		
Practising Cost Accountant's Services		

Liberalization of Export of Service Rules, 2005

As discussed above, all the taxable services have been classified as per aforesaid criterion to provide conditions for each of three criterions for exports separately. In addition to conditions specified for respective criterion, Rule 3(2) provides following conditions, which are required to be fulfilled for all taxable services to be considered as export of services irrespective of classification under which they fall:

(a) Such service is provided from India and used outside India; and
(b) Payment for such service is received by the service provider in convertible foreign exchange.

Notification No.06/2010 dated 27.02.2010 deletes the condition specified in clause (a). The said condition caused confusion among the practitioners, tax payers, tax authorities and even courts, despite the clarificatory circular issued by Service tax department. The said clause, prima facie, appears to contrary to conditions provided in rule 3(1)(i) and 3(1)(iii) of Export of Service Rules, 2005. After deletion of said clause, export rules have been made easy to interpret.

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2. Change in definition of India provided in Export of Service Rules, 2005 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006

Notification No.06/2010 and Notification 16/2010 both dated 27.02.2010 amends the definition of India as given under export rules and import rules. Prior to such amendment, it reads as under:

"India" includes the installations, structures and vessels in the continental shelf of India and the exclusive economic zone of India.

After amendment by aforesaid notification, it read as under:
"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."***

IV CENVAT CREDIT RULES

1. Benefit of CENVAT Credit on Computer and computer peripherals

Prior to Notification No. 06/2010 C.E dated 27.02.2010, second proviso to rule 3(5) of CENVAT credit Rules, 2004 provided that if the capital goods, on which CENVAT Credit has been taken, are removed after being used, then the manufacturer or the provider of output service shall be required to pay an amount equal to the CENVAT Credit taken on the said capital goods reduced by 2.5 per cent for each quarter of a year or part thereof from the date of taking the CENVAT Credit.

The aforesaid proviso has been amended to provide special benefit if capital which is removed after used is computer or computer peripherals. The reduction instead of 2.5% per quarter shall be applicable as under:

for each quarter in the first year @ 10%
for each quarter in the second year @ 8%
for each quarter in the third year @5%
for each quarter in the fourth and fifth year @1%

Reduction percentage for capital goods other than computer or computer peripherals shall remain same.

2. Increment in Penalty under rule 15 of CENVAT Credit Rules, 2004

Notification No. 06/2010 C.E (N.T.) dated 27.02.2010 substituted Rule 15 of CENVAT Credit Rules, 2004. Prior to such substitution, a penalty of Rs.2000/- could be imposed if CENVAT credit in respect of input services was wrongly or in contravention of any of the provisions of these rules in respect of any input service is taken. However, now, after substitution of new rule, penalty shall be imposed as under:

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A penalty not exceeding Service Tax payable of such services
Or
Rs.2000/-, *whichever is higher.*

Further the word "takes" has been replaced by the words "takes or utilizes".

3. Refund to Exporters u/r 5 of CCR 2004 - Prospective Amendment in Notification No.05/2006 –CE(NT) dated 14.03.2006

The conditions A and B given in the Annexure to the Notification are being deleted, and the details required to be given under these conditions, along with certain additional details, are to be furnished by the claimant in a table, which has been prescribed in condition A. The table should be certified by a person authorized by the Board of Directors (in the case of a limited company) or the proprietor/partner (in case of firms/partnerships) if the amount of refund claimed is less than Rs.5 lakh in a quarter. In case the refund claim is in excess of Rs.5 lakh, the declaration should also be certified by the Chartered Accountant who audits the annual accounts of the exporter for the purposes of Companies Act, 1956 (1 of 1956) or the Income Tax Act, 1961 (43 of 1961), as the case may be. This verification is aimed at reducing the checking of voluminous records which is required to be done by the officers processing the refund claims and ensure faster processing of refund claims.

Consequential changes by introducing the words "in relation to" and "for" in the Annexure to the Notification have been brought to bring them in line with the amendments made in the main conditions of the Notification.

V OTHERS

1. Extends the provision of Finance Act, 1994 to specified area for specified purpose

Notification No.1/2002 dated 01.03.2002 extended the provisions of Chapter V of the Finance Act (32 of 1994) to the designated areas in the Continental Shelf and Exclusive Economic Zone of India as declared by the Notifications of the Government of India in the Ministry of External Affairs Nos. S.O. 429 (E) dated the 18th July 1986 and S.O. 643 (E), dated the 19th September, 1996 with effect from 01.03.2002.

Now, Notification No. 14/2010 dated 27.02.2010 rescinds the aforesaid notification and extends the provisions of chapter V of Finance Act, 1994 to following specified area and purpose:

Sl. No	The areas in the Continental Shelf and the Exclusive Economic Zone of India	Purpose
(1)	(2)	(3)
1.	Whole of continental shelf and	Any service provided for all activities

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	exclusive economic zone of India	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.	The installations, structures and 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.

B. Changes which are effective from 1st day of April, 2010

I AMENDMENTS / WITHDRAWAL OF EXEMPTIONS

1. Reintroduction of "Transportation of goods by rail services"

Service Tax has been levied since 01-05-2006 on "Transportation of Goods in Containers by Rail Services" provided to any person by any other person *other than government railway* by virtue of addition of sub-clause (zzzp) in clause (105) to section 65 of Finance Act 1994. However, on 06-07-2009 at the time of presentation of union budget for the financial year 2009-10, it was proposed to levy service tax from notified date on goods transported by railways *including Government railways*, whether in containers or otherwise. It was also assured that **suitable abatement and exemption** to specified goods would be provided through issuance of notification at the appropriate time.

In order to implement abatement & exemption, notification were issued in the first instance. Subsequently in very short span of time these notifications were overturned vide notification no. 33/2009 dated 01.09.2009, exemption was provided to rail transportation services.

Now, rail transportation services are again made subject to service tax w.e.f.01.04.2010 by rescinding the aforesaid exemption notification vide Notification No.07/2010 dated 27.02.2010.

Further Notification No.08/2009 dated 27.02.2009 has been issued to give exemption to rail transportation services provided in relation to transport of the goods specified in said notification.

Further Notification No.01/2006 dated 01.03.2006 has been amended vide Notification no. 09/2010 dated 27.02.2010 to provide abatement of 70% to "Transportation of Goods by Rail Services" under said notification.

C. Changes which are effective from the date of enactment of the Finance Bill, 2010

1. Amendment in Section 73(3):

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The Finance Bill 2010 vide clause 75(C) seeks to insert a new explanation in Section 73(3) of the Finance Act, 1994. The said Explanation is numbered as Explanation 2 and the existing explanation is to be read as Explanation 1. The new Explanation reads as under-:

"Explanation 2.- For the removal of doubts, it is hereby declared that no penalty under any of the provision of this Act or the Rules made thereunder shall be imposed in respect of payment of service-tax under this sub-section and interest thereon".

The aforesaid explanation provides that if any person has paid the amount of service tax along with interest thereon, under Section 73(3), then no penalty under any provision of the said Act or Rules made thereunder, shall be imposed upon the said person.

In other words, if a person pays service tax along with interest, before issuance of show cause notice, on self-assessment basis or on the basis of tax ascertained by Central Excise Officer, then no penalty, under the provisions of the Finance Act, 1994 or any Rules, made thereunder, such as Cenvat Credit Rules 2004, shall be imposed on that person.

Thus, the department cannot impose penalty under sections 76 & 77 of the Finance Act, 1994 or under Rule 15 & Rule 15A of Cenvat Credit Rules, 2004.

However, the insertion of the aforesaid explanation under Section 73(3) does not exclude the imposition of penalties, if the non-levy or non-payment or short-levy or short-payment or erroneous refund of service tax is due to any of the following reasons:

(a) fraud: or
(b) collusion: or
(c) willful mis-statement: or
(d) suppression of facts; or
(e) contravention of any of the provisions of the Chapter or of the rules made there under with intent to evade payment of service tax.

This is for the reason that, in such cases, provisions of section 73(4) apply which override the provisions of Section 73(3) of the Act. Hence, penalty u/s 78 of the Act can be imposed as in such a situation, the case of the assessee shall be covered under Section 73(4) instead of Section 73(3).

2. <u>Amendment in Section 95</u>

The Finance Bill, 2010 has introduced amendment by inserting a new sub section (1G), in Section 95, after sub-section (1F) of the Finance Act, 1994. The said sub section (1G), reads as under-:

"(1G) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act,

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2010, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:
PROVIDED that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2010 receives the assent of the President.

The said amendment empowers the Central Government, for a period of one year, to issue any order, not inconsistent with the provision of this chapter to remove any difficulty in respect of taxable services incorporated by the Finance Act, 2010.

3. Retrospective Amendment in Notification No.05/2006 –CE(NT) dated 14.03.2006

Notification No.05/2006 –CE(NT) dated 14.03.2006 provides the procedure and conditions for claiming refund of CENVAT credit availed in respect of inputs and input services used for providing export of services and manufacturing goods for export. Accumulated CENVAT credit to the exporters of services and other service providers like call centers and BPO's were getting delayed and most of them are ultimately getting rejected,-

(i) On account of difference in perception/interpretation between the department and the export of services as to whether their actives fall under the purview of 'export of service at all';

(ii) Difference in wordings used in Notification No. 5/2006-CE (NT) dated 14.03.2006, issued under Rule 5 of CENVAT Credit Rules, 2004 as regards the definitions of terms such as 'inputs'/ 'input services'

(iii) The procedural requirements prescribed under the notification and illustrations given therein were causing difficulties both in terms of delays and filing of incorrect/incomplete refund forms.

The words "in relation to" have been added in main condition (a) of the Notification. And the word "in' contained in main condition (b) of the said Notification has been replaced with "for".

The above two changes ensure that the provisions of the refund notification and the CENVAT Credit Rules are aligned and that refund is granted on all goods or services on which CENVAT can be claimed by the exporter of goods or services.

Further the illustration given in condition 5 of the Appendix to the Notification has been deleted. This ensures that refund of CENVAT credit which has been availed in the period prior to the quarter/ period for which the refund has been claimed is also eligible for refund. The refund claims should be calculated only on the basis of the ratio of the export turnover to the total turnover of the claimant. Thus, if the CENVAT credit available to the exporter at the end of the quarter, or month, as the case may be, is Rs. 1 crore, and the ratio of export to total turnover during the quarter is 50%, then Rs. 50 lakh should be refunded to the exporter. The essence of the changes is that refund shall be available for all goods, or input services, on which CENVAT is permissible and should be processed accordingly.

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D. Changes which are effective from the notified date after the enactment of the Finance Bill, 2010.

I. NEW SERVICES

Following new categories of taxable services shall be brought in the service tax from a date to be notified after the enactment of the Finance Bill 2010:

1. Services of Promoting/Marketing/Organising of Games of Chance
2. Health Related Services
3. Maintenance of Medical Records of Employees Services
4. Promotion of Brand Services
5. Services of Permitting Commercial Use of Any Event
6. Electricity Exchange Services
7. Copyrights Services
8. Special Services Provided by Builder Etc.

II. <u>ENHANCEMENT OF SCOPE OF EXISTING TAXABLE SERVICES</u>

Following amendments have been **proposed** in the Budget 2010. These modifications would come into effect from a notified date after the enactment of the Finance Bill, 2010.

1. PORT SERVICES – SECTION 65(105)(zn); and AIRPORT SERVICES – SECTION 65(105)(zzm)

All services provided entirely within the port/airport premises liable to Service Tax.

Two services, namely 'port services' and the 'airport services' were introduced in Budgets 2001 and 2004 respectively. The services provided by minor ports covered under 'other ports' became taxable from 2003. The purpose behind creating these services was that since a number of activities are undertaken within the premises of ports and airports, it would be easier to consolidate all such services under one head.

It was reported that divergent practices are being followed regarding classification of services being performed within port/airport area. In some places, all services performed in these areas [even those falling within the definition of other taxable services] are being classified under the port/airport services. Elsewhere, individual services are classified according to their individual description on the grounds that the provisions section 65 A of Finance Act, 1994 prescribes adoption of a specific description over a general one.

Further, both the definitions use the phrase 'any person authorised by port/airport'. In many ports/airports there is no procedure of specifically authorizing a service provider to undertake a particular activity. While there may be restriction on entry into such areas and the authorities often issue entry-passes or identity cards, airport/port authorities seldom issue authority/permission letters to a service provider authorising him to undertake a particular task. Many taxpayers have claimed waiver of tax under these services on the ground that the port/airport authority has not specifically authorised them to provide a particular service.

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In order to remove these difficulties, the definitions of the relevant taxable services are being amended to clarify that all services provided entirely within the port/airport premises would fall under these services. Further, specific authorisation from the port/airport authority would now not be a pre-condition for the levy.

2. AUCTIONEER'S SERVICES – SECTION 65(105)(zzzr)
"Auction by Government" to mean auction of government property
Auctioneer's services provide to levy service tax on services provided in relation to auction of property whether moveable or immoveable, tangible or intangible. However, auctions by the Government were specifically excluded. This exclusion had created confusion in the trade circle. 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. In some other cases government bodies, such as 'Tobacco Board' conducts auction of properties that belong to private individuals or organizations.

In order to avoid the confusion, an "Explanation" defining the phrase 'auction by government' is proposed to be inserted in the taxable clause. As per the said Explanation, exclusion is provided to auction of government property and not when the Government acts as an auctioneer for sale of the private property.

3. MANAGEMENT OF INVESTMENT UNDER ULIP – SECTION 65(105)(zzzzf):
Valuation of taxable service
Tax on insurers issuing Unit Linked Insurance Plans (ULIP) was imposed w.e.f. 1-06-2008. The taxable service is the "Management of investment, under unit linked insurance business, commonly known as Unit linked Insurance Plans (ULIP) scheme" by an insurer carrying life insurance business.

ULIPs are broadly similar to the mutual funds, except that they are required to segregate a certain part of the premium towards the life insurance of the plan holder. Further, unlike in the mutual fund industry, where the funds are managed by an independent Asset Management Company (which is a separate legal entity), in case of ULIP the funds are managed by the insurance company itself. Thus, it is difficult to ascertain the component of the total charges that is attributable to the management of investment.

Accordingly, for the purpose of valuation for charging of service tax, an Explanation was prescribed which in brief, explained that the taxable value for the purpose of this service is the difference between the (a) premium paid by the policy holder for the Unit Linked Insurance Plan policy; and (b) the sum of premium paid for or attributable to risk cover, whether for life, health or other specified purposes, and the amount segregated for actual investment. In other words the differential amount was considered as the charges for asset management.

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It is however a fact that the amount appropriated by the insurance company is not only asset management but for various activities, such as,-

a) Premium Allocation Charge: is an upfront deduction from the policy premium, which is generally more than 10% in the first year of ULIP, and continues to be very high for the initial three years. This amount is used for following purposes:

i) Initial expenses in marketing the issue, including commission paid to distributors.
ii) Cost of conducting medical check up of the ULIP holder and other miscellaneous charges.

b) Policy administration charges; monthly charges for managing the paperwork and other formalities for the insurance, and are not related to asset management. It is chargeable to service tax under insurance services.

c) A number of other charges are also charged by the insurance companies, which, *inter alia*, include, policy surrender charges, switching charges, partial withdrawal charges, miscellaneous charges etc.

d) Fund management charges: This is the amount charged by the insurance company for managing the investible funds, which is intended to be taxed under this service. This amount has been capped for ULIPs by Insurance Regulatory and Development Authority (IRDA) at 1.5% of the gross yield for schemes below 10 years, and 1.25% for schemes above 10 years.

Since the charge pertaining to asset management alone should form the value for taxable purpose, the explanation provided under the definition of the taxable service is being suitably amended to provide that that the value of the taxable service for any year of the operation of policy shall be the actual amount charged by the insurer for management of funds under ULIP or the maximum amount of fund management charges fixed by IRDA, whichever is higher.

The method of computation for monthly payment of tax by such service providers would be prescribed at the appropriate time.

4. TRANSPORT OF PASSENGERS BY AIR SERVICES – SECTION 65(105)(zzzzo)

Travel by airline (both in domestic as well as international) in any class subject to service tax

Presently the Transport of Passengers by Air Services are taxable if any service is provided or to be provided to any passenger to an aircraft operator in relation to scheduled or non scheduled air transport of such passenger embarking in India for international journey, in any class **other than economy class**.

The scope of said taxable service is being expanded to include **domestic journeys**, and international journeys **in any class**. The, modalities of working out the tax

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amount including exemptions, abatement etc. would be prescribed at the appropriate time. In this respect it is pertinent to elucidate that there is no abetment under the said category of service.

Thus, the taxable service is proposed to be suitably amended to extend this levy to cover all domestic and international air passengers embarking in India in any class which shall have impact on the fare of two types of passengers. Firstly, the fare in case of passenger of domestic journeys shall increase equivalent to the amount of service tax charged. Secondly, there shall be increase in the fare of the economy class passenger equivalent to the amount of Service tax charge from them.

Thus, with this amendment, if a person travels through airline within India or outside India, in business class or in economy class, Service tax shall be applicable.

5. INFORMATION TECHNOLOGY SOFTWARE SERVICES (ITSS)- SECTION 65(105)(zzzze)

Services provided other than for business or commerce also included

Presently, services provided in relation to Information Technology (IT) Software, such as development, designing, programming, up-gradation of IT software, providing advice, consultancy and assistance on the matters of IT software and providing right to use IT software for commercial exploitation, and providing right to use IT software supplied electronically, were taxable under the category of ITSS. However, the scope was limited to cases where such IT software was to be used in the course or furtherance of business or commerce. In other words, these activities were taxable only when the service recipient was to use such services for commercial or business purposes.

The scope of the taxable service is proposed to be expanded to tax all such services even if the service provided is used for purposes other than business or commerce.

6. COMMERCIAL OR TRAINING COACHING SERVICES – SECTION 65(105)(zzc):

Scope of term 'Commercial' - Profit motive no longer a criteria for determining taxability – Retrospective amendment w.e.f. 01.07.03

Limit the scope of the term 'Vocational training institutes'

Scope of term 'Commercial' - Profit motive no longer a criteria for determining taxability – Retrospective amendment w.e.f. 01.07.03

Ever since the applicability of service tax on Commercial training or coaching services, there has been an ambivalent regarding the definition of the term 'Commercial' used in the said taxable service due to the absence of any statutory definition of the same under Chapter V of Finance Act, 1994.

The schools ,institutes, colleges and universities providing courses that lead to award of recognized diplomas/degrees and sports education were kept out of tax net. These include universities created under a Central or State Act, institutes

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recognized by UGC as universities or deemed universities, institutes granted recognition professional councils like AICTE, Medical Council of India, Bar Council of India etc. To distinguish the former types of institutes/centres from the latter, the word 'commercial' was used in the definitions of 'Commercial training and coaching', 'Commercial training and coaching centres' and 'taxable service'.

The use of the word 'commercial' in these definitions has led to certain unintended consequences. A view has been taken that the term 'commercial' appearing in various definitions implies that the institute must be run with a profit motive to fall under the taxable service. A number of taxpayers resisted paying tax on this ground.

In order to clarify the legislative intent, an Explanation is being added in the definition of the taxable service 'Commercial Training or Coaching Service' to clarify that the term '**commercial' appearing in the relevant definitions, only means that such training or coaching is being provided for a consideration, whether or not such training or coaching is conducted with a profit motive**. This amendment is being carried out retrospectively (from 01.07.2003) so as resolve the disputes pending at different levels of the dispute settlement system.

As a result of said amendment, now the societies registered under The Societies Registration Act, 1860, assessee recognized as charitable organization under the Income-tax Act, 1961 and similar other organisations imparting training or coaching cannot take the benefit of judgment pronounced in the case of **ICFAI v. Commissioner-2007 (8) S.T.R.41 (Tri-Del) and Great Lakes Institute of Management Ltd v Commissioner of service tax Chennai 2008-(012)-STT-0296- CESAT** wherein it has been held that such societies and organizations cannot be commercial in nature. Thus, all such judgments have now lost their significance as far as the scope of the term commercial (w.r.t. Commercial, Training or Coaching Services) is concerned.

Thus, if the coaching or training is being provided for a consideration, it shall be regarded as commercial in nature attracting service tax under Chapter V of Finance Act, 1994. Profit motive is no longer the criteria for determining the taxability under said category of service.
In this respect, it will not be out of context to mention that by the said amendment, clarification issued by the Department vide Circular No. 107/01/2009 dated 28.01.2009 has now taken a legal shape backed by the statutory provision.

It is also pertinent to elucidate here that pre school coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by law for the time being in force are continued to be excluded from the levy of Service Tax.

Limit the scope of the term 'Vocational training institutes'
Further, the exemption from service tax on 'Commercial training or coaching service' extended to vocational training institutes vide notification No. 24/2004-ST

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dated 10.09.2004 is being limited by introducing a new definition of vocational training institutes. Service tax exemption will be available only to industrial training institutes or industrial training centers affiliated to National Council of Vocational Training (NCVTs) and offering courses in the designated trades covered under Schedule I of the Apprentices Act, 1961. The List figuring under Schedule I of the Act covers engineering as well as non-engineering skills/trades (Notification No.3/2010-ST, dated 27th February, 2010 refers).

7. SPONSORSHIP SERVICES – SECTION 65(105)(zzzn):

Sponsorship of sports events liable to Service Tax

Business entities often associate their brand names, products or services by sponsoring popular or successful events with intent to obtain commercial benefits of spreading their name, goodwill or reputation to public. It is a form of advertisement. Sponsorship service was brought under tax net in Budget 2006. **However, sponsorship of sports events was kept out of the purview of the taxation with a view to encourage sports activity and to provide an avenue for funding sports events.**

Corporate involvement in certain sports such as cricket, golf and tennis has grown rapidly in the recent years and there is a substantial increase in sports events organized by private organizations or business entities. Further, the concept of owning and forming sports clubs that hire the services of sports persons has made many such events highly commercial and profitable activities. The advertisements through sponsorship of such events have created a disparity, as unlike advertisements displayed otherwise, advertisement (through sponsorship) when associated with sports, does not attract service tax.

Therefore, the exclusion available for sponsorship pertaining to sports is being removed by suitable amendment. Suitable exemption to certain categories of sports events would be considered at the appropriate time.

8. COMMERCIAL OR INDUSTRIAL CONSTRUCTION SERVICE/CONSTRUCTION OF COMPLEX SERVICE – SECTION 65(105)(zzq)/(zzzh)

Explanation inserted to cover agreements entered into during the course of construction

"Commercial or Industrial Construction Services" is a comprehensive service covering construction of new buildings or civil structures used for commercial or industrial purposes and repair, alteration or restoration activities of such buildings and civil structures, construction of pipeline or conduit, completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure.

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"Construction of Complex Service" covers construction of a new residential complex or a part thereof, or completion and finishing services in relation to residential complex.

There are different modes of entering into contract with intended purchaser of a flat or commercial unit - in few cases the entire consideration is paid after the residential/commercial complex has been fully developed. This is in the nature of outright sale of the immovable property and therefore no service tax is leviable on such transfer. However, in other cases, the initial transaction between the prospective 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 another scenario 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 is devised to pay lesser stamp duty. In many cases, an instrument called 'Construction Agreement' is parrallely executed under which the obligations of the promoter to get property constructed and that of the buyer to pay the required consideration are incorporated.

An Explanation is to be inserted which provides that unless the entire consideration for the property is paid by the prospective buyer or on his behalf after the completion of construction (i.e. after issuance of completion certificate by the competent authority), 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.

However, it may be noted that the composite contracts which were taxable under both the aforesaid categories of services were specifically made taxable under the category of services in execution of works contract w.e.f. 1.6.2007. Hence, the amendment will not result into any additional revenue to the Government. This seems to be an inadvertent error and may be later modified while enacting the Bill.

9. RENTING OF IMMOVABLE PROPERTY SERVICE – SECTION 65(105)(zzzz)

Renting in itself is taxable

This service was introduced w.e.f. 01.06.2007 with a view to tax the activity of renting of immovable property for use in the course or furtherance of business or

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commerce. However, the Hon'ble High court of Delhi in the case of Home Solution Retail India Ltd. & Others vs. UOI held that renting per se cannot be regarded as service and hence, no service tax could be levied on the activity of renting itself.

The Finance Bill, 2010 seeks to amend the taxable clause in order to overcome the interpretation placed by the Hon'ble Delhi High Court. The new clause explicitly provides that the activity of 'renting' itself is a taxable service. The amendment has been given retrospective effect from 01.06.2007.

Further, it has also been proposed to levy service tax on renting of vacant land, where there is an agreement or contract between the lessor and lessee for undertaking construction of buildings or structures on such land for furtherance of business or commerce during the tenure of the lease. Earlier, renting of vacant land was specifically excluded from the levy of service tax.

The Finance Bill, 2010 seeks to validate actions taken under Section 65(105)(zzzz) vide Clause 76 of the Bill. Clause 76 specifically states that notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or omitted to be done at any time during the period commencing on and from the 1st day of June, 2007 shall be deemed to be and deemed always to have been, for all the purposes, as validly and effectively taken or done or omitted. It has also been stated that no suit or other proceedings shall be maintained or continued in any court for the levy and collection of such service tax. Further, the said Clause explicitly provides for recovery of service tax, interest or penalty or other charges which may not have been collected or refunded, the case may be.

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