

Circular No. 139/8/2011-TRU

F.No.334/81/2011-TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
Tax Research Unit

New Delhi, the 10th May 2011

To

Chief Commissioners of Central Excise and Customs (All),
Director General (Service Tax),
Director General (Central Excise Intelligence),
Director General (Audit),
Commissioners of Service Tax (All)
Commissioners of Central Excise (All)
Commissioners of Central Excise and Customs (All).

Madam/Sir,

**Subject: Short Term Accommodation Service and Restaurant Service-
clarification -regarding**

Since the levy of service tax on the two new services relating to services provided by specified restaurants and by way of short-term hotel accommodation came into force with effect from 1st May 2011, a number of queries have been raised by the potential tax payers.

2. These are addressed as follows:

Short Term Accommodation Service:

Sl. No	Queries	Clarification
1.	What is the relevance of declared tariff? Is the tax required to be paid on declared tariff or actual amount charged?	"Declared tariff" includes charges for all amenities provided in the unit of accommodation like furniture, air-conditioner, refrigerators etc., but does not include any discount offered on the published charges for such unit. The relevance of 'declared tariff' is in determining the liability to pay service tax as far as short term accommodation is concerned. However, the actual tax will be liable to be paid on the amount charged i.e. declared tariff minus any discount offered. Thus if the declared tariff is Rs 1100/-, but actual room rent charged is Rs 800/-, tax will be required to be paid @ 5% on Rs 800/-.
2.	Is it possible to levy separate tariff for the same accommodation in respect of corporate/privileged customers and other normal customers?	It is possible to levy separate tariff for the same accommodation in respect of a class of customers which can be recognized as a distinct class on an intelligible criterion. However, it is not applicable for a single or few corporate entities.
3.	Is the declared tariff supposed to include cost of meals or beverages?	Where the declared tariff includes the cost of food or beverages, Service Tax will be charged on the total value of declared tariff. But where the bill is separately raised for food or beverages, and the amount is charged in the bill, such amount is not considered as part of declared tariff.

4.	What is the position relating to off-season prices? Will they be considered as declared tariff?	When the declared tariff is revised as per the tourist season, the liability to pay Service Tax shall be only on the declared tariff for the accommodation where the published/printed tariff is above Rupees 1000/-. However, the revision in tariff should be made uniformly applicable to all customers and declared when such change takes place.
5.	Is the luxury tax imposed by States required to be included for the purpose of determining either the declared tariff or the actual room rent?	For the purpose of service tax luxury tax has to be excluded from the taxable value.

Services Provided by Restaurants:

1.	If there are more than one restaurants belonging to the same entity in a complex, out of which only one or more satisfy both the criteria relating to air-conditioning and licence to serve liquor, will the other restaurant(s) be also liable to pay Service Tax?	Service Tax is leviable on the service provide by a restaurant which satisfies two conditions: (i) it should have the facility of air conditioning in any part of the establishment and (ii) it should have license to serve alcoholic beverages. Within the same entity, if there are more than one restaurant, which are clearly demarcated and separately named, the ones which satisfy both the criteria is only liable to service tax.
2.	Will the services provided by taxable restaurant in other parts of the hotel e.g. swimming pool, or an open area attached to a restaurant be also liable to Service Tax?	The taxable services provided by a restaurant in other parts of the hotel e.g. swimming pool, or an open area attached to the restaurant are also liable to Service Tax as these areas become extensions of the restaurant.
3.	Is the serving of food and/or beverages by way of room service liable to service tax?	When the food is served in the room, service tax cannot be charged under the restaurant service as the service is not provided in the premises of the air-conditioned restaurant with a licence to serve liquor. Also, the same cannot be charged under the Short Term Accommodation head if the bill for the food will be raised separately and it does not form part of the declared tariff.
4.	Is the value added tax imposed by States required to be included for the purpose of service tax?	For the purpose of service tax, State Value Added Tax (VAT) has to be excluded from the taxable value.

3. Trade Notice/Public Notice may be issued to the field formations and taxpayers.

4. Please acknowledge receipt of this Circular. Hindi version follows.

(J. M. Kennedy)
Director (TRU)
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