

Service Tax- Commercial rent

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The concept of renting /lease is not new to service tax with [the Rent a Cab scheme](#) being the first followed by Mandap Keeping services and banking and financial services.. In 2006 the category of Support services for business or commerce attempted to bring in offices provided along with infrastructural support to the net. In this case it was reasoned that only if the support staff was provided then this category would cover offices.

The bureaucrats drafting the law have a view that rent is considered as a service in Europe that activities of commerce are either to be taxed as goods or services. This view may not be entirely correct.

Renting of immovable property is sought to be taxed with effect from 01.06.2007 under this new category of service. What is sought to be taxed is rental income when let out for business or commercial purposes.

Definitions

"Renting of immovable property" includes renting, letting, leasing, licensing, or other similar arrangements of immovable property for use in the course of furtherance of business or commerce but does not include -

- Renting of immovable property by a religious body or to a religious body or
- Renting of immovable property to an educational body imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre

"for use in the course or furtherance of business or commerce" includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings.

"Immovable property" has been defined to include -

- Building and part of a building and the land appurtenant thereto
- Land incidental to the use of such building or part of a building

- Common or shared areas and facilities relating thereto and
- In case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate

"Immovable property" would not include -

- Vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes
- Vacant land (whether or not having facilities clearly incidental to the use of such vacant land)
- Land used for education, sports, circus, entertainment and parking purposes and
- Building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

Where an immovable property is used partly for residential purposes and partly for use in the course of furtherance of business or commerce, it shall be deemed to be immovable property for use in the course of furtherance of business or commerce.

Service may be provided by any person to any other person in relation to renting of immovable property for use in the course or furtherance of business or commerce.

Who is liable? What is liable?

This category applies to all service providers whether he is an individual or company or partnership firm. The service provider shall first of all satisfy that the property in question falls within the definition of "immovable property" given under [section 65\(105\)\(zzzz\)](#) and explained above. This would be critical as there would be no liability under this head if the property happens to fall under categories excluded by the definition of "immovable property". Even where the property is partly let out for use in course of furtherance of business or commerce, the liability would exist.

Valuation

The service tax shall be levied on the gross amount charged as rent for the property. Where any property taxes paid to the local authorities, such tax paid is exempted by way of exemption notification thereby deducted from the gross value and the service tax is charged on the net value (gross value - property tax paid and eligible for deduction). It is important to note that the

deduction of the property tax is allowed only on payment basis.

Further it is important to note that the deduction for property tax is not given in one lump sum and would have to be calculated on a proportionate basis where the period for which service tax is paid differs from the period for which property tax has been paid. This type of narrow view and nit picking was not necessary.

Example -

If property tax for the year is Rs. 12000 and service tax is to be paid for the month of April, and the rent for April is Rs. 100000, then the service tax is to be paid on Rs. 99000 (100000 - (12000/12)) at the applicable rate of 12% plus education and SHE cess.

The exemption has not been given on interest and penalty payments to local authorities for delay in property tax payment, by [notification 24/2007 ST](#) dated 22.05.2007

Where the assessee is not able to claim deduction for property tax at the time of payment of service tax, he can adjust the service tax paid in excess within one year from the date of actual payment of property tax as per [Rule 6\(4C\)](#) of [Service tax Rules 1994](#) and submit the relevant details of such adjustment to the SCE handling service tax within 15 days of such adjustment.

Where the property is let out partly and the consideration cannot be segregated, the entire amount would have to be taxed.

If the property tax is paid at a later date after receipt of the rent and paying service tax to the Government, the service tax attributable to the property tax so paid can be adjusted in the subsequent payments.

Exemption

The assessee can however examine the benefit of general exemption of up to 8 lakhs where he does not have liability on any other service in such a way that the value exceeds the aforesaid limit. Further for the year 2007-08 in such cases the value of taxable services will have to be taken only from June 2007 to March 2008 and if the same is less than 8 Lakhs the assessee can also avail the benefit of exemption in the year 2008-09 also.

Cenvat credit

The service provider would be eligible to avail cenvat credit on inputs, capital goods and input services used to provide such service. The credits could be on telephone bills, security agency's bills, maintenance bills, equipments like computers etc. If the construction is completing after

01.07.2007 even the service tax paid on the said construction services is also available as credit.

Possible Issues

1. Where the property is a composite one and property tax is paid, whether the entire amount is eligible for deduction remains to be seen?

Comments: Where the entire amount of rental is taxed (because of lack of segregation,) the entire property tax can be considered. But where the rental can be segregated in terms of property liable and property not liable, even the property tax might have to be split on some reasonable basis.

2. What is the treatment in case of co-ownership?

Comments: Where there is a case of co-ownership, the property can be assessed separately and the basis adopted for Income Tax Assessment along with other authorities like municipal authority may be used as a basis to ascertain the shareholdings of the concerned owners (any other basis not in conformity with basis adopted under IT assessment and other authorities could lead to unnecessary litigation).

3. Whether vacant land let out for parking purposes be liable under this head?

Comments: Letting out of vacant land alone for parking of vehicles would not be liable as the definition of immovable property under this head excludes such vacant land.

4. Whether precincts of building let out to members of a residential block for parking of their vehicles be exempt?

Comments: It is important to note that letting out of immovable property solely for residential purposes is exempt under this category. But where the parking space is allowed to members of a residential block and they in turn pay an amount towards the same to an association which maintains the same, the taxability will have to be seen in light of the category club or association's membership service wherein up to Rs. 3000 per month per member would be exempted by [notification 8/2007](#). Letting out space to third parties who are not members, would be exempt under renting category.

5. Whether renting of residential flat to tenant with parking space liable?

Comments: Where letting out is for residential purposes, the same would not be liable.

6. Whether the arrangements of profit share would have any impact under service tax where a

share of the business income gross or net is collected?

Comment: The agreement would be conclusive. Where the measure of the rent in terms of the agreement is based on the turnover or profits the transaction would be liable. However where the premises is provided as a part of a venture or business arrangement where the contributor takes a part in the loss or profit then the same may not be covered as a rent.

7. Whether residential flat let out by a member for the association's office be liable?

Comments: Where the flat is let out to the association itself for rental, the rental may not be taxable as the association cannot be said to be indulging in business or commerce.

This article covers the most important amendments under service tax this budget. Some issues have been envisaged and it is expected that many more issues would require the attention of the law makers.