

62. INVESTMENT MANAGEMENT SERVICE UNDER ULIP

(A) **Date of Introduction:** 16.05.2008 vide Notification No. 18/2008-S.T., dated 10.05.2008

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

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

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

"**Life insurance business**" has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938)

(Section 65 (61) of Finance Act, 1994 as amended)

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

(Section 65 (80) of Finance Act, 1994 as amended)

"**Taxable Service**" means any service provided or to be provided to a policy holder, by an insurer carrying on life insurance business, in relation to management of investment, under unit linked insurance business, commonly known as Unit Linked Insurance Plan (ULIP) scheme.

Explanation. – For the purposes of this sub-clause

(i) management of segregated fund of unit linked insurance business by the insurer shall be deemed to be the service provided by the insurer to the policy holder in relation to management of investment under unit linked insurance business;

(ii) the gross amount charged by the insurer from the policy holder for the said services provided or to be provided shall be equal to the maximum amount fixed by the Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), as fund management charges for unit linked insurance plan or the actual amount charged for the said purpose by the insurer from the policy holder, whichever is higher.

(Section 65 (105) (zzzzf) of Finance Act, 1994 as amended)

(C) **Rate of Tax & Accounting Code:**

| | Rate of Tax | Accounting Code |
|----------------|-------------------------------|-----------------|
| Service Tax | 10% of the value of services | 00440430 |
| Education Cess | 2% of the service tax payable | 00440298 |
| Secondary and | 1% of the service tax | 00440426 |

| | | |
|------------------------|-------------------------|----------|
| Higher Education cess | payable. | |
| Other Penalty/interest | As levied or applicable | 00440431 |

(Rate of tax is effective from 24.02.2009.)

(D) Classification of Taxable Services:

- (1) The classification of taxable services shall be determined according to the terms of the sub-clauses (105) of section 65;
- (2) When for any reason , a taxable service is prima facie, classifiable under two or more sub-clauses of clause (105) of section 65, classification shall be effected as follows :-
 - (a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;
 - (b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, in so far as this criterion is applicable;
 - (c) when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merits consideration.

(Sec.65A of Finance Act,1994)

(E) Valuation of taxable services for charging Service tax

- (1) Service tax chargeable on any taxable service with reference to its value shall,—
 - (i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;
 - (ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;
 - (iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.
- (2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.
- (3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation.—For the purposes of this section,—

(a) “consideration” includes any amount that is payable for the taxable services provided or to be provided;

(b) “money” includes any currency, cheque, promissory note, letter of credit, draft, pay order, travellers cheque, money order, postal remittance and other similar instruments but does not include currency that is held for its numismatic value;

(c) “gross amount charged” includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and ‘book adjustment, and any amount credited or debited, as the case may be, to any account, whether called “Suspense account” or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.

(Sec.67 of Finance Act,1994)

Inclusion in or Exclusion from value of certain expenditure or cost:

(1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.

[Rule 5(1) of Service Tax (Determination of Value) Rules,2006]]

(2) The expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:-

- (i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;
- (ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;
- (iii) the recipient of service is liable to make payment to the third party;
- (iv) the recipient of service authorizes the service provider to make payment on his behalf;
- (v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;
- (vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

- (vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
- (viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

[Rule 5(2) of Service Tax (Determination of Value) Rules,2006]]

(F) Clarifications issued by the Board/ Ministry:

Scope of Investment Management Service under ULIP :

- (1) Unit linked Insurance Plan (ULIP) is an insurance product offered by life insurance companies combining both risk cover and benefits of investment. ULIP being a combination product, premium amount paid under ULIP consists of risk premium and investment component. Risk premium may be for life or health or any other authorized purposes. Unlike in the case of traditional life insurance policies, policy holder of ULIP can choose portfolios for investment with different investment aims such as low, medium and high-risk category or combination thereof. ULIP enables the policy holder to take part in the scheme collectively and becoming the beneficiary like mutual funds. The investment risk is borne by the ULIP policyholder.
- (2) The fund available for investment is known as segregated fund. Insurance companies charge from the policy holder, initially and periodically, various charges, in addition to risk premium, relating to management of the segregated fund under various names, such as, premium allocation charges, fund management fees, fund switching charges, surrender charges etc. These are consideration for providing services relating to investment management.
- (3) The proposed service enables levy of service tax on services provided in relation to management of the investment portion of ULIP premium also known as segregated fund. Consideration for management of the segregated fund shall be computed as the difference between the total premium paid and the sum of premium for the risk cover plus amount of segregated fund. Service tax is liable to be paid as and when an amount is charged from the policyholder.

Illustration:

- (a) Total ULIP premium: Rs.100
 - (b) Premium for risk cover: Rs 10
 - (c) Segregated fund for investment: Rs.85
 - (d) Gross amount charged for the management of segregated fund: Rs. 5[100-(10+85)]
 - (e) Service tax @ 12% (now 10%): Rs.0.60 (12% of Rs.5/-)
- (4) It may be noted that in the case of ULIP, risk premium attributable to risk cover is taxed under 'Insurance service' and management of investment is taxed under the proposed taxable service.

(Based on M.F.(D.R.) letter No.334/1/2008 TRU dated 29.02.2008)

Budget 2010-11 Changes.-

- (1) Tax on insurers issuing Unit Linked Insurance Plans was imposed w.e.f. 1.6.2008. 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.
- (2) 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.
- (3) 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.
- (4) 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 is 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.
- (5) 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 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.

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

(G) Exemption & Exclusion:

1. Exemption to Small Scale Service Providers:

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding **Ten lakh*** rupees in any financial year from the whole of the service tax leviable thereon under section 66 of the said Finance Act:

Provided that nothing contained in this notification shall apply to,-

- (i) taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or
- (ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994.

2. The exemption contained in this notification shall apply subject to the following conditions, namely:-

(i) the provider of taxable service has the option not to avail the exemption contained in this notification and pay service tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year;

(ii) the provider of taxable service shall not avail the CENVAT credit of service tax paid on any input services, under rule 3 or rule 13 of the CENVAT Credit Rules, 2004 (herein after referred to as the said rules), used for providing the said taxable service, for which exemption from payment of service tax under this notification is availed of;

(iii) the provider of taxable service shall not avail the CENVAT credit under rule 3 of the said rules, on capital goods received in the premises of provider of such taxable service during the period in which the service provider avails exemption from payment of service tax under this notification;

(iv) the provider of taxable service shall avail the CENVAT credit only on such inputs or input services received, on or after the date on which the service provider starts paying service tax, and used for the provision of taxable services for which service tax is payable;

(v) the provider of taxable service who starts availing exemption under this notification shall be required to pay an amount equivalent to the CENVAT credit taken by him, if any, in respect of such inputs lying in stock or in process on the date on which the provider of taxable service starts availing exemption under this notification;

(vi) the balance of CENVAT credit lying unutilised in the account of the taxable service provider after deducting the amount referred to in sub-paragraph (v), if any, shall not be utilised in terms of provision under sub-rule (4) of rule 3 of the said rules and shall lapse on the day such service provider starts availing the exemption under this notification;

(vii) where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services; and

(viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed rupees ***ten lakhs** in the preceding financial year.

3. For the purposes of determining aggregate value not exceeding **ten***lakh rupees, to avail exemption under this notification, in relation to taxable service provided by a goods transport agency, the payment received towards the gross amount charged by such goods transport agency under section 67 for which the person liable for paying service tax is as specified under subsection (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994, shall not be taken into account.

Explanation.- For the purposes of this notification,-

- (A) "brand name" or "trade name" means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, logo, label, signature, or invented word or writing which is used in relation to such specified services for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified services and some person using such name or mark with or without any indication of the identity of that person;
- (B) "aggregate value not exceeding ***ten lakh rupees**" means the sum total of first consecutive payments received during a financial year towards the gross amount, as prescribed under section 67 of the said Finance Act, charged by the service provider towards taxable services till the aggregate amount of such payments is equal to ten lakh rupees but does not include payments received towards such gross amount which are exempt from whole of service tax leviable thereon under section 66 of the said Finance Act under any other notification.
4. This notification shall come into force on the 1st day of April, 2005.

[Notification No. 6/2005-ST, dated 1-3-2005. *Amended by Notfn.No. 8/2008-ST dated 01.03.2008]

2. Services to UN Agencies

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

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

3. Export of service: Any service which is taxable under clause 105 of Section 65 may be exported without payment of service tax.

(Rule 4 of Export of Services Rules,2005)

4. Exemption to services provided to a developer of SEZ or a unit of SEZ:

Exempts the taxable services specified in clause (105) of section 65 of the said Finance Act, which are provided in relation to the authorized operations in a Special Economic Zone, and received by a developer or units of a Special Economic Zone, whether or not the said taxable services are provided inside the Special Economic Zone, from the whole of the service tax leviable thereon under section 66 of the said Finance Act subject to certain conditions. (Refer notification for details)

{ Notification No. 09/2009ST dated 03.03.2009 as amended by Notification No. 15/2009ST dated 20.05.2009

5. Exemption to value of goods & material sold by service provider: In exercise of the powers conferred by section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts so much of the value of all the taxable services, as is equal to the value of goods and materials sold by the service provider to the recipient of service, from the service tax leviable thereon under section (66) of the said Act, subject to condition that there is documentary proof specifically indicating the value of the said goods and materials.

(Notification No. 12/2003-ST dated 20.06.2003 effective from 01.07.2003)

6. Exemption to taxable services provided by TBI and STEP: All taxable services, provided by a Technology Business Incubator (TBI) or a Science and Technology Entrepreneurship Park (STEP) recognized by the National Science and technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Govt. of India from the whole of the service tax leviable thereon subject to certain conditions and procedures. (Refer notification for details)

(Notification No.09/2007 ST dated 01.03.2007)

7. Exemption to taxable services provided by entrepreneurs located within the premises of TBI or STEP: All taxable services, provided by an entrepreneur located within the premises of a Technology Business Incubator (TBI) or a Science and Technology Entrepreneurship Park (STEP) recognized by the National Science and technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Govt. of India from the whole of the service tax leviable thereon subject to certain conditions and procedures. (Refer notification for details)

(Notification No.10/2007 ST dated 01.03.2007)

8. Exemption to services provided to Foreign Diplomatic Missions or Consular Post in India: All services provided by any person, for the official use of a Foreign Diplomatic Mission or Consular Post in India are exempted from service tax subject to certain conditions and procedures. (Refer notification for details)

(Notification No. 33/2007-ST dated 23.05.2007)

9. Exemption to services provided for personal use of a family member of Diplomatic Agent or Career Consular Officers posted in Foreign Diplomatic Mission/Consular Post in India: All services provided by any person, for personal use of family member of Diplomatic Agents or Career Consular officers posted in a Foreign Diplomatic Mission or Consular Post in India are exempted from service tax subject to certain conditions and procedures. (Refer notification for details)

(Notification No. 34/2007-ST dated 23.05.2007)
