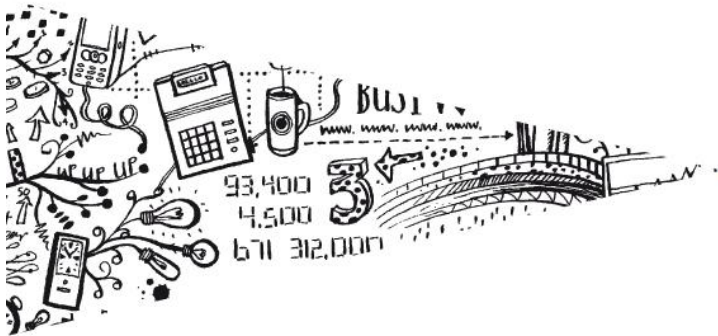


17 May 2011

# EY Tax Alert

Circular issued on interpretation of the term 'used outside India' under Export of Services Rules for the period upto 27 February 2010



The Central Board of Excise and Customs ('CBEC') has issued a clarification vide Circular No 141/10/2011 - TRU dated 13 May 2011 ('Present Circular') with regard interpretation of the term "used outside India" under the Export of Services Rules, 2005 ('Export Rules') for the period upto 27 February 2010.

## Background

Under the Service tax legislation for certain specified taxable services<sup>1</sup> (Category 3 services), one of the conditions to be satisfied for qualifying as export (under the erstwhile Export Rules), was that the said services should be "used outside India".

In this connection, Circular No. 111/05/2009 - ST dated 24 February 2009 ('Earlier Circular') clarified that in relation to Category 3 services (eg business auxiliary services, business support services, information technology software services), the phrase "used outside India" is to be interpreted to mean that the benefit of the service should accrue outside India. Accordingly such services should qualify as export even if all the relevant activities take place in India provided the benefits of these services accrue outside India. Examples of services which were treated as export in the Earlier Circular were as follows:

- ▶ Call centres engaged by foreign companies who attend to calls from customers or prospective customers from all around the world including from India
- ▶ Indian agents who undertake marketing in India of goods of a foreign seller. In this case, the agent undertakes all activities in India and receives

commission for his services from foreign seller in convertible foreign exchange

The Earlier Circular clarified that in the case of aforesaid services, benefit of promotion of business of a foreign company accrues outside India and accordingly, the said services should qualify as export.

With effect from 27 February 2010, the condition of use outside India to qualify as export, was omitted vide Notification No. 6/2010 - ST. Accordingly clarification issued under the Earlier Circular with respect to the ambiguity in interpreting the term "used outside India" was relevant only for the period upto 27 February 2010.

### Present circular

The Present Circular (now issued) provides further clarification to interpret the condition 'used outside India' to qualify as export (with respect to category 3 services).

#### Present circular clarifies that :

- ▶ the expression 'accrual of benefit' is not restricted to mere impact on the bottom-line of the person who pays for the service as this interpretation would defeat the requirement of services being used outside India
- ▶ the expression 'used outside India' may be interpreted in the context of the situs of the effective use and enjoyment of the service. The same would be dependent on the nature of service.

To further explain the above principles, following illustrations have also been provided in the Present Circular

- ▶ In the case of a consultancy service, though the service may be paid for by a client located outside India, if such service is used with respect to a project or an activity in India, such service cannot be said to have been used outside India.
- ▶ Effective use of advertising service shall be the place where the advertising material is disseminated to the audience, though the benefit of such advertisement may finally accrue to the buyer located at another place.
- ▶ In the case of call centres and similar businesses catering to clients located outside India, if the customers (of the client) are also located outside India, the service is used outside India.

## Impact of the present circular

The Present Circular seeks to accord a new perspective to interpret the phrase "used outside India".

<sup>1</sup> Taxable services classified under Rule 3(1)(iii) of the Export Rules

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