

CORPORATE OFFICE TAXATION SECTION 1 ST FLOOR, BHARAT SANCHAR BHAWAN JANPATH, NEW DELHI-1	 BHARAT SANCHAR NIGAM LTD.	BHARAT SANCHAR NIGAM LIMITED [A Government of India Enterprise]
No: 1002-62/2007/Taxation/BSNL/ 9		Dated 10-01-2012

To,
 CGMM STR/WTR/NTR/ETR/ MH circle /Chennai Telephones

Sub: Applicability of Service Tax on Telecommunication Service received from ILDOs (Foreign Telecom Operators) by BSNL –reg.

Ref This office letter no 1002-62/2007/Taxation/BSNL/257 Dated: 30/04/2009
 (Annexure-I)

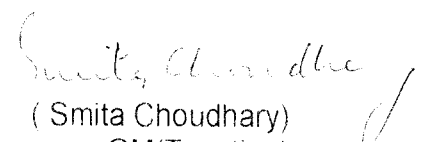
Kindly refer to letter cited above whereby CBEC, MOF, Govt. of India Circular No. 111/105/2009-ST was circulated and intimated that Service tax is not leviable on Telecommunication Service received from ILDOs (Foreign Telecom Operators) by BSNL.

Incidentally it is stated that, CBEC had issued Circular vide F. No. 13/21/2011-Service tax Dated July 15, 2011 (Annexure-II) and clarified that the International Private Leased Circuit (IPLC) charges received from abroad is chargeable to service tax under Business Support Service[Section 65(105)(zzzq)] at the hands of recipients situated in India in terms of sec 66A of the Finance Act, 1994 read with Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 and provisions of Taxation of Services (provided) from outside India and received in India, Rules 2006 apply.

However this matter has been re-examined by CBEC, MOF, Govt. of India and it is clarified vide F. NO. 137/21/2011-Service tax Dated December 19, 2011 that "... IPLC is specifically covered by the definition of Telecommunication service given in clause 65[109a(iv)] of the Finance Act, 1994. As per said section these services are taxable only when provided by a person who has been granted a licence under the first proviso to sub section (1) section 4 of the Indian Telegraph Act, 1985. It is only because the foreign telecom service provider cannot constitute a telegraph authority under an Indian law that they remain outside the taxability clause of the Telecommunication service..." (Copy is enclosed as Annexure-III).

Hence it is clarified that **Service tax is not applicable on Telecommunication Service received from ILDOs (Foreign Telecom Operators) by BSNL.** CBEC Circular dated 19.12.2011 mentioned above may kindly be brought to the notice of all concerned and produced before the Central Excise/ Service Tax authorities, if needed.

Encl:- As above


 (Smita Choudhary)
 GM(Taxation)

Copy for information and necessary action to :-

1. CGM of all BSNL Circles
2. IFAs of all BSNL circles
3. Sr. GM(ILD), BSNL CO New Delhi.

CORPORATE OFFICE
TAXATION SECTION
1ST FLOOR,
BHARAT SANCHAR BHAWAN
JANPATH, NEW DELHI-1



BHARAT SANCHAR NIGAM LIMITED
[A Government of India Enterprise]

No: 1002-62/2007/Taxation/ BSNL/257

Dated: 30-04-2009

To

- (1) IFA, O/o CGM, Western Maintenance Region, BSNL, Mumbai.
- (2) GM(F), O/o CGM Information Technology Project circle, BSNL, Pune-19.

Sub: - Applicability of Service tax on IUC invoices of ILDOs - reg.

- Ref:- 1) GM(F), IT Project Circle Pune letter no. ITPC/IOBAS/ILDO/2007-08/2
Dated 28.09.2007 & 31.07.2007.
- 2) CGMM, WTR letter no. WTR/CA/S.tax/Cenvat credit /2007-08/27
Dated 29.09.2007.
 - 3) This office letter of even no. 06 Dated 02-01-2008 and 397 Dated 11-07-2008.

Kindly refer this office letter of even no. 06 Dated 02-01-2008 wherein it was intimated that the case has been referred to CBEC, New Delhi for seeking clarification on the above noted subject. The CBEC instead of giving any direct reply, has issued a general circular no. 111/05/2009-ST vide F.No. 137/307/2007-CX.4 (Pt.) Dated 24th Feb, 2009 (Copy enclosed).

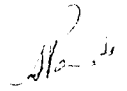
Telecommunication service falls under the category III [Rule 3(1) (iii)] of Export of Service Rules, 2005. In this connection it is clarified in the Para 3 of the CBEC circular stated above that

“ the relevant factor is the location of service receiver and not the place of performance. In this context, the phrase ‘ used outside India ‘ is to be interpreted to mean that the benefit of the service should accrue outside India. Thus for category III services [Rule 3(1)(iii)], it is possible that export of service may take place even when all the relevant activities take place in India so long as the benefits of these services accrue outside India.”

In case of Termination of ILDO calls BSNL provides the service from India and this service is used outside India by the foreign telecom operators abroad i.e. the foreign telecom operators by availing the connectivity provided by BSNL and in turn are able to provide connectivity to their client abroad without coming to India. As the benefits of this service is accrued outside India the clarification issued by CBEC is also applicable to the termination of ILDO calls provided by BSNL to foreign operators and hence no service tax is leviable on such services.

However, the remarks which were advised to be given in the ST-3 return vide this office letter of even no. 397 dated 11-07-2008 continued to be followed.

Encl:-As above.


(Arundati Panda)
GM (Taxation)

Copy for information to: - GM (T&C)/TRF/ILD of BSNL CO New Delhi.

Annexure - II

F.No.137/21/2011-Service Tax
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
New Delhi

Dated: July 15, 2011

Subject: Taxability in respect of International Private Leased Circuit (IPCL) charges and amendment in the definition of Telegraph Authority u/s 65 (111) of the Finance Act, 1994-reg.

Representations have been received seeking clarification regarding taxability of IPCL charges incurred in foreign currency by BPO/MNCs against receipt of services from the service provider situated outside India/group companies under reverse charge mechanism [Section 66A of the Finance Act, 1994 read with Rule 2 (1) (d) (iv) of the Service Tax Rules 1994].

2. The matter has been examined. The activities are in the nature of Leased Circuit services presently covered under Telecommunication service. However, for getting classified under Telecommunication service, Section 65 (105) (zzzx) of the Finance Act, 1994 provides that the service should be provided by a Telegraph authority. Telecommunication service as defined under Section 65 (109a) covers services which are provided by a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of the Indian Telegraph Act, 1885. In this situation in the instant case since the service provider is located abroad, he is not covered under the definition given in Section 65 (109a). Thus the service provided by foreign vendors cannot be taxed under Telecommunication service.

3. Section 65 (105) (zzzq) read with Section 65 (104c) of the Finance Act, 1994, defines Business Support Service as services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.

Explanation - For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security.

4. It is clarified that the above activity of receiving IPCL service from abroad is chargeable to Service Tax under Business Support Service [Section 65 (105)(zzzq) ibid] at the hands of recipients situated in India in terms of Section 66A of the Finance Act, 1994, read with Rule 2 (1) (d) (iv) of the Service Tax Rules, 1994 and provisions of Taxation of Services (Provided) From Outside India and Received in India, Rules 2006 apply.

All pending issues may be decided accordingly.

(R K Kapur)
OSD (Service Tax)
CBEC, New Delhi

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F. No. 137/21/2011 – Service Tax

Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise & Customs)
New Delhi,

Dated: December 19, 2011

Subject: Taxability in respect of International Private Leased Circuit (IPLC) charges and amendment in the definition of Telegraph Authority u/s 65 (111) of the Finance Act, 1994 – reg.

Please refer to the clarifications issued vide Board's letter of even number dated 15.07.2011 on the subject mentioned above

2. The matter has been re-examined and it is seen that the IPLC is specifically covered by the definition of the telecommunication service given in clause 65 [109a(iv)] of the Finance Act, 1994. As per the said section these services are taxable only when provided by a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of the Indian Telegraph Act, 1985. It is only because the foreign telecom service provider cannot constitute a telegraph authority under an Indian law that they remain outside the taxability clause of the telecommunication service.

3. Therefore, the view taken in the said letter that what otherwise constitutes a "telecommunication service" would amount to "business support service" is erroneous.

4. The clarification issued vide the above mentioned letter stands corrected accordingly

Deepankar Aron
Director (Service Tax)
CBEC, New Delhi