



भारतीय राष्ट्रीय राजमार्ग प्राधिकरण
(पोत परिवहन, सड़क परिवहन और राजमार्ग मंत्रालय)
National Highways Authority of India

(Ministry of Shipping, Road Transport and Highways)

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No.11041/217/2007-Admn.

August 01, 2007

POLICY MATTERS-ADMINISTRATION/FINANCE(15/2007)
[Decision taken on Finance Division's File no. NHAI/F&A/DGM F-VI/Service Tax/2006-07]

Sub: Guidelines on computation and payment of Service Tax

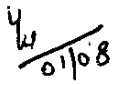
Some of the PIU's administering service tax matters, have sought clarifications on some issues which were referred to our Indirect Tax consultant and their opinion on the issues referred is enclosed at Annexure-I.

2. It may also be noted that the responsibility for payment of service tax lies on the person providing service even if he fails to collect the same from the user and accordingly, the person responsible for the payment of service tax cannot claim any exemption from payment of service tax on the ground that the same was not paid by the client. However, any payment of service tax shall be on the basis of a specific claim made in the invoice, by the Consulting Engineer, and also only as per the specific terms of the relevant contract (e.g. in some contracts, there may be a specific provision that the Service Tax is payable only on the remuneration component).

3. The contractual provisions are of paramount importance and all payments for service tax have to be governed in terms of contractual provisions and only when contract provisions stipulate payment or reimbursement of service tax as per applicable laws, the expert opinion should be taken into account. Where there is a conflict or inconsistency between the contractual provisions and the specific conditions of the contract against which the payment is claimed, the provisions of the contract shall prevail.

4. This issues with the approval of Chairman, NHAI.

Encl: as above


(V.K. Sharma)
GM (Administration)

To

All CGMs/GMs
All Project Directors/PIU's

Copy to: PS to Chairman/PS to Member (F)/PS to Member (A)
All the Officers in Finance Division at HQ

Sl. No.	Query	Reply
a)	Whether service tax is payable on the out-of-pocket expenses, corporate tax & personal income tax in respect of expatriate firm & expatriate personnel?	<p>In the case of expatriate firm & personnel, service tax will be payable on the total amount charged by the expatriate firm & personnel including out-of-pocket expenses.</p> <p>As per the terms of the Contract between NHAI and Foreign consulting engineers, the payments are to be made net of taxes to the consultants. Accordingly, any liability on account of tax payable on the contract value will have to be borne by NHAI. However, service tax will be payable on the value of the taxable service provided as per the contract and not on the personal or corporate tax liability borne by NHAI on behalf of the consultant. Therefore, while calculating value of taxable service, any tax charged in the bills will be excluded. (CBE & C Circular F.No. B11/3/98-TRU dated 07.10.1998)</p>
b)	If yes, what will be the effective date/period for which such taxes be taken in to account?	The effective date is 19.04.2006. Service tax is to be reimbursed on the gross value of invoice as per notification no. 12/2006- Service tax, dated 19.04.2006 and for services rendered prior to 19.04.2006, service tax will be payable only on the remuneration portion.
c)	Whether service tax is payable by NHAI on advance payments (refundable or non-refundable) made in the form of Mobilization Advance, payable to the consultants?	Advance payments made by NHAI in the form of Mobilization Advance are subject to Service tax as per section 67 & amended section 65(105).
d)	Whether service tax is to be reimbursed on the gross value of invoice or only on the remuneration portion, particularly for the services rendered before the issue of MOF instructions dt. 19.04.2006; if yes from which date, the service tax is payable on the gross value of invoice?	Service tax is to be reimbursed on the gross value of invoice as per notification no. 12/2006- Service tax, dated 19.04.2006 and for services rendered prior to 19.04.2006, service tax will be payable only on the remuneration portion.