

**OFFICE OF THE COMMISSIONER**  
**CENTRAL EXCISE, CUSTOMS AND SERVICE TAX,**  
**VADODARA-I COMMISSIONERATE,**  
**VADODARA**

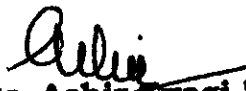
**TRADE NOTICE NO. 05/2010- ST**  
**VADODARA, DATED 17.05.2010**

Enclosed are copies of the following Circulars of the  
Central Board of Excise and Customs, New Delhi :-

Sr.No.	Circular Number and Date	File No.
01.	120(a)/2/2010-ST dated 16-04-2010 .	332/29/2009-TRU
02.	121/3/2010-ST dated 26-04-2010	332/29/2009-TRU

All Trade Associations and Chambers of Commerce  
and Members of Regional Advisory Committee are requested to publicise  
the contents including enclosures of this Trade Notice among their  
members / constituents.

Encl: As above

  
( Dr. Ashir Tyagi )  
Additional Commissioner (Tech),  
Central Excise & Customs,  
Vadodara-I.

F.No. IV/16-21/ST/2009

Vadodara, Dtd. 17-05-2010

Copy forwarded to :- As per Mailing List.

**Circular No. 121/3/2010-ST**

F.No.332/29/2009-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
(Tax Research Unit)

\*\*\*\*\*  
New Delhi-110001 dated the 26<sup>th</sup> April, 2010.

To

Director General of Service Tax, Mumbai  
Director General of Central Excise Intelligence, Delhi  
Chief Commissioner of Central Excise (All)  
Chief Commissioner of Customs and Central Excise (All)  
Commissioner of Service Tax (All)

Madam/Sir,

**Subject: Service tax on Container Detention Charges – regarding**

Generally marine containers are temporarily brought into a customs territory and have to be re-exported within a specified period. Normally, a Full Container Load is taken out of the port and the activity of stuffing or de-stuffing takes place at the premises of the exporter/importer. The shipping companies / steamer agent provide a pre-determined period within which the container (that has gone out of the port) is to be returned. This is called as 'pre-holding period' and the duration of the same is mentioned in the contract. In case there is any delay on the part of the customer in returning the container, the charges known as 'detention charges' are collected over and above the contracted amount by the shipping line.

3. Representations have been received in the Board that service tax has been demanded on such 'detention charges' under the 'Business Support Service (BSS)' or 'Business Auxiliary Service (BAS)'.

4. The issue has been examined. To retain the container beyond the pre-holding period is neither a service provided on behalf of the client (Business Auxiliary Service) nor is it an infrastructural support in the business of either the shipping lines or the customer (Business Support Service). Such charges can at best be called as 'penal rent' for retaining the containers beyond the pre-determined period. Therefore, the amount collected as 'detention charges' is not chargeable to service tax.

5. The Board desires that pending cases, if any, on this issue may be decided in line with the above clarification.

Yours faithfully,

(Gautam Bhattacharya)  
Joint Secretary (TRU-II)  
Tel: 2309302

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**Circular No. 120(a)/2/2010-ST**

F.No.332/29/2009-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise & Customs  
(Tax Research Unit)  
\*\*\*\*\*

Room No. 147-A, North Block,  
New Delhi-110001 dated the 16<sup>th</sup> April, 2010.

To

Director General of Service Tax, Mumbai  
Director General of Central Excise Intelligence, Delhi  
Chief Commissioner of Central Excise (All)  
Chief Commissioner of Customs and Central Excise (All)  
Commissioner of Service Tax (All)

Madam/Sir,

**Subject: Service tax on re-insurance commission – regarding**

In terms of Section 101A (Part IV-A) of the Insurance Act, 1938, every insurer dealing in insurance business is required to re-insure a specified percentage of sum assured with another insurance company.

2. The insurance company pays premium to the reinsuring company for this service. However, a part of such premium is deducted and kept by the insurance company for meeting the administrative expenditure. In other words, the insurance company and the re-insurance company jointly bear the expenses for running the insurance/reinsurance business. This shared expense is commonly known as 'commission' though strictly it is not in the nature of a commission. It may be pertinent to mention that the customer/beneficiary deals only with the insurance company and may not even be aware of the role of re-insurer and the backroom operations between the insurance company and the reinsurer.

3. As per the provision of the Finance Act, 1994, insurance as well as reinsurance are subject to service tax. The Board has received representations that notices have been issued demanding service tax on the amounts deducted by the insurance company (in other words paid by the reinsurance company) on the ground that it is the consideration for the insurance company providing business auxiliary service (BAS) to the re-insuring company. The notices alleged that the insurance companies are promoting the business of re-insurers thereby providing them the BAS.

4. The issue has been examined. As explained in para 2 above, the arrangement between the insurance company and the reinsurer is only sharing of expenses and there is no service provided by the insurance company to the re-insurer for a consideration. Since the policy holder may not even be aware of the operations of the re-insurer, it cannot be said that the payment made by the re-insurer to the insurance company is for its business promotion or a service on behalf of the re-insuring company (i.e. Business Auxiliary Service). In fact, it is the reinsurer which provides insurance service to the insurance company. As both the insurance company and reinsurer pay service tax on the entire amount of premium charged by them, the question of charging service tax under any other taxable service does not arise.

5. The Board desires that all pending cases on this subject may be decided

keeping in view the above clarification.

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Yours faithfully,

(Gautam Bhattacharya)  
Joint Secretary (TRU-II)  
Tel: 23093027