

Service Tax On Leased Circuits

The very debut of Service Tax in India was with a charge on the telecom Industry way back in 1994 when the Finance Act, 1994 levied, for the first time in India, Service Tax on the revenue earned by a telecom

Once a Service Provider is a Telegraphic Authority, any "leased circuit" provided by it would be liable to Service Tax irrespective of the fact, whether there is any other licensing requirement to provide an additional service.

the deposit obtained from the subscriber, as long as it remains unappropriated towards any unpaid service amount due.

The CBEC has clarified in the case of telephone services that no Service Tax would apply on the interest charged on the delay in payment of the circuit charges. The same logic would apply inter alia, to a leased circuit service too.

Leased Circuit Service provides a complete end-to-end, safe connection between two fixed locations. The service is earning a growing attention in these days in view of the ongoing BPO boom in India due to business from the US and the European markets. The article explains how the leased circuit is provided by the telecom service providers under the present day Indian telecom regime. It also explains how the Service Tax levy is administered presently on this service.



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service provider from its telephone services. The charge was, however, only on what we understand as the public telephone system. From July 16, 2001 the provision of leased circuits too became taxable under the Finance Act, 1994 (the Act).

Who is liable?

It is the Telegraphic Authority that is liable to pay tax as a provider of "leased circuit" service. Telegraphic Authority is defined u/s 65(111). It includes both the Department of Telecommunications (DoT) and a licensee under Section 4 of the Telegraph Act, 1885. As on date we have in India, licensees in multiple categories, who are all telegraphic authorities liable under this Section, if they render a leased circuit service.

What is liable to tax?

It is the Gross amount charged by the telegraph authority for providing a leased circuit to a subscriber. Normally service providers charge a one-time installation charge towards the installation of the connecting modems etc. and then a periodic cyclical billing for the capacity dedicated for the exclusive use of the subscriber. Service Tax normally is collected on the whole of such amount. In cases such modems etc. are outrightly sold, one can resort to deduct the cost of these parts, in accordance with the relevant notification 'ST Notification No. 12/2003 dated 20-06-2003 as amended by ST 12/2004 dated 10-09-2004; read with CBEC Circular No. 80 / 10 / 2004 ST dated 17-09-2004'. However, no Service Tax is charged on

What is a leased circuit?

The Act defines a Leased Circuit (See Section 65(60)) as "the dedicated link provided between two fixed locations for the exclusive use of a subscriber". The words "dedicated" and "exclusive" stand ordinate; and have to be read in conjunction. The Circuit should be dedicated as well as be for the exclusive use of the subscriber. The Circuit may either be by means of a physical circuit involving a cable or through wireless mode involving microwave transmission or satellite transmission system. As long as it is a circuit that provides a speech or data or a telegraph circuit between two fixed locations, it is a leased circuit.

The two fixed points that are talked about in the Section need not necessarily be fixed physically to the ground. They are simply two identifiable points. Thus, even if the ends are physically mobile, but stay connected through a dedicated link exclusively for the use of the subscriber, it quali-

fies as a leased circuit.

Under the current telecom regulatory regime in India, "Leased Circuits" takes various forms like National Leased Circuit (NLC), or an International Leased Circuit (ILC) depending upon the locations connected. An NLC connects any two fixed locations within India where else the ILC connects any one location in India with another at any other point outside India. It is quite common that a composite leased circuit is made out to a subscriber, by combining an NLC and an ILC into a one full circuit.

The Circuit may be for speech, data, or a telegraph circuit. Normally, a leased circuit carries speech, data, as well as video images.

Indian scenario of licensing telecom providers

In India, pending the introduction of unified licensing we have three different licenses in providing a telecom-leased circuit. These licenses are issued by the Department of Telecommunications (DoT), Government of India.

- The Basic Service Operator called the (BSO)
- The National Long Distance Operator who is (NLDO)
- The International Long Distance Operator (ILDO)

A single entity may have all the licenses in India but each license permits a different sphere in the provision of a leased circuit service.

Leased circuit within the same telecom circle

The BSO provides the

basic connectivity, physically from the Subscriber's premises to its nearest port. This is called the Local Loop or last mile connectivity. In case the basis loop line is in the wireless mode, it is still the BSO who provides this last mile connectivity. In case a leased circuit service is required within the same telecom circle, a BSO itself can provide the entire circuit in addition to providing the local loop. A telecom circle is a geographical area as defined in the telecom regulations in India.

If for example, a leased circuit is required between Mumbai and Pune, the same can be given by a BSO who has a license to provide a leased circuit service in Maharashtra Circle. A dedicated link is provided by the BSO between the required places. The BSO bills the subscriber for its leased circuit service and charges Service Tax.

Leased circuit between two telecom circles

If the connectivity is required to reach a place beyond the same telecom circle, we require an NLDO. Presently, the BSOs cannot directly interconnect themselves. It is the NLDO that has the licence to connect any two telecom circles.

For a leased circuit from say Mumbai to New Delhi, we require a BSO in Mumbai point A and another BSO at Delhi point B, to be interconnected by a National Long Distance Operator. The leased circuit becomes complete by fusing the three parts (i.e 2 BSOs and one NLDO) into a one seamless telecom connection

exclusively dedicated between point A and B. The BSOs at both the ends raise their bills for the local loop connections with charging Service Tax on their parts, while the NLDO charges tax on the NLD loop.

International connectivity

For a connection between New Delhi and London, we require an ILDO too. International Connectivity is provided in two modes – either through the under sea cable or a satellite. It is the cable mode that is now commercially popular by virtue of its speed and cost effectiveness. If the subscriber at New Delhi requires a leased circuit to London through the submarine cable, the BSO at point A - New Delhi connects the subscriber to the port of the NLDO at New Delhi with his circuit. The NLDO then connects to the port of the ILDO at Mumbai, who in turn further connects to the International undersea cable bandwidth. Indian ILDOs have a well-connected submarine cable system to reach many parts of the world. The circuit goes on under the sea and gets connected to the port of the International Gateway provider at London.

In case the subscriber in our example opts for satellite connectivity, an ILDO at New Delhi itself can do so, if it has the facility. Connection to Point B at London in either case is eventually completed by the telecom service providers at London. The telecom operator at the London side is called the "foreign end". The Circuit between the Indian ILDO (called Indian end) and the foreign end is the Interna-

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tional Leased Circuit.

Various slices of a circuit provided by each licence holder are thus fused into a whole to form a complete circuit. Each service provider is liable to Service Tax, if the levy of tax under section 66 is applicable. Each provider of the slice collects the tax from the subscriber and pays to the Government.

Concept of one-stop shopping

These are days of One Stop Shopping, where we want everything under one roof. Even an International Leased Circuit has the concept of One Stop Shopping (OSS). The customer only has to deal with one contact point for billing and fault repair services; though contractually he would be served by all the service-providers. The one point contact service provider in this case, bills the customer for the full circuit and in turn distributes the revenue amongst the others as per the agreed ratio. Each provider on his share of revenue earnings normally pays Service Tax in such cases.

The advanced model in OSS is that the subscriber contracts the whole service with only one telecom operator (say the ILDO). This operator, in turn, orders for the local loop, NLD connection etc. and makes up the whole circuit. In this case, it is possible to hold that this operator who is ordering the circuit with other operators (eg. BSO, NLDO etc.) is the "subscriber" as defined under Section 65(104) to the other operators. Service Tax would be charged for the local loop & NLC

parts of the leased circuit by the BSO and the NLDO respectively to the ILDO. The ILDO bills the customer for the whole circuit in one shot and charges Service Tax. The ILDO is eligible to avail Cenvat Credit in accordance with the Cenvat Credit Rules 2004 of the tax charged by the BSO and the NLDO upon him for the circuit.

Concept of reverse charge

The concept of Import of services requires a closer look in case of a leased circuit service. This concept is already known in European countries as reverse charge. In India, a service becomes an import only when a taxable service is received in India, wherein the service provider does not have any office or establishment or place of business in India.

Taxable service in case of a leased circuit, is a leased circuit provided by a telegraph authority. As mentioned ear-

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lier, the Service Tax legislation has borrowed the definition of the term Telegraph Authority from the Indian Telegraph Act, 1885. The Telegraph Act, 1885 empowers the Central Government to grant a licence to any person to establish, maintain or work a telegraph within any part of India. Such licensee is also a telegraph authority for the purpose levy of Service Tax.

In case of a leased circuit provided by a telecom service provider who is outside India, it is normally not possible for the Government of India to provide a licence since the Indian Telegraph Act, 1885 empowers the Government to license someone only within India. As the foreign end service-provider is not a telegraph authority, the leased circuit service provided by the foreign end operator is not a taxable service. Therefore, there is no import of a leased circuit service in such cases.

Conclusion

On the eve of the increased outsourcing of business operations by foreign companies to India. The service of a leased circuit is necessary to connect the foreign office with its Indian BPO that provides a dedicated link for the exclusive use of the foreign office. Data security and confidentiality of the information shared are the other vital aspects that necessitate the choice of a dedicated Leased Circuit in preference over the usual Public Switched Network model in which the public telephones work. Thus, the Service of a leased circuit is assuming paramount importance in the days to come. □

