

# ASSOCIATION OF MUTUAL FUNDS IN INDIA

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**A. P. KURIAN**  
CHAIRMAN

**135/BP/09/05-06**

**April 1, 2005**

**To all AMFI members.**



**AMFI Best Practices Guidelines Circular no. 09/2005-06**

**Operational Guidelines and Procedure for implementing Service Tax provisions**

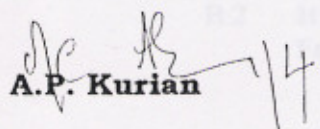
As you are aware, the Finance Bill 2005 has proposed some amendments in the Service Tax provisions and as a result, mutual funds and / or Asset Management Companies would be liable to pay Service Tax on the commission paid to mutual fund distributors or mutual fund agents with effect from April 1, 2005.

We have discussed this matter in the post-budget General Membership Meeting held on March 2, 2005. As decided in the meeting, a working group was constituted with Mr. Lalit Vermani of Birla Sunlife as the convener and Mr. Rakesh Vengayil of ABN AMRO, Mr. Jimmy Patel of JM, Mr. Ritesh Jain of Principal, and Ms. Pranita Gramopadhye of Templeton as members. AMFI has also retained the services of Mr. Shailesh Sheth, a Tax Consultant to guide the working group and provide the necessary technical inputs.

The working group has now formulated detailed operational guidelines with regard to registration, payment of service tax, quantum of service tax and computation thereof, issue of invoices, filing of returns etc. They have also given specimen copies of the forms to be used and other relevant documents. A copy of this report is attached as AMFI guidelines for the use of members. While the guidelines have been formulated by the working group based on the advice and guidance provided by the Tax Expert engaged by AMFI, members are most welcome to consult their own Tax Consultant, if deemed necessary.

Thank you and with regards,

Yours sincerely,

  
**A.P. Kurian**

# ASSOCIATION OF MUTUAL FUNDS IN INDIA

## LEVY OF SERVICE TAX VIS-À-VIS MUTUAL FUNDS – A GUIDANCE NOTE

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### **A. BACKGROUND:**

Vide Finance Act, 2003, a new taxable service under the heading “Business Auxiliary Service” was included in the list of taxable services and the levy was made effective from 1.7.2003.

Till date, the responsibility to obtain Service Tax Registration and discharge liability to pay Service Tax was cast upon the Mutual Fund Distributors and/or Mutual Fund Agents. However, the Finance Bill, 2005 presented by the Hon’ble Finance Minister on 28.2.2005 has proposed a few important changes in relation to the activity of MFs having far reaching effect. Simultaneously, vide Notification No. 7/2005-ST dated 1.3.2005 (to be effective from 1.4.2005), Clause (d) of Sub-rule (1) of Rule 2 of STR is being amended so as to declare ‘Mutual Fund or Asset Management Company, as the case may be, receiving the service’ as the ‘person liable for paying the Service Tax’ by insertion of sub-clause (vi) therein which reads as under:

As a consequence of the above amendments, the Mutual Funds and/or Asset Management Companies would be liable to pay Service Tax on the commission paid to the Mutual Fund Distributors or Mutual Fund Agents with effect from 1.4.2005.

The operational guidelines for implementing this are as below:

### **B. REGISTRATION**

- B.1 Section 69 of the Act contains the provisions relating to Registration and provides that every person liable to pay the Service Tax under the Chapter or the Rules made thereunder shall within the prescribed time and in the prescribed manner and in the prescribed form, apply for Registration to the Jurisdictional Superintendent of Central Excise. Rule 4 of STR, inter-alia, provides that such application for Registration shall be made in Form ST-1 within a period of 30 days from the date on which the Service Tax under Section 66 of the Act is levied. Consequently, MFs and/or AMCs would be required to apply for Registration Certificate on or before 30<sup>th</sup> April, 2005. No statutory fee is prescribed for the purpose of filing of application for Registration Certificate. The Registration Certificate would be granted in Form ST-2 by the Range Superintendent within 7 days of the date of receipt of the application and will be deemed to have been granted if not issued within this period.
- B.2 **It is clarified that separate registration for the schemes of Mutual Funds is not required.**

- B.3 The following details/documents shall be provided alongwith the application in Form ST-1 (attached as **Annexure 1**) viz.:
- (i) Photocopy of PAN No.(self-attested) thereof;
  - (ii) Certified copy of the Board's Resolution empowering the concerned Officer/s to apply for and sign the application and to do/undertake such incidental action as may be considered necessary and also appointing him/them as authorized signatory for the purpose of Act/Rules. A specimen of Board Resolution is attached (**Annexure 2**);

Also, attached is a draft letter to be addressed to the Range Superintendent alongwith the application at Annexure 3.

- B.4 The CBEC vide Circular No. 35/3/2001-CX.4 dated 27.8.2001 has further instructed that every person applying for the Service Tax Registration shall also be required to obtain a Service Tax Code No. (STC). For this purpose, a form in Annexure-II (in Duplicate) (attached as **Annexure 4**) is required to be filed alongwith the application in Form ST-1.
- B.5 The Service Tax Registration Certificate will be valid in respect of the premises for which it has been issued. However, a facility of single registration has been provided vide Sub-rule (2) of Rule 4 of STR (as amended with effect from 1.4.2005 vide Notification No. 7/2005-ST ) in cases where an Assessee is providing a taxable service from more than one premises or offices and has Centralised Billing Systems or Centralised Accounting Systems. **AMC/MF applying for registration can avail the facility of single registration.**
- B.6 The application for Service Tax Registration shall be made for the taxable service viz. **Business Auxiliary Service.**
- B.7 At this stage, it is also pertinent to note that Section 69 of the Act is proposed to be amended vide Clause 88 of the Finance Bill, 2005 so as to provide that the Central Government may, by Notification in the Official Gazette, specify such person or such class of persons, other than the person liable to pay Service tax who shall make an application for Registration within the stipulated time and in the prescribed manner in prescribed form.

The above amendment is intended to empower the Central Government to prescribe separate Registration procedure including Forms in respect of the persons (other than Service providers) as the persons liable to pay Service Tax. However, the amendment will be effective only from the date of the issue of the Notification after enactment of the Finance Bill, 2005 and till then, MFs/AMCs would be required to follow the above procedure.

- B.8 **The AMCs/MFs which already have a service tax registration would need to apply to RS to get the registration modified to include "Business Auxillary Services" in the registration certificate. A draft letter to be addressed to the concerned Range Superintendent is enclosed at Annexure 5.**

**Attachments:**

- (i) Annexure 1 – specimen copy of Form ST-1;
- (ii) Annexure 2 – specimen copy of Board Resolution;
- (iii) Annexure 3 – draft letter to be addressed to the RS alongwith the application;
- (iv) Annexure 4 – specimen copy of Form in Annexure II;
- (v) Annexure 5 – Draft letter to be addressed to the RS for endorsement of new taxable service in the existing registration certificate.

**C. PAYMENT OF SERVICE TAX :**

- C.1 The provisions relating to payment of Service Tax are contained in Section 68(1) of the Act read with Rule 6 of STR.
- C.2 For MFs/AMCs, the due date of payment of Service Tax would be 5<sup>th</sup> of the month immediately following the Calendar month in which the payments of Commission are made. The due date has been preponed from 25<sup>th</sup> of the month to 5<sup>th</sup> of the month vide amendment made to Rule 6 (1) vide Notification No. 7/2005-ST dated 1.3.2005 effective from 1.4.2005. For e.g. for commission paid in the month of April 05, the service tax collected will be payable to the Central Government by May 5, 2005.
- C.3 The Third proviso to Rule 6 (1) however provides that Service Tax on the value of taxable service received during the month of March shall be paid to the Credit of the Central Government by the 31<sup>st</sup> day of March of the Calendar year. Please note that the service tax is based on the **payment** hence, if the payment of commission is made in the month of March (which might pertain to the earlier months), the service tax needs to be paid to the Central Government by March 31.

**Therefore, the MF distributors / Agents who are at present liable to pay service tax shall pay the appropriate amount of service tax by 31.03.2005 in respect of the commission received by them during the month of March, 2005 or quarter ending 31.03.2005, as the case may be.**

- C.4 The payment of Service Tax shall be made through T.R. 6 Challan with the Designated Bank to be allotted and advised by the concerned Superintendent of Central Excise.
- C.5 Section 65 of the Act is proposed to be amended vide clause 88 of the Bill so as to extend the scope of taxable service to include “service to be provided”.
- C.6 A new Explanation to Section 65 is also proposed to be inserted according to which any service provided or to be provided from outside India and such service is received or to be received by a person situated in India, such service would be deemed to be “taxable service”.

- C.7 Section 67 of the Act is proposed to be amended to provide that the value of any taxable service shall be the gross amount charged by the service provider for such service provided or to be provided by him.
- C.8 A new Explanation 3 is also being inserted in Section 67 providing that the gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.
- C.9 The above amendments (mentioned in points C.5 to C.9 above) would be effective from the date to be notified after the enactment of Finance Bill, 2005. On the other hand, the amendments mentioned at point C.7 and C.8 would be effective from the date of the enactment of the Finance Bill.
- C.10 The ultimate effect of the above amendments is that the Service Tax would be payable even on any amount received as advance prior to providing taxable service.

**D. QUANTUM OF SERVICE TAX AND COMPUTATION THEREOF:**

- D.1 The present rate of Service Tax payable is 10% on the value of gross amount charged as per Section 66 of the Act.
- D.2 In addition to the above, Education Cess @ 2% of the Service Tax is required to be paid in terms of the provisions of Finance (No.2) Act, 2004.
- D.3 Vide Section 83 of the Act, the provisions of Section 12A of the Central Excise Act, 1944, amongst other sections thereof, have been made applicable to the matters relating to Service Tax under the Finance Act, 1994 as amended. Consequently, it is required that the amount of Service Tax and the Education Cess are shown separately in the relevant documents.
- D.4 The Explanation 2 to Section 67 of the Act provides that where the gross amount charged by a service provider is inclusive of Service Tax payable, the value of taxable service shall be such amount as with the addition of tax payable, is equal to the gross amount charged.
- D.5 In view of 4 above, the AMCs can announce a gross brokerage to the distributors (inclusive of service tax) and deduct the service tax amount to be paid to the Government.

For instance, if the gross brokerage payable in case of equity funds is 2.25%. The service tax required to be paid to the Government would be 0.20 (approx) and the brokerage paid to the distributor would be 2.05 (approx). The suggested format for the statement of brokerage is attached as Annexure 6.

- D.6 Brokerage on which service tax is applicable would include all forms of payments like upfront commission, annualised and trail commission, AUM linked incentives etc. No service tax is, however, required to be paid on

reimbursement of expenses to any distributor/agent, provided, such expenses are duly supported by actual invoices, courier receipts, Advertisement copies etc. Gifts in kind are also not included in the purview of brokerage chargeable to service tax. However, the AMCs should take care to ensure that these gifts are not being given in lieu of brokerage payments.

- D.7 In order to calculate the service tax, transaction wise records need not be maintained and the service tax can be deducted at the aggregate brokerage for the period.
- D.8 No service tax is required to be paid on brokerage kept in suspense i.e. cases where the brokerage is held back as the broker code is not clear or the broker is not AMFI registered etc. The liability arises only at the time of payment.
- D.9 **The AMCs/MFs are required to deduct and pay service tax from April 1, 2005. Therefore, brokerages for the mobilisation done prior to this date and paid after this date i.e. 01.04.2005 will also be subject to service tax and the liability to deduct these would be on the AMC/Mutual Fund.**

**E. ISSUE OF INVOICE:**

- E.1 Rule 4A(1) of STR requires every person providing taxable service to issue an Invoice, a Bill or, as the case may be, a Challan signed by him or his authorized person in respect of such service provided or to be provided by him.
- E.2 Such Invoice, Bill or Challan shall be serially numbered and shall contain the following details viz:
- (i) The name, address and the Registration No. of such person;
  - (ii) The name and address of the person receiving taxable service;
  - (iii) Description, classification and value of taxable service provided or to be provided; and
  - (iv) The Service Tax payable thereon.
- E.3 Rule 4A(1) is being amended vide Notification No. 7/2005-ST dated 1.3.2005 effective from 1.4.2005 vide which it is provided that such Invoice, Bill or Challan shall be issued within 14 days from the date of completion of such taxable service or receipt of any payment towards the value of such service, whichever is earlier.
- E.4 **In case of Mutual Funds, all the calculation of brokerages and commissions are being done by the Registrars and there are no separate invoices raised by the distributors/agents, AMFI will take up the matter with CBEC and appraise the Board about the procedure being followed by all the AMCs, more specifically, the fact that brokerage statements are being generated monthly/quarterly only and**

**it would also be represented that the brokerage statement generated by the registrars be treated as the invoice for the purpose of compliance with this requirement.**

**F. FILING OF RETURNS:**

- F.1 Section 70 of the Act read Rule 7 of the STR provides for the filing of Returns with the Jurisdictional Superintendent of Central Excise.
- F.2 As per Rule 7, the Return is to be filed on half yearly basis i.e. for the period from 1<sup>st</sup> April to 30<sup>th</sup> September and from 1<sup>st</sup> October to 31<sup>st</sup> March of the relevant year.
- F.3 The half yearly return shall be filed in Form ST-3 on or before the 25<sup>th</sup> of the month following the particular half year i.e. by 25<sup>th</sup> of April and 25<sup>th</sup> of October, as the case may be.
- F.4 Alongwith the Returns, the following documents shall be enclosed:
- (i) Copies of T.R. 6 Challans vide which the payment of Service Tax were made during the relevant period;
  - (ii) A Statement showing the computation of the value of taxable service and the computation of Service tax payable.
- F.5 **As per Rule 5 (2) of STR, every Assessee shall be required, at the time of filing the Return for the first time, furnish a list of all books of accounts maintained by him in relation to Service Tax, including memoranda received from his Branch Offices.**

**G. EXEMPTION TO SMALL SERVICE PROVIDERS -  
APPLICABILITY IN CASE OF MUTUAL FUND  
DISTRIBUTORS/AGENTS:**

- G.1 Vide Notification No.6/2005-ST dated 1.3.2005 effective from 1.4.2005, total exemption from payment of Service Tax has been provided in respect of all taxable services upto an aggregate value of Rs. 4.00 Lakhs in a financial year subject to the prescribed conditions.
- G.2 However, vide Clause (ii) of proviso to para 1 of the Notification, the taxable services notified under Section 68 (2) of the Act read with STR by the Central Government and notifying the persons liable to pay Service Tax thereon (other than Service providers) have been excluded from the scope of the Notification and they will not be entitled for the benefit thereof.
- G.3 As with effect from 1.4.2005, MFs/AMCs have been declared as "persons liable to pay Service Tax" under Section 68 (2) of the Act read with Rule 2(1)(d) of the STR (refer para C.4.1 to C.5 above), they would not be

entitled to avail the exemption upto Rs. 4.00 Lakhs under the above Notification.

H. **BROKERAGE RATES EFFECTIVE APRIL 1, 2005**

H.1 Effective April 1, 2005, the AMCs are advised to communicate to the distributors the fact that brokerage rates are inclusive of service tax and Education Cess. Similarly, any announcement of additional payouts or incentives should also make it aptly clear that these rates are inclusive of service tax and Education Cess.

H.2 For example, the gross brokerage is payable @ 2.25 % and the total quantum of brokerage works out to Rs.1,00,000/- in case of a MF distributor and the same is inclusive of service tax payable @ 10% and education cess @ 2% of the amount of service tax.

In this case, the net amount of brokerage and the service tax as well as education cess payable thereon will be computed as under:

- (a) To arrive at the figure of net brokerage, multiply the total brokerage of Rs. 1,00,000/- by factor 0.907441.  
Thus, Rs. 1,00,000 x 0.907441 = 90,744.10
- (b) Service tax @ 10% on Rs.90,744.10 = Rs.9,074.41
- (c) Education cess payable @ 2% on Rs.9,074.41 = Rs.181.49
- (d) The total of (a), (b) & (c) above -
- |                 |     |                              |
|-----------------|-----|------------------------------|
| Net brokerage - | Rs. | 90744.10                     |
| Service Tax -   | Rs. | 9074.41                      |
| Ed.cess -       | Rs. | 181.49                       |
| <b>Total:</b>   |     | <u><u>Rs.1,00,000.00</u></u> |

H.3 The amount of Service tax and/or education cess payable can be rounded off to the nearest Rupee as per Circular File No.43/3/94-TRU dated 06.05.1994 of Ministry of Finance and Circular No.ST-53/2/2003 dated 27.03.2003.



**Annexure-1 – Specimen copy of Form ST-1**

**FORM ST- 1**

Application for registration under section 69 of the Finance Act, 1994 ( 32 of 1994)

1. Name of the assessee :
2. Address of the assessee :
- 2A. PAN Number :
3. Address of the premises to be registered :
4. Category of the service :
5. Fax / telex and phone number :
6. Form of organisation (individual /company / partnership, etc.) :
7. Additional information required in the case of stock-broker :
  - a) Name of the member, with code No. :
  - b) Name of stock exchange registered with :
  - c) Date of admission of membership :
  - d) Whether member of more than one stock exchange? If so, please give name of the stock exchange with code number :
  - e) Registration number allotted by Securities and Exchange Board of India (copy of certificate of registration may be enclosed or a copy of application for registration with SEBI may be enclosed) :
8. I/ We \_\_\_\_\_ agree to abide by all the provisions of Service Tax Rules, 1994, and any order issued thereunder.
9. I/ We \_\_\_\_\_ declare to the best of my / our knowledge and belief that the information furnished herein is true and complete.

Place :

Date :

Signature of assessee or his  
authorized representative

**Annexure-2 – Specimen copy of Board Resolution**

**DRAFT OF BOARD RESOLUTION:**

'Resolved that Shri .....(Name),.....(Designation)  
and Shri.....(Name),.....(Designation) and  
Shri..... (Name),.....(Designation) are hereby authorised to  
sign all the documents including the application for registrations, prepare and  
maintain various records and to do all such act as may be necessary and required  
and prescribed under the provisions of the Finance Act, 1994 as amended and the  
Rules made thereunder and/or the Central Excise Act, 1944 as amended and the  
Rules made thereunder including Cenvat Credit Rules, 2004 as amended'.

**Annexure-3 Draft letter to be addressed to RS alongwith the application in Form ST-1:**

The Superintendent of Central Excise (Service Tax Cell),

Division:.....,

Commissionerate - .....

.....

Sub: Application for registration in Form ST-1 – filing of – Reg. –

Sir,

We refer to the Notification No.7/2005-ST dated 1.3.2005 effective from 1.4.2005 amending Rule 2(1)(d) of Service Tax Rules, 1994 by inserting clause (vi) therein vide which 'Mutual Fund or Asset Management Company', as the case may be, receiving service of distribution of mutual funds by a mutual fund distributor or an agent as 'the person liable to pay service tax'.

We also refer to the amendment made to Notification No.36/2004-ST dated 31.12.2004 vide Notification No.5/2005-ST dated 1.3.2005 effective from 1.4.2005 notifying the service in relation to 'Business Auxiliary Service' of a distribution of mutual fund by a mutual fund distributor or an agent, as the case may be.

Accordingly, we are applying for the issue of registration certificate for the taxable service namely 'Business Auxiliary Service' and enclose the following documents for the purpose:

- (a) Application in Form ST-1 duly filled in and signed (In Duplicate);
- (b) A photocopy of the self-attested PAN No.;
- (c) A self-certified copy of the Board's Resolution passed at the meeting of the Board of Directors held on .....
- (d) An application in Annexure –II (In Duplicate) for the allotment of Service Tax Code Number.

As we have a Centralised Accounting System / Centralised Billing System, we are applying for the issue of registration only in respect of a single premises mentioned in the above application though we have branches / offices located at various places in the country. This is in terms of Sub-Rule (2) of Rule 4 of Service Tax Rules, 1994 as amended with effect from 1.4.2005 vide Notification No.7/2005-ST dated 1.3.2005.

Please let us know if any additional information / clarifications are required.

Kindly issue the necessary registration certificate and also allot the STC Number at the earliest.

Yours faithfully,

For.....

Encls: As above.

**Annexure-4 – Specimen copy of Form in Annexure-II**

**Annexure-II**

*(In Duplicate)*

*(To be filled in the Service Tax Cell)*

**FORMAT FOR APPLICATION FOR OBTAINING SERVICE TAX CODE NUMBER**

To  
The Deputy/Assistant Commissioner,  
(Address of the Service Tax Cell).

**Subject: Allotment of Service Tax Code Number-regarding.**

Sir,  
I/We may kindly be allotted Service Tax Code Number (STC Number) for which the details are as under:-

**FORMAT FOR THE DETAILS *(All entries shall be in BLOCK letters)***

1. Name of the Applicant (s) \_\_\_\_\_
2. Permanent Account Number \_\_\_\_\_  
*(Issued by Income Tax Department) (Attested copy to be enclosed)*
3. Applicant's Premises or Offices registered under Rule 4 of Service Tax Rules, 1994.  
Existing Classification Code, if any : \_\_\_\_\_  
Registration Number : \_\_\_\_\_  
Address : \_\_\_\_\_  
Telephone Nos. : \_\_\_\_\_  
Fax Nos. : \_\_\_\_\_  
E-mail address : \_\_\_\_\_  
Division \_\_\_\_\_ Commissionerate \_\_\_\_\_ Location Code *(To be filled by the Service Tax Cell (Headquarter/Division))* \_\_\_\_\_
4. OTHER\* Premises or Offices  
*\*[Each of these Premises or Offices have to apply individually in their own jurisdiction unless covered under sub-rules 2 or 3A of Rule 4 of Service Tax Rules]*

Sl. No.	Name and address	Service being provided	Registration No.	Tel. No (s).
1	2	3	4	5
	Fax No.	E-Mail No.	Division	Commissionerate
	6	7	8	9

***[Please furnish the aforesaid information for each of the other registered premises or offices]***

I/We hereby certify that the information given in this form is true, correct and complete in every respect and that I am authorized to sign on behalf of the applicant.

(Signature of the authorized person)

Date:

Place:

NOTE:

1. Use separate application form for each registered premises or offices, for allotment of STC Number.
2. Location Code is to be filled by the Service Tax Cell, Headquarter or Division, based on the new codes allotted by the Directorate of S&I.
3. Telephone numbers/Fax Numbers/E-mail address are to be filled if available.

**Acknowledgement**

**Subject: Allotment of Service Tax Code Number-regarding.**

Your application for allotment of STC Number received on \_\_\_\_\_ is hereby acknowledged. The Receipt Number is \_\_\_\_\_ dated \_\_\_\_\_.

(Signature of the Inspector)  
with Official Seal

**Annexure-5 – Draft letter to be addressed to the RS for inclusion of new service in the existing registration certificate.**

The Superintendent of Central Excise (Service Tax Cell),

Division:.....,

Commissionerate - .....

.....

Sub: Addition of new taxable service in registration certificate – application – Reg. –

Sir,

We are holding the registration certificate no.....dated..... in respect of the taxable service namely, Asset Management Service under the taxable category viz. Banking and other Financial Services.

We refer to the Notification No.7/2005-ST dated 1.3.2005 effective from 1.4.2005 amending Rule 2(1)(d) of Service Tax Rules, 1994 by inserting clause (vi) therein vide which 'Mutual Fund or Asset Management Company', as the case may be, receiving service of distribution of mutual funds by a mutual fund distributor or an agent as 'the person liable to pay service tax'.

We also refer to the amendment made to Notification No.36/2004-ST dated 31.12.2004 vide Notification No.5/2005-ST dated 1.3.2005 effective from 1.4.2005 notifying the service in relation to 'Business Auxiliary Service' of a distribution of mutual fund by a mutual fund distributor or an agent, as the case may be.

Accordingly, we are submitting herewith our aforesaid registration certificate (In Original) with a request to endorse / add the taxable service viz. Business Auxiliary Service therein and return the same after such due endorsement / addition.

As we have a Centralised Accounting System / Centralised Billing System, we shall avail the facility of single registration in respect of a single premises mentioned in the certificate though we have branches / offices located at various places in the country. This is in terms of Sub-Rule (2) of Rule 4 of Service Tax Rules, 1994 as amended with effect from 1.4.2005 vide Notification No.7/2005-ST dated 1.3.2005.

Please let us know if any additional information / clarifications are required.

Kindly do the needful and return the Original Registration Certificate duly endorsed.

Yours faithfully,

For.....

Encl: As above.