Basic Understanding of Service

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Introduction on Service Tax- Negative List, Levy of Service Tax, Exemption

Introduction

· Service tax was constitutionally under the residuary provision of Entry 97 of List I of Seventh Schedule to Constitution of India.

· Though specific Entry 92C was included in List I, but it never came into effect and service tax is continued to be under the above residuary entry 97.

· Under these powers, service tax is being imposed amending chapter V of Finance Act 1994 from time to time. In other words, there is no ‘Service Tax Act’ as on date, but the levy is under Finance Act.

· Initially, 3 services were brought into the net, which expanded to many folds and today the erstwhile conservative or ‘positive list’ approach of taxing the services has been done away with and ‘negative list’ manner of taxing services has been adopted. This is in synchronization with the developed nations of the world and a step towards GST, which is proposed to subsume the wide gamut of indirect taxes and simplify things.

Overview of the New Regime

“Many experts have argued that it will be desirable to tax services based on a small negative list, so that many untapped sectors are brought into the tax net. Such an approach will be very conducive for a nationwide GST. I propose to initiate an informed public debate on the subject to help us finalize the approach to GST.” - Shri Pranab Mukherji, H’ble Union Finance Minister in his Budget Speech 2011
The delay in introduction of GST fast tracked the need to expand the tax base. In August 2011 the proposed “negative list” was hosted and introduced in the Finance Act 2012. The golden rule of anteriority was given a go bye at the cost of confusion/ harassment of the tax payer. Maybe the hurry was due to the fact that FM was to be President soon.

**Objectives:**

The Board (CBEC) with the guidance of the Ministry of Finance (MoF) on 11 August 2011 circulated a concept paper proposing the introduction of the “Taxation based on the Negative List”. In this concept paper, the board has cited the following reasons as to the need of this negative list based taxation:

1. The advantage of the positive list that it has definitiveness starts getting eroded as the number of services increases.
2. The fact that many services were kept out of the tax net invariably leads to unintended exemptions making the tax net/ base narrow.
3. The unintended exemption leads to breakage of input chain adding cost for the end-user.
4. That such introduction at an earlier stage (before GST) will pave the way for the smooth transition to the GST, and significantly ease the challenges arising out of implementing the GST.
5. This comprehensive taxation for the entire service sector would help mitigate litigation and prepare both the department as well as the taxpayers for the eventual transition towards the GST.

**Concerns in New Regime**

The Finance Minister assured that the new approach was not a revenue augmentation measure but intended to make compliance simple and administration of service tax law easier.

However the experience in the last 6 months indicates that most of the above objectives other than that of augmentation of revenue would not be met. Some of the concerns are:

a. Simplicity in compliance and administration?: The drafting leaves much to desired and there is no exemption to certain activities, like construction meant primarily for non-commercial usage such as school/college buildings, which were exempted under earlier laws by virtue of being non-commercial in nature. There is no clarity on leviability or otherwise on transactions of a non-commercial/ non-profit oriented nature. The normal service provider would find it impossible to assess whether liable or not and in some transactions of works contract even the experts would have to hazard a guess. The issue of the Education Guide which clearly states that it cannot be relied on further complicates the understanding. The recent introduction of the classification into 120 categories for “statistical purposes”, the strong revenue bias of the administrators and audit wing would continue to increase/ fuel disputes. The pre budget memorandum in service tax has tripled in size.

b. Seamless Cenvat Credit: The then Finance Minister, in his Budget speech of 2004 quoted,
“I propose to take a major step towards integrating the tax on goods and services. Accordingly, I propose to extend credit of service tax and excise duty across goods and services.”

The reality is that instead of a short negative list of credits, the denial of credit in construction, employee benefits related credits in the existing restricted definition has curtailed the credit. Thereby the objective of mitigating cascading effect may not be achieved.

c. Definition of Service: The attempt to define what is a service seems to suffer from a few infirmities in so far as composite transaction in relation to movable property or immovable property, deemed sale especially in works contracts, coverage of social/ personal transactions, services of employer to employees, services provided to oneself [associations, partners, divisions] amongst many others are concerned.

d. Classification of Services: The stated objective was to do away with classification issues but dozens of services still need to be classified. Added to that the recent requirement of classifying for statistical purposes. The concept of bundled services is bound to lead to several disputes as the same is subjective.

e. Negative List: This list contains those services which the revenue does not wish to tax, those that are under the State jurisdiction like VAT/ CST law, state excise, entertainment, immovable property, under other Central laws like Central Excise, education and services provided by Government. However the wordings and coverage requires study of each as there are many transactions which would still be taxable.

f. Exemption of Services: There are specific exemptions, exemptions by way of refunds and one Mega exemption. The Mega Exemption list is a collation of majority of exemptions available earlier with some additions and a few deletions, which maybe intended or unintended. At times the result appears illogical.

g. Place of Provision of Services Rules: The legal validity for taxation of services provided from outside India would definitely be raised. The unfair treatment for branches outside India providing services to parent or vice versa being considered as liable and the contra transaction not considered as an export would surely need a relook.

h. Reverse / Joint Charge: Akin to TDS, the categories of service where the service provider is not available for enforcing compliance, or he is unorganized or uneducated, the responsibility of collection is shifted partially/ fully on the service receiver. In such cases the receiver is not eligible for the threshold exemption of Rs. 10 lakhs. Also the utilization of credit for payment of the liability has also been barred.

i. Refund for Service Exporters: This is perhaps one aspect where the Government has failed miserably and exporters from India are disadvantaged due to delay of 3-6 years. This also highlights the lack of accountability of the administrators of law.

A comprehensive method of taxation is normally adopted by advanced/ developed countries. This method does not differentiate between the organized and unorganized sector and covering all the service providers. Developing countries
where the economy has not developed/ population not literate avoid this method of taxation to avoid the disputes due to large scale non compliance on account of ignorance.

It is felt that the new law unless it goes though a spate of reforms would result in unnecessary hardship to the tax compliant assessee and lead to increased corruption of many tax administrators. Resistance to this un-understandable law and litigation is bound to increase exponentially in the coming years leading to suppression of transaction by the small and unorganized sector

**Levy and charge of service tax**

Earlier, Service tax was applicable to defined service providers, providing defined services, to defined service receivers, in India. The tax was liable on the gross amounts charged for such service less the deductions and exemptions set out therein. Now, the Service Tax law has undergone a sea change with the term ‘service’ by itself being defined and all the activities which satisfy the definition criterion fall under the service tax bracket. A list of 17 activities called the negative list is provided which are completely outside the service tax bracket. All the earlier exemption notifications have been scrapped off and a mega exemption notification consisting of 39 items is given. Thus one has to check the negative list, then the exemption notification and if any activity is not specified therein, it is a taxable service. The levy now is still on the provision of service, but for crystallization of the levy, we have to check the Point of Taxation Rules, 2011.

**What is Service?**

A new Section 66B has been introduced in this Finance Act and ‘Service’ has been defined in clause (44) of the new section 65B. The definition of service has be divided into three parts i.e. ‘means part’, ‘inclusive part’ and ‘exclusion part’.

**Means part of the definition**

"Service" means any activity carried out by a person for another for consideration. The definition of service has the following essential requirements:

1. It has to be any activity,
2. Such activity has to be carried out by a person,
3. Such person has to carry out the same for another person,
4. Such activity has to be for a consideration

**Inclusive part of the definition**

Inclusive part of the definition has impact of enlarging the scope of the definition. It gives wider meaning to words or phrases in the statute. When it is used in words or phrases, it must be construed as comprehending not only such things as they signify according to their nature and impact, but also those things which interpretation clause declares they shall
include. The definition of service also includes the declared service in the inclusive part. This is done to avoid ambiguity in so far as the activities mentioned under declared services.

**Specific exclusions from the definition of service**

The definition of ‘service’ as provided in Section 65B (44) specifically excludes certain activities which would not be considered as service. That is to say that these activities when performed/executed shall be out of scope of the service tax levy.

(a) an activity which constitutes merely,—

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be sale within the meaning of clause (29A) of article 366 of the Constitution; or

(iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

There are three explanations inserted after the means, inclusive and exclusive limbs of the definition of service. They are as follows:

**Explanation 1 stipulates that the definition shall not apply to**

(A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

(B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 2 is an exception to the part that there have to be 2 distinct persons for provision of service.

(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;
(b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

**Explanation 3 stipulates that**

A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory.

**Classification of Service**

Earlier, the classification of the service provided should have been with reference to the specific coverage within the 119 alternatives. It was possible that the services provided by one service provider may appear to fall under more than one category of specified services. It was possible that one service provider maybe providing numerous individual services or combined services. He was required to register under all of them.

Where the entry was not clear or more than one classification appeared to be correct, then reference was to be made to Section 65A for the rules of interpretation.

Thus, a lot of confusion prevailed here and also litigation.

Now, Section 65A has been scrapped off and the service once identified as taxable, need not be classified into any specific category.

However now when it is required to examine whether the nature of service covered within the scope and ambit of negative list of services or any of the entry in the exemption notifications, then it is requires some guidelines. The said guidelines are given under Section 66F dealing with interpretation.

**Exemptions**

Earlier, there were many notifications general exemptions as well as exemptions relating to specific category of services. Now all the exemptions have been combined into a mega notification No. 25/2012. The exemption notification is to be examined carefully as non-following of the substantive conditions could lead to a denial of the benefit.

**Declared Services**

Declared Services are defined under Section 65B (22) of the Finance Act, 1994 to mean any activity carried out by a person for another person for consideration and declared as such under Section 66E of the Finance Act, 1994. It means for a service to come under the category of declared services, it has to satisfy two basic conditions conjunctively

- it must be an activity by one person to another for consideration
- it must be specified(i.e. declared) under section 66E
Negative List

Negative List and its Analysis

From 1st of July 2012, there was a sea change in the way services are to be taxed where all activities for a consideration would be liable to service tax unless they find a place in the negative list or are exempted. We analyze the negative list of services as under: [some highlights provided in italics].

Most of the entries in the negative list are mentioning specified activities. It is not mentioning services in relation to the specified activities in the entries.

This appears to be an attempt to whittle down the benefit merely to the activities in question and not to extend the same to various other incidental/ancillary activities which could be taken up as a separate activity by the assessee.

The term ‘in relation to’ is very generally used in interpretation clauses in order to enlarge the scope of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include.

In other words, the term ‘in relation to’ used for a particular subject expands the coverage of the subject to cover other connected or linked subjects.

This appears to be a conscious omission on part of drafters as if the phrase ‘in relation to’ was to be used they could have ended up covering a number of activities which though not specifically enumerated could get inadvertently excluded from service tax levy.

This is also reinforced by the Section 66F (1) where it is provided that reference to a service shall not include a reference to a service used for providing main service. In other words, a service which is a specified entry in the negative list would be excluded from service tax levy. However a service which is an input service to provide a service specified in negative list would not be exempted/covered in negative list.

An example in point could be negative list entry which covers access to a road or a bridge on payment of toll charges. The access to National highways or state highways, which are also roads, is hence covered in this entry. As it is a state subject it is validly covered in negative list.

However the outsourced services of toll collection would continue to be liable. In case of revenue sharing arrangements also the possibility of liability to service tax exists.

1. SERVICES PROVIDED BY GOVERNMENT OR LOCAL AUTHORITY:

The services provided by the Central or State Government or Local authorities are in the negative list except the following:
a) Services provided by the Department of Posts by way of speed post, express parcel post, life insurance and agency services carried out on payment of commission on non-government business;

b) Services in relation to a vessel or an aircraft inside or outside the precincts of a port or an airport;

c) Transport of goods and/or passengers;

d) Support services, other than those covered by clauses (a) to (c) above, to business entities.

**What is Meaning of Government?**

‘Government’ has not been defined in the Act, the definition of ‘Government’ as contained in the General Clause Act, 1897 would be applicable as per which ‘Government’ includes both Central and State Government. Further as per the General Clause Act 1897, State includes Union Territory. ‘Government’ would also include various departments and offices of the Central or State Government or the U.T. Administrations which carry out their functions in the name and by order of the President of India or the Governor of a State.

**What is Meant by Local Authority?**

Local authority is defined in 65B and means the following:

1. A Panchayat as referred to in clause (d) of article 243 of the Constitution

2. A Municipality as referred to in clause (e) of article 243P of the Constitution

3. A Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund

4. A Cantonment Board as defined in section 3 of the Cantonments Act, 2006

5. A regional council or a district council constituted under the Sixth Schedule to the Constitution

6. A development board constituted under article 371 of the Constitution, or

7. A regional council constituted under article 371A of the Constitution.

A number of organizations are created by the Government and many are in the form of corporations. All such organization like the various Electricity Companies – BESCOM, JESCOM etc would not be covered. Coffee Board, Housing Development Board are created under an ACT and are managed by the Government. Even such organizations are exempted only for specified services. In the time where the line between public work is disappearing as many public/private partnerships are found to be more effective, the possibility of service tax being attracted even to such enterprises would be quite high.
What is meant by Support Services?

Support services have been defined in section 65B of the Act as ‘infrastructural, operational, administrative, logistic marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and would include advertisement and promotion, construction or works contract, renting of movable or immovable property, security, testing and analysis’. All these services would now be liable when provided to others. However in such cases the recipient would be liable to pay for the same under reverse charge mechanism.

Thus only services which are provided by Government in terms of their sovereign right to business entities are not support services e.g. grant of mining or licensing rights where service tax would not be liable.

The professional advisor / Chartered Accountant who attests would now require to additionally examine the expenditures by way of payment to Government /Government authority and advise service tax payment by the service receiver.

2. SERVICES PROVIDED BY RESERVE BANK OF INDIA

All services provided by the Reserve Bank of India are in the negative list.

Services provided to the Reserve Bank of India are not in the negative list and would be taxable unless otherwise covered in any other entry in the negative list.

3. SERVICES BY A FOREIGN DIPLOMATIC MISSION LOCATED IN INDIA

Any service that is provided by a diplomatic mission of any country located in India is in the negative list. This entry does not cover services, if any, provided by any office or establishment of an international organization.

4. SERVICES RELATING TO AGRICULTURE

In the past also the specified services related to agriculture were exempted under Notification 14/2004-ST. Now the expanded list of services relating to agriculture that are specified in the negative list are services relating to:

agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;

The operations directly related would not means those which have a nexus but something more.

supply of farm labor;

The manpower supply activity would not be covered.
processes carried out at the agricultural farm including tending, pruning, cutting, harvesting, drying cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter essential characteristics of agricultural produce but makes it only marketable for the primary market;

The place where such operations are carried out may not be relevant as some of the activities like ginning of cotton, de-husking of paddy, shelling of cashew nuts maybe done in processing units away from the farm.

Further activities such as fumigation of agricultural produce could be done away from farm. This could also be covered in this entry.

renting of agro machinery or vacant land with or without a structure incidental to its use;

Even commercial transaction would not be covered.

loading, unloading, packing, storage and warehousing of agricultural produce;

Even commercial transaction would not be covered.

agricultural extension services;

These are restricted to farmer education or training and not as the name suggest any other services.

services provided by any Agricultural Produce Marketing Committee or Board or services provided by commission agent for sale or purchase of agricultural produce;

The other services of APMCs could be liable as only some activities have been specified.

Further the activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry is also included in the definition of agriculture. The plantation crops like coffee, tea are also covered in agricultural produce.

**What is the meaning of ‘agriculture’?**

‘Agriculture’ has been defined in the Act as cultivation of plants and rearing or breeding of animals and other species of life forms for foods, fiber, fuel, raw materials or other similar products but does not include rearing of horses.

**What is agricultural produce?**

Agricultural produce means any produce of agriculture on which either no processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market. It also includes specified processes in the definition like tending, pruning, grading, sorting etc. which may be carried out at the farm or elsewhere as long as they do not alter the essential characteristics.
For example: Potato chips or tomato ketchup are manufactured through processes which alter the essential characteristic of farm produce (potatoes and tomatoes in this case) therefore, it does not qualify as agricultural produce.

5. TRADING OF GOODS

Transfer of title of goods is one of the essential conditions for a transaction to come under the ambit of trading of goods. However, the services supporting or ancillary to the trading of goods would not come under the above item of Negative List.

What is covered?

a. Futures contracts would be covered as these are contracts which involve transfer of title in goods on a future date at a pre-determined price.

b. In commodity futures, actual delivery of goods does not normally take place and the purchaser under a futures contract normally offsets all obligations or closes out by selling an equal quantity of goods of the same description under another contract for delivery on the same date. There are, therefore, two contracts of sale/purchase involved which would fall in the category of trading of goods.

What is not covered?

a. Activities of a commission agent or a clearing and forwarding agent who sell goods on behalf of another for a commission would not be included in trading of goods.

b. Auxiliary services relating to future contracts or commodity futures would not be covered in the negative list entry relating to trading of goods.

The exclusion of transfer of property in goods in the definition of service makes this entry redundant but may have been included for abundant clarity or to be able to deny credit proportionately. The concept of essential/predominant motive test of a transaction would have to be applied in cases where along with the sale a bit a service is provided. However for works contract and supply of food a separate entry has been provided in the declared list where the service portion of the same only would be liable.

6. PROCESSES AMOUNTING TO MANUFACTURE OR PRODUCTION OF GOODS

The phrase ‘processes amounting to manufacture or production of goods’ has been defined in section 65B of the Act as a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 (1 of 1944) or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act.

This entry, therefore, covers manufacturing activity carried out on contract or job work basis provided duties of excise are leviable on such processes under the Central Excise Act, 1944 or any of the State Acts.
All processes and job work are not exempted and those such as cutting, polishing, sand blasting, milling, .. where the resultant product is not different from the raw material ; input would not be eligible for this exclusion. They would be liable.

In cases of products to which deemed manufacture applies, processes like branding, packing and those to make the product marketable may amount manufacture and consequently would be out of the levy of ST. The possibility of coverage under central excise levy needs to be examined. In most cases the Rs. 150 lakhs limit may come in useful.

7. SELLING OF SPACE OR TIME SLOTS FOR ADVERTISEMENTS OTHER THAN ADVERTISEMENTS BROADCAST BY RADIO OR TELEVISION

When is Sale of space and time Taxable?

<table>
<thead>
<tr>
<th>Taxable</th>
<th>Non-taxable</th>
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</thead>
<tbody>
<tr>
<td>Sale of space or time for advertisement to be broadcast on radio or television</td>
<td>Sale of space for advertisement in print media</td>
</tr>
<tr>
<td>Sale of time slot by a broadcasting organization.</td>
<td>Sale of space for advertisement in bill boards, public places, buildings, conveyances, cell phones, automated teller machines, internet</td>
</tr>
<tr>
<td></td>
<td>Aerial advertising</td>
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</tbody>
</table>

The industry has opined that the cenvat chain is being cut due to this. However it maybe noted that the designing, creating, canvassing of/ for advertisements by way of advertising services are not excluded and would be liable.

8. ACCESS TO A ROAD OR A BRIDGE ON PAYMENT OF TOLL CHARGES

The negative list entry covers access to a road or a bridge on payment of toll charges. The access to National highways or state highways, which are also roads, is hence covered in this entry.

This is a state subject. However the outsourced services of toll collection would be liable. In case of revenue sharing arrangements also the possibility of liability to service tax exists.

9. BETTING, GAMBLING OR LOTTERY

“Betting or gambling' has been defined in section 65B of the Act as 'putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring'. The State Government levy a betting tax on such activities.
The term which is not used is- in relation to, therefore activities other than betting are excluded from this exemption. Sale of rights to cover the horse races, letting out spaces for restaurants/bookies.

10. ENTRY TO ENTERTAINMENT EVENTS AND ACCESS TO AMUSEMENT FACILITIES

What is’ Entertainment event’?

Entertainment event’ has been defined in section 65B of the Act ‘as an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, such as exhibition of cinematographic films, circus, concerts, sporting events, fairs, pageants, award functions, dance performances, musical performances, theatrical performances including cultural programs, drama, ballets or any such event or program.

What is amusement facility?

‘Amusement facility’ has been defined in the Act as ‘a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other place but does not include a place within such facility where other services are provided’.

The linkage to advertisement in any such activity may require further examination. A FMCG company pays a lump sum to advertise its products in a music concert to the producer and in turn receives the right of free entry to 250 persons. Similarly such facility being taken for a marriage allowing unlimited access. Both would be liable to service tax.

Only the entry is excluded, the services provided by artists, outsourcers to such events/facility could be liable.

11. TRANSMISSION OR DISTRIBUTION OF ELECTRICITY

An ‘electricity transmission or distribution utility’ has also been defined in section 65B of the act to means the following:

a. the Central Electricity Authority
b. a State Electricity Board
c. the Central Transmission Utility (CTU)
d. a State Transmission Utility (STU) notified under the Electricity Act, 2003 (36 of 2003)
e. a distribution or transmission licensee licensed under the said Act
f. any other entity entrusted with such function by the Central or State Government

This exemption seems to be one to save / augment revenue as otherwise the users would be eligible for credit on the same. The electricity companies would be eligible for the capital goods credit.[ investments are huge]

12. SPECIFIED SERVICES RELATING TO EDUCATION
The following services relating to education are specified in the negative list –

a. pre-school education and education up to higher secondary school or equivalent

b. education as a part of a prescribed curriculum for obtaining a qualification recognized by any law for the time being in force;

c. education as a part of an approved vocational education course

Earlier the Institutions were exempt. Now with this change education up to 12th is excluded. However the phrase “education as a part of curriculum” does lead to some doubts. Some argue that the coaching facility for the CA students/College degrees should be excluded. However the coaching for skill development/entrance examination could be covered.

Recognition from foreign universities is not the criterion and only those recognized under India law would be conserved.

**What are the courses which would qualify as an approved vocational education courses?**

Approved vocational education courses have been specified in section 65B of the Act. These are –

a. a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961 (52 of 1961)

b. a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Employment and Training, Ministry of Labour and Employment, Government of India;

c. a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India.

**13. SERVICES BY WAY OF RENTING OF RESIDENTIAL DWELLING FOR USE AS RESIDENCE**

‘Renting’ has been defined in section 65B as “allowing, permitting or granting access, entry, occupation, usage or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property’.

**Snap shot on taxability/ non-taxability of Renting Transactions:**

<table>
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<tr>
<th>If</th>
<th>Then</th>
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<tbody>
<tr>
<td>A residential house taken on rent is used only or predominantly for commercial or</td>
<td>The renting transaction is not covered in this negative list entry.</td>
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</table>
A house is given on rent and the same is used as a hotel or a lodge. The renting transaction is not covered in this negative list entry because the person taking it on rent is using it for a commercial purpose.

Rooms in a hotel or a lodge are let out whether or not for temporary stay. The renting transaction is not covered in this negative list entry because a hotel or a lodge is not a residential dwelling.

Government department allots houses to its employees and charges a license fee. Such service would be covered in the negative list entry relating to services provided by Government and hence non-taxable.

Furnished flats given on rent for temporary stay. These are in the nature of lodges or guest houses and hence not treatable as a residential dwelling.

Paying guest accommodation to students. When it is given for reasonable period of time it would be covered in this entry. When given for short stay to different persons over a period of time, same would be liable.

Renting of property to educational body. Exempted if it is provided to educational institution for purpose of education exempted from service tax. For all others liable.

The end use of residential dwelling units has now to be determined.

### 14. FINANCIAL SECTOR

The services of loans, advances or deposits are in the list in so far as the consideration is represented by way of interest or discount. Any charges or amounts collected over and above the interest or discount amounts would represent taxable consideration. Some examples:

a. Fixed deposits or saving deposits or any other such deposits in a bank for which return is received by way of interest.

b. Providing a loan or over draft facility for a credit limit facility in consideration for payment of interest.

c. Mortgages or loans with a collateral security to the extent that the consideration for advancing such loans or advances are represented by way of interest.

d. Corporate deposits to the extent that the consideration for advancing such loans or advances are represented by way of interest or discount.

The Invoice discounting is covered only to the extent consideration it is represented by way of discount. Any charges or amounts collected over and above the interest or discount amounts would represent taxable consideration.
provided by banks or authorized dealers of foreign exchange by way of sale of foreign exchange to general public are not covered in Negative List.

15. SERVICE RELATING TO TRANSPORTATION OF PASSENGERS

The following services relating to transportation of passengers, with or without accompanied belongings, have been specified in the negative list. Services by:

a. a stage carriage;

b. railways in a class other than (i) first class; or (ii) an AC coach;

c. metro, monorail or tramway;

d. inland waterways;

e. public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and

f. metered cabs, radio taxis or auto rickshaws.

The various other equivalent modes of transport not specified herein could be cause of dispute as the above list is not complete within each segment.

16. SERVICE RELATING TO TRANSPORTATION OF GOODS

The following services provided in relation to transportation of goods are specified in the negative list:

a. by road except the services of

(i) a goods transportation agency; or

(ii) a courier agency

b. by aircraft or vessel from a place outside India upto the customs station of clearance in India; or

c. By inland waterways. (Services provided as agents for inland waterways are not covered in the negative list.)

The difference in GTO and GTA continues and therefore for the former there is no liability. Also the charge of transportation in the bill of the jelly/sand supplier or machinery supplier is not subjected to liability since they are not the GTA or courier.

17. FUNERAL, BURIAL, CREMATORIUM OR MORTUARY SERVICES INCLUDING TRANSPORTATION OF THE DECEASED

This entry exempts services in relation to cremation etc. of dead.
Thankfully while leaving this material world we would not leave a service tax liability.

**Declared Services**

Service has been defined to include declared services. Declared Services are defined under Section 65B (22) of the Finance Act, 1994 to mean any activity carried out by a person for another person for consideration and declared as such under Section 66E of the Finance Act, 1994. It means for a service to come under the category of declared services, it has to satisfy two basic conditions conjunctively

- it must be an activity by one person to another for consideration
- it must be specified (i.e. declared) under section 66E

**Need for Declared Service**

The definition of service in the first instant is very wide to cover any transaction done for a consideration. However, there exist few activities which would overlap with the other levies of state with a marginal difference, thereby questioning the constitutional validity of the levy under service tax. In some cases there may be a doubt whether that activity could possibly called a service at all. To rest the doubt about the validity of a transaction to be considered as service, the authority has intended to declare such activities to be a service. To give an instance, the first declared service “renting of immovable property service” was challenged as to whether it was a “service” as well as the competence of the Union to levy the tax on a property, which is a subject to state governance. Similarly most of the declared services were challenged. For all events and purposes these transactions shall be deemed to be service.

The following nine activities have been specified in section 66E:

a. renting of immovable property;

b. construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority;

c. temporary transfer or permitting the use or enjoyment of any intellectual property right;

d. development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software;

e. agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;

f. transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods;

g. activities in relation to delivery of goods on hire purchase or any system of payment by installments;
h. service portion in execution of a works contract;

i. service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity.

It is clarified that they are amply covered by the definition of service but have been declared with a view to remove any ambiguity for the purpose of uniform application of law all over the country.

4 of the declared services have emerged out of the definition of deemed sales.

These are:

a. Transfer of goods by hiring, leasing etc without transfer of right to use goods

b. Delivery under hire purchase or any system of payment by instalments. Management fees, processing fees and documentation charges are fully taxable.

c. Service portion in works contract;

d. Serving food and drinks.

Let us analyze each of the above.

1. Renting of immovable property;

a. What is renting of immovable property?

i. The term ‘Renting’ is defined to mean

- allowing, permitting or granting access, entry, occupation, use or any such facility,

- wholly or partly in an immovable property

- with or without the transfer of possession or control

- includes letting, leasing, licensing or other similar arrangements in respect of immovable property.

ii. The above definition is very wide in scope and would cover all sought of arrangements for permitting the use of the immovable property.

b. Whether renting for all purposes are covered by the entry?

The entry is wide enough to cover renting of immovable property for all purposes whether residential or commercial purposes. Thus renting for all purposes is a service. However services by way of renting of residential dwelling for use a residence is covered under the negative list of services. Therefore renting of residential dwelling for the residential
purpose is not a taxable service. In case if a residential house is let out for use as office, it not covered under the negative list, therefore taxable. Further an immovable property other than residential dwelling (like a hotel/inn) even if let out for dwelling purposes is not covered under this negative list entry, therefore taxable subject to other conditions.

c. Whether all types of renting other than those covered by negative list are taxable?

No. There are certain cases like renting to educational institutions which are exempted under the mega exemption notification. These are discussed in detail under Chapter ‘Exemptions’.

2. Construction of a complex, building, civil structure or part thereof including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion certificate by the competent authority

a. Thus in cases where any amount (need not be the whole consideration) is received by the service provider at any time before the issuance of completion certificate, it is covered under the declared service and therefore service.

b. In cases where the entire consideration is received by the service provider after obtaining completion certificate, the same shall not be a service and is considered as sale of immovable property.

c. Under the earlier law, these services are covered under the following two separate categories ‘Construction of Residential Complex Service’ and ‘Commercial or Industrial Construction Service’. There were disputes under the earlier law, whether the construction activities carried on for sale to prospective buyers amounts to service. To put an end to that and to bring clarity, a similar deeming fiction was brought in with effect from 01.07.2010. Further the constitutional validity of this deeming fiction was also questioned and upheld by the Punjab & Haryana High Court in the case of G.S. Promoters vs UOI, 2011(21)S.T.R. 100(P&H)

d. Service tax implications in case of construction activities on land given for development:

In case of these constructions, the land owners generally agree to give rights to builder to undertake construction activities in their land. As a consideration to these development rights, they would be given a portion of the built up area by the builder. The builder receives consideration for his activity of construction on land in two ways. 1) Land development rights from land owners for construction of the built up area transferred to them. 2) Cash from other customers. The builder is required to pay service tax on the entire construction activity even on the built up area transferred to landowners in consideration of development rights. This view is confirmed by Mumbai High Court in the case of Maharashtra Chamber of Housing Industry and Others vs UOI [2012-TIOL-78-HC-Mum-ST] and upheld its constitutional validity.

5. Service tax implications in case of development rights given by society/individual flat owners to builder for reconstruction:
In these cases, the development rights are given by society/individual flat owners to builder for construction of new apartments with same or different carpet area to existing owners and the builder would construct additional flats also for sale to others. Builder receives consideration as development rights from existing flat owners/society and in cash from additional flat buyers. Therefore both kinds of consideration are liable to service tax.

6. Service tax implications under Built-Operate-Transfer (BOT) projects;

In case of BOT projects, first the Government would transfer the right to use/development rights to the concessionaire for a specified period for construction of building or furtherance of business or commerce. Consideration for this would be in the nature of upfront lease amount, the service is of the nature of renting of immovable property which falls under ‘support services’ of Government and is taxable.

Secondly, the Concessionaire undertakes the construction of building/infrastructural facility for furtherance of business or commerce would not be treated as service provider since the construction undertaken is on his own account and remains the owner during the Concession period. Therefore the construction activity undertaken by Concessionaire is not liable to service tax. However while undertaking such construction by the concessionaire; if any independent contractor is engaged in providing any service relating to such construction, then such service provided by the independent contractor is taxable.

Thirdly, after construction of the building/infrastructural facility, the concessionaire would enter into agreement with users for commercial exploitation of the building constructed. The Concessionaire may lease the building to the user. This service is liable to service tax and the concessionaire is required to pay service tax.

7. Consideration received in the form of fixed deposits:

There may be a colorable device wherein consideration for provision of construction service is disguised as fixed deposit which is unlikely to be returned. In such cases, there may be a significant amount of interest earned by the builder before obtaining completion certificate. It is clarified by the Department that even such interest earned would be form part of the value of the taxable service.

3. Temporary transfer permitting the use or enjoyment of any intellectual property right.

1. Intellectual property right has not been defined in the Act. The phrase has to be understood as in normal trade parlance as per which intellectual property rights include the following:

   · Copyright
   · Patents
   · Trademark
   · Designs
· Any other similar right to an intangible property

When compared to position under previous law, what are taxable under previous law are those IPRs which are statutorily recognized as IPRs in India. Therefore certain intangible’s like integrated circuits, undisclosed information which are hitherto not taxable under the previous law as they are not statutorily recognized as IPRs are taxable under the negative list regime.

Further it is important to note that there is no condition that the IPR is registered in India. IPRs registered outside India are also taxable provided the place of provision of service is in India in accordance with the Place of Provision of Service Rules, 2012.

2. Permanent transfer is not subjected to service tax;

What is taxable is only temporary transfer of IPR in India. Therefore any permanent transfer i.e. by way of sale or otherwise of IPR would not be liable to service tax as this would amount to transfer of title in goods or immovable property which is excluded from the definition of service.

3. Certain Copyrights exempted;

Notification 25/2012-ST, dated 20-6-2012, exempts the temporary transfer or permitting the use or enjoyment of a copyright covered under clause (a) or (b) of sub section (1) of section 13 of the Indian Copyright Act, 1957 relating to original literary, dramatic, musical, artistic works or cinematographic films.

Thus temporary transfer of copyrights in cinematographic films are exempted which was earlier taxable.

4. Development, design, programming, customization, adaptation,_upgradation, enhancement, implementation of information technology software

1. What is information technology software;

The term ‘information technology software’ has been defined in section 65B of the Act as ‘any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment’.

2. Sale of pre-packaged or canned software;

Sale of pre-packaged or canned software which is put on a media are goods in view of the Supreme Court Judgment in the case of Tata Consultancy Services vs State of AP, 2002(178) ELT22 (SC). Therefore sale of these would be in the nature of sale of goods which falls under the exclusion list in the definition of ‘service’. Therefore these are not taxable.
3. Activities covered under this entry would be on site development of software, advice or consultancy and assistance on matters relating to software.

4. Contracts given for customized development of software:

In case of contracts given for customized development of software, the same are covered under declared list of services. This transaction is in the nature of composite transaction as this would involve an element of service by way of design and development of software and also an element of transfer of title in goods in as much as the intellectual property in CD is transferred to the client. As per the E-guide issued by the Department, the dominant intention of the contract is service and therefore the whole contract value is subjected to service tax.

5. Agreeing to an obligation to refrain from an act or to tolerate an act or situation, or to do an act.

1. This entry states that the following three activities carried out by a person for a consideration would be services.

   · Agreeing to the obligation to refrain from an act.
   
   · Agreeing to the obligation to tolerate an act or a situation.
   
   · Agreeing to an obligation to do an act.

2. Obligation to refrain: As per Webster's dictionary, the word ‘refrain’ means to keep one's self from action or interference.

   Eg: Non-competing fee for not carrying out a particular business or practice a particular profession.

3. Obligation to tolerate an act or situation:

   i. According to Law Lexicon dictionary, the word ‘tolerate’ means to allow the existence or occurrence of anything. Generally the word ‘tolerate’ indicate some sought of suffering/sacrifice. Therefore the act or situation which is being tolerated would not be favorable or beneficial to the person tolerating such act or situation.

   ii. Generally this entry would cover the activity of accepting the occurrence or existence of an act or a particular thing, which is imposed by a condition or circumstances in a contract, agreement or any other document which is legally enforceable by law.

   Eg:

   1. Cancellation charges for DD collected by banks.
   
3. Cancellation charges collected by the Builder from a prospective buyer for cancellation of his booking for the apartment.

4. Obligation to do an act: This means to perform or to do something as prescribed in an agreement, contract for a consideration.

6. Transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods.

1. Significance of the phrase ‘transfer of right to use the goods’

Hiring, leasing, licensing of goods would be a declared service only in case where there is no transfer of right to use such goods. In case where there is a transfer of right to use the goods is involved, the same is a deemed sale under article 366(29A) of the Constitution and is liable for VAT. In such a case, there would be no service tax implications. Therefore it is important to ascertain in every hiring transaction, whether there involves transfer of right to use the goods or not.

2. Meaning and scope of ‘transfer of right to use the goods’

i. Every transfer of goods on lease, license or hiring basis does not result in transfer of right to use goods. Transfer of right to use goods involves transfer of possession and effective control over the goods.

ii. To ascertain whether a transaction involves transfer of right to use the goods or not, the following principles are laid down by Supreme court in the case of BSNL vs UOI [2006] 3 STT 245.

a. The goods must be available for delivery

b. There must be consensus ad idem as to the identity of the goods

c. The transferee should have the legal right to use the goods consequently all legal consequences of such use including any permissions or licenses required therefore should be available to transferee.

d. For the period during which the transferee has such legal right, it has to be for the exclusion of the transferor. This condition is necessary as the legislative intent is not cover mere license to use the goods.

e. Having transferred the right to use the goods during the period for which it is transferred, the owner cannot again transfer the same right to others.

3. Transfer of possession of goods is not the determining factor:

i. It is held in various judicial forums that mere delivery of goods/transfer of possession does not conclude that the transfer is a transfer of right to use goods. To decide whether there is a transfer of right to use or not, the agreement has to be read as a whole. The provisions of the contract understandably have to be construed in the context of the service accorded to be rendered.
ii. The transfer of right to use the goods has to be perceived in the context of the nature, manner and the extent of engagement thereof. The retention of physical possession by the transferor cannot be decisive.

iii. Therefore there needs to be a transfer of possession as well as control for CST/ VAT to be applicable.

4. Some practical cases to understand 'right to use of goods'

i. Shuttering is given on hire to a construction company for a specified period for use in the construction of buildings for a consideration. There is transfer of effective control and possession. VAT is payable and no service tax implications. \( \text{Aggarwal Brothers v. State of Haryana [1999] 113 STC 317(SC)} \)

ii. X allotted different works of steel projects to contractors. To facilitate the execution of work with the use of sophisticated machinery, X has supplied the machinery to the contractors to use the machinery in execution of work. X has received certain charges for the same.

There is no transfer of right to use the goods though possession in goods is transferred but control still rests with X only because the machinery is permitted for use by the contractors only for the contracts with X. The contractors cannot use the same for works other than those with X.

\( \text{State of A.P. v. Rashtriya Ispat Nigam Ltd. [2002] 126 STC 114 (SC)} \)

iii. X company is engaged in supplying machinery on hire basis to an Oil company for use in extraction of oil. During the period of contract, the machinery is would be operated by the technical personnel of X Company. During the period of contract, X company cannot hire the same to any other person.

There is a transfer of right to use the goods in this case even though the possession in goods are retained with X company. This is because, during the period of contract and in terms of the contract, the oil company demonstrates an oblivious domain and control of over the machinery supplied. During the period of the contract, X company was not authorized either to transfer or hire the machinery to the others. The fact that machinery is being operated by the technical personnel of X company, does not militate against the element of exclusiveness in the use thereof for the services and benefit of the oil company.

\( \text{HLS Asia Ltd vs State of Assam [2007]8 VST 314} \)

7. Activities in relation to delivery of goods on hire purchase or any system of payment by installments

a. What is taxable under this service is not the delivery of goods on hire purchase or any system of payment by installment as this is deemed sale under article 366(29A) of the Constitution of India. Only the activities or services provided in relation to such delivery of goods are covered in this declared list entry.

b. What is delivery of goods on hire purchase or any system of payment by installments?
The main difference between mere hiring of goods and delivery of goods by hire purchase system is that the hirer has no option to purchase the goods hired and the risks and rewards incidental to ownership of goods remain with the owner and are not transferred to the hirer. According to Section 2 of the Hire Purchase Act, 1972, delivery of goods by hire purchase or any other system of payment by installments would involve the following ingredients.

a. Goods are let out on hire and under which the hirer has the option to purchase them in accordance with the terms of the agreement.

b. Possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical installments.

c. The property in goods is to pass to such person on payment of the last of such installments.

d. Such person has a right to terminate the agreement at any time before the property passes.

3. Therefore the hiring of goods would not be subject to service tax where there is transfer of possession of goods as well as risks and rewards of ownership by the lessor to lessee. Normally under operating leases, there won't be any transfer of risks and rewards of ownership though there may be transfer of possession or not. Therefore operating leases are not covered under hire purchase system. But operating leases where the possession is transferred are also covered under the deemed sale under the category of ‘transfer of right to use the goods.’ Therefore they would not be liable for service tax.

Activities in relation to delivery of goods under hire purchase are as follows:

a. Interest

b. Leas management fee

c. Processing fee

d. Documentation charges

e. Administrative fee

All the above charges are subjected to service tax. However interest is taxable only to the extent of 10% only as 90% is exempted under Notification No. 26/2012-ST dated 20/06/2012.

8. Service portion in execution of works contract.

1. Works Contract has been defined under section 65B of the Act as a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation,
alteration of any moveable or immoveable property or for carrying out any other similar activity or a part thereof in relation to such property.

2. Thus all those contracts which involve an element of sale of goods apart from services which is leviable to sales tax would come under the meaning of 'Works Contract'. It is to be noted satisfaction of levy by charging section in VAT laws is sufficient for this purpose though the levy of VAT is exempted by way of notification. Typically every works contract involves an element of sale of goods as well as services. To the extent related to sale of goods portion in works contract, sales tax is leviable in terms of article 366(29A) of the Constitution of India. Thus this entry is created with a view to bring in clarity that service portion in works contract would be subject to service tax.

3. Since this entry covers only those contracts which involve transfer of goods as well as services in the course of execution of work, contracts for labour supply are pure service contracts where the whole amount is charged for service tax.

4. Examples of works contract:

i. Maintenance or repair contracts: Maintenance or repair contracts would fall within the ambit of works contract if there involves transfer of property in goods also while undertaking the repair works. In such cases, service tax is payable only on the service portion.

ii. Construction of a pipeline or conduit: Pipelines or conduits are structures on land. Contracts for such construction are works contract as they involve transfer of property in goods also.

iii. Commissioning or installation of plants or machinery, equipment or structures: These contracts are treated as works contract if transfer of property in goods is also involved in the execution of the same.

iv. Contracts for painting of building, repair of building, renovation of a building, wall tiling and flooring would also be covered in works contract if materials are involved.

8. In most of occasions, it may not be practicable to arrive at the exact value of service portion involved in execution of works contract. Even in practicable cases also, it involves tedious exercise of maintenance of records and documents. Where there are proper bifurcations available based on previous years actual figures or cost centre based accounting following the Cost Accounting Standards the same would be preferable to prove the valid value being adopted. Therefore for administrative convenience of assessee and revenue, payment of service tax on value of service in terms of Rule 2A of the Service Tax (Determination of Value) Rules, 2006 are provided.

9. Service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity.

1. This entry covers the service portion in all those activities wherein food or any article of human consumption or any drink (whether or not intoxicating) is supplied. The following are the list of such activities.
Supply of food or drinks in a restaurant.

Supply of food or drinks in a Mandap Keeper, Convention centre.

Supply of food or drinks by an outdoor caterer.

2. In terms of article 366(29A) of the Constitution of India, supply of any goods, being food or any other article of human consumption or any drink (whether or not intoxicating) in any manner as part of a service for cash, deferred payment or other valuable consideration is deemed to be a sale of such goods. Therefore such supply portion cannot be a service and is specifically excluded from the definition of 'service' under section 65B(44) of the Act.

3. Exemption to restaurants not having air conditioning facility or license to serve liquor or both: Entry no. 19 of Notification 25/2012 dated 20.06.2012 provides exemption from payment of service tax to restaurants, eating joints, mess other than those having the following two facilities.

(i) The facility of air-conditioning or central air heating in any part of the establishment at any time during the year.

(ii) License to service alcoholic beverages.

Thus a restaurant would not be required to pay service tax unless it is having both the facilities.

4. The practice hitherto of charging VAT on the entire value may require to be examined. The bifurcation based on costing principles could lead to a conclusion that VAT is payable on say 86% of the value and consequently service tax would be applicable only on 14%.

Exemptions

Under the previous service tax law (i.e., law prevailing upto 30th of June, 2012) there were totally around 88 exemption notifications. Though this new system of tax has come into effect the need for exemptions is not obviated. Some of the existing exemptions have been built into the negative list, while some are continued to be exempted in the current scenario under the new category. For the sake of convenience and simplicity, most of the exemptions now forms a part of one notification which is popularly called as 'Mega Exemption Notification' 25/2012-ST, dated 20th June, 2012.

The Exemptions contained in the notification are discussed below in detail:

1. Services provided to the United Nations or a specified international organization

This entry exempts all the services provided to the United Nations or a specified international organisation i.e., service recipient is UN or specified International Organisation. There are no specific conditions that have been given for claiming exemptions. It may be noted that though the law makers have given the exemption for the services provided to a UN or specified international organisation, there is no such exemption given for the services provided by UN or specified international organisation.
Illustrative list of specified international organisations are as follows:

1. International Civil Aviation Organisation
2. World Health Organisation
3. International Labour Organisation
4. Food and Agriculture Organisation of the United Nations
5. UN Educational, Scientific and Cultural Organisation (UNESCO)
6. International Monetary Fund (IMF)
7. International Bank for Reconstruction and Development
8. Universal Postal Union
9. International Telecommunication Union
10. World Meteorological Organisation
11. Permanent Central Opium Board
12. International Hydrographic Bureau
13. Commissioner for Indus Waters, Government of Pakistan and his advisers and assistants
14. Asian African Legal Consultative Committee
15. Commonwealth Asia Pacific Youth Development Centre, Chandigarh
16. Delegation of Commission of European Community
17. Customs Co-operation Council
18. Asia Pacific Telecommunity
19. International Centre of Public Enterprises in Developing Countries, Ljubljana (Yugoslavia)
20. International Centre for Genetic Engineering and Biotechnology
22. South Asian Association for Regional Co-operation
2. Health care services

This entry exempts health care services by a clinical establishment, an authorised medical practitioner or Para-medics.

In order to understand what exactly has been exempted, the following terms has to be understood-

a. The term 'health care services' has been defined in clause 2(t) of this notification to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

b. Clinical Establishment as per clause 2(j) of the notification mean a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases.

c. "authorized medical practitioner" means a medical practitioner registered with any of the councils of the recognized system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognized system of medicines in India as per any law for the time being in force;

d. 'Para-medics' have not been defined in notification. However, the meaning of the same has been given by way of clarification in CBEC's Education guide. Paramedics are trained health care professionals, for example nursing staff, physiotherapists, technicians, lab assistants etc. Services by them in a clinical establishment would be in the capacity of employee and not provided in independent capacity and will thus be considered as services by such clinical establishment. Similar services in independent capacity are also exempted.

3. Services by a veterinary clinic in relation to health care of animals or birds

The term 'veterinary clinic' has not been defined in the said notification. It has to be understood in common parlance. Thus, generally it means a healthcare facility for care of birds and animals.

4. Charitable Institutions

Services by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) by way of charitable activities.

“Charitable activities" means activities relating to -

(i) public health by way of -
(a) care or counselling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(b) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) advancement of religion or spirituality;

(iii) advancement of educational programmes or skill development relating to,

(a) abandoned, orphaned or homeless children;

(b) physically or mentally abused and traumatized persons;

(c) prisoners; or

(d) persons over the age of 65 years residing in a rural area;

(iv) reservation of environment including watershed, forests and wildlife; or

(v) advancement of any other object of general public utility up to a value of,

(a) eighteen lakh and seventy five thousand rupees for the year 2012-13 subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during 2011-12;

(b) twenty five lakh rupees in any other financial year subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during the preceding financial year;

Analysis of the above-

If a Charitable Institution is rendering any activities falling under (i) to (iv) above, then the same will be exempt from service tax without any limit. However, for the activities as mentioned in (v) above, service tax is exempt upto Rs.25 lakhs in a financial year if the total value of such services had not exceeded Rs.25 lakh during the preceding financial year. The later (v) exemption would be available only if such activity is meant for general public and general public is defined in the notification as ‘body of people at large sufficiently defined by some common quality of public or impersonal nature’.

5. Services provided for Religious purpose

This entry exempts the following service provided by any person-

(a) Service by way of renting of precincts of a religious place meant for general public, or

(b) Service by way of conduct of any religious ceremony.
Analysis of the entry

The notification vide clause 2(zb) has defined the term religious place as to a place which is primarily meant for conduct of prayers or worship pertaining to a religion.

In the first limb of this entry, the essential aspects to be considered are:

(a) The place should be religious place,

(b) Religious place should be meant for general public.

This means there should be no restriction or limitation in normal conditions on any person entering or leaving from the place.

The second limb covers the activity of priest, clergy, mullah, etc., providing services of conducting of any religious ceremony. These functions may be for any of the religion. Also in the case of Commissioner of Central Excise, Mangalore v. Krishnapur Mutt 2006 (3) S.T.R. 144 (Tri.-Bang.) it has been held that marriage is also a religious ceremony.

6. Services provided by Advocates

The entry reads as follows:

Services provided by-

(a) an arbitral tribunal to -

i. any person other than a business entity; or

ii. a business entity with a turnover up to rupees ten lakh in the preceding financial year;

(b) an individual as an advocate or a partnership firm of advocates by way of legal services to,-

i. an advocate or partnership firm of advocates providing legal services ;

ii. any person other than a business entity; or

iii. a business entity with a turnover up to rupees ten lakh in the preceding financial year; or

(c) a person represented on an arbitral tribunal to an arbitral tribunal.

Analysis of this entry-

The first part of this entry exempts the services provided by an Arbitral Tribunal to any person, however, in case the recipient is a business entity then the exemption would be available only if such entity is with a turnover up to Rs.10 lakh
in the preceding financial year. ‘Turnover’ in common parlance means the aggregate of the sale or service provided in a financial year.

As per the second limb, the service provider for claiming this service has to be an individual advocate or could be a partnership firm having only advocates as partners. Also, not every service that is provided by an Advocate is exempt. The service that is exempted is legal services. The term has not been defined and hence, it is very wide to cover the chamber practice as well as court practice of an advocate.

The last part of this entry exempts the service provided by any person who is representing in an arbitral tribunal to resolve dispute between parties.

7. Technical testing or analysis of newly developed drugs, including vaccines and herbal remedies on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller of India.

The said notification exempts the services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies on human participants by a clinical research organisation approved to conduct clinical trials by Drug Controller General of India.

The term "technical testing or analysis" is not defined in the notification. Although the definition of the technical testing or analysis is given under section 65(106) of the Finance Act(which is now redundant), it is not relevant for the interpretation of the present notification. However, an inference can be made to the same to understand what the statute intends to mean by technical testing or analysis.

8. Training or coaching in recreational activities

This notification exempts services by way of training or coaching in recreational activities relating to arts, culture or sports. Recreational activities are often done for enjoyment, amusement, or pleasure and are considered to be ‘fun’. This notification has intended to exempt not all recreational courses but has restricted the exemption to art, culture and sports only. However, it may be noted that where the activities of art, culture or sports are otherwise than for recreational purposes then they would not be covered under the said exemption notification.

9. Educational Services

This entry exempts services provided to or by an educational institution in respect of education exempted from service tax, by way of,-

(a) auxiliary educational services; or

(b) renting of immovable property

Certain services provided by way of education facilities have been included under negative list of services under section 66D of the Act. Further this notification has been issued to exempt other services related to educational institutions
which are not included in the negative list. The purpose of these exemptions is to ensure that the education sector is not burdened with unnecessary tax. For the purpose of claiming exemption under this notification, it is necessary that the institution providing or receiving the services should be covered by the negative list.

10. Services received by a recognised sports body

The said notification exempts services provided by the following persons to a recognised sports body from service tax:

(a) An individual as a player, referee, umpire, coach or a manager for participation in a sporting event organised by a recognised sports body;

(b) One recognised sports body providing service to another sports body.

The essential condition for claiming exemption under this entry is that the service to be provided should be only for participation in a tournament or championship organised by a recognised sports body.

11. Sponsorship services to certain sports events

Sl. No. 11 of the said notification exempts the following services by way of sponsorship of tournaments or championships when organized:

(a) By a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone

The condition for claiming this exemption is that, the participating teams or individuals of such tournaments or championship shall represent their district, state or zone.

(b) By Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympics Committee of India, Special Olympics Bharat

Any amount sponsored to the below mentioned organizations for the purposes of conducting tournaments or championships are exempt from service tax:

- Association of Indian Universities
- Inter-University Sports Board
- School Games Federation of India
- All India Sports Council for the Deaf
- Paralympics Committee of India
- Special Olympics Bharat
(c) By Central Civil Services Cultural and Sports Board

(d) As part of national games, by Indian Olympic Association

(e) Under Panchayat Yuva Kreeda Aur Khel Abhiyaan (PYKKA) Scheme.

12. Services to Government / Governmental Authority / Local Authority

This entry reads as Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of:

a. a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

b. a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

c. a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

d. canal, dam or other irrigation works;

e. pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

f. a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;

This exemption notification intends to cover only services provided to specified service recipient viz., Government, Local authority and Governmental authority.

13. Services to specified categories

The said notification exempts services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of:

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

(c) a building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;
(d) a pollution control or effluent treatment plant, except located as a part of a factory; or a structure meant for funeral, burial or cremation of deceased;

This exemption intends to cover the services provided by any person to any person. Unlike the previous entry of exemption under Sl.no.12 the service recipient can be any person. Therefore, the services provided by way of subcontractor to the main contractor is also covered subject that the service is of the nature described in this entry.

14. Construction of specified original works:

This category covers services by way of construction, erection, commissioning, or installation of original works pertaining to,-

(a) an airport, port or railways, including monorail or metro;

(b) a single residential unit otherwise than as a part of a residential complex;

(c) low-cost houses up to a carpet area of 60 square meters per house in a housing project approved by competent authority empowered under the ‘Scheme of Affordable Housing in Partnership’ framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

(d) post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or

(e) mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

**Original work would mean –**

· All new constructions;

· All types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

· Erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

15. Temporary transfer or permitting the use or enjoyment of a copyright:

This notification provides exemption in relation to temporary transfer or permitting the use or enjoyment of a copyright covered under clauses (a) or (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical, artistic works or cinematograph films;

In this case it should be noted that two conditions are mentioned here i.e.-
There should be a specified copyright- this exemption is applicable only if the owner transfers temporarily the rights relating to original literary, dramatic, musical, artistic works or cinematograph films;

There must be a temporary transfer- In case it is permanent transfer it amounts to sale of good and not a service.

16. Exemptions to certain Artists:

The said Notification exempts services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador;

To avail this exemption, the essential conditions are:

1. The performance would be folk or classical -- the word folk would mean something that is originated from beliefs and customs of ordinary people, the word classical means a traditional and long established form or style.

2. The performance would be in relation to music, dance or theatre.

3. The performance would not be provided as a brand ambassador- In general parlance, brand ambassador means a person, who is known for his skills and talents, when agrees to represent a brand in a direct way.

17. News agency service:

This Notification exempts services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;

Independent Journalist: An Independent journalist has not been defined. However, in common parlance the term would be all journalists who provide service as a freelance. Provision of services in form of collation or provision of news by independent journalist would be exempt from service tax. A corporate owned news gathering organization would not be equated to independent Journalist.

Press Trust of India ( PTI) and United News of India are two primary Indian News agencies. Thus services provided by them are exempt.

18. Services of renting hotel/inn/guesthouse etc. having declared tariff of less than Rs. 1000

This entry covers services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent

19. Services of specified restaurants:

This Notification exempts services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having (i) the facility of air-conditioning or central air-heating in any part of the establishment, at
any time during the year, and (ii) a license to serve alcoholic beverages;

To avail this exemption it is important to satisfy both the conditions i.e. (i) and (ii) above.

20. Transportation of specified items by Rail or vessel:

This entry exempts services by way of transportation by rail or a vessel from one place in India to another of the following goods -

(a) petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;

(c) defence or military equipments;

(d) postal mail or mail bags;

(e) household effects;

(f) newspaper or magazines registered with the Registrar of Newspapers;

(g) railway equipments or materials;

(h) agricultural produce;

(i) food stuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or

(j) chemical fertilizer and oil cakes;

This Notification has not clearly spelt whether services provided by private rail are also covered or not. Therefore exemption can be claimed in the absence of any restriction on the same.

Apart from rail, if transportation is done through vessel from one port to another, it is also covered by the exemption notification.

21. Service of certain goods by GTA:

This entry exempts services provided by a goods transport agency by way of transportation of -

(a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;

(b) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or
(c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;

22. Hiring of Motor Vehicle and means of transportation:

This entry exempts services by way of giving on hire -

(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or

(b) to a goods transport agency, a means of transportation of goods;

Hiring means transferring temporary use of a thing/article/goods for a certain period. It should be distinguished with transfer of right to use goods which is liable to VAT. Motor vehicle should be for transportation of more than 12 passengers. Here there is no mention about driver and the conductor, they should not be included in the calculation in specified number of passengers. Exemption is available only for giving motor vehicle on hire, not for any other services.

23. Transport of passengers to/from specified areas, and others:

This entry covers transport of passengers, with or without accompanied belongings, by -

(a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;

(b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or

(c) ropeway, cable car or aerial tramway;

The transportation should be through air. It may include airlines, helicopter, and charter flight of any other kind or similar means of transportation.

A contract carriage is generally carriage of passengers for hire, which is engaged under a contract, which may be express or implied. The contract may be for use of the vehicle as a whole for such carriage and is entered into by a person with the holder of the permit for such vehicle. The consideration may be fixed on time basis of the points involved.

Transportation of passengers through contract carriage is exempted. However, if the vehicle is used for tourism, conducted tour, charter or hire, it would not be covered by the exemption notification.

24. Motor vehicle parking

This entry covers services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;

25. Specified services provided to government or local authority or government authority:
This entry covers services provided to Government, a local authority or a governmental authority by way of -

(a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or

(b) repair or maintenance of a vessel or an aircraft;

Any activity undertaken by any other person for a consideration to the government in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation is exempted.

Any service of repair or maintenance of a vessel or an aircraft is covered under this exemption notification; however the same service provided to rail is not covered under this entry of exemption.

26. Specified General Insurance schemes:

This entry exempts services of general insurance business provided under following schemes -

(a) Hut Insurance Scheme;

(b) Cattle Insurance under Swarnajayanti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);

(c) Scheme for Insurance of Tribals;

(d) Janata Personal Accident Policy and Gramin Accident Policy;

(e) Group Personal Accident Policy for Self-Employed Women;

(f) Agricultural Pumpset and Failed Well Insurance;

(g) premia collected on export credit insurance;

(h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;

(i) Jan Arogya Bima Policy;

(j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);

(k) Pilot Scheme on Seed Crop Insurance;

(l) Central Sector Scheme on Cattle Insurance;

(m) Universal Health Insurance Scheme;
26A. Services of life insurance business provided under following schemes -

(a) Janashree Bima Yojana (JBY); or

(b) Aam Aadmi Bima Yojana (AABY);.

27. Exemptions to Incubatee:

Services provided by an incubatee up to a total turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:

(a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and

(b) a period of three years has not been elapsed from the date of entering into an agreement as an incubatee;

The term “Incubatee” has been defined to mean an entrepreneur located within the premises of a Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognized by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India and who has entered into an agreement with the TBI or the STEP to enable himself to develop and produce hi-tech and Innovative products.

28. Exemptions to trade unions/societies:

This entry covers service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution -

(a) as a trade union;

(b) for the provision of carrying out any activity which is exempt from the levy of service tax; or

(c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;

The essential feature of the present exemption is as follows:

a. service should be provided or to be provided by specified unincorporated body or an specified entities registered as a society
b. such services should be to its own members

c. such services should be by way of reimbursement of charges or shares of contribution

29. Services exempt by certain persons:

This entry covers services provided by the following persons in respective capacities --

(a) sub-broker or an authorized person to a stock broker;

(b) authorized person to a member of a commodity exchange;

(c) mutual fund agent to a mutual fund or asset management company;

(d) distributor to a mutual fund or asset management company;

(e) selling or marketing agent of lottery tickets to a distributor or a selling agent;

(f) selling agent or a distributor of SIM cards or recharge coupon vouchers;

(g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

30. Services of job work as Intermediate production:

This entry covers the services of Carrying out an intermediate production process as job work in relation to -

(a) agriculture, printing or textile processing;

(b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);

(c) any goods on which appropriate duty is payable by the principal manufacturer; or

(d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines up to an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;

This limit of Rs 150 Lacs is applicable only to the last limb of the entry (d), and not to the first three. All the above exemptions existed in the positive based taxation and even continue to be exempted in the negative regime.
31. Services for a business exhibition held outside India:

This entry covers services by an organizer to any person in respect of a business exhibition held outside India;

Service of a business exhibition held outside India shall fall outside the ambit of Finance Act, 1994.

However services of commission agent and event managers would not be tested by this category and their liability would be determined as would be specific to their effects.

32. Exemption in the telephone sector:

Services by way of making telephone calls from -

- departmentally run public telephone;

- guaranteed public telephone operating only for local calls; or

- free telephone at airport and hospital where no bills are being issued;

33. Services by way of slaughtering of animals;

As per the latest amendments, the exemption is for services by way of slaughtering of animals. Earlier only Bovine animals were covered by this notification. It is to be noted that the new exemption has not specified as to the requirement of mechanized slaughter houses which was a criteria in the positive list based taxation.

34. Services imported exempted in certain cases:

Services when imported by certain specified entities are exempt from service tax. The entities covered by this notification are:

a. Government, local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession

b. An entity registered under section 12AA of the Income Tax Act,1961 for the purpose of providing charitable activities;

c. A person located in non taxable territory.

The last limb of the above clause means the service provided from outside taxable territory to a person outside taxable territory. This activity would anyways not taxable based on the place of provisions of service, Rules, 2012. The need for inserting this clause is unknown.

35. Services of Public Libraries:
The services provided by a public library by way of lending of books, publications or any other knowledge enhancing content or material shall not be subject to service tax. Most of the libraries do not charge any consideration for lending books. However, one time membership fees are charged. This one time membership would also be covered under this exemption.

36. Services by Employees State Insurance Corporation to persons governed under the ESI Act, 1948

Services provided by the ESI to persons governed by the ESI Act are exempt from service tax.

37. Transfer of a going concern as a whole

When a going concern in full or an independent part of the concern is transferred as such, such transaction is exempted from service tax. This concept of transfer is termed as “Slump sale” in Income Tax.

38. Services by way of public conveniences

Amounts collected towards providing services for public conveniences like public toilets, washrooms etc are exempt from service tax.

39. Specified services provided by a governmental authority

Certain specified services which are entrusted to a municipality, but which are provided by a governmental authority are exempt from service tax. The specified services are those which are mentioned under Article 243W of the Constitution of India. The list of service are:

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries.

**CHANGES BY BUDGET, 2013:**

**Background**

It is now completed a year since the Negative list based taxation was introduced. In light of negative list based taxation, the scope of coverage of area of indirect taxes has increased manifold. In this backdrop we examine what are specific changes which are proposed in Budget, 2013 in area of service tax.

**Change in Negative List**

a) At present Vocational Course which is limited to National Council for Vocational Training (NCVT) has been amended to extend the service tax exemption to State Council for Vocational Training (SCVT) also. Therefore courses affiliated by SCVT will also enjoy exemption under negative list.

b) Course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India has been removed from the definition of Approved Vocational Course, thereby making the same taxable.

c) Process on which the excise is levied under Medicinal and Toilet Preparations (Excise Duties) Act, 1955 will be out of the service tax net.

d) The earlier exclusion which was restricted to seed testing has been extended any testing relating to any agricultural operations. The testing activities directly related to any agricultural produce like soil testing, testing of samples from plants or animals, for seeds testing etc will be covered by the negative list.

**Other Changes in the Act**

a) New Section 66BA has been issued to make the reference of section 66 (charging section prior to 01.07.2012) to be applied to 66B (charging section present) with an retrospective effect from 01.07.2012.
b) New Sub-Section 73(2A) has been introduced to make the demand recoverable for the period of 18 months (normal period of limitation). Upto this amendment a SCN could have been issued with the normal period of 18 months (earlier 1 year) from the relevant date, however in case there was fraud, collusion, misrepresentation etc. then the notice could have been issued invoking the extended period of limitation of 5 years. Practically in case the notice was issued invoking the extended period of limitation (5 year notice) and

c) Department failed to establish such allegation of fraud, collusion, etc. then there was not demand in total failed even for the past 18 months/1 year demand is sustainable on merits even in the absence of fraud, collusion etc. Collector of C. EX., Jaipur vs Alcobex Metals 2003 (153) ELT 0241 S.C. decision has been nullified.

d) The earlier penalty for failure in taking registration was levied at higher of (i) upto Rs. 10000/-, OR (ii) Rs. 200/- for every day of default. The Penalty for failure to take registration is restricted to maximum of 10,000/- which had no upper limit earlier.

e) Personal Liability similar in case of Central Excise has been introduced in service tax on Personal Liability of Penalty upto Rs.100,000/- has been proposed to levy on Director, Manager, Secretary or other officer who is responsible for conduct of business at time when company has committed any of the following contraventions:-

(a) Evasion of service tax
(b) Issuance of bill, invoice, challan in contravention of provisions
(c) Availment and utilization of credit on taxes without actual receipt of services or goods in contravention with the rules.
(d) Failure to pay amount collected as service tax to credit of central government for period beyond 6 months

(e) Earlier, the condonation of delay by appellate tribunal for filing appeal or memorandum of cross objections is available only for appeals by Department. Now, the same has been extended to an assessee who is filing appeal.

(f) In case of a person collecting service tax and not paying to central government for period beyond 6 months from date on which payment is due and amount so not paid is greater than Rs. 50,00,000/-, the maximum imprisonment has been increased from 3 years to 7 years. The same has been made applicable even for second and subsequent offence. The offence has been made cognizable offence (i.e. person can be arrested without a warrant) 

g) Commissioner of Central Excise has been given the power to authorize a central excise officer to arrest.

h) Advance ruling can be sought by resident public limited companies also.

i) A scheme by name ‘Voluntary compliance encouragement scheme, 2013’ is proposed to provide amnesty by way of (i) waiver of interest and penalty; and (ii) immunity from prosecution, to the stop filers, non-filers or non-registrants or service providers (who have not disclosed true liability in the returns filed by them during the period from October 2007 to December 2012) who pay the “tax dues”.
j) The defaulter will be required to make a truthful declaration of all his pending tax dues (from 01.10.2007 to 31.12.2012) and pay at least half of that before 31.12.2013; remaining half to be paid by:

(a) 30.06.2014 without interest; or

(b) By 31.12.2014 with interest from 01.07.2014 onwards;

Changes in Exemption

1. The exemption relating to educational services, which are covered under the negative list earlier read as service provided by to an educational institution, now the same has been applicability to an educational institution and hence making the provider irrelevant. The exemption is now for Auxiliary educational service & Renting of immovable property to an educational institution. Earlier renting by educational institution was exempted, but now would be taxable if the same is not leased to educational institution.

2. Services provided by way of temporary transfer or permitting the use or enjoyment of copyright of cinematographic films was fully exempt previously but now exemption is restricted only for cinematographic films for exhibition in a cinema hall or cinema theatre. This would not help the movie makers to take the CENVAT credit on various input service such as remuneration to artist etc. and can pay the service tax on exploitation of copy right other than exhibition in cinema halls. It is also important to apply rule 6 of CENVAT Credit Rules in such cases.

3. Earlier services provided by air-conditioned restaurant and which has liquor license was taxable under service tax but now it is proposed to bring all airconditioned/central air-heating restaurants, eating joints or mess into service tax net and also all bars, whether or not having liquor.

4. Services by way of Transport of following goods by rail or vessel from one place in India to another was earlier exempt but now made taxable:-

(a) Petroleum and petroleum products

(b) Postal mail or mail bags

(c) Household effects.

5. Services by way of transportation of following goods by goods transport agency have been brought into exemption list:-

(a) Agricultural produce

(b) Foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages

(c) Chemical fertilizer and oilcakes
(d) Newspaper or magazines registered with the Registrar of Newspapers

(e) Relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap

(f) Defence or military equipments

6. Service by way of vehicle parking to general public has been brought into service tax net which was earlier exempted.

7. Services provided to Government, a local authority or a governmental authority by way of repair of aircraft which was earlier exempted was now made taxable.

8. Definition of ‘Charitable activities’ has been amended to exclude the advancement of any other object of general public utility.

9. The percentage of Abatement for construction of complex, building, civil structure or part thereof intended for sale to a buyer, wholly or partly except where consideration is received after issuance of completion certificate by competent authority has been amended as follows:-

   a. Residential unit having carpet area upto 2000 sq.ft or where amount charged is less than Rs. 1 Crore - Abatement continues to be 75%

   b. Any other case – Abatement reduced to 70%

There has been negligible change made in scope and coverage of the entries in negative list and mega exemption notification. The one notable proposal had been the proposed amnesty scheme for tax payers which would be enacted by the Finance Bill 2013.

CA Madhukar N Hiregange

For queries post on pdicai.org or caclubindia.com.
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