

## A BRIEF OVERVIEW OF THE NEW SYSTEM OF TAXATION OF SERVICES



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### Introduction

Budget 2012, which received assent of the President of India on 28.05.2012 has ushered a new system of taxation of services; popularly known as Negative List. The new changes are a paradigm shift from the existing system where only services of specified descriptions are subjected to tax. In the new system all services, except those specified in the negative list, will be subject to taxation. This means that if a service meets the characteristics of a "service" as defined in Section 65B(44) it will be taxable unless specified in the Negative List. The new system of taxation of services will be applicable from 1<sup>st</sup> July 2012.

Service tax is a tax which is payable on services provided by the service provider. Just like excise duty is payable on goods manufactured, in the same way service tax is payable on service provided. Service tax is payable by the provider of the service to the Government of India, but the service provider can also collect this tax from the consumer of service i.e. the recipient of service and deposit it with the Government.

Under the New Scheme of taxation:

- Service' has been defined in clause (44) of section 65B of the Act.
- Section 66B specifies the charge of service tax which is essentially that service tax shall be levied on all services provided or agreed to be provided in a taxable territory, other than services specified in the negative list.
- The negative list of services is contained in section 66D of the Act.
- Since provision of service in the taxable territory is an important ingredient of taxability, section 66C empowers the Central Government to make rules for determination of place of provision of service. Under these provisions the Place of Provision of Services Rules, 2012 have been made.
- To remove some ambiguities certain activities have been specifically defined by description as services and are referred as Declared Services (listed in section 66E).
- In addition to the services specified in the negative list, certain exemptions have been given. Most of the exemptions have been consolidated in a single mega exemption for ease of reference.

- Principles have been laid down in section 66F of the Act for interpretation wherever services have to be treated differentially for any reason and also for determining the taxability of bundled services.
- The system of valuation of services for levy of service tax and of availment and utilization of Cenvat credits essentially remains the same with only incidental changes required for the new system of taxation.

### **Legislations Governing Service Tax**

Although service tax was introduced in the year 1994, till date there is no independent legislation on service tax. The list of legislations governing service tax are given hereunder -

**i. The Finance Act, 1994 (Chapter - V, Sections 64 to 96)**

The statutory provisions relating to levy of service tax on services in contained in Chapter V of the Finance Act, 1994.

**ii. The Finance Act, 2003 (Chapter - VA, Sections 96A to 98)**

Chapter VA deals with advance rulings.

**iii. Service Tax Rules, 1994**

Service tax Rules deals with the procedural aspects of registration; taxable service to be provided on the invoice, bill or challan; maintenance of records; procedure for payment of service tax; submission of returns; form of appeals to Commissioner of Central Excise (Appeals), Appellate Tribunal and procedure and facilities for large taxpayers.

**iv. Service tax (Advance rulings) Rules, 2003**

This Rule deals with the procedure for obtaining an advance ruling.

**v. CENVAT credit Rules, 2004**

According to the CENVAT Credit Rules, a manufacturer or producer of final products or a provider of taxable service can take credit i.e. CENVAT credit of excise duty, additional duty of excise, national calamity contingent duty, service tax etc. paid on any input or capital goods received in the factory for manufacture of final product or premises of the provider of output service and any input service received by the manufacturer of final product or by the provider of output services.

**vi. Service tax (Registration of Special Category of Persons) Rules, 2005**

This Rule provides for registration by certain category of persons.

**vii. Service Tax (Determination of Value) Rules, 2006**

This Rule prescribes the manner in determining the value of taxable services in certain cases.

**viii. Dispute Resolution Scheme Rules, 2008**

According to this Rule, a declaration may be made by the assessee in respect of the tax arrears and the amount payable and any sum payable under the Scheme should be paid in cash. On being satisfied, the designated authority will issue a certificate for full and final settlement of tax arrears.

**ix. Service Tax (Provisional Attachment of Property) Rules, 2008**

This Rule deals with the procedure for provisional attachment of property when proceedings for recovery of tax are pending before the authorities. The provisional attachment of property should be to the extent it requires to protect the interest of revenue, i.e. the value of property attached should be equivalent to the amount of pending revenue. The movable property of a person should be attached only if the immovable property available for attachment is not sufficient to protect the interest of revenue. This Rule will not be applicable to attachment of personal property of Proprietor or Partners or Directors. Once the property has been attached provisionally, then

the attached property should not be subject to mortgage, lease, delivery or any other dealings without the prior approval of the Commissioner of Central Excise. The order of provisional attachment will be valid only for a period of 6 months and upto a maximum period of 2 years after sufficient extension. Finally the provisional attachment will cease to have effect when the concerned person has paid the pending revenue along with interest thereon.

**x. The Service Tax (Publication of Names) Rules, 2008**

This Rule deals with publication of names and particulars of persons who have contravened the provisions relating to service tax with the intent of evading payment of service tax and persons who have been adjudged to pay but has not paid any amount, payable under the Finance Act.

**xi. Service Tax Return Preparer Scheme, 2009**

**xii. Point of Taxation Rules, 2011**

This rule has been issued for the purpose of collection of service tax and determination of rate of service tax.

**xiii. Place of provision of services Rules, 2012**

This Rule specifies the manner to determine the taxing jurisdiction for a service.

**xiv. Service Tax (Settlement of Cases) Rules, 2012**

**xv. Service Tax (Compounding of Offences) Rules, 2012**

**Meaning of 'Service'**

Service was not defined prior to 1<sup>st</sup> July 2012. In fact in the case of Magus Construction Pvt. Ltd. V/s. Union of India 2008 (11) S.T.R. 225 (Gau), the Assam High Court defined service as follows -

*“an act of helpful activity, an act of doing something useful, rendering assistance or help. Service does not involve supply of goods; “service” rather connotes transformation of use/user of goods as a result of voluntary intervention of “service provider” and is an intangible commodity in the form of human effort. To have “service”, there must be a “service provider” rendering services to some other person (s), who shall be recipient of such ‘service’”.*

But now service has been defined in **Sec.65B(44)** of Chapter V of the Finance Act, 1994.

“**Service** means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include –

(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 a 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.

*Explanation 1.*— For the removal of doubts, it is hereby declared that nothing contained in this clause shall 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.*-- For the purposes of this clause, transaction in money shall not include any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

*Explanation 3.*-- For the purposes of this Chapter, –

- (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 4.*— 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.”

### **Meaning of activity**

Generally the work activity means an act done, a deed done, an operation carried out, execution of an act, provision of a facility etc. It is a term with very wide connotation. Activity could be active or passive and would also include forbearance to act.

### **Meaning of consideration**

According to Sec.67 (explanation (a)) of the Finance Act, consideration includes any amount that is payable for the taxable services provided or to be provided.

Sec.2(d) of the Indian Contract Act, 1872 defines consideration as - “When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.”

Thus consideration means everything received or recoverable in return for a provision of service which includes monetary payment and any consideration of non-monetary nature or deferred consideration. Therefore consideration will include both monetary and non-monetary consideration.

To be taxable to service tax, an activity should be carried out for a consideration. For example - donations, gifts, free charities etc will not be covered.

Monetary consideration means any consideration received in the form of money. Money means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any such similar instrument but shall not include any currency that is held for its numismatic value. (Sec.65B(33))

Non-monetary consideration means compensation received in kind namely - supply of goods and services in return for provision of services, refraining to do an act in return for provision of service, doing or agreeing to do an act in return for provision of service. Non-monetary consideration also needs to be valued for determining the tax payable on the taxable service and is done according to the provisions of the Service Tax (Determination of Value) Rules 2006.

### **Activity for consideration**

The term 'activity for a consideration' involves an element of contractual relationship wherein the person doing an activity does so at the desire of the person for whom the activity is done in exchange for a consideration. An activity done without such a relationship i.e. without the express or implied contractual reciprocity of a consideration would not be an 'activity for consideration' even though such an activity may lead to accrual of gains to the person carrying out the activity.

For example - An artist performing on a street does an activity without consideration even though passersby may drop some coins in his bowl kept after feeling either rejoiced or merely out of compassion. They are, however, under no obligation to pay any amount for listening to him nor have they engaged him for his services. On the other hand if the same person is called to perform on payment of an amount of money then the performance becomes an activity for a consideration. Grant of pocket money, a gift or reward (which has not been given in terms of reciprocity), amount paid as alimony for divorce would be examples in this category.

Consideration itself pre-supposes a certain level of reciprocity.

### **By a person for another**

The term 'provided by one person to another' means that services provided by a person to self are outside the ambit of taxable service. For example - service provided by one branch of a company to another or to its head office or vice-versa.

But there are two exceptions to this rule namely -

- an establishment of a person located in taxable territory and another establishment of such person located in non-taxable territory are treated as establishments of distinct persons (Sec.66A(2))
- an unincorporated association or body of persons and members thereof are also treated as distinct persons (explanation to Sec.65)

For example, services provided by a club to its members and services provided by the branch office of a multinational company to the headquarters of the multi-national company located outside India would be taxable provided other conditions relating to taxability of service are satisfied.

### **Meaning of Person**

According to Sec.65B(37), person includes, -

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a society,
- (v) a limited liability partnership,
- (vi) a firm
- (vii) an association or body of individuals, whether incorporated or not,
- (viii) Government,
- (ix) a local authority, or
- (x) every artificial juridical person, not falling within any of the preceding sub-clauses;

**Transfer of title in goods or immovable property does not constitute service**

Mere transfer of title in goods or immovable property by way of sale, gift or in any other manner for a consideration does not constitute service. Goods has been defined in section 65B of the Act as 'every kind of moveable property other than actionable claims and money; and includes securities, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under contract of sale'. Immovable property has not been defined in the Act. Therefore the definition of immovable property in the General Clauses Act, 1897 will be applicable which defines immovable property to include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

'Transfer of title' means change in ownership. Mere transfer of custody or possession over goods or immovable property where ownership is not transferred does not amount to transfer of title. For example giving the property on rent or goods for use on hire would not involve a transfer of title.

A transaction which in addition to a transfer of title in goods or immovable property involves an element of another activity carried out or to be carried out by the person transferring the title would not be out rightly excluded from the definition of service. Such transactions are liable to be treated as follows-

If two transactions, although associated, are two discernibly separate transactions then each of the separate transactions would be assessed independently. In other words the discernible portion of the transaction which constitutes, let's say, a transfer of title in goods, would be excluded from the definition of service by operation of the said exclusion clause while the service portion would be included in the definition of service. For example a builder carrying out an activity for a client wherein a flat is constructed by the builder for the client for which payments are received in installments and on completion of the construction the title in the flat is transferred to the client involves two elements namely provision of construction service and transfer of title in immovable property. The two activities are discernibly separate. The activity of construction carried out by the builder would, therefore, be a service and the activity of transfer of title in the flat would be outside the ambit of service.

### **Transactions only in money or actionable claims does not constitute service**

Deposits in or withdrawals from a bank account, advancing or repayment of principal sum on loan to someone or conversion of currency note to coins to the extent of amount received etc will not constitute service.

Investment of funds by a person with another for which the return on such investment is returned or repatriated to the investors without retaining any portion of the return on such investment of funds is a transaction only in money. However, if a commission is charged or a portion of the return is retained as service charges, then such commission or portion of return is out of the purview of transaction only in money and hence taxable.

According to Section 3 of the Transfer of Property Act, 1893, actionable claims means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent. Unsecured debts, right to participate in the draw to be held in a lottery are examples of actionable claims.

### **Deemed Sales does not constitute service**

Activity to be taxable should not constitute merely a transfer, delivery or supply of goods which is deemed to be a sale of goods within the meaning of clause (29A) of article 366 of the Constitution.

The six categories of deemed sales as defined in article 366(29A) of the Constitution are -

- i. transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
- ii. transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- iii. delivery of goods on hire-purchase or any system of payment by installments;

- iv. transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
- v. supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;
- vi. supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration.

### **Provision of service by an employee to the employer**

Provision of service by an employee to the employer is outside the ambit of service. Only services that are provided by the employee to the employer in the course of employment are outside the ambit of services. Services provided outside the ambit of employment for a consideration would be a service. For example, if an employee provides his services on contract basis to an associate company of the employer, then this would be treated as provision of service. Services provided on contract basis i.e. principal-to-principal basis are not services provided in the course of employment. Amounts paid by the employer to the employee for premature termination of a contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment. Hence, amounts so paid would not be chargeable to service tax. However any amount paid for not joining a competing business would be liable to be taxed being paid for providing the service of forbearance to act.

### **Overview of the New System of Taxation of Services**

Budgetary changes relating to service tax this year are aimed at addressing a number of basic issues: simplicity and certainty in tax processes, neutrality of business to tax by mitigating cascading, encouraging exports,

optimizing compliance. And these are largely driven by the desire to create the required setting for the eventual launch of GST in a far more familiar environment.

Clauses 143 to 145 of the Finance Bill, 2012 cover the legislative changes relating to Service Tax. Changes have also been made in the rules as well as exemptions.

The changes are as follows –

- The rate of service tax is being restored to the statutory rate of 12% - same as goods-and Notification No. 8/2009-ST dated February 24, 2009 reducing the rate to 10% has been rescinded effective April 1, 2012.
- The rate for Cenvat reversal for exempt services has been revised likewise from 5% to 6% in Rule 6(3) of Cenvat Credit Rules (CCR), 2004.
- Taxation will be based on what is popularly known as “Negative List of Services”.
- The word “service” is defined in clause (44) of the new section 65B.
- The new charging section is contained in section 66B and levies taxes on all services, other than those in the negative list, provided or agreed to be provided in the taxable territory by one person to another.
- Introduction of the Place of Provision of Services Rules, 2012 which will replace the existing Export of Services Rules, 2005 and the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006.
- Certain changes introduced in the abatements.
- New Section 72A introduced for audit relevant for service tax purposes.
- New reverse charge mechanism introduced.

- Amendments made to Point of Taxation Rules, 2011.

The new sections that have been inserted in the Finance Act –

- Section 65B – Definitions/ Interpretation of various Terms
- Section 66B – Charge of Service Tax
- Section 66C – Determination of Place of Provision of Service
- Section 66D – Negative list of Services
- Section 66E – Declared services
- Section 66F – Principles of interpretation of specified description of Services or bundled Services

The old sections that will cease to apply but will remain relevant in respect of services provided prior to the coming into force of the new provisions are –

- Section 65 – Definition of Taxable Service
- Section 65A – Classification of Taxable service
- Section 66 – Charge of Section Tax
- Section 66A – Charge of Service Tax on Services received from outside India

### **Negative list of Services**

In terms of Section 66B of the Act, service tax will be leviable on all services provided in the taxable territory by a person to another for a consideration other than the services specified in the negative list. The services specified in the negative list therefore go out of the ambit of chargeability of service tax. The negative list of service is specified in the Act itself in Section 66D. Movement towards the negative list will result in reducing nearly 290 definitions and descriptions in the Act to 54, and the exemptions from the existing 88 to 10.

A negative list of services implies two things: firstly, a list of services which will not be subject to service tax; secondly, other than the services mentioned in the negative list, all other services will become taxable which fall within the definition of the 'supply of services'. This can be contrasted from the present method of taxation that has detailed description for each taxable service and all other unspecified services are not liable to tax.

### **Negative list of services**

- 1) Services by Government or a local authority excluding the following services to the extent they are not covered elsewhere:
  - i. services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government;
  - ii. services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
  - iii. transport of goods or passengers; or
  - iv. support services, other than services covered under clauses (i) to (iii) above, provided to business entities.
- 2) Services by the Reserve bank of India.
- 3) Services by a foreign diplomatic mission located in India.
- 4) Services relating to agriculture or agricultural produce by way of -
  - i. agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;
  - ii. supply of farm labour;
  - iii. processes carried out at an 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 make it only marketable for the primary market;

- iv. renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
  - v. loading, unloading, packing, storage or warehousing of agricultural produce;
  - vi. agricultural extension services;
  - vii. services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.
- 5) Trading of goods.
- 6) Any process amounting to manufacture or production of goods.
- 7) Selling of space or time slots for advertisements other than advertisements broadcast by radio or television.
- 8) Service by way of access to a road or a bridge on payment of toll charges.
- 9) Betting, gambling or lottery.
- 10) Admission to entertainment events or access to amusement facilities.
- 11) Transmission or distribution of electricity by an electricity transmission or distribution utility.
- 12) Services by way of -
- i. pre-school education and education up to higher secondary school or equivalent;
  - ii. education as a part of a curriculum for obtaining a qualification recognized by law;
  - iii. education as a part of an approved vocational education course.

- 13) Services by way of renting of residential dwelling for use as residence;
- 14) Services by way of -
  - i. extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
  - ii. inter-se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;
- 15) Service of transportation of passengers, with or without accompanied belongings, by -
  - i. a stage carriage;
  - ii. railways in a class other than -
    - a) first class; or
    - b) an air conditioned coach;
  - iii. metro, monorail or tramway;
  - iv. inland waterways;
  - v. public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
  - vi. metered cabs, radio taxis or auto rickshaws;
- 16) Services by way of transportation of goods -
  - i. by road except the services of -
    - a) a goods transportation agency; or
    - b) a courier agency;
  - ii. by an aircraft or a vessel from a place outside India up to the customs station of clearance in India; or
  - iii. by inland waterways;

- 17) Funeral, burial, crematorium or mortuary services including transportation of the deceased.

## **Mega Exemption**

The following taxable services have been exempt from the whole of service tax leviable thereon vide mega exemption notification No.25 of 2012:-

1. Services provided to the United Nations or a specified international organization;
2. Health care services by a clinical establishment, an authorised medical practitioner or para-medics;
3. Services by a veterinary clinic in relation to health care of animals or birds;
4. Services by an entity registered under section 12AA of the Income tax Act, 1961 by way of charitable activities;
5. Services by a person by way of -
  - a. renting of precincts of a religious place meant for general public; or
  - b. conduct of any religious ceremony;
6. 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;

7. 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 the Drug Controller General of India;
8. Services by way of training or coaching in recreational activities relating to arts, culture or sports;
9. 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;
10. Services provided to a recognised sports body by-
  - a. an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body;
  - b. another recognised sports body;
11. Services by way of sponsorship of sporting events organised -
  - a. by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any 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 or Special Olympics Bharat;
  - c. by Central Civil Services Cultural and Sports Board;
  - d. as part of national games, by Indian Olympic Association; or
  - e. under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme;
12. 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;
13. 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 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
  - e. a structure meant for funeral, burial or cremation of deceased;
14. 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 metres 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. mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;
15. 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 relating to original literary, dramatic, musical, artistic works or cinematograph films;
  16. 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;
  17. Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;
  18. 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 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 licence to serve alcoholic beverages;
  20. 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. foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or
  - j. chemical fertilizer and oilcakes;
21. 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. 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;
23. 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;
24. Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;
25. 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;

26. Services of general insurance business provided under following schemes

- a. Hut Insurance Scheme;
  - b. Cattle Insurance under Swarnajaynti 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;
  - n. Rashtriya Swasthya Bima Yojana; or
  - o. Coconut Palm Insurance Scheme;
27. 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;  
("Incubatee" means an entrepreneur located within the premises of a Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognised 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. 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;
29. Services by the following persons in respective capacities –
- a. sub-broker or an authorised person to a stock broker;
  - b. authorised 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. 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 upto 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;
- 31. Services by an organiser to any person in respect of a business exhibition held outside India;
  - 32. Services by way of making telephone calls from -
    - a. departmentally run public telephone;
    - b. guaranteed public telephone operating only for local calls; or
    - c. free telephone at airport and hospital where no bills are being issued;
  - 33. Services by way of slaughtering of bovine animals;
  - 34. Services received from a provider of service located in a non-taxable territory by-
    - a. Government, a 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 purposes of providing charitable activities; or
    - c. a person located in a non-taxable territory;
  - 35. Services of public libraries by way of lending of books, publications or any other knowledge- enhancing content or material;
  - 36. Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948;
  - 37. Services by way of transfer of a going concern, as a whole or an independent part thereof;
  - 38. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets;
  - 39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.
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## About the Author

### **Rajkumar S. Adukia**

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*Mr. Rajkumar S Adukia is an eminent business consultant, academician, writer, and speaker. A senior partner of Adukia & Associates he has authored more than 34 books on a wide range of subjects. His books on IFRS namely, "Encyclopedia on IFRS (3000 pages) and The Handbook on IFRS (1000 pages) has served number of professionals who are on the lookout for a practical guidance on IFRS. The book on "Professional Opportunities for Chartered Accountants" is a handy tool and ready referencer to all Chartered Accountants.*

*In addition to being a Chartered Accountant, Company Secretary, Cost Accountant, MBA, Dip IFR (UK), Mr. Adukia also holds a Degree in Law and Diploma in Labor Laws. He has been involved in the activities of the Institute of Chartered Accountants of India (ICAI) since 1984 as a convenor of Kalbadevi CPE study circle. He was the Chairman of the Western Region of Institute of Chartered Accountants of India in 1997 and has been actively involved in various committees of ICAI. He became a member of the Central Council in 1998 and ever since he has worked tirelessly towards knowledge sharing, professional development and enhancing professional opportunities for members. He is a regular contributor to the various committees of the ICAI. He is currently the Chairman of Committee for Members in Industry and Internal Audit Standard Board of ICAI.*

*Mr. Adukia is a rank holder from Bombay University. He did his graduation from Sydenham College of Commerce & Economics. He received a Gold Medal for highest marks in Accountancy & Auditing in the Examination. He passed the Chartered Accountancy with 1st Rank in Inter CA & 6th Rank in Final CA, and 3rd Rank in Final Cost Accountancy Course in 1983. He started his practice as a Chartered Accountant on 1st July 1983, in the three decades following which he left no stone unturned, be it academic expertise or professional development. His level of knowledge, source of information, professional expertise spread across a wide range of subjects has made him a strong and sought after professional in every form of professional assignment.*

*He has been coordinating with various professional institutions, associations' universities, University Grants Commission and other educational institutions. Besides he has actively participated with accountability and standards-setting organizations in India and at the international level. He was a member of J.J. Irani committee which drafted Companies Bill 2008. He is also member of Secretarial Standards Board of ICSI. He represented ASSOCHAM as member of Cost Accounting Standards Board of ICWAI. He was a member of working group of Competition Commission of India, National Housing Bank, NABARD, RBI, CBI etc.*

*He has served on the Board of Directors in the capacity of independent director at BOI Asset management Co. Ltd, Bharat Sanchar Nigam Limited and SBI Mutual Funds Management Pvt Ltd. He was also a member of the London Fraud Investigation Team.*

*Mr. Rajkumar Adukia specializes in IFRS, Enterprise Risk Management, Internal Audit, Business Advisory and Planning, Commercial Law Compliance, XBRL, Labor Laws, Real Estate, Foreign Exchange Management, Insurance, Project Work, Carbon Credit, Taxation and Trusts. His clientele include large corporations, owner-managed companies, small manufacturers, service businesses, property management and construction, exporters and importers, and professionals. He has undertaken specific assignments on fraud investigation and*

*reporting in the corporate sector and has developed background material on the same.*

*Based on his rich experience, he has written numerous articles on critical aspects of finance-accounting, auditing, taxation, valuation, public finance. His authoritative articles appear regularly in financial papers like Business India, Financial Express, Economic Times and other professional / business magazines. He has authored several accounting and auditing manuals. He has authored books on vast range of topics including IFRS, Internal Audit, Bank Audit, Green Audit, SEZ, CARO, PMLA, Antidumping, Income Tax Search, Survey and Seizure, Real Estate etc. His books are known for their practicality and for their proactive approaches to meeting practice needs.*

*Mr. Rajkumar is a frequent speaker on trade and finance at seminars and conferences organized by the Institute of Chartered Accountants of India, various Chambers of Commerce, Income Tax Offices and other Professional Associations. He has also lectured at the S.P. Jain Institute of Management, Intensive Coaching Classes for Inter & Final CA students and Direct Taxes Regional Training Institute of CBDT. He also develops and delivers short courses, seminars and workshops on changes and opportunities in trade and finance. He has extensive experience as a speaker, moderator and panelist at workshops and conferences held for both students and professionals both nationally and internationally.. Mr. Adukia has delivered lectures abroad at forums of International Federation of Accountants and has travelled across countries for professional work.*

**Professional Association:** *Mr. Rajkumar S Adukia with his well chartered approach towards professional assignments has explored every possible opportunity in the fields of business and profession. Interested professionals are welcome to share their thoughts in this regard.*