

SERVICE TAX – THE NEW SYSTEM OF TAXATION OF SERVICES



By



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1. INTRODUCTION

It is said that in matters relating to taxes, questions rarely change, but the answers do. Budget 2012 has, however, changed a number of questions relating to service tax.

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 1st July 2012.

1.1. What is Service Tax?

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.

The provisions relating to Service Tax were brought into force with effect from 1st July 1994. It extends to the whole of India except the state of Jammu & Kashmir. The services, brought under the tax net in the year 1994-95 were:

- (1) Telephone
- (2) Stockbroker
- (3) General Insurance

Thereafter the Finance Acts of the forthcoming years extended the scope of service tax and covered a large number of services. By 2012, there were about 128 taxable services.

1.2. 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.

2. WHAT IS THE MEANING OF SERVICE?

Service was not defined prior to 1st 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(BB)** 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.

3. HISTORY OF SERVICE TAX IN INDIA

The levy of service tax can be traced back to recommendations made in early 1990s by the Tax Reforms Committee headed by Professor Dr.Raja J. Chelliah. The Committee recommended imposition of tax on selected services.

Based on the above recommendations (after certain modifications), Dr.Manmohan Singh, the Union Finance Minister, in his budget speech for the year 1994-95 introduced the new concept of service tax and stated that “there is no sound reason for exempting services from taxation, when goods are taxed and many countries treat goods and services alike for tax purposes. The Tax Reforms Committee has also recommended imposition of tax on services as a measure for broadening the base of indirect taxes. I, therefore propose to make a modest effort in this direction by imposing a tax on services of telephones, non-life insurance and stock brokers.” Thus initially service tax was imposed on 3 services.

Successive finance ministers widened the service tax net in their budgets. As on 2012, there were about 128 services in the net of service tax. The number of taxable services has also not only increased, the rate of service tax which was 5% in the year 1994 has also taken a leap to the 12%. The tax collections have also grown manifold since 1994-95 i.e. from Rs.410 crores in 1994-95 to Rs. 97,389 crore in 2011-12.

3.1. Constitutional provisions behind levy of Service Tax

Article 265 of the Constitution lays down that no tax shall be levied or collected except by the authority of law. Schedule VII divides this subject into three categories-

- a) Union list (only Central Government has power of legislation)
- b) State list (Only State Government has power of legislation)
- c) Concurrent list (both Central and State Government can pass legislation)

To enable parliament to formulate principles for determining the modalities of levying the Service Tax by the Central Govt. & collection of the proceeds there of by the Central

Govt. & the State, the amendment vide constitution (95th amendment) Act, 2003 was made. Consequently, new article 268 A was inserted for Service Tax levy by Union Govt., collected and appropriated by the Union Govt., and amendment of seventh schedule to the constitution, in list I-Union list after entry 92B, entry 92C was inserted for taxes on services.

4. 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 are contained in Chapter V of the Finance Act, 1994.

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

Chapter VA deals with advance rulings.

iii. Service Tax Rules, 1994

Service tax Rules deal 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

These Rules deal 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

These Rules provide for registration by certain category of persons.

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

These Rules prescribe the manner in determining the value of taxable services in certain cases.

viii. Dispute Resolution Scheme Rules, 2008

According to these Rules, 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

These Rules deal 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. These Rules 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

These Rules deal 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

These rules have 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

These Rules specify 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

5. 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

6. NEGATIVE LIST

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.

What is a negative list?

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. The latter method of taxation is also referred to as taxation by way of a positive list.

The selective taxation of services by way of incremental additions over the years served well in the past in acclimatizing both the tax payers and tax administrators to the new levy. However, with considerable expansion of the list, the administrative challenge has multiplied manifold. Service tax has now gained considerable maturity and many practitioners of the subject believe that incremental approach to taxation is not suitable for providing a stable system for taxation of services that is at the threshold of getting subsumed into a comprehensive GST.

Some of the considerations that have gone into the negative list of services are –

- (i) Administrative considerations: taxation of Government, difficult to tax sectors e.g. margin-based financial services

- (ii) Under contractual obligations: Specified international bodies and diplomatic missions
- (iii) Welfare considerations: welfare of vulnerable sections of society, essential education, public health; public transport, services by non-profit entities, religious services, promotion of art, culture and sports
- (iv) Economic considerations: transport of export goods, services meant for agriculture, animal husbandry and infrastructure development
- (v) Explicit activities in the nature of services, which are within the taxing powers of States: betting and lotteries, tolls.

About the positive list

Positive list had the advantage of definitiveness, which was an essential pre-requisite for a good taxation law. However this very advantage started getting eroded as the number of services increased. The possibilities of overlaps amongst definitions lead to innumerable administrative issues resulting in litigation and higher compliance costs. Some of the definitions were so wide that they lead to unintended taxation requiring either clarifications or exemptions.

Many services that were outside the tax net invariably lead to unintended exemptions, thus keeping the tax base narrow with all the accompanying consequences. Such unintended exemptions at intermediate stages lead to breakage of the input tax chain adding costs for the tax-payers and end-users. Such exclusions also lead to distortion of economic neutrality across similar or substitute supplies e.g. road vs. rail transportation. But the significant advantage of the positive list was that it had already attained a certain level of awareness and stability in administration. The categorizations of services was also useful for a variety of purposes e.g. import and export rules, Cenvat Rules and Point of Taxation Rules or where ever any differential treatment was required to be given to any service as also for statistical purposes.

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.

Services provided by Government

Most of the services provided by government are provided without a specific charge to the recipient and thus shall not be liable to tax.

Most 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.

Are various corporations formed under Central Acts or State Acts or various government companies registered under the Companies Act, 1956 or autonomous institutions set up by a special Acts covered under the definition of 'Government'?

No. 'Government' would 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 about services provided by the Department of Posts?

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 are excluded from the negative list. Therefore, the following services provided by Department of Posts are not liable to service tax.

- Basic mail services known as postal services such as post card, inland letter, book post, registered post provided exclusively by the Department of Posts to meet the universal postal obligations.

Transfer of money through money orders, operation of savings accounts, issue of postal orders, pension payments and other such services.

Agency services carried out on payment of commission on non government business by the Department of Posts are excluded from the negative list entry relating to services provided by Government or a local authority.

What is the meaning of “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 shall include advertisement and promotion, construction or works contract, renting of movable or immovable property, security, testing and analysis.

Thus services which are provided by government in terms of their sovereign right to business entities, and which are not substitutable in any manner by any private entity, are not support services e.g. grant of mining or licensing rights or audit of government entities established by a special law, which are required to be audited by CAG under section 18 of the Comptroller and Auditor-General’s (Duties, Powers and Conditions of Service) Act, 1971 (such services are performed by CAG under the statute and cannot be performed by the business entity themselves and thus do not constitute support services.)

Are services provided by Police or security agencies to PSUs or corporate entities or sports events held by private entities taxable?

Yes. Services provided by government security agencies are covered by the main portion of the definition of support service as similar services can be provided by private entities. In any case it is also covered by the inclusive portion of the definition. However the tax will be actually payable on reverse charge by the recipient.

Services provided by the Reserve Bank of India

All services provided by the Reserve Bank of India are covered in the negative list but 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. Services provided by banks to RBI would be taxable as these are neither in the negative list nor covered in any of the exemptions.

Services provided 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.

Services relating to agriculture or agricultural produce

The following services relating to agriculture or agricultural produce are covered in the negative list –

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

- renting of agro machinery or vacant land with or without a structure incidental to its use;
- loading, unloading, packing, storage and warehousing of agricultural produce;
- agricultural extension services;
- services provided by any Agricultural Produce Marketing Committee or Board or services provided by commission agent for sale or purchase of agricultural produce;

Meaning of agriculture

Agriculture means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products. (Sec.65B(3) of Finance Act)

Meaning of agricultural produce

Agricultural produce means any produce of agriculture on which either or no further 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. (Sec.65B(5) of Finance Act)

What are the activities that may be covered under agriculture and agricultural produce?

- Activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry will be covered under the definition of agriculture.
- Plantation crops like rubber, tea or coffee will be covered under agricultural produce.

- Making of potato chips or tomato ketchup etc will not be covered under agricultural produce because they are manufactured through processes that alter the essential characteristics of farm produce, namely potatoes and tomatoes.
- Cleaning of wheat would be covered in the negative list entry even if the same is done outside the farm.
- Shelling of paddy would not be covered in the negative list entry relating to agriculture as this process is never done on a farm but in a rice sheller normally located away from the farm.
- If shelling is done by way of a service i.e. on job work then the same would be covered under the exemption relating to 'carrying out of intermediate production process as job work in relation to agriculture. (This is covered under the mega notification.)
- Agricultural products like cereals, pulses, copra and jaggery will be covered in the ambit of 'agricultural produce' even if certain amount of processing is done by a person other than a cultivator or producer.
- Processes of grinding, sterilizing, extraction packaging in retail packs of agricultural products, which make the agricultural products marketable in retail market, will not be covered in the negative list, since only the processes which make the agricultural produce marketable in the primary market are covered in the negative list.
- If vacant land has a structure like storage shed or a green house built on it which is incidental to its use for agriculture then its lease would be covered under the negative list entry.

What is agricultural extension service?

Agricultural extension means application of scientific research and knowledge to agricultural practices through farmer education or training. (Sec.65B(4) of Finance Act)

What are the services provided by Agricultural Produce Marketing Committee or Board?

Agricultural Produce Marketing Committee or Board means any committee or board constituted under a state law for the time being in force for the purpose of regulating the marketing of agricultural produce. (Sec.65B(6) of Finance Act)

Agricultural Produce Marketing Committees or Boards are set up under a State Law for purpose of regulating the marketing of agricultural produce. Such marketing committees or boards have been set up in most of the States and provide a variety of support services for facilitating the marketing of agricultural produce by provision of facilities and amenities like, sheds, water, light, electricity, grading facilities etc. They also take measures for prevention of sale or purchase of agricultural produce below the minimum support price. APMCs collect market fees, license fees, rents etc. Services provided by such Agricultural Produce Marketing Committee or Board are covered in the negative list. However any service provided by such bodies which is not directly related to agriculture or agricultural produce will be liable to tax e.g. renting of shops or other property.

Trading of goods

Forward contracts will be covered under trading of goods as these are contracts which involve transfer of title in goods on a future date at a pre-determined price.

The services provided by commission agent or a clearing and forwarding agent are not in the nature of trading of goods. These are auxiliary for trading of goods. In terms of the provision of clause (1) of section 66F reference to a service does not include reference to a service used for providing such service. Moreover the title in the goods never passes on to such agents to come within the ambit of trading of goods.

Services provided by commodity exchanges or clearing houses or agents will not be covered in the negative list entry relating to trading of goods.

Processes amounting to manufacture or production of goods

Process amounting to manufacture or production of goods means a process on which duties of excise are leviable under Section 3 of the Central Excise act, 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 for the time being in force. (Sec.65B(4) of Finance Act)

It therefore covers manufacturing activity carried out on contract or job work basis, which does not involve transfer of title in goods, provided duties of excise are leviable on such processes under the Central Excise Act, 1944 or any of the State Acts.

Will service tax be leviable on processes which do not amount to manufacture or production of goods?

Service tax would be levied on processes, unless otherwise specified in the negative list, not amounting to manufacture or production of goods carried out by a person for another for consideration. Some of such services relating to processes not amounting to manufacture are covered in Clause 30 of the mega notification.

“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.

Will service tax be leviable on processes on which Central Excise Duty is leviable under the Central Excise Act, 1944 but are otherwise exempted?

If Central Excise duty is leviable on a particular process, as the same amounts to manufacture, then such process would be covered in the negative list even if there is a central excise duty exemption for such process. However if central excise duty is wrongly paid on a certain process which does not amount to manufacture, with or without an intended benefit, it will not save the process on this ground.

Selling of space or time slots for advertisements other than advertisements broadcast by radio or television

Advertisement means any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person. (Sec.65B(2) of Finance Act)

What kind of sale of space is not taxable?

- Sale of space for advertisement in print media is not taxable.
- Sale of space for advertisement in bill boards, organization. public places (including stadia), buildings, conveyances, cell phones, automated teller machines, internet are not taxable.
- Aerial advertising is also not taxable.

What kind of sale of space is taxable?

- Sale of space or time for advertisement to be broadcast on radio or television.
- Sale of time slot by a broadcasting organization.
- Services provided by advertisement agencies relating to making or preparation of advertisements.
- Commissions received by advertisement agencies from the broadcasting or publishing companies for facilitating business, which may also include some portion for the preparation of advertisement.

- Canvassing advertisement for publishing on a commission basis by persons/agencies

Access to a road or a bridge on payment of toll charges

Access to a road or a bridge on payment of toll charges will also cover National Highways and State Highways.

Will collection charges or service charges paid to any toll collecting agency be covered in the negative list?

The negative list entry only covers access to a road or a bridge on payment of toll charges. Services of toll collection on behalf of an agency authorized to levy toll are in the nature of services used for providing the negative list services. As per the principle laid down in section 66F(1) of the Finance Act the reference to a service by nature or description in the Act will not include reference to a service used for providing such service.

Betting, gambling or lottery

Betting or gambling means 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. (Sec.65B(15) of Finance Act)

Auxiliary services that are used for organizing or promoting betting or gambling events are not covered in the negative list.

Entry to Entertainment Events and Access to Amusement Facilities

Entertainment event means an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, by way of exhibition of cinematographic film, circus, concerts, sporting events, pageants, award functions, dance, musical or theatrical performances including drama, ballets or any such event or programme. (Sec.65B(24) of Finance Act)

Amusement facility means 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 places but does not include a place within such facility where other services are provided. (Sec.65B(9) of Finance Act)

Whether a cultural programme, drama or a ballet is held in an open garden and not in a theatre would qualify as an entertainment event?

A cultural programme, drama or a ballet performed in the open does not cease to be a theatrical performance provided it is performed in the manner it is performed in a theatre, i.e. before an audience.

Will a standalone ride set up in a mall qualify as an amusement facility?

A standalone amusement ride in a mall is also a facility in which fun or recreation is provided by means of a ride. Access to such amusement ride on payment of charges will be covered in the negative list.

Will entry to video parlors exhibiting movies played on a DVD player and displayed through a TV screen be covered in the entry?

Such exhibition is an exhibition of cinematographic film and hence is covered under the negative list.

Will membership of a club qualify as access to an amusement facility?

A club does not fall in the definition of an amusement facility.

Will auxiliary services provided by a person, like an event manager, for organizing an entertainment event or by an entertainer for providing the entertainment to an entertainment event organizer be covered in this entry?

Such services are in the nature of services used for providing the service specified in this negative list entry and would not be covered in the ambit of such specified service.

Transmission or distribution of electricity

Electricity transmission or distribution utility means the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility notified under the Electricity Act, 2003; or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central or State Government or as the case may be, the State Government. (Sec.65B(23) of Finance Act)

Whether charges collected by a developer or a housing society for distribution of electricity within a residential complex covered under the negative list?

The developer or the housing society would be covered under this entry only if it is entrusted with such function by the Central or a State government or if it is, for such distribution, a distribution licensee licensed under the Electricity Act, 2003.

Whether services provided by way installation of gensets or similar equipment by private contractors for distribution of electricity covered under the negative list?

It does not cover services provided by private contractors. Moreover the services provided are not by way of transmission or distribution of electricity.

Services relating to education

The following services relating to education are specified in the negative list –

- pre-school education and education up to higher secondary school or equivalent
- education as a part of a prescribed curriculum for obtaining a qualification recognized by law for the time being in force;
- education as a part of an approved vocational education course.

Only such educational services that are related to delivery of education as ‘a part’ of the curriculum that has been prescribed for obtaining a qualification prescribed by law is covered in the negative list. To be in the negative list the service should be delivered as part of curriculum. Conduct of degree courses by colleges, universities or institutions

which lead grant of qualifications recognized by law would be covered. Qualification recognised by a law of a foreign country will not be covered as the course should be recognised by an Indian law.

Services provided by international schools giving certifications like IB also are covered in the negative list.

Training given by private coaching institutes would not be covered as such training does not lead to grant of a recognized qualification.

Private tutors are not covered in the negative list, however they can avail the benefit of threshold exemption.

What about services provided by boarding schools?

Boarding schools provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of bundled services if the charges for education and lodging and boarding are inseparable. Their taxability will be determined in terms of the principles laid down in section 66F of the Act. Such services in the case of boarding schools are bundled in the ordinary course of business. Therefore the bundle of services will be treated as consisting entirely of such service which determines the dominant nature of such a bundle. In this case since dominant nature is determined by the service of education and other dominant service of providing residential dwelling is also covered in a separate entry of the negative list, hence the entire bundle would be treated as a negative list service.

Auxiliary services provided by educational institutions

Auxiliary services provided by educational institutions are covered under the mega notification.

The following activities are auxiliary educational services:

- any services relating to imparting any skill, knowledge or education, or
- development of course content, or

- any other knowledge – enhancement activity, whether for the students or the faculty, or
- any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including following services relating to:
 - admission to such institution
 - conduct of examination
 - catering for the students under any mid-day meals scheme sponsored by Government
 - transportation of students, faculty or staff of such institution.

If a course in a college leads to dual qualification only one of which is recognized by law would the service provided by the college by way of such education be covered in this entry?

Provision of dual qualifications is in the nature of two separate services as the curriculum and fees for each of such qualifications are prescribed separately. Service in respect of each qualification would, therefore, be assessed separately.

Placement services provided to educational institutions

Placement services provided to educational institutions for securing job placements for the students does not fall in the category of exempt services provided to educational institutions.

In the same way fees charged by educational institutions from prospective employers for recruiting candidates through campus interviews are not covered in the negative list.

Renting of residential dwelling for use as residence

Renting means 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 of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property. (Sec.65B(41) of the Finance Act)

Residential dwelling has not been defined in the Act, but it is usually considered as any residential accommodation, but does not include hotel, guest house, lodge, house boat, inn, motel or any other similar place for temporary stay.

The following will not be covered under the negative list -

- A residential house taken on rent used only or predominantly for commercial or non-residential use
- if a house is given on rent and the same is used as a hotel or a lodge
- rooms in a hotel or a lodge are let out whether or not for temporary stay
- furnished flats given on rent for temporary stay for different persons over a period of time
- government department allots houses to its employees and charges a license fee (covered under the negative list of service relating to services provided by government)

Financial services

There are several services provided by banks and financial institutions relating to lending or borrowing of money or investments in money. In fact a variety of instruments are used for these services. Transactions in such instruments have to be examined with reference to the definition of service given in Section 65B(44) of the Finance Act and the negative list of services, to determine whether such transactions would be chargeable to service tax. The following should be considered to determine the taxability of financial transactions –

- a) The definition of 'service' excludes activities that constitute only transactions in money or actionable claims. 'Money' has been defined in clause (33) of section 65B to include instruments like cheques, drafts, pay orders, promissory notes, letters of credit etc. Therefore activities that are only transactions in such instruments would be outside the definition of service. This would include transactions in Commercial Paper ('CP') and Certificate of Deposit ('CD') (on the understanding of being in the nature of promissory notes), issuance of drafts or letters of credit etc.
- b) Transaction in money does not include any activity in relation to money by way of its use or 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. While mere transactions in money are outside the ambit of service, any activity related to a transaction in money by way of its use or conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination would not be treated as a transaction in money if a separate consideration is charged for such an activity. While the transaction in money, per-se, would be outside the ambit of service the related activity, for which a separate consideration is charged, would not be treated as a transaction of money and would be chargeable to service tax if other elements of taxability are present therefore service tax would be levied on service charges normally charged for various transactions in money including charges for making drafts, letter of credit issuance charges, service charges relating to issuance of CDs/CPs etc.
- c) Activities that constitute only transactions in 'goods' are also excluded from the definition of service. Goods include securities and securities include derivatives. Hence transactions in instruments like interest rate swaps and foreign exchange swaps would be excluded from the definition of 'service' as such instruments are derivatives, being securities, based on contracts of difference. Since only transfer of title in securities is excluded from the definition of 'service' any attendant service charges or fees would be chargeable to service tax.

Services of extending deposits, loans or advances as far as the consideration is represented by way of interest or discount

It will cover any facility by which an amount of money is lent or allowed to be used or retained on payment of what is commonly called the time value of money which could be in the form of an interest or a discount. This entry would not cover investments by way of equity or any other manner where the investor is entitled to a share of profit.

Services of extending deposits, loans or advances where the consideration is represented by interest or discount will include the following services –

- ✓ Fixed deposits or saving deposits or any other such deposits in a bank or a financial institution for which return is received by way of interest.
- ✓ Providing a loan or overdraft facility or a credit limit facility in consideration for payment of interest.
- ✓ 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.
- ✓ Corporate deposits to the extent that the consideration for advancing such loans or advances are represented by way of interest or discount.

Any charges or amounts collected over and above the interest or discount amounts would represent taxable consideration.

Sale of foreign exchange to general public

Sale and purchase of foreign exchange between banks or authorized dealers of foreign exchange or between banks and such dealers are only covered in the negative list and hence sale of foreign exchange to general public will be taxable.

What about transactions entered into by banks in instruments like repos and reverse repos?

According to Section 45U(c) of the RBI Act, 1934, 'repos' is an instrument for borrowing funds by selling securities with an agreement to repurchase the securities on a mutually agreed future date at an agreed price which includes interest for the funds borrowed.

According to Section 45U(d) of the RBI Act, 1934, 'reverse repos' is an instrument for lending funds by buying securities with an agreement to resell the securities on a mutually agreed future date at an agreed price which includes interest for the funds lent. Repos and reverse repos are financial instruments normally used by banks to borrow from or lend money to RBI. The margins, called the repo rate or reverse repo rate in such transactions are nothing but interest charged for lending or borrowing of money. Thus they have the characteristics of loans and deposits for interest. However they are more appropriately excluded from the definition of service, being the sale and purchase of securities, which are covered under the definition of goods.

Subscription to or trading in Commercial Paper (CP) or Certificates of Deposit (CD)

These are instruments used for lending or borrowing money where in consideration is represented by way of a discount issue or subscription to CPs or CDs and hence would be covered in the negative list entry relating to 'services by way of extending deposits, loans or advances in so far as consideration is represented by way of interest or discount'. But if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, then the same would be considerations for provision of service and chargeable to service tax.

Forward contracts in commodities or currencies

A forward contract is basically an agreement, executed, to purchase or sell a pre-determined amount of a commodity or currency at a pre-determined future date at a pre-determined price. The settlement could be by way of actual delivery of underlying commodity/currency or by way of net settlement of differential of the forward rate over the prevailing market rate on the settlement date.

In a forward contract effectively two contracts are entered into, one for purchase and other for sale at a future date at a pre-determined price. These contracts would be in the nature of transfer in title in goods (in case the forward contract relates to a commodity) or transaction only money (in case the forward contract relates to transaction and

money). Therefore, forward contracts in commodities or currencies would not fall in the ambit of definition of 'service'. But if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, then the same would be considerations for provision of service and chargeable to service tax.

Future contracts

Since future contracts are in the nature of contracts of difference based on the prices of underlying stocks or index of stocks or approved currencies, they would be outside to the ambit of definition of 'service' as being transactions only in transfer of title in derivatives.

Charges for late payment of dues on credit card outstanding

In case of a credit card, issuing entity allows the facility of payment of the purchases made by the card holder within a specified period failing which some charges are levied. The question that arises is whether the credit so extended for this payment is in the nature of a loan or advance for interest.

Interest for delayed payment of any consideration for the sale of goods or provision of service has been specifically excluded from value by rule 6 of valuation rules. Thus ordinarily any interest charged for delayed payment of consideration would have been outside the gambit of service tax. However in the case of credit cards the credit extended is not for the delayed payment of consideration for the provision of services. The services in the case of the credit card are by way of levy of issuing charges or the commission charged from merchants etc. The interest in this case is not for the consideration for the use of the card. Thus the benefit under the valuation rules will not be available to credit card companies.

The other question is whether such credit extended will amount to loans or advances. Loans and advances are meant to signify amounts contractually negotiated as such (loan or advance) and not merely failure to pay an amount at the due date. The exorbitant charges have also no relationship with the prevailing interest for the same

class of creditworthiness and are in the nature of consideration for the services rendered for using the convenience of using the services by way of a credit card and hence taxable.

Services 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 –

- a stage carriage;
- railways in a class other than (i) first class; or (ii) an AC coach;
- metro, monorail or tramway;
- inland waterways;
- public transport, other than predominantly for tourism purpose, in a vessel, between places located in India; and
- metered cabs, radio taxis or auto rickshaws

Services by way of transportation of passengers on a vessel covered in the negative list?

Such transportation by a vessel (of any size) is covered in the negative list since such transportation is between two places located in India and if it is not mainly for tourism purpose.

Normal public ships or other vessels that sail between places located in India would be covered in the negative list entry even if some of the passengers on board are using the service for tourism as predominantly such service is not for tourism purpose. However services provided by leisure or charter vessels or a cruise ship, predominant purpose of which is tourism, would not be covered in the negative list even if some of the passengers in such vessels are not tourists.

Services relating to transportation of goods

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

- by road
- by aircraft or vessel from a place outside India up to the customs station of clearance in India; or
- by inland waterways.

The services of a goods transportation agency and courier agency are excluded from the purview of the negative list. But some services provided by the goods transport agency are exempted under the mega notification –

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

Services provided as agents for inland waterways are in the nature of services used for providing the negative list entry service of transport of goods on inland waterways and would not be covered by the entry in the negative list.

6.1. 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 **servicing 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.

Services provided to international organisations

Services provided to specified international organisations only are exempt under the notification.

"Specified international organization" means an international organization declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply. (Clause 2(zf) of the mega notification)

Some of the specified international organisations are –

1. International Civil Aviation Organisation
2. World Health Organisation
3. International Labor 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
21. Asian Development Bank
22. South Asian Association for Regional Co-operation
23. International Jute Organisation, Dhaka, Bangladesh

Health Care Services

Only the following systems of medicines are recognized systems of medicines in India, which are covered under health care services –

- i. Allopathy
- ii. Yoga
- iii. Naturopathy
- iv. Ayurveda
- v. Homeopathy
- vi. Siddha
- vii. Unani
- viii. Any other system of medicine that may be recognized by central government

Who are paramedics?

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.

Services provided to or by a governmental authority

All services provided to or by a governmental authority are not exempt. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution are exempt. All other services are subjected to service tax if they are not otherwise exempt.

The functions entrusted to a municipality 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.

Services provided to a governmental authority

The following services are exempt –

- Specified services in relation to construction;
- Services 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;
- Services received from a service provider located in a non- taxable territory by such authorities in relation to any purpose other than commerce, industry or any other business or profession.

Charities

“Charitable activities” means activities relating to -

(i) public health by way of -

(a) care or counseling 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) preservation 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. (Clause 2(k) of mega notification)

Religious places/ceremonies

Renting of precincts of a religious place is not taxable if the place is meant for general public. "General public" means the body of people at large sufficiently defined by some common quality of public or impersonal nature. (Clause 2(q) of mega notification)

Conduct of religious ceremonies is also exempt under the mega notification. Religious ceremonies are life-cycle rituals including special religious poojas conducted in terms of religious texts by a person so authorized by such religious texts. Occasions like birth, marriage and death involve elaborate religious ceremonies.

Advocates or arbitral tribunals

Advocates can provide services either as individuals or as firms. Legal services provided by advocates or partnership firms of advocates are exempt from service tax when provided to the following –

- an advocate or partnership firm of advocates providing legal services (same class of persons);
- any person other than a business entity;
- a business entity with a turnover upto rupees ten lakh in the preceding financial year.

In respect of services provided to business entities, with a turnover exceeding rupees ten lakh in the preceding financial year, tax is required to be paid on reverse charge by the business entities. Business entity is defined as 'any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession'. Thus it includes sole proprietors as well. The business entity can, however, take input tax credit of such tax paid in terms of Cenvat Credit Rules, 2004, if otherwise eligible.

This is the same for Arbitral Tribunal also.

Sports

Services provided to a recognized sports body by an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from service tax. Similarly services by a recognized sports body to another are also exempt.

Copyright

Temporary transfer of a copyright relating to original literary, dramatic, musical, artistic work or cinematographic film falling under clause (a) and (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 is exempt. An author having copy right of a book written by him would not be required to pay service tax on royalty amount received from the publisher for publishing the book. A person having the copyright of a cinematographic film would also not be required to pay service tax on the amount received from the film exhibitors for exhibiting the cinematographic film in cinema theatres.

7. TAXABILITY OF SERVICES

Sec.66B of the Finance Act deals with taxability of services or charge of service tax on and after the Finance Act, 2012.

“There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve percent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.”

Hence a taxable service should be –

- ✓ provided or agreed to be provided by a person to another
 - Services which have only been agreed to be provided but are yet to be provided are taxable. Receipt of advances for services agreed to be provided will become taxable before the actual provision of service. Advances that are retained by the service provider in the event of cancellation of contract of service by the service receiver will become taxable as these represent consideration for a service that was agreed to be provided. Further the point of taxation is determined in terms of the Point of Taxation Rules, 2011.
- ✓ in the taxable territory
 - Taxable territory is the territory to which the Act applies i.e. the whole of India other than the State of Jammu and Kashmir. The Place of Provision of Services Rules, 2012 will determine the place of provision of service depending on the nature and description of service.
- ✓ should not be specified in the negative list
 - The negative list of services has been specified in section 66D of the Act.

Determination of taxable service in the absence of a positive list

Earlier, there was a list of services to determine if the service provided is taxable or not. Now it is not so because of the negative listing. Hence the following questions need to be posed by the service provider to determine whether it is a service.

- ❖ Doing an activity for another person?
- ❖ Doing such activity for consideration?
- ❖ The activity does not consist of transfer of title in goods or immovable property; deemed sales; transaction only in money or actionable claims; activity in the nature of court fees for a court or tribunal; service provided by an employee to an employer or any other exempted activity.

If the above questions are answered in the affirmative, then it is considered as a service.

Once it is confirmed that the activity of the person is considered as service, then it needs to be determined whether the service is taxable by posing the following questions.

- ❖ Provided or agreed to provide the service.
- ❖ Provided or agreed to provide the service in the taxable territory.
- ❖ Activity is not entirely covered in the services provided in the negative list of services.

If the above questions are answered in the affirmative, then it is considered as a taxable service.

8. TAXABILITY OF BUNDLED SERVICES

Bundled service means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. (Explanation to Sec.66F of the Finance Act)

Two rules have been prescribed for determining the taxability of such services in sub-section (3) of Section 66F. These provisions are subject to provisions of rule contained in sub-section (2) of S. 66F

Naturally bundled service

If various elements of a bundled service are naturally bundled in the ordinary course of business, it shall be treated as provision of a single service which gives such bundle its essential character.

For example – A 5 star hotel provides a 3 day holiday package with various services like breakfast, local sight-seeing etc. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle, the essential character and would, therefore, be treated as service of providing hotel accommodation.

Not naturally bundled service

If various elements of a bundled service are not naturally bundled in the ordinary course of business, it shall be treated as provision of a service which attracts the highest amount of service tax.

For example - A house is given on rent, one floor of which is to be used as residence and the other for commercial purpose. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Therefore, if a single rent deed is executed it will be treated as a service comprising entirely of such service which attracts highest liability of service tax. In this case renting for use as residence is a negative list service while renting for non-residence use is chargeable to tax. Since the latter category attracts highest liability of service tax amongst the two services bundled together, the entire bundle would be treated as renting of commercial property.

Manner of determining if the services are bundled in the ordinary course of business

This would depend upon the normal practice followed in the business. Such practice adopted in the business can be ascertained from the terms of the contract, perception of the recipient of service, the nature of various services in the bundle, the prevailing practice of majority service provider in a particular business and such other factors.

Of course there is no formula to determine whether a service is naturally bundled in the ordinary course of business and the same has to be examined individually in the backdrop of various factors.

9. DECLARED SERVICES

According to the definition of service in Sec.65B(44) of the Finance Act, service includes a declared service. According to Sec.65B(22) of the Finance Act, declared service means any activity carried out by a person for another person for consideration and declared as such under Section 66E.

The below mentioned 9 activities when carried out by a person for another for consideration would amount to provision of service –

- 1) renting of immovable property;
- 2) 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;
- 3) temporary transfer or permitting the use or enjoyment of any intellectual property right;
- 4) development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software;
- 5) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
- 6) transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods;
- 7) activities in relation to delivery of goods on hire purchase or any system of payment by instalments;
- 8) service portion in execution of a works contract;
- 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.

All services, whether declared or not, which are covered under Section 66B of the Act are taxable if elements of taxability are present. The only purpose behind declaring

activities as service is to bring uniformity in assessment of such activities across the country.

Renting of immovable property

Renting of certain kinds of immovable properties are not taxable, namely –

- renting of vacant land, with or without a structure incidental to its use, relating to agriculture
- renting of residential dwelling for use as residence
- renting out of any property by the Reserve Bank of India
- renting out of any property by a Government or a local authority to a non-business entity.

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

Since there is no condition regarding the law under which an intellectual right should be registered, temporary transfer of a patent registered outside India would also be covered in this entry. However, it will become taxable only if the place of provision of service of temporary transfer of intellectual property right is in taxable territory.

Sale of pre-packaged or canned software is, in the nature of sale of goods and hence not covered under declared services.

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

By virtue of a non-compete agreement one party agrees, for consideration, not to compete with the other in any specified products, services, geographical location or in any other manner. Such action on the part of one person is also an activity for consideration and will be covered by the declared services.

10. POINT OF TAXATION

The Point of Taxation Rules, 2011 has been issued for the purpose of collection of service tax and determination of rate of service tax. The basic idea behind the issue of these Rules is to clarify the levy and collection of service tax particularly in case of change of rate of service tax and imposition of service tax on new services; to link the payment of tax to raising of invoice, provision of service or payment for service, whichever is earlier and to align the service tax provisions with other indirect taxes for smooth transition to proposed Goods and Services Tax (GST) regime.

Important aspects of Point of Taxation Rules

The general principle of Service Tax is that the tax is payable only upon receipt of consideration for the services so rendered. Though the service provider charges service tax on the amount of bill raised on his client, service tax is payable to the Government only on the amount actually received towards value of taxable services. It is, thus, not payable on amounts charged in the bills / invoice but on the amount that is actually received.

But now as per the Rules, service tax will be payable in the following circumstances:

- a) Provision of service; or
- b) Issuance of invoice; or
- c) Receipt of payment/consideration

This means that the service provider will be compelled to pay service tax for which consideration has not been received or not likely to be received, just on the basis of provision of service or issuance of invoice.

Determination of Point of Taxation

Point of taxation means the point in time when a service shall be deemed to have been provided. (Rule 2(e) of Point of Taxation Rules, 2011)

According to Rule 3 of Point of Taxation Rules, 2011, the point of taxation will be determined in the following manner -

- a) the time when the invoice for the service provided or agreed to be provided is issued;
- b) if invoice is not issued within prescribed time period i.e.30 days and 45 days in case of financial sector, of completion of provision of service then the date of completion of service;
- c) the date of receipt of payment, where payment is received before issuance of invoice or completion of service.

Continuous supply of service

Any agreement for service or provision of service for more than 3 months shall qualify as continuous service or as may be notified by the central Government. The following services are notified to be continuous services irrespective of the period for which they are provided:

- Telecommunication services
- Commercial or industrial construction
- Construction of residential complex
- Internet telecommunication services
- Works contract services

Point of Taxation would be the completion of such service as provided under the agreement & shall be deemed to be the date of completion of service.

Actual date of payment

New rule 2A has been introduced by the Point of Taxation (Amendment) Rules, 2012, with a view to rationalize the taxation on the basis of Point of Taxation. Earlier the rules were silent about "What is the actual date of payment".

Now the date of payment shall be earlier of the dates on which the payment is entered in the books of accounts or is credited to the bank account of the person liable to pay tax.

In the following cases the 'date of credit' into the bank alone shall be treated to be date of payment:-

- When there is change in effective rate of tax or service is taxed first time during the period between entry in books and credit in bank.
- Credit in bank is after 4 working days from date of change in effective rate of tax or when service is taxed for the first time.
- Payment is made by way of an instrument which is credited to a bank account.

Determination of point of taxation in case of change of rate of tax

Change in effective rate of tax shall include a change in the portion of value on which tax is payable in terms of a notification issued in the Official Gazette under the provisions of the Act, or rules made thereunder. (Rule 2(ba))

The point of taxation will be determined in the following manner:

- In case a taxable service is provided before the change in effective rate of tax, the date of issue of invoice or the receipt of payment, whichever is earlier.
- In case a taxable service is provided after changing effective rate of tax, the date of issue of invoice or the payment received, whichever is earlier. However, where the invoice is raised after the change in effective rate of tax but payment received before change in effective rate of tax, the point of taxation shall be the date of issue of invoice.

Payment of tax in case of new services

In case of a new levy, no tax is chargeable on services where payment has been received and invoice is issued within a period of 14 days of the date when the service is taxed for the first time.

Point of taxation for the service recipient in case of reverse charge mechanism

Both the service provider and service recipient are governed by the Point of Taxation Rules 2011 in respect of the service provided or received by him. Usually it is the invoice or date of receipt of payment which is the point of taxation for the service provider. However for the service recipient, in terms of rule 7 of the said rules, point of taxation is when he pays for the service. Thus in the case where the invoice is issued in say July 2012 and the service recipient pays for the same in August 2012 the point of taxation for the service provider will be the date of issue of invoice in July 2012. The point of taxation for the service recipient shall be the date of payment in August 2012. The service provider would be required to pay tax (to the extent liability is affixed on him) by 5th/6th August, 2012 or 5th/6th October 2012 depending upon the admissibility of benefit under the proviso to rule 6 of the Service Tax Rules 1994. The service recipient would need to pay tax (to the extent liability is affixed on him) by 5th/6th September 2012.

Point of taxation in case of copyrights, etc

In respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration, the service will be treated as having been provided each time when a payment in respect of such use or the benefit is received by the provider in respect thereof, or an invoice is issued by the provider, whichever is earlier.

Point of taxation in other cases

Where the point of taxation cannot be determined as per these Rules, as the date of invoice or the date of payment or both are not available, then the Central Excise Officer is empowered to determine the point of taxation to the best of his knowledge

11. PLACE OF PROVISION OF SERVICES

The 'Place of Provision of Services Rules, 2012' specifies the manner to determine the taxing jurisdiction for a service. Earlier, the task of identifying the taxing jurisdiction was largely limited in the context of import or export of services. For this purpose rules were formulated which handled the subject of place of provision of services somewhat indirectly, confining to define the circumstances in which a provision of service would constitute import or export.

Henceforth, the new rules will determine the place where a service shall be deemed to be provided, in terms of section 66C of the Finance Act, 2012, read with section 94 (hhh) of Chapter V of the Finance Act, 1994. Under Section 66B, a service is taxable only when, inter alia, it is "provided (or agreed to be provided) in the taxable territory". Thus, the taxability of a service will be determined based on the "place of its provision". The 'Place of Provision of Services Rules, 2012' will replace the 'Export of Services, Rules, 2005' and 'Taxation of Services (Provided from outside India and received in India) Rules, 2006.

These rules are primarily meant for persons who deal in cross-border services. They will also be equally applicable for those who have operations with suppliers or customers in the state of Jammu and Kashmir.

The taxability of a service will be determined based on the place of its provision. For determining the taxability of a service, therefore, one needs to ask the following questions sequentially:-

1. Which rule applies to the service provided specifically? In case more than one rules apply equally, which of these come later in the order given in the rules?
2. What is the place of provision of the service in terms of the above rule?
3. Is the place of provision in taxable territory? If yes, tax will be payable. If not, tax will not be payable.

4. Is the provider 'located' in the taxable territory? If yes, he will pay the tax.
5. If not, is the service receiver located in taxable territory? If yes, he may be liable to pay tax on reverse charge basis.
6. Is the service receiver an individual or government receiving services for a non-business purpose, or a charity receiving services for a charitable activity? If yes, the same is exempted.
7. If not, he is liable to pay tax.

The new charging section, section 66B, enables taxation of only such services as are provided in taxable territory. Thus services that are provided in a non-taxable territory are not chargeable to service tax.

Location of the service provider

Location of the service provider means –

- a) where the service provider has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;
- b) where the service provider is not covered under sub-clause (a):
 - i. the location of his business establishment; or
 - ii. where the services are provided from a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or
- c) where services are provided from more than one establishment, whether business or fixed, the establishment most directly concerned with the provision of the service; and
- d) in the absence of such places, the usual place of residence of the service provider.

Location of the service receiver

Location of the service receiver means:-

- a) where the recipient of service has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;
- b) where the recipient of service is not covered under sub-clause (a):
 - i. the location of his business establishment; or
 - ii. where services are used at a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or
 - iii. where services are used at more than one establishment, whether business or fixed, the establishment most directly concerned with the use of the service; and
 - iv. in the absence of such places, the usual place of residence of the recipient of service.

The usual place of residence in case of a body corporate means the place where it is incorporated or otherwise legally constituted. In the case of telecommunication service, the usual place of residence will be the billing address.

Place of provision of service

According to the general rule i.e. Rule 3 of the 'Place of Provision of Services Rules, 2012', the service will be deemed to be provided where the receiver of service is located. If the location of the service recipient is not available in the ordinary course of business, then the place of provision of service would be the location of the service provider. This rule will be applicable when none of the other rules are applicable.

The ultimate effect of this rule is –

- Where the location of receiver of a service is in the taxable territory, such service will be deemed to be provided in the taxable territory and service tax will be payable
- However if the receiver is located outside the taxable territory, no service tax will be payable on the said service..

Place of provision of performance based services

According to Rule 4, in cases where the where the physical presence of goods is essential in providing the services, the place of provision of service would be the place of actual performance of the service. Under this rule, actual performance of service would be the driving force rather than the place of delivery or consumption of service. As an exception, where services have been provided from a remote location by electronic means, the location of the goods at the time of provision of service would be considered as the place of provision. Services in the nature of warehousing, transportation, repair, maintenance, testing, health care, education, courier service, cargo handling service, dry cleaning etc would qualify under this rule.

Rule 4(b) which relates to individuals also operates on similar lines and the place of actual performance will determine the place of provision of service. Services like cosmetic or plastic surgery, beauty treatment services, personal security service, health and fitness services, photography service (to individuals), internet café service, classroom teaching, are examples of services that require the presence of the individual receiver for their provision.

Place of provision of services relating to immovable property

According to Rule 5, In case of services related to immovable property, the place of provision of service would be determined based on the location of the immovable property. The main condition of this service is that the service should be in relation to the immovable property and not goods or individuals.

Services like construction, alteration, demolition, repair or maintenance of a building, renting of immovable property, Services of real estate agents, auctioneers, architects, engineers etc., surveying of land, supply of hotel accommodation or warehouse space etc. will be covered under the services relating to immovable property.

Place of provision of services relating to events

According to Rule 6, place of provision of services provided by way of admission to, or organization of a cultural, artistic, sporting, scientific, educational, entertainment event, or a celebration, conference, fair, exhibition, or any other similar event and of services ancillary to such admission, will be the place where the event is actually held.

Services in relation to admission as well as organization of events such as conventions, conferences, exhibitions, fairs, seminars, workshops, weddings, sports and cultural events are covered under this Rule.

Place of provision of services provided at more than one location

According to Rule 7, where any service in respect of which rule 4, 5 or 6 will apply is provided at more than one location including the location of taxable territory, then the place of provision of service would be the location of taxable territory where the greatest proportion of service is provided. Hence, where services are partly performed in taxable territory and non-taxable territory, the complete service would be deemed to be performed in the taxable territory irrespective of the proportion of service performed in non-taxable territory.

Place of provision of services where provider and recipient are located in taxable territory

According to Rule 8, where the service receiver and service provider are located in the taxable territory, the provision of service would be the location of service receiver irrespective of where the service is performed, delivered or consumed. The presence of both the service provider and the service receiver in the taxable territory indicates that the place of consumption of the service is in the taxable territory.

Place of provision of specified services

For the following specified services, the place of provision will be the location of the service provider:-

- i. Services provided by a banking company, or a financial company, or a non-banking financial company to account holders;
- ii. Online information and database access or retrieval services;
- iii. Intermediary services;
- iv. Service consisting of hiring of means of transport, up to a period of one month.

Place of provision of goods transportation services

According to Rule 10, the place of provision for transportation of goods other than by mail or courier will be the destination of the goods. In case of services of goods transport agency to which the reverse charge mechanism applies, the location of the person liable to tax will be the place of provision.

Place of provision of passenger transportation service

According to Rule 11, the place of provision of service will be the place where the passenger embarks on the conveyance for a continuous journey.

Place of provision of services provided on board a conveyance

According to Rule 12, the place of provision of services provided on board a conveyance during the course of a passenger transport operation is the first scheduled point of departure of that conveyance for the journey. Any service provided on board a conveyance (aircraft, vessel, rail, or roadways bus) will be covered under this Rule. For example - on-board service of movies/music/video/ software games on demand, beauty treatment etc, when provided against a specific charge and not supplied as part of the fare.

12. REVERSE CHARGE MECHANISM

With effect from 1.7.2012 a new scheme of taxation is being brought into effect whereby the liability of payment of service tax shall be both on the service provider and the service recipient. Usually such liability is affixed either on the service provider or the service recipient, but in specified services and in specified conditions, such liability shall be on both the service provider and the service recipient.

The Central government has issued notification no. 30/2012 dated 20.6.2012 notifying the description of specified services when provided in the manner so specified where part of the service tax has to be paid by the service receiver. The extent to which tax liability has to be discharged by the service receiver has also been specified in the said notification.

In terms of serial nos. 7(b), 8 and 9 of the table in notification no. 30/2012 dated 20.6.12, the new partial reverse charge mechanism is applicable to services provided or agreed to be provided by way of

- (a) renting of a motor vehicle designed to carry passengers on non-abated value to any person who is not engaged in a similar business, or
- (b) supply of manpower for any purpose, or
- (c) service portion in execution of a works contract;

by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as a body corporate located in the taxable territory.

Thus the nature of the service and the status of both the service provider and service receiver are important to determine the applicability of partial reverse charge provisions.

Reverse charge mechanism in case the turnover of the service provider is less than Rs.10 lakhs

The liability of the service provider and service recipient are different and independent of each other. Thus in case the service provider is availing exemption owing to turnover being less than Rs 10 lakhs; he shall not be obliged to pay any tax. However, the

service recipient will have to pay service tax which he is obliged to pay under the partial reverse charge mechanism.

Tax liability of service recipient under reverse charge mechanism

The service recipient would need to discharge liability only on the payments made by him. Thus the assessable value would be calculated on such payments done. As the liability of the service provider and service recipient are different and independent of each other, the service recipient can independently avail or forgo abatement or choose a valuation option depending upon the ease, data available and economics.

13. ABATEMENT

Under the service tax provisions, general exemptions are allowed at fixed percentage for certain services. This fixed percentage is called abatement. Abatement can be claimed by the service provider if he has not claimed Cenvat credit on input services/goods.

All abatements available to services of specified categories are covered under Exemption notification no 26/2012-ST dated 20/6/12. According to this notification, exemption is granted from so much of the service tax leviable, as is in excess of the service tax calculated on a value which is equivalent to a percentage specified in the corresponding entry in column (3) of the following Table, of the amount charged (or in some cases of specified amount) by such service provider for providing the said taxable service, unless specified otherwise, subject to the relevant conditions specified in the corresponding entry in column (4) of the said Table.

Table

Sl.No.	Description of taxable service	%	Conditions
(1)	(2)	(3)	(4)
1	Services in relation to financial leasing including hire purchase	10	Nil.
2	Transport of goods by rail	30	Nil.
3	Transport of passengers, with or without accompanied belongings by rail	30	Nil.
4	Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organizing a function) together with renting of such premises	70	CENVAT credit on any goods classifiable under chapter 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986) has not been taken under the provisions of the CENVAT Credit Rules, 2004.
5	Transport of passengers by air, with or without accompanied belongings	40	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
6	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes	60	Same as above.
7	Services of goods transport agency in relation to transportation of goods.	25	CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.
8	Services provided in relation to chit	70	Same as above.
9	Renting of any motor vehicle designed to carry passengers	40	Same as above.
10	Transport of goods in a vessel	50	Same as above.

14. OTHER IMPORTANT AMENDMENTS

The other important amendments brought out by the Budget 2012-13 are discussed hereunder.

Exemption to small service providers

Under Notification No. 33/2012 - Service Tax dated 20th June, 2012 which will come into effect from the 1st day of July, 2012, the Central Government, being satisfied that it is necessary in the public interest, exempts taxable services of aggregate value not exceeding Rs.10 lakhs, in any financial year from the whole of the service tax leviable thereon under section 66B of the Finance Act:

Provided that nothing contained in this notification shall apply to,-

- (i) taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or
- (ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994.

The exemption contained in notification no. 33/2012 shall apply subject to the following conditions, namely:-

- (i) the provider of taxable service has the option not to avail the exemption contained in this notification and pay service tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year;
- (ii) the provider of taxable service shall not avail the CENVAT credit of service tax paid on any input services, under rule 3 or rule 13 of the CENVAT Credit Rules, 2004 (hereinafter referred to as the said rules), used for providing the said taxable service, for which exemption from payment of service tax under this notification is availed of;

(iii) the provider of taxable service shall not avail the CENVAT credit under rule 3 of the said rules, on capital goods received, during the period in which the service provider avails exemption from payment of service tax under this notification;

(iv) the provider of taxable service shall avail the CENVAT credit only on such inputs or input services received, on or after the date on which the service provider starts paying service tax, and used for the provision of taxable services for which service tax is payable;

(v) the provider of taxable service who starts availing exemption under this notification shall be required to pay an amount equivalent to the CENVAT credit taken by him, if any, in respect of such inputs lying in stock or in process on the date on which the provider of taxable service starts availing exemption under this notification;

(vi) the balance of CENVAT credit lying unutilised in the account of the taxable service provider after deducting the amount referred to in sub-paragraph (v), if any, shall not be utilised in terms of provision under sub-rule (4) of rule 3 of the said rules and shall lapse on the day such service provider starts availing the exemption under this notification;

(vii) where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services; and

(viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed ten lakh rupees in the preceding financial year.

For the purposes of determining aggregate value not exceeding ten lakh rupees, to avail exemption under this notification, in relation to taxable service provided by a goods transport agency, the payment received towards the gross amount charged by such goods transport agency under section 67 of the said Finance Act for which the person liable for paying service tax is as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994, shall not be taken into account.

Notes:

(A) “brand name” or “trade name” means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, logo, label, signature, or invented word or writing which is used in relation to such specified services for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified services and some person using such name or mark with or without any indication of the identity of that person;

(B) “aggregate value” means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification.”

Exemption on services provided to SEZ authorised operations

The Central Government, on being satisfied that it is necessary in the public interest to do so, has exempted by notification No.40/2012, the services on which service tax is leviable under section 66B of the said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ) or Developer of SEZ and used for the authorised operations, from the whole of the service tax, education cess and secondary and higher education cess leviable thereon.

The exemption contained in this notification shall be subject to the following conditions, namely:-

(a) the exemption shall be provided by way of refund of service tax paid on the specified services received by a unit located in a SEZ or the developer of SEZ and used for the authorised operations:

Provided that where the specified services received in SEZ and used for the authorised operations are wholly consumed within the SEZ, the person liable to pay service tax has

the option not to pay the service tax ab initio instead of the SEZ unit or the developer claiming exemption by way of refund in terms of this notification.

Explanation.- For the purposes of this notification, the expression “wholly consumed” refers to such specified services received by the unit of a SEZ or the developer and used for the authorised operations, where the place of provision determinable in accordance with the Place of Provision of Services Rules, 2012 (hereinafter referred as the POP Rules) is as under:-

(i) in respect of services specified in rule 4 of the POP Rules, the place where the services are actually performed is within the SEZ ; or

(ii) in respect of services specified in rule 5 of the POP Rules, the place where the property is located or intended to be located is within the SEZ; or

(iii) in respect of services other than those falling under clauses (i) and (ii), the recipient does not own or carry on any business other than the operations in SEZ;

(b) where the specified services received by the unit of a SEZ or developer are not wholly consumed within SEZ, maximum refund shall be restricted to the extent of the ratio of export turnover of goods and services multiplied by the service tax paid on services other than wholly consumed services to the total turnover for the given period to which the claim relates, i.e.,

$$\frac{(\text{Export turnover of goods + Service tax paid on services of SEZ Unit/Developer}) \times \text{other than wholly consumed Services (both for SEZ and DTA)}}{\text{Total turnover for the period}}$$

Refund amount = -----
Total turnover for the period

Explanation.- For the purposes of condition (b),-

(A)“refund amount” means the maximum refund that is admissible for the period;

(B) “export turnover of goods” means the value of final products and intermediate products cleared during the relevant period and exported;

(C) “export turnover of services” means the value of the export service calculated in the following manner, namely:-

Export turnover of services = payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period – advances received for export services for which the provision of service has not been completed during the relevant period;

(D) “total turnover” means sum total of the value of-

(a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;

(b) export turnover of services determined in terms of clause (C) and the value of all other services, during the relevant period;

(c) for the purpose of claiming exemption, the Unit of a SEZ or developer shall obtain a list of services that are liable to service tax as are required for the authorised operations approved by the Approval Committee (hereinafter referred to as the specified services) of the concerned SEZ;

(d) for the purpose of claiming ab initio exemption, the unit of a SEZ or developer shall furnish a declaration in Form A-1, verified by the Specified Officer of the SEZ, in addition to the list specified under condition (c); the unit of a SEZ or developer who does not own or carry on any business other than the operations in SEZ, shall declare to that effect in Form A-1;

(e) the unit of a SEZ or developer claiming the exemption shall declare that the specified services on which exemption and/ or refund is claimed, have been used for the authorised operations;

(f) the unit of a SEZ or developer claiming the exemption by way of refund, should have paid the amount indicated in the invoice, bill or as the case may be, challan, including the service tax payable, to the person liable to pay the said tax or the amount of service tax payable under reverse charge, as the case may be, under the provisions of the said Act;

(g) no CENVAT credit of service tax paid on the specified services used for the authorised operations in a SEZ has been taken under the CENVAT Credit Rules, 2004;

(h) no refund shall be available on services wholly consumed for operations in the Domestic Tariff Area (DTA) worked out in the same manner as clauses (i) and (ii) of the explanation to condition (a);

(i) exemption or refund of service tax paid on the specified services other than wholly consumed services used for the authorised operations in a SEZ shall not be claimed except under this notification;

(j) the unit of a SEZ or developer, who intends to avail exemption and or refund under this notification, shall maintain proper account of receipt and use of the specified services on which exemption is claimed, for authorised operations in the SEZ.

15. LIST OF NOTIFICATIONS ISSUED IN 2012

- 01/2012-ST dt.17-03-2012 Seeks to amend the notification No. 42/ 2011 – Service Tax, dated the 25th July, 2011 so as to substitute the words “including registered cooperative societies” with the words with the existing ‘dyeing units’.
- 02/2012-ST dt.17-03-2012 Seeks to rescind Notification No.08/2009-Service Tax, dated 27.02.2009 so as to change the rate of service tax.
- 03/2012-ST dt.17-03-2012 Seeks to amend the Service Tax Rules, 1994 to amend and introduce certain provisions under the Rules.
- 04/2012-ST dt.17-03-2012 Seeks to amend Point of Taxation Rules, 2011 to amend and introduce certain provisions under the Rules.
- 05/2012-ST dt. 17-03-2012 Seeks to amend Notification No.6/2005-ST dated 01.03.2005 so as to substitute the “aggregate value” for SSI.
- 06/2012-ST dt. 17-03-2012 Seeks to supercede Notification No. 26/2010-Service Tax, dated the 22nd June, 2010 to change the rate applicable under transport of passenger by air service with abatement of 60 per cent.
- 07/2012-ST dt. 17-03-2012 Seeks to amend Notification No.7/2010-ST dated 27.02.2010 so as to change the effective date of levy to be 1st July, 2012 in place of 1st April, 2012.
- 08/2012-ST dt. 17-03-2012 Seeks to amend Notification No.8/2010-ST dated

27.02.2010 so as to change the effective date of levy to be 1st July, 2012 in place of 1st April, 2012.

- 09/2012-ST dt. 17-03-2012 Seeks to amend Notification No.9/2010-ST dated 27.02.2010 so as to change the effective date of levy to be 1st July, 2012 in place of 1st April, 2012.
- 10/2012-ST dt. 17-03-2012 Seeks to amend Notification No.32/2007-ST dated 22.05.2007 so as to give an option to the provider of a works contract service to pay an amount equivalent to 4.8 per cent. of the gross amount charged for the works contract instead of paying service tax at the rate specified in section 66 of the Finance Act, 1994 with effect from 1st April, 2012.
- 11/2012-ST dt. 17-03-2012 Seeks to amend the Service Tax (Valuation) Rules, 2006 to amend certain provisions under the Rules.
- 12/2012-ST dt. 17-03-2012 Seeks to exempt the following taxable services from the whole of the service tax
- 13/2012-ST dt. 17-03-2012 Seeks to provide exemption on specified taxable services, by way of abatement from taxable value for the purposes of calculating service tax, subject to the fulfilment of the prescribed conditions.
- 14/2012-ST dt. 17-03-2012 Seeks to exempt the taxable service involving import of technology, from so much of the service tax leviable, as is equivalent to the amount of cess payable on the said import of technology under the provisions of section 3 of the Research and Development Cess Act, 1986 (32 of 1986), subject to certain conditions.

15/2012-ST dt. 17-03-2012	Seeks to supercede the Notification No. 36/2004-Service Tax, dated the 31st December, 2004 so as to specify taxable services, and the extent of service tax payable thereon by person specified under section 68(2) of the Finance Act,1994.
16/2012-ST dt. 29-05-2012	Makes Service Tax (Settlement of Cases) Rules, 2012
17/2012-ST dt. 29-05-2012	Makes Service Tax (Compounding of Offences) Rules, 2012
18/2012-ST dt. 01-06-2012	Seeks to notify the date on which Clauses A,B,D,E of the Finance Act 2012 becomes effective.
19/2012-ST dt. 05-06-2012	Seeks to notify the date on which Clauses C,F,G,I of the Finance Act 2012 becomes effective.
20/2012-ST dt. 05-06-2012	Seeks to notify the date on which the provisions of the said section 65 of the Finance Act shall not apply.
21/2012-ST dt. 05-06-2012	Seeks to notify the date on which the provisions of the said section 65A of the Finance Act shall not apply.
22/2012-ST dt. 05-06-2012	Seeks to notify the date on which the provisions of the said section 66 of the Finance Act shall not apply.
23/2012-ST dt. 05-06-2012	Seeks to notify the date on which the provisions of the said section 66A of the Finance Act shall not apply.
24/2012-ST dt. 06-06-2012	Seeks to amend Service Tax (Determination of Value) Rules, 2006 [Second Amendment]
25/2012-ST dt. 20-06-2012	Mega exemption notification

26/2012-ST dt. 20-06-2012	Abatement notification
27/2012-ST dt. 20-06-2012	Exemption to services for the official use of foreign Diplomatic Mission
28/2012-ST dt. 20-06-2012	Place of Provision of Services Rules, 2012 Amended by No. 38/2012-ST dt. 20-06-2012
29/2012-ST dt. 20-06-2012	Exemption on property tax paid on immovable property
30/2012-ST dt. 20-06-2012	Notification under sub-section (2) of section 68
31/2012-ST dt. 20-06-2012	Exemption to specified services received by exporter of goods
32/2012-ST dt. 20-06-2012	Exemption of services provided by TBI/STEP
33/2012-ST dt. 20-06-2012	Exemption to Small service providers
34/2012-ST dt. 20-06-2012	Rescinding of certain notifications
35/2012-ST dt. 20-06-2012	Rescinding of certain notification
36/2012-ST dt. 20-06-2012	Seeks to amend Service Tax Rules
37/2012-ST dt. 20-06-2012	Seeks to amend point of Taxation Rules
38/2012-ST dt. 20-06-2012	Amendment of Notification 28/2011-ST (Place of Provision of Services Rules, 2012)
39/2012-ST dt. 20-06-2012	Notification under rule 6A of Service Tax Rules
40/2012-ST dt. 20-06-2012	Exemption on services provided to SEZ authorised

operations

- 41/2012-ST dt. 29-06-2012] Seeks to provide refunds on specified services to the exporter of goods
- 42/2012-ST dt. 29-06-2012 Seeks to Exempt certain specified services received by exporter of goods.
- 43/2012-ST dt. 02-07-2012 Seeks to Exempt certain specified services provided by the Indian Railways
- 44/2012-ST dt. 07-08-2012 Seeks to amend Notification No. 25/2012 –ST dated 20th June, 2012.
- 45/2012-ST dt. 07-08-2012 Seeks to amend Notification No.30/2012-ST dated 20th June, 2012.
- 46/2012-ST dt. 07-08-2012 Seeks to Amend Service Tax Rules, 1994.

16. IMPORTANT WEBSITES

www.servicetax.gov.in – Directorate of Service Tax

www.aces.gov.in – Automation of Central Excise and Service Tax

<http://www.cbec.gov.in/cae1-english.htm> - Central board of Excise and Customs