



**THE INSTITUTE OF  
Company Secretaries of India**  
**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
Statutory body under an Act of Parliament

# **TAX LAWS UPDATES**

**APPLICABLE FOR DECEMBER 2013  
EXAMINATION  
FOR EXECUTIVE PROGRAMME (OLD  
SYLLABUS)**

***Disclaimer-***

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## (A) INCOME TAX (INCOME TAX ACT, 1961)

### (1) TAX RATES

(a) *In case of Individual (including women) or Hindu undivided family or association of persons or body of individuals or every artificial juridical person:*

Upto ₹2,00,000	Nil
₹2,00,001 to ₹5,00,000	10 % of the amount in excess of ₹2,00,000
₹5,00,001 to ₹10,00,000	₹30,000 <i>plus</i> 20 per cent of the amount in excess of ₹5,00,000
₹10,00,001 and above	₹1,30,000 <i>plus</i> 30 % of the amount in excess of ₹10,00,000

(b) *In the case of every individual, being a resident in India, who is of the age of sixty years or more at any time during the previous year but not more than 80 years on the last day of the previous year:-*

Upto ₹2,50,000	Nil
₹2,50,001 to ₹5,00,000	10 % of the amount in excess of ₹2,50,000
₹5,00,001 to ₹10,00,000	₹25,000 <i>plus</i> 20 per cent of the amount in excess of ₹5,00,000
₹10,00,001 and above	₹1,25,000 <i>plus</i> 30 % of the amount in excess of ₹10,00,000.

(d) *In the case of every individual, being a resident in India, who is of the age of 80 years or more at any time during the previous year:-*

Upto ₹5,00,000	Nil
₹5,00,001 to ₹10,00,000	20 % of the amount in excess of ₹5,00,000
₹10,00,001 and above	₹1,00,000 <i>plus</i> 30 % of the amount in excess of ₹10,00,000.

(e) *In the case of every co-operative society:*

(1) where the total income does not exceed ₹10,000.	10 % of the total income;
(2) where the total income exceeds ₹10,000 but does not exceed ₹20,000.	₹1,000 <i>plus</i> 20% of the amount by which the total income exceeds ₹10,000;
(3) where the total income exceeds ₹20,000	₹3,000 <i>plus</i> 30% of the amount by which the total income exceeds ₹20,000.

(e) *In the case of every firm: On the whole of the total income @30%*

(f) *In the case of every local authority: On the whole of the total income @30%*

(g) In the case of a company:

- (i) In the case of a domestic company @30% of the total income.
- (ii) In the case of a company other than a domestic company:

(i) on so much of the total income as consists of:	
(a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976; or	
(b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976, and where such agreement has, in either case, been approved 50 %; by the Central Government	50%
(ii) Other income	40 %

#### **Surcharge on income-tax**

- (i) in the case of every domestic company having a total income exceeding one crore rupees @5% of such income-tax;
- (ii) in the case of every company other than a domestic company having a total income exceeding one crore rupees @ 2%

#### **(2) INCOME WHICH DO NOT FORM PART OF TOTAL INCOME**

Section 10 of the Income-tax Act provides for certain incomes which are not included in the total income of a person subject to the conditions specified in the relevant clauses of the section. The following clauses of Section 10 are amended by the Finance Act, 2012 ;

##### **(a) Exemption of income of Prasar Bharati (Broadcasting Corporation of India) [Section 10(23BBH)]**

With effect from A.Y.2013-14, clause (23BBH) has been inserted in section 10 to exempt any income of the Prasar Bharati (Broadcasting Corporation of India) established under section 3(1) of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990.

##### **(b) Removal of sectoral restrictions on VCUs [Sections 10(23FB)]**

Section 10(23FB) provides that income of a SEBI regulated Venture Capital Fund (VCF) or Venture Capital Company (VCC), derived from investment in a domestic company i.e. Venture Capital Undertaking (VCU), is exempt from taxation, provided the VCU is engaged in only nine specified businesses. The working of VCF, VCC or VCU are regulated by SEBI and RBI. In order to avoid multiplicity of conditions in different regulations for the same entities, the sectoral restriction on business of VCU is removed from Income Tax Act and such VCU is to be allowed to be governed by conditions imposed by SEBI and RBI. Therefore, with effect from Assessment year 2012-14, the

venture Capital undertaking shall have same meaning as provided in relevant SEBI regulations and there would be no sectoral restriction.

**(c) *Exemption in respect of income received by certain foreign companies in India in Indian currency from sale of crude oil to any person in India [Section 10(48)]***

A new clause (48) has been inserted with retrospective effect from assessment year 2012-13 in section 10 of the Income-tax Act to provide for exemption in respect of any income of a foreign company received in India in Indian currency on account of sale of crude oil to any person in India subject to the following conditions:

- (i) The receipt of money is under an agreement or an arrangement which is either entered into by the Central Government or approved by it.
- (ii) The foreign company, and the arrangement or agreement has been notified by the Central Government having regard to the national interest in this behalf.
- (iii) The receipt of the money is the only activity carried out by the foreign company in India.

**(d) *Assessment of charitable organization in case commercial receipts exceed the specified threshold [Section 10(23C) & 13]***

Sections 11 and 12 of the Act exempt income of any charitable trust or institution, if such income is applied for charitable purposes in India and such institution is registered under section 12AA of the Act. Section 10(23C) of Income Tax Act also provides exemption in respect of approved charitable funds or institutions. Section 2(15) of the Act provides definition of charitable purpose. It includes "advancement of any other object of general public utility" as charitable purpose provided that it does not involve carrying on of any activity in the nature of trade, commerce or business.

The Second proviso to said section provides that in case where the activity of any trust or institution is of the nature of advancement of any other object of general public utility, and it involves carrying on of any activity in the nature of trade, commerce or business; but the aggregate value of receipts from the commercial activities does not exceed ₹25,00,000/- in the previous year, then the purpose of such institution shall be considered as charitable, and accordingly, the benefits of exemption shall be available to it.

Thus, a charitable trust or institution pursuing advancement of object of general public utility may be a charitable trust in one year and not a charitable trust in another year depending on the aggregate value of receipts from commercial activities.

There is, therefore, need to expressly provide in law that no exemption would be available for a previous year, to a trust or institution to which first proviso of sub-section 2(15) become applicable for that particular previous year.

However, this temporary excess in one year may not be treated as altering the very nature of the trust or institution so as to lead to cancellation of registration or withdrawal of approval or rescinding of notification issued in respect of trust or institution.

Therefore, there is need to ensure that if the purpose of a trust or institution does not remain charitable due to application of first proviso on account of commercial receipt threshold provided in second proviso in a previous year. Then, such trust or institution

would not be entitled to get benefit of exemption in respect of its income for that previous year for which such proviso is applicable. Such denial of exemption shall be mandatory by operation of law and would not be dependent on any withdrawal of approval or cancellation of registration or a notification being rescinded.

It is, therefore, section 10(23C), section 13 and section 143 of the Act has been amended with retrospective effect from Assessment year 2009-10 to ensure that such organization does not get benefit of tax exemption in the year in which it's receipts from commercial activities exceed the threshold whether or not the registration or approval granted or notification issued is cancelled, withdrawn or rescinded.

Further, section 143(3) has been amended to provide that, in such a circumstance, no effect shall be given by the Assessing Officer to the exemption provisions under section 10(23C) while making an assessment of the total income or loss of the trust or institution for the previous year.

### **(3) INCOME FROM BUSINESS OR PROFESSION**

#### ***(a) Additional depreciation to power sector undertakings [Section 32(1)(iia)]***

With effect from Assessment Year 2013-14 the benefit of additional depreciation at 20% of the cost of new plant or machinery (other than ships and aircraft) acquired and installed during the previous year has been extended to assessee engaged in manufacture or production of any article or thing as well as assessee engaged in the business of generation or generation and distribution of power

#### ***(b) Weighted deduction for expenditure incurred on in-house scientific research and development [Section 35(2AB)]***

- (i) Under section 35(2AB), a weighted deduction of 200% of expenditure incurred on in-house research and development facility as approved by the prescribed authority (not being expenditure in the nature of cost of any land or building) is allowed to a company which is engaged in the business of bio-technology or in any business of manufacture or production of any article or thing. However, the deduction was restricted to such expenditure incurred on or before 31st March, 2012.
- (ii) In order to encourage the corporate sector to continue to spend on in-house research and development, with effect from Assessment Year 2013-14 the benefit of weighted deduction has been extended by a further period of 5 years i.e. up to 31st March, 2017.

#### ***(c) Deduction in respect of capital expenditure on specified business under section 35AD***

- (i) The investment-linked tax deduction under section 35AD has been extended to three new businesses, namely –
  - setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962;
  - bee-keeping and production of honey and beeswax; and
  - setting up and operating a warehousing facility for storage of sugar.

Deduction is allowed to the above mentioned new “Specified businesses” only if the date of commencement of operations of such business is on or after 1st April, 2012.

Further, the following “specified businesses” would also be eligible for weighted deduction@150% of the capital expenditure (including capital expenditure incurred before commencement of operations and capitalized in the books of account on the date of commencement of operations) under section 35AD(1A), if they commence operations on or after 1st April, 2012 – setting up and operating a cold chain facility;

- setting up and operating a warehousing facility for storage of agricultural produce;
- building and operating, anywhere in India, a hospital with at least 100 beds for patients;
- developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government. Such scheme should be notified by the CBDT in accordance with the prescribed guidelines; and
- production of fertilizer in India.

- (ii) As per section 35AD, as it stands at present, an assessee engaged in the business of building and operating a hotel, of 2-star or above category in India, becomes eligible for deduction under section 35AD only if he owns and operates the hotel himself.

However, on account of the franchisee business structure which is prevalent in hotel industry, the owner of the hotel generally outsources the operation of the hotel to another person.

Therefore, in order to clarify that the hotel owner would continue to be eligible for the investment-linked tax deduction in such cases, with retrospective effect from Assessment Year 2011-12, sub-section (6A) has been inserted in section 35AD.

New sub-section (6A) provides that where the assessee builds a hotel of two-star or above category as classified by the Central Government and subsequently, while continuing to own the hotel, transfers the operation of the said hotel to another person, the assessee shall be deemed to be carrying on the specified business of building and operating a hotel. Therefore, he would be eligible to claim investment-linked tax deduction under section 35AD.

***(d) Weighted deduction in respect of expenditure incurred on notified agricultural extension project [Section 35CCC]***

With effect from assessment year 2013-14, new section 35CCC has been inserted to provide a weighted deduction of a sum equal to 150% of expenditure incurred by an assessee on agricultural extension project in accordance with the prescribed guidelines. Only those agricultural extension project which are notified by the board shall be eligible for this weighted deduction.



**(e) *Weighted deduction in respect of expenditure incurred by companies on notified skill development project [Section 35CCD]***

In order to encourage companies to invest on skill development projects in the manufacturing sector, with effect from assessment year 2013-14, a new section 35CCD has been inserted to provide for a weighted deduction of a sum equal to 150% of the expenditure (not being expenditure in the nature of cost of any land or building) on skill development project incurred by the company in accordance with the prescribed guidelines.

The skill development project eligible for this weighted deduction shall be notified by the Board.

**(f) *Increase in threshold limits of total sales / turnover / gross receipts for audit of accounts and presumptive taxation [Section 44AB]***

In order to reduce the compliance burden on small businesses and on professionals, the threshold limit of total sales, turnover or gross receipts, specified under section 44AB for getting accounts audited has been increased from sixty lakh rupees to one crore rupees in the case of persons carrying on business and from fifteen lakh rupees to twenty five lakh rupees in the case of persons carrying on profession.

***Presumptive taxation under section 44AD:***

For the purposes of presumptive taxation under section 44AD, the threshold limit of total turnover or gross receipts has been increased from sixty lakh rupees to one crore rupees.

Finance (No.2) Act, 2009 substituted Section 44AD in the Income-tax Act to provide for a presumptive income scheme for small businesses with effect from 1st April, 2011. Under this scheme a sum equal to 8% of the total turnover or gross receipts is deemed to be the profits and gains from business. This presumptive scheme is applicable only to a person carrying on any business, except business of plying, hiring or leasing goods carriage, having turnover or gross receipt of less than 60 lakh rupees.

Section 44AD has been amended to clarify that this presumptive scheme is not applicable to

- (i) a person carrying on profession as referred to in sub-section (1) of section 44AA;
- (ii) persons earning income in the nature of commission or brokerage income; or
- (iii) a or a person carrying on any agency business.

**(4) INCOME UNDER THE HEAD CAPITAL GAINS**

**(a) *Capital gains in cases of amalgamation and demerger***

- (i) Under the provisions of section 47(vii) any transfer by a shareholder, in a scheme of amalgamation of a capital asset being a share or shares held by him in the amalgamating company is not regarded as a transfer if,
  - (a) any transfer is made in consideration of the allotment to him of any share or shares in the amalgamated company, and
  - (b) the amalgamated company is an Indian company.

In a case where a subsidiary company amalgamates into the holding company, it is not possible to satisfy one of the conditions at (a) above, i.e. that the amalgamated company (the holding company) issues shares to the shareholders of the amalgamating company (subsidiary company), since the holding company is itself the shareholder of the subsidiary company and cannot issue shares to itself. Therefore, with effect from assessment year 2013-14, provisions of section 47(vii) has been amended so as to exclude the requirement of issue of shares to the shareholder where such shareholder itself is the amalgamated company. However, the amalgamated company will continue to be required to issue shares to the other shareholders of the amalgamating company.

- (ii) Similarly, in the case of a demerger, there is a requirement under section 2(19AA)(iv) that the resulting company has to issue its shares to the shareholders of the demerged company on a proportionate basis. However, it is not possible to satisfy this condition where the demerged company is a subsidiary company and the resulting company is the holding company.

Therefore, with effect from assessment year 2013-14 the provisions of section 2(19AA) has been amended so as to exclude the requirement of issue of shares where resulting company itself is a shareholder of the demerged company. The requirement of issuing shares would still have to be met by the resulting company in case of other shareholders of the demerged company.

***(b) Cost of acquisition in case of transfer of assets by a sole proprietorship or a firm to a company on conversion***

Where transfer of an asset from one person to another is not regarded as a transfer under section 47, then, for the purpose of computation of capital gains, the cost of the asset in the hands of the successor under section 49 is taken as that of the predecessor. Certain transactions like transfer of assets by a sole proprietorship or a firm to a company on conversion are not regarded as transfer under the provisions of section 47(xiv) and section 47(xiii). While computing capital gains on subsequent sale of such assets by the company, there is no reference in the provisions of section 49 with regard to the cost to be taken for such assets.

Accordingly, with retrospective effect from assessment year 1999-2000, provisions of section 49 has been amended to provide that in case of conversion of sole proprietorship or firm into a company which is not regarded as a transfer, the cost of acquisition of asset in the hands of the company would be the same as that in the hand of the sole proprietary concern or the firm, as the case may be.

***(c) Fair market value of the capital asset to be taken as sale consideration, where the consideration is not determinable [Section 50D]***

Recently, some of the courts have ruled that, in case of transfer of a capital asset for which the sale consideration is not determinable, the gain arising from transfer of such asset shall not be taxable, due to failure of the machinery provision.

Consequently, with effect from assessment year 2013-14, a new section 50D has been inserted by the Finance Act, 2012 providing that, in case where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined, then, for the purpose of computing income chargeable to tax as capital gains, the fair market value of the said asset on the date of

transfer shall be deemed to be the full value of consideration received or accruing as a result of such transfer.

**(d) Extension of capital gain exemption under section 54B to a HUF [Section 54B]**

Under section 54B, the capital gain arising on the transfer of land which was used for agricultural purposes by an individual or his parents during the 2 years immediately preceding the date of transfer shall not be charged to tax to the extent of cost of acquisition of new agricultural land acquired within a period of 2 years after the date of transfer.

The aforesaid exemption was so far available only to an individual assessee. Section 54B is now amended to extend the benefit of such an exemption to a Hindu Undivided Family also.

Therefore, the capital gain arising on the transfer of land used for agricultural purposes, for 2 years immediately preceding the date of transfer by an assessee, *being an individual or his parent, or a Hindu Undivided Family* shall not be charged to tax if such assessee purchases a new agricultural land within a period of 2 years after the date of transfer. The capital gain would be exempt to the extent of cost of acquisition of new agricultural land acquired.

**(e) Capital gain exemption on transfer of residential property if invested in a manufacturing small or medium enterprise [New Section 54GB]**

The Government had announced National Manufacturing Policy (NMP) in 2011, one of the goals of which is to incentivise investment in the Small and Medium Enterprises (SME) in the manufacturing sector. Therefore, with effect from assessment year 2013-14, a new section 54GB has been inserted so as to provide rollover relief from long term capital gains tax to an individual or an HUF on sale of a residential property (house or plot of land) in case of re-investment of sale consideration in the equity of a new start-up SME company in the manufacturing sector which is utilized by the company for the purchase of new plant and machinery.

This relief would be subject to the conditions that —

- the amount of net consideration is used by the individual or HUF before the due date of furnishing of return of income under sub-section (1) of section 139, for subscription in equity shares in the SME company in which he holds more than 50% share capital or more than 50% voting rights.
- the amount of subscription as share capital is to be utilized by the SME company for the purchase of new plant and machinery within a period of one year from the date of subscription in the equity shares.

If the amount of net consideration subscribed as equity shares in the SME company is not utilized by the SME company for the purchase of plant and machinery before the due date of filing of return by the individual or HUF, the unutilised amount shall be deposited under a deposit scheme to be prescribed in this behalf.

Suitable safeguards so as to restrict the transfer of the shares of the company, and of the plant and machinery for a period of 5 years are proposed to be provided to prevent diversion of these funds. Further, capital gains would be subject to taxation in case any of the conditions are violated.

The transfer should take place during April 11, 2012 and 31st March, 2017.

***(f) Reference to the Valuation Officer in case the assessee has taken the fair market value as the cost of acquisition of the asset in accordance with the estimate made by the Registered Valuer [Section 55A]***

Under the provisions of section 55A, where in the opinion of the Assessing Officer value of asset as claimed by the assessee is less than its market value, he may refer the valuation of a capital asset to a Valuation Officer. Under section 55 in a case where the capital asset became the property of the assessee before 1st April, 1981, the assessee has the option of substituting the fair market value of the asset as on 1st April, 1981 as the cost of the asset. In such a case the adoption of a higher value for the cost of the asset as the fair market value as on 1st April, 1981, would lead to a lower amount of capital gains being offered for tax.

Accordingly, with effect from 1<sup>st</sup> July 2012, provisions of section 55A has been amended to enable the Assessing Officer to make a reference to the Valuation Officer where in his opinion the value declared by the assessee is at variance from the fair market value. Therefore, in case where the Assessing Officer is of the opinion that the value taken by the assessee as on 1.4.1981 is higher than the fair market value of the asset as on that date, the Assessing Officer would be enabled to make a reference to the Valuation Officer for determining the fair market value of the property.

**(5) INCOME FROM OTHER SOURCES**

***(a) Exemption of any sum or property received by an HUF from its members [Section 56(2)(vii)]***

Under the existing provisions of clause (vii) of sub-section (2) of section 56 any sum or property received by an individual or HUF for inadequate consideration or without consideration is deemed as income and is taxed under the head "Income from other sources". However, in the case of an individual, receipts from relatives are excluded from the purview of this section and are therefore treated as not taxable. The definition of relative as given in this sub-clause is only in relation to an individual and not in relation to a HUF.

It is therefore with retrospective effect from 1st day of October, 2009 the provisions of section 56 has been amended so as to provide that any sum or property received without consideration or inadequate consideration by an HUF from its members would also be excluded from taxation.

***(b) Share premium in excess of the fair market value to be treated as income [Section 56(2)(viib)]***

With effect from 1<sup>st</sup> April 2013, a new clause (viib) has been inserted in section 56(2). The new clause will apply where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares. In such a case if the consideration received for issue of shares exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income tax under the head "Income from other sources. However, this provision shall not apply

where the consideration for issue of shares is received by a venture capital undertaking from a venture capital company or a venture capital fund.

Accordingly, it is provided that the fair market value of the shares shall be the higher of the value—

- as may be determined in accordance with the method as may be prescribed; or
- as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value of its assets, including intangible assets, being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.

## **(6) DEDUCTION UNDER CHAPTER VI**

### **(a) Deduction for life insurance policies (Section 80C)**

Under the existing provisions contained in section 10(10D) of the Income-tax Act, any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy, is exempt. For this purpose, it is necessary that the premium payable for any of the years shall not exceed 20% of the actual capital sum assured.

The threshold of premium payable is reduced to 10% from 20% of the actual capital sum assured. Accordingly, section 10(10D) has been amended so as to provide that the exemption for life insurance policies issued on or after 1st April, 2012 would only be available for policies where the premium payable for any of the years during the term of the policy does not exceed 10% of the actual capital sum assured.

Further, in order to ensure that the life insurance products are not designed to circumvent the prescribed limits by varying the capital sum assured from year to year, it is provided that the capital sum assured would be the minimum of the sum assured in any of the years of the policy. A new Explanation 2 has been Inserted towards this effect by referring to the new definition of “actual capital sum assured” under Explanation of section 80C(3A). This Explanation will apply to insurance policies issued on or after the 1st April, 2012.

### **(b) Deduction for investment by a resident individual in listed equity shares [New section 80CCG]**

A new section 80CCG has been introduced to provide for a one-time deduction to a resident individual who has acquired listed equity shares in a previous year in accordance with a scheme notified by the Central Government.

The deduction would be 50% of amount invested in such equity shares or ₹25,000, whichever is lower. The maximum deduction of ₹25,000 would be available on investment of ₹50,000 in such listed equity shares.

The following conditions have to be satisfied for claiming the above deduction—

- The gross total income of the assessee for the relevant assessment year should be less than or equal to ₹10 lakh.
- The assessee should be a new retail investor as per the requirement specified under the notified scheme.

- The investment should be made in such listed shares as may be specified under the notified scheme.
- The minimum lock-in period in respect of such investment is three years from the date of acquisition in accordance with the notified scheme.

In addition to the above, other conditions may also be prescribed, subject to fulfillment of which, deduction under section 80CCG can be claimed.

If the individual, after having claimed such deduction, fails to comply with any of the conditions in any previous year, say, he sells the shares before three years, then, the deduction earlier allowed shall be deemed to be the income of the previous year in which he fails to comply with the condition. The income shall, accordingly, be liable to tax in the assessment year relevant to such previous year.

If deduction has been claimed and allowed under this section for any assessment year, the assessee would not be allowed any deduction under this section for any subsequent assessment year.

**(c) Reduction of the eligible age for senior citizens for certain tax relief**

The Finance Act, 2011 amended the effective age of a senior citizen being an Indian resident from sixty-five years of age to sixty years for the purposes of application of various tax slabs and rates of tax under the Income Tax Act, 1961 for income earned during the financial year 2011-12 (assessment year 2012-13). The following provisions are also similarly amended :

- Section 80D of the Income-tax Act provides for a deduction in respect of premia paid towards a health insurance policy for the assessee or his family (spouse and dependant children) and a further deduction is also allowed for buying a health insurance policy for parent(s). Where the premium is paid to effect or keep in force an insurance on the health of any person who is a senior citizen, the deductions are allowable up to a higher sum of ₹20,000/- instead of ₹15,000/-.
- Section 80DDB of the Income-tax Act provides for a deduction up to Rs. 40,000/- for the medical treatment of a specified disease or ailment in the case, inter alia, of an individual or his dependant. This deduction is enhanced to Rs. 60,000/- where the amount actually paid is in respect of any of the above persons who is a senior citizen.
- Section 197A(1C) of the Income-tax Act provides that in respect of tax deduction at source under section 193 (interest on securities) or section 194 (dividends) or section 194A (interest other than interest on securities) or section 194EE (payments in respect of deposits under NSS etc.) or section 194K (income in respect of units), no deduction of tax shall be made in the case of a senior citizen, if such individual furnishes a declaration in the prescribed form (Form No. 15H) to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be nil.

In order to make the effective age of senior citizens uniform across all the provisions of the Income Tax Act, the age for availing of the benefits by a senior citizen under the aforesaid sections (sections 80D, 80DDB and 197A) has been reduced from sixty-five years to sixty years.

**(d) Deduction for expenditure on preventive health check-up [Section 80D]**



With effect from assessment year 2013-14, this section has been amended to include any payment made by an assessee on account of preventive health check-up of self, spouse, dependant children or parents(s) during the previous year as eligible for deduction within the overall limits prescribed in the section. However, the proposed deduction on account of expenditure on preventive health check-up (for self, spouse, dependant children and parents) shall not exceed in the aggregate Rs.5,000.

It is further amended to provide that for the purpose of the deduction under section 80D, payment can be made – (i) by any mode, including cash, in respect of any sum paid on account of preventive health check-up and (ii) by any mode other than cash, in all other cases.

***(e) Prohibition of cash donations in excess of ten thousand rupees (Section 80G & Section 80GGA)***

Section 80G of the Income-tax Act provides for a deduction in respect of donations to certain funds, charitable institutions, etc. subject to specified conditions. The deduction is allowed in respect of any donation being a sum of money. Similarly, section 80GGA of the Income-tax Act provides for a deduction in respect of certain donations for scientific research or rural development made to research associations, universities, colleges or other associations/institutions, subject to specified conditions.

Currently, there is no provision in either of the aforesaid sections specifying the mode of payment of money. Therefore, with effect from assessment year 2013-14, sections 80G and 80GGA has been amended so as specify therein that any payment exceeding a sum of ten thousand rupees shall only be allowed as a deduction if such sum is paid by any mode other than cash.

***(f) Extension of sunset date for tax holiday for power sector [Section 80-IA(4)(iv)]***

Under the existing provisions of section 80-IA(4)(iv) of the Income-tax Act, a deduction from profits and gains is allowed to an undertaking which,—

- is set up for the generation and distribution of power if it begins to generate power at any time during the period beginning on 1st April, 1993 and ending on 31st March, 2012;
- starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on 1st April, 1999 and ending on 31st March, 2012;
- undertakes substantial renovation and modernization of existing network of transmission or distribution lines at any time during the period beginning on 1st April, 2004 and ending on 31st March, 2012.

With effect from assessment year 2013-14, the above provision has been amended to extend the terminal date for a further period of one year, i.e., up to 31<sup>st</sup> March, 2013.

***(g) Deduction in respect of interest on deposits in savings accounts [New Section 80TTA]***

With effect from assessment year 2013-14, section 80TTA has been introduced to provide that in case the gross total income of an assessee, being an individual or a Hindu Undivided Family, includes any income by way of an interest on deposits in a saving account (not being time deposits, which are deposits repayable on expiry of fixed periods), deduction up to ₹10,000 in aggregate shall be allowed while computing the total

income of such assessee. Such deduction shall be allowed in case the saving account is maintained with:

- a banking company to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act);
- a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank); or
- a post office.

However, if the aforesaid income is derived from any deposit in a savings account held by, or on behalf of, a firm, an AOP/BOI, no deduction shall be allowed in respect of such income in computing the total income of any partner of the firm or any member of the AOP or any individual of the BOI.

In effect the deduction under this section shall be allowed only in respect of the income derived in form of the interest on the saving bank deposit (other than time deposits) made by the individual or Hindu Undivided Family directly.

## **(6) TAXATION OF FIRMS/LIMITED LIABILITY PARTNERSHIP**

### ***Alternate Minimum Tax (AMT)* on all persons other than companies**

From the assessment year 2012-13 onwards, where the regular income tax payable for a previous year by a limited liability partnership is less than the alternate minimum tax payable for such previous year then the adjusted total income shall be deemed to be the total income of the LLP for such previous year and it shall be liable to pay income tax on such adjusted total income @ 18.5% plus education & SHEC @ 3%.

Upto Assessment Year 2012-13, Alternate Minimum Tax (AMT) is levied on limited liability partnerships (LLPs). However, no such tax is levied on the other form of business organisations such as partnership firms, sole proprietorship, association of persons, etc.

In order to widen the tax base vis-à-vis profit linked deductions, the provisions regarding AMT has been broadened to cover all persons other than a company, who has claimed deduction under any section (other than section 80P) included in Chapter VI-A under the heading "C – Deductions in respect of certain incomes" or under section 10AA, shall be liable to pay AMT.

Accordingly, where the regular income-tax payable for a previous year by a person (other than a company) is less than the alternate minimum tax payable for such previous year, the adjusted total income shall be deemed to be the total income of such person and he shall be liable to pay income-tax on such total income at the rate of eighteen and one-half per cent.

For the purpose of the above,

- (i) "adjusted total income" shall be the total income before giving effect to provisions of Chapter XII-BA as increased by the deductions claimed under any section (other than section 80P) included in Chapter VI-A under the heading "C – Deductions in respect of certain incomes" and deduction claimed under section 10AA;
- (ii) "alternate minimum tax:" shall be the amount of tax computed on adjusted total income at a rate of eighteen and one half per cent; and



- (iii) “regular income-tax” shall be the income-tax payable for a previous year by a person other than a company on his total income in accordance with the provisions of the Act other than the provisions of Chapter XII-BA.

It is further provided that the provisions of AMT under Chapter XII-BA shall not apply to an individual or a Hindu undivided family or an association of persons or a body of individuals (whether incorporated or not) or an artificial juridical person referred to in section 2(31)(vii) if the adjusted total income of such person does not exceed twenty lakh rupees.

It is also provided that the credit for tax (tax credit) paid by a person on account of AMT under Chapter XII-BA shall be allowed to the extent of the excess of the AMT paid over the regular income-tax. This tax credit shall be allowed to be carried forward up to the tenth assessment year immediately succeeding the assessment year for which such credit becomes allowable. It shall be allowed to be set off for an assessment year in which the regular income-tax exceeds the AMT to the extent of the excess of the regular income-tax over the AMT.

Every person to which this section applies shall obtain a report, in such form as may be prescribed from an accountant certifying that the adjusted total income and the alternate minimum tax have been computed in accordance with the provisions of this Chapter and furnish such report on or before the due date of filing of return under sub-section (1) of section 139.

## **(7) FILING OF RETURNS, SIGNATURE, E-FILINGS, ASSESSMENT AND RE-ASSESSMENT**

### ***(a) Mandatory filing of ROI by every resident having any asset (including financial interest in any entity) located outside India [Section 139(1)]***

With retrospective effect from Assessment year 2012-13, every resident and ordinarily resident having –

- any asset (including financial interest in any entity) located outside India or
- signing authority in any account located outside India
- is required to file a return of income in the prescribed form compulsorily, whether or not he has income chargeable to tax.

The return of income should be verified in the prescribed manner and provide such particulars as may be prescribed.

### ***(b) Reassessment of income in relation to any asset located outside India***

With effect from 1<sup>st</sup> July 2012, income chargeable to tax shall be deemed to have escaped assessment for the purpose of section 147, where a person is found to have any asset (including financial interest in any entity) located outside India. Accordingly, the Assessing Officer can serve a notice under section 148 on such assessee requiring him to furnish a return of income within the specified period, for the purpose of making an assessment, reassessment or recomputation under section 147.

The first proviso to section 147 provides that, where an assessment under section 143(3) has already been made by the Assessing Officer for the relevant assessment year, then, no action under the said section can be taken after expiry of 4 years from the end of relevant assessment year. The exception would be in cases where income has escaped assessment

on account of failure on the part of the assessee to file a return of income under section 139 or in response to a notice issued under section 142(1) or section 148 or to disclose, fully and truly, all material facts necessary for his assessment for that assessment year.

A second proviso has now been inserted in section 147 to provide that the provisions of the above mentioned first proviso shall not apply in a case where income chargeable to tax, in relation to an asset (including financial interest in an entity) located outside India, has escaped assessment for any assessment year. In effect, in such cases, the Assessing Officer can initiate assessment proceedings under section 147 even after the expiry of 4 years inspite of the assessee having –

- duly furnished his return of income and fully and truly disclosing all material facts necessary for his assessment for that assessment year.

An extended time limit of sixteen years would be available for issue of notice under section 148 for an assessment or reassessment, in case income in relation to such assets (including financial interest in any entity) located outside India has escaped assessment [Section 149]. The provision of an extended time limit is due to the reason that gathering information relating to assets located outside India takes substantially more time due to extra procedural requirements and laws of other nations.

Similar amendments have been made in section 17 of the Wealth-tax Act, 1957 on the above lines (i.e. sections 147 and 149 of the Income-tax Act, 1961), i.e., -

- deeming wealth to have escaped assessment where a person is found to have any asset (including financial interest in any entity) located outside India, non-applicability of the four year time limit for issue of notice and provision of an extended time limit of sixteen years for issue of notice for assessment or reassessment in such cases where wealth is deemed to have escaped assessment.

## **(8) TAX DEDUCTED AND COLLECTED AT SOURCE**

### ***(a) Threshold for TDS on payment of interest on debentures (section 193)***

Under the existing provisions of section 193 of the Income-tax Act, a person responsible for paying interest to a resident individual on listed debentures of a company, in which the public are substantially interested, is not required to deduct tax on the amount of interest payable if the aggregate amount of interest paid during a financial year does not exceed ₹2,500/- and the interest is paid by account payee cheque. However, in the case of unlisted debentures of a company, no threshold limit is specified for deduction of tax on payment of interest.

In order to reduce the compliance burden on small assesseees and companies, with effect from 1st July, 2012 no deduction of tax should be made from payment of interest on any debenture, (whether listed or not) issued by a company, in which the public are substantially interested, to a resident individual or Hindu undivided family, if the aggregate amount of interest on such debenture paid during the financial year does not exceed ₹5,000 and the payment is made by account payee cheque.

### ***(b) TDS on remuneration to a director (Section 194)***

Under the existing provisions of the Income-tax Act, a company, being an employer, is required to deduct tax at the time of payment of salary to its employees including Managing director/whole time director.

However, there is no specific provision for deduction of tax on the remuneration paid to a director which is not in the nature of salary. With effect from 1st July, 2012, section 194J has been amended to provide that tax is required to be deducted on the remuneration paid to a director, which is not in the nature of salary, at the rate of 10% of such remuneration.

**(c) Threshold for TDS on compensation or consideration for compulsory acquisition**

Under the existing provisions of the section 194LA of the Income-tax Act, a person responsible for paying any compensation or consideration for compulsory acquisition of immovable property (other than agricultural land) is required to deduct tax at the rate of 10% in case the consideration exceeds one lakh rupees.

In order to reduce the compliance burden of small assessee, With effect from 1st July, 2012, the aforesaid threshold limit has been increased from one lakh rupees to two lakh rupees.

**(d) TCS on sale of certain minerals [Section 206C(1)]**

Mining sector is an important segment of Indian economy but the trading of minerals remained largely unregulated resulting in non-reporting or under-reporting of trading in minerals trading transactions for the taxation purpose.

In order to collect tax at the earliest point of time and also to improve reporting mechanism of transactions in mining sector, with effect from 1st July, 2012, tax at the rate of 1% shall be collected by the seller from the buyer of the following minerals:

- (a) Coal;
- (b) Lignite; and
- (c) Iron ore.

However, the seller shall also not collect tax on sale of the said minerals if the same are purchased by the buyer for personal consumption. Further, the seller of these minerals shall not collect tax if the buyer declares that these minerals are to be utilized for the purposes of manufacturing, processing or producing articles or things. This amendment will take.

**(e) Tax Collection at Source (TCS) on cash sale of bullion and jewellery [Section 206C(1D)]**

Under the existing provisions of the Income-tax Act, tax is required to be collected at source by the seller at the specified rate on certain goods like alcoholic liquor, tendu leaves, scrap etc. at the time of sale.

In order to reduce the quantum of cash transaction in bullion and jewellery sector and for curbing the flow of unaccounted money in the trading system of bullion and jewellery, with effect from 1st July, 2012 the seller of bullion and jewellery shall collect tax at the rate of 1% of sale consideration from every buyer of bullion and jewellery if sale consideration exceeds five lakh and two lakh rupees respectively and the sale is in cash. This would be irrespective of the fact whether buyer is a manufacturer, trader or purchase is for personal use.

**(f) Deemed date of payment of tax by the resident payee [Section 201]**

Under the existing provisions of Chapter XVII-B of the Income-tax Act, a person is required to deduct tax on certain specified payments at the specified rates if the payment exceeds specified threshold. In case of non-deduction of tax in accordance with the provisions of this Chapter, he is deemed to be an assessee in default under section 201(1) in respect of the amount of such non-deduction.

However, section 191 of the Act provides that a person shall be deemed to be assessee in default in respect of non/short deduction of tax only in cases where the payee has also failed to pay the tax directly. Therefore, the deductor cannot be treated as assessee in default in respect of non/short deduction of tax if the payee has discharged his tax liability.

The payer is liable to pay interest under section 201(1A) on the amount of non/short deduction of tax from the date on which such tax was deductible to the date on which the payee has discharged his tax liability directly. As there is no one-to-one correlation between the tax to be deducted by the payer and the tax paid by the payee, there is lack of clarity as to when it can be said that payer has paid the taxes directly. Also, there is no clarity on the issue of the cut-off date, i.e. the date on which it can be said that the payee has discharged his tax liability.

In order to provide clarity regarding discharge of tax liability by the resident payee on payment of any sum received by him without deduction of tax, section 201 has been amended to provide that the payer who fails to deduct the whole or any part of the tax on the payment made to a resident payee shall not be deemed to be an assessee in default in respect of such tax if such resident payee –

- has furnished his return of income under section 139;
- has taken into account such sum for computing income in such return of income; and
- has paid the tax due on the income declared by him in such return of income, and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed.

The date of payment of taxes by the resident payee shall be deemed to be the date on which return has been furnished by the payer.

With effect from 1st July, 2012, it is provided that where the payer fails to deduct the whole or any part of the tax on the payment made to a resident and is not deemed to be an assessee in default under section 201(1) on account of payment of taxes by the such resident, the interest under section 201(1A)(i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident payee.

Amendments on similar lines are also made in the provisions of section 206C relating to TCS for clarifying the deemed date of discharge of tax liability by the buyer or licensee or lessee.

***(g) Senior Citizens, not having profit and gains of business or profession, exempt from payment of advance tax [Section 207]***

Under section 208, every assessee is required to pay advance tax if the tax liability for the previous year is ₹10,000 or more. It is observed that, in case of senior citizens who have passive source of income like interest, rent, etc., the requirement of payment of advance tax causes genuine compliance hardship.

Therefore, in order to reduce the compliance burden on such senior citizens exemption from payment of advance tax has now been provided to a resident individual-

- not having any income chargeable under the head "Profits and gains of business or profession" and of age 60 years or more.

With effect from 1<sup>st</sup> April 2012, such senior citizens need not pay advance tax and are allowed to discharge their tax liability (other than TDS) by payment of self-assessment tax.

## **(B) WEALTH TAX (WEALTH TAX ACT, 1956)**

### ***(a) Exemption of residential house allotted to an employee etc. Of a company [Section 2(ea)]***

Under the existing provisions of section 2 of the Wealth-tax Act, the specified assets for the purpose of levy of wealth tax do not include a residential house allotted by a company to an employee or an officer or a whole time director if the gross annual salary of such employee or officer, etc. is less than five lakh rupees.

Considering general increase in salary and inflation since revision of this limit, with effect from Assessment Year 2013-14, the existing threshold of gross salary has been increased from five lakh rupees to ten lakh rupees for the purpose of levying wealth-tax on residential house allotted by a company to an employee or an officer or a whole time director.

### ***(b) Exemption from Wealth Tax - Reserve Bank of India***

Under the existing provisions of the Wealth-tax Act, wealth-tax is levied on individual, HUF and company. The definition of "Company" under the Act includes a corporation established by or under the Central, State or Provincial Act. Therefore, the Reserve Bank of India (RBI), being a corporation established under the Central Act, would be deemed as company for the purpose of levy of wealth-tax and shall be liable to pay wealth-tax. However, there is no provision for exempting RBI from the levy of wealth-tax either in the Wealth-tax Act or in Reserve Bank of India Act, 1934.

In order to provide that the RBI is not liable to pay wealth-tax, section 45 has been amended with retrospective effect from assessment year 1957-58 to provide that wealth-tax shall not be levied on the net wealth of RBI.

## **(C) SERVICE TAX (PART B)**

### ***Important Note:***

*The Following study lessons of Service Tax will replace Study XI: Service Tax – Background, Administrative and Procedural Aspects and Study XII: Levy, Collection and Payment of Service Tax along with Cenvat Credit Rules of the Tax Laws, Executive Programme study.*

## STUDY XI

### Background, Administration and Procedural Aspects of Service Tax

#### LESSON OUTLINE

- Background
- Constitutional validity
- Limbs of service tax laws
- Administrative mechanism
- Taxability of services
  - Meaning of service
  - Declared services
  - Negative list of services
  - List of exemptions under mega notification
  - Place of provision of services rules
- Computation of service tax
- Lesson round up
- Self Test Questions

#### LEARNING OBJECTIVES

The Service tax was introduced on the recommendation of Dr. Raja Chelliah Committee on tax reforms. Initially it was imposed at a uniform rate of 5% in the Union Budget for 1994-95 on 3 services. In a journey of about 19 years, it has seen various changes. Finance Act, 2012 has made remarkable changes in service tax legislation whereby the concept of Positive list of Taxable services has been replaced with a negative list. There is paradigm shift in the way services are taxed. Now all services except as notified in Negative list or exemption list are subject to applicability of service tax.

At the end of this lesson, you will learn

- The principles underlying the introduction of service tax
- Constitutional background of service tax
- Administrative machinery of service tax
- Components which provides for governance of service tax law
- Place of Provision of Services Rules
- Applicable rate of service tax.

*Service tax is administered by the Central Board of Excise and Customs (CBEC) which is under the control of the Department of Revenue, Ministry of Finance. CBEC administers the service tax through the Central Excise Department. A separate cell called the service tax cell, under each Commissionerates of central excise has been created for the purpose. Considering large number of assesseees, CBEC has also established Service Tax Commissionerates in some cities.*



## BACKGROUND

As the economy grows and develops, the contribution of the services sector becomes more substantial. Hence, tax on services becomes substantial revenue for the Government. Although Service tax is a concept of the modern era where developed economies as well as developing economies find over 70% of their gross economic output coming from the service sector. Service tax was there in vogue even in the Mauryan period in India. Ms. Romila Thaper in her “Asoka and the Decline of the Mauryas”, at page 72 (London 196, paperback edition, 1997, by Oxford) points out that services of weapon and implement makers were required to be provided to the state for a certain number of days in a year. This was a form of service tax in that period. But in the modern context, because of the increasing contribution of the service sector to the GDP of an economy, the importance of service tax is growing. As under the WTO agreements governments are required to reduce customs tariffs, governments are considering increase in service taxes revenues as a compensatory revenue generation mechanism. In terms of economics, tax on services is an indirect tax. This is because the burden of service tax can be passed on to the customer i.e., the recipient of the service. The service provider may also bear the burden of the tax by not passing or charging the same to a customer.

### ***How the burden of service tax shifted on the consumer?***

*Mr. Mohit is practicing Company Secretary, he represent before the Tax Authorities on behalf of Mr. Neeraj and raise a invoice of ₹1,00,000 plus service tax @12.36%.*

*Here, Mr. Neeraj is the client and he is required to pay the service tax of ₹12,360 in addition to the value of services. Subsequently Mr. Mohit deposit the sum to treasury of Central Government.*

*The ultimate outcome of this is that the burden of service tax is on the consumer.*

The Tax Reforms Committee headed by Dr. Raja J Chelliah recognized the revenue potential of the service sector and recommended imposition of service tax on selected services (selective approach or positive list approach). Consequently the service tax was imposed at a uniform rate of 5% in the Union Budget for 1994-95 on 3 services.

Finance Act, 2012 has made remarkable changes in service tax legislation whereby the concept of Positive list of Taxable services has been replaced with a negative list. A negative list of services implies that there is, a list of services which are not be subject to service tax. Service tax will not be chargeable on the services mentioned in the negative list and which are exempted by issue of notification. This is in contrast to the earlier method of taxation of services where the law had provided definition for each taxable service and all other undefined services were outside the preview of Service Tax.

### **Reason for Imposition of Service Tax:**

In *ALL INDIA FEDN. OF TAX PRACTITIONERS v. UNION OF INDIA* 2007 (7) S.T.R. 625 (S.C.) the Hon'ble Supreme Court of India has mentioned the following reasons for the imposition of service tax.

Service tax is an indirect tax levied on certain services provided by certain categories of persons including companies, association, firms, body of individuals etc. Service sector contributes about 64% to the GDP. Services constitute heterogeneous spectrum of economic activities. Today services cover wide range of activities such as management, banking,

insurance, hospitality, consultancy, communication, administration, entertainment, research and development activities forming part of retailing sector. Service sector is today occupying the centre stage of the Indian economy. It has become an Industry by itself. In the contemporary world, development of service sector has become synonymous with the advancement of the economy. Economics hold the view that there is no distinction between the consumption of goods and consumption of services as both satisfy the human needs.

In late seventies, Government of India initiated an exercise to explore alternative revenue sources due to resource constraints. The primary sources of revenue are direct and indirect taxes. Central excise duty is a tax on the goods produced in India whereas customs duty is the tax on imports. The word “goods” has to be understood in contradistinction to the word “services”. Customs and excise duty constitute two major sources of indirect taxes in India. Both are consumption specific in the sense that they do not constitute a charge on the business but on the client. However, by 1994, Government of India found revenue receipts from customs and excise on the decline due to W.T.O. commitments and due to rationalization of duties on commodities. Therefore, in the year 1994-95, the then Union Finance Minister introduced the new concept of “service tax” by imposing tax on services of telephones, non-life insurance and stock-brokers. That list has increased since then. Knowledge economy has made “services” an important revenue-earner.

At this stage, we may refer to the concept of “Value Added Tax” (VAT), which is a general tax that applies, in principle, to all commercial activities involving production of goods and provision of services. VAT is a consumption tax as it is borne by the consumer.

In the light of what is stated above, it is clear that Service Tax is a VAT which in turn is destination based consumption tax in the sense that it is on commercial activities and is not a charge on the business but on the consumer and it would, logically, be leviable only on services provided within the country. Service tax is a value added tax.

As stated above, service tax is VAT. Just as excise duty is a tax on value addition on goods, service tax is on value addition by rendition of services. Therefore, for our understanding, broadly “services” fall into two categories, namely, property based services and performance based services. Property based services cover service providers such as architects, interior designers, real estate agents, construction services, mandap Keepers etc.. Performance based services are services provided by service providers like stock-brokers, practicing company secretaries, practising chartered accountants, practising cost accountants, security agencies, tour operators, event managers, travel agents etc..

Government of India in order to tap new areas of taxation and to identify the hidden one appointed Tax Reforms Committee under the Chairmanship of Dr. Raja J Chelliah in August, 1991. The recommendations made by the Committee were accepted and the Service Tax was introduced in the Budget for 1994-95 through the Finance Act, 1994. Under the said enactment, Service Tax is the tax on notified services provided or to be provided. After its introduction, the constitutional validity of the services taxed by the Central Government was challenged before the Constitution Bench of this Court which took the view that the Central Government derived its authority from Entry 97 of List I of the Seventh Schedule to the Constitution for levying tax on services provided.



## CONSTITUTIONAL VALIDITY

As per Article 246 of the Constitution of India, law can be enacted by Parliament or the State legislature, if such power is given by the Constitution of India.

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).

Entry 97 of the Union list is the residuary entry and empowers the Central Government to levy tax on any matter not enumerated in state list or the concurrent list.

In 1994, the service tax was levied by the central government under the power granted by the entry 97 of the union list.

Thereafter in 2003 the government has passed the constitution (88th Amendment Act, 2003) which provides for the levy of service tax by the centre through the insertion of article 268A to the constitution. In addition to article 268A, entry 92C has been inserted in the union list to make the enactment relating to service tax a subject matter of union list.

Students may note that entry No.92C has not yet been made effective by the parliament and service tax is still governed by the entry 97 of the union list.



### Test Your Knowledge

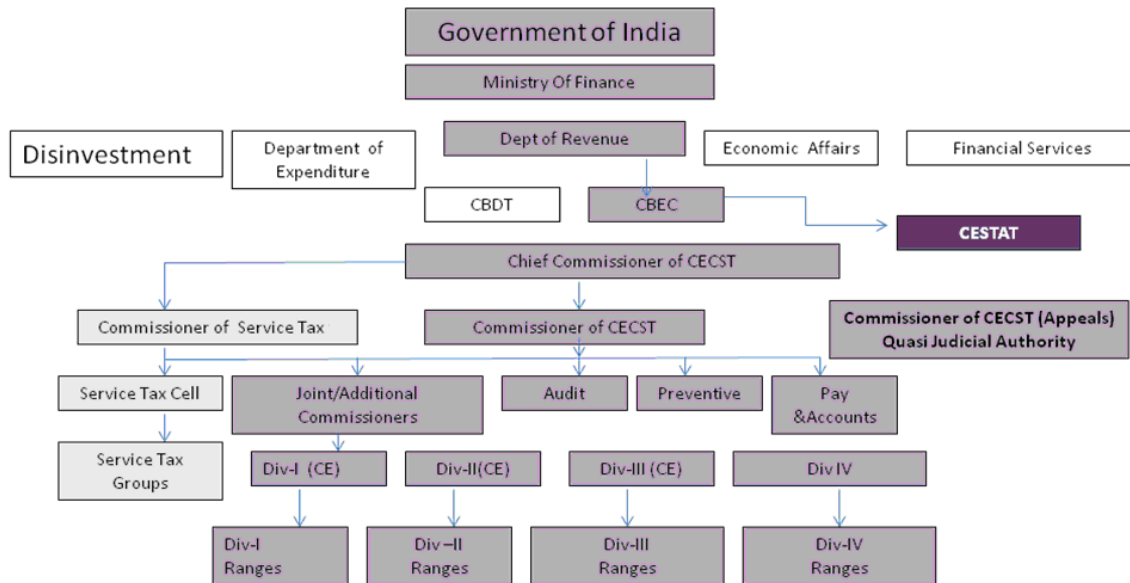
**1. When service tax was first introduced in the year 1994, it was levied on a uniform basis.**

- True
- False

## ADMINISTRATIVE MECHANISM

Service tax is administered by the Central Board of Excise and Customs (CBEC) which is under the control of the Department of Revenue, Ministry of Finance. CBEC administers the service tax through the Central Excise Department. A Central Excise Commissionerate establishes a separate cell called the service tax cell for the purpose of administration of Service Tax within its jurisdiction. Considering large number of assesseees, CBEC has also established Service Tax Commissionerates in some cities. There are six Commissionerates located at metropolitan cities of Delhi, Mumbai, Kolkata, Chennai, Ahmadabad and Bangalore which deal exclusively with work related to Service Tax. These Commissionerates are supervised by the jurisdictional Chief Commissionerate of Central Excise.

## Administrative Structure – Service Tax



**Division in charge :** Assistant / Deputy Commissioner    **Range in Charge:** Superintendent

### NOTES:

- CESTAT        =    Custom Excise Service Tax Appellate Tribunal
- CECST         =    Central Excise, Customs & Service Tax
- Div             =    Division

When separate Service Tax Commissioner is Constituted, then Commissioner of CECST, Commissioner of CEC, Service Tax Cell Comes under Service Tax Commissioner.

When separate Service Tax Commissioner is not Constituted, then Service Tax Cell Comes under Commissioner of CECST.

The above Chart is illustrative, as under the Commissioner of CECST or Commissioner of CEC there are other functional departments like Adjudication, Refunds, Technical Cell, Laboratory, Establishment.



### Test Your Knowledge

2. Service Tax is administered by
- (a) CBEC
  - (b) CDBT
  - (c) Central Government
  - (d) None of the above

## **TAXABILITY OF SERVICES**

Service Tax is levied vide Finance Act, 1994 (the Act). The Finance Act, 1994 applies all over India except the state of Jammu & Kashmir.

With effect from 1st July 2012, a new charging Section 66B has been inserted by the Finance Act 2012. Section 66B provides that there shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent 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.

The taxation of services is completely overhauled from positive approach or selective services to negative list approach. Now, no classification of services is required for the purpose of taxability. Moreover, only services rendered in taxable territory are taxable for which Place of Provision of Service Rules, 2012 ('PPSR') are prescribed and with this Import of Services and Export of Services Rules has been rescinded.

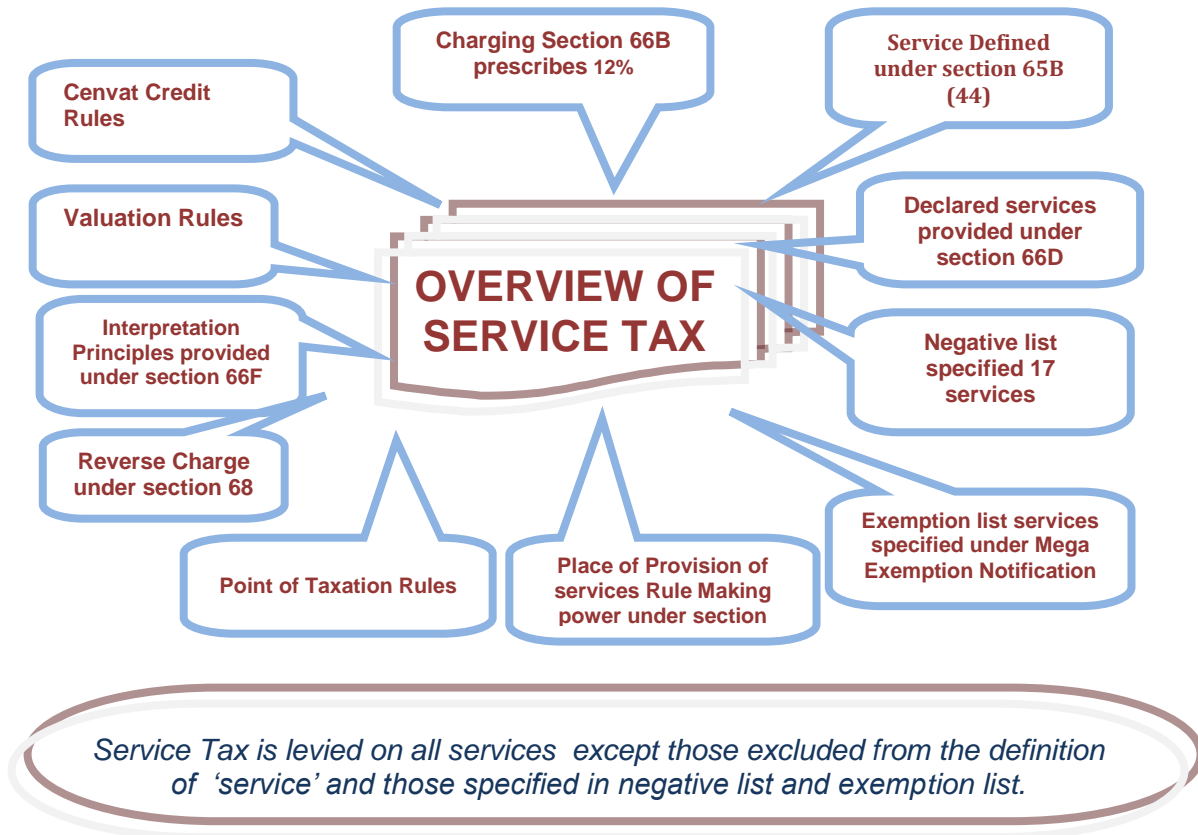
## **LIMBS OF SERVICE TAX LAWS**

The various limbs of the Service Tax Law are:

- Chapter V and VA (SECTIONS 64 TO 98) of the Finance Act, 1994 as amended by successive Finance Acts;
- As per Section 83 of the Finance Act, 1994 the provisions of the following sections of the Central Excise Act, 1944, as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise :- sub-section 2 of 9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, 31, 32, 32A to 32P, 33A, 35EE, 34A, 35F, 35FF, to 35O (both inclusive), 35Q, 35R, 36, 36A, 36B, 37A, 37B, 37C, 37D 38A and 40. Certain Sections of Central Excise Act, 1944 are also made applicable to the Service Tax matters.
- Service Tax Rules, 1994,
- Service Tax (Advance Ruling), Rules 2003;
- The CENVAT Credit Rules, 2004;
- Service Tax (Advance Rulings) Rules, 2003
- Authority for Advance Rulings (Central Excise, Customs and Service Tax) Procedure Regulations, 2005;
- Service Tax (Registration of Special category of persons) Rules, 2005;
- Service Tax (Determination of Value) Rules, 2006;
- Service Tax (Provisional Attachment of Property) Rules, 2008;
- Service Tax (Publication of Names) Rules, 2008;
- Service Tax Return Preparer Scheme, 2009;
- Point of Taxation Rules, 2011;
- Indirect Tax Ombudsman Guidelines, 2011;
- Service Tax (Settlement of Cases) Rules, 2012;
- Service Tax (Compounding of Offences) Rules, 2012;

- Service Tax (Removal of Difficulty) Order, 2012;
- Place of Provision of Services Rules, 2012.

Further, Service Tax Notifications issued by the Government is also an important limb of Service Tax law. The Central Board of Excise and Customs also issues Circulars on service tax and on the basis of Circulars jurisdictional Commissionerates of Central Excise issues Trade Notices for the guidance of the assesseees on service tax matters.



## MEANING OF SERVICE

The Finance Act, 2012 has also defined a term "Service" for the first time. In other words, from June 1994 to June 2012, the Finance Act, 1994 was not containing a definition of the term Service.

Clause (44) of Section 65B of the Act has defined a term Service as under:

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

- an activity which constitutes merely,—
  - a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
  - 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
  - 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.

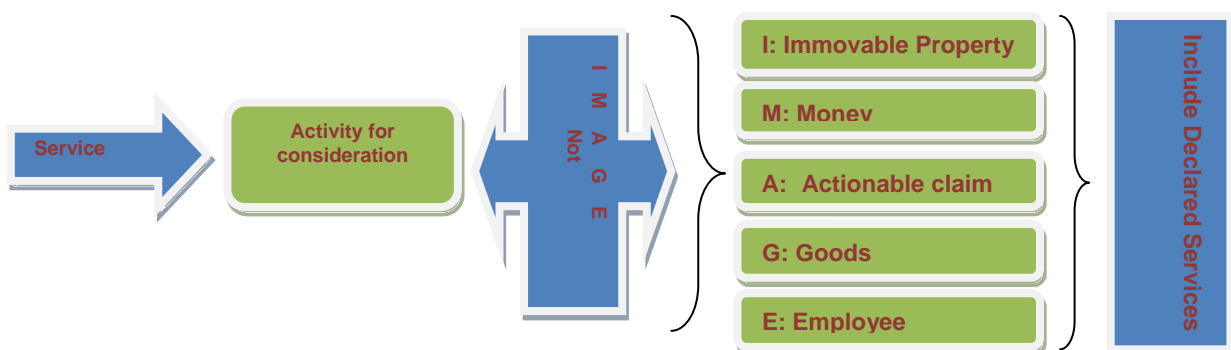
Explanation 2-- For the purposes of this clause, transaction in money shall not include any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged.

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;

**Example:** Service of an unincorporated body or a non-profit entity registered under any law for the time being in force to its own members up to an amount of ₹5,000 per member per month by way of reimbursement of charges or share of contribution is exempt from service tax. Where RWA is working as a pure agent of its members for sourcing of goods or services from a third person, amount collected by RWA from its members may be excluded from the value of taxable service in terms of Rule 5(2) of Service Tax (Determination of Value) Rules, 2006 subject to compliance with the specified conditions.



## Accounting Codes for Services

Service Tax accounting codes must be mentioned in the Service Tax Payment Challan (GAR 7). In case of Multiple service Provider (a service provider rendering more than one taxable service), amount attributable to each such service along with the concerned accounting codes should be mentioned clearly in the column provided for this purpose in the GA R 7 Challan.

Accounting code for the purpose of payment of service tax under the Negative List approach ["All Taxable Services" – 00441089] was prescribed vide Circular 161/12/2012 dated 6th July, 2012. However, for statistical analysis suggestions were received for restoration of old accounting codes and to provide list of description of services to the taxpayers for obtaining registration. After examining the suggestions old accounting code list has been restored and service specific accounting codes for the purpose of registration and payment of service tax is provided in annexure to the Circular No.165/16/2012 –ST.

### (A) DECLARED SERVICES

Section 66E specify nine activities or transactions which are declared to be covered as 'service'. Such activities include:-

- (a) renting of immovable property
- (b) construction of a complex.
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software
- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act
- (f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods
- (g) activities in relation to delivery of goods on hire purchase or any system of payment by instalments
- (h) service portion in the execution of a works contract
- (i) service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity

Para No. 3.4.1 of Taxation of Services – An education Guide dated 20.06.2012 has given the following test to determine whether an activity is a taxable service:

#### **STEP 1: To determine whether service is being provided by you:**

<i>S.NO.</i>	<i>QUESTION</i>	<i>Provide Your Answer</i>
1	Am I doing an activity (including, but not limited to, an activity Specified in section 65E of the Act) for another person*?	YES
2	Am I doing such activity for a consideration?	YES
3	Does this activity consist only of transfer of title in goods or	NO

	immovable property by way of sale, gift or in any other manner?	
4	Does this activity constitute only 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?	NO
5	Does this activity consist only of a transaction in money or actionable claim?	NO
6	Is the consideration for the activity in the nature of court fees for a court or a tribunal?	NO
7	Is such an activity in the nature of a service provided by an employee of such person in the course of employment?	NO
8	Is the activity covered in any of the categories specified in Explanation 1 to clause (44) of section 65B of the Act	NO

If the answer to the above questions is as per the above answers in column 3 of the table above THEN you are providing a service.

#### **STEP 2: To determine whether service provided by you is taxable**

If you are providing a 'service' (Step 1) and then pose the following Questions to yourself-

<b>S.NO.</b>	<b>QUESTION</b>	<b>ANSWER</b>
1	Have I provided or have I agreed to provide the service?	Yes
	Have I provided or have I agreed to provide the service in the taxable territory?	Yes
2	Is this activity entirely covered in any of the services described in the negative list of services contained in section 66D of the Act?	No

If the answer to the above questions is also as per the answers given in column 2 of the table above then you are providing a 'taxable service'.

#### **(B) NEGATIVE LIST OF SERVICES**

A Negative List approach to taxation of services has been introduced vide sections 66B, 66C, 66D, 66E and 66F in Chapter V of the Finance Act. The services specified in the 'Negative List' (section 66D) will remain outside the tax net. All other services, except those specifically exempted by the exercise of powers under section 93(1) of the Finance Act, 1994, would thus be chargeable to service tax. Negative list approach to taxation of services is effective from July 1, 2012.

Section 66D specify the following list of services under the negative list: –

- (a) 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.
- (iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities.
- (b) services by the Reserve Bank of India.
- (c) services by a foreign diplomatic mission located in India.

*Vide Notification No. 27/2012 ST dated 20.06.2012, services provided by any person for official uses of a foreign diplomatic mission has been exempted on satisfaction of the prescribed conditions.*
- (d) 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 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 the 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.
- (e) trading of goods.
- (f) any process amounting to manufacture or production of goods.
- (g) selling of space or time slots for advertisements other than advertisements broadcast by radio or television.
- (h) service by way of access to a road or a bridge on payment of toll charges.
- (i) betting, gambling or lottery.
- (j) admission to entertainment events or access to amusement facilities.
- (k) transmission or distribution of electricity by an electricity transmission or distribution utility.
- (l) 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 recognised by any law for the time being in force.
  - (iii) education as a part of an approved vocational education course.
- (m) services by way of renting of residential dwelling for use as residence.



- (n) 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 authorised dealers of foreign exchange or amongst banks and such dealers.
- (o) 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 airconditioned 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
- (p) 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
- (q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

### **(C) LIST OF EXEMPTIONS UNDER MEGA NOTIFICATION**

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994, the Central Government has issued Notification No. 25/ 2012 ST dated 20th June 2012 (Mega Exemption Notification) exempting the following taxable services. This notification has come in to effect from 1st day of July, 2012.

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

“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;

*The illustrative list of such organizations has been provided by Para No.7.1, Taxation of Services – An Education Guide dated 20.06.2012 as follows:*

- *International Civil Aviation Organisation*
- *World Health Organisation*
- *International Labour Organisation*
- *Food and Agriculture Organisation of the United Nations*

- *UN Educational, Scientific and Cultural Organisation (UNESCO)*
- *International Monetary Fund (IMF)*
- *International Bank for Reconstruction and Development*
- *Universal Postal Union*
- *International Telecommunication Union*
- *World Meteorological Organisation*
- *Permanent Central Opium Board*
- *International Hydrographic Bureau*
- *Commissioner for Indus Waters, Government of Pakistan and his advisers and assistants*
- *Asian African Legal Consultative Committee*
- *Commonwealth Asia Pacific Youth Development Centre, Chandigarh*
- *Delegation of Commission of European Community*
- *Customs Co-operation Council*
- *Asia Pacific Telecommunity*
- *International Centre of Public Enterprises in Developing Countries, Ljubljana (Yugoslavia)*
- *International Centre for Genetic Engineering and Biotechnology*
- *Asian Development Bank*
- *South Asian Association for Regional Co-operation*
- *International Jute Organisation, Dhaka, Bangladesh*

2. Health care services by a clinical establishment, an authorized medical practitioner or para-medics.

The terms health care services are defined as follows:

**“Health care services”** means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes

- services by way of transportation of the patient to and from a clinical establishment, but does not include:
- hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;

As per para 7.2.1 of Taxation of services –An Education Guide the services provided in recognized systems of medicines in India are exempt. In terms of the Clause (h) of section 2 of the Clinical Establishments Act, 2010, the following systems of medicines are recognized systems of medicines:

- *Allopathy*
- *Yoga*

- Naturopathy
- Ayurveda
- Homeopathy
- Siddha
- Unani
- Any other system of medicine that may be recognized by central government

**“clinical establishment”** means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;

**“authorised medical practitioner”** means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;

Para 7.2.2. of Taxation of services- An Education Guide describes 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.

In short, the health care services provided by a clinical establishment, an authorized medical practitioner and paramedics shall be exempt.

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 (43 of 1961) by way of charitable activities.

**“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;

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.

In this case the exemption is provided to the activity of letting out on rent of areas surrounding, or in the compound of a religious place.

For this purpose, the following are defined as;

***“Religious place”*** means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality;

***“General public”*** means the body of people at large sufficiently defined by some common quality of public or impersonal nature;

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.

***Arbitral tribunal*** defines as “arbitral tribunal” has the meaning assigned to it in clause (d) of section 2 of the Arbitration and Conciliation Act, 1996 (26 of 1996);

The definition as provided in clause (d) of section 2 of the Arbitration and Conciliation Act, 1996 read as; “arbitral tribunal” means a sole arbitrator or a panel of arbitrators”

Further, Business entity is defined in section 65B of the Finance Act, 1994 as ‘any person ordinarily carrying out any activity relating to industry, commerce or any other business.

Thus, services provided by arbitral tribunal to a business entity having turnover of more than ₹10 lakhs in the preceding financial year would not be exempt.

- (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

***“Advocate”*** has the meaning assigned to it in clause (a) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961);

The definition of advocate has been defined in clause (a) of subsection (1) of section of the Advocates Act, 1961 as; “advocate means an advocate entered in any roll under the provisions of this Act”

***“legal service”*** means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority;

Thus, any services provided by such advocates/firms in fields other than legal services would be taxable. Such services can include services relating to mergers and acquisitions, due diligence etc.

- (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.

In order to promote development of new drugs, exemption is provided to testing and analysis of such new drugs.

8. Services by way of training or coaching in recreational activities relating to arts, culture or sports.

Vide Circular No. 164/15/2012 S.T, dated 28-08-2012, it has been clarified that no service tax is leviable on vocational education/training/skill development courses (VEC) offered by the Government (Central Government or state Government) or local authority themselves. Also in case of such courses offered by an entity independently established by the Government under the law as a society or any other similar body, it has been clarified that the words “recognised by an entity established under a central or state law including delegated legislation, for the purpose of granting recognition to any education course including a VEC

9. Services provided to an educational institution in respect of education exempted from service tax, by way of,-

(a) auxiliary educational services; or

(b) renting of immovable property.

Here, exemption is provided to

- to an educational institution
- in respect of education
- which is exempt from levy of service tax
- by way of auxiliary educational services
- by way of renting of immovable property.

For this purpose ‘auxiliary educational services’ are defined as follows:

**“auxiliary educational services”** means any services relating to imparting any skill, knowledge, 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 services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution;

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.

**“Recognized sports body”** means - (i) the Indian Olympic Association, (ii) Sports Authority of India, (iii) a national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations, (iv) national sports promotion organisations recognised by the Ministry of Sports and Youth Affairs of the Central Government, (v) the International Olympic Association or a federation recognised by the International Olympic

*Association or (vi) a federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India;*

For this purpose 'Recognized sports body' is defined as follows:

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, Paralympic 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.

For this purpose 'governmental authority' is defined as follows:

***"governmental authority"*** means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution;

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 12AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;
- (d) a pollution control or effluent treatment plant, except located as a part of a factory; or

(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.

***"Original works"*** means has the meaning assigned to it in Rule 2A of the Service Tax (Determination of Value) Rules, 2006;

*Definition as provided in such rules is as follows:*

*Original works means:*

- (i) All new constructions;
- (ii) All types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
- (iii) Erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.

***"residential complex"*** means any complex comprising of a building or buildings, having more than one single residential unit;

***"single residential unit"*** means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family;

15. Services provided by way of temporary transfer or permitting the use or enjoyment of a copyright,-

- (a) covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical or artistic works; or
- (b) of cinematograph films for exhibition in a cinema hall or cinema theatre.

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.

***"Declared tariff"*** includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air-conditioner, refrigerators or any other amenities, but



*without excluding any discount offered on the published charges for such unit;*

19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year.

20. Services by way of transportation by rail or a vessel from one place in India to another of the following goods -

- (a) omitted by Finance Act, 2013 as enacted on 10th May 2013;
- (b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
- (c) defence or military equipments;
- (d) omitted;
- (e) omitted;
- (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 transport in a goods carriage of,-

- (a) agricultural produce;
- (b) goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;
- (c) goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred fifty;
- (d) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages;
- (e) chemical fertilizer and oilcakes;
- (f) newspaper or magazines registered with the Registrar of Newspapers;
- (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
- (h) defence or military equipments;

***“Goods carriage”*** has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

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.

***“State transport undertaking”*** has the meaning assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

*For clarification, Taxation of services –An Education Guide dated 20.06.2012, provides the following:*

*7.11.5 Is giving of a bus on hire to any person liable to tax?*

*Giving on hire a bus to a state transport undertaking is exempt from service tax. If the bus is given on hire to a person other than a state transport undertaking, it will be taxed.*

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.

*“contract carriage” has the meaning assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);*

24. Omitted;

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.

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;

*“trade union” has the meaning assigned to it in clause (h) of section 2 of the Trade Unions Act, 1926 (16 of 1926).*

*For clarification Taxation of services – An Education Guide dated 20.06.2012, provides the following:*

*7.11.9 I am a Resident Welfare Association (RWA). The members contribute an amount to RWA for holding camps to provide health care services to poor men and women. Am I required to pay tax on contribution received from members?*

*No. You are not required to pay service tax on the contribution received as you are carrying out any activity (holding camps to provide health care services) which is exempt from the levy of service tax. If contribution is for carrying out an activity which is taxable, you are required to pay service tax.*

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;

**“sub-broker”** has the meaning assigned to it in sub-clause (gc) of clause 2 of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992;

**“authorised person”** means any person who is appointed as such either by a stock broker (including trading member) or by a member of a commodity exchange and who provides access to trading platform of a stock exchange or a commodity exchange as an agent of such stock broker or member of a commodity exchange;

**“commodity exchange”** means an association as defined in section 2(j) and recognized under section 6 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952);

**“distributor or selling agent”** has the meaning assigned to them in clause (c) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i), vide number G.S.R. 278(E), dated the 1st April, 2010 and shall include distributor or selling agent authorised by the lottery-organising State;

**“business facilitator or business correspondent”** means an intermediary appointed under the business facilitator model or the business correspondent model by a banking company or an insurance company under the guidelines issued by Reserve Bank of India;

**“banking company”** has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act, 1934(2 of 1934);

**“general insurance business”** has the meaning assigned to it in clause (g) of section 3 of General Insurance Business (Nationalisation) Act, 1972 (57 of 1972);

**“insurance company”** means a company carrying on life insurance business or general insurance business;

**“life insurance business”** has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938);

**“rural area”** means the area comprised in a village as defined in land revenue records, excluding-

the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or any area that may be notified as an urban area by the Central Government or a State Government;

For clarification Taxation of services –An Education Guide dated 20.06.2012, provides the following:

2.8.12 Would recharge vouchers issued by service companies for enabling clients/consumers to avail services like mobile phone communication, satellite TV broadcasts, DTH broadcasts etc be ‘actionable claims’

No. Such recharge vouchers do not create a ‘beneficial interest’ in a moveable property but only enable a person to enjoy a particular service.

7.11.11 Whether the exemption provided in the mega -exemption to services by way of

*construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., is also available to the sub-contractors who provide input service to these main contractors in relation to such construction?*

*As per clause (1) of section 66F reference to a service by nature or description in the Act will not include reference to a service used for providing such service. Therefore, if any person is providing services, in respect of projects involving construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., such as architect service, consulting engineer service, which are used by the contractor in relation to such construction, the benefit of the specified entries in the mega-exemption would not be available to such persons unless the activities carried out by the sub-contractor independently and by itself falls in the ambit of the exemption.*

*It has to be appreciated that the wordings used in the exemption are 'services by way of construction of roads etc' and not 'services in relation to construction of roads etc'. It is thus apparent that just because the main contractor is providing the service by way of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., it would not automatically lead to the classification of services being provided by the sub-contractor to the contractor as an exempt service.*

*However, a sub-contractor providing services by way of works contract to the main contractor, providing exempt works contract services, has been exempted from service tax under the mega exemption if the main contractor is engaged in providing exempt services of works contracts. It may be noted that the exemption is available to sub-contractors engaged in works contracts and not to other outsourced services such as architect or consultants.*

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;

*"Appropriate duty" means duty payable on manufacture or production under a Central Act or a State Act, but shall not include 'Nil' rate of duty or duty wholly exempt;*

*"Principal manufacturer" means any person who gets goods manufactured or processed on his account from another person;*

31. Services by an organiser to any person in respect of a business exhibition held outside India;

***For clarification Taxation of services –An Education Guide dated 20.06.2012, provides the following:***

*Para No. 7.11.16 Footwear Association of India is organizing a business exhibition in Germany for footwear manufacturers of India. Is Footwear association of India required to pay service tax on services to footwear manufacturers?*

*No. The activity is exempt from service tax.*

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.

***For clarification Taxation of services –An Education Guide dated 20.06.2012, provides the following:***

*Para No. 7.11.13 Whether service tax is leviable on telephone services rendered by M/s. BSNL through Village Panchayat Telephone (VPT) with local call facility, as M/s. BSNL is a public sector unit and telephones run by it cannot be treated as ‘departmentally run telephones’?*

*As per Sl. No. 32 of the mega-exemption Notification in addition to exemption to ‘departmentally run telephones’ there is exemption for ‘Guaranteed Public Telephone operating only for local calls’ also. Village Public Telephones (VPTs) with facility of local calls (without 9 dialing facility or STD facility) run by BSNL would fall under the category of ‘Guaranteed Public Telephone operating only for local calls’.*

33. Services by way of slaughtering of 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 (43 of 1961) for the purposes of providing charitable activities; or
- (c) a person located in a non-taxable territory.

*For clarification Taxation of services –An Education Guide dated 20.06.2012, provides the following example:*

*Para No. 7.11.17 I am resident in Jammu and Kashmir and planning to construct a property in Delhi. I have got the architectural drawings made from an architect who is also resident in Jammu and Kashmir. Am I liable to pay service tax on architect services?*

*Solution: No. Even though the property is located in Delhi- in a taxable territory- your architect is exempt from service tax as both the service provider and the service receiver is 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 (34 of 1948).

37. Services by way of transfer of a going concern, as a whole or an independent part thereof.



*As per Taxation of services –An Education Guide dated 20.06.2012, ‘transfer of going concern’ means transfer of a running business which is capable of being carried on by the purchaser as an independent business, but shall not cover mere or predominant transfer of an activity comprising a service. Such sale of business as a whole will comprise comprehensive sale of immovable property, goods and transfer of unexecuted orders, employees, goodwill etc. Since the transfer in title is not merely a transfer in title of either the immovable property or goods or even both it may amount to service and has thus been exempted.*

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 243W of the Constitution.

*“governmental authority” means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution;*

#### **(D) PLACE OF PROVISION OF SERVICES RULES**

##### **Service Tax Is Destination Consumption Based Tax**

Service Tax is a Value Added Tax (VAT) and is destination based consumption tax in the sense that it is on commercial activities and is not a charge on the business but on the consumer and it would, logically, be leviable only on services provided within the country. This principle is more or less universally applied.

In terms of this principle, exports are not charged to tax, as the consumption is outside the taxable territory, and services are taxed on their importation into the taxable territory.

However, most of the services are intangible in nature; the determination of place of their consumption is not easy. Services could be provided by a person located at one location, actually performed at another while being delivered to a person located at a third location, and occasionally actually consumed at a third location or over a larger geographical territory, falling in more than one taxable jurisdiction. For example a person situated in Delhi may buy a ticket on line from a service provider located outside India, say Delta Airline, USA for a journey from Mumbai to New York, wherein part of the service will be provided on Indian land mass or in taxable territory (the territory of India including territorial waters of India extending up to 12 nautical miles (under International Sea Act). Hence services provided beyond the territorial waters of India are not liable to service tax as the provisions of the service tax have not been extended beyond India). On other occasions the exact location of service recipient itself may not be available e.g. services supplied electronically through internet such as software services, web based services, software maintenance services. As a result it is necessary to lay down rules determining the exact place of provision, while ensuring a certain level of harmonization with international practices in order to avoid both the double taxation as well as double non-taxation of services.

It is also a common practice to largely tax services provided by business to other business entities, based on the location of the customers and other services from business to consumers based on the location of the service provider. Since the determination in terms of above principle is not easy, or sometimes not practicable, nearest proxies are adopted to provide



specificity in the interpretation as well as application of the law.

### **Function of Place of Provision of Services Rules, 2012**

These rules are primarily meant for:

- (a) The assessee who deal in cross-border services (from taxable territory to non taxable territory or from non taxable territory to taxable territory).
- (b) Those assessees who have operations with suppliers or customers in the state of Jammu and Kashmir.
- (c) Service providers operating within India (within the taxable territory) from multiple locations, without having centralized registration will find them useful in determining the precise taxable jurisdiction applicable to their operations.
- (d) Determining services that are wholly consumed within a SEZ, to avail the outright exemption from service tax.

### **Basic Framework**

Place of Provision of Services (POPS) Rules, 2012 are comprehensive set of rules which provides for whether a service has been provided in taxable territory or not. The concept of Export or Import service has been replaced with provision of service in taxable or non taxable territory and therefore no separate set of rules for Export and Import of services exists. The rules for determination of import of services has done away with and export of services are now determined with Rule 6A of Service Tax Rules, 1994.

### **How the POPS Rules, 2012 shall apply**

*The answer to this question is provided in Para 5.2.1. of Taxation of Services – An Education Guide dated 20.06.2012 as follows:*

As stated earlier, in terms of 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. 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. If not, he is liable to pay tax.

Before moving to the Rules for determining the Place of provision of Services Rules, the understanding of the following term is very important.

**Taxable territory** has been defined in sub-section 52 of section 65B. It means the territory to which the provisions of Chapter V of the Finance Act, 1994 apply i.e. whole of India excluding the

state of Jammu and Kashmir.

**“Non-taxable territory”** is defined in sub-section 35 *ibid* accordingly as the territory other than the taxable territory.

**“India”** is defined in sub-section 27 of section 65 B, as follows:

**“India”** means—

- (a) the territory of the Union of India as referred to in clauses (2) and (3) of article 1 of the Constitution;
- (b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976;
- (c) the sea-bed and the subsoil underlying the territorial waters;
- (d) the air space above its territory and territorial waters; and
- (e) the installations structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

### **Order of Application of POPS, Rules 2012**

Rule 14 of POPS rules, provides that rules should be interpreted in reverse order, means rules which comes last in order will be considered first and if that is not applicable then go to the second last and so on. These rules should be applied in the reverse order (from below to above) i.e. in case rule 8 is applicable no other rule prior to this rule shall be applicable.

An illustration is given in Para 5.14.1 of Taxation of Services – An Education Guide dated 20.06.2012 as follows:

#### **Illustration 1**

*An architect based in Mumbai provides his service to an Indian Hotel Chain (which has business establishment in New Delhi) for its newly acquired property in Dubai. If Rule 5 (Property rule) were to be applied, the place of provision would be the location of the property i.e. Dubai (outside the taxable territory). With this result, the service would not be taxable in India. Whereas, by application of Rule 8, since both the provider and the receiver are located in taxable territory, the place of provision would be the location of the service receiver i.e. New Delhi. Place of provision being in the taxable territory, the service would be taxable in India.*

*By application of Rule 14, the later of the Rules i.e. Rule 8 would be applied to determine the place of provision.*

#### **Illustration 2**

*For the Ms Universe Contest planned to be held in South Africa, the Indian pageant (say, located in Mumbai) avails the services of Indian beauticians, fashion designers, videographers, and photographers. The service providers travel as part of the Indian pageant's entourage to South Africa. Some of these services are in the nature of personalized services, for which the place of provision would normally be the location where performed (Performance rule-Rule 4), while for others, under the main rule (Receiver location) the place of provision would be the location of receiver.*

*Whereas, by application of Rule 8, since both the provider and the receiver are located in taxable territory, the place of provision would be the location of the service receiver i.e. New Delhi. Place of provision being in the taxable territory, the service would be taxable in India.*

*By application of Rule 14, the later of the Rules i.e. Rule 8 would be applied to determine the place of provision.*

### **Main Rule: Rule 3**

Rule 3 of the POPS rules provide the basic rule (except provided otherwise in the POPS Rules). As per this rule, the place of provision of services shall be:

- the location of the recipient of service
- in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

The principal effect of this rule is that:-

- A. 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.
- B. However if the receiver is located outside the taxable territory, no service tax will be payable on the said service.

### **Rule 2 defines 'location of service provider' as follows:**

- (h) "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*
    - (iii) *where services are provided from more than one establishment, whether business or*
    - (iv) *fixed, the establishment most directly concerned with the provision of the service; and in the absence of such places, the usual place of residence of the service provider.*

### **Rule 2 defines 'location of service receiver' as follows**

- (i) "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.

*Explanation:-* For the purposes of clauses (h) and (i), “usual place of residence” in case of a body corporate means the place where it is incorporated or otherwise legally constituted.

*Explanation 2:-* For the purpose of clause (i), in the case of telecommunication service, the usual place of residence shall be the billing address.

### Who is a service receiver?

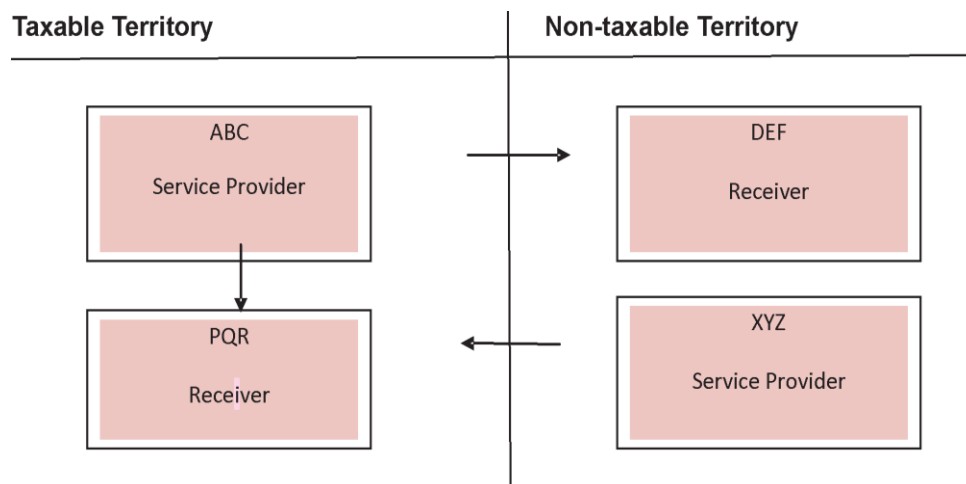
Para 5.3.3 of Taxation of Services – An Education Guide dated 20.06.2012 provides as follows:

Normally, the person who is legally entitled to receive a service and, therefore, obliged to make payment, is the receiver of a service, whether or not he actually makes the payment or someone else makes the payment on his behalf.

Service tax is normally required to be paid by the provider of a service, except where he is located outside the taxable territory and the place of provision of service is in the taxable territory.

Where the provider of a service is located outside the taxable territory, the person liable to pay service tax is the receiver of the service in the taxable territory, unless of course, the service is otherwise exempted.

Following illustration will make this clear:-



A company ABC provides a service to a receiver PQR, both located in the taxable territory. Since the location of the receiver is in the taxable territory, the service is taxable. Service tax liability will be discharged by ABC, being the service provider and being located in taxable territory.

However, if ABC were to supply the same service to a recipient DEF located in non-taxable territory, the provision of such service is not taxable, since the receiver is located outside the taxable territory.

If the same service were to be provided to PQR (located in taxable territory) by an overseas

provider XYZ (located in non-taxable territory), the service would be taxable, since the recipient is located in the taxable territory. However, since the service provider is located in a non-taxable territory, the tax liability would be discharged by the receiver, under the reverse charge principle (also referred to as “tax shift”).

#### **RATE OF SERVICE TAX**

The rate of service tax is mentioned in the charging section. As per the new charging section 66B, as stated earlier, service tax is leviable @12% on the value of taxable services. Further, as per section 91 read with section 95 of the Finance (No. 2) Act, 2004 Education cess is leviable @ 2% and as per section 136 read with section 140 of the Finance Act, 2007 secondary and higher education cess is leviable @ of on the amount of Service Tax levied. Education cess of 2% and secondary and higher education cess of 1% is in the nature of sur tax on service tax.

#### **Computation of Service Tax**

If a person renders a taxable service of the value of ₹500, the service tax @12% will be ₹60. The Education cess of 2% on ₹60 will be ₹1.20 and secondary and higher education cess of 1% will be ₹0.60. Thus, a total tax will be ₹61.80.

#### **ROUNDING OFF OF SERVICE TAX**

The provisions of Section 37D of the Central Excise Act, 1944 are applicable to Service Tax Law by virtue of Section 83 of Finance Act, 1994 (as amended), provide that the amount of service tax, interest, penalty, fine or any other sum payable and the amount of refund or any other sum due, under the provisions shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.

#### **LESSON ROUND UP**

- The Tax Reform Committee headed by Dr. Raja C. Chelliah recognised the revenue potential of service sector and recommended imposition of service tax on some select services.
- Entry No. 92C has not yet been made effective by the parliament and service tax is still governed by the entry 97 of the union list.
- The Central Board of Excise and Customs has been entrusted with the task of administration of service tax.
- The taxation of services is completely overhauled from positive approach or selective services to negative list approach. Now, no classification of services is required for the purpose of taxability.
- With the introduction of Negative list approach the services which are out of the purview of negative list and mega exemption list are chargeable to service tax.
- Services rendered in taxable territory are taxable for which Place of Provision of Service Rules, 2012 ('PPSR') are prescribed and with this Import of services and export of services rules has been rescinded.

- Service tax is charged @12% plus Education cess @2% and SHEC @ 1%.
- Service tax, interest, fine, penalty or any other sum payable shall be rounded off to the nearest of rupee one.

### SELF TEST QUESTIONS

*These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.*

#### TRUE AND FALSE

1. Service tax in India is levied under a separate enactment.
2. The Central Excise Officer is empowered to impose penalty under service tax.
3. The Central Government has exempted some of the taxable services.
4. Service tax is administered by service tax department.
5. Service tax has been imposed by amending Chapter-VI of the Finance Act, 1994.
6. Service tax is applicable on whole India excluding Jammu and Kashmir.
7. Rate of service tax payable for the financial year 2012-13 is 10 per cent.

#### ELABORATIVE

1. Describe briefly the scope of service tax in India.
2. Define the following:
  - (a) Service;
  - (b) Service tax.
3. Describe briefly the mechanism in administering service tax in India.
4. Explain in brief the steps for calculation of service tax under the new regime.

### ANSWERS/HINTS

#### True and False

1. False; 2. True; 3. True; 4. False; 5. False; 6. True; 7. False.

#### Test Your Knowledge

1. True
2. CBEC

### SUGGESTED READINGS

1. Taxation of Services – An Education Guide dated 20.06.2012
2. Service Tax Manual: Taxmann
2. Dr. V.K. Singhania: Students Guide to Income-tax; Taxmann Publications Pvt. Ltd., New Delhi.
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## STUDY XII

### LEVY, COLLECTION AND PAYMENT OF SERVICE TAX

#### LESSON OUTLINE

- Registration Charge of Service tax
- Service Tax Registration of Special Category of Persons
- Payment of service tax
- Incidence to pay Service Tax
- Point of Taxation Rules, 2011
- Adjustment of Service Tax
- Interest on delayed payment of service tax u/s 75
- Records to be maintained
- E-filing of Service Tax Returns
- Penalties and Prosecution
- Waiver or reduction of penalty
- Abatement in Service Tax
- Role of Company Secretary
- Lesson Round Up
- Self Test Questions

#### LEARNING OBJECTIVES

This chapter covers the procedural as well substantive provisions relating to levy, collection and payment of service tax and relevant CENVAT Credit Rules 2004. It also covers the registration aspects, filing aspects including e-filing, appeal matters including appeal before Appellate Tribunal. The new regime of service tax i.e. levy of service tax on negative list approach have been discussed in the previous lesson.

At the end of this lesson, you will learn :

- What is the basis of charge for service tax?
- What are the circumstances under which service tax is paid by the receiver of services?
- When the liability for payment of service tax arises?
- What is the registration procedure for service provider?
- How to file service tax return?
- What are the Penal provisions for payment/non-payment of service tax?
- What is role of Company Secretaries?

*CBEC has rolled-out a new centralized, web-based and workflow-based software application called Automation of Central Excise and Service Tax (ACES) for on-line filing/ uploading of documents and other activities under Central Excise and Service Tax.*

*A Certified Facilitation Centre (CFC) under ACES project is a facility, other than the physical front offices or Facilitation Centres of CBEC, which may be set-up and operated by a Company Secretary in practice to whom a certificate is issued under the ACES project, where the assessee of Central Excise and Service Tax can avail the facility to file their returns and other documents electronically on payment of specified fees.*



## REGISTRATION

Section 69 of the Finance Act, 1994 specifies the persons who are required to get themselves registered under this Act. Every person liable to pay service tax to get registered with designated Superintendent of Central Excise.

An application for registration is required to be made to the Superintendent of Central Excise in Form ST-1. This is to be made within a period of thirty days from the date on which the service tax is leviable on him and where a person commences the business of providing a taxable service after such service has been levied, he shall make an application for registration within a period of thirty days from the date of such commencement.

As stated earlier, a person can become liable to pay tax both as service provider as well as service receiver. Therefore, when a service receiver is liable to pay service tax he is also required to get himself registered.

### Procedure for Registration

With effect from 1st June 2010 vide notification no.20-21/2010 a person shall make an online application for registration. Online registrations have been made mandatory for all the assessees. Assessee has to register via online portal of Automation of Central Excise and Service Tax (ACES) or can utilise the services Certified Facilitation Centres (CFCs) set up by Company Secretaries in practice under the (ACES) project of Central Board of Excise and Custom.

Assessee has to fill Form ST-1 for registration and thereafter submit the following documents as specified in Order No.2/2011 dated 13-12-2011:

- Copy of Permanent Account number (PAN);
- Proof of residence
- Constitution of applicant other than individuals at the time of filing an application for registration.
- Power of attorney in respect of authorized person.

Registration where the services are provided or received from more than one premises and having centralised accounting system in one or more premises:

#### Where a person, liable for paying service tax on a taxable service

- (i) provides such service from more than one premises or offices; or
- (ii) receives such service in more than one premises or offices; or,
- (iii) is having more than one premises or offices, which are engaged in relation to such service in any other manner, making such person liable for paying service tax, and has centralised billing system or centralised accounting system in respect of such service, and such centralised billing or centralised accounting systems are located in one or more premises, he may, at his option, register such premises or offices from where centralised billing or centralised accounting systems are located.

*The registration under this case shall be granted by the Commissioner of Central Excise in whose jurisdiction the premises or offices, from where centralised billing or accounting is done, are located.*

***Registration where the services are provided or received from more than one premises and not having centralised accounting system:***

Where an assessee is providing a taxable service from more than one premises or offices, and does not have any centralized billing systems or centralized accounting systems, as the case may be, he shall make separate applications for registration in respect of each of such premises or offices to the jurisdictional Superintendent of Central Excise.

**Single Registration for Multiple Services**

Where an assessee is providing more than one taxable service, he may make a single application, mentioning therein all the taxable services provided by him, to the concerned Superintendent of Central Excise.

**Issue of Registration Certificate**

The Superintendent of Central excise is bound to grant a certificate of registration in Form ST-2 within 7 days of the date of receipt of the application or intimation for any change or additional information provided by the applicant. This certificate shall indicate the details of all the taxable services provided by the service provider. In case of transfer of business by the assessee to another person, the transferee is required to obtain a fresh Certificate of Registration.

**Surrender of Certificate of Registration**

The registered assessee who ceases to provide the taxable services for which he had been registered shall surrender his Certificate of Registration to the concerned Superintendent of Central Excise.

**Service Tax Registration of Special Category of Persons**

**Input Service Distributor**

Service Tax (Registration of Special Category of Persons) Rules, 2005 have come into effect on 16th day of June, 2005.

Registration under these rules can be obtained by an input service distributor by making an application to the jurisdictional Superintendent of Central Excise in such form as specified by the Board within a period of thirty days of the commencement of business or the 16th day of June, 2005, whichever is later.

**Small Scale Service Provider**

A small scale service provider has been specified as any provider of taxable service whose aggregate value of taxable service in a financial year does not exceeds a certain specified limit. A small scale service provider whose aggregate value of taxable service in a financial year exceeds nine lakh rupees shall make an application to the jurisdictional Superintendent of Central Excise in the prescribed form for registration within a period of thirty days of exceeding the aggregate value of taxable service of nine lakh rupees.

However, a small scale service provider are not liable to pay service tax till they cross the exemption limit of ₹10 lakhs during a Financial Year.



### Test Your Knowledge

(1) Any provider of taxable service whose aggregate value of taxable service in a financial year exceeds \_\_\_\_\_ shall make an application for registration to the jurisdictional Superintendent of Central Excise.

- (a) ₹3,00,000
- (b) ₹5,00,000
- (c) ₹7,00,000
- (d) ₹9,00,000

### PAYMENT OF SERVICE TAX

As per Section 68(1), every person providing taxable services i.e. provider of taxable service is liable to pay service tax at the rate specified in section 66B of the Finance Act, 1994 in such manner and within such period as may be prescribed.

Section 68(2), provides that in respect of the taxable services notified by the Central Government the service tax thereon shall be paid by such person as may be prescribed. Notification No. 30/2012 dated 20th June 2012 provides for the services where service tax shall be paid by service receiver or in some case by both i.e. service receiver and service provider. The mechanism under which liability for payment of service tax is on the service receiver is known as **reverse charge**. Under this charge service receiver has to register himself under service tax. Further service receiver cannot claim general exemption limit of ₹10 Lakhs and he is liable to pay service tax even on small amount.

Below is the list of services covered under Reverse charge mechanism along with the share of service provider and share of service recipient on which they are required to pay service tax.

Sl.No.	Description of a Service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
1	Services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	Nil	100%
2	Services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	Nil	100%
3	Services provided or agreed to be provided by way of sponsorship	Nil	100%
4	Services provided or agreed to be provided by an arbitral tribunal	Nil	100%
5	Services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services	Nil	100%

6	Services provided or agreed to be provided by way of support service by Government or local authority excluding renting of immovable property and services specified in section 66D(a) (i), (ii) & (iii)	Nil	100%
7	(a) In respect of services provided or agreed to be provided by way of renting or hiring any motor vehicle designed to carry passenger on abated value to any person who is not in the similar line of business.	Nil	100%
	(b) In respect of services provided or agreed to be provided by way of renting or hiring any motor vehicle designed to carry passenger on non abated value any person who is not in the similar line of business.	60%	40 %
8.	Services provided or agreed to be provided by way of supply of manpower for any purpose including security services	25%	75 %
9.	Services provided or agreed to be provided by way of works contract	50%	50%
10.	Any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory	Nil	100%
11.	Services provided or agreed to be provided by a director of a company to the said company	Nil	100%

#### INCIDENCE TO PAY SERVICE TAX

With effect from 1st July 2011, the liability to pay service tax was shifted from receipt basis to accrual basis with the introduction of Point of Taxation (POT) Rules, 2011. As per rule 3 of POT rules the liability to pay service tax shall arise upon issuance of invoice or receipt of payment whichever is earlier.

Proviso to Rule 6 of Service Tax Rules, 1994 has provided that in case of the individuals and partnership firms having an aggregate value of taxable services provided from one or more premises of ₹50 lakhs or less in the previous financial year, shall have the option to pay service tax upon receipt basis upto ₹50 lakhs in the current financial year.

The basic purpose for introduction of Point of Taxation Rules, 2011 is to bring clarity and certainty in matter of levy and collection of service tax in situations of:

- Change of rate of service tax
- Imposition of service tax on new services
- Continuous supply of services

Moreover, POT rules, 2011 have been introduced to bring synchronization between service tax and other taxes like Excise Duty and VAT which work on accrual basis and this is a step towards implementation of GST.

POT rules, 2011 were issued by the Central Government vide Notification No. 18/2011- ST dated 1st March, 2011 w.e.f. 1st April 2011. However, these rules were made effective w.e.f. 1st July 2011 vide Notification No.25/2011-ST dated 31st March 2011. Now, let us discuss the provisions of these rules:

Point of taxation means the point in time when a service shall be provided or deemed to have been provided. This Point of time will determine rate of service tax and due date of payment of service tax.

As per rule 2A of POT Rules, "Date of payment" shall be the 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:

Provided that —

- (A) the date of payment shall be the date of credit in the bank account when—
  - (i) there is a change in effective rate of tax or when a service is taxed for the first time during the period between such entry in books of accounts and its credit in the bank account; and
  - (ii) the credit in the bank account is after four working days from the date when there is change in effective rate of tax or a service is taxed for the first time; and
  - (iii) the payment is made by way of an instrument which is credited to a bank account,
- (B) if any rule requires determination of the time or date of payment received, the expression "date of payment" shall be construed to mean such date on which the payment is received".

As per Rule 3 of Point of Taxation Rules, Point of taxation shall be;

- (a) the time when the invoice for service provided or to be provided is issued or
- (b) in case where payment is received before the issue of invoice then the time when such payment is received or
- (c) where advance is received by the service provider the time of receipt of such advance.

Rule 4A of the Service Tax Rules, 1994, provides that every person providing taxable service shall issue invoice within 30 days of completion of service or receipt of payment of service whichever is earlier.

Further proviso to Rule 3 of POT Rules, provides that where the invoice is not issued within 30 days of completion of service than the point of taxation shall the date of completion of such service.

#### Examples:

<i>S. No.</i>	<i>Date of Completion of service</i>	<i>Date of Invoice</i>	<i>Date on which payment is received</i>	<i>Point of taxation</i>	<i>Remarks</i>

1	April 10, 2012	April 20, 2012	April 30, 2012	April 20, 2012	Invoice is issued within 30 days and before payment
2	April 10, 2012	May 26, 2012	April 30, 2012	April 10, 2012	Invoice not issued within 30 days and payment received after completion of service
3	April 10, 2012	April 20, 2012	April 15, 2012	April 15, 2012	Invoice is issued within 30 days and payment received before issue of invoice
4	April 10, 2012	May 26, 2012	April 5, 2012 (Part) and April 25, 2012 (remaining)	April 5, 2012 and April 10, 2012 for remaining	Advance received in part before completion of service and invoice not issued within 30 days of completion of service.

### **Continuous Supply of Service**

“Continuous supply of service” means any service provided or agreed to be provided continuously or on recurrent basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time. Further, Central Government may notify provision of a particular service to be considered as continuous supply of service.

The following services have been notified vide Notification No. 28/2011 as continuous supply of service irrespective of period for which they are provided or to be provided;

- Telecommunication service
- Commercial or Industrial Construction Service
- Construction of Residential Complex
- Internet Communication
- Works contract services

As per Rule 3, in case of continuous supply of service, the point of taxation shall be the date of completion of the events as specified in the contract or time when invoice for the service provided or to be provided is issued or the date on which payment is received whichever is earlier. Where any advance is received by the service provider the point of taxation shall be date of receipt of each such advance. Further, where the invoice is not issued within 30 days of completion of such event then point of taxation shall be the date of completion of such event.

### **Point of Taxation in case of change in effective rate of tax (Rule 4)**

Notwithstanding anything contained in rule 3, the point of taxation in cases where there is

a change in effective rate of tax in respect of a service, shall be determined in the following manner, namely:-

- (a) in case a taxable service has been provided before the change in effective rate of tax,-
  - (i) where the invoice for the same has been issued and the payment received after the change in effective rate of tax, the point of taxation shall be date of payment or issuing of invoice, whichever is earlier; or
  - (ii) where the invoice has also been issued prior to change in effective rate of tax but the payment is received after the change in effective rate of tax, the point of taxation shall be the date of issuing of invoice; or
  - (iii) where the payment is also received before the change in effective rate of tax, but the invoice for the same has been issued after the change in effective rate of tax, the point of taxation shall be the date of payment;
- (b) in case a taxable service has been provided after the change in effective rate of tax,-
  - (i) where the payment for the invoice is also made after the change in effective rate of tax but the invoice has been issued prior to the change in effective rate of tax, the point of taxation shall be the date of payment; or
  - (ii) where the invoice has been issued and the payment for the invoice received before the change in effective rate of tax, the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier; or
  - (iii) where the invoice has also been raised after the change in effective rate of tax but the payment has been received before the change in effective rate of tax, the point of taxation shall be date of issuing of invoice.

*“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.*

#### **Point of Taxation where Service is Taxed First Time (Rule 5)**

Where a service is taxed for the first time, then, –

- (a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;
- (b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within fourteen days of the date when the service is taxed for the first time.

#### **Point of Taxation in case of Specified Services or Persons (Rule 7)**

The point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made.

Provided that, where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist.

Provided further that in case of “associated enterprises”, where the person providing the service is located outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier.



### **Determination of Point of Taxation in case of intangibles (Rules 8)**

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 shall 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.

### **Determination of Point of Taxation based on best judgement (Rule 8A)**

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, the Central Excise officer, may, require the concerned person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account such material and the effective rate of tax prevalent at different points of time, shall, by an order in writing, after giving an opportunity of being heard, determine the point of taxation to the best of his judgment.

### **DUE DATE FOR PAYMENT OF SERVICE TAX**

Rule 6(1) of the Service Tax Rules, 1994 specifies the time period for payment of service tax.

#### **For individuals or proprietors or partnership firms:**

The service tax shall be paid to the credit of the Central Government **by the 5th of the month immediately following the respective quarter** in which service is deemed to have been provided as per POT Rules made in this regard.

Where payment is made through internet banking, such e-payment can be made **by 6th of the month immediately following the respective quarter.**

However, for the quarter ending 31st March, the due date of payment of service tax shall be 31st March.

As stated earlier, individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is fifty lakh rupees or less in the previous financial year, the service provider shall have option to pay the service tax on receipt basis by the due dates upto ₹50 lakhs in the current financial year.

#### **For others**

The service tax shall be paid to the credit of the Central Government by the 5th of the month immediately following the calendar month in which service is deemed to have been provided.

### **Mandatory e-payment of service tax**

Under proviso to Rule 6(2), e-payment of service tax is mandatory for the assessee, who has paid service tax of rupees 10 lakh (cash plus Cenvat credit) and above in the preceding financial year shall be deposit the service tax liable to be paid by him electronically, through internet banking.

Further, notwithstanding the time of receipt of payment towards the value of services, no service tax is payable for the part or whole of the value of services, which is attributable to services provided during the period when such services were not taxable.

### **Deposit of Service Tax**

The assessee shall deposit the service tax liable to be paid by him with the bank designated by the Central Board of Excise and Customs in Form GAR – 7 challan.

#### **Test Your Knowledge**



- (2) Where payment for service tax is made through internet banking, such e-payment can be made by the\_\_\_\_\_ of the month, immediately following the quarter in which the payments are received.
- (a) 5th
  - (b) 6th
  - (c) 8th
  - (d) 10<sup>th</sup>

### **Interest on Delayed Payment of Service Tax under Section 75**

Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate not below 10% and not exceeding 36% p.a.

However where the service provider whose taxable services does not exceed ₹60 lakhs during any of the financial years covered by the notice or during the last financial year the rate of interest shall be reduced by 3% p.a.

### **ADJUSTMENT OF SERVICE TAX**

#### **(1) Adjustment of excess service tax paid on the services which are not so provided**

Where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason, or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract the assessee may take the credit of such excess service tax paid by him, if the assessee,

- (a) has refunded the payment or part thereof, so received along with the service tax payable thereon for the service to be provided by him to the person from whom it was received;
- (b) has issued a credit note for the value of the service tax not so provided to the person to whom such an invoice had been issued.

#### **(2) Adjustment of excess service tax paid in other cases**

Where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, the assessee may adjust such excess amount paid by him against his service tax liability for the

succeeding month or quarter.

The adjustment of excess amount paid, shall be subject to the conditions that the excess amount is paid on account of reasons not involving interpretation of law, taxability, valuation or applicability of any exemption notification.

### VALUATION OF TAXABLE SERVICES

Section 67 provides for the method of valuation of taxable services i.e. the value on which service provider is required to discharge service tax. As per section 67, the valuation of taxable service shall be determined under the following two situations:

- Service tax is separately charged in the bill
- Bill value is inclusive of service tax

#### Where the service tax is separately charged in the bill:

- (i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;
- (ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;
- (iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

#### Where the bill is inclusive of service tax:

Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged. In this case, value of taxable services shall be calculated as follows:

$$\text{Value of taxable Services} = \frac{\text{Gross Amount} \times 100}{100 + \text{Applicable rate of service tax}}$$

#### Example:

Pawan rendered a taxable service to a client on 25-08-2012. A bill of ₹40,000 was raised on 29-08-2012; ₹15,000 was received from the client on 1-10-2012 and the balance on 23-10-2012.

(a) If service tax was separately charged in the bill, what is the value of taxable services and service tax payable?

(b) No Service tax was separately charged in the

- Is Pawan liable to pay service tax, even though the same has not been charged by him?
- In case, she is liable, what is the value of taxable services and service tax payable?

#### Solution

The bill is raised on 29-08-2012 but the payment is received in October 2012. As per Point

of Taxation Rules, service tax shall be payable on or before 05-09-2012 or 06-09-2012 and not in October when payment is received.

Therefore, in this case service tax shall be payable as;

(a) Value of taxable service is ₹40,000, therefore service tax shall be payable @12% Plus Education @2% and SHEC@1%.

Service tax = ₹40,000 × 12.36% = ₹4944/-

(b) Pawan is liable to pay service tax even though the tax has not been collected by him. The service tax payable shall be;

= 40,000 × 12.36/112.36 = ₹4400/-

### **ABATEMENT IN SERVICE TAX**

Abatement in Service Tax is a major relief to certain kinds of services which are chargeable to service tax. Finance Act 1994 provides that for determining value of service tax on which service tax is to be charged abatement in value determination is allowed.

Abatement under service tax laws means that for certain services, a specified percentage of discount is allowed from the gross amount collected for rendering the services subject to the conditions that CENVAT Credit has not been availed by the service provider.

Notification No. 26/2012- ST dated 20/06/2012 provides the list of services on which abatement is allowed. It also provides for the percentage on which service tax is payable under the scheme of abatement. The concept of abatement may be understood with the help of this example;

As per notification no. 26/2012, railway is required to charge service tax only on 30% value of the Taxable services. Thereby by virtue of this provision, if railways receive an amount of ₹50 Lakhs against the services, it needs to pay service tax only on ₹15 Lakhs i.e. 30% value of ₹50 Lakhs.

### **RECORDS TO BE MAINTAINED**

Every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time or the 31st day of January, 2008, whichever is later, a list in duplicate, of-

- (i) all the records prepared or maintained by the assessee for accounting of transactions in regard to,-
  - (a) providing of any service,
  - (b) receipt or procurement of input services and payment for such input services;
  - (c) receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;
  - (d) other activities, such as manufacture and sale of goods, if any.
- (ii) all other financial records maintained by him in the normal course of business;

All such records shall be preserved at least for a period of five years immediately after the financial year to which such records pertain.

The records including computerised data, as maintained by an assessee in accordance with the various laws in force from time to time shall be acceptable.

## **RETURNS UNDER SERVICE TAX**

Rule 7 of the Service Tax Rules, 1994 return under Service Tax is required to be filed by every assessee on half yearly basis in Form ST-3 or Form ST-3A, as the case may be, along with a copy of the Form TR-6/GAR-7, in triplicate for the months covered in the half-yearly return.

Every assessee shall submit the half yearly return by the 25th of the month following the particular half-year. Every assessee is required to file return electronically.

Vide Notification No. 43/2011 dt. 25th August 2011, every Assessee shall submit a half yearly return electronically. Assessee can file service tax return online at registering at <https://www.aces.gov.in>.

With effect from 1st October, 2011, every assessee is required to file half yearly return electronically.

### **Revision of Returns**

As per Rule 7B, an assessee may submit a revised return, in Form ST-3, in triplicate, to correct a mistake or omission, within a period of ninety days from the date of submission of the return under rule 7.

## **Penalty for not filing and late Filing of Return**

If return of service tax is not filed within the prescribed period penalty is leviable under section 77(2) which can be upto ₹10,000.

Rule 7C of Service Tax Rules, 1994 provides for penalty for delay in filing of service tax return. Accordingly late fee is payable as follows:

Delay upto 15 days	₹500/-
Delay beyond 15 days and upto 30 days	₹1,000/-
Delay beyond 30 days	₹1,000 + ₹100/- per day subject to a maximum of ₹20,000/ [the penalty prescribed in section 70(1)]

Penalty for late filing of return is specifically prescribed in Rule 7C subject to section 70 therefore if late fee is paid then no penalty prescribed under section 77(2) shall be leviable.

## **PENALTIES AND PROSECUTION**

Various penalties have been provided under the Act. Section 83A empowers Central Excise Officer to adjudicate penalty within such powers as may be conferred by CBEC, by issuing a notification.

### **(A) PENALTY FOR FAILURE TO PAY SERVICE TAX [SECTION 76]**

Any person who fails to pay service tax, shall pay, in addition to such tax and the interest on that tax amount in accordance with the provisions of section 75, a penalty which shall not

be less than;

- one hundred rupees for every day during which such failure continues; or
- at the rate of one per cent. of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax.

Provided that the total amount of the penalty payable in terms of this section shall not exceed 50% of the service tax payable.

#### **Example**

X, an assessee, fails to pay service tax of ₹10 lakhs payable by 5th March. X pays the amount on 15th March. The default has continued for 10 days. The penalty payable by X is computed as follows:-

- 1% of the amount of default for 10 days =  $1 \times 10,00,000 \times 10/31 = ₹3,225.80$  or
- Penalty calculated @ ₹100 per day for 10 days = ₹1,000

Penalty liable to be paid is ₹3,226.00.

#### **(B) PENALTY FOR CONTRAVENTION OF RULES AND PROVISIONS OF ACT FOR WHICH NO PENALTY IS SPECIFIED ELSEWHERE [SECTION 77]**

- (a) Any person who is liable to pay service tax, or required to take registration, fails to take registration shall be liable to pay a penalty which may extend to **ten thousand rupees**.
- (b) Any person who fails to keep, maintain or retain books of account and other documents shall be liable to a penalty which may extend to **ten thousand rupees**.
- (c) Any person who fails to —
  - (i) furnish information called by an
  - (ii) produce documents called for by a Central Excise Officer
  - (iii) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry, shall be liable to a penalty which may extend to;
    - ten thousand rupees or
    - two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance.
- (d) Any person who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to **ten thousand rupees**.
- (e) Any person who issues invoice with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to **ten thousand rupees**.
- (f) Any person, who contravenes any of the provisions or any rules for which no penalty is separately provided, shall be liable to a penalty which may extend to **Ten thousand rupees**

#### **(C) PENALTY FOR SUPPRESSING VALUE OF TAXABLE SERVICE [SECTION 78]**

Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of

- (a) fraud; or
- (b) collusion; or
- (c) wilful mis-statement; or
- (d) suppression of facts; or
- (e) contravention of any of the provisions or of the rules with intent to evade payment of service tax the person shall be liable to pay service tax or erroneous refund, and

shall be liable to pay a penalty, in addition to such service tax and interest which shall equal to the amount of service tax so not levied or short-paid or erroneously refunded.

However the amount of penalty shall be reduced to:

- (a) 50% where true and complete details of the transactions are available in the specified records.
- (b) 25% where true and complete details of the transactions are available in the specified records and the amount of service tax, interest and penalty has been paid within 30 days.

In case of service providers whose taxable value of service tax does not exceed ₹60 lakhs, the period of 30 days shall be extended to 90 days.

Section 78 provides that if penalty is applicable under this section, provisions section 76 shall be apply. Thus, the assessee is relieved from effects of dual penalty.

#### **(D) PENALTY FOR OFFENCES BY DIRECTOR, ETC., OF COMPANY [Section 78A]**

Where a company has committed any of the following contraventions, namely:—

- (a) evasion of service tax; or
- (b) issuance of invoice, bill or, as the case may be, a challan without provision of taxable service in violation of the rules made under the provisions of this Chapter; or
- (c) availment and utilisation of credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or
- (d) failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, then
  - any director, manager, secretary or other officer of such company,
  - who at the time of such contravention was in charge of, and was responsible to,
  - the company for the conduct of business of such company and was knowingly concerned with such contravention,

**shall be liable to a penalty which may extend to one lakh rupees.**

#### **WAIVER OR REDUCTION OF PENALTY**

As per Section 80, penalty under Sections 76, 77 or first proviso to section 78 (1) can be waived if assessee proves that he had reasonable cause for the failure.



## PROSECUTION

Section 89 was inserted by Finance Act, 2011 which provides for offences which can lead to prosecution. The prosecution was introduced in service tax to promote self compliance among the assessee. Further, sections 9A, 9AA, 9B, 9E and 34A of the Central Excise Act, 1944 have been made applicable service tax. These provisions together constitute the provisions relating to prosecution of offences.

## CENVAT CREDIT RULES, 2004

The CENVAT Credit Rules, 2004 have replaced the existing Cenvat Credit Rules, 2002 and Service tax Credit Rules, 2002 with effect from 10th September 2004. The new Rules integrated services with goods. With the introduction of these rules, inter sectoral credit is allowed to be taken. Service tax paid on input service is allowed to be used for duty payable on final products removed. Similarly, excise duty paid on inputs is allowed to be used for paying service tax on output service.

### **Example:**

*Duty paid on raw plastic for the manufacture of plastic furniture is ₹20,000 and service tax paid on transportation i.e Goods Transport Agency of raw plastic of ₹10,000. The duty payable on the finished goods (plastic furniture) is ₹35,000 while paying the duty on plastic furniture; the manufacturer is allowed to deduct the amount already paid as excise duty and service tax (Input tax) on raw plastic. Thus, the net duty payable will be ₹5,000 only. Technically speaking, the manufacturer availed the cenvat credit to the extent of ₹30,000 that he paid on inputs and input service for manufacturing of plastic furniture.*

**Note: The provisions of CENVAT Credit Rules will be covered in detail at Professional Programme.**

## ROLE OF COMPANY SECRETARIES

There is a great scope for Company Secretaries in Practice in the area of service tax. A Practicing Company Secretary can render several services under the Service Tax such as;

- **Consultancy services:** The company secretaries can provide expertise services to their clients by explaining and interpreting the provisions of the transformed and upcoming legislations. For Example, the taxability of services shifted from selective approach to negative approach.
- **Compliance Services:** The Company Secretaries can help the client or employers to comply with the following procedural requirement:
  - (a) Registration
  - (b) Payment of tax
  - (c) Maintenance of books and records
  - (d) Availment and utilization of Cenvat Credit
  - (e) Submissions of service tax returns.
- **Certified Facilitation Centres (CFCs):** Company Secretaries in Practice can set up CFCs under the Automation of Central Excise and Service Tax Project of CBEC to provide procedural compliance services to the assesseees by charging fees.

## LESSON ROUND UP

- Registration of service tax: Section 69 of the Finance Act, read with Rule 4 of the Service Tax Rules make provisions relating to registration. It is mandatory for every person liable to pay service tax to get registered with Superintendent of Central Excise. A person providing a taxable service is liable to pay service tax in terms of Section 68.
- An application for registration to the Superintendent of Central Excise can be made in form (ST-1). This is to be made within a period of thirty days from the date on which the service tax is leviable.
- Payment of service tax: With effect from 1st April 2011, Finance Act, 2011 introduced Point of Taxation (POT) Rules, 2011. These rules laid down the provisions relating to payment of service tax on accrual basis instead of receipt basis and specify the relevant date for determining rate of service tax. Point of taxation means the point in time when a service shall be deemed to have been provided. This Point of time will determine rate of service tax and due date of payment of service tax.
- Reverse charge- As per Section 68, every person providing taxable services i.e. provider of output service is liable to pay service tax. But in special cases service receiver is liable to pay service tax. This is known as reverse charge. Under this charge service receiver has to register himself under service tax. Further service receiver can not claim general exemption limit of 10 Lakhs rupees and he is liable to pay service tax even on small amount.
- Section 67 provides for the method of valuation of taxable services i.e. the value on which service provider is required to discharge service tax. As per section 67, the valuation of taxable service shall be determined under the following two situations:
  - Service tax is separately charged in the bill
  - Bill value is inclusive of service tax
- Abatement under service tax laws means that for certain services, a specified percentage of discount is allowed from the gross amount collected for rendering the services subject to the conditions that CENVAT Credit has not been availed by the service provider.
- Adjustment of Service tax: Where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter.
- Maintenance of Accounts: Every assessee is required to furnish to the Superintendent of Central Excise at the time of filing his return for the first time, a list of all accounts maintained by him in relation to service tax including memoranda received from his branch offices.
- Filing of return: Rule 7 of the Service Tax Rules, 1994 return under Service Tax is required to be filed by every assessee on half yearly basis in Form ST-3 or Form ST-3A, as the case may be, along with a copy of the Form GAR -7, in triplicate for the

months covered in the half-yearly return. Every assessee shall submit the half yearly return by the 25th of the month following the particular half-year.

- E-filing of return: With effect from 1st October, 2011, every assessee is required to file half yearly return electronically.
- Interest on late payment of service tax: Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate not below 10% and not exceeding 36% p.a.
- **Doctrine of unjust enrichment:** Since service tax is indirect tax, it is recoverable from customer. If you recover the amount from customer and again claim refund, you will get double benefit. Hence, provision of 'unjust enrichment' has been made in the law. As per the doctrine of unjust enrichment, refund will be granted to assessee only if assessee had not passed on the tax burden to your customer/client. It will be presumed that assessee has passed on the burden of service tax.
- Penalties: Various penalties have been provided under the Act. The penalties can be imposed by Central Excise Officers. There is no provision for prosecution under the Act.
- Role of Company Secretaries: The educational background, knowledge, training and exposure that a Company Secretary has, makes him a versatile professional capable of rendering a wide range of services to companies of all sizes, other commercial and industrial organizations, small scale units, firms etc.

### SELF TEST QUESTIONS

*These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.*

#### MULTIPLE CHOICE QUESTIONS

Choose the most appropriate answer from the given options in respect of the following:

1. What would be the value of taxable service, if gross amount charged by a service provider on 5th March, 2012 is ₹9,000 –
  - (a) ₹8,010
  - (b) ₹8,160
  - (c) ₹9,000
  - (d) ₹8,100.
2. If Radha has collected any amount of service tax from Bholu which is not required to be collected, Radha shall pay the amount so collected to –
  - (a) Bholu
  - (b) The Central Government
  - (c) Keep it with himself
  - (d) None of the above.
3. E-payment of service tax is compulsory in the case of an assessee who had paid service

- tax in the preceding financial year equal to at least –
- (a) ₹10 lakh
  - (b) ₹40 lakh
  - (c) ₹50 lakh
  - (d) No limit
4. Upto what amount, the value of all taxable services provided by a service provider during a financial year is exempt from payment of service tax –
- (a) ₹4 lakh
  - (b) ₹8 lakh
  - (c) ₹10 lakh
  - (d) ₹12 lakh.
5. If a corporate assessee has paid ₹15,000 as excess service tax during the previous half-year ending period, this excess amount can be adjusted against its subsequent tax liability –
- (a) Equally every month
  - (b) Equally per quarter
  - (c) Equal to the service tax liability
  - (d) Equally on half-yearly basis.

#### **TRUE AND FALSE**

- 1. Recovery and adjustment of service tax means the same thing.
- 2. Return of service tax is required to be filed by every assessee in Form No. ST 3
- 3. Registration is mandatory under the service tax.
- 4. No service tax is payable on free services.

#### **FILL IN THE BLANKS**

- 1. Maximum amount of penalty for late filing of service tax return is\_\_\_\_\_.
- 2. Under service tax rules, every assessee is required to furnish to \_\_\_\_\_ at the time of filing his return for the first time a list of all accounts maintained in relation to the service tax.
- 3. Service tax return can be revised within a period of \_\_\_\_\_from the date of submission of return.
- 4. The application for registration shall be made within a period of \_\_\_\_\_ of commencement of business by an input service provider.
- 5. The registration certificate is issued to a service provider within 7 days by the \_\_\_\_\_.
- 6. Due date for payment of service tax in the case of individual assessee is \_\_\_\_\_ immediately following the quarter of the financial year except in case of last quarter.

#### **ELABORATIVE**

- 1. What are the various provisions relating to payment of service tax? Explain.
- 2. What are the provisions regarding penalties under service tax in the following cases :

- (a) Failure to take registration.
  - (b) Failure to keep books of account.
  - (c) Failure to produce accounts and documents.
3. "The value of any taxable service shall be the gross amount charged by the service provider for such service rendered by him". In the light of this statement, explain how the value of taxable service is determined.
  4. Briefly state the provisions relating to the procedure of registration under the service tax.
  5. What are the due dates for payment of service tax by different assesseees ?
  6. Indicate the amount of interest payable for late payment of service tax and the amount of penalty payable for late filing of return of service tax.
  7. Explain the provisions regarding submission of return under service tax.
  8. What is the basis of calculation of service tax payable ? Explain the provisions governing valuation of taxable services.
  9. "Service tax is generally payable by the service provider, but there are certain situations in which service receiver is liable to pay service tax." Explain.
  10. Discuss 'advance ruling in service tax'.
  11. Explain the provisions regarding service tax on Company Secretaries.

## ANSWERS/HINTS

### Multiple Choice Questions

1. (a); 2. (b); 3. (a); 4. (c); 5. (c)

### True and False

1. False; 2. False; 3. False; 4. True;

### Fill in the blanks

1. ₹20,000; 2. Superintendent of Central Excise; 3. 90 Days; 4. 30 Days; 5. Superintendent of Central Excise; 6. 5th of the month;

### Test Your Knowledge

1. ₹9,00,000
2. 6<sup>th</sup>

## SUGGESTED READINGS

1. Dr. V.K. Singhania : Students Guide to Income-tax; Taxmann Publications Pvt. Ltd., New Delhi.
2. Girish Ahuja and Ravi Gupta : Systematic Approach to Income-tax and Sales-tax; Bharat Law House, New Delhi.
3. Service Tax Manual: Taxmann

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