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New Approach to Taxation of Services



Directorate of Publicity and Public Relations
Customs & Central Excise
C.R. Building, I.P. Estate, New Delhi-110109

Central Board of Excise & Customs
Department of Revenue, Ministry of Finance
Government of India
www.cbec.gov.in

Budget 2012 has ushered a new system of taxation of services, popularly known as Negative List. The new changes are a paradigm shift from the existing system where only services of specified descriptions are subjected to tax. In the new system, all services, except negative list services and exempt services, will be subject to tax.

‘Service’ has been defined in clause (44) of the new section 65B and means –

- any activity
- for consideration
- carried out by a person for another
- and includes a declared service.

The said definition further provides that ‘Service’ does not include –

- any activity that constitutes only a transfer in title of (i) goods or (ii) immovable property by way of sale, gift or in any other manner
- (iii) 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
- a transaction only in (iv) money or (v) actionable claim
- a service provided by an employee to an employer in the course of the employment.

- fees payable to a court or a tribunal set up under a law for the time being in force Four explanations are appended to the definition of 'service'.

Activity

'Activity' has not been defined in the Act. In terms of the common understanding of the word, activity would include an act done, a work done, a deed done, an operation carried out, execution of an act, provision of a facility etc. It is a term with very wide connotation.

Activity could be active or passive and would also include forbearance to act. Agreeing to an obligation to refrain from an act or to tolerate an act or a situation has been specifically listed as a declared service under section 66E of the Act.

Consideration

The phrase 'consideration' has not been defined in the Act. What is, therefore, the meaning of 'consideration'?

As per Explanation (a) to section 67 of the Act "consideration" includes any amount that is payable for the taxable services provided or to be provided.

Since this definition is inclusive, it will not be out of place to refer to the definition of 'consideration' as given in section 2 (d) of the Indian Contract Act, 1872 as follows: "When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise"

Simply put, 'consideration' means everything received or recoverable in return for a provision of service which includes monetary payment and any consideration of non-monetary nature or deferred consideration as well as recharges between establishments located in a non-taxable territory on one hand and taxable territory on the other hand.

Activity should be carried out for a consideration – what are the implications?

- To be taxable an activity should be carried out by a person for a 'consideration'
- Activity carried out without any consideration like donations, gifts or free charities are, therefore, outside the ambit of service. For example grants given for a research where the researcher is under no obligation to carry out a particular research would not be a consideration for such research.
- An act by a charity for consideration would be a service and taxable unless otherwise exempted.
- Conditions in a grant stipulating merely proper usage of funds and furnishing of account also will not result in making it a provision of service.
- Donations to a charitable organization are not consideration unless charity is obligated to provide something in return e.g. display or advertise the name of the donor in a specified manner or such that it gives a desired advantage to the donor.

Monetary consideration - meaning

Monetary consideration means any consideration received in the form of money. 'Money' has been defined in section 65B and includes not only cash but also cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveler's cheque, money order, postal or electronic remittance or any such similar instrument.

Non-monetary consideration

Non-monetary consideration essentially means compensation in kind such as the following:

- Supply of goods and services in return for provision of service
 - Refraining or forbearing to do an act in return for provision of service
 - Tolerating an act or a situation in return for provision of a service
 - Doing or agreeing to do an act in return for provision of service
- The non-monetary consideration also needs to be valued for determining the tax payable on the taxable service since service tax is levied on the value of consideration received which includes both monetary consideration and money value of non-monetary consideration.

Money value of non-monetary consideration – how to determine?

The value of non-monetary consideration is determined as per section 67 of the Act and the Service

Tax (Determination of Value) Rules 2006, which is equivalent money value of such consideration and if not ascertainable, then as follows:

- On the basis of gross amount charged for similar service provided to other person in the ordinary course of trade;
- Where value cannot be so determined, the equivalent money value of such consideration, not less than the cost of provision of service.

WITH EFFECT FROM 1st JULY 2012 ALL SERVICES ARE TAXABLE EXCEPT NEGATIVE LIST SERVICES AND EXEMPT SERVICES

IF YOU ARE A SERVICE PROVIDER (or service receiver in the case of reverse charge services or partial reverse charge services), MAY BE YOU HAVE TO OBTAIN SERVICE TAX REGISTRATION AND DISCHARGE OBLIGATIONS CAST UPON YOU UNDER THE PROVISIONS OF CHAPTER V OF THE FINANCE ACT, 1994.

For information visit: www.cbec.gov.in

For registration: www.icegate.gov.in

NEGATIVE LIST OF SERVICES

Budget 2012 has ushered a new system of taxation of services, popularly known as Negative List based comprehensive approach to taxation of services. In the new system, all services, except negative list services and exempt services, will be subject to tax.

In terms of Section 66B of Chapter V of the Finance Act, 1994 (hereinafter, the Act) service tax will be leviable on all services provided in the taxable territory by a person to another for a consideration other than the services specified in the negative list. The services specified in the negative list therefore go out of the ambit of chargeability of service tax. The negative list of service is specified in the Act itself in Section 66 D of the Act. In all, there are seventeen heads of services that have been specified in the negative list. The negative list services are as follows:

Services provided by Government or local authority

Most services provided by the Central or State Government or local authorities are in the negative list except the following: a) services provided by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services carried out on payment of commission on non government business; b) services in relation to a vessel or an aircraft inside or outside the precincts of a port or an airport; c) transport of goods and/or passengers; d) support services, other than those covered by clauses (a) to (c) above, to business entities.

Services provided by Reserve Bank of India

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

Services by a foreign diplomatic mission located in India

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

Services relating to agriculture or agricultural produce

The services relating to agriculture or agricultural produce that are specified in the negative list are services relating to – agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing; supply of farm labour; processes carried out at the agricultural farm including tending, pruning, cutting, harvesting, drying cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter essential characteristics of agricultural produce but makes it only marketable for the primary market; renting of agro machinery or vacant land with or without a structure incidental to its use; loading, unloading, packing, storage and warehousing of agricultural produce; agricultural extension services; services provided by any Agricultural Produce Marketing Committee or Board or services provided by commission agent for sale or purchase of agricultural produce;

Trading of goods

The services provided by commission agent or a clearing and forwarding agent are not covered in this entry. These are auxiliary for trading of goods.

Processes amounting to manufacture or production of goods

The phrase 'processes amounting to manufacture or production of goods' has been defined in section 65B of the Act as a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 (1 of 1944) or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act. This entry, therefore, covers manufacturing activity carried out on contract or job work basis, which does not involve transfer of title in goods, provided duties of excise are leviable on such processes under the Central Excise Act, 1944 or any of the State Acts.

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

'Advertisement' has been defined in section 65 B of the Act. Sale of space for advertisement in print media , Sale of time slot by a broadcasting organization. Sale of space for advertisement in bill boards, public places (including stadia), buildings, conveyances, cell phones, automated teller machines, internet Aerial advertising fall within this entry.

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

Collection charges or service charges paid to a toll collecting agency are not covered in this entry.

Betting, gambling or lottery

“Betting or gambling’ has been defined in section 65B of the Act. Auxiliary services that are used for organizing or promoting betting or gambling events are not covered in this entry.

Entry to Entertainment Events and Access to Amusement Facilities.

‘Entertainment event’ and ‘amusement facility’ has been defined in section 65B of the Act. Auxiliary services provided by a person, like an event manager, for organizing an entertainment event or by an entertainer for providing the entertainment to an entertainment event organizer are not covered in this entry.

Services by electricity transmission or distribution utility

An ‘electricity transmission or distribution utility’ has also been defined in section 65B of the Act. It includes the following – the Central Electricity Authority; a State Electricity Board ; the Central Transmission Utility (CTU) ; a State Transmission Utility (STU) notified under the Electricity Act, 2003 (36 of 2003) ; a distribution or transmission licensee licensed under the said Act ; any other entity entrusted with such function by the Central or State Government

Specified services relating to education

The following services relating to education are specified in the negative list – pre-school education and education up to higher secondary school or equivalent ; education as a part of a prescribed curriculum for obtaining a qualification recognized by law for the time being in force; education as a part of an approved vocational education course. Approved vocational education courses have been specified in section 65B of the Act. These are : a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961(52 of 1961) ; a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Employment and Training, Ministry of Labour and Employment, Government of India; a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India.

Services by way of renting of residential dwelling for use as residence

‘Renting’ has been defined in section 65B as “allowing, permitting or granting access, entry, occupation, usage or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property”. The phrase ‘residential dwelling’ to be interpreted in terms of the normal trade parlance as per which it is any residential accommodation, but does

not include hotel, motel, inn, guest house, camp–site, lodge, house boat, or like places meant for temporary stay.

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

The negative list entry covers any such service wherein moneys due are allowed to be used or retained on payment of interest or on a discount. The words used are 'deposits, loans or advances and have to be taken in the generic sense. They would cover any facility by which an amount of money is lent or allowed to be used or retained on payment of what is commonly called the time value of money which could be in the form of an interest or a discount. This entry would not cover investments by way of equity or any other manner where the investor is entitled to a share of profit.

Services of transport of passengers

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

Stage carriage, inland waterways, metered cab have been defined in section 65B of the Act.

Service relating to transportation of goods

By road except the services of (i) a goods transportation agency; or (ii) a courier agency; by aircraft

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

Funeral, burial, crematorium or mortuary services including transportation of the deceased

This negative list entry is self-explanatory.

[This highly simplified pamphlet is meant for taxpayer education; for actual compliance please refer the relevant provisions of the Finance Act and Rules. Education Guide released by the CBEC may serve as an introduction to the new approach to taxation of services].

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