

GLIMPSE OF SERVICE TAX AMENDMENTS

July 2012

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GLIMPSE OF SERVICE TAX AMENDMENTS

Since 1994 (year when Service tax was introduced) till date – for 18 long years, Service tax has been administered on the basis of a positive list of taxable services whereby taxable service for different sets of transactions was defined in the law and if a given transaction fulfilled the conditions as specified in any of the defined services, then the same became taxable. Each Finance Minister kept on adding services in the same from one budget to the other and thereby casting the tax net wide enough to cover the almost the entire gamut of services. It was felt in the trade as well as revenue circles that this approach is fraught with intrinsic risk of friction where each person will interpret the provisions in his own dynamic ways thereby giving rise to classification based litigations. At the last count the taxable services as defined was more than 115. To stop these interpretational headaches and to make life easy for all stake holders the Finance Minister and his team has taken a step to introduce a Negative list based taxation concept.

The New Scheme of the Act

From 1-7-2012, the scheme of levy of tax would be as follows:

- ❖ The word 'service' has been defined in section 65B(44) of Chapter V of the Finance Act, 2012. It is an exhaustive definition and covers all the activities except the one excluded from the purview of service.
- ❖ Section 66B of Chapter V of Finance Act, 2012 is the charging section which provides that the service tax shall be levied on all services provided or agreed to be provided in a taxable territory other than the services specified in negative list. The word 'taxable territory' is defined in section 65B(52) as territory to which this Chapter applies. As per section 64, this Chapter applies to all over India except State of Jammu & Kashmir.
- ❖ The word 'India' has been defined in section 65B(27) of Chapter V of Finance Act, 2012 in a very wide manner. It not only includes territorial waters, continental shelf of India, exclusive economic zone but also includes seabed underlying the territorial waters and air space above territorial waters.
- ❖ The negative list of services is specified in section 66D of Chapter V of Finance Act, 2012. The service tax is payable on all the services except the one specified in section 66D or otherwise exempt under notification.
- ❖ Taxability arises when the provision of service is made in a taxable territory. Section 66C of Chapter V of Finance Act, 2012 empowers Central Government to make rules for determination of place of provision of service. The Place of Provision of Service Rules 2012 have been notified and explained.
- ❖ Section 66E declares certain activities as services in order to avoid any dispute which may arise.
- ❖ Mega exemption Notification No. 25/20012-ST, dated 20-6-2012 has been issued exempting many services from payment of service tax.
- ❖ Section 66F provides principle of interpretation wherever the services are treated differentially for any reason.
- ❖ The scope of payment of service tax under reverse charge is also proposed to be increased by including many services like manpower supply, rent-a-cab and services provided by Government, Works contract.

Abatement Provisions

From 1-7-2012, the abatement is permitted in respect of certain categories of services as follows:

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

| | | | |
|----|---|----|---|
| 7 | Services of goods transport agency in relation to transportation of goods. | 25 | CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. |
| 8 | Services provided in relation to chit | 70 | Same as above. |
| 9 | Renting of any motor vehicle designed to carry passengers | 40 | Same as above. |
| 10 | Transport of goods in a vessel | 50 | Same as above. |
| 11 | Services by a tour operator in relation to,- (i) a package tour | 25 | (i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The bill issued for this purpose indicates that it is inclusive of charges for such a tour. |
| | (ii) a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour | 10 | (i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation. (iii) This exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation. |
| | (iii) any services other than specified at (i) and (ii) above. | 40 | (i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under |

| | | | |
|-----|--|----|--|
| | | | the provisions of the CENVAT Credit Rules, 2004. (ii)The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour. |
| 12. | Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority | 25 | (i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii)The value of land is included in the amount charged from the service receiver. |

Negative List of Services

Section 66D specifies following services as non-taxable:

(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; or
- (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.

(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 seed testing;

- (ii) supply of farm labour;
 - (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter essential characteristics of agricultural produce but make it only marketable for the primary market;
 - (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
 - (v) loading, unloading, packing, storage or warehousing of agricultural produce;
 - (vi) agricultural extension services;
 - (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.
- (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 recognized by law;
 - (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 authorized 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 air conditioned coach;
- (iii) metro, monorail or tramway;
- (iv) inland waterways;
- (v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
- (vi) metered cabs, radio taxis or auto rickshaws;
- (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.

Mega Exemption Notification

Notification No. 25/2012-ST dated 20-6-2012 grants exemption to certain services listed below:

1. Services provided to the United Nations or a specified international organization;
2. Health care services by a clinical establishment, an authorised medical practitioner or para-medics;
3. Services by a veterinary clinic in relation to health care of animals or birds;
4. Services by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) by way of charitable activities;
5. Services by a person by way of-
 - (a) renting of precincts of a religious place meant for general public; or
 - (b) conduct of any religious ceremony;
6. Services provided by-
 - (a) an arbitral tribunal to -
 - (i) any person other than a business entity; or
 - (ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;

- (b) an individual as an advocate or a partnership firm of advocates by way of legal services to,-
 - (i) an advocate or partnership firm of advocates providing legal services ;
 - (ii) any person other than a business entity; or
 - (iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year; or
 - (c) a person represented on an arbitral tribunal to an arbitral tribunal;
7. Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India;
8. Services by way of training or coaching in recreational activities relating to arts, culture or sports;
9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-
- (a) auxiliary educational services; or
 - (b) renting of immovable property;
10. Services provided to a recognised sports body by-
- (a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body;
 - (b) another recognised sports body;
11. Services by way of sponsorship of sporting events organised,-
- (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;
 - (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, 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;
13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-
- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;
 - (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;
 - (c) a building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;
 - (d) a pollution control or effluent treatment plant, except located as a part of a factory; or
a structure meant for funeral, burial or cremation of deceased;
14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-
- (a) an airport, port or railways, including monorail or metro;
 - (b) a single residential unit otherwise than as a part of a residential complex;
 - (c) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
 - (d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or
 - (e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;
15. Temporary transfer or permitting the use or enjoyment of a copyright covered under clauses (a) or (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical, artistic works or cinematograph films;
16. Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador;
17. Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;
18. Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent;
19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and (ii) a licence to serve alcoholic beverages;
20. Services by way of transportation by rail or a vessel from one place in India to another of the following goods -

- (a) petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);
 - (b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
 - (c) defence or military equipments;
 - (d) postal mail or mail bags;
 - (e) household effects;
 - (f) newspaper or magazines registered with the Registrar of Newspapers;
 - (g) railway equipments or materials;
 - (h) agricultural produce;
 - (i) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or
 - (j) chemical fertilizer and oilcakes;
21. Services provided by a goods transport agency by way of transportation of -
- (a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;
 - (b) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or
 - (c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;
22. Services by way of giving on hire -
- (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
 - (b) to a goods transport agency, a means of transportation of goods;
23. Transport of passengers, with or without accompanied belongings, by -
- (a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;
 - (b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or
 - (c) ropeway, cable car or aerial tramway;
24. Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;
25. Services provided to Government, a local authority or a governmental authority by way of -

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

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

26. Services of general insurance business provided under following schemes -

(a) Hut Insurance Scheme;

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

(c) Scheme for Insurance of Tribals;

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

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

(f) Agricultural Pumpset and Failed Well Insurance;

(g) premia collected on export credit insurance;

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

(i) Jan Arogya Bima Policy;

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

(k) Pilot Scheme on Seed Crop Insurance;

(l) Central Sector Scheme on Cattle Insurance;

(m) Universal Health Insurance Scheme;

(n) Rashtriya Swasthya Bima Yojana; or

(o) Coconut Palm Insurance Scheme;

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

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

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

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

(a) as a trade union;

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

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

29. Services by the following persons in respective capacities -

- (a) sub-broker or an authorised person to a stock broker;
- (b) authorised person to a member of a commodity exchange;
- (c) mutual fund agent to a mutual fund or asset management company;
- (d) distributor to a mutual fund or asset management company;
- (e) selling or marketing agent of lottery tickets to a distributor or a selling agent;
- (f) selling agent or a distributor of SIM cards or recharge coupon vouchers;
- (g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or
- (h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

30. Carrying out an intermediate production process as job work in relation to -

- (a) agriculture, printing or textile processing;
- (b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act ,1985 (5 of 1986);
- (c) any goods on which appropriate duty is payable by the principal manufacturer; or
- (d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;

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

32. Services by way of making telephone calls from -

- (a) departmentally run public telephone;
- (b) guaranteed public telephone operating only for local calls; or
- (c) free telephone at airport and hospital where no bills are being issued;

33. Services by way of slaughtering of bovine animals;

34. Services received from a provider of service located in a non- taxable territory by -

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

- (b) an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or
- (c) a person located in a non-taxable territory;

- 35. Services of public libraries by way of lending of books, publications or any other knowledge- enhancing content or material;
- 36. Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948 (34 of 1948);
- 37. Services by way of transfer of a going concern, as a whole or an independent part thereof;
- 38. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets;
- 39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

Definitions - For the purpose of this notification, unless the context otherwise requires, –

- (a) "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);
- (b) "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;
- (c) "arbitral tribunal" has the meaning assigned to it in clause (d) of section 2 of the Arbitration and Conciliation Act, 1996 (26 of 1996);
- (d) "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;
- (e) "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;
- (f) "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;
- (g) "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);
- (h) "brand ambassador" means a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person;
- (i) "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;

- (j) "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;
- (k) "charitable activities" means activities relating to -
- (i) public health by way of -
 - (a) care or counseling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or
 - (b) public awareness of preventive health, family planning or prevention of HIV infection;
 - (ii) advancement of religion or spirituality;
 - (iii) advancement of educational programmes or skill development relating to,-
 - (a) abandoned, orphaned or homeless children;
 - (b) physically or mentally abused and traumatized persons;
 - (c) prisoners; or
 - (d) persons over the age of 65 years residing in a rural area;
 - (iv) preservation of environment including watershed, forests and wildlife; or
 - (v) advancement of any other object of general public utility up to a value of,-
 - (a) eighteen lakh and seventy five thousand rupees for the year 2012-13 subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during 2011-12;
 - (b) twenty five lakh rupees in any other financial year subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during the preceding financial year;
- (l) "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);
- (m) "contract carriage" has the meaning assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);
- (n) "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;
- (o) "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;

- (p) "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);
- (q) "general public" means the body of people at large sufficiently defined by some common quality of public or impersonal nature;
- (r) "goods carriage" has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);
- (s) "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;
- (t) "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;
- (u) "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;
- (v) "insurance company" means a company carrying on life insurance business or general insurance business;
- (w) "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;
- (x) "life insurance business" has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938);
- (y) "original works" means has the meaning assigned to it in Rule 2A of the Service Tax (Determination of Value) Rules, 2006;
- (z) "principal manufacturer" means any person who gets goods manufactured or processed on his account from another person;
- (za) "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;
- (zb) "religious place" means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality;
- (zc) "residential complex" means any complex comprising of a building or buildings, having more than one single residential unit;
- (zd) "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;

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

(zf) "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;

(zg) "state transport undertaking" has the meaning assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(zh) "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;

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

Declared Services

In the definition of 'service' contained in clause (44) of section 65B of the Act it has also been stated that service includes a declared service. The phrase 'declared service' is also defined in the said section as an activity carried out by a person for another for consideration and specified in section 66E of the Act. The following nine activities have been specified in section 66E:

1. Renting of immovable property;
2. construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority;
3. Temporary transfer or permitting the use or enjoyment of any intellectual property right;
4. Development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software;
5. Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
6. Transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods;
7. Activities in relation to delivery of goods on hire purchase or any system of payment by instalments;
8. Service portion in execution of a works contract;
9. Service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity.

The above activities when carried out by a person for another for consideration would amount to provision of service. Most of these services are presently also being taxed except in so far as Sl. No.5 is concerned. It is clarified that they are amply covered by the definition of service but have been declared with a view to remove any ambiguity for the purpose of uniform application of law all over the country.

Payment of Service Tax under Reverse Charge

From 1-7-2012, under section 68(2) for specified services, Service Tax is to be paid by the Service Provider and/or Service Receiver as follows:

I. The taxable services,—

- (A)** (i) provided or agreed to be provided by an insurance agent to any person carrying on the insurance business;
- (ii) provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—
- (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
 - (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
 - (c) any co-operative society established by or under any law;
 - (d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
 - (e) any body corporate established, by or under any law; or
 - (f) any partnership firm whether registered or not under any law including association of persons;
- (iii) provided or agreed to be provided by way of sponsorship to anybody corporate or partnership firm located in the taxable territory;
- (iv) provided or agreed to be provided by,-
- (A) an arbitral tribunal, or
 - (B) an individual advocate or a firm of advocates by way of support services, or
 - (C) Government or local authority by way of support services excluding,-
 - (1) renting of immovable property, and
 - (2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994,to any business entity located in the taxable territory;
- (v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;
- (B)** provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory;

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely:-

Table

| 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 | in respect of services provided or agreed to be provided by an insurance agent to any person carrying on insurance business | Nil | 100% |
| 2 | in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road | Nil | 100% |
| 3 | in respect of services provided or agreed to be provided by way of sponsorship | Nil | 100% |
| 4 | in respect of services provided or agreed to be provided by an arbitral tribunal | Nil | 100% |
| 5 | in respect of services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services | Nil | 100% |
| 6 | in respect of services provided or agreed to be provided by Government or local authority by way of support services excluding,- (1) renting of immovable property, and (2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994 | Nil | 100% |
| 7 | (a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business (b) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business | Nil 60% | 100 % 40% |
| 8. | in respect of services provided or agreed to be provided by way of supply of manpower | 25% | 75 % |

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| | for any purpose | | |
| 9. | in respect of services provided or agreed to be provided in service portion in execution of works contract | 50% | 50% |
| 10 | in respect of 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% |

Explanation-I - The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

Explanation-II - In works contract services, where both service provider and service recipient is the persons liable to pay tax, the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the provider of service.

COMPARISON OF CHANGES UNDER SERVICE TAX ACT – AT GLANCE

| Section | New Provision | Old Provision |
|---------------------------|--|------------------------------------|
| Section 65B - Definitions | <p>"service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—</p> <p>(a) an activity which constitutes merely,—</p> <p>(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or</p> <p>(ii) a transaction in money or actionable claim;</p> <p>(b) a provision of service by an employee to the employer in the course of or in relation to his employment;</p> <p>(c) fees taken in any Court or tribunal established under any law for the time being in force.</p> <p>Explanation 1.— For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,—</p> <p>(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</p> <p>(B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or</p> <p>(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.</p> <p>Explanation 2.— For the purposes of this Chapter,—</p> <p>(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;</p> <p>(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.</p> | The word "Service " is not defined |

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| | Explanation 3.— A person carrying on a business through a | |
| Section 66B – Charging Section | <p><i>“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, <u>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.</u>”</i></p> <p>"taxable territory" means the territory to which the provisions of this Chapter apply;</p> <p>As per section 64, this Chapter applies to all over india except state of jammu & Kashmir</p> | <p><i>“There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent. of the value of taxable services referred to in sub-clauses [] of clause (105) of section 65 and collected in such manner as may be prescribed.”</i></p> |
| Definition – Rule 2 of Service Tax Rules | Partnership firm includes Limited Liability Partnership (LLP) | Limited Liability Partnership (LLP) was not recognized. |
| Issuance of bills or invoices – Rule 4A of Service Tax Rules. Notification No.3/2012 - Service Tax | Within 30 days from the date of provision of taxable service. Within 45 days in case of persons providing banking and other financial services from the date of provision of taxable service. | Within 14 days from the date of provision of taxable service. |
| Payment of Tax in relation to Export of Service – Rule 6 of Service Tax Rules Notification No.3/2012 - Service Tax | It is clarified that Service provider who export the services pursuant to Export of Service Rules and receives the consideration within the period specified by RBI i.e. one year or extended time limit, service provider is not liable to pay tax. | Proviso was not in existence. |
| Payment of tax on receipt basis Notification No.3/2012 - Service Tax | Individuals and Partnership Firms whose aggregate value of taxable services provided from one or more premises is Rs. 50 Lacs or less in the previous financial year, SP have option to pay tax on taxable services up to a total of Rs. 50 Lacs in current financial year, on receipt basis (Rule 6 of STR) | Only the following eight specified categories, the service provider providing service as individual, HUF or in partnership were allowed to pay service tax on receipt basis : i) Chartered Accountant |

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| | | <ul style="list-style-type: none"> ii) Cost Accountant iii) Company Secretary iv) Technical Consultancy v) Interior Decorator vi) Consulting Engineer vii) Architect viii) Legal Services, <p>the provider of service was allowed to pay service tax on receipt basis</p> |
| Adjustment of excess amount paid – Rule 6(4B) of Service Tax Rules | Excess amount can be adjusted without any monetary limit subject to conditions that such excess is not on account of reasons involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification. | Excess amount paid was adjusted to the extent of Rs. 2 Lacs subject to conditions that such excess is not on account of reasons involving interpretation of law, Taxability, classification, valuation or applicability of any exemption notification. |
| Definition of Continuous Services – Rule 2 (C) of Point of Taxation Rules | Continuous supply of service” means any service which is provided, or to be provided or to be provided continuously or on a recurrent basis , under a contract, for a period exceeding three months with obligation for payment periodically or from time to time or where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition. | Continuous supply of service” means any service which is provided, or to be provided continuously, under a contract, for a period exceeding three months, or where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition. |
| Point of taxation applicable to persons required to pay service tax on reverse charge basis as provided u/s. 68(2) - Rule 7 of Point of Taxation Rules | Such persons can pay service tax when the payment of consideration is made to the service provider. However, if the payment is not made within 6 months from the date of invoice, the Point of Taxation shall be regarded to have occurred on the date of invoice. | No such provision exist |

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| <p>Meaning of “aggregate value” in threshold limit exemption Notification No. 6/2005</p> | <p>“aggregate value” means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year. With introduction of Point of Taxation Rules, the exemption limit is based on the total value of taxable services charged instead of receipts.</p> | <p>“aggregate value” not exceeding ten lakh rupees” means the sum total of first consecutive payments received during a financial year.</p> |
| <p>Definition of Capital Goods – Rule 2(a) of Cenvat Credit Rules, 2004</p> | <p>Motor Vehicles are now covered within the definition of Capital Goods except followings–</p> <ul style="list-style-type: none"> (i) Motor Vehicle for transport of ten or more persons including driver; (ii) Motor Cars and Vehicles designed for transport of persons including station wagons and racing cars; (iii) Motor Vehicle for transport of goods; (iv) Motor cycles including mopeds and cycles fitted with an auxiliary motor, with or without side cars; (v) And chasis of (i) to(iv) <p>However, service provided by –</p> <ul style="list-style-type: none"> (a) Courier agency; (b) Tour Operator; (c) Rent-a-cab operator; (d) Cargo handling agency; (e) Goods Transport Agency; (f) Outdoor caterer; (g) Pandal Shamiana Contractor <p>Would be eligible to consider above motor vehicle as a Capital goods.</p> | <p>Motor Vehicles of any kind were not covered within the definition of Capital Goods.</p> |
| <p>Definition of Input Services – Rule 2(l) of Cenvat Credit Rules, 2004</p> | <p>Motor Vehicle used under the Service category of “Supply of tangible goods”, Insurer providing general insurance and authorized service stations are excluded from the definition of Input Services subject to certain conditions. Accordingly, Rent-a-cab operator and Transfer agent can avail the Cenvat when they use Motor Vehicle.</p> | <p>Motor Vehicle is used by -</p> <ul style="list-style-type: none"> (a) Insurer providing general insurance; (b) Rent-a-cab operator; (c) Transfer agents were excluded from the definition of Input Services. However, if it is used for |

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| | | the provision of taxable service, it would be considered as Input Service. |
| Condition for allowing Cenvat Credit – Rules 4 of Cenvat Credit Rules | Cenvat Credit on Inputs and Capital goods can be allowed on delivery at any place i.e. without bringing them in to the factory of manufacturer or premises of the output service providers subject to due documentation regarding their delivery and location. | Cenvat Credit on Inputs and Capital goods can be allowed only after they are brought to the factory of manufacturer or premises of the output service provider |
| Refund of Cenvat Credit – | New simplified procedure is prescribed where no nexus is required to be established between the export & input service used in the export. The Refund will be on prorata basis: $\frac{EG + ES \times \text{Net Cenvat Credit}}{\text{Total turnover}}$ EG = Export of Goods ES = Export of Services This new rule would be applied to all exports made on or after 01-04-2012. | Manufacturer or final products or an intermediary product or provider of output service, when exports without payment of taxes subject to conditions and limitations. |
| Reversal of Cenvat Credit – Rule 6 of Cenvat Credit Rules | Rate of tax has been enhanced to 6% of value of exempted goods or services, if manufacturer or service provider wants to avail full Cenvat credit. | Manufacturers or service providers when provides taxable as well as exempted goods or services, have an option to avail the full Cenvat Credit by paying an amount of 5% of value of exempted goods or services. |
| Input Service Distributor – Rule 7 of Cenvat Credit Rules | Conditions for distribution of input credit made more stringent. Now, ISD can distribute the Cenvat Credit in respect of Input Services to its manufacturing units or units providing services subject to – (a) Credit should not be more than the invoice amount; (b) Credit should not be attributable to services used in a unit exclusively manufacturing or providing exempted goods or services; (c) Credit of service tax attributable to services used wholly in a unit shall be distributed only to that unit; | ISD can distribute the Cenvat Credit in respect of Input Services to its manufacturing units or units providing services subject to – (a) Credit should not be more than the invoice amount; or (b) Credit should not be attributable to services used in a unit exclusively manufacturing or providing exempted goods or services. |

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| | (d) Credit of service tax attributable to service used in more than one unit shall be distributed prorata on the basis of the turnover of the concerned unit to the sum total of the turnover of all the units to which the service relates. | |
| Determination of Value of Works Contract - Rule 2A of Service tax Determination of Value Rules | <p>If assessee is not able to determine the value of WC as per the existing scheme of taxation, in such a situation, one more simplified method of calculation of service tax liability is proposed as under:</p> <p>a. Value for execution of Original works i.e. all new Construction and all types of addition and alteration to abandoned or damaged structures on land that are required to make them workable, service tax payable would be 40% of the total amount charged for the WC. If Gross amount charged includes value of land, service tax payable would be 25% of the total amount charged.</p> <p>b. Value for execution of works contracts, other than contracts for execution of original works, including contracts for completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings, service tax payable would be 60% of the total amount charged for the works contract.</p> <p>Total Amount means sum total of value of all goods and services including free supply but excluding the VAT paid on goods.</p> <p>If Value of free supply cannot be ascertained then it shall be determined on Fair Market Value that has closely available resemblance.</p> <p>No CENVAT Credit of Excise duty paid on goods whose property is transferred. However, assessee is eligible for Cenvat on Capital Goods and Input Services.</p> | Gross amount charged for the Works Contract (WC) less the value of transfer of property in goods involved in execution of the said WC. Gross amount should not include VAT or Sales Tax paid on actual value of transfer of property in goods. |
| Certain items to be specifically included in value of taxable services | <p>Sub clause (x) inserted to include the following amounts:</p> <p>Any amount realized as demurrage or by any other name whatever called for the provision of service beyond the period originally contracted or in</p> | No Such provision |

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| <p>– Rule 6 of Service Tax (Determination of Value) Rules.</p> | <p>any other manner related to provision of services.</p> | |
| <p>Certain items to be specifically excluded from value of taxable services – Rule 6 of Service Tax (Determination of Value) Rules.</p> | <p>The following shall be excluded: a. Interest on deposits; b. Interest on delayed payment of any consideration for the provision of services or sale of goods; c. any accidental damages due to unforeseen actions not relating to the provision of service</p> | <p>Sub clause (iv) provides for Interest on Loans.</p> |
| <p>Notification No. 10/2012 – Service Tax</p> | <p>Works contract (Composition Scheme for Payment of Service Tax) Rules, 2007 – composition rate increased to 4.8% from 4%</p> | |
| <p>Notification No. 29/2012-Service Tax</p> | <p>property tax levied and collected by local bodies will be deductible while calculating value of taxable service under clause “renting of an immovable property” Provided that wherever the period for which property tax paid is different from the period for which service tax is paid or payable, property tax proportionate to the period for which service tax is paid or payable shall be calculated and the amount so calculated shall be excluded from the gross amount charged for renting of the immovable property for the said period, for the purposes of levy of service tax.</p> | |
| <p>Section 66B Notification No. 33/2012 - Service Tax</p> | <p>No service Tax payable on taxable services of aggregate value not exceeding ten lakh rupees in any financial year under section 66B of the said Finance Act. Exemption the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed ten lakh rupees in the preceding financial year.</p> | |