

NEW SCHEME OF TAXATION OF SERVICES

by

**Basavaraja M N – Assistant Manager
Ishwariya G – Trainee**

August 1, 2012

1. Introduction

History:

Taxes in the form of central excise, customs and on Sale of goods have been levied both on indigenous and imported/exported goods from the ancient times. Tax on services was first introduced in India in the year 1994; the time when Service Sector growth in India was showing rapid increase. With effect from 01st July 1994, three Services viz., telephone Services, Services relating to non-life insurance and Services provided by Stock Brokers were brought into the Service Tax net. Service Tax was made applicable throughout India except the State of Jammu and Kashmir. The list of services covered by the levy of service tax was gradually increased and by 2011, **119** Services were made subject to Service Tax.

Service Tax Rates:

From	To	Service Tax Rates *
1 st July, 1994	13 th May, 2003	5%
14 th May, 2003	9 th September, 2004	8%
10 th September, 2004	17 th April, 2006	10%
18 th April, 2006	23 rd February, 2009	12%
24 th February, 2009	31 st March, 2012	10%
1 st April, 2012	-	12%
* Excluding Education Cess & Higher Education Cess		

The law relating to Service Tax is primarily governed by Chapter V of the Finance Act, 1994. The chargeability of Service Tax was purely based on the concept of positive approach; only those Services which have been expressly defined were chargeable to tax. Considering the complexities in the interpretation and the growing litigation on definitions, the concept of 'Negative List Approach' has been brought in force with effective from 01st July 2012.

Transition Towards Negative list :

Negative List approach was brought in vide Finance Act 2012 by introducing new sections on application, methods and approach by altogether restricting the impact of earlier sections as they stood prior to 1st July 2012.

In short, Services to be taxable must qualify the definition of “Service” & should not find entry in either the ***NEGATIVE LIST*** or the ***MEGA EXEMPTION LIST***.

2. Definition Of Service

Service has been defined in ***clause (44) of the new section 65B*** as follows:

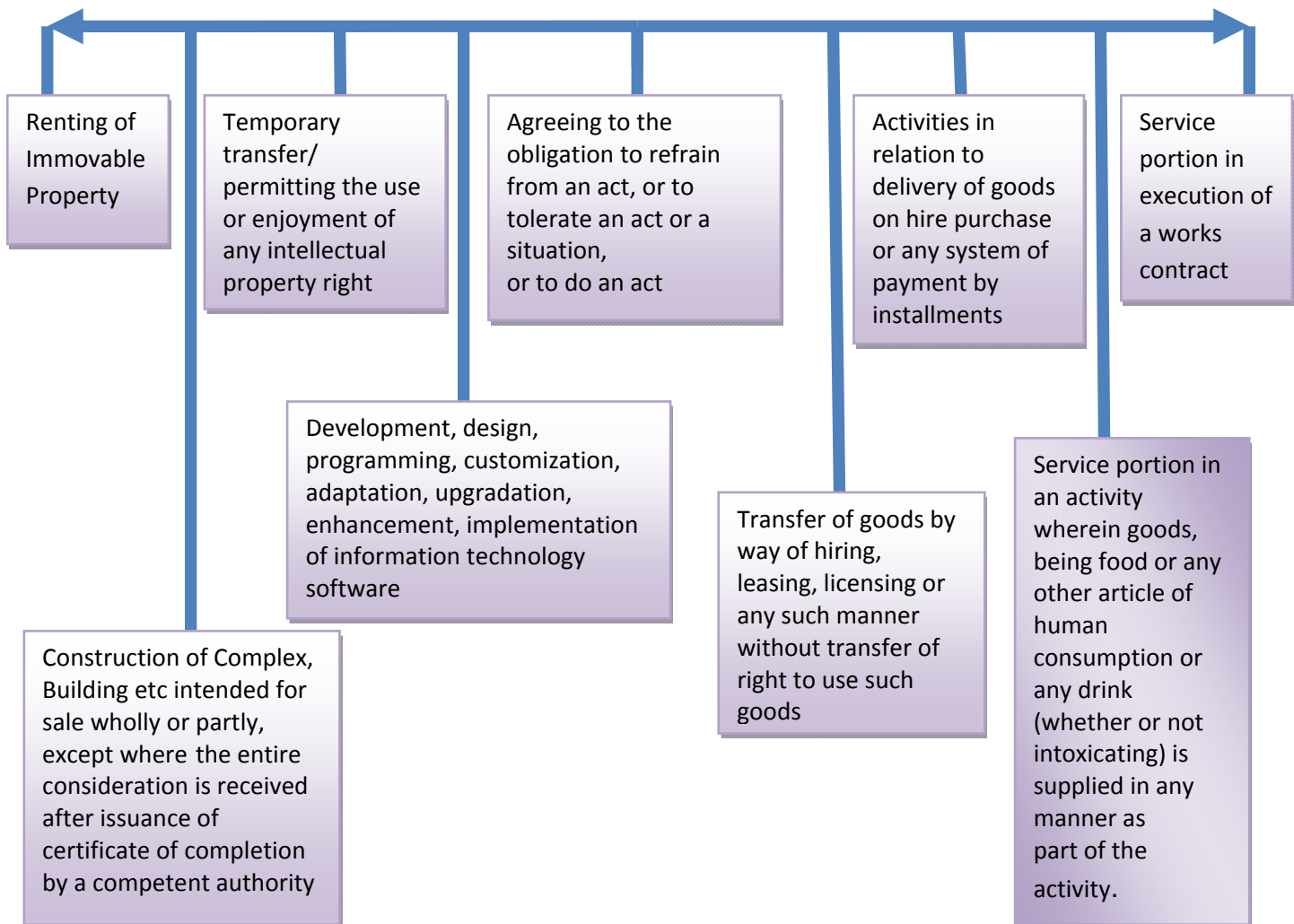
Service –

- Any activity
- For consideration
- Carried out by a person for another
- And includes a “declared service”

Further, “Service” does not include-

- Any activity that constitutes only a transfer in title of goods or immovable property by way of sale, gift or in any other manner 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 money or actionable claim. (Ex: Debts, Lottery Tickets)
- 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.

DECLARED SERVICES INCLUDE:



3. Registration:

- Any person, providing taxable Services in the taxable territory, wherein the value of taxable Services provided exceeds Rs.1million in the preceding financial year or the value of taxable Services provided exceeds Rs. 0.9 million in the current financial year is required to be registered under the act.
- Further, every person, being a service receiver, liable to Service Tax on 'Reverse Charge Mechanism' is liable to get registered.
- Input Service distributor.

The Act also provides for Voluntary registration, where the threshold levels are not reached.

4. Point Of Taxation:

According to the Point of Taxation Rules, 2011 incidence of taxation (timing) shall be the **earliest** of the following:

- The time when the invoice for the service provided or agreed to be provided is issued.
- The date of receipt of payment where payment is received before issuance of invoice or completion of service.
- The time when service is completed.

After the completion/provision of service, invoice is to be raised on or before 30 days (45 days in case of Financial Sector - Banks, Financial Institutions etc).

Where no such invoice is raised, then the 'Point of Taxation' would deem to be the date on which the service is completed.

5. Valuation Of Services:

The manner of valuation of service is provided in Section 67. As per sub section (1) of section 67 wherever Service Tax is chargeable on any taxable service with regard to its value then its value shall be:

- In a case where the consideration for a taxable service is in terms of money, the value of such service shall be the gross amount charged by the service provider for such service provided or to be provided by him.
- In a case where the consideration for a taxable service is not wholly or partly in terms of money, then the value of such service shall be the equivalent to money value of such consideration.
- In a case where the consideration for a taxable service is not ascertainable, the value of such service is determined 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

Separate Valuation methods provided for the following specific services:

- Value of service portion involved in execution of works contract.
- Value of service in relation to money changing.
- Value of service portion involved in supply of food and any other article for human consumption or any drinks in a restaurant or as outdoor catering.

6. Reverse Charge/Partial Charge Mechanism:

From 1st July 2012, the concept of levy has been modified radically into the Reverse Charge Mechanism under which the following Services have been specified. Under this, the Service Recipient and/or the Service Provider have to discharge the Service Tax on the specified percentage of the value of Services.

S No.	Description of Services	Percentage of Service Tax payable by the person on reverse charge basis
1	In respect of Services provided by an insurance agent to a person carrying on insurance business	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	100%
3	In respect of Services provided or agreed to be provided by way of Sponsorship	100%
4	In respect of Services provided or agreed to be provided by an Arbitral Tribunal or by individual advocate or a firm of advocates by way of legal Services	100%
5	In respect of Services provided or agreed to be provided by Government or local authority by way of “Support Services”	100%
6	With respect to following Services provided or agreed to be provided by any individual, HUF or Partnership Firm, whether registered or not, including AOP, located in the taxable territory to a business entity registered as a body corporate, located in a taxable territory <ul style="list-style-type: none"> • Motor vehicle designed to carry passengers, who is not engaged in the similar line of business (With Abatement in the Past) • Motor vehicle designed to carry passengers who is not engaged in the similar line of business (Without 	100% 40% 75%

	Abatement in the Past) • Manpower Services • Security Services • Works Contract Services	75% 50%
7	In respect of 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	100%
8	In respect of Services provided or agreed to be provided by a director of a company to the said company	100%

7. Negative List/Mega Exemption:

Under the ‘**new approach of Negative List**’, Service Tax is leviable on all the Services rendered in taxable territory in India except on the Services specified under the Negative List or the Mega Exemption List.

Negative List mainly includes government Services (except renting of immovable property & support Services), specified services relating to education, agriculture, electricity, etc.

Mega Exemption mainly includes Clinical Services, Services towards construction/maintenance of a road, bridge, tunnel, or terminal for road transportation for use by general public, etc.

8. Compliances and Due Dates:

• Registration

Registration should be obtained within 30 days from the date of reaching the taxable turnover Rs. 0.9 million or becoming liable to pay taxes under reverse charge (Recipient of Services) mechanism

• Deposit of Taxes

- Due dates of deposit of Service Taxes pertaining to April to February should be deposited within 5th of the following month or 6th where deposits made through electronically, in case of March liability on the close of the month i.e. 31st of March under both the mode of payments.
- For small service providers, carrying on business as individuals or in partnership i.e. Taxable services in the preceding Financial Year being less than Rs. 5 million or up to Rs. 5 million in the current Financial Year may choose to deposit the taxes on quarterly basis from April to December wherein, taxes should be deposited within 5th of the following quarter or 6th where deposits made through electronically, for the January to March due date would be 31st March.

- Electronic deposit of taxes is compulsory where liability to pay taxes exceeded Rs. 1 million in the preceding Financial Year including input Service Tax credit

- **Filing of Returns**

Every assessee is required to furnish half yearly return electronically for the period falling from April to September and October to March on 25th of following respective half year ended. Revision of return is permissible within 60 days with cenvat credit or 90 days without cenvat credit from the date of submission of original return.

9. Cenvat Credit:

Taxes suffered by service provider in the form of Excise duty/Additional duty/Service Tax on any inputs/capital goods/input services would be allowed to offset against output Service Tax liability.

However, under the present system of input tax credit, the definition of input service is defined in three parts for the ease of reference viz., Specific part, Inclusive part and Excluded part.

- **The Specific Part**

Any taxable service received by an output service provider and used by him directly for providing the output service will be covered under this specific part of the definition.

- **The Inclusive Part**

This covers only 16 set of defined Services. No exception as to whether these Services are used for providing output Services or not, Services identified with inclusive part are eligible for input Service Tax credit. Ex: Sales promotion, security, Renovation/repair of premises/office, etc.

- **The Excluded Part**

Under this excluded part, certain specified Services are purely kept out of input service definition. E.g. Construction/setup related Services, Rent-a- cab, Vehicle Insurance and Services benefitting the employer.

Credit in respect of Service Tax paid under any of the categories mentioned below would not be eligible:

- a) Not directly identified with providing output service
- b) Not finding entry in the inclusive part
- c) Not falling under the excluded part

10. Refund

Rule 5 of the CENVAT Credit Rules, 2004, allows refund of input Service Tax used for providing output Services exported without payment of Service Tax and such credit being allowed under Rule 3 of the CENVAT Credit Rules, 2004, for payment of duty in respect of final products cleared for home consumption or for export on payment of duty or for payment of Service Tax on output Services during the given period. Where any output service provider is into providing domestic and export Services, then, input service not offset fully against output service would be allowed refund in proportion of export of Services to total Services rendered.

11. Goods And Service Tax (GST)

Introduction of “Goods and Services Tax” (GST) is imminent in India and is a comprehensive tax levy on manufacture, sale and consumption of goods and Services at a national level. Through a tax credit mechanism, this tax is collected on value-added goods and Services at each stage of sale or purchase in the supply chain.

The system allows the set-off of GST paid on the procurement of goods and Services against the GST which is payable on the supply of goods or Services. However, the end consumer bears this tax as he is the last person in the supply chain.

GST, when introduced, would be a new era in the taxing of goods or Services in India, wherein manufacturer/traders/service provider would be brought under one platform and by giving GST credit, mitigates the cascading effects of taxation on Goods & Services.