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Ministry of Finance
Department of Revenue
(Tax Research Unit)

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D. O. F. No 334/1/2012-TRU
New Delhi, dated 16th March, 2012.

Dear Sir/Madam,

Subject: Union Budget 2012: Changes in Service Tax-reg.

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

2. No more will the most often-asked question “which taxable service is being provided?” be relevant; no more will an exporter be asked whether an input service has been used in export to claim a Cenvat refund; and no more will a host of questions confront a tax-payer filing his new one page return.

3. Budgetary changes relating to service tax this year are aimed at addressing a number of basic issues: simplicity and certainty in tax processes, neutrality of business to tax by mitigating cascading, encouraging exports, optimizing compliance. And these are largely driven by the desire to create the required setting for the eventual launch of GST in a far more familiar environment.

4. Clauses 143 to 145 of the Finance Bill, 2012 cover the legislative changes relating to Service Tax. Changes have also been made in the rules as well as exemptions. A number of other changes are slated to be introduced in subordinate legislation at the time the legislative provisions are operationalized.

5. These changes can be broadly captured as follows:

A. Rate changes:

1. The rate of service tax is being restored to the statutory rate of 12% - same as goods-and Notification No. 8/2009-ST dated February 24, 2009 reducing the rate to 10% has been rescinded effective April 1, 2012.

2. Consequent changes have also been made in composition rates as follows:

- i For life insurance: 3% for the first year premiums while retaining the rate @1.5% for the subsequent years(simultaneously restoring full Cenvat credit);
 - ii Money changing: raising the existing rates proportionately by 20%;
 - iii Distributor or selling agent of lotteries: Raising the specified amounts proportionately and suitably rounded off to Rs 7,000 and 11,000;
 - iv For works contracts from 4% to 4.8%.
3. The rate for Cenvat reversal for exempt services has been revised likewise from 5% to 6% in Rule 6(3) of Cenvat Credit Rules (CCR), 2004.
4. The dual tax structure for air transportation: partly specific, partly ad valorem - is being replaced with a uniform ad-valorem levy at standard rate with an abatement of 60% on all sectors and all classes.
5. **All these changes will be effective April 1, 2012.**

B. Taxation of services:

B.1. Negative List:

1. There is paradigm shift in the way services are proposed to be taxed in future. Taxation will be based on what is popularly known as “Negative List of Services”.
2. In simple words, it means that if an activity meets the characteristics of a “service” it is taxable unless specified in the Negative list, comprising 17 heads listed in proposed new section 66D, or otherwise exempted by a notification issued under section 93 of the Act. Most of the 88 exemptions at present will be either rescinded, being no more needed, or modified in some manner, or merged in a mega notification, leaving the final tally of exemptions to just 10.
3. The word “service” is defined in clause (44) of the new section 65B. This will also include certain activities that have been specified as declared services in section 66E. Most of these declared services are presently taxed as positive list.
4. The new charging section is contained in section 66B and levies taxes on all services, other than those in the negative list, provided or agreed to be provided in the taxable territory by one person to another.
5. The entire concept, including the key to understanding the various dimensions of the new taxation, together with answers to possible questions, is contained in a detailed draft Guidance Paper: A (GPA for short) and is attached as Annexure A to this letter. The negative list, the mega-exemption notification and list of other exemptions, being retained, are a part of GPA as Exhibits “A1”, “A2” and “A3” respectively.
6. On the coming into force of the new provisions, the earlier provisions contained in sections 65, 65A, 66, 66A will cease to apply but will remain relevant in respect of services provided prior to the coming into force of the new provisions.

B.2. Place of Provision of Services Rules, 2012:

7. An important component of the proposed changes is the introduction of the Place of Provision of Services Rules, 2012, which have been released for comments and feedback for the time being. Another draft Guidance Paper-B, or GPB for short, has also been issued explaining all the various aspects relating to these rules and is attached as Annexure B.

8. The new rules will replace the existing Export of Services Rules, 2005 and the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006. Rule 5 of the export rules will be incorporated in Service Tax Rules.

B.3. Other related changes:

9. The transition to Negative List will require a number of other changes, in particular, movement away from service-specific provisions in rules and notifications. Many other changes are also being timed with the introduction of negative list, including most of the new exemptions. These changes are as follows:

B. 3(I). Service Tax Rules

10. Besides complying with some revised drafting needs due to negative list, the rules will need changes in respect of person liable to pay tax: to provide for recipient persons relating to services provided to business entities by government, advocates or arbitrators, change in services provided from non-taxable territory, some changes to services provided by GTA and the deletion of all those services that are now exempt e.g. mutual funds agents and distributors.

11. Since the Export Rules will cease to apply, the required provisions will be incorporated in Service Tax Rules. A transaction will qualify as export when it meets following requirements:

- i The service provider is located in Taxable territory;
- ii Service recipient is located outside India;
- iii Service provided is a service other than in the negative list.
- iv The Place of Provision of the service is outside India; and
- v The payment is received in convertible foreign exchange

B. 3(II). Valuation Rules

12. Negative list will require movement away from service-specific provisions. As such, the abatements under Notification 1/2006-ST and composition rate under the Works Contract (composition scheme for payment of service tax) Rules, 2007 will need some reformulations.

13. A new valuation rule is being introduced to substitute the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. The value of the Works Contract is proposed to be redefined, as follows:

- i As at present, first determination will be the value of service being the total amount charged for the contract reduced by the value of property transferred in goods for State VAT purpose;
- ii If value of goods is not intimated to State VAT, the assesseees can still calculate the actual value of goods and the same will be relevant to deduce the value of the service involved in the works contract;
- iii If the value is not so deduced, and not merely as an option, the value shall be specified percentage of the total value as follows:
 - a. for original works: 40% of the total amount;
 - b. other contracts: 60% of the total amount;
 - c. for contracts involving construction of complex or building for sale where any part of the consideration is received before the completion of the building: 25% of the total amount

14. Original works will include all new constructions and all types of additions and alterations to abandoned or damaged structures to make them workable.

15. The total amount will be gross amount plus the value of any material supplied under the same contract or any other contract.

16. The input tax credit on goods forming part of the property on which VAT is payable shall not be available as they are not used in the provision of service, which is totally independent of the deemed sale. However taxes paid on capital goods and input services will be available including in respect of iii.c of para 13 above.

17. Likewise a new Rule 2C is being introduced, for determination of value of taxable service involved in supply of food and drinks in a restaurant or as outdoor catering. The value is being adjusted such that the industry is able to utilize credit on capital goods, specified inputs (other than chapter 1 to 22 i.e. foods and beverages) and input services. Thus the taxable portion is being raised but the move is expected to be business-friendly.

18. The revised taxable portion shall be as follows:

S. No	Description of service	Existing taxable portion	Proposed taxable portion
1.	Service portion in the supply of food or any other article of human consumption or drink at a restaurant	30%	40%
2.	S. No.1 provided from a premises elsewhere(outdoor catering)	50%	60%

19. Further, it is proposed to amend Rule 3 of valuation rules to provide that 'prescribed manner' in Rule 3 will be applicable only in the cases where valuation is not ascertainable. At present Rule 3 has been inadvertently made applicable to

situation where consideration received is not wholly or partly consisting of money, which is fully covered by the Act.

20. Rule 6 of Valuation Rules prescribes inclusions and exclusions to the taxable value. Following changes are being made here:

- i Sub-rule (1) to include “any amount realized as demurrage, or by any other name, for the provision of a service beyond the period originally contracted or in any other manner relatable to the provision of service”. This change will become relevant in the context of negative list where such amounts may be collected in the name of demurrage but will actually be in all respects a service.
- ii In sub-rule (2) clause (iv) regarding exclusion of ‘interest on loans’ is proposed for substitution with “interest on (a) deposits; and (b) delayed payment of any consideration for the provisions made (services/goods)”. This will keep such amounts outside the value and thus not be relevant for reversal of credits under rule 6(3) of CCR, 2004. Interest on loans will now be an exempt income rather than an exclusion from value.
- iii Under the list of exclusions in sub-rule (2) from taxable value “accidental damages due to unforeseen actions not relatable to the provision of service” is being added. This again is in view of the negative list approach to taxation of services and to confine inclusions of demurrages to those under category I above and not beyond.

21. In the Negative List approach, Rule 7 may not be required; therefore it is proposed to omit the same.

B.3(III). Abatements:

22. Certain changes are proposed to be introduced in the abatements along with negative list. The increase in taxable portion of value are accompanied with liberalization in input tax credits following the principle of neutrality of taxes that the burden of taxes should not raise the cost per se but passed on to the point of consumption. It is expected that, though the taxable portion of services may appear a little higher, but the availability of credits will lead to reduction in costs and hence prices for the consumers.

23. The existing and new abatements shall be as follows:

S. No.	Service	Existing taxable portion	Proposed taxable portion	Cenvat credits
1.	Convention center or mandap with catering	60%	70%	All credits, except on inputs, of chapter 1 to 22, will now be available.
2	Pandal or Shamiana with catering.	70%	70%	
3	Coastal shipping	75%	50%	No credits as at

				present
4	Accommodation in hotel etc.	50%	60%	Credits on input services allowed
5	Railways: goods	30%	30%	All credits will be allowed
6	Railways: passengers	New levy	30	-do-

B.3(IV) Cenvat Rules:

24. Cenvat rules will require some changes in the light of negative list. First of all the service-specific references in the rules by clauses will be replaced by broad descriptions retaining the essence of the existing provisions.

25. Due to the fact that exports will cease to be a taxable service per se, changes are being made to incorporate the concept by changing the definition of output service such that it includes exports of service and that too without payment being received until the period available under the RBI requirements. This will allow continuation of the benefit of not reversing the input tax credits for exports without treating them exempt until the period specified for realizing export proceeds.

26. Interest on loans, advances will now be an exempt service. This will require reversal of credits used for earning such income. For the banking and financial sector, provisions are available to reverse credits up to 50% in rule 6(3D). It is being proposed to change this formula to actual basis, the value of service being net interest i.e. interest earned less interest paid on deposits, subject to a minimum of 50% of interest paid on deposits. For the non-financial sector it is being proposed that they may reverse credits on gross interest basis.

B. 3(V). Rebate of service tax on export of goods:

27. The scheme for electronic refund of service tax paid on taxable services (eighteen different taxable services) used for export of goods at the post-manufacture /post-removal stage has been made operational since 3rd January, 2012, as announced by the Honorable Finance Minister in his last year's Budget speech.

28. The scheme is operated at present as a general exemption under section 93(1) of the Finance Act, 1994. To strengthen the electronic refund further, it is proposed to amend section 93A of Finance Act, 1994. After its enactment, Notification 52 /2011-ST dated 30/12/2011 concerning refund service tax paid on export of goods at the post-manufacture/ removal stage, will be placed under this section.

29. This means that in future, service tax refunded will be recoverable, without any time bar from the exporter, against whose shipping bill, sale proceeds have not been received from abroad. Moreover the service-specific exemption will be revisited and suitably altered.

B.3 (VI) SEZ changes:

30. There are no changes at present. However service-specific criterion for determination of services provided exclusively within the SEZ shall be taken care at the time of introducing negative list.

C. Other legislative changes:

C.1. General Changes

1. In Explanation to section 67, definition of money, in clause (b), is proposed for omission as nearly the same definition shall be available in section 65A for capturing the meaning of 'service'.

2. A new section: 67A is being inserted to prescribe the relevant date for the application of rate of exchange, valuation or rate of service tax. Rule 5B of ST Rules, which covers this aspect partially will be deleted.

3. Special audit provisions, available at present by way of section 14AA of the Central Excise Act and made applicable to Service Tax by way of section 83, are being replaced by a new section: 72A, giving comprehensive powers for such audit relevant for service tax purposes.

4. The provisions of section 73 are being amended as follows:

- i The period for issue of demands in normal situations is being raised from 12 months to 18 months. This is being done to take care of the shorter period available due to the periodicity of the new return EST-1 (to replace ST-3 and discussed later) being reduced to 1 month for large assesseees from the existing 6 months and to have the benefit of audited accounts available for the purpose of scrutiny of returns;
- ii A new sub-section (1A) is being inserted to save the botheration of retyping the same charges (and save paper) when a follow-up demand is given for a period subsequent to the previous notice(s) on same grounds;
- iii Reference to sub-section (3) is being deleted in sub-section (4A) so that the latter section will not overrule the earlier;

5. Provisions relating to Settlement Commission are being brought in the Service Tax by adding sections 31, 32 and 32A to 32P of the Central Excise Act in section 83. On the date of the enactment of the Finance Bill, notification containing Service Tax (Settlement of Cases) Rules, 2007 along the lines of Central Excise (Settlement of Cases) Rules, 2007, will come into effect. This should encourage quick settlement of disputes and save the business from the worries of prosecution in certain situations.

6. The periods for filing appeals in service tax are being aligned with Central Excise. These are captured by relevant amendments in sections 85 and 86. New limitations will apply to decisions or orders passed after the date on which Finance Bill, 2012, receives the assent of the President.

7. At present in service tax, appeals against the order of commissioner (appeals) lie before the Tribunal; whereas in Central Excise, a revision mechanism is available to hear certain specified matters i.e. credit of any duty allowed to be utilized towards payment of excise duty on final products, rebate on exports. It is proposed that this revision mechanism may also be made available for service tax, to the extent applicable. Accordingly, Central Excise provisions relating to revision mechanism (section 35EE of Central Excise Act) are being made applicable to service tax by amending section 83.

8. Clause (a) of section 89 relating to prosecution for non-issue of invoice is being replaced with the words “knowingly evades payment of service tax”. This will meet the demand of business that mere non-issue of invoices should not be made punishable with prosecution, while giving a comprehensive coverage to offences and also aligning with other indirect laws. Simultaneously process of compounding of offences will be operationalized and the enabling rule making power has been obtained in the Act.

9. Powers of Advance Ruling Authority to hear cases relating to Cenvat credit will also cover cases of Central Excise duty. This was an anomaly due to the applicability of the then 2002 Cenvat rules only to service tax credits that has been corrected.

C.2. Reverse charge provisions:

10. There are a number of changes relating to reverse charge provisions. First of all, the term “taxable territory” has been defined in the Act and only services provided in taxable territory will be liable to tax. Thus any service provided in the state of J&K will not be liable to tax. The Place of Supply Rules, 2012 will determine whether a service is being provided in J&K.

11. Moreover wherever the service provider is located in J&K but the service is being provided in taxable territory, in terms of the stated rules, the tax will be collected from the service receiver.

12. Secondly it has been noticed that a number of registrants collect the tax but do not pay the same to the Department. This is a serious loss of the revenue even though the compliant section at the recipient end is often not benefitted. To ensure proper collection, while not inconveniencing small business, a new scheme is proposed to be introduced.

13. To give effect to this new reverse charge mechanism, some changes are being proposed: firstly, a proviso is being added to sub-section (2) of section 68 and both the service provider and service receiver will be considered as persons liable to pay the tax on notified taxable services and to the extent specified against each one of them.

14. The scheme is being introduced for three services where the service provider is either an individual or a firm or LLP and the recipient is a body corporate. The three services and the portion of tax payable are as follows:

Sl. No.	Description of service	Service recipient	Service provider
1.	Hiring of a motor vehicle designed to carry passengers: (a) with abatement (b) without abatement	100% 40%	NIL 60%
2.	Supply of manpower for any purpose	75%	25%
3.	Works contract service	50%	50%

15. It is clarified that the liability of the two persons is for respective amounts and is not influenced by compliance or the lack of it by the other side. Service provider is allowed Cenvat credit of tax paid by him on inputs and input services. The respective portions have been attempted such that the credits available will be well below the amount required to be paid by such persons. In extreme situations the small service provider is also being allowed the refund of unutilized Cenvat credit if any, available with him. Suitable changes will be made in Cenvat Credit Rules, to this effect.

16. Even though the above scheme can be given effect on enactment, it is proposed to time it with Negative List approach as a part of the comprehensive reform.

C.3 Penalty waiver for renting of immovable property service:

17. Recently, Delhi High Court while examining the issue of constitutionality of service tax on renting of immovable property service in the matter of Home Solutions Retail Vs UOI observed that 'on the question of penalty due to non-payment of tax, it is open to the Government to examine whether any waiver or exemption can be granted' [para 73]. Subsequently, in the matter of Retailers Assn. of India Vs Union of India, Honorable apex court, had ruled on October 14, 2011, that litigants should pay 50% of the arrears within six months in three equated installments. For the balance, solvent surety should be furnished to the satisfaction of the jurisdictional commissioner.

18. Against the above backdrop, it is proposed that penalty may be waived for those taxpayers who pay the service tax due on the renting of immovable property service (as on the sixth day of March, 2012), in full along with interest within six months. Section 80A is being introduced for this purpose. Those who fail to avail the benefit will be treated as if this section did not exist.

C.4. Retrospective changes

19. Rule 6(6A) of the Cenvat Credit rules, introduced last year vide Notification 3/2011-CE (NT), dated 01/03/2011, is being given effect from February 10, 2006. This will neutralize the investigations or demands for reversal of credits in respect of services provided to SEZs for the past.

20. Exemption provided for the setting up of common facilities for treatment and recycling of effluents and solid wastes by Notification 42/2011-ST dated 25th July, 2011 shall be made applicable effective June 16, 2005;

21. Repair of roads has been exempted from service tax by Notification 24/2009-ST dated 27th July, 2009. By section 97, exemption relating to roads is extended for the earlier period commencing from June 16, 2005;

22. Service tax exemption has also been granted with retrospective effect on management, maintenance or repair service in relation to non-commercial Government buildings from 16th June, 2005 till the coming into force of the negative list when such repair will be exempted by the new mega notification.

23. These changes will come into effect when the Bill receives the Presidential assent barring C.1.1 & reverse charge that will come into effect along with Negative List.

D. Point of Taxation Rules, 2011

1. The time period for issuance of invoice is being increased to 30 days ordinarily and 45 days for banks and financial institutions (to reconcile with the business practice of issuing monthly statement). These changes are being provided in Rule 4A of Service Tax Rules and the time period so defined is being incorporated in POT Rules.

2. In case of export of services and eight specified services provided by individuals or firms, the point of taxation is the date of payment. The special dispensation is being shifted from the POT Rules to the Service Tax Rules. This would help provide certainty in the application of rate of tax while retaining the benefit of payment of tax until payment is received.

3. In case of exporters, the period extended by the Reserve Bank of India is now explicitly included in the period for which the tax is allowed to be deferred.

4. The benefit available to individuals and firms to determine POT on the basis of date of payment for eight specified services is being extended to all services in a slightly modified form. The facility will be now available to individuals and partnership firms (including limited liability partnership) up to a turnover of Rs 50 lakh in a financial year provided the taxable turnover did not exceed this limit in the previous financial year. For computing the above limits, the turnover of the whole entity is required to be summed up and not any single registration.

5. The definition of continuous supply of service is being amended to capture the concept in a more wholesome manner, namely the recurrent nature of services and the obligation for payment periodically or from time-to-time.

6. Since the essence of the rule in case of continuous supply of service is the same as the main Rule, the separate rule for continuous supply of service [Rule 6] is

being merged with the main rule. Moreover the provisions of rules 4 and 5 relating to changes in rates or application of tax on new services would also be applicable to continuous supply of services;

7. In case of a new levy, no tax is chargeable on services where payment has been received and invoice issued within a period of 14 days. To provide certainty, clause (b) is being amended to specify that invoice should be issued within 14 days of the date of the new levy.

8. The “date of payment” could be a subject of litigation particularly when effective rate changes. A new rule has been created: Rule 2A, keeping in view the impending change in rate effective April 1, 2012 and introduction of Negative List at a later date. In normal circumstances this date shall be the earlier of the dates of entry into books of accounts or actual credit in the bank account (when applicable). However, when there is change in effective rate of tax or a new levy between the said two dates, the date of payment shall be the date of actual credit in the bank account, if the amount is credited through a banking instrument more than four working days after the date of such change.

9. This will have no impact where invoice is the basis for point of taxation. Thus business may be advised to take steps to deposit all advances received up to March 31, 2012 in their bank accounts suitably. Any delay in this regard will lead to charging tax at higher rate.

10. As a measure of added facilitation, an option has been provided to determine the point of taxation in respect of small advances up to Rs 1000, in excess of the amount indicated in the invoice, on the basis of invoice or completion of service rather than payment. Such provision is expected to address the accounting problems faced by service providers in telecommunications, credit card businesses who regularly receive minor excess payments from their customers.

11. A residual rule has been made by way of best judgement to handle situations where the tax-payer is unable to furnish one or more of the details needed i.e. date of payment or date of invoice or both to determine POT.

12. And lastly, the small scale exemption has also been amended recognizing that the first clearances up to Rs 10 lakhs will be in terms of invoices and not mere payments received.

13. These changes come into effect from April 1, 2012.

E. Service Tax Rules, 1994:

1. A common simplified registration format for Central Excise and Service Tax is being placed for public comments, together with further liberalization in registration requirements, particularly centralized registrations. The proposed changes are attached as Annexure C.

2. Likewise a new simplified one page common return with Central Excise: to be called Excise & Service Tax Return (EST for short) is being introduced. The format of the return is given as Annexure D. It is also being proposed that the cycles for the payment service tax and filing of return should coincide. To this end the tax payment requirement is proposed to be revised as follows:

A. Assesseees who paid tax of Rs 25 lakh or more in previous year and new assesseees other than individuals and firms: Monthly

B. Others: Quarterly

3. This will improve cash flow for small businesses registered as companies or other corporate bodies while making large non-corporates pay tax on monthly business.

4. The restrictions in Rule 6(4B) are being omitted allowing unlimited amount of permissible adjustments.

5. Changes at S. No 1 & 2 will come into force after inviting comments from stakeholders. S. No 4 will come into force from April 1, 2012.

F. Cenvat Credit Rules, 2004:

F.1. Simplified scheme for refunds:

1. A simplified scheme for refunds is being introduced by substituting the entire Rule 5 of CCR, 2004. The new scheme does not require the kind of correlation that is needed at present between exports and input services used in such exports. Duties or taxes paid on any goods or services that qualify as inputs or input services will be entitled to be refunded in the ratio of the export turnover to total turnover.

2. The notification prescribing the detailed manner and safeguards will be issued by the Policy wing shortly.

F.2. Other changes:

3. Presently credit on all motor vehicles is not available except to a few specified service providers. This is being liberalised and credit on motor vehicles, other than those falling under tariff heading 8702, 8703, 8704, 8711 and their chassis, will be allowed. The credit of service tax paid on their hiring, insurance and repair will also be allowed.

4. Following credits in respect of vehicles will also be allowed:

i of insurance to motor insurance companies (as re-insurance and third party insurance) and manufacturers (as in-transit insurance);

ii of repair of vehicles to manufacturers in respect of motor vehicles manufactured by them and to insurance companies in respect of motor vehicles insured /re-insured by them.

5. Presently credit on goods can be taken only after they are brought to the premises of the service provider. Sub-rules 4(1) and 4(2) have been amended to allow credit without bringing them into premises subject to due documentation regarding their delivery and location.

6. Rule 9(1)(e) is being amended to allow availment of credit on the tax payment challan in case of payment of service tax by all service receivers on reverse charge.

7. Changes are being made in Rule 7 relating to distribution of credits of input services by an input service distributor (ISD) to ensure their scientific allocation to only such units where they have been put to use and proportionate to turnover. For example in case of services by way of advertisement-

- i if the advertisement is for a product or service provided from only one unit, the said credit shall be distributed only to that unit; and if two units, the said credit shall be distributed only to those two units, in proportion to the respective turnovers;
- ii if the advertisement is for the company as such, the said credit shall be distributed only to the extent of the turnover of units registered and entitled to avail Cenvat credit to the total turnover of the company including unregistered units.

8. These changes will be effective from 1.4.2012.

9. Additionally, there are other changes which have implication largely in respect of central excise but may also touch upon service tax. These may be referred to in JS, TRU-I's letter.

G. Disclaimer:

The changes mentioned in this letter are intended to provide you a quick glimpse of the budgetary changes. They are neither exhaustive nor meant to be used to interpret any provision. For the sake of easier understanding legal texts have been avoided in the writing of this letter, which may impact the precise understanding sometimes. The wordings used in the statutory provisions and the notifications should be relied upon which alone have the legal standing.

H. Miscellaneous:

1. You may go through all the changes together with both the guidance papers and provide your valuable observations as early as possible. The changes that have immediate implications for business may be intimated to them as efficiently as possible.

2. All my officers will be pleased to assist you in understanding the impact of these changes. I must clarify that, occasionally, due to the complex nature of the issues involved, and in order to provide you with our most informed response, it is not possible to give responses as expeditiously as you might desire. However, we have put in place a process that will help us consider all the various suggestions and would endeavor to clarify them as early as we can.

3. For the sake of convenience and better management of time on both sides, may I request you to correspond by e-mail, though any other form of communication is equally welcome. You may like to send your e-mails to jayaprahasam@gmail.com with a copy of important communications to me.

4. Our Board has organized a one day interactive session for business on 23rd March at Delhi. This is on first-come basis and those desirous of joining may be advised to get in touch with National Academy of Customs, Central Excise & Narcotics (NACEN): contact person Shri Ashok Mehta ADG; e-mail: ashokmehtairs@gmail.com. A seminar for Departmental officers is slated later.

5. As a team that has worked on these proposals collectively, we are unanimous in admitting that it has given us tremendous satisfaction to see the concept of the negative list, as envisioned by our Honorable Finance Minister in the previous budget, reach the doorsteps of fruition. The best part of the whole exercise has been the process of transparency that could be observed in putting, not one but two, concept papers in public domain as also the whole-hearted contribution of uncountable people through their valuable comments and insights.

6. Our journey so far has emboldened us to place before all stakeholders both the draft guidance papers as well as acquaint them with practically all the changes that will unfold later when the negative list is introduced. We remain conscious that these clarifications may not sometime capture all the various complexities of diverse businesses that service tax is required to confront with. To that extent the quest to pursue doubts and improve upon the answers already furnished will persist.

7. We expect the negative list, together with all the other changes, to spearhead the most positive changes in the field of service taxation: to reduce litigation and compliance costs and pave the way for long-term stability. If this dream is realized, it would be worth all the effort that the team has relentlessly put in over the last one year.

8. And before concluding, respectful thanks to all my seniors for their guidance, and keeping the environment sufficiently relaxed despite enormous challenge.

Enclosures: Annexure A, B, C & D

Sincere regards,

Yours sincerely

(V K Garg)
Joint Secretary (TRU-II)

To: All Chief Commissioners/ Directors General/CDR;
All Commissioners: of Customs/Central Excise/Service Tax;
Commissioner DPPR/ Logistics/Legal Affairs/ Data Management;
Commissioner (ST) CBEC/ ADG DGST

Draft Guidance Paper: A

Taxation of Services based on Negative List

TRU, Central Board of Excise & Customs, Department of Revenue, Ministry of Finance March 16, 2012

In this guidance paper

- Introduction
- Guidance Note 2: What is service?
- Guidance Note 3: Taxability of services
- Guidance Note 4: Negative List
- Guidance Note 5: Declared services
- Guidance Note 6: Exemptions
- Guidance Note 7: Rules of interpretation
- Exhibit1:Negative List of services
- Exhibit2: Exemptions in mega notification
- Exhibit3: Other exemptions

1. Introduction

1.1 What is the significance of the changes due to the new system of taxation?

Budget 2012 proposes to usher a paradigm shift in the manner services will be taxed in future. The transition involves shift from taxation of 119 service-specific descriptions to a new regime whereby all services will be taxed unless they are covered by any of the entries in the negative list or are otherwise exempted. The new system is a marked shift by way of comprehensive taxation of the entire service sector without getting into complex issues of classification of services.

1.2 What is the aim of this Guidance Paper?

This draft guidance paper is aimed at explaining various aspects of the new concept in order to seek the inputs of all stakeholders and to address any issue that may impact the harmonious application of the new provisions in general or any specific sector in particular. The guidance will be useful to all those who are rendering a service, whether presently taxable or not, tax administrators and tax practitioners besides others who have interest in indirect taxation.

The paper is being brought out as draft guidance recognizing that legislative changes are contained in the form of a Bill which has to undergo the due process of law. Besides it will be desirable that when changes on this scale are being carried out it should have the benefit of inputs from all stakeholders before it attains finality.

1.3 What is the key to using this Guidance Paper?

The guidance paper consists of a number of Guidance Notes. Each of the notes deals with a specific topic relating to the proposed new system of taxation based on the negative list, as summed up in para 1.2 above. The list of these guidance notes is as follows-

Guidance Note 1	Introduction
Guidance Note 2	What is 'service'?
Guidance Note 3	Taxability of a 'service'
Guidance Note 4	Negative List
Guidance Note 5	Declared Services
Guidance Note 6	Exemptions
Guidance Note 7	Rules of interpretation

In addition, the Guidance Paper has the following three Exhibits:

- Exhibit A1 - List of services specified in the negative list
- Exhibit A2 – List of exemptions in mega notification
- Exhibit A3 - Gist of other proposed exemptions

1.4 What is the broad the scheme of new taxation?

In the new system, service tax will be levied on all services provided in a taxable territory other than the services specified in the negative list. The key features of this system are as follows:

- At the outset 'service' has been defined in clause (44) of section 65B of the Act.
- Section 66B specifies the charge of service tax which is essentially that service tax shall be levied on all services provided or agreed to be provided in a taxable territory, other than services specified in the negative list.
- The negative list of services is contained in section 66D of the Act.
- Since provision of service in the taxable territory is an important ingredient of taxability, section 66C empowers the Central Government to make rules for determination of place of provision of service. Under these provisions the Place of Provision of Services Rules, 2012 have been made for which a separate and detailed guidance paper (GPB) has been issued.
- To remove some ambiguities certain activities have been specifically defined by description as services and are referred as Declared Services (listed in section 66E).
- In addition to the services specified in the negative list, certain exemptions have been given. Most of the exemptions are proposed to be consolidated in a single mega exemption for ease of reference.
- Principles have been laid down in section 66F of the Act for interpretation wherever services have to be treated differentially for any reason and also for determining the taxability of bundled services.
- The system of valuation of services for levy of service tax and of availment and utilization of Cenvat credits essentially remains the same with only incidental changes required for the new system of taxation

Guidance Note 2 – What is Service?

In the existing system, only the services specified in clause (105) of section 65 of the Finance Act, 1994 are taxed under the charging section 66. In the new system, all services, other than services specified in the negative list, provided or agreed to be provided in the taxable territory by a person to another would be taxed under section 66B. This Note explains the various ingredients and aspects of the definition of service. 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
- a transaction only in (iii) money or (iv) actionable claim
- any 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

There are three explanations appended to the definition of 'service' which are dealt with in later part of this Guidance Note. Each of the ingredients bulleted above have been explained in the points below.

2.1 Activity

2.1.1 What does the word 'activity' signify?

'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 the obligation to refrain from an act or to tolerate an act or a situation has also been specified as a declared service under section 66E of the Act.

2.2 Consideration

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

Yes. ‘Consideration’ has not been defined in the Act. The definition of ‘consideration’ as given in the Indian Contract Act, 1872 can safely be adopted to understand the concept of consideration. When so applied to the Act, ‘consideration’ for a service provided or agreed to be provided by service provider would mean anything which the service receiver or any other person has done or abstained from doing, or does or abstain from doing, or promises to do or to abstain from doing for receiving the service.

In simple term, ‘consideration’ means everything received in return for a provision of service which includes monetary payment and any consideration of non- monetary nature as well as deferred consideration.

2.2.2 What are the implications of the condition that activity should be carried out for a ‘consideration’?

- To be taxable an activity should be carried out by a person for another 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. (**for exemptions to charities please see Guidance Note 6**)
- 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 business advantage to the donor.

2.2.3 What is the meaning of monetary consideration?

Monetary consideration means any consideration received in the form of money. ‘Money’ 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 when used as consideration to settle an obligation.

2.2.4 What is non-monetary consideration?

Non-monetary consideration could be in the form of 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

Illustrations

If.....	And in return...
A agrees to dry clean B's clothes	B agrees to click A's photograph
A agrees not to open dry clean shop in B's neighborhood	B agrees not to open photography shop in A's neighborhood
A agrees to design B's house	B agrees not to object to construction of A's house in his neighborhood
A agrees to construct 3 flats for B on land owned by B	B agrees to provide one flat to A without any monetary consideration

Then

For the services provided by A to B, the acts of B specified in 2nd column are non-monetary consideration provided by B to A. Conversely, for services provided by B to A, similar reasoning will be adopted.

2.2.5 Is the value of non-monetary consideration important?

Yes. 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.

2.2.6 How is the money value on non-monetary consideration determined?

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.

2.2.7 Are research grant with counter obligation on researcher to provide IPR rights on outcome of a research a consideration?

In case research grant is given with counter obligation on the researcher to provide IPR rights on the outcome of research or activity undertaken with the help of such grants then the grant is a consideration for the provision of service of research. General grants for researches will not amount to a consideration.

2.2.8 Would the payments in the nature as explained in column A of the table below constitute a consideration for provision of service?

S. No.	A	B
	Nature of payment	Whether consideration for service?
1.	Amount received in settlement of dispute.	Would depend on the nature of dispute. <i>Per se</i> such amounts are not consideration unless it represents a consideration. If the dispute itself pertains to consideration relating to service then it would be a part of consideration. For example the amount may represent payments for an executed works contract in dispute.
2.	Amount received as advances for performance of service.	Such advances are consideration for the agreement to perform a service.
3.	Deposits returned on cancellation of an agreement to provide a service.	Returned deposits are in the nature of a returned consideration. If tax has already been paid the tax payer would be entitled to refund subject to provisions in this regard.
4.	Advances forfeited for cancellation of an agreement to provide a service.	Since service becomes taxable on an agreement to provide a service such forfeited deposits would represent consideration for the agreement that was entered into for provision of service.
5.	Security deposit that is returnable on completion of provision of service.	Returnable deposit is in the nature of security and hence do not represent consideration for service.
6.	Security deposits forfeited for damages done by service receiver in the course of receiving a service	If the forfeited deposits relate to accidental damages due to unforeseen actions not relatable to provision of service then such forfeited deposits would not be a consideration in terms a clause proposed to be inserted in rule 6 of the Valuation Rules.
7.	Fines and penalties paid for violation of provisions of law.	These are not considerations as no service is received in lieu of payment of such fines and penalties.
8.	Excess payment made as a result of a mistake	If returned it is not consideration. If not returned and retained by the service provider it becomes a part of the taxable value.

9.	Demurrages payable for use of services beyond the period initially agreed upon e.g. use of containers beyond the normal period.	This will be consideration and is being so provided in the amendments made to Rule 6 of the Valuation Rules.
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2.2.9 Can a consideration for service be paid by person other than the person receiving the benefit of the service?

Yes. The consideration for a service may be provided by a person other than the person receiving the benefit of service as long as there is a link between the provision of service and the consideration. For example, holding company may pay for works contract service or architect services that are provided to its associated companies.

2.3 By a person for another

2.3.1 What is the significance of the phrase ‘carried out by a person for another’?

The phrase ‘provided by one person to another’ signifies that services provided by a person to self are outside the ambit of taxable service. Example of such service would include a service provided by one branch of a company to another or to its head office or vice-versa.

2.3.2 Are there any exceptions wherein services provided by person to the same person are taxable?

Yes. Two exceptions have been carved out to the general rule that only services provided by a person to another are taxable. These exceptions, contained in Explanation 2 of clause (44) of section 65B, are:

- an establishment of a person located in taxable territory and another establishment of such person located in non-taxable territory are treated as establishments of distinct persons. [Similar provision exists presently in section 66A(2)].
- an unincorporated association or body of persons and members thereof are also treated as distinct persons. [Also exists presently in the explanation to section 65].

Implications of these deeming provisions are that inter-se provision of services between such persons, deemed to be separate persons, would be taxable. For example, services provided by a club to its members and services provided by the branch office of a multi-national company to the headquarters of the multi-national company located outside India would be taxable provided other conditions relating to taxability of service are satisfied.

2.3.3 Who is a ‘person’? Is it only a natural person or includes an artificial or a juridical person?

‘Person’ is not restricted to natural person. ‘Person’ has been defined Section 65 B of the Act. The following shall be considered as persons for the purposes of the Act:

- an individual
- a Hindu undivided family
- a company
- a society
- a limited liability partnership
- a firm
- an association or body of individuals, whether incorporated or not
- Government (Central and State Governments, will be separate persons)
- a local authority, or
- every artificial juridical person, not falling within any of the preceding sub-clauses.

2.3.4 Are Government and local authorities also liable to pay tax?

Yes. However, most of the services provided by the Government or local authorities are in the negative list.

2.3.5 What is the rationale behind taxing certain activities of the Government or local authorities?

Only those activities of Government or local authorities are taxed where they compete with private entities. The rationale is as follows-

- to provide a level playing field to private entities in these areas as exemption to Government in such activities would lead to competitive inequities; and
- to avoid break in Cenvat chain as the support services provided by Government are normally in the nature of intermediary services.

2.3.6 Would taxable services provided by Government or local authorities still be taxable if they are covered under any other head of the negative list or are otherwise exempted?

No. For example, transport services provided by Government to passengers by way of a stage carriage would not be taxable as transport of passengers by stage carriage has separately been specified in the negative list of services. The specified services provided by the Government or local authorities are taxable only to the extent they are not covered elsewhere i.e. either in the negative list or in the exemptions.

2.4 Activities specified in the declared list are services.

Declared Services are activities that have been specified in Section 66 E of the Act. When such activities are carried out by one person for another in the taxable territory for a consideration then such activities are taxable services. For guidance on the declared services please refer to **Guidance Note 5**.

2.5 Activity to be taxable should not constitute only a transfer in title of goods or immovable property by way of sale, gift or in any other manner

- Mere transfer of title in goods or immovable property by way of sale, gift or in any other manner for a consideration does not constitute service.
- Goods has been defined in section 65B of the Act as ‘every kind of moveable property other than actionable claims and money; and includes securities, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under contract of sale’.
- Immovable property has not been defined in the Act. Therefore the definition of immovable property in the General Clauses Act, 1897 will be applicable which defines immovable property to include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

2.5.1 What is the significance of the phrase ‘transfer of title’?

‘Transfer of title’ means change in ownership. Mere transfer of custody or possession over goods or immovable property where ownership is not transferred does not amount to transfer of title. For example giving the property on rent or goods for use on hire would not involve a transfer of title.

2.5.2 What is the significance of the word ‘only’ in the said exclusion clause in the definition of ‘service’?

The word ‘only’ signifies the transactions which involve only transfer of title in goods or immovable property is not included as service. A transaction which in addition to a transfer of title in goods or immovable property involves an element of another activity carried out or to be carried out by the person transferring the title would not be excluded from the definition of service.

2.5.3 Would the answer to 2.5.2 mean that all composite transactions which in addition to a transfer of title in goods involve an element of provision of service be considered as a ‘service’ and taxable as such?

No. The manner of treatment of such composite transactions for the purpose of taxation, i.e. are they to be treated as sale of goods or provision of service, has been laid down by the Honorable Supreme Court in the case of Bharat Sanchar Nigam Limited vs Union of India [2006(2)STR161(SC)]. The relevant paras 42 and 43 of the said judgment are reproduced below -

“42. Of all the different kinds of composite transactions the drafters of the 46th Amendment chose three specific situations, a works contract, a hire purchase contract and a catering contract to bring within the fiction of a deemed sale. Of these three, the first and third involve a kind of service and sale at the same time. Apart from these two cases where splitting of the service and supply has been Constitutionally permitted in Clauses (b) and (g) of Clause 29A of Art. 366, there is no other service which has been permitted to be so split. For example the clauses of Art. 366(29A) do not cover hospital services. Therefore, if

during the treatment of a patient in a hospital, he or she is given a pill, can the sales tax authorities tax the transaction as a sale? Doctors, lawyers and other professionals render service in the course of which can it be said that there is a sale of goods when a doctor writes out and hands over a prescription or a lawyer drafts a document and delivers it to his/her client? Strictly speaking with the payment of fees, consideration does pass from the patient or client to the doctor or lawyer for the documents in both cases.

43. *The reason why these services do not involve a sale for the purposes of Entry 54 of List II is, as we see it, for reasons ultimately attributable to the principles enunciated in Gannon Dunkerley's case, namely, if there is an instrument of contract which may be composite in form in any case other than the exceptions in Article 366(29-A), unless the transaction in truth represents two distinct and separate contracts and is discernible as such, then the State would not have the power to separate the agreement to sell from the agreement to render service, and impose tax on the sale. The test therefore for composite contracts other than those mentioned in Article 366 (29A) continues to be - did the parties have in mind or intend separate rights arising out of the sale of goods. If there was no such intention there is no sale even if the contract could be disintegrated. The test for deciding whether a contract falls into one category or the other is to as what is the substance of the contract. We will, for the want of a better phrase, call this the **dominant nature test.**"*

The following principles emerge from the said judgment for ascertaining the taxability of composite transactions-

- Except in cases of works contracts or catering contracts [exact words in article 366(29A) being – ‘service 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 service’] composite transactions cannot be split into contracts of sale and contracts of service.
- The test whether a transaction is a ‘composite transaction’ is that did the parties intend or have in mind that separate rights arise out of the constituent contract of sale and contract of service. If no then such transaction is a composite transaction even if the contracts could be disintegrated.
- The nature of a composite transaction, except in case of two exceptions carved out by the Constitution, would be determined by the element which determines the ‘dominant nature’ of the transaction.
 - If the dominant nature of such a transaction is sale of goods or immovable property then such transaction would be treated as such.
 - If the dominant nature of such a transaction is provision of a service then such transaction would be treated as a service and taxed as such even if the transaction involves an element of sale of goods.
- In case of works contracts and ‘service 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 service’ the ‘dominant nature test’ does not apply and service portion is taxable as a ‘service’ This has also been declared as a service under section 66E of the Act. For guidance on these two types of composite transactions and the manner of determining the value portion of service portion of such composite transactions please refer to point nos. 5.8 and 5.9 of this Guidance Paper.
- If the transaction represents two distinct and separate contracts and is discernible as such then contract of service in such transaction would be

segregated and chargeable to service tax if other elements of taxability are present. This would apply even if a single invoice is issued.

The principles explained above would, *mutatis mutandis*, apply to composite transactions involving an element of transfer of title in immovable property.

2.5.4 Why is notification 12/2003-ST proposed for deletion?

Notification 12/2003 – ST exempted so much of the value of all taxable services as was equal to the value of goods and materials sold by the service provider to the service recipient subject to condition that there is documentary proof of such value of goods and materials. Under the negative list scheme, transactions that involve transfer of title in goods are excluded. Therefore if goods are being sold by a service provider under a distinct and a separate contract then sale of such goods is excluded from the definition of service. If it is a ‘composite contract’ and dominant nature of the contract is that of provision of service then value of goods cannot be excluded and if the dominant nature is sale of goods then the contract is not taxable as service. In view of the above notification 12/2003-ST has been proposed to be deleted.

2.5.5 “Securities” has been included as goods. What are securities?

Securities has been defined in section 65B of the Act as having the same meaning assigned to it in clause (h) of section 2 of the Securities Contract (Regulation) Act, 1956 (42 of 1956) in terms of which ‘securities’ includes –

- Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate.
- Derivative.
- Security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
- Units or any other such instrument issued to the investors under any mutual fund scheme.
- Government securities;
- Such other instruments as may be declared by the Central Government to be securities.
- Rights or interest in securities.

2.5.6 What are the implications of inclusion of ‘securities’ as ‘goods’?

The definition of ‘goods’ has essentially been borrowed from the Sale of Goods Act, 1930 with the only variation that in the inclusion clause of the said definition the phrase ‘stocks and shares’ been replaced with ‘securities’. In effect, therefore, activities that are in the nature of only transfer of title by way of sale, redemption, purchase or acquisition of securities on principal-to-principal basis, excluding services of dealers, brokers or agents in relation to such transactions, are outside the ambit of ‘services. However activities which are not in the nature of transfer of title in securities (for example a person agreeing not to exercise his right in a security for a

given period of time for a consideration) would not be included in this exclusion clause to the definition of 'service.

2.5.7 Are 'deemed sales' defined in article 366(29A) of the Constitution also included in the ambit of 'sale'?

Yes. The six categories of deemed sales as defined in article 366(29A) of the Constitution are also included in the term sale since these transactions have been deemed to be a 'sale' in the Constitution itself. These are –

- transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration
- transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract
- delivery of goods on hire-purchase or any system of payment by installments
- transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration
- supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration
- supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration.

2.5.8 What is the meaning of 'transfer of the right to use any goods'?

Transfer of right to use goods is a well recognized constitutional and legal concept. Every transfer of goods on lease, license or hiring basis does not result in transfer of right to use goods. 'Transfer of right of goods' involves transfer of possession and effective control over such goods. Transfer of goods without transfer of possession and effective control over goods would not be a sale but a service (such transfer has also been declared as a service under section 66F of the Act)

For guidance on 'transfer of right to use' please see Point no 5.6 of this Guidance Note.

2.5.9 What is the scope of the phrase 'delivery of goods on hire-purchase or any system of payment by installments'?

Section 2 of the Hire Purchase Act, 1972 defines a "hire purchase agreement" as 'an agreement under which goods are let out on hire and under which the hirer has the option to purchase them in accordance with the terms of the agreement and includes an agreement under which-

- (i) possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical installments, and
- (ii) the property in the goods is to pass to such person on the payment of the last of such installments, and

(iii) such person has a right to terminate the agreement at any time before the property so passes.’

As per the Sales of Goods Act by Mulla (Seventh Edition. Page 14) delivery is ‘voluntary dispossession in favour of another’ and that ‘in all cases the essence of delivery is that the deliveror, by some apt and manifest act, puts the deliverer in the same position of control over thing, either directly or through a custodian, which he held himself immediately before the act’.

The nature of such arrangements has been explained by the Supreme Court in the case of Association Of Leasing & Financial Service Companies Vs Union Of India [2010 (20) S.T.R. 417 (S.C.)]. The relevant extract in para 20 of the said judgement is reproduced below:

“20. According to Sale of Goods Act by Mulla [6th Edition] a common method of selling goods is by means of an agreement commonly known as a hire-purchase agreement which is more aptly described as a hiring agreement coupled with an option to purchase, i.e., to say that the owner lets out the chattel on hire and undertakes to sell it to the hirer on his making certain number of payments.”

Key ingredients of the deemed sale category of ‘delivery of goods on hire-purchase or any system of payment by installments’, therefore are-

- Transfer of possession (and not just of custody)
- The hirer has the option or obligation to purchase the goods in accordance with the terms of the agreement.

2.5.10 What is the difference between a normal hiring agreement and a hire-purchase agreement?

In a mere hiring agreement the hirer has no option to purchase the goods hired and the risks and rewards incidental to ownership of goods remain with the owner and are not transferred to the hirer. In a hire-purchase agreement the hirer has an option or an obligation to purchase goods.

2.5.11 If ‘delivery of goods on hire-purchase or any system of payment by installments’ then what is scope of the declared service entry ‘activities relating to delivery of goods on hire-purchase or any system of payment by installments’?

For answers to this query please refer to **point no. 5.5** of this Guidance Paper.

2.5.12 Are ‘financial leases’, ‘operating leases’ and ‘equipment leases’ covered as ‘delivery of goods on hire purchase or any system of payment of installments’?

Such leases would be covered only if the terms and conditions of such leases have the ingredients as explained in point no. 2.5.9 above.

2.6 Transactions only in money or actionable claims do not constitute service

2.6.1 What kind of activities would come under ‘transaction only in money’?

- Deposits in or withdrawals from a bank account.
- Advancement or repayment of principal sum on loan to someone.
- Conversion of Rs 1,000 currency note into one rupee coins to the extent amount is received in money form.

2.6.2 Would a business chit fund come under ‘transaction only in money’?

In business chit fund since certain commission received from members is retained by the promoters as consideration for providing services in relation to the chit fund it is not a transaction only in money. The consideration received for such services is therefore chargeable to service tax.

2.6.3 Would the making of a draft or a pay order by a bank be a transaction only in money?

No. Since the bank charges a commission for preparation of a bank draft or a pay order it is not a transaction only in money. However, for a draft or a pay order made by bank the service provided would be only to the extent of commission charged for the bank draft or pay order. The money received for the face value of such instrument would not be consideration for a service since to the extent of face value of the instrument it is only a transaction in money.

2.6.4 Would debt collection services or credit control services be considered to be transaction only in money?

No. Such services provided for consideration are taxable.

2.6.5 What are actionable claims?

As per section 3 of the Transfer of Property Act, 1893 actionable claims means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

Illustrations of actionable claims are -

- Unsecured debts
- Right to participate in the draw to be held in a lottery.

2.6.6 If an unsecured debt is transferred to a third person for a consideration would this activity be treated as service?

No. Since unsecured debt is an actionable claim, a transaction only in such actionable claim is outside the ambit of service.

2.7 Provision of services by an employee to the employer is outside the ambit of services

2.7.1 Are all services provided by an employer to the employee outside the ambit of services?

No. Only services that are provided by the employee to the employer in the course of employment are outside the ambit of services. Services provided outside ambit of employment for a consideration would be a service. For example, if an employee provides his services on contract basis to an associate company of the employer, then this would be treated as provision of service. Likewise a person engaged by the employer in private capacity and beyond the demands of employment will be taxable.

2.7.2 Would services provided on contract basis by a person to another be treated as services in the course of employment?

No. Services provided on contract basis i.e. principal-to-principal basis are not services provided in the course of employment.

2.7.3 What is the status of services provided by casual workers or contract labour?

If.....	Then.....
Services provided by casual worker to employer who gives wages on daily basis to the worker	These are services provided by the worker in the course of employment
Casual workers are employed by a contractor, like a building contractor or a security services agency, who deploys them for execution of a contract or for provision of security services to a client	Services provided by the workers to the contractor are services in the course of employment and hence not taxable. However, services provided by the contractor to his client by deploying such workers would not be a service provided by the workers to the client in the course of employment. The consideration received by the contractor would therefore be taxable if other conditions of taxability are present.

2.8 Exclusions from the definition of ‘service’

- **Explanation 1** clarifies that ‘service’ does not cover functions or duties performed by Members of Parliament, State Legislatures, Panchayat, Municipalities or any other local authority, any person who holds any post in

pursuance of the provisions of the Constitution or any person as a Chairperson or a Member or a Director in a body established by the Central or State Governments or local authority and who is not deemed as an employee.

- **Explanation 2** creates two exceptions, by way of a deeming provision, to the general rule that only services provided by a person to another are taxable. As per these deeming provisions establishment of a person located in taxable territory and establishment of such person located in non-taxable territory are deemed to be establishments of distinct persons. Further an unincorporated association or body of persons and members thereof are also deemed as separate persons. **For implications please see point no 2.3.2 of this Guidance Paper.**
- **Explanation 3** explains that a branch or an agency of a person through which the person carries out business is also an establishment of such person.

Guidance Note 3 – Taxability of services

The taxability of services or the charge of service tax has been specified in section 66B of the Act. To be a taxable a service should be –

- provided or agreed to be provided by a person to another
- in the taxable territory
- and should not be specified in the negative list.

3.1 Provided or agreed to be provided

3.1.1 What is the significance of the phrase ‘agreed to be provided’?

The phrase “agreed to be provided” has been retained from the definition of taxable service as contained in the existing clause (105) of section 65 of the Act. The implications of this phrase are –

- Services which have only been agreed to be provided but are yet to be provided are taxable
- receipt of advances for services agreed to be provided become taxable before the actual provision of service
- advances that are retained by the service provider in the event of cancellation of contract of service by the service receiver become taxable as these represent consideration for a service that was agreed to be provided.

3.1.2 Does the liability to pay the service tax on a taxable service arise the moment it is agreed to be provided without actual provision of service?

No. The point of taxation is determined in terms of the Point of Taxation Rules, 2011. As per these Rules point of taxation is –

- the time when the invoice for the service provided or agreed to be provided is issued;
- if invoice is not issued within prescribed time period(30 days except for specified financial sector where it is 45 days) of completion of provision of service then the date of completion of service;
- the date of receipt of payment where payment is received before issuance of invoice or completion of service.

Therefore agreements to provide taxable services will become taxable only on issuance of invoice or date of completion of service if invoice is not issued within prescribed period of completion or on receipt of payment. For specific cases covered under the said Rules, including continuous supply of service, please refer to the Point of Taxation Rules, 2011.

3.2 Provided in the taxable territory

- Taxable territory has been defined in section 65B of the Act as the territory to which the Act applies i.e the whole of territory of India other than the State of Jammu and Kashmir.
- Detailed rules called the Place of Provision of Service Rules, 2012 have been made which determine the place of provision of service depending on the nature and description of service.
- Please refer to the Place of Provision of Service Rules, 2012 and the detailed **Guidance Paper: B on Place of Provision of Service.**

3.3 Service should not be specified in the negative list.

As per section 66B, to be taxable a service should not be specified in the negative list. The negative list of services has been specified in section 66D of the Act. For the sake of simplicity the negative list of services has been reproduced in **Exhibit AI** to this Guidance Paper. For guidance on the negative list please refer to **Guidance Note 4.**

3.4 Relevant Questions relating to taxability of services

3.4.1 How do I know that I am performing a taxable service in the absence of a positive list?

The drill to identify whether you are providing taxable service is very simple. Pose the questions listed in Step 1 and Step 2 below-

Step 1

To determine whether you are providing a ‘Service’

Pose the following questions to yourself

S.NO.	QUESTION	ANSWER
	1	2
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 immovable property by way of sale, gift or in any other manner?	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	

[*if you are a person doing business through an establishment located in the taxable territory and another establishment located in non taxable territory OR a association or body of persons or a member thereof then please see Explanation 2 to clause (44) of section 65B of the Act before answering this question]

If the answer to the above questions is as per the answers indicated in column 2 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-

S.NO.	QUESTION	ANSWER
	1	2
4	Am I providing or have I agreed to provide the service?	Yes
	Am I providing or have I agreed to provide the service in the taxable territory?	Yes
5	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'

3.4.2 Will I have to pay service tax for all taxable services provided in the taxable territory?

No. You will not have to pay service tax on taxable services provided by you in the following cases:

- if in the previous financial year the aggregate value of taxable services provided by you was less than Rs.10 lakh and in the present financial year the aggregate value of taxable services provided by you is also less than Rs.10 lakh. (you start paying service tax after crossing the threshold of Rs 10 lakh) For details please refer to the threshold exemption given in Exhibit A3 to this guidance Paper).
- If the taxable service provided by you is covered under any one of the exemptions issued under section 93 of the Act.

Service Tax is liable to be paid by you on all other taxable services provided by you.

3.4.3 How do I know that the service provided by me is an exempt service?

There are nearly 10 exemption notifications that will be finally issued under section 93 of the Act of which the main exemption is proposed to have 34 heads (mega notification). If the service provided by you fits into the nature and description of services specified in these notifications then the service being provided by you is an exempted service. For the sake of convenience the proposed mega exemption notification and gist of other proposed notifications has been reproduced in **Exhibits A2 and A3 of this Guidance Paper** respectively. **(Please also refer to Guidance Note 6 for guidance on exemptions)**

3.4.4 Are declared services also covered by exemptions?

Yes.

3.4.5 Are services other than declared services taxable?

Yes. All services, whether declared or not, which are covered under Section 66B of the Act are taxable if elements of taxability are present. The only purpose behind declaring activities as service is to bring uniformity in assessment of such activity across the country.

Guidance Note 4 – Negative List of Services

In terms of Section 66B of the Act, service tax will be leviable on all services provided in the taxable territory by a person to another for a consideration other than the services specified in the negative list. The services specified in the negative list therefore go out of the ambit of chargeability of service tax. The negative list of service is specified in the Act itself in Section 66 D. For sake of ease of reference the negative list of services is given in **Exhibit A1**. In all, there are seventeen heads of services that have been specified in the negative list. The scope and ambit of these is explained in paras below.

4.1 Services provided by Government or local authority

4.1.1 Are all services provided by Government or local authority covered in the negative list?

No. 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.

4.1.2 Would the taxable services provided by the Government be charged to tax if they are otherwise exempt or specified elsewhere in the negative list?

No. If the services provided by the government or local authorities that have been excluded from the negative list entry are otherwise specified in the negative list then such services would also not be taxable.

4.1.3 ‘Government’ has not been defined in the Act. What is the meaning of Government?

Since ‘Government’ has not been defined in the Act, the definition of ‘Government’ as contained in the General Clauses Act, 1897 would be applicable as per which ‘Government’ includes both State Government and Central Government. Further as per the General Clause Act 1897, State includes Union Territory.

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

No. In terms of the definition of ‘Government’ as contained in the General Clause Act, 1857 and as per the settled position of law such corporations or authorities or companies are not included in the definition of ‘Government’. Services provided by such entities would, therefore, not be entitled to the negative list entry relating to the ‘Government’. It would also not include regulatory bodies.

4.1.5 What entities are then covered under ‘Government’?

‘Government’ would include various departments and offices of the Central or State Government or the U.T. Administrations which carry out their functions in the name and by order of the President of India or the Governor of a State.

4.1.6 Would a department of the Government need to get itself registered for each of the services listed in answer to Q. No.4.1.1 above?

For the support services provided by the Government to business entities government departments will not have to get registered because service tax will be payable on such services by the service receiver i.e. the business entities receiving the service under reverse charge mechanism in terms of the provisions of section 68 of

the Act and the notification proposed to be issued under the said section. For services mentioned at (a) to (c) of the list (point 4.1.1 above refers) tax will be payable by the concerned department.

4.1.7 What is the meaning of “support services” which appears to be a phrase of wide ambit?

Support services have been defined in section 65B of the Act as ‘infrastructural, operational, administrative, logistic marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of movable or immovable property, security, testing and analysis’. Thus services which are provided by government in terms of their sovereign right to business entities are not support services e.g. grant of mining or licensing rights.

4.1.8 What is the meaning of local authority?

Local authority is defined in 65B and means the following:-

- A Panchayat as referred to in clause (d) of article 243 of the Constitution
- A Municipality as referred to in clause (e) of article 243P of the Constitution
- A Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund
- A Cantonment Board as defined in section 3 of the Cantonments Act, 2006
- A regional council or a district council constituted under the Sixth Schedule to the Constitution
- A development board constituted under article 371 of the Constitution, or
- A regional council constituted under article 371A of the Constitution.

4.2 Services provided by Reserve Bank of India

4.2.1 Are all services provided by the Reserve Bank of India in the negative list?

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

4.2.2 What about services provided to the Reserve Bank of India?

Services provided to the Reserve Bank of India are not in the negative list and would be taxable unless otherwise covered in any other entry in the negative list.

4.3 Services by a foreign diplomatic mission located in India

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

4.4 Services relating to agriculture

The services relating to agriculture 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;

4.4.1 What is the meaning of ‘agriculture’?

‘Agriculture’ has been defined in the Act as cultivation of plants and rearing or breeding of animals and other species of life forms for foods, fibre, fuel, raw materials or other similar products but does not include rearing of horses.

4.4.2 Are activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry included in the definition of agriculture?

Yes. These activities are included in the definition of agriculture.

4.4.3 What is the meaning of agricultural produce?

Agricultural produce has also been defined in section 65B of the Act which means any produce of agriculture on which either no processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market. It also includes specified processes in the definition like tending, pruning, grading, sorting etc. which may be carried out at the farm or elsewhere as long as they do not alter the essential characteristics.

4.4.4 Would plantation crops like rubber, tea or coffee be also covered under agricultural produce?

Yes. Such plantation crops are also covered under agricultural produce.

4.4.5 Would potato chips or tomato ketchup qualify as agricultural produce?

No. In terms of the definition of agricultural produce, only such processing should be carried out as is usually done by cultivator producers which does not alter its essential characteristics but makes it marketable for primary market. Potato chips or tomato ketchup are manufactured through processes which alter the essential characteristic of farm produce (potatoes and tomatoes in this case).

4.4.6 Would leasing of vacant land with a green house or a storage shed meant for agricultural produce be covered in the negative list?

Yes. In terms of the specified services relating to agriculture 'leasing' of vacant land with or without structure incidental to its use' is covered in the negative list. Therefore, if vacant land has a structure like storage shed or a green house built on it which is incidental to its use for agriculture then its lease would be covered under the negative list entry.

4.4.7 What is the meaning of agricultural extension services?

Agricultural extension services have also been defined in section 65B of the Act as application of scientific research and knowledge to agricultural practices through farmer education or training.

4.4.8 What are the services referred to in the negative list entry pertaining to Agricultural Produce Marketing Committee or Board?

Agricultural Produce Marketing Committees or Boards are set up under a State Law for purpose of regulating the marketing of agricultural produce. Such marketing committees or boards have been set up in most of the States and provide a variety of support services for facilitating the marketing of agricultural produce by provision of facilities and amenities like shops, sheds, water, light, electricity, grading facilities etc. They also take measures for prevention of sale or purchase of agricultural produce below the minimum support price. APMCs collect market fees, license fees, rents etc. Services provided by such Agricultural Produce Marketing Committee or Board are covered in the negative list.

4.5 Trading of goods

4.5.1 Would activities of a commission agent or a clearing and forwarding agent who sells goods on behalf of another for a commission be included in trading of goods?

No. The services provided by commission agent or a clearing and forwarding agent are not in the nature of trading of goods. These are auxiliary for trading of goods. In terms of the provision of clause (1) of section 66F reference to service does not include reference to a service used for providing such service. (For guidance on clause (1) of section 66F please refer to point no 7.1.1 of this Guidance Paper) Moreover the

title in the goods never passes on to such agents to come within the ambit of trading of goods.

4.5.2 Would future contracts in commodities be covered under trading of goods?

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

4.5.3 Would commodity futures be covered under trading of goods?

Yes. In commodity futures actual delivery of goods does not normally take place and the purchaser under a futures contract normally offsets all obligations or closes out by selling an equal quantity of goods of the same description under another contract for delivery on the same date. There are, therefore, two contracts of sale/purchase involved which would fall in the category of trading of goods.

4.5.4 Would auxiliary services relating to future contracts or commodity futures be covered in the negative list entry relating to trading of goods?

No. Such services provided by commodity exchanges clearing houses or agents would not be covered in the negative list entry relating to trading of goods.

4.6 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 provided duties of excise are leviable on such processes under the Central Excise Act, 1944 or any of the State Acts.

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

Yes. Service tax would be levied on processes, unless otherwise specified in the negative list, not amounting to manufacture or production of goods carried out by a person for another for consideration. Some of such services relating to processes not amounting to manufacture are exempt as specified in entry no. 30 of Exhibit A2.

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

No. If Central Excise duty is leviable on a particular process as the same amounts to manufacture then such process would be covered in the negative list even if there is a central excise duty exemption for such process.

4.7 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 as form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person.

4.7.1 Sale of space of time for advertisements not including sale of space for advertisement in print media and sale of time by a broadcasting agency or organization is currently taxed under clause (zzzm) of sub-section (105) of the Finance Act,1944. So what kind of sale of space or time would become taxable and what would be not taxable?

Taxable	Non-taxable
Sale of space or time for advertisement to be broadcast on radio or television	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, buildings, conveyances, cell phones, automated teller machines, internet
	Aerial advertising

4.7.2 Would services provided by advertisement agencies relating to preparation of advertisements be covered in the negative list entry relating to sale of space for advertisements?

No. Services provided by advertisement agencies relating to making or preparation of advertisements would not be covered in this negative list entry and would thus be taxable. This would also not cover commissions received by advertisement agencies from the broadcasting or publishing companies for facilitating business, which may also include some portion for the preparation of advertisement.

4.7.3 In case a person provides a composite service of providing space for advertisement that is covered in the negative list entry coupled with taxable service relating to design and preparation of the advertisement how will its taxability be determined?

- This would be a case of bundled services taxability of which has to be determined in terms of the principles laid down in section 66F of the Act.

- Bundled services have been defined in the said section as provision of one type of service with another type or types of services.
- If such services are bundled in the ordinary course of business then the bundle of services will be treated as consisting entirely of such service which determines the dominant nature of such a bundle.
- If such services are not bundled in the ordinary course of business then the bundle of services will be treated as consisting entirely of such service which attracts the highest liability of service tax.

For guidance on how to determine whether or not a bundle of services is bundled in the ordinary course of business please refer to **Guidance Note 7 of this Guidance Paper**.

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

4.8.1 Is access to national highways or state highways also covered in this entry?

Yes. National highways or state highways are also roads and hence covered in this entry.

4.8.2. Are collection charges or service charges paid to any toll collecting agency also covered?

No. The negative list entry only covers access to a road or a bridge on payment of toll charges. Services of toll collection on behalf of an agency authorized to levy toll are in the nature of services used for providing the negative list services. As per the principle laid down in sub section (1) of section 66F of the Act the reference to a service by nature or description in the Act will not include reference to a service used for providing such service.

4.9 Betting, gambling or lottery

“Betting or gambling’ has been defined in section 65B of the Act as ‘putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring’.

4.9.1. Are auxiliary services that are used for organizing or promoting betting or gambling events also covered in this entry?

No. These services are in the nature of services used for providing the negative list services of betting or gambling. As per the principle laid down in sub section (1) of section 66F of the Act the reference to a service by nature or description in the Act will not include reference to a service used for providing such service.

4.10 Entry to Entertainment Events and Access to Amusement Facilities.

‘Entertainment events’ has been defined in section 65B of the Act ‘as an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, such as exhibition of cinematographic films, circus, concerts, sporting events, fairs, pageants, award functions, dance performances, musical performances, theatrical performances including cultural programs, drama, ballets or any such event or programme’.

‘Amusement facility’ has been defined in the Act as ‘a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other place but does not include a place within such facility where other services are provided’.

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

Yes. The words used in the definition are ‘theatrical performances’ and not ‘performances in theatres’. A cultural programme, drama or a ballet performed in the open does not cease to be a theatrical performance provided it is performed in the manner it is performed in a theatre, i.e. before an audience.

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

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

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

Yes. Such exhibition is an exhibition of cinematographic film.

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

No. A club does not fall in the definition of an amusement facility.

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

No. Such services are in the nature of services used for providing the service specified in this negative list entry and would not be covered in the ambit of such specified service by operation of the rule of interpretation contained in clause (1) of section 66F of the Act. For guidance on the rules of interpretation please refer to **Guidance Note 7**.

4.11 Transmission or distribution of electricity

4.11.1 What is the meaning of 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

4.11.2 If charges are collected by a developer or a housing society for distribution of electricity within a residential complex then are such services covered under this entry?

No. The developer or the housing society would be covered under this entry only if it is entrusted with such function by the Central or a State government or if it is, for such distribution, a distribution licensee licensed under the Electricity Act, 2003.

4.11.3 If the services provided by way installation of gensets or similar equipment by private contractors for distribution of electricity covered by this entry?

No. the entry does not cover services provided by private contractors. Moreover the services provided are not by way of transmission or distribution of electricity.

4.12 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

4.12.1 Are services provided by international schools giving international certifications like IB also covered in this entry?

Yes. Services by way of education up to higher secondary school or equivalent are covered in this entry.

4.12.2 Are services provided by boarding schools covered in this entry?

Boarding schools provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of bundled

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

4.12.3 Are services provided to educational institutions also covered in this entry?

No. Such services are not covered under the negative list entry. However certain services provided to educational institutions are separately exempted by a notification:

- Services to an educational institution by way of catering under the centrally assisted mid – day meals scheme sponsored by government.
- Transport to and fro such exempt institutes.
- Services to or by an institution in relation to educational services, where the educational services are exempt from the levy of service tax, by way of services in relation to admission to such education.

4.12.4 Are private tuitions covered in the entry relating to education?

No. However, private tutors can avail the benefit of threshold exemption.

4.12.5 Are services provided by way of education as a part of a prescribed curriculum for obtaining a qualification recognized by a law of a foreign country covered in the negative list entry?

No. To be covered in the negative list a course should be recognized by an Indian law.

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

Provision of dual qualifications is in the nature of two separate services as the curriculum and fees for each of such qualifications are prescribed separately. Service in respect of each qualification would, therefore, be assessed separately. If an artificial bundle of service is created by clubbing two courses together, only one of which leads to a qualification recognized by law, then by application of the rule of determination of taxability of a service which is not bundled in the ordinary course of business contained in section 66F of the Act it is liable to be treated as a course which attracts the highest liability of service tax. However incidental auxiliary courses provided by way of hobby classes or extra-curricular activities in furtherance of overall well being will be an example of naturally bundled course. One relevant consideration in such cases will be the amount of extra billing being done for the unrecognized component viz-a-viz the recognized course. (For guidance on 'bundled services' please refer to **Guidance Note 7**).

4.12.7 Are placement services provided to educational institutions for securing job placements for the students covered in this negative list entry?

No. Such services do not fall in the category of exempt services provided to educational institutions (please refer to point no 4.12.3 above).

4.12.8 Are services of conducting admission tests for admission to colleges exempt?

Yes in case the educational institutions are providing qualification recognized by law for the time being in force (please refer to point no 4.12.3 above).

4.12.9 In addition to the services specified in the negative list, which educational services are exempt if provided by a charitable organization?

Please refer to **point no 6.3**

4.12.10 What are the courses which would qualify as an approved vocational education courses?

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.

4.13 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’.

4.13.1 What is a ‘residential dwelling’?

The phrase ‘residential dwelling’ has not been defined in the Act. It has therefore 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.

4.13.2 Would renting of a residential dwelling which is for use partly as a residence and partly for non residential purpose like an office of a lawyer or the clinic of a doctor be covered under this entry?

This would also be a case of bundled services as renting service is being provided both for residential use and for non residential use. Taxability of such bundled services has to be determined in terms of the principles laid down in section 66F of the Act. (Please refer to Guidance Note 7).

4.13.3 Would the nature of renting transactions explained in column 1 of the table below be covered in this negative list entry?

1	2
If.....	Then.....
(i) a residential house taken on rent is used only or predominantly for commercial or non-residential use.	the renting transaction is not covered in this negative list entry.
(ii) if a house is given on rent and the same is used as a hotel or a lodge	the renting transaction is not covered in this negative list entry because the person taking it on rent is using it for a commercial purpose.
(iii) rooms in a hotel or a lodge are let out whether or not for temporary stay	the renting transaction is not covered in this negative list entry because a hotel or a lodge is not a residential dwelling.
(iv) government department allots houses to its employees and charges a license fee	such service would be covered in the negative list entry relating to services provided by government and hence non-taxable.
(v) furnished flats given on rent for temporary stay	these are in the nature of lodges or guest houses and hence not treatable as a residential dwelling

4.14 Financial sector

4.14.1 What are the “services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount”?

Illustrations of such services are -

- Fixed deposits or saving deposits or any other such deposits in a bank for which return is received by way of interest.
- Providing a loan or over draft facility for in consideration for payment of interest.
- Mortgages or loans with a collateral security to the extent that the consideration for advancing such loans or advances are represented by way of interest.
- Corporate deposits to the extent that the consideration for advancing such loans or advances are represented by way of interest or discount.

4.14.2 If any service charges or administrative charges or entry charges are recovered in addition to interest on a loan, advance or a deposit would such charges be also a part of this negative list entry?

No. The services of loans, advances or deposits are exempt in so far as the consideration is represented by way of interest or discount. Any charges or amounts collected over and above the interest or discount amounts would represent taxable consideration.

4.14.3 To what extent is invoice discounting covered in the negative list entry?

Invoice discounting is covered only to the extent consideration is represented by way of discount.

4.14.4 Would services provided by banks or authorized dealers of foreign exchange by way of sale of foreign exchange to general public be covered in this entry?

No. This entry only covers sale and purchase of foreign exchange between banks or authorized dealers of foreign exchange or between banks and such dealers

4.15 Service relating to transportation of passengers

The following services relating to transportation of passengers, with or without accompanied belongings, have been specified in the negative list.

Services 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 of less than fifteen tonne net; and
- metered cabs, radio taxis or auto rickshaws.

Following terms have been defined in section 65B of the Act –

- stage carriage
- inland waterways
- metered cab

4.15.1 Are services by way of giving on hire of motor vehicles to state transport undertakings covered in this negative list entry?

No. However such services provided by way of hire of motor vehicle meant to carry more than 12 passengers to a State transport undertaking is exempt (refer entry no. 22 of Exhibit A2).

4.15.2 In some cases contract carriages get permission or temporary permits to ply as stage carriages. Would such services be taxable?

Specific exemption is available to services of transport passengers by a contract carriage for transportation of passengers, excluding tourism, conducted tours, charter or hire. (Refer entry No. 23 of Exhibit A2).

4.15.3 Are national waterways covered in the definition of inland waterways?

Yes.

4.16 Service relating to transportation of goods

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

- 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 to the first customs station of landing in India; or
- by inland waterways.

4.16.1 Are all services provided by goods transport agency excluded from the negative list?

Yes. However, there are separate exemptions available to the services provided by the goods transport agency. These are services by way of transportation of –

- fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;
- goods where gross amount charged on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or
- goods where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty.

4.16.2 Are goods transport agencies liable to pay tax in all cases or are provisions relating to reverse charge also applicable after introduction of negative list?

The provisions relating to reverse charge, i.e. service tax is liable to be paid by the consigner or consignee in specified cases, are applicable even after the introduction of negative list.

4.16.3 Are the following services of transportation of goods covered in the negative list entry?

Nature of service relating to transportation of goods	Whether covered in the negative list entry?
By railways	No
By air within the country or abroad	No
By a vessel in the coastal waters	No
By a vessel on a national waterway	Yes

Services provided by a GTA	No
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4.16.4 Are services provided as agents for inland waterways covered by this entry?

No. these are in the nature of services used for providing the negative list entry service of transport of goods on inland waterways and would not be covered by application of the rule for interpretation where services are specified by way of description contained in clause (1) of section 66F of the Act.(for guidance on this rule please refer to **Guidance Note 7**)

4.16.5 If transportation of goods takes place from Delhi to Jammu by road then how would the taxability of such transportation be determined considering that Jammu is located in at a place outside taxable territory?

Please refer to **Guidance Paper: GPB on Place of Provision of service.**

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

This negative list entry is self-explanatory.

Guidance Note 5 – Declared Services

In the definition of ‘service’ contained in clause (44) of section 65B of the Act it has 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.

If the above activities are carried out by a person for another for consideration it 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.

5.1 Renting of Immovable Property

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’

5.1.1 Is renting of all kinds of immovable property taxable?

No. Renting of certain kinds of property is specified in the negative list. These are –

- renting of vacant land, with or without a structure incidental to its use, relating to agriculture. (sl no 4 of Appendix 1)
- renting of residential dwelling for use as residence (sl no 13 of appendix 1)
- renting out of any property by Reserve Bank of India
- renting out of any property by a Government or a local authority to all non-business entity.

Renting of all other immovable properties would be taxable unless covered by an exemption (refer 5.1.2).

5.1.2 Are there any exemptions in respect of renting of immovable property?

Yes. These are:–

- Threshold level exemption up to Rs. 10 lakh.
- Renting of precincts of a religious place meant for general public is exempt.
- Renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a room below rupees one thousand per day or equivalent is exempt.

5.1.3 Would permitting usage of a property for a temporary purpose like conduct of a marriage or any other social function be taxable?

Yes. As per definition allowing or permitting usage of immovable property, without transferring possession of such property, is also renting of immovable property.

5.1.4 Would activities referred to in column 1 of a table below be chargeable to service tax?

Sl. No.	Nature of Activity	Taxability
1.	Renting of property to educational body	Chargeable to service tax; no exemption
2.	Renting of vacant land for animal husbandry or floriculture	Not chargeable to service tax as it is covered in the negative list entry relating to agriculture
3.	Permitting use of immovable property for placing vending/dispensing machines	Chargeable to service tax as permitting usage of space is covered in the definition of renting
4.	Allowing erection of communication tower on a building for consideration.	Chargeable to service tax as permitting usage of space is covered in the definition of renting
5.	Renting of land or building for entertainment or sports	Chargeable to service tax as there is no specific exemption.
6.	Renting of theatres by owners to film distributors	Chargeable to service tax as the arrangement amounts to renting of immovable property.

5.1.5 Would service tax be chargeable on renting of property located outside the taxable territory but where the property is owned by a person located in the taxable territory?

In respect of a service relating to immovable property the place of provision of service is the location of immovable property. If the immovable property is located outside taxable territory then it becomes a service provided outside the taxable territory even if the property owners is located in the taxable territory and would hence not be taxable.

For details please see the **Guidance Paper: GPB on the Place of Provision of Service Rules, 2012.**

5.2 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.

This service is already taxable as part of construction of residential complex service under clause (zzzh) of sub-section 105 of section 65 of the Act and as part of service in relation to commercial or industrial construction under clause (zzq) of sub-section 105 of section 65 of the Act. This entry covers the services provided by builders or developers where building complexes, civil structure or part thereof are offered for sale but the payment for such building or complex or part thereof is received before the issuance of completion certificate by a competent authority.

5.2.1 There are various types of arrangements under which builders or developers sell buildings, flats, office space etc. to buyers where entire

consideration is received before completion certificate is issued including tripartite model, redevelopment model, investment model, reconversion model, BOT projects and joint development agreement model. How will the taxability of such arrangements be determined?

A detailed circular has been issued by the Board dealing with such arrangements in the context of existing taxable service of same description vide Circular no 151/2/2012 ST dated 10/2/12 issued from F.No. 332/13/2011 TRU. The said circular may be referred to for guidance on this point

5.2.2 In certain States requirement of completion certificate are waived of for certain specified types of buildings. How would leviability of service tax be determined in such cases?

In terms of explanation in section 66E in such cases the completion certificate issued by a architect or a chartered engineer or a licensed surveyor of the respective local body or development or planning authority would be treated as completion certificate for the purposes of determining chargeability of service tax.

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

5.3.1 What is the scope of the term ‘intellectual property right’?

‘Intellectual property right’ has not been defined in the Act. The phrase has to be understood as it is understood in normal trade parlance as per which intellectual property right includes the following –

- Copyright
- Patents
- Trademarks
- Designs
- Any other similar right to an intangible property

5.3.2 Would the temporary transfer of a patent registered in a country outside India also be covered under this entry?

Since there is no condition regarding the law under which an intellectual right should be registered, temporary transfer of a patent registered outside India would be covered in this entry. However, it will become taxable only if the place of provision of service of temporary transfer of intellectual property right is in taxable territory. For details please see the **Guidance Paper: B on the Place of Provision of Service.**

5.4 Development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software

The term 'information technology software' has been defined in section 65B of the Act as 'any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment'.

5.4.1 Would sale of pre-packaged or canned software be included in this entry?

No. Sale of pre-packaged or canned software is in the nature of sale of goods and is not covered in this entry.

5.4.2 Is on site development of software covered under this entry?

Yes. On site development of software is covered under the category of development of information technology software.

5.4.3 Would providing advice, consultancy and assistance on matters relating to information technology software be chargeable to service tax?

These services may not be covered under the declared list entry relating to information technology software. However, such activities when carried out by person for another for consideration would fall within the definition of service and hence chargeable to service tax if other requirements of taxability are satisfied.

5.4.4 Would providing a license to use prepackaged software be a taxable service?

It is a settled position of law that prepackaged software or canned software or shrink wrapped software is goods. (Supreme Court judgment in case of Tata Consultancy Services vs State of Andhra Pradesh [2002(178) ELT 22(SC) refers]. To determine whether providing license to use a software is a service or sale of goods it would need to be seen whether the license to use packaged software tantamount to 'transfer of right to use goods'. 'Transfer of right to use goods' is deemed to be a sale under Article 366(29A) of the Constitution of India and transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods is a declared service.

5.5 Activities in relation to delivery of goods on hire purchase or any system of payment by instalments

5.5.1 Is the delivery of goods on hire purchase of any system of payment by installments taxable?

No. The delivery of goods on hire purchase or any system of payment on installment is not chargeable to service tax because as per Article 366(29A) of the Constitution of India such delivery of goods is deemed to be a sale of goods.(For guidance on this aspect please refer to point nos. 2.5.7 to 2.5.12 of this Guidance Paper) However

activities or services provided in relation to such delivery of goods are covered in this declared list entry.

5.5.2 What is the scope of the phrase delivery of goods on hire purchase of any system of payment by installments?

Please refer to point no 2.5.9 of this Guidance Paper.

5.5.3 If delivery of goods on hire purchase or any system of payment on installment is deemed to be sale of goods what are the activities in relation to such delivery which are covered in the declared service?

It has been held by Supreme court in the case of Association Of Leasing & Financial Service Companies Vs Union Of India [2010 (20) S.T.R. 417 (S.C.)] that in equipment leasing/hire-purchase agreements there are two different and distinct transactions, viz., the financing transaction and the equipment leasing/hire-purchase transaction and that the financing transaction, consideration for which was represented by way of interest or other charges like lease management fee, processing fee, documentation charges and administrative fees, which is chargeable to service tax. Therefore, such financial services that accompany a hire-purchase agreement fall in the ambit of this entry of declared services.

5.5.4 Is service tax leviable on the entire quantum of interest and other charges received in relation to a hire purchase?

No. In terms of the exemption notification relating to such activities, service tax is leviable only on 10% of the amount representing interest. No exemption is available in respect of other charges.

Important

Transfer of right to use goods is a well recognized constitutional and legal concept. Every transfer of goods on lease, license or hiring basis does not result in transfer of right to use goods. 'Transfer of right of goods' involves transfer of possession and effective control over such goods.

For Details please see Point no 5.6 of this Guidance Note.

5.6 Transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods

5.6.1 What is the meaning and scope of the phrase 'transfer of right to use such goods'?

Transfer of right to use goods is a well recognized constitutional and legal concept. Every transfer of goods on lease, license or hiring basis does not result in transfer of right to use goods. **'Transfer of right of goods' involves transfer of possession and effective control over such goods** in terms of the judgement of the Supreme Court in the case of State of Andhra Pradesh vs Rashtriya Ispat

Nigam Ltd [Judgment dated 6/2/2002 in Civil Appeal no. 31 of 1991]. Transfer of custody along with permission to use or enjoy such goods, per se, does not lead to transfer of possession and effective control.

The test laid down by the Supreme Court in the case of Bharat Sanchar Nigam Limited vs Union of India [2006(2)STR161(SC)] to determine whether a transaction involves transfer of right to use goods, which has been followed by the Supreme Court and various High Courts, is as follows:

- There must be goods available for delivery;
- There must be a consensus ad idem as to the identity of the goods;
- The transferee should have legal right to use the goods – consequently all legal consequences of such use including any permissions or licenses required therefore should be available to the transferee;
- For the period during which the transferee has such legal right, it has to be the exclusion to the transferor – this is the necessary concomitant of the plain language of the statute, viz., a ‘transfer of the right to use’ and not merely a license to use the goods;
- Having transferred, the owner cannot again transfer the same right to others.

Whether a transaction amounts to transfer of right or not cannot be determined with reference to a particular word or clause in the agreement. The agreement has to be read as a whole, to determine the nature of the transaction.

5.6.2 Whether the transactions listed in column 1 of the table below involve transfer of right to use goods?

S.No.	Nature of transaction	Whether transaction involves transfer of right to use
1	A car is given in hire by a person to a company along with a driver on payment of charges on per month/mileage basis	Right to use is not transferred as the car owner retains the permissions and licenses relating to the cab. Therefore possession and effective control remains with the owner (Delhi High Court Judgment in the case of International Travel House in Sales Tax Appeal no 10/2009 refers). The service is, therefore covered in the declared list entry.
2	Supply of equipment like excavators, wheel loaders, dump trucks, cranes, etc for use in a particular project where the person to whom such equipment is supplied is subject to such terms and conditions in the contract relating to the manner of use of such equipment, return of such equipment after a specified time, maintenance and upkeep	The transaction will not involve transfer of right to use such equipment as in terms of the agreement the possession and effective control over such equipment has not been transferred even though the custody may have been transferred along with permission to use such equipment. The receiver is not free to use such equipment in any manner as he likes and conditions have been imposed on use and control of such equipment.

	of such equipment.	
3.	Hiring of bank lockers	The transaction does not involve the right to use goods as possession of the lockers is not transferred to the hirer even though the contents of the locker would be in the possession of the hirer.(refer to Andhra Pradesh High Court Judgment in the case of State Bank of India Vs State of Andhra Pradesh)
4.	Hiring out of vehicles where it is the responsibility of the owner to abide by all the laws relating to motor vehicles	No transfer of right to use goods as effective control and possession is not transferred (Allahabad High Court judgement in Ahuja Goods Agency vs State of UP [(1997)106STC540] refers)
5	Hiring of audio visual equipment where risk is of the owner	No transfer of right to use goods as effective control and possession is not transferred

Note: The list in the table above is only illustrative to demonstrate how courts have interpreted terms and conditions of various types of contracts to see if a transaction involve transfer of right to use goods. The nature of each transaction has to be examined in totality keeping in view all the terms and condition of an agreement relating to such transaction.

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

In terms of this entry the following activities if carried out by a person for another for consideration would be treated as provision of service.

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

5.7.1 Would non-compete agreements be considered a provision of service?

Yes. In case a company or any other person enters into a non-compete agreement with another person for a consideration then it would be a provision of service.

5.8 Service portion in execution of a works contract

Works contract has been defined in section 65B of the Act as a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, improvement, repair, renovation, alteration of any building or structure on land or for carrying out any other similar activity or a part thereof in relation to any building or structure on land. Typically every works contract involves an element of sale of goods and provision of service. In terms of Article 366 (29A) of the Constitution of India transfer of property

in goods involved in execution of works contract is deemed to be a sale of such goods. It is a well settled position of law, declared by the Supreme Court in BSNL's case [2006(2) STR 161 (SC)], that a works contract can be segregated into a contract of sale of goods and contract of provision of service. This declared list entry has been incorporated to capture this position of law in simple terms.

Further, with a view to bring certainty and simplicity the manner of determining the value of service portion in works contracts will be given in the Valuation Rules.

5.8.1 Would labour contracts in relation to a building or structure treated as a works contract?

No. Labour Contracts do not fall in the definition of works contract. It is necessary that there should be transfer of property in goods involved in the execution of such contract which is leviable to tax as sale of goods. Pure labour contracts are therefore not works contracts and would be leviable to service tax like any other service and on full value.

5.8.2 Would contracts for tailoring of clothes or development of photographs also be treated as works contracts as these are also for carrying out a particular work?

No. The phrase used is 'works contract' and not work contract. 'Works' has a defined and accepted legal meaning. As per Black's Law dictionary 'works' means 'buildings or structures on land'. Moreover works contract has been defined in the Act as contract for carrying out specified activity, like construction, erection, commissioning, installation, completion, fitting out, improvement, repair, renovation, alteration etc., or a part thereof in relation to any building or structure on land. Therefore contracts which do not pertain to building or structures on land would be out of the ambit of works contracts.

5.8.3 Would contracts for construction of a pipe line or conduit be covered under works contract?

Yes. As pipeline or conduits are structures on land contracts for construction of such structure would be covered under works contract.

5.8.4 Would contracts for erection commissioning or installation of plant, machinery, equipment or structures, whether prefabricated or otherwise be treated as a works contract?

Such contracts would be treated as works contracts if –

- *Transfer of property in goods is involved in such a contract; and*
- *The machinery equipment structures are attached or embedded to earth after erection commissioning or installation.*

5.8.5 What is the scope of ‘building or structure on land’?

Buildings and structures on land means not only buildings or structures attached to earth but also things permanently fastened to a building or structure attached to earth.

5.8.6. Would contracts for painting of a building, repair of a building, renovation of a building, wall tiling, flooring be covered under ‘works contract’?

Yes, if such contracts involve provision of materials as well.

5.8.7 What is the way to segregate service portion in execution of a works contract from the total contract?

A simplified manner for determining the value of service portion of a works contract from the total works contract is given in Rule 2A of the Service Tax (Determination of Value) Rules, 2006 (which will be amended partially for the negative list). In brief the value of the service portion is the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract.

Gross amount includes	Gross amount does not include
Labour charges for execution of the works	Value of transfer of property in goods involved in the execution of the said works contract. Note: Where Value Added Tax has been paid on the actual value of transfer of property in goods involved in the execution of the works contract, then such value adopted for the purposes of payment of Value Added Tax, shall be taken as the value of transfer of property in goods involved in the execution of the said works contract.
Amount paid to a sub-contractor for labour and services	
Charges for planning, designing and architect’s fees	
Charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract	
Cost of consumables such as water, electricity, fuel, used in the execution of the works contract	
Cost of establishment of the contractor relatable to supply of labour and services and other similar expenses relatable to supply of labour and services	
Profit earned by the service provider relatable to supply of labour and services	Value Added Tax (VAT) or sales tax, as the case may be, paid, if any, on transfer of property in goods involved in the execution of the said works contract

5.8.8 Is there any simplified scheme for determining the value of service portion in a works contract?

Yes. The scheme will be contained in the revised Rule 2A of the Service Tax (Determination of Value) Rules, 2006.

As per this scheme the value of the service portion, where value has not been determined in the manner as explained at 5.8.7 above, shall be determined in the manner explained in the table below -

<i>Where works contract is for...</i>	<i>Value of the service portion shall be...</i>
(i) execution of original works	forty percent of the total amount charged for the works contract
(ii) execution of original works and the gross amount charged includes the value of land	twenty five per cent of the total amount charged including such gross amount
(iii) 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.	sixty percent of the total amount charged for the works contract

Important - 'total amount' referred to in the second column of the table above would be the sum total of gross amount and the value of all goods and services supplied free of cost for use in or in relation to the execution of works contract, under the same contract or any other contract and, in case of (ii) in the table above, including the value of land charged as a part of the total consideration.

5.8.9 How is the value of goods or services supplied free of cost be determined to arrive at the total amount charged for a works contract?

If the value of goods and services supplied free of cost for use in or in relation to execution of a works contract is not ascertainable, the same shall be determined on the basis of the fair market value of the goods or services that have close resemblance to goods made available.

5.8.10 What are "original works"?

Original works' means :

- all new constructions;
- all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

5.8.11 Is duty paid on any goods, property in which is transferred (whether as goods or in some other form) in the execution of works contract, available as Cenvat credit?

No. Such Cenvat credit is not available, irrespective of the fact that the value of service portion in execution of the works contract is determined in the manner explained at Point no. 5.8.7 or 5.8.8 above, since such goods are not inputs for the service provided. However, the goods not forming part of such transfer will be eligible for input tax credit subject to the provisions of the Cenvat Credit Rules, 2004 including the provisions relating to reversal of credits contained in rule 6 of the said rules.

5.9 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

In terms of article 366(29A) of the Constitution of India supply of any goods, being food or any other article of human consumption or any drink (whether or not intoxicating) in any manner as part of a service for cash, deferred payment or other valuable consideration is deemed to be a sale of such goods. Such a service therefore cannot be treated as service to the extent of the value of goods so supplied. The remaining portion however constitutes a service. It is a well settled position of law, declared by the Supreme Court in BSNL's case [2006(2)STR161(SC)], that such a contract involving service along with supply of such goods can be dissected into a contract of sale of goods and contract of provision of service. This declared list entry is has been incorporated to capture this position of law in simple terms.

5.9.1 What are the activities covered in this declared list entry?

The following activities are illustration of activities covered in this entry-

- Supply of food or drinks in a restaurant;
- Supply of foods and drinks by an outdoor caterer.

5.9.2 Are services provided by any kind of restaurant, big or small, covered in this entry?

Yes. Although services provided by any kind of restaurant are covered in this entry, the emphasis is to levy tax on services provided by only such restaurants where the service portion in the total supply is substantial and discernible. Thus the following category of restaurants are exempted –

- 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, and which has a license to serve alcoholic beverage.
- Below the threshold exemption

5.9.3. How is the value of service portion to be determined?

The manner of determination of service portion in such an activity is very simple and is proposed to be given in Rule 2C of the the Service Tax (Determination of Value) Rules, 2006 (as amended for the negative list). In terms of the said rule value of the service portion shall be determined in the following manner-

Value of service portion.....	Shall be percentage of the total amount charged:
In a restaurant	40
By an outdoor caterer	60

Important - ‘Total amount’ referred to in the second column of the table above would be the sum total of gross amount and the value of all goods supplied free of cost for use in or in relation to the supply of food or any other article of human consumption or any drink, under the same contract or any other contract.

5.9.4 What are the restrictions, if any, on availment of Cenvat credit by such service providers?

In terms of the Explanation² to the proposed Valuation rules any goods meant for human consumption classifiable under chapters 1 – 22 of Central Excise Tariff are not ‘inputs’ for provision of such service. Cenvat Credit is, therefore, not available on these items. Availability of Cenvat credit on other inputs, input services and capital goods would be subject to the provisions of the Cenvat Credit Rules, 2004 including the provisions relating to reversal of credits contained in rule 6 of the said rules.

Guidance Note 6 – Exemptions

Under the present system there are 88 exemption notifications. The need for exemptions is not obliterated with the introduction of negative list. While some existing exemptions have been built into the negative list, others, wherever necessary, have been retained as exemptions. In addition new exemptions are proposed to be introduced in the context of the negative list. For ease of reference and simplicity most of the exemptions are part of one single mega exemption notification (list of such proposed exemptions is placed as **Exhibit A2**). In addition there are 9 more exemption notifications (list of such proposed exemptions is placed as Exhibit A3). The total number of exemption notifications, therefore, proposed to be issued in the new system would be only 10.

6.1 Are services provided to all international organizations exempt?

NO. Services to only specified organizations are exempt which are as follows:

1. International Civil Aviation Organisation
2. World Health Organisation
3. International Labor Organisation
4. Food and Agriculture Organisation of the United Nations
5. UN Educational, Scientific and Cultural Organisation (UNESCO)
6. International Monetary Fund (IMF)
7. International Bank for Reconstruction and Development
8. Universal Postal Union
9. International Telecommunication Union
10. World Meteorological Organisation
11. Permanent Central Opium Board
12. International Hydrographic Bureau
13. Commissioner for Indus Waters, Government of Pakistan and his advisers and assistants
14. Asian African Legal Consultative Committee
15. Commonwealth Asia Pacific Youth Development Centre, Chandigarh
16. Delegation of Commission of European Community
17. Customs Co-operation Council
18. Asia Pacific Telecommunity
19. International Centre of Public Enterprises in Developing Countries, Ljubljana (Yugoslavia)
20. International Centre for Genetic Engineering and Biotechnology
21. Asian Development Bank
22. South Asian Association for Regional Co-operation
23. International Jute Organisation, Dhaka, Bangladesh

6.2 Health Care Services (Details at Sr. No 2 of Exhibit A2)

6.2.1 Are all health care services exempt?

No. only services in recognized systems of medicines are exempt. In terms of the Clause (h) of section 2 of the Clinical Establishments Act, 2010, the following systems of medicine are recognized systems of medicine:

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

6.2.2 Who all are covered as paramedic?

Paramedics are trained health care professionals, for example nursing staff, physiotherapists, technicians, lab assistants etc. They are accountable for their services when provided independently. 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. Similarly services

of assisting an authorized medical professional would be considered as services by such authorized medical professional only.

6.3 Charities (Details at Sr. No. 4 of Exhibit A2)

6.3.1 I am a registered charity. How do I know that activities provided by me are charitable activities?

You are doing charitable activities if you are registered with income tax authorities for this purpose under section 12AA the Income Tax Act, 1961 and carry out one or more of the specified charitable activities. Following are the specified charitable activities:-

- (a) public health by way of -
 - (I) 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
 - (II) public awareness of preventive health, family planning or prevention of HIV infection;
- (b) advancement of religion;
- (c) advancement of educational programmes or skill development relating to,-
 - (I) abandoned, orphaned or homeless children;
 - (II) physically or mentally abused and traumatized persons;
 - (III) prisoners; or
 - (IV) persons over the age of 65 years residing in a rural area;
- (d) preservation of environment including watershed, forests and wildlife; or
- (e) advancement of any other object of general public utility up to a value of twenty five lakh rupees in a financial year subject to the condition that total value of such activities had not exceeded twenty five lakh rupees during the preceding financial year.

6.3.2 What is the tax liability of a registered charity on their activities?

If a registered charity is doing any activity falling in negative list of services or otherwise exempt, he is not required to pay service tax on that activity. In case, where his activity is covered explicitly in any of the specified charitable activities at 'a' to 'd' of the answer to 6.3.1 he is exempt from service tax without any value limit. For charitable activities mentioned at 'e' of the answer to 6.3.1 he is exempt up to a value of twenty five lakh rupees in a financial year if the total value of such services had not exceeded twenty five lakh rupees during the preceding financial year. However, if his activity is not for general public as defined in the notification, he is not eligible for exemption and required to pay service tax on such activities. General public is defined in the notification as 'body of people at large sufficiently defined by some common quality of public or impersonal nature'.

6.4 What is the tax liability of an individual advocate or arbitral tribunal on services provided by them?

They are not required to pay service tax on services provided by them. However, when such services are provided to a business entity, the business entity is required to pay service tax under reverse charge. 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'. The business entity can take input tax credit of such tax paid in terms of Cenvat Credit Rules, 2004

6.5 What is the scope of exemption to coaching or training in recreational activities?

There is exemption from service tax to training or coaching in recreational activities relating to arts, culture or sports. The benefit is available to coaching or training relating to all forms of dance, music, painting, sculpture making, theatre and sports etc.

6.6 Sports (Details at Sr. No 10 of Exhibit A2)

6.6.1 What is the tax liability on services provided to a recognized sports body?

Services provided to a recognized sports body by an individual as a player, referee, umpire, coach or manager for participation in a tournament or championship organized by a recognized sports body are exempt from service tax. Similarly services by a recognized sports body to another are exempt. Services by individuals such as selectors, commentators, curators, technical experts etc are taxable. Recognized sports body has been defined in the notification.

6.7 Construction (Details at Sr No 12 to 14 of Exhibit A2)

6.7.1 I am a contractor in number of projects for constructing roads. What is my tax liability on construction of roads under different types of projects?

Construction of roads for use by general public is exempt from service tax. Construction of roads which are not for general public use e.g. construction of roads in a factory, residential complex etc would be taxable.

6.7.2 I am in to construction of hospitals and educational institutes. Am I required to pay service tax?

If you are constructing such structures for the government or local authority, you are not required to pay service tax. If you are constructing for others, you are required to pay tax.

6.7.3 I am setting up a wheat flour mill. The supplier of machines is demanding service tax on erection and installation of machineries and equipments in the flour mill. Is he is right in demanding service tax?

There is no service tax liability on erection or installation of machineries or equipments for units processing agricultural produce as food stuff excluding alcoholic beverages. You are processing wheat which is made from processing an agricultural produce. Similarly erection or installation of machineries or equipments for dal mills, rice mills, milk dairies or cotton ginning mills would be exempt.

6.8 Copyright (Details at Sr No 15 of Exhibit A2)

6.8.1 Will a music company having the copyright for any sound recording be taxable for his activity of distributing music?

Temporary transfer of a copyright relating to original literary, dramatic, musical, artistic work or cinematographic film falling under clause (a) and (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 is exempt. A music company would be required to pay service tax as the copyright relating to sound recording falls under clause (c) of sub-section (1) of section 13 of the Indian Copyright Act, 1957.

6.8.2 I am a composer of a song having the copyright for my song. When I allow the recording of the song on payment of some royalty by a music company for further distribution, am I required to pay service tax on the royalty amount received from a music company?

No, as the copyright relating to original work of composing song falls under clause (a) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 which is exempt from service tax. Similarly an author having copy right of a book written by him would not be required to pay service tax on royalty amount received from the publisher for publishing the book. A person having the copyright of a cinematographic film would also not be required to pay service tax on the amount received from the film exhibitors for exhibiting the cinematographic film in cinema theatres.

6.9 Miscellaneous

6.9.1 I am an artist. How do I know that my activity is subjected to service tax?

The activities by a performing artist in folk or classical art forms of music, dance, or theatre are not subjected to service tax. All other activities by an artist in other art forms e.g. magic shows, mimicry, western music or dance, modern theatres, performance of actors in films or television serials would be taxable. Services provided by such an artist as brand ambassador is also taxable.

6.9.2 I have a bus with a contract permit and operating the bus on a route. The passengers embark or disembark from the bus at any place

falling on the route and pay separate fares either for the whole or for the stages of journey. Am I required to pay tax?

No. However, transport of passengers in a contract carriage for the transportation of passengers, for tourism, conducted tour, charter or hire is taxable.

6.9.3 I have taken on rent a piece of vacant land from its owner. The land will be used for providing the facility of motor vehicles parking on payment. What is my service tax liability?

You are not required to pay tax on providing the facility of motor vehicle parking to general public. However, if you are providing the facility of parking of vehicles to a car dealer, you are be required to pay tax as parking facility is not for general public. Moreover, land owner is liable to pay service tax on renting of his land to you.

6.9.4 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 providing exempt health care services to third persons. If contribution is for the taxable services to be provided to third persons, you are required to pay service tax.

6.9.5 What is the tax liability on services by the intermediaries to entities those are liable to pay tax on their final output services? (Details at Sr No 29 of Exhibit A2)

Services by following intermediaries are exempt from service tax:

- a sub-broker or an authorized person to a stock broker
- an authorized person to a member of a commodity Exchange
- a mutual fund agent or distributor to mutual fund or asset management company for distribution or marketing of mutual fund
- a selling or marketing agent of lottery tickets to a distributor or a selling agent
- a selling agent or a distributor of SIM cards or recharge coupon vouchers
- a business facilitator or a business correspondent to a banking company or an insurance company in a rural area

6.9.6 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.

6.9.7 I am an individual receiving services from a service provider located in non- taxable territory, am I required to pay service tax?

If you are using these services for industry, business or commercial purposes, you are required to pay tax under reverse charge, unless otherwise exempt or in negative list. If use is for other purposes, you are exempt from service tax.

Guidance Note 7 – Rules of Interpretation

Despite doing away with the service-specific descriptions, there will be some descriptions where some differential treatment will be available to a service or a class of services. Section 66F lays down the principles of interpretation of specified descriptions of services and bundled services. These are explained in paras below –

7.1 Principles for interpretation of specified descriptions of services

Although the negative list approach largely obviates the need for descriptions of services, such descriptions continue to exist in the following areas –

- In the negative list of services.
- In the declared list of services.
- In exemption notifications.
- In the Place of Provision of Service Rules, 2012
- In few other rules and notifications.

There are two principles laid down which are contained in clauses (1) and (2) of section 66F of the Act.

7.1.1 What is the scope of the clause (1) of section 66F: ‘Unless otherwise specified, reference to a service (hereinafter referred to as the “main service”) shall not include reference to a service which is used for providing the main service’

This rule can be best understood with few illustrations which are given below –

- ‘Provision of access to any road or bridge on payment of toll’ is a specified entry in the negative list in section 66D of the Act. Any service provided in relation to collection of tolls or for security of a toll road would be in the nature of service used for providing such specified service and will not be entitled to the benefit of the negative list entry.
- Transportation of goods on an inland waterway is a specified entry in the negative list in section 66D of the Act. Services provided by an agent to book such transportation of goods on inland waterways or to facilitate such transportation would not be entitled to the negative list entry.

7.1.2 What is the scope of clause (1) of section 66F: ‘where a service is capable of differential treatment for any purpose based on its

description, the most specific description shall be preferred over a more general description’.

This rule can also be best understood with few illustrations which are given below –

- The services provided by a real estate agent are in the nature of intermediary services relating to immovable property. As per the proposed Place of Provision of Service Rule, 2012, the place of provision of services provided in relation to immovable property is the location of the immovable property. However in terms of the rule 5 pertaining to services provided by an intermediary the place of provision of service is where the intermediary is located. Since Rule 5 of the draft ‘Place of Provision of Services Rules, 2012’ provides a specific description of ‘estate agent’, the same shall prevail.
- Pandal and Shamiana is an existing service and will remain a subject of taxation. Likewise service provided by way of catering is a taxable service and entitled to abatement. There is abatement when the two are provided in combination. Since the combination is more a specific entry than the two provided individually, there is no need to apply the later rule of bundled services, where the character could be judged by the service which provides it the essential character.

7.2 Taxability of ‘bundled services’.

‘Bundled service’ means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. An example of ‘bundled service’ would be air transport services provided by airlines wherein an element of transportation of passenger by air is combined with an element of provision of catering service on board. Each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different.

Two rules have been prescribed for determining the taxability of such services in clause (3) of section 66F of the Act. These rules, which are explained below, are subject to the provisions of the rule contained in sub section (2) of section 66F, viz a specific description will be preferred over a general description as explained in para 7.1.2 above.

7.2.1 Services which are naturally bundled in the ordinary course of business

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

Illustrations -

- A 5-star hotel in Gurgaon (Haryana) provides a 4-D/3-N package with the facility breakfast. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as service of providing hotel accommodation.

7.2.2 Services which are not naturally bundled in the ordinary course of business

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

Illustrations -

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

7.2.3 Significance of the condition that the rule relating to ‘bundled service’ is subject to the provisions of sub-section (2) of section 66F.

Sub-section (2) of section 66 lays down : ‘where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description’ (refer para 7.1.2 above). This rule predominates over the rule laid down in sub-section (3) relating to ‘bundled services’. In other words, if a bundled service falls under a service specified by way of a description then such service would be covered by the description so specified. The illustration, relating to a bundled service wherein a pandal and shamiana is provided in combination with catering service, given in the second bullet in para 7.1.2 above explains the operation of this rule.

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

Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators few of which are listed below –

- The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package then such a package could be treated as naturally bundled in the ordinary course of business.
- Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.
- The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main

service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service. For example service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

- Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are -
 - There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
 - The elements are normally advertised as a package.
 - The different elements are not available separately.
 - The different elements are integral to one overall supply – if one or more is removed, the nature of the supply would be affected.

No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.

7.2.5 Manner of determination of taxability ‘composite transactions’ wherein an element of provision of service is combined with an element of sale of goods

Please refer to **point no 2.5.3 of this Guidance Note.**

Exhibit A1: Negative List of Services

- (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 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 in a vessel of less than fifteen tonne net, other than predominantly for tourism purpose; 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 to the first customs station of landing in India; or
 - (iii) by inland waterways;
 - (q) Funeral, burial, crematorium or mortuary services including transportation of the deceased.
-

Exhibit A2: Proposed exemptions under Mega Notification

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 to any person other than a business entity by:-
 - (a) an individual as an advocate; or
 - (b) a person represented on and as arbitral tribunals;
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:-
 - (a) to an educational institution by way of catering under any centrally assisted mid – day meals scheme sponsored by Government;
 - (b) to or by an institution in relation to educational services, where the educational services are exempt from the levy of service tax, by way of transportation of students or staff;
 - (c) to or by an institution in relation to educational services, where the educational services are exempt from the levy of service tax, by way of services in relation to admission to such education;
10. Services provided to a recognised sports body by:-
 - (a) an individual as a player, referee, umpire, coach or manager for participation in a tournament or championship organized by a recognized sports body;
 - (b) another recognised sports body;
11. Services by way of sponsorship of tournaments or championships organized:-

- (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, 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 or local authority by way of erection, construction, maintenance, repair, alteration, renovation or restoration of:—

- (a) a civil structure or any other original works meant predominantly for a non-industrial or non-commercial use;
- (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under 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) drinking water supply (ii) water treatment (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 Finance Act;

13. Services provided by way of erection, construction, maintenance, repair, alteration, renovation or restoration of:-

- (a) road, bridge, tunnel, or terminal for road transportation for use by general public;
- (b) 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;
- (c) pollution control or effluent treatment plant, except located as a part of a factory; or
- (d) electric crematorium;

14. Services by way of erection or construction of original works pertaining to:-

- (a) airport, port or railways;
- (b) single residential unit otherwise 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 clause (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 room below one thousand rupees 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 the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and which has a licence to serve alcoholic beverages;
20. Services by way of transportation by rail or a vessel from one port 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, mail bags or household effects;
 - (e) newspaper or magazines registered with Registrar of Newspapers;
 - (f) railway equipments or materials;
 - (g) agricultural produce;
 - (h) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or
 - (i) 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 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 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; or
- (b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire;

24. Services by way of motor vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;

25. Services provided to the Government or a local authority by way of:–

- (a) repair of a ship, boat or vessel;
- (b) effluents and sewerage treatment;
- (c) waste collection or disposal;
- (d) storage, treatment or testing of water for drinking purposes; or
- (e) transport of water by pipeline or conduit for drinking purposes;

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 business turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:-

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

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

28. Service by an unincorporated body or an entity registered as a society to own members by way of reimbursement of charges or share of contribution:–

(a) as a trade union;

(b) for the provision of exempt services by the entity to third persons; 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) a sub-broker or an authorised person to a stock broker;

(b) an authorised person to a member of a commodity exchange;

(c) a mutual fund agent or distributor to mutual fund or asset management company for distribution or marketing of mutual fund;

(d) a selling or marketing agent of lottery tickets to a distributor or a selling agent;

(e) a selling agent or a distributor of SIM cards or recharge coupon vouchers;
or

(f) a business facilitator or a business correspondent to a banking company or an insurance company in a rural area;

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 telephones;

(b) guaranteed public telephones operating only for local calls; or

(c) free telephone at airport and hospitals where no bills are being issued;

33. Services by way of slaughtering of bovine animals;
34. Services received from a service provider located in a non- taxable territory by -
 - (a) the Government, a local authority or an individual in relation to any purpose other than industry, business or commerce; or
 - (b) an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities.

Definitions. - For the purpose of these exemptions, unless the context otherwise requires, –

1. “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),
2. “appropriate duty” means duty payable on manufacture or production under a Central or a State Act, but shall not include ‘Nil’ rate of duty or duty wholly exempt,
3. “arbitral tribunal” has the meaning assigned to it in clause (d) of section 2 of the Arbitration and Conciliation Act, 1996 (26 of 1996),
4. “authorised medical practitioner” means any medical practitioner registered with any of the Councils of the recognised system of medicine and includes medical professional having the requisite qualification to practice in any recognised system of medicine as per any law for the time being in force,
5. "authorised person" means and includes any person whether being an individual, partnership firm, limited liability partnership or body corporate, who is appointed as such either by a stock broker including trading member or by a member of commodity exchange and who provides access to trading platform of a stock exchange or a commodity exchange, as an agent of the stock broker or member of a commodity exchange,
6. “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),
7. “business facilitator or business correspondent” means an intermediary appointed under business facilitator model or business correspondent model by a banking company or an insurance company under the guidelines issued by Reserve Bank of India,
8. "clinical establishment" means a hospital, nursing home, clinic, sanatorium or an 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 medicine, established and administered or maintained by any person or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases,
9. “charitable activities” means activities relating to–

- a) public health by way of –
 - I. 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
 - II. public awareness of preventive health, family planning or prevention of HIV infection;
- b) advancement of religion;
- c) advancement of educational programmes or skill development relating to,-
 - i. abandoned, orphaned or homeless children;
 - ii. physically or mentally abused and traumatized persons;
 - iii. prisoners; or
 - iv. persons over the age of 65 years residing in a rural area;
- d) preservation of environment including watershed, forests and wildlife; or
- e) advancement of any other object of general public utility up to a value of twenty five lakh rupees in a financial year subject to the condition that total value of such activities had not exceeded twenty five lakh rupees during the preceding financial year; or

Explanation: - For the purpose of this clause, ‘general public’ means the body of people at large sufficiently defined by some common quality of public or impersonal nature,

- 10. “commodity exchange” means an association as defined in section 2 (j) and recognized under section 6 of the Forward Contracts (Regulation) Act,1952,
- 11. “contract carriage” has the meaning assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988),
- 12. “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 does not include any discount offered on the published charges for such unit,
- 13. “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,
- 14. "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),
- 15. “goods carriage” has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988),
- 16. “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

medicine and includes services by way of supply of meals for the patient or 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,

17. “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,

18. “insurance company” means a company carrying on life insurance business or general insurance business,

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

20. “original works” means –

(a) all new constructions; or

(b) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable,

24. “principal manufacturer” means any person who gets goods manufactured or processed on his account from another person,

25. “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,

26. “religious place” means a place which is primarily meant for conduct of prayers or worship pertaining to a religion,

27. “residential complex” means any complex comprising of a building or buildings, having more than one single residential unit,

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

(i) the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or

- (ii) any area that may be notified as an urban area by the Central Government or a State Government,
28. "single residential unit" means an independent residential unit with specific facilities for living, cooking and sanitary requirements,
29. "specified international organisation" means an international organisation 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,
30. "state transport undertaking" has the meaning assigned to it in clause (42) of Section 2 of the Motor Vehicles Act, 1988 (59 of 1988),
31. "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) (Second Amendment) Regulations, 2006,
30. "trade union" has the meaning assigned to it in clause (h) of section 2 of the Trade Unions Act, 1926 (16 of 1926).
-

Exhibit A3: Gist of other exemptions

A. Small scale exemption

1. For the service provider for the taxable services of aggregate value not exceeding ten lakh rupees in a financial year subject to certain conditions.

B. Exporters/ SEZ

2. Transportation of export goods by Goods Transport Agency in a goods carriage received by an exporter for transport of the said goods directly from -
 - i. any container freight station or inland container depot to the port or airport, from where the goods are exported;
 - ii. his place of removal, to an inland container depot, a container freight station, a port or airport, from where the goods are exported.
3. Refund of service tax paid on certain specified taxable services received by an exporter of goods and used for export of goods, subject to certain specified conditions.
4. Taxable services, received by a unit located in a Special Economic Zone or Developer of SEZ for the authorised operations.

C. Import of technology

5. Taxable service involving import of technology, from so much of service tax, as is equivalent to the extent of amount of cess payable on the said transfer of technology under the provisions of section 3 of the Research and Development Cess Act, 1986.

D. Services to foreign diplomatic mission

6. Taxable services provided for the official use of a foreign diplomatic mission or consular post in India, or for personal use or for the use of the family members of diplomatic agents or career consular officers posted therein.

E. Services by TBI or STEP

7. Taxable services provided by a Technology Business Incubator (TBI) or a Science and Technology Entrepreneurship Park (STEP) recognized by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India.

F. Renting of an immovable property

8. Taxable service of renting of an immovable property, from so much of the service tax leviable thereon, as is in excess of the service tax calculated on a value which is

equivalent to the gross amount charged for renting of such immovable property less taxes on such property, namely property tax levied and collected by local bodies.

G. Abatement

9. Exemption from so much of the service tax leviable, as is in excess of the service tax calculated on a value which is equivalent to a percentage specified in the corresponding entry in column (3) of the following Table, of the gross amount charged by such service provider for providing the said taxable service, subject to the relevant conditions specified in the corresponding entry in column (4) of the said Table:

Table

Sl. No.	Description of taxable service	Percent - age	Conditions
(1)	(2)	(3)	(4)
1	Financial leasing services including equipment leasing and 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	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 place specially arranged for organizing a function	70	CENVAT credit on any goods classifiable under chapter 1 to 22 of the Central Excise Tariff Act, 1985 (5 of 1986) has not been taken under the provisions of the CENVAT Credit Rules, 2004.
5	Transport of passengers by air, with or without accompanied belongings	40	CENVAT credit on inputs or 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	Transport of goods by road by Goods Transport Agency	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 from one port in India to another	50	Same as above.
11	(i) Services provided or to be provided to any person, by a tour operator in relation to 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) Services provided or to be provided to any person, by a tour operator in relation to 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) Services, other than services specified in (i) and (ii) above, provided or to be provided to any person, by a tour operator in relation to a tour	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.

Draft Guidance Paper “B” Place of Provision of Services Rules, 2012

TRU, Central Board of Excise & Customs, Department of Revenue, Ministry of Finance
March 16, 2012

In this guidance paper

1. Introduction
2. Basic framework
3. Rules & Commentary
4. Exhibit: Draft Place of Provision of Services Rules, 2012

1. Introduction

1.1 Background

1.1.1 The Finance Minister has introduced the Finance Bill, 2012 proposing, inter-alia, taxation of services based on a negative list. This announcement involves a paradigm shift by moving away from taxation of specified description of services to a new system of taxation of all services except those specified in the negative list or otherwise exempted. An important key for its implementation is to identify the taxing jurisdiction for a service.

1.1.2 So far the task of identifying the jurisdiction was largely limited in the context of import or export of services. For this purpose rules were formulated which handled the subject of place of provision of services somewhat indirectly confining to define the circumstances in which a provision of service will constitute import or exports and thus limiting their scope more to their taxability or otherwise of a service.

1.1.3 The new rules will, on the other hand, determine the place where a service shall be deemed to be provided. Its taxability will be determined based on the location of its provision. The ‘Place of Provision of Services Rules, 2012’ will replace the ‘Export of Services, Rules, 2005’ and ‘Taxation of Services (Provided from outside India and received in India) Rules, 2006.

1.1.4 This is a draft guidance mainly to help both the departmental officials and business to understand the new provisions better and to make some of the advance preparations to implement the changes as and when made applicable. In the meanwhile both sides may also provide useful feedback on any aspect of the rules, particularly where the provisions are likely to create situations that may place legitimate business in any disadvantageous position or loss of legitimate revenue for the government. The final guidance will follow when the rules are to be operationalized.

1.1.5 The guidance has been prepared in Q&A form for easy understanding. It is realized that despite every effort made there would be some areas which require greater elaboration or even correction. Team TRU will be highly thankful for free and frank views on any aspect.

1.2 For whom are these rules meant?

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

1.2.2 Additionally service providers operating within India from multiple locations, without having centralized registration will find them useful in determining the precise taxable jurisdiction applicable to their operations. The rules will be equally relevant for determining services that are wholly consumed within a SEZ to avail the outright exemption.

1.2.3 As a precursor for the eventual roll out of a nation-wide GST, the new rules are also expected to provide a possible backdrop to initiate an honest debate in interested circles so as to fathom all the various issues that may arise in the taxation of inter-state services.

1.3 What is the basic philosophy of these rules?

1.3.1 The essence of indirect taxation is that a service should be taxed in the jurisdiction of its consumption. This principle is more or less universally applied. In terms of this principle, exports are not charged to tax, as the consumption is elsewhere, and services pay tax on their importation into the taxable territory.

1.3.2 However, this determination is not easy. Services could be provided from one location, delivered to a person located at another and yet be actually consumed at a third location or over a larger geographical territory, falling in more than one taxable jurisdiction. For example a person located in Mumbai may buy a ticket on internet from a service provider located outside India for a journey from Delhi to London. On other occasions the exact location of service recipient itself may not be available e.g. services supplied electronically. As a result it is necessary to lay down rules determining the exact place of provision to capture the place of consumption, 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.

1.3.3 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.

2. Basic Framework

2.1 How will I know that I am providing a service that may be taxable in India?

2.1.1 The following 2-step process will help to determine this.

Step 1: To ascertain the nature of service

If you are providing a service, then first you need to check as to whether the service provided is excluded either by the negative list or is otherwise exempted. If it is not so covered, try to capture the nature of the service, if necessary by applying the principles indicated in section 66F. You may refer to the 'Guidance Paper: A, Guidance Note 7' for this purpose.

Step 2: To determine whether the place of provision of service is in the taxable territory:

You need to ask the following questions sequentially, applying these rules:-

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

2.2 What is "taxable territory"? What is its significance?

2.2.1 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.

2.2.2 "India" is defined in sub-section 27 of section 65 B, as follows:
"India" means—

- (a) the territory of India as referred to in 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(- of 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;

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

2.3 What is the significance of “Location” of a Service Provider or Receiver for determining taxing jurisdiction?

2.3.1 In terms of explanation (2) to sub-section 44 of section 65B, an establishment of a person outside the taxable territory is a person distinct from an establishment in a taxable territory. Thus, services provided from overseas are to be carefully judged whether they are being rendered by the establishment outside the taxable territory or within.

2.3.2 Similarly, from the taxpayer’s perspective, the jurisdiction of the field formation, which is relevant for compliance with registration formalities, filing of returns, refund claims etc. by the person liable to pay tax (provider or receiver as the case may be), will be the “location” as determined in terms of these rules.

2.4 How will such “location” be determined?

2.4.1 The location of a service provider or receiver (as the case may be) is to be determined by applying the following steps sequentially:

- A. where the service provider or receiver has obtained only one registration, whether centralized or otherwise, the premises for which such registration has been obtained;
- B. where the service provider or receiver is not covered by A above:
 - i. the location of his business establishment; or
 - ii. where services are provided or received at a place other than the business establishment i.e. a fixed establishment elsewhere, the location of such establishment;
 - iii. where services are provided or received at more than one establishment, whether business or fixed, the establishment most directly concerned with the provision or use of the service; and
 - iv. in the absence of such places, the usual place of residence of the service provider or receiver.

2.4.2 This is indicated in Flow Diagram F1 on page 6 at the end of this section.

2.5 What is the meaning of “business establishment”?

2.5.1 ‘Business establishment’ is the place where the essential decisions concerning the general management of the business are adopted, and where the functions of its central administration are carried out. This could be the Head office, or a factory, or a workshop, or shop/ retail outlet. Most significantly, there is only one business establishment that a service provider or receiver can have.

2.6 What is the meaning of a “fixed establishment”?

2.6.1 A “fixed establishment” is a place (other than the business establishment) which has the permanent presence of human and technical resources to provide or receive a service. Temporary presence of a staff by way of a short visit at a place cannot be called a fixed establishment.

2.7 How will the establishment “most directly concerned with the supply” be determined?

2.7.1 This will depend on the facts and supporting documentation, specific to each case. The documentation will include the following:-

- the contract(s) between the service provider and receiver;
- where there are no written contracts, any written account (documents, e-mail etc) between parties which sets out in detail their understanding of the oral contract;
- details of how the business fits into any larger corporate structure;
- the establishment whose staff is actually involved in the execution of the job;
- performance agreements (which may be indicative both of the substance and actual nature of work performed at a particular establishment);

Illustration 1

A business has its headquarters in India, and branches in London, Dubai, Singapore and New York. Its business establishment is in India.

Illustration 2

An overseas business house sets up offices with staff in India to provide services to Indian customers. Its fixed establishment is in India.

Illustration 3

A company with a business establishment abroad buys a property in India which it leases to a tenant. The property by itself does not create a fixed establishment. If the company sets up an office in India to carry on its business by managing the property, this will create a fixed establishment in India.

Illustration 4

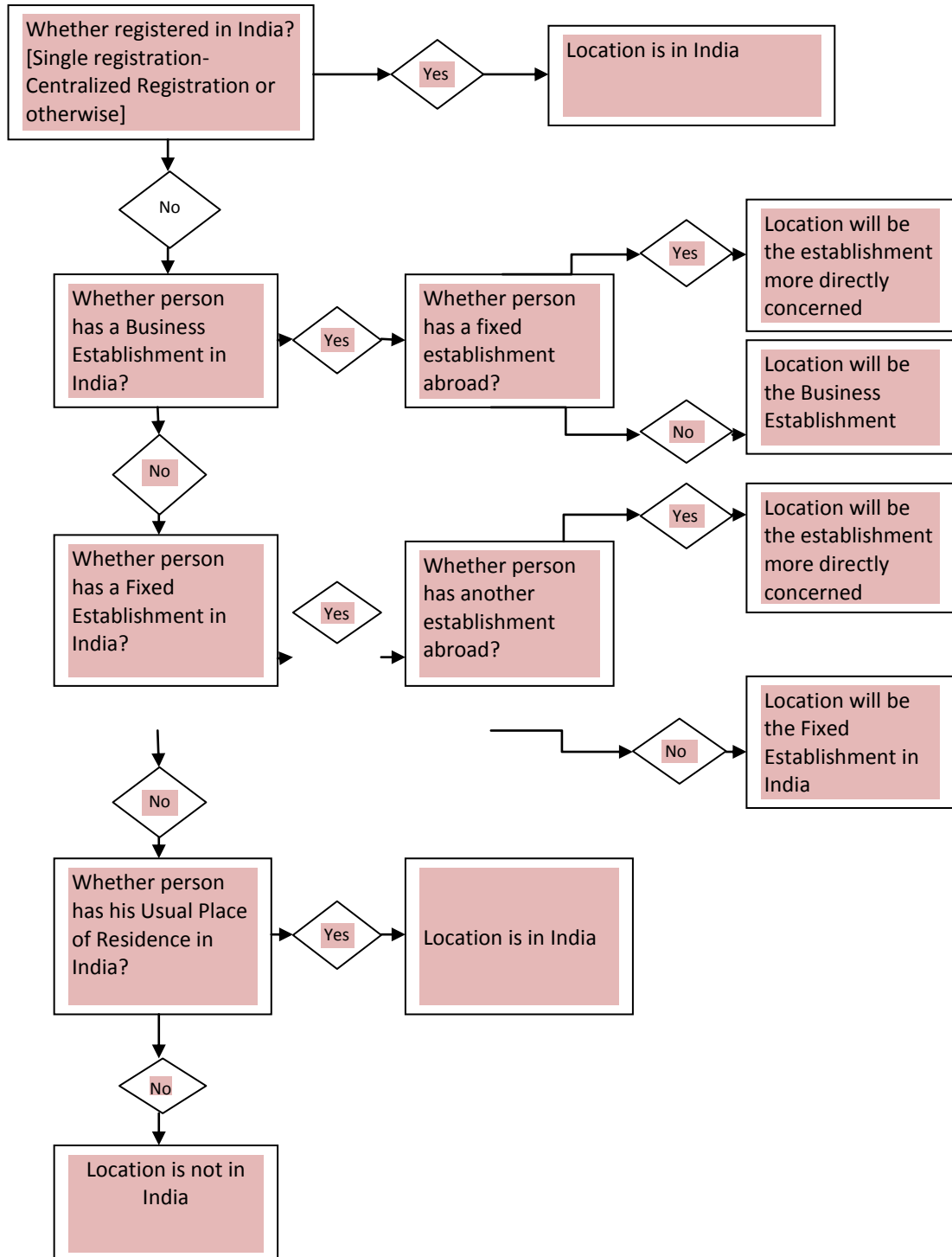
A company is incorporated in India, but provides its services entirely from Singapore. The location of this service provider is Singapore, being the place where the establishment most directly concerned with the supply is located.

2.8 What does “usual place of residence” mean?

2.7.1 The usual place of residence, in case of a body corporate, has been specified as the place where it is incorporated or otherwise legally constituted.

2.7.2 The usual place of residence of an individual is the place (country, state etc) where the individual spends most of his time for the period in question. It is likely to be the place where the individual has set up his home, or where he lives with his family and is in full time employment. Individuals are not treated as belonging in a country if they are short term, transitory visitors (for example if they are visiting as tourists, or to receive medical treatment or for a short term language/other course). An individual cannot have more than one place of usual residence.

FLOW DIAGRAM F1 HOW TO DETERMINE LOCATION?



3. Rules & Commentary

3.1 Main Rule- Rule 3- Location of the Receiver

3.1.1 What is the implication of this Rule?

The main rule or the default rule provides that a service shall be deemed to be provided where the receiver is located.

The main rule is applied when none of the other later rules apply (by virtue of rule 14 governing the order of application of rules- see para 3.12 of this guidance paper). In other words, if a service is not covered by an exception under one of the later rules, and is consequently covered under this default rule, then the receiver's location will determine whether the service is leviable to tax in the taxable territory.

The principal effect of the Main 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.

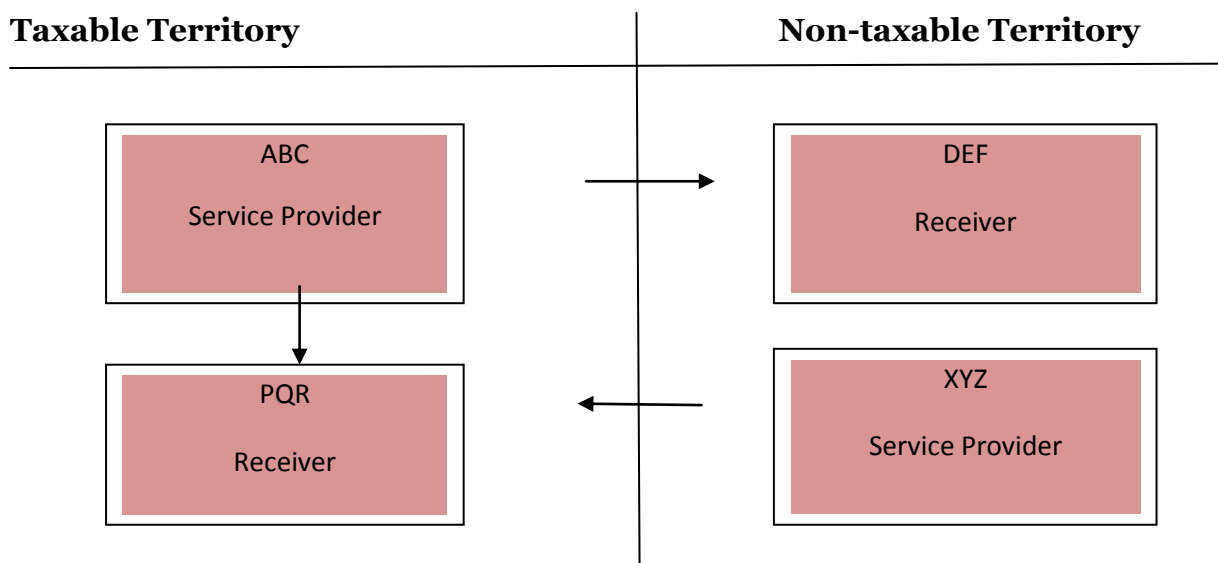
3.1.2 If the place of provision of a taxable service is the location of service receiver, who is the person liable to pay tax on the transaction?

Service tax is 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:-

Illustration



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”).

3.1.3 Who is the service receiver?

Normally, the person who receives a service and, therefore, becomes 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.

Illustration

A lady leaves her car at a service station for the purpose of servicing. She asks her chauffer to collect the car from the service station later in the day, after the servicing is over. The chauffer makes the payment on behalf of the lady owner and collects the car. Here the lady is the 'person obliged to make the payment' towards servicing charges, and therefore, she is the receiver of the service.

3.1.4 What would be the situation where the payment for a service is made by the headquarters of a business but the actual rendering of the service is elsewhere?

Occasionally, a service receiver may be the person liable to make payment for the service provided on his behalf to another person. For instance, the provision of a service may be made at the headquarters of an entity by way of centralized sourcing of services whereas the actual provision is made at various locations. Here, the central office acts only as a facilitator to negotiate the contract on behalf of various geographical establishments. Each of the geographical establishments receives the service and is obligated to make the payment either through headquarters or sometimes directly. When the payment is made directly, there is no confusion. In other situations, where the payment is settled either by cash or through debit and credit note, it is clear that the payment is being made by such geographical location. It should be noted that in terms of proviso to section 66B, the establishments in a taxable and non-taxable territory are to be treated as distinct persons.

Illustration

The following example illustrates the above, by comparing the place of provision of services rendered under a Global Agreement¹ vis-à-vis a Global Framework Agreement².

AAA is a firm with its manufacturing unit and business establishment located in the taxable territory A. It has got two other manufacturing plants located in countries X

¹ A 'Global Contract or Agreement' is between two parent companies for provision of services from one to the other, where actual provision of services is to be made to subordinate offices of the recipient company in different tax jurisdictions.

² A 'Global Framework Agreement' is between two parent companies for provision of services, but here, the 'framework agreement' only specifies the broad terms of the agreement i.e fees, terms and conditions, the list of recipient branches/offices or even the details of provision of services to be made. The subsidiaries in different locations then enter into separate and independent business agreements, for provision of services and payments.

and Y (say, AAA-X and AAA-Y respectively). AAA wishes to obtain IT services for a new production process for its three manufacturing plants in the region.

BBB is an IT firm located in the taxable territory (location of business establishment). BBB Ltd also has fixed establishments (subsidiaries) located in country X (say BBB-X) and in country Y (say, BBB- Y).

AAA engages BBB for meeting its IT service requirement.

Scenario 1 [See Flow Diagram F 2 below]

AAA enters into a **Global (centralized purchasing) agreement** with BBB for provision of IT services for the whole group. Following are the different transactions under which services are provided:-

- a) Under the global agreement, some component of IT service is provided by BBB to AAA in country A (say, Transaction 1).
- b) To meet the requirements of providing IT solutions specific to the plants AAA-X and AAA-Y in countries X and Y, BBB enters into agreements with its subsidiaries BBB-X (in country X) and BBB-Y (in country Y), under which they provide IT services to BBB (say, Transaction 2 and Transaction 3). Though these services are provided by BBB-X and BBB-Y to BBB, these are rendered as under:-
 - By BBB-X to AAA-X (in country X)- under transaction 2, and
 - By BBB-Y to AAA-Y (in country-Y) – under transaction 3.
- c) AAA enters into separate agreements with AAA-X and AAA-Y, under which AAA Ltd provides IT services to them (transaction 4 and transaction 5).

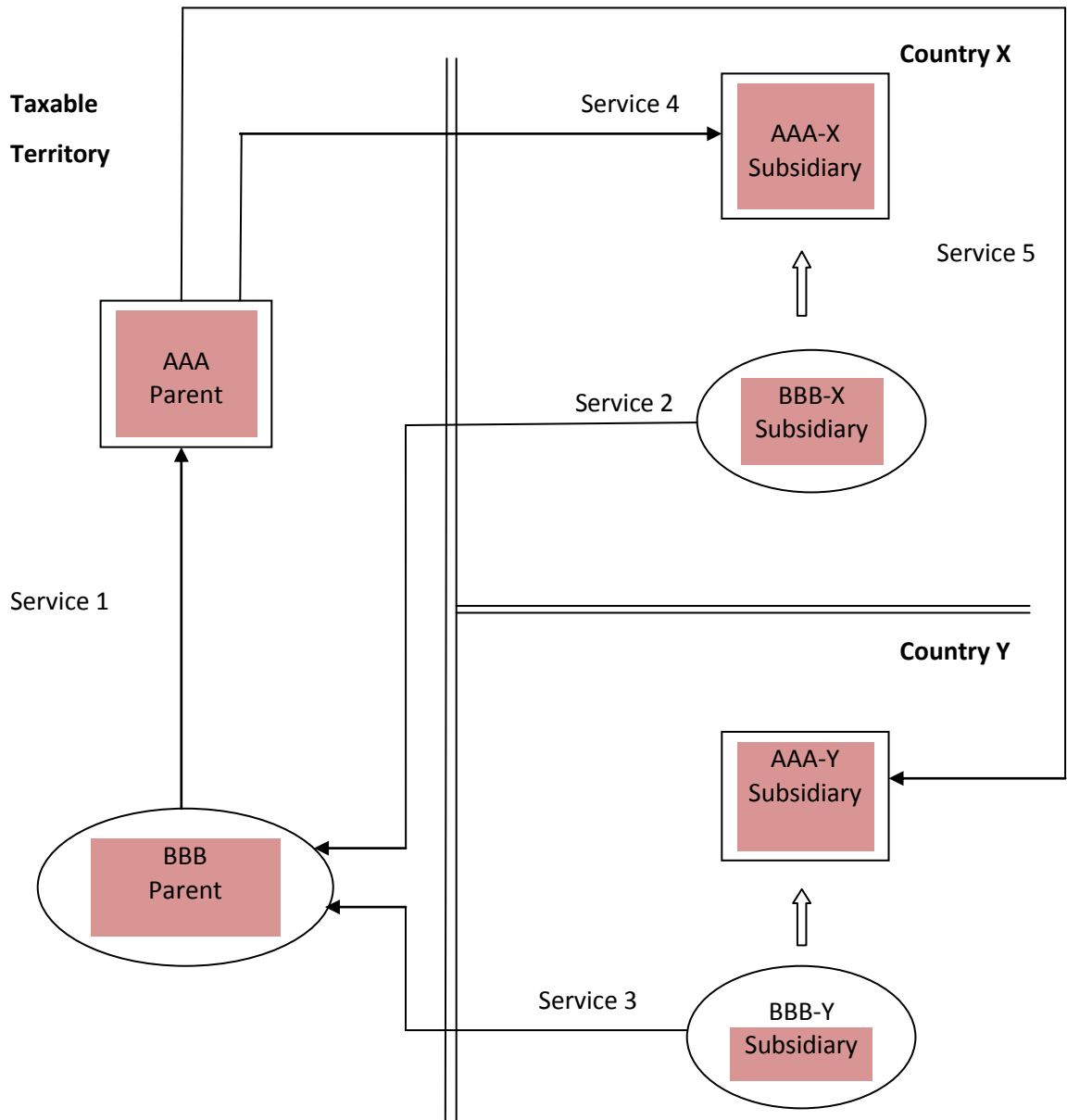
The transactions and provision of service under each are illustrated in the Flow diagram titled ‘Scenario1’ in the following page.

Scenario 2 [See Flow Diagram F 3 below]

AAA enters into a **Framework Agreement** with BBB for provision of IT services for the whole group. The Framework agreement covers the broad contours of supply between the two parties, payment milestones, obligations relating to confidentiality, penalty for default, limitations of liability and warranties etc, which would apply as and when group companies enter into separate agreements, in accordance with the terms envisaged in the framework agreement. BBB-X and BBB-Y could then enter into separate and independent business agreements with AAA-X and AAA-Y, in countries X and Y respectively, for provision of IT services. There are four agreements, but only three transactions involving provision of services, as indicated in the Flow diagram- Scenario 2 below.

PROVISION OF SERVICES UNDER A ‘GLOBAL AGREEMENT’- Scenario 1

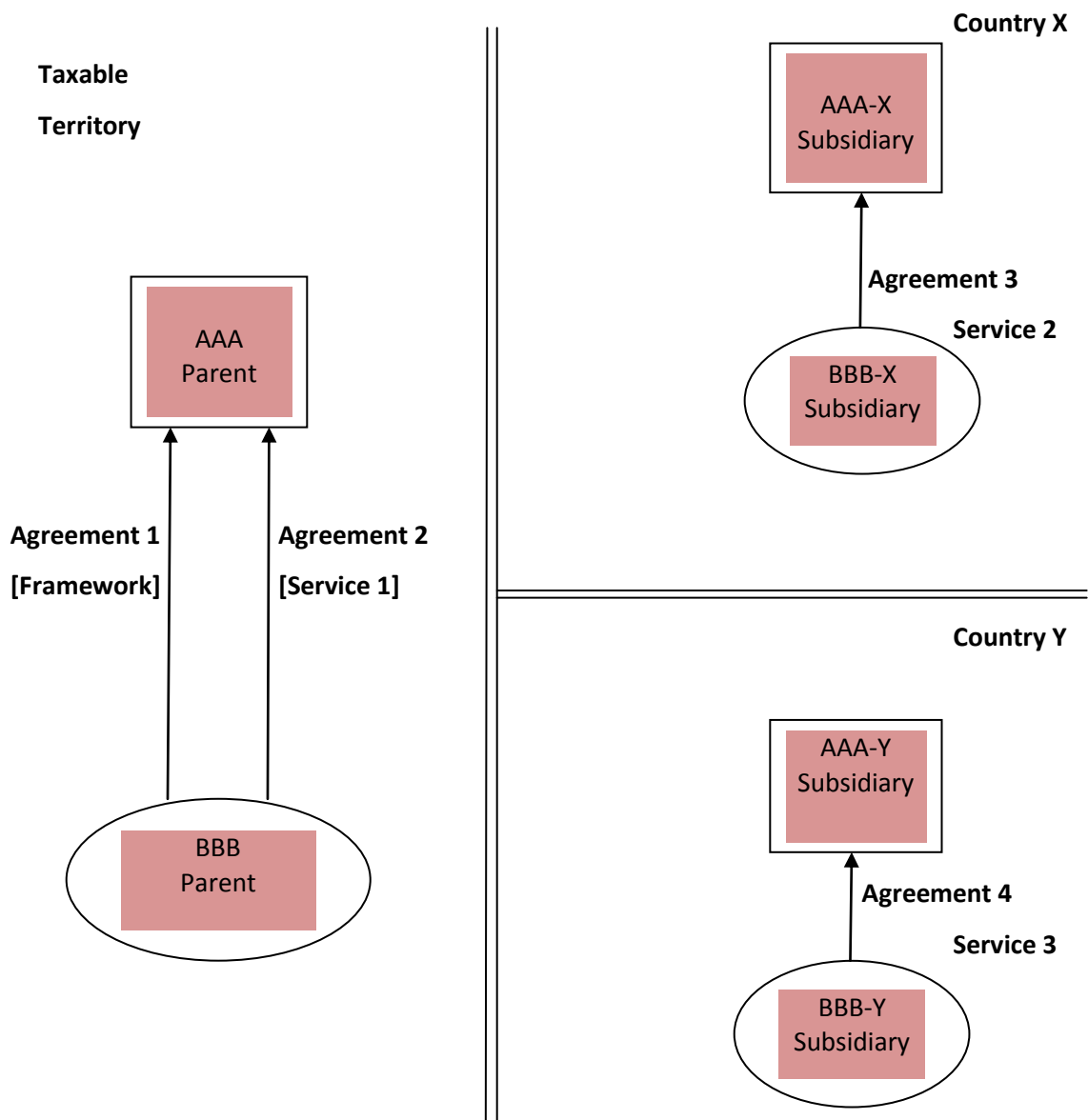
FLOW DIAGRAM F 2



Place of provision for service 1 is taxable territory
Place of provision for service 2 is taxable territory
Place of provision for service 3 is taxable territory
Place of provision for service 4 is country X
Place of provision for service 5 is country Y.

PROVISION OF SERVICES UNDER ‘FRAMEWORK AGREEMENT’- Scenario 2

FLOW DIAGRAM F 3



Agreement 1 is not transactional, has no consideration, and does not create a provision of service. Agreement 1 stipulates the terms and conditions which are activated only when the parties (i.e. group subsidiaries on either side enter into separate and independent business agreements, in accordance with the terms specified in the framework agreement.

Under Agreement 2, service 1 is provided by BBB Ltd to AAA Ltd, and the place of provision of this service, under the main rule, is the location of the receiver i.e within the taxable territory. Under Agreement 3, service 2 is provided by BBB-X to AAA-X, and the place of provision of this service, under the main rule, is country X i.e outside

the taxable territory. Under Agreement 4, service 3 is provided by BBB-Y to AAA-Y, and the place of provision of this service, again under the main rule, is country Y i.e. outside the taxable territory.

3.1.5 What is the place of provision where the location of receiver is not ascertainable in the ordinary course of business?

Generally, in case of a service provided to a person who is in business, the provider of the service will be in a position to ascertain the location of the recipient's registered location, or his business establishment, or his fixed establishment etc, as the case may be. However, in case of certain services (which are not covered by the exceptions to the main rule), the service provider may not be in a position to ascertain the location of the service receiver, in the ordinary course of his business. This will also be the case where a service is provided to an individual customer who comes to the premises of the service provider for availing the service and the provider has to, more often than not, rely on the declared location of the customer. For instance, an individual may go to the office of a Custom House Agent to obtain his services for clearance of imported personal effects, and furnish an address to which the goods are to be delivered. Normally in such cases, the provider will not be expected to make any detailed enquiry from a customer regarding his 'location', in the ordinary course of business. In such cases, it will be deemed that the place of provision of the service is the location of the service provider (in the taxable territory).

3.2 Rule 4- Performance based Services

In case of certain specified categories of services, the place of provision shall be the place where the services are performed. These are discussed in the following paragraphs.

3.2.1 What are the services that are provided “in respect of goods that are made physically available, by the receiver to the service provider, in order to provide the service”?- sub-rule (1):

Services that are related to goods, and which require such goods to be made available to the service provider so that the service can be rendered, are covered here. Examples of such services are repair, reconditioning, or any other work on goods (not amounting to manufacture), storage and warehousing, courier service, cargo handling service (loading, unloading, packing or unpacking of cargo), technical testing/inspection/certification/ analysis of goods, dry cleaning etc. It will not cover services where the supply of goods by the receiver is not material to the rendering of the service e.g. where a consultancy report commissioned by a person is given on a pen drive belonging to the customer. Similarly, provision of a market research service to a manufacturing firm for a consumer product (say, a new detergent) will

not fall in this category, even if the market research firm is given say, 1000 nos. of 1 kilogram packets of the product by the manufacturer, to carry for door-to-door surveys.

Illustration 1

A foreign music troupe, undertaking a tour in four Indian cities, obtains the services of an Indian cargo handling firm to move its sound and music equipment between the four cities. The place of provision of this service is in the taxable territory, notwithstanding the location of the receiver.

Illustration 2

An Electrical engineering firm located in India deposes its engineers to undertake repairs at a hydel power plant in Bhutan (which is owned by say, Govt of Bhutan). Place of provision of this service will be Bhutan i.e outside taxable territory.

Illustration 3

An airline company in India gets its aircraft repaired at a hanger at Mumbai airport, by engineers deputed by an overseas firm (say, Airbus, France) who travel from Toulouse, France to Mumbai for the purpose. The place of provision of this service is in the taxable territory, and more specifically, Mumbai.

3.2.2 What is the implication of the proviso to sub-rule (1)?

The proviso to this rule states as follows:-

“Provided further that where such services are provided from a remote location by way of electronic means, the place of provision shall be the location where goods are situated at the time of provision of service.”

In the field of Information Technology, it is not uncommon to provide services in relation to tangible goods located distantly from a remote location. Thus the actual place of performance of the service could be quite different from the actual location of the tangible goods. This proviso requires that the place of provision shall be the actual location of the goods and not the place of performance, which in normal situations is one and the same.

Following example will illustrate the implication of this proviso:-

Illustration

An IT firm located in Bangalore provides repair service in respect of software, to an IT company at its establishment in Singapore by way of electronic means. The place of provision of this service will be Singapore. The position will remain the same even if the service receiving firm has its 'business establishment' in India, so long as the 'location' as determined under the rules is the Singapore establishment (more directly concerned with receiving service).

3.2.3 What are the services provided in conjunction with a supply of goods under another contract?- sub-rule (2)

Examples of such services, when provided under a separate contract are as under:-

- An erection and commissioning contract;
- An 'annual maintenance contract', bundled with the sale of goods (say, an electrical appliance or an electronic product);

3.2.4 What are the services that are provided “entirely or predominantly in the physical presence of an individual (the receiver)”?-sub-rule (3)

Certain services like cosmetic or plastic surgery, beauty treatment services, personal security service, health and fitness services, photography service (to individuals), internet café service, classroom teaching, are examples of services that require the presence of the individual receiver for their provision. As would be evident from these examples, the nature of services covered here is such as are rendered in person and in the receiver's physical presence. Though these are generally rendered at the service provider's premises (at a cosmetic or plastic surgery clinic, or beauty parlor, or health and fitness center, or internet café), they could also be provided at the customer's premises, or occasionally while the receiver is on the move (say, a personal security service; or a beauty treatment on board an aircraft).

3.2.5 What is the significance of “..in the physical presence of an individual, whether represented either as the service receiver or a person acting on behalf of the receiver” in this rule?

This implies that while a service in this category is capable of being rendered only in the presence of an individual, it will not matter if, in terms of the contractual arrangement between the provider and the receiver (formal or informal, written or oral), the service is actually rendered by the provider to a person other than the receiver, who is acting on behalf of the receiver.

Illustration 1

A company contracts with a fitness centre for 10 annual memberships, which are availed by the company's senior executives. Here is a situation where the company is the receiver of the service, but the service is rendered to the executives, who are receiving the health service on behalf of the modeling agency. Hence, notwithstanding that the modeling agency does not qualify as the individual receiver in whose presence the service is rendered, the nature of the service is such as can be rendered only to an individual, thereby qualifying to be covered under this rule.

Illustration 2

A modeling agency contracts with a beauty parlour for beauty treatment of say, 20 models. Here again is a situation where the modeling agency is the receiver of the service, but the service is rendered to the models, who are receiving the beauty treatment service on behalf of the modeling agency. Hence, notwithstanding that the modeling agency does not qualify as the individual receiver in whose presence the service is rendered, the nature of the service is such as can be rendered only to an individual, thereby qualifying to be covered under this rule.

3.3 Rule 5- Location of Immovable Property

In the case of a service that is 'directly in relation to immovable property', the place of provision is where the immovable property (land or building) is located, irrespective of where the provider or receiver is located.

3.3.1 What is "immovable property"?

"Immovable Property" has not been defined in Service Tax law. However, in terms of section 4 of the General Clauses Act, 1897, the definition of immovable provided in sub-section 3 (26) of the General Clauses Act will apply, which states as under:

"Immovable Property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth."

3.3.2 What are the criteria to determine if a service is 'directly in relation to' immovable property located in taxable territory?

Generally, the following criteria will be used to determine if a service is in respect of immovable property located in the taxable territory:

- i) the service is physically performed or agreed to be performed on a specific immovable property (e.g. maintenance) or property to come into existence (e.g. construction);
- ii) the direct object of the service is the immovable property in the sense that the service enhances the value of the property, affects the nature of the property, relates to preparing the property for development or redevelopment or the environment within the limits of the property (e.g. engineering, architectural services, surveying and sub-dividing, management services, security services etc);
- iii) the purpose of the service is:
 - a) the transfer or conveyance of the property or the proposed transfer or conveyance of the property (e.g., real estate services in relation to the actual or proposed acquisition, lease or rental of property, legal services rendered to the owner or beneficiary or potential owner or beneficiary of property as a result of a will or testament);
 - b) the determination of the title to the property.

There must be more than a mere indirect or incidental connection between a service provided in relation to an immovable property, and the underlying immovable property. For example, a legal firm's general opinion with respect to the capital gains tax liability arising from the sale of a commercial property in India is basically advice on taxation legislation in general even though it relates to the subject of an immovable property. This will not be treated as a service in respect of the immovable property.

3.3.3 Examples of land-related services

- i) Services supplied in the course of construction, reconstruction, alteration, demolition, repair or maintenance (including painting and decorating) of any building or civil engineering work;
- ii) Renting of immovable property;
- iii) Services of real estate agents, auctioneers, architects, engineers and similar experts or professional people, relating to land, buildings or civil engineering works. This includes the management, survey or valuation of property by a solicitor, surveyor or loss adjuster.
- iv) Services connected with oil/gas/mineral exploration or exploitation relating to specific sites of land or the seabed.
- v) The surveying (such as seismic, geological or geomagnetic) of land or seabed.
- vi) Legal services such as dealing with applications for planning permission.
- vii) Packages of property management services which may include rent collection, arranging repairs and the maintenance of financial accounts.
- viii) The supply of hotel accommodation or warehouse space.

3.3.4 What if a service is not directly related to immovable property?

The place of provision of services rule applies only to services which relate directly to specific sites of land or property. It does not apply if a supply of services has only an

indirect connection with the immovable property, or if the service is only an incidental component of a more comprehensive supply of services.

For example, the services of an architect contracted to design the landscaping of a particular resort hotel in Goa would be land-related. However, if an interior decorator is engaged by a retail chain to design a common décor for all its stores in India, this service would not be land-related. The default rule i.e. Rule 3 will apply in this case.

3.3.5 Examples of services which are not land-related

- i) Repair and maintenance of machinery which is not permanently installed. This is a service related to goods.
- ii) Advice or information relating to land prices or property markets because they do not relate to specific sites.
- iii) Land or Real Estate Feasibility studies, say in respect of the investment potential of a developing suburb, since this service does not relate to a specific property or site.
- iv) Services of a Tax Return Preparer in simply calculating a tax return from figures provided by a business in respect of rental income from commercial property.

3.4 Rule 6- Services relating to Events

3.4.1 What is the place of provision of services relating to events?

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

3.4.2 What are the services that will be covered in this category?

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

Illustration 1

A management school located in USA intends to organize a road show in Mumbai and New Delhi for prospective students. Any service provided by an event manager, or the right to entry (participation fee for prospective students, say) will be taxable in India.

Illustration 2

An Indian fashion design firm hosts a show at Toronto, Canada. The firm receives the services of a Canadian event organizer. The place of provision of this service is the location of the event, which is outside the taxable territory. Any service provided in relation to this event, including the right to entry, will be non-taxable.

3.4.3 What is a service ancillary to admission?

A service of hiring a specific equipment to enjoy the event at the venue (against a charge that is not included in the price of entry ticket) is an example of a service that is ancillary to admission. For example, the service of providing facility of golf carts (with attendant/driver) to elderly persons, to facilitate their movement within the golf course, during a golf tournament.

3.4.4 What are event-related services that would be treated as not ancillary to admission to an event?

A service of courier agency used for distribution of entry tickets for an event is a service that is not ancillary to admission to the event.

3.5 Rule 7- Part performance of a service at different locations

3.5.1 What does this Rule imply?

This Rule covers situations where the actual performance of a service is at more than one location, and occasionally one (or more) such locations may be outside the taxable territory.

This Rule states as follows:-

“Where any service stated in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided”.

The following example illustrates the application of this Rule:-

Illustration 1

An Indian firm provides a 'technical inspection and certification service' for a newly developed product of an overseas firm (say, for a newly launched motorbike which has to meet emission standards in different states or countries). Say, the testing is carried out in Maharashtra (20%), Kerala (25%), and an international location (say, Colombo 55%).

Notwithstanding the fact that the greatest proportion of service is outside the taxable territory, the place of provision will be the place in the taxable territory where the greatest proportion of service is provided, in this case Kerala.

3.6 Rule 8- Services where the Provider as well as Receiver is located in Taxable Territory

3.6.1 What is the place of provision of a service where the location of the service provider and that of the service receiver is in the taxable territory?

The place of provision of a service, which is provided by a provider located in the taxable territory to a receiver who is also in the taxable territory, will be the location of the receiver.

3.6.2 What is the implication of this Rule?

This Rule covers situations where the place of provision of a service provided in the taxable territory may be determinable to be outside the taxable territory, in terms of the application of one of the earlier Rules i.e. Rule 4 to 6, but the service provider, as well as the service receiver, are located in the taxable territory.

The implication of this Rule is that in all such cases, the place of provision will be deemed to be in the taxable territory, notwithstanding the earlier rules. The presence of both the service provider and the service receiver in the taxable territory indicates that the place of consumption of the service is in the taxable territory. Moreover, it is not possible for any other taxing jurisdiction to be able to tax the provision of such services in the ordinary course.

Similarly, in case of services rendered, where both the provider and receiver of the service are located outside the taxable territory, there is no mechanism to collect tax.

Illustration

A helicopter of Pawan Hans Ltd (India based) develops a technical snag in Nepal. Say, engineers are deputed by Hindustan Aeronautics Ltd, Bangalore, to undertake repairs at the site in Nepal. But for this rule, Rule 4, sub-rule (1) would apply in this case, and the place of provision would be Nepal i.e outside the taxable territory. However, by application of Rule 7, since the service provider, as well as the receiver, are located in the taxable territory, the place of provision of this service will be within the taxable territory.

3.7 Rule 9- Specified services- Place of provision is location of the service provider

3.7.1 What are the specified services where the place of provision is the location of the service provider?

Following are the specified services where the place of provision is the location of the service provider:-

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

3.7.2 What is the meaning of “account holder”? Which accounts are not covered by this rule?

“Account” has been defined in the rules to mean an account which bears an interest to the depositor. Services provided to holders of demand deposits, term deposits, NRE (non-resident external) accounts and NRO (non-resident ordinary) accounts will be covered under this rule. Banking services provided to persons other than account holders will be covered under the main rule (Rule 3- location of receiver).

3.7.3 What are the services that are provided by a banking company to an account holder (holder of an account bearing interest to the depositor)?

Following are examples of services that are provided by a banking company or financial institution to an “account holder”, in the ordinary course of business:-

- i) services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc;
- ii) transfer of money including telegraphic transfer, mail transfer, electronic transfer etc.

3.7.4 What are the services that are not provided by a banking company or financial institution to an account holder, in the ordinary course of business, and will consequently be covered under another Rule?

Following are examples of services that are generally NOT provided by a banking company or financial institution to an account holder (holder of a deposit account bearing interest), in the ordinary course of business:-

- i) financial leasing services including equipment leasing and hire-purchase;
- ii) merchant banking services;
- iii) Securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;
- iv) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services;
- v) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy;
- vi) banker to an issue service.

In the case of any service which does not qualify as a service provided to an account holder, the place of provision will be determined under the default rule i.e the Main Rule 3. Thus, it will be the location of the service receiver where it is known (ascertainable in the ordinary course of business), and the location of the service provider otherwise.

3.7.5 What is the place of provision of telecommunication services?

The place of provision of telecommunication services provided to subscribers is the location of the service provider. Thus, a provider of telecommunication services, who is located in India, will be liable to pay tax on any service provided to a subscriber. For services provided to persons other than subscribers e.g. telecommunication services provided to another provider of telecommunication services, the place of provision will be determined in terms of the main rule i.e. the location of the receiver, the obvious implication being that if such receiver is not located in the taxable territory, the service will not be taxable.

3.7.6 What are “Online information and database access or retrieval services”?

“Online information and database access or retrieval services” are services in relation to on-line information and database access or retrieval or both, in electronic form through computer network, in any manner. Thus, these services are essentially delivered over the internet or an electronic network which relies on the internet or similar network for their provision. The other important feature of these services is that they are completely automated, and require minimal human intervention.

Examples of such services are:-

- i) online information generated automatically by software from specific data input by the customer, such as web-based services providing trade statistics, legal and financial data, matrimonial services, social networking sites;
- ii) digitized content of books and other electronic publications, subscription of online newspapers and journals, online news, flight information and weather reports;
- iii) Web-based services providing access or download of digital content.

The following services will not be treated as “online information and database access or retrieval services”:-

- i) Sale or purchase of goods, articles etc over the internet;
- ii) Telecommunication services provided over the internet, including fax, telephony, audio conferencing, and videoconferencing;
- iii) A service which is rendered over the internet, such as an architectural drawing, or management consultancy through e-mail;
- iv) Repair of software, or of hardware, through the internet, from a remote location;
- v) Internet backbone services, and internet access services.

3.7.7 What are “Intermediary Services”?

An “intermediary” is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without material alteration or further processing. Thus, an intermediary is involved with two supplies at any one time:

- i) the supply between the principal and the third party; and
- ii) the supply of his own service (agency service) to his principal, for which a fee or commission is usually charged.

For the purpose of this rule, an intermediary in respect of goods (commission agent i.e a buying or selling agent) is excluded by definition.

In order to determine whether a person is acting as an intermediary or not, the following factors need to be considered:-

Nature and value: An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the principal must know the exact value at which the service is supplied (or obtained) on his

behalf, and any discounts that the intermediary obtains must be passed back to the principal.

Separation of value: The value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging. It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as "commission".

Identity and title: The service provided by the intermediary on behalf of the principal are clearly identifiable.

In accordance with the above guiding principles, services provided by the following persons will qualify as 'intermediary services':-

- i) Travel Agent (any mode of travel)
- ii) Tour Operator
- iii) Stockbroker
- iv) Commission agent [an agent for buying or selling of goods is excluded]
- v) Recovery Agent

Even in other cases, wherever a provider of any service acts as an agent for another person, as identified by the guiding principles outlined above, this rule will apply.

3.7.8 What is a service consisting of "hiring of means of transport"?

The services of providing a hire or lease, without the transfer of right to use (explained in Guidance Paper A- point 5.6) of any of the following will constitute a service consisting of hiring of means of transport:-

- i) Land vehicles such as motorcars, buses, trucks;
- ii) Vessels;
- iii) Aircraft;
- iv) Vehicles designed specifically for the transport of sick or injured persons;
- v) Mechanically or electronically propelled invalid carriages;
- vi) Trailers, semi-trailers and railway wagons.

The following are not 'means of transport':-

- i) Racing cars;
- ii) Containers used to store or carry goods while being transported;
- iii) Dredgers, or the like.

3.7.9 What if I provide a service of hiring of a fleet of cars to a company on an annual contract? What will be place of provision of my service if my business establishment is located in New Delhi, and the company is located in Faridabad (Haryana)?

This Rule covers a situation where the hiring is for a period of upto one month. Since hiring period is more than one month, this sub-rule cannot be applied to the situation. The place of provision of your service will be determined in terms of the default rule i.e Rule 3 i.e. receiver location, which in this case is Faridabad (Haryana).

3.8 Rule 10- Place of Provision of a service of transportation of goods

3.8.1 What are the services covered under this Rule?

Any service of transportation of goods, by any mode of transport (air, vessel, rail or by a goods transportation agency), is covered here. However, transportation of goods by courier or mail is not covered here.

3.8.2 What is the place of provision of a service of transportation of goods?

Place of provision of a service of transportation of goods is the place of destination of goods, except in the case of services provided by a Goods Transportation Agency for transportation of goods by road, in which case the place of provision is the location of the person liable to pay tax (as determined in terms of rule 2(1)(d) of Service Tax Rules, 1994.

Illustration

A consignment of cut flowers is consigned from Chennai to Amsterdam. The place of provision of goods transportation service will be Amsterdam (outside India, hence not liable to service tax). Conversely, if a consignment of crystal ware is consigned from Paris to New Delhi, the place of provision will be New Delhi.

3.8.3 What does the proviso to this Rule imply?

The proviso to this Rule states as under:-

“Provided that the place of provision of services of transportation of goods by goods transportation agency shall be the location of the person liable to pay tax.”

Sub-rule 2(1)(d) of Service Tax Rules, 1994 provides that where a service of transportation of goods is provided by a ‘goods transportation agency’, and the consignor or consignee is covered under any of the specified categories prescribed therein, the person liable to tax is the person who pays, or is liable to pay freight (either himself or through his agent) for the transportation of goods by road in a goods carriage. If such person is located in non-taxable territory, then the person liable to pay tax shall be the service provider. The proviso to Rule 10 of these rules

specifies that in the case where services of transportation of goods is provided by a goods transportation agency, the place of provision of such service will be the place where the person liable to pay tax, as determined in accordance with sub-rule 2(1)(d) of Service Tax Rules, 1994, is located. The implication is that the tax will be liable to be paid by the service provider, and consequently the place of provision will also be the location of the service provider.

Illustration 1

A goods transportation agency ABC located in Delhi transports a consignment of new motorcycles from the factory of XYZ in Gurgaon (Haryana), to the premises of a dealer in Bhopal, Madhya Pradesh. Say, XYZ is a registered assessee and is also the person liable to pay freight and hence person liable to pay tax, in this case. Here, the place of provision of the service of transportation of goods will be the location of XYZ i.e Haryana.

Illustration 2

A goods transportation agency ABC located in Delhi transports a consignment of new motorcycles from the factory of XYZ in Gurgaon (Haryana), to the premises of a dealer in Jammu (non-taxable territory). Say, as per mutually agreed terms between ABC and XYZ, the dealer in Jammu is the person liable to pay freight. Here, in terms of amended provisions of rule 2(1)(d), since the person liable to pay freight is located in non-taxable territory, the person liable to pay tax will be ABC. Accordingly, the place of provision of the service of transportation of goods will be the location of ABC i.e. Delhi.

3.9 Rule 11- Passenger Transportation Services

3.9.1 What is the place of provision of passenger transportation services?

The place of provision of a passenger transportation service is the place where the passenger embarks on the conveyance for a continuous journey.

3.9.2 What does a “continuous journey” mean?

A “continuous journey” means a journey for which:-

- (i) a single ticket has been issued for the entire journey; or
- (ii) more than one ticket or invoice has been issued for the journey, by one service provider, or by an agent on behalf of more than one service providers, at the same time, and there is no scheduled stopover in the journey

3.9.3 What is a “stopover”?

“Stopover” means a place where a passenger disembarks from the conveyance.

3.9.4 The Table below contains illustrations which explain the principle enunciated in this Rule.

Illustrations

S. No.	Journey	Place of Provision	Taxability
Single Ticket			
1	Mumbai-Delhi	Mumbai	Yes, Mumbai, being the place of only embarkation
2	Mumbai-Delhi-Mumbai	Mumbai	Yes, Mumbai, being the place of embarkation where the continuous journey begins
3	Mumbai-Delhi-London-Delhi-London	Mumbai	-do-
4	Delhi-London-New York-London-New York	Delhi	Yes, New Delhi, being the place of provision for continuous journey with single ticket
5	Delhi-London-New York	Delhi	-do-
6	New York-London-Delhi	New York	No, New York is place of provision for continuous journey with single ticket
7	New York-London-Delhi-Mumbai-Delhi-London-New York	New York	-do-
More than one ticket for a journey (issued by a single service provider, or by a single agent, for more than one service providers)			
1	(a) Delhi-Bangkok-Delhi (b) Bangkok-Bali-Bangkok	Delhi is place of provision for journey (a); Bangkok is place of provision for journey (b)	Journey (a) is taxable since place of provision is in taxable territory; Journey (b) is not taxable since place of provision is outside taxable territory
2	(a) Delhi-New York-Delhi (b) New York-Boston-	Delhi is place of provision for journey	Journey (a) is taxable since place of provision

	New York	(a); New York is place of provision for journey (b)	is in taxable territory; Journey (b) is not taxable since place of provision is not in taxable territory.
3	(a) London-Delhi-London (b) Delhi-Chandigarh (c) Chandigarh-Amritsar (d) Amritsar-Delhi	London is place of provision for journey (a); Delhi is place of provision for journey (b); Chandigarh is place of provision for journey (c); Amritsar is place of provision for journey (d)	Journey (a) is not taxable since place of provision is outside taxable territory; Journeys (b), (c) and (d) are taxable since place of provision is in taxable territory.
4	(a) Jammu-Delhi-Jammu (b) Delhi-Bangkok-Delhi	Jammu is place of provision for journey (a); Delhi is place of provision for journey (b)	Journey (a) is not taxable since place of provision is outside taxable territory Journey (b) is taxable, since place of provision is in taxable territory
5	(a) Jammu-Delhi (b) Delhi-Bangkok-Delhi (c) Delhi-Lucknow (d) Lucknow-Jammu	Jammu is place of provision for journey (a); Delhi is place of provision for journey (b); Delhi is place of provision for journey (c); Lucknow is place of provision for journey (d)	Journey (a) is not taxable since place of provision is not in taxable territory; Journeys (b), (c) and (d) are taxable since place of provision is in taxable territory.

3.10 Rule 12- Services provided on board conveyances

3.10.1 What are services provided on board conveyances?

Any service provided on board a conveyance (aircraft, vessel, rail, or roadways bus) will be covered here. Some examples are on-board service of movies/music/video/software games on demand, beauty treatment etc, albeit only when provided against a specific charge, and not supplied as part of the fare.

3.10.2 What is the place of provision of services provided on board conveyances?

The place of provision of services provided on board a conveyance during the course of a passenger transport operation is the first scheduled point of departure of that conveyance for the journey.

Illustration

A video game or a movie-on-demand is provided as on-board entertainment during the Kolkata-Delhi leg of a Bangkok-Kolkata-Delhi flight. The place of provision of this service will be Bangkok (outside taxable territory, hence not liable to tax).

If the above service is provided on a Delhi-Kolkata-Bangkok-Jakarta flight during the Bangkok-Jakarta leg, then the place of provision will be Delhi (in the taxable territory, hence liable to tax).

3.11 Rule 13- Power to notify services or circumstances

3.11.1 What is the implication of this Rule?

This Rule states as follows:-

“In order to prevent double taxation or non-taxation of the provision of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service.”

The rule is an enabling power to correct any injustice being met due to the applicability of rules in a foreign territory in a manner which is inconsistent with these rules leading to double taxation or double non-taxation. Due to the cross border nature of many services it is also possible in certain situations to set up businesses in a non-taxable territory while the effective enjoyment, or in other words consumption, may be in taxable territory. This rule is also meant as an anti-avoidance measure where the intent of the law is sought to be defeated through ingenious practices unknown to the ordinary ways of conducting business.

3.12 Rule 14- Order of application of Rules

3.12.1 What is the implication of this Rule?

Rule 14 provides that where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration.

This Rule covers situations where the nature of a service, or the business activities of the service provider, may be such that two or more rules may appear equally applicable.

Following illustrations will make the implications of this Rule clear:-

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 tax 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 tax would be taxable in India.

By application of Rule 15, the later of the Rules i.e Rule 8 would be applied to determine the place of provision.

DRAFT PLACE OF PROVISION OF SERVICES RULES, 2012**NOTIFICATION NO. ___/2012-ST [GSR ___ (E), DATED __. __. 2012]**

In exercise of the powers conferred by sub-section (1) of section 66C and clause (hhh) of sub-section (2) of section 94 of the Finance Act, 1994 and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue, number 9/2005-ST dated March 3, 2005 published in the Gazette of India Extraordinary, Part II, ...vide number GSR.....dated....., and the notification of the Government of India in the Ministry of Finance, Department of Revenue, number 11/2006-ST dated May 19, 2006 published in the Gazette of India Extraordinary, Part II, ...vide number GSR.....dated....., except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules for the purpose of determination of the place of provision of services, namely:-

1. Short title, extent and commencement.- (1) These rules may be called the Place of Provision of Services Rules, 2012.

(2) They shall come into force on ___ day of.....2012.

2. Definitions.- In these rules, unless the context otherwise requires, -

- (a) "Act" means the Finance Act, 1994 (32 of 1994);
- (b) "account" means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;
- (c) "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);
- (d) "continuous journey" means a journey for which a single or more than one ticket or invoice is issued at the same time, either by one service provider or through one agent acting on behalf of more than one service provider, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued;
- (e) "financial institution" has the meaning assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);
- (f) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of service between two or more persons;
- (g) "leg of journey" means a part of the journey that begins where passengers embark or disembark the conveyance, or where it is stopped to allow for its servicing or refueling, and ends where it is next stopped for any of those purposes;
- (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 fixed, the establishment most directly concerned with the provision of the service; and
 - (iv) in the absence of such places, the usual place of residence of the service provider.
 - (i) “location of the service receiver” means:-
 - (A). where the service receiver has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;
 - (B). where the service receiver is not covered under sub-clause (A):
 - (i) the location of his business establishment; or
 - (ii) where services are received 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 received 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 service receiver.
- 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.
- (j) “means of transport” means any conveyance designed to transport goods or persons from one place to another;
 - (k) “non-banking financial company” means-
 - (i) a financial institution which is a company; or
 - (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or
 - (iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette specify;
 - (l) “online information and database access or retrieval services” means providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;
 - (m) “person liable to pay tax” shall mean the person liable to pay service tax under section 68 of the Act or under sub-clause (d) of sub-rule (1) of rule (2) of the Service Tax Rules, 1994.
 - (n) “provided” includes the expression “to be provided”;
 - (o) “received” includes the expression “to be received”;
 - (p) “registration” means the registration under rule 4 of the Service Tax Rules, 1994;
 - (q) words and expressions used in these rules and not defined, but defined in the Act, shall have the meanings respectively assigned to them in the Act.

3. Place of provision generally.- The place of provision of a service shall be the location of the service receiver:

Provided that 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 service provider.

4. Place of provision of performance based services.- The place of provision of following services shall be the location where the services are actually performed, namely:-

(a) services provided in respect of goods that are required to be made physically available by the service receiver to the service provider, in order to provide the service:

Provided that when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service;

(b) services provided in conjunction with the supply of goods under another contract by the service provider;

(c) services provided entirely or predominantly, in the ordinary course of business, in the physical presence of an individual, represented either as the service receiver or a person acting on behalf of the receiver.

5. Place of provision of services relating to immovable property.- The place of provision of services provided directly in relation to an immovable property, including services provided in this regard by experts and estate agents, provision of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or coordination of construction work, including architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

6. Place of provision of services relating to events.- The place of provision of services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission, shall be the place where the event is actually held.

7. Place of provision of services provided at more than one location.- Where any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided.

8. Place of provision of services where provider and receiver are located in taxable territory.- Place of provision of a service, where the location of the service provider as well as that of the service receiver is in the taxable territory, shall be the location of the service receiver.

9. Place of provision of specified services.- The place of provision of following services shall be the location of the service provider:-

- a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;
- b) Telecommunication services provided to subscribers;
- c) Online information and database access or retrieval services;
- d) Intermediary services;
- e) Service consisting of hiring of means of transport, upto a period of one month.

10. Place of provision of goods transportation services.- The place of provision of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of the goods:

Provided that the place of provision of services of goods transportation agency shall be the location of the person liable to pay tax.

11. Place of provision of passenger transportation services.- The place of provision in respect of a passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.

12. Place of provision of services provided on board a conveyance.- Place of provision of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

13. Powers to notify description of services or circumstances for certain purposes.- In order to prevent double taxation or non-taxation of the provision of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service.

14. Order of application of rules.- Notwithstanding anything stated in any rule, where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration.

Common registration formalities with Central excise and draft amendments to Service Tax Rules 1994

In the Service Tax Rules, 1994, in rule 4, the sub-rules (1) to (8) shall be omitted and in the rule 4 the following sub-rules shall be inserted namely:-

(1) Every Assessee shall make an application electronically through the Automation of Central Excise and Service Tax (ACES) system for registration in EST Registration Form within a period of 30 days from the date on which service tax under section 66 of the Finance Act, 1994 (32 of 1994) has been levied on a service making the assessee liable to pay the service tax..

Provided that where the assessee commences his business after such service tax has already been levied, he shall make an application for registration within a period of thirty days from the date of such commencement.

(2) The Central Board of Excise and Customs may, by an order specify the documents which are to be submitted along with the application for registration and the time period within which the documents have to be submitted.

(3) Where the assessee is providing taxable services from or receiving taxable service at more than one premise, he shall make separate applications for registration in respect of each of such premises to the respective jurisdictional Superintendent or Superintendants of Central Excise.

(4) Notwithstanding anything contained in sub-rule (3) where the assessee,

- a. provides such service from more than one premises; or
- b. receives such service in more than one premises; or
- c. is having more than one premises, which are engaged in relation to such service in any other manner, making such person liable for paying service tax,

and has centralized billing system or centralized accounting system in respect of such service, and such centralized billing or centralized accounting systems are located in one or more premises, he may, at his option, centrally register at the premises from where the centralized billing or accounting is done.

(5) When there is any change in or addition to the information that has been furnished earlier, such change or addition shall be intimated by the assessee to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be, within a period of thirty days of such change or addition.

(6) The registration on an application made under sub-rule (1) or sub-rule (4), as the case may be, shall be granted by the Superintendent of Central Excise.

(7) The Superintendent of Central Excise shall grant a certificate of registration or a revised certificate of registration pursuant to information furnished under sub-

rule (5) in Form ST-2 within seven days from the date of receipt of the completed application or the information under sub-rule (5). If the registration certificate or the revised certificate is not granted within the said period, the registration applied for shall be deemed to have been granted or the information furnished under sub-rule (5) shall be deemed to be incorporated in the registration certificate.

(8) Where the registered assessee transfers his business to another person, the transferee shall obtain a fresh certificate of registration.

(9) Every registered assessee who ceases to provide taxable services shall submit his request for surrender of his registration certificate to the Superintendent of Central Excise within seven days after submitting the return for the period in which he ceases to provide taxable service or within seven days of the due date for submitting the return for the said period, as provided under rule 7 of these rules, whichever is earlier.

(10) Notwithstanding anything contained in sub-rule (9) the jurisdictional Assistant Commissioner or the Deputy Commissioner of Central Excise shall cancel the registration certificate of an assessee who has ceased to provide taxable services after due intimation to the assessee.

(11) On receipt of the request for surrender under sub-rule (9) and before the cancellation under sub-rule (10), the Superintendent of Central Excise or the Assistant Commissioner or Deputy Commissioner as the case may be shall ensure that any action under the provisions of the Act and the rules and notifications issued there under, including payment of any monies due to the Central Government, is not pending against the assessee, and thereupon accept the request for surrender or as the case may be, cancel the registration certificate.

(12) Nothing contained in the above amendment to these rules shall effect the validity of the Order No. 2/2011 – Service Tax dated 13.12.2011 issued by the Central Board of Excise and Customs and the registration granted prior to the date from which this amendment to these rules become effective.

(13) The Form 'EST –X Registration Form' is appended hereto.

Annexure “D”

EST Registration Form										
1	Application for registration			New		Amendment				
				Central Excise		Service Tax				
2	Name of applicant									
3	Name of business									
4	PAN		Applicant		Business					
5	Constitution of business									
	Proprietorship		Hindu Undivided Family (HUF)			Govt. Deptt.				
	Partnership		Private Limited Company			PSU's				
	Unlimited Company		Public Limited Company			LLP's				
	Society/ Club/ Trust		Others							
6	Indicate existing registrations of the same legal entity:									
	Central Excise		Y/N		CST Registration No		Y/N			
	Service Tax		Y/N		IEC No		Y/N			
	State VAT (TIN)		Y/N		Corporate Identification No		Y/N			
7	Investment in land, plant and machinery (Rs. lakhs) (for Central Excise registration):									
8	Whether applied for centralized registration (for Service Tax registration):									
9	Details of place of business including head office (if multiple premises give information for each)									
	Name of premises/ Building									
	Flat/ Floor/Door/Block No									
	Road/ Street/ Lane									
	Block/ Taluka/ Subdivision/ Town									
	Post office									
	Pin code				Census code					
	Premises		Owned		Leased/ Rented		Telephone No.			
	E-mail address				Fax No					
	Whether invoices issued from the premises						Y/N			
	Nature of business activities carried out at this premises (please tick appropriate):									
	Factory		EOU/ STPI/ EHTP		Service provider		Dealer			
	Importer		Input service distributor		Service recipient		Warehouse			
	Depot		Head office							
	10	Details of bank account (Give details of all the bank accounts used for conducting business):								
	Name of the bank				IFSC Code					
	A/c No.			Type of account		MICR No				
	Name of premises/ Building									
	Flat/ Floor/Door/Block No									
	Road/ Street/ Lane									
	Block/ Taluka/ Subdivision/ Town									
	Post office									

	Pin code					Census code	
11	Details of persons (including the authorized signatory) responsible for conducting business:						
	Name of the person		First Name	Middle Name	Surname		
	Father's name		First Name	Middle Name	Surname		
	Designation			Passport No			
	Gender	M/F	PAN		DIN		Email
	Address			Present	Permanent		
	Name of premises/ Building						
	Flat/ Floor/Door/Block No.						
	Road/ Street/ Lane						
	Block/ Taluka/ Subdivision/ Town						
	Post office						
	Pin code						
	If engaged in any other business, give the name of business						
12	Details of goods and output services provided in which the business deals:						
	Sl.No.	Description of goods/ services		CETH/ Clause (105) of section 65 of Finance Act, 1994			
13	Verification						
	I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my/ our knowledge and belief and nothing has been concealed therefrom						
				Signature of applicant			
	Place			Name of applicant			
	Date			Designation			

EST Return for Central Excise and Service Tax

1	Period of Return		2	Central Excise/ Service Tax														
3	Name of the Assessee																	
4	Registration Number	Central Excise																
		Service Tax																
5	Computation of CENVAT/ Service Tax Payable																	
	Description of Goods/ Services	CETSH	Exemption Claimed	Effective rate of duty/ Service Tax	Quantity Cleared	Total Taxable/ Dutiable Value	CENVAT/ Service Tax payable											Remarks
6	Details of CENVAT Credit taken and utilized																	
	Details of Credit				CENVAT/ Service Tax	AED (TTA)	NCCD	ADE*	Addl Duty**	Edu. Cess**								
1	Opening Balance																	
2	Credit on Inputs																	
3	Credit on Capital Goods																	
4	Credit on Input Services																	
5	Credit from inter-unit transfers in LTU																	
6	Credit taken under Rule 12BB(2) of CER, 2002																	
	Credit Utilization for payment:																	
7	Of CENVAT on goods/ Service Tax on Output Services																	
8	When inputs/ Capital goods cleared as such																	
9	Of amount under Rule 6 of CCR, 2004																	
10	Adjustments under STR																	
11	Other payments																	
12	Inter unit transfer of credit by LTU																	
13	Closing balance																	
7	Details of payment made																	
	Description	Duty Code	Account		Challan		BSR Code	Total Paid										
			Credit	Cash	Date	Number												
	CENVAT																	
	Service tax																	
	Education Cess																	
	Secondary Education Cess																	
	Cess																	
	NCCD																	
	Other Duties & Cess																	
	Adjustments under STR																	
	Arrears Rule 8																	
	Other Arrears																	
	Interest Rule 8																	
	Other Interests																	
	Other payments																	

*ADE levied under clause 85 of Finance Act 2005

***Education Cess & Secondary education Cess

**Additional duty of Customs levied under Section 3(5) of Customs Tariff Act, 1985.

