

**NEGATIVE LIST & MEGA EXEMPTION NOTIFICATION UNDER SERVICE TAX****- A DISCUSSION PAPER****LIST OF SERVICES COVERED UNDER NEGATIVE LIST****1.0 Brief overview of the new system of taxation of services based on Negative List Principle**

Budget 2012 has ushered a new comprehensive system of taxation of services based on the principle of Negative List. The new changes are a paradigm shift from the existing system where only services of specified descriptions were subjected to tax. The concept of taxation of services based on a negative list principle was put forth initially for public discussion by the Finance Minister by release of Concept Paper on “**Taxation of service based on a negative list of services**” in August 2011. In the Budget Speech of FY 2012-13, the Finance Minister officially announced the introduction of new scheme of taxation of services based on negative list principle by stating that:

*“The negative list comprises of **17 heads** and has been carefully drawn up, keeping in view of the **federal nature of our policy**, the **best international practices** and our **socio-economic requirements**”*

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.

Under the new system of taxation of services, *all services provided in the taxable territory by a person to another for a consideration other than the services specified in the negative list are liable to service tax* [Section 66B of the Finance Act, 1994 (in short ‘the Act’)]. The services specified in the negative list, therefore, go out of the ambit of chargeability. Further, in addition to the services specified in the Negative List, exemptions have been granted to certain services. Thus, all services other than those which are specified in the Negative List or otherwise exempted by Notification are chargeable to service tax.



2.0 Services covered under the Negative List [Section 66D of the Act]

Section 65B(34) of the Act defines negative list as **services listed in Section 66D of the Act.**

Section 66D states that the Negative List comprises of the following services:

- (a) **Services provided by Government or a Local Authority** except for (i) services provided by the Posts Department by way of speed post, express parcel post, life insurance & agency services to a person other than Government; (ii) services in relation to a vessel or an aircraft inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers and (iv) support services, other than those covered by clauses (i) to (iii) above, to business entities;
 - For services mentioned at (i) to (iii) above, service tax would be payable by the concerned department itself. However, for the support services provided by the Government to business entities, other than support services by way of renting of immovable property, service tax would be payable by the service receiver i.e. the business entities under reverse charge mechanism in terms of **Notification No. 30/2012-ST dated 20-06-2012.**
 - Services which are provided by Government in terms of their sovereign right to business entities are not support services e.g. Grant of mining rights, Government audits etc.
- (b) **Services by the Reserve Bank of India;**
- (c) **Services by a foreign diplomatic mission located in India;**
- (d) **Services relating to Agriculture or Agricultural Produce** by way of (i) agricultural operations; (ii) Supply of labour; (iii) processes carried out at agricultural farm; (iv) renting or leasing of agro machinery or vacant land with/without structure; (v) loading, unloading, packing, storage or warehousing of agricultural produce; (vi) agricultural extension services & (vii) services by any commission agent or board for sale/purchase of agricultural produce;
- (e) **Trading of goods;**
 - Forward contracts will 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.



- Auxiliary service provided by commission agent or a clearing and forwarding agent for trading of goods are not covered within the negative list, hence is taxable.
- (f) **Any process amounting to manufacture or production of goods;**
- Process amounting to manufacture or production of goods means a process on which duties of excise are leviable under the Central Excise Act or any process on which duties of excise are leviable under any State Act.
 - Any manufacture or production of goods which is excisable but is exempt from payment of excise duty, due to any exemption notification, is also covered within the negative list.
- (g) **Selling of space or time slots for advertisements other than advertisements broadcast by radio or television;**
- Sale of space or time for advertisement in print media, bill boards, public places (including stadium), buildings, cell phones, ATM, internet or aerial advertising are not taxable.
 - Services provided by advertisement agencies relating to making or preparation of advertisements are taxable.
 - 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, are taxable.
 - Canvassing advertisements for publishing on a commission basis are taxable.
- (h) **Services 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;**
- Access to a mall having a standalone amusement ride on payment of charges would be covered in the negative list.



- A club does not fall in the definition of an amusement facility and therefore access to such club would be taxable.
- Auxiliary services provided by a person, like an event manager, for organizing an entertainment event or by an entertainer to an entertainment event organizer are taxable.

(k) **Transmission or distribution of electricity by an electrical transmission or distribution authority;**

- Charges collected by a developer or a housing society for distribution of electricity within a residential complex would be covered under the negative list only if the developer or housing society is entrusted with such function by the Government or if it is a distribution licensee licensed for such distribution under the Electricity Act, 2003.
- Services provided by way of installation of gensets or similar equipment by private contractors for distribution of electricity is still taxable.

(l) **Services by way of education** - (i) pre-school education & 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;

- Services provided by International Schools giving international certifications are covered in the Negative list.
- Qualification recognised by a law of a foreign country will not be covered as the course should be recognised by an Indian law.
- Training given by private coaching institutes or tutors would not be covered as such training does not lead to grant of any recognized qualification.
- 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, lodging and boarding are inseparable. In this case since dominant



nature is determined by the service of education, hence the entire bundle would be treated as a negative list service.

(m) **Services by way of *renting of residential dwelling for use as residence*;**

- Residential dwelling has not been defined in the Act, but it is usually considered as any residential accommodation, but does not include hotel, guest house, lodge, house boat, inn, motel or any other similar place for temporary stay.
- If furnished flats are given on rent for temporary stay for different persons over a period of time, the same is not covered under the negative list.

(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) **Services by way of *transportation of passengers***, with or without accompanied belongings, by (i) a stage carriage; (ii) railways [except for first class & air conditioner coach]; (iii) metro, monorail or tramway; (iv) inland waterways; (v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India & (vi) metered cabs, radio taxis or auto rickshaws;

(p) **Service by way of *transportation of goods*** by (i) road ***except for goods transportation agency & courier agency***; (ii) an aircraft or a vessel from a place outside India up to the customs station of clearance in India; or (iii) by inland waterways &;

(q) ***Funeral, burial, crematorium or mortuary services including transportation of the deceased.***



LIST OF SERVICES COVERED UNDER MEGA EXEMPTION NOTIFICATION

3.0 Brief overview of Mega Exemption Notification

Under the erstwhile Service Tax Regime, there were 88 exemption notifications. While some existing exemptions have been built into the negative list, others, wherever necessary, have been retained as exemptions. For ease of reference and simplicity most of the exemptions are now a part of one single **Mega Exemption Notification No. 25/2012 dated 20-06-2012** [hereinafter referred to as Mega Exemption Notification], effective from 01-07-2012, which contains a compilation of exemptions provided to 39 categories of services specified therein.

In this regard, it would be pertinent to note the difference between the services specified in the negative list and those specified in the Mega Exemption Notification. While the services specified in the negative list are not taxable at all, being excluded from the charging section 66B of Finance Act, 1994 itself, the services specified in the Mega Exemption Notification although taxable have been specifically exempted by the Central Government in exercise of its powers conferred under Section 93(1) of the Act.

4.0 Categorization of Exemptions provided under Mega Exemption Notification

4.1 Exemption on Medical Services [Sl. No. 2, 3 & 7]

- **Health care** services by a **Clinical Establishment, an authorised Medical Practitioner or Para-Medics**
- Services by a **veterinary clinic** in relation to **health care of animals or birds**
- 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



4.2 Exemption on Religious & Charitable Services [Sl. No. 4 & 5]

- Services by an **entity registered under section 12AA of the Income tax Act, 1961** by way of **charitable activities**
- 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**

4.3 Exemption on Art, Culture or Sports [Sl. No. 8, 10, 11 & 16]

- Services by way of **training or coaching** in recreational activities relating to arts, culture or sports
- Services provided **to a recognised sports body** by (a) an individual as a **player, referee, umpire, coach or team manager** for participation in a sporting event organized by a recognized sports body & (b) **another recognised sports body**
- Services by way of **sponsorship of sporting events** organized by **specified organization or federation**
- 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**

4.4 Exemption on Education Services [Sl. No. 9 & 35]

- Services provided **to or by an educational institution** in respect of **education exempted from service tax**, by way of (a) **auxiliary educational services**; or (b) **renting of immovable property**
- Services of **public libraries** by way of lending of books, publications or any other knowledge-enhancing content or material



4.5 Exemption on Construction Services [Sl. No. 12, 13 & 14]

- Services provided **to the Government**, a local authority or a governmental authority by way of **construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration** of (a) civil structure or any other original works meant predominantly for use **other than for commerce, industry, or any other business or profession**; (b) a historical monument, archaeological site or remains of national importance; (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 water supply, water treatment or sewerage treatment or disposal & (f) a residential complex **predominantly meant for self-use** or the use of their employees or other persons specified in the *Explanation 1* to clause 44 of section 65 B of the said Act [such as Member of Parliament, State Legislature, Parliament, Municipalities or other local authorities]
- Services provided by way of **construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration** of (a) a road, bridge, tunnel, or terminal for road transportation for **use by general public**; (b) a civil structure or any other original works pertaining to a scheme under JNURM or Rajiv Awaas Yojana; (c) a building owned by an entity registered under Section 12AA of the Income tax Act, 1961 and meant **predominantly for religious use by general public** & (d) a pollution control or effluent treatment plant, **except located as a part of a factory** or a structure meant for funeral, burial or cremation of deceased
 - Construction of roads which are not for general public use [e.g. construction of roads in a factory or a residential complex] would be taxable
- Services by way of **construction, erection, commissioning, or installation** of original works pertaining to (a) an airport, port or railways, including monorail or metro; (b) **a single residential unit otherwise than as a part of a residential complex**; (c) low- cost houses up to a carpet area of 60 square metres per house in a housing project **approved by competent authority**; (d) **post- harvest storage infrastructure** for agricultural produce including a cold storages; or (e) **mechanised food grain handling system**, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages



4.6 Exemption on Hospitality Services [Sl. No. 18 & 19]

- Services by way of **renting of a hotel, inn, guest house, club, campsite or other commercial places** meant for residential or lodging purposes, having **declared tariff** of a unit of accommodation **below ₹ 1000/day or equivalent**
 - **Declared Tariff** includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air-conditioner, refrigerators or any other amenities, **but without excluding any discount offered** on the published charges for such unit. However, the tax will be liable to be paid on the amount actually charged i.e. declared tariff minus any discount offered.
- Services provided in relation to **serving of food or beverages by a restaurant**, eating joint or a mess, other than those having (i) the **facility of air-conditioning or central air-heating in any part** of the establishment, **at any time during the year, and** (ii) **a licence to serve alcoholic beverages**

4.7 Exemption provided on Transportation Related Services [Sl. No. 20 to 24]

- Services by way of **transportation by rail or a vessel** from one place in India to another of (a) petroleum and petroleum products; (b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; (c) defense or military equipments; (d) postal mail or mail bags; (e) **household effects**; (f) newspaper or magazines registered with the Registrar of Newspapers; (f) railway equipments or materials; (g) agricultural produce; (h) **foodstuff** excluding alcoholic beverages; or (i) chemical fertilizer and oilcakes
- Services provided **by a goods transport agency by way of transportation of** (a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage; (b) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed ₹ 1500/-; or (c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed ₹ 750/-



- Services by way of **giving on hire** (a) to a **state transport undertaking, a motor vehicle** meant to carry more than 12 passengers; or (b) to a **goods transport agency**, a means of transportation of goods
- **Transport of passengers**, with or without accompanied belongings, by (a) **air**, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal; (b) **a contract carriage for the transportation of passengers, excluding** tourism, conducted tour, charter or hire; or (c) **ropeway, cable car or aerial tramway**
- Services by way of **vehicle parking to general public** excluding leasing of space to an entity for providing such parking facility

4.8 Exemption on Intermediary Services [Sl. No. 29 & 30]

- Services by the **following persons** in respective capacities – (a) sub-broker or an authorised person to a stock broker; (b) authorised person to a member of a commodity exchange (c) mutual fund agent to a mutual fund or asset management company; (d) distributor to a mutual fund or asset management company; (e) selling or marketing agent of lottery tickets to a distributor or a selling agent; (f) selling agent or a distributor of SIM cards or recharge coupon vouchers; (g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or (h) **sub-contractor providing services by way of works contract** to another contractor providing **works contract services which are exempt**
- 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; (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 ₹ 150 Lakh in a financial year subject to the condition that such aggregate value had not exceeded ₹ 150 Lakh during the preceding financial year



4.9 Exemption on International Transactions [Sl. No. 31 & 34]

- Services by an **organiser** to any person in respect of a **business exhibition held outside India.**
- **Services received from a provider of service located in a non - taxable territory** by (a) Government, a local authority, a governmental authority or an individual in relation to any purpose **other than commerce, industry or any other business or profession**; (b) an entity registered under section 12AA of the Income tax Act, 1961 for the purposes of providing charitable activities; or (c) a person located in a non-taxable territory

4.10 Exemption on Public Utility Services [Sl. No. 25, 32, 38 & 39]

- Services **provided to Government, or a local authority** by way of (a) carrying out any activity in relation to any **function ordinarily entrusted to a municipality** in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or (b) repair or maintenance of a vessel or an aircraft
- Services by way of **making telephone calls** from (a) departmentally run public telephone; (b) guaranteed public telephone operating only for local calls; or (c) free telephone at airport and hospital where no bills are being issued
- Services by way of **public conveniences** such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets
- Services by a governmental authority by way of any activity in relation to any **function entrusted to a municipality** under article 243 W of the Constitution

4.11 Other Exemptions [Sl. No. 1, 6, 15, 17, 26, 27, 28, 33, 36 & 37]

- Services provided **to United Nations** or a specified international organization.
- Services provided by (a) **an arbitral tribunal** to (i) any person **other than a business entity**; or (ii) **a business entity** with a turnover **up to Rs. 10 Lakh in preceding financial year** or



(b) **an individual** as an advocate or a partnership firm of advocates by way of legal services to (i) an advocate or partnership firm of advocates providing legal services ; (ii) any person **other than a business entity**; or (iii) **a business entity** with a turnover **up to Rs. 10 Lakh in the preceding financial year**; or (c) a person represented on an arbitral tribunal to an arbitral tribunal.

- In respect of services provided to business entities, with a turnover **exceeding Rs. 10 Lakh** in the preceding financial year, tax is required to be paid on reverse charge by the 'Business Entities'. Business Entity is defined in Section 65B of the Act as 'any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession'. Thus, business entity would include sole proprietors as well. The business entity can, however, take input tax credit of such tax paid in terms of CENVAT Credit Rules, 2004, if otherwise eligible. The provisions relating to arbitral tribunal are also on similar lines.
- **Temporary transfer or permitting the use or enjoyment of a copyright** covered under clauses (a) or (b) of Section 13(1) of the Indian Copyright Act, 1957, relating to original literary, dramatic, musical, artistic works or cinematograph films.
- Services by way of **collecting or providing news** by an independent journalist, Press Trust of India or United News of India.
- Services of **general insurance business** provided under specified schemes.
- Services provided by **an incubatee** up to a total turnover of Rs. 50 Lakh in a financial year subject to the following conditions - (a) total turnover had not exceeded Rs. 50 Lakh during the preceding financial year; **and** (b) period of three years has not been elapsed from the date of entering into an agreement as an incubate.
- Service by an **unincorporated body or a non- profit entity** registered under any law for the time being in force, to its own members by way of **reimbursement of charges or share of contribution** (a) as a trade union; (b) for the provision of carrying out any activity which is exempt from the levy of service tax; or (c) up to an amount of Rs. 5000 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.

- Services by way of **slaughtering of animals**.
- Services by **Employees' State Insurance Corporation** to persons governed under the Employees' Insurance Act, 1948.
- Services by way of **transfer of a going concern**, as a whole or an independent part thereof
 - Transfer of a going concern means transfer of a running business which is capable of being carried on by the purchaser as an independent business, but shall not cover mere or predominant transfer of an activity comprising a service. Such sale of business as a whole will comprise comprehensive sale of immovable property, goods and transfer of unexecuted orders, employees, goodwill etc. Since the transfer in title is not merely a transfer in title of either the immovable property or goods or even both it may amount to service and has thus been exempted.



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