SERVICES APPLICABLE TO CA FINAL (NEW SYLLABUS) MAY 2010.

FRANCHISE SERVICES

Date of introduction : 01.07.2003 – vide Notification No. 7/2003 Dated 20.06.2003

Definition :

a) "Franchise" means an agreement by which-i) franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be, is involved; ii) the franchisor provides concepts of business operation to franchisee, including know how, method of operation, managerial expertise, marketing technique or training and standards of quality control except passing on the ownership of all know how to franchisee; iii) the franchisee is required to pay to the franchisor, directly or indirectly, a fee and iv) the franchisee is under an obligation not to engage in selling or providing similar goods or services or process, identified with any other person;

b) "franchisor" mean any person who enters into franchise with a franchisee and includes any associate of franchisor or a person designated by franchisor to enter into franchise on his behalf and the term "franchisee" shall be construed accordingly;

c) "taxable service" means any service provided to a franchisee, by the franchisor in relation to franchise; and the term "service provider" shall be construed accordingly.

Value of Taxable Service:

Value of taxable service shall be the gross amount charged by the service provider of such service rendered by him.

Scope of Service:

Service tax is payable on the gross amount charged by the franchisor from the Franchisee in relation to Franchise.

Board's Clarification: Circular No.59/8/2003 dated 20.06.2003

Franchise service is a service provided by Franchisor to a Franchisee. Section 65 of the Finance Act, 1994, (sub section 47) defines franchise as a specific type of agreement. This agreement has various ingredients, which have been specified in the said definition. For removal of doubt it is clarified that unle ss all the ingredients mentioned at (I) to (iv) of the said sub section are satisfied the agreement can not be called as franchise agreement. These ingredients are :

(i) the franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be, is involved;

(ii) the franchisor provides concepts of business operation to franchisee, including know how, method of operation, managerial expertise, marketing techniques or training and standards of quality control except passing on the ownership of all know how to franchisee;

(iii) the franchisee is required to pay to the franchisor, directly or indirectly, a fee; and

(iv) the franchisee is under an obligation not to engage in selling or providing similar goods or services or process, identified with any other person.
For example, the mere fact that a principal manufacturer has allowed production of goods bearing his brand name by another person under 'License Production Agreement', does not make the agreement a Franchise Agreement. A franchise agreement also includes the franchisee being obliged to follow the concept of business operation, managerial expertise, market techniques etc. of the franchisor and is under an obligation not to engage in selling, producing or providing similar goods or service, identified with any other person. Therefore, in the absence of such ingredients, a mere licensed production cannot be called as a franchise agreement and accordingly the license fees paid for such license production cannot be charged to Service Tax.

BANKING AND OTHER FINANCIAL SERVICES

Date of Introduction: 16.07.2001 vide Notification No.4/2001-ST dt.09.07.2001.
Definition:
As per section 65(10) of the Finance Act, 1994, "banking and financial services" means the following services provided by a banking company or a financial institution including a non banking financial company, namely *:*

(i) financial leasing services including equipment leasing and hire-purchase by a body corporate;

(ii) credit card services;

(iii) merchant banking services;

(iv) securities and foreign exchange (forex) broking;

(v) asset management including portfolio management, all forms of fund management, pension fund management, custodial depository and trust services, but does not include cash management;

(vi) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers a restructuring and strategy; and

vii) provision and transfer of information and data processing.

Taxable event and scope of service:

The taxable service, as per section 65(72)(zm) means any service provided, to a customer, by a banking company or a financial institution including a non banking financial company, in relation to banking and other financial services.

The definitions of 'banking', 'banking company', 'financial institution' and 'non-banking financial company' as per the Banking Regulation Act, 1949 and Reserve Bank of India Act, 1934 are given below:

"Banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise.

"Banking company" means any company which transacts the business of banking in India.

"Financial institution" means any non-banking institution, which carries on as its business or part of its business any of the following activities, namely

(i) the financing, whether by way of making loans or advances or otherwise, of any activity other than its own:

(ii) the acquisition of shares, stock, bonds, debentures or securities issued by a government or local authority or other marketable securities of like nature:

(iii) letting or delivering of any goods to a hirer under a hire-purchase agreement as defined in clause (c) of section 2 of the Hire Purchase Act. 1972 (26 of 1972):

(iv) the carrying of any class of insurance business:

(v) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries as defined in any law which is for the time being in force in any State, or any business, which is similar thereto;

(vi) collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lump-sum or otherwise, by way of subscription or by sale of units, or other instruments or in any other manner and awarding prizes or gifts whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person, but does not include any institution, which carries on as its principal business
(a) agricultural operations; or
(aa) industrial activity; or
(b) purchase or sale of any goods (other than securities) or providing of any service, or
(c) the purchase, construction or sale of immovable property, so, however, that no portion of the income of the institution is derived from the financing of purchases, construction or sales of immovable property by other persons.
"non-banking financial company " means
(i) a financial institution which is a company;

(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;

(iii) such other non-banking institution or class of such institutions, as the Bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

Financial services covered under the tax net are specifically mentioned in the definition itself.

1. Financial leasing including equipment leasing and hire purchase:

1.1 In case of financial leasing including equipment leasing and hire purchase, the service is taxable only if it is rendered by a body corporate. The term 'body corporate' has the meaning assigned to it in clause (7) of section 2 of the Companies Act, 1956. Briefly, body corporate means a private limited, public limited company or a Government company. Such companies should be either a banking company or a financial institution or non-banking financial company to come under the tax net. In other words individuals, proprietorship firms, partnership firms will not come under tax net. The leasing or hire purchase may be of motor vehicles, machinery, equipment or other goods.

1.2 In the case of leasing or hire purchase, it is understood that the general business practice is as follows: The service provider enters into a leasing or hire purchase agreement with the lessee or hire-purchaser. At the time of entering into the agreement, they collect a charge called lease management fee or processing fee or documentation charges or by any other name, which is usually a percentage of the transaction value. The lease rental or hire purchase amount is recovered in equated monthly instalments (EMI) over the period of lease or hire-purchase as indicated in the agreement through post dated cheques and no separate bills are raised for the monthly recovery. Every agreement bears a unique number.

1.3 The EMIs consist of recovery of principal amount (towards the original cost of the equipment) and finance /interest charges. The allocation between the principal and the finance/interest charges are known to and agreed upon by both the parties. The customer repayment schedule contains the details of the EMIs with the break up for the principal and the interest. In respect of leasing and hire purchase, the amount recovered as principal is not the consideration for services rendered but is credit
lessor/hire purchase service provider. The interest/finance charges are the revenue or income and are c
Such interest or finance charges together with the lease management fee/ processing fee/documentation
the services rendered and, therefore, they constitute the value of taxable service and Service Tax is payab

Service Tax in the case of financial leasing including equipment leasing and hire purchase will be leviable only on the lease management fee/processing fee/documentation charges (recovered at the time of entering into the agreement) and on the finance/interest charges (recovered in equated monthly instalments) and not on the principal amount.

2 Credit card services:

2.1 This is a service where the customer is provided with credit facility for purchase of goods and services in shops, restaurants, hotels, railway bookings, petrol pumps, utility bill payments, etc. Cash advances are also permitted upto specified limits in most of the cases. This service is provided by nationalized banks, multinational banks and private banks.

2.2 For rendering the service, the service provider collects joining fee, additional card fee, annual fee, replacement card fee, cash advance fee, charge slip/statement retrieval fee, surcharge/service charges on railway fare, fuel charges, and utility bill payments, charges on over limit accounts and late payment fee, interest on delayed payment, interest on revolving credit, etc. The fees may vary based on the type of card and from bank to bank. All these charges, including interest charges are made for the services rendered. Hence they all form part of the value of the taxable service in this case.

3 Merchant banking services:

Banks and Financial institutions including NBFCs providing merchant banking services are governed by the SEBI (Merchant Bankers) Rules, 1992 and SEBI (Merchant Bankers) Regulations, 1992. As per these rules and regulations, merchant banking service is any service provided in relation to issue management either by making arrangements regarding selling, buying or subscribing securities as manager, consultant, advisor or rendering corporate advisory service in relation to such issue management. This, inter-alia, consists of preparation of prospectus and other information relating to the issue, determining financial structure, tie up of financiers and final allotment and refund of the subscription for debt/ equity issue management and acting as advisor, consultant, comanager, underwriter and portfolio manager. In addition, merchant banking services also include advisory services on corporate restructuring, debt or equity restructuring, loan restructuring, etc. The fee charged by the merchant banker for rendering these services will be the taxable value in respect of this service.

4 Asset management including portfolio management and all forms of fund management, pension fund management, custodial depository and trust services.

4.1 Asset management and portfolio managers are also governed by the SEBI (Portfolio Managers) Rules, 1993 and SEBI (Portfolio Managers) Regulations, 1993. As per these rules and regulations, the “portfolio manager” means any person who pursuant to a contract or arrangement with a client, advises or directs or undertakes on behalf of the client (whether as discretionary manager or otherwise) the management or the administration of portfolio of securities or the funds of the client, as the case may be. They enter in agreement with the client and charge an agreed fee for providing the service. The tax will be leviable on the fee charged for providing these services. Similarly in the case of other types of fund management such as pension fund management, Service Tax will be leviable on the fee charged for providing the service.
4.2 Custodial depository services means safe keeping of securities of a client and providing services incidental thereto, and includes
(a) maintaining accounts of securities of a client;
(b) collecting the benefit of rights accruing to the client in respect of the securities;
(c) keeping the client informed of the action taken or to be taken by the issuer of securities, having a bearing on the benefits or rights accruing to the client; and
(d) maintaining & reconciling records of the services referred to in sub-clause (a) to (c). Taxable value is the fee charged for providing custodial services. However, Service Tax will not be leviable on NSDL or CSDL fees paid to the depositories and recovered from the customers on actual basis.

5. Other auxiliary financial services:

1 Some examples of other auxiliary financial services are investment and portfolio research and advice, advice given on mergers and acquisition, advice on corporate restructuring and strategy, market analysis and intelligence.

2 In the case of banks and financial institutions including NBFCs, while some services may be done in a centralized way (that is centralized billing and accounting) either at the head office or regional office, in respect of other services such as financial leasing including equipment leasing, specified branches may be providing the service with separate billing and accounting. In respect of a taxable service, where the billing and accounting is centralized in an office of the bank, only such office needs to be registered and made liable to pay Service Tax in respect of such service. Where the billing and accounting is not centralized and is undertaken by different branches of a bank or a financial institution including NBFCs, each such branch office will have to be registered and made responsible for payment of Service Tax and compliance with other procedural formalities.
(Ministry’s F.No.B-11/1/2001-TRU dt.09.07.2001)

Value of Taxable Service:

Value of taxable service shall be the gross amount charged by the service provider for such service rendered by him. (Section 67 of Finance Act, 1994 as amended)

Exemption and Exclusion:

1 In the case of lease or hire-purchase agreements entered into prior to the imposition of levy (prior to 16-7-2001) no Service Tax will be leviable, provided the property/goods has also been received by the lessee prior to 16.7.2001.

2 In the case of Credit card services, the Service Tax is leviable only in respect of transactions, which are done using a credit card on or after 16th of July 2001. Any amount paid by a customer to credit card service provider in respect of tra
2001 is not liable to Service Tax even though such amount is paid on or after the 16th July, 2001.

3 With respect to mutual funds, the asset management companies will not come under the purview of Service Tax, as they are not NBFC. (Ministry's F.No.B11/1/2001TRU dt.09.07.2001)

CREDIT RATING AGENCIES

Date of Introduction: 16.10.1998 vide Notification No.53/98-ST dt. 07.10.1998

Definition:
"Credit rating agency" means any commercial concern engaged in the business of credit rating of any debt obligation or of any project or programme requiring finance, whether in the form of debt or otherwise, and includes credit rating of any financial obligation, instrument of security, which has the purpose of providing a potential investor or any other person any information pertaining to the relative safety of timely payment of interest or principal.
(Section 65(21) of Finance Act, 1994 as amended)

Taxable events and scope of service:
Taxable service provided to a client, by a credit rating agency in relation to credit rating of any financial obligation, instrument or security. (Section 65(72)(x) of Finance Act, 1994 as amended)

The credit rating agencies operating in India are registered with the Reserve Bank of India. These agencies provide among others ratings in respect of corporate bonds, commercial paper, fixed deposits, municipal debt, infrastructure bond, utilities, asset backed securities, structured obligations, toll road bonds, mutual funds, etc. All public issues of debt are statutorily required to be rated. These ratings help individual and institutional investors frame their investment policies based on benchmark ratings.

The relevant date for determining the Service Tax liability would be the date when rating has been assigned to a particular instrument. In the case of ongoing projects, where rating has been assigned after the notified date i.e. 16th October, 1998, the Service Tax would be payable.
(Ministry's F.No.B-11/3/98-TRU dt.07.10.1998)

Value of Taxable Service:
Value of taxable service shall be the gross amount charged by the service provider for such service rendered by him. (Section 67 Finance Act, 1994 as amended)

The client wanting to get rated a debt issue being floated by it requires the services of a credit rating agency. For this purpose they enter into a written agreement with a Credit rating Agency in a standardized format. The agreement specifies the charges for such rating services as well as for regular surveillance on the existing rating, to see whether it needs to be revised or otherwise. The fees of the rating agency are generally expressed as a percentage of the amount of debt sought to be raised. The fees on any assignments are usually paid at the time of entering into an agreement i.e. in advance. Such amounts are kept as advance against rating fee and is recognized as income only when the rating is assigned. After the rating is given, it is communicated to the client. The rating of any instrument remains under surveillance until the entire debt is repaid. The surveillance is a mandatory exercise for rating agencies. After surveillance, the client is billed as per the agreed fee structure. Service Tax is payable both on the fee received for credit rating of the debt instrument and the surveillance fee.

The amount received in advance for the service of rating to be provided to the client, is only an advance and the services can only deemed to have been provided only when the rating exercise has been completed and when rating of any instrument has been assigned. In case rating is not done, for any reason and the entire amount is returned back to the client, it cannot be said that services have been rendered and hence Service Tax is not attracted.
(Ministry's F.No.B-11/3/98-TRU dt. 07.10.1998)

Exemption and Exclusion:

The information and advisory services, if any, rendered by credit rating agencies would not attract Service Tax for the reason that taxable services in respect of credit rating agency means service provided to a client only in relation to credit rating of any financial obligation, instrument or security. Services of research and information such as analysis of industries in specific sectors of financial and business aspects of a company, other customized services on say business houses and capital markets, indexing services and information services such as privatization policy for infrastructure projects, macro studies of infra-structure sector, implication of government policy in respect of any sector, financial modeling, bid evaluation, power purchase agreement, restructuring of state electricity boards, etc are not services 'in relation to' the credit rating of any financial obligation, instrument or security and are hence outside the gamut of service as on the services of credit ratings. (Ministry's F.No.B-11/3/98-TRU dt.07.10.1998)

STOCK BROKER

Date of Introduction: 01.07.1994. Notification No.1/94-ST dt. 20.06.1994.
Definition:

"Stock Broker' means a stock-broker who has either made an application for registration or is registered as a stockbroker in accordance with the rules and regulations made under the Securities and Exchange Board of Indian Act, 1992 (15 of 1992)."

(Section 65(69) of Finance Act, 1994 as amended) The service provided by the stock broker becomes liable to pay Service Tax subject to the conditions that the

(a) Stock Broker should be registered as per SEBI Act, 1972.
(b) Stock should be listed in the Stock Exchange.
(b)The Stock Exchange must be recognized Stock Exchange as per Securities Contract (Regulation) Act, 195

(c) The Sale/Purchase should be on behalf of an investor.

Taxable event and scope of service:

Taxable service means any service provided to an investor by a stockbroker in connection with sale or purchase of securities listed on a recognized Stock Exchange.
(Section 65(72)(a) of Finance Act, 1994 as amended)

"Securities" has the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).
(Section 65 (61) of Finance Act, 1994 as amended)

Section 2 (h) of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) reads as follows: "Securities" includes

(i) shares, scrips, stocks, bonds, debentures, debenture stock, or other marketable securities of a like nature in or of any incorporated company or body corporate;
(ia) derivative;
(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;
(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interests in securities."
"Recognized stock exchange" has the meaning assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956). (Section 65 (58) of Finance Act, 1994 as amended) Section 2 (f) of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) reads as follows:

"Recognized stock exchange" means a stock exchange which is for the time being recognized by the Central Government under section 4. The Central Government has recognized the following 22 Stock Exchanges:

(1) Bombay Stock Exchange
(2) Delhi Stock Exchange Association Ltd.
(3) Madhya Pradesh Stock Exchange (Indore)
(4) Ahmedabad Stock Exchange
(5) Madras Stock Exchange
(6) Calcutta Stock Exchange
(7) Uttar Pradesh Stock Exchange Association Ltd.
(8) Pune Stock Exchange Ltd.
(9) Bangalore Stock Exchange Ltd.
(10) Ludhiana Stock Exchange Association Ltd.
(11) Hyderabad Stock Exchange Ltd.
(12) Gauhati Stock Exchange Ltd.
(13) Cochin Stock Exchange Ltd.
(14) Mangalore Stock Exchange Ltd.
(15) Magadh Stock Exchange Association
(16) Bhubaneshwar Stock Exchange
(17) Saurashtra Kutch Stock Exchange
(18) Jaipur Stock Exchange
(19) Vadodara Stock Exchange
(20) Coimbatore Stock Exchange
(21) Over The Counter Exchange of India
(22) National Stock Exchange.

Own trading: In case, a broker enters into a transaction on his own account, with an investor who is a non–member on the stock exchange, the service provided will be taxable service, and subject to Service Tax.

Arbitrage: In the case of arbitrage transaction i.e. the transaction between two brokers of different stock exchanges, the service is provided by a broker i.e. the member of a stock exchange even though the investor may be a member of another stock exchange, there being an investor involved in the transaction, the service so provided to the investor will be a taxable service and subject to Service Tax.
(Ministry's F.No.148/1/94 CX-4 (Pt. I) dt. 31.12.1996)

National Stock Exchange using Very Small Aperture Terminals (VSAT) installed at trading members office whereas the members of local stock exchange is required to carry on business compulsory within the jurisdiction of the said Stock Exchange where he is registered. Board is of the view that Trading members/Stockbrokers of National Stock Exchange will have to register their premises with the Central Excise Commissionerate having the jurisdiction over the place where trading membership is granted and infrastructural facilities are provided for installing the Very Small Aperture Terminals and operating the business.
(Ministry's F.No.148/5/96-CX.4 dt.16.09.1996)

A Broker who is registered with Kanpur Stock Exchange has to apply for registration with Commissionerate of Central Excise, Kanpur. All the officers of this broker irrespective of location will be registered with Commissionerate of Central Excise, Kanpur.
(Ministry's F.No.148/1/94-CX.4 dt.06.09.1994)

For the issue raised as to whether service tax can be collected for a transaction in Sikkim Sto
been recognized, it is clarified that service tax is required to be collected from Stockbrokers. Stockbroker h
i.e., a stockbroker who has either made an application for registration or is registered as a stockbroker i

regulations made under the Securities and Exchange Board of Indian Act, 1992 (15 of 1992). Hence, all stockbrokers are covered by service tax scheme.
(Ministry's F.No.148/1/94-CX.4 dt.06.09.1994)

For the reasons of transparency that service tax charged/collected is shown separately in the Contract Note/Bills. (Ministry's F.No.148/1/94-CX.4 dt.06.09.1994)

Charging of service tax from an investor who is provided with taxable service by two brokers of different stock exchanges does not amount to double taxation.

Value of Taxable Service:

Value of the taxable service provided by Stockbroker, is the aggregate of the commission or brokerage charged by the stockbroker on the sale or purchase of securities from the investors and includes the commission or brokerage paid by the broker to any sub-brokers.
(Section 67 of Finance Act, 1994 as amended)

"Sub-broker" means a sub-broker who has either made an application for registration or is registered as a sub broker in accordance with the rules and regulations made under the Securities and Exchange Board of India Act, 1992.
(Section 65 (70) of Finance Act, 1994 as amended)

Exemption and Exclusion:

1. Jobbing -The transaction on principal to principal basis between brokers, no investor is involved and as such no taxable service is provided and therefore, no Service Tax is chargeable.
(Ministry's F.No.148/1/94 CX-4 (Pt.I) dt.31.12.1996)

2. Taxable service means any service provided to an investor, by a stockbroker in connection with the sale or purchase of securities listed on a recognized stock exchange. The commission charged by stockbroker as underwriters is for floating securities. Hence, it is not covered.
(Ministry's F.No.148/1/94 CX-4 dt.06.09.1994)

3. Sub-brokers are not covered by service tax. (Ministry's F.No.148/1/94-CX.4 dt.06.09.1994)
4. The following transaction undertaken by the Stockbrokers do not attract the levy of Service Tax.
   a. Private placement charges
   b. Public issue consultancy fee
   c. Brokerage or primary market operations

Case laws:

U.S.Chaudhary V/s. CCE, Kanpur [1999 (110) ELT 925 (Tribunal)

No service tax is payable when the brokers of the same stock-exchange or brokers of one stock exchange with another stock-exchange carry on business in purchase or sale of securities since in either of the situation no investor is involved.

TRANSPORT OF GOODS BY ROAD

Date of Introduction: 01.01.2005

Definitions:

"goods carriage" has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988(59 of 1988). Section 65 (50a)of the Finance Act, 1994

"goods transport agency" means any **person who** provides service in relation to transport of goods by road and issues consignment note, by whatever name called Section 65 (50b)of the Finance Act, 1994

"taxable service" means any service provided to a customer, by a goods transport agency, in relation to transport of goods by road in a goods carriage. Section 65(105)(zzp)of the Finance Act, 1994

Value of Taxable Service:

The value of taxable service shall be the gross amount charged by the service provider for providing such service and the money value of any other consideration (if any) received for providing such service. The value of taxable service shall be determined as per the provisions made under section 67 of the Finance Act, read with Service Tax (Determination of Value) Rules, 2006
(For provisions relating to abatement please see '**Exemptions'**)

Who is responsible to pay Service Tax:

The service provider is responsible for payment of Service Tax. (Section 68 of Finance Act, 1994). However. in relation to taxable service provided by a goods transport agency, **where the consignor or consignee** of goods is,
(a) any factory registered under or governed by the Factories Act,
(b) any company established by or under the Companies Act, 1956 (1 of 1956);
(c) any corporation established by or under any law;

(d) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India;
(e) any co-operative society established by or under any law;
(f) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made there under; or
(g) any body corporate established, or a partnership firm registered, by or under any law, any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage;"

Scope of Service:

The scope of the service covers any service provided by the goods transport agency in relation to transport of goods by road in goods carriage. Goods Transport Agency is any person who provides service in relation to transport of goods and issues a consignment note (by whatever name it is called). The consignment note should be serially numbered and it should contain name and address of the consignee and consignor, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax, whether consignee or consignor or the goods transport agency.

Exemptions:

1. Notification No.32/2004 dated 03.12.2004– Abatement of 75% on the gross amount charged for providing the service, subject to the condition that no credit of inputs or capital goods is availed while providing such service. This Notification has been **rescinded** vide Notification No.2/2006 dated 01.03.2006. However, the same benefit of abatement is provided vide **Notification No.1/2006 dated 01.03.2006**

2 Notification No.33/2004 dated 03.12.2004– Exemption to transport services rendered by an agency in relation to vegetables, fruits, eggs and milk
Notification No.34/2004 dated 03.12.2004– Exemption to GTA – subject to condition that amount charged is Rs.750 / Rs.1500

COURIER SERVICES

Date of Introduction: 01.1.1996 vide Notification No.6/96-ST dt. 31.10.96.
Definition:

Courier Agency means a commercial concern engaged in the door to door tr ansportations of time sensitive documents, goods or articles, utilising the services of a person either directly or indirectly to carry or accompany such documents, goods or articles.
(Section 65(20) of Finance Act, 1994 as amended)

Taxable events & scope of services:
Taxable service means any service provided to a customer, by a Courier Agency to their client in respect of door-to-door transportation of time sensitive documents, goods or articles.
(Section 65(72)(f) of Finance Act, 1994 as amended)

The nature of service provided by these Express Cargo Transporter is the same as the service provided by the conventional courier agencies. Therefore, these Express Cargo Services are also liable to pay Service Tax.
(Ministry's F.No.341/43/96-TRU dt.31.10.1996)

Angadia engaged in commercial activities such as undertaking of delivery of the documents, goods, or articles received from the customer to other end, are clearly covered by the definition of "Courier Agency" and are liable to pay the Service Tax on the services provided by them.

Value of Taxable service:
Value of the taxable service in relation to Courier Service shall be the gross amount charged by such agency from the customer for services in relation to door-to-door transportation of time sensitive documents, goods and articles.
(Section 67 of Finance Act, 1994 as amended)

Wherever the Courier Agencies provide service in relation to warehousing, packing, inventory management relatable to door to door transportation of documents, goods and articles, the amount charged for such facilities are includible in the gross amount for the purpose of levy of Service Tax. *(Ministry's F.No.341/43/96TRU dt.31.10.1996)*

Exemption and Exclusion:

i. The services provided by the Courier Agencies to United Nations, an International Organization and certain specified Diplomatic Missions are exempted from payment of Service Tax.
(Authority: Notification no. 48/98 dated 24/04/98, 44/98 dated 22/1/98, 47/98 ST dated 24/4/98)

ii. 'Co-loader' is a company whose services are engaged by a Courier Agency for handling part of the job for delivery of articles, goods, documents, etc. they are not providing any direct service to the customer. The client is concerned only with the Courier Agency, for the services and the co-loader is only a subcontractor. Therefore the service provided by the "co-loader" is not leviable to Service Tax.

iii. Department of Post is not a commercial concern. The Speed Post services provided by it do not attract Service Tax.
(Ministry's F.No.341/43/96-TRU dt.31.10.1996)

MAILING LIST COMPILATION AND MAILING

Date of Introduction: 16.06.2005 vide Notification NO.15/2005 dated 07.06.2005

Definitions:

"mailing list compilation and mailing" means any service in relation to —

(i) compiling and providing list of name, address and any other information from any source; or
(ii) sending document, information, goods or any other material in a packet, by whatever name called, by addressing, stuffing, sealing, metering or mailing,for, or on behalf of, the client; (section 65(63a))

"taxable service" means any service provided or to be provided to any person, by any other person, in relation to mailing list compilation and mailing; (section 65(105)(zzzg))

Value of Taxable Service:

The value of taxable service shall be the gross amount charged by the service provider for providing such service and the money value of any other consideration (if any) received for providing such service. The value of taxable service shall be determined as per the provisions made under section 67 of the Finance Act, read with Service Tax (Determination of Value) Rules, 2006

Who is responsible to pay Service Tax:

The service provider is responsible to pay service tax. However, in cases, where the provider of taxable service is located outside India and the recipient of service is located in India, the recipient of service is responsible for payment of service tax. The responsibility to pay service tax under such situations is determined by the provisions made under section 66A of the Finance Act, 1994, read with Taxation of Services (Provided from outside India and received in India) Rules, 2006

Scope of Service:

Any service provided or to be provided to any person, by any other person, in relation to mailing list compilation and mailing is taxable under sub-clause (zzzg) of section 65(105) of the Finance Act, 1994. "Mailing list compilation and mailing" has been defined under clause (63a) of section 65 of the Finance Act, 1994.

Business establishments such as banks, insurance companies, companies listed on stock exchanges, real estate agents and other similar commercial entities engage the services of persons who compile and provide lists of names, addresses and other information from telephone directories, internet or any other source of information for the benefit of the business. Some agencies also provide services of sending documents, materials, information or any other goods by addressing, stuffing, sealing, metering or mailing the envelope or packet for or on behalf of the client. Such services are taxable under this category of service. Mail order business companies may engage the services of mailing companies to despatch goods to customers. Such mailing companies are also covered under this service. (Ref: Board's Circular No. F.No.B1/ 6 /2005-TRU dated 27.07.2005)

General Exemptions:

Sr.No.	Notification No.	Nature of exemption
1	16/2002	Services provided to United nations or any International Organisation
2	12/2003	Exemption to value of goods and material sold during the course of providing taxable service, subject to conditions laid down in the notification.
3	4/2004	Service provided to a developer of Special Economic Zone or Unit located in SEZ
4	6/2005	Exemption from service tax for taxable services upto gross value of Rs. 4 lakhs, in case of service providers whose gross turnover for the preceding financial year was less than Rs. 4 lakhs (w.e.f 01.04.2005)

CLEARING AND FORWARDING AGENTS

Date of Introduction: 16.07.1997 vide Notification No.26/97-ST dt.11.07.1997.

Definition:

"Clearing and forwarding agent" means any person who is engaged in providing any service, either directly or indirectly, concerned with the clearing and forwarding operations in any manner to any other person and includes a consignment agent.
(Section 65(16) of Finance Act, 1994 as amended)

Taxable event & Scope of Service:

Taxable service means any service provided to a client, by a Clearing & Forwarding Agent in relation to clearing & forwarding operations, in any manner.
(Section 65(72) (j) of Finance Act, 1994 as amended)

The clearing and forwarding agents are engaged / appointed by manufacturer of goods (both excisable and non-excisable goods), producers and distributors of goods and shall also include such agents appointed for agricultural and mineral goods.

Normally, there would be a contract between the principal and the clearing and forwarding conditions and also indicating the commission or which the C&F agent is entitled.

A clearing and forwarding agent normally undertakes the following activities:

(a) receiving the goods from the factories or premises of the principal or his agents;

(b) warehousing these goods;

(c) receiving dispatch orders from the principal;

(d) arranging dispatch of goods as per the directions of the principal by engaging transport on his own or through the authorized transporters of the principal;

(e) maintaining records of the receipt and dispatch of goods and the stock available at the warehouse; Service Tax is payable on above services. (Ministry's F.No.B43/7/97-TRU dt.11.07.1997)

If factories or persons are engaging brokers for sending their goods directly to their customers, on the basis of orders procured by them, services rendered by brokers would amount to services provided by a Clearing& forwarding Agents and would be liable for payment of Service Tax.

Value of Taxable Service:

The value of taxable service shall be the gross amount charged by the service provider for such service rendered by him. (Section 67 of Finance Act, 1994 as amended)

However as per sub rule (8) of Rule 6 of Service Tax Rules, 1994 the value of taxable service in relation to the services provided by a clearing and forwarding agent to a client for rendering services of clearing and forwarding operations in any manner shall be deemed to be the gross amount of remuneration or commission (by whatever name called) paid to such agent by the client engaging such agent.

For the services rendered, the C & F agent receives commission or remuneration, which usually consists of two components:

1. minimum commission on a flat rate or turnover basis depending on the packages/consignments handled, and
2. a variable commission based on performance which is computed on the performance indicators agreed upon between the agent and the principal.

The above two constitute the remuneration or commission paid to the C & F agent by the principal.

Case Laws:

In the case of Laghu Udyog Bharati and other v. U.O.I. and others [1999 (112) ELT 365 (SC)], the Supreme Court was examining whether provisions in Rule 2(XII) and (XVII) of the Service Tax Rules, 1994 (as amended in 1997) are contrary to provisions of Sections 65 and 66 of the Finance Act, 1994. The said Rule 2(XII) stipulated that:
"in relation to services provided by a clearing and forwarding agent, every person who engages a clearing and forwarding agent and by whom, remuneration or commission (by whatever name called) is paid for such services to the said agent."

The Hon'ble Supreme Court, after analysing various provisions of Chapter V of the Finance Act, 1994 as amended, has referred to provisions in Section 68 (1A), which was introduced by the Finance Act, 1997. The section provided that the Service Tax introduced by the Finance Act, 1997. The section provided that the Service Tax for such service was to be collected from such person and in such manner as may be prescribed and to such person all the provisions shall apply as if he is the person responsible for collecting the Service Tax in relation to such service. The Apex Court then observed "as we read Section 68, it does not in any way seek to alter or change the charge of Service Tax levied under Section 66 which is on the person responsible for collecting the Service Tax. It also does not to our mind, in any way, amend any of the sub-sections of Section 65, which contains the definition of different expressions. All that Section 68(1A) enables to be done is that with regard to assessees or the persons who are responsible for collecting the Service Tax, the individual or the officer concerned can be identified and it is that person who would be a person responsible for collecting the Service Tax. In other words, this provision, namely Section 68 (1A) cannot be so interpreted, as to make a person as an assessee even though he may not responsible for collecting the Service Tax. The Service Tax is levied by reason of the services, which are offered. The imposition is on the person rendering the service. Of course, it may be indirect tax, it may be possible that the same is passed on to the customer but as for the levy and assessment is concerned it is the person rendering the service who alone can be regarded as an assessee and not the customer. This is the only way to provisions can be read harmoniously."

The Apex Court, thereafter, analysed the provisions in Section 70, (person responsible for collecting Service Tax to furnish prescribed return), section 71 (Assessment) and section 94 (power of Central Government to make Rules) and held that "we have no hesitation in holding that the provisions of Rule 2(d) (XII) and (XVII), in so far as it makes persons other than the clearing and forwarding agents or the persons other than the goods transport operator as being responsible for collecting Service Tax are ultra-vires the Act, itself. The said sub-rules are accordingly squashed". The Supreme Court, thereafter, ordered that "any tax which has been paid by customers or clients of the clearing and forwarding agents as of the goods transport operator shall be refunded within twelve weeks on their making a demand for refund."

This decision was delivered by the Apex Court on 27th July, 1998 but in the meantime, the said Rule 2(d) (XII) was substituted vide Service Tax (Amendment) Rules, 1998 effective from 16.10.1998. The substituted Rule 2(d) (III) reads as "in relation to services provided by a clearing and forwarding agent, every person who engages a clearing and forwarding agent and by whom remuneration or commission (by whatever name called) is paid for such services to the said agent".

However, the said Rule 2(d) (iii) was omitted vide Notification No.7/99-ST, dt.23.08.1999 by the Service Tax (second amendment) Rules, 1999 with effect from 01.09.1999.

CARGO HANDLING SERVICE

Date of Introduction :
16th August, 2002 (Notification No.8/2002ST dated 01.08.2002)

Definition :
Cargo handling service means loading, unloading, packing or unpacking of cargo and includes cargo handling services provided for freight in special containers or for non-containerised freight, services provided by container freight terminal or any other freight terminal, for all modes of transport and cargo handling services incidental to freight, but does not include handling of export cargo or passenger baggage or mere transportation of goods.
(Section 65(21) of Chapter V of Finance Act, 1994)

Taxable Service :
Any service provided to a person by a cargo handling agency in relation to cargo handling services.
(Section 65(90)(zr) of Finance Act, 1994)

Scope of the Service :
Examples of cargo handling services are services provided in relation to cargo handling by Container Corporation of India, Airport Authority of India, Inland Container Depot, Container Freight Station etc. This is an illustrative list. There are several other firms that are engaged in cargo handling.
(Board's F.No.B11/1/2002-TRU dated 01.08.2002)

Value of Taxable Service :
The gross amount charged by the service provider for such services rendered by him.
(Section 67 of Finance Act, 1994)

Who is responsible to pay Service Tax :

The service provider i.e. Cargo Handling Agency is responsible for payment of Service Tax.

Exemption & Exclusion :

Handling of export cargo, passenger baggage, mere transportation of goods, cargo handled by Airport Authority of India for export are excluded from payment of Service Tax. Cargo handling services render in relation to agricultural produce or goods intended to be stored in cold storage are exempted from payment of Service Tax vide Notification No.10/2002 dated 01.08.2002

CUSTOM HOUSE AGENT

Date of Introduction: 15.06.1997 vide Notification No.17/97ST dt.06.06.1997.

Definition:
"Custom House Agent" means a person licensed, temporarily or otherwise, under the regulations made under sub-section (2) of section 146 of the Customs Act, 1962.
(Section 65(22) of Finance Act, 1994 as amended)

A person is permitted to operate as a customs house agent, temporarily under regulation 8(1) and permanently under regulation 10, of the Customs House Agents Licensing Regulations, 1984.

Taxable events & Scope of service:
Taxable service means any provided to a client, by a Custom House Agent in relation to the entry or departure of conveyances or the import or export of goods.
(Section 65(72) (h) of Finance Act, 1994 as amended)

The services rendered by the custom house agent are not merely limited to the clearing of the import and export consignment. The CHA also renders the service of loading/unloading of import or export goods from/at the premises of the exporter/importer, the packing, weighment, measurement of the export goods, the transportation of the export goods to the customs station or the import goods from the custom station to the importers premises, carrying out of various statutory and other formalities such as payment of expenses on account of octroi, destuffing /pelletisation terminal handling, fumigation, drawback/DEEC processing, survey /amendment fees, dock fees, repairing and examination charges, landing and container charges, statutory labour charges, testing fees, drug control formalities, sorting /marking/stamping/sealing on behalf of the exporter/ importer. The custom house agent incur various other expenses such as crane/fork lift charges, taxi charges, Photostat and fax charges, bank collection charges, courier service charges, and miscellaneous other expenses on account of the importer /exporter. For all the above charges, the CHA is ordinarily reimbursed by the importer/ exporter for whom the above services are rendered. Apart from the above charges, the CHA also charges the client for his services under the head /nomenclature of "agency and attendance charges " or similar kind of heads which is purported to be his service charge in respect of the services rendered in relation to the import/export goods.

A CHA may have various branch officers located at different stations but all these branch officers do not raise the bills and only the main or central office will be raising the bills. In such cases only the central office should be registered with the Deptt. The Commissioners of Central Excise may verify any such contention and allow the payment to be made by Head Office.
(Ministry's F.No.B43/1/97-TRU dt.06.06.1997)

Value of Taxable Service:
Value of the taxable service shall be the gross amount charged by the service provider for such service ren
(Section 67 of Finance Act,1994 as amended)

The Service Tax is to be computed only on the gross service charges, by whatever head/nomenclature billed by the Custom House agent to the client. It is informed that the practice obtaining is to show the charges for service as “agency commission”, “charges”, “agency and attendance charges”, “agency charges” and some similar descriptions. The Service Tax will be computed only with reference to such charges. In other words, payments made by CHA on behalf of the client, such as statutory levies (cess, custom duties, port dues etc) and various other reimbursable expenses incurred are not to be included for computing the Service Tax.

In many cases the customs house agent provides services for “turnkey” imports and exports where a lump sum amount is charged from the client for undertaking various services. The said lump sum amount covers not only the “agency commission” fee but also other expenses and no separate break-up is given in respect of these expenses. In such cases, the value of the taxable Service Tax shall be 15% of the lump sum amount charged to the client. The custom house agents would have to show the service charges as 15% of such lump sum amount of the bills. Service Tax of 5% will be chargeable on the above 15%.

Sometimes the bills raised by the CHA are not entirely paid by the client and the CHA is forced to give discounts. In such cases where the final bill raised is lower than the initial bill, it may be mentioned that the law provides for claiming of refund of excess Service Tax paid within six months from the date of payment of tax. If the CHA can produce evidence of having charged less service fee, he may claim refund of excess Service Tax paid, if any, as per the provisions of law.

(Ministry’s F.No.B-43/1/97-TRU dt.06.06.1997)

Exemption/Exclusion:

1. Sometimes CHAs sub-contract their work to CHAs located in other stations. In such cases it is possible that the sub-contracting CHA raises the bill on the main CHA who in turn raises the bill to the client. It has been decided that in such cases the sub-contracting CHA will not be required to pay Service Tax on the bills raised by him on the main CHA. The Service Tax will be payable by the CHA who provides the actual service to the client and raises the bill to the client.

(Ministry’s F.No.B-43/1/97-TRU dt.06.06.1997)

2 The payment received by the Custom House Agent from the Shipping Lines for canvassing of Import/export cargo, would not be chargeable to Service Tax.

STORAGE AND WAREHOUSING SERVICE

Date of Introduction :
16th August, 2002 (Notification No.8/2002ST dated 01.08.2002)

Definition :
Storage and Warehousing includes storage and warehousing services for goods including liquids and gases but does not include any services provided for storage of agricultural products or any services provided by a cold storage. (Section 65(87) of Chapter V of Finance Act, 1994)

Taxable Service :
Any service provided to a person by a storage or warehouse keeper in relation to storage and warehousing of goods. (Section 65(90)(zza) of Finance Act, 1994)

Scope of the Service :
Storage and warehousing service for all kind of goods are provided by public warehouses, private warehouses, by agencies such as Central Warehousing Corporation, Airport Authority, Railways, Inland Container Depots, Container Freight Stations, storage godown and tankers operated by private individuals etc. The storage and warehousing service provider normally makes arrangement for space to keep the goods, loading, unloading and stacking of goodsin the storage area, keep inventory of goods, makes security arrangements and provide insurance cover etc. (Board’s F.No.B11/1/2002-TRU dated 01.08.2002)

Value of Taxable Service:
The gross amount charged by the service provider for such services rendered by him. (Section 67 of Finance Act, 1994)

Who is responsible to pay Service Tax:
The service provider i.e. Storage and Warehousing provider is responsible for payment of Service Tax.

Exemption & Exclusion :
Cloak room services for passengers’ luggage at railway stations, bus stations etc. are do not come within the purview of storage and warehousing service.
(Board’s F.No.B11/1/2002-TRU dated 01.08.2002)

TRANSPORT OF GOODS THROUGH PIPELINE OR OTHER CONDUIT

Date of Introduction: 16.06.2005 vide Notification No.15/2005 dated 07.06.2005

Definitions:

“taxable service” means any service provided to any person, by any other person, in relation to transport of goods other than water, through pipeline or other conduit (section 65(105)(zzz))

Value of Taxable Service:

The value of taxable service shall be the gross amount charged by the service provider for providing such service and the money value of any other consideration (if any) received for providing such service. The value of taxable service shall be determined as per the provisions made under section 67 of the Finance Act, read with Service Tax (Determination of Value) Rules, 2006

Who is responsible to pay Service Tax:

The service provider is responsible to pay service tax. However, in cases, where the provider of taxable service is located **outside** India and the recipient of service is located **in** India, the recipient of service is responsible for payment of service tax. The responsibility to pay service tax under such situations is determined by the provisions made under section 66A of the Finance Act, 1994, read with Taxation of Services (Provided from outside India and received in India) Rules, 2006

Scope of Service:

Transportation of goods, other than water, through pipeline or conduit is generally employed to transport petroleum and other petroleum products, natural gas, LPG, chemicals, coal slurry and other similar products. Such transport services are liable to service tax under sub-clause (zzz) of section 65(105) of the Finance Act, 1994. Consideration for the said transportation service provided may be payable periodically or from time to time. The service provider is required to pay service tax as and when payment is received for the services provided or to be provided.

(Ref: Board's Circular No. F.No.B1/ 6 /2005-TRU dated 27.07.2005)

General.Exemptions:

Sr.No.	Notification No.	Nature of exemption
1	16/2002	Services provided to United nations or any International Organisation
2	12/2003	Exemption to value of goods and material sold during the course of providing taxable service, subject to conditions laid down in the notification.
3	4/2004	Service provided to a developer of Special Economic Zone or Unit located in SEZ
4	6/2005	Exemption from service tax for taxable services upto gross value of Rs. 4 lakhs, in case of service providers whose gross turnover for the preceding financial year was less than Rs. 4 lakhs (w.e.f 01.04.2005)

TRANSPORT OF GOODS IN CONTAINERS BY RAIL (OTHER THAN INDIAN RAILWAY)

Date of Introduction: 01.05.2006 vide Notification No.15/2006 dated 25.04.2006

Definitions:

"taxable service" means any service provided or to be provided to any person, by any other person other than Government railway as defined in clause (20) of section 2 of the Railways Act, 1989, in relation to transport of goods in containers by rail, in any manner; (section 65(105)(zzzp) of the Finance Act, 1994)

Value of Taxable Service:

The value of taxable service shall be the gross amount charged by the service provider for providing such service and the money value of any other consideration (if any) received for providing such service. The value of taxable service shall be determined as per the provisions made under section 67 of the Finance Act, read with Service Tax (Determination of Value) Rules, 2006

Who is responsible to pay Service Tax:
The service provider is responsible to pay se
rvice tax. However, in cases, where the provider of taxable service is located **outside** India and the recipient of service is located **in** India, the recipient of service is responsible for payment of service tax. The responsibility to pay service tax under such situations is determined by the provisions made under section 66A of the Finance Act, 1994, read with Taxation of Services (Provided from outside India and received in India) Rules, 2006

Scope of Service:

The proposed levy is on transport of goods in containers by rail. Service provided by Indian Railways is excluded. Suitable abatement for the amount paid by such service providers to railways for haulage services will be prescribed separately. The levy will, therefore, be restricted only to that portion of the consideration received and retained by the service provider for the services provided.

(Ref: Joint Secretary (TRU)'s letter D.O.F.No. 334/4/2006-TRU dated 28.02.2006)

Service-specific Exemption:

An abatement of 70% from the value of taxable services has been provided vide Notification No.1/2006 d
Notification No.20/2006 dated 25.04.2006

General Exemptions:

Sr.No.	Notification No.	Nature of exemption
1	16/2002	Services provided to United nations or any International Organisation
2	12/2003	Exemption to value of goods and material sold during the course of providing taxable service, subject to conditions laid down in the notification.
3	4/2004	Service provided to a developer of Special Economic Zone or Unit located in SEZ
4	6/2005	Exemption from service tax for taxable services upto gross value of Rs. 4 lakhs, in case of service providers whose gross turnover for the preceding financial year was less than Rs. 4 lakhs (w.e.f 01.04.2005)

PRACTISING CHARTERED ACCOUNTANT, PRACTISING COST ACCOUNTANT & PRACTISING COMPANY SECRETARY

Date of Introduction: 16.10.1998 vide Notification No.53/98-ST dt.07.10.1998.

Definition:

1. "Practising Chartered Accountant" is a person who is a member of the Institute of Chartered Accountants of India and is holding a certificate of practice granted under the provisions of the Chartered Accountants Act, 1949 and includes any concern engaged in rendering services in the field of chartered accountancy.
(Section 65(52) of Finance Act, 1994 as amended)

2. "Practising Cost Accountant" is a person, who is a member of the Institute of Cost and Works Accountants of India and is holding a certificate of practice granted under the provisions of the Cost and Works Accountant Act, 1959 and includes any concern engaged in rendering services in the field of cost accountancy.
(Section 65(53) of Finance Act, 1994 as amended)

2 "Practising Company Secretary" is a person who is a member of the Institute of Company Secretaries of India and is holding a certificate of practice granted under the provisions of the Company Secretaries Act, 1980 and includes any concern engaged in rendering services in the field of company secretary ship.
(Section 65(54) of Finance Act, 1994 as amended)

Taxable event and scope of service:

1 Taxable service means any service provided to a client, by a practising chartered accountant in his professional capacity, in any manner.
(Section 65(72) (s) of Finance Act, 1994 as amended)

2 Taxable service means any service provided to a client, by a practising cost accountant in his professional capacity, in any manner.
(Section 65(72) (t) of Finance Act, 1994 as amended)

3 Taxable service means any service provided to a client, by a practising company secretary in his professional capacity, in any manner.
(Section 65(72) (u) of Finance Act, 1994 as amended)

4 The following services, which are provided by practising Chartered Accountant, a practising Cost Accountant or Company Secretaries in their professional capacity to a client and are rendered by them either exclusively or are common to their profession, are liable for payment of Service Tax. In case of service provided by the practising Chartered Accountant, a practising cost accountant or company secretaries, the taxable services are,

(i) accounting and auditing; or

(ii) cost accounting and cost auditing; or

(iii) secretarial auditing; or

(iv) verification of declarations in prescribed forms of compliance's for obtaining a Certificate of commencement of business or commencement of other business under section 149 of the companies Act, 1956 (1 of 1956); or

(v) signing of the annual return of listed companies under section 161 of the companies act, 1956(1 of 1956) ; or

(vi) certification that requirement of Schedule XIII to the Companies Act, 1956 (1of 1956) have been complied with as regards statutory guidelines for appointment of managerial personnel and payment of managerial remuneration to them without the approval of the Central Government under Section 269 and Schedule XIII of the Companies Act, 1956(1 of 1956) ; or

(vii) Certification of documents to be filed by Companies with the registrar of Companies under Com

(viii) Certification in Form 1 that the whole of the amount remaining unpaid or unclaimed for a period transfer to the special account under subsection (1) and sub-section (2) of section 205A of the Companies Act, 1956 (1 of 1956) has been transferred to the General Revenue Account of the Central Government under the Companies unpaid Dividend (Transfer to General revenue Account of the Central Government) rules, 1978; or

(ix) Certification of documents under the Exports and Imports Policy (1997-2002) of the Government of India; or

(x) Certification for exchange control purposes which a practising chartered accountant can issue as documentary evidence in support of certain applications under the Foreign Exchange Regulation Act, 1973 (46 of 1973); or

(xi) Certification in respect of valuation of instrument or assets as per rule 8A (7) of the wealth tax rules, 1957 (Notification No.59/98-ST dt.16.10.1998)

Thus, in case any of the above mentioned services are rendered to a client by either a practising chartered accountant or a practising company secretary or a practising cost accountant, the same would attract Service Tax. For example, Certification services for exchange control purposes provided by a practising chartered accountant or a practising company secretary or a practising cost accountant under the Foreign Exchange Regulation Act, 1973 to a client shall attract Service Tax. Similarly in a case where services of accounting or auditing or costing or certification related thereto are provided by a practicing chartered accountant or a practising company secretary or a practising cost accountant, the same shall attract Service Tax. Another example are the cases where a practising chartered accountant or a practising company secretary or a practising cost accountant provides services to a client of appearing before the Foreign Exchange Appellate tribunal or the Income Tax Appellate Tribunal as his authorized representative. He shall be exempt from paying Service Tax on such services to the client, as the service in question is not covered in the list of services mentioned above. (Ministry's F. No. 11/3/98-TRU dt.20.10.1998)

Value of Taxable Service:

In the case of practising Chartered Accountant, Practising Cost Accountant and Practising Company Secretary– "Value of taxable service shall be the gross amount charged by the service provider for such services rendered by him." (Section 67 of Finance Act, 1994 as amended)

Exemption and Exclusion:

1. The services other than those mentioned in Sr.No.4 of Taxable events and scope of services above are exempted from payment of Service Tax. (Authority: Notification no. 59/98 ST dt.16.10.1998).

Case Law:

Constitutional validity of Service Tax leviable on the services provided by Practising Chartered Accountant was challenged by All India Federation of Tax Practioner's & Others before the Hon'ble Mumbai High Court in Writ Petition No.142/99 and the said Hon'ble Court has dismissed the petition vide order dtd.22-2-2001. The main ground held by the Court was that such a levy is, in pith and substance, a levy on the profession, and as such falls within the legislative competence of the States only. It was also contended that the distinction made between professionally qualified Chartered Accountant and other tax practitioners who render similar services, and bringing the former alone into the tax net is discriminatory. The High Courts rejected both the contentions, and held that the very fact that Parliament has levied tax on service rendered by the professionals with reference to gross receipts received by them for the services makes it clear that the levy is not a tax on professions, since profession tax levied by the States is a tax levied on a person because he is carrying on a profession, irrespective of his income. The classification adopted as between the qualified professionals and others was also held to be reasonable and not arbitrary, since the nature of services provided by a qualified Chartered Accountant is bound to be qualitatively higher than the services rendered by non qualified person. The Court also held that the apprehension that the professionals would be required to pay service tax even if their clients did not pay the fees was misplaced, since Section 68 of the Act provides the requisite protection to cater to such cases.

MANAGEMENT CONSULTANT

Date of Introduction: 16.10.1998 vide Notification No.53/98-ST dt.07.10.1998.

Definition:

"Management Consultant" means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organization in any manner and includes any person who renders any advice, consultancy or technical assistance, relating to conceptualizing, devising, development, modification, rectification or upgradation of any working system of any organization.

(Section 65(37) of Finance Act, 1994 as amended)

Taxable event and scope of service:

Taxable service means any service provided to a client, by a management consultant in connection with the management of any organization in any manner.

(Section 65(72) (r) of Finance Act, 1994 as amended)

Service rendered in respect of Merger and Acquisition is leviable to Service Tax under the categ
upto 15.07.2001 thereafter the same is leviable to Service Tax under the category of banking and other fin
(Ministry's F.No.177/2/2001 CX-4 dt.27.06.2001)

The activities of rendering lectures/briefs/advise to the Management Association Members relate to upgradation of Human Resources of an organization and therefore these services attract Service Tax under the category of Management Consultant.
(Ref. Service Tax through Questions & Answers, 2000-2001)

Value of Taxable Service:

Value of the taxable service in relation to the service provided by a management consultant to a client, shall be the gross amount charged by such consultant from the client for services rendered in connection with the management of any organization in any manner.
(Section 67 of Finance Act, 1994 as amended)

Exemption/Exclusion:

1. If the management consultant renders any service to a client located abroad, the charges received by him for such consultancy service is not liable to service tax. However, if the management consultant has provided any consultancy service to a foreign company in India and received payment for such services, the same is liable to service tax.

2. Service rendered by practitioner of law, ESI, PF, etc. are in the nature of providing specialized professional assistance or secretarial assistance for filing various declarations/forms etc., maintenance of records etc. Such services do not make any change or improvement in the existing system of management of organizations. Such persons are not covered by management consultant.

CONSULTING ENGINEERS

Date of Introduction: 07.07.1997 vide Notification No.23/97-ST dt.02.07.1997.

Definition:

Consulting Engineer means any professionally qualified engineer or engineering firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering.
(Section 65(18) of Finance Act, 1994 as amended)

Consulting engineers shall include self-employed, professionally qualified engineers, who may or may not have employed others to assist him or it could be an engineering firmwhether organized as a sole proprietorship, partnership, a private or a public Ltd. Company.
(Ministry's F.No.B-43/5/97 TRU dt.02.07.1997)

Similarly, it will also include Trust and Societies & Government Organizations. (Service Tax Through Questions & Answers 2000-01)

Taxable events & scope of service:

The taxable service means any service provided to a client, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering.
(Section 65(72)(g) of Finance Act, 1994 as amended)

The services, which attract the levy, include all the services which are rendered in the capacity of a professional person and specifically include the services pertaining to structural engineering works, civil/mechanical/electrical engineering works or relating to construction management. All services rendered within the above scope of the term engineering attract Service Tax provided they are rendered in the capacity of a consulting engineer. The scope of the services of a consultant may include any one or more of the following categories:

(i) Feasibility study
(ii) Pre-design services/project report
(iii) Basic design engineering
(iv) Detailed design engineering
(v) Procurement
(vi) Construction supervision and project management
(vii) Supervision of commissioning and initial operation
(viii) Manpower planning and training
(ix) Post-operation and management
(x) Trouble shooting and technical services, including establishing systems and procedures for an existing plant. The list is only illustrative.

In the case of the services rendered by the sub-consultant/associate consultant to the prime consultant, the levy of Service Tax, does not fall on the sub-consultant but only on the prime or main consulting engineer who raises a bill on his client (which would include the charge for services by the sub-consultant).
(Ministry's F.No.B-43/5/97 TRU dt.02.07.1997)

The service provided by consulting engineer to Central Government/State Government Organizations or Public Sector undertaking is also leviable to Service Tax.
(Ministry's F.No.345/7/99- TRU dt.07.06.1999)

If the firms are manufacturing tailor made items and are also engaged in drawing, designing, erection & commissioning of the machinery at site, all the essential ingredients of 'Consulting Engineers' i.e. advice, consultancy & technical assistance are present and therefore, they would be liable for payment of Service Tax.

Service Tax would be payable in the event of consulting engineers are sent on deputation/secondment to other firms.

Services rendered by Agency authorized by Director of Explosive, Nagpur to conduct inspection and certify roadworthiness of LPG Tanker attract Service Tax as Consulting Engineer.

The service provided by Engineer Valuers regarding valuation of immovable property and plant & machinery would fall within the purview of Consulting Engineers and is liable for payment of Service Tax.

Value of Taxable Service:

The value of taxable service shall be the gross amount charged by consulting engineer for advice, consultancy or technical assistance in any manner in one or more disciplines of engineering. If payment from the client is received in different stages, Service Tax is required to be paid on payments received at each stage from the client. If there is any modification in payment, the same need to be adjusted when final payment is received. (Section 67 of Finance Act, 1994 as amended)

In the case of amount received in convertible foreign exchange is leviable to Service Tax, the rate of conversion of foreign currency into Indian Rupees is the rate prevailing on the date on which payment is made by service receiver.

Exemption and Exclusion:

1. Taxable service provided to any person by a Consulting Engineer in relation to Computer Software, is exempted from the whole of Service Tax leviable thereon vide notification no. 4/99 ST dtd.28/2/99.

2. The deduction from the value for levy of Service Tax would be allowed for the amount incurred by the consulting engineer on behalf of the client towards expenses, which are reimbursed on actual basis and in case, where the client is billed on a lump sum basis, any deduction from the same on account of reimbursable expenses for the purpose of determining the value of taxable service are permitted on the basis of documentary evidence adduced by the consulting engineer.

(Ministry's F.No.B-11/3/98 TRU dt.07.10.1998)

3. The service provided by qualified engineers in the area of Insurance survey and loss assessment would not be leviable to Service Tax under the category of Consulting Engineer.

(Ministry's F.No.345/5/2001 TRU dt.30.04.2001)

Case Law:

Hon'ble Madras High Court in the case of V.Shanmughavel v. Commissioner of Central Excise, Chennai-II [2001(131) E.L.T. 14 (Mad)] has held that registered valuers of Plant & Machinery and immovable property would fall within the ambit of Consulting Engineers, that Service Tax is not a tax on profession and hence not beyond the legislative competence of Parliament and that the tax on Consulting Engineers is not violative of Article 14 of the Constitution.

SCIENTIFIC AND TECHNICAL CONSULTANCY

Date of Introduction: 16.07.2001 vide Notification No.4/2001-ST dt.09.07.2001

Definition:

Section 65(60) defines "scientific and technical consultancy" as any advice, consultancy, or scientific or technical assistance, rendered in any manner, by a scientist or a technocrat, or any science or technology institution or organization, to a client, in one or more discipline of science or technology.

Taxable events and scope of service:

The taxable service has been defined in clause 72 (za) of section 65 as "any service provided, to a client, by a scientist or a technocrat, or any science and technology institution or organization, in relation to scientific or technical consultancy".

The taxable service should be understood in the context of its commonly understood meaning and scope. For instance, it would cover consultation, advice or technical assistance provided by a scientist or a technocrat or a science or technology institution on any issue relating to any branch of science and technology. Such consultation may be in the nature of an expert opinion/advice in regard to scientific or technical feasibility or any other scientific or technical aspect of a project, process or design, recommending an apt technology, suggestion for improvement in existing technology or process, providing consultation on any technical problem or about new technology, etc.

Public funded research institutions like CSIR, ICAR, DRDO, IITs and IISc., Regional Engineering Colleges etc, which are exempt from payment of income tax are covered under the Service Tax and Service Tax is liable to be paid when any scientific or technical consultancy service is rendered whether by public funded institutions or by private agencies.

Scientific or technical consultancy is provided to a government department/public sector undertaking for which consultation fees are received, then Service Tax would be applicable.
(Ministry's F.No.B-11/1/2001-TRU dt. 09.07.2001)

Value of Taxable Service:

Value of Taxable service shall be the gross amount charged by the service provider for such service rendered by him. (Section 67 of Finance Act, 1994 as amended)

Exemption and Exclusion:

1. Services rendered by doctors, medical colleges, nursing homes, hospitals, diagnostic and pathological labs, etc. would not come under the purview of levy of Service Tax as in common parlance, these categories of service providers are not known as scientists or technocrats or science or technology institutions or organizations.
2. Mere testing will not attract Service Tax. However, in case testing is an integral part of the consultancy, then such activity is part and parcel of the taxable service and no abatement of any kind admissible.
3. Public funded research institutions, which receive grants or aids from the Government for conducting research /project works are not covered under the purview of Service Tax as no service is rendered to any one. However, if they render service to anyone on payment basis, Service Tax will be payable on such services.

(Ministry's F.No.B-11/1/2001-TRU dt. 09.07.2001)

TECHNICAL TESTING AND ANALYSIS (EXCLUDING HEALTH AND DIAGNOSTIC TESTING); TECHNICAL INSPECTION AND CERTIFICATION.

Date of Introduction : 01.07.2003 vide Notification 07/2003 dated 20.06.2003

Definitions :

(a) 'technical testing and analysis' means any service in relation to physical, chemical, biological or any other scientific testing or analysis of goods or material or any immovable property, but does not include any testing or analysis service provided in relation to human bein gs or animals;

(b) 'technical testing and analysis agency' means any agency or person engaged in providing service in relation to technical testing and analysis;

(c) 'technical inspection and certification' means inspection or examination of goods or process or material or any immovable property to certify that such goods or process or material or immovable property qualifies or maintains the specified standards, including functionality or utility or quality or safety or any other characteristic or parameters, but does not include any service in relation to inspection and certification of pollution levels;

(d) 'technical inspection and certification agency' means any agency or person engaged in providing service in relation to technical inspection and certification.

(e) "Taxable service" means any service provided to any person -

(i) by a technical testing and analysis agency, in relation to technical testing and analysis;

(ii) by a technical inspection and certification agency, in

relation to technical inspection and certification; and the term "service provider" shall be construed accordingly. Value of taxable service: Value of taxable service shall be the gross amount charged by the service provider of such service rendered by him.

Scope of Service :

(i) Services provided by Technical Testing and Analysis Agency in relation to technical testing or analysis.
(ii) Services provided by technical inspection and certification agencies in relation to technical inspection and certification.

Board's Clarification : Circular No. 59/8/2003 dated 20.06.2003

A doubt has been raised whether certification given in respect of immovable property should fall under the purview of 'technical inspection and certification services'. In this regard it may be recalled that earlier, CBEC vide its order No.1/1/2002, dated 26.02.2003, issued under Section 37B (of the Central Excise Act as made applicable to service tax) had clarified that certification given under authority of any code or statute can not be considered as a consulting engineer service. However, the new service included in 2003 budget, namely 'technical inspection and certification services' would cover certification of all types including that of immovable property. Therefore, it is clarified that such services become taxable from the notified date.

MARKET RESEARCH AGENCY

Date of Introduction: 16.10.1998 vide Notification No.53/98-ST dt. 07.10.1998.

Definition:

"Market research agency" means a commercial concern engaged in conducting market research in any manner, in relation to any product, service or utility, including all types of customized and syndicated research services. (Section 65(41) of Finance Act, 1994 as amended)

Market research includes research based services in respect of consumer markets, industrial marketing, business to business marketing, social and rural marketing, etc. and is based on the requirements of the client. Such research se
various techniques and may take the form of brand and advertising research. Such market research servic
strategic research & brand positioning development, new product development research, creating develop

logo, pack label research, corporate image, diagnostic market research, customer research, etc. Therefore, the market research services are of a very diverse nature and of a very wide variety. (Ministry's F.No.B-11/3/98 TRU dt. 07.10.1998)

Taxable events and scope of service:

Taxable service means any service provided to a client, by a market research agency in relation to market research of any product, service or utility, in any manner.
(Section 65(72)(y) of Finance Act, 1994 as amended)

Market research agency providing the service to the advertising agencies, who have commissioned its services on behalf of the client, required paying Service Tax on services rendered by it to an advertising agency. The advertising agency would also liable to pay Service Tax on the amount billed to its client, but for advertising services.

The Service Tax is payable on all taxable services rendered in India, whether to an Indian or foreign client.
(Ministry's F.No.B-11/3/98-TRU dt. 07.10.1998)

Value of Taxable Service:

Value of the taxable service shall be the gross amount charged by such agency for services rendered in connection with market research of any product, service or utility in any manner.
(Section 67 of Finance Act, 1994 as amended)

Exemption and Exclusion:

1. Out of pocket expenses which are reimbursable on actual basis, such as travelling, Boarding and Lodging expenses are not includible in the value for levy of Service Tax. The assessee is required to produce documentary evidence for the purpose.
(Ministry's F.No.B-11/3/98 TRU dt. 07.10.1998)

PUBLIC RELATIONS SERVICE

Date of Introduction: 01.05.2006 vide Notification No.15/2006 dated 25.04.2006

Definitions:

"public relations" includes strategic counseling based on industry, media and perception research, corporate image management, media relations, media training, press release, press conference, financial public relations, brand support, brand launch, retail support and promotions, events and communications and crisis communications; (section 65(86c) of the Finance Act, 1994)

"taxable service" means any service provided or to be provided to any person, by any other person, in relation to managing the public relations of such person, in any manner (section 65(105)(zzzs) of the Finance Act, 1994) **Value of Taxable Service:** The value of taxable service shall be the gross amount charged by the service provider for providing such service and the money value of any other consideration (if any) received for providing such service. The value of taxable service shall be determined as per the provisions made under section 67 of the Finance Act, read with Service Tax (Determination of Value) Rules, 2006

Who is responsible to pay Service Tax:

The service provider is responsible to pay service tax. However, in cases, where the provider of taxable service is located **outside** India and the recipient of service is located **in** India, the recipient of service is responsible for payment of service tax. The responsibility to pay service tax under such situations is determined by the provisions made under section 66A of the Finance Act, 1994, read with Taxation of Services (Provided from outside India and received in India) Rules, 2006

Scope of Service:
Public relation agencies are engaged to provide services relating to image or communication management. These services are proposed to be taxed. The term "public relations" is defined.
(Ref: Joint Secretary (TRU)'s letter D.O.F.No. 334/4/2006-TRU dated 28.02.2006)

General Exemptions:

Sr.No.	Notification No.	Nature of exemption
1	16/2002	Services provided to United nations or any International Organisation
2	12/2003	Exemption to value of goods and material sold during the course of providing taxable service, subject to conditions laid down in the notification.
3	4/2004	Service provided to a developer of Special Economic Zone or Unit located in SEZ
4	6/2005	Exemption from service tax for taxable services upto gross value of Rs. 4 lakhs, in case of service providers whose gross turnover for the preceding financial year was less than Rs. 4 lakhs (w.e.f 01.04.2005)

Date of Introduction: 01.05.2006 vide Notification No.15/2006 dated 25.04.2006

Definitions:

"public relations" includes strategic counseling based on industry, media and perception research, corporate image management, media relations, media training, press release, press conference, financial public relations, brand support, brand launch, retail support and promotions, events and communications and crisis communications; (section 65(86c) of the Finance Act, 1994)

"taxable service" means any service provided or to be provided to any person, by any other person, in relation to managing the public relations of such person, in any manner (section 65(105)(zzzs) of the Finance Act, 1994) **Value of Taxable Service:** The value of taxable service shall be the gross amount charged by the service provider for providing such service and the money value of any other consideration (if any) received for providing such service. The value of taxable service shall be determined as per the provisions made under section 67 of the Finance Act, read with Service Tax (Determination of Value) Rules, 2006

Who is responsible to pay Service Tax:

The service provider is responsible to pay service tax. However, in cases, where the provider of taxable service is located **outside** India and the recipient of service is located **in** India, the recipient of service is responsible for payment of service tax. The responsibility to pay service tax under such situations is determined by the provisions made under section 66A of the Finance Act, 1994, read with Taxation of Services (Provided from outside India and received in India) Rules, 2006

Scope of Service:
Public relation agencies are engaged to provide services relating to image or communication management. These services are proposed to be taxed. The term "public relations" is defined.
(Ref: Joint Secretary (TRU)'s letter D.O.F.No. 334/4/2006-TRU dated 28.02.2006)

General Exemptions:

Sr.No.	Notification No.	Nature of exemption
1	16/2002	Services provided to United nations or any International Organisation
2	12/2003	Exemption to value of goods and material sold during the course of providing taxable service, subject to conditions laid down in the notification.
3	4/2004	Service provided to a developer of Special Economic Zone or Unit located in SEZ
4	6/2005	Exemption from service tax for taxable services upto gross value of Rs. 4 lakhs, in case of service providers whose gross turnover for the preceding financial year was less than Rs. 4 lakhs (w.e.f 01.04.2005)

REAL ESTATE AGENT

Date of Introduction: 16.10.1998 vide Notification No.53/98-ST dt.07.10.1998.

Definition:

A "Real estate agent" means a person who is engaged in rendering any service in relation to sale, purchase, leasing or renting, of real estate and includes a real estate consultant.
(Section 65 (56) of Finance Act, 1994 as amended)

"Real estate consultant" means a person who renders in any manner, either directly or indirectly, advice, consultancy or technical assistance, in relation to evaluation, conception, design, development, construction, implementation, supervision, maintenance, marketing, acquisition or management, of real estate.
(Section 65(57) of Finance Act, 1994 as amended)

Taxable event & Scope of service:

Taxable service means any service provided to a client, by a real estate agent in relation to real estate. (Section 65 (72) (v) of Finance Act, 1994 as amended)

Some international realty concerns, such as Richard Ellis, Colliers and Jardine etc. have opened shop in India and they are providing comprehensive realty services. Apart from the traditional services in respect of sale/purchase/leasing of real estate such concerns are, inter alia, providing services to real estate developers and promoters in respect of evaluation of a proposed real estate scheme/project by conducting techno-economic studies, providing feasibility reports and by even helping in marketing real estate projects. Such services shall also attract Service Tax.
(Ministry's F.No.B11/3/98-TRU dt.07.10.1998)

Value of Taxable Service:

Value of the taxable services shall be the gross amount charged by the service provider for such
(Section 67 of Finance Act, 1994 as amended)

Exemption & Exclusion:

The activity of actual construction of any building, carried out by builders/developers would not attract Service Tax levy, as it is not a service within the meaning of the term real estate agent or real estate consultant. (Ministry's F.No.B11/3/98-TRU dt.07.10.1998)

SITE PREPARATION

Date of Introduction: 16.06.2005 vide Notification NO.15/2005 dated 07.06.2005

Definitions:
"site formation and clearance, excavation and earthmoving and demolition" includes,

(i) drilling, boring and core extraction services for construction, geophysical,geological or similar purposes; or

(ii) soil stabilization; or

(iii) horizontal drilling for the passage of cables or drain pipes; or

(iv) land reclamation work; or

(v) contaminated top soil stripping work; or

vi) demolition and wrecking of building, structure or road,but does not include such services provided in relation to agriculture, irrigation, watershed development and drilling, digging, repairing, renovating or restoring of water sources or water bodies; (section 65(97a))

"taxable service" to any person, by any other person, in relation to site formation and clearance, excavation and earthmoving and demolition and such other similar activities; (section 65(105)(zzza))

Value of Taxable Service:

The value of taxable service shall be the gross amount charged by the service provider for providing such service and the money value of any other consideration (if any) received for providing such service. The value of taxable service shall be determined as per the provisions made under section 67 of the Finance Act, read with Service Tax (Determination of Value) Rules, 2006

Who is responsible to pay Service Tax:

The service provider is responsible to pay service tax. However, in cases, where the provider of taxable service is located **outside** India and the recipient of service is located **in** India, the recipient of service is responsible for payment of service tax. The responsibility to pay service tax under such situations is determined by the provisions made under section 66A of the Finance Act, 1994, read with Taxation of Services (Provided from outside India and received in India) Rules, 2006

Scope of Service:

Any service provided or to be provided to any person, by any other person, in relation to site formation and clearance, excavation and earthmoving and demolition and such other similar activities is leviable to service tax under sub-clause (zzza) of section 65(105) of the Finance Act, 1994. "Site formation and clearance, excavation and earthmoving and demolition" has been defined in clause (97a) of section 65 of the Finance Act, 1994.
The definition of site formation and clearance, excavation and earthmoving and demolition is an inclusive definition and the activities specifically mentioned are indicative and not exhaustive. Prior to construction of buildings, factory or any civil structure, activity of mining or laying of cables or pipes, preparation services of site formation and clearance, excavation and earthmoving or leveling are normally undertaken for a consideration to make the land suitable for such activities. Such services include blasting and rock removal work, clearance of undergrowth, drilling and boring, overburden removal and other development and preparation services of mineral properties and sites, and other similar excavating and earthmoving services. Demolition of structures, buildings, streets or highways is also undertaken for a consideration as a preparatory activity for subsequent construction activity or for clearing the site for any other purpose. All such activities fall within the scope of this service.
However, site formation and clearance, excavation and earthmoving and demolition services when provided in relation to agriculture, irrigation, watershed development and drilling, digging, repairing, renovating or restoring of water sources or water bodies are specifically excluded and not within the scope of this service.

(Ref: Board's Circular No. F.No.B1/ 6 /2005-TRU dated 27.07.2005)

Service-specific Exemption:

Notification 17/2005-ST dated 07.06.2005 exempts this service provided in the course of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams, major and minor ports.

General Exemptions:

Sr.No.	Notification No.	Nature of exemption
1	16/2002	Services provided to United nations or any International Organisation
2	12/2003	Exemption to value of goods and material sold during the course of providing t

		down in the notification.
3	4/2004	Service provided to a developer of Special Economic Zone or Unit located in SEZ
4	6/2005	Exemption from service tax for taxable services upto gross value of Rs. 4 lakhs, in case of service providers whose gross turnover for the preceding financial year was less than Rs. 4 lakhs (w.e.f 01.04.2005)

INTERIOR DECORATOR

Date of Introduction: 16.10.1998 vide Notification No.53/98-ST dt.07.10.1998.

Definition:

"Interior decorator" means any person engaged, whether directly or indirectly, in the business of providing by way of advice, consultancy, technical assistance or in any other manner, services related to planning, design or beautification of spaces, whether man-made or otherwise and includes a landscape designer.
(Section 65 (34) of Finance Act, 1994 as amended)

Taxable event and scope of service:

Taxable service means any service provided to a client, by an interior decorator in relation to planning, design or beautification of spaces, whether man-made or otherwise, in any manner.
(Section 65(72)(q) of Finance Act, 1994 as amended)

The project which started before 16th Oct., 1998 and still continuing after 16th Oct., the Service Tax is payable only in respect of services rendered on or after the date on which the Service Tax provisions came into force i.e. 16th October, 1998. Service Tax is not required to be paid on payment received for services rendered prior to the service concerned being notified.
(Ministry's F.No.B-11/3/98-TRU dt.07.10.1998)

Value of Taxable Service:
Value of the taxable service in relation to the service provided by an interior decorator to a client, shall be the gross amount charged by such decorator from the client for services rendered in relation to planning, design or beautification of spaces in any manner.
(Section 67 of Finance Act, 1994 as amended)

Exemption and Exclusion:

1. In cases where an interior decorator sub-contracts part/whole of his work to another interior decorator, no Service Tax is required to be paid by the sub-contractor provided that the princip al interior decorator has paid the Service Tax on the services rendered by him to the client and provided the sub-contracting is in respect of the same service category.

2 The services rendered by Art directors of films and others who render services of design etc. for setting up temporary structures/settings for shootings, etc. do not attract Service Tax as such interior decoration has no permanency and is only of a temporary nature.

3 The Service Tax is not leviable on supply of materials, items of furniture or decoration, per se, but only on services rendered in any manner concerning planning, design or beautification of spaces.

4 Out of pocket expenses which are reimbursable on actual basis, such as traveling, boarding and lodging expenses are not includible in the value for levy of Service Tax. The assessee is required to produce documentary evidence for the purpose.
(Ministry's F.No.B-11/3/98-TRU dt. 07.10.1998)

BUSINESS AUXILIARY SERVICE

Date of introduction : 01.07.2003 – vide Notification No. 7/2003 Dated 20.06.2003

Definition :

b) "Business Auxiliary service" means any service in relation to -

i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or

ii) promotion or marketing of service provided by the client; or

iii) any customer care service provided on behalf of the client; or

iv) any incidental or auxiliary support service such as billing, collection or recovery of accounts and remittance evaluation of prospective and public relation services, and includes services as a commission agent, but does not include any informa
Explanation: For the removal of doubts, it is hereby declared that for the purposes of this clause "Informat
any service in relation to designing, development or maintaining of computer software, or computerized d
networking, or any other service primarily in relation to operation of computer system. In the Budget prop

following further additions are proposed in the definition of “Business Auxiliary Service”. iv) procurement of goods or services, which are inputs for the client; or

v) production of goods on behalf of the client; or

vi) provision of service on behalf of the client; or

Further the earlier entry no.(iv) is proposed to be amended as under and renumbered as (vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision. and includes services as a commission agent, but does not includes any information technology service and any activity that amounts to “manufacture” within the meaning of clause (f) of section 2 of the Central Excise Act, 1944.

Value of Taxable Service:

Value of taxable service shall be the gross amount charged by the service provider of such service rendered by him.
i) Scope of Service: Any service provided to a client for promotion or marketing of his goods/services, providing customer care service on behalf of the client, or providing any incidental or auxiliary support service to the client for conduct of his business is taxable. However services in relation to information technology are excluded from tax net.
Exemptions:
i) Call centres & Medical transcription centres are exempted from payment of service tax (Notfn.8/2003 S.T. dated 20.06.2003)

ii) The commission agents were exempted from payment of service tax vide Notfn.No.13/2003-S.T. dated 20.06.2003. However with effect from 09.07.2004, by virtue of amendment to above notfn. Vide Notfn.8/2004-S.T. dated 09.07.2004, the exemption is available only to the commission agents dealing in agricultural produce.

Board's Clarification: Circular No.59/8/2003 dated 20.06.2003

As per the definition of business auxiliary services, services of commission agent are considered business auxiliary services. However services of commission agents have been exempted from service tax w.e.f. 1st July, 2003 vide notification No.13/2003-Service Tax dated 20th June 2003. Commission agent has been defined in the notification, as a person who causes sale or purchase of goods, on behalf of another person for a consideration, which is based on the quantum of such sale or purchase. It may be noticed that the exemption under this notification is for a commission agent while the services of a consignment agent remain taxable under the category of Clearing and Forwarding Services. It may be appreciated that the nature of service provided by a Consignment agent is different than that provided by a commission agent. A consignment agent's job is to receive the goods from the principal and dispatch them on the directions of the principal whereas a commission agent's job is to cause sale/purchase on behalf of another person. Thus, the essential difference is that a commission agent sells or purchase on behalf of the principal while consignment agent receives and dispatches the goods on behalf of a principal. It is possible that a person may be a consignment agent as well as a commission agent. Such a person would already be covered in the category of Clearing and Forwarding agent and would be liable to pay service tax in that category. In other words, the present exemption is available only to such commission agent who is not a consignment agent.

Certain doubts have been raised in case of business auxiliary services. In this regard the following is clarified, While it is not possible to give an exhaustive list of business auxiliary services, the following are illustrations of services that are covered under this category viz. evaluation of prospective customers, processing of purchase orders, customer management, information and tracking of delivery schedules, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, managing distribution & logistics. The services provided in relation to getting a customer, verification of prospective customer, processing of purchase order etc would also be covered under service tax, as the law specifically provides for inclusion of such services as business auxiliary support services.

As regards the question whether insurance agents, C&F agents working on commission basis fall under the definition of business auxiliary services, it is clarified that they do not, as they are specifically covered within the definition of other specified taxable services, namely the Insurance service and C&F service respectively. Under Section 65A of Finance Act, 1994, it has also been provided that in case of overlap, a service would be classified under the head, (a) which provides most specific description, (b) in case of a composite service having combination of different taxable services, the service which give them their essential character and (c) in case the test of (a) and (b) does not resolve, the service which comes earlier in the clauses of Section 65, i.e. the service that was subjected to service tax prior to imposition of tax on business auxiliary service, the insurance agents, C&F agents working on commission basis would fall under those respective categories. From this, it follows that a particular service can be taxed only under one head of service.

As per the definition of business auxiliary services, information technology service is outside the purview of business auxiliary services. in the explanation appended to the definition in the Act itself, it has been clarified that information technology service means any service in relation to designing, developing or maintaining of computer software or computerized data processing or system networking or any other service primarily in relation to operation of computer systems. In this regard, it is clarified that only if the output service provided by a service provider is in the nature of the above operations, such exclusion would operate. The mere fact that a personal computer or a laptop has been used for providing the service does not, ipso facto, make the service an information technology service. Similarly, the fact that any of the IT services mentioned in the explanation has been used by the service provider as an input service does not automatically make the output service an IT service. Therefore, in such cases, individual service has to be examined with reference to the explanation provided to the definition of business auxiliary service and only such output services which qualify to be IT services in terms of the said explanation shall remain excluded from taxable service under the heading business auxiliary service.
Circular No.62/11/2003 dated 21.08.2003

Scope of IT service under Business Auxiliary Service :

The definition of Business Auxiliary Service in the law excludes the Information Technology IT services. As p
means any service in relation to designing, developing or maintaining of computer software or computeriz
networking or any other service primarily in relation to operation of computer systems. It was clarified in C

20th June 2003 that only if the output service provided by a service provider is in the nature of the above operations, such exclusion would operate. The mere fact that a personal computer or a laptop has been used for providing the service does not, ipso facto, make the service an information technology service. Similarly, the fact that any of the IT services mentioned in the explanation has been used by the service provider as an input service does not automatically make the output service an IT service.

A doubt has been raised that the clarification in the said circular dated 20.06.03, is at odds with the letter F.No.334/1/2003TRU dated 28.02.2003 which states, "However computer enable services, namely, data processing, networking, back office processing, computer facility management shall not be subjected to Service Tax." It is claimed that back office processing may include accounts outsourcing or payroll-processing activities etc. and such service may not be primarily in relation to computer system.

It is clarified that there is no contradiction between the clarifications dated 20.02.03 and dated 20.06.03. The scope of IT services is explained in the definition of Business Auxiliary Service in the Act itself as any service in relation to designing, developing or maintaining of computer software or computerized data processing or system networking or any other service primarily in relation to operation of computer systems. The last words "primarily in relation to operation of computer systems" make the intention abundantly clear. The words "back office processing" used in the clarification dated 28.02.2003 have to be read in conjunction with the other terms used therein viz. data processing, networking, computer facility management. Thus any service of back office processing primarily in relation to operation of computer systems will be covered as IT services and not taxable. Payroll-processing, accounts management etc. even by using computer programs, can not be termed as activities primarily relation to computer system. The use of computer in these services is secondary and the primary activity is that of business-related work. Thus these services will be taxable as Business Auxiliary Services. This is exactly the position that has been clarified in the circular dated 20.06.2003.
Circular No.66/15/2003 dated 05.11.2003

Applicability of service tax on commission income earned on distribution and marketing of units of mutual fund.

Some doubts have been raised regarding application of service tax on the activity of Mutual Fund Distribution as to whether 1) the commission received by distributors on mutual fund distribution as liable to Service Tax under the category of Business Auxiliary Services? 2) the services provided is exempt from service tax in terms of Notification No.13/2003 dated 20.06.2003. In this connection, it is clarified that the services provided as referred above are primarily in nature of the services of commission agent in relation to clause (ii) and (iv) of the category of services mentioned in the definition of Business Auxiliary Services and hence should be leviable to service tax under this category. This activity does not get covered under exemption Notification No.13/2003-ST dated 20.06.2003 as this is not in relation to sale or purchase of goods. The exemption provided under Notification 13/2003-ST is applicable only for commission agents dealing in goods.

BUSINESS SUPPORT SERVICE

Date of Introduction: 01.05.2006 vide Notification No.15/2006 dated 25.04.2006

Definitions:

"support services of business or commerce" means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing. Explanation.—For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security; (section 65(104c) of the Finance Act, 1994)

"taxable service" means any service provided or to be provided to any person, by any other person, in relation to support services of business or commerce, in any manner; (section 65(105)(zzzq) of the Finance Act, 1994) **Value of Taxable Service:** The value of taxable service shall be the gross amount charged by the service provider for providing such service and the money value of any other consideration (if any) received for providing such service. The value of taxable service shall be determined as per the provisions made under section 67 of the Finance Act, read with Service Tax (Determination of Value) Rules, 2006

Who is responsible to pay Service Tax:

The service provider is responsible to pay service tax. However, in cases, where the provider of taxable service is located **outside** India and the recipient of service is located **in** India, the recipient of service is responsible for payment of service tax. The responsibility to pay service tax under such situations is determined by the provisions made under section 66A of the Finance Act, 1994, read with Taxation of Services (Provided from outside India and received in India) Rules, 2006 **Scope of Service:** Business entities outsource a number of services for use in business or commerce. These services include transaction processing, routine administration or accountancy, customer relationship management and tele-marketing. There are also business entities which provide infrastructural support such as providing instant offices along with secretarial assistance known as "Business Centre Services". It is proposed to tax all such outsourced services. If these services are provided on behalf of a person, they are already taxed under Business Auxiliary Service. Definition of support services of business or commerce gives indicative list of outsourced services
(Ref: Joint Secretary (TRU)'s letter D.O.F.No. 334/4/2006-TRU dated 28.02.2006)

General Exemptions:

Sr.No.	Notification No.	Nature of exemption
1	16/2002	Services provided to United nations or any International Organisation
2	12/2003	Exemption to value of goods and material sold during the course of providing t down in the notification.
3	4/2004	Service provided to a developer of Special Economic Zone or Unit located in SE

4	6/2005	Exemption from service tax for taxable services upto gross value of Rs. 4 lakhs, in case of service providers whose gross turnover for the preceding financial year was less than Rs. 4 lakhs (w.e.f 01.04.2005)

Economic Zone or Unit located in SEZ Exemption from service tax for taxable services 6/2005 upto gross value of Rs. 4 lakhs, in case of service providers whose gross turnover for the preceding financial year was less than Rs. 4 lakhs (w.e.f 01.04.2005)

MAN POWER RECRUITMENT AGENCY

Date of Introduction: 07.07.1997 vide Notification No.23./97-ST dt.02.07.1997

Definition:

"Manpower recruitment agency " means any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment of manpower, to a client.

(Section 65(40) of Finance Act, 1994 as amended)

Taxable event and Scope of service:

Taxable service means any service provided to a client, by a manpower recruitment agency in relation to the recruitment of manpower in any manner.

(Section 65(72) (k) of Finance Act, 1994 as amended) The coverage of the term "manpower recruitment agency" is wide and includes within its ambit, the services provided by an agency from the primary stage of building a database of manpower for different categories of personnel employment, whether white collar or blue collar, whether for employment in India or overseas, determining manpower requirement for the client, preliminary identification, short-listing and screening of prospective candidates, providing specialists for interviewing prospective candidates, arranging for their interviews at each stage; placing advertisements for recruitment of manpower in the print or electronic media, etc. Service Tax on manpower recruitment agency shall cover services provided by a man-power recruitment agency to a client from the initial stage of selecting / identifying man-power required for any prospective employment, till the stage of actual selection for the same. In cases, where a person approaches a manpower recruitment agency for being employed in a suitable position abroad, the prospective candidate for employment becomes the client for purposes of Service Tax. (Ministry's F.No.B43/5/97-TRU dt.02.07.2001.)

The academic institutions, recruiting their students for industrial establishment on receipt of payment fall within the scope of definition of term "Manpower recruitment agency" and become liable to pay service tax. Similarly the trusts providing the services of manpower recruitment agency are also liable to pay service tax under the category of "manpower recruitment agency".

Value of Taxable Service:

Value of taxable service shall be the gross amount charged by the service provider for such service rendered by him. (Section 67 of Finance Act, 1994 as amended)

The manpower recruitment agency receives remuneration from the client for the services rendered by him as per the stipulations in the contract/agreement between them. The payment from the client is received at different stages, based on the completion of work/service at each stage. The manpower recruitment agency shall be required to pay Service Tax on the payments received at each stage from the client by the 25th of the succeeding month / 25th of the month immediately following the quarter, as the case may be. Subsequent modifications, if any, in the bills raised to the client at the time of final payment may be allowed after verification.

(Ministry's F.No.B43/5/97-TRU dt. 02.07.1997)

Explanation & Exclusion:

1. Service Tax on manpower recruitment agencies shall be the gross amount charged to the client for services rendered in relation to the recruitment of manpower excluding the amount incurred by the manpower recruitment agency on behalf of the client towards expenses, which are reimbursed on actual basis. The Commissioners may selectively, in doubtful cases require the manpower recruitment agency to substantiate such actual expenses on the basis of documentary evidence. In case the manpower recruitment agency is billing the client on the basis of a lumpsum, any deductions from the same on account of reimbursable expenses, for the purposes of determining the value of taxable service may be permitted on the basis of documentary evidence adduced by the agency. (Ministry's F.No.B43/5/97-TRU dt.02.07.1997)

2. The labour contractors, who supplied their own labour on contract could not be covered under the definition of "manpower recruitment agency".