COMMERCIAL TRAINING OR COACHING SERVICES

(A) Effective date

Service tax has been levied with effect from 1st July, 2003.

(B) Scope of taxable service [Section 65(105)(zzc)]

Any service provided or to be provided to any person, by a commercial training or coaching centre in relation to commercial training or coaching, is a taxable service.

(C) Definitions

Section 65(26) :

"Commercial training or Coaching" means any training or coaching provided by a commercial training or coaching centre.

Section 65(27) :

"Commercial training or Coaching Centre" means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include pre-school coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force.

Notes :

1. **Circular No. 107/2009 ST Dated 28.01.2009 :**

   Many service providers argue that the word ***commercial*** appearing in **"Commercial training or Coaching Centre"** suggests that the establishment or the institute must be **commercial (i.e. having profit motive)** in nature. It is argued that institutes which are run by charitable trusts or on no-profit basis would not fall within the phrase **"Commercial training or Coaching Centre"** and none of their activities would fall under the taxable service. This argument is clearly erroneous. As the phrase **"Commercial training or Coaching Centre"** has been defined in a statute, there is no scope to add or delete words while interpreting the same. The definition **"Commercial training or Coaching Centre"** has no mention that such institute must have 'commercial' (i.e. profit making) intent or motive. Therefore, there is no reason to give a restricted meaning to the phrase. Secondly, service tax is chargeable on the **gross amount received** towards the service charges, irrespective of whether the venture is 'profit making, loss making or charity oriented' in its motive or its outcome. The word "Commercial" used in the phrase is with reference to the **activity of training or coaching** and **not to the nature or activity of the institute** providing the training or coaching. Thus, services provided by all institutes or establishments, which fulfills the requirements of definition, are leviable to service tax.

2. An institution providing pre-school coaching to kids before joining regular schools is not subject to service tax. Pre-school is an early childhood programme in which children combine ***learning with play*** in a programme run by professionally trained adults.

3. Any institution or establishment providing commercial training or coaching is subject to service tax regardless of the fact whether any formal certificate of training or coaching is issued by it or not. However, any institute or establishment which issues any certificate or diploma or degree or any

educational qualification ***recognised by law for the time being in force*** is not subject to service tax. Hence all universities (and colleges affiliated to such universities) which are constituted under any Central, State and provincial Act are not subject to service tax. Professional Institutions like ICAI, ICSI, and ICWAI are constituted under independent Act enacted by the parliament and are therefore not subject to service tax. Institutions providing certificate or diploma of a ***foreign university*** are subject to service tax, as it cannot be said that such institutions are ***recognised by law for the time being in force.***

4. Institutions that prepare applicants for Board Examinations, University Examinations and Competitive Examinations like entrance examinations of IIT, Civil Services Examinations etc. are subject to service tax. Institutions providing postal coaching or online coaching are also subject to service tax.

(D) Exemptions

(i) Exemption to vocational/recreational training institute [Notification No. 24/2004 ST dated 10.09.2004]

Taxable services, provided in relation to commercial training or coaching by :

(a) a ***vocational training institute*** or

(b) a ***recreational training institute***;

to any person are exempt from the whole of the service tax leviable thereon.

However, this exemption is not available to the taxable services provided in relation to commercial training or coaching by a ***computer training institute***.

Explanation : For the purpose of this notification :

"Vocational training institute" means a commercial training or coaching centre which provides vocational coaching or training that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching[#];

"Recreational training institute" means a commercial training or coaching centre which provides coaching or training relating to recreational activities such as dance, singing, martial arts, hobbies.

"computer training institute" means a commercial training or coaching centre which provides coaching or training relating to computer software or hardware.

[#]Circular No. 107/2009 ST Dated 28.01.2009

The vocational training institutes are exempted from service tax vide **Notification No. 24/2004 ST dated 10.09.2004**. By definition, such institutes should provide training or coaching that imparts skill to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching. Disputes have arisen in respect of institutes that offer general course on improving Communication Skills, Personality Development, How To Be Effective In Group Discussions, Personal Interviews, etc. It is claimed that such training or coaching improves the job prospects of a candidate and therefore they are eligible for exemption as ***"Vocational training institute"***.

However, a careful reading of the definition shows that the exemption is available only to such institutes that impart training to enable the trainee to seek employment or self-employment. The courses referred to above do not satisfy this condition because on their own such courses do not prepare a candidate to take up employment or self-employment directly after such training or coaching. They only improve the chances of success for a candidate who already has the required skill. Therefore, such institutes are not covered under the exemption.

(ii) Exemption to ICAI and the like [Notification No. 10/2003 ST dated 20.06.2003]

The taxable services provided by a commercial training or coaching centre, in relation to commercial training or coaching, which form an essential part of a course or curriculum of ***any other institute*** or establishment, leading to issuance of any certificate or degree or educational qualification recognised by law for the time being in force, to any person, are also exempt from the whole of the service tax leviable thereon.

However, this exemption shall not be applicable if the charges for such services are paid by the ***person undergoing such course or curriculum*** directly to the commercial or coaching centre. For example, if ICAI hire the services of other institute to impart training to the students of ICAI and payment for such hiring is made to such institute by the ICAI, the same is exempt from levy of service tax.

(iii) Exemption to tuition/coaching imparted in home

Since the service tax is on commercial institution or establishment, ***individuals*** providing services at the premises of a service receiver is not covered under service tax for tuition/coaching. Only institutional coaching/training is covered under service tax net.

If commercial coaching or training centre provides commercial coaching by sending individuals to the premises of service receivers, such services would be liable to service tax as in this case service is rendered by an individual on behalf of a commercial coaching/training institute or establishment.

(iv) Exemption to in-house training

When employer provides any free training themselves to his employee, such training is not taxable to service tax. However, if the employer hires an outside agency for imparting some training to its employees, then the payment made to such agency is taxable.

(v) All India Council for Technical Education (AICTE) [Circular No. 107/01/2009 ST Dated 28.01.2009]

All India Council for Technical Education Act, 1987 provides that :

- ***no new Technical Institution or University Technical Department shall be started; or***
- ***no course or programme shall be introduced by any Technical Institution, University including a Deemed University or University Department or Collage; or***
- ***no Technical Institution, University or Deemed University or University Department or College shall continue to admit students for Degree or Diploma course; or***
- ***no approved intake capacity of seats shall be increased or varied;***
- ***without the approval of the AICTE.***

From the above it is clear that if any commercial training or coaching for imparting skill or knowledge or lessons is started without prior approval of the AICTE, then it will not be a recognised course or programme and, consequently, service tax exemption shall not be available. For example, if North Bengal University starts a technical course or programme without the approval of AICTE, it shall be subject to service tax.

MANDAP KEEPER'S SERVICES

(A) Effective date

Service tax has been levied with effect from 1st July, 1997.

(B) Scope of taxable service [Section 65(105)(m)]

Any service provided or to be provided ***to any person***, by a Mandap Keeper in relation to the use of a Mandap in any manner including the facilities provided or to be provided to such person in relation to such use and also the services, if any, provided or to be provided as a caterer, is a taxable service.

(C) Definitions

Section 65(66) :

"Mandap" means any immovable property as defined in Section 3 of the Transfer of Property Act, 1882 and includes any furniture, fixtures, light fittings and floor coverings therein let out for consideration for organising any official, social or business function. Here, social function includes marriage.

Section 3 of the Transfer of Property Act, 1882 :

"Immovable property" does not include standing timber, growing crops or grass.

Section 65(67) :

"Mandap Keeper" means a person who allows ***temporary occupation*** of a Mandap for consideration for organising any official, social or business function. Here, social function includes marriage.

Section 65(24) :

"Caterer" means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose or occasion.

Notes :

1. A Mandap is generally known as "Kalyana Mandapans" in South India or "Barat Ghar" in North India. It is known as "banquet hall" or "conference hall" in a hotel. Even open land or ground belonging to a municipality, is a Mandap for this purpose.

2. A Mandap Keeper can be any person i.e. an individual, firm, company, etc.

3. A Mandap Keeper must allow ***temporary occupation*** of the Mandap. If Mandap Keeper has let out some room, hall or space for some period of time then during such period, the room, hall or space should essentially be in the exclusive possession of service receiver. The element of exclusivity is essential. The mere activity of reservation of seats in a restaurant will not attract service tax.

4. The purpose of allowing temporary occupation is to organize any official, social or business function including marriage. Such function may include cultural functions like dance programmes, music concerts, drama, etc. Official function may include reception organised in honour of VIPs, political party meetings, farewell parties, founder's day function, silver jubilee function, etc. Business function may be organising board meeting, annual general meeting, etc. Screening of feature films in cinema theatres is not an official, social or business function and, therefore, not covered under Mandap Keeper's Service.

5. Service of Mandap Keeper does not include commission received from decorators by providing them client for the purpose of decoration. In other words, the Mandap Keeper gets payment for providing different services to the service receiver and besides he gets commission from decorators for arranging business for them, commission so received is not subject to service tax.

6. If it is temporary structure, service will be taxed under ***Pandal or Shamiana Contractor's Service***. Renting of art gallery will get covered under ***Business Exhibition Service***.

(D) Exemptions

(i) Notification No. 14/2003 ST dated 20.06.2003

The taxable services provided to any person by a Mandap Keeper for the use of the precincts of a religious place as a Mandap are exempt from service tax leviable thereon. Here, religious place means a place which is meant for conduct of prayers or worship pertaining to a religion.

(ii) Notification No. 1/2006 ST dated 01.03.2006

In case of services provided by a Mandap Keeper (or a ***hotel***), where services provided include catering services (i.e. supply of ***food*** alongwith any service in relation to use of a Mandap), an abatement of 40% of the gross amount charged is granted if the bill issued for this purpose indicates that it is inclusive of charges for catering services. Accordingly, in such cases, service tax is payable on 60% of the gross amount charged for the above services. However, the exemption is not available in cases where :

(i) the CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has been taken under the provisions of Cenvat Credit Rules, 2004; or

(ii) the service provider has availed the benefit under the Notification No. 12/2003 ST, dated 20.06.2003. (See Page No. 9).

"Food" means a substantial and satisfying meal. To put it differently, the Mandap Keeper (or hotel) should also provide lunch or dinner. Even high tea supplied by a Mandap Keeper along with Mandap will be qualified to get the aforesaid abatement.

"Hotel" means a place that provides boarding and lodging facilities to public on commercial basis.

SERVICES TO MEMBERS BY CLUBS OR ASSOCIATIONS

(A) Effective date

Service tax has been levied with effect from 16th June, 2005.

(B) Scope of taxable service [Section 65(105)(zzze)]

Any service provided or to be provided to its members, by any Club or Association in relation to provision of services, facilities or advantages for a subscription or any other amount, is a taxable service.

(C) Definitions

Section 65(25a) :

"Club or Association" means any person or body of persons providing services, facilities or advantages, for a subscription or any other amount, to its members, but does not include :

(i) any body established or constituted by or under any law for the time being in force; or

(ii) any person or body of persons engaged in the activities of trade unions, promotion of agriculture, horticulture or animal husbandry; or

(iii) any person or body of persons engaged in any activity having objectives which are in the nature of public service and are of a charitable, religious or political nature; or

(iv) any person or body of persons associated with press or media;

(D) Exemptions

Notification No.8 /2007 ST dated 01.03.2007

The taxable services provided or to be provided by a ***housing society* or *a resident welfare association*** to its members have been exempted from whole of the service tax leviable thereon. However, the exemption is subject to the condition that the total consideration received from an individual member by the said association for providing the said services does not exceed Rs. 3,000 per month.

Notes :

1. Services provided by a body established under any law, is not subject to service tax. A body corporate formed under an Act of Parliament or Act of State Government (e.g. ICAI, ICWAI, ICSI, etc.) comes under the exempted category and service tax is not applicable. However, a company registered under the Companies Act or a society registered under Societies Act or a trust registered under Indian Trust Act, is not a body established or constituted under a law and exemption is not available.

2. Even facilities or advantages are provided to members in return for a subscription or ***any other amount*** is subject to service tax. For this purpose, ***any other amount*** is the amount paid by members, apart from membership fees or recurring subscription fees. For example amount paid for provision of services to the guests of a member, amount paid for get-together and functions.

3. Amount charged by club to its members for sale of items such as food or beverages is, however, not subject to service tax provided the documents evidencing such as sale are available.

4. Service tax is applicable only on service provided or to be provided. Consequently, life membership fee is subject to service tax. However, if life membership fee is refunded to the member, the excess service tax paid can be adjusted on pro rata basis against future payment of service tax liability.

INFORMATION TECHNOLOGY SOFTWARE SERVICES

(A) Effective date

Service tax has been levied with effect from 16th May, 2008.

(B) Scope of taxable service [Section 65(105)(zzzze)]

Service provided or to be provided to any person, by any other person in relation to information technology software for use in the course, or furtherance, of business or commerce, including :

(i) development of information technology software,

(ii) study, analysis, design and programming of information technology software,

(iii) adaptation, upgradation, enhancement, implementation and other similar services related to information technology software,

(iv) providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specifications for a database design, guidance and assistance during the startup phase of a new system, specifications to secure a database, advice on proprietary information technology software,

(v) providing the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products,

(vi) providing the right to use information technology software supplied electronically.

(C) Definitions

Section 65(53a) :

"Information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment.

Notes :

1. Service tax is payable on the gross amount received for the aforesaid services. However, service tax is not payable on charges which represent cost of goods sold by service provider.

2. The service provided must be for use in the course, or furtherance, of business or commerce. Only if the service receiver is intended to use the service for his business or commercial purposes, it is subject to service tax. If the aforesaid service is provided for personal purposes, service tax is not applicable.

3. Software, branded as well as tailor made, has been held as goods by Supreme Court in Tata Consultancy Services v. State of Andhra Pradesh [2005] 141 Taxman 132(SC). A few examples are Microsoft's Window XP/Vista software, oracle software, lotus software, Accounting software. It is also specified as 'goods' in both Central Excise and Customs Laws. Many States are imposing Vat on sale of branded as well as unbranded software. These are sold as "goods" and subject to excise duty and VAT.

4. Service tax is not leviable in the case of ***branded*** softwares. From the department clarifications, it appears that ***unbranded/customized*** softwares are not considered by the department as "goods" and service tax is leviable. However, there is a lot of confusion, as many State Governments have levied VAT on ***unbranded/customized*** softwares. It is doubtful whether service tax can be charged on unbranded/customized softwares, when the same is subject to VAT.

Even if it is assumed that ***unbranded/customized*** software is service (and subject to service tax). Notification No. 12/2003-ST dated June 20, 2003, permits deduction of value of material sold from the value of taxable service to find out service tax liability. For instance, if Rs. 1,00,000 is charged by a service provider for development of a unbranded/customized software, value of taxable service shall be calculated as follows :

	If the State Government charges VAT on unbranded/customized software (Rs.)	**If the State Government does not charge VAT on unbranded/customized software (Rs.)**
Charges for development of unbranded/customized software	1,00,000	1,00,000
Less : Value of materials sold	1,00,000*	Nil
Value of taxable service	Nil	1,00,000

*Benefit of Notification No.12/2003, dated June 20, 2003 can be taken only if the State Government treats unbranded/customized software as "Goods" and charges VAT on it.

5. If software is downloaded from internet from abroad, it will be 'import of service' and service tax will be payable by recipient under reverse charge method, except in cases where recipient is an individual and he can establish that the downloaded software is not for business and commerce – CBEC Letter No. 334/1/2008 dated 29-2-2008.

LEGAL CONSULTANCY SERVICES

(A) Effective date

Service tax has been levied with effect from 1st September, 2009.

(B) Scope of taxable service

Any service provided or to be provided ***to* a business entity**, ***by* any other business entity**, in relation to advice, consultancy or assistance in any branch of law, in any manner, is a taxable service. However, any service provided by way of appearance before any court, tribunal or authority shall not amount to taxable service.

"Business Entity" includes an association of persons, body of individuals, company or firm, but does not include an individual.

Notes :

1. If an individual advocate provides the aforesaid service to any person or if any person provides the aforesaid service to an individual, it is not taxable service. In other words, the service provider as well as service receiver should be a business entity (excluding individual). For instance, if an individual provides legal service to a company or firm or an AOP, it is not taxable service. Similarly, if a legal firm provides legal service to an individual it is not taxable service.

2. The service provided in any branch of law should be in the nature of advice, consultancy or assistance. It even covers legal assistance. It even covers legal assistance relating to compliance with various procedural requirements. For this purpose, the law does not require that to come within the purview of "taxable service', the person rendering service should hold a specific qualification.

3. A business entity (other than an individual) may practice in corporate laws, direct and indirect tax laws, labour laws, civil laws, criminal laws, economic laws, municipal laws. These services are subject to service tax irrespective of their relation to any branch of law.

Exemption to goods and materials sold by service provider to recipient of service (Notification No. 12/2003 ST, dated 20.6.2003)

With effect from 1.07.2003 so much of the value of all the taxable services, as is equal to the value of goods and materials sold by the service provider to the recipient of service has been exempt from the service tax leviable thereon subject to the condition that there is documentary proof specifically indicating the value of the said goods and materials (i.e. the sale of goods is evidenced and the sale value is quantified and shown separately in the invoice).

However, the said exemption shall apply only in such cases where :

(a) no credit of duty paid on such goods and materials sold, has been taken under the provisions of the CENVAT Credit Rules, 2004; or

(b) where such credit has been taken by the service provider on such goods and materials, such service provider has paid the amount equal to such credit availed before the sale of such goods and materials.

Note :

This exemption is restricted to the value of goods and materials sold by the service provider to the recipient of service i.e. this exemption is available only in respect of 'sale'. If certain goods and materials are consumed for providing taxable service, then value of such goods and materials will not be exempt and will form integral part of value of taxable service. Following illustrations will make this point very clear :

1. A beauty parlour consumes certain cosmetics while providing beauty treatment service and also sells certain cosmetics to the service recipient. Exemption will be available only in respect of the latter, not the former.
2. A photographer consumes 10 reels while shooting photos of his clients. He also sells 5 reels to the client for his future use. Here, he will get exemption only in respect of the 5 reels sold to the client. The value of first 10 reels forms intrinsic part of the provision of service and, thus, the same will form part of the value of taxable service and will not be exempt.