SERVICE TAX APPLICABILITY

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With immense pleasure I would like to present this report on "**SERVICE TAX APPLICABILITY**"

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Preeti Vishnu Brid

CONCEPTS AND GENERAL PRINCIPLES OF SERVICE TAX

Learning objectives
After reading this you will be able to understand the:

- ♦ Principles underlying the introduction of service tax.
- ♦ Evolution of service tax to its present form.
- ♦ Nature of coverage of services in India.
- ♦ Constitutional background of service tax.
- ♦ Components which make up the service tax law.
- ♦ Administrative machinery of service tax.
- ♦ Procedures governing the service tax law.
- ♦ Challenges faced by the service tax administration.
- ♦ Extent, commencement and application of the service tax provisions.

1. NEED FOR A TAX ON SERVICES

In any Welfare State, it is the prime responsibility of the Government to fulfill the increasing developmental needs of the country and its people by way of public expenditure. India, being a developing economy, has been striving to fulfill the obligations of a Welfare State with its limited resources. The Government's primary sources of revenue are direct and indirect taxes. Central excise duty on the goods manufactured/produced in India and customs duties on imported goods constitute the two major sources of indirect taxes in India. However, revenue receipts from customs & excise have been declining due to World Trade Commitments and rationalization of commodity duties.

On the other hand, service sector has been growing phenomenally all over the world, though it may vary in degree and magnitude among the various countries. The growing importance of this sector can be gauged from the ever increasing contribution made by the service sector to GDP, thereby pushing back the contribution of traditional contributors like agriculture and manufacturing sectors. India is also not an exception to this changed phenomenon. In 2002, the service sector accounted for 49.2% of GDP while agriculture accounted for 25% and industry 25.8% of GDP. Continued growth in GDP accompanied by higher rate of growth in service sector promises new and wider avenues of taxation to the Government.

In the present day context, services are so widespread and encompass almost all activities like management, banking, insurance, hospitality, administration, communication, entertainment, travel, wholesale distribution, retailing, research and development activities, other professional services, etc. Service sector is now occupying the center stage of the economy so much so that in the contemporary world, development of service sector has become synonymous with the advancement of the economy. Economists believe that with the phenomenal development of the service sector, the exclusion of the service sector from indirect taxation leads not only to the loss of considerable potential revenue, but also creates distortion in the allocation of resources. The distortion arises because the consumer starts making the choice between the consumption of goods and services.

Hence, the Government's argument is that substantial revenue should come from the service sector and the tax on goods (excise duty) should be complemented with the tax on services. If the tax on services reduces the degree of intensity of taxation on manufacturing and trade without forcing the government to compromise on the revenue needs, it will enable better pricing of its products by the manufacturing sector in the global market. With these objectives in mind, service tax was introduced in India in 1994 and today it is envisaged as the tax of the future.

2. GENESIS OF SERVICE TAX IN INDIA

The levy of service tax can be traced back to recommendations made in early 1990's by the Tax Reforms Committee headed by Professor Dr. Raja J. Chelliah. The Committee recommended imposition of tax on select services. The Committee emphasized the importance of moving towards full-fledged value added tax for making the system of indirect taxation broadly revenue neutral in relation to production and consumption and widening the tax base by covering exempted commodities. Dr. Raja J. Chelliah opined that introduction of value added tax would eliminate cascading and cost escalation effect of indirect taxation.

Concepts and General Principles of Service Tax

However, the desired objectives would not be achieved to the full extent, unless services were also taxed and the tax on services and tax on goods were integrated to form one general value added tax. It was envisaged that as the central excise duties on goods would get gradually transformed into a value added tax at the manufacturing level, service tax would get woven into that system. It was considered that in the Indian context, the taxation of services would lead to widening of the tax base which would make possible a further reduction in the general level of rates of commodity taxes. The recommendations relating to introduction of service tax made in the interim report of the Tax Reforms Committee have been reproduced here for the better understanding of the students.

"We have throughout the report emphasized the need for broadening the base of the tax system, which would make possible a lowering of rates. In respect of indirect taxes such broadening has to take the form of covering (a) almost all commodities other than raw produce of agriculture, (b) *many, if not most, services* and (c) all stages of production or transactions. This is accomplished under the ideal system of VAT. In our present context, the major steps to be taken are to extend the coverage of commodities under excise, on which we have already made recommendations, and to make a beginning with the *taxation of services*.
From the economic point of view, there is little difference between the taxation of commodities and that of services. In both cases, the principle of value added taxation can be applied to tax the final users. As an economy develops, the services sector expands relatively to the commodities sector. Multifarious services are produced for the benefit of the consumers as well as producers. Exclusion of services from indirect taxation tends to create distortions just as the exclusion of major commodity groups. There is no question therefore, that services must be brought under taxation. As pointed out earlier, the substantial broadening of the base through the taxation of services would enable the lowering of rates of commodity taxation.

A general value added tax levied even at 10 per cent covering imports and domestically produced commodities and services plus a selective excise at a limited number of higher rates on a few commodities should be able to fetch sufficient revenues. It is extremely important, however, that we do not commit the same kinds of mistakes as we have committed in respect of commodities. We must ensure that there will be a unified and rational system of taxation of services applicable to the whole country. This means that the services tax must be part of a value added tax in course of time and should be levied at the central level. A cascading type of service tax should be avoided at all costs.

As the Union excise on commodities gets gradually transformed into a value added tax at the manufacturing level, the service tax will get woven into that system and therefore tax could be levied also on services that enter into the productive processes. Towards the end of our discussion of the reform of the Union excises earlier in this we had indicated the manner in which the Modvat system should be gradually converted into the comprehensive value added tax at the manufacturing stage. Once this is done it would be possible to introduce a fairly comprehensive system of taxation of services also on the basis of the value added principle so that the entire system of indirect taxation at the Central level would be devoid of cascading and would cause no distortion in costs or in the allocation of resources. The power to levy a tax on services in general is not mentioned either in the Union List or in the State List in the VII Schedule of the Constitution. However, by virtue of Entry 97 in the Union List which gives power to the Centre for levy and collection of "any tax not mentioned in either of those Lists" (that is, the State List or the Concurrent List), it is clear that the Union Legislature is competent to levy indirect tax on services.

For the time being only a few selected services should be subjected to tax; and the services to be selected for the purpose must be those which do not enter into productive processes in any substantial way. We recommend that a tax be levied on the following services:

a. Advertising services;
b. Services of stock brokers;
c. Service of automobile insurance;
d. Service of insurance of residential property, personal effects and jewellery; and
e. Residential telephone services.

In all the cases above except for telephone services, the tax will be levied at 10 per cent of the value of the transaction, i.e., the value of the turnover in the case of advertising and brokerage services and the value of the insurance policy in the case of insurance services. The same basis could be applied also to the taxation of the residential telephone services. However, in order to limit the incidence and because of the difficulty of separating out business and non-business telephone calls made from residences. It is recommended that an annual telephone service tax, on every residential telephone connection, of Rs. 1,000 be levied on those in whose names telephones are installed in residential premises. For purposes of this tax, connections in places other than the non-residential premises of public limited companies, non-profit organisations and government offices will be treated as residential telephones.

3. Concepts and General Principles of Service Tax

The telephones department should be asked to collect the tax alongwith the telephone charges in bound equal installments. It is common in India for employers to provide their senior employees with one or more telephone connections in their residences. Although they are meant to be used for official purposes, they are also generally being used for calls on personal account often without any restriction as to the number of calls. Such telephone connections should also be made subject to the telephone service tax. In their case, the tax can be collected only from the employers because the telephone connections would be in their names. However, in case such connections are in the name of the employer-the Government, Public Sector Company, private sector Company or non-profit organisation, as the case may be the tax will be collected from the employer. It is for the employer to recover the whole or part of the tax from the employee concerned".

Based on the above recommendations (though with certain modifications), Dr. Manmohan Singh, the then Union Finance Minister, in his Budget speech for the year 1994-95 introduced the new concept of service tax and stated that "There is no sound reason for exempting services from taxation, when goods are taxed and many countries treat goods and services alike for tax purposes. The Tax Reforms Committee has also recommended imposition of tax on services as a measure for broadening the base of indirect taxes. I, therefore, propose to make a modest effort in this direction by imposing a tax on services of telephones, non-life insurance and stock brokers." Thus, service tax was imposed on 3 services. The baton then passed on to successive Finance Ministers who widened the service tax net in their budgets. The modest beginning that was made in the year 1994 by levying tax on three services has reached an ambitious level today. At present, 96 services are in the net of service tax. In the year 2006-07 alone, 15 new taxable services have been added by the Finance Act, 2006. In the years to come, it is expected that all services would be in the service tax net except a few exempted services. During this period of twelve years (1994-2006) not only the number of taxable services has increased from 3 to 96, the rate of service tax, which was 5% in the year 1994, has also taken a leap to 8% in the year 2003, to 10% in the year 2004 and to 12% in 2006.

4. SELECTIVE VS. COMPREHENSIVE COVERAGE

Depending on the socio-economic compulsions, each country evolved a taxation system on services adopting either a comprehensive approach or a selective approach. In comprehensive approach all services are made taxable and a negative list is given in case some services are to be exempted. In selective approach, selective services are subjected to service tax.

While most of the developed countries tax all the services with very few and limited exemptions, most of the developing countries have opted for taxation of select services only. India has adopted a selective approach to taxation of services. In India, service tax has been levied on specified taxable services and the responsibility of payment of the tax is cast on the service provider (barring few exceptional cases). The service tax is leviable on the gross amount charged by the service provider from the client. System of self assessment of service tax by the assesses has been introduced. Tax returns are expected to be filed half yearly. Central Board of Excise & Customs is the central authority to regulate service tax matters. Directorate of Service Tax at Mumbai oversees the activities at the field level for technical and policy level coordination.

5. NATURE OF SERVICE TAX

Service tax is a tax on services. This is not a tax on profession, trade, calling or employment but is in respect of service rendered. If there is no service, there is no tax. As per Webster's Concise Dictionary, 'service' means a useful result or product of labour, which is not a tangible commodity. Thus, basically, service is a value addition that can be perceived but cannot be seen, as it is intangible. However, usage of some goods during the course of rendering the service would not mean that there is no 'service'. It is the predominant factor in each case, which is to be studied to arrive at a conclusion.

6. SERVICE TAX LAW

Service tax was introduced in 1994 but there is no independent statute on service tax as yet. However, following sources provide statutory provisions relating to service tax and can be broadly grouped under the following categories:

Finance Act, 1994:

The statutory provisions relating to service tax were first promulgated through V of the Finance Act, 1994. Since then, V of the Finance Act, 1994 is working as the Act for the service tax provisions. Later, in the year 2003, the Finance Act 2003 inserted VA relating to advance rulings on service tax in the Finance Act, 1994. In the year 2004, the provisions relating to charging of 'education cess' on the amount of service tax were made applicable through VI of the Finance (No.2) Act, 2004.

Rules on service tax:

Section 94 of V and section 96 -I of VA of the Finance Act, 1994 grants power to the Central Government to make rules for carrying out the provisions of these s. Using these powers, the Central Government has issued Services Tax Rules 1994, Service Tax (Advance Rulings) Rules, 2003, CENVAT Credit Rules, 2004, Export of Service Rules, 2005, Service Tax (Registration of Special Category of Persons) Rules, 2005, Service Tax (Determination of Value) Rules, 2006 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 which are amended from time to time.

Rules should be read with the statutory provisions contained in the Act. Rules are made for carrying out the provisions of the Act. The rules can never override the Act and cannot be in conflict with the same.

Notifications on service tax:

Sections 93 and 94 of V, and section 96-I of VA of the Finance Act, 1994 empower the Central Government to issue notifications to exempt any service from service tax and to make rules to implement service tax provisions. Accordingly, notifications on service tax have been issued by the Central Government from time to time. These notifications usually declare date of enforceability of service tax provisions, provide rules relating to service tax, make amendments therein, provide or withdraw exemptions from service tax or deal with any other matter which the Central

Government may think would facilitate the governance of service tax matters.

Circulars or Office Letters (Instructions) on service tax: The Central Board of Excise and Customs (CBEC) issues departmental circulars or instruction letters from time to time to explain the scope of taxable services and the scheme of service tax administration etc. These circulars/instructions have to be read with the statutory provisions and notifications on service tax. The circulars clarify the provisions of the Act and thus, bring out the real intention of the legislature. However, the provisions of any Act of the Parliament cannot be altered or contradicted or changed by the departmental circulars.

Orders on service tax:
Orders on service tax may be issued either by the CBEC or by the Central Government. Rule 3 of the Service Tax Rules, 1994, empowers the CBEC to appoint such Central Excise Officers as it thinks fit for exercising the powers under V of the Finance Act, 1994. Accordingly, orders have been issued by the CBEC, from time to time, to define jurisdiction of Central Excise Officers for the purposes of service tax.

Trade Notices on service tax:
Trade Notices are issued by the Central Excise/Service Tax Commissionerates. These Commissionerates receive various instructions from the Ministry of Finance or Central Board of Excise & Customs for effective implementation and administration of the various provisions of service tax law. The same are circulated among the field officers and the instructions which pertain to trade are communicated to them in the form of trade notices. Trade Associations are supplied with the copies of these trade notices. Individual assesses may also apply for copies of trade notices. The trade notice disseminate the contents of the notifications and circulars/letters/orders, define their jurisdiction; identify the banks in which service tax can be deposited; give clarifications regarding service tax matters, etc.

7. ADMINISTRATION OF SERVICE TAX

The Department of Revenue of the Ministry of Finance exercises control in respect of matters relating to all the direct and indirect taxes through two statutory Boards, namely, the Central Board of Direct Taxes (CBDT) and the Central Board of Excise and Customs (CBEC). Matters relating to the levy and collection of all the direct taxes (income tax, wealth tax etc.) are looked after by CBDT, whereas those relating to levy and collection of indirect taxes (customs duties, central excise duties etc.) fall within the purview of CBEC. The two Boards were constituted under the Central Board of Revenue Act, 1963. The responsibility of administration and collection of service tax has also been vested upon the CBEC ('Board'). The Board administers service tax matters through the Central Excise Zones and each Zone, in turn works through Central Excise Commissionerate falling under its territory. Each zone is headed by a Chief Commissioner of Central Excise, while each Commissionerate is headed by a Commissioner of Central Excise. The Chief Commissioner of Zone exercises supervision and control over the working of the Commissionerates in the Zone and is mainly responsible for monitoring revenue collection, disposal of pendencies, redressal of grievances of trade, etc. He also ensures coordination among the Commissionerates within the Zone.

Director General (Service Tax):
Considering the increasing workload due to the expanding coverage of service tax, it was decided to centralise all the work and entrust the same to a separate unit supervised by a very senior official. Accordingly, the office of Director General (Service Tax) was formed in the year 1997. It is headed by the Director General (Service Tax). The functions and powers of Director General (Service Tax) areas follow:

- To ensure that proper establishment and infrastructure has been created under different Central Excise Commissionerates to monitor the collection and assessment of service tax.
- To study the staff requirement at field level for proper and effective implementation of service tax.
- To study as to how the service tax is being implemented in the field and to suggest measures as may be necessary to increase revenue collection or to streamline procedures.
- To undertake study of law and procedures in relation to service tax with a view to simplify the service tax collection and assessment and make suggestions thereon.
- To form a data base regarding the collection of service tax from the date of its inception in 1994 and to monitor the revenue collection from service tax.
- To inspect the service tax cells in the Commissionerate to ensure that they are functioning effectively.
- To undertake any other functions as assigned by the Board from time to time. The Directorate of Service Tax coordinates between the CBEC and Central Excise Commissionerates. It also monitors the collection and the assessment of service tax. It compiles the service tax revenue reports received from various Central Excise Commissionerates and monitors the performances of the Commissionerates. It scrutinizes the correspondences received from field formations and service providers and replies to the clarifications sought for, wherever possible. In cases where the doubts/clarification sought involves policy matter, the Directorate apprises the Board for issuing clarification/instruction.

8. EXTENT, COMMENCEMENT AND APPLICATION [SECTION 64]

The Finance Act, 1994 came into force from 1.7.1994. By section 64(1), the Act extends to the whole of India except the state of Jammu and Kashmir, and by section 64(3), the levy applies to “taxable services provided”. Thus, services provided in the State of Jammu and Kashmir are not liable to service tax.

As per Article 370 of the Constitution, any Act of Parliament applies to Jammu & Kashmir only with concurrence of State Government. Since, no such concurrence has been obtained in respect of Finance Act, 1994, service tax provisions are not applicable in Jammu and Kashmir. Service tax will not be payable only if service is provided in Jammu & Kashmir. However, if a person from Jammu & Kashmir provides the service outside Jammu & Kashmir in any other part of India, the service will be liable to service tax, as the location where service is provided is relevant. Merely because the office of the service provider is situated in Jammu & Kashmir, it does not mean that service is provided in Jammu & Kashmir.

Levy of service tax extends to services rendered in designated areas in the continental shelf and exclusive economic zone. The 'exclusive economic zone' extends upto 200 nautical miles inside the sea from base line. Service provided within the territorial waters will be liable to service tax as levy of service tax extends to whole of India except Jammu and Kashmir and 'India includes territorial waters.
Indian territorial waters extend upto 12 nautical miles from the Indian land mass.

9. DEFINITIONS [SECTION 65]

This section contains definitions of various important terms used in the Finance Act, 1994. The adoption of selective coverage necessitates the definition of various service categories/service providers. These definitions are contained in section 65 of the Act. The Act defines the categories of services to which the Act applies by defining the term "taxable service" which is contained in section 65(105) of the Act. Further, various service providers like "stock brokers", "advertisement agencies", "courier agency", etc. are also defined in this section. These definitions form the crux of the entire Act, and are analysed in 2 hereinafter.

CHARGE OF SERVICE TAX, TAXABLE SERVICES AND VALUATION

CHARGE OF SERVICE TAX

Learning objectives

After reading this unit you will be able to understand the:
♦ Concept of charging service tax on services.
♦ Principles of education cess.
♦ General exemptions available in respect of all services.

10. CHARGE OF SERVICE TAX [SECTION 66]

Section 66 is the charging section of the Act which deals with the levy and collection of service tax. It prescribes the applicable rate of service tax which is to be levied on the value of various taxable services. For collection of service tax, it provides that the 'prescribed manner' needs to be followed. Applicable rate is provided in the section itself whereas the prescribed manner for collection and payment of tax is provided in the Service Tax Rules, 1994. With effect from 18.04.2006, the rate of service tax prescribed by section 66 is 12% of the value of taxable services referred to in section 65(105) of the Act. Section 65(105) provides that taxable service shall not only include service provided but also the "service to be provided".
Thus,

- The charge is on the services provided or to be provided.
- The services provided or to be provided must be the one which is covered in section 65(105).
- The rate of tax is 10%.
- The measure of tax is on "value of taxable services" provided which is defined in section 671.

Education Cess:
With effect from 10.09.2004, an education cess has been levied @ 2%, calculated on the service tax on all taxable services vide the Finance (No.2) Act, 2004. Thus, the effective rate of service tax works out to be 10.30%.
The cess paid on input services is available as credit for payment of cess on output services or final products. The education cess on taxable services is in addition to the tax chargeable on such taxable services. The education cess so collected is utilized for providing and financing universalised quality basic education. The provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder, including those relating to refunds and exemptions from

tax and imposition of penalty, apply in relation to the levy and collection of the education cess on taxable services, as they apply in relation to the levy and collection of tax on such taxable services under Chapter V of the Finance Act, 1994 or the rules, as the case may be. Fully exempted taxable services are not subject to education cess. In case of a partial exemption, say by way of abatement, the cess is calculated on the net tax paid and not on the entire amount of tax that would have been payable, but for the exemption.

GENERAL EXEMPTIONS FROM SERVICE TAX FOR ALL SERVICES

Section 93 of the Finance Act, 1994 empowers the Central Government to exempt taxable services either generally or subject to the specified conditions from levy of whole of the service tax or any part thereof. This power is exercised by issuing notifications or special orders.

The following general exemptions from payment of whole of the amount of service tax are available to the service providers:

a. Exemption to all services provided to United Nations or International Organisation:

Central Government has exempted all the taxable services specified in section 65 of the Act provided by any person to the United Nations or an International Organisation, from whole of the service tax leviable thereon under section 66 of the Act.

The CENVAT Credit Rules, 2004 relating to availment and utilization of credit in respect of services shall be discussed at the Final level.

b. Exemption to services provided to a developer or units of special economic zone:

Taxable service provided to a developer of special economic zone or a unit (including a unit under construction) of special economic zone by any service provider, for consumption of the services within such special economic zone, are exempt from the whole of service tax leviable thereon under section 66 of the Act.

However, such an exemption is subject to the following conditions, namely:-

(i) The developer has been approved by the Board of Approvals to develop, operate and maintain the special economic zone;

(ii) The unit of the special economic zone has been approved by the Development Commissioner or Board of Approvals, as the case may be, to establish the unit in the special economic zone

(iii) The developer or unit of a special economic zone shall maintain proper account of receipt and utilization of the said taxable services.

Here,

(1) "Board of Approvals" means the combined Board of Approvals for export oriented unit and special economic zone units, as notified in the Official Gazette, from time to time by the Government of India in the Ministry of Commerce and Industry.

(2) "Developer" means a person engaged in development or operation or maintenance of special economic zone, and also includes any person authorized for such purpose by any such developer.

(3) "Special Economic Zone" means a zone specified as special economic zone by The Central Government in the notification issued under clause (iii) of Explanation 2 to the proviso to sub-section (1) of section 3 of the Central Excise Act, 1944.

c. Exemption to goods and materials sold by service provider to recipient of service –

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.

However, the said exemption shall apply only in such cases where:
(i) No credit of duty paid on such goods and materials sold, has been taken under the provisions of the CENVAT Credit Rules, 2004; or
(ii) 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.

d. Exemption for small service providers –

Service tax is fully exempt in respect of the taxable services of aggregate value not exceeding Rs.4,00,000 in any financial year. The exemption is however, subject to certain conditions. This exemption was introduced with effect from 01.04.2005.

TAXABLE SERVICES

Learning objectives

After reading this unit you will be able to understand the:
♦ Different definitions relating to all taxable services.
♦ Scope of taxable services and the specific provisions governing the services covered in the gamut of service tax.

I. STOCK BROKING SERVICES:

Effective date: 1st July 1994.

Definitions:
"Stock-broker" means a person, who has either made an application for registration or is registered as a stock-broker or sub-broker, as the case may be, in accordance with the rules and regulations made under the Securities and Exchange Board of India Act, 1992 "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. "Securities" has the meaning assigned to it in clause (h) of section 2 of the Securities contracts (Regulation) Act, 1956.
"Securities" include —
(i) Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
(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 interest in securities.

Scope of taxable service shall include any service provided or to be provided to any person, by a stock-broker in connection with the sale or purchase of securities listed on a recognised stock exchange.

II. TELEPHONE SERVICES

Effective date: 1st July 1994

Definitions:
"Telegraph authority" has the meaning assigned to it in clause (6) of section 3 of the Indian Telegraph Act, 1885 and includes a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of that Act.

"**Telegraph authority**" means the Director General of Posts and Telegraphs, and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act. - Section 3(6) of the Indian Telegraph Act, 1885 Within India, the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs:

Provided that the Central Government may grant a licence, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India;
Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as it thinks fit, the establishment, maintenance and working-
(a) Of wireless telegraphs on ships within Indian territorial waters and on aircraft within or above India, or Indian territorial waters, and
(b) Of telegraphs other than wireless telegraphs within any part of India.

"Subscriber" means a person to whom any service of a telephone connection or facsimile or a leased circuit or a pager or a telegraph or a telex has been provided by the telegraph authority.

Scope of taxable service shall include any service provided or to be provided to a subscriber, by the telegraph authority, in relation to a telephone connection. — Section 65(105)(b).

♦ Cellular phone operators are covered under this category.
♦ In the case of plastic roaming facility, the liability to pay service tax is on the home operator (home network), to whom the subscriber is attached, as he is the one, who arranges roaming facility in other metro cities through arrangements with other service operators (visiting network).
♦ In case of international roaming facility, the liability to pay service tax is on the home operator (home network), to whom the subscriber is attached, as he is the one who arranges roaming facility in other countries through arrangements with the foreign network operators (visiting network).

III. PAGER SERVICES

Effective date: 1st November 1996

Definitions:
"**Pager** means an instrument", apparatus or appliance which is a non-speech, one way personal calling system with alert and has the capability of receiving, storing and displaying numeric or alpha-numeric messages.

"Telegraph authority" has the meaning assigned to it in clause (6) of section 3 of the Indian Telegraph Act, 1885 and includes a person who has been granted a licence under the first proviso to sub-section (1) of section 4 of that Act.

"**Subscriber**" means a person to whom any service of a telephone connection or facsimile or a leased circuit or a pager or a telegraph or a telex has been provided by the telegraph authority.
Scope of taxable service shall include any service provided or to be provided to a subscriber, by the telegraph authority in relation to a pager.

IV. GENERAL INSURANCE SERVICES

Effective date: 1st July 1994.

Definitions:
"General insurance business" has the meaning assigned to it in clause (g) of section 3 of the General Insurance Business (Nationalization) Act, 1972. "General insurance business" means fire, marine or miscellaneous insurance business,

Whether carried on singly or in combination with one or more of them but does not include capital redemption business and annuity certain business. [Section 3(g) of General Insurance Business (Nationalization) Act, 1972]

"**Policy holder**" has the meaning assigned to it in clause (2) of section 2 of the Insurance Act, 1938.
"**Policy Holder**" includes a person to whom the whole of the interest of the policy holder in the policy is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition.
"Insurer" means any person carrying on the general insurance business and includes a re-insurer.

Scope of taxable service shall include any service provided or to be provided to a policyholder or any person, by an insurer, including re-insurer carrying on general insurance business in relation to general insurance business.

It is to be noted that service tax is payable only on the total amount of the premium charged by an insurer carrying on general insurance business - fire, marine and miscellaneous insurance.

Exemptions

With effect from 11.07.2003 the taxable service provided by an insurer, carrying on general insurance business, to a policyholder in relation to General Insurance Business provided under the Universal Health Insurance Scheme is exempt from the service tax leviable thereon.

V. ADVERTISING AGENCY SERVICES

Effective date: 1st November 1996.

Definitions:

"Advertisement" includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas.

"Advertising agency" means any *person* engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant.

Scope of taxable service shall include any service provided or to be provided to a client, by an advertising agency in relation to advertisement, in any manner.

♦ Activity of printing and publishing Telephone Directories, Yellow Pages or Business Directories does not attract service tax since such activity is essentially of printing readymade advertisement from the advertisers and publishing the same in the directory which are similar to the activities carried out by newspapers or periodicals. However, any activity relating to making or preparation of an advertisement, such as designing, visualizing, conceptualising, etc., will be liable to service tax.

♦ When the term 'canvassing' includes service of 'space selling' which merely involves contacting potential advertisers and persuading them to give advertisement to a particular newspaper/periodical/magazine, it would not be subject to service tax because it does not entail any further activity relating to making and preparation of the advertisement namely, drafting of the text etc. These tasks are left either to the advertiser or to newspaper/periodical/magazine.

♦ The term 'canvassing' would fall within the phrase 'any service provided in any manner connected to making preparing, displaying and exhibiting' and would be a taxable service when it involves a space selling agency approaching a customer, receiving the texts of the advertisement (including photographs, monograms etc. of the customs), estimating the space that such advertisement would occupy in the newspaper/periodical/magazine, negotiating the price, informing the general layout of the advertisement that would finally appear in such newspaper etc.

♦ Cinema theatres cannot be treated as advertisement agencies as they project advertisement only on behest of advertising agencies.

VI. COURIER SERVICES

Effective date: 1st November 1996.

Definition:

"Courier agency" means *any person* engaged in the door-to-door transportation 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.

Scope of taxable service shall include any service provided or to be provided to a customer, by a courier agency in relation to door-to-door transportation of time-sensitive documents, goods or articles.

♦ Transporters who advertise themselves as 'Express Cargo Service' and provide the service of door to door transportation of goods and articles with an assurance of timely delivery are also liable to service tax as the nature of service provided by them is not different from the service provided by the conventional courier agencies.

♦ The service provided by a co-loader to the courier agency is not chargeable to service tax as only the services which are provided to a **customer** by the courier agency are liable to service tax. Co-loaders undertake to transport the documents, goods or articles on behalf of the courier agency and charge the courier agency for such services.

♦ 'Angadias' are also covered under this category of service and hence liable to pay service tax. Angadias undertake to deliver the documents, goods or articles received from customers to other end.

VII. CONSULTING ENGINEER'S SERVICES

Effective date: 7th July 1997

Definition:

"Consulting engineer" means any professionally qualified engineer *or any body corporate or any other 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.

Scope of taxable service shall include any service provided or to be 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 but not in the discipline of computer hardware engineering or computer software engineering.

♦ the scope of the services of an engineering consultant may include any one or more of the following categories:

Feasibility study.
Pre-design services/project report.
Basic design engineering.
Detailed design engineering.
Procurement.
Construction, supervision and project management.
Supervision of commissioning and initial operation.
Manpower planning and training.
Post-operation and management.
Trouble shooting and technical services, including establishing systems and procedures for an existing plant.

♦ Services must be provided to a client. Thus, services rendered by a sub-consultant to a prime consultant are outside the ambit of service tax.

♦ The term 'consulting engineer' does not include those qualified engineers who act as insurance surveyors and loss assessor within its scope. Therefore, service tax levy on the consulting engineer in any discipline of engineering will not cover the insurance surveying and loss assessment service rendered by a qualified engineer.[Insurance survey and loss assessment fall under insurance auxiliary services

♦ Construction agencies take up turnkey projects for construction of flats, administrative building, etc. For any civil construction work to commence a lot of preparatory work is required, e.g. soil testing, survey, planning, designing, drawing, etc. If the client suggests some changes in the design etc. they are incorporated. This portion of the work i.e, the service provided to the client in making the desired changes is the service of a consulting engineer, and hence is taxable.

VIII. CUSTOM HOUSE AGENT'S SERVICES

Effective date: 15th June 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.

Scope of taxable service shall include any service provided or to be 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**.**

♦ Only persons who are licensed under the Customs Act come within the ambit of service tax under this clause.

♦ Only services rendered to a client attract service tax. Thus, in case a custom house agent (CHA) sub-contracts work to another CHA, then in such cases, the bill raised by the latter on the main CHA will not attract service tax. Service tax will be payable by the main CHA who renders services to the client and raises the bill on the client.

IX. STEAMER AGENT'S SERVICES

Effective date: 15th June 1997

Definitions:
"Shipping line" means any person who owns or charters a ship and includes an enterprise which operates or manages the business of shipping.

"Steamer agent" means any person who undertakes, either directly or indirectly,—
(a) to perform any service in connection with the ship's husbandry or dispatch including the rendering of administrative work related thereto; or
(b) to book, advertise or canvass for cargo for or on behalf of a shipping line; or
(c) to provide container feeder services for or on behalf of a shipping line.

"Ship" means a sea-going vessel and includes a sailing vessel.

Scope of taxable service shall include any service provided or to be provided to a shipping line, by a steamer agent in relation to a ship's husbandry or dispatch or any administrative work related thereto as well as the booking, advertising or canvassing of cargo, including container feeder services.

X. CLEARING & FORWARDING AGENT'S SERVICES

Effective date: 16th July 1997

Definition:
"Clearing and forwarding agent" means any person, who is engaged in providing any service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any other person and includes a consignment agent.

Scope of taxable service shall include any service provided or to be provided to a client, by a clearing and forwarding agent in relation to clearing and forwarding operations, in any manner. A clearing and forwarding agent's scope of services is quite wide. Normally, there is a contract between the principal and the clearing and forwarding agent detailing the terms and conditions and also indicating the commission or remuneration to which the C&F agent is entitled. In a typical situation, clearing & forwarding agents are appointed in outstation location by manufacturers or wholesale distributors so that they may clear the goods, store them and then forward the goods according to the instructions of the principal owner. Thus, the person concerned is an agent and an agent is an authorised representative of a named principal owner.

♦ 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 authorised transporters of the principal;
(e) Maintaining records of the receipt and dispatch of goods and the stock available at the warehouse;
(f) Preparing invoices on behalf of the principal.
♦ The value of the taxable service in relation to the services provided by a clearing and forwarding agent to a client for services of clearing and forwarding operations in any manner shall deemed to be the gross amount of remuneration or commission (by whatever name called) paid to such agent by the client engaging such agent.
♦ ICDs (Inland Container Depot)/CFS (Customs Freight Station) cannot be considered as C&F agents on the following grounds:
(i) There is no agreement or contract between service Provider (ICD/CFS) and service receiver (importer/exporter);
(ii) ICDs/CFS is functioning under authority of Government of India and not for any principal or owner (importer/exporter).
♦ Coal merchants who act as buyer's agents and carry out such jobs/assignments as asked for by the respective consumers/buyers are liable to service tax as clearing and forwarding agents. It is immaterial as to whether they are working as agents of buyers or sellers.

XI. MANPOWER RECRUITMENT AGENT'S SERVICES

Effective date: 7th July 1997

Definition:
"Manpower recruitment or supply agency" means *any person* engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise to a client.
Scope of taxable service shall include any service provided or to be provided to a client, by a manpower recruitment or supply agency in relation

to the recruitment or supply of manpower, temporarily or otherwise in any manner.

♦ Service tax on manpower recruitment agency shall cover services provided by a manpower recruitment agency to a client from the incipient stage of selecting/identifying manpower required for any prospective employment, till the stage of actual selection for the same.

♦ 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.

♦ *Services rendered by commercial concerns to business or industrial organizations for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks is covered within the purview of service tax. In these cases, the individuals are generally contractually employed by the manpower supplier. The supplier agrees for use of the services of an individual employed by him to another person for a consideration. It is to be noted that the staff are not contractually employed by the recipient but come under his direction.*

♦ *When the artisans are hired by any organisation or business, directly, without engaging the services of any other person in any manner, in such cases, the artisans are contractually employed by the company. There is no intermediary and hence no consideration is paid to or payable to any intermediary. The service tax would be leviable only when the services of a person are engaged for recruitment or supply of artisans.*

XII. AIR TRAVEL AGENT'S SERVICES

Effective date: 1st July 1997

Definition:

"Air travel agent" means any person engaged in providing any service connected with the booking of passage for travel by air.

Scope of taxable service shall include any service provided or to be provided to a customer, by an air travel agent in relation to the booking of passage for travel by air.

♦ Air travel agent may pay the service tax @ *0.6%* of the basic fare in the case of domestic booking and *1.2%* of the basic fare in the case of international booking towards discharge of his service tax liability instead of paying tax @ *10%* on the actual commission received from the airlines. The expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline

♦ In respect of tickets issued directly on collection of fare by general sales agent (GSA) or by an agent affiliated to International Airlines Transport

Association (IATA), the GSA/IATA agents have to collect and pay service tax on the commission they get from the airline.
♦ Sub-agents, who are not getting commission from the airlines and also not making out tickets directly are not required to collect service tax and get registration.

Exemptions
The portion of the value of taxable service which is in excess of the commission received by the air travel agent from the airline for booking of passage for travel by air is exempt from service tax.

XIII. MANDAP KEEPER'S SERVICES

Effective date: 1st July 1997

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

"Mandap keeper" means a person who allows temporary occupation of a mandap for consideration for organising any official, social or business function.

"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.

Scope of taxable service shall include any service provided or to be provided to a client, by a mandap keeper in relation to the use of a mandap in any manner including the facilities provided or to be provided to the client in relation to such use and also the services, if any, provided or to be provided as a caterer.
♦ Kalyana mandaps or marriage halls, banquet halls, conference halls, etc. fall within the ambit of service tax under this category of service.
♦ Hotels and restaurants which let out their banquet halls, rooms, gardens, etc. for holding/organizing any marriages, parties, conferences, shows, etc. fall within the scope of mandap keeper's service. However, the hall, room or space has to be let out for some period of time and during such period the room, space or hall should be in exclusive (temporary) possession of the person to whom it is let out so as to attract service tax.

♦ The activity of mere reservation of seats in a restaurant does not attract service tax.
♦ Renting out of hall for the purpose of holding a dance, drama or music programme or a competition is chargeable to service tax under the category of mandap keeper as they are deemed to be social functions.
♦ Renting out of premises by art galleries for the exhibition of art and artifacts is not liable to service tax under the category of mandap keeper as the art exhibitions held in the premises of an art gallery cannot be treated as social/business functions.

Exemptions

(i) 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) In case of services provided by a hotel as mandap keeper, 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.*

Here, 'food' means a substantial and satisfying meal. 'Hotel' means a place that provides boarding and lodging facilities to public on commercial basis.

(iii) An abatement of 40% of the gross amount charged is granted in case of services in relation to use of mandap, including the facilities provided to the client in relation to such use and also for the catering charges. Accordingly, in such cases, service tax is payable on 60% of the gross amount charged for the above services. This exemption shall apply only in such cases where the mandap keeper also provides catering services, that is, supply of food and the invoice, bill or challan issued indicates that it is inclusive of the charges for catering service. 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.*

Here, ‘food’ means a substantial and satisfying meal

XIV. TOUR OPERATOR’S SERVICES

Effective date: 1st September 1997

Definitions:

“Tour operator” means any person engaged in the business of planning, scheduling, organising or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle covered by a permit
granted under the Motor Vehicles Act, 1988 or the rules made thereunder.

“Tour” means a journey from one place to another irrespective of the distance between such places.

“Tourist vehicle” has the meaning assigned to it in clause (43) of section 2 of the Motor Vehicles Act, 1988. “Tourist vehicle” means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf —

Scope of taxable service shall include any service provided or to be provided to any person, by a tour operator in relation to a tour.

♦ In the context of services rendered by a tour operator the trade notice does not provide for exemption of sub-contracted services from service tax in contradistinction to trade notices issued for several other services where it is clearly provided that in case of sub-contracted services service tax is not required to be paid by the subcontractor whereas) Service tax has been paid by the principal (who has sub-contracted the services) for services rendered by him to his client; and
b) the sub-contracting in question is in respect of the same service category.

♦ Service tax on tour operators will be chargeable only on services rendered in India in respect of tour within Indian territories. Service rendered towards foreign tours i.e tours abroad does not attract service tax.

Exemptions

(i) In case of services provided in relation to a tour by a tour operator where the tour operator provides a package tour, an abatement of 60% of the gross amount charged is granted if the bill issued for this purpose indicates that it is inclusive of charges for such a tour. Accordingly, in such cases, service tax is payable on 40% 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.* Here, 'package tour' means a tour in which the provisions for transportation and accommodation for stay of the person undertaking the tour has been afforded by the tour operator.

(ii) In case of services provided in relation to a tour by a tour operator where the services provided are other than in relation to a package tour, an abatement of 60% of the gross amount charged is granted if the bill issued for this purpose indicates that the amount charged in the bill is the gross amount charged for such a tour. Accordingly, in such cases, service tax is payable on 40% 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.*

Here, 'package tour' means a tour in which the provisions for transportation and accommodation for stay of the person undertaking the tour has been afforded by the tour operator.

(iii) In cases where the services provided by a tour operator are solely of arranging or booking accommodation for any person in relation to a tour, an abatement of 90% of the gross amount charged is granted if invoice, bill or challan issued for this purpose indicates that it is towards charges for such accommodation. This exemption shall not apply in such cases where the invoice, bill or challan issued by the tour operator to the client only includes the service charges for arranging or booking accommodation for any person in relation to a tour and does not include the cost of such accommodation. 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. 12/2003ST, dated 20.06.2003.*

XV. RENT-A-CAB SCHEME OPERATOR'S SERVICES

Effective date: 16th July 1997

Definitions:

"Rent-a-cab scheme operator" means any person engaged in the business of renting of cabs.

"Cab" means a motor cab or maxi cab.

"Maxi cab" has the meaning assigned to it in clause (22) of section 2 of the Motor Vehicles Act, 1988. "Maxi cab" means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver, for hire or reward

"Motor cab" has the meaning assigned to it in clause (25) of section 2 of the Motor Vehicles Act, 1988. "Motor cab" means any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward — [Section 2(25) of The Motor Vehicles Act, 1988].

Scope of taxable service shall include any service provided or to be provided to any person, by a rent-a-cab scheme operator in relation to the renting of a cab.

Exemptions

In case of services provided by a rent-a-cab scheme operator in relation to renting of cabs, an abatement of 60% of the gross amount charged is granted. Thus service tax is payable on 40% of the total amount charged in the above case. 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.*

XVI. ARCHITECT'S SERVICES

Effective date: 16th October 1998.

Definition:

"Architect" means any person whose name is, for the time being, entered in the register of architects maintained under section 23 of the Architects Act, 1972 and also includes any commercial concern engaged in any manner, whether directly or indirectly, in rendering services in the field of architecture.

Scope of taxable service shall include any service provided or to be provided to a client, by an architect in his professional capacity, in any manner.

♦ The work of an architect starts from providing appropriate advice keeping in view the requirements of the client at the preliminary stage of initial sketches, specifications and drawings of plans, and consists of providing detailed drawings, approval of the drawings from the concerned authorities, supervision at each stage of construction and till the point where the completion certificate is obtained from the authorities.
♦ Where an architect/interior decorator sub-contracts part/whole of his work to another architect/interior decorator, no service tax is required to be paid by the subcontractor provided that the principal architect/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. However, service tax would be required to be paid in a case where sub-contracting is to a different service category. For example where an architect sub-contracts his work to a consulting engineer, then service tax would be required to be paid by both the architect and the consulting engineer on the services rendered by them.

XVII. INTERIOR DECORATOR'S SERVICES

Effective date: 16th October 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 manmade or otherwise and includes a landscape designer.

Scope of taxable service shall include any service provided or to be 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.
♦ 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 the service tax levy, as such interior decoration has no permanency and is only of a temporary nature.
♦ Vaastu/FengShui Consultants come under the category of interior decorators as they offer services by way of advice relating to planning and designing of spaces.

XVIII. MANAGEMENT CONSULTANT'S SERVICES

Effective date: 16th October 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 organisation in any manner and includes any person who renders any advice, consultancy or technical assistance, *in relation to financial management, human resources management, marketing management, production management, logistics management, procurement and management of information technology resources or other similar areas of management.*

Scope of taxable service shall include any service provided or to be provided to a client, by a management consultant in connection with the management of any organisation, in any manner.

♦ Any services rendered in relation to merger and acquisition will be covered under the scope of taxable services provided by management consultant and these services will be liable to service tax accordingly.

♦ The definition of management consultant reads "...any person who is engaged in ..." The words "any person" cannot be narrowly construed so as to mean only individuals. Thus, management consultancy services rendered by companies, firms etc. are also liable to service tax.

♦ Law firms/legal consultants etc. fall under the purview of service tax, if they render services under the category of management consultants with regard to mergers/acquisitions, changes in organizational structure.

XIX. PRACTISING CHARTERED ACCOUNTANT'S SERVICES

Effective date: 16th October 1998.

Definition:

"Practising Chartered accountant" means 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.

Scope of taxable service shall include any service provided or to be provided to a client, by a practising chartered accountant in his professional capacity, in any manner.

XX. PRACTISING COST ACCOUNTANT'S SERVICES

Effective date: 16th October 1998

Definition:
"Practising Cost accountant" means 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 Accountants Act, 1959 and includes any concern engaged in rendering services in the field of cost accountancy.
Scope of taxable service shall include any service provided or to be provided to a client, by a practising cost accountant in his professional capacity, in any manner.

XXI. PRACTISING COMPANY SECRETARY'S SERVICES

Effective date: 16th October 1998.

Definition:
"Practising Company Secretary" means 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 Secretaryship.

Scope of taxable service shall include any service provided or to be provided to a client, by a practising company secretary in his professional capacity, in any manner.

XXII. REAL ESTATE AGENT'S SERVICES

Effective date: 16th October 1998.

Definitions:
"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.

"**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.

Scope of taxable service shall include any service provided or to be provided to a client, by a real estate agent in relation to real estate.
♦ Service tax is attracted in respect of services provided by real estate concerns to real estate developers/promoters in respect of evaluation of a proposed real estate scheme/project by-
conducting techno-economic studies,
providing feasibility reports, and
helping in marketing real estate projects.

XXIII. SECURITY AGENCY'S SERVICES

Effective date: 16th October 1998.

Definition:
"Security agency" means any *person* engaged in the business of rendering services relating to the security of any property, whether moveable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel.

Scope of taxable service shall include any service provided or to be provided to a client, by a security agency in relation to the security of any property or person, by providing security personnel or otherwise and includes the provision of services of investigation, detection or verification of any fact or activity.
♦ Detective agencies which are providing confidential services in respect of say, financial credibility of any person, trademark/ copyright infringements etc. are included in the scope of security agency.

XXIV. CREDIT RATING AGENCY'S SERVICES

Effective date: 16th October 1998.

Definition:
"Credit rating agency" means any *person* 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 or 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.

Scope of taxable service shall include any service provided or to be provided to a client, by a credit rating agency in relation to credit rating of any financial obligation, instrument or security.

♦ Information and advisory services and other customised services fall outside the scope of credit rating services.

XXV. MARKET RESEARCH AGENCY'S SERVICES

Effective date: 16th October 1998.

Definition:

"Market research agency" means any *person* engaged in conducting market research in any manner, in relation to any product, service or utility, including all types of customised and syndicated research services.

Scope of taxable service shall include any service provided or to be provided to a client by a market research agency in relation to market research of any product, service or utility, in any manner.

♦ Market research, *inter alia*, includes research based services in respect of consumer market, industrial marketing, business to business marketing, social and rural marketing etc., and is based on the requirement of the client.

♦ Research services may be carried out by various techniques and may take the form of brand and advertising research.

♦ Market research services include studies such as strategic research and brand positioning development, new product development research, creative development research, brand name, logo, pack label research, corporate image, diagnostic market research, customer research etc.

XXVI. UNDERWRITER'S SERVICES

Effective date: 16th October 1998.

Definitions:

"Underwriter" has the meaning assigned to it in clause (f) of rule 2 of the Securities and Exchange Board of India (Underwriters) Rules, 1993.

"**Underwriter**" means a person who engages in the business of underwriting of an issue of securities of a body corporate. [Rule 2(f) of The Securities and Exchange Board of India (Underwriters) Rules, 1993].

"Underwriting" has the meaning assigned to it in clause (g) of rule 2 of the Securities and Exchange Board of India (Underwriters) Rules, 1993.

"Underwriting" means an agreement with or without conditions to subscribe to the securities of a body corporate when the existing shareholders of such body corporate or the public do not subscribe to the securities offered to them." — [Rule 2(g) of The Securities and Exchange Board of India (Underwriters) Rules, 1993].

“Body corporate” shall have the meaning assigned to it in clause (7) of section 2 of the
Companies Act, 1956.
“Body corporate” or “corporation” includes a company incorporated outside India but does not include —
(a) A corporation sole;
(b) A co-operative society registered under any law relating to co-operative societies;
And
(c) Any other body corporate (not being a company as defined in this Act), which the
Central Government may, by notification in the Official Gazette, specify in this behalf.
- Section 2(7) of the companies Act, 1956.
“Securities” has the meaning assigned to it in clause (h) of section 2 of the Securities contracts (Regulation) Act, 1956.
(i) “Securities” include —
(i) Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
(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 interest in securities.

Scope of taxable service shall include any service provided or to be provided to a client, by an underwriter in relation to underwriting, in any manner.
♦ Underwriting services can be provided by financial institutions, banks, share brokers who are members of stock exchanges and investment companies/trusts with adequate financial capacity, appropriate standing and experience.
♦ As per Rule 3 of the Securities and Exchange Board of India (Underwriters) Rules, 1993 no person can act as underwriter unless he holds a certificate granted by the SEBI under the Securities and Exchange Board of India (Underwriters) Regulations,
1993

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XXVII. SCIENTIFIC OR TECHNICAL CONSULTANCY SERVICES

Effective date: 16th July 2001.

Definition:
"Scientific or Technical Consultancy" means any advice, consultancy or scientific or technical assistance rendered in any manner, either directly or indirectly, by a scientist or a technocrat or any science or technology institution or organisation, to a client, in one or more disciplines of science or technology.

Scope of taxable service shall include any service provided or to be provided to a client, by a scientist or a technocrat, or any science or technology institution or organisation, in relation to scientific or technical consultancy.

♦ The terms "scientist", "technocrat", "science or technology institution or organisation"
should be understood as they occur in common parlance.

♦ Services rendered by doctors, medical colleges, nursing homes, hospitals, diagnostic & pathological labs, etc. do not come within the ambit of service tax since in common parlance, these categories of service providers are not known as scientists or technocrats or science or technology institutions or organisations.

♦ The 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.

♦ The public funded research institutions like CSIR, ICAR, DRDO, IITs, IISc and Regional Engineering colleges, etc,. which are exempt from payment of income tax are liable to pay service tax when any scientific or technical consultancy service is rendered by them.

♦ Grants received by the public funded research institutions from the government for conducting research/project work is outside the ambit of service tax since no service is rendered to anyone.

♦ Mere testing does 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 eligible to service tax.

♦ Service tax is also leviable on scientific & technical consultancy services provided to Government departments, public sector undertakings, etc.

XXVIII. PHOTOGRAPHY SERVICES

Effective date: 16th July 2001.

Definitions:

"Photography" includes still photography, motion picture photography, laser photography, aerial photography or fluorescent photography.

"Photography studio or agency" means any professional photographer or any *person* engaged in the business of rendering service relating to photography.

Scope of taxable service shall include any service provided or to be provided to a customer, by a photography studio or agency in relation to photography in any manner.

♦ News agency services, that is, press photographers are excluded from the purview of service tax.

♦ Concerns which do X-Ray or CT scan by using fluorescent photography technique are not photography studios or agencies in common parlance and hence service provided by them does not come within the ambit of service tax.

♦ Services provided by collection centre do not fall under category of photography service as the collection centre does not undertake the activity of taking the photograph or processing thereof; it merely act as courier/commission agent who receive commission and handling charges from the processing labs. [A collection center collects exposed films from photography studios who does not have processing facility/photographers, gets such rolls processed from a colour lab and hands over the prints to the photography studio/photographer].

XXIX. CONVENTION SERVICES

Effective date: 16th July 2001.

Definition:

"Convention" means a formal meeting or assembly which is not open to the general public, and does not include a meeting or assembly the principal purpose of which is to provide any type of amusement, entertainment or recreation.

Scope of taxable service shall include any service provided or to be provided to a client, by *any person* in relation to holding of convention in any manner.

♦ Stage shows, music concerts, sport events are not considered as convention since these events provide some type of amusement, entertainment or recreation. Further, conventions open to the general public are also not liable to service tax.
♦ Hotels and event management companies holding seminars are liable for service tax in respect of the charges levied towards holding of such seminars. The service can be in the nature of providing of room/ hall for the convention. The services can also include providing other facilities such as video conferencing, over head projectors, video-roma (LCD projector), speakers, microphones, and technical staff for operating these equipments and stationery etc. apart from providing space for holding a convention.
♦ The services provided by a mandap keeper may appear to overlap with convention services, but there is a subtle distinction between the types of events i.e., official, social or business function in case of mandap keeper as opposed to formal meeting in case of convention service.
♦ If a service provider is already registered as a mandap keeper and paying service tax, he is not liable to pay service tax again under the category of convention services. Similarly, a service provider providing convention services is not liable to tax as mandap keeper service also.

Exemptions
In case of services provided in relation to holding of a convention where services provided include catering services, an abatement of 40% of the gross amount charged is granted if the gross amount charged from the client is inclusive of the charges for the catering services. Thus service tax will be leviable on 60% of the total amount billed. 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*.
Here, "catering service" means supply of substantial and satisfying meal.

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XXX. TELEGRAPH SERVICES

Effective date: 16th July 2001.

Definitions:
"Telegraph" has the meaning assigned to it in clause (1) of section 3 of the Indian Telegraph Act, 1885. "Telegraph" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images, and sounds or intelligence of any nature by

wire, visual or other electro-magnetic emissions, radio waves or Hertzian waves, galvanic, electric or magnetic means; - Section 3(1) of the Indian Telegraph Act, 1885

“Telegraph Authority” has the meaning assigned to it in clause (6) of section 3 of the Indian Telegraph Act, 1885 and includes a person who has been granted a license under the first proviso to sub-section (1) of section 4 of that Act.

“Telegraph authority” means the Director General of Posts and Telegraphs, and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act - Section 3(6) of the Indian Telegraph Act, 1885 Within India, the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs:
Provided that the Central Government may grant a licence, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India;
Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as it thinks fit, the establishment, maintenance and working-
(a) of wireless telegraphs on ships within Indian territorial waters and on aircraft within or above India, or Indian territorial waters, and
(b) of telegraphs other than wireless telegraphs within any part of India. - Section 4(1) of the Indian Telegraph Act, 1885

Scope of taxable service shall include means any service provided or to be provided to a subscriber, by the telegraph authority in relation to a communication through telegraph.

XXXI. TELEX SERVICES

Effective date: 16th July 2001.

Definitions:
“Telex” means a typed communication by using teleprinters through telex exchanges.
“**Telegraph Authority**” has the meaning assigned to it in clause (6) of section 3 of the Indian Telegraph Act, 1885 and includes a person who has been granted a license under the first proviso to sub-section (1) of section 4 of that Act.

“Telegraph authority” means the Director General of Posts and Telegraphs, and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act - Section 3(6) of the Indian Telegraph Act, 1885 Within India, the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs:
Provided that the Central Government may grant a licence, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India;
Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as it thinks fit, the establishment, maintenance and working-
(a) of wireless telegraphs on ships within Indian territorial waters and on aircraft within or above India, or Indian territorial waters, and
(b) of telegraphs other than wireless telegraphs within any part of India. [Section 4(1) of the Indian Telegraph Act, 1885]

Scope of taxable service shall include any service provided or to be provided to a subscriber, by the telegraph authority in relation to a communication through telex.

XXXII. ON-LINE INFORMATION AND DATABASE ACCESS AND/OR RETRIEVAL SERVICES

Effective date: 16th July 2001.
Definitions:

"Data" has the meaning assigned to it in clause (o) of sub-section (1) of section 2 of the Information Technology Act, 2000.
"Data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer.-Section 2(1)(o) of the Information Technology Act, 2000.
"On-line information and database access or retrieval" means providing data or information, retrievable or otherwise, to a customer, in electronic form through a computer network.

"Electronic form" has the meaning assigned to it in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000.
"Electronic form" with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, microfilm, computer generated micro fiche or similar device.- Section 2(1)(r) of the Information Technology Act, 2000.
"Information" has the meaning assigned to it in clause (v) of sub-section (1) of section 2 of the Information Technology Act, 2000. "Information" includes data, text, images, sound, voice, codes, computer programmes, software and databases or micro film or computer generated micro fiche.-Section 2(1)(v) of the Information Technology Act, 2000.
"Computer Network" has the meaning assigned to in clause (j) of sub-section (1) of section 2 of the Information Technology Act, 2000.
"Computer network" means the interconnection of one or more computers through – (i) the use of satellite, microwave, terrestrial line or other communication media; and (ii) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained; [Section 2(1)(j) of the Information Technology Act, 2000]

Scope of taxable service shall include any service provided or to be provided to a customer, by *any person*, in relation to on-line information and database access or retrieval or both in electronic form through computer network, in any manner. In the context of this service, it may be relevant to point out the manner in which on-line information and database access/retrieval is generally made available. First, the function of what is commonly known as Internet Service Providers (ISPs). The ISPs provide telecommunication network or gateways necessary to access messages and databases and other information holdings of content providers.

The second element is on-line information provision services which includes database services, provision of information on web-sites, provision of on-line data retrieval services from data bases and other information, to all or limited number of users and provision of on-line information by content providers. Internet service providers (ISPs) provide access to the web-sites through the computer network and the web-sites. Web-sites, in turn, provide the database or information. Some of the well-known ISPs operating in India are VSNL, MTNL, Satyam online, Bharti, Tata, RPG, HCL, Wipro, BPL, Dishnet etc. They normally charge the customers on the basis of usage of time (hours). They also provide dedicated lease lines on lump-sump payment basis. Clearly ISPs provide service in relation to on-line information and database access or retrieval. They are an integral part of the internet operations and without their service, the data or information can neither be accessed nor retrieved. They are, therefore, liable to pay service tax on the amount charged from the customers whether on usage time basis or on lease line basis.

♦ Paid web-sites like indiainformer.com, ciionline.com, which charges the customers for certain specific information contained in their website either in advance or credit basis are liable to service tax on the paid services provided by them.

♦ Interconnection charges paid by one ISP to another ISP are not liable to service tax. ISP's provide inter-connectivity services to one another and recover charges for such services. This is done to inter connect various networks so as to reach the server where the information is stored.

♦ E-commerce transactions are not ordinarily covered under the service tax net as no service of on-line information and database access/retrieval is involved in ecommerce transactions.

XXXIII. VIDEO TAPE PRODUCTION SERVICES

Effective date: 16th July 2001.

Definitions:

"Video production agency" means any professional vidoegrapher or any commercial concern engaged in the business of rendering services relating to video-tape production.

"Video-tape production" means the process of any recording of any programme, event or function on a magnetic tape or on any other media or device and includes services relating thereto such as editing, cutting, colouring, dubbing, title printing, imparting special effects, processing, adding, modifying or deleting sound, transferring from one media or device to another, or undertaking any video post-production activity, in any manner.

Scope of taxable service shall include any service provided or to be provided to a client, by a video production agency in relation to videotape production, in any manner.

♦ This taxable service covers the service of recording of any programme, event or function and includes recording of serials, telefilms or any other programme meant for broadcasting.

♦ Facilitation activities, such as providing studio, other facility as lights, gadgets, instruments, devices, providing technical persons for operating the recording devices or for any other activity in relation to video tape production are taxable.

♦ Editing, colouring, dubbing, printing titles and special effects, film processing etc. by a video production agency all come within the scope of this service.

♦ Reproduction of original master to make further copies of a video-tape does not come within the purview of service tax.

♦ Lending/hiring of video/sound recording equipment is in the nature of sub-contract and because the sub-contractors are not providing the service to the customer directly, they are not required to pay service tax.

XXXIV. SOUND RECORDING SERVICES

Effective date: 16th July 2001.

Definitions:

"Sound recording" means recording of sound on any media or device including magnetic storage device, and includes services relating to recording of sound in any manner such as sound cataloguing, storing of sound and sound mixing or re-mixing or any audio postproduction activity.

"Sound recording studio or agency" means any *person* engaged in the business of rendering any service relating to sound recording.

"Magnetic storage device" includes wax blanks, discs or blanks, strips or films for the purpose of original sound recording.

Scope of taxable service shall include any service provided or to be provided to a client, by a sound recording studio or agency in relation to any kind of sound recording.

♦ The activities which fall under the category of sound recording service are providing the facility of studio, technical persons, musical instruments and other devices or any other facility or all the facilities in a consolidated manner, required for recording of sound, editing thereof, providing different kinds of sounds from the sound library for use in theater, films and radio etc.

The service charges that are paid for the use of these facilities are usually in terms of hours of usage.

♦ Reproduction of original master to make further copies of the audio tape or CDs etc. does not come within the purview of service tax.

♦ Lending/hiring of video/sound recording equipment is in the nature of sub-contracts and because the sub-contractors are not providing the service to the customer directly, they are not required to pay service tax.

XXXV. BROADCASTING (RADIO AND TELEVISION) SERVICES

Effective date: 16th July 2001.

Definitions:

"Broadcasting" has the meaning assigned to it in clause (c) of section 2 of the Prasar Bharati (Broadcasting corporation of India) Act, 1990. It also includes programme selection, scheduling or presentation of sound or visual matter on a radio or a television channel that is intended for public listening or viewing, as the case may be. In the case of a broadcasting agency or organisation, having its head office situated in any place outside India, the term includes the activity of selling time slots or obtaining sponsorships for broadcasting of any programme or collecting the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing, picture, image and sounds of all kinds by transmission of electro-magnetic waves through space or through cables, direct to home signals or by any other means to cable operator including multisystem operator or any other person on behalf of the said agency or organisation, by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner. "Broadcasting" means the dissemination of any form of communication like signs, signals, writing, pictures, images, and sounds of all kinds by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations and all its grammatical variations and cognate expressions shall be construed accordingly. – Section 2(c) of the Prasar Bharti (Broadcasting Corporation of India) Act, 1990.

Broadcasting agency or organisation – It means any agency or organisation engaged in providing service in relation to broadcasting in any manner. In the case of a broadcasting agency or organisation having its head office situated in any place outside India, it includes its branch office or subsidiary or representative in India or any agent appointed in India or any person who acts on its behalf in any manner, engaged in the activity of selling time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing, picture, image and sounds of all kinds by transmission of electromagnetic waves through space or through cables, direct to home signals or by any other means to cable operator, including multisystem operator or any other person on behalf of the said agency or organisation.

Scope of taxable service shall include any service provided or to be provided to a client, by a broadcasting agency or organisation in relation to broadcasting in any manner and, in the case of a broadcasting agency or organisation, having its head office situated in any place outside India, include service provided by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting the broadcasting charges or permitting the rights to receive any form of communication like sign, signal, writing, picture, image and sounds of all kinds by transmission of electromagnetic waves through space or through cables, direct to home signals or by any other means to cable operator, including multisystem operator or any other person on behalf of the said agency or organisation. *Explanation* – For the removal of doubts, it is hereby declared that so long as the radio or television programme broadcast is received in India and intended for listening or viewing, as the case may be, by the public, such service shall be a taxable service in relation to broadcasting, even if the encryption of signals or beaming thereof through the satellite
through the satellite might have taken place outside India.

This service covers both radio broadcasting and television broadcasting**.** While radio broadcasting is done by the All India Radio (AIR) or any private radio channel, television broadcasting is done by Doordarshan, Indian TV Channels and Foreign TV channels. The broadcasting may be of advertisements, serials/programmes or live events. The client is the person who wants an advertisement to be broadcasted or the sponsor of a serial or programme or event who wants the serial or programme or event to be broadcasted. The service provider i.e., broadcasting agency or organisation is the AIR, Doordarshan, other Indian TV Channels and foreign TV channels who broadcast the programme in India. Broadcasting is done either terrestrially or through satellite links. Most of the private TV channels are using satellite links for broadcasting their programmes. The uplinking of the programme to the satellite is done through VSNL or other earth stations located in India or through other agencies located abroad. The up-linking agencies are not broadcasting agencies and are not liable to service tax in respect of such service. The signals beamed by satellite are received either by Multi System Operators (MSO) or directly by cable operators. In the latter case the cable operator further retransmits the signals to the public (viewers). However, in the case of MSO, they first retransmit signals to the cable operator who in turn retransmits the same to the viewers.

In the case of radio or TV broadcasting services, the services are subject to tax where the services are effectively used and enjoyed. Multi System Operators (MSOs) are permitted to receive signals from the broadcasting agencies on payment of prescribed amount Cable operators transmit programmes to customers through cable network after receiving signals from the multisystem operators (MSOs). The services provided by cable operators to their customers and multisystem operators to cable operators are liable to service tax under the category of cable operator's services (refer para 2.44) while the charges recovered by the broadcasting agencies from the multisystem operator for providing the signals are subject to service tax under broadcasting services. In view of the advent of set top boxes, the customers can now access the signals directly without the interface of MSO and cable operators. Service tax is leviable on provision of direct to home (DTH) signals by the broadcasting agencies to the customers. Broadcasting service is provided by selling time slots. In the case of advertisemets, service charges are recovered based on the duration and frequency of advertisement and the time slot (prime time, non-prime time etc.) provided for the advertisement. In the case of serials/programmes/ events, service charges are made on the basis of factors such as duration, time slot, etc. However, some free commercial time is provided to the sponsor, which he can sell to others. In the case of broadcasting service, the advertisement charges or the sponsorship charges received by the braodcasting agency or organisation are the consideration for the services rendered and service tax is payable on these charges. In case of foreign satellite TV channels, their head office may be located outside India.

However, they have their branch offices or subsidiary companies located in India. In some cases, they have appointed agents. These branch offices/ subsidiary companies/agents act on behalf of these channels, selling time slots and recovering service charges and remitting the same to their head office/holding company/principals as the case may be. In such cases, these branch offices/subsidiary companies/agents are rendering the service in relation to broadcasting and therefore, they are liable to pay the service tax and comply with all other procedural formalities relating to service tax.

♦ Prasar Bharati Corporation (Doordarshan and All India Radio) is liable to pay service tax as the provider of the broadcasting services.

XXXVI. BANKING AND OTHER FINANCIAL SERVICES

Effective date: 16th July 2001

Definitions:

“Banking” and **“Banking company”** shall have the meanings assigned to them in clauses (b) and (c) of section 5 of the Banking Regulation Act, 1949, respectively.

“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, and order or otherwise.

“Banking Company” means any company which transacts the business of banking in India.
Explanation - Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause. - Section 5 (c) of the Banking Regulation Act, 1949

“Financial Institution” has the meaning assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934. “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 a 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;
(iv) the carrying on 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 subscriptions 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) The purchase or sale of any goods (other than securities) or the providing of any
Services; 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, constructions or sales of immovable property by other persons;

Explanation- For the purposes of this clause, "industrial activity" means any activity specified in sub-clauses (i) to (xviii) of clause (c) of section 2 of the Industrial Development Bank of India Act, 1964. [Section 45-I(c) of the Reserve Bank of India Act, 1934]

"Non-Banking Financial company" has the meaning assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934.
"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. [Section 45-I(f) of the Reserve Bank of India Act, 1934]

"Banking and other financial services" means—
(a) the following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate or *any other person*, namely:—
(i) Financial leasing services including equipment leasing and hire-purchase;
(ii) Merchant banking services;
(iii) Securities and foreign exchange (forex) broking;
(iv) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services, but does not include cash management;
(v) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy; (vi) provision and transfer of information and data processing; and
(vii) Banker to an issue; and
(viii) other financial services, namely, lending; issue of pay order, demand draft, cheque, letter of credit and bill of exchange; *transfer of money including telegraphic transfer, mail transfer and electronic transfer*, providing

bank guarantee, over draft facility, bill discounting facility, safe deposit locker, safe Vaults; operation of bank accounts
(b) Foreign exchange broking provided by a foreign exchange broker other than those covered under sub-clause (a).

"Banker to an issue" *means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934, carrying on the activities relating to an issue including acceptance of application, application money, allotment money and call money, refund of application money, payment of dividend and interest warrants.*

"Foreign exchange broker" includes any authorised dealer of foreign exchange. **"Authorised dealer of foreign exchange"** has the meaning assigned to "authorised person" in clause (c) of section 2 of the Foreign Exchange Management Act, 1999. "Authorised person" means an authorized dealer, money changer, off-shore banking unit or any other person for the time being authorized under sub-section (1) of section 10 to deal in foreign exchange or foreign securities. -Section 2(c) of the Foreign Exchange Management Act, 1999

Scope of taxable service shall include any service provided or to be provided to a customer, by a banking company or a financial institution including a non-banking financial company or any other body corporate or *any other person* in relation to banking and other financial services. It shall also include any service to a customer, by a foreign exchange broker other than those brokers in relation to banking and other financial service referred to above.

I. Financial leasing including equipment leasing and hire purchase

♦ The leasing or hire purchase may be of motor vehicles, machinery and equipments or other goods.
♦ only financial leases are covered.
♦ Operating leases are outside the purview of service tax.
♦ 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 installments) and not on the principal amount.

II. Merchant banking services

♦ 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.

♦ Merchant banking service 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, co-manager, underwriter and portfolio manager.

♦ Merchant banking services also include advisory services on corporate restructuring, debt or equity restructuring, loan restructuring, etc.

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

♦ Custodial depository services, i.e. service of safe keeping of securities of a client and providing incidental services thereto, attract service tax. However, service tax is not leviable on National Securities Depository Limited (NSDL) or Central Depository Services (India) Limited (CDSL) fees paid to the depositories and recovered from the customers on actual basis.

♦ Service tax will be charged on the fee for providing these services.

IV. Chit Funds

♦ Business of a chit fund is to mobilize cash from the subscribers and effectively cause movement of such cash to keep it working. Therefore, the activity of chit fund is in the nature of cash management, which is specifically excluded from the scope of the banking and other financial services.

V. Other auxiliary financial services

♦ Other auxiliary financial services include investment and portfolio research, advice on mergers and acquisition, advice on corporate restructuring and strategy, market analysis and intelligence.

VI. Depository services

♦ Electronic Access to Securities Information (EASI) provided by a depository to its customers is not 'e-commerce' but banking and other financial service and is taxable. EASI enables the owner to access its DEMAT account and transact depository business.

VII. Foreign Exchange Broking

♦ *Authorized dealers/money changers etc. which are authorized to deal in foreign exchange are covered in the definition of "foreign exchange brokers" under service tax provisions. However, only the service of "foreign exchange broking" when Provided by foreign exchange brokers (other than* *banking company/financial institution/body corporate which is already covered) is covered under the tax net. [Under Sale of Goods Act, goods mean every kind of movable property but exclude Money. Therefore, buying/selling of foreign exchange undertaken by money changers do not fall under scope of sale and is thus, covered under foreign exchange broking].*

Exemptions

(i) Banking company or financial institutions are exempt from service tax for the service provided to Government of India or a State Government for collection of any duties or taxes.

(ii) The value of taxable service provided to a customer, by a banking company or a financial institution including a non-banking financial company, or any other body corporate or *any other person*, in relation to,-

(a) Overdraft facility;

(b) Cash credit facility; or

(c) discounting of bills, bills of exchange or cheques, which is equivalent to the amount of interest on such overdraft, cash credit or, as the case may be, discount is exempt from the service tax subject to the condition that the said interest amount is shown separately in an invoice, a bill or, as the case may be, a challan issued for this purpose.

(iii) *Exemption from service tax is provided to financial leasing services including equipment leasing and hire-purchase from so much of the service tax as is equivalent to the service tax calculated on 90% of an amount, forming or representing interest. In other words service tax shall be payable only on 10% of the interest. The interest is the difference between the installment paid towards repayment of the lease amount and the principal amount contained in such installment. This exemption does not apply to any amount, other than an amount forming or representing as interest, charged by the service provider such as lease management fee, processing fee, documentation charges and administration fee*

(iv) *Taxable services provided or to be provided to any person, by Reserve Bank of India, are exempt from the whole of service tax leviable thereon.*

XXXVII. PORT SERVICES BY MAJOR PORTS AND OTHER PORTS

Effective date: 16th July 2001.

Definitions:

"Port" has the meaning assigned to it in clause (q) of section 2 of the Major Port Trusts Act, 1963.

“Port” means any major port to which this Act applies within such limits as may, from time to time, be defined by the central Government for the purposes of this Act by notification in the Official Gazette, and, until a notification is so issued, within such limits as may have been defined by the central Government under the provisions of the Indian Ports Act – Section 2(q) of the Major Port Trusts Act, 1963

“Port service” means any service rendered by a port or other port or any person authorised by such port or other port, in any manner, in relation to a vessel or goods.

"Other port" has the meaning assigned to "port" in clause (4) of section 3 of the Indian Ports Act, 1908, but does not include the port defined in clause (81).

“Port” includes also any part of a river or channel in which this Act is for the time being in force. [Section 3(4) of the Indian Ports Act, 1908]

“Vessel" has the meaning assigned to it in clause (z) of section 2 of the Major Port Trusts Act, 1963.
“Vessel” includes anything made for the conveyance, mainly by water, of human beings or of goods and a caisson. - Section 2(z) of the Major Port Trusts Act, 1963

“Goods” has the meaning assigned to it in clause (7) of section 2 of the Sale of Goods Act, 1930.
“Goods” are defined as every kind of movable property other than actionable claims and money, and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale. [Section 2(7) of Sale of Goods Act, 1930]

Scope of taxable service shall include any service provided or to be provided to any person, by a port or any person authorised by the port, in relation to port services, in any manner. It shall also include any service to any person, by other port or any person authorized by that port in relation to port services in any manner. The first point to be noted is that the situs is on services provided ‘to any person’ in contradistinction to other services where the situs of taxation is on the services provided ‘to a client’ or ‘to a customer’. It is to be noted that vessel related and cargo related services are liable to service tax. Services in relation to passengers are excluded.

♦ Port services consist of port and dock services (these are for services rendered in relation to vessels), cargo handling and storage services, railway haulage services, and container handling services (these are for services rendered in relation to goods). The charges for these services are covered under service tax.
♦ Demurrage charges attract service tax since these charges are in relation to goods. These charges are levied only if the goods overstay a prescribed free period in the port.
♦ Estate rentals of the port which are charged for renting of accommodation provided to outsiders and port users, lease rental for land, etc. are not liable to service tax as these are not services rendered in relation to goods or vessels.
♦ Handling/storage of empty containers within a port area is covered within the scope of port services, as empty containers come under the definition of goods.
♦ The services rendered by ship chandlers are services rendered in relation to the vessel under authorization from port authorities and hence come within the ambit of port services and are liable to service tax.
♦ Ship repair services including dry docking within port premises come within the ambit of port services and thus are chargeable to service tax.

XXXVIII. AUTHORISED SERVICE STATIONS'S SERVICES

Effective date: 16th July 2001.

Definitions:
"Authorised service station" means any service station, or centre, authorised by any motor vehicle manufacturer, to carry out any service, reconditioning or restoration or repair of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer.

"Motor car" has the meaning assigned to it in clause (26) of section 2 of the Motor 15 Vehicles Act, 1988. "Motor car" means any motor vehicle other than a transport vehicle, omnibus, road roller, tractor, motorcycle or invalid carriage. [Section 2(26) of the Motor Vehicles Act, 1988]

"Motor vehicle" has the meaning assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988. "Motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding thirty five cubic centimeters. [Section 2(28) of the Motor Vehicles Act, 1988]

"Light Motor Vehicle" means any motor vehicle constructed or adapted to carry more than six passengers, but not more than twelve passengers, excluding the driver.

Scope of taxable service shall include any service provided or to be provided to a customer, by an authorised service station, in relation to any service or repair, reconditioning or restoration of motorcars, light motor vehicles or two wheeled motor vehicles, in any manner.
♦ For an authorised service station, the charges towards repair or service of all motor cars or two wheeled motor vehicles are chargeable to service tax, whether the motor car or two wheeled motor vehicle is manufactured by the authorizing manufacturer or not.
♦ Services provided during warranty period, subsequent services such as routine check of performance of engine and vehicle, engine tuning, engine oil check, gear oil check, wheel alignment, wheel balancing, clutch and

brake adjustment, wheel rotation, cleaning/washing and any repairs undertaken are the types of services that are covered under this category.
♦ the activity of a sales dealer at the pre-sale stage or at the time of sale does not come under the purview of service tax. The activity of providing teflon coating at the time of sale cannot be construed as a service or repair provided by an authorized service station even though the same dealer may also be authorised to carry out after sale services.
♦ *the reconditioning or restoration of old motor cars, two-wheeled and light motor vehicles carried out by the authorized service stations or centres are liable to service tax.*

XXXIX. CARGO HANDLING SERVICES

Effective date: 16th August 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 noncontainerised 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.

Scope of taxable service shall include any service provided or to be provided to any person, by a cargo handling agency in relation to cargo handling services.
♦ the services provided in a port in relation to handling of goods are covered under port services and thus, no separate levy is attracted under the category of cargo handling agency service.
♦ all goods meant for export are excluded from the scope of this levy even in cases where goods are sent for transshipment for further transport for export.
♦ Service tax is not leviable on handling of export cargo from one international carrier to another international/domestic carrier.
♦ Unaccompanied baggage of a passenger is not leviable to service tax.
♦ Marketing or canvassing for cargo for airlines does not come within the ambit of cargo handling services. Hence no service tax is payable under the category of cargo handling service.
♦ Persons hiring labour/labourer for loading or unloading of goods in their individual capacity, are not liable to service tax as a cargo handling agency.
♦ The activity of storing/washing/repairing and handling of empty containers for the shipping lines undertaken by the Container Freight Stations does not

come within the purview of cargo handling services as empty containers can not be treated as cargo.

Exemptions

Taxable service provided to any person by a cargo handling agency in relation to agricultural produce or goods intended to be stored in a cold storage is exempt from payment of service tax.

XL. COMMERCIAL TRAINING OR COACHING SERVICES

Effective date: 1st July 2003.

Definitions:

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

"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 preschool 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.

Scope of taxable service shall include any service provided or to be provided to any person, by a commercial training or coaching centre in relation to commercial training or coaching.

♦ Institutes like the Institute of Chartered Accountants of India sometimes hire the services of other institutes to impart some part of training (like language or computer training) to the students undertaking courses for obtaining recognized degrees/diplomas (like Chartered Accountancy) from their institute. Whereas institutes like the Institute of Chartered Accountants of India are not chargeable to service tax because they confer qualifications recognized by law, the institutes or centers providing such part of training are under service tax net.

♦ Service tax is leviable on any coaching or training provided by an institution on commercial basis. Therefore, the coaching provided by postal means is also covered under the service tax and the charges, including the postal charges collected for rendering this service are subject to service tax.

♦ Training for competitive examinations and various entrance tests etc. provided by institutes which issue a certificate, diploma or degree recognized by law are outside the scope of service tax.

♦ Individuals providing services at the premises of a service receiver are not covered under this taxable service as service tax is on institutions or establishments.

♦ Commercial coaching provided by coaching or training center by sending individuals to the premises of service receivers is chargeable to tax, as in this case, the individuals are rendering services on behalf of an institution.

♦ Any free training provided by employers to their employees is not chargeable to service tax. However if an employer hires an outside commercial coaching or training center for imparting some training to its employees, then the payment made by the said employer to such coaching center will be chargeable to service tax.
♦ Coaching imparted by institutions that prepare applicants for board examinations and competitive exams is chargeable to service tax.
♦ Commercial coaching given to the students to prepare for university degree exam is liable for service tax.

Exemptions

(i) Taxable services, provided in relation to commercial training or coaching by, -
(a) a vocational training institute;
(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 purposes of this notification, -
(i) a 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;
(ii) "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.
(iii) 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.