BASICS

ON

SERVICE TAX

INTRODUCTION TO SERVICE TAX LAW

1. Introduced in India in 1994 by chapter V of the Finance Act, 1994 & continues to be administered under the same Act
2. Other Statues applicable to service tax are:
   - Service Tax Rules, 1994 (as amended from time to time)
   - CENVAT Credit Rules, 2004
   - Specific provisions of Central Excise Act, 1944 as adopted for the purposes of service tax.
   - Other provisions of specified laws as applicable

IMPORTANT INGREDIENTS OF SERVICE TAX

- Service Chargeability
  - ➢Charging provision
  - ➢Classification
- Service Receiver
- Service Provider
- Input Service
- Output service
- Exemptions

CHARGING PROVISION

Section 66 of the Finance Act, 1994 is the charging section of service tax.

Analysis:

- Leviable from effective date
- Leviable at specified percentage
- Leviable on the value of **taxable services***
- Shall be paid in the manner prescribed

* Taxable service has been defined under section 65(105) of the Finance Act, 1994

CLASSIFICATION OF SERVICES

- Not all the services are taxable. Only those mentioned in clause (105) of section 65 are liable to service tax.

  (Total till date 96 services)

- Though there is a uniform rate of tax for all services, classification is important to actually determine the taxability or otherwise (similar to excise).
- For e.g. Mineral exploration services
- Even if a particular service falls under two or more headings, tax has to be paid only once for the same service.

CLASSIFICATION OF SERVICES

Sometimes the same service /activity may fall under more than one service. A few examples could be services provided by:

Service	Possible similar service
Management consultant	Manpower recruitment services
Mandap Keepers	Convention Services
Rent a Cab	Tour Operators
Cargo handling services	Storage & Warehousing services
Architect	Interior Decorator
Scientific & Technical consulting	Consulting Engineer
Practising Chartered Accountants	Management Consultants

CLASSIFICATION OF SERVICES

The Act itself gives the solution in section 65A by laying down the manner in which classification shall be effected.

Section prevails as under mentioned:

- Most specific description
- Essential character
- Occurs first among the sub-clauses which equally merit consideration

SCOPE OF SERVICE RECEIVER

The definition of Taxable Service also defines the EXACT scope of service recipient

Term used	**Service categories**
Any Person	E.g.: Stock brokers, Tour operators, Rent a cab, port services, Cargo handling services, Airport services, Construction services, Air transport services, Technical testing, Technical inspection etc
Subscriber	Telephone, pager, leased circuit, Telegraph, Telex, FAX
Policy holder	General Insurance, Life Insurance
Client	Advertising Agency, consulting engineers, Architect, Chartered Accountants, C & F Agents, Business Auxiliary services etc
Customer	Air travel agent, online information, banking & financial services etc
Shipping line	Steamer Agent
Insurer or policy holder	Insurance Auxiliary services
Franchisee	Franchise
Exhibitor	Business Exhibition services

IMPLICATIONS

The exact use of specific terms for the service recipient can have MAJOR IMPLICATIONS in deciding the tax liability.

However in the light of recent Judicial pronouncements & from the intention of wide coverage, the aforesaid statement is losing its relevance.

- Client or customer: Subcontracting assignments with in the same service fall outside the purview of service tax.

IMPLICATIONS

- Any person: the scope of taxability becomes much wider.

  The subcontracting assignments are also covered under service tax. In such situations the department has granted benefit through a circular.

- Specific words like insurer or policy holder: For e.g. if an actuary offers his service to a corporate for the purposes of valuation of retirement benefits, the said service cannot be taxable under insurance auxiliary service as the service receiver is neither insurer nor the policy holder.

SCOPE OF SERVICE PROVIDER

- Pick & choose approach of taxation for:

    a. Services

    b. Service providers

For most of the taxable services the definition of service provider is specifically included in Sec 65 of Finance Act 1994

SCOPE OF SERVICE PROVIDER

- Commercial concern: Concept withdrawn via Finance act, 2006

Illustrative example:

The Act defines advertising agency to mean:

"advertising agency" means any commercial concern engaged in……….

one can find that the service provider has to be a commercial concern. Thus a charitable institution organising a fund raising programme & receiving advertisements for its souvenir would not be liable to collect service tax.

<u>INPUT SERVICE</u>

"input service" means any service,-

i. Used by a provider of taxable service for providing an output service; or

i. Used by the manufacturer, whether **<u>directly or indirectly</u>**, in or in relation to the manufacture of final products and clearance of final products from the place of removal, **and includes**

INPUT SERVICE

Services used in relation to:

- Setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises,
- Advertisement or sales promotion, market research,
- Storage upto the place of removal,
- Procurement of inputs,
- Activities relating to business, such as accounting, auditing, financing, recruitment and quality control,
- Coaching and training, computer networking, credit rating, share registry, and security,
- Inward transportation of inputs or capital goods and outward transportation upto the place of removal;

INTERPRETATION

- It is possible for the service provider to directly receive the inputs at the third place & consume the same for the purpose of rendering the taxable services.

- The term input shall not include motor vehicle as far as the service provider is concerned.

OUTPUT SERVICE

"output service" means any taxable service provided by the provider of taxable service, to a customer, client, subscriber, policy holder or any other person, as the case may be, and the expressions 'provider' and 'provided' shall be construed accordingly;

Explanation.- For the removal of doubts it is hereby clarified that if a person liable for paying service tax does not provide any taxable service or does not manufacture final products, the service for which he is liable to pay service tax shall be deemed to be the output service.

AVAILMENT OF SERVICE TAX CREDIT

- If both input & output services fall in the same category, the output service provider can avail full credit of service tax paid on input services
- If output service services are exempt from tax or not taxable at all, credit of input service tax is not available
- The input tax credit is available for services within the same service category w.e.f. 16-8-02 & for services across service category w.e.f 14-5-03

AVAILMENT OF SERVICE TAX CREDIT

- Input tax credit is available only after the payment of the service value & the service tax thereon.

- In case both taxable as well as non taxable services are rendered, then the assessee should maintain separate records & avail the service tax credit only in respect of taxable output services

AVAILMENT OF SERVICE TAX CREDIT

- Where no separate records are maintained, utilisation is restricted to 20% of the service tax on such output service
- For example:

Service tax payable on an output service is Rs 100. Service tax paid on input service is Rs 20. These input services are used for both taxable & exempt output services. In such case assessee can avail & utilize credit of Rs 20.

However, if tax paid on input services is Rs 75, then assessee can avail credit of Rs 75 (i.e. he can take credit of Rs 75 in his Service tax credit account), but can utilize the credit of only Rs 20. The balance will remain in the credit account only.

AVAILABILITY OF INPUT TAX CREDIT TO OUTPUT SERVICE PROVIDER/ MANUFACTURER

- CASH BASED APPROACH i.e. Input tax credit is available only after the payment of the service value & the service tax thereon as indicated in invoice or bill or challan of input service provider.
- No Preponement of Credit

Notification no 6/2004: Rule 6 of service tax credit rules has been amended to provide that if the input service supplier has not paid the service tax, the service tax credit cannot be recovered from the person availing the credit.

UTILISATION OF SERVICE TAX CREDIT

- Only towards payment of tax, not for penalty & interest
- Utilisation can never result to refund (except in Exports)
- Utilisation is restricted only to the extent such credit is available on the last day of the month/ quarter for payment of service tax related to the month/quarter

RATE OF SERVICE TAX & EDUCATION CESS

Steady increase in the rate of service tax

Period	Rate of service tax	Education cess	Effective rate
Upto 13th may 2003	5%	-	5%
14th may 2003 to 9th Sept 2004	8%	-	8%
10th Sept 2004 to 17th April 2006	10%	2%	10.2%
18th April Onwards	12%	2%	12.24%

EFFECTIVE DATE OF LEVY

Services rendered prior to the effective date cannot be brought to tax even if the same are realized later.

Some illustrative examples of the applicable tax rates are mentioned below for the ready reference.

EFFECTIVE DATE & RATE OF LEVY

Sr. No.	Situation	Tax Rate
1	Services rendered (& billed) prior to 13th may 2003 – irrespective of the date of realisation	5%
2	Services rendered (& billed) between 14th may 2003 and 9th September 2004 - irrespective of the date of realisation	8%
3	Services rendered (& billed) between 10th September 2004 and 17th April 2006- irrespective of the date of realisation	10.2%
4	Services rendered after 18th April 2006 – but realized in advance (prior to 18th April 2006)	10.2%

Note: The time of raising the bill is a primary evidence of the time of rendering the service but is not a conclusive one.

GENERAL EXEMPTIONS FROM SERVICE TAX:

- Services provided to United Nation & Other International Organisation vide N no. 16/2002
- When payment is received in convertible foreign exchange vide N no.21/2003
- Services provided to the developers/units of SEZ vide N no. 4/2004
- Service providers up to the turnover limit of 4 lacs vide N no.6/2005

EXPORT OF SERVICES – NO SERVICE TAX LEVIABLE

- Circular No. 56/5/03 dated 25-4-03 has clarified that the service tax is a destination based consumption tax & not applicable to export of services.
- Circular No. 36/4/2001 dated 8-10-2001 clarifies that the services provided outside the limits of Indian territorial waters is not liable to service tax
- Notification No. 21/2003 When payment is received in convertible foreign exchange it avails the general exemption from service tax
- Export of Service Rules, 2005

WHO IS LIABLE TO PAY SERVICE TAX

General principle:

- Person providing the taxable service.

WHO IS LIABLE TO PAY SERVICE TAX

Exceptions to General Rule:

- in relation to insurance auxiliary service by an insurance agent, any person carrying on the general insurance business or the life insurance business, as the case may be, in India;

- in relation to business auxiliary service of distribution of mutual fund by a mutual fund distributor or an agent, as the case be, the mutual fund or asset management company, as the case may be, receiving such service;

WHO IS LIABLE TO PAY SERVICE TAX

- in relation to any taxable service provided by a person who is a non-resident or is from outside India, dose not have any office in India, the person receiving taxable service in India;

- In relation to any taxable service provided by a goods transport agency, where the consignor or the consignee of goods is,-

WHO IS LIABLE TO PAY SERVICE TAX

(a) any factory registered under or governed by the factories Act, 1948 (63 of 1948);

(b) any company established by or under the Companies Act, 1956 (1 of 1956);

(c) any corporation established by and under any law;

(d) any society registered under the Society Registration Act, 1860 (21 of 1860) or any other law corresponding to that Act in force in any part of India;

(e) any co-operative society established by or under any other law;

WHO IS LIABLE TO PAY SERVICE TAX

(f) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or rules made there under; or

(g) any body corporate established, or a partnership firm registered, by or under any law;

any person who pays or is liable to pay freight himself or through his agent for transportation of such goods by road or road carriage;

Thank you