

Q. EXPLAIN IN BRIEF RELEVANT TAXABLE SERVICE**Relevant Taxable Services**

1. Commercial Training & Coaching 65(105)(zzc)
2. Information Technology Software Service 65(105)(zzzzz)
3. Legal Consultancy Services 65(105)(zzzzm)
4. Cargo Handling Services 65(105)(zr)
5. Custom House Agent Services 65(105)(h)
6. Practising Chartered Accountant Services 65(105)(s)
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8. Manpower Recruitment or Supply Agency's Services. 65(105)(k)

ANALYSIS OF TAXABLE SERVICES

Commercial Training or Coaching Centre
(Effective Date: 1-7-2003)

What is taxable - 65(105)(zzc)

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

Who is the receiver of service	Who is the provider of service	
Any person	A commercial training or coaching centre	Responsible for Payment

Meaning of Commercial training or coaching - 65(26)

"commercial training or coaching" means any training or coaching provided by a commercial training or coaching centre;

Meaning of Commercial Training or Coaching Centre - 65(27)

"commercial training or coaching centre" means

- any institute or establishment providing
 - commercial training or coaching for imparting skill or knowledge or lessons on any subject or field
 - other than the sports,

with or without issuance of a certificate and includes

coaching or tutorial classes **BUT**

does not include 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;

Important Points

1. It should provide **commercial training or coaching**
2. Services provided for training of sports like cricket, hockey, football, athletics, etc are not taxable.
3. **Pre-school** coaching like play home is not taxable.
4. **Postal coaching** or through correspondence is taxable and it will include the postal charges charged for rendering the service.
5. **Study material value** is not excludible otherwise than sale value of standard text book which are priced.
6. Special Coaching by institution in addition to coaching for recognised courses is not taxable if it is recognised by law:
7. **"(i) vocational training institute" means an Industrial Training Institute or an Industrial Training Centre affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961(52 of 1961).**

8. Commercial training & coaching centre includes a centre or institute, where training is imparted for consideration, whether such institute or centre is registered as a society or trust. (with or without the profit motive)
9. Recreational training institute provides training related to recreational activities like **dance, singing, martial arts or hobbies are not taxable.**
10. Taxable services provide by a commercial training or coaching centre which form an essential part of a course of any other institute recognised by law for the time being forced are exempt otherwise than the charges are paid to the commercial training or coaching centre.
11. If individual **going to the house to provide services**, it would not be taxable otherwise than if such individual is providing the service on the behalf of commercial institution. **(It must be any institute or Establishment)**
12. If employer provides any free **training themselves** to the employees **it will not be taxable**, but if hire an **outside commercial coaching** centre it will be **taxable**.
13. Coaching imparted to students of standards 1 to 9 is not taxable [FAQ]
14. Commercial coaching and training institutes that prepare applicants for Board/University Examinations, Competitive Exams like entrance examinations for IIT's, IIM's, Pre-Medical tests, Civil Services exams etc., or who impart knowledge in any field are required to pay service tax.
15. Institutes like the Institute of Chartered Accountants of India some time 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 the Institute of Chartered Accountants of India will not be chargeable to service tax because they confer qualifications recognized by law, the institutes or centers providing such part of training may be otherwise under service tax net. Vide notification No. 10/2003-such coaching or training is exempted from service tax which form an essential part of the course or curriculum leading to issuance of recognized certificate, diploma, degree or any other educational qualification. The exemption is subject to the condition that the receiver of such service (for example, student) makes payment for the entire course or curriculum to the institute or establishment issuing such certificate, diploma etc. and not to the commercial coaching or training center.
16. Service provided in relation to **Modular Employee Skill courses** approved by National Council of Vocational Training is fully exempt from service tax (Notification No. 23/2010)
17. Donation received by commercial training & coaching centre is not taxable **as donation is not linked** to specific trainee or training. (Circular No.127 / 09 / 2010 – ST)

Summary of Taxability (Important For Examination)

Coaching Centre / Institute imparting:	Taxable / Not Taxable
Sports Coaching	Not Taxable
Preschool Coaching i.e. Nursery or Play Homes etc	Not Taxable
Certificate Course by Recognised Institute	Not Taxable
Diploma Course by Recognised Institute	Not Taxable
Degree Course by Recognised Institute	Not Taxable
Coaching at Residence	Not Taxable
Training to Employees	Not Taxable
Special Coaching in addition to coaching for recognised courses	Not Taxable
Recreational Coaching – Dance, Singing, Martial Arts or Hobby Classes	Not Taxable
Vocational Training – Provided by Centre Affiliated to National Council	Not Taxable
Vocational Training – Other than above	Taxable
Non Profit Organisation	Taxable
Postal Coaching	Taxable

Legal Consultancy Service
(Effective Date: 1-09-2009)

What is taxable - 65(105)(zzzzm)

Any service provided or to be provided to a business entity, by any other business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner:

Provided that any service provided by way of appearance **before any court, tribunal or authority shall not amount to taxable service.**

Explanation.— For the purposes of this sub-clause, "business entity" **includes an association of persons, body of individuals, company or firm, but does not include an individual;**

Who is the receiver of service	Who is the provider of service	
Business Entity	Business Entity	Responsible for Payment

Summary

- Services shall be in relation to advice, consultancy or assistance
- Such advise etc shall be in relation to any branch of law.
- Services provided by business entity to entity are taxable

Individual to Individual	Not taxable
Individual to Company / Firm / LLP	Not taxable
Company / Firm / LLP to Individual	Not taxable
Company / Firm / LLP to Charitable Institution	Not Taxable
Company / Firm / LLP to Company / Firm / LLP	Taxable

No specific qualification is required to be a service provider.

Extracts from Circular No. D.O. F. No.334/13/2009-TRU dated 6-7-2009

2.3 Legal Consultancy Service: As in the case of management consultancy or engineering consultancy service, any consultancy, advice or technical assistance provided in any discipline of law is proposed to be subjected to service tax.

However, the tax would be limited to services provided by a **business entity to another business entity**. It has been defined that a business entity includes firms, associates, enterprises, companies etc. **but does not include an individual**. Thus, services provided by an individual advocate either to an individual or even to a business entity would be outside the scope of the taxable service. Similarly, the services provided by a corporate legal firm to an individual would also be outside the purview of taxable service. Any service of appearance before any court of law or any statutory authority would also be kept outside this levy.

Information Technology Software Services
(Effective Date: 16-5-2008)

What is taxable - 65(105) (zzzze)

Any service provided or to be provided to any person, by any other person in relation to information technology software **for use in the course, or furtherance, of business or commerce**, including,—

- development of information technology software,
- study, analysis, design and programming of information technology software,
- adaptation, upgradation, enhancement, implementation and other similar services related to information technology software,
- providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specifications for a database design, guidance and assistance during the start-up phase of a new system, specifications to secure a database, advice on proprietary information technology software,

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

Who is the receiver of service	Who is the provider of service	Responsible for Payment
Any Other Person	Any person	

Meaning of information technology software - 65(53a)

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

Extracts from Circular No. D.O.F. No.334113/2009-TRU dated 6-7-2009

A correction has been carried out in the definition of the taxable service by replacing the word '**acquiring**' by the word '**providing**', considering the fact that it is the providing of 'right to use' and not the acquiring of 'right to use' is a taxable service. This amendment would have retrospective effect from 16.05.2008, when the service came into effect.

Summary

- Only **customized software is covered**. Packaged software sold off the shelf is leviable to excise duty. However in some cases there is an exemption granted from excise / customs duty for part of the value of the packaged software. Such value which is exempt from excise would be liable for service tax.
- Packaged or Canned software intended for single use and packed accordingly is not liable to service tax if following conditions are satisfied
 - Document providing the right to use is packed along with software
 - Importer has paid appropriate customs duties
 - Benefit under notification 31/2010 of customs is not availed by importer.
- Electronic supplies** are covered.
- Services provided in relation to Information Technology (IT) software, such as **development, designing, programming, up-gradation, providing advice, consultancy and assistance** on the matters of IT software and **providing right to use** IT software, whether supplied on a media or electronically, were brought in the ambit of Service tax. However, **taxable only when the receiver of service exploits them for commercial or business purposes**.

Cargo Handling Services

(Effective Date: 16/08/2002)

What is Taxable 65(105)(zr): -

Cargo handling services provided by the **cargo handling agent** in relation to movement of cargo (excluding export cargo) except actual transportation of goods.

Meaning of Cargo Handling Service: - [Section 65(23)]

Means loading, unloading, packing or unpacking of cargo and includes cargo handling services provided for freight in special containers or for non-containerized freight, services provided by a container freight terminal or any other

freight terminal; for all modes of transport and cargo handling service incidental to freight, **but does not include handling of export cargo or passenger baggage or mere transportation of goods;**

Who is the receiver of service	Who is the provider of service	Responsible for Payment
Any Other Person	Cargo Handling Agent	

Examples are services provided in relation to cargo handling by Container Corporation of India, Airport Authority of India, Inland Container Depot, Container Freight Station etc. This is an illustrative list. There are several other firms that are engaged in cargo handling.

Exemption & Exclusion: (Important For May & Nov 2011)

- Handling of export cargo,
- passenger baggage,
- mere transportation of goods,
- Cargo handled by Airport Authority of India for export are excluded from payment of Service Tax.
- Cargo handling services render in relation to agricultural produce or goods intended to be stored in cold storage.

1. Cargo handling services provided for freight in Special Containers / Non-Containerized Freight.	Taxable
2. Services provided by an Inland Container Depot (ICD) or a Container Freight such as	
a. Receipt, dispatch or delivery of cargo;	Taxable
b. Stuffing and stripping of containers;	Taxable
c. Transit operations by rail / road to and from serving ports;	Taxable
d. Temporary storage of cargo containers etc.	Taxable
3. Services provided by Freight Terminal, for all modes of transport;	Taxable
4. Cargo handling services incidental to Freight	Taxable
5. Services of transshipment of Import Cargo from international to domestic carrier.	Taxable
6. Packing together with transportation of cargo or using services like loading, unloading, unpacking	Taxable
7. Services relating to Agricultural Produce / goods intended for cold storage.	Non Taxable
8. Transportation of goods;	Non Taxable
9. Handling of Export Cargo / Passenger Baggage.	Non Taxable
10. Marketing or canvassing for cargo for Airlines	Non Taxable
11. Service of auction of abandoned cargo	Non Taxable
12. Cargo handling services provided in the port (Port Services)	Non Taxable
13. Supply of labour for handling the cargo (Manpower Recruitment and Supply Services)	Non Taxable
14. Storing, Washing, Repairing and Handling of empty containers for shipping lines. (Storage and Warehousing Services; Port Services if rendered within a Port)	Non Taxable

Custom House Agent Services (Effective Date: 15.06.1997)

What is Taxable 65(105)(h): -

Taxable service means any service 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.

Who is the receiver of service	Who is the provider of service	Responsible for Payment
Client	Custom House Agent	

Scope of the Services: - Services rendered by CHA are

- Clearing of the import and export consignment
- Loading/unloading of import or export goods from/at the premises of the exporter/importer, the packing,
- Weighment, measurement of the export goods,
- The transportation of the export goods to the customs station or the import goods from the custom station to the importers premises,
- Carrying out of various statutory and other formalities such as payment of expenses on account of octroi, destuffing /pelletisation terminal handling, fumigation, drawback/DEEC processing, survey /amendment fees, dock fees, repairing and examination charges, landing and container charges, statutory labour charges, testing fees, drug control formalities, sorting /marking/stamping/sealing on behalf of the exporter/ importer.
- The CHA incur various other expenses such as crane/fork lift charges, taxi charges, Photostat and fax charges, bank collection charges, courier service charges, and miscellaneous other expenses on account of the importer /exporter.
- For all the above charges, the CHA is ordinarily reimbursed by the importer/ exporter for whom the above services are rendered.
- Apart from the above charges, the CHA also charges the client for his services under the head nomenclature of “agency and attendance charges “ or similar kind of heads which is purported to be his service charge in respect of the services rendered in relation to the import/export goods.

Special Provision for registration: - A CHA may have various branch offices located at different stations but all these branch officers do not raise the bills and only the main or central office will be raising the bills. In such cases only the central office should be registered with the Department.

Value of Taxable Service: - Gross Amount Charges for Such Services. **Except** Payments made by CHA on behalf of the client, such as statutory levies (cess, custom duties, port dues etc) and various other reimbursable expenses incurred **are not to be included for computing the Service Tax.**

In case of “turnkey” imports and exports where a lump sum amount is charged from the client for undertaking various services. In such cases, the value of the taxable Service Tax shall be 15% of the lump sum amount charged to the client.

In case the bills raised by the CHA are not entirely paid by the client and the CHA is forced to give discounts then where the final bill raised is lower than the initial bill – CHA can claim refund within 6 months from the date of payment of service tax on production of evidence.

Exemption/Exclusion:

1. in case of sub-contract - it is possible that the sub-contracting CHA raises the bill on the main CHA who in turn raises the bill to the client. It has been decided that in such cases the sub-contracting CHA will not be required to pay Service Tax on the bills raised by him on the main CHA. The Service Tax will be payable by the CHA who provides the actual service to the client and raises the bill to the client. (Ministry’s F.No.B-43/1/97-TRU dt.06.06.1997)

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

Practicing Chartered Accountant Services
(Effective date: 16.10.1998)

What is Taxable 65(105)(s)

Taxable service means **any service provided** to a client, by a practicing chartered accountant in his professional capacity, in any manner.

Who is the receiver of service	Who is the provider of service	
Client	Practicing Chartered Accountant	Responsible for Payment

Meaning of Practicing Chartered Accountant: - [Section 65(83)]

Practicing Chartered Accountant is a person who is a member of the Institute of Chartered Accountants of India and is holding a certificate of practice granted under the provisions of the Chartered Accountants Act, 1949 and includes any concern engaged in rendering services in the field of chartered accountancy.

Taxable Services: - All services provided by Practicing Chartered Accountants, Practicing Company Secretaries and Practicing Cost Accountants, in their professional capacity.

Exempt Services: -

- (i) Authorized Representative Service
- (ii) Services relating to teaching, placement, etc. (not deemed to be provided in professional capacity)

Consulting Engineers Service

(Effective Date: 7.7. 1997)

What is Taxable 65(105)(g): -

Any service provided or to be provided to any person, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering including the discipline of computer hardware engineering but excluding the discipline of computer software engineering

Who is the receiver of service	Who is the provider of service	Exemption from Amount of Cess
Any Person	Consulting Engineer	Responsible for Payment

Consulting Engineer: -means any professionally qualified engineer or anybody 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.

Taxable Services: -

- Services provided in the discipline of computer hardware engineering and computer software;
- Services of Valuation
- Soil Testing, Land Surveys, Structural Engineering Works, Civil, Mechanical or Electrical engineering, Construction Management, Survey, Planning, Supply of drawings and Designs etc.
- Services provided by self employed professionally qualified engineer.

Non taxable Services: -

- Testing laboratories, Supply of marine crafts, Piloting of vessels from anchorage, Pollution Control Steps, Overseas Project;

2. Services of certification or inspection **Carried out as legal requirement** under a statute or code [Technical Inspection and Certification Service];
3. Services of soil testing;
4. Supply of Technical Manpower [Manpower Recruitment and Supply Agency Services].
5. Works Contracts Service
6. Commissioning, Erection & Installation etc.
7. Payment of royalty for use of Technical know How, Brand Name, Trade Mark, Patent etc.; [Intellectual Property Service]
8. Providing training to customers for correct use of technology

Manpower Recruitment or Supply Agency's Services

(Effective Date: 07/07/1997)

What is Taxable 65(105)(k): -

Any service provided or to be provided to any person, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner. It also includes services in relation to pre-recruitment screening, verification of the credentials and antecedents of the candidate and authenticity of documents submitted by the candidate

Who is the receiver of service	Who is the provider of service	
Any Person	Manpower Recruitment & Supply Agency	Responsible for Payment

Issues: -

- Educational institutes such as IITs and IIMs fall within the definition of 'manpower recruitment or supply agency', and service tax is liable on services provided by such institutions in relation to campus recruitment under section
- In the case of supply of manpower, individuals are contractually employed by the manpower recruitment or supply agency. The agency agrees for use of the services of an individual, employed by him, to another person for a consideration. Employer employee relationship in such case exists between the agency and the individual and not between the individual and the person who uses the services of the individual.

§...It's a Beginning...§

Prepared By C.A. Anandkumar B.Parakh

Suggestions and Criticism from all the readers would be highly appreciated and acknowledged

Address for Correspondence

F- 8, Heritage Apartment,
Station Road,
Near Varqa School,
Ahmednagar (MH)
Email: - parakhanand@gmail.com
Ph: - 0241 – 2328612