INTRODUCTION TO SERVICE TAX

1. ***What is Service Tax? Whether it is direct or indirect tax?***

   Service tax is an indirect tax levied on certain services provided by certain categories of persons/firms/agencies. Service sector was not taxed for considerably very long time. For the first time, the services came to be taxed in 1994 Budget through Chapter V of the Finance Act, 1994. However w.e.f. 01.07.2012 service tax is applicable on all services except those either mentioned in Negative List or in Exemption Notifications.

2. ***What is the meaning of service?***

   'Service' has been defined in the clause (44) of the new section 65(B) Act and means any activity for consideration carried out by a person for another person and includes a declared service .However it does not include—

   — any activity that constitutes only a transfer in title of (i) goods or (ii) immovable property by way of sale, gift or in any other manner

   — such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution; or

   — A transaction only in (iii) money or (iv) actionable claim

   — Any service provided by an employee to an employer in the course of the employment.

   — Fees payable to a court or a tribunal set up under a law for the time being in force

3. ***Who is liable to pay Service Tax to the Government?***

   The person who provides the taxable service is liable to pay the Service Tax to the Government except in certain specified cases where the service receiver may also be liable to pay the Service Tax to the credit of the Government.

4. ***Which is the machinery to administer the Service Tax?***

   Service Tax is an indirect tax and is administered by CBEC i.e. *Central Board of Excise and Customs through its Commissionerate and Office of Director General of Service Tax. Service tax cells setup by Central Excise and Customs are there throughout the country to administer the service tax.*

5. ***Under what authority service tax is levied?***

   Vide Entry 97 of Schedule VII of the Constitution of India, the Central Government levies service tax through Chapter V of the Finance Act, 1994.

6. ***Where is service tax provision applicable?***

The statutory provisions of the Finance Act, 1994 (Chapters V and VA) extends to taxable territory i.e. (whole of India except the State of Jammu and Kashmir).

7. ***What is the taxable amount on which service tax is charged?***

The gross amount charged/collected from the client/customer by the service provider in relation to the services provided is the taxable amount subject to exemptions, abatements.

8. ***What is the effective rate of Service Tax?***

Presently the rate of Service Tax is 12.36% to be levied on the 'value of taxable service". The meaning of "Value of Taxable Service" is the gross amount charged by the service provider for the taxable service rendered by him.

9. ***What is the 'value of taxable services'?***

The 'value of taxable services' in case of any taxable services as per section 67, shall be the gross amount charged by the service provider for such taxable services rendered by it to any person.

Gross amount means the gross amount charged without deduction of expenses incurred in rendering/providing the service and without any abatement from the taxable value (except specified otherwise).

Also, Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

Section 67 of the Finance Act, 1994 read with Service Tax (Determination of Value) Rules, 2006, has to be followed to arrive at the taxable value.

As amended by the Finance Act, 2005, the value of taxable service will also include amount to be received by the service provider or amount received in advance from the customer or client. Therefore, the gross amount shall include the amount received towards the taxable service before, during or after the provisions of taxable service.

Cost of material or goods sold, to the service users will not form part of value of taxable service.

The Finance Act, 2006 substituted the existing section 67 with a new section 67 to provide for determination of value of taxable service in cases, where the consideration received for taxable services provided is not wholly in money terms or the consideration is not ascertainable.

Finance Act 2012, Section 67A has also been inserted to prescribe that the rate of service tax, rate of exchange, if any shall be the rate of service tax or value of taxable service or rate of exchange, as the case may be, in force or as applicable at the time when the taxable service has been provided or agreed to be provided.

10. ***Are there any general exemptions available to all the service providers from payment of service tax?***

In addition to exemptions contained in Mega Exemption Notification, exemptions are also available to all the service providers in respect of all/specified taxable services, which are mentioned here below:

(a) Services rendered to the United Nations or an International Organization (vide Notification No. 27/2012-ST, dated 20.06.2012).

(b) Exemption for services provided to SEZ units and developers (Notification No. 40/2012-ST dated 20.06.2012).

(c) Exemption to small service providers, whose aggregate value of taxable services during the preceding financial year does not exceed 10 lakh vide *Notification No. 33/2012-ST, dated 20.06.2012..*

(d) Service rendered to a foreign diplomatic mission or consular post in India (Notification No. 27/2012, dated 20-6-2012).

(e) All taxable services, provided or to be provided, by a Technology Business Incubator (TBI) or a Science and Technology Entrepreneurship Park (STEP). (Notification No. 32/2012-ST, dated 20.06.2012).

(f) Exemption in respect of cess payable on import of technology (Notification No. 14/2012-ST dated 17.03.2012)

(g) Exemption in respect of property tax paid (Notification No. 29/2012-ST dated 20.06.2012)

11. What is the taxable event in case of Service Tax?

W.e.f. 1.4.2011, the taxable event is event when a service shall be 'deemed to have been provided'. When a service shall be 'deemed to have been provided' has been specified in "Point of Taxation Rules, 2011.

However, upto 30.6.2011, it is at the option of the assessee to exercise Point of Taxation Rules, 2011 and instead pay service tax on realization basis.

In case of new service, which is taxed for the first time; no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable. However, if the payment has been received before the service becomes taxable, but the invoice has not been issued, no service tax shall be payable only if the invoice has been issued within the period referred to in rule 4A of the Service Tax Rules, 1994.

12. What are transitional provisions in case of shifting from cash basis to accrual basis

The new rule i.e. Point of Taxation Rules shall not be applicable in case provision of service is completed or where invoices are issued prior to the date on which these rules come into force. The point of taxation in such situation shall be the date on which the payment is received or made as the case may be.

13. Whether all services provided are subject to service tax?

Yes, All the services except which are covered under negative list and which are specifically *exempted by the exercise of powers under 93(1) of the Finance Act 1994 are subject to levy of service tax.*

14. How is the classification of taxable services done?

Finance Act, 1994, section 65A provides for classification of taxable services w.e.f. 14-5-2003. Accordingly—

(a) Classification of taxable services shall be determined according to the terms of the sub-clauses of clause (105) of section 65.

(b) When the taxable service is classifiable under two or more sub-clauses of clause (105) of section 65, classification shall be done as follows:

(i)The sub-clause providing specific description to be preferred over the sub-clause providing a more general description.

(ii)If the services cannot be classified in the above clause (i), then the classification is to be done based on the essential character.v

(iii)If the services cannot be classified as per the above clauses (i) and (ii), then classification based on the sub-clause which occurs first among the sub-clauses which equally merit consideration.

However, after coming into force of new provisions, 65A will cease to apply but will remain relevant in respect of services provided upto June 30, 2012.

15. Whether there is any basic exemption limit or any minimum limit on levy of service tax?

Yes, exemption is available to small service provider having turnover upto Rs. 10 lakh, subject to conditions and safeguards mentioned in Notification No. 33/2012-ST dated 20.06.2012).

16. What is the basis of charge for levy of service tax?

Section 66B, the charging section states that service tax at the prescribed rate shall be levied on the value of taxable services provided in taxable territory by a person to another for a consideration other than the services specified in the negative list and which are specifically exempted by the exercise of powers under 93(1) of the Finance Act 1994.

17. Who is the person required to pay Service Tax to the Government?

The person who provides taxable service is required to pay service tax to the Government except in certain cases in which service recipient has to pay Service Tax.

18. What is the meaning of 'quarter' under Service Tax Rules?

The word 'quarter' means a period of 3 months in the following 4 quarters in a financial year:—

1st April to 30th June

1st July to 30th September

1st October to 31st December

1st January to 31st March

19. *Mr. X is paying Service Tax to the Government, whether he can deduct this as expenditure under the Income-tax Act?*

Yes, Mr. X can deduct this expenditure as business expenditure and can charge this to the profit and loss account to the extent it is not recovered from his clients. W.e.f. 16th October, 1998, Service tax payable shall be computed on gross value of taxable services collected during the period.

20. *Mr. X, delays payment of Service Tax, will he be liable to pay any interest?*

Yes, Mr. X will be required to pay at simple interest at the rate of 18% (15% in the case value of taxable services provided during the last preceding financial year does not exceed sixty lakh rupees, w.e.f. 8-4-2011) per annum for the period by which the payment is delayed.

However, for the period upto 31-3-2011, above rate of interest is 13% irrespective of turnover during the last preceding F/Y.

21. *What are the existing statutes governing Service Tax?*

The Statutes governing the levy of Service Tax are as follows:

(i) The Finance Act, 1994 Chapter V — Section 64 to 96-I. This chapter extends to the whole of India except the State of Jammu and Kashmir.

(ii) The Finance Act, 2004 Chapter VI — for levy of Education Cess @ 2% on the Service Tax.

(iii) The Finance Act, 2007 Chapter VI — for levy of Secondary & Higher Education Cess @ 1% on the Service Tax.

(iv) The Service Tax Rules, 1994.

(v) The CENVAT Credit Rules, 2004.

(vi) The Service Tax (Registration of Special categories of persons) Rules, 2005.

(vii) The Service Tax (Determination of Value) Rules, 2006

(viii) Point of Taxation Rules, 2011, w.e.f. 1.4.2011

(ix) Place of Provision of Services Rules, 2012.

(x) Service Tax (Advance Ruling) Rules, 2003

(xi) Service Tax (Provisional Attachment of Property) Rules, 2008

(xii) Service Tax (Publication of Names) Rules, 2008

(xiii) Service Tax Return Preparer Scheme, 2009

(xiv) Service Tax (Compounding of Offences) Rules, 2012

(xv) Service Tax (Settlement of Cases) Rules, 2012

(xvi) Dispute Resolution Scheme Rules, 2008

(xvii) In addition to the above, certain provisions of the Central Excise Act, 1944 are also made applicable for Service Tax matters (Section 83 of the Finance Act, 1994).