NEGATIVE LIST OF SERVICES

1. ***What is "Negative List of Services"?***

In terms of Section 66B of the Act, service tax will be leviable on all services provided in the taxable territory by a person to another for a consideration other than the services specified in the negative list. The services specified in the negative list therefore go out of the ambit of chargeability of service tax. The negative list of service is specified in the Act itself in Section 66D.

In all, there are seventeen heads of services that have been specified in the negative list.

2. ***What are these Seventeen heads that have been specified in the negative list?***

According to Section 66D of the Finance Act, 1994;

The negative list shall comprise of the following services, namely:

(a) *services by Government or a local authority excluding the following services to the extent they are not covered elsewhere*
   - *(i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;*
   - *(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport*
   - *(iii) transport of goods or passengers; or*
   - *(iv) support services, other than services covered under clauses* (i) *to* (iii) *above, provided to business entities;*

(b) *services by the Reserve Bank of India;*

(c) *services by a foreign diplomatic mission located in India;*

(d) *services relating to agriculture by way of*
   - (i) *agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;*
   - (ii) *supply of farm labor;*
   - (iii) *processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;*
   - (iv) *renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;*
   - (v) *loading, unloading, packing, storage or warehousing of agricultural produce;*
   - (vi) *agricultural extension services;*
   - (vii) *services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;*

(e) *trading of goods;*

(f) *any process amounting to manufacture or production of goods;*

(g) *selling of space or time slots for advertisements other than advertisements broadcast by radio or television;*

(h) *service by way of access to a road or a bridge on payment of toll charges;*

(i) *betting, gambling or lottery;*

(j) *admission to entertainment events or access to amusement facilities;*

(k) *transmission or distribution of electricity by an electricity transmission or distribution utility;*

(l) *services by way of*

(i) *pre-school education and education up to higher secondary school or equivalent;*

(ii) *education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;*

(iii) *education as a part of an approved vocational education course;*

(m) *Services by way of renting of residential dwelling for use as residence;*

(n) *services by way of*

(i) *extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;*

(ii) inter se *sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;*

(o) *service of transportation of passengers, with or without accompanied belongings, by*

(i) *a stage carriage;*

(ii) *railways in a class other than*

(A) first class; or

(B) an air-conditioned coach;

(iii) *metro, monorail or tramway;*

(iv) *inland waterways;*

(v) public transport, other than predominantly for tourism purpose, in a vessel of less than fifteen tonne net; and

(vi) metered cabs, radio taxis or auto rickshaws;

(p) *services by way of transportation of goods*

(i) *by road except the services of*

(A) a goods transportation agency; or

(B) a courier agency;

(ii) *by an aircraft or a vessel from a place outside India to the first customs station of landing in India; or*

(iii) *by inland waterways;*

(q) *funeral, burial, crematorium or mortuary services including transportation of the deceased.*

3. Are all services provided by Government or local authority covered in the negative list?

No, *all the services provided by Government or local authority are not covered in the negative list .The* *services which are not covered are given below:*

(i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;

*(*ii*) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;*

*(*iii*) transport of goods or passengers; or*

*(*iv*)* ***support services,*** *other than services covered under clauses (*i*) to (*iii*) above, provided to business entities .*

4. ***Would the taxable services provided by the Government be charged to tax if they are otherwise exempt or specified elsewhere rather than the negative list?***

   No. *If the services provided by the government or local authorities that have been excluded from the negative list entry are otherwise specified elsewhere then such services would also not be taxable.*

5. ***Are various corporations formed under Central Acts or State Acts or various government companies registered under the Companies Act, 1956 or autonomous institutions set up by a special Acts covered under the definition of 'Government'?***

   No. *In terms of the definition of 'Government' as contained in the General Clause Act, 1857 and as per the settled position of law such corporations or authorities or companies are not included in the definition of 'Government'. Services provided by such entities would, therefore, not be entitled to the negative list entry relating to the 'Government'. It would also not include regulatory bodies.*

6. ***What entities are then covered under 'Government'?***

   'Government' would include various departments and offices of the Central or State Government or the U.T. Administrations which carry out their functions in the name and by order of the President of India or the Governor of a State.

7. ***Would a department of the Government need to get itself registered for each of the services taxable under the Act?***

   For the support services (except renting of immovable property service, department of post, transport of goods or passengers, services in relation to an aircraft or a vessel) provided by the Government to business entities government departments will not have to get registered because service tax will be payable on such services by the service receiver i.e. *the business entities receiving the service under reverse charge mechanism in terms of the provisions of Section 68. However in respect of services covered under exception e.g. renting of immovable property service mentioned supra, government department has to obtain service tax registration.*

8. ***What is the meaning of 'support services' which appears to be a phrase of wide ambit?***

   Support services have been defined in Section 65B of the Act as 'infrastructural, operational, administrative, logistic marketing or any other support of any kind comprising functions that entities *carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of movable or immovable property, security, testing and analysis'.*

Thus services which are provided by government in terms of their sovereign right to business entities are not support services e.g. *grant of mining or licensing rights or audit of government entities established by a special law, which are required to be audited by CAG under section 18 of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 (such services are performed by CAG under the statue and cannot be performed by the business entity themselves and thus do not constitute support services.)*

9. ***Will the services provided by Police or security agencies to PSUs or corporate entities or sports events held by private entities be taxable?***

   Yes. *Services provided by government security agencies are covered by the main portion of the definition of support service as similar services can be provided by private entities. In any case it is also covered by the inclusive portion of the definition. However the tax will be actually payable on reverse charge by the recipient.*

10. ***Would agency or intermediary services on commission basis (distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills), which are provided by the Department of Posts to non-government entities be liable to service tax?***

    Yes. *Agency services carried out on payment of commission on non government business are excluded from the negative list entry relating to services provided by Government or a local authority.*

11. ***Are all services provided by the Reserve Bank of India in the negative list?***

    Yes. *All services provided by the Reserve Bank of India are in the negative list.*

12. ***What about services provided to the Reserve Bank of India?***

    Services provided to the Reserve Bank of India are otherwise not in the negative list and would be taxable unless covered in any other entry in the negative list.

13. ***Would services provided by banks to RBI be also taxable?***

    Yes. *Services provided by banks to RBI would be taxable as these are neither in the negative list nor covered in any of the exemptions.*

14. ***Would services provided by a foreign diplomatic mission located in India in the negative List?***

    Yes. *Any service that is provided by a diplomatic mission of any country located in India is in the negative list. This entry does not cover services, if any, provided by any office or establishment of an international organization.*

15. ***What is the meaning of 'agriculture'?***

'Agriculture' has been defined in the Act as cultivation of plants and rearing or breeding of animals and other species of life forms for foods, fiber, fuel, raw materials or other similar products but does not include rearing of horses.

16. ***Are activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry included in the definition of agriculture?***
    Yes. *These activities are included in the definition of agriculture.*

17. ***What is the meaning of agricultural produce?***
    Agricultural produce has also been defined in Section 65B of the Act which means any produce of agriculture on which either no processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market. It also includes specified processes in the definition like tending, pruning, grading, sorting etc. which may be carried out at the farm or elsewhere as long as they do not alter the essential characteristics.

18. ***Would plantation crops like rubber, tea or coffee be also covered under agricultural produce?***
    Yes. *Such plantation crops are also covered under agricultural produce.*

19. ***Would potato chips or tomato ketchup qualify as agricultural produce?***
    No. *In terms of the definition of agricultural produce, only such processing should be carried out as is usually done by cultivator producers which does not alter its essential characteristics but makes it marketable for primary market. Potato chips of tomato ketchup are manufactured through processes which alter the essential characteristic of farm produce (potatoes and tomatoes in this case).*

20. ***Would operations like shelling of paddy or cleaning of wheat carried out outside the farm be covered in the negative list entry relating to agriculture as sub-clause (*iii*) of clause (*d*) of section 66D relating to services by way of processes carried out at an agricultural farm?***
    *The said sub-clause (*iii*) also includes 'such like operations which do not alter the essential characteristic of agricultural produce'. Therefore, activities like the processes carried out in agricultural farm would also be covered if the same are performed outside the agricultural farm provided such processes do not alter the essential characteristics of agricultural produce but only make it marketable in the primary market. Therefore, cleaning of wheat would be covered in the negative list entry even if the same is done outside the farm. Shelling of paddy would not be covered in the negative list entry relating to agriculture as this process is never done on a farm but in a rice sheller normally located away from the farm. However, if shelling is done by way of a service* i.e. *on job work then the same would be covered under the exemption relating to 'carrying out of intermediate production process as job work in relation to agriculture.*

21. ***Would agricultural products like cereals, pulses, copra and jaggery be covered in the ambit of 'agricultural produce' since on these products certain amount of processing is done by a person other than a cultivator or producer?***

'Agricultural produce' has been defined in clause (5) of section 65B as 'any produce resulting from cultivation or rearing of plants, animals including all life- forms, on which either no further processing is done or such processing is done as is usually done by the cultivator or producer which does not alter essential characteristics of agricultural produce but make it marketable for primary market'. The processes contemplated in the said definition are those as are 'usually done by the cultivator or producer'.

22. ***Would the processes of grinding, sterilizing, extraction packaging in retail packs of agricultural products, which make the agricultural products marketable in retail market, be***

    No. *Only such processes are covered in the negative list which makes agricultural produce marketable in the primary market.*

23. ***Would leasing of vacant land with a green house or a storage shed meant for agricultural produce be covered in the negative list?***

    Yes. *In terms of the specified services relating to agriculture 'leasing' of vacant land with or without structure incidental to its use is covered in the negative list. Therefore, if vacant land has a structure like storage shed or a green house built on it which is incidental to its use for agriculture then its lease would be covered under the negative list entry.*

24. ***What is the meaning of agricultural extension services?***

    Agricultural extension services have also been defined in Section 65B of the Act as application of scientific research and knowledge to agricultural practices through farmer education or training.

25. ***What are the services referred to in the negative list entry pertaining to Agricultural Produce Marketing Committee or Board?***

    Agricultural Produce Marketing Committees or Boards are set up under a State Law for purpose of regulating the marketing of agricultural produce. Such marketing committees or boards have been set up in most of the States and provide a variety of support services for facilitating the marketing of agricultural produce by provision of facilities and amenities like shops, sheds, water, light, electricity, grading facilities etc. They also take measures for prevention of sale or purchase of agricultural produce below the minimum support price. APMCs collect market fees, license fees, rents etc. Services provided by such Agricultural Produce Marketing Committee or Board are covered in the negative list.

26. ***Would service tax be leviable on processes which do not amount to manufacture or production of goods?***

    Yes. *Service tax would be levied on processes, unless otherwise specified in the negative list, not amounting to manufacture or production of goods carried out by a person for another for consideration.*

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27. ***Would service tax be leviable on processes on which Central Excise Duty is leviable under the Central Excise Act, 1944 but are otherwise exempted?***

    No. *If Central Excise duty is leviable on a particular process as the same amounts to manufacture then* *such process would be covered in the negative list even if there is a central excise duty exemption for such process. However if central excise duty is wrongly paid on a certain process, with or without an intended benefit, it will not save the process on this ground.*

28. ***Would activities of a commission agent or a clearing and forwarding agent who sells goods on behalf of another for a commission be included in trading of goods?***

    No. *The services provided by commission agent or a clearing and forwarding agent are not in the nature of trading of goods. These are auxiliary for trading of goods. In terms of the provision of clause (1) of Section 66F reference to service does not include reference to a service used for providing such service. Moreover the title in the goods never passes on to such agents to come within the ambit of trading of goods.*

29. ***Would future contracts in commodities & commodity futures be covered under trading of goods?***

    Yes. *Futures contracts would be covered under trading of goods as these are contracts which involve transfer of title in goods on a future date at a pre-determined price. In commodity futures actual delivery of goods does not normally take place and the purchaser under a futures contract normally offsets all obligations or closes out by selling an equal quantity of goods of the same description under another contract for delivery on the same date. There are, therefore, two contracts of sale/purchase involved which would fall in the category of trading of goods.*

30. ***Would auxiliary services relating to future contracts or commodity futures be covered in the negative list entry relating to trading of goods?***

    No. *Such services provided by commodity exchanges clearing houses or agents would not be covered in the negative list entry relating to trading of goods.*

31. ***Would service tax be leviable on processes which do not amount to manufacture or production of goods?***

    Yes. *Service tax would be levied on processes, unless otherwise specified in the negative list, not amounting to manufacture or production of goods carried out by a person for another for consideration.*

32. ***Would service tax be leviable on processes on which Central Excise Duty is leviable under the Central Excise Act, 1944 but are otherwise exempted?***

    No. *If Central Excise duty is leviable on a particular process as the same amounts to manufacture then such process would be covered in the negative list even if there is a central excise duty exemption for such process. However if central excise duty is wrongly paid on a certain process, with or without an intended benefit, it will not save the process on this ground.*

33. ***What is 'Advertisement' and what is the current taxability status of selling of space or time***

slots for advertisements after introduction of negative list?

'Advertisement' has been defined in Section 65 B of the Act as form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person.

Sale of space of time for advertisements not including sale of space for advertisement in print media and sale of time by a broadcasting agency or organization is currently taxed under clause (zzzm) of sub-section (105) of the Finance Act, 1944. So what kind of sale of space or time would become taxable and what would be not taxable after introduction of negative list?

Taxable	***Non-taxable***
Sale of space or time for advertisement to be broadcast on radio or television	*Sale of space for advertisement in print Media*
Sale of time slot by a broadcasting organization.	*Sale of space for advertisement in bill boards, public places, buildings, conveyances, cell phones, automated teller machines, internet*
	Aerial advertising

34. ***Would services provided by advertisement agencies relating to preparation of advertisements be covered in the negative list entry relating to sale of space for advertisements?***

No. *Services provided by advertisement agencies relating to making or preparation of advertisements would not be covered in this negative list entry and would thus be taxable. This would also not cover commissions received by advertisement agencies from the broadcasting or publishing companies for facilitating business, which may also include some portion for the preparation of advertisement.*

35. ***In case a person provides a composite service of providing space for advertisement that is covered in the negative list entry coupled with taxable service relating to design and preparation of the advertisement how will its taxability be determined?***

- *This would be a case of bundled services taxability of which has to be determined in terms of the principles laid down in Section 66F of the Act.*
- *Bundled services have been defined in the said Section as provision of one type of service with another type or types of services.*
- *If such services are bundled in the ordinary course of business then the bundle of services will be treated as consisting entirely of such service which determines the dominant nature of such a bundle.*

- *If such services are not bundled in the ordinary course of business then the bundle of services will be treated as consisting entirely of such service which attracts the highest liability of service tax.*

36. ***Whether merely canvassing advertisement for publishing on a commission basis by persons/agencies is taxable?***

    Yes. *These services are not covered in the negative list entry.*

37. ***Whether Service by way of Access to a Road or a Bridge on payment of Toll Charges covered in Negative list?***

    Yes. *In this case, the person who has been authorized or engaged to construct the road or bridge and to operate and maintain the said road or bridge would be covered, if he is charging any toll to Access to such Road or Bridge.*

38. ***Is access to national highways or state highways also covered in this entry?***

    Yes. *National highways or state highways are also roads and hence covered in this entry.*

39. ***Are collection charges or service charges paid to any toll collecting agency also covered?***

    No. *The negative list entry only covers access to a road or a bridge on payment of toll charges. Services of toll collection on behalf of an agency authorized to levy toll are in the nature of services used for providing the negative list services. As per the principle laid down in sub Section (1) of Section 66F of the Act the reference to a service by nature or description in the Act will not include reference to a service used for providing such service.*

40. ***Are auxiliary services that are used for organizing or promoting betting or gambling events also covered in this entry?***

    No. *These services are in the nature of services used for providing the negative list services of betting or gambling. As per the principle laid down in sub-section (1) of Section 66F of the Act the reference to a service by nature or description in the Act will not include reference to a service used for providing such service.*

    'Amusement facility' has been defined in the Act as 'a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other place but does not include a place within such facility where other services are provided'.

41. ***If a cultural programme, drama or a ballet is held in an open garden and not in a theatre would it qualify as an entertainment event?***

    Yes. *The words used in the definition are 'theatrical performances' and not 'performances in theatres'. A cultural programme, drama or a ballet preformed in the open does not cease to be a theatrical performance provided it is preformed in the manner it is preformed in a theatre,* i.e. *before an* *audience.*

42. ***Would a standalone ride set up in a mall qualify as an amusement facility?***

    Yes. *A standalone amusement ride in a mall is also a facility in which fun or recreation is provided by means of a ride. Access to such amusement ride on payment of charges would be covered in the negative list.*

43. ***Would entry to video parlors exhibiting movies played on a DVD player and displayed through a TV screen be covered in the entry?***

    Yes. *Such exhibition is an exhibition of cinematographic film.*

44. ***Would membership of a club qualify as access to an amusement facility?***

    No. *A club does not fall in the definition of an amusement facility.*

45. ***Would auxiliary services provided by a person, like an event manager, for organizing an entertainment event or by an entertainer for providing the entertainment to an entertainment event organizer be covered in this entry?***

    No. *Such services are in the nature of services used for providing the service specified in this negative list entry and would not be covered in the ambit of such specified service by operation of the rule of interpretation contained in clause (1) of Section 66F of the Act.*

46. ***If charges are collected by a developer or a housing society for distribution of electricity within a residential complex then are such services covered under this entry?***

    No. *The developer or the housing society would be covered under this entry only if it is entrusted with such function by the Central or a State government or if it is, for such distribution, a distribution licensee licensed under the Electricity Act, 2003.*

47. ***If the services provided by way installation of gen sets or similar equipment by private contractors for distribution of electricity covered by this entry?***

    No. *the entry does not cover services provided by private contractors. Moreover the services provided are not by way of transmission or distribution of electricity.*

48. ***What is the meaning of 'education as a part of curriculum for obtaining a qualification recognized by law'?***

    It means that only such educational services are in the negative list as are related to delivery of education as 'a part' of the curriculum that has been prescribed for obtaining a qualification prescribed by law. It is important to understand that to be in the negative list the service should be delivered as part of curriculum. Conduct of degree courses by colleges, universities or institutions which lead grant of qualifications recognized by law would be covered. Training given by private coaching institutes would not be covered as such training does not lead to grant of a recognized *qualification.*

49. *Are services provided by international schools giving international certifications like IB also covered in this entry?*

Yes. *Services by way of education up to higher secondary school or equivalent are covered in this entry.*

50. *Are services provided by boarding schools covered in this entry?*

Boarding schools provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of bundled services if the charges for education and lodging and boarding are inseparable. Their taxability will be determined in terms of the principles laid down in Section 66F of the Act. Such services in the case of boarding schools are bundled in the ordinary course of business. Therefore the bundle of services will be treated as consisting entirely of such service which determines the dominant nature of such a bundle. In this case since dominant nature is determined by the service of education other dominant service of providing residential dwelling is also covered in a separate entry of the negative list, the entire bundle would be treated as a negative list service.

51. *Are services provided to educational institutions also covered in this entry?*

No. Such services are not covered under the negative list entry. However certain services provided to educational institutions are separately exempted by a notification:

- *Services to an educational institution by way of catering under the centrally assisted mid – day meals scheme sponsored by government.*
- *Transport to and fro such exempt institutes.*
- *Services to or by an institution in relation to educational services, where the educational services are exempt from the levy of service tax, by way of services in relation to admission to such education.*

52. *Are private tuitions covered in the entry relating to education?*

No. *However, private tutors can avail the benefit of threshold exemption.*

53. *Are services provided by way of education as a part of a prescribed curriculum for obtaining a qualification recognized by a law of a foreign country covered in the negative list entry?*

No. *To be covered in the negative list a course should be recognized by an Indian law.*

54. *What are auxiliary educational services?*

'Auxiliary educational services' are defined in the mega notification. In term of the definition, the following activities are auxiliary educational services:

- *any services relating to imparting any skill, knowledge or education, or*

- *development of course content, or*
- *any other knowledge - enhancement activity, whether for the students or the faculty, or*
- *any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including following services relating to:*
    - *admission to such institution*
    - *conduct of examination*
    - *catering for the students under any mid-day meals scheme sponsored by Government*
    - *transportation of students, faculty or staff of such institution.*

55. If a course in a college leads to dual qualification only one of which is recognized by law would the service provided by the college by way of such education be covered in this entry?

Provision of dual qualifications is in the nature of two separate services as the curriculum and fees for each of such qualifications are prescribed separately. Service in respect of each qualification would, therefore, be assessed separately. If an artificial bundle of service is created by clubbing two courses together, only one of which leads to a qualification recognized by law, then by application of the rule of determination of taxability of a service which is not bundled in the ordinary course of business contained in Section 66F of the Act it is liable to be treated as a course which attracts the highest liability of service tax. However incidental auxiliary courses provided by way of hobby classes or extra-curricular activities in furtherance of overall well being will be an example of naturally bundled course. One relevant consideration in such cases will be the amount of extra billing being done for the unrecognized component vis-à-vis the recognized course.

56. Are placement services provided to educational institutions for securing job placements for the students covered in this negative list entry?

No. Such services do not fall in the category of exempt services provided to educational institutions.

57. Are services of conducting admission tests for admission to colleges exempt?

***Yes;** in case the educational institutions are providing qualification recognized by law for the time being in force.*

58. In addition to the services specified in the negative list, which educational services are exempt if provided by a charitable organization?

If the assessee is doing charitable activities and is registered with income tax authorities for this purpose under Section 12AA the Income Tax Act, 1961 and carry out the activity of advancement of educational programmes or skill development relating to,

- *abandoned, orphaned or homeless children;*
- *physically or mentally abused and traumatized persons;*
- *prisoners; or*
- *persons over the age of 65 years residing in a rural area;*

Then the above mentioned services are exempt if provided by the charitable organization.

59. *What are the courses which would qualify as an approved vocational education courses?*

Approved vocational education courses have been specified in Section 65B of the Act. These are—

- *a course run by 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)*
- *a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Employment and Training, Ministry of Labor and Employment, Government of India;*
- *a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India.*

60. *Educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses/MNCs, who come to the institutes for recruiting candidates through campus interviews. Whether services provided by such institutions are taxable?*

Yes. *Service tax is liable on services provided by such institutions in relation to campus recruitment as such services are not covered in the negative list.*

61. *Services by way of renting of residential dwelling for use as residence*

'Renting' has been defined in Section 65B as 'allowing, permitting or granting access, entry, occupation, usage or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property'.

62. *What is a 'residential dwelling'?*

The phrase 'residential dwelling' has not been defined in the Act. It has therefore to be interpreted in terms of the normal trade parlance as per which it is any residential accommodation, but does not include hotel, motel, inn, guest house, camp–site, lodge, house boat, or like places meant for temporary stay.

63. *Would renting of a residential dwelling which is for use partly as a residence and partly for non residential purpose like an office of a lawyer or the clinic of a doctor be covered under this entry?.*

This would also be a case of bundled services as renting service is being provided both for residential use and for non residential use. Taxability of such bundled services has to be determined in terms of the principles laid down in Section 66F of the Act.

64. *Would the nature of renting transactions explained in column 1 of the table below be covered*

in this negative list entry?

1	2
If……	***Then……***
a residential house taken on rent is used only or predominantly for commercial or non-residential use.	*the renting transaction is not covered in this negative list entry.*
if a house is given on rent and the same is used as a hotel or a lodge	*the renting transaction is not covered in this negative list entry because the person taking it on rent is using it for a commercial purpose.*
rooms in a hotel or a lodge are let out whether or not for temporary stay	*the renting transaction is not covered in this negative list entry because a hotel or a lodge is not a residential dwelling.*
government department allots houses to its employees and charges a license fee	*such service would be covered in the negative list entry relating to services provided by government and hence nontaxable.*
furnished flats given on rent for temporary stay	*these are in the nature of lodges or guest houses and hence not treatable as a residential dwelling*

65. What is the manner of dealing with various services provided by banks and other financial institutions?

Banks and financial institutions provide a bouquet of financial services relating to lending or borrowing of money or investments in money. For such services invariably a variety of instruments, often complex in nature, are used in the financial markets. Transactions in such instruments have to be examined on the touchstone of definition of 'service' given in clause (44) of section 65B and the list of services specified in the negative list to see whether such transactions would be chargeable to service tax. Broadly, the following legal provisions would have a bearing on determining the taxability of such transactions.

- *The definition of 'service' excludes activities that constitute only transactions in money or actionable claims. 'Money' has been defined in clause (33) of section 65B to include instruments like cheques, drafts, pay orders, promissory notes, letters of credit etc. Therefore activities that are only transactions in such instruments would be outside the definition of service. This would include transactions in Commercial Paper ('CP') and Certificate of Deposit ('CD') (on the understanding of being in the nature of promissory notes), issuance of drafts or letters of credit etc.*
- *Explanation 2 to clause (44) of section 65B has to be kept in mind which clarifies that transaction in money does not include any activity in relation to money by way of its use or conversion by cash*

or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged. The implications of this explanation are that while mere transactions in money are outside the ambit of service, any activity related to a transaction in money by way of its use or conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination would not be treated as a transaction in money if a separate consideration is charged for such an activity. While the transaction in money, per se, would be outside the ambit of service the related activity, for which a separate consideration is charged, would not be treated as a transaction of money and would be chargeable to service tax if other elements of taxability are present therefore service tax would be levied on service charges normally charged for various transactions in money including charges for making drafts, letter of credit issuance charges, service charges relating to issuance of CDs/CPs etc.

- *Activities that constitute only transactions in 'goods' are also excluded from the definition of service. 'Goods' have been defined in clause (25) of section 65 B to include 'securities'. Definition of 'securities include 'derivatives'. Transactions in instruments like interest rate swaps and foreign exchange swaps would be excluded from the definition of 'service' as such instruments are derivatives, being securities, based on contracts of difference. Since only transfer of title in securities is excluded from the definition of 'service' any attendant service charges or fees would be chargeable to service tax.*
- *Further services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.*

66. What are the 'services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount'?

The negative list entry covers any such service wherein moneys due are allowed to be used or retained on payment of interest or on a discount. The words used are 'deposits, loans or advances and have to be taken in the generic sense. They would cover any facility by which an amount of money is lent or allowed to be used or retained on payment of what is commonly called the time value of money which could be in the form of an interest or a discount. This entry would not cover investments by way of equity or any other manner where the investor is entitled to a share of profit.

Illustrations of such services are

- *Fixed deposits or saving deposits or any other such deposits in a bank for which return is received by way of interest.*
- *Providing a loan or over draft facility for in consideration for payment of interest.*
- *Mortgages or loans with a collateral security to the extent that the consideration for advancing such loans or advances are represented by way of interest.*
- *Corporate deposits to the extent that the consideration for advancing such loans or advances are represented by way of interest or discount.*

67. If any service charges or administrative charges or entry charges are recovered in addition to interest on a loan, advance or a deposit would such charges be also a part of this negative list

entry?

No. *The services of loans, advances or deposits are exempt in so far as the consideration is represented by way of interest or discount. Any charges or amounts collected over and above the interest or discount amounts would represent taxable consideration.*

68. To what extent is invoice discounting covered in the negative list entry?

Invoice discounting is covered only to the extent consideration is represented by way of discount.

69. Would services provided by banks or authorized dealers of foreign exchange by way of sale of foreign exchange to general public be covered in this entry?

No. *This entry only covers sale and purchase of foreign exchange between banks or authorized dealers of foreign exchange or between banks and such dealers, but does not cover the transaction between general public and the authorized dealers/banks.*

70. Would transactions entered into by banks in instruments like repos and reverse repos be covered in this negative list entry?

Section 45U(c) of the RBI Act, 1934 defines 'repos' as' an instrument for borrowing funds by selling securities with an agreement to repurchase the securities on a mutually agreed future date at an agreed price which includes interest for the funds borrowed'.

Section 45U(d) of the RBI Act, 1934 defines 'reverse repos' as' an instrument for lending funds by buying securities with an agreement to resell the securities on a mutually agreed future date at an agreed price which includes interest for the funds lent'. Repos and reverse repos are financial instruments of short term call money market that are normally used by banks to borrow from or lend money to RBI. The margins, called the repo rate or reverse repo rate in such transactions are nothing but interest charged for lending or borrowing of money. Thus they have the characteristics of loans and deposits for interest. However they are more appropriately excluded from the definition of service itself being the sale and purchase of securities, which are goods.

71. Would subscription to or trading in Commercial Paper (CP) or Certificates of Deposit (CD) be taxable?

Commercial Paper ('CP') and Certificate of Deposit ('CD') are understood as unsecured money market instruments issued in the form of a promissory note or in a dematerialized form through any of the depositories approved by and registered with SEBI. CPs are normally issued by highly rated companies, Primary Dealers and Financial Institutions at a discount to the face value. On the maturity date, the holder of CPs receives the income in the nature of discount or interest from the issuer. CDs can be issued by Scheduled Commercial Banks (excluding RRBs and Local Area Banks) and All - India Financial Institutions (FIs) permitted by RBI.

Promissory note is included in the definition of money in the Act as given in clause (33) of section 65B. Thus both the issue and subscription to such commercial paper will be a transaction in money. However if some service charges or service fees or documentation fees or broking charges or such like *fees or charges are charged, the same would be considerations for provision of service and chargeable*

72. *Would forward contracts in commodities or currencies be within the ambit of definition of 'service'?*

A forward contract is an agreement, executed today, to purchase or sell a pre-determined amount of a commodity or currency at a pre-determined future date at a pre-determined price. The settlement could be by way of actual delivery of underlying commodity/currency or by way of net settlement of differential of the forward rate over the prevailing market rate on the settlement date.

In a forward contract effectively two contracts are entered into, one for purchase and other for sale at a future date at a pre-determined price. These contracts would be in the nature of transfer in title in goods (in case the forward contract relates to a commodity) or transaction only money (in case the forward contract relates to transaction and money).

Therefore, forward contracts in commodities or currencies would not fall in the ambit of definition of 'service'. However if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be considerations for provision of service and chargeable to service tax.

73. *Would 'future contracts' be chargeable to Service tax?*

Future contracts are similar to forward contracts. Main difference is that in future contracts, the underlying are stocks or index of stocks or certain approved currencies and the settlement happens only by way of net settlement with no actual delivery. Another difference is that future contracts are traded only on recognized stock exchange while forward contracts may also be traded over-the-counter.

Since future contracts are in the nature of contracts of difference based on the prices of underlying stocks or index of stocks or approved currencies, they would be outside to the ambit of definition of 'service' as being transactions only in money or transfer of title in derivatives.

74. *Would charges for late payment of dues on credit card outstanding be chargeable to service tax?*

In case of a credit card, issuing entity allows the facility of payment of the purchases made by the card holder within a specified period failing which some charges are levied. The question that arises is whether the credit so extended for this payment is in the nature of a loan or advance for interest.

Interest for delayed payment of any consideration for the sale of goods or provision of service has been specifically excluded from value by rule 6 of valuation rules. Thus ordinarily any interest charged for delayed payment of consideration would have been outside the gambit of service tax. However in the case of credit cards the credit extended is not for the delayed payment of consideration for the provision of services. The services in the case of the credit card are by way of levy of issuing charges or the commission charged from merchants etc. The interest in this case is not for the consideration for the use of the card. Thus the benefit under the valuation rules will not be available to credit card companies.

The other question is whether such credit extended will amount to loans or advances. Loans and advances are meant to signify amounts contractually negotiated as such (loan or advance) and not merely failure to pay an amount at the due date. The exorbitant charges have also no relationship with the prevailing interest for the same class of creditworthiness and are in the nature of consideration for the services rendered for using the convenience of using the services by way of a credit card and hence taxable.

75. Are services by way of giving on hire of motor vehicles to state transport undertakings covered in this negative list entry?

No. *However such services provided by way of hire of motor vehicle meant to carry more than 12 passengers to a State transport undertaking is exempt.*

76. In some cases contract carriages get permission or temporary permits to ply as stage carriages. Would such services be taxable?

Specific exemption is available to services of transport passengers by a contract carriage for transportation of passengers, excluding tourism, conducted tours, charter or hire.

77. Are national waterways covered in the definition of inland waterways?

Yes.

78. Would services by way of transportation of passengers on a vessel, from say Chennai to Port Blair (mainland - island) or Port Blair to Havelock (inter island), be covered in the negative list entry?

Yes *in case the transportation is not predominantly for tourism purpose as such transportation by a vessel (of any size) is between two places located in India.*

79. What is the scope of the phrase 'predominantly for tourism purpose' which qualifies the negative list entry relating to public transportation of passengers by a vessel in sub-clause (v) of clause (o) of section 66D?

The words 'other than predominantly for tourism purpose' qualify the preceding words "public transport". This implies that the public transport by a vessel should not be predominantly for tourism purposes. Normal public ships or other vessels that sail between places located in India would be covered in the negative list entry even if some of the passengers on board are using the service for tourism as predominantly such service is not for tourism purpose. However services provided by leisure or charter vessels or a cruise ship, predominant purpose of which is tourism, would not be covered in the negative list even if some of the passengers in such vessels are not tourists.

80. Are all services provided by goods transport agency excluded from the negative list?

Yes. *However, there are separate exemptions available to the services provided by the goods transport agency. These are services by way of transportation of—*

- *fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;*
- *goods where gross amount charged on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or*
- *goods where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty.*

81. Are goods transport agencies liable to pay tax in all cases or are provisions relating to reverse charge also applicable after introduction of negative list?

The provisions relating to reverse charge, i.e. *service tax is liable to be paid by the consigner or consignee in specified cases, are applicable even after the introduction of negative list.*

82. Some transporters under-take door-to-door transportation of goods or articles and they have made special arrangements for speedy transportation and timely delivery of such goods or articles. Such services are known as 'Express Cargo Service' with assurance of timely delivery. Whether such 'Express cargo service' is excluded as courier agency service under this negative list entry?

"Courier" has been defined in section 65B as any person engaged in door-to-door delivery of time sensitive documents, goods or articles utilizing the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles.

The nature of service provided by 'Express Cargo Service' falls within the scope and definition of the courier agency. Hence, the said service is excluded from the negative list entry relating to transportation of goods by road.

83. Whether services provided by 'angadia' are liable to service tax as a courier service?

'Angadia' undertakes delivery of documents, goods or articles received from a customer to another person for a consideration. Therefore, 'angadias' are covered within the definition of a 'courier' and services provided by angadia are liable to service tax.

84. Are the following services of transportation of goods covered in the negative list entry?

Nature of service relating to transportation of goods	***Whether covered in the negative list entry?***
By railways	*No*
By air within the country or abroad	*No*
By a vessel in the coastal waters	*No*
By a vessel on a national waterway	*Yes*
Services provided by a GTA	*No*

85. Are services provided as agents for inland waterways covered by this entry?

No. *these are in the nature of services used for providing the negative list entry service of transport of* *goods on inland waterways and would not be covered by application of the rule for interpretation where services are specified by way of description contained in clause (1) of Section 66F of the Act.*

86. If transportation of goods takes place from Delhi to Jammu by road then how would the taxability of such transportation be determined considering that Jammu is located in at a place outside taxable territory?

Please refer to Chapter on Place of Provision.

87. What are Bundled Services and how will be the taxability of Bundled Services determined?

'Bundled service' *means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. An example of 'bundled service' would be air transport services provided by airlines wherein an element of transportation of passenger by air is combined with an element of provision of catering service on board. Each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different. Two rules have been prescribed for determining the taxability of such services in clause (3) of Section 66F of the Act. These rules, which are explained below, are subject to the provisions of the rule contained in sub Section (2) of Section 66F, viz a specific description will be preferred over a general description.*

Services which are naturally bundled in the ordinary course of business

The rule is – 'If various elements of a bundled service are naturally bundled in the ordinary course of business, it shall be treated as provision of a single service which gives such bundle its essential character'.

Illustrations:

A 5-star hotel in Gurgaon (Haryana) provides a 4-D/3-N package with the facility breakfast. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as service of providing hotel accommodation.

A 5 star hotel is booked for a conference of 100 delegates on a lump sum package with the following facilities:

- *Accommodation for the delegates*
- *Breakfast for the delegates,*
- *Tea and coffee during conference*
- *Access to fitness room for the delegates*
- *Availability of conference room*
- *Business centre*

As is evident a bouquet of services is being provided, many of them chargeable to different effective rates of tax. None of the individual constituents are able to provide the essential character of the service. However, if the service is described as convention service it is able to capture the entire essence of the package. Thus the service may be judged as convention service and chargeable to full rate. However it will be fully justifiable for the hotel to charge individually for the services as long as there is *no attempt to offload the value of one service on to another service that is chargeable at a concessional rate.*

Services which are not naturally bundled in the ordinary course of business

The rule is – 'If various elements of a bundled service are not naturally bundled in the ordinary course of business, it shall be treated as provision of a service which attracts the highest amount of service tax.'

Illustrations:

A house is given on rent one floor of which is to be used as residence and the other for housing a printing press. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Therefore, if a single rent deed is executed it will be treated as a service comprising entirely of such service which attracts highest liability of service tax. In this case renting for use as residence is a negative list service while renting for non-residence use is chargeable to tax. Since the latter category attracts highest liability of service tax amongst the two services bundled together, the entire bundle would be treated as renting of commercial property.

Significance of the condition that the rule relating to 'bundled service' is subject to the provisions of sub-Section (2) of Section 66F

Sub-Section (2) of Section 66 lays down 'where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description'. This rule predominates over the rule laid down in sub-Section (3) relating to 'bundled services'. In other words, if a bundled service falls under a service specified by way of a description then such service would be covered by the description so specified.

Illustration:

Pandal and Shamiana is an existing service and will remain a subject of taxation. Likewise service provided by way of catering is a taxable service and entitled to abatement. There is abatement when the two are provided in combination. Since the combination is more a specific entry than the two provided individually, there is no need to apply the later rule of bundled services, where the character could be judged by the service which provides it the essential character.

Manner of determining if the services are bundled in the ordinary course of business

Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators few of which are listed below

- *The perception of the consumer or the service receiver. If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package then such a package could be treated as naturally bundled in the ordinary course of business.*
- *Majority of service providers in a particular area of business provide similar bundle of services. For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.*
- *The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature*

of incidental or ancillary services which help in better enjoyment of a main service.

For example service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are—

- *There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.*
- *The elements are normally advertised as a package.*
- *The different elements are not available separately.*
- *The different elements are integral to one overall supply – if one or more is removed, the nature of the supply would be affected.*

No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.