Understanding Negative List of Services in Depth

Negative list of services [SECTION 66D]

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

Services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—Sec. 66 D[a]

(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) [*][any service], other than services covered under clauses (i) to (iii) above, provided to business entities;

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[*] Substituted by the Finance Act, 2015 w.e.f. 14.05.2015, Earlier it read as under: "support services"

1. Department of Posts provides a number of services. What is the status of those services for the purpose of levy of service tax?

As per sub-clause (i) of clause (a) of section 66D services provided by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services carried out on payment of commission on non government business are excluded from the negative list. Therefore, the following services provided by Department of Posts are not liable to service tax.

Basic mail services known as postal services such as post card, inland letter, book post, registered post provided exclusively by the Department of Posts to meet the universal postal obligations.

Transfer of money through money orders, operation of savings accounts, issue of postal orders, pension payments and other such services.

2. 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.

3. 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, and which are not substitutable in any manner by any private entity, 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.)

4. **Would a department of the Government need to get itself registered for each of the services listed in answer ?**

For the support services provided by the Government, other than where such support services are by way of renting of immovable property, 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 of the Act and the notification issued under the said section as well Service Tax Rules, 1994. For services mentioned at (i to iii above) and renting of immoveable properties the tax will be payable by the concerned department.

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

No. Most services provided by the Central or State Government or local authorities are in the negative list except the following :

(*a*) services provided by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services carried out on payment of commission on non government business;

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

(*c*) transport of goods and/or passengers;

(*d*) any services, other than those covered by clauses (a) to (c) above, to business entities.

Services by the Reserve Bank of India- Sec-66D(b)

1. **Which services are covered in Negative list Vide Sec-66D(b)?**

The following service is covered under Negative List vide Sec 66D(b): services by the Reserve Bank of India

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

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

3. 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.

Service provided by foreign diplomatic Missions-Sec. 66D [c]

65B(27) "India" means —

(a) the territory of the Union as referred to in clauses (2) and (3) of article 1 of the Constitution;

(b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976);

(c) the seabed and the subsoil underlying the territorial waters;

(d) the air space above its territory and territorial waters; and

(e) the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

1. Which services are covered in Negative list Vide Sec 66D(c)

The following service is covered under Negative List vide Sec 66D(c):Services by a foreign diplomatic mission located in India.

2. Services by a foreign diplomatic mission located in India

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.

Services relating to agriculture or agricultural produce by way of—Sec. 66D(d)

(i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;

(ii) supply of farm labour;

(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;

65B(5) "agricultural produce" means any produce of agriculture on which either no further 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;

65B(4) "agricultural extension" means application of scientific research and knowledge to agricultural practices through farmer education or training;

65B(3)"agriculture" means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products;

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

Yes, 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. 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.

2. Would the processes of grinding, sterilizing, extraction& packaging in retail packs of agricultural products, which make the agricultural products marketable in retail market, be covered in the negative list?

No, processes of grinding, sterilizing, extraction& packaging in retail packs of agricultural products will not be covered under the Negative List. Only such processes are covered in the Negative list which makes agricultural produce marketable in the primary market.

3. Would plantation crops like rubber, tea or coffee be also covered under agricultural produce

Yes. According to **point no. 4.4.4** of Education Guide dated 20.06.2012, plantation crops like rubber, tea or coffee are also covered under agricultural produce.

4. Would agricultural products like cereals, pulses, copra and jiggery 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?

According to **point no. 4.4.7** of Education Guide dated 20.06.20 ˜agricultural produce' has been defined in section 65B(5) 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'.**

It may, therefore, be inferred that since processing on above-mentioned agricultural products is done by a person other than a cultivator or producer, the aforesaid agricultural products would **not** be covered in the ambit of agricultural produce.

5. 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.

6. 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.

7. 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, fibre, fuel, raw materials or other similar products but does not include rearing of horses.

Trading of Goods: Sec. 66D[e]

1. **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.

2. **Would forward contracts in commodities be covered under trading of goods?**

Yes. Forward 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.

3. **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 a service does not include reference to a service used for providing such service. (For guidance on clause (1) of section 66F please refer to Guidance Note 9) Moreover the title in the goods never passes on to such agents to come within the ambit of trading of goods.

Services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption. Sec.-66D(f)

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substituted by the Finance Act, 2015 w.e.f. 14.05.2015.Earlier it read as under:

"any process amounting to manufacture or production of goods;"

1. **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 which does not amount to manufacture, with or without an intended benefit, it will not save the process on this ground.

2. **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. Some of such services relating to processes not amounting to manufacture are exempt as specified in entry No.30 of Exhibit A3.

selling of space for advertisements in print media]; Sec. 66D(g)

Substituted for "selling of space or time slots for advertisements other than advertisements broadcast by radio or television" by Finance (No.2) Act, 2014 with effect from 01.10.2014.

65b(2)"advertisement" means any 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;

1. Which services are covered in Negative list Vide Sec66D(g)?

The following service is covered under Negative List vide Sec 66D(g):

Selling of space for advertisements

With effect from 01.10.2014 ***Selling of space for advertisements in print media***
For the period 01.07.2012 to 30.09.2014 ***Selling of space or time slots for advertisements other than advertisements broadcast by radio or television*;**

2. 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 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.

3. Selling of space or time slots for advertisements other than advertisements broadcast by radio or television

'Advertisement' has been defined in section 65B of the Act as "any 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."

Service by way of access to a road or a bridge on payment of toll charges; Sec.66D(h)

1. 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.

2. 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.

Betting, gambling or lottery –Sec-66D(i)

1. 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.

Admission to entertainment events or access to amusement facilities; Sec. 66D(j)

65B(9)"amusement facility" means 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 places but does not include a place within such facility where other services are provided;

65B(24)"entertainment event" means an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, by way of exhibition of cinematographic film, circus, concerts, sporting event, pageants, award functions, dance, musical or theatrical performances including drama, ballets or any such event or programme;

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

No. According to point no. 4.10.4 of Education Guide dated 20.06.2012, a club does not fall in the definition of an amusement facility.

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

   Yes. According to **point no. 4.10.3** of Education Guide dated 20.06.2012, such exhibition is an exhibition of cinematographic film

3. **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.

4. **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.

5. **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 performed in the open does not cease to be a theatrical performance provided it is performed in the manner it is performed in a theatre, i.e. before an audience.

Transmission or distribution of electricity by an electricity transmission or distribution utility; Sec. 66D(k)

1. **If the services provided by way installation of gensets 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.

2. **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.

3. What is the meaning of electricity transmission or distribution utility?

An 'electricity transmission or distribution utility' has also been defined in section 65B of the Act. It includes the following -

the Central Electricity Authority,a State Electricity Board,the Central Transmission Utility (CTU),

a State Transmission Utility (STU) notified under the Electricity Act, 2003 (36 of 2003),

distribution or transmission licensee licensed under the said Act any other entity entrusted with such function by the Central or State Government

Services by way of—Sec.66D(l)

(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 recognised by any law for the time being in force;

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

1. Are services of conducting admission tests for which separate fees is charged for admission to colleges exempt?

Yes. According to **point no. 4.12.13** of Education Guide dated 20.06.2012, in case the educational institutions are providing qualification recognised by law for the time being in force, the same would be covered in the Negative List.It may be pertinent to add here that these services continue to be exempt in terms of Entry No. 9 substituted vide Notification No. 06/2014-Service Tax dated 11.07.2014 with effect from 11.07.2014.

2. 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 (please refer to point no 4.12.5 above).

3. 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.

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

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

5. Are the auxiliary educational services for all educational institutions exempt?

No. Exemption is available for services to or by educational institutions in respect of education exempted from service tax. Therefore, service tax is chargeable on such auxiliary educational services which are in respect of education chargeable to service tax.

6. 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.

7. 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.

8. 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 Labour 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.

9. 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.

Circular No. 172/7/2013 — ST, Dated: 19.09.2013

Sep 19, 2013

Education services - clarification - regarding.

The following representations have been received seeking clarifications regarding the levy of service tax on certain services relating to the education sector:

1. Private Schools Correspondents Confederation, Madurai.
2. Tamil Nadu Nursery, Primary, matriculation and Higher Secondary Schools Association, Chennai.
3. Punjab Association, Chennai.
4. Association of Self financing Universities of Rajasthan
5. Unaided Schools' Forum, Mumbai.
6. Vedavalli Vidyalaya, Wallajapet.
7. Independent Schools Associations, Chandigarh.
8. Mother Teresa Public School, New Delhi.
9. BVM Global, Chennai.
10. Sastra University, Tanjavur.
11. HLC International, Chennai.
12. Sodexo Food Solutions, Mumbai.
13. Federation of Associations of Maharastra, Mumbai.

2. The matter is covered by two provisions of the Finance Act, 1994. Section 66D of the Finance Act contains a negative list of services and clause (l) thereof reads as under:

"services by way of –

(i) pre-school education and education upto 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;".

Further section 93(1) of the Finance Act, 1994, enables the Government to exempt generally or subject to such conditions taxable service of specified description. By virtue of the said power, Government has issued a notification No.25/2012-ST dated 20th June, 2012, exempting certain services. Sl. no.9 thereof reads as follows:

"Services provided to an educational institution in respect of education exempted from service tax, by way of,-

(a) auxiliary educational services; or

(b) renting of immovable property;".

As defined in the said notification, *"auxiliary educational services" means any services relating to imparting any skill, knowledge, 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 services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution.*

3. By virtue of the entry in the negative list and by virtue of the portion of the exemption notification, it will be clear that all services relating to education are exempt from service tax. There are many services

provided to an educational institution. These have been described as "auxiliary educational services" and they have been defined in the exemption notification. Such services provided to an educational institution are exempt from service tax. For example, if a school hires a bus from a transport operator in order to ferry students to and from school, the transport services provided by the transport operator to the school are exempt by virtue of the exemption notification.

4. In addition to the services mentioned in the definition of "auxiliary educational services", other examples would be hostels, housekeeping, security services, canteen, etc.

5. Thus the apprehensions conveyed in the representations submitted by certain educational institutions and organizations have no basis whatsoever. These institutions and organizations are requested not to give credence to rumours or mischievous suggestions. If there is any doubt they are requested to approach the Chief Commissioner concerned.

6. All concerned are requested to acknowledge the receipt of this circular.

[F. No.B1/14/2013-TRU]

Circular No. 164/15/2012-ST, Dated 28.08.2012

Aug 28, 2012

service tax vocational education/training course -- regarding

Clarification has been sought in respect of levy of service tax on certain vocational education/training/ skill development courses (VEC) offered by the Government (Central Government or State Government) or local authority themselves or by an entity independently established by the Government under the law, as a society or any other similar body.

2. The issue has been examined. When a VEC is offered by an institution of the Government or a local authority, question of service tax does not arise. In terms of section 66D (a), only specified services provided by the Government are liable to tax and VEC is excluded from the service tax.

3. When the VEC is offered by an institution, as an independent entity in the form of society or any other similar body, service tax treatment is determinable by the application of either sub-clause (ii) or (iii) of clause (l) of section 66D of the Finance Act, 1994. Sub-clause (ii) refers to "qualification recognized by any law" and sub-clause (iii) refers to "approved VEC". In the context of VEC, qualification implies a Certificate, Diploma, Degree or any other similar Certificate. The words "recognized by any law" will include such courses as are approved or recognized by any entity established under a central or state law including delegated legislation, for the purpose of granting recognition to any education course including a VEC.

4. This Circular may be communicated to the field formations and service tax assessees, through Public Notice/Trade Notice. Hindi version to follow.

Services by way of renting of residential dwelling for use as residence; Sec. 66D(m)

1. 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**
(i) 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.
(ii) 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.
(iii) rooms in a hotel or a lodge are letout 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.
(iv) 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 non- taxable.
(v) furnished flats given on rent for temporary stay(a few days)	such renting as residential dwelling for the bonafide use of a person or his family for a reasonable period shall be residential use; but if the same is given for a short stay for different persons over a period of time the same would be liable to tax.

2. 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. **(Please refer to Guidance Note 9).**

3. 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.

4. Would the payments in the nature as explained in column A of the table below constitute a consideration for provision of service?

S. No.	A	B
	Nature of payment	**Whether consideration for service?**
1.	Amount received in settlement of dispute.	Would depend on the nature of dispute. Per se such amounts are not consideration unless it represents a portion of the consideration for an activity that has been carried out. If the dispute itself pertains to consideration relating to service then it would be a part of consideration.
2.	Amount received as advances for performance of service.	Such advances are consideration for the agreement to perform a service.
3.	Deposits returned on cancellation of an agreement to provide a service.	Returned deposits are in the nature of a returned consideration. If tax has already been paid the tax payer would be entitled to refund to the extent specified and subject to provisions of law in this regard.
4.	Advances forfeited for cancellation of an agreement to provide a service.	Since service becomes taxable on an agreement to provide a service such forfeited deposits would represent consideration for the agreement that was entered into for provision of service.
5.	Security deposit that is returnable on completion of provision of service.	Returnable deposit is in the nature of security and hence do not represent consideration for service. However if the deposit is in the nature of a colorable device wherein the interest on the deposit substitutes for the consideration for service provided or the interest earned has a perceptible impact on the consideration charged for service then such interest would form part of gross amount received for the service.
6.	Security deposits for feited for damages done by service receiver in the course of receiving a service	If the forfeited deposits relate to accidental damages due to unforeseen actions not relatable to provision of service then such forfeited deposits would not be a consideration in terms of clause (vi) of sub-rule (2) of rule 6 of the Valuation Rules.
7.	Excess payment made as a result of a mistake	If returned it is not consideration If not returned and retained by the service provider it becomes a part of the taxable value.
8.	Demurrages payable for use of services beyond the period initially agreed upon e.g. retention of containers beyond the normal period.	This will be consideration and is covered by clause (x) of sub -rule (1) to Rule 6 of the Valuation Rules.

Services by way of—Sec. 66D(n)

(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 authorised dealers of foreign exchange or amongst banks and such dealers;

1. Would charges for late payment of dues on credit card outstandings 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.

2. Would 'future contracts' be chargeable to Service tax?

Future contracts are in the nature of financial derivatives price of which is depended on the value of underlying stocks or index of stocks or certain approved currencies and the settlement happens normally by way of net settlement with no actual delivery.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. For details please refer to point no. 2.6.8.

3. 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 which may be 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. CDs can be issued by Scheduled Commercial Banks (excluding RRBs and Local Area Banks) and All - India Financial Institutions (FIs) permitted by RBI.Since these instruments for lending or borrowing money where in consideration is represented by way of a discount issue or subscription to CPs or CDs would be covered in the negative list entry relating to â ˜services by way of interest or discount. It may also be borne in mind that promissory note is included in the definition of money in the Act as given in clause (33) of section 65B.

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.

4. 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 asan 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' asan 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.

5. 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.

6. To what extent is invoice discounting or cheque discounting or any other similar form of discounting covered in the negative list entry?

Such discounting is covered only to the extent consideration is represented by way of discount as such discounting is nothing else but a manner of extending a credit facility or a loan.

7. 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.

8. 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.

Â· 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 65B 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.

Service of transportation of passengers, with or without accompanied belongings, by—Sec.66D(o)

(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 between places located in India; and

(vi)* *[metered cabs or auto rickshaws;]*

*Substituted for "metered cabs, radio taxis or auto rickshaws "by Finance (No.2) Act, 2014 with effect from 01.10.2014.

1. 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.

2. 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. Such transportation by a vessel (of any size) is covered in negative list since such transportation is between two places located in India.

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

Yes.

4. 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. (Refer entry No. 23 of Exhibit A3).

5. 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 (refer entry no. 22 of Exhibit A3).

Services by way of transportation of goods—Sec. 66D(p)

(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 customs station of clearance in India; or

(iii) by inland waterways;

1. **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 Guidance note 5 in chapter on Place of Provision of Service.

2. **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. (for guidance on this rule please refer to **Guidance Note 9**)

3. **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

4. **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.

5. 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.

6. 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.

7. Service relating to transportation of goods

The following services provided in relation to transportation of goods are specified in the negative list of services:-

¦ by road except the services of (i) a goods transportation agency; or (ii) a courier agency

¦ by aircraft or vessel from a place outside India up to the customs station of clearance in India; or by inland waterways.

Funeral, burial, crematorium or mortuary services including transportation of the deceased.-Sec. 66D(q)

This negative list entry is self-explanatory.

About the Author:

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