Specific Services

2

LEGAL CONSULTANCY SERVICES

'Legal Consultancy Service' means services provided

- By a business entity, to any person, in relation to advice, consultancy or assistance in any branch of law, in any manner.
- Representational Services provided by any person to a business entity
- Services provided by arbitrators to business entity

Explanations

1. "Business Entity" includes an association of persons, body of individuals, company or firm, but does not include an individual.
2. Charitable Institution is not a business entity.
3. Arbitrator is a private, neutral person chosen to arbitrate a disagreement. An arbitrator could be used to settle any non-criminal dispute and many business contracts make provision for an arbitrator, as it is substantially less expensive than resoling it through a court of law.
4. Services provided by individuals to other individual will remain outside the levy. Thus, services provided by an individual advocate to an individual would be outside the scope of the taxable service. Also, legal services provided by an individual to a business entity other than representation service is not taxable.
5. Any individual in association with another individual who is conversant with any branch of law can provide the said service in any manner by forming a partnership. For e.g. if two individuals (who are not advocates) form a partnership firm and provide services related to patent law or undertake tax compliance work of corporate clients, they are also liable to service tax.

Summary

Individual to Individual	Not Taxable
Individual to Company / Firm / LLP (Representation Service)	Taxable
Individual to company/ Firm/ LLP (Other than Representation Service)	Not Taxable
Company/ Firm/ LLP to Individual (Consultancy Service)	Taxable
Company/ Firm/ LLP to Individual (Representation Service)	Not Taxable
Company/ Firm/ LLP to Charitable Institution (Representation Service)	Not Taxable
Company/ Firm/ LLP to Charitable Institution (Consultancy Service)	Taxable
Company/Firm/ LLP to Company/ Firm/ LLP	Taxable

Illustration 1: With reference to legal consultancy services, state whether service tax is applicable in the following cases:

(i) Mr. Ramesh, an advocate, providing consultancy services to Omega Ltd. in relation to company law matters.

(ii) Mehta and Sons, a proprietorship law firm, providing legal assistance to Omega Ltd. in relation to civil cases filed against the company.

(iii) Mehta and Sons, a Proprietorship law Firm, providing advisory services to Mr. Kamlesh in respect of his property matters.

Here, "business entity" includes an association of persons, body of individuals, company or firm, but does not include an individual.

(i) Mr. Ramesh, being an individual service provider is not a business entity. Hence, Mr. Ramesh will not be liable to service tax.

(ii) Here, service provider being individual but provides representational service. Thus service provided will be liable to service tax.

(iii) In this case, both, the service receiver and the service provider are individual. Thus, service tax will not be applicable in this case.

Illustration 2: X & Co. is a limited liability partnership consisting of X and Y. Both are advocate in practice. X & Co. formed on December 1, 2011 for providing legal and consultancy services in Mumbai. During the year ending March 31, 2012, the following services are provided-

	`
Value of legal consultancy services provided to clients (other than individuals)	21,20,000
Value of legal consultancy services provided to different individuals	11,35,000
Gross amount charged in respect of appearances in High Court (clients are insurance companies)	17,90,000
Gross amount charged in respect of appearances in Tribunal (clients are multinational companies)	9,89,000
Gross amount charged in respect of appearances before different benches of Supreme Court (none of the clients is individual)	35,56,000

Find out the amount of service tax liability which will be charged in addition to figures given above.

Solution: The service tax payable shall be computed as follows –

	`
Value of legal consultancy services provided to clients other than individuals	21,20,000
Value of legal consultancy services provided to clients who are individuals	11,35,000
Gross amount charged in respect of appearances in High Court	17,90,000
Gross amount charged in respect of appearances in Tribunal	9,89,000
Gross amount charged in respect of appearances in Supreme Court	35,56,000
Total value of taxable services	95,90,000
Service tax @ 10.3%	9,87,770

Illustration 3: Shivam Consultants Ltd. started providing the legal consultancy services in Rajasthan on 01.09.2011. For the financial year 2011-12, details of the transactions are as follows:-

Particulars	`
Amount received for appearance before any court, tribunal or authority to Private companies	4,00,000
Amount received for services provided to sole proprietorship concerns	2,20,000
Amount received for tax consultancy	16,50,000

Shivam Consultants Ltd. has not collected any service tax from its clients because it is of the view that legal consultancy services are not subject to service tax. Shivam Consultants Ltd. has approached you for advice. Examine whether Shivam Consultants Ltd. is liable to pay service tax and if so, what shall be the amount of service tax payable by it?

Note: Assume that exemption available to small service providers is not available to Shivam Consultants Ltd.

Solution: Services provided by Shivam Consultants Ltd. are subject to service tax. Further, the statutory liability does not get extinguished if the service provider fails to realize or charge service tax from the service receiver. In these cases, the amount recovered from the client, in lieu of rendering the services will be taken to be inclusive of service tax and accordingly tax payable will be calculated by making back calculations.

Hence, the amount of service tax payable by Shivam Consultants Ltd. for the financial year 2011-12 would be computed as follows:-

Particulars	Amount (`)
Gross amount received for tax consultancy to private companies	22,70,000
Value of taxable services = $\frac{22,70,000 \times 100}{110.30}$	20,58,023.57
Service tax @ 10.3%	2,11,976.43

Illustration 4: With reference to legal consultancy services, state whether service tax is applicable in the following cases:

(i) Mr. Mahir, an advocate, providing consultancy services to omega Ltd. in relation to company law matters.

(ii) A Partnership law firm providing legal assistance to Alpha Ltd. in relation to civil cases filed against the company.

(iii) A Proprietorship law firm providing advisory services to Mr. pranav in respect of his property matters.

(iv) A Proprietorship law firm providing service of appearance before Sessions Court to beta Ltd. in relation to criminal cases filed against the company.

Solution:

(i) Mr. Mahir will not be liable to service tax.

(ii) Service tax will be applicable in this case.

(iii) Service tax will not be applicable.

(iv) Service tax will be applicable

COMMERCIAL TRAINING AND COACHING CENTRE

"Commercial training or coaching" means any training or coaching provided by a Commercial training or coaching center to any person.

Commercial training or coaching center
means
any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate

and includes
coaching or tutorial classes

but does not include

- preschool coaching and training or
- ~~any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by law for the time being in force.~~ Education that leads to award of qualification (Certificate/ Degree/ Diploma) recognized by law.

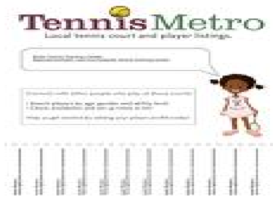
Exemption Notification
This Service shall be 100% exempt when provided by

1. Vocational Training Institute: The exemption extended to a Vocational Training Institute, which means a industrial training institutes affiliated to National Council of Vocational Training which provides vocational training or coaching that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching. On going through the above, the general understanding one can get is that Service Tax is exempted if the courses covered under Schedule I of Apprentices Act which impart knowledge for poor educated/ semi-educated youth about some Vocational Courses, which will help them in their future endeavors. Example: Training to drive vehicle, mobile repair, computer repair etc.

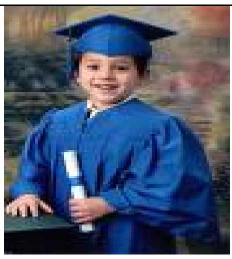
2. Recreational Training Institute: It means a commercial training and coaching centre which provides training or coaching relating to recreational activities such as dance, singing, martial art or hobby classes.

But this exemption shall not be applicable to Computer Training Institute.
Computer Training Institute means a commercial training or coaching centre which provides coaching or training relating to computer software or hardware. Example: NIIT, Aptech.

Discuss whether the following shall be subject to Service Tax?

Coaching Centre	Sports Training Centre
Premier Institute of Commerce 	  
Whether liable for Service Tax? Yes **Reason** Because it provides coaching	**Whether liable for Service Tax?** No **Reason** Institute giving training/ Coaching relating to sports activities has been specifically excluded from Scope of CTCC.

Home Tuition	Tuition Bureau	School	
		Sunbeam	St. Johns
			
Whether liable for Service Tax? No **Reason** Only an Institute or establishment can be CTCC. Thus providing Services at the premises of service receiver can't be said to be one having any Institute/ Establishment.	**Whether liable for Service Tax?** Yes **Reason** Such Service Liable to ST as the individuals are rendering services on behalf of an institution which falls within the definition of CTCC.	**Whether liable for Service Tax?** No **Reason** Education that leads to any certificate which is legally recognized in India have been excluded From the definition of CTCC. Thus School Fee is not liable for ST. But in case they provide other education with is not recognized, they shall be liable to ST.	

Pre- School	University/ College/ ICAI	
	BHU	ICAI
 		
Whether liable for Service Tax? No **Reason** Pre-School training & Coaching centre have been excluded from the definition of CTCC.	**Whether liable for Service Tax?** No **Reason** Education that leads to any degree/ diploma which is legally recognized in India have been excluded from the definition of CTCC. Thus Fee for B. Com/ M. Com/ CA is not liable for ST. But in case they provide other education which is not recognized, they shall be liable to ST.	

<table>
<tr><th colspan="2">Vocational Training</th><th>Computer Training Institute</th></tr>
<tr><td>Mobile Repairing
</td><td>Computer Typing
</td><td> </td></tr>
<tr><td colspan="2">Whether liable for Service Tax? <u>No</u>
Reason Services provided by Vocational Training institute shall be 100% exempt if affiliated to National council of Vocational training.</td><td>Whether liable for Service Tax? <u>Yes</u>
Reason Exemption does not apply to computer training institute.</td></tr>
</table>

<table>
<tr><th colspan="2">Recreational Training Institute</th></tr>
<tr><td>Music Class
</td><td>Dance Class
  </td></tr>
<tr><td colspan="2">Whether liable for Service Tax? <u>No</u>
Reason Service provided by Recreational Training Institute shall be 100% exempt.</td></tr>
</table>

Important Points

1. Postal coaching or through correspondence is taxable and it will include the postal charges charged for rendering the service.
2. Study material value is not excludible otherwise than sale value of standard text book which are priced.
3. Coaching imparted to students of standards 1 to 9 is not taxable.
4. Institutes like the Institute of Chartered Accountants of India some time hire the services of other institutes to impart some part of training (like language or computer training) to the students undertaking courses for obtaining recognized degrees/diplomas (like Chartered Accountancy) from their institute. Whereas the Institute of Chartered Accountants of India will not be chargeable to service tax because they confer qualifications recognized by law, the institutes or centers providing such part of training may be otherwise under service tax net. Vide notification No. 10/2003-such coaching or training is exempted from service tax which form an essential part of the course or curriculum leading to issuance of recognized certificate, diploma, degree or any other educational qualification. The exemption is subject to the condition that the receiver of such service (for example, student) makes payment for the entire course or curriculum to the institute or establishment issuing such certificate, diploma etc. and not to the commercial coaching or training center.
5. Donation received by commercial training & coaching centre is not taxable as donation is not linked to specific trainee or training.

6. “Modular Employable Skill Courses” provided by Institute registered under “Skill Development Initiative Scheme” with the Directorate General of Employment and Training is exempt from whole of service tax.

Summary of Taxability

Coaching Centre/Institute imparting:	Taxable / Not Taxable
Sports Coaching	Not Taxable
Preschool Coaching i.e. Nursery or Play Homes etc	Not Taxable
Certificate Course by Recognized Institute	Not Taxable
Degree Course by Recognised Institute	Not Taxable
Coaching at Residence of Service Recipient	Not Taxable
Training to Employees	Not Taxable
Recreational Coaching – Dance, Singing, Martial Arts or Hobby Classes	Not Taxable
Vocational Training – Provided by Centre Affiliated to NCVT	Not Taxable
Vocational Training – Other than above	Taxable
Not Profit Organisation	Taxable
Postal Coaching	Taxable

Illustration 1: Whether intensive tuition/ coaching institutes /group of individuals for various competitive exams/ correspondence and foreign degree courses/ spoken language course liable for Service Tax?

Solution: Commercial coaching and training services provided by institutes that prepare applicants for Board examinations and competitive exams, like entrance examinations for IIT, Joint Entrance Exams, Premedical Tests, Civil Services Exam, etc. are chargeable to service tax.
However, services in relation to Commercial Coaching and training, provided by-
Vocational Training Institute affiliated to NCVT and
Recreational Training Institute
have been exempted from service tax. Therefore, vocational coaching and training services provided by typing and shorthand institutes, TV/Vehicle repairs training institutes, tailoring institutes, industrial training institutes, foreign language institutes, hobby classes, institutes teaching martial arts, painting, dancing etc, would not be chargeable to Service Tax.

Illustration 2: Whether service tax is leviable on postal/correspondence coaching?

Solution: Service Tax is leviable on any coaching or training provided by an institution on commercial basis. Therefore, the coaching provided by postal means would also be covered under the service tax.

Illustration 3: Whether individuals going to houses to impart tuition/coaching would be chargeable to service tax?

Solution: Service tax is on institutions/ establishments. Only those service providers are covered under service tax who have some establishment for providing commercial coaching or training. Thus, individuals providing services at the premises of a service receiver would not be covered under service tax. However, if coaching or training center provides commercial coaching by sending individuals to the premises of service receivers, such services would be chargeable to service tax.

Illustration 4: Whether commercial coaching provided by institute to the students of degree exams held by universities are chargeable to service tax?

Solution: Yes. The commercial coaching given to the students to prepare them to prepare for university degree exam is liable for service tax

Illustration 5: With reference to commercial training or coaching services, state whether service tax is applicable in the following cases:

(i) Pinnacle Institute offering courses on personality development and grooming.

(ii) BTL Engineering College offering B. Tech to students. However, the college has been derecognized by the All India Council for Technical Education.

Solution: The scope of taxable service shall include any service provided or to be provided to any person, by a commercial training or coaching centre in relation to commercial training or coaching. A commercial training or coaching centre means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include preschool coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by law for the time being in force.

(i) Institutes offering general course on improving communication skills, how to be effective in group discussions or personal interviews, personality development, general grooming and finishing etc. are not covered under the definition of vocational training institute because they only improve the chances of success for a candidate possessing required skill and do not impart training to enable the trainee to seek employment or self-employment.

Thus, Pinnacle Institute is not entitled to exemption under the above notification and is liable to service tax.

(ii) B. Tech degree is recognized by law and thus institutes offering such degrees are excluded from the scope of the said taxable service. An institution or establishment which is derecognized by the professional councils (such as All India Council for Technical Education-AICTE, Medical Council of India-MCI, India Council for Agricultural Research-ICAR, institutes/establishments which issue diploma or certificate recognized by the law is taxable under the category of commercial coaching and training services.

Thus, BTL Engineering College being derecognized by All India council for Technical Education shall be liable to service tax.

Illustration 6: Whether donations and grants-in-aid received from different sources by a charitable Foundation imparting free livelihood training to the poor and marginalized youth, will be treated as 'consideration' received for such training and subjected to service tax under 'commercial training or coaching service'?

Solution: The important point here is regarding the presence or absence of a link between 'consideration' and taxable service. It is a settled legal position that unless the link or nexus between the amount and the taxable activity can be established, the amount cannot be subjected to service tax. Donation or grant-in-aid is not specifically meant for a person receiving such training or to the specific activity, but is in general meant for the charitable cause championed by the registered Foundation. Between the provider of donation/grant and the trainee there is no relationship other than universal humanitarian interest. In such a situation, service tax is not leviable, since the donation or grant-in-aid is not linked to specific trainee or training.

Illustration 7: X & Co. is an educational institute. It provides commercial training for imparting knowledge on commerce and accountancy without the issuance of any certificate. Will it be liable to service tax? Will your answer be different if certificates are issued for the same?

Solution: Commercial training or coaching centre means any institute or establishment which provides commercial training or coaching for imparting knowledge or lessons on any subject or field. It is liable for service tax regardless of the fact whether any formal certificate is issued or not. There are a few exceptions to this rule. If such institute provides coaching in the field of sports or if such institute provides any certificate / diploma/degree/other education qualification recognized by law, service tax is not applicable.

Illustration 8: XY Associates is a commercial training centre. It was established in 2005 since then gross annual receipt is more than ` 40,00,000 every year. It charges ` 1,50,000 per student per batch for providing training, the break up of the bill is as follows-

Training charges : ` 1,20,000

Value of books sold : ` 30,000

Compute the amount of service tax to be charged.

Solution: The service tax payable shall be computed as follows

	`
Training charges	1,20,000
Value of books sold (exempt under Notification No. 12/2003-ST)	Nil
Total value of taxable services	1,20,000
Service tax @ 10.3%	12,360

Illustration 9: Industrial Training Institute (ITI), Mayapuri offered "Modular Employable Skill courses" for the month of May, 2011. It is registered under "Skill Development Initiative Scheme" with the Directorate General of Employment and Training. Ministry of Labour and Employment. Revenue raised the demand for the service tax on the services provided by it.

Examine whether the demand raised by Revenue is correct in law.

Solution: No, the demand raised by the Revenue is not valid in law. Notification No. 23/2010-ST dated 29.04.2010 has exempted the commercial training or coaching centre services provided in relation to "Modular Employable Skill courses" provided by a vocational training provider registered under 'Skill Development Initiative Scheme' with the Directorate General of Employment and Training, Ministry of Labour and Employment. Therefore, Industrial Training Institute (ITI), Mayapuri is not liable to pay service tax.

INFORMATION TECHNOLOGY SOFTWARE SERVICES

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

The Scope of the taxable service is being expanded to tax such service even if the service provided is used for purposes other than business or commerce. Scope of taxable service shall include service provided or to be provided to any person, by any other person in relation to information technology software, including,

(i) Development of information technology software,
(ii) Study, analysis, design and programming of information technology software,
(iii) Adaptation, upgradation, enhancement, implementation and other similar services related to information technology software,
(iv) Providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specifications for a database design, guidance and assistance during the startup phase of a new system, specifications to secure a database, advice on proprietary information technology software,
(v) ~~Providing~~ the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products,
(vi) ~~Providing~~ the right to use information technology software supplied electronically

Branded Software vs Unbranded Software

Branded software or packaged software or normal software are treated as “goods”. A few examples are Microsoft’s Window XP/Vista software, oracle software, lotus software, tally - accounting software. These are sold as “goods” and subject to excise duty and VAT. Service tax is not leviable in the case of branded software or packaged software.

From the department clarification, it appears that unbranded software or customized software are not considered by the department as “goods” and service tax is leviable. However, there is a lot of confusion, as many State Governments have levied Vat on customized software.

Even if it is assumed that unbranded or customized software is service (and subject to service tax). Notification No. 12/2003 –ST, dated June 20, 2003, permits deduction of value of material sold from the value of taxable service to find out service tax liability. For instance, if ` 60,000 is charged by a service provider for development of a Customized software, value of taxable service shall be calculated as follows-

	If the state Government treats “Customised software” as “goods” and charges VAT `	If the State Government does not charge VAT `
Charges for development of customized software	60,000	60,000
Less: Value of material sold (as per Notification No. 12/2003, dated June 20, 2003) [the State Government charges VAT on sale of customized software]	60,000	Nil
Value of taxable service	Nil	60,000

Important Points

1. **Only customized software is covered.** Packaged software sold off the shelf is leviable to excise duty. However in some cases here is an exemption granted from excise / customs duty for part of the value of the packaged software. Such value which is exempt from excise would be liable for service tax.
2. **Packaged or Canned software intended for single use and packed accordingly is not liable to service tax if following conditions are satisfied**
   i. Document providing the right to use is packed along with software
   ii. Importer has paid appropriate customs duties
   iii. The manufacturer/ duplicator/ the person holding the copyright to software has paid the excise duty on the entire amount received from the buyer.
3. Services provided in relation to Information Technology (IT) software, such as development, designing, programming, up-gradation, providing advice, consultancy and assistance on the mattes of IT software and providing right to use IT software, whether supplied on a media or electronically, were brought in the ambit of Service tax. However, taxable only when the receiver of service exploits them for commercial or business purposes.

Illustration 1: X Ltd. provides legal and consultancy services pertaining to Information Technology to Y Ltd. Under which services it will be liable to service tax?

Solution: The services provided by X Ltd. to Y Ltd. will be taxable under "Information Technology Software Service" and not under legal consultancy services since it is related to software.

Illustration 2: Claytronics Software Systems (CSS) is an information technology software company. The service provided during financial year 2011-12 are as under:-

Particulars	Amount (`)
Development of information technology software	3,20,000
Providing the right to use information technology	8,50,000
Programming of information technology software	5,00,000
Providing right to use the packaged software on which the amount of the excise duty has been paid and benefit under Notification No. 17/2010 CE dated 27.2.2010 has not been availed	6,00,000

Determine the value of taxable services and amount of service tax payable CSS for the financial year 2011-12.

CSS has a good track record. In financial year 2010-11, it has provided the taxable services of value of ` 15 lakh. The amount of service tax has been charged separately.

Solution:

Computation of the value of taxable services and amount of service tax payable by CSS for the financial year 2011-12

Particulars	Amount (`)
Receipts for development of information technology software	3,20,000
Receipts for providing the right to use information technology software supplied electronically	8,50,000
Receipts for programming of information technology software	5,00,000
Total value of taxable services	16,70,000

Service tax @ 10% (` 16,70,000 x 10%)	1,67,000
Add: Education cess @ 2% (` 1,67,000 x 2%)	3,340
Add: Secondary and higher education cess @ 1% (` 1,67,000 x 1%)	1,670
Service tax payable	1,72,010

Note:

Receipts for providing the right to use the packaged software on which the excise duty has been paid and benefit under Notification No. 17/2010 CE dated 27.02.2010 has not been availed are exempt from service tax vide Notification No. 01/2010 dated 27.02.2010. Therefore, receipts of ` 6,00,000 are not liable to service tax.

CARGO HANDLING SERVICES

Cargo – The term 'cargo' means 'the load (i.e., freight) of a vessel, train, truck, aeroplane or other carrier'. Thus any goods which are meant for transportation from one place to another place by any mode of transport are known as 'cargo'.

Any service provided (or to be provided) to any person, by a cargo handling agency in relation to cargo handling services, is a taxable service. "Cargo handling service" means-

a. Loading of cargo;
b. Unloading of cargo;
c. Packing of cargo; or
d. Unpacking of cargo.

Besides the above, it also includes-

1. **Services Provided In Special Containers -** Cargo handling service also includes service provided in special containers. Now a day, container service has become a significant mode of cargo transportation by ship/aircraft/rail.

2. **Services Provided by Container Freight Terminals –** A place where empty containers are stored and accounted for when not in use, is known as container freight terminal. Generally, loading/unloading of cargo takes place at such a terminal. Such services are also taxable.

3. **Packing And Transportation Only –** "Cargo handling service" also include services of only packing together with transportation of cargo. These services are also known as "packers and movers" services. Even if the facility of unloading and unpacking is not provided at the destination, such service would be taxable under "cargo handling service" only.

It does not Include

1. **Cargo Handling Relating to Export -** All cargo handling services in relation to export are excluded from "cargo handling service". This exemption is available even in cases where goods are sent for transshipment for further transport for export. Handling of export cargo from one international carrier to another international/domestic carrier is also exempt.

2. **Handling of Passenger Baggage -** Handling of passenger baggage (Whether accompanied baggage or unaccompanied baggage) is excluded from "cargo handling service"

3. **Mere Transportation -** Where goods are transported without under – going any loading, unloading, packing or unpacking, handling of such goods are excluded from the purview of the definition of "cargo handling service".

Value of Taxable Service

Service tax is payable on the entire amount received for the aforesaid services. However, service tax is not payable on charges which represent cost of goods sold by service provider.

Cargo Handling service is taxable in relation to all modes of transport.

Transportation of cargo is taxable only when it is through air/road/pipeline or other conduit.

Suppose, goods sent by Road **GTA Invoice**		Suppose, Goods sent by Ocean (Sea) **Shipping Company's Invoice**	
Packing/Unpacking/Loading Charges	4,000	Packing/Unpacking/Loading Charges	4,000
Transportation Charges	25,000	Transportation Charges	25,000
Total Charges	29,000	Total Charges	29,000
ST		ST	
ST on cargo handling service (4,000 * 10.3%)		ST on cargo handling service (4,000 * 10.3%)	
ST on Transport Service (25,000 * 10.3%)		ST on Transport Service ------No ST------	

Exemption

1. Cargo handling service provided to a goods transport agency (GTA) for use by the said GTA to provide transportation service to a customer in relation to transport of goods by road in a goods carriage.
2. When provided in relation to
   - Agricultural Produce (e.g., Sugarcane/ Rice)
   - Goods meant for cold Storage (e.g., Fish)

Summary

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

Illustration 1: Shankar Cargo Ltd. is engaged in providing 'cargo handling services'. In 2011-12, it rendered service for an amount of ` 1,00,00,000. Calculate the value of taxable service under 'cargo handling services' providing brief reasons where required with suitable assumptions based on the following break-up of the service provided.

Services	` (in lakh)
Services in relation to export cargo and handling of passenger baggage	50
Storage and cleaning of empty containers of shipping lines	10
Packing and transport of cargo	5
Handling of agricultural produce	5
Mere transportation of cargo	5
Other receipts for providing cargo handling services	25

Note: The above receipts are exclusive of service tax

Solution:

Calculation of the value of taxable service under 'cargo handling services' of Shankar Cargo Ltd.

Particulars	`
Total services rendered	1,00,00,000
Less: Exemptions:-	
1. Services in relation to export cargo & handling baggage of passenger (Note-1)	50,00,000
2. Services for storage, washing etc. of empty containers of shipping lines (Note-4)	10,00,000
3. Services in relation to handling of agricultural produce (Note-3)	5,00,000
4. Services for mere transportation of cargo (Note-5)	5,00,000
Value of taxable services under cargo handling services	30,00,000

Note:

1. The definition of 'cargo handling service' under section 65(23) specifically excludes handling of export cargo or passenger baggage. Hence, they do not form part of taxable services.
2. Charges received for packing together with transportation of cargo, ` 5,00,000 are taxable as per section 65(230).
3. Notification NO. 10/2002 ST dated 01.08.2002 exempts the taxable service provided to any person by a cargo handling agency in relation to agricultural produce or goods intended to be stored in a cold storage from payment of service tax.
4. Circular No. B.11/1/2002-TRU dated 1/8/2002 clarifies that activity of storing/washing / repairing and handling empty containers for the shipping lines does not come within the purview of "cargo handling services".
5. The definition of 'cargo handling service' under section 65(23) specifically excludes mere transportation of goods. Hence, they do not form part of taxable services.

CUSTOM HOUSE AGENT'S SERVICES

Any service provided (or to be provided) to any person, by a custom house agent in relation to the entry or departure of conveyances or the import or export of goods, is a 'taxable service'.
Individual/ Proprietor/ Firms providing this Service shall continue to pay tax on receipt basis.

Custom house agent is the person licensed, temporarily or otherwise, under the Customs Act providing service in relation to entry or departure of conveyances or Import or export of goods.

Does not cover:
1. **Representatives/ employees of** an enterprise providing the above services to the enterprise.
2. **CHA,** who provides services to other licensed CHA.

Service Covered
(i) Obtaining relevant documents (invoices, packing list, license required for clearance of cargo, license required for export, bill of lading)
(ii) Preparation of bill of entries
(iii) Arranging for execution of bond
(iv) Examination of cargo
(v) Preparing shipping bill
(vi) Making payment of export/import duty
(vii) Clearing of import and export consignment
(viii) Loading/unloading of import/export goods from/at the premises of exporter / importer
(ix) Packing, weighment and measurement of export / import goods
(x) Transportation of export goods to customs station or import good from customs station to importer's premises
(xi) Sorting/ marking / stamping / sealing of goods on behalf of exporter / importer

Value of taxable service
Service tax is payable on the amount received for the aforesaid services. However, service tax is not payable on charges which represent cost of goods sold by the service provider. Moreover, expenses (which are liability of the service receiver) incurred by the service provider and later on recovered from service receiver are not subject to service tax.
In case of "turnkey" imports and exports where a lump sum amount is charged from the client for undertaking various services. In such cases, the value of the taxable Service Tax shall be 15% of the lump sum amount charged to the client.

Exemption/Exclusion:
1. In case of sub-contract – It is possible that the sub-contracting CHA raises the bill on the main CHA who in turn raises the bill to client. It has been decided that in such cases the sub-contracting CHA will not be required to pay Service Tax on the bills raised by him on the main CHA. The Service Tax will be payable by the CHA who provides the actual service to the client and raises the bill to the client.
2. The payment received by the C.H.A. from the Shipping Lines for Canvassing of Import/export cargo, would not be chargeable to Service Tax.
3. Services provided by a CHA in relation to goods exported by exporter are exempt from levy of Service Tax.

PRACTICING CHARTERED ACCOUNTANT'S SERVICE

Any service provided (or to be provided) to person, by a practicing chartered accountant in his professional capacity in any manner, is taxable service.
Individual/ Proprietor/ Firms providing this service shall continue to pay tax on receipt basis.

Service should be provided by a practicing Chartered Accountant- Service should be provided by a practicing chartered accountant. A practicing chartered accountant is one, who satisfies the following requirements

a. The said accountant must be a "person"
b. Such person must be a member of the institute of Chartered Accountants of India; and
c. Such person must be holding a certificate of practice granted under the provisions of the Chartered Accountants Act, 1949.

A concern engaged in providing services in the field of chartered accountancy is also included in the definition of a practicing chartered accountant. Service can be provided by the chartered accountant himself or with the help of other persons. These other persons may or may not be practicing chartered accountant. Service can be provided directly or through post, e-mail or any other electronic mode.

Service can be Provided to Any Person - The recipient of service may be "any person" and not necessarily a client of the service provider. In other words, the recipient of service may or may not be a client of the practicing chartered accountant who provides professional services.

~~**Service relating to representing a client before Statutory Authority is exempt** - Service provided (or to be provided) by a practicing chartered accountant in his professional capacity to a client relating to representing the client before any statutory authority in the course of proceedings initiated under any law for the time being in force, is fully exempt from service tax, provided such proceedings are initiated by way of issue of a notice. This exemption is available vide Notification No. 25/2006~~.
[Notification withdrawn by N/No. 32/2011, dated 25.4.2011]

Value of taxable service
Service tax is payable on the amount received for the aforesaid services (excluding exempt services). However, service tax is not payable on charges which represent cost of goods sold by service provider. Moreover, expenses (which are a liability of the service receiver) incurred by the practicing chartered accountant and later on recovered from the service receiver, are not subject to service tax.

Illustration 1: Mohit is a qualified Chartered Accountant. He acquired the certificate of practice from the ICAI in November, 2011. For the quarter ended on March, 2012, his **receipts** are as follows:-

Particulars	Amount (`)
Certification of documents under Export and Import Policy of Government of India	2,00,000
Preparation of the financial statement of ABC Ltd. (Amount Billed 8,00,000)	5,00,000
Representation of the client before ITAT	50,000
Receipts for tax consultancy provided in the month of December, 2011	10,000

Using the above information, calculate the value of taxable services for the quarter ended on March, 2012.

Solution:

Calculation of the value of taxable services for the quarter ended on March, 2012

Particulars	**Amount (`)**	**Amount (`)**
Certification of documents under export and Import Policy of Government of India	$= 2,00,000 \text{ X } \frac{100}{110.30}$	1,81,324
Preparation of the financial statement of ABC Ltd.	$= 5,00,000 \text{ X } \frac{100}{110.30}$	4,53,309
Representation of Client before ITAT	$= 50,000 \text{ X } \frac{100}{110.30}$	45,331
Receipts for tax consultancy provided in the month of December, 2011	$= 10,000 \text{ X } \frac{100}{110.30}$	9,066
Value of taxable services		6,89,030

CONSULTING ENGINEER'S SERVICES

Any service provided (or to be provided) to any person, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner (in one or more discipline of engineering including the discipline of computer hardware engineering) is a taxable service. Services provided by a consulting engineer in relation to advice, consultancy or technical assistance in the disciplines **of both** computer hardware engineering and computer software engineering shall also be classifiable under "consulting engineer's services".

Service Should Be provided by a consulting Engineer – Service should be provided by a "consulting engineer". Consulting engineer for this purpose is any professionally qualified engineer or anybody corporate or any other firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to any person in one or more disciplines of engineering. The consulting engineer should be professionally qualified engineer. Alternatively the service provider can be any body corporate or any other firm who renders any advice, consultancy or technical assistance in any manner to a receiver of service by engaging professionally qualified engineer/engineers in any discipline of engineering.

Service Should Be Provided to any Person - The recipient of service may be any person. He may or may, not be a client of the service provider.

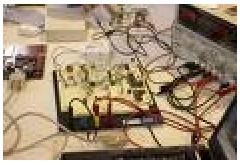
Service must Relate to Any Discipline of Engineering – Service rendered by way of advice, consultancy or technical assistance, should be in relation to one or more disciplines of engineering. An illustrative list of the disciplines of engineering are-

INDUSTRIAL ENGINEERING
An INDUSTRIAL engineer designs the soda factory layout. They set up an entire manufacturing process keeping in mind people who have to work in the factory.

MECHANICAL ENGINEERING
A MECHANICAL engineer designs the machines in the factory.

AEROSPACE ENGINEERING
An AEROSPACE engineer designs the geometry of the flow system which is used to make the soda mix in the most efficient manner.

COMPUTER ENGINEERING
A COMPUTER engineer designs a computer system to automate many of the machines.



ELECTRICAL ENGINEERING

An ELECTRICAL engineer designs and regulates the circuitry throughout the plant. They link the machines to the computer operating systems.

METALLURGICAL ENGINEERING

A METALLURGICAL engineer chooses the type of aluminum used to make the can.

CHEMICAL ENGINEERING

A CHEMICAL engineer designs the chemical process necessary to create that favorite type of soda. They have to decide what to mix together and how to do it in mass quantities.

CIVIL ENVIRONMENTAL

A CIVIL / ENVIRONMENTAL engineer determines a process to control all the waste products and helps to keep the factory within environmental guidelines.

Other Discipline of engineering are-

- Agricultural
- Aquaculture
- Architecture
- Automobile
- Aviation
- Electronics
- Environmental
- Fabrication
- Geotechnical
- Hydraulic
- Marine
- Mining
- Telecommunication
- Biotechnology

Value of taxable service

Service tax is payable on the amount received for the aforesaid service. However, service tax is not payable on charges which represent cost of goods sold by service provider. Moreover, expenses (which are the liability of the service receiver) incurred by the service provider and later on recovered from service receiver, are not subject to service tax.

Other points

1. Service provided by unqualified engineers cannot be taxed under "consulting engineer's services.
2. Service provided by a person who is holder of certificate from an industrial training institute run by Ministry of Labour and Rehabilitation, cannot be taken as service provided by consulting engineer.
3. It is not necessary that the concern rendering service should be a commercial concern.
4. Research & Development Cess (Cess payable on import of technology) is allowed as deduction from value of taxable Service provided.

Illustration 1: Mr. Ramesh, a consulting engineer provides the following particulars in respect of various services rendered by him during the quarter ending December 2011:

S. No.	**Particulars**	`
(i)	Professional advice to one of his friend	5,000
(ii)	Consultancy services in computer hardware engineering	15,000
(iii)	Technical assistance in computer software engineering	25,000
(iv)	Advice in relation to metallurgical engineering	10,000
(v)	Professional advice to his friend free of charge	

` 5,000 has been paid by him as cess payable under section 3 of the Research and Development Cess Act, 1986 in respect of the above-mentioned services. Compute the service tax payable by Mr. Ramesh for the quarter ending December, 2010. Service tax has been charged separately by Mr. Ramesh and is not included in any of the receipts mentioned above. Mr. Ramesh is not entitled to the benefit of small service provider available under Notification No. 6/2005 ST dated 01.03.2005.

Will your answer be different if the above services are rendered by AB Ltd., a consulting engineering company.

Solution: Computation of service tax payable:-

Particulars	`
Professional advice to one of his friend	5,000
Consultancy services in computer hardware engineering	15,000
Technical assistance in computer software engineering	25,000
Advice in relation to metallurgical engineering	10,000
Total	55,000
Less: Cess payable under section 3 of the Research and Development cess Act, 1986	5,000
Value of taxable services	50,000
Service tax @ 10%	5,000
Add: Education cess @ 2%	100
Add: Secondary and higher education cess @ 1%	50
Service tax payable	5,150

Note:

1. Advice to friend is taxable as service rendered to any person is taxable.
2. Consultancy and technical assistance in relation to both computer hardware and software engineering are taxable
3. Advice in relation to any branch of engineering is taxable
4. Services rendered free of charge are not liable to service tax
5. Cess payable under section 3 of the Research and Development Cess Act, 1986 is exempt under Notification No. 18/2002 ST dated 16.12.2002.

MANPOWER RECRUITMENT OR SUPPLY AGENCY'S SERVICES


Any service provided (or to be provided) to any person, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower (temporarily or other-wise) in any manner, is a taxable service. The expression "recruitment or supply of manpower" also includes

a. Service in relation to pre-recruitment screening;
b. Verification of the credentials and antecedents of the candidate; and
c. Authenticity of documents submitted by the candidate.

Service May be Provided to any Person – It is not necessary that service receiver is a client of the service provider.

Service Should be Provided by a Manpower Recruitment or Supply Agent – The service provider must be engaged in providing services connected with recruitment of manpower, as an organized and fairly continuous activity, and not as an isolated or occasional activity.

Service Should be provided in Relation to Recruitment or Supply of Manpower - The service should be in relation to recruitment or supply of manpower on permanent or on temporary basis. Further, it includes services in relation to pre-recruitment screening, verification of the credentials and antecedents of the candidate and authenticity of documents submitted by the candidate. The scope of this service includes the following services provided by an agency-

a. Preliminary stage of building a database of manpower for different categories of personnel employment, whether white collar or blue collar, whether for employment in India or overseas;

b. Determining manpower requirement for the client, preliminary identification, short listing and screening of prospective candidates, providing specialists for interviewing prospective candidates, arranging for their interviews at every stage; and

c. Placing advertisements for recruitment of manpower in the print or electronic media. In short, it will cover entire gamut of services from incipient stage of selecting / identifying manpower requirement till stage of final selection.

Value of Taxable service – Service tax is payable on the amount received for the aforesaid service. However, expenses (which are the liability of the service receiver) incurred by the service provider and later on recovered from the service receiver, are not subject to service tax.

Important Points -

1. A manpower supply agency provides truck drivers to a transport undertaking for carriage of goods whether temporarily or otherwise is exempt from the whole of the Service Tax.

2. Educational institutions (such as universities, IIMs, IITs) fall within the definition of 'manpower recruitment or supply agency', and service tax is liable on services provided by such institutions in relation to campus recruitment.
3. The contract should be for supply of manpower. If the contract is for executing some work (e.g., floor polishing), it is not a "manpower supply service".
4. Amount collected by an agency for making available bio-data/resume of prospective candidates, is subject to service tax.

Illustration 1: Assessee entered into a contract with a company to provide labourers as per co's requirement for housekeeping work, for loading, unloading purpose etc. Payment to be made by the company was related to the no. of labourers supplied during a specified period and not related to quantum of work carried out.

Solution: Thus held that above contract was nothing but supply of manpower and covered under 'Manpower Recruitment or supply agency's service'.

Illustration 2: M/s RK Consultants are a renowned placement agencies. Premier Ltd requires 2 qualified CA for the purpose of employing (recruiting) them in the company. Premier Ltd has contacted M/S RK consultants in this regard. M/s RK gets 2 qualified CA recruited in Premier Ltd and charges ` 20,000 for that.

Solution: The "manpower recruitment and supply service" covers service relating to **recruitment of manpower permanently.** Thus, ABC Ltd. would also be liable to service tax under the category of "Manpower recruitment or supply service"

Illustration 3: AB Ltd is a LABOUR CONTRACTOR, i.e., it supplies labour on temporary basis to the clients for a particular period/project. The labour so supplied remains on the payroll of AB Ltd. recovers charges for supply of labour from the client and they pay the labour employed by it.

Solution: The "manpower recruitment and supply service" covers mere **supply of manpower temporarily**. Thus, ABC Ltd. would also be liable to service tax under the category of "Manpower recruitment or supply service"

Illustration 4: M/s Omege Consultants are a **labour contractor** of manpower to M/s Work Creations. They charge to the **principal employer** for the wages of their labour which amounts to ` 1,20,000 plus their service charges of ` 10,000 for arranging the labour. The issue is whether service is payable on the gross amount charged by them or only their charges for labour. Examine the case.

Solution: The service tax is payable on the "value of taxable service" which shall be the gross amount charged by the service provider for the service. M/s Omega Consultant is providing the service of supply of manpower. In Relation to their service, they have charged ` 1,30,000 in totality which is inclusive of ` 1,20,000 payable by them to labour as wages. CBEC in this context has clarified that the value shall include recovery of staff costs from the recipient e.g., salary and other contributions. Thus, M/s Omega consultant shall be liable to pay service tax on ` 1,30,000

Illustration 5: Whether there would be in any change in you answer if agreement provides for direct payment of ` 1,20,000 by client to the staff and only ` 10,000 is paid to M/s Omega Consultants, the manpower recruitment or supply agency?

Solution: No, CBEC has clarified that "even if agreement does not involve the recipient paying these staff costs to the supplier/service provider (because the salary is paid directly to the individual or the contributions are paid to the respective authority) these amounts are still part of the consideration and hence form part of the gross amount".

Illustration 6: Parsvnath Consultants is engaged in providing manpower recruitment and supply agency's services. For the financial year 2011-12, following information is available:-

Particulars	Amounts (`)
Amount for pre-recruitment screening of the prospective candidates	8,00,000
Amount for verification of the credentials of the candidates	5,00,000
Amount for supply of contractual employees to big business houses	9,00,000
Amount for manpower recruitment services provided to Bindu transporters-a goods transport agency	1,00,000

On the basis of the above information, compute the service tax payable by Parsvnath Consultants under the category of 'manpower recruitment and supply agency's services' for the financial year 2011-12.

Note: Parsvnath Consultants enjoys a good reputation among its clients. Resultantly, its aggregate value of taxable services amounted to ` 23 lakh in the financial year 2010-11. Further, the amount of servie tax has been charged separately.

Solution: Computation of service tax payable by Parsvnath Consultants under the category of 'manpower recruitment and supply agency's services for the financial year 2011-12:

Particulars	Amounts (`)
Pre-recruitment screening of the prospective candidates	8,00,000
Verification of the credentials of the candidates	5,00,000
Supply of contractual employees to big business house	9,00,000
Value of taxable services	22,00,000
Service tax @ 10% = ` 22,00,000 x 10%	2,20,000
Add: Education cess payable @ 2% = ` 2,20,000 x 2%	4,400
Add: Secondary and education cess payable @ 1% = ` 2,20,000 x 1%	2,200
Amount of service tax payable	2,26,600

Note:

1. Notification No. 1/2009 ST dated 05.01.2009 has exempted the services provided by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise provided to a goods transport agency for transportation of goods by road in the said goods carriage from the whole of the service. Tax. Therefore, ` 1,00,000 would not be included in the value of the taxable services.
2. Exemption from service tax under Notification No. 6/2005-ST dated 01.03.2005 is not available to Parsvnath Consultants for the financial year 2011-12 because the aggregate value of taxable services exceeds ` 10 lakh in the preceding financial year 2010-11.

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