

**INTEGRATED PROFESSIONAL COMPETENCE COURSE (IPCC)/
PROFESSIONAL COMPETENCE COURSE (PCC)**

SUPPLEMENTARY STUDY PAPER - 2011

TAXATION

[Covers amendments made by the Finance Act, 2011 and Important Circulars/Notifications issued between 1st May 2010 and 30th April 2011]

**(Relevant for students appearing for May, 2012 and
November, 2012 examinations)**



**BOARD OF STUDIES
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**

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A WORD ABOUT SUPPLEMENTARY

Taxation is among the extremely dynamic subjects of the chartered accountancy course. The level of knowledge prescribed at the IPCC/PCC level for the subject is 'working knowledge'. For attaining such a level of knowledge, the students have not only to be thorough with the basic provisions of the relevant laws, but also have to constantly update their knowledge regarding statutory developments.

The Board of Studies has been instrumental in imparting theoretical education for the students of Chartered Accountancy Course. The distinctive characteristic of the course i.e., distance education, has emphasized the need for bridging the gap between the students and the Institute and for this purpose, the Board of Studies has been providing a variety of educational inputs for the students.

One of the important inputs of the Board is the supplementary study paper on taxation to be used by the PCC/IPCC students. The supplementary study papers are annual publications and contain a discussion of the amendments made by the Annual Finance Acts and Notifications/Circulars in income-tax and service tax. They are very important to the students for updating their knowledge regarding the latest statutory developments in these areas. A lot of emphasis is being placed on these latest amendments in the PCC/IPCC examinations.

The amendments made by the Finance Act, 2011 and important Notifications/Circulars issued between 1st May 2010 and 30th April, 2011 have been incorporated in this Supplementary Study Paper – 2011, which is relevant for students appearing for May 2012 and November 2012 examinations. In case you need any further clarification/guidance with regard to this publication, please send your queries relating to income-tax at priya@icai.org and queries relating to service-tax at shefali.jain@icai.in.

Happy Reading and Best Wishes for the forthcoming examinations!

TAXATION

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TAXATION

PART - I : INCOME-TAX

AMENDMENTS BY THE FINANCE ACT, 2011

1. RATES OF TAX

Section 2 of the Finance Act, 2011 read with Part I of the First Schedule to the Finance Act, 2011, seeks to specify the rates at which income-tax is to be levied on income chargeable to tax for the assessment year 2011-12. Part II lays down the rate at which tax is to be deducted at source during the financial year 2011-12 i.e., A.Y. 2012-13 from income subject to such deduction under the Income-tax Act; Part III lays down the rates for charging income-tax in certain cases, rates for deducting income-tax from income chargeable under the head "salaries" and the rates for computing advance tax for the financial year 2011-12 i.e. A.Y.2012-13. Part III of the First Schedule to the Finance Act, 2011 will become Part I of the First Schedule to the Finance Act, 2012 and so on.

Rates for deduction of tax at source for the F.Y.2011-12 from income other than salaries

Part II of the First Schedule to the Act specifies the rates at which income-tax is to be deducted at source during the financial year 2011-12 i.e. A.Y. 2012-13 from income other than "salaries". These rates of tax deduction at source are the same as were applicable for the F.Y.2010-11. However, it has been clarified that the rate of tax deduction at source @20% on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency would not be applicable in respect of interest payable by a notified infrastructure debt fund to a non-resident/foreign company under new section 194LB, for which the rate of TDS would be 5%.

Further, no surcharge would be levied on income-tax deducted at source except in the case of foreign companies. If the recipient is a foreign company, surcharge@2% would be levied on such income-tax if the income or aggregate of income paid or likely to be paid and subject to deduction exceeds Rs.1 crore. Levy of surcharge has been withdrawn on deductions in all other cases. Also, education cess and secondary and higher education cess would not be added to tax deducted or collected at source in the case of a domestic company or a resident non-corporate assessee. However, education cess @2% and secondary and higher education cess @ 1% of income tax including surcharge, wherever applicable, would be leviable in cases of persons not resident in India and foreign companies.

Rates for deduction of tax at source from "salaries", computation of "advance tax" and charging of income-tax in certain cases during the financial year 2011-12

Part III of the First Schedule to the Act specifies the rate at which income-tax is to be deducted at source from "salaries" and also the rate at which "advance tax" is to be computed and income-tax is to be calculated or charged in certain cases for the financial year 2011-12 i.e. A.Y. 2012-13.

It may be noted that education cess @2% and secondary and higher education cess @ 1% would continue to apply on tax deducted at source in respect of salary payments.

The general basic exemption limit for individuals/HUFs/AOPs/BOIs and artificial juridical persons has been increased from Rs.1,60,000 to Rs.1,80,000. The basic exemption limit for senior citizens has been increased from Rs.2,40,000 to Rs.2,50,000. Further, the age criterion for qualifying as a "senior citizen" for availing this higher basic exemption limit has been reduced from 65 years to 60 years. Also, resident individuals of the age of 80 years or more at any time during the previous year would be eligible for a higher basic exemption limit of Rs.5,00,000. The exemption limit for resident women below the age of 60 years has, however, been retained at Rs.1,90,000. The revised tax slabs are shown hereunder -

(i) (a) Individual/ HUF/ AOP / BOI and every artificial juridical person

Level of total income	Rate of income-tax
Where the total income does not exceed Rs.1,80,000	Nil
Where the total income exceeds Rs.1,80,000 but does not exceed Rs.5,00,000	10% of the amount by which the total income exceeds Rs.1,80,000
Where the total income exceeds Rs.5,00,000 but does not exceed Rs.8,00,000	Rs.32,000 plus 20% of the amount by which the total income exceeds Rs.5,00,000
Where the total income exceeds Rs.8,00,000	Rs.92,000 plus 30% of the amount by which the total income exceeds Rs.8,00,000

(b) For resident women below the age of 60 years at any time during the previous year

Level of total income	Rate of income-tax
Where the total income does not exceed Rs.1,90,000	Nil

Where the total income exceeds Rs.1,90,000 but does not exceed Rs.5,00,000	10% of the amount by which the total income exceeds Rs.1,90,000
Where the total income exceeds Rs.5,00,000 but does not exceed Rs.8,00,000	Rs.31,000 plus 20% of the amount by which the total income exceeds Rs.5,00,000
Where the total income exceeds Rs.8,00,000	Rs.91,000 plus 30% of the amount by which the total income exceeds Rs.8,00,000

(c) For resident individuals of the age of 60 years or more but less than 80 years at any time during the previous year

Level of total income	Rate of income-tax
Where the total income does not exceed Rs.2,50,000	Nil
Where the total income exceeds Rs.2,50,000 but does not exceed Rs.5,00,000	10% of the amount by which the total income exceeds Rs.2,50,000
Where the total income exceeds Rs.5,00,000 but does not exceed Rs.8,00,000	Rs.25,000 plus 20% of the amount by which the total income exceeds Rs.5,00,000
Where the total income exceeds Rs.8,00,000	Rs.85,000 plus 30% of the amount by which the total income exceeds Rs.8,00,000

(d) For resident individuals of the age of 80 years or more at any time during the previous year

Level of total income	Rate of income-tax
Where the total income does not exceed Rs.5,00,000	Nil
Where the total income exceeds Rs.5,00,000 but does not exceed Rs.8,00,000	20% of the amount by which the total income exceeds Rs.5,00,000
Where the total income exceeds Rs.8,00,000	Rs.60,000 plus 30% of the amount by which the total income exceeds Rs.8,00,000

(ii) Co-operative society

There is no change in the rate structure as compared to A.Y.2011-12.

	Level of total income	Rate of income-tax
(1)	Where the total income does not exceed Rs.10,000	10% of the total income
(2)	Where the total income exceeds Rs.10,000 but does not exceed Rs.20,000	Rs.1,000 plus 20% of the amount by which the total income exceeds Rs.10,000
(3)	Where the total income exceeds Rs.20,000	Rs.3,000 plus 30% of the amount by which the total income exceeds Rs.20,000

(iii) Firm/Limited Liability Partnership (LLP)

The rate of tax for a firm for A.Y.2012-13 is the same as that for A.Y.2011-12 i.e. 30% on the whole of the total income of the firm. This rate would apply to an LLP also.

(iv) Local authority

The rate of tax for a local authority for A.Y.2012-13 is the same as that for A.Y.2011-12 i.e. 30% on the whole of the total income of the local authority.

(v) Company

The rates of tax for A.Y.2012-13 are the same as that for A.Y.2011-12.

(1)	In the case of a domestic company	30% of the total income
(2)	In the case of a company other than a domestic company	40% on the total income However, specified royalties and fees for rendering technical services (FTS) received from Government or an Indian concern in pursuance of an approved agreement made by the company with the Government or Indian concern between 1.4.1961 and 31.3.1976 (in case of royalties) and between 1.3.1964 and 31.3.1976 (in case of FTS) would be chargeable to tax @50%.

Surcharge

The rates of surcharge applicable for A.Y.2012-13 are as follows -

(i) Individual/HUF/AOP/BOI/Artificial juridical person

No surcharge would be leviable in case of such persons.

(ii) Co-operative societies/Local authorities

No surcharge would be leviable on co-operative societies and local authorities.

(iii) Firms/LLPs

No surcharge would be leviable on firms and LLPs.

(iv) Domestic company

Where the total income exceeds Rs.1 crore, surcharge is payable at the rate of 5% of income-tax computed in accordance with the provisions of para (v)(1) above or section 111A or section 112. Marginal relief is available in case of such companies having a total income exceeding Rs.1 crore i.e. the additional amount of income-tax payable (together with surcharge) on the excess of income over Rs.1 crore should not be more than the amount of income exceeding Rs.1 crore.

Example

Compute the tax liability of X Ltd., assuming that the total income of X Ltd. is Rs.1,01,00,000 and the total income does not include any income in the nature of capital gains.

The tax payable on total income of Rs.1,01,00,000 of X Ltd. computed@ 31.5% (including surcharge) is Rs.31,81,500. However, the tax cannot exceed the tax of Rs.30,00,000 payable on total income of Rs.1 crore by more than the Rs.1,00,000, being the amount of total income exceeding Rs.1 crore. Therefore, the tax payable on Rs.1,01,00,000 would be Rs.31,00,000 (30,00,000+1,00,000). The marginal relief is Rs.81,500 (i.e., Rs.31,81,500-Rs.31,00,000).

(v) Foreign company

Where the total income exceeds Rs.1 crore, surcharge is payable at the rate of 2% of income-tax computed in accordance with the provisions of paragraph (v)(2) above or section 111A or section 112. Marginal relief is available in case of such companies having a total income exceeding Rs.1 crore i.e. the additional amount of income-tax payable (together with surcharge) on the excess of income over Rs.1 crore should not be more than the amount of income exceeding Rs.1 crore.

Education cess / Secondary and higher education cess on income-tax

The amount of income-tax as increased by the union surcharge, if applicable, should be further increased by an "Education cess on income-tax", calculated at the rate of 2% of such income-tax and surcharge. Education cess is leviable in the case of all assessees i.e. individuals, HUFs, AOP/BOIs, co-operative societies, firms, LLPs, local authorities

and companies. Further, “Secondary and higher education cess on income-tax” @1% of income-tax and surcharge is leviable to fulfill the commitment of the Government to provide and finance secondary and higher education. No marginal relief would be available in respect of such cess.

2. BASIC CONCEPTS

Increase in monetary limit in respect of permissible receipts from trading activity for an institution with the object of “advancement of any other object of general public utility” to retain its “charitable” status [Section 2(15)]

- (i) Section 2(15) defines “charitable purpose” to include relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility. However, the “advancement of any other object of general public utility” shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity.
- (ii) Organisations existing for charitable purpose can obtain exemption under the Income-tax Act, 1961. However, the institutions which were engaged in charitable activities and having the object of general public utility were denied exemption, if they were engaged in any activity in the nature of trade, commerce or business or activity of rendering any service in relation to any trade, commerce or business for a cess or fees. This amendment denying the benefit of exemption was brought about by the Finance Act, 2008 w.e.f. 1.4.2009.
- (iii) In order to provide relief to the genuine hardship faced by charitable organizations which receive marginal consideration from such activities, the Finance Act, 2010 had provided that such benefit of exemption will not be denied to the institutions having object of advancement of general public utility, even where they are engaged in the activity of trade, commerce or business or rendering any service for a cess or fee, provided the aggregate value of receipts from such activities does not exceed Rs.10 lakh in the year under consideration. This amendment was effected retrospectively from A.Y.2009-10.
- (iv) The above limit of Rs.10 lakhs has now been increased to Rs.25 lakhs by the Finance Act, 2011 with effect from A.Y.2012-13.
- (v) Therefore, in effect, “advancement of any other object of general public utility” would continue to be a “charitable purpose”, if the total receipts from any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business does not exceed Rs.25 lakhs in the relevant previous year.

(Effective from A.Y. 2012-13)

Example

An institution having its object as “advancement of general public utility” received Rs.30 lakhs in aggregate during the P.Y.2011-12 from an activity in the nature of trade. It applied 85% of its receipt from such activity during the same year for its main object i.e. advancement of general public utility.

- (i) *What would be the tax consequence of such receipt and application thereof by the institution?*
- (ii) *Would your answer be different if the institution had received Rs.23 lakhs (instead of Rs.30 lakhs) in aggregate during the P.Y.2011-12 from an activity in the nature of trade?*
- (iii) *What would be your answer if the main object of the institution is “relief of the poor” and the institution receives Rs.30 lakhs from a trading activity and applies 85% of the said receipts for its main object?*

Answer

- (i) As the main object of the institution is “advancement of object of general public utility”, the institution will lose its “charitable” status for the P.Y.2011-12, since it has received Rs.30 lakhs from an activity in the nature of trade. The application of 85% of such receipt for its main object during the year would not help in retaining its “charitable” status for that year.
- (ii) If the institution receives only Rs.23 lakhs in aggregate from an activity in the nature of trade during the P.Y.2011-12, then it will not lose its “charitable” status since receipt of upto Rs.25 lakhs in a year from such activity is permissible as per the amendment by the Finance Act, 2011. The institution can claim exemption subject to fulfillment of other conditions under sections 11 to 13.
- (iii) The restriction regarding carrying on of a trading activity for a cess, fee or other consideration will not apply if the main object of the institution is “relief of the poor”. Therefore, receipt of Rs.30 lakhs from a trading activity by such an institution will not affect its “charitable” status. The institution can claim exemption subject to fulfillment of other conditions under sections 11 to 13.

3. INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

- (a) **Exemption of specified allowances and perquisites paid to Chairman or a retired Chairman or any other member or retired member of the UPSC [Section 10(45)]**
 - (i) Under the Income-tax Act, 1961, perquisites and allowances received by an employee are taxable under the head “Salaries” unless they are specifically exempted.
 - (ii) New clause (45) has been inserted in section 10 to exempt specified allowances and perquisites received by Chairman or any other member,

including retired Chairman/member, of the Union Public Service Commission (UPSC).

- (iii) The exemption would be available in respect of such allowances and perquisites as may be notified by the Central Government in this behalf.

(Effective retrospectively from A.Y.2008-09)

Note – *At present, tax exemption is available in respect of certain specified perquisites enjoyed by Chief Election Commissioner/Election Commissioner and judges of Supreme Court on account of the enabling provisions in the respective Acts which govern their service conditions.*

(b) Exemption of specified income of notified entities not engaged in commercial activity [Section 10(46)]

Related amendment in section: 139(4C)

- (i) New clause (46) has been inserted in section 10 to provide for exemption of income arising to a body or authority or Board or Trust or Commission, the nature and extent of which is to be specified by the Central Government.
- (ii) For availing the benefit of exemption under this clause, the body or authority or Board or Trust or Commission should be set up or constituted by or under a Central, State or Provincial Act or constituted by the Central or State Government with the object of regulating or administering an activity for the benefit of the general public.
- (iii) Further, the body or authority or Board or Trust or Commission should –
 - (1) not be engaged in any commercial activity;
 - (2) be notified by the Central Government in this behalf.
- (iv) Section 139(4C) has been amended to require such body or authority or Board or Trust or Commission to furnish its return of income for the previous year in the prescribed form within the period specified under section 139(1), if its total income, without giving effect to the exemption under section 10(46), exceeds the basic exemption limit.

(Effective from 1st June, 2011)

(c) Exemption of income of notified infrastructure debt funds and concessional tax rate on interest received by non-residents from such fund [Section 10(47) & 115A]

Related amendment in sections: 194LB & 139(4C)

- (i) In order to give a fillip to infrastructure and encourage inflow of long-term foreign funds to this sector, the Central Government to notify infrastructure debt funds to be set up in accordance with the prescribed guidelines, the income of which would be exempt from tax.

- (ii) Interest income received by a non-resident or a foreign company from such fund would be subject to tax at a concessional rate of 5% under section 115A on the gross amount of such interest income.
- (iii) Accordingly, tax would be deductible @ 5% on interest paid/credited by such fund to a non-resident/foreign company. The person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax @5%. This is provided for in new section 194LB.
- (iv) Section 139(4C) has been amended to require such infrastructure debt fund to furnish its return of income for the previous year in the prescribed form within the period specified under section 139(1), if its total income, without giving effect to the exemption under section 10(47), exceeds the basic exemption limit.

(Effective from 1st June, 2011)

(d) Sunset for dividend distribution tax (DDT) exemption for SEZ Developers and consequential amendment in section 10(34)

- (i) Section 10(34) provides for exemption of dividend referred to in section 115-O in the hands of the recipient. Explanation to section 10(34) clarifies that dividend referred to in section 115-O shall not be included in the total income of the assessee, being a Developer or entrepreneur.
- (ii) So far, the dividend declared, distributed or paid by an SEZ Developer or enterprise was exempt from dividend distribution tax under section 115-O and such dividend was also exempt in the hands of the recipient. Further, dividend referred to in section 115-O was not included in the total income of the SEZ Developer or entrepreneur.
- (iii) A sunset clause has now been introduced to remove DDT exemption for dividends declared, distributed or paid on or after 1st June, 2011.
- (iv) Since DDT would be levied under section 115-O on dividends declared, distributed or paid on or after 1.6.2011, such income would be exempt in the hands of the recipient under section 10(34). Further, dividend income received by an SEZ Developer or entrepreneur would also be exempt under section 10(34), since the same would have been subject to DDT under section 115-O.
- (v) Therefore, the clarificatory Explanation to section 10(34) has been omitted w.e.f. 1.6.2011, since the dividend income would be exempt in the hands of the recipient under the main section 10(34) itself.

(Effective from 1st June, 2011)

4. PROFITS AND GAINS OF BUSINESS OR PROFESSION

(a) Increase in percentage of weighted deduction under section 35(2AA)

- (i) Section 35(2AA) provides for a weighted deduction of 175% in respect of amount paid to National Laboratory, or a University or an IIT or specified person with a specific direction that such sum shall be used for the purpose of an approved scientific research programme.
- (ii) The Finance Act, 2011 has increased the percentage of weighted deduction from 175% to 200% with effect from A.Y.2012-13.

(Effective from A.Y.2012-13)

Example

A Ltd. furnishes the following particulars for the P.Y.2011-12. Compute the deduction allowable under section 35 for A.Y.2012-13, while computing its income under the head "Profits and gains of business or profession".

Particulars	Rs.
1. Amount paid to Indian Institute of Science, Bangalore, for scientific research	1,00,000
2. Amount paid to IIT, Delhi for an approved scientific research programme	2,50,000
3. Amount paid to X Ltd., a company registered in India which has as its main object scientific research and development, as is approved by the prescribed authority	4,00,000
4. Expenditure incurred on in-house research and development facility as approved by the prescribed authority	
(a) Revenue expenditure on scientific research	3,00,000
(b) Capital expenditure (including cost of acquisition of land Rs.5,00,000) on scientific research	7,50,000

Answer

Computation of deduction under section 35 for the A.Y.2011-12

Particulars	Rs.	Section	% of weighted deduction	Amount of deduction (Rs.)
Payment for scientific research				
Indian Institute of Science	1,00,000	35(1)(ii)	175%	1,75,000

IIT, Delhi	2,50,000	35(2AA)	200%	5,00,000
X Ltd.	4,00,000	35(1)(iia)	125%	5,00,000
Expenditure incurred on in-house research and development facility				
Revenue expenditure	3,00,000	35(2AB)	200%	6,00,000
Capital expenditure (excluding cost of acquisition of land Rs.5,00,000)	2,50,000	35(2AB)	200%	5,00,000
Deduction allowable under section 35				22,75,000

(b) Expansion of scope of “specified business” for provision of “investment-linked tax incentives” under section 35AD and for set-off of losses under section 73A

- (i) At present, investment-linked tax incentives are available in respect of the following specified businesses, namely, –
- setting-up and operating ‘cold chain’ facilities for specified products;
 - setting-up and operating warehousing facilities for storing agricultural produce;
 - laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network;
 - building and operating a **new** hotel of two-star or above category, anywhere in India;
 - building and operating a **new** hospital, anywhere in India, with at least 100 beds for patients;
 - developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the Central Government or a State Government, as the case may be, and notified by the CBDT in accordance with the prescribed guidelines.
- (ii) 100% of the capital expenditure incurred during the previous year, wholly and exclusively for the above businesses would be allowed as deduction from the business income. However, expenditure incurred on acquisition of any land, goodwill or financial instrument would not be eligible for deduction.

- (iii) Further, the expenditure incurred, wholly and exclusively, for the purpose of specified business prior to commencement of operation would be allowed as deduction during the previous year in which the assessee commences operation of his specified business. A condition has been inserted that such amount incurred prior to commencement should be capitalized in the books of account of the assessee on the date of commencement of its operations.
- (iv) **The Finance Act, 2011 has extended the investment-linked tax deduction under section 35AD to two new businesses –**
 - (1) **developing and building a housing project under a notified scheme for affordable housing framed by the Central Government or State Government; and**
 - (2) **production of fertilizer in India.**
- (v) **One of the conditions is that the date of commencement of operations in the case of the two “specified businesses” of affordable housing projects and production of fertilizer in a new plant or in a newly installed capacity in an existing plant should be on or after 1st April, 2011.**

(Effective from A.Y.2012-13)

- (vi) In respect of the business of hotels and hospitals, the word “new” has been removed from the definition of “specified business”. Therefore, “specified business” means the business of building and operating, anywhere in India, -
 - (1) a hotel of two-star or above category as classified by the Central Government;
 - (2) a hospital with at least one hundred beds for patients.

Consequently, the loss of an assessee claiming deduction under section 35AD in respect of a specified business can be set-off against the profit of another specified business under section 73A, irrespective of whether the latter is eligible for deduction under section 35AD. As assessee can, therefore, set-off the losses of a hospital or hotel which begins to operate after 1st April, 2010 and which is eligible for deduction under section 35AD, against the profits of the existing business of operating a hospital (with atleast 100 beds for patients) or a hotel (of two-star or above category), even if the latter is not eligible for deduction under section 35AD.

(Effective from A.Y.2011-12)

Example

XYZ Ltd. commenced operations of the business of a new three-star hotel in Madurai, Tamil Nadu on 1.4.2011. The company incurred capital expenditure of Rs.50 lakh during the period January, 2011 to March, 2011 exclusively for the above business, and capitalized the same in its books of account as on 1st April, 2011. Further, during the P.Y.2011-12, it incurred capital expenditure of Rs.2 crore (out of which Rs.1.50 crore was for acquisition of land) exclusively for the above business. Compute the income under the head "Profits and gains of business or profession" for the A.Y.2012-13, assuming that XYZ Ltd. has fulfilled all the conditions specified for claim of deduction under section 35AD and has not claimed any deduction under Chapter VI-A under the heading "C. – Deductions in respect of certain incomes". The profits from the business of running this hotel (before claiming deduction under section 35AD) for the A.Y.2012-13 is Rs.25 lakhs. Assume that the company also has another existing business of running a four-star hotel in Coimbatore, which commenced operations 5 years back, the profits from which are Rs.120 lakhs for A.Y.2012-13.

Answer

Particulars	Rs.
Profits from the specified business of new hotel in Madurai (before providing deduction under section 35AD)	25 lakh
Less: Deduction under section 35AD	
Capital expenditure incurred during the P.Y.2011-12 (excluding the expenditure incurred on acquisition of land) = Rs.200 lakh – Rs.150 lakh (See point no. (ii) above)	50 lakh
Capital expenditure incurred prior to 1.4.2011 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2011 (See point no. (iii) above)	<u>50 lakh</u>
Total deduction under section 35AD for A.Y.2012-13	<u>100 lakh</u>
Loss from the specified business of new hotel in Madurai	(75 lakh)
Profit from the existing business of running a hotel in Coimbatore	<u>120 lakh</u>
Net profit from business after set-off of loss of specified business against profits of another specified business under section 73A	<u>45 lakh</u>

- (c) **Employer's contribution to the account of the employee under a Pension Scheme referred to in section 80CCD to be deductible as a business expenditure [Section 36(1)(iva)]**

Related amendment in sections : 40A(9) & 80CCE

- (i) Clause (iva) has been inserted in section 36(1) to provide that the employer's contribution to the account of an employee under a Pension Scheme as

referred to in section 80CCD would be allowed as deduction while computing business income.

- (ii) However, the deduction would be restricted to 10% of salary of the employee in the previous year.
- (iii) Salary, for this purpose, includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.
- (iv) Correspondingly, section 40A(9), which provides for disallowance of any sum paid by an employer towards contribution to any fund or trust has been amended to exclude from the scope of its disallowance, contribution by an employer to the pension scheme referred to in section 80CCD, to the extent to which deduction is allowable under section 36(1)(iva).
- (v) Further, such contribution by the employer to the pension scheme, allowable as deduction under section 80CCD(2) in the hands of the employee, would now be outside the overall limit of Rs.1 lakh stipulated under section 80CCE i.e. the employer contribution to pension scheme allowable as deduction under section 80CCD(2) in the hands of the employee would be in addition to the other investments which are subject to the overall limit of Rs.1 lakh under section 80CCE.

(Effective from A.Y.2012-13)

Examples

(1) Computation of deduction in the hands of the employer in respect of contribution to pension scheme

X Ltd. contributes 20% of basic salary to the account of each employee under a pension scheme referred to in section 80CCD. Dearness Allowance is 40% of basic salary and it forms part of pay of the employees. Compute the amount of deduction allowable under section 36(1)(iva), if the basic salary of the employees aggregate to Rs.10 lakh. Would disallowance under section 40A(9) be attracted, and if so, to what extent?

Answer

Computation of deduction allowable under section 36(1)(iva) and disallowance under section 40A(9)

Particulars	Rs.
Basic Salary	10,00,000
Dearness Allowance@40% of basic salary [DA forms part of pay]	4,00,000
Salary for the purpose of section 36(1)(iva) (Basic Salary + DA)	14,00,000

(2) Tax treatment of employer's and employee's contribution to pension scheme in the hands of the employee

Answer

(a) Employer's contribution to such pension scheme would be treated as salary since it is specifically included in the definition of "salary" under section 17(1)(viii). Therefore, Rs.36,000, being 15% of basic salary of Rs.2,40,000, will be included in Mr.A's salary.

(b) Mr. A's contribution to pension scheme is allowable as deduction under section 80CCD(1). However, the deduction is restricted to 10% of salary. Salary, for this purpose, means basic pay plus dearness allowance, if it forms part of pay.

Particulars	Rs.
Basic salary = 20,000 × 12 =	2,40,000
Dearness allowance = 40% of Rs.2,40,000 = 96,000	
50% of DA forms part of pay = 50% of Rs.96,000	48,000
Salary for the purpose of deduction u/s 80CCD	2,88,000

Rs.28,800 is allowable as deduction under section 80CCD(1). This would be taken into consideration and be subject to the overall limit of Rs.1 lakh under section 80CCE.

- (c) Employer's contribution to pension scheme would be allowable as deduction under section 80CCD(2), subject to a maximum of 10% of salary. Therefore, deduction under section 80CCD(2), would also be restricted to Rs.28,800, even though the entire employer's contribution of Rs.36,000 is included in salary under section 17(1)(viii). However, this deduction of employer's contribution of Rs.28,800 to pension scheme would be outside the overall limit of Rs. 1 lakh under section 80CCE i.e., this deduction would be over and above the other deductions which are subject to the limit of Rs.1 lakh.

5. DEDUCTIONS FROM GROSS TOTAL INCOME

(a) Deduction for investment in long-term infrastructure bonds to continue for one more year [Section 80CCF]

- (i) At present, there is cap of Rs.1 lakh on the savings qualifying for deduction from gross total income, and this embraces all forms of eligible savings through different instruments, whether it be contribution to provident fund, public provident fund, pension fund, subscription to ELSS, NSC or payment of life insurance premium. This ceiling is provided in section 80CCE for the investments/contributions covered under section 80C, 80CCC & 80CCD(1).
- (ii) In order to give a fillip to the infrastructure sector, section 80CCF was introduced last year to provide an additional deduction of up to Rs.20,000 to individuals and HUFs exclusively for subscription to notified long-term infrastructure bonds during the financial year 2010-11. This deduction is over and above the deduction under section 80C, 80CCC and 80CCD(1), which is restricted to Rs.1 lakh under section 80CCE.
- (iii) The Central Government has notified the long-term infrastructure bonds, subscription to which would qualify for deduction under section 80CCF, i.e., subscription to long-term infrastructure bonds of Industrial Finance Corporation of India, Life Insurance Corporation of India, Infrastructure Development Finance Company Limited and a Non Banking Finance Company classified as an Infrastructure Finance Company by the Reserve Bank of India. Further, subscription to long-term infrastructure bonds of India Infrastructure Finance Company Ltd. would also qualify for deduction under section 80CCF.
- (iv) This benefit of additional deduction of Rs.20,000 under section 80CCF for investment in notified long-term infrastructure bonds has now been extended for one more year i.e. A.Y. 2012-13.

(Effective for A.Y.2012-13)

Example

The gross total income of Mr.X for the A.Y.2012-13 is Rs.5,00,000. He has made the following investments/payments during the F.Y.2011-12 -

	Particulars	Rs.
(1)	Contribution to PPF	70,000
(2)	Payment of tuition fees to Apeejay School, New Delhi, for education of his son studying in Class XI	45,000
(3)	Repayment of housing loan taken from Standard Chartered Bank	25,000
(4)	Contribution to approved pension fund of LIC	10,000
(5)	Subscription to IDFC long-term infrastructure bonds	25,000

Compute the eligible deduction under Chapter VI-A for the A.Y.2012-13.

Answer**Computation of deduction under Chapter VI-A for the A.Y.2012-13**

	Particulars	Rs.
Deduction under section 80C		
(1)	Contribution to PPF	70,000
(2)	Payment of tuition fees to Apeejay School, New Delhi, for education of his son studying in Class XI	45,000
(3)	Repayment of housing loan	25,000
		1,40,000

Deduction under section 80CCC

(4)	Contribution to approved pension fund of LIC	10,000
		1,50,000

As per section 80CCE, the aggregate deduction under section 80C, 80CCC and 80CCD(1) has to be restricted to Rs.1 lakh

Deduction under section 80CCF

(5)	Subscription to notified long-term infrastructure bonds of IDFC, Rs.25,000, but restricted to Rs.20,000, being the maximum deduction allowable under section 80CCF	20,000
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Deduction allowable under Chapter VIA for the A.Y.2012-13	1,20,000
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(b) Extension of sunset clause for tax holiday under section 80-IA for power-sector undertakings [Section 80-IA(4)(iv)]

Section 80-IA(4)(iv) provides for deduction in respect of profits and gains derived by an undertaking which –

- (1) is set up in India for generation or generation and distribution of power, if it begins to generate power on or before 31st March, 2011;
- (2) starts transmission or distribution by laying a network of new transmission or distribution lines on or before 31st March, 2011;
- (3) undertakes substantial renovation and modernization of the existing network of transmission or distribution lines on or before 31st March 2011.

This time limit has been extended by one year i.e., from 31st March, 2011 to 31st March, 2012, to enable undertakings which start generation, or transmission or distribution of power during the period between 1st April, 2011 and 31st March, 2012 or which undertakes substantial renovation and modernization of the existing network of transmission or distribution lines between 1st April, 2011 and 31st March, 2012 to avail benefit of deduction under this section.

(Effective from A.Y.2012-13)

(c) Sunset clause for tax holiday in respect of certain undertakings engaged in commercial production of mineral oil [Section 80-IB(9)]

- (i) For the purposes of claiming deduction under sub-section (9), all blocks licensed under a single contract, which has been awarded -
 - (1) under the New Exploration Licencing Policy announced by the Government of India vide Resolution No.O-19018/22/95-ONG.DO.VL, dated 10.2.1999 or
 - (2) in pursuance of any law for the time being in force or
 - (3) by Central or a State Government in any other mannershall be treated as a single "undertaking".
- (ii) An undertaking which is located in any part of India and engaged in commercial production of mineral oil is eligible for a seven-year profit linked deduction under section 80-IB(9), if it has begun commercial production on or after 1.4.1997. So far, no sunset clause has been provided for such business.
- (iii) A sunset clause for tax holiday in respect of certain undertakings engaged in commercial production of mineral oil has now been inserted. Accordingly, the above deduction for commercial production of mineral oil will not be available for blocks licensed under a contract awarded after 31.3.2011 under the New Exploration Licencing Policy or in pursuance of any law for the time being in force or by the Central or a State Government in any other manner.

(Effective from A.Y.2012-13)

6. PROVISIONS FOR FILING RETURN OF INCOME

(a) Extension of due date for filing return of income of corporate assessee undertaking international transactions [Section 139(1)]

- (i) The due date for filing of return of income of corporate assessee who have undertaken international transactions during the relevant previous year has been extended from 30th September to 30th November of the assessment year, on account of the practical difficulties in accessing contemporary comparable data before 30th September.
- (ii) Consequently, the due date within which the sums referred to in section 43B have to be actually paid to escape disallowance under that section would be 30th November of the assessment year in case of such companies.
- (iii) Similarly, the tax deducted at source at any time during the year by such companies can be deposited on or before the extended due date of 30th November of the assessment year, to avoid disallowance under section 40(a)(ia).
- (iv) The extension of due date for filing of return would, however, not be applicable to non-corporate assessee who have undertaken international transactions during the relevant previous year.

(Effective from A.Y. 2011-12)

(b) Specified class or classes of persons to be exempted from filing return of income [Section 139(1C)]

- (i) Under section 139(1), every person has to furnish a return of his income on or before the due date, if his total income exceeds the basic exemption limit.
- (ii) For reducing the compliance burden of small taxpayers, the Central Government has been empowered to notify the class or classes of persons who will be exempted from the requirement of filing of return of income, subject to satisfying the prescribed conditions. This has been provided for in new clause (1C) of section 139.

(Effective from 1st June, 2011)

IMPORTANT CIRCULARS & NOTIFICATIONS ISSUED BETWEEN 1.5.2010 AND 30.4.2011

CIRCULARS

1. Circular No. 4/2010 dated 18.5.2010

Clarification regarding definition of new infrastructure facility for the purpose of section 80-IA(4)

The CBDT has, vide this Circular, clarified that widening of an existing road by constructing additional lanes as a part of a highway project by an undertaking would be regarded as a new infrastructure facility for the purpose of section

80-IA(4)(i). However, simply relaying of an existing road would not be classifiable as a new infrastructure facility for this purpose.

2. Circular No. 6/2010 dated 20.9.2010

Regional Rural Banks not eligible for deduction under section 80P

The CBDT has, through this circular, reiterated that Regional Rural Banks are not eligible for deduction under section 80P of the Income-tax Act, 1961 from the assessment year 2007-08 onwards. It has also been clarified that the Circular No. 319 dated 11-1-1982 deeming any Regional Rural Bank to be cooperative society stands withdrawn for application with effect from A.Y.2007-08.

This is consequent to the amendment in section 80P by the Finance Act, 2006, providing specifically that w.e.f. 1-4-2007, the provisions of section 80P will not apply to any co-operative bank other than a Primary Agricultural Credit Society or a Primary Cooperative Agricultural and Rural Development Bank. The same has been further clarified by this circular.

3. Circular No. 7/2010 dated 27.10.2010

Clarification regarding period of validity of approvals issued under section 10(23C)(iv), (v), (vi) or (via) and section 80G(5)

For the removal of doubts about the period of validity of various approvals granted by the Chief Commissioners of Income-tax or Directors General of Income-tax under sub-clauses (iv), (v), (vi) and (via) of section 10(23C) and by the Commissioners of Income-tax or Directors of Income-tax under section 80G(5) of the Income-tax Act, 1961, the CBDT has, through, this circular clarified the following:-

- (1) For the purposes of sub-clauses (iv) and (v) of section 10(23C), any notification issued by the Central Government under the said sub-clauses, on or after 13-7-2006 will be valid until withdrawn and there will be no requirement on the part of the assessee to seek renewal of the same after three years.
- (2) For the purposes of sub-clauses (vi) and (via) of section 10(23C), any approval issued on or after 1-12-2006 under the said sub-clauses would be a one time approval and would be valid till it is withdrawn.
- (3) For the purposes of section 80G(5), existing approvals expiring on or after 1st October, 2009 shall be deemed to have been extended in perpetuity unless specifically withdrawn. Further, any approval under section 80G(5) on or after 1-10-2009 would be a one time approval which would be valid till it is withdrawn.

NOTIFICATIONS

1. Notification Nos. 48/2010 dated 9.7.2010 & 77/2010 dated 11.10.2010

Notification of long-term infrastructure bonds by the Central Government, subscription to which would qualify for deduction under section 80CCF

Section 80CCF provides that an assessee, being an individual or a Hindu Undivided Family, shall get a deduction of up to rupees twenty thousand in computing his total income if he subscribes to long-term infrastructure bonds as may be notified by the Central Government for this purpose.

Consequently, the Central Government has, vide these notifications, specified the long-term infrastructure bonds, subscription to which would qualify for deduction under section 80CCF. Accordingly, subscription to long-term infrastructure bonds of Industrial Finance Corporation of India, Life Insurance Corporation of India, Infrastructure Development Finance Company Limited and a non-banking Finance Company classified as an Infrastructure Finance Company by the Reserve Bank of India would qualify for deduction under section 80CCF. Further, subscription to long-term infrastructure bonds of India Infrastructure Finance Company Ltd. would also qualify for deduction under section 80CCF.

2. Notification No. 59/2010 dated 21.07.2010

Cost Inflation Index of financial year 2010-11 notified

The CBDT has notified the cost inflation index for the financial year 2010-11 as 711.

S. No.	Financial Year	Cost Inflation Index
1.	1981-82	100
2.	1982-83	109
3.	1983-84	116
4.	1984-85	125
5.	1985-86	133
6.	1986-87	140
7.	1987-88	150
8.	1988-89	161
9.	1989-90	172
10.	1990-91	182
11.	1991-92	199
12.	1992-93	223

13.	1993-94	244
14.	1994-95	259
15.	1995-96	281
16.	1996-97	305
17.	1997-98	331
18.	1998-99	351
19.	1999-2000	389
20.	2000-01	406
21.	2001-02	426
22.	2002-03	447
23.	2003-04	463
24.	2004-05	480
25.	2005-06	497
26.	2006-07	519
27.	2007-08	551
28.	2008-09	582
29.	2009-10	632
30.	2010-11	711

3. Notification No. 24/2011 dated 13.05.2011 (in supersession of Notification No. 69/2010 dated 26.8.2010)

9.5% notified as the interest rate on RPF, the interest in excess of which would be taxable as salary

Rule 6 of Part A of the Fourth Schedule to the Income-tax Act, 1961, provides, *inter alia*, that interest credited on the balance to the credit of an employee participating in a recognized provident fund in so far as it is allowed at a rate exceeding such rate notified by the Central Government, shall be deemed to have been received by the employee in the relevant previous year and shall be included in his total income.

Accordingly, the Central Government has, vide this notification, notified w.e.f. 1st September, 2010, in exercise of the powers conferred by Rule 6, 9.5% as the rate of interest on employer's annual contributions in a recognized provident fund. In effect, the Notification No. 69/2010 dated 26.8.2010, notifying the rate of interest as 8.5% w.e.f. 1st September, 2010, has been superseded by this notification.

This implies that interest credited on the balance to the credit of the employee in excess of 9.5% (and not 8.5% as earlier notified to be effective from 1.9.2010) shall be deemed to have been received by the employee in the previous year and shall be included in the total income of the employee. Prior to 1.9.2010, in any case, the interest credited in excess of 9.5% was deemed to be the income of the employee.

Therefore, the position of law as it stands now after issue of this notification is that irrespective of the date of credit of interest, whether before or on or after 1.9.2010, only the interest credited on the balance to the credit of the employee in excess of 9.5% shall be included in the total income of the employee. For example, if an employer credits interest @10% for the P.Y.2010-11 and P.Y.2011-12 on the balance standing to the credit of each employee, then the excess interest of 0.5% (10% - 9.5%) would be included in the total income of the employee for the respective years.

4. Notification No. 80/2010 dated 19.10.2010 (as amended by Notification No.20/2011 dated 21.4.2011)

Notification of annuity plan for deduction under section 80C

Deduction under section 80C is available in respect of any sum paid or deposited to effect or to keep in force a contract for such annuity plan of the Life Insurance Corporation or any other insurer as the Central Government may, by notification in the Official Gazette specify in this behalf.

Accordingly, the Central Government, has, through this notification specified the Tata AIG Easy Retire Annuity plan of the Tata AIG Life Insurance Company Limited as the annuity plan of the Tata AIG Life Insurance Company Limited for the purposes deduction under section 80C.

5. Notification No.41/2010 dated 31.05.2010

Substitution of Rules 30, 31 & 31A in the Income-tax Rules, 1962.

Rule 30 – Time and mode of payment to Government account of TDS or tax paid under section 192(1A)

- (a) All sums deducted in accordance with Chapter XVII-B by an office of the Government shall be paid to the credit of the Central Government on the same day where the tax is paid without production of an income-tax challan and on or before seven days from the end of the month in which the deduction is made or income-tax is due under section 192(1A), where tax is paid accompanied by an income-tax challan.
- (b) All sums deducted in accordance with Chapter XVII-B by deductors other than a Government office shall be paid to the credit of the Central Government on or before 30th April, where the income or amount is credited or paid in the month of March. In any other case, the tax deducted should be paid on or before seven days from the end of the month in which the deduction is made or income-tax is due under section 192(1A).

- (c) In special cases, the Assessing Officer may, with the prior approval of the Joint Commissioner, permit quarterly payment of the tax deducted under section 192/194A/194D/194H on or before 7th of the month following the quarter, in respect of first three quarters in the financial year and 30th April in respect of the quarter ending on 31st March. The dates for quarterly payment would, therefore, be 7th July, 7th October, 7th January and 30th April, for the quarters ended 30th June, 30th September, 31st December and 31st March, respectively.

Rule 31 – Certificate of TDS to be furnished under section 203

- (a) The certificate of deduction of tax at source to be furnished under section 203 shall be in Form No.16 in respect of tax deducted or paid under section 192 and in any other case, Form No.16A.
- (b) Form No.16 shall be issued to the employee annually by 31st May of the financial year immediately following the financial year in which the income was paid and tax deducted. Form No.16A shall be issued quarterly within 15 days from the due date for furnishing the statement of TDS under Rule 31A.

Rule 31A – Statement of deduction of tax under section 200(3)

- (a) Every person responsible for deduction of tax under Chapter XVII-B shall deliver, or cause to be delivered, the following quarterly statements to the DGIT (Systems) or any person authorized by him, in accordance with section 200(3):
- (1) Statement of TDS under section 192 in Form No.24Q;
 - (2) Statement of TDS under sections 193 to 196D in Form No.26Q in respect of all deductees other than a deductee being a non-resident not being a company or a foreign company or resident but not ordinarily resident in which case the relevant form would be Form No.27Q.
- (b) The time limit for furnishing such quarterly statements shall be 15th of the month following each quarter in respect of the first three quarters and 15th May for the last quarter ending on 31st March. The due dates would therefore be 15th July, 15th October, 15th January and 15th May for the quarters ending 30th June, 30th September, 31st December and 31st March, respectively.

6. Ceiling for gratuity exemption raised to Rs.10 lakhs

Section 10(10)(ii) exempts any gratuity received under the Payment of Gratuity Act, 1972, to the extent it does not exceed an amount calculated in accordance with the provisions of sub-sections (2) and (3) of section 4 of that Act. The limit specified under sub-section (3) of section 4 has been increased from Rs.3,50,000 to Rs.10,00,000 by the Payment of Gratuity (Amendment) Act, 2010 dated 17th May, 2010.

Thereafter, the Central Government has enhanced the notified limit under section 10(10)(iii) from Rs.3,50,000 to Rs.10,00,000 in relation to employees who retire or

become incapacitated prior to such retirement or die on or after 24th May, 2010 or whose employment is terminated on or after the said date. In effect, the ceiling for gratuity exemption under section 10(10)(iii), which is relevant for employees not covered under the Payment of Gratuity Act, 1972, has also been increased to Rs.10 lakh vide Central Government Notification No.43/2010 dated 11th June, 2010.

7. Notification No.84/2010 dated 22.11.2010

Salaried persons entitled to act as Tax Return Preparers

In exercise of the powers conferred under section 139B(1), the CBDT had framed the Tax Return Preparer Scheme, 2006 for the purpose of enabling any specified class or classes of persons in preparing and furnishing their return of income. "Specified class or classes of persons" means any person, other than a company or a person, whose accounts are required to be audited under section 44AB or under any other law for the time being in force, who is required to furnish a return of income under the Act.

Paragraph 2(f) of the Tax Return Preparer Scheme, 2006 defining a Tax Return Preparer, specifically provided that a person who is in employment and income from which is chargeable under the head "Salaries" shall not be entitled to act as a Tax Return Preparer. This disqualification has now been removed by amending paragraph 2(f). Consequently, a salaried person is now eligible to act as a Tax Return Preparer.

Consequential amendment has been made in Paragraph 11(1)(xii), which provided for withdrawal of certificate given to the Tax Return Preparer in case he, after issue of Tax Return Preparer Certificate to him, takes up an employment, income from which is chargeable under the head "Salaries". Henceforth, taking up a salaried employment would not result in withdrawal of certificate given to the Tax Return Preparer.

However, it may be noted that as per section 139B(3) of the Income-tax Act, 1961, an employee of the "specified class or classes of persons" is not authorized to act as a Tax Return Preparer. A combined reading of section 139B(3) with the amended Tax Return Preparer Scheme, 2006 reveals that employees of companies and persons whose accounts are required to be audited under section 44AB or any other law for the time being in force, are eligible to act as Tax Return Preparers.

8. Notification No.85/2010 dated 22.11.2010

Increase in exemption limit for allowance granted to employees working in a transport system to meet their personal expenditure during the course of duty

Section 10(14)(ii) exempts any such allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides, or to compensate him for the increased cost of living as may be prescribed and to the extent as may be prescribed.

Rule 2BB(2) prescribes the allowances for the purposes of exemption under section 10(14)(ii). As per this rule, the exemption allowable in respect of any allowance granted to an employee working in any transport system to meet his personal expenditure during his duty performed in the course of running of such transport from one place to another place (provided he is not in receipt of daily allowance) is 70% of such allowance, subject to a maximum of Rs.6,000 per month.

The monthly limit of Rs.6,000 has been increased to Rs.10,000 with retrospective effect from 1st September, 2008. Therefore, with effect from 1st September, 2008, the exemption would be 70% of such allowance, subject to a maximum of Rs.10,000 per month.

9. Notification No. 12/2011 dated 25.02.11

United Stock Exchange of India Ltd. notified as a recognized stock exchange

Clause (d) of the proviso to section 43(5) provides that an eligible transaction in respect of trading in derivatives referred to in section 2(ac) of the Securities Contracts (Regulation) Act, 1956 carried out in a recognised stock exchange, which is notified by the Central Government for this purpose, shall not be deemed to be a speculative transaction.

Accordingly, in exercise of the powers conferred under section 43(5) read with Rule 6DDB, the Central Government has notified the United Stock Exchange of India Limited as a recognised stock exchange for the purpose of the said clause. The notification also lays down certain conditions to be fulfilled by the stock exchange.

It may be noted that at present, there are three other stock exchanges notified as recognized stock exchanges for the purposes of section 43(5), namely, the National Stock Exchange, Bombay Stock Exchange and MCX Stock Exchange.

10. Notification No. 14/2011 dated 9.3.2011

Conditions to be fulfilled for a stock exchange to qualify as a recognized stock exchange for the purposes of section 43(5) - Modification of cash and derivative market transactions registered in the system permitted in case of genuine error

Clause (d) of proviso to section 43(5) provides that an eligible transaction in respect of trading in derivatives referred to in section 2(ac) of the Securities Contracts (Regulation) Act, 1956 carried out in a recognised stock exchange shall not be deemed to be a speculative transaction. Rule 6DDB provides for notification of recognised stock exchange for the purposes of said clause.

Further, Rule 6DDA provides the conditions that a stock exchange is required to fulfil to be notified as a recognised stock exchange for the purpose of abovementioned clause. One of the conditions, specified in clause (iv) of Rule 6DDA, is that the stock exchange shall ensure that transactions once registered in the system cannot be erased or

modified. This clause has been substituted to provide that the stock exchange shall ensure that transactions (in respect of cash and derivative market) once registered in the system are not erased.

Another condition has been stipulated by insertion of clause (v), which provides that the stock exchange shall ensure that the transactions (in respect of cash and derivative market) once registered in the system are modified only in cases of genuine error. The stock exchange should maintain data regarding all transactions (in respect of cash and derivative market) registered in the system which have been modified and submit a monthly statement in Form No. 3BB to the Director General of Income-tax (Intelligence), New Delhi within fifteen days from the last day of each month to which such statement relates.

Corresponding amendment has been made in Rule 6DDB requiring that the application for notification of a recognised stock exchange should be accompanied by inter alia, confirmation regarding fulfilling the conditions referred to in clauses (ii) to (v) of Rule 6DDA.

PART - II : SERVICE TAX
AMENDMENTS BY THE FINANCE ACT, 2011

Amendments in Chapter V and VA of the Finance Act, 1994

1. 2 new services brought under the service tax net - Section 65

(a) Restaurant service [Section 65(105)(zzzzv)]

1. Service provider: A restaurant having:-

- the facility of air-conditioning in any part of the establishment, at any time during the financial year, and
- licence to serve alcoholic beverages

2. Service receiver: Any person

3. Date from which such service is taxable: 1st May, 2011

4. Scope of taxable service: Any service provided or to be provided to any person, by a restaurant, by whatever name called, having the facility of air-conditioning in any part of the establishment, at any time during the financial year, which has licence to serve alcoholic beverages, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises.

5. Departmental Clarification: *DOF No. 334/3/2011-TRU dated 28.02.2011* clarifies as follows:-

- The new levy is directed at services provided by high-end restaurants that are air-conditioned and have license to serve liquor. If the air-conditioning facility is available at any time during the financial year, the conditions for the levy shall be met.
- Such restaurants provide conditions and ambience in a manner that service provided may assume predominance over the food in many situations.
- It should not be confused with mere sale of food at any eating house, where such services are materially absent or so minimal that it will be difficult to establish that any service in any meaningful way is being provided.
- The levy is intended to be confined to the value of services contained in the composite contract and shall not cover either the meal portion in the composite contract or mere sale of food by way of pick-up or home delivery, as also goods sold at MRP.

6. Abatement of 70% of the gross amount charged: With effect from 01.05.2011, *Notification No. 1/2006 ST dated 01.03.2006* has been amended to grant abatement of 70% of the gross amount charged in respect of restaurant services.

[Notification No. 34/2011 ST dated 25.04.2011]

Conditions to be satisfied for claiming the exemption under Notification No. 1/2006 ST dated 01.03.2006:-

- (i) CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has not been taken under the provisions of Cenvat Credit Rules, 2004; and
- (ii) Service provider has not availed the benefit under the Notification No. 12/2003 ST, dated 20.06.2003.

(b) Short-term accommodation services [Section 65(105)(zzzzw)]

1. **Service provider:** A hotel, inn, guest house, club or camps, by whatever name called.
2. **Service receiver:** Any person
3. **Date from which such service is taxable:** 1st May, 2011
4. **Scope of taxable service:** Any service provided or to be provided to any person by a hotel, inn, guest house, club or camps, by whatever name called, for providing of accommodation for a continuous period of less than three months.
5. **Abatement of 50% of the gross amount charged:** With effect from 01.05.2011, Notification No. 1/2006 ST dated 01.03.2006 has been amended to grant abatement of 50% of the gross amount charged in respect of short-term accommodation services.

[Notification No. 34/2011 ST dated 25.04.2011]

Conditions to be satisfied for claiming the exemption under Notification No. 1/2006 ST dated 01.03.2006:-

- (i) CENVAT credit of duty paid on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has not been taken under the provisions of Cenvat Credit Rules, 2004; and
- (ii) Service provider has not availed the benefit under the Notification No. 12/2003 ST, dated 20.06.2003.

2. Amendment in the scope of existing taxable services - Section 65

(a) Service station service [Section 65(105)(zo)]

S.No.	Prior to amendment	Situation after the Finance Act, 2011
1.	Service must be provided by an authorised service station	Service may be provided by any person
2.	Service is to be provided in relation to:- · any service, repair, reconditioning or	Service is to be provided in relation to:- · any service for repair,

	restoration of · motor cars, light motor vehicles or two wheeled motor vehicles.	reconditioning or restoration or decoration or any other similar services of · any motor vehicle other than three wheeler scooter auto-rickshaw and motor vehicle meant for goods carriage.
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Hence, the definition of taxable service of “service station” reads as follows:-

Any service provided or to be provided to any person, by any other person, in relation to any service for repair, reconditioning, restoration or decoration or any other similar services, of any motor vehicle other than three wheeler scooter auto-rickshaw and motor vehicle meant for goods carriage.

Consequential amendment-definition of authorized service station omitted

Since service provided by any person i.e. whether authorized service station or otherwise is taxable, definition of authorized service station provided under section 65(9) of the Finance Act, 1994 has been omitted.

(b) Life insurance services [Section 65(105)(zx)]

Prior to amendment

Earlier ‘life insurance service’ was defined as follows:-

Any service provided or to be provided to a policy holder or any person, by an insurer, including re-insurer carrying on life insurance business in relation to risk cover in life insurance.

Hence, earlier **only service in relation to risk cover in life insurance** was subjected to service tax.

Amendment made by the Finance Act, 2011

Finance Act, 2011 has substituted the aforesaid definition as follows:-

Any service provided or to be provided to a policy holder or any person, by an insurer, including re-insurer carrying on life insurance business.

Now, the scope of the life insurance services has been widened. Hence, **any service** provided by the Life Insurance Companies is liable to service tax.

Clarification

In this regard, *DOF No. 334/3/2011-TRU dated 28.02.2011* clarifies as follows:-

Life insurance companies provide services relating to risk cover and managing investment for the policy holders. The former is already subjected to service tax. The latter has now been brought into the tax net. Similar services rendered by way of ULIP are already subject to service tax since 2008.

(c) **Services in respect of membership of clubs or associations [Section 65(105)(zzze) and section 65(25a)]**

Prior to amendment

- (a) Earlier, services in respect of membership of clubs or associations provided **only to the members of such club or association** were subjected to tax [Section 65(105)(zzze)].
- (b) Club or association was defined under section 65(25a). It inter alia provides that "**club or association**" means any person or body of persons providing services, facilities or advantages to its members. Hence, services provided **only** to members were taxable [Section 65(25a)].

Amendment made by the Finance Act, 2011

- (a) Section 65(105)(zzze) has been amended. Now, the scope of the said services has been widened to include such services provided to any other person (a non-member) also.
- (b) Since, definition of clinical establishment has been provided under section 65(25a), club/association has been defined under section 65(25aa). Further, the new definition provides that "club or association" means any person or body of persons providing services, facilities or advantages, **primarily** to its members. Hence, primarily such services should be provided to members, however, services provided to non-members are also includible in the definition of club or association.

Now the definition of club or association reads as under:-

"club or association" means any person or body of persons providing services, facilities or advantages, **primarily** to its members, for a subscription or any other amount, but does not include-

- (i) any body established or constituted by or under any law for the time being in force or
- (ii) any person or body of persons engaged in the activities of trade unions, promotion of agriculture, horticulture or animal husbandry or
- (iii) any person or body of persons engaged in any activity having objectives which are in the nature of public service and are of a charitable, religious or political nature or

(iv) any person or body of persons associated with press or media.

Clarification

In this regard, *DOF No. 334/3/2011-TRU dated 28.02.2011* clarifies as follows:-

In case a member of club/association avails the facilities for his guest, he is already covered by the existing definition as payment for such services is made by the member only and not by the guest.

The revised definition brings the following services into service tax net:-

- Clubs or associations allowing non-members to use their facilities in their own capacity for a separate charge.
- Clubs entertaining members of other affiliated clubs.

(d) Legal consultancy services [Section 65(105)(zzzzm)]

Prior to amendment

Earlier 'legal consultancy service' was defined as follows:-

Any service provided or to be provided to a business entity, by any other business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner. However, any service provided by way of appearance before any court, tribunal or authority shall not amount to taxable service.

Amendment made by the Finance Act, 2011

Finance Act, 2011 has substituted the aforesaid definition as follows:-

Any service provided/to be provided:-

- (i) to any person, by a business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner,
- (ii) to any business entity, by any person, in relation to representational services before any court, tribunal or authority;
- (iii) to any business entity, by an arbitral tribunal, in respect of arbitration.

Meaning of arbitration and arbitral tribunal

- (a) Arbitration** means any arbitration whether or not administered by permanent arbitral institution [Section 2(a) of the Arbitration and Conciliation Act, 1996].
- (b) Arbitral tribunal** means a sole arbitrator or a panel of arbitrators [Section 2(d) of the Arbitration and Conciliation Act, 1996]

ANALYSIS

A comparison between the position prior to amendment and position after the amendment made by the Finance Act, 2011 can be better understood with the help of the following table:-

Type of service	Service provider	Service receiver	Subjected to service tax	
			Prior to amendment	After amendment
Advice, consultancy or assistance in any branch of law, in any manner	Individual	Business entity	No	No
	Business entity	Business entity	Yes	Yes
	Business entity	Individual	No	Yes
Representational services before any Court, Tribunal or Authority	Individual	Business entity	No	Yes
	Business entity	Business entity	No	Yes
	Business entity	Individual	No	No
Arbitration	Arbitral authority	Business entity	No	Yes
Any legal consultancy service	Individual	Individual	No	No

(e) Health care services [Section 65(105)(zzzz)]

Prior to amendment

Earlier 'health care service' was defined as follows:-

Any service provided by any hospital, nursing home or multi-specialty clinic—

- (i) to an employee of any business entity, in relation to health check-up or preventive care, where the payment for such check-up or preventive care is made by such business entity directly to such hospital, nursing home or multi-specialty clinic; or
- (ii) to a person covered by health insurance scheme, for any health check-up or treatment, where the payment for such health check-up or treatment is made by the insurance company directly to such hospital, nursing home or multi-specialty clinic.

Amendment made by the Finance Act, 2011

Finance Act, 2011 has substituted the aforesaid definition as follows:-

Any service provided/to be provided to any person,

- (i) by a clinical establishment; or
- (ii) by a doctor, not being an employee of a clinical establishment, who provides service from such premises for diagnosis, treatment or care for illness, disease, injury, deformity abnormality or pregnancy in any system of medicine [**Section 65(105)(zzzzz)**].

Definition of clinical establishment

Clinical establishment means

- (i) a hospital, maternity home, nursing home, dispensary, clinic, sanatorium or an institution, by whatever name called, owned, established, administered or managed by any person or body of persons, whether incorporated or not, having in its establishment the facility of central air-conditioning either in whole or in part of its premises and having more than twenty-five beds for in-patient treatment at any time during the financial year, offering services for diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine; or
- (ii) an entity owned, established, administered or managed by any person or body of persons, whether incorporated or not, either as an independent entity or as a part of any clinical establishment referred to in sub-clause (i), which carries out diagnosis of diseases through pathological, bacteriological, genetic, radiological, chemical, biological investigations or other diagnostic or investigative services with the aid of laboratory or other medical equipment,

but does not include an establishment, owned or controlled by-

- (a) the Government; or
- (b) a local authority [**Section 65(25a)**].

Important Note: Students may hereby note that with effect from 01.05.2011, health care services [**Section 65(105)(zzzzz)**] have been exempted from whole of the service tax vide *Notification No. 30/2011 dated 25.04.2011*.

(f) Definition of commercial training or coaching centre amended [Section 65(27)**]**

Prior to amendment

Earlier the definition of commercial training or coaching centre specifically excluded the following:-

- (a) the preschool coaching and training centre

or

- (b) any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force.

Amendment made by the Finance Act, 2011

The aforesaid **exclusion** has been removed.

Departmental clarification

In this regard, *DOF No. 334/3/2011-TRU dated 28.02.2011* clarifies as follows:-

The scope of the service has been expanded to include all coaching and training that is not recognized by law irrespective of whether the institute is providing any other course(s) recognized by law.

Earlier, the unrecognized education which is imparted by an institute that issues any certificate or diploma or degree or any educational qualification recognized by law was outside the service tax purview. Thus, two identical courses may be treated differently merely because one of the institutes also conducts another course that is recognized by law. This anomaly is corrected by subjecting all such unrecognized education to tax.

Important note: Students may note that exemption has been granted vide **Notification No. 33/2011 ST dated 25.04.2011** to:-

- (a) Preschool coaching and training and
- (b) Coaching or training relating to educational qualifications that are recognized by law.

(g) Definition of support services of business or commerce amended [Section 65(104c)]

Prior to amendment

The definition of support services of business or commerce under section 65(104c) provides a list of services to be included in the said services. One such service was “**operational assistance for marketing**”.

Amendment made by the Finance Act, 2011

The scope of the said service has been expanded to include “**operational or administrative assistance in any manner**”.

Departmental clarification

In this regard, *DOF No. 334/3/2011-TRU dated 28.02.2011* clarifies as follows:-

The words “operational and administrative assistance” have wide connotation and can include certain services already taxed under any other head of more specific description. The correct classification will continue to be governed by section 65A.

The scope will cover all support activities for others on a contract or fee, that are ongoing business support functions that businesses and organizations commonly do for themselves, but sometimes find it economical or otherwise worthwhile to outsource.

3. Maximum penalty for delay in furnishing of return increased to Rs. 20,000 [Section 70]

Prior to amendment

Section 70(1) inter alia provides that maximum late fee for filing of periodical return after the due date is Rs. 2,000.

Amendment made by the Finance Act, 2011

Finance Act, 2011 has increased the maximum penalty under section 70 for delay in filing the service tax return from Rs. 2,000 to Rs. 20,000. However, there is no change in the amount/rate of penalty under rule 7C of the Service Tax Rules, 1994.

4. Concession of 3%, for specified assesseees, in the rate of interest for amount of service tax collected in excess [Section 73B]

Section 73B provides that where an amount has been collected in excess of the tax assessed/determined and paid for any taxable service, the person who is liable to pay such amount as determined under section 73A(4) shall, in addition to the amount, be liable to pay the interest ranging between 10% to 24% p.a as may be notified by the Central Government. At present, the rate of **interest @ 18% p.a** has been notified.

Concessional rate provided by the Finance Act, 2011

Finance Act, 2011 has inserted second proviso to section 73B of the Finance Act, 1994 which provides as follows:-

In the case of a service provider, whose value of taxable service provided in a financial year does not exceed Rs. 60 lakh during any of the financial years of the notice issued under section 73A(3) or during the last preceding financial year, as the case may be, such rate of interest shall be reduced by 3% per annum.

Hence, a concessional rate of interest of 15% per annum is available to the tax payers whose turnover during any of the years covered in the notice issued under section 73A(3) or the preceding financial year is below Rs 60 lakh.

5. Concession of 3%, for specified assesseees, in the rate of interest for delayed payment of service tax [section 75]

Section 75 provides that the failure to pay service tax, including a part thereof within the period prescribed, attracts simple interest at a rate not below 10% p.a. but not exceeding 36% p.a. as may be notified by the Central Government. At present, the rate of **interest @ 18% p.a** has been notified.

Concessional rate provided by the Finance Act, 2011

Finance Act, 2011 has inserted proviso to section 75 of the Finance Act, 1994 which provides as follows:-

In case of a service provider, whose value of taxable service provided in a financial year does not exceed Rs. 60 lakh during any of the financial years covered by the notice or during the last preceding financial year, as the case may be, such rate of interest shall be reduced by 3% per annum.

Hence, a concessional rate of interest of 15% per annum is available to the tax payers whose turnover during any of the years covered in the notice or the preceding financial year is below Rs 60 lakh.

SIGNIFICANT AMENDMENTS MADE THROUGH NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.05.2010 TO 30.04.2011

New services and amendments in the existing services to be effective from 1st May, 2011

The new services introduced by the Finance Act, 2011 and the amendments made in the existing services vide the Finance Act, 2011 would be effective from 01.05.2011.

[Notification No. 29/2011 ST dated 25.04.2011]

A. EXEMPTIONS/AMENDMENTS IN/WITHDRAWALS OF EXISTING EXEMPTIONS

1. Transport of passengers by air service

(a) Air travel of specified persons exempted

With effect from 01.07.2010, air transport of following persons has been exempted from service tax:

- (a) persons in transit in the course of international journey who have not passed through immigration;
- (b) crew members on board the aircraft.

[Notification No. 25/2010 ST dated 22.06.2010]

(b) Air journeys originating/terminating in North-Eastern States exempted

With effect from 01.07.2010, air transport of passengers embarking on a journey originating or terminating in an airport located in any of the North-Eastern States (Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura) or at Bagdogra located in West Bengal have been exempted from service tax.

[Notification No. 27/2010 ST dated 22.06.2010]

(c) Specified rates of service tax for transport of passengers by air

The rates of service tax on travel by air are as follows:-

Type of Travel		Service tax leviable at the rate of	
		01.07.2010-31.03.2011	01.04.2011 onwards
		<i>Notification No. 26/2010 ST dated 22.06.2010</i>	<i>Notification No. 04/2011-ST dated 01.03.2011</i>
Domestic Travel	Economy Class	(a) 10% of the gross value of the ticket or (b) Rs.100 per journey whichever is less	(a) 10% of the gross value of the ticket or (b) Rs.150 per journey whichever is less
	Other than Economy Class	(a) 10% of the gross value of the ticket or (b) Rs.100 per journey whichever is less	10% (Standard rate)
International Travel	Economy Class	(a) 10% of the gross value of the ticket or (b) Rs.500 per journey whichever is less	(a) 10% of the gross value of the ticket or (b) Rs.750 per journey whichever is less
	Other than Economy Class	10% (Standard rate)	10% (Standard rate)

These special provisions apply only where excise duty credit has not been taken on inputs used for providing such taxable service.

Meaning of economy class

Economy class in an aircraft means, —

- (i) **where there is more than one class of travel:** the class attracting the lowest standard fare; or
- (ii) **where there is only one class of travel:** that class.

2. Construction services

(a) Construction of complex service in relation to Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana exempted

With effect from 01.07.2010, the construction of complex service in relation to Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana has been exempted from service tax.

[Notification No. 28/2010 ST dated 22.06.2010]

(b) Abatement of 75% for construction services

With effect from 01.07.2010, service tax is payable on 25% of the gross amount charged in case of “commercial or industrial construction services” and “construction of complex services” provided the gross amount charged includes the value of goods and materials supplied/provided/used for providing the taxable service and the cost of land. This exemption is not available in cases where the taxable services provided are only completion and finishing services.

[Notification No. 29/2010 ST dated 22.06.2010]

3. Port/Other Port/Airport services

(a) Specified services provided within a port or an airport exempted

A negative list of services provided within a port or an airport has been notified with effect from 01.07.2010. In other words, the following services provided within a port or an airport have been exempted from service tax with effect from 01.07.2010:

- (i) repair of ships/boats/vessels owned by the Government (including Navy or Coast Guard or Customs) but excluding Government owned Public Sector Undertakings;
- (ii) repair of ships/boats/vessels where such repair amounts to ‘manufacture’ as per section 2(f) of the Central Excise Act, 1944;
- (iii) supply of water;
- (iv) supply of electricity;
- (v) treatment of persons by a dispensary, hospital, nursing home or multi-specialty clinic (except cosmetic or plastic surgery service);
- (vi) services provided by a school or centre to provide formal education other than those services provided by commercial coaching or training centre;
- (vii) services provided by fire service agencies
- (viii) pollution control services.

[Notification No. 31/2010 ST dated 22.06.2010]

(b) Exemption to commercial or industrial construction of wharves, quays, docks etc. within the port

With effect from 01.07.2010, commercial or industrial construction when provided wholly within the port or other port, for construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways has been exempted from service tax.

[Notification No. 38/2010 ST dated 28.06.2010]

(c) Abatements available to specified services to continue when provided wholly within a port/airport

The following services when provided wholly within an airport or a port or other port will continue to be eligible for the abatements available to them under *Notification No.1/2006 ST dated 01.03.2006*:

- (a) Renting of a cab service
- (b) Erection, Commissioning & Installation Service
- (c) Goods Transport Agency service
- (d) Commercial or Industrial construction service
- (e) Construction of complex service
- (f) Transport of goods by rail service

Reason for the amendment

Definitions of port, other port and airport services were amended vide the Finance Act, 2010 so as to provide *inter alia* that all services provided entirely within the airport/port premises would be classified under these services. This would have led to the situation where abatements and exemptions presently available under individually defined taxable services would get denied when provided within airport or port merely as they would now be taxable under newly introduced taxable services. This Notification has been issued to take care of such situations.

[Notification No. 40/2010 ST dated 28.06.2010 as corrected by corrigendum dated 30.06.2010 and Notification No. 43/2010 ST dated 30.06.2010]

(d) Exemptions available to cargo handling agency and storage or warehouse keeper in respect of agricultural produce, air transport of export goods etc. to continue when provided wholly within port/airport

With effect from 01.07.2010, the following services when provided wholly within the port or other port or airport have been exempted from payment of service tax:

- (i) taxable service provided by a cargo handling agency in relation to, agricultural produce or goods intended to be stored in a cold storage;
- (ii) taxable service provided by storage or warehouse keeper in relation to storage and

warehousing of agricultural produce or any service provided for storage of or any service provided by a cold storage;

- (iii) taxable service in relation to transport of export goods in an aircraft by an aircraft operator;
- (iv) taxable service of site formation and clearance, excavation and earthmoving and demolition and such other similar activities.

Exemptions to these services are already available under their respective category. The above exemption has been provided in view of the classification of these services getting changed when provided wholly within a port or an airport.

[Notification No. 41/2010-ST dated 28.06.2010]

(e) Commercial or Industrial Construction provided wholly within the airport exempt from service tax

With effect from 01.07.2010, commercial or industrial construction when provided wholly within the airport has been exempted from payment of service tax.

The definition of commercial or industrial construction *inter alia* excludes services of such kind provided in respect of airports. On account of the amendment in the definition of airport service, commercial or industrial construction when provided wholly within the airport would be classified as airport service. Therefore, the exclusion to such construction has been provided by way of the above exemption notification.

[Notification No. 42/2010-ST dated 28.06.2010]

(f) Service tax paid on service provided by airports authority to an exporter for export of goods eligible for refund

Service tax paid on certain taxable services that are used in relation to or for export of goods are eligible for refund under *Notification No. 17/2009 ST dated 07.07.2009*. The said Notification covers port service within its ambit but does not include 'airport service'. Such anomaly has been corrected by amending the said Notification so as to include 'airport service' in the list of eligible services under the said refund scheme.

[Notification No. 37/2010 ST dated 28.06.2010]

(g) Exemption to works contract service provided wholly within an airport and classified under section 65(105)(zzm)

Works contract services, when provided wholly within an airport and classified under airport services [Section 65(105)(zzm) of the Finance Act, 1994], have been exempted from the whole of service tax.

[Notification No. 10/2011-ST dated 01.03.2011]

(h) Exemption to works contract service provided wholly within a port/other port

Works contract services, when provided wholly within the port or other port, for construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways have been exempted from the whole of service tax.

[Notification No. 11/2011-ST dated 01.03.2011]

4. Business auxiliary services

(a) Taxable services provided for distribution of electricity exempted

Taxable services provided by a distribution licensee, a distribution franchisee, or any other person authorized to distribute power under the Electricity Act, 2003 for distribution of electricity have been exempted from service tax.

[Notification No. 32/2010 ST dated 22.06.2010]

(b) Service tax payable on transmission and distribution of electricity upto 26th February and 21st June, 2010 respectively not required to be paid

The Central Government vide the powers conferred by section 11C of the Central Excise Act, 1944 read with section 83 of the Finance Act, 1994 has directed that service tax payable on all taxable services, which was not being levied in accordance with a generally prevalent practice, provided by a person to any other person in relation to:

- (a) transmission of electricity is not required to be paid for the period up to 26.02.2010;
- (b) distribution of electricity is not required to be paid for the period up to 21.06.2010.

It is important to note here that transmission and distribution of electricity have been exempted from service tax with effect from 27.02.2010 and 22.06.2010 vide *Notification Nos. 11/2010 and 32/2010* respectively.

[Notification No. 45/ 2010-ST dated 20.07.2010]

5. General Insurance services

(a) Exemption to the general insurance business provided under the Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme

The General Insurance services provided under the Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture, have been exempted from the whole of the service tax leviable thereon.

[Notification No.58/2010-ST dated 21.12.2010]

(b) Exemption to the general insurance service provided under “Rashtriya Swasthya Bima Yojna”

The General Insurance service provided by an insurer carrying on General Insurance

Business to any person for providing insurance under the Rashtriya Swasthya Bima Yojana has been exempted from the whole of the service tax.

[Notification No. 07/2011-ST dated 01.03.2011]

6. Transport of goods by air/road/rail service

(a) Exemption to services of transportation of goods by air/road/rail provided to a person located in India when the goods are transported from a place outside India to a destination outside India

With effect from 01.04.2011, following taxable services provided to any person located in India have been exempted from the whole of service tax, when the goods are transported from a place located outside India to a final destination which is also outside India:-

- (a) Transport of goods by air services
- (b) Transport of goods by rail service
- (c) Transport of goods by road service

[Notification No. 08/2011-ST dated 01.03.2011]

(b) Exemption to the transport of goods by air service to the extent air freight is included in the customs value of goods

With effect from 01.04.2011, services of transport of goods by air have been exempted from service tax to the extent so much of the value as is equal to the amount of air freight included in the value determined under section 14 of the Customs Act, 1962 or the rules made thereunder for the purpose of charging customs duties.

[Notification No. 09/2011-ST dated 01.03.2011]

(c) Exemption/withdrawal of exemption from service tax on service provided in relation to 'transport of goods by rail'

The exemptions/withdrawal of exemptions with regard to service provided in relation to 'transport of goods by rail' can be summarized as follows:-

Notification No.	Amendment	Effect of amendment
19/2011 ST dated 01.04.2011	Has amended <i>Notification No. 7/2010 dated 27.02.2010</i>	Following services also shall now be subject to service tax levy with effect from 1st July, 2011:- (i) Transport of goods by Government railway. (ii) Transport of goods by rail otherwise than in containers.

20/2011 ST dated 30.03.2011	Has amended <i>Notification No. 8/2010 dated 27.02.2010</i>	Exemption provided to transport of specified goods by rail shall now be restored with effect from 1st July, 2011.
21/2010 ST dated 30.03.2011	Has amended <i>Notification No. 9/2010 dated 27.02.2010</i>	Abatement of 70% of the gross value of the freight charged on goods (other than exempted goods), in case of transportation of goods by rail, shall now be effective from 1 st July, 2011.

7. Sponsorship services provided for tournaments/championships organised by specified bodies exempted

With effect from 01.07.2010, the sponsorship services provided for the tournaments or championships organised by the following bodies has been exempted from service tax:

- (i) National Sports Federations or Federations affiliated to such National Sports Federations, where the participating teams or individuals represent any District, State or Zone;
- (ii) Association of Indian Universities – Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India (for the physically challenged), Special Olympics Bharat (for the mentally challenged);
- (iii) Central Civil Services Cultural and Sports Board;
- (iv) Indian Olympic Association as part of National Games;
- (v) Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme.

[Notification No. 30/2010 ST dated 22.06.2010]

8. Exemption to advance received prior to 01.07.2010 towards new services as introduced by the Finance Act, 2010 and existing services whose scope have been widened by the said Act

Advance payments received prior to 01.07.2010 towards eight new services introduced by the Finance Act, 2010 have been exempted from payment of service tax. Similarly, advances received prior to 01.07.2010 towards activities brought into service tax net on account of expansion of scope of existing services vide the Finance Act, 2010 have also been exempted from payment of service tax. However, such an exemption would not be available to commercial training or coaching services and renting of immovable property service.

For example, service tax would not be payable in case of a domestic air journey performed after 01.07.2010 if the payment for the ticket of such journey has been made prior to 01.07.2010. However, this exemption would be available only if the advance is

received by the service provider/ person liable to pay the tax and not by an agent, who in turn transfers such amount to such person after 01.07.2010.

[Notification No.36/2010 ST dated 28.06.2010 as corrected vide corrigendum dated 29.06.2010]

9. Outdoor Catering for Mid-Day Meal Scheme exempted from service tax

Taxable service of outdoor catering provided by a Non Government Organisation registered under any Central Act or State Act, under the Centrally assisted Mid-Day Meal Scheme has been exempted from the whole of service tax leviable thereon.

[Notification No. 47/2010 ST dated 03.09.2010]

10. Persons marketing lottery tickets to authorized Distributors/Selling Agents opting for new Composition Scheme exempt from service tax

Persons marketing the lottery tickets, other than the authorized distributors or selling agents, have been exempted from service tax if the distributor or selling agent avails of optional composition scheme notified vide *Notification No. 49/2010 ST dated 08.10.2010* in respect of such lottery during the financial year.

However, the exemption will not be available when such person markets lottery tickets to the distributors or selling agents who have not opted for the above-mentioned composition scheme.

Meaning of distributor or selling agent

Distributor or selling agent means an individual or firm or body corporate or other legal entity under law so appointed by the Organising State through an agreement to market and sell lotteries on behalf of the Organising State [Rule 2(c) of the Lottery (Regulation) Rules, 2010]

and shall include distributor/selling agent authorised by the lottery organising State.

[Notification No. 50/2010 ST dated 08.10.2010]

11. Exemption to packaged or canned software from service tax on specified taxable service when excise/customs duty paid

Prior to amendment

The taxable service of providing the right to use the **packaged/canned software, pre-packed in retail packages intended for single use** has been exempted from the service tax under 'information technology software services' subject to the following conditions:-

1. the document providing the right to use such software is packed along with the software.

2. (a) **In case of import:** The importer has paid the custom duty on the entire amount received from the buyer.
- (b) **In case of domestic production:** The manufacturer/duplicator/the person holding the copyright to software has paid the excise duty on the entire amount received from the buyer.
3. the benefit under the following notifications has not been availed:-
 - Notification No. 17/2010 CE dated 27.02.2010
 - Notification No. 31/2010 Cus dated 27.02.2010

[Notification No. 02/2010 ST dated 27.02.2010 and Notification No. 17/2010 ST dated 27.02.2010]

Amendment made by Notification No. 51-53/2010-S.T. dated 21-12-2010

Notification No. 02/2010 and 17/2010 have been rescinded by **Notification No. 51/2010** and **52/2010** respectively. Further, **Notification No. 53/2010-S.T.** has been issued to exempt the service of providing the right to use the **packaged or canned software** (hereinafter referred to as 'said goods') under 'information technology software services' from the whole of service tax, subject to the condition that-

- (i) the value of the said goods domestically produced/imported, for the purposes of excise duty or countervailing duty (if imported) has been determined on the basis of MRP valuation (i.e. under section 4A of the Central Excise Act, 1944) and
- (ii) (a) **In case of domestic production:** the appropriate duties of excise on such value have been paid by the manufacturer, duplicator or the person holding the copyright to such software, as the case may be, in respect of software manufactured in India; or

(b) **In case of import:** the appropriate duties of customs including the additional duty of customs on such value, have been paid by the importer in respect of software which has been imported into India.
- (iii) a declaration made by the service provider on the invoice relating to such service that no amount in excess of the retail sale price declared on the said goods has been recovered from the customer.

Meaning of important terms

(i) Appropriate duties of excise

It means the duties of excise leviable under section 3 of the Central Excise Act, 1944 and a notification, for the time being in force, issued in accordance with the provision of sub-section (1) of section 5A of the said Central Excise Act; and

(ii) Appropriate duties of customs

It means the duties of customs leviable under section 12 of the Customs Act, 1962 and any of the provisions of the Customs Tariff Act, 1975 and a notification, for the time being in force, issued in accordance with the provision of section 25(1) of the said Customs Act.

Significant points of amendment

1. With effect from 21.12.2010, excise duty/CVD on the packaged/canned software is payable on the basis of MRP valuation. Consequently, the exemption under service tax has also been aligned with the same.
 2. With effect from 21.12.2010, packaged/canned software whether intended for single use or multiple use would be eligible for exemption under the service tax.
 3. Service provider needs to make a declaration on the invoice that no amount in excess of the retail sale price declared on the said goods has been recovered from the customer.
- 12. Exemption to service of management, maintenance or repair of roads extended to bridges, tunnels, dams, airports, railways and transport terminals**

Prior to amendment

The taxable service provided to any person by any other person in relation to management, maintenance or repair of roads was exempt from the whole of the service tax leviable thereon vide *Notification No. 24/2009 ST dated 27.07.2009*

Amendment made by the Notification No. 54/2010-ST dated 21.12.2010

The aforesaid exemption has been extended to the service of management, maintenance or repair of bridges, tunnels, dams, airports, railways and transport terminals also.

13. Exemption to business exhibition held outside India

The business exhibition service provided by an organiser of business exhibition for holding a business exhibition outside India has been exempted from the whole of the service tax.

[Notification No. 05/2011-ST dated 01.03.2011]

14. Exemption to works contract service rendered for carrying out construction services under Jawaharlal Nehru Urban Renewable Mission (JNURM) and Rajiv Awaas Yojana

The taxable service of execution of a works contract provided for the purpose of carrying out-

- (a) construction of new residential complex or part thereof; or
- (b) completion and finishing services of new residential complex or part thereof ,

under Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana has been exempted from whole of the service tax.

[Notification No. 06/2011-ST dated 01.03.2011]

15. Abatement of 25% of the gross amount charged to the transport of coastal goods, goods through National Waterways/ inland water

Notification No. 01/2006 dated 01.03.2006 has been amended so to provide an abatement of 25% of the gross amount charged for the services provided or to be provided, to any person, by any other person, in relation to transport of-

- (i) Coastal goods;
- (ii) Goods through national waterway; or
- (iii) Goods through inland water.

[Notification No. 16/2011-ST dated 01.03.2011]

16. Exemption to services received by a developer or units of a special economic zone, (refund of service tax paid) - Notification No. 9/2009-ST dated 03.03.2009 superseded

(A) Eligibility for exemption

The taxable services received by any of the following are eligible for exemption under this notification:-

- a unit located in a Special Economic Zone (hereinafter referred to as SEZ)
- developer of SEZ for the authorized operations

(B) Conditions to be fulfilled

(a) List of taxable services required to be approved by the Approval Committee

For the purpose of claiming exemption, the Developer or Unit of SEZ shall obtain a list of taxable services as are required for the authorised operations approved by the Approval Committee (hereinafter referred to as the specified services) of the concerned SEZ.

(b) Declaration by the developer/unit of SEZ not owning/carrying out any business other than SEZ operations

The Developer or Unit of SEZ who does not own or carry out any business other than SEZ operations, shall furnish a declaration to that effect in **Form A-1**, verified by the Specified Officer of the SEZ, in addition to obtaining list under condition (a) above, for the purpose of claiming exemption.

(c) Option not to pay service tax *ab-intio* in case the specified services wholly consumed within the SEZ

(i) Where the specified services are wholly consumed within the SEZ

Service provider/service receiver (reverse charge basis) has the option not to pay the service tax. Hence, under this option, instead of the Unit or Developer claiming exemption by way of refund, service tax may not be paid *ab intio*.

(ii) Where the specified services are not wholly consumed within the SEZ

Where the specified services received and used for authorised operations are partially consumed within the SEZ and partially outside SEZ, the exemption shall be provided only by way of refund of service tax paid on the specified services received for the authorised operations in a SEZ. Hence, the option of not paying the service tax *ab-intio* is not available here.

Meaning of wholly consumed

For the purposes of this notification, the expression —

Wholly consumed refer to following taxable services, received by a developer or unit of a SEZ, for the authorised operations, namely:-

- (i) services listed in clause (i) of sub-rule (1) of rule 3 of the Export of Services Rules, 2005 in relation to an immovable property situated within the SEZ; or
- (ii) services listed in clause (ii) of sub-rule (1) of rule 3 of the Export of Services Rules, 2005, as are wholly performed within the SEZ; or
- (iii) services other than those falling under (i) and (ii) above, provided to a Developer or Unit of SEZ, who does not own or carry on any business other than the operations in the SEZ.

(d) Restricted amount of refund in case the specified services are not wholly consumed within the SEZ

Where the specified services received by Unit or Developer, are not wholly consumed within SEZ, i.e., shared between authorised operations in SEZ Unit and Domestic Tariff Area(DTA) Unit, refund shall be restricted to the extent of the ratio of export turnover to the total turnover for the given period to which the claim relates.

$$\text{Maximum refund} = \frac{\text{ST} \times \text{ET}}{\text{TT}}$$

where

ST stands for service tax paid on specified services used for SEZ authorised operations shared with DTA Unit for the period

ET stands for Export turnover of SEZ Unit for the period

TT stands for Total turnover for the period

Meaning of important terms

For the purposes of condition (d),-

(a) Total turnover means the sum total of the value of:-

- (i) all output services and exempted services provided, including the value of services exported;
- (ii) all excisable and non-excisable goods cleared, including the value of the goods exported;
- (iii) bought out goods sold,

during the period to which the invoices pertain and the exporter claims the facility of refund under this notification.

(b) Turnover of SEZ Unit means the sum total of the value of:-

- (i) final products exported,
- (ii) output services exported

during the period of which the invoices pertain and the exporter claims the facility of refund under this notification.

(e) Declaration that the specified services have been actually used for the authorized operations

Any Developer or Unit of SEZ claiming the exemption shall declare that the specified services on which exemption and/ or refund is claimed to have been actually used for the authorized operations.

(f) Developer/unit of SEZ claiming refund must actually pay the amount indicated in invoice

The Developer or unit of SEZ claiming the exemption, by way of refund has actually paid the amount indicated in the invoice, bill or as the case may be, challan, including the service tax payable, to the person liable to pay the said tax or the amount of service tax payable under reverse charge, as the case may be, under the provisions of the Finance Act.

(g) No CENVAT credit of service tax paid on the specified services availed

No CENVAT credit of service tax paid on the specified services used for the authorized operations in a SEZ has been taken under the CENVAT Credit Rules, 2004.

(h) No exemption/refund of service tax paid on specified services claimed under any other notification

Exemption of service tax paid on the specified services (refund, in case of other than wholly consumed services) used for the authorised operations in a SEZ shall not be claimed except under this notification.

(i) Maintenance of proper account of receipt and use of the specified services

The developer or unit of a SEZ, who intends to avail exemption and or refund under this notification, shall maintain proper account of receipt and use of the specified services on which exemption is claimed, for authorised operations in the SEZ.

(C) Procedure for claiming the benefit of the exemption

(a) Refund claim to be filed by Developer or Unit of a SEZ

The Developer or Unit of a SEZ, who has paid the service tax under sections 66 of the Finance Act, shall avail the exemption by filling a claim for refund of service tax paid on specified services used for the authorised operations.

(b) Registered Developer or Unit of a SEZ to file the claim to jurisdictional Assistant/Deputy Commissioner of Central Excise

The Developer or Unit of a SEZ who is registered as an assessee under the Central Excise Act, 1944 (1 of 1944) or the rules made there under, or the Finance Act, 1994 or the rules made there under, shall file the claim for refund to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the SEZ or registered office or the head office of the Developer or Unit, as the case may be, in Form A-2.

(c) Unregistered Developer or Unit of a SEZ to file a declaration in Form A-3 with the jurisdictional Assistant/Deputy Commissioner of Central Excise before filing claim

The Developer or Unit of a SEZ who is not so registered under the provisions referred to in clause (b), shall, before filing a claim for refund under this notification, file a declaration with the Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, having jurisdiction over the SEZ or registered office or the head office of the Developer or Unit, as the case may be, in Form A-3.

(d) Allotment of service tax code number within 7 days in Form A-3

The Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code number to the Developer or Unit of SEZ, referred to in clause (c), within seven days from the date of receipt of the said declaration, in Form A-3.

(e) Time-limit of one year for filing the refund claim

The claim for refund shall be filed, within one year from the end of the month in which actual payment of service tax was made by such developer or unit to the registered service provider.

Extension of time-limit of one year

The aforesaid period of one year can be extended if the Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, so permit.

(f) Documents to accompany the refund claim

The refund claim shall be accompanied by the following documents, namely:-

- (i) a copy of the list of specified services as are required for the authorized operations in the SEZ, as approved by the Approval Committee; wherever applicable, document specified in 2(c), i.e. , declaration in Form A-1;
- (ii) invoice or a bill or as the case may be, a challan, issued in accordance with the provisions of Finance Act or rules made thereunder, in the name of the Developer or Unit of a SEZ, by the registered service provider, along with proof of payment for such specified services used for the authorised operations and service tax paid, in original;
- (iii) a declaration by the Developer or Unit of SEZ, claiming such exemption, to the effect that—
 - (A) the specified services on which refund of service tax claimed, has been actually used for the authorized operations in the SEZ ;
 - (B) proper account of the specified services received and used for the authorised operations are maintained by the developer or unit of the SEZ and the same shall be produced to the officer sanctioning refund, on demand;
 - (C) accounts or documents furnished by the Developer or Unit as proof of payment of service tax claimed as refund, based on the invoice, or bill , or as the case may be challan issued by the registered service provider indicating the service tax paid on such specified services, are true and correct in all respects.

(g) Grant of refund after due verification

The Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, after verifying that,-

- (i) the refund claim is complete in all respects;
 - (ii) the information furnished in Form A-2 and in supporting documents correctly indicate the service tax involved in the specified services used for the authorised operations in the SEZ, which is claimed as refund, and has been actually paid to the service provider,
- shall refund the service tax paid on the specified services.

(h) Service provider to provide the specified services falling under wholly consumed category under exemption provided Developer or Unit of SEZ produce the specified documents

A service provider, shall provide the specified services falling under wholly consumed category, under exemption granted by this notification, to a Developer or Unit of SEZ, for authorized operations, subject to the production of documents specified in sub-para (b) of para (B). and in addition wherever applicable, documents specified in sub-para (c) para (B), i.e., declaration in Form A-1.

(i) Recovery of erroneous refund

Where any refund of service tax paid on specified services is erroneously refunded for any reasons whatsoever, such service tax refunded shall be recoverable under the provisions of the Finance Act, 1994 and the rules made there under, as if it is recovery of service tax erroneously refunded;

Points to be noted

1. Words and expressions used in this notification and defined in the Special Economic Zones Act, 2005 or the rules made thereunder, shall apply, so far as may be, in relation to refund of service tax under this notification as they apply in relation to a SEZ.

2. Meaning of statutory auditor

Statutory auditor refers to a Chartered Accountant who audits the annual accounts of the Developer or Unit of a SEZ for the purposes of the Companies Act, 1956 or the Income Tax Act, 1961.

[Notification No. 17/2011 dated 01.03.2011]

17. Exemption to inter-bank transactions of purchase or sale of foreign currency undertaken by any banks /money changers

Prior to amendment

Earlier, *Notification No. 19/2009-ST dated 07.07.2009* had exempted the money changer services provided in relation to sale and purchase of foreign currency by one Scheduled bank to another Scheduled bank.

Amendment made by Notification No.27/2011 – ST dated 31.03.2011

With effect from 01.04.2011, the aforesaid notification has been amended to provide that money changer services provided in relation to sale and purchase of foreign currency to any bank, including a bank located outside India, or money changer, by any other bank or money changer are exempt.

18. Exemption to accommodation services when the declared tariff for providing of such accommodation is less than Rs. 1000 per day

With effect from 01.05.2011, the accommodation services are exempt from whole of the service tax when the declared tariff for providing of such accommodation is less than Rs. 1000 per day.

Declared tariff

includes charges for all amenities provided in the unit of accommodation like furniture, air-conditioner, refrigerators etc.,

but does not include any discount offered on the published charges for such unit.

[Notification No.31/2011 – ST dated 25.04.2011]

19. Withdrawal of exemption to the practicing Chartered Accountant, practicing Company Secretary and practicing Cost Accountant representing the client before any statutory authority in the course of proceedings initiated under any law

Prior to amendment

Earlier, the taxable services provided or to be provided by a practicing Chartered Accountant/ practicing Company Secretary/ practicing Cost 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, by way of issue of notice, were exempt from the whole of service tax leviable thereon vide *Notification No. 25/2006 ST dated 13.07.2006*.

Amendment made by Notification No.32/2011—ST dated 25.04.2011

With effect from 01.05.2011, the said exemption stands withdrawn. It implies that the representational services provided by practicing Chartered Accountants, practicing Cost Accountants and practicing Companies Secretaries are liable to service tax.

20. Exemption to preschool coaching and training and coaching leading to grant of a certificate/diploma/degree/educational qualification recognised by any law

With effect from 01.05.2011, the following services provided by any commercial coaching or training centre have been exempted from service tax:-

- (i) any preschool coaching and training;
- (ii) any coaching or training leading to grant of a certificate or diploma or degree or any educational qualification which is recognised by any law for the time being in force.

[Notification No. 33/2011 ST dated 25.04.2011]

B. AMENDMENTS IN THE SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006

1. Determination of value of service in relation to money changing [Rule 2A]

Rule 2B inserted after rule 2A provides the manner of determination of the value of taxable service for the banking and other financial services so far as it pertains to purchase or sale of foreign currency, including money changing. The value of service shall be determined as follows:-

(a) For a currency, when exchanged from, or to, Indian Rupees (INR)

For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency.

Example I: US\$ 1,000 are sold by a customer at the rate of Rs. 45 per US\$.

RBI reference rate for US\$ is Rs. 45.50 for that day.

Value of taxable service = (RBI reference rate for \$ – Selling rate for \$) × Total units

= Rs. (45.50 - 45) × 1,000

= Rs. 0.50 × 1,000

The taxable value shall be Rs. 500.

Example II: INR 70,000 is changed into Great Britain Pound (GBP) and the exchange rate offered is Rs. 70, thereby giving GBP 1000.

RBI reference rate for that day for GBP is Rs. 69.

The taxable value shall be Rs. 1,000.

(b) Where the RBI reference rate for a currency is not available

Where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money.

(c) Where neither of the currencies exchanged is Indian Rupee

Where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.

The aforementioned amendment shall come into force on 01.04.2011.

[Notification No. 02/2011-ST dated 01.03.2011 as amended by Notification No. 24/2011 dated 31.03.2011]

2. Value of taxable service for the telecommunication service [Explanation to rule 5(1)]

Following explanation to rule 5(1) has been inserted vide **Notification No. 02/2011-ST dated 01.03.2011** to provide clarification regarding the value of taxable service under telecommunication service:-

For the removal of doubts, it is hereby clarified that for the telecommunication service [Section 65(105)(zzzx)], the value of the taxable service shall be the gross amount paid by the person to whom telecom service is provided by the telegraph authority.

Clarification

In this regard, *DOF No. 334/3/2011-TRU dated 28.02.2011* clarifies that in case of service provided by way of recharge coupons or prepaid cards or the like, the value shall be the gross amount charged from the subscriber or the ultimate user of the service and not the amount paid by the distributor or any such intermediary to the telegraph authority.

C. AMENDEMENTS IN THE SERVICE TAX RULES, 1994

1. Date for determination of rate [Rule 5B]

With effect from 01.04.2011, rule 5B has been inserted vide **Notification No. 03/2011-ST dated 01.03.2011** containing provision relating to the date for determination of rate of service tax. It stipulates as follows:-

The rate of tax in case of services provided, or to be provided shall be the rate prevailing at the time when the services are deemed to have been provided under the rules (Point of Taxation Rules, 2011) made in this regard.

The aforesaid provision aims at alignment with the Point of Taxation Rules, 2011.

2. Amendments in rule 6 - Payment of service tax

(a) Sub-rule (1) - Due dates for payment of service tax

Prior to amendment

Earlier, rule 6(1) and three provisos to rule 6(1) provided as follows:-

Service tax on the value of taxable services received:

- (i) by an individual or a proprietary firm or a partnership firm during any quarter is payable by the 5th day/6th day (if duty is deposited electronically) of the month immediately following the quarter in which **payments are received, towards the value of taxable services [Sub-section (1)]**
- (ii) in other cases (company and HUF) during any calendar month is payable by the 5th day/6th day (if duty is deposited electronically) of the month immediately following the calendar month in which **payments are received, towards the value of taxable services [First proviso]**.

However, the service tax on the **value of taxable services received** during the month of March or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by 31st day of March of the calendar year **[Third proviso]**.

Notwithstanding the time of receipt of payment towards the value of services, no service tax shall be payable for the part or whole of the value of services, which is attributable to the services provided during the period when such services were not taxable **[Second proviso]**.

In case of transactions of taxable services involving any associated enterprise, any payment received towards the value of taxable service includes any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax **[Explanation to third proviso]**.

Amendment made by Notification No. 03/2011-ST dated 01.03.2011

With effect from 01.04.2011, following amendments have been carried out in rule 6(1) and three provisos to rule 6(1):-

Service tax on the value of taxable services received:

- (i) by an individual or a proprietary firm or a partnership firm during any quarter is payable by the 5th day of the month immediately following the quarter in which **service is deemed to be provided as per the rules (Point of Taxation Rules, 2011) framed in this regard [Sub-section (1)]**
- (ii) in other cases (company and HUF) during any calendar month is payable by the 5th day of the month immediately following the calendar month in which **service is deemed to be provided as per the rules (Point of Taxation Rules, 2011) framed in this regard [First proviso]**.

However, the service tax on **the service deemed to be provided** in the month of March, or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by the 31st day of March of the calendar year **[Third proviso]**.

Second proviso and explanation after third proviso have been omitted.

The aforesaid amendments aim at aligning the provisions consequent to the introduction of the Point of Taxation Rules, 2011.

(b) Self adjustment of service tax where services are partly or wholly not rendered [Sub-rule (3)]

Prior to amendment

Under rule 6(3), the assessee is allowed to adjust against his subsequent period's liability the excess service tax paid by him for services which are not wholly or partially rendered by him for any reason, provided he has refunded the amount charged and also the service tax thereon to the client.

Amendment made by Notification No. 03/2011-ST dated 01.03.2011 as amended by Notification No. 26/2011-ST dated 31.03.2011

With effect from 01.04.2011, sub-rule (3) has been substituted with the following sub-rule-

Where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract, the assessee may take the credit of such excess service tax paid by him, if the assessee:

- (a) has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or
- (b) has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued.

(c) Excess payment of service tax [Sub-rule (4B)]

Prior to amendment

In case the service provider has made excess payment, the same may be utilized for the payment of service tax for the subsequent month liability subject to certain conditions as prescribed under various clauses of sub-rule (4B) of rule 6.

Clause (iii) of the said sub-rule stipulates that the adjustment of excess amount paid shall be subject to **maximum of Rs. 1,00,000/-** for a relevant month or quarter, as the case may be, in cases where the excess payment is not due to delayed receipt of details of payments towards taxable services.

Amendment made by Notification No. 03/2011-ST dated 01.03.2011

With effect from 01.04.2011, the aforesaid limit of Rs. 1,00,000 has been increased to Rs. 2,00,000.

(d) Recovery of the amount of service tax short paid/not paid under self-assessment [Sub-rule (6A)]

With effect from 01.04.2011, sub-rule (6A) has been inserted vide **Notification No. 03/2011-ST dated 01.03.2011** which provides as follows:-

Where an amount of service tax payable has been self-assessed under sub-section (1) of section 70 of the Act, but not paid, either in full or part, the same, shall be recoverable alongwith interest in the manner prescribed under section 87 of the Act.

(e) Special rate of service tax in case of sale/purchase of foreign currency including money changing amended [Sub-rule (7B)]

Prior to amendment

Sub-rule (7B) to rule 6 provided that person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, provided by a foreign exchange broker,

including an authorised dealer in foreign exchange or an authorized money changer, referred to in section 65(105)(zm) and section 65(105)(zzk) as amended had the option to pay an amount calculated at the rate of **0.25% of the gross amount of currency exchanged** towards discharge of his service tax liability instead of paying service tax @ 10%.

However, such option shall not be available in cases where the consideration for the service provided or to be provided is shown separately in the invoice, bill or, as the case may be, challan issued by the service provider [Proviso to sub-rule (7B)].

Amendment made by Notification No. 26/2011-ST dated 31.03.2011

With effect from 01.04.2011, sub-rule (7B) to rule 6 has been amended to provide as follows:-

Person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, provided by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorized money changer, referred to in section 65(105)(zm) and section 65(105)(zzk) as amended had the option to pay an amount at the following rates instead of paying service tax @ 10%:-

S.No.	For an amount	Service tax shall be calculated at the rate of
1.	Upto Rs. 100,000	0.1 % of the gross amount of currency exchanged or Rs. 25 whichever is higher
2.	Exceeding Rs. 1,00,000 and upto Rs. 10,00,000	Rs. 100 + 0.05 % of the gross amount of currency exchanged
3.	Exceeding Rs. 10,00,000	Rs. 550 + 0.01 % of the gross amount of currency exchanged or Rs. 5,000 whichever is lower

However, the person providing the service shall exercise such option for a financial year and such option shall not be withdrawn during the remaining part of that financial year [Proviso to sub-rule (7B)].

(f) Special rate of service tax leviable on life insurance increased from 1% to 1.5% [Sub-rule (7A)]

Prior to amendment

An insurer carrying on life insurance business liable for paying the service tax has the option to pay an amount calculated @ 1% of the gross amount of premium charged by such insurer towards the discharge of his service tax liability instead of paying service tax @ 10%.

Such option was not available in cases where:-

- the entire premium paid by the policy holder is only towards risk cover in life insurance; or
- the part of the premium payable towards risk cover in life insurance is shown separately in any of the documents issued by the insurer to the policy holder.

Amendment made by Notification No. 35/2011 ST dated 25.04.2011

With effect from 01.05.2011, the insurer carrying on life insurance business would have the option to pay service tax on the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of service. In all other cases, the insurer may pay service tax @ 1.5% of the gross amount of premium charged from a policy holder.

However, such option would not be available if the entire premium is only towards risk cover in life insurance.

(g) Optional Composition Scheme for Distributor or Selling Agents of Lotteries

An optional mode of payment of service tax has been provided to a distributor or selling agent of lotteries by inserting sub-rule (7C) in rule 6 of the Service Tax Rules, 1994. The distributor or selling agents rendering the taxable service of promotion, marketing or organising/assisting in organising lottery can discharge their service tax liability in the following manner instead of paying service tax @10%:

Where the guaranteed lottery prize payout is > 80%	Rs. 6000/- on every Rs 10 Lakh (or part of Rs 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw.
Where the guaranteed lottery prize payout is < 80%	Rs. 9000/- on every Rs 10 Lakh (or part of Rs 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw.

Points to be noted:-

1. In case of online lottery, the aggregate face value of lottery tickets will be the aggregate value of tickets sold.
2. The distributor/selling agent will have to exercise such option within a period of one month of the beginning of each financial year. The new service provider can exercise such option within one month of providing the service.
3. The option once exercised cannot be withdrawn during the remaining part of the financial year.
4. For the financial year 2010-11, the distributor or selling agent will have to exercise such option by 07.11.2010.

Meaning of important terms

- (a) **Distributor or selling agent:** means an individual or firm or body corporate or other legal entity under law so appointed by the Organising State through an agreement to market and sell lotteries on behalf of the Organising State [Rule 2(c) of the Lottery (Regulation) Rules, 2010]
and shall include the distributor/selling agent authorized by lottery organizing State.
- (b) **Draw:** means a method by which the prize winning numbers are drawn for each lottery/lottery scheme by operating the draw machine or any other mechanical method based on random technology which is visibly transparent to the viewers [Rule 2(d) of the Lottery (Regulation) Rules, 2010].
- (c) **Online lottery:** means a system created to permit players to purchase lottery tickets generated by the computer or online machine at the lottery terminals where the information about the sale of a ticket and the player's choice of any particular number or combination of numbers is simultaneously registered with the central computer server [Rule 2(e) of the Lottery (Regulation) Rules, 2010].
- (d) **Organising State:** means the State Government which conducts the lottery either in its own territory or sells its tickets in the territory of any other State [Rule 2(f) of the Lottery (Regulation) Rules, 2010].

[Notification No. 49/2010 ST dated 08.10.2010]

D. POINT OF TAXATION RULES, 2011

The Point of Taxation Rules, 2011 were formulated vide **Notification No.18/2011-ST dated 01.03.2011** as amended by *Notification No. 25/2011-ST dated 31.03.2011*. The said rules are effective from 01.04.2011.

The Point of Taxation Rules, 2011-a precursor to GST- have brought a paradigm shift in the point of taxation of services. Earlier, the provider of the service was liable for payment of service tax only when the consideration towards the value of taxable services was 'received'. These rules have shifted the point of taxation for service tax from receipt basis to hybrid basis.

The detailed provisions of the said rules along with their analysis are as under:-

1. Determination of point of taxation [Rule 3]- For the purposes of these rules, unless otherwise provided, 'point of taxation' shall be-

- (a) the time when the invoice for the service provided/to be provided is issued.

However, in case the invoice is not issued within 14 days of the completion of the provision of the service, the point of taxation shall be date of such completion.

- (b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

Point of taxation in case of advance received by service provider

For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be **the date of receipt of each such advance.**

ANALYSIS

As per rule 3 of the said rules, point of taxation would be determined as follows:-

S.No.	In case	Point of taxation would be
1.	the invoice is issued within the prescribed period of 14 days from the date of completion of provision of service	(a) Date of invoice or (b) Date of payment whichever is earlier
2.	the invoice is not issued within the prescribed period of 14 days from the date of completion of provision of service	(a) Date of completion of service or (b) Date of payment whichever is earlier

The principle of point of taxation can be better understood with the help of the following tabular summary followed by an illustration:-

Case	In case where	Point of Taxation	
I	Invoice is issued within 14 days from the completion of service and payment is received after invoice	Date of invoice	
II	Invoice is issued within 14 days from the completion of service, but payment is received before invoice	Date on which payment is received.	
III	Invoice is not issued within 14 days from the completion of service and payment is received after completion of service	Date of completion of service	
IV	Invoice is not issued within 14 days from the completion of service. However, part payment is received before the completion	For the payment received	Point of taxation is

	of service and remaining payment is received after the completion of service.	before the date of completion of service	the date on which payment is received.
		after the date of completion of service	the date of completion of service.

Case	Date of completion of service	Date of invoice	Date on which payment received	Point of Taxation
I	September 5, 2011	September 15, 2011	September 25, 2011	September 15, 2011
II	September 5, 2011	September 15, 2011	September 10, 2011	September 10, 2011
III	September 5, 2011	September 21, 2011	September 25, 2011	September 5, 2011
IV	September 5, 2011	September 21, 2011	Amount received partly on September 3, 2011 and remaining on September 20, 2011	September 3, 2011 and September 5, 2011 for respective amounts

- 2. Determination of point of taxation in case of change in effective rate of tax [Rule 4]-**
Notwithstanding anything contained in rule 3, the point of taxation in cases where there is a **change in effective rate of tax** in respect of a service, shall be determined in the manner laid down in the following table namely:-

In case a taxable service has been provided	Invoice has been issued	Payment received for the invoice	Point of taxation shall be
(i) BEFORE the change in effective rate of tax.	AFTER the change in effective rate of tax	AFTER the change in effective rate of tax	(a) date of issuance of invoice or (b) date of receipt of payment whichever is earlier

	PRIOR to the change in effective rate of tax	AFTER the change in effective rate of tax	date of issuance of invoice
	AFTER the change in effective rate of tax	PRIOR to the change in effective rate of tax	date of receipt of payment
(ii) AFTER the change in effective rate of tax.	PRIOR to the change in effective rate of tax	AFTER the change in effective rate of tax	date of receipt of payment
	PRIOR to the change in effective rate of tax	PRIOR to the change in effective rate of tax	(a) date of issuance of invoice or (b) date of receipt of payment whichever is earlier
	AFTER the change in effective rate of tax	PRIOR to the change in effective rate of tax	date of issuance of invoice

Change in effective rate of tax

For the purposes of this rule, “**change in effective rate of tax**” shall include a change in the portion of value on which tax is payable in terms of a notification issued under the provisions of Finance Act, 1994 or rules made thereunder.

Hence, **change in effective rate of tax would include the following:-**

- (a) Change in the percentage of the exemption granted in value for various services vide *Notification No. 1/2006-ST dated 01.03.2006* which has the effect of payment of tax only on a part of the value.
- (b) Change in the rate/values under optional composition schemes provided under various sub-rules of rule 6 of the Service Tax Rules, 1994 to the following service providers:-
 - (i) Air travel agent [Sub-rule(7)]
 - (ii) Insurer carrying on life insurance business [Sub-rule(7A)]
 - (iii) Foreign exchange broker, including an authorised dealer in foreign exchange or an authorized money changer [Sub-rule(7B)]

- (iv) Distributor or selling agents of lotteries [Sub-rule(7C)]
 - (c) Change in composition rates under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007
 - (d) Issuance, rescission, or amendment in any other notification thereby altering the taxability of any service
- 3. Payment of tax in cases of new services [Rule 5]** - Where a service, not being a service covered by rule 6, is taxed for the first time, then, –
- (a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;
 - (b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within the period referred to in rule 4A of the Service Tax Rules, 1994.

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This rule specifically discusses the situation where a service (which is not a continuous supply of service) is charged to tax for the first time i.e. becomes taxable for the first time.

The rule provides that:-

- (a) If an invoice has been issued and payment is received before a service becomes taxable, no tax would be charged even if the service is provided after the same has become taxable. This provision is consistent with the other similar provisions in these rules, and ensures that a financial transaction which has achieved finality before a service was taxable shall not be reopened for collection of tax.
- (b) If any payment has been received prior to a service being chargeable to tax, no tax shall be chargeable if an invoice has also been issued within the period prescribed in rule 4A of the Service Tax Rules, 1994, i.e. within 14 days of receipt of payment.

The rule also clearly lays down that any service, which is not a continuous supply of service, if provided before the service becomes chargeable to tax, shall not be subjected to tax.

4. Determination of point of taxation in case of continuous supply of service [Rule 6]- Notwithstanding anything contained in rules 3,4 or 8, in case of continuous supply of service, the 'point of taxation' shall be-

- (a) the time when the invoice for the service provided or to be provided is issued:
However, where the invoice is not issued within 14 days of the completion of the provision of the service, the point of taxation shall be date of such completion.
- (b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

1. Date of completion of provision of continuous service
For the purpose of this rule, where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the service receiver to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.
2. Point of taxation in case of advance received by service provider
For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.

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The application of the rule can be better understood with the help of the following detailed tabular summary:-

S. No.	Scenario	Point of Taxation
1.	Invoice issued within 14 days from the completion of milestone for payment and payment is received after invoice	Date of invoice
2.	Invoice issued within 14 days from the completion of milestone for payment and advance payment is received before invoice	Date of receipt to the extent of such advance
3.	Invoice NOT issued within 14 days from the completion of milestone for payment and payment is received after completion of such milestone	Date of completion of milestone for payment
4.	Invoice issued before completion of milestone for payment	Date of invoice
5.	No milestone for payment agreed in the contract and no amount received till completion of service and invoice raised within 14 days from the completion	Date of invoice
6.	No milestone for payment agreed in the contract and no amount received till completion of service and invoice not issued	Date of completion of service
7.	No milestone for payment and part amount received before completion	Date of such receipt to the extent of such amount

The aforesaid rule will have primacy over rules 3, 4 and 8.

Departmental clarification

DOF No. 341/34/2010-TRU dated 31.03.2011 clarifies that rule 6 relating to continuous supply of service is in alignment with rule 3 relating to single supply service. However, the date of completion of continuous service shall be the date of completion of the specified event stated in the contract which obligates payment in part or whole for the contract. For instance, in the case of construction services if the payments are linked to stage-by-stage completion of construction, the provision of service shall be deemed to be completed in part when each such stage of construction is completed.

5. Determination of point of taxation in case of specified services or persons [Rule 7]-
Notwithstanding anything contained in these rules, the point of taxation in respect of-

- (a) the services covered by sub-rule (1) of rule 3 of Export of Services Rules, 2005;
- (b) the persons required to pay tax as recipients under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Finance Act, 1994;
- (c) individuals or proprietary firms or partnership firms providing taxable services referred to in sub-clauses (p), (q), (s), (t), (u), (za), (zzzzm) of clause (105) of section 65 of the Finance Act, 1994,

shall be the date on which payment is received or made, as the case may be:

However, in case of services referred to in clause (a), where payment is not received within the period specified by the Reserve Bank of India, the point of taxation shall be determined, as if this rule does not exist.

Further, in case of services referred to in clause (b) where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist.

Moreover, in case of “associated enterprises”, where the person providing the service is located outside India, the point of taxation shall be the date of credit in the books of account of the person receiving the service or date of making the payment whichever is earlier.

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S.No.	Cases where date of receipt or payment of consideration would be the point of taxation	Condition to be satisfied	Point of taxation would be determined as per the general rule of completion of service or date of issue of invoice, whichever is earlier
1.	Services covered by rule 3(1) of Export of Services Rules, 2005	the amount must be realized within the period prescribed by RBI.	where payment is not received within the period specified by the Reserve Bank of India

2.	Person liable to pay service tax under reverse charge mechanism	the payment must be made within a period of 6 months from the date of invoice	where the payment is not made within a period of six months of the date of invoice
3.	Individuals or proprietary firms or partnership firms providing the any of the following taxable services:- (a) Architect's Services (b) Interior Decorator's Services (c) Practicing Chartered Accountant's Services (d) Practicing Cost Accountant's Services (e) Practicing Company Secretary's Services (f) Scientific or Technical Consultancy Services (g) Legal Consultancy Services Point which merit consideration: The benefit shall not be available in case of any other service also supplied by the person concerned along with the specified services.		

Point of taxation in case of import of services by “associated enterprises”

In case of “associated enterprises”, where the person providing the service is located outside India, the point of taxation shall be:-

(a) the date of credit in the books of account of the person receiving the service

or

(b) date of making the payment

whichever is earlier.

6. Determination of point of taxation in case of copyrights, etc. [Rule 8]- Rule 8 applies where in case of royalties and payments pertaining to copyrights, trademarks, designs or patents, the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration.

In such a case, the service shall be treated as having been provided each time when:-

(a) a payment in respect of such use/benefit is received by the provider in respect thereof

or

(b) an invoice is issued by the provider

whichever is earlier.

7. Transitional Provisions [Rule 9]-Nothing contained in these rules shall be applicable-

- (i) where the provision of service is completed; or
- (ii) where invoices are issued

prior to April 01, 2011.

However, the point of taxation shall, at the option of the taxpayer, be the date on which the payment is received/made as the case may be in the following two cases:-

- (i) Services for which provision is completed on/before 30.06.2011
- or
- (ii) where the invoices are issued upto 30.06.2011.

ANALYSIS

Assesseees	Benefit under transitional provisions will apply to
who switch over to the new rules on 01.04.2011	(a) all invoices issued before 01.04.2011 (b) services for which provision has been completed before 01.04.2011
who like to shift to the new rules on 01.07.2011	(a) invoices issued before 01.07.2011 (b) services for which provision has been completed before 01.07.2011

DOF No. 341/34/2010-TRU dated 31.03.2011 clarifies that the payments received before the new rules come into force do not require any transitional provisions as they are already required to pay tax on payment basis.

Important definitions [Rule 2]

In these rules, unless the context otherwise requires,

- (a) Act** means the Finance Act, 1994.
- (b) Associated enterprises** shall have the meaning assigned to it in section 92A of the Income Tax Act, 1961.
- (c) Continuous supply of service** means
 - (i) any service which is provided, or to be provided continuously, under a contract, for a period exceeding three months,
 - or
 - (ii) where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition.

Services notified by the Central Government

In this regard the Central Government has prescribed the provision of following services to be a continuous supply of service:-

- (i) Construction in respect of Commercial or Industrial Buildings or Civil Structures
- (ii) Construction Services of Residential Complexes
- (iii) Telecommunication Services
- (iv) Internet Telecommunication Services
- (v) Works Contract Services

[Notification No. 28/2011-ST dated 01.04.2011]

Hence, it implies that the aforesaid services will constitute “continuous supply of services” irrespective of the period for which they are provided or agreed to be provided. Other services will be considered continuous supply only if they are provided or agreed to be provided continuously for a period exceeding three months.

- (d) Invoice** means the invoice referred to in rule 4A of the Service Tax Rules, 1994 and shall include any document as referred to in the said rule.
- (e) Point of taxation** means the point in time when a service shall be deemed to have been provided.
- (f) Taxable service** means a service which is subjected to service tax, whether or not the same is fully exempt by the Central Government under section 93 of the Act.

E. CLARIFICATIONS

1. Clarification on applicability of service tax on laying of cables under or alongside roads and similar activities

The taxability of following activities has been clarified:

- laying of cables under or alongside roads,
- shifting of overhead cables to underground on account of renovation/widening of roads;
- laying of electrical cables under or alongside roads/railway tracks;
- electrification of railways, installation of street-lights, traffic lights, flood-lights etc.

The chargeability of the above activities under specific categories of service has been explained in the following table:

S. No.	Taxable service	Coverage of the above activities under the respective services
1.	Commercial or industrial construction services	Only such electrical works that are parts of (or which result in emergence of a fixture of) buildings, civil structures, pipelines or conduits are covered under this taxable service. Further, such activities undertaken in respect of roads, railways, transport terminals, bridges, tunnels and dams are outside the scope of levy of service tax under this taxable service.
2.	Erection, commissioning or installation services	Activity resulting in emergence of an erected, installed and commissioned plant, machinery, equipment or structure or resulting in installation of an electrical or electronic device (i.e. a machine or equipment that uses electricity to perform some other function) are covered under this taxable service,
3.	Works Contract	Activities excluded from aforesaid two services would generally remain excluded from this taxable service as well.
4.	Site formation and clearance, excavation, earthmoving and demolition services	Services provided independently and not as part of a complete work are covered under this taxable service. Thus, site formation and excavation activities provided in respect of a complete work like that of laying of cables under the road will not be taxable.

Further, the taxable status of various activities, on which disputes have arisen is clarified in the following table:

S. No.	Activity	Taxable Service/Non-taxable service	Relevant category of service	Relevant clause of Section 65(105) of the Finance Act, 1994
1.	Shifting of overhead cables/ wires for any reasons such as widening/renovation of roads	Non-taxable service	-	-

2.	Laying of cables under or alongside roads	Non-taxable service	-	-
3.	Laying of electric cables between grids/sub-stations/transformer stations en route	Non-taxable service	-	-
4.	Installation of transformer/ sub-stations undertaken independently	Taxable service	Erection, commissioning or installation services	(zzd)
5.	Laying of electric cables up to distribution point of residential or commercial localities/complexes	Non-taxable service	-	-
6.	Laying of electric cables beyond the distribution point of residential or commercial localities/complexes.	Taxable service	Commercial or industrial construction' or 'Construction of complex' service	(zzq)/(zzzh)
7.	Installation of street lights, traffic lights flood lights, or other electrical and electronic appliances/devices or providing electric connections to them	Taxable service	Erection, commissioning or installation services	(zzd)
8.	Railway electrification, electrification along the railway track	Non-taxable service	-	-

The clarifications are essentially general in nature. Thus, facts and circumstances of each case will have to be considered while applying these clarifications. The pending disputes /cases may be decided based on the clarifications contained in this circular.

[Circular No.123/5/2010-TRU dated 24.05.2010]

2. Architect/Chartered Engineer/Licensed Surveyor notified as 'authority competent' to issue a completion certificate in respect of residential/commercial complex

With effect from 01.07.2010, a registered architect or a registered chartered engineer or a licenced surveyor of the local body of the city/town/village/development or planning authority (in addition to any Government authority) have been notified as competent authority to issue a completion certificate in respect of residential or commercial or industrial complex, as a precondition for its occupation.

[M.F.(D.R.) Order No. 1/2010 dated 22.06.2010]

3. Services provided by State Governments under Centrally Sponsored Schemes (CSS) are not liable to service tax

It is clarified that levy and collection of service tax on State Government agencies/ departments implementing CSS under a central grant, is not legally tenable. The fact that State Governments are implementing agencies for the Central Government within the framework of CSS does not make them service providers. Consequently, Central Government cannot be taken as service receiver. Grant released by the Central Government under a centrally sponsored scheme cannot be presumed as consideration for providing a taxable service.

[Circular No. 125/7/2010-S.T. dated 30-7-2010]

CENTRALLY SPONSORED SCHEMES

CSSs are special purpose grants extended by the Central Government to States to encourage and motivate State Governments to plan and implement programmes that help attain national goals and objectives, for instance, extending clean drinking water and sanitation to every habitation, eradicating polio and tuberculosis, making primary education universal for every female and male child, and so on. CSSs are formulated by concerned Ministries and Departments and implemented through counterpart State level departments and para-statal bodies identified for the purpose.

For instance, in the case of the centrally sponsored National Biogas and Manure Management Program operating under Ministry of New and Renewable Energy, State Government agencies were involved in setting up of bio-gas plants in villages. Certain expenses incurred by the State Governments or their departments/agencies during the course of setting up of such bio-gas plants were reimbursed by the Central Government by way of a grant under the CSS. Jurisdictional service tax authorities demanded service tax from the State Government department/agency, saying that the reimbursements received by the concerned State Government department/ agency (as service provider) are nothing but consideration for installation and commissioning service received from the Central Government (service receiver).

4. Underwriting commission received by the Primary Dealers for the auction of Government Securities not liable to service tax

The terms 'underwriting' and 'underwriter' as provided in the Finance Act, 1994 and further defined in the Securities and Exchange Board of India (Underwriters) Rules, 1993, pertain to dealing in securities of a body corporate. In other words, service tax is leviable on underwriting only when the securities of a body corporate are underwritten.

Though the Government securities are issued by the Reserve Bank of India (RBI), which is a 'body corporate' in terms of section 3(2) of the RBI Act, 1934, Government securities are not securities of a body corporate as the Government securities are sovereign securities having zero default risk and RBI of India only manages the issue as also the auction of Government Securities on behalf of the Government of India.

The Primary Dealers registered with the RBI (as opposed to registration with the Securities Exchange Board of India) deal in Government Securities, issued by the RBI on behalf of the Government of India, as a part of the Central Government's market borrowing program.

Therefore, it has been clarified that service tax liability does not arise on Underwriting Fee or Underwriting Commission received by the Primary Dealers during the course of the dealing in Government Securities.

[Circular No.126/08/2010 ST dated 10.08.2010]

5. Donations and grants-in-aid received by a Charitable Foundation imparting free livelihood training to the youth not liable to service tax

It has been clarified that donations and grants-in-aid received from different sources by a Charitable Foundation imparting free livelihood training to the poor and marginalized youth, will not be treated as 'consideration' received for such training and thus not subjected to service tax under 'commercial training or coaching service as 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. There is no relationship other than universal humanitarian interest between the provider of donation/grant and the trainee. In such a situation, service tax is not leviable, since the donation or grant-in-aid is not linked to specific trainee or training.

[Circular No.127/09/2010 ST dated 16.08.2010]

6. Electricity meter installed in consumers' premises and hire charges collected are eligible for exemption for transmission and distribution of electricity

Issue	Clarification
Whether renting of electricity meter by a service provider	It is a general practice among electricity transmission(TRANSCO)/distribution companies (DISCOM) to install electricity meters at the

rendering the service of transmission or distribution of electricity is covered by the exemption available under <i>Notification No. 11/2010-ST dated 27.02.2010</i> and/or <i>32/2010-ST dated 22.06.2010</i> ?	premises of the consumers, to measure the amount of electricity consumed by them and 'hire charges' are collected periodically. Supply of electricity meters for hire to the consumers being an essential activity having direct and close nexus with transmission and distribution of electricity, the same is covered by the exemption for transmission and distribution of electricity, extended under the relevant notifications.
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[Circular No. 131/13/2010 – ST dated 07.12.2011]

7. Fumigation of export cargo in compliance of export obligation is not taxable under 'cleaning services'

Issue	Clarification
Whether the activity of fumigation of export cargo including agricultural/horticultural produce, whether loaded into containers or otherwise is a taxable service falling under 'cleaning services' or not?	- It is clarified that fumigation*, per se, is a cleaning activity. However, fumigation of export cargo including agricultural/horticultural produce, whether loaded into containers or otherwise, does not satisfy the statutory definition of 'cleaning activity' under section 65(24b) of the Finance Act, 1994. - Specialised cleaning services of containers used for export goods are exempt from the service tax by virtue of an exemption notification. This is in line with the international practice of making the export consignments free from taxation in the country of its origin. However, the wordings of the exemption notification cannot be used to interpret the scope of service defined under Section 65(105)(zzzd) of the Finance Act, 1994.

[Circular No. 132/1/2011 ST dated 12.01.2011]

***Note:** Fumigation is the method of pest control. In this method, a lethal chemical (fumigant) is released in gaseous state into an enclosed area to eliminate an infestation of pests by poisoning or suffocating them.

9. Clarification of the scope and meaning of 'Janata Personal Accident Policy (JPAP)' exempt under Notification No. 3/1994 dated 30.06.1994

Notification No. 3/1994 dated 30.06.1994 inter alia provides that 'Janata Personal Accident Policy (JPAP)' is exempt from whole of the service tax leviable thereon.

Since a description of JPAP is not available in the relevant notification, it is clarified that customized group JPAP insurance schemes floated by various insurance companies as per the specifications of State Governments concerned, to extend risk cover to target populations, and to fulfill the prescribed 'rural or social sector' obligation, are covered by the subject service tax exemption.

[Circular No. 133/2/2011-S.T., dated 18-1-2011]

Janata Personal Accident Policy (JPAP)

JPAP is a customized group insurance policy scheme floated by various insurance companies as specified by State Governments, to extend risk cover to certain specified target populations, under varying terms of insurance.

Generally, a standard JPAP is an individual oriented policy with a fixed 'sum assured'. The sum assured in these JPAP policies is often as low as Rs. 25,000/- , so that even people without regular income can afford to purchase a risk cover for themselves.

For the insurers, JPAP offers a vehicle to fulfill the 'rural or social sector' obligation prescribed by the Insurance Regulatory Development Authority (IRDA).

10. Visa facilitators not liable to service tax

Service provided by a visa facilitator, in the form of assistance to individuals directly, to obtain a visa, does not fall under any of the taxable services under section 65(105) of the Finance Act, 1994. Hence service tax is not attracted. Visa facilitators collect certain statutory charges like visa fee, certification fee, attestation fee, emigration fee, etc. from the visa applicant, which are remitted to the respective authorities, and in addition collect service charges for themselves as remuneration for the assistance provided by them to obtain the visa.

It has been clarified that assistance provided by a visa facilitator, for obtaining visa, to a visa applicant or for foreign employer does not fall within the scope of supply of manpower service or business auxiliary service as visa facilitator does not act on behalf of the embassies, as agents of the principal. Such services can also not be classified as business support services as the visa applicant pays the service charge on his own meaning such service charge is not borne by any business entity.

However, service tax would be leviable on any service provided other than direct assistance to individuals for obtaining visa, falling under the description of any taxable service, as classifiable under the appropriate heading. For example, where visa facilitators also act as agents of recruitment or of foreign employer, service tax would be leviable to the extent under the service of 'supply of manpower'. Where the visa facilitator renders visa assistance to individuals who are employed in a business entity and the service charges are paid by the business entity on behalf of those individuals, to the visa facilitator, service tax would be leviable under 'business support service'.

[Circular No. 137/6/2011 ST dated 20.04.2011]

11. Service tax exemption applies to Education Cess and Secondary and Higher Education Cess as well

It has been clarified that since Education Cess and Secondary and Higher Education Cess are levied and collected as percentage of service tax, when and wherever service tax is NIL by virtue of exemption, Education Cess and Secondary and Higher Education Cess would also be NIL.

According to section 95(1) of the Finance (No.2) Act, 2004 and section 140(1) of the Finance Act, 2007, Education Cess and Secondary and Higher Education Cess are leviable and collected as service tax, and when whole of service tax is exempt, the same applies to education cess and secondary and higher education cess as well.

[Circular No. 134/3/2011 ST dated 08.04.2011]

F. OTHER AMENDMENTS

1. Rate of interest for amount collected of service tax in excess increased by 5% per annum [Section 73B]

Earlier, the rate of interest notified by the Central Government under section 73B was **13% per annum** vide *Notification No. 8/2006 dated 19.04.2006*.

Amendment made by Notification No. 15/2011 dated 01.03.2011

With effect from 01.04.2011, the said notification has been amended to increase the rate of interest to 18% per annum.

2. Rate of interest for delayed payment of service tax increased by 5% per annum [Section 75]

Earlier, the rate of interest notified by the Central Government under section 75 was **13% per annum** vide *Notification No. 26/2004 dated 10.09.2004*.

Amendment made by Notification No. 14/2011 dated 01.03.2011

With effect from 01.04.2011, the said notification has been amended to increase the rate of interest to 18% per annum.

Important Note

Students may note that amendments relating to all the taxable services have been discussed in this Supplementary Study Paper since they form part of the syllabus of IPCC/PCC. However, taxable services applicable for May, 2012 and November, 2012 examinations would be separately notified and informed to the students by way of an announcement in the student's journal "The Chartered Accountant Student". The announcement would also be hosted on the Institute's website www.icai.org.