

Basic Concepts of Service Tax

Question 1

Briefly answer the following:-

- (a) *Explain as to how and when the amendments made in Finance Bill, in respect of service tax matters come into force?*
- (b) *Is service tax payable in respect of services provided in the Indian territorial waters?*

Answer

- (a) Amendments made by the Finance Bill, in respect of service tax matters, come into force from the date of enactment of the Finance Bill i.e., the date on which the Finance Bill receives the assent of the President of India. However, wherever it is specifically provided so in the Finance Bill, certain amendments become effective from a date to be notified after the enactment of the Finance Bill.
- (b) Yes, services provided within Indian territorial waters are liable to service tax, as the levy of service tax extends to the whole of India except Jammu and Kashmir and India includes Indian territorial waters. Indian territorial waters extend upto 12 nautical miles from the Indian land mass.

Question 2

What are the sources of service tax law?

Answer

There is no independent statute on service tax as yet. However, the sources of service tax law are:-

- (i) Finance Act, 1994
- (ii) Rules on service tax
- (iii) Notifications on service tax
- (iv) Circulars or Office Letters (Instructions) on service tax
- (v) Orders on service tax and
- (vi) Trade notices on service tax

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Question 3

State the provisions which enable the Central Government to make rules for administering service tax. For what purposes are such rules made? Name any four such rules issued by the Central Government so far.

Answer

Section 94 of Chapter V and section 96-I of Chapter VA of the Finance Act, 1944 grants power to Central Government to make rules for carrying out the provisions of these Chapters. Rules should be read with the statutory provisions contained in the Act. Rules can never override the Act and cannot be in conflict with the same.

So far, the Central Government has issued the following rules for administering service tax –

- (a) Service Tax Rules, 1994
- (b) Service Tax (Advance Ruling) Rules, 2003
- (c) Point of Taxation Rules, 2011
- (d) Place of Provision of Service Rules, 2012
- (e) Service Tax (Registration of Special Category of Persons) Rules, 2005
- (f) Service Tax (Determination of Value) Rules, 2006 and

Note: Any four rules may be mentioned.

Question 4

State with reasons in brief whether the following statement is correct or incorrect with reference to the provisions of service tax:

Service tax provisions are not applicable in Jammu and Kashmir because State Government concurrence was not obtained in respect of Finance Act, 1994.

Answer

The statement is correct. As per Article 370 of the Constitution, any Act of Parliament applies to Jammu and Kashmir only with the concurrence of the State Government. Since, no such concurrence has been obtained in respect of Finance Act, 1994, service tax provisions are not applicable in Jammu and Kashmir.

Question 5

Briefly explain about the charge of service tax.

Answer

Section 66B is the charging section of the Act, which provides that there shall be levied a tax at the rate of 12% on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in

such manner as may be prescribed. The effective rate of service tax is 12%; plus education cess of 2% and secondary & higher education cess of 1%.

Question 6

Define the following terms in terms of Finance Act, 1994

- (i) Advertisement
- (ii) Business Entity
- (iii) Goods
- (iv) Goods Transport Agency
- (v) Process amounting to manufacture
- (vi) Renting
- (vii) Support Services
- (viii) Bundled Service

Answer

Section 65B has been inserted by Finance Act, 2012 with effect from 01.07.2012. Section 65B has statutory defined certain terms. Thus, statutory definitions of all the above terms as per section 65B are given in the following table:

S.No.	Term	Relevant Definition	Relevant Section
(i)	Advertisement	<i>"Advertisement"</i> means any form of presentation for promotion of, or bringing awareness about any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person.	65B(2)
(ii)	Business Entity	<i>"Business Entity"</i> means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession.	65B(17)
(iii)	Goods	<i>"Goods"</i> means every kind of movable property other than actionable claim and money; and includes securities, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.	65B(25)
(iv)	Goods Transport Agency	<i>"Goods Transport Agency"</i> means any person who provides service in relation to transport of goods by road and issue consignment note, by whatever name called.	65B(26)

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(v)	Process amounting to manufacture	<i>"Process amounting to manufacture or production of goods" means a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 (1 of 1944) or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force.</i>	65B(40)
(vi)	Renting	<i>"Renting" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.</i>	65B(41)
(vii)	Support Services	<i>"Support services" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis.</i>	65B(49)
(viii)	Bundled Service	<i>"Bundled service" means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.</i> <i>In order to truly appreciate the concept of 'bundled service', a couple of examples are given below:</i> <i>(A) Service of stay in a hotel is often combined with a service of laundering of certain specified items of clothing per day.</i> <i>(B) Transport by air is often combined by catering on board.</i>	Explanation to Section 66F(3)

Question 7

State briefly whether service tax will be levied in the following case:

Services provided in the State of Rajasthan by a person having a place of business in the State of Jammu and Kashmir.

Answer

As per section **64(1)** of the Finance Act, 1994, service tax provisions do not extend to the State of Jammu and Kashmir. However, since service tax is a destination based consumption tax, service provided in Rajasthan from Jammu and Kashmir would be liable to service tax.

Question 8

Define the term "Negative List". Specify any eight services which have been included in Negative List of Services.

Answer

According to Section 65B (34) of Finance Act, 1994 "negative list" means the services which have been listed in section 66D. Following Seventeen services have been listed in Section 66D.

S.No.	Description
1.	Services by Government or a local authority excluding the following services to the extent they are not covered elsewhere— (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers; or (iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities;
2.	services by the Reserve Bank of India;
3.	services by a foreign diplomatic mission located in India;
4.	services relating to agriculture or agricultural produce by way of— (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing; (ii) supply of farm labour; (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;

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	(iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use; (v) loading, unloading, packing, storage or warehousing of agricultural produce; (vi) agricultural extension services; (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;
5.	trading of goods;
6.	any process amounting to manufacture or production of goods;
7.	selling of space or time slots for advertisements other than advertisements broadcast by radio or television;
8.	service by way of access to a road or a bridge on payment of toll charges;
9.	betting, gambling or lottery;
10.	admission to entertainment events or access to amusement facilities;
11.	transmission or distribution of electricity by an electricity transmission or distribution utility;
12.	services by way of— (i) pre-school education and education up to higher secondary school or equivalent; (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force; (iii) education as a part of an approved vocational education course;
13.	services by way of renting of residential dwelling for use as residence;
14.	services by way of— (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount; (ii) <i>inter se</i> sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers;
15.	service of transportation of passengers, with or without accompanied belongings, by— (i) a stage carriage; (ii) railways in a class other than— (A) first class; or (B) an air-conditioned coach; (iii) metro, monorail or tramway; (iv) inland waterways; (v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India and

	(vi) metered cabs, radio taxis or auto rickshaws.
16.	services by way of transportation of goods— (i) By road except the services of - (A) a goods transportation agency; or (B) a courier agency; (ii) by an aircraft or a vessel from a place outside India upto the customs station of clearance in India; or (iii) by inland waterways;
17.	Funeral, burial, crematorium or mortuary services including transportation of the deceased.

(Note: out of the above seventeen services, students may specify any eight services)

Question 9

According to Section 65B (44) the term “service”, inter alia, means any activity carried out by a person for another for consideration. In this background, explain the meaning of monetary consideration as well as non-monetary consideration ?

Answer

‘Monetary consideration’ means any consideration received in the form of money. According to Section 65B(33) “money” means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any such similar instrument but shall not include any currency that is held for its numismatic value. On the other hand, ‘Non-monetary consideration’ essentially means compensation in kind. For instance:

- (A) Supply of goods and services in return for provision of service.
- (B) Refraining or forbearing to do an act in return for provision of service.
- (C) Tolerating an act or situation in return for provision of a service.
- (D) Doing or agreeing to do an act in return for provision of a service.

EXERCISES

1. Service tax was introduced in India in the year:
 - (a) 1994
 - (b) 1996
 - (c) 1995
 - (d) 1991

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2. *The provisions relating to service tax are contained in:*
 - (a) *Service tax Act, 1992*
 - (b) *Finance Act, 1994*
 - (c) *Finance Act, 1992*
 - (d) *Income-tax Act, 1961*
3. *Which of the following statement is true?*
 - (a) *Rules can override the provisions of the Act.*
 - (b) *Only in certain exceptional circumstances can the rules override the provisions of the Act.*
 - (c) *Rules can never override the provisions of the Act.*
 - (d) *none of the above*
4. *Director General (Service tax) coordinates between _____ and _____.*
 - (a) *CBEC and CBDT*
 - (b) *Chief Commissioner of Central Excise and Commissioner of Central Excise*
 - (c) *Department of Revenue and CBEC*
 - (d) *CBEC and Central Excise Commissionerates*
5. *Sections _____ and _____ of the Finance Act, 1994 empower the Central Government to make rules.*
 - (a) *64 and 65*
 - (b) *94 and 96-I*
 - (c) *93 and 94*
 - (d) *none of the above*
6. *Indian Territorial Waters extend up to _____ nautical miles from the Indian land mass.*
 - (a) *200*
 - (b) *24*
 - (c) *12*
 - (d) *none of the above*
7. *In which of the following cases service tax will not be attracted?*
 - (a) *a person from Jammu provides service at New Delhi*
 - (b) *a person having office at Srinagar provides service at New Delhi*
 - (c) *a person from New Delhi provides service at Jammu*
 - (d) *all of the above*

8. Which committee recommended the introduction of service tax?
9. Which were the first three services to be brought under the service tax net?
10. What is the extent and application of the provisions of Finance Act, 1994 relating to service tax?
11. Write a note on administration of service tax.
12. What do you mean by selective and comprehensive coverage of services for the purpose of service tax? Which system is being adopted in India?
13. Write briefly about the role of a chartered accountant in the field of service tax consultancy.
14. What is education cess? Why is it being levied? What is the source of levy of education cess?
15. Does service tax law provide for any exemption to small service providers? If yes, then what is the quantum of such exemption?

Answers

1.(a); 2.(b); 3.(c); 4.(d); 5.(b); 6.(c); 7.(c); 8. Tax Reforms Committee headed by Dr. Raja J. Chelliah; 9. Telephones, General insurance and Stock brokers.