SERVICE TAX

(As amended by the Finance Act, 2013)

For CS/CA STUDETS appearing DEC/NOV 2013
Attempt

INDEX

BASIC CONCEPTS OF SERVICE TAX

Significance / Important / Need of Service tax in India

It is the prime responsibility of the Government to fulfil the increasing development needs of the country and its people, by way of public expenditure. The Government's primary sources of revenue are direct and indirect taxes. Central Excise Duty on the goods manufactured and produced in India and Customs Duties on imported goods constitute the two major sources of indirect taxes in India. Due to WTO commitments and rationalization of commodity duties, the revenue receipts from customs and excise duties are low.

*[**Note:** 'C' denote the importance from exam point of view, topics divided into ABC Analysis]*

Constitutional validity

According to Article 265 of the constitution India, no tax of any nature can be levied or collected by Central or State Governments, except by the Authority of Law. According to Article 246, law can be enacted by the Parliament or the State Legislature, if such power is given by the Constitution of India. ***List - I (Union list):*** Parliament has the exclusive right to make law in respect of that entry.

List - II (State list): Any state has exclusive power to make law for such state or any part thereof with respect to such an entry.

List - III (Concurrent list): The parliament or the legislature of a state has power to make laws with respect to any matter, enumerated in List III.

- ⇨ There are various matters enumerated in each list. Each matter in the list is known as an entry.
- ⇨ Entry 97 of the Union list is the residuary entry and it empowers the Central Government to levy tax on any matters, which are not enumerated in List II (State List) or List III (Concurrent List).
- ⇨ In 1994, the Service Tax was levied by the Central Government, under the powers granted under the said Entry 97, of List I.
- ⇨ Entry 92C has been inserted to the 1st List, in the VII Schedule so as to make the enactment a subject matter of Union List.

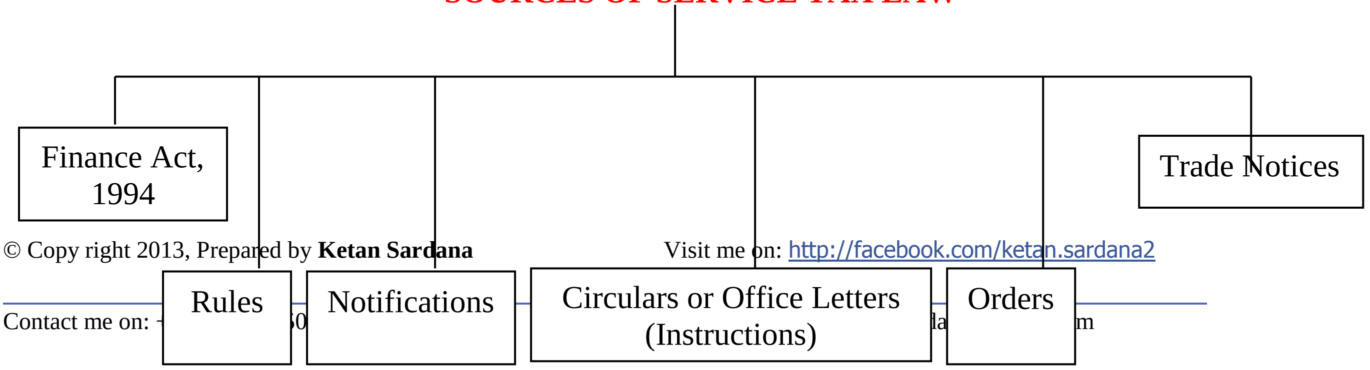
Sources of Service tax law

Laws relating to Service Tax: An understanding of the Service Tax law requires the study of the following:

1. Chapter V and V A, of the Finance Act, 1994, amended upto date.
2. Rules on Service Tax.
3. Notifications, issued by the Central Government, from time to time.
4. Circulars and clarifications, issued by Central Board of Excise and Customs (CBEC).
5. Trade Notice, issued by respective Jurisdictional Commissionerate.
6. Definitions given under other statutes.
7. Judicial decisions.

The various components making service tax law have been represented in the following diagram:

SOURCES OF SERVICE TAX LAW



Extent, Commencements and Application (of Service tax)	Sec. 64 [Finance Act]

- **The Finance Act, 1994** came into force from 01.07.1994.
- The Act extends to the whole of India **except the state of J&K**. Thus, *services provided in the state of J&K are not liable to service tax.*
- Applicability of ST provisions shall be decided w.r.t. **location of services** and not with reference of location of **service provider**.
- Thus, Service tax will not be payable only if service is provided in J&K. However, if a person from J&K provides the service outside J&K, the service will be liable to service tax. Merely because the office of the service provider is situated in Jammu and Kashmir, it does not mean that service is provided in Jammu and Kashmir.
- Service provided within the territorial waters will be liable to service tax as levy of service tax extends to whole of India except Jammu and Kashmir and 'India includes territorial waters".
- Indian territorial waters extend upto **12 nautical miles** from the Indian land mass. **[1 NM = 1.852 km]**

The provisions of service tax have been extended to the **designated areas in Exclusive Economic Zone** of India also. **(EEZ = upto 200 NM from base line)**

Administration of service tax

ADMINISTRATION OF SERVICE TAX

MINISTRY OF FINANCE (1)

↓

DEPARTMENT OF REVENUE (2)

↓

CENTRAL BOARD OF EXCISE AND CUSTOMS (3)

↓

CENTRAL EXCISE ZONES HEADED BY CHIEF COMMISSIONERS (4)

↓

CENTRAL EXCISE COMMISIONERATES HEADED BY COMMISSIONERS (5)

↓

SERVICE TAX COMMISSIONERATE (6)

↓

ADDITIONAL COMMISSIONER (7)

↓

JOINT COMMISSIONER (8)

↓

ASSISTANT COMMISSIONER/DEPUTY COMMISSIONER (9)

↓

SUPERINTENDENT (10)

↓

INSPECTOR (11)

DIRECTOR GENERAL OF SERVICE TAX (Coordinator between 3 & 5)

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Contact me on: +91 8285054506

Mail your views : - ketanhsardana@gmail.com

Role of a Chartered Accountant

Since with the introduction of the negative list the gamut of service tax has expanded substantially, there would be a great need for professionals to advice and assist the assessees. A chartered accountant with strong grounding in accounting coupled with his training and experience is well-equipped to position himself in the role as an advisor and facilitator for due compliance of service tax law. The nature of professional services could be:

(a) Advisory services : With the comprehensive coverage of service tax, a great deal of professional acumen would be required to interpret and understand the law and advise the applicability of service tax qua an activity or service. A chartered accountant would be able to fill this void.

(b) Procedural compliance: The service tax law envisages registration, payment of tax, filing returns and assessments involving interface with the excise department. A chartered accountant with his experience and expertise would be the best person to assist the assessee in all the above functions and ensure compliance.

(c) Personal representation: As per the service tax law read with the Central Excise Act and Rules, a chartered accountant is allowed to appear before the assessment authority, Commissioner (Appeals) (first appeal) and Tribunal (second appeal). Here too with his experience and expertise a chartered accountant would be well positioned to represent his clients. When the matter goes up to the High Court or Supreme Court, the chartered accountant can assist/ advise the advocates.

(d) Certification and audit: With the widening of tax base there will be a phenomenal growth in the number of service tax assessees. In the ensuing years the department would have to evolve a mechanism where there is management by exception i.e. generally accept all the returns as correct and pick and choose those returns which need detailed scrutiny. In this mechanism a chartered accountant could be of great assistance. Service tax returns and financial statements could be certified by the chartered accountant from the perspective of service tax similar to an audit under section 44AB of the Income-tax Act.

(e) Onerous task to keep pace : The service tax like excise is administered more by way of trade notices issued by various Commissionerates. A chartered accountant will have to keep himself abreast of the latest notifications and trade notices in addition to the changes in law so as to meet the client expectations. Thus, in order to render good value added services in the area of service tax a chartered accountant has an onerous task to keep pace with the latest in the legal front.

CHARGE OF SERVICE TAX [SECTION 66B]

Section 66B is the charging section of the Act, which provides that there shall be levied a tax (hereinafter referred to as the service 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%.

(a) Provided or agreed to be provided: The implications of this phrase are –

- Services which have only been agreed to be provided but are yet to be provided are also taxable.
- Receipt of advances for services agreed to be provided become taxable before the actual provision of service.
- Advances that are retained by the service provider in the event of cancellation of contract of service by the service receiver become taxable as these represent consideration for a service that was agreed to be provided.

However, it is important to note that the liability to pay the service tax on a taxable service arise the moment it is agreed to be provided without actual provision of service. The liability to pay tax arises in such cases at the point of taxation which is determined as per the Point of Taxation Rules, 2011 (discussed in detail in Chapter 2).

(b) Provided in the taxable territory

The service must have been provided in the taxable territory.

Taxable territory means the territory to which the provisions of this Chapter apply i.e. the whole of territory of India other than the State of Jammu and Kashmir **[Section 65B(52)]**.

(c) Service should not be specified in the negative list

As per section 66B, to be taxable a service should not be specified in the negative list. The negative list of services has been specified in section 66D of the Act.

Education Cess and Secondary and Higher Education Cess

(a) Education cess (EC): An education cess is levied @ 2%, calculated on the service tax on all taxable services. The education cess so collected is utilized for providing and financing universalized quality basic education.

(b) Secondary and higher education cess (SHEC): Further, with effect from 11.05.2007, a secondary and higher education cess @ 1% is also being imposed on services liable to service tax.

Thus, the effective rate of service tax becomes 12.36%.

Points to be noted regarding EC & SHEC

(a) Service tax, education cess and secondary and higher education cess should be shown separately in the invoice.

(b) These cesses paid on input services are available as credit for payment of cesses on output services or final products.

(c) The education cess and secondary and higher education cess on taxable services are in addition to the tax chargeable on such taxable services, under Chapter V of the Finance Act, 1994.

(d) The provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder, including those relating to refunds and exemptions from tax and imposition of penalty, apply in relation to the levy and collection of the education cess and secondary and higher education cess also, as they apply in relation to the levy and collection of tax on such taxable services.

Contact me on: +91 8285054506 Mail your views : - ketanhsardana@gmail.com

JUST FOR READ (BASIC KNOWLEDGE)
SMALL SERVICE PROVIDER'S (SSP) EXEMPTION

Central Government has exempted the taxable services of aggregate value not exceeding `10 lakh in any financial year from the whole of the service tax leviable thereon under section 66B of the Finance Act, 1994 in case the aggregate value of taxable services rendered by the service provider from one or more premises, does not exceed `10 lakh in the preceding financial year. However, such exemption is not available to the taxable services provided by a person under a brand name or trade name, whether registered or not, of another person and to such value of taxable services in respect of which service tax is payable on reverse charge mechanism by a person (discussed in detail in Paper-8 Indirect Tax Laws at Final Level).
[Notification No. 33/2012 – ST dated 20.06.2012

Section 66B of the Finance Act, 1994 - Charge of Service Tax on and after Finance Act, 2012 - Exemption to small service providers

Notification No. 33/2012-ST, dated 20-6-2012

[Supersession of Notification No. 6/2005-ST, dated 1-3-2005]

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Finance Act), and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 6/2005-Service Tax, dated the 1st March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* G.S.R. number 140(E), dated the 1st March, 2005, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act:

Provided that nothing contained in this notification shall apply to,-

(*i*) taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or

(*ii*) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules,1994.

2. The exemption contained in this notification shall apply subject to the following conditions, namely:-

(*i*) the provider of taxable service has the option not to avail the exemption contained in this notification and pay service tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year;

(*ii*) the provider of taxable service shall not avail the CENVAT credit of service tax paid on any input services, under rule 3 or rule 13 of the CENVAT Credit Rules, 2004 (herein after referred to as the said rules), used for providing the said taxable service, for which exemption from payment of service tax under this notification is availed of;

(*iii*) the provider of taxable service shall not avail the CENVAT credit under rule 3 of the said rules, on capital goods received, during the period in which the service provider avails exemption from payment of service tax under this notification;

(*iv*) the provider of taxable service shall avail the CENVAT credit only on such inputs or input services received, on or after the date on which the service provider starts paying service tax, and used for the provision of taxable services for which service tax is payable;

(*v*) the provider of taxable service who starts availing exemption under this notification shall be required to pay an amount equivalent to the CENVAT credit taken by him, if any, in respect of such inputs lying in stock or in process on the date on which the provider of taxable service starts availing exemption under this notification;

(*vi*) the balance of CENVAT credit lying unutilised in the account of the taxable service provider after deducting the amount referred to in sub-paragraph (v), if any, shall not be utilised in terms of provision under sub-rule (4) of rule 3 of the said rules and shall lapse on the day such service provider starts availing the exemption under this notification;

(*vii*) where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services; and

(*viii*) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed ten lakh rupees in the preceding financial year.

3. For the purposes of determining aggregate value not exceeding ten lakh rupees, to avail exemption under this notification, in relation to taxable service provided by a goods transport agency, the payment received towards the gross amount charged by such goods transport agency under section 67 of the said Finance Act for which the person liable for paying service tax is as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules, 1994, shall not be taken into account.

Explanation. - For the purposes of this notification,-

(A) "brand name" or "trade name" means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, logo, label, signature, or invented word or writing which is used in relation to such specified services for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified services and some person using such name or mark with or without any indication of the identity of that person;

(B) "aggregate value" means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification."

4. This notification shall come into force on the 1st day of July, 2012.

NEGATIVE LIST OF SERVICES [SECTION 66D]

The charging section-section 66B of the Finance Act, 1994, inter alia, provides that service tax shall be levied on all services, except the services specified in the negative list. Accordingly, section 66D of the Act has specified the list of services consisting of 17 heads of services which is termed as 'Negative List'. In a comprehensive tax regime, this 'Negative List' is of paramount importance because every activity not covered under this list is chargeable to service tax.

Section 66D specified following services as non-taxable:

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, 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 (i) to (iv) 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 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, cutting, harvesting (picking), drying, cleaning, trimming, sun draying, fumigating (cleaning), curing, sorting, grading, cooling or bulk packaging and like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
   - (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
   - (v) loading, unloading, packing, storage or warehousing of agricultural produce;
   - (vi) agricultural extension services;
   - (vii) services by any Agricultural produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;
5. Trading of goods;
6. Any process amounting to manufacture or production of goods;
7. Selling of space or time slots of advertisements other than advertisements broadcasts 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 event or access to amusement facilities;
11. Transmission or distribution of by an electricity transmission or distribution utility;
12. Service by way of
    - (i) pre-school education and education up to higher secondary school or equivalent;
    - (ii) education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force;
    - (iii) education as a part of an approved vocational education courses;
13. Service by way of renting of residential dwelling for use as residence;
14. Service by way of

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

(ii) inter se sale or purchase of foreign currency amongst banks or 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;
public transport, other than predominantly for tourism purpose, in a vessel between places located in India
(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

ANALYSIS OF NEGATIVE LIST

1. Entry (a): Services by Government or Local Authority,
Entry (o): Transportation of passengers,
Entry (p): Transportation of goods

All the services provided by the Government or a local authority are not chargeable to service tax.

Meaning of Government

Government has no where been defined in the Finance Act, 1994 or the rules made thereunder. As per General Clauses Act, 1897.

Government shall include both the Central Government and any State Government [Section 3(23) of the General Clauses Act, 1897].

It would include various departments and offices of the Central or State Government or the Union Territory Administrations which carry out their functions in the name and by order of the President of India or the Governor of a State.

Meaning of local authority

Local authority means—

(a) Panchayat as referred to in clause (d) of article 243 of the Constitution.
(b) Municipality as referred to in clause (e) of article 243P of the Constitution.
(c) Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.
(d) Cantonment Board as defined in section 3 of the Cantonments Act, 2006.
(e) Regional council or a district council constituted under the Sixth Schedule to the Constitution.
(f) Development board constituted under article 371 of the Constitution.
(g) Regional council constituted under article 371A of the Constitution **[Section 65B(31)].**

Exceptions:

However, the following services, even if provided by the Government or local authority, are taxable:-

(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.

I. SERVICES BY THE DEPARTMENT OF POSTS PROVIDED TO A PERSON OTHER THAN GOVERNMENT

Following services **provided to a person other than Government**, by the Department of Posts are taxable:-

(a) Speed post: provides time-bound and express delivery of letters, documents and parcels across the nation and around the world. Now-days, speed posts can be tracked on a daily basis with the help of speed post tracking service started by Postal Department of India.

(b) Express parcel post: Express Parcel Post is fast and reliable service for sending the parcels upto 35 kg within India. It provides convenience to the customers by picking up from customer’s premises and delivering to consignee.

(c) Life insurance: Post offices offer insurance under two schemes:

(a) Postal Life Insurance
(b) Rural Postal Life Insurance.

(d) Agency services: includes distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills, which are provided by the Department of Posts to non-Government entities.

Services provided by Department of Posts NOT liable to service tax

Therefore, the following services provided by Department of Posts are not liable to service tax:-

- Basic mail services known as postal services such as post card, inland letter, book post, registered post provided exclusively by the Department of Posts to meet the universal postal obligations.
- Transfer of money through money orders, operation of savings accounts, issue of postal orders, pension payments and other such services.

Illustration: Lakhanpur Post Office provided the following services to persons other than Government during the quarter ending 31.03.2014:-

Services rendered	Amount (`)
Basic mail services	1,00,000
Transfer of money through money orders	5,00,000
Operation of saving accounts	1,50,000
Rural postal life insurance services	2,00,000
Distribution of mutual funds, bonds and passport applications	5,00,000
Issuance of postal orders	3,00,000
Collection of telephone and electricity bills	1,00,000
Pension payment services	50,000
Speed post services	5,00,000
Express parcel post services	2,00,000

Compute the service tax liability of Lakhanpur Post Office for the quarter ending 31.03.2014.

Notes:

1. Point of taxation for all the aforesaid cases fall during the quarter ending 31.03.2014.
2. All the service charges stated above are exclusive of service tax.
3. Small Service Providers' exemption need not be taken into account while solving the aforesaid question.

Solution:

Services provided by the Government or a local authority are not chargeable to service tax as they are included in the negative list. However, following services provided to a person other than Government, by the Department of Posts are excluded from the negative list:-

(i) Speed post

(ii) Express parcel post

(iii) Rural postal Life Insurance

(iii) Agency services which include distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills, etc.

Hence, the aforesaid services are taxable.

Thus, the amount of service tax payable by Lakhanpur Post Office for the quarter ending 31.03.2014 would be as follows:-

Particulars	Amount(`)
Basic mail services	Nil
Transfer of money through money orders	Nil
Operation of saving accounts	Nil
Rural postal life insurance services	2,00,000
Distribution of mutual funds, bonds and passport applications	5,00,000
Issue of postal orders	Nil
Collection of telephone and electricity bills	1,00,000
Pension payments	Nil
Speed post services	5,00,000
Express parcel post	2,00,000
Value of taxable service	15,00,000
Service tax @ 12% [15,00,000×12%]	1,80,000
Education cess @ 2% [1,80,000×2%]	3,600

Secondary and higher education cess @ 1% [1,80,000×1%]	1,800
Service tax liability	1,85,400

II. SERVICES IN RELATION TO AN AIRCRAFT OR A VESSEL, INSIDE OR OUTSIDE THE PRECINCTS OF A PORT OR AN AIRPORT

Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport provided by Government or local authority are taxable.

1. Aircraft means any machine which can derive support in the atmosphere from reactions of the air, other than reactions of the air against the earth's surface and includes balloons, whether fixed or free, airships, kites, gliders and flying machines **[Section 65B(7)]**.

2. Airport means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome****[Section 65B(8)]**.

**Aerodrome means any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes all buildings, sheds, vessels, piers and other structures thereon or appertaining thereto.

3. As per **section 65B(38)**, **port** covers two types of ports:-

(i) Major ports as defined under section 2(q) of the Major Port Trusts Act, 1963

Port means any major port to which this Act applies within such limits as may, from time to time, be defined by the Central Government for the purposes of this Act by notification in the Official Gazette, and, until a notification is so issued, within such limits as may have been defined by the Central Government under the provisions of the Indian Ports Act.

(ii) Other ports as defined under section 3(4) of the Indian Ports Act, 1908

Port includes also any part of a river or channel in which this Act is for the time being in force.

4. Vessel includes anything made for the conveyance, mainly by water, of human beings or of goods and a caisson **[Section 65B(53)]**.

5. "Contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum-

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes-

(i) a maxicab; and

(ii) a motorcar notwithstanding the separate fares are charged for its passengers **[Section 2(7) of Motor Vehicles Act 1988]**

6. "Stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or j reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey. **[Section 2(40) of Motor Vehicles Act 1988]**

III. TRANSPORT OF GOODS OR PASSENGERS

Services of transport of passengers and goods have been specifically dealt with in clause (o) and (p). Here we are discussing the complete taxability of transport of passengers and goods. As a result of the combined study of the clause (o), (p) and this part of entry (a), the taxability of transport of passengers and goods is under:-

A. Transport of passengers

Transport of passengers by Government or local authority is generally taxable. However, following services of transportation of passengers,(whether provided by Government or otherwise) **with or without accompanied belongings are not taxable:—**

(i) Transport of passengers by a stage carriage

Vehicles which can carry more than six passengers shall be included here. In other words, carriages running under public transport shall not be taxable.

It may be noted that transport of passengers by vehicles under contract carriage is outside the purview of this entry. However under mega exemption, specific exemption is available to services of transport of passengers by a contract carriage for transportation of passengers, excluding tourism, conducted tours, charter or hire.

Stage carriage means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey **[Section 65B(46)]**.

(ii) Transport of passengers by railways in a class other than—

(A) first class; or

(B) an air conditioned coach

Transport of passengers in railways in first class or an air conditioned coach is taxable. Thus, journey by rail in 2nd class, sleeper class or general class is not taxable.

(iii) Transport of passengers by metro, monorail or tramway

Transport of passengers by metro, monorail or tramway is not taxable.

(iv) Transport of passengers by inland waterways

Inland waterways means:-

(i) National waterways as defined in section 2(h) of the Inland Waterways Authority of India Act, 1985, or

(ii) Other waterway on any inland water as defined in section 2(b) of the Inland Vessels Act, 1917 **[Section 65B(29)].**

As per section 2(h) of the Inland Waterways Authority of India Act, 1985,

National waterway means the inland waterway declared by section 2 of the National Waterway (Allahabad-Haldia Stretch of the Ganga-Bhagirathi-Hooghly River) Act, 1982, to be a national waterway.

Explanation–If Parliament declares by law any other waterway to be a national waterway, then from the date on which such declaration takes effect, such other waterway–

(i) shall be deemed also to be a national waterway within the meaning of this clause; and

(ii) the provisions of this Act shall, with necessary modifications (including modification for construing any reference to the commencement of this Act as a reference to the date aforesaid), apply to such national waterway.

As per section 2(b) of the Inland Vessels Act, 1917,

Inland water means any canal, river, lake or other navigable water.

(v) Transport of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India

The words ‘other than predominantly for tourism purpose’ qualify the preceding words “public transport”. This implies that the public transport by a vessel should not be predominantly for tourism purposes. Normal public ships or other vessels that sail between places located in India would be covered in the negative list entry even if some of the passengers on board are using the service for tourism as predominantly, such service is not for tourism purpose.

However, services provided by leisure or charter vessels or a cruise ship, predominant purpose of which is tourism, would not be covered in the negative list even if some of the passengers in such vessels are not tourists.

For instance, services by way of transportation of passengers on a vessel, from Kolkata to Port Blair (mainland – island) or Port Blair to Rose Island (inter island), is covered in the negative list entry.

(vi) Metered cabs, radio taxis or auto rickshaws

Metered cab means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 and the rules made there under **[Section 65B(32)]**.

B. Transportation of goods

Transport of goods by Government or local authority is generally taxable. However, following services of transportation of goods, (whether provided by Government or otherwise) **are not taxable:-—**

(i) Services by way of transportation of goods by road except the services of—

(A) a goods transportation agency; or

(B) a courier agency.

Transportation of goods by road is not taxable. However, services of goods transportation agency and courier agency services are excluded from the negative list entry relating to transportation of goods by road thereby making these two services taxable.

(A) Goods transportation agency services

When the goods are transported by road by a goods transport agency, it is liable to tax.

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

Goods transport agency means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called **[Section 65B(26)]**.

(B) Courier agency

Courier agency services are liable to service tax.

Express cargo service: The nature of service provided by 'Express Cargo Service' falls within the scope and definition of the courier agency. Hence, the said service is liable to service tax.

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

Courier agency means any person engaged in the door-to-door transportation of time sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles **[Section 65B(20)]**.

(ii) Services by way of transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance in India

Transportation of goods either by air or by sea from outside India upto custom station of clearance in India is not taxable.

1. Aircraft means any machine which can derive support in the atmosphere from reactions of the air, other than reactions of the air against the earth's surface and includes balloons, whether fixed or free, airships, kites, gliders and flying machines **[Section 65B(7)]**.

2. Vessel includes anything made for the conveyance, mainly by water, of human beings or of goods and a caisson **[Section 65B(53)]**.

3. Customs station means any customs port, customs airport or land customs station **[Section 65B(21)]**.

(iii) Services by way of transportation of goods by inland waterways

Almost any water transport within India would be covered under the negative entry for transportation of goods by inland waterways.

IV. SUPPORT SERVICES, OTHER THAN SERVICES COVERED UNDER CLAUSES I. TO III. ABOVE, PROVIDED TO BUSINESS ENTITIES

Other support services provided by the Government or a local authority to the business entities are taxable services.

1. Business entity means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession **[Section 65B(17)]**.

2. 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 **[Section 65B(49)]**.

2. <u>Entry (b): Services provided by Reserve Bank of India</u>

All the services by the Reserve Bank of India gets covered in the negative list, and becomes non taxable. Accordingly, the services provided by banks to RBI would be taxable as these are neither in the negative list nor covered in any of the exemptions.

Note: Services **PROVIDED TO** the Reserve Bank of India are **NOT** in the negative list and would be taxable.

3. Entry (c): Services by a Foreign Diplomatic Mission located in India

All the services rendered by a foreign diplomatic mission located in India are not chargeable to service tax. This entry does not cover services, if any, provided by any office or establishment of an international organization.

4. Entry (d): Services relating to agriculture or agricultural produce

Following services relating to agriculture or agricultural produce are not taxable-

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

- Activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry are included in the definition of agriculture.
- Plantation crops like rubber, tea or coffee would be also covered under agricultural produce.
- The processes contemplated in the definition of agricultural produce are those as are **'usually done by the cultivator or producer'**. Thus agricultural products like cereals, pulses, copra and jaggery where certain amount of processing on these products is done by a person other than a cultivator or producer may not get covered in the ambit of 'agricultural produce'.

1. Agriculture means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products **[Section 65B(3)].**

2. Agricultural produce means any produce of agriculture on which either no further processing is done or such processing is done as is **usually done by a cultivator or producer** which does not alter its essential characteristics but makes it marketable for primary market **[Section 65B(5)].**

(ii) Supply of farm labour

The service provider who is providing the desired farm labour to the service receiver is not liable to pay service tax on the said services.

(iii) Processes which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market

The 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 are not taxable.

(a) Process which alters the essential characteristics of the agricultural produce

Potato chips or tomato ketchup does not qualify as agricultural produce because in terms of the definition of agricultural produce, only such processing should be carried out as is usually done by cultivator producers **which does not alter its essential characteristics** but makes it marketable for primary market. Potato chips or tomato ketchup are manufactured through processes which alter the essential characteristic of farm produce (potatoes and tomatoes in this case).

(b) Process which makes agricultural produce marketable in the retail market

The processes of grinding, sterilizing, extraction packaging in retail packs of agricultural products, which make the agricultural products marketable in retail market, would NOT be covered in the negative list. Only such processes are covered in the negative list which makes agricultural produce marketable in the primary market.

(iv) Renting or leasing of agro machinery or vacant land with or without a structure incidental to its use

Leasing of vacant land with a green house or a storage shed meant for agricultural produce would be covered in the negative list. In terms of the specified services relating to agriculture, ‘leasing’ of vacant land with or without structure incidental to its use’ is covered in the negative list. Therefore, if vacant land has a

Contact me on: +91 8285054506 Mail your views : - ketanhsardana@gmail.com

structure like storage shed or a green house built on it which is incidental to its use for agriculture then its lease would be covered under the negative list entry.

(v) Loading, unloading, packing, storage or warehousing of agricultural produce

(vi) Agricultural extension services

Agricultural extension means application of scientific research and knowledge to agricultural practices through farmer education or training **[Section 65B(4)]**.

(vii) Services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce

Agricultural Produce Marketing Committees or Boards are set up under a State Law for purpose of regulating the marketing of agricultural produce. Such marketing committees or boards have been set up in most of the States and provide a variety of support services for facilitating the marketing of agricultural produce by provision of facilities and amenities like, sheds, water, light, electricity, grading facilities etc. They also take measures for prevention of sale or purchase of agricultural produce below the minimum support price. APMCs collect market fees, license fees, rents etc. Services provided by such Agricultural Produce Marketing Committee or Board are covered in the negative list. However any service provided by such bodies which is not directly related to agriculture or agricultural produce will be liable to tax e.g. renting of shops or other property.

Service provided by commission agent for sale or purchase of agricultural produce are also covered under the negative list entry.

5. <u>Entry (e): Trading of goods</u>

The above entry refers to the activity of trading of goods.

Thus, the check has to be twofold –

(1) the activity should be of trading and

(2) trading, should be of goods.

Whether the following would be covered under trading of goods?

(a) Activities of a commission agent/CHA selling goods on behalf of another for a commission

The services provided by commission agent or a clearing and forwarding agent (CHA) are not in the nature of trading of goods. These are auxiliary for trading of goods. In terms of the provision of clause (1) of section 66F (discussed later in this chapter in heading 13.) reference to a service does not include reference to a service used for providing such service. Moreover the title in the goods never passes on to such agents to come within the ambit of trading of goods.

(b) Forward contracts in commodities

Forward contracts would be covered under trading of goods as these are contracts which involve transfer of title in goods on a future date at a pre-determined price.

(c) Commodity futures

Commodity futures would be covered under trading of goods. In commodity futures actual delivery of goods does not normally take place and the purchaser under a futures contract normally offset all obligations or closes out by selling an equal quantity of goods of the same description under another contract for delivery on the same date. These are in the nature of derivatives.

(d) Auxiliary services relating to future contracts or commodity futures

Such services provided by commodity exchanges clearing houses or agents would not be covered in the negative list entry relating to trading of goods.

Note: It is relevant to note here that in common parlance whenever the term 'trading' is used, it is considered as 'trading in goods'. The term 'trading of service' seems to be little uncommon to use but these kind of activities commonly takes place where a person procures services from one person and provides to another, practically such transactions most of the times get recognised as commission agent's services though may not be strictly commission based.

Goods 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 **[Section 65B(25)]**.

Securities include —

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
(ia) derivative;
(ib) Units or any other instrument issued by any collective investment scheme to the investors in such schemes;
(ii) Government securities;
(iia) such other instruments as may be declared by the central Government to be Securities; and
(iii) rights or interest in securities **[Section 65B(43)]**.

6. Entry (f): Processes amounting to manufacture or production of goods

Any process amounting to manufacture or production of goods shall not be taxable.

Points to be noted

- This entry covers **manufacturing activity carried out on contract or job work basis**, which does not involve transfer of title in goods, **provided** duties of excise are leviable on such processes under the Central Excise Act, 1944 or any of the State Acts.
- In other words, if Central Excise duty is leviable on a particular process, as the same amounts to manufacture, then such process would be covered in the negative list even if there is a central excise duty exemption for such process.
- However if central excise duty is wrongly paid on a certain process which does not amount to manufacture, with or without an intended benefit, it will not save the process on this ground.

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 or the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955) 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 **[Section 65B(40)]**.

7. Entry (g): Selling of space or time slots for advertisements other than advertisements broadcast by radio or television

This entry covers selling of space or time slots for advertisements other than advertisements broadcast by radio or television.

Taxable/Not covered by negative list entry (g)	**Non-taxable**
Sale of space or time for advertisement to be broadcast on radio or television	Sale of space for advertisement in print media
Sale of time slot by a broadcasting organization.	Sale of space for advertisement in bill boards public places (including stadia), buildings, conveyances, cell phones, automated teller machines, internet
	Aerial advertising*

*Aerial advertising is a form of advertising that incorporates the use of aircraft, balloons or airships to create, transport, or display, advertising media. The media can be static, such as a banner, logo, lighted sign or sponsorship branding. It can also be dynamic, such as animated, lighted or audio.

Advertisement means any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person **[Section 65B(2)].**

Points to be noted

1. Making or preparing advertisements

Services provided by advertisement agencies relating to making or preparation of advertisements would not be covered in this entry and thus, would be taxable. This would also not cover commissions received by advertisement agencies from the broadcasting or publishing companies for facilitating business, which may also include some portion for the preparation of advertisement.

2. Composite service of providing space for advertisement coupled with designing and preparation of the advertisement

In case a person provides a composite service of providing space for advertisement that is covered in the negative list entry coupled with taxable service relating to design and preparation of the advertisement, this would be a case of bundled services taxability of which has to be determined in terms of the principles laid down in section 66F (discussed later in this chapter in heading 13.) of the Act.

As per section 66F, if such services are bundled in the ordinary course of business then the bundle of services will be treated as consisting entirely of such service which determines the dominant nature of such a bundle.

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

3. Canvassing advertisement for publishing on a commission basis

Merely canvassing advertisement for publishing on a commission basis by persons/agencies is not covered in the negative list entry and is taxable.

8. <u>Entry (h): Access to a road or a bridge on payment of toll charges</u>

This entry covers the services of providing access to road and charging toll charges.

Whether the following are covered in this entry of negative list?

1. Access to national highways or state highways

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

2. Collection charges or service charges paid to any toll collecting agency

The negative list entry only covers access to a road or a bridge on payment of toll charges.

Services of toll collection on behalf of an agency authorized to levy toll are in the nature of services used for providing the negative list services. As per the principle laid down in sub section (1) of section 66F of the Act the reference to a service by nature or description in the Act will not include reference to a service used for providing such service.

9. <u>Entry (i): Betting, gambling or lottery</u>

Services in relation to betting, gambling or lottery are included in this entry.

Auxiliary services used for organizing/promoting betting/gambling events NOT covered

The auxiliary services that are used for organizing or promoting betting or gambling events are **NOT** covered in this entry. These services are in the nature of services used for providing the negative list services of betting or gambling. As per the principle laid down in sub section (1) of section 66F of the Act, the reference to a service by nature or description in the Act will not include reference to a service used for providing such service.

Betting or gambling means putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring **[Section 65B(15)]**.

10. <u>Entry (j): Entry to Entertainment Events and Access to Amusement Facilities</u>

Following two services are not taxable:-

(i) Entry to entertainment events

(ii) Access to amusement facilities

Points to be noted

1. Cultural programme, drama or a ballet held in an open garden and not in a theatre qualifies as an entertainment event

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

2. Standalone ride set up in a mall qualifies as an amusement facility

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

3. Entry to video parlors exhibiting movies played on a DVD player and displayed through a TV screen covered in the entry

Entry to video parlors exhibiting movies played on a DVD player and displayed through a TV screen is covered in the entry because such exhibition is an exhibition of cinematographic film.

4. Membership of a club DOES NOT qualify as access to an amusement facility

A club does not fall in the definition of an amusement facility. Hence, membership of a club does not mean access to an amusement facility.

5. Auxiliary services for organizing an entertainment event or for providing the entertainment to an entertainment event organizer NOT covered in this entry

Auxiliary services provided by a person, like an event manager, for organizing an entertainment event or by an entertainer for providing the entertainment to an entertainment event organizer would **NOT** be covered in this entry. Such services are in the nature of services used for providing the service specified in this negative list entry and would not be covered in the ambit of such specified service by operation of the rule of interpretation contained in clause (1) of section 66F of the Act.

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

2. Amusement facility means a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places but does not include a place within such facility where other services are provided **[Section 65B(9)]**.

11. <u>Entry (k): Transmission or distribution of electricity</u>

The above entry covers the services of transmission or distribution of electricity by an electricity transmission or distribution utility.

1. Electricity transmission or distribution utility means

- the Central Electricity Authority
- a State Electricity Board
- the Central Transmission Utility
- a State Transmission Utility notified under the Electricity Act, 2003
- a distribution or transmission licensee
- any other entity entrusted with such function by the Central or State Government **[Section 65B(23)]**.

12. <u>Entry (l): Specified services relating to education</u>

The following services relating to education are specified in the negative list –:-

(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.

(i) Pre-school education and education up to higher secondary school or equivalent

1. Services provided by **international schools** giving certifications like IB (International Baccalaureate) are also covered in this entry.

2. **Private tuitions** are NOT covered in this entry. Hence, they are liable to pay service tax if their aggregate values of taxable services exceed the threshold exemption.

3. **Boarding schools** provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of bundled services if the charges for education and lodging and boarding are inseparable. Their taxability will be determined in terms of the principles laid down in section 66F of the Act.

Such services in the case of boarding schools are bundled in the ordinary course of business. Therefore the bundle of services will be treated as consisting entirely of such service which determines the dominant nature of such a bundle. In this case since dominant nature is determined by the service of education other dominant service of providing residential dwelling is also covered in a separate entry of the negative list, the entire bundle would be treated as a negative list service.

(ii) Education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force

(a) In order to be covered in the negative list, a course should be recognized by an Indian law. Services provided by way of education as a part of a prescribed curriculum for obtaining a qualification recognized by a law of a **foreign country are NOT covered** in the negative list entry.
(b) If a course in a college leads to **dual qualification** only one of which is recognized by law, service in respect of each qualification would, therefore, be assessed separately.
Provision of dual qualifications is in the nature of two separate services as the curriculum and fees for each of such qualifications are prescribed separately. If an artificial bundle of service is created by clubbing two courses together, only one of which leads to a qualification recognized by law, then by application of the rule of determination of taxability of a service which is not bundled in the ordinary course of business contained in section 66F of the Act it is liable to be treated as a course which attracts the highest liability of service tax. However incidental auxiliary courses provided by way of hobby classes or extra-curricular activities in furtherance of overall well being will be an example of naturally bundled course. One relevant consideration in such cases will be the amount of extra billing being done for the unrecognized component viz-a-viz the recognized course.

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

(iii) Education as a part of an approved vocational education course
Approved vocational education course means,—
(i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961; or
(ii) a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Employment and Training, Union Ministry of Labour and Employment. **[Section 65B(11)]**.
Points to be noted
1. Educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses/ MNCs, who come to the institutes for recruiting candidates through campus interviews. Service tax is liable on services provided by such institutions in relation to campus recruitment as such services are not covered in the negative list.
2. Services of conducting admission tests for admission to colleges are exempt in case the educational institutions are providing qualification recognized by law for the time being in force.

13. Entry (m): Services by way of renting of residential dwelling for use as residence

The above entry covers services -
- by way of renting
- of a residential dwelling
- for use as residence

1. 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 **[Section 65B(41)]**.
2. Residential dwelling: The phrase 'residential dwelling' has not been defined in the Act. It has therefore to be interpreted in terms of the normal trade parlance as per which it is any residential accommodation, but does not include hotel, motel, inn, guest house, camp–site, lodge, house boat, or like places meant for temporary stay.

Renting of a residential dwelling which is for use partly as a residence and partly for non residential purpose like an office of a lawyer or the clinic of a doctor would also be a case of bundled services as renting service is being provided both for residential use and for non residential use. Taxability of such bundled services has to be determined in terms of the principles laid down in section 66F of the Act.

Whether the following renting transactions are included in the negative entry?

1. Residential house taken on rent used only or predominantly for commercial or nonresidential use

The said renting transaction is not covered in this negative list entry.

2. House given on rent and the same is used as a hotel or a lodge

The said renting transaction is not covered in this negative list entry because the person taking it on rent is using it for a commercial purpose.

3. Rooms in a hotel or a lodge let out whether or not for temporary stay

The said renting transaction is not covered in this negative list entry because a hotel or a lodge is not a residential dwelling.

4. Houses allotted by Government department to its employees and a license fee is Charged

Such service would be covered in the negative list entry relating to services provided by Government and hence non- taxable.

5. Furnished flats given on rent for temporary stay (a few days)

Such renting as residential dwelling for the bonafide use of a person or his family for a reasonable period shall be residential use; but if the same is given for a short stay for different persons over a period of time the same would be liable to tax.

14. <u>Entry (n): Specified financial services</u>

Following services are included in this entry:-

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

(ii) Services by way of inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.

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

Any such service wherein moneys due are allowed to be used or retained **on payment of interest or on a discount** are covered here. It is important to note that the words **'deposits, loans or advances'** have to be taken in the **generic** sense.

They would cover any facility by which an amount of money is lent or allowed to be used or retained on payment of what is commonly called the time value of money which could be in the form of an interest or a discount.

Examples of services covered in this entry:

- Loan or overdraft facility or a credit limit facility provided in consideration for payment of interest.
- Mortgages or loans with a collateral security to the extent that the consideration for advancing such loans or advances are represented by way of interest.
- Fixed deposits or saving deposits or any other such deposits in a bank or a financial institution for which return is received by way of interest.
- Corporate deposits to the extent that the consideration for advancing such loans or advances are represented by way of interest or discount.

Note: This entry would not cover investments by way of equity or any other manner where the investor is entitled to a share of profit.

Whether the following financial transactions are covered in this negative list entry?

S. No.	If	Then
1.	any service charges or administrative Charges or entry charges are recovered in addition to interest on a loan, advance or a deposit	such charges or amounts collected over and above the interest or discount amounts would not be part of this negative entry and thus would represent taxable consideration
2.	there is invoice discounting or cheque	such discounting is covered only to the extent

	discounting or any other similar form of discounting	consideration is represented by way of discount as such discounting is nothing else but a manner of extending a credit facility or a loan.
3.	services are provided by banks or authorized dealers of foreign exchange by way of sale of foreign exchange to general public	such services would not be covered in this entry because this entry only covers sale and purchase of foreign exchange between banks or authorized dealers of foreign exchange or between banks and such dealers.
4.	transactions are entered into by banks in instruments like repos and reverse repos*	they are more appropriately excluded from the definition of service itself being the sale and purchase of securities, which are goods.
5.	there is a subscription to or trading in Commercial Paper (CP) or Certificates of Deposit (CD)**	since these are instruments for lending or borrowing money wherein consideration is represented by way of a discount, issue or subscription to CPs or CDs, they would be covered in the negative list entry relating to 'services by way of extending deposits, loans or advances in so far as consideration is represented by way of interest or discount'. It may also be borne in mind that promissory note is included in the definition of money in the Act as given in clause (33) of section 65B.

***Repos and reverse repos** are financial instruments of short term call money market that are normally used by banks to borrow from or lend money to RBI. The margins, called the repo rate or reverse repo rate in such transactions are nothing but interest charged for lending or borrowing of money.
****Commercial Paper ('CP') and Certificate of Deposit ('CD')** are understood as unsecured money market instruments which may be issued in the form of a promissory note or in a dematerialized form through any of the depositories approved by and registered with SEBI.
CPs are normally issued by highly rated companies, primary dealers and financial institutions at a discount to the face value. CDs can be issued by Scheduled Commercial Banks (excluding RRBs and Local Area Banks) and All – India Financial Institutions (FIs) permitted by RBI.

Illustration: Euro Bank Ltd. furnishes the following information relating to services provided and the gross amount received:

Particulars	**Amount (`)**
Interest on overdraft	5,00,000
Interest on loans with a collateral security	6,00,000
Interest on corporate deposits	10,00,000
Administrative charges (over and above interest) on loans, advances and deposits	6,00,000
Sale of foreign exchange to general public	15,00,000*
Service charges relating to issuance of Certificates of Deposit (CDs)	20,00,000

Compute the value of taxable service and the service tax liability of Euro Bank Ltd. considering the rate of service tax at 12% assuming that it is not eligible for small service providers' exemption under *Notification No. 33/2012 – ST dated 20.06.2012*.
*It represents the value of taxable service computed as per rule 2B of the Service Tax Valuation Rules.

Solution:

Computation of value of taxable service and service tax liability of Euro Bank Ltd.:-

Particulars	**Amount (`)**
Interest on overdraft (Note-1)	Nil
Interest on loans with a collateral security (Note-1)	Nil

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Interest on corporate deposits (Note-1)	Nil
Administrative charges (over and above interest) on loans, advances and deposits (Note-2)	6,00,000
Sale of foreign exchange to general public (Note-3)	15,00,000
Service charges relating to issuance of CD (Note-4)	20,00,000
Value of taxable service	41,00,000
Service tax @ 12% [` 41,00,000×12%]	4,92,000
Education cess @ 2% [` 4,92,000×2%]	9,840
Secondary and higher education cess @ 1% [` 4,92,000×1%]	4,920
Service tax liability	5,06,760

Notes:

1. Following services provided in consideration of payment of interest are included in the negative list and hence are not taxable:-
   - Overdraft facility.
   - Loans with a collateral security.
   - Corporate deposits.

2. Administrative charges or amounts collected over and above the interest or discount amounts would not be part of the negative list and thus would represent taxable consideration.

3. Sale of foreign exchange between banks or by banks to authorized dealers of foreign exchange is included in the negative list. However, sale of foreign exchange to general public is not so covered and hence taxable.

4. Since CDs are in the nature of promissory notes, transactions in CDs shall be considered as transaction in money. However, a related activity, for which a separate consideration is charged would not be treated as a transaction of money and would be taxable. Hence, service charges relating to issuance of CDs shall be chargeable to service tax.

15. <u>Entry (q): Funeral, burial, crematorium or mortuary services</u>

Funeral, burial, crematorium or mortuary services including transportation of the deceased are included in this entry and hence are not liable to service tax.

<u>EASIEST WAY TO LEARN NEGATIVE LIST :-</u>

IN alphabetic order.
A - Advertisement (except on radio & T.V.)
B - Bridges
C - Cabs (means transportation of passengers)
D - Diplomatic mission
E - Electricity
F - Funeral (includes transportation of deceased)
G - Goods Transportation
H - House Residential
I - Interest
J - Jhule (Rides)
K - Kheti (agriculture)
L - Lottery
M- Manufacture
Q - Qualification (education)
R -RBI
S - Sarkar (government)
T –Trading of Goods

PRACTICE MANUAL

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

Question3
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, 1994 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 in case of conflict Act will prevail.
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
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 and 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	"Advertisement" means any form of presentation for promotion of, or bringing awareness about any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person.	65B(2)
(ii)	Business Entity	"Business Entity" means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession.	65B(17)
(iii)	Goods	"Goods" 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	"Goods Transport Agency" means any person who provides service in relation to transport of goods by road and issue consignment note, by whatever name called.	65B(26)

(v)	Process amounting to manufacture	"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 the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955) 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.	65B(40)
(vi)	Renting	"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.	65B(41)
(vii)	Support Services	"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.	65B(49)
(viii)	Bundled Service	"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. In order to truly appreciate the concept of 'bundled service', a couple of examples are given below: (A) Service of stay in a hotel is often combined with a service of laundering of certain specified items of clothing per day. (B) Transport by air is often combined by catering on board.	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 and service recipient shall be liable to pay service tax under Reverse Charge.

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

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REGISTRATION

Registration Section 69/Rule 4(1) of STR, 1994

A service provider can charge service tax only if he is registered with the Service Tax Department.

Every service provider in whose case, gross receipt has exceeded `9,00,000 shall apply for registration to the Service Tax Department in Form No ST-1 within 30 days from the date of crossing the limit of `9,00,000, however, he will charge service tax after crossing the limit of `10,00,000. He will also submit a copy of Permanent Account Number and proof of residence. Department shall grant him a registration certificate in Form No ST-2 within 7 days from the date of receipt of application otherwise the service provider shall be deemed to be registered.

The service provider shall be given a Registration Number by the Department which will be called STP code i.e. Service Tax Payer Code and it will be 15 digit PAN based number and first 10 digit shall be that of PAN and remaining 5 digit shall be allotted by Service Tax Department e.g. AAEPC1298D – ST-001

The last three digit shall indicate total number of registration for the same Permanent Account Number.

If a person is providing more than one taxable service, he may give only one application. He should mention in the application all the taxable services provided by him.

A person may apply for voluntary registration at any time and also a person may forgo (reject) the general exemption of `10,00,000.

As per section 77, any person who has failed to take registration shall be liable to a penalty which may extend to `10,000.

Centralised Registration Rule 4(2) of STR, 1994

If a service provider is providing services from more than one premises, in such cases he can apply for separate registration for each of such premises. He may apply for a single registration called Centralized Registration provided he has either centralized accounting or centralized billing system. In such cases one of the places shall be considered to be Head Office and all other premises shall be considered to be branches. A single registration certificate shall be issued. If the service provider do not have centralized accounting and also there is no centralized billing system, he will not be allowed to apply for centralized registration.

Amendment of Registration Certificate Rule 4(5A) of STR, 1994

A service provider may apply for amendment in registration in the following cases:

1. Change in place of business
2. Change in the name of business
3. Change in services rendered i.e. there may be addition / deletion
4. Any other similar change

If there is any such change, service provider should apply to the department within 30 days for effecting the change.

Cancellation of Registration Certificate Rule 4(7), 4(8) of STR, 1994

Every registered assessee, who ceases to provide the taxable service for which he is registered or if he dies, registration certificate shall be cancelled.

The Superintendent of Central Excise shall ensure that the assessee has paid all monies due to the Central Government under the provisions of the Act, and the rules and the notifications issued thereunder, and thereupon cancel the registration certificate.

Where a registered assessee transfers his business to another person, the transferee shall obtain a fresh certificate of registration.

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POINT OF TAXATION

1. Introduction

Point of taxation means the point in time when a service shall be deemed to have been provided. The point of taxation enables us to determine the rate of tax, value of taxable service, rate of exchange and due date for payment of service tax. For determination of point of taxation of a service, Point of Taxation Rules, 2011 were introduced with effect from 01.04.2011. These rules were introduced as a precursor to Goods and Service Tax. They 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 shifted the point of taxation for service tax from receipt basis to hybrid basis. As per these rules, point of taxation is –

- the time when the invoice for the service provided or agreed to be provided is issued;
- if invoice is not issued within prescribed time period (30 days except for specified financial sector where it is 45 days) of completion of provision of service, then the date of completion of service;
- the date of receipt of payment where payment is received before issuance of invoice or completion of service.

Therefore agreements to provide taxable services will become liable to pay tax only on issuance of invoice or date of completion of service if invoice is not issued within prescribed period of completion or on receipt of payment.

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

2. Determination of point of taxation-General rule [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/ agreed to be provided is issued.

However, in case the invoice is not issued **within the time period specified in rule 4A of the Service Tax Rules, 1994 (30 or 45 days, as the case may be)** 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.

For the purposes of clauses (a) and (b), -

(i) in case of continuous supply of service 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 receiver of service 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;

(ii) wherever the provider of taxable service receives a payment up to ` 1,000 in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined in accordance with the provisions of clause (a) [Proviso to rule 3].

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 **30* days** from the date of completion of provision of service	(a) Date of invoice or

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		(b) Date of payment whichever is earlier
2.	the invoice is not issued within the prescribed period of **<u>30* days</u>** 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:-

<table>
<tr><th>Case</th><th>In case where</th><th colspan="2">Point of taxation</th></tr>
<tr><td>I</td><td>Invoice is issued within <u>30* days</u> from the completion of service and payment is received after invoice</td><td colspan="2">Date of invoice</td></tr>
<tr><td>II</td><td>Invoice is issued within <u>30 *days</u> from the completion of service, but payment is received before invoice</td><td colspan="2">Date on which payment is received.</td></tr>
<tr><td>III</td><td>Invoice is not issued within <u>30* days</u> from the completion of service and payment is received after completion of service.</td><td colspan="2">Date of completion of service</td></tr>
<tr><td rowspan="3">IV</td><td rowspan="3">Invoice is not issued within <u>30* days</u> from the completion of service. However, part payment is received before the completion of service and remaining payment is received after the completion of service.</td><td>For the payment received</td><td>Point of taxation is</td></tr>
<tr><td>Before the date of completion of service</td><td>The date on which payment is received.</td></tr>
<tr><td>After the date of completion of service</td><td>The date of completion of service.</td></tr>
</table>

*** 45 days in case of in case of banking and other financial institutions including NBFCs.**

3. 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:-

<table>
<tr><th>In case a taxable service has been provided</th><th>Invoice has been issued</th><th>Payment received for the invoice</th><th>Point of taxation shall be</th></tr>
<tr><td rowspan="3">(i) BEFORE the change in effective rate of tax</td><td>AFTER the change in effective rate of tax</td><td>AFTER the change in effective rate of tax</td><td>(a) date of issuance of invoice
or
(b) date of receipt of payment
whichever is earlier</td></tr>
<tr><td>PRIOR to the change in effective rate of tax</td><td>AFTER the change in effective rate of tax</td><td>date of issuance of invoice</td></tr>
<tr><td>AFTER the change in effective rate of tax</td><td>PRIOR to the change in effective rate of tax</td><td>date of receipt of payment</td></tr>
<tr><td>(ii) AFTER the change in effective</td><td>PRIOR to the change in effective rate of tax</td><td>AFTER the change in effective rate of tax</td><td>date of receipt of payment</td></tr>
</table>

rate of tax.	**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

4. Payment of tax in cases of new services [Rule 5]

Where a service 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 14 days of the date when the service is taxed for the first time.**

ANALYSIS

This rule specifically discusses the situation where a 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 14 days of the date when the service is taxed for the first time.**

****It is important to note that in case of new levy, time-period available for the issuance of the invoice has still been restricted to 14 days as against normal time-period for issuance of invoice been extended to 30 days.**

5. Determination of point of taxation in case of associated enterprises [Rule 7]

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 debit in the books of account of the person receiving the service

or

(b) date of making the payment

whichever is earlier.

Associated enterprise shall have the meaning assigned to it in section 92A of the Income-tax Act, 1961*** [Section 65B(13)].**

An enterprise which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise is considered as associated enterprise.

*Section 92A of the Income-tax Act, 1961 has been discussed in detail in the Study Material of Paper 7: Direct Tax Laws of CA Final Exam

Illustration : Sambhav Industries Ltd. (SIL) is an Indian Company. It has received taxable services from a UK based company-George Ltd. on 01.01.2014. George Ltd. raised on SIL an invoice of £ 45,000 on 27.01.2014. SIL debited its books of accounts on 07.02.2013 and made the payment on 25.03.2014.
George Ltd. and SIL are associated enterprises. Determine the point of taxation using aforesaid details.

Solution:

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 debit in the books of account of the person receiving the service
or
(b) date of making the payment
whichever is earlier.

Hence, in the given case, the point of taxation shall be earlier of the following two dates:-
(a) the date of debit in the books of account of SIL i.e. 07.02.2014
or
(b) date of making the payment i.e. 25.03.2014
Thus, the point of taxation is 07.02.2014.

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. Determination of point of taxation in other cases [Rule 8A]

Rule 8A is the residual rule to determine the point of taxation by way of best judgment to handle situations where the tax-payer is unable to furnish one or more of the details needed i.e. date of payment or date of invoice or both to determine point of taxation. It provides as follows:-
Where the point of taxation cannot be determined as per these rules as the date of invoice or the date of payment or both are not available, the Central Excise Officer, may, require the concerned person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account such material and the effective rate of tax prevalent at different points of time, shall, by an order in writing, after giving an opportunity of being heard, determine the point of taxation to the best of his judgment.

IMPORTANT DEFINITIONS
POT RULES, 2011

1. Definitions under rule 2

In these rules, unless the context otherwise requires,

(a) Act means the Finance Act, 1994.

(b) Continuous supply of service means

(i) any service which is provided, or agreed to be provided continuously **or on recurrent basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time,** **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) Telecommunication Services

(ii) Works Contract Services

(c) 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.

(d) Point of taxation means the point in time when a service shall be deemed to have been provided.

(e) "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 in the Official Gazette under the provisions of the Act, or rules made there under.

2. Definition of date of payment under rule 2A

Date of payment shall be:-

(a) date on which the payment is entered in the books of accounts or

(b) date on which payment is credited to the bank account of the person liable to pay tax whichever is earlier.

(A) Date of payment in case of change in effective rate of tax or a new levy between the above two dates

In case,

(i) there is a change in effective rate of tax or when a service is taxed for the first time during the period between such entry in books of accounts and its credit in the bank account;

(ii) the bank account is credited after four working days from the date when there is change in effective rate of tax or a service is taxed for the first time; and

(iii) the payment is made by way of an instrument which is credited to a bank account,

the date of payment shall be the date of credit in the bank account instead of the date of recording of payment in the books of accounts.

Analysis

Since rate of service tax has been changed from 10% to 12% with effect from 01.04.2012,

(i) In case where service has been provided before 01.04.2012 and the cheque / demand draft etc. has been received upto March 31, 2012, applicable rate of service tax would be 10% provided cheque / demand draft is credited in the bank account by April 5, 2012. Otherwise, the date of payment would be date of credit in the bank account [viz. after April 5, 2012] and consequently, new rate of 12% would be applicable.

(ii) In case where date of issuance of invoice and receipt of payment by cheque / demand draft etc. is received before 01.04.2012, applicable rate of service tax would be 10% provided cheque / demand draft etc. is credited in the bank account by April 5, 2012. Otherwise, the date of payment would be date of credit in the bank account [viz. after April 5, 2012] and consequently, new rate of 12% would be applicable.

<u>(B) If any rule requires determination of the time or date of payment received:</u> the expression "date of payment" shall be construed to mean such date on which the payment is received.

PRACTICE MANUAL

Question 1

Nikhil Ltd. provides Management Consultancy Services to its client Aggarwal Properties Ltd. for agreed consideration of `1,50,000. Aggarwal Properties Ltd. makes the payment on 25th April, 2013. However, the date of completion of service is 15th April, 2013. The relevant invoice for `1,50,000 is raised by Nikhil Ltd. as per following table:

CASE I	30th April, 2013
CASE II	16th May, 2013
CASE III	20th April, 2013

Determine Point of Taxation in each of the above three cases.

Answer

As per Rule 3 of the Point of Taxation Rules, point of taxation would be determined as follows:-

1. Date of invoice or payment, whichever is earlier, if the invoice is issued within 30 days from the date of completion of service.
2. Date of completion of provision of service or payment, if the invoice is not issued within 30 days.

Point of Taxation in each of the above three cases will be as under:

CASE I-The point of taxation is date of payment [25th April,2013] as date of payment [25.04.2013] falls before date of issuance of invoice[30.04.2013] and invoice has been issued within 30 days of completion of service.[15.04.2013].

CASE II- The point of taxation is date of completion of service [15th April, 2013] as date of completion of service [15.04.2013] falls before date of payment [25.04.2013] and invoice [16.05.2013] has not been issued within 30 days of completion of service [15.04.2013].

CASE III- The point of taxation is 20th April, 2013 as date of invoice [20.04.2013] falls before date of payment [25.04.2013] and invoice has been issued within 30 days of completion of service [15.04.2013].

Question 2

Briefly answer the following questions:-

(a) Where a service provider maintains books of accounts on mercantile basis relating to taxable services provided by him, will service tax be payable on accrual basis?

(b) A particular service has been brought into the service tax net with effect from 01.07.2013.Mr. Vignesh has provided this service on 20.6.2013 and issued the invoice on 02.07.2013,the payment for the same was received on 10.7.2013. Is service tax payable on the same?

Answer

(a) Service tax is payable as per Point of Taxation Rules, 2011 and the method of accounting is irrelevant for making payment of service tax.

(b) Payment of tax in cases of new services [Rule 5 of Point of Taxation Rules 2011]

Where a service 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 14 days of the date when the service is taxed for the first time.

The facts given in the question does not fall under any of the above two clauses. Hence service tax is payable on the same.

Question 3

Ajay Ltd. has agreed to render services to Mr. Guru. The following are the chronological events:

Particulars	`
Contract for services entered into on 31.8.2013	
Advance received in September, 2013 towards all services	60,000
Total value of services, billed in February, 2014	2,10,000
Above includes non-taxable services of	70,000
Balance amount is received in March, 2014	

When does the liability to pay service tax arise and for what amount? Contract contains clear details of services; consideration and service tax are charged separately, as mutually agreed upon.

Answer

As per Rule 3 of point of taxation Rules, 2011,

The point of taxation shall be -

(a) the time when the invoice for the service provided/ agreed to be provided is issued. However, in case the invoice is not issued within 30 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.

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.

Advance portion

Particulars	`
Advance received towards all services in September, 2013	= 60,000
Amount billed for taxable services	= 2,10,000 – 70,000
	= 1,40,000
Advance received towards taxable services	$= \left[60{,}000 \times \frac{1{,}40{,}000}{2{,}10{,}000}\right]$
	= 40,000
Service tax @ 12% (since, service tax is charged separately)	= 40,000 x 12%
	= 4,800
Education cess @ 2%	= 96
Secondary and higher education cess @ 1%	= 48
Total service tax liability	= 4,944

In this case, the due date for payment of service tax will be 5th October, 2013.

Balance portion

Particulars	`
Amount billed for taxable services	= `1,40,000
Advance received towards taxable services	= 40,000
Amount billed but not received towards taxable services	= `(1,40,000 – 40,000)
	= 1,00,000
Service tax @ 12%	= 1,00,000 x 12%
	= 12,000
Education cess @ 2%	= 240
Secondary and higher education cess @ 1%	= 120
Total service tax liability	= 12,360

In this case, the due date for payment of service tax will be 5th March, 2014.

Question 4

Determine the Point of Taxation in each of following independent cases in accordance with **Point of Taxation Rules, 2011:**

S. No.	Date of completion of service	Time [date] of invoice	Date on which payment received
1.	10.04.2013	05.05.2013	20.05.2013
2.	10.04.2013	05.05.2013	25.04.2013
3	10.04.2013	05.05.2013	25.04.2013 (part) and 20.05.2013 (remaining)
4.	10.04.2013	05.05.2013	O6.04.2013 (part) and 09.04.2013 (remaining)
5.	10.04.2013	05.05.2013	06.04.2013 (part) and 01.05.2013 (remaining)
6.	10.04.2013	16.05.2013	20.05.2013
7.	10.04.2013	16.05.2013	05.04.2013 (part) and 14.05.2013 (remaining)

Answer

The provisions of Rule 3 of Point of Taxation Rules are given below in Tabular Format for easy recap:

Relevant Clause and Rule	Time of Issue of Invoice	Point of Taxation unless otherwise specified
Clause (a) of Rule 3	Within the time period specified in Rule 4A of the Service Tax Rules, 1994 i.e. thirty days (or forty five days for banks and financial institutions) from the date of **completion** of the service	Time of issuance of invoice
	According to substituted proviso to Rule 3(a) with effect from 01.04.2012 if invoice is Not issued within [i.e. After] thirty days (or forty five days for banks and financial institutions)from the date of completion of the service	Date of Completion of provision of service
Clause (b) of Rule 3	If, service provider receives any payment before time specified in clause (a) above i.e. before the issuance of invoice or before date of completion of service as the case may be.	Time [Date] of Payment to the extent it is received.

Note in respect of receipt of advance: According to Explanation appended to this Rule 3 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

Point of Taxation in each of above cases has been given in following table:

S. No.	Date of Completion of service	Time [Date] of Invoice, Bill or Challan as the case may be	Date on which payment received	Point of Taxation	Remarks
1.	10.04. 2013	5.05.2013	20.05.2013	05.05.2013	Invoice issued within 30 days and before receipt of payment.
2.	10.04.2013	5.05.2013	25.04.2013	25.04.2013	Invoice issued within 30 days but payment received before invoice.
3.	10.04. 2013	5.05.2013	Part payment on 25.04.2013 remaining on 20.05.2013	25.04.2013 for the part payment and 5.05.2013 for	Invoice issued within 30 days. Part payment received before

				the remaining amount	invoice and remaining payment after invoice.
4.	10.04. 2013	5.05.2013	Part payment on 6.04.2013 and remaining on 09.04.2013	06.04.2013 and 09.04.2013 for the respective amount	Invoice issued within 30 days. However, the **advance** has been received in two installments before the date of completion of service. Thus, date of receipt of each such advance shall be treated as point of taxation.
5.	10.04. 2013	5.05.2013	Part payment on 06.04.2013 and remaining on 01.05.2013	06.04.2013 and 1.05.2013 for the respective amount	Invoice issued within 30 days. Part payment [in the form of **advance]** received before issue of invoice and remaining payment received before issuance of Invoice
6.	10.04. 2013	16.05.2013	20.05.2013	10.04.2013	Invoice **not issued** within 30 days and payment received after completion of service. Thus. Point of Taxation is Date of completion of service.
7.	10.04. 2013	16.05.2013	Part payment on 05.04.2013 and remaining on 14.05.2013	05.04.2013 and 10.04.2013 for Respective amounts	Invoice **not issued** within 30 days. Part payment received **as advance** before completion of service and remaining payment received after completion of service

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Question 5

A service becomes taxable with effect from **01.07.2013.** Determine in each of the following independent cases whether service tax is leviable in accordance with Point of Taxation Rules, 2011?

Case	Date of Issuance of Invoice	Date of receipt of payment
I	25.06.2013 for `1,00,000	26.06.2013 for ` 1,00,000
II	25.06.2013 for ` 1,00,000	26.06.2013 for ` 60,000
III	25.06.2013 for `60,000	26.06.2013 for ` 1,00,000
IV	24..06.2013 for `1,00,000	20.06.2013 for ` 1,00,000
V	03.07.2013 for ` 1,00,000	30.06.2013 for ` 1,00,000
VI	24.07.2013 for ` 1,00,000	20.06.2013 for ` 1,00,000

Answer

According to substituted Rule 5 of Point of Taxation Rules, 2011 with effect from 01.04.2012, where a service is taxed for the **first time**, then Point of Taxation will be determined in the following manner:

Relevant Rule of POT Rules, 2011	Time of Issue of Invoice	Time of receipt of payment	Position of Taxability
Rule 5(a)	Before the date such service becomes taxable for the first time	Before the date such service becomes taxable for the first time	Not-Taxable **to the extent of** issue of invoice and receipt of payment against such invoice.
Rule 5(b)	Issue of invoice within fourteen days of the date when the service is taxed for the first time.	Before the date such service becomes taxable for the first time	Not Taxable if the payment has been received before the service become taxable and invoice has been issued within fourteen days of the date when the service is taxed for the first time.

In the light of above provisions of Rule 5 of POT Rules, 2011 the position of taxability in each of cases given in the question will be as under:

<table>
<tr><th>Date of Issuance of Invoice</th><th>Date of receipt of payment</th><th colspan="3">Position of Taxability</th></tr>
<tr><td>25.06.2013 for ` 1,00,000</td><td>26.06.2013 for `1,00,000</td><td colspan="3">Not-Taxable to the extent of issue of invoice and receipt of payment against such invoice before such service becomes taxable i.e. entire amount of `1,00,000 in this case.</td></tr>
<tr><td>25.06.2013 for ` 1,00,000</td><td>26.06.2013 for `60,000</td><td colspan="3">Not-taxable to the extent of `60,000 because against the invoice of `1,00,000 only part payment to the extent of `60,000 has been received before such service becomes taxable for the first time. In other words, `40,000 received after such service become taxable [i.e. after 01.07.2013] will be subject to service tax.</td></tr>
<tr><td rowspan="3">25.06.2013 for ` 60,000</td><td rowspan="3">26.06.2013 for `1,00,000</td><td colspan="3">Not-taxable to the extent of ` 60,000 because of Rule 5(a) of this Rule i.e. to the extent of issue of invoice and receipt of payment against such invoice before such service becomes taxable.<br>The taxability of remaining ` 40,000/- will be determined in the following manner:</td></tr>
<tr><th>Time of Issuance of Invoice</th><th>Time of Receipt of Payment</th><th>Position of Taxability</th></tr>
<tr><td>If invoice for `40,000 is issued</td><td>Before the date such Service becomes</td><td>Not Taxable because the situation will</td></tr>
</table>

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		within 14 days [i.e. latest by 14.07.2013 in the present case] from the date such service becomes taxable.	taxable for the first time	be squarely covered by Rule 5(b).
		If invoice for `40,000/- is not issued within 14 days [i.e. after 14.07.2013 in the present case] from the date such service becomes taxable.	Before the date such service becomes taxable for the first time	Taxable because neither the requirement of Rule 5(a) nor Rule 5(b) is met.
24.06.2013 for `1,00,000	20.06.2013 for ` 1,00,000	**Not Taxable** as the payment has been received before the service became taxable and invoice has also been issued before such service became taxable.		
03.07.2013 for ` 1,00,000	30.06.2013 for `1,00,000	No Tax shall be payable because payment has been received before the service becomes taxable and invoice has been issued within 14 days of the date when the service is taxed for the first time.		
24.07.2013 for ` 1,00,000	20.06.2013 for ` 1,00,000	Taxable because essential requirement of issue of invoice within 14 days of the date when service is taxed for the first time is not met.		

Question 6

Kirti Ltd is the owner of a coal-mine in Bihar. It obtained a patent from the concerned competent authorities in relation of foregoing coal-mine in February, 2012. Further, the company has entered into an agreement with ABC Ltd in **April, 2012** for allowing the latter party to extract coals for the next three years. The consideration payable by ABC Ltd. For using the coal-mine has been fixed @ `1000 per tonne. The quantum of coal extracted by ABC Ltd and other relevant details are given in the following table:

Relevant Year	**Relevant Output (in Tonnes]**	**Consideration for using the coal-mine @ `1000/- per tonne**	**Date of Issuance of Invoice**	**Date of Receipt of Payment**
2012-13	2,000	20,00,000	05.07.2013	26.08.2013
2013-14	3,000	30,00,000	13.04.2014	03.04.2014
2014-15	4,000	40,00,000	11.04.2015	20.07.2015

Note: Kirti Ltd. has not exercise the option given under rule 9 and applied Point of Taxation Rule from April 1, 2012 itself.

Answer

It is pertinent to clarify here that in the present question, Kirti Ltd. is the service provider and ABC Ltd. is the service recipient. Since whole amount of the consideration for the provision of patent is not ascertainable at the time when service was performed and subsequently the use of these services by a person other than the provider gives right to any payment of consideration, both the conditions specified in Rule 8 of POT Rules, 2011 get satisfied. The Point of Taxation of Kirti Ltd. for the various Financial Years has been exhibited in the following table:

Point of Taxation For Various Financial Years As Per Rule 8

Earlier of the following two:

(i) Date of Issuance of Invoice;

(ii) Date of receipt of payment.

It is worth highlighting that Point of Taxation is to be determined in the above manner **each time** on the occurrence of earlier of the above two events.

Point of Taxation	**Reason/Remarks**
05.07.2013	Date of Issuance of Invoice[05.07.2013] falls before Date of Payment[26.08.2013]
03.04.2014	Date of Payment [03.04.2014] precedes Date of Issuance of Invoice[13.04.2014]
11.04.2015	Date of Issuance of Invoice[11.04.2015] falls before Date of Payment[20.07.2015]

VALUATION OF TAXABLE SERVICE

Learning objectives

After reading this chapter you will be able to understand the:

♦ provisions relating to valuation of taxable services for charging service tax.

♦ concept of gross amount charged and consideration for taxable services.

1. Valuation of taxable services for charging service tax [Section 67]

Section 67 provides for the valuation of taxable services. The provisions of this section are discussed below:

(1) Consideration in terms of money

If the consideration for a taxable service is in terms of money, the value of such service shall be the gross amount charged by the service provider for such service provided or to be provided by him.

(2) Consideration not wholly or partly in terms of money

If the consideration for a taxable service is not wholly or partly in terms of money, then the value of such service shall be such amount in money, with the addition of service tax charged, is equivalent to the consideration.

(3) Consideration not ascertainable

If the consideration for a taxable service is not ascertainable, the value of such service shall be the amount as may be determined in the prescribed manner.

(4) Where the gross amount charged is inclusive of service tax payable

Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

Illustration

Rishabh provides a taxable service to Padam for a consideration of `10,000 inclusive of service tax at 12.36%. The value, in such case, shall be computed as $\frac{10{,}000}{1.1236}$ or $\left[10{,}000\times\frac{100}{112.36}\right]=$ `8,900

(5) Gross amount charged includes amount received before/during/after the provision of such service

The gross amount charged for the taxable service shall include any amount received towards the taxable service either before, during or after the provision of such service.

(6) Subject to the aforementioned provisions mentioned, the value of a taxable service shall be determined in such manner as may be prescribed.

1. Gross amount charged includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment, and 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, where the transaction of taxable service is with any associated enterprise.

2. Consideration includes any amount that is payable for the taxable services provided or to be provided.

2. Service Tax (Determination of Value) Rules, 2006

Notification No.12/2006-ST, *dated 19.04.2006* has notified the Service Tax (Determination of Value) Rules, 2006. They have come into force from 19.04.2006.

2.1 Definitions [Rule 2]

Value: "**Value**" shall have the meaning assigned to it in section 67 **[Clause (c)]**.

The words and expressions used in these rules and not defined but defined in the Finance Act, 1994 shall have the meaning respectively assigned to them in the Act.

2.2 Determination of value of service in relation to money changing [Rule 2B]

Rule 2B provides the manner of determination of the value of taxable service provided so far as the services so provided 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.

***Note: 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.

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

RBI reference rate for US$ is `45.50 for that day.

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

= `(45.50 - 45) × 1,000

= ` 0.50 × 1,000

The taxable value shall be `500.

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

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

The taxable value shall be `1,000.

(b) 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.

Illustration 2: (i) Siddhi Ltd. exported some goods to Samson Inc. of USA. It received US $ 9,000 as consideration for the same and sold it @ ` 44 per US dollar. Compute the value of taxable service under rule 2B of the Service Tax (Determination of Value) Rules, 2006 in the following cases:-

(a) RBI reference rate for US dollar at that time is ` 45 per US dollar.

(b) RBI reference rate for US dollars is not available.

(ii) What would be the value of taxable service if US $ 9,000 are converted into UK £ 4,500. RBI reference rate at that time for US $ is ` 46 per US dollar and for UK £ is ` 88 per UK Pound.

Solution:

(i) (a) 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.

Hence, in the given case, value of taxable service would be as follows:-

(RBI reference rate for $ – Selling rate for $) × Total units of US $

= ` (45-44) × 9,000

= ` 9,000

(b) If 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 .

Hence, in the given case, value of taxable service would be as follows:-

1% of ` (44 × 9,000)

=` 3,960

(ii) 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.

Hence, in the given case, value of taxable service would be 1% of the lower of the following:-

(a) US dollar converted into Indian rupees = $ 9,000 × ` 46
= ` 4,14,000

(b) UK pound converted into Indian rupees = £ 4,500× ` 88
= ` 3,96,000

Value of taxable service = 1% of ` 3,96,000
= ` 3,960

PRACTICE MANUAL

Question 1

Will the payment to a hotelier of ` 10,000 on behalf of an architect, the service provider by a service receiver be included in the value of taxable services?

Answer

Service tax chargeable on any taxable service is on the basis of gross amount charged by service provider for such service provided or to be provided by him. It is not necessary that the service receiver should pay the consideration only to the service provider; any money paid to the third party is also includible. Hence, the hotel bill met by the client would be includible in the value of taxable services.

Question 2

Answer the following questions:

(a) Can it be said that if the taxable service is not capable of ascertainment, the same cannot form part of value of taxable services?

(b) How is the value of taxable services determined when the consideration against taxable services is received in other than monetary terms?

Answer

(a) No, it cannot be said so. The provisions of section 67 states clearly that if the consideration for a taxable service is not ascertainable, the value of such service shall be the amount as may be determined in the manner prescribed under the Service Tax (Determination of Value) Rules, 2006.

(b) Section 67 of the Finance Act, 1994 provides that if the consideration for a taxable service is not wholly or partly in terms of money, then the value of such service shall be such amount in money, with the addition of service tax charged, is equivalent to the consideration.

Question 3

Ms. Priya rendered a taxable service to a client. A bill for ` 40,000 was raised on 29.04.2013; ` 15,000 was received from the client on 01.05.2013 and the balance on 23.05.2013. No service tax was separately charged in the bill. The questions are:

(a) Is Ms. Priya liable to pay service tax, even though the same has not been charged by her?

(b) In case she is liable, what is the value of taxable service and the service tax payable?

Answer

Section 68 of the Finance Act, 1994 casts the liability to pay service tax upon the service provider .This liability is not contingent upon the service provider realizing or charging the service tax at the prevailing rate. The statutory liability does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver. Hence, Ms. Priya is liable to pay service tax.

However, sometimes it may happen that the assessee is not able to charge service tax because of the nature of service or he fails to recover the service tax from the client / customer as he is not aware that his services are taxable. Hence, in these cases, the amount recovered from the client in lieu of having rendered the service will be taken to be inclusive of service tax and accordingly tax payable will be calculated by making back calculations.

The rates of service tax payable are:

Basic rate	12%
Education cess (2% of 12%)	0.24%
Secondary and higher education cess (1% of 12%)	0.12%
Effective rate of service tax	12.36%

As per Rule 3 of point of taxation Rules, 2011,

The 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 30 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.

Value of taxable service = $\frac{\textit{Gross}\text{ amount charged}}{(100+\textit{Effective}\text{ rate})}\times 100$

Value of taxable service = $\frac{40{,}000\times 100}{112.36} =$ ` $35{,}600$

Service tax payable = $\frac{40{,}000\times 12.36}{112.36} =$ ` $4{,}400$

Question 4

Ms. Priyanka, a proprietress of Royal Security Agency received ` 1,00,000 by an account payee cheque as advance while signing a contract for providing taxable service. She received ` 5,00,000 by credit card while providing the service and another ` 5,00,000 by a pay order after completion of service on January 31, 2014. All three transactions took place during financial year 2013-14. She seeks your advice about her liability towards value of taxable service and the service tax payable by her. The amount of service tax has been charged separately.

Answer

Computation of taxable service of Ms. Priyanka for financial year 2013-14

Particulars	`
Advance received by an account payee cheque	1,00,000
Amount received while providing service through credit card	5,00,000
Amount received on completion of service by a pay order	5,00,000
Value of taxable service	11,00,000

Calculation of service tax liability

Particulars	`
Service tax @12% on ` 11,00,000	1,32,000
Add: (i) Education cess @ 2% on service tax	2,640
Add: (ii) Secondary and higher education cess @ 1% on service tax	1,320
Total service tax payable	1,35,960

Notes:

1. Money means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveler 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
2. Gross amount charged includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment
3. It has been assumed that the assessee is not an SSP.

Question 5

Pareesh & Co., is a partnership firm engaged in the business of recruitment and supply of labourers. The firm, which had rendered taxable services to the tune of ` 20.2 lacs in the financial year 2012-13, furnishes the following details pertaining to the half year ended on 30.09.2013:

		(`)
(i)	Amounts collected from companies for pre-recruitment screening	2,50,000

(ii)	Amounts collected from companies for recruitment of	
	Permanent staff	3,00,000
	Temporary staff	4,00,000
(iii)	Advances received from prospective employers for conducting campus interviews in colleges	1,00,000

Wherever applicable, service tax has been charged separately and received from clients. Compute the value of taxable services rendered and the service tax payable by the assessee for the relevant half year.

Answer

Computation of value of taxable services and service tax payable by M/s Pareesh & Co.:-

Particulars	Amount of taxable services (`)	Amount of service tax (`)
Amounts collected from companies for pre-recruitment screening	2,50,000	30,900
Amounts collected from companies for recruitment of permanent staff	3,00,000	37,080
Amounts collected from companies for recruitment of temporary staff	4,00,000	49,440
Advances received from prospective employers for conducting campus interview in colleges (Note-1)	89,000	11,000
Total	10,39,000	1,28,420

Notes:

1. Amounts received as advance are also liable to service tax. Service tax on advance has been calculated on the presumption that the same is inclusive of service tax $\left[\frac{1,00,000\times 12.36}{112.36}\right]$.

2. Since the value of taxable services rendered in the preceding year is more than ` 10 lakh (i.e. ` 20.2 lakh), the assessee is not a small service provider. Hence, it is not eligible for the exemption available to the small service provider.

Question 6

During the year ended 31.3.2013, Kohli & Co. , running a coaching centre, has collected a sum of ` 10.2 lacs as service tax, ` 70,000 was met through Cenvat credit and the balance was paid by cheques on various dates. The details pertaining to the quarter ended 30.6.2013 are as under:

Particulars	Amount (`)
Value of free coaching rendered	20,000
Coaching fees collected from students (Service tax collected separately)	14,50,000
Advance received from a college for coaching their students, on 30.6.2013. However, no coaching was conducted and the money was returned on 12.04.2014	3,00,000

Determine the Service Tax Liability for the quarter and indicate the date by which the service tax has to be remitted by the assessee.

Answer

Computation of Service Tax Liability of Kohli & Co. for the quarter ended 30.06.2013:-

Particulars	Amount of service tax (`)
Free coaching rendered	Nil
Coaching fees collected from students $\left[\frac{14,50,000\times 12.36}{100}\right]$	1,79,220
Advance received from a college for coaching their students	33,001
Total Service Tax Liability for the quarter ended 30.06.2013	**2,12,221**

Notes:

1. Free coaching is not exigible to service tax
2. Coaching fees collected from students will be liable to service tax @ 12.36%.
3. Advance receipt is chargeable to service tax. It is immaterial that no coaching was conducted and the money was returned on 12.04.2014. Advance would be chargeable to service tax in the quarter ended 30.06.2013. Advance has been assumed to be inclusive of service tax $\left[\frac{3,00,000 \times 12.36}{112.36}\right]$

During the preceding financial year, the service tax liability met by the assessee, inclusive of CENVAT credit availed was more than ` 10 lakh. Hence, during the current financial year, for all quarters, payment of service tax will have to be made electronically. Therefore, the last date for making the payment of service tax by Kohli & Co. (non-corporate assessee), other than HUF for the quarter ended 30.06.2013 is 6th July, 2013.

Question 7
How will a taxable service be valued when the consideration thereof is not wholly or partly in terms of money?
Answer
As per section 67 (2) of the Finance Act, 1994, if the consideration for a taxable service is not wholly or partly in terms of money, then the value of such service shall be such amount in money, with the addition of service tax charged, is equivalent to the consideration.
In other words, where the service rendered is for a consideration not wholly or partly consisting of money the value of the taxable service is equivalent to the total value of the consideration. However, the total of such money and non-money values of the consideration has to be treated as inclusive of the service tax payable thereon.

Question 8
ABC Partnership firm, is engaged in providing a taxable service. For the quarter ended on 31st March 2014, its gross receipts were ` 18,00,000 (No amount was received in preceding quarters). The break-up of these receipts are as follows:

Month in which services are performed	**Receipt (`)**
July, 2013 (includes ` 1,00,000 for the services in relating to betting)	4,00,000
August, 2013 (includes ` 1,25,000 for the services rendered with the Indian territorial waters)	3,00,000
January, 2014 (includes ` 1,75,000 for services rendered to its associated enterprise in India)	5,00,000
February, 2014 (includes ` 1,50,000 for services rendered in the State of Jammu & Kashmir)	6,00,000

In the financial year 2012-13, ABC Partnership firm, had paid `2,47,200 as service tax (@12.36%). State the amount of Service Tax Payable; for the quarter ended on 31st March 2014.
Answer
Computation of service tax payable by ABC partnership firm for the month of January, 2014

Particulars	**`**
Services performed in July, 2013 [Refer Note 1]	3,00,000
Services performed in August, 2013 [Refer Note 2]	3,00,000
Services performed in January, 2014 [Refer Note 3]	5,00,000
Services performed in February, 2014 [Refer Note 4]	4,50,000
Total taxable services including service tax	15,50,000
Service tax (including 3% education cesses) payable on above, rounded off [Refer Note 5]	1,70,506

Notes:
1. Services in relation to betting is included in the negative list of services. Hence, it is not taxable.
2. Levy of service tax extends to whole of India excluding Jammu and Kashmir and India includes Indian territorial waters. Hence, services rendered within Indian territorial waters would be liable to service tax.
3. Services rendered to associated enterprise are liable to service tax..

4. Levy of service tax extends to whole of India excluding Jammu and Kashmir. Hence, services rendered in Jammu and Kashmir would not be liable to service tax.
5. As the particulars relate to gross receipts, the same are taken to be inclusive of service tax and hence service tax has been computed by making back calculations

$$= \frac{15{,}50{,}000 \times 12.36}{112.36}$$

6. The aggregate value of taxable services of ABC partnership firm In the preceding financial year i.e., F.Y. 2012-13 is more than ` 10,00,000 as it has paid service tax of ` 2,47,200. Hence, it will not be entitled to exemption for small service providers in F.Y.2013-14 and would be liable to service tax.

Question 9

Mr. Ram who has entered into a roll over contract approached NDBC Bank for selling US $35,000 at rate of `49 per US $ RBI reference rate for US $ is `49.50 at that time. However, rate of exchange declared by CBEC for the day is `50.50 per US $. Calculate the value of taxable service.

Answer

Rule 2B of the Service Tax (Determination of Value) Rules, 2006 provides the manner of determination of the value of taxable service so far pertains to purchase or sale of foreign currency, including money changing. The value of service for a currency, when exchanged from, or to, Indian Rupee (INR), 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.

Hence, the value of taxable service = (RBI reference rate for $-Selling rate for $) × Total units

= ` (49.50 – 49) × 35,000

= ` 0.50 × 35,000

The taxable value shall be `17,500.

Question 10

Rishabh Professionals Ltd. is engaged in providing services which became taxable with effect from July 01, 2013. Compute the service tax payable by Rishabh Professionals Ltd. on the following amounts (exclusive of service tax) received for the month of March, 2014:-

Particulars	**Amount (`)**
Services performed before such service became taxable	5,00,000
Services by way of renting of residential dwelling for use as residence	1,50,000
Market Value of free services rendered to the friends	20,000
Advance received in March, 2014 for services to be rendered in July, 2014 (The agreement got terminated in April, 2014. Hence, no services were rendered in July, 2014. However, a sum of ` 3,50,000 was refunded in June, 2014)	5,00,000
Other receipts	12,00,000

Answer

Computation of Service Tax Payable by Rishabh Professionals Ltd.:-

Particulars	**Amount (`)**
Services performed before such service became taxable (Amount received after the service become taxable is taxable as per rule 5 of POT Rules, 2011.)	5,00,000
Services by way of renting of residential dwelling for use as residence (Note-1)	Nil
Free services rendered to the friends (Note-2)	Nil
Advance received for the services to be rendered in July, 2014 (Note-3)	5,00,000
Other receipts	12,00,000
Total	22,00,000
Less: Exemption available to small service providers (Note-4)	10,00,000
Value of taxable services	12,00,000
Service tax @12%	1,44,000

Add: Education cess @ 2%	2,880
Add: Secondary and higher education cess @ 1%	1,440
Service Tax Payable	1,48,320

Notes:-

1. Services by way of renting of residential dwelling for use as residence are included in the negative list of services. Hence, they are not subject to service tax.
2. Service tax is chargeable on the value of service. Thus, service tax is not payable in case of free services as there is no consideration in such case.
3. Advance received for the services to be rendered in July, 2014 is liable for service tax. The amount of service tax included in the amount refunded in the next financial year i.e. June 2014 would be adjusted against service tax liability of subsequent periods. [It is assumed that ` 3,50,000 refunded in June, 2014 after the termination of agreement includes the amount of service tax payable thereon].
4. Since, services provided by Rishabh Professional Ltd. became taxable on July 01, 2013, aggregate value of taxable services rendered in preceding financial year 2012-13 is Nil. Hence, Rishabh Professional Ltd. is eligible for exemption under Notification No. 33/2012 ST dated 20.06.2012.

Question 11

Sambahv Private Limited is engaged in providing the services liable to service tax. Compute the service tax payable by it in the month of October, 2013 from the information furnished below:-

Particulars	**Amount (`)**
Services rendered to poor people free of cost (Value of the services computed on comparative basis)	40,000
Advances received in October, 2013 from clients for which no service has been rendered so far	50,000
Renting of agro machinery for agricultural purpose	5,00,000
Amount received for the services rendered in July, 2013 (Bills for the same were issued on July 29, 2013)	60,000

Note: The aforesaid amounts are exclusive of service tax. Sambahv Private Limited is not eligible for small service providers' exemption in the financial year 2013-14.

Answer

Computation of Service Tax Payable by Sambhav Private Limited in the month of October, 2013:-

Particulars	**Amount(`)**
Services rendered to poor people free of cost (Note-1)	Nil
Advances received in October, 2013 from clients (Note-2)	50,000
Renting of agro machinery for agricultural purpose (Note-3)	Nil
Amount received for the services rendered in July, 2013 (Note-4)	Nil
Value of taxable services	50,000
Service tax @ 12% = `50,000 × 12%	6,000
Education cess @ 2% = ` 6,000 × 2%	120
Secondary and higher education cess @ 1% = ` 6,000 × 1%	60
Service Tax Payable	6,180

Notes:

1. Service tax is chargeable on the value of service. Thus, service tax is not payable in case of free services as there is no consideration in such case.
2. Advances received in October, 2013 shall be taxable in the month of receipt of advance only. [Explanation to rule 3 of the Point of Taxation Rules, 2011].
3. Services relating to renting of agro machinery for agricultural purpose is included in the negative list of service. Hence, it is not taxable.

4. Point of taxation in respect of the services rendered in July, 2013 is July 29, 2013. Hence, receipts of ` 60,000 is not chargeable to service tax in October, 2013 [Rule 3(a) of the Point of Taxation Rules, 2011].

Question 12

Ahmed & Co. of Srinagar rendered taxable services both within and outside the State of Jammu & Kashmir. It received ` 26,12,000 for the services rendered inside the State of Jammu & Kashmir and ` 18,00,000 for the services rendered outside the State of Jammu & Kashmir.

Compute its taxable service value and service tax liability.

In case, Ahmed & Co. was situated in Mumbai, what would be value of its taxable service and service tax liability?

Answer

Eligibility to service tax for services rendered in Jammu & Kashmir and other places:-

The services rendered inside the State of Jammu and Kashmir are not liable to service tax and hence, `26,12,000 is not chargeable to service tax.

The services rendered outside the State of Jammu and Kashmir are liable to service tax and service tax should be paid by the service recipient under reverse charge.

Value of taxable service = `18,00,000

The service tax liability would be `18,00,000 x $\frac{12.36}{100}$ = ` 2,22,480

In case Ahmed & Co. was in Mumbai, the services rendered in the State of Jammu and Kashmir would not be liable to service tax levy and the services rendered at any place other than Jammu and Kashmir would be liable to service tax.

Hence, receipts of ` 18,00,000 is liable to service tax.

Value of taxable service = `18,00,000 x $\frac{100}{112.36}$ = ` 16,01,994

The service tax liability would be `18,00,000 x $\frac{12.36}{112.36}$ = ` 1,98,006

Note: It has been assumed that Ahmed & Co. is non SSP.

Question 13

State with reasons whether the following are liable for service tax :

(i) Services rendered by a sub-contractor.

(ii) Services rendered to associated enterprise.

Answer

(i) Services rendered by sub-contractor are liable to service tax. A sub-contractor is essentially a taxable service provider. The fact that services provided by such subcontractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor.

(ii) Services rendered to associated enterprise are liable to service tax. No special treatment from exigibility to service tax or exemption has been provided for services rendered to an associated enterprise.

Question 14

Chandra Limited started providing taxable services. The services became taxable from 01.10.2013.

Chandra Limited for the month of March, 2014, received following receipts (inclusive of service tax)

S. No.	Particulars	Amount (`)
1.	Amount received in respect of services rendered in July and August, 2013.	10,30,000
2.	Services rendered to its auditors against audit fee Payable.	5,15,000
3.	Advance received for services to be rendered in May, 2014.	6,18,000

4.	Market Value of Services provided to office staff and their relatives free of cost	20,000

Out of advance received, 50% was returned on 15-04-2014 to the party, as they have closed their operations from 31-03-2014.

Compute the taxable services and service tax payable for March, 2014 by Chandra Limited.

Answer

Computation of amount of service tax collected by Chandra Limited:-

Particulars	Amount (`)
Amount received in respect of services rendered in July and August 2013(Amount Received after the service become taxable is taxable as per rule 5 of POT Rules,2011)	10,30,000
Services provided to its auditors against audit fee payable	5,15,000
Advance received for services to be rendered in May 2014 (advance receipt is chargeable to service tax. It is immaterial that operation has been closed from 31/03/2014 and advance was returned on 15/04/2014. As regards this month, it is chargeable to tax.)	6,18,000
Services provided to office staff and their relatives free of cost (service rendered without any consideration are not liable to service tax)	NIL
Gross Amount	21,63,000
Less: Exemption available to small service providers (since, service became taxable in 2013-14 itself, the aggregate value of taxable services in 2012-13 would be zero. Hence, Chandra Limited is eligible for small service providers' exemption in the current financial year	10,00,000
Value of taxable services (inclusive of service tax)	11,63,000
Value of taxable services (excluding service tax) = `11,63,000 ×100/112.36	10,35,066
Service tax = `11,63,000 × 12.36/112.36	1,27,934

Notes:-

1. It has been assumed that Chandra Limited and it has not collected service tax on the turnover up to `10 lakh and has started collecting the same thereafter.
2. Amount Received after the service become taxable is taxable as per rule 5 of POT Rules,2011.

Question 15

Briefly explain the "Exemption available to small scale service providers" in reference to service tax:

Answer

Central Government has exempted the taxable services of aggregate value not exceeding ` 10 lakh in any financial year from the whole of the service tax leviable thereon under section 66B of the Finance Act, 1994 in case the aggregate value of taxable services rendered by the service provider from one or more premises, does not exceed `10 lakh in the preceding financial year.

Question 16

ABC & Co. received the following amounts during the half year ended 31.03.2014:

Particulars	Amount(`)
(i) For services performed prior to the date of levy of service tax	3,50,000
(ii) Advance amount received in March, 2014 (No service was rendered and the amount was refunded to the client in July 2014)	75,000
(iii) For free services rendered to customers, amount reimbursed by the manufacturer of such product. (for the period after the imposition of service tax)	50,000
(iv) Amounts realized and on which service tax is payable (excluding the items (i) & (ii) above)	14,26,500

Calculate the Service Tax Liability duly considering the threshold limit.

Answer

Computation of Service Tax Liability of ABC & Co.:-

Particulars	Amount(`)

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Amount received for the services rendered prior to levy of service tax is taxable as the amount received after the service become taxable (Rule 5 of POT Rules, 2011.)	3,50,000
Advance received is liable to service tax. On refund of amount received for the services; service tax so paid would be adjusted against service tax liability of the subsequent period.	75,000
Amount received from manufacturer for free services rendered to customers is liable for service tax	50,000
Amount realized for services rendered after imposition of service tax.	14,26,500
Total	19,01,500
Less: Threshold limit	10,00,000
Value of taxable service	9,01,500
Service Tax Liability = (`9,01,500 x 12.36)/112.36	99,168

Question17

Briefly provide the manner of determination of the value of taxable service relating to purchase or sale of foreign currency, including money changing.

Answer

Rule 2B of Service Tax (Determination of Value) Rules, 2006 provides the manner of determination of the value of taxable service provided so far as the services so provided 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.

(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.

PAYMENT OF SERVICE TAX

Person liable to pay service tax [Section 68(1)]

Every person providing taxable service to any person shall pay service tax at the **rate specified in section 66B** (12.36%) in the prescribed manner and within the prescribed period.
[Section 68(1)].
The period and the manner have been prescribed in **rule 6 of the Service Tax Rules, 1994**.

Payment of service tax [Rule 6 of the Service Tax Rules, 1994]

(a) Payment both on receipt and accrual basis

As per rule 6(1) of the Service Tax Rules, 1994, service tax is payable on service deemed to be provided as per Point of Taxation Rules, 2011. As per the Point of Taxation Rules, 2011:-
In case the invoice is issued within the prescribed period of ***30 days*** from the date of completion of provision of service, service tax is payable on:-
(a) date of invoice
or
(b) date of payment
whichever is earlier.
However, in case the invoice is not issued within ***30 days*** of the completion of the provision of the service, service tax is payable on:-
(a) date of completion of service
or
(b) date of payment
whichever is earlier.
Further, in case of individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is ` 50 lakh or less in the previous financial year, service tax on taxable services provided or to be provided by him up to a total of `50 lakh in the current financial year is payable on receipt basis. Also in case of advance, service tax is payable on receipt basis, i.e. when the consideration for the services are received. Hence, service tax is payable on both receipt and accrual basis.

(b) Service tax not payable on free services

Section 67(1)(iii) and Service Tax (Determination of Value) Rules, 2006 make provisions for valuation even when consideration is not ascertainable. However, these provisions apply only when there is consideration. If there is no consideration i.e., in case of free service, section 67 and Service Tax (Determination of Value) Rules, 2006 cannot apply.
Thus, no service tax is payable when value of service is zero. In other words, if the value is zero, the tax will also be zero even though the service may be taxable. However, this principle applies only when there is really a 'free service' and not when its cost is recovered through other means.

(c) Service tax liable to be paid even if not collected from the client

Section 68 casts the liability to pay service tax upon the service provider. This liability is not contingent upon the service provider realizing or charging the service tax at the prevailing rate. The statutory liability does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver.
However, sometimes it may happen that the assessee is not able to charge service tax because of the nature of service or he fails to recover the service tax from the client/customer as he is not aware that his services are taxable. Hence, in these cases the amount recovered from the client in lieu of having rendered the service will be taken to be inclusive of service tax and accordingly tax payable will be calculated by making back calculations.
For example, if bill amount is ` 5,000 and service tax is not shown separately in invoice, then service tax payable shall be computed as follows:

5,000/112.36 x 12.36 = ` 550
It may be noted that service tax payable is not ` 618 computed by applying 12.36% to ` 5000.
The value of the taxable service in this case is ` 4450.
The example given above can be solved by using the following formulae:
Value of taxable service = [Gross amount charged/(100 + rate of tax)] x 100
Service tax = [Gross amount charged/(100 + rate of tax)] x rate of tax

(d) Service tax payable on advance received

As per explanation to rule 3 of the Point of Taxation Rules, 2011, service tax is payable on any advance by whatever name known, received by the service provider towards the provision of service.
For example, a security agency takes a contract to provide security services to a client for the month of October for a consideration of `50,000. It receives an advance of `25,000 from the client in the month of September. In this case service tax shall be payable by the security agency on the amount of `25,000 received as an advance even though the service has not been provided at that time.

(e) Advance payment of service tax : The assessee has been provided a facility to make advance payment of service tax on his own and adjust the amount so paid against the service tax which he is liable to pay for the subsequent period. Such facility shall be available when the assessee:
(i) intimates the details of the amount of service tax paid in advance, to the Jurisdictional Superintendent of Central Excise within a period of 15 days from the date of such payment, and
(ii) indicates the details of the advance payment made, and its adjustment, if any in the subsequent return to be filed under section 70 **[Sub-rule (1A) of rule 6]**.

(f) Self adjustment of service tax where services are partly or wholly not rendered

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 **[Sub-rule (3) of rule 6]**.
Note: Rule 6(3) does not allow adjustment of excess payment of service tax per se, say due to clerical mistake etc. In such cases the assessee has to follow the procedure laid down in section 11B of Central Excise Act to claim the refund of excess tax paid.

(g) Interest on amount collected in excess [Section 73B]

(i) Cases where interest is to be levied: Where an amount has been collected in excess of the tax assessed/determined and paid for any taxable service under this Chapter/rules made thereunder from the recipient of such service.
(ii) Who is liable to pay interest and on what amount?: Such person who is liable to pay such amount as determined under sub-section (4) of section 73A above, shall, in addition to the amount, be liable to pay interest.
(iii) Rate of interest : The interest could be ranging between 10% to 24% p.a. At present, the rate of interest @ 18% p.a. has been notified vide *Notification No. 15/2011 dated 01.03.2011*.
(iv) Period for which interest would be charged : The interest shall be payable from the first day of the month succeeding the month in which the amount ought to have been paid till the date of payment of such amount.
(v) No interest payable subject to certain conditions: No interest shall be payable where the amount becomes payable consequent to issue of an order, instruction or direction by the Board under section 37B of Central Excise Act, 1944, subject to fulfillment of the following conditions:
(i) the full amount is paid voluntarily within 45 days from the date of issue of such order, instruction or direction; and
(ii) no right to appeal against such payment at any subsequent stage is reserved.
In other cases, the interest shall be payable on the whole amount, including the amount already paid.

(vi) Change in amount of interest: Where the amount determined by the Central Excise Officer under section 73A is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal, or the Court, the interest payable thereon under this section shall be on such reduced or increased amount.

(vii) Concession of 3% for specified assesses: In the case of a service provider, whose value of taxable service provided in a financial year does not exceed `60 lakh during any of the financial years of the notice issued under section 73A(3) or during the 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 upto ` 60 lakh.

(h) Due date for payment of service tax

Provisions of rule 6(1) inter alia provides as follows:

Due date for payment of service tax on the service which is deemed to be provided (as per the Point of Taxation Rules, 2011) by an individual or a proprietary firm or a partnership firm:-

S. No.	Particulars	Due date for payment of service tax
1.	If the service tax is paid electronically through internet banking	6th day of the following **Quarter**
2.	In any other case	5th day of the following **Quarter**
3.	In the case service is deemed to be provided in the quarter ending in March	31st day of March

Due date for payment of service tax on the service which is deemed to be provided (as per the Point of Taxation Rules, 2011) in any other cases (company and HUF):-

S. No.	Particulars	Due date for payment of service tax
1.	If the service tax is paid electronically through internet banking	6th day of the following **month**
2.	In any other case	5th day of the following **month**
3.	In the case service is deemed to be provided in the month of March	31st day of March

Note: If the last day of payment of service tax is a public holiday, tax can be paid on next working day. ***[CBEC Circular No. 63/12/2003 - S.T. dated 14.10.2003]***

Individuals/partnership firms with aggregate value of taxable services of `50 lakh or less in previous financial year allowed to pay service tax on payment basis in current financial year upto a total of `50 lakh [Third proviso to sub-rule (1)]

In case of individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is ` 50 lakh or less in the previous financial year, the due dates for payment of service tax on taxable services provided or agreed to be provided by him up to a total of ` 50 lakh in the current financial year, at the option of service provider, is as follows:-

S. No.	Particulars	Due date for payment of service tax
1.	If the service tax is paid electronically through internet banking	6th day of the following quarter in which the payment is received
2.	In any other case	5th day of the following quarter in which the payment is received
3.	In the case payment is received in the quarter	31st day of March

	ending in March	

Note: Partnership firm includes limited liability partnership [Rule 2(cd) of the Service Tax Rules, 1994].

(i) Manner of payment

A. Conventional mode of payment: In case, the assessee is not required to make the e-payment of the service tax and he pays service tax by GAR-7 challan, following procedure would be followed:

(i) Bank to have EASIEST facility

Service tax is payable in authorized bank by way of GAR-7 challan where Bank is having 'EASIEST' facility (Earlier, it was a TR-6 challans).

(ii) Single copy challan

GAR-7 challan is a single copy challan with tax payer's counterfoil at the bottom of challan. Both challan and counterfoil are to be filled in by assessee. The challan should be on white paper with black printing.

(iii) Challan to be serially numbered

The challans should be serially numbered from 1st April onwards.

(iv) Details required in GAR-7 challan

Details to be filled in GAR-7 challan are as follows-

(a) Full name of assessee
(b) Complete Address
(c) Telephone number
(d) PIN code
(e) Assessee's STC Code (15 digit)
(f) Commissionerate name
(g) Commissionerate Code
(h) Division Code
(i) Range Code
(j) Accounting Code of service tax/cess
(k) Amount tendered in (6 columns)
(l) Total
(m) Total Rupees in words
(n) Cash/Cheque/Draft/Pay order No. and date
(o) Bank on which Cheque/Draft/Pay order No. is drawn.

(v) Relevant details to be repeated on counterfoil

Relevant among these details like assessee code, amount tendered in `, accounting code of service tax/cess etc. are repeated in the Tax payer's counter-foil. Details filled in the challan and Taxpayer's counter-foil should be identical.

(vi) Receipt of payment

The counterfoil duly receipted by Bank with stamp of Bank will be given by receiving Bank to assessee.
The stamp of receiving bank will contain Challan Identification Number (CIN). This CIN will have to be quoted in the return.

(vii) Evidence of payment of service tax

The Taxpayers acknowledgement is the evidence of payment. The Challan Identification Number (CIN) appearing on this acknowledgement will have to be quoted in the return.
The banks will be giving the tax payer a computer generated acknowledgement/receipt with the various details including the CIN.

Payment in case of multiple service provider: A multiple service provider (a service provider rendering more than one taxable service) can use single GAR-7 challan for payment of service tax on different services. However, amounts attributable to each such service along with concerned accounting codes should be mentioned clearly in the column provided for this purpose in the GAR-7 challan. Alternatively, separate GAR-7 challans may be used for payment of service tax for each service provided by the service provider.

B. E-payment of service tax: Where an assessee has paid a total service tax of ` 10 lakh or more including the amount paid by utilisation of CENVAT credit, in the preceding financial year, he shall deposit the service tax liable to be paid by him electronically, through internet banking.

E-payment in case of a person providing taxable service from more than one premise

For a person providing taxable service from more than one premises, where each such premises is separately registered with the Department for payment of service tax, the criterion of ` 10 lakh would apply to each registered premises individually, as each registered premises is separately an assessee in terms of law. Similar is the situation in the case of a person paying service tax on taxable service received by him.

However, in case of a Large Taxpayer (LTU), the cumulative service tax paid by all registered premises of such Large Taxpayer will be taken into account for satisfaction of criterion of payment of service tax amount of `10 lakh.

Procedure for e-payment of service tax: E-payment of service tax facilitates anytime, anywhere payment of the service tax. Moreover, after the payment of service tax online, the receipt of the same is generated instantly. It provides the convenience of making on line payment of Central excise and service tax through bank's Internet banking service. E-payment of the service tax can be made through ACES.

For e-payment, assessees should open a net banking account with one of the authorized banks (currently there are 28 banks). For effecting payment, assessees can access the ACES website and click on the e-payment link that will take them to the EASIEST portal or they can directly visit the EASIEST portal.

Procedure for e-payment of service tax can be summarized as follows:-

(i) To pay excise duty and service tax online, the assessee has to enter the 15 digit Assessee Code allotted by the Department under erstwhile SACER/SAPS or the current application ACES. There will be an online check on the validity of the Assessee Code entered.

(ii) If the Assessee code is valid, then corresponding assessee details like name, address, Commissionerate Code etc. as present in the Assessee Code Master will be displayed.

(iii) Based on the Assessee Code, the duty / tax i.e. Central Excise duty or Service Tax to be paid will be automatically selected.

(iv) The assessee is required to select the type of duty / tax to be paid by clicking on Select Accounting Codes for Excise or Select Accounting Codes for Service Tax, depending on the type of duty / tax to be paid.

(v) At a time the assessee can select up to six Accounting Codes.

(vi) The assessee should also select the bank through which payment is to be made.

(vii) On submission of data entered, a confirmation screen will be displayed. If the taxpayer confirms the data entered in the screen, it will be directed to the net-banking site of the bank selected.

(viii) The taxpayer will login to the net-banking site with the user id/ password, provided by the bank for net-banking purpose, and will enter payment details at the bank site.

(ix) On successful payment, a challan counterfoil will be displayed containing CIN, payment details and bank name through which e-payment has been made. This counterfoil is proof of payment made.

EASIEST (Electronic Accounting System in Excise and Service Tax)

(i) What is EASIEST scheme?

EASIEST has been developed to make payment of tax easy. The facility is available with 28 banks.

(ii) Benefits of EASIEST to the taxpayer

(a) Only one copy of the challan has to be filled instead of earlier four copies.

(b) Facility of online verification of the status of tax payment using CIN.

(iii) Challan Identification Number (CIN)

Challan Identification Number (CIN) is a 20 digit unique identifier which will be given on the Taxpayer's computer generated acknowledgement /receipt. This number is a combination of the BSR code of the bank branch (first 7 digits), the date of deposit (next 8 digits) and Challan Serial Number (last 5 digits).

(iv) Service Tax Code Number

Assessee code/registration number/STC code are all one and the same. It is a 15-character identification number allotted by the system to the assessee based on the PAN number or temporary number (if PAN is not submitted) when the registration details are entered in the Central Server. The 15-character assessee code will be available in the registration certificate issued to the assessee by the Assistant Commissioner/Deputy Commissioner of the Division.

The first 10 digits of the STC code are 10 character PAN issued by Income tax authorities.

Next two are 'ST'. Last three are numeric code 001, 002, 003 etc. The concerned person has to apply in a prescribed form to obtain STC.

The main objective of allocating an alphanumerical number by the Government agencies is to identify the assessees/exporters/importers. It is also used to identify in some cases the concerned office where the person would be assessed or registered. Further alphanumeric number helps in processing of the information in relation to the assessee on computers.

Quoting of service tax code number on all the related documents has become compulsoryfrom 1.7.2002.

(j) Points to be remembered while paying service tax

The following important points should be kept in mind while paying service tax:

♦ Service tax is to be paid on the value of taxable services which is charged by an assessee. Any income tax deducted at source is included in the charged amount.

Therefore, service tax is to be paid on the amount of income tax deducted at source also. For example, if invoice is for ` 9,000 and payment received is ` 8,500 after deducting a TDS of ` 500, service tax will be payable on ` 9,000.

♦ Payment should be rounded off in multiple of rupees.

♦ The date of presentation of cheque to the bank shall be deemed to be date on which service tax has been paid subject to the realization of the cheque.

(k) Adjustment of excess amount paid towards service tax liability [Sub-rule (4A) & (4B) of rule 6]

Where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be. ***However, self-adjustment of such excess amount paid shall be subject to the condition that the excess amount paid is on account of reasons not involving interpretation of law, taxability, valuation or applicability of any exemption notification.***

(l) Adjustment of excess amount paid as service tax in case of renting of immovable property service [Sub-rule (4C) of rule 6]

In case of renting of immovable property service, a deduction of property taxes paid in respect of the immovable property is allowed from the gross amount charged for renting of the said immovable property vide ***Notification No.29/2012 ST dated 20.06.2012***. However, where any amount in excess of the amount required to be paid towards service tax liability has been paid on account of non-availment of such deduction, such excess amount may be adjusted against the service tax liability within 1 year from the date of payment of such property tax. The details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of 15 days from the date of such adjustment.

Example

Property tax paid for April to September = ` 12,000/-
Rent received for April = `1, 00,000/-
Service tax payable for April = ` 98,000/- (1, 00,000 -12,000/6) x 12.36% = `12,113

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

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.

(n) Provisional payment of service tax [Sub-rule (4), (5) and (6) of rule 6]

In case the assessee is unable to correctly estimate, at the time of the deposit, the actual amount of service tax for any month or quarter, he may make a written request to Assistant/Deputy Commissioner of Central Excise for making payment of service tax on provisional basis. **Procedure for provisional assessment**

(a) Request for provisional assessment: The assessee shall make a request in writing to the Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be, to make a provisional payment of tax on the basis of the amount deposited.

(b) Order of provisional assessment of service tax : The Assistant Commissioner/Deputy Commissioner as the case may be, may, on receipt of such request, order provisional assessment of tax.

(c) Memorandum in Form ST-3A to be submitted along with Form ST-3: In case an assessee requesting for provisional assessment, the assessee shall submit a memorandum in form ST-3A; giving details of difference between the provisional amount of service tax deposited and the actual amount of service tax payable for each month along with the half-yearly return in form ST-3.

(d) Finalization of provisional assessment : Where the assessee submits a memorandum in Form ST-3A under sub-rule (5), it shall be lawful of the Assistant Commissioner/Deputy Commissioner of Central Excise, as the case may be to complete the assessment, wherever he deems it necessary, after calling such further documents or records as he may consider necessary and proper in the circumstances of the case.

(0) Special provision for payment of service tax

A. In case of air travel agent [Sub-rule (7)]

Person liable for paying the service tax in relation to the services of booking of tickets for travel by air provided by an air travel agent, shall have the option to pay following amounts instead of paying service tax at the rate of 12%:-

In the case of	Option to pay an amount calculated at the rate of
Domestic bookings of passage for travel by air during any calendar month or quarter, as the case may be	0.6% of the basic fare
International bookings of passage for travel by air during any calendar month or quarter, as the case may be	1.2% of the basic fare

Points to be noted

1. The option once exercised, shall apply uniformly in respect of all the bookings of passage for travel by air made by him and shall not be changed during a financial year under any circumstances.

2. Meaning of basic fare

For the purposes of this sub-rule, the expression **"basic fare"** means that part of the air fare on which commission is normally paid to the air travel agent by the airline.

B. In case of insurer carrying on life insurance business [Sub-rule (7A)] : An insurer carrying on life insurance business shall have the option to pay tax:

(i) 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;

(ii) Where amount of the gross premium allocated for investment or savings on behalf of policy holder is not intimated to the policy holder at the time of providing of service:-

First year	on 3% of the gross amount of premium charged
Subsequent year	on 1.5% of the gross amount of premium charged

towards the discharge of his service tax liability instead of paying service tax at the rate of 12%.

Point to be noted

Such option shall not be available in cases where the entire premium paid by the policy holder is only towards risk cover in life insurance.

Life insurance business: means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any [Rule 2(ccb)].

C. In case of sale/purchase of foreign currency including money changing [Sub-rule (7B)] : Person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, has an option to pay an amount at the following rates instead of paying service tax at the rate of 12%:-

S. No.	For an amount	Service tax shall be calculated at the rate of
1.	Upto `100,000	0.12 % of the gross amount of currency exchanged or ` 30 whichever is higher
2.	Exceeding `1,00,000 and upto ` 10,00,000	` 120 + 0.06 % of the (gross amount of currency exchanged- ` 1 lakh)
3.	Exceeding `10,00,000	` 660 + 0.012 % of the (gross amount of currency exchanged –` 10 lakh) or ` 6,000 whichever is lower

Point to be noted

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.

D. Optional Composition Scheme for the taxable service of promotion, marketing or organising/assisting in organising lottery [Sub-rule (7C)] : An optional mode of payment of service tax has been provided for the taxable service of promotion, marketing or organising/assisting in organising lottery in the following manner instead of paying service tax at the rate of 12%:-

Where the guaranteed lottery prize payout is > 80%	` 7000/- on every ` 10 Lakh (or part of ` 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%	`11,000/- on every ` 10 Lakh (or part of ` 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.

(p) Interest on delayed payment of service tax (Section 75)

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.
Interest would also apply in case of excess availment and utilization of CENVAT credit.

Rate of interest
Currently, the interest rate @ 18% per annum has been notified vide *Notification No. 14/2011 dated 01.03.2011*.
Time-period for payment of interest
Interest is payable for the period by which such crediting of the tax or any part thereof is delayed.

SOME IMPORTANT THEORY QUESTIONS

Question: Write a note on penalty for failure to pay Service Tax.
Answer:
Penalty for failure to pay service tax   Section 76
If any person liable to pay service tax has failed to pay service tax, he shall be liable to pay service tax alongwith **interest @ 18% p.a.** and also penalty may be imposed which shall be **`100 per day or 1% of such tax, per month** whichever is higher starting with first day after the due date till the date of actual payment. However total amount of penalty **shall not exceed 50% of service tax payable**.
Example
ABC Ltd, an assessee, fails to pay service tax of ten lakh rupees payable by 5th March. ABC Ltd. pays amount on the 15th March. The default has continued for ten days The penalty payable by ABC Ltd. is computed as follows:—
100 x 10 = `1,000
10,00,000 x 1% x 10/31 = `3,225.80
whichever is higher
Penalty liable to be paid is ` 3226.00.

Example
Mr. X, an assessee, fails to pay service tax of `3,000 payable by 31st March. Mr. X pays the amount on 30th April. The default has continued for 30 days. The penalty payable by Mr. X is computed as follows:
100 x 30 = `3,000
3,000 x 1% x 30/30 = `30
whichever is higher.
Penalty liable to be paid is `3,000 but penalty cannot exceed 50% of the amount of service tax, hence amount of penalty shall be `1,500

Question: Write a note on penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere.
Answer:
Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere Section 77
(1) Any person who has failed to take registration shall be liable to a penalty which may extend to `10,000.
(2) Any person who has failed to maintain the book of accounts shall pay penalty which may extend upto `10,000.
(3) Any person who has failed to furnish information or failed to furnish any document to the service tax officer shall pay penalty of `200 per day or `10,000 whichever is higher.
(4) If any person has failed to pay service tax electronically shall pay penalty which may extend upto `10,000
(5) Any person who issues invoice with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to ten thousand rupees.

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(6) Any person, who contravenes any of the provisions of this Chapter or any rules made thereunder for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to ten thousand rupees.

Question: Write a note on penalty for suppressing (to conceal) value of taxable services.

Answer:

Penalty for suppressing value of taxable service Section 78

If any person has not paid service tax or has short paid service tax or there was a refund of service tax because of fraud, wilful mis-statement etc., in such cases he shall be liable to pay **service tax alongwith interest and also penalty** shall be payable which shall be equal to the **amount of service tax**.

Provided that where true and complete details of the transactions are available in the specified records, penalty shall be reduced to **50%** of the service tax so not levied or paid or short-levied or short-paid or erroneously (wrongly) refunded. If the **tax and interest has been paid within 30 days of receiving** the orders from the Central Excise Officer, penalty payable shall be **25% of such service tax**. Further such penalty should also be paid within the period of **30 days** as mentioned above.

If the service provider whose value of taxable services do not exceeds **`60 lakhs** during preceding financial year, the period of **30 days** shall be taken as **90 days**.

Provided also that if the penalty is payable under this section, the provisions of section 76 shall not apply.

PRACTICE MANUAL

Question 1

Briefly answer the following questions:-

(a) Should service tax be paid even if not collected from the client or service receiver?

(b) Is a service provider allowed to pay service tax on a provisional basis?

(c) Mr. Saravanan has collected a sum of `15,000 as service tax from a client mistakenly, even though no service tax is chargeable for such service. Should the amount so collected be remitted to the credit of the Central Government?

(d) Who is liable to make e-payment of service tax?

(e) Whether life insurer carrying on life insurance business has option to calculate service tax at different rate?

(f) Mr. X, a service provider who pays service tax regularly, was of the opinion that a particular service was not liable for service tax. He, therefore, did not charge service tax in his bill. He received the bill amount without service tax. How will service tax liability of Mr. X be determined in such case?

Answer

(a) Section 68 of the Finance Act, 1994 casts the liability to pay service tax upon the service provider. This liability is not contingent upon the service provider realizing or charging the service tax at the prevailing rate. The statutory liability does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver.

(b) In case the assessee is unable to correctly estimate, at the time of the deposit, the actual amount of service tax for any month or quarter, he may make a written request to Assistant/Deputy Commissioner of Central Excise for making payment of service tax on provisional basis. The provisions of the Central Excise Rules, 2002 relating to provisional assessment shall apply except the provisions relating to execution of bond.

(c) Section 73A of the Finance Act, 1994 casts an obligation on every person who has collected service tax from any recipient of service in any manner as representing service tax, to remit the same to the credit of the Central Government. On account of this provision, where any person has collected any amount, which is not required to be collected from any other person, in any manner as representing service tax, he should also immediately pay the amount so collected to the credit of the Central Government.

Hence, Mr. Saravanan has to remit the service tax collected by him on the non taxable services to the credit of the Central Government before the due date.

(d) An assessee who has paid a total service tax of `10 lakh or more including the amount paid by utilisation of CENVAT credit, in the preceding financial year, has to deposit the service tax liable to be paid by him electronically, through internet banking.

(e) An insurer carrying on life insurance business has the option to pay tax:

(i) 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;

(ii) Where amount of the gross premium allocated for investment or savings on behalf of policy holder is not intimated to the policy holder at the time of providing of service:-

First year	on 3% of the gross amount of premium charged
Subsequent year	on 1.5% of the gross amount of premium charged

towards the discharge of his service tax liability instead of paying service tax at the rate of 12%.

However, such option shall not be available in cases where the entire premium paid by the policy holder is only towards risk cover in life insurance.

(f) Section 68 casts the liability to pay service tax upon the service provider. This liability is not contingent upon the service provider realizing or charging the service tax at the prevailing rate. The statutory liability does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver.

In this case, the amount received from the service receiver will be taken to be inclusive of service tax. Accordingly, service tax liability by the service provider shall be ascertained by making back calculations in the following manner:-

Service tax liability = Amount received x Effective rate / (100 + Effective rate)

Question 2

Answer the following questions:

(a) An assessee who has collected service tax from a client is unable to perform the service. Briefly explain the situations in which and the conditions subject to which he can adjust the service tax relating to above, against his forthcoming service tax liability.

(b) Mr. Vasudevan has rendered freely, a service to a client which is taxable, but has not charged or received any fee from the client. Is service tax payable on such free service?

(c) What are the due dates for payment of service tax?

Answer

(a) 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

(b) Section 67(1)(iii) and Service Tax (Determination of Value) Rules, 2006 make provisions for valuation even when consideration is not ascertainable. However, these provisions apply only when there is consideration. If there is no consideration i.e., in case of free service, section 67 and Service Tax (Determination of Value) Rules, 2006 cannot apply.

Thus, no service tax is payable when value of service is zero. In other words, if the value is zero, the tax will also be zero even though the service may be taxable. However, this principle applies only when there is really a 'free service' and not when its cost is recovered through other means.

(c) The due date for payment of service tax on the service which is deemed to be provided (as per the Point of Taxation Rules, 2011) by an individual or a proprietary firm or a partnership firm:-

S. No.	Particulars	Due date for payment of service tax
1.	If the service tax is paid electronically through internet banking	6th day of the following **quarter**
2.	In any other case	5th day of the following **quarter**
3.	In the case service is deemed to be provided in the quarter ending in March	31st day of March

Due date for payment of service tax on the service which is deemed to be provided (as per the Point of Taxation Rules, 2011) in any other cases (company and HUF):-

S. No.	Particulars	Due date for payment of service tax
1.	If the service tax is paid electronically through internet banking	6th day of the following month
2.	In any other case	5th day of the following month
3.	In the case service is deemed to be provided in the month of March	31st day of March

Question 3

Does a service provider have an option to pay service tax at a rate different from the general rate applicable on gross value of taxable services, in the case of purchase or sale of foreign currency?

Answer

Yes, the person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, has an option to pay an amount at the following rates instead of paying service tax at the rate of 12%:-

S. No.	For an amount	Service tax shall be calculated at the rate of
1.	Upto ` 100,000	0.12 % of the gross amount of currency exchanged or ` 30 whichever is higher
2.	Exceeding ` 1,00,000 and upto `10,00,000	` 120 + 0.06 % of the gross amount of currency exchanged – `1 lakh)
3.	Exceeding ` 10,00,000	` 660 + 0.012 % of the gross amount of currency exchanged – `10 lakh) or ` 6,000 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.

Question 4

How can an assessee adjust the excess payment of service tax against his liability of service tax for subsequent periods? What is the basic condition for it?

Answer

Where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be. **However, self-adjustment of such excess amount paid shall be subject to the condition that the excess amount paid is on account of reasons not involving interpretation of law, taxability, valuation or applicability of any exemption notification.**

Question 5

Write a note in brief on provisional payment of service tax.

Answer

In case the assessee is unable to correctly estimate, at the time of the deposit, the actual amount of service tax for any month or quarter, he may make a written request to Assistant/ Deputy Commissioner of Central Excise for making payment of service tax on provisional basis. The provisions of the Central Excise Rules, 2002 relating to provisional assessment shall apply except the provisions relating to execution of bond.

For the purpose of provisional assessment at the time of filing the return, the assessee is required to file a statement in form ST - 3A giving detail of difference between service tax deposited and the service tax liable to be paid for each month. The quarterly or half yearly statements should also accompany.

The Assistant/Deputy Commissioner of Central Excise, on the basis of memorandum in form ST - 3A may complete the assessment after calling for necessary documents or records, if need be.

Question 6

Briefly discuss about the adjustment of excess amount of service tax paid in case of renting of immovable property service, owing to property tax payment.

Answer

In case of renting of immovable property service, a deduction of property taxes paid in respect of the immovable property is allowed from the gross amount charged for renting of the said immovable property

Contact me on: +91 8285054506 Mail your views : - ketanhsardana@gmail.com

vide **Notification No.29/2012 ST dated 20.06.2012**. However, where any amount in excess of the amount required to be paid towards service tax liability has been paid on account of non-availment of such deduction, such excess amount may be adjusted against the service tax liability within 1 year from the date of payment of such property tax. The details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of 15 days from the date of such adjustment.

Question 7

Briefly explain the provisions relating to advance payment of service tax

Answer

The assessee has been provided a facility to make advance payment of service tax on his own and adjust the amount so paid against the service tax which he is liable to pay for the subsequent period. Such facility shall be available when the assessee:

(i) intimates the details of the amount of service tax paid in advance, to the Jurisdictional Superintendent of Central Excise within a period of 15 days from the date of such payment, and

(ii) indicates the details of the advance payment made, and its adjustment, if any in the subsequent return to be filed under section 70.

Question 8

(i) When does e-payment of service tax become mandatory?

(ii) State the 'due date' for e-payment of service tax by individuals and companies.

Answer

(i) E-payment of service tax becomes mandatory if the assessee has paid a total service tax of `10 lakh or more (including the amount of service tax paid by utilizing CENVAT credit) in the previous financial year.

(ii)

Assessee	**Due date for e-payment of service tax**
(i) Individuals	6th day of the month immediately following the quarter in which the service is deemed to be provided (as per the Point of Taxation Rules, 2011)
(ii) Companies	6th day of the month immediately following the month in which the service is deemed to be provided (as per the Point of Taxation Rules, 2011)

However, service tax on the value of taxable services service deemed to be provided in the quarter ending in March (in case of individuals) or in the month of March (in case of companies) is payable by 31st March.

Question 9

Explain optional composition scheme under service tax for distributor or selling agents of lotteries.

Answer

An optional mode of payment of service tax has been provided for the taxable service of promotion, marketing or organising/assisting in organising lottery in the following manner instead of paying service tax at the rate of 12%:-

Guaranteed lottery prize payout	**Amount of service tax payable on every ` 10 Lakh (or part of ` 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw**
More than 80%	` 7000/-.
Less than 80%	` 11,000/-

In case of online lottery, the aggregate face value of lottery tickets will be the aggregate value of tickets sold.

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. The option once exercised cannot be withdrawn during the remaining part of the financial year.

Question 10

Write short notes on Service Tax Code Number and the objective sought to be achieved thereunder.

Answer

Service Tax Code Number is a 15-digit alphanumerical number allotted by the system to the assessee based on the PAN number or temporary number (if PAN is not submitted). The assessee applies for it in a prescribed form. This code is available in the registration certificate issued to the assessee by the Assistant Commissioner/Deputy Commissioner of the Division. It is also known as assessee code or registration number.

The first 10 digits of the STC code are 10 character PAN issued by Income tax authorities. Next two are 'ST'. Last three are numeric code 001, 002, 003 etc.

Objective sought to be achieved

1. The objective is to identify the assessees, exporters or importers as also the concerned office where the person would be assessed or registered.
2. It helps in online processing of the information in relation to the assessee.

Question 11

What is EASIEST scheme and state the benefits in the context of service tax ?

Answer

EASIEST stands for Electronic Accounting System in Excise and Service Tax. It makes tax payment easy. This facility is available with 28 banks.

The benefits of EASIEST to the taxpayer are as follows:-

(a) Only one copy of the challan is to be filled instead of four copies as required earlier.

(b) EASIEST facilitates online verification of the status of tax payment using Challan Identification Number.

Question 12

Miss Radhika, a wedding planner, has rendered service to Mr. Ram Kapoor in relation to planning the marriage of his son. Miss Radhika, being a close relative of Mr. Ram Kapoor, has not charged any fee from him. Is service tax payable on such free, but taxable service?

Answer

Section 67(1)(iii) and Service Tax (Determination of Value) Rules, 2006 make provisions for valuation even when consideration is not ascertainable. However, these provisions apply only when there is consideration. If there is no consideration i.e., in case of free service, section 67 and Service Tax (Determination of Value) Rules, 2006 cannot apply.

Thus, no service tax is payable when value of service is zero. In other words, if the value is zero, the tax will also be zero even though the service may be taxable. However, this principle applies only when there is really a 'free service' and not when its cost is recovered through other means.

Therefore, in the light of the aforesaid discussion, it may be inferred that, the service tax is not payable on service rendered by Miss Radhika to Mr. Ram Kapoor as Miss Radhika has not charged any fee from Mr. Ram Kapoor.

Question 13

Mr. Rajesh Singla, an assessee wants to adjust `2,50,000, the excess payment of service tax against his liability of service tax for the subsequent periods. Can he do so? What is the condition to be satisfied for it?

Answer

Yes, Mr. Rajesh Singla, can adjust ` 2,50,000, the excess payment of service tax against his liability of service tax for the subsequent periods subject to the fulfillment of specified condition.

With effect from 1st April, 2012 Rule 6(4B) has been substituted with the new one providing for only one condition for adjustment of excess amount paid towards service tax liability that is the excess amount paid is on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification. Hence, with effect from 1st April, 2012 other restrictions earlier provided in

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rule 6(4B) has been omitted thereby allowing unlimited amount of permissible adjustment of excess service tax paid.

Question 14

Vibha Ltd. is engaged in providing management consultancy services. It was liable to pay the service tax amounting to ` 10,000, electronically, for the month of August 2013. However, due to some unavoidable circumstances, it could not pay the said amount on due date and paid the service tax on 30th November, 2013. You are required to compute the interest payable by Vibha Ltd. on delayed payment of service tax.

Answer

Computation of interest payable on delayed payment of service tax by Vibha Ltd.:-

Due date of payment of service tax	06.09.2013
Actual date of payment	30.11.2013
No. of days of delay (24+31+30)	85
Amount of service tax	` 10,000/-
Calculation of interest under section 75 @ 18% per annum*	$10{,}000 \text{ x } \frac{85}{365} \text{ x } \frac{18}{100}$
Amount of interest payable	` 419/-

Note: It has been assumed that value of taxable services is above `60 lakh in preceding financial year.

Question 15

S. Ltd. paid service tax of ` 8 lacs during the preceding financial year and utilized CENVAT credit of ` 3 lacs. Whether he is required to deposit service tax electronically for the financial year 2013-14.

Answer

An assessee is required to deposit service tax electronically through internet banking if he has paid the total service tax of ` 10 lakhs or more (including the amount of service tax paid by utilization of CENVAT credit) in the preceding financial year.

As the total service tax paid (including CENVAT credit) by S. Ltd., in the preceding financial year is ` 11 lakhs on the presumption that service tax of ` 8 lakh does not include service tax of ` 3 lakh paid by utilizing CENVAT credit, it will be required to deposit service tax electronically for the financial year 2013-2014.

Question 16

State the service tax provisions regarding adjustment of service tax paid when service was not provided either wholly or partly.

Answer

As per rule 6(3) of Service Tax rules, 1994, 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

However, Rule 6(3) does not allow adjustment of excess payment of service tax per se, say due to clerical mistake etc. In such cases the assessee has to follow the procedure laid down in section 11B of Central Excise Act to claim the refund of excess tax paid.

Question 17

Briefly explain the important points to be kept in mind while paying service tax.

Answer

The important points to be kept in mind while paying service tax are as follows:

1. Service tax is to be paid on the value of taxable services which is charged by an assessee. Any income tax deducted at source is included in the charged amount. Therefore, service tax is to be paid on the amount of income tax deducted at source also.
   For example, if invoice is for ` 9,000 and payment received is ` 8,500 after deducting a TDS of `500, service tax will be payable on ` 9,000.
2. Payment should be rounded off in multiple of rupees.
3. The date of presentation of cheque to the bank shall be deemed to be date on which service tax has been paid subject to the realization of the cheque.

FILING OF RETURNS

FILING OF RETURNS

Learning objectives

After reading this unit you will be able to:

♦ understand the procedure relating to filing of service tax returns.
♦ know the frequency of filing returns.
♦ be aware of the due date for filing returns.

Returns [Section 70, Rule 7, Rule 7B & Rule 7C of Service Tax Rules, 1994]

Section 70(1) inter alia provides that every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed. Rule 7 of the Service Tax Rules, 1994 prescribes the form, manner and frequency of furnishing the return.

Section 70(2) provides that the person or class of persons notified under sub-section (2) of section 69 shall furnish to the Superintendent of the Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.

Manner of filing return

1.	**Form of return**	Return/revised return has to be furnished in **Form ST-3**.
2.	**Periodicity of filing return**	Service tax return has to be filed on a **half-yearly basis**.
3.	**Details to be furnished**	Return must indicate *inter alia*, monthwise: (i) the value of taxable service; (ii) gross amount charged; (iii) service tax payable etc.
4.	**Enclosures to return**	Half-yearly return in Form ST-3 is required to be accompanied by:- (i) Photocopy of counterfoil of GAR-7 challan. (ii) Memorandum in Form ST-3A (where the assessment is provisional)**.**

Due dates for filing of service tax returns

The service tax return, in Form ST-3 should be filed on half yearly basis by the 25th of the month following the particular half year. The due dates on this basis are tabulated as under:

Half year	Due date
1st April to 30th September	25th October
1st October to 31st March	25th April

When the due date falls on public holiday: In case the due date of the filing of return i.e., either 25th October or 25th April falls on a public holiday, the assessee can file the return on the immediately succeeding working day.

Delayed return

A delayed return can also be furnished by paying the prescribed late fee. Section 70(1) inter alia provides for filing of periodical return after the due date with the prescribed late fee of not more than `20,000.

Late fee for delayed return [Rule 7C]

The prescribed late fee for furnishing a delayed return is given in the following table:

S. No.	Period of delay	Late fee

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(a)	15 days from the date prescribed for submission of the return	`500
(b)	Beyond 15 days but not later than 30 days from the date prescribed for submission of the return	` 1,000
(c)	Beyond 30 days from the date prescribed for submission of the return	An amount of `1,000 plus `100 for every day from the 31st day till the date of furnishing the said return

Maximum late fees: Total late fee for delayed submission of return shall not exceed `20,000.
Further, where the assessee has paid the prescribed late fee for delayed submission of return, the proceedings, if any, in respect of such delayed submission of return shall be deemed to be concluded.
Late fee may be reduced/waived where service tax payable is nil : Where the gross amount of service tax payable is nil, the Central Excise Officer may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the penalty (late fee) [Proviso to rule 7C].

Revised return [Rule 7B]

An assessee can submit a revised return, in **Form ST-3**, in **triplicate**, to correct a mistake or omission, within a period of **90 days** from the date of submission of the original return.
It has been clarified that where an assessee submits a revised return, the **'relevant date'** for the purpose of recovery of service tax, if any, under section 73 of the Act shall be the date of submission of such revised return**.**

Contents of the return

General details, like financial year, period of return, name of the assessee, registration number and address of the premises for which return is being filed, category of services are required to be furnished. Apart from this, other significant details also need to be furnished.
For instance:
(i) Gross amount received in money against service provided
(ii) Gross amount received in money in advance for service to be provided
(iii) Value on which service tax is exempt/not payable
(iv) GAR-7 challan date and number
(v) Abatement amount claimed
(vi) Notification number of abatement and exemption
(vii) Service tax payable
(viii) Education cess payable
(ix) Credit details for service tax provider/recipient

Return by input service distributor

The input service distributor, shall furnish a half yearly return in such form as may be specified, by notification, by CBEC, during the said half year to the jurisdictional Superintendent of Central Excise, not later than the last day of the month following the half year period.

Single return for multiple service providers

For an assesee who provides more than one taxable service, only a single return will be sufficient. However, the details in each of the columns of the Form ST-3 have to be furnished separately for each of the taxable service rendered by him.

Nil return

Even if no service has been provided during a half year and no service tax is payable; the assessee has to file a Nil return within the prescribed time limit.

First return

Every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time or the 31st day of January, 2008, whichever is later, a list in duplicate, of-

(i) all the records prepared or maintained by the assessee for accounting of transactions in regard to,-

(a) providing of any service, whether taxable or exempted;

(b) receipt or procurement of input services and payment for such input services;

(c) receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;

(d) other activities, such as manufacture and sale of goods, if any.

(ii) all other financial records maintained by him in the normal course of business.

E-filing of returns

E-filing of returns is mandatory for the assessees. With effect from 01.10.2011, every assessee will have to submit half-yearly service tax return electronically, irrespective of the amount of service tax paid by him in the preceding financial year.

Scheme for submission of returns through Service Tax Return Preparers [Section 71]

Section 71 provides for the scheme for submission of returns through Service Tax Returns Preparers. Section 71 empowers the Central Board of Excise and Customs (Board) to frame a Scheme for the purposes of enabling any person or class of persons to prepare and furnish a return under section 70 and authorise a Service Tax Return Preparer to act as such under the Scheme. Hence, CBEC has framed the Service Tax Return Preparer Scheme, 2009 notified through *Notification 7/2009 ST dated 03.02.2009.*

A **Service Tax Return Preparer** shall assist the **person or class of persons** to prepare and furnish the return in such manner as may be specified in the Scheme framed under this section.

The Scheme framed by the Board may provide for the following, namely:—

(a) the manner in which and the period for which the Service Tax Return Preparer shall be authorised under sub-section (1);

(b) the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Service Tax Return Preparer;

(c) the code of conduct for the Service Tax Return Preparer;

(d) the duties and obligations of the Service Tax Return Preparer;

(e) the circumstances under which the authorisation given to a Service Tax Return Preparer may be withdrawn;

(f) any other matter which is required to be, or may be, specified by the Scheme for the purposes of this section.

Meaning of Service Tax Return Preparer

"Service Tax Return Preparer" means any individual, who has been authorised to act as a Service Tax Return Preparer under the Scheme framed under this section.

Meaning of person or class of persons

"Person or class of persons" means such person, as may be specified in the Scheme, who is required to furnish a return required to be filed under section 7

PRACTICE MANUAL

Question 1

Answer the following questions:-

(a) Which are the documents to be submitted along with service tax return?

(b) Who are the persons liable to file service tax returns?

(c) Whether service tax return can be furnished after the due date?

(d) Mr. Raju is a multiple service provider and files only a single return. State with reasons whether he can do so?

Answer

(a) Along with service tax (ST-3) return, the following documents should be attached:

(i) copies of GAR-7 challans which indicate the payment of service tax for the months/quarter covered in the half-yearly return.

(ii) memorandum in Form ST-3A giving full details of the difference between the amount of provisional amount of tax deposited and the actual amount payable for each month. This memorandum (Form ST-3A) is to be attached only when the assessee opts for provisional payment of service tax.

(b) Section 70(1) of the Finance Act, 1994, inter alia, provides that every person liable to pay service tax shall himself assess the tax due on the services provided by him and shall furnish a return to the Superintendent of Central Excise.

Sub-section (2) of section 70 stipulates that certain notified person or class of persons shall also furnish to the Superintendent of the Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.

(c) A delayed return can be furnished by paying the prescribed late fee. Section 70(1) of the Finance Act, 1994, inter alia, provides for filing of periodical return after the due date with the prescribed late fee of not more than ` 20,000/-.

(d) Yes, Mr. Raju can file a single return though he is a multiple service provider. He has to furnish the details in each of the columns of the Form No.ST-3 separately for each of the taxable services rendered by him. Thus, instead of showing a lump sum figure for all the services together, service-wise details should be provided in the return.

Question 2

List the documents to be submitted alongwith the first service tax return.

Answer

Every assessee shall furnish to the Superintendent of Central Excise at the time of filing the return for the first time or 31st January, 2008 whichever is later, a list of following documents in duplicate:

(a) all the records prepared or maintained by the assessee for accounting of transactions in regard to

(i) providing of any service, whether taxable or exempted;

(ii) receipt or procurement of input services and payment for them;

(iii) receipt, purchase, manufacture, storage, sale or delivery, as the case may be, in regard to inputs and capital goods;

(iv) other activities such as manufacture and sale of goods, if any.

(b) all other financial records maintained by him in the normal course of business.

Question 3

What do you mean by e-filing of returns? Is there any facility of e-filing of service tax returns?

Answer

E-filing is a facility for the electronic filing of service tax returns by the assessee from his office, residence or any other place of choice, through the internet, by using a computer. E-filing of returns is mandatory for the assessees. **With effect from 01.10.2011, every assessee will have to submit half-yearly service tax return electronically, irrespective of the amount of service tax paid by him in the preceding financial year.**

CBEC has rolled out an application called ACES(Automation of Central Excise and Service Tax) for automation of major processes like returns, registration, etc.
The assesses can electronically file statutory returns of Central Excise and Service Tax by choosing one of the two facilities being offered by the Department at present :
1. they can file it online, or
2. download the off-line return utilities which can be filled-in off-line and uploaded to the system through the internet.

Question 4
State the due dates for filing of service tax returns. Will the delayed filing of service tax return result in payment of any late fee? If so, how much?
Answer
The service tax return (in Form ST-3) should be filed on half yearly basis by the 25th of the month following the particular half-year. The due dates on this basis are as under:

Half year	**Due date**
1st April to 30th September	25th October
1st October to 31st March	25th April

In case the due date of filing of return falls on a public holiday, the assessee can file the return on the immediately succeeding working day.
Yes, late fee will be levied for delay in furnishing of the service tax return. The prescribes late is given hereunder:

S. No.	**Period of delay**	**Late fee**
	Particulars	`
(a)	15 days from the date prescribed for submission of the return	500
(b)	Beyond 15 days but not later than 30 days from the date prescribed for submission of the return.	1,000
(c)	Beyond 30 days from the date prescribed for submission of the return	An amount of ` 1,000 plus `100 for every day from the 31st day till the date of furnishing the said return

However, the total late fee for delayed submission should not exceed ` 20,000

Question 5
What is the late fee payable for delay in furnishing the service tax return? Can the same be waived?
Answer
The late fee payable for delay in submitting the service tax return is furnished below:

S. No.	**Period of delay (No. of days from the due date of filing the return)**	**Late fee (`)**
(a)	15 days	500
(b)	16 – 30 days	1000
(c)	Beyond 30 days	` 1000 plus ` 100 for every day

		of delay beyond 30 days.

However, the total late fee payable shall not exceed ` 20,000.

Waiver of late fee: Where the gross amount of service tax payable is nil, the Central Excise Officer may, on being satisfied that there was sufficient cause for the delay, reduce or waive the late fee.

Question 6

State the contents of Service tax return.

Answer

General details, like financial year, half year period (April-September or October-March), name of the assessee, registration number of the premises for which return is being filed, category of taxable services are required to be furnished. Apart from this, some significant month-wise details also need to be furnished. For instance:

(i) amount received towards taxable service
(ii) amount received in advance towards taxable service to be provided
(iii) amount billed for exempted services and services exported without payment of tax
(iv) amount billed for services on which tax is to be paid
(v) abatement claimed - value
(vi) notification number of abatement and exemption
(vii) service tax payable
(viii) education cess payable
(ix) GAR-7 challan date and number
(x) credit details for service tax provider/recipient

Question 7

(i) Can the service tax return be revised? If so, state the relevant period before which it can be done?

(ii) Mr. Amarnath, a registered service provider did not render any taxable services during the financial year 2013-14. Whether he is required to file service tax return? Is he liable for penalty for non-filing? If so, how much?

Answer

(i) Yes, the service tax return can be revised by an assessee. An assessee can submit a revised return, in Form ST-3, in triplicate, to correct a mistake or omission.
The service tax return can be revised within a period of 90 days from the date of submission of the original return.

(ii) Every assessee has to file a half yearly return in Form ST-3. Even if no service is provided during a half year, and no service tax is payable; a NIL return has to be filed. Therefore, Mr. Amarnath is required to file a service tax return even if he did not render any taxable services during the financial year 2013-14

Yes, Mr. Amarnath is liable for penalty for non-filing of return. The maximum amount of penalty which can be levied for non-filing of return is ` 20,000. However, the Central Excise Officer may reduce or waive the penalty if he is satisfied that there is sufficient reason for not filing the return.

As per Rule 7C of the Service Tax Rules, 1994, the prescribed late fee for furnishing a delayed return is:

S. No.	Period of delay	Late fee (`)
a)	15 days from the date prescribed for submission of the return.	500
b)	Beyond 15 days but not later than 30 days from	1,000

c)	the date prescribed for submission of the return. Beyond 30 days from the date prescribed for submission of the return.	An amount of ` 1,000 plus ` 100 for every day from the 31st day till the date of furnishing the said return.

Question 8

PS Ltd. has paid service tax of ` 9 lakh during the financial year 2013-14.You are required to examine whether it is required to file service tax return electronically for the half year ended September 30, 2013.

Answer

Service Tax Rules, 1994 have been amended to provide that every assessee will have to submit half-yearly service tax return electronically, irrespective of the amount of service tax paid by him in the preceding financial year. The amendment would be effective from October 1st, 2011. Hence, PS Ltd. has to file service tax return electronically for the half year ended September 30, 2013.

Question 9

Prasad & Co. seeks your advise for the following in the context of service tax:

It wants to file revised service tax return even though the original return was filed belatedly.

Your answer must be with reasons.

Answer

Revised service tax returns may be filed within 90 days from the date of filing original return. Even if the original return is filed belatedly, the return could be revised by filing a revised return.

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TDS WHEN PAYMENT INCLUDES SERVICE TAX

Question: Explain provisions of Tax Deduction at Source (TDS) with regard to Service Tax.

Answer:

If any service recipient has to make the payment to the service provider and tax has to be deducted at source, in that case, while deducting tax at source, service tax shall also be included in some of the cases and it will not be included in some other cases and is as given below:

TDS excluding Service Tax

1. If the service recipient is making payment of **Rent**, tax shall be deducted at source under section 194-I @ 10% and tax shall be deducted excluding service tax.

Example

ABC Ltd. has let out one commercial building to XYZ Ltd. and rent charged is `20,00,000 plus service tax, in this case, tax to be deducted at source by XYZ Ltd. shall be 20,00,000 x 10% = `2,00,000 and amount payable to ABC Ltd. shall be

Rent	20,00,000
Add: Service Tax @ 12.36%	2,47,200
Total	22,47,200
Less: TDS (20,00,000 x 10%)	2,00,000
Amount Payable	20,47,200

2. If the service recipient is making payment of **Commission / Brokerage**, tax shall be deducted at source under section 194-H @ 10% and tax shall be deducted excluding service tax.

Example

Mr. X a property dealer has rendered services for getting one commercial building on rent to XYZ Ltd. and Commission charged is `5,00,000 plus service tax, in this case, tax to be deducted at source by XYZ Ltd. shall be 5,00,000 x 10% = `50,000 and amount payable to Mr. X shall be

Commission	5,00,000
Add: Service Tax @ 12.36%	61,800
Total	5,61,800
Less: TDS (5,00,000 x 10%)	50,000
Amount Payable	5,11,800

3. If the service recipient is making payment of **Commission for Sale of Lottery Tickets**, tax shall be deducted at source under section 194-G @ 10% and tax shall be deducted excluding service tax.

ABC Ltd. has appointed Mr. X as a salesman for sale of lottery tickets and Mr. X has charged commission of `2,00,000 plus service tax @ 12.36%, in this case, amount of TDS shall be

Commission	2,00,000
Add: Service Tax @ 12.36%	24,720
Total	2,24,720
Less: TDS (2,00,000 x 10%)	20,000
Amount Payable	2,04,720

4. If the service recipient is making payment of **Commission for Insurance Business**, tax shall be deducted at source under section 194-D @ 10% and tax shall be deducted excluding service tax. There is a Reverse Charge and service tax has to be paid by the Insurance Company (Such services are called Insurance Auxiliary Services)

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Example

If LIC has to commission of `2,00,000 to their agent Mr. X in connection with insurance business, amount of TDS shall be `2,00,000 x 10% = `20,000 and service tax of `24,720 shall be paid directly by LIC to the Government under Reverse Charge under Rule 2(1)(d).

TDS including Service Tax

1. If the service recipient is making payment for **Professional / Technical** services, tax shall be deducted at source under section 194-J @ 10% and tax shall be deducted including service tax.

Example

Mr. X, a Chartered Accountant has given professional services to XYZ Ltd. and charged `20,00,000 plus service tax, in this case, tax to be deducted at source by XYZ Ltd. shall be 22,47,200 x 10% = `2,24,720 and amount payable to Mr. X shall be

Professional Charges	20,00,000
Add: Service Tax @ 12.36%	2,47,200
Total	22,47,200
Less: TDS (22,47,200 x 10%)	2,24,720
Amount Payable	20,22,480

2. If the service recipient is making payment for any **Contract** e.g. **Advertising Contract** or **Catering Contract** etc tax shall be deducted at source under section 194-C @ 2% but if payment is being given to any individual or HUF, tax shall be deducted at source @ 1% and tax shall be deducted including service tax.

Example

ABC Ltd. has rendered advertising services to XYZ Ltd. and charged `20,00,000 plus service tax, in this case, tax to be deducted at source by XYZ Ltd. shall be 22,47,200 x 2% = `44,944 and amount payable to ABC Ltd. shall be

Advertising Charges	20,00,000
Add: Service Tax @ 12.36%	2,47,200
Total	22,47,200
Less: TDS (22,47,200 x 2%)	44,944
Amount Payable	22,02,256

Question 1

State with reason in brief whether the following statement is true or false with reference to the provisions of service tax:

Mr. Salim, an architect has received the fees of ` 4,48,500 after the deduction of income-tax of `51,500.Service tax will be payable on ` 4,48,500.

Answer

False : As the charge of the service tax is on the total value of services provided, the gross receipts are to be considered for tax calculation. Hence, service tax will be payable on the gross fee of ` 5 lakh.

Question 2

X & Co. is a service provider. It received ` 19,80,000 during the financial year 2013-14 after deduction of tax at source under section 194 J of the Income-tax Act, 1961.

The rate of tax deduction is 10% (i.e. after deduction of ` 2,20,000)

(i) Calculate the service tax liability of X & Co.

(ii) Can a multiple service provider use a single challan for payment of service tax for various services rendered by it?

Answer

(i) Calculation of Service Tax Liability of X & Co.:-

Particulars	`
Amount received (Net)	19,80,000.00
Add: Tax deducted at source under section 194J	2,20,000.00
Gross amount (including service tax)	22,00,000.00
Service Tax Liability = 22,00,000 x $\frac{12.36}{112.36}$	2,42,007.83
Service Tax Liability (rounded off)	2,42,008.00

(ii) A multiple service provider (a service provider rendering more than one taxable service) can use single GAR-7 challan for payment of service tax on different services. However, amounts attributable to each such service along with concerned accounting codes should be mentioned clearly in the column provided for this purpose in the GAR-7 challan. Alternatively, separate GAR-7 challans may be used for payment of service tax for each service provided by the service provider.

Note: It has been assumed that X & Co. is non SSP.

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PRACTICE PROBLEMS

Question 1:

Mr. X has started rendering services w.e.f. 01/04/2013 and it is not covered in the Negative List and also not covered in Mega Exemption. He has submitted particulars as given below:

1. Rendered services on 01/05/2013 and issued bill on 10/06/2013 for ` 6 lakhs and payment was received on 10/12/2013.
2. Rendered services on 07/06/2013 and issued bill on 30/06/2013 for ` 15 lakhs and payment was received on 07/03/2014.
3. Rendered services on 12/07/2013 and issued bill on 31/08/2013 for ` 30 lakhs and payment was received on 07/01/2014.
4. Rendered services on 22/11/2013 and issued bill on 28/12/2013 for ` 60 lakhs and payment was received on 10/02/2014.

All the above amounts are exclusive of Service Tax and Service Tax has been charged separately, wherever applicable.

Compute the Service Tax Payable for each quarter and also last date upto which Service Tax should be paid.

If there was delay of 10 days on each payment, compute interest payable under section 75.

Question 2:

Presume in above question Service Provider is XYZ Ltd.

Question 3:

Mr. X, a service provider has submitted information as given below:

a) Rendered services on 10/04/2013 and issued bill on 01/07/2013 ` 20 lakhs + Service Tax and payment was received on 01/01/2014.
b) Rendered services on 30/06/2013 and issued bill on 10/07/2013 ` 75 lakhs + Service Tax and payment was received on 31/12/2013.
c) Rendered services on 10/12/2013 and issued bill on 05/01/2014 ` 27 lakhs + Service Tax and payment was received on 01/04/2014.

Compute Service Tax payable for each quarter in the following situations, and if there was a delay of 20 days in each payment of Service Tax, compute interest under section 75 and penalty under section 76.

I. Gross receipt in F.Y. 2012-13 was ` 30 Lakhs
II. Gross receipt in F.Y. 2012-13 was ` 55 Lakhs

Question 4:

Mr. X a Service Provider, has submitted information as given below:-

a) Rendered services on 10/06/2013 and issued bill on 01/07/2013 ` 32 lakhs + Service Tax and payment was received on 01/01/2014.

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b) Rendered services on 01/09/2013 and issued bill on 10/10/2013 ` 60 lakhs + Service Tax and payment was received on 16/03/2014.
c) Rendered services on 31/12/2013 and issued bill on 28/01/2014 ` 25 lakhs + Service Tax and payment was received on 20/08/2014.

Compute Service Tax payable for each quarter in the following situations and also interest u/s 75 and penalty u/s 76 for each quarter, presuming that each payment was delayed by 18 days.

I. Gross receipt in F.Y. 2012-13 was ` 40 Lakhs
II. Gross receipt in F.Y. 2012-13 was ` 55 Lakhs
III. Gross receipt in F.Y. 2012-13 was ` 65 Lakhs
IV. Service Provider is a Company, gross receipt in F.Y. 2012-13 is 35 lakhs and also show calculation of each month.

Question 5:
ABC Ltd. has submitted information as given below:

a) Rendered services on 10/05/2013 and issued bill on 07/06/2013 `12 lakhs, payment was received on 10/12/2013 and no service tax is charged.
b) Rendered services on 20/06/2013 and issued bill on 13/07/2013 and payment was received on 21/08/2013 in kind and market value is `18,00,000.
c) Rendered free services on 10/09/2013 and market value of service is `11,00,000.
d) Rendered services on 18/12/2013 and issued bill on 07/01/2014 `60,00,000 and no service tax was charged and the company has received payment on 31/03/2014.
e) Company has taken input services on 10/02/2014 and paid `10,00,000 + Service Tax.
f) Company has incurred expenses of `7,00,000 in rendering services.
g) Company has paid Service Tax of `11,00,000 in F.Y. 2012-13.

Compute Service Tax Payable for each month and also the Income Tax Liability. Company has paid Service Tax on 20th of the month instead of due date from 01/04/2013 to 31/12/2013. Compute interest u/s 75 and the department have waived off the penalty u/s 76 and 78.

Question 6:
Mr. X has submitted particulars as given below:-

a) Rendered service on 01.05.2013 and issued Invoice on 10.05.2013 of `6 Lakh and payment was made on 01.07.2013

b) Rendered service on 01.06.2013 and issued Invoice on 10.07.2013 of `20 Lakh and payment was made on 30.06.2013

c) Rendered service on 01.09.2013 and issued Invoice on 30.09.2013 of `11 Lakh and payment was made on 31.03.2014

d) Rendered service on 28.12.2013 and issued Invoice on 24.01.2014 of `60 Lakh and payment was made on 08.01.2014

i. He has incurred `10 Lakh in rendering services.

His gross receipt in F.Y.2012-13 was `40 lakh and is not eligible for SSP Exemption. All the amounts are exclusive of Service Tax.

Compute Service Tax for Financial Year 2013-14 and Income Tax Liability for Assessment Year 2014-15.

b) Presume Receipt in last year is ` 60 Lakh.

Question 7:

Mr. X has submitted particulars as given below:-

The service provider has issued bills and received amount of ` 10 lakh from 01.07.2013 to 30.09.2013. He has taken input services in August 2013 and he has paid ` 2 lakh plus service tax.

The service provider has issued bill of ` 70 Lakh on 01.11.2013 and received ` 30 lakh on 31.12.2013 and balance on 31.03.2014 and service were rendered on 31.10.2013.

His receipt in FY 2012-13 was `55 Lakh.

Service tax has been charged in addition to the above amount wherever it was applicable.

Compute Service Tax Payable for the each quarter.

Question 8:

Mr. X has submitted particulars as given below:-

a) Rendered service and issued Invoice on 01.05.2013 of `30 Lakh and payment was received on 10.03.2014

b) Rendered service on 01.09.2013 and issued Invoice on 10.09.2013 of `70 Lakh and payment was received on 10.01.2014.

His receipt in FY 2012-13 was `32 Lakh.

Compute Service Tax Payable for the financial year 2013-14 and last date up to which service tax should be paid.

Question 9:

Date of completion	Date of Invoice	Date of Payment
01.08.2013	20.08.2013	18.08.2013
01.07.2013	20.08.2013	18.08.2013
01.07.2013	20.07.2013	01.05.2013
01.08.2013	31.08.2013	01.09.2013

Determine the Point of Taxation as per Rule 3 of Point of Taxation Rule 2011.

Question 10:

Mr. X started rendering services w.e.f. 01.04.2013 and has submitted particulars as given below:-

1) Rendered services on 10.04.2013, bill issued on 20.04.2013 amount `10 Lakh, Payment Received on 10.11.2013

2) Rendered services on 06.07.2013 `60 Lakh and issued bill on 01.08.2013 and payment received on 10.12.2013

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3) Rendered services on 07.11.2013 `30 Lakh, bill issued on 08.11.2013 and payment received in advance on 03.10.2013.

4) Rendered services on 10.01.2014 `10 Lakh bill issued on 01.04.2014 and payment received on 03.04.2014

All of the amounts are exclusive of service tax and service tax has been charged separately, wherever it was applicable.

Compute service tax payable for each quarter and the last date up to which the payment should be made.

Question 11:

Mr. X is a service Provider and he is rendering services which are exempt from service tax and his turnover up to 30.06.2013 is ` 6 lakh.

The service has become taxable w.e.f 01.07.2013 and value of service rendered from 01.07.2013 to 30.09.2013 is ` 10 lakh. He has taken input service from 01.07.2013 to 30.09.2013 and paid ` 2 lakh plus service tax.

He has rendered service from 01.10.2013 to 31.12.2013 ` 11 Lakh and he himself has taken input services and paid ` 3 lakh plus service tax

He has rendered services from 01.01.2014 to 31.03.2014 ` 9 lakh.

Service tax has been charged in addition to the above amount wherever service tax was received in the relevant quarter.

Compute Service Tax Payable for the each quarter and also last date up to which service tax should be deposited. Also compute Income Tax Liability presuming that other expenditure is ` 9 lakh.

b) Presume Service provider rejected SSP exemption

Question 12:

ABC Ltd. is a service provider and it has submitted particulars as given below:-

a) Rendered service on 10.04.2013 and issued invoice on 18.05.2013 of `11 lakh plus service tax and half payment was received on 03.09.2013 and balance half on 01.05.2013.

b) Rendered service on 17.06.2013 and issued invoice on 07.07.2013 of `42 lakh plus service tax and payment was received on 10.08.2013

c) Rendered service on 21.09.2013 and issued invoice on 10.10.2013 of `22 lakh and no service tax was collected and payment was received on 10.12.2013

d) Rendered service on 01.01.2014 and issued invoice on 18.02.2014 of `28 lakh and no service tax was collected and payment was received on 01.04.2014.

   Company has taken input services on 01.07.2013 and paid `10 lakh plus service tax. Company is not eligible for SSP exemption.

Compute Service Tax Payable for each month for F.Y. 2013-14 and also the last date up to which payment should be made and in the F.Y. 2012-13 company paid service tax of ` 13 Lakh.

Question 13:

Mr. X has submitted particulars as given below:-

a) Rendered service on 10.04.2013 and issued invoice on 01.05.2013 of `20 lakh plus service tax and payment was received on 10.01.2014

b) Rendered service on 10.07.2013 and issued invoice on 31.08.2013 of `30 lakh plus service tax and payment was received on 30.06.2013

c) He has taken input Services on 01.07.2013 and paid `3 lakh plus Service tax.

d) Rendered service on 01.12.2013 and issued invoice on 15.01.2014 of `22 lakh plus service tax and half payment were received on 10.12.2013 and balance half on 18.01.2014.

He has taken input services on 01.02.2014 ` 4 lakh plus Service tax and other expenses incurred by him ` 6 lakh

His gross receipt in F.Y.2012-13 was `55 lakh

Compute Service Tax Payable for the F.Y.2013-14 and Income Tax Liability for A.Y. 2014-15 and if each payment was delayed by 10 days compute Interest u/s 75 and Penalty u/s 76.

Question 14:

The Jaipuria Ltd. provides the following particulars in respect of various services rendered during the F.Y.2013-14. No service tax has been charged.

S. No.	Particulars	`
(i)	Service provided to RBI	15,00,000
(ii)	Service provided to Mr. Chamku for advertisement on T.V.	18,00,000
(iii)	Service provided to ACL Ltd. for repairing of an aircraft	80,00,000

Compute the service tax payable by The Jaipuria Ltd. for the F.Y.2013-14.

The Jaipuria Ltd is not entitled to the benefit of small service provider exemption available under *Notification No. 33/2012 ST dated 20.06.2012.*

Question 15:

Mr. X started rendering services w.e.f. 01.04.2013 and has submitted information as given below: Service tax has been charged separately

(i) Rendered services to an agricultural farm in relating to agricultural operation of `40,00,000 received on 10.12.2013.

(ii) Renting of agro machinery to an agricultural farm of `10,00,000, received on 05.06.2013

(iii) Selling of space for advertisement to APL ltd. on T.V. `20,00,000,received on 10.10.2013

(iv) Renting of commercial property for `25,00,000 to XYZ Ltd., received `10,00,000 on 10.03.2014 and balance on 20.04.2014

(v) Rendered service to ABC Ltd. for `25,00,000 on 10.03.2014, Issued bill on 20.03.2014, Received on 01.03.2014.

Compute Service Tax Payable for F.Y. 2013-14.

Question 16:

Following services are provided by various service providers, state whether services are taxable or not?

1. Speed post service provided by post office to Delhi govt.
2. Express parcel post service provided by post office to Rajasthan Ltd.
3. Services provided to RBI
4. Service provided by Delhi Metro Rail Corporation for transport of passengers
5. Services provided by an Indian railway for the transport of passengers in first class a/c
6. Service provided in non taxable territory

SOLUTIONS

SOLUTION 1:

- First bill issued is of ` 6 lakhs and it is exempt from Service Tax because Service Provider is eligible for SSP exemption.
- Second bill issued is of ` 15 lakhs, out of which ` 4 lakhs is not taxable because Service Provider is eligible for SSP exemption and balance of ` 11 lakhs shall be taxable on actual receipt basis in the 4^{th} quarter.
- Third bill issued is of ` 30 lakhs and is taxable on actual receipt basis in the 4^{th} quarter.
- Fourth bill issued is of ` 60 lakhs, out of which ` 9 lakhs (50-11-30) is taxable on actual receipt basis in the 4^{th} quarter and balance of ` 51 lakhs shall be taxable on the basis of Rule 3 of Point of Taxation Rules, 2011 and Point of Taxation shall be 22/11/2013 and taxable in third quarter.

	`
Quarter 1:	**NIL**
Quarter 2:	**NIL**
Quarter 3:	
Value of Services	51,00,000
Service Tax @12%	6,12,000
Add: Education Cess @2%	12,240
Add: SHEC @1%	6,120
Total Service Tax	6,30,360

This should be paid up to 05/01/2014.

Interest u/s 75:

6,30,360x15%x10/365	2,591

Quarter 4:

Value of Services (11,00,000+30,00,000+9,00,000)	50,00,000
Service Tax @12%	6,00,000
Add: Education Cess @2%	12,000
Add: SHEC @1%	6,000
Total Service Tax	6,18,000

This should be paid up to 31/03/2014.

Interest u/s 75:

6,18,000x15%x10/365	2,540

SOLUTION 2:

	`
April	**NIL**
May	**NIL**
June	
Value of Services (15,00,000-4,00,000)	11,00,000
(POT 30/06/2013)	
Service Tax @12%	1,32,000
Add: Education Cess @2%	2,640
Add: SHEC @1%	1,320
Total Service Tax	1,35,960
This should be paid up to 05/07/2013.	
Interest u/s 75:	
1,35,960 x 15% x 10/365	559
July	
Value of Services	30,00,000
(POT 12/07/2013)	
Service Tax @12%	3,60,000
Add: Education Cess @2%	7,200
Add: SHEC @1%	3,600
Total Service Tax	3,70,800
This should be paid up to 05/08/2013.	
Interest u/s 75:	
3,70,800 x 15% x 10/365	1,524
August	**NIL**
September	**NIL**
October	**NIL**
November	
Value of Services	60,00,000
(POT 22/11/2013)	
Service Tax @12%	7,20,000
Add: Education Cess @2%	14,400
Add: SHEC @1%	7,200
Total Service Tax	7,41,600
This should be paid up to 05/12/2013.	
Interest u/s 75:	
7,41,600 x 15% x 10/365	3,048
December	**NIL**
January	**NIL**
February	**NIL**
March	**NIL**

SOLUTION 3:

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I: Computation of Service Tax Payable `

1st Quarter (Apr-June)			NIL
2nd Quarter (July-Sep.)			
Output Service Tax (75,00,000 – 30,00,000) x 12.36% (POT 10/07/2013)			5,56,200
Input Service Tax Credit			NIL
Net Service Tax Payable			5,56,200
Interest u/s 75			
`5,56,200 x 15% x 20/365			4,572
Penalty u/s 76			
`5,56,200 x 1% x 20/31		3,588	
Or			
`100 x 20 days	2,000		
Whichever is Higher, Hence penalty is			3,588
3rd Quarter (Oct.-Dec.)			
Output Service Tax (`30,00,000 x 12.36%) (POT 31/12/2013)			3,70,800
Input Service Tax Credit			NIL
Net Service Tax Payable			3,70,800
Interest u/s 75			
`3,70,800 x 15% x 20/365			3,048
Penalty u/s 76			
`3,70,800 x 1% x 20/31		2,392	
Or			
`100 x 20 days	2,000		
Whichever is Higher, Hence penalty is			`2,392
4th Quarter (Jan-March)			
Output Service Tax (`20,00,000 x 12.36%) (POT 01/01/2014)			2,47,200
Output Service Tax (`27,00,000 x 12.36%) (POT 05/01/2014)			3,33,720
Input Service Tax Credit			NIL
Net Service Tax Payable			5,80,920
Interest u/s 75			
`5,80,920 x 15% x 20/365			4,775
Penalty u/s 76			
`5,80,920 x 1% x 20/30		3,873	
Or			
`100 x 20 days	2,000		
Whichever is Higher, Hence penalty is			`3,873

II: Computation of Service Tax Payable `

1st Quarter (Apr-June)

Output Service Tax (20,00,000 x 12.36%) (POT 10/04/2013)		2,47,200
Input Service Tax Credit		NIL
Net Service Tax Payable		2,47,200
Interest u/s 75		
`2,47,200 x 15% x 20/365		2,032
Penalty u/s 76		
`2,47,200 x 1% x 20/31	1,595	
Or		
`100 x 20 days	2,000	
Whichever is Higher, Hence penalty is		2,000

2nd Quarter (July-Sep.)

Output Service Tax (75,00,000 x 12.36%) (POT 10/07/2013)		9,27,000
Input Service Tax Credit		NIL
Net Service Tax Payable		9,27,000
Interest u/s 75		
`9,27,000 x 15% x 20/365		7,619
Penalty u/s 76		
`9,27,000 x 1% x 20/31	5,981	
Or		
`100 x 20 days	2,000	
Whichever is Higher, Hence penalty is		5,981

3rd Quarter (Oct.-Dec.)		NIL
4th Quarter (Jan-March)		
Output Service Tax (`27,00,000 x 12.36%) (POT 05/01/2014)		3,33,720
Input Service Tax Credit		NIL
Net Service Tax Payable		3,33,720
Interest U/s 75		
`3,33,720 x 15% x 20/365		2,743
Penalty U/s 76		
`3,33,720 x 1% x 20/30	2,225	
Or		
`100 x 20 days	2,000	
Whichever is Higher, Hence penalty is		`2,225

SOLUTION 4:

I: Computation of Service Tax Payable `

1st Quarter (Apr-June)	NIL
2nd Quarter (July-Sep.)	
Output Service Tax (42,00,000 x 12.36%) (POT 01/09/2013)	5,19,120
Input Service Tax Credit	NIL
Net Service Tax Payable	5,19,120
Interest u/s 75	
`5,19,120 x 15% x 18/365	3,840
Penalty u/s 76	
`5,19,120 x 1% x 18/31 3,014	
Or	
`100 x 18 days 1,800	
Whichever is Higher, Hence penalty is	3,014
3rd Quarter (Oct.-Dec.)	NIL
4th Quarter (Jan-March)	
Output Service Tax (`32,00,000 x 12.36%) (POT 01/01/2014)	3,95,520
Output Service Tax (`18,00,000 x 12.36%) (POT 16/03/2014)	2,22,480
Output Service Tax (`25,00,000 x 12.36%) (POT 28/01/2014)	3,09,000
Input Service Tax Credit	NIL
Net Service Tax Payable	9,27,000
Interest u/s 75	
`9,27,000 x 15% x 18/365	6,857
Penalty u/s 76	
`9,27,000 x 1% x 18/30 5,562	
Or	
`100 x 18 days 1,800	
Whichever is Higher, Hence penalty is	`5,562

<u>II: Computation of Service Tax Payable</u> `

1st Quarter (Apr-June)	NIL
2nd Quarter (July-Sep.)	
Output Service Tax (32,00,000 x 12.36%) (POT 01/07/2013)	3,95,520
Output Service Tax (60,00,000 x 12.36%) (POT 01/09/2013)	7,41,600
Input Service Tax Credit	NIL
Net Service Tax Payable	11,37,120

Interest u/s 75

`11,37,120 x 15% x 18/365 8,412

Penalty u/s 76
`11,37,120 x 1% x 18/31 6,603
Or
`100 x 18 days 1,800
Whichever is Higher, Hence penalty is 6,603
3rd Quarter (Oct.-Dec.) NIL

4th Quarter (Jan-March)
Output Service Tax (`25,00,000 x 12.36%) 3,09,000
(POT 28/01/2014)
Input Service Tax Credit NIL
Net Service Tax Payable 3,09,000

Interest u/s 75
`3,09,000 x 15% x 18/365 2,286

Penalty u/s 76
`3,09,000 x 1% x 18/30 1,854
Or
`100 x 18 days 1,800
Whichever is Higher, Hence penalty is `1,854

<u>III: Computation of Service Tax Payable</u> `

1st Quarter (Apr-June) NIL

2nd Quarter (July-Sep.)
Output Service Tax (32,00,000 x 12.36%) 3,95,520
(POT 01/07/2013)
Output Service Tax (60,00,000 x 12.36%) 7,41,600
(POT 01/09/2013)
Input Service Tax Credit NIL
Net Service Tax Payable 11,37,120

Interest u/s 75
`11,37,120 x 18% x 18/365 10,094

Penalty u/s 76
`11,37,120 x 1% x 18/31 6,603
Or
`100 x 18 days 1,800
Whichever is Higher, Hence penalty is 6,603

3rd Quarter (Oct.-Dec.) NIL

4th Quarter (Jan-March)
Output Service Tax (`25,00,000 x 12.36%) 3,09,000
(POT 28/01/2014)
Input Service Tax Credit NIL
Net Service Tax Payable 3,09,000

Interest u/s 75
`3,09,000 x 18% x 18/365 2,743

Penalty u/s 76
`3,09,000 x 1% x 18/30 1,854
Or
`100 x 18 days 1,800
Whichever is Higher, Hence penalty is `1,854

<u>IV: Computation of Service Tax Payable</u> `

April 2013 NIL

May 2013 NIL

June 2013 NIL

July 2013

Output Service Tax (32,00,000 x 12.36%) (POT 01/07/2013)	3,95,520
Input Service Tax	NIL
Net Service Tax Payable	3,95,520

Interest u/s 75
`3,95,520 x 15% x 18/365 2,926

Penalty u/s 76
`3,95,520 x 1% x 18/31 2,297
Or
`100 x 18 days 1,800
Whichever is Higher, Hence penalty is `2,297

August 2013 NIL

September 2013

Output Service Tax (60,00,000 x 12.36%) (POT 01/09/2013)	7,41,600
Input Service Tax	NIL
Net Service Tax Payable	7,41,600

Interest u/s 75
`7,41,600 x 15% x 18/365 5,486

Penalty u/s 76
`7,41,600 x 1% x 18/31 4,306
Or
`100 x 18 days 1,800
Whichever is Higher, Hence penalty is `4,306

October 2013	NIL
November 2013	NIL
December 2013	NIL
January 2014	
Output Service Tax (25,00,000 x 12.36%) (POT 28/01/2014)	3,09,000
Input Service Tax	NIL
Net Service Tax Payable	3,09,000
Interest u/s 75	
`3,09,000 x 15% x 18/365	2,286
Penalty u/s 76	
`3,09,000 x 1% x 18/28 1,986	
Or	
`100 x 18 days 1,800	
Whichever is Higher, Hence penalty is	1,986
February 2014	NIL
March 2014	NIL

<u>SOLUTION 5:</u>

<u>Computation of Service Tax Payable</u>

	`
April 2013	NIL
May 2013	NIL
June 2013	
Total amount charged (inclusive of Service Tax) (POT 07/06/2013)	12,00,000
Amount of Service Tax Payable (12,00,000 x 12.36/112.36)	1,32,004
Interest u/s 75	
`1,32,004 x 18% x 14/365	911
July 2013	
Total amount charged (inclusive of Service Tax) (POT 13/07/2013)	18,00,000
Amount of Service Tax Payable (18,00,000 x 12.36/112.36)	1,98,006
Interest u/s 75	
`1,98,006 x 18% x 14/365	1,367
August 2013	NIL
September 2013	NIL

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October 2013	NIL
November 2013	NIL
December 2013	NIL
January 2014	
Total amount charged (inclusive of Service Tax) (POT 07/01/2014)	60,00,000
Amount of Service Tax Payable (60,00,000 x 12.36/112.36)	6,60,021
February 2014	
Input services	10,00,000
Input tax credit (10,00,000 x 12.36%)	1,23,600

Tax credit of `1,23,600 shall be carried forward and shall be adjusted from output tax in future.

March 2014 NIL

<u>Computation of Income Tax liability:</u>

Receipt from rendering of services	
June (12,00,000 – 1,32,004)	10,67,996
July (18,00,000 – 1,98,006)	16,01,994
January (60,00,000 – 6,60,021)	53,39,979
Total receipt	80,09,969
Less: Input Services	10,00,000
Less: Other expenses	7,00,000
Less: Interest (911 + 1,367)	2,278
Income under the head Business/Profession	63,07,691
Gross Total Income	63,07,691
Less: Deduction u/s 80C to 80U	NIL
Total Income	63,07,691
Rounded off u/s 288A	63,07,690
Tax on 63,07,690 @ 30%	18,92,307.00
Add: Education cess @ 2%	37,846.14
Add: Secondary and higher education cess @ 1%	18,923.07
Tax Liability	19,49,076.21
Rounded off u/s 288B	19,49,080.00

<u>SOLUTION 6:</u>

`

Computation of Service Tax Payable

<u>1st Quarter (Apr-June)</u>

Output service tax (`20, 00,000 x 12.36%) (POT 30.06.2013)	2,47,200

<u>2nd Quarter (July-Sep.)</u>

Output service tax (`6, 00,000 x 12.36%) (POT 01.07.2013)	74,160

3rd Quarter (Oct.-Dec.)	Nil
4th Quarter (Jan-March)	
Output service (`11, 00,000 x 12.36%) (POT 31.03.2014)	1,35,960
Output service tax (`13, 00,000 x 12.36%) (POT 08.01.2014)	1,60,680
Output service `47, 00,000 x 12.36% (POT 08.01.2014)	5,80,920
Total Output service tax	8,77,560

Computation of Income Tax Liability

Gross Receipt (`6 Lakh + `20 Lakh + `11 Lakh + `60 Lakh)	97,00,000	
Less: Input Service Exp.		10,00,000
Income under head B/P		87,00,000
Gross Total Income		87,00,000
Less: Deduction u/s 80C to 80U		Nil
Total Income		87,00,000

Computation of Income Tax Liability

On `87,00,000 at slab rate	24,40,000
Add: EC/SHEC @ 3%	73,200
Tax Liability	25,13,200

SOLUTION 6(b):

`

Computation of Service Tax Payable

1st Quarter (Apr-June)	
Output service tax (6,00,000x12.36%) (POT 10.05.2013)	74,160
Output service tax (`20,00,000 x 12.36%) (POT 01.06.2013)	2,47,200
Total Output Service Tax	**3,21,360**
2nd Quarter (July-Sep.)	
Output service tax (`11,00,000 x 12.36%) (POT 30.09.2013)	1,35,960
3rd Quarter (Oct.-Dec.)	Nil
4th Quarter (Jan-March)	

Output service tax (`60, 00,000 x 12.36%) (POT 08.01.2014)	7,41,600

Computation of Total Income

Gross Receipt (`6 Lakh + `20 Lakh + `11 Lakh + `60 Lakh)	97,00,000	
Less: Input Service Exp.		10,00,000
Income under head B/P		87,00,000
Gross Total Income		87,00,000
Less: Deduction u/s 80C to 80U		Nil
Total Income		87,00,000

Computation of Income Tax Liability

On `87,00,000 at slab rate	24,40,000
Add: EC/SHEC @ 3%	73,200
Tax Liability	25,13,200

SOLUTION 7:

Calculation of Service Tax Payable `

1st Quarter (Apr.- June) Nil

2nd Quarter (July- Sep.)

Output service Tax (`10,00,000 x 12.36%)	1,23,600
Less: Input service Tax paid (`2,00,000 x 12.36%)	24,720
Net Service Tax Payable	98,880

3rd Quarter (Oct. - Dec.)

Output Service Tax (`70,00,000 x 12.36%)	8,65,200
Net Service Tax Payable	8,65,200

4th Quarter (Jan.-March) Nil

SOLUTION 8:

`

Computation of Service Tax Payable

1st Quarter (Apr-June) Nil

2nd Quarter (July-Sep.)

Output service Tax (`50,00,000 x 12.36%) (POT Date 10.09.2013)	6,18,000

3rd Quarter (Oct.-Dec.) Nil

4th Quarter (Jan-March)

Output service Tax (`30,00,000 x 12.36%) (On Receipt basis)	3,70,800

Output service Tax (`20,00,000 x 12.36%) (On Receipt basis)	2,47,200
Service Tax Payable	6,18,000

Last date of the payment of service tax for:

1st quarter	5th July/6th July
2nd quarter	5th Oct/6th Oct
3rd quarter	5th Jan/6th Jan.
4th quarter	31st March

SOLUTION 9:

Date of completion	Date of Invoice	Date of Payment	POT
01.08.2013	20.08.2013	18.08.2013	18.08.2013
01.07.2013	20.08.2013	18.08.2013	01.07.2013
01.07.2013	20.07.2013	01.05.2013	01.05.2013
01.08.2013	31.08.2013	01.09.2013	31.08.2013

SOLUTION 10:
Calculation of Service Tax Payable

First Quarter (Apr-June)
In this Quarter the service provider has started rendering services w.e.f. 01.04.2013, hence no service tax is payable on first `10 Lakh

Second Quarter (July-sep.)
Total bills issued are ` 60 lakh, out of which service of the value of ` 50 Lakh shall be payable on Receipt basis. (I.e. In the third quarter)

Service tax on balance `10 Lakh shall be payable as per rule 3 of point of taxation rule 2011 and Point of Taxation shall be 01.08.2013

	`
`10, 00,000 x 12.36%	1,23,600
Service Tax Payable	1,23,600

3rd Quarter (Oct. To Dec.)

`50,00,000 x 12.36%	6,18,000
`30,00,000 x 12.36%	3,70,800
Service Tax Payable	9,88,800

4th Quarter :-(Jan to March)
Since Point of taxation is 01.04.2014 no service tax is payable in F.Y. 2013-14.

SOLUTION 11:
Calculation of service tax payable

1st Quarter (Apr. - June)
In this Quarter the service is exempt from service tax, so no service tax is charged.

2nd Quarter (July- Sep.)
In this case value of service is up to ` 10 lakh no service tax shall be charged also no tax credit is allowed.

3rd quarter (Oct. - Dec.)

	`
Output service tax (`11, 00,000 x 12.36%)	1,35,960
Less: Input service tax paid (`3,00,000 x 12.36%)	37,080
Net Service Tax	98,880

4th quarter (Jan.-March)

Output service tax (`9,00,000 x 12.36%)	1,11,240

Last date of the payment of service tax for:

1st quarter	5th July/6th July
2nd quarter	5th Oct/6th Oct
3rd quarter	5th Jan/6th Jan.
4th quarter	31st March

Computation of Income Tax Liability

Income under head business profession	
Gross receipt	36,00,000
Less: Expenditure	9,00,000
Less: Input Service (`2,24,720 + `3,00,000)	5,24,720
Total Income	21,75,280
Tax Liability	4,97,060

b)
Calculation of service tax payable
1st Quarter (Apr. - June)
In this Quarter the service is exempt from service tax, so no service tax is charged.

2nd Quarter (July -Sep.)

Output service tax (`10,00,000 x 12.36%)	1,23,600
Less: Input service tax paid (`2,00,000 x 12.36%)	24,720
Net Service Tax	98,880

3rd quarter (Oct. - Dec.)

Output service tax (`11, 00,000 x 12.36%)	1,35,960
Less: Input service tax paid (`3,00,000 x 12.36%)	37,080
Net Service Tax	98,880

4th quarter (Jan.-March)

Output service tax (`9,00,000 x 12.36%)	1,11,240

Last date of the payment of service tax for:

1st quarter	5th July/6th July
2nd quarter	5th Oct/6th Oct
3rd quarter	5th Jan/6th Jan.

4th quarter	31st March

Computation of Income Tax Liability

Income under head business profession	
Gross receipt	36,00,000
Less: Expenditure	9,00,000
Less: Input Service (`2,00,000 + `3,00,000)	5,00,000
Total Income	22,00,000
Tax Liability	5,04,700

SOLUTION 12:
Computation of Service Tax Payable

	`
April 2013	
Output Service Tax `11,00,000 x 12.36% (POT 10.04.2013)	1,35,960
Net Service Tax Payable	1,35,960
May 2013	Nil
June 2013	Nil
July 2013	
Output Service Tax `42,00,000 x 12.36% (POT 07.07.2013)	5,19,120
Less: Input Service Tax `10,00,000 x 12.36%	1,23,600
Net Service Tax Payable	3,95,520
August 2013	Nil
September 2013	Nil
October 2013	
Output Service Tax `22,00,000 /112.36 x 12.36 (POT 10.10.2013)	2,42,008
Net Service Tax Payable	2,42,008
November 2013	Nil
December 2013	Nil
January 2014	
Output Service Tax `28,00,000 /112.36 x 12.36 (POT 01.01.2014)	3,08,010
February 2014	Nil
March 2014	Nil

Last date of the payment of service tax for:

April 2013	6th May 2013
May 2013	6th June 2013
June 2013	6th July 2013
July 2013	6th August 2013
August 2013	6th September 2013
September 2013	6th October 2013
October 2013	6th November 2013
November 2013	6th December 2013
December 2013	6th January 2014
January 2014	6th February 2014
February 2014	6th March 2014
March 2014	31st March 2014

SOLUTION 13:

Computation of Service Tax Payable

	`
1st Quarter (Apr-June)	
Output Service Tax `20,00,000 x 12.36% (POT 01.05.2013)	2,47,200
Output Service Tax `30,00,000 x 12.36% (POT 30.06.2013)	3,70,800
Service Tax Payable	6,18,000

Interest u/s 75
`6,18,000 x 15% x 10/365 2,540

Penalty u/s 76
`6,18,000 x 1% x 10/31 1,994
Or
`100 x 10 1,000
whichever is Higher ,Hence penalty is `1,994.

2nd Quarter (July-Sep.)	
Output Service Tax	Nil
Input Service Tax Credit `3,00,000 x 12.36%	37,080
Service Tax Credit	
	37,080

3rd Quarter (Oct.-Dec.)

Output Service Tax `22,00,000 x 12.36% (POT 01.12.2013)	2,71,920
Less: B/f Input service tax Credit	37,080
Net Service Tax Payable	2,34,840

Interest u/s 75
`2,34,840 x 15% x 10/365 965

Penalty u/s 76
`2,34,840 x 1% x 10/31 758
Or
`100 x 10 1,000
whichever is Higher ,Hence penalty is `1,000.

4th Quarter (Jan-March)

Output Service Tax	Nil
Input Service Tax Credit `4,00,000 x 12.36%	49,440
Service Tax Credit	49,440

Computation of Total Income

	`
Gross Receipt (`20 lakh + `30 lakh + `22 lakh)	72,00,000
Less: Input Service Exp.	7,00,000
Less: Other Expenses	6,00,000
Less: Interest Expenses	3,505
Income under head Business/Profession	58,96,495
Gross Total Income	58,96,495
Less: Deduction u/s 80C TO 80 U	Nil
Total Income	58,96,495
Total Income (Rounded off U/s 288A)	58,96,500

Computation of Tax Liability

Tax on `58,96,500 at slab rate	15,98,950.00	
Add: Education Cess @ 2%		31,979.00
Add: SHEC @ 1%		15,989.50
Tax Liability		16,46,918.50
Rounded off u/s 288B		16,46,920.00

SOLUTION 14:

Computation of Service Tax Payable

Particulars	`
Service provided to RBI	15,00,000
Service provided to Mr. Chamku for advertisement on T.V.	18,00,000
Service provided to ACL Ltd. for repairing of an aircraft	80,00,000
Value of taxable services	113,00,000
Service Tax Payable `113,00,000 x 12.36/112.36	12,43,040.23
Rounded off u/s 37D	12,43,040.00

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SOLUTION 15:

Computation of Service Tax Payable

Particulars	`
Rendered services to an agricultural farm in relating to agricultural operation	Exempt
Renting of agro machinery	Exempt
Selling of space for advertisement on T.V	20,00,000
Renting of commercial property	10,00,000
Rendered service to ABC Ltd.	25,00,000
Value of Taxable Service	55,00,000.00
Less: SSP exemption	10,00,000.00
Value of taxable services	45,00,000.00
Service Tax Payable `45,00,000 x 12.36%	5,56,200.00

Notes:

1. Rendered services to an agricultural farm in relating to agricultural operation is exempt under section 66D
2. Renting of agro machinery exempt under section 66D

SOLUTION 16:

S. No.	**Particulars**	**Taxable / Not Taxable**
1.	Speed post service provided by post office to Delhi Govt.	Not Taxable
2.	Express parcel post service provided by post office to Rajasthan Ltd.	Taxable
3.	Services provided to RBI	Taxable
4.	Service provided by Delhi Metro Rail Corporation for transport of passengers	Not Taxable
5.	Services provided by an Indian railway for the transport of passengers in first class a/c	Taxable
6.	Service provided in non taxable territory	Not Taxable

EXAMINATION QUESTIONS

IPCC - MAY – 2013

Question 1(b). **(5 Marks)**

Q Ltd. is engaged in providing the taxable services. Ascertain the amount of service tax payable by it in the month of September, 2013 from the information given below:

Particulars	Amount (`)
Supply of farm labour for agriculture purpose.	1,00,000
Service to people free of cost.	60,000
Advance received in September, 2013 from clients for which no service has been rendered till date.	85,000
Amount received for the services rendered in June, 2013 (bills) for the same were issued on 25th June, 2013)	90,000
Bill raised for the services rendered in the month of September, 2013 against which no amount is received so far.	75,000

The above amounts are exclusive of service tax. Q. Ltd is not eligible for small service provider's exemption in the financial year 2013-14.

The rate of Service Tax is 12%, Education Cess is 2% and Higher Education cess is 1%.

Solution:

Computation of amount of Service Tax Payable

Particulars	Amount (`)
Supply of farm labour for agriculture purpose (Covered under Negative List so not taxable)	Nil
Service to people free of cost.	Nil
(Service tax is chargeable on the value of service. Thus, service tax is not payable in case of free services as there is no consideration in such case.)	
Advance received in September, 2013 from clients for which no service has been rendered till date. (Advance received for which no services has been rendered till date is liable for service tax)	85,000
Amount received for the services rendered in June, 2013 (bills) for the same were issued on 25th June, 2013)	Nil
In this case POT shall be the date of Invoice as the bill is issued within 30 days. So taxable in the month of June, 2013	
Bill raised for the services rendered in the month of September, 2013 against which no amount is received so far.	75,000
Value of Taxable Service	1,60,000
Service Tax @ 12%	19,200
Add: Education cess @ 2%	384
Add: SHEC @ 1%	192
Service Tax Payable	19,776

Question 2(b). **(4 Marks)**

What is "Negative list of services"? Which services by Government or a local authority are not included in the negative list of services?

Solution:

The charging section-section 66B of the Finance Act, 1994, inter alia, provides that service tax shall be levied on all services, except the services specified in the negative list. Accordingly, section 66D of the Act has specified the list of services consisting of 17 heads of services which is termed as 'Negative List'. In a comprehensive tax regime, this 'Negative List' is of paramount importance because every activity not covered under this list is chargeable to service tax.

The negative list shall comprise of the following services, namely:—
services by Government or a local authority excluding the following services to the extent they are not covered elsewhere—

(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;

Question 3(b) **(4 Marks)**
What is meant by EASIEST scheme? Enlist the benefits of Easiest scheme to an assessee under the Service Tax Provision.

<u>Solution:</u>
<u>EASIEST (Electronic Accounting System in Excise and Service Tax)</u>
EASIEST has been developed to make payment of tax easy. The facility is available with 28 banks.

Benefits of EASIEST to the taxpayer
(a) Only one copy of the challan has to be filled instead of earlier four copies.
(b) Facility of online verification of the status of tax payment using CIN.

Challan Identification Number (CIN)
Challan Identification Number (CIN) is a 20 digit unique identifier which will be given on the Taxpayer's computer generated acknowledgement /receipt. This number is a combination of the BSR code of the bank branch (first 7 digits), the date of deposit (next 8 digits) and Challan Serial Number (last 5 digits).

Service Tax Code Number
Assessee code/registration number/STC code are all one and the same. It is a 15-character identification number allotted by the system to the assessee based on the PAN number or temporary number (if PAN is not submitted) when the registration details are entered in the Central Server. The 15-character assessee code will be available in the registration certificate issued to the assessee by the Assistant Commissioner/Deputy Commissioner of the Division.
The first 10 digits of the STC code are 10 character PAN issued by Income tax authorities.

Next two are 'ST'. Last three are numeric code 001, 002, 003 etc. The concerned person has to apply in a prescribed form to obtain STC.
The main objective of allocating an alphanumerical number by the Government agencies is to identify the assessees/exporters/importers. It is also used to identify in some cases the concerned office where the person would be assessed or registered. Further alphanumeric number helps in processing of the information in relation to the assessee on computers.
Quoting of service tax code number on all the related documents has become compulsoryfrom 1.7.2002.

Question 4(b) **(4 Marks)**

State with reasons whether the following statements are correct or incorrect under the Service Tax Provision:

(1) Mr. P provides the service in March, 2013. He receives the payment by cheque on 30.03.2013 and the cheque is cleared on 15.04.2013. The point of taxation of this service will be 30.03.2013 and the rate of service tax will be 10%.

(2) Postal services for registered post are liable to service tax.

(3) M/s SR Brothers having office in Jammu, provide the services to M/s QR Ltd. in Patna. These services are not liable to service tax.

(4) Jaipur Branch of ABC Ltd. provides services to Baroda Branch of ABC Ltd. These services are not liable to service tax.

Solution:

(1) Incorrect: The POT shall be 15.04.2013 as the amount is credited to bank account after 4 working days from the date of change in rate of service tax.

(2) Incorrect: As per Negative List Services rendered by Department of Post is not liable for service tax except services by way of Speed Post, express parcel post, life insurance and agency services. So Postal Service is not liable to service tax.

(3) Incorrect: Services rendered from non-taxable territory to taxable territory is a taxable service covered under reverse charge.

(4) Correct: Service provided to its branch in taxable territory shall not be taxable because service provided by a person to self is outside the ambit of taxable service.

Question 5(b) **(4 Marks)**

ABC & Co. is a partnership firm engaged in the business of recruitment and supplying of labours. The firms, which had rendered taxable services to the tune of ` 30 lacs in the financial year 2012-13, furnishes the following details pertaining to the half year ended on 30.09.2013:

Sl. No.	Particulars	`
1.	Amounts collected from companies for pre-recruitment screening.	3,00,000
2.	Amounts collected from companies for recruitment of - Permanent staff - Temporary staff	 1,80,000 4,50,000
3.	Advances received from prospective employers for conducting campus interviews in colleges.	80,000

Whenever applicable, service tax has been charged separately and received from clients.

Compute the value of taxable services rendered and the service tax payable by the assessee for the relevant half year. The rate of service tax is 12%, education cess in 2% and higher education cess is 1%.

Solution:

Computation of value of taxable services and service tax payable by M/s ABC & Co.:-

Particulars	Amount of taxable services (`)	Amount of service tax (`)
Amounts collected from companies for pre-recruitment screening	3,00,000	37,080

Amounts collected from companies for recruitment of permanent staff	1,80,000	22,248
Amounts collected from companies for recruitment of temporary staff	4,50,000	55,620
Advances received from prospective employers for conducting campus interview in colleges (Note-1)	71,200	8,800
Total	10,01,200	1,23,748

Notes:

1. Amounts received as advance are also liable to service tax. Service tax on advance has been calculated on the presumption that the same is inclusive of service tax $\left[\frac{80{,}000 \times 12.36}{112.36}\right]$.

2. Since the value of taxable services rendered in the preceding year is more than ` 10 lakh (i.e. ` 30 lakh), the assessee is not a small service provider. Hence, it is not eligible for the exemption available to the small service provider.

Question 6(b) **(4 Marks)**

Mr. Rajesh, a proprietor of Z enterprise provides taxable services. He received the following amount during the financial year 2013-14:

(i) ` 1,25,000 as advance while signing a contract.
(ii) ` 6,00,000 by pay order during process of providing service.
(iii) ` 5,25,000 by credit card after completion of service as on 31st Dec., 2013.

Compute the value of taxable services and amount of service tax payable by him. Assume service tax has been charged separately. Z enterprise is not eligible for small service provider's exemption in the financial year 2013-14.

The rate of service tax is 12%, education cess is 2% and higher education cess is 1%.

Solution:

Computation of Service Tax Payable by Mr. Z

	`
Advance received while signing a contract	1,25,000
Amount received while providing service through a pay order	6,00,000
Amount received on completion of service by credit card	5,25,000
Value of Taxable Service	12,50,000
Service Tax @ 12%	1,50,000
Add: Education cess @ 2%	3,000
Add: SHEC @ 1%	1,500
Service Tax Payable	1,54,500

Question 7(b) **(4 Marks)**

How is the value of the service under service tax provisions determined where such value is not ascertainable?

Solution:

The provisions of section 67 states clearly that if the consideration for a taxable service is not ascertainable, the value of such service shall be the amount as may be determined in the manner prescribed under the Service Tax (Determination of Value) Rules, 2006.

Manner of determination of value *when such value is not ascertainable* [Rule 3]
The value of taxable service, ***where such value is not ascertainable***, shall be determined by the service provider in the manner described below.

(a) Value of similar services
The value of taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person subject to fulfillment of the conditions below:
1. Such service is in the ordinary course of trade.
2. The gross amount charged is the sole consideration.

(b) When value of similar services cannot be ascertained
Where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent money value of such consideration. However, such value shall, in no case be less than the cost of provision of such taxable service.

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MEGA EXEMPTIONS

1. What are the mega exemptions introduced vide Notification No. 25/2012-ST, dated 20.6.2012?

Exemption in respect of following services has been introduced vide Notification No. 25/2012-ST dated 20.06.2012:-

1) Services provided to the United Nations or a specified international organization;
2) Health care services by a clinical establishment, an authorized medical practitioner or para-medics;
3) Services by a veterinary clinic in relation to health care of animals or birds;
4) Services by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) by way of charitable activities;
5) Services by a person by way of:—
    a) renting of precincts of a religious place meant for general public; or
    b) conduct of any religious ceremony.
6) Services provided by—
    a) an arbitral tribunal to—
        i. any person other than a business entity; or
        ii. a business entity with a turnover up to rupees ten lakh in the preceding financial year;
    b) an individual as an advocate or a partnership firm of advocates by way of legal services to,—
        i. an advocate or partnership firm of advocates providing legal services;
        ii. any person other than a business entity; or
        iii. a business entity with a turnover up to rupees ten lakh in the preceding financial year; or

c) a person represented on an arbitral tribunal to an arbitral tribunal.

7) Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organization approved to conduct clinical trials by the Drug Controller General of India;

8) Services by way of training or coaching in recreational activities relating to arts, culture or sports.

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

a) auxiliary educational services; or

b) renting of immovable property;

*10)*Services provided to a recognized sports body by—

a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body.

b) another recognized sports body;

*11)*Services by way of sponsorship of sporting events organized,—

a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;

b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympics Committee of

India or Special Olympics Bharat;

c) by Central Civil Services Cultural and Sports Board;

d) as part of national games, by Indian Olympic Association; or

e) under Panchayat Yuva Kreeda Aur Khel Abhiyaan (PYKKA) Scheme;

*12)*Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of—

a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and

Archaeological Sites and Remains Act, 1958 (24 of 1958);

c) a structure meant predominantly for use as

i. an educational,

ii. a clinical, or

iii. an art or cultural establishment;

d) canal, dam or other irrigation works;

e) pipeline, conduit or plant for

i. water supply

ii. water treatment, or

iii. sewerage treatment or disposal; or

f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the 1 to clause 44 of section 65 B of the said Act;

Explanation

13) Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,—

a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

c) a building owned by an entity registered under section 12 AA of the Income tax Act, 1961 (43 of 1961) and meant predominantly for religious use by general public;

d) a pollution control or effluent treatment plant, except located as a part of a factory; or

e) a structure meant for funeral, burial or cremation of deceased;

14) Services by way of construction, erection, commissioning, or installation of original works pertaining to,—

a) an airport, port or railways, including monorail or metro;

b) a single residential unit otherwise than as a part of a residential complex;

c) low- cost houses up to a carpet area of 60 square meters per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or

e) mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

*15)*Temporary transfer or permitting the use or enjoyment of a copyright covered under clause (a) or (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical, artistic works or cinematograph films;

*16)*Services by a performing artist in folk or classical art forms of

a) music, or

b) dance, or

c) theatre, excluding services provided by such artist as a brand ambassador;

*17)*Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;

*18)*Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent;

*19)*Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having

i. the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and

ii. a license to serve alcoholic beverages;

*20)*Services by way of transportation by rail or a vessel from one place in India to another of the following goods—

a) petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the

First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;

c) defense or military equipments;

d) postal mail or mail bags;

e) household effects;

f) newspaper or magazines registered with the Registrar of Newspapers;

g) railway equipments or materials;

h) agricultural produce;

i) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or

j) chemical fertilizer and oilcakes

21) Services provided by a goods transport agency by way of transportation of—

a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;

b) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or

c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;

22) Services by way of giving on hire:—

a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or

b) to a goods transport agency, a means of transportation of goods;

23) Transport of passengers, with or without accompanied belongings, by:—

a) air, embarking or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Baghdogra located in West Bengal; or

b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire;

c) ropeway, cable car or aerial tramway;

24) Services by way of motor vehicle parking to general public excluding leasing of space ` to an entity for providing such parking facility;

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25) Services provided to Government, a local authority or a governmental authority by way of—

a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy,

solid waste management or slum improvement and upgradation; or

b) repair or maintenance of a vessel or an aircraft;

26) Services of general insurance business provided under following schemes:—

a) Hut Insurance Scheme;

b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);

c) Scheme for Insurance of Tribals;

d) Janata Personal Accident Policy and Gramin Accident Policy;

e) Group Personal Accident Policy for Self-Employed Women;

f) Agricultural Pumpset and Failed Well Insurance;

g) premia collected on export credit insurance;

h) 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;

i) Jan Arogya Bima Policy;

j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);

k) Pilot Scheme on Seed Crop Insurance;

l) Central Sector Scheme on Cattle Insurance;

m) Universal Health Insurance Scheme;

n) Rashtriya Swasthya Bima Yojana; or

o) Coconut Palm Insurance Scheme;

27) Services provided by an incubatee up to a total turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:-

a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and

b) a period of three years has not been elapsed from the date of entering into an agreement as an incubatee;

28) Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution—

a) as a trade union;

b) for the provision of carrying out any activity which is exempt from the levy of service tax; or

c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;

29) Services by the following persons in respective capacities—

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a) sub-broker or an authorised person to a stock broker;

b) authorised person to a member of a commodity exchange;

c) mutual fund agent to a mutual fund or asset management company;

d) distributor to a mutual fund or asset management company;

e) selling or marketing agent of lottery tickets to a distributer or a selling agent;

f) selling agent or a distributer of SIM cards or recharge coupon vouchers;

g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or

h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

30) Carrying out an intermediate production process as job work in relation to—

a) agriculture, printing or textile processing;

b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act ,1985 (5 of 1986);

c) any goods on which appropriate duty is payable by the principal manufacturer; or

d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;

31) Services by an organizer to any person in respect of a business exhibition held outside India;

32) Services by way of making telephone calls from:–

a) departmentally run public telephones;

b) guaranteed public telephones operating only for local calls; or

c) free telephone at airport and hospitals where no bills are being issued;

33) Services by way of slaughtering of bovine animals;

34) Services received from a provider of service located in a non- taxable territory by—

a) Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;

b) an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or

c) a person located in a non-taxable territory;

35) Services of public libraries by way of lending of books, publications or any other knowledge- enhancing content or material;

36) Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948 (34 of 1948);

37) Services by way of transfer of a going concern, as a whole or an independent part thereof;

38) Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets;

39) Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

2. What are the relevant definitions for the purpose of Mega exemption?

For the purpose of these exemptions, unless the context otherwise requires,

a) "Advocate" has the meaning assigned to it in clause (a) of sub-section (1) of section 2 of the

Advocates Act, 1961 (25 of 1961);

b) "appropriate duty" means duty payable on manufacture or production under a Central Act or a State Act, but shall not include 'Nil' rate of duty or duty wholly exempt;

c) "arbitral tribunal" has the meaning assigned to it in clause (d) of section 2 of the Arbitration and Conciliation Act, 1996 (26 of 1996);

d) "authorized medical practitioner" means a medical practitioner registered with any of the councils of the recognized system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognized system of medicines in India as per any law for the time being in force;

e) "authorized person" means any person who is appointed as such either by a stock broker (including trading member) or by a member of a commodity exchange and who provides access to trading platform of a stock exchange or a commodity exchange as an agent of such stock broker or member of a commodity exchange;

f) "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge –

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

g) "banking company" has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act,1934(2 of 1934);

h) "brand ambassador" means a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person;

i) "business facilitator or business correspondent" means an intermediary appointed under the business facilitator model or the business correspondent model by a banking company or an insurance company under the guidelines issued by Reserve Bank of India;

j) "clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;

k) "charitable activities" means activities relating to— (i) public health by way of—

(a) care or counseling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(b) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) advancement of religion or spirituality;

(iii) advancement of educational programmes or skill development relating to,—

(a) abandoned, orphaned or homeless children;

(b) physically or mentally abused and traumatized persons;

(c) prisoners; or

(d) persons over the age of 65 years residing in a rural area;

(iv) preservation of environment including watershed, forests and wildlife; or

(v) advancement of any other object of general public utility up to a value of,—

(a) eighteen lakh and seventy five thousand rupees for the year 2012-13 subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during 2011-12;

(b) twenty five lakh rupees in any other financial year subject to the condition that total value of such activities had not exceeded twenty five lakhs rupees during the preceding financial year;

l) "commodity exchange" means an association as defined in section 2 (j) and recognized under section 6 of the Forward Contracts (Regulation) Act,1952 (74 of 1952);

m) "contract carriage" has the meaning assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

n) "declared tariff" includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air-conditioner, refrigerators or any other amenities,

but without excluding any discount offered on the published charges for such unit;

o) "distributor or selling agent" has the meaning assigned to them in clause (c) of the rule 2 of the Lottery (Regulation) Rules, 2010 notified by the Government of India in the Ministry of Home Affairs, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i), *vide* number G.S.R. 278(E), dated the 1st April, 2010 and shall include distributor or selling agent authorized by the lottery- organizing State;

p) "general insurance business" has the meaning assigned to it in clause (g) of section 3 of General Insurance Business (Nationalization) Act, 1972 (57 of 1972);

q) "general public" means the body of people at large sufficiently defined by some common quality of public or impersonal nature;

r) "goods carriage" has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

s) "governmental authority'' means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution;

t) "health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;

u) "incubatee" means an entrepreneur located within the premises of a Technology Business Incubator (TBI) or Science and Technology Entrepreneurship Park (STEP) recognized by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India and who has entered into an agreement with the TBI or the STEP to enable himself to develop and produce hi-tech and innovative products;

v) "insurance company" means a company carrying on life insurance business or general insurance business;

w) “legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority;

x) “life insurance business” has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938);

y) “original works” means has the meaning assigned to it in Rule 2A of the Service Tax (Determination of Value) Rules, 2006;

z) “principal manufacturer” means any person who gets goods manufactured or processed on his account from another person;

za) “recognized sports body” means—

(i) the Indian Olympic

Association,

(ii) Sports Authority of India,

(iii) a national sports federation recognized by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations,

(iv) national sports promotion organizations recognized by the Ministry of Sports and Youth Affairs of the Central Government,

(v) the International Olympic Association or a federation recognized by the International Olympic Association or

(vi) a federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India;

(zb) “religious place” means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality;

(zc) “residential complex” means any complex comprising of a building or buildings, having more than one single residential unit;

(zd) “rural area” means the area comprised in a village as defined in land revenue records, excluding—

(i) the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or

(ii) any area that may be notified as an urban area by the Central Government or a State Government;

(ze) “single residential unit” means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family;

(zf) "specified international organization" means an international organization declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply;

(zg) "state transport undertaking" has the meaning assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(zh) "sub-broker" has the meaning assigned to it in sub-clause (gc) of clause 2 of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992;

(zi) "trade union" has the meaning assigned to it in clause (h) of section 2 of the Trade Unions Act, 1926 (16 of 1926).