

Analysis of Service Tax Issues

BANKING, FINANCE & NBFC

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MEANING OF BANKING & OTHER FINANCIAL SERVICES

(As amended by Finance Act 2008 w.e.f. 16-05-2008)

“Banking and Other Financial Services” means-

- a) The following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern, namely:-
 - i. Financial leasing services including equipment leasing and hire-purchase;

Explanation- For the purposes of this item, ‘financial leasing’ means a lease transaction where –

- i. Contract for lease is entered into between two parties for leasing of a specific asset;
- ii. Such contract is for use and occupation of the asset by the lessee
- iii. The lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and
- iv. The lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment;



MEANING OF BANKING & OTHER FINANCIAL SERVICES

- ii) [Omitted];
- iii) Merchant banking services
- iv) Securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;
- v) Asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services;
- vi) Advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy;
- vii) Provision and transfer of information and data processing; and
- viii) Banker to an issue services; and
- ix) Other financial services, namely, lending, issue of pay order, demand draft, cheque, letter of credit and bill of exchange, transfer of money including telegraphic transfer, mail transfer and electronic transfer, providing bank guarantee, overdraft facility, bill discounting facility, safe deposit locker, safe vaults, operation of bank accounts;



MEANING OF BANKING & OTHER FINANCIAL SERVICES

- (b) Foreign exchange broking and purchase or sale of foreign currency, including money changing provided by a foreign exchange broker or an authorised dealer in foreign exchange or an authorised money changer, other than those covered under sub-clause (a);

Explanation – For the purposes of this clause, it is hereby declared that ‘purchase or sale of foreign currency, including money changing’ includes purchase or sale of foreign currency, whether or not the consideration for such purchase or sale, as the case may be, is specified separately.

DEFINITIONS

Meaning of Banking- Section 65(10)

“As per Section 5(b) of Banking Regulation Act, 1949, banking would mean the service or activity of accepting of deposits of money from the public, for the purpose of lending or investing, which may be repayable on demand or otherwise and would also include withdrawal of money by cheque, draft, pay order or any other mode.”

Meaning of Banking Company - Section 65(11)

"*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).

As per Banking Regulation Act, 1949, a banking company would mean a company which transacts the business of banking as aforesaid, in India.

Banking company would cover all banking companies as per definition of Banking Regulation Act, 1949 and would include State Bank of India, subsidiaries of State Bank of India, any corresponding new bank constituted under Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 and other notified financial institutions.

Company shall mean to be a company as per the provisions of the Companies Act, 1956.

DEFINITIONS

Meaning of Financial Institution

Section 65(45) defines 'financial institution' as under —

"*Financial institution*" has the meaning assigned to it in clause (c) of Section 45-1 of the Reserve Bank of India Act, 1934 (2 of 1934).

As per Section 65(45), financial institutions would mean an institution as per Section 45-1(c) of the Reserve Bank of India Act, 1934. Financial institution is not a banking company and means any non-banking company which carries on the following activities as its business or part of business —

- (i) Finance loans and advances other than its own activities.
- (ii) acquisition of shares, stocks, bonds, debentures or other securities issued by government or local bodies or other marketable securities of similar nature.
- (iii) hire purchase of goods
- (iv) insurance business
- (v) Managing, conducting or supervising in any capacity of chits or kuries in any State or any other similar business.
- (vi) Collecting monies and disbursing monies in any manner.



DEFINITIONS

Meaning of Financial Institution

Financial institution would not include institutions which undertake any of the following activities as its principal business —

- (a) agricultural operations
- (b) industrial activities
- (c) purchase or sale of any goods (not securities) or providing of services
- (d) Purchase, construction or sale of immovable property.

DEFINITIONS

Meaning of Non-Banking Finance Company (NBFC)

Section 65(74) defines 'non-banking finance company' as under —

"non-banking finance company" has the meaning assigned to it in clause (f) of section 45-1 of the Reserve Bank of India Act, 1934 (2 of 1934).

As per Section 65(74) 'non-banking finance company' would have the meaning assigned to it under Section 45-1(f) of Reserve Bank of India Act, 1934. Accordingly, it is a financial institution which is a company; or a non-banking institution which is a company and which has its principal business of receiving of deposits or lending under any scheme or in any manner; or any other such non-banking institution or class of such institutions as the Reserve Bank may notify in the Official Gazette.

Non-Banking Financial Company (NBFC) means —

- (1) a financial institution, being a company,
- (2) a non-banking institution which is a company and which has as its principal business the recovering of deposits, under any scheme or arrangement or in any other manner, or lending in any manner,
- (3) such other non-banking institution or class of such institutions, as the bank may, with the previous approval of the Central Government and by Notification in the Official Gazette, specify.

DEFINITIONS

Definition of Body Corporate- Section 65(14)

"*Body Corporate*" has the meaning assigned to it in clause (7) of section 2 of the Companies Act, 1956

As per Section 65(14), body corporate carries the meaning as per Section 2(7) of Companies Act, 1956 and accordingly, body corporate or corporation includes a company incorporated outside India but does not include-

- (a) a corporation sole
- (b) any other body corporate (not being a company as defined in Companies Act) which the Central Government may, by notification in the Official Gazette, specify in this behalf.
- (c) a co-operative society registered under any law relating to co-operative societies.

Company has been defined under Section 3/ 2(68) as a company formed and registered under Companies Act or an existing company. All incorporated companies, whether public or private limited companies and other body corporates shall be covered under 'body corporate'.



BASIC TEST FOR TAXABILITY

- (a) Service should be provided by a banking company, financial institution or NBFC or any other body corporate.
- (b) It shall not include individuals, proprietorship or partnership firms providing financial services.
- (c) Service should be provided to a customer (to any person w.e.f. 16-5-2008).
- (d) Service must relate to specified banking and financial services.



TAXABLE SERVICES

Taxable services will also include:

- i. Issue of pay order/drafts
- ii. Commission on transactions
- iii. Discount on bills of exchange
- iv. Letter of Credit
- v. Letter of guarantee
- vi. Locker Rent
- vii. Cheque book/return/collection charges
- viii. Charges for account statement etc.
- ix. Transfer of money (TT,MT, or ET)
- x. Bankers to issue services
- xi. Cash management services
- xii. Forex Broking Services
- xiii. Money Changing Services

EXEMPTED SERVICES

Exempted Services include :

- i. Service in relation to tax/duties collection on behalf of State or Central Government,
- ii. Interest on overdraft facility.
- iii. Interest on cash credit facility.
- iv. Discount on discounting of bills, bills of exchange or cheques.
- v. Services provided by or to Reserve Bank of India.
- vi. Inter bank foreign transactions between scheduled banks

SCOPE OF BANKING AND FINANCIAL SERVICES

SERVICE	PERIOD OF COMMENCEMENT OR EFFECTIVE PERIOD
Financial leasing including equipment leasing and hire purchase	16.07.2001
Merchant Banking	16.07.2001
Securities and Forex Broking	16.07.2001
Asset Management including Portfolio and Fund Management (excluding cash management services)	16.07.2001
Advisory & Other Auxiliary Financial Services	16.07.2001
Provision and Transfer of information and data processing	16.07.2001
Credit Card Related Services	16.07.2001 to 30.04.2006
Foreign Exchange broking by individuals/non-commercial concern	01.07.2003
Banking Services – lending, issue of pay orders, demand draft, cheque, letter of credit and bills of exchange, bank guarantee, overdraft, bill discounting etc.	10.09.2004
Safe deposits and safe vaults	10.09.2004
Banker to an Issue	01.05.2006
Transfer of money including telegraphic, mail and electronic transfer	01.05.2006
Cash Management Services	01.06.2007
Money changing services	16.05.2008

EXEMPTION IN RESPECT OF EXPORTS

Vide Notification No 17/2009-ST dated 7.7.2009, following services in relation to banking and other financial services and forex services have been specified as taxable service on which exemption shall be provided to exporter of goods subject to conditions specified in the Notification —

- a) Section 65(105)(zm)
 - i. service provided in relation to collection of export bills.
 - ii. service provided in relation to export letter of credit such as advising commission, advising amendment, confirmation charges.
 - iii. service of purchase or sale of foreign currency, including money changing provided to an exporter in relation to export goods.
- b) Section 65(105)(zzk)

Service of purchase or sale of foreign currency including money changing provided to an exporter in relation to export goods.

EXEMPTION IN RESPECT OF EXPORTS

Notification No. 17/2009 has since been superseded by Notification No. 52/2011-ST, dated 30-12-2011 wherein some services are covered.

When Indian borrowers raise money in foreign countries by way of external commercial borrowings (ECBs) or foreign currency convertible bonds [FCCBs), the liability to pay service tax w.e.f. 18.4.2006 shall be that of Indian borrower under reverse charge mechanism. However, prior to 18.4.2006, such liability was that of Indian bank branch if foreign branch of same bank rendered the service. The fee paid for such services is liable to service tax under banking and other financial services.

NEGATIVE LIST APPROACH (W.E.F. FINANCE ACT, 2012)

Finance Act 2012 defines 'service' in Clause (44) of the new section 65B and means-

- i. Any activity
- ii. for consideration
- iii. carried out by a person for another
- iv. and includes a declared service.

The said definition further provides that 'Service' does not include –

- i. any activity that constitutes only a transfer in title of (i) goods or (ii) immovable property by way of sale, gift or in any other manner
- ii. (iii) a transfer, delivery or supply of goods which is deemed to be a sale of goods within the meaning of clause (29A) of article 366 of the constitution
- iii. A transaction only in (iv) money or (v) actionable claim
- iv. A service provided by an employee to an employer in the course of the employment
- v. Fees payable to a court or a tribunal set up under a law for the time being in force.

NEGATIVE LIST APPROACH (W.E.F. FINANCE ACT, 2012)

According to Section 66D inserted by the Finance Act, 2012, following services are covered under the negative list and thus, out of the service tax net-

- 1) services provided by the Reserve Bank of India (Clause b)
- 2) services by way of—
 - a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount,
 - b) inter-se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers

Under the negative list approach, following services shall be exempt from levy of service tax vide Notification No. 12/2012-ST dated 17.3.2012 (Entry No 29)-

- 1) a mutual fund agent or distributor to mutual fund or asset management company for distribution or marketing of mutual fund,
- 2) a business facilitator or a business correspondent to a banking company or an insurance company in a rural area.

SPECIFIC EXEMPTIONS W.E.F. 1-07-2012

- 1) Services on taxes/duties collection on behalf of Central/State Government are exempt from tax w.e.f. 10-5-2004. Vide Notification No. 13/2004-ST, dated 10-9-2004 — since rescinded w.e.f. 1-7-2012 vide Notification No. 34/2012-ST, dated 20-6-2012.
- 2) Service tax on extended scope as per Finance Act, 2004 shall be exempt on fees received prior to 10-9-2004 (Notification No. 25/2004-ST dated 10-9-2004).
- 3) Service tax on interest on overdrafts, cash credit and interest or discount on bill, and bills of exchange is exempt vide Notification No. 29/2004-ST, dated 22-9-2004— since rescinded w.e.f. 1-7-2012 vide Notification No. 34/2012-ST, dated 20-6-2012.
- 4) Exemption from service tax has been provided to financial leasing services including equipment leasing and hire purchase, on that portion of taxable value comprising of ninety per cent of amount representing as interest i.e., difference between the installment paid towards repayment of the lease amount and the principal amount in such installment paid (Notification No. 4/2006-ST dated 1-3-2006 — since rescinded w.e.f. 1-7-2012 vide Notification No. 34/2012-ST, dated 20-6-2012).

SPECIFIC EXEMPTIONS W.E.F. 1-07-2012

- 5) Exemption from service tax has been provided to taxable services provided to any person by Reserve Bank of India, vide Notification No. 7/2006-ST dated 1-3-2006.

- 6) Taxable services provided or to be provided by any person, to Reserve Bank of India when the service tax for such services is liable to be paid by the Reserve Bank of India under Section 68(2) of Finance Act, 1994 or Rule (2) of Service Tax Rules, 1994 has been exempt vide Notification No. 22/2006-ST dated 31.03.2006 in supersession of Notification No. 7/2006-ST, dated 1-3-2006. Thus, Taxable services provided or to be provided to any person by Reserve Bank of India (RBI); services provided by any person to RBI, where tax is liable to be paid by RBI and services received in India from outside India by RBI are exempt from levy of service tax vide Notification No. 22/2006-ST, dated 31-5-2006 — since rescinded w.e.f. 1-7-2012 vide Notification No. 34/2012-ST, dated 20-6-2012.

SPECIFIC EXEMPTIONS W.E.F. 1-07-2012

7. Abatement @ 30 per cent is allowed on services provided in relation to chits vide Notification No. 27/2008-ST dated 27.5.2008. Thus, service tax shall be payable on 70 per cent of the value of chit fund services — since rescinded w.e.f. 1-7-2012 vide Notification No. 34/2012-ST, dated 20-6-2012.
8. Exemption to forex transactions is available w.e.f. 7.7.2009. Taxable services in relation to inter-bank transactions of purchase and sale of foreign currency provided to a scheduled bank by another scheduled bank has been exempt from levy of service tax vide Notification No. 19/2009-ST dated 7.7.2009. W.e.f. 1.4.2011, exemption is available to services provided to any bank, including a bank located outside India, or money changer, by any other bank or money changer vide Notification No. 27/2011-ST, dated 31.3.2011.
9. W.e.f. 1-7-2012, vide Notification No. 25/2012-ST, dated 20-6-2012, services by way of transfer of going concern, as a whole or an independent part thereof is exempt from service tax.

CLARIFICATION ISSUED IN THE EDUCATIONAL GUIDE

- I) What is the Manner of dealing with various services provided by banks and other financial institutions?

Ans: Banks & Financial Institutions provide a bouquet of Financial Services relating to lending or borrowing of money or investments in money. The definition of service excludes activities that constitute only transactions in money or actionable claims. Money has been defined in Clause (33) of Section 35B to include instruments like cheques, drafts, pay orders, promissory notes, letters of credit etc. The transaction in such instruments would be outside the definition of Service.

Explanation to Clause (44) of Sec 65B clarifies that transaction in money does not include any activity in relation to money by way of its use or conversion by cash or by any other mode from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged. While the transaction in money per se would be outside the ambit of service, the related activity by way of its use or conversion by cash or any other mode from one form, currency or denomination to another form for which a separate consideration is charged would not be treated as transaction in money and would be chargeable to Service Tax.



CLARIFICATION ISSUED IN THE EDUCATIONAL GUIDE

Activities that constitute only transactions in goods are excluded from the definition of Service. Goods have in defined in clause (25) of Section 65B to include Securities. Definition of Securities include Derivatives. Transaction in instruments like interest rate swaps and foreign exchange swaps would be excluded from the definition of service; as such instruments are derivatives being securities based on contracts of differences. Any attendant service charges or fees charged separately would be chargeable to service tax.

Services by way of extending loans, deposits or advances in so far as the consideration is represented by way of interest or discount is outside the purview of Service Tax.

- 2) What are the “services by way of extending deposits, loans or advances” in so far as the consideration is represented by way of interest or discount?

Ans. The negative list covers such service wherein the monies dues are allowed to used or retained on payment of interest or on a discount. The amount of money is lent or retained on payment of what is commonly called the time value of money which could be in form of a interest or a discount. This is outside the purview of Service Tax.

This entry will not cover investments by way of equity or any other manner where an investor is entitled to a share of profits.



CLARIFICATION ISSUED IN THE EDUCATIONAL GUIDE

- 3) If any service charges or administrative charges or entry charges are recovered in addition to interest on a loan, advance or a deposit would such charges be also a part of this negative list entry?

Ans. Interest or discount on loans, deposits or advances is outside the purview of Service Tax. Any charges or amounts collected over and above the interest or discount amounts would represent the taxable consideration.

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

Ans. Such discounting is nothing else but a manner of extending a credit facility or a loan, hence interest or discount on such transactions would be outside the purview of service tax.

- 5) Would services provided by banks or authorized dealers of foreign exchange by way of sale of foreign exchange to general public be covered in this entry?

Ans. No, this entry only covers sale or purchase of Foreign exchange between Banks or Authorised Dealers of foreign exchange or between Banks and such dealers



CLARIFICATION ISSUED IN THE EDUCATIONAL GUIDE

- 6) Would transactions entered into by banks in instruments like repos and reverse repos be covered in this negative list entry?

Ans. Section 45U (c) of the RBI Act, 1934 defines 'repos' as an instrument for borrowing funds by selling securities with an agreement to repurchase the securities on a mutually agreed future date at an agreed price which includes interest for the funds borrowed.

Section 45U(d) of the RBI Act, 1934 defines 'reverse repos' as an instrument for lending funds by buying securities with an agreement to resell the securities on a mutually agreed future date at an agreed price which includes interest for the funds lent.

Repos and Reverse Repos are financial instruments to borrow from and lend money to RBI. They have the characteristics of Loans and Deposits for interest but are more appropriately excluded from the definition of Service itself, being sale or purchase of securities which are goods.



CLARIFICATION ISSUED IN THE EDUCATIONAL GUIDE

7) Would subscription to or trading in Commercial Paper (CP) or Certificates of Deposit (CD) be taxable?

Ans. Commercial Paper and Certificates of Deposits are instruments for lending and borrowing money wherein the consideration is represented by way of interest or discount, hence outside the purview of Service Tax. If any service charges, fees, documentation fees, broking fees, or any such fees are charged the same would be chargeable to Service tax.

8) Would forward contracts in commodities or currencies be within the ambit of definition of 'Service'?

Ans. These contracts would be in the nature of transfer in the title in goods (if the contract relates to commodity) or transactions in money (in case the forward contract related to transaction in money). Therefore, forward contracts in commodities or currencies would not fall in the ambit of definition of service.

CLARIFICATION ISSUED IN THE EDUCATIONAL GUIDE

9) Would 'future contracts' be chargeable to Service Tax?

Ans. Future contracts are in the nature of financial derivatives, the price of which is dependent on the price of underlying stocks or index of stocks or certain approved currencies and settlements happen normally by way of net settlements with no actual delivery. Hence, outside the ambit of definition of Service, as being transaction only in transfer of title in derivatives.

10) Would charges for late payment of dues on credit card outstanding be chargeable to service tax?

Ans. Interest for delayed payment of any consideration for the sale of goods or provision of service is specifically excluded from the value by Rule 6 of valuation rules. Ordinarily the interest charged for delayed payment of consideration would be out of the ambit of service tax. The Services in case of Credit card are by way of issuing charges or commission charge from merchants etc. The interest in this case is not for the consideration for the use of the card. Thus the benefit of valuation rules will not be available to credit card companies.



ISSUES

RECORDS – RULE 4A

Issue - Raising of Invoice

Notification No, 30/2004-ST notifies fourth amendment to Service Tax Rules, 1994 by inserting proviso to rule 4A (1 and 2) in relation to banking services. Accordingly, bills/invoices/challans in case of financial services may not contain a serial number and address of the person receiving the service.

Similarly, in case of input service distribution, it has been provided under rule 4A(2) that in case the input service distributor is an office of a banking company or a financial institution including a non-banking financial company, or any other body corporate or commercial concern, providing service to a customer, in relation to banking and other financial services, an invoice, a bill or, as the case may be, challan shall include any document, by whatever name called, whether or not serially numbered but containing other information in such documents as required under this sub-rule.

W.e.f 1.4.2012, Service Tax Rules have been amended (Rule 4A) to provide that in case of banking and financial services, invoices can be issued within 45 days as against 30 days in ordinary course.

Earlier, invoice was required to be issued within 14 days of the rendering of service or receipt of payment.

CENVAT CREDIT RESTRICTION

Vide Notification No. 3/2011-CE (NT) dated 1.3.2011, CENVAT Credit Rules, 2004 have been amended.

- Rule 6(3B) – Notwithstanding anything contained in Sub-rules 1, 2 and 3; a banking company and a financial institution including a non-banking financial company, (engaged in providing services by way of extending deposits, loans or advances) shall pay for every month an amount equal to 50% of the Cenvat Credit availed on input & input services in that month.
- W.e.f 1.4.2011 according to Rule 6(3B), banking companies, financial institutions and non-banking finance companies (NBFCs) will have to pay or reverse 50 per cent of the credit availed on inputs and input services in the same month.

This has been done as the substantial part of the income of a bank or financial institution or NBFCs is from investment or by way of interest in which a number of inputs and input services are used.

There have been difficulties in ascertaining the amount of credit flowing into earning these amounts.

CENVAT CREDIT RESTRICTION

Other options of payment of amount under Rule 6 of Cenvat Credit Rules shall not be available for these taxpayers.

- Earlier to 1-4-2011, Cenvat Credit was required to be reversed on proportionate reversal method u/r 6 (3) (1-4-2008 to 31-3-2011)
- Prior to proportionate reversal method, Cenvat was claimed on 17 specified services @ 100 % and for the rest of the services not more than 20% of the tax liability of the month. (Upto 31-3-2008)



RECEIPT V/S. ACCRUAL

- Certain Incomes of Banking & Financial Institutions are recognised on Receipt basis whereas certain on Accrual basis.
- Service tax is payable on the value of Taxable Services rendered.
- The value of taxable services on receipt basis needs to be ascertained from the screening of accounts manually.
- The Incomes such as Rent on Safe Deposit Vaults, Commission on LC/BG and DPG are recovered in advance and transferred to the PL based upon the periodic recognition of income.
- Certain heads of Income in Banking Industry are clubbed under the residual head as Other Incomes, such heads need to be analysed to identify the taxable value.



REVERSE CHARGE APPLICABILITY & DATA MANAGEMENT

- With the advent of Section 68 (2) Reverse Charge Mechanism, from 1-7-2012, the Banking & Financial Institutions need to be really careful in gathering of the data for services on which the Banking & Financial Institutions need to discharge the service tax liability under Reverse Charge.
- Proper care needs to be taken to ascertain whether the taxable services are rendered by an Individual, HUF, Partnership, Association of Persons located in the taxable territory to a Business Entity registered as Body Corporate and are captured to trigger the Reverse Charge Mechanism.
- Limited applicability of Reverse Charge Mechanism for business entities registered, other than body corporates.



LIABILITY UNDER REVERSE CHARGE BUT TAXES COLLECTED & PAID BY SERVICE PROVIDER

- Under the Reverse Charge Mechanism, the Banking & Financial Institutions need to discharge the portion of tax liability applicable to the receiver of service.
- Invariably, if the service provider has charged fully or wrongly the service tax liability in excess of his portion, then whether still the service recipient needs to discharge his liability under Reverse Charge.
- Under Reverse Charge Mechanism, the liability of the Service provider and service recipient are distinct i.e. individually they need to discharge their portion of liability.
- However, it has been held by the Hon. Mumbai CESTAT in the case of Umasons Auto Compo Pvt Ltd [2014-TIOL-126-MUM CESTAT] that once the amount of Service Tax is accepted by the revenue from the provider the same cannot be demanded again from the recipient.



REGISTRATIONS – SINGLE OR CENTRALIZED (AMENDMENT)

- Banking & Financial Services are generally geographically dispersed services, in such cases, Centralised Registrations are advisable.
- One needs to constantly upgrade and amend the registration for addition in premises, change in addresses and addition in services (with reference to services covered under Reverse Charge etc.)

INPUT DISTRIBUTOR – RATIO WORKINGS

- The administrative offices & departments of Banking & Financial Institutions are the potential Input Distributors.
- They need to obtain separate registration as Input Distributors.
- The Input Services consist of two types, the input services used for Bank as a whole and input services for generating income other than from Lending.
- The service tax paid on expenses incurred for Bank as a whole can be distributed to the Branches/ Zones/ Regions.
- Service Tax paid on expenditure incurred for generating income for the administrative offices can be utilised against the service tax liability of the said office.
- The availment of Cenvat is strictly as per Rule 6 (3B).
- The Service tax paid on Input Services can be distributed by the administrative office based upon the proportionate taxable turnover of the previous month of the constituent branches/ zones/ regions.



WHETHER SERVICE TAX NEEDS TO BE PAID ON WITHHOLDING TAXES IN CASE OF PAYMENTS MADE OUTSIDE INDIA

- Payments made outside India for taxable services rendered from outside India are liable to service tax.
- Withholding Tax provisions under Income Tax apply to such payments.
- What should be the value on which service tax needs to be paid?
- As per our view, service tax needs to be paid on the gross value debited to the expenditure account, including the value of Withholding tax as service tax needs to be paid on the value of Taxable Services.



SERVICE TAX ON SHARING OF REVENUES BY FOREIGN BANKS

- Certain transactions with relation to exports pertaining to documentation, liasioning etc. with Foreign Banks are carried out by Foreign Agents.
- These Foreign Agents receive commission for facilitating business from Foreign Banks. This Commission is shared with the Indian Banks.
- The commission accrues for rendering services by Foreign Agents located outside India to Foreign Banks who are also located outside India as a part of generating business for Foreign Banks.
- This commission received by the Indian Banks is not taxable amounting to Export Income.



SERVICE TAX ON INTERCHANGE FEES (CREDIT CARD TRANSACTIONS)

- In case of Credit Card transactions, the service tax is paid on the full amount of Income /Commission earned by the Acquirer Bank (i.e. the Bank who owns the POS Machine).
- Certain amount of the income is shared by the Acquirer with the Network Vendor whose network is used for executing the transaction.
- Certain amount is shared with the card issuer Bank.
- All the independent entities pay service tax on full value of Income/Commission.
- Doesn't this amount to payment of service tax on Income /Commission which is not at all generated ?
- This is because presently there is no mechanism to claim Cenvat Credit.

RECONCILIATION OF SERVICE TAX LIABILITY

- One needs to identify independent taxable services in the Profit & Loss account of Banking & Financial Institutions and calculate the service tax liability applicable thereupon.
- One needs to add the amounts received in advance from Nominal Accounts to ascertain the Service tax liability.
- One should also consider the liability arising out of payments made under the Reverse Charge Mechanism.
- Reimbursements and recoveries made by the Banks also attract service tax liability.
- Certain Debit accounts like Postage, Couriers etc. need to be analysed to ascertain and identify the credit items representing the ad-hoc recoveries made from customers towards such expenses, thereby attracting the levy of service tax.

Specimen of Profit & Loss Statement of Banking Institution

_____BANK		
Branch		
PROFIT AND LOSS ACCOUNT FOR THE HALF YEAR ENDED		
	Sch No.	Amount
I. INCOME		
Interest Earned	13	
Other Income	14	
Balance (GROSS LOSS) - transferred to RO / ZO / CO vide M.F. No. _____ dated _____		
TOTAL ..		
II. EXPENDITURE		
Interest Expended	15	
Operating Expenses	16	
Balance (GROSS PROFIT) - transferred to RO / ZO / CO vide M.F. No. _____ dated _____		
TOTAL ..		
DATE: _____		

Specimen of Profit & Loss Statement of Banking Institution

SCHEDULE - 14 - OTHER INCOME	Taxable / Non-Taxable	Actual / Receipt
I. Commission, Exchange & Brokerage		
i) Commission / Brokerage (Inland)		
- Bills for Collection	Taxable	Actual
- Letter of Credit	Taxable	Receipt
- Letter of Guarantee/DPG	Taxable	Receipt
- Letters of Comforts issued	Taxable	Actual
- Bills Purchased / Discounted	Taxable	Actual
- Payment of Dividend /Interest Warrants of Companies	Taxable	Actual
- Safe Custody Accounts	Taxable	Actual
- Underwriting Commission	Taxable	Actual
- Supervision charges on borrowal Accounts	Taxable	Actual
- Commission on booking of forward contracts	Taxable	Actual
- Commission recovered From Member Establishments	Taxable	Actual
- Commission on Xpress Money	Taxable	Actual
- Incidental/Service charges(excl.commit/Process)	Taxable	Actual
- Processing charges	Taxable	Actual
-Commitment charges	Taxable	Actual
- Government Business Transactions	Taxable	Receipt
- Commission on Travellers Cheques	Taxable	Actual
- Commission on Bankassurance - Life	Non- Taxable	
-Commission on Bank assurance - Non Life	Non- Taxable	
-Commission on Demat Services	Taxable	Actual
-Commission on Mutual Fund Products	Taxable	Actual

Specimen of Profit & Loss Statement of Banking Institution

Others		
Supervision charges on borrowal Accounts	Taxable	Actual
P&L Comm . Supervision Charges on Borrower Accounts	Taxable	Actual
Commission for Handling various Schemes	Taxable	Actual
P&L Comm. For handling various schemes	Taxable	Actual
Commission on Xpress Money	Taxable	Actual
P&L Commission on Xpress Money	Taxable	Actual
P&L Brokerage Commission on IPO	Taxable	Actual
Charge recovered on booking of Forward Contract	Taxable	Actual
P&L Charge recovered on booking of Forward Contract	Taxable	Actual
Charges recovered on account of early/late Deposit	Taxable	Actual
Commission recovered from Member Establishments	Taxable	Actual
Brokerage on Sterling or Dollar Transaction	Taxable	Actual
ii)Commision/Brokerage(Foreign)		
- Bills for Collection	Taxable	Actual
- Letter of Credit (Export)	Taxable	Receipt
- Letter of Credit (Import)	Taxable	Receipt
- Letter of Guarantee/DPG	Taxable	Receipt
- Letter of Comforts issued	Taxable	Actual
- Bills Purchased / Discounted	Taxable	Actual
Sub-Total ..		

Specimen of Profit & Loss Statement of Banking Institution

iii) Exchange		
- DD / TT (Inland)	Taxable	Actual
- DD / TT (Foreign)	Taxable	Actual
- charges receivable on NEFT/NECS/RECS/ECS Transactions	Taxable	Actual
Sub-Total ..		
Total of Comm,Exchange & Brokerage I(i to iii)		
II. Profit/Loss on sale of Investments(C.O.item)	Non- Taxable	
III. P/L on revaluation of Investment(CO item)	Non- Taxable	
IV. Profit / Loss on sale of Land/Buildings and Other Assets (C.O.)	Non- Taxable	
V. Profit / Loss on Exchange Transactions	Non- Taxable	
VI.Income Earned by Dividend etc from Subs/Jt. Ventures (C.O. item)	Non- Taxable	
VI. Income Earned by Dividend etc from Subs/Jt. Ventures (C.O. item)	Non- Taxable	
VII.Miscellaneous Income		
- Rent on Safe Deposit Lockers	Taxable	Receipt
- Amt. recovered From staff for occupation of flat	Non- Taxable	
- Amt. recovered for use of furniture provided to staff	Non- Taxable	
- Amt. recovered for use of Banks car	Non- Taxable	
- Penalty recovered From ATM vendors	Taxable	Actual
- Forfeiture of Gratuity/ PF of staff (C.O. Item)	Non- Taxable	
- Success fees on recoveries - A/cs assigned to ARCs(C.O)	Taxable	Actual
- Enrolment fee Received From UIDAI (C.O. Item)	Taxable	Actual
- Recovery Received in Accounts written off	Non- Taxable	
- Rent received from Occupants of Banks Own Premises	Taxable	Receipt
- Income on Cent Gold	Non- Taxable	
- Income on Cent Silver	Non- Taxable	
- Income From Currency Chest Operation	Taxable	Actual
- Income From Door Step Banking Services	Taxable	Actual
-Others....		
EDC rent charges recovered from Member Establishments	Taxable	Actual
Success fee on recoveries	Taxable	Actual
Enrollement fee for UID	Taxable	Actual
Sub-Total ..		
Schedule - 14 - Other Income - Total (I to VII)		



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THANK YOU

