

Definition of Service, Chargeability, Threshold Exemption,
Registration , Records and issue of Invoice, payment of tax,
etc.)

Workshop on Service Tax for Beginners
Organised by Indirect Tax Committee of ICAI

Hosted by: WIRC of ICAI

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Snapshot

- Definition of Service
- Chargeability
- Threshold Exemption
- Registration under Service Tax Law
- Payment of Service Tax
- Issue of Invoices, Challans, etc
- Maintaining of records, etc.

What is Service?

- ❖ “Service” **means** any activity carried out by a person for another for consideration, and **includes** a declared service, but shall **not include** :
 - a) An activity which constitutes merely:
 - i. a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
 - ii. Such transfer, delivery or supply of any goods which is deemed to be sale within the meaning of clause (29A) of article 366 of the Constitution; or
 - iii. a transaction in money or actionable claim.
 - b) A provision of service by an employee to an employer in the course of or in relation to his employment.
 - c) Fees taken in any Court or tribunal established under any law for the time being in force.

Service – ‘Means’ Clause

Service requires three elements namely:

- ❖ Any activity.
- ❖ Person carrying out the activity (SP) and the person for whom the activity is carried on (SR).
- ❖ The person must carry out an activity for some ‘consideration’.

What is 'an activity' ?

- ❖ 'An Act' denotes a process of doing or performing. The term 'act' or 'action' or 'activity' in its widest import includes both positive and negative acts.
- ❖ Whether activity should be an 'economic activity' ?

What is meant by 'Persons'?

'Person' is defined in Sec.65B(37) of the Act in an inclusive manner to including :

- ❖ an individual,
- ❖ HUF,
- ❖ a company,
- ❖ a society,
- ❖ a limited liability partnership,
- ❖ a firm,
- ❖ an association of persons or body of individuals, (whether incorporated or not) ,
- ❖ Government, a local authority
- ❖ Or every artificial juridical person, not falling within any of the preceding sub-types.

Legal Person

- ❖ It is the 'corpus' or 'subject of identification' that constitutes the soul of legal person.
- ❖ The law may identify '*groups of individuals*' or '*series of successive individuals*' as corpus or subject of identification in order to confer thereupon a status 'person' in law.
- ❖ In yet another form, the corpus is the '*entity or institution*' itself regardless of persons forming it. Thus, subject of identification is not a 'group' or 'series' of individuals, but the entity itself.

Service Provider & Service Receiver

- ❖ A person carrying on an activity is understood as a **‘service provider’** and the person receiving the service i.e. for whom the service provider is acting is known as **‘service receiver’**.
- ❖ ‘Activity Carried out by a person for another’ signifies that, there has to be **two distinct persons** for an activity to constitute a service. Thus, an activity for self cannot be treated as a service.

Explanation 3(a) to Sec.65B(44)

- ❖ An **unincorporated** association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons.

Explanation 3(b) to Sec.65B(44)

- An establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments.

Explanation 4 to Sec.65B(44)

- A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory.

What would be covered within the expressions 'branch or agency or representational office?'

- Branch:

'Branch' has been assigned the same meaning as provided in Section 2(9) of the Companies Act, 1956.

- Representative/ Liaison Office:

It undertakes only liaison activities i.e. it acts as a channel of communication between Head Office and its parties located indifferent taxable territories.

- ❖ Project Office:

A 'project office' is defined in Sec.2(f) of the Foreign Exchange Management (Establishment in India of Branch or Office or other place of business) Regulations, 2000 to mean place of business of the company , to represent interest of the Company executing project in India.

What is meant by Consideration?

- ❖ ‘Consideration’, in simple terms means, ‘quid-pro-quo’ i.e. ‘something-in-return’ as understood by and between the parties.
- ❖ Promise made in return for a promise is consideration.
- ❖ To be taxable an activity should be carried out by a person for a ‘consideration’. Activity carried out without any consideration like donations, grants, gifts or free charities are therefore outside the ambit of service.
- ❖ The performance of a ‘Legal Duty’ is no consideration for promise. Example: If a person is served with a summons requiring him to give evidence before court, his presence shall not tantamount to consideration.

Consideration (Contd)

- ❖ A service means any activity carried out 'for other' for a consideration. Example: If an act done at the Promisor's desire derives no personal benefit to him, yet it will be good consideration, if the promisee has carried out the act desired by the promisor.
- ❖ As per explanation to sec.67(1) "consideration" includes any amount that is payable for the taxable services provided or to be provided. It can either be in monetary form or in non-monetary form.
- ❖ Whether reimbursements are considered 'Consideration' ?

Inclusions – Declared Services

- ❖ The inclusive part of the definition, extends the ambit of ‘activities’ covered within the definition service to include those activities, which ordinarily cannot be termed as ‘service’ for the purpose of levy of tax under Service Tax Law. So far such declared services are grouped under nine broad descriptions as under:
 - Renting of immovable property.
 - Sale of **under-constructed premises** intended for sale unless, the entire consideration is received after issue of completion certificate by competent authority.
 - **Temporary transfer** or permitting the use or enjoyment of any intellectual property right

Inclusions - Declared Services

- Development, design, programming, customization, adaption, up gradation, enhancement, implementation of information technology software.
- Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation or to do an act.
- Transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods
- Activities in relation to delivery of goods on Hire purchase or any system of payment by installments
- Service portion in the execution of a works contract
- Service portion in an activity wherein goods, being food or any other article of human consumption or any drink is supplied in any manner as a part of the activity

What activities are excluded from the definition of Service ?

EXCLUDES:

- ❖ an activity which constitutes merely,—
 - a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
 - Such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or
 - a transaction in money or actionable claim.

Comparison:

Section 66E	Article 366(29A)
<ul style="list-style-type: none">Transfer of goods by way of hiring, leasing, licensing or in any such manner <u>without transfer of right to use such goods.</u>	<ul style="list-style-type: none">Transfer of right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
<ul style="list-style-type: none"><u>Activities in relation to</u> delivery of goods on Hire purchase or any system of payment by installments.	<ul style="list-style-type: none">Delivery of goods on Hire-purchase or any other system of payment by installments;

Comparison:

Section 66E	Article 366(29A)
<ul style="list-style-type: none">• <u>Service portion</u> in the execution of a works contract.	<ul style="list-style-type: none">• The transfer of property in goods (whether as goods in some other form) involved in the execution of a works contract;
<ul style="list-style-type: none">• <u>Service portion</u> in an activity wherein goods, being food or any other article of human consumption or any drink is supplied in any manner as a part of the activity	<ul style="list-style-type: none">• Supply, by way of or as a part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), whether such supply is for cash, deferred payment or other valuable consideration.

Actionable Claims

- ❖ “Actionable claim” shall have the meaning assigned to it in section 3 of the Transfer Property Act.
- ❖ It basically means “chose” “in action” or “thing” “in action”.
- ❖ Definition
 - It is a claim to an unsecured debt or
 - any beneficial interest in a ‘movable property’ not in possession of the claimant, recognised by law for affording grounds for relief.

Transaction in money:

- ❖ Promise made in return for a promise is a consideration.
- ❖ If such promise involves payment of money, then mere discharge of consideration or promise in terms of payment of money would not constitute service.
- ❖ It is known as ‘transaction in money’.
- ❖ “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** actionable.

Transaction in money & Actionable Claim

- ❖ Explanation 2 – For the Purpose of this clause the expression “transaction in money” or actionable claim shall not include
 - Any activity relating to use of money or its conversion by cash or by any other mode from one form, currency or denomination to other form, currency or denomination for which a separate consideration is charged
 - Activities of “lottery distributor or selling agent in relation to promotion marketing, organising, selling of lottery or facilitating in organising lottery
 - By a foreman of a Chit Fund for conducting or organising chit in any manner.

Exclusions - Definition of 'Service'

- ❖ A provision of service by an employee to the employer
- ❖ All services provided by an employer to the employee are not outside the ambit of services, only those provided **in the course of employment or in relation to employment** are outside the ambit of services
- ❖ Services provided on contract basis i.e. principal-to-principal basis are not services provided in the course of employment and thereby treated as provision of service.
- ❖ Fees taken in any Court or tribunal established under any law for the time being in force.

Exclusions - Definition of 'Service'

- ❖ Functions / duties performed by certain persons holding constitutional positions in certain offices or in a body established by the Central Government or State Governments or local authority are excluded such as-
 - a) Functions Performed by **Members of Parliament**, State Legislative, Panchayats, Municipalities and other local bodies who receive any consideration in performing the functions of that office as such member.
 - b) the duties performed by any person who holds any **post in pursuance of the provisions of the Constitution** in that capacity.
 - c) the duties performed by any person as a **Chairperson or a Member or a Director** in a **body established** by the **Central Government or State Governments or local authority** and who is not deemed as an employee before the commencement of this section

SERVICE TAX - GENERAL RATES

- ❖ Rate Of Service Tax increased from 12.36% to **14%** [w.e.f. date yet to be notified]
- ❖ Additionally there may be a tax called “**Swachh Bharat Cess**” on all or any of the taxable services @ 2% on value of such services [w.e.f. date yet to be notified]

SERVICE TAX- SPECIFIC RATES

Rule	Taxable Service	Existing Rate	Revised Rate
6(7)	Booking Of Air Travel Tickets by Air Travel Agent		
	Domestic Booking	0.6%	0.7%
	International Booking	1.2%	1.4%
6(7A)	Life Insurance Service		
	First Year Premium	3%	3.5%
	Subsequent Year Premium	1.5%	1.75%

SERVICE TAX – SPECIFIC RATES

Rule	Taxable Service	Existing Rate	Revised Rate
6(7B) – Money Changing Services	Gross amount of currency exchanged for an amount upto Rs.1,00,000	0.12% or Rs.30 Whichever is higher	0.14% or Rs.35 whichever is higher
	Gross amount of currency exchanged for an amount of Rs.1,00,000 and upto Rs.10,00,000	Rs.120 + 0.06%	Rs.140 + 0.07%
	Gross Amount of currency exchanged for an amount exceeding Rs.10,00,000	Rs.660 + 0.012% subject to maximum Rs.6,000	Rs.770 + 0.014% subject to maximum Rs.7,000

SERVICE TAX – SPECIFIC RATES

Rule	Taxable Service	Existing Rate	Revised Rate
6(7C)	Services provided by lottery distributor and selling agent		
	Where the guaranteed prize payout is more than 80%	Rs.7000 on every Rs.10 Lakh or part of Rs.10 Lakh of aggregate face value of lottery tickets	Rs.8,200 on every Rs.10 Lakh or part of Rs.10 Lakh of aggregate face value of lottery tickets
	Where the guaranteed prize payout is less than 80%	Rs.11,000 on every Rs.10 Lakh or part of Rs.10 Lakh of aggregate face value of lottery tickets	Rs.12,800 on every Rs.10 Lakh or part of Rs.10 Lakh of aggregate face value of lottery tickets

SERVICE TAX - ABATEMENT

In the following cases abatement has been reduced and the revised rates are:

Description Of Service	Existing Rate	Revised Rate
Transport of passengers by		
i.) Economy class	4.944%	5.60%
ii.) Other	4.944%	8.40%
Services of goods transport agency in relation to transportation of goods	3.09%	4.20%
Services provided in relation to chit	8.652%	14%
Transportation of goods in vessel	4.944%	4.20%

SERVICE TAX - ABATEMENT

Contd...

Thus, transportation of goods by road, rail, and vessel will now be charged at a uniform rate of **4.20%**, subject to conditions as to non availment of CENVAT credit in respect of following used for providing such services. [w.e.f.01-04-2015]

Sr. No.	Description Of Service	Inputs	Capital Goods	Input Services
1	Transport of Goods by rail	X	X	X
2	Transport of passenger by rail	X	X	X

THRESHOLD EXEMPTION LIMIT

- ❖ Threshold exemption limit continues to be Rs.10,00,000.
- ❖ Notification No.33/2012-ST dtd.20-06-2012

Registration under Service Tax Law

- ❖ Section 69 of the Act – Requirement for Registration
- ❖ Section 77 (a) of the Act – Penalty for non-registration
- ❖ Rule 4 of Service Tax Rules
- ❖ Service Tax (Registration of Special Category of Persons Rules), 2005
- ❖ Form ST-1 Application for Registration
- ❖ Form ST-2 Certificate of Registration

Registration under Service Tax Law

- ❖ Who is required to obtain registration ?
- ❖ Types of Registration
 - Centralised Registration.
 - Single Premise-Based Registration.
- ❖ Time limit for obtaining registration
- ❖ Procedure for obtaining registration
- ❖ Procedure for surrender of registration
- ❖ Penalty for non-registration – Section 77(a).

Payment of Service Tax

- ❖ Section – 68 Payment of Service Tax
- ❖ Section – 75 Interest for non-payment / short payment of service tax
- ❖ Section 76 Penalty for failure to pay service tax
- ❖ Section 77(d) Penalty for failure to pay service tax electronically
- ❖ Section 78 Penalty for suppressing etc
- ❖ Rule 6 – Payment of Service Tax

Payment of Service Tax

- ❖ Due dates for payment of service tax.
- ❖ Manner of payment of service tax.
- ❖ Can service tax be paid voluntarily in Advance?
- ❖ What if assessee pays excess service tax?
- ❖ Whether it is possible to make adjustment of service tax in case of Bad Debts
- ❖ Interest under section 75
- ❖ Penalty for non-payment of service tax.

Payment of Service Tax - Interest

- ❖ Due date of Payment – 06th February 2014 (i.e. prior to 1st October 2014).
- ❖ Date of Payment – 31st December 2014
 - Till 30th September 2014 – 18% p.a
 - From 01st October 2014 to 31st December 2014 – 24% p.a.

Issue of Invoices , challans etc.

- ❖ Section 77(e) – Penalty for failure to issue invoices with incorrect or incomplete particulars
- ❖ Rule 4A of Service Tax Rules – Invoice, Bills, Challan on the basis of which credit of service tax paid is to be distributed.
- ❖ Rule 4B of Service Tax Rules – Issue of consignment notes etc.

Issue of Invoices , challans etc.

- ❖ What is an Invoice?
- ❖ Time limit for issue of invoices
- ❖ Contents of invoices
- ❖ Special provisions for GTA and Banking , Non-banking or financial institutions.
- ❖ Invoices by ISD
- ❖ Penal consequences for non-issue of invoices in time.

Maintaining of Records, etc

- ❖ Section 77 (b) – Penalty for failure to maintain or retain books of accounts and other documents and records.
- ❖ Section 89 – Offence – Maintaining false books of accounts
- ❖ Rule 5 of Service Tax Rules – Records

Maintaining of Records, etc

- ❖ What records are required to be maintained
- ❖ Till what period records are required to be maintained
- ❖ Where the accounts and records are required to be maintained
- ❖ Penal consequences for not maintaining books of accounts

