

# SERVICE TAX ON NPOs

## AFTER FINANCE ACT, 2013

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### INTRODUCTION

**1.1.1** The Finance Act 2012 had brought radical changes in Service Tax Laws which were further amended by the Finance Act 2013. Now all services shall be treated as taxable except those services which are included in the negative list of services (Refer **Annexure-1**) or are specifically exempted and notified (Refer **Annexure-2**) and shall also include certain activities that have been specified as declared services (Refer **Annexure-3**). The earlier law provided a list of taxable services and all other services were exempted whereas, under the amended law all services have become taxable other than services included in negative list or covered under exemption.

**1.1.2** As per the existing law, all NGOs are subject to Service Tax wherever applicable. However, the Finance Act 2012 has, exempted certain category of NGOs totally from the purview of service tax. In other words, such NGOs need not pay service tax even for providing taxable services without

any financial limit. Unfortunately, very few types of NGOs have been included under this totally exempted category. All such related matters are discussed in this issue.

### NGOs WHICH ARE EXEMPTED

**1.2.1** The exemption has been given to only those NGOs which are registered under section 12AA of the Income Tax Act, 1961 and carrying on one or more of the following charitable activities :

(1) NGO engaged in 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;
- (2) NGO engaged in advancement of religion;
- (3) NGO engaged in 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;
- (4) NGO engaged in preservation of environment including watershed, forests and wildlife; or

In the light of the above definition, Service Tax shall be applicable –

- a) to NGOs which are not registered u/s. 12AA of the Income Tax Act, 1961, for example NGOs registered u/s. 10(23C) etc. **This seems to be a drafting error as the intent could not have been to deprive NGOs registered u/s. 10(23C) etc. from the benefits which are available to NGOs which are registered u/s. 12AA.**
- b) to NGOs which are engaged in relief to poor, preventive health, informal education programmes, etc.
- c) In case of NGOs engaged in “advancement of any other purpose of public utility” .

#### **1.2.2 To sum up:**

- The Service Tax Act has made all services taxable except those services which are specifically exempted. Under the new law, almost all services rendered by NGOs on commercial basis or on consultancy contract shall become taxable.

- However some NGOs (not all) registered under Section 12AA of Income Tax Act, 1961 are totally exempted from Service Tax.

- The NGOs engaged in “advancement of any other object of general public utility” were exempt upto a certain limit of taxable services in addition to the blanket exemption of Rs.10 Lacs. However vide Notification No.33/2012-ST dt. 20/06/2012 the special exemption given to this category of NGOs has also been withdrawn, meaning thereby there is no special exemption for the NGOs engaged in “advancement of any other object of general public utility” though they can avail the basic exemption of Rs.10 Lacs.

**- The Service Tax laws have taken a narrow definition of the term ‘charitable purpose’ which is different from the definition of charitable purpose under the Income Tax Act. There is an urgent need to align and use the same definition of the term ‘charitable purpose’ both under the Income Tax Act and the Service Tax laws.**

#### **SERVICES COVERED IN THE NEGATIVE LIST**

**1.3.1** The services which are included in the negative list are exempt from applicability of Service Tax. Therefore NGOs (which are not covered under exempt category as discussed herein above) have to find out whether the services rendered by them falls under the negative list or the services rendered by NGOs are outside the negative list. If the services rendered is outside the

Negative list, then these services shall be subject to Service Tax Act.

**1.3.2** Some of the services covered in Negative list includes:

- a) 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 recognized by any law for the time being in force;
  - iii) Education as a part of an approved vocational education course

Hence it appears that non-formal education is not covered under the exempt category of Service Tax and therefore any collection from non formal, program shall be subject to service tax.

- b) Services by way of renting of residential dwelling for use as residence;

Hence if the NGO is renting out properties for non-residential purpose then this rent income shall become service subject to Service Tax.

#### **BASIC EXEMPTION AVAILABLE FOR TAXABLE SERVICES**

**1.4.1** If the service rendered by a non-exempt NGO does not fall under negative list then also there is no liability of service tax upto the value of Rs.10 lakhs. This means even if a non-exempt NGO provides taxable service for an amount upto Rs.10 lakhs in a year, there is no implication of service tax.

#### **WHAT IS SERVICE?**

**1.5.1** In the new service tax system, all services, other than services specified in the negative list, provided or agreed to be provided in the taxable territory by a person to another would be taxed under section 66B. The term 'Service' has been defined in clause (44) of the new section 65B of the Service Tax Act and it means –

- any activity
- for consideration
- carried out by a person for another
- and includes a declared service.

**1.5.2** As per the above definition, an activity for consideration carried out by a person for another person can be included as service and it may also include a declared service. In other words, any service provided for a fee or when something is received in return shall be considered as a service. All services except those provided in the negative list shall be considered as taxable services.

#### **WHICH ACTIVITIES WILL NOT BE INCLUDED UNDER SERVICE?**

**1.6.1** The definition under Section 66B further provides that 'Service' does not include –

- 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
- a transaction only in (iii) money or (iv) actionable claim
- any service provided by an employee to an employer in the course of the employment.
- fees payable to a court or a tribunal set up under a law for the time being in force

## WHAT IS CONSIDERATION?

**1.7.1** The word 'consideration' has not defined in the Act. However the master Circular issued on 16.03.2012 clarifies that:

- Activity carried out without any consideration like donations, gifts or free charities are therefore outside the ambit of service. For example, grants given for a research where the researcher is **under no obligation** to carry out a particular research would not be a consideration for such research.
- Conditions in a grant stipulating merely proper usage of funds and furnishing of account also will not result in making it a provision of service.
- Donation to a charitable organization is not a consideration unless charity is obligated to provide something in return e.g. **display or advertise the name of the donor in a specified manner** or such that it gives a business advantage to the donor.

## WILL PROJECT GRANT BE TREATED AS A SERVICE?

**1.8.1** Project grants and restricted funds shall not be treated as service. However, if the grant agreement has any clause where any benefit or business value is going back to the donor, then it shall be treated as a taxable service. Some example of such benefit could be as under:

- (i) If the donor puts a clause that the implementing organization has to display its logo or name at the places of activity, then it could be considered as a taxable service.

(ii) If the implementing organization is conducting some research, survey or activity in which the donor is interested and the implementing organization is under obligation to provide certain specified output to the donor, then the services can be considered as taxable services. For example, if the donor keeps a condition that the implementing organization shall provide activity report or utilization statements, then it will not be treated as taxable service. However, if the donor keeps a condition that the implementing organization shall provide specific data or specific research report as an outcome of the activity, then it will be treated as a taxable service.

## WILL CSR GRANT BE CONSIDERED AS TAXABLE SERVICE?

**1.9.1** In the light of the definition of the term 'consideration' where it is provided that "*Donation to a charitable organization is not a consideration unless charity is obligated to provide something in return e.g. **display or advertise the name of the donor in a specified manner** or such that it gives a business advantage to the donor*", it seems that CSR grants could be treated as taxable services if the donor company is getting any business advantage out of such donation or keeps a condition regarding display of its logo or name during the implementation process. **Generally all grants including CSR grants should not be considered as service.**

## WHAT DOES THE WORD 'ACTIVITY' SIGNIFY?

**1.10.1** 'Activity' has not been defined in the Act. In terms of the common understanding of the word, activity would include an act

done, a work done, a deed done, an operation carried out, execution of an act, provision of a facility etc. It is a term with very wide connotation. Activity could be **active or passive** and would also include forbearance to act. Agreeing to the obligation to refrain from an act or to tolerate an act or a situation has also been specified as a declared service under section 66E of the Act. In other words, even a promise of not doing something for a consideration can be considered as a service. For example, if an activist NGO enters into a contract for not agitating against any particular organization or any particular issue, then such services can be treated as taxable service.

#### **WHAT IS NON-MONETARY CONSIDERATION?**

**1.11.1** Non-monetary consideration could be in the form of following:

- Supply of goods and services in return for provision of service
- Refraining or forbearing to do an act in return for provision of service
- Tolerating an act or a situation in return for provision of a service
- Doing or agreeing to do an act in return for provision of service

#### **APPLICABILITY OF NEW REVERSE CHARGE MECHANISM TO NGOS**

**1.12.1** Under the Service Tax Act, the recipient of the services has to pay the service tax on certain category of services. These services includes :

- a) Rent – a- cab service
- b) Manpower power supply service
- c) Works Contract service

**1.12.2** This reverse charge mechanism shall be applicable only if the service receiver is a business concern & registered as a body

corporate. **Hence all the NGOs registered as a trust and society are not covered under the new reverse charge mechanism but section 25 Companies may be covered under this new reverse charge mechanism if it also carries on business.**

#### **FAQ's**

**1.13.1 Whether all NGOs registered u/s 12AA are exempt from service tax.?**

**Ans:** No all NGOs registered u/s 12AA are not exempt from Service Tax. Only NGOs registered u/s. 12AA of Income Tax Act, 1961 and engaged in one or more of the specified charitable activities are exempt from Service Tax. Refer **Point No. 1.2.1.**

**1.13.2 Whether the NGOs registered under 10(23) are liable for Service Tax?**

**Ans :** NGOs registered u/s. 10(23) are not covered under the exempt category and therefore they are liable for Service Tax, if the service provided by them is not covered under negative list.

**1.13.3 Whether grant received by NGOs after deduction of TDS either u/s. 194C or 194J shall be subject to Service Tax?**

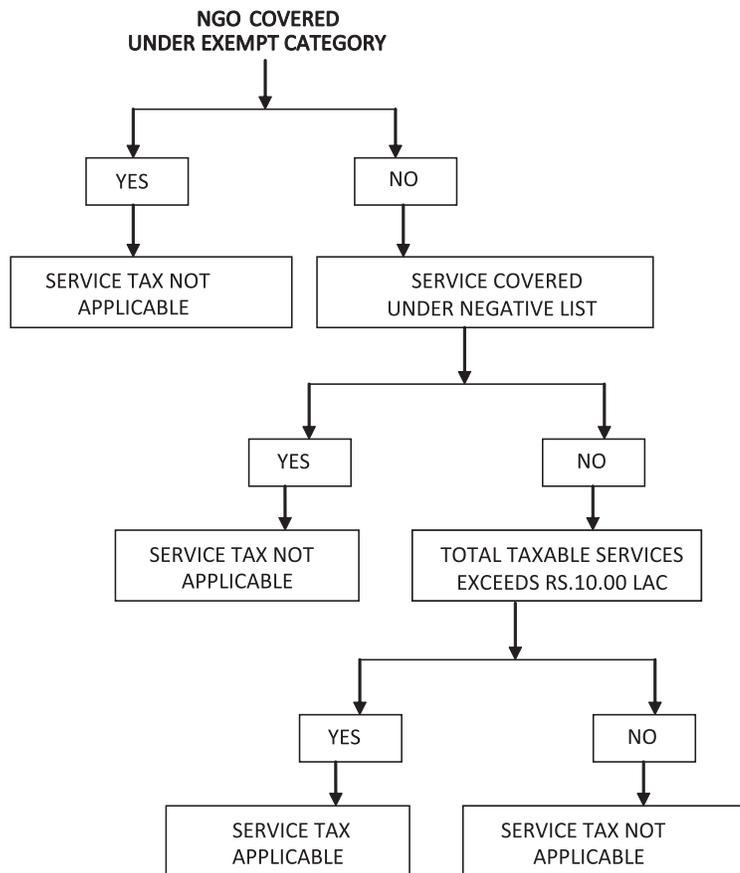
**Ans :** If the tax is deducted u/s. 194C or 194J while remitting the grant, then the grant may be considered in the nature of services and if the NGO does not fall under the exempt category and the nature of work done by NGO is also not included in negative list, then the grant amount on which Tax is deducted at source may be considered in the nature of services subject to Service Tax. However, there are case laws where it has been held that if by mistake a grant contract is drafted as a consultancy contract, it would not convert the transaction into a commercial transaction. In the case *Heart Care Management v. Director of Income-tax (E)* [2012] 22

taxmann.com 105 (Delhi - Trib.) it was held that only because donors deducted TDS, it will not convert a donation into a commercial receipt on the basis of presumptive inferences. As long as the assessee has credited the amount as donation and issued donation receipts, in our view, the same cannot be held to be commercial receipt.

**1.13.4 In certain NGOs internal billings are raised as rent for use of office space or for conducting various trainings and these incomes are separately shown as income in the consolidated Audited reports. Whether these internal charges shall be subject to service tax?**

**Ans:** Normally Rental income booked through internal bills are not legal income and therefore any income arising out of such internal billing should not be subject to Service Tax. However, if the consolidated financial audited reports consider these rental incomes as independent income without disclosure, then this rental income may be considered by the Service Tax Department as services rendered by the organization subject to Service Tax and therefore, NGO may have to defend its case by providing all the documents. Hence it is advisable not to include notional income while presentation of financial statements.

**1.13.5 What is the scheme of applicability of Service Tax to NGO ?**



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## THE NEGATIVE LIST OF SERVICES WHICH ARE EXEMPTED

The negative list as per Section 66D shall comprise of the following services, namely:—

- (a) 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;
- (b) services by the Reserve Bank of India;
- (c) services by a foreign diplomatic mission located in India;
- (d) services relating to agriculture by way of—
  - (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;
  - (ii) supply of farm labour;
  - (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
  - (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;
- (e) trading of goods;
- (f) any process amounting to manufacture or production of goods;
- (g) selling of space or time slots for advertisements other than advertisements broadcast by radio or television;
- (h) service by way of access to a road or a bridge on payment of toll charges;
- (i) betting, gambling or lottery;
- (j) admission to entertainment events or access to amusement facilities;
- (k) transmission or distribution of electricity by an electricity transmission or distribution utility;
- (l) 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 recognized by any law for the time being in force;

- (iii) education as a part of an approved vocational education course;
- (m) services by way of renting of residential dwelling for use as residence;
- (n) 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 authorized dealers of foreign exchange or amongst banks and such dealers;
- (o) 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 of less than fifteen tonne net; and
  - (vi) metered cabs, radio taxis or auto rickshaws;
- (p) 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 to the first customs station of landing in India; or
  - (iii) by inland waterways;
- (q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

**EXEMPTIONS UNDER MEGA NOTIFICATION**

[TO BE PUBLISHED IN THE GAZZETE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

**Government of India Ministry of Finance Department of Revenue**

**NOTIFICATION NO.12/2012-SERVICE TAX**

New Delhi, the 17th March 2012

**Exemptions from Service tax — Mega Notifications — Notification No. 12/2012-S.T. superseded**

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 Act) and in supersession of notification number 12/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 210(E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely :-

1. Services provided to the United Nations or a specified international organization;
2. Health care services by a clinical establishment, an authorised 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 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, Paralympic 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 Kreedha 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 Explanation 1 to clause 44 of section 65B of the said Act;
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 12AA 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 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 metres 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) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;
15. Services provided by way of temporary transfer or permitting the use or enjoyment of a copyright,-
- (a) covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical or artistic works; or
- (b) of cinematograph films for exhibition in a cinema hall or cinema theatre;";
16. Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) 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 the facility of air-conditioning or central air heating in any part of the establishment, at any time during the year;
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) defence 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 transport in a goods carriage of,-
- (a) agricultural produce;
  - (b) goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;
  - (c) goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred fifty;
  - (d) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages;
  - (e) chemical fertilizer and oilcakes;
  - (f) newspaper or magazines registered with the Registrar of Newspapers;
  - (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
  - (h) defence or military equipments;”;
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 from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;
  - (b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or
  - (c) ropeway, cable car or aerial tramway;
- ~~24. Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;~~
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 airport;
26. Services of general insurance business provided under following schemes -
- (a) Hut Insurance Scheme;
  - (b) Cattle Insurance under Swarnajaynti Gram SwarozgarYojna (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 ArogyaBima Policy;
  - (j) National Agricultural Insurance Scheme (Rashtriya KrishiBimaYojana);
  - (k) Pilot Scheme on Seed Crop Insurance;
  - (l) Central Sector Scheme on Cattle Insurance;
  - (m) Universal Health Insurance Scheme;
  - (n) Rashtriya SwasthyaBimaYojana; or
  - (o) Coconut Palm Insurance Scheme;
- “26A. Services of life insurance business provided under following schemes -
- (a) JanashreeBimaYojana (JBY); or
  - (b) AamAadmiBimaYojana (AABY);”.
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 -
- (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 distributor or a selling agent;
  - (f) selling agent or a distributor 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 organiser 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 telephone;
  - (b) guaranteed public telephone operating only for local calls; or
  - (c) free telephone at airport and hospital 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. **Definitions.**- For the purpose of this notification, 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) “authorised medical practitioner” means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognized by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;

(e) “authorised 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 & 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 authorised by the lottery-organising State;

(p) “general insurance business” has the meaning assigned to it in clause (g) of section 3 of General Insurance Business (Nationalisation) 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 recognised

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) recognised 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 recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations, (iv) national sports promotion organisations recognised by the Ministry of Sports and Youth Affairs of the Central Government, (v) the International Olympic Association or a federation recognised 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 the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or 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  
(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).

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

**[Notification No. 25/2012-S.T., dated 20-6-20**

**] [Notification No. 25/2012-S.T., dated 20-6-2012]**

## **DECLARED SERVICES**

In the definition of 'service' contained in clause (44) of section 65B of the Act it has been stated that service includes a declared service. The phrase 'declared service' is also defined in the said section as an activity carried out by a person for another for consideration and specified in section 66E of the Act. The following nine activities have been specified in section 66E:

1. renting of immovable property;
2. construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority;
3. temporary transfer or permitting the use or enjoyment of any intellectual property right;
4. development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software;
5. agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
6. transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods;
7. activities in relation to delivery of goods on hire purchase or any system of payment by instalments;
8. service portion in execution of a works contract;
9. service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity.

If the above activities are carried out by a person for another for consideration it would amount to provision of service. Most of these services are presently also being taxed except in so far as Sl. No.5 is concerned. It is clarified that they are amply covered by the definition of service but have been declared with a view to remove any ambiguity for the purpose of uniform application of law all over the country.