Negative List, Important Exemptions and Exclusions from Service Tax – Sector wise Analysis

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Synopsis

- Exclusions from Service Tax -
  - Entries in Negative List (Section 66D)
  - Deemed Valuations
  - Abatements.

- Exemptions from Service Tax – Entries in Mega Exemption Notification (Not. 25 /2012)

- Industries/ Sectors Covered
  - Agriculture
  - Charitable / Not for Profit Organisations
  - Education
  - Hotels, Restaurants, Catering and Eating Houses
  - Renting / Hiring
  - Healthcare and Medical
  - Entertainment, sports and Advertising
  - Legal Services
  - Transport and Tourism
  - Manufacturing, Trading and Job Work
  - Infrastructure, Construction, Works Contract
  - Banking, Insurance, Broking etc.
  - Govt., Local Authorities and Statutory Bodies
Agriculture

Negative List

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

- 'Agriculture' means cultivation of plants and rearing or breeding of animals and other species of life forms for foods, fibre, fuel, raw materials or other similar products but does not include rearing of horses.

- Agricultural Produce – No processing or Processing without alteration in essential characteristics to make it marketable, whether or not performed on farm.

- Agricultural extension services have been defined as application of scientific research and knowledge to agricultural practices through farmer education or training.

- Para 4.4.11 of ‘Service Tax Education Guide’ - support services for facilitating the marketing of agricultural produce by provision of facilities and amenities like, sheds, water, light, electricity, grading facilities etc. are covered in negative list. But renting of shops or other property are taxable as these activities are not directly related to Agriculture or Agriculture produce.

Mega Exemption

40. Services by way of loading, unloading, packing, storage or warehousing of rice, cotton, ginned or baled;

44. Specified services in respect of fruits and vegetables: Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labeling of fruits and vegetables which do not alter the essential characteristics of fruits and vegetables.
Charitable / Not for Profit Organisations

Mega Exemption

4. Services by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) by way of charitable activities;

• "charitable activities" means activities relating to -
• (i) public health by way of -
  • (a) care or counselling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or
  • (b) public awareness of preventive health, family planning or prevention of HIV infection;
• (ii) advancement of religion or spirituality;
• (iii) advancement of educational programmes or skill development relating to,-
  • (a) abandoned, orphaned or homeless children, (b) physically or mentally abused and traumatized persons; (c) prisoners; or (d) persons over the age of 65 years residing in a rural area;
• (iv) preservation of environment including watershed, forests and wildlife;
Charitable / Not for Profit Organisations (contd)

Mega Exemption

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;

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;

35. Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material;

38. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets;
Education

Negative List

(I) Services by way of—

• (i) Pre-school education and education up to higher secondary school or equivalent;
  - Educational courses up to this level by any Institutes covered if recognised.

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

• (iii) education as a part of an approved vocational education course;
  - Charges recovered for any other service by Educational Institutions are taxable.
9. Services provided,-

• (a) by an educational institution to its students, faculty and staff;
• (b) to an educational institution, by way of,-
  (i) transportation of students, faculty and staff;
  (ii) catering, including any mid-day meals scheme sponsored by the
       Government;
  (iii) security or cleaning or house-keeping services performed in such
       educational institution
  (iv) services relating to admission to, or conduct of examination by,
       such institution;”

9A. Any services provided by, _

• (i) the National Skill Development Corporation set up by the Government of India;
• (ii) a Sector Skill Council approved by the National Skill Development Corporation;
• (iii) an assessment agency approved by the Sector Skill Council or the National Skill Development
       Corporation;
• (iv) a training partner approved by the National Skill Development Corporation or the Sector Skill
       Council in relation to (a) the National Skill Development Programme implemented by the National Skill
       Development Corporation; or (b) a vocational skill development course under the National Skill
       Certification and Monetary Reward Scheme; or (c) any other Scheme implemented by the National
       Skill Development Corporation.”
Hotels, Restaurants, Catering and Eating Houses

Mega Exemption

18. Services by way of renting of a hotel, inn, guest house, club, campsite 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 airconditioning or central air-heating in any part of the establishment, at any time during the year;

19A. Services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 (63 of 1948), having the facility of air-conditioning or central air-heating at any time during the year.

33. Services by way of slaughtering of animals;
Hotels, Restaurants, Catering and Eating Houses

Valuation

Determination of value of service portion involved in supply of food or any other article of human consumption or any drink (whether or not intoxicating) in a restaurant or as outdoor catering.

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Activity</th>
<th>Percentage Value of Total Amt. of Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>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 a part of the activity, at a restaurant.</td>
<td>40</td>
</tr>
<tr>
<td>2.</td>
<td>Service portion in outdoor catering wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of such outdoor catering.</td>
<td>60</td>
</tr>
</tbody>
</table>

Conditions:
- Total Amount of Service includes the fair market value of all goods and services supplied in or in relation to above supply, whether or not supplied under the same contract or any other contract.
- CENVAT Credit on duties or cess paid on any goods classifiable under Chapters 1 to 22 Central Excise Tariff Act, 1985 not allowed.
## Hotels, Restaurants, Catering and Eating Houses

### Abatement

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Activity</th>
<th>Abatement %</th>
<th>Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organizing a function) together with renting of such premises</td>
<td>30</td>
<td>CENVAT credit not been taken on any goods classifiable under Ch. 1 to 22 of the Cent. Excise Tariff Act, 1985</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(Tax Payable on 70%)</td>
</tr>
<tr>
<td>2.</td>
<td>Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes.</td>
<td>40</td>
<td>CENVAT credit on inputs and capital goods, has not been taken.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(Tax Payable on 60%)</td>
</tr>
</tbody>
</table>
Renting / Hiring

Negative List

(m) Services by way of renting of residential dwelling for use as residence;

- Accommodation purely for temporary stay not covered.
- Residential house used for commercial purpose will be taxable.
- Whether paying Guests are covered in Negative List?

Mega Exemption

5. Services by a person by way of-
   - renting of precincts of a religious place meant for general public; or
   - conduct of any religious ceremony;

“religious place” means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation or spirituality
Healthcare, Medical etc.

**Negative List**

(q) Funeral, burial, crematorium or mortuary services including transportation of the deceased.

- Mainly these services rendered by Govt. or Local authorities, except Performing religious rituals, running mortuaries (Pvt. Hospitals).

**Mega Exemption**

2A. Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.

2B. Services provided by operators of Common Bio-medical Waste Treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.

3. Services by a veterinary clinic in relation to health care of animals or birds.
Healthcare, Medical etc.

Mega Exemption

2. i) Health care services by a clinical establishment, an authorised medical practitioner or para-medics;

   ii) Services provided by way of transportation of a patient in an ambulance, other than those specified in (i) above; w.e.f. 1st April 2015

• "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;

• "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 or medicines in India, or a place established as an independent entity or a part of an establishment or carry out diagnostic or investigative services of diseases;

• Paramedics are trained health care professionals, for example nursing staff, physiotherapists, technicians, lab assistants etc.
## Negative List

(g) **Selling of space for advertisements in Print Media** (wef. 1/10/2014)

(Words in *Bold & Italics* were not taxable till 30/09/2014 in below table)

<table>
<thead>
<tr>
<th>Taxable</th>
<th>Non-taxable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale of space or time for advertisement to be broadcast on radio or television</td>
<td>Sale of space for advertisement in print media</td>
</tr>
<tr>
<td>Sale of time slot by a broadcasting organization</td>
<td></td>
</tr>
<tr>
<td><em>Sale of space for advertisement in bill boards, public places (including standees), buildings, conveyances, cell phones, automated teller machines, internet</em></td>
<td></td>
</tr>
<tr>
<td>Aerial advertising</td>
<td></td>
</tr>
</tbody>
</table>
Entertainment, Sports and Advertising (contd.)

Negative List

(i) **Betting, gambling or lottery; excluding** any activity relating to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out by a lottery distributor or selling agent in relating to promotion, marketing, organizing, selling of lottery or facilitating in organizing lottery of any kind.

- Service charges, entry charges collected or retention of bet amount by organizers is taxable.

(j) **Mega Exemption**

8. Services by way of training or coaching in *recreational activities* relating to arts, culture or sports;

- Whether coaching, training in professional activities relating to art, culture and sports is exempt?

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;

- Services by individuals such as selectors, commentators, curators, technical experts are taxable.

- Match fees received from Team Franchisees is Taxable.
Entertainment, Sports and Advertising (contd)

Mega Exemption

11. Services by way of sponsorship of sporting events organised,-
   • (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 Kreeda Aur Khel Abhiyaan (PYKKA) Scheme;

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;”
Mega Exemption

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 in such cases where the amount charged for a performance is not more than Rupees one lakh.

17. Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;

29 (f). Services by the following persons in respective capacities - selling agent or a distributor of SIM cards or recharge coupon vouchers

31. Services by an organiser to any person in respect of a business exhibition held outside India
W.e.f. 1st April 2015

• Entry No. 45 – Admission to museum, zoo etc.:
  Services by way of admission to museum, zoo, national park, wildlife sanctuary and tiger reserve.

• Entry No. 46 – Movie Exhibition Services:
  Services by way of exhibition of a movie by the exhibitor (theatre owner) to the distributor or to an association of persons wherein such exhibitor is a member.

W.e.f. 1st June 2015

Entry No. 47 – Admission to entertainment events:

• Services by way of right to admission to
  ➢ Exhibition of cinematographic film, circus, dance, or theatrical performance including drama or ballet;
  ➢ Recognised sporting event;
  ➢ Award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event, where the consideration for admission is not more than Rs 500/- per person.

  Hence now, service Tax shall be levied on the service provided by way of access to amusement facility providing fun or recreation by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks and theme parks.

Para 2, clause (zab) of Not.25/2012 :- "recognised sporting event" means any sporting event,
(i) organised by a recognised sports body where the participating team or individual represent any district, state, zone or country;
(ii) covered under entry 11.
Legal Services

Mega Exemption

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;
   • Business entity is defined as 'any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession'. Thus it includes sole proprietors as well.
Transport and Tourism

Negative List

(o) Service of transportation of passengers, with or without accompanied belongings, by—

- (i) a stage carriage; contract carriages not covered
- (ii) railways in a class other than—
  - (A) first class; or (B) an airconditioned coach;
- (iii) metro, monorail or tramway;
- (iv) inland waterways;
- (v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
- (vi) metered cabs or auto rickshaws;

- Boat cruises not included in negative list as the same is predominantly for tourism purpose.
- Radio Taxis were included in clause (vi) till 30/09/2014

(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 up to the customs station of clearance in India; or
- (iii) by inland waterways;
  - Transportation of goods by vessel on coastal water not covered?
Transport and Tourism (contd.)

**Mega Exemption**

20. Services by way of transportation by rail or a vessel from one place in India to another of the following goods -

- (a) --- (b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; (c) defence or military equipments; (d) ---- (e) ------; (f) newspaper or magazines registered with the Registrar of Newspapers; (g) railway equipments or materials; (h) agricultural produce; (i) milk, salt, food grains, including flours, pulses and rice; or (j) chemical fertilizer, organic manure and oilcakes; (k) cotton, ginned or baled.

21. Services provided by a goods transport agency by way of transportation of -

- (a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;
- (b) goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; (c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;
- (d) milk, salt, food grains, including flours, pulses and rice.
- (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;
- (h) defence or military equipments
- (i) cotton, ginned or baled.
Mega Exemption

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) non-airconditioned contract carriage other than radio taxis for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or
   • (c) ropeway, cable car or aerial tramway;

42. Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.
## Transport and Tourism (contd.)

### Abatements

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Activity</th>
<th>Tax On %</th>
<th>Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Transport of goods by rail</td>
<td>30</td>
<td>CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken by the service provider.</td>
</tr>
<tr>
<td>2.</td>
<td>Services of goods transport agency in relation to transportation of goods.</td>
<td>30</td>
<td>Same as above - No CENVAT</td>
</tr>
<tr>
<td>3.</td>
<td>Transport of goods in a vessel</td>
<td>30</td>
<td>Same as above - No CENVAT</td>
</tr>
<tr>
<td>4.</td>
<td>Transport of passengers, with or without accompanied belongings by rail</td>
<td>30</td>
<td>Same as above - No CENVAT</td>
</tr>
<tr>
<td>5.</td>
<td>Transport of passengers by air, with or without accompanied belongings by-</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>a) By Economy Class</td>
<td>40%</td>
<td>No CENVAT credit on inputs and capital goods.</td>
</tr>
<tr>
<td></td>
<td>b) By other than Economy Class</td>
<td>60%</td>
<td>Same as above</td>
</tr>
</tbody>
</table>
### Transport and Tourism (contd.)

#### Abatements (contd.)

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Activity</th>
<th>Tax On %</th>
<th>Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.</td>
<td>Transport of passengers, with/ without accompanied belongings, by—</td>
<td>40</td>
<td>CENVAT credit on inputs, capital goods and input services, has not been taken.</td>
</tr>
<tr>
<td></td>
<td>(a) a contract carriage other than motorcab. And (b) a radio taxi.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Renting of <em>motorcab</em></td>
<td>40</td>
<td>(i) No Cenvat Credit on Inputs and Capital Goods</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(ii) <em>CENVAT credit on input service of renting of motorcab</em> allowed as under:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(a) Full *CENVAT credit of such input service received from a person who is paying service tax on forty per cent of the value; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(b) Up to forty per cent *CENVAT credit of such input service received from a person who is paying service tax on full value</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(iii) No *CENVAT credit on input services other than those specified in (ii) above.</td>
</tr>
</tbody>
</table>
## Abatements (contd.)

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Activity</th>
<th>Tax On %</th>
<th>Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.</td>
<td>Services by a tour operator in relation to,- (i) a package tour (ii) a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour (iii) any services other than specified at (i) and (ii) above.</td>
<td>25 10 40</td>
<td>(i) No CENVAT credit on inputs, capital goods and <em>input services other than the input service of a tour operator.</em> (ii) The bill issued for this purpose indicates that it is inclusive of charges for such a tour. (iii) No CENVAT credit on inputs, capital goods and <em>input services other than the input service of a tour operator.</em> (iv) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation. (v) No Exemption if invoice, bill or challan issued only includes the service charges for arranging or booking accommodation and does not include the cost of such accommodation. (vi) No CENVAT credit on inputs, capital goods and <em>input services other than the input service of a tour operator.</em> (vii) The bill issued indicates that the amount charged in the bill is the gross amount charged for such tour.</td>
</tr>
</tbody>
</table>
Manufacturing, Trading, Job Work

**Negative List**

(f) Any process amounting to manufacture or production of goods;

   excluding any service by way of carrying out any processes for production or manufacture of alcoholic liquor for human consumption.

   - This entry covers manufacturing activity carried out on contract or job work basis, which does not involve transfer of title in goods, provided duties of excise are leviable on such processes under the Central Excise Act, 1944 or any of the State Acts.

(e) Trading of goods;

   • Auxiliary activities for trading of goods not included in negative list.

**Mega Exemption**

30. Carrying out an intermediate production process (excluding intermediate production of alcoholic liquor for human consumption) 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 excluding alcoholic liquors for human consumption 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;
Construction, Works Contracts- Taxability of Services

Negative List

(h) Service by way of access to a road or a bridge on payment of toll charges;
- Service charges, collection charges or commission paid for toll collection are taxable.
- Excess of toll collected over and above amount guaranteed to the Govt. is taxable?

Construction Service

Section 66E of Finance Act, 1994 provides for ‘Declared Services’ and clause (b) of the list of declared services specifies the taxable services as-

“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 completion certificate by the competent authority.”

Explanation. — For the purposes of this clause,—

(I) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—

• (i) architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
• (ii) chartered engineer registered with the Institution of Engineers (India); or
• (iii) licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(II) the expression "construction" includes additions, alterations, replacements or remodeling of any existing civil structure;
Construction, Works Contracts- Taxability of Services

Construction Service

- Even if Part of Consideration received before CC – Taxable
- Receipt of consideration important- date of agreement not relevant.
- All types of constructions i.e. school, colleges, hospitals etc. are Taxable (unless exempt specifically)
- Resale of under construction flat by flat owner – not included.

Occupation Certificate and Completion Certificate

Occupancy Certificate will become necessary when the Building Completion Certificate is not there. In other words, while building construction may still continue, one may obtain occupancy certificate depending upon the portions that have become habitable and safe for living, while other portions etc., of the building construction can go on. On the other when the entire building has been constructed and building completion has been certified, the occupancy is automatic.
Abatement

**Description of Taxable Service** | **Abatement** | **Taxable Value**
--- | --- | ---
For Construction of Residential Unit for which (i) amount charged is less than 1 Crore **AND** (ii) the Carpet area less than 2,000 Sq. Feet | 75% | 25%
For Other Constructions | 70% | 30%

**Conditions for availing abatement**
- Value of land is included in the amount charged
- No CENVAT availed for excise duty paid on inputs used.
  - So CENVAT available in respect of Capital Goods & Input Services.
Construction, Works Contracts- Taxability of Services

Works Contract Service

Clause (h) of Section 66E provides that service portion in the execution of a works contract as “Declared Service”.

Clause (54) of Section 65B defines "works contract" to mean
• a contract wherein transfer of property in goods involved in the execution of such contract
• such transfer is leviable to tax as sale of goods and
• such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of
• any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;

Points to be remembered-
• Contracts should be liable under VAT laws.
• Only specific activities are included.
• Activities in relation to movable as well as immovable property.
Valuation of Works Contract

Rule 2A of Service Tax (Determination of Value) Rules

• Clause (i) specifies method of finding out value of works contract as under-
• Value of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.
• If Vat or sales tax paid on actual sales value of goods (by bifurcating sales and service) then such value of goods can be adopted.
• Vat or sales tax not included in Value.
• Charges such as labour charges, subcontractors’ charges, planning, designing and architect's fees, hire charges for machinery and tools etc. to be included.
• Cost of consumables like water & electricity, cost of establishment or such other expenses for labour & services to be included.
• profit earned in relation to supply of labour and services to be included.

Deemed Valuation-
• Where value has not been determined under clause (i) following method specified in clause (ii) shall be adopted-
Valuation of Works Contract – Deemed Valuation
Till 30th September 2014

- In case of works contracts entered into for execution of original works, service tax shall be payable on 40% of the total amount charged for the works contract.

- In case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on 70% of the total amount charged for the works contract.

- In case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property, service tax shall be payable on 60% of the total amount charged for the works contract.
Valuation of Works Contract – Deemed Valuation

From 1\textsuperscript{st} October 2014

- in case of works contracts entered into for execution of original works, service tax shall be payable on 40\% of the total amount charged for the works contract

- in case of works contract, not covered under sub-clause (A), including works contract entered into for —
  (i) maintenance or repair or reconditioning or restoration or servicing of any goods; or
  (ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property,

• service tax shall be payable on 70\% of the total amount charged for the works contract.
Valuation

Valuation of Works Contract – Deemed Valuation

• Explanation 1 –

• (a) Meaning of “Original Works”
  • (i) all new constructions;
  • (ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
  • (iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise

(b) “Total Amount” means the total of the gross amount charged for
  • the works contract and the FMV (computed as per generally accepted accounting principles) of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-
    • (i) the amount charged for such goods or services, if any; and
    • (ii) the value added tax or sales tax, if any, levied thereon:

• CENVAT Credit on inputs used in or in relation to works contracts is not allowed.
Clause 12 of Notification No. 25/2012

Services provided to government / Local authority/ governmental authority.

Services provided to the Government or local authority/ governmental authority by way of erection, construction, commissioning, installation, completion, fitting out, maintenance, repair, alteration or renovation of –

- a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
- canal, dam or other irrigation works;
- pipeline, conduit or plant for (i) water supply (ii) water treatment or (iii) sewerage treatment or disposal;

Exemptions withdrawn w.e.f. 1\textsuperscript{st} April 2015

- a civil structure or any other original work meant predominantly for a non-industrial or non-commercial use or any other business or profession;
- a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment
- a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Expl. 1 to clause 44 of section 65 B.
Clause 13 of Notification No. 25/2012

Services in relation to certain Public utility Infrastructure Facilities.

Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,

- road, bridge, tunnel, or terminal for road transportation for use by general public;
- a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;
- building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;
- pollution control or effluent treatment plant, except located as a part of a factory;
- a structure meant for funeral, burial or cremation of deceased.

Points to be Noted-

- The maintenance services provided w.r.t. last three services mentioned above were taxable. It has now become exempt.
- Construction of all roads was earlier exempted. Now only road used by general public are exempt. Services in relation to road in a residential complex or a factory, etc. will attract service tax.
- Earlier construction, repair, etc. of non commercial building like schools, college, hospitals, charitable clinic, etc. was not leviable to service tax. Not covered in mega exemption.
Clause 14 of Notification No. 25/2012

Services in relation to erection, commissioning, installation, construction, w.r.t. certain specified purposes.

Services by way of erection, construction, commissioning and installation of original works pertaining to,-

- Railways including monorail or metro;
- Single residential unit otherwise than as a part of a residential complex;
- 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;
- Post-harvest storage infrastructure for agricultural produce including cold storages for such purposes; or
- Mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

Exemptions withdrawn w.e.f. 1st April 2015

- For airport, port
Clause 14 of Notification No. 25/2012 - Comments:

- All services in respect of airport, port have become taxable now.
- As regards railways – only specified activities relating to Original Works are exempt - constructions other than original work, repairs, alteration, restorations and maintenance are taxable.
- Complex now means more than One residential units having some common facilities like common access road, common compound, common water supply etc.
- The term “single residential unit” means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family.

Clause 29(h) of Notification No. 25/2012

Service provided by specified persons.

- Services by Sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt.

w.e.f. 1st April 2015

Entry No. 43 – Services provided by common effluent treatment plant operator by way of treatment of effluent.
Banking, Insurance, Broking etc.

**Negative List**

(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 authorised dealers of foreign exchange or amongst banks and such dealers;
- Charges levied for processing Loans, negotiating bills, purchase or sale of foreign currency are not covered in negative list.
- Sale or purchase of foreign currency to/from other parties (incl. individuals) not covered in negative list.

**Mega Exemption**

26. Services of general insurance business provided under following schemes -

- (a) Hut Insurance Scheme; (b) Cattle Insurance under Swarnajayanti Gram Swarojgar Yojna (earlier known as Integrated Rural Development Programme); (c) Scheme for Insurance of Tribals; (d) Janata Personal Accident Policy and Gramin Accident Policy; (e) Group Personal Accident Policy for Self-Employed Women; (f) Agricultural Pumpset and Failed Well Insurance; (g) Premia collected on export credit insurance; (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture; (i) Jan Arogya Bima Policy; (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana); (k) Pilot Scheme on Seed Crop Insurance; (l) Central Sector Scheme on Cattle Insurance; (m) Universal Health Insurance Scheme; (n) Rashtriya Swasthya Bima Yojana; or (o) Coconut Palm Insurance Scheme; (p) Pradhan Mantri Suraksha Bima Yojna
Banking, Insurance, Broking etc.

**Mega Exemption**

26A. Services of life insurance business provided under following schemes -
   (a) Janashree Bima Yojana (JBY); or (b) Aam Aadmi Bima Yojana (AABY);
   (c) life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees (d) ‘Varishtha Pension Bima Yojana’, (e) Pradhan Mantri Jeevan Jyoti Bima Yojana, (f) Pradhan Mantri Jan Dhan Yojana

26B. Services by way of collection of contribution under Atal Pension Yojana (APY)

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; (g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area;

37. Services by way of transfer of a going concern, as a whole or an independent part thereof;
## Abatements

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Activity</th>
<th>Abatement %</th>
<th>Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Services in relation to financial leasing including hire purchase</td>
<td>90% (Tax on 10%)</td>
<td>Abatment available on Interest amount (i.e. Total of Installments- Principal Amt.) No abatement on charges.</td>
</tr>
<tr>
<td>2.</td>
<td>Services provided in relation to chit</td>
<td>30% (Tax on 70%)</td>
<td>CENVAT credit on inputs, capital goods and input services, has not been taken</td>
</tr>
</tbody>
</table>
Govt., Local Authority, Govt. Undertaking, RBI Etc.

**Negative List**

(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;

Para 2.4.6 of ‘Service Tax Education Guide’ specifies that only those activities of Government or local authorities are taxed where similar or substitutable services are provided by private entities

- to provide a level playing field to private entities in these areas; and
- to avoid break in Cenvat chain.

(b) **Services by the Reserve Bank of India**;

- Services provided to RBI are taxable unless exempted elsewhere.

(c) **Services by a foreign diplomatic mission located in India**;

(k) **Transmission or distribution of electricity by an electricity transmission or distribution utility**;

- In addition to Central/State Electricity Boards only entities entrusted with such function by the Central or a State government or if it is, for such distribution and a distribution or transmission licensee licensed under the Electricity Act, 2003 are covered in this list.
Mega Exemption

1. Services provided to the United Nations or a specified international organization;
   • 'Specified international organisation' means an international organization declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947

5A. Services by a specified organisation in respect of a religious pilgrimage facilitated by Ministry of External Affairs of the Government of India, under bilateral agreement.

25. Services provided to Government, a local authority or a governmental authority by way of - (a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation; or;
   (b) repair or maintenance of a vessel;

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;

36. Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948 (34 of 1948);

39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution.

41. Services received by the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves;
THANK YOU