

EXECUTIVE PROGRAMME

SUPPLEMENT FOR TAX LAWS AND PRACTICE

(Relevant for students appearing in December, 2015 examination)

MODULE 1- PAPER 4

Disclaimer-

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TAX LAWS AND PRACTICE

Students appearing in December 2015 Examination shall note the following

- 1. For Direct taxes, Finance (No.2) Act, 2014 is applicable.*
- 2. Applicable Assessment year is 2015-16 (Previous Year 2014-15).*
- 3. Since, Wealth Tax Act, 1957 has been abolished w.e.f. 1st April, 2016. The questions from the same will not be asked in examination from December 2015 session onwards.*
- 4. For Indirect Taxes, all changes made by the Finance Act, 2015 are also applicable*
- 5. Students are also required to update themselves on all the relevant Notifications, Circulars, Clarifications, etc. issued by the CBDT, CBEC & Central Government, on or before six months prior to the date of the examination*

In the event of any doubt, students may write to the Institute for clarifications at academics@icsi.edu

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PART B

SERVICE TAX & SALES TAX

LESSONS

17.	Background, Administration and Procedural Aspects of Service Tax
18.	Levy, Collection and Payment of Service Tax
19.	Introduction, Computation and Other Procedural Aspects of VAT and CST
20.	VAT Provisions in India and VAT System in other Countries and Scope for Company Secretaries

LEARNING OBJECTIVES

This part of the study covers the Service Tax and Value Added Tax (VAT) including Central Sales Tax (CST) and Goods and Service Tax. These are the forms of indirect tax imposed on specified services called "taxable services" and sale of goods within the state and Inter-state called VAT and CST respectively.

Service Tax was first brought into force with effect from 1st July 1994. All service providers in India, except those in the state of Jammu and Kashmir, are required to pay a Service Tax in India. Initially only three services were brought under the net of service tax and the tax rate was 5%. Gradually more services came under the ambit of Service Tax and from 1st of July 2012 onwards service tax is charged on all services excepts covered under negative list of services or mega exemption list of services.

VAT is a multi-stage tax levied at each stage of the value addition chain, with a provision to allow input tax credit (ITC) on tax paid at an earlier stage, which can be appropriated against the VAT liability on subsequent sale. With the introduction VAT, state sales tax was replaced with VAT however, CST is still in place which will be phased out in coming times or as when the GST will come into place.

To keep pace with all these changes, one has to be very alert and updated. In order to comply with the dynamic subject of tax laws, industry requires the services of tax professionals like Company Secretaries. And to keep pace with the changes in law, one has to remain alert and updated. After going through the lessons of Service Tax and VAT, students will acquire practical and procedural knowledge of Service Tax, VAT and CST laws.

Lesson 17

Background, Administration and Procedural Aspects of Service Tax

LESSON OUTLINE

- Background
- Constitutional validity
- Limbs of service tax laws
- Administrative mechanism
- Taxability of services
 - Meaning of service
 - Declared services
 - Negative list of services
 - Exempted services
- Place of provision of services rules
- Rate of Service Tax
- Rounding off of Service Tax
- Lesson round up
- Self Test Questions

LEARNING OBJECTIVES

The Service tax was introduced on the recommendation of Dr. Raja Chelliah Committee on tax reforms. Initially it was imposed at a uniform rate of 5% in the Union Budget for 1994-95 on 3 services. In a journey of about 20 years, it has seen various changes. Finance Act, 2012 has made remarkable changes in service tax legislation whereby the concept of Positive list of Taxable services was replaced with a negative list. There has been paradigm shift in the way services are taxed. Now all services except as notified in Negative list or exemption list are subject to applicability of service tax.

At the end of this lesson, you will learn

- The principles underlying the introduction of service tax
- Constitutional background of service tax
- Administrative machinery of service tax
- Components which provides for governance of service tax law
- Place of Provision of Services Rules
- Applicable rate of service tax.

Service tax is administered by the Central Board of Excise and Customs (CBEC) which is under the control of the Department of Revenue, Ministry of Finance. CBEC administers the service tax through the Central Excise Department. A separate cell called the service tax cell, under each Commissionerates of central excise has been created for the purpose. Considering large number of assessees, CBEC has also established Service Tax Commissionerates in some cities.

BACKGROUND

As the economy grows and develops, the contribution of the services sector becomes more substantial. Hence, tax on services becomes substantial revenue for the Government. Although Service tax is a concept of the modern era where developed economies as well as developing economies find over 70% of their gross economic output coming from the service sector. Service tax was there in vogue even in the Mauryan period in India. Ms. Romila Thaper in her work "Asoka and the Decline of the Mauryas", at page 72 (London 196, paperback edition, 1997, by Oxford) points out that services of weapon and implement makers were required to be provided to the state for a certain number of days in a year. This was a form of service tax in that period. But in the modern context, because of the increasing contribution of the service sector to the GDP of an economy, the importance of service tax is growing. As under the WTO agreements governments are required to reduce customs tariffs, governments are considering increase in service taxes revenues as a compensatory revenue generation mechanism. In terms of economics, tax on services is an indirect tax. This is because the burden of service tax can be passed on to the customer i.e., the recipient of the service. The service provider may also bear the burden of the tax by not passing or charging the same to a customer.

Example: How the burden of service tax shifted on the consumer?

Mr. Mohit is practicing Company Secretary, he represent before the Tax Authorities on behalf of Mr. Neeraj and raise a invoice of ₹1,00,000 plus service tax @ 14%.

Here, Mr. Neeraj is the client and he is required to pay the service tax of ₹ 14,000 in addition to the value of services. Subsequently Mr. Mohit deposit the sum to treasury of Central Government.

The ultimate outcome of this is that the burden of service tax is on the consumer.

The Tax Reforms Committee headed by Dr. Raja J Chelliah recognized the revenue potential of the service sector and recommended imposition of service tax on selected services (selective approach or positive list approach). Consequently the service tax was imposed at a uniform rate of 5% in the Union Budget for 1994-95 on 3 services.

Finance Act, 2012 has made remarkable changes in service tax legislation whereby the concept of Positive list of Taxable services has been replaced with a negative list. A negative list of services implies that there is, a list of services which are not subject to service tax. Thus, Service tax is not chargeable on the services which are either mentioned in the negative list or are exempted by issue of notification. This is in contrast to the earlier method of taxation of services where the law had provided definition for each taxable service and all other undefined services were outside the preview of Service Tax.

The taxation of services is completely overhauled from positive approach or selective services to negative list approach. Now, no classification of services is required for the purpose of taxability. Moreover, only services rendered in taxable territory are taxable for which Place of Provision of Service Rules, 2012 ('PPSR') are prescribed and with this Import of Services and Export of Services Rules has been rescinded.

Reason for Imposition of Service Tax

In *ALL INDIA FEDN. OF TAX PRACTITIONERS v. UNION OF INDIA* 2007 (7) S.T.R. 625 (S.C.) the Hon'ble Supreme Court of India has mentioned the following reasons for the imposition of service tax.

Service tax is an indirect tax levied on certain services provided by certain categories of persons including companies, association, firms, body of individuals etc. Today services cover wide range of activities such as management, banking, insurance, hospitality, consultancy, communication, administration, entertainment, research and development activities forming part of retailing sector. Service sector is today occupying the centre stage of the Indian economy. It has become an Industry by itself. In the contemporary world, development of service sector has

become synonymous with the advancement of the economy. Economists hold the view that there is no distinction between the consumption of goods and consumption of services as both satisfy the human needs.

In late seventies, Government of India initiated an exercise to explore alternative revenue sources due to resource constraints. The primary sources of revenue are direct and indirect taxes. Central excise duty is a tax on the goods produced in India whereas customs duty is the tax on imports. The word “goods” has to be understood in contradistinction to the word “services”. Customs and excise duty constitute two major sources of indirect taxes in India. Both are consumption specific in the sense that they do not constitute a charge on the business but on the client. However, by 1994, Government of India found revenue receipts from customs and excise on the decline due to W.T.O. commitments and due to rationalization of duties on commodities. Therefore, in the year 1994-95, the then Union Finance Minister introduced the new concept of “service tax” by imposing tax on services of telephones, non-life insurance and stock-brokers. That list has increased since then. Knowledge economy has made “services” an important revenue-earner.

After its introduction, the constitutional validity of the services taxed by the Central Government was challenged before the Constitution Bench of this Court which took the view that the Central Government derived its authority from Entry 97 of List I of the Seventh Schedule to the Constitution for levying tax on services provided.

CONSTITUTIONAL VALIDITY

As per Article 246 of the Constitution of India, law can be enacted by Parliament or the State legislature, if such power is given by the Constitution of India.

Article 265 of the Constitution lays down that no tax shall be levied or collected except by the authority of law.

Schedule VII divides this subject into three categories –

- (a) Union list (only Central Government has power of legislation)
- (b) State list (only State Government has power of legislation)
- (c) Concurrent list (both Central and State Government can pass legislation).

Entry 97 of the Union list is the residuary entry and empowers the Central Government to levy tax on any matter not enumerated in state list or the concurrent list.

In 1994, the service tax was levied by the Central Government under the power granted by the entry 97 of the union list. Thereafter, in 2003 the government has passed the constitution (88th Amendment Act, 2003) which provides for the levy of service tax by the centre through the insertion of article 268A to the constitution. In addition to article 268A, entry 92C has also been inserted in the union list to make the enactment relating to service tax a subject matter of union list. However, since entry No.92C has not yet been made effective by the Parliament and Service Tax is still governed by the entry 97 of the union list.

TEST YOUR KNOWLEDGE



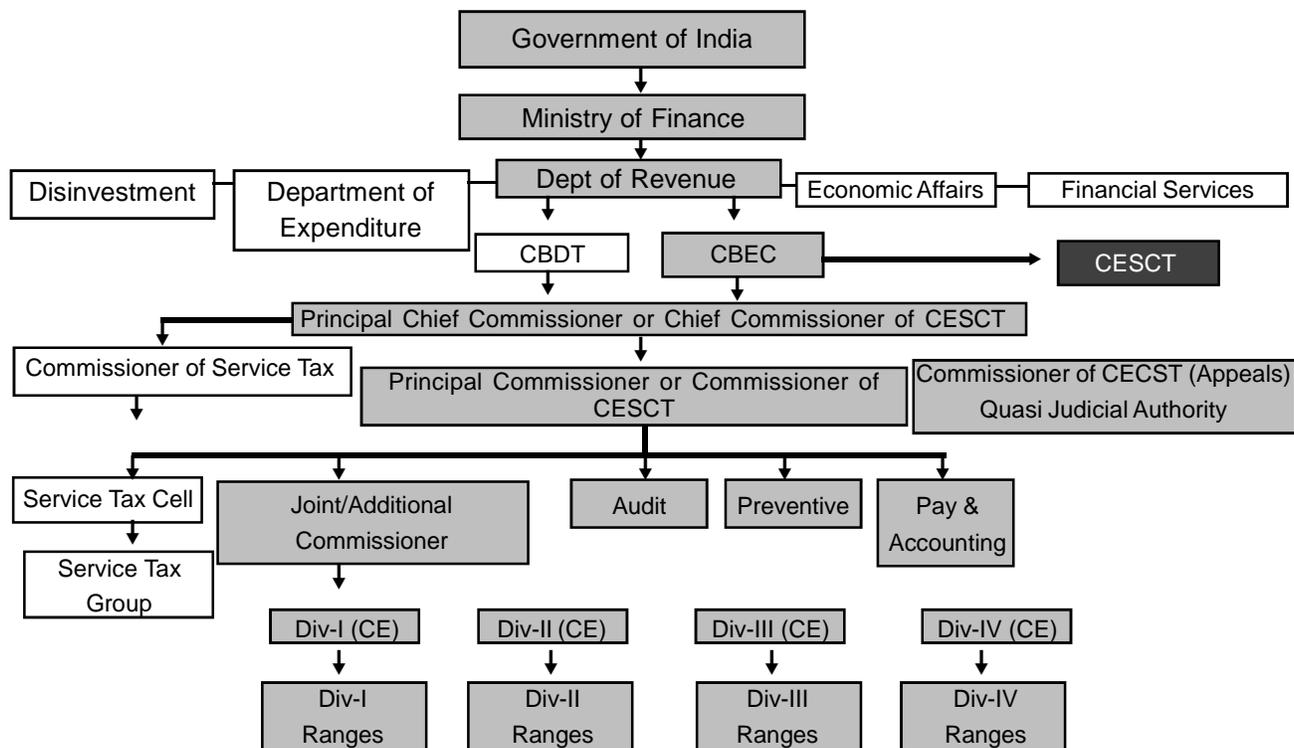
1. When service tax was first introduced in the year 1994, it was levied on a uniform basis.

- True
- False

ADMINISTRATIVE MECHANISM

Service tax is administered by the Central Board of Excise and Customs (CBEC) which is under the control of the Department of Revenue, Ministry of Finance. CBEC administers the service tax through the Central Excise Department. Central Excise Commissionerate has established a separate cell called the Service Tax Cell for the purpose of administration of service tax within its jurisdiction. Considering large number of assessees, CBEC has also established Service Tax Commissionerates in some major cities which deal exclusively with work related to Service Tax. These Commissionerates are supervised by the jurisdictional Chief Commissionerate of Central Excise.

ADMINISTRATIVE STRUCTURE – SERVICE TAX



Division in charge : Assistant/Deputy Commissioner

Range in Charge: Superintendent

NOTES:

CESTAT = Custom Excise Service Tax Appellate Tribunal

CECST = Central Excise, Customs & Service Tax

Div = Division

Where, separate Service Tax Commissioner is Constituted, Commissioner of CECST, Commissioner of CEC and Service Tax Cell Comes under Service Tax Commissioner.

Where, separate Service Tax Commissioner is not Constituted, Service Tax Cell Comes under Commissioner of CECST.

TEST YOUR KNOWLEDGE



2. Service Tax is administered by

- (a) CBEC
- (b) CBDT
- (c) Central Government
- (d) None of the above

TAXABILITY OF SERVICES

Service Tax is levied vide Finance Act, 1994 (the Act). The Finance Act, 1994 applies all over India except the state of Jammu & Kashmir.

With effect from 1st July 2012, charging Section 66B has been inserted by the Finance Act 2012. Section 66B provides that there shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

Section 66B of the 1994 Act has been amended by has been amended by Section 108 of the Finance Act, 2015 and for the words “twelve per cent”, the words “fourteen per cent” has been substituted, with effect from 1st June, 2015 (as notified on 19th May, 2015 vide Notification No. 14/2015-Service Tax).

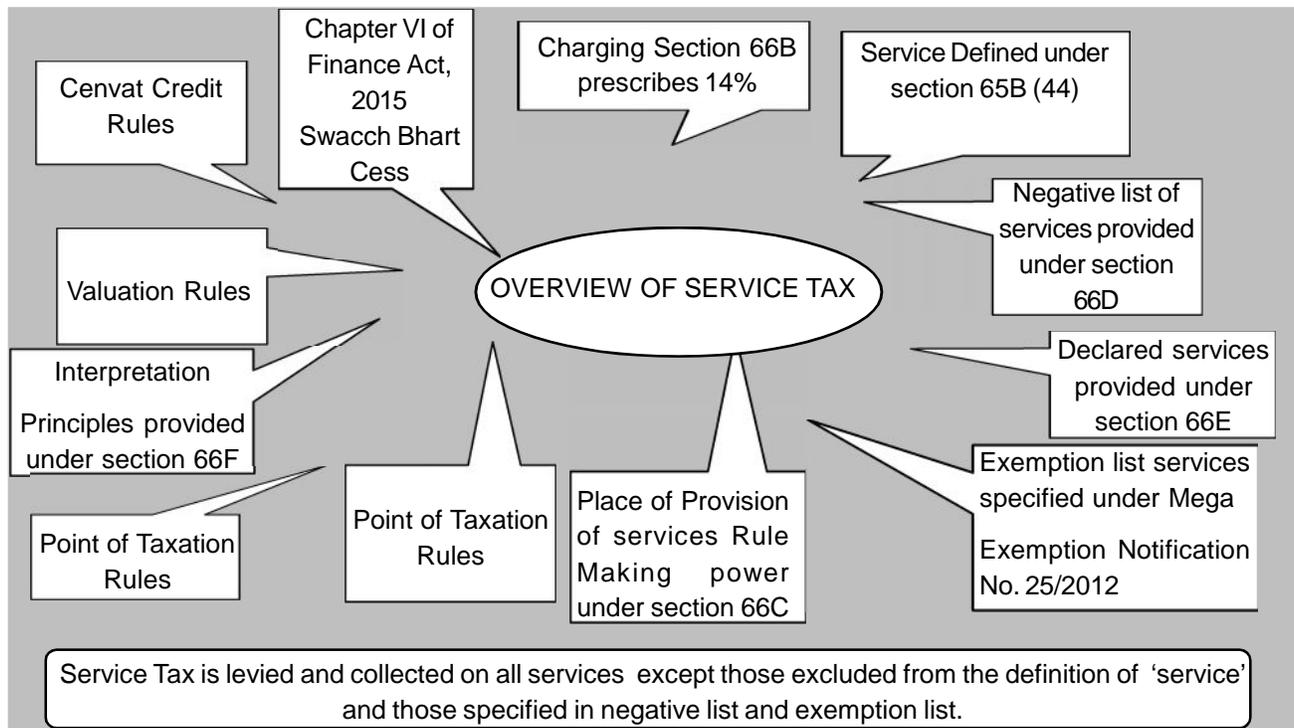
LIMBS OF SERVICE TAX LAWS

The various limbs of the Service Tax Law are:

- Chapter V and VA (Section 64 to 98) of the Finance Act, 1994 as amended by successive Finance Acts;
- Chapter VI of Finance Act, 2015;
- As per Section 83 of the Finance Act, 1994 the provisions of the following sections of the Central Excise Act, 1944, as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise :- sub-section (2A) of section 5A, sub-section 2 of 9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, 15A, 15B, 31, 32, 32A to 32P(both inclusive), 33A, 35EE, 34A, 35F, 35FF, to 35O (both inclusive), 35Q, 35R, 36, 36A, 36B, 37A, 37B, 37C, 37D 38A and 40.
- Service Tax Rules, 1994;
- Service Tax (Advance Ruling), Rules 2003;
- The CENVAT Credit Rules, 2004;
- Service Tax (Advance Rulings) Rules, 2003;
- Authority for Advance Rulings (Central Excise, Customs and Service Tax) Procedure Regulations, 2005;
- Service Tax (Registration of Special category of persons) Rules, 2005;
- Service Tax (Determination of Value) Rules, 2006;
- Service Tax (Provisional Attachment of Property) Rules, 2008;
- Service Tax (Publication of Names) Rules, 2008;

- Service Tax Return Preparer Scheme, 2009;
- Point of Taxation Rules, 2011;
- Indirect Tax Ombudsman Guidelines, 2011;
- Service Tax (Settlement of Cases) Rules, 2012;
- Service Tax (Compounding of Offences) Rules, 2012;
- Service Tax (Removal of Difficulty) Order, 2012;
- Place of Provision of Services Rules, 2012.
- Services Tax Voluntary Compliance Encouragement Rules, 2012.

Further, Service Tax Notifications, circulars and clarifications etc. issued by the Government and CBEC is also an important limb of Service Tax law.



MEANING OF SERVICE

The Finance Act, 2012 has defined a term “Service” for the first time. Clause (44) of Section 65B of the Act has defined a term Service as under:

“**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 a 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 the 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.

Explanation 1 – For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to–

- (A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or
- (B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
- (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.

*Explanation 2 – For the purposes of this clause, the expression “transaction in money or actionable claim” shall not include –

- (i) any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;
- (ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out –
 - (a) by a lottery distributor or selling agent in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner;
 - (b) by a foreman of chit fund for conducting or organising a chit in any manner.*;

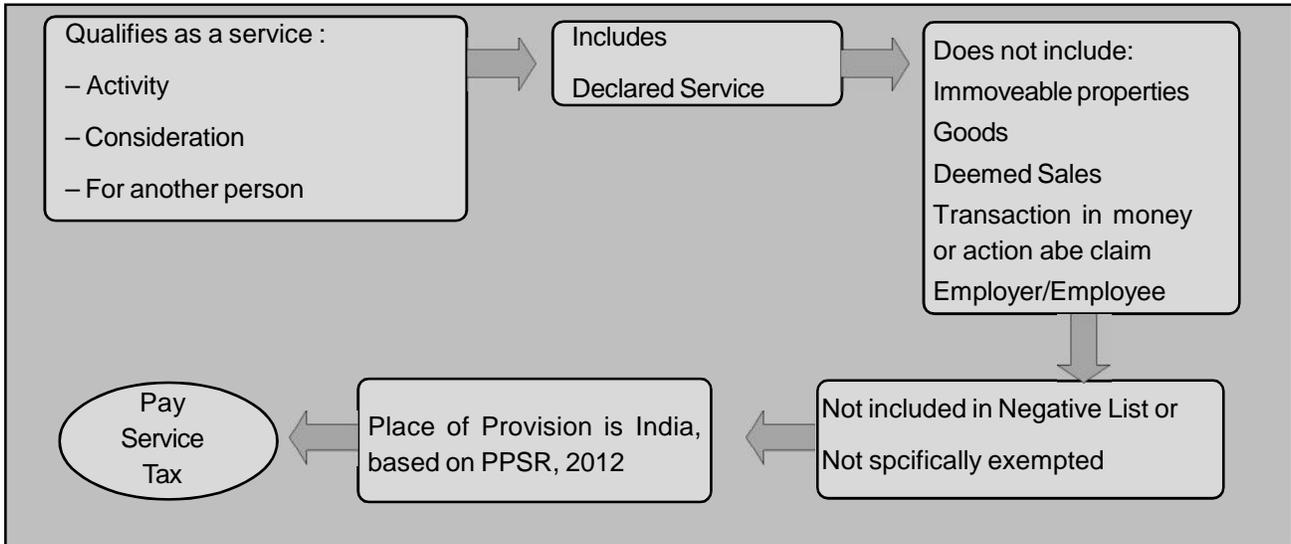
Explanation 3 – For the purposes of this Chapter, –

- (a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;
- (b) 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 of distinct persons.

Explanation 4 – 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;

Example: Service of an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members up to an amount of ₹5,000 per member per month by way of reimbursement of charges or share of contribution is exempt from service tax. Where RWA is working as a pure agent of its members for sourcing of goods or services from a third person, amount collected by RWA from its members may be excluded from the value of taxable service in terms of Rule 5(2) of Service Tax (Determination of Value) Rules, 2006 subject to compliance with the specified conditions.

* as substituted vide Finance Act, 2015



Test to Detrmine whether an activity is taxable service

STEP 1: To determine whether service is being provided by you:

S.NO.	QUESTION	Provide Your Answer
1	Am I doing an activity (including, but not limited to, an activity Specified in section 66E of the Act) for another person?	YES
2	Am I doing such activity for a consideration?	YES
3	Does this activity consist only of transfer of title in goods or immovable property by way of sale, gift or in any other manner?	NO
4	Does this activity constitute only a transfer, delivery or supply of goods which is deemed to be a sale of goods within the meaning of clause (29A) of article 366 of the Constitution?	NO
5	Does this activity consist only of a transaction in money or actionable claim?	NO
6	Is the consideration for the activity in the nature of court fees for a court or a tribunal?	NO
7	Is such an activity in the nature of a service provided by an employee of such person in the course of employment?	NO
8	Is the activity covered in any of the categories specified in Explanation 1 to clause (44) of section 65B of the Act?	NO

If the answer to the above questions is as per the above answers in column 3 of the table above then you are providing a service.

STEP 2: To determine whether service provided by you is taxable :

If you are providing a 'service' (Step 1), then pose the following Questions to yourself –

S.NO.	QUESTION	Provide Your Answer
1	Have I provided or have I agreed to provide the service?	Yes
2	Have I provided or have I agreed to provide the service in the taxable territory?	Yes
3	Is this activity entirely covered in any of the services described in the negative list of services contained in section 66D of the Act?	No

If the answer to the above questions is also as per the answers given in column 2 of the table above then you are providing a 'taxable service'.

Now let us understand the various categories of services:

- Declared service – Section 66E
- Services specifically excluded from the definition of service- Section 65B (44)
- Negative List of services- Section 66D
- Exempted Service
 - Notification No. 25/2012 dated 20.06.2012 as amended from time to time
 - Other exemptions in exercise of powers conferred under section 93 (1) of Finance Act, 1994

(A) DECLARED SERVICES

Section 66E specify nine activities or transactions which are declared to be covered as 'service'. Such activities include:–

- (a) renting of immovable property
- (b) construction of a complex.
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software
- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act
- (f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods
- (g) activities in relation to delivery of goods on hire purchase or any system of payment by instalments
- (h) service portion in the execution of a works contract
- (i) 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

(B) NEGATIVE LIST OF SERVICES

A Negative List approach to taxation of services has been introduced vide sections 66B, 66C, 66D, 66E and 66F in Chapter V of the Finance Act. The services specified in the 'Negative List' (section 66D) will remain outside the tax net. All other services, except those specifically exempted by the exercise of powers under section 93(1) of the Finance Act, 1994, would thus be chargeable to service tax. Negative list approach to taxation of services is effective from July 1, 2012.

Section 66D specify the following list of services under the 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.
 - (iv) any service, 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.

Vide Notification No. 27/2012 dated 20/6/2012, services provided by any person for the official use of a Foreign Diplomatic Mission has been exempted if the prescribed conditions are satisfied.

- (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.

As per Section 65B (5) of the Finance Act, 1944, “agricultural produce” means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;

CBEC has issued a circular vide Circular No.177/03/2014 – ST dated 17th February, 2014 and has clarified that the said definition covers ‘paddy’; but excludes ‘rice’. However, many benefits available to agricultural produce in the negative list [section 66D (d)] have been extended to rice, by way of appropriate entries in the exemption Mega Notification.

- (e) trading of goods.
- (f) any process amounting to manufacture or production of good excluding alcoholic liquor for human consumption.
- (g) selling of space for advertisements in print media.

“**Print media**” means, –

- (i) “book” as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867, but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes;

(ii) "newspaper" as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867;

Service tax leviable on sale of space or time for advertisements in broadcast media, namely radio or television, has been extended to cover such sales on other segments like online and mobile advertising. Sale of space for advertisements in print media, however, would remain excluded from service tax.

(h) service by way of access to a road or a bridge on payment of toll charges.

(i) betting, gambling or lottery.

Explanation.- For the purposes of this clause, the expression "betting, gambling or lottery" shall not include the activity specified in Explanation 2 to clause (44) of section 65B;

(j) omitted *vide* Finance Act, 2015

(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 recognised 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 authorised 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 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

Finance Act, 2014 has deleted Radio Taxis from entry (o) (vi) of the Negative List specified under Section 66D and service tax is to be levied on the services provided by radio taxis or radio cabs, whether air-conditioned or not. The abatement presently available to rent-a-cab service would also be made available to radio taxi service, to bring them on par.

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

(C) EXEMPTED SERVICES

As per section 93 of the Finance Act, 1994, if the Central Government is satisfied that it is necessary in the public interest so to do, it may:

- (1) by notification in the Official Gazette, exempt generally or subject to such conditions as may be specified in the notification, taxable service of any specified description from the whole or any part of the service tax leviable thereon.
- (2) by special order in each case, exempt any taxable service of any specified description from the payment of whole or any part of the service tax leviable thereon, under circumstances of exceptional nature to be stated in such order.

LIST OF EXEMPTIONS UNDER MEGA NOTIFICATION

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994, the Central Government has issued Notification No. 25/ 2012 ST dated 20th June 2012 (Mega Exemption Notification) exempting the following taxable services. This notification has come in to effect from 1st day of July, 2012.

Amendments to Mega Exemption Notification

The principal notification was published in the Gazette of India, Extraordinary, by notification No. 25/2012 - Service Tax, dated the 20th June, 2012,

Subsequently Amended vide following notifications :

- 44/2012-Service Tax, dated, 7th August, 2012
- 49/2012-Service Tax, dated 24th December, 2012
- 3/2013-Service Tax, dated 1st March, 2013
- 13/2013-Service Tax, dated 10th September, 2013
- 14/2013-Service Tax, dated 22nd October, 2013
- 01/2014-Service Tax, dated the 10th January, 2014
- 02/2014-Service Tax, dated the 30th January, 2014
- 04/2014-Service Tax, dated the 17th February, 2014
- 06/2014- Service Tax, dated the 11th July, 2014
- 17/2014-Service Tax, dated 20th August, 2014
- 6/2015-Service Tax, dated 1st March, 2015
- 12/2015-Service Tax, dated 30th April, 2015

1. Services provided to the United Nations or a specified international organization.

“Specified international organization” means an international organization declared by the Central Government in

pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply;

The illustrative list of such organizations has been provided by Para No.7.1, Taxation of Services – An Education Guide dated 20.06.2012 as follows:

- *International Civil Aviation Organisation*
- *World Health Organisation*
- *International Labour Organisation*
- *Food and Agriculture Organisation of the United Nations*
- *UN Educational, Scientific and Cultural Organisation (UNESCO)*
- *International Monetary Fund (IMF)*
- *International Bank for Reconstruction and Development*
- *Universal Postal Union*
- *International Telecommunication Union*
- *World Meteorological Organisation*
- *Permanent Central Opium Board*
- *International Hydrographic Bureau*
- *Commissioner for Indus Waters, Government of Pakistan and his advisers and assistants*
- *Asian African Legal Consultative Committee*
- *Commonwealth Asia Pacific Youth Development Centre, Chandigarh*
- *Delegation of Commission of European Community*
- *Customs Co-operation Council*
- *Asia Pacific Telecommunity*
- *International Centre of Public Enterprises in Developing Countries, Ljubljana (Yugoslavia)*
- *International Centre for Genetic Engineering and Biotechnology*
- *Asian Development Bank*
- *South Asian Association for Regional Co-operation*
- *International Jute Organisation, Dhaka, Bangladesh*

2 (i). Health care services by a clinical establishment, an authorized 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;

The terms health care services are defined as follows:

“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;

As per para 7.2.1 of Taxation of services –An Education Guide the services provided in recognized systems of medicines in India are exempt. In terms of the Clause (h) of section 2 of the Clinical Establishments Act, 2010, the following systems of medicines are recognized systems of medicines:

- Allopathy
- Yoga
- Naturopathy
- Ayurveda
- Homeopathy
- Siddha
- Unani
- Any other system of medicine that may be recognized by central government

“**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;

“**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;

Para 7.2.2. of Taxation of services- An Education Guide describes Paramedics are trained health care professionals, for example nursing staff, physiotherapists, technicians, lab assistants etc. Services by them in a clinical establishment would be in the capacity of employee and not provided in independent capacity and will thus be considered as services by such clinical establishment. Similar services in independent capacity are also exempted.

In short, the health care services provided by a clinical establishment, an authorized medical practitioner and paramedics shall be exempt.

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 the 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.

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 counseling of (i) terminally ill persons or persons with severe physical or mental disability, (ii) persons afflicted with HIV or AIDS, or (iii) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or
 - (b) public awareness of preventive health, family planning or prevention of HIV infection;
- (ii) advancement of religion or spirituality;
- (iii) advancement of educational programmes or skill development relating to, -
 - (a) abandoned, orphaned or homeless children;
 - (b) physically or mentally abused and traumatized persons;
 - (c) prisoners; or
 - (d) persons over the age of 65 years residing in a rural area;

(iv) preservation of environment including watershed, forests and wildlife;

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.

5A. Services by a specified organization in respect of a religious pilgrimage facilitated by the Ministry of External affairs of the Government of India, under bilateral arrangement;

In this case the exemption is provided to the activity of letting out on rent of areas surrounding, or in the compound of a religious place.

For this purpose, the following are defined as;

“Religious place” means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality;

“General public” means the body of people at large sufficiently defined by some common quality of public or impersonal nature;

“Specified organization” shall mean :-

- (a) Kumaon Mandal Vikas Nigam Limited, a Government of Utrakhand undertaking
- (b) Committee or State committee as defined in section 2 of Haj Committee Act, 2002 (35 of 2002)

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.

Arbitral tribunal defines as “arbitral tribunal” has the meaning assigned to it in clause (d) of section 2 of the Arbitration and Conciliation Act, 1996 (26 of 1996);

The definition as provided in clause (d) of section 2 of the Arbitration and Conciliation Act, 1996 read as; “arbitral tribunal” means a sole arbitrator or a panel of arbitrators”

Further, Business entity is defined in section 65B of the Finance Act, 1994 as ‘any person ordinarily carrying out any activity relating to industry, commerce or any other business.

Thus, services provided by arbitral tribunal to a business entity having turnover of more than ₹ 10 lakhs in the preceding financial year would not be exempt.

- (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

“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);

The definition of advocate has been defined in clause (a) of subsection (1) of section 2 of the Advocates Act, 1961 as; “advocate means an advocate entered in any roll under the provisions of this Act”

“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;

Thus, any services provided by such advocates/firms in fields other than legal services would be taxable. Such services can include services relating to mergers and acquisitions, due diligence etc.

- (c) a person represented on an arbitral tribunal to an arbitral tribunal.

7. Omitted.

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

Vide Circular No. 164/15/2012 S.T, dated 28-08-2012, it has been clarified that no service tax is leviable on vocational education/training/skill development courses (VEC) offered by the Government (Central Government or state Government) or local authority themselves. Also in case of such courses offered by an entity independently established by the Government under the law as a society or any other similar body, it has been clarified that the words "recognised by an entity established under a central or state law including delegated legislation, for the purpose of granting recognition to any education course including a VEC

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;

For this purpose, educational institution is defined as:

"educational institution" means an institution providing services specified in clause (l) of section 66D of the Finance Act, 1994 (32 of 1994);

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.

10. Services provided to a recognised 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 recognised sports body.

For this purpose 'Recognized sports body' is defined as follows:

"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;

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, zone or country;

- (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 Kreedaa 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) omitted;
- (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) omitted;
- (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) omitted;

(a), (c) and (f) have been omitted vide Notification No.6/2015 dated 01.03.2015

For this purpose 'governmental authority' is defined as follows:

"governmental authority" means an authority or a board or any other body;

- (i) set up by an Act of Parliament or a State Legislature; or
- (ii) established by Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution.

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
- (e) a structure meant for funeral, burial or cremation of deceased.

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

- (a) 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.

“Original works” means has the meaning assigned to it in Rule 2A of the Service Tax (Determination of Value) Rules, 2006;

Definition as provided in such rules is as follows:

Original works means:

- (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.

“residential complex” means any complex comprising of a building or buildings, having more than one single residential unit;

“single residential unit” means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family;

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 an artist by way of a performance in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, if the consideration charged for such performance is not more than one lakh rupees:

Provided that the exemption shall not apply to service 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 a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent;

“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;

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.

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.

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

- (a) Omitted by Finance Act, 2013 as enacted on 10th May 2013;
- (b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
- (c) defence or military equipments;
- (d) omitted;

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- (e) omitted;
- (f) newspaper or magazines registered with the Registrar of Newspapers;
- (g) railway equipments or materials;
- (h) agricultural produce;
- (i) foodgrain including flours, pulses and rice;
- (j) chemical fertilizer, organic manure and oilcakes;
- (k) cotton, ginned or baled.

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) foodgrain including flours, pulses and rice;
- (e) chemical fertilizer, organic maure 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;
- (i) cotton, ginned or baled.

As per clarification issued vide Circular No.177/03/2014 – ST, Food stuff under entry Sl. No. 20 (i) and entry Sl. No.21(d) includes rice.

“Goods carriage” has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

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.

“State transport undertaking” has the meaning assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

For clarification, Taxation of services –An Education Guide dated 20.06.2012, provides the following:

7.11.5 Is giving of a bus on hire to any person liable to tax?

Giving on hire a bus to a state transport undertaking is exempt from service tax. If the bus is given on hire to a person other than a state transport undertaking, it will be taxed.

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- air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or”;
- (c) ropeway, cable car or aerial tramway;

“**radio taxi**” means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS);

24. Omitted;

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.

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

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

26A. Services of life insurance business provided under the 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) Varishta 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).

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:-

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- (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.

“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;

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;

Clarifications Issued by CBEC vide Circular No.175 /01 /2014 – ST dated 10th January, 2014

- (i) In a residential complex, monthly contribution collected from members is used by the RWA for the purpose of making payments to the third parties, in respect of commonly used services or goods [Example: for providing security service for the residential complex, maintenance or upkeep of common area and common facilities like lift, water sump, health and fitness centre, swimming pool, payment of electricity Bill for the common area and lift, etc.]. Is service tax leviable?

Exemption at Sl. No. 28 (c) in notification No. 25/2012-ST is provided specifically with reference to service provided by an unincorporated body or a non-profit entity registered under any law for the time being in force such as RWAs, to its own members.

However, a monetary ceiling has been prescribed for this exemption, calculated in the form of five thousand rupees per month per member contribution to the RWA, for sourcing of goods or services from third person for the common use of its members.

- (ii) If the contribution of a member/s of a RWA exceeds five thousand rupees per month, how should the service tax liability be calculated?

If per month per member contribution of any or some members of a RWA exceeds five thousand rupees, the entire contribution of such members whose per month contribution exceeds five thousand rupees would be ineligible for the exemption under the said notification. Service tax would then be leviable on the aggregate amount of monthly contribution of such members

- (iii) Is threshold exemption under notification No. 33/2012-ST available to RWA?

Threshold exemption available under notification No. 33/2012-ST is applicable to a RWA, subject to conditions prescribed in the notification. Under this notification, taxable services of aggregate value not exceeding ten lakh rupees in any financial year is exempted from service tax. As per the definition of ‘aggregate value’ provided in Explanation B of the notification, aggregate value does not include the value of services which are exempt from service tax.

- (iv) Does ‘aggregate value’ for the purpose of threshold exemption, include the value of exempt service? If a RWA provides certain services such as payment of electricity or water bill issued by third person, in the name of its members, acting as a ‘pure agent’ of its members, is exclusion from value of taxable service available for the purposes of exemptions provided in Notification 33/2012-ST or 25/2012-ST ?

In Rule 5(2) of the Service Tax (Determination of Value) Rules, 2006, it is provided that expenditure or costs

incurred by a service provider as a pure agent of the recipient of service shall be excluded from the value of taxable service, subject to the conditions specified in the Rule.

For illustration, where the payment for an electricity bill raised by an electricity transmission or distribution utility in the name of the owner of an apartment in respect of electricity consumed thereon, is collected and paid by the RWA to the utility, without charging any commission or a consideration by any other name, the RWA is acting as a pure agent and hence exclusion from the value of taxable service would be available. However, in the case of electricity bills issued in the name of RWA, in respect of electricity consumed for common use of lifts, motor pumps for water supply, lights in common area, etc., since there is no agent involved in these transactions, the exclusion from the value of taxable service would not be available.

- (v) Is CENVAT credit available to RWA for payment of service tax?

RWA may avail cenvat credit and use the same for payment of service tax, in accordance with the Cenvat Credit Rules.

“trade union” has the meaning assigned to it in clause (h) of section 2 of the Trade Unions Act, 1926 (16 of 1926).

For clarification Taxation of services – An Education Guide dated 20.06.2012, provides the following:

7.11.9 I am a Resident Welfare Association (RWA). The members contribute an amount to RWA for holding camps to provide health care services to poor men and women. Am I required to pay tax on contribution received from members?

No. You are not required to pay service tax on the contribution received as you are carrying out any activity (holding camps to provide health care services) which is exempt from the levy of service tax. If contribution is for carrying out an activity which is taxable, you are required to pay service tax.

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) (d) & (e) omitted vide Notification No. 06/2015-ST, dated 01.03.2015
- (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;

“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;

“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;

“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);

“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

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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;

“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;

“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);

“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);

“insurance company” means a company carrying on life insurance business or general insurance business;

“life insurance business” has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938);

“life micro-insurance product” shall have the meaning assigned to it in clause (e) of regulation 2 of the Insurance Regulatory and Development Authority (Micro-insurance) Regulations, 2005.

“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;

“national park” has the meaning assigned to it in the clause (21) of the section 2 of The Wild Life (Protection) Act, 1972 (53 of 1972);

“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.;

“tiger reserve” has the meaning assigned to it in clause (e) of section 38K of the Wild Life (Protection) Act, 1972 (53 of 1972);

“trade union” has the meaning assigned to it in clause (h) of section 2 of the Trade Unions Act, 1926 (16 of 1926);

“wildlife sanctuary” means sanctuary as defined in the clause (26) of the section 2 of The Wild Life (Protection) Act, 1972 (53 of 1972);

“zoo” has the meaning assigned to it in the clause (39) of the section 2 of the Wild Life (Protection) Act, 1972 (53 of 1972).

For clarification Taxation of services – An Education Guide dated 20.06.2012, provides the following:

2.8.12 Would recharge vouchers issued by service companies for enabling clients/consumers to avail services like mobile phone communication, satellite TV broadcasts, DTH broadcasts etc be ‘actionable claims’

No. Such recharge vouchers do not create a ‘beneficial interest’ in a moveable property but only enable a person to enjoy a particular service.

7.11.11 Whether the exemption provided in the mega -exemption to services by way of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., is also available to the sub-contractors who provide input service to these main contractors in relation to such construction?

As per clause (1) of section 66F reference to a service by nature or description in the Act will not include reference to a service used for providing such service. Therefore, if any person is providing services, in respect of projects

involving construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., such as architect service, consulting engineer service which are used by the contractor in relation to such construction, the benefit of the specified entries in the mega-exemption would not be available to such persons unless the activities carried out by the sub-contractor independently and by itself falls in the ambit of the exemption.

It has to be appreciated that the wordings used in the exemption are 'services by way of construction of roads etc' and not 'services in relation to construction of roads etc'. It is thus apparent that just because the main contractor is providing the service by way of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., it would not automatically lead to the classification of services being provided by the sub-contractor to the contractor as an exempt service.

However, a sub-contractor providing services by way of works contract to the main contractor, providing exempt works contract services, has been exempted from service tax under the mega exemption if the main contractor is engaged in providing exempt services of works contracts. It may be noted that the exemption is available to sub-contractors engaged in works contracts and not to other outsourced services such as architect or consultants.

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 excluding alcoholic liquor 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;

As per clarification issued vide Circular No.177/03/2014 – ST, milling of paddy into rice on job work basis is exempt from service tax under sl.no.30 (a) of exemption notification 25/2012-ST dated 20th June, 2012, since such milling of paddy is an intermediate production process in relation to agriculture.

“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;

“Principal manufacturer” means any person who gets goods manufactured or processed on his account from another person;

31. Services by an organiser to any person in respect of a business exhibition held outside India;

For clarification Taxation of services – An Education Guide dated 20.06.2012, provides the following:

Para No. 7.11.16 Footwear Association of India is organizing a business exhibition in Germany for footwear manufacturers of India. Is Footwear association of India required to pay service tax on services to footwear manufacturers?

No. The activity is exempt from service tax.

32. Omitted vide Notification No.06/2015-ST dated 01.03.2015.

For clarification Taxation of services –An Education Guide dated 20.06.2012, provides the following:

Para No. 7.11.13 Whether service tax is leviable on telephone services rendered by M/s. BSNL through Village Panchayat Telephone (VPT) with local call facility, as M/s. BSNL is a public sector unit and telephones run by it cannot be treated as 'departmentally run telephones'?

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As per Sl. No. 32 of the mega-exemption Notification in addition to exemption to 'departmentally run telephones' there is exemption for 'Guaranteed Public Telephone operating only for local calls' also. Village Public Telephones (VPTs) with facility of local calls (without 9 dialing facility or STD facility) run by BSNL would fall under the category of 'Guaranteed Public Telephone operating only for local calls'.

33. Services by way of slaughtering of 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.

For clarification Taxation of services –An Education Guide dated 20.06.2012, provides the following example:

Para No. 7.11.17 I am resident in Jammu and Kashmir and planning to construct a property in Delhi. I have got the architectural drawings made from an architect who is also resident in Jammu and Kashmir. Am I liable to pay service tax on architect services?

Solution: No. Even though the property is located in Delhi- in a taxable territory- your architect is exempt from service tax as both the service provider and the service receiver is 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.

As per Taxation of services –An Education Guide dated 20.06.2012, 'transfer of going concern' means transfer of a running business which is capable of being carried on by the purchaser as an independent business, but shall not cover mere or predominant transfer of an activity comprising a service. Such sale of business as a whole will comprise comprehensive sale of immovable property, goods and transfer of unexecuted orders, employees, goodwill etc. Since the transfer in title is not merely a transfer in title of either the immovable property or goods or even both it may amount to service and has thus been exempted.

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 243W of the Constitution.

"governmental authority" means an authority or a board or any other body;

- (i) set up by an Act of Parliament or a State Legislature; or
- (ii) established by government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;

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

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

42. Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.

The following entries have been inserted in the mega exemption notification vide Notification No. 6/2015-Service Tax, dated 1st March, 2015

43. Services by operator of Common Effluent Treatment Plant by way of treatment of effluent;
44. Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables;
45. Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo;
46. Service provided by way of exhibition of movie by an exhibitor to the distributor or an association of persons consisting of the exhibitor as one of its members;
47. Services by way of right to admission to, -
 - (i) exhibition of cinematographic film, circus, dance, or theatrical performance including drama or ballet;
 - (ii) recognised sporting event;
 - (iii) 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.

Other Exemptions

1. In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government vide Notification No. 17/2015-Service Tax dated 19th May, 2015 has exempted taxable services provided under the Power System Development Fund Scheme of the Ministry of Power from the whole of the service tax leviable thereon under section 66B of the said Act, by way of, -

- (A) re-gasification of Liquefied Natural Gas imported by the Gas Authority of India Limited (GAIL);
- (B) transportation of the incremental Re-gasified Liquefied Natural Gas (RLNG) to the specified power generating companies or plants.

These exemptions are however subject to certain conditions prescribed in the notification.

A new chapter, Chapter VI has been inserted vide Finance Act, 2015, Section 119 of which empowers the Central Government to levy **Swachh Bharat Cess** as service tax on all or any of the taxable services at the rate of 2% on the value of such services for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto from the date of notification which is yet to be notified.

Chapter VI
Swachh Bharat Cess
Section 119 of Finance Act, 2015

(1) This Chapter shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(2) There shall be levied and collected in accordance with the provisions of this Chapter, a cess to be called the Swachh Bharat Cess, as service tax on all or any of the taxable services at the rate of two per cent on the value of such services for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto.

(3) The Swachh Bharat Cess leviable under sub-section (2) shall be in addition to any cess or service tax leviable on such taxable services under Chapter V of the Finance Act, 1994 (32 of 1994), or under any other law for the time being in force.

(4) The proceeds of the Swachh Bharat Cess levied under sub-section (2) shall first be credited to the Consolidated Fund of India and the Central Government may, after due appropriation made by Parliament by law in this behalf, utilise such sums of money of the Swachh Bharat Cess for such purposes specified in sub-section (2), as it may consider necessary.

(5) The provisions of Chapter V of the Finance Act, 1994 and the rules made thereunder, including those relating to refunds and exemptions from tax, interest and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Swachh Bharat Cess on taxable services, as they apply in relation to the levy and collection of tax on such taxable services under Chapter V of the Finance Act, 1994 or the rules made thereunder, as the case may be.

RETROSPECTIVE EXEMPTION

Section 100 inserted by Finance Act, 2014 provides retrospective exemption from service tax in case of taxable services provided by the Employees' State Insurance Corporation (ESIC), prior to 1.07.2012. It provides that :

“Notwithstanding anything contained in section 66 as it stood prior to the 1st day of July, 2012, no service tax shall be levied or collected in respect of taxable services provided by the Employees' State Insurance Corporation set up under the Employees' State Insurance Act, 1948, during the period prior to the 1st day of July, 2012.”

PLACE OF PROVISION OF SERVICES RULES

Service Tax Is Destination Based Consumption Tax

Service Tax is a Value Added Tax (VAT) and is destination based consumption tax in the sense that it is levied on commercial activities and is not a charge on the business but on the consumer and it would, logically, be leviable only on services provided within the country. This principle is more or less universally applied. In terms of this principle, exports are not charged to tax, as the consumption is outside the taxable territory, however, services are taxed on their importation into the taxable territory.

Since, most of the services are intangible in nature; the determination of place of their consumption is not easy. Services could be provided by a person located at one location, actually performed at another while being delivered to a person located at a third location, and occasionally actually consumed at a third location or over a larger geographical territory, falling in more than one taxable jurisdiction. For example a person situated in Delhi may buy a ticket on line from a service provider located outside India, say Delta Airline, USA for a journey from Mumbai to New York, wherein part of the service will be provided on Indian land, (taxable territory, the territory of India including territorial waters of India extending up to 12 nautical miles. Hence, services provided beyond the territorial waters of India are not liable to service tax as the provisions of the service tax do not extend beyond India. On other occasions the exact location of service recipient itself may not be available e.g. services supplied electronically through internet such as software services, web based services, software maintenance services. As a result, it is necessary to lay down rules determining the exact place of provision, while ensuring a certain level of harmonization with international practices so as to avoid both the double taxation as well as double non-taxation of services.

In exercise of the powers conferred by sub-section (1) of section 66C and clause (hhh) of sub-section (2) of section 94 of the Finance Act, 1994, the Central Government has issued Place of Provision of services Rules, 2012 vide Notification No. 28/2012-ST dated 20-06-2012 for the purpose of determination of the place of provision of services.

Function of Place of Provision of Services Rules, 2012

These rules are primarily meant for:

- (a) The assessee who deal in cross-border services (from taxable territory to non taxable territory or from non taxable territory to taxable territory).
- (b) Those assessees who have operations with suppliers or customers in the state of Jammu and Kashmir.
- (c) Service providers operating within India (within the taxable territory) from multiple locations, without having centralized registration will find them useful in determining the precise taxable jurisdiction applicable to their operations.
- (d) Determining services that are wholly consumed within a SEZ, to avail the outright exemption from service tax.

Basic Framework

Place of Provision of Services (POPS) Rules, 2012 are comprehensive set of rules which provides for whether a service has been provided in taxable territory or not. The concept of Export or Import service has been replaced with provision of service in taxable or non taxable territory and therefore no separate set of rules for Export and Import of services exists. The rules for determination of import of services has done away with and export of services are now determined with Rule 6A of Service Tax Rules, 1994.

How the POPS Rules, 2012 shall apply

The answer to this question is provided in Para 5.2.1. of Taxation of Services – An Education Guide dated 20.06.2012 as follows:

As stated earlier, in terms of section 66B, a service is taxable only when, inter alia, it is “provided (or agreed to be provided) in the taxable territory”. Thus, the taxability of a service will be determined based on the place of its provision. For determining the taxability of a service, therefore, one needs to ask the following questions sequentially:-

1. Which rule applies to the service provided specifically? In case more than one rules apply equally, which of these come later in the order given in the rules?
2. What is the place of provision of the service in terms of the above rule?
3. Is the place of provision in taxable territory? If yes, tax will be payable. If not, tax will not be payable.
4. Is the provider ‘located’ in the taxable territory? If yes, he will pay the tax.
5. If not, is the service receiver located in taxable territory? If yes, he may be liable to pay tax on reverse charge basis.
6. Is the service receiver an individual or government receiving services for a non business purpose, or a charity receiving services for a charitable activity? If yes, the same is exempted. If not, he is liable to pay tax.

Before moving to the Rules for determining the Place of provision of Services Rules, the understanding of the following term is very important.

Taxable territory has been defined in sub-section 52 of section 65B. It means the territory to which the provisions of Chapter V of the Finance Act, 1994 apply i.e. whole of India excluding the state of Jammu and Kashmir.

“Non-taxable territory” is defined in sub-section 35 *ibid* accordingly as the territory other than the taxable territory.

“India” is defined in sub-section 27 of section 65 B, as follows:

“India” means—

- (a) the territory of the Union of India as referred to in clauses (2) and (3) of article 1 of the Constitution;
- (b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976;
- (c) the sea-bed and the subsoil underlying the territorial waters;
- (d) the air space above its territory and territorial waters; and
- (e) the installations structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

Order of Application of POPS, Rules 2012

Rule 14 of POPS rules, provides that rules should be interpreted in reverse order, means rules which comes last in order will be considered first and if that is not applicable then go to the second last and so on. These rules should be applied in the reverse order (from below to above) i.e. in case rule 8 is applicable no other rule prior to this rule shall be applicable.

An illustration is given in Para 5.14.1 of Taxation of Services – An Education Guide dated 20.06.2012 as follows:

Illustration

An architect based in Mumbai provides his service to an Indian Hotel Chain (which has business establishment in New Delhi) for its newly acquired property in Dubai. If Rule 5 (Property rule) were to be applied, the place of provision would be the location of the property i.e. Dubai (outside the taxable territory). With this result, the service would not be taxable in India. Whereas, by application of Rule 8, since both the provider and the receiver are located in taxable territory, the place of provision would be the location of the service receiver i.e. New Delhi. Place of provision being in the taxable territory, the service would be taxable in India.

By application of Rule 14, the later of the Rules i.e. Rule 8 would be applied to determine the place of provision.

Main Rule: Rule 3

Rule 3 of the POPS rules provide the basic rule (except provided otherwise in the POPS Rules 4 to 12). As per this rule, the place of provision of services shall be:

- the location of the recipient of service
- in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

The Principal effect of this rule is that:

- A. If the location of service receiver is not available, location of service provider is the place of provision of service;
- B. If the service receiver is located outside taxable territory, however service provider is located in the taxable territory, then the service will deemed to be provided in the taxable territory and service tax will be payable.

Under normal circumstances, a service provider is liable to pay service tax. However, if he is located outside the taxable territory and the place of provision of service is in the taxable territory, the person liable to pay service tax is service receiver in the taxable territory.

Rule 2 defines 'location of service provider' as follows:

(h) "location of the service provider" means-

- (a) where the service provider has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;
- (b) where the service provider is not covered under sub-clause (a):
 - (i) *the location of his business establishment; or*
 - (ii) where the services are provided from a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or
 - (iii) where services are provided from more than one establishment, whether business or
 - (iv) *fixed, the establishment most directly concerned with the provision of the service; and in the absence of such places, the usual place of residence of the service provider.*

Rule 2 defines 'location of service receiver' as follows

(i) "Location of the service receiver" means:-

- (a) where the recipient of service has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;
- (b) where the recipient of service is not covered under sub-clause (a):
 - (i) the location of his business establishment; or
 - (ii) where services are used at a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or
 - (iii) where services are used at more than one establishment, whether business or fixed, the establishment most directly concerned with the use of the service; and
 - (iv) in the absence of such places, the usual place of residence of the recipient of service.

Explanation:- For the purposes of clauses (h) and (i), "usual place of residence" in case of a body corporate means the place where it is incorporated or otherwise legally constituted.

Explanation 2:- For the purpose of clause (i), in the case of telecommunication service, the usual place of residence shall be the billing address.

Summary of Rules under Place of Provision of Service Rules, 2012

Rules	Applicability	Place of Provision	Exception
Rule 3	Main Rule	Location of recipient of service	If location of service recipient is not available then place of provision shall be location of service provider
Rule 4	Performance Based Services	Location where services are actually performed	service provided in respect of goods that are temporarily imported into India for repairs and are exported after the repairs without being put to any use in the taxable territory, other than that which is required for such repair
Rule 5	Services directly related to immovable property	Place where immovable property is actually located or intended to be located	
Rule 6	Services related to an event	Where event is actually held	
Rule 7	Where services are provided at more than one location, including a taxable territory	Taxable territory where the greatest proportion of service is provided	
Rule 8	Where both service recipient as well as service provider are located in taxable territory	Location of service recipient	
Rule 9	In case of specified services (a) provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;	Location of service provider	In case of Banking Services provided to a person other than account holder, place of provision would be

	(b) Online information and database access or retrieval services; (c) Intermediary services; (d) Service consisting of hiring of means of transport other than aircraft and vessels except yacht, upto a period of one month.		location of service receiver
Rule 10	Goods Transportation services other than by way of mail or courier	Destination of Goods	In case of goods transportation agency, location of service provider
Rule 11	Passenger Transportation service	Place where the passenger embarks on the conveyance for the journey	
Rule 12	Services provided on board a conveyance	The first scheduled point of departure of that conveyance for journey	
Rule 13	Power of the Central Government to notify any description of service or circumstances	place of provision shall be the place of effective use and enjoyment of a service.	
Rule 14	Order of Application of Rules	Where Service is determinable in terms of more than one rule the later rule prevails over earlier rule	

Who is a service receiver?

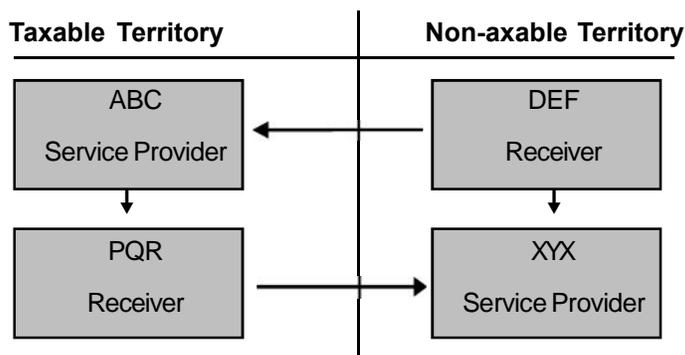
Para 5.3.3 of Taxation of Services – An Education Guide dated 20.06.2012 provides as follows:

Normally, the person who is legally entitled to receive a service and, therefore, obliged to make payment for services, is the receiver of a service, whether or not he actually makes the payment or someone else makes the payment on his behalf.

Service tax is normally required to be paid by the provider of a service, except where he is located outside the taxable territory and the place of provision of service is in the taxable territory.

Where the provider of a service is located outside the taxable territory, the person liable to pay service tax is the receiver of the service in the taxable territory, unless of course, the service is otherwise exempted.

Following illustration will make this clear:-



A company ABC provides a service to a receiver PQR, both located in the taxable territory. Since the location of the receiver is in the taxable territory, the service is taxable. Service tax liability will be discharged by ABC, being the service provider and being located in taxable territory.

However, if ABC were to supply the same service to a recipient DEF located in non-taxable territory, the provision of such service is not taxable, since the receiver is located outside the taxable territory.

If the same service were to be provided to PQR (located in taxable territory) by an overseas provider XYZ (located in non-taxable territory), the service would be taxable, since the recipient is located in the taxable territory. However, since the service provider is located in a non-taxable territory, the tax liability would be discharged by the receiver, under the reverse charge principle (also referred to as “tax shift”).

RATE OF SERVICE TAX

The rate of service tax is mentioned in the charging section i.e. section 66B of Finance Act, 1994. After the amendments made vide Finance Act, 2015 made effective, service tax is leviable @ 14% w.e.f. 01.06.2015.

A new chapter, Chapter VI has been inserted vide Finance Act, 2015, Section 119 of which empowers the Central Government to levy **Swachh Bharat Cess** as service tax on all or any of the taxable services at the rate of 2% on the value of such services for the purposes of financing and promoting Swachh Bharat initiatives or for any other purpose relating thereto from the date of notification which is yet to be notified.

Computation of Service Tax

Thus, if a person renders a taxable service of the value of ₹ 500, the service tax @ 14% will be 70, prior to 1.06.2015, Service Tax was levied @ 12% along with, the Education cess of 2% and secondary and higher education cess of 1% thereon.

ROUNDING OFF OF SERVICE TAX

The provisions of Section 37D of the Central Excise Act, 1944 are applicable to Service Tax Law by virtue of Section 83 of Finance Act, 1994 (as amended), provide that the amount of service tax, interest, penalty, fine or any other sum payable and the amount of refund or any other sum due, under the provisions shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.

LESSON ROUND UP

- The Tax Reform Committee headed by Dr. Raja C. Chelliah recognised the revenue potential of service sector and recommended imposition of service tax on some select services.
- Entry No. 92C has not yet been made effective by the parliament and service tax is still governed by the entry 97 of the union list.
- The Central Board of Excise and Customs has been entrusted with the task of administration of service tax.
- The taxation of services is completely overhauled from positive approach or selective services to negative list approach. Now, no classification of services is required for the purpose of taxability.
- With the introduction of Negative list approach the services which are out of the purview of negative list and mega exemption list are chargeable to service tax.
- Services rendered in taxable territory are taxable for which Place of Provision of Service Rules, 2012 (‘POPSR’) are prescribed and with this Import of services and export of services rules has been rescinded.
- Service tax is charged @ 14%.
- Service tax, interest, fine, penalty or any other sum payable shall be rounded off to the nearest of rupee one.

SELF TEST QUESTIONS**MULTIPLE CHOICE QUESTIONS**

Choose the appropriate answer from the given options in respect of the following:

1. Service tax has been imposed by amending which chapter of the Finance Act, 1994.
 - (a) Chapter-VI
 - (b) Chapter –IV
 - (c) Chapter-III
 - (d) None of the above
2. The Negative List is specified under section:
 - (a) 65
 - (b) 66D
 - (c) 64
 - (d) 67
3. Service Tax shall be rounded off to the nearest:
 - (a) 100
 - (b) 10
 - (c) Rupee
 - (d) None of the above
4. Which is the main rule of Place of Provision of Service Rules, 2012:
 - (a) Rule 14
 - (b) Rule 2
 - (c) Rule 4
 - (d) Rule 3
5. Service Tax was introduced by the Finance Act,
 - (a) 2004
 - (b) 1994
 - (c) 1992
 - (d) 2001

These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.

TRUE AND FALSE

1. Service tax in India is levied under a separate enactment.
2. The Central Excise Officer is empowered to impose penalty under service tax.
3. The Central Government has exempted some of the taxable services.
4. Service tax is administered by service tax department.

5. Service tax has been imposed by amending Chapter-VI of the Finance Act, 1994.
6. Service tax is applicable on whole India excluding Jammu and Kashmir.
7. Rate of service tax payable for the financial year 2015-16 is 10 per cent.
8. Service tax is not levied on online and mobile advertising.
9. Rule 4 of the place of provision of service is the main rule.
10. The rate of service tax has been increased to 14% w.e.f. 1.3.2015.

ELABORATIVE

1. Describe briefly the scope of service tax in India.
2. Define the following:
 - (a) Service;
 - (b) Service tax.
3. Describe briefly the mechanism in administering service tax in India.
4. Explain in brief the steps for calculation of service tax under the new regime.

Multiple Choice Questions

1 (a); 2(b); 3(c); 4(d); 5(b)

ANSWERS/HINTS

True and False

1. False; 2. True; 3. True; 4. False; 5. False; 6. True; 7. False; 8. False; 9. False; 10. False.

Test Your Knowledge

1. True
2. CBEC

SUGGESTED READINGS

1. Taxation of Services – An Education Guide dated 20.06.2012
2. Service Tax Manual: Taxmann
3. Dr. V. K. Singhania : Students Guide to Income-tax; Taxmann Publications Pvt. Ltd., New Delhi.
4. Service Tax – V. S. Datey.

Lesson 18

Levy, Collection and Payment of Service Tax

LESSON OUTLINE

- Introduction
- Payment of Service Tax
- Registration
- Incidence to pay Service Tax
- Due date for Payment of Service Tax
- Adjustment of Service Tax
- Valuation of Taxable Services
- Abatement in Service Tax
- Records to be maintained
- Returns under Service Tax
- CENVAT Credit Rules, 2004
- Role of Company Secretary
- Lesson Round Up
- Self Test Questions

LEARNING OBJECTIVES

This chapter covers the procedural as well substantive provisions relating to levy, collection and payment of service tax and relevant CENVAT Credit Rules, 2004. It also covers aspects like registration, filing including e-filing, appeal matters including appeal before Appellate Tribunal.

At the end of this lesson you will learn :

- What is the basis of charge for service tax?
- What are the circumstances under which service tax is paid by the receiver of services?
- When the liability for payment of service tax arises?
- What is the registration procedure for service provider?
- How to file service tax return?
- What are the Penal provisions for payment/non-payment of service tax?
- What is role of Company Secretaries?

CBEC has rolled-out a new centralized, web-based and workflow-based software application called Automation of Central Excise and Service Tax (ACES) for on-line filing/ uploading of documents and other activities under Central Excise and Service Tax. A Certified Facilitation Centre (CFC) under ACES project is a facility, other than the physical front offices or Facilitation Centres of CBEC, which may be set-up and operated by a Company Secretary in practice to whom a certificate is issued under the ACES project, where the assessee of Central Excise and Service Tax can avail the facility to file their returns and other documents electronically on payment of specified fees.

INTRODUCTION

As explained in previous lesson, Service Tax is a tax levied by Central Government on services provided or to be provided for consideration, excluding the services covered under negative list and exemption notification after considering the provisions prescribed under 'the Place of Provision of Services Rules, 2012'.

Now let us understand from whom, how and when is it collected.

PAYMENT OF SERVICE TAX

As per sub section (1) of section 68 of the Finance Act, 1994, every person providing taxable service to any person shall pay service tax at the rate specified in section 66 in such manner and within such period as may be prescribed.

Further, subsection (2) of the section 68, provides that notwithstanding anything contained in sub-section (1), in respect of such taxable service as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66 and all the provisions of this chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.

Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider.

Thus, person liable to pay service tax may be service provider or service receiver or any other person made so liable.

Notification No. 30/2012 dated 20.06.2012 provided for the services where service tax shall be paid by the service receiver. However, as per Notification No. 7/2015 dated 01.03.2015, the provisions have been amended and with effect from 01-03.2015, these provisions are applicable not only to service provider and receiver but to any other person liable for paying service tax for the taxable services specified in paragraph I (of the Notification No. 30/2012 as amended from time to time)

The extent of service tax payable thereon by the person who provides the service and any other person liable for paying service tax for the taxable services specified in paragraph I shall be as specified in the following Table, namely:-

<i>Sl. No.</i>	<i>Description of a Service</i>	<i>Percentage of service tax payable by the person providing service</i>	<i>Percentage of service tax payable by any person liable for paying service tax other than service provider</i>
1	Services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	Nil	100%
1A	Services provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a non-banking financial company	Nil	100%
1B	In respect of services provided or agreed to be provided by a mutual fund agent or distributor, to a mutual fund or asset management company	Nil	100%

1C	In respect of services provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent	Nil	100%
2	Services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	Nil	100%
3	Services provided or agreed to be provided by way of sponsorship	Nil	100%
4	Services provided or agreed to be provided by an arbitral tribunal	Nil	100%
5 A	In respect of services provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate	Nil	100%
5B	Services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services	Nil	100%
6	Services provided or agreed to be provided by way of support service by Government or local authority excluding renting of immovable property and services specified in section 66D(a) (i), (ii) & (iii)	Nil	100%
7	(a) In respect of services provided or agreed to be provided by way of renting or hiring any motor vehicle designed to carry passenger on abated value to any person who is not in the similar line of business. (b) In respect of services provided or agreed to be provided by way of renting or hiring any motor vehicle designed to carry passenger on non abated value any person who is not in the similar line of business. (with effect from 1.10.2014)	Nil 50%	100% 50%
8.	Services provided or agreed to be provided by way of supply of manpower for any purpose including security services	Nil	100%
9.	Services provided or agreed to be provided by way of works contract	50%	50%
10.	Any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory	Nil	100%
11.	In respect of services provided or agreed to be provided by a person involving an aggregator in any manner	Nil	100%

REGISTRATION

Section 69 of the Finance Act, 1994 specifies the persons who are required to get themselves registered under this Act. Every person liable to pay service tax to get registered with designated Superintendent of Central Excise.

An application for registration is required to be made to the Superintendent of Central Excise in Form ST-1. This is to be made within a period of thirty days from the date on which the service tax is leviable on him and where a

person commences the business of providing a taxable service after such service has been levied, he shall make an application for registration within a period of thirty days from the date of such commencement.

As stated earlier, a person can become liable to pay tax as service provider as well as any other person. Therefore, when any other person is liable to pay service tax he is also required to get himself registered.

Procedure for Registration

In supersession of Order No. 2/2011-Service Tax dated 13-12-2011, the Central Board of Excise and Customs has vide Order No. 1/2015-ST dated 28th February specified the following documentation, time limits and procedure with respect to filing of registration applications for single premises, which came into effect from 1-3-2015.

General procedure

- (i) Applicants seeking registration for single premises in service tax shall file the application online in the Automation of Central Excise and Service Tax (ACES) website www.aces.gov.in in Form ST-1.
- (ii) Registration shall mandatorily require that the Permanent Account Number (PAN) of the proprietor or the legal entity being registered be quoted in the application with the exception of Government Departments for whom this requirement shall be non-mandatory. Applicants, who are not Government Departments, shall not be granted registration in the absence of PAN.

Existing registrants, except Government departments not having PAN shall obtain PAN and apply online for conversion of temporary registration to PAN based registration within three months of this order coming into effect, failing which the temporary registration shall be cancelled after giving the assessee an opportunity to represent against the proposed cancellation and taking into consideration the reply received, if any.

- (iii) E-mail and mobile number mandatory: The applicant shall quote the email address and mobile number in the requisite column of the application form for communication with the department. Existing registrants who have not submitted this information are required to file an amendment application by 30-4-2015.
- (iv) Once the completed application form is filed in ACES, registration would be granted online within 2 days, thus initiating trust-based registration. On grant of registration, the applicant would also be enabled to electronically pay service tax.
- (v) Further, the applicant would not need a signed copy of the Registration Certificate as proof of registration. Registration Certificate downloaded from the ACES web site would be accepted as proof of registration dispensing with the need for a signed copy.

Documentation required

The applicant is required to submit a self attested copy of the following documents by registered post/ Speed Post to the concerned Division, within 7 days of filing the Form ST-1 online, for the purposes of verification:-

- (i) Copy of the PAN Card of the proprietor or the legal entity registered.
- (ii) Photograph and proof of identity of the person filing the application namely PAN card, Passport, Voter Identity card, Aadhar Card, Driving license, or any other Photo-identity card issued by the Central Government, State Government or Public Sector Undertaking.
- (iii) Document to establish possession of the premises to be registered such as proof of ownership, lease or rent agreement, allotment letter from Government, No Objection Certificate from the legal owner.
- (iv) Details of the main Bank Account.
- (v) Memorandum/Articles of Association/List of Directors.
- (vi) Authorisation by the Board of Directors/Partners/Proprietor for the person filing the application.

- (vii) Business transaction numbers obtained from other Government departments or agencies such as Customs Registration No. (BIN No), Import Export Code (IEC) number, State Sales Tax Number (VAT), Central Sales Tax Number, Company Index Number (CIN) which have been issued prior to the filing of the service tax registration application.

Where the need for the verification of premises arises, the same will have to be authorised by an officer not below the rank of Additional /Joint Commissioner. Further, the registration certificate may be revoked by the Deputy/ Assistant Commissioner in any of the following situations, after giving the assessee an opportunity to represent against the proposed revocation and taking into consideration the reply received, if any:

- (i) the premises are found to be nonexistent or not in possession of the assessee.
- (ii) no documents are received within 15 days of the date of filing the registration application.
- (iii) the documents are found to be incomplete or incorrect in any respect.

Registration where the services are provided or received from more than one premises and having centralised accounting system in one or more premises:

Where a person, liable for paying service tax on a taxable service

- (i) provides such service from more than one premises or offices; or
- (ii) receives such service in more than one premises or offices; or
- (iii) is having more than one premises or offices, which are engaged in relation to such service in any other manner, making such person liable for paying service tax, and has centralised billing system or centralised accounting system in respect of such service, and such centralised billing or centralised accounting systems are located in one or more premises, he may, at his option, register such premises or offices from where *centralised billing or centralised accounting systems are located*.

The registration under this case shall be granted by the Commissioner of Central Excise in whose jurisdiction the premises or offices, from where centralised billing or accounting is done, are located.

Registration where the services are provided or received from more than one premises and not having centralised accounting system:

Where an assessee is providing a taxable service from more than one premises or offices, and does not have any centralized billing systems or centralized accounting systems, as the case may be, he shall make separate applications for registration in respect of each of such premises or offices to the jurisdictional Superintendent of Central Excise.

Single Registration for Multiple Services

Where an assessee is providing more than one taxable service, he may make a single application, mentioning therein all the taxable services provided by him, to the concerned Superintendent of Central Excise.

Issue of Registration Certificate

The Superintendent of Central excise is bound to grant a certificate of registration in Form ST-2 within 7 days of the date of receipt of the application or intimation for any change or additional information provided by the applicant. This certificate shall indicate the details of all the taxable services provided by the service provider. In case of transfer of business by the assessee to another person, the transferee is required to obtain a fresh Certificate of Registration.

Surrender of Certificate of Registration

The registered assessee who ceases to provide the taxable services for which he had been registered shall surrender his Certificate of Registration to the concerned Superintendent of Central Excise.

Service Tax Registration of Special Category of Persons

Input Service Distributor

Service Tax (Registration of Special Category of Persons) Rules, 2005 have come into effect on 16th day of June, 2005.

Registration under these rules can be obtained by an input service distributor by making an application to the jurisdictional Superintendent of Central Excise in such form as specified by the Board within a period of thirty days of the commencement of business or the 16th day of June, 2005, whichever is later.

A penalty upto ₹ 5,000 or ₹ 2,00 for everyday during which such failure continues is payable if a person fails to get registration – Section 77(1)(a) of Finance Act, 1994.

Small Scale Service Provider

A small scale service provider has been specified as any provider of taxable service whose aggregate value of taxable service in a financial year does not exceeds a certain specified limit. A small scale service provider whose aggregate value of taxable service in a financial year exceeds nine lakh rupees shall make an application to the jurisdictional Superintendent of Central Excise in the prescribed form for registration within a period of thirty days of exceeding the aggregate value of taxable service of nine lakh rupees.

However, small service providers are not liable to pay service tax till they cross the exemption limit of ₹10 lakhs during a Financial Year.

TEST YOUR KNOWLEDGE



(1) Any provider of taxable service whose aggregate value of taxable service in a financial year exceeds _____ shall make an application for registration to the jurisdictional Superintendent of Central Excise.

- (a) ₹ 3,00,000
- (b) ₹ 5,00,000
- (c) ₹ 7,00,000
- (d) ₹ 9,00,000

INCIDENCE TO PAY SERVICE TAX

With effect from 1st July 2011, the liability to pay service tax was shifted from receipt basis to accrual basis with the introduction of Point of Taxation (POT) Rules, 2011. As per rule 3 of POT rules the liability to pay service tax shall arise upon issuance of invoice or receipt of payment whichever is earlier.

Proviso to Rule 6 of Service Tax Rules, 1994 has provided that in case of the individuals and partnership firms having an aggregate value of taxable services provided from one or more premises of ₹ 50 lakhs or less in the previous financial year, shall have the option to pay service tax upon receipt basis upto ₹ 50 lakhs in the current financial year.

The basic purpose for introduction of Point of Taxation Rules, 2011 is to bring clarity and certainty in matter of levy and collection of service tax in situations of:

- Change of rate of service tax
- Imposition of service tax on new services
- Continuous supply of services

Moreover, POT rules, 2011 have been introduced to bring synchronization between service tax and other taxes like

Excise Duty and VAT which work on accrual basis and this is a step towards implementation of GST.

POT rules, 2011 were issued by the Central Government vide Notification No. 18/2011- ST dated 1st March, 2011 w.e.f. 1st April 2011. However, these rules were made effective w.e.f. 1st July 2011 vide Notification No.25/2011-ST dated 31st March 2011. Now, let us discuss the provisions of these rules:

Point of taxation means the point in time when a service shall be provided or deemed to have been provided. This Point of time will determine rate of service tax and due date of payment of service tax.

As per rule 2A of POT Rules, "Date of payment" shall be the earlier of the dates on which the payment is entered in the books of accounts or is credited to the bank account of the person liable to pay tax:

Provided that —

- (A) the date of payment shall be the date of credit in the bank account when—
- (i) there is a change in effective rate of tax or when a service is taxed for the first time during the period between such entry in books of accounts and its credit in the bank account; and
 - (ii) the credit in the bank account is after four working days from the date when there is change in effective rate of tax or a service is taxed for the first time; and
 - (iii) the payment is made by way of an instrument which is credited to a bank account,
- (B) if any rule requires determination of the time or date of payment received, the expression "date of payment" shall be construed to mean such date on which the payment is received".

As per Rule 3 of Point of Taxation Rules, Point of taxation shall be;

- (a) the time when the invoice for service provided or to be provided is issued or
- (b) in case where payment is received before the issue of invoice then the time when such payment is received or
- (c) where advance is received by the service provider the time of receipt of such advance.

Rule 4A of the Service Tax Rules, 1994, provides that every person providing taxable service shall issue invoice within 30 days of completion of service or receipt of payment of service whichever is earlier.

Further proviso to Rule 3 of POT Rules, provides that where the invoice is not issued within 30 days of completion of service than the point of taxation shall the date of completion of such service.

Examples:

Sl. No.	Date of Completion	Date of Invoice	Date on which payment is	Point of taxation	Remarks
1	April 10, 2012	April 20, 2012	April 30, 2012	April 20, 2012	Invoice is issued within 30 days and before payment
2	April 10, 2012	May 26, 2012	April 30, 2012	April 10, 2012	Invoice not issued within 30 days and payment received after completion of service
3	April 10, 2012	April 20, 2012	April 15, 2012	April 15, 2012	Invoice is issued within 30 days and payment received before issue of invoice
4	April 10, 2012	May 26, 2012	April 5, 2012 (Part) and April 25, 2012 (remaining)	April 5, 2012 and April 10, 2012 for remaining	Advance received in part before completion of service and invoice not issued within 30 days of completion of service.

Continuous Supply of Service

"Continuous supply of service" means any service provided or agreed to be provided continuously or on recurrent

basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time. Further, Central Government may notify provision of a particular service to be considered as continuous supply of service.

The following services were notified vide Notification No. 28/2011 as continuous supply of service irrespective of period for which they are provided or to be provided;

- Telecommunication service
- Commercial or Industrial Construction Service
- Construction of Residential Complex
- Internet Communication
- Works contract services

However w.e.f, 1st day of July, 2012, vide Notification No. 38/2012 - Service Tax, dated 20th June, 2012, following two services are considered as continuous supply of services:

- telecommunication service; and
- service portion in execution of a works contract

As per Rule 3, in case of continuous supply of service, the point of taxation shall be the date of completion of the events as specified in the contract or time when invoice for the service provided or to be provided is issued or the date on which payment is received whichever is earlier. Where any advance is received by the service provider the point of taxation shall be date of receipt of each such advance. Further, where the invoice is not issued within 30 days of completion of such event then point of taxation shall be the date of completion of such event.

Point of Taxation in case of change in effective rate of tax (Rule 4)

Notwithstanding anything contained in rule 3, the point of taxation in cases where there is a change in effective rate of tax in respect of a service, shall be determined in the following manner, namely:-

- (a) in case a taxable service has been provided before the change in effective rate of tax,-
 - (i) where the invoice for the same has been issued and the payment received after the change in effective rate of tax, the point of taxation shall be date of payment or issuing of invoice, whichever is earlier; or
 - (ii) where the invoice has also been issued prior to change in effective rate of tax but the payment is received after the change in effective rate of tax, the point of taxation shall be the date of issuing of invoice; or
 - (iii) where the payment is also received before the change in effective rate of tax, but the invoice for the same has been issued after the change in effective rate of tax, the point of taxation shall be the date of payment;
- (b) in case a taxable service has been provided after the change in effective rate of tax,-
 - (i) where the payment for the invoice is also made after the change in effective rate of tax but the invoice has been issued prior to the change in effective rate of tax, the point of taxation shall be the date of payment; or
 - (ii) where the invoice has been issued and the payment for the invoice received before the change in effective rate of tax, the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier; or
 - (iii) where the invoice has also been raised after the change in effective rate of tax but the payment has been received before the change in effective rate of tax, the point of taxation shall be date of issuing of invoice.

“Change in effective rate of tax” shall include a change in the portion of value on which tax is payable in terms of a notification issued in the Official Gazette under the provisions of the Act, or rules made thereunder”.

Point of Taxation where Service is Taxed First Time (Rule 5)

Where a service is taxed for the first time, then, –

- (a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;
- (b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within fourteen days of the date when the service is taxed for the first time.

Point of Taxation in case of Specified Services or Persons (Rule 7)

The point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made.

Provided that, where the payment is not made within a period of three months of the date of invoice, the point of taxation shall be the date immediately following the said period of three months.

Further, if the invoice in respect of a service, for which point of taxation is determinable under rule 7 has been issued before the 1st day of October, 2014 but payment has not been made as on the said day, the point of taxation shall, –

- (a) if payment is made within a period of six months of the date of invoice, be the date on which payment is made;
- (b) if payment is not made within a period of six months of the date of invoice, be determined as if rule 7 and this rule do not exist.

Provided further that in case of “associated enterprises”, where the person providing the service is located outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier.

Determination of Point of Taxation in case of intangibles (Rules 8)

In respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration, the service shall be treated as having been provided each time;

- when a payment in respect of such use or the benefit is received by the provider in respect thereof, or
- an invoice is issued by the provider, whichever is earlier.

Determination of Point of Taxation based on best judgement (Rule 8A)

Where the point of taxation cannot be determined as per these rules as the date of invoice or the date of payment or both are not available, the Central Excise officer, may, require the concerned person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account such material and the effective rate of tax prevalent at different points of time, shall, by an order in writing, after giving an opportunity of being heard, determine the point of taxation to the best of his judgment.

DUE DATE FOR PAYMENT OF SERVICE TAX

Rule 6(1) of the Service Tax Rules, 1994 specifies the time period for payment of service tax.

For individuals or proprietors or partnership firms:

The service tax shall be paid to the credit of the Central Government **by the 5th of the month immediately following the respective quarter** in which service is deemed to have been provided as per POT Rules made in this regard.

Where payment is made through internet banking, such e-payment can be made **by 6th of the month immediately following the respective quarter.**

However, for the quarter ending 31st March, the due date of payment of service tax shall be 31st March.

As stated earlier, individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is fifty lakh rupees or less in the previous financial year, the service provider shall have option to pay the service tax on receipt basis by the due dates upto ₹50 lakhs in the current financial year.

For others

The service tax shall be paid to the credit of the Central Government by the 5th of the month immediately following the calendar month in which service is deemed to have been provided.

Mandatory e-payment of service tax

Rule 6 (2) as ammended vide Notification No. 09/2014-ST issued on 11th July, 2014 , provides that with effect from 1st October, 2014, every assessee shall electronically pay the service tax payable by him, through internet banking.

Provided that the Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be, having jurisdiction, may for reasons to be recorded in writing, allow the assessee to deposit the service tax by any mode other than internet banking.

Deposit of Service Tax

The assessee shall deposit the service tax liable to be paid by him with the bank designated by the Central Board of Excise and Customs in Form GAR – 7 challan.

TEST YOUR KNOWLEDGE



(2) Where payment for service tax is made through internet banking, such e-payment can be made by the _____ of the month, immediately following the quarter in which the payments are received.

- (a) 5th
- (b) 6th
- (c) 8th
- (d) 10th

Interest on Delayed Payment of Service Tax under Section 75

Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate not below 10% and not exceeding 36% p.a.

However where the service provider whose taxable services does not exceed ₹60 lakhs during any of the financial years covered by the notice or during the last financial year the rate of interest shall be reduced by 3% p.a.

In exercise of the powers conferred by section 75 of the Finance Act, 1994 and in supersession of the notification No.26/2004-Service Tax, dated 10th September, 2004, published in the Gazette of India, except as respects things done or omitted to be done before such supersession, the Central Government , vide Notification No. 12/2014-Service Tax fixed the certain rates of simple interest per annum for delayed payment of service tax, these rates are given in below Table:-

Sl. No.	Period of Delay	Rate of Interest
1	Upto six months	18%
2	More than six months and upto one year	18% for the first six months of delay and 24% for the delay beyond six months.
3	More than one year	18 % for the first six months of delay; 24% for the period beyond six months up to one year 30% for any delay beyond one year.

The aforementioned rates are effective from 1st October, 2014

ADJUSTMENT OF SERVICE TAX

(1) Adjustment of excess service tax paid on the services which are not so provided

Where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason, or where the amount of invoice is renegotiated due to deficient provision of service, or any terms contained in a contract the assessee may take the credit of such excess service tax paid by him, if the assessee,

- (a) has refunded the payment or part thereof, so received along with the service tax payable thereon for the service to be provided by him to the person from whom it was received;
- (b) has issued a credit note for the value of the service tax not so provided to the person to whom such an invoice had been issued.

(2) Adjustment of excess service tax paid in other cases

Where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter.

The adjustment of excess amount paid, shall be subject to the conditions that the excess amount is paid on account of reasons not involving interpretation of law, taxability, valuation or applicability of any exemption notification.

VALUATION OF TAXABLE SERVICES

Section 67 provides for the method of valuation of taxable services i.e. the value on which service provider is required to discharge service tax. As per section 67, the valuation of taxable service shall be determined under the following two situations:

- Service tax is separately charged in the bill
- Bill value is inclusive of service tax

Where the service tax is separately charged in the bill:

- (i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;
- (ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;
- (iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

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Where the bill is inclusive of service tax:

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

$$\text{Value of taxable Services} = \frac{\text{Gross Amount} \times 100}{100 + \text{Applicable rate of service tax}}$$

'As per section 67 of the Finance Act, 1994

"consideration" includes –

- (i) any amount that is payable for the taxable services provided or to be provided;
- (ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;
- (iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.'.

Example:

Pawan rendered a taxable service to a client on 25-08-2015. A bill of ₹ 40,000 was raised on 29-08-2015; ₹ 15,000 was received from the client on 1-10-2015 and the balance on 23-10-2015.

- (a) If service tax was separately charged in the bill, what is the value of taxable services and service tax payable?
- (b) No Service tax was separately charged in the
 - Is Pawan liable to pay service tax, even though the same has not been charged by him?
 - In case, he is liable, what is the value of taxable services and service tax payable?

Solution

The bill is raised on 29-08-2015 but the payment is received in October 2015. As per Point of Taxation Rules, service tax shall be payable on or before 05-09-2015 or 06-09-2015 and not in October when payment is received.

Therefore, in this case service tax shall be payable as;

- (a) Value of taxable service is ₹ 40,000, therefore service tax shall be payable @14%
Service tax = ₹40,000 x 14% = ₹ 5600/-
- (b) Pawan is liable to pay service tax even though the tax has not been collected by him. The service tax payable shall be;
= 40,000 x 14/114 = ₹ 4912/-

ABATEMENT IN SERVICE TAX

Abatement in Service Tax is a major relief to certain kinds of services which are chargeable to service tax. Finance Act 1994 provides that for determining value of service tax on which service tax is to be charged abatement in value determination is allowed.

Abatement under service tax laws means that for certain services, a specified percentage of discount is allowed from the gross amount collected for rendering the services subject to the conditions that CENVAT Credit has not been availed by the service provider.

Notification No. 26/2012- ST dated 20/06/2012 provides the list of services on which abatement is allowed. It also provides for the percentage on which service tax is payable under the scheme of abatement. The concept of abatement may be understood with the help of this example;

As per notification no. 26/2012, railway is required to charge service tax only on 30% value of the Taxable services. Thereby by virtue of this provision, if railways receive an amount of ₹ 50 Lakhs against the services, it needs to pay service tax only on ₹ 15 Lakhs i.e. 30% value of ₹ 50 Lakhs.

RECORDS TO BE MAINTAINED

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

- (i) all the records prepared or maintained by the assessee for accounting of transactions in regard to,-
 - (a) providing of any service,
 - (b) receipt or procurement of input services and payment for such input services;
 - (c) receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;
 - (d) other activities, such as manufacture and sale of goods, if any.
- (ii) all other financial records maintained by him in the normal course of business;

All such records shall be preserved at least for a period of five years immediately after the financial year to which such records pertain.

The records including computerised data, as maintained by an assessee in accordance with the various laws in force from time to time shall be acceptable.

RETURNS UNDER SERVICE TAX

Rule 7 of the Service Tax Rules, 1994 return under Service Tax is required to be filed by every assessee on half yearly basis in Form ST-3 or Form ST-3A, as the case may be, along with a copy of the Form TR-6/GAR-7, in triplicate for the months covered in the half-yearly return.

Every assessee shall submit the half yearly return by the 25th of the month following the particular half-year. Every assessee is required to file return electronically.

Vide Notification No. 43/2011 dt. 25th August 2011, every Assessee shall submit a half yearly return electronically. Assessee can file service tax return online at registering at <https://www.aces.gov.in>.

With effect from 1st October, 2011, every assessee is required to file half yearly return electronically.

Revision of Returns

As per Rule 7B, an assessee may submit a revised return, in Form ST-3, in triplicate, to correct a mistake or omission, within a period of ninety days from the date of submission of the return under rule 7.

Penalty for not filing and late Filing of Return

If return of service tax is not filed within the prescribed period penalty is leviable under section 77(2) which can be upto ₹10,000.

Rule 7C of Service Tax Rules, 1994 provides for penalty for delay in filing of service tax return. Accordingly late fee is payable as follows:

Delay upto 15 days	₹ 500/-
Delay beyond 15 days and upto 30 days	₹ 1,000/-
Delay beyond 30 days	₹1,000 + ₹ 100/- per day subject to a maximum of ₹ 20,000 [the penalty prescribed in section 70(1)]

Penalty for late filing of return is specifically prescribed in Rule 7C subject to section 70 therefore if late fee is paid then no penalty prescribed under section 77(2) shall be leviable.

PENALTIES AND PROSECUTION

Various penalties have been provided under the Act. Section 83A empowers Central Excise Officer to adjudicate penalty within such powers as may be conferred by CBEC, by issuing a notification.

(A) PENALTY FOR FAILURE TO PAY SERVICE TAX [SECTION 76]

Provisions of section 76 before Finance Act, 2015

Any person who fails to pay service tax, shall pay, in addition to such tax and the interest on that tax amount in accordance with the provisions of section 75, a penalty which shall not be less than;

- one hundred rupees for every day during which such failure continues; or
- at the rate of one per cent. of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax.

Provided that the total amount of the penalty payable in terms of this section shall not exceed 50% of the service tax payable.

Example

X, an assessee, fails to pay service tax of ₹10 lakhs payable by 5th March. X pays the amount on 15th March. The default has continued for 10 days. The penalty payable by X is computed as follows:-

- 1% of the amount of default for 10 days = $1 \times 10,00,000 \times 10/31 = ₹3,225.80$ or
 - Penalty calculated @ ₹100 per day for 10 days = ₹1,000
- Penalty liable to be paid is ₹ 3,226.00.

Provisions of section 76 after amendment by Finance Act, 2015

As per section 76 of the Finance Act, 1994 as amended vide section 113 of the Finance Act, 2015,

Where service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason, other than the reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding ten per cent of the amount of such service tax:

Provided that where service tax and interest is paid within a period of thirty days of –

- (i) the date of service of notice under sub-section (1) of section 73, no penalty shall be payable and proceedings in respect of such service tax and interest shall be deemed to be concluded;
- (ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under

sub-section (2) of section 73, the penalty payable shall be 25% of the penalty imposed in that order, only if such reduced penalty is also paid within such period.

Further, where the amount of penalty is increased by the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, over the above the amount as determined under sub-section (2) of section 73, the time within which the reduced penalty is payable under clause (ii) of the proviso to sub-section (1) in relation to such increased amount of penalty shall be counted from the date of the order of the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be.

(B) PENALTY FOR CONTRAVENTION OF RULES AND PROVISIONS OF ACT FOR WHICH NO PENALTY IS SPECIFIED ELSEWHERE [SECTION 77]

- (a) Any person who is liable to pay service tax, or required to take registration, fails to take registration shall be liable to pay a penalty which may extend to **ten thousand rupees**.
- (b) Any person who fails to keep, maintain or retain books of account and other documents shall be liable to a penalty which may extend to **ten thousand rupees**.
- (c) Any person who fails to –
 - (i) furnish information called by an
 - (ii) produce documents called for by a Central Excise Officer
 - (iii) appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry, shall be liable to a penalty which may extend to;
 - ten thousand rupees or
 - two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance.
- (d) Any person who is required to pay tax electronically, through internet banking, fails to pay the tax electronically, shall be liable to a penalty which may extend to **ten thousand rupees**.
- (e) Any person who issues invoice with incorrect or incomplete details or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to **ten thousand rupees**.
- (f) Any person, who contravenes any of the provisions or any rules for which no penalty is separately provided, shall be liable to a penalty which may extend to **Ten thousand rupees**.

(C) PENALTY FOR FAILURE TO PAY SERVICE TAX FOR REASON OF FRAUD, ETC. [SECTION 78]

Provisions of section 78 before Finance Act, 2015

Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of

- (a) fraud; or
- (b) collusion; or
- (c) wilful mis-statement; or
- (d) suppression of facts; or
- (e) contravention of any of the provisions or of the rules with intent to evade payment of service tax the person shall be liable to pay service tax or erroneous refund, and

shall be liable to pay a penalty, in addition to such service tax and interest which shall equal to the amount of service tax so not levied or short-paid or erroneously refunded.

However the amount of penalty shall be reduced to:

- (a) 50% where true and complete details of the transactions are available in the specified records.
- (b) 25% where true and complete details of the transactions are available in the specified records and the amount of service tax, interest and penalty has been paid within 30 days.

In case of service providers whose taxable value of service tax does not exceed ₹ 60 lakhs, the period of 30 days shall be extended to 90 days.

Section 78 provides that if penalty is applicable under this section, provisions section 76 shall be apply. Thus, the assessee is relieved from effects of dual penalty.

Provisions of section 78 after Finance Act, 2015

PENALTY FOR FAILURE TO PAY SERVICE TAX FOR REASON OF FRAUD, ETC. [SECTION 78]

Where any service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to 100% of the amount of such service tax:

Provided that in respect of the cases where the details relating to such transactions are recorded in the specified records for the period beginning with the 8th April, 2011 upto the date on which the Finance Bill, 2015 received the assent of the President i.e 14th May, 2015 (both days inclusive), the penalty shall be 50% of the service tax so determined:

Provided further that where service tax and interest is paid within a period of 30 days of –

- (i) the date of service of notice under the proviso to sub-section (1) of section 73, the penalty payable shall be fifteen per cent of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded;
- (ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent of the service tax so determined:

Provided also that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period:

Explanation. – For the purposes of this sub-section, “specified records” means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of account shall be considered as the specified records.

Further, where the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, modifies the amount of service tax determined under sub-section (2) of section 73, then the amount of penalty payable under sub-section (1) and the interest payable thereon under section 75 shall stand modified accordingly, and after taking into account the amount of service tax so modified, the person who is liable to pay such amount of service tax, shall also be liable to pay the amount of penalty and interest so modified.

Also, where the amount of service tax or penalty is increased by the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, over and above the amount as determined under sub-section (2) of section 73, the time within which the interest and the reduced penalty is payable under clause (ii) of the second proviso to sub-section (1) in relation to such increased amount of service tax shall be counted from the date of the order of the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be.

(D) PENALTY FOR OFFENCES BY DIRECTOR ETC. OF COMPANY [Section 78A]

Where a company has committed any of the following contraventions, namely: –

- (a) evasion of service tax; or
- (b) issuance of invoice, bill or, as the case may be, a challan without provision of taxable service in violation of the rules made under the provisions of this Chapter; or
- (c) availment and utilisation of credit of taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or
- (d) failure to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, then
 - any director, manager, secretary or other officer of such company,
 - who at the time of such contravention was in charge of, and was responsible to,
 - the company for the conduct of business of such company and was knowingly concerned with such contravention,

shall be liable to a penalty which may extend to one lakh rupees.

TRANSITORY PROVISION [SECTION 78B]

After section 78A of the Finance 1994 Act, transitory provision i.e. section 78B has been inserted vide Finance Act, 2015 which provides that where in any case-

- (a) service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded and no notice has been served under sub-section (1) of section 73 or under the proviso thereto, before the date on which the Finance Bill, 2015 received the assent of the President i.e before 14th May, 2015; or
- (b) service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded and a notice has been served under sub-section (1) of section 73 or under the proviso thereto, but no order has been passed under sub-section (2) of section 73, before the date on which the Finance Bill, 2015 received the assent of the President i.e before 14th May, 2015,

Then, in respect of such cases, the provisions of section 76 or section 78, as the case may be, as amended by the Finance Act, 2015 shall be applicable.

(2) In cases where show cause notice has been issued under sub-section (1) of section 73 or under the proviso thereto, but no order has been passed under sub-section (2) of section 73 before the date on which the Finance Bill, 2015 receives the assent of the President, the period of thirty days for the purpose of closure of proceedings on the payment of service tax and interest under clause (i) of the proviso to sub-section (1) of section 76 or on the payment of service tax, interest and penalty under clause (i) of the second proviso to sub-section (1) of section 78, shall be counted from the date on which the Finance Bill, 2015 received the assent of the President i.e. 14th May, 2015.

PROSECUTION

Section 89 was inserted by Finance Act, 2011 which provides for offences which can lead to prosecution. The prosecution was introduced in service tax to promote self compliance among the assessee. Further, sections 9A, 9AA, 9B, 9E and 34A of the Central Excise Act, 1944 have been made applicable service tax. These provisions together constitute the provisions relating to prosecution of offences.

CENVAT CREDIT RULES, 2004

The CENVAT Credit Rules, 2004 have replaced the existing Cenvat Credit Rules, 2002 and Service tax Credit

Rules, 2002 with effect from 10th September 2004. The new Rules integrated services with goods. With the introduction of these rules, inter sectoral credit is allowed to be taken. Service tax paid on input service is allowed to be used for duty payable on final products removed. Similarly, excise duty paid on inputs is allowed to be used for paying service tax on output service.

Example:

Duty paid on raw plastic for the manufacture of plastic furniture is ₹20,000 and service tax paid on transportation i.e Goods Transport Agency of raw plastic of ₹10,000. The duty payable on the finished goods (plastic furniture) is ₹35,000 while paying the duty on plastic furniture; the manufacturer is allowed to deduct the amount already paid as excise duty and service tax (Input tax) on raw plastic. Thus, the net duty payable will be ₹5,000 only. Technically speaking, the manufacturer availed the CENVAT credit to the extent of ₹30,000 that he paid on inputs and input service for manufacturing of plastic furniture.

Note: The provisions of CENVAT Credit Rules will be covered in detail at Professional Programme.

ROLE OF COMPANY SECRETARIES

There is a great scope for Company Secretaries in Practice in the area of service tax. A Practicing Company Secretary can render several services under the Service Tax such as;

- **Consultancy services:** The company secretaries can provide expertise services to their clients by explaining and interpreting the provisions of the transformed and upcoming legislations. For Example, the taxability of services shifted from selective approach to negative approach.
- **Compliance Services:** The Company Secretaries can help the client or employers to comply with the following procedural requirement:
 - (a) Registration
 - (b) Payment of tax
 - (c) Maintenance of books and records
 - (d) Availment and utilization of Cenvat Credit
 - (e) Submissions of service tax returns.
- **Certified Facilitation Centres (CFCs):** Company Secretaries in Practice can set up CFCs under the Automation of Central Excise and Service Tax Project of CBEC to provide procedural compliance services to the assesseees by charging fees.

LESSON ROUND UP

- **Registration of service tax:** Section 69 of the Finance Act, read with Rule 4 of the Service Tax Rules make provisions relating to registration. It is mandatory for every person liable to pay service tax to get registered with Superintendent of Central Excise. A person providing a taxable service is liable to pay service tax in terms of Section 68.
- An application for registration to the Superintendent of Central Excise can be made in form (ST-1). This is to be made within a period of thirty days from the date on which the service tax is leviable.
- **Payment of service tax:** With effect from 1st April 2011, Finance Act, 2011 introduced Point of Taxation (POT) Rules, 2011. These rules laid down the provisions relating to payment of service tax on accrual basis instead of receipt basis and specify the relevant date for determining rate of service tax. Point of taxation means the point in time when a service shall be deemed to have been provided. This Point of time will determine rate of service tax and due date of payment of service tax.

- **Reverse charge**-As per Section 68, every person providing taxable services i.e. provider of output service is liable to pay service tax. But in special cases other person is liable to pay service tax. This is known as reverse charge. Under this charge other person liable to pay service tax has to register himself under service tax. Further, he can not claim general exemption limit of 10 Lakhs rupees and he is liable to pay service tax even on small amount.
- Section 67 provides for the method of valuation of taxable services i.e. the value on which service provider is required to discharge service tax. As per section 67, the valuation of taxable service shall be determined under the following two situations:
 - Service tax is separately charged in the bill
 - Bill value is inclusive of service tax
- Abatement under service tax laws means that for certain services, a specified percentage of discount is allowed from the gross amount collected for rendering the services subject to the conditions that CENVAT Credit has not been availed by the service provider.
- **Adjustment of Service tax:** Where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter.
- **Maintenance of Accounts:** Every assessee is required to furnish to the Superintendent of Central Excise at the time of filing his return for the first time, a list of all accounts maintained by him in relation to service tax including memoranda received from his branch offices.
- **Filing of return:** Rule 7 of the Service Tax Rules, 1994 return under Service Tax is required to be filed by every assessee on half yearly basis in Form ST-3 or Form ST-3A, as the case may be, along with a copy of the Form GAR -7, in triplicate for the months covered in the half-yearly return. Every assessee shall submit the half yearly return by the 25th of the month following the particular half-year.
- **E-filing of return:** With effect from 1st October, 2011, every assessee is required to file half yearly return electronically.
- **Interest on late payment of service tax:** Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate not below 10% and not exceeding 36% p.a.
- **Doctrine of unjust enrichment:** Since service tax is indirect tax, it is recoverable from customer. If you recover the amount from customer and again claim refund, you will get double benefit. Hence, provision of 'unjust enrichment' has been made in the law. As per the doctrine of unjust enrichment, refund will be granted to assessee only if assessee had not passed on the tax burden to your customer/client. It will be presumed that assessee has passed on the burden of service tax.
- **Penalties:** Various penalties have been provided under the Act. The penalties can be imposed by Central Excise Officers. There is no provision for prosecution under the Act.
- **Role of Company Secretaries:** The educational background, knowledge, training and exposure that a Company Secretary has, makes him a versatile professional capable of rendering a wide range of services to companies of all sizes, other commercial and industrial organizations, small scale units, firms etc.

SELF TEST QUESTIONS

These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.

MULTIPLE CHOICE QUESTIONS

Choose the most appropriate answer from the given options in respect of the following:

1. What would be the value of taxable service, if gross amount charged by a service provider on 5th March, 2015 is ₹ 9,000 –
 - (a) ₹8,010
 - (b) ₹ 8,160
 - (c) ₹9,000
 - (d) ₹8,100.

2. If Radha has collected any amount of service tax from Bholu which is not required to be collected, Radha shall pay the amount so collected to –
 - (a) Bholu
 - (b) The Central Government
 - (c) Keep it with himself
 - (d) None of the above.

3. E-payment of service tax is compulsory in the case of of assessee –
 - (a) who has paid service tax in preceeding financial year equal to atleast ₹10 lakh
 - (b) who has paid service tax in preceeding financial year equal to atleast ₹ 40 lakh
 - (c) who has paid service tax in preceeding financial year equal to atleast ₹ 50 lakh
 - (d) all the assessee

4. Upto what amount, the value of all taxable services provided by a service provider during a financial year is exempt from payment of service tax –
 - (a) ₹4 lakh
 - (b) ₹ 8 lakh
 - (c) ₹10 lakh
 - (d) ₹12 lakh.

5. If a corporate assessee has paid ₹ 15,000 as excess service tax during the previous half-year ending period, this excess amount can be adjusted against its subsequent tax liability –
 - (a) Equally every month
 - (b) Equally per quarter
 - (c) Equal to the service tax liability
 - (d) Equally on half-yearly basis.

TRUE AND FALSE

1. Recovery and adjustment of service tax means the same thing.
2. Return of service tax is required to be filed by every assessee in Form No. ST 3.
3. Registration is mandatory under the service tax.
4. No service tax is payable on free services.

FILL IN THE BLANKS

1. Under service tax rules, every assessee is required to furnish to _____ at the time of filing his return for the first time a list of all accounts maintained in relation to the service tax.
2. Service tax return can be revised within a period of _____ from the date of submission of return.
3. The application for registration shall be made within a period of _____ of commencement of business by an input service provider.
4. Due date for payment of service tax in the case of individual assessee is _____ immediately following the quarter of the financial year except in case of last quarter.

ELABORATIVE

1. What are the various provisions relating to payment of service tax? Explain.
2. What are the provisions regarding penalties under service tax in the following cases :
 - (a) Failure to take registration.
 - (b) Failure to keep books of account.
 - (c) Failure to produce accounts and documents.
3. "The value of any taxable service shall be the gross amount charged by the service provider for such service rendered by him". In the light of this statement, explain how the value of taxable service is determined.
4. Briefly state the provisions relating to the procedure of registration under the service tax.
5. What are the due dates for payment of service tax by different assessees ?
6. Indicate the amount of interest payable for late payment of service tax and the amount of penalty payable for late filing of return of service tax.
7. Explain the provisions regarding submission of return under service tax.
8. What is the basis of calculation of service tax payable ? Explain the provisions governing valuation of taxable services.
9. "Service tax is generally payable by the service provider, but there are certain situations in which service receiver is liable to pay service tax." Explain.
10. Discuss 'advance ruling in service tax'.
11. Explain the provisions regarding service tax on Company Secretaries.

Lesson 19

Value Added Tax – Introduction, Computation and Other Procedural Aspects

LESSON OUTLINE

- Introduction
- VAT Regime
- Registration
- Composition Scheme of VAT
- Tax Invoice
- Advantages
- Variants of VAT
- Computation of VAT
- Exempted sale
- Zero Rating
- Credit and set-off under VAT
- Tax on Work Contract
- Assessment
- VAT Audit Returns
- Appeals, revision and appearances
- Central Sales Tax
- Distinction between CST and VAT
- Goods and Service Tax
- Lesson Round Up
- Self Test Questions

LEARNING OBJECTIVES

Value Added Tax (VAT) is a multi point tax added to the goods at each step of the production and distribution process. Ever since 1954, when the Value added tax was first introduced in France, it has spread to over 160 countries in the world. In India, the Committee of Finance Minister (in 1995 and 1998) had put forward recommendations to replace sales tax by Value Added Tax (VAT).

One of the reasons underlying the shift to VAT regime was to do away with the distortions in our earlier tax structure. Since, VAT is a multi-stage tax levied at each stage of the value addition chain, with a provision to allow input tax credit (ITC) on tax paid at an earlier stage.

Unlike service tax, VAT is governed by the State Government by separate VAT Act passed by each of the state under the guidelines issued by an Empowered Committee of State Finance Ministers to ensure uniformity. Therefore, the procedure for VAT Registration, the VAT Rates, the procedure for VAT payment, deadline for VAT Return Filing and other modalities differ from State to State.

At the end of this lesson, you will

- Have an overview of the history and procedural aspects of VAT
- Understand the basic concepts of VAT
- Understand the procedural aspects of VAT
- Learn the basic concepts of CST and GST.

VAT is a multi-stage tax on goods that is levied across various stages of production and supply with credit given for tax paid at each stage of Value addition. VAT is the most progressive way of taxing consumption rather than business.

INTRODUCTION

The Value Added Tax (VAT) in India is a state level multi-point tax on value addition which is collected at different stages of sale with a provision for set-off for tax paid at the previous stage i.e., tax paid on inputs. It is to be levied as a proportion of the value added (i.e. sales minus purchase) which is equivalent to wages plus interest, other costs and profits. It is a tax on the value added and can be aptly defined as one of the ideal forms of consumption taxation since the value added by a firm represents the difference between its receipts and cost of purchased inputs. Value Added Tax is commonly referred to as a method of taxation whereby the tax is levied on the value added at each stage of the production/distribution chain. As against the existing regime under which goods are charged to tax at single point, or multi-point on the value of the goods, without any credit being given for taxes paid at the preceding stages. VAT intends to tax only the value added at each stage. By ensuring that only the incremental value is taxed, VAT aims at eliminating the cascading effect of taxes on commodities, and thereby reduces the eventual cost to the consumer.

It is one of the most radical reforms, albeit only in the sphere of State level taxes on sale, those have been initiated for the Indian economy after years of political and economic debate aiming to replace complicated tax structure and do away with the fraudulent practices.

With the objective to introduce State-Level VAT in India in the Year 1992, the Government of India constituted a Tax Reform Committee headed by Dr. Raja J. Chelliah. In 1993, the Committee recommended the introduction of VAT in place of existing tax system. Thereafter, the Government appointed NIPFP (National Institute of Public Finance and Policy), New Delhi, as the Nodal Agency to work out the modalities of VAT.

The first preliminary discussion on State-Level VAT took place in 1995, in a meeting of Chief Ministers convened by Dr. Manmohan Singh, the then Union Finance Minister. In this meeting, the basic issues on VAT were discussed in general terms and recommendation to replace sales tax by Value Added Tax was put forth. After this, periodic interactions of State Finance Ministers were held.

Thereafter, on November 16, 1999, in a significant meeting of all Chief Ministers convened by Shri Yashwant Sinha, the then Union Finance Minister, three important decisions were taken. First, before the introduction of State-level VAT, the unhealthy sales tax rate "war" among the States would have to end and sales tax rates would need to be harmonized by implementing uniform floor rates of sales tax for different categories of commodities with effect from January 1, 2000. Second, in the interest of harmonization of incidence of sales tax, the sales-tax related industrial incentive schemes would also have to be discontinued with effect from January 1, 2000. Third, on the basis of achievement of the first two objectives steps would be taken by the states for introduction of State-level VAT after adequate preparation.

For implementing the VAT, an Empowered Committee of State Finance Ministers was set-up. Thereafter, this Empowered Committee met frequently and got full support from the State Finance Ministers, the Finance Secretaries and the Commissioners of Commercial Taxes of the State Governments as well as Senior Officials of the Revenue Department of the Ministry of Finance, Government of India. Through repeated discussions and collective efforts of all, it was possible to achieve remarkable success within a period of about one and half years. After reaching this stage, steps were initiated for the systematic preparation for the introduction of State-Level VAT.

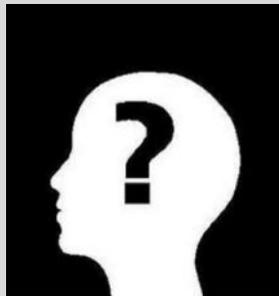
Along with these measures ensuring convergence on the basis issues on VAT, steps were taken for necessary training, computerization and interaction with trade and industry, particularly at the State level. The conference of Chief Minister and the Finance Minister proposed introduction of VAT with uniform floor rates and the Empowered Committee of State Finance Ministers on February 8, 2003 again endorsed the suggestion that all the State legislations on VAT should have a certain minimum set of common features and most of the States came out with their respective draft legislations. Thereafter, Shri Jaswant Singh the then Union Finance Minister, announced the introduction of VAT from 1st April, 2003 in his 2003-2004 budget speech made on February 28, 2003.

However, owing to some unavoidable circumstances, VAT could not be implemented w.e.f. 1st April, 2003, and the date of introduction of VAT was thus revised to 1st June, 2003

Despite all obstacles, Haryana implemented VAT w.e.f. April 1, 2003 and became the first state in India to implement VAT.

With the introduction of VAT, all sales or purchases of goods made within the State except the exempted goods are subjected to VAT as a consumption tax.

Test Your Knowledge



1. Which of the following agency was appointed as the Nodal Agency to work out the modalities of VAT?

- (a) National Institute of Public Finance and Policy
- (b) National Institute of Finance
- (c) Institute of Financial Planning
- (d) Finance Ministry

WHITE PAPER

The Empowered Committee of the State Finance Ministers constituted by the Ministry of Finance, Government of India, on the basis of the resolution adopted in the conference of the Chief Ministers on November 16, 1999 under the Chairmanship of Dr. Asim Dasgupta came out with a White Paper on State-Level VAT, which was released on January 17, 2005 by Shri P. Chidambaram, The Finance Minister, Government of India. On this occasion the Finance Minister remarked :

“This is the first document which has been collectively prepared and put out to the people of the country by the Finance Ministers of all States.... We have formed the rainbow coalition to undertake one of the biggest tax reforms.”

This Paper consists of three parts. In Part I, justification of VAT and the background has been mentioned. In Part II, main design of VAT as evolved on the basis of consensus among the States through repeated discussions in the Empowered Committee has been elaborated. In Part III, other related issues for effective implementation of VAT have been discussed.

In his speech introducing Union Budget 2005-06, the Hon'ble Finance Minister also said, “In a remarkable display of the spirit of cooperative federalism, the States are poised to undertake the most important tax reform ever attempted in this country. All States have agreed to introduce the Value Added Tax with effect from 1st April, 2005. VAT is a modern, simple and transparent tax system that will replace the existing sales tax and eliminate the cascading effect of sales tax.

In the medium to long term, it is my goal that the entire production/distribution chain should be covered by a national VAT, or even better, a goods and services tax, encompassing both the Centre and the States. The Empowered Committee of the State Finance Ministers, with the solid support of the Chief Ministers, has laboured through the last seven years to arrive at a framework acceptable to all States. The Central Government has promised its full support and has also agreed to compensate the States, according to an agreed formula, in the event of any revenue loss. I take this opportunity to pay tribute to the Empowered Committee, and wish the States success on the introduction and implementation of VAT”.

Test Your Knowledge



2. Which of the following was the first State to implement VAT w.e.f. April 1, 2003?

- (a) Maharashtra
- (b) Punjab
- (c) Haryana
- (d) Karnataka

KELKAR COMMITTEE REPORT

Considering that the implementation of VAT was closely linked to the administration of other indirect taxes and impacts the tax to GDP ratio, it had become necessary to examine the relevant issues. In this direction the Task Force has had the benefit of meeting with the Empowered Committee of the Finance Ministers of the States, constituted for the purpose of implementing a nationwide State-level VAT. The Empowered Committee experimented on federal fiscal planning and achieved much in terms of building a consensus on many of the critical issues relating to implementation of VAT in a relatively short spell of time. Most countries have taken several years to implement VAT. Decisions were taken on the important features of VAT relating to replacement of the State Tax levied by the States though some other local taxes like octroi, mandi, cess etc. may continue.

It was recommended that a public awareness programme shall be started jointly by the Central Government and the State Governments. The Central Government shall extend financial support for this, if needed. Since the State VAT is expected to be implemented from 1.4.2003, it was also necessary that the public awareness programme should be implemented at the earliest.

One of the issues which had impact on the transition of VAT was the compensation to be given to the States upon the removal of Sales tax and the introduction of State VAT, in the event the tax revenue drops due to the changeover. In this regard, it had been observed that the experience worldwide has been that a move towards VAT results in higher revenue realization.

During the meetings that the Task Force had with several industry and trade bodies, it was represented that the switch-over to VAT must ensure that the desired benefits were achieved, especially in view of the fact that this switch-over entailed a major overhaul of systems and procedures for business and governments and at substantial expenditure of money, time and effort.

Under the sales-tax structure, there were problems of double taxation of commodities and multiplicity of taxes resulting in a cascading tax burden. As per the earlier structure before a commodity is produced, inputs were first taxed and then after the commodity was produced with input tax load, output was taxed again. This caused an unfair double taxable with cascading effects. In the VAT, a set-off is given for input tax as well as tax paid on previous purchases.

The design of State-level VAT has been worked out by the Empowered Committee through several rounds of discussions and striking a federal balance between the common points of convergence regarding VAT and flexibility for the local characteristics of the States.

The Value Added Tax (VAT) is based on the value addition to the goods and the related VAT liability of the dealer is calculated by deducting input tax credit from tax collected on sales during the payment period (say, a month).

VAT REGIME

- The rates shall be uniform. However, it is possible that items under the exempted category category may be broadly similar across all States.

- Each State has its own VAT Act, Rules, Schedules, and Forms. therefore there will remain differences even in definitions among various Acts.
- Petroleum products, like Aviation Turbine Fuel, Naphtha, etc. used as fuel for running automobiles are brought under VAT, but credit cannot be taken on the tax paid thereon.
- Tobacco, Textiles and Sugar, which were under additional duty in lieu of excise and not under State taxation, are brought into the State Tax net at a rate not more than 4%, thereby integrating these products in the VAT structure.

Test Your Knowledge



4. What is the rate of VAT for precious and semiprecious metals?

- (a) 0%
- (b) 3%
- (c) 4%
- (d) 1%

REGISTRATION

Every dealer up to the retailer level is required to be registered with the Sales Tax department to avail the credit of input tax. However, there is a threshold turnover level. The retailers with turnover below the threshold can opt not to register, but pay a nominal composition tax. However, such dealers are not entitled to take credit of prior stage tax, nor can they pass the credit to their buyers. In effect, the VAT chain breaks at their stage. Those opting not to register under VAT can opt for general registration.

Registration of dealers with gross annual turnover above the threshold limit is compulsory. There is a provision for voluntary registration for dealers with gross annual turnover of less than the threshold limit. All existing dealers will be automatically registered under the VAT Act. A new dealer were allowed 30 days time from the date of his being liable to get registered.

The White Paper specified that registration under the VAT Act shall not be compulsory for the small dealers with gross annual turnover not exceeding Rs. 5 lakh. However, the Empowered Committee of State Finance Ministers has subsequently allowed the States to increase the threshold limit for the small dealers to Rs. 10 lakh, but the concerned State shall have to bear the revenue loss, on account of increase in the limit beyond Rs. 5 lakh.

COMPOSITION SCHEME OF VAT PAYMENT

Small dealers with gross annual turnover not exceeding the threshold limit will not be liable to pay VAT. States will have flexibility to fix threshold limit within ₹10 lakh. Small dealers with annual gross turnover not exceeding ₹25 lakh who are otherwise liable to pay VAT, shall however have the option for a composition scheme with payment of tax at a small percentage of gross turnover. The dealers opting for this composition scheme will not be entitled to input tax credit.

The VAT regime has thus designed composition scheme so that high value taxpayers should not be spared and on the contrary small dealers should be hassle free from compliance procedures. The objective of all such composition schemes is not to burden small dealers by the provisions of record keeping. Therefore, such schemes will generally contain the following features:

- (i) small amount of tax shall be payable;
- (ii) there shall be no requirement to calculate taxable turnover;

(iii) a simple return form to cover longer return period shall be sufficient.

TAX INVOICE

This entire design of VAT with input tax credit is crucially based on documentation of tax invoice, cash memo or bill. Every registered dealer, having turnover of sales above an amount specified, shall issue to the purchaser [who is entitled to tax credit and not to the final consumer] serially numbered tax invoice with the prescribed particulars. This tax invoice will be signed and dated by the dealer or his regular employee, showing the required particulars.

ADVANTAGES

Various advantages of introducing VAT:

- to encourage and result in a better-administered system;
- to eliminate avenues of tax evasion;
- to avoid under valuation at all stages of production and distribution;
- to claim credit on tax paid on inputs at each stage of value addition;
- do away with cascading effect resulting in non distortion of the business decisions;
- to permit to easy and effective targeting of tax rates as a result of which the exports can be zero-rated;
- to ensure to better tax compliance by generating a trail of invoices that supports effective audit and enforcement strategies;
- to contribute to fiscal consolidation for the country. As a steady source of revenue, it shall reduce the debt burden in due course;
- to help our country to integrate better in the WTO regime;
- to stop the unhealthy tax-rate war and trade diversion among the States, which had adversely affected the interests of all the States in the past.

VARIANTS OF VAT

1. Gross Product Variant: Tax is levied on all sales & deductions for tax paid on inputs (excluding capital goods) is allowed. Thus, no deduction is allowed for taxes paid on capital inputs.

2. Income Variant: This allows deduction on purchase of raw materials and components as well as depreciation on capital goods. This method provides incentives to classify purchases as current expenditure to claim set-off.

3. Consumption Variant: Tax is levied on all sales with deduction for tax paid on all business inputs (including capital goods).

METHODS OF COMPUTATION

VAT can be computed by using any of the three methods detailed below:

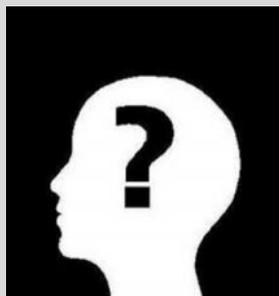
- 1. The Subtraction method:** Under this method the tax rate is applied to the difference between the value of output and the cost of input.
- 2. The Addition method:** Under this method value added is computed by adding all the payments that are payable to the factors of production (viz., wages, salaries, interest payments, etc.).
- 3. Tax Credit method:** Under this method, it entails set-off of the tax paid on inputs from tax collected on sales. Indian States opted for tax credit method, which is similar to CENVAT.

Procedure

The VAT is based on the value addition to the goods and the related VAT liability of the dealer is calculated by:

- Deducting input tax credit from tax collected on sales during the payment period.
- This input tax credit is given for both manufacturers and traders for purchase of input/supplies meant for both sales within the State as well as to the other States irrespective of their date of utilization or sale.
- If the tax credit exceeds the tax payable on sales in a month, the excess credit will be carried over to the end of the next financial year.
- If there is any excess unadjusted input tax credit at the end of the second year then the same will be eligible for refund.
- For all exports made out of the country, tax paid within the State will be refunded in full.
- Tax paid on inputs procured from other States through inter-State sale and stock transfer shall not be eligible for credit.
- VAT has been introduced by in States / UTs. However, Central Sales Tax continues to govern inter-State Sales and Exports.

Test Your Knowledge



3. Under which method is the rate of tax applied to the difference between the value of output and the cost of input?

- (a) Subtraction method
- (b) Addition method
- (c) Tax Credit method
- (d) None of the above

Rates of Tax

Following Types of VAT Rates: As contrasted to the multiplicity of rates under the existing regime, VAT will have following broad rates.

- Exempted for unprocessed agricultural goods, and goods of social importance;
- 1% for gold & silver ornaments, precious and semiprecious stones;
- 4% for inputs used for manufacturing and on declared goods, capital goods and other essential items,
- 20% for demerit/luxury goods; and
- Rest of the commodities will be taxed at a Revenue Neutral Rate of 12.5%.

EXEMPTED SALE

When a certain sale is exempted from tax, the dealer effecting the exempt sale will not be entitled to any VAT credit on the inputs purchased by him. The sale effected by him will also be exempt from any tax. This results in breaking of the VAT chain.

Samples or Gifts

Another example where reversal will be required is when goods are sold as samples or gifts i.e., non-taxable transactions and the input tax credit relating thereto has already been availed against output tax payable on other sale transactions. In such circumstances, the credit earned will be reversed. This is called “Reverse Credit of Input Tax”.

Stock Transfer

A registered dealer may send goods to its branches in other States. This is called 'stock transfer'. Since inter-state stock transfer does not involve sale. Such a transaction is generally not subject to payment of CST. The same position is adopted by different States under the VAT regime. Generally, the tax paid on inputs used in manufacture of finished goods which are stock transferred or purchase of goods which are stock transferred, is available as input tax credit after retention of 2 percent of such tax by the concerned State Government. For example, if the tax paid on input is 12.5%, credit of 10.5% is available. If the tax paid on input was 4%, input tax credit of 2% is available.

ZERO RATING

Zero Rating means that the tax payable on sale of a commodity is fixed at 0%. Though apparently, it looks similar to an exempted transaction, there is a significant difference between the two. In an exempted transaction, the tax paid on input lapses i.e. it cannot be set off while under the zero rated sales, prior stage tax is set off against the 0% tax paid, and effectively the entire tax paid on purchases is eligible for refund. Thus, 'Zero Rated' is advantageous to the dealer as compared to 'exempted sale' transactions. Generally, export sales are zero rated and thereby, exporters are granted refund of taxes paid by them on their inputs. Exporters gain significantly due to the 'Zero Rating'.

Refunds are to be granted by the end of the financial year. Thus, the benefit of zero rating is not immediate, but deferred. Some States have also provided for refund where the tax paid on inputs exceeds the output tax payable and cannot be set off in a given period. In such cases, the excess tax not so set off shall be refunded after adjusting any dues towards interest, penalty, etc., in accordance with the State VAT Act.

CREDIT AND SET-OFF UNDER VAT

VAT aims at providing set-off for the tax paid earlier and this is given effect through the concept of input tax credit.

Input tax credit in relation to any period means setting the amount of input tax by a registered dealer against the amount of his output tax. Tax paid on the earlier point is termed as, "input tax". This amount is adjusted against the tax payable by the purchasing dealer on his sales. This credit availability is called input tax credit.

Input tax is the tax paid or payable in the course of business on purchase of any goods made from a registered dealer of the State.

Output tax means the tax charged or chargeable under the Act, by a registered dealer for the sale of goods in the course of business.

In simple words, input tax is the tax a dealer pays on his local purchases of business inputs which include raw materials, capital goods as well as other inputs used directly or indirectly in his business. Output tax is the tax that a dealer charges on his sales that are subject to tax.

The input tax credit is to be given to both manufacturers and traders for purchase of inputs/ supplies meant for sale within the State as well as to other States, irrespective of when these were utilized or sold. Input tax paid in excess of 2% on stock transfers to other states are also eligible for tax credit. It is also to be noted that in certain cases, partial input tax credit is available in respect of input used for manufacture of exempted goods.

Input tax credit is allowable to a registered dealer for purchase of any goods made within the State from a dealer holding a valid certificate of registration under the Act. Input tax credit on capital goods is available for traders and manufacturers.

No input credit on CST paid on purchases from other states: Central sales tax paid on inter-state purchases is not eligible for being set off against Value Added Tax payable in the state.

Input tax on capital goods: While taxes paid on raw materials and inputs are eligible for set off against taxes on output, taxes paid on capital goods are not eligible for immediate set-off. The reason perhaps is the huge credit that

States may have to grant in cases of capital purchases of large value. Due to this, tax on capital goods may be granted, but over a certain period of time.

Input tax in case of export sales: Export sales are zero rated and thereby exporters are either granted refund of input taxes paid by them or they can adjust such input tax while making domestic sales.

In some cases, the input tax paid and taken credit of, may have to be reversed as such, for example, when the material is consumed for personal purposes and not for business purposes, or when the input including packing materials is used for manufacture and/or sale as exempt goods etc.

TAX ON WORK CONTRACT

The works contracts are quite different from the normal sales. In normal sale there is a transfer of property in definite or ascertained goods. The goods remain same before and after the delivery of the goods. However, in works contracts it does not happen. The goods before the delivery and after the execution of works contracts are different. For example, at the site of construction of a building, before the Construction (works contract) commences, the goods are like bricks, cement, steel etc. but after the Construction a building (immovable goods) comes to an existence. This is often termed as “deemed sales” in the indivisible works contract. Some examples of works contracts are construction of a Building, erection of Plant & Machinery, Processing jobs, Job works, Repair jobs, Electrical Fittings, Annual maintenance Contracts (AMCs) etc.

The Supreme Court of India, in its judgment has confirmed the difference between a normal sale and an indivisible/composite works contract;

“If the thing to be delivered has any individual existence before the delivery as the property of the party who is to deliver it, then it is a sale. If the main object of the work undertaken is not the transfer of a Chattel qua Chattel, the contract is one for work and labour” (Hindustan Shipyard – 119 STC 533-SC).

Further, Supreme Court in its landmark judgment in the case of Gammon & Dunkerely (9 STC 353) held that the states cannot levy the Sales Tax on the indivisible works contracts as there is no sale. After which, the then Finance Ministers of the States requested the then Union Finance Minister to take necessary legal steps so as to facilitate levy Sales Tax on indivisible works contracts.

Finally, the 46th amendment to the Constitution of India has been made on 2nd February, 1983 to add a sub-article (29-4) as under,

“(b) a tax on the transfer of property in goods (whether a goods or in some other form) involved in the execution of a works contract”.

After the said amendment to the Constitution, the States were empowered to levy Sales Tax / Works Contract Tax on such sales, called as “Deemed sales” involved in the execution of works contract. However, the tax could be levied only on the ‘Material Value’ of the works contract. The High Courts and the Supreme Court have suggested methods on “How to arrive at a material value from the total Contract Price”. (Gannon Dunkerly’s SC Judgement 1993) (88 STC 204).

After the implementation of VAT, the VAT States have incorporated in their respective State VAT Acts, the provisions of ‘Works Contracts’ for levying the Sales Tax /VAT on the deemed sales involved in the execution of works contracts i.e VAT on the Works Contract transactions (Deemed Sales). Just like sales tax, VAT is leviable on the ‘Material Value’ of the Contract. However, under VAT, the advantage to the contractors is that, they can avail VAT set off / Credit of the VAT paid to the local vendors, which was not available in the Pre-VAT Regime.

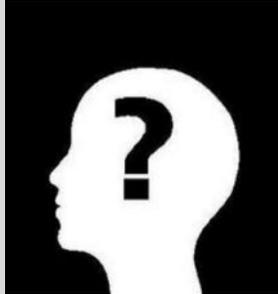
Certain Works Contracts like construction contracts, civil Jobs, Annual Maintenance Contracts (AMCs) involve the transfer of property in goods (sale of goods / materials) as well as rendering of Taxable Service because of which both VAT & Service Tax are applicable on the Contract price. Thus, the both the state & the Central Governments levy VAT & Service tax on the same taxable base i.e. Contract Price, respectively. However, under service tax laws, the abatements are available for specific Taxable Services towards the value of material / goods involved in the same.

Inter-stare works contract

When the Contractor dispatches his goods from one State to another under an indivisible works contract, it is an interstate works contract. For example, a Manufacturer in Mumbai dispatches his own material to a processor in Surat and the processor returns back the processed material back to the Mumbai Manufacturer.

The Central Government amended the definition of 'Sale' under the Central Sales Tax Act, 1956 from 11.5.2002 with the said amendment, the states were empowered to levy CST on the inter-state works contract. In interstate works contracts too, the CST is payable only on the 'Material Value/Price' of the Contract.

Test Your Knowledge



5. Which of the following tax is paid by the dealer on his/her local purchases of business inputs?

- (a) Input tax
- (b) Output Tax
- (c) First Point Tax
- (d) Last Point Tax

ASSESSMENT

The VAT liability is self-assessed by the dealer himself. It pre-supposes that all the dealers act in honest manner. Scrutiny may be done in cases where there are doubts arising due to under reporting of transactions or evasion of tax.

SCRUTINY PROCESS AND VAT AUDIT

There is no compulsory assessment at the end of each year. Correctness of self-assessment is checked through a system of VAT Audit (departmental audit). It is a sample audit where, a certain percentage of the dealers are taken up for audit every year on a scientific basis. In case of detection of evasions during the course of audits, the concerned dealer may be taken up for audit for previous periods.

The Audit Wing is delinked from tax collection wing to remove any biasedness. The audit team conducts its work in a time bound manner to complete the same within six months. The audit report is transparently sent to the dealer as well.

Simultaneously, a cross-checking through computerized system is done on the basis of coordination between the tax authorities of the State Governments and the authorities of Central Excise to compare constantly the tax returns and set-off documents of VAT system of the States and those of Central Excise. This comprehensive cross-checking system helps in reduction of tax evasions and also lead to significant growth of tax revenue.

In many states other than the Departmental Audit, audit of accounts by Accountant is made mandatory where the turnover exceeds the prescribed limit.

RETURNS

The return filing procedures are designed in such a way that the compliance costs are minimum. A registered dealer is required to file a return along with the requisite details such as output tax liability, value of input tax credit, and payment of VAT.

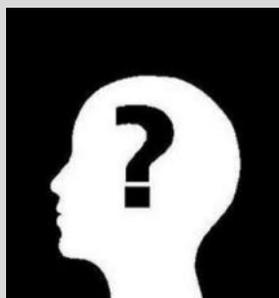
Under VAT there exist simple forms of returns, which shall be filed monthly or quarterly or annually as per the provisions of various State laws. Returns shall be accompanied with the challans evidencing payment of tax. In certain States, returns cum challan forms have been devised. In those cases, the returns along with the payment have to be filed with the treasury.

Every return so furnished is required to be scrutinized expeditiously within the prescribed time limit from the date of filing the return. If any technical mistake is detected on scrutinizing, the dealer shall be required to rectify the defect or pay the deficit respectively.

APPEALS, REVISION AND APPEARANCES

In India there is no central Value Added Tax Act till now. Further, there is no consensus among states to introduce a unique Act which will apply to all states and union territories without any reservation and constraints. The eventuality is being separate states have their own VAT Act. Since different states and union territories have their own VAT Act and Rules, the appeal, revision and other relevant issues are explained differently. As a result any representative provisions relating to appeals, revision and appearances cannot be stated. It is worth mentioning that some states have recognised company secretaries as authorised representative to represent their client's case before any VAT authority. Some other states are in the process of recognizing company secretaries as professionals who can appear before their respective VAT authorities.

Test Your Knowledge



6. What are some of the advantages of introducing VAT?

- (a) Encouraging and resulting in a better-administered system
- (b) Avoiding under valuation at all stages of production and distribution
- (c) Retaining cascading effect resulting in non distortion of the business decisions
- (d) Claiming credit on tax paid on inputs at each stage of value addition

CENTRAL SALES TAX

Central sales tax (CST) is a tax on inter-state sales of goods levied by the Central Government of India. It extends to the whole of India. The Central Sales Tax is levied by the Central Government but, it is collected by that state government from where the goods were sold. The tax thus collected is given to the same state government which collected the tax. In case of Union Territories the tax collected is deposited in the consolidated fund of India.

Every dealer who makes an inter-state sale must be a registered dealer and a certificate of registration has to be displayed at all places of his business. There is no exemption limit of turnover for the levy of central sales tax.

CST is applicable only in the case of inter-state sales and not on sales made within the state or import/export of sales. The interstate nature of transaction is to be determined as defined in Section 3(a)/(b) the Central Sales Tax Act. If sale/purchase results in the movement of goods from one State to another State, it is an interstate sale. Thus, consignments to agents or transfer of goods to branch or other offices are not a sale. A sale, effected by transfer of documents of title to goods when goods are in inter-state movement, is also an inter-state sale.

However, goods which are sold within a state, but while travelling through another state is not considered as inter-state sales.

Under this act, the goods have been classified as:

- Declared goods or goods of special importance in inter-state trade or commerce; and
- Other goods.

The rates of tax on declared goods are lower as compared to the rate of tax on goods in the second category.

The rules regarding submission of returns, payment of tax, appeals etc. are not given in the Act. For this purpose, the rules followed by a state in respect of its own sales tax law shall be followed for purpose of this Act. Even though

the central sales tax has been framed by the central government, the state governments are allowed to frame such rules, subject to such notification and alteration as it deem fit.

SOME IMPORTANT DEFINITIONS

Declared goods [section 2(c)]

It includes those goods which are considered to be of special importance in interstate trade or commerce under section 14. Some of these goods is –

- cereals
- coal
- cotton
- crude oil
- jute
- oilseeds
- Pulses
- sugar

Goods [section 2(d)]

This includes all material articles or commodities and all kind of Movable property excluding newspapers, actionable claims, stocks, shares and securities. If newspapers are sold as scrap then, it will be charged to central sales tax if it is an inter- state sale.

Sale [section 2 (g)]

It means transfer of property in goods by one person to another for cash or for deferred payment or for any valuable consideration. However, a mortgage, hypothecation of, or a charge, or pledge on goods is not included.

Essential elements of sale:

- goods should be transferred
- general property in good should be transferred
- price must be paid
- there must be a seller and a buyer
- there must be a valid consent of both buyer and seller

Sale price [section 2 (h)]

It means amount payable to a dealer as consideration for the sale of any Goods which includes the following –

- central sales tax
- excise duty
- cost of packing material
- packing charges
- bonus given for effecting additional sales
- insurance charges, if goods are insured by seller

- freight charges if, not shown separately
- any sum charged for anything done by the dealer in respect of goods at the time of or before delivery thereof;

Sale price does not includes the following -

- freight or transport charges for delivery of goods, if charged separately
- cost of installations, if charged separately
- cash discounts for making timely payments.
- trade discount
- insurance charges of goods insured on behalf of the buyer
- goods rejected
- goods returned within 6 months of the date of sale

Turnover [section 2 (j)]

It is the aggregate of the sale prices received and receivable by the dealer In respect of sales of any goods in the course of inter-state trade or commerce made during a prescribed period. Prescribed period is the period in which sales tax return is filed.

Section 4 of the CST Act determines situs of sale: i.e. State in which the sale takes place. Accordingly the situs is to be decided on the location of the goods at the time of sale.

Section 5 defines the sale/purchase taking place in course of import/export and such transactions are immune from levy of any tax by State Government or Central Government. [(Sections 5(1), 5(2) and 5(3)].

The sale of goods to any exporter for the purpose of complying with the pre-existing order and covered by Section 5(3) is also exempt as deemed export. These sales are to be supported by Form H along with export order details and copy of bill of lading etc. as evidence of actual export.

Determination of Turnover

As per section 8 (A) , to determine turnover following amounts will be deducted –

- Central sales tax
- Sale price of goods returned within six months
- Other items as the central government may notify

Central Sales Tax

If tax forms a part of aggregate sales price then amount of tax collected by a registered dealer shall be deducted from his gross turnover. Tax is calculated by the following formula.

$$\frac{\text{Rate of tax} \times \text{Aggregate of sales price}}{100 \div \text{Rate of tax}}$$

If the turnover of a dealer is taxable at different rates, then above formula shall be applied separately in respect of each part of the turnover liable to a different rate of tax.

Registration of Dealers

According to Section 7, registration of dealer can be done in any of the two ways-

1. Compulsory registration

2. Voluntary registration

WITHDRAWAL OF CENTRAL SALES TAXES

Presently, CST continues, though it is proposed to be phased out in due course. The provisions in respect of Central Tax are summarized below :

- (i) CST may go after decision in respect of loss of revenue to States is taken and comprehensive Taxation information System is put in place [Para 4.3 of White Paper on State-Level VAT]. Note that CST has been reduced to 3% w.e.f. 1.4.2007, and further reduced to 2% w.e.f. 1.6.2008.
- (ii) The forms under CST, i.e., C, E-I/E-II and H are still being used however, Form No. D has been abolished w.e.f. 1.4.2007.
- (iii) There is no credit of CST paid on inter-state purchases [Para 2.6 of White Paper on State-Level VAT]
- (iv) If goods are sent on stock transfer outside the State, input tax paid in excess of 2% is allowed as credit. In other words, input tax to the extent of 2% is not allowed as credit if goods are sent inter-state.

DISTINCTION BETWEEN CENTRAL SALES TAX (CST) AND VAT

S.No.	CST System	VAT System
1.	Earlier the local sales tax was based on single point tax. The single point tax was either at first point or at last point. The First point tax (FPT) was convenient to the revenue but had inbuilt cascading effect. The Last Point Tax (LPT) is an ideal system but it was evasion prone. Creates loss of revenue to the government.	The VAT system on the other hand reduces the disadvantages of both FPT and LPT and at the same time draws the advantages from both. The VAT system obviously is more transparent, uniform and less prone to tax evasion.
2.	States continue to tax declared goods on single at point basis under the existing system subject to a rate of 2%.	Under VAT, declared goods will also suffer tax at multiple levels
3.	Under the existing Sales tax systems, inputs used for manufacture, whether capital or otherwise, are eligible for concessional rate of tax on furnishing the requisite forms.	However, under the VAT system, there is no place for concessions. Goods will be taxed at their respective rates, of course, with a provision for set off in future. There will be no incentive schemes under VAT, barring those carried forward from the existing system.
4.	The exports are exempt from tax and supplies to exporters i.e. penultimate sales are also exempt subject to certain conditions.	Under VAT, exports are zero rated i.e. they are not exempted, giving rise to refund of tax paid on inputs.
5.	There is no set off of prior taxes paid under the existing system of Single Point Tax and Multi-point tax.	In the VAT system, all prior taxes are given setoff against output tax if the sale is not an exempt sale.

The following illustration may show the difference between first point tax and last point tax.

Assume the base price of the commodity is ₹1000 and the government wishes to collect sales tax of 10% on base price i.e. ₹100.

Taxation

First Point Tax (F.P.T.)	₹	Last Point Tax (L.P.T.)	₹
Price paid by A	1,000	Price paid by A	1,000
Tax paid by A	100	Tax paid by A	Nil
Total	<u>1,100</u>	Total	<u>1,000</u>
Margin @ 50% added by A	<u>550</u>	Margin added by A @50%	<u>500</u>
Price paid by B	1,650	Price paid by B	1,500
Margin @ 50% added by B	825	Margin @50% added by B	750
	<u>2,475</u>		<u>2,250</u>
Tax	Nil	Tax	100
Price paid by Consumer	2,475	Price paid by Consumer	2,350

In both the cases as above, the tax collected by the government is ₹ 100 but consumer would pay more under F.P.T. than under L.P.T. Under VAT, the consumer would pay the same amount as under F.P.T. but the government would get the tax of ₹ 225/- instead of ₹ 100/-

GOODS AND SERVICE TAX

One of the biggest taxation reforms in India, the "Goods and Service Tax (GST)" is all set to integrate State economies and boost overall growth. The GST is a comprehensive destination based tax levy on manufacture, sale and consumption of goods and services at a national level which will subsume other indirect taxes such as octroi, Central Sales Tax, State-level sales tax, entry tax, stamp duty, telecom licence fees, turnover tax, tax on consumption or sale of electricity, taxes on transportation of goods and services, etc. thus avoiding multiple layers of taxation that currently exist in India.

Introduction of the Value Added Tax (VAT) at the Central and the State level has been considered to be a major step and important breakthrough in the sphere of indirect tax reforms in India. If the VAT is a major improvement over the pre-existing Central excise duty at the national level and the sales tax system at the State level, then the Goods and Services Tax (GST) will indeed be a further significant improvement the next logical step towards a comprehensive indirect tax reforms in the country.

"GST is expected to play a transformative role in the way our economy functions. It will add buoyancy to our economy by developing a common Indian market and reducing the cascading effect on the cost of goods and services. We are moving in various fronts to implement GST from the next year"

-Arun Jaitley, Budget Speech, 2015

GST is expected to create a single, unified Indian market to make the economy stronger. The introduction of Goods and Services Tax (GST) at the Central level will not only include comprehensively more indirect Central taxes and integrate goods and service taxes for the purpose of set-off relief, but may also lead to revenue gain for the Centre through widening of the dealer base by capturing value addition in the distributive trade and increased compliance.

Despite the success of VAT, there are still certain shortcomings in the structure of VAT both at the Central and at the State level. The shortcoming in CENVAT of the Government of India lies inter-alia in several taxes which are in the nature of indirect tax on goods and services, such as luxury tax, entertainment tax, etc., and yet not subsumed in the VAT and thus keeping the benefits of comprehensive input tax and service tax set-off out of reach for manufacturers/dealers.

GST is not simply VAT plus service tax rather it is an improvement over the previous system of VAT and disjointed service tax. The essence of GST is that the cascading effects of both CENVAT and service tax will be removed with set-off, and a continuous chain of set-off from the original producer's point and service provider's point upto the retailer's level will be established which will reduce the burden of all cascading effects. The GST may usher in the possibility of a collective gain for industry, trade, agriculture and common consumers as well as for the Central Government and the State Governments. The GST may, indeed, lead to the possibility of collectively positive-sum game.

Important Events

28th February, 2007: An announcement was made by the then Union Finance Minister in the Central Budget (2007-08) to the effect that GST would be introduced with effect from April 1, 2010.

10th May, 2007: The Empowered Committee of State Finance Ministers had set up a Joint Working Group which submitted a report on a model and road map for GST.

30th April, 2008: After accommodating the views of the States appropriately on this report, the views of the Empowered Committee on the model and road map were sent to the Government of India

12th December, 2008: The comments of the Government of India were received

16th December, 2008: These comments were duly considered by the Empowered Committee in its meeting and it was decided that a Committee of Principal Secretaries/Secretaries (Finance/Taxation) and Commissioners of Trade Taxes should consider the comments received from the Government of India and submit its views and also work out the Central GST and State GST rates.

5th and 6th January, 2009: The Committee held detailed deliberations and submitted its recommendations to the Empowered Committee.

21st January, 2009: The Empowered Committee considered the recommendations in its meeting and accepted them in principle. The Empowered Committee also decided to constitute a Working Group consisting of Principal Secretaries/ Secretaries (Finance/Taxation) and Commissioners of Trade Taxes of all States/UTs to give their recommendations on

- (a) the commodities and services that should be kept in the exempted list,
- (b) the rules and principles of taxing the transactions of services including the transactions in inter-State services, and
- (c) finalization of the model suggested for inter-state transaction/movement of goods including stock transfers in consultation with the State Bank of India and some other nationalized banks.

10th February, 2009: The Working Group deliberated on the issues and released First Discussion Paper on GST in India which covered the background, justification and a comprehensive structure of GST model.

22nd March, 2011: The Constitution (One Hundred and Fifteenth Amendment) Bill, 2011 to give concurrent taxing powers to both the Union and States was introduced. The bill suggested the creation of Goods and Services Tax council and a Goods and Services Tax Dispute Settlement Authority. However, the bill was lapsed.

28th March, 2013: A not for profit, non-Government, private limited company was incorporated in the name of **Goods and Services Tax Network (GSTN)**. It is a special purpose vehicle setup by the government primarily to provide IT infrastructure and services to the Central and State Governments, tax payers and other stakeholders for implementation of the Goods and Services Tax (GST).

19th December, 2014: The Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014 was introduced in the Lok Sabha on December 19, 2014 by the Minister of Finance, Mr. Arun Jaitley. The Bill seeks to amend the Constitution to introduce the goods and services tax (GST) and subsume state value added tax, octroi and entry

tax, luxury tax, etc. The Bill proposes to insert a new Article in the Constitution to give the Central and State governments the concurrent power to make laws on the taxation of goods and services. It also proposes compensations to states and provides that Parliament may, by law, provide for compensation to states for revenue losses arising out of the implementation of the GST, on the GST Council's recommendations.

28th February, 2015: The Finance Minister reaffirms the introduction of this landmark reform with effect from 1st April, 2016.

17th March, 2015: To bring states on board for rollout of GST by 2016-17, the Cabinet approved the release of Rs 33,000 crore in tranches to states and Union Territories to compensate them for revenue loss on account of cut in Central Sales Tax for three financial years.

Highlights of GST Bill, 2014

- The Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014 was introduced in the Lok Sabha on December 19, 2014 by the Minister of Finance, Mr. Arun Jaitley.
- **Amendment of Constitution:** The Bill seeks to amend the Constitution to introduce the goods and services tax (GST). Consequently, the GST subsumes various central indirect taxes including the Central Excise Duty, Countervailing Duty, Service Tax, etc. It also subsumes state value added tax, octroi and entry tax, luxury tax, etc.
- **Concurrent powers for GST:** The Bill inserts a new Article in the Constitution to give the central and state governments the concurrent power to make laws on the taxation of goods and services.
- **Integrated GST (IGST):** Only the centre may levy and collect GST on supplies in the course of inter-state trade or commerce. The tax collected would be divided between the centre and the states in a manner to be provided by Parliament, by law, on the recommendations of the GST Council.
- **GST Council:** The President must constitute a Goods and Services Tax Council within sixty days of this Act coming into force. The GST Council aim to develop a harmonized national market of goods and services.
- **Composition of the GST Council:** The GST Council is to consist of the following three members: (i) the Union Finance Minister (as Chairman), (ii) the Union Minister of State in charge of Revenue or Finance, and (iii) the Minister in charge of Finance or Taxation or any other, nominated by each state government.
- **Functions of the GST Council:** These include making recommendations on: (i) taxes, cesses, and surcharges levied by the centre, states and local bodies which may be subsumed in the GST; (ii) goods and services which may be subjected to or exempted from GST; (iii) model GST laws, principles of levy, apportionment of IGST and principles that govern the place of supply; (iv) the threshold limit of turnover below which goods and services may be exempted from GST; (v) rates including floor rates with bands of GST; (vi) special rates to raise additional resources during any natural calamity; (vii) special provision with respect to Arunachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and (viii) any other matters.
- **Resolution of disputes:** The GST Council may decide upon the modalities for the resolution of disputes arising out of its recommendations.
- **Restrictions on imposition of tax:** The Constitution imposes certain restrictions on states on the imposition of tax on the sale or purchase of goods. The Bill amends this provision to restrict the imposition of tax on the supply of goods and services and not on its sale.
- **Additional Tax on supply of goods:** An additional tax (not to exceed 1%) on the supply of goods in the course of inter-state trade or commerce would be levied and collected by the centre. Such additional tax shall be assigned to the states for two years, or as recommended by the GST Council.

- **Compensation to states:** Parliament may, by law, provide for compensation to states for revenue losses arising out of the implementation of the GST, on the GST Council's recommendations. This would be up to a five year period.
- **Goods exempt:** Alcoholic liquor for human consumption is exempted from the purview of the GST. Further, the GST Council is to decide when GST would be levied on: (i) petroleum crude, (ii) high speed diesel, (iii) motor spirit (petrol), (iv) natural gas, and (v) aviation turbine fuel.

Note : The GST Bill, 2014 was passed in Lok Sabha on May, 6 2015. However, it is still pending in Rajya Sabha.

LESSON ROUND UP

Background: The Value Added Tax (VAT) in India is a state level multi-point tax on value addition which is collected at different stages of sale with a provision for set-off for tax paid at the previous stage i.e., tax paid on inputs. It is to be levied as a proportion of the value added (i.e. sales minus purchase) which is equivalent to wages plus interest, other costs and profits. It is a tax on the value added and can be aptly defined as one of the ideal forms of consumption taxation since the value added by a firm represents the difference between its receipts and cost of purchased inputs.

Registration: Registration of dealers with gross annual turnover above the threshold limit is compulsory. There is provision for voluntary registration for dealers with gross annual turnover of less than the threshold limit.

Advantages of VAT: Encourage a better-administered system; Eliminate tax evasion; Avoid under valuation; avail tax credit; do away with cascading effect; permits easy and effective targeting of tax rates; ensures better tax compliance; contribution to fiscal consolidation for the country

Variants of VAT : Gross product, income and consumption variant.

Methods of VAT: Subtraction method, Addition method and Tax Credit method.

Rate of VAT:

- Exempted for unprocessed agricultural goods, and goods of social importance),
- 1% for precious and semiprecious metals,
- 4% for inputs used for manufacturing and on declared goods, capital goods and other essential items,
- 20% for demerit/luxury goods and
- The rest of the commodities will be taxed at a Revenue Neutral Rate of 12.5%.

Exempted Sale: When a certain sale is exempted from tax, the dealer effecting the exempt sale will not be entitled to any VAT credit on the inputs purchased by him

VAT Credit: VAT aims at providing set-off for the tax paid earlier and this is given effect through the concept of input tax credit.

Works Contract Tax: Some contracts are contracts for labour, work or service and not for sale of goods. The VAT is levied on the material value of the contract.

VAT Audit: There is no longer be compulsory assessment at the end of each year. Correctness of self-assessment shall be checked through a system of Department Audit. A certain percentage of the dealers shall be taken up for audit every year on a scientific basis

Filing of Return: The return filing procedures are designed in such a way that the compliance costs are minimum. A registered dealer is required to file a return along with the requisite details such as output tax liability, value of input tax credit, and payment of VAT.

Central Sales Tax: Central sales tax (CST) is a tax on sales of goods levied by the Central Government of India. It extends to the whole of India. Every dealer who makes an inter-state sale must be a registered dealer and a certificate of registration has to be displayed at all places of his business.

Withdrawal of CST: Presently, CST will continue, though it is proposed to be phased out in due course.

Goods and Service Tax: The GST is a comprehensive destination based tax levy on manufacture, sale and consumption of goods and services at a national level which will subsume other indirect taxes such as octroi, Central Sales Tax, State-level sales tax, entry tax, stamp duty, telecom licence fees, turnover tax, tax on consumption or sale of electricity, taxes on transportation of goods and services, etc. thus avoiding multiple layers of taxation that currently exist in India.

SELF TEST QUESTIONS

These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.

MULTIPLE CHOICE QUESTIONS

Q.1 On the recommendation of which Committee, VAT was levied in India:

- (a) Kelkar Committee
- (b) Chelliah Committee
- (c) Naresh Chandra Committee
- (d) Justice Verma Committee

Q.2. VAT is a:

- (a) First Stage tax
- (b) Last Stage tax
- (c) Multi stage tax
- (d) Single stage tax as per the option of the assessee

Q.3. Which out of the following was first State to implement VAT in India:

- (a) Delhi
- (b) Haryana
- (c) Uttar Pradesh
- (d) Maharashtra

Q.4. What is the rate of VAT for precious and semiprecious metals?

- (a) 0%
- (b) 3%
- (c) 4%
- (d) 1%

Q.5. X a dealer at Mumbai purchased goods from dealer Y of Mumbai for Rs. 13,50,000 including VAT @ 12.5%. X earns a profit @ 25% on the cost and sold the same goods to a retailer Z. Compute the amount of VAT payable by X.

- (a) Rs. 37,500

- (b) Rs. 1,50,000
- (c) Rs. 1,87,500
- (d) Nil

Q.6. Which of the following dealer is allowed to opt for composition scheme?

- (a) Dealer selling goods within the State and not exceeding the specified limit of turnover
- (b) Dealer who makes inter state purchases or sales exceeding the specified turnover limit
- (c) Dealer who does not wants to issue tax invoice
- (d) None of the above

Q.7. Which of the following is not a method of computation of VAT:

- (a) Addition method
- (b) Invoice method
- (c) Substraction method
- (d) Gross product

Q.8. In case of zero rated goods, input tax credit isand in case of exempted goods, input tax credit is.....

- (a) Allowed, Allowed
- (b) Allowed, Not allowed
- (c) Not allowed, Not allowed
- (d) Not allowed, Allowed

Q.9. Under which method is the rate of tax applied to the difference between the value of output and the cost of input?

- (a) Subtraction method
- (b) Addition method
- (c) Tax Credit method
- (d) None of the above

Q.10. If goods are purchased by Mumbai dealer from Delhi for Rs. 1,02,000 which includes CST of Rs. 2,000, Delhi dealer will get input tax credit of:

- (a) Nil
- (b) Rs. 2,000
- (c) Rs. 1,02,000
- (d) Rs. 4,000

TRUE AND FALSE

1. Value added tax (VAT) is levied by the Central Government.
2. VAT is a multi-point tax.
3. VAT system has single fixed rigid tax rate for all states.

4. VAT system is followed by all states in India.
5. Registration of dealer is mandatory under VAT.
6. Input VAT credit is available on inter-state purchases.
7. Haryana was the first state to implement VAT in India.
8. Zero-rated sale is advantageous to the dealer compared to exempted sale transactions.
9. Stock/consignment transfers are exempt from VAT.

ELABORATIVE

1. What is 'white paper'? What are the different parts of white paper under value added tax (VAT)?
2. Explain the procedure of computation of VAT liability of a dealer.
3. Explain the audit procedure applicable under the VAT system.
4. How is the value added tax (VAT) structure an improvement over the sales tax system?
5. "Input tax credit is generally given for the entire VAT paid within the State on purchases of taxable goods meant for re-sale or manufacture of taxable goods." Explain.
6. Discuss the provisions of registration under VAT.
7. How would you take input tax credit when goods purchased are transferred by the dealer to his branch in any other State?
8. "A registered dealer can set-off the amount of input tax against the amount of his output tax." Explain.
9. Explain the procedure of registration under 'value added tax' (VAT).
10. In what purchases input tax credit is not allowed under VAT?
11. What are the deficiencies in the design of VAT that has been adopted by the States in India? Give your opinion.
12. "Tax credit or invoice method has been adopted universally because of the inherent advantages in the credit method of calculating tax liability." Explain.
13. Who is liable to pay VAT? Discuss the advantages of introduction of VAT in India.
14. Discuss, with suitable example, various methods for computation of VAT liability.

PRACTICAL QUESTIONS

1. Pusha Traders have provided the following information relating to purchase and sales for the month of July, 2015 :

Purchases :

Product "A" total cost ₹1,80,000, rate of VAT 4%.

Product "B" total cost ₹2,60,500, rate of VAT 12.5%.

Sales :

Product "A" total sales ₹2,40,000, rate of VAT 4%.

Product "B" total sales ₹2,10,000, rate of VAT 12.5%.

On the basis of above information, compute eligible input tax credit and value added tax payable for the month.

2. Suresh, a trader sells entire raw material to a manufacturer of finished products in the same State. He buys his stock in trade from other States as well as from the local markets. Following transactions took place during the financial year 2015-16 :

Cost of materials purchased from other States including central sales tax @2% ₹3,06,000

Cost of local materials including VAT ₹6,75,000

Other expenditure includes storage, transport, interest, loading and unloading and profit earned by him ₹2,62,500

Calculate VAT and invoice value charged by him to the manufacturer. Assume the rate of VAT @ 12.50%.

ANSWERS/HINTS

Multiple choice question

(1) a, (2) c, (3) b, (4) d, (5) a, (6) a, (7) d, (8) b, (9) a, (10) a

True and False

(1) False; (2) True; (3) False; (4) True; (5) False; (6) False; (7) True; (8) True; (9) True

Practical Questions

(1) Input Tax Credit – ₹ 3,913 / Tax Payable – Nil (2) VAT Payable – ₹ 71,063 / Invoice Value – ₹ 13,14,563.

Test Your Knowledge

1. (a); 2. (c); 3. (a); 4. (d); 5. (a) and 6. (a), (b) & (d)

SUGGESTED READINGS

- 1. Dr. V.K. Singhanian : Students Guide to Income-tax; Taxmann Publications Pvt. Ltd., New Delhi.
- 2. Girish Ahuja and Ravi Gupta : Systematic Approach to Income-tax and Sales-tax; Bharat Law House, New Delhi.

Lesson 20

VAT provisions in India and VAT System in other Countries and Scope for Company Secretaries

LESSON OUTLINE

- The VAT system
- Some of the states in which VAT is implemented
- Role and Position of Company Secretaries
- Authorized representative before VAT authorities:
 - Certification for professionals
 - Filing of returns:
 - Scrutiny of records and advising to clients
- VAT audit
- VAT in other Countries
 - Australia
 - Canada
 - The European Union
 - France
 - Germany
 - United States
- Lesson Round Up
- Self Test Questions

LEARNING OBJECTIVES

In this chapter the VAT provisions in different countries and corresponding practices in GST Scheme or VAT Scheme has been adequately covered. It has been observed that the standard practice in the developed countries relating to Sales Tax is to follow the GST Scheme. The practice depends upon the peculiarities of individual countries or trade blocks as well as the International Trading System of goods and services. The Chapter also covers the poignant role, the Company Secretaries play in their professional capacity before any VAT authorities in our country. As a matter of fact, it is also being observed that the acceptability of company secretaries before the VAT authorities is increasing day by day.

At the end of this lesson, you will –

- Have a brief overview of state level VAT
- Know the role of Company Secretaries in VAT
- Understand the implementation of VAT worldwide.

The VAT was first introduced at a national level in France in 1954. Its original coverage was limited, and France did not move to a full VAT that reached the broader retail sector until 1968. The second phase of VAT adoption occurred from the late 1980s with the introduction of VAT in some high-profile industrialized countries outside the EU, such as Australia, Canada, Japan, and Switzerland. This phase also witnessed the massive expansion of VAT in transitional and developing economies, most notably in Africa and Asia. In the early 20th century, the VAT has been adopted by more than 140 countries and accounts for approximately 20 percent of worldwide tax revenue.

***– Exploring the Origins and Global Rise of VAT
By Kathryn James***

THE VAT SYSTEM

The VAT system is increasingly applied by different states of our country as an alternative to the existing Sales Tax System. The Empowered Committee on VAT under the Chairmanship of Dr. Ashim Kumar Dasgupta justified the implementation of VAT System in our country. The development of VAT System in our country is not according to the expectation of the Empowered Committee. Initially there was some apprehension in some states of the danger of losing revenue to other states, if VAT was implemented. As a result the development of VAT system took more time than it was reasonably required for. As of now, all states and union territories, adopted the VAT regime.

LEGISLATIVE PROVISIONS IN DIFFERENT STATES RELATING TO THE APPOINTMENT, JURISDICTION AND POWERS OF THE AUTHORITIES

ANDHRA PRADESH

Appointment, jurisdiction and powers of the authority

Under section 3A of the Andhra Pradesh Value Added Tax Act, 2005 the state government may appoint a Commissioner of Commercial Taxes and as many

- Additional Commissioners of Commercial Taxes
- Joint Commissioners of Commercial Taxes
- Appellate Deputy Commissioners of Commercial Taxes
- Deputy Commissioners of Commercial Taxes
- Assistant Commissioners of Commercial Taxes
- Commercial Tax Officers and
- Deputy Commercial Tax Officers

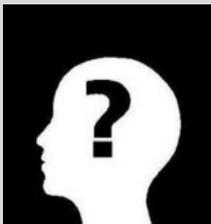
for the purpose of performing the functions respectively conferred on them by or under the Act.

The State Government under Section 3 of the above Act shall appoint an Appellate Tribunal consisting of a Chairman and two other members. To exercise the functions conferred on the Appellate Tribunal by or under the Act. The Chairman shall be a judicial officer not below the rank of a District Judge Super Time Scale/District Judge Selection Grade and of the other two members, one shall be an officer of the State Government not below the rank of a Joint Commissioner of Commercial Taxes and the other shall be an officer of the Indian Revenue services not below the rank of an Additional Commissioner.

Under Section 28 of the Act, a Deputy Commissioner shall have the powers of a Collector under the Andhra Pradesh Revenue Recovery Act, 1864 for the purpose of recovery of any amount due under the Act.

Any Officer of the Commercial Tax Department not lower in rank than an Assistant Commercial Tax Officer under Section 63 of the Act has the power to summon witnesses and production of documents. It has also the power to gather information under any proceedings.

Test Your Knowledge



1. Under Section 28 of the Andhra Pradesh Value Added Tax Act, 2005 the shall have the powers of a Collector under the Andhra Pradesh Revenue Recovery Act, 1864 for the purpose of recovery of any amount due under the Act.

- (a) Deputy Commissioner
- (b) Commercial Tax Officer
- (c) Deputy Commercial Tax Officers
- (d) Commissioners of Commercial Taxes

ARUNACHAL PRADESH

Appointment, jurisdiction and powers of the authority

Under section 67(2) of Arunachal Pradesh Goods Tax Act, 2005 to assist the Commissioner in the administration of this Act –

- (a) the Government may appoint as many Additional Commissioners of Goods Tax as the government thinks necessary; and
- (b) the Commissioner may engage and procure the engagement of other persons to assist him in the performance of his duties (in this Act referred to as “Goods Tax Authorities”).

Under section 67(3), the Commissioner and the Goods Tax authorities shall exercise such powers as may be conferred, and perform such duties as may be required, by or under this Act.

Under section 68(1) the Commissioner shall have responsibility for the due and proper administration of the Act and shall have jurisdiction over the whole of Arunachal Pradesh.

Under section 69(1) subject to certain restrictions and conditions as may be prescribed the Commissioner may delegate any of his powers under this Act to any Goods Tax authorities, except the power conferred by this section.

ASSAM

Appointment, jurisdiction and powers of the authority

Under section 3(2) of the Assam Value Added Tax, 2003, there shall be the following taxing authorities to assist the Commissioner :

- Additional Commissioner of Taxes
- Joint Commissioner of Taxes
- Deputy Commissioner of Taxes
- Assistant Commissioner of Taxes
- Superintendent of Taxes
- Inspector of Taxes
- any other person appointed as such by the Government

The Commissioner shall perform his functions in respect of the whole of the state of Assam. The government may authorize an officer not below the rank of Deputy Commissioner of Taxes to exercise the power and perform the functions of the Appellate Authority.

Under Section 53 of the above Act where an order giving rise to refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Prescribed Authority is of the opinion that the grant of such refund is likely to adversely affect the revenue and that it may not be possible to recover amount later the Prescribed Authority may withhold the refund till such time as he may determine.

Under the above Act section 83, any authority including the Appellate Authority, Revisional Authority and Appellate Tribunal may, on an application or otherwise at any time within three years from the date of any order passed by it, rectify any error apparent on the face of the record.

BIHAR

Appointment, jurisdiction and powers of the authority

Under section 10 of the Bihar Value Added Tax Act, 2005, there shall be the following classes of authorities to be appointed by the State Government, for carrying out the purposes of this Act :

- Commissioner of Commercial Taxes;
- Senior Joint Commissioner of Commissioner of Taxes;
- Joint Commissioner of Commercial Taxes,
- Deputy Commissioner of Commercial Taxes,
- Assistant Commissioner of Commercial Taxes,
- Commercial Taxes Officer;
- Assistant Commercial Taxes Officer,

The authorities appointed under sub-section (1) shall, within such areas or in respect of such transactions falling within an areas as the State Government may, by notification specify, exercise such powers as may be conferred and perform such duties as may be imposed, by or under this Act.

Under section 12 of the above Act the Tribunal constituted under section 9, or the Commissioner or any officer or authority appointed under section 10 or section 86 shall, for carrying out the purposes of this Act, have all the powers of a Civil Court under the Code of Civil Procedure, 1908, and in particular have the power a) to summon and enforce attendance of any person, including any officer of a banking company, and examine him on oath or affirmation; b) to compel the production of documents or accounts and c) to impound and retain them and to issue commissions for the examination of witness.

Under section 71 of the above Act where an order giving rise to a refund is the subject-matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the authority competent to grant such refund is of the opinion that the grant of the refund is likely to adversely affect the revenue, such authority (not being the Commission) with the previous approval of the Commissioner may withhold the refund till such time as is deemed fit.

Under Section 78 of the Act The Commissioner may, after giving the parties a reasonable opportunity of being heard in the mater, by order in writing after recording his reason for so doing, transfer any proceedings or class of proceedings under any provisions of this Act, from himself to any other officer and he may likewise transfer any such proceeding, including a proceeding pending with any officer or already transferred under this section, from any officer to any other officer.

CHATTISGARH

Appointment, jurisdiction and powers of the authority

Under section 3 of the Chhattisgarh Value Added Tax Act, 2005, there may be appointed a person to be the Commissioner of Sales Tax and the following category of officers to assist him namely :

- Additional Commissioner of Sales Tax;
- Appellate Deputy Commissioner or Additional Appellate Deputy Commissioner of Sales Tax;
- Deputy Commissioner or Additional Deputy Commissioner of Sales Tax;
- Assistant Commissioner or Additional Assistant Commissioner of Sales Tax;
- Sales Tax Officer or Additional Sales Tax Officer;
- Assistant Sales Tax Officer; and
- Inspector of Sales Tax.

The Commissioner of Sales Tax and the Additional Commissioner of Sales Tax shall be appointed by the State Government and the other officers referred to in sub-section (1) shall be appointed by the State Government or such

other authority as it may direct. The Commissioner of Sales Tax and the Additional Commissioner of Sales Tax shall exercise all the powers and perform all the duties conferred or imposed on the Commissioner by or under this Act throughout the State and for this purpose any reference to the Commissioner in this Act, shall be construed as a reference to the Additional Commissioner of Sales Tax.

Under section 54 of the above Act, if Commissioner or the Appellate Deputy Commissioner or the Board, in the course of any proceedings under this Act is satisfied that dealer has concealed his turnover or the aggregate of purchases prices in respect of any goods or has furnished false particulars of his sales or purchases, as the case may be, in his return or returns for any year or part thereof or has furnished a false return or returns for such period, the commissioner or the appellate deputy commissioner or the Board as the case may be, may initiate proceeding separately for imposition of penalty under this section.

GOA

Appointment, jurisdiction and powers of the authority

Under section 13 of the Goa Value Added Tax Act, 2005, the Government shall, by notification published in the Official Gazette, appoint an officer to be called the Commissioner. Likewise, the Government may, by notification published in the Official Gazette, appoint an Additional Commissioner, if any, and such number of:

- (a) Assistant Commissioners,
- (b) other officers and persons,

and give them such designations, if any, as the Government thinks necessary.

Under section 13(7) of the above Act, no person shall be entitled to call in question, in any proceeding, in any jurisdiction including the territorial jurisdiction of any officer or person appointed under sub-section (2) after the expiry of 30 days from the date of receipt by such person any notice under this Act, issued by such officer or person. If within the period aforesaid a separate application in writing in the prescribed form raising an objection as to the jurisdiction of any such officer or person is made to him, the officer or person shall refer the question to the Commissioner who shall after giving the person raising the objection a reasonable opportunity of being heard, make an order determining the question.

Under section 16 of the above Act, the Tribunal and Commissioner inter alia have the following powers of a Civil Court for the purpose of :

- (a) proof of facts by affidavit;
- (b) summoning and enforcing the attendance of any person, and examining him on oath or affirmation;
- (c) compelling the production of documents; and issuing commissions for the examination of witnesses.

Under section 39 the Commissioner has revisional powers under any proceedings under the above Act.

Under section 41 of the Act, Tribunal has the power to rectify any error apparent on the record submitted by the assessee.

GUJARAT

Appointment, jurisdiction and powers of the authority

Under section 16 of the Gujarat Value Added Tax Act, 2003, the State Government shall appoint Commissioner of Commercial Tax and specified number of

- Joint Commissioners,
- Dy. Commissioners,

- Asstt. Commissioners,
- Commercial Tax Officers; and
- Other Officers to assist the Commissioner of Commercial Tax in discharging his functions.

Under section 17 of the above Act the commissioner has the power to transfer proceedings from one jurisdiction to another jurisdiction as per the circumstances.

Under Section 20 of the above Act the Tribunal and the Commissioner have the following powers of civil courts for the purpose of :

- (a) receiving of proof of facts on affidavit;
- (b) summoning and enforcing the attendance of any person, and examining him on oath or affirmation;
- (c) compelling the production of documents; and
- (d) issuing commissions for the examination of witnesses.

In case of any affidavit to be made for the purposes of this Act, any officer appointed by the Tribunal or the Commissioner may administer the oath to the deponent.

Test Your Knowledge



2. Under which of the following sections of the Gujarat Value Added Tax Act, 2003, does the commissioner have the power to transfer proceedings from one jurisdiction to another as per the circumstances?

- (a) Section 20
- (b) Section 16
- (c) Section 17
- (d) Section 53

HARYANA

Appointment, jurisdiction and powers of the authority

Haryana was the first State in India to implement VAT. Under section 55 of the Haryana Value Added Tax Act, 2003, the State Government may appoint a Commissioner and as many : –

- Additional Excise and Taxation Commissioners,
- Joint Excise and Taxation Commissioners;
- Deputy Excise and Taxation Commissioners;
- Asstt. Excise and Taxation Commissioners;
- Excise and Taxation Officers
- Other Officers to assist the commissioner for discharging his duties under this Act.

The Commissioner shall have jurisdiction over the whole of the state and shall exercise all the powers conferred and perform all the duties imposed on the Commissioner, by or under this Act, and other officers appointed under subsection (1) shall exercise such powers as may be conferred and perform such duties as may be required by or under this Act in the area of jurisdiction as may from time to time be assigned to them.

Under section 46 of the Act, the taxing authority and an appellate authority shall for the purpose of this Act have the same powers as vested in a civil court, when trying a suit, in respect of the following matters, namely: -

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of documents and impounding or detaining them;
- (c) issuing commissions for the examination of witnesses;
- (d) requiring or accepting proof of facts by affidavits;
- (e) such other powers as may be prescribed,

Under section 47 of the Act, a taxing authorities can determine any person to be a dealer.

Under section 48 of the Act, the authority has power to call the information from any person or dealer.

Under section 49 of the Act, the same authority has the power to purchase under-priced goods.

Under section 50, the taxing authority has the power of transferring proceedings from one jurisdiction to another.

HIMACHAL PRADESH

Appointment, jurisdiction and powers of the authority

Under section 3 of the Himachal Pradesh Value Added Tax Act, 2005, the State Government may, by notification, appoint a person to be the Commissioner and such other persons with such designations, as it thinks fit, the State Government may by notification, appoint as many Assessing authorities as it may think fit. The commissioner and other persons appointed under sub-section (1) shall perform such functions and duties as may be required by or under this Act or as may be conferred, by the State Government by notification. The jurisdiction of the Commissioner and other officers posted at the State Headquarters shall extend to the whole of the state of Himachal Pradesh and the jurisdiction of other officers or officials shall, unless the State Government otherwise directs by notification extend to the districts or the areas of the districts for which they are for the time being posted.

Under section 33 of the Act, any Asstt. Excise and Taxation Commissioner or Excise and Taxation Officer appointed to assist the Commissioner under sub-section (1) of section 3 or an Excise and Taxation Inspector duly authorized by the Commissioner.

Under section 37 of the Act, the Commissioner or any other person appointed to assist him has power to call for information from any person.

KARNATAKA

Appointment, jurisdiction and powers of the authority

Under section 58 of the Karnataka Value Added Tax Act, 2003, the State Government may appoint

- a Commissioner of Commercial Taxes and
- as may Additional, Joint, Deputy, Assistant Commissioners,
- State Representatives and
- Commercial Tax Officers,

as they think fit for the purpose of performing the functions. The Commissioner may empower an officer not below the rank of an Asstt. Commissioner or an Advocate or a Chartered Accountant [or a Cost Accountant] or a Tax Practitioner enrolled in the prescribed manner to perform the functions of state representative.

Under section 41 of the Act, the authority concerned has power of rectification of assessment or re-assessment in certain cases.

Under section 51 of the Act the authority concerned has power to withhold refund in certain cases with previous approval of commissioner.

KERALA

Appointment, jurisdiction and powers of the authority

Under section 3 of the Kerala Value Added Tax Act, 2003, the Commissioner shall have and exercise all the powers and shall perform all the duties conferred or imposed upon him by or under this Act. The Commissioner shall have Superintendence over all Officers and persons employed in the execution of this Act.

The Government shall appoint as many Joint Commissioner, Deputy Commissioners, Deputy Commissioners (Appeals), Asstt. Commissioner, Commercial Tax Officers and other officers.

Under section 4 of the above Act, the Government shall appoint an Appellate Tribunal consisting of a Chairman and as many other members as they think fit. The Chairman shall be a person who is or has been a Judicial Officer not below the rank of a District Judge and the other member shall possess such qualification as may be prescribed.

Under section 58 of the Act, the Commissioner have powers of revision of the Commissioner *suo motu*.

Under section 66 of the Act, any authority including Appellate Tribunal and Settlement Commission has power to rectify any error apparent on the face of the record.

MADHYA PRADESH

Appointment, jurisdiction and powers of the authority

Under section 3 of the Madhya Pradesh Value Added Tax Act, 2002, there may be appointed a person to be the Commissioner of Commercial Tax and the following officers to assist him :

- Director of Commercial Tax;
- Additional Commissioner of Commercial Tax;
- Deputy Commissioner or Additional Deputy Commissioner of Commercial Tax;
- Asstt. Commissioner or Additional Asstt. Commissioner of Commercial Tax;
- Commercial Tax Officer or Additional Commercial Tax Officer,
- Asstt. Commercial Tax Officer, and
- Inspector of Commercial Tax.

The Commissioner of Commercial Tax, the Director of Commercial Tax and the Additional Commissioner of Commercial Tax shall be appointed by the State Government and the other officers referred in sub-section (1) shall be appointed by the State Government or such other authority as it may direct.

The Commissioner of Commercial Tax, the Director of Commercial Tax and the Additional Commissioner of commercial Tax shall exercise all the powers and perform all the duties conferred or imposed on the Commissioner by or under this Act. The state Government may, by order appoint any officer not below the rank of Deputy Commissioner, of commercial tax as Appellate Authority.

Section 43 of the Act, gives power to Commissioner and his assistants to take evidence on oath, etc.

Section 44 of the Act, gives power to Commissioner to call for information in certain cases.

Section 45 of the Act, gives power to Commissioner to stay proceedings.

MAHARASHTRA

Appointment, jurisdiction and powers of the authority

Under section 10 of the Maharashtra Value Added Tax Act, 2002, the State Government shall appoint an Officer to be called:

- the Commissioner of Sales Tax,
- Joint Commissioners,
- Deputy Commissioners,
- Assistant Commissioners,
- Sales Tax Officers and other officers and persons.

The Commissioner shall have jurisdiction over the whole of the State. The Commissioner shall have and exercise all the powers and perform all the duties conferred in the commissioner by or under the Act. A Special Commissioner of Sales Tax and the Additional Commissioner or Additional Commissioners of Sales Tax, if any be appointed, shall, save as otherwise directed by the Commissioner by notification in the *Official Gazette*, have and exercise, within his or their jurisdiction, all the powers and perform all the duties, conferred or imposed on the Commissioner, by or under this Act.

Under Section 14 powers of Tribunal and Commissioner, the Tribunal and the Commissioner shall have all the powers of a Civil Court for this purpose of :

- (a) proof of facts by affidavit;
- (b) summoning and enforcing the attendance of any person, and examining him on oath or affirmation;
- (c) compelling the production of documents; and
- (d) issuing commissions for the examination of witnesses.

Section 54 of the Act gives power to the competent authority withhold refund in certain cases with previous approval of the commissioner.

Section 70 of the Act gives power to the Commissioner to direct that statistics be collected relating to any matter dealt with, by or in convention with this Act.

ORISSA

Appointment, jurisdiction and powers of the authority

Under section 3 of the Orissa Value Added Tax Act, 2004, the State Government shall for purposes of this Act, appoint a person to be the Commissioner of Sales Tax. The Government may appoint such other persons, including :

- Special Commissioner,
- an Additional Commissioner,
- a Joint Commissioner,
- a Deputy Commissioner,
- an Assistant Commissioner,
- a Sales tax Officer or
- an Assistant Sales Tax Officer

to assist the Commissioner. The Commissioner shall have jurisdiction over the whole of the State and the other persons appointed within such areas as the Commissioner may specify.

Under section 6 of the Act, the Commissioner have power to transfer proceedings.

Under section 60 of the Act, the Commissioner have power to withhold refund in certain cases.

PUNJAB

Appointment, jurisdiction and powers of the authority

Under section 4 of the Punjab Value Added Tax Act, 2005, the State Government by Notification in Official Gazette constitutes the Tribunal to exercise the powers and discharge functions conferred on it stated under the above act.

The Tribunal shall consist of a Chairman, and three members appointed by the State Government. The Chairman shall be either a retired judge of the High Court or a retired or serving officer of the Rank of Chief Secretary to the State Government or Secretary to Government of India.

Under section 41 of the Act, the competent officer shall have power to withhold refund in certain cases with previous approval of the commissioner.

Under section 87 of the Act, the Tribunal or the Commissioner or the officers appointed under sub-section (1) of section 3, to assist the Commissioner, shall have all the powers conferred on a Civil Court in respect of the following matters, namely -

- (a) summoning and enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of documents and impounding them;
- (c) proof of facts by affidavits; and
- (d) issuing commissions for examination of witnesses.

TAMIL NADU

Appointment, jurisdiction and powers of the authority

Under section 48 of the Tamil Nadu Value Added Tax Act, 2006, the State Government may appoint a Commissioner of Commercial taxes and as many :

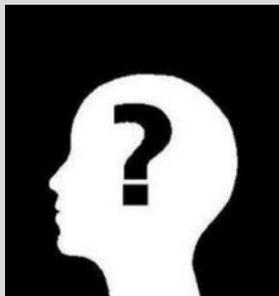
- Additional Commissioner of Commercial taxes,
- Appellate Joint Commissioner of Commercial taxes,
- Joint Commissioner of Commercial taxes,
- Appellate Deputy Commissioner of Commercial taxes,
- Deputy Commissioner of Commercial taxes,
- Appellate Assistant Commissioner of Commercial taxes,
- Territorial Assistant Commissioner of Commercial taxes,
- Administrative Assistant Commissioner of Commercial taxes,
- Assistant Commissioner of Commercial taxes (Assessment),
- Assistant Commissioner of Commercial taxes (Enforcement), and
- Commercial Tax Officers and other officers shall perform the function.

Section 54 gives the power of revision of Joint Commissioner.

Under section 56 of the Act, the Chairman of the Appellate Tribunal has power to transfer appeals.

Under section 65, authority has power to order production of accounts and powers of entry, inspection, etc. and also powers to inspect goods delivered to a carrier or a bailee.

Test Your Knowledge



3. Under which of the following sections of the Tamil Nadu Value Added Tax Act, 2006 Chairman of the Appellate Tribunal has power to transfer appeals.

- (a) Section 56
- (b) Section 55
- (c) Section 54
- (d) Section 53

UTTAR PRADESH

Appointment, jurisdiction and powers of the authority

Under section 39 of the Act, the State Government has power to grant installment.

Under section 45 of the Act, any officer empowered by the State Government in this behalf has power to order production of accounts documents and power of entry, inspection, search and seizure.

Under section 46 the authority has power of search, inspection and seizure in case of a person other than dealer.

Under Section 47 of the Act, the assessing authority has power to seek information and to issue summons.

Under section 48 of the Act, an officer authorized under sub-section (1) of section 45 shall have the powers to seize any goods.

Under section 53 of the Act, an officer exercising powers under the provisions of sections 45, 48, 50, 51 or 52 may take the assistance of police or other officers or officials of the state.

WEST BENGAL

Appointment, jurisdiction and powers of the authority

Under section 9 of the West Bengal Value Added Tax Act, 2003, all persons appointed under this Act to exercise any power or to perform any function there under shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

Under section 19 of the Act, the State Government may by notification, fix the rate of tax, with prospective or retrospective effect, not exceeding 30% of the turnover of sales of goods specified in Schedule D and different rates may be fixed for different items of such goods.

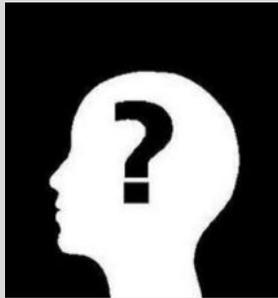
Under section 20 of the Act, the state government after giving by notification not less than 14 days' notice of its intention so to do, may by notification with prospective or retrospective effect, add to amend, or alter any schedule to this Act.

Under section 72 of the Act, states the power of the Commissioner to stop delivery of goods and seizure of such goods.

Under section 88B of the Act, the Commissioner has power to revise orders prejudicial to revenue.

Under section 91 of the Act, the Appellate and Revisional Board, the Commissioner, the Special commissioner, the Additional Commissioner, or any person appointed under sub-section (1) of section 6 to assist the Commissioner, shall for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) for matters namely : (a) enforcing the attendance of any person and examining him on oath or affirmation; (b) compelling the production of documents; and (c) issuing commissions for the examination of witnesses. Under sections 111, 112, 113 & 114 the Commissioner has power to collect statistics from dealer and power of State Government to prescribe rates of fees and power of State Government to engage any person, firm or company to collect certain information's and also power of state government to make rules.

Test Your Knowledge



4. The VAT system is applied by different States in India as an alternative to the Central Sales Tax System.

- True
- False

ROLE AND POSITION OF COMPANY SECRETARIES

As we know that the VAT system in India is not unique and every state and Union Territories have its own VAT Act or Rules; it becomes quite a difficult task to give a generalized picture regarding Certification of Documents by professionals applicable to all States or Union territories. However, considering the above situation, in general terms a professional including a Company Secretary, has to see that all documents to be filed before VAT authorities are correct or not. Specially the calculation sheet, tax calculation sheet, TIN or GRN No., etc. Apart from this the Company Secretary has to see the returns to be filed before VAT authorities are made in prescribed rules. He should also take into consideration the procedural aspects regarding payment of VAT and related assessment proceedings.

As a professional he has to see that whether the dealer has maintained the records and documents required under the Act. He has to advice the concerned client the provisions relating to appeals and revisions if any matter relating to VAT proceedings is undertaken by Appellate Tribunal or Court of Law as the case may be. Company Secretary has also to be well versed with the technical aspects in dealing with seizure and confiscation procedure before judicial or quasi judicial bodies. Besides this a professional dealing with VAT authorities has to carefully vouch and take careful steps with regard to books of accounts, and return procedures annually.

Every state has its own peculiarities regarding to documents to be filed before the VAT authorities in connection with filing of return and other related issues. The technicalities and calculation of tax is an important component of services is to be provided by professional under VAT authorities in India. Any mistakes or errors can put the client in great displeasure and anxiety.

The profession of Practicing Company Secretaries, which made a humble beginning in the sixties, has now reached greater heights. With the blended knowledge of various laws, the Practicing Company Secretaries are versatile professionals capable of rendering wide range of services in diversified fields including VAT.

(1) AUTHORIZED REPRESENTATIVE BEFORE VAT AUTHORITIES

The Company Secretaries play poignant role in their professional capacity before VAT authorities in our country.

The acceptability of company secretaries before the VAT authorities is increasing day by day. Company Secretaries in Practice have now been recognized to act as an authorized representative for the purpose of appearing before VAT authorities under Statutes of various States. The Company Secretaries in Practice have been recognized to act as Authorized Representative under -

- (i) Maharashtra Value Added Tax Act, 2002 – Section 82(1)(b)
- (ii) West Bengal Value Added Tax Rules, 2005 – Rule 2(1)(a)(iv)
- (iii) Bihar VAT Act, 2005 – Section 87(d)
- (iv) Goa VAT Act, 2005 – Section 82(1)(b)
- (v) Karnataka VAT Rules, 2005 – Rule 168(1)
- (vi) Kerala VAT Act, 2003 – Section 86(e)
- (vii) Daman & Diu VAT Regulation, 2005 – Regulation 82(1)(b)
- (viii) Jharkhand VAT Rules, 2006 – Rule 51(1)(c)
- (ix) Delhi Value Added Tax Act, 2004 – Section 82(1)(b)
- (x) Uttar Pradesh VAT Rules, 2008 – Rule 2(e) read with Rule 73.

The Company Secretaries in Practice have been recognized to act as Authorized Representative under Section 288 of the Income Tax Act, 1961 read with Rule 50 of the Income Tax Rules, 1962.

(2) CERTIFICATION OF DOCUMENTS

Moreover, the VAT system in India is not unique and every state and Union Territories have its own VAT Act or Rules; it becomes quite a difficult task to give a generalized picture regarding Certification of Documents by professionals applicable to all states or union territories. A professional including a Company Secretary, has to see that all documents to be filed before VAT authorities, specially the calculation sheet, tax calculation sheet, TIN or GRN No., etc.

(3) FILING OF RETURNS

The Company Secretary has to see the returns to be filed before VAT authorities are made in prescribed rules. He should also consider the procedural aspects regarding payment of VAT and related assessment proceedings. Every state has its own peculiarities regarding the documents to be filed before the VAT authorities in connection with filing of return and other related issues.

(4) SCRUTINY OF RECORDS AND ADVISING TO CLIENTS

As a professional he has to see that whether the dealer has maintained the records and documents required under the Act. He has to advise the concerned client the provisions relating to appeals and revisions if any, matters relating to VAT proceedings is undertaken by Appellate Tribunal or Court of Law as the case may be. Company Secretary has to be well versed with the technical aspects in dealing with seizure and confiscation procedure before judicial or quasi judicial bodies. Besides this a professional dealing with VAT authorities has to carefully vouch and take careful steps with regard to books of accounts, and return procedures annually. The technicalities and calculation of tax is an important component of services to be provided by professional under VAT authorities in India.

VAT AUDIT

The Company Secretaries in Practice have been recognized to conduct VAT Audit under the following States:

- (a) Jharkhand VAT Act, 2005 – section 2(i).

- (b) Karnataka VAT Rules, 2005 – As a Tax Practitioner under Rule 34(1)
- (c) Gujarat VAT Act, 2005 – As a Tax Practitioner under Rule 59(1)(a)

VAT IN OTHER COUNTRIES

VAT does not primarily link tax liability to residence. This means that foreign companies can also become liable for VAT in countries other than the country where they have their business establishment.

Transactions for the supply of goods or services are normally covered by a sales contract or sales conditions. If drawn carefully, these contracts or sales conditions will also contain tax clauses. Such clauses are governed by contract law, which means that their contents should be distinguished from the legal situation according to tax law.

In order to be sure that both parties, i.e., supplier and customer, are fully aware of the VAT (but also e.g., customs, excise, sales tax) treatment, it is recommendable to verify the tax clauses of the contract or sales conditions before the agreement is concluded.

Value Added Tax (VAT) is a type of sales tax. In some countries, including Australia, Canada, New Zealand and Singapore, this tax is known as “goods and services tax” or GST; and in Japan it is known as “consumption tax”. VAT is an indirect tax, in that the tax is collected from someone other than the person who actually bears the cost of the tax (namely the seller rather than the consumer). As VAT is intended as a tax on consumption, exports (which are, by definition, consumed abroad) are usually not subject to VAT or VAT is refunded.

VAT was first introduced in France in 1954. Worldover more than 145 countries have adopted VAT. List of few countries that collect VAT include :Algeria, Argentina, Azerbaijan, Bangladesh, Belarus, Belgium, Brazil, Bulgaria, Cameroon, Chile, China, Colombia, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Guatemala, Guyana, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Latvia, Lebanon, Lithuania, Luxembourg, Malta, Mexico, Monaco, Montenegro, Morocco, Netherlands, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Romania, Russia, Senegal, Serbia, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Taiwan, Thailand, Tunisia, Turkey, Ukraine, United Kingdom, Uruguay, Uzbekistan, Venezuela, Vietnam, Zambia.

AUSTRALIA

The Australian Goods and Services Tax (‘GST’) is a value –added tax introduced in Australia in July 2000. It is similar to the European Union’s VAT system, requiring re-calculation and payments to the tax authorities at each transaction point in the onward sales chain. The Australian GST is collected by the Australian Tax Office. The revenue is then redistributed to the states and territories via the Commonwealth Grants Commission process. In essence, this is Australia’s program of horizontal fiscal equalisation. Whilst the rate is currently set at 10%, there are many domestically consumed items that are effectively zero-rated (GST-free) such as fresh food, education, and health services, as well as exemptions for Government charges and fees that are themselves in the nature of taxes.

CANADA

Value added tax in Canada is known as Goods and Services Tax. The goods and services tax was introduced in Canada on the 1st of January 1991. The goods and services tax in Canada replaced the manufacturers’ sales taxes. The main purpose behind introducing the goods and services tax was that the manufacturers’ sales tax was having a negative impact on the export prospects of the manufacturing sector in Canada. The manufacturers’ sales tax was hidden and the rate of taxation was 13%. The goods and services tax could be called a multi-level tax. In Canada the value added taxes are taken along with the sales taxes that are applicable for the particular provinces. The only exception to this is the province of Alberta. There are no sales taxes at the provincial level in Alberta. In provinces like New Brunswick, Nova Scotia and Newfoundland a Harmonized Sales Tax is charged. The Harmonized Sales Tax is a combination of goods and services tax and the provincial sales tax.

THE EUROPEAN UNION

The value added tax was perceived by the member-countries of the European Union as the ideal means to “promote neutrality and uniformity of the tax burden and to provide incentives for increased productivity and industrialization. Though the EC Fiscal and Financial Committee had recommended as early as 1962 that all member-countries should shift to the VAT system, the change for the original members was completed only in 1973 when Italy switched over to the VAT. However, certain other recommendations of the committee regarding uniformity of rates and eventual adoption of the original principle for taxation of trade within the EC were not implemented immediately.

Test Your Knowledge



5. Which of the tax is applicable in the province of Alberta in Canada?

- (a) Goods and Services Tax (GST)
- (b) Only Sales Tax (RST)
- (c) Harmonized Sales Tax (HST)
- (d) Value Added Tax (VAT)

FRANCE

The Value Added Tax (VAT) had its origin only in France. The latest innovation is the value-added tax. Its emergence in France illustrates the process by which a sort of continuing ferment of improvisation now and then gives rise to an invention of the first order. They were the first Europeans to adopt it in 1954. A new regulation was introduced in France regarding VAT transaction. Since September 1st, 2006 according to Article 283-1 of the FTC when a supply of goods or services is carried out by a French VAT liable entity non-established in France, VAT must be self-assessed by the buyer when he is VAT identified in France. VAT registration is mandatory for intra-EU operations. When the supplier is not established in E.O., the Respondent is necessarily get its Fiscal Representative nominated through application under Article 289A of French Tax Code (FTC).

GERMANY

On January 1, 1968, Germany replaced its multi-point sales tax on goods and services, which extended down to the retail stage, by a VAT with a normal rate of 10 per cent and a reduced rate of 5 per cent on foodstuffs and agricultural products like raw wool raw hides, and timber. The switchover to the VAT was meant to be revenue-neutral and was not expected to have any tangible effect on prices.

UNITED KINGDOM

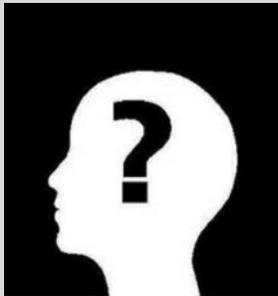
The VAT was introduced in the United Kingdom on 1 April, 1973. As in Spain, this was in fulfillment of one of the key conditions for entry into the European Community. It is destination-based, general consumer expenditure tax chargeable on all supplies of goods and services in the country, barring those which are exempted or zero-rated. The tax is expected to be borne by the final consumer, though collected at each stage of production/trade. The VAT replaced two of the major indirect taxes levied in the UK earlier, viz., the Purchase Tax (PT) on commodities and the Selective Employment Tax (SET). The PT was a single stage tax on wholesalers that had to make a distinction which was often difficult to draw between goods and services and between different categories of dealers and goods. The purchase tax was then chargeable at three different rates—25 per cent, 18 per cent and 11.15 per cent and these rates represented substantial reductions from previous levels in preparation for the introduction of the VAT on the wholesale values of many goods. The SET was a tax essentially on selected services. The Government

felt that these taxes were inferior to a tax on the value added that could be applied to consumer expenditures comprehensively. On several counts, the VAT clearly offered a better instrument of taxation. Then there was the EC requirement. It should, however, be noted that UK would have gone in for the VAT in any case because of its intrinsic merits.

UNITED STATES

The United States, with a federal structure, provides an important case study for consideration of the VAT for any federal economy in general. Even though the United States has been interested in the VAT for the last thirty years, its actual introduction in the US does not seem to be anywhere near the horizon. The main reason for this situation is that the United States does not merely appear to be satisfied with its existing states retail sales taxes but the possibility of the federal government usurping the states' powers of sales taxation has been keeping it away from the VAT at a respectable distance. Although attempts for a federal level VAT date as far back as the proposal by T.S. Adams in 1921, it was in 1972 that the VAT was recommended as a source of revenue for providing relief on residential property taxes. The proposed Tax Restructuring multiple rates between 10 and 15 per cent. In the late seventies, Congressman Ulman came up with a proposal for the VAT to replace part of the pay roll tax, personal income tax and corporate income tax for \$50 billion and \$28 billion respectively. This proposal was subjected to a great deal of public debate even after 1980 when Ulman lost his election.

Test Your Knowledge



6. Which of the following indirect taxes were replaced by VAT in UK?

- (a) Purchase Tax (PT)
- (b) Selective Employment Tax (SET)
- (c) Harmonized Sales Tax (HST)
- (d) Goods and Services Tax (GST)

LESSON ROUND UP

- All States and Union Territories, adopted the VAT regime. Moreover, the VAT system in India is not unique and every state and Union Territories have its own VAT Act or Rules;
- The Company Secretaries play a poignant role in their professional capacity before VAT authorities in our country. The acceptability of company secretaries before the VAT authorities is increasing day by day. Company Secretaries in Practice have now been recognized to act as an authorized representative for the purpose of appearing before VAT authorities under Statutes of various States.
- The Company Secretaries in Practice have also been recognized to conduct VAT Audit.
- VAT was first introduced in France in 1954. Worldwide more than 145 countries have adopted VAT.

SELF TEST QUESTIONS

These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation.

MULTIPLE CHOICE QUESTIONS

1. Under which of the following state VAT Rules, a Company Secretary is not authorized to act as representative before VAT authorities:

- (a) Jharkhand
 - (b) Uttar Pradesh
 - (c) West Bengal
 - (d) Rajasthan
2. Under which of the following state Act, company Secretaries in practice are authorized to conduct VAT audit:
- (a) Gujarat
 - (b) Uttar Pradesh
 - (c) Rajasthan
 - (d) Kerala
3. The VAT had its origin in:
- (a) France
 - (b) Germany
 - (c) United kingdom
 - (d) United States
4. The first State to implement VAT in India was :
- (a) Chattisgarh
 - (b) Haryana
 - (c) Punjab
 - (d) Himachal Pradesh
5. VAT system is applied by different states as an alternative to :
- (a) Central sales Tax system
 - (b) Excise
 - (c) Service Tax
 - (d) None of the above

ELABORATIVE

1. Discuss the role of Company Secretaries in the professional capacity before VAT authorities in our country.
2. Explain briefly the practices followed in developed countries with regard to goods and services tax.
3. How the practice followed specially in Western Countries is different from practices followed in our country under VAT regime.
4. Discuss briefly the powers of the VAT authorities of Andhra Pradesh, Haryana and Maharashtra.
5. Explain briefly the procedures relating to the appointment of Chairman and other officers under VAT regime in the states of West Bengal, Gujarat and Tamil Nadu.

