

Compliances of Service Tax in Banking Sector- 2017



The Institute of Chartered Accountants of India
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Foreword

Service tax was first introduced in 1994 based on the recommendations of Dr. Raja Chelliah Committee on Tax Reforms. Since then successive Finance Ministers have widened the service tax net by bringing new services under its ambit. In the year 2012, all the services were brought into the service tax net, barring a few that have been specifically mentioned in the negative list. Revenue from service tax has also increased steadily over the years. The implementation of GST which is now expected in July, 2017, will bring further changes in the overall indirect tax structure of the Country including service tax.

Banking and other Financial Services were brought under the scope of Service Tax net from 16.07.2001. Also with major changes in mega exemption notification, abatement notification and reverse charge notification service tax compliances increased manifold. The banking system is also highly regulated considering its importance within the financial system in channelizing resources and helping in economic growth.

Considering that no significant material was available for providing guidance to the members to check the compliance of service tax in banking sector, I am happy to note that the Indirect Taxes Committee of ICAI had published this material titled "Compliances of service tax in Banking Sector" in the year 2014. The publication is assisting members to verify the service tax compliance by Banks specially while doing the Bank Branch/Central Statutory and Concurrent Audit. The committee has updated the publication last year incorporating the changes made by the Finance Act, 2016. The publication is now being further revised with the limited changes proposed by the Finance Bill, 2017 and changes made through notification in the law during the last year.

I congratulate the Indirect Taxes Committee for this contribution in particular, CA. Madhukar N Hiregange, Chairman, CA. Sushil Goyal, Vice-Chairman and the members of Indirect Taxes Committee for getting the material updated in a timely manner.

I am sure that the members would find this publication immensely useful while providing their services to the Banking Sector as auditors or otherwise.

Date: 10th March 2017

Place: New Delhi

CA. Nilesh S. Vikamsey

President

Preface

The taxation of services underwent a paradigm shift from positive list to negative list in the year 2012. The change in process of taxation led to change in procedures and compliances across all the sectors. This year would mark the year of transition to GST.

The Banking industry's contribution towards GDP is continuously increasing year by year. Post implementation of taxation based on negative list it has become imperative for the auditors to check and examine each and every banking activity to ensure service tax compliance not only on the revenue side but also on expenditure side. The liability for reverse charge for which credit cannot be utilized classifies as a significant amount. Considering the nature and varieties of transactions which banking industries have been undertaking, the assignment of auditing of banking industries has become peculiarly important.

Considering the intricacies involved in Bank Audits, the Indirect Taxes Committee had published a booklet titled "Compliances of service tax in Banking Sector" in March 2014. The revised booklet was updated with the changes brought in by Finance Act 2016 last year. Considering the changes made in the law during the last year and proposed by Finance Bill 2017 relevant to audit of accounts of 2016-17, the publication has been revised to bring in the impact of all the changes.

We extend our gratitude to CA. Nilesh Vikamsey, President, ICAI and CA Naveen N.D Gupta, Vice-President, ICAI for their encouragement to the initiatives of the Indirect Taxes Committee. We would like to thank CA. Kevin Shah for updating this publication and CA Jatin Christopher for reviewing it.

We trust this publication will be of practical use to members while conducting the bank audit assignments. We look forward to feedback from members for further improvement in this publication in subsequent years. Suggestions may be sent at dtc@icai.in

Date: 10th March 2017

Place: New Delhi

CA. Madhukar Narayan Hiregange
Chairman
Indirect Taxes Committee

CA. Sushil Kumar Goyal
Vice Chairman
Indirect Taxes Committee

Chapter 1

Incomes Earned By Banks

Incomes are earned by banks from various sources other than interest. The interest income forms the major part of the incomes but in recent years due to globalisation such a scenario has been changed and accordingly the banking sector has involved themselves into numerous activities resulting into variety of incomes. All such incomes are recorded in the books of accounts under various heads which we have to analyse and decide taxability on the same. Some incomes so earned and their taxability are as under:

1. Interest income

No service tax is applicable on income earned by way of interest income as the same is excluded by way of entry (n) of the negative list. Therefore, inquiry into the same may be restricted whether the income is rightly characterized as 'interest' to enjoy the exclusion from service tax.

2. Commission income

Generally commission income is earned by banks from various contractual arrangements for distribution of products and solutions including those in co-ordination between banks. The same are recorded in "Other income" in the financial statements. Commission earned (on accrual) is liable to service tax and some examples are discussed here by way of illustration:

(a) M/s. A Ltd. wants to invest in fixed securities / bonds which can be only routed through ICICI bank as they have exclusive rights for subscribing the same. ICICI bank gets 2% commission on the amounts so subscribed. For the period 2017-18, the bank earns 250 crores of commission from such subscription which is recorded as 'Other Income'. The auditor has to check whether service tax is appropriately disbursed on the said amount. Whether payments are made by complying with the due date for payment of service tax. Also, verify returns filed for proper disclosure of the correct amount of liability. If the tax is not discharge then appropriate disclosure would be required. Discrepancy in the returns filed (after any revision) and liability as determined may be disclosed. Interest being mandatory may be suitably

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included in the disclosure. Suitable disclosure whether any contingency exists in respect of applicable penalty may also be appropriate.

Further, review of agreements where commission is earned must be carried out thoroughly and if any milestone incentives, performance bonus, time bonus etc is provided then appropriate tax treatment should be suggested.

(b) ICICI bank gets 1% commission from private companies for providing them investment exposure in foreign markets. The same is liable for payment of service tax and appropriate tax treatment should be followed and suggested. Disclosures as discussed above may be considered, if any tax liability is found to be unpaid

Author's views: Where the investment activity is undertaken in another group company but the banking entity provides leads to such investment activity for which it receives some (smaller) percent as commission. Such transactions should be thoroughly analysed and proper movement of funds tracked.

3. Brokerage income

Generally, such incomes are earned by the securities activities of the bank. If the same is a separate company then incomes are recorded separately and thereafter the same is consolidated. However, under either of the situations taxability has to be determined and appropriate tax should be disbursed as the same is liable for payment of service tax. Review whether the role of the bank is as a sub-broker.

4. Agency charges

Generally, such income is earned by way of being appointed as an agency either by RBI, State Governments, Central Governments or by some corporates. Under such arrangements, banks act as a facilitator/collection centre and in lieu of provision of such services such banks collect certain fees as "Agency charges". Such charges are liable for payment of service tax. Very often, the underlying arrangement will be of agency, but it may be described in a contemporary terminology like 'enablement charge' or 'facilitation fee' or simple 'management fee' which may appear misleading.

The auditor needs to analyse the relevant agreements entered and has to study the flow of consideration and thereafter decide taxability and the amount on which service tax is applicable. The same has to be communicated to the management if no service tax is being paid till date.

5. Portfolio management service:

Generally, the said services are being provided by different entities within the banking sector. Due to stiff competition and one-stop window for priority customer's (i.e. customers who are depositing amount beyond a certain limits) only one person provides all such services and thereafter relevant commissions are split between entities or costs are shared. Under such situations, such commission splitting has to be analysed in great details and appropriate tax treatment adopted be reviewed for compliance with applicable provisions.

6. Account maintenance charges:

It is a common practice that in most of the banks certain charges are recovered towards maintenance. The said charges are nominal but the same is liable for payment of service tax. Accordingly, the concerned concurrent /internal /statutory auditor would do well to check on this aspect of taxability and ensure compliance.

Further, even locker charges are being recovered from the customers on an annual basis which is liable for payment of service tax. There can be different modes of arrangement for availing such income but such income is liable for payment of service tax.

For e.g: Mr A wants to open a locker at IVY bank wherein the bank has an option for opening a locker:

- a. Make an FD of Rs. 25,000/- and pay an annual charge of Rs. 5000/-.
- b. Make an FD of Rs. 50,000/- and pay an annual charge of Rs. 2500/-.
- c. Make an FD of Rs. 1,50,000/- and do not pay any annual charge

Depending upon the documents the auditor has to analyse the tax position and thereafter decide taxability on the same i.e. under all the options whether service tax is payable on FD interest + annual charge or only annual charge or there is some different mechanism of determining taxability for the said transactions. If the issue is complicated then the payment should be backed by an expert opinion and should be appropriately documented.

7. Credit/Debit card charges:

Income earned by way of issuing and maintaining such transactions are liable for payment of service tax. Therefore, auditor should carefully examine

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such transactions and appropriate disclosures be made in case of non-compliance with relevant tax provisions.

8. Other income

Income earned by way of penalties, retention charges etc are liable for payment of service tax. The reason being that such transactions qualify to be termed as service [Section 65B(44)] and cannot be termed as transaction in money. Further, it is neither excluded from negative list nor exempted under mega exemption notification. Therefore, such income earned by banks are liable for payment of service tax.

For eg:

(a) IVY Bank charges Rs. 2500/- to all those customers who maintains an average quarterly balance below Rs. 25000/-. Accordingly, the total collection of income from such source is Rs. 5,00,00,000/- and thereafter IVY bank has to discharge service tax on the same at appropriate rate.

(b) IVY Bank penalises Rs. 500/- to all such customers whose cheques are bounced and the income collection for the period 15-16 is Rs. 50,00,000/-. IVY bank has to discharge service tax on the same at appropriate rate.

(c) IVY Bank charges Rs. 50/- for issuing DD. Such income is liable for payment of service tax and the auditor has to carefully scrutinise whether appropriate tax rate has been disbursed.

To summarise all the income sources of the banks have to be thoroughly scrutinised except interest incomes and thereafter the auditor has to comment on its taxability, compliance with tax payment along with interest, applicable penalty and transparency in disclosure in the returns filed .

Chapter-2

Expense Incurred By Banks

There are various expenses incurred by the banks and some expenses are also in the form of foreign payments for various reasons. After 01.07.2012 scrutinising of expense in foreign currency has become an important area due recipient of service being fastened with the liability to pay tax under section 68(2) that is read with notification 30/2012=ST dated 20.06.2012 referred as tax payment under Reverse Charge Mechanism.

Under Reverse Charge Mechanism, the service receiver has to deposit on its own when the services are provided by such service provider. The list of such services where reverse charge mechanism is applicable is as under:

Sr. No	In respect of services provided or agreed to be provided by	service provider	service receiver	service provider	service receiver
		Before Amendment		After amendment	
1	an insurance agent to any person carrying on insurance business	Nil	100%	Nil	100%
1A	services provided by recovery agent to bank	Nil	100%	Nil	100%
1B	services provided by a mutual fund agent to a fund or AMC	Nil	100%	Nil	
1C	services provided by a selling or a marketing agent or distributor or a lottery distributor or selling agent under the provisions of Lottery(regulations) Act, 1998	Nil	100%	Nil	100%
2	a goods transport agency in respect of	Nil	100%	Nil	100%

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Sr. No	In respect of services provided or agreed to be provided by	service provider	service receiver	service provider	service receiver
	transportation of goods by road (on abated value)				
3	way of sponsorship	Nil	100%	Nil	100%
4	an arbitral tribunal	Nil	100%	Nil	100%
5	individual advocate	Nil	100%	Nil	100%
5A	Non-executive directors to company	Nil	100%	Nil	100%
6	Service by Government or local authority	Nil	100%	Nil	100%
7	(a) way of renting or hiring any motor vehicle designed to carry passenger on abated value.	Nil	100%	Nil	100%
	(b) way of renting or hiring any motor vehicle designed to carry passenger on non abated value.	50%	50%	50%	50%
8	way of supply of manpower for any purpose	Nil	100%	Nil	100%
	way of security services	Nil	100%	Nil	100%
9	By way of Works Contract Service	50%	50%	50%	50%
10	any person who is located in a non-taxable territory other than non-assessee online recipient and received by any person located in the taxable	Nil	100%	Nil	100%

Expense Incurred By Banks

Sr. No	In respect of services provided or agreed to be provided by	service provider	service receiver	service provider	service receiver
	territory				
11	Services provided by an aggregator	Nil	100%	Nil	100%

Some of the services which are relevant with respect to the said sector are explained in detailed below:

Services provided by recovery agent:

Generally, loans are the areas wherein the banks earn major portion of their income. It is the most organized form of extending credit to customers and interest is earned as an income in respect of such credits extended. Majority of banks spend great time and effort in recovering credits so granted.

Further, many banks sell their loans to third parties or hire third party agents to initiate recovery on their behalf. Loans sold to factoring agents are not liable for payment of service tax.

The principal applicable here is that there should be a transfer of title of the borrower. However, under another type of transaction third parties are hired to initiate recovery on behalf of the banks which is purely a service transaction and liable to payment of service.

Further, RCM is applicable on such transactions and therefore the banks who hire such third party agents are liable for payment of service tax on the fees so paid to these recovery agents/third party agents.

Banks also provide infrastructure, phone facilities and such other benefits to these third party agents in order to perform their services. Even such value is required to be taken into consideration while determining the value of service for the purpose of payment of service tax.

Services provided by insurance agent

If the banks are also engaged in business of insurance then the services provided by such insurance agent who sell insurance products of the banks is liable for payment of service tax. Further, the amount on which tax is payable is commission so paid to the insurance agent. Such commission also includes reimbursement by any mode.

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The insurance division of the banks so receiving the services from those insurance agents are liable for payment of service tax under reverse charge mechanism.

Services provided by mutual fund agent

If the banks are also engaged in business of mutual funds then the services provided by such mutual fund agent providing services in managing the funds or AMC is also liable to payment of service tax. Subject to the threshold limit of Rs.10 lacs, the agent will be liable to pay service tax and no tax is payable on reverse charge basis.

Services provided by goods transport agency service:

If any services are provided by any goods transport agency wherein the bank pays any freight then service tax is payable on the same. Further, such transaction is liable for payment of service tax. Therefore, banks have to disburse tax on the same.

Valuation:

By virtue of notification 26/2012 dated 20.06.2012, 70% abatement is granted on the total value of the GTA service availed. Accordingly, tax is payable on only 30% of the total value. Further, 100% of such tax is payable by the banks. So the auditor has to check compliance in this regard.

Services provided by advocates:

If any service of advocates are availed by banks, then service tax is payable on the same. Further, such transaction is liable for payment of service tax . Therefore, banks have to disburse tax on the same.

Further, from 01.04.2016, services provided by senior advocates are outside from the purview of reverse charge mechanism. Senior advocates means those advocates who are designated as "Senior Counsels" by the State Bar Council. Its meaning is as per section 16 of the Advocates Act, 1961

Service provided by rent-a-cab

If any service is provided by way of renting or hiring any motor vehicle designed to carry passenger by any person then the said transaction is liable for payment of service tax.

Services provided by way of Manpower Supply:

Generally, manpower is required in huge numbers for day-to-day operations of the banks and since the accretion rate/labour turnover rate is high in the said industry many banks hire various manpower agencies/recruitment agencies for supply of manpower. The said transaction strictly qualifies to be a service. Contracts with agencies must be examined to determine who the contractual employer of such manpower is and if the bank is found not to be the contractual employer but another entity, then it indicates to be a contract for supply of manpower.

Accordingly, service tax is payable on the same under reverse charge mechanism on full value of the amount so to paid these persons. Further, an issue has arisen that whether service tax under RCM is applicable for payments made to manpower recruitment agency. The answer to that is no because technically they do not supply manpower, they refer eligible candidates and who are recruited by the bank directly and the agency will get their referral commission which is not a contract for manpower supply.

Further, the person who is supplying manpower should be a person other than body corporate and only then RCM is applicable or else forward charge is applicable.

Services provided by way of Security services.

Services of security provided in banks are liable for payment of service tax under reverse charge mechanism.

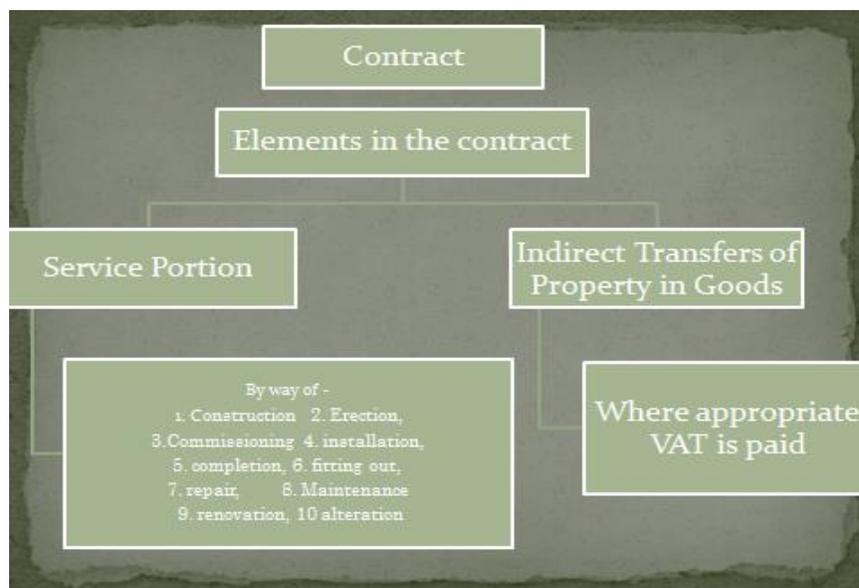
For eg: if the cost of salary is separately billed from the value of agency charges then service tax under RCM is applicable on total value of both the bills.

Further, the person who is providing security services should be a person other than body corporate and only then RCM is applicable or else forward charge is applicable.

Services provided by way of works contract service:

Banks may hire works contract services for undertaking construction of infrastructure. Works contract service is a service which is very dynamic and has expanded its scope and applicability after introduction of the negative list. For simple understanding the same is depicted as under:

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Thus, services have to be classified depending upon the above mentioned analysis and thereafter taxability has to be decided. Further the same is subject to RCM as per the table mentioned above.

Further, the person who is providing works contract services should be a person other than body corporate and only then RCM is applicable or else forward charge is applicable.

Service provided by way of import of services:

Many banks do spend a lot of funds on procuring services from abroad. Where the services are taxable in nature, service tax is payable by the recipient bank. Some important areas are summarised as under:

1. Bond floating expenditure:

Generally, bond floating expenditure is an expenditure which though appropriately recorded in the books of accounts, skips the attention and the applicable taxes are not discharged often in respect of the same. Therefore, the concerned auditor should thoroughly inspect the books of accounts and identify all payments in foreign currency for compliance with these provisions.

For eg: IVY Bank wants to issue bonds in NYSE and for the said purpose has appointed WYE bank a leading bank of America for floating the said bonds and acting as a lead merchant banker. The fee for the same is generally

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some fixed % of the ticket size which is recorded appropriately in the books of accounts. However, the said transaction is liable for payment of service tax because the same qualifies to be as a service in terms of Rule 3 of the Place of Provision Rules, 2012 [For details refer to general module where the provisions are explained in greater details] and are liable for payment of service tax under reverse charge mechanism. Such expense should be thoroughly scrutinised, relevant contracts & invoices, payment details, customs rate of exchange etc should be referred and appropriate tax should be disbursed on such transactions.

2. Underwriting charges:

If underwriting charges are paid in foreign currency to an underwriter who is located outside India then service tax is imminent on such transactions. Appropriate ledgers, contracts etc should be scrutinised in great detail and thereafter relevant disclosures should be made regarding taxability on the same.

3. I.T infrastructure cost:

Generally, I.T infrastructure is a common cost which the banks bears on a all-India basis and executes one common contract for the same. If the vendor is based outside India or the technicians are outside India and payment is being disbursed in foreign currency then such transactions attract service tax. The auditor has to scrutinise the same in detail and determine tax compliance .

Swachh Bharat Cess is introduced with effect from 15.11.2015 'as' service tax after Education Cess and Secondary and Higher Education Cess came to be discontinued. Where service tax is applicable, this SBC cess may also be included in the calculation of tax. Further, as per circular no. 96/85/2015 dated 07.12.2015 closing balance of Education Cess and Secondary and Higher Education Cess is no longer permitted to be carried forward.

Chapter 3

Cenvat Credit

The Cenvat credit of inputs, input services and capital goods can be availed by the banks. Further, under the erstwhile provisions the same was subjected to 50% reversal of the credit so taken. However, under the current budget the said rules have been amended Cenvat credit availment with respect to banking sector so as to allow banks and other financial institutions to reverse credit in respect of exempted services on actual basis in addition to the option of 50% reversal.

Clarification on reversal of credits for banks and financial institutions including NBFCs:

Relevant provisions have been amended to exclude banks and financial institutions including NBFCs engaged in providing services by way of extending deposits, loans or advances from its ambit. It has been provided in the said explanation that value for the purpose of reversal of common input tax credit taken on inputs and input services used in providing taxable and exempted services, shall not include the value of service by way of extending deposits, loans or advances against consideration in the form of interest or discount.

Amended provision on actual reversal of cenvat credit is explained in detail on the link provided as under:

<http://idtc-icai.s3.amazonaws.com/download/CENVAT-24Jun16.pdf>

However, the auditor should ensure that credits are appropriately availed in terms of the rules mentioned above and thereby necessary compliance is being made.

Further, there is a serious area of concern with banks not passing on tax credits to companies which receive services from banks. The reason being that banks do not raise an invoice for their charges and debit the account which impairs availment of cenvat credit. Therefore, the auditor should ensure that proper invoices are issued in terms of Rule 4 of the Service Tax Rules, 1994 with appropriate disclosures made in the invoices.

Chapter 4

Routine Procedural Checks

Payment dates:

Service tax should be disbursed by following the due dates mentioned below:

- By 6th of next month (compulsory e-payments)
- For the month of March – By 31st March

Returns

Service tax returns should be regularly filed in FORM ST-3 by adhering the following due dates:

Sr.No	Period	Due Date
1	April – September	Within 25 days from the end of the half year i.e. 25th October
2	October – March	Within 25 days from the end of the half year i.e. 25th April.

Registration:

Generally, banks operate from more than one premise. In that situation since the services provided by all these premises is almost the same except for certain specific departments, therefore it may be preferable that centralised registration be taken by these banks in terms of Rule 4(2) of the service Tax Rules, 1994.

Chapter 5

Questionnaire for Service Tax Audit of Banks

Name of the Branch:

Service Tax Code:

Particulars/information for the year.....

PART A: Basic Details of Assessee			
1.	Name of the Service Provider/Service Receiver	:	
2.	Full Address of :	:	
	(a) Head Office/Central Office (in case of Centralised Registration)	:	
	(b) Branches (Registered or Unregistered with Service Tax Department) & Enclosed list in case of large number of branches	:	
3.	Service Tax Registration Number, Date of registration and Service categories specified in the registration certificate. If assessee is paying service tax under reverse charge, whether it is registered under such category or not.	:	
4.	PAN of Assessee	:	
5.	List principal activities	:	
6.	Is there any change in the activities stated above during the year as compared to immediately preceding year? Whether the same is included in registration.	:	

Questionnaire for Service Tax Audit of Banks

7.	Principal books of account/ records examined.	:	
8.	(a) Whether list of records maintained filed with the Department in terms of Rule 5(2) of the Service Tax Rules 1994? (Refer Appendix I)	:	
	(b) Whether any intimation has been filed under Rule 6(3) of CENVAT Credit Rules, 2004?		
	PART B : EXEMPTION AVAILABLE/NEGATIVE LIST AS PER FINANCE ACT 1994		
9.	Broad description of nature of Income	:	
10.	a) Are services provided in the State of Jammu & Kashmir? If Yes, Please specify nature of Service and amount involved b) Are services provided outside India? If Yes, Please specify nature of Service and amount involved	:	
11.	Broad description of exempted services provided, if any, along with Notification No. and Amount Involved		
12.	Broad description of services, which are covered under Negative List and Amount Involved		
13.	(a) Whether any activity in the nature of "Transaction in Money" has been claimed as outside the definition of "Service" as per section 65B(44)		
	(b) If yes, whether any separate consideration is charged and service tax being paid on the same.		

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14.	(a) Whether the company is engaged in providing services related to securities/ derivatives which are covered up in the exclusion clause of definition of services as per Section 65B (44) as Sale of Goods.	
	(b) If yes, whether any service charges collected, during the relevant period and service tax is being paid on the same. Please provide the details thereof.	
15.	In case, any service charges or administrative charges or entry charges are recovered in addition to interest on a loan, advance or a deposit such as locker rent, folio charges, loan processing fee, late payment fee, lease management fee, rent, management fee etc. Whether service tax is being paid on the same.	
16.	(a) Whether the Bank is trading in Commercial paper /Certificates of deposits?	
	(b) If yes, whether any separate charges are collected and service tax being paid on the same and provide details thereon.	
17.	(a) Whether service tax is levied on late fee charges collected from credit card holders?	
	(b) If yes, then whether service tax is being paid on the same and give details thereof.	

Questionnaire for Service Tax Audit of Banks

PART C: COMPLIANCES OF SERVICE TAX RULES 1994		
18.	(a) Broad description of Taxable Services received for which tax has to be paid under reverse charge.	
	Works Contract Service- Such as construction & repair of building, white wash, make up of furniture, AMC with parts, Cartridge refilling, repair or any other work which include material and labour.	
	Cab Hiring Charges	
	Manpower Supply- Such as temporary hiring of office staff or housekeeping staff.	
	Security Services	
	Sponsorship	
	Legal services advocates- such as law charges	
	Services Received from Govt.	
	Services provided by arbitrator	
	Services provided by Director	
	Recovery Agent	
	Goods Transportation Charges	
	(b) Is Rule 2(1)(d) of Service Tax Rules, 1994 followed ? (Refer Appendix I)	
	(c) if the answer (b) is No, Specify the head of expenditure and corresponding details ?	

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19.	<p>(a) Challan-wise details of service tax remitted during the year. (Annexure B) (Not applicable if Centralised Registration)</p> <p>(b) Whether Tax has been paid in time while following Point of Taxation Rules 2011? (Refer Appendix IV)</p> <p>(c) If Tax is paid belatedly, specify interest paid on delayed payment.</p>	:	
20.	<p>(a) Whether the assessee has the option of discharging its liability under Rule 6(7B) of the Service Tax Rules, 1994. (Refer Appendix I) For branches dealing in purchase or sale of foreign currency and money changing.</p> <p>(b) If yes, whether service tax liability has been discharged in manner prescribed under the provisions.</p>		
PART D: COMPLIANCE OF CENVAT CREDIT RULES 2004			
21.	<p>(a) Whether CENVAT taken/ utilized is matching with Books of accounts and service tax returns</p> <p>(b) if the answer of (a) above is negative, Report differences thereof. (Annexure "C").</p>	:	
22.	Whether CENVAT credit taken, utilized and reversed on input services / inputs and Capital goods is as per CENVAT Credit Rules, 2004?	:	
23.	Month-wise amount of distribution of CENVAT credit if the assessee is registered as an Input Service Distributor together with address of the	:	

Questionnaire for Service Tax Audit of Banks

	unit to which it is distributed. (Applicable for Zonal / Head Office) (Not Applicable if Bank has Centralised Registration)	
24.	List of major Input services /inputs on which the company takes CENVAT Credit: whether it comply with Rule 2(l) of CENVAT Credit Rules, 2004	
25.	Whether reversal under Rule 6(3B) of CENVAT Credit Rules, 2004 of 50% of CENVAT taken in each month is complied or whether reversal is being done in accordance with Rule 6(3) as substantially amended from April 1, 2016. (Refer Appendix II)	
26.	If credit is reversed in accordance with Rule 6 (3) and not in terms of 6(3B) then, what value is considered? Whether interest or discounts in loans, advances or deposits are excluded? (see specific definition of exempted services which includes activities not included within the definition of service u/s 65B(44))	
27.	Whether the company is availing CENVAT Credit on service tax paid under reverse charge mechanism before or after the date of payment to Govt.	
28.	If the answer of 27 is No, then details of CENVAT Aailed and utilized.	
29.	Whether CENVAT Credit distributed is in compliance to Rule 7 of CENVAT Credit Rules, 2004. (Applicable for Zonal/Head Office) (Refer Appendix II)	

Compliances of Service Tax in Banking Sector

	If answer to above is negative, provide the discrepancy in the distribution and reasons thereof;		
30.	Amount of CENVAT credits received from Input Service Distributor, if any together with address of the unit from which it is received.	:	
31.	(a) Whether any Credit on Invoices first time claimed after 6 month from date of invoice (applicable on invoices issued on or after 1 st September, 2014 but before 1 st March, 2015) (b) Whether any Credit on Invoices first time claimed after one year from date of invoice (applicable on invoices issued on or after 1 st March, 2015)		
PART E: COMPLAINTS OF PLACE OF PROVISION RULES 2012			
32.	(a) Value of service provided to persons other than account holders where tax not charged on the ground that the place of provision is outside the taxable territory. (b) Value of services exported if any, on which no service tax has been charged. (c) Whether any amount of (a) above should be taxed for not following Place of Provision of Services Rules, 2012? (d) Under which Rule of Place of Provision of Services Rules, 2012, the exported Service(s) fall? (Refer Appendix III)		
33.	Is the payment for services exported received by the service provider in convertible foreign currency? If not, list	:	

Questionnaire for Service Tax Audit of Banks

	those transactions where amounts are not received in foreign currency.		
34.	Is the payment for services exported received by the service provider in convertible foreign currency within the time limit prescribed by RBI? If not, give details.	:	
Place:			**Signed
Date:			

NAME OF THE ASSESSEE

ANNEXURE A

RECONCILIATION OF TURNOER FOR THE YEAR.....

S. No	Particulars	
A	Total Taxable Turnover Service 1 Service 2	
B	Total Non-Taxable Turnover	
C	Grand Total	
D	Advance as on 31 st March	
E	The amount on which the service tax amount that is to be calculated (A+D)	
F	Service Tax at the rate specified under section 66 Service Tax at the rate after abatement (Refer Appendix IV)	
G	Service Tax	
H	Education Cess	
I	Secondary & higher education Cess Swachh Bharat Cess	

Questionnaire for Service Tax Audit of Banks

	Total Service Tax liability payable	
	Mode of Payment	
J	Paid Through CENVAT	
	Paid In cash (<i>Details in Annexure B</i>)	
K	Difference (F-J)	

Compliances of Service Tax in Banking Sector

Sep																				
Oct																				
Nov																				
Dec																				
Jan																				
Feb																				
Mar																				

Clarification regarding Questionnaire for Service Tax Audit of Banks

Point No. 2 & 3: As per Rule 4 of the Service Tax Rules, 1994, an assessee having multiple offices may take a centralized registration. With reference to the checklist, an auditor should check, whether the concerned branch is registered with the department and the centralized registration certificate has been obtained or not? To check registration details we may log in into www.aces.gov.in by using client's user id and password.

Further, a service receiver is liable to make payment as a recipient by virtue of Section 68(2) of the Finance Act, 1994. Being an auditor, we should check whether concerned branch is also registered as a service recipient or not and whether related services are registered with the department.

Point No.5: In order to understand the taxability of various services provided by the concerned branch/head office, it is important to identify the various services provided by such branch or head office. For this purpose the auditors may analyse the various income heads (Operating and Non-Operating).

Point No.6: It is important to check whether any new service is provided by the concerned branch or head office. If yes, being an auditor we can check whether the same is updated in the Service Tax registration certificate or not? It becomes important because taxability of any activity depends upon its nature and any exemption or relief will be available accordingly.

Point No.8: Rule 5 of the Service Tax Rules, 1994 provide for the documents to be maintained by the assessee and Rule 5(2) provides that every assessee maintaining such records will intimate the department about such records. Being an auditor, we can check whether concerned branch is maintaining proper records and whether the same is intimated to the department within the time prescribed under such rules? ***(Please refer Rule 5 of Service Tax Rules 1994, Appendix I)***

Point No.10: The applicability of Finance Act, 1994 is to whole of India except Jammu and Kashmir? It is important to check whether taxability of services provided to a customer is determined by applying Place of Provision Rules, 2012 (Appendix III) or not? **For example:** A customer is located in Jammu and Kashmir and having its bank account in Baddi Branch,

Clarification regarding Questionnaire for Service Tax Audit of Banks

Himanchal, in such case we can check whether service tax is charged on transaction between concerned branch and customer. This transaction will be taxable by virtue of Rule 9 of the Place of Provision Rules, 2012.

Similarly, it is important to check taxability of services provided to client located outside India.

Point No.11: Finance Act, 1994 has provided various exemptions vide Mega Exemption Notification 25/ 2012-ST as well other notification such as services to SEZ developer and units, diplomats etc. If the concerned branch has claimed benefit of any such exemption then being an auditor we can ask for the relevant documents/certificate as prescribed under relevant notification.

Relevant Exemption Notification:

- 1. 25/2012-ST-Mega Exemption Notification- Services provided to WHO, International Organization etc.;**
- 2. 27/2012-ST-Services provided to Diplomat;**
- 3. 40/2012-ST and 45/2012-ST and 12/2013-ST- Services provided to SEZ units and SEZ Developers**

Point No.13: Transaction in money has been excluded from the definition of service as defined under Section 65B (44) of the Finance Act, 1994. However, it is also provided that if any separate consideration is charged by the service provider, then the same will be taxable and service tax shall be payable on such separate consideration.

For eg. A is carrying 40\$ and wants to convert it in to INR. A approaches to a bank and get an amount of Rs. $40 \times 60 = \text{Rs.}2400$. In this case, no separate consideration is charged by the bank and the transaction is merely a transaction in money. However, if the bank recovers an additional amount say Rs. 100 for the same, it will be liable to service tax payment.

Point No.14: Securities /Derivatives has been included under the definition of goods as defined under Section 65B (25) of the Finance Act, 1994. Transaction in instruments are not taxable however, any sort of service charge collected by the service provider for such transaction shall be liable for the payment of service tax.

Being an auditor, we can check whether service tax is paid by the concerned branch on amount recovered as an additional consideration.

Compliances of Service Tax in Banking Sector

Point No.15: Any services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discounts is mentioned in the negative list of services. However, if any additional amount is charged over and above interest or discounts the same would represent taxable consideration.

Services covered under this exemption category are-

- Fixed deposits or saving deposits or any other such deposits in a bank or a financial institution for which return is received by way of interest.
- Providing a loan or overdraft facility or a credit limit facility in consideration for payment of interest.
- Mortgages or loans with a collateral security to the extent that the consideration for advancing such loans or advances are represented by way of interest.
- Corporate deposits to the extent that the consideration for advancing such loans and advances are represented by way of interest or discount.

Being an auditor, we can check whether any additional amount is recovered by the concerned branch/head office and the same is accounted for separately instead of treating it as a component of interest/ advance.

Point No.17: Late fee charged for the delayed payment of any consideration for the sale of goods or provision of services has been specifically excluded from the Rule 6 of the Service Tax (Determination of Value) Rules, 2006. However, charges received in case of credit card are in the nature of consideration for the services rendered for using the convenience of services by way of a credit card and hence taxable.

Being an auditor, we can check whether such late payment charges recovered by the concerned branch are not shown as interest. These charges are taxable and service tax shall be levied on the same.

Point No. 18: A service receiver is liable to pay Service Tax under reverse charge mechanism under Section 68(2) of the Finance Act, 1994 read with Rule 2(1)(d) of the Service Tax Rules, 1994. In order to identify the portion of Service Tax payable by the service recipient, it is important to clearly define the nature of services received. This point requires auditors to check the nature and description of services received by the concerned branch/head office.

Clarification regarding Questionnaire for Service Tax Audit of Banks

Sub-points to Point No. 18:

➤ **Works Contract Services-** Works contract service is defined under Section 66B (54). Works contract service is mentioned under Notification No. 30/2012-ST which provides for joint charge and signifies the proportion of Service Tax payable by service provider or the service receiver. Section 66B(54) defines works contract as follows:

"works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any moveable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property";

Further, the valuation of works contract services will be done by applying Service Tax (Determination of Value) Rules, 2006. Rule 2A(i) provides that if value of services and goods supplied is separable in that case, service tax will be charged only on the service value. However, in case the value of goods and services is inseparable, the value of services shall be determined in accordance with Rule 2A(ii) which provides as follows:

(A)	Original works (i.e. new construction, erection, commissioning, installation)	40% of 'total amount'
(B)	Maintenance or repair or reconditioning or restoration or servicing of any goods	70% of 'total amount'
(C)	Other works contracts (other than (A) and (B) including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property	

Being an auditor, we can check whether the concerned branch is correctly paying its portion of service tax liability as mentioned under Notification No. 30/2012-ST under works contracts services.

Compliances of Service Tax in Banking Sector

For Example: An invoice of *original works* contract service is received by the concerned branch. Here the service provider must be an individual, partnership or HUF but not a corporate:

(i) The value of goods is separable:

Material: Rs. 500

Service: Rs. 100

Vat @10%: Rs. 50

Service Tax @14.5%: Rs. 14.5

Total: Rs. 664.5

In this case, service tax is payable by the service recipient as well as the service provider in a proportion mentioned in the notification i.e. 50% of the service tax liability which amounts to Rs. 7.25.

Further, in respect of prior years, please refer to retrospective amendment made to Rule 2A in Union Budget, 2017 vide clause 128 of the Finance Bill.

(ii) The value of goods is inseparable

In this case, service tax is payable by the service recipient as well as the service provider in a proportion mentioned in the notification i.e. 50% of the service tax liability. However, it is to be noted that service tax charged on invoice by the service tax provider may or may not be in compliance to the Valuation Rules. Service Tax Determination of Value Rules 2006 provide that in case of original works if the value of service and goods is inseparable, the service portion will be 40% of the total value of invoice and by virtue of that a service recipient is liable to pay services tax as follows:

Goods & Services: Rs. 500

VAT@ 10% on 70% value: Rs. 35

Service Tax@14.5% on 40% value: Rs. 29

Total: Rs. 564

*** This may vary as per the State VAT laws**

Liability of service recipient: 50% of Rs, 29 i.e. Rs. 14.5 and not 50% of Rs. 21 i.e. Rs.10.5

Clarification regarding Questionnaire for Service Tax Audit of Banks

Cab Hire Charges - As per Rule 2(1)(d), a service recipient is liable to pay Service Tax under reverse charge mechanism in proportion as mentioned under Notification No.30/2012-ST which is illustrated as follows:

Eg. Invoices from the service provider of rent a cab can be of three types:

Particulars	Amount (Rs.)	Amount (Rs.)	Amount (Rs.)	Remark
Hiring Charges	100	100	100*	
Abatement:	60	-	-	Abatement is taken by the service provider as per Notification No. 26/2012-ST
Service Tax	5.8	14.5	-	
Total Value	105.8	114.5	100	
Liability of service Recipient	5.8	7.25	7.25	In case vendor has not opted for benefit of abatement, service recipient is liable to pay 50% amount of Service Tax
Liability of Service provider	-	7.25	-	

* In this case, service provider is not a registered assessee.

Manpower Supply: As per Rule 2(1) (d), a service recipient is liable to pay service tax under reverse charge mechanism in proportion as mentioned under Notification No.30/2012-ST.

Compliances of Service Tax in Banking Sector

Manpower Supply is defined under Rule 2(1) (g) of the service tax rules, 1994 which provides as follows:

“Supply of Manpower temporarily or otherwise to another person to work under his superintendence or control”

It denotes that if the manpower is deputed in the concerned branch/head office in a manner that his/her control lies with the branch/head office itself in that case it will be covered under reverse charge mechanism and service tax liability shall be discharged in a proportion mentioned under Notification No. 30/2012-ST. Further, contract is of utmost importance to understand whether a contract is for supply of manpower or such contract is job specific. For e.g. A contract requiring the contractor to provide specific level of cleaning services and also specifying the number of person to be deputed but does not empower the branch to guide or monitor the work , the same will not be treated as manpower supply, instead it is merely a job specific contract. On the contrary, the same contract can be executed without specifying the nature of service although the deputed staff can be assigned a job of cleaning the office premises to the satisfaction of the management, it will be treated as manpower supply.

Being an auditor, we can check whether concerned branch is paying service tax liability under reverse charge mechanism if the same is qualified as manpower supply.

Security Service: As per Rule 2(1)(d), a service recipient is liable to pay service tax under reverse charge mechanism in proportion as mentioned under Notification No.30/2012-ST as amended by Notification No. 45/2012-ST

Security Service is defined under Rule 2(1)(fa) of the service tax rules, 1994 which provides as follows:

“Security service means service relating to security of any property whether movable or immovable of any person in any manner and includes the services of investigation, detection or verification of any facts or activity”

Hence, any service received by the concerned branch/head office in the nature of security, investigation or verification shall be covered here and service tax shall be payable under reverse charge mechanism. Being an auditor, we can check whether service tax is being paid by the concerned branch/head office in compliance to the Notification No. 30/2012-ST.

Clarification regarding Questionnaire for Service Tax Audit of Banks

Sponsorship Service: As per Rule 2(1)(d)(c), a service recipient is liable to pay service tax under reverse charge mechanism in proportion as mentioned under Notification No.30/2012-ST wherein service tax shall be payable by the service recipient in case service provided or agreed to be provided by way of sponsorship to any body corporate or partnership firm located in the taxable territory.

Sponsorship is not defined in the act after the introduction of negative list of services however it was defined under Section 65(99a) and the same can be borrowed for determining the taxability post introduction of negative list of services.

Section 65(99a) provides that sponsorship includes naming an event after the sponsor displaying the sponsors company logo or trading name giving the sponsor exclusive or priority booking rights, sponsoring prizes or trophies for competition; but does not include any financial or other support in form of donation or gifts, given by the donor subject to the condition that the service provider is under no obligation to provide anything in return to such donors"

Hence, being an auditor, we can check whether concerned branch/head office is correctly paying service tax liability in proportion as mentioned under Notification No. 30/2012-ST.

Legal Service: As per Rule 2(1)(d)(D), a service recipient is liable to pay service tax under reverse charge mechanism in proportion as mentioned under Notification No.30/2012-ST in case service is provided or agreed to be provided by an arbitral tribunal or an individual advocate or firm of advocates by way of legal services to any business entity located in taxable territory.

It is to be noted that a stay was granted by the Hon'ble Delhi High Court regarding the taxability of services provided by an Advocate however recently Bombay High Court has confirmed Service Tax levy.

It is to be noted that services provided by Senior advocates is not subject to reverse charge mechanism from 01.04.2015

Being an auditor, we can check whether concerned branch is discharging its service tax liability in accordance with the rules and also whether it has taken the benefit of stay order. We can high light the exposure if service tax is not paid on the basis of stay order.

Point 19(b): The point of taxation Rules, 2011 provides the point of time when the service shall be deemed to be provided. This rule helps us in determining the rate of tax to be applied and date of payment of Service Tax.

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Refer Appendix IV of the book for Point of Taxation Rules, 2011. Further liability to pay tax is earlier of payment to service provider or date immediately following the three months from the date of invoice.

Further, in case of transaction between associated enterprises where person providing the service is located outside India, the point of taxation is the date of debit in the books of accounts or date of making payment whichever is earlier.

Being an auditor, we can check whether the rate of tax and date of payment of service tax is determined on the basis of point of taxation in compliance to the Point of Taxation rules, 2011.

Point 20: A service provider dealing in the sale or purchase of foreign currency has the option to pay service tax in a manner as mentioned under Rule 6(7B) of the Service Tax Rules, 1994 instead of discharging its service tax liability at the rate prescribed under Section 66B. Please refer Appendix I for Rule 6(7B).

Points 23 & 27 & 28: Rule 7 of the CENVAT Credit Rules, 2004 provides for the distribution of CENVAT credit by the input service distributor to its branches. There arises the issue related to the distribution of the credit as what should be the turnover for the distribution, relevant period etc. Being an auditor, we can check the following issue:

- (a) Whether CENVAT Credit distributed against the documents as mentioned under Rule 9 of the CENVAT Credit Rules, 2004?
- (b) Whether credit in respect of unit which is exclusively providing only exempted services is taken or not?
- (c) Whether credit attributable to a specific unit is distributed to that unit only?
- (d) Whether turnover for the distribution has been determined in accordance with the Rules?

Apart from this from the prospect of Point No 28, we can check whether CENVAT Credit taken by the concerned branch received by an input service distributor is in compliance to the CENVAT Credit Rules, 2004.

Points 24: CENVAT credit of various services is not allowed to a service provider which is not input services by virtue of exclusion clauses in the definition of input services under Section 2(l). Being auditors we can ask for the list of major input services on which CENVAT Credit is availed by the

Clarification regarding Questionnaire for Service Tax Audit of Banks

concerned branch/head office? Following are illustrative services which are not allowed:

- (i) Employee Insurance
- (ii) Outdoor Catering
- (iii) Rent a cab
- (iv) Construction services

Point 25: As per Rule 6(3B) of CENVAT Credit Rules, 2004, an assessee in banking sector has to reverse 50% of the CENVAT Credit taken on monthly basis or follow the procedure for reversal as per Rule 6(3). Being an auditor, we can check whether, concerned branch is reversing the CENVAT Credit in compliance to the said Rule. Further, we also have to check in cases where procedure for reversal is being executed in terms of Rule 6(3), that the value for reversal of input tax credit taken on inputs and input services used in providing taxable and exempted services, shall not include the value of service by way of extending deposits, loans or advances against consideration in the form of interest or discount. If CENVAT Credit is not reversed in compliance to the said Rule, it shall be treated as CENVAT wrongly taken and the same will be recovered under Rule 14 of the CENVAT Credit Rules, 2004 along with the interest under Section 75 of the Finance Act, 1994.

Point No.26: As per First proviso to Rule 4(7) of the CENVAT Credit Rule, 2004, an assessee can take the CENVAT of service tax paid on reverse charge on or after the day on which service tax is paid to the government.

Being an auditor, we can check whether CENVAT Credit is taken in compliance to the proviso to Rule 4(7). Briefly invoices on which credit sought to be claimed should bear name and address of Service Recipient Branch, Date of invoice, Value of Service Tax charged separately, Name and Registration number of service provider. In case the concerned branch/head office has taken the CENVAT Credit prior to the payment of service tax, in that case it shall be treated as wrong avilment of CENVAT Credit and shall be recovered under Rule 14 along with the interest under Section 75 of the Finance Act, 1994.

Point No.31: The Place of Provision of Service Rules, 2012 specifies the manner to determine the tax jurisdiction for a service. As per Rule 66B, a service is taxable only when it is provided or deemed to be provided in the taxable territory. Thus the taxability shall be determined based on the place

Compliances of Service Tax in Banking Sector

of provision. These rules help us in determining the place of provision of a service specifically in case of cross border transactions.

Rule 9 of the Place of Provision of Service Rules, 2012 provides that a service provided by the bank to its account holder shall be deemed to be provided at the place where such bank is located. For e.g. An account in the concerned branch is located in UK, in that case any service provided by the bank to such account holder shall be taxable at the location of service provider i.e. concerned branch which may be located in the taxable territory.

Being an auditor, we can check whether service tax is charged and paid by the concerned branch on services provided to an account holder located in the non taxable territory.

Clarification regarding Annexure to Questionnaire:

Annexure A

This annexure intends to reconcile and highlight any discrepancy in payment of service tax during the period under audit. Serial number wise clarification has been provided below:

A. Total Taxable Turnover: This will include all taxable components of turnover on which service tax is paid by the concerned branch during the period under Audit.

B. Total Non Taxable Turnover: This will include turnover of all the Non Operating, Exempted and Non Taxable (Negative list) activities.

C. Grand Total: It should match with the income appearing in the profit and loss account of the concerned branch/head office.

D. Advances as on 31st March 20XX: As per Point of Taxation Rules, 2011, Service Tax is payable at earlier of advances received or date of invoice. We need to check the amount of advances appearing in the balance sheet with the amount mentioned in the annexure.

F. Service Tax is calculated at the rate prescribed on different taxable components. For e.g. there are two different components (i) bank charges (ii) conversion of foreign currency -. In this line item, we need to calculate total tax by applying respective rate or valuation method i.e. on bank charges @ 12% and foreign currency conversion in manner prescribed under Rule 6(7B).

J. This line item refers the payment of service tax by utilizing CENVAT credit available with the branch and payment made in cash.

Clarification regarding Questionnaire for Service Tax Audit of Banks

Annexure D

CENVAT register is required to check whether the payment against invoices on which CENVAT Credit is taken by the concerned branch is made within 90 days from the ***Date of Invoice***.