

# Background Material on Service Tax- Entertainment Sector



**The Institute of Chartered Accountants of India**  
*(Set up by an Act of Parliament)*  
**New Delhi**

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# Foreword

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The introduction of Service Tax was recommended by Dr. Raja Chelliah Committee in early 1990s which pointed out that the indirect taxes at the Central level should be broadly neutral in relation to production and consumption of goods and should, in course of time cover commodities and services. Thus Service Tax was introduced in India in the year 1994-95, adopting a selective approach with only 3 services under its net. The basic objective of introduction of Service Tax was broadening of the tax base, augmentation of revenue and larger participation of citizens in the economic development of the nation.

Presently it covers entire gamut of Services barring the ones covered by Negative List & Mega Exemption List. Service tax now covers many sectors of the Indian Economy and is one of the major contributors in the government exchequer. Though the broad structure of service tax is uniform, however, its applicability to different sectors may differ due to difference in business practices followed by them. Considering the different requirements of every sector, the Indirect Taxes Committee of the Institute of Chartered Accountants of India (ICAI) has taken an initiative to develop sector specific publications on Service Tax. I am pleased that the Committee has come up with this Background Material on Service Tax – Entertainment Sector. This material attempts to explain taxation of services related to Entertainment sector in a very exhaustive manner.

I compliment CA. Atul Gupta, Chairman, CA. Nihar Niranjan Jambusaria, Vice-Chairman and other members of the Indirect Taxes Committee of ICAI for accomplishing this task successfully.

I trust that this material would prove to be very useful to the members in their day to day practice and support them in their endeavours.

Date: 3<sup>rd</sup> February, 2015  
Place: New Delhi

CA. K Raghu  
President, ICAI



# Preface

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Dr. Manmohan Singh, the then Union Finance Minister, in his Budget speech for the year 1994-95 introduced the concept of Service Tax. This marked a paradigm shift in the area of taxation with the introduction of taxation on three services. Since then, different Finance Ministers have brought out new services under the tax ambit. Another major shift took place in the year 2012, when all services barring a few specifically mentioned in the negative list were brought into the service tax net. Service tax law expanded its reach to cover most transactions of services and now pervades all sectors of the economy. The large number of changes in the law and introduction of new rules for taxation of services under different sectors has brought up the requirement of having in depth knowledge of service tax for different sectors.

In order to facilitate the understanding of provisions of Service Tax applicable to various sectors of the economy, the Indirect Taxes Committee of ICAI has taken an initiative to develop sector specific Technical Guide/ Background material on Service Tax. One of the products of this initiative is Background Material on Service Tax for Entertainment Sector which covers all the aspects of service tax related to entertainment sector. It intends to support the members to address the various issues arising in relation to entertainment sector.

I am extremely thankful to CA. K Raghu, President and CA. Manoj Fadnis, Vice-President, ICAI and members of the Committee for all their support and guidance in this initiative. Further I commend the efforts of CA. Kevin Shah for preparing the basic draft of the publication and CA. Vishal Gill for reviewing the same. I must also compliment and appreciate the substantial assistance provided by the Indirect Taxes Committee Secretariat to bring this material to its being.

I am confident that this material would help the readers to be well equipped with the nuances of service tax related to works contract. Please feel free to share your suggestions/ comments at [idthc@icai.in](mailto:idthc@icai.in).

Date: 3rd February, 2015  
Place: New Delhi

CA. Atul Gupta  
Chairman  
Indirect Taxes Committee



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# Chapter 1

## About the Entertainment Sector

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(i) The media and entertainment industry in India consists of many different segments under its folds such as television, print, and films. It also includes smaller segments like radio, music, Out of Home (OOH), animation, gaming and visual effects (VFX) and Internet advertising. All these sectors accounts for Rs. 1120 Billion Industry in India for 2013. This industry is expected to grow at CAGR of 15% for the next five years.

Areas	Revenue (Billion INR)	Per Cent Share
Television	420	37.50%
Internet Access	252	22.50%
Print	223	19.91%
Film	126	11.25%
Internet	29	2.59%
Gaming	21	1.88%
OOH	19	1.70%
Radio	18	1.61%
Music	12	1.07%
<b>Total</b>	<b>1120</b>	

(ii) With just a single state-owned channel, Door-darshan, in the 1990s, TV in India has grown to more than 400 active channels in the country. Television is one of the major mass media of India and is a huge industry and has thousands of programs in all the states of India. Today India boasts of being the third largest television market in the world. The small screen has produced numerous celebrities of their own kind some even attaining national fame.

(iii) Indian print industry is growing stronger by the day and is expected to grow similarly while the global print industry is moving towards digitalization and showing a negative growth rate year on year. Print industry in India is the world's second largest with over 90 million copies in circulation daily after China with 130 million copies in circulation daily. Most newspapers have an online presence and a growing view counts on their portals. Much of the entertainment and media segments is now focusing on growth in regional areas and smaller towns.

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(iv) The Ubiquitous presence of mobile phone connections (estimated at 886 million in December 2013), availability of cost effective smart phones and feature-phones, technology upgrades provided by mobile operators and tech-savvy young generation have driven the growth in mobile internet access revenues.

(v) Films are the most important form of entertainment in India. Film industry in India is among the largest in the world in terms of films produced (approximately 1000) in different languages which include films in Hindi, Kannada, Bengali, Tamil, Telugu, Punjabi and Malayalam. Approximately, twenty-three million Indians go to see a film every day. Film Federation of India is the apex body of film industry in India whose objective is to popularize and promote the cinema. Bollywood accounts for 46 percent of the total Indian film industry revenues film industry experts claim.

(vi) With this holistic view, we now proceed towards the taxation part of the entertainment industry. The instant guide particularly deals with service tax because of the growing complexities of the transaction in today's world it becomes imperative to know the insights of service tax and its applicability on the same in great detail. Thus, the instant guide is being prepared with a view to navigating the complex tax structure in a simple manner.

## Chapter 2

# Taxability under Entertainment Sector

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### (a) Interpretation of the term “service”

Service tax was introduced in 1994 and only three services were made taxable during that time. After which the law continuously updated and more and more services were brought under the ambit of service tax.

Further, post 01.07.2012 the service tax law underwent a dynamic change and as pursuant to which category based taxation structure was abolished and a new taxation structure was introduced. The same is popularly known as negative list based taxation mechanism. According to the said mechanism, the term “service” was defined<sup>1</sup> for the first time after the introduction of service tax since 1994. Every transaction was classified as a service except those getting covered under the negative list, and was made taxable<sup>2</sup>. Further, certain relations by way of exemptions were provided vide notification No. 25/2012 dated 20.06.2012.

Analysis of the term “service” is very important to understand in order to decide taxability on any transaction under entertainment sector. Thus, for easy reference, the term “service” is defined 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;*

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<sup>1</sup>Section 65B (44) of the Finance Act, 1994

<sup>2</sup>Section 66B of the Finance Act, 1994

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(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 purpose of this clause, transaction in money shall not include any activity relating to the 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.*

*Explanation 3. — For the purpose 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;*

The above definition can be divided into three elements:

## **Meaning clause**

The meaning clause of the definition of service states that any activity carried out by one person for another for a consideration is considered to be a service transaction. Thus, any transaction which has three elements mentioned below is considered to be a service transaction. They are as under:

- (a) An activity
- (b) Two persons
- (c) Consideration

Further, except for the term “person”, nothing is defined; the other terms above are explained in the guidance note, based on which one has to interpret that whether this basic ingredients are present in the transaction or not.

### **Inclusion clause**

The term inclusion clause means the services which are specified under the declared service<sup>3</sup> list are considered as transactions on which service tax is clearly leviable..

Further, the list of declared services includes one entry in which such types of transactions as are being taxed for the first time in the history of indirect taxation which is also relevant for the instant sector. The said entry is as under:

*(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;*

As per the above mentioned entry, service tax is payable on such transactions as involve one obliging some other person, or one tolerating some other person, or a person doing something good graciously for the benefit of others. Thus, any amount which is a reward of such act would be considered as a service and is liable for payment of service tax. Thus, all non-compete agreements in which one obliges another for a consideration would be considered as a service w.e.f 01.07.2012 and accordingly service tax is payable on the said transactions.

### **Practical illustration**

1. M/s. ABC Limited, a news agency has some exclusive footage of a business house conclusively involved in a scam and is willing to put it on air. The said business house approach the news agency and requested them to oblige by not putting the same on air in lieu of a monthly compensation of Rs. 5,00,000/- for a period of 20 years.

**Ans:** Service tax is applicable on such transaction in view of the concept of declared service explained supra.

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<sup>3</sup>Section 66E of the Finance Act, 1994

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2. M/s. Tara agency is planning to do extensive marketing for a product of M/s. Pepsico Limited in the region of Delhi NCR. During the same time M/s. Raid agency is planning to do extensive marketing for a product of M/s. Coca Cola Limited in the same region. M/s. Tara agency had tremendous sales pressure and as a result they offered a sum of Rs. 1,00,00,000/- to M/s. Raid agency for postponing their advertisement campaign for a period of 6 months. M/s. Raid agency obliged and would like to know the taxability on the sum under reference.

Ans: Service tax is applicable on the instant transaction in view of the concept of declared service explained supra

### **Exclusion clause**

Further, Exclusion clause gives a list of transactions which are, though covered under the meaning of service, are excluded from the definition of service, and hence are not liable for payment of service tax. They are as under:

#### **(a) Sale transaction**

Transfer of property by way of sale/gift of any movable/immovable property from one person to any other person is not considered to be a service transaction. This is because the same is a sale transaction. Such sale includes deemed sale.

#### **(b) Transaction in money or actionable claims**

All the transactions involving extension/exchange of money are called transaction in money.

What kind of activities would come under 'transaction only in money'?

- The principal amount of deposits in or withdrawals from a bank account.
- Advancing or repayment of principal sum on loan to someone.
- Conversion of Rs 1,000 currency note into one rupee coins to the extent amount is received in money form

Further, as per section 3 of the Transfer of Property Act, 1893 actionable claims means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

Illustrations of actionable claims are:

- Unsecured debts
- Right to participate in the draw to be held in a lottery.

**(c) Employer – employee relationship**

Further, services provided by the employee to the employer in the course of employment are outside the purview of service tax. Thus, salary is outside the purview of service tax. Further services provided by the employee to the employer are still taxable.

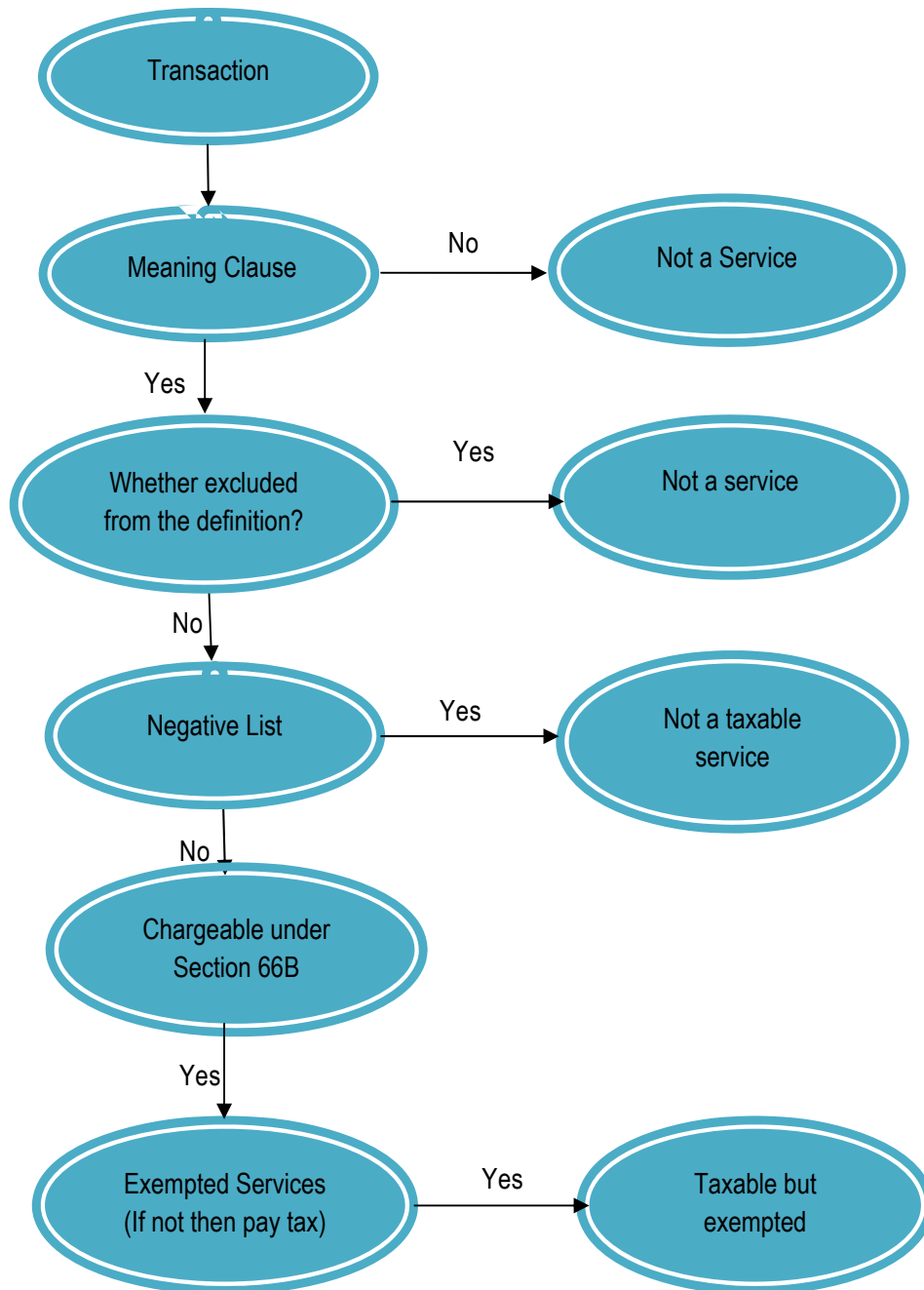
**(d) Fees by court**

Any statutory fee charged by the court is not considered to be as a service transaction as money is collected for discharging statutory functions.

Further, services provided by MP's, MLA's etc. are expressly excluded from the definition of service by way of an explanation to the definition, and many such explanations are being given to the definition in order to harmonize the situation with respect to taxability. Based on the above analysis one has to scrutinize the transaction which he/she is undertaking in the light of the definition mentioned supra and then decide taxability with respect to service tax.

Thus, for any transaction to be made taxable under the bracket of service tax, it is recommended the following procedure be followed in order to ensure that the transaction is taxable and that no benefits are skipped apart from the interpretational error. The said procedure is depicted as under:

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## **(b) Negative list**

After discussing the scope of the term service, we now discuss the much awaited concept of negative list. Negative list is a list of 17 entries which are specified by the Central Government as services outside the purview of service tax. They are excluded from the ambit of taxable service<sup>4</sup> and hence are not taxable. Therefore, any service appearing in the said list is a service which is not chargeable under the purview of service tax.

As the said guide is focused on providing harmonious solutions to the dispute under the entertainment sector, and hence out of 17 entries only, 3 entries which are related to the said sector is discussed here in great detail. The said entries are enumerated here for your ready reference:

“Entry (g) : selling of space for advertisements in print media”

“Entry (i) : betting, gambling or lottery”

“Entry (j) : admission to entertainment events or access to amusement facilities”

## **Transactions on which service tax is not applicable**

### **1. Entry g: Selling of space for advertisements in print media**

Law prior to 01.07.2012:

Prior to 01.07.2012, services in relation to the advertisement which is a part of the entertainment sector was taxable under the following categories:

- (a) Advertisement agency service
- (b) Sale of space or time for advertisement service.

The service of advertisement agency was made taxable w.e.f. 01.11.1996 vide Notification 6/96 dated 31.10.1996. Accordingly, advertisement services provided by any person being an advertising agency to any other person is taxable under the ambit of service tax.

Further, the service of selling of time slots or space for advertisement was made taxable w.e.f. 01.05.2006 vide notification 15/2006 dated 24.04.2006 wherein service tax is levied on any person who executes the transaction for sale of space or time slots for advertisements with any other person. Further, the said

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<sup>4</sup>Section 66B of the Finance Act, 1994

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transaction excludes sale of space or time slots for advertisement in print media and sale of time slots by a broadcasting agency or organization. Thus, till 01.07.2012 service tax on entertainment sector was being governed by the above mentioned categories. As mentioned supra, the regime of service tax underwent a dynamic change post- 01.07.2012 with the venting off of the concept of category based taxation and the introduction of negative list based taxation.

#### Law for the period from 01.07.2012 to 06.11.2014:

By Finance Act, 2012, negative list<sup>5</sup> was defined and following service affecting the said sector was excluded from the purview of service tax. The same was effective from 01.07.2012. The said entry is enumerated as under:

*(g) Selling of space or time slots for advertisements other than advertisements broadcast by radio or television*

The said entry states that selling of space or time slots for advertisement was excluded from the purview of service tax. The same is no longer a taxable service and, therefore, the companies providing such services should discontinue payment of service tax on such services. However, services by way of selling of space or time slots for broadcast of advertisement by way of radio or television was still taxable. Thus, the law appears very clear that only advertisements on television or radio is taxable and all others are excluded from the purview of service tax.

To that many doubts were raised as to whether services by way of advertisement on bill boards, signboards, pamphlets are excluded from the purview of service tax or not etc. Thus, a guidance note<sup>6</sup> was introduced for smooth transition and implementation of the newly introduced law. The said guidance note has discussed certain situations wherein an overview was given and the approach one should adopt was demonstrated. The same is articulated here below:

Sale of space of time for advertisements not including sale of space for advertisement in print media and sale of time by a broadcasting agency or organization is currently taxed under clause (zzzm) of sub-section (105) of the

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<sup>5</sup>Section 66D of the Finance Act, 1994

<sup>6</sup>**Note:** The guidance note is a view portrayed by the department purely as a measure of facilitation so that all stakeholders obtain some preliminary understanding of the new issues for smooth transition to the new regime. The same is not binding on either side in any manner.

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Finance Act, 1944. So what kind of sale of space or time would become taxable and what would be not taxable?

<i>Taxable</i>	<i>Non-taxable</i>
Sale of space or time for advertisement to be broadcast on radio or television	Sale of space for advertisement in print media
Sale of time slot by a broadcasting organization.	Sale of space for advertisement in bill boards, public places (including stadia), buildings, conveyances, cell phones, automated teller machines, internet
	Aerial advertising

Would services provided by advertisement agencies relating to preparation of advertisements be covered in the negative list entry relating to sale of space for advertisements?

No. Services provided by advertisement agencies relating to making or preparation of advertisements would not be covered in this entry and would thus be taxable. This would also not cover commissions received by advertisement agencies from the broadcasting or publishing companies for facilitating business, which may also include some portion for the preparation of advertisement.

In case a person provides a composite service of providing space for advertisement that is covered in the negative list entry coupled with taxable service relating to design and preparation of the advertisement, how will its taxability be determined?

- This would be a case of bundled services, taxability of which has to be determined in terms of the principles laid down in section 66F of the Act.
- Bundled services have been defined in the said section as provision of one type of service with another type or types of services.
- If such services are bundled in the ordinary course of business then the bundle of services will be treated as consisting entirely of such service which determines the dominant nature of such a bundle.
- If such services are not bundled in the ordinary course of business then the bundle of services will be treated as consisting entirely of such service which attracts the highest liability of service tax.

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Whether merely canvassing advertisement for publishing on a commission basis by persons/agencies is taxable?

Yes. These services are not covered in the negative list entry.

Thus, all the agencies carrying on the business of selling of space or time slot for advertisement through commission basis were taxable and were not excluded from the purview of service tax irrespective of the mode of advertisement. The intention of the legislature behind the same is that tax should not be levied only on such transactions which undertake the actual selling of space or time slot for advertisement and not on transactions which facilitate the selling of space or time slots for advertisement. Mere facilitation is not considered to be as a service of selling of space or time slot for advertisement but the nature of the service is more akin to "Commission agent service" which then was known as "Business Auxiliary Service".

Further, on referring to the principles of classification<sup>7</sup>, it is very clear that one cannot consider commission agency service to be the same as selling of space or time slots for advertisement service. For clarity the said clause is reproduced below:

*"Unless otherwise specified, reference to a service (herein referred to as a main service) shall not include reference to a service which is used for providing main service".*

Thus, after the above mentioned clause being present in the act it is difficult to take a view that service of commission agency for sale of space or time slots for advertisements is the same as the service of actual sale of space or time slots for advertisements because both the services are two different services. Though the service of commission agency is a derivative of the main service, yet in the light of the above clause, it is difficult to take a view that the service of commission agency is excluded from the purview of service tax.

Scenario 1: Mr. A has a 10 storey building along a highway. The same is a very good place for display of banner or advertisement. M/s. Pioneer advertisement approached Mr. A to kindly give 50 sq. ft. of space for affixing a billboard on which they can display advertisement. Mr. A agreed and a rent of Rs. 75000/- p.m was decided for renting of 50 sq. ft of space on terrace and accordingly a contract was entered. . In view of the above mentioned entry, is the amount of Rs. 75,000/- p.m taxable under the ambit of service tax.

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<sup>7</sup>Section 66F of the Finance Act, 1994

**Ans:** Yes.

*Explanation:* The said transaction is considered to be a taxable transaction in view of the concept of principles of classification explained supra [point 4.1.6]. Thus, the service of renting of space for affixing a billboard on which advertisement would be displayed is a service which is more akin to renting of immovable property and not sale of space for advertisement. Therefore, the transaction between Mr. A and M/s. Pioneer is considered to be a taxable transaction and accordingly service tax is applicable on the same.

**Scenario 2:** The said company rents the space to certain brands so that they can install their kiosk for the purpose of advertisement and thereby recover good income from the same. Is tax payable on such a transaction?

**Ans:** Yes, service tax is payable on the said transaction as the same is nothing but a transaction correctly classified as renting of immovable property and thus tax is payable on the said transaction.

*[Author's Comments: It can be argued that the same pertains to advertisement and therefore no tax is payable but the same may not sustain as generally the agreements suggest grant of the right to use the space for installation of kiosk which is altogether a different transaction than the agreement for sale of space for advertisement. For example: granting of space for installation of billboards is taxable whereas sale of space on the billboards is excluded from the levy of service tax.]*

**Scenario 3:** Mr. A is a manufacturer of automated toys and for branding the same Mr. A hires Shahrukh Khan because of his vibrant image both in India and overseas. Mr. Khan endorsed the product of Mr. A for which Mr. Khan received Rs. 5 crore a year. In view of the above mentioned entry is the amount of Rs. 5 crore taxable under the ambit of service tax?

**Ans:** Yes

*Explanation:* The said entry states that selling of time slots for advertisement is excluded from the levy of service tax. On a plain reading of the said entry it appears that the instant transaction is squarely covered and hence the exclusion should prevail. However, such is not the case. Let us analyze the said clause in great detail. The instant clause states that selling of time slots for advertisement is excluded from the levy of service tax. Thus, there are two important ingredients of the transaction which is as under:

- (a) Selling of time slots

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(b) The same should be for advertisements

On analyzing the instant transaction, it can be said that clause (a) is being satisfied, the reason being that one of the factors towards recovery of the fees is time involvement of Mr. Khan and hence the amount so received is towards selling of Mr. Khan's time for endorsement of the product.

While analyzing clause (b) of the transaction, it is pertinent to know the meaning of the term "advertisement" and the same has been defined<sup>8</sup> under the said act. The same is reiterated as under:

*"advertisement" means any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person*

For better understanding, the term advertisement is divided into two parts:

- (a) Meaning clause
- (b) Exclusion clause

**Meaning clause:**

Any form of presentation which can be audio, visual etc. Typically, the term 'presentation' means a process of presenting a topic to an audience. It is typically a demonstration, lecture, or speech meant to inform, persuade, or build good will. Such presentation should be for bringing awareness about any event, idea, immovable property, person, service, goods or actionable claim. Further, the said awareness may be through the mode of newspaper, television, radio or any other mode.

**Exclusion clause:**

Such presentation may not include presentation made in person which means that any presentation about the awareness about any event, idea, immovable property, person, service, goods or actionable claim made by any person cannot be termed as advertisement

Therefore, based on the analysis made supra it is concluded that though Mr. Khan is selling time slot, the same is not for advertisement under the service tax regime.

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<sup>8</sup>Section 65B(2) of the Finance Act, 1994

Scenario 4: M/s. ABC Ltd has appointed Mr. Salman Khan as the brand ambassador for the above event wherein they paid Rs. 5 crores to him. Further, as a part of structuring, the company made Mr. Salman Khan the profit partner in the said event. The company would like to seek an opinion whether service tax is applicable on the same.

Ans: Yes, service tax is applicable on the said transaction as the structuring of the agreement with respect to consideration will not change the colour of the transaction i.e. promotion of the event as brand ambassador.

*[Author's Comment: As per the very specifics of the clauses of the agreement the answer may vary]*

Scenario 5: Mr. A floated a website named ghunteraho.com which was a big success. As a result, the website received many nominations for posting their ads on the website. Accordingly, ads were posted and the website generated revenue of Rs. 1 crore from the same. Mr. A would like to know the impact of service tax on the same?

Answer: No

*Explanation:* Service tax applicability on advertisements on internet was a big question. The reason: it appears that this form of advertisement is more akin to the television form of advertisement. However, the advertisement on television is not the same as advertisement on internet. The reason is that these two are altogether different modes of advertisement and the intention of the legislature is to tax only television and radio mode of advertisement and not any other. Therefore, tax is applicable only on such transactions. Further, though the television mode of advertisement is more akin to internet-based advertisement, the two are not synonymous and hence tax cannot be made applicable on advertisements on internet.

Further, the term "television" means ---

- (a) An electronic broadcast system in which special providers transmit a continuous program of video content to the public or subscribers by way of antenna, cable, or satellite dish, often on multiple channels: a news it common television. {as per [www.thefreedictionary.com](http://www.thefreedictionary.com)}
- (b) Video content, especially short programs, created for or distributed through such a system: stayed home and watched television. {as per the [freedictionary.com](http://thefreedictionary.com)}

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- (c) An electronic device for viewing television programs and movies, consisting of a display screen and speakers: situated close to the television.

{as per thefreedictionary.com}

- (d) a device shaped like a box with a screen that receives electrical signals and changes them into moving images and sound, or the method or business of sending images and sound by electrical signals:

{as per dictionary.cambridge.org}

On analyzing the definitions of television above, it can be concluded that internet form of advertisement is technically very different and hence service tax is not applicable on the same.

**Law post 06.11.2014**

After growing litigation in the said space and also on realisation of the impact of the loss of revenue from the said area, the department amended the said entry vide Finance Act, 2014 and only advertisements by way of print media were excluded from the purview of service tax w.e.f. 06.11.2014. The said amended entry reads as under:

*“(g) selling of space for advertisements in print media”*

The said entry states that selling of time slots for advertisements in print media is excluded from levy of service tax. Further, the term print media is being defined<sup>9</sup> which means books and newspaper as defined<sup>10</sup> and thus printing of advertisement on every volume, part or a division of a volume, pamphlets, every sheet of music, map, chart or plan and any periodical work containing public news or comments on public news is excluded from the levy of service tax.

However, the definition of print media specifically excludes business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes, which means printing of advertisement on the same for commercial purpose is taxable.

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<sup>9</sup>Section 65B (39a) of Finance Act, 1994

<sup>10</sup>Section 1(1) of the Press and Registration of Books Act, 1867 (25 of 1867)



### Taxability under Entertainment Sector

The analysis of taxability under the said sector is as under:

Particulars	Position of taxability		
	01.04.2006 to 01.07.2012	01.07.2012 to 06.11.2014	06.11.2014 till date
Mode of advertisements			
Television	Yes	Yes	Yes
Radio	Yes	Yes	Yes
Internet	Yes	No	Yes
Hoardings/pamphlets etc	Yes	No	No
Newspapers/ Books	No	No	No
Business directories, yellow pages etc	Yes	No	Yes
Brand endorsement made by representation in person	Yes	Yes	Yes

### Mere display is not advertisement

In the context of section 328A of the Bombay Municipal Corporation Act, 1888, the term advertisement has been interpreted by the Supreme Court<sup>11</sup> to mean any communication whereby the communicator tries to influence people to buy his product or service, or attract towards his product or service. It was stated that an advertisement is a matter that draws attention of the public or segment of public to a product, service, person, organization or line of conduct in a manner calculated to promote or propose directly or indirectly that product, service, person, organization or line of conduct intended to promote sale or use of product or range of products. It was also held that an advertisement is generally of goods and services and its information intended for the potential customers and not a mere display of the name of the company unless the same happens to be a trade mark or trade name. In ordinary parlance, if meaning is not given to the word 'advertisement' in section 328A, it will create anomalous position, inasmuch as a simple name plate put on the house to indicate who is residing in the premises, would also be an advertisement; a name board or signboard of a trader visible to the public to identify the place of business would also be an advertisement. The 'advertisement' within the meaning of section 328A must

<sup>11</sup> *ICICI Bank v Municipal Corpn. of Greater Bombay* (2006) 4 STT 20 (SC).

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primarily have a commercial purpose and should be indicative of business activity of the displayer with a view to attracting the attention of people to its business.

Thus, it can be concluded that the taxable scenario post-2012 with respect to taxability under the advertisement sector has changed drastically and thus each and every transaction has to be critically analysed from the point of view of service tax and an income model designed accordingly, otherwise it can have long lasting adverse implications.

## **2. Entry i : betting, gambling or lottery**

Betting, gambling or lottery is a game of chance, and the same was not taxable right from the introduction of service tax. The reason was that betting, gambling or lottery per se comes within the jurisdiction of state authorities and therefore the centre cannot levy service tax on the same.

Under the negative list-based taxation, the position with respect to taxability on betting, gambling or lottery is no different. Further, the term "betting or gambling" is defined<sup>12</sup> under the current regime. The same is reproduced below:

*"betting or gambling" means putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring*

Thus, betting or gambling is a game or a contest wherein some stake in value, particularly money, is involved with the consciousness of risk and hope of gain on the outcome of a game or a contest, whose result is determined by chance or accident or the likelihood of anything occurring or not.

Some illustrations which satisfy the above mentioned clause are the games like BINGO, LOTTO, Poker, Roulette etc.

Further, only the game of betting, gambling or lottery per se is excluded from the levy of service tax. However, services in relation to rendition of these services are not excluded from the levy of service tax.

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<sup>12</sup>Section 65B(15) of the Finance Act, 1994

### **3. Entry j : admission to entertainment events or access to amusement facilities**

#### **Law for the period from 16.08.2002 to 01.07.2012**

Prior to 01.07.2012, service tax was levied on the entertainment events which is the part of the entertainment sector under the category “Event Management Service”. The said service was made taxable w.e.f. 16.08.2002 vide notification 8/2002-ST, dated 01.08.2002. Accordingly, any service provided by an event manager [who can be any person] to any person in relation to event management is taxable under the instant category.

Further, the term “event management” was defined under section 65(40) of the Finance Act, 1994 as any services provided in relation to planning, promotion, organizing or presentation of any arts entertainment, business, sports, marriage or any other event and includes any consultations provided in this regard.

Thus, an important point to be taken into consideration is that only services in relation to planning, promotion, organizing or presentation is taxable and not any other service. Thus, the amount paid for getting an access to these entertainment events is still not taxable. As mentioned supra, the regime of service tax underwent a dynamic change post-01.07.2012 with the venting off of the concept of category based taxation and the introduction of negative list-based taxation.

#### **Law for the period from 01.07.2012**

On introduction of the negative list-based taxation regime, certain relaxation in the form of exclusions from the levy of service tax was introduced vide Finance Act, 1994. Accordingly, the following entry was added for the said sector:

#### ***(j) Admission to entertainment events or access to amusement facilities***

From the above it can be inferred that admission to entertainment events or access to amusement facilities is being excluded from the levy of service tax. For better understanding, the said entry is divided into two parts, and is analysed in the following manner:

- ❖ Admission to entertainment events
- ❖ Access to amusement facilities

(i) ***Admission to entertainment events***: From the plain reading of the entry it can be summarised that only admission to entertainment events per se is

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excluded from the levy of service tax and not services in relation to admission to entertainment events.

**Practical illustrations:**

**Scenario 1:** M/s. A Ltd, an event management company which is into organizing of events and also into media advertisements has organised a magical show of David Blaine on a grand scale, where he will be performing at MMRDA grounds. The entry ticket cost for this event is Rs. 5000/- per person. A Ltd wants to know whether service tax is applicable on the same.

**Ans:** Service tax is not applicable on the same as it is an entertainment event which is intended to provide recreation, pastime, fun or enjoyment by way of exhibition of a performance in an event. Further, an important thing to be noted is that such a transaction is excluded from the levy of service tax. However, for the purpose of availment of CENVAT credits, M/s. A Ltd may have to do proportionate reversals. [For detailed meaning of the term entertainment event please refer point 4.3.8]

**Scenario 2:** M/s. A Ltd has organised a fashion event in Delhi wherein the art of all the fashion designers is being showcased. Further, if any person is interested in the creativity, then he can contact the designer and can start business relations with him/her. The said fashion show is a mix of musical performances by top class DJ's, dance performances by famous celebrities etc. Thus, the said event is a mix of business as well as entertainment and the entry charge is Rs. 10,000/- per participant. Therefore, M/s. A Ltd. would like to seek an opinion that whether service tax is payable on the same.

**Ans:** Service tax is not applicable on the instant transaction because the said event is an entertainment event since such an event is intended to provide recreation, pastime, fun or enjoyment by way of exhibition of a dance, musical performances. Further, it also provides business opportunities. However, on analysing the definition carefully, it can be said that the element of provision of business opportunities being present, does not debar the said event from being classified as an "entertainment event". Further, the Supreme Court<sup>13</sup> has held that fashion shows are entertainment events. Therefore, service tax is not applicable on the instant transaction.

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<sup>13</sup> Amit Kumar vs. State of U.P 2008 AIR 592 SC

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Scenario 3: As a part of the event, the company is providing catering service in the entertainment event and wishes to know whether the same can be treated as bundled service and consequently no tax is payable on the same.

Ans: No, service tax on the same is payable as the same is not naturally bundled and also according to the principles of classification the same is capable of a differential description. Therefore, tax is payable on the same.

Scenario 4: The said company is also recovering parking charges from the participants who come in for the said event for availment of car parking facility. Whether the same can be treated as bundled service and consequently no tax is payable on the same.

Ans: No. Service tax on the same is payable as the same is not naturally bundled and also according to the principles of classification the same is capable of a differential description. Therefore, tax is payable on the same.

Scenario 5: M/s. Abc Ltd. has organized a fusion dance event which is a mix of traditional dance as well as western dance and the entry charges for the event are Rs. 5000/- . The company would like to know whether service tax is applicable on the said ticket charges.

Ans: No, service tax is not applicable on the said event as the same is an entertainment event.

Scenario 6: Mr. Shah is owner of one of the cricket teams named “Delhi Knight Riders” and the same was purchased for Rs. 400 crores. A match was being played by the team in Wankhede Stadium wherein the entry fee for viewing the match was Rs. 2500/- per ticket. The entire ticket proceeds would be collected by Mr. Shah as he is the owner of the team. Therefore, Mr. Shah would like to know the applicability of service tax on the tickets sold.

Ans: Service tax is not applicable on the amount received from sale of tickets as the same amounts to admission to an entertainment event which is clearly getting covered under the negative list.

i. The term “entertainment event” is defined<sup>14</sup> under the said act and the same is as follows:

*“Entertainment Event” means an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, by way of exhibition of cinematograph film, circus, concerts, sporting event, pageants, award functions,*

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<sup>14</sup> Section 65B (24) of the Finance Act, 1994

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*dance, musical or theatrical performances including drama, ballets or any such event or programme.- as defined in Sec 65B (24) of the Finance Act 1994.*

The scope of the term 'Entertainment' can never be limited to a bunch of activities. It is a term having wide connotations. By Shakespeare's time, the word had acquired the meaning of "engaging or keeping the attention of a person". In ordinary sense, entertainment is meant to be an act or art or field of entertaining such that it amuses or pleases the audience. It included activities like acrobatics, comedy, dance performance, circus, sports etc.

The phrase mentioned in the definition '*intended to provide*' clearly indicates that the event performed should be intended to provide recreation, pastime, fun or enjoyment to the public. Whether public is entertained or not is not a pre-requisite for eligibility to include such event under this entry of negative list. What appears as entertainment may or may not be a means of achieving insight or intellectual growth.

One thing relevant to note is that all the events mentioned above are organized events. These events must be organized for attention or interest of audience with an idea to provide pleasure or delight. Also, an act or event that leads to diversion or distraction from worries and vexations can be treated as an entertainment event. Thus, screening of India vs. Pakistan cricket match for entertainment purpose will also be covered under the definition of entertainment event as the said activity is meant for recreation or enjoyment of public.

Following events are specifically included in the definition of Entertainment Event. The principle of *ejusdem generis* should be applied while interpreting this definition. The definition specifically mentions the term 'by way of', which restrict the scope of the events to the following:

- Exhibition of cinematograph film
- Circus
- Concerts
- Sporting event
- Pageants
- Award functions
- Dance, musical or theatrical performances
- Drama
- Ballets

## Dictionary meanings of above terms

### Exhibition of cinematograph film

Sec 2(f) of the Indian Copyright Act 1957 defines cinematograph film as:

*"cinematograph film" means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films;*

The definition of the expression "Cinematograph" includes VCR/VCP/TV Projector as the said equipment's achieve/serve the same purpose as the traditional media for exhibition of moving pictures. It must be so interpreted to take into account new and subsequent scientific developments in the field as it cannot be confined to traditional interpretation of such apparatus or simply compartmentalized. (Samrat Video Parlour v. State of Haryana, AIR 1993 SC 2328.)

Thus, exhibition of cinematograph film means public display of such films.

### Circus

A show with performers such as acrobats and clowns and animals such as elephants and horses that takes place in a large tent called a big top (Macmillan Dictionary)

An arena often covered by a tent and used for variety shows usually including feats of physical skill, wild animal acts, and performances by clowns (Merriam Webster)

### Concerts

An event at which an orchestra, band, or musician plays or sings in front of an audience (Macmillan Dictionary)

A public performance as of music or dancing. (Merriam Webster)

### Sporting event

A sporting event is a wide term that includes all those events which are organized in relation to sports, mainly a tournament or a championship.

A tournament is a competition involving a relatively large number of competitors, all participating in a sport or game. (Wikipedia)

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A championship is an important competition that decides which player or team is the best in a particular sport, game. (Merriam Webster)

#### **Pageants**

A play, concert, or other performance based on a historical or religious story (Macmillan Dictionary)

A large-scale, spectacular theatrical production or procession- Pageants often serve to express the shared identity of a community or religious group. Secular pageants include coronations and royal weddings, carnival processions, etc. (Merriam Webster)

#### **Award functions**

Often signified by trophies, titles, certificates, commemorative plaques, medals, badges, an award is given to a person or a group of people to recognize their excellence in a certain field. An award may or may not carry a monetary prize to the recipient

#### **Dance, musical or theatrical performances**

- **Dance:** Form of expression that uses bodily movements that are rhythmic, patterned (or sometimes improvised), and usually accompanied by music. One of the oldest art forms, dance is found in every culture and is performed for purposes ranging from the ceremonial, liturgical, and magical to the theatrical, social, and simply aesthetic. (Merriam Webster)
- **Musical:** Vocal or instrumental sounds possessing a degree of melody, harmony, or rhythm. (Farlex Dictionary)  
Sounds made by voices or instruments arranged in a way that is pleasant to listen to (Macmillan Dictionaries)
- **Theatrical:** Of or relating to the theatre or the presentation of plays (Merriam Webster)

#### **A performance of a play (Farlex Dictionary)**

#### **Drama**

A prose or verse composition, especially one telling a serious story, that is intended for representation by actors impersonating the characters and performing the dialogue and action. (Farlex Dictionary)



A composition in verse or prose intended to portray life or character or to tell a story usually involving conflicts and emotions through action and dialogue and typically designed for theatrical performance (Merriam Webster)

### **Ballets**

A type of dancing used for telling a story, with complicated movements that need great skill and a lot of training (Macmillan Dictionary)

A theatrical presentation of group or solo dancing to a musical accompaniment, usually with costume and scenic effects, conveying a story or theme (Farlex Dictionary)

### **Event held in open garden**

Cultural programme, drama or ballet held in open garden instead of theatre would be eligible to be covered under the definition of entertainment event. The words used in the definition are 'theatrical performances' and not 'performances in theatre'. A cultural programme or such events when held in open garden do not cease to be a theatrical performance provided it is performed in the manner it is performed in a theatre, i.e. before an audience.- Para 4.10.1 of the Education Guide.

A few illustrations of entertainment event:

- Organizing plays depicting stories of *Ramayana* or *Mahabharata*.
- Entry to video parlours exhibiting movies played on a DVD player and displayed through a TV screen.
- '*Dance India Dance*' contest
- Musical concerts
- *Dandiya* or *Garba* events

The place of provision of service in case of entertainment event shall be the place where event is actually held.- Rule 6 of Place of Provision of Service Rules 2012.

Further, auxiliary services provided by a person like an event manager for organizing an entertainment event or by an entertainer for providing the entertainment to an entertainment event organizer are not covered under the negative list. Such services are in the nature of services used for providing the service specified in the negative list entry and would not be covered under the

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ambit of such specified service by operation of the principles of classification contained in Sec 66F(1) of the Act as mentioned supra.

(ii) *Access to Amusement facility*: From a plain reading, it can be substantiated that only amount with respect to access per se recovered in lieu of amusement facilities is excluded from the levy of service tax.

**Practical illustrations**

**Scenario1:** M/s. A Ltd has setup an exemplary gaming parlour “Games beyond imagination” wherein they provide the experience of virtual gaming, real gaming, video gaming, outdoor gaming etc. The company wishes to know whether service tax is applicable on the said transaction and if yes, then when?

**Ans:** Service tax is not applicable on purchase of tickets to get an access to the gaming parlour. [For detailed meaning of the term “amusement facility” please refer point 4.3.12]

**Scenario 2:** For setting up the above mentioned parlour M/s. A Ltd has incurred huge capex against installation of gaming technologies, gaming software’s, production of new games, installation of equipment’s etc. The company seeks to know whether service tax is payable on the said transaction.

**Ans:** Service tax is payable on the said transaction as only amount collected in the nature of admission or access fees from the final customer is excluded from the levy of service tax and not all the services in relation to the creation of amusement facilities or entertainment events.

*[Author’s Comments: Service tax is payable on the instant transaction no matter if after colouring the transaction you may shape it into a permanent transfer of property [w.r.t software’s, games etc.]. The reason is that the very nature of erstwhile information technology software services, video tape production service etc won’t be shed away and hence tax is payable on the same. ]*

**Scenario 3:** Would a standalone ride set up in a mall qualify as an amusement facility?

**Ans:** Yes. A standalone amusement ride in a mall is also a facility in which fun or recreation is provided by means of a ride. Access to such amusement ride on payment of charges would be covered in the negative list.

**Scenario 4:** Would entry to video parlours exhibiting movies played on a DVD player and displayed through a TV screen be covered in the entry?

**Ans:** Yes. Such exhibition is an exhibition of cinematographic film.

Scenario 5: Would membership of a club qualify as access to an amusement facility?

Ans: No. A club does not fall in the definition of an amusement facility.

Scenario 6: Would auxiliary services provided by a person, like an event manager, for organizing an entertainment event or by an entertainer for providing the entertainment to an entertainment event organizer be covered in this entry?

Ans: No. Such services are in the nature of services used for providing the service specified in this negative list entry and would not come within the ambit of such specified service by operation of the principles of classification as explained supra.

The term "amusement facility" has been defined<sup>15</sup>and the same is as under:

*'Amusement facility' means a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places but does not include a place within such facility where other services are provided.'*

Thus, on analysing the above definition it can be said that access to any such amusement facility is covered under this category of negative list and hence not chargeable to service tax. Such definition is inclusive in nature and hence apart from places mentioned therein, other places where such facilities are provided are also covered under this entry.

*The 3 important aspects of this definition are:*

**A. Fun or recreation must be provided**

The facility provided must have the purpose of provision of fun, recreation & entertainment. Such activities are often done for enjoyment or pleasure. The term recreation and fun imply a state of refreshment for mind and body.

**B. There should be infrastructure or devices**

The definition states that such an activity should be provided by means of rides, gaming devices or bowling alleys.

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<sup>15</sup> section 65B(9) of the Finance Act, 1994

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- **Rides:** Rides are large mechanical devices that move people to create enjoyment. They are frequently found at amusement parks, travelling, carnivals and funfairs. (Source: <http://en.wikipedia.org/wiki/Rides>)
- **Bowling Alley:** As per Section 2(a-al) of Bombay Entertainment Duty Act “bowling alley” means a building housing a hardwood lane or lanes or lane or lanes made of any other material for bowling or an enclosed ground or part of ground having hardwood lane or lanes or lane or lanes made of any other material, for playing any of the several games in which balls are rolled down an alley at an object or group of objects or pins

The term bowling alley is also defined under various dictionaries as follow:

- a long narrow lane down which the ball is rolled in tenpin bowling( Collins English Dictionaries)
  - a long, narrow track along which balls are rolled in the games of skittles or tenpin bowling( Oxford Dictionary)
- **Game:** The Supreme Court, in the case of Pleas an time Products v CCE 2009 (243) ELT 641, after referring to various dictionary meanings of the word ‘game’, has observed as follows-

*‘18. The word ‘game’ in commercial sense means an article or apparatus used in playing games. According to Words and Phrases, Permanent Edition, the word ‘game’ also defines, in certain context, instrumentalities used in playing them. According to Stroud’s Judicial Dictionary, a ‘game’ is a form of play or sports especially a competitive one, played according to the rules and decided by the skill and chance. According to words and phrases, permanent edition, the instruments by which chance may be developed and upon which skill may be exercised are also games – such as cards, dice, balls, figures, letters, checks etc. Therefore, in a game there is a trail of skill or chance between two or more contesting parties according to some rule(s) by which one may succeed or fail. It is a contest for success for a trail of chance or skill and it embraces every contrivance which has for it objects sport, recreation or amusement. These are the various dictionaries meaning of the word “game”. Applying the dictionary meaning, we are of the view that “Scrabble” is a board game. It is not a puzzle...’*

- **Gaming Device:** Gaming Device means the object by which such games are played. In case of Roulette game, wheel and tables on which wheel is placed is a gaming device. Gaming device is helpful in playing the games.

**C. Places included**

The definition states that the above mentioned infrastructure should be provided in amusement park, amusement arcade, Water Park and theme park. The said terms are elaborated as under:

- **AMUSEMENT PARK:** The term amusement park has been defined under various dictionaries as given below-
  - a large park equipped with such recreational devices as a merry – go-round, ferries, wheel, roller coaster etc. and usually having booths for games and refreshment's (*dictionaryreference.com*)
  - as per section 2(a-1) of the Bombay Entertainment Duty Act, "amusement park" means the place where in various types of amusement including games or rides or both (but excluding exhibition by cinematograph and video exhibition) are provided fairly on permanent basis , on payment for admission
  - a commercially operated park having various devices for entertainment (as a merry go-round and roller coaster) and usually booths for the sale of food and drink (*Webster Dictionary* )
  - amusement parks are a group of entertainment attractions and rides and other events in a location for the enjoyment of large number of people. An amusement park is more elaborate than a simple city park or playground, usually providing attractions meant to cater specifically to certain age groups. as well as some that are aimed towards all ages ([http://en.wikipedia.org/wiki/amusement\\_park](http://en.wikipedia.org/wiki/amusement_park))
- **AMUSEMENT ARCADE:** the term amusement arcade has been defined under various dictionaries as given below-
  - an indoor area containing coin-operated game machines (Oxford Dictionary )
  - an amusement arcade or video arcade is a venue where people play arcade games such as video games, pin ball machines , electromechanical games, redemption games, merchandisers (such as claw cranes) , or coin- operated billiards or air hockey tables. In some countries, some types of arcade are also legally permitted to provide gambling machines such as slot machines or pachinko

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machines. Games are usually housed in cabinets (Wikipedia)  
(Source ([http://en.wikipedia.org/wiki/amusement\\_arcade](http://en.wikipedia.org/wiki/amusement_arcade) )

➤ **WATER PARK:** The term water park has been defined under various dictionaries as given below-

- an amusement park with facilities( as pool and wetted slides) for aquatic recreation(Webster Dictionary)
- an amusement park featuring swimming pools, water slides , wave pools, fountains or other attractions involving water (dictionary reference.com)
- water park is an amusement park that features water play are as such as water slides , splash pads, spray grounds( water play grounds) , lazy rivers , or other recreational bathing, swimming and bare footing environments. Water parks in more current states of development may also be equipped with some type of artificial surfing or body boarding environment such as a wave pool or Flow Rider(Wikipedia)

*Source: [http://en/Wikipedia.org/wiki/water\\_park](http://en/Wikipedia.org/wiki/water_park)*

➤ **THEME PARK:** The term theme park has been defined under various dictionaries as given below-

- an amusement park in which landscaping , building and attractions are based on one or more specific themes as jungle, wildlife, fairy tales or the Old west(dictionaryreference.com).
- an area planned as a leisure attraction in which all the displays , buildings, activities etc. are based on or relate to one particular subject (Collins Dictionary)
- a large permanent area for public entertainment, with entertainment activities and big machines to ride on or play games on, restaurants etc. , all connected with a single subject (Cambridge Dictionary)
- they, a group of entertainment attractions and rides and other events in a location for the enjoyment of large number of people (Wikipedia)

**Exclusion:** The definition specifically excludes the place within such Amusement park, Amusement Arcade, Water Park and Theme Park where other services are provided. Amusement facilities generally have restaurant

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accommodation etc. As per the clause, the restaurant and accommodation facilities attached to these amusement facilities will not be covered under the definition, and tax will be payable on the amount recovered towards the same.

Even though a place includes other facilities along with those for amusement, still the amusement facility will be covered under this entry of negative list. A standalone amusement ride in a mall is also a facility in which fun or recreation is provided by means of rides. Access to such amusement ride on payment of charges would be covered in this entry of negative list. Also, in amusement parks such as Essel World, entry fee for amusement facilities would not be chargeable to service tax. However, in case of any other facilities provided within such place which are not meant for amusement would not get benefit under this category. Further, membership of a club doesn't amount to amusement facility because it does not fall within the definition of amusement facility.

In conclusion, service tax on access to amusement facilities or admission to entertainment events was never taxable in the erstwhile service tax regime nor is the same taxable under the new service tax regime.

## Chapter 3

# Exemption from Service Tax

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As per the flow mentioned supra, the final escape from service tax is only possible if the services are specified in the exemption notification. Currently, there is only one exemption notification<sup>16</sup> [i.e. mega exemption notification] which is operating in the service tax regime which provides exemption to around 40 services and the same caters services from all sectors. Since the guide is only focused towards entertainment sector therefore only 6 services which are in relation to the said sector will be discussed in great detail.

### a) Sports Related

The primary entries for discussion are entries<sup>17</sup> relating to sporting event. The same are as under:

Sr. No	Corresponding Entry No.	Description of the entry
1	10	Services provided to a recognized sports body by- (a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body; (b) another recognized sports body;
2	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;

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<sup>16</sup>Notification 25/2012 dated 20.06.2012

<sup>17</sup>Entry 10 & 11 of Notification 25/2012 dated 20.06.2012



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		(c) by Central Civil Services Cultural and Sports Board; (d) as part of national games, by Indian Olympic Association; or (e) under Panchayat Yuva Kreedha aur Khel Abhiyaan (PYKKA) Scheme;
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Services in relation to sporting event were taxable earlier also under the positive list regime. However, there were different categories under which the said services were taxable. The same are as under:

- **Sponsorship service:** The said service was made taxable w.e.f. 01.05.2006 vide notification 15/2006 dated 24.04.2006. Under the said category, any person providing any service by way of receiving sponsorship under the obligation to provide services such as displaying the sponsor's company logo or trading name, giving the sponsor exclusive or priority booking rights, sponsoring prizes or trophies for competition to the person sponsoring is taxable.
- **Promotion or marketing of a brand of a goods, service, event, business entity service:** The said service was made taxable w.e.f 01.07.2010 vide notification 24/2010 dated 22.06.2010. Under the said category, any person agreeing to provide a service under a contract for promotion or marketing of a brand of goods, service, event or endorsement of name, including trade name, logo or house mark of a business entity by appearing in advertisement and promotional event of carrying out any promotional activity of such goods, service or event is taxable.
- **Permitting commercial use of exploitation or exploitation of any event service:** The said service was made taxable w.e.f 01.07.2010 vide notification 24/2010-ST dated 22.6.2010. Under the said category, any person granting the right or by permitting commercial use or exploitation of any event including an event relating to art, entertainment, business, sports or marriage to any other person is taxable.

Depending upon the ingredients of the transaction even Business Auxiliary service was a service which was popular with this sector with respect to taxability under service tax. However, with the venting off of the category-based taxation determining taxability of the transaction under the above mentioned appropriate categories has taken its way.

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As per the new regime, any transaction classifying to be a service is taxable. However, as per the flow mentioned supra, transactions which are covered under the negative list and exemption list are outside the purview of service tax.

As per the entry mentioned supra [Sr. no 1 in table in point 5.2], an exemption from the purview of service tax is being granted to specified persons participating in sporting event organised by the recognized sports body. The said specified persons are players, referees, umpires, coach or team managers. Thus, all the services provided by such specified persons in relation to participation in a sporting event are exempted from the levy of service tax. Further, provision of service by one recognized sports body to another is also exempted from the purview of service tax.

### **Practical illustrations**

1. MCA, a club which is affiliated with International Cricket Club (ICC) has organised an small inter district cricket tournament called "Quick 10" wherein Pepsi is their main sponsor plunging a whopping Rs. 250 crore. The club would like to know the taxability of the same.

Ans: No service tax is applicable

2. Mr. Sachin Tendulkar has purchased a team at "Quick 10" tournament for Rs. 400 crore and has decided to coach the player wherein he gets Rs. 10 crore for the tournament. Mr. Sachin would like to know the impact of taxability

Ans: No service tax is payable for money received in lieu of coaching.

3. Mr. Akshay Kumar with a view to promote karate among youth opens a club which is affiliated with World Karate Organisation (an international body which promotes the sport karate throughout globe). Further, Mr. Kumar has organised an event called "All India Karate Champion" wherein Nokia is the lead sponsor and has given Rs. 100 crore to the club. Discuss taxability on the same.

Ans: No service tax is payable

{For detailed meaning of recognized sports body please refer to its meaning explained in clause 5.9 below}

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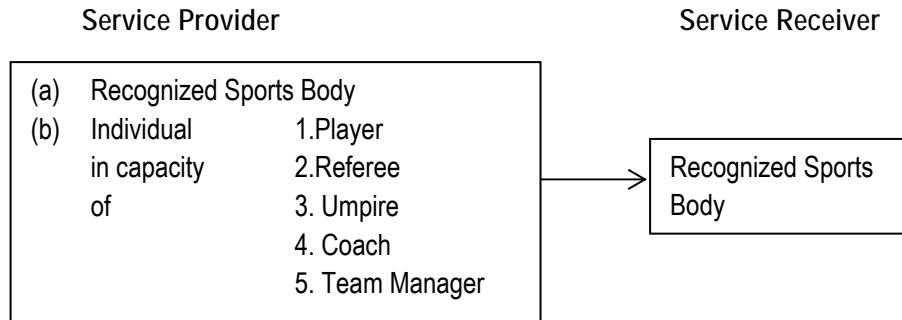
**Meaning of the term “recognized sports body”-**

As per the erstwhile sub-clause (za) and now sub-clause (zaa) to clause 2 of Notification No. 25/2012 S.T. dated 20.06.2012, the term “recognized sports body” means:

- the Indian Olympic Association,
- Sports Authority of India,
- a national sports federation recognized by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations,
- national sports promotion organizations recognized by the Ministry of Sports and Youth Affairs of the Central Government,
- the International Olympic Association or a federation recognized by the International Olympic Association or
- a federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India.

To summarize, most of the sports federations which organize or arranges sports events or sporting activities and which are affiliated with the either national or international sports federation or are formed under the supervision of the government with a view to promoting sports then the said federation is considered to be are cognized sports body.

➤ Thus, entry 10 which provides exemption for services provided to are cognised sports body can be summarized as under:



Thus, the services provided to a recognized body by (a) and (b) above are exempt from the purview of service tax.

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The entry at clause 11 of the Mega Exemption provides that the services by way of Sponsorship of Sporting Events organised by national sports federation or its affiliated federations or such other specified federations are exempt from levy of Service tax. Earlier, exemption was granted only to such sporting events organized by national sports federation or its affiliated federations wherein participating teams or individuals represent any district, state or zone. However, the scope has been expanded [w.e.f. 10.01.2014] to include even participating teams or individuals representing any country.

To conclude, services by way of sponsorships received for all the sporting events organized by specified persons are outside the purview of service tax.

### **b) Intellectual Property Rights Related**

The next entry for discussion is the entry which is in relation to transfer/use of copyrights. The said entry is explained as under:

*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*

### **Position prior to 01.07.2012:**

Prior to 01.07.2012, services pertaining to temporary transfers of copyright, intellectual property service etc. were taxable. However, the same were taxed under respective categories enumerated as under:

#### ➤ **Intellectual Property Right Service:**

Service tax was introduced under the said category w.e.f 10.09.2004 vide notification. Under the said category, any service provided by the person holding any intellectual property and provides any service in relation to intellectual property service, then the said transaction is taxable.

The term “intellectual property service” means temporary transfer or permitting the use or enjoyment of such intellectual property right [IPR]. Further, the term intellectual property was defined which meant any right to intangible property

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namely trademarks, designs, patents or any other similar intangible property under any law and it excludes copyrights.

The phrase “any law for the time being in force” implies such laws as are applicable in India. Thus, IPR covered under Indian law in force at present lone are chargeable to service tax and IPRs which are not covered by Indian law are outside the purview of service tax. Further, IPRs like integrated circuits, undisclosed information or secrets cannot be registered under the Indian laws and, hence, the same is outside the purview of service tax. Thus, all the IPRs which cannot be registered under the Indian laws are outside the purview of service tax.

➤ **Copyright Service:**

Service tax was introduced under the said category w.e.f. 01.07.2012 vide notification 24/2010 dated 22.06.2010. Under the said category, if any person is providing any service in relation to temporary transfer or permitting the use or enjoyment of copyright defined under the Copyright Act, 1957 to any other person, then the said transaction is taxable under the purview of service tax. Further, under the said category service tax is not applicable on following transactions:

- Permanent transfer of copyright
- Transfer/use/enjoyment of work classified as original literary, dramatic, musical and artistic works;

Thus, the above mentioned transactions are outside the purview of service tax and are not taxable.

3.1 The above mentioned taxable events where there is rendition of intellectual property rights, service can be summarized as under:

Sr. No	Particulars	Tax effect	Category
1.	Patent	Taxable	Intellectual Property Right [IPR] Service
2.	Goodwill	Taxable	IPR Service
3.	Trademark	Taxable	IPR Service
4.	Designs	Taxable	IPR Service
5.	Copyright	Taxable	Copyright Service
6.	Original Literary,	Not taxable	.....N.A.....

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	dramatic, musical and artistic work		
7.	Service mark registered under U.S laws	Not taxable	.....N.A.....
8.	Unregistered brand	Not taxable	.....N.A.....
9.	Undisclosed information	Not taxable	.....N.A.....
10.	Ideas and trade secrets	Not taxable	.....N.A.....

**Position from 01.07.2012 to 01.03.2013:**

With negative list under consideration, the position with respect to taxability of the transactions under intellectual property service has changed. Since the venting off of the category-based taxation, the need for determination of the transaction as either an intellectual property right or as copyright is no longer important. However, for the purpose of claiming certain exemptions, the same is important.

There were lots of disputes as to whether service tax is applicable on IPR transactions or not. In order to avoid such a situation, a concept known as declared service<sup>18</sup> was introduced in which a specific list of services, which ought to be chargeable under the purview of service tax without any reservations, was drawn up. Out of the list, the entry relevant for the said sector is as under:

*(c) Temporary transfer or permitting the use or enjoyment of any intellectual property right;*

Accordingly, the act of temporarily transferring or permitting the use or enjoyment of any intellectual property right is considered to be a declared service and thus the same is liable for payment of service tax.

➤ **Meaning of the term “Intellectual Property Right”**

The term “intellectual property right has not been defined under the current scenario. However, the same was defined in the earlier scenario and accordingly any right to intangible property namely trademarks, designs, patents or any other

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<sup>18</sup>Section 66E of the Finance Act, 2004

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similar intangible property under any law for the time being in force and it excludes copyrights. The earlier definition excludes copyright from the definition of intellectual property and so the same is taxable under a separate category.

Under the current scenario, the situation has changed. The term intellectual property right has not been defined and therefore the meaning of the same has to be adopted as existing in common parlance. Accordingly, intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time. Thus, in other words, intellectual property right means any right to intangible property, namely, trademarks, designs, patents, copyrights or any other similar intangible property.

#### ➤ Registered or Unregistered IPRs

Under the erstwhile provisions of the said law, service tax was only applicable on transactions which had underlying instrument as registered IPRs. Therefore, service tax was not applicable on transactions which had underlying instrument as unregistered IPRs. Further, the registered IPRs should be IPRs which are registered under any Indian law for the time being in force as explained supra. Therefore, considering the erstwhile provisions it can be suggested that the scope of service tax was much narrow and only certain transactions were made liable for payment of service tax as compared to the provisions in the new law.

The reason is that the term “intellectual property right” was defined in the erstwhile provisions whereas the same is deleted now. Therefore, the transactions under the taxable gamut increase and all the transactions which have underlying instrument as an “intellectual property right” (the term intellectual property defined under common trade parlance as explained supra) and it further intends its temporary transfer or permitting its use for enjoyment, then, becomes taxable, subject to few exemptions.

#### ➤ Transfer must be temporary

Under the erstwhile provisions as well as under the current scenario, one thing is common that the service tax is applicable only on such transactions where transfer is temporary and not on such transactions where transfer of IPR is of a permanent nature.

As per the principles for determination of taxability mentioned supra, certain transactions mentioned in the exemption list are exempted from payment of service tax. The said entry is as under:

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*Temporary transfer or permitting the use or enjoyment of a copyright covered under clauses (a) or (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical, artistic works or cinematograph films*

As per the above mentioned entry, any transaction which relates to temporary transfer or permitting the use or enjoyment of a copyright covered under Section 13(1)(a) or (b) of the Indian Copyright Act, 1957, is exempted from payment of service tax. Such copyright relates to original literary, dramatic, musical, artistic works or cinematograph films.

For any transaction to qualify for the said exemption following ingredients should be present:

- The intellectual property right should be classified as a copyright.
- Such copyright should be covered under Section 13(1) (a) or (b) the Indian Copyright Act, 1957.

The question as to whether the intellectual property right is of a breed belonging to copyright is a thin line of interpretation which needs to be observed very carefully. Since the definition is not available under the present law, we may rely for its definition under the Indian Copyright Act, 1957 which is as follows:

#### **➤ Meaning of the term "Copyrights"**

*For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:-*

- (a) *in the case of a literary, dramatic or musical work, not being a computer programme,*
  - (i) *to reproduce the work in any material form including the storing of it in any medium by electronic means;*
  - (ii) *to issue copies of the work to the public not being copies already in circulation;*
  - (iii) *to perform the work in public, or communicate it to the public*
  - (iv) *to make any cinematograph film or sound recording in respect of the work;*
  - (v) *to make any translation of the work;*



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- (vi) *to make any adaptation of the work;*
  - (vii) *to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);*
- (b) *in the case of a computer programme,-*
  - (i) *to do any of the acts specified in clause (a);*

51A "(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme:

*Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental."*
- (c) *in the case of an artistic work,-*
  - (i) *to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;*
  - (ii) *to communicate the work to the public;*
  - (iii) *to issue copies of the work to the public not being copies already in circulation;*
  - (iv) *to include the work in any cinematograph film;*
  - (v) *to make any adaptation of the work;*
  - (vi) *to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);*
- (d) *In the case of cinematograph film, -*
  - (i) *to make a copy of the film, including a photograph of any image forming part thereof;*
  - (ii) *to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;*
  - (iii) *to communicate the film to the public;*
- (e) *In the case of sound recording, -*
  - (i) *to make any other sound recording embodying it;*

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- (ii) *to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions;*
- (iii) *to communicate the sound recording to the public.*

*Explanation: For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.*

Thus, the above mentioned definition is very specific and helps in claiming the exemption effectively. The above mentioned scheme of the definition is very specific as it explains what would be considered as copyright for the purpose of Section 13(1) (a) or (b) of the Indian Copyright Act, 1957. Thus, the interpretation should happen in the fashion explained supra in the definition and claim exemption.

Further, the said exemption was amended<sup>19</sup> w.e.f. 01.03.2013 wherein the scope of the exemption was narrowed: The said exemption reads as under:

*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;*

On analyzing the above entry it can be stated that the scope for exemption has been narrowed to include only services provided by way of temporary transfer, or permitting the use or enjoyment of a copyright of cinematograph films for exhibition in a cinema hall or cinema theatre.

For the period from 01.07.2012 to 01.03.2013, exemption from payment of service tax was provided to services provided by way of temporary transfer or permitting the use or enjoyment of a copyright of cinematograph films. On analyzing the meaning of the term "cinematograph film" mentioned supra, it can be stated that the term not only covers cinematograph films which are being made with an intention to exhibit in theater but also covers many other related transactions. Thus, an effective analysis is being provided in order to understand the amended position:

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<sup>19</sup>Notification 3/2014 dated 01.03.2014

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Sr. No	Transaction	Tax Effect from 01.07.2012 to 28.02.2013	Tax Effect from 01.03.2013 till date
1.	Mr. Khan wants to make remake of the movie "The Godfather" and purchases the right to remake the movie from its producer	Exempt	Taxable
2.	Mr. Khan has purchased Hindi dubbing rights from a German producer for the purpose of exhibition of films in India.	Exempt	Taxable (Under the said transaction, only recording rights with respect to cinematograph film have been transferred which is different from the exemption entry)

Thus, from the above it can be inferred that the said exemption is very limited and has changed the taxable scenario. The above exemption has to be strictly interpreted in the limited scope explained above.

For determination of copyright of cinematograph films, reference can be placed on clause (d) of the definition of the term "Copyright" under the Indian Copyright Act, 1957 as mentioned supra.

To summarize, taxability for the transaction pertaining to copyright of recording of cinematograph films is as follows:

- For the period from 01.07.2012 to 28.02.2013: EXEMPTED
- For the period from 01.03.2013 till date: TAXABLE

To summarize, the effect of taxability with respect to service tax on temporary transfer, or permitting the use or enjoyment of any intellectual property right pre- and post- amendment is as follows:

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Sr. No	Particulars	Tax effect pre 01.07.2012	Tax effect post 01.07.2012
1.	Patent	Taxable	Taxable
2.	Goodwill	Taxable	Taxable
3.	Trademark	Taxable	Taxable
4.	Designs	Taxable	Taxable
5.	Copyright	Taxable	Taxable
6.	Original Literary, dramatic, musical and artistic work	Not taxable	Taxable; However, exempted as per point 4.3 supra
7.	Service mark registered under U.S laws	Not taxable	Taxable
8.	Unregistered brand	Not taxable	Taxable
9.	Undisclosed information	Not taxable	Taxable
10.	Ideas and trade secrets	Not taxable	Taxable

The next entry for discussion is the entry in relation to performances of any form of art by any artist. The said services were taxable in the erstwhile regime w.e.f. 01.07.2010 vide notification 24/2012 dated 22.06.2010. The said services were taxable under the category of promotion or marketing of brand of goods/services/events service.

**Position prior to 01.07.2012:**

Service tax on promotion or marketing of brand of goods/services/events services was introduced in 2010. Accordingly, any service provided under any contract which is for promotion or marketing of a brand of goods, service, event or endorsement of name, including a trade name, logo or house mark of a business entity or appearing in any advertisement or promotional event for the purpose of promotion of such goods, service or event became taxable. Going further, many services like commercial exploitation of an event, Business Auxiliary Service, Business Support Service etc. were added to expand its tax gamut. Thus, many services under the glamour industry came into the taxable bracket post introduction of this entry.

**Practical illustrations**

1. Mr. Khan was called by Mr. Karan for the opening of his restaurant and for the same Mr. Khan was wearing a T-shirt which had restaurant name and logo on it. Further, Mr. Khan was paid a sum of Rs. 25,00,000/- for attending the event. Mr. Khan would like to know whether the said amount is taxable?

Ans: Yes

2. In continuation of the above illustration, Mr. Khan demanded franchise rights of the restaurant instead of the consideration of Rs. 25,00,000/-. In the light of this, Mr. Khan would like to determine his taxability.

Ans: Yes. However, the value on which tax is payable can be determined with the help of valuation rules prescribed under the Act.

3. M/s. PepsiCo Ltd had paid a sum of Rs. 400 crore for displaying their logo on the T-shirt of the Indian Cricket Team which is valid for a tenure of 1 year. The company would like to know its tax implication for the same. Can the same be treated as sponsorship for sporting event and can an exemption be claimed accordingly?

Ans: Yes, tax is applicable on the same. The same cannot be treated as sponsorship service, nor exemption claimed because the instant transaction is a transaction more classifiable as commercial exploitation of event or marketing/promotion of goods, services etc. as per explanation mentioned supra.

*[Author's Note: The answer may change depending upon the clauses specified in the agreement]*

#### **Position post 01.07.2012**

After introduction of the negative list-based taxation concept, provision of most of the services under the said sector became taxable. The reason is that if the transaction is being qualified as a service as per the definition mentioned supra then the transaction becomes taxable unlike erstwhile law wherein taxation was limited to a few categories as explained above.

#### **c) Performing Artist Related**

Further, exemption is provided to performing artists for a very limited genre of performing their art. The said entry is elaborated as under:

*16. Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador;*

Thus, as per the above mentioned entry, exemption from payment of service tax can be claimed by a performing artist only if he is providing services of performing classical or folk art forms. Such art forms are by way of (i) music or, (ii) dance or, (iii) theatre.

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Further, while providing such services he/she should not provide services under the catalogue as a brand ambassador. The term “brand ambassador” has been defined<sup>20</sup> as a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person. Accordingly, while providing folk or classical art form services, if the said performing artist additionally provides services as a brand ambassador or, then exemption would not be available to that extent.

### **Practical illustration:**

1. M/s. Sankalp Entertainment Pvt Ltd is planning to hold a huge event “Navratri Utsav 2015” wherein M/s. Sankalp is planning to hire Ms. Falguni Pathak for a period of 10 days and she will be paid Rs. 10,00,00,000/- for singing at the event. Ms. Pathak would like to know the service tax applicability on the same.

Ans: No service tax is payable.

2. M/s. Mony Entertainment Pvt Ltd is planning to hold a classical music fest at a Restaurant named ‘No Animal’ wherein the company is planning to bring 2 good classical music artists to perform before the audience in the restaurant and they would be paid a sum of Rs.10,00,000/- each. The cover charges for the restaurant for that day are Rs 5000/- per couple of which food coupons worth Rs. 3000/- per couple would be provided. The same can be utilised for consumption of food in the restaurant or any other tie-up restaurants mentioned in the list. The company has entered into an agreement with the restaurant to share the entire sales proceeds for that day in the ratio 1: 1. M/s. Mony Entertainment Pvt Ltd would like to seek an opinion on the taxability of the same.

Ans: The author would like to state that the above transaction is not a single transaction and therefore taxability would also be discussed at various tranches of each transaction. The same is elaborated as under:

- A. First leg of the transaction is payment made to artist: The same is exempted in view of the above mentioned entry.
- B. Second leg of the transaction is amount received from audience: The same is not taxable as it is covered under the negative list.

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<sup>20</sup> Clause 2(h) of Notification 25/2012 dated 20.06.2012

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- C. Third leg of the transaction is amount received from food coupons: The same would not be taxable as it is an actionable claim which can be utilised as per will.
- D. Fourth leg of the transaction is amount received from partnership arrangement: The same is also not taxable as share in profits does not amount to service.

*[Author's Note: The answers above may vary according to the clauses specified in the agreement]*

- 3. In continuation of the above example, the company has organised various street plays where various artists would be performing small plays on streets propagating the rich culture of India. Any person desirous of watching the play can pay a sum of Rs. 500/- and watch the play. The company would like to know the taxability on the same.

Ans: No service tax is applicable as the same qualifies to be a classical theatre. For detailed meaning of the term classical theatre, please refer to explanations of the term mentioned below.

- 4. In continuation of the above example, the company has appointed Mr. Anupam Kher to be the brand ambassador of these streets plays and help in promoting the same properly on a pan-India basis. The company is paying a sum of Rs. 50 lakhs to him. Further, during one of the plays, Mr. Kher spoke a few lines about his upcoming movie and the company was paid Rs. 2 lakhs for the same from the film producer. The company would like to know the taxability on the same.

Ans: The entire transaction is taxable and the same is explained in detail as under:

There are two legs of the transaction:

First leg is the transaction between the company and Mr. Anupam Kher: The said transaction is taxable as it qualifies to be a service, and, secondly, the same is not getting covered by any exemption. The above mentioned exemption is not valid for representations made as a brand ambassador in person.

Second leg is the transaction between the company and the film producer: The said transaction is taxable as it qualifies to be a service and secondly the same is not getting covered by any exemption or exclusion from the payment of service tax.

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The term “folk” and “classical” have not been defined under the said law. Therefore, it becomes imperative to seek reference for the said term from neighbour laws or the dictionary meaning.

#### **Folk**

- Folk art has been defined as Art originating among the common people of a nation or region and usually reflecting their traditional culture, especially everyday, or festive items produced or decorated by unschooled artists.
- Folk art encompasses art produced from an indigenous culture or by peasants or other labouring trade’s people

#### **Classical**

- Classical can be defined as anything which comes from the past, our heritage, etc.
- classical means “Relating to ancient Greek or Latin literature, art, or culture.” {As per oxforddictionaries.com}

a. On analysing the above mentioned entry, it can be substantiated that only classical and folk art in the form of dance, music and theatre is exempted from payment of service tax. Thus, analysis of the following terms becomes important:

#### **Folk dance**

Indian folk and tribal dances are simple dances, and are performed to express joy. Folk and tribal dances are performed for every possible occasion to celebrate the arrival of seasons, birth of a child, a wedding and festivals. The dances are extremely simple with minimum of steps or movement. The dances burst with verve and vitality. Men and women perform some dances exclusively, while in some performances men and women dance together. On most occasions, the dancers sing themselves, while being accompanied by artists on the instruments. Each form of dance has a specific costume. Most costumes are flamboyant with extensive jewels. While there are numerous ancient folk and tribal dances, many are constantly being improved. The skill and the imagination of the dances influence the performance.

Below mentioned is illustrative list of state-wise folk dances:

- Andhra Pradesh: Kuchipudi, Kolattam
- Arunachal Pradesh: BardoChham



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- Assam : Bihu dance, JumurNach, Bagurumba, Ali Ai Ligang
- Chhattisgarh: Panthi; Raut Nacha
- Goa: Koli
- Gujarat: Garba, Padhar, Raas, Tippani Dance
- Himachal Pradesh: KinnauriNati, Namgen
- Haryana: Ghoomar
- Karnataka: Yakshagana, Bayalata, DolluKunitha, Veeragaase dance
- Kashmir: Dumhal
- Lakshadweep: Lava
- Madhya Pradesh: Tertali, Charkula, Jawara, Matki Dance, Phulpati Dance, Grida Dance, Maanch, Gaur Maria Dance
- Maharashtra: PavriNach, Lavani, Koli
- Manipur: Thang Ta, Dholcholom
- Mizoram: Cheraw Dance
- Nagaland: Chang Lo or SuaLua
- Odisha: Ghumura Dance, Ruk Mar Nacha (& Chhau dance), GotiPua, Nacnī, Odissi, Danda Nacha, Western Odisha (Baagh Naach or Tiger Dance, Dalkhai, Dhap, Ghumra, Karma Naach, Keisabadi)
- Puducherry: Garadi
- Punjab: Bhangra, Giddha, Malwai Giddha, Jhumar, Karthi, Kikkli, Sammi, Dandass, Ludi, Jindua
- Rajasthan: Ghoomar, Kalbelia, Bhavai, Teratali, Chirami, Gair
- Sikkim: Singhi Chham
- Tamil Nadu: Bharatanatyam, Kamandi or Kaman Pandigai, Devarattam, Kummi, Kolattam, Karagattam or Karagam, MayilAttam or Peacock dance, Paampuattam or Snake Dance, Oyilattam, Puliyattam, Poikal Kudirai Attam, Bommalattam, Theru Koothu
- Tripura: Hojagiri
- West Bengal: Gambhira, Kalikapatadi, Nacnī, Alkap, Domni

## **Folk music**

Folk music includes both traditional music and the genre that evolved from it during the 20th century folk revival. The term originated in the 19th century but is often applied to music that is older than that. Some types of folk music are also called world music. Indian folk music is diverse because of India's vast cultural diversity. Though it might have started with devotional songs, it later covered each & every part of contemporary human life including psychology, philosophy, anatomy (Deha-Tatva), socio-economic condition, love, day to day living etc. and in many of them you will find deep insight into life. There are numerous eminent bards/saints or Fakirs who had contributed a lot in this field.

Below mentioned is an illustrative list of state-wise folk music:

- Andhra Pradesh: Madiga Dappu, Mala Jamidika
- Assam: Bihugeet, Lokageet, Tokarigeet
- Chhattisgarh: Pandavani
- Karnataka: Bhavageete, DolluKunita, Veeragase
- Maharashtra: Lavani
- Punjab: Bhangra and Giddha
- Tamil Nadu: NaatupuraPaatu
- West Bengal: Baul, Bhatiali, Bhadu, Bhawayia, Saari
- Kerala: Pulaya, Paraya
- Gujarat: Garba

## **Folk theatre**

Folk theatre in India has a rich legacy. In the ancient Vedic culture, and even in Buddhist literature, folk theatre first made its presence felt as an art form to illustrate the unedited realities of life. However, it is only in the medieval period that folk theatre gradually became an integral part of Indian drama. Historically folk theatre in India did emerge back in the 15th or 16th century as illustrations from puran as, eposes, historical epics, myths and biographies of the celestial heroes show. It is right after the colossal success of Indian traditional theatre as an art form, the distinct style of Indian Natya changed and thus developed a whole new theatre form where Indian myth, dance, history, song, culture, mores, traditions, and beliefs all gained a matchless dimension.

Every state in India has its own distinctive forms of folk theatre. Various known as the Jatra in Orissa, Bengal and Eastern Bihar, Tamasha in Maharashtra, Nautanki in Uttar Pradesh, Rajasthan and Punjab, Bhavai in Gujarat, Yakshagana in Karnataka, Therubuttu in Tamil Nadu, Indian folk theatre with its sheer vibrancy since the age-old days has reached out to all.

### **Classical dance**

Indian classical dance is an umbrella term for various codified art forms rooted in sacred Hindu musical theatre styles whose theory can be traced back to the Natya Shastra of Bharata Muni (400 BCE). Indian classical dances are:

- Dances are performed inside the sanctum of the temple according to the rituals called Agama Nartanam. Natya Shastra classifies this type of dance form as *margi*, or a soul-liberating dance.
- Dances performed in royal courts to the accompaniment of classical music are called Carnatakam. In the most essential sense, a Hindu deity is considered a revered royal guest in his temple, and should be offered all of the "sixteen hospitalities," among which are music and dance. All of the "sixteen hospitalities" are intended to be pleasing to the senses.

The term "classical" (Sanskrit: "Shastriya") was introduced by Sangeet Natak Akademi to denote the Natya Shastra-based performing art styles. Classical dance performances usually feature a story about good and evil. The entire dance is traditionally presented in a dramatic manner called nritta, which uses "clean" facial expressions and mudrā, or hand gestures, to narrate the story and to demonstrate concepts such as particular objects, weather, aspects of nature, and emotions. Classical Indian dance is also known as Natya. Even though the art of Natya includes nritta or dance proper, Natya has never been limited to dancing and also includes singing and abhinaya (mime acting). These features are common to all Indian classical styles of dance. In the margi form, Nritta is composed of karanas, while desi nritta consists mainly of adavus.

Illustrative list of some of the Classical dances

Dance form	State(s) of origin
Bharatanatyam	Tamil Nadu
Chhau	Odisha, West Bengal, Jharkhand
GaudiyaNritya	West Bengal
Kathak	Northern India (Uttar Pradesh)

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Kathakali	Kerala
Kuchipudi	Andhra Pradesh
Manipuri	Manipur
Mohiniyattam	Kerala
Odissi	Odisha
Sattriya	Assam
Thang Ta	Manipur

### **Classical music**

Indian classical music is the art music of the Indian subcontinent. The origins of Indian classical music can be found in the Vedas, which are the oldest scriptures in the Hindu tradition. The Samaveda was derived from the Rigveda so that its hymns could be sung as Samagana. These hymns were sung by Udgatar priests at sacrifices in which the Soma ritual drink, clarified and mixed with milk and other ingredients, was offered in libation to various deities. This chanting style evolved into jat is and eventually into ragas. Indian classical music has also been significantly influenced by, or syncretised with, Indian folk music. Bharat's Natyashastra was the first treatise laying down fundamental principles of dance, music, and drama.

There are two different style of Indian classical music i.e. Hindustani music (North India) and Carnatic music (South India). Hindustani music is mainly found in North India. Khyal and Dhrupad are its two main forms, but there are several other classical and semi-classical forms. There is a significant amount of Persian influence in Hindustani music in terms of the instruments, style of presentation, and ragas such as Hijaz Bhairav, Bhairavi, Bahar, and Yaman. Carnatic music, from South India, tends to be more rhythmically intensive and structured than Hindustani music. Examples of this are the logical classification of ragas into melakarthis, and the use of fixed compositions similar to Western classical music.

### **Classical theatre**

Aryans settled in India in 1500 B.C.E. and created a Vedic civilization centralized around the Vedas—the founding texts of Hinduism. Classical Indian drama is based on the Aryan caste system, in which Indian society was divided into a hierarchy of four groups: priests, warriors and rulers, traders and merchants, workers and peasants. Though the earliest surviving Indian plays date from 100 C.E., Indian theatre may have been based on Vedic rituals. The

Mahabharata makes references to performers (nata), though it is not known if these included actors. Bharata Muni (300 B.C.E.–200 C.E.) wrote the treatise Natyasastra (Art of Theatre), which described the nature and purpose of dramatic performance.

#### **d) News, Journalist etc. Related**

The next topic for discussion is an entry which covers services provided by certain specified persons in relation to news. The said services were taxable in the erstwhile regime under the category of “Business Support Services”; “Copyright Service”; “Business Auxiliary Service”; “Supply of tangible goods service” etc. Depending upon the nature of the services, the taxable category was decided. There were many disputes attached to the same in the erstwhile regime wherein taxability on many tricky transactions were discussed at great detail, and many disputes regarding the same are pending before various courts of law.

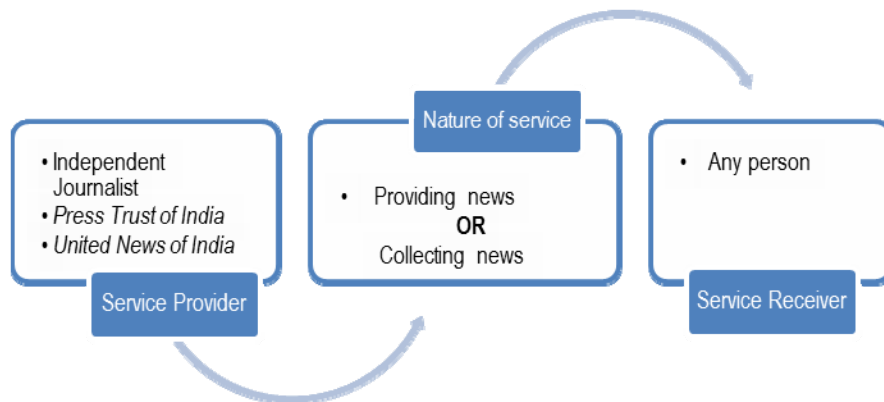
#### **Position post- 01.07.2012**

Post-introduction of the negative list regime, the confusion with respect to taxability of various transaction discussed earlier is being cleared to a greater extent. Thus, any transaction under the said space becomes taxable if the essential ingredients of the definition of service are present in the said transaction and the same does not qualify to be present under the negative list or the exemption list. However, relaxation is provided under the said space vide an exemption and the same is enumerated as under-

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

As per the above mentioned entry, any service provided by way of collecting news or any service provided by way of providing news to any person by such specified persons then such services are exempted from payment of service tax. On analysing the above mentioned exemption entry it can be said that the entry has following features which are depicted as under:

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Thus, on analysing the above, it can be said that only specified service providers can claim exemption under the said entry. The said service providers are as follows:

### Independent Journalist

The term “independent journalist” is not defined under the statute. However, the term “independent” is used with journalist to signify that exemption is granted to independent journalist. Such journalist should not be employee of any organisation. Further, for the term “journalist”, reference to the said term is explained by placing reliance on various dictionaries which is as under:

- The activity or job of collecting, writing, and editing news stories for newspapers, magazines, television, or radio {as per [www.learnersdictionary.com](http://www.learnersdictionary.com)}
- A person who writes for newspapers or magazines or prepares news to be broadcast on radio or television {as per [www.oxforddictionaries.com](http://www.oxforddictionaries.com)}
- The activity or job of collection, preparation and distribution of news and related commentary and feature materials through such media as pamphlets, newsletters, magazines, radio, motion pictures, television, books, blogs, webcasts, podcasts and e-mail. The word journalism was originally applied to the reportage of current events in printed form, specifically newspapers but with the advent of radio, television and the Internet in the 20<sup>th</sup> Century the use of the term broadened to include all printed and electronic communication dealing with current affairs. {as per “*Britannica*”}

## **Press Trust of India**

### **United news of India**

The services provided by such specified persons explained above are exempted from payment of service tax if they provide services which involve two activities:

- (a) Collecting news
- (b) Providing news

Thus, if above mentioned activities are provided by the specified service providers then the said transaction is exempted from payment of service tax. From the above, it can be stated that mere collection of news is exempted from payment of service tax. Further, even if some special news is being provided by some specialised journalist, the said transaction is exempted from payment of service tax.

**Stringers are not liable for payment of Service tax:**

Stringers are professionals, independent journalist who are specialized in the field of collecting news in any form i.e. collecting feed, and the feed so collected is sold to various persons who are desirous of buying the same. Thus, there was a dispute under the erstwhile regime where tax was demanded under “Business Support Services” with the argument that such persons provide support services to the news agencies.

Post 2012, exemption can be claimed successfully as the entry clearly states the same. Thus, there would be no dispute on such front post 2012. However, without claiming exemption, one can take a view that the transaction itself is not a service<sup>21</sup> transaction as the activity between stringers and the news agencies is nothing but a mere purchase sale transaction and thus the same is excluded from the levy of service tax.

### **Practical illustration:**

1. M/s. ABC Limited is a news agency which provides news all across the world. For that the company has tie-ups with various agencies and stringers all across the world. The company decided to cover the story of the Pakistan bomb blast wherein many school children were killed. For the same, the company paid \$1,000,000/- for a 30 seconds footage to Mr. Ayan Khan a stringer in Pakistan. The company would like to know the taxability for the same.

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<sup>21</sup>Section 65B(44) of the Finance Act, 1994

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Ans: No service tax is applicable on this transaction in view of the exemption notification explained supra in Para5.53

2. M/s ABC Ltd is a company who is planning to launch a news channel name "Toofan" and for the said purpose it has entered into a contract with M/s. United News of India for procurement of the news feed with a monthly retainer fee of Rs. 1,00,00,000/- . The company would like to know the taxability on the same with respect to service tax.

Ans: No service tax is applicable on the same in view of the exemption entry explained supra.

**e) Business Exhibition Related**

The next entry for discussion is in relation to the event management sector wherein certain relaxation is being provided from payment of service tax. Earlier, the services in relation to organising the business exhibition event were taxable under the category of "Business exhibition service", where it was stated that any service in relation to organising the business exhibition is taxable under the said category. Service tax was made applicable from 10.09.2004.

Further, the term "business exhibition" was defined under the erstwhile provisions as any exhibition which markets, promotes, advertises or showcases any product or service, intended for the growth in business of the producer or provider of such product or service.

Further, if the above mentioned services were performed outside then the said transaction is exempted from payment of service tax as the criteria for determination of export was the place where the actual services are performed.

However, post-introduction of the negative list-based taxation mechanism, the scenario with respect to taxability of the same has not changed much. The said transaction is still taxable. However, certain relaxation is provided by way of exemption list. The exemption is being granted by the following entry:

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

On analysing the above mentioned transaction, it can be stated that the above mentioned entry is being inserted in the exemption list in order to restore the earlier position of taxability with respect to business exhibitions held outside the taxable territory. Thus, accordingly, any services provided by an organiser to any person in relation to business exhibition held outside India are taxable but are exempted by virtue of the exemption notification.



**Practical illustration:**

1. M/s. Abc Limited is a company incorporated in India which is arranging a global diamond summit in Hong Kong for which the company is undertaking bookings for the participants from India. The company would like to know the taxability of the same.

Ans: No service tax is payable. The above transaction is taxable under service tax in view of Rule 8 of the Place of Provision Rules, 2012. However, by virtue of exemption notification mentioned supra the said transaction is exempted from payment of service tax.

2. In continuation of the above example, the company has entered a contract with Money Music Entertainment India limited to provide Indian music for the exhibition wherein Rs. 50,00,000/- was paid to the provider. The company would like to know taxability for the same.

Ans: It is taxable. Only services provided by an organiser to any person for a business exhibition held abroad are not taxable whereas vice – versa is taxable.

# Chapter 4

## Point of Taxation

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### What is Point of Taxation?

Point of taxation means the point in time when the services shall be deemed to have been provided and thus tax has to be disbursed as applicable during that point in time.

Before point of taxation rules, the determination of point of taxation was governed by service tax rules wherein tax was payable on receipt basis. However, there were lots of disputes with respect to the determination of rate, time when it becomes due etc.

To end all disputes, Point of Taxation Rules, 2011 was introduced by the legislature wherein, depending upon different situations, rules have been drafted in order to determine the correct tax position in the given situation and thereby allow a satisfactory solution which will curb litigation.

The rules introduced in 2011 underwent dynamic changes in 2012 and therefore a critical analysis of the rules so drafted is given as under-

Rule	POSITION PRIOR TO 01.07.2012	POSITION AFTER 01.07.2012
3	General Rule	General Rule (Including Continuous Supply Rules)
4	PoTR in case of Rate Change	PoTR in case of Rate Change
5	PoTR in case of taxation of new services	PoTR in case of taxation of new services
6	PoTR in case of Continuous Supply of services	Deleted (However merged with Rule 3)
7	PoTR in case of Specified Person (earlier 11 Services covered)	PoTR in case of Specified Person (Now 2 Services covered)
8	Copyrights	Copyrights

**Rule 3 of the Point of Taxation Rules, 2011**

Point of Taxation will be any of the following events, whichever earlier:

1. Issue of invoice subject to invoice being issued within days as required under Rule 4A of the Service Tax Rules, 1994;
2. The date of completion of provision of service;
3. Receipt of payment.

Post 2012, the rules for continuous supply of services got merged with Rule 3. Continuous Supply Service means any agreement for service or provision of service for more than 3 months.

Further, where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of service.

Generally, for long term advertisement contracts, the company has to follow the rules prescribed above and has to accordingly follow the rules prescribed above. In case of any lapse in payment of service tax according to the law, the consequential interest and penalties will prevail.

Rule 4, 5 and 7 are general rules which are applicable to each and every sector and thus the general details for the same can be referred from the guide published by ICAI on statutory provisions.

**Rule 8 of the Point of Taxation Rules, 2011:**

In case of Copy right, Point of Taxation will be any of the following events, whichever earlier:

1. Issue of invoice
2. Receipt of payment

Thus, receipt of royalty income in lieu of temporary transfer of copyright is an income which is generally present with most of the creative units and thus the above mentioned rules with respect to determination of time of payment of service tax has to be accordingly determined and applied.

## Chapter 5

# Place of Provision Rules, 2012

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Under the erstwhile regime of service tax, for all cross-border transactions, import rules and export rules were introduced to facilitate smooth navigation to cross border transaction. However, with the introduction of the negative list regime, the instant rule was replaced with Place of Provision Rules, 2012.

The 'Place of Provision of Services Rules, 2012' specifies the manner to determine the taxing jurisdiction for a service. Hitherto, the task of identifying the taxing jurisdiction was largely limited to the context of import or export of services. For this purpose, rules were formulated which handled the subject of place of provision of services somewhat indirectly, confining to define the circumstances in which a provision of service would constitute import or export.

The new rules will, on the other hand, determine the place where a service shall be deemed to be provided, in terms of section 66C of the Finance Act, 2012, read with section 94 (hhh) of Chapter V of the Finance Act, 1994. Under 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". The 'Place of Provision of Services Rules, 2012' will replace the 'Export of Services, Rules, 2005' and 'Taxation of Services (Provided from outside India and received in India) Rules, 2006.

The essence of indirect taxation is that a service should be taxed in the jurisdiction of its consumption. This principle is more or less universally applied. In terms of this principle, exports are not charged to tax, as the consumption is elsewhere, and services are taxed on their importation into the taxable territory.

However, this determination 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 located in Mumbai may buy a ticket on internet from a service provider located outside India for a journey from Delhi to London. On other occasions, the exact location of service recipient itself may not be available e.g. services supplied electronically. As a result it is necessary to lay down rules determining the exact place of provision, while ensuring a certain

level of 52 harmonization with international practices in order to avoid both the double taxation as well as double non-taxation of services.

The said rules are, therefore, very important for the instant sector where the company is exposed to cross border transactions. The synopsis of the said rules is as under:

Rule No	Particulars
Rule 3 (Basic Rule)	<ul style="list-style-type: none"><li>➤ PPS of a service shall be the location of the recipient of service</li><li>➤ Where the location of the service receiver is not available in the ordinary course of business, the PPS shall be the location of the provider of service.</li></ul>
Rule 4 (Performance based Rule)	<ul style="list-style-type: none"><li>➤ Services in respect of goods required physically: The location of the goods shall be the PPS</li><li>➤ Where the goods are provided at a remote location by electronic means, the location of goods shall be the PPS.</li><li>➤ This rule is not applicable to the goods if they are imported for a temporary term in India for repairs, reconditioning, or re-engineering for re-export</li><li>➤ In case of services received by an individual where he is acting on his behalf or on behalf of the recipient, where the physical presence is necessary, the PPS would be location of actual performance of service.</li></ul>
Rule 5 (Services relating to immovable property)	<ul style="list-style-type: none"><li>➤ PPS shall be the location of immovable property where the service is directly related to the immovable property</li><li>➤ Example: Real Estate Expert and Agent, Hotels, Inn, Guest House, Club or Campsite, Construction work and services related thereto, Interior Decorator, etc.</li></ul>
Rule 6 (Services related to events)	<ul style="list-style-type: none"><li>➤ In case of service provided during the event, the location of the event would be the PPS</li><li>➤ Example: Admission to event, organisation of</li></ul>

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	cultural, artistic, sporting, scientific, educational, or entertainment event, celebration, conference, fair, exhibition or similar event
Rule 7 (services provided at more than one location)	➤ In case of Rule 4,5 and 6, where the PPS is more than 1 place, the PPS will be the place where the PPS is in greater proportion
Rule 8 (Service Provider and service recipient located in same taxable territory)	Where the location of the service provider and the recipient of service is in the taxable territory, than the PPS shall be the location of service
Rule 9 (services provided by specified people)	The location of service provider shall be the PPS in case of following services: <ul style="list-style-type: none"> <li>• Services provided by Banking Company, Financial Institution and NBFC to the account holders</li> <li>• Online information and database access or retrieval services</li> <li>• Intermediary services</li> <li>• Hiring of transport (excluding yachts and aircrafts) upto 1 month</li> </ul>
Rule 10 (Goods Transportation Service)	<ul style="list-style-type: none"> <li>➤ This rule is applicable to cases other than mail or courier</li> <li>➤ PPS would be the destination of the goods</li> <li>➤ PPS of the GTA shall be the location of the person liable to tax</li> </ul>
Rule 11 (Services provided for transportation of passenger)	The place of provision in respect of a passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.
Rule 12 (Services Provided on board a conveyance)	Place of provision of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall

	be the first scheduled point of departure of that conveyance for the journey.
Rule 14	Where the provision of a service is, prima facie, determinable in terms of more than one rule it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration.

Thus, all cross border transaction has to be determined in terms of the place of provision rules explained supra. Rule 3, 6 & 8 of the Place of Provision Rules, 2012 are the rules which are very important from the point of view of this sector. The broad theme under which the transaction should be determined is elaborated above and hence taxability for every transaction has to be determined accordingly.

### **Practical illustration**

1. M/s. ABC Limited is planning to organize an event in China for which M/s. ABC has earned income by way of sponsorship, overseas strategic tie – ups etc. The company would like to know the taxability on the same

Ans: No service tax is applicable in terms of Rule 6 of the Place of Provision Rules, 2012 explained above.

2. M/s. ABC Limited has organised an event named “World War of DJs”, wherein world-class DJs across countries are invited to perform in India. For the said purpose, the company has hired M/s. Stalker Inc, a security agency in USA is to provide security services to these artists. The company paid \$15 million to M/s. Stalker Inc. The company would like to know the taxability on the same.

Ans: Service tax is payable on the said transaction in terms of Rule 3 of the Place of Provision Rules, 2012.

3. M/s. ABC India limited is an agent for M/s. Matrix India Limited who is organizing an auto expo in China for which the ticket cost is \$200. M/s. ABC India limited is undertaking the task of selling the tickets in West Zone for which M/s. ABC India limited would be paid good commission. M/s. ABC India Limited wants to know the effect of service tax on the same.

Ans: Service tax is payable on the instant transaction of commission in view of Rule 8 of the Place of Provision rules, 2012 which is explained supra.

# Chapter 6

## CENVAT Credit

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CENVAT was initially introduced as MODVAT in the year 1986 whereby the manufacturers could avail credit of duty paid on inputs used in or in relation to manufacture of the final products for being set off against the duty payable on the final products. Later on, the scheme was extended to capital goods also. In the year 2001, CENVAT Credit Rules, 2001 were introduced which was superseded by the CENVAT Credit Rules, 2002. Credit of Service tax paid on input services was introduced for the first time in the year 2002.

Post 10.09.2004, CENVAT Credit Rules, 2004 was notified to replace the erstwhile CENVAT Credit Rules, 2002 and Service Credit Rules, 2002. These rules have integrated the credit of goods and services. In other words, duties of excise paid on inputs/ capital goods and service tax paid on input services can be adjusted against the manufacturer's excise duty liability or a service provider's service tax liability.

The architecture of the CENVAT credit is constructed upon 3 pillars which are as under:

- (a) Capital Goods - [Rule 2(a) of the CENVAT Credit Rules, 2004]
- (b) Inputs - [Rule 2(k) of the CENVAT Credit Rules, 2004]
- (c) Input Service – [Rule 2(l) of the CENVAT Credit Rules, 2004]

### 1. Capital Goods – Rule 2(a) of the CENVAT Credit Rules, 2004

The definition of capital goods has been substantially amended post introduction of negative list-based taxation of services i.e. since 01 July 2012. As per Rule 2 (a) of the rules, capital goods have been defined to include the following goods:

- (A) For service provider or a manufacturing assessee
  - (i) Goods falling under the following chapter / chapter heading:

Tariff Heading	Type of goods
Chapter 82	Tools hand tools Knives etc.
Chapter 84	Machinery



Chapter 85	Electrical machinery
Chapter 90	Measuring, Checking and testing machine
Chapter Heading 6805	Abrasive powder or grain on base of textile material, of paper, of paper board, or other material
Chapter Heading 6804	Grinding wheels

- (ii) Pollution control equipment
- (iii) Components, spares and accessories of the goods specified at (i) and (ii)
- (iv) Moulds and dies, jigs and fixtures
- (v) Refractories and refractory materials
- (vi) Tubes and pipes and fittings thereof
- (vii) Storage tank
- (viii) Motor vehicles other than those falling under tariff headings and their chassis but including dumpers and tippers

Tariff Heading	Type of vehicle
8702	Motor vehicle for the transport of ten or more persons, including the driver
8703	Motor cars and other Motor vehicle principally designed for the transport of persons (other than those specified in heading 8702) including station wagon and racing cars
8704	Motor vehicles for transportation of goods
8711	Motorcycle (including moped) and cycle fitted with an auxiliary motor, with or without side cars

The Credit for the above mentioned capital goods is available only when they are used for providing output service.

(B) Motor vehicles for goods transportation

Motor vehicle designed for transportation of goods including their chassis registered in the name of the service provider, when used for-

- (i) providing an output service of renting of such motor vehicle; or

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- (ii) transportation of inputs and capital goods used for providing an output service; or
- (iii) providing an output service of courier agency”
- (C) Motor vehicles for Passenger carriage

Motor vehicle designed to carry passengers including their chassis, registered in the name of the provider of service, when used for providing output service of-

- (i) transportation of passengers; or
- (ii) renting of such motor vehicle; or
- (iii) imparting motor driving skills
- (D) Components, spares and accessories of motor vehicles which are capital goods for the assessee

**2. Inputs – [Rule 2(k) of the CENVAT Credit Rules, 2004]**

The term “Inputs” has been defined under CENVAT Credit Rules, 2004. The same can be simplified as under:

- (a) Meaning clause
- (b) Exclusion clause

**Meaning clause:**

- (a) All the goods used in the factory by the manufacturer.
- (b) All goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products.
- (c) All goods used for generation of electricity or steam for captive use.
- (d) All goods used for providing output service.

**Exclusion clause:**

- (a) Light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol.
- (b) Any goods used for –
  - (i) Construction or Works contract of a building /civil structure or its part.

- (ii) Laying of foundation or making of structures for support of capital goods.

**Exception to the exclusion:**

The above mentioned exclusion clause is not applicable to a person providing service as listed in 66E(b) of the Finance Act, 1994:

- (a) Capital goods except when used as parts or components in the manufacture of a final product
- (b) Motor vehicles
- (c) Any goods used in a guest house, residential colony, club or recreation facility and clinical establishment which are meant primarily for personal use or consumption of any employee.
- (d) Any goods which have no relationship whatsoever with the manufacture of final product.

**3. Input Service – [Rule 2(l) of the CENVAT Credit Rules, 2004]**

The term “Input service” has been defined under CENVAT Credit Rules, 2004. The same can be simplified as under:

- (a) Meaning clause
- (b) Inclusion clause
- (c) Exclusion clause

**Meaning clause:**

- (a) Any service used for providing output service.
- (b) Any service used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal.

**Inclusion clause:**

Apart from the meaning clause, there are certain services which are expressly termed as input service irrespective of their nexus with that of the output service. The same is listed as under:

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Sr. No	Services specifically used in relation to –
1	Modernisation of premises/factory/office
2	Repairs of premises/factory/office
3	Renovation of Premises/factory/office
4	Advertisement
5	Sales Promotion
6	Market Research
7	Storage
8	Procurement of Inputs
9	Accounting/Auditing/Financing
10	Recruitment and Quality Control
11	Coaching and Training
12	Computer Networking
13	Credit Rating
14	Business Exhibition
15	Share Registry
16	Security
17	Legal Services
18	Inward transportation of inputs or capital goods
19	Outward transportation upto the place of removal

The above mentioned list of services is specifically termed as input services and therefore CENVAT availment on the same is free from litigation.

**Exclusion clause:**

- (a) Any goods used for –
  - (i) Construction or Works contract of a building /civil structure or its part.
  - (ii) Laying of foundation or making of structures for support of capital goods.

**Exception to the exclusion:**

The above mentioned exclusion clause is not applicable to a person providing service as listed in 66E(b) of the Finance Act, 1994:

- (b) Services of renting of motor vehicle which is not a capital goods: or
- (c) General Insurance Service, Authorised service station service, Repair and Maintenance service relating to motor vehicles which is not a capital goods except when used by–
  - A manufacture of Motor vehicle
  - Insurance company in respect of Motor vehicle insured or reinsured.

Exception: Capital goods as per Rule 2(a) of the CENVAT Credit Rules, 2004

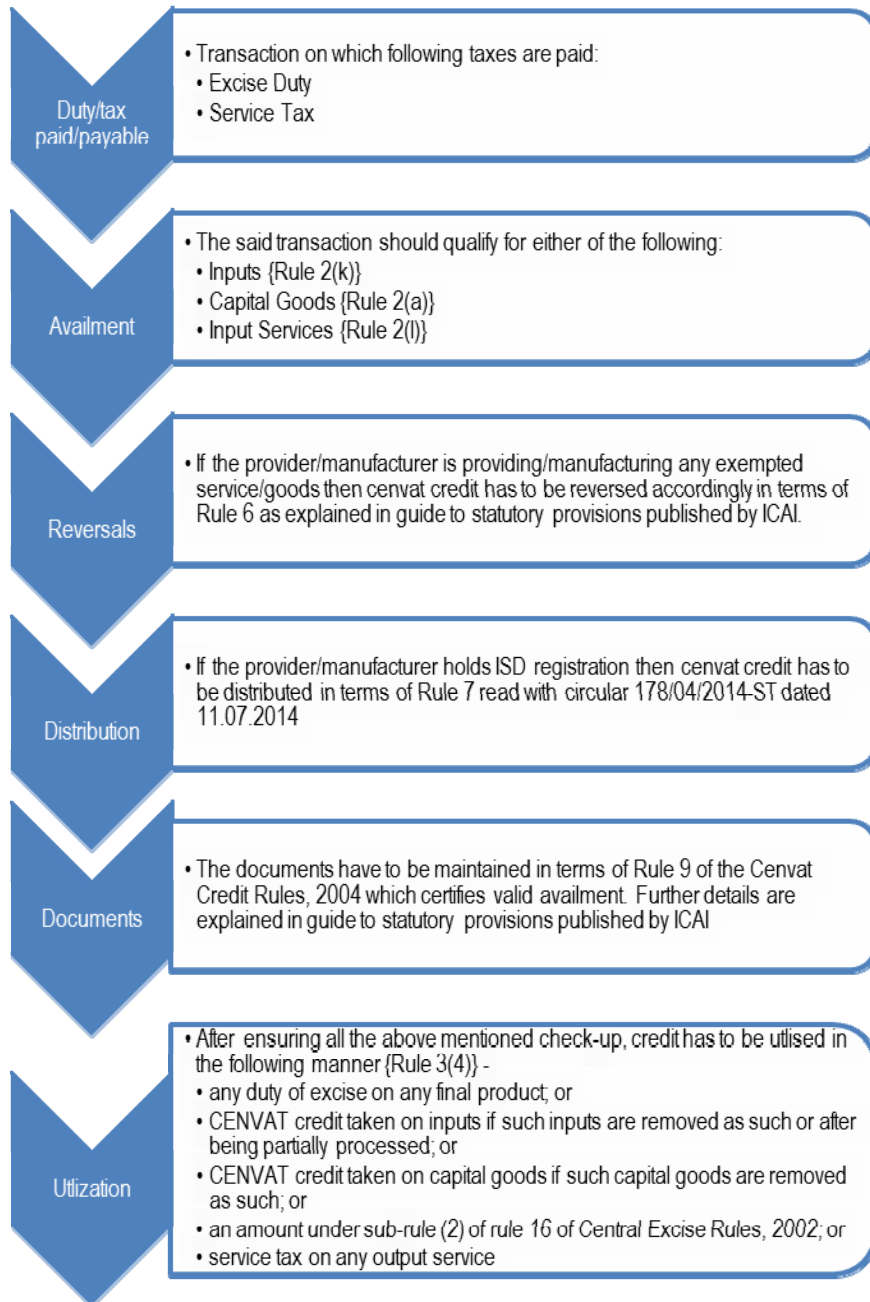
*Note: The term "Motor vehicles" has same meaning as assigned to it under section 2(28) of Motor Vehicles Act*

- (d) Certain services like outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession have been specifically excluded. However, this exclusion is *only when* such services are used *primarily* for personal use or consumption of any employee. This exclusion will not apply in other cases

Thus, on the basis of the explanation mentioned supra, one has to critically analyze the above mentioned terms, and thereafter decide on its availment. Further, there are other terms which need to be understood in detail in order to implement the CENVAT credit mechanism effectively in any organization. Further, there are rules with respect to availment, utilization, reversal of CENVAT credit which is explained in great detail in the guide of statutory

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provision published by ICAI. The basic flow for determination of CENVAT credit is as under:



### *CENVAT Credit*

If the credit availment is done by following the above mentioned mechanism then CENVAT availment and its utilization would not be as difficult as it seems. Further, adequate checks should be made at the time of availment and utilization of CENVAT credit.

Availment of CENVAT credit is very crucial as the entire requirement for abiding by the rules/procedures of the CENVAT credit arises once the provider of output service/manufacturer avails CENVAT credit. As explained above, availment is based on three concepts i.e. inputs, capital goods and input services. Thus, understanding of the said term and thereby availing CENVAT credit solves major issues and thereafter some important checks as highlighted above should be taken into consideration. All other details with respect to penalties, transfer of credit, refund of CENVAT credit etc. are explained in the guide to statutory provisions wherein each and every concept is explained in great detail. The reason for not stating the same here is because the same is common for all sectors and thus only broad guidelines are outlaid supra.

# Chapter 7

## Other Procedural Aspects

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### Registration

The moment it is determined that a person is providing taxable service as per the method mentioned supra, the person has to procure registration<sup>22</sup>. The registration has to be procured in accordance with the rules mentioned in the Statute. Further, the moment any person crosses taxable turnover of Rs. 8,00,000/-, he/she should make an application for registration. All this is elaborated in the guide to statutory provisions wherein each and every concept is explained in great detail.

### Payment of Tax

Post registration comes payment of taxes<sup>23</sup>. The person providing taxable services has to make payment of taxes in accordance with the due date specified under the rules<sup>24</sup>. Any person engaged in selling of lottery tickets and getting commission on the same (i.e. the distributor of lottery tickets) has an option to pay service tax at a special rate as specified in the rules<sup>25</sup> which areas under:

Sr.No	Rate	Condition
1	Rs. 7000 on every Rs. 10,00,000 (or part of Rs. 10,00,000) of aggregate face value of lottery tickets printed by the organising state for a draw.	If the lottery or lottery scheme is won by the guaranteed price pay-out is more than 80%
2	Rs. 11000 on every Rs. 10,00,000 (or part of Rs. 10,00,000) of aggregate face value of lottery tickets printed by the organising state for a draw	If the lottery or lottery scheme is won by the guaranteed price pay-out is less than 80%

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<sup>22</sup>Section 69 of the Finance Act, 1994

<sup>23</sup>Section 68 of the Finance Act, 1994

<sup>24</sup>Rule 6 of the Service Tax Rules, 1994

<sup>25</sup>Rule 6(7C) of the Service Tax Rules, 1994



Thus, the distributor of lottery tickets has the option to pay tax by opting for the scheme as explained supra. However, once the scheme is adopted, the same has to be followed throughout the year and it shall not be withdrawn. Further, the option has to be exercised within a period of one month of the beginning of each financial year. All this is elaborated in the guide to statutory provisions wherein each and every concept is explained in great detail.

### **Filing of returns**

Any person who has procured service tax registration has to file service tax returns in Form ST-3 in accordance with the Act and Rules<sup>26</sup> made thereunder. All this has been elaborated in the guide to statutory provisions wherein each and every concept is explained in great detail.

If the above compliances are not made in time, then the person who has not complied with the provisions of act has to bear consequential interest and penalties which is elaborated in the guide to statutory provisions wherein each and every concept is explained in great detail.

The procedures with respect to audit, issue of Show Cause Notice, Appeal etc is not discussed here as there is a separate module on assessment procedures and statutory provisions which is common across sectors.

I hope the same is a good read and I sincerely thank ICAI Indirect Tax Committee for providing me the opportunity to share my knowledge and views with you. Thank you for patient reading.

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<sup>26</sup>Section 70 read with Rule 7 of the Service Tax Rules, 1994

# Appendix 1

## Notification No. 25/2012-S.T. – Mega Exemption

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### Extract to Entertainment Sector

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 210(E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely :-

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;
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
15. Services provided by way of temporary transfer or permitting the use or enjoyment of a copyright,-

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- (a) covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical or artistic works; or
  - (b) of cinematograph films for exhibition in a cinema hall or cinema theatre;”;
16. Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador;
17. Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;

## Appendix 2

# Circular on Distributors/Sub-distributors of Films & Exhibitors of Movie- ST

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Circular No.148 / 17 / 2011 - ST  
F.No.354/27/2011-TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs  
Tax Research Unit

153 North Block, New Delhi  
Dated: 13.12.2011

To

Chief Commissioners of Central Excise and Service Tax (All),  
Director General (Service Tax),  
Director General (Central Excise Intelligence),  
Director General (Audit),  
Commissioners of Service Tax (All),  
Commissioners of Central Excise and Service Tax (All).

Madam/Sir,

**Subject: - Clarification on levy of service tax on distributors/sub-distributors of films & exhibitors of movie - regarding.**

1. Representations requesting clarification on taxability of consideration earned by the distributors/sub-distributors/area distributors of Indian & Foreign films in the form of 'revenue share' from the exhibitors of the movie, and on revenue retained as percentage by the exhibitors of the movie from the sale of tickets have been received from certain sections of service providers in the light

*Circular on distributors/sub-distributors of films & exhibitors of movie- ST*

of recent changes in the law and CBEC Circular No 109/03/2009 dated 23.02.2009 issued under F. No. 137/186/2007-CX.4.

2. These representations have been examined. Subsequent to issuance of CBEC Circular No. 109/03/2009 dated 23.02.2009 significant changes in the law have taken place. Temporary transfer or permitting the use or enjoyment of, any copyright defined in the Copyright Act, 1957 (14 of 1957), except the rights covered under sub-clause (a) of clause (1) of section 13 of the said Act were made taxable w.e.f. 01.07.2010 under the sub-clause (zzzzt) of Sec 65(105) by the Finance Act of 2010. Also, for the words 'operational assistance for marketing', the words 'operational or administrative assistance in any manner' were substituted in the clause (104c) of Sec 64 of the Act by the Finance Act, 2011, w.e.f. 01.05.2011.

3. The normal business practice in the industry is that the producer of the film, who owns the intellectual property rights of the film, temporarily transfers the rights to a person [normally distributor or any other person] who directly or indirectly enters into an agreement with the exhibitor [normally theater owner] for screening of the film. There are also other variant modes of transaction in the industry.

4. In cases where distributor transfers the rights to sub-distributor, area distributor, exhibitor or theatre owner, the distributor is liable to collect the service tax under copyright service & deposit it with the government exchequer. Similarly when the sub-distributor or area distributor etc further transfers the rights to any person, he is also liable to collect the service tax under copyright service & deposit it with the government exchequer.

5. In cases where no such copyrights are transferred by the distributor or sub-distributor or area distributor to the exhibitor or theatre owner, the same is not chargeable to service tax under Copyright Services. However the business transaction needs to be examined for levability of service tax under other heads. Depending upon the arrangement whether the theatre owner has merely let out its premises to the distributor or is also involved in giving support services for the business of the distributor, there can be a case of levability of service tax on the remuneration retained by such theatre owner under "Business Support service" or "Renting of Immovable Property". The definition of "Business Support service" has been amended in Budget 2011 to include "operational or administrative assistance in any manner" in its definition.

6. It is being represented that in certain situation the distributor and the theatre owner conduct business together and hence no service tax is leviable.

### *Background Material on Service Tax - Entertainment Sector*

Arrangement amongst two or more entities can either be on principal-to-principal basis or on partnership/joint/collaboration basis. In the former, the constituent members are independent of each other and do not share any risk/revenue/profit/loss/liability of the other while in latter the constituent members join hands for mutuality of interest and share common risk/profit together.

7. Unincorporated joint venture, not operating on principal-to-principal basis, will exist only if the arrangement entered into between the two independent persons is also recognized as a person. It may be noted that the word “person” has not been defined in the Finance Act, 1994. As per Sec 3(42) of General Clauses Act, 1897 “person shall include any company or association or body of individuals, whether incorporated or not”. In this regard attention is invited to explanation to Sec 65 of the Finance Act, 1994 wherein the taxable service includes any taxable service provided or to be provided by any unincorporated association or body of persons to a member thereof.

8. Such a joint venture is also recognized as a legal & juristic entity in the nature of a partnership of the constituent companies by the hon’ble Supreme Court of India in the case of New Horizons [1995 SCC (1) 478; 1994 -TMI – 83686] wherein it was held that *“the expression ‘joint venture’ connotes a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks. It requires a community of interest in the performance of the subject-matter, a right to direct and govern the policy in connection therewith, and duty, which may be altered by agreement, to share both in profit and losses.* The independence of joint venture as a separate legal entity, away from its constituent members, has further been fortified in the case of M/s Gammon India Ltd. Vs Commissioner of Customs, Mumbai, 2011-TMI - 204309 wherein the hon’ble Supreme Court categorically denied the benefit of exemption to the JV as the impugned goods were directly imported by constituent member.

9. Thus, where the distributor or sub-distributor or area distributor enters into an arrangement with the exhibitor or theatre owner, with the understanding to share revenue/profits and not provide the service on principal-to-principal basis, a new entity emerges, distinct from its constituents. As the new entity acquires the character of a “person”, the transactions between it and the other independent entities namely the distributor / sub-distributor / area distributor and the exhibitor etc will be a taxable service. Whereas, in cases the character of a

*Circular on distributors/sub-distributors of films & exhibitors of movie- ST*

“person” is not acquired in the business transaction and the transaction is as on principal-to-principal basis, the tax is leviable on either of the constituent members based on the nature of the transaction and as per rules of classification of service as embodied under Sec 65A of Finance Act, 1994.

10. To sum-up the above, the arrangements entered into by the distributor or sub-distributor or area distributor etc and the exhibitor or theatre owner etc in exhibiting the film produced by the producer, the original copyright holder, the arrangements and their respective service tax classification is tabulated as under:

Type of Arrangement	Movie exhibited on whose account	Service Tax Implication
Principal –to – Principal Basis	Movie being exhibited by theatre owner or exhibitor on his account – i.e. The copyrights are temporarily transferred	Service tax under copyright service to be provided by distributor or sub-distributor or area distributor or producer etc, as the case may be
	Movie being exhibited on behalf of Distributor or Sub-Distributor or Area Distributor or Producer etc – i.e. no copyrights are temporarily transferred	Service Tax under Business Support Service / Renting of Immovable Property Service, as the case may be, to be provided by Theatre Owner or Exhibitor
Arrangement under unincorporated partnership/ joint/ collaboration basis	Service provided by each of the person i.e. the ‘new entity’/ Theater Owner or Exhibitor / Distributor or Sub-Distributor or Area Distributor or Producer etc, as the case may be, is liable to Service Tax under applicable service head	

11. It is understood that the Circular dated 23.02.2009 has been misinterpreted to exclude all ‘revenue sharing’ arrangements from the levy of service tax. Remuneration or payment arrangements on basis of fixed or revenue sharing or profit sharing or hybrid versions of these may exist. However, the nature of transaction determines the leviability of service tax. Each case may be looked into on its merits and decision be taken on case to case basis.

*Background Material on Service Tax - Entertainment Sector*

12. The arrangements mentioned in this Circular will apply *mutatis mutandis* to similar situations across all the services taxable under the Finance Act.

(Samar Nanda)  
Under Secretary (TRU)