

Technical Guide to Service Tax — Insurance Sector



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

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Foreword

Service Tax was introduced in India in 1994 on 3 services with an objective of broadening of the tax base, augmentation of revenue and larger participation of citizens in the economic development of the nation. The system of taxing services witnessed a sea-change in the year 2012, with the introduction of taxation based on Negative List. This method of taxation has further increased the significance of service tax in the economy.

Considering the fact that though the broad structure of service tax is uniform, its applicability to different sectors may differ due to difference in business practices followed, the Indirect Taxes Committee of the Institute of Chartered Accountants of India (ICAI) took up an initiative during 2014-15 to develop sector specific Technical Guide/ Background Material on Service Tax. Technical Guide to Service Tax – Insurance Sector is one of the outcomes of this initiative.

Every year respective Finance Acts bring in gamut of changes in the taxation laws. Accordingly, the Committee has been revising all the guides with the changes made by Finance Act, 2015, as a publication in tax laws retains its significance only when it is updated and reflects the current position of the law.

I heartily compliment CA. Atul Gupta, Chairman, CA. Shyam Lal Agarwal, Vice-Chairman and other members of Indirect Taxes Committee of ICAI for their untiring efforts in bringing out the revised edition of Technical Guide to Service Tax – Insurance Sector duly updated with changes. I am sure that this updated Guide would be warmly received and appreciated by the members and other interested readers.

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: 18th August, 2015

Place: New Delhi

CA. Manoj Fadnis

President, ICAI

Preface

A paradigm shift in the area of taxation took place in the year 1994-95 when the concept of Service Tax on three services was introduced. Since then different Finance Ministers have brought in new services under its tax ambit. Another major development 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. The large number of changes in the law and introduction of new rules for taxation of services 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 developed sector specific Technical Guide/ Background Material on Service Tax during the year 2014-15. Considering the changes made through Finance Act 2015, notifications/ circulars etc., the Committee thought it fit to revise all these guides/ background materials as a publication in tax laws retains its significance only when it is updated and reflects the current position of the law. Accordingly, this Technical Guide on Service Tax – Insurance Sector has been updated with all the amendment made by Finance Act, 2015, notifications/ circulars etc. It intends to support the members to address the various issues arising in relation to insurance sector.

I am extremely thankful to CA. Manoj Fadnis, President and CA. M. Devaraja Reddy, Vice-President, ICAI and members of the Committee for their support and guidance in this initiative. Further, I thank CA. Harsh Udeshi for thoroughly revising the Guide with updated provisions of Finance Act, 2015. I must also compliment and appreciate the substantial assistance provided by the Indirect Taxes Committee Secretariat to bring this publication to its being.

I am confident that this revised publication would help the readers to be well equipped with the nuances of service tax related to insurance sector.

I look forward to receiving feedback for further improvements at itdc@icai.in.

Date: 4th February, 2015

Place: New Delhi

CA. Atul Gupta

Chairman

Indirect Taxes Committee

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Highlights of the Finance Act 2015

Varishtha Pension Bima Yojana – Exempted

Life insurance serviced provided by way of Varishtha Pension Bima Yojana will be exempted with effect from 01 April 2015. Notification 6/2015 – ST dated 01 March 2015 amends Notification No. 25/2012 dated 20 June 2012 (Mega Exemption Notification)

Alternate rate of Service Tax

In respect of certain services such as insurance service, the service provider has been allotted to pay service tax at an alternative rate subject to the conditions as prescribed under 6(7A) of the Service tax Rules, 1994. Consequent to the upward revision in Service Tax Rate, the alternative rates shall also be revised proportionately.

This amendment shall come into effect from 01 June 2015 as the new service tax rate has been notified vide Notification No 14/2015. The effect of the amendment is shall be as stated below:

Service Provider	Old Rate	New Rate
Life insurers (1 st Year of Policy)	3 % of premium charged	3.5 % of premium charged
Life insurers (Subsequent Years)	1.5 % of premium charged	1.75 % of premium charged

Important Definitions

This Chapter, unless the context otherwise requires, refers to the clauses of Section 65 of Chapter V of the Finance Act, 1994.

- (1) **"actuary"** has the meaning assigned to it in clause (1) of section 2 of the Insurance Act, 1938 (4 of 1938)
- (7) **"Assessee"** means any person, including his agent, liable to pay a service tax. ;
- (49) **"General insurance business"** has the meaning assigned to it in clause (g) of section 3 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972)
- (54) **"Insurance Agent"** has the meaning assigned to it in clause (10) of section 2 of the Insurance Act, 1938 (4 of 1938) which is an insurance agent licensed under Sec. 42 who receives or agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance;
- (55) **"Insurance auxiliary service"** means any service provided by an actuary, an intermediary or insurance intermediary or an insurance agent in relation to general insurance business and includes risk assessment, claim settlement, survey and loss assessment.
- (56) **"intermediary or insurance intermediary"** has the meaning assigned to it in clause (f) of subsection (1) of section 2 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999)
- (58) **"Insurer,"** means any person who carries on the general insurance business or life insurance business [and includes a re-insurer]
- (61) **"life insurance business"** has the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938) which is the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any

Important Definitions

- (80) **"Policy holder"** has the meaning assigned to it in clause (2) of section 2 of the Insurance Act, 1963 (4 of 1938);
- (81) **"Port"** has the meaning assigned to it in clause (q) of section 2 of the Major Port Trust Act, 1963 (38 of 1963);
- (86) **"Prescribed"** means prescribed by rules made under this Chapter;
- (95) **"Service tax"** means tax leviable under the provisions of this Chapter;
- (105) **"taxable service"** means any [service provided or to be provided],-
- (d) to a policy holder or any person], by an [insurer, including re-insurer] carrying on general insurance business in relation to general insurance business;
 - (zl) to a [policy holder or any person] or [insurer, including re-insurer] by an actuary or intermediary or insurance intermediary or insurance agent, in relation to insurance auxiliary services;
 - [(zx) to a policy holder or any person, by an [insurer, including re-insurer carrying on life insurance business;]
 - (zy) to a [policy holder or any person] or [insurer, including re-insurer] by an actuary, or intermediary or insurance intermediary or Insurance agent, in relation to insurance auxiliary services concerning life insurance business;
 - [(zzzzf) to a policy holder, by an insurer carrying on life insurance business, in relation to management of investment, under unit linked insurance business, commonly known as Unit Linked Insurance Plan (ULIP) scheme.

Explanation: For the purposes of this sub-clause,—

- (i) management of the segregated fund of unit linked insurance business by the insurer shall be deemed to be the service provided by him to the policy holder in relation to the management of investment under unit linked insurance business; and
- [(ii) the gross amount charged by the insurer from the policy holder for the said service provided or to be provided shall be equal to the maximum amount fixed by the Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and Development Authority Act, 1999, as fund

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management charges for unit linked insurance plan or the actual amount charged for the purpose by the insurer from the policy holder, whichever is higher.

Chapter 1

Introduction

Introduction

Service tax was introduced in 1994 to levy the tax on service. Though service tax was introduced in the Finance Act, 1994, the term 'service' was not defined therein. It was levied on the deemed taxable services, which were defined in different sub-clauses of clause (105) of Section 65 of the Finance Act, which gave the list of taxable service.

The term 'service' has been defined to cover every transaction between two persons that happens for a consideration, with few exceptions, which are basically transactions already taxed by the State/Union.

Service Tax is a destination based consumption tax. The levy of service tax is made applicable for providing or agreeing to provide any service other than services in the negative list, in taxable territory, to any person by any other person for a consideration.

Applicable Service Tax Rate

As notified vide Notification No 14/2015 dated 19 May 2015 whereby the rate of service tax has been increased from 12.36 % to 14 % (including cesses). Thus, the new rate of service tax shall be applicable for services provided to the insurers in relation to insurance business

Prior to 01 June 2015 - The rate of service tax for the period. 01-04-2012 to 31-05-2015 was 12.36%. [Including 2 % as education cess and 1% as secondary and higher education cess]

Valuation of Services

The taxable value on which the tax is to be computed is arrived normally on gross basis and is on the amount charged as 'consideration' for the taxable services provided or agreed to be provided. The non-taxable service or the activity which goes out of the definition of taxable services would not form part of the gross value for service tax consumption.

All the costs and expenditure incurred by the service provider in connection with the taxable service, which is claimed as reimbursements, would also form part of the value unless the same is incurred as of pure agent with certain conditions tagged for such purpose.

CENVAT Credit

The credit of excise duty/additional duty of customs paid on inputs or capital goods used for providing taxable service would be eligible for CENVAT Credit in addition to tax paid on input services used for providing output service. This benefit will also be eligible for manufacturers.

Identification of place providing service

The levy of service tax would only be on the taxable services provided in the taxable territory of India and hence the service provided outside the taxable territory would be out of the service tax net. It is critical to identify when the service considered to have been provided is in the taxable territory. This would be determined on the basis of the Place of Provision of Service Rules, 2012

When to pay service tax?

The service tax is required to be paid on a monthly basis to the account of the Central Government by 5th of the month following the one in which the point of taxation for the taxable services provided or agreed to be provided arises. In case of e-payment of service tax the due date is extended to 6th of the month. However, for the month of March, it has to be paid by 31st March in either of the payment modes.

Time of providing service and deemed provision of service

The service tax levy is attracted at the time of provision of taxable services and crystallizes at the time as prescribed considering the Point of Taxation Rules, 2011.

Chapter 2

Taxability under Insurance Sector

Taxability of Services

The taxability of services or the charge of service tax has been specified in section 66B of the Act. To be taxable a service should be –

- Provided or agreed to be provided
- In the taxable territory
- And should not be specified in the negative list

Taxability in terms of Insurance Sector

Prior to 01/07/2012, services in relation to insurance were taxable under the categories of general insurance service, life insurance service and insurance auxiliary service.

Sl. No.	Category of service	Clause of Section 65	Sub Clause
1	General Insurance Service	(49)	(d)
2	Life Insurance Service	(61)	(zx)
3	Insurance Auxiliary Service	(55)	(zl / zy)

With effect from 01/07/2012, the definition of 'service' is the one given in section 65B (44). It means any activity carried by one person for any other person for a consideration. In addition to that, service would also include declared service and excludes certain activities from the definition.

To summarize, the definition of service envisages the following:

- There has to be an activity to be carried out
- The activity has to involve two different persons
- The activity has to be for a consideration
- The activity includes declared services which are specifically set out
- Some activities are specifically excluded vide Negative List

In terms of insurance services, where insurance service is provided by any person, whether on behalf of the Government or by private, to another person for consideration will be considered a 'taxable service'.

PROVISIONS RELATING TO INSURANCE SERVICE

Insurance Service – Not a Declared Service

Clauses (a) to (i) of section 66E declare certain services as taxable services. None of the clauses relate to insurance services. Even though the said service is not specified as a declared service, it will fall under the definition of service specified under section 65B (44). By virtue of this section, any activity done for a consideration will be considered a taxable service.

Provision Relating To Negative List

The clauses (a) to (q) of section 66D specify certain services which are not taxable. None of the clauses relates to insurance services. Therefore, services in relation to insurance will be considered taxable services unless exempted vide Notification No 25/2012- ST dated 20-06-2012.

Provisions Relating To Exemption

Items No. 26, 26A and 36 of Notification No 25/2012 ST dated 20-06-2012 grant exemption to specified insurance schemes framed by the Central Government/State Government. Item No. 26, 26A and 36 of Notification No 25/2012-ST dated 20-06-2012 are discussed below:

Exemption to General Insurance Business

Item no 26 of Notification No 25/2012-ST dated 20-06-2012 reads as follows:

“26. Services of general insurance business are provided under the following schemes:

1. Hut Insurance Scheme
2. Cattle Insurance under Swarnajaynti Gram Swarozgar Yojana (known earlier as Integrated Rural Development Programme)
3. Scheme for the insurance of Tribals
4. Janata Personal Accident Policy and Gramin Accident Policy
5. Group Personal Accident Policy for Self Employed Women

Taxability under Insurance Sector

6. Agricultural Pumpset and Failed Well Insurance
7. Premia collected on export credit insurance
8. Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture
9. Jan Arogya Bima Policy
10. National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana)
11. Pilot Scheme on Seed Crop Insurance
12. Central Sector Scheme on Cattle Insurance
13. Universal Health Insurance Scheme
14. Rashtriya Swasthya Bima Yojana
15. Coconut Palm Insurance Scheme”

The following aspects must be noted –

- (a) services must be of general insurance business
- (b) services must be under specified schemes

Service of General Insurance Business

Item no. 26 of Notification No. 25/2012 dated 20-06-2012 grants exemption to services of general insurance business under specified schemes. The scope of General Insurance and Specified Schemes are discussed below:

General Insurance – Clause (p) of Para 2 of Notification 25/2012 dated 20-06-2012 defines ‘general insurance business as having the meaning assigned to it in clause (g) of section 3 of the General Insurance Business (Nationalisation) Act 1972. The said clause (g) provides that ‘general insurance business’ means fire, marine or miscellaneous insurance business, whether carried on singly or in combination with one or more of them.

The Insurance Act, 1938 defines marine, fire and miscellaneous insurance business as follows:

Marine Insurance Business – As per clause (13A) of section 2 of the Insurance Act, 1938, Marine Insurance business means the business of effecting contracts of insurance upon vessels of any description, including cargoes, freights and other interest which may be legally insured, in or in relation to such vessels, cargoes and freights, goods, wares, merchandise and property of whatever description insured for any transit by land or water, or both, whether or not including warehouse risks or similar risks in addition to such transit and includes any other risks customarily included among the risks insured against in marine insurance policies.

Fire Insurance Business – As per clause (6A) of section 2 of the Insurance Act, 1938, Fire Insurance business means the business effecting, otherwise than incidentally to some other class of insurance business, contracts of insurance against loss by or incidental to fire or other occurrence customarily included among the risks insured against in fire insurance policies.

Miscellaneous Business – As per clause (13B) of section 2 of the Insurance Act, 1938, Miscellaneous Insurance business means the business of effecting contracts of insurance which are not principally of any kind and included in fire, marine or life insurance business.

Specified Scheme – The benefit is available only when the premium is received by any person under any of the above schemes.

Exemption to Life Insurance Business

Item no. 26A of the Notification No 25/2012 ST dated 20-06-2012 grants exemption to certain schemes of life insurance business. The said item number reads as follows:

26A Service of life insurance business provided under the following schemes

- (a) Janashree Bima Yojana
- (b) Aam Aadmi Bima Yojana
- (c) Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees – added vide notification no. No. 6/2014-15-ST dated 11-07-2014
- (d) Varistha Pension Bima Yojana – added vide notification no. 6/2015 dated 01-03-2015 w.e.f. 01-04-2015

It must be noted that–

- (a) Services must be of Life insurance business
- (b) Services must be provided under specified schemes

Service of Life Insurance Business

Item no. 26A of notification No. 25/2012 St dated 20-06-2012 grants exemption to services of Life insurance business under specified schemes.

Life Insurance – Clause (x) of para 2 of Notification No. 25/2012 ST dated 20-06-2012 defines 'life insurance business' as the meaning assigned to it in clause (11) of section 2 of the Insurance Act, 1938.

Section 2(11) of the Insurance Act, 1938 defines Life insurance business as follows:

“Life insurance” business means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include –

- (a) The granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance
- (b) The granting of annuities upon human life, and
- (c) The granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons'

It can be seen that the definition is “means and includes” definition. The meaning of the part of the definition covers contracts of insurance upon human life, under which assured sums are payable on death or any contingency dependent upon human life. The definition further creates a fiction in the inclusive part to cover –

- (i) Disability and accident benefits

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- (ii) Annuities and
- (iii) Superannuation allowances and annuities applicable only to professionals and businessmen. Granting of superannuation payable out of any fund applicable solely to the relative (and maintenance of person who are engaged in particular trade or employment or dependent of such person.

Normally, organisations pay premium to the insurer to cover the sum payable to employees on their superannuation or to cover payment of annuities to them. The insurer undertakes to pay the amount to the employees against the receipt of premium from the insured. Such a policy taken by any organization will also be considered life insurance.

Specified Scheme – The nature of schemes is specified in item no. 26A of Notification No 25/2012 ST dated 20-06-2012. Its benefit is available only when premium is received by any person under any of the above schemes.

However, with effect from 01-04-2015 the exemption has been extended to Varishtha Pension Bima Yojana.

Services Provided By Employees State Insurance Corporation

Item No. 36 of Notification 25/2012 dated 20-06-2012 grants exemption to the services provided by the Employees State Insurance Corporation established under the Employees Insurance Act, 1948 to persons governed under the Act. Thus, services provided by the ESIC, including insurance services, will be exempt from payment of service tax.

The Employees Insurance Act is applicable to workmen working in specified undertakings. The employer is required to pay notified amount to the ESIC to ensure that healthcare benefit is provided to the employees of the undertakings covered by it. These employees are generally issued cards for the purpose of identification. The ESIC has appointed doctors/hospitals in various areas, which are affiliated to Corporation and provide health care services to the employees of undertakings.

Chapter 3

Service Tax Rules, 1994 - Insurance Sector

Definitions

Some important definitions related to Insurance Sector in the Service Tax Rules, 1994 are stated below:

Section 2 (cba) – “insurance agent” has the meaning assigned to it in clause (10) of section 2 of the Insurance Act, 1938

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

Registration

Rule 4 – Every person who is liable to pay service tax under the insurance sector shall make an application to the concerned Superintendent of Central Excise in Form ST-1 for registration within a period of 30 days from the date on which the service tax under section 66B of the Finance Act, 1994 is levied.

Where the service provider has started giving service, he shall make an application for registration within a period of 30 days from the date of such commencement of service.

If the insurer provides service from more than one premise he can opt for either of the options:

- To follow the centralized billing system and mention the place from where billing shall be done; or
- not to follow the centralized billing system and make separate applications for registration in respect of each such premise or office

After verifying the application, the Superintendent shall issue the registration certificate in Form ST-2 within 7 days from the date of receipt of the application. If it is not granted within 7 days, it will be deemed to have been granted. Further, w.e.f. 1st March, 2015 vide Order No, 1/2015-ST; CBEC has

reduced time period to grant registration certificate in case of single premises registration from seven days to two days.

Any change in registration certificate has to be made within a period of 30 days of such change and intimated to the concerned officer. .

Taxable service to be provided or credit to be distributed on invoice, bill or challan

Rule 4A –Every person not later than 30 days from the date of completion of taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, issue an invoice, a bill or a challan which shall contain:

- The name, address and the registration number of the person
- The name and address of the person receiving taxable service
- Description and value of taxable service provided or agreed to be provided and
- The service tax payable thereon

CBEC vide *Circular No. 166/1/2013-ST dated 01-01-2013* provided that notices/reminders issued for life insurance policies to the effect that the reminder letters/ invoices for insurance policies not being invoices under Rule 4A of the Service Tax Rules, 1994 would not invite levy of Service Tax.

Following are the extracts of circular –

- “It has been represented by life insurance companies that in terms of the practice followed, reminder notices / letters are being issued to the policy holders to pay renewal premiums. Such reminder notices only solicit furtherance of service which if accepted by policy holder by payment of premium results in a service. Clarification has been desired whether service tax needs to be paid on the basis of such reminders.
- The matter has been examined. Under the Point of Taxation Rules 2011, the point of taxation generally is the date of issue of invoice or receipt of payment whichever is earlier. The invoice mentioned refers to the invoices as issued under Rule 4A of the Service Tax Rules 1994. No tax point arises on account of such reminders. Thus it is clarified that reminder letters/notices for insurance policies not being

invoices would not invite levy of service tax. In case of issuance of any invoice, point of taxation shall accordingly be determined."

Records

Rule 5 – The records should be maintained and furnished to the Superintendent by the person providing taxable service, in duplicate, of –

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

The records should be preserved for a period of 5 years immediately after the financial year to which such records pertain.

Rule 4C has been introduced w.e.f. 1st March, 2015 to provide authentication of challans, invoice etc. issued under Rule 4A and 4B by way of Digital Signature Certificate.

Rule 5(4) has been introduced w.e.f. 1st March, 2015 to allow preservation of records related to Service Tax in the digital form duly authenticated by digital signature.

Access to Registered Premises

Rule 5A – The officer authorized by the Commissioner or Principal Commissioner has the right to have access to any premises for the purpose of scrutiny, verification and checks to safeguard the interest of revenue.

It is the duty of the service provider to make available records maintained or prepared by him in terms of sub-rule (2) of rule 5 and the income-tax audit report, on demand, for inspection to the officer empowered under sub-rule (1)

or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, or a cost accountant or chartered accountant nominated under section 72A of the Finance Act, 1994, for the scrutiny of the officer or the audit party, or the cost accountant or chartered accountant, within the time limit specified by the said officer or the audit party or the cost accountant or chartered accountant, as the case may be.

Payment of Service Tax

Rule 6 – It states that the service provider collecting service tax from the service recipient has to deposit the amount to the Central Government within

- (a) 6th day of the month, if the duty is deposited electronically
- (b) 5th day of the month, if not done electronically.

Immediately following the calendar month in which such service is deemed to be provided.

It is also provided that the service tax for the month of March has to be paid to the Central Government by 31st March of the calendar year.

If the service provider has deposited the amount of service tax in excess of what is actually due, it shall be adjusted with the liability for the next month or quarter.

An insurer shall have the option to pay tax

- (a) On the gross premium from a policy holder reduced by the amount allocated for investment or savings on his behalf, if such amount is intimated to him at the time of providing service.
- (b) In all other cases, 3 % of the premium charged from a policy holder in the first year and 1.5 % of the premium charged from a policy holder in the subsequent years.

Towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66B of the Chapter V of the Act

The above option shall not be available, where the entire premium paid by the policy holder is only towards covering risk in life insurance.

Return

Rule 7-The insurer has to submit a half yearly return in Form ST 3 or ST 3A by the 25th of the month following the particular half year in an electronic mode. Form TR – 6 should also be submitted in triplicate for the months covered in the half yearly return.

The period of filing of return can be extended by the CBEC by such period as the circumstances may suggest.

Rule 7B – If the insurer feels that the return submitted contains some errors or a mistake, then he can file a revised return within 90 days from the date of submission of the original return.

Accordingly, the relevant date of recovery of service tax shall get extended from the date of submission of the original return to the date of submission of the revised return.

Penalty

Rule 7C – It states that where the insurer has submitted the return after the due date, then he shall pay the following penalty to the Central Government:

Sl. No.	Delay in Filing Return	Penalty
1	Within 15 days	Rs. 500
2	Between 15 days to 30 days	Rs. 1,000
3	Beyond 30 days	Rs. 1,000 In addition, Rs. 100 per day till the date return is furnished

The Central Excise Officer, if satisfied with reasons for the delay in filing of return, can reduce or waive the penalty.

Appeals

Rule 8 – If the insurer is not satisfied with the order passed by the Central Excise Officer, then he can file an appeal (in duplicate) against it to the Commissioner of Central Excise (Appeals) in Form ST 4 along with the copy of the order.

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Rule 9 –An appeal can be filed by the insurer to the Appellate Tribunal in Form ST 5 if he is not satisfied with the order passed by the Commissioner of Central Excise (Appeals).

Pre-Deposit Requirements

In terms of Section 83 of Finance Act, 1994, Section 35F of Central Excise Act, 1944 dealing with the pre-deposit requirements have been made applicable to service tax appeals also.

Prior to 6.8.2014, Section 35F provided that where an appeal is to be preferred before Commissioner (Appeals) or before Tribunal, duty, interest or penalty shall be deposited prior to filing appeal. However, the Commissioner (appeals) or CESTAT was empowered to waive deposit of such adjudicated levies. The said provision has been amended w.e.f 6-8-2014 and the summary of the present section 35FF is as below:

Sl. No.	Order passed by	Appeal before	Pre-deposit requirement	Comments
1.	Officer below Commissioner	Commissioner (Appeals)	7.5% of demand	Where tax or tax and penalty are in dispute, 7.5% of tax demand
2.	Commissioner	CESTAT	7.5% of demand	
3.	Commissioner (Appeals)	CESTAT	10% of demand	Where only penalty is in dispute, 7.5% of penalty

Other important points in connection with pre-deposit requirement:

- (a) maximum pre-deposit shall be Rs. 10 Crores
- (b) the said provisions shall not be applicable to appeals or stay application pending on or prior to 6.8.2014
- (c) amendments were also brought to Section 35C (2A) which provided for vacation of stay where the appeals were not disposed off within 365 days from date of stay order.

Chapter 4

Valuation and Abatement

Introduction

Valuation of the service is important because this provides the methodology for arriving at the amount on which the service tax is to be charged. Service Tax (Determination of Value) Rules 2006 were inserted in April 2006 along with amendment in section 67 of the Service Tax Act. It provided valuation for the service where no consideration is received in money as well as for instances where both monetary and non-monetary considerations are received.

Valuation of Taxable Services

Section 67 provides that where the service tax is payable on value, such value shall be the gross amount charged by the service provider for such services provided or to be provided. In this case, the statute does not grant any abatement from the value from the gross amount charged for determining the value of taxable service. Therefore, the gross amount charged as determined under section 67 will constitute value of taxable service.

Background of Taxability

Life insurance services were made taxable with effect from 10-09-2004. Tax on insurers issuing Unit Linked Insurance Plans (ULIP) was imposed w.e.f. 01-06-2008. The taxable service is the "Management of investment, under unit linked insurance business, commonly known as Unit linked Insurance Plans (ULIP) scheme" by an insurer carrying life insurance business.

From the enactment of the Finance Act 2010, the definition of taxable service was amended to provide that the value of taxable service for any year of the operation of policy shall include the charges involved in the management of funds. Fund management charges is the amount charged by the insurance company for managing the investible funds, which is intended to be taxed under this service.

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Since the charge pertaining to asset management alone should form the value for taxable purpose, the explanation provided under the definition of the taxable service is being suitably amended to provide that the value of the taxable service for any year of the operation of policy shall be the actual amount charged by the insurer for management of funds and all other charges shall be exempted.

The taxable service was defined in erstwhile section 65(105)(zz) for the period to 01-05-2011 as follows:

“taxable service means any service provided or to be provided to a policyholder or any person, by an insurer, including re-insurer carrying on life insurance business in relation to the risk cover in life insurance”

The definition was amended on 01-05-2011, which read as follows:

“Taxable service means any service provided or to be provided to a policy holder or any person by an insurer, including re-insurer carrying on life insurance business”

After the amendment, the CBEC issued letter no. D.O.F. 334/3/2011-TRU dated 28-02-2011 which clarified the scope of the service following the amendment. The clarification is as follows:-

1. Life insurance companies provide services relating to risk cover and managing investment for the policy holders. The former is already subjected to service tax. The latter is now being brought into the tax net. Similar services rendered by way of ULIP are already subject to service tax since 2008.
2. When the entire premium is only for the risk cover the same shall continue to be taxed even in the revised definition. However in the case of other schemes, a significant portion of the premium is used towards investment, while the rest is allocated towards various overheads and mortality. IRDA in its *Circular Ref: IRDA/ACT/CIR/VIP/171/2010 dated 21 November 2010* has made it mandatory for the insurance companies to share this break up with the policy holders in the case of variable insurance policies under the heads: premium received deductions towards mortality, commission and expenses, interest added and closing balance. Thus amounts relating to deductions for mortality, commission and expenses are not available for investment. After the enactment of the new levy it is proposed to amend the service tax rules to give the option to pay tax at the standard rate on that portion of the premium that has not been invested and

is so indicated in any of the documents given to the policyholder. Where the break up is not indicated in any document issued to the policy holder, option will be given to pay tax @ 1.5 % of the gross amount of premium.

From the clarification it is evident that tax is not proposed on the entire amount of the premium, but service tax is payable on the premium minus the investment portion contained in the premium amount. As per the clarification, the premium amount minus the investment amount represents the amount receivable by the insurer for the purpose of providing the service of life insurance and other related services. Therefore, the value of the service provided by the insurer should be restricted only to the amount recovered towards risk cover plus the amount received for the management of investment.

Clarifications issued by the Board regarding Reinsurance

Re-insurance Commission not liable to service tax:-

1. In terms of section 101 A (Part IV-A) of the Insurance Act, 1938, every insurer dealing in insurance business is required to re-insure a specified percentage of sum assured with another insurance company.
2. The insurance company pays premium to the reinsuring company for this service. However, a part of such premium is deducted and kept by the insurance company for meeting the administrative expenditure. In other words, the insurance company and reinsurance company jointly bears the expenses for running insurance/reinsurance business.
3. As per the provision of the Finance Act, 1994 insurance as well as reinsurance are subject to Service Tax. The board has received representations that notices have been issued demanding Service Tax on the amounts deducted by the insurance company on the ground that it is the consideration for the insurance company providing Business Auxiliary Services (BAS) to the reinsurer company.
4. The issues have been examined. As explained in point 2 above, the arrangement between the insurance company and the reinsurer is only sharing the expenses and there is no service provided by the insurance company to the reinsurer for a consideration. Since the policy holder may not be even aware of the operations of the insurer, it cannot be said that the payment made by the reinsurer to the insurance company is for its business promotion or a service on behalf of Reinsurance

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Company. In fact, it is the reinsurer which provides insurance service to the insurance company. As both the insurance company and reinsurer pay service tax on the entire amount of the premium charged by them, the question of charging Service Tax under any other taxable service does not arise.

(CBEC Circular 120(a)/2/2010 ST dated 16-04-2010)

Commission, fee or any other sum – services provided by agents

Rule 6 of the Service Tax (Determination of Value) Rules, 2006 specifies that subject to provisions of Section 67, certain items which are included or excluded from the value of taxable service. Clause (ix) of Rule 6(1) reads as follows:

- (ix) the commission, fee or any other sum, by whatever name called, paid to such agent by the insurer appointing such agent in relation to insurance auxiliary services provided by an insurance agent

Therefore, any other sum or commission must be in the nature of commission or fees and not any amount received by the service provider.

Value of service provided by agents

The agents are paid commission on the basis of premium received under the policies procured by them. Many times, the agents are also provided incentive in the form of bonus or any other form to encourage them to achieve certain targets of procuring policies. The amount which can be directly linked to the quantum of premium generated under the policy procured through the agents can be considered commission or fee received by the agents. Any other sum which has no relation to the quantum of premium received under the policy generated by the agents cannot be included in the value of taxable service.

Option for payment of service tax under rule 6(7A) to the insurer

As per rule 6(7A) of the Service Tax Rules, 1994, an insurer who carries on life insurance business has been provided the option to pay service tax as per the following:

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- (i) On the gross premium charged from a policy holder reduced by the amount allocated for investment or savings on behalf of a policy holder, if such amount is intimated to him at the time of providing service.
- (ii) In all other cases, 3.5 percent of the premium charged from a policy holder in the first year and 1.75 percent premium charged from policy holder in the subsequent years towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66B of Chapter V of Finance Act, 1994.

The above rule divides the policy into two parts:

- (i) Where the amount allocated to investment or savings on behalf of a policy holder is intimated to the policy holder. In this case, the service tax is payable on the amount of premium minus the amount allocated to investment or saving.

For example,

M/s XYZ Co has recovered the premium of Rs. 100000 from Mr. ABC. As per the contract of insurance policy, out of Rs. 100000 premium, the insurer is required to invest Rs. 90000. Thus, the service tax at the appropriate rate is payable on Rs. 10000.

- (ii) In case the amount allocated for investment or saving has not been communicated to the policy holder, the service tax will be payable @3.5 percent of the premium charged for the first year and @ 1.75 percent of the premium charged in the subsequent year.

The above payment of service tax will be sufficient compliance of payment of service tax by the insurer.

Option not available when entire premium is towards risk cover

First proviso to rule 6(7A) provides that where the entire premium paid by the policy holder is only towards risk cover; option under this rule cannot be exercised. The insurer will have to pay service tax on the entire amount of premium received by him. As the entire premium is for risk cover in life insurance, no amount can be allocated towards investment or saving.

Service tax on providing life insurance

This rule provides that insurers in life insurance business have the option to pay tax at the specified rate towards discharge of his service tax liability instead of paying service tax at the rate specified in section 66B. Thus, service tax payable on the premium received by the insurer can be paid by opting under this rule. If the insurer is recovering any amount for any other activity, such as life agency processing fee or policy discontinuation charges, service tax will be payable by him separately.

Agency processing charges

Leviability of service tax depends on case to case and law does not specify clearly. In accordance with the views of senior council, insurance company acts as pure agent for collecting agency processing charges in accordance with the service tax rules. Hence in such cases, no service tax is payable.

Policy discontinuation charges

Clause (e) of section 66E declares that 'agreeing to the obligation to refrain from an act, or tolerate an act or a situation or to do an act' is a taxable service. Thus, tolerating an act has also been declared a taxable service.

The discontinuation charges are retained by the insurer for violation of the terms of the contract by the policy holder, because he has not paid the amount of premium. The insurer has tolerated the act of the non-payment of premium by the policy holder and hence, discontinuation charges recovered by him will be a separate service chargeable to service tax at the appropriate rate.

Abatement

Notification no. 26/2012 ST dated 20-06-2012 provides for abatement from gross amount charged for determining the value of taxable service. None of the entries in the said notification relate to insurance service.

Threshold Exemption

As per Notification No. 33/2012 ST dated 20-06-2012, the service provider is entitled to the benefit of the exemption notification, provided the aggregate value of taxable service has not exceeded Rs. 10 lakhs in the preceding

Valuation and Abatement

financial year. The definition of 'aggregate value' specifically excludes amounts raised towards exempted services.

As explained above, the service portion in the premium is the amount of premium minus the amount allocated for investment or saving. Therefore, only the amount on which tax is payable will be considered as value of taxable service for the purpose of computing the aggregate value of Rs. 10 lakhs.

Further, benefit of this notification is not available to a service recipient paying service tax under reverse charge mechanism.

Chapter 5

Reverse Charge & Point of Taxation Rules, 2011

Introduction

In terms of section 66B and section 68 of the Finance Act, service tax has to be charged by the service provider from the service receiver and has to be paid to the credit of the Central Government. However, an exception to the general rule that the tax is payable by the service provider, section 68 provides that the service recipient is liable to make the payment.

Person liable to pay service tax including reverse charge

As per provisions of section 68(1) the service tax is payable by the person providing taxable service in a specified manner and within a specified period. Section 68(2) empowers the Central Government to notify the services and specify the person liable to pay service tax in respect of such notified services. In exercise of these powers, the Central Government issued Notification 30/2012 S Tax 20-06-2012 notifying the services and the person liable to pay service tax. The Serial No. 1 of the Notification provides that for the services provided by the insurance agent, the service tax shall be payable by the person carrying on the insurance business. The following aspects shall be noted in this regard:

- (i) Service must be provided by an insurance agent
- (ii) It should be provided to a person carrying on insurance business

Service provided by insurance agent

As per Entry No 1 of Notification No 30/2012 ST dated 20-06-2012, service tax is payable by the recipient of service where services are provided by the insurance agent to any person carrying on insurance business. The meaning of insurance agent and, insurance business is discussed below:

Meaning of Insurance Agent – According to Clause (10) of section 2 of the Insurance Act, 1938 the term insurance agent means an agent licensed under section 42 of the Insurance Act who receives or agrees to receive

payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business, including business relating to the continuance, renewal or revival of policies of insurance.

The insurance agent is granted a licence under section 42 of the Insurance Act, 1938, which provides for the detailed procedure for granting licence to the agent. No person can act as Insurance Agent without the licence. The Insurance Agents are employed by the Insurance Company to solicit insurance business. They act as a link between the prospective customers and the insurance company. They help the customers in filling forms and completing other formalities for obtaining insurance cover. They also help the customers in getting claims passed from the company and ensuring regular payment of premiums by them. The Agent receives commission from the Company for the services rendered by him. The commission received and the fees charged are the value of taxable service.

The term 'Insurance Agent' does not cover the Chief Agent defined under section 2 (5A), the Special Agent as defined under section 2(17) and the Principal Agent as defined under section 2(15) of the Insurance Act, 1938. They are defined separately under the Insurance Act, in its different sections.

Only service provided by insurance agent in the capacity of agent is covered

An Insurance Agent normally provides the service of selling policies to s customers, for which he receives commission. As per Rule 6(1) of the Service Tax (Determination of Value) Rules, 2006, commission, fee or other sum received by the Insurance agent will be included in the value of taxable service. The agent can provide other services also, but these are not in his capacity of an insurance agent.

Example

Mr. XYZ is an insurance agent and has office in Mumbai. The insurance company requests Mr. XYZ to provide space in his office for the purpose of promoting the sale of policies in that region. The company asks one of its employees to handle the said office for the purpose. Mr. XYZ provides the office along with other facilities and charges lump sum amount for the same. The service of providing space with facilities is not provided in his capacity as insurance agent. Hence, service tax will not be payable by the person carrying on insurance business but by the insurance agent himself.

Agents of both Life Insurance and General Insurance are covered

The service tax is payable by a person carrying on insurance business. The person carrying on either life insurance or general insurance business is covered in this clause.

Provisions relating to Point of Taxation

The Point of Taxation Rules, 2011 makes provision for determining the time when the tax has to be paid. . No tax is payable on services of General Insurance and Life insurance Business under specified schemes because these are exempted. Therefore, the provisions relating to the Point of Taxation for these services are not of much relevance. However, in respect of services other than those that are exempted, the point of taxation will be determined as per the Point of Taxation Rules, 2011.

As per rule 3 of the Point of Taxation Rules, 2011, the point of taxation shall be

- The time when the invoice for the service provided or to be provided is issued. As per Rule 4A of Service Tax Rules, invoice shall be issued within 30 days from the date of completion of service. In case invoice is not issued within 30 days from the completion of service, the point of taxation shall be the date of completion of service. In case, where the above person providing the service receives payment before the date specified above, the date of receipt of payment shall be the point of taxation.

Generally, premium is received in advance. Hence, service tax shall be payable on receipt basis as per Rule 3(b) of the Point of Taxation Rules, 2011.

Notice/reminder letters are not invoice

The insurer normally sends the notice/reminder letters to various policy holders to pay the renewal premium. Such notice/reminder letters only solicit furtherance of business which when accepted by the policy holder for payment from time to time results in service. It has been clarified vide *Circular No 166/1/2013-ST dated 01-01-2013* that the reminder/letters/notice sent by the insurer cannot be termed as invoice issued under Rule 4A of Service Tax Rules 1994, therefore they cannot be considered for point of taxation purposes.

Chapter 6

Place of Provision of Service Rules, 2012

Provision relating to Place of Provision of Service Rules, 2012 (POPS 2012)

The Place of Provision of Service (POPS) for services provided by the insurer is as follows:

Where the service receiver and service provider are located in the taxable territory

As per Rule 8 of the Place of Provision of Service Rules, 2012 where the location of the provider of service as well as the recipient of service is in the taxable territory, the Place of Provision of Service shall be the location of the recipient of service.

Example

Mr. ABC is located in Kolkata, but owns immovable property in the USA. M/s XYZ Co located in Delhi undertakes the insurance of the immovable property located in the USA. In this case, since the service recipient as well as service provider are located in the taxable territory, the Place of Provision of Service will be the location of the recipient of service i.e. Mr. ABC who is located in Kolkata.

Where either the service receiver or service provider is located outside the taxable territory

Place of Provision of Service in case of immovable property

As per Rule 5 of the POPS Rules, 2012, the Place of Provision of Service in relation to immovable property shall be the place where the immovable property is located or intended to be located.

Example

Mr. ABC is located in Kolkata, but owns immovable property located in Chennai, Mr. ABC insures the said property with M/s XYZ Ltd which is

located in London. In this case, since the immovable property is located in the taxable territory, the POPS will be the place where the property is located, which is, Chennai and tax shall be payable accordingly.

Place of Provision of Service for property other than of immovable property and natural person

The POPS in respect of insurance services provided to property other than immovable property and services provided in respect of insurance of natural persons will be governed by rule 3 of the Place of Provision of Service Rules, 2012. As per this rule, the POPS will be the place of location of the recipient of service.

In case of life insurance, the policy holder normally provides the address where the policy or any other correspondence is sent by the insurer. The said address shall be considered as the location of the service receiver.

Explanation 2 in the definition of 'location of service receiver' given in clause (2)(i) of the POPS Rules provides that in case of telecommunication service, usual place of residence shall be the billing address. Rule 2(i) lays down the criteria for considering the location of service receiver and sub-clause (b)(iv) provides that if the location of service receiver cannot be determined by any sub-clause in (2)(i), it shall be the usual place of residence of the service recipient. The other sub-clauses are applicable when the service recipient is registered or has a business establishment. Therefore, in case the policy of life insurance is held by an individual, the location of the service receiver will be determined as per the provisions of rule 2(i)(b)(iv) of the POPS Rules, that is, the usual place of residence.

POPS for services provided by an insurance agent

As per Rule 9(c) of the POPS Rules, 2012, the place of provision of service for intermediary services will be the location of the service provider. The intermediary service is defined in rule 2(f) of the POPS Rules, 2012 which reads:

“intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the provision of service (hereinafter called the ‘main’ service) between two or more persons, but does not include a person who provides the main service. The definition specifically includes a person who arranges or facilitates the provision of main service between two

or more persons. Thus, an intermediary is involved with two supplies at any one time:

- (i) The supply between the principal and the third party and
- (ii) The supply of his own service (agency service) to his principal, for which a fee or commission is usually charged

The meaning of intermediary service has been explained in para 5.9.6 of the CBEC education guide.

The services provided by an insurance agent fall under the definition of an intermediary, as he is engaged in the facilitation of the main service of insurance between the policy holder (service receiver) and the insurer (service provider).

Thus, the place of provision of service for insurance agent will be governed by rule 9(c) of the POPS Rules, 2012 and, accordingly, the place of provision will be the location of the insurance agent who provides the services.

Example

Mr. ABC is an insurance agent located in Kolkata. He provides the service of selling life insurance policies to an insurance company say M/s. XYZ located in Delhi. M/s. XYZ pays commission to Mr. ABC for selling policies on their behalf. As Mr. ABC is located in Kolkata, the place of provision of service will be Kolkata.

Bundled Services

The provisions relating to bundled services are contained in section 66F. Sub-section (3) provides that if various elements of such services are naturally bundled in the ordinary course of business, these shall be treated as provisions of single service which gives essential character to the bundle. Sub-clause (b) provides that if the services are not naturally bundled in the ordinary course of business, these shall be treated as provisions of a single service which results in the highest liability of service tax. As per section 66F of the Act, bundled service means a bundle of provision of various services wherein an element of provision of one service is combined with the element of provision of another service or services.

Chapter 7

CENVAT Credit Rules, 2004

Introduction

The CENVAT Credit Rules, 2004 provide for availing credit of the excise duty paid on inputs and capital goods and service tax on input service. The words 'capital goods', 'inputs' and 'input service' are defined respectively in rule 2(a), 2(k) and 2(l). Credit is made available to the manufacturer or service provider for the duty or tax paid on these items.

CENVAT credit – not available when used for providing exempted output services

Items no. 26 and 26A of Notification No. 25/2012 ST dated 20-06-2012 exempts the premium received on the policies issued under specified schemes from payment of service tax. This is also considered as exempted service. Thus, the provisions of rule 6(1) of CENVAT Credit Rules, 2004 would apply.

Interest amount shall be excluded

Most of the companies engaged in life insurance business or general insurance business earn interest from various types of loans/advances. They are also exempted services, as they fall under the negative list entry under section 66D(n).

As per Rule 6(3) of the CENVAT Credit Rules, when a person provides taxable services as well as exempted services and opts not to maintain separate accounts of input or input services used in taxable services and exempted services, he can follow any of the following options:

- (i) Pay an amount equal to six/ seven percent of value of the exempted goods and exempted services respectively or
- (ii) Pay an amount as determined under sub-rule (3A) or
- (iii) Maintain separate accounts for the receipt, consumption and inventory of inputs as provided in clause (a) of sub-rule (2), take CENVAT credit only on inputs under sub-clauses (ii) and (iv) of said

clause (a) and pay an amount determined under sub-rule (3A) in respect of input services. The provisions of sub-clauses (i) and (ii) of clause (b) and sub-clauses (i) and (ii) of clause (c) of sub-rule (3A) shall not apply to r such payments.

In case he follows the options specified in clauses (ii) and (iii), the procedure laid down under sub-rule (3A) which provides filing of declaration in writing to the Superintendent of Central Excise shall be followed.

Explanation I specifies the manner of determining the value of taxable service. It provides that value will not include value of taxable service by way of extending deposits, loans, advances in so far as the consideration is represented by way of interest or discount. Thus, interest amount will not be included in the value of service for computing the amount of reversal of credit under Rule 6(3).

Reinsurance Service and CENVAT Credit

Reinsurance is a process whereby one entity takes on all or part of the risk covered under a policy issued by an insurance company in consideration of a premium payment.

Thus, it can be stated that reinsurance is insurance purchased by an insurance company from other insurance companies to manage their risk. It protects against significantly large claims or disasters, allowing the insurance company to cover more individuals without fear of bankruptcy should a disaster occur, resulting in multiple policyholders filing claims at one time. In some reinsurance arrangements, several insurance providers pool their policies and divide the risk among a number of insurance providers, sometimes globally.

It has been held in **PNB MetLife India Insurance Company Ltd – vs.- CCE, Service Tax and Customs – 8 TMI 298 [2014]- CESTAT Bangalore** that **CENVAT Credit** denied on the ground that reinsurance takes place after the insurance business is effected as reinsurance is a statutory obligation and the reinsurance is coterminous with the insurance policy. It does not have any direct nexus with the insured and thus CENVAT Credit cannot be availed in regard to the output service provided by the reinsurance companies.

Chapter 8

Notifications/Circulars Pertaining to Insurance Sector

Relevant Notifications

Sl. No.	Notification No.	Date of Applicability	Subject/Details
1	1/1994	20-06-1994	Service Tax made leviable on (i) Stock brokers (ii) General insurance business and (iii) Telephone services with effect from 01-07-1994
2	3/1994	30-06-1994	Abatement not allowed in the case of service providers who claim input tax credit or avail benefit of exemption of value of goods and materials and modification in the definition of call centre <i>Rescinded with effect from 01-07-2012 vide Notification No 34/2012 ST dated 20-06-2012</i>
3	12/1997	14-02-1997	Exemption to the taxable services provided by an insurer carrying on general insurance business, to holder of Jan ArogyaBima Policy <i>Rescinded with effect from 01-07-2012 vide Notification No 34/2012 ST dated 20-06-2012</i>
4	1/2000	09-02-2000	Exemption to taxable services provided by the Government of Rajasthan under Group Personal Accident Scheme to its employees in relation to general insurance business

Notifications/Circulars Pertaining to Insurance Sector

Sl. No.	Notification No.	Date of Applicability	Subject/Details
5	3/2000	06-07-2000	Exemption to National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana) & Pilot Scheme on Seed Crop Insurance in relation to General Insurance Business. <i>Rescinded with effect from 01-07-2012 vide Notification No 34/2012 ST dated 20-06-2012</i>
6	4/2000	31-07-2000	Exemption to Cattle Insurance provided under the Central Insurance Scheme in relation to General Insurance Business with effect from 31-07-2000 <i>Rescinded with effect from 01-07-2012 vide Notification No 34/2012 ST dated 20-06-2012</i>
7	16/2003	11-07-2003	Exemption to Policy holders of Universal Health Insurance Scheme. <i>Rescinded with effect from 01-07-2012 vide Notification No 34/2012 ST dated 20-06-2012</i>
8	3/2006	01-03-2006	Exemption to provider for premium booked outside India and premium for reinsurance made taxable
9	31/2006	11-12-2006	Exemption to taxable services for insurance of sheep
10	58/2010	21-12-2010	Exemption to General Insurance Services provided under the Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme <i>Rescinded with effect from 01-07-2012 vide Notification No 34/2012 ST dated 20-06-2012</i>

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Sl. No.	Notification No.	Date of Applicability	Subject/Details
11	07/2011	01-03-2011	Exemption to General Insurance Business Services under Rashtriya Swasthya Bima Yojana <i>Rescinded with effect from 01-07-2012 vide Notification No 34/2012 ST dated 20-06-2012</i>
12	25/2012	20-06-2012	Mega Exemption Notification
13	34/2012	20-06-2012	Rescinding of certain Notifications
14	49/2012	24-12-2012	Amendment to Mega Exemption Notification
15	06/2014	11-07-2014	Exemption extended to life micro insurance product approved by IRDA
16	9/2015	21-01-2015	Deduction in respect of contribution to Sukanya Samridhi Account under section 80C of the Income Tax Act
17	32/2015	31-03-2015	Non-applicability of Income Computation and Disclosure Standard relating to accounting policies in respect of Insurance Business

Relevant Circulars/Trade Notices/ Clarifications

Sl. No.	No.	Date of Applicability	Subject/Details
1	1/1/1994	29-06-1994	Service Tax Clarifications
2	3/3/1994	28-07-1994	General Insurance Business
3	96/7/07	23-08-2007	Clarification on Technical Issues relating to taxation of services under the Finance Act, 1994
4	120(a)/2/2010-ST	16-04-2010	Service tax on re-insurance commission
5	133/2/2011	18-01-2011	Clarification regarding Service Tax Exemption for Janta Personal Accident Policy

Chapter 9

Citation of Case Laws – Hand Words for Insurance Sector

- **Max New York Life Insurance Co Ltd vs Insurance Ombudsman [2011] 22 STR 387 (Kerala)**

It was held that since service tax was not loaded when policy became effective, though it was there and was also not specifically mentioned by insurance company at the time of submitting the proposal, that premium was not inclusive of service tax and other expenses. So it was held that premium was fixed as inclusive of tax/all expenses and could be collected separately.

- **Karnataka Government Insurance Department (KGID) –vs.- Assistant Commissioner of Central Excise [2012] 34 STT 260 : 26 STR 521 (Karnataka)**

Since the assessee was a Government Department, it had collected fees for insuring vehicles owned by it (and commercial concern) and vehicles in which Government had financial interest and vehicles for which Government had advanced money, it was held that the above activities of the assessee would be liable to service tax under 'general insurance business'

- **Kerala State Insurance Department –vs.- Union of India [2012] 28 STR 337 (Kerala)**

Where the assessee was a Kerala State Insurance Department providing general insurance for the assets of Government/ Governmental Institutions, it was held that in this case, service was given to self and not to anybody else. However, in case of institutions such as a Government company in which the Government had financial interest, it was to be considered a separate entity and its assets could be insured only by contract and not by statutory obligation; therefore, issuance of such policy by contract was a business and subject to service tax.

- **Surprasesh General Insurance Services & Brokers (P) Ltd –vs.- CST [2009] 18 STT 137 (Chennai – CESTAT)**

It was held that 'insurance' and 'reinsurance' are independent contracts and

that, in each of these, the transaction is between the insurer and the insured. But because under a contract of reinsurance, reinsurer and reinsured are like the insurer and insured, it would follow that 'insurer' defined under section 65(58) also included a 'reinsurer'. Even without the amendment of clauses (58) and (105)(zi) of section 65 of the Finance Act, 2006, the definition of 'insurer' under section 65(58) was broad enough to include a 'reinsurer' consequently, 'insurance auxiliary service' concerning general insurance business, provided to a reinsurer by an intermediary or insurance intermediary or an insurance agent is also taxable under section 65(105)(zi) prior to 01-05-2006

- **PNB MetLife India Insurance Co. Ltd. Vs. C.C.E., S.T. & CUS., Bangalore [2014 (36) S.T.R. 891 (Tri. - Bang.)]**

Percentage of insurance to be reinsured is directly connected to the premium collected from the persons who are insured with insurer and it is basically transfer of a portion of the risk and therefore it can be said that reinsurer is providing the service to the insurance company when he accepts to reinsure a portion of insurance undertaken by the insurer. Hence the Service Tax paid on reinsurance service can be considered as input service.

Chapter 10

FAQ's for Insurance Sector

Q 1. What is the definition of taxable service?

Ans. With effect from 18.04.2006, taxable service means any service provided or to be provided to a policyholder or any person by an insurer including reinsurer on general insurance business in relation to general insurance business. Section 65(105)(d).

Q2. Are motor vehicle Insurance Services Taxable under the category of 'General Insurance Business'?

Ans. The General Insurance Business(Nationalization) Act 1972 is not applicable to levy service tax under the Finance Act, 1944 Service tax leviable to motor vehicle insurance under the category of 'General Insurance Business' is defined under section 65(49) , Karnataka Government Insurance Department Versus C.E.E., Bangalore 2008 (9) S.T.R 355 (tri-bang).

Q3. What are the specific exemptions of General Insurance Scheme?

Ans. General Insurance Scheme as specified in Notification no. 25/2012-ST 20.06.1994 provides the following exemptions:

Under Clause 26: Services of general insurance business provided under following schemes -

- (a) Hut Insurance Scheme;
- (b) Cattle Insurance under Swarnajaynti Gram SwarozgarYojna (earlier known as Integrated Rural Development Programme);
- (c) Scheme for Insurance of Tribals;
- (d) Janata Personal Accident Policy and Gramin Accident Policy;
- (e) Group Personal Accident Policy for Self-Employed Women;
- (f) Agricultural Pumpset and Failed Well Insurance;
- (g) Premia collected on export credit insurance;
- (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;

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- (i) Jan ArogyaBima Policy;
- (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);
- (k) Pilot Scheme on Seed Crop Insurance;
- (l) Central Sector Scheme on Cattle Insurance;
- (m) Universal Health Insurance Scheme;
- (n) Rashtriya Swasthya Bima Yojana; or
- (o) Coconut Palm Insurance Scheme;

Under clause 26A: Services of life insurance business provided under following schemes -

- (a) Janashree Bima Yojana (JBY); or
- (b) Aam Aadmi Bima Yojana (AABY);]
- (c) Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees
- (d) Varishtha Pension Bima Yojana [w.e.f 01-04-2015]

Q4. Is DICGC taxable under the category of General Insurance?

Ans. The DICGC falls within the ambit of section 65(105)(d) of the Finance Act , 1994(Finance Act , 1994) and is chargeable to service tax.

Q5. What will influence government authority to perform a service which is not in the nature of statutory activity?

Ans. If the government authority performs a service which is not in the nature of a statutory activity and is undertaken for a consideration, this will be invite tax. The Hon'ble Karnataka High Court, vide its order dated 4.11.2011, in case of Karnataka Government Insurance Department (K.G.I.D.) Vs Assistant Commissioner of Central Excise 2011-TMI-208786- KARNATAKA HIGH COURT held as follows:

A careful perusal of the aforesaid circular shows what is exempted in paragraph 2 is the activities performed by sovereign/ public authorities under the provision of law, which are in the nature of statutory obligations and to be fulfilled in accordance with law. The fees collected by them for performing such activities are in the nature of a compulsory activity, as per the

provisions of the relevant statute and to be deposited in the Government treasury. Such activities are of a purely public interest and undertaken as mandatory and statutory functions. Service tax is not leviable on them. But insurance business is not a sovereign act. Paragraph 3 of the said circular makes it clear that if a government authority performs service which is not in the nature of a statutory fee/Levy, then service tax would be leviable. (Therefore according to the circular, on which reliance is placed, the activity carried on by the petitioner viz, the insurance activity falls within that tax and the tax is leviable. The three authorities concurrently held so we do not see any infirmity which calls for interference. According the petition is dismissed

Q6. Is Service Tax applicable on premiums paid on insurance products?

All premiums and charges are subject to applicable taxes including service tax, education Cess and secondary & higher education Cess as applicable under the prevailing tax laws. With effect from April 1, 2012, Service Tax Rate has been changed to 3.09% on first year premium and 1.545% on subsequent year premium for traditional endowment & annuity products and 12.36% for ULIP, Term, Health products & Riders.

Q7. Is Service Tax applicable on ULIP products?

"Service tax is applicable, on the risk cover and fund related charges towards management of investments of Unit Linked Insurance Products included in life insurance premium in accordance with Section 65(105)(zx) of Finance Act 1994, as amended by Finance (No.2) Act 2004 and Section 65(105)(zzzzf) of Finance Act 2008 (inserted w.e.f. May 16,2008) respectively, at the applicable rates and the same would get deducted by way of cancellation of units. The risk cover includes charges towards mortality/morbidity while the fund related charges shall include premium allocation, policy administration, fund management, switching, partial withdrawal and redirection charges which are levied for services provided by the insurer to the policyholder in relation to management of investments under unit linked insurance business."

Q8. Whether tax and duties can be charged separately on the transaction for which premium has already been paid?

Ans. A service provider who does not disclose the prevailing statutory duties and levies at the transaction is not entitled to claim such tax and levies from the customer at a later stage during the course of the continuation of service.