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**FOR-LNMU -B.com part - 3Rd Paper-vii – Taxation Theory
and Practice**

Unit-4 Service tax

SERVICE TAX

Service tax was a tax levied by the Central Government of India on services provided or agreed to be provided excluding services covered under negative list and considering the Place of Provision of Services Rules, 2012 and collected as per Point of Taxation Rules, 2011 from the person liable to pay service tax.

Person liable to pay service tax is governed by Service Tax Rules, 1994 he may be service provider or service receiver or any other person made so liable. It is

an indirect tax wherein the service provider collects the tax on services from service receiver and pays the same to government of India

- ✓ ***Services are one of the major contributors to the development of economy. As per the latest Economic Survey, the services sector has made a major contribution to the Indian Economy, growing by 8% annually and contributing to about quarter of employment.***
- ✓ ***Tax on services was first introduced in the year 1994, through the insertion of Chapter V in the Finance Act, 1994 (“the Finance Act”) and levy was confined to three services. Since then, the Finance Act has been amended every year to bring in more services into the tax net and had 119 services in the tax net till June 30, 2012.***
- ✓ ***The Finance Act, 2012, w.e.f. 1st July, 2012 has introduced comprehensive approach for levy of service tax to tax services based on what is popularly known as “Negative List of Services”. It means, if any activity meets the characteristics of a “service”, it is taxable unless specified in the***

negative list or otherwise exempted by the mega exemption notification. The negative list comprises of 17 services which are listed in the Section 66D of the Finance Act

✓ *Applicability of Service Tax*

Section 64 of the Finance Act deals with the 'applicability' of levy and provides that 'service tax' Will extend to whole of India, except the state of Jammu & Kashmir.

Some important definitions under section 65B of Finance Act are as follows-

(i) "India" means,-

(a) The territory of the Union as referred to in clauses (2) and (3) of article 1 of the Constitution;

(b) Its territorial waters, continental shelf, exclusive economic zone or any other maritime Zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976; (80 of 1976.)

the seabed and the subsoil underlying the territorial waters;

- (c) The air space above its territory and territorial waters; and the installations, structures and vessels located in the continental shelf of India and the Exclusive economic zone of India, for the purposes of prospecting or extraction or Production of mineral oil and natural gas and supply thereof. [65B (27)]***
- (ii) “Taxable territory” means the territory to which the provisions of this Chapter apply. [65B(52)] Hence, the taxable territory covers whole of India except the state of Jammu & Kashmir.***
- (iii) “Non-taxable territory ” means the territory other than the taxable territory. [65B(35)]***

In view of the above, the services provided within the territorial limits of the state of Jammu &

Kashmir will not be liable to service tax irrespective of whether the service Provider is residing in that state or not. However, any person residing in the state of J & K Providing services in other parts of country would be liable to service tax, whereas, the Person having office in other part of country other than J & K and providing service in J & K, would not be liable to pay service tax.

(iv) "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 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; 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 the duties performed by any person as a Chairperson or a Member or a Director in a Body established by the Central Government or State Governments or local authority And who is not deemed as an employee before the commencement of this section.

Explanation 2. – For the purposes of this clause, 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 purposes of this Chapter,-

(a) An unincorporated association or a body of persons, as the case may be, and a Member thereof shall be treated as distinct persons;

(b) An establishment of a person in the taxable territory and any of his other Establishment in a non-taxable territory shall be treated as establishments of distinct Persons.

Explanation 4.- A person carrying on a business through a branch or agency or Representational office in any territory shall be treated as having an establishment in That territory

✓ Charge of Service Tax

✓ During the period prior to 1.7.2012, the charging of service tax was provided in Section 66 Which provided that 12% service tax leviable on the 'taxable services' referred in various sub-Clauses of Section 65(105) which contained all the definitions of taxable services of about 121 Services.

- ✓ ***Consequent to the amendments made by Finance Act, 2012 which ushered in 'Negative List of Taxation of services' w.e.f., 1.7.2012, a new charging provision is contained in Section 66B of The Finance Act which provides that a tax referred to as Service Tax shall be levied at the rate of 12% of the value of all services, other than those services specified in the negative list, provided Or agreed to be provided in the taxable territory by one person to another and collected in such Manner as may be prescribed.***

- ✓ ***Therefore, it is clear that w.e.f. 1.7.2012, all those activities which get covered under the Definition of 'service' as per Section 65B(44) would be liable to service tax at 12% ad valorem With exception of those services which are contained in 'Negative List'.***