

Important Sections inserted in Finance Act, 1994 applicable from 01.Jul.2012

Section 65B – New Definitions

Section 66B – Charge of service tax

Section 66D – Negative list of services

Section 66E – Declared services

Interpretations

65B. In this Chapter, unless the context otherwise requires,—

- (1) "actionable claim" shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882 (4 of 1882);
- (2) "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;
- (3) "agriculture" means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products;
- (4) "agricultural extension" means application of scientific research and knowledge to agricultural practices through farmer education or training;
- (5) "agricultural produce" means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;
- (6) "Agricultural Produce Marketing Committee or Board" means any committee or board constituted under a State law for the time being in force for the purpose of regulating the marketing of agricultural produce;
- (7) "aircraft" has the meaning assigned to it in clause (1) of section 2 of the Aircraft Act, 1934 (22 of 1934);
- (8) "airport" has the meaning assigned to it in clause (b) of section 2 of the Airports Authority of India Act, 1994 (55 of 1994);
- (9) "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;
- (10) "Appellate Tribunal" means the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962);
- (11) "approved vocational education course" means,—
 - (i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961 (52 of 1961); or

- (ii) a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Employment and Training, Union Ministry of Labour and Employment; or
 - (iii) a course run by an institute affiliated to the National Skill Development Corporation set up by the Government of India;
- (12) "assessee" means a person liable to pay tax and includes his agent;
 - (13) "associated enterprise" shall have the meaning assigned to it in section 92A of the Income-tax Act, 1961 (43 of 1961);
 - (14) "authorised dealer of foreign exchange" shall have the meaning assigned to "authorised person" in clause (c) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999);
 - (15) "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;
 - (16) "Board" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);
 - (17) "business entity" means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession;
 - (18) "Central Electricity Authority" means the authority constituted under section 3 of the Electricity (Supply) Act, 1948 (54 of 1948);
 - (19) "Central Transmission Utility" shall have the meaning assigned to it in clause (10) of section 2 of the Electricity Act, 2003 (36 of 2003);
 - (20) "courier agency" means any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles;
 - (21) "customs station" shall have the meaning assigned to it in clause (13) of section 2 of the Customs Act, 1962 (52 of 1962);
 - (22) "declared service" means any activity carried out by a person for another person for consideration and declared as such under section 66E;
 - (23) "electricity transmission or distribution utility" means the Central Electricity Authority; a State Electricity Board; the Central Transmission Utility or a State Transmission Utility notified under the Electricity Act, 2003 (36 of 2003); or a distribution or transmission licensee under the said Act, or any other entity entrusted with such function by the Central Government or, as the case may be, the State Government;
 - (24) "entertainment event" means an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, by way of exhibition of cinematographic film, circus, concerts, sporting event, pageants, award functions, dance, musical or theatrical performances including drama, ballets or any such event or programme;
 - (25) "goods" means every kind of movable property other than actionable claim and money; and includes securities, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;
 - (26) "goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called;
 - (27) "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);
 - (c) the seabed and the subsoil underlying the territorial waters;
 - (d) the air space above its territory and territorial waters; and
 - (e) the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;
- (28) "information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment;
- (29) "inland waterway" means national waterways as defined in clause (h) of section 2 of the Inland Waterways Authority of India Act, 1985 (82 of 1985) or other waterway on any inland water, as defined in clause (b) of section 2 of the Inland Vessels Act, 1917 (1 of 1917);
- (30) "interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised;
- (31) "local authority" means—
- (a) a Panchayat as referred to in clause (d) of article 243 of the Constitution;
 - (b) a Municipality as referred to in clause (e) of article 243P of the Constitution;
 - (c) a Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;
 - (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006 (41 of 2006);
 - (e) a regional council or a district council constituted under the Sixth Schedule to the Constitution;
 - (f) a development board constituted under article 371 of the Constitution; or
 - (g) a regional council constituted under article 371A of the Constitution;
- (32) "metered cab" means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 (59 of 1988) and the rules made thereunder;
- (33) "money" means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any such similar instrument but shall not include any currency that is held for its numismatic value;
- (34) "negative list" means the services which are listed in section 66D;
- (35) "non-taxable territory" means the territory which is outside the taxable territory;
- (36) "notification" means notification published in the Official Gazette and the expressions "notify" and "notified" shall be construed accordingly;
- (37) "person" includes,—
- (i) an individual,

- (ii) a Hindu undivided family,
 - (iii) a company,
 - (iv) a society,
 - (v) a limited liability partnership,
 - (vi) a firm,
 - (vii) an association of persons or body of individuals, whether incorporated or not,
 - (viii) Government,
 - (ix) a local authority, or
 - (x) every artificial juridical person, not falling within any of the preceding sub-clauses;
- (38) "port" has the meaning assigned to it in clause (q) of section 2 of the Major Port Trusts Act, 1963 (38 of 1963) or in clause (4) of section 3 of the Indian Ports Act, 1908 (15 of 1908);
- (39) "prescribed" means prescribed by rules made under this Chapter;
- (40) "process amounting to manufacture or production of goods" means a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 (1 of 1944) or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force;
- (41) "renting" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property;
- (42) "Reserve Bank of India" means the bank established under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);
- (43) "securities" has the meaning assigned to it in clause (h) of section 2 of the Securities Contract (Regulation) Act, 1956 (42 of 1956);
- (44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—
- (a) an activity which constitutes merely,—
 - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
 - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or
 - (iii) a transaction in money or actionable claim;
 - (b) a provision of service by an employee to the employer in the course of or in relation to his employment;
 - (c) fees taken in any Court or tribunal established under any law for the time being in force.

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

- (A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

- (B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
- (C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 2.— For the purposes of this clause, 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;

- (45) "Special Economic Zone" has the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005);
- (46) "stage carriage" shall have the meaning assigned to it in clause (40) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);
- (47) "State Electricity Board" means the Board constituted under section 5 of the Electricity (Supply) Act, 1948 (54 of 1948);
- (48) "State Transmission Utility" shall have the meaning assigned to it in clause (67) of section 2 of the Electricity Act, 2003 (36 of 2003);
- (49) "support services" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis;
- (50) "tax" means service tax leviable under the provisions of this Chapter;
- (51) "taxable service" means any service on which service tax is leviable under section 66B;
- (52) "taxable territory" means the territory to which the provisions of this Chapter apply;
- (53) "vessel" has the meaning assigned to it in clause (z) of section 2 of the Major Port Trusts Act, 1963 (38 of 1963);
- (54) "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;
- (55) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise.]

Charge of service tax on and after Finance Act, 2012

66B. There shall be levied a tax (hereinafter referred to as the service tax) at the rate of **twelve per cent on the value of all services, other than** those services specified in the **negative list**, provided or agreed to be provided in the **taxable territory** by one person to another and collected in such manner as may be prescribed.

[Explanation.—For the removal of doubts, it is hereby clarified that the references to the provisions of section 66 in Chapter V of the Finance Act, 1994 (32 of 1994) or any other Act, for the purpose of levy and collection of service tax, shall be construed as references to the provisions of section 66B.]

Negative list of services

66D. The negative list shall comprise of the following services, namely:—

- (a) **services by Government or a local authority** excluding the following services to the extent they are not covered elsewhere—
 - (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
 - (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
 - (iii) transport of goods or passengers; or
 - (iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities;
- (b) services by the Reserve Bank of India;
- (c) services by a foreign diplomatic mission located in India;
- (d) services relating to **agriculture or agricultural produce** by way of—
 - (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;
 - (ii) supply of farm labour;
 - (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
 - (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
 - (v) loading, unloading, packing, storage or warehousing of agricultural produce;
 - (vi) agricultural extension services;
 - (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;
- (e) **trading of goods**;
- (f) any process amounting to **manufacture or production of goods**;
- (g) selling of **space or time slots for advertisements other than** advertisements broadcast by **radio or television**;
- (h) service by way of access to a road or a bridge on payment of toll charges;
- (i) betting, gambling or lottery;

- (j) admission to entertainment events or access to amusement facilities;
- (k) transmission or distribution of electricity by an electricity transmission or distribution utility;
- (l) services by way of—
 - (i) pre-school education and education up to higher secondary school or equivalent;
 - (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
 - (iii) education as a part of an approved vocational education course;
- (m) services by way of renting of residential dwelling for use as residence;
- (n) services by way of—
 - (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
 - (ii) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers;
- (o) service of transportation of passengers, with or without accompanied belongings, by—
 - (i) a stage carriage;
 - (ii) railways in a class other than—
 - (A) first class; or
 - (B) an airconditioned coach;
 - (iii) metro, monorail or tramway;
 - (iv) inland waterways;
 - (v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
 - (vi) metered cabs, radio taxis or auto rickshaws;
- (p) services by way of transportation of goods—
 - (i) by road except the services of—
 - (A) a goods transportation agency; or
 - (B) a courier agency;
 - (ii) by an aircraft or a vessel from a place outside India up to the customs station of clearance in India; or
 - (iii) by inland waterways;
- (q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

Declared services

66E. The following shall constitute declared services, namely:—

- (a) renting of immovable property;
- (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority.

Explanation.—For the purposes of this clause,—

- (I) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—
 - (A) architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or
 - (B) chartered engineer registered with the Institution of Engineers (India); or
 - (C) licensed surveyor of the respective local body of the city or town or village or development or planning authority;
- (II) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;
- (c) **temporary transfer** or permitting the use or enjoyment of any **intellectual property right**;
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of **information technology software**;
- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
- (f) **transfer of goods** by way of **hiring, leasing, licensing** or in any such manner without transfer of right to use such goods;
- (g) activities in relation to **delivery of goods on hire purchase** or any system of payment by instalments;
- (h) service portion in the execution of a **works contract**;
- (i) service portion in an activity wherein goods, being food or any other **article of human consumption** or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.