

Negative List Approach to be Effective From 01/07/2012

CA Amarpal M- 0971.710.5008

New Sections of Negative List Approach under Service Tax Laws

To be Effective from 01/07/2012

Much awaited Negative List Regime of Service Tax was given effect from 01/07/2012 vide notification nos. 19/2012 dated 05/06/2012. Before proceeding further, let me give you a brief about Negative List Approach and its history.

What is Negative List Approach?

Service Tax was firstly introduced in India in the year of 1994 vide Chapter V of Finance Act, 1994. Since then, the scope of service tax has been widened to a far extent. Under the existing approach, the nos. of taxable services can be counted, i.e. the service which are mentioned in the clauses of section 65(105) of said Act, shall be liable for service and rest services shall be non-taxable.

Now, under the new schema of Negative list, the list of non-taxable services shall be provided. The services which are not in the negative list of services shall be liable for service tax.

The summary of Negative list Approach, sections and their effect are given below:-

1. Section 65B :- Interpretations

This section prescribes the definition and interpretation of different word and phrases to be used in other provisions.

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2. Section 66B - Charging Section

Section 66B is charging section for Negative List Approach. It prescribes to charge service tax @12% on all services other than those provided in the negative list. The word 'Service' has been defined by clause 44 of section 65B.

3. Section 66C - Determination of Place of provision of Service

This seeks to empower the Central Government to make rules which will contain principles on the basis of which taxing jurisdiction of a service can be determined. These rules would be known as Place of Provision of Services Rules, 2012. From 01.07.2012, these rules come into effect, existing 'Export of Services Rules, 2005' and 'Taxation of Services (Provided from outside India and received in India) Rules, 2006' will be rescinded.

4. Section 66D - List of Negative Services

Section 66D prescribes the list of negative services i.e. the services which are not liable for service tax. The major head of such services are as under:-

- (a) Services by Government or a local authority excluding post services, airport services, transport of goods/passenger.
- (b) Services by the Reserve Bank of India.
- (c) Services by a foreign diplomatic mission located in India.
- (d) Services relating to agriculture including harvesting, supply of farm labour, seed testing, renting or leasing of

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land/plant/machinery and other allied service to the product suitable for market

(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

(l) Specified services relating to education-

(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 recognized by law;

(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 extending deposits, loans or advances, sale/purchase of foreign currency amongst the banks or authorized 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

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- (B) an air conditioned coach;
- (iii) metro, monorail or tramway;
- (iv) inland waterways;
- (v) public transport in a vessel of less than fifteen tonne net, other than predominantly for tourism purpose; 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 to the first customs station of landing in India; or
 - (iii) by inland waterways;
- (q) Funeral, burial, crematorium or mortuary services including transportation of the deceased.

5. **Section 66E - List of Declared Services**

As per the definition of 'Services' under clause 44 of newly inserted section 65B, 'the Services include the declared services. 'Declared Services' has been defined under clauses 22 of said section 65B as an activity carried out by a person for another for consideration and specified in section 66E of the Act. The lists of 9 declared services are as under:-

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- (i) Renting of immovable property;
- (ii) 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.
- (iii) Temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (iv) Development, design, programming, customization, adaptation, up-gradation, enhancement, implementation of information technology software;
- (v) Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
- (vi) Transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;
- (vii) Activities in relation to delivery of goods on hire purchase or any system of payment by instalments;
- (viii) Service portion in the execution of a works contract;
- (ix) 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.

6. Section 66F – Principles of interpretation of specified descriptions of service or bundled services

Section 66F provides the principles used to decide the most appropriate head of service for deciding the taxability i.e. classification of services. This is more or less equal to existing section 65A of the Act which has been ceased to take effect from 1st June, 2012 vide notification no. 18/2012 dated 05/06/2012.