

ABATEMENTS – All About Abatements in Service Tax

Abatement has been provided in Notification no. 26/2012 dated 20.6.2012 effective from 1.7.2012

1. Financial leasing services- 10% taxable

Financial leasing includes hire charges but excludes operating lease

- ✚ The value of taxable service would be 10% i.e. abatement of 90% has been granted unconditionally.
- ✚ Taxability is defined as follows:
 - ✚ Interest chargeable to the extent of 10%
 - ✚ Principal amount not subject to tax
 - ✚ Fees based income such as lease management fees, processing fees, documentation charges and administrative fees would be fully taxable.

Distinction between financial lease and operating lease

Financial lease : financial lease is usually long term agreement covering entire economic life of assets. Whole investment is recovered by lessor plus his profit. Assets is usually maintained by lessee. It is not cancellable contract. Practically lessee become owner not legally.

Operating lease : operating lease is for short term . Asset may be given to more than one parties on lease during the economic life of the asset. Hence cost of the assets is not recovered in one contract of lease. Usually , lessor upkeep and maintain the asset. For example , computer or furniture given on rent.

Constitutional validity

In association of leasing and financial service companies v. Union of India [2010] 29STT316 the Supreme Court held that service tax imposed on value of taxable services , in so far as relates to financial leasing including equipment leasing and hire purchase is within the legislative competence of Parliament under Entry 97, List I of the Seventh Schedule to Constitution.

2. Transport of Goods by Rail – 30% taxable

Abatement of 70% has been granted unconditionally.

Essential ingredient to avail abatements

- ✘ Service should be in relation to transport of goods
- ✘ Such transportation shall be by rail.

3. Transport of passenger by rail – 30% taxable

Abatement of 70% has been granted unconditionally

Transport of passenger by metro, monorail and tramway have been included in the negative list and are therefore out of the tax net.

4. Supply of Food and any other Article- 70% taxable

Specially arranged place : Abatement of 30%

Supply of food or any other article of human consumption or any drink , in the premises(including Hotel , convention centre, club, pandal , shamiana or any other place specially arranged for organizing function) together with renting of such premises would get benefit of abatement.

The abatement is subject o the condition that CENVAT credit on any goods classifiable under chapter 1 to 22 of the Central Excise Tariff Act,1985 has not been taken under the provision of the CENVAT Credit Rules ,2004.

Consideration include free supplies also to service provider

Valuation of service is in Restaurant or by outdoor caterer :

w.e.f. 1.7.2012 , as per the new rule 2C of the Valuation Rules :

The goods should be as follows :

- ✘ Food or
- ✘ Any other article of human consumption
- ✘ Any drink (whether or not intoxicating)

The goods should be supplied in any manner as part of the activity

- ✘ At a restaurant or
- ✘ As outdoor catering

Description	Taxable Percentage of total amount.
At a Restaurant	40
Outdoor catering	60

Over lapping and conflicting between Rule 2C and abatement scheme

Rule 2C applies if food is provided in restaurant or outdoor without any other services. However , if service is provided at any other place specially arranged for organising a function , the abatement scheme of 70% shall apply.

Exemption to restaurant without BAR and Air Conditioning : Sr. No 19 of the Notification No. 25/2012-ST , dated 20.6.2012

5. Transport of passenger by Air - 40% taxable

Abatement of 60% , this is subject to the condition that input and capital goods , used for providing the taxable services has not been taken under the provision of CENVAT Credit Rules ,2004.

6. Renting of hotels, inns etc.- 60% taxable

Abatement of 40%

Renting of hotels, inns, guest house , clubs, , campsites or other commercial places meant for residential or lodging purpose would get the abatement of 40%. It should be noted that abatement is available only to the specified immovable properties.

This is subject to the condition that input and capital goods , used for providing the taxable services has not been taken under the provision of CENVAT Credit Rules ,2004.

7. Goods transport agency - 25% taxable



Abatement of 75%

This is subject to the condition that input, input services and capital goods, used for providing the taxable services has not been taken under the provision of CENVAT Credit Rules, 2004.

Transport of goods by road, other than GTA and courier agency, have been fully exempt as included in section 66D [p] of the ACT pertaining to the negative list.

What is good transport agency: S. 65B [26] provides that "Goods Transport Agency " means any person who provide services in relation to transport of goods by road and issue consignment note, by whatever named called 'Goods Transport Agency' was identically defined in erstwhile section 65[50b] of the Act.

Contents of the consignment note has been defined under the explanation to Rule 4B.

8. Service provided in relation to chit -70% taxable



Abatement of 30%

Chit means transaction whether called chit, chit fund, chitty, kuri or by whatever name by or under which a person enters into agreement with a specified number of person that every one of them shall subscribe a certain sum of money by way of periodical installments over a definite period and that each subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit fund agreement, be entitled to prize amount.

9. Renting of any motor vehicle – 40% taxable



Abatement of 60%.

This is subject to the condition that input, input services and capital goods, used for providing the taxable services has not been taken under the provision of CENVAT Credit Rules, 2004

Following are requisite for claiming rebate.

- ✚ Renting
- ✚ Renting of motor vehicle
- ✚ Motor vehicle designed to carry passenger.

Rent means act of letting out or allowing the use of something for consideration. The expression 'rent a car' is defined in the dictionary as a car rented for day, week or other contracted time, for fixed sum or according to mileage.

There is distinction between providing 'rent a cab service' and giving vehicle on lease / hire.

If vehicle is given on lease / hire without driver, effective control over the vehicle passes to the person taking vehicle on hire. This becomes 'transfer of right to use goods' and may be taxable under VAT, since it is deemed sale of goods. If the effective control is not handed over to customer, the service will come under service tax. [R.S. Travels v. CCE [2008] 15STT437 [New Delhi CESTAT]

Liability to pay service tax

Hiring of motor vehicle designed to carry passenger	Service recipient	Service provider
a] with abatement	100%	nil
b] without abatement	40%	60%

10. Transport of goods in vessel from one port to another -50% taxable

Abatement of 50%.

This is subject to the condition that input, input services and capital goods, used for providing the taxable services has not been taken under the provision of CENVAT Credit Rules, 2004

Transportation of goods from one port to another can be through either national waterway or inland waterway or otherwise. As transportation of goods through inland waterways [which includes national waterway] has been included in the negative list [section 66D(p)], there would be no service in that case.

Essential Ingredients

- ✚ Transportation should be in vessel
- ✚ Goods through inland water would be exempt
- ✚ Transportation of goods other than inland waterway and national waterway would get an abatement of 50%.

11. Tour operator services

Notification no. 26/ 2012 defines Tour operator means any person engaged in the business of planning, scheduling, organising , arranging tours[which may includes arrangement of accommodation, sightseeing or other similar services] by any mode of transport, and includes any person engaged in the business of operating tours.

Description	Abatement
Package tour	75%
Booking accommodation	90%
Service other than mentioned above	60%

This is subject to the condition that input, input services and capital goods , used for providing the taxable services has not been taken under the provision of CENVAT Credit Rules ,2004

12. Construction services – 25% taxable

Abatement of 75%.

Service provided with respect to

- ✚ Construction of complex, building, civil structure and part thereof , intended for sale , wholly or partially
- ✚ Except those where entire consideration is received after issuance of completion certificate by the competent authority.

✚ This is subject to the condition that input used for providing the taxable services has not been taken under the provision of CENVAT Credit Rules ,2004.

✚ Value of land is included in the amount charged from the service recipient

Further ,for the purpose of valuation the amount charged shall be the sum total of the amount charged for the service including the fair market value of all the goods and services supplied by the recipient in or in relation to the services , whether or not supplied under the same contract or any other contract , after deducting :

- 1) The amount charged for such goods or services supplied to the service provider , if any: and
- 2) The value added tax or sales tax , if any, levied thereon.

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