

**Relevant Taxable Services for IPCC Examination as announced by the ICAI on 06-11-2009****- Vikash Mundhra****Legal Consultancy Service [W.e.f. 01-09-2009]****Taxable service**

- ⊗ Any service provided or to be provided to a *business entity*, by any *other business entity*, in relation to advice, consultancy or assistance in any branch of law, in any manner is taxable. [Sec. 65(105)(zzzzm)]
- ⊗ *Business entity* includes an association of persons, body of individuals, company or firm, but does not include an individual.
  - ☛ It also includes limited liability partnership, society, or any other form but does not include individuals, charitable association & Government.

**Taxable Services**

Any service provided or to be provided in relation to advice, consultancy or assistance in any branch of law, in any manner is taxable.

- ☛ Services provided through third parties are also taxable.

**Value of taxable service**

Gross amount charged for providing such service shall be considered as taxable value.

**Exemption**

- ⊗ Any service provided to any person including company, firm, etc. by way of
  - a. appearance before any court,
  - b. tribunal or
  - c. authority
 shall not amount to taxable service.
- ⊗ Further, any service provided by an individual advocate either to an individual or to a business entity would be outside the scope of taxable services. Similarly, legal service provided by a legal firm to an individual is also not covered.

Legal consultancy services provided by a business entity to another business entity is taxable. If either of provider or recipient of service is not business entity, such service is not taxable.

**Information Technology Software Service [W.e.f. 16-05-2008]****Meaning**

*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. [Sec. 65(53a)]

**Taxable Service [Sec. 65(105)(zzzze)]**

Any service provided or to be provided to any person, by any other person in relation to information technology software for use in the course, or furtherance, of business or commerce, including:

- (i) development of information technology software,
- (ii) study, analysis, design and programming of information technology software,
- (iii) adaptation, upgradation, enhancement, implementation and other similar services related to information technology software,
- (iv) providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specifications for a database design, guidance and assistance during the startup phase of a new system, specifications to secure a database, advice on proprietary information technology software,
- (v) providing the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products,

(vi) providing the right to use information technology software supplied electronically;

### **Value of taxable service**

Gross amount charged for providing such service shall be considered as taxable value.

### **Exemption**

- ⊛ Services provided to individuals for personal use are outside the scope of taxable service.
- ⊛ If such services are not used in the course of or furtherance of business or commerce, the service is not taxable. E.g. service provided to the charitable organisation is not taxable.

## **Services in respect of membership of clubs or associations [Club or Association Service] [W.e.f. 16-06-2005]**

### **Meaning**

- ⊛ “Club or association” means any person or body of persons providing services, facilities or advantages, for a subscription or any other amount, to its members, *but does not include*:
  - i) Any body established or constituted by or under any law for the time being in force i.e. statutory bodies; or
  - ii) Any person or body of persons engaged in the activities of trade unions, promotion of agriculture, horticulture or animal husbandry; or
  - iii) Any person or body of persons engaged in any activity having objectives which are in the nature of public service and are of a charitable, religious or political nature; or

*Taxpoint*: The exemption under the Income-tax Act is of no consequences to levy service tax.

- iv) Any person or body of persons associated with press or media. [Sec. 65(25a)]

### **Taxable Service**

Any service provided or to be provided to its *members*, by any club or association in relation to provision of services, facilities or advantages for a subscription or any other amount. [Sec. 65(105)(zzze)] E.g. services provided by a club in relation to games, sports, swimming pool, etc. is taxable

### **Taxpoint**

- ☛ Any service provided to a person who is not a member of such club or association is not taxable.
- ☛ Principle of mutuality is not applicable in this case as explanation to sec.65 provides that taxable service includes any taxable service provided or to be provided by any unincorporated association or body of persons to a member thereof, for cash, deferred payment or any other valuable consideration.

### **Board's Circular No. F.No.B1/ 6 /2005-TRU dated 27.07.2005**

- ⊛ Any service provided or to be provided to its members by any club or association in relation to provision of services, facilities, or advantages for a subscription or any other amount is taxable u/s 65(105)(zzze) of the Finance Act, 1994. “Club or association” has been defined u/s 65(25a) of the Finance Act, 1994.
- ⊛ Various clubs or associations provide services, facilities or advantages to their members for a subscription or a charge. This taxable service covers within its ambit the charges recovered by such clubs or associations for membership and providing various services. However, exclusions have been made in respect of specific clubs or associations which will not be covered within the ambit of clubs or associations for the purpose of levy of service tax.
- ⊛ These exclusions cover any body established or constituted by or under any law, trade unions, clubs or association formed for promotion of agriculture, horticulture or animal husbandry, clubs or association which are non profit making bodies and are engaged in any activity which are in the nature of public service and are of a charitable, religious or political nature, clubs or associations associated with press or media.
- ⊛ Legally, bodies which are established or constituted “under a statute” are different from bodies which are “formed and registered” under a statute. Companies and Societies registered under the respective Acts are merely bodies “formed and registered” under these Acts and cannot be treated as “established or constituted” under these Acts. Therefore companies or societies would fall outside the scope of sec. 65(25 a)(i) of Finance Act. In other words, any body formed and registered as a company or society which provides services, facilities or advantages for a subscription or any other amount to its members is liable to pay service tax u/s 65(25a) of the Finance Act, 1994.
- ⊛ Taxable services are defined as services provided to members by clubs or associations in relation to provision of services, facilities or advantages for a subscription or any other amount. Facilities or advantages are provided to members in return for a subscription or other consideration. The scope of the term any other amount is the amount paid by members, apart

from membership fee or recurring subscription fee, such as amounts paid for provisions of services to the guests of a member, amount paid for get-togethers and functions charged over and above the subscription amount. This will also be liable to service tax. However, amount charged by club to its members for sale of items such as food or beverages would not be taxable provided the documents evidencing such sale are available.

- ⊗ Any additional fee should be treated in the same way as subscription. Life membership fees must be treated in the same way as subscription. In certain professions, persons cannot practice unless they are registered with a statutory body and have paid fees which are prescribed by law. In such cases, the organization is not providing any service in the course of its business and it is merely carrying statutory functions. Since no service is provided, the question of levy of service tax does not arise. However, if there is no statutory requirement, service tax is liable to be paid.

### **Value of taxable service**

Any service charges charged by the association for such service shall be considered as assessable value.

### **Exemption**

- ⊗ **Resident Welfare Association:** Service provided or to be provided by Resident Welfare Association (Housing Co-operatives Societies in Mumbai) to its member is exempt provided

- The monthly contribution of a member does not exceed Rs.3000 per month; and
- Membership is restricted to members of the residential complex or locality. [Notification No. 8/2007 – ST dt. 1-3-2007]

**Taxpoint:** A resident welfare association registered as a co-operative society is also eligible for aforesaid exemption.

- ⊗ **FIEO and Export Promotion Council:** Any service provided or to be provided by the following associations, is exempted upto 31-03-2010:

1. Federation of Indian Export Organisations	2. Engineering Export Promotion Council
3. Chemicals and Allied Products Export Promotion Council	4. Basic Chemicals, Pharmaceuticals and Cosmetics Export Promotion Council
5. Project Exports Promotion Council of India	6. Council for Leather Exports
7. Sports Goods Export Promotion Council	8. Gem and Jewellery Export Promotion Council
9. Shellac Export Promotion Council	10. Cashew Export Promotion Council
11. Synthetic and Rayon Textile Export Promotion Council	12. Export Promotion Council for Export Oriented Units and Special Economic Zones Units
13. Pharmaceutical Export Promotion Council	14. Apparel Export Promotion Council
15. Carpet Export Promotion Council	16. Cotton Textile Export Promotion Council
17. Export Promotion Council for Handicrafts	18. Handloom Export Promotion Council
19. Indian Silk Export Promotion Council	20. Powerloom Development Export Promotion Council
21. The Plastics Export Promotion Council	22. Wool and Woollens Export Promotion Council

- ⊗ Membership fees paid to the association without any benefit in return is not taxable as there is no service is rendered to the member.

### **Relevant Extract of Circular 96/7/2007 dated 23-08-2007**

“Club or association” is defined as any person or body of persons providing services, facilities or advantages, for a subscription or any other amount, to its members, but does not include such person or body of persons engaged in any activity having objectives which are of a charitable nature.

Whether a club or association enjoying exemption under the provisions of Income Tax Act as a public charitable institution gets automatically excluded from levy of service tax under section 65(105)(zzze) read with section 65(25a) of the Finance Act, 1994?

Exemption under the Income Tax Act on the ground of being a public charitable institution is of no consequence or relevance for service tax purposes. Levy of service tax is entirely governed by the provisions contained in the Finance Act, 1994 and the rules made thereunder.

“Charity” is defined as “aid given to the poor, the suffering or the general community for religious, educational, economic, public safety, or medical purposes”, and “charitable” is defined as “dedicated to a general public purpose, usually for the benefit of needy people who cannot pay for the benefits received” [Black’s Law Dictionary].

Whether a club or association is engaged in activity having objectives which are of a charitable nature or not is to be determined purely on the basis of the facts and circumstances of the case.

*Services provided by a resident welfare association to its members under club or association service [section 65(105) (zzze)] is exempted from service tax vide notification No.8/2007-Service Tax, dated 01.03.07, subject to the condition that the total consideration received from an individual member by the said association for providing the said services does not exceed three thousand rupees per month.*

*Whether a resident welfare association registered as a co-operative society with the Registrar of Co-operative Societies is entitled for the benefit of service tax exemption under notification No.8/2007-Service Tax, dated 01.03.2007 or not?*

*A resident welfare association, even if it is registered as a co-operative society with the Registrar of Co-operative Societies, is eligible to avail of exemption from levy of service tax vide notification No.8/2007-Service Tax, dated 01.03.2007 provided the following conditions are satisfied, namely:-*

- a) The exemption is available for the services specified under section 65(105)(zzze) of the Finance Act, 1994 and provided or to be provided by the association to its members.
- b) The sole criterion for membership of the resident welfare association is the residential status of a person in a residential complex or locality i.e., membership of the association is restricted to the residents of the complex or locality.
- c) The value of total consideration received from an individual member by the association for providing the services does not exceed Rs.3,000/- per month.

### **Mandap Keeper's Service [W.e.f. 01-07-1997]**

#### **Meaning**

☼ "Mandap" means any immovable property as defined in sec. 3 of the Transfer of Property Act, 1882 and includes any furniture, fixtures, light fittings and floor coverings therein let out for consideration for organizing any official, social or business function. [Sec. 65(66)]

- ☛ Social function includes marriage.

☼ "Mandap keeper" means a person who allows temporary occupation of a Mandap for consideration for organizing any official, social or business function [Sec. 65(67)]

- ☛ Social function includes marriage.
- ☛ Mandap Keeper may not be an owner of such mandap.
- ☛ Mandap keeper may be any person like individual, charitable organisation, municipal corporation, etc.

#### **Taxable Service**

Any service provided or to be provided to any person, by a Mandap keeper in relation to the use of Mandap in any manner including

- a) the facilities provided or to be provided to such person in relation to such use; and
- b) the services, if any, provided or to be provided as a caterer.

shall be taxable

#### **Taxpoint:**

- It also includes letting out of premises for the purpose of holding a dance, drama or music programme.
- Stadium let out by a municipal corporation for *garbas*, etc. is covered under this category.

#### **Value of taxable services**

Gross amount charged from such service is taxable.

#### **Taxpoint:**

- ☼ Sales Tax, Expenditure Tax are statutory levies and therefore they cannot be included in the value of the taxable services.
- ☼ Charges for facilities like electricity, furniture, lighting etc. levied by mandap keeper shall not be reduced from the value of taxable services even they are charged separately.

#### **Exemption**

☼ *Facility including catering services:* Where mandap keeper charges include catering service, also, 40% of entire value of taxable service is exempt. E.g. if a hotel provided banquet hall (including catering) for marriage ceremony for lump sum consideration of Rs.15,00,000, then 40% of Rs.1500000/- (i.e. Rs.600000/-) is exempted and Rs.900000 shall be considered as taxable value of service. The said exemption is subject to following conditions:

- a) Such mandap keeper also provides catering services, that is, supply of food and the invoice, bill or challan issued for this purpose indicates that it is inclusive of charges for catering service; and
- b) No credit of duty paid on inputs or capital goods has been taken under the provisions of the Cenvat Credit Rules, 2004; and
- c) Such mandap keeper has not claimed the value of deduction from the value of service provided.

- ⊗ **Art Galleries:** Letting out of premises by Art Galleries for exhibition are exempted.
- ⊗ **Religious place:** Services provided in religious places like parish, hall, temples, etc. for hosting of social and religious functions in their precincts are exempt from service tax.  
*Religious place* means a place which is meant for conduct of prayers or worship pertaining to religion.
- ⊗ **Formal Meeting:** Premises given for formal meeting is not covered under this service. However, such services are covered under a separate taxable service viz. Convention Center Services.
- ⊗ **Temporary Occupation:** A permanent grant (or for grant of lease for longer period) of lease is not covered as per the definition, mandap keeper must allow temporary occupation of a mandap.
- ⊗ **Restaurant:** Mere reservation of seats in a restaurant is not taxable as such an occupation is not an exclusive occupation of rooms, halls, etc. However, on the other hand, if banquet hall is given, then such service shall be taxable.
- ⊗ **Boat Parties:** Any service of letting out of boat for arranging parties, etc. is not taxable as boat is not an immovable property.
- ⊗ **Facility provided by Third Party:** Any facility like furniture, electrical fittings, etc. is provided by third party and the mandap keeper is not associated with such supply then such service is not covered. However, if such services are provided by the mandap keeper, then such services shall also be taxable.
- ⊗ **Shooting:** The activity of shooting of Film / T.V. serial can not be considered to a official, social or business functions hence the renting out of Studio premises for such activities would not be covered under the category of Services provided by Mandap Keeper.
- ⊗ **Theatre:** Giving the theatre on rent showing the premiere shows of movies which is a part of entire process of making and releasing the feature films in cinema theatres would not attract Service Tax as screening of feature film in cinema theatre is not an official, social or business function.
- ⊗ **Cancellation of booking:** Some times booking is made for Mandaps are cancelled. In such cases the question of levy of Service Tax does not arise as no service has been rendered. Service Tax need not be paid at the time of booking of the Mandap but only when the service is actually rendered and bill raised by the Mandap Keeper to his client. Security amount if any paid while booking the Mandap need not be included in the assessable value, if it is refunded.

#### **Relevant Extract of Circular 96/7/2007 dated 23-08-2007**

1. *Whether hotels / restaurants letting out their halls, rooms etc. for social, official or business functions fall within the definition of "mandap" and allowing temporary occupation of halls, rooms etc by such hotels / restaurants for organizing any official, social or business function is liable to service tax under "mandap keeper service"?*  
  
Halls, rooms etc. let out by hotels / restaurants for a consideration for organising social, official or business functions are covered within the scope of "mandap" [section 65(66)], and such hotels and restaurants are covered within the scope of "mandap keeper" [section 65(67)]. Accordingly, service tax is leviable on services provided by hotels and restaurants in relation to letting out of halls, rooms, etc. for organizing any official, social or business function under mandap keeper service [section 65(105)(m)].
2. *Whether allowing temporary occupation of a hall for the purpose of holding dance, drama or music programme or competitions is liable to service tax under Mandap Keeper Service?*  
  
Dance, drama or music programme or competitions are social functions and allowing temporary occupation of a hall for a consideration for organizing such functions are liable to service tax under Mandap Keeper Service [section 65(105)(m)].

#### **Commercial Training or Coaching Services [W.e.f. 01-07-2003]**

Already given