

NEGATIVE LIST BASED TAXATION OF SERVICES

CORPORATE GURUKUL

EXEMPTIONS & EXCLUSIONS

CORPORATE GURUKUL

Cases where Tax is not payable

- Certain transactions are not treated as services in the definition of Service
- 17 Services are specifically listed in the negative list u/s.66D
- Mega exemption notification 25/2012-ST
- General Exemption notifications

Conceptual Differences

- Is there a difference between the phrases:
 - Not a Service
 - Excluded Service
 - Exempted Service

- Impact on CENVAT Credit Reversal

- Can service tax be paid to maintain the Credit Chain?
- Can exports be monetised?

Sectoral Analysis of the Exemptions and Exclusions

- Government & Similar Related Services
- Not for Profit Organizations
- Education Services
- Health Care
- Agriculture
- Electricity
- Construction, Real Estate & Works Contract Services
- Renting
- Sports & Games
- Entertainment & Media
- Travel & Tourism
- Hotel, Restaurant and Food services
- Transport & Logistics
- Business & Marketing
- Job Work
- Banking, Financial & Insurance
- Exports and SEZ Units
- Miscellaneous

Abbreviations

Abbreviation	Reference
NL	Specific sub clause of the service in the negative list under Section 66D
ME	Specific serial number of the exemption provided by the mega exemption notification 25/2012-ST.
GE	Specific general exemption notification

Government & Similar Related Services...

The following entries are specified in the negative list:

- NL (a) Services Provided by Government or a local authority excluding the following services to the extent they are not covered elsewhere -
 - 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;
 - Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
 - Transport of goods or passengers; or
 - Support services, other than services covered under clauses (i) to (iii) above, provided to business entities.

- NL (b): Services by the Reserve Bank of India.

- NL (c): Services by a foreign diplomatic mission located in India.

Government & Similar Related Services...

The following services are granted exemption through Mega Exemption Notification 25/2012 dated 20.06.2012

- ME 1: Services provided to the United Nations or a specified international organization;
- ME 25: Services provided to Government, a local authority or a governmental authority by way of –
 - ▣ carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and up gradation; or
 - ▣ repair or maintenance of a vessel or an aircraft;

Government & Similar Related Services...

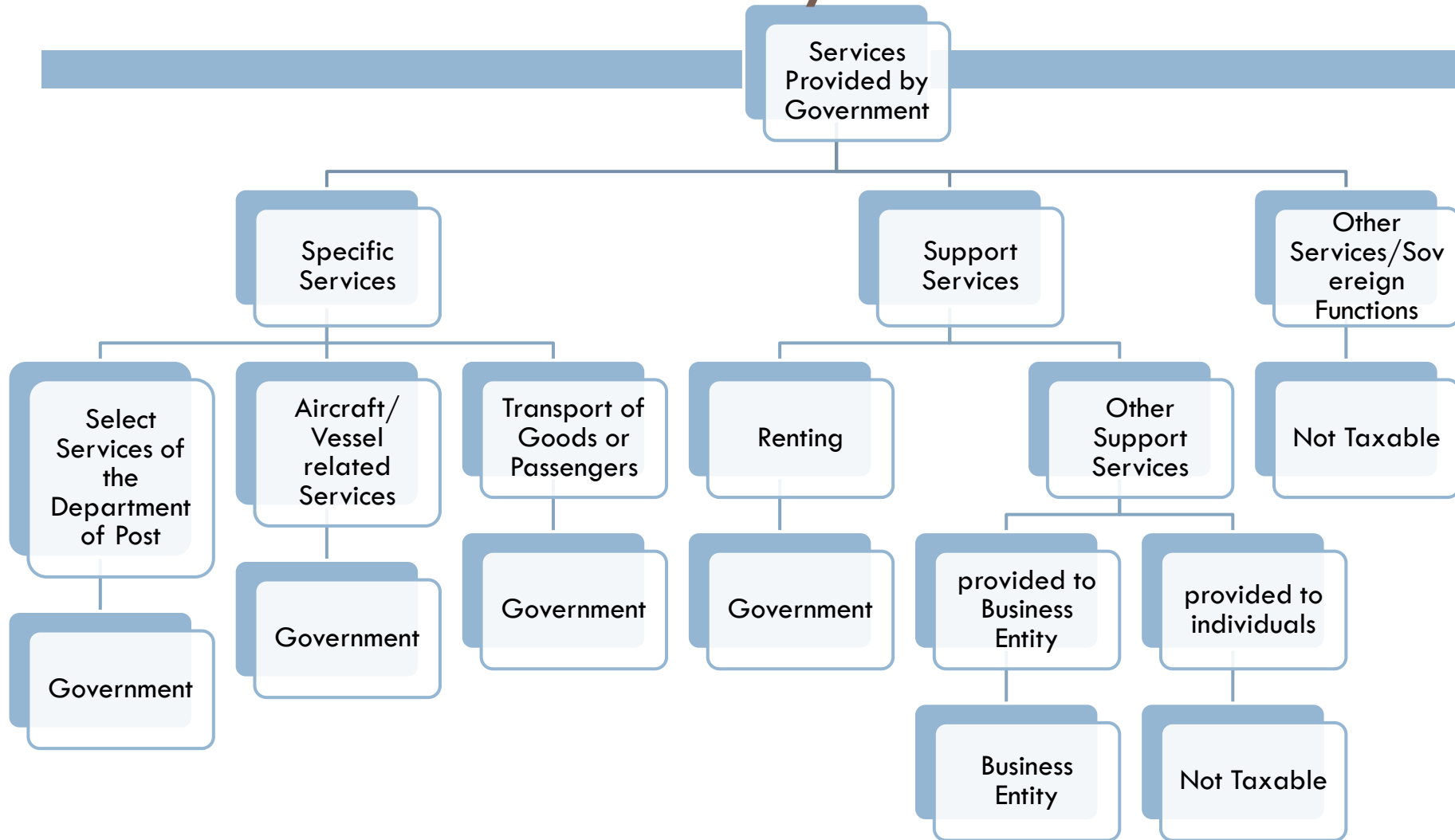
- ME 34: Services received from a provider of service located in a non- taxable territory by -
 - ▣ the Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;
- ME 36: Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948 (34 of 1948);
- ME 39: Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

Government & Similar Related Services

The following services are granted exemption through General Exemption Notification 27/2012- ST dated 20.06.2012

- Exemption to services for the official use of foreign Diplomatic Mission
 - ▣ Taxable services provided for the official use of a foreign diplomatic mission or consular post in India, or for personal use or for the use of the family members of diplomatic agents or career consular officers posted therein.

Services Provided by Government



Support Services..

"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.

Government Services: Issues

- Reverse Charge Mechanism
 - Onerous Responsibility
- Sovereign Function vs. Rendition of Services
- Services provided by Government through Agencies vs. Services provided by Agencies

Specific Instances : Whether these payments would be covered?

- Ground Rent Paid to Municipal Corporations
- Payments made to the State Police for Protection
- Payments made to CISF
- Customs MOT Charges
- Payments made to major/minor/private ports for import or export of goods
- Payments for filing eTDS Returns/ RoC Returns
- Administration Charges paid to EPFO
- Fees paid by Government companies to CAG

Not for Profit Organizations...

The following services are granted exemption through Mega Exemption Notification 25/2012 dated 20.06.2012

- ME 4: Services by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) by way of **charitable activities**;
 - Charitable Activities specifically defined

- ME 5: Services by a person by way of-
 - Renting of precincts of a **religious place** meant for general public; or
 - Conduct of any religious ceremony;

...Not for Profit Organizations

- ME 28: Service by an unincorporated body or a non-profit entity registered under any law for the time being in force to its own members by way of reimbursement of charges or share of contribution –
 - As a trade union;
 - For the provision of carrying out any activity which is exempt from levy of service tax; or
 - Up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;
- ME 34: Services received from a provider of service located in a non-taxable territory by -
 - An entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities.

Education Services

The following entries are specified in the negative list:

- NL (I): Services by way of –
 - Pre-school education and education up to higher secondary school or equivalent;
 - Education as a part of a curriculum for obtaining a qualification recognized by law for the time being in force;
 - Education as a part of an approved vocational education course.

The following services are granted exemption through Mega Exemption Notification 25/2012 dated 20.06.2012

- ME 8: Services by way of training or coaching in recreational activities relating to arts, culture or sports;
- ME 9: Services provided to or by an educational institution in respect of education exempted from service tax by way of
 - auxiliary educational services; or
 - renting of immovable property;

Health Care

The following services are granted exemption through Mega Exemption Notification 25/2012 dated 20.06.2012

- ME 2: **Health care services** by a clinical establishment, an authorised medical practitioner or Para-medics;
- ME 3: Services by a veterinary clinic in relation to health care of animals or birds;
- ME 7: Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India;

Agriculture...

The following entries are specified in the negative list:

- NL (d): Services relating to **agriculture** or agricultural produce by way of –
 - Agricultural operations directly related to production of any **agricultural produce** including cultivation, harvesting, threshing, plant protection or seed testing;
 - Supply of farm labor;
 - 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 essential characteristics of agricultural produce but make it only marketable for the primary market;

Agriculture...

- ❑ Renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
- ❑ Loading, unloading, packing, storage or warehousing of agricultural produce;
- ❑ Agricultural extension services;
- ❑ Services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.

Electricity

The following entries are specified in the negative list:

- NL (k): Transmission or distribution of electricity by an electricity transmission or distribution utility.

Construction, Real Estate & Works Contract Services...

The following entries are specified in the negative list:

- NL (h): Service by way of access to a road or a bridge on payment of toll charges.

The following services are granted exemption through Mega Exemption Notification 25/2012 dated 20.06.2012

- ME 12: Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of specified structures
- ME 13: Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of specified structures
- ME 14: Services by way of construction, erection, commissioning, or installation of original works pertaining to specified structures

Construction, Real Estate & Works Contract Services...

- ME 12: Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -
 - a civil structure or any other **original works** meant predominantly for other than for commerce, industry, or any other business or profession;
 - a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
 - a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
 - canal, dam or other irrigation works;
 - pipeline, conduit or plant for (i) water supply (ii) water treatment or (iii)sewerage treatment or disposal; or
 - a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the *Explanation 1* to clause 44 of section 65 B of the said Finance Act;

...Construction, Real Estate & Works Contract Services...

- ME 13: Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-
 - Road, bridge, tunnel, or terminal for road transportation for use by general public;
 - A civil structure or any other original works pertaining to a scheme under
 - Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;
 - Building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;
 - Pollution control or effluent treatment plant, except located as a part of a factory; or
 - A structure meant for funeral, burial or cremation of deceased;

...Construction, Real Estate & Works Contract Services

- ME 14: Services by way of construction, erection, commissioning, or installation of original works pertaining to:-
 - Airport, port or railways, including monorail or metro;
 - **Single residential unit** otherwise than as a part of a **residential complex**;
 - Low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
 - Post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or
 - Mechanized food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;
- ME 29: Services by the following persons in respective capacities -
 - (h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

Renting

The following entries are specified in the negative list:

- NL (m): Services by way of renting of residential dwelling for use as residence;

The following services are granted exemption through GE 29/2012

- Exemption for property tax paid on immovable property: Value which is equivalent to the gross amount charged for renting of such immovable property less taxes on such property, namely property tax levied and collected by local bodies.

Sports & Games

The following services are granted exemption through Mega Exemption Notification 25/2012 dated 20.06.2012

- ME 10: Services provided to a recognized sports body by-
 - ▣ An individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body;
 - ▣ Another recognised sports body;
- ME 11: Services by way of sponsorship of sporting events organised,-
 - ▣ By a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;
 - ▣ By Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India, Special Olympics Bharat;
 - ▣ By Central Civil Services Cultural and Sports Board;
 - ▣ As part of national games, by Indian Olympic Association; or
 - ▣ Under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme;

Entertainment & Media...

The following entries are specified in the negative list:

- NL (g): Selling of space or time slots for advertisements other than **advertisements** broadcast by radio or television.
- NL (i): Betting, gambling or lottery.
- NL (j): Admission to entertainment events or access to amusement facilities.

...Entertainment & Media

The following services are granted exemption through Mega Exemption Notification 25/2012 dated 20.06.2012

- ME 15: Temporary transfer or permitting the use or enjoyment of a copyright covered under clause (a) or (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical, artistic works or cinematograph films;
- ME 16: Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador;
- ME 17: Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;

Travel & Tourism...

The following entries are specified in the negative list:

- NL (o): Service of transportation of passengers, with or without accompanied belongings, by
 - A stage carriage;
 - Railways in a class other than –
 - (A) First class; or
 - (B) An air conditioned coach;
 - Metro, monorail or tramway;
 - Inland waterways;
 - Public transport other than predominantly for tourism purpose in a vessel between places located in India
 - Metered cabs, radio taxis or auto rickshaws;

Travel & Tourism...

- The following services are granted exemption through GE 43/2012 up to 30.09.2012
 - ▣ Service of transportation of passengers, with or without accompanied belongings, by railways in -
 - (A) first class; or
 - (B) an air conditioned coach

...Travel & Tourism

The following services are granted exemption through Mega Exemption Notification 25/2012 dated 20.06.2012

- ME 22: Services by way of giving on hire -
 - (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
- ME23: Transport of passengers, with or without accompanied belongings, by –
 - Air, embarking or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal; or
 - A contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire;
 - Ropeway, cable car or aerial tramway;
- ME 24: Services by way of vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;

Hotel, Restaurant and Food services

The following services are granted exemption through Mega Exemption Notification 25/2012 dated 20.06.2012

- ME 18: Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent;

- ME 19: Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having
 - (i) the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and
 - (ii) a license to serve alcoholic beverages;

Transport & Logistics...

The following entries are specified in the negative list:

- NL (p): Services by way of transportation of goods –
 - ▣ By road except the services of –
 - A goods transportation agency; or
 - A courier agency;
 - ▣ By an aircraft or a vessel from a place outside India to the customs station of clearance in India; or
 - ▣ By inland waterways;

...Transport & Logistics...

The following services are granted exemption through Mega Exemption Notification 25/2012 dated 20.06.2012

- ME 20: Services by way of transportation by rail or a vessel from one port in India to another of the following goods –
 - Petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);
 - Relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
 - Defence or military equipments;
 - Postal mail or mail bags;
 - Household effects;
 - Newspaper or magazines registered with Registrar of Newspapers;
 - Railway equipments or materials;

...Transport & Logistics...

- ▣ Agricultural produce;
- ▣ Foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or
- ▣ Chemical fertilizer and oilcakes;
- ▣ ME 21: Services provided by a goods transport agency by way of transportation of –
 - ▣ Fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;
 - ▣ Goods where gross amount charged for the transportation of goods on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or
 - ▣ Goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;

...Transport & Logistics

- ME 22: Services by way of giving on hire –
 - (b) To a goods transport agency, a means of transportation of goods;

- The following services are granted exemption through GE 43/2012 up to 30.09.2012
 - Services by way of transportation of goods by railways

Business & Marketing...

The following entries are specified in the negative list:

- NL (e): Trading of goods.

The following services are granted exemption through Mega Exemption Notification 25/2012 dated 20.06.2012

- ME 6: Services provided by-
 - An arbitral tribunal to –
 - Any person other than a business entity; or
 - A business entity with a turnover up to rupees ten lakh in the preceding financial year;

...Business & Marketing...

- An individual as an advocate or a partnership firm of advocates by way of legal services to,
 - An advocate or partnership firm of advocates providing legal services ;
 - Any person other than a business entity; or
 - A business entity with a turnover up to rupees ten lakh in the preceding financial year; or
- A person represented on an arbitral tribunal to an arbitral tribunal;

...Business & Marketing...

- ME 29: Services by the following persons in respective capacities –
 - ▣ A sub-broker or an authorised person to a stock broker;
 - ▣ An authorised person to a member of a commodity exchange;
 - ▣ A mutual fund agent to a mutual fund or asset management company;
 - ▣ distributor to a mutual fund or asset management company;
 - ▣ a selling or marketing agent of lottery tickets to a distributor or a selling agent;
 - ▣ a selling agent or a distributor of SIM cards or recharge coupon vouchers; or
 - ▣ a business facilitator or a business correspondent to a banking company or an insurance company in a rural area;

...Business & Marketing

- ME 31: Services by an organizer to any person in respect of a business exhibition held outside India;
- ME 37: Services by way of transfer of a going concern, as a whole or an independent part thereof;

The following services are granted exemption through General Exemption Notification 14/2012-ST dated 17.03.2012:

- Seeks to exempt the taxable service involving import of technology, from so much of the service tax leviable, as is equivalent to the amount of cess payable on the said import of technology under the provisions of section 3 of the Research and Development Cess Act, 1986 (32 of 1986), subject to certain conditions.

Job Work

The following entries are specified in the negative list:

- NL (f): Any process amounting to manufacture or production of goods.

The following services are granted exemption through Mega Exemption Notification 25/2012 dated 20.06.2012

- ME 30: Carrying out an intermediate production process as job work in relation to –
 - Agriculture, printing or textile processing;
 - Cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);
 - Any goods on which appropriate duty is payable by the principal manufacturer; or
 - Processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;

Banking, Financial & Insurance...

The following entries are specified in the negative list:

- NL (n): Services by way of –
 - ▣ Extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
 - ▣ Inter-se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;

...Banking, Financial & Insurance...

The following services are granted exemption through Mega Exemption Notification 25/2012 dated 20.06.2012

- ME 26: Services of general insurance business provided under following schemes -
- Hut Insurance Scheme;
- Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);
- Scheme for Insurance of Tribals;
- Janata Personal Accident Policy and Gramin Accident Policy;
- Group Personal Accident Policy for Self-Employed Women;

...Banking, Financial & Insurance

- Agricultural Pumpset and Failed Well Insurance;
- Premia collected on export credit insurance;
- Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;
- Jan Arogya Bima Policy;
- National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);
- Pilot Scheme on Seed Crop Insurance;
- Central Sector Scheme on Cattle Insurance;
- Universal Health Insurance Scheme;
- Rashtriya Swasthya Bima Yojana; or
- Coconut Palm Insurance Scheme;

Exports and SEZs

GE	Exemption
31/2012	Outward Road Transport Services availed by exporters of goods
42/2012	Overseas Commission Paid by exporters of goods
41/2012	Exemption by way of refund on specified services for exporters of goods
40/2012	Exemption (Outright/through Refund) for SEZ Units/Developers

Miscellaneous...

The following entries are specified in the negative list:

- NL (q): Funeral, burial, crematorium or mortuary services including transportation of the deceased.

The following services are granted exemption through Mega Exemption Notification 25/2012 dated 20.06.2012

- ME 27: Services provided by an incubatee up to a total business turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:-
 - ▣ The total business turnover had not exceeded fifty lakh rupees during the preceding financial year; and
 - ▣ a period of three years has not elapsed from the date of entering into an agreement as an incubatee;

...Miscellaneous...

- ME 32: Services by way of making telephone calls from –
 - ▣ Departmentally run public telephones;
 - ▣ Guaranteed public telephones operating only for local calls; or
 - ▣ Free telephone at airport and hospitals where no bills are being issued;
- ME 33: Services by way of slaughtering of bovine animals;
- ME 35: Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material;
- ME 38 : Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets;

...Miscellaneous

The following services are granted exemption through General Exemption Notification 32/2012- ST dated 20.06.2012

- Services by TBI or STEP: Taxable services provided by a Technology Business Incubator (TBI) or a Science and Technology Entrepreneurship Park (STEP) recognized by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India. (For detailed explanation and procedure, refer to Notification No.32/2012-ST)

The following services are granted exemption through General Exemption Notification 33/2012- ST dated 20.06.2012

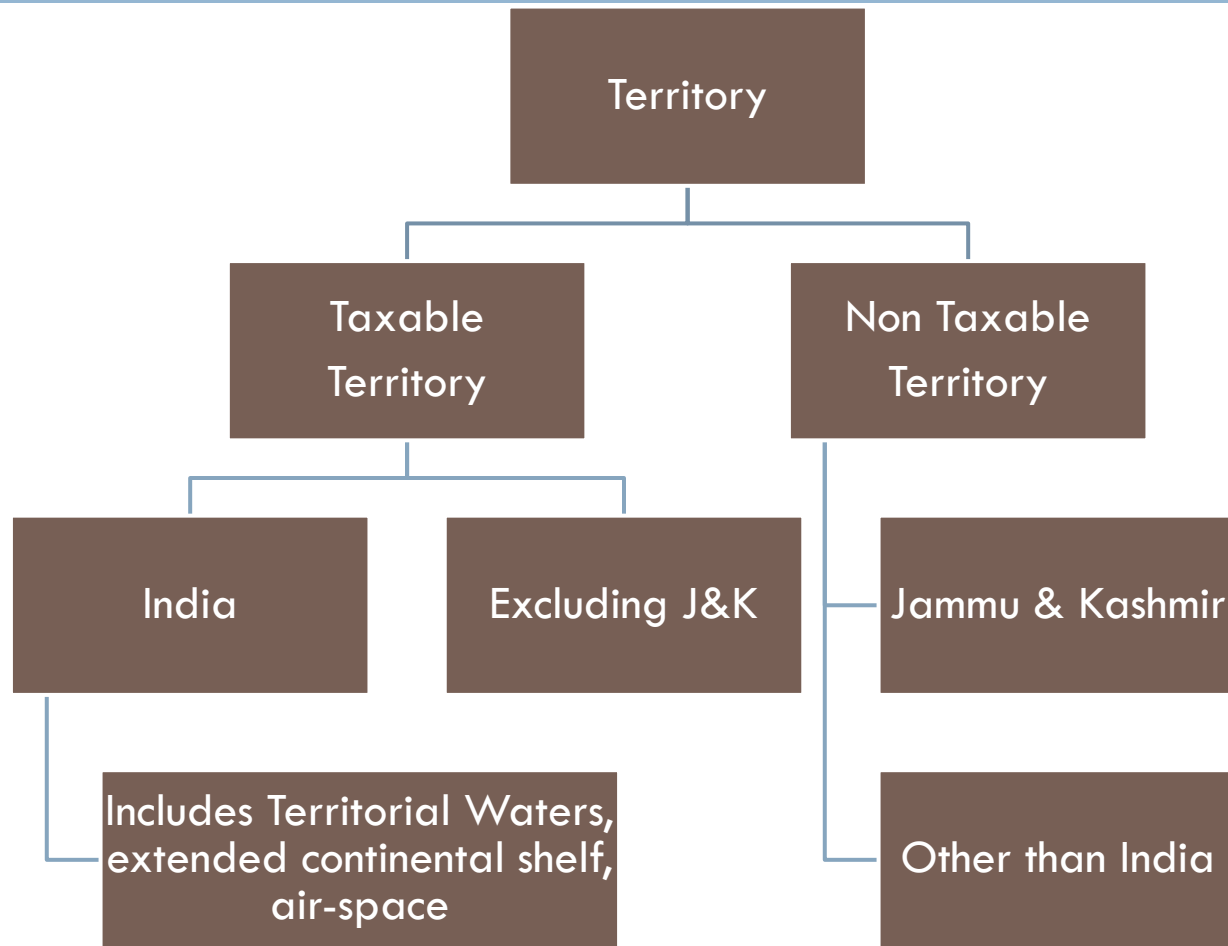
- Small Scale Exemption: Exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act

**TIME FOR QUESTIONS
AND REFRESHMENTS..**

NEGATIVE LIST BASED TAXATION OF SERVICES

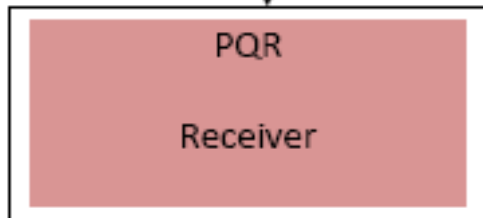
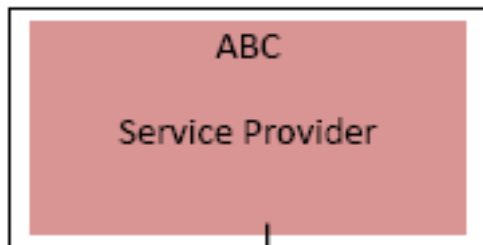
PLACE OF PROVISION OF SERVICE RULES

Territory

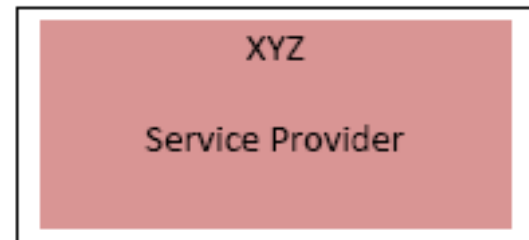
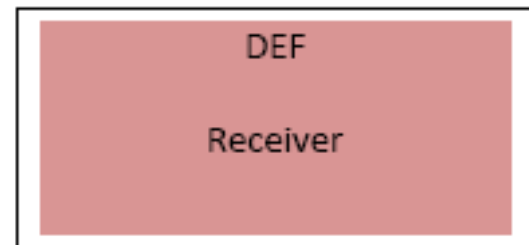


Situs of Taxation

Taxable Territory



Non-taxable Territory



Some Concepts

- Transaction either covered or not covered
- Based on Place of Provision of Services Rules
- Concepts of Import / Export of Service deleted
- Reverse Charge Mechanism applicable, if Service Provider located outside India
- No Major Impact – more confusing due to use of word “provision” instead of “receipt”

Snapshot of Impact

	Old Provisions	New Provisions
Basis of Determination	Separate Rules for Import and Export based on category of service	Common Rules based on substance of transaction
Services rendered to foreign clients	Not Liable for Payment of service tax	Not Liable for Payment of Service Tax since territory outside India
Impact of receipt in Indian Currency	Taxable	Still Not Taxable but, reversal of CENVAT Credit required
Services from foreign vendors	Liable for Payment under RCM	Liable for Payment under RCM
Transactions with J&K	Not Applicable	Applicable
Transactions between Branches	Impacted Imports only	Impacts Imports as well as Exports

Place of Provision of Services Rules...

Description	Rule
General Rule	Location of Service Receiver. In case the location of the service receiver is not available, then Location of service provider
Services provided in respect of goods that are required to be made physically available by the service receiver to the service provider, in order to provide the service	Place of Performance
When such services are provided from a remote location by way of electronic means.	Location of goods at the time of provision of service
Services provided entirely or predominantly, in the ordinary course of business, in the physical presence of an individual, represented either as the service receiver or a person acting on behalf of the receiver	Place of Performance

...Place of Provision of Services Rules

Description	Rule
Services in relation to immovable property	Location of Immovable property
Services in relation to Events	where the event is actually held
When Service Provider and Service Receiver are located in taxable territory	Location of service receiver
Specified services:	Location of Service Provider
a) Banking & Financial Services	
b) Online Information and Database access or retrieval services	
c) Intermediary services	
d) Hiring of means of transport	
Service of Transport of Goods	Destination of Goods
Goods Transport Agency	Location of Service Recipient
Passenger Transportation	Place of Origin
On Board a conveyance	Place of Origin

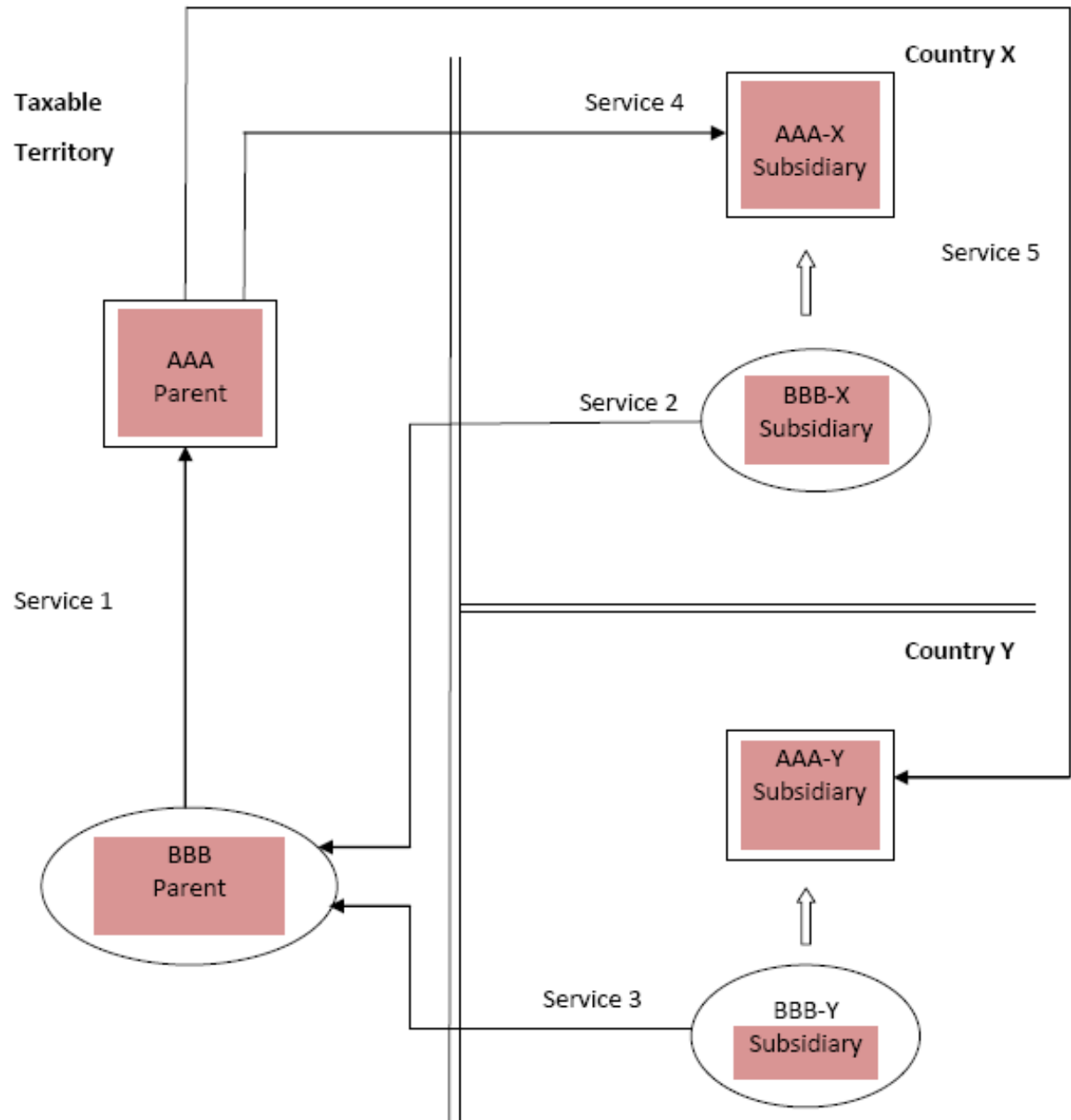
Snapshot of Impact

	Old Provisions	New Provisions
Generic Issues		
Service Provider and Service Recipient in same location	Debatable if the service is rendered abroad	Taxable even if service rendered abroad
India Specific Definitions (like telecommunication services)	Earlier not taxable	Now Taxable in view of negative list
Category Specific Issues		
Technical Testing and Analysis	Recipient Based	Performance Based
Service Intermediaries	Recipient Based	Provider Based
Online Information and Database Access	Recipient Based	Provider Based

Force of Attraction Rule

- In case of multiple establishments, place of establishment more closely connected with the activity to be considered
- How to determine the place of establishment more closely connected?
 - ▣ Invoice
 - ▣ Contract
 - ▣ Payment
 - ▣ Debit to Accounts (Bearing of Cost)
 - ▣ Actual Performance/Consumption of the Service

Example for Global Services



**TIME FOR QUESTIONS
AND REFRESHMENTS...**

NEGATIVE LIST BASED TAXATION OF SERVICES

CORPORATE GURUKUL

PERSON LIABLE TO PAY

CORPORATE GURUKUL

Forward/Reverse Charge Mechanisms

- **General Principle (Forward Charge Mechanism)**
 - ▣ Service Provider to collect from Service Recipient and pay tax to the Government
 - ▣ Service Recipient is not accountable to the Government directly

- **Reverse Charge Mechanism**
 - ▣ Service Recipient called upon to directly pay tax to the Government

Reverse Charge Mechanism : Background

- Need for Reverse Charge Mechanism
- Legal Provisions – Section 68
 - ▣ Independent Liability of Service Provider and Service Recipient
 - ▣ Not Similar to Tax Deduction at Source
- Variations
 - ▣ Full / Partial Reverse Charge Mechanism
 - ▣ Comprehensive / Selective Reverse Charge Mechanism
- Too Onerous a Responsibility?

RCM: Implementation Issues

- Service Tax to be paid as a service recipient
- Service Recipient may account for the service either as
 - ▣ Expenses
 - ▣ Capital Asset/ CWIP
 - ▣ Asset/Liability (specially reimbursement of expenses)
- Invoicing Issues:
 - ▣ What should the service provider's invoice contain?
 - ▣ How to account in books?
 - ▣ What are the Income Tax TDS obligations
- CENVAT Credit Related Issues
 - ▣ Whether CENVAT can be utilised for paying this tax?
 - ▣ Having paid this tax, whether CENVAT can be claimed?

Person Liable to pay Service Tax...

Description of Service	Liability of Service Provider		Liability of Service Recipient	
	Component	Effective Rate	Component	Effective Rate
Only Non Corporate Service Providers and Corporate Service Recipients				
Rent-a-Cab on abated value	NIL	NIL	100%	4.944%
Rent –a-Cab on non abated value	60%	7.416%	40%	4.944%
Supply of Manpower	25%	3.09%	75%	9.27%

Rent – A – Cab : Issues

- Net Impact on Service Recipient is the same 4.944%
- What is covered?
 - ▣ Taxis
 - ▣ Radio Cabs
 - ▣ Employee Leased Cars
 - ▣ Long Term Car Leases
 - ▣ General Tourist Cars taken on lease
 - ▣ Reimbursement claimed by employees
- No CENVAT Credit is available

Supply of Manpower

- Definition
 - “supply of manpower” means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control
- Controversy between a manpower supply service and the basic service (matter in Supreme Court)
 - Labour Contractor
 - Labour Supplier
 - Housekeeping Agency
 - Security Agency
 - Data Entry Operators
 - Accounts Outsourcing
 - Industrial Labourers
- Impact of Valuation where salaries/ESIC/PF paid by the company

...Person Liable to pay Service Tax...

Description of Service			Liability of Service Provider		Liability of Service Recipient	
			Component	Effective Rate	Component	Effective Rate
Works Contract Services						
Only Non Corporate Service Providers and Corporate Service Recipients						
Nature of Works Contract	Presumptive Value of Service	Effective Tax Rate				
Original Works (Construction of new immovable property)	40%	4.944%	50%	2.472%	50%	2.472%
Works Contracts relating to moveable assets	70%	8.652%	50%	4.326%	50%	4.326%
Other Works Contracts	60%	7.416%	50%	3.708%	50%	3.708%

Works Contract Services

- Need to revisit the following
 - ▣ Concept of Works Contract under Service Tax Law
 - ▣ Valuation of Works Contracts

- Choice of Valuation Option independent of each other

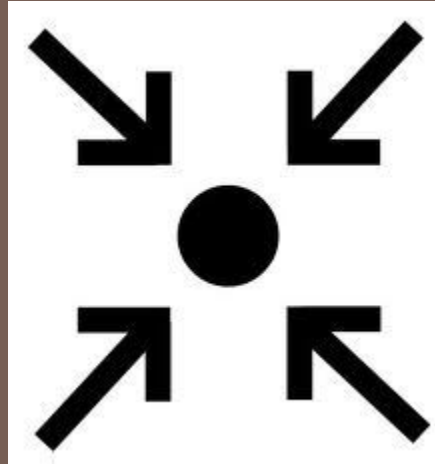
- Debates will increase on account of
 - ▣ Free issue materials and services
 - ▣ Interpretation of works contract vs. labour contracts

...Person Liable to pay Service Tax

General				
Description of Service	Liability of Service Provider		Liability of Service Recipient	
	Component	Effective Rate	Component	Effective Rate
Sponsorships	NIL	NIL	100%	12.36%
Arbitral Tribunal	NIL	NIL	100%	12.36%
Individual Advocates or Firm of Advocates	NIL	NIL	100%	12.36%
Support Service (Other than renting) by Government or Local Authority	NIL	NIL	100%	12.36%
Import of Services	NIL	NIL	100%	12.36%
Goods Transport Agency Services	NIL	NIL	100%	3.09%

RCM : Summing Up

- Onerous Obligation
- How to handle implementation
 - Manual
 - ERP/System Driven
- Possibility of Mistakes very common
- Will the Department provide an HUG in case of such mistakes?



POINT OF TAXATION



Point of Taxation : Background

Charge of Service Tax

Section 66 of the Act (upto 30.06.2012)

Section 66B of the Act (from 01.07.2012)



Assessment of Service Tax (Section 67A) – provided or agreed to be provided

Rate of Service Tax

Value of Taxable Service

Rate of Exchange



Collection of Service Tax [Section 94(2)(a) – Collection & (hhh) - Rate]

Payment of Service Tax
(Section 68)

Service Tax Rules (Rule 6)
– Deemed to be provided

**POINT OF TAXATION
RULES, 2011**

Conceptual Issues :

- Can compliance or non compliance of PoT Rules result in tax liability or does it merely define the time when the tax has to be paid?
 - ▣ New Services – Rule 5
- Is the situation same for change in the rate of tax? – Section 94(2)(hhh)
- Can there be multiple points of taxation for the same transaction?

PoT Rules - Snapshot

	From 01.04.2011 till 31.03.2012	From 01.04.2012 onwards
General Rule (Rule3)	Invoice or Receipt whichever is earlier	Invoice or Receipt whichever is earlier
Case where PoT = Completion of Service (Proviso to Rule 3(a))	If Invoice not raised within 14 days of completion of service	If Invoice not raised within Rule 4A timelines (30 days of completion of service)
Continuous Supply of Service	Service deemed to be completed at each milestone (Independent Rule 6)	Service deemed to be completed at each milestone (Proviso to General Rule)
Reverse Charge Cases (Rule 7)	Payment Basis (For Imports from AE – Entry in Books of Accounts) – if payment made within 6 months	Payment Basis (For Imports from AE – Entry in Books of Accounts) – if payment made within 6 months

PoT Rules – Snapshot (Contd.)

	From 01.04.2011 till 31.03.2012	From 01.04.2012 onwards
Export of Services	On Receipt Basis within RBI Stipulated Time (Rule 7)	Upto 30.06.2012 – Proviso to Rule 6 of Service Tax Rules, 1994 Not Relevant thereafter
PoT = Receipts	For Specified Professionals (Rule 7)	Individuals/Partnerships with VTS < 50 lakhs - Proviso to Rule 6 of Service Tax Rules, 1994
Copyrights (Rule 8)	Invoice or Receipt whichever is earlier	Invoice or Receipt whichever is earlier

Connecting the Points

Point...	Reference and Remarks
Invoice Date	Generally Relevant – Any document containing the information may constitute an invoice
Payment Date	Generally Relevant – Entry in Books relevant only if amount realised within 4 working days
Date of Completion of Service	Relevant only in cases where invoice is not issued within grace period - means completion of all the related activities that place the service provider in a situation to be able to issue an invoice
Entry in Books of Accounts	Generally not relevant – Relevant only for Import transactions with AE

Transition

- *Nothing contained in this rule shall be applicable where:*
 - Provision of service is complete prior to 1 April 2011 or
 - Invoice is issued prior to 1 April 2011

- Option to pay service tax on receipt basis where
 - ▣ Provision is complete on or before 30 June 2011 or
 - ▣ Invoice is issued on or before 30 June 2011



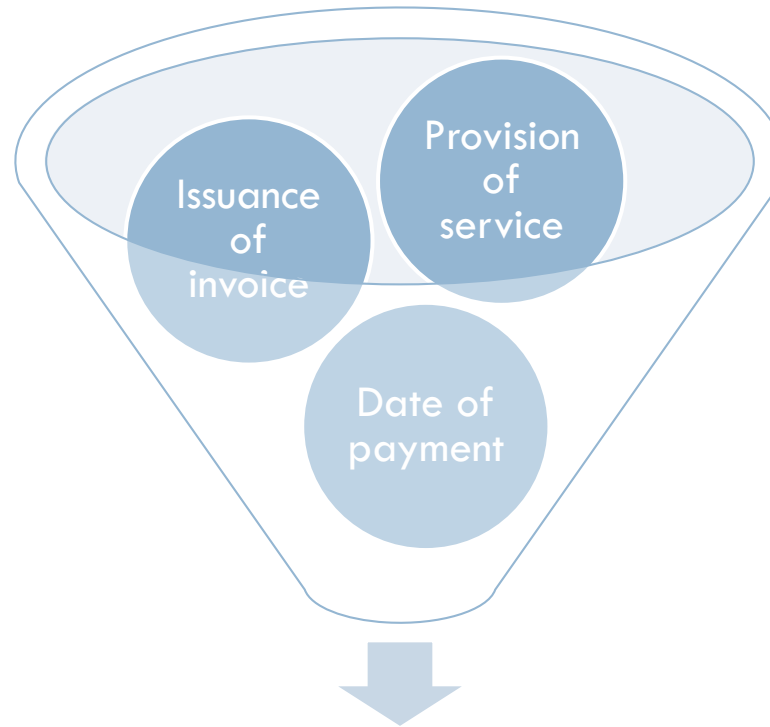
Till now (Income)

Description	Amt.	Linkage with Accounts
Invoices Raised during the month		Sales Register
Services Completed but invoices not raised within 30 days		Unbilled Revenue /MIS
Advances Received during the month		Debtors' Ledger
Services deemed to be completed on achievement of milestone but invoices not raised within 30 days		Project Teams & Client Communications
Non AE Related Foreign Remittances made during the month		Foreign Currency Remittances
Non AE Related Expenditure for which no foreign remittances are made within 6 months	Revise old working	Ageing Analysis
AE Related Foreign Currency Expenditure booked in books of accounts		Provisions
Invoices raised under older provisions but realised during the current period		Debtors Reconciliation Statement
<u>LESS</u> Invoices Raised during the month but taxed earlier		Contra from earlier workings

POT – IMPACT OF RATE CHANGE (01.04.2012)



Change in effective rate – Rule 4



Applicable ST rate \rightarrow 2/3

Change in Rate: Permutations & Combinations

<i>Provision of Service</i>	<i>Raising of Invoice</i>	<i>Receipt of Money</i>	<i>Effective Rate</i>	<i>Reference to the Rules</i>	<i>Point of Taxation</i>
Prior to 01.04.2012	Prior to 01.04.2012	Prior to 01.04.2012	10.30%	No Need to refer to the Rules	Invoicing or Receipt whichever is earlier
Prior to 01.04.2012	Prior to 01.04.2012	After 01.04.2012	10.30%	Rule 4(a)(ii)	Invoicing
Prior to 01.04.2012	After 01.04.2012	Prior to 01.04.2012	10.30%	Rule 4(a)(iii)	Receipt
Prior to 01.04.2012	After 01.04.2012	After 01.04.2012	12.36%	Rule 4(a)(i)	Invoicing or Receipt whichever is earlier
After 01.04.2012	Prior to 01.04.2012	Prior to 01.04.2012	10.30%	Rule 4(b)(ii)	Invoicing or Receipt whichever is earlier
After 01.04.2012	Prior to 01.04.2012	After 01.04.2012	12.36%	Rule 4(b)(i)	Receipt (even though it is subsequent to invoicing)
After 01.04.2012	After 01.04.2012	Prior to 01.04.2012	12.36%	Rule 4(b)(iii)	Invoicing (even though it is subsequent to receipt)
After 01.04.2012	After 01.04.2012	After 01.04.2012	12.36%	No Need to refer to the Rules	Invoicing or Receipt whichever is earlier

Change in rate : Action Points

- Identify the cases where
 - ▣ Services were rendered before 01.04.2012 but neither billed nor received (unbilled revenue)
 - ▣ Invoice raised before 01.04.2012 but services not provided nor realised (Advance Billing)
 - ▣ Amounts received before 01.04.2012 but the services not provided or invoiced (Advances)
- In all the above cases,
 - ▣ Liability to discharge the Tax at New Rate (12.36%)
 - ▣ In view of POT, Tax would have been discharged at Old Rate earlier (10.30%)
 - ▣ So Pay the Differential based on POT

Change in Rate – Import of Services

- Normal Cases
 - ▣ Date of Payment
 - 12.36% (PoT was never determined earlier)
- Late Transactions
 - ▣ General Rule
 - 10.30% (PoT was determined earlier)
- AE Transactions
 - ▣ Date of Booking
 - 10.30% (PoT was determined earlier)

Rate Change : Continuous Services

- Scenario in April 2012
 - ▣ Rule relating to rate change did not apply to rule relating to continuous services
 - ▣ Generally invoice and deemed completion would coincide
 - ▣ Generally no need to revisit tax liability
- Scenario in July 2012
 - ▣ Rule relating to rate change applies to rule relating to continuous services therefore 2/3 criteria important
 - ▣ But, generally invoice and deemed completion would coincide
 - ▣ Therefore, generally no need to revisit tax liability

POT – IMPACT OF NEW LAW (01.07.2012)



New Law – Transition Issues

Issue	Example	To be treated as	Impact
Withdrawal of Exemption	Site Formation for Dam	Change in Rate of Tax	2/3 Criteria
Fresh Exemption Granted	Outdoor Hoardings	Change in Rate of Tax	2/3 Criteria
New Service introduced	Services rendered by actors	New Service	See next slide
Change in Value for Works Contracts	Repairs of Immoveable Properties	Change in Rate of Tax	2/3 Criteria

New service

- Where a service not being a CSS, is taxed first time then, no ST payable if
 - ▣ Invoice and Receipt are before date of introduction
 - ▣ Receipt is before date of introduction and invoice is issued within 14 days from collection (not amended consequent to the amendment in Rule 4A)

- What happens to invoice raised before the introduction but receipt after the introduction?



New Law – Transition Issues

Issue	Example	Clarification
Change in Place of Provision of Service	Online Information and Data Access	None
Change in Person Liable to Pay – Partial Reverse Charge	Manpower Supply Agency Services	Look at service provider's POT / Change in Tax Rate
Change in Person Liable to Pay – Full Reverse Charge	Advocates	Look at service provider's POT

New Law – Transition Issues - Impact

- Will Section 67A be more important
 - ▣ Services provided or to be provided
- How to establish provision of services without documentary trail?
- Invoice therefore may be a more authentic basis
- This is subject to exceptions

OTHER RULES – RELEVANT ASPECTS



Service Tax Rules

- Service Tax to be paid as and when services are deemed to be provided

- Subsequent Adjustment Permitted
 - in the following cases:
 - Non Provision of Service, wholly or partially
 - Deficiency in Provision of Service
 - Renegotiation of Invoice as per the terms of the contract
 - Subject to the following conditions
 - Amount Refunded
 - Credit Note Issued



Adjustment – Some Examples

Non Provision of Service

- Cancellation after advance
- Mistakes in Invoices

Deficiency in Provision of Service

- Quality Discount

Renegotiation of Invoice Amount due to terms in contract

- Volume Discount
- Performance Driven Waivers

Adjustment – whether permitted?

- Bad Debts
- Cash Discounts
- Ad Hoc Discounts
- Deduction on account of Penalties
- Deduction on account of material quality



**TIME FOR QUESTIONS
AND REFRESHMENTS...**



NEGATIVE LIST BASED TAXATION OF SERVICES

CORPORATE GURUKUL



CENVAT CREDIT: POST NEGATIVE LIST REGIME

CONCEPTUAL FRAMEWORK

CORPORATE GURUKUL

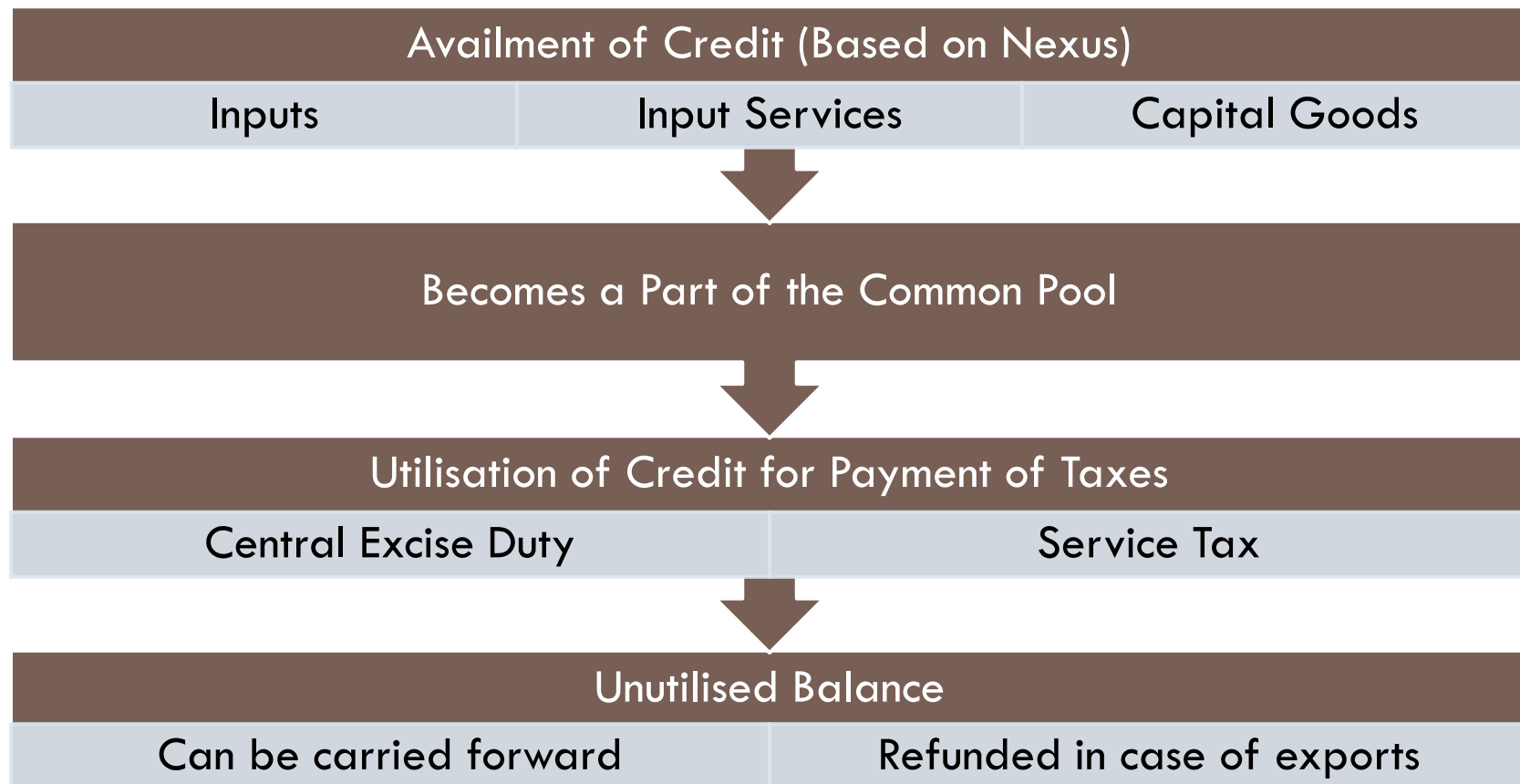
Purpose

- To grant relief from cascading effect of central level indirect taxes (central excise duty, service tax and cess thereon)

- In case output is not taxable, there should be no credit

- In case output is taxable, credit should follow
 - ▣ Manufacture of Final Product ~ Assessed at Transaction Value
 - ▣ Provision of Taxable Service

Passbook Concept



CENVAT and Accounting : Common Issues

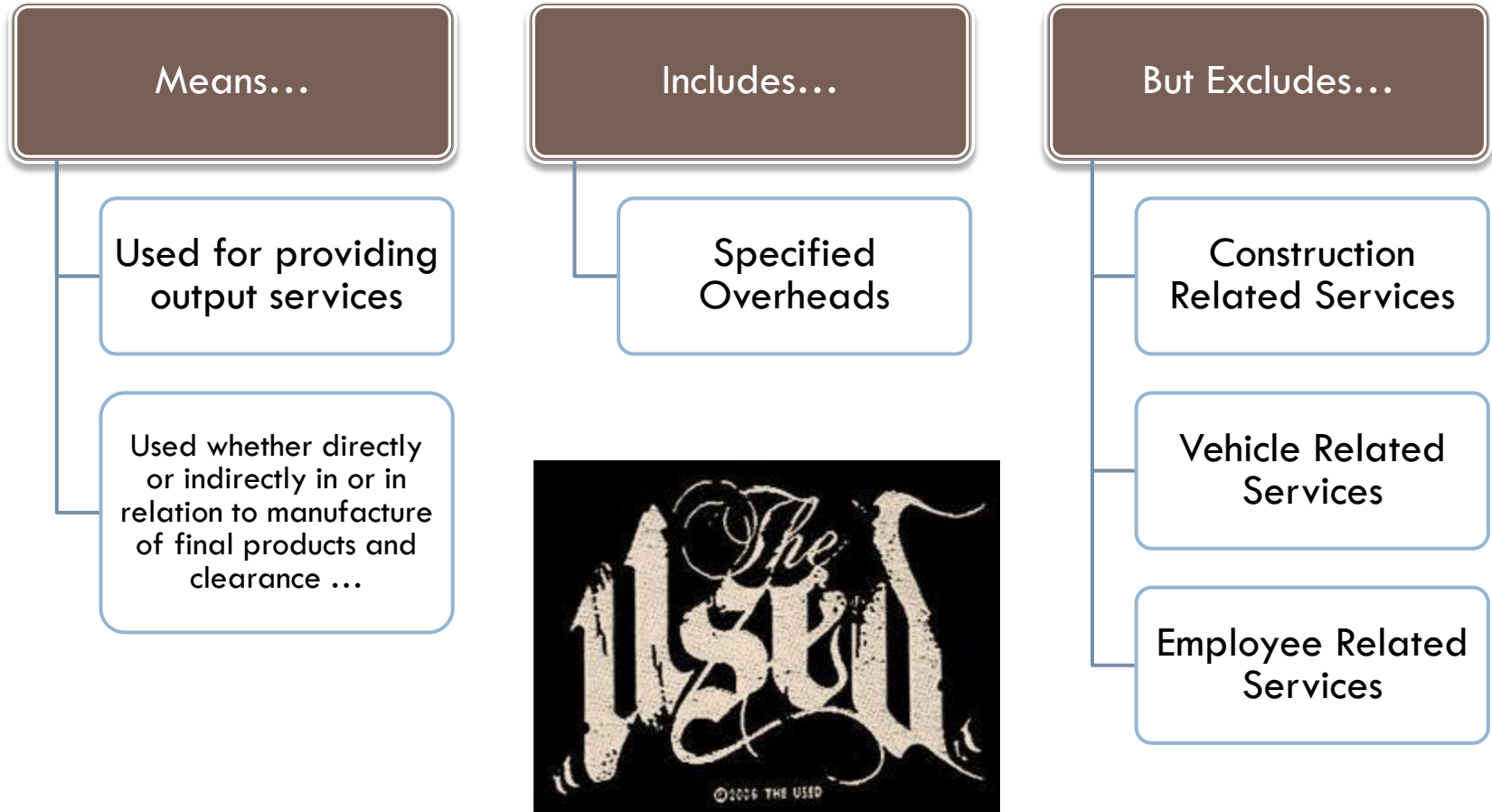
- CENVAT Credit Balance
 - ▣ As per Form ST-3 vs. As per Balance Sheet
- Accounting of Service Tax Component on Expenses
 - ▣ Gross vs. Net
- What happens in Expense off Cases
 - ▣ In one account or respective accounts?
- Disconnect between Capital and Revenue:
 - ▣ Capital Goods vs. Inputs
 - ▣ Input Services for Capitalisation

ELIGIBILITY OF CREDIT – INPUTS, INPUT SERVICES, CAPITAL GOODS

Inputs...

Nature of Input	Eligibility
Goods used in the factory by manufacturer	Yes
Goods cleared with finished goods as accessories	Yes
Goods used for providing free warranty for excisable goods	Yes
Goods used for generation of electricity	Yes
Goods used for providing output service	Yes
LDO/HSD/Motor Spirit	No
Goods used for construction of building or civil structure or foundation for capital goods	No, except for port, airport, construction, works contract service providers
Capital Goods	No, except when used as parts or components
Motor Vehicles	No
Goods for consumption of employee	No
Goods with no relationship to manufacture	No

Input Services – the definition



Input Services..

Nature of Input Service	Eligibility
Services used for providing output service	Yes
Services used in relation to manufacture of final goods	Yes
Modernisation, Repairs or Renovation of Premises	Yes
Advertisement, Sales Promotion, Market Research, Storage, Procurement of Inputs, Accounting, Auditing, Financing, Recruitment and Quality Control, Coaching and Training, Computer Networking, Credit Rating, Share Registry, Security, Business Exhibition, Legal Services, inward transportation, outward transportation upto place of removal	Yes

Input Services - Negative List

Nature of Input Service	Eligibility	Exceptions
Construction & Works Contract Services used for construction	No	unless used for providing specified output services
Rent a Cab of motor vehicle	No	unless the credit is available on the motor vehicle itself
Insurance and Repairs connected with motor vehicles	No	unless the credit is available on the motor vehicle itself or used by manufacturer or insurance company
Outdoor Catering, Beauty Treatment, Health Services, Cosmetic Surgery, Club, Health Club. Life Insurance, Health Insurance, Travel Benefits to employees	No	

Capital Goods

- Goods falling in Excise Tariffs:
 - Chapter 82 (Tools & Implements of Base Metals)
 - Chapter 84 (Machinery & Mechanical Equipments)
 - Chapter 85 (Electrical Machinery & Equipments)
 - Chapter 90 (Technical Instruments)
 - Headings 68.04 & 68.05
- Spares, Components & Accessories
- Generation of Captive Electricity
- Pollution Control Equipment, Refractories & Refractory Material, Moulds & Dies, jigs & fixtures, Tubes & Pipes, Storage Tanks
- Motor Vehicles except those specifically excluded
- Specific Motor Vehicles for specified service providers only

- Credit Available subject to non claim of Depreciation

Timing of Credit

Nature of Eligibility	When can credit be claimed	Remarks	Documents for claiming credit
Inputs	Immediately on receipt in premises	Reversal required for removals and write offs.	Excise Invoice / Bill of Entry
Capital Goods	50% in the year of receipt, balance in next year	Reversal required for removals and write offs.	Excise Invoice / Bill of Entry
Input Services – Domestic	On Receipt of Invoice	Reversal required if not paid within 90 days	Invoice / ISD Invoice
Input Services – Reverse Charge	On Payment of Value and Tax	N.A.	GAR-7 Challan

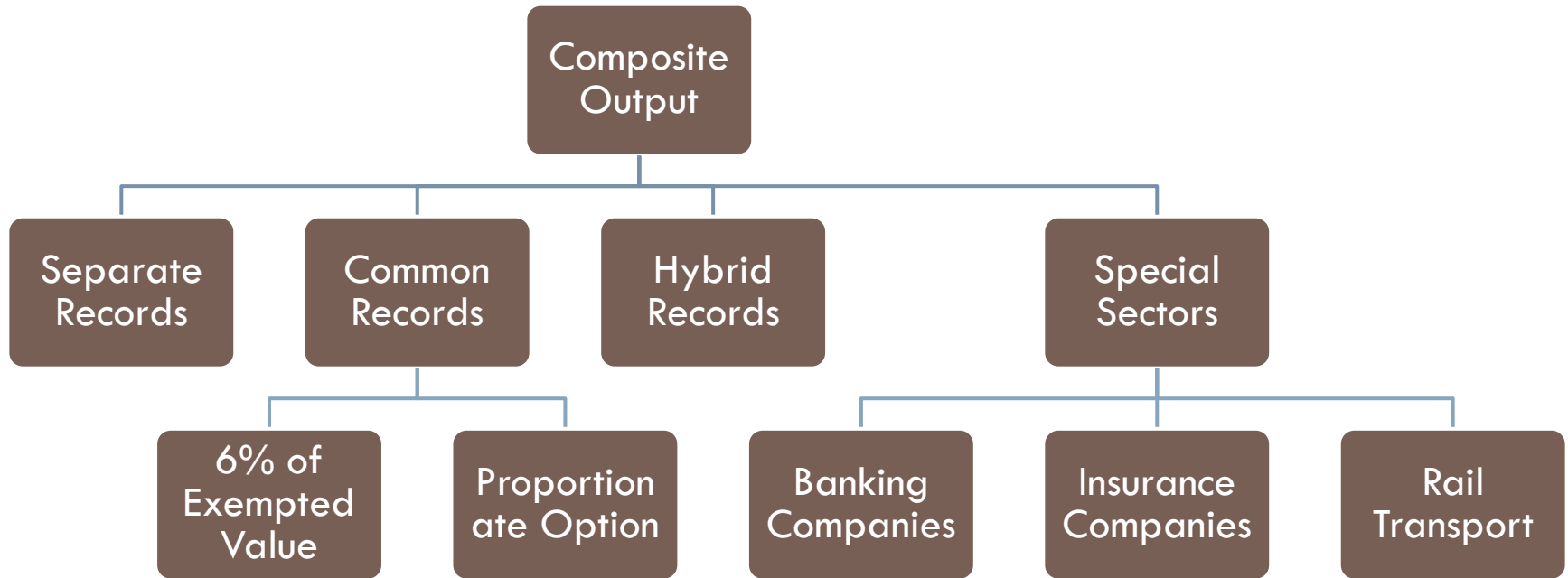
COMPOSITE OUTPUT

CORPORATE GURUKUL

Eligibility of Credit based on Output

	Taxable	Exempted
Manufacturers	<ul style="list-style-type: none"> • Excisable Goods • SEZ Units/Developers • Export of Goods 	<ul style="list-style-type: none"> • Exempted Goods • Goods cleared at 1% or 2% Rate
Service Providers	<ul style="list-style-type: none"> • Taxable Services • Export of Services • Services to SEZ Units/Developers 	<ul style="list-style-type: none"> • Exempted Services • Excluded Services • Services in Non Taxable Territories
Special Rates/Values	<ul style="list-style-type: none"> • Services on which Abatement is claimed under Notification 26/2012-ST without the condition • Services on which Composition Scheme /Special Rates Aailed 	<ul style="list-style-type: none"> • Services on which Abatement is claimed under Notification 26/2012-ST subject to the condition that no credit is available on inputs and input services • Trading in Goods and Securities

Options for Composite Output



CENVAT : Composite Output: Examples

Assumptions : Credit 2 lakhs, TS = 40 lakhs, ES = 60 lakhs	Total	Working
Specific Identification and claim for taxable goods / services (Option I)	2,00,000 Say 1,10,000 + 90,000	Claim 1,10,000
No identification – composite scheme for manufacturers / service providers based on output (ad hoc payment) – OPTION II	2,00,000	Claim 2,00,000 Pay 3,60,000
No identification – composite scheme for manufacturers / service providers based on input & input services (proportionate payment) – OPTION III	2,00,000	Claim 2,00,000 Pay 1,20,000
No identification – composite scheme for manufacturers / service providers based on input services (proportionate payment) – OPTION IV	2,00,000 Say 60,000 + 20,000 + 1,20,000	Claim 60,000 + 1,20,000 Pay 72,000

Abatement : Impact on CENVAT

Description of taxable service	Taxable Percentage	Eligibility of CENVAT Credit on			Impact on Expense off Ratio	
		Inputs	Capital Goods	Input Services	ES	TS
Financial Leasing	10	Yes	Yes	Yes	0	100
Rail Freight Transport	30	Yes	Yes	Yes	0	100
Rail Passenger Transport	30	Yes	Yes	Yes	0	100
Mandap Keeper	70	Yes*	Yes	Yes	0	100
Air Passenger Transport	40	No	No	Yes	0	100
Hotel Accommodation	60	No	No	Yes	0	100
Goods Transport	25	No	No	No	100	0
Chit	70	No	No	No	100	0
Rent a Cab	40	No	No	No	100	0
Coastal Transport	50	No	No	No	100	0
Services by a tour operator	various	No	No	No	100	0
Sale of Under Construction Flats	25	No	Yes	Yes	0	100

Other Cases: Impact on CENVAT

	Taxable	Exempted
Works Contracts :		
Original Works	40	0
Contracts relating to moveable assets	70	0
Other Contracts	60	0
Catering Contracts		
Restaurants	40	0*
Outdoor Catering	60	0*
Trading		
in Goods	0	GP or 10%
in Securities	0	GP or 1%
Composition Cases	Reverse Work	0

CENVAT: Common Points

- FULL Credit available for capital goods if used for common purposes
- Exercise Option across all activities
 - Circular 868/6/2008-CX dated 09-05-2008 Q. 2
- Option once exercised should not be changed in financial year
- Prior intimation for Options III/IV

CENVAT: Special Cases

Nature of Service	Special Payments
Banking & Financial Services provided by banking company, financial institution or NBFC	Pay 50% of the amount claimed as credit on input and input services
Services in the nature of life insurance and ULIP Related Services	Pay 20% of the amount claimed as credit on input and input services
Rail Transport Services	2% of the exempted component

Refunds

- Refund of Accumulated CENVAT Credit on Exports
- Refund for specified areas
- Refund in case of Reverse Charge Mechanism cases

PROCEDURAL ASPECTS



Registration

- No Categories with effect from 01.07.2012
 - Service Provider
 - Service Recipient
 - Input Service Distributor
- Existing Registrations to continue
- Premise Specific Registration and Role of Centralised Registration
- Procedure for Online Registration and Amendments

Invoices

- Name, Address & Regn. No
- Name & Address of Service Recipient
- Description of Service
- Value of Taxable Service
- Service Tax & Education Cess
- Signed & Serially Numbered
- To be issued within 30 days

Payment of Tax & Filing of Returns

	Current	Proposed
Existing Assesseees		
Paid tax of Rs 25 lakh or more in previous year	Monthly for Corporate Quarterly for Others	Monthly
Paid tax of less than Rs 25 lakh in previous year	Monthly for Corporate Quarterly for Others	Quarterly
New Assesseees		
Individuals and Firms	Quarterly	Quarterly
Other than Individuals and Firms	Monthly	Monthly
Filing of Returns	Half Yearly	Coinciding with Payments

Procedures = Snapshot..

- No concept of assessment
- Various Levels of Audit / Scrutiny
 - ▣ Audit – EA / CERA / Jurisdiction
 - ▣ Investigation – Anti Evasion / DGCEI
- Show Cause Notice pursuant to above / repeat SCN
- Adjudication based on show cause notice
- Appeal to be filed before Commissioner (Appeals) / CESTAT

THANK YOU

