

FAQs on Service Tax with Emphasis on International Transactions

It is often said that whenever Cross-border Transactions take place, weightage is more on the commercial and economic aspects rather than taxation aspects. Though taxation aspects may not be the prime movers, they are second to none. They have a significant role to play in deciding the viability of a Cross-border Transaction. The subject of international taxation not only include direct taxes, but also indirect taxes. The study of international taxation is incomplete without understanding the indirect taxes in the host countries. Quite often, while advising or deciding on the matters, greater emphasis is placed on direct taxation, ignoring the impact of indirect taxation. However, indirect taxes can have a significant impact on Cross-border Transactions. In this article, we shall examine the impact of the indirect tax in the form of 'Service Tax' levied by the

the Department of Central Excise, which has separate cells for Service Tax administration. While the levy is in accordance with Chapter V of the Finance Act, 1994 (as amended), there are many provisions of the Central Excise Act, 1944 which are also applicable.

Que.3 Who is liable to pay the tax?

3.1 Service Tax is an indirect tax, which is generally levied on the provider of the service, who has to charge and collect the same from his customer and pay it to the Government Treasury.

3.2 While this is the general position, for certain types of services or service provider, the same is to be paid by the person receiving the service. Section 68(2) empowers the Central Government to notify any taxable service in respect of which rules may provide for a designated person who will be treated as the person liable to pay Service Tax. The services notified for this purpose are contained in Notification No.36/2004-S.T., dated 31-12-2004, which has come into force with effect from 1-1-2005. The persons responsible for paying Service Tax in respect of these notified services have already been indicated in Rule 2(1)(d). The notified services and the persons re-

The scope of the law relating to Service Tax is applicable to the whole of India excluding the state of Jammu & Kashmir. By notification this has been extended to include even the continental shelf, thus, technically levying a tax outside of Indian jurisdiction. By another amendment made by the Finance Act, 2005, the definition of 'Imports of Services' has been amended to include all services consumed outside India by any person who is a resident of India or who has a place of business in India. Service Tax on such 'imported services' is payable by the person receiving the service, rather than the one providing the service. The person receiving the service will need to get registration and pay the tax for such imported services. He will, if eligible, also be entitled to take credit for such tax as input tax under the Cenvat Credit Rules.



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Government of India and its applicability to international transactions.

Que.1 Which law governs the levy and payment of this tax?

In India, Service Tax has been levied since 1994. While it began as a tax on just three services, now over 80 services are taxable. The tax is levied under Chapter V of the Finance Act, 1994 (as amended) ("The Act").

Que.2 Which authority administers the same?

As noted above, Service Tax is a levy of indirect tax. The same is administered by

Notified service	Person liable for paying Service Tax
<ul style="list-style-type: none"> Services in relation to a telephone connection or pager or a communication through telegraph or telex or facsimile communication or a leased circuit. 	Director-General of Posts and Telegraphs, or the Chairman-cum-Managing Director, Mahanagar Telephone Nigam Ltd., Delhi. or Any other person who has been granted a licence by the Central Government under the first proviso to section 4(1) of the Indian Telegraphs Act, 1885.
<ul style="list-style-type: none"> Services in relation to general insurance business. 	(i) any other person carrying on general insurance business and who has obtained a certificate of registration under Section 3 of the Insurance Act, 1938.
<ul style="list-style-type: none"> Services in relation to insurance auxiliary services by an insurance agent. 	Any person carrying on general insurance business or life insurance business, as the case may be, in India.
<ul style="list-style-type: none"> Services in relation to transport of goods by road in a goods carriage, where the consignor or consignee of goods is, (a) any registered factory, or (b) any company, or (c) any statutory corporation, or (d) a registered society, or (e) any co-operative society, or (f) any dealer of excisable goods who is registered under central excise law, or (g) any body corporate established by any law, or (h) a partnership firm ('the specified persons'). 	Any person who pays or is liable to pay freight either himself or through his agent for the transport of such goods by road in a goods carriage.
<ul style="list-style-type: none"> Business auxiliary service of distribution of mutual fund by a mutual fund distributor or an agent, as the case may be (from 1-4-2005) 	Mutual fund or asset management company, as the case may be.
<ul style="list-style-type: none"> All cases where the provider of the service is Non-Resident. 	Person receiving the service (discussed in detail later)

sponsible for paying Service Tax are given above in tabular form :

Que.4 Whether it has to be collected from some other person or it has to be borne by the person depositing the same?

Generally Service Tax has to be collected from the customers and deposited with the Government Treasury by the provider of the service. However, in cases where the service provider fails to charge or collect the tax, he will have to bear the liability and pay it from his own pocket.

Apart from this, there are certain other cases where the payment has to be made by a

person other than the provider of the service, as discussed in Que.3.

Que.5 Which transactions attract this tax?

The tax is payable on the rendering on a taxable service. The scope of such taxable services is being widened from year to year and now as against only three services being taxable in 1994, there more than 80 taxable services, most of which are listed out in Annexure 'A'.

Que.6 Are there any scenarios under which the tax has not to be paid?

6.1 As noted above, Service Tax is payable only on

rendering of a taxable service. If the service rendered is not included in the list of taxable services, no Service Tax is payable thereon. However, with the widening of the Service Tax net, year after year, most of the services are now taxable leaving very few non-taxable services such as those provided by lawyers, solicitors, doctors, etc.

6.2 As regards taxable services, in certain cases, these are exempt. The services rendered to the following categories are totally exempt from levy of the Service Tax:

i. United Nations or any notified international organisation (such as WHO/

ILO/IMF, etc.). The list of such international organisations is given in Annexure 'B'.

ii. Development of Special Economic Zones (SEZ) or units operating in SEZ (provided the same is approved by the Board of Approvals).

iii. Services, which qualify as exports of services under the Export of Services Rules, 2005 (discussed in detail later).

iv. By Notification # 12/2003, dated 20th June, 2003, exemption has been granted for so much of the value of taxable service as is equal to the value of goods and materials sold by the provider of the taxable service to the receiver of such service. This is subject to the condition that there is documentary proof indicating the value of the said goods and services. It is also "clarified" that such exemption will be available only if the sale value is quantified and shown separately on the invoice.

v. As per a notification no. 13/2004-ST [F.No. B2/8/2004-TRU], dated 10.09.2004, Service Tax is not to be charged on services provided to Central or State Governments in relation to collection of any duties or taxes. These will NOT include companies set up by such governments. Further, foreign governments are not exempted under the notification.

vi. Besides, for various categories of services, certain value has been exempted by notification for e.g., for Advertising Agency Services, 85 per cent of the value charged to the client is exempt as pertaining to cost of print or electronic media. As a result, in

such a case only 15 per cent of the amount charged to the customer is liable to Service Tax. There are similar notifications issued for some other services as well, which need to be examined to determine the Service Tax liability.

vii. Under Notification No. 6/2005-Service Tax, dated 1-3-2005, full exemption from tax is granted from the financial year 2005-06 to all the service providers on taxable services of aggregate value not exceeding Rs.4 lacs in any financial year.)

The notification also spells out the persons who are not eligible to avail this exemption benefit, and also stipulates certain conditions and requirements for this purpose. The exemption is not available to the following persons:

- (a) Persons providing taxable services under a brand name or trade name (as defined in the notification), whether registered or not, of another person.
- (b) Persons (service receivers) who are liable for paying Service Tax as laid down in rule 2(1)(d) of the Service Tax Rules.

Para 2 of the notification spells out the conditions to be satisfied. This may be gone into in minute detail, and they will have to be complied with in full. The important conditions are summarised below:

- No Cenvat Credit should have been availed on the Service Tax paid on any input services used for providing the said taxable service.
- No Cenvat should have been availed on capital goods received in the prem-

ises of the service provider during the period in which the service provider avails exemption from payment of service. For example, if the aggregate value of taxable services has not crossed Rs.4 lacs on, say, 30-9-2005, but has crossed that limit on 1-10-2005, the service provider should not take Cenvat Credit on capital goods received in his premises during the period 1-4-2005 to 30-9-2005.

- Cenvat Credit on inputs and input services can be availed only in respect of those that are received after the provider of service starts paying tax.
- Unutilised Cenvat Credit at the end of the financial year cannot be carried over, it will lapse.
- Where services are provided from more than one premises, or more than one service is provided, the limit of Rs. 4 lacs will apply to the aggregate value of all the taxable services.
- The aggregate value of taxable services rendered from one or more premises should not have exceeded Rs. 4 lacs in the preceding financial year. (If this condition were to apply for the financial year 2005-06, service providers whose aggregate receipts from providing taxable services during the financial year 2004-05 has exceeded Rs. 4 lacs are ineligible to avail the exemption benefit from 1-4-2005 onwards. Is this the real intention?)
- In the case of goods transport agency, the limit of

The earlier provision of exemption in toto of all services where payment is received in convertible foreign exchange is now replaced by detailed rules laying down criterion for exemption. Now services are classified in three categories and there are different rules for each category to qualify for exemption

Sr. No.	Particulars	Due Date
1.	Payment of Service Tax by assesseees other than Individual, Proprietary Firms or Partnership Firms.	5th of the month immediately following the calendar month in which the payments for the services (including advances) are received.
2.	Payment of Service Tax by assesseees who are Individuals, Proprietary Firms or Partnership Firms.	5th of the month immediately following the quarter in which the payments for the services (including advances) are received.

Note: Due date for the months/quarter ended 31st March each year is 31st March itself in both the above cases.

Rs. 4 lacs will be applied on the aggregate value minus the amount for which the 'specified persons' are liable to pay tax.

Que.7 When is the Service Tax to be paid?

Under Rule 6 of the Service Tax Rules, Service Tax payments have to be made as above:

Que.8 Whether any periodical returns have to be filed under this law?

Under Rule 7 of the Service Tax Rules, all assesseees have to file half yearly returns, which are due by the 25th of the month following the end of the half-year. Accordingly, Returns for the period April to September have to be submitted by 25th October and Returns for the period October to March have to be submitted by 25th April.

Que.9 Are there any special provisions for payment of this tax by non-residents?

9.1 Act based on 'situs' principle:

As per section 64(1) of the Act, it applies to the whole of India except the State of Jammu & Kashmir. Also as per section 64(3), the levy of tax applies in respect of "taxable services provided". Thus, on a plain reading of both sections, one comes to the con-

clusion that the law covers taxable services performed in India. As a natural corollary, services performed outside India are not taxable in India. One may also take the help of circular no. 36/4/2001, dated 8th October 2001 wherein it has been clarified that the services performed/provided beyond the territorial waters of India are not within the purview of Act. Subsequently, the Central Government has vide Notification no. 1/2002 dated 1st March, 2002 extended the provisions to the designated areas in the Continental Shelf and Exclusive Economic Zones (EEZ) of India. This is in line with the provisions existing in relation to Central Excise and Customs Duty.

As such, even if the services are rendered in India by non-residents, those services would also be liable to Service Tax in India, based on the 'situs' principle, which means the services have to be rendered in India in order to be taxable. Thus the Act has refrained itself from extra-territorial jurisdiction (except as discussed later).

9.2 Meaning of International Transactions:

9.2.1 The plain meaning of International Transaction, presupposes a transaction of provision of service between resident and non-resident. In simple terms, it would

mean a resident service provider provides/renderers taxable service to a non-resident or vice-versa. The Act does not define the terms 'resident' and 'non-resident', which leads to the confusion as to whether recourse can be taken to the definitions given under the Income-Tax Act or FEMA. However, as the intentions of these Acts are different, it may not be appropriate to rely on the definitions given in these Acts. In which case, one may try to deduce the meaning of the terms as under:

(a) Resident: Person rendering the services from India or receiving the services in India.

(b) Non-resident: Person resident outside India receiving/rendering the services.

9.2.2 International Transactions Covered:

Now we can examine the applicability of Service Tax on



Sr. no.	Services provided / rendered in	Service provided by	Service provided to	Whether Liable to S.T.	Remarks
1	India	Resident	Resident	Yes	-
2	India	Non Resident	Resident	Yes	"Import of Services"
3	India	Resident	Non Resident	Yes	However, in specific cases, these may be considered as export of services, and hence exempt
4	India	Non Resident	Non Resident	Yes	However, in specific cases, these may be considered as export of services, and hence exempt
5	Outside India	Resident	Resident	No	Import of services
6	Outside India	Non Resident	Resident	No	Import of services
7	Outside India	Resident	Non Resident	No	-
8	Outside India	Non Resident	Non Resident	No	-

the following broad categories of International transactions:

(a) Services provided/ rendered in India (whether by a resident or non-resident) to a non-resident;

(b) Services provided/ rendered outside India (whether by a resident or non-resident) to a non-resident;

In the case of first category, services would be liable to Service Tax since the services are performed/rendered in India since the 'situs' is in India. This could include certain transactions, which are in the nature of either "import of services" or "export of services", which are discussed later.

In the case of the second category, services would not be liable to tax since the services are performed/rendered outside India to a non-resident and services are meant to be used outside India. The position will remain the same even

if the payment in this case is received in / made from India. However, in view of a recent amendment, there could be a different view in such a case, as discussed later.

The above can be summarised in tabular form, as given above:

Que.10 What are the special provisions in respect of Imports of Services?

10.1 Scheme of the Act & Rules:

10.1.1 Services Rendered by Non-Residents – Imports of Services

By an amendment made by the Finance Act, 2005, the scope of taxable service is enlarged to cover import of service, by inserting an explanation in Section 65(105) defining taxable service. The effective date of this amendment is notified as 16th June 2005. As such, after that date,

services provided from outside India to a recipient in India is within the ambit of Service Tax, even if the service was provided outside India. The term recipient in India has been defined to mean one who has received the service, who has his place of business, fixed establishment, permanent address or usual place of residence in India.

As a result, services rendered outside India by a person



who has a place of business etc outside India to a person who has a place of business etc in India, will now be considered as taxable service. Curious though it may appear, any person who has a place of business or permanent address or usual place of residence in India will now have to pay Service Tax on services consumed outside India, on a literal interpretation, e.g. getting a hair cut or a shave outside India would now attract Service Tax in India. In the opinion of the author, this would tantamount to extension of the jurisdiction of the Act to beyond its territorial jurisdiction. This is totally against the earlier circular which had categorically stated that Service Tax is a destination based consumption tax, as also the basic scheme of the Act as per Section 64(1), which states that the Act shall extend to the whole of India, excluding Jammu and Kashmir. Such extra territorial jurisdiction of the Act is bad in law, and it would be better if the authorities come out with an amendment/notification to this effect.

Interestingly, as per Notification 25/2005 dated 7th June 2005, exemption has been granted to services provided to individuals outside India, not in the furtherance of commerce, industry or business, in respect of services received and consumed outside India. Accordingly, only such services are exempt, but all other services so consumed outside India, i.e. all services received

by non individuals, and all services received by individuals excluding those not in the furtherance of commerce, industry or business are now taxable.

To illustrate, if an Indian company has a branch overseas, which consumes any taxable services there, then the same is a taxable service in India. Hence the overseas branch manager will need to ascertain whether the services obtained by his branch are falling within the list of 80 odd taxable services, and if so, he will need to get the Indian Head Office to obtain registration and make payment of Service Tax in India. Besides, credit for such tax paid would be available only if the same is utilised for rendering any taxable service. Hence if the services utilised outside India are for rendering services from there, which are not taxable here, no credit for such taxes can be claimed here.

Likewise, if an Indian Chartered Accountant (individual) goes abroad, and utilises services of another local chartered accountant there to help him with the assignment, the same will be taxable here. However, if he goes for a hair cut outside India, though it is a taxable service, as the same is not for the furtherance of his profession, in the view of the author, the same is not taxable in India. On the other hand, if a film actor or a model goes for a similar haircut outside India, the same could be for the furtherance of business, and hence taxable.

The tax is payable on the rendering on a taxable service. The scope of such taxable services is being widened from year to year and now as against only three services being taxable in 1994, there are more than 80 taxable services, most of which are listed out in Annexure 'A'

These examples bring out the wide spectrum of coverage of taxable services, consequent upon the amendment carried out by Finance Act, 2005 ostensibly "for the removal of doubts". In fact, this amendment creates many more doubts and the very thought of such broad compliance would bring nightmares to persons in Cross-border Trade and industry.

By another notification (dated 7th June, 2005), certain taxable services provided by a non resident and consumed outside India in the course of sailing a ship which is registered in India, and which is owned by an Indian citizen/entity have been exempted.

As such, all services other than those covered by the two notifications listed above which are consumed outside India are now taxable in India, if the receiver of the service has a place of business or residence in India.

10.1.2 As per Rule 2(1)(d)(iv) of the Service Tax Rules, for taxable services provided by non-residents or persons from outside India who do not have office in India, the person receiving the service in India is treated as person liable for paying Service Tax. This is in contrast to other cases, where the service provider is the person liable for paying Service Tax.

The change in the Rules as noted above effectively makes Service Tax a direct tax for services rendered by non-residents as against an indi-

rect tax, which it is generally supposed to be. However, the distinctions of Direct tax and Indirect tax are academic and there does not appear to be any bar on such Rule reversion, which is called 'Reverse Charge'. Such reverse charges are not uncommon in other countries, e.g. in U.K.

10.2 Consequences:

There are some of the difficulties and issues, which arise due to the reverse charge.

The Resident Service Receiver has to get registration and pay taxes in respect of services received by him. As a corollary, he will have to file returns and continue filing NIL returns till the registration continues even in case of one-off service transactions. The registration, payments and returns have to be filed in respect of the assessee who is the Non-Resident Service Provider. The Resident Service Receiver may not even be aware of quantum of services provided by the Non-Resident to other Residents in India. Besides, for the same Non-Resident, there could be multiple registrations for each different customer in India. A point to be noted that for such cases, the basic exemption of Rs. 4 lacs recently announced is not available. Hence even if the value of taxable services so rendered is paltry, the resident recipient of service is required to comply with the onerous provisions.

10.3 Broadcasting services:

As regards broadcasting services, when Service Tax was introduced on such services in 2001, by notification broadcasting from outside India was

treated as a taxable service in India. As certain doubts were expressed about the validity of such notification, the Finance Act, 2002 has amended the definition of broadcasting and taxable service with retrospective effect from 16th July, 2001 to clarify and include such broadcast within the scope of taxable service beyond doubt. So long as the broadcast of radio or television programme is received in India and intended for listening or viewing, as the case may be, by public in India, such services are liable to tax, even if the encryption or beaming thereof through the satellite might have taken place outside India. In case of foreign satellite TV channels, the branch office /agent are liable to pay Service Tax and comply with all other related procedural formalities.

10.4 However, in view of the amendment by the Finance Act, 2005 discussed above, the notification is no more relevant, as all such cases where service is provided outside India are now taxable.

Unfortunately, the language of the relevant provisions in respect of import of services is quite general, and not as specific as in respect of Exports of services (discussed later). As a result, the transaction narrated above would be fully taxable in India.

10.5 Services by a non-resident to another in India

The 'situs' principle would include service provided by a Non-resident to another Non-resident in India. For e.g. a Foreign Fashion Designer providing taxable service to a Foreign Contestant of the "Miss World" Contest held in

The registration, payments and returns have to be filed in respect of the assessee who is the Non-Resident Service Provider. The Resident Service Receiver may not even be aware of quantum of services provided by the Non-Resident to other Residents in India

India. As the Foreign Contestant has availed the services in India, she is to be treated as person liable to pay Service Tax under Rule 2(1)(d)(iv) of the Service Tax Rules.

Que.11 What the provisions in respect of taxation or exemption of Exports of Services?

11.1 Services Rendered to Non-Residents – Exports of Services

11.1.1 By notification no. 6/99 dated 9th April, 1999 exemption was provided from levy of Service Tax in respect of all taxable services for which the payment is received in India in convertible foreign exchange. A condition for claiming this exemption is that the payment received in foreign currency should not be repatriated from or sent outside India. This notification was in force between 9th April 1999 and 28th February 2003.

11.1.2 The said notification was rescinded effective 1st March 2003. However, it was expressed by circular no. ST 56/5/2003 dated 25th April, 2003 that export of services would continue to be exempt, if the services were consumed abroad and payments therefore was received in convertible foreign exchange. There was lot of confusion as the definition of the term "consumption of services" was not available, and its meaning was capable of having different connotations.

11.1.3 Finally, the old exemption based on receipt in foreign currency was restored by notification no. 21/2003 with effect from 20-11-2003. Hence, again after that date the services in respect

of which the payment was received in convertible foreign exchange, no Service Tax was payable.

11.1.4 However, once again the position has changed effective 15th March 2005. The notification dated 20th November 2003 has been rescinded, and in its place the Export of Services Rules, 2005 have been issued. The Rules divide the taxable services in three categories, and the taxability is to be decided having regard to the relevant factor to be looked at for the respective category. If a service can be categorised as an export of service, the same will be exempt from tax under Rule 4 of the Export of Services Rules, 2005. Besides, under Rule 5 the exporter can also get rebate of input taxes paid, if any, while rendering such services. The manner and procedure for obtaining such a refund is provided in Notification 12 dated 19th April 2005.

11.1.5 By Notification no 11 dated 19th April, 2005 rebate is also allowed for Service Tax paid in respect of services exported. As eligible exports of services are not taxable under Rule 4 of the Export Services Rules, 2005, generally there would not be a question of first paying tax for such services, and then claiming a refund for the same. However, in case such tax is paid due to either oversight, or due to part of the same not having been considered as exports earlier, the notification lays down the manner and procedure of obtaining a rebate for the same, in the form of refund of tax already paid (if any).

11.1.6 For services

related to immovable property, (nine services) the same will be treated as export of services if the said property is outside India. Effective 16th June, 2005, this exemption is available subject to the satisfaction of the following conditions –

- Service is delivered outside India
- Service is used in a business or for any other purpose outside India; and
- Payment for such services is received in convertible foreign exchange.

As such, prior to 16th June 2005, even if the payment was not received in convertible foreign exchange, the exemption was available.

11.1.7 For certain (50) specified services, the tax-

ability will be decided if the service was wholly or partly provided outside India. Hence even if a part of such service is provided outside India, the same is not taxable in India. Effective 16th June, 2005, this exemption is available subject to the satisfaction of the following conditions –

- Service is delivered outside India
- Service is used in a business or for any other purpose outside India; and
- Payment for such services is received in convertible foreign exchange.

As such, prior to 16th June 2005, even if the payment was not received in convertible foreign exchange, the exemption was available.



11.1.8 For the remaining services, the taxability needs to be analysed in the context of whether the recipient of the service outside India has used the services in relation to any commerce or industry, or otherwise. If so, the service will be treated as an export of service if the recipient of the service is located outside India. There is one caveat here. If such recipient also has any commercial or industrial establishment or office in India, the exemption will be available only if— (i) the order for the service is made on the service provider by the office outside India; and (ii) the service is delivered outside India and is used in business outside India; and (iii) the payment is received by the service provider in convertible foreign exchange. In the other alternative, i.e. where the services are used other than in relation to commerce or industry, the same will be treated as export of services if the recipient of service is located outside India when the services are received.

11.1.9 These rules are briefly summarised in Annexure “C”.

11.2 Examples:

In this background, few illustrations are discussed below, for proper understanding of the concepts.

a. Mr. A acts as a broker for an immovable property in UAE, which is purchased by his NRI client. He receives 2 per cent of the value of the transaction as his brokerage in INR by cheque from the NRI drawn from his NRO bank account in India.

This case falls in Category

I listed above. As the immovable property is located outside India, the same is an export of service, and accordingly not taxable, though the payment is received in India in INR.

b. Mr. B, a US citizen engages an Indian interior decorator for providing designing services for his ancestral home at Ahmedabad. The payment is made by a T/T from his bank in the US to the decorators' bank at Ahmedabad.

In this case, though the payment is received in convertible foreign exchange, as it falls in category I listed above, and the property is located in India, the same will be taxable.

c. Mr. C is a practicing Chartered Accountant from Mumbai. His client is a company incorporated at Mauritius, where he goes to carry out the audit, and issue the audit report from there.

This falls in category II of the list, and as the service is performed outside India, the same is not taxable.

d. Mr. D is an Indian photographer, who is engaged by his European client to obtain photographs of few Indian models for an event to be held in Africa. The shooting of photographs takes place in Kerala. The fees are received in US dollars.

As the service of photography has taken place in India, the same is taxable here.

If, however, the photographs were shot say in Africa, the same

would not be taxable, as the place of providing the service is outside India.

e. M/s E is an advertising agency based at Bangalore. Its client in Paris sends an advertisement to be released in the Indian press. The client is a large fashion house based in Paris.

This service falls in Category III. As the taxable services are used in relation to commerce / industry and the recipient of such services is located outside India, the same will not be taxable, unless the recipient has any commercial or industrial establishment or office in India. Further, even if the recipient has an office or establishment in India, the same shall be exempt from

Service Tax if the three conditions mentioned in proviso to Rule 3(3)(i) of the Export of Service Rules, 2005 are satisfied.

f. However, if the advertisement was to be issued for the Paris based client's non-business purposes; say for releasing a matrimonial ad, the same will not be taxable.

g. M/s F is an organisation assisting students in getting admissions in foreign universities. Apart from the fees charged to students in India (on which Service Tax is charged), they are also getting commission from the foreign universities for the students referred to them, which is received in convertible foreign exchange. Is this commission taxable?



Annexure “A”

Sr. No.	Name of the services/Service provider
1.	Advertising Agency
2.	Air Travel Agent
3.	Aircraft Operator
4.	Airport Authority
5.	Architect
6.	Authorised Service Station for service or repair of light motor vehicles
7.	Authorised Service Station for service or repair of motor cars or two wheeled motor vehicles
8.	Banking and other financial Services
9.	Beauty Parlour
10.	Broadcasting Service
11.	Business Auxiliary Service
12.	Cable Services
13.	Cargo Handling Agency
14.	Cleaning activity
15.	Clearing & Forwarding Agent
16.	Commercial Concern in relation to holding of Convention
17.	Commercial Training and Coaching Centre
18.	Commissioning and Installation Agency
19.	Construction of complexes
20.	Construction Service
21.	Consulting Engineer
22.	Courier Agency
23.	Credit Rating Agency
24.	Custom House Agent
25.	Dredging
26.	Dry Cleaner
27.	Event Manager
28.	Exhibitor
29.	Fashion Designer
30.	Fax Service
31.	Foreign Exchange Broker
32.	Franchise
33.	Goods Transport Agency
34.	Health Club and Fitness Centre
35.	Insurance Auxiliary Services concerning life Insurance
36.	Insurance Auxiliary Services relating General Insurance
37.	Insurer carrying on General Insurance Business
38.	Intellectual property service
39.	Interior Decorator
40.	Internet Café
41.	Leased circuit service
42.	Life Insurance Services

The service rendered to the universities can be classified as a business auxiliary service, which falls in category III above. As the taxable services are used in relation to commerce/industry and the recipient of such services is located outside India, the same will not be taxable, unless the recipient has any commercial or industrial establishment or office in India. Further even if the recipient has an office or establishment in India, the same shall be exempt from Service Tax if the three conditions mentioned in proviso to Rule 3(3)(i) of the Export of Service Rules, 2005 are satisfied.

This example brings out a peculiar position, i.e. the same service can have more than one type of customers, and the taxability of each can be different, in the case of a service provider. Other examples of such multiple types of customers are a bank deducting its charges while making/receiving foreign remittances, over and above the amount charged to the person making the remittance, or a manpower recruitment agency which may be charging both the overseas employer and the local candidate for the same recruitment.

Que.12 Does this Tax have

any relevance to determination of taxes under the Double Tax Avoidance Agreements?

Service Tax is an indirect tax while the Double Tax Avoidance Agreements are in respect of direct taxes. In none of the DTAA entered in to by India, the scope of taxes covered includes Service Tax. As such, the DTAA's are not at all applicable for claiming relief from Service Tax.

Conclusion

The above discussion brings out that the law relating to Service Tax on international transactions in India is still in a nascent stage of development. The law does not spell out with clarity what is covered, and what is exempt. Even for exemption for exports of services, the Act, Rules and the notifications leave a lot to be desired in as much as they do not categorically stipulate the documentation to be maintained for claiming the exemption. What sort of evidence will be required to demonstrate that the services were in fact performed or delivered outside India, particularly for IT-enabled services need to be specified with much clarity. Likewise, for import of services, the law is drafted too

Annexure "B"

List of organisation notified as International Organisation

- (i) International Civil Aviation Organisation.
- (ii) World Health Organisation.
- (iii) International Labour Organisation.
- (iv) U. N. International Children's Emergency Fund (UNICEF).
- (v) The Joint Enterprise Aid in Mass Vaccination against T.B. in India.
- (vi) Food and Agriculture Organisation of the United Nations.
- (vii) U. N. Educational, Scientific and Cultural Organisation (UNESCO).
- (viii) International Monetary Fund.
- (ix) International Bank for Reconstruction and Development.
- (x) Universal Postal Union.
- (xi) International Tele-communications Union.
- (xii) World Meteorological Organisation.
- (xiii) U. N. T. A. Board.

inclusively without attempting to draw a line at the borders of the country.

International trade & Commerce would be adversely impacted by such uncertainties, and it is hoped that the powers that be realise this and come out with clearer law on the subject at the earliest. □

Annexure "C"

Category	Name of the services / Service provider	When treated as Export of Services	Deciding factor
I	(1) Insurer carrying on General Insurance Business (2) Architect (3) Interior Decorator (4) Real Estate Agent (5) Construction Service (6) Site formation, clearance, excavation and similar services (7) Dredging (8) Survey and map making (9) Construction of complexes	Services which are rendered in relation to Immovable properties situated outside India	Situs of the subject matter i.e. Immovable property. Effective 16th June, 2005, this exemption is available subject to the satisfaction of the following conditions – (1) Service is delivered outside India (2) Service is used in a business or for any other purpose outside India; and (3) Payment for such services is received in convertible foreign exchange.
II	(1) Stock Broker (2) Courier Agency (3) Custom House Agent (4) Steamer Agent (5) Clearing & Forwarding Agent (6) Air Travel Agent (7) Mandap Keeper (8) Tour Operator (9) Rent-a-cab scheme operator (10) Practising Chartered Accountant (11) Practising Cost Accountant (12) Practising Company Secretary (13) Security Agency (14) Credit Rating Agency (15) Market Research Agency (16) Underwriter (17) Photography Studio (18) Commercial Concern in relation to holding of Convention (19) Video Production Agency (20) Sound Recording Studio (21) Port (22) Authorised Service Station for service or repair of motor cars or two wheeled motor vehicles (23) Beauty Parlour (24) Cargo Handling Agency (25) Dry Cleaner (26) Event Manager (27) Fashion Designer (28) Health Club and Fitness Centre (29) Storage and Warehouse Keeper (30) Commercial Training and Coaching Centre (31) Commissioning and Installation Agency (32) Internet Café (33) Maintenance or Repair (34) Technical Testing and Analysis	Services are performed outside India (whether wholly or in part).	Performance or part performance of the service outside India. Effective 16th June, 2005, this exemption is available subject to the satisfaction of the following conditions – (1) Service is delivered outside India (2) Service is used in a business or for any other purpose outside India; and; (3) Payment for such services is received in convertible foreign exchange.



<p>Agency (35) Technical Inspection and Certification Agency (36) Authorised Service Station for service or repair of light motor vehicles (37) Other Port Services (38) Airport Authority (39) Aircraft Operator (40) Exhibitor (41) Goods Transport Agency (42) Opinion Poll Agency (43) Outdoor Caterer (44) Survey & Exploration of mineral (45) Pandal or Shamiana Contractor (46) Travel Agent (47) Member of Recognised Association or a registered association in relation to forward contract (48) Cleaning activity (49) Provisions of services etc., by a club (50) Packaging services</p>		
<p>III (1) Telephone Service (2) Pager Service (3) Advertising Agency (4) Consulting Engineer (5) Manpower Recruitment Agency (6) Management Consultant (7) Scientific or technical consultancy (8) Leased circuit service (9) Telegraph service (10) Telex Service (11) Fax Service (12) On-line information and database access or retrieval (13) Broadcasting Service (14) Insurance Auxiliary Services relating General Insurance (15) Banking and other financial Services (16) Cable Services (17) Life Insurance Services (18) Insurance Auxiliary Services concerning life Insurance (19) Rail Travel agent (20) Business Auxiliary Service (21) Franchise (22) Foreign Exchange Broker (23) Intellectual property service (24) Programme producing service (25) Transport of Goods other than water through pipeline (26) Mailing List compilation (27) Survey and map making in relation to movable property</p>	<p>(a) (i) if services provided are used in or in relation to commerce or industry, then the recipient of such services is located outside India and does not have any commercial or industrial establishment or any office related thereto in India (a) (ii) if the recipient has any commercial or industrial establishment or any office related thereto in India, then order of such service is made from outside India, such service is delivered outside India and used in the business outside India and payment for such service is received in Convertible foreign exchange, (b) In case the services provided are not used in or in relation to commerce or industry, then recipient of such services is located outside India when the services are received.</p>	<p>Location of the recipient Location of the recipient Delivery of the service outside India</p>