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|  | **A.Y.2011-12** |
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| **[SERVICE TAX – NEW TAXABLE SERVICES]** |
| HERE THE DETAILED REPORT ATTACHED IN REGARDING NEW TAXABLE SERVICES. |

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**SERVICE TAX**

**Announcement by ICAI on 18.11.2010**

Applicability of services for May and November 2011 examinations:-

Detailed Analysis only in respect of the following taxable services:

1. Legal consultancy services
2. Commercial training or coaching services
3. Information technology software services
4. Cargo handling services
5. Custom housing agent’s services
6. Practicing Chartered Accountant’s services
7. Consulting engineer’s services
8. Manpower recruitment or supply agency’s services.

**Only for STUDY**

Section 65(105) Taxable service: - means any service provided *or to be provided to any person for cash or deferred payment or any other valuable consideration, by a ………….*

* “**Practicing chartered accountant**”– **[section 65(105)(s)]**

Who is member of the ICAI and

* + is holding a certificate of practice granted under the provisions of the Chartered Accountants Act, 1949 (38 of 1949)
	+ and includes any concern engaged in rendering services in the field of CA.
* But NN 25/2006 dated 13-7-06 restored the exemption only in respect of services
* as a representative of client
* in respect of proceedings under any law
* for representation with any statutory authority
* ***in pursuance of any notice***.

Hence services provided by CA in respect of

1. Preparing and filing of returns (Income tax, service tax, VAT etc.)
2. Providing opinions on any matter including taxation, preparation of project report
3. Providing consultancy on any issue including taxation
4. Conducting audit, certification, verification etc.

shall remain taxable.

Note:- All persons whose names are entered in the register maintained under the provisions of the ICAI Act shall be known as members of the institute.

* **“Legal consultancy service” [section 65(105)(zzzzm)]**

 Legal consultancy service is the service provided or to be provided

* **to** a business entity;
* **by** any business entity.

It includes services in the nature of:-

* Advice
* Consultancy or
* Assistance in any manner in any branch of law.

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| 1. For the purpose of this service, **business entity does not include Individuals**.

 Therefore Services provided by:- (a) an individual advocate to any person or  (b) a corporate legal firm to an individual  will not be taxable.1. Service of appearance before any Court, Tribunal, or any Authority is exempt for all.
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|  | **Provider** | **Receiver** | **Taxable** |
| 1. | Individual | Individual | NO |
| 2. | Individual | Company | NO |
| 3. | Company | Individual | NO |
| 4. | Company | Company | YES |

*Illust.* *(a)* X & co. a Lawyer firm who is liable to pay service tax has submitted particulars as given below:-

1. *Rendered service in may 2010 and issued bill for Rs. 1,20,000 incl. of service tax. (out of which Rs. 75,000 was received by cheque on 10th August 2010 and balance on 3rd March 2011.)*
2. *Rendered service in the month of June 2010 in connection with scrutiny assessment and a bill of Rs. 75,000 was issued.*
3. *Rendered free service in July 2010 (market value Rs. 20,000)*
4. *Represented one client in the court of commissioner (Appeals) in sep 2010 and a bill of Rs. 1,00,000 was issued and payment was received on 3rd Oct 2010.*
5. *Rendered service to different clients in the month of Jan 2011 and bills of Rs. 7,00,000 as issued incl. of service tax but only Rs. 5,00,000 was received in the same month in full and final settlement.*
6. *Received Rs. 70,000 in advance in March 2011 for services to be rendered in April 2011.*

*Compute amount of service tax payable for each quarter and also the last date upto which tax should be paid for the financial year 2010-2011.*

* “**Consulting engineer**” **[section 65(105)(g)]**

* + Who is professionally qualified
	+ Includes any firm, body corporate
	+ advice, consultancy or technical assistance
	+ in one or more disciplines of engineering
	+ including hardware and *software* engineering

Cess paid on transfer of technology under Research and Development Cess Act shall be excluded from the gross amount charged.

Engineer should be engaged in a profession of engineer holding any diploma or degree. Engineers employed under a company, firm are not covered.

* **“Manpower recruitment or supply agency” [section 65(105)(k)]**
* any person
* for recruitment of manpower
* or supply of manpower, temporarily or otherwise
* and includes pre-recruitment screening, verifying the credentials of the candidate, authenticity of documents of documents submitted by the candidate and verification of antecedents.

Includes services connected with campus interviews by IIT’s, IIMs etc. (as manpower is being provided).

**Case Study:-** Assessee entered into a contract with a company to provide labourers as per co’s requirement for housekeeping work, for loading, unloading purpose etc. Payment to be made by the company was related to the no. of labourers supplied during a specified period and not related to quantum of work carried out.

Thus held that above contract was nothing but supply of manpower and covered under ‘Manpower Recruitment or supply agency’s service’.

* **“Custom house agent”** – **[section 65(105)(h)]**
* person licensed, temporarily or otherwise, under the Customs Act
* providing service in relation to
* entry or departure of conveyances or
* import or export of goods.

Services provided by CHA are –

* Examination of cargo
* Obtaining relevant documents such as invoices, packing list, bill of lading etc.
* Preparing bill of entries etc
* Pursuing with custom house for appraisement of bill of entry.
* Making payment of duty on behalf of the client, Arranging for removal of cargo.
* **“Cargo Handling service” [section 65(105)(zr)]**

 Means

* packing
* loading,
* unloading,
* or unpacking

 and includes

1. cargo handling services provided in special containers or without containers and
2. service of packing together with transportation of cargo, with or without other services like loading, unloading, unpacking.

does not include handling of

* export cargo or
* passenger baggage or
* mere transportation of goods.
1. **"Commercial training or coaching*”***
* institute providing commercial training or coaching
* imparting skill or knowledge or lessons
* on any subject or field
* [With or without profit motive inserted by FA 2010 w.r.e.f. 1-7-2003]

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| Other than * sports,
* preschool,
* issuing certificate under any law,
* Certain recognized institutes have delegated some part of training to other coaching centers. If the training is essential part of courses of such certificate, such training will be exempt,
* Vocational training i.e. imparting skill to enable the trainee to seek employment or undertake self employment after such training.

[it means industrial training institute (ITI) or an industrial training centre affiliated to the national council of vocational training offering courses in designated trades inserted by FA 2010]and * Recreational training relating to activities such as dance, singing or hobbies.
* Individuals providing services at the premises of the receiver are not taxable.
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**Q.** Explain the term “Vocational Training Institute” under the provisions of Service Tax.

**Ans.***Vocational Training Institute*is an institutewhich gives skills to help the trainee to get job or start his own business after such training.

But now exemption is not granted to all types of institutes. Exemption is granted only to industrial training institute (ITI) or an industrial training centre affiliated to the national council of vocational training offering courses in notified trades.

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|  | Type of coaching  | Taxable/Not Taxable |
| 1. | Imparting Training in field of sports |  |
| 2. | Coaching/ Tutorial Classes |  |
| 3. | Running crèche/play homes |  |
| 4. | Institutes conferring recognized certificates |  |
| 5. | Coaching provided at service receiver premises (student)By individualBy individual sent by coaching or training centre |  |
| 6. | Free summer training/ in – house training provided By employer By employer by hiring an outside training centre  |  |
| 7. | Coaching in respect of Computer training |  |

**Q.** Whether donations and grants-in-aid received from different sources by a charitable Foundation imparting free livelihood training to the poor and marginalized youth, will be treated as ‘consideration' received for such training and subjected to service tax under ‘commercial training or coaching service'.

**Ans. *Circular No. 127/9/2010-ST, dated 16-8-2010***

Donation or grant is not specifically meant for a person receiving such training or to the specific activity, but is in general meant for the charitable cause.

In such a situation, service tax is not leviable, since the donation or grant is not linked to specific trainee or training.

* **Information Technology Software Service’[section 65(105)(zzzze)]**

Means any service provided:

* + In relation to information technology software
	+ [Whether or not used in the business or commerce inserted by FA 2010]

 It includes-

* Development of software.
* Upgradation, implementation and other similar services in relation to IT software.
* Providing advice and assistance on the matters relating to IT software.

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| Does not include services provided * + to government or
	+ to charitable institutions or
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Service tax has been levied on **eight new** services.These are:-

* 1. Services of **games of chance**
	2. **Health services** by hospital, nursing home or multi- specialty clinic
	3. Maintenance of **medical records** services
	4. Promotion of **brand** services
	5. Services provided by **builder** to prospective buyer
	6. Services provided by **Electricity Exchange**
	7. **Copyright** service
	8. **Granting rights**, permitting commercial use or exploitation services

BCCI granting broadcasting right to the sports channel for live broadcasting and highlights telecast will be covered.

* **“Lottery”**

The distributor or selling agent, liable to pay service tax for the taxable service of promotion, marketing or organising lottery, shall have the option to pay tax at the following rates, instead of rate u/s 66:-

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| **S.No.** | **Rate** | **Condition** |
| 1 | Rs. **6,000** on every Rs. 10 lakhs (or part thereof) of aggregate face value of lottery tickets printed by the organizing state for a draw | If lottery scheme is one where guaranteed prize payout is **more** than 80%. |
| 2 | Rs. **9,000** on every Rs. 10 lakhs (or part thereof) of aggregate face value of lottery tickets printed by the organizing state for a draw | If lottery scheme is one where guaranteed prize payout is **less** than 80%. |

Face value : it is the amount mentioned on the lottery ticket.

Aggregate Face Value : face value of lottery x the number of tickets printed

Guaranteed Prize Payout : the agreed aggregate prize money distributed to all the winners

Provided that in case of online lottery, the aggregate face value of lottery tickets **sold** shall be taken.

Provided further that the distributor or agent shall exercise such option within a period of **one month** of beginning of each F/Y and such option shall not be withdrawn during the remaining part of the F/Y.

**[Inserted on 8th October 2010] applicable for May 2011 exams**

***General Scheme of Lotteries (as given in Departmental Circular)***

Lotteries are conducted by various State Governments and are regulated by a Central legislation, i.e. the Lotteries (Regulation) Act, 1998.

The State Governments appoint distributors to advertise, promote and sell lottery tickets. Besides the State Governments organizing lotteries, some other games of chance are also being organized. The services provided for promotion or marketing or organizing such games of chance are now being covered by introducing a separate taxable service to cover the services in connection with games of chance, organized conducted or promoted by the client, in whatever form or by whatever name called (such as lottery, lotto) under the ‘Games of chance’ service. The tax would be applicable also to such games conducted online.

* **“Tour Operator” [section 65(105)(n)]**

Means: - Any Person engaged in the business of planning, scheduling, organizing or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle or a contract carriage by whatever name called, covered by a permit, other than a stage carriage permit, granted under the Motor Vehicle Act, 1988 or the rules made there under.

Includes:

1. Services provided in relation to a journey from one place to another in a tourist vehicle having contract carriage permit is leviable to service tax under tour operator service.
2. Public sector undertakings operating tours like ITDC.

Excludes:

1. Service tax is not payable for tour abroad.
2. “Tour” does not include a journey organized or arranged for use by an educational body, other than a commercial training or coaching center, imparting skill or knowledge or lessons on any subject or field.

Exemptions:

1. 75% abatement of gross amount – for package tour.

Package tour means tour wherein the tour operator arranges for the following also –

Transpotaion

Boarding and Loadging

Tourist Guide and entry for monuments.

1. 60% abatements of gross amount – in case of other than packaged tour.
2. 90% abatements of Gross amount – when operator only provides booking services for accommodation.
3. The services provided by the tour operators undertakings point-to-point transportation of passengers in a vehicle bearing contract carriage permit is being fully exempted from service tax, provided such transportation is not in relation to tourism or conducted tours, or charter or hire.

 **With Regard,**

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