

TAXATION OF SERVICES NEGATIVE OR POSITIVE LIST

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As the nation prepares itself for the Goods and Service Tax, the Government is in the process of fine-tuning different aspects of the proposed GST structure. The Government has already put in place Point of Taxation Rules, 2011 in order to harmonise service tax with goods taxation. Recently, the threshold of disputed amount, below which indirect tax authorities would not opt for legal recourse, has also been raised. It has also proposed replacement of the famous DEPB scheme with duty drawback scheme. Now, the next in line is the introduction of negative list for service tax purposes.

Among the fast growing developing countries, India holds a distinct place due to its services sector. The share of services towards GDP of the country has risen at an accelerating pace. This growth of services is not concentrated in any particular sector; rather it is growing in almost all the sectors of the economy today. Despite this potential of services sector in the economy, the revenue collection from the sector still remains less than satisfactory.

The present system, of maintaining a list of services which are taxable under the Finance Act, 1994, has come under the scanner for several reasons. Every year, this list is expanded by amendments through the Finance Acts and at present, there are 119 services which are amenable to service tax liability. The result is lack of clarity regarding the coverage and classification of a given service within the enlisted categories of taxable services. The fact that many services are outside the tax net under the positive list invariably leads to unintended exemptions. This problem has also been compounded with certain recently introduced categories of services which already exist within the definition of taxable services. This not only leads to a useless increase in administrative costs but also increases compliance cost for assesses and results in avoidable litigation. Therefore, there was an urgent need to adopt a new approach to determine taxable services at a time when the service tax is going to be subsumed into a comprehensive GST.

In this backdrop, introduction of negative list of services, which would be exempt from taxation, can be a significant step towards reduction of vagueness in law and greater transparency. The much awaited concept of negative list of services has now been put forth for public discussion by the Finance Ministry on August 29, 2011. The Ministry has released a concept paper on *'taxation of services based on a negative list of services'* for public comments. This move will constitute a major step forward towards GST. However, the Government has made its intentions very clear that if there is any delay in implementation of GST, this regime of negative list may be launched in this budget itself. It justifies the introduction of negative list by stating that:

"The service tax in India has matured and the sector now contributes more than half to country's GDP. So barring a few essential services, there is no reason why all services should not be taxed. Many experts have argued that it will be desirable to tax services based on a small negative list, so that many untapped sectors are brought into the tax net. Such an approach will be very conducive for a nationwide GST."

Majority of the world's economies have adopted the model of negative list of services in their statutes. This model refers to listing down of services which will be exempt from service tax. Primarily, the negative list implies two things, i.e., a list of services on which service tax will not be levied, and that service tax will be levied on all other services. The 'negative list' approach, followed globally, allows for exemption of some essential services from tax while the rest are taxed as opposed to 'positive list' approach that lists taxable services. This approach has already been outlined in the draft discussion paper on GST, put out by the Empowered Committee of State Finance Ministers.

The Concept Paper on negative list has proposed to initiate a public debate on issues like advantages and disadvantages of negative list vis-a-vis current system of positive list, the international experience of taxation based on negative list, possible list of services to be included within the negative list, definition of the term 'service', the revenue implications, etc. Services like railway travel, capitation fees or donations in educational institutes and non-compete services are among the many new services that may come under the purview of taxation if this negative list is put in practice.

The concept paper whilst maintaining the traditional notion of services, that it includes everything except supply of goods, money or immovable property, has further defined the term 'service' in a comprehensive manner. The inclusive portion of this definition identifies certain services which would be specifically included within the definition of service such as right to use an immovable property, temporary transfer or permitting the use or enjoyment of any intellectual property right, in order to provide greater clarity to the new approach of taxation of services. It is worth noting that all these specific services are those on which there are abundant cases pending before the Courts under the present regime of positive list of taxable services.

While formulating the negative list of services, the Government has taken into consideration notions such as administrative considerations, contractual obligations under international bodies and diplomatic missions, welfare considerations and explicit activities in the nature of services which are within the taxing powers of states. The negative list includes services such as notified services provided by the Government, Judiciary, RBI and certain governmental bodies; services provided by individuals to Government; services by UN, international bodies, diplomatic missions; social welfare and public utility services; agricultural and animal husbandry services; certain financial sector services; public transport services; certain educational and health services, certain construction services.

Successful GST models adopted by countries world over have opted for a broad base of taxable services with moderate rates of taxes. On the other hand, having a negative list in India, where the spectrum of social services has no limitations, would have its own limitations and whether it is prudent to have such a system is still an open issue. From a consumer's perspective, this approach does not hold good as the broad base of services would increase the costs and end price of products and services and would also inflict additional compliance burden on practically every entity in a State where a large part of services exists within an unorganized system. It should be ensured that the proposed approach does not result in any uncalled-for disruption in credit system thereby defeating the very purpose of introducing GST. Nonetheless, notwithstanding the drawbacks of negative list, continuing with the present system of positive list of taxable services in the GST regime will only retain the paradox of the present system. A well thought out and small

negative list of services with a proper definition of services would create a uniform and comprehensive base for GST. However, introducing this in the present service tax regime without a comprehensive taxation of goods and services and with an imperfect credit system would be premature.