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TAXATION OF SERVICES BASED ON A NEGATIVE LIST OF SERVICES

1.0 Background:

In the Parliament, while presenting the Union Budget 2011, the Finance Minister proposed that:

“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. I propose to initiate an informed public debate on the subject to help us finalize the approach to GST.”

The Central Board of Excise and Customs (**hereinafter referred as “CBEC”**) has suggested a switch from the present system of selecting services to tax, through a negative list in view of the impending Goods and Services Tax (**hereinafter referred as “GST”**) regime.

2.0 Present basis of service tax:

The Finance Act, 1994 (**hereinafter referred as “the Act”**) provides for the method of levy of service tax, the circumstances in which the levy would arise, the procedures to be followed, and allied subjects like registration, self-assessment, penalty, etc. The Act lays down that service tax is leviable on services in respect of which charge of tax has been created under the Act, at the prescribed rates.

The present method of taxation is through a positive list of services having only a limited number of services which have detailed description of each taxable service and all other unspecified services are not liable to tax.

3.0 Concept of negative list of services:

The Finance Minister, in Budget 2011, has indicated a shift in the taxation of services from taxation based on a ‘positive list’ to taxation based on a ‘negative list’ to help widen the service-tax base, reduce ambiguity and facilitate better and convenient administration and collection of service tax. In view of the same, the Government released a concept paper on ‘Taxation of Services based on Negative List’ on August 31, 2011 and thereafter a revised edition of the Concept Paper was released on November 18, 2011 which was based on interim inputs received from stakeholders.

The proposed concept would allow the Government to levy service tax on all the services except those that are specifically exempted and notified under the negative list on which service tax would not be applicable. The concept paper has proposed to levy service tax on all transactions except those that constitute supply of goods, money or immovable property. The levy of service tax is also proposed to be extended to cover certain specified transactions involving renting or construction of immovable property, use of Intellectual Property Rights (IPR), and leasing of goods which may otherwise also be covered under other indirect tax statutes such as the Value Added Tax (VAT) legislation.

However, the revised concept paper provides more clarity on the scope of services, the activities that would be charged to service tax and a revised list of negative (exempt) services, which now includes only 22 service categories as against 27 service categories in the original list which is definitely a move in the right direction. Accordingly, the revised list of exempt services now includes, amongst others, specified transactions of the financial sector, construction services for specified infrastructure projects, specified health services and education services, renting of residential dwellings with rent up to Rs 1 lakh, rail transport for non-AC IInd Class travel and specified public transport which would be exempt from service tax in the interest of the larger public benefit. The revised concept paper has also deleted the activities of service provided directly in relation to agriculture, horticulture and animal husbandry, service of transportation of goods outside India and services by religious parties and political parties from the earlier negative list of services; and has modified or contracted the scope of certain other services in the negative list, thereby making them liable to service tax.

4.0 Negative vs Positive list of Services:

The pros and cons of the two list of services should also be examined and can be argued both ways with each having its own distinctive advantages and disadvantages. Positive list has the advantage of definitiveness, which is an essential pre-requisite for a good taxation law. However this very advantage starts getting eroded as the number of services increase. The possibilities of overlaps amongst definitions lead to innumerable administrative issues resulting in litigation and higher compliance costs. On the other hand, the positive list has already attained a certain level of awareness and stability in the administration and the people are well aware of its basis and procedures followed for the same.

Now, the fact that that many services are outside the tax net invariably leads to unintended exemptions, thus keeping the tax base narrow with all the accompanying consequences. Such unintended exemptions at intermediate stages lead to breakage of the input tax chain adding costs for the tax-payers and end-users, thereby constituting the introduction of the negative services beneficial and advantageous.

5.0 Conclusion:

The objective of proposed concept seems to tax only those economic activities that are undertaken for a consideration and with the intent of either direct or indirect commercial advantage. The Ministry needs to be diligent and watchful that the changes in the existing rules are drafted in a crisp and easily implementable manner so that the number of litigations can be reduced. Taxing services through a negative list is a sound policy decision and its

introduction is inevitable. With the move towards taxation of services based on a negative list, the industry hopes for a strong credit mechanism with little exclusion, so that cascading is kept to a minimum.

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