

# Corporate Lexport

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## SERVICE TAX APPLICABILITY ON LAWYERS, LAW FIRMS AND LEGAL CONSULTANCY SERVICES

### **A. Pre-budget definition of Legal Consultancy Services –Applicable upto 30<sup>th</sup> June 2012**

- 1.1 The earlier Section 65 sub-clause (zzzzm) as amended by the Finance Act, 2011 defined taxable legal consultancy service as follows:

*"Section 65 (105) (zzzzm)- taxable service means any service provided or to be provided-*

- (i) to any person, by a business entity in relation to advice, consultancy or assistance in any branch of law*
- (ii) to any business entity, by any person in relation to representational services before any court, tribunal or authority.*
- (iii) to any business entity, by an arbitral tribunal, in respect of arbitration.*

***Explanation:** For the purposes of this item, the expressions "arbitration" and "arbitral tribunal" shall have the meanings respectively assigned to them in the Arbitration and Conciliation Act, 1996."*

- 1.2 The essential ingredients of the definition of taxable service as it stood are as follows:

- (i) The services provided or to be provided to a business entity by any other business entity.
- (ii) The services provided or to be provided to a business entity by Individual in relation to appearance before any court, Tribunal or any authority.
- (iii) The services provided or to be provided to a Individual by a business entity in relation to advice, consultancy or assistance in any branch of law.

*Services provided by individuals to other individual will remain outside the levy."*

- 1.3 It is clear from the above, that the services provided purely by an individual to an individual will remain excluded from the purview of legal consultancy

service. Statement showing service tax applicability on transactions between persons is shown below:

**Table -1**

**Advice, consultancy or assistance in any branch of law**

<b>Taxable Legal Consultancy Service provided by</b>	<b>Taxable Consultancy provided to</b>	<b>Legal Service</b>	<b>Service tax applicability</b>
Business Entity	Business Entity		Yes
Individual	Business Entity		No
Business Entity	Individual		Yes
Individual	Individual		No

**Table-2**

**Representational services before any court, tribunal or authority**

<b>Taxable Legal Consultancy Service provided by</b>	<b>Taxable Consultancy provided to</b>	<b>Legal Service</b>	<b>Service tax applicability</b>
Business Entity	Business Entity		Yes
Individual	Business Entity		Yes
Business Entity	Individual		No
Individual	Individual		No

1.4 Interpretation of the term “Business Entity” :

‘Business Entity’ is defined under Section 65 sub-clause (19b) of the Finance Act, 1994 (as amended). The Finance Act 2010 has inserted the definition, which expressly excludes individual from the ambit of business entity.

*“(19b) “business entity” includes an association of persons, body of individuals, company or firm, but does not include an individual.”*

**B. Post-budget Changes**  
**- Applicable w.e.f. 1<sup>st</sup> July 2012**

- 2.1 As per Finance Act, 2012, the definition of Taxable Services under section 65B (51) is:

*“Any services on which service tax is leviable under section 66B”.*

Section 66B is inserted as a charging section under Finance Act, 2012. As per section 66B, Service Tax will be levied on all services excluding the services mentioned in the negative list given under section 66B or covered under the exempted services as notified by the Department.

- 2.2 Further, the exemption Notification No. 25/2012 dated 20<sup>th</sup> June 2012 provides for exemption in relation to the legal services as under:-

*Services provided by-*

*(a) an arbitral tribunal to -*

*(i) any person other than a business entity; or*

*(ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;*

*(b) an individual as an advocate or a partnership firm of advocates by way of legal services to,-*

*(i) an advocate or partnership firm of advocates providing legal services ;*

*(ii) any person other than a business entity; or*

*(iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year; or*

*(c) a person represented on an arbitral tribunal to an arbitral tribunal;*

The term “Legal Services” as defined in the said Notification as follows:

*“Legal Services” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal authority.*

- 2.3 Interpretation of the term Business Entity :

*‘Business Entity’ is defined under section 65B (17) of the Finance Act, 2012 means any person ordinarily carrying out any activity relating to industry, commerce or any other business.*

- 2.4 It is clear from the above, that the services provided by the Individual Advocates or the Partnership firm of Advocates to an Advocates, partnership firm of Advocates, any person other than business entity or business entity with turnover upto Rs. 10 lakh in preceding financial year are exempt from levy of Service Tax. A Statement showing Service Tax applicability on legal services is shown below:

Taxable Legal Service provided by	Taxable Legal Service provided to	Service tax applicability
Individual Advocates / Partnership firms of Advocates	Advocates/ Partnership firms of Advocates	No
Individual Advocates / Partnership firms of Advocates	Any person other than Business Entity	No
Individual Advocates / Partnership firms of Advocates	Business Entity	Yes <sup>1</sup>

- 2.5 Further, the Notification No. 30/2012-ST dated 20<sup>th</sup> June, 2012 provides that the recipient of legal service from Advocates or firm of Advocates, would be liable to pay Service Tax. The relevant portion of above Notification is extracted as under:

S.No.	Description of service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving service
1.	In respect of services provided or agreed to be provided by arbitral tribunal	NIL	100%
2.	In respect of services provided or agreed to be provided by individual advocate or a firms of advocates by way of legal services	NIL	100%

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<sup>1</sup> The service tax will be applicable, only if the turnover of such entity is more than Rs 10 Lakh in the preceding financial year.