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The Proposed Negative List - A Positive Move?

India at present only taxes certain services that are specifically included in the Finance Act, 1994 as amended from time to time. The government is now considering a proposal where all services will be taxable and only certain specific ones exempted. In this regard, the Indian Ministry of Finance on 31 August 2011 introduced a concept paper on “*Taxation of Services Based on Negative List*”. The concept paper received an overwhelming support and various suggestions for the proposed taxation of all services other than those specifically exempted. On 18 November 2011, the Ministry of Finance, introduced a “*Revised Concept Paper on Taxation of Services Based on Negative List*” to consider all the relevant issues that may arise if the negative list is to be introduced.

The revised consent paper proposes the exemption of 8 broad categories of services with 22 sub-categories of services that form part of the negative list (illustrated below).

Definition of “service” & “taxable person”

The definition of “service” has been retained in the revised concept paper to “mean anything which does not constitute supply of goods, money or immovable property.”

The revised concept paper has proposed the definition of “taxable person” to mean “any person who independently carries out any economic activity, whether or not for a pecuniary profit.” Accordingly, taxable person (amongst others) will not include employees in general as they do not carry out economic activities independently but only on behalf of the organization they work for.

Further, economic activities are those which are carried out for consideration whether or not it is adequate, or results in any profit. The taxable activities will thus exclude transactions carried out free of charge, without any direct or indirect commercial advantage, or as a recreation or hobby.



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The proposed negative list

At present, there are a total of 22 items in the proposed negative list. These include:

- Services provided by the Government;
- Social welfare and public utility services provided by organizations registered as non-profit entities under the Income Tax Act, 1961 (DTC 2012);
- Financial sector services such as sale, purchase of securities, debts, mutual funds; interest or discount on cheques, promissory notes, bills of exchange or debt instrument; dividend on investments, and sale and purchase of foreign currency amongst banks;
- Low end transport services like non-AC second class passenger travel by railway and any class by metro or mono-rail, public transport buses on point to point basis, metered cabs etc.;
- Construction and real estate services which relate to (i) specified infrastructure for larger public good, (ii) residential building comprising a single dwelling unit, (iii) renting of personal dwelling “in excess of INR 100,000” per month per dwelling;

ALMT Note: *There seems to be an inadvertent error in the revised concept paper which proposes a tax renting of a property which is below INR 100,000 per month. However, in the earlier concept paper introduced by the finance ministry on 31 August 2011 it was discussed that “due to wide pergence in income levels in India a case is made for bringing opulent living within the tax net.” Accordingly, the earlier negative list proposed an exemption to renting of residential premise falling below a threshold limit. It appears that the intention of the Government is to tax the renting of a residential premise which is above (and not below) INR 100,000.*

- Education services;
- Health services;
- Other services like copyright services of original literary, dramatic, musical and artistic works, services provided by independent journalists and government news agencies (PTI & UNI), representational services provided by an advocate to individuals, advertisements other than advertisements published in newspapers or broadcast by radio or TV or displayed in other electronic media, etc.



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Conclusion

We believe that the negative list when introduced, will not only broaden the services tax base, but also reduce the ambiguity relating to the interpretation and classification of services. It will also reduce breakages in the input tax credit chain.

With respect to the timing for the launch of the negative list, the opinions are divided. If introduced at the time of the Goods and Service Tax (“GST”), it will have a wider Constitutional mandate. On the other hand, if introduced earlier, it would give useful experience for the implementation of GST and minimize the impact of the changes to be introduced with the GST regime.

The revised concept paper is open for comments till 15 December 2011.

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