

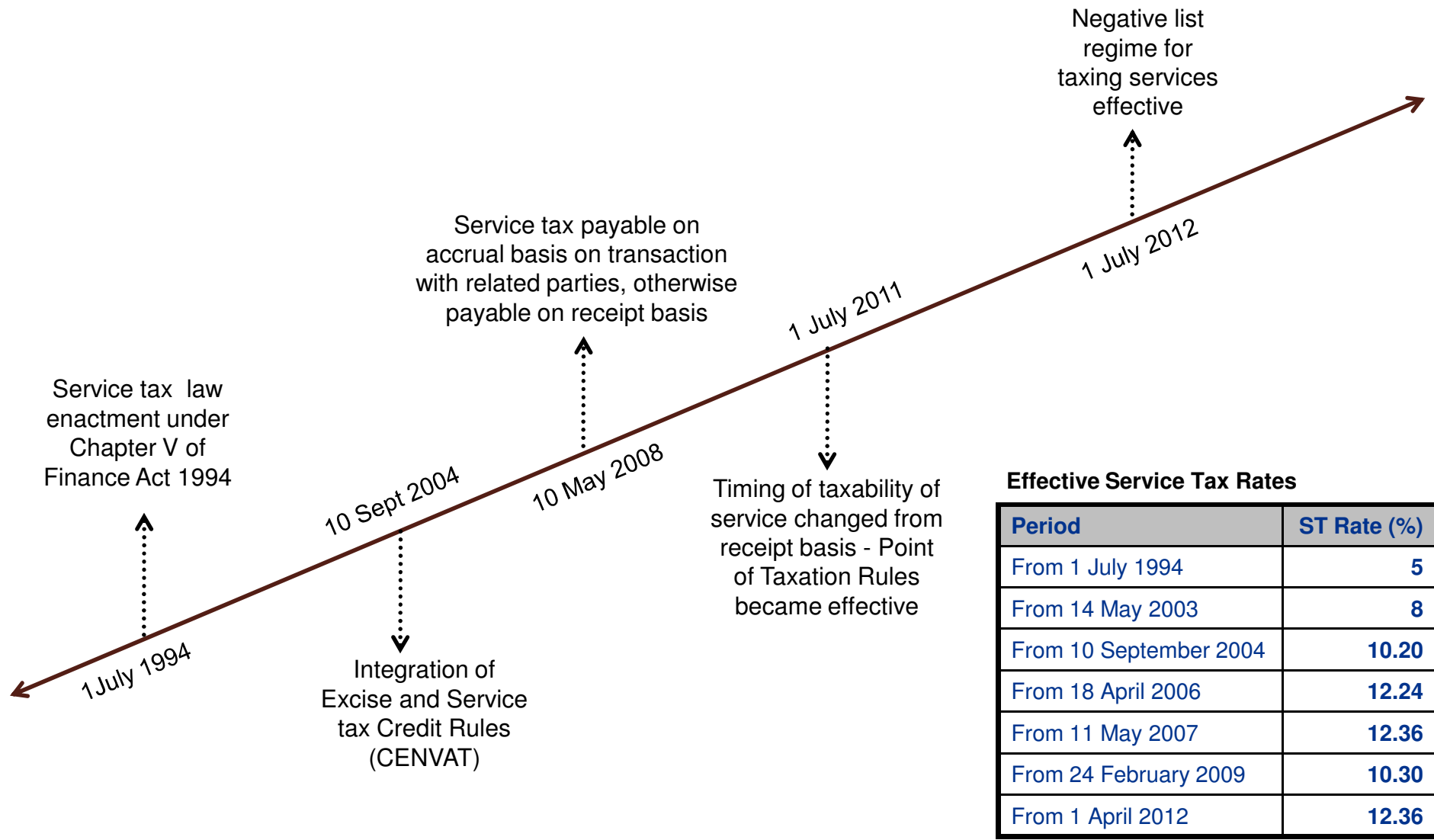
# SERVICE TAX- Negative List & Mega Exemption

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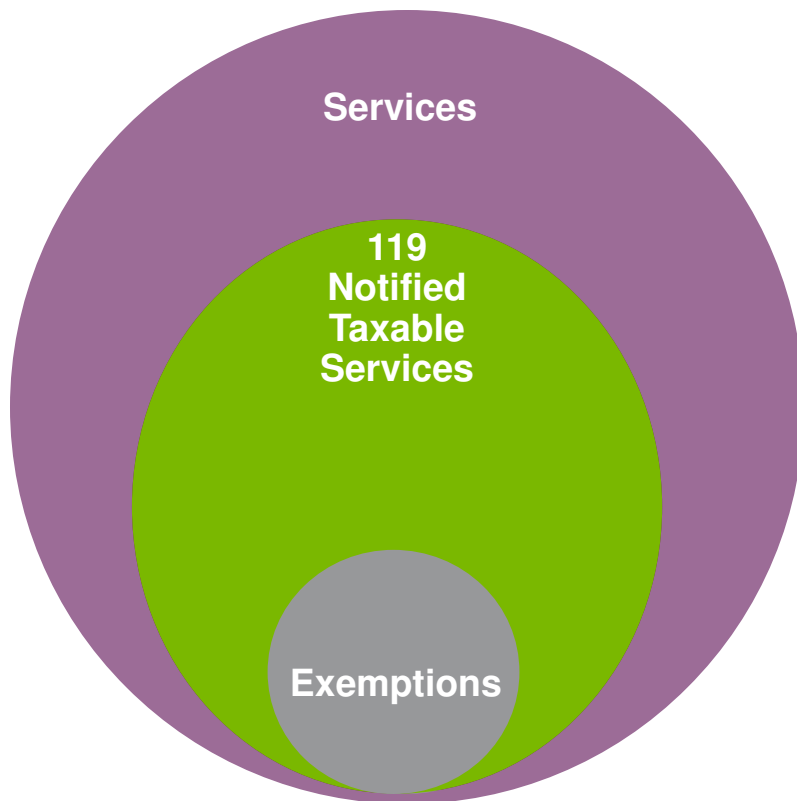
**Service Tax**

# Service tax trend till date

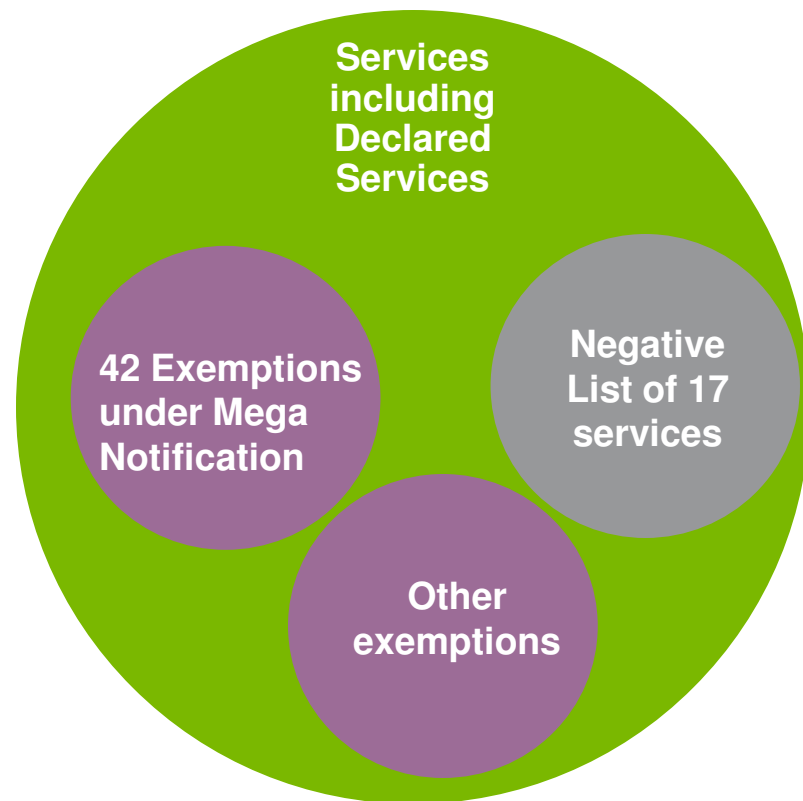



# Service Tax - Change in sphere of taxation

## Positive list regime



## Negative list regime



 Taxable

## NEW LEVY

- **Section 66B:**

***There shall be levied a tax at the rate of twelve per cent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.***

## IMPORTANT ELEMENTS

- **Tax**
- **levied on all services,**
- **Except those specified in negative list,**
- **Provided or agreed to be provided,**
- **In the taxable territory, and**
- **By a person to another**

## PHRASE – AGREED TO BE PROVIDED

- **Guidance Note:**

- **Services taxable on agreement even before actual provisioning**
- **Advances retained on cancellation of contract taxable**

## SERVICE-DEFINED

- **Section 65B(44) defines 'Service' as:**
- **any activity carried out by a person for another for consideration**
  - **And includes Declared Services**
  - **Not to include:**
- **Mere Transfer of title in:**
  - **Goods or Immovable property**
    - By way of sale/gift or in any other manner**
- **"such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution."**

## **SERVICE-DEFINED**

- **Mere transaction in Money or Actionable claim**
- **Services in the course of employment provided by an employee to employer**
- **Fees payable in a court/ tribunal**





■ **Explanation 2:**

- **Unincorporated association or a body of persons and a member thereof, to be treated as distinct persons**
- **Establishment of a person in a taxable territory and a non-taxable territory to be treated as distinct persons**
  - **Explanation 3:**
- **A person carrying business through a branch or agency in any territory shall be treated as having an establishment in that territory.**

# ACTIVITY

- **Not defined in the Act**
  - Guidance Note:
    - **Meaning as understood in common parlance should be given**
    - **Activity could be active or passive so to include act of forbearance etc**

# CONSIDERATION

- **Not defined in the Act**
- **Guidance Note:**
  - **Definition of consideration from Indian Contract Act, 1872 could be borrowed**
  - **Anything which the receiver does or abstain from doing for receiving the service**
  - **Would include both monetary as well as non-monetary**
  - **Section 67 to determine value of non-monetary consideration**

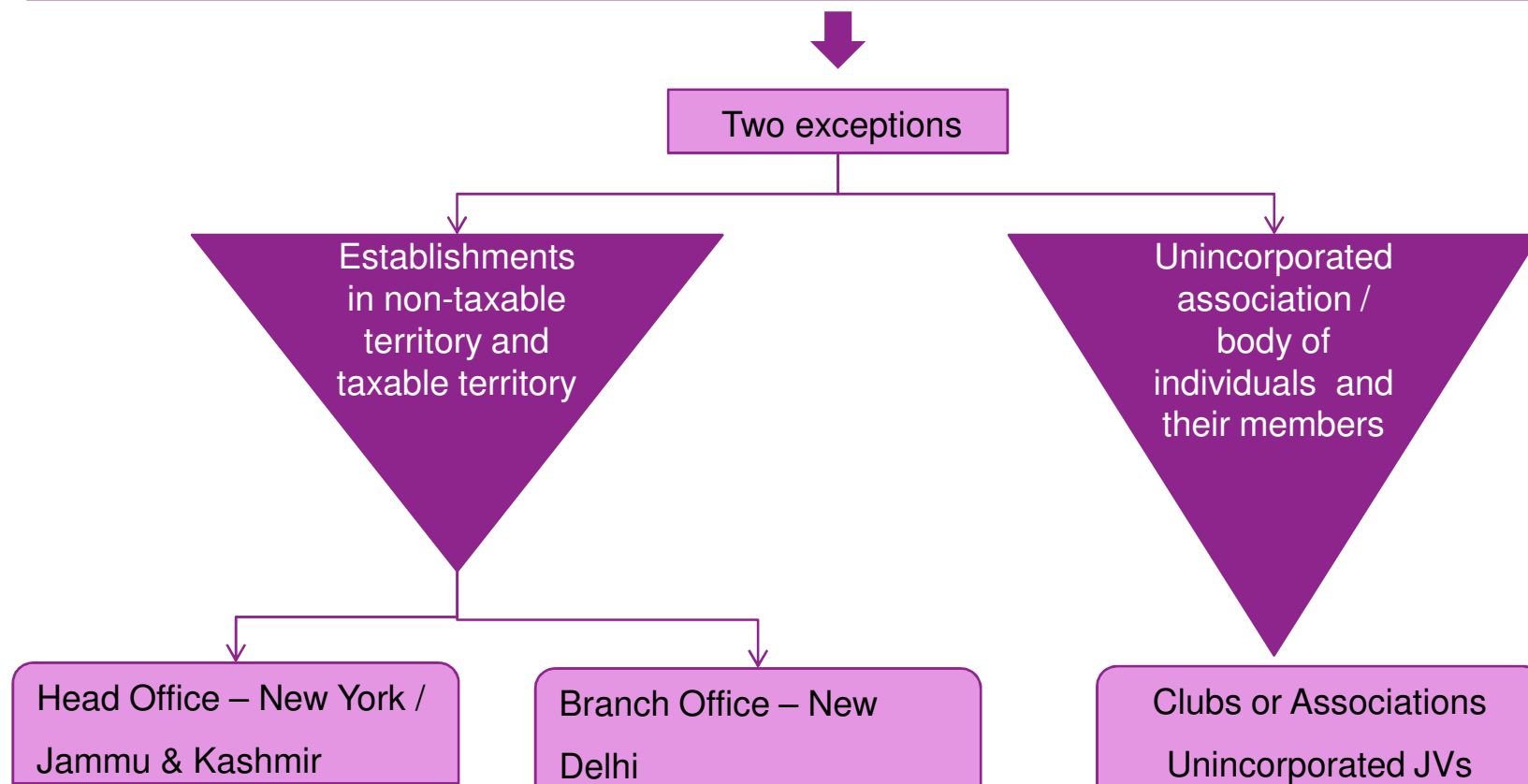
## WHETHER CONSIDERATION?



- Advance forfeited for cancellation of agreement to provide service?
- Excess payment made by mistake?
- Security deposit forfeited for damages/faulty action of receiver?

# Carried out by a 'person'

There should be two distinct persons – Service receiver and service provider

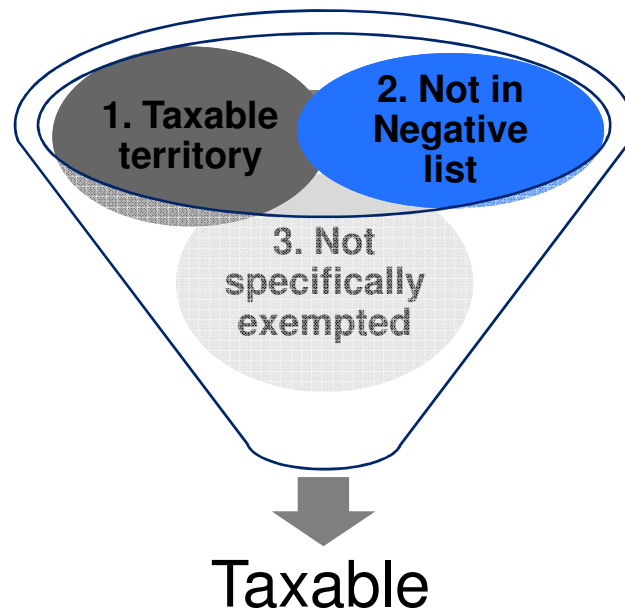


# Negative list regime – Concept

‘Service’ defined to mean any ‘**activity**’ carried out by a ‘**person**’ for ‘**consideration**’

↓ ↓ ↓ ↓ ↓  
**IMAGE** transactions not covered

- I**: Immovable property
- M**: Money
- A**: Actionable claim
- G**: Goods
- E**: Employee



## Some queries

### Whether Service tax would be applicable on the following:

\* A residential co-operative Housing Society providing services to its members?

\* ABC Ltd. is providing the following to its employees:

- Gymnasium facility free of charge
- Creche at a nominal charge of INR 1000 per month
- Cab facility to commute to and from office at subsidized rate of INR 1800 per month, forming part of CTC

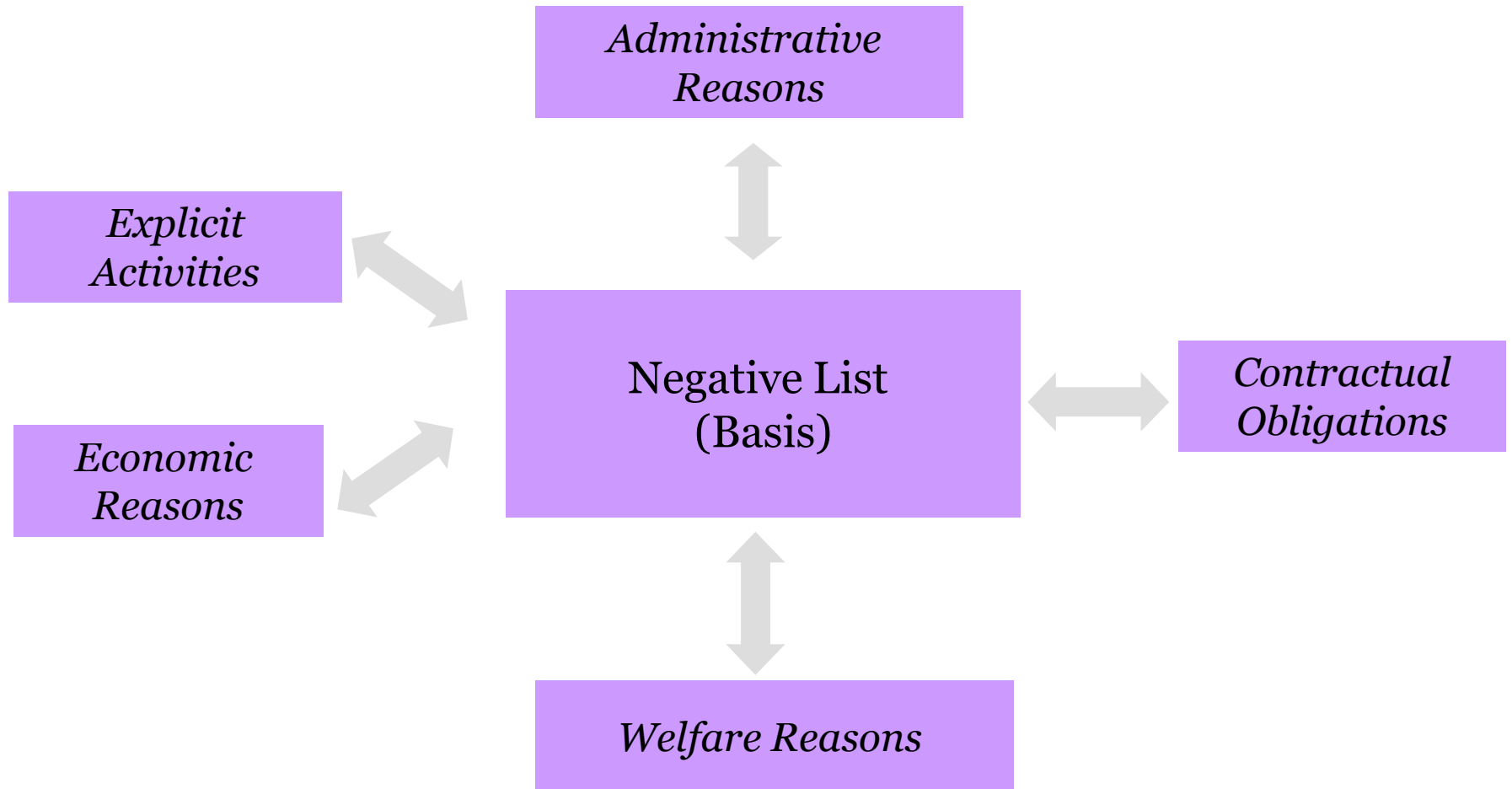
ABC Ltd. reimburses its employees actual cab and food expenses for working late night at office



# Negative List of Services



# BASIS FOR FRAMING THE NEGATIVE LIST



## NEGATIVE LIST : ADMINISTRATIVE REASONS

- Activities in the negative list owing to Administrative Reasons are:
  - *Services by Government or a local authority excluding the following services to the extent they are not covered elsewhere :*
    - *Service by Department of Post by way of speed post, express parcel post life insurance and agency services provided to a person other than Government*
    - *Service in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport,*
    - *Transport of goods or passengers, or*
    - *Support services, other than covered under clauses (i) and (iii) above, provided to an business entity.*
  - *Services by Reserve Bank of India,*
-

## NEGATIVE LIST : CONTRACTUAL OBLIGATIONS

- Activities in the negative list owing to Contractual obligations are :
  - *Services by a foreign diplomatic mission located in India*
-

## NEGATIVE LIST : WELFARE REASONS

- Activities in the negative list owing to Welfare Reasons are :
  
  - **Service by way of:**
    - *Pre-school education and education upto higher secondary education or equivalent,*
    - *Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force,*
    - *Education as a part of approved vocational education course.*
-

## NEGATIVE LIST : WELFARE REASONS

- **Service of transportation of passengers, with or without accompanied belongings, by-**
    - ***a stage carriage;***
    - ***railways in a class other than-***
      - (a) first class; or***
      - (b) an air-conditioned coach;***
      - (c) metro, monorail or tramway;***
      - (d) inland waterways;***
      - (e) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and***
      - (f) metered cabs, or auto rickshaws.***
-

## NEGATIVE LIST : WELFARE REASONS

- **Services of transportation of goods :**
    - ***By road except the service of -***
      - ***A goods transportation agency, or***
      - ***A courier agency.***
    - ***By an aircraft or a vessel from a place outside India up to the custom station of clearance in India, or***
    - ***By an inland waterways***
  
  - **funeral, burial, crematorium or mortuary services including transportation of deceased**
  
  - **Services by way of renting of residential dwellings for use as residence**
-

## NEGATIVE LIST : ECONOMIC REASONS

- **Economic Reasons are :**
  
  - **Transmission or distribution of electricity by an electricity transmission or distribution utility,**
  
  - **Services relating to agricultural or agricultural produce by way of-**
    - *Agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing plant protection or testing;*
    - *Supply of farm labour ;*
-

## NEGATIVE LIST : ECONOMIC REASONS

- *Process carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;*
  - *Renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;*
  - *Loading, unloading, packing, storage or warehousing of agricultural produce;*
  - *Agricultural extension services;*
  - *Services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;*
-



## NEGATIVE LIST : EXPLICIT ACTIVITIES

- **Explicit activities are :**
  - **Trading of goods**
    - Meaning? Why required? Exempt service or not?
  - **Service by way of access to a road or a bridge on payment of toll charges,**
  - **Betting, gambling or lottery,**
  - **Admission to entertainment event or access to amusement facilities**
  - **Selling of space for advertisements in print media**
-

## **NEGATIVE LIST : Amendment by Finance ( no 2) Act, 2014**

### **Amendment in Negative list made by the Finance (no 2) Act, 2014 effective from 1-10-2014**

- ***Selling of space or time slots for advertisements other than advertisements broadcast by radio or television was amended as:***

***- Selling of space for advertisements in print media***

***i.e. Section 66D specifically excludes advertisements broadcast by radio or television from Negative list.***

- ***Word 'Radio Taxis' is omitted by Finance Act, 2014 from Negative list from service of transportation of passengers.***

***i.e. from 1-10-2014 the transportation of passengers by radio taxi will be a taxable service. However, transportation of passengers by metered cab or auto rickshaws will continue to remain non-taxable. As the definition of metered cab as given in Sec 65B(32) has been amended to exclude from its radio taxis.***

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## NEGATIVE LIST : OTHER ITEMS

- Other activities mentioned in the negative list are :
  
  - Service by way of:
    - *Extending deposit, loans or advances in so far as the consideration is represented by way of interest or discount,'*
    - *Inter-se sale or purchase of foreign currency amongst banks or authorized dealer of foreign exchange or amongst banks and such dealers*
-



# **EXEMPTIONS**

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## **EXEMPTIONS : CLASSIFICATION**

- **Services to specified organizations/persons**
  - **Services by specified organizations/persons**
  - **Services related to Welfare activities/Charitable activities**
  - **Services related to infrastructure and public good**
  - **Services related to cultural/religious/vocational activities**
  - **Services having economic reasons**
-

## **EXEMPTIONS : CLASSIFICATION**

- **Services related to Government/Local authority**
  - **Value based exemptions**
  - **Services related to infrastructure/public good**
  - **Other exemptions**
-

# EXEMPTIONS : SERVICES TO GOVT./LOCAL AUTHORITY/GOVERNMENTAL AUTHORITY

- **Erection, construction, commissioning, installation, completion, fitting out, maintenance, repair, alteration or renovation to Government/Local Authority/Governmental Authority of:**
    - **Civil structure and other original works meant pre-dominantly for use other than for commerce, industry, or any other business or profession**
    - **Historical monument, archaeological site etc**
    - **Structure pre-dominantly meant for educational, clinical, art or cultural establishment**
    - **Canal, dam or other irrigation works**
    - **Pipeline, conduit or plant for water supply, water treatment and sewage treatment**
    - **Residential complex for self-use, of employees or other specified persons**
-

## EXEMPTIONS : SERVICES RELATED TO INFRASTRUCTURE

- **Erection, construction, commissioning, installation, completion, fitting out, maintenance, repair, alteration or renovation of:**
    - **Road, bridges, tunnels, road terminals for general public use**
    - **Civil structure or other original works under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana**
    - **Building owned by Charitable Entity and meant for religious use**
    - **Pollution control or effluent treatment plant except when located as a part of factory and structure meant for funeral, burial or cremation of deceased**
-



## EXEMPTIONS : SERVICES TO GOVT./LOCAL AUTHORITY/GOVERNMENTAL AUTHORITY

- **Services received from provider based in non-taxable territory by :**
  - Government, local or governmental authority or individual provided the same is not for business, profession, commerce or industry
  - An entity registered as charitable institution
  - A person located in a non-taxable territory
-

## **EXEMPTIONS : VALUE BASED**

- **Service of renting of hotel, guest house etc having a declared tariff of less than Rs.1,000/-**
  - **Service by a Goods Transport Agency by way of :**
    - **Gross amount charged up to Rs.1500/- for total consignments / Rs 750/- for individual consignments.**
  - **Services by an incubatee up to Rs.50,00,000/- in a financial year subject to fulfillment of specified conditions**
-

## **EXEMPTIONS : VALUE BASED**

- **Services provided by an unincorporated body or a non-profit entity registered under applicable law to its own members by way of reimbursement of charges/share of contribution :**
  - **Up to Rs.5,000/- per month per member for sourcing goods or services from a third person for common use of members in housing society/residential complex**
-

## EXEMPTION TO INTERMEDIARIES

- . Sub Broker of a stock Broker
  - . Distributor to a mutual fund or asset management company
  - . Selling or marketing agent of lottery tickets to a distributor or a selling agent
  - . Selling agent or a distributor of SIM cards or recharge coupon vouchers
  - . Sub Contractor providing services
-

## EXEMPTION: OTHERS

- Temporary transfer or permitting use or enjoyment of Copyright under Section 13(1)(a) or (b) relating to original literary, dramatic, musical, artistic works or cinematograph films
  - *Service in relation to serving of foods or beverages (alcoholic) by a restaurant or eating joint other than those having AC and license to serve liquor*
  - Services of sponsorship of sporting events by specified bodies
  - Transfer of a going concern, as a whole or an independent part thereof.
-

## EXEMPTIONS : OTHERS

- **Carrying out intermediate production process as a job-work in relation to:**
  - Agriculture, printing or textiles processing,
  - Cut and polish diamonds and gem stones or plain and studded jewellery of gold,
  - Any goods on which appropriate duty is payable by the principal manufacturer,
  - Process of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting etc for manufacture of cycle parts or sewing machines upto 150 lakhs in a financial year subject to specified conditions
-

## Some queries

Whether Service tax would be applicable on the following:

Airport Authority of India (AAI) leased the space to X for the purpose of providing parking facility outside the Airport.

- X pays INR 20 lacs per month to AAI
- X receives INR 25 lacs per month from general public for providing the parking facility

## Amendment in Mega Exemption List after Finance (no 2) Act, 2014

### **Services inserted in Sec 66B of Finance Act, 1994**

- ***Services provided by operators of Common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto - Sec 66B(2a)***
  - ***Services by a specified organization in respect of a religious pilgrimage facilitated by the ministry of external affairs of GOI, under bilateral arrangement- Sec 66B(5A)***
  - ***Services of life insurance business provided under JBY or AABY, life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees-Sec 66B(26A)***
-



## Amendment in Mega Exemption List after Finance (no 2) Act, 2014

### Services substituted in Sec 66B of Finance Act, 1994

- ***Entry 9 of Mega Exemption List was substituted with specific list of services as prior all auxiliary educational services or renting of immovable property were exempted from service tax.***
  - ***Services provided-***
    - (a) by an educational institution to its students, faculty and staff;***
    - (b) to an educational institution, by way of,-***
      - (i) transportation of students, faculty and staff;***
      - (ii) catering, including and mid-day meals scheme sponsored by the government;***
      - (iii) security or cleaning or house-keeping services performed in such educational institution***
      - (iv) services relating to admission to, or conduct of examination by, such institution.***
-

## Amendment in Mega Exemption List after Finance (no 2) Act, 2014

### Services substituted in Sec 66B of Finance Act, 1994

➤ ***Entry 18 was substituted as :***

- ***Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below Rs 1,000/- per day or equivalent.***

**Dharamshala or Mutt providing lodging facility – taxable or not?**

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## Amendment in Mega Exemption List after Finance (no 2) Act, 2014

### Services substituted in Sec 66B of Finance Act, 1994

➤ Entry 21 item (e) is substituted as :

- *Services provided by a goods transport agency, by way of transport in a goods carriage of-*

*(e) Chemical fertilizer, organic manure and oil cakes.*

*Prior to amendment it read as Chemical fertilizer and oil cakes.*

➤ Entry 25 is substituted as :

- *Services provided to Government, a local authority or a government authority by way of-*

*(a) Water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation ;or*

*(b) Repair or maintenance of a vessel*

*Prior amendment list of authority was not specific it said ‘carrying out any activity in relation to any function ordinarily entrusted to a municipality’ and it included in repair and maintenance even of an aircraft.*

## Amendment in Mega Exemption List after Finance (no 2) Act, 2014

### Services substituted in Sec 66B of Finance Act, 1994

➤ **Entry 40 is substituted by entry 40, 41 and 42 in Finance Act, 2014**

***40. Services by way of loading, unloading, packing, storage or warehousing of rice, cotton, ginned or baled***

***41. Services received by Reserve Bank of India, from Outside India in relation to management of foreign exchange reserves.***

***42. Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.***

***Prior it was read as under-***

***40. Services by way of loading, unloading, packing, storage or warehousing of rice.***

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**THANK YOU**

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