

EXCISE DUTY**INDEX**

SR NO	CHAPTER NAME	PAGE NO
1	Introduction to Central Excise	2
2	Central Excise Tariff Act	30
3	Excise Valuation	38
4	Central Excise Valuation Rules, 2000	69
5	Central Excise Rules, 2002	88
6	CENVAT Credit Rules, 2004	119
7	Exemption for Small Scale Industries	171
8	Export Procedure	184
9	Special Audit and Scrutiny	195

CHAPTER 1: INTRODUCTION TO CENTRAL EXCISE

CONSTITUTIONAL BACKGROUND

The Constitution of India is the supreme law and all other laws of the Central or State Government have to be consistent with the Constitution. Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. Therefore, there cannot be any arbitrary levy or collection of taxes.

Source of power: Articles 246 and 248 and Schedule VII of the Constitution of India as follows:

Source of power	Short-title	Power to make laws vests with -
List I to Schedule VII	Union List	Central Government
List II to Schedule VII	State List	State Governments
List III to Schedule VII	Concurrent list	Central Government and the State Governments, both, concurrently (no taxes are covered in this List)
Entry 97 of List I	Residuary entry	Central Government (This power is residuary Power in respect to matters / taxes not covered by other lists/entries) Applicability to J&K : Taxes deriving their authority under Entry 97 of List I are not applicable to Jammu & Kashmir unless consented to by J&K.

Entries in Union and State Lists as to Indirect Tax Laws (Relevant Extracts):

Name of tax/duty	Source of power	Power with	Tax imposed on -	Corresponding law
Customs duty	Entry 83 of List I	Central Government	Import or export of goods	Customs Act, 1962 and Customs Tariff Act, 1975
Excise duty	Entry 51 of List II	State Government	Manufacture or production of – Alcoholic liquors for human consumption; Opium, Indian hemp and other narcotic drugs and narcotics.	State excise laws
	Entry 84 of List I	Central Government	Manufacture or production in India of all goods – Except those falling in Entry 51 above. But including medicinal and toilet preparations containing alcohol or opium, Indian hemp and other narcotic drugs and narcotics.	Central Excise Act, 1944, Central Excise Tariff Act, 1985 and other central laws dealing with specific goods.

Tax on sale or purchase	Entry 92A of List I	Central Government	Inter-state sale or purchase of goods	Central Sales Tax (CST) Act, 1956
	Entry 54 of List II	State Government	Taxes on intra-state (within the State) sale or purchase of goods	State Sales-tax or Value-added Tax (VAT) laws.
Service Tax	Entry 92C of List I	Central Government	Taxes on Services	This entry has not yet come into force
Other Taxes	Entry 97 of List I	Central Government	Any other tax not enumerated in List II or List III	Service Tax is presently being imposed by Finance Act, 1994 under this entry.

Illustration 1

Mr. X service tax liability for half year ended on March 31, 2016 is Rs. 50,000. However, Mr. X has suffered unexpected loss in his business and is short of cash. Therefore, he decides not to pay service tax for the said half year. Examine whether Mr. X's contention is valid.

Solution

No, Mr. A's contention is not valid as tax is not a voluntary payment or donation, but an enforced contribution, exacted pursuant to legislative authority. Thus, Mr. X will have to compulsorily pay service tax of Rs. 50,000 for half year ended on March 31, 2016 in accordance with the applicable provisions of service tax law irrespective of his financial position.

Illustration 2

Goods are imported at a port city. State Government of the port city intends to levy customs duty on such imported goods as they have landed at a port which comes under its (State Government's) jurisdiction. Examine whether the State Government's stand is correct in law.

Solution

No. the State Government's stand is not correct in law. Power to levy customs duty is vested with Central Government by virtue of Entry 83 of Union List of Seventh Schedule to Article 246 of Constitution of India. Union List or List-I contains the matters in respect of which Parliament (Central Government) has the exclusive right to make laws.

Illustration 3

Examine with reasons whether following statements are true or false:

- A State Government and the Central Government together can make laws in respect of taxes covered under Concurrent List.
- In case of a Union Territory, Parliament can make laws in respect of a matter included in State List.

Solution

- (i) False: Since, there is no head of taxation in Concurrent List (List – iii), there does not arise any question of State Government and the Central Government together making laws in respect of any tax.
- (ii) True: Parliament has a further power to make any law for any part of India not comprised in a State even if such matter is included in State List.

Illustration 4

Examine the validity of following statements:

- (i) Central Government is empowered to make laws in respect of excise duty leviable on liquors (meant for human consumption) containing alcohol.
- (ii) Taxes on intra-State sale or purchase of goods are covered under Entry 92A of Union List of the Constitution.

Solution

- (i) Invalid: Duties of excise on alcoholic liquors meant for human consumption are covered under Entry 51 of State List (List II). Thus, only State Governments are authorized to make laws in respect of such excise duty.
- (ii) Invalid: Taxes on intra-State sale or purchase of goods are covered under Entry 54 of State List of the Constitution. Entry 92A of Union List of the Constitution covers central sales tax.

ADMINISTRATIVE SET UP

All India	Department of Revenue, of the Ministry of Finance	Exercise control in respect of matters relating to all the direct and indirect taxes
All India	CBDT / CBEC constituted under the Central Board of Revenue Act, 1963	Matters relating to the levy and collection of all the direct taxes (income tax, wealth tax etc.) are looked after by CBDT, whereas those relating to levy and collection of indirect taxes (customs duties, central excise duties etc.) fall within the purview of CBEC.
Zone office	Chief Commissioner of Central Excise	The Chief Commissioner exercise supervision and control over the working of the Commissionerates in the Zone and is mainly responsible for 1. Monitoring revenue collection, 2. Disposal of pendencies 3. Redressal of grievances of trade etc. He also ensures coordination among the Commissionerates.
Commissionerate office	1. Commissioner of Central Excise	

	2. Additional CCEX and Joint CCEX	
	3. Dy. CCEX and Asst. CCEX	
Range office	1. Supt of CCEX	
	2. Inspector of CCEX	

WHAT IS EXCISE DUTY?

Excise is derived from the Latin Word “**Excisum / Excidere** which means to **cut out**”. Excise, is a **tax attracted by the event of manufacture** but collected at some convenient stage which may be after the said event, which is only administrative convenience.

BASIC OF EXCISE DUTY

Duties of excise on tobacco and other goods manufactured or produced in India

Except:

- (a) Alcoholic liquors for human consumption
- (b) opium, Indian hemp and other narcotic drugs and narcotics;

But including

Medicinal and toilet preparations containing alcohol, or any substance stated before

ACT		
Central Excise Act, 1944	Excise	The Central Excise Act, 1944 (hereinafter referred to as the ‘Act’ in this Unit) contains the basic provisions relating to the levy of excise duty. It comprises of Chapters I to VII.
Central Excise tariff Act, 1985	Excise	Central Excise tariff, Act 1985 containing the Tariff Schedule was enacted, based on the international product coding system called Harmonized System of Nomenclature (H.S.N.). The schedules to the Act enlist all the excisable goods and provide for the corresponding rates of excise duty chargeable on the same.

RULES

1. Central Excise rules, 2002
2. Central excise valuation (determination of price of excisable goods) rules, 2000
3. Central Excise (determination of retail sale price of excisable goods) rules, 2008
4. Cenvat credit rules, 2004
5. Pan Masala packing machines (capacity determination and collection of duty) rules, 2008
6. Central excise (removal of goods at concessional rate of duty for manufacture of excisable goods) rules, 2001
7. Authority for advance rulings (central excise, customs and service tax) procedure regulations, 2005
8. Central Excise (advance rulings) rules, 2002
9. Central excise (appeals) rules, 2001
10. Central excise (compounding of offenses) rules, 2005
11. Central excise (settlement of cesses) rules, 2007

12. Consumer welfare fund rules, 1992

NOTIFICATIONS

Notifications are issued to provide rules relating to excise duty, make amendments therein, provide or withdraw exemptions from excise duty or deal with any other matter which the Central Government may think would facilitate the governance of excise duty.

Circulars

The Central Board of Excise and Customs issues departmental circulars or instruction letters from time to time for the purpose of ensuring uniformity in the classification of excisable goods or with respect to levy of duty of excise on goods.

INDIA MEANS

- India includes its territorial waters Territorial waters means water extending up to **12 nautical miles** (1 nautical miles = 1.853184 Kms) from Base line
- Excise Duty liability will attract if goods are manufactured up to 200 nautical miles (up to exclusive economic zone). Example oil exploration in the sea
- Domestic Tariff Area means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones (Section 2(i) of Special Economic Zones Act, 2005), **100%** Export Oriented Unit (EOUs)/ Electronic Hardware Technology Park (EHTP) / Software Technology Park (STP) / Bio Technology Park (BTP).

Meaning of SEZ, DTA and EEZ

- | | |
|------------------|---|
| KEY NOTES | <ul style="list-style-type: none"> • SEZ (Special Economic Zone) refer to designated areas in countries that possess special economic regulations that are different from other areas in that same country. (In India SEZ, Act, 2005 governs SEZ) • DTA (Domestic Tariff Area) refers to the whole of India excluding the SEZ Area. • EEZ (Exclusive Economic Zone): Territorial waters, Continent shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 extends territory of India to 12 NM (Nautical Miles). It also gives power to the CG to extend applicability of any Act up to 200 NM (by issuance of Notification in Official Gazette). The Central Government has notified applicability of CEA, 1944 to EEZ. |
|------------------|---|

DEFINITIONS**FACTORY' UNDER CENTRAL EXCISE - SECTION 2(e)**

- Factory means as any premises, including the precincts thereof, wherein or in any part of which excisable goods are manufactured
- Precincts mean area enclosed by compound wall. A Canteen, a recreation club, a shed a cycle stand located inside the compound wall will be a factory
- Whole premises will be 'factory' if in any of its part, excisable goods are manufactured.

- It is not necessary that factory registered under factories act.

Whole premises will be 'factory' if in any of its part, excisable goods are manufactured

CUSTOMS LAWS**INDEX**

SR NO.	CHAPTER NAME	PAGE NO
1	Introduction & Definitions	2
2	Types of Customs Duties	11
3	Levy, Assessment, Remission and Valuation	23
4	Import / Export Procedure	61
5	Goods in Transit / Transshipment	75
6	Warehousing	77
7	Export Incentive (Duty Drawback)	86
8	Special Provisions	95
9	Penalties and Confiscation	114

CHAPTER 1: INTRODUCTION AND DEFINATIONS

BACKGROUND OF CUSTOM LAW

- As per ancient custom a merchant entering a kingdom with his goods had to make a suitable gift to the king. In the course of time this custom was formalized into custom duty.
- Customs duty is an indirect tax and it is levied on import into India and export out of India, as per entry list No. 83 List I of Indian Constitution.

CUSTOMS ACT, 1962

1. Customs law in India is governed by the Customs Act, 1962.
2. It came into force with effect from 1.2.1963.
3. It extends to the whole of India, including the designated areas in the Continental Shelf and the Exclusive Economic Zone of India notified by the Ministry of External affairs from time to time.
4. The Customs Act has 161 Sections distributed over 17 Chapters.

COMPONENTS OF CUSTOMS LAW

CUSTOMS TARIFF ACT, 1975

1. **Schedules to the Customs Tariff Act [Section 2 of the Customs Tariff Act, 1975: The Customs Tariff Act, 1975 ("CTA, 1975") contains the following schedules -**

- (a) Schedule I provides rate of duty applicable to import of goods [IMPORT TARIFF] - It is similar to Schedule I of the Central Excise Tariff Act, 1985;
- (b) While, Schedule II provides rate of duty applicable to export goods [EXPORT TARIFF].

2. **Classification of goods:**

- (a) The goods are categorized into various Tariff Headings, Sub-Headings and Tariff Items.
- (b) The tariff is grouped into sections and chapters. The generation explanatory notes to the Tariff, rules for interpretation of tariff, etc. have also been made.
- (c) They all are same as already discussed in Central Excise Module [Central Excise Tariff Act, 1985].

3. **General rate of customs duty: 10% ad valorem.**

The five column-headings as prescribed in the schedule to the Customs Tariff Act, 1975 are -

- (a) Tariff Item i.e. 8-digit code of the goods;
- (b) Description of goods covered;
- (c) Standard Unit of Quantity;
- (d) Standard Rate of Duty;
- (e) Preferential Rate of Duty (preferential rate of duty is applicable in circumstances specified in section 4).

RULES UNDER CUSTOMS ACT

Section 156 of Customs Act, 1962 provides C.G has been empowered to make rules, consistent with provisions of the Act, to carry out the purposes of the Act.

Major rules among those are

- Customs Valuation Rules, 1988:
- Customs and Central Excise Duties Drawback Rules, 1995:
- Baggage Rules, 1998: Regulations under Customs Act -
- Section 157 of Customs Act, 1962, provides Board (CBE&C) has been empowered to make regulations,

Difference between Rules & Regulations

Rules made by central government	Regulation made by CBEC
Rules are made u/s 156	Regulations are made u/s 157
Consistent with the provisions of the Act	Consistent with the provisions of the Act as well as rules.

Public Notices

- Commissioners of Customs issue Public Notices.
- Public notices for local requirements are also issued.

Notifications under Customs Act

Central Government has got power to issue notifications. Example

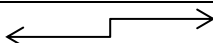
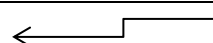
- Section 25(1) to grant partial or full exemption from duty
- Section 11 to prohibit import or export of goods.

Board Circulars -

CBE&C is empowered u/s 151A of customs Act to issue circulars, CBE&C issues circulars giving various instructions / prescribing various procedures etc. These instructions should be followed.

IMPORTANT DEFINITIONS IN CUSTOMS

Sec. 2(1)	Adjudicating Authority	As per Section 2(1) of the Customs Act, 1962, adjudicating authority means any authority competent to pass any order or decision under this Act, but does not include: <ul style="list-style-type: none"> • The Central Board of Excise and Customs (CBE&C), • Commissioner of Customs (Appeals) or • Customs, Excise and Service Tax Appellate Tribunal (CESTAT)
Section 2(2)	Assessment	As per section 2(2) of the Customs Act, assessment means process of determining the tax liability in accordance with the provisions of the Act, which includes provisional assessment, self-assessment, reassessment and any assessment in which the duty assessed is nil.
Section 2(7)	Coastal goods	As per of the Customs Act, the term coastal goods means goods, other than imported goods, transported in a vessel from one port in India to another.

		Under section 7(1) (d) of the Customs Act, 1962, the Central Board of Excise and Customs (CBE&C), may by notification in the Official Gazette, appoint the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India.			
Section 2(9)	Conveyance	As per of the Customs Act Defines, 'Conveyance includes a Vessel, an Aircraft and a Vehicle'. The specific terms are vessel (by sea), aircraft (by air) and vehicle (by land).			
Section 2(11)	Custom area	As per of the Customs Act, customs area means the area of a customs station and includes any area in which imported goods or exported goods are ordinarily kept before clearance by Customs Authorities.			
Section 2(14)	Dutiable Goods	<ul style="list-style-type: none">Any goods which are chargeable to duty and on which duty has not been paid.Goods continue to be 'dutiable' till they are not cleared from the port.Once goods are assessed at 'Nil' rate of duty, they no more remain 'dutiable goods'.			
Section 2(18)	Export	Taking out of India to a place outside India.			
Section 2(19)	Export Goods	<ul style="list-style-type: none">Any goods, which are to be taken out of India to a place outside India. &Goods brought near customs area for export purpose.			
Sec 2(22)	Goods	Goods' includes Vessels, Aircrafts, Vehicles, Stores, Baggage, Currency Negotiable instruments and any other kind of movable property. The duty is payable on goods belonging to government also.			
Section 2(23)	Import	Bringing into India from a place outside India			
Section 2(25)	Imported goods	<ul style="list-style-type: none">Any goods brought in India from a place outside India,And does not include goods which have been cleared for home consumption.			
Section 2(27)	India	'India' as inclusive of territorial waters.			
	Nautical Miles				
	0	12	24		
	200				
	Land	12 nautical miles	12 nautical miles	176 nautical miles	High Seas
		Indian Territorial Waters	Indian Contiguous Zone		

	<table><tr><td>Indian Customs Water (upto 24 nm) ←</td><td>→</td></tr><tr><td colspan="2">Indian Exclusive Economic Zone (upto 200 nm)</td></tr></table>	Indian Customs Water (upto 24 nm) ←	→	Indian Exclusive Economic Zone (upto 200 nm)								
Indian Customs Water (upto 24 nm) ←	→											
Indian Exclusive Economic Zone (upto 200 nm)												
	Territorial Waters of India	<ul style="list-style-type: none">• A portion of sea, which is adjacent to the shores of a country, 12 nautical miles from the base line. (1 nautical mile = 1.853 Kms)• 'Import' is complete as soon as goods enter territorial water. Similarly, export is complete only when goods cross territorial waters.										
	Exclusive economic zone'	<ul style="list-style-type: none">• Area extends to 200 nautical miles from the base line.• In this zone, the coastal State has exclusive rights to exploit it for economic purposes like constructing artificial islands (for oil exploration, power generation) fishing, mineral resources and scientific research• Beyond 200 nautical miles, the area is 'High Seas', where all countries have equal rights.• These high seas are reserved for peaceful purposes.										
Section 2(28)	Indian Custom Water	<ul style="list-style-type: none">• Indian custom waters means the water extending into the sea up to the limit of contiguous zone of India under Sec 5 of the Territorial waters, Continental shelf, Exclusive economic zone and other Maritime zones Act 1976 and includes any bay, gulf, harbor or tidal river.• Area beyond 12 nautical miles and up to 24 nautical miles from base line of India'.• The C G has got powers to take measures in this area for security of India and immigration, <p><u>Significance and importance of 'Indian Customs Waters'</u></p> <ul style="list-style-type: none">• Customs officer has power to arrest a person in India or within Indian customs waters.• To stop and search any vessel in India or within the Indian Customs waters. <p>If such vessel does not stop, it can be/confiscated/ fired upon.</p>										
Section 2(31)	Person – in – charge	<p>As per person – in – charge means</p> <table><tr><td>a. Vessel</td><td>Master</td></tr><tr><td>b. Aircraft</td><td>Commander or Pilot in Charge</td></tr><tr><td>c. Train</td><td>Conductor or Guard</td></tr><tr><td>d. Vehicle</td><td>Driver</td></tr><tr><td>e. Other conveyance</td><td>Person in charge</td></tr></table>	a. Vessel	Master	b. Aircraft	Commander or Pilot in Charge	c. Train	Conductor or Guard	d. Vehicle	Driver	e. Other conveyance	Person in charge
a. Vessel	Master											
b. Aircraft	Commander or Pilot in Charge											
c. Train	Conductor or Guard											
d. Vehicle	Driver											
e. Other conveyance	Person in charge											

Section 2(38)	Stores	As per of the Customs Act, stores means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment , whether or not for immediate fitting.	
	Foreign-going vessel or aircraft	<ul style="list-style-type: none"> • Vessel/Aircraft engaged in the carriage of goods or passengers between any port or airport in India and outside India, whether touching any intermediate port or airport in India or not, and includes — • Any naval vessel of a foreign Government taking part in any naval exercises; • Any vessel engaged in fishing/ other operations outside the territorial waters of India; • Any vessel or aircraft proceeding to a place outside India for any purpose whatsoever. 	
	Entry	1. Import of goods as cargo	Bill of Entry
		2. Export of goods as cargo	Shipping bill or bill of export
		3. Goods imported or to be exported by post	Label or declaration u/s 82
		4. Goods imported or to be exported as baggage	Declaration u/s 77

POWER TO PROHIBIT IMPORTATION OR EXPORTATION OF GOODS

The Central Government may by notification in the Official Gazettee, prohibit either absolutely or subject to such conditions as may be specified, the import or export of goods of any specified description for any of the following purposes:

1. The maintenance of public order and standards of decency or morality;
2. The prevention of smuggling;
3. The prevention of shortage of goods of any description
4. The conservation of foreign exchange and the safeguarding of balance of payments;
5. The prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver;
6. The prevention of surplus of any agricultural product or the product of fisheries;
7. The maintenance of standards for the classification, grading or marketing of goods in international trade;
8. The establishment of any industry;
9. The prevention of serious injury to domestic production of goods of any description;
10. The protection of human, animal or plant life or health;
11. The conservation of exhaustible natural resources;
12. The protection of patents, trademarks and copyrights;
13. The prevention of deceptive practices;
14. The carrying on of foreign trade in any goods by the State, or by a Corporation owned or controlled by the state to the exclusion, complete or partial, of citizens of India;

15. The fulfillment of obligations under the Charter of the United Nations for the implementation of any treaty, agreement or convention with any country;
16. The compliance of imported goods with any laws which are applicable to similar goods produced or manufactured in India;
17. The prevention of dissemination of documents containing any matter which is likely to prejudicially affect friendly relations with any foreign state or is derogatory to national prestige;
18. The prevention of the contravention of any law for the time being in force; and
19. Any other purpose conducive to the interests of the general public.

Whether goods shall be treated as prohibited goods under the following cases:

Goods	Prohibition
"X" shall not be imported into India	Absolute Prohibition
"Y" shall not be imported into India unless the importer has obtained "Import License". A Ltd. imports "Y" in India after obtaining concerned Import License.	Not Prohibited
"Y" shall not be imported into India unless the importer has obtained "Import License". B Ltd. imports "Y" in India without obtaining concerned Import License.	Prohibited (Pre – importation condition)
"Z" can be imported into India only and only, if it is used for providing free medical services to at least 40% of outdoor patients.	Prohibited (Post – importation condition)

DETECTION OF ILLEGALLY IMPORTED GOODS AND PREVENTION OF THE DISPOSAL THEREOF [CHAPTER IV-A: SECTION 11A TO 11G]

Sec.	Provisions
11B	Central Government may, for the purpose of checking the illegal import, circulation or disposal of any goods of a class or description, or facilitating the detection of such goods, notify such goods.
11C	Every person who owns possesses or controls, on the notified date (i.e. date of issue of notification u/s/ 11B), any notified goods, shall, within 7 days, deliver to the proper officer a statement in relation to the notified goods owned, possessed or controlled by him and the place where such goods are kept or stored. A person seeking to acquire such goods shall also submit aforesaid statement before acquisition. Such restriction applies to shifting of such goods, sale or transfer of such goods.
11D	Except in case of acquisition by gift or succession, from any other individual in India, a person may acquire notified goods after notified date only under prescribed documents.
11E	Every person owning, possessing or controlling or acquiring notified goods (including manufacturer using such notified goods) after notified date shall keep proper accounts in prescribed manner.
11F	On and from the notified date, no person shall sell or otherwise transfer any notified goods, unless every transaction in relation to the sale or transfer of such goods is evidenced by a prescribed voucher.
11G	Section 11C, 11E and 11F shall not apply to any notified goods which are - (a) In personal used of the person by whom they are owned, possessed or controlled, or (b) Kept in the residential premises of a person for his personal use.

	However, if such person sells, or otherwise transfers for a valuable consideration, any such goods, he shall issue to the purchaser or transferee a memorandum containing prescribed particulars.
11N	The Central Government may exempt generally, either absolutely or subject to specified conditions, goods of any class or description from all or any of the provisions of Chapter IVA.

INDEX

SR NO.	CHAPTER NAME	PAGE NO
1	SERVICE TAX	2
2	COMMON PROCEDURE	70
3	VALUE ADDED TAX	106
4	INTRODUCTION TO GST	135

CHAPTER 1: SERVICE TAX

INTRODUCTION

- Service tax is an Indirect tax levied on all services excluding specified services u/s 66D of Finance Act 1994,
- In the year 1994, it made a small beginning with 3 taxable services only, now its form a considerable part of the union Budget and covers all services excluding 17 specified services.
- Dr. Manmohan Singh, the then union finance Minister introduced it in the Finance Act of 1994.
- There is no separate Act of the service tax and it is government by Finance Act, 1994.
- It is levied by the Central government.
- It is different from Excise duty, sales tax and **VAT** which are levied on goods whereas service tax is levied on service.
- **“Tax Reform Committee” headed by Dr. Raja J. Chelliah.**

CONSTITUTIONAL VALIDITY

As per Article 246 of the constitution of India, three lists have been made for revenue purpose

Union List	Article 246(1) of constitution of India state that the parliament has the exclusive power to make law with respect to any of the matter enumerated in List 1 of the seventh schedule of the constitution called UNION list. E.G. Income Tax (Entry no. 82), Customs (Entry no. 83), Excise (Entry no, 84), Service tax (Entry no. 92C / 97), etc.
State List	Article 246(3) of constitution of India state that the state government has the exclusive power to make law with respect to any of the matter enumerated in List II of seventh schedule of the Constitution called State List. E.g. Taxes on agriculture income (Entry No.46), Excise duty on alcoholic liquor, opium and narcotics (Entry No.51), VAT (Entry No.54), etc
Concurrent List	List III contains entries where both Union and state Government can exercise power E.g. criminal law and procedures, civil procedures, etc.

Parliament has passed the constitution amendment making entry 92C to Union List in the name “Tax on Services” However this provision has not been made effective. Still service tax is presently collected under the Residual power entry 97 (i.e. any other matter which is not included in List II and List III.)

NATURE OF SERVICE TAX

- Value addition to a product which is intangible in nature is called service
- Service tax is a tax on services (i.e. If there is no service, there is no Service tax)
- There is no separate act such. Chapter V & VA of the Finance Act, 1994 (sections 64 to 96-I) (hereinafter referred as 'Act') provide for the levy of service tax and constitute the law governing service tax. Initially, only three services are covered under the tax net viz. telephone, general insurance and stock broking. After that, the Act has been amended from time to time to include more and more services under the umbrella. In order to execution of levy, further, following rules are also notified by the Government.

Approach

Service tax may be levied in two ways viz. Comprehensive Approach and Selective Approach is comprehensive approach, all services are generally taxable and services which are not liable to tax shall be specifically mentioned in the statute by way of a negative list. On the other hand, in selective approach, the services which are specifically mentioned in the statute are chargeable and the services which are not covered by the statute are not liable to service tax. With effect from 1.7.2012, in India, it is levied on **comprehensive approach basis**. Earlier, service tax was levied on selective basis.

DEFINITIONS

India [Sec 65B(27)]

- The territory of the Union;
- Its territorial waters, continental shelf, exclusive economic zone or any other maritime zone;
- The seabed and the subsoil underlying the territorial waters
- The air space above its territory and territorial waters; and
- The installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof

Example: Mohit of Kashmir provides taxable service to the following person; examine the taxability of such services:

Service Receiver	Services provides at	Payment Received in	Answer
A of Bengal	Jammu & Kashmir	INR	Not taxable, as service is provided in the state of J&K
N of Gujarat	Himachal Pradesh	INR	Taxable
R of Punjab	Indonesia	USD	Not taxable, as service is not provided in India
B of Srinagar	Punjab	INR	Taxable
J of Kashmir	Jammu & Kashmir	INR	Not taxable, as service is provided in the state of J&K
C of London	Tamilnadu	INR	Taxable

G of USA	Jammu & Kashmir	INR	Not taxable, as service is provided in the state of J&K
M of France	Germany	USD	Not taxable

TAXABLE SERVICE [SEC. 65B (51)]

Taxable service means any service on which service tax is leviable u/s 66B. Hence, Non-taxable service includes following:

- a) Service provided outside taxable Territory and
- b) Service listed in Negative list.

Notes:

KEY NOTES	<ul style="list-style-type: none"> As Sec. 66B excludes only above two, we can say that Exempted services are taxable services. Any activity not amounting to service shall not be treated as taxable service
------------------	---

Assessee: “Assessee” means a person liable to pay tax and includes his agent;

Business Entity: “Business Entity” means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession;

Money: “Money” means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveler cheque, money order, postal or electronic remittance or any such similar instrument but shall not include any currency that is held for its numismatic value;

Taxable Territory: “taxable Territory” means the territory which the provisions of this chapter apply.

Non-Taxable Territory: “Non-Taxable Territory” means the territory which is outside the taxable territory.

Actionable Claim means which gives right to claim money

ADMINISTRATION

The Act is administered by the Central Board of Excise and Customs. All returns, etc. is required to be submitted with Excise Department.

CHARGEABILITY [SEC. 66B]

Sec 66B of the Finance Act 1994 is the charging section. It states that –

There shall be levied a service tax @ 14%

- 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.

Service Tax Rate	14% on value of service
Swachh Bharat Cess leviable	@ 0.5% on all taxable services w-e-f 15-11-2015
Krishi Kalyan cess leviable	@ 0.5% on all taxable services w-e-f 01-06-2016

SBC & KKC

1. Whether these cesses are levied on all or selected services?	Ans: YES. These are levied on all taxable services except services which are either fully exempt from service tax under any notification issued under section 93(1) of the Finance Act, 1994 or are otherwise not leviable to service tax under section 66B of the Finance Act, 1994.
2. Whether SBC and KKC would be required to be mentioned separately in invoice?	Ans: Yes. SBC and KKC needs to be charged separately in the invoice, accounted for separately in the books of account and paid separately under separate accounting codes as notified.
3. How will the SBC and KKC be calculated for services under reverse charge mechanism?	Ans: In case of reverse charge the liability is shifted from service provider to the service recipient. Government has notified that reverse charge under notification No.30/2012-Service Tax dated 20th June, 2012 shall apply mutatis mutandis for the purpose of levy of SBC and KKC.
4. How will cess be calculated for services where abatement is allowed?	<p>Ans: Taxable services, on which service tax is leviable on a certain percentage of value of taxable service, will attract SBC and KKC on the same percentage of value as provided in the notification No. 26/2012-Service Tax, dated 20th June, 2012.</p> <p>For example, in the case of GTA, effective rate of tax [i.e., Service Tax + SBC + KKC] would be 30% of (14% Service Tax + 0.5% SBC + 0.5% KKC) = 4.5 % (i.e., 30% of 15%)</p>
5. What would be the point of taxation?	<p>Ans: SBC and KKC are new levies. Hence, rule 5 of the Point of Taxation Rules would be applicable.</p> <p>Therefore, in cases where payment has been received and invoice is raised before the date of levy of such cesses, there is no liability to pay such cess.</p> <p>In cases where payment has been received before the date of levy and invoice is raised within 14 days from the date of levy, even then the liability to pay cess will not arise.</p>

6. What would be the liability to KKC in case of Reverse Charge Services, where services have been received prior to 1.6.2016, but consideration paid post 1.6.2016?	2nd Proviso to Rule 7(1) of POT Rules states that where there is change in the liability or extent of liability of a person required to pay tax under reverse charge, in case service has been provided and the invoice issued before the date of such change, but payment has not been made as on such date, the point of taxation shall be the date of issuance of invoice. <u>[Inserted by N/N 21/2016 w-e-f 30-03-2016]</u> Hence in such case no KKC would be payable as invoice is issued before 1st June 16.
7. Whether Cenvat credit of payment of KKC is permissible under Cenvat Credit Rules, 2004?	Yes. The Cenvat credit of KKC shall be available and shall be utilized only for the payment of KKC. Thus, separate accounts needs to be maintained. Refund of KKC shall also be allowed to Exporter of Service as well as Exporter of Goods.
8. Whether Cenvat Credit of the SBC is available?	Ans. SBC is not integrated in the Cenvat Credit Chain. Therefore, credit of SBC cannot be availed. Further, SBC cannot be paid by utilizing credit of any other duty or tax.

SERVICE MEANS [SEC 65B (4A) w.e.f. 1-7-2012]

- Any activity
- For consideration
- Carried out by a person for another
- And includes a declared service

Explanation to above

Sr	Point	Explanation
1	Activity	<u>It includes anything done which could be active or passive.</u> e.g. a) Vipul Shah & Co completed audit of X Ltd. b) Mr. VS is very good faculty of Tax. He takes lecture at Delhi. He agrees not to take lecture at Delhi and receives Rs 12, 00,000. Hence not doing is also activity.
2	Consideration	<u>Monetary consideration and non-monetary consideration</u> 1. <u>Monetary consideration means</u> any consideration received in the form of money. Money means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveler cheque, money order, postal or electronic remittance or any such similar instrument but shall not include any currency that is held for its numismatic value.

		<p>2. <u>Non-monetary consideration essentially means</u> compensation in kind such as the following:</p> <ul style="list-style-type: none"> • Supply of goods and services in return for provision of service • Refraining or forbearing to do an act in return for provision of service • Tolerating an act or a situation in return for provision of a service • Doing or agreeing to do an act in return for provision of service <p>Activity without consideration not taxable</p> <p>Examples of an activity without consideration are as follows: -</p> <ul style="list-style-type: none"> • Tourism information free of charge • Access of free TV channels • An artist performing on a street where passers-by may drop some coins in his bowl kept either after feeling rejoiced or out of compassion • Large number of governmental activities for citizens
3	Carried out by a person for another	<p>a) Service should be provided by one to another.</p> <p>b) Service provided by a person to self are outside the gambit of taxable service. e.g.: Service provided by one government department to another government department does not attract service tax.</p>
4	Includes declared service (Sec 66E)	<p>Section 66E defines the following 9 services as declared services.</p> <p>(a) Renting of immovable property;</p> <p>(b) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, where the whole or part of the consideration is received before issuance of completion-certificate by the competent authority.</p> <p>The expression “construction” includes additions, alterations, replacements or re-modelling of any existing civil structure;</p> <p>(c) Temporary transfer or permitting the use of enjoyment of any intellectual property right;</p> <p>(d) Development, design, programming, customization, adaptation, up-gradation, enhancement, implementation of information technology software;</p> <p>(e) Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;</p>

	<p>(f) Transferor goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;</p> <p>(g) Activities in relation to delivery of goods on hire purchase or any system of payment by installments;</p> <p>(h) Service portion in the execution of a works contract;</p> <p>(i) Service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity.</p> <p>(j) Assignment by the government of the right to use the radio frequency spectrum and subsequent transfer thereof. <u>(Finance Act 2016)</u></p>
--	---

However the following shall not be considered as service:

a) An activity which constitutes merely,:

- (i) A transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
- (ii) Such transfer, delivery or supply of any goods which is **deemed to be a sale** with the meaning of Article 366(29A) of the Constitution; or
- (iii) A transaction in money or actionable claim;

Explanation2. – For the purpose of this clause, the expression “transaction in money or actionable claim” shall not include

- (i) Any activity relating to the use of money or its **conversion** by cash or by any other mode, **from one form, currency or denomination to another form, currency or denomination** for which a separate consideration is charged shall be considered as service and will be chargeable to tax.
- (ii) Any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out –
 - By a lottery distributor or selling agent in relation to promotion, marketing, organizing, selling of lottery or facilitating in organizing lottery of any kind, in any other manner;
 - By a foreman of chit fund for conducting or organizing a chit in any manner

b) A provision of service by an employee to the employer in the course of or in relation to his employment;

c) Fees taken in any Court or tribunal established under any law for the time being in force.

d) The functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

e) The duties performed by any person who holds any post in pursuance of the provisions of the

Constitution in that capacity; or

f) The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority.

Explanation 3.-For the purposes of this Chapter,-

- a)** An unincorporated association or a body of persons, and a member thereof shall be treated as distinct persons;
- b)** An establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

CHARGE - ON WHOM

- The phrase “provided or to be provided” clarifies that service tax would be payable even on advances received (for services to be provided).
- “Person” includes:
 - (a)** An individual;
 - (b)** A Hindu Undivided Family;
 - (c)** A company;
 - (d)** A society;
 - (e)** A limited liability partnership;
 - (f)** A firm;
 - (g)** An association of persons or body of individuals, whether incorporated or not,
 - (h)** Government
 - (i)** A local authority; or
 - (j)** Every artificial juridical person not covered above.

CS PROFESSIONAL [DIRECT TAX –NEW SYLLABUS]**INDEX**

Sr	Chapter	Page no
1	BASIC CONCEPT AND TAXATION OF INDIVIDUAL	2
	Basic Concepts	2
	Residential status	4
	Income From Salary	12
	Income From House Property	16
	Income From Business or Profession	24
	Capital Gain	34
	Income from other source	38
	Clubbing of Income	41
	Set off and Carry forward of losses	43
	Deductions u/s 80C to 80G	46
	Computation of Total Income	
2	ASSESSMENT OF PARTNERSHIP FIRM	53
	Assessment of LLP	59
3	ASSESSMENT OF COMPANIES	63
	Alternate Minimum Tax	96
4	INTERNATIONAL TAXATION	100
	Taxation of Non-Resident	104
	Advance Ruling	115
	Transfer Pricing	121
	Double Taxation Avoidance Agreement	141
5	TAX PLANNING	151
	Tax Planning based on nature of organisation	155
	Tax Planning with reference location of a new business	157
	Tax Planning with based on nature of business	173
	Tax Planning with regard to financial management decision	181
	Tax Planning with reference to specific management decision	182
	Tax Planning with reference to employees remuneration	186
	Tax planning with respect to corporate organisation	192

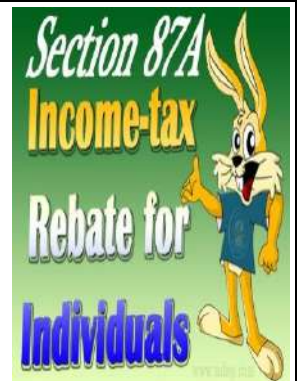
CHAPTER 1: BASIC CONCEPTS

TAX RATES FOR AY 17-18

Tax rate	Resident Individual (Male & Female), HUF, AOP, BOI & AJP	Resident Individual (Age >= 60) Senior citizen (Male& Female)	Resident Individual (Age >=80) Super senior citizen(Male & Female)
NIL	2,50,000	3,00,000	5,00,000
10%	2,50,001 to 5,00,000	3,00,001 to 5,00,000	NA
20%	5,00,001 to 10,00,000	5,00,001 to 10,00,000	5,00,001 to 10,00,000
30%	Above 10,00,000	Above 10,00,000	Above 10,00,000
Add	Surcharge @ 15% (Amendment Finance Act 2016) if Total Income exceeds Rs 1 crore		
Education cess	2% on Tax plus surcharge (if applicable)		
Secondary and Higher secondary Education cess	1% on Tax plus surcharge (if applicable)		

REBATE U/ 87A

- A resident individual (whose net income does not exceed Rs. 5, 00,000) can avail rebate u/s. 87A. It is deductible from income tax before calculating education cess.
- **Net income = GTI – Deduction u/s 80C to 80U**
- **The amount of rebate is 100% of income tax or Rs. 5,000 whichever is less.** [Amendment Finance Act 2016]
- **It is to be deducted before education cess.**
- **Rebate u/s 87A and surcharge cannot come at a time.**



NON RESIDENT ASSESSEE

- For Non-Resident individual exempted income shall be upto Rs. 2, 50,000 irrespective of Age Tax Rate for Non-Resident.
- Surcharge @ 15% if income exceeds 1cr
- Cess @ 3% on Tax + SC
- Rebate u/s 87A is not available.

KEY NOTE	Total Income does not include taxable Long Term Capital Gain (20%), Short Term Capital Gain (15%) on Securities subjected to STT, Lottery Winnings, Horse races, etc. (30%) and other Income chargeable at Special Rates.
-----------------	---

FOR OTHER ASSESSEES / PERSONS (W.e.f. AY 17-18)

Assessee	Rate of tax	TI < Rs. 1 Crore	TI > Rs.1 Crore, but TI ≤ Rs.10 Crores	TI > Rs.10 crores	Rate of EC + SHEC
Domestic Companies	30%		7%	12%	3%
Foreign Companies	40%		2%	5%	3%
Firms and LLP	30%		12%	12%	3%
Local Authorities	30%		12%	12%	3%
Co – operative Societies	10%		-	-	3%
For First Rs.10,000	20%		-	-	3%
For Next Rs.10,000	30%		12%	12%	3%
For the Balance					

FOR DOMESTIC COMPANIES

TI = Total Income TT = Total Turnover GR = Gross Receipts

Asst. Year	Tax Rate		SC	Cess
2017 – 18	TT / GI ≤ Rs. 5 Crores in FY 2014 - 15	TT / GI > Rs. 5 Crores in FY 2014 – 15		

TI ≤ Rs. 1 Crores	29%	30%	-	3%
TI > Rs. 1 Crore, but ≤ Rs. 10 Crores	29%	30%	7%	3%
TI > Rs. 10 Crores	29%	30%	12%	3%