



# Union Budget 2012-13

Service Tax implications on Not for Profit Sector

7 May 2012

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# Service Tax – Key Budget Proposals

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- ▶ Currently approx 120 specified services are subject to service tax through a Positive List
- ▶ Finance Bill 2012 seeks to levy service tax based on a Negative List of services
- ▶ Under negative list regime, all services to attract service tax except those included in negative list or in any exemption notification
  - ▶ Service defined to mean any activity for consideration carried out by a person for another
  - ▶ 17 services to be included in the Negative List, including services provided by Government, RBI, local authority, trading of goods
  - ▶ 34 Services exempted under the negative list based taxation
- ▶ Connotation of 'person' in specific cases
  - ▶ Establishment of the same person within taxable and non-taxable territory to be treated as distinct persons (earlier exception existed in case of import of services)
  - ▶ Carrying business through branch, agency or representational office to be treated as existence of establishment in relevant territory
  - ▶ An unincorporated body or association of persons and members thereof to be regarded as distinct persons

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# Service Tax implications – Charitable Institutions

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- ▶ Services provided by an entity registered under Section 12AA of Income Tax Act by way of 'charitable activities' exempted
  
- ▶ Charitable activities defined to mean activities relating to-
  - ▶ Public health by way of:
    - ▶ Care or counseling of terminally ill persons/ persons with severe physical or mental disability/ persons afflicted with HIV or AIDS/ persons addicted to dependence forming substances
    - ▶ Public awareness of preventive health, family planning or prevention of HIV infection
  - ▶ Advancement of religion
  - ▶ Advancement of educational programs or skills development relating to
    - ▶ abandoned, orphaned or homeless children
    - ▶ physically or mentally abused and traumatized persons
    - ▶ prisoners
    - ▶ persons over the age of 65 years residing in a rural area
  - ▶ Preservation of environment including watershed, forests and wildlife
  - ▶ Advancement of other object of general public utility upto INR 25 lakhs in a financial year

*Thus, an entity may be liable to service tax if its activities do not qualify as charitable activity*

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# Service Tax implications – Charitable Institutions

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- ▶ Some aspects which will require examination are
  - ▶ Whether grants/ donations qualify as consideration for service
  - ▶ Whether request for proposal/ tender is made by donor for the purpose of giving grant
  - ▶ Whether activities carried out by NGOs for the donor qualify as project management services
  
- ▶ For certain services onus of paying service tax will be partly on service provider and partly on service recipient
  - ▶ Services proposed are hiring of motor vehicle, supply of manpower and works contract services where the service provider is either an individual, HUF, a firm or LLP and recipient of services is a body corporate
  - ▶ NGOs/ charitable institutions set up as a body corporate may have liability to deposit service tax on these services as a recipient

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# Service Tax implications – Liaison Office/ Branch office

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- ▶ Currently, services provided by a branch office/ liaison office/ project office (BO/LO/PO) in India to its overseas head office/other offices are considered as service to self
  - ▶ Accordingly, these services are outside the ambit of service tax
  - ▶ Exception existed in case of import of services
  
- ▶ Finance Bill 2012 proposes that -
  - ▶ an establishment of a person located in taxable territory and
  - ▶ another establishment of such person located in non-taxable territory
  - ▶ shall be treated as establishment of distinct persons
  
- ▶ Further, a person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory
  
- ▶ Any service provided by a BO/LO/PO in India to its overseas head office would be within the service tax net in the negative list regime

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# Service Tax implications – Liaison Office/ Branch office

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- ▶ A BO/PO/LO would be required to examine a host of related questions
  - ▶ Whether the transactions carried out between a BO/LO/PO located in India and head office outside India would qualify as 'service' for levy of service tax
  - ▶ Whether services provided by a BO/LO/PO located in India to head office outside India would qualify as export of service
  - ▶ What would be the place of provision under Place of Provision of Service Rules
  - ▶ What service tax compliances would be required to be undertaken by the BO/LO/PO

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# What we can do

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Decoding the new provisions to understand implications specific to your Indian operations

Determining change in taxability, classification, valuation, export status and point of taxation

Scrutinizing all payouts/ expenses to analyze new reverse charge obligations

Determining need for system changes to capture data requirements of the new regulation

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# What we can do

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Outlining new set of compliance requirements

Advice on strategy of maintenance of records and periodic disclosures to mitigate risks

Determine need for advocacy efforts to address open issues especially refund claims, and assist in filing and representing

Basis the above study, planning action steps required to address concerns or fully realize opportunities

Implementation of agreed actions