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Act



Rules



Notifications / Circulars



Cenvat Credit



Abatement



Service Tax Registration



Case Laws



Negative List



Exemptions



Reverse Charge (RCM)



Place of Provision



E-Filing of Return

Levy of Service Tax on :

Travel
Agents

Tour
Operators

Service Tax on Travel Agents

Taxable Activity

Air Travel Agent or Rail Travel Agent earns **commission** on their activity of booking of tickets. **Such commission is taxable.**

Who is Air Travel Agent

Person who books the air ticket for travel by air for any person

Exclusion from Value

Rule 6 (2) of Valuation Rules 2006

The airfare collected by air travel agent in respect of service provided by him;

The railfare collected by rail travel agent in respect of service provided by him;

Air Travel Agent - Compounding Scheme

Rule 6 (7) of Service Tax Rules 1994

Pay an amount calculated at the rate of **0.6%** of the **basic fare** in the case of **domestic bookings**,

Pay an amount at the rate of **1.2%** of the **basic fare** in the case of **international bookings**

“**basic fare**” means that part of the air fare on which commission is normally paid to the air travel agent by the airline.

Air Travel Agent - Compounding Scheme

Rule 6 (7) of Service Tax Rules 1994

The option of compounding, once exercised, shall apply uniformly in respect of all the bookings of passage for travel by air made by Air Travel Agent and **shall not be changed during a financial year** under any circumstances

Air Travel Agent - Compounding Scheme

The option of paying Service Tax on basic fare will not amount to abatement or Exemption.

Air Travel Agent – Sub-Agent

Commission received by sub-agent from Air Travel Agent, in respect of booking of air passage was taxable under the category of “Business Auxiliary Service.” After introduction of negative list. The category of BAS does not exist per se, but taxability will remain un-changed.

Air Travel Agent – Sub-Agent

Option to pay service tax on basic fare is not available to the sub-agent, as such option is available to the IATA air travel agent getting commission **directly from the Airlines.**

Rail / Air Travel Agent – Manner of booking

If Tickets are booked manually or by online method, still it does not make any difference. Such commission is taxable.

Cancellation of Tickets

Amount received by agent towards the cancellation of tickets shall also be taxable.

Availability of Cenvat Credit

Air / Rail Travel Agent is entitled to claim Cenvat credit of services used in relation to providing output service

Service Tax on Tour Operator

Tour Operator

Notification No. 26/2012-ST dated 20.06.2012

“tour operator” means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours.

Package Tour

Notification No. 26/2012-ST dated 20.06.2012

“package tour” means a tour wherein transportation, accommodation for stay, food, tourist guide, entry to monuments and other similar services in relation to tour are provided by the tour operator as part of the package tour to the person undertaking the tour,

Abatement

Sl. No.	Description of taxable service	% of Taxable Value	Conditions
11	Services by a tour operator in relation to,- (i) a package tour	25	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The bill issued for this purpose indicates that it is inclusive of charges for such a tour.

Abatement

Sl. No.	Description of taxable service	% of Taxable Value	Conditions
11	<p>Services by a tour operator in relation to,-</p> <p>(ii) a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour</p>	10	<p>(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the CENVAT Credit Rules, 2004.</p> <p>(ii) The invoice, bill or challan issued indicates that it is towards the charges for such accommodation.</p> <p>(iii) <u>This exemption shall not apply</u> in such cases where the invoice, bill or challan issued by the tour operator, in relation to a tour, only includes the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation.</p>

Abatement

Suppose Tour operator book hotel accommodation for a client and pays Rs. 9,000/- to the hotels for accommodation and in turn raises invoice of Rs. 10,000/- on client for such service.

In such a case tour operator shall be liable to pay service tax on 10% of Rs. 10,000/- after availing abatement of 90% i.e. $10000 - 9000 = 1000$ * 12.36%

Abatement

Sl. No.	Description of taxable service	% of Taxable Value	Conditions
11	Services by a tour operator in relation to,- (iii) any services other than specified at (i) and (ii) above.	40	(i) CENVAT credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour.

Outbound Tours

Before 01.07.2012

Services in relation to Outbound Tours qualified as Export of Services under Export of Service Rules, 2005. Services in relation to outbound tours fell under category (ii) of Rule 3(1) of Export of Services Rules, 2005. Clause (ii) of sub rule 1 of Export of Services Rules, 2005 provided that when such taxable service is **partly performed outside India**, it shall be treated as performed outside India and be categorized as export of services

From 01.07.2012

From, 01.07.2012, Export of Services is governed by new provision of Rule 6A of the Service Tax Rules 1994.

To Qualify as export - Conditions

The provision of any service provided or agreed to be provide **shall be treated as export of service when** :

- (a) the provider of service is located in the **taxable territory,**
- (b) the **recipient** of service is **located outside India,**
- (c) the service is not a service specified in the section 66D of the Act,

To Qualify as export - Conditions

The provision of any service provided or agreed to be provided shall be treated as export of service when :

(d) the **place of provision of the service is outside India,**

(e) the payment for such service has been received by the provider of service in convertible foreign exchange, and

(f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act

Taxable Territory

Section 65B (52) “Taxable Territory” means the territory to which the provisions of chapter V of Finance Act apply

i.e. whole of India excluding the state of Jammu and Kashmir.

Non-Taxable Territory

Section 65B (35) “Non Taxable Territory” means the territory which is outside the taxable territory.

Location of Service will be decided by POPs

From, 01.07.2012, Place of Provision of Services Rules, 2012 determine the place where a service shall be deemed to be provided under the provisions of Service Tax.

Cross Border Transactions = Go to POPs Rules

Tour Operator – Place of Provision?

Rule 9. Place of provision of specified services.-

The place of provision of following services shall be the **location of the service provider:-**

(a)..

(b)...

(c) Intermediary services;

Education Guide – Para 5.9.6

services provided by the following persons will qualify as ‘intermediary services’:-

- i) Travel Agent (any mode of travel)
- ii) Tour Operator
- iii)
- iv)

Conclusion

Services rendered in relation in outbound tours by tour operators, does not fulfil conditions for a service to be designated as an **export of service**.

Hence, tour operators are liable to pay service tax on service rendered in relation to outbound tours.

Tour Operator – Cross Border Transactions

Whether RCM Applicable?

Whether Reverse Charge will be applicable when the Indian Tour Operator avails services of

- (i) Foreign Tour Operator
- (ii) Foreign Hotel

Rule 2(1) (d) (G) – Person Liable to Pay service tax

Rule 2(1)(d)(G) of STR, 1994 – Person Liable to pay tax shall be the recipient of service, in relation to any taxable service be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory,

66B : Charge of service tax

There shall be levied a tax (hereinafter referred to as the service 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.

Impact of 66B

If service is **not provided in taxable territory**, there cannot be any levy of Service Tax –
Neither Direct Charge Nor
Reverse Charge

3 Conditions to Qualify as Import of Service

1. Service Provider is located in non-taxable territory
2. As per the POPS Rules, 2012, the place of provision of service is in taxable territory.
3. The services are received by the person located in a taxable territory,

Indian Tour Operator – Imports Services

Indian Tour Operator
(Service Receiver in
Taxable Territory)

Receives Services from
Foreign Hotel (Service
Provider in Non-
Taxable Territory)

Receives Services from
Foreign Tour Operator
(Service Provider in
Non-Taxable Territory)

Service Provider is Foreign Hotel

Rule 5. Place of provision of services relating to immovable property.- The place of provision of services provided directly in relation to an immovable property, including services provided in this regard by experts and estate agents, **provision of hotel accommodation by a hotel etc.**, shall be the place where the immovable property is located or intended to be located.

Service Provider is Foreign Hotel

As Hotel is an immovable property located outside taxable territory, place of provision is in non-taxable territory – SERVICE TAX need not be paid by Indian Tour Operator under RCM.

Service Provider is Foreign Tour Operator

Tour Operator is an 'intermediary service'.

In case of Intermediary Services, the location of Service Provider is the place of provision. (Rule 9 of POPS)

Rule 9 of POPS

Rule 9. Place of provision of specified services.-

The place of provision of following services shall be the **location of the service provider:-**

(a)..

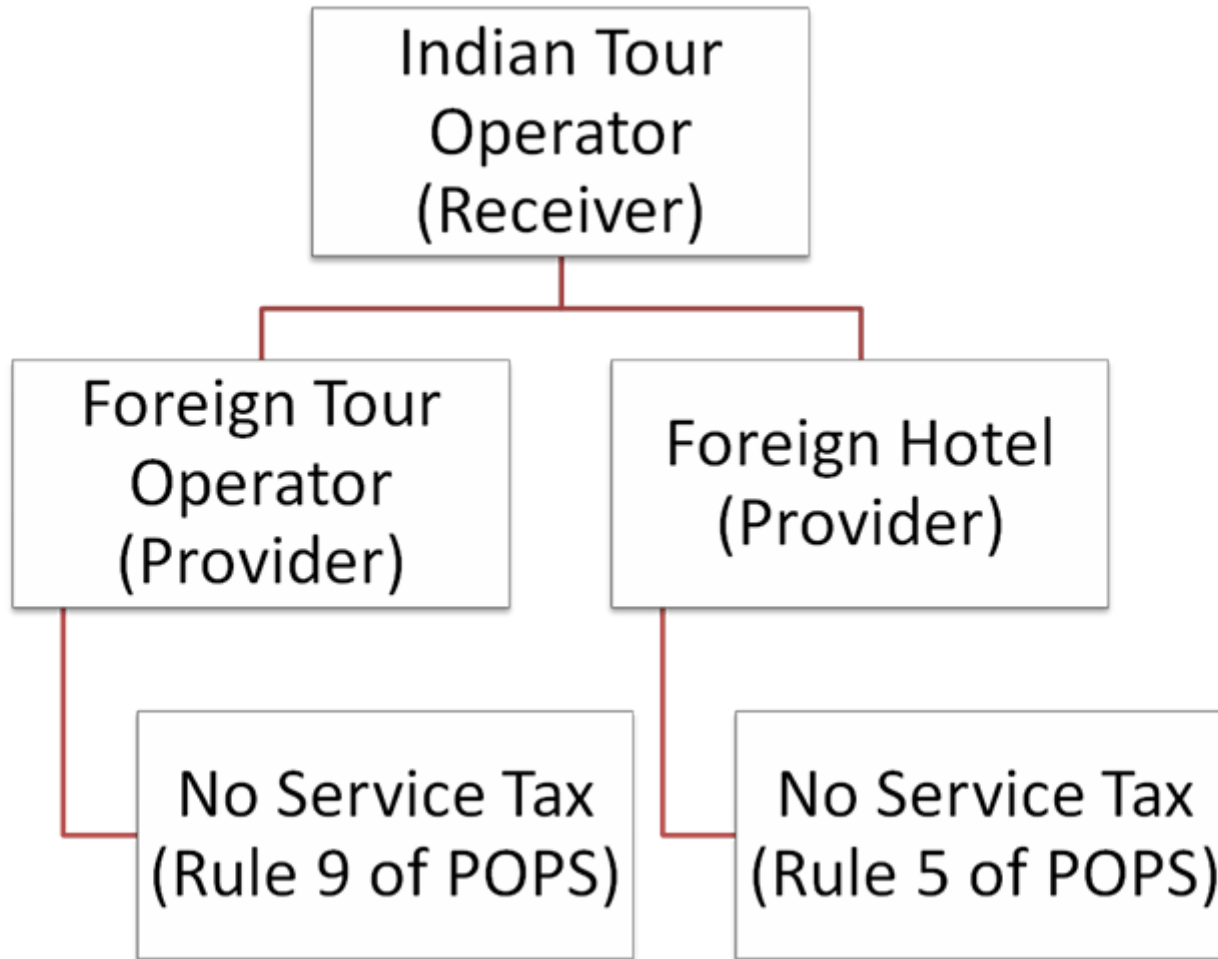
(b)...

(c) Intermediary services;

Service Provider is Foreign Tour Operator

As Foreign Tour Operator is providing services from non-taxable territory, place of provision will be in non-taxable territory – SERVICE TAX need not be paid by Indian Tour Operator under RCM.

In Short



Commercial's

Commentary on

NEGATIVE LIST BASED

Service Tax

As Amended by the Finance Act, 2013
(Act No. 17 of 2013) dt. 10-05-2013

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INCORPORATING

Detail Analysis & Commentary on

- Negative List
- Bundled Services
- Reverse Charge Mechanism
- Declared List
- Notifications Issued upto 13-05-2013
- Voluntary Compliance Encouragement Scheme, 2013
- Mega Exemption List
- Mega Positive List
- Point of Taxation
- Valuation
- Place of Provision of Service Tax

and Much More...

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Covering
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Commentary
on Facelift of
Service Tax !!!**

Commercial's

FAQ'S

ON
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LIST
BASED
**SERVICE
TAX**

[Covering more than
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