

EXPORT OF SERVICES

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The worlds over export of goods or services are kept insulated from the local taxation not only of the tax on the goods/ services exported but also from the cost of local taxes in manufacturing/ providing the said services. Service providers may note that where services are exported from India, the same **would be** subject to levy of service tax unless they are taxable services and in accordance with the framework prevailing under service tax for regarding a service as having been exported outside India.

Before we proceed further it is pertinent to note that the Central Government is empowered under section 93 of Chapter V of Finance Act to grant exemption from service tax and the exemption may be whole or partial and may be subject to conditions which may be specified. The government can also grant rebate of service tax paid on taxable services used as input services for providing any taxable services which are exported, u/s 93A. Rules can also be made u/s 94 with regard to exports which may provide for the following -

- Determination of export of taxable services
- Exemption to or granting rebate of service tax paid on taxable services exported out of India
- Rebate of service tax paid or payable on the taxable services which have been consumed for or duties paid or deemed to have been paid on goods used for providing taxable services which are exported out of India
- Rebate of service tax paid or payable on the taxable services used as input services in the manufacturing or processing of goods exported out of India u/s 93A

Export of Service – when?

We should basically have a scenario where the service involved is a taxable service and the same should be provided to a service receiver who is abroad but since services are not tangible a number of issues arise and have not been resolved even by the OECD for the cross border transactions. The service that is provided should be provided in accordance with the requirements of Rule 3 of Export of Service Rules 2005 which have been framed in this regard. An interpretation of this rule would indicate that the following

conditions would have to be satisfied in order to treat a taxable service as having been exported –

1. Such service is provided from India and used outside India
2. Payment for such service provided outside India is received by the service provider in convertible foreign exchange
3. The additional criterion depending on the category of service involved would have to be satisfied. This requirement is explained below -

For the purpose of meeting this additional criterion, the rule has basically divided the taxable services into three categories for the purpose of determining whether a taxable service is exported or not.

- The first category deals with the taxable services received in relation to an immovable property. With regard to this category, the taxable services provided or to be provided in relation to an immovable property situated outside India shall be regarded as having been exported from India. In other words the location of the immovable property would be the critical factor.
- The second category deals with taxable services with regard to which the place of performance would be the critical factor. Here, the taxable services shall be regarded as having been exported from India if such services have been performed outside India. Performance here could even be part performance outside India. Thus the place of performance of the service would determine the status regarding export.
- The third category deals with taxable services with regard to which the location of the recipient himself would be the critical factor. Here, the taxable services when provided in relation to business or commerce shall be regarded as having been exported from India if such services have been provided to a recipient located outside India. When not provided in relation to business or commerce, the taxable service shall be regarded as having been exported if the service receiver is outside India at the time of provision of such service.

Note: - The Department has come out with Circular 111/05/2009 ST dated 24.02.2009 as per which the phrase “used outside India” is to be interpreted to mean benefit of service should accrue outside India, in case of services falling under the recipient based criterion under Rule 3(1)(iii) of Export of Service Rules 2005. Thus even where all the activities are undertaken in India, the taxable service can be regarded as having been exported if the benefits of this service accrues outside India.

Where the recipient has a commercial establishment or any office relating thereto in India, such taxable services provided shall be treated as export of service only when order for provision of such service is made from any of his commercial establishments or offices located outside India.

“India” includes the designated areas in the continental shelf and exclusive economic zone of India as declared by the notifications of the Ministry of External Affairs, Government of India.

A taxable service can be exported without payment of service tax by virtue of Rule 4 of Export of Service Rules 2005. Moreover, rule 5 also provides the facility for the government to grant rebate by a notification through which rebate of service tax paid (if any) on such taxable service or service tax or duty paid on input services or inputs used in providing such taxable service can be allowed subject to conditions prescribed being met.

Category 1 – Services in relation to immovable property

- General Insurance business provided by an insurer under section 65(105)(d)
- Architectural service u/s 65(105)(p)
- Interior decorator's service u/s 65(105)(q)
- Real estate agent's service u/s 65(105)(v)
- Commercial or industrial construction service u/s 65(105)(zzq)
- Site formation, clearance, excavation and earthmoving and demolition services u/s 65(105)(zzza)
- Dredging services u/s 65(105)(zzzb)
- Survey and map making services u/s 65(105)(zzzc)
- Construction of complexes u/s 65(105)(zzzh)
- Auction of property u/s 65(105)(zzzr)
- Mining of mineral, oil and gas 65(105)(zzzy)
- Renting of immovable property 65(105)(zzzz)
- Works contract service 65(105)(zzzza)

Category 2 – Services where place of performance would be relevant

- Services by a stock broker in connection with sale or purchase of listed securities u/s 65(105)(a)
- Services by a courier agency in relation to door to door transportation of time sensitive documents, goods or articles u/s 65(105)(f)
- Services by a customs house agent in relation to entry or departure of conveyances or the import or export of goods u/s 65(105)(h)
- Services by a steamer agent in relation to a ship's husbandry or dispatch or any administrative work related thereto as well as the booking, advertising, canvassing of cargo u/s 65(105)(i)
- Clearing and forwarding agent's services u/s 65(105)(j)
- Air travel agent's services u/s 65(105)(l)
- Services by a mandap keeper (including catering) u/s 65(105)(m)
- Tour operator's services u/s 65(105)(n)
- Services by a rent-a-cab-scheme operator u/s 65(105)(o)
- Services by a practising chartered accountant u/s 65(105)(s)
- Services by a practising cost accountant u/s 65(105)(t)
- Services by a practising company secretary u/s 65(105)(u)
- Security agency's services u/s 65(105)(w)
- Credit rating agency's services u/s 65(105)(x)
- Market research agency's services u/s 65(105)(y)
- Underwriter's services u/s 65(105)(z)
- Photography studio or agency's services u/s 65(105)(zb)
- Services in relation to holding of a convention u/s 65(105)(zc)
- Services by a video production agency in relation to video-tape production u/s 65(105)(zi)
- Sound recording studio or agency's services u/s 65(105)(zj)
- Port services by any person u/s 65(105)(zn)
- Services by an authorised service station in relation to service of motor vehicles u/s 65(105)(zo)
- Beauty parlour's services in relation to beauty treatment u/s 65(105)(zq)
- Cargo handling agency's services u/s 65(105)(zr)

- Dry cleaning services by a dry cleaner u/s 65(105)(zt)
- Event manager's services in relation to event management u/s 65(105)(zu)
- Fashion designer's services u/s 65(105)(zv)
- Health club and fitness centre's services in relation to health and fitness u/s 65(105)(zw)
- Services by a storage or warehouse keeper in relation to storage and warehousing of goods u/s 65(105)(zza)
- Services in relation to commercial training or coaching by a commercial training or coaching centre u/s 65(105)(zzc)
- Services in relation to erection, commissioning or installation by a commissioning and installation agency u/s 65(105)(zzd)
- Services in relation to access of internet by an internet cafe u/s 65(105)(zzf)
- Services in relation to management, maintenance or repair u/s 65(105)(zzg) *(read note below)*
- Services in relation to technical testing and analysis by a technical testing and analysis agency u/s 65(105)(zzh) *(read note below)*
- Services in relation to technical inspection and certification by a technical inspection and certification agency u/s 65(105)(zzi) *(read note below)*
- Port services by other port or person authorised u/s 65(105)(zjl)
- Services by airports authority or person authorised by it in an airport or a civil enclave u/s 65(105)(zjm)
- Services by an aircraft operator in relation to transport of goods by aircraft u/s 65(105)(zjn)
- Services in relation to business exhibition by the organiser of a business exhibition u/s 65(105)(zjo)
- Services in relation to transport of goods by road in a goods carriage by a goods transport agency u/s 65(105)(zjp)
- Services in relation to opinion poll by an opinion poll agency u/s 65(105)(zjs)
- Services by an outdoor caterer u/s 65(105)(zjt)
- Services in relation to survey and exploration of minerals u/s 65(105)(zjv)
- Services by a pandal and shamiana contractor (including catering) u/s 65(105)(zjw)
- Travel agent's services u/s 65(105)(zjx)

- Services in relation to forward contract by a member of a recognised association or a registered association u/s 65(105)(zzy)
- Services in relation to cleaning activity u/s 65(105)(zzzd)
- Provision of services or facilities or advantages by a club or association to its members for a subscription or any other amount u/s 65(105)(zzze)
- Services in relation to packaging activity u/s 65(105)(zzzf)
- Services in relation to transport of goods in containers by rail in any manner other than Government railways u/s 65(105)(zzzp)
- Recognised stock exchange services 65(105)(zzzzg)
- Commodity exchange services 65(105)(zzzzh)
- Clearing house services 65(105)(zzzzi)

Note: - Where the services of management, maintenance or repair or technical testing and analysis or technical inspection and certification falling under clauses (zzg), (zzh) and (zzi) of section 65(105) are provided remotely through internet or an electronic network in relation to any goods or material or any immovable property situated outside India at the time of provision of service, such services shall be treated as having been performed outside India and treated as export of service.

Category 3 – Services where the location of the recipient would be the critical factor

The services not covered in the aforesaid two categories would be covered here unless there is exclusion with regard to the concerned taxable service here, explained in the note below. The services covered here are as follows –

- General insurance business service not for immovable property 65(105)(d)
- Advertising service 65(105)(e)
- Consulting engineer 65(105)(g)
- Manpower recruitment 65(105)(k)
- Management consultant 65(105)(r)
- Scientific or technical consultancy 65(105)(za)
- Online information and database access or retrieval 65(105)(zh)
- Broadcasting services 65(105)(zk)

- Insurance auxiliary service pertaining to general insurance business 65(105)(zl)
- Banking and other financial services 65(105)(zm)
- Cable operator services 65(105)(zs)
- Life insurance business services 65(105)(zx)
- Insurance auxiliary service pertaining to life insurance business 65(105)(zy)
- Rail travel agent 65(105)(zz)
- Business auxiliary service 65(105)(zzb)
- Franchisee services 65(105)(zze)
- Foreign Exchange Broker 65(105)(zzk)
- Intellectual property service 65(105)(zzr)
- TV or radio program services 65(105)(zzu)
- Transport of goods through pipeline 65(105)(zzz)
- Survey and map making not for immovable property 65(105)(zzzc)
- Mail list compilation 65(105)(zzzg)
- Registrar to an issue 65(105)(zzzi)
- Share transfer agent 65(105)(zzzj)
- ATM operations, maintenance or management 65(105)(zzzk)
- Recovery agent 65(105)(zzzl)
- Sale or time or space services 65(105)(zzzm)
- Sponsorship service 65(105)(zzzn)
- Support service of business or commerce 65(105)(zzzq)
- Auctioneer's service not for immovable property 65(105)(zzzr)
- Public relations services 65(105)(zzzs)
- Ship management services 65(105)(zzzt)
- Credit card, debit card related services 65(105)(zzzw)
- Telecommunications services 65(105)(zzzx)
- Development and supply of content services 65(105)(zzzxb)
- Asset management services 65(105)(zzzxc)
- Design services 65(105)(zzzxd)
- Internet telecommunication services 65(105)(zzzu)
- Information technology software services 65(105)(zzzze)
- Services in relation to management of investment (ULIP) 65(105)(zzzff)

- Services in relation to supply of tangible goods 65(105)(zzzzj) (*read note below*)

Note: - It is pertinent to once again note here that the third category (recipient based) would not include the following taxable services –

- Services by an aircraft operator in relation to scheduled or non-scheduled air transport of passengers embarking in India for international journey u/s 65(105)(zzzo)
- Services in relation to transport of persons by a cruise ship, embarking from any port or other port in India u/s 65(105)(zzzv)

The third category would specifically cover the following taxable services where they are not provided in relation to an immovable property -

- General Insurance business service provided by an insurer under section 65(105)(d)
- Survey and map making services u/s 65(105)(zzzc) by a person other than an agency under control of or authorized by the Government,
- Auction of property (whether movable or immovable or tangible or intangible) other than by government or under directions or orders of Court, u/s 65(105)(zzzr)
- Where supply of tangible goods service u/s 65(105)(zzzzj) is provided to a recipient outside India, the service would be regarded as export subject to the condition that the tangible goods so supplied are located outside India during the period of usage of such goods by such recipient.

The categorization explained above is similar to the one adopted under Taxation of Service (Provided from outside India and Received in India) Rules 2006.

Importance of classification

The readers should note that correct classification of services would be absolutely critical if one is to maximize benefits under Export of Service Rules 2005. It is quite common to come across assesseees who make mistakes in classifying their taxable services and as a result either end up paying service tax when not required doing so or refraining from paying tax when they are actually required to pay service tax.

Another fall out could be losing out on the benefits as to refund of Cenvat credits on inputs/input services used in providing the output service exported or failure to claim the benefit as to rebate of service tax under Rule 5 of Export of Service Rules 2005. This is an area which is and will be seeing a spate of litigation as exporters apply for a refund.