



## **HOTEL & RESTAURANT ASSOCIATION (WESTERN INDIA)**

**Seminar on Service Tax organized for the benefit of Pune members**

**Jointly with Poona Hoteliers Association on 20<sup>th</sup> November, 2014 at**

**“Vivanta by Taj Blue Diamond”, Pune.**

### **APPLICATION OF SERVICE TAX ON HOTELS AND RESTAURANTS**

The history of Hospitality industry dates back to the colonial period in the late 1700s. This industry has experienced significant developments over the years and it began to take form in the early 1950s leading the way for growth into the dynamic industry we know today.

#### **Brief Overview of Hotel and Restaurant Industry (Activitywise)**

The industry as a whole is involved in providing the following services to its customers:

- 1) Accommodation – guest rooms, suites.
- 2) Food & Drinks – Dining, Buffet, Counter Sales, Home Delivery.
- 3) House Keeping - Cleaning and upkeep of the rooms and the entire premises.
- 4) Laundry - Washing, drying and ironing of clothes of the customers.
- 5) Amenities - Health and Fitness, Recreation, Beauty Treatment.
- 6) Functions & Events – Banquet.
- 7) Support Services - Internet, Pick up and Drop, Local Travel, Travel Desk, Forex Conversion, Vehicle Parking.
- 8) Casino – organising betting, gambling.
- 9) Club Membership.
- 10) Referrals.
- 11) Franchise.

## FOOD AND DRINK (BEVERAGES) – Service Tax implications

### (1) Rule 2 C of Valuation Rules, 2006 –

Subject to provisions of section 67, the value of service portion shall be the specified percentage of the total amount charged :-

Sr.No.	Particulars	Taxable Portion / effective rate
1)	<b>Service portion</b> 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 <b>as part of the activity</b> , at a <b>restaurant</b> .	<b>40%</b> <b>(4.944%)</b>
2)	<b>Service portion</b> in outdoor catering wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating ) is supplied in any manner <b>as a part of such outdoor catering</b> .	<b>60%</b> <b>(7.416%)</b>

### (2) Entry No. 4 of Notification no. 26/2012 - ST Dated 20.06.2012 (Abatement):

Particulars	Taxable Portion / effective rate
<b>Bundled service</b> by way of <b>supply of food</b> or any other article of human consumption or any drink, <b>in a premises</b> (including hotel, convention centre, club, pandal, shamiana or any other place, <b>pecially arranged for organizing the function</b> ) together with <b>renting of such premises</b>	<b>70%</b> <b>(8.652%)</b>

(3) Term ‘Outdoor catering’, ‘Restaurant’ and ‘banquet’ are not defined in the service tax legislation.

Relevant extract of erstwhile sections:

“Outdoor Caterer” [as defined u/s 65(76a)] means a caterer engaged in providing services in connection with catering at a place other than his own but including a place provided by way of tenancy or otherwise by the person receiving such services

“Caterer” [as defined u/s 65(24)] means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose or occasion

“Convention” [as defined u/s 65(32)] means a formal meeting or assembly which is not open to the general public, but does not include a meeting or assembly, the principal purpose of which is to provide any type of amusement, entertainment or recreation.

The scope levy of service tax on Mandap keeper service was clarified vide CBEC instruction F No. B 43/1/97 – TRU dated 06.06.1997

It may kindly be noted that definition of mandap is very wide in its coverage and covers all immovable properties let out for organizing social, official or business functions.....

Hotels and restaurants providing facility like kalyana mandaps or marriage halls, banquet halls, conference halls etc within their premises for organizing any social, official or any business function shall also be obviously included in the coverage of service tax. Therefore the levy of service tax will apply in all his cases.

The scope of taxability of “mere sale of goods” is cleared by circular no. 334/3/2011 – TRU dated 28.02.2011 the relevant part of circular is as under:

“1.4 The new levy is directed at services provided by high-end restaurants that are air-conditioned and have license to serve liquor. Such restaurants provide conditions and ambience in a manner that service provided may assume predominance over the food in many situations. It should not be confused with mere sale of food at any eating house, where such services are materially absent or so minimal that it will be difficult to establish that any service in any meaningful way is being provided.”

In case of Kerala Classified hotels and resorts association [2013-TIOL-533-HC-KERALA-ST] , levy of service tax on restaurant service was held to be unconstitutional

**(4)** Mere sale of food is not a service and hence not liable to service tax

CBEC vide Circular No. 80/10/2004 – ST dated 17.09.2004 clarified that in case a café, hotels , restaurants etc. delivers food to home and no charge other than that for the cost of the foods, is charged (i.e. free home delivery) no service tax is leviable.

In case, separate service charge is recovered for home delivery, it will be treated as service liable to service tax

**(5)** Critical Issues addressed by CBEC

Circular No. 173/8/2013 ST dated 17.10.2013

- a) In a complex where air conditioned as well as non-air conditioned restaurants are operational but food is sourced from the common kitchen, will service tax arise in the non-air conditioned restaurant?
- b) In a hotel, if services are provided by a specified restaurant in other areas e.g. swimming pool or an open area attached to the restaurant, will service tax arise?
- c) Whether service tax is leviable on goods sold on MRP basis across the counter as part of the Bill/invoice.

Circular No. 139/8/2011 – TRU dated 10.05.2011

- a) Is the serving of food and/or beverages by way of room service liable to service tax?
- b) Is the value added tax imposed by States required to be included for the purpose of service tax?

## ACCOMODATION – Service Tax implications

### (1) Entry No. 18 of Notification no. 25/2012 - ST Dated 20.06.2012 (Mega Exemptions):

Following taxable service is exempt from levy of the service tax u/s. 66B of the said Act.
Services by way of <b>renting</b> of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation <b>below rupees one thousand per day</b> or equivalent. <i>(upto 10/07/2014)</i>
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 one thousand rupees per day or equivalent. <i>(w.e.f. 11/07/2014)</i>

### (2) Entry No. 6 of Notification no. 26/2012 - ST Dated 20.06.2012 (Abatement):

Particulars	Taxable Portion / effective rate
<b>Renting</b> of hotels, inns, guest, houses, clubs, campsites or other commercial places meant for residential or lodging purposes.	<b>60%</b> <b>(7.416%)</b>

### (3) Critical Issues addressed by CBEC

Circular No. 139/8/2011 – TRU dated 10.05.2011

a) What is the relevance of declared tariff? Is the tax required to be paid on declared tariff or actual amount charged?

Particulars	Rs.	Rs.	Rs.
Declared Tariff	900	1200	1200
Less: Discount	100	100	300
Actual charged	800	1100	900
Taxable Value	NIL	1100	900

b) Is it possible to levy separate tariff for the same accommodation in respect of corporate, privileged customers and other normal customers?

- c) Is the declared tariff supposed to include cost of meals or beverages?
- d) What is the position relating to off season prices? Will they be considered as declared tariff?
- e) Is the luxury tax imposed by States required to be included for the purpose of determining either the declared tariff or the actual room rent?

**Abatement from Value of Service Tax** [Notification No. 26/2012- Service Tax]

Sl. No.	Description of taxable service	Taxable (%)	Conditions	
4	Bundled service – by way of supply of food or any other article of human consumption or any drink in a premises, together with -renting of such premises	70	CENVAT credit on	
			Capital goods	Not to be taken
			Inputs	Not to be taken
			Input service *	
			On Motorcabs	Full can be taken – if Sr. provider has charged on 40% value Upto 40% only can be taken – if Sr. provider has charged on 100% value
On Others	Not to be taken			
6	Renting of hotels, inns, guest, houses, clubs, campsites or other commercial places meant for residential or lodging purposes.	60	CENVAT credit on	
			Capital goods	Not to be taken
			Inputs (goods)	Not to be taken
			Input service	Can be taken
9	Renting of any motor vehicle designed to carry passengers	40	CENVAT credit on	
			Capital goods	Not to be taken
			Inputs (goods)	Not to be taken
			Input service	Not to be taken
11	Services by a tour operator in relation to,-		The bill issued for this purpose indicates that it is inclusive of charges for such a tour.	
	(i) a package tour	25		
	(ii) a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour	10		
	(iii) any services other than specified at (i) and (ii) above.	40		
			CENVAT credit on	
			Capital goods	Not to be taken
			Inputs (goods)	Not to be taken
			Input service	Not to be taken

*Note: Only relevant extracts as applicable to Hotels and Restaurants.*

*\*w.e.f. 1<sup>st</sup> October 2014.*

Sr.No.	REVERSE CHARGE MECHANISM [Notification No. 30/2012-Service Tax w.e.f.01.07.2012]				
	Description of Service	Service Provider	Service Receiver	Person Liable to Pay Tax	Proportion of 12.36% payable under RCM
2)	Goods Transport	GTA	Specified Persons	Specified Persons	100%
3)	Sponsorship	Any Person	Body Corporate or Firm	Body Corporate or Firm	100%
4)	Legal services	Arbitral Tribunal or Advocate	Business Entity (Turnover more than 10Las in prior year)	Business Entity (Turnover more than 10Las in prior year)	100%
6)	Hiring of Motor Vehicle (Abated Value)	Individual, HUF, Proprietary Firm, Partnership Firm, AOP	Business Entity registered as Body Corporate	Business Entity registered as Body Corporate	100%
7)	Hiring of Motor Vehicle (Non - Abated Value) [partial RCM]	Individual, HUF, Proprietary Firm, Partnership Firm, AOP	Business Entity registered as Body Corporate	Business Entity registered as Body Corporate	50%
				Provider	50%
8)	Supply of Manpower, Security Services for any purpose [partial RCM]	Individual, HUF, Proprietary Firm, Partnership Firm, AOP	Business Entity registered as Body Corporate	Business Entity registered as Body Corporate	75%
				Provider	25%
9)	Director Services	Non - Executive Director	Company or Corporate body	Company or Corporate body	100%
10)	Works Contract [partial RCM]	Individual, HUF, Proprietary Firm, Partnership Firm, AOP	Business Entity registered as Body Corporate	Business Entity registered as Body Corporate	50% *
				Provider	50% *
11)	Any Taxable Service (Import of Services)	Located in Non – Taxable Territory	Any person Located in Taxable Territory	Any person Located in Taxable Territory	100%

*Note: Only relevant extracts as applicable to Hotels and Restaurants.  
\*w.e.f. 1<sup>st</sup> October 2014.*

## **CASE STUDY**

### **Case 1:**

An air conditioned restaurant is partitioned and divided into two parts. Ala Carte is served in one portion and in another portion buffet lunch is served in the day time. In the evening, the other portion is used as exclusive banquet hall. In case, where there is no booking for banquet, the said portion is used as normal restaurant where food is served on Ala Carte basis. Restaurant also provides the home delivery of the food.

What will be the Value of taxable services in these situations.

### **Case 2:**

Computers Ltd. has entered into an agreement with Comfort Hotels where in the hotel will make it available 5 rooms for a span of one year. During this span Computer Ltd. will send its employees for a stay of 3 days on a vacation every two to three months. The rooms are to be made available as and when the employee arrives. 95% of the room tariff has been paid by Computers at the time of signing the agreement itself. The Service Tax Authorities are treating this deal to be a renting of immovable property. Please advise.