

SERVICES PROVIDED BY
GOVERNMENT OR LOCAL AUTHORITY

FREQUENTLY ASKED QUESTIONS
(UPDATED TILL 16TH APRIL, 2016)



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Q1) What is the definition of Government?

A1) Section 65B(26A) of the Finance Act, 1994 defines Government as under:

“Government means the Departments of the Central Government, a State Government and its Departments and a Union Territory and its Departments, but shall not include any entity whether created by a statute or otherwise, the account of which are not required to be kept in accordance with article 150 of the Constitution or the rules made there under”

On reading the above, it can be interpreted that public sector companies, electricity and public utility boards formed under the respective Acts, public sector banks and other corporations controlled by the Central and State Governments would not be treated as ‘Government’. Only the Government Departments which are required to keep their accounts in accordance with article 150 of the Constitution would be treated as Government for the purposes of the Finance Act, 1994.

Q2) What are the legal provisions for taxability of any service provided by Government or local authority?

A2) Section 66D of the Finance Act, 1994 contains the Negative List which comprises the services which are not leviable to service tax. Clause (a) of this list states that services provided by Government or Local Authority are not liable to Service Tax subject to four exclusion clauses.

Clause (iv) of Section 66D(a) of the Finance Act, 1994 earlier referred to **“any support services”** provided to business entities. This meant that the support services provided by Government or local authorities to business entities were taxable.

Section 109(1) of the Finance Act, 2015 substituted the words **“any support services”** with **“any service”**. This section was to be made effective from a future date to be prescribed by the Central Government.

Notification No. 06/2016 dated 18th February, 2016 clearly stated that Section 109(1) of the Finance Act, 2015 would be effective from 1st April, 2016.

So as per Section 66D of the Finance Act, 1994, any service provided by Government or local authority to business entities was considered to be taxable from 1st April, 2016.

Q3) Does this mean that all the services provided by the Government or local authority are taxable from 1st April, 2016?

A3) No, the Government has issued Notification no. 22/2016-ST, 23/2016-ST, 24/2016 CE(NT) and 24/2016-ST along with Circular No. 192/02/2016-ST dated 13th April, 2016 to clarify the answer relating to this question.

Notification no. 22/2016 dated 13th April, 2016 mentions quite a number of amendments relating to services provided by the Government or local authority in the Mega Exemption Notification no. 25/2012 dated 20th June, 2012.

Thereby considering the relevant entries of the Notification no. 25/2012 dated 20th June, 2012, if the services provided by the Government or local authority fall within any of the below entries, they will be considered to be exempt:

- 1) Entry 39: Services provided by Government or local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution;
- 2) Entry 48: Services provided by Government or local authority to a business entity with a turnover of upto Rupees Ten lakhs in the preceding financial year.
- 3) Entry 54: Services provided by Government or a local authority to another Government or local authority except services specified in sub-clauses (i),(ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994;
- 4) Entry 55: Services provided by Government or a local authority by way of issuance of passport, visa, driving license, birth certificate or death certificate;
- 5) Entry 56: Services provided by Government or a local authority where the gross amount charged for such services does not exceed Rs. 5000/- except services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994. In case of continuous supply of service provided by the Government or a local authority, the exemption shall apply only where the gross amount charged for such service does not exceed Rs. 5000/- in a financial year;
- 6) Entry 57: Services provided by Government or a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract;
- 7) Entry 58: Services provided by Government or a local authority by way of-
 - (a) registration required under any law for the time being in force;
 - (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force;
- 8) Entry 59: Services provided by Government or a local authority by way of assignment of right to use natural resources to an individual farmer for the purposes of agriculture;
- 9) Entry 60: Services by Government, a local authority or a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution;

- 10) Entry 61: Services provided by Government or a local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Government or the local authority before the 1st April, 2016. The exemption shall apply only to service tax payable on one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource;
- 11) Entry 62: Services provided by Government or a local authority by way of allowing a business entity to operate as a telecom service provider or use radiofrequency spectrum during the financial year 2015-16 on payment of license fee or spectrum user charges, as the case may be;
- 12) Entry 63: Services provided by Government by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges (MOT).

Q4) What will be the date of applicability of service tax on any service provided by the Government or local authority to a business entity under Section 66D(a)(iv) of the Finance Act, 1994?

- A4) As per Notification No. 6/2016 dated 18th February, 2016 read with Section 109(1) of the Finance Act, 2015, the date of applicability of service tax on any services provided by the Government or local authority to a business entity as per Section 66D(a)(iv) of the Finance Act, 1994 will be 1st of April, 2016.

However, Notification no. 22/2016-ST, 23/2016-ST, 24/2016 CE(NT) and 24/2016-ST and Circular No. 192/02/2016-ST clarifying the applicability of service tax on services by Government or local authority have been issued on 13th April, 2016 without specifying any particular date of applicability. So, these notifications and circular will be said to be applicable from 13th April, 2016.

Here, it is to be noted that the applicability of service tax for the period 1st April to 12th April, 2016 on services provided by Government or local authority has not been clarified.

Q5) Whether all the services provided by the Government or local authority which do not fall within the negative list or the exemption notification be taxable irrespective of the status of the service recipient?

- A5) No, only if the service recipient satisfies the following two conditions, it will be taxable:
- 1) The service recipient should be a business entity (clause (iv) of Section 66D(a) of the Finance Act, 1994)
 - 2) The service recipient should have a turnover of greater than Rs. 10 lakhs in the preceding financial year.

Business Entity having a turnover of less than Rs. 10 lakhs in the preceding financial year in respect of services provided by Government or local authority has been exempted from the payment of service tax as per Entry 48 inserted in the Mega Exemption Notification no. 25/2012 dated 20th June, 2012 vide Notification No. 6/2016 dated 18th February, 2016)

As per Section 65B(17) of the Finance Act, 1994, 'Business entity' means "any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession".

Q6) Is there any threshold of value below which the service tax will not be chargeable on services provided by Government or local authority?

A6) As per Entry 56 of the Mega Exemption Notification No. 25/2012 dated 20th June, 2012, services provided by Government or Local Authority below the value of Rs. 5,000/- will not be chargeable to service tax.

In case of continuous supply of services by Government or Local Authority, services below the value of Rs. 5,000/- in a financial year are not exigible to service tax.

In the following cases where the services provided by Government or local authority, there will be no threshold for chargeability of service tax:

- 1) Services provided by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government
- 2) Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport
- 3) Transport of goods or passengers

Q7) What will be the mechanism of payment in case of services provided by the Government or local authority?

A7) Service tax in respect of all the services provided by the Government or local authority which are taxable will be liable for payment under reverse charge i.e. the business entity which is in receipt of the services will be liable to pay service tax as per the necessary amendments carried out in Sl No. 6 of Notification No. 30/2012 dated 20th June, 2012 and Rule 2(1)(d)(i)(E) of the Services Tax Rules, 1994.

However, in respect of the following cases, service tax will be payable under forward charge i.e. the Government/Government authority will be liable to pay service tax:

- 1) Services provided by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government
- 2) Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport
- 3) Transport of goods or passengers
- 4) Renting of Immovable Property

Q8) What is the point of taxation in case of service provided by Government or local authority?

A8) The point of taxation for services covered under reverse charge mechanism is the date of payment as per Rule 7 of the Point of Taxation Rules, 2011. However, for the purpose of Services provided by Government or local authority which are taxable under reverse charge mechanism a new proviso has been inserted in the Rule 7 of the Point of Taxation Rules, 2011. This proviso states that the point of taxation in case of services provided by the Government or local authority under reverse charge mechanism will be earlier of the dates on which:

- (a) any payment, part or full, in respect of such service becomes due, as specified in the invoice, bill, challan or any other document issued by the Government or local authority demanding such payment or
- (b) payment for such services is made.

This means that if there is any delay beyond the due date in the payment of any amount whether statutory or otherwise, against services provided by Government or local authority which are taxable, then the service receiver will not only be liable for payment of the consideration but also the interest on delayed payment of service tax.

(For details of the services on which reverse charge and forward charge are applicable, please refer Q7 above).

Q9) How will the Cenvat Credit be availed for service provided by Government or local authority?

A9) In case of services liable to tax under forward charge, Cenvat Credit is available to the service receiver on input services upon the receipt of invoice from the service provider. As per Rule 4(7) of the Cenvat Credit rules, if the service receiver does not pay the invoice/bill/challan amount within 3 months from the date of invoice/bill/challan, the Cenvat Credit is required to be reversed. Once the payment is made after the period of 3 months, Cenvat credit can be availed once again.

As per Rule 6(1) of the Cenvat Credit Rules, 2004, the provider of exempt output services is not entitled to the Cenvat Credit on inputs/input services which are attributable to the use in providing the exempt output service. So, if the service recipient is engaged in the provision of exempt service only, he will not be entitled for any Cenvat Credit.

In respect of the payment made by the service recipient under reverse charge as per rule 4(7) of the Cenvat Credit Rules, 2004, the service recipient can take the credit of the input services immediately after he has paid the service tax to the credit of Central Government. Even if the payment is not made to the service provider, the said credit is available.

Overriding all the above paragraphs with regard to this question, in case of services provided by Government or local authority by way of assignment of right to use any natural resource, Cenvat Credit paid in a financial year will be available over a period of three years as per the amendments made in the Rule 4(7) of the Cenvat Credit

Rules, 2004 vide Notification No.24/2016-CE(NT) dated 13th April, 2016. It is to be noted that the Cenvat credit will be on the basis of actual payment made which will be spread evenly over a period of 3 years irrespective of whether the payment was made upfront or as was part of any installment. Where such rights are further assigned to another person, then the assignor can take the balance amount of credit in that financial year in which such right is assigned. However, this balance credit cannot exceed the service tax payable on the consideration charged for this further assignment. The assignee can then start taking credit on the balance installments over a period of three years as and when it makes the payment.

(For details of the services on which reverse charge and forward charge are applicable, please refer Q7 above).

Q10) What will be the value of service for levy of service tax in respect of service provided by Government or local authority?

A10) In accordance with Section 67 of the Finance Act, 1994, the value for the purpose of service tax will be the amount charged by the Government or local authority for any taxable services provided by it.

Though the provisions of valuation in case of services provided by Government or local authority are similar to the valuation of any other service as per the valuation provisions, there is a small exception. As per clause (iv) of Rule 6(2) of the Service Tax (Determination of Value) Rules, 2006, interest on delayed payment of any consideration for the provision of service or sale of immovable/movable property is not be included in the value for the purpose of service tax. However, this will be included in the value in respect of services provided by Government or local authority where the payment is allowed to be deferred on payment of interest or any other consideration as per the proviso inserted in Rule 6(2)(iv) of the Service Tax(Determination of Value) Rules, 2006 vide Notification no. 23/2016-ST dated 13th April, 2016.

Q11)Whether Service Tax will be leviable on taxes, duties or cesses?

A11) Service tax is not leviable on taxes, duties or cesses. The primary condition for levy of service tax is that there should be a provision of service in the first place. However, in case of taxes, duties or cesses, there is no particular service as such against which the consideration is being paid. Hence, there will be no levy of service tax. These taxes, cesses or duties include excise duty, customs duty, Service Tax, State VAT, CST, income tax, wealth tax, stamp duty, taxes on professions, trades, callings or employment, octroi, entertainment tax, luxury tax and property tax. This has been clarified by the Government through Sl No. 3 of the Circular No. 192/02/2016 – ST dated 13th April, 2016.

Q12) Whether Service Tax will be leviable on fines and penalties?

A12) There will be no service tax leviable on the fines and penalties. There can be two kinds of fines and penalties which can be levied by the Government or local authority:

- a) Violation of Law - Fines and Penalties chargeable by Government or local authority imposed for violations of a statute, bye-laws, rules or regulations are not leviable to Service tax. This has been clarified as per SI No. 4 of the Circular No. 192/02/2016 – ST dated 13th April, 2016.
- b) Non-performance of contract – Any fines and damages payable by way of consideration to Government or local authority for tolerance of non-performance of contract has also been exempted vide Entry 57 of Notification No. 25/2012 dated 20th June, 2012.

Q13) Whether Service tax will be leviable on any fees charged by Government or local authority against any service provided by it?

A13) Yes, service tax will be leviable on the fees charged by the Government or local authority. However, if the service provided by Government or local authority relates to any of the following cases, then service tax will be exempt:

- a) Service of registration required under any law(as per Entry 58 of the Notification No. 25/2012-ST dated 20th June, 2012)
- b) Services of testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law(as per Entry 58 of the Notification No. 25/2012-ST dated 20th June, 2012)
- c) Services where the value of services does not exceed Rs. 5,000/- except sub-clause (i), (ii) and (iii) of Section 66D(a) of the Finance Act, 1994 in which no exemption limit is applicable. For continuous supply of services, this limit becomes Rs. 5,000/- in a financial year. (as per Entry 56 of the Notification No. 25/2012-ST dated 20th June, 2012)

It has been clarified in the Circular No. 192/02/2016 – ST dated 13th April, 2016 that any activity that the Government or local authority undertakes will constitute a Service. If any payment is made to the Government or local authority for getting a service in return, it has to be regarded as consideration for that service and will be taxable.

Q14) Whether service tax will be collected on any permission, license or assignment of right to use granted by the Government or local authority?

A14) Service tax is leviable on any payment made against any permission or license or assignment of right granted by the Government or local authority. However, in the following cases where services are provided by Government or local authority, no service tax will be leviable:

- a) Services by way of grant of passport, visa, driving license, birth or death certificate(as per Entry 55 of the Notification no. 25/2012-ST dated 20th June, 2012)
- b) Services where the value of services does not exceed Rs. 5,000/- except sub-clause (i), (ii) and (iii) of Section 66D(a) of the Finance Act, 1994 in which no exemption limit is applicable. For continuous supply of services, this limit becomes Rs. 5,000/- in a financial year. (as per Entry 56 of the Notification No. 25/2012-ST dated 20th June, 2012)
- c) Services by way of assignment of right to use natural resources to an individual farmer for the purposes of agriculture(as per Entry 59 of the Notification no. 25/2012-ST dated 20th June, 2012)
- d) Services provided by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the financial year 2015-16 on payment of licence fee or spectrum user charges, as the case may be.
- e) Services by way of assignment of right to use any natural resource where the assignment was made before the 1st April, 2016. Exemption is only for the one-time charge payable, whether paid in full upfront or in installments for such right.(as per Entry 61 of the Notification no. 25/2012-ST dated 20th June, 2012).

However, any periodic payment made as Spectrum User charges, license fees or monthly payment for extraction of coal from coal mine or royalty payable on extracted coal will be chargeable to service tax.

Also, if the assignment of right to use any natural resources is made on or after 1st April, 2016, then the payments made for such assignment will be chargeable to service tax. In effect, purchase of spectrum by telecom companies after 1st April, 2016 will also be liable to service tax.

Q15) Will service tax be applicable in case of various services entrusted to Municipalities as per the Constitution like water supply services, change of land use, commercial building approval and utility services?

A15) No, the services entrusted to municipalities (list specified in Article 243W of the Constitution) are exempted and no service tax will be leviable whether the services are provided by Government, local authority or Governmental authority(as per Entry 39 of the Notification No. 25/2012-ST dated 20th June, 2012)

Q16) What are the implications if the services provided by the Government or local authority is part of the statutory or sovereign functions of the Government?

A16) The mere fact that such activity is a statutory or mandatory requirement under the law or whether the amount charged is laid down in statute does not have any impact on the chargeability of service tax.

The statute has mentioned that 'any service' provided by Government or local authority to business entity within section 66D(a)(iv) of the Finance Act, 1994 will be liable to service tax. All the entries relating to Government or local authority which

will not be chargeable to service tax has been specifically stated in the Mega Exemption Notification no. 25/2012 dated 20th June, 2012. So, all other services provided by the Government or local authority will be exigible to service tax whether a sovereign function or not.

In fact, Circular No. 89/7/2006-ST dated 18th December, 2006 and Reference Code 999.01/23.8.07 in Circular No. 96/7/2007-ST dated 23rd August, 2007 which talk about the statutory/sovereign functions of the Government have been specifically stated to be no longer applicable under the current regime as per the Circular No. 192/02/2016 – ST dated 13th April, 2016.

So, various statutory payments like ESI Inspection, PF inspection, Motor Vehicles Inspection Charges, Building Inspection etc. will be liable to service tax. However, any payments made for the following will not be taxable:

- a) Service of registration required under any law
- b) Services of testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law
- c) Tax, Duty or Cess to be required under any law
- d) Fines and penalties for violation of any law

Q17) Will service tax be applicable in case of fees charged for filing of statutory form to the Registrar of Companies on the MCA website?

A17) Yes, service tax will be applicable on fees charged for filing of statutory form to the Registrar of Companies on the MCA website except in the cases below:

- 1) Services provided by way of Incorporation of Company/LLP will not be chargeable to service tax as service of registration required under any law is exempt as per Entry 58 of the Mega Exemption Notification No. 25/2012 dated 20th June, 2012.
- 2) As per Entry 56 of the Mega Exemption Notification No. 25/2012 dated 20th June, 2012, services provided by Government or Local Authority below the value of Rs. 5,000/- will not be chargeable to service tax. In case of continuous supply of services by Government or Local Authority, services below the value of Rs. 5,000/- in a financial year are not exigible to service tax.

Whether the service relating to the fees charged for filing of statutory form to the Registrar of Companies on MCA website is a one-time service or a continuous supply of service is a matter of debate and has not been clarified by the Government. However, taking the view that the record keeping and maintenance of documents is provided by the MCA on a continuous basis, this can be considered to be a continuous supply of service. So, service tax should be applicable if the value of filing fees on the MCA website increases beyond Rs. 5,000/- in a financial year.

The late filing fees should also be included in the value of services as per the proviso inserted in Rule 6(2)(iv) of Service Tax (Determination of Value) Rules, 2006. This proviso implies that the interest on delayed payment of any consideration for the provision of services or sale of immovable or movable property will be included in

the value of service in case of services provided by Government or local authority where the payment of such service is allowed to be deferred on payment of interest or consideration. Hence, late filing fees will also be liable for service tax.

Q18) What will be the taxability if any person outside the taxable territory avails of any services provided by the Government or local authority?

A18) The taxability in this scenario will depend on the Place of Provision of Services Rules, 2012. If the services are provided in the non-taxable territory, then no service tax will be leviable.

Depending on the nature of services, the specific rule of the Place of Provision of Services Rules, 2012 needs to be examined. If the services do not fall within any of these specific rules, then the Rule 3 which is the general rule needs to be looked at. Rule 3 states that the place will be the location of service recipient.

Most of the services provided by the government or local authority fall within this Rule 3 of the Place of Provision of Services Rules, 2012. If the service recipient who is availing the services provided by the Government or local authority is located outside the taxable territory, then the services will be deemed to have been provided outside the taxable territory. So in that case, no service tax will be levied.

For example, if a company outside India applies for renewal of a patent/trademark in India, then the place of provision of services will be outside India, so no service tax will be levied.

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