

TAXABLE SERVICES UNDER SERVICE TAX

1.1. What is a taxable service

Under the Act, as amended by Finance Act, 2012, Section 65B(51) defines taxable services as “any service on which service tax is leviable under Section 66B”. Section 66B of the Finance Act, 1994 provides that there shall be levied a tax on all services except those mentioned in negative list (Negative list has been defined under Section 65B(34) as services listed in Section 66D of Finance Act, 1994) and provided or agreed to be provided by one person to another in the taxable territory and collected in the manner prescribed.

"Service" has been defined under Section 65B(44) of the Finance Act, 1994 as under:

“(44) "Service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(a) An activity which constitutes merely,—

(i) A transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) Such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or

(iii) A transaction in money or actionable claim;

(b) A provision of service by an employee to the employer in the course of or in relation to his employment;

(c) Fees taken in any Court or tribunal established under any law for the time being in force.

Explanation 1.—For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,—

(A) The functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

(B) The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(C) The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 2. – For the purpose of this clause, transaction in money shall not include any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

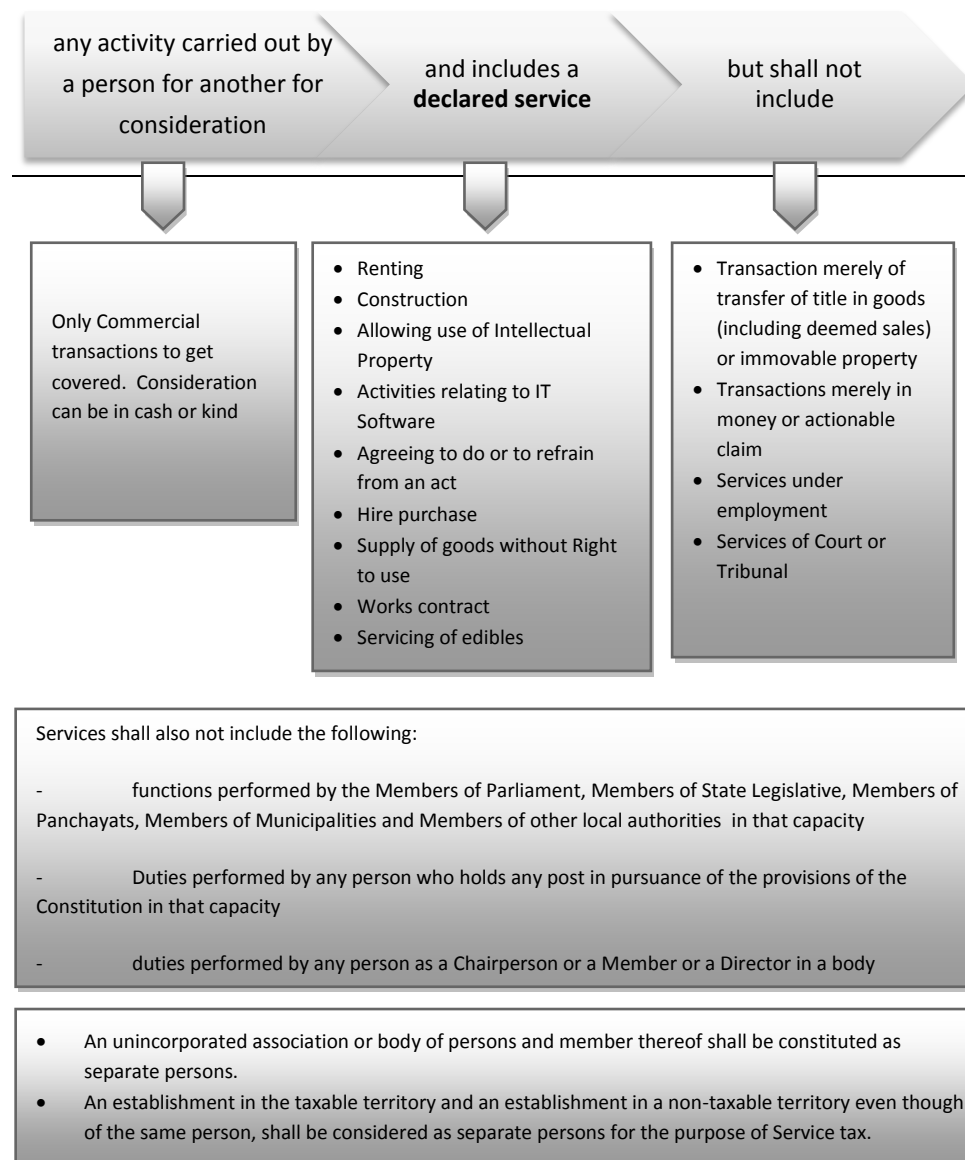
Explanation 3.— For the purposes of this Chapter,—

(a) An unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;

(b) An establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Explanation 4.—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;”

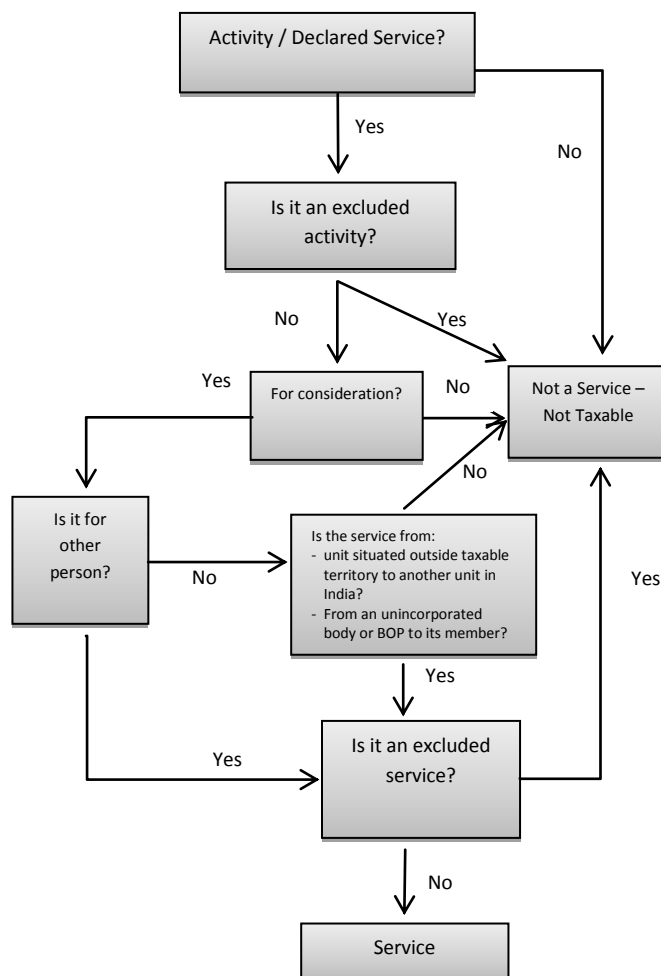
The above definition can be explained as under:



Thus, for being a service, the following conditions are essential to be fulfilled:

- It must be an activity (in case of declared services, even this test is not required)
- It must not be an excluded activity
- It must be for consideration
- It must be for another person
- It must not be an excluded service

While, the concept of service is defined above, the process flow for determination of any activity being a service is provided below. To determine whether an activity is a service or not, the same can be done with the help of the following diagram:



As seen above for the journey of every activity to become a service, there are certain checks which need to be performed.

Being an activity is the first and foremost requisite for anything to fall within the purview of being a service under Finance Act, 1994.

‘Activity’ has not been defined in the Finance Act, 1994. Accordingly, we have to resort to the definition of the term as is available in general dictionaries.

As per Collins English Dictionary – Complete and Unabridged, the term ‘activity’ has been defined as follows:

“activity n. pl -ties

1. *the state or quality of being active*
2. *lively action or movement*
3. *any specific deed, action, pursuit, etc. recreational activities*
4. *(Physics / General Physics) the number of disintegrations of a radioactive substance in a given unit of time, usually expressed in curies or disintegrations per second*
5. *(Chemistry)*
 - a. *the capacity of a substance to undergo chemical change*
 - b. *the effective concentration of a substance in a chemical system. The absolute activity of a substance B, λ_B , is defined as $\exp(\mu_B/RT)$ where μ_B is the chemical potential.”*

As per Concise Oxford English Dictionary, the term ‘activity’ has been defined as follows:

“activity n. (pl-ies) 1 a condition in which things are happening or being done. >busy or vigorous action or movement. 2 an action taken in pursuit of an objective. >A recreational pursuit. 3 the degree to which something displays its characteristic property or behavior.”