

The reader may note that a detailed discussion about the aforesaid exemptions along with relevant notifications have been given in the Chapter—'Exemption from whole of Service Tax'.

N.B. The readers may note that provisions, procedures and other related discussions related to registration, value of taxable services, rate of service tax, payments of service tax, filing of return, interest and penalty, assessment procedure, appeal, refund of tax, etc., which are the same as applicable in respect of other taxable services, have been given in separate Chapters of this Book.



ANNEXURE I ✓

Issues pertaining to service tax — Regarding

[D.O.F. No. 334/3/2011-TRU, dated 28-02-2011, relevant extract]

**Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)**

New Delhi, dated 28th February, 2011

1. Services provided by a restaurant

1.1 Restaurants provide a number of services normally in combination with the meal and/or beverage for a consolidated charge. These services relate to the use of restaurant space and furniture, air-conditioning, well-trained waiters, linen, cutlery and crockery, music, live or otherwise, or a dance floor. The customer also has the benefit of personalized service by indicating his preference for certain ingredients e.g. salt, chillies, onion, garlic or oil. The extent and quality of services available in a restaurant is directly reflected in the margin charged over the direct costs. It is thus not uncommon to notice even packaged products being sold at prices far in excess of the MRP.

1.2 In certain restaurants the owners get into revenue-sharing arrangements with another person, who takes the responsibility of preparation of food, with his own materials and ingredients, while the owner takes responsibility for making the space available, its decoration, furniture, cutlery, crockery and music etc. The total bill, which is composite, is shared between the two parties in terms of the contract. Here the consideration for services provided by the restaurants is more clearly demarcated.

1.3 Another arrangement is whereby the restaurant separates a certain portion of the bill as service charge. This amount is meant to be shared amongst the staff who attend the customers. Though this amount is exclusively for the services it does not represent the full of value of all services rendered by the restaurants.

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.

1.5 It is not necessary that the facility of air-conditioning is available round the year. If the facility is available at any time during the financial year the conditions for the levy shall be met.

1.6 The levy is intended to be confined to the value of services contained in the composite contract and shall not cover either the meal portion in the composite contract or mere sale of food by way of pick-up or home delivery, as also goods sold at MRP. Finance Minister has announced in his budget speech 70% abatement on this service, which is, inter-alia, meant to separate such portion of the bill as relates to the deemed sale of meals and beverages. The relevant notification will be issued when the levy is operationalized after the enactment of the Finance Bill.

Sincere regards,

Yours sincerely,
(V. K. Garg)

