5.1 Valuation for Service Tax

Valuation provisions are stated in section 67 of the Act, which are as below:-

- Service tax is payable on gross amount charged by service provider for service provided or to be provided. Thus tax is payable as soon as advance is received.

- Gross amount charged is value of taxable services plus service tax payable [Sec 67(2)].

- Where the consideration for providing services is entirely in monetary terms, gross amount charged by service provider of taxable service provided or to be provided by him will be relevant for ‘valuation’ [sec 67(1)(i)].

- Where the consideration for providing services is not wholly or partly in terms of money, service tax payable on amount of money, which with addition of service tax is charged, is equivalent to the consideration [sec 67(1)(ii)].

- Where consideration is not ascertainable, valuation will be on the basis of Valuation Rules [sec 67(1)(iii)].

- If gross amount charged by service provider is inclusive of Service Tax, value of taxable service will be calculated by back calculations so that with addition of service tax payable, the total amount is equal to the gross amount charged[Sec67(2)].
Gross amount charged for taxable services shall include any amount received towards taxable service before, during or after provision of such service [Sec 67(3)].

Valuation will be as per Valuation Rules, subject to Section 67(1), 67(2) and 67(3). Thus valuation can be only with reference to Valuation Rules.

5.2 Value when consideration is partly or fully in money

Under clause (i) of sub section (1) of section 67 where the provision of service is for a consideration in money terms, the value shall be the gross amount charged by the service provider for such service provided or to be provided by him. This applies to majority of services where considerations other than in terms of money may not be involved.

But the cases where non monetary consideration is also involved then such non-monetary consideration also needs to be valued for determining the tax payable on the taxable service since service tax is levied on the value of consideration received which includes both monetary consideration and money value of non-monetary consideration.

The value of non-monetary consideration is determined as per section 67 of the Act and the Service Tax (Determination of Value) Rules 2006, which is equivalent money value of such consideration and if not ascertainable, then as follows:-

- On the basis of gross amount charged for similar service provided to other person in the ordinary course of trade;

- Where value cannot be so determined, the equivalent money value of such consideration, not less than the cost of provision of service.
In number of cases service provider is supplied with certain inputs, generally by the service receiver, which is essential for providing the services either free of cost or at concessional cost. Such supply of inputs in any form depresses the value of taxable service charged by the Service Provider to the service receiver. For Example:- A Ltd hires a truck from B ltd for transportation of goods from Mumbai to Ahmadabad. Normally, charges for transporting the goods charged by B ltd is say Rs15000/-. A ltd agrees to supply diesel to B Ltd which is required for running of trucks for transportation of goods from Mumbai to Ahmadabad. Therefore B Ltd agrees to charge only Rs 10000/- to A ltd for the purpose of transporting the goods. In this particular case, the consideration for transportation of goods is partially received in money terms i.e Rs 10000 and partially in other form i.e. diesel.

The fact that the consideration has been received in other form must be established in order to invoke the provisions of this sub rule. In case no consideration has been received in other form and the reduced amount has been charged, the provisions of this sub rule cannot be invoked.
5.3 Tax on payment received in advance from the customers

The phrase “agreed to be provided” has been retained from the definition of taxable service as contained in the erstwhile clause (105) of section 65 of the Act. The implications of this phrase are –

- Services which have only been agreed to be provided but are yet to be provided are taxable.
- Receipt of advances for services agreed to be provided become taxable before the actual provision of service.
- Advances that are retained by the service provider in the event of cancellation of contract of service by the service receiver become taxable as these represent consideration for a service that was agreed to be provided.

Liability to pay the service tax on a taxable service does not arise on the moment it is agreed to be provided without actual provision of service rather for this, the point of taxation is determined in terms of the Point of Taxation Rules, 2011. As per these Rules point of taxation is –

- The time when the invoice for the service provided or agreed to be provided is issued.
- If invoice is not issued within prescribed time period (30 days except for specified financial sector where it is 45 days) of completion of provision of service then the date of completion of service.
- The date of receipt of payment where payment is received before issuance of invoice or completion of service.
Therefore agreements to provide taxable services will become liable to pay tax only on issuance of invoice or date of completion of service if invoice is not issued within prescribed period of completion or on receipt of payment.

**Meaning of Consideration:** explanation (a) of section 67 simply states that ‘Consideration’ includes any amount that is payable for the taxable services provided or to be provided. This definition is inclusive and not an exhaustive one. However, the word consideration has a technical meaning and that meaning have to be adopted for purpose of Section 67.

### 5.4 Valuation when consideration is not ascertainable

If the consideration for a taxable service is not ascertainable, the value of such service shall be the amount as may be determined in Rule 3 of the Service Tax (Determination of Value) Rules, 2006.

As per Rule 3 of the Service Tax (Determination of Value) Rules, 2006, subject to the provisions of Section 67, the value of taxable service, where such value is not ascertainable, shall be determined by the service provider in the following manner:-

(a) **Value of similar services:** The value of taxable service shall be equivalent to the gross amount charged by the service provider to provide similar services to any other person subject to fulfilment of the conditions below:-

   (1) Such services in the ordinary course of trade.
   (2) The gross amount charged is the sole consideration.

(b) **When value of similar services cannot be ascertained:** Where the value cannot be determined in accordance with clause (a), the service provider shall determine the equivalent money value of such consideration. How-
ever, such value shall, in no case be less than the provision of such taxable services.

**Costs and Expenditure relating to service includible: -**

(1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.

(2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:-

- The service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured.

- The recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service.

- The recipient of service is liable to make payment to the third party.

- The recipient of service authorises the service provider to make payment on his behalf.

- The recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party.
• The payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service.

• The service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

• The goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

**Explanation-1**: For the purposes of sub-rule (2), “pure agent” means a person who—

• Enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;

• Neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;

• Does not use such goods or services so procured; and

• Receives only the actual amount incurred to procure such goods or services.

**Explanation2**:— For the removal of doubts it is clarified that the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice.
Illustration 1. – X contracts with Y, a real estate agent to sell his house and thereupon Y gives an advertisement in television. Y billed X including charges for Television advertisement and paid service tax on the total consideration billed. In such a case, consideration for the service provided is what X pays to Y. Y does not act as an agent behalf of X when obtaining the television advertisement even if the cost of television advertisement is mentioned separately in the invoice issued by X. Advertising service is an input service for the estate agent in order to enable or facilitate him to perform his services as an estate agent.

Illustration 2. – In the course of providing a taxable service, a service provider incurs costs such as travelling expenses, postage, telephone, etc., and may indicate these items separately on the invoice issued to the recipient of service. In such a case, the service provider is not acting as an agent of the recipient of service but procures such inputs or input service on his own account for providing the taxable service. Such expenses do not become reimbursable expenditure merely because they are indicated separately in the invoice issued by the service provider to the recipient of service.

Illustration 3. – A contracts with B, an architect for building a house. During the course of providing the taxable service, B incurs expenses such as telephone charges, air travel tickets, hotel accommodation, etc., to enable him to effectively perform the provision of services to A. In such a case, in whatever form B recovers such expenditure from A, whether as a separately itemised expense or as part of an inclusive overall fee, service tax is payable on the total amount charged by B. Value of the taxable service for charging service tax is what A pays to B.
Illustration 4. – Company X provides a taxable service of rent-a-cab by providing chauffeur-driven cars for overseas visitors. The chauffeur is given a lump sum amount to cover his food and overnight accommodation and any other incidental expenses such as parking fees by the Company X during the tour. At the end of the tour, the chauffeur returns the balance of the amount with a statement of his expenses and the relevant bills. Company X charges these amounts from the recipients of service. The cost incurred by the chauffeur and billed to the recipient of service constitutes part of gross amount charged for the provision of services by the company X.

Cases in which the commission, costs, etc., will be included or excluded—

(1) Subject to the provisions of section 67, the value of the taxable services shall include,–

- The commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock-broker to any sub-broker,

- The adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit,

- The amount of premium charged by the insurer from the policy holder;

- The commission received by the air travel agent from the airline;

- The commission, fee or any other sum received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;
• The reimbursement received by the authorised service station, from manufacturer for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer;

• The commission or any amount received by the rail travel agent from the Railways or the customer;

• The remuneration or commission, by whatever name called, paid to such agent by the client engaging such agent for the services provided by a clearing and forwarding agent to a client rendering services of clearing and forwarding operations in any manner; and

• The commission, fee or any other sum, by whatever name called, paid to such agent by the insurer appointing such agent in relation to insurance auxiliary services provided by an insurance agent.

(2) Subject to the provisions contained in sub-rule (1), the value of any taxable service, as the case may be, does not include–

• Initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit,

• The airfare collected by air travel agent in respect of service provided by him,

• The rail fare collected by travel agent in respect of service provided by him, and

• Interest on loans.
5.5 Rejection of value and determination of value by Central Excise officer

(1) Nothing contained in rule 3 of the valuation Rules, 2006 shall be construed as restricting or calling into question the power of the Central Excise Officer to satisfy him as to the accuracy of any information furnished or document presented for valuation.

(2) Where the Central Excise Officer is satisfied that the value so determined by the service provider is not in accordance with the provisions of the Act or these rules, he shall issue a notice to such service provider to show cause why the value of such taxable service for the purpose of charging service tax should not be fixed at the amount specified in the notice.

(3) The Central Excise Officer shall, after providing reasonable opportunity of being heard, determine the value of such taxable service for the purpose of charging service tax in accordance with the provisions of the Act and these rules.

5.6 Consideration when services are provided from outside India

- The value of taxable service received under the provisions of section 66A, shall be such amount as is equal to the actual consideration charged for the services provided or to be provided.

- Notwithstanding anything contained in sub-rule (1), the value of taxable services specified in clause (ii) of rule 3 of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, as are partly performed in India, shall be the total consideration paid by the recipient for such services including the value of service partly performed outside India.