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A COMPILATION ON SERVICE TAX LEVY ON ADVOCATES.

Author : **G. Natarajan**

Pre negative list regime:

Section 65 (105) (zzzzm) - Legal Consultancy Service - With effect from 01.09.2009

Taxable service means any service provided or to be provided to a business entity, by any other business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner :

Provided that any service provided by way of appearance before any court, tribunal or authority shall not amount to taxable service.

Explanation. – For the purposes of this sub-clause, “business entity” includes an association of persons, body of individuals, company or firm, but does not include an individual.

Notes:

- (i) Service should be provided by a Business entity. Individual is not a business entity.
- (ii) Service should be provided to a Business entity.
- (iii) Services by way of appearances is not covered in the levy.
- (iv) Wherever applicable, Service Tax has to be paid under Forward charge mechanism by the Firm of Advocates.

Amendment vide Finance Act, 2010, w.e.f. 01.07.2010

The Explanation under Section 65 (105) (zzzzm) was omitted. But, the term “business entity” came to be defined under Section 65 (19b) as below.

“business entity” includes an association of persons, body of individuals, company or firm but does not include an individual

Notes:

No effect for the above amendment as the definition remains the same.

Amendment vide Finance Act, 2011, w.e.f 01.05.2011

Section 65 (105) (zzzzm) was substituted vide Finance Act, 2011 w.e.f 01.05.2011 as below.

Taxable service means any service provided or to be provided

(i) to any person, by a business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner;

(ii) to any business entity, by any person, in relation to representational services before any court, tribunal or authority;

(iii) to any business entity, by an arbitral tribunal, in respect of arbitration

Notes:

(i) Services provided by a “business entity” to any person is taxable.

(ii) Services provided to a “business entity” by any person is taxable.

(iii) Services in the form of representation provided to business entities is also liable to Service Tax.

Negative list regime from 01.07.2012

The term “Service” is defined in Section 65 B (44).

The following exemption was available under S.No. 6 (b) of Notification 25/2012 S.T. Dt. 20.06.2012.

6. Services provided by-

(b) an individual as an advocate or a partnership firm of advocates by way of legal services to,-

(i) an advocate or partnership firm of advocates providing legal services ;

(ii) any person other than a business entity; or

(iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year.

(c) a person represented on an arbitral tribunal to an arbitral tribunal;

The term “legal service” is defined in the notification as below.

“legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.

Notes:

- (i) Services by an Advocate / law firm to another Advocate / Law firm is exempted. So billings between Advocates / Law firms is not liable to Service Tax.
- (ii) Services provided by an advocate / law firm to other than business entities.
- (iii) Services provided by an advocate / law firm to small business entities having turnover up to Rs. 10 lakhs in the preceding financial year.
- (iv) The definition of the term “advocate” is borrowed from the definition under Section 2 (1) of the Advocates Act, 1961. As this definition covers senior advocates also, the above exemptions would be available for senior advocates also.

Applicability of Reverse Charge.

The liability to pay Service Tax is normally on the person providing the service, as per sub-section (1) of Section 68. But, as per sub-section (2) of the said section, the liability can be cast on any other persons also. Accordingly, for various services, the service recipients are made liable to pay Service Tax, vide Notification 30/2012, which is referred to Reverse Charge Mechanism. This notification will prescribe the services where such reverse charge is applicable and the extent of liability of the service recipient (full or partial).

Inter alia, the following service is notified for reverse charge.

I. The Taxable Services

A. (i).....

(ii).....

(iii).....

(iv) *provided or agreed to be provided*

(A) An arbitral tribunal;

(B) An individual advocate (which term would cover senior advocates also) or firm of advocates by way of legal services.

As per S.No. 5 of the Table appended to this notification, the extent of Service tax payable by the service recipient is prescribed as below.

No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
5.	<i>in respect of services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services</i>	Nil	100%

Amendments with effect from 01.04.2016.

Vide Notification No. 9/2016 S.T. Dt. 01.03.2016, w.e.f. 01.04.2016 clauses (b) and (c) of S. No. 6 of Notification No. 25/2012 S.T. has been substituted as below.

in entry 6, for clause (b) and clause (c), the following clauses shall be substituted, namely, -

(b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to -

- (i) an advocate or partnership firm of advocates providing legal services;*
- (ii) any person other than a business entity; or*
- (iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year; or*

(c) a senior advocate by way of legal services to a person other than a person ordinarily carrying out any activity relating to industry, commerce or any other business or profession;

It may be noted that the exemption has been withdrawn for senior advocates except when the services are provided other than for those, who are not in business, profession, industry or commerce.

This has been further explained in CBEC's letter NO. 334/8/2016 Dt. 28.02.2016, as

6.1 Exemption in respect of the following services is being withdrawn, -

- Services provided by a senior advocate to an advocate or partnership firm of advocates, and*
- A person represented on an arbitral tribunal to an arbitral tribunal;*

Service tax in the above instances would be levied under forward charge. However, the existing dispensation regarding legal services provided by a firm of advocates or an advocate other than senior advocate is being continued.

(Sl. No. (i) of Notification No. 9/2016-S.T., dated 1st March, 2016 refers).

Notification No. 30/2012 S.T. Dt. 20.06.2012 (RCM Notification) has been amended vide Notification No. 18/2016 S.T. Dt. 01.03.2016, with effect from 01.04.2016, as below.

in paragraph I, in clause (A), -

in sub-clause (iv), for item (B), the following shall be substituted, namely :-

(B) a firm of advocates or an individual advocate other than senior advocate, by way of legal services.

As a consequence, S. No. 5 of the above table has also been amended as,

in respect of services provided or agreed to be provided by a firm of advocates or an individual advocate other than a senior advocate by way of legal services.

It may be noted that from 01.04.2016, reverse charge is not applicable for Senior Advocates and they have to pay Service Tax under Forward Charge.

Amendments from 06.06.2016.

Subsequently, Notification 30/2012 has been amended vide Notification 34/2016 S.T. Dt. 06.06.2016 as below.

(a) in paragraph I, in clause (A), -

(i) in sub-clause (iv), for item (B), the following item shall be substituted, namely :-

“(B) an individual advocate or a firm of advocates by way of legal services other than representational services by senior advocates”;

(ii) for sub-clause (iva), the following sub-clauses shall be substituted, namely :-

“(iva) provided or agreed to be provided by a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, and the senior advocate is providing such services, to such business entity who is litigant, applicant, or petitioner, as the case may be”.

It may be observed from the above that reverse charge has once again introduced for representational services provided by senior advocates. It may be noted that services other than representational services, provided by senior advocates, continued to be under forward charge.

So, for the brief period between 01.04.2016 to 05.06.2016, senior advocates are liable to pay Service Tax under Forward Charge mechanism and from 06.06.2016 they continue to pay Service Tax under Forward Charge mechanism for services other than representational services (opinions, etc.) provided by them.

A new clause (c) has been substituted in S. No. 6 of Notification 25/2012 vide Notification 32/2016 S.T. Dt. 06.06.2016. (the same date on which RCM for representation services provided by senior advocates was re-introduced).

a senior advocate by way of legal services to -

(i) any person other than a business entity; or

(ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year.

This position continued up to the introduction of GST from 01.07.2017.

The above changes during the negative list regime are tabulated below for ease of understanding.

Taxability from 01.07.2012 to 30.06.2017.

From	To	Service Provider	Service Recipient	Nature of Service	Taxability	FCM / RCM
01.07.12	31.03.16	Individual advocates, including senior advocates	Individual advocates, including senior advocates	Legal Service (Including representation)	Exempt 6 (b) (i) of Noti 25/2012	NA
01.07.12	31.03.16	Individual advocates, including senior advocates	Other than business entity	Legal Service (Including representation)	Exempt 6 (b) (ii) of Noti 25/2012	NA
01.07.12	31.03.16	Individual advocates, including senior advocates	Business entity with less than Rs. 10 lakhs turnover in previous year	Legal Service (Including representation)	Exempt 6 (b) (iii) of Noti 25/2012	NA
01.07.12	31.03.16	Individual advocates, including senior advocates	Other than the above	Legal Service (Including representation)	Taxable	RCM
01.04.2016	30.06.2017	Individual advocates, excluding senior advocates	Individual advocates, including senior advocates	Legal Service (Including representation)	Exempt 6 (b) (i) of Noti 25/2012	NA
01.04.2016	30.06.2017	Individual advocates, excluding senior advocates	Other than business entity	Legal Service (Including representation)	Exempt 6 (b) (ii) of Noti 25/2012	NA
01.04.2016	30.06.2017	Individual advocates, excluding senior advocates	Business entity with less than Rs. 10 lakhs turnover in previous year	Legal Service (Including representation)	Exempt 6 (b) (iii) of Noti 25/2012	NA
01.04.2016	05.06.2016	Senior advocate	Persons other than those ordinarily carrying out any activity relating to industry.	Legal services (including representation)	Exempt 6 (c) of Noti 25/2012	NA

			commerce, business or profession			
01.04.2016	05.06.2016	Senior Advocate	Persons ordinarily carrying out any activity relating to industry, commerce, business or profession	Legal Services (including representation)	Taxable	FCM
06.06.2016	30.06.2017	Senior Advocates	Any person other than business entity	Legal Services (including representation)	Exempt 6 (c) of Noti 25/2012	NA
06.06.2016	30.06.2017	Senior Advocates	Business entity having a turnover of less than Rs. 10 lakhs in the preceding FY	Legal Services (including representation)	Exempt 6 (c) of Noti 25/2012	NA
06.06.2016	30.06.2017	Individual advocates including Senior Advocates	Business entities having more than Rs. 10 lakhs turnover in preceding FY	Legal services (other than representational services by senior advocates)	Taxable	RCM
06.06.2016	30.06.2017	Senior Advocates	Business entities having more than Rs. 10 lakhs turnover in preceding FY	Representational services	Taxable	RCM

Rule 2 (1) (d) of Service Tax Rules, 1994.

This rule defines the term “person liable for paying Service Tax” in the context of reverse charge. The amendments made in this rule, in so far as it is applicable for services provided by Advocates, are captured below for ease of reference.

As amended by Notification 36/2012 S.T. Dt. 20.06.2012

2 (1) (d) Person liable for paying Service Tax in respect of the taxable services notified under sub-section (2) of section 68 of the Act, means

D. in relation to service provided or agreed to be provided by,-

(I) an arbitral tribunal, or

(II) an individual advocate or a firm of advocates by way of legal services,

to any business entity located in the taxable territory, the recipient of such service;

As amended by Notification No. 19/2016 S.T. Dt. 01.03.2016 w.e.f. 01.04.2016

in rule 2, in sub-rule (1), in clause (d), in sub-clause (i),-

(a) in item (D), for sub-item (II), the following shall be substituted, namely :-

“(II) a firm of advocates or an individual advocate other than a senior advocate by way of legal services”*

“(II) a firm of advocates or an individual advocate other than a senior advocate by way of legal services”*

As amended by Notification No. 33/2016 S.T. Dt. 06.06.2016.

In the Service Tax Rules, 1994, in rule 2, in sub-rule (1), in clause (d), in sub-clause(i), -

(a) in item (D), for sub-item (II), the following sub-item shall be substituted, namely :-

“(II) an individual advocate or a firm of advocates by way of legal services other than representational services by senior advocate.”*

* “the recipient of such service” is missing.

(b) after item (D), the following item shall be inserted, namely :-

“(DD) in relation to service provided or agreed to be provided by a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, and the senior advocate is providing such services, the recipient of such services, which is the business entity who is litigant, applicant, or petitioner, as the case may be”

GST from 01.07.2017

Ever since GST was introduced from 01.07.2017, the GST liability in respect of the services supplied by Advocates and Senior Advocates is notified for reverse charge under Notification 13/2017 Central Tax (Rate) Dt. 28.06.2017 and corresponding SGST and IGST Notifications. To quote from the Notification,

In exercise of the powers conferred by sub-section (3) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government on the recommendations of the Council hereby notifies that on categories of supply of services mentioned in column (2) of the Table below, supplied by a person as specified in column (3) of the said Table, the whole of central tax leviable under section 9 of the said Central Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services as specified in column (4) of the said Table:-

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
2	<p>Services supplied by an individual advocate including a senior advocate by way of representation services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, or by a firm of advocates, by way of legal services, to a business entity.</p>	<p>An individual advocate including a senior advocate or firm of advocates.</p>	<p>Any business entity located in the taxable territory</p>

“The following exemption is available under Notification 11/2017 Central Tax (Rate) Dt. 28.06.2017 and corresponding SGST and IGST Notifications.

In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the corresponding entry in column (5) of the said Table, namely:-

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
45	Heading 9982 or Heading 9991	<p><i>Services provided by-</i></p> <p><i>(a) an arbitral tribunal to -</i></p> <p><i>(i) any person other than a business entity; or</i></p> <p><i>(ii) a business entity with an aggregate turnover up to twenty lakh rupees (ten lakh rupees in the case of specified category States) in the preceding financial year.</i></p> <p><i>(b) a partnership firm of advocates or an individual as an advocate other than a</i></p>	Nil	Nil

		<p>senior advocate, by way of legal services to</p> <p>(i) an advocate or partnership firm of advocates providing legal services</p> <p>(ii) any person other than a business entity; or</p> <p>(iii) a business entity with an aggregate turnover up to twenty lakh rupees (ten lakh rupees in the case of special category states) in the preceding financial year</p> <p>(c) a senior advocate by way of legal services to -</p> <p>(i) any person other than a business entity; or</p> <p>(ii) a business entity with an aggregate turnover up to twenty lakh rupees (ten lakh rupees in the case of special category states) in the preceding financial year.</p>		
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Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
2	<p>Services supplied by an individual advocate including a senior advocate by way of representation services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, or by a firm of advocates, by way of legal services, to a business entity.</p>	<p>An individual advocate including a senior advocate or firm of advocates.</p>	<p>Any business entity located in the taxable territory</p>

Sl No	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Nil	Condition
(1)	(2)	(3)	(4)	(5)
2	Heading 9982 or Heading 9991	<p>Services provided by-</p> <p>(a) an arbitral tribunal to -</p> <p>(i) any person other than a business entity; or</p> <p>(ii) a business entity with an aggregate turnover upto twenty lakh rupees (ten lakh rupees in the case of specified category States) in the preceding financial year.</p> <p>(b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to</p> <p>(i) an advocate or partnership firm of advocates providing legal services</p> <p>(ii) any person other than a business entity; or</p> <p>(iii) a business entity with an aggregate turnover up to twenty lakh rupees (ten lakh rupees in the case of special category states) in the preceding financial year</p> <p>(c) a senior advocate by way of legal services to -</p> <p>(i) any person other than a business entity; or</p>	Nil	Nil

Sl No	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Nil	Condition
(1)	(2)	(3)	(4)	(5)
		(ii) a business entity with an aggregate turnover up to twenty lakh rupees (ten lakh rupees in the case of special category states) in the preceding financial year		

