

## Service Tax on Renting of Immovable Property to Educational Institutes

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Whilst most educational institutes were lucky to escape the service tax net when the Finance Act, 2010 sought to rest the raging controversy surrounding imposition of service tax on renting of immovable property for commercial purposes in favour of the Revenue, their luck has finally run out.

Renting of immovable property to educational institutes will no longer be a service tax exempt service. The Finance Act, 2012 ("FA 2012"), which has received Presidential assent on May 28, 2012, seeks to overhaul the entire service tax regime by widening the ambit of India's service tax laws.

A paradigm shift is envisaged in the way services are proposed to be taxed in future. Taxation will be based on what is popularly known as a "Negative List of Services", i.e., if an activity meets the characteristics of a "service", it is taxable unless specified in the Negative List (which comprises of 17 heads listed in Section 66D of the FA2012) or otherwise exempted by a notification issued under the Finance Act, 1994. Most of the 88 exemptions available at present, will be either rescinded, or modified in some manner, or merged in a mega notification.

On and from the effective date of notification of the relevant provisions of the FA2012, any activity carried out by a person for another for consideration, including 'declared services' but excepting those specified in the 'Negative List' or exempted vide a specific notification (such as No.12/2012 dated March 17, 2012), shall be a 'service' and hence subject to service tax. The Government is expected to come out with ten such exemption notifications including the one cited above. A gist of the proposed exemptions has been provided in D. O. F. No 334/1/2012-TRU dated March 16, 2012 issued by Department of Revenue, Ministry of Finance.

The exclusion granted to renting of immovable property to educational institutes imparting skill or knowledge or lessons on any subject or field (other than commercial training or coaching centre) under Section 65(90a) of the Finance Act, 1994, does not find mention, either under the 'Negative List' or under the proposed exemption notifications referred to above.

In fact, what is interesting is that the Government, likely having learned from its previous harrowing experience in defending the taxability of 'renting of immovable property', has included such services within the definition of 'declared services' under Section 66E of the FA2012. 'Declared services' are specifically included within the new all encompassing definition of 'service', to nip in the bud, any controversies with respect to the taxability of such services.

The only breather likely to be available is the threshold level exemption upto Rs. 10 lacs (which is anyway available vis-à-vis most services) and, possibly, deduction of property tax from the gross amount charged for renting of immovably property.

Consequently, from the effective date of notification of the relevant provisions of the FA2012 relating to service tax, all not-for-profit organizations such as a trust, society or a section 25 company, running educational institutions will

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have to cough up their share of service tax on leases/licenses/permissions obtained by them from real estate entities (which are sometimes related parties and/or affiliates) for using immovable property.

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