

Is service tax law intruding into our personal lives – June 26, 2012

Is service tax law intruding into our personal lives?

JUNE 26, 2012

By S Sivakumar, CA

LET's take a super quick look at the rather simple definition of 'service' , in terms of Section 65B(44) of the Finance Act, 1994.... This reads as under: "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) 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.

Let's also keep in mind the fact that, under Section 66E (e), 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act' is a declared service, which means that one cannot even file a writ challenging the constitutional validity of this entry.

One major differentiation under the new service tax is that, there is no need for a service provider-service receiver relationship. All that is required is an activity involving two persons...

Activities, which are merely, in the nature of transactions in money or actionable claims, are excluded, as per this definition. The key to understanding the reach of the new definition of 'service', would then be, to understand the word 'merely'.... A random search on the Net throws up the following meanings for the word 'merely', viz. *'only as specified and nothing more'*, *'not otherwise than'*, *'simply'*, *'barely'*, *'only'*, *'just'*, etc.

Let's take some practical cases and see if these could be treated as mere transactions in money...

I meet the expenses of the marriage of my niece, who is not otherwise economically sound, and end up incurring Rs 20 lakhs for this marriage. Is my niece treated as a service provider to me? Take a further twist in this example... Assume that, my niece, is taking caring of my old sister... here, there is an obvious understanding that my niece would continue to take care of my sister. Will this constitute an agreement to do an act? Perhaps, yes. Can the expenses incurred by me be treated as a mere transaction in money? No, in my view...

Take another practical case...assume that, my brother pays me a monthly amount, for taking care of our parents who are staying with me... can this activity could be treated as a 'service' rendered by me to my brother, as I am refraining from sending my parents out of my house to his house, which could be treated as an 'activity' under the proposed simple definition of 'service'. Or, perhaps, this can be treated as me, tolerating a situation (may be, a good situation)? Quite possibly, under the new law.

Let's take the third example... my father makes a gift of Rs 50 lakhs to me, to buy a flat, with the obvious expectation that, he would be allowed to stay in the flat. Surely, this cannot be considered as a mere transaction involving money. And, what is the consideration involved... an implied agreement that I would

take care of my father. (of course ... I should take care of my father, even if he does not give me money to buy the flat...). This transaction could be treated as a service, under the new law.

Before concluding...

It would seem that, in the absence of a specific exemption, the new service tax law is bound to intrude into our homes and personal homes.

It would seem that, my wife could be treated as a service provider, in respect of the amounts given by me, to run the family. Is she not tolerating me?... a declared service under the new service tax law.

(The Author is Director, S3 Solutions Pvt Ltd, Bangalore)