1. (i) Service tax rate enhanced from 12% to 14% and (ii) Levy of education cesses on taxable services ceased to have effect [Section 66B]

The rate of service tax has been increased from 12% to 14%. Further, the ‘Education Cess’ @ 2% and ‘Secondary and Higher Education Cess’ @ 1% have been subsumed in the revised rate of service tax. Thus, the effective increase in service tax rate is from the existing 12.36% (inclusive of cesses) to 14%, subsuming the cesses.

The change in rate of service tax has been effected as under:

(i) Section 66B, the charging section, has been amended to increase the rate of service tax from 12% to 14%.

(ii) It has been provided vide sections 153 and 159 respectively of the Finance Act, 2015 that sections 95 of the Finance Act, 2004 and 140 of the Finance Act, 2007, levying Education Cess and Secondary and Higher Education Cess on taxable services shall cease to have effect.

Both the above amendments were to be effective from a date to be notified by the Central Government after the enactment of the Finance Bill, 2015. The Central Government, after the Bill got enacted on 14.05.2015, vide Notification No. 14/2015 dated 19.05.2015 has notified June 1, 2015 as the date for these amendments to become effective. Thus, the new service tax rate has come into effect from 01.06.2015.

[Effective from 01.06.2015]
2. 2% Swachh Bharat Cess to be levied on value of all or any of taxable services [Section 119 of the Finance Act, 2015]

Section 119 of the Finance Act, 2015 has empowered the Central Government to impose a Swachh Bharat Cess on all or any of the taxable services at a rate of 2% on the value of such taxable services. This cess shall be levied from such date as may be notified by the Central Government. The details of coverage of this Cess would be notified in due course. However, no notification has been issued in this regard, as yet.

[To be effective from a date to be notified]

3. Activities undertaken by (i) chit fund foremen in relation to chit and (ii) lottery distributors and selling agents in relation to lotteries are not transactions in money or actionable claim and are thus, liable to service tax - Explanation 2 substituted in the definition of “service” [Explanation 2 to section 65B(44)]

(a) Clause (44) of section 65B inter alia defines service to mean any activity carried out by a person for another for consideration, and includes a declared service. The definition inter alia excludes an activity which constitutes merely a transaction in money or actionable claim.

(b) The Delhi High Court in the case of Delhi Chit Fund Association v. UOI 2013 (30) STR 347 (Del.)\(^1\) held that services of a foreman of a chit business do not constitute taxable service and thus, are not liable to service tax. The High Court observed that since in a chit business the subscription is tendered in any one forms of money as defined under section 65B(33), it would be a transaction in money and would fall in

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\(^1\) Reported at pg. nos. 162-163 of Select Cases in Direct and Indirect Tax Laws, October, 2014 Edition
the exclusionary part of the definition. Further, since services rendered by foreman of a chit business for which separate consideration is charged is not an activity of the nature explained in Explanation 2 to section 65B(44), the same would be out of the clutches of the definition.

The Special Leave Petition filed by the Department against the High Court order has been dismissed by the Supreme Court vide an order dated 7th January, 2014 – 2014-TIOL-23-SC-ST.

(c) The Sikkim High Court in the case of Future Gaming Solutions India Pvt. Ltd. 2014 (36) STR 733 (Sikkim) examined the issue as to whether the activity of promoting, organising or assisting in arranging the sale of lottery tickets of the Government is a taxable service under the Finance Act, 1994 or not. After noting the decision of the Supreme Court in the case of Sunrise Associates vs. Govt. of NCT of Delhi and Others - 2006-TIOL-4O-SC-CT-LB, wherein lotteries have been held to be actionable claims, the High Court held that in the light of section 65B(44), lottery is excluded from the definition of ‘service’ being an ‘actionable claim’. Further, lottery also stands excluded from the purview of service tax since it is covered in negative list of services.

The High Court was of the view that the activity of petitioner comprising of promotions, organising, reselling or any other manner assisting in arranging of lottery tickets of the State Lotteries does not establish the relationship of a principal or an agent but rather that of a buyer and a seller and, on principal to principal basis in view of the nature of the transaction consisting of bulk purchases of lottery tickets by the petitioner from the State Government on full payment on a discounted price as a natural business transaction and, other related features like there being no privity of contract between the State Government and the stockists, agents, resellers under the Petitioner.

(d) The Finance Act, 2015, however, has now substituted Explanation 2 to the definition of “service” to specifically state the intention of the legislature to levy service tax on activities undertaken by chit fund foremen in relation to chit, and lottery distributors and selling agents in relation to lotteries.

(e) The substituted Explanation reads as under:

“Explanation 2. – For the purposes of this clause, the expression “transaction in money or actionable claim” shall not include—

(i) any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

(ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out—
(a) by a lottery distributor or selling agent in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner;

(b) by a foreman of chit fund for conducting or organising a chit in any manner.

(f) The TRU Letter explaining the budget proposals says that the intention in law has been to levy service tax on the services provided by:

(a) chit fund foremen by way of conducting a chit.
(b) distributor or selling agents of lottery, as appointed or authorized by the organizing state for promoting, marketing, distributing, selling, or assisting the state in any other way for organizing and conducting a lottery.

(g) Thus, it has been made clear that what is excluded from the definition of service is only a transaction in money or actionable claim (like lottery) and not any activity in relation to, or for facilitation of a transaction in money or actionable claim.

(h) With effect from 01.06.2015, an Explanation has been inserted in clause (i) of section 66D which covers betting, gambling or lottery under negative list of services. The Explanation clarifies that the expression ‘betting, gambling or lottery’ shall not include the activity specified in Explanation 2 to section 65B(44). Thus, by virtue of the said amendments, the activity carried out by a lottery distributor or selling agent in relation to promotion, marketing, organizing, selling of lottery or facilitating in organizing lottery of any kind, in any other manner shall be out of the ambit of ‘transaction in money or actionable claim’ as well as the negative list of services.

(i) Thus, the decision of the Delhi High Court in the case of Delhi Chit Fund Association v. UOI and Sikkim High Court in the case of Future Gaming Solutions India Pvt. Ltd. described above stand overruled to that extent.

(j) A new clause (23A) has been inserted in section 65B to define the term “foreman of chit fund” as under:

“Foreman of chit fund shall have the same meaning as is assigned to the term foreman in clause (j) of section 2 of the Chit Funds Act, 1982.”

(k) Also, another new clause (31A) has been inserted in section 65B to define the term “lottery distributor or selling agent” as under:

“Lottery distributor or selling agent means a person appointed or authorised by a State for the purposes of promoting, marketing, selling or facilitating in organising lottery of any kind, in any manner, organised by such State in accordance with the provisions of the Lotteries (Regulation) Act, 1998.”

[Effective from 14.05.2015]
4. All services provided by the Government or local authority to a business entity removed from the Negative List [Section 66D(a)(iv)]

Services provided by Government or a local authority, excluding certain services, are covered in the Negative List of services vide clause (a) of section 66D. The excluded services are specified under sub-clauses (i) to (iv) of clause (a). Sub-clause (iv) covers support services provided by the Government or local authority to business entities thereby making the same liable to service tax.

The said sub-clause (iv) has been amended by substituting the words “support services” with the words “any service”. This would enable exclusion of all services provided by the Government or local authority to a business entity from the Negative List. Consequently, the definition of “support service” as provided under section 65B(49) has also been omitted.

Therefore, all services provided by the Government or local authority to a business entity, except the services that are specifically exempted, or covered by any another entry in the Negative List would be liable to service tax. There are doubts that the sovereign functions of the Government may also come under the service tax net on account of the said amendment. However, this cannot be the intention of the legislature. An appropriate clarification from the Department would be required to clear such doubts.
It may be noted that this amendment is yet to become effective as the date on which the same will come into effect has not been notified as of now.

[To be effective from a date to be notified]

5. Definition of Government incorporated in the Act [Section 65B(26A)]

Services, excluding a few specified services, provided by the Government are included in the Negative List. Further, specified services received by the Government are also exempt. However, the term “government” had not been defined in the Act or under any notification. This gave rise to interpretational issues. To address such issues, w.e.f. 14.05.2015, a definition of the term “Government” has been incorporated in the Act vide clause (26A) under section 65B. The new definition reads as under:

“Government means the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with article 150 of the Constitution or the rules made thereunder”.

[Effective from 14.05.2015]

6. Services by way of carrying out any process amounting to manufacture/production of potable liquor made liable to service tax [Section 66D(f)]

Services by way of carrying out any process amounting to manufacture or production of goods were covered in the Negative List under clause (f) of section 66D.

Clause (f) has been substituted by a new clause to exclude process for production or manufacture of alcoholic liquor for human consumption from the ambit of negative list. Consequently, service tax would be levied on contract manufacturing/job work for production of potable liquor for a consideration. The substituted clause (f) reads as under:

“services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption”.

Pursuant to the said amendment, following consequential amendments have also been made in other provisions of service tax law:

(i) The words “alcoholic liquors for human consumption” have been omitted from the definition of the term “process amounting to manufacture or production of goods” as provided in clause (40) of section 65B. The amended definition reads as under:

“process amounting to manufacture or production of goods” means a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 or the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 or any process amounting to manufacture of opium, Indian hemp and other narcotic drugs and
narcotics on which duties of excise are leviable under any State Act for the time being in force”.

(ii) Mega Exemption Notification No. 25/2012 ST dated 20.06.2012 has been amended to withdraw exemption pertaining to intermediate production of alcoholic liquor for human consumption. The amendments in the Mega Exemption Notification have been discussed in detail in Chapter 5: Exemptions and Abatements.

[Effective from 01.06.2015]

7. Admission to entertainment events or access to amusement facilities made liable to service tax [Section 66D(j)]

Clause (j) of the negative list under section 66D pertaining to “admission to entertainment events or access to amusement facilities” has been omitted vide the Finance Act, 2015. Consequently, the definitions of “amusement facility” and “entertainment event” as contained in section 65B(9) and section 65B(24) have also been omitted.

Therefore, service tax would be leviable on admission to entertainment event or access to amusement facility. Thus, entry to amusement facility providing fun or recreation by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks and theme parks would be exigible to service tax.

However, simultaneous exemption has also been provided in respect of admission to certain specific events/programmes etc. by inserting a new entry in the Mega Exemption Notification. The amendments in the Mega Exemption Notification have been discussed in detail in Chapter 5: Exemptions and Abatements.

[Effective from 01.06.2015]

8. Illustration inserted in section 66F to explain the principle of bundled services [Section 66F]

Section 66F prescribes the principles to interpret the specified descriptions of services or bundled services. Sub-section (1) of section 66F prescribes that unless otherwise specified, reference to a service (main service) shall not include reference to any input service used for providing such service (main service). The following illustration has been incorporated in this section to exemplify the scope of this provision:

“The services by the Reserve Bank of India, being the main service within the meaning of clause (b) of section 66D, does not include any agency service provided or agreed to be provided by any bank to the Reserve Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing the main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in section 66D and hence, such service is leviable to service tax.”

[Effective from 14.05.2015]
Clarification regarding levy of service tax on joint venture

CBEC has issued following clarification regarding levy of service tax on joint venture:

(i) **Services provided by the members of the Joint Venture (JV) to the JV and vice versa or between the members of the JV:** In accordance with Explanation 3(a) of the definition of service under section 65B(44) of the Finance Act, 1994, JV (an unincorporated temporary association constituted for the limited purpose of carrying out a specified project) and the members of the JV are treated as distinct persons and therefore, taxable services provided for consideration, by the JV to its members or vice versa and between the members of the JV are taxable.

(ii) **Cash calls (capital contributions) made by the members to the JV:** If cash calls are merely a transaction in money, they are excluded from the definition of service provided in section 65B(44) of the Finance Act, 1994. Whether a ‘cash call’ is ‘merely… a transaction in money’ [in terms of section 65B(44) of the Finance Act, 1994] and hence not in the nature of consideration for taxable service, would depend on the comprehensive examination of the Joint Venture Agreement, which may vary from case to case. Detailed and close scrutiny of the terms of JV agreement may be required in each case, to determine the service tax treatment of cash calls.