

Economic / Business Activity & Consideration

By: [Madhukar N Hiregange](#)

Understanding of “Economic / Business Activity” and “Consideration” in Service Tax

The provision for Service Tax levy - [Section 66B](#) specifies that the **value of services** provided or agreed to be provided in taxable territory for **consideration** would be liable. The definition of “**service**” states that any activity for a **consideration** from one person to another...

The Negative List based taxation from 1.7.12 has substantially expanded the coverage under service tax by defining a “service” as an activity for a consideration. There is no general exclusion for the personal, charitable, social or religious activities though there are some entries in Negative List / Mega Exemption which provide some relief.

The VAT/ ST law in India has been borrowed from the UK/ European laws on VAT. In the UK law the activity to be liable should amount to a business or economic activity. The same should also be conducted frequently. Therefore solitary instance may not be covered.

The concept of negative list regime as understood by us is that there should be an business or, **economic activity**. **Therefore** personal activity whether carried out free of charge or as hobby or recreation should not in ordinary course be covered.

Therefore transactions such as those related to religious activities, awards for excellence and transactions out of pure love affection or moral duty would not be covered as “service”.

Also transaction in the nature of statutory fines or penalties would normally not be related to the activity and would not be covered as “service”.

Accidental damages due to unforeseen action may not be related and therefore not a consideration at all. Past consideration may not be a consideration.

However demurrage [charge for delayed lifting of good from transporter], late payment fee for delayed credit card payments though not directly related to the service could be brought to tax.

Transactions which may require examination whether in the nature of a punishment or a compensation could be amounts paid for breach of contract, forfeiture of property without compensation, cancellation due to either party not keeping up ones commitment. Maybe the sum itself could be significant whether far in excess of the cost of money involved/ more than the

recompense/ damage. The intention of the parties to the contract also could be important.

It is clear under the negative list that where there is no “service” or no “consideration” as defined there would be no liability.

The dictionary meaning of consideration – compensation, payment or reward.

Legal dictionaries expand it to include some right, interest, profit, benefit or advantage accruing to one party or some forbearance, detriment, loss, responsibility or disadvantage given, suffered or undertaken by another.

[Section 67\(4\)](#) explanation defines “consideration” as including any amount payable for taxable services provided or to be provided. [agreed word seems to have been missed]It further covers the value of service if not wholly in money terms as value in money and if not determinable as to be valued as prescribed.

[Rule 5 \(1\)](#) expands the definition to include all expenses and costs incurred **in the course** of providing the service as consideration. However if incurred as a pure agent then the same is not liable to be included.

This note seeks to start a deeper enquiry/ study on what could be an activity which is not a service as also what is that which is not a “consideration” as both could lead to the liability under service tax not coming up. Maybe in the upcoming budget the ST liability would be restricted to only activities for the furtherance of business, industry or commerce.