

**CLUB OR ASSOCIATION SERVICE**

1. Covered under the ambit of service tax from 16.06.2005. However, until 16.05.2011, only services provided by the club or association to its members were chargeable to service tax. Whereas, w.e.f 16.05.2011, even services provided to non-members will be chargeable to service tax.

2. Section 65 (105)(zzze) defines taxable service as:

“Any service provided or to be provided to its members, **or any other person\***, by any club or association in relation to provision of services, facilities or advantages for a subscription or any other amount”.

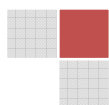
*\*w.e.f 16.05.2011*

- Letter No D.O.F. 334/3/2011-TRU, dated 28.02.2011:

“Services provided by a club or association to its members are already subjected to tax since 2005. When a member avails the facilities for his guest, he is already covered by the existing definition as the services are paid for by the member and not by the guest. However a number of clubs or associations allow non-members to use their facilities in their own capacity for a separate charge. Clubs also entertain members of other affiliated clubs. Such services are proposed to be brought within the revised definition.”

- Interpretation of terms used in the above definition:

- Subscriptions received from members are chargeable to service tax because amounts received for services ‘to be provided’ are also covered under the definition. The same logic applies to Life Membership Fees. **(Test of service provider service receiver relationship needs to be passed to levy service tax).**



However, we are of the opinion that Life Membership Fees or any such amount which is to be collected mandatorily as per the by-laws and cannot be directly correlated to any specific service should not be chargeable to service tax. So also, donations received from members/non-members should not be chargeable to service tax if the same are not directly correlated to any specific service.

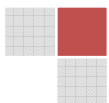
- Amounts charged by clubs or association from its members/non-members for sale of items such as food, beverages etc would not be taxable provided the documents evidencing such sale are available.

- Following is the Department's Circular in this regard:

*Para 10.5 and 10.6 of Circular F.No B1/6/2005-TRU dated 27.07.2005*

*'10.5 – Taxable services are defined as services provided to members by clubs or associations in relation to provision of services, facilities or advantages for a subscription or any other amount. **Facilities or advantages are provided to members in return for a subscription or other consideration. The scope of the term any other amount is the amount paid by members, apart from membership fee or recurring subscription fee, such as amounts paid for provisions of services to the guests of a member, amount paid for get-togethers and functions charged over and above the subscription amount. This will also be liable to service tax. However, amount charged by club to its members for sale of items such as food or beverages would not be taxable provided the documents evidencing such sale are available.'***

*'10.6 – Any additional fee should be treated in the same way as subscription. Life membership fees must be treated in the same way as subscription. In certain professions, persons cannot practice unless they are registered with a statutory body and have paid fees which are prescribed by law. In such cases, the organization is not providing any service in the course of its business and its merely carrying statutory functions. Since no service is provided, the question of levy of service tax does not arise. However, if there is no statutory requirement, service tax is liable to be paid.'*



3. Section **65(25aa)** of the Finance Act, 1994 as amended defines ‘club or association’ as follows:

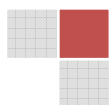
**Club or Association** means *any person* or body of persons **providing services, facilities or advantages, primarily\*** to its members, **for a subscription or any other amount**, but does not include the following:

- a. Any person or body established by or under any law for the time being in force;
- b. Any person or body of persons engaged in the activities of trade unions, promotion of agriculture, horticulture or animal husbandry;
- c. Any person or body of persons engaged in any activity having objectives which are in the nature of public service and are of a charitable, religious or political nature;
- d. Any person or body of persons associated with press or media;

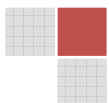
\* *w.e.f 01.05.2011.*

Interpretation of terms used in the above definition:

- **‘Services’** can be interpreted as services of any description made available to the members, mainly for the purpose of entertainment, amusement, relaxation etc.
- **‘Facilities’** as per Oxford Advanced Learners Dictionary means ‘buildings, services, equipments etc that are provided for a particular purpose, like sports, leisure, etc’.
- **‘Advantages’** can be interpreted as certain privileges enjoyed by the members/non-members such as gym, residential accommodation etc.
- Monetary consideration is a pre-requisite as per the above definition. Hence, any service provided free of charge will not be chargeable to service tax.



- **'Subscription'** generally denotes periodical payments of fixed amount to be made by members and will also include one-time payments like life membership.
  - **'Other amount'** is wide enough to cover other payments made by members, towards admission fee, use of special facilities, mess bills, bar bills etc.
  - Body established or constituted by or under any law for the time being in force –  
Eg: ICAI, Bar Council of India etc.
  - Housing Societies will be covered under the above definition and hence subscriptions collected from its members shall be leviable to service tax.  
**However, resident welfare associations are specifically excluded subject to some conditions which are enumerated in Para 5 below.**
4. Exemption from Service Tax to club or association engaged in any activity having objectives which are in the nature of public service and are of a charitable, religious or political nature:
- Circular No. 96/7/2007 –ST dated 23.08.2007 clarifies as follows:***
- *Exemption under the Income Tax Act on the ground of being a public charitable institution is of no consequence or relevance for service tax purposes.*
  - *Levy of service tax is entirely governed by Finance Act, 1994 and the rules made there under.*
  - *'Charity' is defined as "aid given to the poor, the suffering or the general community for religious, educational, economic, public safety, or medical purposes" [Black's Law Dictionary].*
  - *'Charitable' is defined as "dedicated to a general public purpose, usually for the benefit of needy people who cannot pay for the benefits received" [Black's Law Dictionary].*



- Hence, whether the club is engaged in such activities needs to be checked on a case to case basis.

5. Specific Exemption:

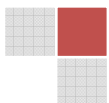
Resident Welfare Associations (Even if registered as a co-operative society) are exempted from Service Tax under the category 'Club or Association Service', vide Notification No 8/2007-ST dated 01.03.2007 provided the following conditions are complied with:

- a. The sole criterion for membership is the residential status of a person in a residential complex or locality; and
- b. Total consideration received from an individual member by the association for providing the said services does not exceed Rs 3,000/- per month.

6. Summary of Judgments with regard to the said service:

**a. *Surat District Cricket Association v Commissioner of Central Excise, Surat* [2011(23)S.T.R. 165 (Tribunal – Ahmedabad)]**

- Stay/Dispensation of pre-deposit – Charitable trust provided services such as health club, sports activity, organizing cricket matches on renting the ground, renting place for party purposes, organizing tournaments etc – Submission that service provided by club or association cannot be separated by members and that it cannot be said that there are two parties – HELD: Service provided clearly covered by definition under section 65(25a) of Finance Act, 1994 – Part pre-deposit directed.

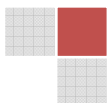


**b. Karnataka Golf Association v Commissioner of Service Tax , Bangalore [2011(21)S.T.R. 623 (Tribunal – Bangalore)]**

Stay/Dispensation of pre-deposit - Valuation - Club or Association service - Advance received from applicant desirous of becoming member of appellant's club - Person paying advance required to undergo rigorous test of playing 26 rounds of golf before admission as member - Person during interim period considered as temporary member or member-elect - Legal issues to be gone in detail - Prima facie case for complete waiver of pre-deposit not made out - Plea of appellant being a registered society taken - Pre-deposit of ` 30 lakhs directed - Per-deposit of balance amounts waived - Section 35F of Central Excise Act, 1944 as applicable to Service tax vide Section 83 of Finance Act, 1994.

**c. Ahmedabad Management Association v Commissioner of Service Tax , Ahmedabad [2009 (14) S.T.R. 171 (Tribunal – Ahmedabad)]**

- Club or Association service - Receipts without return - Member not entitled to any specific service in return - Institutions also become members - Membership fee to be paid without expecting any return - Revenue not brought out the services or advantages received by members on paying fees or other amount - Service tax not leviable on amounts received from members, member institutions and trade - Sections 65(25a) and 73 of Finance Act, 1994



**d. Madras Race Club v Commissioner of Service Tax, Chennai [ 2009(14) S.T.R 646 (Tribunal- Chennai)**

Stay/Dispensation of pre-deposit - Club or Association service - Self-service - Demand of Service tax on amount collected by club from its members for use of amenities provided and for food and beverages - Appellant contesting demand on the ground of service rendered being in the nature of self-service - Argument invoking doctrine of mutuality impressive - Prima facie case in favour of appellant - Pre-deposit waived - Recovery of Service tax, interest and penalty stayed - Section 35F of Central Excise Act, 1944 as applicable to Service tax vide Section 83 of Finance Act, 1994.

7. Rate of Service Tax:

- 16.06.2005 to 17.04.2006 – 10.20%
- 18.04.2006 to 10.05.2007 – 12.24%
- 11.05.2007 to 23.02.2009 – 12.36%
- 24.02.2009 till date – 10.30%

