

IPC
Service Tax Test 1
Answer Sheet

Total Marks - 40

Q 1

- a) **Yes.** Though grants given for a research where the researcher is under no obligation to carry out a particular research is not a consideration, grant given with counter obligation on the researcher **to provide IPR rights** on the outcome of research undertaken with the help of such grants is a consideration for the provision of service of research.
- b) **No.** Since fines and penalties are legal consequences of a person's actions and not a consideration for any activity, fine imposed by Traffic Police on breaking signal is not a consideration.
- c) **Yes.** The consideration for a service may be provided by a person other than the person receiving the benefit of service as long as there is a link between the provision of service and the consideration. Since in the given case, payment for the service is made by Suresh, a debtor of service receiver Rajesh, on the instructions of Rajesh, the payment will be treated as consideration of service provided by CA Amitkumar to Rajesh.

Q2

As per section 65B(44) of Finance Act, 1994, a service is an activity carried out by one person for another person in lieu of a consideration. Further, Explanation 3 to section 65B(44) provides *inter alia* that an establishment of a person located in taxable territory and another establishment of such person located in non-taxable territory are treated as establishments of distinct persons. Also, as per explanation 4 to the said section, a person carrying on a business through a branch in any territory is treated as having an establishment in that territory.

Therefore, services provided by Hyderabad branch to Head Office at Mumbai will not be service in terms of section 65B(44) since both the establishments namely, Branch office and Head office are located in the taxable territory and are thus, one and the same person. However, when services are provided by Head Office at Mumbai to Paris branch (located in non-taxable territory), the two establishments are treated as establishments of distinct persons and thus, the services provided in this case will constitute service under service tax law.

Q3

The compensation for termination of employment will not attract service tax as it is under the terms of employment. Such amount paid by the employer to the employee for premature termination of contract of employment is treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment. Hence, amount so paid would not be chargeable to service tax.

Q 4

As per the amendment made by Finance Act, 2015 the expression “The transaction in money or actionable claim” shall not include the activity carried out by Lottery agent in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner.

Thus the activities related to marketing of lottery carried out by Mr. Vipul are not considered as “transaction in money or actionable claims.”

As per section 65B (44) service shall not include a transaction in money or actionable claim. As above activities are not considered as “transaction in money or actionable claims, they will be included in the definition of “service”. Thus this activity is liable to service tax.

Q5

- a) **Invalid.** As per amendment by Finance Act 2015, the words “support services” are substituted with the words “all services”.
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 other entry in the Negative List would be liable to service tax.
- b) **Invalid.** Services provided by Government and local authorities are covered in negative list of services with a few exceptions. Health care services provided to general public are not covered in such exceptions and Municipality is a local authority.

Q6

- a) **No.** Service of transportation of passengers with or without accompanied belongings, by Railways in a class other than first class; or an air conditioned coach is covered in the negative list of services. Thus, service of transportation of passengers with or without accompanied belongings, by Railways in an air conditioned coach is not covered in the negative list of services.
- b) **No.** Only selling of space for advertisements in print media is covered in the negative list of services. Thus, selling of space or time slots for advertisement broadcast by FM Radio will not be covered in the negative list of services.
- c) **No.** Only the following services provided by the Department of Post to a person other than Government are not covered in the negative list of services:
- a. speed post,
 - b. express parcel post,
 - c. life insurance and
 - d. agency service

Therefore, the service provided by Department of Posts by way of basic mail services known as postal services, transfer of money through money orders, operation of savings accounts, issue of postal orders, pension payments and other such services will be covered in the negative list of services.

Q7

As per amendment made by Finance Act 2015, to section 65B (40) "Process amounting to manufacture or production of goods" excludes process amounting to manufacture of alcoholic liquors for human consumption.

Thus job worker manufacturing alcoholic liquors for human consumption is liable to service tax on their job charges even though on such activity State excise is payable.

Q 8

In the given case, since the invoice is issued within the prescribed period of 30 days from the date of completion of provision of service, the point of taxation, as per rule 3 of the POTR, shall be the:

- (a) date of invoice(i.e.20.08.20xx) or
- (b) date of receipt of payment (i.e. 15.08.20XX) [Refer note below] whichever is earlier, i.e. 15.08.20XX.

Note: Date of payment is:-

- (1) date on which the payment is entered in the books of account (i.e. 15.08.20XX)
- or

- (i) date on which the payment is credited to the bank account of the person liable to pay tax (i.e. 25.08.20XX)
- whichever is earlier, i.e. 15.08.20XX [Rule 2A of the POTR].

Q9

In case of continuous supply of service, the date of completion of each event which requires the service receiver to make any payment to service provider, as specified in the contract is deemed to be the date of completion of provision of service.

The point of taxation will, then, be determined accordingly in terms of provisions of rule 3 of the POTR.

As per rule 3 of the POTR, if the invoice is issued within 30 days of the completion of the provision of the service, point of taxation is: -

- (i) date of invoice or
- (ii) date of payment, whichever is earlier.

However, if the invoice is not issued within 30 days of the completion of the provision of the service, point of taxation is:-

- (i) date of completion of service or
- (ii) date of payment, whichever is earlier

Q 10

As per rule 3 of the POTR, advances received are taxable at the time when such advances are received. Thus, point of taxation is 23rd June, 2015.

