

TIME FOR A NEGATIVE LIST OF SERVICES FOR TAXATION?

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Desirable, but may not be practical at this juncture

IN JUNE 2000, AN EXPERT GROUP HEAD-ED by NIPFP director M Govinda Rao observed that the 'selective approach to taxation of services is undesirable for this violates neutrality in taxation, leads to inadequate coverage in addition to raising several avoidable procedural and legal complications'.

The group recommended that the Centre should move towards a 'general and comprehensive extension of the tax to cover all services with a small and clearly-defined exemption list'. It identified six categories of services to be put in the negative list, and that included all public services of government, all public utility services of essential nature and all school education.

The Advisory Group on Tax Policy and Tax Administration for the Tenth Plan, headed by Parthasarathi Shome, in May 2001 also criticised the 'sporadic efforts of the Centre (to add services on a gradual basis)' as it remained 'far below the revenue potential from this sector'. The advisory group advocated a comprehensive base of taxation though it viewed that the states were in a better position to collect this tax.

In its report in November 2002, a task force headed by Vijay Kelkar recommended that while 'it would be in order to identify certain services, which are not to be subjected to service tax', service tax should be comprehensive and there should be no selectivity of item'. The empowered committee of state finance ministers has also agreed for a comprehensive coverage.

While this is history, it is almost fashionable now to be on the side of a broad-based tax-

ation. Economists seem to feel it is already too late. Tax administrators perceive it as expansion of their kingdom.

Industry see this as an opportunity to lobby for a moderation in tax rates — to remove the distortions of the present tax regime. There can be no denying that a comprehensive base, barring a negative list, of taxability would undoubtedly boost the revenues from the service sector. Importantly, it would also virtually put an end to the disputes on interpretation of individual taxable services which, unfortunately, has seriously undermined the effective and efficient administration of service tax.

That said, it may not be prudent to ignore that tax policy is not necessarily dictated entirely by sound economic principles. It has several other dimensions as well — political judgment being an important one. Taxation of services is linked to GST.

The political debate over the design and structure of GST is not yet conclusive. At this stage, when GST is knocking at the door, if the Centre alone decides to collect tax on all services, it might lead to apprehensions and complications. In any event, taxing all services at 10% when inflation is worrisome does not seem feasible. The economy is not fully liberated from the global slowdown. Discontinuation of the stimulus packages at this juncture appears doubtful.

Overall, it seems that though taxing all services, except a negative list, is no doubt desirable, there are serious doubts about its practicability at the present.

TAXING ALL SERVICES AT A RATE OF 10% WHEN INFLATION IS WORRISOME DOES NOT SEEM FEASIBLE

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Compliance burden of small firms will rise with negative list

SERVICE TAX IS ONE MORE ATTEMPT AT widening the tax net and the litigation surrounding the same is insurmountable! It was introduced by the Finance Act in 1994, where initially only three services were sought to be taxed. Over time, policymakers have thought it prudent to expand the list of services every year rather than have a separate enactment. While there is a need for a separate legislation, which is now being proposed by way of the GST legislation, the debate on the desirability of a negative list of services for taxation continues. It has been proposed that all services except those in the negative list be taxed under the GST model. Would it not be better to have an all-encompassing positive list by clearly specifying the object to be taxed?

The main argument put forth in favour of a negative list is that it is likely to provide clarity, reducing the quantum of tax controversy. This claim ignores the fact that service providers would be encouraged to manoeuvre the services around for assuming shelter under the negative list. Fresh disputes would arise on what constitutes service and whether the activity is actually a provision of service. A controversy in the case of the real estate sector on the issue of whether renting an immovable property constitutes service already exists.

Also, service tax authorities are not clear on what constitutes a service, which is clear from instances where service tax has been attempted to be levied on capital infusion in entities. This is without a legal basis. A move

towards a negative list will only result in more such controversies. Additionally, such a negative list will result in additional compliance burden and disputes for smaller players. Respectably, it is unfair to a taxpayer for the regulators to twist the law existing for 15 years under which jurisprudence has been built and set afresh a new law for a taxpayer to be returned to.

The need of the hour is for a system in which all the services sought to be taxed are identified upfront and any overlaps between services removed. Perhaps, instead

of compiling a negative list, adequate carveouts should be drawn in the positive list to identify the services and entities that the government desires to retain outside the purview of taxation, e.g., NGOs, charitable organisations etc. Also, there is a need for a consolidating enactment that would categorise and consolidate the services in a proper manner, thereby balancing the revenue needs

and providing simplicity and transparency in the legislation to taxpayers.

While the GST seeks to provide for such a consolidating enactment, questions still arise as to whether it is prudent to have only a negative list of exempted services. It must be borne in mind that a tenet to any tax legislation is simplicity, fairness and clarity; which is a right of the taxpayer and, most respectfully, a negative list does not serve the purpose. The adoption of a negative list would not fulfill the above criteria and cast a more onerous burden on the taxpayer.

A POSITIVE LIST WITH CARVEOUTS FOR SERVICES AND ENTITIES THAT DESERVE TAX EXEMPTIONS WOULD BE MORE APPROPRIATE