

Sub: Levy of service tax on educational institutions- Reg.

Various educational institutions impart training and conduct courses in different fields. Many of these institutions issue certificates/degrees/diplomas to the candidates upon their successfully completing such courses. Apart from government run or aided institutes imparting education, training or coaching, there are several private run institutes or centers, which impart education/training/ coaching, teach skills, help in preparing for competitive examinations or run classes on various subjects. Service tax is leviable on services provided by 'commercial training and coaching centers', since the year 2003. Over a period of time, certain doubts /disputes have arisen in the field in respect of the chargeability of service tax on the fees/ charges collected by such institutes and education centers. Some of such issues have been discussed below.

2. COMMERCIAL NATURE OF INSTITUTE

The first issue arises from the very name i.e. 'Commercial training or coaching center'. Many service providers argue that the word 'commercial' appearing in the aforementioned phrase, suggests that to fall under this definition, the establishment or the institute must be commercial (i.e. having profit motive) in nature. It is argued that institutes which are run by charitable trusts or on no-profit basis would not fall within the phrase commercial training or coaching center and none of their activities would fall under the taxable service. This argument is clearly erroneous. As the phrase 'commercial training or coaching center' has been defined in a statute, there is no scope to add or delete words while interpreting the same. The definition commercial training or coaching center has no mention that such institute must have 'commercial' (i.e. profit making) intent or motive. Therefore, there is no reason to give a restricted meaning to the phrase. Secondly, service tax, unlike direct taxes, is chargeable on the gross amount received towards the service charges, irrespective of whether the venture is 'profit making, loss making or charity oriented' in its motive or its outcome. The word "Commercial" used in the phrase is with reference to the activity of training or coaching and not to the nature or activity of the institute providing the training or coaching. Thus, services provided by all institutes or establishments, which fulfill the requirements of definition, are leviable to service tax.

3. POST SCHOOL EDUCATION

3.1 Determination of taxability of education, other than school education is more complex and poses more questions. This is because, it covers an entire gamut of educational courses, such as formal higher education (i.e. bachelors, masters, doctoral, post doctoral course), specialized education, vocational education, language (including foreign language) courses etc. These vary in terms of their content; purpose; scope; and the type of institutes or establishments, which impart them.

3.2 The system of statutory recognition of educational establishments or institutions in India is still in the state of evolution. As regards university education, University Grants Commission (UGC) is the apex regulating body. As per the objects of the University Grants Commission Act, 1956 (which established UGC) the said Act is 'to make provision for the co-ordination and

determination of standards in Universities and for that purpose, to establish a University Grants Commission'.

As per the definition, in terms of Section 2(f) of the Act, a University means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act. . Therefore, all universities which are a creature of a State or Union Act fall within this definition of 'University'.

Further, Section 3 of the Act, explains the scope of a 'deemed university' and defines that the Central Government may, on the advice of the Commission, declare by notification in the Official Gazette, that any institution for higher education, other than a University, shall be deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institution as if it were a University within the meaning of clause (f) of section 2.

Also, UGC, with the approval of Central Government and under the Recognition of College in Terms of Regulations, 1974 framed under the UGC Act, can grant recognition to a college or institution run by a trust, a registered society or a body corporate or body incorporated under Central or state Act as an institution affiliated to or form as constituent member with a university, providing education up to a bachelors degree, masters degree or diploma of a duration of minimum one academic year

As per National Policy on Education, 1986, a scheme of autonomous colleges was promoted. In the autonomous colleges, whereas the degree continues to be awarded by the university, the name of college is also included. These colleges develop and submit new courses of study for approval by the university. These autonomous colleges are fully responsible for the conduct of examination.

As all these institutions or establishment are either created or recognized in terms of the power conferred by statutes, they would fall in the category of institutes/ establishments which issues diploma or certificate recognized by the law for the time being in force. As regards issuance of degree, section 22(1) of the said Act, provides for right of conferring or granting degrees only by a 'university' (as defined above) or a 'deemed university' (as defined above).

3.3 In addition, for recognition of professional courses, promotion of professional institutions and providing grants to various programmes, a number of 'professional councils (Such as All India Council for Technical Education-AICTE, Medical Council of India-MCI, Indian Council for Agricultural Research-ICAR, Bar Council of India-BCI) have been created through independent Union Acts. Since, inter alia these councils are entrusted with ensuring norms and standards of the courses, physical and instructional facilities, undertaking assessment etc., they have also been provided with powers to make subordinate legislations (i.e. through notifications, circulars, rules) that the institutions or the establishments within their ambit must abide. In case of default, the councils have the power to derecognize an institution or establishment or a particular course being conducted by them, even if they are recognized as a university, a deemed university or an affiliated college. If an institution or establishment is derecognized, then such institution or establishment cannot be called to be an institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by the law for the time being in force. With the result, the courses conducted would fall under the ambit of 'commercial training or coaching centers' and would be charged to tax. It may however, be noted

that for exercising such power, there should be a valid rule / notification / circular, prescribing the minimum requirements or standards as also the consequences of default.

3.4 All India Council for Technical Education-AICTE, was started in 1945 with the objectives stated above. Based on the recommendations of a 'National Working Group' (constituted by the Government of India) that AICTE be vested with the necessary statutory authority, it was given legislative support through an Act, called the AICTE Act, 1987. AICTE, using the powers conferred on it through 1987 Act, issued the 'AICTE (Grant of Approval for Starting New Technical Institutions, Introduction of Courses or Programme and Approval), Regulation 1994. These were amended in the years 1997 and 2000. Under Regulation 4 (Requirement of Grant of approval) of these Regulations, AICTE prescribed that,-

"After the commencement of these regulations,-

- a. No new Technical Institution or University Technical Department shall be started; or
 - b. No course or programme shall be introduced by any Technical Institution, University including a Deemed University or University Department or Collage; or
 - c. No Technical Institution, University or Deemed University or University Department or College shall continue to admit students for Degree or Diploma course; or
 - d. No approved intake capacity of seats shall be increased or varied;
- Except with the approval of the council.

The powers to issue regulations for approval are conferred on AICTE under Section 23 read with Section 10 of the AICTE Act.

3.5 In 2003, when service tax was first imposed on commercial training and coaching centers, the AICTE regulations required that for (a) starting or establishing new technical institutions; (b) introduction of additional programmes; or (c) increase in 'intake' in the existing programmes of AICTE approved institutions, a 'no objection certificate' from the concerned State government /UT would be required (notification F.37-3/Legal (iii)/2002 dated 10.09.2003). This notification does not prescribe any certification for existing institutes or establishments, which did not introduce any additional programme or did not increase in 'intake' in an existing programme. Thus, at that stage, not having a AICTE approval for such existing institution or establishment did not make them ineligible for being an institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by the law for the time being in force. Thus, if otherwise recognized or accepted, this sole reason of absence of AICTE approval did not cause such institutions or establishments to be within the service tax net. On 6.01.2005, vide notification No. F.37-3/Legal/2004, the previous AICTE Regulations was replaced by new Regulations. These Regulations expanded the scope and stated (Regulation No. 5) that no new technical institution of the Government, Government Aided or Private institution shall be introduced; no new courses or programs in technical education shall be introduced or no variation of intake shall be effected or no existing technical institution of the Government, Government Aided or Private institution shall conduct any technical course without prior approval of the council. The Regulation No. 7 of these Regulations also stated that the council shall, in every year publish the names of approved technical institutions, conducting course in technical education, the course and programs approved by the council and the number of seats permitted for each course etc. These Regulations were again superseded by another set of Regulations issued vide Not. No. F-37-3/Legal/2004 dated 28.11.2005, where the requirement of grant of approval by AICTE was further elaborated to specifically include universities, deemed universities and any admission authority etc. Vide notification No. F-2-1/2006 U.3 (A) dated 5.04.2006 the Central Government issued clarification regarding the role and the powers of

AICTE and UGC with respect to 'Deemed to be University'. From the above it emerges that from the year 2005 onwards, a technical institution or establishment (which is otherwise recognized being a university, or affiliate college) not having AICTE approval cannot be called to be the one issuing any certificate or diploma or degree or any educational qualification recognized by the law for the time being in force and thus be within the ambit of service tax. However 'Deemed to be University' have been exempt from this requirement. As per the said notification for the institutes 'Deemed to be University', it is not a pre-requisite to obtain the approval of AICTE to start any programme in technical or management education leading to an award, including degrees in disciplines covered under the AICTE Act, 1987. However, such institutes are required to ensure the maintenance of the minimum standards prescribed by the AICTE for various courses under the jurisdiction of the said council.

3.6 Similar would be the situation in case of other Statutory Councils.

3.7 A related issue is, that since the concept of recognition of an educational qualification in India has been dynamic in nature (i.e. the degree/ diploma/ certificate an institute or establishment may be recognized by the law at one time and not recognized at other, due to change in legal provisions) the taxability of the courses conducted would depend on the legal status of such institute or establishment at the point of time when such service is provided (i.e. course is conducted). It cannot be said that once recognized an institute or establishment would remain so even in future or was so in the past.

3.8 Many a time private institutes conduct courses and issue diplomas or certificates in collaboration with certain foreign institutes universities. In many cases private enterprises conduct campus interviews of the students of such institutes and offer them jobs. Such certificates / diplomas may be accepted for higher education abroad. However, such a certificate / diploma cannot be called as the one 'recognized by the law for the time being in force' unless such a diploma/ certificate has been specifically recognized by the statutory authorities such as UGC, AICTE. Consequently, such institutes would not fall under the exempted category and would be subjected to tax.

4. VOCATIONAL TRAINING INSTITUTE

The vocational training institutes are exempted from service tax vide notification no. 24/2004-ST, dated 10.09.2004 (as amended). By definition, such institutes should provide training or coaching that imparts skill to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching. Disputes have arisen in respect of institutes that offer general course on improving communication skills, personality development, how to be effective in group discussions or personal interviews, general grooming and finishing etc. It is claimed that such training or coaching improves the job prospects of a candidate and therefore they are eligible for exemption as 'vocational training institutes. However, a careful reading of the definition shows that the exemption is available only to such institutes that impart training to enable the trainee to seek employment or self-employment. The courses referred to above do not satisfy this condition because on their own such courses do not prepare a candidate to take up employment or self-employment directly after such training or coaching. They only improve the chances of success for a candidate who already has the required skill. Therefore, such institutes are not covered under the exemption.

5. CONCLUSION

All pending cases may be disposed of accordingly. In case any difficulty is faced in implementing these instructions, the same may be brought to the notice of the undersigned.