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**CONSTRUCTION
FEDERATION OF
INDIA**

18th October 2011

**The OSD (TRU),
Central Board of Excise & Customs (CBEC)
Ministry of Finance,
North Block,
NEW DELHI-110 001.**

Kind Attention: Shri Shobhit Jain

Dear Sir,

CBEC PAPER ON NEGATIVE LIST OF SERVICES

On behalf of the members of Construction Federation of India (CFI), may we take this opportunity to bring to your kind attention few comments/suggestion on the Concept Paper on Negative list of Services prepared by the CBEC and posted on the CBEC Website.

CFI is a representative body of the leading engineering construction firms of the country engaged in building dams, power stations, roads etc., and other basic infrastructure of national importance.

Before proceeding, we would like to mention that the construction sector is characterized by a set of business and operational practices which are unique to it and are not shared by either the manufacturing sector or the service sector. Somehow this perspective has been missing while imposing taxes on the construction sector that contribute to nearly 8% of the national GDP, resulting into a number of legal controversies, ambiguities, contradictions, loopholes and prolonged litigations.

Comments/Suggestions

Most of the stakeholders in trade agree with the viewpoint that the **proper time to introduce a comprehensive taxation of services with some limited exemption through negative would be alongside of GST only.**

Our comments on the Concept Paper of Negative List of Services are as under:

S.No.	Question for feedback	Proposed provision/intention	Modification suggested (shown in bold letters)
1.	Should the country adopt the negative list? What will be the proper timing; at the time of GST or earlier?	<p>The Hon'ble Finance Minister in his Budget speech has said that he wanted a public debate on the feasibility of introducing a short negative list of services to bring untapped sectors into service tax net instead of expanding the positive list to avoid overlap which leads to innumerable administrative issues resulting in litigation and higher compliance cost. This approach will be very conducive for a nationwide GST .</p> <p>It appears that the Government intends to implement Negative List in the forthcoming Budget.</p>	<p>We may apprehend that a comprehensive Negative List of services may bring better clarity to tax payers. However, we strongly feel that the same should be introduced alongside of GST for the following reasons:</p> <p>1. Service is a very comprehensive subject and the services provided by Construction Sector in particular is very complex. The main reason is that infrastructure projects are carried out by the Contractor simultaneously at different sites throughout the country by pooling engineering, construction materials, equipment, manpower etc. Changes in law leads to innumerable administrative issues including tax administration, changes in e-governance etc. which takes a long time to settle down. In addition, the Government will have to amend appropriately the following Act/Rules which will add further ambiguity, legal disputes etc.:</p> <p>a. Chapters V and VA of Finance Act, 1994 b. Service Tax Rules, 1994 c. CENVAT Credit Rules, 2004 c. Any other law related to Service Tax.</p> <p><u>Similar exercise will have to be carried out once again when GST is introduced. Therefore, in our opinion the Negative List should be introduced alongside of GST.</u></p>

2.	How to define Service Tax for the purpose of taxation	A service mean anything which does not constitute supply of goods, money or immovable property - and include..... but exclude a supply	A "service" means any activity provided or to be provided for furtherance of commerce or industry for a consideration which does not constitute supply of goods, money or immovable property ...and includes - A, B, C, &.... (D. should be deleted or amended suitably to avoid litigation for want of clarity). but excludes
3	What are the services which should be placed in the negative list?	Possible Negative list of services as per possible list: Sector 1.to Sector 9.	Please see comments below. Sector-wise.
4.	How comprehensive the coverage should be while drawing the negative list	Possible negative list of services	The list of negative services must be exhaustive, clear, free from ambiguity and such that it can be interpreted with the same meaning by the Assessee and Assessor. This will avoid unnecessary controversies, disputes and litigations.
5	What are the revenue implications?	If Negative List is introduced, it is presumed by the Government that roughly 40% of the total potential services will come into the tax net as a result of the proposed negative list.	It is difficult to predict since the Positive List has covered most of the services. The government must ensure that the Negative List covers all the services which are not intended for commerce or industry.

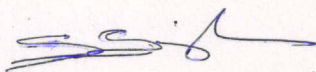
	ANNEXURE:	POSSIBLE NEGATIVE LIST OF SERVICES:	
6.	1. By specified persons	Notified services provided to : a. Government b. RBI c. Government regulatory bodies	a) Government - All projects of Union, State and local self government, Autonomous bodies/Undertakings/Companies promoted by State/Central Govt. under Companies Act, 1956 predominantly not for industrial or commercial use but with objectives to provide service in civic amenities, public utilities etc. should also be included in Negative List.
7.	Construction & Real Estate	Construction, Works Contract, repair, alteration, renovation or restoration: a) road,pipelines; b) Building owned by Government, other than meant predominantly for industrial or commercial use, including government hospitals and educational institutions. c) Residential building comprising of a single dwelling unit:	Services in relation to Construction, Erection, Installation and Commissioning, Works Contract, repair, alteration, renovation or restoration, maintenance of and in: a) roads, airports, railways, transport terminals, bridges, tunnels, dams, canals, irrigation and flood control waterworks including watershed development and water-bodies, water treatment plants and water supply pipelines, Pollution control projects, Effluent Treatment Plants, Ports and docks, wharves, quays, stages, jetties, piers and also similar services in SEZ. b) Building owned by Government other than predominantly for industrial or commercial use, Govt. Hospitals, Educational institutions, Diplomatic Buildings, Projects funded by UN Agencies, Hospitals constructed by Corporate, Trusts, NGOs, for public utility c) Residential building comprising upto 12 dwelling units: staff quarters, Labour camps, staff canteens

		d) homeless shelter, orphanage, old-age home, rehabilitation & de-addiction centre, child day-care home or place of worship.	d) Constructions used for homeless shelter, orphanage, old-age home, rehabilitation & de-addiction centre, child daycare home, religious, charitable, sanitation or philanthropic, disaster relief shelters, community halls, dharamshala, meditation halls, etc.
8.	Health	Option:1 Services provided by a clinical establishment with a turnover below Rs. R4 crores.. Option 2: Hospital, medical care, diagnostic para medical servicessurgery	Option:1 Services provided by clinical establishments (without limit).. Option 2 : Hospital, medical care diagnostic, paramedical services, including services in relation to preventive health check-up within a precincts of a clinical establishment.
9.	Others	Toll except services in relation to collection of toll	Toll, Annuity including services in relation to collection of toll by BOT/DBFOT (Design, Build, Finance, Operate and Transfer) operator to recover construction and maintenance costs. Services provided in relation to collection of any tax or levy Central/State/local bodies.

*Modifications suggested by the Federation have been marked in Bold

We request you to consider the changes suggested by the Federation in the interest of construction sector.

With regards,
Yours sincerely,


(Siddharth Singh)
Secretary General