**Introduction**

Taxation is a fiscal tool in the hands of the Government to raise revenue for the country and indirect taxes like excise duty, customs duty, value added tax, service tax, proposed goods and service tax, etc. are some of the taxes which contribute majorly to raise this revenue.

The proposed move to GST by the Indian Government which would combine most of these indirect taxes and be introduced as one common tax on both goods and services, is a step in this direction.

**Technical Fiche (2008)**, Globally, the financial services industry contributes around 20% of the total tax revenues.

In view of the above, it is highly relevant that laws in relation to taxation of services are clear and unambiguous. This is especially so because in the case of financial services, it is extremely conflicting determining the place of provision of the services, consumption of the services, value of the services etc. Currently, the law lends itself to various interpretations, thereby increasing litigation. Hence it is imperative that the proposed GST address these concerns of the financial services industry.

**Background of Indirect Taxes in India**

Historically in India, indirect taxes were applicable only on goods and were dominated by Excise duties on production of goods, Customs duty on import of goods and Sales Tax in various states on sale of goods. This resulted in services escaping indirect taxes and increased cost of indirect tax on goods due to tax being charged on tax.
Further, there was no concept of availability of input tax set off against the output tax liability other than under excise i.e. in the form of Cenvat credit on manufacture of goods. Later as sales tax was replaced with VAT input credit became available in VAT. **Finance Act, 1994**, introduced service tax as an indirect tax on services. At the time of introduction there were only 3 services and towards 2011 there were 105 services under the service tax net. **Cenvat Credit Rules, 2002**, (as amended from time to time) allowed Cenvat credit under the service tax legislation also. However, since all these taxes were not connected to a large extent there was “tax on tax”.

**Proposed GST**

Goods & Service Tax or GST was proposed to be introduced in 2010 in India by the then finance minister Mr. P. Chidambaram. **Model Roadmap for GST in India, (2008)** The GST was conceptualized as one tax on production, sale and consumption of goods and services with seamless input credit available which would address the issue of tax being charged on tax under the existing regime. The GST would replace and/or include existing central and state taxes. Given that India has a federal government, GST would be twofold in nature i.e. with a State GST and Central GST with an Interstate GST for interstate transactions. Exports would be zero rated and imports would be taxed under reverse charge making them on par with domestic goods/services. Financial services would be taxed based on input taxation approach and destination based consumption approach.

**Negative List Regime**
Finance Act, 2012 – Provisions in relation to Service Tax, (2012) Towards this end, in 2012, there was a huge shift in the concept of taxation where the category based service taxation was abolished and “Negative List” based taxation approach was introduced. Under the negative list regime, any activity not covered under the negative list is liable to service tax. There are a few exemptions granted through s Notification. But other than the negative list and exemption list all other activities are liable to service tax.

Place of Provision of Services Rules, 2012 - POPS

Notification 28/2012 (2012) Services being intangible in nature, POPS were introduced with the negative list system of taxation in order to determine in which location the service is taxable. This is extremely relevant from a GST angle, since the proposed GST being two fold in nature, where the service is taxable would decide which state the state GST becomes payable. Further, it would also determine the availability of ITC for setoff. However, the POPS are not completely clear as regards the financial services industry. Currently, the POPS has broadly classified the financial services taxability based on whether the customer is an “account holder” or not and based on the nature of services provided.