

SERVICE TAX BUDGET UPDATES 2011

PROPOSED NEW SERVICES

RESTAURANT SERVICE

The service provided by a restaurant in relation to serving of food and beverages (including alcohol) to any person has been brought into the tax net. The service tax would be applicable only on satisfaction of cumulative criteria,

- a. Having the facility of Air Conditioning.
- b. Having License to serve alcohol.

Although the Finance Minister Speech states that there would be an abatement of 70%. There is no such notification at this juncture as the same would be given only after the enactment.

ISSUES:

1. Whether AC restaurants without liquor license would be liable for service tax?

No, Service tax is applicable for AC restaurant having the license to serve liquor; the taxability under this service would require both the condition to be satisfied cumulatively.

2. Whether the service provided in Non-Air Conditioned section is liable?

Usually the restaurants would be having both AC and Non-AC section, although the levy in this case is only for air conditioned restaurant, the definition states that AC can be installed in any portion of the establishment and hence the same would be taxable for Non-AC section also.

3. In case AC facility is used only in summer, what would be the implication when the service is provided without the use of AC in winter?

The definition states that AC facility provided for any part of the year is sufficient, therefore service tax would be payable even for the service provided in winter.

4. Whether the AC restaurants allowing the consumption of liquor at the risk of the customer would be liable for service tax.

No, to attract service tax under this category, license to serve liquor is mandatory. Therefore such arrangement would not be liable for service tax.

5. Whether AC restaurant with liquor license servicing a particular customer food and/or non-alcohol would be liable for service tax.

Yes, the definition covers serving of food or beverages including alcoholic beverages and hence the same would be liable. Once there being a liquor license and having AC facility irrespective of the service, there would be the liability.

6. What would be the value for charging service tax?

The finance minister speech states that there would be an abatement of 70% in such case and therefore service tax would be chargeable only on 30%, however the condition for such deduction could be known only after the issuance of notification.

7. Whether VAT would be exempted on the value on which service tax is paid?

Supreme Court in two instances has clearly held that service tax and VAT would be mutually exclusive, however in the instant case both Service Tax law and VAT laws are deeming this serving of food and beverages as deemed service and deemed sale respectively. Therefore a strong representation has to be made to the State Government for exempting the value on which the service tax is paid.

8. In case there is explicit service charge indicated in the Invoice, Whether service tax can be paid on such amount alone?

Notification 12/2003-ST as amended provides exemption for the goods sold in the course of execution of the service. There are divergent views as to the applicability of this notification, The Bangalore Tribunal decision in case of Daspalla Hotels Ltd. vs Commissioner of C. Ex., Visakhapatnam 2010 (018) STR 0075 Tri.-Bang supports this view, however recently Delhi Tribunal has taken a contrary view in case of M/s Sayaji Hotels Ltd Vs CCE, Indore 2011-TIOL-226-CESTAT-DEL that the benefit of notification 12/2003-ST as amended is not allowed as the notification is not meant for the deemed sale but actual sale. Therefore this view has to be judicially tested.

9. Whether self service at airports would be liable for service tax?

No. since the element of service is absent in such case there would not be service tax under this category, but could be covered under airport service.

10. Whether the restaurant would be eligible for CENVAT credit?

Yes, CENVAT credit would be available in a regular scheme; however there may be restrictions in to be notified abatement scheme. The CENVAT credit would be availed on the following

- a. Excise Duty/CVD paid on Air Condition, Furniture, cutlery, crockery, beverages (other than alcohol) etc
- b. Service Tax paid on the rent of the premises and other service used for providing the taxable service

HOTEL/LODGE SERVICE

The service of providing accommodation for a continuous period for a period less than 3 months has brought into the tax net. The service provider in this case is a hotel, inn, guest house, club or camp site by whatever name called. Service apartments may also be covered, further examination maybe necessary. The term continuous period has not been defined but in common parlance may be understood as more than a day. The Budget speech and the TRU circular states that the levy would be made applicable to only those hotels, which have the declared tariff value more than Rs. 1000 per day. That means hotels having tariff less than Rs. 1000/- per day would be exempted by a notification to be issued. The Finance Minister speech states that the abatement of 50% would be notified

ISSUES:

1. Whether there would be tie between the Luxury tax and service tax for this service?

The Luxury tax is a stale levy for taxing the luxury provided in the hotel room. The new service intends to tax the provision of the accommodation, therefore the aspect of taxation of both the services is different. However this may be constitutionally examined.

2. *Whether single day accommodation would be liable to pay service tax?*

The definition requires provision of accommodation for a continuous period. The term continuous period has not been defined under the statute. Therefore the same has to be understood in common parlance. The dictionary meaning of continuous is “un broken, un interrupted” and that period is “portion of time, a phase or stage”. In general understanding one day is not understood as a period. Therefore may not be liable for service tax.

3. *Whether Hostels facility provided by an education institution would be liable for service tax?*

The service providers as defined in the definition are hotel, inn, guest house, club or campsite by whatever name called, that means service provider is restricted to only these specified service provider and Hostel is not in the nature of the defined service provider hence the same may not be liable for service tax.

4. *Whether the Paying Guest accommodation is covered under this service?*

Yes, the paying guest facility resembles guest house and hence the same would be liable for service tax.

5. *Whether the holiday homes/ home stay facilities are covered?*

Yes, the holiday homes located in hilly area etc are very much covered under this service.

6. *Whether the service apartments are covered?*

Yes, Residential apartments are covered under this service, however in case the period of stay exceeds a period of 3 months then it would be out of the tax net.

7. *Whether the Hospital providing the accommodation to patients would be covered under this service?*

The service providers as defined in the definition are hotel, inn, guest house, club or campsite by whatever name called, that means service provider is restricted to only these specified service provider and Hospitals is not in the nature of the defined service provider hence the same may not be liable for service tax.

EXPANSION OF SCOPE OF THE EXISTING SERVICE

AUTHORIZED SERVICE STATION:

Presently the repair and service of the light motor vehicle service, two wheeler service by the authorized service station was covered under the tax net. The scope of this service has been enhanced to all the cover any service of repair, reconditioning, restoration, or decoration or any other similar services, of any motor vehicle. The exception has been given to three wheeled scooter, auto rickshaw and goods carrier. The authorization would be irrelevant as of now and every garage doing the repair or servicing of the vehicle whose turnover exceeds Rs. 10 lakhs would be liable for service tax. Further the car decorators service such as interior seat covering, glass tint, etc are also brought into the tax net.

HEALTH SERVICE:

In previous year budget, service tax was levied on the health service provided by a Hospital, Nursing Home and Multispecialty clinic to the insured patient and where consideration is received directly from the Insurance Company. In this budget the service tax base has been enhanced to include clinic, individual doctor etc.

a. Treatment

- i. The taxable service is diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy.
- ii. The service provider is "Clinical Establishment" means a hospital, maternity home, nursing home, dispensary, clinic, sanatorium or an institution, by whatever name called.
- iii. It should mandatorily have the facility of central air-condition and should be having more than 25 beds at any time during the financial year.

b. Diagnosis

- i. The taxable service is diagnosis of diseases through pathological, bacterial, genetic, radiological, chemical, biological investigations or other diagnostic or investigate service

- ii. It should have the aid of laboratory or other medical equipment.
- iii. The service provider is any entity either independent or as a part of any clinical establishment.
- c. Doctor
 - i. The taxable service is diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy.
 - ii. The service provider is a individual doctor, not being an employee of the clinical establishment
 - iii. The service has to be provided in a clinical establishment.
- d. Exclusion
 - i. Establishment owned or controlled by Government or a local authority.

CLUBS OR ASSOCIATION SERVICE:

Service provided to the members of the club or association in relation to provision of any services, facilities or advantages for a subscription or any other amount was taxable. Now this definition has been extended to service provided to other also. Further exemption has been provided for the membership fee collected by the association formed for representing the industry or commerce during the period from 16.06.2005 to 31.03.2008. Further the refund is also permitted within the time limit of 6 months from the date of enactment of the finance bill.

COMMERCIAL COACHING AND TRAINING:

The scope of this service has been enhanced include the

- a. preschool coaching and training centre or
- b. any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force

However, exemption notification for the above two activities are expected

BUSINESS SUPPORT SERVICE:

The scope of this service has been enhanced to include the administrative assistance as well.

LEGAL SERVICE:

Presently the service provided by a business entity to business entity was taxable.
The scope has been enhanced as under

Sl. No.	Service Provider	Service Receiver	Service	Taxability
1.	Individual	Business Entity	advice, consultancy or assistance in any branch of law	Taxable
2.	Individual	Individual	advice, consultancy or assistance in any branch of law	Not taxable
3.	Business Entity	Business Entity	advice, consultancy or assistance in any branch of law	Taxable
4.	Business Entity	Individual	advice, consultancy or assistance in any branch of law	Taxable
5.	Individual	Business Entity	Representational services before any court, tribunal or authority	Taxable
6.	Individual	Individual	Representational services before any court, tribunal or authority	Not taxable
7.	Business Entity	Business Entity	Representational services before any court, tribunal or authority	Taxable

8.	Business Entity	Individual	Representational services before any court, tribunal or authority	Not taxable
9.	Arbitral tribunal	Business Entity	Arbitration	Taxable
10.	Arbitral tribunal	Individual	Arbitration	Not taxable

REDUCTION OF EXEMPTION FOR AIR TRAVEL

Type of Journey	Existing Taxable	Proposed Taxable
Economy class, within India	Lower of 10% of the ticket and Rs. 100/-	Lower of 10% of ticket or Rs.150
Other than economy class, within India	Lower of 10% of the ticket and Rs. 100/-	10% of the ticket
International journey in economy class	Lower of 10% of the ticket and Rs. 500/-	Lower of 10% of ticket or Rs.750/-
International journey in other than economy class	10% of the ticket	10% of the ticket

(Refer Notification: 04/2011-ST dated 28.02.2011 made effect from 01.04.2011)

CHANGE FOR THE RATE FOR FOREX BROKING

Forex Brokers or Banking & other financial services in relation to money changing activity can continue to make payment of ST on Gross Amount received but ST liability shall be computed at the rate of 0.1% instead of 0.25% of the gross amount received.

(Refer Notification No: 03/2011- ST dated 28.02.2011 made effect from 01.04.2011)

BUSINESS EXHIBITION SERVICE

Exemption has been extended to service provided by an organiser of business exhibition for holding a business exhibition outside India.

(Refer Notification No: 05/2011-ST dated 28.02.2011)

WORKS CONTRACT SERVICE

Construction of New residential complex or part thereof or completion & finishing of services of new residential complex or part thereof under JNNURM (Jawaharlal Nehru National Urban Renewal Mission) and Rajiv Awaas Yojana (RAY) has been exempted

(Refer Notification No: 06/2011-ST dated 28.02.2011)

GENERAL INSURANCE BUSINESS

Service provided by Insurer in General Insurance Business is exempted from ST levy if services are rendered to any person under the Rashtriya Swasthya Bima Yojana.

(Refer Notification No: 07/2011-ST dated 28.02.2011)

EXEMPTION FOR TRANSPORTATION OUTSIDE INDIA

Exemption is available if the services are provided to any person located in India, when the goods transported from a place located outside India to a final destination which is also outside India in relation to following service

- a. Transport of goods by road service
- b. Transport of goods by Air service
- c. Transport of goods by Rail service

(Refer Notification No: 08/2011 dated 28.02.2011) (w.e.f 01.04.2011)

TRANSPORT OF GOODS BY AIR

Exemption has been granted to the extent of the value as is equal to amount of air freight included in the value determined in accordance with Sec 14 of Customs Act, 1962

(Refer Notification No: 09/2011 –ST dated 28.02.2011) (w.e.f 01.04.2011)

AIRPORT SERVICE/PORT AND OTHER PORT SERVICE

- a. Works Contract Service wholly within the Airport and classifiable under the service of Airport Service is wholly exempted

(Refer Notification No: 10/2011 dated 28.02.2011) (w.e.f 01.04.2011)

- b. Works Contract Services when provided wholly within the port or other port, for construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways is exempted

(Refer Notification No: 11/2011 dated 28.02.2011) (w.e.f 01.04.2011)

TRANSPORT OF COASTAL GOODS ETC

25% Abatement has been given for the service provided services in relation to transport of:

- (i) Coastal goods;
- (ii) Goods through national waterway; or
- (iii) Goods through inland water.

In other words service tax is payable on 75%

(Refer Notification No: 16/2011 dated 28.02.2011) (w.e.f 01.04.2011)

SEZ EXEMPTION NOTIFICATION

The optional exemption for claiming refund has been granted; further the service wholly consumed has been tagged to Export of Service Rules, 2005. The procedure and condition has been notified

OTHER CHANGES IN THE PROVISION

INTEREST & PENALTY

- a. Interest for delay payment and interest for delay in remittance of the tax collected in excess has been enhanced from 13% to 18%p a
- b. Interest for the service provider, whose turnover not exceeding Rs. 60lakhs has been enhanced from 13% to 15%
- c. Late filing of returns has been enhanced from Rs. 2,000/- to Rs. 20,000/-
- d. The reduced penalty of 25% of the tax payable under section 78 has been extended only to the true and complete transaction is available in the specified records. The specified records here means any records including computerized data as are required to be maintained as required by any law being in force. In case the same is not required, even the record of invoice in the books of accounts would be considered. In other words the benefit of 25% of penalty is not available for unaccounted transaction.
- e. The payment period of 30 days from the date of order has been relaxed to 90 day in case of the service provider's turnover not exceeding 60 lakhs.
- f. The penalty under section 76 has been reduced from "higher of Rs. 200 per day or 2% pm but restricted to 100% of tax payable" to "higher of Rs. 100 per day or 1% pm but restricted to 50% of tax payable"
- g. The penalty under section 78 was presently between 100% and 200%, this has been reduced to 100% for un accounted transaction and 50% for accounted transaction.
- h. Penalty waiver has been restricted to unaccounted transaction, in other words for un accounted transaction there would be mandatory penalty of 100%

POWERS FOR SEARCH & SEIZURE:

Powers of search has been given to Superintendent of Central Excise upon authorization of Joint Commissioner. Earlier the powers vested with AC/DC upon authorization by Commissioner of Central Excise.

PROVISION OF CENTRAL EXCISE MADE APPLICABLE TO SERVICE TAX

- a. Certain offices has been made non-cognizable offence, with a compounding power to Commissioner of Central Excise on payment

- b. Personal penalty of the directors/manages etc has been introduced
- c. Power of Court to publish name, place of business, etc., of persons convicted under service tax has been bough in.
- d. The provision of section 562 of the Code of Criminal Procedure, 1898, and of the Probation of Offenders Act, 1958 is made applicable to service tax
- e. The provision of fixing the monetary limit for department appeal. Notification to this effect would be given after enactment.

CHARGE ON PROPERTY

First charge on the property of the assessee or the service provider

IMPRISONMENT

The following offenses are punishable with imprisonment of upto 3 years in case the offence exceeds 50Lakhs and in other case it would be upto 1year

- a. Providing taxable service without issuance of Invoice
- b. Availing the credit without actual receipt of service or goods
- c. Maintenance of false books of account
- d. Collects excess service tax and not remitting to credit of the government for a period beyond 6 months

AMENDMENT TO SERVICE TAX RULES, 1994

- a. Invoicing:
 - i. Service Provider shall issue an invoice within 14 days from the date of provision of service or receipt of payment towards the service whichever is earlier. Earlier the requirement was to issue invoice on completion of the service
 - ii. In case of continuous service, with periodical payments, the invoice was required to be issued invoice within 14 days from end of such period, now the same has been done away with.

- b. Applicability of rate of service tax: The service tax rate shall be the rate prevailing on the date on which the service is deemed to be provided as per the Point of Taxation Rules, 2011. Earlier the rate prevailing at the time of raising the invoice was considered for charging service tax, irrespective of date of realization.
- c. Payment of Service Tax: The service tax has to be paid to the credit of Central Government within due dates immediately the following month in which the services are deemed to be provided as per the Point of Taxation Rules, 2011. The present system of cash realization for payment of service tax would be irrelevant.
- d. Adjustment for non-provision of service: In case of assessee who has issued an invoice/ received payment towards a service to be provided and has not provided service (in full or part), he is eligible to take the credit of excess ST paid by him if he:
 - iii. Refunded the payment along with the ST to the receiver of service or
 - iv. Issued a credit note for the value of service not so provided to the person to whom he has issued invoice.
- e. Enhancement of the adjustment limit: In case where the assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability, can be adjusted in the subsequent period subject to a monetary limit which has enhanced from Rs. 1,00,000/- to Rs. 2,00,000/-.

EXPORT OF SERVICE/IMPORT OF SERVICE

- a. The following service would be considered as export of service if the recipient is located outside India, which was earlier taxed under the performance condition.

Sub Clause	Service
(x)	Credit rating agency
(y)	Market Research Agency
(zzh)	Technical testing and Analysis
(zzn)	Transport of goods by air
(zzp)	Transport of goods by road
(zzs)	Opinion poll
(zzzp)	Transport of goods in containers by rail



- b. The following service would be considered as export of service if the service provided on a immovable property located outside India, which was under recipient category

<u>Sub Clause</u>	<u>Service</u>
(zzzzu)	Service provided by builder for providing preferential location or development of complex.

- c. The following service would be considered as export of service if the service performance (at least part performance) outside India, which was under recipient category

<u>Sub Clause</u>	<u>Service</u>
(zz)	Rail Travel Agent service
(zzzzz)	Services provided by a clinical establishment or a doctor

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