

SERVICE TAX

Q.NO.1. WHAT IS THE NEED OF INTRODUCTION OF SERVICE TAX?

Need for Taxation of Services: It is the prime responsibility of the Government to fulfill the increasing development needs of the country and its people, by way of public expenditure. The Government's primary sources of revenue are direct and indirect taxes. Central Excise Duty on the goods manufactured and produced in India and Customs Duties on imported goods constitute the two major sources of indirect taxes in India. Due to WTO commitments and rationalization of commodity duties. Therefore the revenue receipts from customs and excise duties are low.

The largest component of GDP in the country comes from the service sector,

- To introduce value added tax in Indirect taxation as a whole
- To widen the taxation base.
- To merge tax on goods & services for eliminating multiple levels and for bringing about single levels called Goods & Service tax through out country

Q.NO.2.EVALUATION OF SERVICE TAX IN INDIA?

Service Tax in India: Based on these recommendations, Dr.Mannohan Singh, the then Union Finance Minister, in his Budget Speech for the year 1994-95 introduced the new concept of Service Tax and stated as under:

“There is no sound reason for exempting services from taxation, where goods are taxed and many countries treat goods and services alike for tax purposes. I, therefore, propose to make a modest effort in this direction by imposing a tax on services of TELEPHONE, NON-LIFE INSURANCE, AND STOCK BROKERS”.

- Therefore, the service tax was levied under Chapter V of the Finance Act, 1994.
- It was introduced for the first time on 3 services with a nominal rate of 5% advalorem.
- Subsequent Finance Acts have added more and services to be taxes for Service Tax purposes.
- As such, today more than 100 services are chargeable to Service Tax.

Q.NO.3. WHAT IS THE CONSTITUTIONAL BACK GROUND OF INDIA?

Constitutional Background: According to Article 265 of the constitution India, **no tax of any nature can be levied** or collected by Central or State Governments except by the Authority of Law. According to Article 246, law can be enacted by Parliament or the State Legislature, if such power is given by the Constitution of India.

List – I – Union list – Parliament has the exclusive right to make in respect of that entry.

List – II – State list – Any state has exclusive power to make law for such state or any part thereof with respect to such entry.

List – III – Concurrent list – The parliament or the legislature of a state has power to make law with respect to any matter enumerated in List III.

- There are various matters enumerated in each list. Each matter in the list is known as an entry.
- Entry 97 of the Union list is the residuary entry and empowers the Central Government to levy tax on any matters not enumerated in List II (State List) or List III (Concurrent List).
- In 1994 the Service Tax was levied by the Central Government under the powers granted under the said Entry 97 of List I.
- Entry 92C has been inserted to the 1st List in the VIIth Schedule (so as to make the enactment a subject matter of Union List.

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- Although the Government has amended the Constitution and inserted entry No.92C the List 1 of Schedule VII but **no separate Act** has been passed yet and service tax is still being governed by entry 97 i.e. residuary entry.

Q.NO.4.EXPLAIN AS TO HOW AND WHEN THE AMENDMENTS MADE IN FINANCE BILL, IN RESPECT OF SERVICE TAX MATTER COME INTO FORCE?

Amendments in the Finance Bill: Amendments made in the Finance Bill in respect of Service tax service tax matters become effective from the date when the relevant Finance Bill gets the assent of the President and it becomes an Act. Further, new services which are introduced shall become taxable when these services are notified or from the date mentioned in such Notification.

The law relating to service tax extends to whole of India except the State of Jammu and Kashmir and it is applicable to taxable services provided on or after the commencement of Chapter V of the Finance Act, 1994.

Q.NO.5. EXPLAIN BRIEFLY THE APPROACHES OF LEVY OF SERVICE TAX?

Selective or comprehensive coverage of service tax: The levy of a service tax can be based on either of the following 2 approaches:

1. Comprehensive coverage/approach
2. Selective coverage/approach

1. **Comprehensive coverage/approach:** The comprehensive approach contemplates taxation of all services and a negative list is given in case some services are to be exempted.
2. **Selective coverage/approach:** In the case of selective approach, only selective are subject to service tax. In this case, the legislator attempts to specify and list the services that would be taxable and the scope of coverage of each service. There is no residuary category for taxing all services.

Q.NO.6. BRIEFLY EXPLAIN THE NATURE OF SERVICE TAX?

Nature of Service Tax: Service tax is a tax on services. Service tax is not a tax on profession / trade but is a tax on the service provided in exercise of the profession/ trade. It is leviable only if there is provision of service.

What is 'service'? 'Service' means a useful result/product of labour, which is intangible i.e. which cannot be seen through eyes. Thus, service is a value addition that can be felt only but cannot be seen.

Q.NO.7. EXPLAIN THE FEATURES OF SERVICE TAX?

Features of Service Tax:

The salient features of levy of service tax are: -

1. **Scope:** It is leviable on taxable services 'provided' or 'to be provided' by a service provider. The services 'to be provided' in future are taxed only if payment in its respect is received in advance.

Two separate persons required - Payment to employees not covered: For charge of service tax, it is necessary that the service provider and service recipient should be two separate persons acting on 'principal-to-principal basis'. Services provided by an employee to his employer are not covered service tax and, therefore, salaries or allowances paid to them cannot be charged to service tax.
- **S. Maruthappan v. CCE.** [2007] 8 STR 228 (Tri -Chennai).

2. **Rate :** It is leviable @ 12% of the value of taxable services. Education Cess @ 2% and Secondary and Higher Education Cess @ 1 % are chargeable on the amount of service tax, thus, making the effective rate of service tax at 12.36% of the value of taxable service.

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3. **Taxable services** : Service tax is leviable only on the taxable services. Taxable services mean the services taxable under section 65(105) of the Finance Act, 1994. The taxable services with their scope, inclusions/ exclusions and specific exemptions are discussed in the next chapter.
4. **Value** : For the levy of the service tax, the value shall be computed in accordance with section 67 read with Service Tax (Determination of Value) Rules, 2006.
5. **Free services not taxable** : No service tax is leviable upon the services provided free of cost.
6. **Payment of service tax** : The person providing the service (i.e. the service provider) has to pay service tax in such manner and within such period as is prescribed in the Service Tax Rules, 1994. The service tax is to be paid only on the receipt of payment towards the value of taxable services.
7. **Procedures**: Provisions have been made for registration, assessment including self-assessment, rectifications, revisions, appeals and penalties on the service provider.
8. **CENVAT credit** : The credit of service tax and excise duty across goods and services is allowable in accordance with the CENVAT Credit Rules, 2004.

Accordingly, output service provider (i.e. provider of any taxable service) can avail credit not only of the service tax paid on any input service consumed for rendering any output service but also of the excise duty paid on any inputs and capital goods used for rendering output service. CENVAT credit so availed can be utilized for payment of service tax on taxable output service.
9. **Services provided by an unincorporated association/body to its members also taxable [Explanation to Sec. 65]** : 'Taxable service' includes any taxable service provided or to be provided by any unincorporated association or body of persons to a member thereof, for cash, deferred payment or any other valuable consideration. Hence, the services (falling under any category of taxable service) provided or to be provided by any unincorporated association/body to member thereof shall be liable to service tax. **This provision is an exception to the 'principle of mutuality'**.
10. **Performance of statutory activities/duties, not 'service'**: An activity performed by a sovereign /public authority under provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such entities.
11. **Import/Export of services**: While import of services is chargeable to tax u/s 66A, the export of services has been made exempt from tax. Import/export provisions are discussed separately.

Q.NO.8. WHAT IS THE CHARGE OF SERVICE TAX AND EXPLAIN THE ALTERNATE RATE OF SERVICE TAX?

Charge of Service Tax: There shall be levied a tax (hereinafter referred to as the service tax) at the rate of 12% of the value of taxable services referred in various sub-clauses of section 65(105) and collected in such manner as may be prescribed.

Alternate rate of service tax in case of certain services: Although service tax is levied at the basic rate of 12% but in case of certain services, an alternative rate is also provided. Some of these are as under:

1. Specified **immovable properties** an optional composition tax rate of **4%** of gross value has been provided.
2. In case of **life insurance services** alternate mode of discharge of service tax liability has been provided and the rate of service tax in this case is **1%** of total premium.
3. In case of **Air Travel Agents services**, the Air Travel Agent, shall have the option to pay service tax of an amount calculated as under:
 - a. In case of domestic bookings – **0.6%** of the basic fare.
 - b. In case of international bookings – **1.2%** of the basic fare.

Taxable services have been defined to mean any service provided or to be provided to a person/client/customer, etc. by the service provider mentioned in various sub-clauses of section 65(105). The following can be considered as **essential characterizes** of services:

1. Existence of two parties – Service provider and Service recipient
2. Service as distinct to sale
3. Service provide should be a taxable services
4. Consideration for the service. There is no tax on free services.
 - a. Service tax is attracted on service provided or to be provided but **the tax has to be paid only on the receipt** of the consideration **except** in case of **associated enterprise**.
 - b. In case, some amount has been realized in advance, tax has to be paid in advance.
 - c. **Education cess:** Education cess @ **2%** is to be charged on the service tax on all taxable services.
 - d. **Secondary and Higher Education Cess (SHEC):** SHEC @ **1%** shall also be charged on the service tax on all taxable service.
 - e. **The effective rate of service tax** = 12.36%

Q.NO.9. EXPLAIN THE VALUATION OF TAXABLE SERVICE FOR CHARGING OF SERVICE TAX?

Valuation of taxable services for charging service tax: As per section 66, service tax is to be charged @ **12%** of the value of taxable service provided or to be provided. Hence, we have to determine the value of such taxable services so as to pay service tax.

If the consideration consisting of

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| 1. | where the provision of service is for a consideration in money | Gross amount charged by the service provider for such service provided or to be provided by him. |
| 2. | where the provision of service is for a consideration not wholly or partly consisting of money | such amount in money, with the addition of service tax charged, as is equivalent to the consideration. In order words, it should be value of similar services provided to third party. If similar service is not provided to third party, it should be market value as determined by the assessee but it cannot be lower than the cost of provision of same. |
| 3. | where the provision of service is for a consideration which is not ascertainable. | the amount as may be determined in the prescribed manner. |

1. **Consideration** also includes any amount which is payable for the taxable services provided or to be provided.
2. **Money** includes any currency, cheque, promissory note, letter of credit, draft, pay order, travelers cheque, money order, postal remittance and other similar instruments but does not include currency that held for its numismatic value.
3. **Gross amount charged** include payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment.
4. **The first basic principle** is that service tax is payable on the gross amount and not on the net amount.
5. **The second principle** which also flows from section 67 is that the amount charged has to be in relation to services rendered.
6. **Valuation where billing is inclusive of service tax:** The assessee is to calculate service tax based on reverse working.

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E.g.: If the billing is done inclusive of service tax (Consider billing 100 (inclusive) realization 100 (inclusive), the assessee can claim that the bill amount should be bifurcated into value and service tax components. Accordingly the service tax payable shall be $(100 \times 12.36/112.36) = \text{Rs.}11.00$.

Q.NO.10. EXPLAIN BRIEFLY THE INCIDENCE FOR LEVY AND COLLECTION OF SERVICE TAX AND EFFECTIVE DATE OF TAXATION?

Taxability: The taxability otherwise of a service with reference to the effective date for levy is as under –

1. Service will not be taxable even if the bills are raised or payment received after the effective date.
2. Service will be taxable even if the advance was received before the effective date of levy.
3. **Effective date** = Date on which a service is made taxable for the first time (OR) date from which a service is included in the taxable service.

Q.NO.11. WHAT ARE THE EXCLUSIONS IN THE VALUATION OF TAXABLE SERVICES?

Sale value of goods to be excluded: There should be documentary proof specifically indicating the value of said goods and materials. In certain cases, supply of goods is integral to the rendering of services.

The sale consideration for such supply of goods cannot be dissected from the service element and the same shall be exposed to liability for service tax. Similarly, it has been clarified that in case of commercial training and coaching institutes, deduction will be not be available for any study material or written text provided by the institute.

Reimbursement of expenses to be excluded in certain cases: The reimbursement claim can be permitted only in cases where the service provider acts as a “pure agent” of the client when he procures the goods or services or incurs the expenses on behalf of the client.

Q.NO.12. WHO IS A PURE AGENT?

Pure agent is a person who has an agreement with service receiver to act as his pure agent to incur expenditure for providing service receiver to act as his pure agent to incur expenditure for providing service. The salient features of a pure agent are:

1. He has no title over the goods/services of the principal.
2. He cannot use them for his purpose.
3. He gets from the service receiver only the actual cost of such purchases.

Eg: Contractor procures cement, steel etc. on behalf of the flat promoter, passes on the actual cost to the recipient, possesses no title over the materials and leaves the balance materials at the site. In such cases, Assessable Value shall be exclusive of cost of materials.

Q.NO.13. EXPLAIN TAXATION OF FREE SERVICES?

No service tax on free services: No service tax is leviable if free the services are provided by the service provider. However, if the authorized dealer of motor vehicle provides to customers free servicing of motor vehicles without charging any amount of service charge from the customers and vehicle manufacturer reimburses the amount to authorized service station on account of such free services, the authorized service station shall have to pay service tax on the amount received from the vehicle manufacturer for the purpose of servicing the vehicle.

Q.NO.14. EXPLAIN THE LIST OF TAXABLE SERVICES?

List of Taxable Services

| S.No | Taxable Services | Effective Date |
|-------------|---|-----------------------|
| 1. | Advertising Services | 01/11/1996 |
| 2. | Air transport of passengers embarking for International travel | 01/05/2006 |
| 3. | Air Travel Agents Services | 01/07/1997 |
| 4. | Aircraft Transport Services | 10/09/2004 |
| 5. | Airport Services | 10/09/2004 |
| 6. | Architects Services | 16/10/1998 |
| 7. | Asset Management Services | 01/06/2007 |
| 8. | ATM operations | 01/05/2006 |
| 9. | Auctioneers Services | 01/05/2006 |
| 10. | Authorized Service Station's Services | 16/07/2001 |
| 11. | Banking and other Financial Services | 16/07/2001 |
| 12. | Beauty Parlours | 16/08/2002 |
| 13. | Broadcasting services | 16/07/2002 |
| 14. | Business Auxiliary Services | 01/07/2003 |
| 15. | Business Exhibition Services | 19/09/2004 |
| 16. | Business Support Services | 01/05/2006 |
| 17. | Cable Operators | 16/08/2002 |
| 18. | Card Services | 01/05/2006 |
| 19. | Cargo Handling | 16/08/2002 |
| 20. | Chartered Accountants | 16/10/1998 |
| 21. | Cleaning & Forwarding Agents Services | 16/07/1997 |
| 22. | Commercial coaching classes | 01/07/2003 |
| 23. | Company Secretaries | 16/10/1998 |
| 24. | Construction of Complex Services | 16/06/2005 |
| 25. | Construction Services | 10/09/2004 |
| 26. | Consulting Engineers Services | 07/07/1997 |
| 27. | Convention Service | 16/07/2001 |
| 28. | Cost Accountants | 16/10/1998 |
| 29. | Courier Services | 01/11/1996 |
| 30. | Credit Card, Debit Card, Charge Card or Other Payment Card Services | 01/05/2006 |
| 31. | Credit Rating Agencies | 16/10/1998 |
| 32. | Customs House Agents Services | 15/06/1997 |
| 33. | Designing Services | 12/05/2007 |
| 34. | Development and supply of content services | 12/05/2007 |
| 35. | Dredging Services | 16/06/2005 |
| 36. | Dry Cleaning Services | 16/08/2005 |
| 37. | Erection, Commissioning & Installation Services | 01/07/2003 |
| 38. | Event Management | 16/08/2002 |

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|-----|---|------------|
| 39. | Fashion Designers | 16/08/2002 |
| 40. | Forward Contract Brokers Services | 10/09/2004 |
| 41. | Franchisee service | 01/07/2003 |
| 42. | Goods Transport Services | 10/09/2004 |
| 43. | Health Club & Fitness Centres | 16/08/2002 |
| 44. | Information Technology Services | 01/07/2004 |
| 45. | Insurance Auxiliary Services (Concerning general insurance) | 16/07/2001 |
| 46. | Insurance Auxiliary Services (Concerning Life Insurance) | 16/07/2001 |
| 47. | Intellectual Property Services | 10/09/2004 |
| 48. | Interior Decorators | 16/10/1998 |
| 49. | International Air Travel services | 01/05/2006 |
| 50. | Internet Café services | 01/07/2003 |
| 51. | Internet Tele-communication services | 16/05/2008 |
| 52. | Internet Telephony Services | 01/05/2006 |
| 53. | Life Insurance Services | 01/05/2006 |
| 54. | Mailing List Services | 16/08/2002 |
| 55. | Maintenance & Repairs Services | 01/07/2003 |
| 56. | Management Consultancy services | 16/07/1997 |
| 57. | Mandap Keepers Services | 01/07/1997 |
| 58. | Manpower Recruitment Agency Services | 07/07/1997 |
| 59. | Market Research Agencies | 16/10/1998 |
| 60. | Membership of Clubs | 16/06/2005 |
| 61. | Mining Services | 12/05/2007 |
| 62. | Online Information and database access | 16/07/2001 |
| 63. | Opinion Poll Services | 10/09/2004 |
| 64. | Other port services | 16/07/2001 |
| 65. | Outdoor catering services | 10/09/2004 |
| 66. | Packaging Services | 16/06/2005 |
| 67. | Pandal & Shamiana Contractor Services | 10/09/2004 |
| 68. | Photography Service | 16/07/2001 |
| 69. | Port Services | 16/07/2001 |
| 70. | Processing and clearing house services | 16/05/2008 |
| 71. | Public Relations Services | 01/05/2006 |
| 72. | Rail Travel Agents | 16/07/1997 |
| 73. | Real Estate Agents or Consultants | 16/10/1998 |
| 74. | Recognized Association Services | 16/05/2008 |
| 75. | Recognized Stock Exchange Services | 16/05/2008 |
| 76. | Recovery Agent's Services | 01/05/2006 |
| 77. | Registrar | 01/05/2006 |
| 78. | Rent a Cab Scheme Operators | 16/07/1997 |
| 79. | Renting of Immoveable Property Services | 12/05/2007 |

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| 80. | Sale of Space or Time for Advertisement services | 01/05/2006 |
| 81. | Scientific & technical consulting service | 16/07/2001 |
| 82. | Security Agencies | 16/10/1998 |
| 83. | Share Transfer Agent's Services | 01/05/2006 |
| 84. | Ship Management Services | 01/05/2006 |
| 85. | Site Formation Service | 16/06/2005 |
| 86. | Sound recording services | 16/07/2001 |
| 87. | Sponsorship | 01/05/2006 |
| 88. | Steamer Agents Service | 15/06/1997 |
| 89. | Stock Brokerage Service | 01/07/1994 |
| 90. | Storage & Warehousing Services | 16/08/2002 |
| 91. | Supply of tangible goods | 16/05/2008 |
| 92. | Survey and exploration of mineral services | 10/09/2004 |
| 93. | Survey and Map Making Services | 16/06/2005 |
| 94. | Technical inspection and certification services | 01/07/2003 |
| 95. | Technical Testing & Analysis & Certification | 01/07/2003 |
| 96. | Telecommunication Services | 12/05/2007 |
| 97. | Tour Operators | 19/09/1997 |
| 98. | Transport of goods by Air Services | 10/09/2004 |
| 99. | Transport of goods by pipeline or other conduit Services | 16/06/2005 |
| 100. | Transport of goods in containers by Rail Services | 01/05/2006 |
| 101. | Transport of Persons by Cruise Ship Services | 01/05/2006 |
| 102. | Travel Agent Services | 10/09/2004 |
| 103. | ULIP Services | 16/05/2008 |
| 104. | Underwriting Agents | 16/10/1998 |
| 105. | Video tape Production services | 16/07/2001 |
| 106. | Works contracts Services | 12/05/2007 |

Q.NO.15. WHAT IS A PROCEDURE FOR REGISTRATION FOR SERVICE TAX?

Registration: Persons who are liable to pay Service Tax are required to register with Central Excise Department.

1. Service Provider
2. **Specified Persons [Rule 2(1) (d)]:** In the following cases, the specified person (and not the service provider) is liable to pay Service Tax.

| Category of Service | Specified Person |
|---|--|
| a) General Insurance Business. | Insurer of Re-insurer |
| b) Insurance Auxiliary Service provided by an Insurance Agent. | Insurance Company |
| c) Service provided by a Goods Transport Agency for transport of goods by road. | ❖ Person Liable: Specified Consignor/ Consignee who pays or is liable to pay freight should pay the Service Tax. ❖ Specified consignor or consignee includes – |

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| | (i) Factory; (ii) Company; (iii) Corporation, (iv) Society; (v) Co-operative Society; (vi) Registered Dealer of Excisable goods; (vii) Body Corporate; (viii) Partnership Firm |
| d) Business Auxiliary Services provided by Mutual Fund Distributors in relation to distribution of Mutual Fund. | Service Tax should be paid by the Mutual Fund or the Asset Management Company receiving such service. |
| e) Sponsorship Service provided to any Body Corporation or Firm. | Service Tax is to be paid by the Body Corporate or Firm, which receives the sponsorship service. |
| f) Any Taxable Service provided by any person from a country other than India u/s 66A. | Person receiving such service [in accordance with Taxation of Services (Provided from Outside India and Received in India)] |

3. Persons notified by the Central Government – Special Category Persons:

a) Input Service Distributor:

(i) **Office:** Input Service distributor refers to an office of the –

- ❖ Manufacturer or
- ❖ Producer of final products or
- ❖ Provider of output service

(ii) **Invoice:** Which receives tax paid invoices (under Rule 4A of Service Tax Rules, 1994) towards purchases of input services and issues invoice, bill or challan.

(iii) **Purpose:** For distributing the credit of service tax paid on the said services to such manufacturer or producer or provider.

b) Aggregate Value of Taxable Services exceeds Rs.9 Lakhs

Every person liable to pay service tax shall apply for registration in Form ST-1 within 30 days from levy of tax. Normally, applicant will be the service provider. However, in exceptional cases the service receiver with tax liability shall also register himself.

Registration certificate (RC) is issued in Form ST-2 within seven days. For all the services provided by a person a single RC will do.

A separate RC is required for every place of business. However, the service provider may opt for a single RC if he follows centralized billing or centralized accounting and wishes to remit the tax centrally.

Q.NO.16. WHAT ARE THE DOCUMENTS TO BE ENCLOSED ON REGISTRATION?

Documents to be attached

An application for registration has to be accompanied along with the following documents:

1. Application in Form ST-1 in triplicate duly signed
2. Attested Copy of the PAN Card
3. Proof of Address of the premises which is required to be registered
4. Copy of the Document governing the constitution of the organization (Partnership deed in case of a partnership firm, Memorandum of Association in case of a company, Trust Deed in case of a trusts or associations)
5. Authority Letters in favor of the person who is to collect the registration certificate on the Letter head of the organization applying for registration.
6. Power of Attorney in case the documents are signed by an authorized representative

Q.NO.17. WHAT IS SERVICE TAX CODE NUMBER?

Service Tax Code: The department has decided to introduce Service Tax Code based on PAN. The Service Tax Code is a digit alphanumeric code. First 10 digits will be 10 character PAN issued by Income Tax authorities. Next two characters will be 'ST'. Last three will be numeric code 001, 002, 003 etc. The concerned person should apply in prescribed form

1. Input service distributors
2. Small scale provider whose aggregate value of taxable services exceeds Rs.9 lakh in a financial year.

Q.NO.18. EXPLAIN THE CIRCUMSTANCE THAT CALL FOR MULTIPLE REGISTRATION.

1. **Multiple Proprietorship Firms under different names:** The applicant shall register individually for each of such proprietary Firm.
2. **Multiple services:**
 - a. **Commencement of services at the same time:** The applicant in a single application may be made mentioning all the taxable services provided by him.
 - b. **Commencement of services at different points of time:** The applicant has already registered for one service but subsequently becomes liable for another category of service, he should get his certificate endorsed for the category of service.
3. **Changes in existing certification of Registration:**
 - a. **Change in information provided in ST-1:** Intimated in writing to the jurisdictional assistant commissioner within a period of 30 days of such change
 - b. **Change of place:** A new registration certificate should be applied for, and the previous registration certificate should be cancelled.
 - c. **Transfer of business:** Where the assessee transfers his business to another person, the transferee should obtain a fresh certificate of registration.

Q.NO.19. EXPLAIN THE PROCEDURE FOR SURRENDER OF REGISTRATION OF CERTIFICATE?

1. **Surrender of Registration of certificate:**
 - a. **Circumstances:**
 - Cessation of Services
 - Change of Place
 - Transfer of Business
 - b. **Procedure for surrender of Certification of Registration:**
 - Assessee should surrender the service tax registration certificate (ST-2)
 - Superintendent of central excise will cancel the registration certificate after insuring that the assessee has paid all service tax dues to the Government under the provisions of the Act.
 - c. **Non surrender of certificate:**
 - There is no statutory requirement for the assessee to make an application for surrender of certificate.
 - Non-surrender of certificate does not attract any penalty.
 - However, the Assessee should furnish half yearly returns even if no service is provided.

Q.NO.20. SUMMARIZE THE EXEMPTION AVAILABLE TO SERVICE TAX ASSESSEES?

Service Tax Exemptions:

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1. General Exemption from Service Tax for certain assessee:

a) Service Provider

Services Provided by the following are exempt:

- Reserve Bank of India (RBI)
- Small service Provider (SSP) (upto a turnover of Rs.10 lakhs)
- Entrepreneur in Technology Business Incubator (TBI)
- Entrepreneur In Science and Technology Entrepreneurship park (STEP)

b) Service Receiver

Service Provided to the following are exempt:

- Reserve bank of India(RBI)
- Developers of Special Economic Zone (SEZ)
- Unit in SEZ
- United nations, International organizations, Foreign Diplomatic missions

2. **SMALL SERVICE PROVIDER (SSP)**

- a) Exemption granted through notification No.7/2007 – ST dt. 01.03.07
- b) Exemption is upto a turnover (money received) of Rs.10,00,000 in a financial year.
- c) Unit in SEZ
- d) On crossing the exemption limit of Rs.10,00,000/- tax is payable at the usual rate and CENVAT credit can also be availed.
- e) The service Provider shall opt for the exemption.
- f) Options is irreversible till the end of that financial year.
- g) Registration is necessary if the turnover (collection) exceeds Rs.9,00,000.
- h) For eligibility to opt for being SSP this year, the criterion is the value of service provided last year.
Eg. If Mr.Aopts to claim ?SSP benefit during the Financial year 2008-09, he has to satisfy the criterion of Rs.8,00,000, during the Financial Year 2007 – 08.
- i) Exemption is available in the current year, if in the previous year, the aggregate value of taxable services provided does not exceed Rs.10,00,000/-

For eligibility to avail exemption, the criterion is the value of service received in the current year (exemption is upto Rs.10,00,000/-)

However the above exemption shall not apply to :-

- i. taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or
- ii. Such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under section 68(2) of the said Finance Act read with Service Tax Rules, 1994 i.e. where service tax is payable by the service recipient instead of service provider.

Note for reference purposes:

“ Brand name” or “Trade name” whether registered or not, that is to say, a name or a mark, such as symbol, monogram, logo, label, signature, or invented word or indicate a connection in the course of trade between such specified services and some person using such name or mark with or without any indication of the identity of that person.

- a) Exemption to business Auxiliary Service in respect of production of goods on behalf of client i.e. job work Production

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- b) Services can be 'exported without payment of tax' CENVAT Credit is still available for ;exported services
 c) Exemption for Services Provided to Units in SEZ

According for Services Provided to a developer of SEZ or unit of SEZ for consumption within the special economic zone shall be exempt subject to the following conditions.

- To develop, operate and maintain the Special Economic Zone.
- To Establish the unit in the Special Economic Zone
- To maintain proper account of receipt and utilization of the said taxable services.

- d) exemption for the Value of Goods and materials Sold

Conditions for availing exemption –

- The cost of inputs should be included in value.
- Cenvat credit should not have been availed for the inputs.

Q.NO.21.EXPLAIN THE PROCEDURE FOR ISSUANCE OF BILL AND MAINTENANCE OF RECORDS?

Maintenance of Records – STR 5

- a. No separate form has been prescribed.
- b. Records may be computerized also.
- c. They should be preserved for a period of five years.
- d. They should be made available for inspection by departmental officers.

Procedure for issuance of bill:

- a. Every person providing taxable service shall issue an invoice/bill/challan signed by such person or a person authorized by him in respect of such taxable service provided or to be provided.
- b. Time limit for issue of invoice/bill/challan: The invoice/bill challan shall be issued not later than fourteen days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier.

Where any payment towards the value of taxable service is not received and such taxable service is provided continuously for successive periods of time and the value of the such taxable service is determined or payable periodically, then, an invoice/bill/challan shall be issued by a person providing such taxable service, not later than fourteen days from the last day of the said period.

Q.NO.22. EXPLAIN THE CIRCUMSTANCES FOR PAYMENT OF SERVICE TAX?

Payment of Service tax – Sec.68 and STR 6

- a) Service Tax is payable only on actual receipt of consideration.
 - Where the service provider receives only a part of the total service charges, Service tax shall be paid proportionately only on such part and not on the entire consideration.
 - The balance service tax will have to be paid upon receipt of the balance consideration.
 - This position will not alter even if the service provider follows mercantile system of accounting.
- b) Tax is payable on advances received also.

Q.NO.23. WHAT ARE THE DUE DATES FOR PAYMENT OF SERVICE TAX?

1. Due dates for payment of Service tax.

Service tax had to be paid on a monthly / quarterly basis depending upon the status of the service provider.

| Service provider | Monthly/Quarterly due dates | Due date for the month of March and Quarter ending March |
|------------------|-----------------------------|--|
| | | |

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|-----------------------|--|------------------------|
| Individuals and Firms | 5 th of the month following the Quarter ended June, Sep, Dec. | 31 st March |
| Others | 5 th of the following Month | 31 st March |
| e-payment | 6 th of the following Month | 31 st March |

2. Big assessee with a service tax liability of Rs.50 lakhs and above should pay tax electronically. For electronic payment, Service tax Reg.No. is mandatory.
3. If the last date for paying tax is a public holiday, tax may be paid on the next working day.
4. Tax is paid by **debit to CENVAT account** (if credit available) **or through GAR – 7** challan.
5. The date of presentation of cheque to the designated bank shall be deemed to be the date of payment of service tax (But the cheque should not be dishonoured).
6. If **tax** has been **paid** to Government for **service not provided**, then the **excess payment** made to Government may be **adjusted in future dues, provided, the excess is refunded to customer.**
7. Service Tax collected by the Service provider/ Service receiver as the case may be, should be remitted within the due date to the credit of the Central Government.
8. **Payment by cheque**
The date of payment is the date on which the cheque is tendered to the designated bank provided the cheque is not dishonoured in the course of clearing.
9. **Rounding off of tax:**
The payment of service tax should be round of in multiple of Rupees. Where such amount includes 50 paise or more it should be increased to one rupee and if it is less than 50 paise it should be ignored.

Q.NO.24. BRIEFLY EXPLAIN THE PROCEDURE FOR ADJUSTMENT OF EXCESS SERVICE TAX PAID?

Adjustment of Excess Service Tax paid:

There is no provision for an automatic adjustment of such excess service tax except in a situation visualized under

Where an assessee has paid to the credit of central government service tax in respect of

1. Taxable service which not so provided by him either wholly or partially for any reason, and
2. Taxable service the assessee has refunded the value of taxable services including service tax. Thereon to the person from whom it was received

Then the assessee may adjust the excess tax so paid against the service tax liability for the subsequent period.

In case where an assessee has opted for centralized registration and has paid any service tax amount in excess of liability for a period due to non receipt of details of receipts from other premises or offices, the assessee may adjust such excess amount against his service tax liability for the subsequent period.

Where the excess payment is due to any other reason the assessee has to applied for a refund U/s 11B of the central excess Act.

Q.NO.25. EXPLAIN THE CIRCUMSTANCES FOR SELF ADJUSTMENT OF EXCESS SERVICE TAX PAID?

Self Adjustment of Excess service tax paid

1. Reason not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification.
2. On account of delayed receipt of details of payments towards taxable services may be adjusted without monetary limit.

3. In case other than specified in clause (ii) above, the excess amount paid may be adjusted with a monetary limit of rupees fifty thousand for a relevant month or quarter, as the case may be
4. The details and reasons for such adjustment shall be intimated to the jurisdiction Superintendent of Central Excise within a period of fifteen days from the date of such adjustment.

Q.NO.26. WHO PAYS SERVICE TAX - SERVICE PROVIDER OR SERVICE RECEIVER?

2. Who pays Service Tax- Service Provider or Service Receiver? – Sec.68 and STR 2(1) (d)

Sec.68 imposes the responsibility on a person for paying service tax. As provided in this section, service tax is payable by the Service Provider.

Exceptions to this rule: In certain cases, as provided in STR 2(1)(d), the service tax shall be payable by the service receiver or the specified person and not by the service provider.

The following table summarizes such services and the person liable to pay service tax:

| S.No | Nature of the Service | Service Provider | Service Receiver | Person liable to pay tax |
|------|--|-------------------------------------|---|--|
| 1. | Insurance auxiliary services | Insurance agent | Insurance company | Insurance company |
| 2. | Service provided to a person in India from outside India. | Person outside India | Person in India | Person in India |
| 3. | Goods transport agency for transport of goods by road. Note: If the service receiver is individual, HUF etc., tax is payable by the service provider (GTA) | Goods transport agency | <ol style="list-style-type: none"> a. Any registered factory b. Any company c. Any corporation d. Any registered Society / corporative society e. Any registered dealer of excisable goods f. any registered firm or body corporate | The service receiver or his agent (i.e., consignor or consignee) |
| 4. | Business Auxiliary services – Mutual fund distribution | Mutual fund distributor or an agent | Mutual Fund company | Mutual Fund Company |
| 5. | Sponsorship service | Any person | Body Corporate or Firm | Body corporate or firm. |

Q.NO.27. EXPLAIN THE PENALTY CONSEQUENCES FOR DELAYED PAYMENT AND NON PAYMENT OF SERVICE TAX?

1. Interest on delay in payment of Service tax – Section 75

- a) Delay in payment of tax attracts interest @ 13% p.a.
- b) The interest shall be payable for the period by which payment of tax is delayed.
- c) The said period commences from the day following the due date and ends on the day of payment.

Eg: Mr. Mthamil, Chartered Accountant, liable to pay service tax amounting to Rs.50,000/- on 05.01.2009. But due to financial crunch, he has made the payment only on 31.3.2009. Whether he is liable to pay any interest on service tax, if so, what is amount of interest payable?

Ans: Mr. Muthamil is liable to pay interest on delay remittance of service tax – Sec.75.

| Particulars | Amount |
|------------------------|-------------|
| Amount Payable | Rs.50,000/- |
| Due Date for payment | 05.01.2009 |
| Actual Date of Payment | 31.03.2009 |

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| | |
|------------------------------------|---|
| Period for calculation of interest | 06.01.2009 to 31.03.2009 (85 no.of days) |
| Amount of Interest | Rs.5,000 × 13% (85 days /365 days) = Rs.1,541 |

2. Penalties – Secs. 76, 77 & 78

| S.No. | Nature of Violation | Penalty |
|-------|---|--|
| 1. | Failure to pay Service tax [Sec.76 | Not less than Rs.200 per day of default or 2% per month of tax whichever is higher. In no case penalty can exceed the amount of tax. |
| 2. | Suppression of Value | 100% to 200% of duty sought to be charged. |
| 3. | Failure of registration | Rs.5,000 or Rs.200 per day whichever is higher from the first day after due date till the day of actual compliance. |
| 4. | Failure to furnish information called by officer on Central Excise Officer | Rs.5,000 or Rs. per day whichever is higher from the first day after due date till the day of actual compliance. |
| 5. | Failure to appear before the Central Excise Officer when issued with a summon for appearance to give evidence or to produce document. | Rs.5,000 or Rs.200 per day whichever is higher from the first day after due date till the day of actual compliance. |
| 6. | Failure to maintain books of accounts. | Maximum Rs.5,000/- |
| 7. | Fails to pay through e-payment | Maximum Rs.5,000/- |
| 8. | Where no penalty is mentioned | Maximum Rs.5,000/- |

Q.NO.28. EXPLAIN THE PROCEDURE FOR ASSESSMENT AND RETURNS?

Assessment and Returns – Sec.70 and STR 7

- The service provider shall himself assess and pay the tax. This process is known as Self Assessment.
- If he is not able to estimate the tax amount correctly, he may apply to the department for Provisional Assessment (PA). PA is a process through which the department arrives at the provisional tax liability on the services provided by the service provider without waiting for the complete assessment at the initial stage itself. However, the service provider has to provide an undertaking for bearing the final liability once the final assessment is completed.
- Return are filed half yearly in Form ST-3 (Form ST – 3A for PA). The half yearly due dates are:
 - 25th October for the half year ending 30th September; and
 - 25th April for the half year ending 31st March.
- E-filing of returns is also permissible.
- If the due date is a public holiday then the return should be filed on the next working day.
- Revised returns may be filed within 90 days from the date of filing of original return – Notification No.4/2008 dated 01.03.08
- For delay in filing returns, “late fee” is payable as follows:

| Period of Delay | Late Fee |
|--------------------|---|
| Upto 15 days | Rs.500 |
| 16 days to 30 days | Rs.1,000 |
| More than 30 days | Rs.1,000 plus Rs.100 per day (from the 31 st day) till the date of filing returns (Max Rs.2,000) |

- Nil return should also be filed within the prescribed time limit.

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9. Filing of single return is sufficient in case of multiple services, Provided necessary details are submitted along with the return.

Q.NO.29. WHAT ARE THE DOCUMENTS TO BE ATTACHED ALONG WITH RETURN?

Documents to be attached along with return

The following documents that are to be attached along with ST-3

1. Copies of GAR-7 challans, for payments made.
2. Memorandum ST-3A, incase of provisional payment of tax.
3. In case of first return, details of accounts maintained in relation to service tax should be furnished to superintendent of Central Excise, at the time of filing first half yearly return i.e., ST-3, a list of all accounts maintained by him in relation to service tax including memorandum received from his branch office.

Q.NO.30. WHAT IS LIABILITY OF SERVICE PROVIDER IN CASE OF EXCESS COLLECTION OF TAX?

Excess collection of tax – Sec. 73A & 73B

1. The service provider shall not collect tax in excess of what he pays to the Government.
2. The case his collection is more than his payment, he shall promptly deposit the excess with Government or refund the amount collected excess to the customer.
3. Any delay in this regard attracts payment of interest @ 13% p.a.

Q.NO.31. BRIEFLY EXPLAIN IMPORT OF SERVICES?

Charge of service tax on service received from outside India (Section 66A) - Import

Where any service specified in section 65(105) is provided or to be provided by a person who has:

1. established a business or has a fixed established in a country outside India, or
2. his permanent address or usual place of residence is India.

Such service is received by a person (i.e., recipient) who has his place of business, fixed establishment, permanent address or unusual place of residence in India.

It will be treated as if recipient himself has provided the services in India and it will be chargeable to tax in his hand instead of the service provider.

However, if the recipient of the service is an **individual**, such service shall not be taxable unless it has been received by him in any business or commerce.

Q.NO.32. BRIEFLY EXPLAIN EXPORT OF SERVICES?

Export: A service shall be considered as Export if following conditions are satisfied:

1. service should be performed from India and used outside India,
2. payment for such service should be received in Convertible Foreign Exchange.

Q.NO.33. WRITE SHORT NOTES ON CLASSIFICATION OF SERVICES?

Classification of Services:

1. **Classification:** Classification of taxable services shall be determined according to the terms of Section 65(105) i.e., by the definition of various services.
2. **More than one classification:** Where the service falls under more than one category of service-
 - a. Perfect specific description to general description.
 - b. In the case of composite service, go by the service that gives the essential character.

- c. Where classification is not possible under the above two route, and the service falls under more than one category u/s 65(105), then it shall be classified under the sub-clause which occurs first among the sub-clauses, which equally merit consideration. (Sec. 65A of the Act)

Q.NO.34. BRIEFLY EXPLAIN SERVICE TAX RETURN PREPARERS SCHEME?

Service Tax Return preparers Scheme:

1. Definitions:

- a. **Service Tax Return Preparer:** It refers to an individual who has been authorized to act as a "Service Tax Return Preparer" under a scheme framed under this section.
- b. **Specified Classes of persons:** It refers to persons specified in the Scheme, who are required to furnish a return required to be filed under section 70.

2. **Power of Board:** The CBEC is empowered to frame a scheme for furnishing return of income by any specified classes through a Service Tax Return Preparer.

3. **Duty of Service Tax Return Preparer:** Every Service Tax Return Preparer should assist the specified classes of persons to prepare and furnish the service tax return in the manner specified in the scheme.

4. **Structure of the Scheme:** The scheme framed by the Board may provide for the following –
- Manner in which and the period for which the Service Tax Return Preparer shall be authorized,
 - Educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Service Tax Return Preparer,
 - Code of Conduct for the Service Tax Return Preparer,
 - Duties and Obligations of the Service Tax Return Preparer,
 - Circumstances under which the authorization given to a Service Tax Return Preparer may be withdrawn,
 - Any other matter which is required to be specified by the Scheme for the purposes of this section.

Q.NO.35.WHAT ARE THE STATUTORY GOVERNING SERVICE TAX?

An understanding of the service tax law requires the study of the following:

- Chapter V and V A of the Finance Act, 1994 amended upto date.
- Rules on Service Tax.
- Notifications issued by the Central Government from time to time.
- Circulars and clarifications issued by Central Board of Excise and Customs (CBEC).
- Trade Notice issued by respective Jurisdictional Commissionerate.
- Definitions given under other statutes.
- Judicial decisions.

Q.NO.36. HOW ADMINISTRATION OF SERVICE TAX?

Administration of Service Tax: The CBEC administers service tax.

The main functions assigned to this Directorate are –

- to monitor the collection and assessment of service tax,
- to study the implementation of Service Tax in the field and to suggest measure to increase revenue collection;
- to undertake study of law and procedures,
- to form a data base, and
- to inspect the Service Tax Cells in the Commissionerates.

Q.NO.37. WHAT IS THE ROLE OF CHARTERED ACCOUNTANTS?

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Role of Chartered Accountants: Service tax is an indirect tax and being a new legislation, there a great scope for professionals like chartered accountants, company secretaries and others. Unlike income tax only few professionals are practicing in the field of indirect tax.

1. Consultancy services.
2. Services for complying with procedural requirement, like registration, filing of return (including e-filing), etc.
3. representation services: A chartered accountant is allowed to appear before the
 - (a) Assessment Authorities, (b) Adjudication Authorities, and (c) Appellate Authorities.
4. Scope for certification and audit under service tax in the near future.

Q.NO.38. WHAT IS THE PROCEDURE AND FACILITIES FOR LAREGE TAXPAYER?

The following rule shall apply to large tax payer:

1. Large taxpayer shall submit the returns, as prescribed under these rules, for each of the registered premises.
2. A large taxpayer, on demand, may be required to make available the financial, stores and CENVAT credit records in electronic media, such as, compact disc or tape for the purposes of carrying out any scrutiny and verification, as may be necessary.
3. A large taxpayer may, with intimation of at least thirty days in advance, opt out to be a large taxpayer from the first day of the following financial year.
4. Any notice issued but not adjudged by any of the Central Excise officer administering the Act or rules made there under immediately before the date of grant of acceptance by the Chief Commissioner of Central Excise, Large Taxpayer Unit, shall be deemed to have been issued by Central Excise officers of the said unit.
5. Provisions of these rules, in so far as they are not inconsistent with the provisions of this rule shall mutatis apply in case of a large taxpayer.

Additional Points

1. Circular No.41/2007 dated 06/10/07

This Circular Allows refund of service tax paid on specified services used for export of goods. it stipulates that a merchant exporter shall file the claim of refund to the Assistant Commissioner/Deputy Commissioner of Central Excise having jurisdiction over the registered office or the head office.

Case Studies:

1. When the service is provided, it was not taxable; However, the same service becomes taxable when the payment is received. Is the tax payable?

Ans: No, Any service, which is not a taxable service at the time of providing such service, cannot be taxed merely because it becomes taxable at the time of receipt of consideration.

2. Service is provided but money has not been received. Is tax payable?

Ans: No tax is payable when consideration is not yet received.

Q.NO.39. EXPLAIN THE APPLICABILITY OF GEOGRAPHICAL AREAS OF SARVICE TAX?

1. **Destination Based:** Service tax is destination based and service is taxable only if provided in India. Hence, in the following cases, there is no service tax liability-
 - a. Technical Consultancy provided by Foreign Collaborator (Illustrative).
 - b. If Indian service provider provides services abroad.
 - c. Services consumed for the purpose of Export
2. **Special Consideration for J & K:** The levy of Service Tax extends to the whole of India except Jammu & Kashmir. The following are the observations in this regard-

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- a. Services rendered in Jammu and Kashmir will not be liable to Service Tax.
 - b. Service rendered by a person established in Jammu and Kashmir, but rendered outside the state is liable to Service Tax
3. **Service provided in Exclusive Economic Zone and Continental shelf:** India includes territorial waters and exclusive economic zone. Therefore Service Tax provisions are applicable to designated areas of continental shelf and exclusive economic zone of India.

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