

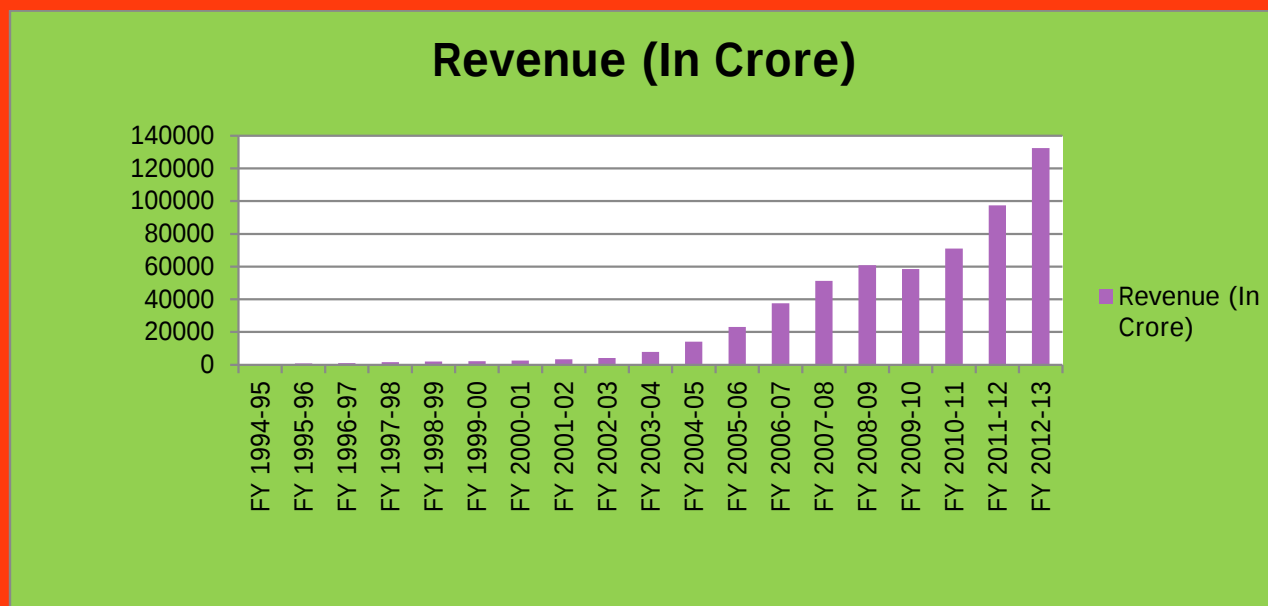
SERVICE TAX AMENDMENTS

2014-15



Aditya Singhania
Nischal Agarwal





(A) Review of the Negative List of services

- Levy of Service Tax on Radio-taxis/cabs**

The government has proposed to levy Service Tax on Radio-taxis/cabs whether or not air-conditioned. Earlier the same was exempted from the purview of Service Tax as it was covered under the Negative list [Section 66D (o)]. In order to remove disparity between the two, the abatement presently available to rent-a-cab service would also be made available to Radio-taxis/cabs. The abatements were notified by the government vide Notification No. 25/2012-ST dated 26-06-2012. The definition of radio taxi is being included in the exemption notification No.25/2012-ST which reads as mentioned here-in-below:

“a taxi including a radio cabby whatever name called which is in two way radio communication with a central control office and is enabled for tracing using Global Positioning System (GPS) or General Packet Radio Service (GPRS)”.

Applicable From:

It will come into effect from a date to be notified later, after the Finance (No.2) Bill, 2014 receives the assent of the President.

- **Service Tax extended to be levied on sale of space or time for advertisements on online & mobile advertising**

Earlier Service Tax was leviable on sale of space or time for advertisements in broadcast media such as 'radio' or 'television'. It has been now proposed to be extended to cover:-

- Such sales on other segments like 'online' and 'mobile' advertising;
- Advertisements in internet websites;
- Out-of-home media;
- On film screen in theatres;
- Bill boards;
- Conveyances;
- Buildings;
- Cell phones;
- Automated Teller Machines;
- Tickets;
- Commercial publications;
- Aerial advertising, etc..

In this regards, it would be relevant to note that the sale of space for advertisements in print media would continue to be in the negative list and hence remain excluded from the ambit of service tax.

Now one may be in dilemma over here as in what will happen if a person provides a composite service of providing space for advertisement that is covered in the negative list entry coupled with taxable service relating to design and preparation of the advertisement. How will its taxability be determined?

This would be a case of bundled services taxability of which has to be determined in terms of the principles laid down in section 66F of the Act. Bundled services have been defined in the said section as provision of one type of service with another type or types of services. If such services are bundled in the ordinary course of business then the bundle of services will be treated as consisting entirely of such service which determines the dominant nature of such a bundle. If such services are not bundled in the ordinary

course of business then the bundle of services will be treated as consisting entirely of such service which attracts the *highest liability of service tax*.

Applicable From:

It will come into effect from a date to be notified later, after the Finance (No.2) Bill, 2014 receives the assent of the President.

(B) Review of General Exemptions

For ease of reference and simplicity most of the exemptions were incorporated under one single mega exemption notification 25/2012-ST dated 20/6/12. Out of 39 such entries in the Mega Exemption Notification, entry no. 7 & 23(b) stands to be withdrawn which are mentioned here-in-below for ease of reference:

- **Exemption extended to clinical research on human participants is being withdrawn [Entry No. 7]**

Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India has been withdrawn vide Notification No. 06/2014-ST dated 11TH July, 2014.

- **Exemption extended to ‘air-conditioned’ contract carriages like buses is being withdrawn [Entry No. 23(b)]**

Earlier under the entry no. 23(b) exemption was for the transportation of passengers, with or without accompanied belongings, by a contract carriage excluding tourism, conducted tour, charter or hire whether air condition or not.

In this regards, it must be noted that the exemption has been withdrawn only for ‘air-conditioned’ contract carriages like buses vide Notification No. 06/2014-ST dated 11TH July,

2014 and hence shall now be chargeable to Service Tax. . As a result, any service provided for transport of passenger by air-conditioned contract carriage including which are used for point to point travel, will attract service tax, with immediate effect. Service tax will be charged at an abated value of 40% of the amount charged from service receiver and the effective tax will be 4.944%

For this purpose 'contract carriage' has the meaning assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988)

Applicable From:

Both the aforesaid exemptions withdrawn shall be chargeable to Service Tax with immediate effect.

(C) Rationalisation of Exemptions

- **Education**

Section 66D (l) of the Finance Act, 1994 exempts all educational services provided by educational institutions to their students, faculty and staff which shall continued to be under the arena of Negative List. Now before going into the amendment brought in under this head, let us have a brief highlight on educational service. The services which are exempt under the Negative list can be categorized under the following major heads:

- Pre-school education and education up to higher secondary school or equivalent;
- Education as a part of a prescribed curriculum for obtaining a qualification recognized by law for the time being in force;
- Education as a part of an approved vocational education course.

Let us now, come on the facts of the amendment brought via Union Budget 2014-15. Let me ask one question now. Are services provided to educational institutions also covered in the Negative List? The answer is NO. Such services are not covered under the negative list entry. However certain services provided to or by educational institutions are separately exempted under the mega-notification by way of:

- **Auxiliary educational services; or**
- **Renting of immovable property.**

What is Auxiliary Educational Service?

Auxiliary educational services are defined in the mega notification. In term of the definition, the following activities are auxiliary educational services:

- Any services relating to imparting any skill, knowledge or education,
- Development of course content,
- Any other knowledge enhancement activity, whether for the students or the faculty,
- Any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including following services relating to :
 - ✓ Admission to such institution
 - ✓ Conduct of examination
 - ✓ Catering for the students under any mid-day meals scheme sponsored by Government
 - ✓ Transportation of students, faculty or staff of such institution.

In order to bring clarity, it has been proposed to *'omit the concept of 'auxiliary educational services'*.

Accordingly, the following services received by eligible educational institutions are exempted from service tax:

- Transportation of students, faculty and staff of the eligible educational institution;
- Catering service including any mid-day meals scheme sponsored by the Government;
- Security or cleaning or house-keeping services in such educational institution;
- Services relating to admission to such institution or conduct of examination.

Further as a rationalization measure, the exemption hitherto available to services provided by way of renting of immovable property to educational institutions stands withdrawn, with immediate effect.

Applicable From:

The aforesaid exemptions withdrawn shall be with immediate effect.

• Services ordinarily provided by a Municipality

For greater clarity, the exemption in respect of services provided to Government or local authority or governmental authority in entry at serial no. 25 of Mega Exemption Notification

has been made more specific. Services by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation will continue to remain exempted but the *exemption would not be extendable to other services* such as consultancy, designing, etc., not directly connected with these specified services.

• Services by a Hotel, Inn or Guest House

Earlier service by way of renting of a hotel, inn, guest house, club or campsite or other **commercial places** meant for residential or lodging purposes, having a declared tariff of a unit of accommodation below INR 1000 per day or equivalent is exempt from service tax.

Some doubts appears to have arisen on account of use of the word “*commercial*” in the entry as to whether dharmashalas, ashram or any such entity which offer accommodation would be covered therein. It may be noted that this exemption, upto the specified threshold level, is available to any entity providing service by way of accommodation, including dharmashalas or ashram or such other entities. To remove any ambiguity, “*the word commercial is being omitted*”.

However it would be relevant to note that the renting of vacant land or buildings for hotels would continue to be taxable irrespective of the hotels declared tariff.

• Service tax on service portion in Works Contracts

Rule 2A of Service Tax (Determination of Value) Rules, 2006 determines the value of service portion in the execution of works contract. Where the value has not been determined under clause (i) of Rule 2A, the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner mentioned here-in-below for ease of reference:

- Works contracts → Execution of original works → Service tax shall be payable on → $40\% \times \text{Total amount charged for the works contract}$;

- Works contracts → Maintenance or repair → Service tax shall be payable on → $70\% \times \text{Total amount charged for the works contract}$;

- Works contract other than first two clause → Maintenance, repair, completion and finishing services → $60\% \times \text{Total amount charged for the works contract}$.

The amendment brought herein is in category last two categories of works contracts wherein it is proposed to be merged into one single category with percentage of service portion as 70%. Primarily this amendment has been made to avoid disputes of classification between these two categories vide Notification No.11/2014-ST dated 11th July, 2014.

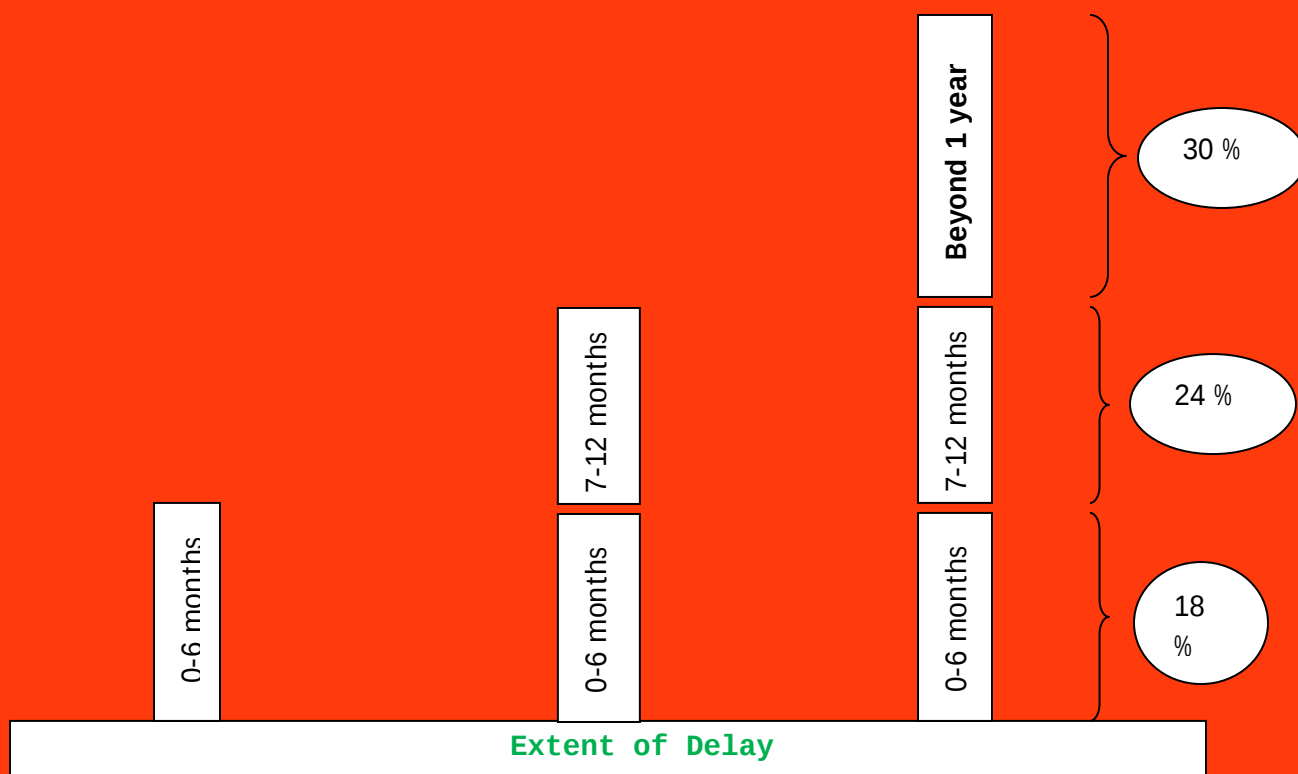
Applicable From:

The aforesaid amendment will come into effect from 1st October, 2014.

(D) Measures for compliance enhancement

- Variable rates of Interest**

Notification No. 12/2014 -ST dated 11th July, 2014 specifies different interest rates to be levied on the basis of extent of delay in order to encourage prompt payment of service tax.



To bring in more clarity let us take up the illustration as suggested by the government.

Service tax became due on: 6th July, 2012
Assessee pays the dues on: 6th December, 2014.

In such a case, the interest to be charged would be as mentioned here-in-below for ease of reference:

- 18% simple interest upto 30th September, 2014.
- For the period from 1st October, 2014 – 6th December, 2014, the Rate of Interest will be 30% since the period of delay is beyond one year.

Applicable From:

The new interest rate regime will come into effect from 1st October, 2014.

- **E-payment**

E-payment of service tax is being made mandatory vide Notification No. 09/2014-ST dated 11th July, 2014. However the relaxation on same can be provided by the Deputy Commissioner/Assistant Commissioner on case to case basis.

Applicable From:

The aforesaid amendment will come into effect from 1st October, 2014.

(E) Facilitation measures

- **Reverse Charge Mechanism**

Services provided by Recovery Agents to Banks, Financial Institutions and NBFC is being brought under the reverse charge mechanism vide Notification No. 10/2014-ST dated 11th July, 2014. Service receiver will be the person liable to pay service tax.

Further, services provided by a director of a company or a body corporate to the said company or the body corporate has been brought under the purview of Reverse Charge Mechanism.

Description of a service	% payable by service provider	% payable by service receiver
Services provided By recovery agent to banking company or financial institution, NBFC	Nil	100%
Services provided by a director of a company or a body corporate to the said company or the body corporate	Nil	100%

• Point of Taxation Rules

Rule 7 of the Point of Taxation Rules is being amended to provide that point of taxation in respect of reverse charge will be:

- The date of payment, or
 - The first day that occurs immediately after a period of 3 months from the date of invoice.
- } **whichever is earlier**

Applicable From:

This amendment will apply only to invoices issued after 1st October, 2014.

• Simplification of partial reverse charge mechanism

In renting of motor vehicle, where the service provider '*does not take abatement*' the portion of service tax payable by the service provider and service receiver will be modified as 50% each. It has be tabulised here-in-below for ease of reference:

Particulars	Description of Service	% payable by Service Provider	% payable by Service Receiver
Pre Budget	Renting of Motor Vehicle –	60%	40%
Post Budget		50%	50%

	Non abated		
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Applicable From:

This will come into effect from 1st of October 2014.

• CENVAT Credit Rules

- **A landmark amendment** - A manufacturer or a service provider shall take credit on inputs and input services within a period of “*six months*” from the “date of issue of invoice, bill or challan”. The same will come into effect from 1st September, 2014.
- In case of service tax paid under FULL reverse charge, the condition of payment of invoice value to the service provider for availing credit of input services is being withdrawn. It would be pertinent to note that there is *no change in respect of partial reverse charge*.
- Re-credit of CENVAT credit reversed on account of non-receipt of export proceeds within the specified period or extended period, to be allowed, if export proceeds are received within one year from the period so specified or extended period. This can be done on the basis of documents evidencing receipt of export proceeds

• New exemptions

- Life micro-insurance schemes for the poor, approved by IRDA, where sum assured does not exceed INR 50,000 to be exempted from service tax.
- Transport of organic manure by vessel, rail or road (by GTA) is being exempted.
- Loading, unloading, packing, storage or warehousing, transport by vessel, rail or road (GTA), of cotton, ginned or baled, is being exempted.
- Services provided by common bio-medical waste treatment facility operators to clinical establishments are being exempted.

- Specialized financial services received by RBI from global financial institutions in the course of management of foreign exchange reserves, e.g., external asset management, custodial services, securities lending services, etc. are being exempted.
- Services provided by Indian tour operators to foreign tourists in relation to a tour wholly conducted outside India are being exempted.

Applicable From:

New exemptions will come into effect immediately.

- **Clarification in regards to Input Service Distributor**

Rule 7 of the CENVAT Credit Rules, 2004, provides for the manner of distribution of common input service credit by the Input Service Distributor. This was amended vide notification No. 05/2014-CE (N.T.) amending, inter-alia, rule 7(d), to provide for distribution of common input service credit among all units in their turnover ratio of the relevant period. Some interpretational issues were raised regarding the amendment such as:

- (i) due to the use of the term “such unit” in rule 7(d), the distribution of the credit would be restricted to only those units where the services are used, and
- (ii) the credit available for distribution would also get reduced by the proportion of the turnover of those units where the services are not used.

These issues are being clarified vide ***Circular No. 178/04/2014-ST, dated 10.7.2014*** illustrating the effect of the amendment carried out vide notification No. 05/2014-CE (N.T.). It clarifies that the amended rule 7 allows distribution of input service credit to all units (which are operational in the current year) in the ratio of their turnover of the previous year/previous quarter as the case may be.

- **Miscellaneous Amendments**

- The condition for availing abatement in case of GTA service is being amended with immediate effect to clarify that the condition for non-availment of credit is required to be satisfied by the service providers only. Service recipient will not be required to establish satisfaction of this condition by the service provider.

- Service of transportation of passenger by air-conditioned contract carriages is taxable with immediate effect, as stated earlier. Hence, an entry has been inserted at Sl. No. 9A providing that the taxable portion of such service shall be 40% with the condition that CENVAT credit of inputs or capital goods or input services has not been taken.
- The condition against entry No. 9 is amended with effect from 1st October 2014, to allow the credit of input service of renting of a motor cab if such services are received from a person engaged in the similar line of business i.e. a sub-contractor providing services of renting of motor cab to the main contractor. The whole of the CENVAT credit has been allowed with respect to input service of renting of any motor cab, received from a person who is paying service tax on 40% of the value of services. The CENVAT credit eligibility will be restricted to 40% of the credit of the input service of renting of any motor cab if service tax is paid or payable on full value of the services i.e. no abatement is availed.
- Tour operator service providers are also being allowed to avail CENVAT credit on the input service of another tour operator, which are used for providing the taxable service. This is being provided to avoid cascading of taxes. The same will be applicable with effect from 1st October, 2014.
- Taxable portion in respect of transport of goods by vessel is being reduced from 50% to 40%. Effective service tax will decrease from the present 6.18% to 4.944%. The same will be applicable with effect from 1st October, 2014.
- Section 35F of the Central Excise Act has already been made applicable to Service Tax. This section is being substituted with a new section to prescribe a mandatory fixed pre-deposit of 7.5% of the duty demanded or penalty imposed or both for filing of appeal before the Commissioner(Appeal) or the Tribunal at the first stage, and 10% of the duty demanded or penalty imposed or both for filing second stage appeal before the Tribunal. The amount of pre-deposit payable would be subject to a ceiling of Rs 10 Crore. All pending appeals/stay application would be governed by the statutory provisions prevailing at the time of filing such stay applications/appeals. This new provisions would, mutatis mutandis, apply to Service Tax.
