BUDGET ANALYSIS 2015-16

SERVICE TAX

Presented by

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BUDGET ANALYSIS 2015-16 : SERVICE TAX

❖ **<u>CONTENT : Changes in</u>**

- Finance Act 1994
- Service Tax Rules 1994
- Exemption Notification
- Reverse Charge Mechanism
- Abatement Provisions
- Miscellaneous Provisions

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Sr. No.	Section	Type of Amendment	Summary of Changes	Analysis	Effective from
1	Sec 65B(9) & Sec 66D(j)	Amendment	Services of Amusement Facility was covered under Negative List. However now it is delated from negative list	Due to this access to amusement park will be covered under Service Tax and Service Tax will be applicable on the same. Rightly government has deleted such service from negative list, as it is now a days big business.	Applicable from date notified by Central Government in official gazette
2	Sec 65B(23A), Sec 66B(31A), Explanation 2 to Sec 65B(44) and clause (i) to Sec 66D	New Clause added in Sec 65B , Explanation 2 of Sec 65B(44) is substituted and Explanation to clause (i) of Sec 66D is added	Intention of government was to charge service tax on activity of Chit fund & distributor/agent of lottery. However Supreme court has taken view in case of Union of India Vs. Delhi Chit Fund Association [(2014) 42 taxmann.com 52 (SC)] that activity of Chit fund is not covered by Service Tax provisions. Hence no service tax leviable. Now government has specifically inserted explanation to clarify that such activity is covered under Service Tax.	It was expected that government will nullify the judgment of supreme court by amending the provisions.	Applicable after enactment of Finance Act 2015

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Sr. No.	Section	Type of Amendment	Summary of Changes	Analysis	Effective from
3	Sec 65B(24), Sec 66D(j) & Clause 47 of Notification 25/2012 ST read with Notification 6/2015 ST	Sec 65B(24) and Sec 66D(j) is omitted and Clause 47 of Notification 25/2012 is added	Currently below activity are out of the purview of service tax by way of negative list. a) exhibition of cinematographic film, circus, dance,or theatrical performances including drama, ballets b) sporting event, c) concerts, pageants, award functions, musical or any such event or programme. But now activity mentioned above is shifted from Negative list to Exemption list. However activity mentioned at (c) above is exempt only if consideration for admission is not more than Rs 500 per person	Service tax needs to be discharged in case of activity mentioned at (c) if consideration per person is going to be more than Rs 500 per person.	Applicable from date notified by Central Government in official gazette
4	Sec 65B(26A), Sec 65B(49) & Sec 66D(a)(iv), Rule 2(1)(d)(i)(E) of Service Tax Rules 1994	Sec 65B(26A) and Sec 65B(49) is omitted & Sec 66D(a)(iv) is amended, Rule 2(1)(d)(i)(E) of Service Tax Rules 1994 has been amended vide Notification 5/2015.	Earlier Support services provided by government to business entity was taxable under reverse charge. Definition of Support services was also provided. Now **ANY** services provided by government to business entity will be taxable, except service which is specifically exempted/covered by negative list Accordingly Rule 2(1)(d)(i)(E) of Service Tax Rules 1994 has been amended to omit the word Support	Definition of Support Services was prone to litigation. Hence government has replaced word **"Any services"** with **"Support Services"**. This will reduce litigation and will also increase the tax base of service tax.	Applicable after enactment of Finance Act 2015

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Sr. No.	Section	Type of Amendment	Summary of Changes	Analysis	Effective from
5	Sec 65B(40), clause (f) to Sec 66D & clause 47 to Notification No 25/2012 ST read with Notification No 6/2015 ST	Sec 65B(40) is amended , clause (f) to Sec 66D is substituted & clause 47 to Notification No 25/2012 ST is amended	Service Tax is not applicable on (1) any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act (2) Intermediate job work activity in relation to (1) . However now service tax will also be applicable on above mentioned activity.	Liquor is government's tool to increase the tax revenue. In order to meet the requirement of funds for infrastructure and to reduce the fiscal deficit, government has brought them under service tax base. Now Liquor will attract State Excise Duty as well as Service Tax.	Applicable from date notified by Central Government in official gazette
6	Sec 66B , Sec 95 of Finance Act 2004 and Sec 140 of Finance Act 2007	Sec 66B is amended and Sec 95 of Finance Act 2004 & Sec 140 of Finance Act 2007 is omitted	Currently rate of Service Tax is 12.35% (12% for ST + 0.36% for ED cess). Now rate of service tax will be Flat 14% . No education cess will be applicable.	This is move towards GST and single rate of Taxation. It is expected that GST rate for goods & Services is going to be 16%. Hence rightly government has increased rate of service tax 2% and it is also expected that next year either it will become 16% or GST will be made applicable at 16%.	Applicable from date notified by Central Government in official gazette
7	Sec 66F(1)	Illustration provided	Section 66F (1) prescribes that unless otherwise specified, reference to a service shall not include reference to any input service used for providing such service. An illustration is being incorporated in this section.	This illustration clarifies the scope of this provision.	Applicable after enactment of Finance Act 2015

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Sr. No.	Section	Type of Amendment	Summary of Changes	Analysis	Effective from
8	Explanation (a) to Sec 67 & Sec 94(2)(aa)	Explanation (a) to Sec 67 is substituted and Sec 94(2)(aa) is amended	New explanation provide that Consideration for service shall include: (a) all reimbursable expenditure or cost incurred and charged by the service provider except circumstances prescribed. (b) amount retained by the distributor/agent of lottery from gross sale amount of lottery ticket, the discount received. Sec 94(2)(aa) has been amended to empower central government to frame rule to determine circumstances when (a) above will not be applicable.	With is explanation, the intention is clarified to include reimbursable expenditure in the value of taxable service. However, in some cases courts have taken a contrary view. Therefore, the intention of legislature is being stated specifically by this provision.	Applicable after enactment of Finance Act 2015
9	Sec 73(1A) & Sec 73(4A)	Sec 73(1A) is added & Sec 73(4A) is omitted.	Sec 73 is amended to provide for: 1) in case short payment of service tax is declared in Return file by assessee, then show cause notice for the same will not issued on assessee for recovery of the same and same is to be recovered as per Sec 87. 2) Sec 73(4A) give benefit of reduced penalty , which is omitted now.		Applicable after enactment of Finance Act 2015

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Sr. No.	Section	Type of Amendment	Summary of Changes	Analysis	Effective from
10	Sec 76	Sec 76 is substituted	Sec 76 levies compulsory penalty in case of default in payment of service tax and give manner of calculation of penalty. However newly substituted Sec 76 provides that where there is default in payment of service tax, Not deliberately/fraudulently, then - 1) No penalty , if service tax and interest is paid within 30 days of issuance of notice under Sec 73 (1) 2) Maximum penalty payable is 10% of Service Tax 3) Reduced penalty equal to 10% of penalty imposed, if same along with service tax & interest is paid within 30 days of Demand Order.	More logical approach has been incorporated by legislature of penalty levy. Also opportunity is given to forgive penalty if service tax & interest is paid voluntarily or paid within 30 days of SCN.	Applicable after enactment of Finance Act 2015
11	Sec 77	Sec 76 is substituted	Newly substituted Sec 77 provides that where there is default in payment of service tax deliberately/fraudulently, then 1) penalty payable is equal to 100% of Service Tax 2) Penalty equal to 15% of Service Tax, if same along with service tax and interest is paid within 30 days of SCN issued under Sec 73(1) 2) Penalty equal to 25% of Service Tax, if same along with service tax and interest is paid within 30 days of Order issued under Sec 73(2)		Applicable after enactment of Finance Act 2015

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Sr. No.	Section	Type of Amendment	Summary of Changes	Analysis	Effective from
12	Sec 80	Omitted	Sec 80 provides immunity from penalty under Sec 76/77 if it can be proved that there was reasonable cause for failure. Now this section is deleted.	It was causing more litigation due to wording 'reasonable cause'. Hence same is omitted	Applicable after enactment of Finance Act 2015
13	Sec 86(1)	Amendment	Section 86 is being amended to prescribe that matters involving rebate of service tax shall be dealt with in terms of Section 35EE of the Central Excise Act.		Applicable after enactment of Finance Act 2015
14	Sec 117 of Finance Act 2015	New Section	**Swachh Bharat Cess:** In order to achieve Core objective of Modi Government of Swachh Bharat, Cess @ 2% on value of service shall be levied, for the purpose of financing this objective.	If this section is triggered , **Service Tax Rate will become 16%** (14% service Tax + 2% Swachh Bharat Cess	Applicable from date notified by Central Government in official gazette

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Sr. No.	Rule	Type of Amendment	Summary of Changes	Analysis	Effective from
1	Rule 2(1) of Service Tax Rules 1994	New Rule inserted by Notification No 5/2015 ST	Service received by Aggregator is brought under Reverse Charge Mechanism. Aggregator means a person, who owns/manages a web based software application, and by means of the application and a communication device, enables customer to connect with persons providing particular service under the brand/trade name of the aggregator	Aggregator is E-commerce website dealing in Services (For e.g. OLA, Uber, TaxiForSure) Now Aggregator or his agent/representative needs to discharge service tax under reverse charge. This is new concept in India and government has incorporated it, so as to increase tax revenue.	1st March 2015
2	Rule 2(1)(d)(EEA) of Service Tax Rules 1994	New Rule inserted by Notification No 5/2015 ST	Mutual Fund/Asset Management Company needs to pay service tax under reverse charge on services received from agent/distributor	Earlier This service was exempted by Notification 25/2012. But Exemption is now withdrawn. Also This category was earlier covered under Reverse Charge but omitted by Notification 36/2012 ST. However now government has again brought it under reverse charge	1st March 2015
3	Rule 2(1)(d)(EEB) of Service Tax Rules 1994	New Rule inserted by Notification No 5/2015 ST	Lottery Distributor needs to pay service tax under reverse charge on services received from agent.	Earlier This service was exempted by Notification 25/2012. But Exemption is now withdrawn. New Category under reverse charge mechanism	1st March 2015

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Sr. No.	Rule	Type of Amendment	Summary of Changes	Analysis	Effective from
4	Rule 4	Amendment by Notification No 5/2015 ST	Rule 4 is being amended to provide that the CBEC, by way of an order, specify the conditions, safeguards and procedure for registration in service tax.		1st March 2015
5	Rule 4C & Rule 5(3)(4)	New Rule inserted by Notification No 5/2015 ST	Option is provided for 1) Authentication of Invoice by digital signature 2) Maintaining records in electronic form and to be authenticated by digital signature	Move towards E governance and paperless society	1st March 2015
6	Rule 6(6A)	Sub Rule omitted by Notification No 5/2015 ST	Rule 6 (6A) which provided for recovery of service tax self-assessed and declared in the return under section 87 is being omitted consequent to amendment in section 73 for enabling such recovery		Applicable after enactment of Finance Act 2015
7	Rule 6(7) , Rule 6(7A) & Rule 6(7C)	Amendment by Notification No 5/2015 ST	Special Rate of Service tax are applicable in case of Money changer, Air travel agent, insurer, lottery distributor. As general rate of Service tax is increased from 12% to 14%, Special rate prescribed under Rule 6(7) , Rule 6(7A) & Rule 6(7C) for above service provider is suitably increased.		Applicable from date notified by Central Government in official gazette

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CHANGES MADE IN EXEMPTED LIST OF SERVICES IS AS UNDER:

(Amendment to Mega Exemption Notification 25/2012 ST is made vide Notification No 6/2015 ST dt 1st March 2015)

TYPE OF CHANGE	SR. NO.	PARTICULARS OF SERVICE	APPLICABLE FROM
NEW EXEMPTIONS	1	Services provided by way of transportation of a patient in an ambulance	1st April 2015
	2	Services of life insurance business provided under Varishtha Pension Bima Yojana	1st April 2015
	3	Services by operator of Common Effluent Treatment Plant by way of treatment of effluent	1st April 2015
	4	Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables	1st April 2015
	5	Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo;	1st April 2015
	6	Service provided by way of exhibition of movie by an exhibitor to the distributor or an association of persons consisting of the exhibitor as one of its members	1st April 2015
	7	Services by way of right to admission to,- (i) exhibition of cinematographic film, circus, dance, or theatrical performance including drama or ballet; (ii) recognised sporting event (iii) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event, Where the consideration for admission is not more than Rs 500 per person."	Applicable from date notified by Central Government in official gazette

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TYPE OF CHANGE	SR. NO.	PARTICULARS OF SERVICE	APPLICABLE FROM
EXEMPTION WITHDRAWN	1	Services provided to the Government/a local authority/governmental authority by way of construction/erection/commissioning/ installation/ completion/ fitting out/ repair/ maintenance /renovation/alteration of - 1) a civil structure or any other original works meant predominantly for use, other than for Commerce/industry/business/profession. 2) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment 3) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;	1st April 2015
	2	Services by way of construction, erection, commissioning, or installation of original works pertaining to airport/port.	1st April 2015
	3	Services (i) by way of transportation by rail or a vessel from one place in India to another of (ii) provided by GTA by way of transport of : the foodstuff including flours, tea, coffee, jaggery, sugar and edible oil other than agriculture produce	1st April 2015
	4	Service by (1)mutual fund agent to a mutual fund or asset management company (2) distributor to a mutual fund or asset management company (3) selling or marketing agent of lottery tickets to a distributer or a selling agent;	1st April 2015
	5	Services by way of making telephone calls from - (a) departmentally run public telephone; (b) guaranteed public telephone operating only for local calls; (c) free telephone at airport and hospital where no bills are being issued;	1st April 2015
EXEMPTION AMENDED	1	"Services by an artist by way of a performance in folk/classical art forms of (i) music, or (ii) dance, or (iii) theatre, **if the consideration charged for such performance is not more than one lakh rupees**, Provided that the exemption shall not apply to service provided by such artist as a brand ambassador"	1st April 2015
	2	Carrying out an intermediate production process as job work in relation to any goods **excluding alcoholic liquors for human consumption , on which appropriate duty is payable by the principal manufacturer**	Applicable from date notified by Govt in gazette

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CHANGES MADE IN REVERSE CHARGE MECHANISM

(Changes made to Notification No 30/2012 ST vide Notification No 7/2015 ST Dated 1.3.15)

Sr. No.	Type of Service	Type of Amendment	Liability of Service Provider	Liability of Service Receiver	Applicable from
1	Services provided by a mutual fund agent/distributor, to a mutual fund or asset management company	New Entry under RCM	Nil	100%	1st April 2015
2	Service provided by a selling/marketing agent of lottery tickets to a lottery distributor or selling agent	New Entry under RCM	Nil	100%	1st April 2015
3	Services provided by a person involving an aggregator in any manner	New Entry under RCM	Nil	100%	1st March 2015
4	Service provided by way of supply of manpower for any purpose or security services	Amendment in Percentage	Nil	100%	1st April 2015

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CHANGES MADE IN ABATMENT PROVISIONS:

(Changes made to Notification No 26/2012 ST by Notification No 8/2015 ST Dated 1.3.15) - Applicable from 1st april 2015

In Nutshell, 3 changes are made in abatment provisions. Details of the same are given under below table:

I.	Abatment percentage and Condition is rationalised and made made uniform, in case of transport of (a) goods by rail/Vessal/GTA (b) Passanger by rail
II.	Abatment to Chit fund is omited. Hence now service tax is payable on full value
III.	Service Tax on Air Travel by Business Class is increased

Sr. No.	Description of taxable service	Taxable Value	Abatment	Condition
1	Transport of goods by rail	30%	70%	Cenvat credit on inputs, capital goods and input services used for providing the taxable service, has not been taken
2	Transport of passengers, with or without accompanied belongings by rail	30%	70%	
3	Services of goods transport agency in relation to transportation of goods.	30%	70%	
4	Transport of goods in a vessel	30%	70%	
5	Transport of passengers by air with or without accompanied belongings by Economy Class	40%	60%	Cenvat credit on inputs and capital goods used for providing the taxable service, has not been taken
6	Transport of passengers by air with or without accompanied belongings by other than Economy Class	60%	40%	

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CHANGES MADE IN SERVICE TAX : MISCELLANEOUS PROVISIONS

Sr. No.	Notification	Type of Amendment	Summary of Changes	Effective From
1	Notification No 42/2012	Notification 42/2012 rescinded by Notification 3/2015 dt 1.3.15	Notification 42/2012 provides exemption to service provided by a commission agent located outside India to an exporter located in India. However This exemption has become redundant due to amendments made in the definition of "intermediary" in the Place of Provision of Services Rules by previous Finance Act (No 2) 2014 . Therefore rescinded	1st March 2015
2	Notification No 31/2012	Notification 42/2012 amended by Notification 4/2015 dt 1.3.15	GTA service provided for transport of export goods by road from the place of removal to ICD, CFS, a port or airport is already exempt from service tax vide notification No. 31/12. Scope of this exemption is widened to exempt such services when provided for transport of export goods by road from the place of removal to a land customs station (LCS).	1st April 2015