Key changes being made in the Service Tax in the Union Budget 2015-16, by amending the clauses 105 to 116 of the Bill under Chapter V of the Finance Act, 1994 and Chapter VI of the Bill(clause 117) to levy Swachh Bharat Cess @ 2% of the value of taxable services. These changes are categorized below based on the dates on which they would come into effect.

A. Date to be notified after the enactment of the Finance Bill 2015.

1. Changes in Service Tax rates

The rate of Service Tax is being increased from 12% plus Education Cesses to 14%. The 'Education Cess' and 'Secondary and Higher Education Cess' shall be subsumed in the revised rate of Service Tax. Thus, the effective increase in Service Tax rate will be from the existing rate of 12.36% (inclusive of cesses) to 14%, subsuming the cesses.

2. Swachh Bharat Cess

An enabling provision is being incorporated in the Finance Bill, 2014 (Chapter VI/clause 117) to empower the Central Government to impose a Swachh Bharat Cess on all or any of the taxable services at a rate of 2% on the value of such taxable services.

3. Review of Negative List

a. Service Tax is to be levied on the service provided by way of access to amusement facility such as rides, bowling alleys, amusement arcades, water parks, theme parks, etc.

b. Service tax to be levied on services by way of admission to entertainment event of concerts, non-recognised sporting events, pagents, music concerts and award functions, if the amount charged for admission is more than Rs. 500. Service by way of admission to exhibition of the cinematographic film, circus, dance, or theatrical performances including drama, ballets or recognized sporting events shall continue to be exempt.

c. Service tax to be levied on service by way of carrying out any processes as job work for production or manufacture of alcoholic liquor for human consumption.

d. An enabling provision is being made to exclude all services provided by the government or local authority to a business entity from the Negative List. Once this amendment is given effect to, all service provided by the government to business entities, unless specifically exempt, shall become taxable.

4. Amendments in Notification No .25/2012-ST.

a. To exclude job work in relation to alcoholic liquor for human consumption from the scope of this exemption.

b. To exempt services by way of (i) right to admission to exhibition of film, circus, dance or theatrical performances including drama, or ballet; (ii) recognized sporting event; and (iii) admission to other events where the consideration for admission is upto Rs. 500;

5. Amendments in Service Tax Rules

Amendments in alternative rates of service tax provided for air travel agent, insurance service, money changing service and service provided by a lottery distributor and selling agent in rule 6(7), 6(7A), 6(7B) and 6(7C) of the Service Tax Rules.

B. <u>Changes in the Finance Act,1994 that would get incorporated on enactment of the Finance Bill 2015.</u>

1. Services, excluding a few specified services, provided by the government are included in the Negative List. Further, specified services received by the government are also exempt. Hitherto, the term “government” has not been defined in the Act or the notification. This has given rise to interpretational issues. To address such issues, a definition of the term “government” is being incorporated in the Act **[section 65 B (26A)].**

2. The intention in law has been to levy Service Tax on the services provided by:

(a) chit fund foremen by way of conducting a chit.

(b) distributor or selling agents of lottery, as appointed or authorized by the organizing state for promoting, marketing, distributing, selling, or assisting the state in any other way for organizing and conducting a lottery.

However, Courts have taken a contrary view in some cases, while in some cases the levy has been upheld.

An Explanation is being inserted in the definition of “service” to specifically state the intention of the legislature to levy Service Tax on activities undertaken by chit fund foremen in relation to chit, and lottery distributors and selling agents, in relation to lotteries **[section 65 B (44)].** Further, an explanation is being added **in entry (i) of section 66D** to specifically state that these activities are not covered by the Negative List.

3. **Section 66F (1)** prescribes that unless otherwise specified, reference to a service shall not include reference to any input service used for providing such services. An illustration is being incorporated in this section to exemplify the scope of this provision. As illustrated, reference to service provided by the Reserve Bank of India (RBI), in section 66D (b) does not include any agency service provided by other banks to RBI, as such agency services are input services used by RBI for provision of its main service. Accordingly, banks providing agency service to or in relation to services of RBI, are liable to pay Service Tax on the agency services so provided by virtue of the existing section 66F (1).

4. **Section 67** prescribes for the valuation of taxable services. It is being prescribed specifically in this section that consideration for a taxable service shall include:
   (a) all reimbursable expenditure or cost incurred and charged by the service provider. The intention has always been 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 in section 67.
   (b) amount retained by the distributor or selling agent of lottery from gross sale amount of lottery ticket, or, as the case may be, the discount received, that is the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such tickets.

5. **Section 73 is being amended in the following manner:**
   (a) a new sub-section (1B) is being inserted to provide that recovery of the Service Tax amount self-assessed and declared in the return but not paid shall be made under section 87, without service of any notice under sub-section (1) of section 73 and consequential amendments made in Rule 6(6A) of the Service Tax Rules by omitting such Rules ; and
   (b) sub-section (4A) that provides for reduced penalty if true and complete details of transaction were available on specified records, is being omitted.

6. **Section 76 is being amended** to rationalize the provisions relating to penalties, in cases **not involving** fraud or collusion or willful misstatement or suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of Service Tax, in the following manner,-

   (a) penalty not to exceed ten per cent of Service Tax amount involved in such cases;
   (b) no penalty is to be paid if Service Tax and interest is paid within 30 days of issuance of notice under section 73 (1);

(c) a reduced penalty equal to 25% of the penalty imposed by the Central Excise officer by way of an order is to be paid if the Service Tax, interest and reduced penalty is paid within 30 days of such order; and

(d) if the Service Tax amount gets reduced in any appellate proceeding, then the penalty amount shall also stand modified accordingly, and benefit of reduced penalty (25% of penalty imposed) shall be admissible if service tax, interest and reduced penalty is paid within 30 days of such appellate order.

7. **Section 78 is being amended** to rationalize penalty, in cases involving fraud or collusion or wilful mis-statement of suppression of facts or contravention of any provision of the Act or rules with the intent to evade payment of Service Tax, in the following manner,-

   (a) penalty shall be hundred per cent of Service Tax amount involved in such cases;
   (b) a reduced penalty equal to 15% of the Service Tax amount is to be paid if Service Tax, interest and reduced penalty is paid within 30 days of service of notice in this regard;
   (c) a reduced penalty equal to 25% of the Service Tax amount, determined by the Central Excise officer by an order, is to be paid if the Service Tax, interest and reduced penalty is paid within 30 days of such order; and
   (d) if the Service Tax amount gets reduced in any appellate proceeding, then the penalty amount shall also stand modified accordingly, and benefit of reduced penalty (25%) shall be admissible if Service Tax, interest and reduced penalty is paid within 30 days of such appellate order.

8. **A new section 78 B is being inserted** to prescribe, by way of a transition provision, that,-

   (a) amended provisions of sections 76 and 78 shall apply to cases where either no notice is served, or notice is served under subsection (1) of section 73 or proviso thereto but no order has been issued under sub-section (2) of section 73, before the date of enactment of the Finance Bill, 2015; and
   (b) in respect of cases covered by sub-section (4A) of section 73, if no notice is served, or notice is served under sub-section (1) of section 73 or proviso thereto but no order has been issued under sub-section (2) of section 73, before the date of enactment of the Finance Bill, 2015, penalty shall not exceed 50% of the Service Tax amount.

9. **Section 80 that provided for waiver of penalty in certain circumstances is being omitted.**

10. **Section 86 is being amended** to prescribe that remedy against the order passed by Commissioner (Appeal), in a matter involving rebate of Service Tax, shall lie in terms of section 35EE of the Central Excise Act.
    It is also being provided that all appeals filed in Tribunal after the date the Finance Act, 2012 came into effect and pending on the date when the Finance Bill, 2015 receives assent of the President shall be transferred and dealt in accordance with section 35EE of the Central Excise Act.

11. **Certain changes have been made** in the provisions relating to **Settlement Commission**. These provisions, contained in the Central Excise Act, 1944, are made applicable to Service Tax, through section 83 of the Finance Act, 1994. For details, the D.O. letter of J.S. (TRU-I) may please be referred to.

C. Changes to be effective from 1st day of April, 2015.

1. **The Cenvat Credit Rules, 2004**

   Rule 4(7) of Cenvat Credit Rules are being amended to allow credit of service tax paid under partial reverse charge by the service receiver without linking it to the payments of values of service to service provider.

2. **Reverse Charge Mechanism**

   a. Manpower supply and securities services when provided by individual, HUF, partnership firm to a body corporate are being brought to full reverse charge as a simplification measure. Presently, these are taxed under partial reverse charge mechanism.

   b. Service provided by mutual fund agents, mutual fund distributors and lottery agents are being brought to under reverse charge consequent to withdrawal of exemption on such services.

3. **Service tax will not be applicable due to the inclusion of exemptions under Notification No. 25/2012 w.e.f 01.04.2015.**
   a. Services of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labeling of fruits and vegetables are being exempted.[Entry No. 44]
   b. Life insurance service provided by way of Varishtha Pension Bima Yogna is being exempted. [Entry No. 26A.]
   c. Services provided by way of exhibition of movie by the exhibitor/ theatre owner to the distributors or association of persons consisting of exhibitors as one of it's member is being exempted.[Entry No. 46]
   d. All ambulances services provided to patients are being exempted. [Entry No. 2].
   e. Services provided by way of admission to a museum, zoo, national park, wild life sanctuary and a tiger reserve is being exempted. [Entry No. 45]
   f. Service provided by a Common Effluent Treatment Plant operator for treatment of effluent is being exempted. [Entry No. 43]
   g. Transport of goods for export by road from the factory to a land customs station (LCS) is being exempted. [Amendment in Notification No. 31/12-ST]

4. **Service tax will now be applicable due to the exclusion/restriction of exemption under Notification No. 25/2012 w.e.f 01.04.2015.**
   a. Exemption presently available on specified services of construction, repair of civil structures, etc. when provided to Government shall be restricted only to,-
      - A historical monument, archaeological site
      - Canals, dam or other irrigation work
      - Pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.
   b. Exemption of construction, erection, commissioning or installation of original works pertaining to an airport or port is being withdrawn.
   c. Exemption to service provided by a performing artist in fork or classic art form of (i) music, or (ii) dance, or (iii) theatre, will be limited only to such cases where amount charged is upto Rs. 1,00,000 per performance (except brand ambassador).
   d. Exemption to transportation of 'food stuff' by rail, or vessels or road will be limited to transportation of food grains including rice and pulses, flours, milk, and salt only. Transportation of agricultural produce is separately exempt which would continue.

e. Exemption are being withdrawn on the following services:
   - services provided by a mutual fund agent to a mutual fund or assets management company;
   - distributor to a mutual fund or AMC; and
   - selling or marketing agent of lottery ticket to a distributor of lottery.

   Service Tax on these services shall be levied on reverse charge basis.

f. Exemption is being withdrawn on the following services,-
   - Departmentally run public telephones
   - Guaranteed public telephone operating only local calls
   - Service by way of making telephone calls from free telephone to airport and hospital where no bill is issued

5. Rationalization of abatement

a. A uniform abatement is being prescribed for transport by rail, road and vessel to bring parity in these sectors. Service Tax shall be payable on 30% of the value of such service subject to a uniform condition of non availment of Cenvat Credit on input, capital goods and input services. Presently, tax is payable on 30% of the value in case of rail transport, 25% in case of road transport and 40% in case of transport by vessel.

b. The abatement for executive (business/ first class) air travel, wherein the service element is higher, is being reduced from 60% to 40%. Consequently, service tax would be payable on 60% of the value of fare for business class.

c. Abatement is being withdrawn from services provided in relation to chit.

D. Changes to be effective from 1st day of March, 2015.

1. Amendments in Service Tax Rules

a. **Rule 2 along with Notification 30/2012-ST has been amended** in respect of any service provided under aggregator model, the aggregator is being made liable to pay service tax if the service is provided using the brand name of aggregator in any manner.

b. **Rule 4, 4A and 5 has been amended** to prescribed registration for single premises to be granted within two days of filing the application, to specify the conditions, safeguards and procedures for registration in service tax, issuing digitally signed invoices and maintaining of records in electronic form and their authentication by means of digital signatures.

2. **Amendments in Cenvat Credit Rules, 2004.**
   a. The period for taking Cenvat Credit is being extended from six months to one year from the date of invoice.
   b. Certain other changes are being made in the provisions of the Cenvat Credit Rules, 2004, which, inter-alia, include allowing Cenvat Credit on input and capital goods received directly by job workers, defining "export goods" for the purposes of rule 5, defining "exempt goods" for the purposes of rule 6, making applicable the provision of rule 9(4) to importer dealers, authorizing imposition of restrictions on registered dealers under rule 12AAA, and provisions relating to recovery of credit wrongly taken and imposition of penalty. For details, the D.O. letter of J.S (TRU-I) may please be referred to.

3. Extending the scope of Advance Ruling to resident firms under section 96A(b)(iii) of the Finance Act,1994 vide Notification No. 9/2015-ST.

4. Existing exemption notification for service provided by a commission agent located outside India to an exporter located in India is being rescinded, as this notification has become redundant in view of the amendments made in law in the previous budget, whereby services provided by such agents have been excluded from the tax net. [Rescinded of Notification No. 42/2012-ST]

Changes complied above are not intended to be exhaustive and are meant only to draw attention to major changes. The text of the statutory provisions and the wordings of the notifications should be read carefully for interpreting the law.