A2Z TAXCORP LLP

NEW DELHI, INDIA

Union Budget, 2015 Communique: Changes in Service tax with Effective Dates and its impact

This bulletin brings to you the highlights of recent updates and pivotal changes in Services tax under the Union Budget, 2015 in the order of their applicability along with certain issues which may crop up pursuant to the effective dates.

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UNION BUDGET 2015: CHANGES IN SERVICE TAX WITH EFFECTIVE DATES AND ITS IMPACT

In the Union Budget, 2015 presented by the Hon'ble Finance Minister Shri. Arun Jaitley on February 28, 2015, Saturday, numerous changes in Direct and Indirect taxes, have been introduced to address the need of hour, the continued growth to contest the challenges paved in the way of progress. Changes in the Chapter V of the Finance Act, 1994 (**"the Finance Act"**) is one such step made to combat the impediments in growth by adhering the maxim - "*secret of walking on water is – knowing where the stones are*". Certain imperative changes brought by the Union Budget, 2015 in the Finance Act with effect dates are:

EFFECTIVE FROM MARCH 1, 2015	
Notification No. 42/2012-ST dated 29-06-2012 rescinded vide Notification No. 3/2015-ST dated 1-03-2015.	The exemption vide Notification No. 42/2012-ST dated 29-6-2012, to the service provided by a commission agent located outside India to an exporter located in India, become redundant in view of the amendment made in the previous budget, in the definition of "intermediary" in the Place of Provision of Services Rules, 2012 to include intermediary of goods in its scope at par with Intermediary for services.
Service Tax Rules, 1994 amended vide Notification No. 5/2015-ST dated 01-03-2015	**Under Rule 2: Aggregator Model taxable under Full Reverse Charge Mechanism** • Definition of the terms 'aggregator'and 'brand name or trade name' has been specifically inserted; • Aggregator means a person, who owns and manages a web based software application, and by means of the application and a communication device, enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the Aggregator. As is evident from the nature of transactions there are 3 parties involved under an Aggregator Model: - The Aggregator; - Service Provider using the brand name or trade name of Aggregator; and - Customer • Service received by Aggregator is brought under Reverse Charge Mechanism. **Under Rule 4: New Registration Process**

	• Rule 4(9) inserted to provide that the CBEC shall, by way of an order, specify the conditions, safeguards and procedure for registration in Service tax. In this regard Order No. 1/15-ST dated 28-02-2015, effective from 1-03-2015 has been issued, prescribing documentation, time limits and procedure for registration for single premises. Registration for single premises: within 2 days of filing of application. **New Rule 4C has been inserted after Rule 4B of the Service Tax Rules – Corresponding changes made in Rule 5 thereof:** • Provision for issuing digitally signed invoices, bill or challan has been added along with the option of maintaining of records in electronic form and their authentication by means of digital signatures. • It is further provided that the conditions and procedure in this regard shall be specified by the CBEC.
Changes in Reverse Charge Mechanismvide Notification No. 7/2015-ST dated 01-03-2015, amending Notification No. 30/2012-ST dated 20-06-2012	**Aggregator Model under Full Reverse Charge Mechanism** • Liability of Aggregator(supra) to pay Service tax under Reverse Charge; • Person liable to pay Service tax: - If the Aggregator is located in India, then such Aggregator is liable. - If the Aggregator does not have physical presence in the taxable territory, then the person representing the Aggregator is liable. - If the Aggregator does not either have a physical presence or representative in the taxable territory then the Aggregator shall appoint a person for the purpose of paying Service tax.
Changes in Advance Ruling under Section 96A(b)(iii) of the Finance Act vide Notification No. 9/2015-ST dated 01-03-2015	**Extending scope of Advance Rulings to Resident firm** The facility of Advance Ruling has been extended to Resident firm by specifying such firm as a class of persons under Section 96A (b)(iii) of the Finance Act.
EFFECTIVE FROM APRIL 1, 2015	

Exemption widened on Service provided by transport of export goods by road from the place of removal to a land customs station (LCS) vide Notification No. 4/2015-ST dated 1-03-2015 (Effective From 1-04-2015):	Goods transport agency service provided for transport of export goods by road from the place of removal to an inland container depot, a container freight station, a port or airport is exempt from Service Tax vide notification No. 31/2012-ST dated 20-6-2012. Scope of this exemption is being 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).
Service Tax Rules, 1994 amended vide Notification No. 5/2015-ST dated 01-03-2015	**<u>Under Rule 2: New Entries under Full Reverse Charge</u>** • Mutual Fund/ Asset Management Company needs to pay Service tax under Reverse Charge on services received from mutual fund agent/ distributor - 2(1)(d)(i)(EEA) inserted; • Lottery Distributor or Selling Agent needs to pay Service tax under Reverse Charge on services received from selling or marketing agents of lottery tickets - Rule 2(1)(d)(i)(EEB) inserted
Changes in Mega Exemption Notification No. 25/2012-ST dated 20-06-2012 vide Notification No. 6/2015-ST dated 01-03-2015	**<u>Exemptions Withdrawn:</u>** **<u>Entry 12:</u>** Services provided to the Government, a Local authority or a Governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of- • a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; • a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; • 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 65B of the said Act. **<u>Entry 14:</u>** Services by way of construction, erection, commissioning, or installation of original works pertaining to

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	an airport or port. **Entry 29:** Services by following persons in respective capacities: • Mutual fund agent to a mutual fund or asset management company; • Distributor to a mutual fund or asset management company; • Selling or marketing agent of lottery tickets to a distributer or a selling agent. Service tax on the above stated services shall be levied under Reverse Charge Mechanism on Mutual fund or Asset Management Company/ Lottery Distributor or Selling Agent w.e.f 01-04-2015 **Entry 32:** Services by way of making telephone calls from: • Departmentally run public telephone; • Guaranteed public telephone operating only local calls; • Free telephone at airport and hospital where no bill is issued **Exemptions Amended:** **Entry 16:** Exemption to services provided by a performing artist in folk or classical art form of (i) music, or (ii) dance, or (iii) theatre, has been restricted only to such cases where amount charged is not exceeding Rs. 1,00,000/- for a performance (except brand ambassador) **Entry 20:** Exemption under Entry 20(i) substituted, transportation of food stuffs by rail or vessels from one place in India to another will be limited to milk, salt and food grains including flours, pulses and rice. [Earlier Entry 20(i): foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages]. **Entry 21:** Exemption under Entry 21(d) substituted, for Services provided by a goods transport agency, by way of

	transport in a goods carriage of, milk, salt and food grain including flours, pulses and rice. [Earlier Entry 21(d): foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages] **New Exemptions:** **Entry 2:** All ambulance services provided to patients are exempted. Hitherto, any service provided by way of transportation of a patient to and from a clinical establishment by a clinical establishment was exempt from Service tax. **Entry 26A:** Life insurance service provided by way of Varishtha Pension Bima Yojna. **Entry 43:** Services by operator of Common Effluent Treatment Plant by way of treatment of effluent. **Entry 44:** 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. **Entry 45:** Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo. **Entry 46:** Services 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. Certain new definitions also provided for following terms– 'National park', 'Tiger reserve', 'Trade union', Wildlife sanctuary', 'Zoo'.
Changes in Reverse Charge Mechanismvide Notification No. 7/2015-ST dated 01-03-2015 amending Notification No. 30/2012-ST dated 20-06-2012	**New Entries under Full Reverse Charge** a) Mutual Fund/ Asset Management Company needs to pay Service tax under Reverse Charge on services received from mutual fund agent/ distributor; b) Lottery Distributor or Selling Agentneeds to pay Service tax under Reverse Charge on services received from selling or marketing agents of lottery tickets;

	<u>From Partial Reverse Charge to Full Reverse Charge</u> a) Manpower Supply and Security services provided by an individual, HUF, partnership firm or association of persons to a business entity registered as body corporate have been brought under Full Reverse Charge as against Partial Reverse Charge mechanism applicable at present.
Changes In Abatement Notification No. 26/2012-ST dated 20-06-2012 vide Notification No. 8/2015-ST dated 01-03-2015	• **<u>Uniform Abatement for transport by rail, road and vessel:</u>** A uniform abatement of 70% has been 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 Inputs, Capital goods and Input services. Presently, Service tax is payable on 30% (in case of rail transport)/ 25% (in case of road transport)/ 40% (in case of transport by vessels). Further, there is no condition for availment of Cenvat credit on Inputs, Capital goods and Input services in case of transport by rail, which is now withdrawn. • **<u>Reduction in abatement for classes other than economy class:</u>** The abatement for classes other than economy class (i.e. business/ first class) has been reduced from 60% to 40%. Accordingly, Service tax would be payable on 60% of the value of such higher classes. At present, Service tax is payable on 40% of the value of transport of passenger by air for economy as well as higher classes (i.e. business/ first class). • **<u>Abatement in relation to Chit fund withdrawn:</u>** Abatement for the services provided in relation to Chit fund stands withdrawn. Consequently, Service tax shall be paid by on full consideration received by the foremen of Chit fund.
<u>FROM DATE TO BE NOTIFIED AFTER THE ENACTMENT OF FINANCE BILL, 2015</u>	
Increase in Rate of Service tax	From 12.36% (including Education Cess and Secondary and

	Higher Education Cess) to flat 14%. The 'Education Cess' and 'Secondary and Higher Education Cess' shall be subsumed in the new Service tax rate. Balance lying in 'Education Cess' and 'Secondary and Higher Education Cess' may be allowed to be adjusted with liability of Service tax but the CBEC needs to be clarify this issue.
Swachh Bharat Cess – Enabling Provision	An enabling provision is being made to empower the Central Government to impose a Swachh Bharat Cess (**"SB Cess"**) on all or any taxable services at a rate of 2% on the value of all or any taxable services. The proceeds from this Cess would be utilized for Swachh Bharat initiatives. The Government will specify the categories of taxable services on which SB Cess would be leviable. <u>Open issues:</u> a) What all services are going to be covered under the levy of SB Cess? In the absence of clearly defined provisions, it is likely that the SB Cess may re-ignite the tussle on 'classification' of services. b) Whether Cenvat credit of SB Cess would be available or not because there are no amendments proposed in the Credit Rules? c) Whether there will be restriction as regards utilisation of SB Cess as was in case of Education Cess and Secondary & Higher Education Cess?
Changes in relation to the Negative List – Section 66D of the Finance Act	**<u>Section 66D(a)</u>**: Under clause (iv), the words 'support services' has been proposed to be substituted by the words 'any service'. Accordingly, after such amendment, all services provided by the Government or local authority to a business entity would be exigible to Service tax, except for the services that are specifically exempted, or covered by any another entry

	in the Negative List. **<u>Section 66D(f):</u>** Services by way of carrying out any processes for production or manufacture of alcoholic liquor for human consumption brought under the Service tax net. **<u>Section 66D(i):</u>** Explanation inserted whereby the expression "betting, gambling or lottery" shall not include the activity as specified in substituted explanation 2 to Clause (44) of Section 65B of the Finance Act. **<u>Section 66D(j):</u>** Proposed to be Omitted. At present, it covers 'admission to entertainment event or access to amusement facilities'. Consequently, Service tax to be levied on the services provided by way of access to amusement facility such as rides, bowling alleys, amusement arcades, water parks, theme parks, etc; Service tax to be levied on services by way of admission to entertainment event of concerts, non-recognized sporting events, pageants, music concerts and award functions, if the amount charged for admission is more than Rs. 500. Whereas services 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; [Read with the Notification No. 6/2015-ST dated 01-03-2015 vide which changes has been made in the Mega Exemption List of Services]
Various other Sections under the Finance Act	**<u>Section 65B:</u>** Definitions of certain terms <u>omitted</u> [Section 65B(9): 'amusement facility', Section 65B(24): 'entertainment event' and Section 65B(49): 'support services' has been omitted;] Definitions of certain terms <u>amended</u> [Section 65B(40): 'process amounting to manufacture or production of goods' excluding alcoholic liquors for human consumption] Definitions of certain terms has been <u>inserted</u> [Section 65B(23A): 'foreman of chit fund', Section

	65B(26A):'Government' and Section 65B(31A):'lottery distributor or selling agent'] **<u>Change in definition of 'Service' [Section 65B(44)]:</u>** Explanation 2 to Section 65B(44) of the Finance Act, defining the term 'Service' is amended 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. **<u>Section 66B</u>**: to substitute the rate of Service tax from 12% to 14%. **<u>Section 66F:</u>** 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 has been incorporated in the stated Section to exemplify the scope of this provision in the following manner: *"The services by the Reserve Bank of India, being the main service within the meaning of clause (b) of section 66D, does not include any agency service provided or agreed to be provided by any bank to the Reserve Bank of India. Such agency service, being input service, used by the Reserve Bank of India for providing the main service, for which the consideration by way of fee or commission or any other amount is received by the agent bank, does not get excluded from the levy of service tax by virtue of inclusion of the main service in clause (b) of the negative list in section 66D and hence, such service is leviable to service tax."* **<u>Section67:</u>** Amendment in definition of the term 'Consideration' to include: a) any reimbursable expenditure or cost incurred and charged by the service provider; b) any amount retained by the lottery 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

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	which the distributor or selling agent gets such tickets. **Section 73:** New sub-section (1B) inserted to provide that the Service tax amount self-assessed and declared in the return but not paid (either in part or full) shall be recovered under Section 87 thereof, without service of any notice under Section 73(1). Further, Section 73(4A) providing for reduced penalty up to 50% of Service tax liability, if true and complete details of transaction are available on specified records has been omitted. **Section 76:** Rationalization of penal provisions in cases not involving fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Finance Act or rules with the intent to evade payment of Service tax, in the following manner: a) Ceiling of 10% of Service tax amount as penalty has been incorporated; b) No penalty leviable if Service tax and interest is paid within 30 days of issuance of SCN under Section 73(1) of the Finance Act; c) Reduced penalty equal to 25% of the penalty (i.e. 2.5% of the Service tax liability) 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 receipt of the aforesaid 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 (i.e. 25% of penalty imposed) shall be admissible if Service tax, interest and reduced penalty is paid within 30 days of such Appellate Order. **Section 78:** Rationalization of penal provisions relating to penalties in cases involving fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Finance Act or rules with the intent to evade payment of Service tax, in the following manner: a) Penalty shall be of 100% of Service tax amount;

	b) Reduced penalty equal to 15% of the Service tax amount alleged in the SCN shall be imposable if Service tax, interest and reduced penalty is paid within 30 days of issuance of SCN under Section 73(1) of the Finance Act; c) Reduced penalty equal to 25% of the Service tax amount, determined by the Central Excise officer by an Order, shall be imposable if the Service tax, interest and reduced penalty is paid within 30 days of receipt of Order of the Central Excise Officer; 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 (i.e. 25%) shall be admissible if Service tax, interest and reduced penalty is paid within 30 days of such Appellate Order. **New Section 78B inserted after Section 78A:** A new Section 78B has been inserted to prescribe transition provision in the following manner: a) Amended provisions of Sections 76 and 78 of the Finance Act shall apply to cases where either no notice is served, or notice is served under Section 73(1)or proviso thereto but no Order has been issued under Section 73(2) thereof, before the date of enactment of the Finance Bill, 2015; and b) In respect of cases covered under Section 73(4A) of the Finance Act, if no notice is served, or notice is served under Section 73(1) or proviso thereto but no Order has been issued under Section 73(2) thereof, before the date of enactment of the Finance Bill, 2015, penalty shall not exceed 50% of the Service tax amount. **Section 80 omitted:** At present, it provides for waiver of penalty under Section 76 and 77 of the Finance Act, on Reasonable cause. **Section 86:** Amended to prescribe that remedy against the Order passed by the Ld. Commissioner (Appeals), in a matter involving rebate of Service tax on Input services, duty paid on Inputs, used in providing service which is exported, shall lie in terms of Section 35EE of the Central

	Excise Act, 1944 ("**the Excise Act**")(i.e. Revision by the Central Government). It is also provided that all appeals filed before the Hon'ble 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 Excise Act. **Section 94:** Clause (aa) of Section 94(2) has been substituted with *"determination of the amount and value of taxable service, the manner thereof, and the circumstances and conditions under which an amount shall not be a consideration, under Section 67".* **Section 83**: Certain changes have been made in the provisions relating to Settlement Commission under the Excise Act which are made applicable to the Finance Act by virtue of Section 83 thereof.
Service Tax Rules, 1994 amended vide Notification No. 5/2015-ST dated 01-03-2015	**Under Rule 2**: • The term 'support' has been omitted from the Rule 2(1)(d)(i)(E) which provides for liability of service receiver to pay Service tax under Reverse Charge in relation to support services provided or agreed to be provided by Government or Local authority with certain exceptions. **Under Rule 6:** • Rule 6(6A) has been omitted which provided for recovery of Service tax self-assessed and declared in the return in the manner prescribed under Section 87 of the Finance Act, 1994 as the same has been now incorporated in Section 73 of the Finance Act; • Explanation (i) to Rule 6(7C) has been omitted which defined the term 'distributor or selling agent'; • Consequent to the upward revision in Service tax rate, the composition rate is proposed to be revised proportionately under Rule 6(7), 6(7A), 6(7B) and 6(7C) of the Service Tax Rules on specified services, namely, - **Air Travel Agent:** From "0.6%" and "1.2 %", to "0.7

	per cent." and "1.4 per cent of Basic fares in the case of domestic bookings and international bookings respectively. - **Life insurance service:** From "3%" and "1.5%", to "3.5%" of the premium charged from policy holder in the first year and "1.75% in the subsequent year". - **Money changing service provided by banks or authorized dealers:** o From "0.12%" to "0.14%" of gross amount of currency exchanged for an amount upto Rs.1,00,000/-subject to minimum amount of "Rs.35"which was "Rs. 30 earlier or; o From "Rs. 120 and 0.06%" to "Rs. 140 and 0.07%" of gross amount of currency exchanged for an amount exceeding Rs.1,00,000/- upto Rs. 10,00,000/ or; o From "Rs. 660 and 0.012%" to "Rs. 770 and 0.014%" of gross amount of currency exchanged for an amount exceeding Rs.10,00,000/- subject to maximum amount of Rs. 7000/- which was Rs. 6000/- earlier - **Service provided by lottery distributor and selling agent:** o Guaranteed price payout is more than 80%: Rs. 8200/- (earlier Rs. 7000/-) on every Rs. 10,00,000/- (or part of Rs. 10,00,000/-) of aggregate face value of lottery tickets printed by organizing State for a draw or o Guaranteed price payout is less than 80%: Rs. 12,800/- (earlier Rs.11,000/-) on every Rs. 10,00,000/- (or part of Rs. 10,00,000/-) of aggregate face value of lottery tickets printed by organizing State for a draw.
Changes in Mega Exemption Notification No. No. 25/2012-	**Exemptions withdrawn by amending Entry 30:** **Entry 30:** Services by way of carrying out an intermediate

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ST dated 20-06-2012 *vide* Notification No. 6/2015-ST dated 01-03-2015	production process as job work in relation to alcoholic liquors for human consumption. **<u>New Exemption:</u>** **<u>Entry 47:</u>** Services by way of right to admission to: • exhibition of cinematographic film, circus, dance, or theatrical performances including drama or ballet; • recognized sporting events; • award functions, concerts, pageants, musical performances or any sporting events other than recognized sporting event, where the consideration for such admission is upto Rs. 500 per person [This Will be exempted effective from the date the amendments being made in the Negative List concerning the service by way of admission to entertainment events come into effect] Definition of 'recognized sporting events' provided.
Changes in Reverse Charge Mechanismvide Notification No. 7/2015-ST dated 01-03-2015 amending Notification No. 30/2012-ST dated 20-06-2012	In paragraph I, clause (A) sub clause (iv) Item C, the term 'support' has been omitted for services provided or agreed to be provided by Government or Local authority from a date to be notified by the Central Government.

DISCUSSION FORUM - ARTICLES

IMPACT OF CHANGE OF SERVICE TAX LIABILITY STRUCTURE FROM PARTIAL REVERSE CHARGE TO FULL REVERSE CHARGE ON MANPOWER SUPPLY AND SECURITY SERVICES IN TRANSITION PERIOD

As discussed Supra, Notification No. 30/2012-ST dated 20-06-2012 has been amended *vide* Notification No. 7/2015-ST dated 01-03-2015, therebyshifting the Supply of Manpower and Security services from Partial Reverse Charge to Full Reverse Charge. The stated change will be effective from 01-04-2015.

At present, Service tax liability in respect of Manpower supply and Security services are distributed as follows:

S. No.	***Description of Service***	***Percentage of Service tax payable by the person providing service***	***Percentage of Service tax payable by the person receiving the service***
8	*In respect of services provided or agreed to be provided by way of supply of manpower for any purpose or security services*	*25%*	*75%*

However, effective from 01-04-2015, 25% of the Service tax which was earlier liable to paid by service provider will be shifted in the hands of service recipient, thereby increasing the effective Service tax liability to be paid by service recipient from 75% to 100%.

Transactions for Manpower supply and Security services entered on or after01-04-2015 would not pose any problem and manifestly the service receiver would be liable to discharge 100% Service tax under Reverse Charge. But on scrutinizing the stated change in the light of provisions of the Point of Taxation Rules, 2011 (**"the POT Rules"**), there are chances of turmoil being faced by the service receiver in respect of transactions made in the transitional period. It is likely that the Department may dispute the tax rate at which the service recipient is required to discharge Service tax i.e. at 75%/ 100% for the services provided before 01-04-2015 and invoices/ payments made on or after 01-04-2015.

Before taking deeper dive into the area of turmoil which may crop up pursuant to stated amendment, it is apposite here to have an overview of the Point of taxation as governed under POT Rules. As we all are aware that earlier Service tax was payable on receipt of payment in respect of taxable services provided. But with the introduction of the POT Rules, now Service tax payment is made on accrual basis in terms of the provisions contained under the POT Rules. The general Rule 3 of the POT Rules stipulates that Point of taxation shall be the earlier one among raising of invoice or date of making the payment. Further, if the invoice is not raised within 30 days (45 days) from the date of completion of provision of service, Point of taxation shall be the date of completion of provision of service.

However, Point of taxation for Reverse Charge situation (full/ partial) is governed by Rule 7 of the POT Rules which stipulates the date of making payment as the Point of taxation. Further, in case the payment of the aforesaid invoice has not been made within a period of 3 months from date of invoice, then the provisions of Rule 3 of the POT Rules will supersede Rule 7 thereof.

Key Concerns:

In cases where the provisions of services are completed on or before to 31-03-2015 but the payment for the same is made on or after 01-04-2015, disputes can arise as to who is required to discharge 25% Service tax liability:

INVOICE IS ISSUED ON OR BEFORE 31-03-2015 BUT PAYMENT IS MADE ON OR AFTER 01-04-2015

In such case, service provider is liable to pay 25% in terms of Rule 3 of the POT Rules. However, since payment is made on or after 01-04-2015, the Department may invoke Rule 7 of the POT Rules and allege that the service receiver is liable to pay 100% in view of the amended provisions as the date of payment is the Point of taxation.

INVOICE IS ISSUED ON OR AFTER 01-04-2015 AND PAYMENT IS ALSO MADE ON OR AFTER 01-04-2015

Here following two situations may arise:

a) Invoice is raised within 30 days of date of completion of service – Clearly, service receiver will have to pay 100% Service tax;

b) Invoice is not raised within 30 days of date of completion of service – Here again, service provider is liable to pay 25% in terms of Rule 3 of the POT Rules. However, since payment is made on or after 01-04-2015, the Department may invoke Rule 7 of the POT Rules and allege that the service receiver is liable to pay 100% in view of the amended provisions as the date of payment is Point of taxation.

INVOICE IS ISSUED ON OR AFTER 01-04-2015 BUT PAYMENT IS MADE ON OR BEFORE 31-03-2015

Since, payment is madeon or before 31-03-2015, liability of service receiver would be to deposit Service tax at 75% in terms of Rule 7 of the POT Rules. However, the Department might raise an issue that since the invoice is raised on or after 01-04-2015, discharge of Service tax should be governed under the new provisions i.e. 100% by the service recipient only.

Conclusion: Therefore this issue needs to be handled appropriately and it is expected that the CBEC should clarify this issue at the earliest to avoid any unnecessary litigation.

HIKE IN RATE OF SERVICE TAX – OPEN ISSUES

The Union Budget, 2015 has proposed an increase in the rate of Service tax from 12.36% to flat 14% with abolishment of Education cess and Secondary & Higher Secondary Education cess. Further pursuing with Mr. Narendra Modi's Dream of Swachh Bharat, a new Chapter VI has been inserted in the Finance Bill, 2015 that contains a new levy of cess called the 'Swachh Bharat Cess' (**"SB Cess"**) which may be levied on all or any of the taxable services at the rate of 2% of the value of such services. With SB Cess, Service tax rate may increase from present 12.36% to 16%.

Since the change in rate of Service tax will take place from the date of enactment of the Finance Bill, 2015, issues may build up in respect of the ongoing transactions for which certain advance payment is received prior to enactment of the Finance Bill, 2015 but the completion of provision of service may take place post facto thereof.

Here again by applying the provisions of Rule 3 of the POT Rules, the service provider would be liable to pay Service tax on the advance payments received at the prevailing rate of 12.36%. However, the service provider may encounter the issue of adjusting this payment of tax for increase in Service tax rate afterwards when the service will be provided and invoice will be raised for the service for which advance has been received already.

Our Comments: Point of taxation involving change in effective rate of tax is governed by Rule 4 of the POT Rules, which provides for determination of Point of taxation when there is change in effective rate of tax as mentioned in the table below:

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S. No.	In case a taxable service has been provided	Invoice has been issued	Payment received for the invoice	Point of taxation shall be	Applicable Rate
1	**BEFORE** the change in effective rate of tax	**AFTER** the change in effective rate of tax	**AFTER** the change in effective rate of tax	Date of issuance of invoice or Date of receipt of payment, whichever is earlier	New Rate
2		**BEFORE** the change in effective rate of tax	**AFTER** the change in effective rate of tax	Date of issuance of invoice	Old Rate
3		**AFTER** the change in effective rate of tax	**BEFORE** the change in effective rate of tax	Date of receipt of payment	Old Rate
4	**AFTER** the change in effective rate of tax	**BEFORE** the change in effective rate of tax	**AFTER** the change in effective rate of tax	Date of receipt of payment	New Rate
5		**BEFORE** the change in effective rate of tax	**BEFORE** the change in effective rate of tax	Date of issuance of invoice or Date of receipt of payment, whichever is earlier	Old Rate
6		**AFTER** the change in effective rate of tax	**BEFORE** the change in effective rate of tax	Date of issuance of invoice	New Rate

Accordingly, the above scenario of advance payments may be interpreted as under:

a) **Services are completed after change in effective rate of tax but the invoice is raised before change in rate:** In terms of Rule 3 read with Rule 4(b)(ii) of the POT Rules, no differential payment may be required (Refer S. No. 5 of the table);

b) **Services are completed after change in effective rate of tax and the invoice is also raised after change in rate:** In terms of Rule 3 read with Rule 4(b)(iii) of the POT Rules, differential payment (i.e. 16%/14% - 12.36%) will have to be paid at the time of such invoice (Refer S. No. 6 of the table).

Key Concerns:

Even after applying provisions of Rule 4 of the POT Rules, uncertainties and ambiguities will definitely prevail in the Trade in case of on-going services, which warrants some clarification/ relief from the Board such as:

- One such question would be whether the service provider would also be required to pay interest on differential amount of Service tax;
- Further considering Rule 4(a)(i) of the POT Rules (Refer S. No. 1 of the Table), why new rate would be applicable when services are rendered before change in effective rate of tax but invoice is raised and payment is made after change of rate. The Hon'ble Supreme Court in the case of ***All India Federation of Tax Practitioners Vs. Union of India [2007-TIOL-149-SC-ST]*** held that "*a tax on a thing or goods can only be with reference to a taxable event*" and the same contention was upheld again in the case of ***Association of Leasing & Financial Service Companies Vs. Union of India [2010 (20) STR 417 (SC)]***, wherein the Hon'ble Supreme Court observed that the **taxable event under the Service tax law is the rendition of service**;
- Last but not the least, a clarification as to whether SB Cess will be considered as part and parcel of Service tax for the POT Rules is, however, needed to avoid confusion about liability under SB Cess for advances received prior to the date of applicability of such Cess.

TAXABILITY OF NEWLY MADE 'TAXABLE SERVICES'

As discussed Supra, the Finance Bill, 2015 *vide* Clause107 has proposed certain amendments in the Negative List of services given under Section 66D of the Finance Act thereby removing certain services from the Negative List. Now, in this case, the issue may crop up that the services rendered prior to the date of notification are exigible to Service tax when payments for such services are received later or invoices pertaining to services are raised later.

LEVY AND COLLECTION OF SERVICE TAX UNDER THE FINANCE ACT

In any taxing statute, the statutory provision containing the charging Section is of foremost importance. It is well settled law that levy of tax is one thing and collection thereof is quite different thing. Once the levy is attracted, the collection of tax may be at any different point/stage/ event.

Under the Finance Act, Section 66B of the Finance Act is the charging Section which levy Service tax on taxable services. We are reproducing herewith Section 66B of the Finance Act for the ease of convenience:

> *"**66B. Charge of service tax on and after Finance Act, 2012**.*
>
> *There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent. on the value of all services, **other than those services specified in the negative list**, **provided or agreed to be provided** in the taxable territory by one person to another and **collected in such manner as may be prescribed**."*

The literal interpretation of the charging Section 66B of the Finance Act means that the levy of Service tax is on those service 'other than the one specified in the Negative List', 'provided or agreed to be provided'. However, the collection of Service tax may be shifted to any point/ stage/event, in any manner, as prescribed by the Rules made in this behalf.

Further as already quoted above, the Hon'ble Supreme Court of India in the case of ***Association of Leasing & Financial Service Companies Vs. Union of India [2010 (20) STR 417 (SC)]*** specifically observed that the taxable event under the Service tax law is the rendition of service.

Now, in view of the above discussions, the levy of Service tax is on the provision of service and accordingly, the service must be taxable service at the time of its rendition in order to attract Service tax levy. In other words, if at the time of rendition of service, it is covered under the Negative List, then as per Section 66B of the Finance Act, no Service tax may be levied on the same irrespective of the date of its payment or raising of invoice.

However, in this regard, Rule 5 of the POT Rules governing Point of taxation in case of new services provides contradictory provisions.

RULE 5 OF THE POT RULES

Rule 5 of the POT Rules provides that where a service is charged to tax for the first time, then:

(a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;

Our Comments: As per this Rule, No Service taxis payable even if services are rendered after such service becomes taxable only when the invoice has been issued and the payment received against such invoice before such service became taxable.

(b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within 14 days of the date when the service is taxed for the first time.

Our Comments: Manifestly, the stated Rule provides that in cases of levy on new services, irrespective of date of completion of service, Service tax shall be payable if the payment is received on or after the date of levy and if the invoice is not issued within 14 days of the date of levy.

Key concerns:

In view of the above discussed provisions, the matter is subjected to debate as to whether Service tax would be leviable on a service which was not a 'taxable service' at the time of its rendition as being covered under the Negative List, merely because its payment is received on or after the date of levy and the invoice is not issued within 14 days of the date of levy.

Here it would not be out of place to mention that POT Rules were framed by the Central Government in exercise of the powers conferred under Section 94 of the Finance Act and such delegated legislation cannot be extended to go beyond the vires of the Finance Act.

ABOUT US

A2Z TAXCORP LLP having professionals from Multi disciplines which provides services under the Indirect Tax Laws, DGFT, Foreign Trade Policy, SEZ, EOU, Export – Import Laws, Free Trade Policy, Accounting, Auditing, Law, Company Laws, etc.

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