Basics

What is the need of introduction of service tax?

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

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

Who will decide which government will collect service tax (Constitutional Authority)?

As we have federal governments (central govt., state govt. & Local govt.) in India. So it is decided by article 246 of the constitution of India under 7th schedule.
It (7th Schedule) has 3 list –

- List 1 – Central government will collect tax
- List 2 – State government will collect tax
- List 3 – Both mutually

A new entry called 92-C has been introduced in list I providing for levy of service tax by the union.
Based on this power, service tax was, for the first time in our country, levied through Chapter V of the finance Act 1994 for Just 3 Service.

Evaluation of service tax in India?

At the time of independence of India the contribution of agriculture sector to India's GDP was largest; the contribution of service sector was least.
But after 1991 (LPG Phase), the contribution of service sector is growing at substantial increasing rate. Due to this the custom & excise revenue from manufacturing sector is lost and government was in problem regarding revenue collection. To remove this problem government appoints a "Tax Reform Committee" headed by Dr. Raja J. Challiah.
He made two proposals –

1. To introduce VAT on goods
2. To introduce tax on services (As it was growing fastly)

So on his recommendation tax on services was introduced by, the then Union Finance Minister, Dr. Manmohan Singh on 1st July, 1994, in 3 services

1. **Telephone, 2. General insurance, 3. Stock Broking – all @ 5%**

Nature of Service Tax

- Value addition to a product which is intangible in nature is called service
- Service tax is a tax on services (i.e. If there is no service, there is no Service tax)
- There is No separate Act as such
- ST is imposed by amending chapter V of FA, 1994 from time to time
- There is No provision of TDS from ST (Like in Income tax)

Approaches to service tax?

1. Comprehensive approach: The comprehensive approach contemplates taxation of all services and a negative list is given in case some services are to be exempted.
2. Selective approach: In the case of selective approach, only selective services are subject to service tax. In this case, the legislator attempts to specify and list the services that would be

taxable and the scope of coverage of each service. There is no residuary category for taxing all services.

Basic Features of Service Tax [B.A.S.I.C. F.A.R.E. Compliance]

1. Service Tax in India is administrated by Central Board of Excise &
2. Applicable to whole of India except the state of J & K
3. Self Assessment
4. Indirect Tax (burden of tax can be shifted to 3rd party)
5. Charged on taxable services mentioned in sec 65(105).
6. No Tax on Free Services
7. No separate Act is there for taxable services
8. Rate of service tax 10.3%
9. Exemption to small service providers providing taxable service upto Rs. 10 Lakh in a financial year.
10. Voluntary Compliance

Administration of Service Tax

1. **Ministry of finance**
2. **Department of revenue** *headed by secretary*
3. Central Board of Excise & Custom **(CBEC)** – *headed by Chairman*
4. **Central Excise Zones** – *headed by chief commissioners of central excise*
5. **Central excise commissionerates** *headed by commissioners of central excise*
6. **Divisions** *headed by Deputy commissioners or Assistant commissioners of central excise*
7. **Ranges** *headed by Suprintendent of central excise with the help of inspectors*

Administrative Mechanism (Weapons)

1. Finance Act, 1994 – it contains provisions in chapter V & Chapter VA contain advance ruling on ST, chapter VI in 2004 introduces Edu cess & Chapter VI in 2007 introduces SHEC.
2. Service Tax Rules – 94, 03, 06, 08 etc. these rules helps in carrying out the provisions of the Act.
3. Notifications by C.G. to exempt any service or to make rules for implementation of ST
4. Circulars, letters by CBEC that defines the scope of taxable services & administration of ST.
5. Orders on ST – issued by CBEC or Central government
6. Trade notices by central excise / ST commissionerates on receiving instruction from CBEC for effective implementation & administration of ST law. These notices are given to trade associations and contain information regarding content of notifications, circulars, letters & orders.

Role of Chartered Accountant – ***(A.P.A.R.T.)***

Advising clients, Procedural requirement, Audit & certification, Representation & Tax planning

Challenges before the Service Tax Administration in India – (G.I.S.E)

1. **Growth of service Sector** – not possible for dept to administrate all services
2. **Intangible in nature** – cannot be easily identified & brought under the tax net.
3. **Separate legislation** (Act) is required
4. Some services are provided by people with low **Education level** – don't know abt provisions

Sec. 64 **Extent**

ST provisions are applicable to whole of India except the state of J & K

(Services provided in the state of J & K are exempt)

India Means–

- Territorial waters (Upto 12 Nautical Mile from the land mass of India)
- India includes installation, structure & vessels located in the Continental shelf and Exclusive Economic Zone (extend to 200 nautical miles from the base line) of India for the purpose of prospecting or extraction or production of mineral oil & natural gas and supply thereof.

Sec. 65

Definition –

Sec 65(105) – Taxable services

Taxable service means any service provided or to be provided

To….

By….

In relation to….

Section 65-A

Classification of Services

One service – Classifiable into more than 1 Category (Sub-clauses) of sec. 65(105), classification shall be effected as follows:

i. Choose specific clause over general clause
ii. If composite service – determine which service provides the essential character and classify composite service into that. (For ex – architect will be classified under architect under sub-clause "p" and other decorator under interior decorator under sub-clause "q")
iii. When a service cannot be classified in a manner specified above, then Choose first in numerical order

Sec. 66

Charging Section – Rate of Service Tax (At a Uniform rate of 10.3%)

- 10% on services as per FA, 1994
- 2% edu cess as per chapter VI of Finance Act, 2004 &
- 1% SH edu cess as per chapter VI of Finance Act, 2007.

Sec. 67

Valuation of Taxable services (Not applicable on Free Services)

Situation	Taxable Value
Consideration in Money	Gross amount charged (Exclusive of ST)
Consideration wholly or partly in Non-Monetary terms	Rule 3 of STVL, 2006 **Method 1**. TV = GAC by service provider for similar ser to third party. **Method 2**. TV= [Monetary Consideration + Mkt value of Monetary Consideration]
Consideration is not quantifiable	TV= Value determined in prescribed manner

Sec. 68

Liability & Payment

A. Person liable for Payment of Service Tax

68 (1) – Prima Facie Liability – Every person providing taxable service shall pay service tax at a prescribed rate (10.3% u/s 66), prescribed time & in manner as prescribed under rule 6 of the STR, 1994.

68 (2) – empowers the central government to notify certain specified persons to pay Service tax in respect of certain services in the manner prescribed in Rule 2(1)(d) of STR, 1994.

Notified services – 2(1)(d)	Person liable to pay tax
Telecommunication service	Director general of post & telegraph **or** chairman of M person who has been granted licence by CG under telegraphs Act.
General Insurance Business	Insurer or reinsurer providing such services
Insurance Auxiliary services	Service provided by agent but liability is of **insurance Co'**

Business Auxiliary services by MF distributor / Agent	Mutual fund company or AMC, receiving such services
Import of services	Receiver (If import for personal purpose - Exempted)
Sponsorship services provided to Body Corporate or Firm in India	Body corporate / firm who receive such services. (if provided outside India – treated as export & exempted)
Goods transport agency	Where the consignor or consignee of goods is – any registered factory, any company, any statutory corporation, a reg society, any dealer, any body corporate 7 a partnership firm, then – The person who pay or liable to pay freight

Note – Liability to pay service tax is statutory in nature & not contingent.

Rule -6 of STR, 1994 – Payment of Service Tax

- **Due Dates of Payment of Service Tax –**

Service provider	Monthly/Quarterly due dates	Due date for the month of March and Quarter ending March
Individuals and Firms	5th of the month following the Quarter ended June, Sep, Dec.	31st March
Others	5th of the following Month	31st March
e-payment	6th of the following Month	31st March

- If the last date for paying tax is a public holiday, tax may be paid on the next working day.
- Service Tax is payable at the time of realization of the amount for services from the client.
- Service Tax is payable on the advance money received.
- Where there is short recovery of the billed amount, service provider should revise the bill otherwise he shall be liable to pay Service Tax on the full amount which has been billed to service receiver.
- **Manner of payment of ST** – the assessee has to pay ST in the designated bank by the CBEC in Form TR-6 (yellow in colour) by cash or cheque (Date of deposit of cheque is considered only)

- **E-Payment of ST** – in case of e-payment Form GAR-7 (white in colour) is used instead of TR-6. E-payment is compulsory in case of assessee who had paid service tax of Rs. 10 Lakh or more in the preceeding financial year or current financial year.

Sec. 69

Registration

Registration – By Whom

69 (1) – Every **person liable to pay tax** shall make an application for registration in form no ST-1 to the designated superintendent of the central excise

69(2) – Here central govt can make any person liable to pay tax, Govt had notified two persons

1. **Input Service Distributor** – within 30 days of commencement of business.
   (Manufacturer + Hire eng service(Input) + pay ST + claim input tax set off from govt = ISD)
2. **Small Service Provider *** (When Aggregate value of services > Rs. 9 Lakh)

then within 30 days of value exceeding Rs. 9 Lakh

Provisions on Rule 4

- Registration Application – Form No. ST-1
- Registration Certificate – Form No. ST-2 (Shall be granted within 7 Days from application, otherwise it shall be deemed to have been granted)
- **Multiple services – Single application** mentioning all taxable services
- **Multiple Premises (Places)** – if any person provides services from different places, then he have to register for each place except in case he is having centralized accounting or centralized billing system, and then register the place where CBS/CAS is in existence with commissioner of central excise..
- If service provider want to change any information furnished by him in Form ST-1 or want to furnish any additional information, then he will made it in Form ST-1 and go to Assistant Commissioner/ Deputy Commissioner within 30 Days of such change.
- Business Transfer – Liability of transferee, to register (Fresh) within 30 day of transfer
- Any taxable service provider ceases to provide taxable services, then he have to cancellation or surrender of his ST-2 registration certificate.

Documents to be attached on Registration (Process for registration)

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

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

Surrender of Registration of certificate:

Circumstances:

- Cessation of Services
- Change of Place
- Transfer of Business

Procedure for surrender of Certification of Registration:

- Assessee should surrender the service tax registration certificate (ST-2)
- Superintendent of central excise will cancel the registration certificate after insuring that the assessee has paid all service tax dues to the Government under the provisions of the Act.

Non – surrender of certificate:

- There is no statutory requirement for the assessee to make an application for surrender of certificate.
- Non- surrender of certificate does not attract any penalty.
- However, the Assessee should furnish half yearly returns even if no service is provided.

Sec. 70

Return [Rule 7/ 7B/ 7C]

1. Every person liable to pay the service tax shall himself assess and pay the tax. This process is known as Self Assessment.
2. If he is not able to estimate the tax amount correctly, he may apply to the department for Provisional Assessment (PA). PA is a process through which the department arrives at the provisional tax liability on the services provided by the service provider without waiting for the complete assessment at the initial stage itself. However, the service provider has to provide an undertaking for bearing the final liability once the final assessment is completed.

3. Returns are field half yearly in Form ST-3 (Form ST – 3A for PA). The half yearly due dates are:

a. 25th October for the half year ending 30th September; and

b. 25th April for the half year ending 31st March.

4. Exiling of returns is also permissible.

5. If the due date is a public holiday then the return should be filed on the next working day.

6. Revised returns may be filed within 90 days from the date of filing of original return **[Rule-7B].**

7. For delay in filing returns, "**late fee**" is payable as follows **[Rule- 7C]:**

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

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

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

10. Documents to be attached along with return (ST-3)

- Copies of TR-6 or GAR-7 challans, for payments made.
- Memorandum ST-3A, incase of provisional payment of tax.
- In case of first return, details of accounts maintained in relation to service tax should be furnished to superintendent of Central Excise, at the time of filing first half yearly return i.e., ST- 3, a list of all accounts maintained by him in relation to service tax including branch memorandum.

Sec. 71

ST Return preparation (STRP) Scheme

1. Definitions:

a. Service Tax Return Preparer: It refers to an individual who has been authorized to act as a "Service Tax Return Preparer" under a scheme framed under this section.

b. Specified Classes of persons: It refers to persons specified in the Scheme, who are required to furnish a return required to be field under section 70.

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

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

4. Structure of the Scheme: The scheme framed by the Board may provide for the following –

a. Manner in which and the period for which the Service Tax Return Preparer shall be authorized,

b. Educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Service Tax Return, Preparer,

c. Code of Conduct for the Service Tax Return Preparer,

d. Duties and Obligations of the Service Tax Return Preparer,

e. Circumstances under which the authorization given to a Service Tax Return Preparer may be withdrawn,

f. Any other matter which is required to be specified by the Scheme for the purposes of this section.

Section 73-A/B

(73A) – Payment of ST collected in excess to be paid(Credit) to the A/c of central government

(73B) – Interest payable on amount collected in excess @ 13% (Fixed by central government)

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Sec. 75 — **Late Payment of service tax** i.e. payment after due date (Mandatory **Interest Payable @ 13%**)

Sec. 76, 77 & 78 — **Penalty**

Section	Nature of Violation	Penalty
76	**Failure to pay Service tax**	Higher of Rs. 200 per day of defaulting or 2% per mo tax, subject to tax not paid. Penalty can exceed the am tax
77	**Any other Non-compliance** 1. Failure of registration **OR** Failure to furnish information called by officer on Excise Officer **OR** Failure to appear before the Central Excise Officer when with a summon for appearance to give evidence or to produce document. – **Rs or Rs.200 per day** whichever is higher from the first day after due date till the actual compliance. 2. Failure to maintain books of accounts – Maximum Rs.5,000/- 3. Fails to pay through e- payment – Maximum Rs.5,000/-	
78	**Suppression of Value**	100% to 200% of (Tax evaded) duty sought to be charged

Sec. 80 — **Waiver of penalty**

Penalty u/s 76, 77 & 78 can be waived if the assessee proves that there was reasonable cause for the said failure.

Sec. 93 — **Central Govt has Power to grant Exemption from ST (Short Cut- URGENT RIDE)**

Questions asked in previous exams

Q. Should service tax be paid even if not collected from the client or service receiver?(May, 07)

Answer.

Section 68 of the Finance Act, 1994 casts the liability to pay service tax upon the service provider or upon the person liable to pay service tax as per rule 2(1)(d) of the Service Tax Rules, 1994. This liability is not **contingent** upon the service provider realizing or charging the service tax at the prevailing rate. The **statutory liability** does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver.

Q. Where a service provider maintains books of accounts on mercantile basis relating to taxable services Provided by him, will service tax be payable on accrual basis? (2 Marks) (Nov, 2007)

Answer. Service tax is not payable on accrual basis and the method of accounting is irrelevant for making payment of service tax. Service tax is payable to the Government only when any payment is received-whether in advance or after the bill is raised-from the client or service receiver for the taxable services provided.

Q. Is a service provider allowed to pay service tax on a provisional basis?(2 Marks) (Nov, 2007)

Answer - In case the assessee is unable to correctly estimate, at the time of the deposit, the actual amount of service tax for any month or quarter, he may make a written request to Assistant/Deputy Commissioner of Central Excise for making payment of service tax on provisional basis. The concerned officer may allow payment of service tax on provisional basis on such value of taxable service as may be specified by him.

Q. Whether life insurer carrying on life insurance business has option to calculate service tax at different rate? (2 Marks) (Nov, 2008)

Answer - An insurer carrying on life insurance business who is liable for paying service tax has the option to pay an amount calculated @ 1% of the gross amount of premium charged by him towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66 of Chapter V of the Act.

However, such option is not available in cases where:

(i) the entire premium paid by the policy holder is only towards risk cover in life insurance; or

(ii) the part of the premium payable towards risk cover in life insurance is shown separately in any of the documents issued by the insurer to the policy holder.

Q. How can the excess payment of service tax be adjusted? (2 Marks) (June, 2009)

Answer - Where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be. However, such an adjustment would be subject to the following conditions mentioned below:

- Self-adjustment of excess credit would not be allowed in case of reasons involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification.
- Excess amount paid & proposed to be adjusted should not exceed Rs.1,00,000 for the relevant month or quarter except in case of assessees opting for centralized registration.
- Adjustment can be made only in the succeeding month or quarter.
- The details of self-adjustment should be intimated to the Superintendent of Central Excise within a period of 15 days from the date of such adjustment.