

Indirect taxes

Service tax

Amended FA 2010

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Notifications and circulars up to 30.06.2011

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Chapter 3 Service tax

Service tax is an indirect tax levied on Services

- Services tax was imposed by chapter V of Finance Act 1994
- No separate “Service Tax Act”.
- Service tax is imposed every year by making amendment to the Finance Act 1994
- Central excise department has been entrusted to look after the administration of service tax
- Service tax is a destination based consumption tax, as per CBE&C Circular No. 56/5/2003 dated 25-4-2003.
- **Service implies existence of two parties** - Service tax is attracted when there are two parties. One cannot give service to himself.

Coverage of Service tax

The following is various legislatures to cover Service tax

Finance Act, 1994 [Sections 64 to 96]

- Service Tax Rules, 1994
- Service Tax (Registration of Special Category of Persons) Rules, 2005.
- Export of Services Rules, 2005.
- Cenvat Credit Rules 2004
- Service Tax (Advance Rulings) Rules, 2003
- Taxation of Services (Provided from Outside India and Received in India) Rules, 2006
- Service Tax (Determination of Value) Rules, 2006.
- Authority for Advance Rulings (Customs, Central Excise and Service Tax) Procedure Regulations, 2005
- Central Excise (Appeals) Rules 2001
- Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982
- Service tax circulars, notifications and case laws

Approaches to levy Service tax

Selective or comprehensive coverage of service tax: The levy of a service tax can be based on either of the following 2 approaches:

1. Comprehensive coverage/approach
2. Selective coverage/approach

1. Comprehensive coverage/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 coverage/approach: In the case of selective approach, only selective 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.

Applicability of Service tax

Service tax extends to whole of India except the state of Jammu and Kashmir.

- There shall be no service tax on the services provided/consumed in the state of Jammu and Kashmir.
- However if service provider is in the state of Jammu and Kashmir and provides services to anyone outside the state of Jammu and Kashmir then service tax shall be imposed on such services rendered

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Charging Section Sec 65(105) and Sec 66

Service tax is imposed on taxable services provided or to be provided in future, by the service provider.

- Services to be provided in future shall be chargeable to service tax only if the advance payment for it is received
- Taxable services are mentioned in section 65(105) of Finance Act 1994
- Total 116 + services listed in Sec 65(105), which are liable for service tax.
Taxable Event is for service tax is date of rendering of Service
- All taxable Services charged to Service tax @ 10.3%

Alternate rate of service tax in case of certain services: Rule 6 (7) (7A)(7C)-

Although service tax is levied at the basic rate of 10% but in case of certain services, an Alternative **Optional** rate is also provided. Some of these are as under:

1. Specified immovable properties an optional composition tax rate of **4%** of gross value has been provided.

2. In case of life insurance services alternate mode of discharge of service tax liability has been provided and the rate of service tax in this case is **1.5%** of total premium.

3. In case of Air Travel Agents services, the Air Travel Agent, shall have the option to pay service tax of an amount calculated as under:

In case of domestic bookings – **0.6%** of the basic fare. In case of international bookings – **1.2%** of the basic fare

4. In case of foreign exchange dealer in case of sale/purchase of foreign currency including money changing, Notification No. 26/2011-ST dated 31.03.2011

S.N	For an amount	Service tax shall be calculated at the rate of
1.	Upto ` 100,000	0.1 % of the gross amount of currency exchanged or Rs. 25 whichever is higher
2.	Exceeding 1,00,000 and upto Rs. 10,00,000	Rs 100 + 0.05 % of the gross amount of currency exchanged
3.	Exceeding ` 10,00,000	Rs. 550 + 0.01 % of the gross amount of currency exchanged or ` 5,000 whichever is lower

However, the person providing the service shall exercise such option for a financial year and such option shall not be withdrawn during the remaining part of that financial year

5. In case of lottery distributor or selling agent, liable to pay service tax for the taxable service of promotion, marketing, organizing or in any other manner assisting in organizing lottery shall liable to pay as below: **Notification No 49/2010 dated 08.10.2010**

No.	Rate	Condition
(1)	(2)	(3)
1.	Rs 6000/- on every Rs 10 Lakh (or part of Rs 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw	If the lottery or lottery scheme is one where the guaranteed prize payout is more than 80%
2.	Rs 9000/- on every Rs 10 Lakh (or part of Rs 10 Lakh) of aggregate face value of lottery tickets printed by the organizing State for a draw	If the lottery or lottery scheme is one where the guaranteed prize payout is less than 80%

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Provided that in case of online lottery, the aggregate face value of lottery tickets for the purpose of this sub-rule shall be taken as the aggregate value of tickets sold, and service tax shall be calculated in the manner specified in the said Table.

Provided further that the distributor or selling agent shall exercise such option within a period of one month of the beginning of each financial year and such option shall not be withdrawn during the remaining part of the financial year.

Provided also that the distributor or selling agent shall exercise such option for financial year 2010-11, within a period of one month of the publication of this sub-rule in the Official Gazette or, in the case of new service provider, within one month of providing of service under the said sub-clause and such option shall not be withdrawn during the remaining part of that financial year.

Persons other than distributor and selling agent of lottery tickets is exempts from payment of service tax. If distributor and selling agent of lottery tickets opt for the composition scheme as above.

Notification No 50/2010 dated 08.10.2010

6. Specified rates of service tax for transport of passengers by air :Notification No. 04/2011-ST dated 01.03.2011

Type of travel	Service tax rate
Domestic Travel	
Economy Class	10% of the gross value of the ticket or Rs.150 per journey whichever is less
Other than Economy Class	10% (Standard rate)
International Travel	
Economy Class	10% of the gross value of the ticket or Rs.750 per journey whichever is less
Other than Economy Class	10% (Standard rate)

These special provisions apply only where excise duty credit has not been taken on inputs used for providing such taxable service.

Meaning of economy class: Economy class in an aircraft means, —

- (i) where there is more than one class of travel: the class attracting the lowest standard fare; or
(ii) Where there is only one class of travel: that class.

Small Service Providers Exemption: Notification No. 6/2005(Small service providers

Each year service receipt up to 10 lakhs exempt , If previous year service rendered up to 10 lakhs.

Conditions

- Exemption is optional;
- Exemption limit not for individual service or individual premise – aggregate value of 10 lakhs is exempt.

No Cenvat credit of Input+ Input Service + Capital goods can be availed till limit of 10 lakhs.

Calculation of monetary limits for Rs. 10 lakhs

- Where the previous year's value of taxable service provided exceeds Rs. 10 lakhs, service tax would be payable even if the current year's turnover is less than Rs. 10 lakhs.

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- Where the previous year's turnover is Rs. 10 lakhs or below and the current year's turnover exceeds Rs. 10 lakhs, no service tax is payable up to Rs. 10 lakhs if the specified conditions are complied with.

- Further, the sum total of first consecutive payments '**received**' during the financial year towards the taxable services up to Rs. 10 lakhs would be exempt.

The payments received towards wholly exempt services are to be excluded for determining the amount of Rs. 10 lakhs

10 lakhs Small Service Provider exemption not applicable

- Where taxable services are provided by a person under a brand name / trade name of **another** person whether registered or not.

Thus, service provided by a person under his own brand name would not be affected by this restriction and would be entitled for the exemption.

Where service tax is payable by a person As a receiver of service (reverse charge) e.g.

- Services provided by Non-residents / foreign companies who do not have an office in India

- Services provided by insurance agents

- Service provided by a mutual fund distributor

–As a payer of service - for transport services

Thus, the exemption would apply only in cases where service tax is payable as a provider of service.

All taxable services are exempt under following situations

Provided to United Nation or International Organization;

- Provided to SEZ Unit or Developer of SEZ(subject to certain conditions).

- Provided to RBI;

- Provided by RBI;

- Provided to Foreign Diplomatic Missions / Consulates;

- Provided for personal use of member (or his family) of a Foreign Diplomatic Mission/ Consulates;

- Cost of goods or material sold by service provider to the receiver of such services.

Notification No. 12/2003.

- Export of services i.e. services rendered abroad. Notification No. 9/2005.

- Exemption available to small service providers (10 lakhs)

Services provided to EOU - Services provided to EOU/EHTP/STP are **not** exempt from service tax. EOU/EHTP/STP units can avail Cenvat credit of service tax paid. The EOU units can claim rebate of service tax paid on their input services vide Rule 5 of Cenvat Credit Rules

Condition for getting exemption from Service tax for SEZ- Notification No 15/2009 dt 20.05.2009

Where the services are consumed wholly within SEZ

Procedure to be followed:

Approval of list of services

The developer or units of SEZ shall get the services required in relation to the authorized operations in the S EZ approved from the Approval Committee

Actual use of specified services

The developer or units of SEZ claiming the exemption actually uses the services in relation to the authorised operations in the SEZ

Exemption from payment of service tax

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In case of the services consumed wholly within the sez, the exemption can be claimed by the developer or units SEZ without following the refund route.

No CENVAT credit of service tax paid on specified services

No CENVAT credit of service tax paid on the specified services used in relation to the authorized operations in the Special Economic Zone.

Exemption under no other notification claimed

Exemption on the specified services used in relation to the authorized operations in the Special Economic Zone shall not be claimed except under this notification

Proper records of receipts and utilization of services

The developer or unit of a special economic zone shall maintain proper account of receipt and utilization of the taxable services for which exemption is claimed.

II. Where the aforesaid services are consumed partially or wholly outside SEZ

The above referred same procedure to be followed, exemption is provided to the services consumed within the SEZ following the refund route, first they and claim refund as per prescribed procedure.

Partial exemption in respect of Materials/ goods and services involved in service:

Notification No 12/2003 [applicable to all taxable service]

That part of value of service = Value of goods and material sold in course of service shall be exempt if the following conditions are satisfied

Conditions:

- Invoice of service shall separately show the value of goods and material;
- Cenvat Credit of input shall not be availed [However, Cenvat Credit of input service and capital goods can be taken]

Calculation of service tax when service tax not charged

Where a service provider not collected service tax or not charged service tax

- Service Provider has to pay service tax treating the value service is inclusive of Service tax
- Service tax is to be calculated using backward calculation as below

Taxable value of service = amount collected x 100/100 + Rate of service tax

For example, if Bill amount is Rs. 1,000 and service tax is not shown separately in Invoice, the tax payable calculated by backwards as follows -

Assessable Value = (Cum tax price)/(1 + rate of tax)

Assessable Value (AV) = $1000 \times 100/110.3 = 906.62$. Assessable Value is Rs. 906.62 and service tax @ 10% will be Rs. 90.67. Education cess @ 2% of service tax will be Rs. 1.81. SAH education cess 1% is Rs. 0.91. Thus, total service tax including ec will be Rs.93.38

Short Recovery or excess Recovery of Service tax

- 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.
- Where there is excess recovery from a client or customer then such excess amount can be refunded to such client or customer, or it should pay to Government.

Reverse Charge in case of Service tax

Normally service Provider will have to pay service tax. But in the following cases service Receiver has to pay service tax

Service	ST to be paid by
Insurance Auxiliary Service of Insurance Agent	Insurer
Service provided by a person from outside	Service receiver in India (except in case of

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India	individual where the service received for personal purposes)
Goods transport Agency – when either Consignor or Consignee is of “specified category	Person paying the freight to GTA
Business Auxiliary Service of Distribution of Mutual Fund	Mutual Fund or Asset Management Company
Sponsorship service	Body Corporate or Firm receiving such service If the recipient of sponsorship service is located outside India, service tax is required to be paid by the service provider and not by the recipient

Service tax Valuation: Sec 67 and Service tax Valuation Rules 2006

Free service No service tax liability

Sec 67 (1)

Situation	Value
Where total consideration is monetary consideration	Taxable Value = Gross Amount Charged Exclusive of ST
Where consideration is in kind ["non-monetary consideration"] ☐ Wholly in Kind	Taxable Value= Monetary Equivalent of "non-monetary consideration" Rule 3 of Service Tax Valuation Rules, 2006 Method-1: Taxable Value= GAC by service provider for similar service provided to third party
☐ Partly in Kind	Method-2: Taxable Value = [Monetary Consideration + Mkt Value of Non-Monetary Consideration] [but it shall not be less than the cost of provisioning of service]
Where consideration is "not- quantifiable"	Taxable Value = Value determined in prescribed manner No manner prescribed so far – but it is practically best judgment assessment

Other points

Consideration also includes any amount which is payable for the taxable services provided or to be provided.

2. Money includes any currency, Cheque, promissory note, letter of credit, draft, pay order, travelers Cheque, money order, postal remittance and other similar instruments but does not include currency that held for its numismatic value.

3. Gross amount charged include payment by Cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment.

4. Service tax is payable on the gross amount and not on the net amount.

5. Section 67 provides that the amount charged has to be in relation to services rendered.

Rejection of Value by CEO Rule 4

- ❖ Where the CEO is satisfied that the value so determined by the service provider is not in accordance with the provisions of the Act or these rules, he shall issue SCN, why cannot fix the value at the amount specified in SCN
- ❖ The C E O after providing reasonable opportunity of being heard, determine the value of such taxable service as per provisions of the Act and these rules

Treatment of Reimbursement of Expenses for Service

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Cost/Exp incurred by Service provider and then recovered from service receiver ---

Treatment of such recovery in valuation is as below:

Where such cost/exp was incurred in the capacity of "PURE AGENT" of service receiver [Pure Agent:-- 4 features: i) Separate agreement to act as pure agent ii) No title over the goods/services so procured iii) Does not use such goods/services iv) Recovery cost on actual basis	Such costs/expenses are not includible in valuation
All Other cases	Such costs/expenses are includible in valuation

Commission Costs etc (list) includible in Service for valuation purpose (Rule 6)

Rule 6, provides the list of certain items includible/excludible in valuation in case of certain specific services. They are as below:

Inclusions:

- (i) the commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock-broker to any sub-broker
- (ii) the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit;
- (iii) The amount of premium charged by the insurer from the policy holder;
- (iv) The commission received by the air travel agent from the airline;
- (v) The commission, fee or any other sum received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;
- (vi) the reimbursement received by the authorized service station, from manufacturer for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such manufacturer;
- (vii) The commission or any amount received by the rail travel agent from the Railways or the customer;
- (viii) the remuneration or commission, by whatever name called, paid to such agent by the client engaging such agent for the services provided by a clearing and forwarding agent to a client rendering services of clearing and forwarding operations in any manner; and
- (ix) The commission, fee or any other sum, by whatever name called, paid to such agent by the insurer appointing such agent in relation to insurance auxiliary services provided by an insurance agent.

Exclusions

- (i) Initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit;
- (ii) The airfare collected by air travel agent in respect of service provided by him;
- (iii) The rail fare collected by rail travel agent in respect of service provided by him;
- (iv) Interest on loans.
- (v) The taxes levied by any Government on any passenger travelling by air, if shown separately on the ticket, or the invoice for such ticket, issued to the passenger (Notification No 15/2010 dt.27.02.2010)

Actual consideration to be the value of taxable service provided from outside India Rule 7

The value of taxable service received shall be such amount as is equal to the actual consideration charged for the services provided or to be provided.

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Notwithstanding above, the value of taxable services in respect of Services partly performed in India, shall be the total consideration paid by the recipient for such services including the value of service partly performed outside India

Classification of Service- Sec 65 A

If one service – classifiable into more than 1 category

- i) Choose specific over general
- ii) If Composite service – determine which service provides the essential character and classify composite service into that
- iii) Choose first in numerical order

Service tax payment Rule 6

As and when Payment is received

- ST is payable only on the amount received
- Service tax is payable even advance payments received
- Service tax is payable even amount received in installments or on part payments received
- Any amount received whether before or after provisioning of Service shall attract Service tax upon its receipt.
- Free Service- Sec 67 not applicable -No ST payable

Service on sub-contract basis

CBE&C vide circular No. 999.03/23.8.07 has clarified that a sub-contractor is also a taxable Service provider. His services are taxable even if these are used by main provider for Completion of his work. The sub- contractor is liable even if the service is input service of the main contractor and main contractor is paying service tax on entire value of contract.

Due dates: Service tax had to be paid on a monthly / quarterly basis depending upon the status of the service provider as below

Service provider	Due dates April to February/ April to December -3 QTRS	Due date for the month of March and Quarter ending March
Individuals and Firms (Quarterly Payment)	5th of the following the Quarter ended June, Sep, Dec	31 st March
Others (Monthly)	5th of the following month	31 st March
E payment	6 th instead of 5 th	31 st March

1. Assessee who paid Service tax 10 lakhs in Previous year or they have already paid 10 lakhs in current year they should pay tax electronically.).
2. If the last date for paying tax is a public holiday, tax may be paid on the next working day.
3. Tax is paid by debit to CENVAT account (if credit available) or through GAR – 7 challan.
4. The date of presentation of Cheque to the designated bank shall be deemed to be the date of payment of service tax (But the Cheque is honored).
5. If tax has been paid to Government for service not provided, then the excess payment made to Government may be adjusted in future dues, provided, the excess is refunded to customer.
6. Service Tax collected by the Service provider/ Service receiver as the case may be, should be remitted within the due date to the credit of the Central Government. Interest for delay @ 18% p.a.
7. Rounding off of tax: The payment of service tax should be round of in multiple of Rupees. Where such amount includes 50 paise or more it should be increased to one rupee and if it is less than 50 paise it should be ignored.

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Self Adjustment of Excess service tax paid

1. In case of reason not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification, adjustment cannot be made
2. On account of delayed receipt of details of payments towards taxable services may be adjusted without monetary limit.
3. In case other than specified in clause 2 above, for example difficult to accurately estimate the amounts he is going to receive from his customers in last two days in the month of march the excess amount paid may be adjusted with a monetary limit of rupees **Two lakh** for a relevant month or quarter, as the case may be
4. The details and reasons for such adjustment shall be intimated to the jurisdiction Superintendent of Central Excise within a period of fifteen days from the date of such adjustment. This is directory provision and not mandatory provision, since in many cases, it is impossible to inform in 15 days. In such cases, information at the time of filing return should be sufficient
5. Self- adjustment of excess credit is not allowed on account of reasons like interpretation of law, taxability, classification, valuation or applicability of any exemption notification [Rule 6(4B)(i)]. In such cases, refund application should be filed and self adjustment is not Permissible.

Adjustment if service not provided partly or fully - If excess tax is paid, in respect of service which is not provided either wholly or partly for any reason, the excess service tax paid can be adjusted against service tax payable for subsequent period, if the value of services and tax thereon is refunded to the person from whom it was received. [Rule 6(3)]. Such adjustment is permissible only when refund is on account of services not provided. Thus, if the person refunds on account of giving some discount to client, this provision does not apply.

Adjustment in case of service tax on renting of immovable property - In case of service tax on renting of immovable property, abatement is available in case of property tax paid to local authorities. If such tax is paid at a later date, self-adjustment in service tax payable is permissible within one year from date of payment of tax, without any monetary limit. Assessee should inform Superintendent within 15 days of making adjustment [Rule 6(4C) of Service Tax Rules].

Excess collection of tax – Sec. 73A & 73B

1. The service provider shall not collect tax in excess of what he pays to the Government.
2. The case his collection is more than his payment, he shall promptly deposit the excess with Government or refund the amount collected excess to the customer.
3. Any delay in this regard attracts payment of interest @ 18% p.a.

Service tax abatements in case of certain specific services: Notification No 1/2006

Certain % of “Gross Amount Charged” is Exempt, if the service includes the cost of materials, goods and other items. No Cenvat credit. ST payable on Taxable value The following are the details

Sl No.	Nature of Service	Abatement Allowed	Taxable Value	Remarks
(i)	Rent-A-Cab Scheme Operator's Service	60%	40%	Service include fuel cost

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(ii)	Tour-Operator's Service 4 Package Tour [i.e., accommodation cum- transport, part of tour] 4 Non-package Tour [say,	75% 60% 90%	25% 40% 10%	
(iii)	Mandap Keeper Service	40%	60%	Service include supply of food
(iv)	Convention services	40%	60%	Service include supply of food
(v)	Outdoor Catering	50%	50%	Service include supply of food
(vi)	Pandal & Shamiana Contractor's Service	30%	70%	Service include supply of food provided
(vii)	Commercial or Industrial Building Construction Service	75%	25%	Service including the value of materials, cost of land (Not applicable if service consist only completing and finishing services
(viii)	Residential Complex Construction Service	67%	33%	includes value of material
(ix)	Erection, Commissioning & Installation	67%	33%	includes value of material
(x)	Transport of goods in Containers by Rail	70%	30%	Service including the value of materials.
(xi)	Business Auxiliary Service in relation to production/ <u>processing of PARTS and ACCESSORIES</u> which are used in the manufacture of "Cycles / Cycle Rickshaws / Hand-operated Sewing Machines."	30%	70%	inclusive of cost of inputs and input services, whether or not supplied by the client
(xii)	Goods Transport Agency	75%	25%	Tax on amount in his Invoice [Payment will be made by consignor/consignee who is actually paying freight]]
(xiii)	Chit fund	70%	30%	

Service tax Registration Sec 69 / Rule 4

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Persons requiring Registration

Person	Time Limit
Person liable for payment of Service tax (Normally Service providers and in some cases service receivers – reverse charge)	Within 30 days of service becoming taxable ,if business is commenced later on, then within 30 days of commencement of business
Service exempt – no liability for payment Service Tax – Aggregate value of service exceeding 9 lacs	Within 30 days of value exceeding 9 lacs
Input Service Distributor	Within 30 days of commencement of business

The following persons who are receivers of service liable to pay service are required to be Registered

	Category of Service	Specified Person
1	General Insurance Business	Insurer of Re-insurer
2	Insurance Auxiliary Service provided by an Insurance Agent.	Insurance Company
3	Service provided by a Goods Transport Agency for transport of goods by road.	Person Liable: Specified Consignor/ Consignee who pays or is liable to pay freight should pay the Service Tax. ☐ Specified consignor or consignee includes – (i) Factory; (ii) Company; (iii) Corporation, (iv) Society; (v) Co-operative Society; (vi) Registered Dealer of Excisable
4	Business Auxiliary Services provided by Mutual Fund Distributors in relation to distribution of Mutual Fund	Asset management Company
5	Sponsorship Service provided to any Body Corporation or Firm	Body Corporate or Firm,
6	Any Taxable Service provided by any person from a country other than India u/s 66A.	Person receiving such service

Premises to be registered

S No	Premises details	Registration required
1	Single Premise, Single Service or Single premises multiple services	Single Registration
2	Multiple Premises, Single Service/Multiple Services	Centralized Billing System or Centralized Accounting System not in existence - ☐ Registration required for all premises registration with Superintendent of Central Excise] ☐ Centralized Billing System or Centralized Accounting System in existence - ☐ Registration only those premises where CBS/CAS is in existence with Commissioner of Central Excise

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Procedure for Registration

Registration should be made in Application by form No ST-1 duly filled up and signed along with self certified copy of PAN

Other enclosures normally required are MOA, AOA in case of Company, Partnership deed in case of Firm, Power of Attorney copy in case of appointment of Manager, declaration about date of commencement of service/business. Board resolution in case of director who sign the application and returns and records.

Document to be Submitted with ST-1 As per Hyderabad-IV, Trade Notice No. 76/2003, dated 6-11-2003

- Proof of address of the premises office sought to be registered
 - PAN number of the assessee
 - List of Branches offices or premises of the assessee
 - Brief note on accounting system adopted by the assessee
 - Branch-wise series of invoices maintained along with a sample copy thereof
 - Previous years audited balance sheet along with gross trial balance of different branches
 - Details of records accounts maintained at different branches and Central Office
- Bank account numbers of the Branches and Central Office through which the receipts are deposited, transacted

The application will be scrutinized and registration certificate will be granted in form NO ST-2 within 7 days)

STC code i.e. registration number - Registration No., also known as 'Service Tax Code (STC)' is a fifteen digit PAN based number. First 10 digits of this number are the same as the PAN of such person. Next two digits are 'ST'. Next three digits are serial numbers indicating the number of registrations taken by the service taxpayer against a common PAN - CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

Premises code - The registration certificate gives details of 'premises code' which is given on the basis of Commissionerate + Division + Range + Serial No. The number is given in the registration certificate ST-2 at Sl No. 5. This number is used for easy identification of location of registration of tax payer – para 2.6 of CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

- Penalty for failure to obtain registration - Rs. 5000/ Rs 200 per day whichever is higher

Change in the Constitution of firm

- Intimate any change in the details furnished in ST1 to AC/DC
- Within 30 days of such change

Surrender of Registration

- Every registered assessee, who ceases to provide the taxable service for which he is registered, shall surrender his registration certificate immediately. rule 4(7)
- Assessee should file up-to-date returns and apply for cancellation. Registration may not be cancelled if any demands are pending.

Records and Returns under Service tax

Invoice by Service Provider

Invoice should be raised and prepared within 14 days from date of completion of taxable service or receipt of payment towards the value of taxable service, whichever is earlier.

Details required to be shown in invoice/bill/challan - As per Rule 4A(1),

the invoice/challan/Bill should be signed by authorised person of provider of input services, should be serially numbered and should contain following details -

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- (1) Name, address and registration number of person providing taxable service
- (2) Name and address of person receiving taxable service
- (3) Description, classification and value of taxable service provided or to be provided and
- (4) Service tax payable on the taxable service

The Rule does not make mention of date, but actually, date should be mentioned.

Education Cess and SAH education Cess to be shown separately in the Invoice for complying with requirements of Cenvat Credit Rules to facilitate availment of Cenvat credit by recipient
Relaxation in case of banking and financial services

In case of banking and financial services provided by banking company, FI, NBFC or a commercial concern, the invoice/challan need not be serially numbered and name and address of person receiving taxable service need not be contained on the invoice/challan.[proviso to Rule 4A(1) of Service Tax Rules]. This facility is also available to input service distributors of such type of service Para 5.3 of CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

Air ticket to be considered a valid invoice/bill/challan under rule 4A

In case of aircraft operation services, the ticket (in any form, including electronic form whatever may be the name) showing the name of the passenger, description of the journey and the amount of service tax collected would be deemed to be the invoice/ bill /challan for the purposes of the rule

The ticket would be a valid invoice/ bill /challan even if it does not contain registration number of the service provider or the classification of the service received or address of the service receiver. **Notification No.39/2010 ST dated 28.06.2010**

Invoice in case of continuous service/Periodical billing

In some cases, service is provided continuously for successive periods of time and value of such taxable service is determined or payable periodically. In such cases, the Invoice or challan shall be issued within 14 days from last date of the period [second proviso to Rule 4A(1) .

Invoice at end of billing period

In case of some services like services of commission agent, it is impractical to prepare invoice of commission for each sale. Billing is done at end of the agreed period (say month or quarter), which is termed as 'Billing Period'. In such cases, it can be argued that such services are provided on continuous basis and Billing at end of the period should be acceptable.

Maintenance of Records Rule 5

No separate form has been prescribed.

☐ Records can be kept in electronic form also.

☐ Record should normally include

- (1) Register for value of services billed giving bill wise details
- (2) Register for value of services received/collected giving bill wise details
- (3) Register for Cenvat credit for Credit available, utilized and balance as per Cenvat credit rules 9
- (4) Usual financial records such as cash, bank book general ledger, copies of invoices and Bank statements etc.,

☐ Records should be preserved for a period of five years.

☐ They should be made available for inspection by departmental officers

Returns to be filed under Service tax

Indirect taxes service tax

Person liable for payment of Service tax	April to September - Due date October 25th October to March – Due date April 25th
Service exempt - no liability for payment of Service Tax - Aggregate value of service exceeding 9 lacs	April to September - Due date October 25th October to March – Due date April 25th
Input Service Distributor	April to September - Due date October 30 th October to March – Due date April 30 th

ST return can be revised to correct error or omission – revised return can be filed within 90 days. From the date of filing ST3. Revised return can be filed only when the original ST3 filed in time. If return is revised, then Relevant Date for the purposes of sending SCN shall be “Date of

filing of revised return” [Rule 7-B of STR, 1994]

Where the St paid(Gross) was Rs. 10 lakhs or more returns to be filed electronically

Documents to be attached along with return

The following documents that are to be attached along with ST-3

1. Copies of GAR-7 challans, for payments made. (Now it is not mandatory. 20 digit CIN to be quoted)
2. Memorandum ST-3A, in case of provisional payment of tax.
3. 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 memorandum received from his branch office

Penalty of belated filing of service tax return

Sec 70 has been amended by FA, 2007. It provides for payment of late fees for belated return .As per Rule 7C. Amount to be paid for delay in furnishing is as below

Period of delay	Late fee payable
(i) 15 days from the due date	Rs 500/-
(ii) beyond 15 but not later than 30 days from the due	Rs 1,000/-
(iii) beyond 30 days from the due date	Rs 1000 plus Rs 100 for every day from the 31st day till the date of furnishing the said return

Provided that the total amount of late fee shall not exceed Rs.2000/-.

Penalty can be waived if no tax was payable

Where the gross amount of service tax payable is nil, the Central Excise officer may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the penalty.

Department is required to accept late return even non submission of proof of late fee is not paid – In case of returns filed late, the appropriate late fees should be paid at the time of filing the return, without waiting for any communication or notice from the department. Mere non-submission of evidence of payment of late fee along with the return is, however, not a ground for refusal to allow filing of the return – para 6.4 of CBE&C Circular No. 97/8/2007-ST dated 23-8-2007.

E filing of Returns

☐ Mandatory where the Service tax paid is Rs. 10 lakhs(Gross) during PY or already paid Rs. 10 lakhs in CY. Optional- Other cases

☐ Basic Requirement PAN Based Service Tax Code (STC)

Indirect taxes service tax

Procedure

☐ File Application to Divisional AC/DC in Annexure 'A' with a Trusted email id & a Contact No.

☒ AC/DC will Provide User id & Password within Ten Days of receipt of Application through e-mail

☐ You can Change Password ☐ File return on www.aces.gov.in

Condonation of Delay

☐ Only for those using e-filing Facility first time

☐ Assessee has faced technical difficulties

☐ Delay of 1 month shall be condoned as per Circular No. 71/2004

Import of Services

Import of Service [Service provided from outside India and received in India]

Charge of Service Tax on services received from outside India Sec 66 A

Person residing out of India, Providing or to be provided service having (SP)	Person residing In India,(Service Receiver)
(i) established a business or has a fixed establishment or	(i) established a business or has a fixed establishment or
(ii) or has his permanent address or usual place of residence	(ii) or has his permanent address or usual place of residence

Taxable service shall be treated as if the recipient had himself provided the service in India and Service recipient is liable to pay service tax

Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.

Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted

Non Applicability of Service recipient liability

Where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce. I.e. personal purpose. In such a cases as per charging section 65 (105), Service provider, Nonresident liable to pay service tax

Taxation of Service (Provided from outside India and received in India) Rules 2006

Rule 3: It provides Criteria for charge in case of import of services, as below

<i>Immovable Property Criteria</i>	Immovable property situation in India
<i>Performance Based Criteria</i>	Service is physically performed in India (whether wholly or partly)
<i>Residuary</i> Excluding 2: a) Foreign Travel Air b) Travel by Cruise Service	<i>Provided in relation to Business or Commerce</i> <i>Service recipient is located in India</i>

Rule 4 Service recipients shall get him registered.

Rule 5 the service imported into India for which service recipient is liable for payment of ST
CA N RAJA SEKHAR CHENNAI, 9444019860 rajdhost@yahoo.com

Indirect taxes service tax

Shall not be treated as "Output Service" for the purpose of using Cenvat credit of other services for payment of such amount.

India" includes the installations, structures and vessels in the Continental Shelf and Exclusive Economic Zone (UP to 200 nautical miles) of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.

Liability of Service tax in case of import of services

S No	Nature of Transaction	Liability of service tax
1	Services performed by Nonresident in India	Liability is on recipient (If recipient deals with foreign establishment,)
2	Services performed by Nonresident outside India, but consumed in India	Liability is on recipient
3	Services performed and consumed Outside India but paid from India	No ST Liability
4	Services performed and consumed Outside India but paid from India, Accounted in India books	No ST Liability
5	Services performed and consumed Outside India but paid by branch outside India but claimed as reimburse of expenditure from Indian H O	ST liability may arise

Export of Services/ Export of service rules 2005

Rule 3

<i>Immovable Property Criteria</i>	Immovable property situation in India
<i>Performance Based Criteria</i>	Service is physically performed in India (whether wholly or partly)
<i>Residuary</i> Excluding 2: a) Foreign Travel Air b) Travel by Cruise Service	<i>Provided in relation to Business or Commerce</i> <i>Service recipient is located in India</i> <i>Other cases ---Service receiver is located outside India at the time of provision of service is made.</i>

Additional Conditions for all 3 categories:

- 1) Service must be provided from India and used outside India
- 2) Payment must be received in convertible Foreign Exchange.

How to export service

2-Options

Export without payment of Service tax (Rule 4 of Export of Service Rules, 2005)

Pay ST and then claim rebate (Rule 5 of Export of Service Rules, 2005)

[Rebate is also admissible of related input and input service]

"India" includes the installations structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof

Exemption to specified taxable services used for export of goods

Notification No. 40/2009 ST dated 30.09.2009 has amended Notification No.17/2009 ST dated 07.07.2009 which exempts Service provided for transport of export goods through national waterway, inland water and coastal shipping (zzzzl)

Indirect taxes service tax

The exporter shall produce the Bill of Lading or a Consignment Note or a similar document by whatever name called, issued in his name; and produce evidence to the effect that the said transport is provided for export of relevant goods.

SERVICE TAX RETURN PREPARERS SCHEME

Service Tax Return preparers 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 filed under section 70.

2. Power of Board: 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 – Manner in which and the period for which the Service Tax Return Preparer shall be authorized,

- a. 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,
- b. Code of Conduct for the Service Tax Return Preparer,
- c. Duties and Obligations of the Service Tax Return Preparer,
- d. Circumstances under which the authorization given to a Service Tax Return Preparer may be withdrawn, Any other matter which is required to be specified by the Scheme for the purposes of this section.

Assessments demands, refunds and recoveries, settlement Commission, AAR etc.

The provisions are similar to excise and excise provisions will be applicable: Check the comparison chart available at the end of customs notes

Rectification of Mistake apparent on record Sec 74

The Central Excise Officer who has passed order (of assessment or demand or penalty) can rectify any mistake apparent from the record, within two years of the date on which the order was passed. The mistake must be 'apparent from the records'. Any rectification that reducing the refund or increasing the liability, opportunity should be given to assessee.

Revision orders by Commissioner Sec 84

The Commissioner of Central Excise can revise the orders passed by adjudicating authority subordinate to him. The revision order can be passed anytime within two years of the original order, but not afterwards. No revision can be made if appeal against such order is pending with Commissioner (Appeals) [Section 84]. Appeal against the order of Commissioner (after revision) lies with CESTAT under Section 86.

Power of Central Excise Officer to Access to a registered premises Rule 5 A

- (1) An officer authorized by the Commissioner in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.
- (2) Every assessee shall, on demand, make available to CEO or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, within a reasonable time not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by such officer or the audit party, as the case may be,-

Indirect taxes service tax

Penalties under Service tax – Sec. 76, 77 & 78

S.N	Nature of Violation	Penalty
1.	Failure to pay Service tax [Sec.76	Not less than Rs.200 per day of default or 2% per month of tax whichever is higher. In no case penalty can exceed the amount of tax.
2.	Suppression of Value (fraud cases)	100% to 200% of duty sought to be charged. Penalty is reduced to 25% of if service tax paid within 30 days.
3.	Failure of registration	Rs.5,000 or Rs.200 per day whichever is higher from the first day after due date till the day of actual compliance.
4.	Failure to furnish information called by officer on Central Excise Officer	Rs.5,000 or Rs. per day whichever is higher from the first day after due date till the day of actual compliance.
5.	Failure to appear before the Central Excise Officer when issued with a summon for appearance to give evidence or to produce document.	Rs.5,000 or Rs.200 per day whichever is higher from the first day after due date till the day of actual compliance.
6.	Failure to maintain books of	Maximum Rs.5,000/-
7.	Fails to pay through e-payment	Maximum Rs.5,000/-
8.	Where no penalty is mentioned	Maximum Rs.5,000/-

No penalty will be levied if assessee proves; there is a reasonable and sufficient cause for Failure to Comply- Sec 80

Power to search premises: Section 82:-

If the Commissioner of Central Excise has reason to believe that any documents or books or things which in his opinion will be useful for or relevant to any proceeding under this Chapter are secreted in any place, he may authorize any AC/DC to search for and seize or may himself search for and seize, such documents or books or things.

The Criminal code Procedure will apply with regard to searches.

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