SIGNIFICANT AMENDMENTS MADE THROUGH NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.07.2011 TO 30.06.2012

A. NEW EXEMPTIONS/AMENDMENTS IN/WITHDRAWAL OF EXISTING EXEMPTIONS

1. Rate of service tax restored to 12%

As per section 66, the charging section under earlier regime, rate of service tax was 12% of the value of taxable services. However, the rate of service tax was reduced to 10% vide *Notification No. 8/2009 ST dated 24.02.2009.*

With effect from 01.04.2012, ***Notification No. 02/2012-ST dated 17.03.2012*** rescinded the said notification and the rate of service tax was restored to 12% for the period between 01.04.2012 to 30.06.2012.

With effect from 01.07.2012, new charging section, section 66B has come into effect. The rate of service tax is 12% as per the new charging section also.

2. Rescission of the earlier Notifications

With the introduction of negative list approach of taxation of services, a large number of earlier notifications which were either not in line with the new provisions or which have been subsumed in mega exemption or abatement notification or a new notification has been issued, have been rescinded *vide* ***Notification No. 34/2012-ST dated 20.06.2012.*** The rescinded notifications have been tabulated as under:-

S.No.	Notification No.	Description of the Notification
1.	45/2011-ST dated 12-09-2011	Exemption to the taxable services provided to any business entity, by an arbitral tribunal, in respect of arbitration.
2.	33/2011-ST dated 25-04-2011	Exemption to preschool coaching and training and coaching or training relating to educational qualifications that are recognized by law.
3.	31/2011-ST dated 25-04-2011	Exemption to accommodation services when the declared tariff for providing of such accommodation is less than ₹ 1000 per day
4.	30/2011-ST dated 25-04-2011	Exemption to health services
5.	11/2011-ST dated 01-03-2011	Exemption to works contract service provided wholly within a port/other port for construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways.
6.	10/2011-ST dated 01-03-2011	Exemption to works contract service provided wholly within an airport and

		classified under erstwhile section 65(105)(zzm)
7.	09/2011-ST dated 01.03.2011	Exemption to the transport of goods by air service to the extent air freight is included in the customs value of goods.
8.	08/2011-ST dated 01-03-2011	Exemption to services of transportation of goods by air/road/rail provided to a person located in India when the goods are transported from a place outside India to a destination outside India
9.	07/2011-ST dated 01-03-2011	Exemption to the general insurance service provided under "Rashtriya Swasthya Bima Yojna"
10.	06/2011-ST dated 01-03-2011	Exemption to works contract service rendered for carrying out construction services under Jawaharlal Nehru Urban Renewable Mission (JNURM) and Rajiv Awaas Yojana
11.	05/2011-ST dated 01-03-2011	Exemption to business exhibition held outside India
12.	58/2010-ST dated 21-12-2010	Exemption to the general insurance business provided under the Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme
13.	53/2010-ST dated 21.12.2010	Exemption to packaged/canned software from service tax on specified taxable service when excise/customs duty is paid
14.	50/2010-ST dated 08-10-2010	Exemption to persons marketing lottery tickets to authorized Distributors/Selling Agents opting for the optional Composition Scheme
15.	47/2010-ST dated 03-09-2010	Exemption to outdoor Catering for Mid-Day Meal Scheme
16.	42/2010-ST dated 28-06-2010	Exemption to commercial or Industrial Construction provided wholly within the airport
17.	41/2010-ST dated 28-06-2010	Exemptions to cargo handling agency and storage or warehouse keeper in respect of agricultural produce, air

		transport of export goods and site formation and clearance, excavation and earthmoving and demolition and such other similar activities when provided wholly within port/airport
18.	38/2010-ST dated 28-06-2010	Exemption to commercial or industrial construction of wharves, quays, docks, stages, jetties, piers and railways within the port
19.	32/2010-ST dated 22-06-2010	Exemption to taxable services provided for distribution of electricity
20.	31/2010-ST dated 22-06-2010	Exemption to specified services provided within a port or an airport
21.	30/2010-ST dated 22-06-2010	Exemption to the sponsorship services provided for tournaments/ championships organised by specified bodies
22.	28/2010-ST dated 22-06-2010	Exemption to construction of complex service in relation to Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana
23.	27/2010-ST dated 22-06-2010	Exemption to air journeys originating/terminating in North-Eastern States
24.	25/2010-ST dated 22-06-2010	Exemption to air transport of persons in transit in the course of international journey who have not passed through immigration
25.	23/2010-ST dated 29-04-2010	Exemption to the commercial training or coaching centre services provided in relation to "Modular Employable Skill courses"
26.	13/2010-ST dated 27-02-2010	Exemption provided to Indian News Agencies subject to specified conditions
27.	12/2010-ST dated 27-02-2010	Exemption to certain services provided in relation to erection, commissioning or installation
28.	11/2010-St dated 27-02-2010	Exemption to transmission of electricity
29.	10/2010-ST dated 27-02-2010	Exemption to Central and State Seed Testing Laboratories, and Central and

		State Seed Certification Agencies
30.	08/2010-ST dated 27-02-2010	Exemption provided to transport of specified goods by rail
31.	42/2009-ST dated 12-11-2009	Exemption to the manufacture of parts of cycles or sewing machines in relation to specified processes subject to specified conditions
32.	41/2009-ST dated 23-10-2009	Exemption to service in relation to execution of a works contract in respect of canals, other than those primarily used for the purposes of commerce or industry
33.	39/2009-ST dated 23-09-2009	Exemption to value of inputs used for providing business auxiliary service during manufacture/processing of alcoholic beverages
34.	32/2009-ST dated 1-09-2009	Exemption to taxable service provided in relation to manufacture of specified goods charged to excise duty under Medicinal and Toilet Preparations (Excise Duties) Act, 1955.
35.	31/2009-ST dated 1-09-2009	Exemption to the business auxiliary service provided by the sub-broker to a stock-broker
36.	30/2009-ST dated 31-08-2009	Exemption to certain specified goods transported through national waterway, inland water and coastal shipping.
37.	24/2009-ST dated 27-7-2009	Exemption to management, maintenance or repair of roads service.
38.	20/2009-ST dated 07-07-2009	Exemption to tour operators with contract carriage permit for specified services.
39.	19/2009-ST dated 07-07-2009	Exemption to Money changer services provided in relation to sale and purchase of foreign currency when such services are provided to any bank, including a bank located outside India, or money changer, by any other bank or money changer.
40.	01/2009-ST dated 05-01-2009	Exemption to specified taxable services provided to Goods Transport Agency for

		use in transport of goods by road
41.	14/2008-ST dated 01-03-2008	Exemption to services provided by a person located outside India in relation to booking of accommodation for a customer located outside India in a hotel in India
42.	13/2008-ST dated 01-03-2008	Exemption to a goods transport agency of 25% of the gross amount charged for providing the said taxable service
43.	34/2007-ST dated 23-05-2007	Exemption to services provided for the personal use or the use of the family members of diplomatic agents or career consular officers posted in a foreign diplomatic mission or consular post in India
44.	33/2007-ST dated 23-05-2007	Exemption to services provided for the official use of a foreign diplomatic mission or consular post in India
45.	25/2007-ST dated 22-05-2007	Exemption to commercial or industrial construction services and works contract services provided to any person by any other person in relation to construction of port or other port
46.	12/2007-ST dated 01-03-2007	Exemption to services provided in relation to delivery of contents of a cinema in digitized encrypted form
47.	11/2007-ST dated 01-03-2007	Exemption to technical testing and analysis services of newly developed drugs on human participants by CRO
48.	10/2007-ST dated 01-03-2007	Exemption to taxable Services provided by entrepreneur in Technology Business Incubator or Science and Technology Entrepreneurship Park (STEP)
49.	08/2007-ST dated 01-03-2007	Exemption to service provided to an individual member by a resident welfare association in case total consideration received from such member does not exceed ` 3,000 per month
50.	22/2006-ST dated 31-05-2006	Exemption to services provided by or to the Reserve Bank of India
51.	06/2006-ST dated 01-03-2006	Exemption to testing and analysis of

		water quality by Government owned State/ District level laboratory
52.	04/2006-ST dated 01-03-2006	Exemption to financial leasing services including equipment leasing and hire purchase equivalent to service tax calculated on 90% of interest
53.	01/2006-ST dated 01-03-2006	Abatement granted to various specified services
54.	29/2005-ST dated 15-07-2005	Exemption to service provided to any person, by an aircraft operator, in relation to transport of export goods by aircraft
55.	21/2005-ST dated 07-06-2005	Exemption to job work in relation to manufacture of diamonds, gem stones and jewellery
56.	17/2005-ST dated 07-06-2005	Exemption to aforesaid services provided for construction of roads, airports, railways, transport terminals, bridges, tunnels, dams, ports or other ports
57.	08/2005-ST dated 01-03-2005	Exemption to job-worker for the goods produced on behalf of client
58.	34/2004-ST dated 03-12-2004	Exemption to consignments transported by road when gross amount charged is upto ₹ 1,500/- or when gross amount charged for an individual consignment is upto ₹ 750/-
59.	33/2004-ST dated 3-12-2004	Exemption to transport of fruits, vegetables, eggs, food grains, pulses or milk by road in a goods carriage
60.	29/2004-ST dated 22-09-2004	Exemption for providing services of overdraft, cash credit or discounting of bills on value of interest or discount
61.	24/2004-ST dated 10-09-2004	Exemption to commercial training or coaching services provided by vocational/recreational training institute
62.	17/2004-ST dated 10-09-2004	Exemption from service tax on holder of intellectual property right of cess paid towards the import of technology under the provisions of section 3 of the Research and Development Cess Act

63.	14/2004-ST dated 10-09-2004	Exemption to specified services in relation to business auxiliary service
64.	13/2004-ST dated 10-09-2004	Exemption to banking company or a financial institution, providing service in relation to collection of duties or taxes levied by Government
65.	16/2003-ST dated 11-07-2003	Exemption to service provided by Insurer of General Insurance to Policy Holder under Universal Health Insurance Scheme.
66.	14/2003-ST dated 20-06-2003	Exemption to the use of the precincts of a religious place as a mandap.
67.	13/2003-ST dated 20-06-2003	Exemption to commission agent in relation to sale or purchase of agricultural produce.
68.	12/2003-ST dated 20-06-2003	Exemption to the value of the goods and materials sold by service provider to recipient of service subject to the documentary evidence being available.
69.	10/2003-ST dated 20-06-2003	Exemption to commercial training or coaching services forming an essential part of a course or curriculum of any other institute or establishment
70.	18/2002-ST dated 16-12-2002	Exemption from service tax on consulting engineering services of cess paid on transfer of technology under the Research and Development Cess Act, 1986
71.	16/2002-ST dated 02-08-2002	Exemption to all services provided to United Nations or International Organisation
72.	10/2002-ST dated 01-08-2002	Exemption to cargo handling agency service provided in relation to agricultural produce or goods intended to be stored in a cold storage
73.	4/2000-ST dated 31-07-2000	Exemption to cattle insurance services provided under the Central Sector Scheme on Cattle Insurance
74.	3/2000-ST dated 06-07-2000	Exemption to National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana) or the Pilot Scheme on

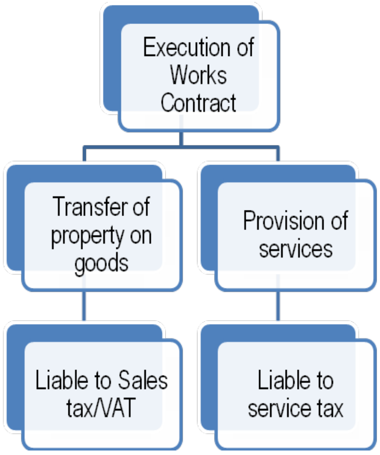
		Seed Crop Insurance
75.	2/2000-ST dated 01-03-2000	Exemption to mechanised slaughter house in relation to the slaughtering of bovine animals
76.	22/1997-ST dated 26-06-1997	Exemption from service tax on the value of taxable service which is in excess of the commission received by the air travel agent from the airline for booking of passage for travel by air
77.	12/1997-ST dated 14-02-1997	Exemption to Jan Arogya Bima Policy
78.	03/1994-ST dated 30-06-1994	Exemption to following insurance schemes:- (1) Personal Accident Social Security and Hut Insurance Scheme. (2) Comprehensive Crop Insurance Scheme (3) Cattle Insurance under Integrated Rural Development Programme (4) Scheme for Insurance of Tribals (5) Janata Personal Accident Policy and Gramin Accident Policy (6) Group Personal Accident Policy for Self-Employed Women (7) Agricultural Pumpset and Failed Well Insurance (8) Premia collected on insurance of export of goods from India and export credit insurance (9) Small transactions involving premium of less than Rs. 50 except motor insurance

B. AMENDMENTS IN THE SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006

The amendments in the Service Tax (Determination of Value) Rules, 2006 have been made vide *Notification No. 24/2012 dated 06.06.2012* effective from 01.07.2012.

1. More comprehensive manner of determination of value of service portion in the execution of a works contract prescribed [Rule 2A]

Works contract is a contract for the provision of service as well as supply of materials. As decided by Apex Court in *BSNL v. UOI 2006 (2) S.T.R. 161 (S.C.)*, a works contract can be segregated into a contract of sale of goods and contract of provision of service. With a view to bring certainty and simplicity, the manner of determining the value of service portion in works contracts was provided in the erstwhile rule 2A of the Service Tax (Determination of Value) Rules, 2006. In order to align this rule with the new system of taxation of services based on the negative list, the erstwhile rule 2A has been replaced by a new rule 2A which provides as follows:-.



Subject to the provisions of section 67, the value of service portion in the execution of a works contract shall be determined in the following manner, namely:-

A. **Determination of value on the basis of value of transfer of property in goods transferred, adopted for State VAT purposes**

Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.

Particulars	Amount (₹)
Gross amount charged for the works contract	xxxx
Less: Value of transfer of property in goods transferred, computed for State VAT purpose**	xxxx
Less: VAT/Sales tax, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract.	xxxx
Value of the works contract service	xxxx

****Note: Value of transfer of property in goods involved in the execution of the said works contract in case VAT/sales tax is paid/payable on their actual value**

Where VAT/sales tax has been paid/payable on the actual value of property in goods transferred in the execution of the works contract (and not using standard rate of deduction) then, such value adopted for the purposes of payment of VAT/sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

Inclusions

Value of works contract service shall include -

(i) labour charges for execution of the works;

(ii) amount paid to a sub-contractor for labour and services;

(iii) charges for planning, designing and architect's fees;

(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;

(vi) cost of establishment of the contractor relatable to supply of labour and services;

(vii) other similar expenses relatable to supply of labour and services; and

(viii) profit earned by the service provider relatable to supply of labour and services.

B. Simplified scheme for determining the value of service portion in a works contract

Where the value has not been determined as per the aforementioned method, the person liable to pay tax on the taxable service involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

S.No.	In case of	Value of service portion shall be ______ of the total amount charged for the works contract
1.	works contracts entered into for execution of original works	40%
2.	works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods	70%
3.	other works contracts, not covered under in above two cases, including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property	60%

Points which merit consideration

1. Meaning of original works

Original works means

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.

2. Meaning of total amount

Particulars		Amount	Amount
Gross amount charged for the works contract			xxxx
Add: Value of all goods and services supplied by the service receiver in/in relation to the execution of the works contract (whether or not supplied under the same contract or any other contract)	FMV of such goods & services (determined in accordance with the generally accepted accounting principles)	xxxx	
	Less:		
	(i) the amount charged for such goods or services, if any, by service receiver; and	xxxx	
	(ii) VAT/sales tax, if any, levied thereon	xxxx	xxxx
Total amount			xxxx

3. It is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

Illustration: Mahavir Enterprises (ME) has entered into a contract for construction of a building with Sambhav Constructions Ltd (SCL). As per the agreement, the amount payable (excluding all taxes) by ME to SCL is ₹ 95,00,000 in addition to the steel and cement to be supplied by ME for which it charged ₹ 5,00,000 from SCL. Fair market value of the steel and cement (excluding VAT) is ₹ 10,00,000. Compute the 'total amount charged' pertaining to the said works contract for execution of 'original works'.

S. No.	*Particulars*	*Amount (₹)*
1.	*Gross amount received excluding taxes*	*95,00,000*
2.	*Fair market value of steel and cement supplied by ME excluding taxes*	*10,00,000*
3.	*Amount charged by service receiver for steel and cement*	*5,00,000*
4.	*Total amount charged (1.+2.-3.)*	*1,00,00,000*

5.	*Value of service portion (40% of 4. in case of original works)*	*40,00,000*

Note: When the service provider pays partially or fully for the materials supplied by the service receiver, gross amount charged would inevitably go higher by that much amount.

2. Valuation of money changing service-Rule 2B amended

With the introduction of negative list of services, provisions of section 65 have ceased to exist. Therefore, the reference to sub-clauses (zm) and (zzk) of clause (105) of section 65 has been removed from rule 2B.

3. Determination of value of service portion involved in supply of food or any other article of human consumption or any drink in a restaurant or as outdoor catering [Rule 2C inserted]

Subject to the provisions of section 67, the value of service portion, in an activity wherein goods being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity at a restaurant or as outdoor catering, shall be the specified percentage of the total amount charged for such supply, in terms of the following table, namely:-

S.No.	Description	Value of taxable service shall be ____ of the total amount
1.	Service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity, at a restaurant	40%
2.	Service portion in outdoor catering wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of such outdoor catering	60%

1. Meaning of total amount

Particulars			Amount
Gross amount charged			xxxx
Add: Value of all goods and services supplied in or in relation to the supply of food or any other article of human consumption or any drink (whether or not intoxicating),	FMV of all goods & services supplied by the service receiver (determined in accordance with the generally accepted		

whether or not supplied under the same contract or any other contract	accounting principles) Less: (i) the amount charged for such goods or services, if any, by the service receiver; and (ii) VAT/sales tax, if any, levied thereon	xxxx xxxx xxxx	 xxxx
Total amount			xxxx

2. It is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985.

4. Rule 3 relating to manner of determination of value amended

Prior to amendment

Earlier in rule 3, "prescribed manner" provided for determination of the value of taxable service was inadvertently made applicable to the situation where the consideration received is not wholly or partly consisting of money. However, such a situation was fully covered by section 67(2) of the Finance Act, 1994.

After the amendment

Consequently, rule 3 has been suitably amended. Hence, now the prescribed manner for determination of the value of taxable service is applicable only in a situation where such value is not ascertainable.

5. Reference to section 65(105)(zzzx) substituted by the words "telecommunication service"

With the introduction of negative list of services, provisions of section 65 have ceased to exist. Therefore, the reference to sub-clauses (zzzx) of clause (105) of section 65 has been substituted with the telecommunication service.

6. Amendments in rule 6 relating to cases in which the commission, costs, etc., will be included or excluded

(a) Sub-rule (1)-Inclusions to taxable value-Clause (x) inserted

Clause (x) has been inserted in sub-rule (1) which provides as follows:-

The amount realised as demurrage or by any other name whatever called for the provision of a service beyond the period originally contracted or in any other manner relatable to the provision of service.

This change is relevant in the context of negative list where such amounts may be collected in the name of demurrage, but will actually be in all respects a service.

(b) Sub-rule (2)-Exclusions to taxable value

(i) Clause (iv) substituted with the new clause

Prior to amendment

Earlier, interest on loans was excluded from the value of taxable service by virtue of rule 6(2).

Amendment made by Notification No. 24/2012-ST dated 06.06.2012

Clause (iv) has been substituted with a new clause which excludes interest on delayed payment of any consideration for the provision of services or sale of property, whether moveable or immoveable.

(ii) Clause (vi) and (vii) inserted

As per newly inserted clause (vi) and (vii), following expenses have been excluded from the value of taxable services:-

Clause (vi)

Accidental damages due to unforeseen actions not relatable to the provision of service.

Clause (vii)

Subsidies and grants disbursed by the Government, not directly affecting the value of service.

(c) Rule 7 providing that actual consideration would be the value of taxable service provided from outside India omitted

In the Negative List approach, rule 7 may not be required; therefore it is has been omitted.

C. AMENDMENTS IN THE SERVICE TAX RULES, 1994

1. All assessees to file Service Tax Returns electronically

Service Tax Rules, 1994 have been amended to provide that every assessee will have to submit half-yearly service tax return electronically, irrespective of the amount of service tax paid by him in the preceding financial year. The amendment has been made effective from October 1, 2011.

Earlier, electronic filing of service tax returns was mandatory for the assessees who had paid service tax of ₹ 10 lakh or more including the amount of service tax paid by utilization of CENVAT credit in the preceding financial year.

[Notification No. 43/2011 ST dated 25.08.2011]

Procedure for electronic filing of Central Excise and Service Tax returns and for electronic payment of excise duty and service tax

Central Excise and Service Tax returns, the DG (Systems) has issued comprehensive instructions outlining the procedure for electronic filing of Central Excise duty and Service

Tax returns and electronic payment of taxes under ACES. The said instructions outline the registration process for new assessees, existing assessees, non–assessees and for Large Taxpayers Units, steps for preparing and filing of return, use of XML Schema for filing dealer's return, procedure for obtaining acknowledgement of e-filed return, procedure for e-payment etc.

[Circular No. 956/17/2011 CX dated 28.09.2011]

2. Amendments made by *Notification No. 3/2012-ST dated 17.03.2012* (effective from 01.04.2012)

Definition of partnership firm inserted

Partnership firm includes limited liability partnership [Rule 2(cd)]

(a) Amendments in rule 6

(i) **Individuals/partnership firms with aggregate value of taxable services of ₹ 50 lakh or less in previous year allowed to pay service tax on payment basis in current year upto a total of ₹ 50 lakh [Fourth proviso to sub-rule (1) inserted]**

In case of **individuals and partnership firms** whose aggregate value of taxable services provided from one or more premises is ₹ 50 lakh or less in the previous financial year, the due dates for payment of service tax on taxable services provided or ***agreed*** to be provided by him up to a total of ₹ 50 lakh in the current financial year, at the option of service provider, is as follows:-

S.No.	Particulars	Due date for payment of service tax
1.	If the service tax is paid electronically through internet banking	6th day of the following quarter in which the payment is received
2.	In any other case	5th day of the following quarter in which the payment is received
3.	In the case payment is received in the quarter ending in March	31st day of March

(ii) **Restrictions in rule 6(4B) omitted thereby allowing unlimited amount of permissible adjustment of excess service tax paid**

Prior to amendment

Earlier the excess amount of service tax paid on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification was allowed subject to the following conditions:-

(a) The excess payment shall be utilized for the payment of service tax for the subsequent month liability subject to maximum of ₹ 2,00,000/- for a relevant month or quarter, as the case may be.

(b) The excess amount paid by a registered assessee, on account of delayed receipt of details of payments towards taxable services may be adjusted without monetary limit.

(c) The adjustment shall be intimated to the jurisdictional superintendent of Central Excise within 15 days from such adjustment.

After the amendment

All the three aforesaid conditions [mentioned in point (a) to (c) above] have now been dispensed with. Consequently, sub-rule (4B) now provides as under:-

The adjustment of excess amount paid, under sub-rule (4A), shall be subject to the condition that the excess amount paid is on account of reasons not involving interpretation of law, taxability, valuation or applicability of any exemption notification.

(iv) Changes in the composition rates

A. In case of insurer carrying on life insurance business [Sub-rule (7A)]

Where amount of the gross premium allocated for investment or savings on behalf of policy holder is not intimated to the policy holder at the time of providing of service:-

	Rate of service tax	
	Prior to amendment (Till 31.03.2012)	After amendment (With effect from 01.04.2012)
First	1.5% of the gross amount of premium charged	3% of the gross amount of premium charged
Subsequent year	1.5% of the gross amount of premium charged	1.5% of the gross amount of premium charged

B. In case of sale/purchase of foreign currency including money changing [Sub-rule (7B)]

S.No.	For an amount	Rate of service tax	
		Prior to amendment (Till 31.03.2012)	After amendment (With effect from 01.04.2012)
1.	Upto ₹ 100,000	0.1 % of the gross amount of currency exchanged or	0.12 % of the gross amount of currency exchanged or

		₹ 25 whichever is higher	₹ 30 whichever is higher
2.	Exceeding ₹ 1,00,000 and upto ₹ 10,00,000	₹ 100 + 0.05 % of the gross amount of currency exchanged	₹ 120 + 0.06 % of the gross amount of currency exchanged
3.	Exceeding ₹ 10,00,000	₹ 550 + 0.01 % of the gross amount of currency exchanged or ₹ 5,000 whichever is lower	₹ 660 + 0.012 % of the gross amount of currency exchanged or ₹ 6,000 whichever is lower

C. In case of Distributor or Selling Agents of Lotteries [Sub-rule (7C)] :

Guaranteed lottery prize payout	Amount of service tax payable on every ₹ 10 Lakh (or part of ₹ 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw	
	Prior to amendment (Till 31.03.2012)	After amendment (With effect from 01.04.2012)
More than 80%	₹ 6000/-.	₹ 7000/-
Less than 80%	₹ 9000/-	₹ 11000/-

3. Amendments made by *Notification No. 36/2012 dated 20.06.2012* (effective from 01.07.2012)

S.No.	Rule	Amendment
1.	5B	Rule 5B has been omitted.
2.	6(7)	Reference to erstwhile charging section 66 has been substituted with the new charging section 66B.
3.	6(7A)	Reference to erstwhile charging section 66 has been substituted with the new charging section 66B.
4.	6(7B)	Reference to erstwhile sub-clauses (zm) and (zzk) of clause (105) of section 65 has been omitted.
5.	6(7C)	Reference to erstwhile sub-clause (zzzzn) of clause (105) of section 65 of the said Act has been omitted.

D. AMENDMENTS/CLARIFICATIONS IN THE POINT OF TAXATION RULES, 2011

CLARIFICATION

1. **Service to be treated as "completed" on completion of all the auxiliary activities enabling the service provider to issue the invoice**

CBEC has clarified that the test for the determination whether a service has been completed would be the completion of all the related activities that place the service provider in a situation to be able to issue an invoice. The Service Tax Rules, 1994 require that invoice should be issued within a period of 30 days from the completion of the taxable service. The invoice needs to indicate *inter alia* the value of service so completed. Thus, it is important to identify the service so completed. This would include not only the physical part of providing the service but also the completion of all other auxiliary activities that enable the service provider to be in a position to issue the invoice. Such auxiliary activities could include activities like measurement, quality testing etc. which may be essential pre-requisites for identification of completion of service. However, it has been clarified that such activities do not include flimsy or irrelevant grounds for delay in issuance of invoice.

The Board has elucidated that the above interpretation also applies to determination of the date of completion of provision of service in case of "continuous supply of service".

[Circular No. 144/13/2011- ST dated 18.07.2011]

AMENDMENTS

1. **Date of payment [Rule 2A]**

Rule 2A has been inserted to define the date of payment.

For the purposes of these rules, "date of payment" shall be:-

(a) date on which the payment is entered in the books of accounts

or

(b) date on which payment is credited to the bank account of the person liable to pay tax

whichever is earlier.

(A) Date of payment in case of change in effective rate of tax or a new levy between the above two dates

In case,

(i) there is a change in effective rate of tax or when a service is taxed for the first time during the period between such entry in books of accounts and its credit in the bank account;

(ii) the bank account is credited **after four working days** from the date when there is change in effective rate of tax or a service is taxed for the first time; and

(iii) the payment is made by way of an instrument which is credited to a bank account,

the date of payment shall be the date of credit in the bank account instead of the date of recording of payment in the books of accounts.

Analysis

Since rate of service tax has been changed from 10% to 12% with effect from 01.04.2012,

(i) In case where service has been provided before 01.04.2012 and the cheque / demand draft etc. has been received upto March 31, 2012, applicable rate of service tax would be 10% provided cheque / demand draft is credited in the bank account by April 5, 2012. Otherwise, the date of payment would be date of credit in the bank account [viz. after April 5, 2012] and consequently, new rate of 12% would be applicable.

(ii) In case where date of issuance of invoice and receipt of payment by cheque / demand draft etc. is received before 01.04.2012, applicable rate of service tax would be 10% provided cheque / demand draft etc. is credited in the bank account by April 5, 2012. Otherwise, the date of payment would be date of credit in the bank account [viz. after April 5, 2012] and consequently, new rate of 12% would be applicable.

(B) **If any rule requires determination of the time or date of payment received:** the expression "date of payment" shall be construed to mean such date on which the payment is received.

[Effective from 01.04.2012]

[Notification No. 04/2012-ST dated 17.03.2012]

2. Amendments in rule 3 relating to determination of point of taxation

(a) Proviso to clause (a) amended

Prior to amendment

In case the invoice is not issued within 14 days of the completion of the provision of the service, the point of taxation shall be date of such completion.

After the amendment

In order to align the aforesaid proviso with increased time-limit for issuance of invoice from 14 days to 30 days (45 days in case of banks and financial institutions including NBFCs) in rule 4A of the Service Tax Rules, 1994, proviso to clause (a) of rule 3 has been substituted with the following proviso:-

In case the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules, 1994 (30 or 45 days, as the case may be) of the completion of the provision of the service, the point of taxation shall be date of such completion.

(b) Proviso to rule 3 inserted

For the purposes of clauses (a) and (b), —

(i) **Date of completion of provision of service in case of continuous supply of service:** In case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

(ii) Point of taxation in case where payment upto ₹ 1,000 received in excess of the invoiced amount

Wherever the provider of taxable service receives a payment up to ₹ 1,000 in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined on the basis of invoice or completion of service, as the case may be, rather than payment.

Simultaneously, an amendment has also been made in the Service Tax Rules, 1994 which provides that service provider is not required to issue an invoice in the aforementioned case for such excess amount upto 1,000.

Purpose of the aforesaid provision:-

As a measure of added facilitation, an option has been provided to determine the point of taxation in respect of small advances up to ₹ 1000, in excess of the amount indicated in the invoice, on the basis of invoice or completion of service rather than payment. Such provision is expected to address the accounting problems faced by service providers in telecommunications, credit card businesses who regularly receive minor excess payments from their customers.

[Effective from 01.04.2012]

[Notification No. 04/2012-ST dated 17.03.2012]

3. Rule 5 relating to payment of tax on new services substituted with the new rule

Rule 5 has been substituted with a new rule which provides as follows:-

Where a service is taxed 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;

(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.

**It is important to note that time-period available in case of new levy for the issuance of the invoice has still been restricted to 14 days as against normal time-period for issuance of invoice been extended to 30 days.

[Effective from 01.04.2012]

[Notification No. 04/2012-ST dated 17.03.2012]

4. Omission of rule 6 relating to determination of point of taxation in case of continuous supply of service

Since the essence of the rule applicable in case of continuous supply of service is the same as the main rule-rule 3, the separate rule for continuous supply of service has been omitted and merged with the main rule.

[Effective from 01.04.2012]

[Notification No. 04/2012-ST dated 17.03.2012]

5. Rule 7 substituted with a new rule

Prior to amendment

Earlier, rule 7 provided that in the following cases, subject to specified conditions, date of receipt or payment of consideration would be the point of taxation:-

(a) Person liable to pay service tax under reverse charge mechanism

(b) Services covered by rule 3(1) of the Export of Services Rules, 2005

*(c) Individuals or proprietary firms or partnership firms providing the eight specified services***

Further, in case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be:-

(a) the date of credit in the books of account of the person receiving the service

or

(b) date of making the payment

whichever is earlier.

After the amendment

Category (b) has been omitted now.

Further, the benefit of payment of service tax on receipt basis earlier provided to eight specified services has also been withdrawn. However, in case of individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is ₹ 50 lakh or less in the previous financial year, service tax on taxable services provided or to be provided by him up to a total of ₹ 50 lakh in the current financial year is payable on receipt basis (provided in Service Tax Rules, 1994).

New rule 7 reads as under:-

Notwithstanding anything contained in these rules, the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made:

However, where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist.

Further, in case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier.

***Note: CBEC vide Circular No. 154/5/ 2012 – ST dated 28.03.2012 has clarified that, in* *respect of the specified eight services, for invoices issued on or before 31st March 2012, the point of taxation shall be the date of payment.*

*Further, Board has clarified vide **Circular No. 158/9/2012-ST dated** 08.05.2012 that the rate of service tax prevalent on the date when point of taxation occurs is the rate of service tax applicable on any taxable service. Therefore, in the abovementioned cases where the point of taxation is the date of payment, service tax should be charged @ 12% on these services, if the payment is received on or after 1st April, 2012 even though the invoices have been issued before 1st April, 2012.*

Further, the supplementary invoices may be issued to reflect the new rate of tax, if required to recover the differential amount and that CENVAT credit can be availed on such supplementary invoices and tax payment challans (in case of reverse charge).

[Effective from 01.04.2012]

[Notification No. 04/2012-ST dated 17.03.2012]

6. Determination of point of taxation in other cases [Rule 8A inserted]

A residual rule-rule 8A has been inserted to determine the point of taxation by way of best judgment to handle situations where the tax-payer is unable to furnish one or more of the details needed i.e. date of payment or date of invoice or both to determine point of taxation. It provides as follows:-

Where the point of taxation cannot be determined as per these rules as the date of invoice or the date of payment or both are not available, the Central Excise officer, may, require the concerned person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account such material and the effective rate of tax prevalent at different points of time, shall, by an order in writing, after giving an opportunity of being heard, determine the point of taxation to the best of his judgment.

[Effective from 01.04.2012]

[Notification No. 04/2012-ST dated 17.03.2012]

Definitions inserted / amended [Rule 2]

Following definitions have been inserted / amended:-

1. Definition of change in effective rate of tax inserted [Section 2(ba)]

"Change in effective rate of tax" shall include a change in the portion of value on which tax is payable in terms of a notification issued in the Official Gazette under the provisions of the Act, or rules made thereunder.

Earlier, this definition was provided as an explanation to rule 4 which has been omitted now.

2. Definition of continuous supply of service amended [Section 2(c)]

Prior to amendment

Earlier, continuous supply of service means any service which is provided, or to be provided continuously, under a contract, for a period exceeding three months or any other notified service.

After the amendment

Amended definition reads as follows:-

Continuous supply of service means

(i) any service which is provided, or to be provided continuously *or on recurrent basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time*,

or

(ii) where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition.

Implication of the amendment

The definition of continuous supply of service has been amended to capture the concept in a more wholesome manner. Consequently, in case of continuous supply of services, the condition of making payment periodically or from time-to-time has been inserted. Moreover, the services provided on a recurrent basis shall also be considered as continuous supply of service.

Services notified by the Central Government

Earlier, Central Government had notified following services to be continuous supply of service:-

(i) Construction in respect of Commercial or Industrial Buildings or Civil Structures

(ii) Construction Services of Residential Complexes

(iii) Telecommunication Services

(iv) Internet Telecommunication Services

(v) Works Contract Services

With effect from 01.07.2012, only telecommunication service and service portion in execution of a works contract are the services notified as the continuous supply of services. *[Notification No. 38/2012-ST dated 20.06.2012]*.

3. Definition of associated enterprises and taxable service omitted

Definition of associated enterprises and taxable service provided under clause (b) and (f) is omitted.

7. For the words, "provided or to be provided" wherever they occur, the words "provided or agreed to be provided" has been substituted.

[Effective from 01.07.2012]

[Notification No. 37/2012-ST dated 20.06.2012]