Tax Talk
The Monthly Service Tax Bulletin

Issue No. 4/2012 July 2012

Editorial

The month of June adorned our lives with rain relieving us of the scorching heat along with lots of new notifications, circulars and orders, some new, some replacing the old ones. The month has seen a lot of activity in terms of changes being made applicable with effect from 1^{st} July 2012.

1^{st} July 1994 was a historic date for all of us. It was the day when service tax became applicable for the first time after being introduced via Finance Act, 1994. The date 1^{st} July 2012 will again go down in history and will always be remembered as the day on which service tax was reincarnated. After a lot of speculations and apprehensions finally the day has arrived on which the most talked about concept "The Negative List" along with a horde of new set of rules shall become applicable. The Government has issued 19 Notifications, 2 Circulars and 2 orders this month. These communications has been redrafted after reviewing the same.

A position had arisen wherein there was no liability to pay service tax and cess at the prescribed rate with effect from 1^{st} July 2012. On being pointed out by a learned person, immediate rectification was carried out and it resulted in issue of Order No.1/2012 for service tax and order No.2/2012 for cess thereupon. Hence the position is status quo i.e. tax has to be paid at the prescribed rates as before.

Among the 19 Notifications issued in this month special mention goes to Notification No.34/2012 dated 20^{th} June 2012 whereby 81 notifications has been rescinded. The Notifications would have been anyway rescinded in the light of section 66 of the Finance Act, 1994 becoming inapplicable from 1^{st} July 2012. Hence when section 66 of Finance Act, 1994 has no identity post 1^{st} July 2012, the notifications issued exempting service tax applicable under section 66 automatically stands null and void for the period after 1^{st} July 2012.

CBEC has also come out with a 164 page Educational Guide on Service Tax, which provides hypothetical situations and the applicability of the new provisions in these situations. The guide has succeeded in bringing out the intention of Government behind the new provisions, hence providing a lot of clarity and transparency but the guide lacks legal status. The Aim of the Guide has been reproduced below:-

"This guide is aimed at educating the tax payers and the tax administrators on various aspects of the new concept in order to assist them in gaining better understanding about the new system of taxation."

So it's a win-win situation for the department. The guide would act as Bible for the officers and they will interpret all new provisions in light of the guide, while the guide cannot be challenged in the court of law.

We all can just hope that the new provisions are assessee friendly and are interpreted in the spirit with which they are enacted. We have tried our best to bring out the changes as enacted vis a vis those prevailing before the historic day of 1^{st} July 2012. Hope you find the same useful.

Before concluding we would like to discuss that the expected total collection from the Service Tax in the Financial Year 2012-13 will exorbitantly exceed the budgeted figures. The Finance Ministry admitted that the actual collection exceeded the targeted for the year ₹ 124000 Crores by 40% for the months of April and May 2012 i.e. even before the implementation of Negative List. We are of the view that it might reach ₹ 200000 Crores i.e. double the total actual revenue collections for the fiscal 2011-12.

We look forward to your suggestions and comments as always. If any of your friends and well wishers wants to receive this newsletter, please feel free to contact us through email at servicetaxgoyal@gmail.com.

CA Sushil Kr Goyal

DUE DATES

Case	Form	Due Date
Payment for Month/Quarter ending 30th June	Cash/Cheque	5th July 2012
	E-Payment	6th July 2012
Revised return for the half year October 2011-March 2012	ST-3	90 days of filing of original return

Latest Notifications

24/2012
Provides new Rule for determination of value of service portion in execution of works contract/restaurant/ outdoor catering (refer page 4).

25/2012
New mega exemption notification (refer page 3).

26/2012
Covers new abatements on 12 services (refer page 4).

27/2012
Exemptions to foreign diplomatic mission /consular/ their family etc.

28/2012
Notify Place of Provision of Services Rules, 2012 in place of import/export rules (refer page 5).

29/2012
Exempts the property tax from renting of an immovable property.

30/2012
Notify services under reverse charge (refer page 6).

31/2012
Exemption to exporters of goods for transportation services.

32/2012
Exempts services provided by Technology Business Incubator (TBI) or Science & Technology Entrepreneurship Park (STEP).

33/2012
Now covers exemption of Rs. 10 lakh in any financial year as "Small Service Provider" in place of 6/2005.

34/2012
Withdraws 81 notifications all of them are related with exemptions.

35/2012
Withdraws composition scheme available in Works Contract Service.

36/2012
Amends the Service Tax Rules, 1994 to modify person liable to pay tax and other rules.

37/2012
Amends Point of Taxation Rules to make services agreed to be provided taxable.

38/2012
Notify "Telecommunication Services" and "Service portion in execution of works Contract" as only notified Continuous supply of services.

39/2012
Rebate/refund to exporter of services to any country other than Nepal & Bhutan.

40/2012
Exempts the services received by a unit located in SEZ or by a developer of SEZ.

41/2012
Rebate/refund to exporter of goods of tax paid on input services for export of goods.

42/2012
Exemption to exporters of goods for foreign commission agent service.

43/2012
Postponed the proposed tax on transportation of passenger (1st class and AC class) and goods by Government Rail upto 1st October, 2012.

Changes in Exemptions (Mega Exemptions)

Earlier mega exemption Notification No. 12/2012-ST, dated 17th March, 2012 had prescribed 34 activities as exempted services but the list has been extended to 39 activities with few modifications vide Notification No. 25/2012-ST, dated 20th June, 2012,which supersedes the earlier mega exemption notification. Detail list of exempted services was published in the first issue of Tax Talk (April 2012). Hence we are hereby providing the changes made in the notification only.

Exemption of the following services have been modified:-

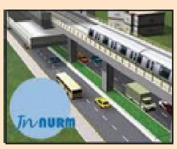
6. **Services by Arbitral Tribunal and Advocate**: Service provided by an arbitral tribunal or legal service by an individual as an advocate or by a partnership firm of advocates to a "business entity with a turnover upto Rs.10 lakh in the preceding financial year" has also been included under mega exemption.

Also "legal service by an individual as an advocate or by a partnership firm of advocates to an advocate or partnership firm of advocates providing legal services", has also come under mega exemption.

9. **Services to or by Educational Institution**: Service provided to or by an educational institution in respect of education by way of "renting of immovable property" along with "auxiliary education service", has also come under mega exemption.

11. **Sponsorship service**: Service by way of sponsorship of all "sporting events" in place of "tournaments" or "championships" has now come under mega exemption.

12. **Services to Government etc**: Service provided to "Governmental Authority" has also been included with the services provided to "Government" or "Local Authority". Services of "commissioning, installation, completion and fitting out" along with construction, erection, repair, maintenance, renovation or alteration, have also been included under mega exemption, but restoration work has been deleted hence becoming taxable. Also all kinds of water supply has been included under mega exemption.



13. **Service of Construction etc**: Service by way of "commissioning, installation, completion and fitting out" along with "construction, erection, repair, maintenance, renovation or alteration", have also come under mega exemption, but restoration work has been deleted hence becaming taxable.

Similarly, civil structure or original works under a scheme of JNNURM or RAY and a structure for funeral, burial or cremation of deceased, have also been included under mega exemption.

14. **Services relating to Original works**: i)"commissioning and installation" along with "construction and erection" of original works, have also been included under mega exemption.

ii) construction, erection, commissioning or installation of "monorail or metro" along with "airport, port or railways", have also come under mega exemption.

20. **Transportation of goods by Rail or Vessel**: The word "port" has been replaced by the word "place". Hence, there will be no confusion regarding service by rail.

23. **Transport of Passengers**: Service by "ropeway, cable car or aerial tramway" for transport of passengers has also come under mega exemption.

24. **Service of Vehicle parking**: Service by way of all "Vehicle" parking to general public and not only "motor vehicle", has now been covered under mega exemption.

25. **Services to Government etc**: Service provided to "Governmental Authority" has also been added with service provided to "Government" or "Local Authority". Service of "maintenance" has been newly incorporated under mega exemption. "Aircraft" has been brought under the umbrella of mega exemption; the words "ship and boat" have been deleted hence becaming taxable.

Carrying out any activity in relation to any function ordinarly entrusted to a municipality in relation to water supply (not merely drinking water), public health, sanitation conservancy, solid waste management (not merely waste collection or disposal), slum improvement and upgradation.

27. **Service by Incubatee**: Service provided by an incubatee is exempt upto "total turnover" of Rs.50 lakh and not "total business turnover" as per the mega exemption.

28. **Service by non-profit Entity**: Service provided by a "non-profit entity registered under any law" and not only "entity registered as society" to its member, has also been covered under mega exemption.

29. **Service by Sub-contractor**: Works contract service provided by Sub-contractor to another contractor who is providing exempted works contract service is now covered.

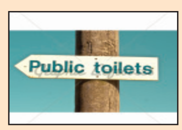
34. **Service from non taxable-territory**: Service provided to "governmental authority" has also been added with service provided to "government" or "local authority". Also service received by a person located in non taxable-territory from a person located in non taxable-territory, is now exempted under mega exemption.

Five activities which have been newly inserted in mega exemption list are:-

35. Services of public libraries by way of lending of books, publications or any other knowledge- enhancing content or material.

36. Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948.

37. Services by way of transfer of a going concern, as a whole or an independent part thereof.



38. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories urinal or toilets.

39. Services by governmental authority by way of an activity in relation to any function entrusted to a municipality under article 243W of the constitution.

New Abatements with CENVAT Credit

Abatement which were available earlier under Notification No. 1/2006 now available w.e.f 1st July 2012 vide exemption(abatement) Notification No 26/2012. Apart from exemption (abatement) notification, Rule 2A of the Service Tax (Determination of Value) Rules, 2006, as amended vide Notification No 24/2012 dated 06.06.2012 has provided the methodology and portion of abatement to ascertain the value of service portion in the Execution of Works Contract/ Restaurant/Outdoor Catering.

New abatement table is given below with portion of CENVAT Credit allowable under the services:-

Taxable Services Abatement As Per Notification 26/2012	Tax-able (%)	CENVAT Credit Allowed		
		Input	Input Services	Capital Goods
Financial leasing including hire purchase [No abatement against lease management, processing, documentation and administrative fees]	10	✓	✓	✓
Transport of goods by rail	30	✓	✓	✓
Transport of passengers by rail	30	✓	✓	✓
Convention / Mandap Keeper Service. If Bundled by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, pandal shamiana, club etc) specially arranged for organizing a function together with renting of such premises	70	✓*	✓	✓
Transport of passengers by air	40	×	✓	×
Renting of hotels, inns, guest houses, clubs, campsites or other commercial places for residential or lodging purposes.	60	×	✓	×
Goods Transport Agency	25	×	×	×
Services in relation to Chit.	70	×	×	×
Renting of any motor vehicle designed to carry passengers	40	×	×	×
Transport of goods in a vessel	50	×	×	×
Services by a tour operator in relation to,-				
(i) a package tour.	25	×	×	×
(ii) a tour solely for arranging or booking accommodation.	10	×	×	×
(iii) any other service.	40	×	×	×
Construction of Complex Service	25	×	✓	✓

Taxable Services Abatement As Per Rule 2A / 2C of Valuation Rules	Tax-able (%)	CENVAT Credit Allowed		
		Input	Input Services	Capital Goods
Service portion in supply of food or any other articles of human consumption or any drink (Rule 2C).				
a) at a restaurant	40	✓*	✓	✓
b) in outdoor catering	60	✓*	✓	✓
Works Contract Service (Rule 2A) in relation to :				
a) Execution of Original Works#	40	×	✓	✓
b) Maintenance or repair or reconditioning or restoration or servicing of any goods	70	×	✓	✓
c) All other cases	60	×	✓	✓

Original Work means (i) all new constructions (ii) all types of addition and alteration 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.

* CENVAT credit on any goods classifiable under Chapters 1 to 22 of the Central Excise Tariff Act, 1985, used for providing the taxable service, is not allowed as input.

As per new **Rule 2A of the Service Tax (Determination of Value) Rules, 2006,** if VAT is paid on actual value, such value can be excluded from gross amount and service tax @ 12% is to be paid on the remaining value as value of service portion. In case where VAT is not paid on actual basis, the value of service portion has been determined on the percentage on **Total Amount** as given in above table.

Total Amount = Gross amount charged (A) + FMV of goods and services supplies by the service receiver (B) – amount charged by service receiver for goods and service supplied (C) - VAT or Sales Tax (D).

Illustration:-Value of service portion in execution of Original Works:- 40% of [95,000 (A) +10000 (B)-5000 (C)-1000 (D)]=39600

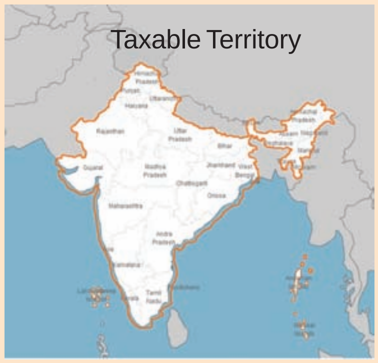
Place of Provision of Services

Place of Provision of Services Rules, 2012

A new set of rules called Place of Provision of Services Rules, 2012 has come into effect from 1st July, 2012 vide Notification No. 28/2012-ST, dated 20.06.2012, which replaces Export of Services Rules, 2005 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006. These rules shall determine the place where such services are provided or deemed to be provided.

These rules have framed in a way that the order of applicability shall start from the last rule and go on to the first rule, i.e. to say, while determining the place of provision of a particular service more weightage will be given to Rules that comes later in the order among those meriting equal consideration. We will now proceed to discuss the rules :-

- **Place of provision generally (Rule 3)**
  This is the default rule and will apply when the following rules do not apply in the given circumstance. The place of provision of a service shall be the ***location of the recipient of service.*** In case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.



- **Place of provision of performance based services (Rule 4)**
  The place of provision of following services shall be the location where the ***services are actually performed***, namely:-
  (i) Services provided in respect of goods that are required to be made physically available by the recipient of service to the provider of service. (Example- Repair, Maintenance, Courier, Cargo Handling, etc.)
  (ii) services provided to an individual, which require the physical presence of the receiver. (Example- Beauty treatment, Internet café, Health Fitness services etc.)
- **Place of provision of services relating to immovable property (Rule 5)**
  The place of provision of services provided directly in relation to an immovable property shall be the place where the ***immovable property is located or intended to be located.*** (Example- Renting, Surveying, Real Estate Agents, Hotel Accommodations, etc.)
- **Place of provision of services relating to events (Rule 6)**
  The place of provision of services provided in relation to admission or organization of any event or any service ancillary to admission to such event shall be the place where the ***event is actually held***.
- **Place of provision of services provided at more than one location (Rule 7)**
  Where any service referred to in Rule 4, Rule 5, and Rule 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the ***location in the taxable territory where the greatest proportion of the service is provided***. Hence in cases where the place of provision for a proportion of service is determined to be non taxable territory in light of the above mentioned rules the same is deemed to fall in that taxable territory where the maximum proportion of service is rendered.
- **Place of provision of services where provider and recipient are located in taxable territory (Rule 8)**
  The above rule is for situations when the place of provision of service provided in taxable territory is determined to be non taxable territory in light of Rules 4, Rule 5 and Rule 6 but both the service provider and recipient are located in the taxable territory to deem the place of provision to be ***location of service recipient*** i.e. within taxable territory.
- **Place of provision of specified services (Rule 9)**
  The place of provision of following services shall be the ***location of the service provider***:-
  (a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders (Example Opening, operation, of bank accounts, transfer by way of Telegraphic transfer, Mail transfer or electronic transfer)
  (b) Online information and database access or retrieval services
  (c) Intermediary services (Example Travel Agent, Tour operator, recovery agent etc.)
  (d) Service consisting of hiring of means of transport, upto a period of one month (Examples of means of transport would be land vehicles, aircraft, vessels etc)
- **Place of provision of goods transportation services (Rule 10)**
  Place of provision in case of Transportation of goods by rail, air, vessel other than courier or mail shall be ***place of destination of the goods***.
  In case of services of a Goods Transportation Agency, the place of provision shall be the ***location of the person liable to pay tax***. In case the person liable to pay tax is in a non taxable territory, as per amended Rule 2(1) (d) of Service Tax Rules, 2012, the provider shall be liable to pay tax.
- **Place of provision of passenger transportation service (Rule 11)**
  Place of provision for the above service shall be the place where the ***passenger embarks on the conveyance for a continuous journey***.
  In case of single ticket is issued even if there is a stopover the place of provision shall be the place from where the passenger embarks the conveyance.
  In case of multiple tickets and where the journey involves a stopover, each leg of the journey shall be independent and will be dealt with separately, i.e. after each stopover the place of provision shall be determined to be the place from where the passenger embarks each leg of the journey.
- **Place of provision of services provided on board a conveyance (Rule 12)**
  Place of provision for services provided on board of a flight, bus, vessel, rail etc for which additional specific charges are applicable (over and above the fare) will be the ***first scheduled point of departure of that Conveyance***.

Services Under Reverse Charge

Insurance Auxiliary Service

Person liable to pay tax :– Receiver : 100% Provider : Nil

Services by an Insurance Agent to any person carrying on insurance business.

Advocate (Legal Service)

Person liable to pay tax :– Receiver : 100% Provider : Nil

Services by individual advocate or firm of advocate to any Business Entity having turnover of more than ₹ 10 Lakh in preceding financial year.

Supply of Manpower

Person liable to pay tax :– Receiver : 75% Provider : 25%

Services by Individual, HUF, Partnership Firm or AOP to any Body Corporate.

Transportation of Good by Road

Person liable to pay tax :– Receiver : 100% Provider : Nil

Services by GTA to any one of the following receiver (who is paying the freight) :

(a any factory under the Factories Act,1948;

(b) any society registered under the Societies Registration Act, 1860 or under any other law in any part of India;

(c) any co-operative society established by or under any law;

(d) any dealer of excisable goods, registered under the Central Excise Act, 1944 or the rules made there-under;

(e) any body corporate established, by or under any law; or

(f) any partnership firm including AOP.

(For any other receipent GTA is liable to pay tax)

Arbitral Tribunal

Person liable to pay tax :– Receiver : 100% Provider : Nil

Services by Arbitral Tribunal to any Business Entity having turnover of more than ₹ 10 Lakh in preceding financial year.

Support Service

Person liable to pay tax :– Receiver : 100% Provider : Nil

Services by Government or Local Authority to any Business Entity for services other than following.

a) Renting of Immovable Property Services

b) Services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Govt.

c) Services in relation to an aircraft or a vessel, inside or outside the presincts of a port or an airport and

d) Transport of goods or passengers service.

Rent a Cab Service

Person liable to pay tax :– Receiver : 100% Provider : Nil
(with abatment)

Person liable to pay tax :– Receiver : 40% Provider : 60%
(without abatment)

Services of renting of motor vehicle by Individual, HUF, Partnership Firm or AOP to a Body Corporate not in similar line of business.

Sponsorship Service

Person liable to pay tax :– Receiver : 100% Provider : Nil

Services by any person to any Body Corporate or Partnership Firm.

Works Contract Service

Person liable to pay tax :– Receiver : 50% Provider : 50%

Services by Individual, HUF, Partnership Firm or AOP to any Body Corporate.

Import of Taxable Services

Person liable to pay tax :– Receiver : 100% Provider : Nil

Services by any person located in the non taxable territory to any person located in the taxable territory.

Note:- The above reverse charge shall be applicable only in cases where the recipient is located in the taxable territory.

FAQ on Reverse Charge

What will be the Point Of Taxation for Service Recipient who is required to pay service tax under reverse charge mechanism?

Point of Taxation for Service Recipients required to pay tax on reverse charge mechanism is the date on which payment is made, provided the payment is made within a period of six months from the date of invoice. Otherwise the Point of taxation shall shift to the date of invoice.

If service provider is availing SSP exemption, is service recipient required to pay service tax?

Service recipient is required to pay service tax notwithstanding the fact that SSP exemption is availed by the service provider in both the cases below:

(i) Service provider may be a SSP in case of partial reverse charge or

(ii) Service provider may be a SSP in case of complete reverse charge.

What should be contents of the invoice issued by service provider when service recipient is liable to pay service tax under reverse charge mechanism?

Service provider should mentioned his name, address, registration no. along with name and address of service recipient, description and value of service and service tax payable thereon. The service tax payable shall include the liability payable by the service provider and service recipient under reverse charge.

Can service recipient avail Cenvat credit of service tax paid under reverse charge?

Service recipient can avail the Cenvat credit of the entire service tax paid (by receiver and by provider) on the services received by the service recipient subject to the provisions of CENVAT Credit Rules, 2004.

What are the documents required to be produced by the service recipient to take Cenvat credit?

Service recipient is required to produce invoice issued by the service provider and also the challan evidencing payment of service tax by service recipient as person liable to pay service tax.

What shall be the value on which the service receiver shall pay tax under reverse charge mechanism?

The assessable value for payment of service tax by the service receiver shall be the payment made by the recipient subject to Valuation Rules (Free of cost materials supplied and out of pocket reimbursement incurred by service provider is required to be included). Further the valuation method adopted by receiver can be independent of that adopted by the provider depending on the abatement, data available and economics.

Is reverse charge applicable on services provided and complete before 01.07.2012 though payments are made or are due as on 01.07.2012?

If the point of taxation and liability for services provided and completed before 01.07.2012 has already been determined before 01.07.2012, the receiver is not required to pay tax on such services under reverse charge.

Regular Column - Updates

Returns and Payment Cycle

The proposed EST return and alignment of payment with return provisions are yet to be made applicable. Hence the current prevailing system of monthly / quarterly payment and half yearly returns will continue as of now until further notice.

Accounting codes

The accounting codes for services rendered before 01.07.2012 and taxable under positive list approach shall be as prescribed for different services. The accounting codes for services rendered after the period 01.07.2012 in lieu of introduction of negative list approach shall be announced shortly.

Frequently Asked Question

Q. Whether Interest payable under section 75 or Penalties payable under Section 76, 77 or 78 of the Act or Penalties payable under Rule 14, 15, or 15A of the CENVAT Credit Rules, 2004, be adjusted with the CENVAT Credit available on 'Input', 'Capital Goods' or 'Input services'?

A. Cenvat credit cannot be utilized or adjusted against interest payable U/s 75 or Penalties payable U/s 76, 77 & 78 of the Act or under Rule 14, 15, 15A of the CENVAT Credit Rules, 2004.

As per provisions contained in Rule 3(4) of the CENVAT Credit Rules, 2004, the CENVAT Credit available on inputs, capital goods or input services' may be utilized only for the payment of:-

(a) Excise duty on any final product; or

(b) CENVAT Credit taken on inputs if such inputs are removed as such or after being partially processed;

(c) CENVAT credit-taken on capital goods if such capital goods are removed as such; or

(d) an amount under sub – rule (2) of rule 16 of Central Excise Rules, 2002; or

(e) service tax on output service

Hence, Cenvat credit cannot be utilized or adjusted for payment of interest or penalties.

Further more a point to be considered is that service receipients liable to pay service tax under reverse charge mechanism cannot use CENVAT Credit for setting off their above liability.

Recent Circulars

Circular No. 159/10/2012-ST, dated 19.06.2012, states that CAG being a constitutional authority cannot be categorized or considered as a concern in the same manner as a firm of chartered accountants and hence service tax is not payable on Audit fees collected by CAG.

Circular No. 160/11/2012, dated 29.06.2012, clarifies the doubts regarding applicability of provisions of Finance Act, 2004 relating to Education Cess (EC) and Finance Act, 2007 relating to Secondary and Higher Secondary Education Cess (SHEC). Hence, EC and SHEC shall be payable as before at the rate of 2% and 1% respectively.

BOOK POST

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