# SERVICE TAX

**NOTICE BOARD of ICAI**

Non-applicability of taxable services in PCE-Paper 5: Taxation, IPCE-Paper 4: Taxation and Final-Paper for November, 2012 examinations

The Examination Committee at its 497th meeting held in September, 2012 has decided that students appearing in November 2012 examinations will not be examined with respect to specific services in the area of service tax laws in the following papers:

(i) Part-II - Service Tax and VAT of Paper 5: Taxation (PCE)

(ii) Part-II Service Tax and VAT of Paper 4: Taxation (IPCE)

## HISTORY AND NATURE OF SERVICE TAX

With the growth of the economy, expenditure of government also increases. The major sources of revenue for the government are taxes. With increases in expenditure government has been increasing taxes. Government imposed custom duty to the extent of 135% and it became a matter of gossiping. India become member of GATT and entered in to WTO agreement. This agreement restricted custom duty and created a wide gap in the Government revenue and Government Expenditure and therefore it became the need of hour to look for Additional Taxes.

Government appointed a committee for tax reforms under the chairmanship Dr. Raja Chelliah, it recommended introduction of Service Tax. Till 1994, services in our country were not taxable. Service sector accounts about 70 % of our GDP.

Based on the recommendation of the Tax Reforms Committee headed by Dr. Raja J. Chelliah (1922 to April 2009), Service Tax was introduced for the first time, in 1994, by the 10th Finance Minister Dr. Manmohan Singh with three☼ services at the initial stage @ 5 *percent* to broaden the base of indirect taxation.

The exact wordings of Dr. Manmohan Singh were:

> *"There is no sound reason for exempting services from taxation, when goods are taxable and many countries treat goods and services alike for tax purpose".*

Taxes are two types:-

Type of Taxes
- Direct tax
- Indirect tax

| DIRECT TAX | INDIRECT TAX |
|---|---|
| It is on the individual | It is on goods |
| Incident cannot be passed on to anybody | Incident can be passed on the final consumer |
| Recovery mechanism is expensive | Recovery mechanism is very economic. |
| | In economics, indirect tax are called duty however service tax is not called duty i.e. excise duty, custom duty, however service tax is not called like sales tax this is because service tax is recovery before and paid to the govt. later on. |

- Service tax is a tax levied on services rendered by a person and the responsibility of payment of the tax is cast on the service provider.
- It is an indirect tax as it can be recovered from the service receiver by the service provider in

☼ Telephones 2. Non-life insurance and 3. Stock brokers course of his business transactions.

- Service Tax was introduced in India in 1994 by Chapter V of the Finance Act, 1994. It was imposed on an initial set of three services and the scope of the service tax has since been expanded continuously by subsequent Finance Acts.
- The Finance Act extends the levy of service tax to the whole of India, except the State of Jammu & Kashmir.
- The Central Board of Excise & Customs (CBEC) under Department of Revenue in the Ministry of Finance, Government of India deals with the task of formulation of policy concerning levy and collection of Service Tax.
- In exercise of the powers conferred, the Central Government makes service tax rules for the purpose of the assessment and collection of service tax.
- The Service Tax is being administered by various Central Excise Commissionerates, working under the CBEC.
- There are **six** Commissionerates located at metropolitan cities of Delhi, Mumbai, Kolkata, Chennai, Ahmedabad and Bangalore which deal exclusively with work related to Service Tax.
- Directorate of Service Tax at Mumbai oversees the activities at the field level for technical and policy level coordination.

**APPLICABILITY OF SERVICE TAX**

As per Sec. 64 of the Finance Act, 1994, Service tax is applicable to **whole of India except the state of J & K**. Thus, services provided in the state of J & K are not liable to tax.

**Scenario I:** If services are provided in CHANDIGARH by a person, who has his office or establishment at J&K.
Service tax is a tax on services and not on particular profession or trade and on the same footing the services provided in the J&K are not liable to service tax but if the services are provided at any place other than J&K by the person who has his establishment in J&K then service tax will be applicable.

**Scenario II:** Person having his office at DELHI and providing some services in J&K
Service tax is not applicable in J&K then the service provided in J&K even by the person having his establishment outside J&K will also be not taxable. The services provided by a person outside J&K who has his office or establishment in J&K will be taxable and the services provided by a person in J&K will not be taxable even if the person providing services has his office or establishment outside J&K.

***It is the place where services are provided is important and not the place from where service provider belongs or has his office or establishment is important.***

**SERVICE TAX IS NOT A TAX ON PROFESSION OR TRADE**

- Service tax is a tax on **services** though in most of the cases it is collected and deposited by the Service provider.
- The service provider collects it from the service receiver hence he is passing on the burden of tax on the other persons and only acting as a colleting agent.
- It is not a tax on a particular profession, trade or employment but it is a tax on services rendered.
- As per Websters Dictionary **Service means a useful result or product of Labour, which is not a tangible commodity.** Thus, basically service is a value addition that can be perceived but which cannot be seen hence it is an intangible value addition.

- Selling goods is a tangible activity but providing services is not a tangible commodity but none the less it also provides value addition.
- Service tax is a tax on **services** not on a profession or trade. If there is a CHA and providing services to various exporters then the tax is imposed only when he provides services and if during a certain period he fails to get any client then no tax is payable since it is a tax on services and not on a particular profession or trade.

  Example: The CHA (Custom House agent) is providing his services to the exporter of Goods. The manufacturer of goods supplied the goods to the exporter but the same cannot be exported without **services** of the CHA. Hence the services provided by the CHA are also adding the value to the goods.
- Chartered accountants, Company secretaries, Cost accountants and CHA etc. are covered under the net of service Tax.

**CONSTITUTIONAL POWER TO INTRODUCE SERVICE TAX**

Government needs power to introduce the taxes and the power is given by the Constitution of India and without authorization from constitution no tax can be imposed.

**Article 265** of constitution of India says that "***No tax shall be levied or collected except by the authority of Law".***

The taxes can only be imposed under the authority of law given by the Constitution of India. The constitution through its schedule VII has made the three lists and these lists are related to the powers of Central and State Governments to make laws.

LIST ONE

Union List- The list contains the matters in respect of which Central Government can make the law.

LIST TWO

State List: - The list contains the matters in respect of which State Governments can make the law.

LIST THREE

Concurrent List: - The list contains the matters in respect of which Central and State Governments both can make the law.

When constitution was made in early fifties there were very low contribution from the service sector in the GDP hence no specific provision was made in the constitution with respect to service tax but there is one entry No 97 in the Union list.

**Entry No. 97:- Any other matter not enumerated in List II or List III including any tax not mentioned in either of those lists:** This is residuary entry and according to it, if anything including any tax not mentioned in List II or List III, will be covered under it.

- By using this power of entry No. 97 (List I), Government introduced Service Tax in 1994.
- Wef 7.1.2004, the 92nd Amendment in the constitution was made and now clear entry **No. 92 C** in Union List **"Taxes on Services"** governs service tax.

**APPROACHES TO IMPOSE TAX**

- The world is divided basically in two parts for taxation purposes, the developed countries and the developing countries. Both these segments have their own taxation policies and most of the developed countries have adopted the comprehensive approach but the developing countries have adopted the selective approach and India has also adopted the same.

Approaches to impose tax

- Comprehensive approach
- Selective approach

- In the Comprehensive approach, whole the services is taxed at once and if the law makers want to exempt some of the services then a negative list is also released.

- In the selective approach, Services are selected for taxation just it is being done in our country.
- The situations are different in both type of countries and the developing countries have to give more exemptions, they have to protect essential services and further in developing countries the resistance for new taxation system is more extensive hence they have to gradually increase the number of services under the net of service tax. On the same footing India has adopted the Selective approach.

## THE SERVICE TAX LAW

There is no Service Tax Act in our country. The Finance Act, 1994 which was converted from Finance Bill, 1994 was the part of Budget of 1994. One of the Chapter i.e. chapter No. V of the Finance Act, 1994 contained the statutory provisions as applicable with respect to the taxation of the services in our country.
Further, the law of service tax is Governed in our country through the following:-

1. The Finance Act, 1994, Section 64 to 96 of the Finance Act, 1994
2. The Service Tax Rules, 1994
3. The Notifications issued by the Central Government.
4. Circulars and Office Letters (instructions) on Service tax
5. Trade Notices on service Tax

## THE FINANCE ACT, 1994

Chapter V of the Finance Act was used to introduce service tax in 1994 and later chapter VA was added to Finance Act 1994 by the Finance Act, 2003.
The composition of these chapters:

**Chapter V** OF FINANCE ACT 1994: Section 64 to 96- The Basics of service Tax, Definitions, Classification of services, Charge of Service Tax, Charge of service Tax on services received from outside India, Valuation of Taxable services, Payment of service tax , Registration, Returns, Assessments , Penalties, appeals etc.
**Chapter VA** OF FINANCE ACT 1994: Section 96A to 96I- Advance ruling with respect to a question of law or fact regarding the Liability to pay service Tax.

## RULES ON SERVICE TAX

To carry out the various provisions of the Act, rules are necessary and the Government got the power to make rules from the Act. There are two sections in the Finance Act 1994 which gives power to the central Government to make rules for carrying out various provisions of the Act and these are :-

- Section 94 of the Chapter V.
- Section 96- I of the Chapter VA

By using these powers the Government has formulated the following rules which were amended from time to time:-

1. Service Tax Rules 1994
2. Service Tax (Advance Ruling) Rules, 2003
3. CENVAT Credit Rules, 2004
4. Export of Service Rules, 2005
5. Service Tax (Registration of Special categories of persons) Rules 2006
6. Service Tax (Determination of Value) Rules 2006
7. Taxation of Services (Provided from outside India and Received in India) Rules 2006.
8. Point of Taxation Rules, 2011.

# ACT VS RULES

Law is bifurcated in two broad heads

**Substantive Law-Act**
Substantive law is the law which creates Rights, Duties of the citizens and also decides punishments. All this is in the Acts passed by the Legislatures.

**Procedural Law- Rules**
Procedural Law is the mechanism to implement substantive law. The Rules and Policies describe the procedure to implement the substantive law.



## "No separate Service Tax department".

As initially service tax was imposed on only 3 services hence it was given to the "Central Excise and Customs department" but later also the same practice is going on. The administration of Service tax can be understood with the help of following table:-

1. MINISTRY OF FINANCE
2. DEPARTMENT OF REVENUE
3. CBEC
4. CENTRAL EXCISE ZONES HEADED BY CHIEF COMMISSIONERS
5. CENTRAL EXICISE COMMISSIONERATES HEADED BY COMMISSIONERS

To assist and Co-ordinate in the administration, a separate Directorate by name Director General of Service Tax has been formed (1997) with Head Quarters at Mumbai. The Directorate of Service Tax coordinates between the CBEC and the Central Excise Commissionerates. It also monitors the collection and assessment of Service Tax. The Service Tax reports received from various commissionerates are combined by the Directorate to monitor the performance.

### NOTIFICATIONS

The Government has also got the powers from the Act to issue notifications to

1. Exempt any service from the service tax and
2. Also to make rules to carry out any provisions of the Act. These powers are given in Section 93 and Section 94 of the Chapter V and Section 96-I of the Chapter VA.

By using these powers the Government Issue the Notifications form time to time to exempt the services or to make rules to carry out the provisions of the Act.

### CIRCULARS AND OFFICE LETTERS (INSTRUCTIONS) ON SERVICE TAX

- The administration of service tax is in the hands of CBEC and CBEC issue circulars and office Letters (instructions) from time to time to clarify taxability and scope of various services and also the scheme of administration of Service Tax.
- Here note that these circulars and instructions should be in the line of provisions of the Act and in any case these should be read with the provisions of the Act.
- In any case these circulars and office letters cannot override the provisions of the Act.

### TRADE NOTICES ON SERVICE TAX

- The Service Tax/Central Excise Commissionerates issue trade notices from time to time to explain the various instructions received by them from the CBEC to explain the same to the various trade associations in the form of trade notices.
- The trade notices alongwith the circulars and notifications are also distributed to the field officers for their proper adherence.
- The individual tax payers or citizen can also apply and get the copies of these trade notices.
- These contents of trade notices includes the text of Notifications, circulars, letters, orders, name of banks in which service tax can be deposited, clarifications regarding service tax matters etc.

## PERSON LIABLE TO PAY SERVICE TAX

In case of sale of Goods, VAT is collected and deposited by the seller of the Goods and on the same footings the Service tax is collected and deposited by the Service provider, though in case of some of services the responsibility of payment of tax is given to service receivers. So generally the Service tax is payable by the service provider but due to peculiarities of certain services the responsibility of payment of service tax is given to persons, other than the service tax providers, mostly the service receivers.

The provision that service receiver is liable to pay service tax is termed as **'Reverse Charge'**.

**EXCEPTIONS:**

- **Services provided to non-resident –** In relation to taxable service provided or to be provided by any person from a country other than India and received by any person u/s 66A of Finance Act, service tax is payable by recipient of service [Rule 2(1)(d)(iv)]
- **Services of insurance agents –**In case of insurance auxiliary service by an insurance agent, the tax will be payable by insurance company (general insurance or life insurance as the case may be). The insurance agent is not liable to register and pay tax. [However, the insurance agent is not entitled to avail exemption available to a small service provider].
- **Consignor/consignee paying freight, in case of GTA services -** In case of services of Goods Transport Agency (GTA), service tax is payable by consignor/consignee who is paying freight [rule 2(1)(d)(v)] [However, the consignor/consignee is not entitled to avail exemption available to a small service provider].
- **Services of Agents of mutual fund –**In case of distributors/agents of mutual funds, the liability will be on the recipient of service, namely, mutual funds [Rule 2(1)(vi)] [However, the mutual fund agent is not entitled to avail exemption available to a small service provider].
- **Body corporate or firm located in India receiving sponsorship service –** In case of sponsorship service provided to a body corporate or firm located in India, the body corporate or firm receiving **such sponsorship service** will be liable to pay service tax [rule 2(1)(d)(vii)]. 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.

***Q 1.*** **Who is liable to pay service tax in relation to services provided by a goods transport agency? (3 Marks) (Nov, 2007)**

Ans. In relation to taxable service provided by a goods transport agency, where the consignor or consignee of goods is-

(a) any factory registered under or governed by the Factories Act, 1948,

(b) any company formed or registered under the Companies Act, 1956,

(c) any corporation established by or under any law,

(d) any society registered under Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India,

(e) any co-operative society established by or under any law,

(f) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 or the rules made thereunder, or

(g) anybody corporate established, or a partnership firm registered, by or under any law.

The person liable for paying service tax is any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage.

## TAXABLE SERVICE

As per Sec 66 of Finance Act, 1994, service tax is payable on 'taxable service'. Various clauses of Sec 65(105) of Finance Act, 1994 define each type of 'taxable service'. The definition is different for each class of services, e.g. as per Sec 65(105)(a), any service provided by stock broker to any person in connection with sale or purchase of securities listed on a RSE will be 'taxable service'.

### RATE OF SERVICE TAX

This tax was first time introduced wef 1-7-1994 on three services @ 5 %. The rate of Service Tax applicable during different time period is as follows:

The service tax is charged on the value of taxable services referred in Sec 65(105) of Finance Act, 1994. At present, practically the rate of service tax is 10% and the person responsible for paying the service tax has to pay 2% Education cess and 1% Senior and Higher Education cess hence the overall rate of service tax is 10.3%.

| Period | Rate of Service tax (effective) |
|---|---|
| 1-7-1994 to 13-5-2003 | 5 % |
| 14-5-2003 to 9-9-2004 | 8 % |
| 10-9-2004 to 17-4-2006 | 10.2 % |
| 18-4-2006 to 10-5-2007 | 12.24% |
| 11-5-2007 to 23-2-2009 | 12.36 % |
| 24-2-2009 to 31.03.2012 | 10.30 % |
| Wef 1.4.2012 and onwards | 12.36 % |

### Alternative rate of service tax in case of certain services

- In case of specified works pertaining to specified immovable properties an optional composition rate of 4 % of gross value has been provided.
  **Rate of service tax Wef 1.4.2012**
  **4.8 % on gross amount charged.**
- **Special rate of service tax leviable on life insurance @ 1.5% [Sub-rule (7A)]**
  An insurer carrying on life insurance business liable for paying the service tax has the option to pay an amount calculated @ 1.5% of the gross amount of premium charged by such insurer towards the discharge of his service tax liability instead of paying service tax@ 10%.
  Such option was not available in cases where:-
  - the entire premium paid by the policy holder is only towards risk cover in life insurance; or
  - the part of the premium payable towards risk cover in life insurance is shown separately in any of the documents issued by the insurer to the policy holder.

  **Amendment made by *Notification No. 35/2011 ST dated 25.04.2011***

  **Alternative rates wef 1.4.2012,**
  3 % of the gross premium charged in the first year and
  1.5 % of the gross premium charged in the subsequent years, if the break up of the gross premium into risk portion and investment portion is not given to the policyholders at the time of providing the service.

- **In case of air travel agents services**, the agent have the option to pay service tax as under:
  - In case of domestic bookings: 0.6 % of the basic fare.
  - In case of international bookings: 1.2 % of the basic fare.

- **Special rate of service tax in case of sale/purchase of foreign currency including money changing**

With effect from 01.04.2011 (**Amendment made by *Notification No. 26/2011-ST dated 31.03.2011)***, sub-rule (7B) to rule 6 has been amended to provide as follows:-

Person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, provided by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorized money changer, referred to in section 65(105)(zm) and section 65(105)(zzk) as amended had the option to pay an amount at the following rates instead of paying service tax @ 10%:-

| **S. No.** | **Particulars** | **Rate of service tax** |
|---|---|---|
| **1** | Upto Rs. 100,000 | 0.1 % of the gross amount of currency Exchanged<br>or<br>` 25<br>whichever is higher |
| **2.** | Exceeding ` 1,00,000 and upto ` 10,00,000 | ` 100 + 0.05 % of the gross amount of currency exchanged |
| **3.** | Exceeding ` 10,00,000 | ` 550 + 0.01 % of the gross amount of currency exchanged<br>or<br>` 5,000<br>whichever is lower |

Alternative rates wef 1.4.2012

| **S. No.** | **Particulars** | **Rate of service tax** |
|---|---|---|
| **1** | Upto Rs. 100,000 | 0.12 % of the gross amount of currency Exchanged<br>or<br>` 30<br>whichever is higher |
| **2.** | Exceeding ` 1,00,000 and upto ` 10,00,000 | ` 120 + 0.06 % of the gross amount of currency exchanged |
| **3.** | Exceeding ` 10,00,000 | ` 660 + 0.012 % of the gross amount of currency exchanged<br>or<br>` 6,000,<br>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

**Optional Composition Scheme for Distributor or Selling Agents of Lotteries**

An optional mode of payment of service tax has been provided to a distributor or selling agent of lotteries by inserting sub-rule (7C) in rule 6 of the Service Tax Rules, 1994. The distributor or selling agents rendering the taxable service of promotion, marketing or organising/assisting in organising lottery can discharge their service tax liability in the following manner instead of paying service tax @10%:

| | |
|---|---|
| Where the guaranteed lottery prize payout is > 80% | ` 6000/- on every ` 10 Lakh (or part of ` 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw. |
| Where the guaranteed lottery prize payout is < 80% | ` 9000/- on every ` 10 Lakh (or part of ` 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw. |

**Rate of service tax Wef 1.4.2012**

| | |
|---|---|
| Where the guaranteed lottery prize payout is > 80% | ` 7000/- on every ` 10 Lakh (or part of ` 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw. |
| Where the guaranteed lottery prize payout is < 80% | ` 11000/- on every ` 10 Lakh (or part of ` 10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw. |

**Points to be noted:-**

1. In case of online lottery, the aggregate face value of lottery tickets will be the aggregate value of tickets sold.
2. The distributor/selling agent will have to exercise such option within a period of one month of the beginning of each financial year. The new service provider can exercise such option within one month of providing the service.
3. The option once exercised cannot be withdrawn during the remaining part of the financial year.

**Meaning of important terms**

**(a) Distributor or selling agent:** means an individual or firm or body corporate or other legal entity under law so appointed by the Organising State through an agreement to market and sell lotteries on behalf of the Organising State and shall include the distributor/selling agent authorized by lottery organizing State.

**(b) Draw:** means a method by which the prize winning numbers are drawn for each lottery/lottery scheme by operating the draw machine or any other mechanical method based on random technology which is visibly transparent to the viewers

**(c) Online lottery:** means a system created to permit players to purchase lottery tickets generated by the computer or online machine at the lottery terminals where the information about the sale of a ticket and the player's choice of any particular number or combination of numbers is simultaneously registered with the central computer server.

**(d) Organising State:** means the State Government which conducts the lottery either in its own territory or sells its tickets in the territory of any other State.

***[Notification No. 49/2010 ST dated 08.10.2010]***

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

**SERVICE TAX, EC AND SHE CESS TO BE SHOWN SEPARATELY IN INVOICE**

We need to show service tax, EC and SHE Cess separately in invoice. We cannot just charge 10.30% as 'service tax'.

**SERVICE TAX PAYABLE ON NET AMOUNT EXCLUDING VAT/SALES TAX**

Rule 2A(1)(i)(a) of Service Tax Valuation Rules and rule 3(1) of Works contract (Composition Scheme for Payment of Service Tax) Rules, 2007 make it clear that Vat/sales tax is not to be included in value for purpose of service tax. Thus, service tax is payable only on net amount excluding Vat/sales tax payable on the transaction.

**Q 3. Mr. Vasudevan has rendered freely, a service to a client which is taxable, but has not charged or received any fee from the client. Is service tax payable on such free service? (3 Marks) (May, 2008)**

Ans. Section 67(1)(iii) of the Finance Act, 1994 ensures payment of service tax based on valuation even when consideration is not ascertainable. However, these provisions apply only when there is consideration. If there is no consideration i.e., in case of free service, section 67 cannot apply.

Thus, no service tax is payable when value of services is zero, as the charging section 66 provides that service tax is chargeable on the value of taxable service. Hence if the value is zero, the tax will also be zero even though the service may be taxable. However, this principle applies only when there is really a 'free service' and not when its cost is recovered through other means.

**VALUATION OF TAXABLE SERVICES FOR CHARGING SERVICE TAX (Section 67)**

(1) Service tax chargeable on any taxable service with reference to its value shall,—

(i) **in a case where the provision of service is for a consideration in money**, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) **in a case where the provision of service is for a consideration not wholly or partly consisting of money**, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;

(iii) **in a case where the provision of service is for a consideration which is not ascertainable**, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

**REIMBURSEMENT OF EXPENSES OR 'OUT OF POCKET' EXPENSES**

**Inclusion in or Exclusion from value of certain expenditure or cost:**

- Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.

[Rule 5(1) of Service Tax (Determination of Value) Rules, 2006)]

- The service provider often claims reimbursement of certain expenses incurred by him (like travelling, boarding and lodging, etc.). Often, a service provider incurs some expenditure on behalf of service receiver and then recovers the amount from him. Such expenditure is not part of service provided by him to service receiver, but is incurred by him as per business practice or convenience.

- Octroi/entry tax amount paid by Clearing & Forwarding Agent, CHA or Transporter on behalf of owner of goods/Principal.
- Customs duty, dock dues, demurrage, transport charges etc. paid by Customs House Agent on behalf of client.
- Advertisement charges paid by Advertising Agency to newspaper on behalf of clients.
- Ticket charges paid by Travel Agent and recovered from his customer.
- Reimbursement of godown, salary and loading/unloading expenses by Principal to C&F Agent.

- The expenditure or costs incurred by the service provider **as a pure agent of the recipient of service**, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:-

(i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;

(ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;

(iii) the recipient of service is liable to make payment to the third party;

(iv) the recipient of service authorizes the service provider to make payment on his behalf;

(v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;

(vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and

(viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

[Rule 5(2) of Service Tax (Determination of Value) Rules, 2006)]

## EXCLUSION OF VALUE OF MATERIAL

Notification No. 12/2003-ST dated 20-6-2003 provides that if the amount charged includes value of goods and materials sold, service tax will not be payable on value of goods and materials sold. **There should be documentary evidence** showing value of goods and materials sold. This exemption is available only if CENVAT credit of such material is not taken. If such credit was taken, assessee should pay amount equal to the credit. Such payment should be before sale of such goods and materials.

Many exemption notifications provide that exclusion under notification 12/2003-ST is allowable only **when the service tax is paid at full rate and any abatement under any other exemption notification is not claimed**. Hence, in such cases, notification No. 12/2003-ST is of no use.

In **BSNL v. UOI (2006) SC,** it has been clearly held that price of goods cannot be included in value of services.

**TAX PAYABLE ONLY ON AMOUNT ACTUALLY RECEIVED**

Rule 6(1) of Service Tax Rules makes it clear that service tax is payable on value of taxable services received. Thus, if service provider does not receive any payment from his customer, there is no liability of service tax. No, Service tax is not leviable on free services.

'No service tax is payable if SIM cards are given free as bonus' – *Bharati cellular Ltd.*

'An assessee, who was a stock broker, didn't charge brokerage in respect of certain transactions. It was held that Sec. 67 does not have any deeming provision and hence service tax is not leviable' – Chandravadan Desai V. CCE

The above treatment is applicable only when there is really free service and not when its cost is recovered through different means.

***Q 4.*** **TVS motors sells 2 wheelers to customers through dealers with a free service during warranty period. In case of services to motor vehicles, though the service is termed as 'free service', actually the amount is paid to service provider (i.e. automobile dealer) by the manufacturer of automobile (i.e. TVS motors). The dealer didn't pay service tax on the ground that he didn't receive money from customers (i.e. Service recipient) but from a third party (i.e. Manufacturer). Is the dealer's argument correct?**

Answer: The words used in sec. 67 are "charged for such service provided or to be provided by him" but it does not specify that the amount should be 'charged' to service receiver.

Thus, the charge may be to anyone. **It is not necessary that 'charge' should be only to receiver of service. Even if amount is 'charged' to some other person and not to receiver of service, service tax will become payable.** Though the customer gets service free, it is not free service and would be taxable.

***Q 5.*** **Radhey Ltd. appointed Mr. Girish as its statutory auditor and paid amount to hotel and travelling agency for the accommodation and travelling expenses of auditor. The service provider (i.e. auditor) does not include the said amount paid by the company in the value of taxable services provided and argued that he didn't receive that amount from the service recipient and it is directly paid by it to hotel and travelling agency. Is the treatment adopted by auditor correct?**

Answer: As per Sec. 67, amount need not be 'charged' by service provider. Money paid to third party on behalf and for the purpose of service provider is includible in the value of taxable services provided by service provider. Definition of 'consideration' also makes it clear that consideration need not be received by the service provider himself.

**CALCULATION OF SERVICE TAX BY BACK CALCULATIONS**

The gross amount charged can be taken as inclusive of service tax and the 'value' and 'service' tax is to be calculated by back calculations. For example, if Bill amount is ` 1,000 and service tax is not shown separately in Invoice, the tax payable calculated by a simple mathematical formula is as follows -

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

Assume that Assessable Value (AV) is equal to 'Z'

| | | |
|---|---|---|
| AV | = | 1.000Z |
| Duty@12.36% | = | 0.1236 * Z |
| Sub-Total | = | 1.1236 * Z |
| Now: | | |
| 1.1236* Z | = | 1,000 |
| Hence, 'Z' | = | 1,000/1.1236 |
| i.e. Z | = | 890 |

Thus, 'Z', i.e. Assessable Value is Rs 890 and service tax @ 12% will be Rs 106.80. Education cess @ 2% of service tax will be Rs 2.14. SAH education cess is Rs 1.06. Thus, total tax will be Rs 110.

**Q 6. Mr. X, a service provider who pays service tax regularly, was of the opinion that a particular service was not liable for service tax. He, therefore, did not charge service Taxation tax in his bill. He received the bill amount without service tax. How will service tax liability of Mr. X be determined in such case? (2 Marks) (June, 2009)**

Ans. Section 68 of the Finance Act, 1994 casts the liability to pay service tax upon the service provider or upon the person liable to pay service tax as per rule 2(1)(d) of the Service Tax Rules, 1994. This liability is not contingent upon the service provider realizing or charging the service tax at the prevailing rate. The statutory liability does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver. In this case, the amount received from the service receiver will be taken to be inclusive of service tax. Accordingly, service tax payable by the service provider shall be ascertained by making back calculations in the following manner:-

$$\text{Service tax payable} = \frac{\text{Amount received} \times \text{Service tax rate}}{(100 + \text{Service tax rate})}$$

**Q 7. Should service tax be paid even if not collected from the client or service receiver? (2 Marks)(May, 2007)**

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

**Q 8. Mr. Y, a consulting engineer raised a bill of ` 2,24,720 (including service tax) on his client for consulting services rendered by him in June, 2010. A partial payment of ` 1,68,540 was received by Mr. Y in March, 2011. Compute the service tax amount payable by Mr. Y and the due date by which service tax can be deposited. (3 Marks) (Nov, 2008)**

Ans.The service tax is payable to the Government only when payment is received, though the service provider charges service tax in his bill as and when the service is provided.

In the given case, amount of service tax liable to be paid by Mr. Y

$$\frac{\text{Gross Amount} \times \text{Rate of tax}}{(100 + \text{Rate of tax})}$$

$$\frac{1{,}68{,}540 \times 10.30}{110.30} = 15{,}739$$

Mr. Y is required to deposit service tax of `15,739 on or before 31.03.2011.

Note:

1. Service tax is payable only on the value of taxable services actually received [Rule 6 of the Service Tax Rules, 1994].

2. Rate of service tax is taken to be inclusive of 2% education cess and 1% secondary and higher education cess.

**Service Tax Exemptions**

Central Government can grant partial or total exemption, by issuing an 'exemption notification' u/s 93 of Finance Act, 1994. Such exemption may be partial or total. Exemption may be conditional or unconditional. The only limitation is that exemption cannot be granted by Central Government with retrospective effect. There are following general exemptions -

- **Small service providers (**Notification No. 6/2005-ST dated 1-3-2005) **–** The small service providers whose turnover of taxable services from one or more premises did not exceed ` 10 lacs in 2008-09 will be exempt from service tax in next financial year i.e. in 2009-10 upto the turnover of ` 10 lacs. However, if value of taxable turnover exceeds ` 10 lacs in 2009-10, there will be no exemption at all in 2010-11.
  In brief, service rendered in previous financial year should be less than exemption limit to claim exemption in current year. The exemption is gross for all the services provided by a person, suppose if one is providing two services then it both will be included to check ` 10 lacs, **means exemption is available per person and not per service.**
  Further the **exemption is not available in case of use of brand** .Suppose you are running Suchdeva PT college, Jet King etc. brand of others then exemption is not available at all. The exemption to small service providers is available subject to following conditions:
  - The provider of taxable service shall not avail the CENVAT credit of service tax paid on any input services.
  - The taxable services provided by a person under a brand name or trade name, **whether registered or not**, of another person; will not be eligible for exemption available to small service providers.
  - Person providing taxable service in excess of ` 9 lacs p.a. will have to register with Superintendent of Central Excise under Service Tax provisions [Notification No. 26/2005-ST dated 7-6-2005], though they will be eligible for exemption if turnover is less than ` 10 lacs p.a.
- **Export of Services –** There is no service tax on export of services, if service is exported as per 'Export of Service Rules', 2005.

**Rule 3**(1) Export of taxable services shall, in relation to taxable services,–

(i) Taxable services in relation to immovable property situated outside India;

(ii) Taxable services performed outside India:

***Provided*** that where such taxable service is partly performed outside India, it shall be treated as performed outside India.

(iii) Taxable services provided:

a) in relation to business or commerce to a recipient located outside india.

b) in relation to activities other than business or commerce, to a to a recipient located outside India at the time of provision of such service:

*Provided* that where such recipient has commercial establishment or any office relating thereto, in India, such taxable services provided shall be treated as export of service only when order for provision of such service is made from any of his commercial establishment or office located outside India.

(2) The provision of any taxable service shall be treated as export of service when the following conditions are satisfied, namely:-

**(a) such service is provided from India and used outside India; and**

(b) payment for such service is received by the service provider in convertible foreign exchange.

**4. Export without payment of service tax.-** Any taxable service may be exported without payment of service tax.

**5. Rebate of service tax.-** Where any taxable service is exported, the Central Government may, by notification, grant rebate of service tax paid on such taxable service or service tax or duty paid on input services or inputs, as the case may be, used in providing such taxable service and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification.

- **Services to United Nations, its Agencies or international organisations–**Services provided to UN and International Agencies are exempt [Notification No. 16/2002-ST dated 2-8-2002].
- **Services provided to diplomatic missions for their official use**
- **Services provided to diplomatic missions for their personal use**
- **Exemption of services provided by Technology Business Incubators (TBI) and Science and Technology Entrepreneurship Parks (STEP).**
- **Exemption to services provided to SEZ –** Services provided to Special Economic Zone (SEZ) unit or SEZ developer will be exempt if the services are wholly consumed within SEZ. If the services are consumed wholly or partly outside SEZ, the services will be taxable at the hands of service provider. The service provider to SEZ unit or SEZ developer will have to charge and pay service tax as per normal procedure only when service is wholly or partly consumed outside SEZ. These services will be exempt from service tax at hands of SEZ or SEZ developer by way

of refund. The SEZ or SEZ Developer will have to file refund claim as per procedure prescribed in Notification No. 9/2009-ST dated 3-3-2009. If the service is wholly consumed within SEZ, the service provider is not required to charge service tax and hence no question of any refund.

- **Service provided by SEZ - SEZ is exempt from service tax.**
- **Exemption to services provided in relation to delivery of contents of a cinema in digitized encrypted form directly to cinema theatre for exhibition through use of satellite, microwave communication line and not by any physical means including CD and DVD.**
- **Service tax not leviable on fee collected by public authorities while doing statutory functions.**
- **Services provided by RBI exempt -** Exemption from service tax has been provided to all taxable services provided by RBI.
- **Services where RBI is liable to pay service tax** are also exempt.

**INTERVAL OF DEPOSIT OF SERVICE TAX**

In case of Individual or partnership firms the service tax is payable **quarterly basis** and in case of other assesses the service tax is payable on **monthly basis.**
For the first three quarters the service tax is payable on 5th of the following month and in case of last quarter it has to be deposited on or before 31st. March itself.
In case of monthly payment the service tax for the first 11 Months have to be deposited on 5th of the following month and for the month of March it has to be deposited on or before 31st. March.

| Assessee | Periodicity of payment | Period | Due date |
|---|---|---|---|
| Individual, Firm | Quarterly | April to June | 5th (6th in case of e-payment) of the month immediately following the said quarter) |
| | | January to March | 31st March |
| Others | Monthly | All months except march | 5th (6th in case of e-payment) of the month immediately following the said calendar month) |
| | | March | 31st March |

**THE POINT OF TAXATION RULES, 2011**

[18/2011-Service Tax dated 01.03.2011]
[As amended by 25/2011-Service Tax dated 31.03.2011 and corrigendum dated 04.04.2011]

**1. Short title and commencement. -** These rules shall be called the Point of Taxation Rules, 2011. They shall come into force on the 1st day of April, 2011.

**2. Definitions. -** gives some definitions like act, associated enterprises, invoice and point of taxation etc.

**Rule 3. Determination of point of taxation**.- For the purposes of these rules, unless otherwise provided, 'point of taxation' shall be,-

(a) the time when the invoice for the service provided or to be provided is issued:

***Provided*** that where the invoice is not issued within 30 days of the completion of the provision of the service, the point of taxation shall be date of such completion.

(a) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

**Explanation .-** For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.".

**In other words, the liability to pay service tax shall arise on the date of –**

- The completion of services, if the invoice is not raised within 30 days of completion of service, or
- Raising of invoice, if the invoice is raised within 30 days of completion of service or
- Receipt of payment

Whichever is earliest.

**Rule 4. Determination of point of taxation in case of change in effective rate of tax -** Notwithstanding anything contained in rule 3, the point of taxation in cases where there is a change in effective rate of tax in respect of a service, whether before or after rendering the service , the **new rate will be applicable** only when two of the following conditions are satisfied:

(i) service has been rendered after the date of change of rate;

(ii) invoice has been issued after the date of change of rate;

(iii) payment is received after the date of change of rate.

**Rule 5. Payment of tax in cases of new services.-** Where a service, not being a service covered by rule 6, is taxed for the first time, then, –

(a) **no tax** shall be payable to the extent the **invoice has been issued and 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 the period referred to in rule 4A of the Service Tax Rules, 1994 (ie **within 14 days**).

**N.B: all payments realised after the service became taxable shall suffer tax.**

**Rule 6. Determination of point of taxation in case of continuous supply of service.- Omitted wef 1.4.2012 as it has been merged with Rule 3.**

**Rule 7. Determination of point of taxation in case of associated enterprises.-** Notwithstanding anything contained in these rules, the point of taxation in respect of,-

(a) Export of services as per Export of Services Rules, 2005;

(b) the persons required to pay tax as recipients under the rules made in this regard in respect of services notified u/s 68(2);

(c) individuals or proprietary firms or partnership firms providing taxable services namely-

- CA
- CS

- CWA
- Architect
- Interior Decorator
- Legal, scientific and technical consultancy services

**shall be the date on which payment is received or made, as the case may be:**

***Provided*** that in case of services referred to in clause (a), where payment is not received within the period specified by the RBI, the point of taxation shall be determined, as if this rule does not exist.

***Provided*** further that in case of services referred to in clause (b) 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.

**Rule 8. Determination of point of taxation in case of copyrights, etc. .-** In respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration, the service shall be treated as having been provided each time when a **payment** in respect of such use or the benefit is **received by the provider** in respect thereof, **or an invoice is issued by the provider**, **whichever is earlier.**

***Q 9.*** **What are the due dates for payment of service tax? (3 Marks) (Nov, 2007)**

***Q 10.*** **Who is liable to pay e-payment of service tax? (2 Marks) (Nov, 2008)**

Ans. **Service tax rules has been amended from 01.04.2010.**

**Now e-payment of service tax and e-filing of service tax return is mandatory where the service tax paid is ` 10 lacs or more in the immediately proceeding financial year including the adjustment of Centvat credit.**

If service tax paid in proceeding year is ` 10 lacs or more, then assesee have to make payment of service tax Electronically through internet banking only.

In earlier notification e payment was mandatory if service paid crosses the amount of ` 50 lakh in current year also but in new notification there is no such clause.

Means new businesses has no compulsion to deposit the tax on-line even the service tax paid amount is more than ` 10 lacs.

Further, wef 1.10.2011 every assessee shall submit the half yearly return electronically.

Note:

This amendment is applicable from 01.04.2010. Service tax paid here means service tax directly paid plus adjustment of liability through adjustment of cenvat. For example a company has paid ` 200000 lakh in FY 2009-10 and availed cenvat credit ` 900000 then service tax payment, considered for this purpose will be 200000+900000=1100000/- and Company has to deposit the service tax in FY 2010-11 online.

Penalty for not filing return online: Failure to pay service tax electronically when the person is so required shall attract a penalty of an amount upto ` 20,000.

**Q 11. Is a service provider allowed to pay service tax on a provisional basis? (2 Marks)**

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

**Q 12. Mr. Saravanan has collected a sum of ` 15,000 as service tax from a client mistakenly, even though no service tax is chargeable for such service. Should the amount so collected be remitted to the credit of the Central Government? (2 Marks)(M-08)**

Ans. Section 73A of the Finance Act, 1994 casts an obligation on every person who has collected service tax from any recipient of service in any manner as representing service tax, to remit the same to the credit of the Central Government. On account of this provision, where any person has collected any amount, which is not required to be collected from any other person, in any manner as representing service tax, he should also immediately pay the amount so collected to the credit of the Central Government.

Hence, Mr. Saravanan has to remit the service tax collected by him on the non taxable services to the credit of the Central Government before the due date.

**Q 13. An assessee who has collected service tax from a client is unable to perform the service. Briefly explain the situations in which and the conditions subject to which he can adjust the service tax relating to above, against his forthcoming service tax liability. (3 Marks) (May, 2007)**

Ans. An assessee may adjust excess payment of service tax against his liability of service tax for subsequent periods. Where an assessee has deposited service tax in respect of a taxable service which is not so provided by him either wholly or partially for any reason, he may adjust the excess service tax so paid by him (calculated on a pro rata basis) against his service tax liability for the subsequent period. However, for carrying out such adjustment, the assessee must have refunded the value of taxable service and the service tax thereon to the person from whom it was received.

In such cases of adjustment, the assessee is required to file the details in respect of such suo moto adjustments done by him at the time of filing the service tax returns. The return Form ST – 3 also provides for enclosure of documentary evidence for adjustment of such excess service tax paid.