# VAT & Service Tax

(Amended upto 31st October, 2013)

**FACTS & ACTS**

**TARUN RUSTAGI**

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**Think Different**


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With thanks and Regards

*Tarun Rustagi*

Syllabus coverage & Paper pattern
| Tarun Rustagi |

| TAXATION | | | |
|---|---|---|---|
| | | | |
| **Particulars** | **INCOME TAX** | **VAT** | **SERVICE TAX** |
| ❖ *Power* | CG | SG | CG |
| ❖ *Taxable event* | **Assessment year** (For income earned in previous year) | **Sale** | **Provisioning** **Rendering** |
| ❖ *Tax is on* | **Income** (Total income) | **Goods** (Vatable goods) | **Services** (Taxable services) |
| ❖ *Person liable to pay* | **7 kinds of person** | **Dealer** Manufacture Trader | **Service provider** (in some cases person receiver) |
| ❖ *Point of payment* | **Assessment year** | **Sale** | **Invoice/Payment** (earlier) |
| ❖ *Frequency* | **Yearly** | **Differ from state to state** | **Monthly** **Quarterly** |
| ❖ *Registration*<br>• What to register<br>• Registration no. | • **Person**<br>• **PAN (10 Digits)** | **Person**<br>**TIN (11 Digits)** | **Premises**<br>**15 Digits** |
| ❖ *Basic Exemption* | | **10 lakhs** | **10 lakhs** |

## Syllabus coverage and Paper pattern
| Tarun Rustagi |

| TAXATION | | | |
|---|---|---|---|
| Particulars | Income Tax (50 marks) | VAT (25 Marks) | Service Tax (25 Marks) |
| Governing Act | Income Tax Act 1961 | State VAT Acts | Finance Act 1994 |
| Related Rules | Income Tax Rules 1962 | | STR, 1994<br>POT Rules, 2012<br>STVR, 2006 |
| **Question paper pattern** | | | |
| Level of question | Analytical | Straight forward | Straight forward |
| Types of question | Computational<br>Theoretical | Theoretical<br>Computational | Theoretical<br>Computational |

## Chapter 1 – Introduction to Tax

**Concept - Why Govt. charges tax and constitutional background.**

Govt. provides many kind of services to its resident people or to the non-residents such as infrastructure facility, security etc. and moreover a place where people can earn and live.

In providing these facilities govt. incurs a huge amount of expenditure and to meet those expenditures, Govt. needs funds and there is no specific source from which govt. can generate revenue. Therefore, we can say tax is a fees charged by the govt. against the services provided.

**Govt. major source of revenue is tax** (Direct tax and Indirect tax)

Before we proceed to the income tax, we must have knowledge about the constitutional background of taxes in India i.e. where it is written Govt. can charge tax, and powers related to make rule and laws.

**Constitution of India is the supreme law i.e. all other law in India has to be consistent with the constitution** and if it is not constitutionally valid, it can't be said a legal law.

**Article 246 and 248 and schedule vii of the constitution distributes the power to impose and collect taxes between the central govt. and state govt.**

For example- constitution specifically provides that agricultural income is not to be taxed under Entry 82 and hence central Govt. has no power to tax agricultural income.

Tax
- **Direct tax**
  - **Income Tax**
  - Wealth Tax
- **Indirect tax**
  - Tax on goods
    - Excise duty
    - Custom Duty (Import/Export duty)
    - Cen. Sales tax
    - **Vat**
  - **Service tax**

## WE INDIANS AND OUR CONSTITUTION

| | | |
|---|---|---|
| 15th august 1947 | Independence day | The date on which India achieved independence. |
| 26th January ,1950 | Republic day | The date on which Constitution of India came into force as the governing document of India. |

**Parliament** — There are two houses of parliament-

| | Rajya sabha (council of states) | Lok sabha (house of the people) |
|---|---|---|
| Referred as | Upper house of parliament | Lower house of parliament |
| Max No of members | 250 members | 552 members |
| Leader of house | Dr. Manmohan Singh | Sushil Kumar Shinde |
| Leader of opposition | Arun Jaitely (BJP) | Shushma Swaraj (BJP) |

## IMPORTANT CONSTITUTIONAL PROVISOINS

| ARTICLE 265 OF CONSTITUTION | |
|---|---|
| | No tax shall be levied or collected except by authority of law. |

| ARTICLE 245 OF CONSTITUTION | |
|---|---|
| (1) | Parliament may make laws for the whole or any part of the territory of India, and<br>Legislature of a State may make laws for the whole or any part of the State. |
| (2) | No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation. |

| ARTICLE 246 OF CONSTITUTION | |
|---|---|
| (i) | Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List") |
| (ii) | Parliament, and, subject to clause (i), Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List"). |
| (iii) | Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List") |

## Article 246 of constitution (seventh schedule)

| Union list (CG) | State list (SG) | Concurrent list (Both Govt.) |
|---|---|---|
| 1 to 97 entries<br>(1 to 96 entries are specific and entry 97 is residuary entry) | 1 to 66 entries<br>(all entries are specific) | 1 to 47 entries<br>(At present there is no law related to taxes covered in concurrent list) |
| **Entry 82 – Taxes on income other than agricultural income.** | **Entry 46 – Taxes on agricultural income.** | **Entry 25 – Education** |
| **Entry 83 – Duties of customs including export duties.** | | |
| **Entry 84 – Duties of excise on tobacco and other goods manufactured and produced in India**<br>**Except-**<br>**(a) Alcoholic liquors for human consumption**<br>**(b) Opium, Indian hemp and other narcotic drugs and narcotics**<br>**But including medicinal and toilet preparations containing alcohol or any substance included in (b) above.** | **Entry 51 – Duties of excise on the following goods manufactured or produced in the state-**<br>**(a) Alcoholic liquors for human consumption**<br>**(b) Opium, Indian hemps and other narcotic drugs and narcotics**<br>**But not including medicinal and toilet preparations containing alcohol or any substance included in (b) above.** | |
| **Entry 86 – wealth tax** | | |
| **Entry 92A – Taxes on the sale or purchase of goods other than news papers, where such sale or purchase takes place in the course of inter-state trade or commerce.** | **Entry 54 – Taxes on sale or purchase of goods**<br>**Other than news papers.** | |
| **Entry 92C – Service tax** | **Entry 60 – Taxes on professions, trades, callings and employments.** | |
| **Entry 97 – Any other matter not enumerated in list II or list III including any tax not mentioned in either of those lists (i.e. Residuary entry)** | (Wide power with the Central Govt. due to this residuary entry)<br><br>Author comment – Service tax is chargeable at present with the power derived under entry 97 although there is specific entry 92C. | |

## Constitution and tax laws

Constitution is the foundation and source of powers to legislate all laws in India. Parliament, as well as state legislatures gets the power to legislate various laws from the constitution only and therefore every law has to be within the ambit of the constitution.
Talking about the taxation laws and the interpretation of taxation laws, every tax professional must understand the basic provisions of constitution relating to taxation including the powers of parliament and state legislatures to legislate regarding levy and collection of tax, the restrictions imposed by our constitution on such powers, entries concerning taxation in union list and state list.
All laws are subordinate to the constitution. While interpreting every law one has to keep in mind the object behind the law, if any provisions of law or any interpretation of the law defeats the objects of such law then it is illegal and void.
The root of every law in India lies in the constitution. Interpretation of every law, validity of subordinate legislations must be judged in the background of the provisions of constitution.

**Constitution of India** → **Parliament (All parties)** $\xrightarrow{\text{Approval}}$ **Rajya sabha + Lok sabha** → **Finance Act**

**Central government (Ruling party)** $\xrightarrow{\text{Finance bill}}$ **Parliament (All parties)**

## Finance Act

Every year a Budget is presented before the Parliament by the Finance Minister, normally on the last working day of February month. One of the most important components of the Budget is the Finance Bill. Finance Bill contains **various amendments i.e. changes which are sought to be made in the area of Direct and Indirect taxes** levied by the Central Govt. The Finance Bill also mentions the rates of Income tax.
When the bill is approved by both the Houses (Lok sabha & Rajya sabha) of Parliament and receives the consent of President. It becomes Finance Act**.**

## Article 270 – Constitution Article

(1) **All of the taxes and duties** referred to in **union list** (except surcharge and education cess)
- Shall be levied and collected by **Government of India** and
- Shall be distributed **between Union and States** in the manner provided in clause(2)

(2) **Such % as prescribed (69.5%)** referred to the net proceeds of any such tax or duty in the FY
- Shall **not** form part of the **consolidated fund of India**
- But shall be assigned to the states within which that tax or duty is leviable in that year,

And

- Shall be distributed among the states in such manner as may be prescribed in clause (3)

(3) In this article,

**'PRESCRIBED' means prescribed by President** by order after considering the recommendations of the finance commission.

## Article 271

**Parliament** may at any time **increase any of duties and taxes by a surcharge** (including education cess) for purposes of Union and the whole proceeds of any such surcharge **shall form part of the consolidated fund of India.**

**Author comment-**

| Tax/ Duty | Cess | Interest | Penalty |
|---|---|---|---|
| Tax/duty refers to compulsory recovery of money under force of an Act. In other words, it is compulsory extraction of money by public authority for public purposes, the payment of which is governed by Law. | Cess is also a tax with the only difference that purposes of fund collected are pre-fixed with name of cess.<br>For ex- education cess | Interest is compensatory in character and is imposed on assessee who has withheld any tax as and when it is due and payable | Penalty is penal in character and is ordinarily levied for a deliberate violation of statutory provisions. |

## Interpretation of Definitions

| | |
|---|---|
| Exhaustive definition (restrictive definition) | ☞ This definition begins with word "Means"<br>☞ When the definition of a word begins with 'means' it is indicative of the fact that the meaning of the word has been restricted, that is to say, it would not mean anything else but what has been indicated/ stated in the definition.<br>☞ Example – Honest citizen means Tarun Rustagi. |
| Inclusive definition (expansive definition) | ☞ This definition begins with word "Includes"<br>☞ When the definition of a word begins with 'includes' it is indicative of the fact that the meaning of the word has been expanded, that is to say, it would cover up not only such things as they signify according to their natural meaning, but also those things which the definition declares that it shall include.<br>☞ Example – Honest citizen includes Tarun Rustagi. |
| Exhaustive and inclusive definition | ☞ This definition uses both words "Means and Includes"<br>☞ Example – Honest citizen means Tarun Rustagi<br>And includes Anna Hazare. |

## Interpretation of Words/Expressions

(Words used in law but not defined there in)

| | |
|---|---|
| Definitions in other Acts | (A) Definitions given in General clauses Act, 1897-<br>Example- He includes she<br>- Govt. shall include both CG and SG.<br>☞ Whatever General clauses Act says, that has to be read into every statue (unless a particular statue makes any contrary specific provision)<br><br>(B) Definitions in other Acts-<br>Example – Motor vehicles Act, Transfer of Immovable properties Act etc. |
| Common Parlance | When a word has not been defined in the Act and is a word of everyday use, it must be interpreted in its popular sense meaning. |
| Judicial precedents | Where the meaning of a particular word/ expression has been earlier considered and decided by Court, then that meaning shall continue to prevail. |

## How to read

### Definitions

- **Not defined with in the act**
  - Def. in Other acts
  - Common parlance
  - Judicial precedents
- **defined with in the act**
  - Exhaustive definition (Means)
  - Inclusive definition (Includes)
  - Exhaustive + Inclusive → (Means + Includes

### Interpretation rules

**Rule of Literal interpretation**

This is the primary rule of interpretation. It states that **words used in a statute must be given their ordinary, normal and grammatical meaning**. Their ordinary meaning neither be enlarged nor restricted.

**Rule of purposive interpretation**

**If** literal meaning **leads to absurdity, inconvenience, injustice or evasion, then court must modify the meaning to such an extent as would prevent such a consequence.**

**Note**- It is for judge to say whether literal interpretation is leading to absurd results.

## Chapter 2 – Vat Basics

**Vat is principally not a tax but a taxation system, what we pay to govt. is sales tax (same taxation system we also use in excise)**

**Taxation System**

**Gross taxation system**

(Under gross taxation system Final sales value is taxable)

**Stamp duty**

**VAT taxation system**

(Under vat taxation system tax paid on earlier stage i.e. on Input is allowed as credit to pay output tax)

**(Excise duty/ service tax/ sales tax)**

**Example 1 -**

**Mr. A**

**Purchased shirt**
**Purchase price - 1000**
**VAT on purchase - 50**
**Total paid – 1050**

**Shirt sold**
**Sale price - 2000**
**VAT on sales - 100**
**Total collected - 2100**

**Mr. A collected 100 Rs. on account of vat on sale of shirt from the customer. So it is his liability to pay the collected amount to Govt. But for paying that 100 Rs. he can use credit of 50 Rs. paid by him on purchase of shirt because burden of this 50 Rs. was borne by A and balance 50 Rs. he will pay in cash.**
**Hence in nutshell A has only paid tax on value addition made by him i.e. 2000-1000 = 1000 * 5 % = 50 Rs.**

**Example 2 -**

**Mr. A**

**Purchased house**
**Purchase price – 10 lakhs**
**Stamp duty paid – 50000.**

**Sold house**
**Sale price – 20 lakhs**

**Mr. C**

**(Mr. A will charge at least 1050000 from next buyer(C) because he himself paid 10 lakhs on purchase and 50000 to stamp valuation authority.**
**On 20 lakhs stamp duty will be paid by next buyer(C) who purchased the house from Mr. A. suppose the amount of stamp duty payable by C is Rs. 1 lakh but he needs to pay that in cash only i.e. he cannot claim credit of Rs. 50000 although the burden of this 50000 was borne by C.**

## VAT introduction

**VAT is principally not a tax but a taxation system.** VAT is a taxation system which does not tax GROSS VALUE like in old sales tax system rather which taxes VALUE ADDITION (refer previous page). INDIA adopted this system from foreign countries which generated good results. SO, India adopted this system.
CG adopted this system first under Excise.
Then it suggested state governments to adopt this system.
State governments when understood benefit of VAT system agreed to its acceptance. To ensure harmonisation, principal commitments from states were taken in written, which is popularly known as '**WHITE PAPER ON VAT**'.

**PERSON X** →

Input → output

Purchase price
100
VAT- 10%

**Value addition (3 methods)**

→ **PERSON Y**
Sale price 200
VAT- 10%

**Addition Method**
Value addition= expenses + profit

**Substraction Method**
VA= sale price- purchase price

**ITC Method**
VAT
↓
(Tax on sales/output – Tax on purchases/**Input**)

**Position in India**- In INDIA, ITC method shall be used (credit shall be admissible on the basis of invoice)

- **The next issue arises as what is the meaning of INPUT. For input treatment there is three variants in vat-**

| | Gross product variant | Consumption variant | Income variant |
|---|---|---|---|
| Input | 100% credit | 100% credit | 100% credit |
| Capital goods | No credit | 100% credit | Credit in installments |
| **Input service** | No credit | No credit | No credit |

**Position in India**- States shall have discretion to allow credit in full or in installments i.e. consumption variant or income variant (subject to condition that full credit shall be allowed maximum in 3 years period i.e. to say in 36 monthly installments).

## VAT in India

VAT/Sales tax is **tax on sale of goods within the state** i.e. Intra state sale. **Goods means any movable property and includes securities.**

**Analysis**- Definition of goods specifically includes securities hence sale of shares/ debentures/ bonds etc. are also liable to VAT.

**Whether sale of copyrights/ patents etc. are also liable to VAT?**

The answer is yes, definition of goods itself is of very wide coverage. It includes any movable property. Sale of copyrights (because movable property) is also liable to VAT.

**Vat is a state subject hence it can be levied only on sales affected within a state**. A sale from one state to another state will not be liable to vat but central sales tax (CST), levied by central govt. but collected by state govt.

**Vat is a multi stage tax because transaction of sale also passes through multipoints.**

For example – Sale from manufacturer to whole seller, whole seller to retailer and retailer to end consumer. These all persons are collectively known as DEALER. A dealer may be manufacturer/ whole seller or retailer or any person who sell goods.

Small dealers with turnover of Rs. 10 lakhs have been kept out from vat liability.

**Dealer**
- → **Manufacturer**
- → **Trader**
  - → **whole seller** – who sells goods to any person other than Consumer.
  - → **Retailer**- who sells goods to consumer.

**Author's Note**-

(Students shall clear in their mind that ICAI sets one paper for whole of India but VAT is a state subject i.e. provisions of VAT differs from state to state. That's why you are not required to read the sales tax law, only basic provisions (which is known as white paper) of VAT is in your syllabus which is discussed in detail and with diagrammatic analysis in coming pages. Students are not supposed to remember any section as far as it relates to VAT).

## Vat in India

**Introduction of VAT in India-**

In India, VAT system was introduced in 1995 in respect of central excise duties. Central excise duties being administrated by Central Govt, that system was referred as "CEN-VAT" At the state level, the VAT system was introduced from 2005 & onwards in substitution of existing sales tax system.

- ***At present VAT has been adopted by all states. Haryana was the first state and Uttar Pardesh was the last state to adopt vat system.***

### Old sales tax system v/s New sales tax system

**Old sales tax system-**

PERSON X →

Input → output

Purchase price= 100

Sales tax= 10%

Sales tax= 10 Rs.

Cost= 110

→ PERSON Y

Sale price 200

Sales tax- 10%

Sales tax= 20.

Total sales tax to state govt. = 20 + 10 = 30 Rs.

**New sales tax system-**

PERSON X →

Input → output

Purchase price= 100

Sales tax= 10%

Sales tax= 10 Rs.

→ PERSON Y

Sale price 200

Sales tax- 10%

Sales tax= 20.

Sales tax payment = Tax on output – Tax on input

20 Rs. - 10 Rs.

Total sales tax to government = 20 Rs.

- **Justification of vat in white paper-**

**In the existing system of sales tax structure, there are problems of double taxation of commodities and multiplicity of taxes which leads to cascading tax burden.**

## Chapter 3 - Sales tax and Constitution

Constitution of India

| UNION LIST | STATE LIST | CONCURRENT LIST |
|---|---|---|
| Entry 82- Taxes on Income Other than Agricultural income | Entry 46- Tax on Agricultural income | |
| Entry 83- Custom duties | Entry 54 → TAX on **Sale or Purchase of Goods** Other than News papers | |
| Entry 84- Excise duty | | |
| Entry 86- Wealth tax | | |
| Entry 92C- Service tax | | |
| Entry 97- Residuary Entry | | |

**Analysis-**

In India, there is only Tax on sales. Sale was not defined by the constitution.

But definition of sale as per "Sales of goods Act" **means**-

**Transfer of goods from one person to another in pursuance of a contract of sale** (for a contract there should be an offer and acceptance between the two parties however it can be oral or it can be written)

➢

**Mr. A (sugar manufacturer)** → **Government (as per Govt. policy a sugar manufacturer can not sale sugar irectly in market i.e. he can sale only to Govt. only)**

**There is no offer and acceptance between the two persons but it was an order from the Govt. but Govt. demanded sales tax from Mr. A. A refused to pay tax claiming that it is not an sale but a compulsory acquisition by the Govt and he won the case in Supreme Court. Due to this type of reasons concept of deemed sales came into existence.**

**Amendment in constitution- ARTICLE 366(29A) – Concept of DEEMED SALES-**

**'Tax on Sale or Purchase of goods" includes**

**a) A tax on the transfer otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration.**

**b) A tax on the transfer of property in goods(whether as goods or in some other form) involved in the execution of a WORKS CONTRACT**

**c) A tax on the delivery of goods on HIRE-PURCHASE or any system of payment by installments**

**And others.**

**An understanding of deemed sales**

(Linking of deemed sales under sales tax and declared services under service tax)

**Case 1** **Year 1970**

**Construction of House**

**Contractor** ← **Mr. A**

**In this contract Mr. A will provide the material and Contractor will provide only labour services in construction of house for Mr. A (known as pure labour contract)**

↓

It is a pure contract of service hence VAT is not chargeable and not even service tax because service tax comes into existence from 1994.

**Case 2**

**Contractor** ← **Mr. A**

**In this contract labour as well as material will be provided by contractor and he will charge for both separately from Mr. A (known as composite divisible contract)**

↓

Since contractor is charging both amount separately i.e. for labour and material. On material portion vat is chargeable and on service portion no service tax because service tax comes into existence from 1994.

Case 3

1970

**Contractor** ← **Mr. A**

**In this contract labour as well as material will be provided by contractor and he will charge for both from Mr. A but without bifurcation of amount of material and labour (known as composite indivisible contract/works contract)**

↓

**1970**

Here the litigation starts, because there is one single contract. Contractor claimed because the dominant/main nature of contract is construction, hence it is a service contract and no vat can be chargeable on the same. Since he is claiming it is service contract, there is not even any service tax liability because service tax comes into existence from 1994.

- But **now this case is covered under deemed sales (material portion in execution of works contract)**

**2012**

Service tax came into existence from 1994. Now visualise the above situation in year 2012 where service tax is chargeable @ 12 %. Now the same contractor argues that it is not an service contract but a deemed sale (because vat rate is lower than service tax rate).

- But deemed sale is only material portion in execution of works contract not the whole contract value. So **Central Govt. also brought the concept of declared services in service tax to clear the conflicts by declaring this as declared service and hence service portion is taxable here.**

**Author comment-**

1. **Works contract means any contract in which a single price is charged for both goods and services i.e. it does not happen only in construction of buildings. For example a scooter mechanic may charge lump sum amount for the goods used in repairing the scooter and for his labour charges.**
2. **Deemed sales covers 6 transactions and declared services covers 9 transactions (detail and comparison is given in Part B- Service tax of this book). Same logic and principle will work in understanding of other deemed sale transactions and declared services transactions)**

# Chapter 4 – White paper

Year 1995- The first preliminary discussion on state level vat took place. The basic issue on VAT were discussed in general terms and this was followed up by periodic interactions of state finance ministers.

Year 1999- A significant meeting of all chief ministers took place and some important decisions were taken. For implementing those decisions, an **Empowered committee of State Finance Ministers** was set up. This empowered committee came out with "**white paper on state VAT**" in April 2005

**White paper on VAT-**

White paper is a result of collective efforts of all the states in formulating the basic design of state level VAT through discussions in the empowered committee of state finance ministers.

**White paper is thus an expression of the genuine commitment of the states to the implementation of VAT from April, 2005.**

- **State level VAT is a state subject** (derived from entry 54 of state list) for which the states have sole authority in taking decisions. In arriving at these decisions on VAT, **the states have found it in their interests, to avoid unhealthy competition and have certain features of VAT to be common for all the states**. These features will constitute the basic design of VAT. At the same time, the states will have freedom for appropriate variations consistent with this basic design.
- White paper is a collective attempt of the states to strike a balance between this needed commonality and the desired federal flexibility in the VAT structure.

## Major points mentioned in WHITE PAPER

1. **Selection of method of computation of VAT : ITC Method selected**

   **WHITE PAPER (Extract)**

   > The Value Added Tax (VAT) is based on the value addition to the goods and the related vat liability of the dealer is calculated by deducting INPUT TAX CREDIT from tax collected on sales during the payment period (say, a month)

2. **Selection of variant of VAT: Income variant and consumption variant (choice given to state)**

   **WHITE PAPER (Extract)**

   > Tax credit on CAPITAL GOODS may be adjusted over a maximum period of 36 equal monthly installments.
   > The states may at their option reduce the number of their installments.

3. **Coverage of goods under VAT-**

   > In general, all the goods will be covered under VAT.
   > The only few goods which will be outside the VAT will be
   > - Liquor, Petrol, Diesel and other Motor spirit (reason may be- their prices are not fully market determined)- Rate will be 20 % as per empowered committee.

4. **Tariff structure rates under VAT-**

**WHITE PAPER (Extract)**

**Rates of VAT**

**BASIC RATES**

**5 %**
**(Largest no. of goods of basic Needs/daily usage goods such as Medicines etc.)**

**12.5 %**
**(Remaining goods)**

**SPECIAL RATE ( 1 %)**

**For precious stones bullion, gold & silver ornaments etc.**

5. **Interest of small dealers-**

**WHITE PAPER (Extract)**

**EXEMPTION TO SMALL SCALE DEALERS-**

In order to provide relief to the SMALL DEALERS, small dealers have been exempted from payment of VAT. **Small dealers with annual turnover not exceeding Rs 10 lakhs will not be liable to VAT.**

**States shall have the flexibility to fix this threshold limit within Rs. 10 lakhs.**

**COMPOSITION SCHEME –**

**States have been advised to frame a simple composition scheme for certain category of small dealers (with annual gross turnover not exceeding the specified limit in this respect)**

The dealers opting for this scheme are required to pay tax at small percentage, as prescribed, of gross turnover and are relieved from burden of maintaining VAT records.

# Chapter 5 – Records under VAT

1. **Registration** No. (11 digit numerical number known as TIN no.)
2. **Input purchases**- Purchase records → Purchase Dr.
   ITC(REC.) Dr.
   To supplier
3. **Output sale**- Sales records → Tax Invoice / Retail Invoice

**Credit is allowed to next buyer on the basis of TAX INVOICE.** (Retail invoice is not a supporting invoice to avail credit)

4. **Payment facility**- Monthly or Quarterly or Half Yearly **(vary from state to state)**. For example in Delhi payment is to be made on monthly basis by 21st day of following month AND in Haryana payment is to be made on Quarterly basis by the last day of the following month.
5. **Returns** – Monthly or Quarterly or Half Yearly **(vary from state to state)**. For example in Delhi on Monthly basis and in Haryana on quarterly basis.

**Records under VAT-**

| Records relating to INPUT | Records relating to OUTPUT |
|---|---|
| Purchase records showing-<br>(i) Tax paid purchases- Eligible<br>(ii) Without Tax paid purchases<br>(iii) Purchases from outside state | Sales records showing-<br>(i) Sales chargeable to sales tax<br>(ii) Tax exempted sales<br>(iii) Zero rated sales |
| Record of debit/credit note issued on purchases | Record of debit/credit notes related to sales |
| Total input tax | Total output tax |
| Stock records | Stock records |
| P & L acc. And Balance sheet | Cash book/ day book/ bank records |

**Invoicing under VAT-**

| TAX INVOICE | RETAIL INVOICE |
|---|---|
| **Admissible** as supporting document for taking credit | **Not admissible** as supporting document for taking credit |
| Every dealer making a sale liable to tax can issue 'Tax Invoice'. However, **following dealers cannot issue Tax Invoice-**<br>**(i) Dealer opting for composition scheme**<br>(ii) **Dealer making Inter-state sales/ Export sales** | **It is issued by a dealer in all those cases where Tax Invoice cannot be issued.** |
| A dealer is eligible to issue tax invoice in all cases except where he is statutory prohibited i.e. in above two cases. | Retail Invoice shall be issued only when Tax invoice cannot be issued. |
| The words '**TAX INVOICE**' shall be shown in a **Prominent place**. | The words '**RETAIL INVOICE**' or '**CASH MEMEORANDUM**' or '**BILL**' shall be shown in a prominent place. |
| 2 copies | 2 copies |

# Chapter 6 – Input Tax Credit

**INPUT TAX CREDIT**

**Goods**
(i) Input
(ii) Capital goods

~~**Input service**~~

INPUT → OUTPUT

Credit is allowed at the time of purchase (on the basis of Tax Invoice). It is immaterial whether payment has been made for the purchase or not.

**(Whether purchased from Mfr, 1st stage dealer 2nd stage dealer or any dealer but that dealer Should be registered in same state)**

**(Local dealer + Registered)**

Input
(100 %)

Capital Goods
(Vary from state to state)

In Maharashtra
(100 %)

In Delhi
(In 1/3rd Installments)

**Basic Conditions for claiming credit-**

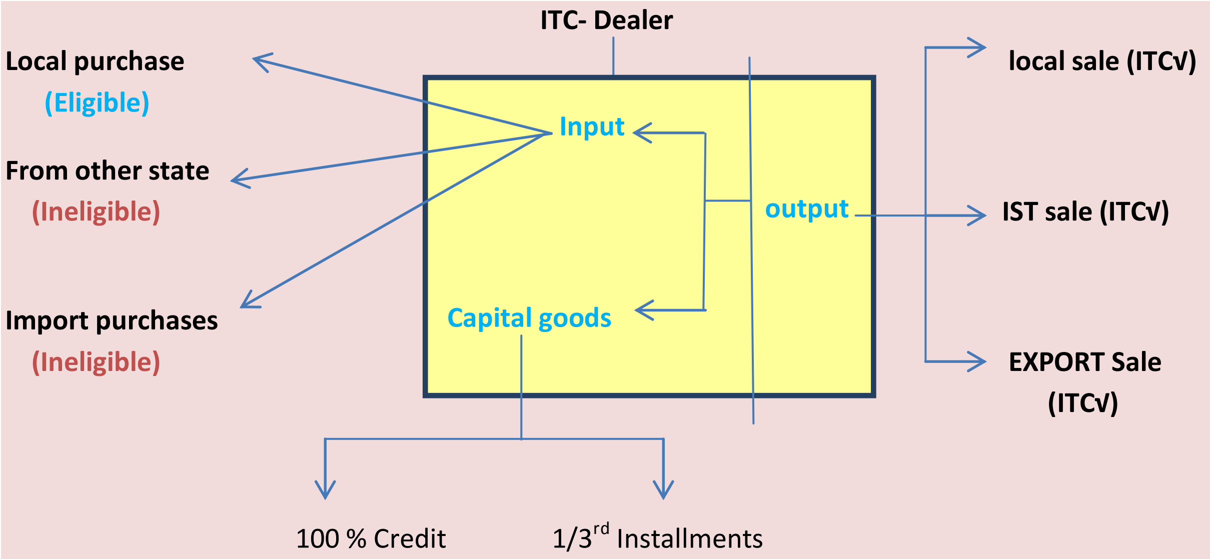
a) **Output should not be Exempted**
b) **Input should be eligible- Credit is allowed only on Input purchased with in the state.**
c) **Input should be received in premises**
d) **Supporting should be there – Tax invoice works as supporting document**

**Exceptions-**

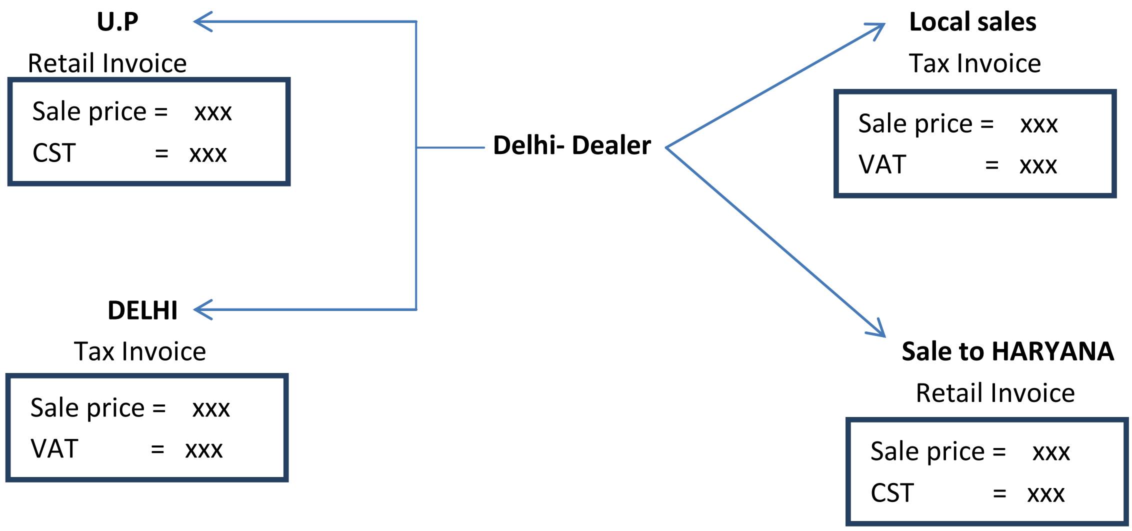
**Credit is allowed in case goods exported outside India**.

**Refund of surplus credit-**

**Refund of surplus credit is allowed but after time limitation of one year** i.e. if assessee is not able to set off the balance credit in one year then he can claim refund.




**EXAMPLE-**




**Central sales tax, 1956 (some important sections)**

| | |
|---|---|
| **Section 3** | **Inter-state sale**- CST shall be levied by central Govt. but collected by the state Govt. |
| **Section 4** | **Intra state sale**- VAT shall be levied as well as collected by the state Govt. |
| **Section 5** | **Export sale**- Not taxable in India |
| **Section 6A** | Inter-state stock transfer to branch stock transfer will not be taxed but 2 % credit need to be reversed. |
| **Section 8** | **Category of sales** — **Applicable rate of CST**<br>➢ Sales against form C — 2% or local vat rate (lower)<br>➢ Other sales — local vat rate |
| **Section 9** | Levy – CST leviable by Central Govt.<br>Collection- **CST shall be collected by State Govt. from where the movement of goods commenced and shall be retained by that state.** |

# Chapter 7 – Models on VAT

**Models of VAT**

Origin based model (OBM)

Destination based model (DBM)

Country A (India)

Country B (USA)

ORIGIN

OBM- Origin will be taxed & Destination will be tax free (Import will be tax free & Export Will be taxed)

DESTINATION

DESTINATION

DBM- Destination will be taxed & origin will be tax free (Export will be tax free & Import Will be taxed)

ORIGIN

**In India- DBM**

**In USA- DBM**

CG suggested these models to use in VAT also to state Governments but for state problem was that **export for a state means sale in other state and sale in outside India.**

**Export** sales because TAX FREE Known as **ZERO rated sale**

Inter-state sales though equal to Export for states still liable to CST though At a lower rate now.

**Author Comment**- IN future, CST will be lower down to 0 % And then it will also be a Zero rated sale.

# Chapter 8 - Methods of Computation of VAT

Following are three methods for computation of VAT

**Addition method**

**Value Addition= Profit + Trade & Mfg. expenses**

**VAT= Value addition X VAT rate**

**Substraction method**

**Value Addition= Sale price- Purchase price**

**VAT= Value addn. X VAT rate**

**Tax credit method**

**Value Addition is not computed**

**VAT= Tax payable on sale – Tax Paid on purchase**

Substraction method:

Direct substraction method (Purchase price and Sale price will be Exclusive of VAT)

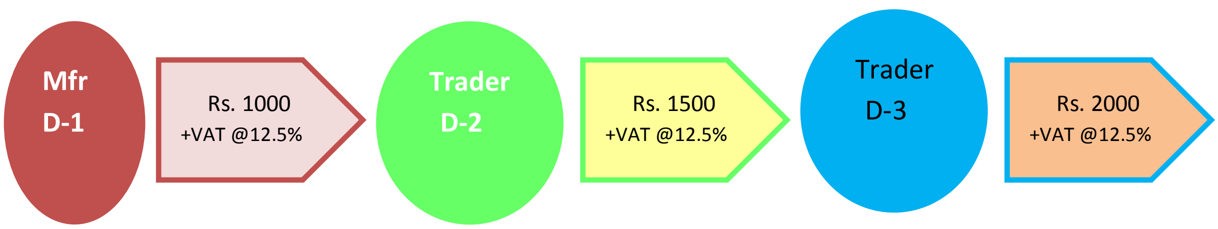
Intermediate substracting method (Purchase price and Sale price will be inclusive of VAT)

**Which method to be opted for ?**

| Addition method | Substraction method | ITC method |
|---|---|---|
| Computations are difficult to make. | It is not workable in a situation where rate of tax is different in respects of Input and output. **It works only when a single rate of VAT exists for all the goods**. | It is the only workable method in a situation where rate of tax is different in respects of Input and output. **It is the best method in multiple rates scenario.** |

**In INDIA, Multiple rate scenario is in existence. Hence, INDIA too has adopted for Input tax credit method (ITC Method).**

**Example-**



**Computation of VAT using Substraction method-**

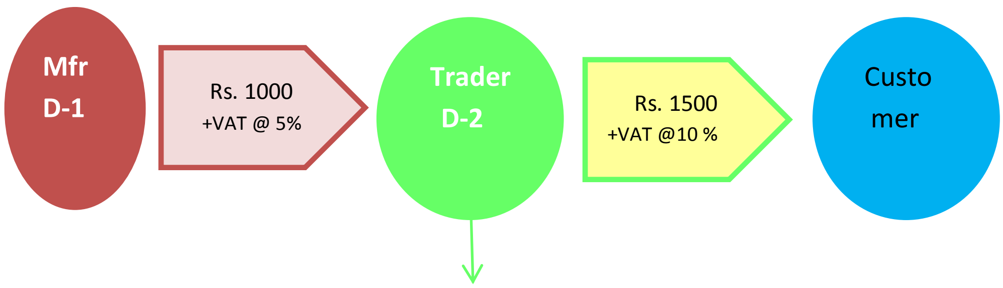
| Particulars | Manufacturer | Trader (D-2) | Trader (D-3) | Total |
|---|---|---|---|---|
| Sale price (Incl.) | 1125 | 1687.50 | 2250 | |
| Purchase price(Incl.) | NIL | 1125 | 1687.50 | |
| Value addition | 1125 | 562.50 | 562.50 | |
| VAT payable | 1125 X $\frac{12.50}{112.50}$ | 562.50 X $\frac{12.50}{112.50}$ | 562.50 X $\frac{12.50}{112.50}$ | 250 |

**Computation of VAT using ITC method-**

| Particulars | Manufacturer | Trader (D-2) | Trader (D-3) | Total |
|---|---|---|---|---|
| Sale price (excl.) | 1000 | 1500 | 2000 | |
| VAT payable on sales @ 12.50 % | 125 | 187.50 | 250 | |
| Less- Credit | Nil | 125 | 187.50 | |
| VAT payable | 125 | 62.50 | 62.50 | 250 |

**observations**

1) Under both system the incidence of Tax at each stage and incidence of tax on final sales price to the consumer will remain same (reason being VAT rate is single)
2) Govt. will get tax equivalent to tax on the final retail price i.e. on 2000. However, the tax will be paid in installments at different stages.
3) Under ITC method, tax credit cannot be claimed unless and until the purchase invoice is produced. As a result, in a chain, if at any stage the transaction is kept out of the books, still there is no loss of revenue. The department will be in a position to recover the full tax at the next stage. Thus the possibility of tax evasion, if not entirely ruled out, will be reduced to a minimum.
4) Results will not be same if there is multi rate scenario. Results are same due to single rate scenario.




VAT liability under ITC method = 150 – 50 = 100

VAT liability under substraction method = (1500 – 1000) x 10% = 50

# Chapter 9 – Variants of VAT

**Variants of VAT**

ITC method of computation of VAT is the best method worldwide and also in India. As per ITC method credit is allowed for VAT paid on input from the VAT paid on output.

Input may have several meanings

- → Raw material/ Trading stock i.e. purchase
- → Capital goods
- → Input service → Credit of service tax paid on input service is not allowed from the VAT paid on output because service tax revenue belongs to Central Govt. and NO VAT on input service.

Hence under VAT credit only in respect of Input and capital goods is allowed. For Input they have made different variants and as per those variants credit is allowed.

**Gross product variant**

100 % Credit in respect of Input is allowed but no credit allowed on VAT paid on capital goods

→ Not applicable in India

**consumption variant**

100 % Credit is allowed in respect of Input as well as in respect of capital goods

**Income variant**

100 % Credit is allowed in respect of Input but credit of VAT paid on capital goods will be allowed in installments subject to maximum 36 monthly installments.

**Note- States have the choice to choose between Consumption variant and Income variant as to allow credit.**

- **Special observation-**

  If credit is allowed on VAT paid on capital goods then depreciation will not be allowed to assessee.

  **Guidance note issued by ICAI- VAT paid on purchases or n capital goods shall not form part of the cost if the same has been allowed as credit**

# Chapter 10 – Composition scheme under VAT

**Every Act provides some relief to some particular assessee's for payment of tax by alternative method. This is also known as presumptive scheme of taxation. For example – In Income tax Act Sec. 44AD u/h PGBP presumes 8% income in case of retail business having turnover upto 1 crore and they are kept exempted from maintenance of books of account. There may be many reasons to frame composition scheme such as to provide relief to unorganised sectors or small assesses. They are not exempted from payment of tax, it is only an alternative method given to them to pay their tax liability.**

## Composition scheme under VAT

The composition scheme is a **special method for determining the tax liability for those dealers who otherwise are liable to VAT** (i.e. Whose turnover is exceeding the threshold exemption limit of Rs. 10 lakhs). It is an alternative method of payment of VAT liability thus, providing the dealer a convenient, hassle free and simple method.

**Method is optional**.

**Eligible Dealer-**

A Dealer is eligible to opt for composition scheme if-

a) He is **registered dealer**
b) He is **liable to pay VAT** under the respective state vat law and
c) His **turnover is upto Rs. 50 lakhs during the last financial year**.

**Computation of VAT liability under composition scheme-**

**VAT liability = Gross Turnover x Notified rate by State**

**States are authorized to notify rates but subject to minimum of 0.25 %.**
(In Delhi rate is 1 %).

**Note**- Separate Composition schemes may be framed for different classes of Dealers and accordingly, States can fix different composition rates for different classes of Dealer.

**Ineligible Dealer-**

**(1) A dealer who buys or sells goods in course of Export or Inter-state sale.**
**(2) Dealer transferring goods outside state otherwise than by way of sale.**
**(3) Dealer purchasing goods from unregistered dealer**
**(4) Dealer who is issuing Tax invoice.**

**Analysis** -

Mr A (mfr.)

Mr B (whole seller)

Mr C    Mr D

**Input** → **Output**


Suppose C is a General store selling 300 types of Goods.
There could be a problem in proper VAT obligations and also to remember
Different Rate on different type of goods.

**Hence Govt. allowed this type of person to PAY under a special method known as composition scheme i.e. Single rate for all goods**

**Payment liability is 1 %**
**On Gross turnover**
**But he will not charge**
**It from customers**

**Payment scheme**

1. Input tax credit will not be allowed.
2. He cannot charge vat from customers in the name of tax.
3. He needs to issue Retail invoice i.e he cannot issue Tax Invoice
4. Scheme is applicable only for Dealer having turnover upto 50 lakhs in last financial year.

# Chapter 11 - SMALL DEALER (THRESHOLD EXEMPTION)

**Concept of small dealer –**

Every Act provides some relief to persons in the respective Act. For example – Income tax Act provides relief in the name of basic exemption (200000 Rs.) to every Individual. Similarly, Wealth tax Act also provides relief in the name of basic exemption of Rs. 30 lakhs to every assessee. Finance Act, 1994 (service tax) also gives relief to small service providers. In VAT, this benefit has been provided to small scale dealers. They have been exempted from payment of VAT. This will reduce tax burden on small dealers as well as it will reduce department cost to administrate such dealers.

Threshold exemption limit is built into VAT system to keep the small dealers out of tax net. This has three main objectives-

(i) It is difficult to administer small dealers because the cost of administering such dealers is very high compare to revenue involved.

(ii) The compliance cost and compliance efforts would be saved for such small dealers.

(iii) Small dealers get relative advantage over large enterprises on account of lower tax incidence.

**Small dealers exempted from VAT-**

**In order to provide relief to the small dealers, such dealers have been exempted from payment of VAT whose turnover does not exceed 10 lakhs rupees.**

**States have the flexibility to fix this threshold limit with in Rs. 10 Lakhs.**

**Analysis** –

1. Small dealers i.e. whose turnover does not exceed 10 lakhs rupees are exempt from the payment of VAT.
2. They even don't need to take registration under VAT.
3. They don't need to file returns as return requirement is generally comes with registration. No Registration – No Return.

# Chapter 12 – Registration

A dealer registered under the VAT law is called a registered dealer.

| | |
|---|---|
| **General requirement** | Any dealer who intends to carry on the business of purchase and sale of goods with in the state and is liable to pay VAT thereon. |
| **Compulsory requirement** | Every dealer is liable to get himself registered compulsorily if his gross annual turnover exceeds Rs. 10 lakhs. |
| **Voluntary registration** | A dealer otherwise not liable to get compulsory registration may also obtain registration voluntarily if the **commissioner** is satisfied the the business of the applicant requires registration. The commissioner may also impose any terms or condition that he thinks fit and he can refuse from granting registration under some circumstances. |

**Time-limit for getting registration-**

a) **Registration is to be taken within 30 days from the date on which person become liable to get registered** i.e. when he becomes liable to pay VAT.
b) Such registration is to be taken by making an application to the **VAT Commissioner** in prescribed form

No time-limit is prescribed for issuing the registration certificate by the authorities but **if dealer has not been granted registration or issued any notice concerning registration within 15 days, the applicant shall be deemed to be registered**.

Single registration for all premises within the state however he can obtain different registration number if he is running business with different trade name.

**Failure to get registered-**

- If an assessee fails to obtain registration under the VAT Act, he may be registered compulsorily by the commissioner.
- The commissioner may assess the tax due from such person on the basis of evidence available with him. In this event the assessee shall have to forthwith pay such amount of VAT.
- Further, failure to get registered shall result in attracting default penalty and forfeiture of eligibility to set off all INPUT TAX CREDIT related to the period prior to the compulsory registration.

**Effective date of registration-**

**From the date on which application for registration is made, even if the registration is granted later**.

**Cancellation of Registration-**

The registered can be cancelled in the following cases-

a) Discontinuance of business
b) Sale of business
c) A dealer fails to furnish security required to be submitted by him
d) A dealer commits fraud or misrepresentation of facts
e) Dealer got insolvent
f) A dealer who violates the provision of the vat laws
**g) If the dealer ceases to be liable to pay VAT as his turnover falling below the specified limit.**

# Chapter 13 – Returns and Assessment under VAT

**Procedure of self-assessment of VAT Liability-**

- Initially, dealer shall himself assess the tax due. He shall deposit the VAT so self-assessed, after adjusting the amount of ITC available for set-off.
- there is no compulsory assessment by officer at the end of year. If no specific notice is issued proposing departmental audit of books of accounts of the dealer within the time limit specified in the Act, the dealer will be deemed to have been self-assessed on the basis of returns submitted by him.

**Cross checking under VAT as per white paper-**

**A cross- checking computerised system is being worked out on the basis of coordination between the tax authorities of the state govt. and the authorities of central excise and income tax to compare constantly the tax returns and set-off documents of VAT system of the states and those of central excise and Income tax. This comprehensive cross-checking system will help reduce tax evasion and also lead to significant growth of tax revenue. At the same time, by protecting transparently the interests of tax complying dealers against the unfair practices of tax-evaders, the system will also bring in more equal competition in the sphere of trade and industry.**

**VAT Returns**

- **Every registered dealer shall furnish VAT return for each tax period**
- **Returns are to be filed monthly/quarterly/annually as per the provisions of the state vat laws**
- **Every return furnished by the dealers will be scrutinized expeditiously within the prescribed time limit from the date of filing the return. If any technical mistake is detected on scrutiny, the dealer will be required to pay the deficit appropriately.**

**Merits and Demerits of VAT-**

| Merits OF VAT | Demerits of VAT |
|---|---|
| **Sine input tax is allowed to be set off from the ultimate tax burden hence no double taxation. It totally eliminates cascading effect.** | For complying with the VAT provisions, the accounting cost will increase. |
| **VAT help in checking under invoicing also to some extent. The under invoicing at any stage other than the last stage may not be of any impact.** | As a result of VAT the administration cost of the Department will go up significantly as the number of dealers is to be administrated now. |
| **One great merit of VAT is transparency. Under VAT, the tax component is totally transparent because if the invoice does not show the tax amount separately, next buyer cannot take credit on the basis of that invoice.** | credit of service tax paid on input service is not allowed |
| **VAT is a self-policing system because the buyer will itself demand Tax Invoice from the seller for the purpose to take credit.** | Non integration of CST with state VAT. |

## Practical Problems on VAT

**Problem 1** - What are the different stages of VAT? Can it be said that the entire burden falls on the final consumer?

**Solution 1** – VAT is a multistage tax levied as a proportion of the value addition. In an economy, apart from manufactures and final consumers, there would be wholesalers and retailers also. Vat will be collected at each stage, and wherever applicable, the manufacturer, wholesaler or retailer can claim input tax credit.

Thus, VAT is collected at each stage of sale whether its Mfr. To wholesaler or wholesaler to retailer or retailer to consumer and ultimately its entire burden falls on the final consumer, who does not get any tax credit.

**Problem 2** – Mr. X(registered dealer) is a manufacturer sells goods to Mr. Y(registered dealer), a distributor for Rs. 2000 (excluding VAT). Mr. Y sells goods to Mr. Z(registered dealer), a wholesale dealer for Rs. 2400 (excluding VAT). The wholesale dealer sells goods to a retailer (registered dealer) for Rs. 3000 (excluding VAT), who ultimately sells to the consumers for Rs. 4000 (excluding VAT).

Compute the tax liability, input credit availed and tax payable by the manufacturer, distributor, wholesale dealer and retailer under input tax credit method assuming VAT rate is 12.5%.

**Solution 2** – computation of VAT liability and Input tax credit

| Particulars | VAT on Sales | VAT on purchase | Net VAT payable |
|---|---|---|---|
| Sale from X to Y (2000 Rs. x 12.5%) | 250 | Nil | 250 |
| Sale from Y to Z (2400 x 12.5%) | 300 | 250 | 50 |
| Sale from Z to Retailer (3000 x 12.5%) | 375 | 300 | 75 |
| Sale from Retailer to Consumer (4000 x 12.5%) | 500 | 375 | 125 |
| Total VAT received by Government | | | 500 |

**Problem 3** – list out six purchases which are not eligible for input tax credit.

**Solution 3** – following are the purchases which are not eligible for input tax credit-

(i) Purchase from outside state
(ii) Purchase from outside India i.e. Import
(iii) Purchase from within state but without TAX INVOICE.
(iv) Purchase from unregistered dealer
(v) Purchase from a dealer, who is opting for composition scheme
(vi) Goods purchased for personal consumption
(vii) Goods purchased but invoice is not showing the amount of VAT separately
(viii) Goods purchased for being utilized in manufacture of exempted goods.

**Problem 4** – Briefly explain the income variant of VAT.

**Solution 4** – Under income variant of vat credit is allowed for both input as well as capital goods. 100% credit is allowed in respect of inputs and credit of vat paid on capital goods is allowed in installements, however it should be allowed in the maximum 36 monthly installments i.e. 1/3rd credit for very year upto 3 year. The period of installements suggested is maximum, hence states have the flexibility to reduce this period as per there suitability.

**Problem 5** – what are the different rates under VAT system?

**Solution 5** – To reduce the multiplicity of sales-tax rates between various states in India, it was recommended that VAT will have broadly the following tax rates:

(a) 1% on precious or semi-precious metals i.e. bullion etc.
(b) 5% on items of basic necessities, agricultural and industrial inputs, capital goods and declared goods under respective vat law of state
(c) 12.5% on other goods, such as motor cars
(d) 20% on lottery, petrol, diesel or like motor spirits etc.

**Problem 6** – Discuss filing of return under VAT.

**Solution 6** – VAT returns are to be filed monthly/quarterly/half-yearly or annually according to the provisions of respective vat law of each state. Returns to be filed along with tax paid challans, they should contain details of output tax liability and details regarding value of input tax credit and payment of vat to Govt. and should be filed within the prescribed time schedule. In case of nay mistakes, revised returns may be filed.

The returns will be checked and any deficiency on account of any reason may have to be made good.

- (imp)

**Problem 7** – Discuss the tax consequences of stock transfer under the vat scheme.

**Solution 7** – VAT is a tax on sale, stock transfer to its own branch do not constitute sale and hence it will not be subject to VAT. Further stock transfer can be of two types-

(i) Intra state stock transfer
(ii) Inter-state stock transfer

Treatment of Intra state stock transfer – It will not be subject to sales tax i.e. it will move freely.

Treatment of Inter-state stock transfer – It will also not be subject to sales tax but 2% credit on input used in stock transfer need to be reversed in the books.

**Problem 8** – What are the items aggregated in the addition method to calculate the VAT payable? When is this method mainly used?

**Solution 8** – In the addition method,

(i) All the factor payments i.e. trade and manufacturing expenses, and
(ii) Profit, are added to arrive at the value addition on which vat rate is applied to compute the vat payable

This method is mainly used with income variant of VAT.

**Problem 9** – State the importance of VAT Invoice/ TAX Invoice in administering VAT.

**Solution 9** – Invoices are crucial documents for administering VAT. In the absence of invoices VAT paid by the dealer on his purchases cannot be allowed as credit. TAX invoice is the supporting document to claim credit. A TAX Invoice helps in-

(a) Helps in determining the input tax credit
(b) Facilitates multi-point taxation on the value addition
(c) Promotes assurance of invoices
(d) Assists in performing audit and investigation activities effectively and checks evasion of tax.

**Problem 10** – Under VAT, Is it permitted to issue 'TAX INVOICE' inclusive of VAT i.e. aggregate sales price & VAT?

**Solution 10** – NO, it is not permitted under any VAT law.

One of the requirements under the contents of tax invoice is that rate and amount of tax charged in respect of taxable goods should be separately shown in the 'Tax Invoice'.

If VAT is charged separately in the invoice, only then the next dealer can claim credit.

**Problem 11** – What are the major deficiencies of VAT system in India?

**Solution 11** – The major deficiencies of VAT system in India are as under:

(a) There is lack of uniformity in the rates of vat in different states. Distortion occurs on account of different rates of vat, composition scheme, exemptions etc.

(b) Central sales tax is not integrated with the state vat law. Therefore, it is difficult to put the purchases from other states at par with the purchases within the state.

(c) For complying with the vat provisions, the accounting cost has increased.

(d) VAT is paid at various stages and not at last stage. This has increased the requirement of working capital and the interest burden on the same.

(e) VAT, being a consumption tax, tends to be regressive since the proportion of income spent on consumption is large for the poor than rich.

**Problem 12** – How can a Chartered accountant help a client in the handling of VAT audit called for by the department?

**Solution 12** – There are audit wings in VAT departments and certain percentage of dealers is taken up for audit every year on scientific basis. Chartered accountants can ensure proper record keeping to satisfy the department auditors. The professional expertise of a Chartered accountant will help a dealer in effective replying audit queries and sorting out audit objections.

# PART B – SERVICE TAX

# Service Tax – Finance Act 1994

**Service Tax Overview**

**Section 64- Short title, extent & commencement**
**Section 65-B – Definitions**

(i) Section 65B(27) – India
(ii) Section 65B(37) - Person
(iii) Section 65B(52) – Taxable territory
(iv) Section 65B(35)- Non Taxable territory
(v) Section 65B(44)- Service

**Section 66B – Charging section**
**Point of Taxation (POT) Rules, 2011**
**Section 66D- Negative list of services**
**Section 66E- Declared services**
**Section 67- Valuation (Read with service tax valuation rules, 2006)**
**Section 68- Person liable to pay service tax**
**Section 69- Registration**
**Section 70- Returns**
**Records – Rules 5 of service tax rules, 1994**
**SSP Exemption- E/N 33/2013**

- **Budget speech 2012- Service tax**

Service tax when introduced i.e. in the year 1994 was levied through selective approach (positive approach) i.e. only selected services(119 services) were in ambit of service tax but P.Chidambaram in his budget speech 2012 said-
I want to keep this speech very short and simple and then he said we are introducing new system to tax services i.e. comprehensive approach (negative list) i.e. **all services are taxable except which we are covering in negative list or which are otherwise exempt**. Service sector is increasing drastically, hence we should also increase the services covered in ambit of service tax.
Earlier 119 specific services were taxable, now all services are taxable including those 119 services.

## Introduction to Service tax

Service tax is levied in India from 1994 through Finance Act, 1994 by Central Govt. deriving power from Entry 97 – Residuary entry of union list. Since there is no separate Service tax Act, there is no service tax department and administration of service tax is handled by Central excise department. Any appeal related to service tax is handled by CESTAT (Custom excise and service tax appellate tribunal).

Initially, Service tax was levied only on 3 services but over a period of time due to drastic changes in services sector it was made applicable to 119 services. But Finance Act, 2012 made it more wider making applicable to all services. Hence now all services are taxable. Only some services are not subject to service tax (known as negative list). Apart from the negative list, some services (although taxable) are 100% exempted from payment of service tax.

The difference between negative list services and 100% exempted services is that – On negative list services service tax could not be levied and on the other hand on 100% exempted services service tax is levied but not collected.

Since service tax is a tax on services, so first we have to understand what does service means. There was no definition of service in FA, 1994 before 2012 but now it is well defined u/s 65B (44). If our activity is not service then service tax could not be levied and in some cases even though our activity is service but still service tax could not be levied (Negative list).

To call any activity a service, there must be existence of two persons. One is known as service provider and other is service receiver. One cannot provide service to himself as in Income tax we learn, one cannot earn income from himself.

Scope of service tax – Every tax professional should have deep knowledge of service tax. There is an huge scope of earning through assistance to clients in service tax compliances. Also, this sector is increasing drastically in India. So do not read it only from exam prospective, it can be your future source of Income. Considering that, in this book you will find legal language of statue related to service tax provisions and you should focus on interpretation of that legal language. Read each and every word carefully. Analysis is given at the end of every section.

**Author comment-**

Since there is no Service tax Act as of now and it is leviable through FA, 1994, Sections here does not start with section 1, section 2 and so on. But its starts with section 64 (it works as section 1 for FA, 1994). Section 65B provides various definitions of words used by FA, 1994 (it works similar to Sec. 2 of any Act)

See the comparison below Central excise Act, 1944 and Finance Act, 1994 (sections game)

| Central Excise Act, 1944 | Finance Act, 1994 |
| --- | --- |
| Section 1 – Short title, extent & commencement | Section 64 –Short title,extent& commencement |
| Section 2 – Definitions | Section 65 B – Definitions |
| Section 3 – Charging section | Section 66 B – Charging section |
| Section 4 - Valuation | Section 67 - Valuation |
| Rest of the sections varies | Rest of the sections varies |

## Section 64- Short title, Extent & commencement

**Chapter V & V-A of the FINANCE ACT, 1994**(short title) **extends to the whole of India**(extent) **Except** the state of **Jammu & Kashmir** **w.e.f 1.7.1994**(commencement).

**Analysis-**
Service Tax is not levied by any particular Act (like as Income tax etc.) but by the FINANCE ACT, 1994 with powers derived from Entry 97 of union list of Article 246 of constitution. It is to be noted that even after 18 years of existence of service tax law, there is no independent service tax Act.
Chapter V & V-A governs the provision of service tax which made it applicable for the whole of India except the state of Jammu & Kashmir.

**Section 65B (27)- INDIA**
**'India' means**

a) The **territory** of the union
b) Its **territorial waters**(upto 12 NM), Continental shelf(upto 24 NM), **Exclusive economic zone**(upto 200 NM)
c) The seabed and the subsoil underlying the Territorial waters of India
d) The air space above its Territory and Territorial waters of India

| 65-B (52) TAXABLE TERRITORY | 65-B (35) NON TAXABLE TERRITORY |
|---|---|
| **Taxable territory means the territory to which the provisions of this chapter apply.**<br>Taxable territory will cover-<br>➢ Entire India including EEZ except J & K. | **Non-taxable territory means the territory which is outside the taxable territory.**<br>Non TT will cover-<br>➢ J & K, Every place outside India |

**Analysis (read it after completion of charging section)-**
**Service tax is leviable on service provided or agreed to be provided in the taxable territory i.e. to say for charging service tax what is necessary is the location of service. It does not matter whether service provider or service receiver is in India or not but the location of service. If the location of service is taxable territory then service tax is chargeable otherwise not. For determination of location of service Govt. has framed "Place of provisioning of service Rules, 2012". (however these rules are not in ca ipcc/ cs executive syllabus)**

**Conclusion- services provided in J & K/ outside India will not subject to service tax being services provided in non-taxable territory. However if service is provided from J & K/outside India in a taxable territory, that service will always be subject to service tax.**

**Mr A- service provider (Delhi)** ⟶ **Mr B- Service receiver (J & K)**

**Mr A- Service receiver (Delhi)** ⟵ **Mr B- service provider (J & K)**

**Sec. 66B** **CHARGING SECTION**

There shall be

- **Levied** a tax (herein after referred as service tax)
- **@ 12%** on the **VALUE** of **ALL Services** **(other than those specified in negative list)**
- **Provided or agreed to be provided in the taxable territory**
- **By one person to another person**

And

**Collected in** such **manner** as may be **prescribed**.

**Service tax Levy @ 12%**

| | | |
|---|---|---|
| **ALL Services** (Except those specified in Negative list) | _**Provided** agreed to be provided | **within Taxable territory** |

**Collection manner**

**(STR, 1994- Rule 6 and POT rules 2011)**

**Analysis-**

1. Levy of service tax is handled by the charging section itself but its collection manner is prescribed under service tax rules, 1994 read with POINT OF TAXATION rules,2011.
2. Taxable Event for service is when it is provided or agreed to be provided. (word agreed to be provided means that where any advance is received, that will also attract levy reason being receipt of advance definitely means that service provider has agreed to provide service (however one should keep in mind that literal interpretation can lead to different analysis - **CBEC Education guide**)
3. The rate of service tax will be 12%. EC & SHEC is to apply additionally through Finance Act,2004 and Finance Act, 2007 respectively)
4. Service tax is a tax on value of service- Value has to be determined in terms of sec. 67).

**All assesses are required to SELF-ASSESS the service tax payable by them and shall pay in the manner as prescribed.**
**Any assessee facing difficulty in self-assessment can make approach to CEO for provisional assessment by following the procedure prescribed under RULE 6(4) of STR, 1994.**

**Section 65B (44)** **SERVICE**

**Means**-

- **Any activity** carried out
- **By a person for another person**
- **For consideration**

**Includes**- **DECLARED SERVICES** (Sec. 66E)

**But does not include-**

**(a)** An activity which constitutes merely-

**(i)** A **transfer of Title in GOODS or IMMOVABLE PROPERTY**, by way of sale, gift or in any other manner; or

**(ii)** Such transfer, delivery or supply of any goods which is **DEEMED to be SALE**, within the meaning of Article 366(29A) of the Constitution; or

**(iii)** A transaction in **MONEY or ACTIONABLE CLAIM**

**(b)** a provision of service by an **EMPLOYEE to the EMPLOYER** in the course of or in relation to his employment

**(c)** **fees taken in any court or tribunal** established under any law for the time being in force

**Explanation 1- for the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to-**

**(i)** The functions performed by the **members of parliament, members of state legislative assembly, members of panchayats, members of municipalities and any member of any other local authorities** who receives any consideration in **performing the functions of that office as such member**.

**(ii)** The **duties performed by any person** who holds any post **in pursuance of the provisions of the constitution in that capacity**

**(iii)** The **duties performed by any person as a chairperson or member or a Director in a body established by the CG or SG or Local authorities** and **who is not deemed as an employee**.

**Explanation 2- for the purpose of this clause**

Transaction in MONEY shall not include any activity relating to the use of money or its conversion by cash or by any other mode, from one form to another form, currency or denomination, to another form, currency or denomination.

**Explanation 3- for the purpose of this chapter**

**An UNINCORPORATED Association or a AOP/BOI, as the case may be and a member there of shall be treated as DISTINCT PERSON.**

**Analysis-**

1. Clause 44 of section 65B gives definition of service but that definition use many other words and such other words may be defined or not defined within the Act.
   Service means any ACTIVITY but activity is not defined anywhere in the provisions of service tax and hence common meaning shall prevail. In terms of common understanding **Activity would include- An act done, a work done, a deed done, an operation carried out, execution of an act, provision of a facility etc. in other terms, it can have a very wide meaning**.

2. To call any activity a service, there should be involvement of at least two persons i.e. to say one cannot give service to himself. One person is known as service provider and the other person is service receiver. Person is defined u/s 65B (37)
   **PERSON** includes-
   **(i)** **An Individual**
   **(ii)** **HUF**
   **(iii)** **Company**
   **(iv)** **Society**
   **(v)** **Firm**
   **(vi)** **Limited liability partnership firm**
   **(vii)** **AOP/BOI, whether incorporated or not**
   **(viii)** **Government**
   **(ix)** **Local authority**
   (x) **Every artificial juridical person, not falling above**.

3. There should be consideration i.e. if a service is provided for free it will not fall under the definition of service. Consideration word is not defined under finance act, 1994 hence we can refer Indian Contract Act, 1872 and according to that definition **consideration means something in return may be in cash or may be in kind**.

4. Declared services are explained under section 66E.

**Note- Receipt of money does not always means that an activity was carried out for consideration. For example a artist performing at street may be in receipt of some money given by passer but that activity cannot be said as activity for consideration. But if YO YO Honey singh performs in any concert for some concern then definitely that would be an activity for consideration. In simple terms, we have to check contractual arrangements between two persons to determine whether an activity is service or not.**

(1) Service means carried out an Activity-

Activity has wider meaning

Certain activities specifically excluded

Certain activities specifically included by declaring them as service i.e. declared services.

(2) Such activity must be carried out-

By one person → for → Another person

Mr TARUN Rustagi $\xrightarrow{\text{coaching}}$ Disha-darshak

CA $\xrightarrow{\text{audit}}$ XYZ Ltd.

(3) That activity should be carried out for consideration-

Existence of consideration
MUST

Form of consideration
Monetary/ Non-Monetary

- **Author Comment-**

Before calling something as a service in terms of FA, 1994, it is important that there should be a contract. If the service recipient had the legal right to enforce the performance of the service, one can assume the existence of a consideration for the service rendered. On the other hand a contract without consideration is non-enforceable in terms of Contract Act, 1872, that's why free services are not taxable under service tax. Since there is no valid contract for service, there can be no service tax.

Analysis-

- There could be many activities without consideration even the person receives some money, On the other hand there could be consideration without any activity.

Examples-

| Particular | Activity | Consideration |
|---|---|---|
| Artist performing on a street | Yes | No |
| Tarun Rustagi teaches many students free of cost | Yes | No |
| Receipt of pocket money by the child from the parents | No | Yes |
| Amount paid as alimony for divorce | No | Yes |
| Gifts/Rewards (which has not been given in terms of reciprocity) | No | Yes |

- Clarifications from the CBEC-

| SN | Nature of payment | Whether consideration for service |
|---|---|---|
| 1 | Amount received in settlement of dispute | Would depend on the nature of dispute. Such amounts are not consideration unless it represents a portion of the consideration for an activity that has been carried out. |
| 2 | Security deposit that is returnable on completion of provision of service (laxmi nagar – Hostel) | Returnable deposit is in the nature of security and hence do not represent consideration for service provided security deposit should not be in lieu of advance payment for the service. |
| 3 | Advances forfeited for cancellation of an agreement to provide a service. | It would form part of consideration because service becomes taxable on an agreement to provide. |
| 4 | Security deposits forfeited for damages done by the service receiver. | If the forfeited deposits relate to accidental damages due to unforeseen actions not relatable to provision of service then it would not be a consideration. |
| 5 | Excess payment received as a result of a mistake | If returned it is not consideration. |
| 6 | Amount received as advances for performance of service | Advances are consideration for the agreement to perform a service. |

**Section 66E** **Declared services** **(not in ipcc/cs executive/cma inter syllabus)**

(a) **Renting of immovable property**

(b) **Construction of complex, building, civil structure or a part thereof, including a complex or building intended for sale to buyer, wholly or partly**, except where the entire consideration is received after the entire consideration is received after issuance of certificate of completion by a competent authority;

(c) **Temporary transfer or permitting the use or enjoyment of any intellectual property right**;

(d) **Development, design, programming, customization, adaption, up gradation, enhancement, implementation of information technology software**;

(e) **Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;**

(f) **Transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods;**

(g) **Activities in relation to delivery of goods on hire purchase or any system of payment by installments;**

(h) **Service portion in execution of works contract**;

(i) **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 part of the activity.**

- **Comparative analysis-**

| Coverage under deemed sales | Coverage under declared services |
|---|---|
| Transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract | Service portion in execution of a works contract |
| Delivery of goods on hire-purchase or any system of payment by installments | Activities related to delivery of goods on hire-purchase or any system of payment by installments |
| Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration | Transfer of goods by way of hiring, leasing or licensing or in any such manner without involving transfer of right to use goods |
| Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration | Service portion in an activity where such supply of food or drinks takes place |

## Introduction to service tax

**In early 1990's the TAX REFORM COMMITTEE headed by DR. RAJA J. CHELLIAH recommended imposition of tax on selected services considering the increased service sector over a period of time.**

**On the basis of such recommendations, the Finance Minister DR. MANMOHAN SINGH introduced the concept of service tax in 1994-95 through finance act, 1994 w.e.f. 1.7.1994.**

**Features of Service Tax-**

**(1) Service tax is an Indirect tax hence one can legally pass on the burden to the next person similar as sales tax. Levy of tax and burden of tax is on two different persons.**

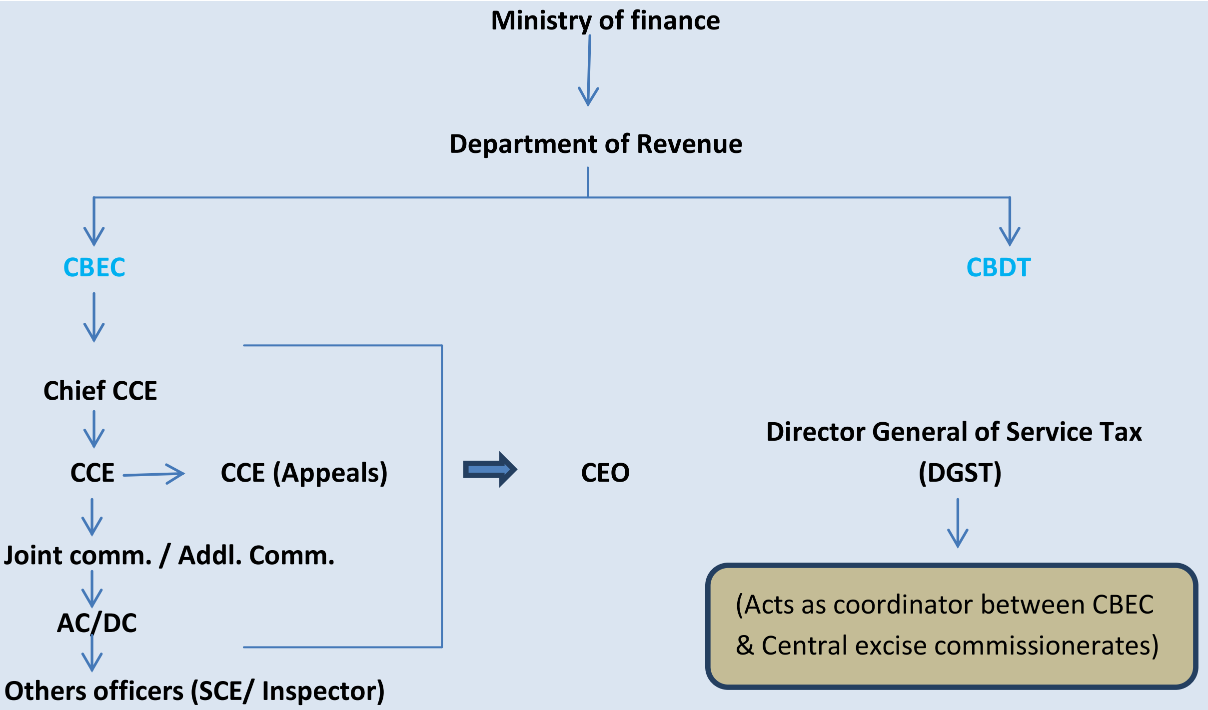
**(2) There is no separate service tax act till date.**

**(3) It is administrated by the Central Board of Excise and Custom (CBEC).**

**(4) There is uniform rate of tax (presently 12.36%) unlike in sales tax.**

**(5) A threshold limit of Rs. 10 lakhs has been prescribed, up to which value of all taxable services provided by a service provider during a financial year is fully exempt from tax.**

**Administrative set-up under service tax law**




**Director general of service tax (DGST)- Functions & powers**

(i) To monitor the collection and assessment of service tax.

(ii) To study the staff requirement at field level.

(iii) To increase revenue collection

(iv) To undertake study of law and procedures in relation to service tax with a view to simplify the service tax collection and assessment and make suggestions theeon.

(v) To form a data base regarding the collection of service tax.

(vi) To inspect the service tax cells in the central excise offices.

(vii) To undertake any other functions as assigned by the board from time to time.

Whether the activities you performed is covered under the definition of service

- **Yes** (Check whether it is covered under Negative list of services)
  - **No** (Check whether the service is Provided or agreed to be provided In taxable territory)
    - **Yes** (Check whether it is covered Under 100 % exemption)
      - **Yes** (No question of S.tax)
      - **No** (Check whether it is covered under partial exemption)
        - **No** (Pay 100 % service tax)
        - **Yes** (Pay partial service tax)
    - **No** (No question of S.tax)
  - **Yes** (No question of S.tax)
- **No** (No question of S.tax)

Person liable to pay service tax

- Service Provider ( Normal/ General charge)
- Service Receiver (Reverse Charge)

## Section 67- Valuation of taxable services for charging service tax

**(1) Where service tax is chargeable with reference to its value, then such value shall be-**

**(i)** In a case **where the provision of service is for a consideration in money**-

- **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**-

- **SUCH AMOUNT in money** as, 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**-

- The **amount** as may be **determined in the prescribed manner i.e. under service tax valuation rules, 2006.**

**Explanation-**

**(a) Consideration includes any amount that is payable for taxable services provided or agreed to be provided.**

**(b) Gross amount charged includes-**

- Payment by cheque, credit card, deduction from account and
- Any form of payment by issue of credit notes or debit notes and
- Book adjustment and
- Any amount debited or credited, as the case may be, to any account whether called "suspense account" or by any other name.

**(2) Where the GROSS AMOUNT CHARGED by a service provider, for the service provided or to be provided is inclusive of service tax payable, then value of such taxable service shall be-**

**( Gross amount charged – service tax included)**

↓

$$\textbf{Gross amount charged} \times \frac{12.36}{112.36}$$

**(3) Gross amount charged will include consideration received (whether as advance or otherwise)-**

**The Gross amount charged for the taxable service shall include any amount received Towards taxable service BEFORE, DURING or AFTER such service.**

**Note-** Money means legal tender, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, money order, postal or electronic remittance or any such similar instrument
But shall not include any currency that is held for its numismatic value.

**Analysis-**
**Section 67(1)-**

**Consideration**

Consideration in Money
**( TV = GAC)**

Consideration total or partial not in money

**Equitable money value Is ascertainable (TV= FMV)**

**Equitable money value is not ascertainable**

Consideration not ascertainable

**ST Valuation rules, 2006**

**Where similar service is provided to some other person ( TV= GAC to provide similar service)**

**where Not**

**( TV = Equal monetary consideration of such service but it cannot be lower than the cost of provisioning)**

**Problem 1**- **Mr Rahul, a CA, provides taxable professional services to one of its client. In lieu of such services, Mr Rahul agreed to take a brand new Apple laptop (market value of which is Rs. 80000). The same service has been provided by Mr Rahul to another client for Rs. 90000 (ST Extra). Rahul has incurred cost of Rs. 40000 in providing such service.**

**Solution 1-** (space for solution)

(Author's remarks- Method 2 need not be considered (as this shall be considered only where the value cannot be determined in accordance with Method 1.)

**Problem 2**- **Shweta, a fashion designer provides taxable professional services to one of its client. In lieu of rendering such service, she takes Rs. 20000 cash and a Apple i-pad (Market value of which is Rs. 15000). Such kind of professional assignment has been received for first time by Shweta. She has incurred cost of Rs. 40000 in providing such service.**

**Solution 2**- (space for solution)

**Analysis-**

(1) The basic principal of law is that service tax is payable on the GROSS AMOUNT CHARGED and not the net amount. Hence one should keep in mind that any expenditure incurred by the service provider is not allowed to be deducted from the Gross amount charged.

> **Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditures or costs shall be treated as consideration for the taxable service and shall be included in the value for the purpose of charging service tax on the said service even if he shows such amount separately in Invoice.**

(2) Is it necessary that consideration should be received from service receiver? i.e. the situations where service is provided to some other person and consideration is received from some other person-

**Service tax valuation rules, 2006 (rule-6) specifically includes such third party receipts.**


**Free service ?**

**(Free service at the time of sale)**

**(3)** Gross amount means gross amount that is even if TDS is deducted by the service receiver, then also for the purpose of service tax, **TDS will also form part of consideration**.

**(4) Reimbursement of expenses-**

The reimbursement claim can only be permitted in cases where service provider acts as a "Pure Agent" of the service recipient.

Pure Agent can claim exclusion of the reimbursement claim from the valuation of taxable Service if the following conditions are satisfied-

(i) The service provider acts as a pure agent of the recipient of the 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,

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

(iv) The recipient of the service authorises the service provider to make payment on his behalf,

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

## Point of Taxation (POT) Rules, 2011

| Rules | Title |
|---|---|
| Rule 1 | Short title and commencement |
| Rule 2 | Definitions |
| Rule 2A | Date of payment |
| Rule 3 | Determination of POT (general rule) |
| Rule 4 | Determination of POT in case of CERT |
| Rule 5 | Payment of taxes in case of new services |
| Rule 6 | Deleted |
| Rule 7 | Determination of POT in REVERSE CHARGE CASES |
| Rule 8 | Determination of POT in case of COPYRIGHTS, etc. |
| Rule 8A | Determination of POT in OTHER CASES (best judgement) |

**Author comment** –

Before 2011, the collection system of service tax was based on receipt of payment from the service receiver i.e. when service provider receives any payment from the client, based on that he was required to deposit service tax to Central Govt. But now after 2011 onwards, collection system is linked with invoicing system i.e. even if service provider does not receive any payment but still he will be liable to pay service tax on the basis of rules framed in this regard i.e. POT rules, 2011. Point of taxation does not deal with levy of service tax, it only helps in collection manner. Levy of service tax is governed by sec. 66B itself. Service tax is deposited to the Central Govt. in month following the month /quarter in which POT falls. So basically POT helps in determination of point of collection.

## Rule 2- Definitions

In these rules, unless the context otherwise requires-

**Rule 2(a)-** **Act**

Act means Finance Act, 1994.

**Rule 2(ba)-** **Change in Effective Rate of Tax (CERT)**

CERT shall include-

- a **change in portion of value on which tax is payable** in terms of a notification
- issued under the provisions of Finance Act, 1994 or rules made there under.

**Analysis-**

(a) change in rate of service tax (e.g. from 10% to 12% in April,2013)
(b) change in rates of service tax under composition schemes
(c) change in taxable value i.e. change in % of abatements

**Rule 2(c) -** **Continuous supply of services**

Continuous supply of services means-

- **any service** which is provided or agreed to be provided
- **continuously or on recurrent basis** under a contract, **for a period exceeding 3 months with the obligation for payment periodically** or from time to time; **or**
- **where the Central Govt, by a notification** in the official gazette, **prescribes provision of a particular service to be a continuous supply of service**.

**Rule 2(d) –** **Invoice**

**"Invoice" means the invoice referred to in Rule 4A of service tax rules, 1994** and shall include any document as referred to in the said rule.

**Rule 2(e) –** **Point of Taxation**

**"Point of Taxation" means the point in time when a service shall be deemed to have been provided**.

**Rule 2A**- **Date of payment (POT Rules, 2011)**

For the purposes of POT rules "**Date of payment" shall be the earlier of dates on which payment the payment is entered in books of accounts or is credited to the bank account** of the person liable to pay tax

**Provided that**

**The date of payment shall be the date of credit in the bank account** when-

| (i) | | (ii) |
| --- | --- | --- |
| **There is a CERT or when a service is taxed for the first time**<br>- **during the period between such entry in books of accounts and its credit in the bank account** | ⇒ | **And the credit in the bank account is after 4 working days from the date when there is CERT or service is taxed for the first time** |

## Rule 3- Determination of POINT OF TAXATION

For the purpose of these rules, unless otherwise provided (i.e. we can say it is the general rule)

POINT OF TAXATION shall be-

| 3(a) | 3(b) |
|---|---|
| the time when the INVOICE for the service provided or agreed to be provided is issued:<br><br>**Provided that**<br>where the invoice is not issued within the time period specified in rule 4-A of STR, 1994 days<br>☞ the POT shall be the DATE OF COMPLETION of such provision of service. | In a case, where the person providing the service, receives a PAYMENT Before 'the time specified in clause (a)'<br>☞ 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 POT shall be the date of receipt of such advance.

Analysis-

Service provider → (Invoice within 30/45 days) → POT = Invoice or Payment (whichever is earlier)

Service provider → (Invoice after 30/45 days) → POT = Completion of service or Payment (whichever is earlier)

Example-

| S. No. | Date of completion of Service | Date of invoice | Date on which payment is received | Point of Taxation | Invoicing | Formula |
|---|---|---|---|---|---|---|
| 1. | 10th April, 2013 | 20th April, 2013 | 30th April 2013 | 20th April, 2013 | Within 30 days | I/P (earlier) |
| 2. | 10th April, 2013 | 6th May, 2013 | 30th May, 2013 | 6th May, 2013 | Within 30 days | I/P (earlier) |
| 3. | 10th April, 2013 | 6th May, 2013 | 30th April, 2013 | 30th April, 2013 | Within 30 days | I/P (earlier) |
| 4. | 25th April, 2013 | 20th April, 2013 | 2nd April, 2013 | 2nd April, 2013 | Within 30 days | I/P (earlier) |
| 5. | 10th April, 2013 | 16th May, 2013 | 30th May, 2013 | 10th April, 2013 | Beyond 30 days | C/P(earlier) |

**POT in case of CONTINUE SUPPLY OF SERVICES-**

**Provided that for the purposes of Rule 3(a) and Rule 3(b) on previous page**

**In case of Continuous supply of service**

**Where the provision of whole or any part of the service is determined periodically on the completion of an event in terms of a contract, which requires the service receiver 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.**

**Wherever the provider of taxable service receives a payment up to Rs. 1000 in excess of the amount indicated in the Invoice**

- **the POT to the extent of such excess amount at the option of the provider of taxable service shall be determined in accordance with the provisions of clause 3(a).**


**Bill amount = 499 Rs.**

**Amount paid = 500 Rs.**

**Analysis-**

1. **The simple indication is that invoicing requirement will arise on completion of each such event and not as per the completion of full provision of service and thus, POT of each such point shall be determined and ST shall be paid accordingly.**
2. **Special relaxation is given as to POT in case of excess amount up to Rs. 1000 is received.**

**Example- S Ltd. Entered into contract with Ambuja Ltd. For CONSTRUCTION OF A NEW BUILDING to be used primarily for the use of commercial purposes for a total consideration of Rs. 300 lakhs on July 01, 2013.**

**The initial booking amount of Rs. 30 lakh was billed and received on the date of contract itself.**

**It was further agreed that Rs. 120 lakhs, s. 70 lakhs, and balance Rs. 80 lakhs would be received on completion of 50%, 75% and 100 % respectively.**

**Determine the POT in respect of each of following stages of completion with the help of relevant details as following-**

| Stage | % of completion | Date of completion | Date of invoice | Date of payment |
|---|---|---|---|---|
| I | 50 % | 15th August, 2013 | 22nd August, 2013 | 29th August, 2013 |
| II | 75 % | 20th September, 2013 | 25th Oct, 2013 | 30th Oct, 2013 |
| III | 100 % | 30th November, 2013 | 11th Dec, 2013 | 7th Dec, 2013 |

**Solution**-

**Date of completion of each such event shall be deemed to be Date of completion of service.**

**1st date of completion of service = 15th August, 2013**

**2nd date of completion of service = 20th September, 2013**

**3rd date of completion of service = 30th Nov, 2013**

**POT shall be determined now separately for each such event.**

| S. No. | Date of completion of service | Date of invoice | Date on which payment is received | Point of Taxation | Invoicing | Formula |
|---|---|---|---|---|---|---|
| 1. | 15th August, 2013 | 22nd Aug, 2013 | 29th August 2013 | 22th Aug, 2013 | Within 30 days | I/P (earlier) |
| 2. | 20th Sept, 2013 | 25th Oct, 2013 | 30th Oct, 2013 | 20th Sept, 2013 | beyond 30 days | C/P(earlier) |
| 3. | 30th Nov, 2013 | 11th Dec. | 7th Dec, | 7th Dec, 2013 | Within 30 days | I/P (earlier) |

**Exception to POT**-

**Proviso to rule 6(1) of service tax rules, 1994 stipulates various situations applicable for Individuals & Partnership firm and other assessees with reference to applicability of POT rules-**

**POT shall be**-

| (a) | (b) |
|---|---|
| In case of Individual & Partnership firms where the aggregate value of taxable services provided in the previous year does not exceed Rs. 50 lakhs<br>☞ based on the actual receipt of payment up to Rs. 50 lakhs in the current financial year. | In case of any other assessee-<br>☞ as determined in manner provided in rule 3 irrespective of whether the aggregate value of taxable services provided in the previous year exceeds to Rs. 50 lakhs or not. |

**50 lakh (jab tak apne pass 50 lakh hai..tab tak heads bhi apna aur tails bhi apna)**

**Example**- **The gross receipts of Tarun Rustagi from the teaching is as under-**

**For the F/Y 2012-13 is Rs. 49 lakhs**

**For the F/Y 2013-14 is Rs. 75 lakhs**

**(a) Advise on the applicability of POT**

**(b) Would your answer be different if the gross receipts for the F/Y 2012-13 was Rs. 75 lakhs and for the F/Y 2013-14 is Rs. 49 lakhs?**

**Solution**- (Space for solution)

## Rule 4- Determination of POT in case of change in CERT

Notwithstanding anything contained in Rule 3,

the POT in case where there is CERT in respect of a service shall be determined in the following manner, namely-

| 4(a)<br>IN case a taxable service has been provided BEFORE the CERT | POT shall be |
|---|---|
| ☞ Where the INVOICE for the same has been issued and the payment received after the change in CERT<br>(analysis- service provided before CERT but invoice and payment after CERT) | ☞ Date of payment or issuing of Invoice, whichever is earlier;<br>(analysis- new rate will be applicable) |
| ☞ Where the Invoice has also been issued prior to change in CERT but payment is received after the CERT)<br>(analysis- service and invoice before CERT but payment after CERT) | ☞ Date if issuing of Invoice<br>(analysis- old rate will be applicable) |
| ☞ Where the payment is also received before the CERT but the Invoice has been issued after the change in CERT<br>(analysis- service and payment before CERT but invoice after CERT) | ☞ Date of payment<br>(analysis- old rate will be applicable) |

| 4(b)<br>IN case a taxable service has been provided AFTER the CERT | POT shall be |
|---|---|
| ☞ Where the payment is also made after the CERT but invoice has been issued before CERT<br>(analysis- service and payment after CERT but invoice before CERT) | ☞ Date of payment<br>(analysis- new rate will be applicable) |
| ☞ Where the Invoice has been issued and the payment received before the CERT<br>(analysis- payment and invoice before CERT but service after CERT) | ☞ Date of issuance of invoice or date of payment, whichever is earlier<br>(analysis- old rate will be applicable) |
| ☞ Where the invoice has also been raised after CERT but payment has been received before the CERT<br>(analysis- service and invoice after CERT but payment before CERT) | ☞ Date of issuing of Invoice<br>(analysis- new rate will be applicable) |

**Section 67A (Inserted w.e.f. 1st July, 2012)-**

**The RATE of service tax, VALUE of a taxable service and RATE of exchange, if any**

**Shall be the rate of service tax or value of a taxable service or rate of exchange, as the case may be**

- **IN FORCE or as applicable at the time When the taxable service has been provided or agreed to be provided.**

**Analysis-**

After the introduction of sec. 67A, for determination of applicable rate, POT rules need not be referred to because sec. 67A does not contain any reference to POT rules, 2011 because it uses the expression " when service has been provided or agreed to be provided" and POT rules, 2011 uses the expression " when services is deemed to be provided"

So as far as rate is concerned, POT rules shall be ignored now.

**Rule 5- Payment of Tax in case of NEW SERVICES**

**Where a service is taxed for the first time**, then-

| 5 (a) | 5 (b) |
|---|---|
| **No tax shall be payable**<br>- **to the extent**<br>- **the Invoice has been issued And the payment received** against such invoice **before such service became taxable.** | **No tax shall be payable**<br>- **if the payment has been received before the service becomes taxable**<br>**And**<br>- **invoice has been issued within 14 days of the date when the service is taxed for the first time.** |

Analysis- Rule 5 if someone analyse it carefully, does not deal with Point of taxation at all. It basically tells about only the charge on new services. POT rules are not made for this purpose, No logics why this rule is covered here.

**Rule 7- Determination of POT in case of specified services or persons (REVERSE CHARGE)**

**Notwithstanding anything contained in these rules, POT in respect of-**

The **person required to pay tax as recipients** of service under the rules made in this regard in respect of services notified u/s 68(2)

- **shall be the date on which payment is made**

**Provided that**

**where payment is not received within a period of 180 days** of the date of Invoice, the POT

- **shall be determined as if this rule does not exist.**

Analysis- Generally charge of service tax is on service provider but under some cases i.e. the cases covered by sec. 68(2) charge is on service recipient i.e. to say service tax payment liability is on service recipient. Rule 7 specifically provides for POT in such cases. For a good assessee ☺ i.e. if he makes payment within 180 days then POT will be the date of payment otherwise it would be determined as per rule 3.

**Rule 8A- Determination of POT in other cases (BEST JUDGEMENT)**

**Where the POT cannot be determined as per these rules**

- as the date of Invoice or 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
- shall by an order in writing, after giving an opportunity of being heard
- **determine the POT to the best of his judgement.**

**Relevant Service Tax Rules, 1994 Read with POT rules,**

**Rule 4A Taxable service to be provided on INVOIVE/ BILL/ CHALLAN**

**Every person**

- **providing taxable service shall issue an Invoice within 30 days** (by himself or a person authorized by him)

**from the date of completion of service OR receipt of any payment**

**(Whichever is earlier)**

**Provided that**

- **in case of continuous supply of service, every person providing such taxable service shall issue an invoice within 30 days of the date when each such event is completed**

**Provided also that**

- **in case the provider of taxable service is a banking company or a financial institution, the time limit for issuance of invoice shall be 45 days** instead of 30 days.

**Analysis-**

| Normal case | Continuous supply of services | Banking/ financial inst. |
|---|---|---|
| 30 days from the date of completion of service or date of payment, whichever is earlier. | 30 days from the date when each such event is completed as specified in the contract. | 45 days from the date of completion of service or date of payment, whichever is earlier. |

**SERVICE TAX RULES, 1994**

**COLLECTION/ PAYMENT SYSTEM UNDER SERVICE TAX**

**Rule 6(1)- Payment of service Tax**

The **SERVICE TAX shall be paid** to the credit of central Govt.

- **by the $6^{th}$ day** of the MONTH, **if** the service tax is deposited **electronically** through internet banking ; and
- **by the $5^{th}$ day** of the MONTH, **in any other case**

Immediately **following** the calendar **MONTH** in which

**service is deemed to be provided as per the rules framed in this regard**( i.e. POT Rules, 2011)

**Provided that**

where the assessee is an **INDIVIDUAL or PROPRIETARY FIRM or PARTNERSHIP FIRM**

the service tax shall be paid to the credit of the Central Govt.

- **by the $6^{th}$ day** of the MONTH, **if** the service tax is deposited **electronically** through internet banking ; and
- **by the $5^{th}$ day** of the MONTH, **in any other case**

Immediately following the calendar QUARTER in which

- **service is deemed to be provided as per the rules framed in this regard**( i.e. POT Rules, 2011)

**Provided also that**

- the service tax on **services deemed to be provided** during the **Month of MARCH**, or **the Quarter ending on March**, as the case may be, **shall be paid** to the credit of CG **by $31^{st}$ March.**

**Analysis-**

**Individual/ PF / PF**
**( 5/$6^{th}$ Day following the Quarter)**

**Others**
**( 5/$6^{th}$ Day following the Month)**

**For the Month/ Quarter ending March**
**($31^{st}$ March)**

**Rule 6(2)- Modes of Payment of SERVICE TAX-**

The assessee shall deposit the Service Tax liable to be paid by him

- with the Bank designated by CBEC for this purpose in FORM/CHALLAN GAR-7 or
- in any other manner prescribed by CBEC.

| | |
|---|---|
| **Service Tax Liability** | **Xxx** |
| **Less- Cenvat credit available during the relevant MONTH/ QUARTER** | **Xxx** |
| **Balance Payable by GAR-7 challan** | **Xxx** |

**Mandatory E- payment for 'High Value Assessee'-**

**Provided that**

**Where an assessee has paid a total ST of Rs. 10 lakhs or more** (including the amount paid by utilization of cenvat credit), **in the preceding financial year-**

- **he shall deposit the ST liable to be paid by him Electronically, through internet banking.**

**Rule- 6(2A)- Date of deposit of cheque = Date of payment of Service tax**

For the purpose of this rule, **if the assessee deposits the service tax by cheque,**

- **the date of presentation of cheque** to the bank **shall be deemed to be the date on which service tax has been paid** subject to realization of that cheque.

**Section 75- Interest on delayed payment of Service tax-**

**Every person**

- liable to pay service tax [in accordance with the provisions of Rules 6(1) ]
- **fails to credit the tax or any part thereof** to the account of Central Govt. **within the time prescribed**
- **shall pay simple interest @18 % p.a.** by which such crediting of the tax or any part thereof is delayed.

**Provided that**

- in the case of a service provider, whose **value of taxable services** provided in a F/Y **does not exceed Rs. 60 lakhs during the last preceding F/Y**, such **rate of interest shall be reduced by 3% p.a.**

**SECTION- 73A Service tax collected wrongly or in excess from any person to be deposited with Central Govt.-**

**(1)** Any **person**-

**(a)** who is **liable to pay service tax** and has **collected**-
- **any amount in excess of service tax assessed/ determined** on any taxable services under the provision of service tax laws/ rules
- from the recipient of taxable service in any manner as representing service tax, or

**(b)** **who has collected any amount, which is not required to be collected**, from any person, in any manner as representing service tax

**shall forthwith pay the amount so collected to the credit of Central Govt.**

**(2)** Central Govt. shall refund the amount to the person from tax has been collected and for this purpose Central Govt. may issue a public notice and such person can make an application within 6 months from the date of public notice.

**(3)** If the amount has not been claimed by any person, it will be deposited in the consumer welfare fund which is regulated by a committee and its member are nominated by the Govt. The amount is utilized for the welfare of consumer in India.

**SECTION 73B- Interest on amount collected in excess u/s 73A**

Where an amount has been collected representing service tax as determined u/s 73A

- Then **such person shall also be liable to pay** such amount along with **interest @ 18% p.a.**
- **From the first day of the month succeeding the month in which the amount sought to have been paid**
- Till the date of such payment

**Provided that**

**If the total value** of taxable services in the relevant F/Y or in the preceding F/Y **does not exceed Rs. 60 lakhs, rate of interest shall be reduced by 3% p.a.**

**Rule 6(4)- Payment of service tax on PROVISIONAL BASIS**

At the time of deposit of service tax,

- An **assessee** is on account of any reason, **unable to estimate correctly, the actual amount of service tax** liability for any month or quarter,
- Then he **may make a written request to AC/DC** of Central Excise **for making payment of service tax on provisional basis**.

After receiving the application, the **concerned officer may allow payment** of service tax on provisional basis **on such value of taxable service as may be specified by him.**

For the purpose of provisional assessment

- **At the time of filing of return, the assessee is required to file a statement in form ST-3A**
- Giving details of difference between service tax deposited and the service tax liable to be paid for each month.

The AC/DC of Central Excise, on the basis of memorandum in form ST-3A may complete the assessment after calling for necessary documents or records, if needed.

The **provisions of Rule 7 of CENTRAL EXCISE RULES, 2002**, relating to such assessment **shall Mutatis mutandis, apply** to such assessment except the execution of PROVISIONAL DUTY BOND.

**Rule 6(6A)- Service tax self-assessed but not paid- Recoverable by recovery cell-**

Where an amount of service tax payable has been self-assessed (u/s 70 of the finance act, 1994)

- But not paid, either in full or in part,
- The same shall be recoverable along with interest in the manner prescribed u/s 87 of Finance Act, 1994.

**Person liable to pay service tax**

**Section 68- Payment of service tax**

**(1) Every person**

- **Providing taxable service** to any person
- **Shall pay service tax** .

**(2) Notwithstanding anything contained in sub-section 1 above**

- In respect of such taxable services as may be notified by the Central Govt.,
- The **service tax thereon shall be paid by such person as notified by the Central govt.** **and**
- **All the provisions** of this chapter **shall apply to such person** as if he is the person liable for paying the service tax in relation to such service

**Provided that**

- The Central Govt. may notify the service and the extent of service tax
- Which shall be payable by such person and the provisions of this chapter shall apply to such person to the extent so specified and
- The remaining part of service tax shall be paid by the service provider.

**Analysis-**

**Person liable to pay service tax**

**Sec. 68(1)**

General charge- General charge to pay service tax is on service provider himself. (100 % service tax is to be paid by service provider)

**sec. 68(2)**

Reverse charge- Central govt. may by notification direct service receiver to pay service tax on any taxable services received by him rather than service provider. (100 % service tax is to be paid by the service receiver)

**Provided that (exception)- Partial reverse charge**

Central Govt. may notify any service, on which service tax is to be paid by the service provider as well as service receiver to the extent specified in such notification. (Partial service tax is to be paid by service provider and partial service tax by service receiver)

**Payment of service tax even if not collected from the client-**

- **CBEC Circular- The liability to pay service tax remains with the service provider. Failure to realize (or even charge) service tax does not negate his statutory liability. In the event of any such failure, whatever is recovered from the customer/ client will be treated as amount inclusive of service tax. Accordingly, the amount of service tax shall be determined and that amount shall be deposited with Central Govt.**

**Advantage media consultant- 2009- SC- When the assessee fails to collect service tax or tax is not separately paid by the client, then the total receipts for rendering services should be treated as inclusive of service tax and the service tax shall be worked out accordingly.**

**Self-adjustment of excess service tax paid**

**Rule 6(1A)- Service tax rules, 1994**

**Every person** liable to pay service tax may, **on his volition** (volition = Discretion)

- **Pay an amount as SERVICE TAX IN ADVANCE**, to the credit of Central Govt **and**
- **Adjust the amount** so paid **against ST** which he is liable to pay **for the subsequent period.**

**Conditions:**

(i) The assessee shall **intimate** the details of the amount of ST paid in advance, to his jurisdictional **SCE within 15 days of such payment**

(ii) The assessee shall **indicate the details of the advance payment made, and its adjustment, if any in the subsequent service tax return**.

**Analysis-**

Any person can pay advance service tax on his own discretion subject to the conditions that he shall intimate this payment to his SCE and indicate this in his return. Mode of advance payment shall also be as per rule 6(2) i.e. through challan GAR-7

**Rule 6(3)- Service tax rules, 1994**

**Where an assessee has issued an invoice**, or **received any payment**

- **Against a service to be provided which is not so provided by him either wholly or partially for any reason**; **OR**
- Where the **amount of invoice is renegotiated due to deficient provision of service or any terms contained in contract**

the **assessee may take the credit** of such service tax paid by him,

**if the assessee-**

(a) **Has refunded the payment or part thereof**, so received for the service provided to the person from whom it was received; **or**

(b) **Has issued a credit note** for the value of the service not so provided to the person to whom such an invoice had been issued.

❖ **Special observation-**

**Rule 6(3) shall not apply in case of bad debts because the provision covers renegotiation only due to deficient provision of service or any terms contained in contract.**

**Rule 6(4A) & (4B) - Service tax rules, 1994**

**If assessee is unable to determine his service tax liability**

- **On account of reasons** other than Interpretation of law, Taxability, Classification, Valuation or Applicability of any exemption notification
- Then assessee **can pay service tax on a higher side** (he can pay higher amount of service tax on his own estimate) **and**

**If subsequently, the service tax paid is found out to be in excess**, then excess amount of the service tax **shall be allowed to be adjusted against service tax liability for the succeeding month or quarter**.

**Example**- Mr X is maintaining computerized records. Just before the quarter ending on 30th sept, 2013 his computer got crashed which has been sent by him for data recovery.
Can he pay service tax on his own estimation rather than to opt for provisional assessment?
**Solution**- He can make payment of ST by estimation. If subsequently it results into excess payment, he can adjust that excess amount in future.

**Example 2**- Mr X rendered a service outside India which amounts to export of service. No ST is payable, however due to lack of knowledge, ST is paid by Mr X.
Can he claim benefit of self-adjustment?
**Solution 2**- He cannot claim benefit of self-adjustment as the excess service tax payment is on account of issue of taxability of services.

**Service tax procedures**

**Section 69- REGISTRATION**-

**(1)** Every **person liable to pay the service tax** under this chapter or the rules made there under **shall**

- within such time in such manner and in such form
- as may be prescribed

**Rule 4, STR 1994**

**Rule 4, Service tax rules 1994**-

(1) Every person liable for paying the service tax

- Shall **make an application to the concerned SCE**
- **In Form ST-1** for registration

**Time limit for registration**-

| | |
|---|---|
| • **Where the service provider is providing a service that has become taxable for the first time** | **within 30 days from the date on which ST u/s 66B is levied**. |
| • **Where the service is already taxable but assessee is commencing business for first time** | **within 30 days of commencement of business by assessee.** |

(1A) CBEC may, by an order specify the documents which are to be submitted by the assessee along with application within such period, as may be specified in the said order.

(5) **SCE shall** after due verification **grant a certificate of registration**

- **in Form ST-2**
- **within 7 days from the date of receipt of application/ intimation**

**If the registration certificate is not granted within 7 days, the registration applied for shall be deemed to have been granted.**

**Intimation of change in information**

(5A) **where there is any change in information/ details furnished** by an assessee I the form ST-1 at the time of obtaining registration, such change in information or detail **shall be intimated in writing, within 30 days of such change.**

**Transfer of business: Transferee to obtain fresh registration certificate**

**(6)** Where a registered assessee transfers his business to another person, the transferee shall obtain a fresh certificate of registration.

**Cessation of business- Surrender of registration certificate**

**(7)** Every registered assessee who ceases to provide the taxable service, for which he is registered, shall surrender his registration certificate immediately to his SCE.

**Premises to be registered (not services)-**

**(2)** **Where a person**, liable for paying service tax on a taxable service

- **provides such service from more than one premises** or offices; or
- **receives such service in more than one premises** or offices

**and**

- ⇨ has CBS/CAS in respect of such service, he may at his option
- ⇨ **take single registration in respect of all the premises in which such CBS/CAS is located.**

**Registration certificate in case of CBS/CAS-**

**(3)** The registration under sub-rule (2) shall be granted by the CCE in whose jurisdiction the premises or offices, from where CBS/CAS is done, are located.

**Single application for all services**

**(4)** Where an assessee is providing more than one taxable service
- ⇨ he may make a single application
- ⇨ mentioning therein all the taxable services provided by him

to the concerned SCE.

**Section 69(2)**- **Mandatory registration even if no service tax liability**

The CG may, by notification in official gazette, specify
- ⇨ **such other person or class of persons**
- ⇨ **who shall make an application for registration**

within such time and in such manner and in such form may be prescribed.

**Rule 3**- **Service tax (Registration of special categories of person) rules, 2005.**

- ❖ **Input service distributor-** **ISD shall make an application to the jurisdictional SCE for registration within 30 days of the commencement of business.**
- ❖ **Any provider of taxable service**
- \- **Whose aggregate value of taxable service in a F/Y exceeds Rs. 9 lakhs**
- \- **Shall make an application** to the jurisdictional SCE, for registration
- \- **Within 30 days of exceeding the aggregate value of Rs. 9 lakhs.**

Provisions of sub-rules of Rule-4 of STR, 1994 shall be applicable mutatis mutandis.

**Analysis of procedure-**

**Commencement of business**

**30 Days**

**Reg. application (ST-1)** → **RC issued within 7 days**

**(Online submission)**

**PAN SP 001**

**Document to be submitted (Manual submission)**

**(within 15 days of submission of application)**

**Copy of PAN**

**Proof of residence**

**Constitution of applicant**

**Power of attorney in respect of authorised person**

**Section 70** **Furnishing of Returns**

**(1) The person who is liable to pay service tax u/s 69(1)-**

**Every person liable to pay service tax**

- shall **himself assess the tax** due on the services provided by him

and

- shall **furnish to SCE, a RETURN** in such form, in such manner and at such frequency and

**with such late fee not exceeding Rs 20000, for delayed furnishing of return**

as may be prescribed.

**Rule 7** **Service tax rules, 1994**

**(1) Every assessee shall submit**

- a **HALF-YEARLY return**
- **in form ST-3**, along with challan GAR-7.

(2) The return shall be submitted **by the 25th day of the month following the particular half year**

- **For April to Sept. – 25th October**
- **For Oct. to March – 25th April**

**Every assessee shall submit the half-yearly return electronically.**

(3) CBEC may, by an order extend the period referred to in sub-rule 2 by such period as deemed necessary under circumstances of special nature.

**(2) Person not liable to pay service tax u/s 69(2)-**

The persons or class of **persons notified u/s 69(2)**

- **Shall furnish** to the SCE, a **Return**
- In such from, in such manner and at such frequency as may be prescribed.

**Rule 4** **Service tax (Registration of special categories of person) rules, 2005.**

- **Where a person is not liable to pay service tax but is required to register since aggregate value of his services exceeds Rs. 9 lakhs**, then he **shall also submit return in form ST-3**.

- **ISD shall file half yearly return by the last day of the month following the particular half year**.

  For April to Sept. – 31st October

  For Oct. to March – 30th April.

**Explanation- Multiple service provider may file a single return in respect of all the services provided by him**

☞ **(imp)**

**Rule 7(C)** Service tax rules, 1994

**Belated return**

Where the return prescribed under rule 7 is furnished after the due date, the person shall pay late fees (as specified below)-

| Period of delay | Late fee payable |
|---|---|
| Upto 15 days | Rs 500 |
| Beyond 15 days but not later than 30 days | Rs 1000 |
| Beyond 30 days | Rs 1000 plus Rs 100 for every day from the 31st day till the date of furnishing of return |

**Provided that**

☞ the total amount of late fee shall not exceed the amount specified in sec. 70 (i.e. Rs 20000)

**Provided also that**

☞ where the gross amount of service tax payable is nil

☞ the Central excise officer may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the late fees.

☞ **(imp)**

**Rule 7(B)** Service tax rules, 1994

**Revise return**

An assessee may

☞ Submit a revised return, in form ST-3, in triplicate copies

☞ to correct a mistake or omission

within a period of 90 days from the date of submission of return under rule-7.

**Author comment- Belated return can also be revised unlike in income tax because belated return is also return filed under rule-7.**

## Sec. 71 SERVICE TAX RETURN PREPARER SCHEME (STRP)

| Assessee |
|---|
| Any assessee can file ST return through STRP.<br>(revised return can be file through STRP only if the original return was filed through STRP) |

| STRP |
|---|
| Individual who has been issued a STRP certificate and a unique ID to carry on the profession of preparing return in accordance of STRP scheme framed by CBEC.<br>Educational qualification- 12th<br>Technical qualification- Training by CBEC. |

**Rule 5** **Service tax rules, 1994**

**Service tax records**

**For the purposes of service tax records**-

- **records maintained under any other law are acceptable**( i.e. No separate records required to be maintained)

**At the time of filing his first service tax return, the assessee shall submit** "list of records". The list shall cover **following records-**

(1) all records prepared or maintained by the assessee for accounting of transaction **in regard to**
- ⇨ providing of any service
- ⇨ receipt / procurement of input services and payment for such input service
- ⇨ receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regards of input and capital goods
- ⇨ other activities, if any.

(2) All **other financial records** maintained by him in the normal course of business.

**Assessee shall keep the records for 5 years in his preservation** and records must be made available for inspection and examination by CEO.

**Documents to be submitted along with service tax return**

**Along with ST-3, following documents should be attached**-

**(i)** **Copies of GAR-7 challans which indicates the payment of service tax;**

**(ii)** **A memorandum in form ST-3A giving details of the difference between the amount of provisionally tax deposited and actual amount payable for each month**

**The service tax return should be filed in triplicate to SCE**. The assessee may also file the return with the concerned divisional office by registered post. However, the assessee should ensure that the return reaches the concerned office on or before due date.

**Provided that even if no service has been provided during a half year and no service tax is payable, the assessee has to file a NIL return within the prescribed limit.**

**Contents of the service tax return**

**The service tax returns contains the following major details**-

**(a)** **Particulars of assessee i.e. name, registration number, address etc.**

**(b)** **Particulars of taxable service**

**(c)** **Particulars of half year period**

**(d)** **Particulars of value of taxable services i.e. amount received, advance received, details of exempted service, exemption claimed etc.**

**(e)** **Particulars of service tax i.e. service tax paid or payable, EC & SHEC paid or payable, interest or penalty paid, payment of excess collection of service tax etc.**

**(f)** **Particulars of Cenvat credit i.e. opening balance, availment, utilization and closing balance.**

## E/N- 33/2012 SMALL SERVICE PROVIDER (SSP) EXEMPTION

**Exemption for aggregate value upto Rs. 10 lakhs-**

**(1) Meaning of small service provider-**

**Small service provider means**

- a **Service provider**
- the "**aggregate value" of taxable services rendered by whom from one or more premises**
- **does not exceed Rs. 10 lakhs in the preceding financial year.**
-

**Explanation- For the removal of doubts, it is hereby declared that aggregate value means-**

- **the sum total of value of taxable services charged during a financial year**
- **but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon u/s 66B.**

**Provided that**

**Nothing contained in this notification shall apply to**

(i) **Taxable services provided by a person under a brand name or trade name** (whetehr registered or not) **of another person**; or

(ii) **Such value of taxable services in respect of which service tax shall be paid by such person covered u/s 68(2)** i.e. reverse charge cases.

**(2) Quantum of Exemption-**

**Small service provider is entitled for 100 % exemption**

- From service tax of aggregate value of taxable services **upto Rs. 10 lakhs provided during the financial year**

If the aggregate value of taxable services exceeds Rs. 10 lakhs, then such excess over Rs. 10 lakhs shall be chargeable to service tax.

**Analysis-**

**SSP**
- → **Aggregate value in preceding F/Y > 10 lakhs = No exemption in current F/Y**
- → **Aggregate value in preceding F/Y < 10 lakhs = Exempt upto 10 lakhs in current F/Y**

**Notes-**

1. **Exemption is optional**-
   The provider of taxable service shall have the option not to avail this exemption and pay ST on the taxable service provided by him. However, such option, once exercised in a F/Y, cannot be withdrawn during the remaining part of F/Y.
2. **Exemption limit of Rs. 10 lakhs is in respect of all services provided from all premises of service provider**.

## Special manner of payment of service tax (optional composition schemes)

| Relevant rule | Service provider (service) | Taxable value | Rate of service tax |
|---|---|---|---|
| Rule 6(7), STR 1994 | Air travel agent | Basic fare | 0.6% (domestic booking)<br>1.2% (international booking) |
| Rule 6(7A), STR 1994 | Life insurance | Total premium amount (saving + risk premium) | First year – 3%<br>Subsequent years – 1.5% |
| Rule 6(7B), STR 1994 | Money changer | Gross amount of currency exchanged (expressed in INR) | Upto Rs. 1 lakh - 0.12% or Rs. 30(higher)<br><br>1 lakh < GAC ≥ 10 lakh – Rs 120 + 0.06% over Rs 1 lakh subject to Rs 660.<br><br>More than 10 lakhs – Rs 660 + 0.012% over Rs 10 lakhs OR 6000 (lower) |

**Note- Service tax computed above is subject to EC and SHEC in all the above cases.**

**Example- Kingfisher airlines running its new aircraft on a domestic run Delhi to Kolkata. The cost of ticket is Rs 15000 (exclusive of service tax).**
**Deepika padukon an air travel agent booked one ticket for the passenger for which she gets Rs 200 from the passenger as service charge and 5% commission from Vijay malya. Commission from the kingfisher airlines is payable at total cost of ticket.**
**Compute the service tax liability of Deepika padukon.**

**Solution**- (space for solution)

## Sec. 66D Negative list of services

### (1) – (a) Services **by** Government or a local authority

☞ **Taxable**

- 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 Government**
- Services in relation to an aircraft or a vessel;
- Transport of goods or passengers; or
- Support services provided **to business entities.**

**CG**

**SG**

**Analysis-** Only those activities of Government or local authorities are taxed where similar or substitutable services are provided by private entities. The rationale is as follows-
to provide a level playing field to private entities in these areas as exemption to Government in such activities would lead to competitive inequities; and to avoid break in CENVAT chain as the support services provided by Government are normally in the nature of intermediary services.

- **"Support services"** means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis.

(b) Services **by** the Reserve Bank of India


(c) Services **by** a foreign diplomatic mission located in India

(2) **Services provided to a** foreign diplomatic mission or consular post in India, or family members of diplomatic agents **or career consular officers posted therein (Notification** 27/2013 dated 20/06/20 12)

(3) Services relating to agriculture or agricultural produce

- **"Agriculture"** means the cultivation of plants and rearing of all life- forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products.
- **"Agricultural produce"** means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.

(4) Trading of goods

(5) Any **process amounting to manufacture or production of goods**

- **Manufacture means** a process on which duties of Excise are leviable u/s of the Central excise Act, 1944 or any process on which State excise duty is leviable.

(6) Selling of space or time slot for advertisements

**space**

**time slot**

☞ **Taxable**

Selling of space or time slots for advertisements **broadcast by radio or television**

- **"Advertisement"** means any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person .

(7) **Services by way of access to a Road or a Bridge on payment of** Toll Charges

(8) Betting, gambling or lottery

- **"Betting or gambling"** means putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring.

(9) **Transmission or distribution of** Electricity

(10) **Admission to entertainment events or access to amusement facilities**

- **"Amusement facility"** means a facility where fun or recreation is provided by means of rides, gaming devices or bowling alleys in amusement parks, amusement arcades, water parks, theme parks or such other places but does not include a place within such facility where other services are provided.
- **"Entertainment event"** means an event or a performance which is intended to provide recreation, pastime, fun or enjoyment, by way of exhibition of cinematographic film, circus, concerts, sporting event, pageants, award functions, dance, musical or theatrical performances including drama, ballets or any such event or programme.

(11) **Pre-school education and education up to higher secondary school**:

**Education as a part of a curriculum for obtaining a qualification**

**Education as a part of an approved vocational education course;**



(12) Services by way of **Renting of residential dwelling for use as residence**

- **Residential dwelling**- It has not been defined in the Act. It has therefore to be interpreted in terms of the normal parlance as per which it is any residential accommodation, but does not include hotel, motel, guest house, lodge or like places meant for temporary stay.

(13) Extending deposits, loans or advances in so far as the consideration is represented by way of **Interest or discount**.

- **"Interest"** means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.

(14) Inter se **sale or purchase of foreign currency amongst banks and/or authorized dealers**

(15) **Transportation of passengers** by stage carriage, railways, metro, monorail, tramway, inland waterways, public transport, metered cabs, radio taxis or auto rickshaws




☞ **Taxable**

Railways - first class., air-conditioned coach (passengers & goods exempt upto 30/09/2013)

(16) **Transportation of goods by road, inland waterways**

☞ **Taxable**

Goods transportation agency, courier agency

(17) **Funeral, burial, crematorium or mortuary services** including "transportation of the deceased".


Funeral


Burial


Crematorium


Mortuary

**SEC. 66F** **Bundled service**

**Bundled service means a bundle** of provision of various services **wherein an element of provision of one service is combined with an element or elements of provision of any other service or services**.

☞ In case of bundled service-

- **If services are naturally bundled, nature of whole service shall be determined acc. to the service which provides its main character.**
- **If services are not naturally bundled, then such service shall be treated as provision of that service which results into highest tax liability.**

**Analysis-**

| SN | Bundle | Services bundled | Nature | Final treatment |
|---|---|---|---|---|
| 1 | Hotel providing 4-day/3-night package with the facility of breakfast | • accommodation service<br>• catering service | Natural | Accommodation service |
| 2 | Air lines providing travel service with catering on board | • Air travel service<br>• Catering service | Natural | Air travel service |
| 3 | Boarding school | • Coaching/Education service<br>• Accommodation service<br>• Catering service | Natural | Coaching/Education service |
| 4 | Renting of house<br>1st floor – Resid.<br>2nd floor- Commer.<br>Single rent deed executed. | • Renting for residential purpose<br>• Renting for commercial purpose | Unnatural | **Renting for commercial purpose**<br>(in this case renting for use as residence is a negative list service while renting for commercial use is a service chargeable to tax. Since the latter category attracts highest liability of service tax, the entire bundle would be treated as renting of commercial property) |

## Principles of Interpretation in Service tax law

**(1) Reference to Main service – does not mean reference to services used in providing main service-**

**Unless otherwise specified**

- **reference to a service** (herein referred to as main service)
- **shall not include reference to a service which is used for providing main service**.

**Analysis-**

**Negative list service – Provision of access to any road or bridge on payment of Toll**

☞ Any service provided in relation to collection of tolls or for security of a toll road would be in the nature of service used for providing such specified service and will not be entitled to the benefit of the negative list entry.

**(2) Treatment of service – Apply specific description**

**Where a service is capable of differential treatment** for any purpose

- **based on its description**
- **the most specific description shall be preferred over a more general description.**

**Analysis**-

☞ Suppose if there is a differential tax treatment for motor cars and motor vehicles, the treatment defined for motor car should be followed even though a motor car can also be classified as a motor vehicle.


## Practical problems

**Problem 1-** ABC Pvt Ltd., is engaged in providing a taxable service. For the month of April, 2013, its gross billing were Rs. 18 lakhs. The breakups of these receipts are as follows-

| Services Rendered | Amount |
|---|---|
| To an international organisation | 4 lakh |
| Within the Indian territorial waters | 3 lakh |
| To its associated enterprise | 5 lakh |
| In the state of Jammu & Kashmir | 6 lakh |

State the amount of service tax payable for the month of April, 2013.

**Solution 1-** Computation of ervice tax payable for the month of April, 2013-

| Particulars | Amount |
|---|---|
| Services to International organisation | Nil |
| Services within the territorial waters | 3 lakh |
| Services to associated enterprise | 5 lakh |
| Services in the state of J & K | Nil |
| Total | 8 lakh |

Service tax liability = 8 lakhs x 12.36 % = 98,880 Rs.

Notes-

(1) Services to international organisation are exempt from the payment of service tax.
(2) Services provided in state of J & K is not taxable, being service provided in non-taxable territory.

**Problem 2 –** Ahmed & Co. of Srinagar rendered taxable services both within and outside the state of J & K. It received Rs. 26,12,000 for the services rendered inside the state of J & K and Rs. 18,00,000 for the services rendered outside the state of J & K.

(i) Compute its taxable service value and service tax liability.
(ii) In case, Ahmed & Co. was situated in Mumbai what would be value of its taxable service and service tax liability?

**Solution 2 –** Chapter V of the FA, 1994, which deals with provisions of service tax, is applicable to whole of India except the state of J & K. Sec. 66B which is charging section of service tax also clearly states, services provided in Taxable territory will only subject to service tax.
J & K being non-taxable territory, services rendered within J & K are not taxable.

(i) Only services rendered outside the state of J & K are taxable. The total amount received from such services is Rs. 18 lakhs.

GAC u/s 67 - $\frac{1800000}{112.36} \times 100$ = Rs. 16,01,994.

Service tax = 16,01,994 x 12.36 % = 1,98,006

(ii) In case Ahmed & Co. was situated in Mumbai, the taxable value would have been the same, as charge of service tax depends on the place of rendering service and not place of the service provider.

**Problem 3 –** Mr A, who renders taxable services for Rs. 8 lakhs furnishes the following information

- Date of completion of service – 10.4.2013
- Date of issuing the Invoice – 15.4.2013
- Date of receipt of payment – 30.4.2013

(1) Determine the POT.
(2) If the Invoice is issued on 15.5.2013, would your answer differ?
(3) If the payment for services are received in advance on 5.4.2013 and 8.4.2013 amounting to Rs. 5,00,000 and Rs. 3,00,000 respectively, what will be the POT?
(4) If the payment for services is received in Advance on 08.4.2013, what will be the POT?
(5) If the payment for services is received on 13.4.2013, what will be POT?
(6) An advance of Rs. 5,00,000 & Rs. 3,00,000 was received on 8.4.2013 & 17.4.2013 respectively, what will be the POT?

**Solution 3 –**

(1) As per rule 3 of POT rules, 2011, where the invoice is issued within 30 days from the date of completion of service, the POT shall be the date of Invoice or the date of payment, whichever is earlier.
POT = 15.4.2013, Accordingly, he is liable to pay service tax on/before $5^{th}/6^{th}$ July 2013.
(2) Where the invoice is not issued within 30 days, POT shall be the date of completion of service or date of payment, whichever is earlier.
POT = 10.4.2013, Accordingly, he is liable to pay service tax upto $5^{th}/6^{th}$ July, 2013.
(3) As per explanation to rule 3 of POT rules, 2011, where any advance is received for any service, the POT shall be the date of receipt of such payment.
There will be two POT- 5.4.2013 & 8.4.2013; Accordingly, he is liable to pay service tax upto $5^{th}/6^{th}$ July 2013.
(4) POT = 8.4.2013, Accordingly, he will be liable to pay service tax upto $5^{th}/6^{th}$ July, 2013.
(5) POT = 13.4.2013, Accordingly, he will be liable to pay service tax upto $5^{th}/6^{th}$ July, 2013.
(6) There will be two POT-
    - First POT = 8.4.2013, the date on which advance is received. For this POT he needs to pay service tax upto $5^{th}/6^{th}$ July, 2013.
    - Second POT = 15.4.2013, the date of Invoice which is earlier. For this POT he needs to pay service tax upto $5^{th}/6^{th}$ July, 2013.

**Problem 4-** Mr X, a practicing chartered accountant, renders audit services to his client company gives the following details-

(a) Receipt for audit service rendered amount to Rs. 30 lakhs. Out of this a sum of Rs. 3 lakhs was received towards representation services on behalf of clients, before RBI, Income tax and service tax authorities in connection with notices issued.
(b) A sum of Rs. 20 lakhs was received as advance for professional fee in respect of service to be rendered I the next financial year.
(c) Amount invoiced to a client Rs. 5 lakhs for audit services is yet to realized.

Compute the value of taxable services.

**Solution 4 -**

**Problem 5** - TR education Ltd., a leading CA coaching institute, has opened up admissions for their batch starting from 12th November, 2013. 1st September to 10th September announced as admission dates. Students from all corners of India applied for admission

Determine the date which shall be treated as 'date of payment' for purposes of POT rules, 2011:

| Situation | Amount | Entry in books | Presentation to bank | Credit to bank account | Date of payment |
|---|---|---|---|---|---|
| Students depositing money directly into academy's bank account | 10,00,000 | 3rd Sep. 2013 | 1st Sep. 2013 | 1st Sep. 2013 | 1st Sep. 2013 |
| students visited academy and paid fees at counter | | | | | |
| Fees paid in cash | 20,00,000 | 1st Sep. 2013 | 2nd Sep. 2013 | 2ndSep.2013 | 1st Sep.2013 |
| Fees paid in cheque | 15,00,000 | 1st Sep. 2013 | 4th Sep. 2013 | 7th Sep.2013 | 1st Sep.2013 |

**Problem 6-** TR consultancy services raised an invoice for Rs. 28,090 (i.e. Rs 25000 + Rs.3090 service tax) to a client on 20.4.2013. The client, however, has paid a lump-sum of Rs. 26,000 on 28.7.2013 for full & final settlement.

(i) How much service tax TR consultancy services has to pay and when does this tax become due for payment?

(ii) What will be his liability, if the client refuses to pay ST and pays only Rs 25,000 in total? The value of taxable services rendered during the preceding year was Rs. 19 lakhs. (CA FINAL – May 2007)

**Solution 6 –** Individual/ Proprietorship firm/ Partnership firm, whose aggregate value of taxable services provided from one or more premises is upto Rs. 50 lakhs in the preceding F/Y, shall have an option to pay tax on receipt basis upto Rs. 50 lakhs in the current F/Y.

When the full bill amount is not received then the amount so received shall be treated as inclusive of service tax and hence service tax is needed to be calculated accordingly.

(i) Service tax = $\frac{26000}{112.36} \times 12.36$ = Rs. 2860

Such service tax should be paid by 5th/6th October, 2013.

(i) Service tax = $\frac{25000}{112.36} \times 12.36$ = Rs. 2750

Such service tax should be paid by 5th/6th October, 2013.

**Problem 7** – An unregistered "service provider" who is a CA provides following details in respect of taxable services provided during the F/Y 2013-14:

| Date | Particulars | Amount |
|---|---|---|
| 30.6.2013 | Advance received from a client | 100000 |
| 30.9.2013 | Part payment received against a bill of Rs. 9,50,000 raised on a client | 500000 |
| 31.12.2013 | Money received against taxable services provided during Dec. 12 | 300000 |
| 31.1.2014 | Taxable services rendered during Jan, 2014 | 100000 |
| 31.3.2014 | Taxable services rendered during March, 2014 | 200000 |

The service tax provider complies with the provisions of registration and collection of service tax as per service tax laws. He gets registered during the year. He received the money against the bills raised during the month of January and March 2014. Compute the service tax liability of service provider for the year 2013-14.

The value of services provided during the preceding year was Rs. 9 lakhs. Amounts are exclusive of service tax.

**Solution 7** –

| Date | Particulars | Amount |
|---|---|---|
| 30.6.2013 | Advance received from a client | 100000 |
| 30.9.2013 | Part payment received | 500000 |
| 31.12.2013 | Money received against services provided during Dec, 2013 | 300000 |
| 31.1.2014 | Services rendered during Jan, 2014 – Payment received | 100000 |
| 31.3.2014 | Services rendered during March, 2014 – Payment received | 200000 |
| Total receipts against taxable services | | 1200000 |
| Less: Exemption for small service provider | | 1000000 |
| Taxable value of services | | 200000 |

Service tax liability = 200000 x 12.36 % = 24,720 Rs.

(Author's Remarks - As per rule 6(1) of STR, 1994, Individuals & Partnership firms whose aggregate value of taxable services provided from one or more premises does not exceed Rs. 50 lakhs in preceding F/Y, shall have an option to pay tax on receipt basis upto Rs. 50 lakhs in current F/Y).

**Problem 8** – TR associates, an architect, received the following amounts:

| Date of receipt | Nature of receipt | Amount | Time of providing service |
|---|---|---|---|
| 20.4.2013 | For service | 1,00,000 | July, 2013 |
| 30.6.2013 | Advance for service | 5,00,000 | Services were rendered in July and August 2013 |
| 05.8.2013 | For service | 50,000 | March, 2014 |
| 10.9.2013 | Advance for service | 3,35,000 | A sum of Rs. 50000 was refunded in April, 2014 after termination of agreement. For the balance amount, service was provided in Sept, 2013. |

Compute-

(i) The amount of taxable service for the first two quarters of F/Y 2013-14.

(ii) The amount of service tax payable

The value of taxable services rendered during the preceding year was Rs. 42 lakhs.

**Solution 8** –

First quarter (1-4-2013 to 30-6-2013)

| | |
|---|---|
| Payment received on 20.04.2013 | |
| 1,00,000 Rs. is taxable though the service is rendered in next quarter | 1,00,000 |
| Less – Service tax ( 100000/112.36 x 12.36) | 11,000 |
| Value of taxable services | 89,000 |
| Payment received on 30.06.2013 | |
| 5,00,000 Rs. is taxable in spite of the fact that the services were rendered in the next quarter | 5,00,000 |
| Less – Service tax ( 500000/112.36 x 12.36) | 55,002 |
| Value of taxable services | 4,44,498 |

Total value of taxable services = 89,000 + 4,44,498 = 5,33,498

Total service tax payable = 11,000 + 55,002 = 66,002

Second quarter (1-7-2013 to 30-9-2013)

| | |
|---|---|
| Payment received on 05.8.2013 | |
| 50,000 Rs. is taxable though the service is rendered in next quarter | 50,000 |
| Less – Service tax ( 50000/112.36 x 12.36) | 5,500 |
| Value of taxable services | 44,500 |
| Payment received on 30.06.2013 | |
| 3,35,000 Rs. is liable for service tax | 3,35,000 |
| Less – Service tax ( 335000/112.36 x 12.36) | 36,851 |
| Value of taxable services | 2,98,149 |

Total value of taxable services = 44,500 + 2,98,491 = 3,42,649

Total service tax payable = 5,500 + 36,851 = 42,351

(Author's Remarks – The amount of service tax included in the amount refunded in the next F/Y i.e. April, 2014 would be adjusted against service tax liability of subsequent periods. This has nothing to do with above payment of service tax).

**Problem 9** – Disha-darshak, a leading coaching Institute for CA/CS/CMA, has collected a sum of Rs. 10.02 lacs as service tax. Rs. 70,000 was met through Cenvat credit and the balance was paid by cheque through GAR-7 challan on various dates during the year ended on 31-3-2013.

The details pertaining to the quarter ended 30-6-2013 are as under-

| Particulars | Amount |
|---|---|
| Value of free coaching rendered to CPT students | 20,000 |
| Coaching fees collected from students (service tax collected separately) | 14,50,000 |
| Advance received from a college for coaching their students, on 30-6-2013. However, no coaching was conducted and the money was returned on 12-4-2014. | 3,00,000 |

Determine the service tax liability for the quarter and indicate the date by which the service tax has to be deposited by Disha-darshak.

**Solution 9** – Computation of service tax liability

| Particulars | Value |
|---|---|
| Value of free coaching rendered | Not taxable |
| Coaching fees collected from students ( ST Extra) | 14,50,000 |
| Advance received from college ( 300000/112.36 x 12.36) | 2,66,999 |
| Value of taxable services | 17,16,999 |

Service tax payable – 17,16,999 x 12.36% = 2,12,221

Due date of payment – 6th July, 2013, (Electronically payment mandatory)

**Problem 10** – Sweety, is a fashion designer. She received Rs. 19,80,000 during the F/Y 2013-14 after deduction of tax at source u/s 194-J of the Income tax Act, 1961; the rate of TDS being 10 %.

Required

(i) Calculate the service tax liability of Sweety

(ii) Can a multiple service provider use a single challan for payment of service tax for various service rendered by it?

**Solution 10** –

(i) Calculation of service tax liability of Sweety-

| | |
|---|---|
| Amount received (Net of TDS) | 19,80,000 |
| ADD- TDS u/s 194-J (1980000/90%) x 10 % | 2,20,000 |
| Gross amount charged | 22,00,000 |

Service tax liability = 22,00,000/112.36 x 12.36 = 2,42,008

(ii) W.e.f. 1st July, 2012, all services except those covered in negative list are liable to service tax. The classification of services is not required. There is only one accounting code for deposit of service tax for all taxable services. Hence, single challan is required for payment of service tax.

**Problem 11** - Arun, a practicing Chartered Accountant provides the following particulars for the Quarter ending 30.6.2013. All bills raised by Arun are inclusive of service Tax.

| Date | Particulars | Amount |
|---|---|---|
| 25.04.2013 | Bill no. 1010 in r/o Statutory Audit fee charged to Mohit ltd. | 3,00,000 |
| 05.05.2013 | Bill no. 1011 in r/o Internal Audit fee charged to Suryansh ltd. | 2,40,000 |
| 19.05.2013 | Amount received from Mohit Ltd. In respect of Bill no. 1010 | 3,00,000 |
| 22.05.2013 | Bill no. 1012 in r/o appearance before Appellate Tribunal against notice issued to T ltd. | 2,60,000 |
| 28.05.2013 | Amount received from Tarun Ltd. In r/o Bill No. 1012 | 2,60,000 |
| 04.06.2013 | Amount received from Suryansh Ltd. Against Bill No. 1011 | 1,60,000 |
| 04.07.2013 | Balance Amount received from Suryansh Ltd. Against Bill no. 1011 | 80,000 |

You are required to compute the following for the quarter ending 30.06.2013:

*(i)* Value of Taxable Services.
*(ii)* Amount of Service Tax Payable.
*(iii)* Last Date of Service Tax Payable.

Assume aggregate value of taxable service provided in the previous financial year:
(A) Did not exceed ` 50,00,000
(B) Exceeded ` 50,00,000 (8 marks)

**Problem 12** - Mr. Salim, a service provider has following receipts during the quarter ending on 30.06.2013:-

| Particulars | Amount |
|---|---|
| Receipts on 04.06.2013 for providing a service on 31.05.2013 (total amount was 2,25,000 but 25,000 was deducted as TDS) | 2,00,000 |
| Issued a bill on 30.06.2013 for service provided on 15.06.2013. Amount not received during the year. | 3,00,000 |
| Services provided on 30.05 2013 to Helpage India a charitable institution and payment received on 09.09.2013.Invoice issued on 15.06.2013 | 2,50,000 |
| Bill raised on 10.07.2013 for a service provided on 15.06.2013. Payment has not been received yet. | 7,75,000 |

Determine the following for Mr. Salim in relation to the quarter ending on 30.06.2013 if in the financial year 12-13 the assessee has provided total taxable services of ` 60 lakhs:

(a) Value of taxable services
(b) The amount of service tax payable.
(c) The due date of payment of service tax.

All the above figures given are exclusive of service tax. (5 marks)

**Problem 13** - Opium ltd. received following amounts against a single taxable services provided (Total contract amount 11,00,000):

(a) 1,00,000 by an account payee Cheque, as advance on 1.10.2013 while signing the contract.
(b) 5,00,000 by credit card on 15.12.2013 while raising the invoice for complete contract amount.
(c) Balance of 5,00,000 by a pay order after completion of service on January 31, 2014.

All three transactions took place during financial year 2013-14. Opium Ltd. seeks your advice about its liability towards value of taxable service and the service tax payable along with the month by which the tax should be deposited.
All amounts given above are exclusive of service tax. Opium Ltd. had provided taxable services of ` 45 lakhs during the F.Y. 12-13. (4 marks)

**Problem 14** - Services provided by Beghar in relation to short term accommodation came under the new levy of service tax on 01.05.2013.You are required to compute the total amount of taxable services rendered by it and the tax liability for the year 13-14:

| | | |
|---|---|---|
| (i) | Services provided on 14th May 2013 but payments were received on 15th April 2013 and the invoice was issued on the date of payment itself. | 5,00,000 |
| (ii) | Services provided to few students on trip on 1st April 2013 for which no consideration was taken. Charges of similar services in same locality are | 6,00,000 |
| (iii) | Services provided to business associates on 17th May 2013, invoice was issued on 24th April 2013 but no payment has been received for it till date. | 2,00,000 |
| (iv) | On 14th May 2013 invoice was issued for a service rendered on 5th May 2013 and the payment was received in cash on 2nd May 2013. | 1,00,000 |
| (v) | On 29th May 2013 an invoice was issued for services already given on 28th April 2013 but the payments for these services were received on 10th April 2013. | 4,00,000 |

All the figures stated above are exclusive of service tax. (5 marks)

**Problem 15** - Calculate the service tax liability of Mr. Dubeylal for the quarter ended on 31.3.14:-

| | | |
|---|---|---|
| (i) | Bill raised for services of hardware assistance completed during the quarter | 4,00,000 |
| (ii) | Service of technical advice given to body corporate on their data base management system on 4th March 2014 (Payment for such service was received on the date of raising the bill on 1st April 2014) | 2,00,000 |
| (iii) | Full and Final payment received for metallurgical engineering services on which invoice was for `6,50,000 and final payment of Rs 5,00,000 could only be recovered. Balance were recorded as bad debts in the books of accounts. | (5 marks) |

**Problem 16** - Following are the particulars of Mr. X, running a charitable institution providing the following services for the year ended on 31.03.2014:

(a) Amount received for services provided to private firms during 13-14 — 20,00,000
(Total bill was 22,00,000 out which 2,00,000 was deducted as TDS)
(b) Payments received on 1.04.2014 for services already rendered in F.Y.13-14 — 10,00,000
(c) Bills issued on 04th April 2014 and services provided to companies on 7th March 2014 (No amount received so far) — 12,00,000
(d) Receipts for services provided to industries in Jammu and Kashmir — 5,00,000

You are required to compute service tax liability for Mr. X for the year ended 31.03.2014.

Mr.X provided total taxable services of ` 35 lakhs during the F.Y. 12-13.

Clearly assign the reasons for treatment followed by you. (4 marks)

**Problem 17** - Following are the services provided by Saumya Ltd. for the year ended on 31.03.2014 and value of total taxable services for the F.Y. 12-13 was `50 lakhs :

| Date of transaction | Particulars | Amount of bill (excluding S. Tax) | Payment received |
|---|---|---|---|
| June 30, 2013 | Advance received from a customer(on July 14,2013 Bill No. 001 was issued) | | 1,00,000 |
| July 14, 2013 | Bill no. 001 issued | 1,00,000 | - |
| September 30, 2013 | Bill No. 002 issued | 9,50,000 | - |
| September 30, 2013 | Part payment against Bill No. 002 | | 4,00,000 |
| December 31, 2013 | Bill No.003 issued(for taxable services rendered during December 2013) | 2,00,000 | - |
| December 31, 2013 | Money received against bill No.003 | | 2,00,000 |
| January 31, 2014 | Bill No. 004 issued(for taxable services rendered during January 2014) | 3,00,000 | - |
| January 31, 2014 | Money received against bill no. 004 | - | 3,00,000 |
| March 31, 2014 | Bill No.005 issued(for taxable services rendered during March 2014) | 2,50,000 | 1,50,000 |

Compute (i) Point of taxation for each activity (ii) Due date of payment (6 marks)

**Problem 18** - Ms. Priya rendered a taxable service to a client, a bill for ` 40,000 was raised on 29.4.2013; 15,000 was received from the client on 1.5.2013 and the balance on 23.5.2013. No service tax was separately charged in the bill. The questions are:

(a) Is Ms. Priya liable to pay service tax, even though the same has not been charged by her?
(b) Is case she is liable, what is the value of taxable service and the service tax payable?
(May 2008) (6 marks)

**Problem 19** - T.R. Institute a coaching centre, is providing coaching to CA students. The institute has furnished the following details for the quarter ended on 31.3.2014(all the amounts given are exclusive of tax):-

| | | |
|---|---|---|
| (i) | Registration fees received from the students for next batches | 14,00,000 |
| (ii) | Amount received on 31.3.2014 from the students of past batches (The batch was completed in March 2014, but they could not pay then and Aap to jaantey hain ki sir kaa to dil hi kuch………) | 5,00,000 |
| (iii) | Free training provided to physically challenged students | 3,00,000 |
| (iv) | Received car from students instead of fees, the market value of which is 8,00,000 | |
| (v) | Fees received indirectly for a poor student | 10,00,000 |
| (vi) | Services provided on 31.3.2014 (Bill raised on 4.4.2014 amount received on 5.4.2014) | 6,00,000 |
| (vii) | Value of taxable services provided by them in F.Y. 12-13 | 60,00,000 |

You are required to calculate the value of taxable services and the service tax payable for the quarter ending on 31.03.2014. (5 marks)

**Problem 20** - IT Ltd. is engaged in the business of providing the information technology software service. From the following information, compute following for the month ending on 31.12.2013:

(a) value of taxable service

(b) the service tax payable

(c) due date of payment of service tax.

Assume that Service Tax, if applicable, is charged extra in the bills raised.

| | | |
|---|---|---|
| 05.11.2013 | Bills issued to S Ltd. for providing upgradation of Software (The service was provided on 31.10.13 and the amount was received on 8.12.13) | 5,00,000 |
| 06.12.2013 | Bill issued for services to be provided on 15.01.2014 | 2,20,600 |
| 02.02.2014 | Bill issued for giving assistance in Software implementation (The service was provided on 31.12.13 and the amount was received on 31.3.14) | 4,00,000 |
| 28.03.2014 | Advance (inclusive of service tax) received for development of Software Service to be rendered in April 2014 | 1,12,360 |

(5marks)

**Problem 21** - Following services have been provided by Mr. Ashok Kumar for the year ending on 31.3.2013:-

| Different Situations | Point of taxation (Deemed to be provided) | Due Date of Deposit |
|---|---|---|
| Service of coaching is completed on Aug 1, 2013<br>Invoice is issued on Aug12, 2013<br>Payment is received on Sep 12, 2013 | | |
| Service of coaching is completed on July 3, 2013<br>Invoice is, however, issued on August 1, 2013<br>Payment is received on September 1, 2013 | | |
| Service of coaching is completed on July 3, 2013.<br>Invoice of ` 7,00,000 is issued on August 1, 2013.<br>Payment of ` 5,00,000 is received on July 11, 2013 and the balance of ` 2,00,000 is received on July 19,2013 | | |
| Service of coaching is completed on July 3, 2013<br>Invoice of ` 3,00,000 is issued on July 4, 2013<br>Advance of ` 75,000 received on June 25, 2013. Balance of ` 2,25,000 is received on July 7, 2013 | | |
| Service of coaching is completed on July 3, 2013<br>However, invoice is issued in advance on June 15, 2013.<br>An advance of ` 75,000 is received on June 16, 2013. The balance of ` 2,25,000 is received at the time of completion of service on July 3, 2013. | | |

(5marks)

**Problem 22** - In F/y 12-13 Total tax liability of P ltd. was 10 lacs, although actual tax deposited was 9 lacs because 1lac credit of input services was used. Decide the amount of tax, due date and mode of payment for 13-14:-

| | | |
|---|---|---|
| (i) | Amount received in Dec. 2013 | 5,00,000 |
| (ii) | Services exported out of India & amount received in foreign exchange | 3,00,000 |
| (iii) | Advance received from Mr. A for services to be provided to son of director (Nothing was charged from the son) in Jan 14 | 2,00,000 |
| (iv) | Service provided on 31st March and amount received on the same date | 4,00,000 |

Also decide the mode of payment in 14-15. (4marks)

**Problem 23** - During F/Y 12-13, T Ltd. received 10 lacs for services provide by him. Compute the service tax payable with the due date for the year 13-14 with following (figures without tax):-

| | | |
|---|---|---|
| (i) | Amount received in April | 4,00,000 |
| (ii) | Amount received in July | 5,00,000 |
| (iii) | Amount received in Nov. | 3,00,000 |
| (iv) | Amount received in Feb. | 6,00,000 |

Also decide that whether the assessee can avail exemption under NN 33/2012 in the year 13-14

(4 Marks)

**Problem 24** - Mr. Sallu a service provider gives following details in respect of the services provided by him in F/Y 13-14:-

1. A bill raised on 26th May 2013 for which payments were received on 25th November 2013 — 6,00,000
2. Taxable services provided to Charitable trust on 28th February 2014 But no bills were raised till date and no payments are yet received. — 4,00,000
3. Services to be provided to Hrithik for which payments were received on 31st March 2014 — 3,00,000

Mr. Sallu had charged service tax separately for all the amounts . In F/Y 12-13 Mr. Sallu had provided taxable services of 2,00,000. You are required to compute the total taxable services provided by him during the year 13-14 and his tax liability. Also suggest whether Mr. Sallu can avail the exemption as per NN 33/2012 for F/Y 14-15. (5 marks)

**Change in rate of tax**

**Problem 25** - Tax Rate – upto 31.03.2013 – 10.3% (including EC & SHEC)

Tax Rate – from 1.4.2013 – 12.36 % (including EC & SHEC)

| Situations | Service Provided | Invoice Raised | Payment Received | Point of Taxation | Rate |
|---|---|---|---|---|---|
| 1 | 28.3.2013 | 3.4.2013 | 10.4.2013 | 3.4.2013 | |
| 2 | 28.3.2013 | 30.3.2013 | 10.4.2013 | 30.3.2013 | |
| 3 | 28.3.2013 | 3.4.2013 | 30.3.2013 | 30.3.2013 | |
| 4 | 3.4.2013 | 28.3.2013 | 5.4.2013 | 5.4.2013 | |
| 5 | 3.4.2013 | 28.3.2013 | 30.3.2013 | 28.3.2013 | |
| 6 | 3.4.2013 | 5.4.2013 | 28.3.2013 | 5.4.2013 | |

(4marks)

**Problem 26** - Nikhil Ltd. provides Management Consultancy Services to its client Aggarwal Properties Ltd. for agreed consideration of ` 1,50,000. Aggarwal Properties Ltd. makes the payment on 25th April, 2013. However, the date of completion of service is 15th April, 2013. The relevant invoice for 1,50,000 is raised by Nikhil Ltd. as per following table:

| | |
|---|---|
| CASE I | 30th April, 2013 |
| CASE II | 16th May, 2013 |
| CASE III | 20th April, 2013 |

Determine Point of Taxation in each of the above three cases. (4marks)

**Problem 27** - Ajay Ltd. has agreed to render services to Mr. Guru. The following are the chronological events:

| Particulars | |
|---|---|
| Contract for services entered into on 31.8.2013 | |
| Advance received in September, 2013 towards all services | 60,000 |
| Total value of services, billed in February, 2014 | 2,10,000 |
| Above includes non-taxable services of | 70,000 |
| Balance amount is received in March, 2014 | |

- When does the liability to pay service tax arise and for what amount? Contract contains clear details of services; consideration and service tax are charged separately, as mutually agreed upon.

**Problem 28** - **Determine the Point of Taxation in each of following independent cases in accordance with Point of Taxation Rules, 2011:**

| S.No. | Date of Completion of Service | Time [Date] of Invoice | Date on which payment received |
|---|---|---|---|
| 1. | 10.04.2013 | 05.05.2013 | 20.05.2013 |
| 2. | 10.04.2013 | 05.05.2013 | 25.04.2013 |
| 3. | 10.04.2013 | 05.05.2013 | 25.04.2013 (Part) and 20.05.2013 (remaining) |
| 4. | 10.04.2013 | 05.05.2013 | 06.04.2013 (Part) and 09.04.2013 (remaining) |
| 5. | 10.04.2013 | 05.05.2013 | 06.04.2013 (Part) and 01.05.2013 (remaining) |
| 6. | 10.04.2013 | 16.05.2013 | 20.05.2013 |
| 7. | 10.04.2013 | 16.05.2013 | 05.04.2013 (Part) and 14.05.2013 (remaining) |

**Problem 29** - **Ms. Priyanka, a proprietress of Royal Security Agency received 1,00,000 by an account payee cheque as advance while signing a contract for providing taxable service. She received 5,00,000 by credit card while providing the service and another 5,00,000 by a pay order after completion of service on January 31, 2014. All three transactions took place during financial year 2013-14. She seeks your advice about her liability towards value of taxable service and the service tax payable by her. The amount of service tax has been charged separately. (4 marks)**

Solution 11 –

(A) When aggregate value of taxable service provided in the previous financial year did not exceed 50,00,000

(i) Value of taxable services rendered by Arun as a practicing Chartered Accountant for the quarter ending 30.06.2013

In this case, the Point of Taxation will be the date on which payment is received.

In view of above, the value of services during the quarter ending 30.06.2013 has been computed as under:

Value of Taxable Services during the quarter ending 30.06.2013

| S. No. | Date | Particulars | Value of Taxable Services |
|---|---|---|---|
| (i) | 19.05.2013 | Amount Received from Mohit Ltd. In respect of Bill No. 1010 | 2,66,999 [3,00,000x 100/112.36] |
| (ii) | 28.05.2013 | Amount Received from Tarun Ltd. In r/o Bill No. 1012 | 2,31,399 [2,60,000x100/112.36] |
| (iii) | 04.06.2013 | Amount Received from Suryansh Ltd. Against Bill no. 1011 | 1,42,399 [1,60,000 x 100/112.36] |
| | | Total Taxable value of Services | 6,40,797 |

(a) Since Amount of Bills are Inclusive of Service Tax, value of Taxable Services has been determined by working backwards i.e. Amount of Bill x 100/112.36

(b) The Balance Amount of ` 80,000 (Inclusive of Service tax) has not been received from Suryansh Ltd. During the quarter ending 30.06.2013, the same not has been taken into consideration for the purpose of working out value of Taxable Services for the quarter ending 30.06.2013. however, the aforementioned amount of ` 80,000 has to be shown under the heading "Taxable Amount Charged" in S-T-3 Return.

*(ii)* Amount of service tax payable for the quarter ending 30.06.2013:

| S. No. | Particulars | Amount |
|---|---|---|
| (i) | Value of Taxable Services | 6,40,797 |
| (ii) | Service Tax @12.36% | 79,203 |

*(iii)* Last Date of service Tax payable:-

| Mode of making payment of Service Tax | Last Date for depositing Service Tax for the quarter ending 30.06.2013 |
|---|---|
| Electronically through internet banking | 06.07.2013 |
| Any mode other than e-banking such as Cash/ Cheque /Credit Card etc. | 05.07.2013 |

**(B) When aggregate taxable value of service provided in the previous financial year exceeded ` 50,00,000.**

**Value of Taxable service including service – tax provided during the quarter ending 30.06.2013**

| | | |
|---|---|---|
| 25.04.2013 | Bill No. 1010 | 3,40,000 |
| 05.05.2013 | Bill No. 1011 | 2,40,000 |
| 22.05.2013 | bill No. 1012 | 2,60,000 |
| | | 8,00,000 |

(i) **Value of service exclusive of service tax : ` 8,00,000 x 100/112.36 = 7,11,997.**

(ii) **Amount of service tax payable : ` 7,11,997 x 12.36% = 88,003.**

(iii) **Last date of deposit of service tax : 5th or 6th July, 2013 as mentioned above.**

**Solution 12 –**

| Particulars | Amount | Due Date |
|---|---|---|
| Service provided on 31.05.2013, before charging TDS | 2, 25,000 | 05.07.2013 |
| Bill issued on 30.06.2013 for service provided on 15.06.2013 | 3, 00,000 | 05.07.2013 |
| Bill issued on 15.06.2013 | 2, 50,000 | 05.07.2013 |
| Bill raised on 10.07.2013 | 7,75,000 | 05.10.2013 |
| | 15,00,000 | |

**Value of taxable services = 15,00,000**

**Service tax payable = 12.36 % of 15,00,000 =**

Author's remarks :-

1. Service tax has to be paid on the gross amount including TDS.
2. Since accrual basis is applicable, tax has to be paid when the bill was issued or amount is received whichever is earlier.

Since the bill is issued within 30 days , it is a valid bill and hence point of taxation will be date of issue of invoice or date of payment whichever is earlier, i.e. 10.07.2013. Tax shall be deposited in next quarter for such service.

**Solution 13 -**

**Services provided in F.Y. 2012-13 = 45lacs**

**But since assessee is a Company Accrual system shall be followed -**

**<u>Value of Taxable Services in F.Y. 2013-14</u>**

| Date | Particulars | Amount | Due Date |
|---|---|---|---|
| 01.10.2013 | Advance received | 1, 00,000 | 05.11.2013 |
| 15.12.2013 | Invoice issued for entire amount | 10, 00,000 | 05.01.2014 |
| | | 11,00,000 | |

**Tax to be deposited :-**

**On 05.11.2013 = 1, 00,000 x 12.36% = ` 12,360**

**On 05.01.2014 = 10, 00,000 x 12.36% = ` 1, 23,600**

**Note:-**

Date of invoice shall be the Point of Taxation as bill raised for complete contract amount.

**Solution 14 -**

| Service Provided | Payment | Invoice | Date of Levy | Taxable or not |
|---|---|---|---|---|
| 14.05.2013 | 15.04.2013 | 15.04.2013 | 1.05.2013 | Not Taxable |
| 01.11.2013 | | Free Services | | Not Taxable |
| 17.05.2013 | - | 24.04.2013 | 01.05.2013 | 2,00,000 |
| 05.05.2013 | 02.05.2013 | 14.05.2013 | 01.05.2013 | 1,00,000 |
| 28.05.2013 | 10.04.2013 | 29.05.2013 | 01.05.2013 | 4,00,000 |
| | | | | 7,00,000 |
| Less: Exemption under NN 33/2012 | | | | (7,00,000) |

**Assessee can claim exemption under NN 33/2012 as his services are being taxed for the first time due to which his service tax liability in the preceeding year must be zero.**
**Service Tax Liability = NIL**

**(**Author's remarks - In the last transaction the invoice has not been issued within 14 days from the date of new levy hence the service shall be taxable @ 12.36%).

**Solution 15 –** <u>**Computing Services tax Liability for P.Y. 2013-14**</u>

| **Particulars** | ` |
|---|---|
| Hardware Assistance | 4,00,000 |
| Bill raised on 1st April 2013 (Note 1) | Nil |
| Final Payment with Bad debts (Note 2) | 6,50,000 |
| **Value of taxable services** | **10,50,000** |

Service Tax @ 12% = 1,26,000
Add: Education Cess @ 2% = 2,520
SHEC @ 1% = 1,260
**Tax Liability** **1,29,780**

Author's remarks **:-**

1. As per Rule 3 of Point of Taxation Rules , the date of invoice is taken for the date when service is deemed to have provided . if invoice is issued within 30 days of completion of services and as per Rule 6 of Service Tax Rules, due date of deposit of tax on services deemed to have been provided on 1st April is 5th July i.e. in F.Y. 2013-14.
2. As per circular of CBEC , Bad debts are not allowed as Concession from service tax.

**Solution 16 –**

**Since the total taxable services provided during the previous F.Y. is less than ` 50 lacs, assessee has the option to pay service tax on cash basis for value of services up to ` 50 lacs.**

| | | |
|---|---|---|
| **(a)** | **Amount received for services provided** | **22,00,000** |
| **(b)** | **Amount received for services rendered in F.Y. 2013-14** | **10,00,000** |
| **(c)** | **Bills issued on 4, April 2013** | **-** |
| **(d)** | **Receipts for services in J&K** | **-** |
| | | **32,00,000** |

**Solution 17 -**

**Since the services are provided by company, cash system is not applicable.**

| Sl. no. | Particulars | Amount | Date of transaction | Point of taxation | Due Date of payment |
|---|---|---|---|---|---|
| 1. | Advance against Bill no. 001 | 1,00,000 | 30.06.2013 | 30.06.2013 | 05.07.2013* |
| 2. | Issue of Bill no.002 | 5,50,000 | 30.09.2013 | 30.09.2013 | 05.10.2013* |
| | Part payment against Bill No.002 | 4,00,000 | 30.09.2013 | 30.09.2013 | 05.10.2013* |
| 3. | Bill no.003 | 2,00,000 | 31.12.2013 | 31.12.2013 | 05.01.2014* |
| 4. | Bill no.004 | 3,00,000 | 31.01.2014 | 31.01.2014 | 05.02.2014* |
| 5. | Issue of Bill no.005 | 2,50,000 | 31.03.2014 | 31.03.2014 | 31.03.2014 |

**If the assessee opts for e-payment then the due date shall be 6$^{th}$ of the same month.**

**Solution 18 -**

(a) **Yes, as per section 68 Every person providing taxable service shall pay service tax at rate specified in section 66B. The statutory liability does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver. Hence, Ms. Priya is liable to pay service tax.**

(b) **Where the gross amount charged is inclusive of service tax payable, service tax shall be calculated in the following manner:-**

$$\frac{\text{Gross amount charged} \times 12.36\%}{112.36\%}$$

**Computation of Service tax payable**

| | | |
|---|---|---|
| Value of Taxable service | (40,000 x 100/112.36) | 35,600 |
| Service tax payable | (40,000 x 12.36/112.36) | 4,400 |
| Amount charged | | 40,000 |

**Solution 19 –**

**Since the value of Services provided in F.Y. 12-13 exceeds 50 Lacs accrual system shall be followed**

| | | | |
|---|---|---|---|
| 1. | Registration fees | [ref. Note 1] | 14,00,000 |
| 2. | Amount Received | [ref. Note 2] | Nil |
| 3. | Amount Received for training | [ref. Note 3] | Nil |
| 4. | Received car from student | | 8,00,000 |
| 5. | Fees received indirectly | [ref. Note 4] | 10,00,000 |
| 6. | Service provided | [ref. Note 5] | 6,00,000 |
| | Taxable Service | | 38,00,000 |
| | Service Tax (38,00,000 x 12.36%) = | | 4,69,680 |

Author's remarks -

1. If any advance is received then the date of receiving advance shall be the Point of Taxation.
2. It shall not be taxable because services were provided in March 2014, and on accrual basis tax was payable then, so no tax is payable on such services when the amount received.
3. Services provided without any consideration are not charged to tax.
4. As per Section 67, it does not matter from whom the consideration is received, service tax shall be charged on the gross amount received for providing the taxable service.
5. As invoice is issued within 30 days so tax is not payable in F.Y. 13-14 but in F.Y. 14-15.

**Solution 20** – Since the assessee is a company, accrual basis shall be followed.

Computation of Total Taxable Services for the month of December 2013:

| Point of Taxation | Particulars | Taxable services |
|---|---|---|
| 05.11.13 | Bill Issued to S Ltd. | NIL |
| 06.12.13 | Bills raised for service to be provided | 2,20,600 |
| 31.12.2013 | Service provided against invalid bills issued | 4,00,000 |
| 28.03.2014 | Advance received in March not taxable for this month | NIL |
| | Total Taxable Services | 6,20,600 |

Service tax @ 12.36% = 76,706.

**Solution 22** -

Total Tax Liability = 10 LAKHS

Therefore, payment is to be made electronically for F/Y 13-14.

| Particulars | Amount | Due Date |
|---|---|---|
| December 2013 | 5,00,000 | 6th Jan 2014 |
| Services exported | Exempt | |
| Advance from A | 2,00,000 | 6th Feb 2014 |
| Services on 31st March 2014 | 4,00,000 | 31st March 2014 |
| | 11,00,000 | |

Service tax = 11,00,000 X 12.36% = ` 1,35,960

Mode of payment for F/Y 14-15 will be manual.

**Solution 23** –

| | | | |
|---|---|---|---|
| November | 2 lakh x 12.36 % | 24,720 | 5th December |
| February | 6 lakh x 12.36% | 74,160 | 5th March |

Notes:

(1) No tax will be payable for the months of April, July and November on 10 Lakh since exemption will be availed on first 10,00,000 as per NN 33/2012.

(2) No he can not avail exemption under NN 33/2012 in F.Y. 2014-15 as his taxable services exceed 10 Lacs .

**Solution 24** - Computing service tax payable

| | |
|---|---|
| (a) Bills issued on 26.05.2013 Payment received on 25.11.2013 | 6,00,000 |
| (b) Services to trust on 28.02.2014 (assuming payments to be received after 31.03.2014) | Nil |
| (c) Advance from Hrithik | 3,00,000 |
| Taxable Services | 9,00,000 |

Mr. Sallu can avail exemption under NN 33/2012 for F.Y. 2013-14 since his taxable income does not exceeds 10,00,000 in F.Y. 2012-13

Mr. Sallu is not required to pay any service tax since his receipts does not exceeds 10,00,000.

Note:- 1. Since less than 50,00,000 in previous year, cash system shall be followed

2. Assuming the payment from trust was received after 31.03.2014

**Solution 26** - Point of Taxation in each of the above three cases will be as under:

Case 1- The point of taxation is date of payment [25th April,2013] as date of payment [25.04.2013] falls before date of issuance of invoice[30.04.2013] and invoice has been issued within 30 days of completion of service.[15.04.2013].

Case II- The point of taxation is date of completion of service [15th April,2013] as date of completion of service [15.04.2013] falls before date of payment [25.04.2013] and invoice [16.05.2013] has not been issued within 30 days of completion of service [15.04.2013].

Case III- The point of taxation is 20th April, 2013 as date of invoice [20.04.2013] falls before date of payment [25.04.2013] and invoice has been issued within 30 days of completion of service [15.04.2013].

**Solution 27** –

**Advance portion**

| Particulars | |
|---|---|
| Advance received towards all services in September, 2013 | = 60,000 |
| Amount billed for taxable services = 2,10,000 - 70,000 | = 1,40,000 |
| Advance received towards taxable services = 60,000x1,40,000/2,10,000 | = 40,000 |
| Service tax @ 12% (since, service tax is charged separately) = 40,000x12% | = 4,800 |
| Education cess @ 2% | = 96 |
| Secondary and higher education cess @ 1% | = 48 |
| Total service tax liability | = 4,944 |

In this case, the due date for payment of service tax will be 5th October, 2013.

**Balance portion**

| Particulars | ` |
|---|---|
| Amount billed for taxable services | = 1,40,000 |
| Advance received towards taxable services | = 40,000 |
| Amount billed but not received towards taxable services = (1,40,000-40,000) | = 1,00,000 |
| Service tax @ 12% = 1,00,000 x 12% | = 12,000 |
| Education cess @ 2% | = 240 |
| Secondary and higher education cess @ 1% | = 120 |
| Total service tax liability | = 12,360 |

In this case, the due date for payment of service tax will be 5th March, 2014.

**Solution 28 –**

| S. No. | Date of Completion of service | Time [Date] of Invoice | Date on which payment Received | Point of Taxation |
|---|---|---|---|---|
| 1 | 10.04. 2013 | 5.05.212 | 20.05.2013 | 5.05.2013 |
| 2 | 10.04.2013 | 5.05.2013 | 25.04.2013 | 25.04.2013 |
| 3 | 10.04. 2013 | 5.05.2013 | Part payment on 25.04.2013 remaining on 20.05.2013 | 25.04.2013 for the part payment and 5.05.2013 for the remaining amount |
| 4 | 10.04. 2013 | 5.05.2013 | Part payment on 6.04.2013 Remaining on 09.04.2013 | 06.04.2013 and 09.04.2013 for the remaining amount |
| 5 | 10.04. 2013 | 5.05.2013 | Part payment on 06.04.2013 and remaining on 1.05.2013 | 06.04.2013 and 1.05.2013 for the remaining amount |
| 6 | 10.04. 2013 | 16.05.2013 | 20.05.2013 | 10.04.2013 |
| 7. | 10.04. 2013 | 16.05.2013 | Part payment on 05.04.2013 and remaining on 14.05.2013 | 5.04.2013 and 10.04.2013 for the remaining amount |

**Solution 29** - Computation of taxable service of Ms. Priyanka for F/Y 2013-14

| Particulars | ` |
|---|---|
| Advance received by an account payee cheque | 1,00,000 |
| Amount received while providing service through credit card | 5,00,000 |
| Amount received on completion of service by a pay order | 5,00,000 |
| Value of taxable service | 11,00,000 |

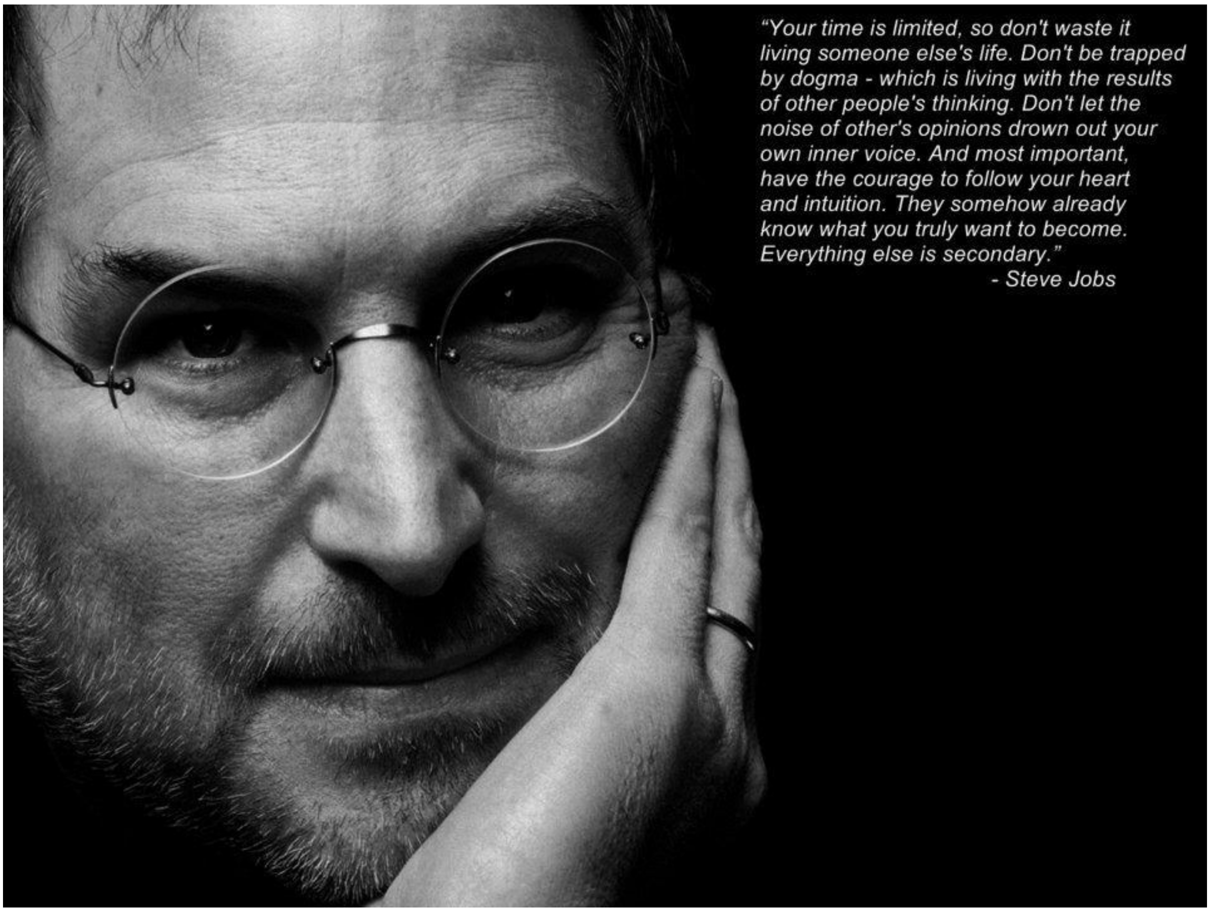
Calculation of service tax liability

| Particulars | ` |
|---|---|
| Service tax @12% on ` 11,00,000 | 1,32,000 |
| Add: (i) Education cess @ 2% on service tax | 2,640 |
| Add: (ii) Secondary and higher education cess @ 1% on service tax | 1,320 |
| Total service tax payable | 1,35,960 |

Author's remarks -

(Gross amount charged includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment).

# PART C – INCOME TAX BASICS



## FRAMEWORK OF CONSTITUTION IN REGARD TO TAXES

| List 1 | List 2 | List 3 |
|---|---|---|
| (Union list) | (State list) | (Concurrent list) |
| Power lies with the central govt. | Power lies with the state govt. | Power lies with both the govt. |
| • Income tax<br>• Custom duty<br>• Sales tax<br>• Service tax<br>• Excise duty | • Excise duty<br>• Vat | • presently no tax is covered in this list. |

**Short discussion on the above taxes-**

Income Tax- Tax on income of a person
Wealth Tax- Tax on wealth of a person
Excise Duty- Tax on manufacturing of goods
Sales Tax- Tax on sale of goods from one state to another state
Vat- Tax on sale of goods with in a state
Service Tax- Tax on services
Import Duty- Tax on purchase of goods from outside India
Export Duty- Tax on sale of goods outside India.

**Difference between Direct and Indirect tax-**

| Direct tax | Indirect tax |
|---|---|
| Direct tax means the tax where a person cannot transfer his tax burden on other person i.e. he himself needs to pay the tax on the income earned by him or the wealth earned by him. | Indirect tax means the tax where a person is legally entitle to recover the tax paid by him from another person i.e. ultimately the consumer of goods and services bears the tax burden. |

**Author comment**

**Income tax law in India- Generally, the income tax works on the following basis-**

One person income is the other person expenditure.
For ex- Salary paid by the employer is expenditure and the same amount is income in the hands of employee.
Rent paid by one person is expenditure and it is income in the hands of receiver.
(However the above rule is to be read in a restricted way i.e. to be applied to make your understanding for the subject only)

**Introduction to Income Tax**

Constitution B.R. Ambedkar → Union list (entry-82)

↓

Act Parliament → Income tax act, 1961

↓

Rules Central govt

↓

Order/Instruction/Direction CBDT

**Administrative set up**

Ministry of Finance

↓

Department of Revenue

↓

CBDT

↓

Chief CIT

↓

CIT → CIT (Appeals)

**Assessing Officers** →

1. **JCIT**
2. **ACIT/DCIT**
3. **ITO**

**Author comment**

**Rank is distributed between assessing officers depending upon the amount of return.**

**Non Corporate assessee**

Return upto 20 lakhs rupees – ITO

Return over and above 20 lakh rupees- AC/DC

**Corporate Assessee**

Return upto 30 lakhs rupees- ITO

Return over and above 30 lakh rupees- AC/DC

**Power of JC- JC selects top 20 cases from the return filed with ITO & AC/DC.**

## Entry 82- Taxes on income other than agricultural income

**CHARGING SCHEME OF INCOME TAX**

Every **person** whose **Total income** exceeds the amount which is not chargeable to tax (i.e. exceeds the basic exemption limit) is an **assessee** and he will be liable to pay tax on his total income of **previous year** into **assessment year** at the **rates** prescribed by Finance Act, 2013 and Income tax Act, 1961.

Income of a person is dependent upon his **residential status** in India

## How to read words used in statue

**Definitions**

- **Not defined with in the act**
  - Def. in Other acts
  - Common parlance
  - Judicial precedents
- **defined with in the act**
  - Exhaustive definition (Means)
  - Inclusive definition (Includes)
  - Exhaustive + Inclusive → (Means + Includes)

**Interpretation rules**

- **Rule of Literal interpretation**
- **Rule of purposive interpretation**

**Rule of Literal interpretation**

This is the primary rule of interpretation. It states that **words used in a statute must be given their ordinary, normal and grammatical meaning**. Their ordinary meaning neither be enlarged nor restricted.

**Rule of purposive interpretation**

**If** literal meaning **leads to absurdity, inconvenience, injustice or evasion, then court must modify the meaning to such an extent as would prevent such a consequence.**

**Note**- It is for judge to say whether literal interpretation is leading to absurd results.

## Section 1- Short title, Extent and commencement

**Author comment-**
Income tax act contains provisions for determination of taxable income, computation of tax liability, procedure for assessment (not in syllabus), appeals, penalties and prosecutions (not in syllabus).

**Name of the Act**- Income tax Act, 1961
**Extent**- Whole of the India
**Commencement**- w.e.f. from 1.4.1962

## Section 2- definitions

## Section 2(25A) – India

**Author comment-**
Territory means the land mass of India and Territorial waters/EEZ means the sea area.

**India** includes-
(i) The territory of India
(ii) Its **territorial waters** and an area of **exclusive economic zone.**

## Section 2(31) – Person

Person includes seven kinds of persons:-

1. **Individual** (Individual means a natural person i.e. a male, female, minor, idiot or lunatic)
   Analysis-
   However the income of a minor is generally included in the income of parent.
   Assessment of Lunatic or idiot is done through representative assessee.
2. **Hindu undivided family (HUF)** - HUF has not been defined under the act however it means a family which consist of all persons lineally descended from a common ancestor. (for ex- joint family business)
3. **Company**- Company includes both Indian company as well as foreign company.
4. **Firm**- Firm means partnership firm (including limited liability partnership firm) but there must be a partnership deed to assess the income in the name of a firm.
5. **Association of persons(AOP) /Body of individuals(BOI)**- Discussed later
6. **Local authority**- Local authority means a authority which is responsible for the local maintenance of a place falls under his jurisdiction
   For example- Municipal committee of Delhi (MCD), Panchayat, and cantonment board etc.
7. **Artificial juridical person or a person not covered above**-
   Analysis-
   Artificial juridical person means a person which is not natural but is a legal person in the eyes of law (ICSI, Delhi University etc.)

**Difference between AOP, BOI & Firm-**

One thing is clear that the above three persons includes a group of persons. But the question is how to differentiate that whether a group of persons is AOP/BOI or FIRM.

| Basis of difference | FIRM | AOP | BOI |
|---|---|---|---|
| Nature | If a group of **person's** works together **By formation of a partnership deed** then it will be called As firm. | If a group of **person's** Works together **voluntarily** without any partnership deed then it will be called As AOP. | If a group of **individuals** works together **By operation of law** without partnership Deed. |

**Example-**

Father →

- Prepared a will according to which his all properties should be Transferred to his sons A and B **if** they works together = BOI
- Father died and his properties transferred to his sons after his Death and his sons A & B decided to work together **voluntarily**= AOP

## Section 2(7) - Assessee

**Assessee** in simple words means a person who is liable to pay **Tax (Income tax)** or **any other sum (interest, penalty etc.)** under the income tax act, 1961.

However assessee also includes-

(i) Every person in respect of whom any **proceeding (filing of return etc.)** has been taken-

- For the assessment of his income or income of any other person (example- minor, lunatic etc.)
- For loss sustained by him or by such other person (Note- income includes loss also)
- To determine the amount of refund due to him or to such other person.

(ii) A person who is **deemed to be an assessee** under the act-

- Agent of non-resident (Agent of non-resident is liable to file return on behalf of non-resident hence he would be treated as deemed assessee.)

(iii) Every person who is **deemed to be an assessee in default** under any provisions of the income tax act-

**Example-**

Rent 500000 Rs.

Mr A (Payer) → Mr B (Payee)

However Mr A fails to deduct TDS from the above payment now as per the provisions of income tax he will be treated as Assessee in default and he would be liable to pay TDS from his own pocket.

Note- Every assessee is a person but every person may not be an assessee.

## Section 2(34)- Previous year

**Previous year** means the previous year as defined in **section3.**

## Section 2(9) – Assessment year

**Author comment-**
Assessment year means the year in which assessee pays tax on his income of P/Y.

**Assessment year** means the **period of 12 months** commencing on the first day of April every year (1st April to 31st march)

**Whether an assessment year can be shorter than 12 months?**

Never

## Section 3 - Previous year

**Previous year** means the **financial year** immediately **preceding** the **assessment year**.

Difference between calendar year, financial year and previous year-

| Calendar year | Financial year | Previous year |
|---|---|---|
| 1st January to 31st December. | Financial year means the year which starts from 1st April as per general clauses act. | Previous year means the financial year in which assessee earns the income. For income tax purposes previous year means that financial year which starts from 1st April and ends on 31st march. |

## Can a previous year be shorter than 12 months?

Yes, in a case of newly established business or year in which new source of income comes into existence.

<u>P/Y for newly established business-</u>

Previous year **begins with the date of setting up business** and ends with 31st march of the said financial year.

<u>P/Y for new source of income-</u>

Previous year **begins with the date on which the new source comes into existence** and ends with 31st march of the said financial year.

However it is possible in the first year only i.e. in the year in which new business is started or new source of income came into existence, for subsequent year previous year will always be of 12 months.

**Every year is an assessment year and previous year also.**

Year 2013-14

| Assessment year | previous year |
|---|---|
| For P/Y 2012-13 | 2013-14 itself |

**Author comment-**

**Income tax** in simple words means **tax on income** i.e. there must be an income in terms of income tax act on which income tax provisions is to be applied.

Definition of income is not provided under the act however we should not read it in a restricted sense.

Income should be real i.e. a person cannot earn income from himself and the person receiving it should have control over it. It should be earned from an activity or from another person.

**Income has been divided into three parts which are as follows:-**

Income

| **Gross total Income** | **Total Income** | **Income which do not form part of total income** |
|---|---|---|
| GTI means income under the five heads of income **before** allowing any deduction under sec. 80C to 80U | Total Income means income under the five heads of income **after** allowing any deduction under sec. 80C to 80U | exempted income |

## Concept of Income

**Income-**

**Author comment-**

**Golden rule of Income tax**

All revenue receipts are taxable unless specifically exempted and All capital receipts are exempt unless specifically taxable.

Income tax act gives inclusive definition of Income. Income includes

(i) Profits and gains

(ii) Capital gains

(iii) Dividend income

(iv) Capital gains

(v) Winning from lotteries etc.

(vi) Allowances and perquisites etc.

**How to differentiate between revenue income and capital income-**

Generally, Income from transfer of the revenue generating asset (i.e. the right which generates income) will be capital receipt and income from the product arises out of that asset will be revenue receipt.

Example-

1. Income from sale of shares will be capital income and dividend income arises out of it will be revenue income.
2. Income from transfer of house property will be capital income and rental income arises out of it will be revenue income.
3. Income from transfer of machine will be capital income and sale of product arises out of machine will be revenue income.
4. Compensation on voluntary retirement compensation is capital income and salary income is revenue income.

**Note-**

As per golden rule of income tax we can conclude that all receipts are not assessable to tax. All receipts by an assessee can not necessarily be deemed to be the income of the assessee for the purpose of the income tax and the question whether any particular receipt is income or not depends on the nature of the receipt and scope read with residential status of person.

1. Income may be in cash or in kind.
2. Illegal incomes are also subject to tax.
3. Income must come from outside
4. Contingent income will not form part of income
5. Method of accounting is only applicable for PGBP and IOS income. For other heads of income act provides specific charging section.

**Five heads of Income**

Income u/h "Salary"

Income u/h "House property"

Income u/h "Profit and gains From Business or Profession"

Income u/h "Capital gains"

Income u/h "Income From other sources"

**Author comment**
These four heads of income are specific heads of income i.e. what is written in these heads will only be taxable under these heads

Residual Head of income (If an income is not covered under the specific head of incomes then it will be taxable under this head)

**Some examples on income and classification under the different heads-**

| S no. | Transaction | Head of income |
|---|---|---|
| 1. | Between employer & employee | Salary |
| 2. | Interest received on saving bank a/c | Income from other sources |
| 3. | Rent received from house property | House property |
| 4. | Sale of house property | Capital gain |
| 5. | Sale of house property by builders | Business & profession |
| 6. | Lottery income | Income from other sources |
| 7. | Gift received | Income from other sources |
| 8. | Gift received during the business | Business & profession |

**Section 4- Charging section**

The **Total income of the previous year of every person shall be charged to the income tax in the assessment year.**

In respect of income chargeable to tax, tax shall be deducted at source or paid in advance in accordance with the relevant provisions.

**Exceptions to charging section-**

There are certain circumstances under which the income of a p/y is chargeable to tax in the previous year itself-

(1) Person leaving India u/s 174
(2) Discontinued business or profession u/s 176
(3) Shipping business of non-resident
(4) Person likely to transfer property to avoid tax
(5) AOP/BOI/AJP formed for any particular purpose

## Section 5- Scope of total income based on residential status

Scope of total income according to residential status is as under:

| Particulars | R & OR | RNOR | NR |
|---|---|---|---|
| **Indian Income-** | | | |
| (a) Income **received or deemed to be received** in India during the relevant p/y. | Taxable | Taxable | Taxable |
| (b) Income **accrues/ arises or deemed to accrue/ arise in India** during the relevant p/y. | Taxable | Taxable | Taxable |
| (c) Income accrue/ arise outside India but the **first receipt** is in India | Taxable | Taxable* | Taxable* |
| **Foreign income-** | | | |
| (a) Income accrues/ arises outside India and the first receipt is also outside India. | Taxable | Not Taxable | Not Taxable |
| (b) Income accrue/ arise outside India **from business or profession** which is controlled from India | Taxable | Taxable | Not Taxable |

*(with the amount received in India)

**Notes-**

(1) If the income is included in total income on accrual basis, the same shall not be once again taxed on receipt basis.
(2) The income should be related to the previous year.
(3) Income may be in cash or in kind.

Indian income

Foreign income

## SOURCES TO READ INCOME TAX LAW

- Income tax Act 1961
- Annual finance act
- Income tax rules 1962
- Circulars & notifications
- High court & Supreme court Judgements

### Income tax act, 1961-

Income tax act covers basic provisions of income tax, Assessment procedures, Penalties & prosecutions i.e. computation of income, computation of tax liability etc.

### Annual finance act-

Discussed later

### Income tax rules, 1962-

Rules are made to carry out basic provisions of income tax effectively and efficiently. However in any case rules cannot override the basic provisions to income tax i.e. rules are sub-ordinate to the act.

### Circulars & Notifications-

Circulars are issued for internal department workings i.e. circulars cannot bind assessee and notifications are issued for general public.

### High court & Supreme Court judgements-

Decisions of High court/Supreme Court are final decisions i.e. neither the assessee nor the department can challenge the decision of Supreme Court.
Note- High court decision can be challenged in Supreme Court.

Income

The person for which Assessment* is to be made (**Assessee**) → Income ← The person who makes the assessment* (**Assessing officer**)

*Assessment- Assessment means determination of income, Computation of tax liability etc.

**Author comment - Tax rates**

**Tax rates**

Tax rates for
Total income

- Normal rates
  Of tax given by
  Finance Act every year
  (Rates of tax
  for
  Every person)

- special rates
  of tax
  given under
  Income tax act itself
  (Tax on long/short Term
  Capital gain
  &
  Tax on lottery income)

TDS/TCS rates
(given under income tax itself)

**Author note- Finance act**

**Every year** a **Budget** is presented before the Parliament by the Finance Minister. One of the most important components of the Budget is the **Finance Bill**. Finance Bill contains **various amendments i.e. changes which are sought to be made in the area of Direct and Indirect taxes** levied by the Central Govt. The Finance Bill also mentions the rates of Income tax. When the bill is approved by both the Houses (Lok sabha & Rajya sabha) of Parliament and receives the consent of President. It becomes **Finance Act.**

In simple words, **Finance Act tells about the rates of tax in advance** i.e. rates of tax for the year in which assessee would earn the income.
Example- Finance act 2013 tells about the rates of tax for assessment year 2014-15 i.e. for the previous year 2013-14

Budget → Finance Bill (Contains amendments) → Approval (Lok sabha + Rajya sabha + Consent of President) → Finance Act

**Author comment-**

**There is three methods to pay tax to Central Govt.**

TAX

TDS
(There are 22 incomes/payments
On which TDS provisions
Are applicable)
TDS is a form of advance tax i.e.
On previous year income, Tax is
To be paid in previous year itself.

Advance Tax
(In the P/Y itself)

Self-Assessment
Tax
(Tax to be paid at the
time of submission
Of Return of income)

(Any tax paid earlier
Whether as TDS or Advance Tax
Will be allowed as credit from the
Tax on total income and if any
Short fall then pay tax otherwise Refund)

## Residential status- (Read with section 5)

Income of a person is dependent upon his residential status. The residential status shall be determined for every person for each P/Y independently.

Residential status

Individual/HUF
- Non Resident
- Resident
  - Ordinary Resident
  - Not ordinary Resident

Any other person (Company/firm etc.)
- Resident
- Non Resident

## [Section 6(1)]- Individual

An individual can either be resident or non-resident. Further if he is resident he can either be ordinary resident or not ordinary resident.

Hence first we have to decide whether he is resident or non-resident (basic conditions)

Secondly ordinary resident or not (additional conditions)

**Basic conditions-**

(a) If individual is in India for a period or periods amounting to **182 days(in aggregate) or more** during the relevant previous year*

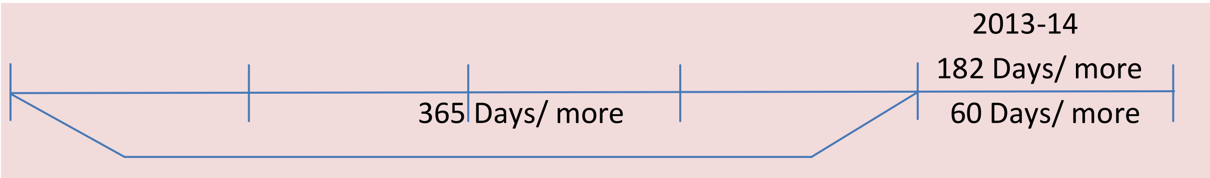
**OR**

(b) If he is in India for a period or periods amounting to **60 days or more(in aggregate)** during relevant previous year and **365 days or more(in aggregate)** during 4 previous years immediately preceding the relevant previous year*.

(*Relevant previous year means the year for which residential status is to be determined)

| | |
|---|---|
| If he satisfies both the conditions i.e. a and b above | **Resident** |
| If he satisfies only one condition i.e. whether a or b above | **Resident** |
| If he does not satisfies any of the above condition | **Non-resident** |

Note- If question does not provide hour of entry and departure then we should take both the day of entry and departure in India.




**Exception to the basic condition (b)-**

Condition of 60 days mentioned in (b) above shall not apply in the following cases

1. Individual, citizen of India, leaving India for the purpose of employment outside India, or
2. Individual, citizen of India, leaving India as a crew member of an Indian ship going outside India, or
3. Individual, citizen of India or person of Indian origin* comes to visit India.

(*Indian origin- Person of Indian origin means a person if he or his parents or grandparents was born in undivided India (i.e. before 15th august 1947) for example- Lahore, Karachi etc.)

**[Section 6(6)]- Additional Conditions**

1. Individual has been a resident in India in **any 2 out of the last 10 previous years** immediately preceding the relevant previous year

   **AND**

2. He was in India for **730 Days or more (in aggregate)** during 7 previous years immediately preceding the relevant previous year.

| | |
|---|---|
| If he satisfies both the additional conditions | **Ordinary Resident(OR)** |
| If he satisfies only one condition | **Not ordinary Res.(NOR)** |
| If he does not satisfies any condition | **Not ordinary Res.(NOR)** |

**Note-** The burden of proof lies on the department.

## Section 6(2)- Hindu undivided family(HUF)

| | |
|---|---|
| If control & management of its affairs is **wholly/partly situated in India** | **Resident** |
| If control & management of its affairs is **wholly situated outside India** | **Non-Resident** |

**[Section 6(6)]- Additional Conditions**

1. Individual being **KARTA**, has been a resident in India in **any 2 out of the last 10 previous years** immediately preceding the relevant previous year
   **AND**
2. He was in India for **730 Days or more (in aggregate)** during 7 previous years immediately preceding the relevant previous year.

| | |
|---|---|
| If **KARTA** satisfies both the additional conditions | **Ordinary Resident(OR)** |
| If **KARTA** satisfies only one additional condition | **Not ordinary Res.(NOR)** |
| If **KARTA** does not satisfies any additional condition | **Not ordinary Res.(NOR)** |

**Note-**
Section 6(2) makes a presumption that a HUF has to be resident in India and the burden of proving that it is not resident is on the HUF

## Section 6(3)- Company

| | |
|---|---|
| Indian company | **Resident** |
| Company other than Indian company and control and management of its affairs is<br>➢ **Wholly situated in India**<br>➢ **Wholly/partly situated outside India** | <br><br>**Resident**<br>**Non-Resident** |

**Note-**
The burden of proving that a company is resident in India lies on the department.

## Section 6(4)- Person other than Individual, HUF & Company

| | |
|---|---|
| If control & management of its affairs is **wholly/partly situated in India** | **Resident** |
| If control & management of its affairs is **wholly situated outside India** | **Non-Resident** |

**Note-**
Section 6(4) makes a presumption that a Firm or AOPs has to be a resident in India and the onus of proving that they are not residents is on them.

## Practical flow

**Author comment-**
It is very normal that an assessee can challenge orders (for income tax, interest & penalty) issued by assessing officer if he feels his part is right.

**Aggrieved assessee** i.e. assessee who does not agree with the **order** issued by **assessing officer** has been provided **two rights** in Income tax act (we can call it statutory remedies)

**Assessee**

→ **Revision application before CIT u/s 264**
(In revision CIT can decrease/increase the income or affirms the order of AO)

→ **First appeal with CIT (Appeals)**
(First appeal can only be made by the assessee Time limit is 30 days)

## Flow of appeals

Assessing officer
↓ SCN
Assessee → CIT (Appeals) → ITAT → HIGH COURT
↓ Representation
Assessing officer

Assessee as well as dept. can file appeal (60 days)

HIGH COURT ↓ SUPREME COURT
(Decision of Supreme Court will Be binding on both the parties)

## Income tax returns

**Author comment-**
Practically return is the primary source by which income tax dept. verifies our income and accordingly he makes assessment if he founds some wrong information.

Every person-

(i) Being a **company or firm** (including LLP)

(ii) **Persons Other than company or firm** if his GTI or income of any other person in respect of which he is assessable exceeds the basic exemption limit

Is required to furnish a return of his income **on or Or before due date** prescribed u/s 139(1).

**Due date means-**

| Assessee | Due date |
|---|---|
| Company | 30th September |
| Person other than company whose accounts are subject to tax audit or under any other law. | 30th September |
| Working partner of a firm whose accounts are subject to tax audit or under any other law | 30th September |
| Any other assessee (means other than company and persons whose accounts are subject to tax audit) | 31st July |
| Assessee required to follow the transfer pricing provisions | 30th November |

## Section 139(1B) – Electronic filing of returns of income

It shall be **mandatory** for the following assessee to file the return electronically-

1. Company
2. Partnership firm whose accounts are subject to tax audit
3. Individual/ HUF whose accounts are subject to tax audit.

## Section 139(4)- Belated returns

If a person has not furnished the return of income on or before due date or within time allowed under a notice issued under section 142(1), then he may furnish the return of income at any time **before the expiry of one year from the end of the relevant assessment year** or before the completion of assessment, whichever is earlier.

## Section 139(5) – Revised return

If any person who has furnished his return of income on or before the due date or within the time allowed under a notice issued u/s 142(1) then he may furnish a revised return at any time **before the expiry of one year from the end of the relevant assessment year** or before the completion of assessment whichever is earlier.

## Advance payment of income tax

**Author comment-**
Although charging sec. says income of previous year is taxable in assessment year but for collection purposes the assessee has to pay advance tax in the previous year itself.

Section 208 makes it **obligatory** to pay advance tax in every case where the **advance tax payable is Rs. 10000 or more** on the amount of estimated income for current financial year less tds.

### Company assessee-

| Due date | Payment |
|---|---|
| By 15th June | 15 % of advance tax |
| By 15th September | 45 % of advance tax less advance tax paid earlier |
| By 15th December | 75% of advance tax less advance tax paid earlier |
| By 15th march | 100 % of advance tax less advance tax paid earlier |

### Other assessee' S

| Due date | Payment |
|---|---|
| 15th September | 30 % of advance tax |
| 15th December | 60 % of advance tax less advance tax paid earlier |
| 15th march | 100 % of advance tax less advance tax paid earlier |

**Notes**- Any amount deposited by 31st march of the current financial year is to be treated as advance tax for that financial year.
If on the last day of payment bank is closed then assessee can make payment on the next working day.