CHAPTER 3

PAYMENT OF SERVICE TAX AND FILING OF RETURNS

UNIT – 1 : PAYMENT OF SERVICE TAX

Learning objectives

After reading this unit, you will be able to:

- identify persons liable to pay service tax.
- get an insight of the basic principles underlying the procedures relating to payment of service tax.
- know the time period for paying service tax.
- comprehend the manner of payment of service tax.

1.1 PERSON LIABLE TO PAY SERVICE TAX

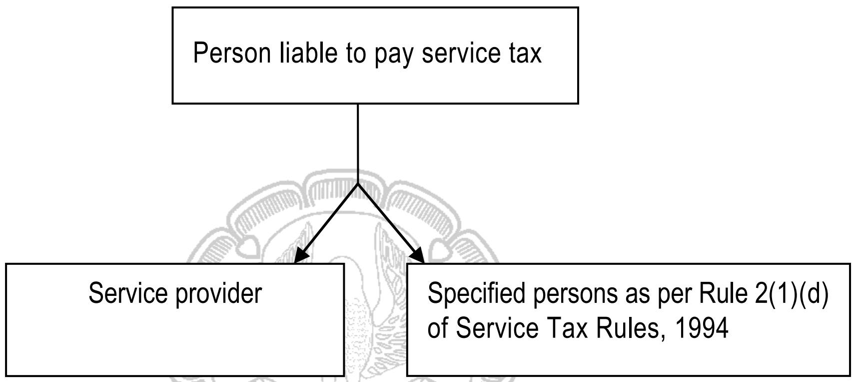
By now you have understood the basic concepts of service tax and the provisions relating to taxable services. In this unit, the procedures relating to payment of service tax have been discussed. The service provider rendering taxable services is liable to pay service tax (with some exceptions) to the Central Government at regular intervals of time.

Section 68 of the Finance Act, 1994 is the principal section which fixes responsibility to pay service tax. The powers to decide time and manner of payment of service tax have been granted to the Central Government vide Rule 6 of the Service Tax Rules, 1994.

As per section 68, every person providing taxable service to any person, pays service tax at the rate specified in section 66 in the prescribed manner and within the prescribed period. The period and the manner is prescribed in Rule 6 of the Service Tax Rules, 1994 which have been discussed in paras 1.9 and 1.11 respectively.

However, in respect of certain services notified by the Central Government, the service tax thereon is paid by certain specified persons in the prescribed manner. In pursuance of this power, the Central Government in Rule 2(1)(d) of Service Tax Rules, 1994 has notified specific class of persons who are liable to pay service tax.

Thus, as a general rule a service provider is liable to pay service tax, but in the cases and circumstances mentioned in Rule 2(1)(d), service receiver or the specified persons are liable to pay service tax. The above mentioned principle can be understood by the following diagram:



Following list provides the notified taxable services and the specified persons/class of persons who are liable to pay service tax thereon as per rule 2(1)(d) of Service Tax Rules,1994:

(i) in relation to general insurance business, the person liable to pay service tax is the insurer or re-insurer, as the case may be, providing such service.

(ii) in relation to insurance auxiliary service provided by an insurance agent, the person liable to pay service tax is the person carrying on general insurance business or the life insurance business as the case may be, in India.

(iii) in relation to any taxable service provided or to be provided by any person from a country other than India and received by any person in India, the person liable to pay service tax is the recipient of such service.

(iv) in relation to taxable service provided by a goods transport agency, where the consignor or consignee of goods is,-

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

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

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

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

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

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

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

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

(v) in relation to business auxiliary service of distribution of mutual fund by a mutual fund distributor or an agent, as the case be, the person liable for paying service tax is the mutual fund or asset management company, as the case may be, receiving such service.

(vi) in relation to sponsorship service provided to any body corporate or firm located in India, the person liable to pay service tax is the body corporate or firm, as the case may be, who receives such sponsorship service.

1.1.1 Sub-contractors liable to service tax: A taxable service provider outsources a part of the work by engaging another service provider, generally known as sub-contractor. Service tax is paid by the service provider for the total work. A question arises as to whether service tax is liable to be paid by the service provider known as sub-contractor who undertakes only part of the whole work.

A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor.

Services provided by sub-contractors are in the nature of input services[1] (Input services are services which are used by a service provider for providing the output service). Service tax

[1] The concept of input services and output services shall be dealt in detail in Paper 8 : Indirect Tax Laws at the Final level under CENVAT Credit Rules, 2004.

is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a sub-contractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided.

1.2 PAYMENT ONLY ON RECEIPT

It is to be noted that though the service provider charges service tax in his bill raised on his client as and when the service is provided, the service tax is payable to the Government only when the value of taxable services is 'received'. Thus, if a chartered accountant raises a bill for auditing services say, on 15th December, 20098 for Rs.1,10,300/- (including service tax of Rs.10,300/-) and the client pays his bill only in February 2010, the liability to pay service tax to the Government would arise only in February 2010. This alleviates the major grievance of the service providers who otherwise would be required to pay service tax on amounts not received or not likely to be received.

Thus, *situs* of taxation is on service provided but the payment of service tax to the Government is deferred till the receipt of the value of the taxable service.

1.3 SERVICE TAX NOT PAYABLE ON FREE SERVICES

Section 67(1)(iii) and Service Tax (Determination of Value) Rules, 2006 (as inserted w.e.f. 19.04.2006) make provisions for valuation even when consideration is not ascertainable. However, these provisions apply only when there is consideration. If there is no consideration i.e., in case of free service, section 67 and Service Tax (Determination of Value) Rules, 2006 cannot apply.

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

1.4 SERVICE TAX LIABLE TO BE PAID EVEN IF NOT COLLECTED FROM THE CLIENT

Section 68 casts the liability to pay service tax upon the service provider or upon the person liable to pay service tax as per Rule 2(1)(d). This liability is not contingent upon the service provider realizing or charging the service tax at the prevailing rate. The statutory liability does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver.

However, sometimes it may happen that the assessee is not able to charge service tax because of the nature of service or he fails to recover the service tax from the client/customer as he is not aware that his services are taxable. Hence, in these cases the amount recovered from the client in lieu of having rendered the service will be taken to be inclusive of service tax and accordingly tax payable will be calculated by making back calculations.

For example, if bill amount is Rs.5,000 and service tax is not shown separately in invoice, then service tax payable shall be computed as follows:

5000/110.30 x 10.30 = Rs.467

It may be noted that service tax payable is not Rs.515 computed by applying 10.30% to Rs.5000. The value of the taxable service in this case is Rs.4533.

The example given above can be solved by using the following formulae:

Value of taxable service = [Gross amount charged/(100 + rate of tax)] x 100

Service tax = [Gross amount charged/(100 + rate of tax)] x rate of tax

1.5 SERVICES PERFORMED PRIOR TO THE DATE OF LEVY NOT LIABLE FOR PAYMENT OF SERVICE TAX

No service tax is payable for the part or whole of the value of services, which is attributable to services provided during the period when such services were not taxable. The time of receipt of payment towards the value of services will not be relevant for this purpose. For instance, no service tax shall be payable in case of newly introduced legal consultancy service which is rendered prior to 01.09.2009. (Legal consultancy service has become effective from 01.09.2009).

1.6 SERVICE TAX PAYABLE ON ADVANCE RECEIVED

Service tax is payable as soon as any advance is received as:

(i) the taxable service includes “service to be provided”, and

(ii) the payments received before, during, or after the provision of taxable service, form part of the gross amount charged for the taxable services.

For example, a security agency takes a contract to provide security services to a client for the month of October for a consideration of Rs.50,000. It receives an advance of Rs.25,000 from the client in the month of September. In this case service tax shall be payable by the security agency on the amount of Rs.25,000 received as an advance even though the service has not been provided at that time.

When advance payment is received for a service which is non-taxable at the time of receipt of payment but becomes taxable during the course of provision of service, such payments would have to be apportioned appropriately between the two periods and that part of service provided on or after the service becomes taxable service, is only liable for service tax.

When payment is received in advance for services to be provided but subsequently the services are not actually provided, then in such cases service tax paid is liable to be refunded.

1.7 SERVICE TAX COLLECTED FROM THE RECIPIENT OF SERVICE MUST BE PAID TO THE CENTRAL GOVERNMENT [SECTION 73A]

Every person, who is liable to pay service tax and has collected any amount in excess of the service tax assessed or determined and paid on any taxable service from the recipient of taxable service in any manner as representing service tax, must pay the amount so collected immediately to the credit of the Central Government. This provision ensures that the service provider does not collect excess amount from the recipient of the service in the name of service tax.

Further, where any person who has collected any amount, which is not required to be collected, from any other person, in any manner as representing service tax, such person should also immediately pay the amount so collected to the credit of the Central Government.

1.8 INTEREST ON AMOUNT COLLECTED IN EXCESS [SECTION 73B]

Where an amount has been collected, in excess of the tax assessed or determined and paid, for any taxable service from the recipient of such service, the person who is liable to pay such amount shall, in addition to the amount, be liable to pay interest. The interest shall also be payable by the person who has collected any amount, which is not required to be collected as service tax.

The interest shall be payable at the rate of 13% per annum from the first day of the month succeeding the month in which the amount should have been paid till the date of payment of such amount.

Where such amount is reduced or increased in appeal, the interest payable thereon shall be on such reduced or increased amount.

1.9 DUE DATE FOR PAYMENT OF SERVICE TAX

Rule 6(1) *inter alia* provides that service tax on the value of taxable services received:

(i) by an individual or a proprietary firm or a partnership firm during any quarter is payable by the **5th day of the month immediately following the said quarter; and**

(ii) in other cases (company and HUF) during any calendar month is payable by the **5th day of the month immediately following the said calendar month.**

However, the month of March is an exception to this general rule. The service tax on the value of taxable services received during the month of March, or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by the 31st day of March of the calendar year. For the month of March there is no distinction between the assessees.

It is to be noted here that service tax is not payable on the amounts charged in the bills/invoice, but on the amounts actually received.

The due dates for payment of service tax in case of different assessees are tabulated below:

I. Individuals, proprietary concerns and partnership firms	
Quarters	**Due dates**
1st April to 30th June	5th July
1st July to 30th September	5th October
1st October to 31st December	5th January
1st January to 31st March	31st March

II. Persons other than individuals, proprietary concerns and partnership firms	
Months	**Due dates**
April	5th May
May	5th June
June	5th July

July	5th August
August	5th September
September	5th October
October	5th November
November	5th December
December	5th January
January	5th February
February	5th March
March	31st March

If the last day of payment of service tax is a public holiday, tax can be paid on next working day.

1.9.1 Due date for payment in case of e-payment of service tax: As per rule 6(1), where service tax is paid electronically through internet banking the service tax on the value of taxable services received:

(i) by an individual or a proprietary firm or a partnership firm during any quarter is payable by the **6th day of the month immediately following the said quarter; and**

(ii) in other cases (company and HUF) during any calendar month is payable by the **6th day of the month immediately following the said calendar month.**

The due date for the month of March will remain the same i.e., 31st March.

1.10 TRANSACTIONS WITH ASSOCIATED ENTERPRISE

In case of transactions of taxable services involving any associated enterprise, any payment received towards the value of taxable service includes any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax. Thus, service tax would be payable on such receipts as well.

Here, "associated enterprise" has the meaning assigned to it in section 92A of the Income tax Act, 1961."

1.11 MANNER OF PAYMENT

Service tax has to be paid to the credit of the Central Government in Form TR-6 challan (yellow colour) in the specified branches of the designated bank. The list of such Banks and

Branches is available in every Commissionerate of Central Excise. Different heads of accounts have been specified for different taxable service by the Government under which payment has to be made. While making the payment of service tax to the credit of Central Government, head of account should be correctly and properly indicated under major and minor heads and sub-heads to avoid misclassification. In the TR-6 challan, account head of education cess should be shown separately.

TR-6 challan is to be filled in quadruplicate and tendered to the designated bank alongwith the payment of service tax. The bank returns two sets of TR-6 challans duly acknowledging payment, one for the assessee's record and the other to be submitted with the return.

1.11.1 Payment in case of multiple service provider : A multiple service provider (a service provider rendering more than one taxable service) can use single TR-6 challan for payment of service tax on different services. However, amounts attributable to each such service along with concerned accounting codes should be mentioned clearly in the column provided for this purpose in the TR-6 challan. Alternatively, separate TR-6 challans may be used for payment of service tax for each service provided by the service provider.

1.11.2 E-payment of service tax : With effect from 01.10.2006, the assessee who has paid service tax of Rs.50,00,000 or above in the preceding financial year or has already paid service tax of Rs.50,00,000 in the current financial year has to compulsorily deposit the service tax liable to be paid by him electronically, through internet banking.

1.12 ADVANCE PAYMENT OF SERVICE TAX

The assessee has been provided with a facility to make advance payment of service tax on his own volition and adjust the amount so paid against the service tax which he is liable to pay for the subsequent period. Such facility shall be available when the assessee:

(i) intimates the details of the amount of service tax paid in advance, to the Jurisdictional Superintendent of Central Excise within a period of 15 days from the date of such payment, and

(ii) indicates the details of the advance payment made, and its adjustment, if any in the subsequent return to be filed under section 70.

1.13 POINTS TO BE REMEMBERED WHILE PAYING SERVICE TAX

The following important points should be kept in mind while paying service tax:

- Service tax is to be paid on the value of taxable services which is charged by an assessee. Any income tax deducted at source is included in the charged amount. Therefore, service tax is to be paid on the amount of income tax deducted at source also.

- Where the amount of service tax is paid in cash, the date of payment is the date on which cash is tendered to the designated bank.
- Payment of service tax into non-designated banks does not amount to payment of service tax.
- In case the amount of service tax is paid by cheque, the date of presentation of cheque to the bank designated by Central Board of Excise and Customs shall be considered as the date of payment, subject to realization of cheque.
- Payment should be rounded off in multiple of rupees.

1.14 ADJUSTMENT OF SERVICE TAX PAID WHEN SERVICE IS NOT PROVIDED EITHER WHOLLY OR PARTIALLY

An assessee may adjust excess payment of service tax against his liability of service tax for subsequent periods. Where an assessee has deposited service tax in respect of a taxable service which is not so provided by him either wholly or partially for any reason, he may adjust the excess service tax so paid by him (calculated on a pro rata basis) against his service tax liability for the subsequent period.

For example, if the assessee, who is an individual or partnership firm, has paid Rs.6,000 in excess of service tax liability during the previous half year ending period, the assessee can adjust Rs.3,000 only per quarter in his subsequent tax liability and not at a stretch.

Similarly, if the assessee is a company and has paid Rs.6,000 in excess of service tax liability during the previous half year ending period, the assessee can adjust Rs.1000 only per month in his subsequent tax liability and not at a stretch.

However, for carrying out such adjustment, the assessee must have refunded the value of taxable service and the service tax thereon to the person from whom it was received.

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

It is to be noted that adjustment of excess payment of service tax is not allowed *per se*, say due to clerical mistake etc. In such cases, the assessee has to claim the refund of excess tax paid.

1.15 ADJUSTMENT OF EXCESS AMOUNT PAID TOWARDS SERVICE TAX LIABILITY

Where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be. However, such an adjustment is subject to the following conditions:

(i) Self-adjustment of excess credit would not be allowed in case of reasons involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification.

(ii) Excess amount paid and proposed to be adjusted should not exceed *Rs.1,00,000* for the relevant month or quarter. However, in case of assessees opting for centralized registration excess amount can be adjusted without any monetary limit provided the excess amount paid is on account of delayed receipt of details of payments from branch offices. (Centralized registration can be obtained when an assessee provides taxable service from more than one premises on fulfillment of certain specified conditions[2]).

(iii) Adjustment can be made only in the succeeding month or quarter.

(iv) The details of self-adjustment should be intimated to the Superintendent of Central Excise within a period of 15 days from the date of such adjustment.

1.15.1 Adjustment of excess amount paid as service tax in case of renting of immovable property service: In case of renting of immovable property service, a deduction of property taxes paid in respect of the immovable property is allowed from the gross amount charged for renting of the said immovable property vide Notification No.24/2007 ST dated 22.05.2007. However, where any amount in excess of the amount required to be paid towards service tax liability has been paid on account of non-availment of such deduction, such excess amount may be adjusted against the service tax liability within 1 year from the date of payment of such property tax. The details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of 15 days from the date of such adjustment.

[2] Concepts relating to registration and centralized registration shall be dealt in detail in Paper 8 : Indirect Tax Laws at the Final level.

1.16 PROVISIONAL PAYMENT OF SERVICE TAX

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

For the purpose of provisional assessment at the time of filling the return, the assessee is required to file a statement in form ST-3A giving detail of difference between service tax deposited and the service tax liable to be paid for each month. The quarterly or half yearly statements should also accompany.

The Assistant/Deputy Commissioner of Central Excise, on the basis of memorandum in form ST-3A may complete the assessment after calling for necessary documents or records, if need be.

1.17 SPECIAL PROVISION FOR PAYMENT OF SERVICE TAX IN CASE OF AIR TRAVEL AGENT

The person liable for paying service tax in relation to the services provided by an air travel agent has an option to pay an amount calculated at the rate of:

(i) 0.6% of the basic fare in the case of domestic bookings, and

(ii) 1.2% of the basic fare in the case of international bookings,

of passage for travel by air, during any calendar month or quarter, as the case may be, towards the discharge of his service tax liability instead of paying service tax @ 10%.

The option once exercised applies uniformly in respect of all the bookings of passage for travel by air made by him and cannot be changed during a financial year under any circumstances.

The expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline.

1.18 SPECIAL PROVISION FOR PAYMENT OF SERVICE TAX IN CASE OF LIFE INSURER CARRYING ON LIFE INSURANCE BUSINESS

An insurer carrying on life insurance business who is liable for paying service tax has the option to pay an amount calculated @ 1% of the gross amount of premium charged by him towards the discharge of his service tax liability instead of paying service tax @ 10%.

However, such option is not available in cases where:

(a) the entire premium paid by the policy holder is only towards risk cover in life insurance; or

(b) the part of the premium payable towards risk cover in life insurance is shown separately in any of the documents issued by the insurer to the policy holder.

1.19 SPECIAL PROVISION FOR PAYMENT OF SERVICE TAX IN CASE OF SERVICES PROVIDED IN RELATION TO PURCHASE OR SALE OF FOREIGN CURRENCY INCLUDING MONEY CHANGING

The person liable to pay service tax in relation to purchase or sale of foreign currency, including money changing, provided by a foreign exchange broker, including an authorised dealer in foreign exchange or an authorized money changer, referred to in sub-clauses (zm) and (zzk) of clause (105) of section 65 of the Finance Act, 1994 as amended shall have the option to pay an amount calculated at the rate of 0.25% of the gross amount of currency exchanged towards discharge of his service tax liability instead of paying service tax @10%.

However, such option shall not be available in cases where the consideration for the service provided or to be provided is shown separately in the invoice, bill or, as the case may be, challan issued by the service provider.

Illustration

Buying rate $US 1 = Rs.38, selling rate $US 1 = Rs.40

(i) Person exchanged $100 for equivalent rupees

Transaction value = Rs.3800 (Rs.38 x 100)

Service tax payable = Rs.9.5 (0.25% x 3800)

(ii) Person exchanged equivalent rupees for $100

Transaction value = Rs.4000 (40 x 100)

Service tax payable = Rs.10 (0.25% x 4000).

1.20 INTEREST ON DELAYED PAYMENT OF SERVICE TAX [SECTION 75]

In case payment of service tax is made after its due date, interest is leviable on the amount of tax liable to be paid for the period of delay. Payment of interest is mandatory in all circumstances. There is no provision to waive this interest on delayed payment of service tax.

Every person who fails to deposit the service tax or any part thereof to the account of Central Government within the prescribed period has to pay simple interest at a rate not below 10% p.a. but not exceeding 36% p.a. as may be notified by the Central Government. Currently, the notified rate of interest is 13%.

For computing the period of delay in payment of service tax, the month is counted from the next day from the date on which the payment of service tax was due. For example, if service tax is payable by 5th of a month, one month period for computation of interest would be from 6th of that month to 5th of the next month.

Self-examination Questions

1. Which of the following statement is false?
   - (a) In case of insurance auxiliary service provided by an insurance agent, the person liable to pay service tax is the person carrying on the insurance business in India.
   - (b) In case of business auxiliary service of distribution of mutual fund by a mutual fund distributor, the person liable to pay service tax is the mutual fund or asset management company receiving such service.
   - (c) In case of accounting services rendered by a chartered accountant, the person liable to pay service tax is the chartered accountant.
   - (d) none of the above
2. What is the due date for payment of service tax in case of a partnership firm?
   - (a) 5th day of the month immediately following every month
   - (b) 25th day of the month immediately following every quarter
   - (c) 5th day of the month immediately following every quarter
   - (d) 25th day of the month immediately following every month
3. 'A Ltd.' enters in to an advertising contract with 'B Ltd.' for a sum of Rs.15,000.00 on 05.06.2009. 'A Ltd.' receives an advance of Rs.10,000.00 on 06.06.2009 and the balance amount on the completion of services on 12.07.2009. The service tax payable by 'A Ltd.' is:
   - (a) Rs.1545 by 25.08.2009

(b) Rs.1020 by 25.07.2009 and Rs.510 by 25.08.2009

(c) Rs.1545 by 05.08.2009

(d) Rs.1030 by 05.07.2009 and Rs.515 by 05.08.2009

4. 'X Ltd.' provides management consultancy service to 'Y' for a consideration of Rs.20,000. 'X Ltd.' raises the bill on 'Y' on 05.06.2009. 'X Ltd.' receives the payment from 'Y' on 15.07.2009. When should 'X Ltd.' pay the service tax?

   (a) on or before 05.08.2009

   (b) on or before 05.07.2009

   (c) on or before 31.07.2009

   (d) on or before 30.06.2009

5. Service tax is payable to the credit of the Central Government in:

   (a) Form ST-3

   (b) TR-6 challan

   (c) Form F

   (d) none of the above

6. 'A' charges Rs.10,000 from 'B' towards the taxable services provided by him. He does not charge service tax from 'B'. In this context, which of the following statement is true?

   (a) No service tax is payable by 'A'.

   (b) Rs.934 is payable by 'A' as service tax.

   (c) Rs.926 is payable by 'A' as service tax.

   (d) Rs.909 is payable by 'A' as service tax.

7. (i) What is the due date for payment of service tax in case of a company for the month of February and March?

   (ii) Who is responsible to make the payment of service tax in case of service rendered by a Goods Transport Agency?

8. (i) A payment of Rs.11,000 is made by a client/ customer to an assessee after deducting income -tax of Rs.1,000 at source. In such a case, is service tax leviable only on the amount actually received by the assessee from his client/customer or does it also extend to the amount of income tax deducted at source?

   (ii) In case of payment of service tax by cheque, which date is considered as date of payment of service tax? Is it the date on which the cheque for the same is deposited/tendered in the designated Bank or the date on which the amount is credited?

9. (i) What is the special provision regarding payment of tax in respect of an air travel agent?

   (ii) Does payment of service tax in a branch of the Bank other than the nominated Bank for the Central Excise Commissionerate amount to non-payment of service tax?

10. Write a brief note on provisional payment of service tax.

Answers

1.(d); **2.**(c); **3.**(d); **4.**(a); **5.**(b); **6.**(b);

UNIT – 2 : FILING OF RETURNS

Learning objectives

After reading this unit you will be able to:

- understand the procedure relating to filing of service tax returns.
- know the frequency of filing returns.
- be aware of the due date for filing returns.

2.1 PERSONS LIABLE TO FILE RETURNS

After understanding the concept of payment of service tax let us now delve with the scheme of filing of service tax returns.

Section 70 of the Finance Act, 1994 is the principal section which fixes the responsibility of filing of returns. It *inter alia* provides that every person liable to pay service tax shall himself assess the tax due on the services provided by him and shall furnish a return to the Superintendent of Central Excise. The return shall be furnished in such manner and at such frequency as may be prescribed. Rule 7 of the Service Tax Rules, 1994 prescribes the form, manner and frequency of furnishing the return.

Sub section (2) of section 70 stipulates that certain notified person or class of persons shall also furnish to the Superintendent of the Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.

2.2 PERIODICITY AND FORM FOR RETURN

The prescribed form for the service tax returns is 'Form ST-3'. This form is applicable in case of all assessees. In case of provisional payment of service tax, the assessee has to file a statement giving details of the difference between the service tax deposited and the service tax liable to be paid for each month in a memorandum in Form 'ST-3A' which should accompany the return in 'Form ST-3'.

The return is to be furnished **half yearly**. In other words, the return should cover the periods of 1st April to 30th September (first half-year) and 1st October to 31st March (second half-year) of a financial year.

2.3 DUE DATES FOR FILING OF SERVICE TAX RETURNS

The service tax return, in Form ST-3 should be filed on half yearly basis by the 25th of the month following the particular half year. The due dates on this basis are tabulated as under:

Half year	Due date
1st April to 30th September	25th October
1st October to 31st March	25th April

2.3.1 When the due date falls on public holiday: In case the due date of the filing of return i.e., either 25th October or 25th April falls on a public holiday, the assessee can file the return on the immediately succeeding working day.

2.4 DELAYED RETURN

Section 70(1) *inter alia* provides for filing of periodical return after the due date with the prescribed late fee of not more than Rs.2,000. Thus, a delayed return can be furnished by paying the prescribed late fee.

2.4.1 Late fee for delay in furnishing return: The prescribed late fee for furnishing a delayed return is given in the following table:

S. No.	Period of delay	Late fee
(a)	15 days from the date prescribed for submission of the return	Rs.500
(b)	Beyond 15 days but not later than 30 days from the date prescribed for submission of the return	Rs.1,000
(c)	Beyond 30 days from the date prescribed for submission of the return	An amount of Rs.1,000 plus Rs.100 for every day from the 31st day till the date of furnishing the said return

However, the total late fee for delayed submission of return shall not exceed Rs.2,000. Further, where the assessee has paid the prescribed late fee for delayed submission of return, the proceedings, if any, in respect of such delayed submission of return shall be deemed to be concluded.

2.4.2 Late fee may be reduced/waived where service tax payable is nil: 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 filling the return, reduce or waive the penalty (late fee).

2.5 REVISED RETURN

An assessee can submit a revised return, in Form ST-3, in triplicate, to correct a mistake or omission, within a period of 90 days from the date of submission of the original return.

2.6 CONTENTS OF THE RETURN

Apart from the general details, like financial year, half year period (April-September or October-March), name of the assessee, registration number of the premises for which return is being filed, category of taxable services, the contents of the return *inter alia*, also include month-wise details of:

(i) amount received towards taxable service

(ii) amount received in advance towards taxable service to be provided

(iii) amount billed for exempted services and services exported without payment of tax

(iv) amount billed for services on which tax is to be paid

(v) abatement claimed - value

(vi) notification number of abatement and exemption

(vii) service tax payable

(viii) education cess payable

(ix) TR-6 challan date and number

(x) credit details for service tax provider/recipient

Further, half yearly details of other payments like interest, arrears and excess amount paid and adjusted subsequently and details of amount payable but not paid as on the last day of the period for which the return is filed are also to be provided in the return.

2.7 DOCUMENTS TO BE SUBMITTED ALONG WITH THE RETURN

Along with ST-3 return following documents should be attached:

(i) copies of TR-6 challans which indicate the payment of service tax for the months/quarter covered in the half-yearly return

(ii) a memorandum in form ST-3A giving full details of the difference between the amount of provisional amount of tax deposited and the actual amount payable for each month. Form-ST-3A is to be attached only when the assessee opts for provisional payment of service tax.

2.7.1 First return: Every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time or the 31st day of January, 2008, whichever is later, a list in duplicate, of-

(i) all the records prepared or maintained by the assessee for accounting of transactions in regard to,-

   (a) providing of any service, whether taxable or exempted;

   (b) receipt or procurement of input services and payment for such input services;

   (c) receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;

   (d) other activities, such as manufacture and sale of goods, if any.

(ii) all other financial records maintained by him in the normal course of business.

2.8 MANNER OF FILING RETURNS

The service tax return in Form ST-3 should be filed in triplicate along with the copies of TR-6 challans for the quarters (in case of individual, proprietary concerns and partnership firms) or months (in other cases) covered in the half-yearly return. The return should be furnished to the Superintendent of Central Excise.

The assessee may also file the return with the concerned Divisional Office by registered post if he finds it difficult to file the return in person. However, the assesses should stick on to the due date and ensure that the return reaches the Divisional Office on or before the due date.

2.8.1 Return in case of multiple service providers: For an assesee who provides more than one taxable service, filing of a single return is sufficient. However, the details in each of the columns of the Form ST-3 have to be furnished separately for each of the taxable service rendered by him. Thus, instead of showing a lump sum figure for all the services together, service-wise details should be provided in the return.

2.9 E-FILING OF RETURNS

E-filing is a facility for the electronic filing of service tax returns by the assesse from his office, residence or any other place of choice, through the Internet, by using a computer. The assesse can go to the e-filing site 'Home Page' by typing the address http://servicetaxefiling.nic.in in the address bar of the browser.

E filing of returns is an assesse facilitation measure of the department in continuation of its modernization and simplification program. It is an alternative to the manual filing of returns. This facility is available to all service providers.

2.10 NIL RETURN

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 time limit.

2.11 SCHEME FOR SUBMISSION OF RETURNS THROUGH SERVICE TAX RETURN PREPARERS [SECTION 71]

The Finance Act, 2008 has inserted a new section 71 to provide for the scheme for submission of returns through service tax returns prepares. Section 71 provides that the Central Board of Excise and Customs (Board) may frame a Scheme for the purposes of enabling any person or class of persons to prepare and furnish a return under section 70 and authorise a Service Tax Return Preparer to act as such under the Scheme.

A Service Tax Return Preparer shall assist the person or class of persons to prepare and furnish the return in such manner as may be specified in the Scheme framed under this section.

"Service Tax Return Preparer" means any individual, who has been authorised to act as a Service Tax Return Preparer under the Scheme framed under this section. "Person or class of persons" means such person, as may be specified in the Scheme, who is required to furnish a return required to be filed under section 70.

The Scheme framed by the Board may provide for the following, namely:—

(a) the manner in which and the period for which the Service Tax Return Preparer shall be authorised under sub-section (1);

(b) the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Service Tax Return Preparer;

(c) the code of conduct for the Service Tax Return Preparer;

(d) the duties and obligations of the Service Tax Return Preparer;

(e) the circumstances under which the authorisation given to a Service Tax Return Preparer may be withdrawn;

(f) any other matter which is required to be, or may be, specified by the Scheme for the purposes of this section.

In this regard, it may be noted that Service Tax Return Preparers Scheme, 2009 has been notified. Further, Form No. ST-3 in Service Tax Rules, 1994 has also been amended to furnish the details of name and identification of Service Tax Return Preparers in case the return has been prepared by them.

Self-examination questions

1. Which of the following statement is true with regards to service tax return?
   (a) A half yearly return is to be filed by each assessee.
   (b) A quarterly return is to be filed by each assessee.
   (c) A monthly return is to be filed by each assessee.
   (d) An annual return is to be filed by each assessee.
2. What is the due date for filing returns?
   (a) 5th of the month following the particular quarter
   (b) 25th of the month following the particular month
   (c) 25th of the month following the particular half year
   (d) 5th of April each year.
3. The prescribed form for service tax return is:
   (a) Form 3CD
   (b) Form 2E
   (c) Form ST-3
   (d) Form TR-6

4. The contents of the service tax return do not include:
   (a) amount billed for exempted services and services exported without payment of tax
   (b) amount received towards taxable service
   (c) amount received in advance towards taxable service to be provided
   (d) the income or loss of the service provider
5. For an assesee who provides 3 taxable services:
   (a) filing of return is not compulsory at all
   (b) filing of a single return is sufficient
   (c) filing of separate returns for all 3 services is necessary
6. Which documents are to be submitted along with the first return?
7. When should the return be filed if the due date happens to be a public holiday?
8. 'X', an individual, has not provided any services in the half year period of April to September. Should he file any return for this period? Give your opinion.
9. Write a note on the manner of payment of service tax.
10. What do you mean by e-filing of returns? Is there any facility of e-filing of service tax returns? If yes, then which of the services are eligible for this facility?

Answers

1.(a); **2.**(c); **3.**(c); **4.**(d); **5.**(b)