

SERVICE TAX PROCEDURES

Question 1

Briefly write a short note on the due dates for monthly and quarterly payment of service tax in respect of various classes of assesseees.
(4 Marks) (May 2011)

Answer

Rule 6(1) of the Service Tax Rules, 1994 provides the due dates for payment of service tax in respect of various classes of assesseees as follows:-

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 quarter in which **service is deemed to be provided as per Point of Taxation Rules, 2011**
- (ii) in other cases (company and HUF) during any calendar month is payable by the 5th day of the month immediately following the calendar month in which **service is deemed to be provided as per Point of Taxation Rules, 2011**

However, the service tax on **the service deemed to be provided** in 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

Question 2

Write a brief note with reference to the Service Tax Rules, 1994 in the following cases:

- (i) *Advance payment of service tax.*
- (ii) *Time limit for preservation of records.*
(4 Marks) (Nov 2010)

Answer

- (i) As per the provisions of rule 6(1A) of the Service Tax Rules, 1994, a facility has been provided to the assesseees to make advance payment of service tax on his own 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 assesseee:

- (a) intimates the details of the amount of service tax paid in advance, to the Superintendent of Central Excise having jurisdiction within a period of 15 days from the date of such payment, and
 - (b) indicates the details of the advance payment made, and its adjustment, if any, in the subsequent return, to be filed under section 70.
- (ii) As per the provisions of Rule 5(3) of the Service Tax Rules, 1994, all records [including computerized data as maintained by an assessee in accordance with the various laws in force from time to time] maintained by the assessee shall be preserved **at least for a period of five years** immediately after the financial year to which such records pertain. For instance records for the financial year 2011-12 are required to be maintained at least for a period of five years w.e.f. financial year 2012-13 i.e. up to financial year 2016-17.

Question 3

S Ltd. provides management consultancy services that are subject to service tax under the Finance Act, 1994. In respect of the services rendered during the month of December, 2010, service tax of ₹15 lakh was remitted to Government treasury on January 20, 2011. Arrive at the penalty under section 76 of the Finance Act, 1994 which is leviable in this case.

(4 Marks) (Nov 2010)

Answer

As per section 76 of the Finance Act, 1994 penalty for failure to pay service tax is ₹ 100 for every day during which such failure continues or 1% of amount of service tax per month whichever is higher.

However, the total amount of the penalty payable under section 76 cannot exceed beyond 50% of the service tax payable.

It is computed from the first day after the due date till the date of actual payment of the outstanding amount of service tax.

Computation of amount of penalty payable:

Amount of penalty will be higher of the following:

- (i) 15 days × ₹100 = ₹ 1,500 (Since the period of delay is 15 days)
- (ii) 1% of ₹ 15 lakh for 15 days = ₹ $\frac{1}{100} \times 15,00,000 \times \frac{15}{31}$ = ₹ 7258.06 or ₹ 7,258 (rounded off)

Higher of above two amounts = ₹ 7,258

Now, ₹ 7,258 is to be compared with 50% of Service Tax payable i.e. ₹ 50% X ₹ 15 lakh which works out to be ₹ 7,50,000 Since ₹ 7,258/- does not exceed ₹ 7,50,000, Thus S Ltd. will have to pay the penalty of ₹ 7,258.

Question 4

Briefly explain the provisions under the Service Tax Rules, 1994 regarding late fee for delayed filing of returns.
(4 Marks) (Nov 2010)

Answer

The provisions regarding late fee for delayed return are covered in Rule 7C of the Service Tax Rules, 1994 as under:

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

Total late fee for delayed submission of return cannot exceed ₹ 20,000.

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 would be deemed to be concluded.

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) [Proviso to rule 7C].

Question 5

Briefly explain the provisions in the Service Tax Rules, 1994 relating to furnishing of list of records at the time of filing of return for the first time.
(4 Marks) (Nov 2009)

Answer

Rule 5(2) of the Service Tax Rules, 1994 lays down that every assessee should furnish to the Superintendent of Central Excise at the time of filing of return for the first time 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.

Question 6

Briefly explain the E-payment of service tax with reference to the Service Tax Rules, 1994 and the Finance Act, 1994. (2 Marks) (Nov 2009)

Answer

Where an assessee has paid a total service tax of rupees ten lakh or more including the amount paid by utilisation of CENVAT credit, in the preceding financial year, he is mandatorily required to deposit the service tax liable to be paid by him electronically, through internet banking.

Question 7

What are the provisions relating to best judgement assessment under Service Tax Law?

(2 Marks) (June 2009)

Answer

According to provisions of Section 72 of Finance Act 1994 if any person, liable to pay service tax,—

- (a) fails to furnish the return under section 70; or
- (b) having made a return, fails to assess the tax in accordance with the provisions of this Chapter or rules made thereunder, the Central Excise Officer, may require the person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, shall by an order in writing, after giving the person an opportunity of being heard, make the assessment of the value of taxable service to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

Question 8

State briefly, whether the following persons are liable to apply for registration under the Finance Act, 1994 and the Service Tax (Registration of Special Category of Persons) Rules, 2005 and if so, from which date:

- (i) *An input service distributor who starts his business with effect from 1st November, 2010.*
- (ii) *A provider of taxable service under an unregistered brand name of another person. Aggregate value of taxable services was ₹8,00,000 up to 31.3.11. (4 Marks) (Nov 2008)*

Answer

- (i) Yes, as per **Rule 3(1)** of the Service Tax (Registration of Special Category of Persons) Rules, 2005, an input service distributor is liable to apply for registration within a period of 30 days of the commencement of business. Thus, in the given case, the input service distributor should apply for registration by 30.11.2010.
- (ii) Yes, a provider of taxable service under an unregistered brand name of another person is liable to apply for registration within a period of 30 days of commencement of business of providing taxable service as basic exemption for small service provider is not available to a service provider who provides taxable service under a trade name or brand name, **whether registered or not**, of another person.