

# **AMENDMENTS TO SERVICE TAX PROVISIONS**

*(PURSUANT TO FINANCE ACT 2011)*

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# INTRODUCTION

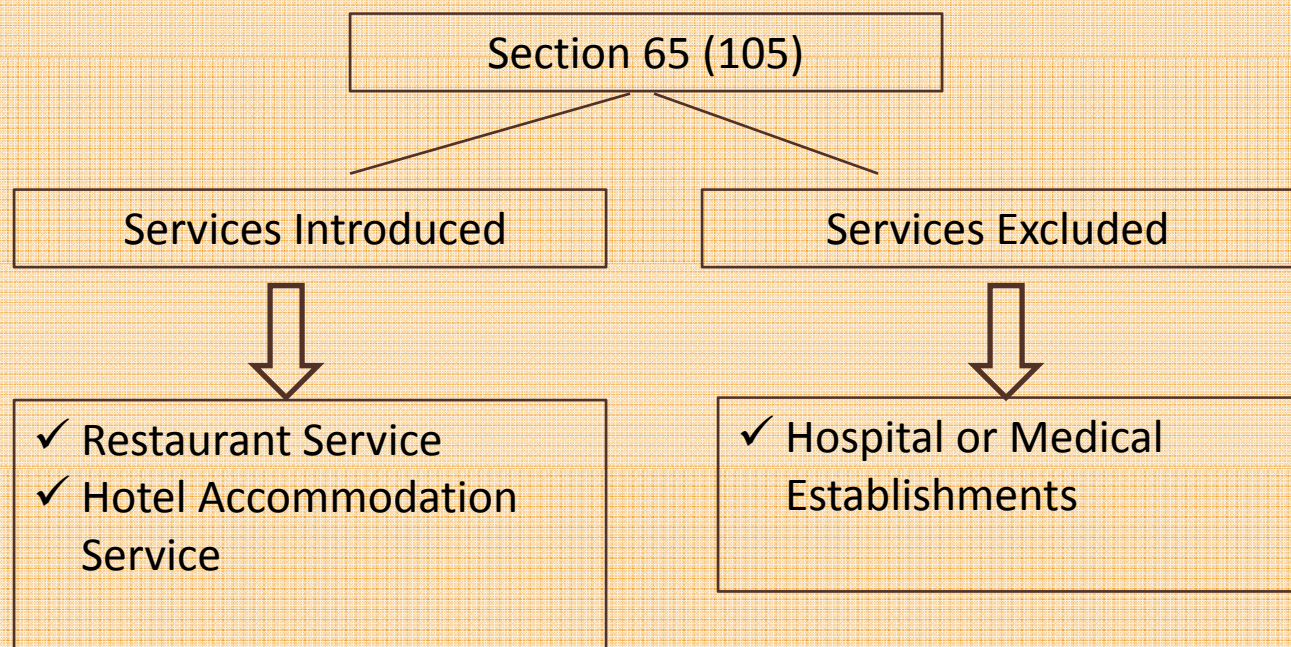
The legal framework governing applicability of Service Tax in India has undergone major changes as a result of Finance Act, 2011 and subsequent notifications issued by the Central Government.

A Key change notified is the introduction of **Point of Taxation Rules, 2011** and consequential amendments to Service Tax Rules. The dominant objective of the notified amendments appears to be the transition towards Goods and Services Tax (GST).

This Tax Alert summarizes salient amendments introduced vide these notifications.

This note is subject to detailed provisions of the enactments.

# CHANGES IN SCOPE OF TAXABLE SERVICES



## **Other Changes to Section 65 (105) w.e.f. 01-05-2011:-**

- ✓ **Arbitral services and representational services** before any court, tribunal, authority
- ✓ Services rendered in professional capacity by CA/CS/CWA expanded to include **representational services**
- ✓ **Business Support services** has been expanded to cover '**operational or administrative assistance in any manner**'
- ✓ **Authorized Service Station Service** has been expanded to cover services provided by any person, whether authorized or not and all motor vehicles, except those used for goods transport and three – wheelers auto rickshaws
- ✓ Service provided by a **club to non-members** will be taxable

# POINT OF TAXATION RULES, 2011

## Point of Taxation Rules effective 1 April 2011

- ✓ The Government has notified Point of Taxation Rules 2011 to bring clarity in the matter of levy and collection of service tax. Currently the payment of tax is linked to receipt of value of services
- ✓ The major change is to link payment of service tax to the provision of service, raising of invoice or receipt of payment whichever is earlier
- ✓ The amendment are in line with best international practices. The main purpose of these rules is alignment of service tax procedures with the proposed GST by making it transaction based taxable event
- ✓ Salient features
  - Concept of 'continuous supply of service' introduced where services are provided for 3 months or more
  - Clarity that both 'providing of services' and 'services to be provided' are taxable event
  - In case invoice is issued and payment is received against services provided or to be provided and the milestone is achieved, the earlier would be the point of taxation
  - Receipt of advance would continue to remain point of taxation
  - No service tax on interest free refundable deposits

## Point of Taxation Rules effective 1 April 2011

- ✓ For services received from outside India, point of taxation shall be date on which the invoice is received or the payment is made, whichever is earlier
- ✓ In case of associated enterprises, point of taxation would be earliest of, date of receipt of payment, date of entry in books of account or date of issuance of debit/ credit note
- ✓ Separate rule provided for determining point of taxation in relation to continuous supply of services
- ✓ In case of royalties and payments towards copyrights, trademarks, etc, where the whole amount of consideration is not ascertainable at the time of provision of service, the point of taxation shall be each time a payment is received or an invoice is issued, whichever is earlier
- ✓ Services for which provision is completed or invoices are issued on or before 30<sup>th</sup> June, 2011, the point of taxation shall, at the option of the taxpayer, be the date on which the payment is received or made as the case may be
- ✓ Service Tax Rules have also been suitably amended to align the existing rules with the Point of Taxation Rules, 2011

*The above changes are a clear indication of how services are going to be taxed under the upcoming GST regime proposed to be introduced.*

# INDUSTRY SPECIFIC AMENDMENTS

Sector	Taxable Service	Key Amendments
REAL ESATE	Work Contract Services	<p><u>Exempt</u> when provided for the purpose of carrying out construction and completion or finishing services of new residential complex or part thereof, under <a href="#">Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana</a>.</p> <p><u>Exempt</u> when provided <a href="#">wholly within an airport</a> and classified under the taxable category of Airport services</p> <p><u>Exempt</u> when provided <a href="#">wholly within the port or other port</a>, for construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways.</p> <p>Prescribed as 'Continuous Supply of Service' for the purpose of Point of Taxation Rules</p>
	Commercial or Industrial Construction Service	Prescribed as 'Continuous Supply of Service' for the purpose of Point of Taxation Rules
	Construction of Residential Complex Service	Prescribed as 'Continuous Supply of Service' for the purpose of Point of Taxation Rules
IT/ ITES	Information Technology Software Services (Operating in SEZ Area)	<u>Exemption</u> provided to taxable services received as Input services by a <a href="#">SEZ Unit or Developer of SEZ</a> for the authorized operations. This exemption shall be subject to specified conditions.
TELECOM	Telecommunication Services	Value of the taxable telecommunication service provided shall be the <a href="#">gross amount paid by the person to whom telecom service is provided</a> by the telegraph authority
HEALTH CARE	Health Services	<u>Exemption</u> granted to Health Services undertaken by Hospitals or Medical Establishment

# INDUSTRY SPECIFIC AMENDMENTS

Sector	Taxable Service	Key Amendments
EDUCATION	Commercial Training or Coaching Centre Services	<p><b>Exempt</b> when provided by a commercial or coaching centre -</p> <p>(i) any preschool coaching and training;</p> <p>(ii) any coaching or training leading to grant of a certificate or diploma or degree or any educational qualification which is recognized by any law for the time being in force;</p>
HOSPITALITY	<p>Restaurant Service</p> <p>Hotel Accommodation Service</p>	<p><b>Taxable</b> when provided by a restaurant having air-conditioning and license to serve alcoholic beverages in relation to serving of food or beverage, including alcoholic beverages or both, in its premises</p> <p><b>Optional Abatement @ 70%</b> subject to prescribed conditions</p> <p><b>Taxable</b> when provided by a hotel, inn, guest house, club or campsite in relation to providing of accommodation for a continuous period of less than three months</p> <p><b>Optional Abatement @ 50%</b> subject to prescribed conditions</p> <p><b>Exempted</b> if the "Declared Tariff" for providing such services is less than INR 1000 per day</p>

# CENVAT CREDIT RULES, 2004

Central Government has made following changes w.e.f. April 1<sup>st</sup>, 2011 vide Notification No. 3/2011-Central Excise:-

## 1. Input has been defined to include

- ✓ all goods used in a factory by the manufacturer,
- ✓ accessories which are part of final product,
- ✓ goods used in electricity generation and
- ✓ goods used for providing any output service

But excludes

- ✓ any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee
- ✓ Goods which have no relationship whatsoever with the manufacture of the final product is excluded from the definition of Input.
- ✓ Goods used for construction of building or civil structure or a part thereof or for laying of foundation or making of structures for support of capital goods except when used for rendering specified services.

## 2. Capital Goods

- ✓ Now the specified items of Capital Goods, may also be used outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory.

## 3. Input Service

- ✓ The definition of “input service” has been aligned with the definition of “input”. Therefore accordingly Goods that do not constitute “input” do not qualify as “input service”.
- ✓ A service meant primarily for the personal use or consumption of employees will not constitute an input service A list of specific services has also been given by way of example in the definition. Most of these services constitute a part of the cost-to-company package of the employee and are provided either free of charge or on concessional basis to company employees.
- ✓ Expressions ‘activities relating to business’ have been deleted and business exhibition and legal services added in the list of eligible input services.

# CENVAT CREDIT RULES, 2004

## 4) Other Changes

- ✓ Scope of exempted services expanded to include (i) trading and (ii) taxable services whose part of value is exempted on the condition that no credit of inputs and input services, used for providing such taxable service, shall be taken.
- ✓ Only 40% of the service tax paid on three specified input service will be available as credit when the provider of these services have paid service tax on full value of service without availing any credit.
- ✓ Now under Rule – 3(5B), even the partial write-off or any provision for partial write-off of the value of -
  - Input;
  - capital goods before put to useon which CENVAT Credit has been taken, is made in the books of account, will require the payment of equivalent amount of CENVAT Credit taken (effective from 01-03-2011)
- ✓ Option to maintain separate accounts only in respect of inputs (and not together with input services) has also been given so that allocation as per formula given in rule 6(3A) is done only in so far as credits on input services are concerned.
- ✓ The amount payable under rule 6(3)(i) in respect of services has been reduced from 6% to 5% Moreover in the case of exempted services (that are partially taxed with no facility of credits) this amount shall be 5% of the exempted value of the service.
- ✓ For the purpose of applying the formula under rule 6(3A) the value of trading service as well as value of services covered by composition schemes has been defined.
- ✓ Consequent to the introduction of the proportionate allocation and its rationalization now, Rule 6(5) that allows full credit of some specified services has been deleted.
- ✓ New sub-rule (6A) has been added to allow provision of services without payment of service tax to a unit in SEZ or to a developer in SEZ for their authorized operations, without requirement of reversal of any CENVAT credit on this account. This will help in tax-free receipt of services by units and developers in SEZs. (effective from 01-03-2011)

# GENERAL PROVISIONS

## EXPORT OF SERVICE RULES, 2005

Rule 3 of Export of Service Rules, 2005, provides conditions for Export of Taxable Services. The services have been classified in to -

- (i) Immovable Property related services
- (ii) Performance based services and
- (iii) Residual Category Services, for specifying conditions for export.

With effect from April 1<sup>st</sup>,2011

### Following added to Category (i):-

- ✓ Builder Services

### Following added to Category (ii):-

- ✓ Rail Travel Agent Services
- ✓ Health Services provided by Hospitals or Medical Establishments
- ✓ Service provided by air-conditioned restaurants
- ✓ Short Term Accommodation Services

### Following are removed from category (ii) and are now part of (residual)Category (iii):-

- ✓ Credit rating agency services
- ✓ Market research agency services
- ✓ Technical testing and analysis services
- ✓ Transportation of goods by air services
- ✓ Goods transport agency services
- ✓ Opinion poll services
- ✓ Transport of goods by rail services

## IMPORT OF SERVICE RULES, 2006

Rule 3 of the Taxation of Service (Provided from outside India and received in India) Rules, 2006, provides conditions for Import of Taxable Services. The services have been classified in to -

- (i) Immovable Property related services
- (ii) Performance based services and
- (iii) Residual Category Services, for specifying conditions of Import.

Central Government has made amendments in this rule similar to the amendments made in the Export of Service Rules, 2005.

# GENERAL PROVISIONS

## CHANGES IN PENAL PROVISIONS

Changes w.e.f. April 1<sup>st</sup>, 2011

Interest Rate on  
delayed payment of  
Service Tax increased  
from 13% to 18%

Interest Rate on excess  
refund of Service Tax  
increased from 13% to  
18%

## MISCELLANEOUS

- ✓ Consequent to the introduction of Point of Taxation Rules – 2011, the existing Rule -4(7) of the Credit Rules with new Rule- 4(7) which provides that credit of Input services would be available on receipt of invoice of Input services except on input services on which tax is payable under reverse charge.
- ✓ However the payment of the invoice needs to be made within three months of the date of invoice. In the event of failure to make payment, an amount equivalent to Credit taken needs to be paid. The amount so paid will be available as Credit upon payment of the invoice.
- ✓ Also in case any payment or part thereof made towards input services of which Credit has been availed is received back, then an amount equal to proportionate amount of Credit taken is payable.
- ✓ The supplementary invoice of output service provider as valid document for availing Credit of Input services.

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