

**Background Material on
Union Budget ,2014- Service tax Provisions
for Study Circle meeting organized by
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Background

- Resounding mandate in the elections had led to unrealistic expectations of what would be delivered in this Budget. The challenge for the Finance Minister was to balance the unduly high expectations built up pre Budget, with the economic realities prevailing at a ground level, with a view to help reshape investment sentiment.
- With GST round the corner, No drastic amendments proposed with a view to ensure stability and continuity in comprehensive taxing mechanism introduced from July 1, 2012. However, there has been certain measure taken to increase tax base and enhancing compliance
- Rate of Service tax remained unchanged to 12% (effective rate at 12.36%).

Changes in Negative List

- The definition of metered cab under Section 65B(32) has been amended to exclude “radio taxi”. Further, Section 66D clause (o)(vi) has been correspondingly amended to exclude “radio taxi” from the negative list.

(applicable w.e.f. date to be notified later)

Remarks –*The proposed amendment would mean that now onwards radio cabs are brought at par with the rent-a-cab operators. Accordingly, abatement scheme of 60% (taxable portion of 40%) has been notified. However, Radio cabs are specifically kept out of the ambit of partial reverse charge.*

- Entry (g) in respect of selling of space or time slots for advertisements other than advertisements broadcast by radio or television under the negative list (Section 66D) has been amended to now provide for exclusion of sale of time slots for advertisement only in print media alone.

(applicable w.e.f. date to be notified later)

Remarks –The budget propose to cover sales of space for advertisement for segments like online and mobile advertising. The new levy would further extend to advertisements in internet websites, out-of-home media, on film screen in theatres, bill boards, conveyances, buildings, cell phones, Automated Teller Machines, tickets, commercial publications, aerial advertising, etc. Sale of space for advertisements in print media, however, would continue to be in the negative list and hence remain excluded from service tax. Print media is being defined in service tax law for this purpose.

Modification in/Withdrawal of Exemption

(applicable w.e.f. July 10, 2014)

Notification 6/2014 –ST dated 10.07.2014 seeks to amend Notification 25/2012 dated 20th June, 2012, the provisions of which are analysed as below -

Entry	Old Provision	New Provision	Remarks
Entry 2B	-----	Services provided by operators of the Common Bio-medical Waste Treatment Facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto	-
Entry 7	Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organization approved to conduct clinical trials by the Drug Controller General of India	-----	Withdrawal of exemption as aforesaid would mean that with immediate effect <i>services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies on human participants by a clinical research organization approved to conduct clinical trials by the Drug Controller General of India would be taxable @ 12.36%.</i>
Entry 9	Services provided to an educational institution in respect of education exempted from service tax, by way of,- (a) auxiliary educational services; or (b) renting of immovable property;	Services provided,- (a) by an educational institution to its students, faculty and staff; (b) to an educational institution, by way of,- (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Government;	Removal of the concept of auxiliary education service and introduction of specific service based exemption has resulted into clarifying the intention of the legislature in lucid manner. Further, the exemption hitherto available to services provided by way of renting of immovable property to educational institutions stands withdrawn

		(iii) security or cleaning or house-keeping services performed in such educational institution; (iv) services relating to admission to, or conduct of examination by, such institution	
Entry 18	Services by way of renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent;	Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent;	Clarificatory change is made to include even non-commercial concerns like dharmashalas or ashram or such other entities providing accommodation service
Entry 20 (j)	Services by way of transportation by rail or a vessel from one place in India to another of following goods - j)chemical fertilizer and oilcakes	Services by way of transportation by rail or a vessel from one place in India to another of following goods - (j) chemical fertilizer, organic manure and oil cakes; (k) cotton, ginned or baled."	Transportation of organic manure will now be at par with fertilizer qualifying for exemption.
Entry 21	Services Provided by goods transport agency ,by way of transport in a goods carriage of - (e) chemical fertilizer and oilcakes	Services Provided by goods transport agency ,by way of transport in a goods carriage of - (e)chemical fertilizer, organic manure and oil cakes; f)..... g)..... h)..... i)cotton, ginned or baled	---do---
Entry 23(b)	a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or	non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or	<i>As a result, any service provided for transport of passenger by air-conditioned contract carriage including which are used for point to point travel, will attract service tax, with immediate effect. Service tax will be charged at an abated value of 40% of the amount charged from service receiver;</i>

			<i>therefore, effective tax will be 4.944%. Services by non-air conditioned contract carriages for purposes other than tourism, conducted tour, charter or hire continue to be exempted.</i>
Entry 25(a)	<p>Services provided to Government, a local authority or a governmental authority by way of –</p> <p>(a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and up gradation; or</p> <p>(b)</p>	<p>Services provided to Government, a local authority or a governmental authority by way of -</p> <p>(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation; or</p> <p>(b)</p>	<p>The aforesaid exemption would lead to continuing the exemption in respect of services by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation. However, the exemption would not be extendable to other services such as consultancy, designing, etc., not directly connected with these specified services</p>
Entry 26A	-----	<p>Services of Life insurance business provided under following schemes –</p> <p>(a)</p> <p>(b)</p> <p>(c) life micro-insurance product as approved by the IRDA, having maximum amount of cover Rs,50000</p>	
Entry 40	-----	<p>Services by way of loading, unloading, packing, storage or warehousing of rice, cotton, ginned or baled</p>	
Entry 41		<p>Services received by the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves</p>	
Entry 42		<p>Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.</p>	

Valuation& Abatement

- Rule 2A of Service tax (Determination of Value) Rules, 2006 has been amended to club the categories of –
(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods; and
(C) in case of other works contracts, not covered under sub-clauses (A) i.e. original works and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property.
Both the above category based on new valuation rules would be liable to be taxed @ 70% of the total amount charged for the works contract.

(applicable w.e.f. October 1, 2014)

Remarks –Theaforesaid clubbing of two categories of works contract would result in rationalization of categories and would avoid disputes of classification between these two categories.

- Following amendments have been made vide Notification 8/2014-ST dated 10.07.2014 amending Notification 26/2012 dated 20th June, 2012 in respect of various abatements–

Goods Transport Agency Service

The condition for availing abatement in case of GTA service is being amended with immediate effect to clarify that the condition for non- availment of credit is required to be satisfied by the service providers only. Service recipient will not be required to establish satisfaction of this condition by the service provider

(applicable w.e.f. July 10, 2014)

Transportation of passenger by AC contract carriage

Service of transportation of passenger by air-conditioned contract carriages is taxable with immediate effect, as stated earlier. Hence, an entry has been inserted at Sl. No. 9A providing that the taxable portion of such service shall be 40% with the condition that CENVAT credit of inputs or capital goods or input services has not been taken.

(applicable w.e.f. July 10, 2014)

Renting of Motor cab

The condition against entry No. 9 is amended with effect from 1st October 2014, to allow the credit of input service of renting of a motor cab if such services are received from a person engaged in the similar line of business i.e. a sub-contractor providing services of renting of motor cab to the main contractor.

(applicable w.e.f. October 1, 2014)

Tour operator service

Tour operator service providers are also being allowed to avail CENVAT credit on the input service of another tour operator, which are used for providing the taxable service. This is being provided to avoid cascading of taxes.

(applicable w.e.f. October 1, 2014)

Transport of goods by vessel

Taxable portion in respect of transport of goods by vessel is being reduced from 50% to 40%. Effective service tax will decrease from the present 6.18% to 4.944%.

(applicable w.e.f. October 1, 2014)

Reverse Charge Mechanism

Following amendments in respect of reverse charge have been provided in Rule 2(1)(d) of Service tax Rules and Notification no. 30/2012-ST –

- New sub-rule (AA) is inserted to provide for banking company, financial institution or NBFC availing services of recovery agent to be liable to pay Service Tax.

(applicable w.e.f. July 11, 2014)

- Amendment to sub-rule (EE) is made which provides that a company or a body corporate shall be liable to pay services tax in respect of services provided by a director of the said company or body corporate (Earlier only company was liable to pay Service Tax on such services)

(applicable w.e.f. July 11, 2014)

- Serial no. 7(b) under Notification No. 30/2012-ST dated 20th June 2012 is amended to provide for services of renting of motor vehicle designed to carry passengers where the Service Provider does not take abatement. The percentage of Service Tax payable by Service Receiver and Service Provider is revised to 50% each instead of earlier proportion of 40% liability of Service Receiver and 60% liability of Service Provider.

(applicable w.e.f. October 1, 2014)

Compliance Enhancement

- To encourage prompt payment of Service tax dues, variable interest rates u/s 75 of the Finance Act is introduced as below –

Sr. No.	Extent of delay	Simple interest rate per annum
1	Up to six months	18%
2	More than six months & upto one year	18% for first six months, and 24% for the period of delay beyond six months
3	More than one year	18% for first six months, 24% for second six months, and 30% for the period of delay beyond one year

(applicable w.e.f. October 1, 2014)

Remarks –As illustrated by TRU, the aforesaid amendment could be explained in nutshell as below –

Assume a case where service tax became due, say, on the 6th of July, 2012 and the assessee pays the dues on 6th of December, 2014. In such a case, the interest to be charged would be as below:

(i) 18% simple interest upto September, 30th, 2014.

(ii) For the period from 1st October, 2014 to 6th December, 2014, the rate of interest will be 30% since the period of delay is beyond one year.

Further, as per the proviso to section 75, 3% concession on the applicable rate of interest will continue to be available to the small service providers.

- Rule 6(2) of Service tax Rules is amended to provide for all assessee to mandatorily make e-payment unless relaxed by the Deputy/Assistant Commissioner.

(applicable w.e.f. October 1, 2014)

Amendments in Place of Provision of Service Rules

(applicable w.e.f. October 1, 2014)

- Provision for prescribing conditions for determination of place of provision of repair service carried out on temporarily imported goods is being omitted. The second proviso to rule 4(a) is being amended to prescribe that it would suffice for the purpose of exclusion of repair service from applicability of rule 4(a) that the goods imported for repair are exported after repair without being put to any use other than that which is required for such repair. It may please be noted that this exclusion does not apply to goods that arrive in the taxable territory in the usual course of business and are subject to repair while such goods remain in the taxable territory, e.g., any repair provided in

the taxable territory to containers arriving in India in the course of international trade in goods will be governed by rule 4.

- The definition of intermediary is being amended to include the intermediary of goods in its scope. Accordingly, with effect from 1.10.2014, an intermediary of goods, such as a commission agent or consignment agent shall be covered under rule 9(c) of the Place of Supply of Services Rules
- Service consisting of hiring of Vessels (excluding yachts) and Aircraft is being excluded from rule 9(d). Accordingly, hiring of vessels, or aircraft, irrespective of whether short term or long term, will be covered by the general rule, that is, the place of location of the service receiver. Hiring of yachts would however continue to be covered by rule 9 (d).

Amendments in Point of Taxation Rules

(applicable w.e.f. October 1, 2014)

- The first Proviso to rule 7 of the Point of Taxation Rules (POTR) is being amended to provide that point of taxation in respect of reverse charge will be –
 1. the payment date; or
 2. the first day that occurs immediately after a period of three months from the date of invoice,
whichever is earlier.

This amendment will apply only to invoices issued after 1st October, 2014. A transition rule is being prescribed under new rule 10 of POTR.

CENVAT Credit

(applicable w.e.f. July 11, 2014)

- A manufacturer or a service provider shall take credit on inputs and input services within a period of six months from the date of issue of invoice, bill or challan w.e.f. 1st September, 2014
- In case of service tax paid under full reverse charge, the condition of payment of invoice value to the service provider for availing credit of input services is being withdrawn. This would mean that in respect of full reverse charge irrespective of date of payment made to service provider, the moment challan payment is made, CENVAT Credit can be availed. However, in respect of partial reverse charge CENVAT credit can only be availed upon fulfilment of condition of payment for value of service and service tax to service provider.
- Re-credit of CENVAT credit reversed on account of non-receipt of export proceeds within the specified period or extended period, to be allowed, if export proceeds are

received within one year from the period so specified. This can be done on the basis of documents evidencing receipt of export proceeds. Such restriction of maximum of one year for receipt of foreign exchange was not provided for in erstwhile CENVAT Credit.

- Inter unit transfer of credit for Large Tax Payers' Unit (LTU) taking/availing credit from July 1, 2014 will not be allowed. However, such transfer of credit taken prior to July 11, 2014 will continue to be permissible.
- Rule 7 of the CENVAT Credit Rules, 2004, provides for the manner of distribution of common input service credit by the Input Service Distributor. This was amended vide notification No. 05/2014-CE (N.T.) amending, inter-alia, rule 7(d), to provide for distribution of common input service credit among all units in their turnover ratio of the relevant period. Some interpretational issues were raised regarding the amendment such as: (i) due to the use of the term "such unit" in rule 7(d), the distribution of the credit would be restricted to only those units where the services are used, and (ii) the credit available for distribution would also get reduced by the proportion of the turnover of those units where the services are not used.

These issues are being clarified vide Circular No. 178/04/2014-ST, dated 10th July 2014 illustrating the effect of the amendment carried out vide notification No. 05/2014-CE (N.T.). It clarifies that the amended rule 7 allows distribution of input service credit to all units (which are operational in the current year) in the ratio of their turnover of the previous year/previous quarter as the case may be.

Simplification of SEZ procedure

(applicable w.e.f. July 11, 2014)

Vide amending Notification No.07/2014-ST following changes have been made in Notification No 12/2013-ST dated 1st July 2013 in relation to SEZ procedures -4

- It is being provided that the Central Excise Officer would issue authorization in Form A-2, within fifteen working days from the date of receipt of Form A-1 by the Central Excise Officer.
- Authorization will have validity from the date on which Form A-1 is verified by the Specified Officer of SEZ. However, if Form A-1 is furnished after a period of 15 days from the date of its verification by the Specified Officer, the authorization shall have validity from the date of furnishing of Form A-1 to the Central Excise Officer.
- SEZ Units or the Developer will, pending issuance of Form A-2, be entitled to avail upfront exemption on the basis of Form A-1. However, in such a case, the SEZ Unit/Developer would be required to furnish a copy of authorization issued by the

Central Excise Officer within 3 months from the date of receipt of specified services. If a copy of authorization is not provided within the said period of three months, the service provider shall pay service tax on the service so provided availing the exemption.

- As regards services covered under full reverse charge, it is being mentioned specifically in Form that there would be no requirement of furnishing service tax registration number of service provider.
- It is being provided that a service shall be treated as exclusively used for SEZ operations if –
 - the recipient of service is SEZ unit or developer, invoice is in the name of such unit/developer; and
 - the service is used exclusively for furtherance of authorized operations in SEZ.
- Further, in respect of refund to the SEZ Units and SEZ Developers it is clarified that the jurisdictional Deputy Commissioner / Assistant Commissioner of Central Excise for all purposes under the said notification would be the authority with whom SEZ Units or the Developers are registered for taking upfront exemption or for the purposes of Chapter V of the Finance Act, 1994. In this context, Circular No. 105/08/2008-ST, dated 16.9.2008 has also been issued clarifying the proposition that if SEZ units have obtained a centralized registration under the Service Tax Rules, it will have option to file a common service tax refund in respect of all units covered under the Centralized Registration or file a unit-wise refund at its option, to the authority having jurisdiction over centralized registration.

Applicability of Central Excise Rules vide Section 83

(applicable w.e.f. enactment of the act)

- Section 5A(2) - This section prescribes that any explanation inserted in a notification or special order at any time within one year of issue of notification or order, for clarifying the scope or applicability thereof, shall have effect from the date of issue of such notification or order.
- Section 15A - This new section is being inserted in the Central Excise Act to stipulate that third party sources shall furnish periodic information, as specified, in the manner as may be prescribed.
- Section 15B - This new section is being inserted in the Central Excise Act to prescribe that failure to provide information under section 15A of the Act would attract penalty as specified.

- Section 35F - Section 35F of the Central Excise Act has already been made applicable to Service Tax. This section is being substituted with a new section to prescribe a mandatory fixed pre-deposit of 7.5% of the duty demanded or penalty imposed or both for filing of appeal before the Commissioner(Appeal) or the Tribunal at the first stage, and 10% of the duty demanded or penalty imposed or both for filing second stage appeal before the Tribunal. The amount of pre-deposit payable would be subject to a ceiling of Rs 10 Crore. All provisions prevailing at the time of filing such stay applications/appeals. This new provisions would, mutatis mutandis, apply to Service Tax.
- Section 31G has been proposed to be amended to rechristen the “Customs and Central Excise Settlement Commission” as the “Customs, Central Excise and Service Tax Settlement Commission”, pursuant to the amendment in 2012 which enabled the Commission to also take up Service Tax matters.
- Section 32E has been proposed to be amended to extend the scope of the cases which can be taken up by the Settlement Commission, to also cover situations in which the assessee has not filed the prescribed returns, provided that the Settlement Commission is satisfied with the circumstances for non-filing of returns
- Section 32E is also proposed to be amended to do away with the bar on filing of application before the Commission for a period of 180 days, where the excisable goods, books of accounts or documents have been seized under the CE Act or Rules thereunder
- By way of a proposed Explanation to Section 320, the bar on filing of subsequent applications to the Settlement Commission will apply where there has been any concealment of particulars of duty liability from a Central Excise Officer.

Other amendments

(applicable w.e.f. enactment of the act unless stated otherwise)

- Resident private limited company is being included as a class of persons eligible to make an application for Advance Ruling in service tax **(w.e.f. July 10, 2014)**
- Section 80 is being amended to exclude the reference of first proviso to section 78. This amendment, in effect, removes the power to waive the 50% penalty imposable in cases where service tax has not been levied, not paid or short levied or short paid on account of suppression of facts or wilful misstatement but details of transactions are available in the specified record.
- Section 87 is being amended to incorporate power to recover dues of a predecessor from the assets of a successor purchased from the predecessor as it is presently provided for in section 11 of the Central Excise Act, 1944.