

Services Tax – Series 3

Changes by Finance Bill, 2011

Notifications issued pursuant to Budget 2011.

Notification No.1/2011 – Service Tax

Rule 3(2A) of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 inserted.

The CENVAT credit of tax paid on taxable services as referred to under sub-clauses (zzd), (zzq) and (zzzh) of clause (105) of section 65 of the Finance Act, 1994, shall be available only to the extent of 40% of the service tax paid when such tax has been paid on the full value of the service after availing CENVAT credit on inputs.

Effective date – 1ST MARCH, 2011.

Notification No.1/2011 – Service Tax

ANALYSIS

Credit of tax on input services of

- **'Erection, commissioning or installation',**
- **'Commercial or industrial construction' and**
- **'Construction of complex' services**

as available to a person providing 'Works contract service' shall be restricted to 40% of tax paid, when such tax has been paid on full value of the service after availment of Cenvat credit on inputs.

Notification No.2/2011 – Service Tax

Determination of value of service in relation to money changing. - Rule 2B of Service Tax (Determination of Value) Rules, 2006 inserted.

Subject to the provisions of section 67, the value of taxable service provided for the services referred to in sub-clause (zm) and (zzk) of clause (105) of section 65 of the Act, so far as it pertains to purchase or sale of foreign currency, including money changing, shall be determined by the service provider in the following manner:-

For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency for that day, multiplied by the total units of currency.

Example I: US\$100 are sold by a customer at the rate of Rupees 45 per US\$. RBI reference rate for US\$ is Rupees 45.50 for that day. The taxable value shall be Rupees 500.

Example II: INR70000 is changed into Great Britain Pound (GBP) and the exchange rate offered is Rupees 70, thereby giving GBP 1000. RBI reference rate for that day for GBP is Rupees 69. The taxable value shall be Rupees 1000.

Provided that in case where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money:

Provided further that in case where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI;

Notification No.2/2011 – Service Tax

ANALYSIS

Determination of value in case of money changers

- (i) for a currency exchanged either from or to Indian Rupees, shall be equal to the units of currency exchanged multiplied by the difference in the buying rate or the selling rate, as the case may be, and the RBI reference rate for that currency for that day;
- (ii) for a currency where the RBI reference rate is not available, shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money;
- (iii) where neither of the currencies exchanged is Indian Rupee, shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day.

Effective date – 1st April, 2011.

Notification No. 3/2011 – Service Tax

Rule 4A(1) of Service Tax Rules, 1994 is amended to .

Every person providing taxable service shall not later than fourteen days from the date of provision of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect of taxable service provided or to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely :-

- (i) the name, address and the registration number of such person;
 - (ii) the name and address of the person receiving taxable service;
 - (iii) description, classification and value of taxable service provided or to be provided
; and
 - (iv) the service tax payable thereon.
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Notification No. 3/2011 – Service Tax

Provided that in case the provider of taxable service is a banking company or a financial institution including a non banking financial company, or any other body corporate or any other person, providing service to any person in relation to banking and other financial services, an invoice, a bill or, as the case may be, challan shall include any document, by whatever name called, whether or not serially numbered, and whether or not containing address of the person receiving taxable service but containing other information in such documents as required under this sub-rule.

Provided further that in case the provider of taxable service is a goods transport agency, providing service to any person, in relation to transport of goods by road in a goods carriage, an invoice, a bill or, as the case may be, a challan shall include any document, by whatever name called, which shall contain the details of the consignment note number and date, gross weight of the consignment and also contain other information as required under this sub-rule.

Provided also that where any payment towards the value of taxable service is not received and such taxable service is provided continuously for successive periods of time and the value of such taxable service is determined or payable periodically, an invoice, a bill, or as the case may be, a challan shall be issued by a person providing such taxable service, not later than fourteen days from the last day of the said period.

Provided also that in case the provider of taxable service is aircraft operator providing the service of air transport of passenger, an invoice, a bill or as the case may be, challan shall include ticket in any form by whatever name called and whether or not containing registration number of the service provider, classification of the service received and address of the service receiver but containing other information in such documents as required under this sub-rule.

Notification No. 3/2011 – Service Tax

Analysis

Prima facie 2 major changes are made in these rules:

- (i) for the word “completion of”, the word “provision of” is substituted;*
- (ii) the third proviso is omitted.*

These changes are result of Point of Taxation Rules, 2011 which are also notified. These rules has changed the method of payment of service tax from cash basis accrual basis. I will discuss these rules in my next presentation in detail.

Change is this rule independently is showing that now invoice within 14 days is not necessary in case of continuous service.

Effective date – 1st April, 2011.

Notification No. 3/2011 – Service Tax

Rule 5B Service tax Rules, 1994 - Date for determination of rate.-
Inserted

The rate of tax in case of services provided, or to be provided, shall be the rate prevailing at the time when the services are deemed to have been provided under the rules made in this regard.

ANALYSIS

Rules are not notified as yet.

Draft Point of Taxation rules, 2010 should be referred for an idea as to how these rules would be framed.

Effective date – 1st April, 2011.

Notification No. 3/2011 – Service Tax

Rule 6 Service tax Rules, 1994 amended.

in sub-rule (1),-

- (a) for the words, "payments are received, towards the value of taxable services", the words "service is deemed to be provided as per the rules framed in this regard" shall be substituted;
- (b) in the first proviso, for the words, "payments are received, towards the value of taxable services", the words "service is deemed to be provided as per the rules framed in this regard" shall be substituted;
- (c) the second proviso shall be omitted;
- (d) for the third proviso, the following shall be substituted, namely: -
"Provided also that 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.";
- (e) after the third proviso, the Explanation shall be omitted;
- (ii) for sub-rule (3), the following shall be substituted, namely: -
"(3) 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, the assessee may take the credit of such excess service tax paid by him, if the assessee.-
 - (a) has refunded the payment or part thereof, so received alongwith the service tax payable thereon for the service to be provided by him 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."

Notification No. 3/2011 – Service Tax

Analysis

Point of Taxation Rules, 2011 are notified. These amendments are made in order to give a fare pass through to these rules. These rules has changed the method of payment of service tax from cash basis accrual basis. I will discuss these rules in my next presentation in detail.

In case services are not rendered but advance has been received by service provider and he has paid the service tax to government then adjustment of such service tax paid is allowed.

Effective date – 1st April, 2011.

Notification No. 3/2011 – Service Tax

Rule 6(4B) Service tax Rules, 1994 in clause (iii), for the words, “one lakh rupees”, the words “two lakh rupees” shall be substituted;

ANALYSIS

The monetary limit of Rs.1,00,000/- for adjustment under Rule 6(4B)(iii) of the Service Tax Rules, 1994 is being raised to Rs.2,00,000/-.

Effective date – 1st April, 2011.

Notification No. 3/2011 – Service Tax

Rule 6(6A) Service tax Rules, 1994 inserted

Where an amount of service tax payable has been self-assessed under sub-section (1) of section 70 of the Act, but not paid, either in full or part, the same, shall be recoverable alongwith interest in the manner prescribed under section 87 of the Act.

ANALYSIS

Rule 6(6A) is being inserted in Service Tax Rules, 1994, to provide that if any amount of service tax has been self-assessed and not paid, the same shall be recoverable with interest under section 87 of the Act. Thus, there shall be no need to resort to provisions of section 73.

Effective date – 1st April, 2011.

Notification No. 3/2011 – Service Tax

Rule 6(7B) Service tax Rules, 1994

- a) for the figures and words “0.25 per cent. of the gross amount”, the figures and words “0.1 per cent. of the gross amount” shall be substituted;
- b) the Proviso and the Illustration shall be omitted.

ANALYSIS

Rule pertaining to sale and purchase of foreign exchange is being amended to,—

- (a) omit the proviso as well as the illustration; and
- (b) reduce the composition rate from 0.25% to 0.1% of the gross amount of currency exchanged towards discharge of service tax liability.

Effective date – 1st April, 2011.

Notification No. 4/2011 – Service Tax

ANALYSIS

The rates of service tax on travel by air are being revised as follows:

- (a) Domestic travel - economy class: from Rs.100 to Rs.150
- (b) Domestic travel - other than economy class - 10% (Standard rate)
- (c) International travel - economy class: from Rs.500 to Rs.750

Effective date – 1st April, 2011.

Notification No. 5/2011 – Service Tax

In exercise of the power conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, being satisfied that it is necessary in the public interest, so to do hereby exempts the taxable service specified in section 65(105)(zz) of the said Finance Act, when provided by an organiser of business exhibition for holding a business exhibition outside India, from the whole of the service tax leviable thereon under section 66 of the said Finance Act.

ANALYSIS

Exemption is being provided to services provided by an organizer of business exhibitions in relation to business exhibitions held outside India.

Effective date – Immediate effect. Date is 1st march, 2011.

Notification No. 6/2011 – Service Tax

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service of execution of a works contract referred to in sub-clause (zzzza) of clause (105) of section 65 of the Finance Act, when provided for the purpose of carrying out,-

- (a) construction of new residential complex or part thereof; or
- (b) completion and finishing services of new residential complex or part thereof ,under Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana, from the whole of the service tax leviable thereon under section 66 of the Finance Act.

ANALYSIS

Exemption is being provided to 'Works contract' service provided for construction or finishing of new residential complex under

1. 'Jawaharlal Nehru National Urban Renewal Mission'; and
2. 'Rajiv Awaas Yojana'.

Effective date – Immediate effect. Date is 1st march, 2011.

Notification No. 7/2011 – Service Tax

In exercise of the power conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service specified in sub-clause (d) of clause (105) of section 65 of the Finance Act, provided by an insurer carrying on General Insurance Business to any person for providing insurance under the Rashtriya Swasthya Bima Yojana from the whole of the service tax leviable thereon under section 66 of the Finance Act.

ANALYSIS

Exemption is being provided to 'Rashtriya Swasthya Bima Yojana' under the 'General insurance' service.

Effective date – Immediate effect. Date is 1st march, 2011.

Notification No. 8/2011 – Service Tax

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services as referred to in sub-clauses (zzn), (zpz) and (zzzp) of clause (105) of section 65 of the Finance Act, provided to any person located in India, when the goods are transported from a place located outside India to a final destination which is also outside India, from the whole of service tax leviable thereon under section 66 of the Finance Act

ANALYSIS

Services related to transportation of goods by road, rail or air when both the origin and the destination are located outside India is being exempted from service tax.

Effective date – 1st April, 2011.

Notification No. 9/2011 – Service Tax

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act (hereinafter referred to as the Finance Act), 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable services as referred to in sub-clause (zzn) of clause (105) of section 65 of the Finance Act, from service tax leviable under section 66 of the Finance Act to the extent so much of the value as is equal to the amount of air freight included in the value determined under section 14 of the Customs Act, 1962 (52 of 1962) or the rules made thereunder for the purpose of charging customs duties.

ANALYSIS

Value of air freight included in the assessable value of goods for charging customs duties is being excluded from taxable value for the purpose of levy of service tax under the 'Transport of goods by air' service.

Effective date –1st April, 2011.

Notification No. 10/2011 – Service Tax

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts services provided in relation to the execution of works contract, referred to in sub-clause (zzzza) of clause (105) of section 65 of the Finance Act, when provided wholly within an airport and classified under sub-clause (zzm) of clause (105) of section 65 of the Finance Act, 1994, from the whole of service tax leviable thereon under section 66 of the Finance Act

ANALYSIS

Exemption is being provided to services provided within an airport or civil enclave under the 'Works contract' service.

Effective date – Immediate effect. Date is 1st march, 2011.

Notification No. 11/2011 – Service Tax

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts services provided in relation to the execution of works contract, referred to in sub-clause (zzzza) of clause (105) of section 65 of the Finance Act, when provided wholly within the port or other port, for construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways from the whole of service tax leviable thereon under section 66 of the Finance Act

ANALYSIS

Exemption is being provided to services provided wholly within the port or other port, for construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways under the 'Works contract' service.

Effective date – Immediate effect. Date is 1st march, 2011.

Notification No. 12/2011 – Service Tax

Rule 3(1) of Export of Services Rules, 2005.

In (i), for the brackets, letters and word “(zzzza), and (zzzzm)”, the brackets, letters and word “(zzzza), (zzzzm) and (zzzzu)” shall be substituted; In clause (ii), for the portion beginning with the brackets, figures and words “specified” and ending with the words “as are performed outside India”, the following shall be substituted, namely: -

“(ii) specified in sub-clauses (a), (f), (h), (i), (j), (l), (n), (o), (w), (z), (zb), (zc), (zi), (zj), (zn), (zo), (zq), (zr), (zt), (zu), (zv), (zw), (zz), (zza), (zzc), (zzd), (zzf), (zzg), (zzi), (ztl), (zzm), (zzo), (ztt), (zzv), (zzw), (zzx), (zzy), (zzzd), (zzze), (zzzf), (zzzzg), (zzzzh), (zzzzi), (zzzzk), (zzzzl) and (zzzzo) of clause (105) of section 65 of the Act, be provision of such services as are performed outside India:

ANALYSIS

Export of Services Rules, 2005 are being amended so as to move some of the specified services from one category to another.

Effective date – 1st April, 2011.

Notification No. 13/2011 – Service Tax

Rule 3 Taxation of Services (Provided from Outside India and Received in India)
Amendment Rules, 2011

in clause (i), for the brackets, letters and word "(zzzza) and (zzzzm)", the brackets, letters and word "(zzzza), (zzzzm) and (zzzzu)" shall be substituted;

in clause (ii), for the portion beginning with the brackets, figures and words "specified" and ending with the words "as are performed in India", the following shall be substituted, namely: -

"(ii) specified in sub-clauses (a), (f), (h), (i), (j), (l), (n), (o), (w), (z), (zb), (zc), (zi), (zj), (zn), (zo), (zq), (zr), (zt), (zu), (zv), (zw), (zz), (zza), (zzc), (zzd), (zzf), (zzg), (zzi), (z zl), (zzm), (zzo), (zzt), (zzv), (zzw), (zzx), (zzy), (zzzd), (zzze), (zzzf), (zzzzg), (zzzzh), (zzzzi), (zzzzk), (zzzzl) and (zzzzo) of clause (105) of section 65 of the Act, be such services as are performed in India:"

ANALYSIS

Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 are being amended so as to move some of the specified services from one category to another.

Effective date –1st April, 2011.

Notification No. 14/2011 – Service Tax

In exercise of the powers conferred by section 75 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 26/2004-Service Tax, dated the 10th September, 2004, published in the Gazette of India, Extraordinary, vide Number G.S.R. 601 (E), dated the 10th September, 2004, namely: -In the said notification, for the words “thirteen per cent.”, the words “eighteen per cent.” shall be substituted.

ANALYSIS

Interest on delayed payment of Service Tax has been increased from 13% to 18%.

This is 50% increase in rate of interest, from now onwards assesses will be forced to comply with service tax payment requirements timely.

Effective date –1st April, 2011.

Notification No. 15/2011 – Service Tax

In exercise of the powers conferred by section 73B of the Finance Act, 1994 (32 of 1994), the Central Government, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 8/2006-Service Tax, dated the 19th April, 2006, published in the Gazette of India, Extraordinary, vide number G.S.R.224 (E), dated the 19th April, 2006, namely: -

In the said notification, for the words “thirteen per cent.”, the words “eighteen per cent.” shall be substituted

ANALYSIS

Interest on amount collected in excess has been increased from 13% to 18%.

This is 50% increase in rate of interest, from now onwards assesses will be forced to comply with service tax payment requirements timely.

Effective date – 1st April, 2011.

Notification No. 16/2011 – Service Tax

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 1/2006-Service Tax, dated the 1st March, 2006, published in the Gazette of India, vide Number G.S.R.115(E), dated the 1st March, 2006, namely: -

In the said notification, in the Table, after S.No.11 and the entries relating thereto, the following S.No. and the entries shall be inserted, namely: -

TABLE

Notification No. 16/2011 – Service Tax

TABLE

(1)	(2)	(3)	(4)	(5)
“12.	(zzzzl)	Services provided or to be provided, to any person, by any other person, in relation to transport of- i) Coastal goods; ii) Goods through national waterway; or iii) Goods through inland water.	-	75”

Notification No. 16/2011 – Service Tax

ANALYSIS

An abatement of 25% from the taxable value is being provided for the purpose of levy of service tax under 'Transport of goods through coastal and inland shipping'.

Effective date – Immediate effect. 1st March, 2011.

Notification No. 17/2011 – Service Tax

Supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 9/2009-Service Tax, dated the 3rd March, 2009

ANALYSIS

A modified scheme is being introduced to refund service tax to SEZ units and developers and notification No. 9/2009-ST is being superceded. In the modified scheme, 'wholly consumed' services are being defined in the notification in order to extend 'outright exemption' and to permit refund of all other services on a proportionate basis.

Effective date –1st April, 2011.

THANK YOU

Your comments and suggestions are of utmost importance and are always welcomed.

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