

SERVICE TAX

Finance Bill(Cla useNo.)	Amend ments Effectin g sections	Old Law	Proposed new law	Applica ble w.e f	Executive Summary
71(A)(1)	65(9)	<p>"authorized service station" means any service station or centre, authorized by any motor vehicle manufacturer, to carry out any 3[service, repair, reconditioning or restoration] of any motor car or two wheeled motor vehicle manufactured by such manufacturer;</p>	-	Will come in to effect from a date notified after the enactme nt of the finance bill, 2011	Definition of ‘Authorised Service Centre’ has been omitted.
71(A)(2)	65(25a)	<p>“club or association” means any person or body of persons providing services, facilities or advantages, for a subscription or any other amount, to its members, but does not include-</p> <p>(i) any body established or constituted by or under any law for the time being in force; or</p> <p>(ii) any person or body of persons engaged in the activities of trade unions, promotion</p>	<p>‘(25a) “clinical establishment” means—</p> <p>(i) a hospital, maternity home, nursing home, dispensary, clinic, sanatorium or an institution, by whatever name called, owned, established, administered or managed by any person or body of persons, whether incorporated or not, having in its establishment the facility of central air-conditioning either in whole or in part of its premises and having more than twenty-five beds for in-patient treatment at any time during the financial year, offering services for</p>	Will come in to effect from a date notified after the enactme nt of the finance bill, 2011	<p>Definition the word ‘Clinical Establishment’ has been introduced in this clause.</p> <p>Tax will be imposed on services provided by any clinical establishments.</p>

		<p>of agriculture, horticulture or animal husbandry; or</p> <p>(iii) any person or body of persons engaged in any activity having objectives which are in the nature of public service and are of a charitable, religious or political nature; or</p> <p>(iv) any person or body of persons associated with press or media;</p>	<p>diagnosis, treatment or care for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine; or</p> <p>(ii) an entity owned, established, administered or managed by any person or body of persons, whether incorporated or not, either as an independent entity or as a part of any clinical establishment referred to in sub-clause (i), which carries out diagnosis of diseases through pathological, bacteriological, genetic, radiological, chemical, biological investigations or other diagnostic or investigative services with the aid of laboratory or other medical equipment, but does not include an establishment, owned or controlled by—</p> <p>(a) the Government; or</p> <p>(b) a local authority;</p>		
71(A)(2)	25(aa)	-	<p>“club or association” means any person or body of persons providing services, facilities or advantages, primarily to its members, for a subscription or any other amount, but does not include—</p> <p>(i) any body established or constituted by or under any law for the time being in force; or</p> <p>(ii) any person or body of persons engaged in the activities of trade unions,</p>	Will come in to effect from a date notified after the enactment of the finance bill, 2011	Scope of this service has been widened. Now service tax would be levied on services rendered to non members also. However service tax would not be levied on several establishments which have been specified in definition.

			<p>promotion of agriculture, horticulture or animal husbandry; or</p> <p>(iii) any person or body of persons engaged in any activity having objectives which are in the nature of public service and are of a charitable, religious or political nature; or</p> <p>(iv) any person or body of persons associated with press or media;';</p>		
71(A)(3)	65(27)	<p>"commercial training or coaching centre" means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes <i>but does not include preschool coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being</i></p>	<p>"commercial training or coaching centre" means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes.</p>	<p>Will come in to effect from a date notified after the enactment of the finance bill, 2011</p>	<p>Scope of this service has been widened.</p> <p>“Commercial training or coaching centre” is being amended to bring all unrecognized courses within the tax net, irrespective of the fact that such courses are conducted by an institute which also conducts courses which may lead to grant of a recognised degree or diploma.</p> <p>Also pre-school coaching and training Centres have been brought under tax net.</p>

		<i>in force;</i>			
71(A)(4)	65 (104c)	<p>“support services of business or commerce” means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.</p> <p><i>Explanation.—For the purposes of this clause, the expression “infrastructural support services” includes providing</i></p>	<p>“support services of business or commerce” means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, <i>operational or administrative assistance in any manner,</i> formulation of customer service and pricing policies, infrastructural support services and other transaction processing.</p> <p><i>Explanation.—For the purposes of this clause, the expression “infrastructural support services” includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security;]</i></p>	Will come in to effect from a date notified after the enactment of the finance bill, 2011	The definition of ‘Business support services’ is being amended to include the services provided by way of operational or Administrative assistance in any manner.

		<i>office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security;]</i>			
71(A)(5) (a)	65 (105) (zo)	[to any person], by an authorised service station, in relation to any service ⁸ [repair, reconditioning or restoration of motor cars, light motor vehicles] or two wheeled motor vehicles; in any manner	“(zo) to any person, by any other person, in relation to any service for repair, reconditioning, restoration or decoration or any other similar services, of any motor vehicle other than three wheeler scooter auto-rickshaw and motor vehicle meant for goods carriage;”;	Will come in to effect from a date notified after the enactment of the finance bill, 2011	The scope of ‘Authorized service station service’ is being expanded to: (a) include services provided by any person; (b) cover all motor vehicles and (c) also cover the services of decoration and similar services in respect of vehicles along with the services already covered. However three wheeler scooter auto-rickshaw and motor vehicle meant for goods carriage.
71(A)(5) (b)	65 (105) (zx)	"taxable service" means any 1[service provided or to be provided],- to a 2[policy holder or any person], by an 3[insurer, including re-insurer] carrying on life insurance business 4[in relation to risk cover in life insurance;]	"taxable service" means any 1[service provided or to be provided],- “ to a policy holder or any person, by an insurer, including re-insurer carrying on life insurance business;	Will come in to effect from a date notified after the enactment of the finance bill, 2011	The scope of the ‘Life insurance service’ is being widened to cover all services provided to a policyholder or any person by insurer, or re-insurer carrying on life insurance business. It is also being provided that tax shall be charged on the portion of the premium other than what is allocated for investment, when the break-up of premium is shown separately in any document given to the policy holder. The composition rate is also

					being increased from 1% to 1.5%.
71(A)(5)(c)	65 (105) (zzze)	to its members, by any club or association in relation to provision of services, facilities or advantages for a subscription or any other amount;	to its members <i>or any other person</i> , by any club or association in relation to provision of services, facilities or advantages for a subscription or any other amount;	Will come in to effect from a date notified after the enactment of the finance bill, 2011	The scope of the ‘Club or association service’ is being expanded to include service provided to non-members also.
71(A)(5)(d)	65 (105) (zzzzm)	to a business entity, by any other business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner: Provided that any service provided by way of appearance before any court, tribunal or authority shall not amount to taxable service.	(i) to any person, by a business entity, in relation to advice, consultancy or assistance in any branch of law, in any manner; (ii) to any business entity, by any person, in relation to representational services before any court, tribunal or authority; (iii) to any business entity, by an arbitral tribunal, in respect of arbitration. <i>Explanation.</i> —For the purposes of this item, the expressions “arbitration” and “arbitral tribunal” shall have the meanings respectively assigned to them in the Arbitration and Conciliation Act, 1996;’;	Will come in to effect from a date notified after the enactment of the finance bill, 2011	The scope of Legal consultancy services is being expanded by bringing within its ambit the: (a) service provided by a business entity to individuals in relation to advice, consultancy or assistance in any branch of law, in any manner; (b) representational service provided by any person (except individual) to any business entity and (c) service of ‘arbitration’ provided by an arbitral tribunal to any business entity. However representational services, provided to individuals will continue to be exempt.
71(A)(5)(e)	65(105) (zzzzo)	by any hospital, nursing home or multi-specialty clinic,— (i) to an employee of any business entity, in relation to health check-up or preventive care,	“to any person,— (i) by a clinical establishment; or (ii) by a doctor, not being an employee of a clinical establishment, who provides services from such premises for diagnosis, treatment or care	Will come in to effect from a date notified after the enactment of the	The scope of Health services is being expanded by including: a) All services, including diagnostic services, provided, by a centrally air-conditioned (wholly or partially) clinical establishment having more

		where the payment for such check-up or preventive care is made by such business entity directly to such hospital, nursing home or multi-specialty clinic; or (ii) to a person covered by health insurance scheme, for any health check-up or treatment, where the payment for such health check-up or treatment is made by the insurance company directly to such hospital, nursing home or multi-specialty clinic;	for illness, disease, injury, deformity, abnormality or pregnancy in any system of medicine;”;	finance bill, 2011	than 25 beds for in-patient treatment during any part of the year; b) Diagnostic services being provided by a clinical establishment with the aid of laboratory or other medical equipment; and c) Services provided by a doctor, not being an employee of a clinical establishment, from the premises of such establishment. In view of the comprehensive coverage of health services under (a), (b) and (c) above, the existing health services where payments are required to be made directly by the insurance company or business entities would no longer be operational. No tax would be imposed on establishments of State Government, Central Government and Local Authority.
71(A)(5) (f)	65(105) (zzzzv)	-	“(zzzzv) to any person, by a restaurant, by whatever name called, having the facility of air-conditioning in any part of the establishment, at any time during the financial year, which has licence to serve alcoholic beverages, in relation to serving of food or beverage, including alcoholic beverages or both, in its premises;	Will come in to effect from a date notified after the enactment of the finance bill, 2011	Service tax would be imposed in relation to serving food and beverages by air-conditioned restaurants having a license to serve alcoholic beverages in its premises.
71(A)(5)	65(105)	-	(zzzzw) to any person by a	Will	Service tax has been

		<p>(zzzc), (zzzd), (zzze), (zzzf), (zzzg), (zzze), (zzzh), (zzzi), (zzzj), (zzzk), (zzzl), (zzzm), (zzzn), (zzzo), (zzzp), (zzzq), (zzzr), (zzzs), (zzzt), (zzzu), (zzzv), (zzzw), (zzzx), (zzzy), (zzzz), (zzza), (zzzb), (zzzc), 4[(zzzd), (zzze), (zzzf), (zzzg), (zzzh), (zzzi), 5[(zzzj), (zzzk), (zzzl), 6[(zzzm), (zzzn), (zzzo), (zzzp), (zzzq) (zzzr) (zzzs) (zzzt) and (zzzu)] of clause (105) of section 65 and collected in such manner as may be prescribed.]</p>			
71(C)	70	<p>Furnishing of returns- [(1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency⁸ [and with such late fee fee not exceeding two thousand rupees, for delayed</p>	<p>Furnishing of returns- [(1) Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency [and with such late fee fee not exceeding <i>twenty thousand rupees</i>, for delayed furnishing of return, as may be prescribed.] [(2) The person or class of persons notified under subsection (2) of section 69,</p>	<p>Will come in to effect from a date notified after the enactment of the finance bill, 2011.</p>	<p>Maximum penalty for late filing of return has been increased from Rs. 2,000/- to Rs. 20,000/-.</p>

		<p>furnishing of return, as may be prescribed.]</p> <p>[(2) The person or class of persons notified under subsection (2) of section 69, shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.]</p>	<p>shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.]</p>		
71(D)	73 (1A) & (2)	<p>Recovery of Service tax not levied or paid or short levied or short paid or erroneously refunded –</p> <p>[(1A) Where any service tax has not been levied or paid or has been short-levied or shortpaid or erroneously refunded, by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Chapter or the rules made thereunder, with intent to evade payment of service tax, by such person</p>	Omitted	<p>Will come in to effect from a date notified after the enactment of the finance bill, 2011</p>	<p>The benefit of reduced penalty available in cases of fraud, collusion, etc. under proviso to section 73 (1A) shall not be available.</p>

or his agent, to whom a notice is served under the proviso to sub-section

(1) by the Central Excise Officer, such person or agent may pay service tax in full or in part as may be accepted by him, and the interest payable

thereon under section 75 and penalty equal to twenty-five per cent. of the service tax specified in the notice or the service tax so accepted by such

person within thirty days of the receipt of the notice.]

(2) The 4[Central Excise Officer] shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of service tax due from, or erroneously refunded to, such person (not being in excess of the amount specified in the notice) and thereupon such

		person shall pay the amount so determined.			
	73 (4A)	-	<p>‘(4A) Notwithstanding anything contained in sub-sections (3) and (4), where during the course of any audit, investigation or verification, it is found that any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, but the true and complete details of transactions are available in the specified records, the person chargeable to service tax or to whom erroneous refund has been made, may pay the service tax in full or in part, as he may accept to be the amount of tax chargeable or erroneously refunded along with interest payable thereon under section 75 and penalty equal to one per cent. of such tax, for each month, for the period during which the default continues, up to a maximum of twenty five per cent. of the tax amount, before service of notice on him and inform the Central Excise Officer of such payment in writing, who, on receipt of such information, shall not serve any notice under sub-section (1) in respect of the amount so paid and proceedings in respect of</p>	<p>Will come in to effect from a date notified after the enactment of the finance bill, 2011</p>	<p>Reduced penalty in cases where during the course of audit, verification or investigation it is found that the transactions not reported to the department are available in the records or invoices. Moreover, penalty is being reduced to 1% per month of the tax amount upto a maximum of 25%.</p>

			<p>the said amount of service tax shall be deemed to have been concluded: Provided that the Central Excise Officer may determine the amount of service tax, if any, due from such person, which in his opinion remains to be paid by such person and shall proceed to recover such amount in the manner specified in sub-section (1).</p> <p><i>Explanation.</i>—For the purposes of this subsection and section 78, “specified records” means records including computerised data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of account shall be considered as the specified records.’;</p>		
71(E)	73B	<p>Interest on amount collected in excess-</p> <p>Where an amount has been collected in excess of the tax assessed or determined and paid for any taxable service under this Chapter or the rules made thereunder from the recipient of such service, the person</p>	<p>Interest on amount collected in excess-</p> <p>Where an amount has been collected in excess of the tax assessed or determined and paid for any taxable service under this Chapter or the rules made thereunder from the recipient of such service, the person who is liable to pay such amount as determined under sub-section (4) of section 73A, shall, in</p>	<p>Will come in to effect from a date notified after the enactment of the finance bill, 2011</p>	<p>Rate of interest shall be reduced interest rate by 3% for assesseees with a turnover of upto Rs.60 lakh.</p>

who is liable to pay such amount as determined under sub-section (4) of section 73A, shall, in addition to the amount, be liable to pay interest at such rate not below ten per cent. and not exceeding twenty-four per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the amount ought to have been paid under this Chapter, but for the provisions contained in sub-section (4) of section 73A, till the date of payment of such amount:

Provided that in such cases where the amount becomes payable consequent to issue of an order, instruction or direction by the Board under section 37B of the Central Excise Act, 1944, and such amount payable is voluntarily paid in

addition to the amount, be liable to pay interest at such rate not below ten per cent. and not exceeding twenty-four per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the amount ought to have been paid under this Chapter, but for the provisions contained in sub-section (4) of section 73A, till the date of payment of such amount:

Provided that in such cases where the amount becomes payable consequent to issue of an order, instruction or direction by the Board under section 37B of the Central Excise Act, 1944, and such amount payable is voluntarily paid in full, without reserving any right to appeal against such payment at any subsequent stage, within forty-five days from the date of issue of such order, instruction or direction, as the case may be, no interest shall be payable and in other cases, the interest shall be payable on the whole amount, including the amount already paid.

“Provided further that in the case of a service provider, whose value of

full, without reserving any right to appeal against such payment at any subsequent stage, within forty-five days from the date of issue of such order, instruction or direction, as the case may be, no interest shall be payable and in other cases, the interest shall be payable on the whole amount, including the amount already paid.

Explanation 1.—Where the amount determined under sub-section (4) of section 73A is reduced by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest payable thereon under this section shall be on such reduced amount.

Explanation 2.—Where the amount determined under sub-section (4) of section 73A is increased by the Commissioner (Appeals), the Appellate

taxable services provided in a financial year does not exceed sixty lakh rupees during any of the financial years covered by the notice issued under sub-section (3) of section 73A or during the last preceding financial year, as the case may be, such rate of interest shall be reduced by three per cent. per annum.”;

Explanation 1.—Where the amount determined under sub-section (4) of section 73A is reduced by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest payable thereon under this section shall be on such reduced amount.

Explanation 2.—Where the amount determined under sub-section (4) of section 73A is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, the interest payable thereon under this section shall be on such increased amount.]

		Tribunal or, as the case may be, the court, the interest payable thereon under this section shall be on such increased amount.]			
71(F)	75	<p>Interest on delayed payment of Service Tax – Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest 5 [at such rate not below ten per cent and not exceeding thirty-six per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette for the period] by which such crediting of the tax or any part thereof is delayed.]</p>	<p>Interest on delayed payment of Service Tax – Every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest 5 [at such rate not below ten per cent and not exceeding thirty-six per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gezette for the period] by which such crediting of the tax or any part thereof is delayed.] <i>“Provided that in the case of a service provider, whose value of taxable services provided in a financial year does not exceed sixty lakh rupees during any of the financial years covered by the notice or during the last preceding financial year, as the case may be, such rate of interest, shall be reduced by three per cent. per annum.”;</i></p>	Will come in to effect from a date notified after the enactment of the finance bill, 2011	Rate of interest shall be reduced interest rate by 3% for assesseees with a turnover of upto Rs.60 lakh.

Penalty for failure to pay service tax-

Any person, liable to pay service tax in accordance with the provisions of section 68 or the rules made under this Chapter, who fails to pay such tax, shall pay, in addition to such tax and the interest on that tax amount in accordance with the provisions of section 75, a penalty which shall not be less than two hundred rupees for every day during which such failure continues or at the rate of two per cent. of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax:

Provided that the total amount of the penalty payable in terms of this section shall not exceed the service tax payable.

Penalty for failure to pay service tax-

Any person, liable to pay service tax in accordance with the provisions of section 68 or the rules made under this Chapter, who fails to pay such tax, shall pay, in addition to such tax and the interest on that tax amount in accordance with the provisions of section 75, a penalty which shall not be less than **one hundred rupees** for every day during which such failure continues or at the rate of **one** per cent. of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax:

Provided that the total amount of the penalty payable in terms of this section shall not exceed **50%** of the service tax payable .

“Illustration

X, an assessee, fails to pay service tax of ten lakh rupees payable by the 5th March. X pays

the amount on the 15th March. The default has continued for ten days. The penalty payable by X is computed as follows:—

1% of the amount of default for 10 days

Will come in to effect from a date notified after the enactment of the finance bill, 2011

Penalty for delayed payment has been reduced from 2% to 1% per month or Rs.100 per day, whichever is higher. Maximum penalty reduced to 50% of the tax amount.

			<p>$(1/100 \times 10,00,000 \times 10/31 = \text{Rs.}3,225.80)$ <i>Penalty calculated @ Rs.100 per day for 10 days = Rs.1,000</i> <i>Penalty liable to be paid is Rs. 3226.00.”;</i></p>		
71(H)	77	<p>Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere. — (1) Any person,— (a) who is liable to pay service tax, or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to pay a penalty which may extend to five thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance; (2) Any person, who contravenes any of the provisions of this Chapter or any rules made thereunder for</p>	<p>Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere. — (1) Any person,— (a) who is liable to pay service tax, or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to pay a penalty which may extend to ten thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance; (2) Any person, who contravenes any of the provisions of this Chapter or any rules made thereunder for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to ten thousand rupees.]</p>	<p>Will come in to effect from a date notified after the enactment of the finance bill, 2011</p>	<p>Maximum penalty has been increased from Rs.5,000 to Rs.10,000.</p>

		which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to five thousand rupees.]			
71(I)	78	<p>Penalty for suppressing value of taxable service.</p> <p>—</p> <p>[Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of —</p> <p>(a) fraud; or</p> <p>(b) collusion; or</p> <p>(c) wilful mis-statement; or</p> <p>(d) suppression of facts; or</p> <p>(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax the person, liable to pay such service tax or erroneous refund, as determined under sub-section (2) of section 73, shall also be liable to pay a penalty, in addition to such service tax and interest thereon, if</p>	<p><i>“(1) Where any service tax has not been levied or paid or has been short-levied or short paid or erroneously refunded, by reason of—</i></p> <p><i>(a) fraud; or</i></p> <p><i>(b) collusion; or</i></p> <p><i>(c) wilful mis-statement; or</i></p> <p><i>(d) suppression of facts; or</i></p> <p><i>(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person, liable to pay such service tax or erroneous refund, as determined under sub-section (2) of section 73, shall also be liable to pay a penalty, in addition to such service tax and interest thereon, if any, payable by him, which shall be equal to the amount of service tax so not levied or paid or short-levied or short-paid or erroneously refunded:</i></p> <p><i>Provided that where true and complete details of the transactions are available in the specified records, penalty shall be</i></p>	Will come in to effect from a date notified after the enactment of the finance bill, 2011	<p>Penalty will be hereafter mandatory and equal to 100% of tax evaded.</p> <p>In situations covered under section 4A, the penalty shall be 50% of the tax amount.</p> <p>Further, the penalty is being reduced to 25% if the tax dues are paid within one month together with interest and reduced penalty.</p> <p>For assesseees having a turnover of upto Rs.60 lakh in any of the years covered in the show cause notice or in the preceding year, the period of one month shall be extended to 90 days.</p>

any, payable by him, which shall not be less than, but which shall not exceed twice, the amount of service tax so not levied or paid or short-levied or short-paid or erroneously refunded:]

reduced to fifty per cent. of the service tax so not levied or paid or short levied

or short-paid or erroneously refunded:

Provided further that where such service tax and the interest payable thereon is paid within thirty days from the date of communication of order of the Central Excise Officer determining such service tax, the amount of penalty liable to be paid by such person under the first proviso shall be twenty-five per cent. of such service tax:

Provided also that the benefit of reduced penalty under the second proviso shall be available

only if the amount of penalty so determined has also been paid within the period of thirty days

referred to in that proviso:

Provided also that in case of a service provider whose value of taxable services does not

exceed sixty lakh rupees during any of the years covered by the notice or during the last preceding financial year, the period of thirty days shall be extended to ninety days.

(2) Where the service tax determined to be payable is reduced or increased by the

Commissioner (Appeals), the Appellate Tribunal or,

as the case may be, the court, then, for the purposes of this section, the service tax as reduced or increased, as the case may be, shall be taken into account:

Provided that in case where the service tax to be payable is increased by the Commissioner

(Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the second proviso to sub-section (1), shall be available, if the amount of service tax so increased, the interest payable thereon and twenty-five per cent. of the consequential increase of penalty have also been paid within thirty days or ninety days, as the case may be, of communication of the order by which such increase in service tax takes effect:

Provided further that if the penalty is payable under this section, the provisions of section 76 shall not apply.

Explanation.—For the removal of doubts, it is hereby declared that any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the second proviso to sub-section (1) or the first

			<i>proviso to sub-section (2) shall be adjusted against the total amount due from such person.”;</i>		
71(J)	80	Penalty not to be imposed in certain cases. – Notwithstanding anything contained in the provisions of section 76,1 [section 77 or section 78], no penalty shall be imposable on the assessee for any failure referred to in said provisions, if the assessee proves that there was reasonable cause for the said failure.	Penalty not to be imposed in certain cases. – Notwithstanding anything contained in the provisions of section 76,1 [section 77 or section <i>1st proviso to sub section 1 section 78</i>], no penalty shall be imposable on the assessee for any failure referred to in said provisions, if the assessee proves that there was reasonable cause for the said failure.	Will come in to effect from a date notified after the enactme nt of the finance bill, 2011	Penalty can now be waived off for section 76, 77 and first proviso to section 78(1).
71(K)	82	Power to search premises – (1) 3[If the Commissioner of Central Excise has reason to believe] that any documents or book or things which in his opinion will be any useful for or relevant to proceedings under this Chapter are secreted in any place, he may authorize 4[any] 5 [Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of	Power to search premises – (1) 3[If the <i>Joint Commissioner of Central Excise</i> has reason to believe] that any documents or book or things which in his opinion will be any useful for or relevant to proceedings under this Chapter are secreted in any place, he may authorize 4[any] 5 [<i>supriendent of central excise</i>] 6[to search for and seize or may himself search for and seize, such documents or books or things.] (2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches,	Will come in to effect from a date notified after the enactme nt of the finance bill, 2011	Power to issue search warrant has been given to Joint Commissioner of central excise and the execution thereof to Superintendent central excise.

		<p>Central Excise] 6[to search for and seize or may himself search for and seize, such documents or books or things.]</p> <p>(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches, shall, so far as may be, apply or searches under this section as they apply to searches under that Code</p>	<p>shall, so far as may be, apply or searches under this section as they apply to searches under that Code</p>		
71(L)	83	<p>Application of certain provisions of Act 1 of 1944 –</p> <p>The provisions of the following section of the Central Excise Act, 1944 (1 of 1944), as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise: -</p> <p>9C, 9D,7 [xxxx], 11B, 8[11BB, 9[11C, 10[xxxx], 12,] 12A], 12B, 12C, 12D, 12E, 14,11 [14AA], 12[15, 33A, 35F], 13[35FF] to 35-O (both inclusive), 35Q, 36, 36A, 36B, 37A, 37B, 37C, 37D,</p>	<p>Application of certain provisions of Act 1 of 1944 –</p> <p>The provisions of the following section of the Central Excise Act, 1944 (1 of 1944), as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise: - “9C, 9D, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 14AA, 15, 33A, 35F”, <i>the figures and letters “9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 14AA, 15, 33A, 34A, 35F</i>”</p> <p>13[35FF] to 35-O (both inclusive), 35Q, 35 R (with effect from 20-10-2010) 36, 36A, 36B, 37A, 37B, 37C, 37D, 14[38A]* and 40.</p>	<p>Will come in to effect from a date notified after the enactment of the finance bill, 2011</p>	<p>Section 9A, 9AA, 9B, 9E, 34A and 35R of the Central Excise Act, 1944 have been made applicable to service tax.</p>

		14[38A]* and 40.			
71(M)	88	New	<p><i>Notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this Chapter, shall, save as otherwise provided in section 529A of the Companies Act, 1956 and the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002, be the first charge on the property of the assessee or the person as the case may be.</i></p>	Will come in to effect from a date notified after the enactment of the finance bill, 2011	First charge on the property of the defaulter has created for recovery of service tax dues from such defaulter subject to provisions of section 529A of the Companies Act, the Recovery of Debt due to Bank and Financial Institution Act, 1993 and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
71(M)	89	New	<p><i>89.(1) Whoever commits any of the following offences, namely,—</i> <i>(a) provides any taxable service chargeable to service tax under sub-section (1) of section 68 or receives any taxable service chargeable to tax under sub-section (2) of said section, without an invoice issued in accordance with the provisions of this Chapter or the rules made thereunder; or</i> <i>(b) avails and utilises credit of taxes or duty without actual receipt of taxable service or</i></p>	Will come in to effect from a date notified after the enactment of the finance bill, 2011	Provisions of section 89 has been re-introduced as under: (i) The prosecution shall apply in the following situations: (a) Provision of service without invoice; (b) Availment and utilization of CENVAT credit without receipt of inputs or input services; (c) Submitting false information; and (d) Non-payment of collected amount of service tax for a period of more than six months. (ii) The sanction for the prosecution will be granted

excisable goods either fully or partially in violation of the rules made under the provisions of this Chapter; or

(c) maintains false books of account or fails to supply any information which he is required to supply under this Chapter or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(d) collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due, shall be punishable,—

(i) in the case of an offence where the amount exceeds fifty lakh rupees, with imprisonment for a term which may extend to three years:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term of less than six months;

(ii) in any other case, with imprisonment for a term,

at the level of Chief Commissioner.

which may extend to one year.

(2) If any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to three years:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for a term less than six months.

(3) For the purposes of sub-sections (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than six months, namely:—

(i) the fact that the accused has been convicted for the first time for an offence under this Chapter;

(ii) the fact that in any proceeding under this Act, other than prosecution, the accused has been ordered to pay a penalty or any other action has been taken against him for the same act which constitutes the offence;

			<p><i>(iii) the fact that the accused was not the principal offender and was acting merely as a secondary party in the commission of offence;</i></p> <p><i>(iv) the age of the accused.</i></p> <p><i>(4) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Chief Commissioner of Central Excise.”;</i></p>		
71(N)	93A	<p>Power to grant Rebate - Where any goods or services are exported, the Central Government may grant rebate of service tax paid on taxable services which are used as input services for the manufacturing or processing of such goods or for providing any taxable services and such rebate shall be subject to such extent and manner as may be prescribed:</p> <p>Provided that where any rebate has been allowed on any goods or services under this section and the sale proceeds in respect of such goods or</p>	<p>Power to grant Rebate - Where any goods or services are exported, the Central Government may grant rebate of service tax paid on taxable services which are used as input services for the manufacturing or processing of such goods or for providing any taxable services and such rebate shall <i>except under such circumstances or such conditions as may be prescribed</i> be subject to such extent and manner as may be prescribed:</p> <p>Provided that where any rebate has been allowed on any goods or services under this section and the sale proceeds in respect of such goods or consideration in respect of such services are not received by or on behalf of the exporter in India within the time</p>	Will come in to effect from a date notified after the enactment of the finance bill, 2011	Additional powers have been given to central Government to grant rebate. Central Government may prescribe such conditional rebate.

		<p>consideration in respect of such services are not received by or on behalf of the exporter in India within the time allowed by the Reverse Bank of India under section 8 of the Foreign Exchange Management Act, 1999 (42 of 1999), such rebates shall be deemed never to have been allowed and the Central Government may recover or adjust the amount of such rebate in such manner as may be prescribed.]</p>			
71(O)	95 (1H)	New	<p><i>“(1H) If any difficulty arises in respect of implementing, classifying or assessing the value of any taxable service incorporated in this Chapter by the Finance Act, 2011, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty: Provided that no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2011 receives the assent of the President.”;</i></p>	<p>Will come in to effect from a date notified after the enactment of the finance bill, 2011</p>	<p>Power has been granted to central government to remove the difficulties arising out of Finance Act, 2011.</p>

71(P)	96(J)	New	<p><i>“ (1) Notwithstanding anything contained in section 66, no service tax shall be levied or collected in respect of membership fee collected by a club or association formed for representing industry or commerce, during the period on and from the 16th day of June, 2005 to the 31st day of March, 2008 (both days inclusive).</i></p> <p><i>(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected if sub-section (1) had been in force at all material times.</i></p> <p><i>(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within six months from the date on which the Finance Bill, 2011 receives the assent of the President.”.</i></p>	Will come in to effect from a date notified after the enactment of the finance bill, 2011	From 16-06-2005 to 31-03-2008 no service tax shall be levied in respect of membership fees collected by a club or association formed, which represents any industries or commerce. In case any service tax has already collected, it shall be refunded back. Application of this refund shall be made within a period of six months from the date on which the finance bill get assent of the President of India.
72		G.S.R. (E).- In exercise of the powers conferred by sections 93 and 94 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in	G.S.R. (E).- In exercise of the powers conferred by sections 93 and 94 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 rules further to	1 ST April 2000	Retrospective effect has been given to exemption granted under G.R.S. 492(E), dated the 7 th July, 2009, issued in exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994, granting exemption from whole service tax leviable under section 66 of

the public interest so to do, hereby makes the following rules further to amend the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, namely:-

1. (1) These rules may be called the Works Contract (Composition Scheme for Payment of Service Tax) Amendment Rules, 2009.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, in rule 3,-

(A) in sub-rule(1), for the Explanation, the following Explanation shall be substituted, namely:-

“Explanation.-For the purposes of this sub-rule, gross amount charged for the works contract shall be the sum,-
(a) including-
(i) the value of all

amend the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, namely:-

1. (1) These rules may be called the Works Contract (Composition Scheme for Payment of Service Tax) Amendment Rules, 2009.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, in rule 3,-

(A) in sub-rule(1), for the Explanation, the following Explanation shall be substituted, namely:-

“Explanation.-For the purposes of this sub-rule, gross amount charged for the works contract shall be the sum,-

(a) including-

(i) the value of all goods used in or in relation to the execution of the works contract, whether supplied under any other contract for a consideration or otherwise; and

(ii) the value of all the services that are required to be provided for the execution of the works contract;

(b) excluding-

(i) the value added tax or sales tax as the case may

that Act, to any person by a tour operator having a contract carriage permit for inter state or intra state transportation of passengers, excluding tourism, conducted tour, charter or hire.

goods used in or in relation to the execution of the works

contract, whether supplied under any other contract for a consideration or otherwise; and

(ii) the value of all the services that are required to be provided for the execution of the works contract;

(b) excluding-

(i) the value added tax or sales tax as the case may be paid on transfer of property in goods involved; and

(ii) the cost of machinery and tools used in the execution of the said works

contract except for the charges for obtaining them on hire:

Provided that nothing contained in this Explanation shall apply to a

works contract, where the execution under the said contract has

commenced or where any payment, except by way of credit or debit to any

account, has been

be paid on transfer of property in goods involved; and

(ii) the cost of machinery and tools used in the execution of the said works contract except for the charges for obtaining them on hire:

Provided that nothing contained in this Explanation shall apply to a

works contract, where the execution under the said contract has

commenced or where any payment, except by way of credit or debit to any account, has been made in relation to the said contract on or before the *1st April 2000.*”;

(B) after sub-rule(3), the following sub-rule shall be added, namely :-

“(4). The option under sub-rule (3) shall be permissible only where the declared value of the works contract is not less than the gross amount charged for such works contract.”.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected as if the notification referred to in sub-section (1) had been in force at all material times.

(3) Notwithstanding anything contained in the Finance Act, 1994, an

made in relation to the said contract on or before the 7th day of July, 2009.”; (B) after sub-rule(3), the following sub-rule shall be added, namely :- “(4). The option under sub-rule (3) shall be permissible only where the declared value of the works contract is not less than the gross amount charged for such works contract.”.

application for the claim of refund of service tax shall be made within six months from the date on which the Finance Bill, 2011 receives the assent of the President.
Explanation.—For the removal of doubts, it is hereby declared that the provisions of section 11B of the Central Excise Act, 1944, shall be applicable in case of refunds under this section.

Amendment in Rules

- 1) 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/-. being raised to Rs.2,00,000/-.
[The change will come into effect from 01.04.2011]
- 2) Rule 6(7A) of the Service Tax Rules, 1994 is being amended to provide that that an insurer carrying on life insurance business shall have the option to pay tax,—
 - (a) on the amount of gross premium charged from a policy holder reduced by the amount allocated for investment, where the breakup of the amount allocated for investment is shown separately to the policy holder;
 - (b) on an amount calculated @ 1.5% of the gross amount of premium charged from a policy holder in cases other than
 - (i) above; towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66 of Finance Act, 1994.
Such option shall not be available in cases where the entire premium paid by the policy holder is only towards risk cover in life insurance.

[The above change will come into effect from *a date to be notified, after the enactment of Finance Bill, 2011*]

3) Clause (B) of Rule 6(7) of the Service Tax Rules, 1994 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.

[The change will come into effect from 01.04.2011]

4) 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.

[The change will come into effect from 01.04.2011]

5) It is being defined in Service Tax (Determination of Value) Rules, 2006 that the value of the money changing service:

(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.

[The change will come into effect from 01.04.2011]

6) An explanation is being added to rule 5(1) of Service Tax (Determination of Value) Rules, 2006 to clarify that for the purpose of Telecommunication services, the value of the taxable service shall be gross amount charged by the telegraph authority from the service receiver.

[The change will come into effect from 01.04.2011]

7) Export of Services Rules, 2005 and 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.

[The changes will come into effect from 01.04.2011]

8) A sub-rule (2A) is being inserted in rule 3 of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 to provide that the 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.

[The change will come into effect from 01.03.2011]

9) The Point of Taxation Rules, 2011 have been framed and made ***effective from 01.04.2011***. These rules determine the point in time when the services shall be deemed to be provided.

Exemption Provided

Sl. No	Particulars	Effective from
1	Exemption is being provided to services provided by an organizer of business exhibitions in relation to business exhibitions held outside India.	Immediate effect
2	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'	Immediate effect
3	Exemption is being provided to 'Works contract' service provided for construction or finishing of new residential complex under 'Jawaharlal Nehru National Urban Renewal Mission' and 'Rajiv Awaas Yojana'.	Immediate effect
4	Exemption is being provided to services provided within a port or other port or an airport under the 'Works contract' service for specified purposes.	Immediate effect
5	Exemption is being provided to 'Rashtriya Swasthya Bima Yojana' under the 'General insurance' service.	Immediate effect
6	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.	01-04-2011
7	Services related to transportation of goods by road, rail or air when both the origin and the destination are located outside	01-04-2011

	India is being exempted from service tax..	
8	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.	Immedia te effect

No service tax audit in case of individual or sole proprietor having receipts upto 60 lakhs.

Clause 191 of the Budget speech which is reproduced as under:

The number of assesseees in service tax has grown manifold. I find that a large number of them comprise individuals or sole proprietors with small turnovers. Any audit at their premises tends to dislocate their activities for the duration of the audit. I therefore, propose to free all individual and sole proprietor taxpayers with a turnover upto `60 lakh from the formalities of audit. This will give relief to a large number of taxpayers. I also intend to give all assesseees with turnover upto `60 lakh, the benefit of 3 percentage points in interest on delayed payment.

States no service tax audit by department in case of individual or sole proprietor having receipts upto 60 lakhs.

Shifting the basis for tax collection from "cash" towards "accrual" basis as with Central Excise duty.

Clause 184 of the budget speech which is reproduced as under:

The actual collections of Service Tax do not reflect the full potential of this sector. While retaining the standard rate of service tax at 10 per cent, I seek to achieve a closer fit between the present service tax regime and its GST successor by:

- Bringing in a few new services into the tax net to expand the tax base while ensuring that the impact is predominantly on sections of society that have the ability to pay;
- Suitably expanding or rationalizing the scope of existing service categories;

- Rationalizing certain provisions relating to import of services and valuation;
- Modifying provisions of the Cenvat Credit scheme to achieve a more realistic balance between input credits and output tax and harmonising the provisions of the scheme across goods and services;
- Rationalizing penal provisions to reinforce the message that honest taxpayers would be facilitated and deviants would be dealt with severely; and
- **Adoption of Point of Taxation rules for services which would shift the basis for tax collection from “cash” towards “accrual” basis as with Central Excise duty.**

States shifting of basis of tax collection from ‘cash’ towards ‘accrual’.