

## ANALYSIS OF CIRCULAR NO. 158/9/ 2012 – ST DATED 08.05.2012

This circular clarifies that which rate of service tax to be taken in respect of 8 services specified (Like CA, CWA, CS, Architect etc.) in Rule 7 of Point of Taxation Rules, 2011 after change in rate of service tax wef 01.04.2012.

Up to 31.03.2011, there were no provisions under Finance Act, 1994 and rules made thereunder in respect of **date for determination of rate**. Same has been first provided by inserting Rule 5B of Service Tax Rules, 1994 wef 01.04.2011 vide notification no. 03 ST dated 01.03.2011. Rule 5B is as under:

**Date for determination of rate.** - 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.

Here it is important to note that Point of Taxation Rules, 2011 provides provision as to when services shall be deemed to have been provided. Rule 3 of POT Rules, 2011 provides provision as to when services shall be deemed to have been provided under normal circumstances. As per Rule 3 of POT Rules, 2011 point of taxation shall be determined on earlier of the following dates:

1. Date of issue of invoice or payment, whichever is earlier  
(if the invoice is issued within the prescribed period of 30 days from the date of completion of the provision of service(up to 31.03.2012 invoices need to be issued within 14 Days).
2. Date of completion of the provision of service or payment, whichever is earlier  
(if the invoice is not issued within the prescribed period as above.)
3. Date of receipt of advance payment

Up to 31.03.2012, if the following 8 services provided by individuals or proprietary firms or partnership firms then these services shall be deemed to have been provided on the date on which payment is received:

1. Consulting Engineer's Services [Section 65(105)(g)]
2. Architect's Services[section 65(105)(p)]
3. Interior Decorator's Services [Section 65(105)(q)]
4. Practicing Chartered Accountant's Services[Section 65(105)(s)]
5. Practicing Cost Accountant's Services[Section 65(105)(t)]
6. Practicing Company Secretary's Services[Section 65(105)(u)]
7. Scientific or Technical Consultancy Services [Section 65(105)(za)]
8. Legal Consultancy Services [Section 65(105)(zzzm)]

From the combined reading of Rule 5B of Service Tax Rules, 1994 and Rule 7 of Point of Taxation rules, 2011 we can say that in respect of above 8 services rate of service tax shall be taken of the date on which payment is received irrespective of date of issue of invoice or completion of services.

WEF 01.04.2012 rate of service tax has been increased from 10% to 12% now the question was that, in respect of invoice issued up to 31.03.2012, which rate of services tax to be taken and same has been clarified by department on the basis of above provisions.

Department has clarified that, in respect of invoices raised up to 31.03.2012 by individuals or proprietary firms or partnership firms providing above 8 specified services, rate of service tax shall be 12%.

I hope it will be very helpful for you. Your feedback in respect of same would be highly appreciated.

(Disclaimer: The above analysis has been drafted as per various provisions of Finance Act 1994, and notifications and circulars issued thereunder. The analysis may not be entirely correct for reader to reader due to different interpretations by different readers. The readers are advised to take into the consideration the prevailing legal position before acting on any of the comments in this reply. We shall not be responsible for any loss caused based on this interpretation.)

**With Warm Regards,**

**CA. Puneet Goyal**

**ACA, ACS, B.Com (Hons.)**

**Co-Moderator (Voice of CA)**

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## ANNEXURE

**Circular No. 158/9/ 2012 – ST**

F.No 354/69/2012- TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs  
Tax Research Unit

Room No 146, North Block, New Delhi

Dated : 8<sup>th</sup> May 2012

To  
Chief Commissioner of Customs and Central Excise (All)  
Chief Commissioner of Central Excise & Service Tax (All)  
Director General of Service Tax  
Director General of Central Excise Intelligence  
Director General of Audit  
Commissioner of Customs and Central Excise (All)  
Commissioner of Central Excise and Service Tax (All)  
Commissioner of Service Tax (All)

Madam/Sir,

**Subject: - Clarification on Rate of Tax - regarding.**

1. The rate of service tax has been restored to 12% w.e.f. 1<sup>st</sup> April 2012. Representations have been received requesting clarification on the rate of tax applicable wherein invoices were raised before 1<sup>st</sup> April 2012 and the payments shall be after 1<sup>st</sup> April 2012. Clarification has been requested in case of the 8 specified services provided by individuals or proprietary firms or partnership firms, to which Rule 7 of Point of Taxation Rules 2011 was applicable and services on which tax is paid under reverse charge.
2. The rate of service tax prevalent on the date when the point of taxation occurs is rate of service tax applicable on any taxable service. In case of the 8 specified services and services wherein tax is required to be paid on reverse charge by the service receiver the point of taxation is the date of payment. [Circular No 154/5/2012 – ST](#) dated 28<sup>th</sup> March 2012 has also clarified the same. Thus in case of such 8 specified services provided by individuals or proprietary firms or partnership firms and in case of services wherein tax is required to be paid on reverse charge by the service receiver, if the payment is received or made, as the case maybe, on or after 1<sup>st</sup> April 2012, the service tax needs to be paid @12%.
3. The invoices issued before 1<sup>st</sup> April 2012 may reflect the previous rate of tax (10% and cess). In case of need, supplementary invoices may be issued to reflect the new rate of tax (12% and cess) and recover the differential amount. In case of reverse charge the service receiver pays the tax and takes the credit on the basis of the tax payment challan. Cenvat credit can be availed on such supplementary invoices and tax payment challans, subject to other restrictions and conditions as provided in the Cenvat Credit Rules 2004.
4. Trade Notice/Public Notice may be issued to the field formations accordingly.
5. Please acknowledge the receipt of this circular. Hindi version to follow.

(Dr. Shobhit Jain)

OSD, TRU

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