IMPACT OF SERVICE TAX ON DIFFERENT AUDITS

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Audit & Service tax

As far as the scope of the auditor in a statutory audit is concerned (in the area of service tax), it might look that it is not much relevant. In the audit under the Companies Act, the emphasis of the audit normally is more on the compliance of the Accounting Standards as applicable to the auditee. The auditor would be concerned as to his report and the contents thereof which usually deals with the preparation of Financial Statements based on the generally accounting policies, agreement of the same with the books of accounts, the applicability and compliance of the Accounting Standards that are applicable, comments if the same has not been applied and the qualifications of the auditor if any.

Internal audits are mostly done for the satisfaction to the management that the controls are in a place and as an assurance to the statutory auditor. It also builds in a moral check due to the fact that they are being monitored by an independent person. It basically covers vouching of transactions, checking the authorizations of a transaction, inventory verification, bank reconciliation etc. Now a days risk analysis has also started being used to measure the exposure due to various uncertainties.

Service tax is a self assessment tax, where the onus of assessing the tax, collection and remission of tax to the department is on the service provider. The revenue department monitors the service provider, based on ST-3 returns filed, desk review, seeking documents clarification if any from the service provider. Further the department would be engaged in periodical audits of the service provider based on amount of Service tax is paid, eg if ST of more than Rs 50 lacs, is paid annually then audit shall be conducted annually, selection of assesee for audit is based on certain risk parameters, such as payment of tax, quantum of credits being availed etc.

I**mpact of Service tax and profitability**

Service tax is generally paid to the Government and later collected from customers, in case there is a short payment of tax or wrong availment of credit, or wrong availment of exemption, and if the same is taken for scrutiny by the department few years down the line, then the department can demand for such short payment of tax arising out of wrong availment of credit, or wrong availment of exemption notification, which the service provider, will have to bear

such liability by himself, as he is not in a position to collect the difference of tax from its customers. If such demand is made on the service provider, on turnover into rate of tax, then net profits would get wiped out. The total exposure could be in excess of 15- 18%.

In our discussion today, we will deal with the service tax aspects one needs to keep in mind while conducting an audit of financial statements. This covers both external audit & internal audit.

Today, most of the companies are concerned with the bottom line. i.e. NET PROFIT. Even most of the CA firms that undertake audit of the financial statements are much concerned as to whether the right provision for Income taxes is made as per the Income tax Act and the Accounting Standard 22 (Accounting for Taxes).

WHY companies should be concerned with service tax vis a vis their bottom line?

- IDT impact in sale of goods is around 20-25% of sale value in most cases. IDT impact in services could be around 12- 15% of service value.
- Service tax is a tax in which the burden of tax is on the final consumer. Company merely pays service tax to the Govt and collects the same from the Customer.
- Taxpayers (company) do not feel the burden of these taxes since they collect the same back from their clients/ customers.
- Credit of taxes paid are adjusted and only the balance is payable. This could be their additional margin if planned properly.

WHY Chartered Accountants need to be concerned with Service Tax?

- In a Companies Act audit, as far as misstatements in this area is concerned, it is a myth that the auditor will not be at much at a risk if the area is not given much importance. What the CA in few cases does usually is to checks whether the turnover as per the returns declared is matching as per the books of accounts, whether the tax shown in liability side of the B/s is paid within the due date or not. Not having an idea of the possible exposure of the company which may even effect the going concern if tax not being paid on activities which are taxable services. The fact that the demand can be for 5 years @average cost of 15% means 75% of the turnover!!

Issues which require the attention of the Auditor:

1. CARO- specific reporting- mandatory to comment on all applicable questions- Clause ix

(a) *is the company regular in depositing undisputed statutory dues including Provident Fund, Investor Education and Protection Fund, Employees' State Insurance, Income-tax,* ***Sales-tax****, Wealth Tax,* ***Service Tax, Custom Duty, Excise Duty, cess*** *and any other statutory dues with the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as at the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated by the auditor.*

In most of the cases, the auditor under the Companies Act himself is the auditor even under the Income Tax Act, would have checked the compliance of TDS deduction and remittances, remittance if PF & ESI under the IT Act and generally would have commented the compliance or non compliance of the same based on his judgment. Under Service tax, the auditor will have to check the liability if any, the payment of service tax paid by cash, in case the tax is paid by cenvat credit, then eligibility of credits needs to examined, which mostly would be checked by the internal auditor, rather than statutory auditor, however if the statutory auditor fails to comment on credits availed to discharge the service tax if found ineligible, then statutory auditor may be at a risk, for having failed to comment on wrong availment of credits.

(b) *in case dues of income tax/sales tax/wealth tax/service tax/ customs duty/ excise duty/cess have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned. (****A mere representation to the Department shall not constitute the dispute****).*

2. In this case, the auditor should enquire with the management as to whether any demand notices were issued by Service tax departments. If the answer is positive, it's the duty of the auditor to obtain a copy of the same and study the same. Ascertain whether the client has paid the same or is disputing the same. If disputing the same, whether the notice has been replied accordingly? This clause should be reported only when an order confirming the demand has been issued. Not merely a show causes notice. The authority before whom the same has been challenged and the status shall be reported.
3. It should be noted that this is not just related to the reporting period. If the issue is of an earlier period but still not settled or still pending to be disposed, it is still mandatory to be reported.
4. **Profit and Loss account**- whether the service / turnover has been accounted under inclusive method of accounting or exclusive method of accounting?

5. If inclusive- whether the tax payable is shown separately under expenses? If yes, whether the same matches with the half yearly returns that are filed.
6. If exclusive- The tax/duty will be routed through the balance sheet. Whether the same is outstanding.
7. Any interest debited to the profit and loss account- this might reveal that there was a delay in payment of paying the tax. This can also help in getting details about the CARO clause.
8. Under the taxation based on Point of Taxation, tax needs to be paid based on the following, raising invoice (within 30 days from completion of service) or completion of service or receipt of advance, whichever is earlier. Service tax needs to be remitted to the Govt, based on point of taxation, later it would be collected from the customer, (except in case of receipt of advance).
9. However in case of bad debts, whatever amounts paid as service tax cannot be adjusted, however if service receiver bargains or negotiates for the value of service, (where the service provider has already paid the service tax) then in such circumstances, the service provider can adjust the excess paid, against its subsequent month liability.
10. Companies Act required accrual system of accounting- however, till 01.04.2011 Service Tax law required payment of tax on cash basis. This continues even now in case of certain services (Professional) upto specified limit.
11. Liability of service tax exists even on advances received- Check whether the same has been paid or not.
12. Be aware of the specific sector wise issues- Construction industry, Software industry etc. Latest developments on the same.
13. The asset side of the balance sheet is more crucial than the liability side since it is a receivable for the company. The most important area of IDT on the asset side is the CENVAT. Check whether all inputs/ input services and the tax/duty component on the same are eligible and has been routed through the CENVAT account. At the end of a period, probably the ineligible credits may be reversed. The balance in this account shall be matching to the CENVAT credit register required to be maintained under the CE or ST Law. Also, the reversal of any credit made on a later date needs to be checked. If any ineligible credit has been taken, the same needs to be reversed along with applicable interest. The closing balance of the CENVAT shall match in all three places. Returns, CENVAT credit register and the books of accounts. Any mismatch should have a valid reconciliation along with justifiable reasons.
14. Credit of Capital goods- Please note that the definition of capital goods as per Companies act is different from the one in indirect taxes. What is not capitalized in the books of accounts may be a capital asset under IDT, and what is capital goods as per

books of accounts may be input under IDT. In case of capital goods maximum credit of 50 % can be taken in first year of purchase and balance in the subsequent year. However in case of Mould, jigs, fixtures (consumables, entire credit can be taken in the first year of purchase itself)

15. 44 AB – Section 145A of the IT act prescribes inclusive method of accounting. If books of accounts on in terms with the same, no issues. However, if there is change in the method employed in the books of accounts that prescribed, then the same needs to be reconciled to prove that there is no impact of the same on the P & L. The ICAI has issued a guidance note in this regard and the same needs to be followed and the working needs to be shown as a part of the 3CD.
16. Section 43 B of the IT Act- Certain expenses deductible only on payments- if the inclusive method of accounting is followed- the payment of ED, ST, VAT needs to be routed through the P & L A/c as an expense. However the same shall be an allowable expense only if the same has been paid before the filing of the return under IT.
17. Most important error prone concept- the liability of service tax under the reverse charge mechanism- Notification 30/2012 – in case of a company needs to be carefully examined.
18. Notes to accounts- disclosure required under the Schedule VI- FE out flow- imports can be identified- if for a service- whether ST liable- paid- provided for-

ELIGIBILITY OF CREDITS

A service provider is entitled for cenvat credit on inputs/ input services which are used for rendering output services, further the service provider is entitled for cenvat credit used in relation to modernation, renovation or repair of premises of service provider, advertisement sales promotion, market research, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal service, inward transport of inputs or capital goods.

However the service provider, should ensure he does not take the following credits

- Credit on service portion in execution of works contract (used for construction of building or civil structure or laying of foundation or making of structural support of capital goods.
- Service in respect of renting of motor cycle,

- Service of general insurance business servicing, repair and maintenance of motor vehicle which is not a capital goods, except when used by the manufacturer of motor vehicle or insurance company in respect of motor vehicle insurance.
- Services of outdoor catering, beauty treatment, health service, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and LTA for employees, which are used primarily for personal use or consumption of any employee

Statutory	**Compliance**
Ensure only eligible credits are availed.	Ensure credits are availed only on receipt of input service invoice
Ensure list of credits availed are intimated to the department, so that in case of doubtful credits like house keeping, courier etc, which are neither restricted nor covered within the definition of input service are not disputed by the department	Ensure payment to the input/ input service provider is made within 3 months from the date of receipt of invoice
	Avail the input service credit, when it is in the name of service provider. Ensure input service/input invoice contain all the details as required under Rule 4A of Service Tax Rules
	Maintain cenvat credit register and file the same to the department on monthly basis. So that assesee is protected from invocation of extended period of limitation.

Regular and proper availment of credit will enable a service provider to be more prices competitive, and can also reduce the cash outflow, which can avoid cascading effect.

REVERSE AND JOINT CHARGE MECHANISM

Introduction:

The new service tax law based on negative list of taxation is effective from 1st of July 2012. Though there are a number of aspects and issues under the same, one of the main issue and concern is about the reverse charge and joint charge mechanism. We discuss the concept for this mechanism w.e.f. 01.07.2012.

The object of introducing this mechanism was to ensure that there was a proper collection of tax while at same time not inconveniencing small business people. These mechanism had shifted the liability of payment of service tax from service provider to recipient.

What is reverse charge?

Normally in the Service Tax Law it is the duty of the service provider to pay service tax to the credit of the Government. However in certain exceptional situations which could be for safe guarding the revenue interest, the responsibility to make a payment of the Service Tax is put on a person who is other than service provider.

The system by which a person other than the service provider makes a payment is known as reverse charge mechanism. Since the person receiving services is made liable to pay service tax, the mechanism of collection of such tax is called as reverse charge (RCM). Though this methodology of making payment was there for a very long time, due to Finance Act, 2012 there are certain changes which was made in scope of services covered in reverse charge mechanism. However, in addition to the concept of reverse charge a new concept of joint charge (recipient and provider of services liable to pay tax) is also introduced.

This is as per Section 68(2) read with Rule 2(1)(d) of Service Tax Rules, 1994. This concept is set out in service tax law by virtue of section 68(2) by empowering the Central Government to notify services positively on which the said RCM would apply. To support this the person liable to pay service tax as defined in rule 2(1)(d) of the Service Tax Rules, 1994 also includes service recipients.

What is Joint Charge Mechanism

Under the concept of joint charge, for one service the service provider as well as service receiver are made liable for payment of service tax to the extent notified. This liability is independent of the other person's liability. In other words the failure to comply with the provisions by one person on his part would not impact the compliance requirement of other person and vice versa.

Effective 01st July 2012 who are all covered under Reverse Charge Mechanism

After changes in the service tax law have been made effective, the notification which applies to reverse charge aswellas joint charge is *Notification No. 30/2012-ST dated 20.06.2012 as amended by Notification No.45/2012-ST dated 07.08.2012*. As per the said notification, the following persons with regards to the corresponding services mentioned are liable for payment of service tax on reverse charge.

Sl. No.	Description of a service	Person Liable to pay Service Tax
1	Services by an insurance agent to any person carrying on insurance business	person carrying on insurance business
2	Services by a goods transport agency in respect of transportation of goods by road	Specified person (explained below) who is liable to pay freight
3	Services by way of sponsorship to anybody-corporate or partnership firm located in the taxable territory	Such body corporate or partnership firm
4	Services by an arbitral tribunal to any Business Entity	Such Business Entity
5	Services by individual advocate or a firm of advocates by way of legal services to any business entity	Such Business Entity
6	Services other than – a. renting of immovable property; and b. speed post, express parcel post, life insurance and agency services provided by department of post to a person other than Government c. Service in relation to aircraft or a vessel, inside or outside the precincts of a port or airport by Government; d. Transport of goods or passengers by Government Provided by Government or local authority by way of support services to any Business Entity located in taxable territory	Such Business Entity
7	Services provided or agreed to be provided by a director of a company to the said company (applicable only in case of non-employee directors)	Such Company
8	Services of renting of a motor vehicle designed to carry passengers provided by - any individual, - Hindu Undivided Family or	Such business entity who is body corporate

Sl. No.	Description of a service	Person Liable to pay Service Tax
	- proprietary firm or - partnership firm, whether registered or not, - including association of persons wherein the service provider has ***claimed abatement*** of 60% following the conditions of the Notification No. 26/2012-ST dated 20.06.2012 And the services receiver is **business entity who is a body corporate** However if the service receiver is also in similar line of business, the service provider himself will have to pay service tax. For eg. Such service provided by specified service provider to another person(being body corporate) who will give the vehicle on rent.	
9	Any taxable services received by any person who is located in taxable territory from any person who is located in a non-taxable territory	The person located in taxable territory who is receiving such service

Effective 01st July 2012 who are all covered under Joint Charge Mechanism

Similar to the reverse charge the same Notification No. 30/2012-ST dated 20.06.2012 as amended by Notification No.45/2012-ST dated 7.08.2012 deals with even joint charge as well. As per the said notification, the cases in which the joint charge would be applicable and to what extent is provided below :

Sl.No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
1.	Services of renting of a motor vehicle designed to carry passengers provided by - any individual, - Hindu Undivided Family or	60%	40 %

Sl.No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
	- proprietary firm or - partnership firm, whether registered or not, - including association of persons wherein the service provider is ***not claiming any abatement*** And the services receiver is **business entity who is a body corporate** However if the service receiver is also in similar line of business, the service provider himself will have to pay service tax. For eg. Such service provided by specified service provider to another person who will give the vehicle on rent.		
2.	Services of supply of manpower for any purpose or security services provided by - any individual, - Hindu Undivided Family or - proprietary firm or - partnership firm, whether registered or not, - including association of persons And the services receiver is **business entity who is a body corporate**	25%	75 %
3.	Services of service portion in execution of works contract provided by - any individual, - Hindu Undivided Family or - proprietary firm or - partnership firm, whether registered or not,	50%	50%

Sl.No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
	- including association of persons And the services receiver is **business entity who is a body corporate**		

It may be noted that LLP is considered as Body corporate as well as partnership technically.

As a consequence of the joint charge mechanism, the specified service recipients who are not at all providing any taxable service would also be liable to register under service tax and pay service tax for the services received. This would add additional compliance to such companies/corporate bodies.

Other relevant aspects

While following the reverse charge or joint charge mechanism the following aspects are relevant.

a. **The quantum of service tax to be displayed in Invoice/Bill/Challan:** The relevant service provider has to comply with Rule 4A of Service Tax Rules, 1994. According to Rule 4A(1)(iv) the Service Tax is payable on the description and value of taxable service provided or agreed to be provided and displayed in invoice.
b. The service recipient is liable to pay service tax irrespective of the fact whether the service provider was exempted or not by virtue of small service provider exemption under Notification No. 33/2012-ST dated 20.06.2012. In other words even if the total value of service provider is less than 10 lakhs the service recipient wherever liable to pay service tax has to pay tax.
c. The exemption if any available to service provider (other than small scale service provider exemption) can also be availed by the service recipient. For eg. if the works contract is for construction of public road, then service recipient need not pay service tax.
d. The service recipient is given freedom to choose the methodology of computation of tax in case of works contract irrespective of the service provider's option to pay tax.
e. The service recipient is eligible to claim CENVAT Credit of service tax paid by both the service provider if any and also recipient by himself, subject to eligibility under CCR, 2004.
f. The service tax has to be paid by the service recipient on making payment to service

provider if the payment is made within six months from the date of invoice. If it is not so paid the liability would be considered to have been arisen when the invoice for the service is raised or if it is delayed beyond the period of 30 days from completion of service the date of completion of service would be considered. In such cases the recipient would be liable to pay interest for the delay.

g. The specified persons in case of GTA services are as follows:
    - any factory registered under or governed by the Factories Act, 1948
    - any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India
    - any co-operative society established by or under any law;
    - any dealer of excisable goods, who is registered under the Central Excise Act, 1944 or the rules made thereunder;
    - any body corporate established, by or under any law; or
    - any partnership firm whether registered or not under any law including association of persons;

FAQ's:

1. **Which are the services for which the joint charge mechanism is applicable?**

   The mechanism is applicable to services provided or agreed to be provided by way of
   a. Renting of a motor vehicle designed to carry passengers on a non-abated value to any person who is not engaged in similar line of business.
   b. Supply of manpower for any purpose or security services.
   c. Service portion in execution of works contract.

2. **What is status of service provider and service recipient when services are covered in joint charge mechanism?**

   Service provider located in taxable territory should fall under any one of the following categories-
   a. Individual.
   b. HUF.
   c. Partnership firm, whether registered or not.
   d. Association of persons. And service recipient should be a business entity body corporate located in taxable territory.

   Thus nature of service and the status of both service provider and service receiver are important to determine applicability of joint charge mechanism.

3. **Whether the service tax liability of service receiver -company in respect of manpower supply services can be paid by the service provider?**
   No, the liability to specified extent of service tax liability of business entity company(of 75%) of total service tax payable) has to be borne by company itself. The service provider individual, firm etc cannot collect service tax from the recipient and pay to Government.

4. **Whether the service receiver body corporate business entity having a service tax registration needs to take a fresh registration for paying service tax under joint charge mechanism?**
   No. The company can pay service tax in its existing registration. Not needed to take a fresh registration under service tax as a recipient of service under joint charge mechanism.

5. **What does a service provider need to indicate on invoice when he is liable to pay only a part of liability under joint charge mechanism?**
   The service provider has to issue an invoice complying with Rule 4A of Service Tax Rules , 1994. Thus the invoice shall indicate name, address and registration number of service provider, name and address of person receiving taxable service, the description and value of taxable service provided or agreed to be provided and the service tax payable thereon. The invoice could indicate as a precaution by way of a note in invoice that service recipient is also under an obligation to deposit the specified percentage of service tax payable by him directly to Government.

6. **What is Point of Taxation for recipient of Service?**
   The Point of taxation for persons who are required to make a payment as a recipient of service shall be date on which the payment is made. This would be applicable only if invoice payment is made within 6 months of date of invoice. If payment is not made within 6 months of invoice date then point of taxation is date of invoice.

7. **What is point of taxation for recipient of service when invoice issued in July 2012 and paid in August, 2012?**
   When the invoice is issued in say July, 2012 and service recipient pays for same in August, 2012 the point of taxation for service recipient is date of payment in August, 2012. The service recipient would need to pay tax to extent of liability by $5^{th}/6^{th}$ of September,2012.

8. **What is point of taxation for service provider when invoice issued in July, 2012 and paid in August, 2012?**

When the invoice is issued in say July, 2012, the point of taxation for service provider is date of invoice in July, 2012. The service provider is required to pay tax by 5th/6th of August, 2012 or 5th/6th October, 2012 depending whether he is a individual/ or proprietary firm or partnership firm or association.

9. **How to compute value of services received by service recipient in case of works contract of original works, where actual value of transfer of property in goods is not determined?**
   The service recipient has to discharge service tax liability based on payments made to service provider. The costs of free issue materials supplied by service recipient to service provider is required to be included in value of relevant services, if presumptive method of paying service tax on 40% of total amount charged is followed under Rule 2A of Valuation Rules.

10. **Whether service tax liability arises to service recipient body corporate under joint charge in respect of housekeeping service, done by individual contractor?**
    Yes, liability can arise to extent of 75% of total service tax payable under manpower supply service only if the labourers are working under superintendence or control of the service recipient body corporate.

11. **Whether service tax liability arises to service recipient construction company under joint charge when it engages daily wage workers on a piece rate basis?**
    If the labourers are engaged on daily wages or measurable work basis then they could be considered as providing services in course of employment. These are services which are provided as an employee of company. This is not a manpower supply service. Therefore, excluded from definition of service

12. **Whether service tax liability arises to service recipient company under joint charge when sole proprietary concern providing security services deploys its persons at company office to provide security services to client?**
    Yes, this would be liable to service tax to extent of 75% of service tax liability as the services are not provided by the security gaurds to the recipient company in course of employment with company. The security services agency is engaged in providing security services and merely 25% liability to be borne by it under joint charge.

13. **Whether service tax liability arises to service recipient company when pure labour jobs such as excavation, removing underbrush is done by a contractor being a partnership firm?**

No, pure labour jobs done in relation to construction by contractor is not liable in hands of recipient. The liability arises to extent of 50% of tax payable only when the works contract by way of a comprehensive contract of material plus labour works is executed by such a contractor for the recipient company.

14. Whether service tax liability can be paid by recipient under joint charge mechanism by utilizing Cenvat credits?

No, payment has to be done in cash/cheque/e-payment. There is a specific restriction that CENVAT credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient.

15. Whether liability of service provider and service recipient are independent of each other?

Yes, the service tax liability is independent and different from each other. The service tax liability of the service provider and the service recipient is to the specified extent alone.

16. If the service provider is exempted as it is a small service provider how joint charge would work?

If the service provider is availing exemption due to turnover being less than Rs 10 Lakhs he is not required to pay any tax.

17. Whether there is any impact of the availment of small service provider exemption by service provider on the service recipient?

A particular service provider may avail the small service provider exemption limit of Rs 10 Lakhs by notification no.33/2012-ST dated 20.6.2012. This availment of exemption by the service provider does not give any relief to service recipient. Discharge of service tax liability by service provider is not made a pre-condition for discharge of service tax liability by service recipient. Service recipient has to discharge the service tax liability even when the threshold exemption is availed by service provider.

18. Whether a body corporate business entity engaged solely in manufacture of exempted goods such as manufacture of breads needs to take a service tax registration to pay service tax on rent a cab service where amount paid less than Rs 1 Lakhs pa?

Yes, as there is no monetary limits for specified services received as a renting of motor vehicles designed to carry passengers. They have to register and pay.

19. Is there any monetary limit of exemption when service tax liability is discharged on joint charge mechanism on works contract services?

No, there is no monetary limit when the service tax liability is discharged by the recipient of service under joint charge mechanism.

20. Whether joint charge is applicable on services provided and completed before 1.7.2012 though payments made after 1.7.2012?

For any services whose point of taxation was determined and whole liability affixed before 1.7.2012 the new provisions would not apply. Merely due to reason that the payments are made after 1.7.2012 would not add any additional liability on service receiver in respect of such services.

Conclusion:

In some respects, the new scheme of taxation under reverse charge and joint charge mechanism is to enable wider coverage of especially unorganized sector and bring them into service tax net. However practically there may be lot of challenges which businessmen have to face initially to align the existing practices to the new scheme considering variations in business models.

SERVICE COVERED UNDER NEGATIVE LIST OR MEGA EXEMPTION LIST.

This scheme of taxation under service tax is said to be negative list based taxation, the charging section 66B excludes from the tax net services specified in the negative list. Therefore the services covered under negative list are outside the scope of levy of taxation. This is different from exemption, which is actually part of the levy but the central Govt has given exemption in the public interest. However during the course of examining an entry into the negative list or under exemption list, a very careful examination is required, as the scope of negative list or exemption is restricted. As most of the time the statute uses the phrase “by way of” or “ service of”, as against the words “in relation to”.

As a matter of abundant caution, whenever an exemption is claimed or when the nature of service renders falls into negative list, it is advisable to write a letter to the department, explaining the nature of activity undertaken, explaining as to how the service provider is covered within the exemption or negative list and confirming the correctness of assesses understanding.

PLACE OF PROVISION OF SERVICE SERVICES

With the introduction of new scheme of tax, the determination of tax is dependent upon whether the services are provided within the taxable territory or not. If it is provided within the taxable territory, it would be taxable and if not in taxable territory not taxable. This would be the position irrespective where the service provider or service receivers are located.

Services being intangible it requires guidelines as to determination of the place providing service to ascertain taxability considering whether it is provided within taxable territory or not. For providing such guidelines Place of Provision of Services Rules, 2012 is notified.

Determining Location of service provider and location of service receiver

Before we go to indentify the place of provision of service, one has to first identify where the location of service provider and location of service receiver.

The location of a service provider or receiver (as the case may be) is to be determined by applying the following steps sequentially:

A. If the service provider/receiver has obtained only one registration, may be centralized (in case of multiple places) or otherwise (having only one place) - **the premises for which such registration is taken is the location**
B. In other cases i.e. either no registration is taken or multiple registration is taken the location of service provider/receiver is identified sequentially as follows:
    a. If services are provided from Business Establishment (place where management and control exist) – **Place of such business establishment is the location**
    b. If services are not so provided but from other establishment (fixed establishments) – **Place of such fixed establishment is the location**
    a. If the services are provided from / received by more than one locations - **the establishment most directly concerned with the provision of service / use of the service is the location**
    b. In the absence of any places mentioned above – **usual place of residence is the location**.

Determination of place of provision

The Place of Provision of Services has been structured by breaking up the services from Rule 4 to Rule 12 into sectors i.e. on following basis (separately explained later as to its scope):

a. Rule 4-Based on the performance of service
b. Rule 5-Based on location of immovable property
c. Rule 6-Based on place of holding event
d. Rule 7-Based on performance of services at more than one location
e. Rule 8-Based on the provision of service where provider and recipient both located in taxable territory
f. Rule 9-Based on specified services where place of provision is at location of service provider
g. Rule 10-Based on destination based transportation of goods services
h. Rule 11- passenger transportation service based on place where the passenger embarks on the conveyance for a continuous journey,
i. Rule 12- based on services provided on board conveyance in course of a passenger transport operation.

When none of these specific rules is applicable, then the place of provision is determined based on default Rule 3, according to which, **the place of provision of service would be based on location of recipient of service.** However, in the ordinary course of business, the location of service receiver is not available (say for example walk in customers where the location of service receiver is not known ordinarily), then the place of provision is the place of the service provider.

Power of Central Government to notify the place of provision

In addition to the above determination as mentioned above, Rule 13 empowers the Central Government to notify the type of services or circumstances in which cases the place of provision would be the place of effective use and enjoyment of a service. As on date the Central Government has not notified any type services in this regard.

Resolving conflict in case more than one rule covering the situation.

As per Rule 14, provides that where the place of provision of a service could be determined under more than one rule as it fits in there, it has to be determined according to the rule that occurs later among the rules that are equally meriting consideration.

For example based on the performance rule (Rule 4) the place of provision is say Newyork, however by virtue of Rule 8 (which provides that if both provider and receiver are located in taxable territory the location of receiver of service to be taken) the place of provision is New Delhi, the place of provision would be New-delhi as Rule 8 occurs later amount Rule 8 and Rule.

Impact of Place of Provision of Service Rules

Under the scheme of Place of provision of Service Rules, if the place of provision is wrongly understood to be outside India considering the general understanding of exports, whereas considering the place of provision of service, rules, if the same is in India and if the condition of Rule 6A of Service Tax Rules has not been fulfilled, then such transaction would be taxable in India. If an assesee goes by a wrong notion and considering the transaction as exports, but factually considering the place of provision of service Rules, if the place of provision of Service was in India, then Service Tax would be payable, if this aspect is been ignored then the department can demand the tax along with interest.

POINT OF TAXATION

Earlier the service tax was payable on receipt basis now wef 1.4.2011, service tax will be payable on billing basis.

Point of Taxation Rules, 2011:

All of the above were proposed to be changed with the introduction of Point of Taxation Rules, 2011.

The main intention of the new rules appears to ensure transition from cash system to accrual system like Central Excise and Sales Tax/VAT. Point of Taxation Rules, 2011 deals with the following types of transactions, namely service provided or to be provided & continuous supply of service along with treatment in case of change in rate of tax. However prior to analysing the implications of these rules, it would be relevant to understand some of the new terms defined in the said Rules.

Definitions/Meaning

PoT as defined under Rule 2(e) means the point in time when a service shall be deemed to have been provided.

The term “continuous supply of service” is defined to mean any service which is provided, or to be provided,

- continuously,
- under a contract,
- for a period exceeding three months,

- or where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition;

Point of Taxation in Single Supply Service/ continuous Supply Service-Rule 3

Sl. No.	Scenario	Point of Taxation
1.	Invoice Issued within 30 days from the completion of service	Date of Invoice
2.	Service Completed, but invoice not issued within 30 days	Date of Completion of Service
3.	Advance Received before completion	Date of receipt to the extent of advance received.
4.	Invoice issued before completion of service	Date of Invoice

PoT Rule 3 is general rule, identifies three events wither of which may be defined as PoT as per the provided Rules. The said three events are:

- Issuance of Invoice
- Rendering of Service if the invoice is not issued within 30 days of completion of provision of service
- Receipt of Payment

The thumb rule is that PoT shall coincide with the event occurring earliest.

Point of taxation where there is a change in rate of Taxes-Rule 4

Rule 4 states that point of taxation as stated in Rule 3 shall not be applicable for determination of date(point of taxation) in cases where there is change of rate of tax in respect of a particular service.

The change of rate means not only the change of rate by amendment in the Act, but also covers change of rate by amendment in exemption notification. Further also it cover a change in abatement rate or value on which the duty needs to be computed.

When there is change of tax rate for a particular service the point of taxation shall be decided in accordance with Rule 4 as under:

Rule 4 provides for determination of PoT in such cases in the following manner:

Rule	**Event prior to change of effective rate**	**Event subsequent to change of effective rate**	**Point of Taxation**
	Provision of service, issuance of Invoice and receipt of payment	N.A.	N.A.
4(a)(i)	Services rendered	Invoice issued and payment received	Issuance of Invoice or receipt of payment, whichever is earlier
4(a)(ii)	Services rendered and invoice issued	Payment received	Issuance of Invoice
4(a)(iii)	Services rendered and payment received	Invoice issued	Receipt of Payment
4(b)(i)	Invoice issued	Payment received and Services rendered	Receipt of payment
4(b)(ii)	Invoice issued and payment received	Service provided	Issuance of Invoice or receipt of payment, whichever is earlier
4(b)(iii)	Payment received	Invoice issued and services rendered	Issuance of Invoice

Assumptions: a) The present rate is 10%, changed rate (in the future) is 12%.

b) Words used in table: Before is in relation to the service, invoice or payment as mentioned in the header.

The rate changes from 10% to 12% as on **14th May**

Rule	**Service**	**Invoice**	**Payment**	**Point of**	**Remarks**

	Provided	**Issued**		**Taxation**	
4(a)(i)	Before (10%) (30th April)	After (12%) (15th May)	After (12%) (31st May)	Date of invoice or payment, whichever is earlier i.e. 15th May	As service was already taxable, and the tax point invoice issued date, ST charged @ 12%
4(a)(ii)	Before (10%) (30th April)	Before (10%) (5th May)	After (12%) (31st May)	Date of invoice i.e. 5th May	ST shall be charged @ 10%
4(a)(iii)	Before (10%) (31st March)	After (12%) (31st May)	Before (10%) (1st May)	Date of payment i.e. 1st May	ST shall be charged @ 10%
4(b)(i)	After (12%) (5th June)	Before (10%) (30th March)	After (12%) (15th May)	Date of payment i.e. 15th May	ST shall be charged @ 12%
4(b)(ii)	After (12%) (31st May)	Before (10%) (30th March)	Before(10%) (20th March)	Date of invoice or payment, whichever is earlier i.e. 20th March	ST shall be charged @ 10%
4(b)(iii)	After (12%) (30th May)	After (12%) (31st May)	Before (10%) (30th April)	Date of Invoice i.e. 31st May	ST shall be charged @ 12%

Determination of applicable rate of Tax in case of introduction of a new service [Rule 5]

Rule 5 of PoT Rules determines the PoT in case of introduction of a new service. The Rule provides for determination of PoT in the following manner:

Rule	Event prior to change of effective rate	Event subsequent to change of effective rate	Point of Taxation
5(a)	Invoice issued and payment received against such invoice before the service became taxable	N.A.	No service tax
5(b)	Payment received before service became taxable	Invoice issued within 14 days of providing of service	No service tax

Where service is provided before the tax became effective and invoice is issued within 14 days and payment received after tax becomes effective. In such a situation Rule 3 would be applicable and PoT will be the date of completion of service as per proviso to Rule 3(a) of PoT Rules. There would be no service tax applicable.

Service Tax Payment on receipt basis continues in specified cases: Rule 7:

Point of Taxation considered as **date of receipt or payment of consideration** in case of following:

- Person liable to pay service tax under reverse charge mechanism if the payment has been made before 6 months from the date of Invoice. **However if the payment is not made within six months of the date of invoice, the general rule as explained above would be applicable.**
- **In case of associated enterprises date of credit in the books of accounts or making payment whichever is earlier** would be considered as point of taxation**.**

Both the service provider and service recipient are governed by the Point of Taxation Rules 2011 in respect of the service provided or received by him. Usually it is the invoice or date of receipt of payment which is the point of taxation for the service provider. However for the service recipient, in terms of rule 7 of the said rules, point of taxation is when he pays of the service. Thus in the case where the invoice is issued in say July 2012 and the service recipient pays for the same in August 2012 the point of taxation for the service provider will be the date

of issue of invoice in July 2012. The point of taxation for the service recipient shall be the date of payment in August 2012. The service provider would be required to pay tax (to the extent liability is affixed on him) by 5th/6th August, 2012 or 5th/6th October 2012 depending upon the admissibility of benefit under the proviso to Rule 6 of the Service Tax Rules 1994. The service recipient would need to pay tax (to the extent liability is affixed on him) by 5th/6th September 2012. (Source- Education Guide)

Associated Enterprises: proviso 2 to Rule 7

In case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be the date of credit in the books of account of the person receiving the service or date of making the payment whichever is earlier.

Determination of PoT in case of certain intangibles [Rule 8]

Rule 8 determines the PoT in cases of Copyright, trademarks, designs or patents, etc. It lays down that where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration, the service shall be treated as having been provided each time when a payment in respect of such use or the benefit is received by the provider in respect thereof, or an invoice is issued by the provider, whichever is earlier.

In other words, in cases where the consideration towards the provision of Intangibles like copyrights, trademarks etc, is not determinable on usage of such intangibles, PoT shall be earlier of following:

- Issuance of Invoice
- Receipt of Payment

However, if the consideration is determinable at the definitive points (say month end) during the period when such intangibles are used by the service recipient, then completion of service may also qualify as PoT. This rule is made since there is a possibility of the revenues arising from the number of units of for example, a book/novel sold, in terms of which the service is deemed to be performed. The book sale could be 100 or 1000 or 10000, and it may not be possible to raise an invoice based on the concept of completion of provision of service, as provided in Rule 3.

8A. Determination of point of taxation in other cases.- Where the point of taxation cannot be determined as the date of invoice or the date of payment or both are not available, the Central Excise officer, may, require the concerned person to produce such accounts, documents or

other evidence as he may deem necessary and after taking into account such material and the effective rate of tax prevalent at different points of time, shall, by an order in writing, after giving an opportunity of being heard, determine the point of taxation to the best of his judgment.

Corresponding Changes in Service Tax Rules, 2002

a. The invoice, bill or challan shall be issued within 30 days from the date of completion of service.
b. In case of continuous supply of service, it requires that an invoice, bill or challan, as the case may be, within thirty days from the milestone date for payment mentioned in the contract.
c. If the amount of invoice is renegotiated due to deficient provision or in any other way changed in terms of conditions of the contract (e.g. contingent on the happening or non-happening of a future event), the tax will be payable on the revised amount provided the excess amount is either refunded or a suitable credit note is issued to the service receiver. **It is not covering bad debts. Further Board Clarification clearly says that this concession is not available for bad debts.**

Impact of Point of Taxation

Point of taxation enables to determine, the point at which the tax needs to paid to the exchequer, based on point of taxation rules .i.e. date of completion of service or date of invoice if invoice is raised within 30 days from date of completion of service or date of receipt of advance, W.E.E. In case the point of taxation is not determined in accordance with POT Rules, then the assesee would be liable to pay interest at the rate of 18%.

VALUATION

The issue of valuation is important and critical factor for every taxing law. Since the tax or duty is payable on the value adopted with the efforts of the tax payer to reduce tax to a minimum and tax collector seeking to maximise the same. The value therefore becomes a bone of contention and leads to increased litigation. The valuation of services under service tax are governed by Section 67 of the Finance Act 1994 as amended and the Service Tax (Determination of Value) Rules 2006. The rules have been prescribed w.e.f. 19.4.2006. The departmental view of the valuation rules have been set out in F.No. B1/4/2006- TRU dt. 19.4.2006. This circular specifically supercedes all the earlier circulars in relation to value.

In the past (prior to 19.4.2006) there was no deeming value for services provided and the actual amount charged was the value for payment of Service Tax. The reimbursements, which were

contractually to be provided by the service receiver or those that were not in relation to the services (unrelated) were allowed as a deduction subject to the evidence of the same being available.

After 19th June 2006 the new section and rules would apply.

Scope of Section 67

Valuation of taxable services for charging Service tax

(1) Subject to the provisions of this Chapter, ***service tax chargeable on any taxable service with reference to its value*** *shall,—*

(i) in a case where the provision of service is for a consideration in money, be the ***gross amount charged by the service provider*** *for such service provided or to be provided by him;*

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Though there are some important changes made in the valuation provision i.e. Section 67 over the years, the essence of the provision remains the same i.e. "***gross amount charged by the service provider for such service"***

One important change which brought out from the said date is that by virtue of Section 67 (4), subject to the provisions of Section 67(1), 67(2) and 67(3), the value for taxable services shall be determined in such manner as is prescribed in Service Tax (Determination of Value) Rules, 2006.

Now the question arises whether the provisions set out in Service Tax (Determination of Value) Rules, 2006 can go beyond the provisions of Sub-Sections (1),(2) & (3) of Section 67 which all speak only about gross amount charged for such i.e. taxable service. There is no deeming fiction created in Section 67 to say all the cost and expenditure incurred by the service provider in the course of providing services should be included in the term consideration. Therefore in view of the paper writer, the Rule cannot override the Act. Therefore without there being a provision to include all such costs and expenditure in the meaning of the term 'consideration' the Rule cannot so set out.

From above the features of valuation under service tax as on date (subject to judicial confirmation/differentiation)are as under

The Salient Features of Valuation under Service Tax are as under:

1) The valuation of services are governed by Section 67 of the Finance Act, 1994 read with Service Tax (Determination of Value) Rules 2006.
2) Service tax has to be paid on gross amount charged for service provided, in general, however specific valuation is prescribed in different cases in Service Tax (Determination of Value) Rules 2006.
3) Section 67(1)(i) provide that when the consideration is received wholly in money then the valuation for the purpose of service tax would be such gross amount charged for providing taxable service. Therefore gross amount received would be considered for Valuation.
4) Section 67(1)(ii) provides that when the consideration is received not fully in money, then the value would be such amount equal to consideration less service tax. In other words the valuation would be on the total value of non-monetary consideration plus monetary consideration received less service tax included therein.
5) Rule 3 of the Service Tax (Determination of Value) Rules 2006 provides in case the value of taxable services not ascertainable then the value would be the gross amount charged by the service provider to provide a similar service to any other person in the ordinary course of trade subject to condition that gross amount charged was the sole consideration.

How to arrive at valuation when gross amount charged by service provider is not wholly in money?

The condition for adopting the consideration charged for similar service are as under:

i. The service should be similar or identical (usually work involved should be compared)
ii. The service is to be provided to other person
iii. The service provided should be in ordinary course of trade (unusually charging to

customer should not be considered)

iv. Gross amount charged should be sole consideration.

v. All the above conditions have to be satisfied for adopting valuation as per such provisions. In case any one condition fails then valuation cannot be adopted as per such sub-rule.

vi. In case all the said conditions have not been met, the valuation would be the equivalent of the money value of such non-monetary consideration. However such value should not be less than the cost of providing the service.

vii. First the cost of provision of service has to be computed and then the money value of the non-monetary consideration has to be determined. Higher of such value has to be adopted. Therefore in case cost of providing the service is more, then higher of such value should be adopted.

viii. Determination of cost of service provided has not been prescribed in the statute, however the cost maybe be arrived at based upon the costing principles.

Here it should be noted that the statue has not provided any mechanism to arrive at the money value equivalent to the consideration received. Therefore the assessee can arrive at the value based on the best judgment or on trade enquiry.

Determination of value of service portion in execution of works Contract

Subject to the provisions of section 67, the value of service portion in execution of works contract, shall be as follows.

- Value of service portion in execution of works contract shall be gross amount charged for works contract, minus the value of goods transferred in execution of works contract, along the value added tax / sales tax paid

- If the value could be determined as per the above mentioned methodology, then ST on service portion of execution of works contract would be as follows.

    - For execution of original works- 40% of the total amount charged for works contract

    - For execution of maintenance or repair or re-conditioning or restoration or servicing of any goods, -70% of total amount charged for works contract

    - For finishing service – 60% total amount charged for works contract

Original works Means

(i) All new constructions;

(ii) All types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) Erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

Determination of Value of service portion involved in supply of food or any other article of human consumption or any drink in a restaurant or as an outdoor catering.

In case food is supplied at Restaurant – 40% of total amount shall be the value for the purpose of service tax. In case of outdoor catering – 60% of total amount shall be the value for the purpose of service tax

Rule 5 of Service Tax (Determination of Value) Rules, 2006

Only with effect from 19.04.2006, the provision of Section 67 has been amended and the concept of "consideration" has been introduced and by virtue of Rule 5 of the Service Tax (Determination of Value) Rules, 2006, the consideration is defined to include reimbursement of expenses also. Thus, all previous circulars on valuation relating to reimbursement of expenses have no impact after 19-04-2006.

As per Rule 5(1) there is a deeming fiction created to consider all the expenditure or costs incurred by the service provider in the course of providing taxable services as consideration. All the expenditure or costs so incurred by the service provider and borne by the recipient will have to be included in arriving at the value for charging service tax on said service.

There is an exception to the above provisions, as per Rule 5(2) where the expenditure or cost incurred by the service provider as a pure agent the same shall be excluded from the value of the taxable service if conditions are satisfied.

What is the concept of Pure Agent

As per Explanation (1) to Rule 5(2) of Service Tax (Determination of Value) Rules 2006, pure agent means a person who-

i. Enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service
ii. Neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service
iii. Does not use such goods or services so procured and
iv. Receives only the actual amount incurred to procure such goods or services

From the above provision it can be seen practically there will be difficulty in fulfilling the above conditions. As a sample it is explained as follows:

a. There may not be written agreement in most of the cases. Even if there is one, it will not be so specific to mention this aspect.
b. Title to goods can be understood. But title to services is very difficult. For example, if a chartered Accountant is travelling for auditing by train, whether he holds the title to such service or the client holds the title to such service.
c. Further if the invoice for the goods are services are in the name of service provider, then the title can be said to have been held by the service provider and the condition is violated.
d. The usage condition is again would create lot of difficulty. In the same example above the travelling services is being used by the Chartered Accountant. Similarly when a stay in hotel the services are being used by the Chartered Accountant. Therefore the condition is violated.

What are the additional conditions which are to be fulfilled by the pure agent.

As per Rule 5(2) of Service Tax Determination of Value Rules, 2006 following are the additional conditions which are required to be fulfilled to claim exclusion from the taxable value.-

i. Service provider to act as a pure agent of the recipient of service while making payment to third party for the goods or services procured
ii. Service receiver to receive and use the goods or services procured by the service provider on his behalf
iii. Service receiver to be liable to make payment to the third party
iv. Service receiver to authorise the service provider to make payment on his behalf
v. Service receiver to know that the goods and services, for which payment has been made by the service provider, shall be provided by the third party
vi. The payment made by the service provider on behalf of the recipient of service is to be separately indicated in the invoice issued by the service provider to the recipient of service
vii. The service provider recovers from the recipient of service only such amount as has been paid by him to the third party
viii. The goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account

Again as can be seen from the above conditions, practically it is difficult to fulfill all the above conditions simultaneously. If one of the conditions is not fulfilled, then the benefit of exclusion is not available.

Any person who is willing to claim the benefit of the above exclusion as a pure agent, then it is advisable to have appropriate documentation to establish all the factors mentioned above.

Discussion on pure reimbursements under service tax levy

Recently, there has been an important judgment of Delhi High Court in the case of *Intercontinental Consultants And Technocrats Pvt Ltd vs. UOI & Anr* [2012-TIOL-966- HC-Del-ST] has held that Section 67 authorises determination of the value of the taxable service for the purpose of charging service tax under Section 66 as the gross amount charged by the service provider for such service provided or to be provided by him, in a case where the consideration for the service is money - It is only the value of such service that can be brought to charge and nothing more. The quantification of the value of the service can therefore never exceed the gross amount charged by the service provider for the service provided by him. Further Rule 5(1) of the Service Tax Determination of Value Rules is held to be ultra Virus section 66 and 67 of Finance Act.

OTHER CONCEPTS

How to arrive at valuation when consideration is inclusive of service tax?

Section 67(2) provides in case when the consideration of service is inclusive of service tax then reverse calculation mechanism has to be adopted wherein the component of service tax is reduced from such consideration.

a. The valuation should be computed as under:

(10,000/112.36) X 100 = 8900/- and service tax liability thereof is Rs. 1100/- (inclusive of cess)

Would the amount received as advance prior to completion of service be part of gross amount liable to service tax?

Section 67(3) provides that the gross amount charged for taxable service includes any amount received towards the taxable service

- Before the provision of service
- During the time of provision of service
- After provision of service

As per Explanation to section 67 consideration includes any amount that is payable for the

taxable services provided or to be provided. Here the definition is an inclusive one; hence the consideration is what is understood in common parlance and also includes the defined consideration.

The valuation rules are bound to lead to frustration and repeated challenge with only the legal intermediaries as the beneficiaries as had happened in valuation disputes under Central Excise.

FILING OF RETURNS

Every service provider is required to file the ST-3 return every half yearly, within 25 date from the end of the half year, the due dates to file the returns is 25th April for the period from October to March and 25th October for the period from April to September, ST-3 returns can be revised within 90 days from the date of filing the returns, if the St-3 returns are not filed then the service provider would be liable for penalty under section 77, where maximum amount of penalty is Rs 20,000/-.

Regular filing of ST-3 return, will provide necessary information to the department, which can act as shield against invoking extended period of limitation, and the demand can be curtailed down to normal period.

REFUNDS

When the service provider export the services in terms of Rule 6 A of Service Tax Rules, and the service provider is enable to utilize the credit, shall file the refund claim of unutilized cenvat credit. The refund claim needs to be filed quarterly, in proportion to total turnover to export turnover. The exporter of service provider, needs to file the following documents

- Export invoices for the period
- FIRC for receipt of FE
- Agreement with foreign client
- Statement of co-relation between export invoice and FIRC
- ST-3 returns
- Copies of input service invoices

The refund claim needs to be filed within 9 months from the end of the quarter, else the refund claim shall be time barred.

COMMON ERRORS MADE SERVICE TAX

(A) Conceptual Errors:

These are errors which are quite common which once committed continue to be practiced and become the norm for years till someone questions the same. The fact that the internal/ statutory auditors may not be focussed in this area also means that incorrect understanding can carry forward for many years. The reason for the same could also be the ignorance of the officers responsible for service tax in the company and the fact that most other department want to maintain the distance from them, due to poor perception. These types of error tend to get accepted over a period of time if no issue arises from them. However the effect could be substantial as the incidence of service tax is now more than 12% and along with interest and penalty can reach 20%, which could be much more than the margin available in the business. Some possible ones are as under:

1) High Impact Errors:
    1. Though the item is not actually covered by specific definition, it is treated as covered under negative list and therefore no Service tax paid on the same.
    2. Not considering the non-monetary consideration received for the payment of service tax. The same should be considered as inclusive of tax.
    3. Not considering the fair market value of goods and services supplied in or in relation to the execution of the works contract by the service receiver for computing the total amount of taxable value. This will result in undervaluation of taxable service thereby under payment of service tax leading to payment of interest in future, if litigated.
    4. Wrong classification of works contract as original works or otherwise and thereby claiming wrong abatement.
    5. Wrongly considering all payment received in foreign currency as export of service.
    6. Utilization of CENVAT credit for the payment of tax under reverse/joint charge, which is specifically not allowed as per CENVAT Credit Rules, 2004
    7. Place of provision of service is not properly identified and improperly claiming it to be not taxable.
    8. Services whose place of provision is not outside India is wrongly considered as export of service in terms of Rule 6A of Service Tax Rules.
    9. Not considering the payment of service tax in case of liability as a recipient of service (GTA, Sponsorship and being a services received from non-taxable territory).
    10. Considering the limit for raising of invoice in case of services coming into service tax for the first time as 30 days instead of 14 days.
    11. Wrong availing of CENVAT credit pertaining to associates and group companies.
    12. Credits availed for inputs not used for manufacture of excisable items and non taxable services.

13. Not paying service tax under joint charge by claiming that the entire service tax has been discharged by the service provider. It should be noted that the liability of service receiver under joint charge is independent.
14. 100% credit on Capital Goods availed in the year of purchase instead of 50% as allowed under CENVAT Credit Rules, 2004.
15. Error in classifying goods as input instead of capital goods and thereby wrongly availing 100% credit on the same in the year of purchase.
16. Non-fulfilment of credit conditions prescribed in the exemption notification.
17. 6% amount on exempted goods not paid when common input services are used in manufacture of exempted goods as well as taxable services and goods, when no separate accounts are maintained to distinguish usage.
18. Utilization of CENVAT credit for payment of service tax on import of services, which is not permissible under the service tax provisions.
19. Utilization of SAD (Special Additional Duty charged under Customs provisions) credit for payment of service tax on output services, which is not permissible. The same is available only to the manufacturer.
20. Non payment of service tax on value of taxable services as and when any amount is credited or debited to any account, in case of transactions with Associated Enterprises. The same will have an interest implication on future.
21. Not following proper valuation methods in case of "Declared Services", especially works contract services and catering services where certain ambiguities exist.
22. Non payment of service tax on the advance received towards provision of taxable service, thus violating the provisions of Point of Taxation Rules, 2011.
23. Availing CENVAT credit in respect of that part of the value of Capital Goods which represent the amount of duty on such Capital Goods which the service provider claims as depreciation u/s 32 of Income Tax Act.
24. Availing credit of Capital Goods which are used for office purpose.
25. Availing credit on inputs in respect of which the benefit of Notification No 1/2011-CE dated 01.03.2011 is availed. CENVAT Credit Rules, 2004 restricts the input on the items enumerated on the said notification.

2) Medium Impact Errors:
    1. Though the activity is not falling within the scope of definition of service, considering the same as service and paying Service tax on it.
    2. Though the activity is covered under the negative list collecting and paying tax on the same.

3. Services which are considered to have been provided outside taxable territory being considered as provided within taxable territory.
4. As an exporter of services not claiming the refund/rebate on duties and input service tax which he is entitled to.
5. As an exporter of goods not claiming the refund of post removal service tax payments, which are eligible.
6. Not following the conditions laid down to claim the deductions as Pure Agent wherever applicable and therefore ending up paying unnecessary tax for the same.
7. Considering VAT/Sales Tax in the total amount charged for computing taxable value wherein it is to be excluded, resulting in excess payment of service tax.
8. Using of wrong nomenclature for recognizing the revenue and ending with payment of tax that was not required.
9. Incorrect methodology adopted for composite services. Not recognizing the exact nature of the service.
10. Service tax paid on different basis without considering point of taxation of services rules.
11. CENVAT credits (input credit, input services credit) missed out due to lack of knowledge on admissibility/of clarified by departmental officers.
12. Credits reversed on oral instructions of departmental officers/audit parties without validating the same with consultants.
13. Credits on differential duty charged by the supplier by way of an invoice not being availed as inputs not received at that time.
14. Inputs removed on payment of duty when actually the credit had not been availed on the receipt of the same materials.
15. Paying Service tax under reverse charge on the value of service charged by the transporters other than Goods transport agency.
16. Availing 50% credit of Special CVD on capital goods (u/s- 3(5) of the Custom Tariff Act) instead of 100%.

3) Low Impact Errors:
    1. Utilizing the Cess credits towards basic service tax payments.
    2. Not bifurcating the service tax and cess amount separately in the books of account.
    3. Availing credit on the basis of Xerox copies of tax invoice.

(B) System Errors:

The service tax provisions can be complied in full, if the procedure are followed and internal control procedure are followed. The errors arising due to the improper system being followed or weakness in internal control not being detected or corrected are indicated in this portion.

These errors can also creep in due to the frequent changes in information technology. The compliance procedures, as well as record keeping aspects have also been covered as under.

1) High Impact Errors:
    1. No proper procedure to ensure the eligibility of CENVAT credit for availment and utilization of the same.
    2. CENVAT credit availed on inputs before the receipt of the material in the premises of the service provider.
    3. Utilization of credits availed in respect of the goods received after the relevant month but before the due date of payment.
    4. Not considering the TDS amount for payment of service tax when the amount is received towards the taxable services is net of TDS amount.
    5. Non reversal of credits on inputs or capital goods which are written off in the books of account.
    6. Non reversal of CENVAT Credit availed on the input services for not making payment to the service provider within 3 months.
    7. Absence of system to classify inputs and availing credit of those input which are specifically excluded from the definition of "input" defined in Rule-2(k) of CENVAT CREDIT RULE, 2004.
    8. ERP or other accounting package system of an enterprise not linked with the taxation aspect, resulting in want of proper reconciliation system between accounts and taxes.
    9. The absence of a system of recording entry in the job work control register when the capital good are sent for service jobs.
    10. The system of sending and receiving the materials without delivery challans/documents.
    11. Having improper system of internal communication with the accounting, purchase and service tax/ excise department in the organization.
    12. No proper system to identify the rules for Place of Provision of service and considering the place of provision of a service as location of service receiver as per general Rule 3 without applying the latter rules sequentially.

2) Medium Impact Errors:
    1. No proper system to ensure that no credit has been missed out while paying tax on output service.
    2. CENVAT credit missed out due to non indication of the service tax in the invoice of the input service provider.
    3. Absence of system to ensure that the balance 50% of credit on Capital Goods of the year of purchase has been availed in the subsequent year.
    4. Frequent delays in availing the CENVAT credit necessitating the payment of tax in cash.

5. Not considering the changes in tax rates while issuing the invoices for the services provided.
6. Inquiry of instances of inordinate time gap between the bill date and the credit note.
7. The system of raising of invoice much prior to or after the date of services especially during year end.
8. Issuing of invoice without mentioning the registration number on the same.
9. Non-availment of credit of service tax paid on services as a receiver of services like tax paid on import of services, GTA service or sponsorship services etc.
10. Not availing the benefit of paying tax on receipt basis in case of person liable to pay service tax under reverse charge. It should be noted that the payment should be made within 6 months from the date of invoice to avail this benefit.
11. Paying ST on reverse charge in case of payment made to individual goods transport operator or to persons not issuing any consignment note. Proper system of accounting should be maintained to include only that payment made to GTA service for payment of Service tax.
12. Absence of proper system to ensure that opening balance of CENVAT has been brought forward in subsequent returns if the returns are filed using excel utility downloaded from ACES.

(C) Compliance Procedures- Omission:

1) High Impact Errors:
    1. The non declaration by the assessee to the department about the records maintained by them which could allow the extended period of limitation being sought to be imposed and a valuable defence being lost.
    2. The delay in filing of returns on a few occasions or beyond a period would lead to the highlighting oneself for the departmental verification or audit.
    3. Failure to obtain registration for the branches or place of providing the service. The credits relating to such branches may be denied if not registered.
    4. Failure to intimate the addition of new branches in case of centralized registration.
    5. Availing CENVAT credit of the branches without centralized registration or Input service distributor invoice.
    6. Input Credits not proportionately reduced for short payment.
    7. Not mentioning the abatement amount in the service tax return.
    8. Not amending registration certificate to incorporate additional services provided by the assessee.

9. Mentioning wrong Service Tax Code or Premises Code on downloaded ST-3 excel utility and uploading the same. This will lead to subsequent rejection of the returns filed, which if unnoticed, may lead to penalty implication.
10. Computing time limit of 90 days for filing revised return from the due date of filing of original return instead of actual date of filing of original return
11. Failure to pay tax online in case where the payment of tax, both by cash and credit, exceeds Rs 10 Lakh in previous year. The same attracts penalty up to Rs 10000as u/s 77.

2) Medium Impact Errors:
    1. Failure to intimate the department within 30 days of change in the constitution of the firm or company.
    2. Failure to obtain endorsement on the registration on the RC once the assessee plans to provide new services.
    3. Failure to amend the registration certificate when any service is imported on which service tax is payable.
    4. The system of acting on departmental views / oral instructions, which are not provided in writing.
    5. Failure to intimate the department for claiming the benefit of paying amount equivalent to credits attributable to exempted services under Rule 6 of CENVAT credit rules 2004.

3) Low Impact Errors:
    1. Mentioning wrong accounting code on payment challan while remitting the service tax.
    2. Failure to apply for service tax registration once the taxable services exceeds Rs 9 lakh and waiting till the turnover reaches Rs 10 Lakhs. This is just a procedural lapse on the part of service provider.

(D) Record Maintenance & Others:

1) High Impact Errors:
    1. The available records are not complete in the sense that the service tax payable and input service credits cannot be arrived at from the records
    2. In case of gross method of accounting purchases where duty portion is not shown separately, the method and accuracy of making monthly entries for the credit.

2) Medium Impact Errors:
    1. The system of reconciliation of credit figures as per accounts and the figures as per service tax returns not done.

This article attempts to collate the relevant laws in brief for the tax, internal and statuary auditor to be supported while doing those audits.