

**Government of India
Ministry of Finance
Department of revenue
Tax Research Unit**

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D.O.F. No. 334/15/2014-TRU
New Delhi, dated July 10, 2014.

Dear Madam/Sir,

Sub.: Union Budget, 2014-15: Changes in Service Tax - reg.

The hon'ble Finance Minister has, while presenting the Union Budget 2014-15, introduced the Finance (No.2) Bill, 2014 [hereinafter, the Bill] in the Lok Sabha on the 10th of July, 2014. Clause 106 appearing in Chapter V of the Bill covers the amendments made to Chapter V of the Finance Act, 1994. In addition, a set of notifications are also under issue.

1.2 After the introduction of the Negative List based tax regime in the services sector in July, 2012, the emphasis has been to ensure stability and continuity. To carry this further, this year, only a limited number of changes have been made in service tax. The main focus in service tax at the present juncture is to widen the tax base and enhance compliance.

1.3 The changes being made by amendments in notifications and rules can be categorized into two broad categories based on when they would come into effect: (i) changes which will have immediate effect; and (ii) changes which are proposed to be given effect to only from 1st October, so as to coincide with the Service Tax Return cycle. As far as statutory amendments are concerned, they would come into effect only from the date on which the Bill receives the assent of the President. Regarding certain amendments proposed for widening the tax base, they would come into effect on a date to be notified after the Bill receives the assent of the President. Entries in the Bill and the notifications may be carefully read, for this purpose.

1.4 The changes being made are discussed below under three broad categories:

- (i) Measures to widen the tax base; [Para 2]
- (ii) Measures for compliance enhancement; [Para 3] and
- (iii) Facilitation measures. [Para 4]

2. **Measures to widen the tax base:**

Broadening the tax base is a fiscal objective justified in itself. Primary objective of the negative list approach which came into effect from 1st July, 2012 was also to broaden the tax base.

Keeping this in view, the negative list and exemptions have been reviewed.

2.1 **Review of the Negative List of services:**

2.1.1 Service tax leviable currently on sale of space or time for advertisements in broadcast media, namely radio or television [section 66D (g) read with section 66B], is proposed to be extended to cover such sales on other segments like online and mobile advertising. The new levy would further extend to advertisements in internet websites, out-of-home media, on film screen in theatres, bill boards, conveyances, buildings, cell phones, Automated Teller Machines, tickets, commercial publications, aerial advertising, etc. Sale of space for advertisements in print media, however, would continue to be in the negative list and hence remain excluded from service tax. Print media is being defined in service tax law for the purpose. This change will come into effect from a date to be notified later, after the Finance (No.2) Bill, 2014 receives the assent of the President.

2.1.2 Service tax is proposed to be levied on services provided by radio taxis or radio cabs, whether or not air-conditioned [section 66D (o)(vi)]. The abatement presently available to rent-a-cab service would also be made available to radio taxi service, to bring them on par. A definition of radio taxi is being included in the exemption notification No.25/2012-ST. Service tax on radio taxi services will come into effect from

a date to be notified later, after the Finance (No.2) Bill, 2014 receives the assent of the President.

2.2 Review of General Exemptions:

The following changes are being made as a result of the review of exemptions.

2.2.1: Exemptions being withdrawn [Notification 25/2012-ST]:

(i) Presently service of passenger transportation by a contract carriage other than for the purposes of tourism, conducted tour, charter or hire, is exempt from service tax [Sl.No.23 (b)]. The scope of exemption is being reduced by withdrawing the exemption in respect of air-conditioned contract carriages. As a result, any service provided for transport of passenger by air-conditioned contract carriage including which are used for point to point travel, will attract service tax, with immediate effect. Service tax will be charged at an abated value of 40% of the amount charged from service receiver; therefore, effective tax will be 4.944%. Services by non-air conditioned contract carriages for purposes other than tourism, conducted tour, charter or hire continue to be exempted.

(ii) Exemption to services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies on human participants by a clinical research organization approved to conduct clinical trials by the Drug Controller General of India [Sl.No.7] is being withdrawn. This would be taxable with immediate effect.

2.2.2 Rationalization of Exemptions:

(i) Education:

At present, all services provided by educational institutions [providing educational services specified in the negative list] to their students, faculty and staff are exempted [section 66 D (l) of the Finance Act, 1994]; this will continue. However, in respect of services received by such educational institutions, presently, exemption is being operated through the concept of 'auxiliary educational services' [Sl.No.9]. Doubts have been raised and clarifications have been sought regarding the scope and meaning of

‘auxiliary educational services’. To bring clarity, it is proposed to omit the concept of ‘auxiliary educational services’ and specify in the notification, the services which will be exempt when received by the eligible educational institutions. Accordingly, the following services received by eligible educational institutions are exempted from service tax: (i) transportation of students, faculty and staff of the eligible educational institution; (ii) catering service including any mid-day meals scheme sponsored by the Government; (iii) security or cleaning or house-keeping services in such educational institution; (iv) services relating to admission to such institution or conduct of examination. Further, for the purposes of this exemption, ‘educational institution’ is being defined in the exemption notification 25/2012-ST as institutions providing educational services specified in the negative list.

It may be noted that the scope of exemption remains the same as earlier in the case of services provided by eligible educational institutions; in the case of services received by the eligible educational institutions, exemption will be available only in respect of the services specified as above. Further as a rationalization measure, the exemption hitherto available to services provided by way of renting of immovable property to educational institutions stands withdrawn, with immediate effect.

(ii) Services ordinarily provided by a Municipality:

For greater clarity, the exemption in respect of services provided to Government or local authority or governmental authority [in entry at Sl.No.25], has been made more specific. Services by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation will continue to remain exempted but the exemption would not be extendable to other services such as consultancy, designing, etc., not directly connected with these specified services.

(iii) Services by a Hotel, Inn or Guest House:

According to the present entry at Sl. No. 18, “service by way of renting of a hotel, inn, guest house, club or campsite or other commercial places meant for residential or

lodging purposes, having a declared tariff of a unit of accommodation below rupees one thousand per day or equivalent” is exempt from service tax. Some doubts appears to have arisen on account of use of the word “commercial” in the entry as to whether *dharmashalas*, *ashram* or any such entity which offer accommodation would be covered therein. It may be noted that this exemption, upto the specified threshold level, is available to any entity providing service by way of accommodation, including *dharmashalas* or *ashram* or such other entities. To remove any ambiguity, the word ‘commercial’ is being omitted. Renting of vacant land or buildings for hotels would continue to be taxable irrespective of the hotel’s declared tariff.

Where the exclusions and exemptions are withdrawn to widen the tax base, if the aggregate value of taxable service provided by a person in a financial year does not exceed Rupees Ten Lakh, exemption will be available in terms of Notification 33/2012-ST.

2.3 Service tax on service portion in Works Contracts:

In Rule 2A of the Service Tax (Determination of Value) Rules, 2006, category ‘B’ and ‘C’ of works contracts are proposed to be merged into one single category, with percentage of service portion as 70%; this change will come into effect from 1st October, 2014. This rationalization by way of merger of categories has been made to avoid disputes of classification between these two categories. [Notification No.11/2014-ST].

3. Measures for compliance enhancement:

3.1 Variable rates of Interest:

To encourage prompt payment of service tax, it is being proposed to introduce interest rates which would vary on the extent of delay [Notification No.12/2014-ST]. Simple interest rates per annum payable on delayed payments under section 75, are prescribed as follows:

| Extent of delay | Simple interest rate per annum |
|------------------|--------------------------------|
| Up to six months | 18% |

| | |
|--------------------------------------|--|
| More than six months & upto one year | 18% for first six months, and 24% for the period of delay beyond six months |
| More than one year | 18% for first six months, 24% for second six months, and 30% for the period of delay beyond one year |

This new interest rate regime will become operational only on 1st October 2014. In other words, upto 1st October, 2014, the rate of interest of 18%, presently applicable, will continue to apply. The variable interest rates will apply only on or after 1st October, 2014.

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

- (i) 18% simple interest upto September, 30th, 2014.
- (ii) For the period from 1st October, 2014 to 6th December, 2014, the rate of interest will be 30% since the period of delay is beyond one year.

As specified in the proviso to section 75, three per cent concession on the applicable rate of interest will continue to be available to the small service providers.

3.2 E-payment:

E-payment of service tax is being made mandatory with effect from the 1st Oct 2014. Relaxation from e-payment may be allowed by the Deputy Commissioner/Asst. Commissioner on case to case basis [Notification 09/2014-ST].

4. **Facilitation measures:**

4.1.1 Section 67A in the Finance Act, 1994:

The Explanation to Section 67A is being amended to enable the Government to prescribe rules for determination of rate of exchange for calculation of taxable value in respect of certain services. Rules will be prescribed in due course, after the Bill receives the assent. This amendment has been proposed in view of requests from the trade and

industry to delink the conversion from the notified Customs rates of exchange as at present. Any suggestions would be welcome before the Rules are notified.

4.1.2 Service Tax Rules: [changes to have immediate effect]:

Service provided by a Director to a body corporate is being brought under the reverse charge mechanism; service receiver, who is a body corporate will be the person liable to pay service tax. This is in view of requests by body corporates such as the Reserve Bank of India.

Services provided by Recovery Agents to Banks, Financial Institutions and NBFC is being brought under the reverse charge mechanism; service receiver will be the person liable to pay service tax. [Notification 9/2014 -ST and 10/2014-ST]

4.1.3 Place of Provision of Services Rules: [changes to take effect from 1st October, 2014].

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

(ii) The definition of intermediary is being amended to include the intermediary of goods in its scope. Accordingly, with effect from 1.10.2014, an intermediary of goods, such as a commission agent or consignment agent shall be covered under rule 9(c) of the Place of Supply of Services Rules.

(iii) Service consisting of hiring of Vessels (excluding yachts) and Aircraft is being excluded from rule 9(d). Accordingly, hiring of vessels, or aircraft, irrespective of whether short term or long term, will be covered by the general rule, that is, the place of location of the service receiver. Hiring of yachts would however continue to be covered by rule 9 (d). [Notification 14/2014-ST]

4.1.4 Point of Taxation Rules: [Notification No.13/2014-ST]

The first Proviso to rule 7 of the Point of Taxation Rules (POTR) is being amended to provide that point of taxation in respect of reverse charge will be the payment date or the first day that occurs immediately after a period of three months from the date of invoice, whichever is earlier. This amendment will apply only to invoices issued after 1st October, 2014. A transition rule is being prescribed (new rule 10 of POTR).

4.1.5 CENVAT Credit Rules: [Notification No.21/2014-CE (N.T.)]

(i) A manufacturer or a service provider shall take credit on inputs and input services within a period of six months from the date of issue of invoice, bill or challan w.e.f. 1st September,2014 [newly inserted proviso to rule 4 (1) and fifth proviso to rule 4(7) refer]

(ii) In case of service tax paid under full reverse charge, the condition of payment of invoice value to the service provider for availing credit of input services is being withdrawn. However, there is no change in respect of partial reverse charge. [Refer amended proviso to rule 4(7)].

(iii) Re-credit of CENVAT credit reversed on account of non-receipt of export proceeds within the specified period or extended period, to be allowed, if export proceeds are received within one year from the period so specified or extended period. This can be done on the basis of documents evidencing receipt of export proceeds [Refer the newly inserted proviso to rule 6(8)].

4.1.6 Notification 26/2012- ST prescribing Taxable Portion: [Notification No. 8/2014-ST]

(i) The condition for availing abatement in case of GTA service is being amended with immediate effect to clarify that the condition for non- availment of credit is required to

be satisfied by the service providers only. Service recipient will not be required to establish satisfaction of this condition by the service provider [Sl. No. 7 refers].

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

(iii) The condition against entry No. 9 is amended with effect from 1st October 2014, to allow the credit of input service of renting of a motor cab if such services are received from a person engaged in the similar line of business i.e. a sub-contractor providing services of renting of motor cab to the main contractor. The whole of the CENVAT credit has been allowed with respect to input service of renting of any motor cab, received from a person who is paying service tax on 40% of the value of services. The CENVAT credit eligibility will be restricted to 40% of the credit of the input service of renting of any motor cab if service tax is paid or payable on full value of the services i.e. no abatement is availed.

(iv) Tour operator service providers are also being allowed to avail CENVAT credit on the input service of another tour operator, which are used for providing the taxable service. This is being provided to avoid cascading of taxes. (Sl. No. 11 refers). [Change to be effective from 1st October, 2014]

(v) Taxable portion in respect of transport of goods by vessel is being reduced from 50% to 40%. Effective service tax will decrease from the present 6.18% to 4.944%, with effect from 1st October, 2014.

4.1.7 Simplification of Partial Reverse Charge mechanism: [Notification No.10/2014-ST]

In renting of motor vehicle, where the service provider does not take abatement the portion of service tax payable by the service provider and service receiver will be modified as 50% each. This change will come into effect from 1st of October 2014.

4.1.8 Advance Ruling:

The resident private limited company is being included as a class of persons eligible to make an application for Advance Ruling in service tax [Notification No.15/2014-ST]. This change will come into effect immediately.

4.1.9 SEZ – procedural simplification: [changes to have immediate effect]

Certain changes are being made in Notification No 12/2013-ST dated 1st July 2013 [vide amending Notification No.07/2014-ST] as follows:

(i) It is being provided that the Central Excise Officer would issue authorization in Form A-2, within fifteen working days from the date of receipt of Form A-1 by the Central Excise Officer.

(ii) Authorization will have validity from the date on which Form A-1 is verified by the Specified Officer of SEZ. However, if Form A-1 is furnished after a period of 15 days from the date of its verification by the Specified Officer, the authorization shall have validity from the date of furnishing of Form A-1 to the Central Excise Officer.

(iii) SEZ Units or the Developer will, pending issuance of Form A-2, be entitled to avail upfront exemption on the basis of Form A-1. However, in such a case, the SEZ Unit/Developer would be required to furnish a copy of authorization issued by the Central Excise Officer within 3 months from the date of receipt of specified services. If a copy of authorization is not provided within the said period of three months, the service provider shall pay service tax on the service so provided availing the exemption.

(iv) As regards services covered under full reverse charge, it is being mentioned specifically in Form that there would be no requirement of furnishing service tax registration number of service provider.

(v) It is being provided that a service shall be treated as exclusively used for SEZ operations if the recipient of service is SEZ unit or developer, invoice is in the name of such unit/developer and the service is used exclusively for furtherance of authorized operations in SEZ.

(vi) Certain doubts have been raised by field formations as regards the jurisdiction for the purposes of granting refunds under notification No. 12/2013-ST to the SEZ Units and SEZ Developers. It is clarified that the jurisdictional Deputy Commissioner / Assistant Commissioner of Central Excise for all purposes under the said notification would be the authority with whom SEZ Units or the Developers are registered for taking upfront exemption or for the purposes of Chapter V of the Finance Act, 1994. In this context, attention is also invited to Circular No. 105/08/2008-ST, dated 16.9.2008. If SEZ units have obtained a centralized registration under the Service Tax Rules, it will have option to file a common service tax refund in respect of all units covered under the Centralized Registration or file a unit-wise refund at its option, to the authority having jurisdiction over centralized registration.

4.1.10 Input Service Distributor:

Rule 7 of the CENVAT Credit Rules, 2004, provides for the manner of distribution of common input service credit by the Input Service Distributor. This was amended vide notification No. 05/2014-CE (N.T.) amending, *inter-alia*, rule 7(d), to provide for distribution of common input service credit among all units in their turnover ratio of the relevant period. Some interpretational issues were raised regarding the amendment such as: (i) due to the use of the term 'such unit' in rule 7(d), the distribution of the credit would be restricted to only those units where the services are used, and (ii) the credit available for distribution would also get reduced by the proportion of the turnover of those units where the services are not used.

These issues are being clarified vide Circular No. 178/04/2014-ST, dated 10.7.2014 illustrating the effect of the amendment carried out vide notification No. 05/2014-CE (N.T.). It clarifies that the amended rule 7 allows distribution of input service credit to all units (which are operational in the current year) in the ratio of their turnover of the previous year/previous quarter as the case may be.

4.2 Exemptions to the social sector: [changes to have immediate effect]

4.2.1 All life micro-insurance schemes approved by the Insurance Regulatory Development Authority (IRDA), where sum assured does not exceed Fifty Thousand

Rupees are being exempted from service tax [entry at Sl. No.26A of Notification 25/2012-ST amended by Notification No.06/2014-ST].

4.2.2 Transport of organic manure by vessel, rail or road (by GTA) is being exempted by amending entries at Sl.No. 20 and 21. Therefore, organic manure will be on par with fertilizer which is already exempted.

4.2.3 Services by way of loading, unloading, packing, storage or warehousing, transport by vessel, rail or road (GTA), of cotton, ginned or baled, is being exempted [amendment of entry at Sl. No. 20 & 21 and 40].

4.2.4 Services provided by Common Bio-medical Waste Treatment Facility operators by way of treatment, disposal of bio medical waste or processes incidental to such treatment or disposal are being exempted [new entry at Sl. No.2B].

4.2.5 Service provided by Employees' State Insurance Corporation (ESIC) during the period prior to 1.7.2012 is proposed to be exempted from service tax. This exemption for services by ESIC would come into effect from the date the Finance (No.2) Bill, receives the assent of the President. It may be noted that any service provided by ESIC to persons governed under the Employees' Insurance Act, 1948 is already exempt for the period commencing from 1.7.2012 [Sl. No. 36].

4.3 Technical exemptions: [changes to have immediate effect]

4.3.1 Specialized financial services received by RBI from outside India, in the course of management of foreign exchange reserves, e.g. external asset management, custodial services, securities lending services, are being exempted [new entry at Sl. No. 41 of 25/2012-ST].

4.3.2 Services provided by the Indian tour operators to foreign tourists in relation to tours wholly conducted outside India are being exempted. This exemption is available to Indian tour operators in cases where they organize tours for a foreign tourist wholly outside India, e.g., service provided to a Sri Lankan for a tour conducted in Bhutan. It may be noted that service provided by a tour operator in relation to an inbound or an outbound tours continue to be leviable to service tax [new entry at Sl. No.42].

5. Amendments in Chapter V of the Finance Act, 1994:

The amendments proposed vide the Bill in Chapter V of the Finance Act, 1994 would come into effect on the date the Bill receives the assent. In some cases, the amendments would be given effect from a date to be notified after the assent [section 65B, 66D and 67A]

5.1 Central Excise provisions made applicable to service tax:

Section 83 is being amended to prescribe that the provisions of following sections of the Central Excise Act shall apply, *mutatis mutandis*, to service tax,-

- (i) Section 5A(2): This section prescribes that any explanation inserted in a notification or special order at any time within one year of issue of notification or order, for clarifying the scope or applicability thereof, shall have effect from the date of issue of such notification or order.
- (ii) Section 15 A: This new section is being inserted in the Central Excise Act to stipulate that third party sources shall furnish periodic information, as specified, in the manner as may be prescribed.
- (iii) Section 15B: This new section is being inserted in the Central Excise Act to prescribe that failure to provide information under section 15A of the Act would attract penalty as specified.
- (iv) Section 35F: Section 35F of the Central Excise Act has already been made applicable to Service Tax. This section is being substituted with a new section to prescribe a mandatory fixed pre-deposit of 7.5% of the duty demanded or penalty imposed or both for filing of appeal before the Commissioner(Appeal) or the Tribunal at the first stage, and 10% of the duty demanded or penalty imposed or both for filing second stage appeal before the Tribunal. The amount of pre-deposit payable would be subject to a ceiling of Rs 10 Crore. All pending appeals/stay application would be governed by the statutory

provisions prevailing at the time of filing such stay applications/appeals. This new provisions would, *mutatis mutandis*, apply to Service Tax.

5.2 Other Amendments:

5.2.1 Section 73 is being amended to prescribe time limits for completion of adjudication as already exists in Central Excise. This time limit would need to be followed, as far as possible.

5.2.2 Section 80 is being amended to exclude the reference of first proviso to section 78. This amendment, in effect, removes the power to waive the 50% penalty imposable in cases where service tax has not been levied, not paid or short levied or short paid on account of suppression of facts or willful misstatement but details of transactions are available in the specified record.

5.2.3 Section 82(1) is being amended, along the lines of section 12F (1) of the Central Excise Act, so that Joint Commissioner or Additional Commissioner or any other officer notified by the Board can authorize any Central Excise Officer to search and seize.

5.2.4 Sub-section (6A) of section 86 is being amended to omit the words “for grant of stay or”.

5.2.5 Section 87 is being amended to incorporate power to recover dues of a predecessor from the assets of a successor purchased from the predecessor as it is presently provided for in section 11 of the Central Excise Act, 1944.

5.2.6 Section 94 is being amended to obtain rule making powers (a) to impose upon assesseees, *inter alia*, the duty of furnishing information, keeping records and making returns and specify the manner in which they shall be verified; (b) for withdrawal of facilities or imposition of restrictions (including restrictions on utilization of CENVAT credit) on service provider or exporter, to check evasion of duty or misuse of CENVAT credit; and (c) to issue instructions in supplemental or incidental matters.

6.1 Changes explained above are not intended to be exhaustive and the analysis of changes does not have legal validity; analysis of changes wherever provided is merely meant to highlight certain aspects of these changes. The text of the statutory provisions and the wordings of the notifications should be read carefully for interpreting the law.

6.2 Field formations are requested to go through the changes made in the Budget carefully. Any issues or doubts which may arise or any omission/error observed may kindly be brought to the notice of the undersigned, Shri J. M. Kennedy, Director, TRU at jm.kennedy@nic.in or Shri G.D.Lohani, Director, TRU, at gd.lohani@nic.in as soon as possible.

I would like to express my thanks for the pre-budget suggestions and inputs which have been received from certain field formations. I would request that similar inputs be continued to be forwarded in future also.

With regards,

Yours sincerely,



10.7.14

(M. Vinod Kumar)

To:

All Chief Commissioners/ Directors General
All Commissioners of Service Tax
All Commissioners of Central Excise