

# Brief Note of Renting of Immovable Property under Service Tax

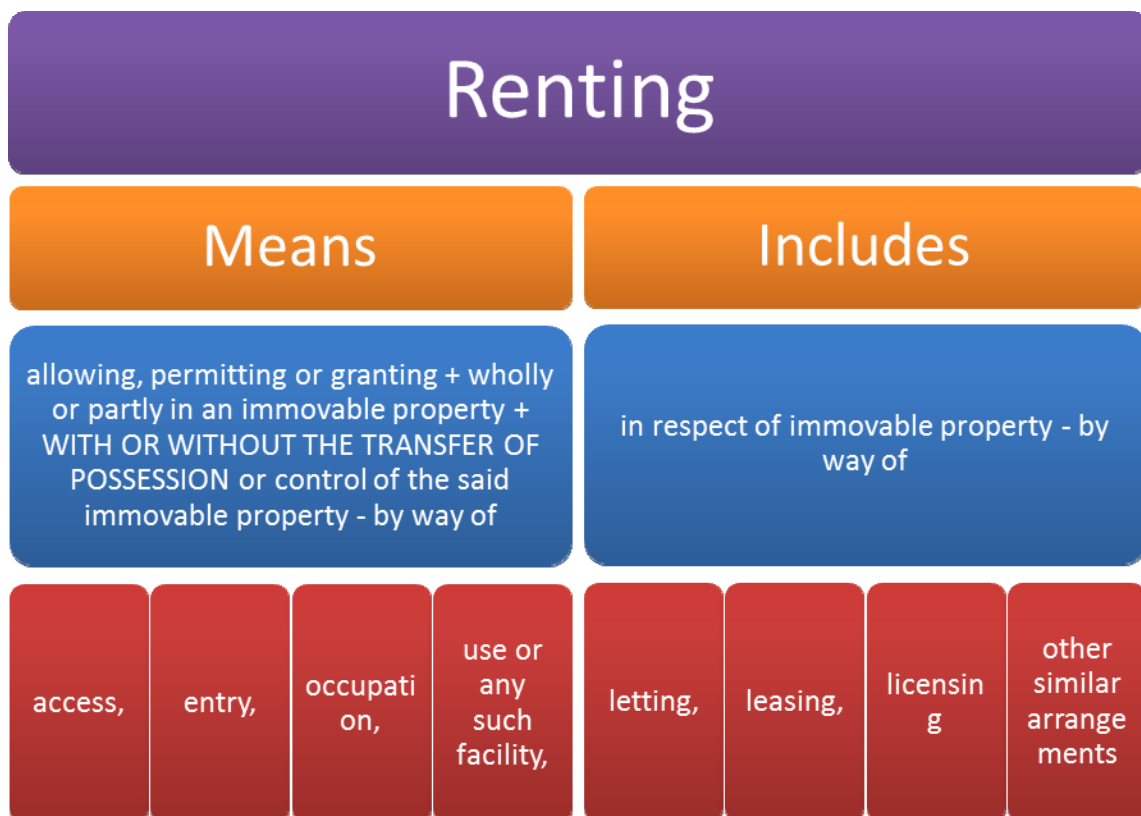
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## 1. INTRODUCTION

Renting of Immovable property has been taxed under the earlier tax regime vide Section 65 (105) (zzzz). Renting of immovable property has been brought into tax net vide Notification No. 23/2007-ST dated 01.06.2007. But After 1.7.2012, the transition involves shift from taxation of 119 service-specific descriptions to a new regime whereby **all services will be taxed** unless they are covered by any of the entries in the negative list or are otherwise exempted. Accordingly as per clause (44) of section 65B of the Act it has also been stated that **service includes a declared service**. And Renting of Immovable property is the part of declared service.

## 2. Renting of immovable property

- (i) Only amount which is received in the nature of rent in respect of immovable property are covered under declared service and accordingly service tax is applicable on such amount. So that I would like to discuss that meaning of "Renting" which has been defined in Section 65B of finance Act, 1994.



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- (ii) If Security amount is received in respect of immovable property to service provider and such amount is refundable amount then such amount shall not be treated as the part of service and accordingly service tax is not applicable on such security amount.
- (iii) But if Security amount is adjusted against the amount of rent then in such amount shall be treated as the part of service and accordingly service tax is applicable on such adjusted amount.
- (iv) If Electricity Charges is received in respect for supplying electricity in flats/shops (Charged on actual basis) then such amount shall not be treated as the part of service and accordingly service tax is not applicable on such electricity amount.
- (v) If Service provider also provides service of maintenance Service towards maintenance of building/complex then in such case such service is treated as another service and accordingly service tax is applicable on such service.

### 3. Summary of above discussion

<u>S. No.</u>	<u>Amount Received</u>	<u>Description</u>	<u>Taxability</u>
1.	Renting Service	Towards of Renting of Immovable Property	Service tax is applicable
2.	Security Amount	Refundable Amount	Service tax is not applicable
3.	Security Amount	Non-Refundable Amount	Service tax is applicable
4.	Security Amount	Which is Adjusted against Rent Amount	Service tax is applicable
5.	Electricity Amount	For supplying electricity in flats/shops (Charged on actual basis)	Service tax is not applicable
6.	Maintenance Service	Towards maintenance of building/complex	Service tax is applicable

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## 4. Valuation

As Per N/N 29/2012, the taxable service of renting of an immovable property, from so much of the service tax leviable thereon under section 66B of the said Finance Act, as is in excess of the service tax calculated on a value which is equivalent to the gross amount charged for renting of such immovable property less taxes on such property, namely property tax levied and collected by local bodies.

Provided that any amount such as interest, penalty paid to the local authority by the service provider on account of delayed payment of property tax or any other reasons shall not be treated as property tax for the purposes of deduction from the gross amount charged.

Provided further that wherever the period for which property tax paid is different from the period for which service tax is paid or payable, property tax proportionate to the period for which service tax is paid or payable shall be calculated and the amount so calculated shall be excluded from the gross amount charged for renting of the immovable property for the said period, for the purposes of levy of service tax.

## Analysis

**VALUE OF TAXABLE SERVICE**= Gross Amount - PROPERTY TAXES( On Proportionate Basis)

NOTE- INT AND PENALTY NOT DEDUCTIBLE

Example:-

Property tax paid for April to September = Rs. 12,000/-

Rent received for April = Rs. 1, 00,000/-

Service tax payable for April = Rs. 98,000/-  $(1, 00,000 - 12,000/6) * \text{applicable rate of service tax}$

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## 5. **If Person Liable to pay service tax has paid excess amount of service tax on account of non-availment of deduction of Property tax Paid.**

In Such Case, as per sub rule (4C) of Rule 6 of service tax rules, 1994

Where the person liable to pay service tax in respect of services of renting of immovable property has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, on account of non-availment of deduction of property tax paid in terms of notification No. 29/2012 ice Tax , dated the 20th June, 2012, from the gross amount charged for renting of the immovable property for the said period at the time of payment of service tax, the assessee may adjust such excess amount paid by him against his service tax liability within one year from the date of payment of such property tax and the details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of fifteen days from the date of such adjustment.

### **Analysis**

SELF- ADJUSTMENT OF S.TAX WITHIN 1 YEAR from the date of payment of such property tax - IF EXCESS S.TAX PAID DUE TO NONDEDUCTION OF PROPERTY TAX.

AND

The details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of fifteen days from

## 6. **Rate of Service Tax**

There shall be levied a tax (hereinafter referred to as the service tax) at the rate of **twelve percent**. On the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

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## 7. Abatement value

**As Per N/N - 26/2012**

<u>Entry No.</u>	<u>Description of taxable Service</u>	<u>Taxable Portion</u>	<u>Exempted Portion</u>	<u>Condition</u>
6.	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes	60%	40%	CENVAT credit on inputs and capital goods, used for providing the taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004.

## 8. Place of Provision of Service Rule

In this service place of provision of service is depends upon the following situation:-

- (i) Where “Service Provider” and “Service receiver” is situated in taxable-territory.**

As per Rule 8 of Place of Provision of Service Rules, 2012

(Place of provision of services where provider and recipient are located in taxable territory).-

Place of provision of a service, where the location of the provider of service as well as that of the recipient of service is in the taxable territory, shall be the location of the recipient of service.

- (ii) Where any one is (i.e. either “Service Provider” or “Service receiver”) is situated in non-taxable territory and Renting Service is availed only for one Immovable Property.**

As per Rule 5 of Place of Provision of Service Rules, 2012

(Place of provision of services relating to immovable property).-

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The place of provision of services provided directly in relation to an immovable property, including services provided in this regard by experts and estate agents, provision of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever, name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

**(iii) Where any one is (i.e. either “organizer” or “Service receiver”) is situated in non-taxable territory and Renting Service is availed for more than one Immovable Property.**

As per Rule 7 of Place of Provision of Service Rules, 2012

(Place of provision of services provided at more than one location).-

Where any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided.

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## Analysis



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## 9. **Point of Taxation Rule**

### **CASE 1:- “if Service shall not be treat as import of service.”**

As per Rule 3 of Point of Taxation Rules, 2011

Determination of point of taxation.- For the purposes of these rules, unless otherwise provided, ‘point of taxation’ shall be,-

(a) the time when the invoice for the service provided or to be provided is issued:

Provided that where the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules,1994, the point of taxation shall be the date of completion of provision of the service”;

(b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

Provided that for the purposes of clauses (a) and (b), —

(i) in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service;

(ii) Wherever the provider of taxable service receives a payment up to rupees one thousand in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined in accordance with the provisions of clause (a).”

Explanation .- For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.”.

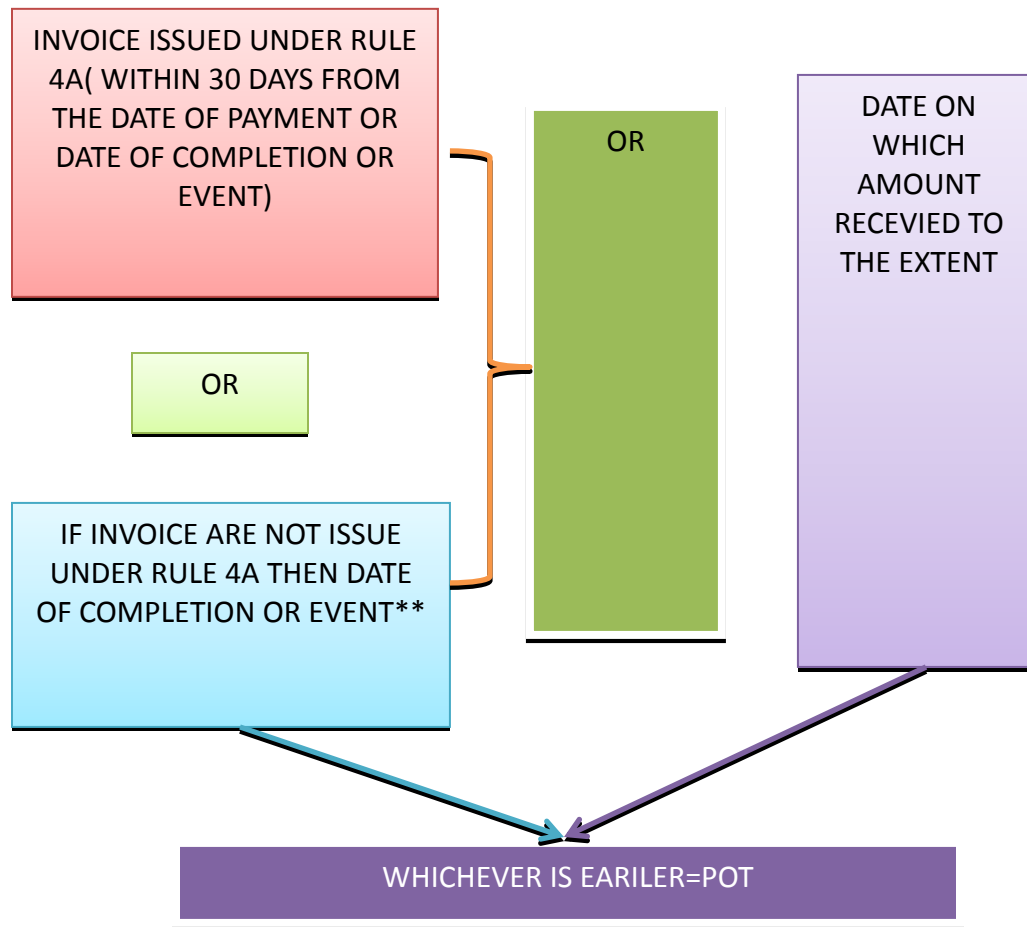


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## Analysis

### Determination of point of taxation

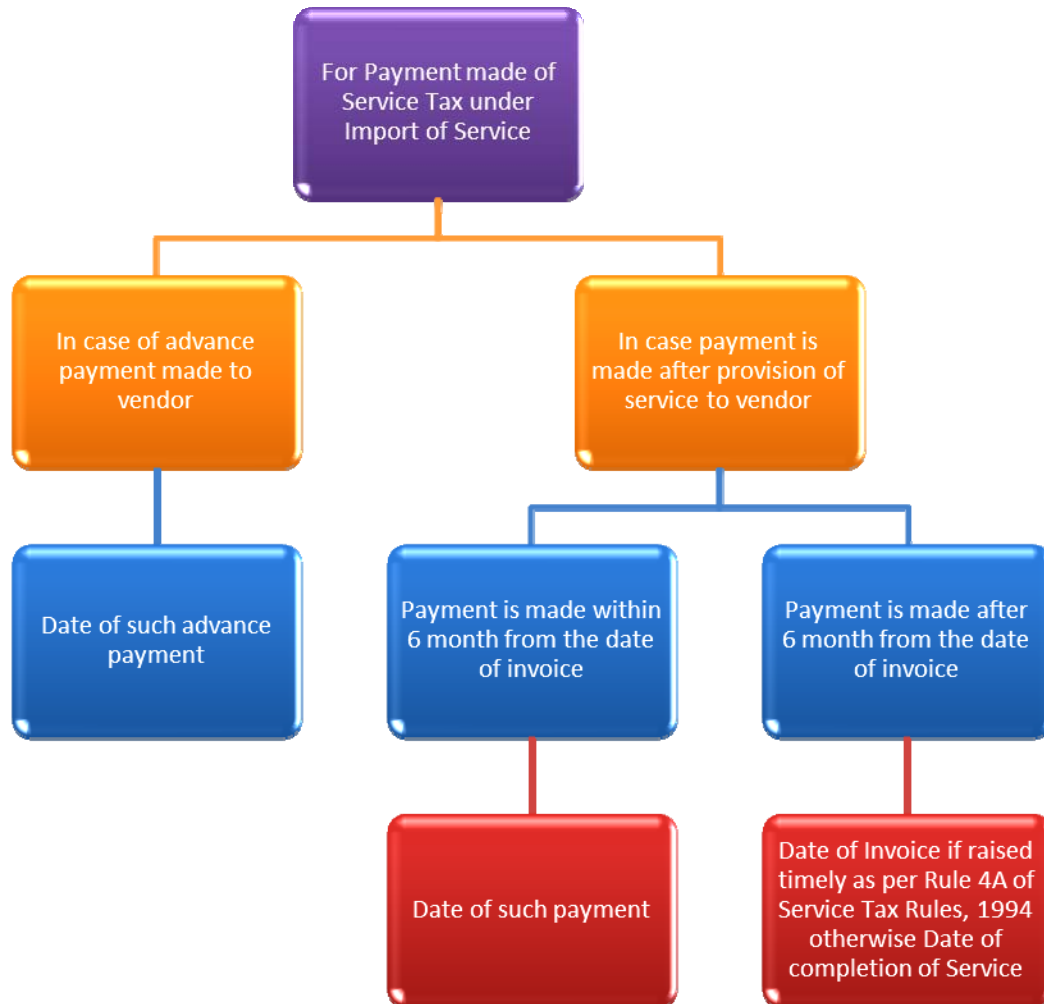


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## **CASE 2:- “if Service shall be treat as import of service.”**

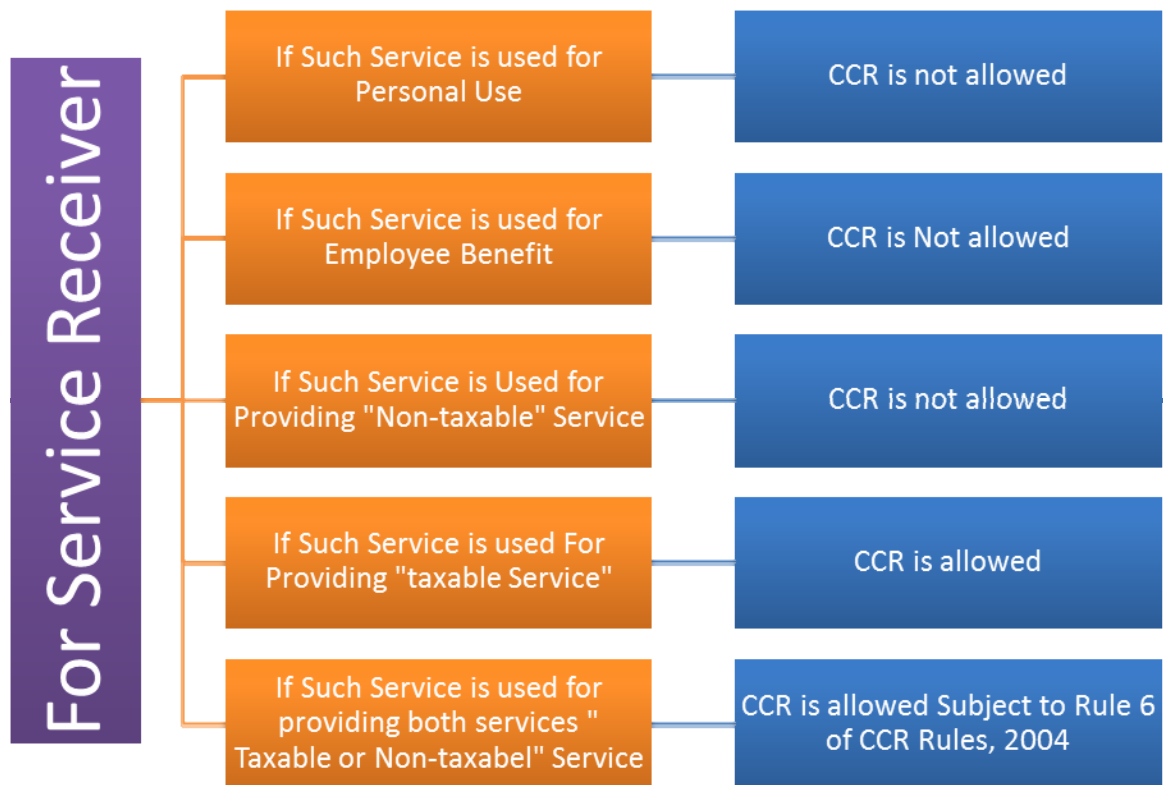
**In this case point of taxation is determine as per Rule 7 of Point of Taxation Rules, 2011**



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## 10. CENVAT Credit Rule



## 11. When such is considered as “Non-Taxable Service” or “Exemption Service”

### (i) Non-Taxable Service

#### Covered Under Negative List

- Renting of vacant land, with or without a structure + incidental to its use, relating to agriculture.
- Renting of residential dwelling + for use as residence.
- Renting out of any property by Reserve Bank of India.
- Renting out of any property by a Government or a local authority to + a nonbusiness entity.
- Sale of Space of Immovable Property for advertisement Purpose.

### (ii) Exempted Service

#### Covered Under Mega Exemption

- Renting of precincts of a religious place meant for general public.
- Renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a room below rupees one thousand per day or equivalent.
- Renting to an exempt educational institution.

### (iii) Other Exemption

Threshold level exemption up to Rs. 10 lakh. (I.e. Small Service Provider)

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## 12. Situations

<u>CASE</u>	<u>Whether Service Tax is Liable or Not</u>
permitting usage of a property for a temporary purpose like conduct of a marriage or any other social function	Service tax is Applicable
Renting of property to an educational body for the purpose of education	Service tax is not applicable (As Per Mega Exemption)
Renting of vacant land for animal husbandry or floriculture	Service tax is not applicable (As Per Negative List).
Permitting use of immovable property for placing vending/dispensing machines	Service tax is Applicable
Allowing erection of a communication tower on a building for consideration.	Service tax is Applicable
Renting of land or building for entertainment or sports	Service tax is Applicable
Renting of theatres by owners to film distributors (including under a profit-sharing arrangement)	Service tax is Applicable
Hotels/restaurants/convention centres letting out their halls, rooms etc. for social, official or business or cultural functions	Service tax is Applicable
Commercial Property For Commercial Use	Service tax is Applicable
Residential Property For Residential use	Service tax is not liable (As Per Negative List).
Residential Property For Commercial Use	Service tax is Applicable

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## 13. Flow Chart for "Renting of Immovable Property"

