

Analysis of Short Term Accommodation Service Introduced by Finance Act, 2011

1. Taxable Service

As per section 65 (105)(zzzw) taxable service means any service provided or to be provided to any person **by a hotel**, inn, guest house, club or campsite, by whatever name called, for providing of accommodation for a **continuous period of less than three months**;

Analysis of above definition

Key ingredients of above definition are as follows:

1. Services to be provided by a hotel, inn, guest house, club or campsite.
2. Above service is taxable only if continuous period of stay is less than 3 months.
3. Services to be provided to any person.

Notes:

1. Read the given circular clarifying number of doubts:

Circular No. 139/8/2011-TRU DATED 10.05.11

Subject: Short Term Accommodation Service and Restaurant Service-clarification -regarding

Since the levy of service tax on the two new services relating to services provided by specified restaurants and by way of short-term hotel accommodation came into force with effect from 1st May 2011, a number of queries have been raised by the potential tax payers.

2. These are addressed as follows:

Short Term Accommodation Service:

Sl. No	Queries	Clarification
1.	What is the relevance of declared tariff? Is the tax required to be paid on declared tariff or actual amount charged?	“Declared tariff” includes charges for all amenities provided in the unit of accommodation like furniture, air-conditioner, refrigerators etc., but does not include any discount offered on the published charges for such unit. The relevance of ‘declared tariff’ is in determining the liability to pay service tax as far as short term accommodation is concerned. However, the actual tax will be liable to be paid on the amount charged i.e. declared tariff minus any discount offered. Thus if the declared tariff is Rs 1100/-, but actual room rent charged is Rs 800/-, tax will be required to be paid @ 5% on Rs 800/-.
2.	Is it possible to levy separate tariff for the same accommodation in respect of corporate/privileged customers and other normal customers?	It is possible to levy separate tariff for the same accommodation in respect of a class of customers which can be recognized as a distinct class on an intelligible criterion. However, it is not applicable for a single or few corporate entities.

3.	Is the declared tariff supposed to include cost of meals or beverages ?	Where the declared tariff includes the cost of food or beverages, Service Tax will be charged on the total value of declared tariff. But where the bill is separately raised for food or beverages, and the amount is charged in the bill, such amount is not considered as part of declared tariff.
4.	What is the position relating to off-season prices ? Will they be considered as declared tariff?	When the declared tariff is revised as per the tourist season, the liability to pay Service Tax shall be only on the declared tariff for the accommodation where the published/printed tariff is above Rupees 1000/- . However, the revision in tariff should be made uniformly applicable to all customers and declared when such change takes place.
5.	Is the luxury tax imposed by States required to be included for the purpose of determining either the declared tariff or the actual room rent?	For the purpose of service tax luxury tax has to be excluded from the taxable value.

2. Date of Applicability

The above service has been brought to service tax net wef 01.05.2011.

3. Value of Taxable Service

Value of taxable services shall be determined as per provision of Section 67 of Finance Act, 1994 read with Service Tax (Determination of Value) Rules, 2006.

Value of taxable services may be determined at the option of the provider of taxable services in any of the following manner:

A. Where the Hotel etc. avails exemption under NN 1/2006-ST dated 01.03.2006:

In above case, value of taxable services shall be the total price charged by the **Hotel etc.** In that case, an exemption of 50% of gross value shall be given as per notification No. 1/2006-ST dated 01.03.2006 amended by notification No. 34/2011-ST dated April 25, 2011.

Provided that this notification shall not apply in cases where, -

- I. the CENVAT credit of duty on **inputs or capital goods** or the CENVAT credit of service tax on **input services**, used for providing such taxable service, has been taken under the provisions of the CENVAT Credit Rules, 2004; or
- II. the service provider has availed the benefit (i.e., exemption regarding goods and material sold during the course of providing taxable services) under the notification of the Government of India in the Ministry of Finance (Department of Revenue), **No. 12/2003-Service Tax**, dated the 20th June, 2003[G.S.R. 503 (E), dated the 20th June, 2003].

B. Where the Hotel etc does not avail exemption under NN 1/2006-ST dated 01.03.2006:

In this case, value of taxable services shall be the total price charged by the **Hotel etc.** However, as per NN 12/2003-ST dated 20.06.2003, value as is equal to the value of goods and materials sold by the hotel is exempted from the service tax leviable thereon under section (66) of the said Act,

subject to condition that there is documentary proof specifically indicating the value of the said goods and materials.

Notes:

- I. Actual levy will be restricted to accommodation with declared tariff of Rs 1,000 per day or higher by an exemption notification. **Once this requirement is met, tax will be chargeable irrespective of the fact that actually the amount charged from a particular customer is less than Rs 1,000. The tax will also be charged on the gross amount paid or payable for the value of the service. (As per Annexure A of D.O.F.No.334/3/2011-TRU DATED 28.02.11). For this purpose Notification No.31/2011 – Service Tax dated 25.04.2011 exempting said service** when the declared tariff for providing of such accommodation is less than rupees 1000 per day from the whole of the service tax leviable thereon under section 66 of the said Act.

4. Accounting Code

As per Circular No.136/5/2011-TRU DATED 20.04.11

Accounting Codes for the purpose of payment of service tax are as follows:

Sl.No.	Taxable Services	Accounting Code		
		Tax Collection	Other Receipts	Deduct Refunds
(1)	(2)	(3)	(4)	(5)
1.	Service provided by a hotel, inn, guest house, club or campsite in relation to providing of accommodation for a continuous period of less than three months[Finance Act 1994, Section 65(105) (zzzzw)]	00441070	00441071	00441072

5. Provision in respect of payment of service tax in case of New Services

Rule 5 of Point of Taxation Rules, 2011 Payment of Tax in Case of New Services

Where a service, **not being a service covered by rule 6 (i.e., Determination of Point of Taxation in Case of Continuous Supply of Service)**, is taxed for the first time, then, –

(a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;

(b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within the period referred to in rule 4A of the Service Tax Rules, 1994.

ANALYSIS OF RULE 5

S. No.	Particulars	Rule 5 (a)	Rule 5 (b)
1	Example	a.) Invoice issued on 15.04.11 of Rs. 10,00,000/- b.) Payment received on 20.04.11 of Rs. 8,00,000/- and on 01.05.11 of Rs. 2,00,000/- c.) Service is first time become taxable	a.) Invoice raised on 20.04.11 b.) Payment received on 15.04.11 c.) Completion of service is on 06.04.11 d.) Service is first time become

		on 30.04.11	taxable on 16.04.11
	Analysis	<p>i.) In the above case invoice has been issued on 15.04.11 and against the same Rs. 8 lac has been received before service first become taxable (i.e. on 30.04.11) therefore no service tax liability will arise on Rs. 8lac.</p> <p>ii) However, ₹ 2 lac has been received after service first become taxable (i.e. after 30.04.2011), therefore assessee has to deposit service tax on the same amount.</p>	Here service tax is not payable because assessee has received payment before service become taxable and issued invoice within the time limit specified under Rule 4A of the Service Tax Rules, 1994
	Conclusion	In case of a service which is first time become taxable, assessee should make the necessary arrangement for the collection of invoice issued before the date service first time become taxable.	Under rule 5 (b), assessee should try to issue invoice within the time specified in above rule and collect the payment before service become taxable.

6. REGISTRATION

Provisions related to registration under Finance Act, 1944 are laid down u/s 69 read with Rule 4 of Service Tax Rules, 1994. As per said rule 4,

(1) Every person liable for paying the service tax shall make an application to the concerned Superintendent of Central Excise in Form ST-1 for registration within a **period of thirty days** from the date on which the service tax under section 66 of the Finance Act, 1994(32 of 1994) is levied. Provided that where a person commences the business of providing a taxable service after such service has been levied, he shall make an application for registration within a period of thirty days from the date of such commencement.

Registration under above Rule 4(1) is required if service provider is not registered under service tax act at all. However in case of service provider who is already registered in respect of any taxable services is required to make application under Rule 4(5A) for amendment in service tax registration certificate.

7. INVOICE AS PER RULE 4A OF STR, 1994

Provisions related to issue of invoices are laid down under Rule 4A of Service Tax Rules, 1994 as under:

(1) Every person providing taxable service shall, **not later than fourteen days from the date of completion of such taxable service or receipt of any payment** towards the value of such taxable service, whichever is earlier, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect of taxable service provided or to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely :-

- (i) the name, address and the registration number of such person;
- (ii) the name and address of the person receiving taxable service;
- (iii) description, classification and value of taxable service provided or to be provided ; and
- (iv) the service tax payable thereon.

Therefore it should be kept in mind that invoice etc should be raised within 14 days from the date of completion of such taxable service or receipt of any payment and should be serially numbered and contain above details.

8. DEPOSIT SERVICE TAX ALONGWITH INTEREST

Provisions related to deposit of service tax are contained in section 66, section 68, Rule 6 of Service Tax Rules, 1994 and Section 75. Service tax is required to be deposited at the rate specified under section 66 in such manner and within such period as provided under Rule 6 of Service Tax Rules, 1994. If service tax is not deposited in time then it should be deposited alongwith interest under section 75.

9. INPUT CREDIT AS PER CENVAT CREDIT RULES, 2004

Credit of duty paid on input and capital goods and service tax paid on input services may be availed and utilized as per provisions of CENVAT Credit Rules, 2004.

10. RETURNS UNDER FINANCE ACT, 1994

A. Under Finance Act, 1994 return is required to be filed by following persons:

- I. Provider of taxable service or receiver of taxable services ,as the case may be , as per provisions of section 70 read with rule 7 of Service Tax Rules, 1994.
- II. Provider of output service availing CENVAT Credit as per provision of Rule 10(9) of CENVAT Credit Rule, 2004.
- III. Input credit distributor as per provision of Rule 10(10) of CENVAT Credit Rule, 2004 read with Rule 4 of Service Tax (Registration of Special Category of Persons) Rules, 2005.

B. Time Limit for Submission of Return:

S. No.	Return By	Due Date	May be Revised Within	Section or Rule
1	Person referred in point 1 above.	25 th of the month following the particular half year.	90 days from the date of filing of return.	See point 1 above.
2	Person referred in point 2 above.	Last day of the month following the particular half year.	60 days from the date of filing of return.	See point 2 above.
3	Person referred in point 3 above.	Last day of the month following the particular half year.	60 days from the date of filing of return.	See point 3 above.

Therefore, return should be filed within the time limit specified under above table and as per provisions of section and rules given in said table.

11. RECORDS AS PER RULE 5 OF STR, 1994

There is no records specified to be maintained under above provision but records maintained under any other law are acceptable. **At the time of filing of return first time, records maintained by assessee are required to be furnished in duplicate.**

12. Point of Taxation Rules, 2011

As per Point of Taxation Rules, in normal situation , services shall be deemed to have been provided as under:

1.

Date of invoice or payment, whichever is earlier
(if the invoice is issued within the prescribed period of 14 days from the date of completion of the provision of service.)

2.

Date of completion of the provision of service or payment, whichever is earlier
(if the invoice is not issued within the prescribed period as above.)

3.

Date of receipt of advance payment

With Warm Regards,

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