

ANALYSIS OF SERVICE TAX RULES, 1994

Service Tax Rules, 1994 are being amended as follows:

A. As per Rule 2 (cd) of STR, 1994, now **partnership includes a limited liability partnership**. Now it will resolve number of issues faced by industry, professionals and department as to whether LLP enjoy benefit available to partnership firm like payment of service tax on quarterly basis etc.

B. Provision related with issue of invoice:

1. The **time period provided in rule 4A for issuance of invoice** is being increased as follows:

S. No.	Cases	Old limit	New limit	Rule or Proviso No.
1	Normal case	14 Days	30 Days	Rule 4A(1)
2	In case of continuous supply of services	14 Days	30 Days	3 rd Proviso of Rule 4A(1)
3	For banks and financial institutions providing banking and other financial services	14 Days	45 Days	4 th Proviso of Rule 4A(1)

2. Let's take an example. You have issued invoice of Rs. 10,000/- and received payment of Rs. 11,000/- and you have opted to determine point of taxation on the option as given in Point of Taxation Rules, 2011. Now as per newly inserted 6th proviso of Rule 4A you need not to issue fresh invoice to the extent of excess amount received i.e. Rs. 1,000/-.

C. Amendment in respect of **Payment of service tax** under Rule 6 of STR, 1994.

1. 3rd Proviso of rule 6 has been inserted and as per this proviso in case of export of services under Rule 3(1) of Export of Services Rules, 2005, payment is need not to be made as required under Rule 6 if payment in respect of export of services received within the time limit specified by RBI.
2. 4th Proviso of rule 6 has been inserted and it provides option to pay service tax on receipt basis to individual and firm as under:

S. No.	Case	Option To Pay Service Tax On Receipt Basis
1	In case of individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is 50 lakh rupees or less in the previous financial year.	In this case individual and firms has option to pay tax on receipt basis in respect of service provided or to be provided up to Rs. 50 lakh in current financial year.
2	In case of individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is more than 50 lakh rupees in the previous financial year	In this case individual and firms has to pay tax on accrual basis .
3	In any other case	It covers all assessee other than individual and firm and they have to pay tax on accrual basis .

D. Amendment in respect of **adjustment of excess amount paid under Rule 6 (4B) of STR, 1994.**

Earlier if the assessee has paid excess amount of service tax under rule 6(4A) then they are allowed to adjust the same only up to the limit of Rs.2 lakh under rule 6(4B) and now it can be adjusted for any amount. It is welcome amendment and logical one.

E. Amendment in respect of Rule 6 (7A), Rule 6 (7B) & Rule 6 (7C) of STR, 1994.

S. No.	Particular	Old	New
1	An insurer carrying on life insurance business shall have the option to pay tax [Rule 6 (7A)]	1.5% of the gross amount of premium charged	3% of the premium charged in the first year and 1.5% of the premium charged in the subsequent years
2	The person liable to pay service tax in relation to purchase or sale of foreign currency have the option to pay tax [Rule 6 (7B)]	<p>1. 0.1% of the gross amount of currency exchanged for up to Rs.100,000, subject to the minimum Rs.25; and</p> <p>2. Rs.100 and 0.05% of the gross amount of currency exchanged for amount exceeding Rs.100,000 and up to Rs.10,00,000; and</p> <p>3.Rs.550 and 0.01% of the gross amount of currency exchanged for amount exceeding Rs.10,00,000, subject to maximum amount of Rs.5000.</p>	<p>1. 0.12% of the gross amount of currency exchanged for up to Rs.100,000, subject to the minimum Rs.30; and</p> <p>2. Rs.120 and 0.06% of the gross amount of currency exchanged for amount exceeding Rs.100,000 and up to Rs.10,00,000; and</p> <p>3. Rs.660 and 0.12% of the gross amount of currency exchanged for an amount exceeding Rs.10, 00,000, subject to maximum amount of Rs. 6000.</p>
3	The distributor or selling agent , liable to pay service tax for the taxable service of promotion etc of lottery have the option to pay tax [Rule 6 (7C)]	Rs.6000/- on every Rs.10 Lakh (or part of Rs.10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw. (Where guarantee prize exceeds 80%).	Rs.7000/- on every Rs.10 Lakh (or part of Rs.10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw. (Where guarantee prize exceeds 80%).

		<p>Rs 9000/- on every Rs.10 Lakh (or part of Rs.10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw. (Where guarantee prize less than 80%).</p>	<p>Rs.11000/- on every Rs.10 Lakh (or part of Rs.10 Lakh) of aggregate face value of lottery tickets printed by the organising State for a draw. (Where guarantee prize less than 80%).</p>

ANALYSIS OF POINT OF TAXATION RULES, 2011

Point of Taxation Rules, 2011 are being amended as follows:

- A.** Rule 2(ba) has been inserted to define **change in effective rate of tax**. Before that it has been explained by explanation 1 of Rule 4 of POT, Rules, 2011. Now this explanation has been omitted.
- B.** Definition of continuous supply of services has been amended and widened. Now it covers services of recurrent nature and the obligation for payment periodically or from time-to-time.
- C.** Rule 2A has been inserted and it defines date of payment.

1. Date of payment means earlier of following:

I. Dates on which the payment is **entered in the books of accounts**

or

II. Dates on which the payment is **credited to the bank account** of the person liable to pay tax.

However date of payment shall be the date of **credited to the bank account if the following conditions are satisfied:**

I. There is a **change in effective rate of tax** or when a **service is taxed for the first time** during the period between such entry in books of accounts and its credit in the bank account; and

II. The credit in the bank account is **after four working days** from the date when there is change in effective rate of tax or a service is taxed for the first time; and

III. The payment is made by way of an **instrument which is credited** to a bank account.

Relevance of date of payment:

Now question is that why we need to know the meaning of date of payment. It is required because as per point of taxation rules, in normal situation, point in time when a service shall be deemed to have been provided shall be earlier of the following:

I. Date of invoice or payment, whichever is earlier.

(if the invoice is issued within the prescribed period of 30 days from the date of completion of the provision of service.)

II. 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.)

III. Date of receipt of advance payment.

Before the insertion of meaning of date of payment there was confusion that what should be taken as date of receipt of payment either date of receipt of cheque or date of entry in books of account or date of credit in bank account or date of deposit of cheque in bank. Now it is resolved.

Important Issue:

Of which date rate of service tax shall be taken it is still not clear?

Reply:

Section 67A has been inserted which provides that date of determination of rate of tax, value of taxable service and rate of exchange will be the time when **taxable services has been provided or agreed to be provided. Here also it is not clear that what is to be considered as AGREED TO BE PROVIDED** either date of receipt of advance or date of entering into agreement or any other date. However, this section would be applicable from the on which Finance Bill 2012 receives the assent of the President. Before that which date should be considered for the same.

As per my analysis this date should be the date on which services has been provided because under service tax act taxable event is rendering of taxable services and accordingly rate of service tax shall be taken of the date when services has been provided. POT Rules, 2011 provides provision to ascertain when a service shall be deemed to be provided. Accordingly rate of service tax shall be taken of the date when services shall be deemed to be provided as per POT Rules, 2011.

2. Precaution to be taken to save tax liability due to increase in tax rate from 10% to 12% wef 01.04.2012.

Here important rule is Rule 4 of POT Rules, 2011 which provides for determination of POT in case of change in rate of tax. This rule determines various POT in given two situations:

Rate of service tax is 10% up to 31.03.2012

Rate of service tax is 12% w.e.f. 01.04.2012

1. In case a taxable service has been provided **before the change of rate**. POT and date of rate of service tax shall be determined as under:

S. No.	Date of completion of service	Date of invoice	Date on which payment recd.	Point of Taxation	Date of which rate of tax shall be taken as per author before applicability of section 67A
1	31.03.2012	14.04.2012	30.04. 2012	14.04.2012	14.04.2012 (12%) i.e., of the date when POT is determined
2	31.03.2012	31.03.2012	30.04.2012	31.03.2012	31.03.2012 (10%) i.e., of the date when POT is determined
3	31.03.2012	14.04.2012	31.03.2012	31.03.2012	31.03.2012(10%) i.e., of the date when POT is determined

Conclusion: If services have been provided prior to change in rate of tax then POT shall be determine of the date of issue of invoice or payment which happen before change of rate of tax. However if both the dates falls after the date of change of rate then earlier of them shall be taken to determine point of taxation.

2. In case a taxable service has been provided **after the change of rate.**

S. No.	Date of completion of service	Date of invoice	Date on which payment recd.	Point of Taxation	Date of which rate of tax shall be taken as per author before applicability of section 67A
1	15.04.2012	30.03.2012	30.04. 2012	30.04. 2012	30.04. 2012 (12%) i.e., of the date when POT is determined
2	15.04.2012	30.03.2012	31.03. 2012	30.03.2012	30.03.2012 (10%) i.e., of the date when POT is determined
3	15.04.2012	30.04.2012	31.03.2012	30.04.2012	30.04.2012(12%) i.e., of the date when POT is determined

Conclusion: If services have been provided after change in rate of tax then POT shall be determine of the date of issue of invoice or payment which happen after change of rate of tax. However if both the dates falls before the date of change of rate then earlier of them shall be taken to determine point of taxation.

According to me, in the above case rate of tax shall be taken of the date on which point of taxation is determined because taxable event under service tax act is providing of taxable services and point of taxation means the point in time when a service shall be deemed to have been provided.

On the basis of above provisions and analysis, it can be concluded that, in case change of tax rate, if payment is received after 4 working days from the date when there is change in effective rate of tax then date of payment will be the date of credit in bank account. Accordingly if this date will fall after 05.04.2012 and POT is the date of payment then service tax has to be deposited with higher rate of 12%. Therefore assessee is required to make all effort to deposit cheques received up to 31.03.2011 and get the cleared up to 05.04.2011.

D. Proviso of Rule 3 (a) of POT Rules, 2011 has been substituted and now invoice can be issued within 30 days in terms of provisions of Rule 4A of Service Tax Rules, 1994.

E. New proviso for clause (a) and (b) of Rule 3 of POT Rules, 2011 has been inserted.

1. Now determination of POT in case of continuous supply of services shall be done as per this proviso and accordingly erstwhile rule 6 of POT Rules, 2011 for continuous supply of services has been omitted.

2. Second clause of this proviso provide an option to determine the point of taxation in respect of advances received up to Rs.1000/- in excess of the amount indicated in the invoice, on the basis of invoice or completion of service rather than payment. In line with this provision, now as per newly inserted 6th proviso of Rule 4A, you need not to issue fresh invoice to the extent of excess amount received i.e. Rs. 1,000/-.

F. Rule 5 has been amended as under:

Now reference to rule 6 in rule 5 has been omitted and in clause b of rule 5 invoice is required to be issued within 14 days of the date when the service is taxed for the first time while before this amendment same can be issued within the time limit given in Rule 4A of Service Tax Rules, 1994.

G. Erstwhile rule 7 of POT Rules, 2011 provide for determination of POT in following cases:

1. Export of Services under rule 3 (1) of Export of Services Rules, 2005
2. Reverse Charges Mechanism U/s 68 (2) of Finance Act, 1994
3. Specified Services under rule 7(c) of said rules
4. Associated enterprises where the person providing the service is located outside India.

Now rule 7 of POT Rules, 2011 provide for determination of POT in following two cases only:

1. Reverse Charges Mechanism U/s 68 (2) of Finance Act, 1994
2. Associated enterprises where the person providing the service is located outside India.

And remaining two cases has been dealt with by following proviso of Rule 6 of Service Tax Rules, 1994:

1. 3rd Proviso of rule 6 has been inserted and as per this proviso in case of export of services under Rule 3(1) of Export of Services Rules, 2005, payment is need not to be made as required under Rule 6 if payment in respect of export of services received within the time limit specified by RBI.
 2. 4th Proviso of rule 6 has been inserted and it provides option to pay service tax on receipt basis to all individual and firm up to Rs.50 lakh.
- H.** Incorporate a new residual rule (i.e. Rule 8A of POT Rules, 2011) to ascertain point of taxation in cases where the same cannot be ascertained by the rules already prescribed. Here POT shall be determined by the Central Excise officer to the best of his judgment.