

SERVICE TAX

Service tax is

- An indirect tax
- Imposed by the Central govt
- On certain services provided
- By certain persons.
- Service tax is a tax on services , not on persons.

Entry 97, Chapter V of Finance Act 1994--Sec 64 to 96 of Finance Act 1994, provides for taxation of services.

- Applies to whole of India, including --territorial waters 12 nautical miles , continental shelf , except Jammu & Kashmir. Not Applicable to services provided in Jammu & Kashmir (State Govt of J &K not consented).
- But for services provided from Jammu & Kashmir to anywhere in India Service tax is applicable.
- Statutes governing Service Tax—Finance Act 1994, various Rules, notifications orders etc.
- Service means any activity carried out by a person for another person, , for consideration (monetary and non monetary).
- Includes Declared Service— 1.07.12--Sec 66E—9 services--includes renting of immovable property, construction of complex, building.

Service Tax and Cess payable—

- Service tax came into effect from 1.07.94. First only three services covered —telephone, general insurance and stock broker services.
- Presently Service Tax is charged at --12% Service tax + 2% Education cess + 1% Secondary and Higher Education cess = 12.36%.

Negative List

- All services are covered by Service Tax other than in negative list(Sec. 66D—17 heads of services). These Services are non taxable.—
- Services provided by govt.
- By RBI
- By Foreign diplomatic mission,
- Agricultural activities,
- Trading in goods,
- Manufacture/production of goods
- Toll charges
- Betting, gambling, lottery
- Admission to entertainment event—film, circus, amusement park
- Transmission/ditn. Of electricity
- Education, training , coaching
- Renting of residential dwelling
- Banking/financial services
- Transport of passengers—railway, metro, monorail etc.

- Transportation of goods, courier agency.
 - Deceased related services
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Mega exemption—notifcn . 20.06.12 --- 42 services--- otherwise taxable but exempt vide this notfcn. –Services to International organizations, Charitable activities , journalists, religious services etc.

- Service tax is administered by Central Excise department.

Taxable Service--Sec 65(105) defines Taxable service as -- any specified service provided. Service provided from outside India to person in India will be taxable if service received in India. Vide Finance Act 2012 all services covered except provided in Negative List.

Input service: Means service used by Service Provider for providing taxable output service . Input service should be used by manufacturer for manufacture of final products. Input Service is used for manufacture, modernisation, repairs of factory/premises or related office. Input Service includes -- Accounting , auditing, transportation , modernization, repairs, financing, legal services, transportation , advertising etc.

Output Service

Taxable service provided by Service provider to customer, client, subscriber, policy holder or other person. Such service must be taxable service. But goods transport agency service are excluded from output services.

REGISTRATION

Section 69 of Finance Act 1994 lays down provisions for registration. Provisions are as under--

- a) Every person who has provided taxable service of value exceeding 9 Lakh in the preceding Financial Year has to get himself registered. For calculating Rs. 9 lakh taxable services , aggregate of all taxable services provided from all different locations should be considered.
- b) Registration should be done within 30 days of commencing business of providing taxable service or service tax is levied.
- c) Application in Form **ST -1** should be made in **duplicate, to the Superintendent of Central Excise.**

- d) **Registration certificate in Form ST-2 shall be issued** within 7 days. If not so issued the certificate of registration is deemed to be granted. PAN based Service tax code/registration no. is allotted to the applicant.
- e) The **output service provider** is the person liable to pay service tax on services rendered by him .
- f) In certain cases the **service recipient (receiver) is liable** to pay service tax. Example—
- By person in non taxable territory to person in taxable territory
 - Director of company
 - By govt/ local authority
 - Legal services
 - Sponsorship
 - Goods transport agency
 - Insurance agent
- g) In case of transfer of business , fresh registration must be obtained by the new owner of business.
- h) Cancellation of certificate can be done by service provider , if he stops providing the taxable service.
- i) Penalty for non registration of Rs 200 for every day of default fom due date of registration , or Rs.10000 whichever is higher.
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FILING OF RETURNS

Section 70 of Finance Act 1994 gives provisions relating to filing Returns—

- a) Service Tax Return in **form ST 3 in triplicate** should be filed, to Superintendent of Central excise.
- b) Service Tax Return should be filed **by all registered assessees** .
- c) **Half yearly Return** on --25th Oct , 25th April is to be filed.
- d) **Filing is compulsory** , even if NIL Return ie. no tax is paid during the period. Return should be accompanied by GAR -7 challan showing proof that service tax has been deposited in the approved bank.
- e) One Service Tax Return for ALL different services is to be filed.
- f) **E filing**-- from 1.10.2011 E filing is compulsory . Assessee having 15 digit Service Tax payer code can file R electronically.
- g) **Revised return**-- in triplicate is to be filed to correct mistake/ommission in filed Return, within 90 days of original Return.

- h) **Penalty**-- For first 15 days --Rs.500. For 16 to 30 days --Rs1000. Beyond 30 days Rs.1000 + Rs.100 each further day (not exceeding 20000).
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PAYMENT OF Service Tax

1) Payment of Service Tax

a) In case of Individuals , Firms, Sole Trader-- Quarterly payments on 5th July, 5th Oct., 5th Jan. and 31 st March, for Service tax collected in quarter ended 30th June, 30th Sept., 31st Dec. and 31st March respectively.

b) In case of Others -- Monthly payments on the 5th of following month and for the month of March --31st March itself, for Service tax collected in the month.

If electronic payment is made –

a) In case of Individuals,,Firms, Sole Trader -- Quarterly payments on 6th July, 6th Oct., 6th Jan. and 31 st March.

b) In case of Others – Monthly payments --on 6th of following month and for March --31st March .

2) E payment mandatory for Service Provider who has paid Service Tax 10L or above in preceding FY or already paid 10L Service tax in Current FY.

3)Interest payable on late payment--Sec 75--Interest--18%pa. payable from due date to date of payment. But ,interest shall be charged at 15% pa. for taxpayers with Turnover(sales) of **services below 60lakh** in previous Financial Year.

4) Penalty --Sec 76--Penalty of Rs100 per day during which failure to pay Service tax or 1% pm of Tax whichever is higher. But penalty shall not exceed 50% of S.Tax.

5) Option to pay tax on receipt basis—individuals, Firm Limited Liability Partnership – total taxable services is 50L or less—in previous FY.

CENVAT CREDIT

- **CENVAT credit rules 2004 were introduced on 10.09.2004.**
- CENVAT credit means tax paid on purchases can be deducted from Service Tax payable on sale of services and only net amount of Service tax is paid.
- CENVAT Credit can be allowed to the service provider in respect of **Excise duty , Service tax, Education Cess and Higher and Secondary Education Cess paid on inputs ie raw material and services purchased ,and capital assets ie fixed assets purchased.**
- But interest and penalty paid for late payment of Service Tax cannot be considered for credit.
- Education cess paid on purchases can be setoff against Education cess payable on sale of services.

- Higher and Secondary Education cess paid on purchases can be setoff against Higher and Secondary cess payable on sale of services .

CONDITIONS FOR ALLOWING CENVAT CREDIT

- 1) CENVAT credit may be taken immediately on receipt of **Inputs(goods)** in premises.
- 2) CENVAT credit is allowed from the day invoice/bill/challan is received for **Input Service**.
- 3) In case of Capital goods CENVAT credit is allowed not more than 50% in first year, and balance of CENVAT credit is allowed in subsequent years if those capital goods are still in possession of the Service Provider.
- 4) In case of Capital goods acquired also on lease/Hire purchase /loan agreement , CENVAT credit is allowed.

EXEMPTION TO SMALL SCALE SERVICE PROVIDER

Taxable Services provided from different premises, during preceding year are not more than Rs.10,00,000 –small scale service provider. Excess over first 10L consecutive payments received.

Conditions for obtaining exemption --

- 1) If Service provider **gives up right to exemption** in a FY, he cannot claim the exemption again in that FY.
- 2) **No CENVAT credit** on Inputs(goods and services) used for providing Taxable Service **on which exemption** of Rs 10 lakh availed/used.
- 3) **No CENVAT credit** on capital goods(fixed assets) purchased during period when he avails **exemption** of Rs 10 lakh.
- 4) CENVAT credit can be availed only on inputs/input services received after Service Provider **starts paying Service Tax**.
- 5) Exemption applies to aggregate value of all Taxable Services provided from all premises by Service provider in preceding FY.