

Changes in Finance Bill (No.2), 2014

**Changes in Negative List of
Services**

Under Section 66D

**(Effective from date of Enactment of
Finance Bill, 2014)**

Changes in Negative List

- S. 66D(g) → *Selling of space for advertisement in print media*
- ~~*Selling of space or time slots for advertisements other than advertisements broadcast by radio or television;*~~
- '(39a) "**Print media**" means,—
- (i) "**book**" as defined in Section 1(1) of the Press and Registration of Books Act, 1867, but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes;
- (ii) "**newspaper**" as defined in Section 1(1) of the Press and Registration of Books Act, 1867;'

Changes in Negative List

- S. 66D(g) → *Selling of space for advertisement in print media*
- Taxable → Online and mobile advertising, 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.

Changes in Negative List

- S. 66D(o) → Service of transportation of passengers, with or without accompanied belongings, by—
 - (i) a stage carriage;
 - (ii) railways in a class other than—
 - (A) first class; or
 - (B) an air-conditioned coach;
 - (iii) metro, monorail or tramway;
 - (iv) inland waterways;
 - (v) public transport, other than predominantly for tourism purpose, in a vessel of less than fifteen tonne net; and
 - (vi) metered cabs, ~~radio-taxis~~ or auto rickshaws;
- Chargeable as Rent a cab @ 40% without CC on Inputs/ Input Services/ Capital goods

Changes in Negative List

- S. 66D(o) → Radio Taxis whether AC or Non AC - Chargeable as Rent a cab @ 40% without CC on Inputs/ Input Services/ Capital goods
- Radio Taxi defined in Mega Exemption N.N 25/2012-ST, duly amended by 6/2014-ST dated. 11-7-2014
- (za) "radio taxi" means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS);

6

Changes in Mega Exemption

Changes in Mega Exemption List of Services

**Notification No. 25/2012-ST Dated. 20-6-2012, duly
amended by 6/2014-ST dated. 11-7-2014
(Effective from 11-7-2014)**

New Exemption w.e.f 11-7-2014

- Entry No. 2B: Exemption granted on Services provided by operators of the Common Bio-medical Waste Treatment Facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto;";
- Entry No. 26(C): Services of general insurance business provided under following schemes

"(c) life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees.";

New Exemption w.e.f 11-7-2014

- Entry No. 20: Services by way of transportation by rail or a vessel from one place in India to another of the following goods –
*“(j) chemical fertilizer, organic manure and oil cakes;
(k) cotton, ginned or baled.”;*
- Entry No. 21: Services provided by a goods transport agency, by way of transport in a goods carriage of,-
*“(e) chemical fertilizer, organic manure and oil cakes;”;
“(i) cotton, ginned or baled.”;*

New Exemption w.e.f 11-7-2014

- Entry No. 40 Substituted:
- "40. Services by way of loading, unloading, packing, storage or warehousing of rice, cotton, ginned or baled;
- ~~Earlier - 40. Services by way of loading, unloading, packing, storage or warehousing of rice.~~
- Entry No. 41: Inserted - Services received by the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves; e.g. external asset management, custodial services, securities lending services

New Exemption w.e.f 11-7-2014

- **Entry 42:** Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.”.

Withdrawal of Exemption 11-7-2014

- ~~▪ Entry 7: Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India;~~

Withdrawal of Exemption 11-7-2014

- ~~▪ Entry No. 9: Services [provided to] old[provided to or by] an educational institution in respect of education exempted from service tax, by way of,~~
- ~~▪ (a) auxiliary educational services; or~~
- ~~▪ (b) renting of immovable property;~~

Entry 9 Substituted 11-7-2014

- **Entry No. 9 substituted: Services provided,-**
 - (a) by an educational institution to its students, faculty and staff;**
 - (b) to an educational institution, by way of,-**
 - (i) transportation of students, faculty and staff;**
 - (ii) catering, including any mid-day meals scheme sponsored by the Government;**
 - (iii) security or cleaning or house-keeping services performed in such educational institution;**
 - (iv) services relating to admission to, or conduct of examination by, such institution;"**

Amendment in Mega Exemption Notification

- Entry No. 18 Substituted: "Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent;"
- Earlier- 18. Services by ~~way of renting of~~ a hotel, inn, guest house, club, campsite ~~or other commercial places~~ ~~meant~~ for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent;

Amendment in Exemption 11-7-2014

- Entry No. 23 (b) : Substituted - Transport of passengers, with or without accompanied belongings, by -
(a).....:
“(b) non-air-conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or”;
- ~~Earlier - (b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire; or~~
- Withdrawing the exemption in respect of air-conditioned contract carriages – Chargeable @ 40% i.e. 4.944%

Amendment in Mega Exemption 11-7-2014

- Entry No. 25 (a) : Substituted - Services provided to Government, a local authority or a governmental authority by way of -
“(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or”;
- Earlier (a) ~~carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to~~ water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or
- Exemption would not be extendable to other services such as consultancy, designing, etc., not directly connected with these specified services

Changes in Mega Exemption Notification

- **New definition provided for Certain terms –**
 - **‘Educational institution’,**
 - **‘life micro insurance product’,**
 - **‘radio-taxi’,**
 - **‘recognised sports body’**

- **Deletion of term – ‘Auxiliary education service’**

Changes in Service Tax Rules, 1994

18

Changes in Service Tax Rules

**Notification No. 9/2014-ST Dated. 11-7-2014
(Effective From 11-7-2014 Unless Otherwise
Stated)**

Changes in Service Tax Rules 11-7-2014

- Service provided or agreed to be provided by a Director of a Company or body corporate to the said company or the body corporate has been brought under the Reverse Charge Mechanism. Service receiver, who is a body corporate, will be the person liable to pay Service tax.
- Services provided by Recovery Agents to Banks, Financial Institutions and NBFCs has also been brought under the Reverse Charge Mechanism.

Changes in Service Tax Rules

- Rule 6(2) E-payment of Service tax has been made mandatory with effect from October 1, 2014.
- Relaxation from e-payment may be allowed by the Deputy Commissioner/ Asst. Commissioner on case to case basis

Changes in Reverse Charge Mechanism

Changes in Reverse Charge

**Notification No. 30/2012-ST Dated 20-6-2012,
duly amended by Notification No. 10/2014-ST
Dated 11-7-2014 (Effective From 11-7-2014
Unless Otherwise Stated)**

Inclusion in Reverse Charge 11-7-2014

- Service provided or agreed to be provided by a Director of a Company or body corporate to the said company or the body corporate has been brought under the Reverse Charge Mechanism. Service receiver, who is a body corporate, will be the person liable to pay Service tax.
- Services provided by Recovery Agents to Banks, Financial Institutions and NBFCs has also been brought under the Reverse Charge Mechanism.

Changes in Reverse Charge Mechanism

- In case of 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 has been modified as 50% each effective from October 1, 2014. (Earlier SP – 60% & SR - 40%)
- On Abated value – SR will discharge 100% liability (40% - 4.944%)

24
Changes in Service tax Valuation Rules

**Changes in Service Tax (Determination of
Value) Rules, 2006**

**Notification No. 11/2014-ST Dated 11-7-2014 (Effective
From 1-10-2014)**

Changes in Service Tax Valuation Rules

- **Rule 2A - Category 'B' and 'C' of Works Contract merged into one single category, with percentage of service portion as 70%, for the chargeability of Service tax.**

"(B) in case of works contract, not covered under sub-clause (A), including works contract entered into for,-

(i) maintenance or repair or reconditioning or restoration or servicing of any goods; or

(ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property,

service tax shall be payable on seventy per cent. of the total amount charged for the works contract".

Changes in Point of Taxation Rules, 2011

Changes in Point of Taxation Rules, 2011

**Notification No. 13/2014-ST Dated 11-7-2014,
(Effective From 1-10-2014)**

Changes in Point of Taxation Rules

- **Rule 7 (first proviso) - POT for Reverse charge**
- *Provided that where the payment is not made within a period of three months of the date of invoice, the point of taxation shall be the date immediately following the said period of three months;*
- ~~*Earlier: Provided that, where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist*~~
- **Rule 10 – Transition Rule:** For the invoices issued prior to 01-10-2014, the existing rule will remain applicable.

Changes in Abatement Mechanism

Changes in Abatement

**Notification No. 26/2012-ST Dated 20-6-2012,
duly amended by Vide Notification No. 8/2014-
ST Dated 11-7-2014 (Effective From 11-7-2014
Unless Otherwise Stated)**

Change in Abatement Rates

S. No.	Taxable Service	Taxable Value	Conditions
9.	Renting of any motor vehicle designed to carry passengers Motor cab	40%	Cenvat credit only on Input Services of renting of motor cab (Up to 40%)
9A(a)	Contract Carriage, Other than motor cab	40%	No Cenvat Credit on Inputs, Input Services and CG – Disparity B/w Motor cab & Other Contract Carriage
	Radio Taxi	40%	--Do--
10	Transporter of goods by Vessels	50% 40%	No Cenvat Credit on Inputs, Input Services and CG
✓ Tour Operator can avail Cenvat Credit on Input Services received from Other Tour Operator, Though No Change in Abatement rates (Earlier, No Cenvat was allowed in case Abatement opted for)			

Changes in POP Rules, 2012

Changes in Place of Provision of Services Rules, 2012

**Notification No. 28/2012-ST Dated 20-6-2012,
duly amended by Vide Vide Notification No.
14/2014-ST Dated 11-7-2014 (Effective From 1-
10-2014)**

Rule 4 – Second Proviso

Rule 4

[Provided further that this clause shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs and are exported after the repairs without being put to any use in the taxable territory, other than that which is required for such repair;]

^{Old}[**Provided further** that this sub-rule shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs, reconditioning or reengineering for re-export, subject to conditions as may be specified in this regard.]

Rule 9(d) – POP Rules

Rule 9

[(d) Service consisting of hiring of all means of transport other than,-

(i) aircrafts, and

(ii) vessels except yachts,
upto a period of one month.]

^{Old}[(d) Service consisting of hiring of means of transport, upto
a period of one month.]

Intermediary – Rule 9 - POP

- **Rule 2** '(f) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the main service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;
- Commission Agent for Services and Goods – Location of Service Provider

SEZ Rules/ Exemption Procedures

Changes in SEZ Exemptions

Notification No. 12/2013-ST Dated 1-7-2013
relating To Exemption From Service Tax To SEZ
Units or the Developer Vide Notification No.
7/2014-ST Dated 11-7-2014 (Effective From 11-7-
2014)

Simplification in SEZ Exemption

- Issuance of Form A-2 (By CE Officer) within working 15 days from date of submission of Form A-1 (To be verified by SEZ Officer)
- In case Form A-1 submitted after 15 days then Form A-2 valid from date of verification made by SEZ Officer in A-1
- No Service Tax on Services provided pending issuance of Form A-2 subject to maximum 3 months from date of Services provided
- Beyond 3 months, Service Provider needs to charge Service tax on such services
- SEZ unit/ Developers will claim refund of ST paid to SP

Overview of Service Tax
Definition of Service, Declared
Service, POT, Works Contract,
etc.

POSITIVE VS NEGATIVE LIST

- Where Registrations obtained/ amended under 'All Taxable Services', the taxpayer should file amendment application online in ACES and opt for relevant description(s) from the list of 120 descriptions of services provided
- New tax payers may register by selecting the relevant descriptions among list of 120 services provided

37

POSITIVE VS NEGATIVE LIST -DISPUTE

- **Manpower Recruitment & Supply Agency Services**
S.65(105)(k): Any Service provided or to be provided to any person, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner;
- **Supply of Manpower R.2(1)(g):** Supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control. (***Manpower Recruitment/ Piece Rate/ Hourly Rate basis/ Cleaning Services***)

Taxable Event - Service Tax

- S. 66 of Finance Act → There shall be levied a tax on the Value of taxable services referred to in various sub-clauses of (105) of S.65 and collected in such manner as may be prescribed
- S. 65(105) → Any Service provided or *to be provided* (16-6-2005)
- Association of Leasing & Financial Service Companies vs. UOI 2010 (20) STR 417 SC → Taxable Event → Rendering of Service
- S. 65B (51) → Taxable service means any service on which service tax is leviable under section 66B;
- S. 66B → There shall be levied a tax at the rate of 12% 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

Definition of Service

39

- S. 65B (44) → "Service" means Any Activity carried out by a Person for another for Consideration, and includes a Declared service, but shall not include—
 - (a) an activity which constitutes merely,—
 - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
 - (ii) such transfer, delivery or supply of any goods which is deemed to be sale within Article 366 (29A) of the Constitution; or
 - (iii) a transaction in money or actionable claim;
 - (b) *a provision of service by an employee to the employer in the course of or in relation to his employment; - Employer-Employee / Secondment/ It Employment/ Director*
- (c) fees taken in any Court or tribunal established under any law for the time being in force.

Definition of Service

- **Explanation 1.**— Nothing contained in this clause shall apply to functions performed by MP, MLA, Other Govt. Officers or Govt. Bodies.
- **Explanation 2.**— For the purposes of this clause, transaction in money shall not include any activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.
- **Explanation 3.**— For the purposes of this Chapter,—
 - (a) *an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;*
 - (b) *an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.*
- **Explanation 4.**— *A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;*

Declared Services –S 66E

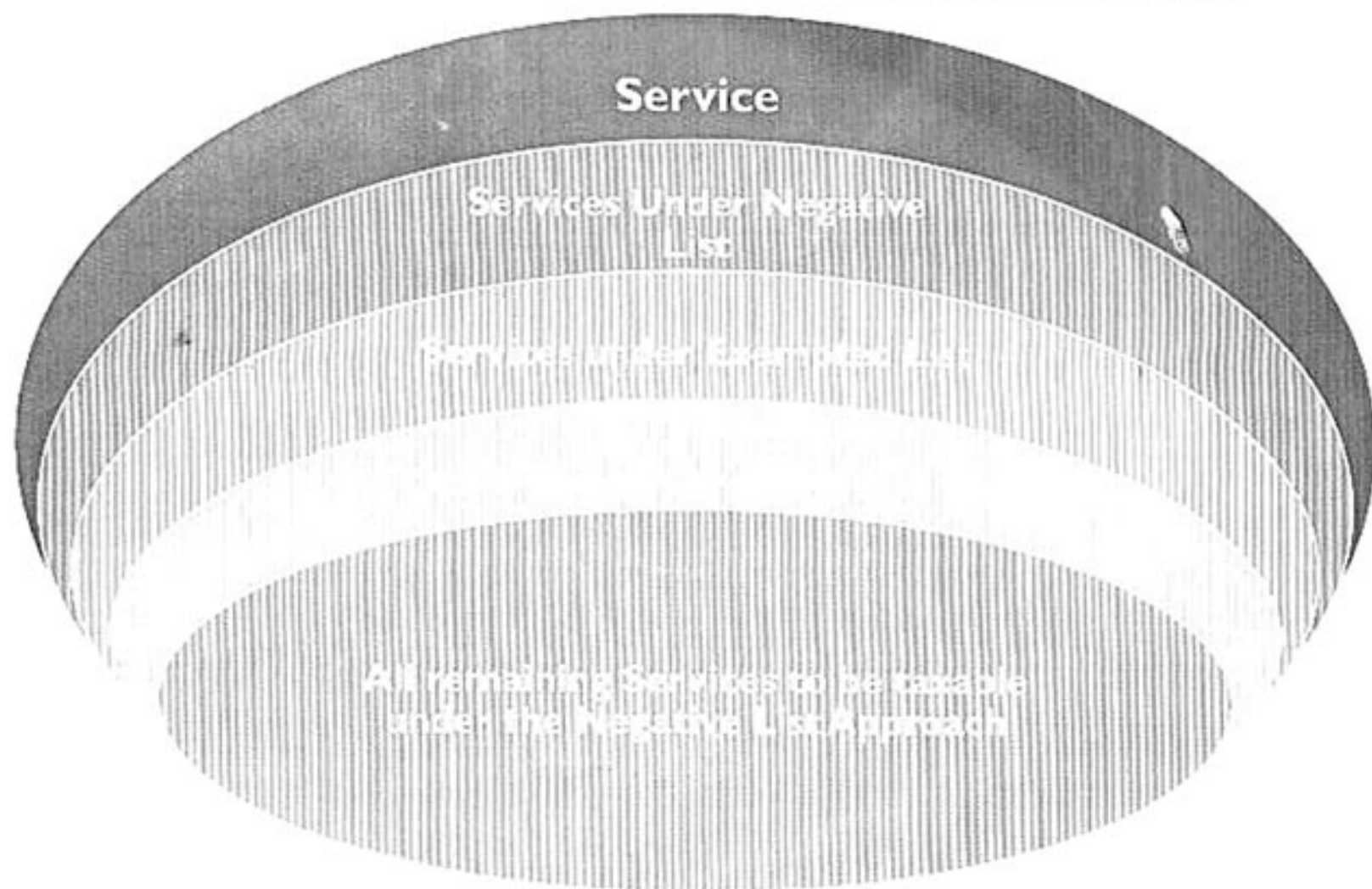
41

9 Activities declared to be Service:

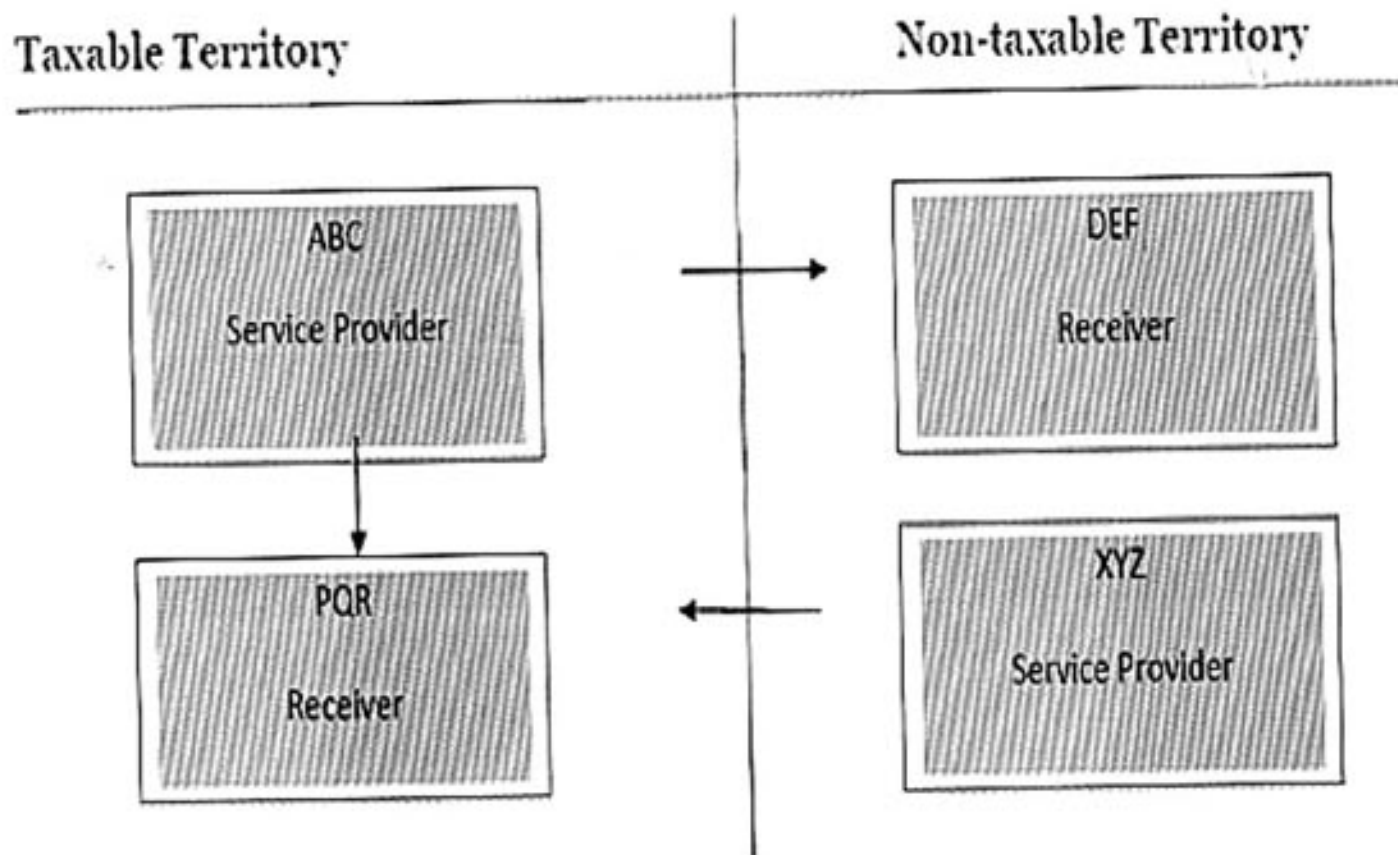
- Renting of Immovable Property (Entry 49 – List II)
- b. Construction of a complex, building, civil structure for which consideration received before issuance of completion certificate (Entry 49)*
- Temporary Transfer/Permitting Use or Enjoyment of **Intellectual Property Rights** {IPR -10/9/2004}
- Development, Design, Implementation etc. of **Information Technology Software** {IT Software Services – 16/5/2008}
- **Agreeing to the obligation or to refrain** from an act, or to tolerate an act or a situation, or to do an act;
- **Transfer of goods by way of hiring/ leasing/ licensing without transfer of right to use such goods** {16/5/2008}
- Activity in relation to delivery of goods on **hire purchase/ any system of payment by instalments**
- h. Service portion in the execution of a works contract {A -366 (29A)}*
- Service portion in an activity involving **supply of food/drinks/article** of human consumption {A -366 (29A)}

42

TAXATION OF SERVICES – NEGATIVE LIST



Obligation & POT



Service – Service Tax

- Activity – Economic
- Person – 65B (37) → Service Provider – Service Recipient
- Consideration – S. 67/ Determination of Valuation Rules
 - Monetary – Free Gift/ Charities/ Grant
 - Non-Monetary: Kind
 - Barter
 - Advance – Services / Goods
 - Deposit - Refundable/ Non- refundable
 - Demurrage/ Accidental Damage – Penalty
 - Late Payment - Interest
 - Short received – Deficiency of Services
 - Bad Debts

Classification of Service

- S. 66F. (1) Unless otherwise specified, reference to a service (herein referred to as main service) shall not include reference to a service which is used for providing main service.

Exemption → Main Service & Service w.r.t Main Service – Toll Collection

- (2) Where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.

Abatement → Mandap Keeper/ Shamiana with Outdoor catering

- (3) Subject to the provisions of sub-section (2), the taxability of a bundled service shall be determined in the following manner, namely:-

Classification of Service

- (a) if various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character;
→ *Hotel Stay with complimentary breakfast*
- (b) if various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax
→ *Single rent deed for renting of Property – Residential/commercial Purpose*
- Explanation.- For the purposes of sub-section (3), the expression "bundled service" means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.';

Point of Taxation - Background

- Effective from 1st April, 2011, the Government introduced Point of Taxation Rules, 2011
- ✓ Prior to these Rules
 - Collection basis - Unrelated parties; and
 - Date of Book entry - Associated parties (16/5/2008)
- **POT means the Point in time when a Service shall be deemed to have been provided**
- ✓ The objective of the Rules is –
 - To appropriately define the POT in a transaction – is it taxable event?
 - POT will determine Due date of payment of Service Tax - Monthly/ Quarterly

Summary Table of POT Rules

Rule 2	Definitions...some definitions modified from 01-04-2012
Rule 3	Determination of Point of Taxation as a General Rule and in case of Continuous supply of services
Rule 4	Determination of POT in case of Change in effective rate of tax/ Change in portion of value on which tax is payable
Rule 5	Determination of POT where tax is being levied on New service
Rule 6	Determination of POT in case of continuous supply of services.....OMITTED from 01-04-2012
Rule 7	Determination of POT in case of specified services MODIFIED from 01-04-2012
Rule 8	Determination of POT where service in the case of copyright, trademarks, designs or patents
Rule 8A	Determination of POT on Best Judgment Basis ...New Rule from 01-04-2012
Rule 9	Transitional Provisions

POT - General Rule 3

- **POT, the earliest of the following:**
 - Date of Receipt of Money (Advance)
 - When Invoice is issued within 30 days from Date of Completion of Service → Date of Invoice
 - When Invoice is not issued within 30 days from Date of Completion of Service → Date of Completion of Service
- **Rule 4A of STR** – Invoice to be issued within 30 or 45 days in case of banks and Fis, (14) days from the **Date of completion of service or Date of Receipt of payments** towards the value of such taxable service, *whichever is earlier*
- **Rule 4A - proviso inserted** - Invoice not required to be issued if amount received is upto Rs. 1,000 in excess of the amount indicated in the Invoice.

POT - General Rule 3

50

S. No.	Date of completion of service	Date of Invoice	Date on which payment recd.	POT	Remarks
1	April 10, 2013	April 24, 2013	May 20, 2013	April 24, 2013	Invoice issued within 30 days and before the receipt of payment
2	April 10, 2013	May 18, 2013	May 20, 2013	April 10, 2013	Invoice not issued within 30 days and payment received after completion of service
3	April 10, 2013	May 6, 2013	April 15, 2013	April 15, 2013	Invoice issued within 30 days but payment received before invoice
4	April 10, 2013	May 29, 2013	April 05, 2013 (part) & April 25, 13 (Bal)	April 05, 2013 & April 10, 2013 for respective amt.	Invoice not issued in 30 days. Part payment before completion, Balance later

POT – Continuous Supply

- **Rule 6 deleted – Rule 3 Proviso inserted Continuous Supply of Services** → Milestone defined in Contract – Date of Completion of Service or Date of Receipt of Money (Advance)
- **Rule 2 (c) “Continuous supply of service”** means any service which is provided or agreed to be provided continuously or on recurrent basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time; or
- Where CG, by notification prescribe particular service to be a continuous supply of service - **Telecommunication Service/ Works Contract Service** Notification No. 38/2012-ST dt. 20-6-2012 → (Excluded Commercial or Industrial Construction, Construction of Complex, Internet telecommunication)

Rule 4 – Effective Rate

- POT: Change in Effective Rate i.e. 10.3% → 12.36% or Change in the portion of Value on which tax is payable
- Taxable service was provided *before* change in effective Rate:
 - Invoice issued and payment received after change of effective Rate → POT = Date of receipt of payment **or** Issue of invoice, whichever is earlier
 - Q: Service was already provided prior to change → Tax on Services
 - Invoice issued prior to change but payment receipt after change in effective rate → POT = Date of issuance of invoice
 - Payment received before change in effective rate but invoice issued later → POT = Date of receipt of payment

Rule 4 –Effective Rate

- Taxable service was provided **after** change in effective Rate:
 - Invoice issued prior to Change but payment received after change in effective rate → POT = Date of payment
 - Q: Do we need to pay differential Tax
 - Invoice issued and payment received both prior to change in effective rate → POT = Date of issuing of invoice or Date of receipt of payment, whichever is earlier
 - Invoice issued after change in effective rate but payment received prior to change in effective rate → POT = Date of issuing an invoice

Rule 4 –Effective Rate

54

Change of Rate from 10% to 12%: 1-5-2013				
Date of Service	Date of Invoice	Date of Payment	Rate of Tax	Date on Which Liability arises
28/4/2013	9/5/2013	25/6/2013	12%	9/5/2013
	28/4/2013	25/6/2013	10%	28/4/2013
	9/5/2013	26/4/2013	10%	26/4/2013
10/5/2013	28/4/2013	25/6/2013	12%	25/6/2013
	28/4/2013	16/4/2013	10%	16/4/2013
	9/5/2013	28/4/2013	12%	9/5/2013

New Services -POT

- **Rule 5 of POT** Rules apply to New service becomes taxable for the first time —
 - ✓ When payment received and invoice issued before such service became taxable – **No tax payable**
 - ✓ Payment received before the service becomes taxable and invoice issued **within 14 days** of the date when the service is taxed for the first time – **No tax payable**

POT – New Services

S. No.	Date of New Service Taxable	Date of Invoice	Date of Payment Received	Taxable/Not Taxable
5(b)	1 st July	14 th July	30 th June	Not Taxable
5(b)	1 st July	15 th July	1 st July	Taxable
5(a)	1 st July	30 th June	30 th June	Not Taxable
5(a)	1 st July	1 st July	2 nd July	Taxable

Rule 7 – Coverage of Specified Services

- **Prior to 01-04-2012, Rule 7 prescribed POT in case of**
 - ✓ **8 Specified Service** categories including CA Service
 - ✓ **Import of Services** and other services received under Reverse charge mechanism – U/S 68(2) of Finance Act
 - ✓ **Export of services**
- **From 01-04-2012, Rule 7 prescribed POT in case of**
 - ✓ **Import of Services** and other services received under Reverse charge mechanism – U/S 68(2) of Finance Act

Rule 7 – POT - Specified Class of Persons

- **Prior to 01-04-2012: Individuals, Proprietors or Partnership Firms**
Architect's Services/ Interior Decorator's Services/ Chartered Accountant's services/ Cost Accountant's services/ Company secretary's services/ Technical Consultancy Services/ Legal consultancy services/ Consulting Engineers (effective from 01-07-2011)
- POT - Date of Receipt of money towards the Value of Service - No time limit was provided
- **Effective from 01-04-2012: Rule 6 of STR - Individuals and Partnership Firms**, if aggregate value of taxable services is less than Rs. 50 lakhs in the previous financial year, the service provider shall have the option to pay tax on receipt basis on taxable services up to Rs. 50 lakhs in the current financial year
Applies for all Services Provider

Rule 7 – POT - Reverse Charge Mechanism

- Rule 7 – Overriding clause - POT - Where Service Recipient is liable to pay Service tax under reverse charge mechanism, **POT would be the Date of Payment of Value of Services** if the payment is made for the services within 6 months from the Date of Invoice
- ✓ *If the payment for the services is not made within 6 months from the date of invoice, the POT would be determined as per General Rule i.e. Rule 3*
- ✓ *W.e.f: 1-10-2014 "Provided that where the payment is not made within a period of three months of the date of invoice, the point of taxation shall be the date immediately following the said period of three months:";*

POT - Partial Reverse Charge

Sl. No	Description of Service	Service Recipient (Business Entity as Body Corporate)	Service Provider (Individual, Firm, HUF, AOP)
7.	Renting or Hiring of Motor vehicles designed to carry passenger to any person who is not in the similar line of business		
	(a)with abatement – CC not availed by SP	100%	NIL
	(b)without abatement – CC availed by SP	40%	60%
8.	Supply of Manpower for any purpose or Security Services (7-8-2012)	75%	25%
9.	Works Contract Service	50%	50%

Rule 7- POT - Export of Services

- **Prior to 01-07-2012:**

For the services covered under Rule 3(1) of the Export of Services Rules, **POT was the Date of Receipt** of Value of Services

- ✓ **Not Export unless the payment** for the said service is received in convertible foreign exchange within the period specified by the Reserve Bank of India

- **Post 01-07-2012:**

Export of Services Rules, 2005 rescinded & replace by Rule 6A of STR, 1994 read with Rule 6(8) & Rule 2(e) of the CCR, 2004

EXPORT OF SERVICES – Rule 6A – N.N. 36

- Services to qualify as export if:
 - ✓ Service provider located in Taxable Territory
 - ✓ Service recipient located in Non Taxable Territory
 - ✓ Service provided is a service other than in Negative list
 - ✓ Payment is received in convertible foreign exchange in RBI defined time period {Rule 6(8) of CCR, 2004}
 - ✓ 'Place of Provision of Service' determined as per the POP Rules is outside India

Rule 8 – POT - Copyright or IPR Services

- **Rule 8 - Royalties and payments pertaining to copyright, trademarks, designs or patent, where –**
 - the amount of consideration not ascertainable at the time when service performed
 - Subsequently use or benefit of services by a person other than the provider gives rise to any payment of consideration
- ✓ **POT** would be earlier of –
 - Payment in respect of such use or benefit is received or,
 - Invoice is issued
- ✓ **Analysis** - This rule is subject to General rule w.r.t Continuous supply of services - Practically Rule 8 is redundant

Rule 8A – Best Judgment

- ✓ Where the point of taxation cannot be determined as per POT rules as the date of invoice or the date of payment or both are not available,
- ✓ the Central Excise officer, may, require the concerned person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account such material and the effective rate of tax prevalent at different points of time, shall, by an order in writing, after giving an opportunity of being heard, determine the point of taxation to the best of his judgment.

Rule 2A inserted to clarify Date of payment

2A. Date of payment.— “Date of payment” shall be the earlier of the dates on which the payment is entered in the books of accounts or is credited to the bank account of the person liable to pay tax:

Provided that — (A) the date of payment shall be the date of credit in the bank account when —

- (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,

Rule 9 – Transitional Provision

✓ Nothing contained in these Rules shall be applicable

- Where the provision of service is completed; or
- Where invoices are issued prior to the date on which these rules come into force.

Provided that services for which provision is completed on or before 30th day of June, 2011 or where the invoices are issued up to the 30th day of June, 2011, the point of taxation shall, at the option of the taxpayer, be the date on which the payment is made

Works Contract vs. Other Services

- **Works Contract viz-a-viz Other Services:**
 - **Erection, Installation, Commissioning Services** – 1/7/2003 – 67%
 - **Commercial or Industrial Construction Services** – 10/9/2004- 67% or 75%
 - **Construction of Residential Complex Services** – 16/6/2005- 67% or 75%
 - **Management, Maintenance or Repair Services** – 1/7/2003 – No Abatement

- **Challenge How to arrive at Material/ Service portion in WC:**
 - Actual Material/ Service portion
 - Standard Material/ Service portion
 - Composition Tax (Alternative Option)

Works Contract

- S. 65B(54) - **Works Contract** → means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any moveable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property; → **Labour/ Rate Contract**

Definition of Service – Works Contract

- S. 65B (44) → “Service” means Any Activity carried out by a Person for another for Consideration, and includes a Declared service, but shall not include—
 - (a) an activity which constitutes merely,-
 - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
 - (ii) such transfer, delivery or supply of any goods which is deemed to be sale within Article 366 (29A) of the Constitution; or
 - (iii) a transaction in money or actionable claim;
- *(b) a provision of service by an employee to the employer in the course of or in relation to his employment; - Employer-Employee / Secondment/ Jt Employment/ Director*
- (c) fees taken in any Court or tribunal established under any law for the time being in force.

Declared Services –S 66E

9 Activities declared to be amounting to services:

- Renting of Immovable Property (Entry 49 – List II)
- b. Construction of a complex, building, civil structure for which consideration received before issuance of completion certificate (En 49)**
- Temporary Transfer/Permitting Use or Enjoyment of Intellectual Property Rights {IPR - 10/9/2004}
- Development, Design, Implementation etc. of Information Technology Software {IT Software Services – 16/5/2008}
- Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
- Transfer of goods by way of hiring/ leasing/ licensing without transfer of right to use such goods {16/5/2008}
- Activity in relation to delivery of goods on hire purchase/ any system of payment by instalments
- h. Service portion in the execution of a works contract {A -366 (29A)}**
- Service portion in an activity involving supply of food/drinks/article of human consumption {A -366 (29A)}

AC Restaurant Service

- Service portion in an activity involving supply of food/drinks/article of human consumption {A -366 (29A)}
- Definition of Service S.65B(44) – Inclusion/ exclusion of Deemed Sale A. 366 (29A)
- Kerala High Court in the matter of “the Kerala Classified Hotels and Resorts Association” vide WP(C) 14045 of 2011 - Section 65(105)(zzzzv) - AC Bar Restaurants – Held that Sub Clause (zzzzv) is beyond the legislative competence of the Parliament as the clauses are covered by Entry 54 of State List
- Valuation – Rule 2C vide N.N-24/2012-ST → 40% of Total Amount (No Cenvat on Inputs)
- Open Joint shops/ Home delivery/ Take away/ Self Service

Service Tax – Valuation Rules

- **Valuation under Service Tax for Works Contract Services – Rule 2A** → Notification No. 24/2012-ST dt. 6-6-2012 (W.e.f 1/7/2012):-
- **Pay service tax on Actual Service portion:-** Gross Consideration **LESS** Value of Property **LESS** VAT/ Sales tax, if any, **ADD** Value of other services;
- **Composition** → Pay Service tax at composite rate
 - Pay ST on 40% Value of Original Works
 - Pay ST on 60% Value of all Other Works contract
 - Pay ST on 70% Value of maintenance or repair or reconditioning or restoration or servicing of any goods
- No Credit on Inputs i.e. Cenvat allowed on Input Services & CG
- Inclusion of FMV of FOC Materials provided by SR

Partial Reverse Charge

Sl. No	Description of Service	Service Recipient (Business Entity as Body Corporate)	Provider (Individual, Firm, HUF, AOP)
7.	Renting or Hiring of Motor vehicles designed to carry passenger to any person who is not in the similar line of business		
	(a)with abatement – CC not availed by SP	100%	NIL
	(b)without abatement – CC availed by SP	40%	60%
8.	Supply of Manpower for any purpose or Security Services (7-8-2012)	75%	25%
9.	Works Contract Service	50%	50%

Consequential Amendments – Rule 4(7) of CENVAT Credit Rules, 2004

CCR - Before Amendment	CENVAT Credit Rules - After Amendment (1/4/2011)
<p>CENVAT credit of input services shall be allowed on or after the day on which payment is made of the value of input services and service tax</p>	<p>CENVAT credit of input service shall be allowed, on or after the day on which the invoice is received within 6 months from date of Invoice</p> <p>PROVIDED</p> <ul style="list-style-type: none"> ▪ In case payment not made within 3 months: Pay an amount equal to the CENVAT credit availed on such input service (Interest ??) ▪ In case payment made after 3 months: Take the credit of the amount equivalent to the CENVAT credit paid earlier ▪ In case of Reverse Charge: CENVAT credit allowed on or after the day on which payment is made of the value of input service & ST ▪ In case Invoice issued prior to 01-04-2011: credit of input service shall be allowed, on or after the day on which payment is made ▪ In case Credit notes issued or part of invoice value refunded: pay an amount equal to the CENVAT credit availed in respect of the amount so refunded or credited

93

Consequential Amendments – STR, 1994

Rule	Service Tax Rules - Before Amendment	Service tax Rules - After Amendment	Reason for Amendment
Rule 6(1)	Service tax to be paid by the 6 th / 5 th of the day immediately following the month in which <u>payment received towards the value of taxable service</u>	Service tax to be paid before the specified date immediately following the month in which <u>services deemed to have been provided as per the POT Rules</u>	POT rules had changed the incidence of taxable event.
Rule 6(1) proviso-2	No service tax required to be paid when service provided at the time when <u>such service was not taxable</u>	Omitted	Separate <u>Rule 5</u> provided in POT Rules to take care of such situation.
Rule 6(1) Proviso-3	Service tax for the month/quarter ending March to be paid based on the <u>value of taxable services received</u>	Service tax for the month/quarter ending March to be paid based on the <u>services deemed to be provided</u>	POT rules had changed the incidence of taxable event.

Consequential Amendments – STR, 1994

Rule	Service Tax Rules - Before Amendment	Service Tax Rules - After Amendment
Rule 6(4B)	The adjustment of excess service tax paid under <u>sub-rule 4A was allowed up to Rs. 2 lakh</u>	<p>The adjustment of excess service tax paid under <u>sub-rule 4A was allowed without monetary limit</u></p> <p>Reason for excess payment should not involve interpretation of law, taxability, valuation or applicability of any exemption notification</p> <p>Adjustment allowed in succeeding month or quarter</p>