
Service Tax

- ✓ Taxability of newly taxable services
- ✓ Change in effective rate of Service Tax

Significant changes, Implications and analysis



Rajput Jain & Associates
Chartered Accountants

Foreword

The Finance Minister has, while presenting the Union Budget 2015-16, introduced the Finance Bill in the Lok Sabha on the 28th of February, 2015. Clauses 105 to 116 of the Bill cover the amendments made to Chapter V of the Finance Act, 1994. Chapter VI of the Bill (clause 117) contains the enabling provisions relating to levy Swachh Bharat Cess, which empowers the government to impose Cess on all or any of the taxable services at the rate of 2% of the value of taxable services. Changes are also proposed in,-

- The Service Tax Rules, 1994 (STR);*
- The CENVAT Credit Rules, 2004(Cenvat Rules);*

The long-awaited Finance Bill, 2015 has obtained the assent of the President of India on Thursday, May 14, 2015, it has now become the much awaited Finance Act, 2015.

We are pleased to bring you our new publication, service tax changes: Key highlights Significant changes, Implications and analysis .This publication brings out the significant changes proposed by the 2015 Act.

We hope this publication clearly explains the significant changes and their potential implications.

**Rajput Jain & Associates,
Chartered Accountants**

Introduction

Service Tax changes

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Key Changes in service Tax Provision

(effective from June 1, 2015)

After the Hon'ble President has given assent to the Finance Bill, 2015 on Thursday, May 14, 2015, the Ministry of Finance, Department of Revenue vide **Notification No. 14/2015-ST dated May 19, 2015** has notified increase in the rate of Service tax from 12.36% to flat 14% (Subsuming Education Cess and Secondary & Higher Secondary Education Cess) to be effective from June 1, 2015.



Swachh Bharat Cess @ 2% on value of taxable services and any Service provided by Government/ Local authority to Business entity to be notified at a later date

As per Clarification vide D.O.F.No.334/5/2015-TRU dated May 19, 2015, the effective dates in respect of the following shall be notified at later date:

A: Swachh Bharat Cess – Enabling Provision

An enabling provision is being made to empower the Central Government to impose a Swachh Bharat Cess (“SB Cess”) on all or any taxable services at a rate of 2% on the value of all or any taxable services. The proceeds from this Cess would be utilized for Swachh Bharat initiatives. The Government will specify the categories of taxable services on which SB Cess would be leviable.

B: Following change in relation to the Negative List – Section 66D of the Finance Act

Section 66D(a):

Under clause (iv), the words ‘support services’ to be substituted by the words ‘any service’. Accordingly, after such amendment, ‘Any services’ provided by the Government or local authority to a Business Entity would be eligible to Service tax, except for the services that are specifically exempted, or covered by any another entry in the Negative List.

Hence, ‘Support services’ provided by Government or Local Authority to Business Entity will continue to be taxed under Reverse charge mechanism except (1) renting of immovable property, and (2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994.

List of changes vides other Service Tax Notifications dated May 19, 2015

A: Notification No. 13/2015-ST

Amend Notification No. 26/2012-ST dated June 20, 2012, thereby removing the entry relating to Chit in the definition part in view of withdrawal of abatement in relation to Chit Fund vide Notification No. 8/2015-ST dated March 1, 2015 (effective from April 1, 2015).

B: Notification No. 14/2015-ST

Increase in the rate of Service tax from 12.36% to flat 14% (Subsuming Education cess and Secondary & Higher Secondary Education cess) to be effective from June 1, 2015;

Following changes in relation to the Negative List – Section 66D of the Finance Act to be effective from June 1, 2015

Section 66D(f):

- **Services by way of carrying out any processes for production or manufacture of alcoholic liquor for human consumption brought under the Service tax net.**

Section 66D(i):

- **Explanation inserted whereby the expression “betting, gambling or lottery” shall not include the activity as specified in substituted explanation 2 to Clause (44) of Section 65B of the Finance Act.**

Section 66D(j):

- **Omitted, which covers ‘admission to entertainment event or access to amusement facilities’.**

Consequent to the above changes in the Negative List of services, definition of following terms to be omitted/ amended in Section 65B of the Finance Act w.e.f. June 1, 2015:

- **Definitions of certain terms omitted [Section 65B(9): ‘amusement facility’, Section 65B(24): ‘entertainment event’]**
- **Definitions of certain terms amended [Section 65B(40): ‘process amounting to manufacture or production of goods’ excluding alcoholic liquors for human consumption]**

C: Notification No. 15/2015-ST

Effective from June 1, 2015, consequent to the upward revision in Service tax rate, the composition rate to be revised proportionately under Rule 6(7), 6(7A), 6(7B) and 6(7C) of the Service Tax Rules, 1994 on specified services, namely Air Travel Agent, Life Insurance service, Money changing service provided by banks or authorized dealers and Service provided by lottery distributor and selling agent.

D: Notification No. 16/2015-ST

Following changes in Mega Exemption Notification No. No. 25/2012-ST dated June 20, 2012 made vide Notification No. 6/2015-ST dated March 1, 2015 effective from June 1, 2015

Entry 30:

Service tax would be levied on services by way of carrying out of intermediate production process of alcoholic liquor for human consumption on job work, consequent to imposition of Service tax on services by way of manufacture of alcoholic liquor for human consumption.

New Exemption:

Entry 47:

Services by way of right to admission to:

- Exhibition of cinematographic film, circus, dance, or theatrical performances including drama or ballet;
- Recognized sporting events;
- Award functions, concerts, pageants, musical performances or any sporting events other than recognized sporting event, where the consideration for such admission is upto Rs. 500 per person.

E: Notification No. 17/2015-ST

Exempts taxable services provided under the Power System Development Fund Scheme of the Ministry of Power from the whole of the Service tax leviable thereon under Section 66B of the Finance Act till April 1, 2017 subject to the conditions specified therein.

Changes in Cenvat Credit Rules –

Reversal of Cenvat Credit on Exempted Services:

Notification No. 14/2015-Central Excise (N.T.), Dated: May 19, 2015

In the light of increase in the rate of Service tax from 12.36% to flat 14% (Subsuming Education Cess and Secondary & Higher Secondary Education Cess) to be effective from June 1, 2015, the rate of reversal of CENVAT Credit under Rule 6(3) of the Cenvat Credit Rules, 2004 has also been enhanced from 6% to 7% in case of exempted services with effect from June 1, 2015.



Change in effective rate of Service Tax:

(Effective from June 1, 2015)

Dilemma of change in effective rate of Service Tax: Rule 4 of the POT Rules vs. S 67A of the Finance Act, 1994:

With the new Service tax rate becoming effective from June 1, 2015, the much hyped hue and cry among the Trade on the presently applicable rate of Service tax would definitely come to an end but there are chances of turmoil being faced by the service provider in respect of the ongoing transactions for which either certain advance payment is received prior to June 1, 2015 but the completion of provision of service may take place post facto thereof or vice versa.

Before taking deeper dive into the area of turmoil, which may crop up pursuant to new rate of Service tax being notified, it is apposite here to have an overview of the Point of taxation as governed under the Point of Taxation Rules, 2011 (“the POT Rules”). With the introduction of the POT Rules, Service tax payment is made on accrual basis in terms of the provisions contained under the POT Rules. The general Rule 3 of the POT Rules stipulates that Point of taxation shall be the earlier one among raising of invoice or date of making the payment. Further, if the invoice is not raised within 30 days (45 days for Banking and financial services) from the date of completion of provision of service, Point of taxation shall be the date of completion of provision of service.

Thus, by applying the provisions of Rule 3 of the POT Rules, the service provider would be liable to pay Service tax on the advance payments received at the prevailing rate of 12.36%. However, the service provider may encounter the issue of adjusting this payment of tax for increase in Service tax rate afterwards when the service will be provided and invoice will be raised for the services rendered, for which advance has been received already.

Point of Taxation (POT) when there is change in effective rate of taxes:

Point of taxation involving change in effective rate of tax is governed by Rule 4 of the POT Rules, which provides for determination of Point of taxation when there is change in effective rate of tax as mentioned in the table below:

<u>S. No.</u>	<u>In case a taxable service has been provided</u>	<u>Invoice has been issued</u>	<u>Payment received for the invoice</u>	<u>Point of taxation shall be</u>	<u>Applicable Rate</u>
1.	BEFORE the change in effective rate of tax	AFTER the change in effective rate of tax	AFTER the change in effective rate of tax	Date of issuance of invoice or Date of receipt of payment, whichever is earlier	New Rate
2.		BEFORE the change in effective rate of tax	AFTER the change in effective rate of tax	Date of issuance of invoice	Old Rate
3.		AFTER the change in effective rate of tax	BEFORE the change in effective rate of tax	Date of receipt of payment	Old Rate

4.		BEFORE the change in effective rate of tax	AFTER the change in effective rate of tax	Date of receipt of payment	New Rate
5.	AFTER the change in effective rate of tax	BEFORE the change in effective rate of tax	BEFORE the change in effective rate of tax	Date of issuance of invoice or Date of receipt of payment, whichever is earlier	Old Rate
6.		AFTER the change in effective rate of tax	BEFORE the change in effective rate of tax	Date of issuance of invoice	New Rate

Accordingly, the above scenario of advance payments may have exemplary situation and countered as under:

- Services are completed after June 1, 2015 but the invoice is raised before change in rate:** In terms of Rule 3 read with Rule 4(b)(ii) of the POT Rules, no differential payment may be required (Refer S. No. 5 of the table);
- Services are completed after June 1, 2015 and the invoice is also raised after change in rate:** In terms of Rule 3 read with Rule 4(b)(iii) of the POT Rules, differential payment (i.e. 14% – 12.36%) will have to be paid at the time of such invoice (Refer S. No. 6 of the table).

Key Concerns:

Whether Rule 4 of the POT Rules can override Section 67A of the Finance Act:

Question is whether Rule 4 of the POT Rules can override the Section 67A of the Finance Act, 1994 (“the Finance Act”), inserted therein w.e.f. May 28, 2012, this reads as under:

“67A. Date of determination of rate of tax, value of taxable service and rate of exchange. – The rate of service tax, value of a taxable service and rate of exchange, if any, shall be the rate of service tax or value of a taxable service or rate of exchange, as the case may be, in force or as applicable at the time when the taxable service has been provided or agreed to be provided.”

Bare perusal of Section 67A of the Finance Act makes it clear that the rate of Service tax to be applied is the rate in force at the time when the taxable service has been provided or agreed to be provided.

Hence, considering Rule 4(a)(i) of the POT Rules (Refer S. No. 1 of the Table), question arise why new rate would be applicable when services are rendered before change in effective rate of tax but invoice is raised and payment is made after change of rate when as per Section 67A of the Finance Act, applicable rate of Service tax is the rate in force at the time when the taxable service has been provided or agreed to be provided.

Here, we would also like to draw your attention towards the decision of the Hon'ble Supreme Court in the case of **All India Federation of Tax Practitioners Vs. Union of India [2007-TIOL-149-SC-ST]** wherein it was held that “a tax on a thing or goods can only be with reference to a taxable event” and the same contention was upheld again in the case of **Association of Leasing & Financial Service Companies Vs. Union of India [2010 (20) STR 417 (SC)]**, wherein the Hon'ble Supreme Court observed that the taxable event under the **Service tax law is the rendition of service;**

In view of the above discussed provisions, the matter is subjected to debate as to what would be the applicable rate of Service tax in respect of ongoing transactions and whether the same should be determined by applying Rule 4 of the POT Rules or as per Section 67A of the Finance Act.

Here it would not be out of place to mention that the POT Rules were framed by the Central Government in exercise of the powers conferred under Section 94 of the Finance Act and such delegated legislation cannot be extended to go beyond the vires of the Finance Act.

Hence, an illustrative clarification to this effect is much warranted from the Board before the new rate of Service becoming effective from June 1, 2015.

What Happen to balance of Education Cess and Secondary and Higher Education Cess' standing in the hands of Service Provider as on June 1, 2015:

Further, next question what happen for balance lying in 'Education Cess' and 'Secondary and Higher Education Cess' as on June 1, 2015 will be allowed to be adjusted with Service tax liability as this is being denied in terms of Rule 3(7)(b) of the Cenvat Credit Rules, 2004 (“the Credit Rules”), also requires clarification by the Board at the earliest.



Taxability of newly taxable services

(Effective from June 1, 2015)

The Ministry of Finance, Department of Revenue vide Notification No. 14/2015-ST dated May 19, 2015 has notified that the following changes in relation to the Negative List of services contained under Section 66D of the Finance Act, 1994 (“the Finance Act”) shall be effective from June 1, 2015:

Section 66D(f): Services by way of carrying out any processes for production or manufacture of alcoholic liquor for human consumption brought under the Service tax net.

Section 66D(i): Explanation inserted whereby the expression “betting, gambling or lottery” shall not include the activity as specified in substituted explanation 2 to Clause (44) of Section 65B of the Finance Act which reads as under:

“Explanation 2.—For the purposes of this clause, the expression “transaction in money or actionable claim” shall not include—

(i) any activity relating to 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;

(ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out—

(a) by a lottery distributor or selling agent in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner;

(b) by a foreman of chit fund for conducting or organising a chit in any manner.”

Section 66D(j): Omitted, which covers ‘admission to entertainment event or access to amusement facilities’.

Consequently, Service tax to be levied on the services provided by way of access to amusement facility such as rides, bowling alleys, amusement arcades, water parks, theme parks, etc;

Service tax to be levied on services by way of admission to entertainment event of concerts, non-recognized sporting events, pageants, music concerts and award functions, if the amount charged for admission is more than Rs. 500.

Whereas services by way of admission to exhibition of the cinematographic film, circus, dance, or theatrical performances including drama, ballets or recognized sporting events shall continue to be exempt; [Read with Notification No. 16/2015-ST dated May 19, 2015 vide which changes has been made in the Mega Exemption List of Services effective from June 1, 2015]

However, as per TRU Clarification vide D.O.F.No.334/5/2015-TRU dated May 19, 2015, the effective dates to be notified later in respect of the changes proposed

in Section 66D(a) of the Finance Act i.e. under clause (iv), the words 'support services' to be substituted by the words 'any service'.

Accordingly, after such amendment, 'Any services' provided by the Government or local authority to a Business Entity would be exigible to Service tax, except for the services that are specifically exempted, or covered by any another entry in the Negative List.

Dilemma of change in taxability of new services effective from June 1, 2015: Rule 5 of the POT Rules Vs. Section 66B of the Finance Act:

With the new services becoming taxable w.e.f. June 1, 2015, the issue may crop up as to whether the services rendered prior to June 1, 2015 are exigible to Service tax when payments for such services are received later or invoices pertaining to such services are raised later.

Before taking insight into the uncertainties and ambiguities, it is pertinent here to understand the basic structure and concept of levy and collection of Service tax under the Finance Act governing taxability of a service.

Levy and Collection of Service tax under the Finance Act

In any taxing statute, the statutory provision containing the charging Section is of foremost importance. It is well settled law that levy of tax is one thing and collection thereof is quite different thing. Once the levy is attracted, the collection of tax may be at any different point/ stage/ event.

Under the Finance Act, Section 66B of the Finance Act is the charging Section which levy Service tax on **taxable services**. We are reproducing herewith Section 66B of the Finance Act for the ease of convenience:

"66B. Charge of service tax on and after Finance Act, 2012.

There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent. 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**."

[It may be noted here that the Ministry of Finance, Department of Revenue vide Notification No. 14/2015-ST dated May 19, 2015 has notified increase in the rate of Service tax from 12.36% to flat 14% (Subsuming Education Cess and Secondary & Higher Secondary Education Cess) to be effective from June 1, 2015.]

The literal interpretation of the charging Section 66B of the Finance Act means that the levy of Service tax is on those service 'other than the one specified in the Negative List', 'provided or agreed to be provided'. However, the collection of Service tax may be shifted to any point/ stage/event, in any manner, as prescribed by the Rules made in this behalf.

Further as already quoted in our earlier newsletter, the Hon'ble Supreme Court in the case of **All India Federation of Tax Practitioners Vs. Union of India [2007-TIOL-149-SC-ST]** has held that "a tax on a thing or goods can only be with reference to a taxable event" and the same contention was upheld again in the case of **Association of Leasing & Financial Service**

Companies Vs. Union of India [2010 (20) STR 417 (SC)], wherein the Hon'ble Supreme Court observed that the taxable event under the Service tax law is the rendition of service.

Now, in view of the above discussions, the levy of Service tax is on the provision of service and accordingly, the service must be taxable service at the time of its rendition in order to attract Service tax levy. In other words, if at the time of rendition of service, it is covered under the Negative List, then as per Section 66B of the Finance Act, no Service tax may be levied on the same irrespective of the date of its payment or raising of invoice.

However, in this regard, Rule 5 of the Point of Taxation Rules, 2011 ("the POT Rules") governing Point of taxation for levy of Service tax in case of new services, provides contradictory provisions.

Key Concerns:

Whether Rule 5 of the POT Rules can override Section 66B of the Finance Act:

Rule 5 of the POT Rules provides that where a service is charged to tax 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;"

As per this Rule 5(a) of the POT Rules, no Service tax is payable even if services are rendered after such service becomes taxable only when 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 14 days of the date when the service is taxed for the first time."

Manifestly, the stated Rule provides that in cases of levy on new services, irrespective of date of completion of service, Service tax shall be payable if the payment is received on or after the date of levy and/ or if the invoice is not issued within 14 days of the date of levy.

Now, the moot question here is that whether Rule 5 of the POT Rules can override Section 66B of the Finance Act in terms of which the levy of Service tax is on the provision of service and accordingly, the service must be taxable service at the time of its rendition in order to attract Service tax levy. In view of the above discussed provisions, the matter is subjected to debate as to whether Service tax would be leviable on a service which was not a 'taxable service' at the time of its rendition as being covered under the Negative List, merely because its payment is received on or after the date of levy and/ or the invoice is not issued within 14 days from the date service is taxed first time.

Here we would like to mention that the POT Rules were framed by the Central Government in exercise of the powers conferred under Section 94 of the Finance Act and such delegated legislation cannot be extended to go beyond the vires of the Finance Act.

Hence, an illustrative clarification to this effect is much warranted from the Board before the new services becoming taxable effective from June 1, 2015.

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CONTACT US!

CORPORATE OFFICE

P-6/90, Connaught Place, Connaught Circus, New
Delhi-110001, India.

Phone No: +91-9811322785; 011-23343333

www.carajput.com; www.caindelhiindia.com

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