

LEGISLATIVE CHANGES

- 1) In Explanation to Section 67, definition of money, in clause (b), is proposed for omission as nearly the same definition shall be available in Section 65A for capturing the **meaning of 'service'**.

Service as Defined in the Finance Budget, 2012

"**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) 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;
- (c) fees taken in any Court or tribunal established under any law for the time being in force.

Explanation 1. - For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,—

- (A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or
- (B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

(C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 2 – 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 3 - 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;

2) Few Items Whether Service or Not

Directors sitting fees	Divorce alimony
Hire charges of equipments	Honorarium
Donations, Gifts or Charities	Grants given for a research
Government Subsidy	Fines and penalties
Amount received on settlement of dispute	Refund of deposits on cancellation of an agreement to provide a service
Refund of security deposit on completion of provision of service	Forfeiture of security deposits for damages by service receiver
Deposits in or withdrawals from a bank account	Advancement or repayment of principal sum on loan
Debt is transferred to a third person for a consideration	Inter branch or inter division services
Transaction between Head office and branches and vice-a-versa	Services of casual workers

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

- 3) There is paradigm shift in the way services are proposed to be taxed in future. Taxation will be based on what is popularly known as “**Negative List of Services**”.

Shift from “selective approach” to “comprehensive approach” of taxation.

Selective approach (present scheme of taxation)	Comprehensive approach (proposed scheme of taxation)
Term “service” not defined	Term “service” is defined [Section 65B(44)] Concept of “declared service” Section 66E] – Deemed Service “Service” includes declared service [Section 65B(44)]
Statute lists out taxable services [Section 65(105)] Only listed specified services are taxable. Non-listed services are not taxable. Exemptions are granted by Notifications.	Statute lists out non-taxable services [negative list – Section 66D] services are specified in negative list Services provided in taxable territory would be taxable Services provided in non-taxable territory would not be taxable

**4) Steps to compute Service Tax under Negative Taxation Regime-
w.e.f Notified date**

- (a) Whether activity amounts to “Service” as defined U/s.65B (44)?
- (b) Whether activity amounts to “Declared service” as defined U/s.66E?
- (c) If answer to any of above is yes, check up whether said activity falls under Negative List of Services under Section 66D?
- (d) If answer to above is no, refer place of Provision of Service Rules to check up whether services are provided within taxable territory?
- (e) If answer to above is yes, check up whether activity is exempted under Mega Notification No. 12/2012-ST or any other notification?

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

- (f) Determine value of taxable service considering Valuation Rules and abatement Notification.
 - (g) Calculate service tax by applying the applicable rate
 - (h) Avail / Utilize Cenvat as per Cenvat Credit Rules, 2004.
 - (i) Work out net service tax payable for respective month / quarter.
- 5) Where service is capable of differential tax treatment based on its description, the most specific description shall be preferred.
- 6) Reference to service (referred to main service) shall not include reference to a service which is used for providing the main service.
- 7) In case of bundled services, where it is naturally bundled in ordinary course of business it will be treated as single service.
- 8) Where it is not naturally bundled, it shall be treated as provision of single service which result in the highest tax liability.

9) List of Services Covered under the Negative List

- (a) Services by Government or a local authority excluding the following services to the extent they are not covered elsewhere:
 - (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government;
 - (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
 - (iii) transport of goods or passengers; or
 - (iv) support services, other than services covered under clauses (i) to (iii) above, provided to business entities.
- (b) Services by the Reserve Bank of India.

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

- (c) Services by a foreign diplomatic mission located in India.
- (d) Services relating to agriculture by way of –
 - (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;
 - (ii) supply of farm labour;
 - (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter essential characteristics of agricultural produce but make it only marketable for the primary market;
 - (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
 - (v) loading, unloading, packing, storage or warehousing of agricultural produce;
 - (vi) agricultural extension services;
 - (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.
- (e) Trading of goods.
- (f) Any process amounting to manufacture or production of goods.
- (g) Selling of space or time slots for advertisements other than advertisements broadcast by radio or television.
- (h) Service by way of access to a road or a bridge on payment of toll charges.
- (i) Betting, gambling or lottery.
- (j) Admission to entertainment events or access to amusement facilities.

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

- (k) Transmission or distribution of electricity by an electricity transmission or distribution utility.
- (l) Services by way of –
 - (i) pre-school education and education up to higher secondary school or equivalent;
 - (ii) education as a part of a curriculum for obtaining a qualification recognized by law;
 - (iii) education as a part of an approved vocational education course.
- (m) Services by way of renting of residential dwelling for use as residence;
- (n) Services by way of –
 - (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
 - (ii) inter-se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;
- (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 in a vessel of less than fifteen tonne net, other than predominantly for tourism purpose; and
 - (vi) metered cabs, radio taxis or auto rickshaws;
- (p) Services by way of transportation of goods –
 - (i) by road except the services of –
 - (A) a goods transportation agency; or

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

- (B) a courier agency;
- (ii) by an aircraft or a vessel from a place outside India to the first customs station of landing in India; or
- (iii) by inland waterways;
- (q) Funeral, burial, crematorium or mortuary services including transportation of the deceased.

DECLARED SERVICE

- 1) In the definition of ‘service’ in the Finance Budget, 2012 stated that service includes a declared service. The phrase ‘**declared service**’ is also defined in the said section “as an activity carried out by a person for another for consideration and specified in section 66E of the Act”. Nine activities have been specified in section 66E.
 - (a) renting of immovable property;
 - (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority;
 - (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;
 - (d) development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software;
 - (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
 - (f) transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods;

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

- (g) activities in relation to delivery of goods on hire purchase or any system of payment by instalments;
- (h) service portion in execution of a works contract;
- (i) service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity.

MEGA EXEMPTION NOTIFICATION – 12/2012-ST, DATED 17-03-2012

- 1) This notification will be effective from notified date
- 2) **List of Services Exempted from the whole of Service Tax**
 - 1. Services provided to the United Nations or a specified international organization;
 - 2. Health care services by a clinical establishment, an authorised medical practitioner or para-medics;
 - 3. Services by a veterinary clinic in relation to health care of animals or birds;

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

4. Services by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) by way of charitable activities;
5. Services by a person by way of-
 - (a) renting of precincts of a religious place meant for general public;
or
 - (b) conduct of any religious ceremony;
6. Services provided to any person other than a business entity by -
 - (a) an individual as an advocate; or
 - (b) a person represented on and as arbitral tribunals;
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;
8. Services by way of training or coaching in recreational activities relating to arts, culture or sports;
9. Services provided-
 - (a) to an educational institution by way of catering under any centrally assisted mid – day meals scheme sponsored by Government;
 - (b) to or by an institution in relation to educational services, where the educational services are exempt from the levy of service tax, by way of transportation of students or staff;
 - (c) to or by an institution in relation to educational services, where the educational services are exempt from the levy of service tax, by way of services in relation to admission to such education;
10. Services provided to a recognised sports body by-

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

- (a) an individual as a player, referee, umpire, coach or manager for participation in a tournament or championship organized by a recognized sports body;
- (b) another recognised sports body;

11. Services by way of sponsorship of tournaments or championships organised,-

- (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;
- (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India, Special Olympics Bharat;
- (c) by Central Civil Services Cultural and Sports Board;
- (d) as part of national games, by Indian Olympic Association; or
- (e) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme;

12. Services provided to the Government or local authority by way of erection, construction, maintenance, repair, alteration, renovation or restoration of –

- (a) a civil structure or any other original works meant predominantly for a non-industrial or non-commercial use;
- (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

- (c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
- (d) canal, dam or other irrigation works;
- (e) pipeline, conduit or plant for (i) drinking water supply (ii) water treatment (iii)sewerage treatment or disposal; or
- (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the *Explanation 1* to clause 44 of section 65 B of the said Finance Act;

13. Services provided by way of erection, construction, maintenance, repair, alteration, renovation or restoration of,-

- (a) road, bridge, tunnel, or terminal for road transportation for use by general public;
- (b) building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;
- (c) pollution control or effluent treatment plant, except located as a part of a factory; or
- (d) electric crematorium;

14. Services by way of erection or construction of original works pertaining to,-

- (a) airport, port or railways;
- (b) single residential unit otherwise as a part of a residential complex;
- (c) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

- (d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or
 - (e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;
- 15.** Temporary transfer or permitting the use or enjoyment of a copyright covered under clause (a) or (b) of sub-section (1) of section 13 of the Indian Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical, artistic works or cinematograph films;
- 16.** Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador;
- 17.** Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;
- 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 room below rupees one thousand per day or equivalent;
- 19.** Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year, and which has a licence to serve alcoholic beverages;
- 20.** Services by way of transportation by rail or a vessel from one port in India to another of the following goods -

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

- (a) petroleum and petroleum products falling under Chapter heading 2710 and 2711 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);
- (b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
- (c) defence or military equipments;
- (d) postal mail, mail bags or household effects;
- (e) newspaper or magazines registered with Registrar of Newspapers;
- (f) railway equipments or materials;
- (g) agricultural produce;
- (h) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages; or
- (i) chemical fertilizer and oilcakes;

21. Services provided by a goods transport agency by way of transportation of –

- (a) fruits, vegetables, eggs, milk, food grains or pulses in a goods carriage;
- (b) goods where gross amount charged on a consignment transported in a single goods carriage does not exceed one thousand five hundred rupees; or
- (c) goods, where gross amount charged for transportation of all such goods for a single consignee in the goods carriage does not exceed rupees seven hundred fifty;

22. Services by way of giving on hire -

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

- (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
 - (b) to a goods transport agency, a means of transportation of goods;
- 23.** Transport of passengers, with or without accompanied belongings, by –
- (a) air, embarking or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal; or
 - (b) a contract carriage for the transportation of passengers, excluding tourism, conducted tour, charter or hire;
- 24.** Services by way of motor vehicle parking to general public excluding leasing of space to an entity for providing such parking facility;
- 25.** Services provided to the Government or a local authority by way of -
- (a) repair of a ship, boat or vessel;
 - (b) effluents and sewerage treatment;
 - (c) waste collection or disposal;
 - (d) storage, treatment or testing of water for drinking purposes; or
 - (e) transport of water by pipeline or conduit for drinking purposes;
- 26.** Services of general insurance business provided under following schemes -
- (a) Hut Insurance Scheme;
 - (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);
 - (c) Scheme for Insurance of Tribals;
 - (d) Janata Personal Accident Policy and Gramin Accident Policy;

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

- (e) Group Personal Accident Policy for Self-Employed Women;
- (f) Agricultural Pumpset and Failed Well Insurance;
- (g) premia collected on export credit insurance;
- (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;
- (i) Jan Arogya Bima Policy;
- (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);
- (k) Pilot Scheme on Seed Crop Insurance;
- (l) Central Sector Scheme on Cattle Insurance;
- (m) Universal Health Insurance Scheme;
- (n) Rashtriya Swasthya Bima Yojana; or
- (o) Coconut Palm Insurance Scheme;

27. Services provided by an incubatee up to a total business turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:-

- (a) the total business turnover had not exceeded fifty lakh rupees during the preceding financial year; and
- (b) a period of three years has not lapsed from the date of entering into an agreement as an incubatee;

28. Service by an unincorporated body or an entity registered as a society to own members by way of reimbursement of charges or share of contribution -

- (a) as a trade union;
- (b) for the provision of exempt services by the entity to third persons; or
- (c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;

29. Services by the following persons in respective capacities -

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

- (a) a sub-broker or an authorised person to a stock broker;
- (b) an authorised person to a member of a commodity exchange;
- (c) a mutual fund agent or distributor to mutual fund or asset management company for distribution or marketing of mutual fund;
- (d) a selling or marketing agent of lottery tickets to a distributor or a selling agent;
- (e) a selling agent or a distributor of SIM cards or recharge coupon vouchers; or
- (f) a business facilitator or a business correspondent to a banking company or an insurance company in a rural area;

30. Carrying out an intermediate production process as job work in relation to –

- (a) agriculture, printing or textile processing;
- (b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act ,1985 (5 of 1986);
- (c) any goods on which appropriate duty is payable by the principal manufacturer; or
- (d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;

31. Services by an organiser to any person in respect of a business exhibition held outside India;

32. Services by way of making telephone calls from –

- (a) departmentally run public telephones;

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

- (b) guaranteed public telephones operating only for local calls; or
- (c) free telephone at airport and hospitals where no bills are being issued;

33. Services by way of slaughtering of bovine animals;

34. Services received from a service provider located in a non-taxable territory by –

- (a) the Government, a local authority or an individual in relation to any purpose other than industry, business or commerce; or
- (b) an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities.

OTHER IMPORTANT LEGISLATIVE CHANGES

- 1) A new Section: 67A is being inserted to prescribe the relevant date for the application of rate of exchange, valuation or rate of service tax. Rule 5B of ST Rules, which covers this aspect partially will be deleted.

New Section 67A Inserted in Budget, 2012

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.

Explanation.— For the purposes of this section, "rate of exchange" means the rate of exchange referred to in the Explanation to section 14 of the Customs Act, 1962.;

- 2) Special audit provisions, available at present by way of Section 14AA of the Central Excise Act and made applicable to Service Tax by way of Section 83, are being replaced by a new **Section: 72A**, giving comprehensive powers for such audit relevant for service tax purposes.

New Section 72 A Inserted in Budget, 2012

- (1) If the Commissioner of Central Excise, has reasons to believe that any person liable to pay service tax (herein referred to as "such person"),
- (i) has failed to declare or determine the value of a taxable service correctly; or
 - (ii) has availed and utilised credit of duty or tax paid-
 - (a) which is not within the normal limits having regard to the nature of taxable service provided, the extent of capital goods used or the type of inputs or input services used, or any other relevant factors as he may deem appropriate; or
 - (b) by means of fraud, collusion, or any wilful misstatement or suppression of facts; or
 - (iii) has operations spread out in multiple locations and it is not possible or practicable to obtain a true and complete picture of his accounts from the registered premises falling under the jurisdiction of the said Commissioner, he may direct such person to get his accounts audited by a chartered accountant or cost accountant nominated by him, to the extent and for the period as may be specified by the Commissioner.
- (2) The chartered accountant or cost accountant referred to in sub-section (1) shall, within the period specified by the said Commissioner, submit a report duly signed and certified by him to the said Commissioner mentioning therein such other particulars as may be specified by him.
- (3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of such person have been audited under any other law for the time being in force.

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

- (4) The person liable to pay tax shall be given an opportunity of being heard in respect of any material gathered on the basis of the audit under sub-section (1) and proposed to be utilised in any proceeding under the provisions of this Chapter or rules made thereunder.

Explanation. - For the purposes of this section,—

- (i) "chartered accountant" shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949;
- (ii) "cost accountant" shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959.!

3) The provisions of **Section 73 are being amended as follows:**

- a) The period for issue of demands in normal situations is being raised from 12 months to 18 months. This is being done to take care of the shorter period available due to the periodicity of the new return EST-1 (to replace ST-3 and discussed later) being reduced to 1 month for large assesseees from the existing 6 months and to have the benefit of audited accounts available for the purpose of scrutiny of returns;
- b) A new sub-Section (1A) is being inserted to save the botheration of retyping the same charges (and save paper) when a follow-up demand is given for a period subsequent to the previous notice(s) on same grounds;
- c) Reference to sub-Section (3) is being deleted in sub-Section (4A) so that the latter Section will not overrule the earlier;

4) Provisions relating to **Settlement Commission are being brought in the Service Tax by adding Sections 31, 32 and 32A to 32P of the Central Excise Act in Section 83. On the date of the enactment of the Finance Bill, notification containing **Service Tax (Settlement of Cases) Rules, 2007** along the lines of Central Excise (Settlement of Cases) Rules, 2007,**

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

will come into effect. This should encourage quick settlement of disputes and save the business from the worries of prosecution in certain situations.

- 5) The periods for filing appeals in service tax are being aligned with Central Excise. These are captured by relevant amendments in Sections 85 and 86. New limitations will apply to decisions or orders passed after the date on which Finance Bill, 2012, receives the assent of the President.

Section 85 – Appeals to Commissioner of Central Excise (Appeals)

"(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.";

The time period for appeal has been reduced to two months instead of earlier period of 3 months.

Section 86 – Appeals to Appellate Tribunals

(i) in sub-section (1), after the words "against such order", the words "within three months of the date of receipt of the order" shall be inserted;

(ii) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Every appeal under sub-section (2) or sub-section (2A) shall be filed **within four months** from the date on which the order sought to be appealed against is received by the Committee of Chief

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

Commissioners or, as the case may be, the Committee of Commissioners.";

The time period for appeal has been increased to four months instead of earlier period of 3 months.

- 6) At present in service tax, appeals against the order of commissioner (appeals) lie before the Tribunal; whereas in Central Excise, a **Revision Mechanism** is available to hear certain specified matters i.e. credit of any duty allowed to be utilized towards payment of excise duty on final products, rebate on exports. It is proposed that this revision mechanism may also be made available for service tax, to the extent applicable. Accordingly, Central Excise provisions relating to revision mechanism (Section 35EE of Central Excise Act) are being made applicable to service tax by amending Section 83.
- 7) Clause (a) of Section 89 relating to prosecution for non-issue of invoice is being replaced with the words “**knowingly evades payment of service tax**”.

This meets the demand of business that mere non-issue of invoices should not be made punishable with prosecution, while giving a comprehensive coverage to offences and also aligning with other indirect laws.

Old Section 89 (1) (a)

Whoever commits any of the following offences, namely:

- (a) provides any taxable service chargeable to service tax under subsection (1) of section 68 or receives any taxable service chargeable to tax under sub-section (2) of said section, **without an invoice issued** in accordance with the provisions of this Chapter or the rules made thereunder;

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

- 8) Process of compounding of offences will be operationalized and the enabling rule making power have been obtained in the Finance Act, 1994.
- 9) Willful evasion of tax may trigger prosecution.
- 10) Partnership firm to include Limited Liability Partnership (LLP) provides clarity on due date for tax payment and filing of the return by LLP (w.e.f 01.04.2012)
- 11) Scope of advance ruling authority is expanded to cover Cenvat Credit cases.

RATE CHANGES

- 1) The rate of service tax is being restored to the statutory rate of **12%** - and Notification No. 8/2009-ST dated February 24, 2009 reducing the rate to 10 % has been rescinded effective April 1, 2012.
- 2) Consequent changes have also been made in composition rates as follows:
 1. For life insurance: 3% for the first year premiums while retaining the rate @1.5% for the subsequent years;
 2. Money changing: raising the existing rates proportionately by 20%;
 3. Distributor or selling agent of lotteries: Raising the specified amounts proportionately and suitably rounded off to Rs 7,000 and 11,000;
- 3) For **works contracts** rates have been raised from 4% to **4.8%**.
- 4) The rate for Cenvat reversal for exempt services has been revised from 5% to **6%** in Rule 6(3) of Cenvat Credit Rules (CCR), 2004.

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

- 5) The dual tax structure for air transportation: partly specific, partly ad valorem - is being replaced with a uniform ad-valorem levy at standard rate with an abatement of 60% on all sectors and all classes.

- 6) All the above changes will be **effective April 1, 2012.**

CHANGES TO SERVICE TAX RULES, 1994

- 1) A common simplified registration format for Central Excise and Service Tax is being placed for public comments, together with further liberalization in registration requirements, particularly centralized registrations.
- 2) Likewise a new simplified one page common return with Central Excise: to be called Excise & Service Tax Return (EST for short) is being introduced.
- 3) It is also being proposed that the cycles for the payment service tax and filing of return should coincide. To this end the tax payment requirement is proposed to be revised as follows:

This will improve cash flow for small businesses registered as companies or other corporate bodies while making large non-corporates pay tax on monthly basis.

Particulars	Payment Date		Return Date	
	Current	Proposed	Current	Proposed
Service Tax liability more than 25 lakhs in previous year				
Individual/Firm/LLP	Quarterly	Monthly	Half Yearly	Monthly
Other than Above	Monthly	Monthly	Half Yearly	Monthly
Service Tax liability less than 25 lakhs in previous year				
Individual/Firm/LLP	Quarterly	Quarterly	Half Yearly	Quarterly
Company Other than New Company	Monthly	Quarterly	Half Yearly	Quarterly
New Company	Monthly	Monthly	Half Yearly	Monthly

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

Changes at S. No 1, 2 & 3 will come into force **after it receives assent of President.**

- 4) The restrictions in Rule 6(4B) are being omitted allowing unlimited amount of permissible adjustments. Requirement of intimating such adjustment to jurisdictional superintendent is omitted.

Old Rule 6(4B)

[(4A) Notwithstanding anything contained in sub-rule (4), where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month or quarter, as the case may be.

(4B) The adjustment of excess amount paid, under sub-rule (4A), shall be subject to the following conditions, namely:-

(i) excess amount paid is on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification,

(ii) excess amount paid by an assessee registered under sub-rule (2) of rule 4, on account of delayed receipt of details of payments towards taxable services may be adjusted without monetary limit,

(iii) in cases other than specified in clause (ii) above, the excess amount paid may be adjusted with a monetary limit of [Rupees one lakh rupees] for a relevant month or quarter, as the case may be,

(iv) the details and reasons for such adjustment shall be intimated to the jurisdictional Superintendent of Central Excise within a period of fifteen days from the date of such adjustment.

The omission will come into force **from April 1, 2012.**

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

- 5) Since the Export Rules will cease to apply, the required provisions will be incorporated in Service Tax Rules. A transaction will qualify as export when it meets following requirements:
- 1) The service provider is located in Taxable territory;
 - 2) Service recipient is located outside India;
 - 3) Service provided is a service other than in the negative list.
 - 4) The Place of Provision of the service is outside India; and
 - 5) The payment is received in convertible foreign exchange

POINT OF TAXATION RULES, 2011

- 1) The time period for issuance of invoice is being increased to 30 days ordinarily and 45 days for banks and financial institutions (to reconcile with the business practice of issuing monthly statement). These changes are being provided in Rule 4A of Service Tax Rules, 1994 and the time period so defined is being incorporated in POT Rules.
- 2) In case of exporters, the period extended by the Reserve Bank of India is now explicitly included in the period for which the tax is allowed to be deferred.
- 3) The benefit available to individuals and firms to determine POT on the basis of date of payment for eight specified services is being extended to all services in a slightly modified form. The facility will be now available to individuals and partnership firms (including limited liability partnership) up to a turnover of Rs 50 lakh in a financial year provided the taxable turnover did not exceed this limit in the previous financial year. For computing the above limits, the turnover of the whole entity is required to be summed up and not any single registration.

Discharge of service tax liability on accrual to realization basis/ vice versa (w.e.f 01.04.2012)

Individuals / firms and LLP having turnover of taxable services of Rs. 50 Lakhs in immediately preceding financial year	Realisation basis irrespective of nature of services.
Individuals / firms and LLP having turnover of taxable services of more than Rs. 50 Lakhs in immediately preceding financial year	Accrual basis irrespective of nature of services. Provider of professional services will also be covered.
Service Providers Other than Individuals / firms and LLP	Accrual basis irrespective of nature of services.

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

- 4) The definition of continuous supply of service is being amended to capture the concept in a more wholesome manner, namely the recurrent nature of services and the obligation for payment periodically or from time-to-time.
- 5) Since the essence of the rule in case of continuous supply of service is the same as the main Rule, the separate rule for continuous supply of service [Rule 6] is being merged with the main rule. Moreover the provisions of rules 4 and 5 relating to changes in rates or application of tax on new services would also be applicable to continuous supply of services;
- 6) In case of a new levy, no tax is chargeable on services where payment has been received and invoice issued within a period of 14 days. To provide certainty, clause (b) is being amended to specify that invoice should be issued within 14 days of the date of the new levy.
- 7) The “date of payment” could be a subject of litigation particularly when effective rate changes. A new rule has been created: Rule 2A, keeping in view the impending change in rate effective April 1, 2012 and introduction of Negative List at a later date. In normal circumstances this date shall be the earlier of the dates of entry into books of accounts or actual credit in the bank account (when applicable). However, when there is change in effective rate of tax or a new levy between the said two dates, the date of payment shall be the date of actual credit in the bank account, if the amount is credited through a banking instrument more than four working days after the date of such change.
- 8) This will have no impact where invoice is the basis for point of taxation. Thus business may be advised to take steps to deposit all advances received up to March 31, 2012 in their bank accounts suitably. Any delay in this regard will lead to charging tax at higher rate.
- 9) As a measure of added facilitation, an option has been provided to determine the point of taxation in respect of small advances 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. Such provision is

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

expected to address the accounting problems faced by service providers in telecommunications, credit card businesses who regularly receive minor excess payments from their customers.

- 10) A residual rule has been made by way of best judgement to handle situations where the tax-payer is unable to furnish one or more of the details needed i.e. date of payment or date of invoice or both to determine POT.
- 11) And lastly, the small scale exemption has also been amended recognizing that the **first clearances up to Rs 10 lakhs** will be in terms of invoices and not mere payments received.
- 12) These changes come into effect **from April 1, 2012**.

REVERSE CHARGE PROVISIONS

- 1) There are a number of changes relating to reverse charge provisions. First of all, the term “taxable territory” has been defined in the Act and only services provided in taxable territory will be liable to tax. Thus any service provided in the state of J&K will not be liable to tax. The **Place of Supply Rules, 2012** will determine whether a service is being provided in J&K.
- 2) Moreover wherever the service provider is located in J&K but the service is being provided in taxable territory, in terms of the stated rules, the tax will be collected from the service receiver.
- 3) Secondly it has been noticed that a number of registrants collect the tax but do not pay the same to the Department. This is a serious loss of the revenue even though the compliant Section at the recipient end is often not benefitted. To ensure proper collection, while not inconveniencing small business, a new scheme is proposed to be introduced.
- 4) To give effect to this new reverse charge mechanism, some changes are being proposed: firstly, a proviso is being added to sub-Section (2) of Section 68 and both the service provider and service receiver will be considered as persons liable to pay the tax on notified taxable services and to the extent specified against each one of them.

Description of Service	Liability of Service Provider	Liability of Service Recipient
Insurance Agents	NIL	100%
Goods Transport Agencies (in case of specified services recipient)	NIL	100%
Sponsorships provided by Arbitral Tribunal to business entity	NIL	100%
Services Provided by individual to business entity	NIL	100%
Support services by Government/ Local Authority to business entity	NIL	100%

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

Rent -a-Cab (where abatement is not availed)*	NIL	100%
Rent -a-Cab (where abatement is availed)*	60%	40%
Supply of Manpower for any purpose*	25%	75%
Works Contract Service *	50%	50%
Services provided by a person in non taxable territory to a person located in taxable territory (popularly known as import of service)	NIL	NIL

* Provided by non-corporate service provider to corporate business entity.

- 5) It is clarified that the liability of the two persons is for respective amounts and is not influenced by compliance or the lack of it by the other side. Service provider is allowed Cenvat credit of tax paid by him on inputs and input services. The respective portions have been attempted such that the credits available will be well below the amount required to be paid by such persons. In extreme situations the small service provider is also being allowed the refund of unutilized Cenvat credit if any, available with him. Suitable changes will be made in Cenvat Credit Rules, to this effect.

- 6) The Reverse charge mechanism can be given effect on enactment with Negative List.

CHANGES IN ABATEMENT

- 1) Certain changes are proposed to be introduced in the abatements along with negative list. The increase in taxable portion of value are accompanied with liberalization in input tax credits following the principle of neutrality of taxes that the burden of taxes should not raise the cost per se but passed on to the point of consumption. It is expected that, though the taxable portion of services may appear a little higher, but the availability of credits will lead to reduction in costs and hence prices for the consumers.
- 2) The existing and new abatements shall be as follows:

Taxable Service	Post Amendment Position		Pre Amendment Position		Cenvat Availability Post Amendment
	Taxable Value	Effective Tax	Taxable Value	Effective Tax	
Financial leasing services including equipment leasing and hire purchase	10	1.24	10	1.03	Yes
Transport of Goods by rail	30	3.71	30	3.09	Yes
Transport passengers by rail	30	3.71	30	3.09	Yes
Supply of food or drink in hotel, convention center, club, pandal, shamiana or any place specially arranged for organizing a function	70	8.65	60	6.18	Cenvat of Capital Goods, Input Services and non-specified inputs available
Shamiana and Pandal	70	8.65	70	7.21	
Renting of hotels, inns, guest houses, clubs, campsites or other	60	7.42	50	5.15	Cenvat of only input services

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

commercial places meant for residential or lodging purposes					available
Transport of Goods by road by Goods Transport Agency	25	3.09	25	2.575	No
Services provided in relation to chit	70	8.66	70	7.21	No
Renting of any motor vehicle designed to carry passengers	40	4.94	40	4.12	No
Transport of goods in a vessel from one port in India to another	50	6.18	70	7.73	
Tour Operator (i) Services provided or to be provided to any person, by a tour operator in relation to a package tour	25	3.09	25	2.575	No
(ii) Services provided or to be provided to any person, by a tour, if the tour operator is providing services solely of arranging or booking accommodation for any person in relation to a tour	10	1.24	10	1.03	No
(iii) Services, other than services specified in (i) and (ii) above, provided or to be provided to any person, by a tour operator in relation to	40	4.94	40	4.12	No

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

a tour					
--------	--	--	--	--	--

3) Value of Taxable Service in Case of Specified Composite Contract w.e.f. Notified date

Taxable Service	Post Amendment Position		Pre Amendment Position		Cenvat Availability Post Amendment
	Taxable Value	Effective Tax	Taxable Value	Effective Tax	
Erection, Commissioning or installation, under a contract for supplying a plant, machinery or equipment and erection, commissioning or installation of such plant, machinery or equipment.	40	4.94	33	3.40	Cenvat of Capital Goods and Input Services available
Commercial or industrial construction service	40	4.94	33	3.40	Same as above
Sale of flats under construction	25	3.09	25	2.575	Same as above
Works contract other than original work	60	7.42	-	-	Same as above
Service portion in the supply of food or any	40	4.94	30	3.09	Cenvat of Capital Goods,

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

other article of human consumption or drink at a restaurant					Input Services and specified inputs available
Service portion in the supply of good or any other article of human consumption or drink provided from premises elsewhere (outdoor catering)	60	7.42	50	5.15	Same as above

CHANGES TO CENVAT CREDIT RULES, 2004

- 1) A simplified scheme for refunds is being introduced by substituting the entire Rule 5 of CCR, 2004. The new scheme does not require the kind of correlation that is needed at present between exports and input services used in such exports. Duties or taxes paid on any goods or services that qualify as inputs or input services will be entitled to be refunded in the ratio of the export turnover to total turnover.
- 2) Presently credit on all motor vehicles is not available except to a few specified service providers. This is being liberalised and credit on motor vehicles, other than those falling under tariff heading 8702, 8703, 8704, 8711 and their chassis, will be allowed. The credit of service tax paid on their hiring, insurance and repair will also be allowed.
- 3) Following credits in respect of vehicles will also be allowed:
 - i. of insurance to motor insurance companies (as re-insurance and third party insurance) and manufacturers (as in-transit insurance);
 - ii. of repair of vehicles to manufacturers in respect of motor vehicles manufactured by them and to insurance companies in respect of motor vehicles insured /re-insured by them.
- 4) Presently credit on goods can be taken only after they are brought to the premises of the service provider. Sub-rules 4(1) and 4(2) have been amended to allow credit without bringing them into premises subject to due documentation regarding their delivery and location.
- 5) Rule 9(1)(e) is being amended to allow availment of credit on the tax payment challan in case of payment of service tax by all service receivers on reverse charge.
- 6) Changes are being made in Rule 7 relating to distribution of credits of input services by an input service distributor (ISD) to ensure their scientific allocation to only such units where they have been put to use

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

and proportionate to turnover. For example in case of services by way of advertisement-

- i. if the advertisement is for a product or service provided from only one unit, the said credit shall be distributed only to that unit; and if two units, the said credit shall be distributed only to those two units, in proportion to the respective turnovers;
- ii. if the advertisement is for the company as such, the said credit shall be distributed only to the extent of the turnover of units registered and entitled to avail Cenvat credit to the total turnover of the company including unregistered units.

7) These above changes will be effective from 1.4.2012.

8) Honorable Supreme Court in case of Ind-Swift Laboratories Ltd [2011 TIOL-21-SC-CX] held that interest would be payable on wrong availment of Cenvat even though such Cenvat was not utilized. Rule 14 is now amended. Interest would be leviable only when assessee has utilized Cenvat Credit which is wrongly taken (w.e.f 17.03.2012).

9) Cenvat credit allowed on a rent-a-cab and supply of tangible goods rent a goods, where such services relate to motor vehicles which qualify as “capital goods”

10) Provision for adhoc Cenvat reversal of 20% by providers of ‘life insurance services’ and ULIP services is omitted. Such service provider will have to reverse Cenvat on actual basis.

11) Provision for adhoc Cenvat reversal of 50% for banking and financial sector may also be omitted post introduction of negative list. Such service provider will have to reverse Cenvat on actual basis.

12) Presently duty on removal of capital goods after use is payable on transaction value. Same will now be payable on higher of the depreciated value of capital goods or transaction value (w.e.f 17.03.2012)

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

- 13) In case where manufacturer / service provider claims full Cenvat of common Input / Input services, the amount of 6% will have to be paid on value of exempted goods / service instead of 5% prescribed earlier
- 14) Simplification of provisions relating to refund of Cenvat credit to an exporter of goods and services including dispensing the need for correlation between exports and inputs / input services used in such export

PENALTY WAIVER FOR RENTING OF IMMOVABLE PROPERTY SERVICE

- 1) Recently, Delhi High Court while examining the issue of constitutionality of service tax on renting of immovable property service in the matter of Home Solutions Retail Vs UOI observed that 'on the question of penalty due to non-payment of tax, it is open to the Government to examine whether any waiver or exemption can be granted' [para 73].
- 2) Subsequently, in the matter of Retailers Assn. of India Vs Union of India, Honorable apex court, had ruled on October 14, 2011, that litigants should pay 50% of the arrears within six months in three equated installments. For the balance, solvent surety should be furnished to the satisfaction of the jurisdictional commissioner.
- 3) Against the above backdrop, it is proposed that penalty may be waived for those taxpayers who pay the service tax due on the renting of immovable property service (as on the sixth day of March, 2012), in full along with interest within six months.
- 4) Section 80A is being introduced in the Finance Act for this purpose.
- 5) Those who fail to avail the benefit will be treated as if this Section did not exist.

RETROSPECTIVE CHANGES

- 1) Rule 6(6A) of the Cenvat Credit rules, introduced last year vide Notification 3/2011-CE (NT), dated 01/03/2011, is being given effect from February 10, 2006. This will neutralize the investigations or demands for reversal of credits in respect of services provided to SEZs for the past.
- 2) Exemption provided for the setting up of common facilities for treatment and recycling of effluents and solid wastes by Notification

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

42/2011-ST dated 25th July, 2011 shall be made applicable effective June 16, 2005;

- 3) Repair of roads has been exempted from service tax by Notification 24/2009-ST dated 27th July, 2009. By newly inserted Section 97, exemption relating to roads is extended for the earlier period commencing from June 16, 2005;
- 4) Service tax exemption has also been granted with retrospective effect on management, maintenance or repair service in relation to non-commercial Government buildings from 16th June, 2005 till the coming into force of the negative list when such repair will be exempted by the new mega notification.
- 5) These changes will come into effect when the Finance Bill receives the President Assent.

PLACE OF PROVISION OF SERVICES (POPS) RULES, 2012

- 1) An important component of the proposed changes is the introduction of the Place of Provision of Services Rules, 2012. Place of Provision of Services Rules, 2012 prescribes the place where services are deemed to be provided
- 2) The new rules will replace the existing Export of Services Rules, 2005 and the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006. Rule 5 of the export rules will be incorporated in Service Tax Rules.
- 3) Taxability of service will be determined based on location of its provision.
- 4) Services provided in taxable territory would be taxable
- 5) Services provided in non-taxable territory would not be taxable
- 6) Taxable territory means whole of India (excluding Jammu & Kashmir) [Section 64 read with Section 65B(52)]
- 7) Self service not taxable:

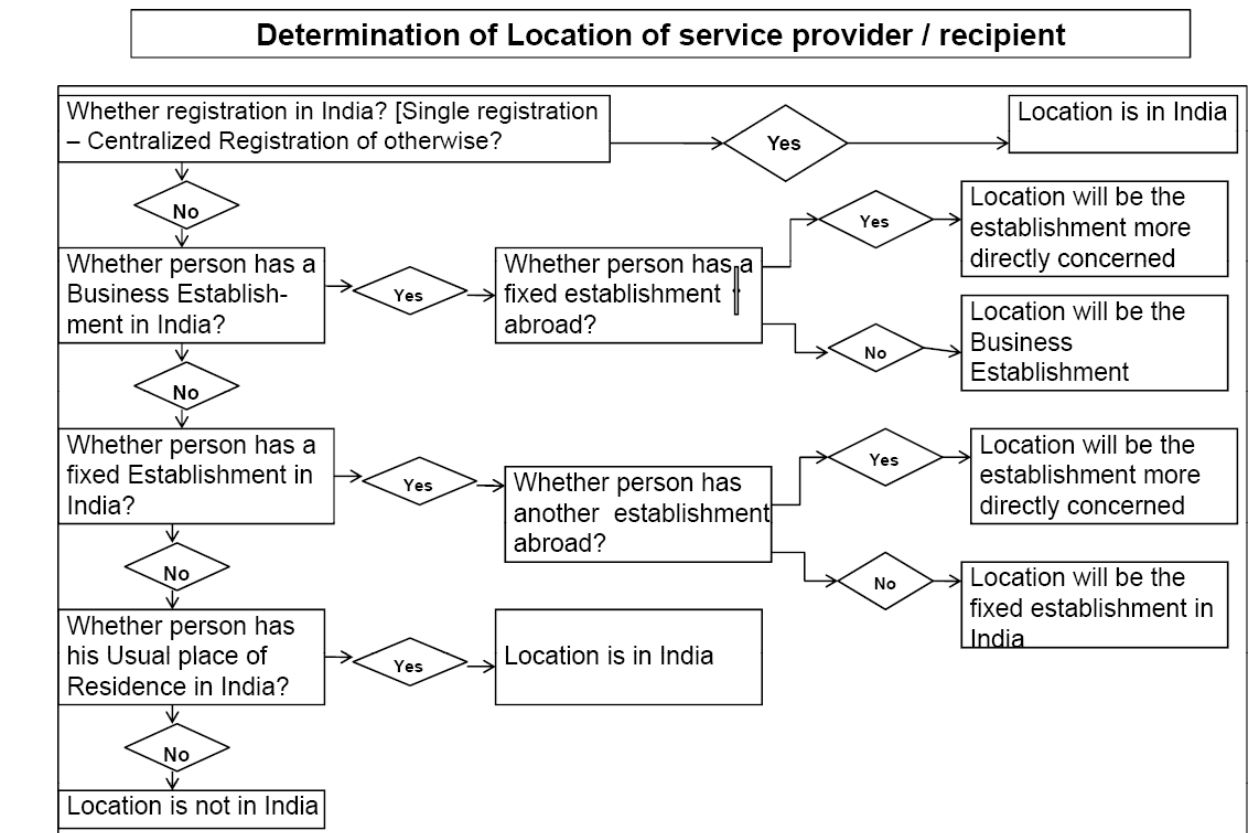
Service is a bilateral transaction. Only bilateral transactions can be taxed

Exception to above general rule

- (a) Transactions between unincorporated association or body of persons and its members
 - (b) Transactions between two establishments of same person one located in taxable territory and other located in non-taxable territory
- 8) POPS prescribes the place of provision of service

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012

- 9) POPS is framed on the principle that service tax is destination based consumption tax. It should be taxed in the jurisdiction of its consumption.
- 10) POPS tries to harmonize with international tax practice to ensure :
Avoidance of double taxation Avoidance double non-taxation.
- 11) POPS is useful for determining:
 - Tax implications of cross broader service transaction.
 - Tax implications of transaction with person based in Jammu & Kashmir
 - Tax jurisdiction in case of multiple locations
 - Whether services are consumed wholly within SEZ



DISCLAIMER

1. Views expressed are the personal views of faculty based on his interpretation of law.
2. Application/implications of various provisions will vary on facts of the case and law prevailing on relevant time.
3. Contents of this presentation should not be construed as legal or professional advice.
4. This is an educational meeting arranged with clear understanding that the Faculty will not be responsible for any error, omission, commission and result of any action taken by participant or anyone on the basis of this presentation.

THANK YOU



**CA Jaiprakash H. Shethiya
Kakaria & Associates
Chartered Accountants
Email id: st@kakariaassociates.com
Tel. No. 0260-3981000, 3981025
Mobile - 09825144673**

RECENT CHANGES IN SERVICE TAX PURSUANT TO BUDGET, 2012