

Reverse Charge Service Tax -2012

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Message

**Nothing is certain except
Death & Taxes**

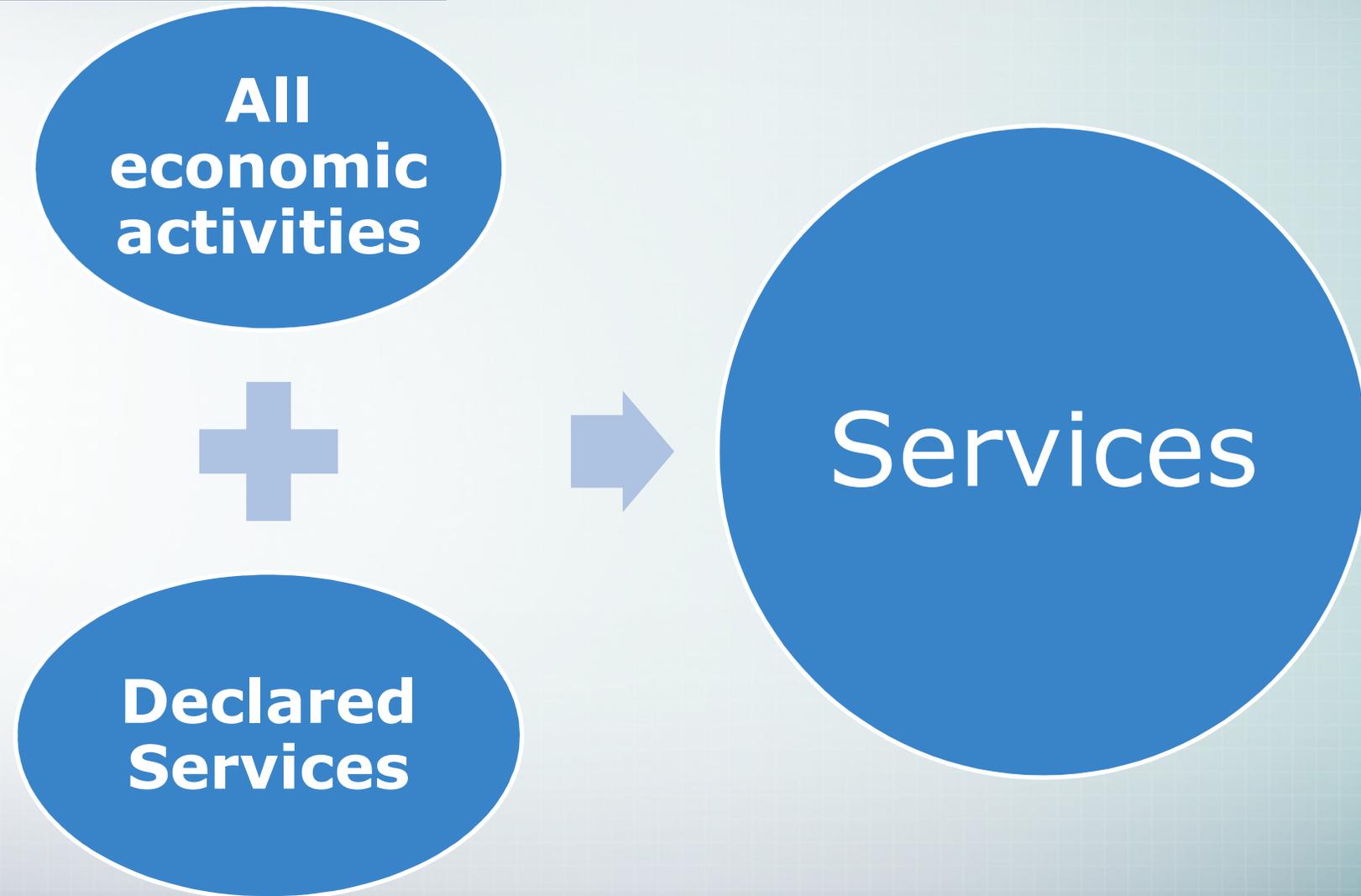
TAXATION OF SERVICES – NEGATIVE LIST



TAXATION OF SERVICES – NEGATIVE LIST



Definition of Service



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

- 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.

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

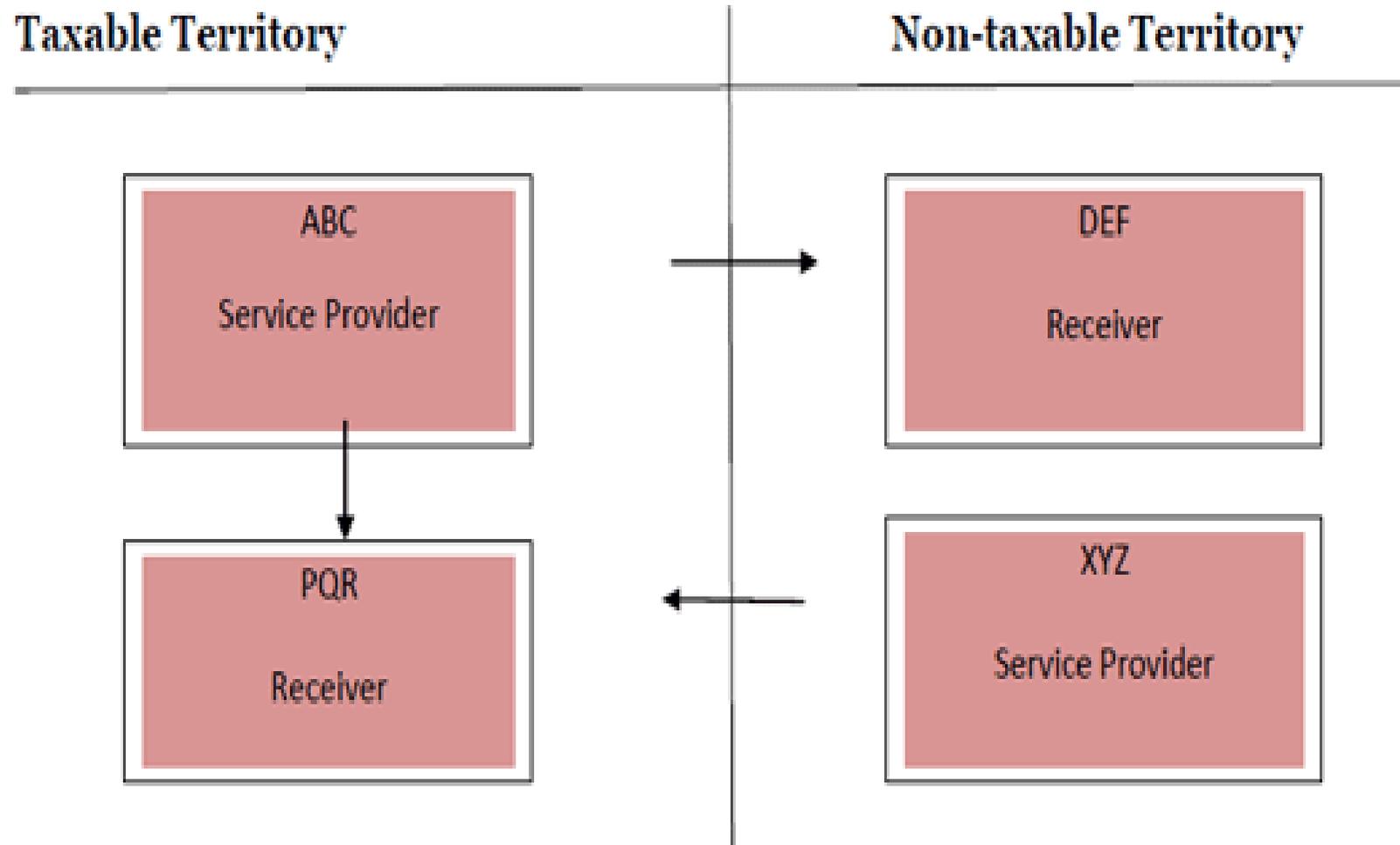
9 Activities declared to be amounting to services:

- 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)}

Discussions

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

Discussions



Reverse Charge

- Notification no. 15/2012-ST dt. 17/3/2012 → **Superseded by Notification No. 30/2012-ST, dated 20.06.2012** services have been Notified for the purpose of section 68(2) for reverse charge purposes
- Amended w.e.f. 01.07.2012, the Service Tax Rules, 1994 by Notification No. 36/2012-ST, dated 20.06.2012 to specify the person liable for paying service tax in respect of such Notified services under Rule 2(1)(d) of the said Rules.

Service Tax – SR – Reverse Charge

- N no. 15/2012-ST dt. 17/3/2012 → Superseded by 30/2012-ST dt. 20-6-2012 (effective from 66B) – S. 68(2) – Service Receiver

S.No	Description of Service	Service Recipient (Body Corporate)	Service Provider (Individual, Firm, LLP)
1	Hiring of Motor vehicles designed to carry passenger		
	(a)with abatement	100%	NIL
	(b)without abatement	40%	60%
2	Supply of manpower for any purpose	75%	25%
3	Works contract service	50%	50%

Works Contract - Valuation

- Challenge remains how to arrive at Material/ Service Value in Works Contract:-
 - Actual Material/ Service portion
 - Standard Material/ Service portion
 - Composition Tax (Alternative Option)

Service Tax – Works Contract

- *CCE, Vadodara vs. M/S. Daelim Industrial Co. Ltd. 2004 (170) ELT A181 (SC)* → “Works contract was on turnkey basis and not a consultancy contract and it cannot be vivisected and part of it cannot be subjected to service tax”.
- *Followed in L&T Ltd. vs. CCE 2006 STT 502 (CESTAT – Delhi)*
- *Service tax on Works contract was introduced w.e.f 1/6/2007* – FM stated – “State Govt. levies tax on transfer of property in goods involved in execution of WCT. So, the value of such services in a WCT should attract service tax Hence, I propose to levy service tax on services involved in the execution of WCT. I propose an optional composition scheme under which ST will be levied at only 2% of total value of WCT Vide clause 125 of the Finance Bill, 2007”.

Service Tax – Works Contract

- ***Overruled in LB – CESTAT Delhi – CCE vs. BSBK Pvt. Ltd. (2010) 26 STT 263*** – “Turnkey project can be vivisected & service element involved in works contract”.

- **Other Services → Works/ Composite Contract –e.g.**
 - Erection, Installation, Commissioning Services – 1/7/2003 – 67%
 - Commercial or Industrial Construction Services – 10/9/2004- 67%/ 75%
 - Construction of Residential Complex Services – 16/6/2005- 67%/75%
 - Management, Maintenance or Repair Services – 1/7/2003– No abatement

- **Difference between Works Contract & Other Services →** When State Sales Tax/VAT payable on transfer of property in execution of Works Contract

Service Tax – Valuation Rules

- **Valuation under Service Tax for Works Contract Services –Rule 2A** → Notification no. 11/2012-ST dt. 17-3-2012 → superseded by 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

Service Tax – Valuation Rules

- Works Contract Composition Rules, 2007 rescinded - 4.8% → Notification no. 35/2012-ST dt. 20-6-2012



Service Tax – Abatement

- **Abatement** → For provision of **Taxable Output Services** → Notification no. 13/2012-ST dt. 17-3-2012 – superseded by **Notification no. 26/2012-ST dt. 20-6-2012** (Effective → 1/7/2012)

- **ALL abatement Merged into One Notification – 12 Services**

- **Change in abatement Rates for Specified Services** → Prior/ Post 1/7/2012
 - TTL Consideration = 100
 - Less: Abatement @ 50% = 50
 - Net Consideration = 50
 - Service Tax 12.36% = 6.18

Service Tax – Abatement

- **Abatement** → Notification no. 26/2012-ST dt. 20-6-2012 → **Conditional Abatement with benefit of Cenvat Credit** available

- Notification No. 12/2003-ST Dated 20/6/2003 & Notification No. 1/2006-ST Dated 1/3/2006 (Rescinded)
 - Inputs – Rule 2(k) of CCR, 2004
 - Input Services – Rule 2 (l) of CCR, 2004
 - Capital Goods – Rule 2 (a) of CCR, 2004



Conditional Notification

- **Conditions are must and to be followed to avail exemption, concession or exception**
 - *IOCL Vs. CCE, VADODARA, {2012-TIOL-04-SC-CX}*

- **Assessee has option either to avail or not avail benefit of Conditional Notification i.e. Avail which is more beneficial to Assessee**
 - *Share Medical Care Vs. Union of India {2007 (209) ELT 321 –SC}*

Reverse Charge -Partial

- As per Explanation-II to Notification 30/2012-ST, dated 20.06.2012, “In **works contract services**, where both service provider and service recipient is the persons liable to pay tax, the service recipient has the option of choosing the **valuation method** as per choice, **independent** of valuation method adopted by the provider of service.”
- As per Rule 2(g) of the Service Tax Rules, 1994, “**supply of manpower**” means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control.

Reverse Charge -Partial

- **Clarification by Government**

10.1.2 What does a service provider need to indicate on the invoice when he is liable to pay only a part of the liability under the partial reverse charge mechanism?

10.1.3 If the service provider is exempted being a SSI (turnover less than Rs. 10 lakhs), how will the reverse charge mechanism work?

10.1.4 Will the credit of such tax paid be available to the service recipient?

Reverse Charge -Partial

- **Clarification by Government**

10.1.5 What shall be the point of taxation for the service recipient? When will he need to pay the service tax in respect of his liability?

10.1.6 How is the service recipient required to calculate his tax liability under partial reverse charge mechanism? How will the service recipient know which abatement or valuation option has been exercised by the service provider?

10.1.7 Is the reverse charge applicable on services provided and complete before 1.7.2012 though payments were made after 1.7.2012?

Reverse Charge -Partial

- In view of the fact that certain percentage of the service tax shall be paid by the service recipient. Keeping in view the same, by Notification No. 28/2012-CE (NT), Cenvat Credit Rules have been amended and **Rule 5B** has been inserted to provide that if such a **service provider is unable to utilize the Cenvat Credit on input and input services**, he shall be allowed refund of such unutilized Cenvat Credit, subject to the procedure, safeguards, conditions and limitations, as may be specified by the Board by issuing Notification. Therefore, the Board would issue the Notification giving the detailed procedure and conditions for seeking the **refund by the service provider of three specified services**, where service tax is to be paid on sharing basis on reverse charge.

Service Tax – SR – Reverse Charge

Description of a service	Service provider	Service receiver	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
<u>Insurance Services</u> in respect of services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	Insurance agent	Business man carrying on insurance business	Nil	100
<u>GTA</u> in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	Goods transport agency	Consignor or Consignee is specified person	Nil	100
<u>Sponsorship</u> in respect of services provided or agreed to be provided by way of sponsorship	Any person	Body corporate or partnership firm	Nil	100
<u>Arbitral Tribunal</u> in respect of services provided or agreed to be provided by an arbitral tribunal	Arbitral tribunal	Business entity	Nil	100

Service Tax – SR – Reverse Charge

Description of a service	Service provider	Service receiver	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
<u>Advocate Services</u> in respect of services provided or agreed to be provided by individual advocate or Firm of Advocates/	Individual advocate or Firm of Advocates	Business entity	Nil	100
<u>Support Service</u> in respect of services provided or agreed to be provided by way of support service by Government or local authority	Government	Business entity	Nil	100
in respect of any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory	Any person	Any person	Nil	100

Reverse Charge

- **Goods Transport Agency Services** → However, where the person who pays or is liable to pay freight is located in a non-taxable territory, then the provider of such service shall be liable to pay service tax. In other words, in such case, reverse charge mechanism will not be applicable and goods transport agency shall be liable to pay tax. Thus, in such case, the said goods transport agency will be liable to pay 100% service tax, subject to available abatement/exemption.
- **Support Service by Government or Local Authority** → In relation to support service provided or agreed to be provided by Government or local authority to any business entity located in the taxable territory, the recipient of such service.

Reverse Charge

- **Reverse charge mechanism not be applicable** when the Government or Local Authority provides following services—
 - (1) renting of immovable property,
 - (2) 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;
 - (3) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; and
 - (4) transport of goods or passengers;Rule 2(f) of the Service Tax Rules, 1994, “renting of immovable property” means any service provided or agreed to be provided by renting of immovable property or any other service in relation to such renting.

Point of Taxation Rules, 2011

- POT Rules Vides Notification No. 18/2011 dated 1-3-2011 & 25/2011 dated. 31-3-2011
- Change from Cash to Accrual/ Hybrid system – 1/4/2011
- **Point of Taxation (POT)** → ‘Point in time when a service shall be ‘deemed to have been provided’ [Rule 2(e)]. This point will determine Rate of service tax and Due date of payment of service tax.
- Notification No. 04/2012-ST dt. March 17, 2012 → Point of Taxation (Amendment) Rules, 2012 (W.e.f 1/4/2012)

POT - General Rule 3

- **Determination of Point of Taxation** → POT means the point in time when a service shall be deemed to have been provided – Date of Invoice
- **Rule 4A of STR** – Invoice to be issued within 30 (14) days from the date of ***completion*** of service ***or*** Receipt of any payments towards the value of such taxable service, ***whichever is earlier***.
- **Unless otherwise stated, POT, the earliest of the following:**
 - **When Invoice is issued** → Date of Invoice **or** Payment (Advance)
 - **When Invoice is not issued** within 30 (14) days from Date of *completion of Service* → Date of Completion of Service **or** Payment

POT - General Rule 3

S. No.	Date of completion of service	Date of Invoice	Date on which payment recd.	POT	Remarks
1	April 10, 2012	April 24, 2012	May 20, 2012	April 24, 2012	Invoice issued within 30 days and before the receipt of payment
2	April 10, 2012	May 18, 2012	May 20, 2012	April 10, 2012	Invoice not issued within 30 days and payment received after completion of service
3	April 10, 2012	May 6, 2012	April 15, 2012	April 15, 2012	Invoice issued within 30 days but payment received before invoice
4	April 10, 2012	May 29, 2012	April 05, 12 (part) & April 25, 12 (Bal)	April 05, 12 & April 10, 12 for respective amt.	Invoice not issued in 30 days. Part payment before completion, Balance later

POT – Continuous Supply

- **Rule 2 (ba) “Change in effective rate of tax”** shall include a change in the portion of value on which tax is payable
- **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 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

Rule 4 – Effective Rate

- Change in Rate → 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

Change of Rate: 1-7-2012		4.8% --> 7.2%	Rate of Tax	POT
Date of Service	Date of Invoice	Date of Payment		
28/6/2012	9/7/2012	25/8/2012	7.2%	9/7/2012
	28/6/2012	25/8/2012	4.8%	28/6/2012
	9/7/2012	26/6/2012	4.8%	26/6/2012
10/7/2012	28/6/2012	25/8/2012	7.2%	25/8/2012
	28/6/2012	16/6/2012	4.8%	16/6/2012
	9/7/2012	28/6/2012	7.2%	9/7/2012

New Services -POT

- Works contract outside the scope of taxation becomes taxable now e.g. construction of residential complex comprising of more than 1 residential units, etc.
- **Rule 5 of POT** Rules apply to such service as if new service becomes taxable from 1-7-2012 → states - Where a service is taxed for the first time, then,—
 - (a) **No tax payable** to the extent the **invoice has been issued** and the **payment received** against such invoice before such service became taxable;

 - (b) **No tax 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.

POT – New Services

S. No.	Date of New Service Taxable	Date of Invoice	Date of Payment Received	Taxable/Not Taxable
1.	1 st July	14 th July	30 th June	Not Taxable
2.	1 st July	15 th July	1 st July	Taxable
3.	1 st July	30 th June	30 th June	Not Taxable
4.	1 st July	1 st July	2 nd July	Taxable

Service Tax – POT

- **Rule 7 – Overriding clause - Substituted with New Clause**
- **Determination of POT - U/S 68(2) - Recipients of Service** - Date on which payment is made 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 → Non Payment within 6 months → Normal POT → Date of Invoice -1/4/2012 & Date of Payment -15/10/2012 – Interest/Change of Rate ??
- **“Associated Enterprises”**, where the person providing the service is located outside India, the POT → the Date of *debit* in the books of account of the person receiving the service or Date of making the payment whichever is earlier.

IMPORT OF SERVICES –Reverse Charge – S 68(2)

- Notification No. 30/2012-ST dated. 20-6-2012 -- Taxable Services to qualify as import of Services if:
 - ✓ Service provided or agreed to be provided by any person located in Non Taxable Territory
 - ✓ Received by any person located in Taxable Territory
 - ✓ Service Receiver is liable to pay service tax – Get registration/ File Return
 - ✓ To pay in cash by GAR -7 challan as it is not output service of SR
 - ✓ Take Cenvat credit provided falls within definition of Input Service

Message

**Imagination is important than
Knowledge**



Thank You

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