

POST BUDGET CHANGES IN SERVICE TAX

The Point of Taxation Rules, 2011 notified through Budget *Notification No. 18/2011 ST dated 1st March, 2011* led to a number of issues which the Government assured would be looked into. Some relief has been extended and many of the areas of difficulty have been addressed. The important point is that the rules are applicable from 1.4.2011 itself unless the service provider opts to continue with the old system for 3 months. In that case there may be some accounting issues and requirement to maintain the parallel records.

The ICAI in its Post-Budget Memorandum, 2011 on Indirect Taxes had urged that the rules may not be applied for those service providers who maintain the cash system of accounting and credit be allowed on accrual basis. These suggestions of ICAI have been accepted. An analysis of the recent amendments has been provided hereunder:

A. Changes in Point of Taxation Rules, 2011 [*Notification 25/11 ST dated 31.03.2011*]

(a) Point of Taxation

The summary of changes made in the *point of taxation* is as under:

- i. The time when the invoice for the service provided or to be provided is issued.
- ii. In terms of amended Rule 6 of the Service Tax Rules the invoice has to be issued, within 14 days from the completion of the service.
- iii. In case the service is completed and invoice has not been issued within the said 14 days, then the date of completion would be point of taxation.
- iv. In case of receipt of advance, to the extent of such amount, the point of taxation would be the date of receipt of advance.
- v. In case of continuous supply service, that is service provided under a contract continuously for a period exceeding 3 months or notified services, the invoice has to be raised within fourteen days of the date of completion of each milestone of payment as per the contract.

- vi. The point of taxation for continuous supply service shall be date of issue of the invoice (i.e, within 14 days from the date of completion of the milestone for payment as per the contract)
- vii. In case invoice is not raised within 14 days of the completion of the milestone for payment, then such date of completion of milestone for payment shall be considered as point of taxation.
- viii. In case of receipt of advance, to the extent of such amount the point of taxation would be the date of receipt of advance

(b) Summary of point of taxation in tabular form

Single Supply Service/other than Continuous Supply Service

Sl. No.	Scenario	Point of Taxation
1.	Invoice issued within 14 days from the completion of service	Date of invoice
2.	Service completed, but invoice NOT issued within 14 days	Date of completion of service
3.	Advance received before completion	Date of receipt to the extent of advance received
4.	Invoice issued before completion of service	Date of invoice

Continuous Supply Service

Sl. No.	Scenario	Point of Taxation
1.	Invoice issued within 14 days from the completion of milestone for payment	Date of invoice
2.	Invoice NOT issued within 14 days from the completion of milestone for payment.	Date of milestone for payment
3.	Advance received before completion of milestone for payment	Date of receipt to the extent of such advance

4.	Invoice issued before completion of milestone for payment	Date of invoice
5.	No milestone for payment agreed in the contract and no amount received till completion of service and invoice raised within 14 days from completion	Date of invoice
6.	No milestone for payment agreed in the contract and no amount received till completion of service and invoice not issued	Date of completion of service
7.	No milestone for payment and part amount received before completion	Date of such receipt to the extent of such amount

(c) Change of Rate

The change of rate would not only mean the change of rate by amendment in the Act, but would also cover change of rate by amendment in exemption notification. Further, it has also been clarified that it would also cover a change in abatement rate or value on which the duty needs to be computed.

(d) Payment on receipt basis continues in specified cases:

Date of receipt or payment of consideration would be the point of taxation in case of the following services:

- i. Services listed in 3(1) of Export of Service Rules, 2005 if the amount is realized within the period prescribed by RBI. *However, if the amount is not realised within the specified period, then general rule of completion of service or date of issue of invoice, whichever is earlier would be applicable. If advance is received, to that extent, the date of receipt of advance would become taxable.*
- ii. Person liable to pay service tax under reverse charge mechanism (Goods Transport Agency's services, sponsorship services and import of service) if the payment has been made within a period of 6 months from the date of invoice. *However, if the payment is not made within six months from the date of invoice, the general rule as explained above would be applicable. In case of import of services by associated enterprises, date of credit in the books of accounts of the*

person receiving the service or the date of making payment whichever is earlier would be the point of taxation.

- iii. Individual/proprietor/firms providing the following service:
 - (a) Architect's Services
 - (b) Interior Decorator's Services
 - (c) Practicing Chartered Accountant' s Services
 - (d) Practicing Cost Accountant' s Services
 - (e) Practicing Company Secretary' s Services
 - (f) Scientific or Technical Consultancy Services
 - (g) Legal Consultancy Services

(e) Transition provision

The Point of Taxation Rules would not apply to services provided or invoices raised prior to 01.04.2011.

Further, it is provided that for the services provided or invoices raised before 30th June 2011, the assessee may at their option continue to follow the existing system i.e., payment of service tax on receipt basis.

B. Changes in Service Tax Rules, 1994

- (i) The provision for issuance of an invoice, bill or challan within 14 days from the date of completion is restored.
- (ii) In case of continuous supply of service, an invoice, bill or challan, as the case may be, has to be issued within fourteen days from the date of completion of the milestone specified in the contract requiring the service receiver to make payment.
- (iii) If the amount of invoice is renegotiated due to deficient provision or in any other way changed in terms of conditions of the contract (e.g. contingent on the happening or non-happening of a future event), the tax will be payable on the revised amount provided the excess amount is either refunded or a suitable credit note is issued to the service receiver. **It does not cover bad debts. Further Board Clarification clearly says that this concession is not available for bad debts.**

C. Change in the time of availment of CENVAT credit and value of trading service

- (i) The CENVAT credit on input services can be availed on receipt of invoice. However, the payment has to be made within three months. This is effective from 01.04.2011 irrespective of the fact that the service provider may continue to pay service tax on receipt basis.
- (ii) In case of service tax paid by the recipient of service on reverse charge basis, the credit can be taken on making payment of the value of service to the service provider and service tax to the Government.
- (iii) If the payment is not made within three months, then the credit availed has to be reversed/paid. However the same can be taken back as credit on making payment.
- (iv) If subsequent to payment made or invoice received, an amount is received back or credit note is received, when the value of service is renegotiated or altered for any reason the credit availed to that extent is required to be reversed/paid.
- (v) Credit on the invoices **issued prior to 01.04.2011** by the service provider would continue to be eligible only on payment basis and not on receipt of invoice.
- (vi) Supplementary invoice, bill or challan issued by a provider of output service, which should be in terms of the Service Tax Rules, 1994 is also added as one of the documents on which credit can be availed. However if such invoice is raised by the service provider in cases where such additional amount of tax became payable by him on account of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Finance Act or of the rules made thereunder with the intent to evade payment of service tax, then it would not be considered as eligible document for credit.
- (vii) As regards to computation of proportionate credit or payment of 5% pertaining to trading goods, the rules have been amended to provide that the value of exempted service will be difference between the sale price and the cost of goods sold (determined as per the generally accepted accounting principles without including the expenses incurred towards their purchase) or 10% of the cost of goods sold, whichever is more.