

Service Tax Budget 2012 updates

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Budget Snap Shots

1. The Honourable FMs speech had some aspects which indicated a wish and repetitions of oft repeated averments which are set out as under:
 - ➔ Have been cruel to be kind.
 - ➔ Negative List had overwhelming support.
 - ➔ GST- Model legislation in progress, before the Parliamentary Standing Committee.
 - ➔ Silent on agreement with States, Compensation for loss of CST, IT infrastructure readiness.
 - ➔ ST Law complex- alignment to Central Excise started.
 - ➔ Cascading significantly reduced.
 - ➔ Refunds on exempted service allowed and refund possible without voluminous documentation.
 - ➔ System to be simple, equitable and progressive.

2. Finally after 18 years the term “service” has been defined to mean any activity carried out by one person to other for a consideration. The under mentioned activities has been excluded from the definition of services.
 - I. Transfer of title in goods & immovable property,
 - II. Transaction in money and actionable claims
 - III. Provision of service by an employee to employer in the course of employment,
 - IV. Fee collected by tribunals and courts.
3. In addition to above the service also include 9 declared services, which also includes
 - I. 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 completion-certificate by the competent authority.
 - II. service portion in the execution of a works contract [Appears to accept the decision of Supreme Court in BSNL & Imagic Creative].
4. Negative list of services comprising of 17 heads has been specified [Some amount of trimming from the original 26 given in the starting and 21 given in the revised list]
5. 34 services has been exempted by a notification. [These are the older notifications, those relevant collated and hopefully none which are important deleted. Notification No. 12/2003 dated 20.06.2003 appears to have been done away with as now value of goods do not form part of service].
6. Service tax is leviable on services provided as well as services agreed to be provided.
7. Basic rate of service tax would increase from 10.3% to 12.36% with effect from 01.04.2012.
8. Limitation for issue of Show Cause Notice by the Department has been enhanced from 12 month to 18 months from the relevant date. Periodical show cause notice for same charge is

done away with and a statement would be issued instead of show cause notice. **This is to come into effect from date when Finance Bill receives assent of President.**

9. The period for filing appeal before the Commissioner (Appeals) has been reduced from 3 months to 2 months with further condonable period upto 2 months. [Making the provision in line with Central Excise]. **This is to come into effect from date when Finance Bill receives assent of President.**
10. Service Tax Return has been fully simplified – one page return: However, may not be a very tax payer friendly action. Though it saves some effort, the onus now fully shifts to tax payer on compliance of this ever changing, poorly drafted, alternatively interpretable law. Quite unfair at this stage.
11. The periodicity of tax payment is proposed to be as follows:
 - (a) Assesseees who paid tax of Rs 25 lakh or more in previous year and new assesseees other than individuals and firms: Monthly
 - (b) Others: Quarterly
12. The periodicity of the returns changed to match with the tax payments.
13. Service Registration form also revised – requires the details of bank account, which was not required earlier. Maybe for possible purpose of attaching, if required.
14. Earlier, the small service provider exemption was available on the sum total of first consecutive payments received upto Rs 10 Lakhs during the financial year towards the taxable value of taxable services. However, this was subject to condition that the value of services provided in proceeding year does not exceed Rs 10 Lakhs. 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. This is in line with the amendments levying service tax on invoices raised, introduced in last year Budget. **This would come into effect from 1.4.2012.**
15. Service provider + receiver liable for 3 services- In case the works contract service has been received by a Company/Body Corporate from Individual/HUF/Proprietary Firm /Partnership Firm/APO then such service recipient company has to discharge 50% of the tax liability. Similarly in the case manpower supply of 75 % has to be discharged and in case of renting/hiring of motor vehicles, without abatement, 40% has to be discharged by the service receiver. It is important to

note that there is no basic exemption of Rs. 10 lakhs for the same. **These changes would come into effect along with the negative list.**

16. Place of Provision of Service Rules, 2012 would be notified to determine the place where the service is deemed to be provided. Draft Guidance Note has been released for debate. This may be important where States would also get to be part of service tax levy and for import and export of services.

17. New services into the tax net: 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.

18. Principles for classification of services have been laid as under

I. Reference to main service shall not include service used for providing the main service

a. Bundle of service (bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services)

i. Where services naturally bundled in the ordinary course of business then would be treated as one service and would be classified based on the essential character.

ii. Where services not naturally bundled in the ordinary course of business then would be treated as provision of the single service which results in highest liability of Service Tax. [This indicates the arrogance of the tax authorities]

19. The rate of service tax, value of a taxable service and rate of exchange, would be as applicable at the time when the taxable service has been provided or agreed to be provided.

20. Special Audit, to be conducted by a Chartered Accountant or Cost Accountant, can be ordered by Commissioner of Central Excise in case has reasons to believe that any person liable to pay service tax:-

I. Has failed to declare or determine the value of a taxable service correctly.

- II. Has availed and/or utilised credit of duty or tax paid, which is not in the normal limits compared with the capital goods used etc or by means of fraud, collusion, or any willful misstatement or suppression of facts.
 - a. Has operations in multiple locations and it is not possible or practicable to obtain a true and complete picture of his accounts from the registered premises.

This is to come into effect from date when Finance Bill receives assent of President.

- 21. Penalty for Renting of immovable property has been waived in case the service tax would have been paid along with the interest within 6 months from the date of enactment of the Finance Bill 2012.
- 22. Earlier, the offence of provision of service, without issuance of invoice was prosecutable. Now, such prosecution has been done away with and prosecution would be for knowingly evading the payment of service tax. **This is to come into effect from date when Finance Bill receives assent of President.**
- 23. The benefit of Settlement Commission made applicable to Service Tax also. **This is to come into effect from date when Finance Bill receives assent of President.**
- 24. Service tax on management, maintenance or repair of roads for the period from 16.06.2005 to 26.07.2009 has been made not applicable. Amount if any paid, refund can be claimed within 6 months from the enactment of the Finance Bill, 2012.

Retrospective changes:

- 25. Rule 6(6A) of the Cenvat Credit rules, which was introduced last year vide Notification 3/2011-CE (NT), dated 01/03/2011, provided that rule 6 provisions related to reversal of cenvat credits on exempted services is not applicable to the taxable services provided to an SEZ unit or developer for their authorized operations, without payment of service tax.
This would now be 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.
- 26. Exemption provided for the setting up of common facilities for treatment and recycling of effluents and solid wastes by Notification 42/2011-ST dated 25th July, 2011 shall be made applicable effective from June 16, 2005;

27. Service tax exemption given 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.
28. These changes will come into effect when the Bill receives the Presidential assent.

List of taxable services proposed

The taxable services would be from the following

- I. Satisfaction of service definition
- II. Specific declared taxable service
- III. Exclusion from the negative list of services

The above changes could be timed to be introduced at time of the introduction of negative list.

I. Taxable by Definition

All activities provided by any person to any other person for consideration

II. Declared taxable services as specified in Section 66E

1. Renting of immovable property
2. Construction of complex, building, civil structure or part thereof intended for sale to buyer wholly or partly except where entire consideration is received after issuance of completion certificate by competent authority (construction includes additions, alterations, replacements or remodeling of existing civil structure)
3. Temporary transfer or permitting the use or enjoyment of any Intellectual Property Right
4. Development, design, programming, customization, adaption, upgradation, enhancement, implementation of information technology software
5. Agreeing to the obligation to refrain from an act, or to tolerate an act or situation, or to do an act

6. Transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer to right to use such goods
7. Activities in relation to delivery of goods on hire purchase or any system of payment by installments
8. Service portion in execution of works contract services
9. 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 a part of the activity.

III. Taxable by exclusion from Negative List

1. Services by the Department of Post by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government.
2. Government providing service in relation to aircraft or a vessel, inside or outside the precincts of a port or airport
3. Government providing transport of goods or passengers
4. Government providing support services provided to business entities
5. Service of transportation of passengers with or without accompanied belongings by Railways in a first class or an air conditioned coach
6. Service of public transport predominantly for tourism purpose in a vessel less than 15 tonne net
7. Services by way of transportation of goods by road by Goods Transport Agency & Courier agency

Exempted/Non-taxable

The service which is not taxable would be under the following category. **The introduction of all these exemptions/non-taxable services could be timed with the introduction of the negative list.**

- I. Exclusion from Definition of service
- II. Exclusion due to not applicability of definition of service
- III. Negative List
- IV. List of exempted services by notification

I. Exclusion from Definition of service

1. Transfer of title in goods or immovable property by way of sale, gift or in any other manner
2. Transaction in money and actionable claim
3. Provision of service by employee to employer in course of or in relation to his employment
4. Fees taken in any court or tribunal established

II. Exclusion due to non applicability of definition of service

1. Services by MP/MLA/Members of Panchayat, local authority for carrying of the functions of that office
2. Duties performed by any person who holds any post in pursuance of provision of Constitution in that capacity
3. Chair Person/Member/Director of a body established by CG/SG/LA and who is not deemed as employee before 65B(44) comes into effect.

III. Negative List

1. Services by the Government or Local Authority
2. Services by RBI
3. Services by a Foreign Diplomatic Mission in India
4. Services relating to agriculture
5. Trading of goods
6. Any process amounting to manufacture or production of goods
7. Selling of space or time slots for advertisements other than broadcast by radio or television
8. Services by way of access to road or a bridge on payment of toll charges
9. Betting, gambling, lottery
10. Admission to entertainment events or access to amusement facilities

11. Transmission or distribution of electricity by an electricity transmission or distribution facility
12. Pre-school education + higher secondary school or its equivalent
13. Education as a part of curriculum for obtaining qualification recognised by law
14. Education as a part of approved vocational education course
15. Renting of residential dwelling for use as residence
16. Extending deposits, loans or advances in so far as the consideration is represented by way of interest/discount
17. Inter se sale or purchase of foreign currency amongst banks or authorised dealers of FE or amongst banks and such dealers
18. Service of transportation of passengers with or without accompanied belongings by Stage Carriage, Railways, metro, monorail or tramway, inland waters, public transport, metered cabs, radio taxis or auto rickshaws
19. Services by way of transportation of goods by road (except GTA & courier agency), aircraft or vessel from a place outside India to the first customs station of landing in India, inland waters
20. Funeral, burial , crematorium or mortuary services including transportation of the deceased

IV. Exempted Service

In addition to the existing exempted services, the following are exempted:-

1. Services by a veterinary clinic in relation to health care of animals or birds
2. Services by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) by way of charitable activities;
3. Services by a person by way of renting of precincts of a religious place meant for general public
4. Services by way of training or coaching in recreational activities relating to arts, culture or sports
5. Services provided to a recognised sports body by-
 - 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;

6. 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;
7. 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
8. Services by way of giving on hire -
 - 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
9. Services by way of motor vehicle parking to general public excluding leasing of space to an entity for providing such parking facility
10. 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
11. 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
12. Services by the following persons in respective capacities -
 - 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
13. 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

Proposed exemptions under Mega Notification which were available even earlier

1. Services provided to the United Nations or a specified international organization;
2. 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;
3. 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;
4. Services provided:-
 - (a) to an educational institution by catering under any centrally assisted mid – day meals scheme sponsored by Government;
 - (b) to or by an institution in relation to educational services, by way of transportation of students or staff where the educational services are exempted from service tax;
 - (c) to or by an institution in relation to educational services, by way of services in relation to admission to such education where the educational services are exempted from service tax;
5. Services by way of sponsorship of tournaments or championships organized:-
 - (a) by a national sports federation, or its affiliated federations;
 - (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 IOA; or
 - (e) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme ;(Note: earlier the sponsorship services in relation to sports were not leviable to service tax).
6. 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;

(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* under section 65 B of the said Finance Act;

7. 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 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;

8. 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 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;

9. Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;

10. 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 one thousand rupees per day or equivalent;

11. 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;

12. Services by way of transportation by rail or a vessel from one port in India to another of the following goods:-

- (a) petroleum and petroleum products;
- (b) relief materials meant for victims of natural or man-made disasters, calamities, accidents;
- (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;

13. 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;

14. 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;

15. 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;
- (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;

16. 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;

17. 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;
- (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. This is subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;

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

19. Services by way of making telephone calls from:-

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

20. Services by way of slaughtering of bovine animals;

Services earlier exempted now not covered under the exemption/negative list

1. Notification No. 29/2004-ST dated 22.09.2004- Certain banking and other financial services
2. Notification No. 12/2007-ST dated 01.03.2007- Services provided by a person who has right to authorize any person to exhibit cinematography film
3. Notification No. 34/2007-ST dated 23.05.2007- Telecommunication roaming service provided to an international inbound roaming subscriber

4. Notification No. 14/2008-ST dated 01.03.2008- Exemption to hotel accommodation booking by and for non-resident
5. Notification No. 1/2009-ST dated 05.01.2009– Exemption to specified taxable services provided to Goods Transport Agency for use in transport of goods by road
6. Notification No. 32/2009-ST dated 01.09.2009- Business auxiliary service exemption to taxable service provided in relation to manufacture of specified goods charged to excise duty under M & TP (ED) Act, 1955
7. Notification No. 39/2009-ST dated 23.09.2009- Business Auxiliary Services — Exemption to value of inputs used for providing taxable service during manufacture/processing of alcoholic beverages
8. Notification No. 52/2010-ST dated 21.12.2010-Exemption to customs duty paid packaged/canned software intended for single use
9. Notification No. 41/2010-ST dated 28.06.2010-Exemption from certain services provided wholly within the port or other port or Airport
10. Notification no 53/2010-ST dated 21.12.2010-Exemption to packaged/canned software from service tax on specified taxable services when excise/customs duty is paid

**Some Services where Clarity maybe needed- Possible unintended coverage?
[Extracted from the Foreign Trade Policy Listing]**

1. Urban Planning
2. Research & Development in sciences/ humanities
3. Motion picture projection
4. Tourist guide services
5. Libraries/ archives/ Museums
6. Many more.....

Abatements in Services

The Comparative Analysis of abatements for the following services is presented in a table as follows:

These could be introduced at time of introduction of negative list.

S. No.	Service	Existing taxable portion	Proposed taxable portion	Proposed Position on Cenvat credits
1.	Convention center or mandap with catering	60%	70%	All credits, except on inputs, of chapter 1 to 22, will now be available.
2.	Pandal or shamiana with catering	70%	70%	All credits, except on inputs, of chapter 1 to 22, will now be available.
3	Coastal shipping	75%	50%	No credits
4	Accommodation in hotel etc.	50%	60%	Credits on input services allowed
5	Railways: goods	30%	30%	All credits will be allowed
6	Railways: passengers	New levy	30 %	All credits will be allowed
7.	Service portion in the supply of food or any other article of human consumption or drink at a restaurant	30%	40%	All credits, except on inputs, of chapter 1 to 22, will now be available.
8.	Service portion in the supply of food or any other article of human consumption or drink from a premises elsewhere(outdoor catering)	50%	60%	All credits, except on inputs, of chapter 1 to 22, will now be available.
9.	Services provided in relation to a chit	70%	70%	No credits

The aforementioned changes would be introduced along with the introduction of negative list.

Changes in Service Tax Rules, 1994

1. There would be a common registration form for obtaining registration both under Central Excise and Service Tax. The assessee to make an application for service tax registration electronically in EST Registration Form through the ACES utility.
2. Rule 5 of the Export of Service Rules, 2005 which deals with the granting of rebate of service tax paid on such taxable services or service tax or duty paid on input services or inputs used in providing such exported taxable services would be incorporated in Service Tax Rules, 1994.
3. A transaction will qualify as export when it meets following requirements:

- a) The service provider is located in Taxable territory;
- b) Service recipient is located outside India;
- c) Service provided is a service other than in the negative list.
- d) The place of provision of the service is outside India; and
- e) The payment is received in convertible foreign exchange

The above changes would be effective from 01.04.2012.

Classification Principles

29. The classification principles which is present now, is proposed to be made ineffective and a new classification of service principles has been laid as under

- b. Reference to main service cannot be used for service used for providing the main service
- c. Bundle of service (bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services)
 - i. Where services naturally bundled in the ordinary course of business then would be treated as one service and would be classified based on the essential character.
 - ii. Where services not naturally bundled in the ordinary course of business then treated as provision of the single service which results in highest liability of Service Tax.

30. The rate of service tax, value of a taxable service and rate of exchange, would be as applicable at the time when the taxable service has been provided or agreed to be provided.

Special Audit by CA/CWA

31. Special Audit, to be conducted by a Chartered Accountant or Cost Accountant, can be ordered by Commissioner of Central Excise in case he has reasons to believe that any person liable to pay service tax:-

- I. Has failed to declare or determine the value of a taxable service correctly.
 - II. Has availed and utilised credit of duty or tax paid, which is not in the normal limits compared with the capital goods used etc or by means of fraud, collusion, or any willful misstatement or suppression of facts.
- b. Has operations in multiple locations and it is not possible or practicable to obtain a true and complete picture of his accounts from the registered premises. **This is to come into effect from date when Finance Bill receives assent of President.**

Penalty waiver for service tax on Immovable Property

32. Penalty for Renting of immovable property has been waived in case the service tax would have been paid along with the interest within 6 months from the date of enactment of the Finance Bill, 2012.

Change in Prosecution Provision

33. Earlier, the offence of provision of service, without issuance of invoice was prosecutable. Now, such prosecution has been done away with and prosecution would be for knowingly evading the payment of service tax.

This is to come into effect from date when Finance Bill receives assent of President.

Retrospective exemption for repair of Road

34. Service tax on management, maintenance or repair of roads for the period from 16.06.2005 to 26.07.2009 has been made not applicable. Amount if any paid voluntarily or consequent to audit note/ notice, refund can be claimed within 6 months from the enactment of the Finance Bill, 2012. This would also put to rest numerous disputes at various levels.

Notice and Appeals

35. Limitation for issue of Show Cause Notice by the Department has been enhanced from the existing 12 months to 18 Months from the relevant date. Periodical show cause notice for same charge has been done away with and a statement would be issued instead of show cause notice.

36. The period for filing appeal before the Commissioner (Appeals) has been reduced from 3 months to 2 months with further condonable period upto 2 months in line with Central Excise.

The above provisions to come into effect from date when Finance Bill receives assent of President.

Reverse Charge under Service Tax

37. In case the works contract service has been received by a Company/Body Corporate from Individual/HUF/Proprietary Firm /Partnership Firm/APO then such service recipient company has to discharge 50% of the tax liability. Similarly in the case manpower of 75 % has to be discharged and in case of renting/hiring of motor vehicles, without abatement 40% has to be discharged. It is important to note that there is no basic exemption for the same.

38. Legal services & arbitrary tribunal are bought under reverse charge, where service recipient (not being an Individual) engaging Advocate has to pay service tax.

These changes would come into effect along with the negative list.

Change in invoicing provision

39. Presently, invoice has to be raised within 14 days of the point of taxation, which has been enhanced to 45 days in case of banks and 30 days in any other case, with effect from 01.04.2012.

40. In case any excess amount that accrued as per the point to taxation has been received upto Rs. 1000/- , then no invoice required to be raised to such extent.

Payment in cash basis

41. For any individual and partnership firm, whose aggregate value of taxable service provided in a previous financial year does not exceed Rs.50 lakh, he shall have the option to pay service tax on realization basis (cash system) upto taxable receipt of Rs.50 lakh in current year and thereafter needs to be pay service tax based on the Point of Taxation Rules, 2011. The 6 categories of service providers who normally account for the income on cash basis were earlier excluded from

the Point of Taxation Rules. Now, they have been included by default including the Chartered Accountants. **These changes to come into effect from 1.4.2012.**

Change in Rate of Service Tax

Taxable service	Present Rate	Rate from 01.04.2012
All services	10.3%	12.36%
Insurer carrying Life Insurance Business	1.5% on the gross amount of premium charged from the policy holder	3% in case first year and 1.5% in subsequent year of the premium charged from the policy holder
Banking & Other Financial Service and Foreign Exchange broking service	- amount upto Rs. 1,00,000/-: 0.1% of Gross amount of currency exchange or 25/- whichever is higher - amount >Rs.1,00,000/- upto Rs. 10,00,000/- Rs. 100/- + 0.05% of gross amount of currency exchange - amount > Rs. 10,00,000/- Rs.550/- + 0.01% of gross amount of currency exchange or Rs. 5000/- whichever is higher	- amount upto Rs. 1,00,000/-: 0.12% of Gross amount of currency exchange or 30/- whichever is higher - amount >Rs.1,00,000/- upto Rs. 10,00,000/- Rs. 120/- + 0.06% of gross amount of currency exchange - amount > Rs. 10,00,000/- Rs.660/- + 0.12% of gross amount of currency exchange or Rs. 6000/- whichever is higher
Promoting, Marketing or organizing of games of chance, including lottery,	Rs. 6000/- on every Rs. 10,00,000/- or Part thereof if guarantee prize payout is	Rs. 7000/- on every Rs. 10,00,000/- or Part thereof if guarantee prize payout is more

Bingo or Lotto	more than 80%	than 80%
	Rs. 9000/- on every Rs. 10,00,000/- or Part thereof if guarantee prize payout is less than 80%	Rs. 11000/- on every Rs. 10,00,000/- or Part thereof if guarantee prize payout is less than 80%

Adjustment of Excess payment

42. In case there has been any excess payment of service tax for a particular month/quarter the same was allowed to be adjusted in the next period with a monetary limit of Rs.2,00,000/- and subject to intimation to the Superintendent. Such monetary limit and intimation is proposed to be done away with. **These changes would come into effect from 1.4.2012.**

Changes in Point of Taxation Rules, 2011

Change in Effective Rate of Tax has been defined

1. Clause (ba) has been inserted to define the term “change in effective rate of tax”, which include a change in the portion of value on which tax is payable as per the provisions of the Finance Act, 1994 or rules made thereunder. Earlier this was in the form of an explanation to the Rule 4.

Amendment to continuous supply of service

2. The definition of continuous supply of service now reads as any service which is provided or 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. The recurrent basis has been included to cover those service provided for a period more than 3 months but with some gap in between each performance, and obligation for periodical payment has been included since the service tax has to be paid on due date of such obligation, failing which point of taxation cannot be applied.

Definition of Date of Payment

3. Date of payment has been inserted to mean the earlier of date of entry in the books of accounts or credited to the bank account of the person liable to pay tax. However in the below mentioned case the date of payment would be always date credit in bank:-

- I. In case of change in rate between such entry and payment
- II. In case the credit in bank is beyond 4 days from the date of change of rate
- III. Payment made by an instrument which is credited to a bank account

Treatment for Excess receipt than accrued

- 4. In case the service provider receives excess amount indicated in the invoice up to rupees one thousand. The service provider has the option to determine point of taxation to that extent of such receipt to pay in the period of receipt or to defer for next point of payment.

Best Judgment Assessment

- 5. In short, this rule can be said as 'Best Judgment'. When the invoice date or the payment date or both the dates were not available to determine the point of taxation, department officers determines point of taxation to the best of the judgment by an order in writing on being heard.

The changes in the Point of Taxation Rules, 2011 would come into effect from 1.4.2012.

Works Contract Valuation

- 6. The summary of the rate of service tax as existing in different scenario and different taxable service and proposed rate is as under.

Classification	Description	Present Rate	Proposed Rate
Works contract Service – any work	Composition Scheme	4.12%	4.944% (till enactment)
Works contract Service - original work without land	Standard Deduction Scheme	NA	4.944% (40% of 12.36%)
Works Contract service - original work including land	Standard Deduction Scheme	NA	3.09% (25% of 12.36%)
Works Contract service – Completion and finishing works	Standard Deduction Scheme	NA	7.416% (60% of 12.36%)
Construction of Complex - with land	Abatement scheme	2.575% (25% of 10.3%)	???

Construction of Complex - without land	Abatement scheme	3.399% (33% of 10.3%)	???
Construction of Complex - Completion and finishing	NA	10.3%	???

7. The valuation Rule 2A has been amended to give the above tabled standard deduction, however the reference drawn is only with respect to works contract service, although the declared services have specifically identified works contract and construction of complex separately, now the applying the provision as specifically given for works contract to construction of complex, whether would be correct has to clarified. However, the clarification clarifies that the same can be applied for the construction of complex also, there seems to be a drafting error in the valuation rules.

8. This scheme allows CENVAT credit on input services and capital goods, which was not earlier provided in the abatement scheme.

Classification	Description	Present Rate	Proposed Rate
Construction of Complex - with land	Abatement scheme	2.575% (25% of 10.3%)	???
Construction of Complex - without land	Abatement scheme	3.399% (33% of 10.3%)	???
Construction of Complex - Completion and finishing	NA	10.3%	???

The rate changes to come into effect from 1.4.2012.

9. The following construction (original works) are specifically exempted:

- a. Airport, port or railways;
- b. Single residential unit otherwise as a part of a residential complex;[by design now any multi unit residence would be liable]

- c. Low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority 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

10. The following construction for Government or Local Authority are also exempted:-

- f. a civil structure or any other original works meant predominantly for a non -industrial or non-commercial use;
- g. 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);
- h. a structure meant predominantly for use as
 - i. an educational,
 - ii. a clinical, or
 - iii. an art or cultural establishment;
- i. canal, dam or other irrigation works;
- j. pipeline, conduit or plant for
 - i. drinking water supply
 - ii. water treatment
 - iii. sewerage treatment or disposal; or
- k. a residential complex predominantly meant for self-use or the use of their employees or other persons viz MP, MLA, Members of Panchayats, Members of Municipalities and

Members of other local authority, any person who holds any post in pursuance of the provisions of the Constitution Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority.

11. Construction of following are also exempted

- l. Road, bridge, tunnel, or terminal for road transportation for use by general public;
- m. 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;
- n. Pollution control or effluent treatment plant, except located as a part of a factory; or
- o. Electric crematorium

The above changes could be timed to be introduced at time of the introduction of negative list.

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

1. A new rule to substitute the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. The value of the Works Contract is proposed to be as follows:
2. The value of service would be equal to the total amount charged for the contract less the value of property transferred in goods for State VAT purpose; If value of goods is not intimated to State VAT, the assesseees can calculate and deduct the actual value of goods in order to arrive at the value of the service involved in the works contract;
3. If the value is not so arrived at, the value shall be percentage of the total value as as specified in the rules and discussed under heading works contract valuation.
4. The value of any material supplied under the same contract or any other contract shall also be added to arrive at total amount charged for the contract.
5. The input tax credit on goods forming part of the property on which VAT is payable shall not be available.

6. The new Rule 2C is introduced, to determine the value of taxable service in supply of food and drinks in a restaurant or as outdoor catering. The value is being adjusted such that the industry is able to utilize credit on capital goods, specified inputs (other than chapter 1 to 22 i.e. foods and beverages) and input services.
7. There was an error in drafting Rule 3 in the past. As a result it was made applicable to situation where consideration received is not wholly or partly consisting of money, which is covered by the section 67(ii) to the Act. An amendment is proposed in Rule 3 to provide that the method to arrive at the value of taxable service as set out in Rule 3 would be applicable where valuation is not ascertainable.
8. Changes are being made in the Rule 6 of Valuation Rules which prescribes inclusions and exclusions to the taxable value.
 - I. the taxable value would include any amount realized as demurrage, nomenclated by any other name, for the provision of a service beyond the period originally contracted or recovered on account of provision of service". This change is to discourage a practice of collecting amounts in the name of demurrage but which are related to a service.
 - II. the value of taxable service in past excluded off 'interest on loans'. But now it is proposed to exclude "interest on (a) deposits; and (b) delayed payment of any consideration for the provisions made (services/goods)". Such amounts would not be treated as exempted services for reversal of credits under rule 6(3) of CENVAT Credit Rules, 2004. Interest on loans will now be an exempted income rather than an exclusion from value. It would be treated as exempted services for reversal of cenvat credits under Rule 6 of CENVAT Credit Rules, 2004.
 - III. Under the list of exclusions from taxable value "accidental damages due to unforeseen actions not relatable to the provision of service" is being added. This again is in view of the negative list approach to taxation of services and to confine inclusions of demurrages to those which are related to the services.
9. In the Negative List approach, Rule 7 dealing with valuation of services received from outside India is proposed to be omitted.

These changes would come into effect along with the negative list.

Changes in CENVAT Credit Rules, 2004

Changes to Definitions:

1. The service-specific references to be replaced by broad descriptions without changing the substance of present provisions.
2. Changes to the definition of output service such that it includes exports of service, which is no longer a taxable service. As a result, the input services credits for exports are not required to be reversed until the period available under the RBI regulations.

These changes would come into effect along with the negative list.

Availment of CENVAT Credit on vehicles:

3. Presently credit on all motor vehicles is not available except to a few specified service providers such as courier services, shamiana contractor, tour operator, rent-a-cab scheme
4. This is being liberalised to allow CENVAT credit on motor vehicles, other than those falling under tariff heading 8702, 8703, 8704, 8711 and their chassis. The credit of service tax paid on their hiring, insurance and repair will also be allowed.

Following input service credits in relation to vehicles will also be allowed:

5. Input service credits of insurance to motor insurance companies (as re-insurance and third party insurance) and manufacturers (as in-transit insurance);
6. Input service credits 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.
7. Presently, credit on goods can be taken only after they are brought to the premises of the service provider. There has been an amendment of sub-rules 4(1) and 4(2) to allow credit without bringing them into premises subject to due documentation regarding their delivery and location.
8. The CENVAT credit could be availed on the tax payment challan in case of payment of service tax by all service receivers on reverse charge.

These changes in relation to motor vehicles will be effective from 1.4.2012.

Input Service Distributor

9. Changes are being made in Rule 7 relating to distribution of credits of input services by an input service distributor (ISD). This is to ensure their scientific allocation to only such units where they have been put to use 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.

These changes will be effective from 1.4.2012.

Exempted Services:

- 10. Interest on loans, advances will now be an exempt service. There is a need to reverse the credits used for earning such income.

Refund Scheme:

- 11. A simplified scheme for refunds by substituted Rule 5 of CCR, 2004. The correlation or nexus between exports and input services used in such exports would not be required under such substituted rule. Excise Duties or input taxes paid on any goods or services that qualify as inputs or input services would be eligible to be refunded in the ratio of the export turnover to total turnover.

Reversal of Credits: Rule 6

- 12. For the banking and financial sector, provisions are available to reverse credits up to 50% in rule 6(3D). It is being proposed to change this formula to actual basis, the value of service being interest earned less interest paid on deposits, subject to a minimum of 50% of interest paid on deposits.
- 13. For the non-financial sector proposed to reverse credits on gross interest basis.
- 14. The rate for CENVAT credits reversal in Rule 6(3) of CENVAT Credit Rules (CCR), 2004 for other exempted services has been revised from 5% to 6%. This is keeping with the increase with service tax rates from 10% to 12%.

The above changes in Rule 6 of Cenvat Credit Rules, 2004 would come into effect from 1.4.2012.

Other changes

Rebate of Service Tax on Exported Goods

- I. The scheme for electronic refund of service tax paid on taxable services (eighteen different taxable services) used for export of goods at the post-manufacture /post-removal stage was operational since 3rd January, 2012, as announced in last year Budget.
 - a. The scheme is operated at present as a general exemption under section 93(1) of the Finance Act, 1994. To strengthen the electronic refund further, it is proposed to amend section 93A of Finance Act, 1994 which gives an exemption subject to fulfillment of conditions. After its enactment, Notification 52 /2011-ST dated 30/12/2011 concerning refund service tax paid on export of goods at the post-manufacture/ removal stage, will be placed under this section.
 - b. In future, service tax refunded will be recoverable, without any time bar from the exporter, against whose shipping bill, sale proceeds have not been received from abroad.

The above changes could be timed to be introduced at time of the introduction of negative list.

Draft Place of Provision of Services Rules, 2012:

The final draft of these rules could be introduced along with the negative list of services.

These rules would replace the existing Export of Services Rules, 2005 and the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006. The new charging section, section 66B, taxes only such services as are provided in taxable territory. Thus, services that are provided in a non-taxable territory are not chargeable to service tax.

Rule 3- Place of provision generally- The place of provision of a service shall be the location of the service receiver: But in case the location of the service receiver is not available in the ordinary course, the place of provision shall be the location of the service provider.

How will such “location” be determined?

The location of a service provider or receiver (as the case may be) is to be determined by applying the following steps sequentially:

- where the service provider or receiver has obtained only one registration, whether centralized or otherwise, the premises for which such registration has been obtained;

- where the service provider or receiver is not covered by above:
 - the location of his business establishment; or
 - where services are provided or received at a place other than the business establishment, being a fixed establishment, the location of such establishment;
 - where services are provided or received at more than one establishment, whether business or fixed, the establishment most directly concerned with the provision or use of the service; and
 - in the absence of such places, the usual place of residence of the service provider or receiver.

What is the Place of provision where the location of receiver is not ascertainable in the ordinary course?

- This is where a service is provided to an individual customer who comes to the premises of the service provider for availing the service. For example, an individual may furnish an address to which the goods are to be delivered when services of a Customs House Agent are taken by him. In such cases, it will be deemed that the place of provision of the service is the location of the service provider .
- This is a default rule which is applicable when none of the later rules applies.

Rule 4- Place of provision of performance based services- The place of provision of following services shall be the location where the services are actually performed, namely:-

Sub-rule (1): Services related to goods, which are required to be made available to the service provider so that the service can be rendered, are covered here. Examples of such services are repair, reconditioning, or any other work on goods (not amounting to manufacture), storage and warehousing, courier service, cargo handling service (loading, unloading, packing or unpacking of cargo), technical testing/inspection/certification/ analysis of goods, dry cleaning etc.

The proviso to this rule states as follows:-

Where such services are provided from a remote location by way of electronic means, the place of provision shall be the location where goods are situated at the time of provision of service.”

In the field of Information Technology, services could be provided from a remote location, in relation to tangible goods located distantly. Thus the actual place of performance of the service could be quite different from the actual location of the tangible goods.

Sub-rule (2): the services provided in conjunction with a supply of goods under another contract- Examples of such services, when provided under a separate contract are as under:-

- I. An erection and commissioning contract;
- II. An 'annual maintenance contract', bundled with the sale of goods (say, an electrical appliance or an electronic product);

Sub-rule(3): Services that are provided "entirely or predominantly in the physical presence of an individual (the receiver) represented either as the service receiver or a person acting on behalf of the receiver.

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Certain services like cosmetic or plastic surgery, beauty treatment services, personal security service, health and fitness services, photography service (to individuals), internet café service, classroom teaching, are examples of services that require the presence of the individual receiver. While a service in this category is capable of being rendered only in the presence of an individual, it will not matter if, in terms of the contract between the provider and the receiver (written or oral), the service is actually rendered by the provider to a person other than the receiver, who is acting on behalf of the receiver.

Rule 5- Place of provision of services relating to immovable property- In the case of a service that is 'directly in relation to immovable property', the place of provision is where the immovable property (land or building) is located

Examples of land-related services

- i) Services supplied in the course of construction, repair or maintenance of any building or civil work;
- ii) Renting of immovable property;
- iii) Services of real estate agents, auctioneers, architects, engineers and similar experts or professional people, relating to land, buildings or civil engineering works.
- iv) Services connected with oil/gas/mineral exploration or exploitation relating to specific sites of land or the seabed.
- v) The surveying of land or seabed.
- vi) Legal services such as dealing with applications for planning permission.
- vii) Packages of property management services which may include rent collection, arranging repairs and the maintenance of financial accounts.
- viii) The supply of hotel accommodation or warehouse space.

Rule 6- Place of provision of services relating to events- The Place of provision of services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, entertainment event, or a celebration, conference, fair, exhibition, or any other similar event, and of services ancillary to such admission, shall be the place where the event is held.

Rule 7- Place of provision of services provided at more than one location-. This Rule covers situations where the actual performance of a service is at more than one location.

This Rule provides:-

“Where any service stated in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided”.

Rule 8-Place of provision of services where provider and receiver are located in taxable territory-The place of provision of a service, provided by a provider located in the taxable territory to a receiver in the taxable territory, will be the location of the receiver.

Example:

A computer is repaired by engineers from Bangalore at the site in Germany, on instruction of the service recipient-Indian company. But for this rule, Rule 4, sub-rule (1) would apply in this case, and the place of provision would be outside the taxable territory. However, since the service provider, as well as the receiver, are located in the taxable territory, the place of provision of this service will be within the taxable territory

Rule 9- Place of provision of specified services- The place of provision of following services shall be the location of the service provider:-

- a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;
- b) Telecommunication services provided to subscribers;
- c) Online information and database access or retrieval services;
- d) Intermediary services;
- e) Service consisting of hiring of means of transport, upto a period of one month.

Rule 10-Place of provision of goods transportation services- The place of provision of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of the goods:

However, the place of provision of services of goods transportation agency shall be the location of the person liable to pay tax.

Rule 11- Place of provision of passenger transportation services- The place of provision in respect of a passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.

Rule 12-Place of provision of services provided on board a conveyance- Place of provision of services provided on board a conveyance during the course of a passenger transport operation, including

services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

Any service provided on board a aircraft, vessel, rail, or roadways bus will be covered here. Some examples are on-board service of movies/music/video/ when provided against a consideration.

Where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration.

The proposals require an in depth study and this is only a preliminary note. At ICAI we have an opportunity to contribute towards making changes to a limited extent by making a post budget memorandum. We request members to communicate to us the issues/ lack of clarity which could be put forward to make the changes smoother and more meaningful.

Feedback maybe sent to: dtc@icai.org