

SERVICE TAX

Service Tax Valuation Rules amended

The Service Tax (Determination of Value) Rules, 2006 were amended vide *Notification No. 11/2012 ST dated 17.03.2012* when the Finance Bill, 2012 was tabled in the Parliament. However, *Notification No. 11/2012 ST* has been rescinded by *Notification No. 24/2012 ST dated 06.06.2012* and these rules have been amended further.

It may be noted that some of the amendments made by *Notification No. 11/2012* have been continued by *Notification No.24/2012 ST* as well. In the update, these amendments have not been discussed but only the new changes made by *Notification No. 24/2012 ST* in the have been explained. **The amendments will be effective from July 1, 2012.**

The amendments are explained hereunder:

Valuation of service involved in execution of works contract - Amendments in clause (ii) of Rule 2A

(i) *Abatement of 75% in case of works contract inclusive of value of land reduced to 60%* - Rule 2A as amended vide *Notification No. 11/2012* provided that where the gross amount charged for a works contract entered into for execution of original works included value of land, service tax would be payable on 25% of the total amount including such gross amount.

However, this provision has been omitted vide *Notification No. 24/2012*. Thus, for all original works, service tax would be payable on 40% of the total amount of the works contract irrespective of whether the value of land is included in the amount charged or not.

(ii) *Abatement of 30% for works contract carried out on goods* - The definition of 'works contract' was expanded to include works carried out on moveable properties also during the passing of the Finance Bill, 2012 by the Lok Sabha. Under the original provisions of the Finance Bill, contracts solely for "any building or structure on land" were covered under the ambit of 'works contract'.

Consequently, rule 2A has been amended to provide valuation mechanism for such type of works contracts. It has been prescribed that for works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any **goods** (moveable property) service tax would be payable on 70% of the total amount charged.

(iii) *Abatement of 60% for erection/commissioning/installation* - Original works will also include erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise. Thus, on such type of works contracts also, service tax would be payable on 40% of the total amount charged.

(iv) *Service tax to be payable on material/services supplied free of cost* - Total amount charged for a works contract will also include the fair market value (FMV) of all goods and services supplied for execution of the works contract (supplied under same or any other contract) less the amount charged for such goods or services, if any; and the value added tax or sales tax levied thereon. The FMV may be determined in accordance with the generally accepted accounting principles.

Thus,

Total amount = GA charged for WC + [FMV of goods/services – (Amount charged for goods/services + VAT paid thereon)]

GA = Gross amount, WC = Works contract

(v) *No CENVAT credit for all inputs* - The service provider will not be entitled to take CENVAT credit of duties paid on **any inputs**, used in or in relation to the said works contract as against the earlier position where the credit could not be availed only in respect of those goods the property in which got transferred in the execution of works contract.

Valuation of money changing service - Amendment in Rule 2B

Consequent to introduction of negative list of services, provisions of section 65 have been made inapplicable. Therefore, the reference to sub-clauses (zm) and (zzk) of clause (105) of section 65 has been removed from rule 2B.

Valuation of service involved in supply of food/drinks in a restaurant or as outdoor catering – Amendments in Rule 2C

(i) *Abatement of 40% for outdoor caterers only when they do not provide any other service (like mandap, shamiana, convention etc.)* – Rule 2C as inserted vide *Notification No. 11/2012* provided *inter alia* that service tax would be payable on 60% of the total amount charged for the outdoor catering service even if it is provided along with other services.

However, rule 2C as amended vide *Notification No. 24/2012* provides that abatement of 40% would be available only when the outdoor catering service alone is provided. When outdoor catering service is provided along with other services, abatement of 30% has been provided vide *Notification No. 13/2012 ST dated 17.03.2012*.

(ii) *Supply of all kinds of drinks – whether intoxicating or not taxable* – It has been clarified in the amended rule that supply of all kinds of drink, irrespective of their being intoxicating or not, in a restaurant or as part of outdoor catering service would be liable to service tax.

(iii) *Service tax to be payable on goods/services supplied free of cost* - Total amount charged for the service will also include the fair market value (FMV) of all goods and services supplied in relation to the service (supplied under same or any other contract) less the amount charged for such goods or services, if any; and the value added tax or sales tax levied thereon. The FMV may be determined in accordance with the generally accepted accounting principles.

Inclusion/exclusion of costs/expenditure from the value – Amendment in explanation to rule 5(1)

The explanation has been amended to provide that the value of the telecommunication service would be the gross amount paid by the person to whom telecommunication service is actually provided. The earlier condition of telecom service to be provided by a telegraph authority has been dispensed with.

Service specific inclusions/exclusions of certain items from the value – Amendments in sub-rule (1) and (2) of rule 6

(i) *Interest on deposits not to be excluded from the value of service* - Rule 6(2)(iv) has been amended to provide that value of taxable service will not include interest on delayed payment of any consideration for the provision of services or sale of property, whether **movable or immovable**. Earlier, interest on deposits was also to be excluded from the value of service. However, interest on delayed payment of consideration for the sale of immovable property was not an exclusion from the value of service.

It may be noted that interest on loans, deposits or advances are covered under the negative list of services. Thus, they will be treated as 'exempt service' and provisions of rule 6 of CENVAT Credit Rules relating to payment of 6% 'amount' or proportionate reversal would apply. The value of these interests will not be excluded from the value of service.

(ii) *Subsidies and grants not in direct relation with the taxable service to be excluded from the value thereof* – Clause (vii) has been inserted in rule 6(2) to provide that value of subsidies and grants disbursed by the Government would be excluded from the value of taxable service (i.e., would be taken as Nil) only if they do not directly affect the value of service. Thus, provisions of rule 6 relating to payment of 6% 'amount' or proportionate reversal would not apply for such subsidies and grants. However, value of subsidies and grants having a relation, direct or indirect, to a specific taxable service will be included in the value of such taxable service.

[Notification No. 24/2012 ST dated 06.06.2012]

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Secretary

Indirect Taxes Committee

The Institute of Chartered Accountants of India

ICAI Bhawan A-29, Sector -62, NOIDA (U.P.)India