

SERVICE TAX

No service tax on remittances from abroad

CBEC has clarified that service tax is not leviable on the amount of foreign currency remitted to India from overseas as definition of 'service' under section 65B(44) specifically excludes transactions in money.

Further, service tax would also not be leviable on the fee or conversion fee chargeable for sending such money as the company conducting the remittances and the person sending the money are located outside India. Such services are deemed to be provided outside India in terms of the Place of Provision of Services Rules, 2012.

It has also been clarified that Indian counterpart or financial institutions or entity who charges the foreign bank or any other entity for the services provided at the receiving end will also not be liable to service tax as the place of provision of such service shall be the location of the recipient of the service, i.e., outside India, in terms of Rule 3 of the Place of Provision of Services Rules, 2012.

[Circular No.163/14/2012 ST dated 10.07.2012]

Determination of POT for works contracts in progression on July 1, 2012 – CBEC clarifies

CBEC has clarified the following issues relating to point of taxation arising out of the amendments made vide the Budget 2012 and subsequent amendments made effective from July 1, 2012:

- (a) Point of taxation and the applicable rate for continuous supply of services at the time of change in rates effective from 01.04.2012;
- (b) Applicability of the revised rule 2A of the Service Tax (Determination of Value) Rules, 2006 to ongoing works contracts for determination of value when the value was being determined under the erstwhile Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007; and
- (c) Applicability of partial reverse charge provisions in respect of specified services.

Till 31.03.2012, rule 6 of the Point of Taxation Rules, 2011 (POTR) determined point of

taxation (POT) in case of continuous supply of services. Since, the rule started with a non-obstantate clause, “notwithstanding anything contained in rules 3, 4 ...”, the POT for continuous supply of services provided on or before 31.03.2012 would not be affected by rule 4 of POTR. In other words, if the invoice had been issued or payment received for such services on or before 31.03.2012, the POT would be determined under rule 6, not being affected by the amendments made effective only from 1.4.2012.

However, with effect from 01.04.2012, rule 6 has been omitted and the POT for continuous supply of services is also being determined ordinarily under the main rule i.e., rule 3 subject to provisions of rule 4. Rule 4 determines the POT when there is a “change in effective rate of tax”. Change in effective rate of tax includes a change in the portion of value on which tax is payable. The following examples have been given by the Board to illustrate as to what would constitute changes in effective rate of tax:-

(i) the change in the portion of total value liable to tax in respect of works contract other than original works (from @ 4.8% earlier to @ 12% on 60% of the total amount charged, or effectively @ 7.2% now).

(ii) exemption granted to certain works contracts w.e.f. 1st July 2012 which were earlier taxable.

(iii) taxability of certain works contracts which were hitherto exempted.

(iv) change in the manner of payment of tax for works contracts from composition scheme to payment on actual value under clause (i) of rule 2A of the Service Tax (Determination of Value) Rules, 2006.

However, the following will not constitute the change in effective rate of tax:-

(i) works contracts paying service tax at the composite rate of 4.8% earlier and now required to pay service tax @12% on 40% of the total amount charged as the effective rate remains the same at 4.8%.

(ii) non – taxable works contracts (and not merely exempted) which have become now taxable e.g. construction of residential complex comprising of 2 to 12 residential units, construction of buildings meant for use by NGOs etc. Rule 5 of the POTR will apply in such cases.

It has been further clarified that the provisions of partial reverse charge would also be applicable in respect of such services where point of taxation is on or after 01.07.2012 under the applicable rule in respect of the service provider.

[Circular No. 162/13/2012 ST dated 06.07.2012]

New accounting codes specified for payment of service tax under the negative list approach

With effect from July 1, 2012, for payment of service tax under negative list based approach, a new Minor Head - 'All taxable Services' has been allotted as under:

Name of Services	Accounting codes			
	Tax collection	Other Receipts (interest on delayed payment of service tax)	Penalties	Deduct refunds (for use by the Revenue/Commissionerates while allowing refund of tax)
All Taxable Services	00441089	00441090	00441093	00441094

The following may be noted:

- (i) service specific accounting codes will also continue to operate, side by side, for accounting of service tax pertaining to the past period (meaning, for the period prior to 1st July, 2012);
- (ii) primary education Cess on all taxable services will be booked under 00440298 and Secondary and Higher Education Cess on all taxable services will be booked under 00440426.

[Circular No. 161/12/2012 ST dated 06/07/2012]

Rail travel in AC coaches and transport of goods by rail exempted from service tax

The following services provided by India Railways have been exempted from service tax till 30th September, 2012:

- Transportation of passengers, with or without accompanied belongings, in first class; or an air conditioned coach
- Transportation of goods

[Notification No. 43/2012 ST dated 02.07.2012]

Service tax rebate for "specified services" received by exporters of goods – CBEC

issues new notification

Notification No. 52/2011 ST dated 30.12.2011 exempted select taxable services received by the exporter of goods subject to the fulfillment of the conditions prescribed therein. The exemption was given as refund of service tax paid by the exporters on the select services covered by the notification. The exporter could either opt for electronic refund through ICES system, which is based on the 'schedule of rates' or go for refund on the basis of documents, by approaching the Central Excise/Service Tax formations.

Pursuant to the introduction of negative list of services, *Notification No. 52/2011* granting exemption on the basis of select taxable services has been rescinded. In its place, *Notification No. 41/2012 ST dated 29.06.2012* has been issued which grants rebate (given in the form of refund) for all taxable services used for the export of goods, other than excisable goods. For excisable goods, the eligible services are the taxable services used for export of excisable goods beyond the place of removal. However, the services covered by the exclusion clause of the definition of 'input service' under rule 2(l) of CENVAT Credit Rules, 2004 will not be eligible for such exemption.

Considering the increase in the service tax rate from 10% to 12%, the rates of refund specified in the 'Schedule of Rates' have been enhanced in the new notification. However, there has not been much of change in the necessary conditions and procedure for availing refund of service tax as laid down in the said notification.

Under new notification, an exporter of goods can file the refund claim on the basis of documents, only if the difference between the rebate amounts calculated as per schedule rates and as per the documents is more than 20%.

[Notification No. 41/2012-ST dated 29.06.2012]

Service tax exemption to exporters on commission paid to foreign commission agent

Exporters appoint foreign commission agent under a contract or agreement etc. to cause sale of goods exported by them. The liability to pay service tax on the commission paid by the exporters to such foreign agents is on the exporters on reverse charge basis.

With effect from July 1, 2012, service tax paid on such commission has been exempted **to the extent of 10% of the FOB value of export of goods**. If the amount of commission charged is in excess of 10% of FOB then the service tax on such excess amount has to be paid within the period specified under Rule 6 of the Service Tax Rules.

The exporter has to intimate to Assistant/Deputy Commissioner in Form EXP 3 before availing the said exemption and file half yearly return in Form EXP4 within 15 days from the respective half year along with original bill/invoice/challan & certified copies of

consignment note.

The conditions and procedure for availing exemption are laid down in the said notification.

[Notification No. 42/2012-ST dated 29.06.2012]

**Education Cesses applicable on service tax post introduction of negative list as well –
CBEC clarifies**

There have been doubts regarding the applicability of education cess (EC) and secondary and higher education cess (SHEC) on service tax from July 1, 2012 on the following grounds:

- (i) Section 91 read with section 95 of the Finance Act (No.2) Act, 2004 levied EC at the rate of 2% on service tax levied under **section 66** of the Finance Act, 1994, and
- (ii) Section 136 read with section 140 of the Finance Act, 2007 imposed SHEC at the rate of 1% on service tax levied under **section 66** of the Finance Act, 1994.

Therefore, EC and SHEC could not be levied on service tax with effect from July 1, 2012, as section 66 ceases to have effect from June 30, 2012 and service tax becomes leviable under section 66B from July 1, 2012.

However, the Board in exercise of its power conferred by section 95(1-l) (inserted vide the Finance Act, 2012) to issue orders for removing difficulties which may arise in giving effect to the provisions of the Finance Act, 2012, relating to insertions of *inter alia* section 66B in Chapter V of the Finance Act, 1994 has issued *Order No. 2/2012 ST dated 29.06.2012* to insert an explanation after section 66B in the Finance Act, 1994 with effect from July1, 2012.

The explanation clarifies that the references to the provisions of section 66 in Chapter V of the Finance Act, 1994 or any other Act, for the purpose of levy and collection of service tax, will be construed as references to the provisions of section 66B.

Further, the Board has clarified vide *Circular No. 160/11/2012 ST dated 29.06.2012* that as per section 8(1) of the General Clauses Act, 1897, where any Central Act repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed should, unless a different intention appears, be construed as references to the provisions so re-enacted.

Thus, any reference to section 66 of the Finance Act, 1994 would be construed as

reference to the newly re-enacted provision i.e., section 66B of the same Act.

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