

Article on applicability of tax on services provided before June 30, 2017

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There have been hue and cry about how the transactions would be viewed legally as well as by the department which have commenced provision of service in June 2017 but the invoicing and the payment for the same are spilling over to July 2017 when the GST is expected to be effective. In this regard Study Group on GST at Bangalore has made an attempt to analyse implications of the following transactions to enable trade and practice to take necessary corrective actions well before the D-Day i.e., July 1, 2017:

Nature of service: GST consultancy services

Sl No.	Completion of service	Invoice date	Payment date
1	Before June 30, 2017	Before June 30, 2017	Before June 30, 2017
2	Before June 30, 2017	Before June 30, 2017	After June 30, 2017
3	Before June 30, 2017	After June 30, 2017	After June 30, 2017
4	After June 30, 2017	After June 30, 2017	After June 30, 2017

Before we analyse each of the above scenarios, we have to first understand the levy or charge, as we commonly relate to in any tax law, under Chapter V of Finance Act, 1994 ("Act") (Statutory provisions for Service Tax) and also understand the levy provisions and transitional provisions under Central Goods and Services Tax Act ("CGST").

The Sections relevant for our analysis are Section 66B and Section 67A of the Act which are reproduced below:

"Section 66B - Charge of service tax on and after Finance Act, 2012

*There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen per cent. 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.*

SECTION 67A - Date of determination of rate of tax, value of taxable service and rate of exchange

(1) The rate of service tax, value of a taxable service and rate of exchange, if any, shall be the rate of service tax or value of a taxable service or rate of exchange, as the case may be, in force or as applicable at the time when the taxable service has been provided or agreed to be provided.

Explanation. — For the purposes of this section, "rate of exchange" means the rate of exchange determined in accordance with such rules as may be prescribed].

(2) The time or the point in time with respect to the rate of service tax shall be such as may be prescribed.

Levy under Section 66B – Whether an individual force or a component of taxability:

On analysing the above two sections of the Act, we understand that the levy is on services provided or agreed to be provided. Since services are intangible in nature and the very fact that they are intangible in nature, they are not visible to a naked eye makes it even more difficult to understand and come to a conclusion as to when the service has really been provided.

To mitigate this difficulty, law in Section 67A has made it clear that these three elements (rate, value, exchange rate) of service would be that in force when the taxable service has been provided or agreed to be provided. To understand when is the service provided or agreed to be provided subsection 2 of Section 67A describes that it is “as may be prescribed”.

The phrase “as may be prescribed” appearing in Section 67A (2) is notified through Point of Taxation Rules, 2011 (“POTR”). So one may have to reach out to POTR to get an answer as to when the services are provided or agreed to be provided. For this purpose, Rule 2(e) of POTR defines “Point of taxation to mean the point in time when a service shall be deemed to have been provided.”

Based on the above analysis, we can come to a conclusion that even though Section 66B is the charging section for the levy of service tax on any services, it is Section 67A through POTR which determines the time at which the service tax would become liable. Unless the point of taxation is determined using POTR, the services under consideration would not become taxable, since Section 66B alone cannot conclude on taxability.

Further Rule 3 of POTR defines the point of taxation generally as the earlier of the following events:

- a. Date of invoice, if the same is issued within 30 days of completion of service, if not, the date of completion of the service;
- b. Receipt of advance to the extent of such advance or receipt of payment

So based on above analysis of various sections and POTR, we can infer that even though the service is completed on a particular date, the levy is either advanced or deferred to the date as determined based on POTR. Levy need not coincide with the completion of service. As service ‘provided’ is taxable as well as service ‘agreed to be provided’ is also taxable.

Implication of above analysis on the listed transactions under Service Tax:

Before we conclude on the impact on the above listed transactions, we must bear in mind that there are three events which are important for us to understand when is the levy complete. The three events are as under:

- a. Completion of service
- b. Date of invoice
- c. Date of receipt of payment

The above three events will determine when is the levy complete for taxation under Service Tax Law.

1. Services are provided before June 30, 2017, Invoice raised before June 30, 2017 and payment also received before June 30, 2017.

Since all the three events are concluded before June 30, 2017, the relevant service would be taxable under Service Tax.

2. Services are provided before June 30, 2017, Invoice raised before June 30, 2017 but payment received after June 30, 2017.

Since service is completed before June 30, 2017 and the invoice for same has also been raised before June 2017, payment has no role here for decided taxability under Service tax. This transaction is certainly taxable under service tax.

3. Services are provided before June 30, 2017 but Invoice raised and payment received after June 30, 2017

Two scenarios are possible:

- a. Invoice is raised within 30 days from the date of completion of service even though it is after June 30, 2017

As per POTR in case the invoice is raised within 30 days then the point of taxation is date of invoice. Since the invoice is issued in the month of July when the Act is not in force, then strictly by going through the legal provisions service tax is not applicable on the said transaction. However, one may take a view that since the service was completed in the month of June 2017 but only the invoice was issued subsequently, service tax on the said transaction may be discharged to ignore any litigation that may crop up in future.

- b. Invoice is not raised within 30 days from the date of completion of service after June 30, 2017

As already discussed above if the invoice is not issued within 30 days from the date of completion of the service, then the point of taxation is the date of completion of service. Since the service is completed in the month of June 2017, service tax is applicable on the said transaction.

As per Rule 4A of Service Tax Rules, 1994 an invoice needs to be issued not later than 30 days from the date of completion of service. The time limit of 30 days must be construed only as an upper limit and not the actual date on which an invoice needs to be issued. Therefore, one needs to be cautious especially in case of fixed term services (renting, leasing, AMC, retainer etc.,) to not wait for the completion of 30 days / going beyond 30 days for issuing an invoice. The ideal approach would be to raise invoice as on the date of completion of service than waiting for completion of time limit of 30 days or going beyond 30 days.

4. Services are provided, Invoice raised and payment also received after June 30, 2017.

Since all the 3 events are after June 30, 2017, service tax is not applicable on the said transaction.

Applicability of GST for the above list of transaction

Having understood the impact of the above list of transactions under service tax, it is important for us to understand whether there can be any overlapping transaction liable to GST as well. For this purpose we need to understand the levy provisions under CGST:

“Levy - Section 9 (1)

*there shall be levied a tax called the central goods and services tax on all **intra-State supplies** of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be*

notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

Time of Supply 13

(1) **The liability to pay tax on services shall arise at the time of supply**, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest of the following dates, namely:—

- a. the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- b. the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- c. the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply”

On analysis of the above two provisions of CGST, we can come to a conclusion that levy under GST, very similar to service tax provisions (as detailed in the earlier part of this document), concludes only at the time as determined under Section 13 reproduced above. Therefore it is safe to understand that supply alone cannot trigger levy. Supply coupled with the time of supply as detailed above would conclude the taxable event under CGST. Hence, only if supply as well as the time of supply (invoice, provision of service, receipt of payment) are under GST only then GST could be charged on such service. If only one of the event takes place under GST and the other under pre-GST or post-GST era, then it can be said that the levy is not under GST.

Before we get into analysing the impact of the above listed transactions under CGST, we need to understand the transitional provisions under CGST:

“Section 142(10) Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.

Section 142(11)(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994”

From the above two transitional provisions, we understand that if the supply is made under GST then taxes are to be paid under CGST. Also that if the transaction was leviable to tax under service tax, then no tax shall be payable under CGST on the same transaction again.

To the extent of the above, the law has tried to make the tax incidence mutually exclusive. The intention of the law is also not to tax the same transaction twice under both service tax and under CGST.

1. Services are provided before June 30, 2017, Invoice raised before June 30, 2017 and payment also received before June 30, 2017.

Not taxable under GST, it is taxable under Service Tax. This is also for the reason that levy is already attracted under service tax and hence not taxable under GST as per Section 142(11) (b).

