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*Topic:- Point Of Taxation Including For
Continuous Supply Of Services*

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INTRODUCTION

Service tax was introduced from the year 1994. Only 3 services were included in the service tax net and now it has been spreaded to more services. [Chapter V of the Finance Act, 1994](#) provides for levy of service tax, crediting the service tax into the Central Government account etc., The service tax is payable on cash basis. Invoices are to be raised within fourteen days of completion of service. The periodicity of service has not been defined by the [Finance Act, 1994](#) or by the rules made there under. Most of the services coming under the service tax net are for short periods. Only few services cover some what longer period. Telecom service is the one which is having longer duration of service. In this service the service begins from the date of application by the subscriber requesting to provide new phone connection to till the date of permanent disconnection of the telephone. This is applicable to landline phones as well as post paid cellular phones. The service is further extended till the date of refund of deposit, if any, to the subscriber.

Telecom service providers engage entities to collect the bills on their behalf on commission basis. Such agents collect service tax on commission paid to them under the 'Business Auxiliary services'. The Revenue does not allow taking CENVAT credit for such service tax paid on input services in the contention that the collection of bills are post service activities. However the appellate authorities decided in favor of the service providers since the said activity is related to the business. Now the phrase 'activities relating to business' found in the definition of 'input service' [under Rule 2\(l\)](#) of CENVAT Credit Rules has been deleted.

The Finance Minister introduced the new concept of paying service tax on accrual basis instead of payment basis from this financial year. For this purpose 'The [Point of Taxation Rules, 2011](#)' has been framed vide [Notification No. 18/2011-ST, dated 01.03.2011](#) which came into effect from 01.04.2011. This Rule has introduced the concept of 'continuous supply of service'.

[Rule 2\(c\)](#) defines the term 'continuous supply of service' as any service which is provided, or to be provided continuously under a contract, for a period exceeding 3 months, or where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition.

Point of taxation means the point in time when a service is deemed to have been provided. The point of taxation enables determination of the rate of tax, value of taxable service, rate of exchange and due date for payment of service tax. Payment of service tax, since its inception in the year 1994, had been linked with the receipt of consideration of the services. However, Point of Taxation Rules, 2011 introduced with effect from 01.04.2011, have brought a paradigm shift in the point of taxation of services.

Payment of Service Tax

Vide Notification No.3/2011-ST dated 1st March, 2011, Rule 6 of the Service Tax Rules, 1994 was Amended w.e.f. 1st April, 2011 whereby the service tax liability was required to be discharged by the service provider by

- 5th of the month immediately Following the calendar month/quarter in which the service was deemed to be provided as per the Point of Taxation Rules,2011.
- In case the service tax is paid electronically through internet banking, the due date shall be 6th of the following month/quarter.
- In respect of payments towards taxable services received in the month/quarter of March, the due date for payment of service tax shall be 31st March.

Effective date for Point of Taxation Rules

The Point of Taxation Rules (POTR), 2011 have been notified w.e.f. 1st April,2011 vide Notification No.18/2011-ST dated 1st March, 2011 as amended by Notification No.25/2011-ST dated 31st March, 2011.,

The Point of Taxation Rules, 2011 were optional for the service providers till 30th June, 2011. The POTR, 2011 were made mandatory w.e.f. 1st July, 2011

Determination of Point of Taxation (Rule 3)

- Point of taxation shall be the time when invoice for service provided or agreed to be provided is issued.
- In case the invoice is not issued within the time period specified in Rule 4A of the Service Tax Rules, 1994, point of taxation shall be the date of the completion of such service.
- In case service provider receives payment before issuance of invoice or completion of service, the point of taxation shall be the receipt of payment to the extent of such payment.

S. No.	Date of completion of service	Date of invoice	Date on which payment received	Point of taxation	Remarks
1	April 10, 2011	April 20, 2011	April 30, 2011	April 20, 2011	<i>Invoice issued in 14 days and before receipt of payment</i>
2	April 10, 2011	April 26, 2011	April 30, 2011	April 10, 2011	<i>Invoice not issued within 14 days and payment received after completion of service</i>
3	April 10, 2011	April 20, 2011	April 15, 2011	April 15, 2011	<i>Invoice issued in 14 days but payment received before invoice</i>
4	April 10, 2011	April 26, 2011	April 5, 2011 (part) and April 25, 2011 (remaining)	April 5, 2011 and April 10, 2011 for respective amounts	<i>Invoice not issued in 14 days. Part payment before completion, remaining later</i>

Note: w.e.f 1st April, 2012, the time period for issuance of an invoice specified in Rule 4A of the Service Tax Rules, 1994 has been increased from 14 days to 30 days from the date of completion of service or receipt of any payment towards the value of such taxable service, whichever is earlier.

In case service provider is banking company or a financial institution including NBFC, the time period has to be read as 45 days.

Completion of service

CBEC vide Circular No.144/13/2011-ST dated 18th July, 2011 has clarified the term “Completion of Service” to mean that all the other auxiliary activities such as measurement, quality testing etc. besides the physical part of providing prime service also to be completed, which enable the service provider to be in a position to issue an invoice. However, such auxiliary activities shall not be flimsy or irrelevant grounds for delay in issuance of invoice.

In case of “**Continuous Supply of Service**” where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

Rule 2(c) of POTR defines “**Continuous supply of service**” to mean any service which is provided, or agreed to be provided continuously or on recurrent basis, under a contract, for a period exceeding 3 months with the obligation for payment periodically or from time to time or where the Central Government, by a notification in the official gazette prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition.

The following services have been notified as ‘continuous supply of services’ in terms of clause 2(c) of the Point of Taxation Rules vide Notification No. 28/2011-ST, dated 01.04.2011:

- (a) Telecommunication Services – [Sec. 65 \(105\) \(zzx\);](#)
- (b) Commercial or industrial construction – [Sec. 65 \(105\) \(za\);](#)
- (c) Construction of residential complex – [Sec. 65 \(105\) \(zzh\);](#)
- (d) Internet Telecommunications services – [Sec. 65 \(105\) \(zzu\);](#)
- (e) Works contract service – [Sec. 65 \(105\) \(zzza\)](#)

The above said services will constitute ‘continuous supply of service’ irrespective of the period for which they are provided or agreed to be provided. Other services will be considered continuous supply only if they are provided or agreed to be provided continuously for a period exceeding 3 months.

[Rule 3](#) deals with determination of point of taxation. [Rule 4](#) deals with determination of point of taxation in case of change in effective rate of tax. [Rule 8](#) deals with determination of point of taxation in case of copy rights etc., [Rule 6](#) deals with the determination of

point of taxation in case of continuous supply of service. This rule has been amended by the Point of Taxation (Amendment) Rules, 2011. [Rule 6](#) provides that notwithstanding anything contained in [Rules 3, 4](#) or [8](#) in case of continuous supply of services, the ‘point of taxation’ shall be-

- (a) The time when the invoice for the service provided or to be provided is issued. Where the invoice is not issued within fourteen days of the completion of the provision of service, the point of taxation shall be the date of such completion. Where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the service receiver to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service;
- (b) In a case, where the person providing the service, receives a payment before the time specified in (a), the time, when he receives such payment, to the extent of such payment. Where any advance, by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.

Thus [Rule 6](#) has primacy over [Rule 3, 4](#) and [8](#).

[Rule 9](#) has given option to pay tax on payment basis as at present till 30.06.2011. The service provider, who provides continuous supply of service may better to give an option either to pay on payment basis till 30.06.2011 or with effect from 1.4.2011 on accrual basis.

The continuous service provider has to maintain two separate accounts, one for the service tax on payment basis up to 31.03.2011 or up to 30.06.2011 and another for the period after 1.4.2011 or 1.7.2011 for accrual basis. The said service provider has to pay service tax on both methods till the collection of payment for invoices issued up to the period (either 31.3.2011 or 30.06.2011) for which option is exercised. For example we may take the month of July 2011. The service provider has to pay service tax on accrual basis for the invoices raised during July 2011 + the payments received during July 2011 in respect of invoices issued up to the period (either 31.3.2011 or 30.06.2011) on payment basis. This will be additional burden for the service provider. The service tax return, ST-3, is also required to be revised for such continuous supply of service to incorporate both the types of payments in the return.

[CBEC vide Circular No 162/13/2012-ST dated 6th July, 2012](#) has clarified that point of taxation in respect of taxable works contract in progress on 1st July, 2012 would be determined as per the provisions of Rule 4 as if there is change in effective rate of tax. It is clarified that following would be considered as “change in effective rate of tax” in respect of a works contract:

1. The change in the portion of total value liable to tax in respect of works contract other than original works [The Works Contract Composition Scheme, 2007 has been omitted w.e.f. 1st July, 2012 thereby service tax payable under Composition Scheme @ 4.8% on the total value of contract till 30th June, 2012 is now required to be discharged @ effective rate of 7.2 % of the value of works contracts (12% of 60% of value of total amount charged for works contract)].
2. Exemption granted to certain works contracts w.e.f. 1st July, 2012 .which were earlier taxable.
3. Taxability of certain works contracts which were hitherto exempted.
4. Change in the manner of payment of tax from composition scheme under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 to payment on actual value under clause (i) of rule 2A of the Service Tax (Determination of Value) Rules, 2006.

It is also clarified that following would not be considered as “change in effective rate of tax” in respect of a works contract:

- (i) Works contracts earlier paying service tax @ 4.8% under composition scheme and now required to pay service tax @12% on 40% of the total amount charged, keeping the effective rate again same at 4.8% (as only the manner of expression has been altered).
- (ii) Works contracts which were outside the scope of taxation (and not merely exempted) but 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 Point of Taxation Rules, 2011 shall apply to such services.)

It has been clarified by the CBEC vide their Letter F.No. 341 /34/2010-TRU dated 31st March, 2011 that change in rate of abatement or any other notification issued, altered, or amended and which has the effect of change in taxability, if any, of the service will also be construed as change in effective rate of tax.

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

The rate of service tax, value of taxable service and rate of exchange shall be the rate of service tax, value of taxable service and rate of exchange as applicable when the taxable service has been provided or agreed to be provided. “Rate of exchange” means the rate of exchange referred to in Section 14 of Customs Act, 1962

(i) “Construction of Complex” means —

- (a) construction of a new residential complex or a part thereof; or
- (b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or
- (c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex;

(Section 65(30a) of the Finance Act, 1994)

(ii) “Residential Complex” means any complex comprising of—

- (i) a building or buildings, having more than twelve residential units;
- (ii) a common area; and
- (iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

Explanation. — For the removal of doubts, it is hereby declared that for the purposes of this clause, —

- (a) “personal use” includes permitting the complex for use as residence by another person on rent or without consideration;
- (b) “residential unit” means a single house or a single apartment intended for use as a place of residence;

(Section 65(91a) of the Finance Act, 1994)

“Taxable Service” means any service provided or to be provided to any person, by any other person, in relation to construction of complex;

(Section 65 (105) (zzzh) of the Finance Act, 1994)

(C) Rate of Tax & Accounting Code:

	Rate of Tax	Accounting Code
Service Tax	10% of the value of services	00440334
Education Cess	2% of the service tax payable	00440298
Secondary and Higher Education cess	1% of the service tax payable.	00440426
Other — Penalty/interest	As levied or applicable	00440335

(Rate of tax is effective from 24.02.2009.)

(D) Classification of Taxable Services:

- (1) The classification of taxable services shall be determined according to the terms of the sub-clauses (105) of section 65;
- (2) When for any reason, a taxable service is *prima facie*, classifiable under two or more sub-clauses of clause (105) of section 65, classification shall be effected as follows :-
 - (a) the sub-clause which provides the most specific description shall be preferred to sub-clauses providing a more general description;
 - (b) composite services consisting of a combination of different services which cannot be classified in the manner specified in clause (a), shall be classified as if they consisted of a service which gives them their essential character, in so far as this criterion is applicable;
 - (c) when a service cannot be classified in the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause which occurs first among the sub-clauses which equally merits consideration.

(Section 65A of Finance Act, 1994)

“Commercial or Industrial Construction” means —

- (a) construction of a new building or a civil structure or a part thereof; or
- (b) construction of pipeline or conduit; or
- (c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or
- (d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit, which is —
 - (i) used, or to be used, primarily for; or
 - (ii) occupied, or to be occupied, primarily with; or

(iii) engaged, or to be engaged, primarily in, commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams;
(Section 65(25b) of the Finance Act, 1994)

“Taxable Service” means any service provided or to be provided to any person, by any other person, in relation to commercial or industrial construction
(Section 65 (105) (zzq) of the Finance Act, 1994)

Explanation: For the purpose of this sub clause, the construction of new building which is intended for sale, wholly or partly, by a builder or any person authorized by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorized by the builder before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer. (w.e.f. 1.7.2010 by Sec. 76 of Finance Act, 2010).

Internet Telecommunications services

1.1 Service Tax has been imposed on Internet Telecommunication services with effect from 16.5.2008 vide Notification No.18/2008-ST, dated 10.5.2008.

1.2 Service Tax is currently leviable @ 10.30% on the value of the taxable service. The tax rate is worked out as follows:

(i) Service Tax @ 10% ad-valorem vide Section 66 of the Finance Act, 1994 read with [Notification No.8/2009-ST, dated 24.2.2009](#),

(ii) Education Cess @ 2% of the Service Tax amount vide Section 85 of the Finance Act, 2004, and

(iii) Secondary and Higher Education Cess @ 1% of the Service Tax amount vide Section 126 of the Finance Act, 2007.

2.1 Section 65(105)(zzu) of the Finance Act, 1994 defines a taxable service as that provided or to be provided by any person to any other person, in relation to internet telecommunications services.

Clarification(s)

10.1 CBEC Circular F.No.334/1/2008-TRU dated 29.2.2008 clarifies that in Budget 2007-08, six taxable services (telephone, pager, leased circuit, telegraph, telex and fax) related to telecommunication were merged into a single taxable service namely telecommunication service. Telecommunication service was comprehensively defined so as to include all services provided in relation to telecommunication. Telecommunication services are also provided through internet and services provided in relation to internet telephony is leviable to Service Tax under Section 65(105)(zzu) of the Finance Act, 1994. Hence, it was decided to define comprehensively internet telecommunication service and omit the present definition of

internet telephony service. As a result, the ‘internet telephony service’ shall get subsumed with in the proposed ‘internet telecommunication service’ and Internet Telecommunication service shall include-

- (i) internet backbone services, including carrier service of internet traffic by one Internet Service Provider (ISP) to another ISP,
- (ii) internet access services, including provision of a direct connection to the internet and space for the customer’s web page, and
- (iii) telecommunication services, including fax, telephony, audio conferencing and video conferencing, provided over the internet.

Further, service provided by ISPs for accessing internet through the computer network shall be specifically covered under the proposed service. At present, this service is covered under ‘On-line information and database access or retrieval service.