

Service tax rate increased from 12.36% to 14% (Subsuming EC and SHEC) effective from 01.06.2015

After the Hon'ble President has given assent to the Finance Bill, 2015 on Thursday, May 14, 2015, the Ministry of Finance, Department of Revenue vide Notification No. 14/2015-ST dated May 19, 2015 has notified increase in the rate of Service tax from 12.36% to flat 14% (Subsuming Education Cess and Secondary & Higher Secondary Education Cess) to be effective from June 1, 2015.

Swachh Bharat Cess @ 2% on value of taxable services and any Service provided by Government/ Local authority to Business entity to be notified at a later date

Point of Taxation (POT) when there is change in effective rate of taxes:

Point of taxation involving change in effective rate of tax is governed by Rule 4 of the POT Rules, which provides for determination of Point of taxation when there is change in effective rate of tax as mentioned in the table below:

S. No.	In case a taxable service has been provided	Invoice has been issued	Payment received for the invoice	Point of taxation shall be	Applicable Rate
1.	BEFORE the change in effective rate of tax	AFTER the change in effective rate of tax	AFTER the change in effective rate of tax	Date of issuance of invoice or Date of receipt of payment, whichever is earlier	New Rate
2.		BEFORE the change in effective rate of tax	AFTER the change in effective rate of tax	Date of issuance of invoice	Old Rate
3.		AFTER the change in effective rate of tax	BEFORE the change in effective rate of tax	Date of receipt of payment	Old Rate
4.	AFTER the change in effective rate of tax	BEFORE the change in effective rate of tax	AFTER the change in effective rate of tax	Date of receipt of payment	New Rate
5.		BEFORE the change in effective rate of tax	BEFORE the change in effective rate of tax	Date of issuance of invoice or Date of receipt of payment, whichever is earlier	Old Rate
6.		AFTER the change in effective rate of tax	BEFORE the change in effective rate of tax	Date of issuance of invoice	New Rate

As per **TRU Clarification vide D.O.F.No.334/5/2015-TRU dated May 19, 2015**, the effective dates in respect of the following shall be notified at later date:

Accordingly, the above scenario of advance payments may have exemplary situation and countered as under:

- Services are completed after June 1, 2015 but the invoice is raised before change in rate:** In terms of Rule 3 read with Rule 4(b)(ii) of the POT Rules, no differential payment may be required (Refer S. No. 5 of the table);
- Services are completed after June 1, 2015 and the invoice is also raised after change in rate:** In terms of Rule 3 read with Rule 4(b)(iii) of the POT Rules, differential payment (i.e. 14% – 12.36%) will have to be paid at the time of such invoice (Refer S. No. 6 of the table).

A: Swachh Bharat Cess – Enabling Provision

- An enabling provision is being made to empower the Central Government to impose a Swachh Bharat Cess (“SB Cess”) on all or any taxable services at a rate of 2% on the value of all or any taxable services. The proceeds from this Cess would be utilized for Swachh Bharat initiatives. The Government will specify the categories of taxable services on which SB Cess would be leviable.

B: Following change in relation to the Negative List – Section 66D of the Finance Act

♣ **Section 66D(a):** Under clause (iv), the words ‘support services’ to be substituted by the words ‘any service’.

Accordingly, after such amendment, ‘Any services’ provided by the Government or local authority to a Business Entity would be exigible to Service tax, except for the services that are specifically exempted, or covered by any another entry in the Negative List.

Hence, ‘Support services’ provided by Government or Local Authority to Business Entity will continue to be taxed under Reverse charge mechanism except (1) renting of immovable property, and (2) services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994.

Gist of changes vides other Service Tax Notifications dated May 19, 2015

A: Notification No. 13/2015-ST

Amend Notification No. 26/2012-ST dated June 20, 2012, thereby removing the entry relating to Chit in the definition part in view of withdrawal of abatement in relation to Chit Fund vide Notification No. 8/2015-ST dated March 1, 2015 (effective from April 1, 2015).

B: Notification No. 14/2015-ST

♣ Increase in the rate of Service tax from 12.36% to flat 14% (Subsuming Education cess and Secondary & Higher Secondary Education cess) to be effective from June 1, 2015;

♣ Following changes in relation to the Negative List – Section 66D of the Finance Act to be effective from June 1, 2015

- **Section 66D(f):** Services by way of carrying out any processes for production or manufacture of alcoholic liquor for human consumption brought under the Service tax net.
- **Section 66D(i):** Explanation inserted whereby the expression “betting, gambling or lottery” shall not include the activity as specified in substituted explanation 2 to Clause (44) of Section 65B of the Finance Act.
- **Section 66D(j):** Omitted, which covers ‘admission to entertainment event or access to amusement facilities’.

♣ Consequent to the above changes in the Negative List of services, definition of following terms to be omitted/ amended in Section 65B of the Finance Act w.e.f. June 1, 2015:

- Definitions of certain terms omitted [Section 65B(9): ‘amusement facility’, Section 65B(24): ‘entertainment event’]
- Definitions of certain terms amended [Section 65B(40): ‘process amounting to manufacture or production of goods’ excluding alcoholic liquors for human consumption]

C: Notification No. 15/2015-ST

- Effective from June 1, 2015, consequent to the upward revision in Service tax rate, the composition rate to be revised proportionately under Rule 6(7), 6(7A), 6(7B) and 6(7C) of the Service Tax Rules, 1994 on specified services, namely Air Travel Agent, Life Insurance service, Money changing service provided by banks or authorized dealers and Service provided by lottery distributor and selling agent.

D: Notification No. 16/2015-ST

Following changes in Mega Exemption Notification No. No. 25/2012-ST dated June 20, 2012 made vide Notification No. 6/2015-ST dated March 1, 2015 effective from June 1, 2015

Entry 30: Service tax would be levied on services by way of carrying out of intermediate production process of alcoholic liquor for human consumption on job work, consequent to imposition of Service tax on services by way of manufacture of alcoholic liquor for human consumption.

New Exemption:

Entry 47: Services by way of right to admission to:

- exhibition of cinematographic film, circus, dance, or theatrical performances including drama or ballet;
- recognized sporting events;
- award functions, concerts, pageants, musical performances or any sporting events other than recognized sporting event, where the consideration for such admission is upto Rs. 500 per person

E: Notification No. 17/2015-ST

Exempts taxable services provided under the Power System Development Fund Scheme of the Ministry of Power from the whole of the Service tax leviable thereon under Section 66B of the Finance Act till April 1, 2017 subject to the conditions specified therein.

Changes in Cenvat Credit Rules – Reversal of Cenvat Credit on Exempted Services:

Notification No. 14/2015-Central Excise (N.T.), Dated: May 19, 2015

In the light of increase in the rate of Service tax from 12.36% to flat 14% (Subsuming Education Cess and Secondary & Higher Secondary Education Cess) to be effective from June 1, 2015, the rate of reversal of CENVAT Credit under Rule 6(3) of the Cenvat Credit Rules, 2004 has also been enhanced from 6% to 7% in case of exempted services with effect from June 1, 2015.

Dilemma of change in effective rate of Service Tax: Rule 4 of the POT Rules vs. S 67A of the Finance Act, 1994:

With the new Service tax rate becoming effective from June 1, 2015, the much hyped hue and cry among the Trade on the presently applicable rate of Service tax would definitely come to an end but there are chances of turmoil being faced by the service provider in respect of the ongoing transactions for which either certain advance payment is received prior to June 1, 2015 but the completion of provision of service may take place post facto thereof or vice versa.

Before taking deeper dive into the area of turmoil, which may crop up pursuant to new rate of Service tax being notified, it is apposite here to have an overview of the Point of taxation as governed under the Point of Taxation Rules, 2011 (“**the POT Rules**”). With the introduction of the POT Rules, Service tax payment is made on accrual basis in terms of the provisions contained under the POT Rules. The general Rule 3 of the POT Rules stipulates that Point of taxation shall be the earlier one among raising of invoice or date of making the payment. Further, if the invoice is not raised within 30 days (45 days for Banking and financial services) from the date of completion of provision of service, Point of taxation shall be the date of completion of provision of service.

Thus, by applying the provisions of Rule 3 of the POT Rules, the service provider would be liable to pay Service tax on the advance payments received at the prevailing rate of 12.36%. However, the service provider may encounter the issue of adjusting this payment of tax for increase in Service tax rate afterwards when the service will be provided and invoice will be raised for the services rendered, for which advance has been received already.

Key Concerns:

Whether Rule 4 of the POT Rules can override Section 67A of the Finance Act:

Question is whether Rule 4 of the POT Rules can override the Section 67A of the Finance Act, 1994 (“**the Finance Act**”), inserted therein w.e.f. May 28, 2012, this reads as under:

“67A. Date of determination of rate of tax, value of taxable service and rate of exchange. – 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.”

Bare perusal of Section 67A of the Finance Act makes it clear that the rate of Service tax to be applied is the rate in force at the time when the taxable service has been provided or agreed to be provided.

Hence, considering Rule 4(a)(i) of the POT Rules (Refer S. No. 1 of the Table), question arise why new rate would be applicable when services are rendered before change in effective rate of tax but invoice is raised and payment is made after change of rate when as per Section 67A of the Finance Act, applicable rate of Service tax is the rate in force at the time when the taxable service has been provided or agreed to be provided.

Here, we would also like to draw your attention towards the decision of the Hon’ble Supreme Court in the case of *All India Federation of Tax Practitioners Vs. Union of India [2007-TIOL-149-SC-ST]* wherein it was held that “*a tax on a thing or goods can only be with reference to a taxable event*” and the same contention was upheld again in the case of *Association of Leasing & Financial Service Companies Vs. Union of India [2010 (20) STR 417 (SC)]*, wherein the Hon’ble Supreme Court observed that the **taxable event under the Service tax law is the rendition of service;**

In view of the above discussed provisions, the matter is subjected to debate as to what would be the applicable rate of Service tax in respect of ongoing transactions and whether the same should be determined by applying Rule 4 of the POT Rules or as per Section 67A of the Finance Act.

Here it would not be out of place to mention that the POT Rules were framed by the Central Government in exercise of the powers conferred under Section 94 of the Finance Act and such delegated legislation cannot be extended to go beyond the vires of the Finance Act.

Hence, an illustrative clarification to this effect is much warranted from the Board before the new rate of Service becoming effective from June 1, 2015.

What Happen to balance of Education Cess and Secondary and Higher Education Cess’ standing in the hands of Service Provider as on June 1, 2015:

Further, next question what happen for balance lying in ‘Education Cess’ and ‘Secondary and Higher Education Cess’ as on June 1, 2015 will be allowed to be adjusted with Service tax liability as this is being denied in terms of Rule 3(7)(b) of the Cenvat Credit Rules, 2004 (“**the Credit Rules**”), also requires clarification by the Board at the earliest.