

FACETS OF SERVICE TAX

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Introduction

Service tax was a tax levied by the Central Government of India on services provided or agreed to be provided excluding services covered under negative list and considering the Place of Provision of Services Rules, 2012 and collected as per Point of Taxation Rules, 2011 from the person liable to pay service tax. Person liable to pay service tax is governed by Service Tax Rules, 1994 he may be service provider or service receiver or any other person made so liable. It is an indirect tax wherein the service provider collects the tax on services from service receiver and pays the same to government of India. Few services are presently exempt in public interest via Mega Exemption Notification 25/2012-ST as amended up to date and few services are charged service tax at abated rate as per Notification No. 26/2012-ST as amended up to date. Presently from 1 June 2016, service tax rate has been increased to consolidated rate at $14\% + 0.5\% + 0.5\% = 15\%$ of value of services provided or to be provided. The service tax rate now is consolidated rate as education cess and secondary higher education cess are subsumed with 2% of "Swachh Bharat Cess (0.50%)" has been notified by the Government

From 15 November 2015, the effective rate of service tax plus Swachh Bharat cess, post introduction of Swachh Bharat Cess, was 14.5%. Currently, Swachh Bharat Cess and Krishi Kalyan Cess would also be levied on all services on which Service Tax is being levied and therefore, the Service Tax (including Swachh Bharat Cess and Krishi Kalyan Cess) applicable from 1 June 2016 has become 15%.

During the 2015 budget, the Finance Minister had incremented the service tax rate from 12.36% to 14%, which had been applicable from 1 June 2015. Further, from 15 November 2015, an additional Swachh Bharat Cess got added at the rate of 0.5%, which left the service tax at 14.5%. After the new proposal brought in during the 2016 Union Budget, the applicable service tax from 1 June 2016 is 15%

Dr. Raja Chelliah Committee on tax reforms recommended the introduction of service tax. Service tax had been first levied at a rate of five per cent flat from 1 July 1994 till 13 May 2003, at the rate of eight percent flat w.e.f 1 plus an education cess of 2% thereon w.e.f 10 September 2004 on the services provided by service providers. The rate of service tax was increased to 12% by Finance Act, 2006 w.e.f 18.4.2006. Finance Act, 2007 has imposed a new secondary and higher education cess of one percent on the service tax w.e.f 11.5.2007, increasing the total education cess to three percent and a total levy of 12.36 percent. The revenue from the service tax to the Government of India have shown a steady rise since its inception in 1994. The tax collections have grown substantially since 1994-95 i.e. from ₹ 410 crore (US\$57 million) in 1994-95 to ₹ 132,518 crore (US\$19 billion) in 2012-13. The total number of Taxable services also increased from 3 in 1994 to 119 in 2012. However, from 1 July 2012 the concept of taxation on services was changed from a 'Selected service approach' to a 'Negative List regime'. This changed the taxation system of services from tax on some Selected services to tax being levied on the every service other than services mentioned in Negative list.

Under the Service tax from the year of original levying year of 1994 are constantly growing. The collections are shown as in the following table:

Financial Year	Revenue Rupees(in crores)	Number of services	Number of Assesseees
1993–1994	254	2	2568
1994–1995	407	3	3943
1995–1996	862	6	4866
1996–1997	1059	6	13982
1997–1998	1586	18	45991
1998–1999	1957	26	107479
1999–2000	2128	26	115495
2000–2001	2613	26	122326
2001–2002	3302	41	187577
2002–2003	4122	52	232048
2003–2004	7891	62	403856
2004–2005	14200	75	774988
2005–2006	23055	84	846155
2006–2007	37598	99	940641
2007–2008	51301	100	1073075
2008–2009	60941	106	1204570
2009–2010	58422	109	1307286
2010–2011	71016	117	1372274
2011–2012	97509	119	1535570
2012–2013	132518	Negative List Regime	1712617

Rates

Service Tax which started out at a nominal 5% is now at 15%.

It was increased to 14% for transactions that happened on or after 1 June 2015 and then for transactions that occurred on or after 15 Nov 2015, the new *Swachh Bharat Cess* at 0.5% was also added to the Service Tax. Therefore, the effective rate became 14.5% with effect from 15 Nov 2015.

For transactions that occurred on or after 1 June 2016 this tax is at 15%. **2016 Union** budget of India has proposed to impose a cess, called the *Krishi Kalyan Cess*, at 0.5% on all taxable services effective from 1 June 2016. The current service tax is at 15%.

With introduction of *Krishi Kalyan Cess*^[4] at 0.5% w.e.f 1 June 2016, effective rate of Service tax would eventually go up to 15%, which was earlier increased to 14% (with subsumation of Education Cess and Secondary and Higher Education Cess) from 12.36% w.e.f 1 June 2015 and *Swachh Bharat Cess* at 0.5% on value of all taxable services imposed w.e.f 15 November 2015. *Krishi Kalyan Cess*, which was announced during the 2016–17 Budget, has become applicable from 1 June.

A tax of 0.5% would be levied over and above the Service Tax and Swachh Bharat Cess. Till 31 May 2016, the Service Tax rate was 14.5%. With Krishi Kalyan cess, the service tax would increase to 15%. While Swachh Bharat Cess was levied to conduct cleanliness drive in India, the new cess has been levied for the purpose of financing and promoting initiatives to improve agricultural growth.

- 14/05/2003 – 09/09/2004 – 8%
- 10/09/2004 – 17/04/2006 – 10.20%
- 18/04/2006 – 10/05/2007 – 12.24%
- 11/05/2007 – 23/02/2009 – 12.36%
- 24/02/2009 – 31/03/2012 – 10.30%
- 01/04/2012 – 31/05/2015 – 12.36%
- 01/06/2015 – 14/11/2015 – 14%
- 15/11/2015 – 31/05/2016 – 14.5% (14% Service Tax + 0.50% Swach Bharath Cess)
- 01/06/2016 – 30/06/2017 – 15% (14% Service Tax + 0.50% Swach Bharath Cess + 0.50% Krishi Kalyan Cess)

Small scale exemption

Service tax is only liable to be paid in case the total value of the service provided during the financial year is more than ₹ 10 lakh (US\$14,000). If the value of services provided during a preceding financial year is less than ₹ 10 lakh (US\$14,000), only then this exemption is applicable in the current financial year. It is optional for he wants to avail this exemption or not.

Negative list

Budget 2012 revamped the taxation provisions for services by introducing a new system of taxation of services in India. In the new system all services, except those specified in the negative list, are subject to taxation. Earlier the levy of service tax was based on positive list—specified 119 taxable services.

As per clause (34) of section 65B of the Finance Act, 1994, the term "Negative List" means the services which are listed in section 66D.

Registration of Service Tax

As per Service Tax Law it is mandatory for the following categories of persons to obtain registration :-

- Every person liable to pay service tax under Reverse Charge
- An input service distributor
- Every provider of taxable service whose aggregate value of taxable service exceeds 9 lakhs in a financial year.

Every person mentioned above will have to get themselves registered under the service tax law within 30 days from the date of commencement of such service or business.

Whereas in case of service provider whose aggregate value of taxable service not exceeded 9 lakhs in a financial year not need to obtain registration, where in case he has obtained registration he is liable to payment of service tax only if the value of taxable services exceeds 10 lakhs rupees.

Service Tax Invoices

Rule 4A prescribes that taxable services shall be provided and input credit shall be distributed only on the basis of a bill, invoice or challan. Such bill, invoice or challan will also include documents used by service providers of banking services (such as pay-in-slip, debit credit advice etc.) and consignment note issued by goods transport agencies. Rule 4B provides for issuance of a consignment note to a customer by the service provider in respect of goods transport booking services.

Salient features of Service tax

Indirect tax to be collected: Being an indirect tax, it is convenient for the

- service provider to collect service tax by charging it separately in invoices raised on the customers. Since it is an indirect tax, burden can be passed on to ultimate consumer of the service.

Tax payable even if not collected from receiver: Service tax is to be compulsorily paid by a service provider irrespective of whether he is able to collect the tax or not. On the other hand if tax is not charged separately in invoice, total amount charged can be treated as inclusive of tax and tax can be calculated by bifurcation of total value into base value and service tax. Tax to be collected separately: As service tax is an indirect tax it can be

- Collected from customer. However, whether a person is actually able to collect the tax or not depends on the contractual relationship between the two parties. Tax collected but not payable, cannot be retained: As it is an indirect
- tax, it is collected on behalf of government i.e. service provider acts as an agent of government as it passes burden of tax payable by him to customers by including the service tax amount in the value of service. However if at a later stage a part of tax paid is refunded back, such a refund would be an undeserving benefit to him as the amount received by him was not actually paid by him and would amount to unjust enrichment. Section 11B of Central Excise Act, 1944 and Section 73A of the Finance Act, 1994 deal with this principle. Certain other important features of service tax:
 - i. No Registration Fee; online registration ii. Deemed Registration, if registration certificate not granted within 7 days. iii. Penalty for non-registration or delay in registration. iv. No specific records prescribed, records kept for business record keeping accepted. v. No tax on export of services- qualifying conditions prescribed. vi. Initially payment of tax on realization of value of taxable service; Barring exception w.e.f. 01-07-2011, tax payable on accrual basis. vii. Simple interest @13% per annum on delay of payment of tax now increased to 30%. viii. Electronically filing of self-assessment return. ix. Self-adjustment of excess service tax paid subject to conditions laid down.

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