

From the Desk of

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BUDGETARY CHANGES 2011

SERVICE TAX

1. **No change in the effective service tax rate of 10.3%.**
2. **Service tax extended to services by air conditioned restaurants having liquor license and to short term accommodation in hotels.**
3. **Scope of seven existing service categories expanded, including life insurance service, legal service, health service and commercial training and coaching service.**
4. **Interest for delayed payment of service tax increased to 18% a year and penalty provisions amended.**
5. **Restrictions on Cenvat credit on input services prescribed in the case of works contractors (availing composition scheme).**
6. **Outright service tax exemption for input services “wholly consumed” in a SEZ, linked with Export Rules.**
7. **Point of Taxation Rules, 2011 introduced, deeming the time of provision of service to be the date of provision of service or date of invoice or date of payment, whichever is earlier.**
8. **Performance based criteria for determining export of certain services.**
9. **Definition of “input service” for Cenvat credit purposes substituted.**
10. **“Exempted services” to include trading.**
11. **Provision relating to availability of full Cenvat credit on specified services under Rule 6(5) of Cenvat Credit Rules deleted.**

Changes mentioned below will take effect from a date to be notified after the enactment of the Finance Bill 2011:

Service tax will be levied on the following two additional services:

1. Services by air conditioned restaurants having license to serve liquor (70% abatement to be prescribed); and
2. Short term accommodation in hotels/ inns/ clubs (50% abatement to be prescribed).

The scope of 7 existing taxable services will be amended as follows:

1. Repair, reconditioning and other similar services of specified motor vehicles will now cover such services provided by any person.
2. Life insurance services will cover all services including management of investments (principles for valuation to be prescribed).
3. Club or association services will include services to non members.
4. Business support services will include operational or administrative assistance of any nature.
5. Legal services will cover services by business entities to individuals, representation services by any person, and arbitration services by an arbitral tribunal, to business entities.
6. Health services will cover any service provided by specified clinical establishments (50% abatement to be prescribed).
7. Commercial training or coaching services will cover all coaching and training (exemptions for pre school coaching and coaching for degrees/ diplomas/ other qualifications recognized by law to continue).

Changes mentioned below will take effect on enactment of the Finance Bill:

1. Interest for delayed payment of service tax will be increased to 18% p.a. (15% p.a. for tax payers with turnover below INR 6 million).

2. Maximum penalty for delayed filing of return will be increased to INR 20,000.
3. Benefit of reduced penalty will not be available in cases of fraud, misstatement, suppression or collusion.
4. Penalty for failure to pay service tax would be halved to INR 100 a day or 1% a month, subject to a maximum of 50% of service tax payable.
5. Penalty for any other contravention will be increased to INR 10,000.
6. Maximum penalty in cases of fraud, misstatement, suppression or collusion will be restricted to 100% of service tax payable.

The following changes will take effect from 1 March 2011:

1. Value of telecommunication services will be the gross amount paid by the person (ultimate user or subscriber) to whom the service is provided by the telegraph authority.
2. Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 will be amended to restrict Cenvat credit to 40% of tax paid on input services relating to erection, commissioning, installation, commercial or industrial construction and construction of residential complex. This will be applicable where service tax has been paid by the vendor on full value of such service after availing Cenvat credit on inputs.
3. Works contract services provided wholly within an airport or port will be exempt from service tax levy.
4. Business exhibition services for holding an exhibition outside India will be exempt from service tax levy.
5. Abatement of 25% will be provided on services of transportation through waterways or of coastal goods.
6. Presently, outright exemption from service tax is available to services which are “wholly consumed” within a SEZ. However, “wholly consumed” has not been defined in this regard. Now, wholly consumed services in a SEZ will be linked with Export Rules for obtaining the above exemption. Other services will be entitled for proportionate refund.

The following changes will take effect from 1 April 2011

1. Point of Taxation Rules, 2011 introduced. Point of taxation for services (which was earlier receipt of taxable value) will be deemed to be:
 - date on which service is provided or to be provided; or
 - date of invoice; or
 - date of payment; **whichever is earlier.**
2. Principles prescribed for determining rate of tax for services.
3. Adjustment of service tax paid will be allowed if service is not subsequently provided.
4. Amount prescribed for suo moto adjustment of excess service tax paid will be increased to INR 200,000.
5. Composition rate applicable to service of purchase or sale of foreign currency, including money changing, reduced to 0.1%.
6. Valuation rules prescribed for money changing services.
7. Export Rules and Import Rules will be amended to change the criteria for determination of Export and Import.
8. Exemption from service tax on services of transportation of goods by air/ road/ rail to a person located in India when the goods are transported from a place outside India to a place outside India.
9. Transportation of goods by air, to the extent of air freight included in value of imported goods for customs duty purposes, will be exempt.
10. Applicable rate of service tax on air travel services (other than standard rate) will be increased.

Cenvat Credit Rules will be amended as follows:

1. Definitions of “input” and “input service” substituted.
2. “Input service” will cover services used for providing output service and other specified services. The phrase “activities relating to business such as” will be deleted from the definition of “input service” and specific exclusions will be provided for services such as construction of building or civil structure, outdoor catering, rent-a-cab services, life/health insurance services to employees.
3. Definition of “exempted service” will include trading and taxable services which are partially exempted.
4. Principles for valuation of aforesaid exempted services prescribed for the purpose of availment of pro rata Cenvat credit. In case of trading, such value will be the difference between sale price and purchase price of the goods traded.
5. For availment of Cenvat credit, additional option to maintain separate accounts only in respect of inputs along with pro rata allocation for input services will be available.
6. Amount payable on exempted services under the option to avail full Cenvat credit will be reduced from 6% to 5% of the value of exempted services.
7. Banking companies or financial institutions, including NBFCs, providing banking and financial services will be obligated to pay an amount equal to 50% of Cenvat credit availed. For services related to life insurance or management of ULIP, such amount will be equal to 20% of credit availed.
8. For the service providers mentioned above, no other option for availment of Cenvat credit will be allowed.
10. Rule 6(5) of the Cenvat Credit Rules allowing full Cenvat credit on specified services will be deleted.
11. Provision of services without payment of service tax to a SEZ developer/ unit will not require pro rata reversal of Cenvat credit. This amendment will take effect from 1 March 2011.
12. Where payment for an input service, or a part thereof, is returned, the person availing credit on such input service will need to proportionately reverse the Cenvat credit availed.

The following changes will take effect from a retrospective date:

1. Membership fee collected by an association or chamber representing commerce or industry for the period 16 June 2005 to 31 March 2008 will be exempt from levy of service tax.
2. Inter state or intra state transportation of passengers, (excluding tourism), in a vehicle bearing contract carriage and tourist vehicle permit for the period 1 April 2000 to 6 July 2009 will be exempt from levy of service tax.
3. Appropriate refund mechanism will be prescribed for giving effect to the amendments mentioned above.

BUDGET 2011 ON GST

1. The Constitutional Amendment Bill required for the introduction of GST would be placed before the Parliament during the present session.
 2. Date of implementation of GST not announced. IT infrastructure to support GST being implemented and model laws for Central and State GST being drafted.
 3. Prior to pan India GST roll out, National Securities Depository Limited expected to set up a pilot portal in collaboration with 11 States, by June 2011.
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