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BRIEF OF FEW CHANGES

MADE IN SERVICE TAX BY

FINANCE ACT, 2012,

APPLICABLE FROM

1, JULY, 2012

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Budget has unhered a new system of taxation of services known as Negative List Approach. Till now services of specified description were subjected to tax. In the new system all services, except those specified in the negative list will be subject to taxation. In addition to the services specified in the negative list certain exemptions have been given vide mega exemption notification no 25/2012 dated 20.6.2012.

The system of valuation of services for levy of service tax and of availment and utilization of CENVAT credits remains the same with only incidental changes required for the new system of taxation.

Under new System of service tax "**Service** " has been defined in clause (44) of the new Section 65 B and means :

- Any activity
- For consideration
- Carried out bby a person for another
- And includes a declared services

The said definition further provides that service does not include

- Any activity that constitute only a transfer in title of i) goods, ii) immovable property by way of sale , gift or in any other manner. iii) a transfer , delivery or supply of goods which is deemed to be a sale of goods.
- A transaction only in iv) money or v) actionable claim
- A service provided by an employee to an employer in the course of employment.
- Fee payable to a court or a tribunal set up under a law for the time being in force.

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Taxability of services

The taxability of services or charge of service tax has been specified in Section 66B of the Finance Act. To be a taxable service a service should be :

- Provided or agreed to be provided by a person to another
- In the taxable territory
- And should not be specified in the negative list.

All services whether declared or not, which are covered under Section 66 B of the Act are taxable if elements of taxability are present. In other words service tax will be leviable on all services provided in the taxable territory by a person to another for a consideration other than the services specified in the negative list. The negative list of services is specified in the Finance Act, 2012 under section 66 D.

Declared services – The phrase declared service is defined in section 66 E as an activity carried out by a person for another for consideration. The following nine activities are specified as declared services.

- Renting of immovable property
- Construction of complex, building , civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is recovered after issuance of certificate of completion by a competent authority
- Temporary transfer or permitting the use or enjoyment of any intellectual property right

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- Development design programming , customization, adaptation, up gradation, enhancement, implementation of Information Technology Software.
- Agreeing to the obligation to refrain from an act or to tolerate an act or a situation or to do an act
- Transfer of goods by way of hiring, leasing , licensing or any such manner without transfer of right to se such goods.
- Activities in relation to delivery of goods on hire purchase or any system of payment by installments.
- Service portion in execution of a works contract
- Service portion on activity wherein goods being food or any other article of human consumption or any drink is supplied in any manner as part of the activity.

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Under the present information note on service tax we have applied the effect of new negative list approach and exemptions given on certain common services provided by the service providers. Few of the common services are discussed as under:

TRANSPORTATION OF GOODS

Applicability of Negative List and exemptions thereof

- Exemption has been given to the Services by way of transportation of Goods by road except the services of
 - A goods transportation agency (GTA) or
 - a courier agency
- Specific exemption has been given to the services provided by a goods transport agency by way of transportation of :
 - a) Fruits, vegetable, eggs, milk, food grains or pulses in a goods carriage.
 - b) **Exemption to consignment where**
 - a. Freight is up to Rs.750/- per consignee per carriage or Rs.1500/- per goods carriage.
- Payment of GTA Service @25 % of normal service tax will be made by the consignor or consignee who is actually paying the freight, if the consignor/ consignee paying freight is a company, body corporate, registered society, factory, partnership or dealer registered under Central Excise.

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- Even if, freight is paid by individual, HUF or unregistered partnership firm, the service tax is payable by individual/HUF, if the consignor/consignee is factory, body corporate, society etc.
- Services provided by person who does not issue consignment note is not taxable. When driver of goods carriage is self employed by owing the carriage or taking it on rent, then he does not issue consignment note.
- W.e.f from 01/07/2012, if freight is payable by person located in a non-taxable territory, the provider of GTA service will be liable to pay service tax.

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REVERSE CHARGE- GOODS TRANSPORT AGENCY SERVICE VIDE

NOTIFICATION NO 30/2012 ST

S.No.	Service	Service Provider	Service Receiver	Liability of service receiver
1	Good TRANSPORT AGENCY – TRANSPORT OF GOODS	GTA- Who issues consignment note	Consignor or Consignee who is – a. Factory, society, registered dealer of excisable goods, body corporate, partnership firm, AOP and b. Who pays or is liable to pay freight either himself or through his agent for transport of such goods in goods carriage	Person liable to pay service tax is service receiver. Tax payable on 25% of value if Cenvat Credit has not been availed by the service provider. Obtain certificate from GTA regarding non a availment of Cenvat Credit. Other wise case pays Tax @ 100% Freight is received from person in Taxable Territory – Freight is received from person in non Taxable Territory – person liable to pay service tax is service provider.

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TRANSPORT OF PASSENGERS

- **Passenger transport by rail**

- Services of transportation of passengers with or without accompanied belongings by railways is exempt except first class or air conditioned coach of the rail.
- Service Tax is payable on 30% of the value in case of transport of rail passenger on first class and air conditioned coaches.

It may be noted that the government vide notification no 43/2012 ST has exempted services for the above two categories of travel i.e first class and air conditioned coach for 3 months i.e upto 30.09.2012. Earlier Tax on travel by rail was effective from 1.7.2012 and the exemption for 3 months has been granted effective from 02.07.2012. Therefore the tax is levied for just one day, for which separate clarification from the department should follow.

- **Transportation of passenger by Air**

- Tax is payable on 40% of amount charged, CENVAT credit on input services is available and CENVAT credit on inputs and capital goods used for providing the taxable service is not available.
- Air Transport in North East is exempt.
- Excess baggage charges are liable to service tax

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- **Hiring of Cabs/ Rent a cab/ Renting of any motor vehicle designed to carry passengers.**

Services of transport of contract carriage are not exempt if they are meant for tourism, conducted tours, charter or Hire. The taxable value under renting of motor vehicle under abatement is 40% of the gross value where no CENVAT credit is available. The effect of reverse charge mechanism is described as below.

Reverse Charge on renting of motor vehicle

S.No.	Service	Service Provider	Service Receiver	Liability
1	Renting or hiring of Motor Vehical designed to Carry passenger to any prson who is not in the similar line of businesse	Individual, HUF, Properitory or partnership firm, AOP, located in taxable territory	a. Business entity registered as body corporate located in the taxable territory	100 % Liability is on the service receiver who is a business entity where tax on 40 %of value has been calculated by provider of service. If the service provider intends to avail Cenvat Credit, it can pay service tax on 60 % of total gross value and service receiver shall be liable to pay on 40 % of the total gross value.

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- **Other modes of transportation of passengers.**

the following modes of transportation other than by air and by rail have been specifically made exempt :

- Metro, monorail or tramway
- Inland waterways
- Public transport other than predominantly for tourism purpose in a vessel between places located in India
- Metered cabs , radio taxis or auto rickshaws.

AIR TRAVEL AGENT

- Pay service tax @0.60% of basic fare in case of domestic booking
- Pay service tax @1.20% of basic fare in case of International booking

TOUR OPERATOR

- Services by a tour operator in relation to Package Tour – Tax @ 25% of amount charged. In this case bill should indicate that, it is inclusive of charges of package tour. No CENVAT credit available.
- If the tour operator is providing services solely of arranging or booking accommodation for any person in relation to tour then Tax@ 10% of amount charged, shall be payable with the condition that the invoice , bill or challan issued indicates that it is towards the charge for such accommodation.

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This exemption to pay on 10 % shall not apply in such cases where the invoice issued by the tour operator in relation to the tour only indicates the service charges for arranging or booking accommodation for any person and does not include the cost of such accommodation.

- Other Tours- Tax @ 40% of amount charged. The bill issued indicates that the amount charged in the bill is the gross amount charged for the tour. No CENVAT Credit available.
- Withdrawn of exemption in case of hotel booking services provided by persons abroad.

WORKS CONTRACT & CONSTRUCTION SERVICE

Under the new regime the definition of Works Contract Service has been changed under clause (54) of Section 65 B of the Finance Act.

“Works Contract” means a contract wherein transfer of property in goods involved in the execution of such contracts is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair , maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or part thereof in relation to such property.”

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The services of works contract and construction have been specifically mentioned under the following :

- Declared Service
 - Construction of complex, building , civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is recovered after issuance of certificate of completion by a competent authority

 - service portion in works contract

- Entries under mega exemption notification no 25/2012 ST
 - As per entry 12 of the notification if the above services are provided to Government or local authority than it is exempt from service tax of the below properties:
 - a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
 - a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

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- a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
 - canal, dam or other irrigation works;
 - pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
 - a residential complex predominantly meant for self-use or the use of their employees or other persons
- As per item no.13 of exemption N/No. 25/2012, Specified services of construction , erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration for use by general public are exempt from the service tax of the below properties:
- A road, bridge, tunnel or terminal for road transportation for use by general public
 - A civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru Urban Renewal mission or Rajiv Awaas Yojana
 - A building owned by an entity registered under section 12AA of the Income Tax Act, 1961 and meant predominantly for religious use by general public.
 - A pollution control or efficient treatment plant except located as part of a factory or a structure meant for funeral, burial cremation of deceased.
- Not only new constructions but other services of erection, commissioning, installation repairs, alteration are also exempt.

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- As per item no.14 of exemption N/No.25/2012 Services by way of “Construction, erection, commissioning or installation” of original works pertaining to:
 - An airport, port or railways including mono rail or metro
 - A single residential unit otherwise than as a part of a residential complex.
 - Low cost house up to a carpet area of 60 square meters per house in a housing project approved by a competent authority
 - Post harvests storage infrastructure for agricultural produce including a cold storage for such purpose
 - Mechanical food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages

- Entry 29 of the Notification which gives exemption to services by the sub contractor providing services by way of works contract to another contractor providing works contract services which are exempt.

- **VALUATION FOR SERVICE TAX ON WORKS CONTRACT**
 - **First Rule:** Calculate value of service and pay service tax @12.36%. Can avail Cenvat Credit of input services & Capital Goods
 - **Second Rule:** Pay service tax under “Composite Scheme” on 40%/60%/70% of total value of works contract. Can avail Cenvat Credit of input services & Capital Goods

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- **Payment of Service Tax on Works Contract under composite scheme**
 - a. In case of original works (i.e new Construction, erection etc.) Pay @40% of total amount
 - b. Maintenance or repair or reconditioning or restoration or servicing of any goods @ 70% of total amount
 - c. Other works contract (other than a & b discussed above e.g. wall tiling installation of electrical fitting of an immovable property) 60% of "Total Amount"

- **VALUATION FOR SERVICE TAX ON OTHER CONSTRUCTION ACTIVITIES**
 - If construction contract (need not be works contract) includes value of land (Abatement Scheme) 25%. Can avail Cenvat Credit of input services & capital goods.

- W.e.f. 01/07/2012 Service Tax will apply on redevelopment of existing buildings
- Individual and partnership firms including LLP (but not HUF) whose total value of taxable services from all premises together is Rs.50 Lakhs or Less in the previous financial Year can opt to pay service tax on receipt basis instead of accrual Basis.
- N/No.- 25/2012 dated 20-06-2012: - if main works contract is exempt, sub-contractor providing works contract service to main contractor will be

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exempt from service tax. This exemption is **only** when the sub-contractor provides works contract service and not in other cases.

REVERSE CHARGE UNDER WORKS CONTRACT

S.No.	Service	Service Provider	Service Receiver	Liability
1	Service Portion in Execution of Works Contract	Individual, HUF, Proprietary or partnership firm, AOP, located in taxable territory	a. Business entity registered as body corporate located in the taxable territory	Tax on 50% of value by service provider and 50% by service receiver

RENTING OF IMMOVABLE PROPERTY

1. No penalty if service tax for earlier with interest is paid within 6 months. (It has been provided that if the assessee pays service tax payable as on 06/03/2012 with interest, within 6 months from 28/05/2012 i.e before 28/11/2012
2. Renting of Immovable property as specified in Negative List, on which no service tax has to be paid

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- a. Renting of vacant land with or without structure relating to agricultural purpose.
 - b. Renting of residential dwelling for use as residence
 - c. Renting of property to RBI
 - d. Renting of any property by a Government to all non business entity
3. Renting of all other immovable property are taxable However, exemptions are as follows:
 - a. Threshold exemption of Rs.10 Lakh
 - b. Renting of precincts of a religious place meant for general public is exempt
 - c. Renting of hotel, in guest house or other commercial places meant for residential or lodging purposes, having declared tariff of a room below One thousand rupees is exempt.
4. Renting of immovable property to or by an educational institute would be exempt, if these services are in respect of education, which is exempt from service tax
5. **Deduction of property tax paid on proportionate basis:-**
 - a. N/No.29/2012 dated 20-06-2012 provides for reduction from gross amount to the extent of property tax paid
 - b. Reduction in respect of property tax paid not in case of interest for delayed payment of tax
 - c. Deduction of property tax will be only in respect of tax actually paid. Deduction will be on pro-data basis
6. Renting services in hotels and lodges
 - a. In the above case, if declared tariff is Rs.1000/- or more than service tax is payable on 60 % of the amount charged subject to condition that Cenvat Credit on inputs and capital goods should not be taken.

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ADVERTISEMENT SERVICE

- With effect from 01/07/2012
 - Selling of space or time slots for advertisement will not be taxable
 - Advertisement broadcasted by radio or a television will be taxable.
 - Service tax will not be levied on any presentation made in person.
 - In crux the following services are not taxable and taxable under different circumstances:
 - Providing space for advertisement in print media is not taxable.
 - Sale of space for advertisement in bill boards, public places, conveyances, cell phone, automated teller machine, internet Aerial advertising is also not taxable.
 - Services of Advertising agency are different than Advertisement and therefore the services of advertisement agency are not excluded under this clause. Hence services of Advertising agency are taxable.
 - In case the person provides both space for advertisement coupled with services of designs and preparation of advertisement, the taxability will be decided in terms of section 66 F(1)
 - Since designing and preparation of advertisement are taxable services, the entire service would be considered as designing and preparation of advertisement tax will be payable.

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CHANGES IN POINT OF TAXATION RULES

1. As per general rule, time of provision of service will be earlier of the following dates:-
 - a. Date of which service is provided or to be provided
 - b. Date of Invoice
 - c. Date of Payment
2. W.e.f from 01/07/2012, rate of service tax, shall be the rate of service tax in force or as applicable at the time when the taxable service has been provided or agreed to be provided.
3. Every person providing taxable service is required to issue invoice within 30days from the date of **Completion** of service or receipt of any payments *whichever is earlier*.
4. In case of default in issuance of invoice, date of completion of provision of service will be point of taxation.
5. Receipt of excess payment up to Rs.1000/- will not shift point of taxation. If such excess charges are up to Rs.1000/-, the point of taxation in respect of such excess amount will be the date of issue of invoice as per Rule 3(a)
6. Payment of service tax in case of new service
 - a. In case of new services, tax is not payable if invoice is issued and payment is received before such services become taxable.
 - b. Further, if payment is received before service becomes taxable, service tax will not be payable if invoice is issued within 14 days of the date **when the service is taxed for the first time**.
 - c. W.e.f from 01/07/2012, if invoice is received earlier but payment is received after service becomes taxable, in such case, service tax will not apply.

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7. Point of taxation in case **Reverse Charge**.
- i. In such a case, point of taxation will be the date on which payment is made to service provider, if the payment for such service is made within 6 months from the date of invoice.
 - ii. If payment not made in 6 months from the date of invoice, the point of taxation shall be determined as per normal procedure.
 - iii. In case of above default, interest for delayed payment will be applicable, as point of taxation will shift to much earlier date.
8. Individuals & Partnership firm (but not HUF) whose total value of taxable services from all premises together is Rs.50 Lakhs or less in the **previous financial year** can opt to pay service tax on receipt basis instead of accrual basis.

Accounting Code for payment of service tax under the Negative List approach to taxation of services, with effect from the first day of July 2012

Accounting codes for the purpose of payment of service tax under the Negative List approach, with effect from 1st July, 2012 is as follows:

Name of Services	Accounting codes			
	Tax collection	Other Receipts	Penalties	Deduct refunds
All Taxable Services	00441089	00441090	00441093	00441094

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NOTE: (i) service specific accounting codes will also continue to operate, side by side, for accounting of service tax pertaining to the past period (meaning, for the period prior to 1st July, 2012); (ii) Primary Education Cess on all taxable services will be booked under 00440298 and Secondary and Higher Education Cess on all taxable services will be booked under 00440426; (iii) a new sub-head has been created for payment of “penalty”; the sub-head “other receipts” is meant only for payment of interest etc. leviable on delayed payment of service tax; (iv) the sub-head “deduct refunds” is not to be used by the assesseees, as it is meant for use by the Revenue/Commissionerates while allowing refund of tax.

In case you require any professional advise you may contact ;

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