

## **SERVICE TAX CHANGES**

### **Registration Procedure Under Service Tax:**

Procedure, conditions and safeguards for registration under service tax will be as prescribed by CBE&C by order – rule 4(9) of Service Tax Rules, inserted w.e.f. 1-3-2015.

The procedure, as prescribed in order No. 1/2015-ST dated 28-2-2015 issued by CBE&C, is as follows –

- Online application for registration in form ST-1 is mandatory. Application should be through ACES (Automation of Central Excise and Service Tax)
- Applicant must have Income Tax PAN. He must have mobile number and e-mail address. On application, applicant will be granted registration within two days. The number will be generated electronically. Online registration through website is adequate proof, even if not signed.
- Assessee can start paying service tax after obtaining registration number electronically
- After application, documents prescribed in CBE&C order No. 1/2015-ST dated 28-2-2015 should be submitted with seven days. These cover copy of PAN, photograph and proof of identity of person, proof of possession of premises, details of main bank account, memorandum and articles and Board resolution.
- Business transaction number with other authorities like Customs Registration Number, IEC (Import Export Code), State Sales Tax Number, CST, Company Index Number etc. should be submitted.
- Verification of premises can be done only with permission of Additional/Joint Commissioner.
- If required clarifications are not provided by assessee, registration can be cancelled after granting personal hearing. If premises are nonexistent, registration can be cancelled by Deputy/Assistant Commissioner

### **Digitally Signed Invoice Allowed:**

Serviced Tax Invoice can be authenticated by digital signature. CBE&C will specify conditions, safeguards and procedures to be followed – Rule 4C of Service Tax Rules, inserted w.e.f. 1-3-2015.

It may be noted that mere computer generated invoice is not 'digitally signed invoice'.

### **Records May Be Maintained Electronically:**

Records may be preserved in electronic form and every page of the record shall be authenticated by means of digital signature. The procedure and conditions and safeguards will be specified by CBE&C by notification – Rule 5(4) of Service Tax Rules, inserted w.e.f. 1-3-2015

Such record keeping is optional. Even otherwise, private records maintained on computers are acceptable, even if not digitally signed.

### **Changes In Abatements:**

Following changes in abatement will be effective from 1-4-2015. The changes are made by amending Notification No. 26/2012-ST dated 20-6-2012.

**Service tax on transport of goods by rail, road or vessel** – Service tax on transport of goods by rail, GTA (road) or vessel will be payable on **30%** of value subject to condition of non-availment of Cenvat credit on inputs, capital goods and input services, subject to non-availment of Cenvat Credit [Till 1-4-2015, service tax on GTA was on 25% and service tax on transport by vessel was on 40% of value].

## **Changes In Reverse Charge:**

Following changes are effective from 1-4-2015. The changes are made by amending Notification No. 30/2012-ST dated 20-6-2012.

In case of service tax on manpower supply service and security agency services, **entire 100%** service tax will be payable by service receiver (against present 75%).

## **New Activities Proposed To Be Covered Under Service Tax:**

**All services provided by Government to business entity taxable** – All services provided by Government to a business entity will be taxable, except those exempted or in negative list. At present, only support services provided by Government are taxable – proposed amendment to section 66D (d) (iv) of Finance Act, 1994 [negative list of services].

Service tax will be payable by business entity under reverse charge.

Note that statutory activities undertaken by Government is not 'service' for the simple reason is that there is no 'consideration' [as consideration is required to be 'at the desire of promisor', as per section 2(d) of Contract Act. Here, the statutory charges are not at the desire of promisor – rather against the desire of promisor].

## **Reimbursement of expenses includible in value of service tax**

There were disputes about inclusion of reimbursement of expenses in value of service tax. There was adverse decision of Delhi High Court.

To get over that decision, it is provided that 'consideration' shall include any reimbursable expenditure or cost incurred by the service provider and charged, in course of providing or agreeing to provide service, except in case of prescribed circumstances – *proposed* Explanation (a) to section 67 of Finance Act, 1994.

## **New Exemptions From Service Tax:**

Following new exemptions are given w.e.f. 1-4-2015. The exemptions are given by amending Notification No. 25/2012-ST dated 20-6-2012.

**Goods transport upto land customs station** – Goods transport service from place of removal upto land customs station will be exempt from service tax – amendment to Notification No. 31/2012-ST dated 20-6-2012.

## Changes In Penal Provisions:

The penalty provisions are revamped. The changes will be effective from the date when Finance Bill, 2015 is passed and receives assent of President of India. The changes are clarified in para 5.2 of MF (DR) letter DOF No. 334/5/2015-TRU dated 28-2-2015.

**No show cause notice if service tax with interest paid before SCN** – Show cause notice cannot be issued if service tax with interest is paid before SCN. This is because show cause notice under section 73(1) of Finance Act, 1994 can be issued only when service tax has not been levied or paid or short levied or short paid or erroneously refunded.

This would be so even if there was suppression of facts, wilful misstatement etc.

Section 73(1) of Finance Act, 1994 does not make any mention of interest. However, proposed section 76(1) and section 78(1) of Finance Act specify that show cause notice should mention interest. Thus, show cause notice must mention interest.

**Immediate steps for recovery of self assessed service tax** – If an assessee declares amount of service tax payable by him in his ST-3 return (on self assessment) but does not pay the service tax, immediate recovery proceedings can be initiated under section 87 of Finance Act, 1994, without issuing any show cause notice – proposed section 73(1A) of Finance Act, 1994.

The principle is that no demand notice is necessary for admitted liability.

Thus, if amount involved is huge, it will be cheaper to delay filing of ST-3 return and pay late fee of Rs 20,000. However, department can allege suppression of facts and penalty will become payable.

**Penalty upto 10% even if no suppression or fraud** – Penalty upto 10% of service tax amount will be payable for violation of any provision of service tax law or rules, even when there was no charge of suppression of facts or wilful misstatement – *proposed* section 76(1) of Finance Act, 1994.

However, if service tax with interest is paid before show cause notice, SCN cannot be issued at all, in view of section 73(1) of Finance Act, 1994. Hence, question of penalty cannot arise.

**No penalty if service tax with interest paid within 30 days of issue of SCN, when no allegation of suppression** – No penalty will be payable if service tax and interest is paid within 30 days of issue of show cause notice under section 73(1) of Finance Act, 1994 (i.e. where there is no allegation of suppression of facts). – proposed proviso (i) to section 76(1) of Finance Act, 1994.

**Penalty @ 25% if service tax, interest and penalty paid within 30 days, when no allegation of suppression** – If service tax, interest and reduced penalty is paid within 30 days from the order of adjudicating authority imposing penalty, penalty payable will be 25% of amount involved, where there is no allegation of suppression of facts or wilful misstatement [25% of 10%] – proposed proviso (ii) to section 76(1) of Finance Act, 1994.

**If service tax amount gets reduced in appeal, penalty also gets reduced** – If service tax amount is reduced in appeal, penalty also gets reduced proportionately, if paid within 30 day [i.e. 2.5% of 10% will be payable – proposed section 76(2) of Finance Act, 1994.

**Penalty in case of suppression of facts or wilful misstatement** – The penalty provisions are as follows – (a) Penalty 100% of amount involved (b) If tax, interest and reduced penalty paid within 30 days from issue of SCN, penalty @ 15% (c) If service tax, interest and reduced penalty is paid within 30 days from date of adjudication order, penalty @ 25% (d) If amount gets reduced in appeal, then benefit of 25% penalty can be availed if tax, interest and penalty is paid within 30 days from appellate order – proposed section 78 of Finance Act, 1994.

***Transitory penalty provisions in respect of adjudications pending*** – The new provisions of penalty shall apply if adjudication order was not passed before the Finance Bill, 2015 is passed and assented by President of India. If true and complete details of transactions were available in specified records, penalty shall not exceed 50% amount – proposed section 78B of Finance Act, 1994.

### **13 Revision against order of Commissioner (Appeals) in respect of rebate of service tax**

Revision against appellate order of Commissioner (Appeals) in respect of rebate of service tax shall be filed before Government. The existing appeals filed in Tribunal after 2002 shall be transferred to Government – proposed amendments to section 86 of Finance Act, 1994.

It may be noted that section 35EE of Central Excise Act has been made applicable to service tax law w.e.f. 28-5-2012. As per that section, appeal from order of Commissioner (Appeals) lies with Tribunal against all orders, **except** (a) loss of goods occurring in transit from factory to warehouse or to another factory or in storage, whether in factory or warehouse (b) rebate of duty on goods exported outside India or excisable goods used in manufacture of goods which are exported and (c) goods exported without payment of duty.

In these cases, revision application has to be filed before Government. The revision application should be submitted personally to Under Secretary, Revision Application Unit, Government of India, Ministry of Finance, Department of Revenue, 4th floor, Jeevan Deep Building, Sansad Marg, New Delhi – 110001, or sent by registered post to him.

After passing of Finance Bill, 2015, revision application will have to be filed in case of rebate of service tax on exports (and not appeal before CESTAT).