



## Impact of Change in Service Tax Rate to 14%

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New service tax rate of 14% is effective from June 1, 2015. This article is intended to provide you with insights of how to deal with change in rate and which scenarios old rate shall prevail and when a new rate

has to be applied. Few of the practical questions posed could be as under:

- What if invoice is issued before the change of rate but payment is received after the change in rate. Which rate needs to be applied?
- What should be the rate applied in case service is provided before the change in rate and invoice is issued after the change in rate?
- What if both invoice is issued and service is provided before the rate change but payment is received after the rate change. Which rate needs to be applied?

As per Section 67A of the Finance Act, 1994 The rate of service tax, value of a taxable service and rate of exchange, if any, shall be taken as the rate/value in force or as applicable at the time when the **taxable service has been provided or agreed to be provided**.

In order to understand the point at which the service is said to have been provided, it would be relevant to read the definition of Point of Taxation as per Rule 2(e) "*point of taxation*" means the point in time **when a service shall be deemed to have been provided**. This implies that one has to go to Point of Taxation Rules, to ascertain as to when the service is been provided to determine the rate of tax as per Section 67A

However the point of agreeing to provide the service cannot be determined as per the point of taxation rules and when as service can be said to have been agreed to be provided, whether on receipt of the advance or on the entering to mere agreement to provide the service can be called as the point of agreed to be provided would be an area, which could lead to varied interpretation and lead to litigation.

Further Rule 4 of Point of Taxation Rules, 2011 lays down guiding principles to identify the point of taxation, i.e. the point when the service is deemed to be provided specifically in case of change in rate of service tax. The initial portion again requires and assumption that the service is provided before the change in rate. This leads to an anomaly, since we are reading rule 4 to understand when the service is deemed to be provided, where as the rule

state that if the service is provided before/after the change in rate, which has not been clarified.

In the view of the paper writer the reference of service being provided before/after the change in rate needs to be understood in common parlance, which may be considered as completion of the service (delivered all the deliverable of a service contract) and if he same is continuous supply service, then the same can be considered as to that extent of the service which has been provided upto the agreed mile stone.

Discussed below are various changes and its treatment in a tabular form for ease of understanding:

Service provided	Invoice issued	Payment received	Rate to be considered.
Before the change in rate of tax	After the change in rate of tax	After the change in rate of tax	14%
Before the change in rate of tax	Before the change in rate of tax	After the change in rate of tax	12.36%
Before the change in rate of tax	After the change in rate of tax	Before the change in rate of tax	12.36%
After the change in rate of tax	Before the change in rate of tax	After the change in rate of tax	14%
After the change in rate of tax	Before the change in rate of tax	Before the change in rate of tax	12.36%
After the change in rate of tax	After the change in rate of tax	Before the change in rate of tax	14%

From the above we can understand that there are 3 events as under:

- Date of provision of service;
- Date of issue of invoice; and
- Date of payment.

**Services Provided Earlier to 1.6.2015:**

**Illustrations when old rate would apply**

- a. **Invoice raised and payment received after 1.6.2015:** The invoice raised on 15<sup>th</sup> June 2015, and service provided in May 2015. Payment received in June 2015. The service tax to be paid at 14%[new rate].

- b. **Where payment received before and invoice issued after 1.6.2015:** The invoice raised on 15<sup>th</sup> June 2015, and service provided on 20<sup>th</sup> May 2015. Payment received on 30<sup>th</sup> May 2015. The service tax to be paid at 12.36% [old rate].
- c. **When the invoice issued before and payment received after 1.6.2015:** The invoice raised on 15<sup>th</sup> May 2015, service provided on 4<sup>th</sup> May 2015 and payment received on 30<sup>th</sup> June 2015. The service tax to be paid at 12.36%[old rate].

**Services Provided Post 1.6.2015:**

**Illustrations when old rate would apply**

- a. **Invoice raised and payment received before 1.6.2015:** If invoice raised on 5<sup>th</sup> May 2015, service provided in June 2015 and payment received on 15<sup>th</sup> May. Then service tax to be paid at 12.36% [old rate].

**Illustrations when new rate would apply:**

- b. **When invoice raised after 1.6.2015 and payment received before rate change:** If invoice is raised on 5<sup>th</sup> June 2015, service provided in June 2015 and payment received on 15<sup>th</sup> May. Then service tax to be paid at 14% [New rate].
- c. **When invoice raised earlier to 1.6.2015 and payment made post change in rate:** If invoice raised on 15<sup>th</sup> May 2015, service provided in June 2015, payment made on 1.6.2015. Then service tax to be paid at 14%[new rate].

**2 out of 3 planning:**

From the above it can be understood that out of the 3 elements viz. (Date of issue of invoice, Date of payment and date of provision of service) if any of the 2 events occur before the effective date of change in rate, then the old service tax rate shall be applicable. Since the new rate most likely is to be effective from June 1, 2015 therefore if any 2 events takes place before that then the benefit of old rate can be taken even after June 1, 2015.

**Anomaly in existence:**

On interpretation of Section 67A, which is supreme to the rule the rate needs to be adopted when the service was provided and the receipt of the consideration and the raising of invoice is irrelevant for this purpose, however Rule 4 of the POTR, 2011 states 2 out of the three events which is tabled above shall be relied to determine the rate of tax. If one has to go with section 67A then it to be made sure that there is a proper documentation in place to prove the service was provided prior to rate change and also intimate this fact to department. To

avoid dispute and one can also examine to issue the Invoice prior to 01.06.2015 for all the completed service.

This situation has arisen perhaps because the POT Rules were notified in 2011 and the Section 67A was inserted in 2012. We may expect some clarification to be issued by the Board in this regard with proper illustrations so that the transition to the new rate is smooth.

### **Impact of Change in Rate**

The immediate impact of the change in rate would be increase in the service tax amount which is to be paid by the service provider post 1.6.2015. As per Section 68(1), service tax is a levy which is payable by the service provider. ST is a destination based levy, could be collected from the customer and paid to the Government.

Service provider has statutory right to pass on the burden of the service tax component to service receiver in absence of prescription by legislature that service tax burden should not be passed on. The Finance Act, 1994 does not contain any such restriction that service provider should not pass on the burden to the service receiver.

However it all depends on terms of contract between the parties. When the contracted price includes all taxes, then the increased service tax burden of 14% would go out of the pocket of the service provider.

When the terms are taxes including service tax extra as applicable, then the service provider could collect and pay the service tax. For all existing contracts as well as future contracts to be inked, care to be taken by service providers engaged in providing taxable services, to renegotiate and put in clause that 'all taxes including service tax as applicable, to be collected extra from the customer'.

### **The ideal alternatives for on going contracts are as under:**

- a) **Service Completed before 1.6.2015:** All the services provided upto end of May 2015 need to be billed. These would include those bills not raised which have been postponed, missed, other reasons. These are to be identified and bill raised by end of May 2015. Otherwise the 14% rate may have to be applied in future.
- b) **Part services provided before 1.6.2015:** The part bill to extent of completed service, could be raised before 1.6.2015 and service tax paid thereon by 5<sup>th</sup>/6<sup>th</sup> of June 2015 at 12.36%.
- c) **Advances received before 1.6.2015 for future services:** Even on advances received towards services to be provided in future, invoices to be raised by 30<sup>th</sup> May 2015 and ST could be paid at 12.36%.

- d) **Where the invoices are issued before 1.6.2015:** When the invoices are raised before 1.6.15 for services to be provided in future [post June 2015], service tax rate is 14%.

### **Impact of subsuming cess**

FA 2015 has done away with the Cess, both under central excise and service tax. The provisions of Rule 3 of the CENVAT Rules permit utilisation of CENVAT credit of Excise duty/ Service tax for payment of Cess but not vice versa. With no Cess on Excise duty/service tax, the manufacturer/service provider will merely accumulate such credit.

There has been a notification no.12/2015-CE(NT) where it has clarified that the ED/SHE cess on inputs/input services/capital goods received on or after 1.3.2015 could be set off to pay excise duty by a manufacturer of final product. Similarly that balance 50% of ED and SHE cess on capital goods received in the factory of manufacture of final product in 2014-15 can be utilized to pay excise duty.

There is no clarity on the past period accumulated credit. A similar issue, could arise under service tax, when cesses are subsumed wef 1.6.2015. Where the customer has substantial accumulated credit could examine legal validity and take a call on set off of such accumulated credit of cess against the service tax payable post 1.6.2015 under intimation to department. It is hoped there would be some clarification issued in this regard.

### **Frequently Asked Questions:**

***Q. What is the effective rate of service tax that I need to charge on Invoice being raise today for the completed service?***

Comments: 12.36%

***Q What is the effective rate of service tax that I need to charge on the advance received today for the service to be provided after 01.06.2015?***

Comments: In case you also raise the invoice prior to 30.06.2015 (law provides time upto 30days from the date of receipt of the advance) then you can charge 12.36% in case the invoice is raised after 01.06.2015 then the same needs to be charged at 14%.

***Q. Work is assigned in the month of May 2015 and 90% of the work is completed as on 31<sup>st</sup> May 2015, no advance is received, Invoice can be raised only on full completion of service in the month of June 2015. What is the service tax needs to be charged?***

Comments: Since the Invoice would be raised in the month of June 2015 and payment would be received in the month of June 2015 14% would be applicable.

***Q. I am a builder paying service tax on earlier of receipt of money or completion of milestone as per the contract, how should I apply the rate charge provision?***

Comments: For the advance received prior to milestone and if the invoice is raised prior to 31<sup>st</sup> May 2015 the applicable rate of tax to that extent shall be 12.36% and all further milestone and payments shall be liable at 14%. For the milestone falling prior to 31<sup>st</sup> May 2015 and if the invoice has raised prior to such date 12.36% would apply to the extent of such amount as mentioned in such milestone, for the balance milestones amounts 14% would apply.

***Q. I am a private limited company need to pay service tax on goods transport agency service under reverse charge mechanism? How to apply this rate change provision?***

Comment: Point of taxation in case of service tax payment under reverse charge by the recipient of the service is governed by Rule 7 of the POTR, 2011 which has a overriding effect of Rule 4 and hence service tax prevalent as on the date of payment to vendor needs to be adopted however if the payment has not been made in 3 months then the rate prevalent as on the date after the expiry of 3 months from the date of Invoice needs to be adopted. For all the payment made before 31.05.2015 service tax would be applicable at 12.36% and for the payments made thereafter, 14% rate would be applicable for all the invoice received date prior to 28<sup>th</sup> February 2015 on which the payment is still pending would be liable at the rate of 12.36% and for the Invoice raise from 1<sup>st</sup> March 2015 onwards for which the payment is pending as on 31<sup>st</sup> May 2015 will be liable at the rate of 14%.

***Q. Do we need to charge Education cess and Secondary and Higher Education Cess on Service Tax w.e.f 01.06.2015?***

Comments: No, the levy of the same gets abolished from June 1, 2015 and the same need not be charged from June 1, 2015.

***Q. Do we need to charge Swach Bharat Cess on Service Tax?***

Comments: No, Swach Bharat cess shall be applicable from the date to be notified. It has not been notified yet. Therefore, it shall not be applicable from June 1, 2015

**Conclusion**

The service providers may need to ensure that bills in respect of the completed services and advance receipts is raised and service tax is paid in next month/ month next to quarter. This would ensure that there are no demands for differential service tax, citing increase in service tax rate to take effect from 1.6.2015. The customer may also not have any objection especially those who are unable to avail the credit.