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Track the Service Tax ! ?

1.What is Service Tax?

It is a tax levied on the transaction of certain specified services by the Central Government under the Finance Act, 1994. It is an indirect tax, which means that normally the service provider pays the tax and recovers the amount from the recipient of taxable service.

2.Can recipient of service be also asked to pay service tax?

In certain cases Government may shift the liability of payment of service tax to the receiver of service as a measure of administrative convenience. It is often referred to as 'reverse charge' in common language.

3.Who is liable to pay Service Tax?

Generally, the 'person' who provides the taxable service on receipt of service charges is responsible for paying the Service Tax to the Government (Sec.68 (1) of the Act), except the following:

(i) the recipient of such services in India is liable to pay Service Tax, where taxable services are provided by foreign service providers with no establishment in India;

(ii) the Service Tax is to be paid by the Insurance Company for the services in relation to Insurance Auxiliary Service by an Insurance Agent.

(iii) the person who pays or is liable to pay freight for the taxable services provided by a Goods Transport Agency for transport of goods by road, is liable to pay Service Tax, if the consignor or consignee falls under any of the seven categories viz. (a) a factory (b) a company (c) a corporation (d) a society (e) a co-operative society (f) a registered dealer of excisable goods (g) a body corporate or a partnership firm

(iv) the taxable services provided by Mutual Fund Distributors in relation to distribution of Mutual Fund. In this regard, Service Tax is to be paid by the Mutual Fund or the Asset Management Company receiving such service.

Refer: Sec. 68(2) of the Act read with Rule 2(d) of the Service Tax Rules, 1994.

4.Under which authority service tax is levied?

Vide Entry 97 of Schedule VII of the Constitution of India, the Central Government levies service tax through Chapter V of the Finance Act, 1994. The taxable services are defined in Section 65 of the Finance Act, 1994. Section 66 is the charging section of the said Act.

5. What are the taxable services?

There are 100 services are subject to Service tax. Please refer the finance act 1994 for the detailed list.

We have to mention the Accounting Heads as specified in the act on the tax payment documents (GAR-7 or TR-6), while depositing the Service Tax and other related dues in the banks.

6. How to decide whether Service Tax is payable by a person?

A. If you are engaged in providing service to your customer, please check:-

(i) Whether the service rendered by you is falling under the scope of any of the taxable services stated under finance act 1994

ii) Whether there is a general or specific exemption available for the category of service provided under any notification.

(iii) Whether you are entitled to the value based exemption available for small service

(iv) Whether the service charges were received for the services provided or to be provided.

In case the service provided by a person falls within the scope of the taxable services and if such service is not fully exempted, the service tax is payable on the value of the taxable service received subject to the eligible abatements,

B. If you are availing the services of the service provider, please check:-

a. Whether the service received by you is falling under the scope of any of the services where the recipient of the service is liable to pay Service Tax in terms of Section 68(2) of the Act read with Rule 2(d) of the Service Tax Rules, 1994

b. In case the service received by recipients of such service is falling under the scope of any of the taxable services defined under section 65 of the Finance Act, 1994, the recipients of the service shall pay Service Tax having regard to the exemptions / abatements admissible, if any.

c. Please note that the value based exemption for small scale service providers under Notification No.6/2005 ST dated 01.03.2005 effective from

01.04.2005 is not admissible to such recipients of taxable services.

7.What is the rate of Service Tax?

At present, the rate of Service Tax is 12%, payable on the "gross value of taxable service". In addition to this, Education Cess is payable at the rate of 3% on the Service Tax amount.

(Total: 12.36% on the value of the taxable service). –Refer section 66 of the Finance Act, 1994 (12% Service Tax), Section 85 of the Finance Act, 2004 (2% Education Cess) and Section 126 of the Finance Act, 2007(1% Secondary and Higher Education Cess).

The rate of tax may change during Annual Budget by a Finance Act from time to time

8.What is meant by "value of taxable service"?

i. Normally, the "value of taxable service" means, the gross amount received by the service provider for the taxable service provided or to be provided by him. Section 67 of the Finance Act, 1994 read with Service Tax (Determination of Value) Rules, 2006, has to be followed to arrive at the taxable value.

ii. For certain services, a specified percentage of abatement is allowed from the gross amount collected for rendering the services, subject to the conditions, inter alia, that CENVAT Credit has not been availed by the service provider and cost of goods sold in the process of providing the subject service is not deducted in terms of Notification No. 12/2003-ST dated 20.6.2003.

iii. There is also a composition scheme for 'works contract service', where the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to 2% of the gross amount charged for the works contract.

The gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, paid on transfer of property in goods involved in the execution of the said works contract.

9.What are the statutes governing the taxation relating to Service Tax?

The Statutes governing the levy of Service Tax are as follows:

(i) The Finance Act, 1994 - Chapter V - Section 64 to 96

This chapter extends to the whole of India except the State of Jammu and Kashmir.

(ii) The Finance Act, 2004 Chapter VI - for levy of Education Cess @ 2% on the Service Tax.

(iii) The Service Tax Rules, 1994.

(iv) The CENVAT Credit Rules, 2004.

(v) The Export of Service Rules, 2005.

(vi) The Service Tax (Registration of Special categories of persons) Rules, 2005.

(vii) The Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 (with effect from 19th April, 2006) – Notification No. 11/2006-ST dated 19.4.2006.

(viii) The Service Tax (Determination of Value) Rules, 2006 (with effect from 19th April, 2006) – Notification No. 12/2006-ST dated 19.4.2006.

(ix) Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007- Notification No. 32/2007-Service Tax dated 22nd May, 2007.

(x) In addition to the above, certain provisions of the Central Excise Act, 1944 are also made applicable for Service Tax matters (Section 83 of the Finance Act, 1994).

10. Is there any exemption from payment of service tax to Diplomatic Missions for official use and individuals and their family members posted in a Diplomatic Mission?

Yes, exemption from payment of service tax relating to all taxable services is available to Diplomatic Missions for official use of services as well as for the personal use or for the use of the family members of diplomatic agents or career consular officers posted in a foreign diplomatic mission or consular post in India, by notifications 33/2007-ST dated 23rd May, 2007 and 34/2007-ST dated 23rd May, 2007 respectively, but subject to procedures specified under those notifications.

Courtesy : G.V.NAIK , Mumbai Director General , Directorate General of Service Tax

" To be continued under Tax blues on Thursday 21 February 2008.....
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