

## **VS ASSOCIATES**

**(Company Secretaries)**

110 Shri Krishna Business Center,  
3/93 Lalita Park , Laxmi Nagar, Delhi-110092

Ph: 011- 43026621 Fax: 22456650

Cell: +91 9971072221, 9871287637

E-mail: vijayatrey@yahoo.com , vijayatrey@gmail.com

Website: www. vsassociate.com

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### **SERVICE TAX**

#### **Existing scheme for levy, assessment & collection of Service Tax in India**

#### **Levy and assessment**

Service tax is levied on specified taxable services and the responsibility of payment of the tax is cast on the service provider. System of self-assessment of Service Tax Returns by service tax assesseees has been introduced w.e.f. 01.04.2001. The jurisdictional Superintendent of Central Excise is authorized to cross verify the correctness of self assessed returns. Tax returns are expected to be filed half yearly.

Central Excise officers are authorized to conduct surveys to bring the prospective service tax assesseees under the tax net. Directorate of Service Tax at Mumbai over sees the activities at the field level for technical and policy level coordination.

#### **Legal provisions**

The provisions relating to Service Tax were brought into force with effect from 1<sup>st</sup> July 1994. It extends to whole of India except the state of Jammu & Kashmir. The services, brought under the tax net in the year 1994-95 ,are as below:

- (1) Telephone
- (2) Stockbroker
- (3) General Insurance

The Finance Act (2) 1996 enlarged the scope of levy of Service Tax covering three more services, viz.,

- (4) Advertising agencies,
- (5) Courier agencies
- (6) Radio pager services.

But tax on these services was made applicable from 1<sup>st</sup> November, 1996.

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The Finance Acts of 1997 and 1998 further extended the scope of service tax to cover a larger number of services rendered by the following service providers, from the dates indicated against each of them.

- |      |                              |                                                                                                           |
|------|------------------------------|-----------------------------------------------------------------------------------------------------------|
| (7)  | Consulting engineers         | (7 <sup>th</sup> July, 1997)                                                                              |
| (8)  | Custom house agents          | (15 <sup>th</sup> June, 1997)                                                                             |
| (9)  | Steamer agents               | (15 <sup>th</sup> June, 1997)                                                                             |
| (10) | Clearing & forwarding agents | (16 <sup>th</sup> July, 1997)                                                                             |
| (11) | Air travel agents ---        | (1 <sup>st</sup> July, 1997)                                                                              |
| (12) | Tour operators               | (exempted upto 31.3.2000 Notification No.52/98, 8 <sup>th</sup> July, 1998, reintroduced w.e.f. 1.4.2000) |
| (13) | Rent-a-Cab Operators         | (exempted upto 31.3.2000 Vide Notification No.3/99 Dt.28.2.99, reintroduced w.e.f. 1.4.2000)              |
| (14) | Manpower recruitment Agency  | (1 <sup>st</sup> July, 1997)                                                                              |
| (15) | Mandap Keepers               | (1 <sup>st</sup> July, 1997)                                                                              |

The services provided by goods transport operators, out door caterers and pandal shamiana contractors were brought under the tax net in the budget 1997-98, but abolished vide Notification No.49/98, 2<sup>nd</sup> June,1998.

The Service Tax is leviable on the 'gross amount' charged by the service provider from the client, from the dates as notified and indicated above.

Government of India has notified imposition of service Tax on twelve new services in 1998-99 union Budget. These services listed below were notified on 7<sup>th</sup> October, 1998 and were subjected to levy of Service Tax w.e.f. 16<sup>th</sup> October, 1998.

- (16) Architects
- (17) Interior Decorators

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- (18) Management Consultants
- (19) Practicing Chartered Accountants
- (20) Practicing Company Secretaries
- (21) Practicing Cost Accountants
- (22) Real Estates Agents/Consultants
- (23) Credit Rating Agencies
- (24) Private Security Agencies
- (25) Market Research Agencies
- (26) Underwriters Agencies

In case of mechanized slaughter houses, since exempted, vide Notification No.58/98 dtd. 07.10.1998, the rate of Service Tax was used to be a specific rate based on per animal slaughtered. In the Finance Act'2001, the levy of service tax has been extended to 14 more services, which are listed below. This levy is effective from 16.07.2001.

- (27) Scientific and technical consultancy services
- (28) Photography
- (29) Convention
- (30) Telegraph
- (31) Telex
- (32) Facsimile (fax)
- (33) Online information and database access or retrieval
- (34) Video-tape production
- (35) Sound recording
- (36) Broadcasting
- (37) Insurance auxiliary activity

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- (38) Banking and other financial services
- (39) Port
- (40) Authorised Service Stations
- (41) Leased circuits Services

In the Budget 2002-2003, 10 more services have been added to the tax net which are listed below. This levy is effective from 16.08.2002.

- (42) Auxiliary services to life insurance
- (43) Cargo handling
- (44) Storage and warehousing services
- (45) Event Management
- (46) Cable operators
- (47) Beauty parlours
- (48) Health and fitness centres
- (49) Fashion designer
- (50) Rail travel agents.
- (51) Dry cleaning services.

and these services have been notified on 1-8-2002 and were subject to levy of Service Tax w.e.f. 16-8-2002.

It is expected that in view of more & more services brought under the Service Tax net, the service tax revenue would now form a major part in Govt. Revenue earnings.

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In the Budget 2003-04 seven more services along with extension to three existing services have been added to the tax net which are listed below. The levy of service tax on these services is effective from 1st July, 2003.

- (52). Commercial vocational institute, coaching centres and private tutorials
- (53). Technical testing and analysis (excluding health & diagnostic testing) technical inspection and certification service.
- (54). Maintenance & repair services
- (55). Commission and Installation Services
- (56). Business auxiliary services, namely business promotion and Support services (excluding on information technology services)
- (57). Internet café
- (58). Franchise Services

The rate of Service Tax was increased from 5% to 8% on all the taxable services w.e.f. 14.5.2003.

In the Budget 2004-05, 10 more services have been introduced in the service tax net along with reintroduction of three existing services as follows:

- (59) Transport of goods by road (earlier Goods Transport Operators service re- introduced).
- (60) Out door Caterer's service (re-introduced)
- (61) Pandal or Shamiana service (re-introduced)
- (62) Airport Services
- (63) Transport of Goods by Air Services
- (64) Business Exhibition Services

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(65) Construction Services in relation to Commercial or Industrial Building Construction Services in relation to Commercial or Industrial Building

*In the Budget 2005-06, 9 more services have been introduced in the service tax net as follows with effect from 16.06.2005:*

- (66) Intellectual Property Services
- (67) Opinion Poll Services
- (68) TV or Radio Programme Services
- (69) Survey and Exploration of Minerals Services
- (70) Travel Agent's Services other than Rail and Air travel agents
- (71) Forward Contract Services
- (72) Transport of goods through pipe line or other conduit Services.
- (73) Site preparation & clearance Services
- (74) Dredging Services
- (75) Survey & Mapmaking Services
- (76) Cleaning Services
- (77) Membership of Clubs & Associations
- (78) Packaging Services
- (79) Mailing list compilation & Mailing Services
- (80) Construction Services in relation to Residential Complexes

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The levy of service tax on these services is effective from 10<sup>th</sup> September, 2004 and the rate of service tax has been enhanced to 10% from 8%. Besides this 2% Education Cess on the amount of service tax has also been introduced. Thus the effective service tax rate is now 10.2% including Education Cess.

### Administrative mechanism.

Service Tax is administered by the Central Excise Commissionerates working under the Central Board of Excise & Customs, Department of Revenue, Ministry of Finance, Government of India. **The unique feature of Service Tax is reliance on collection of tax, primarily through voluntary compliance.**

Government has from the very beginning adopted a flexible approach concerning Service Tax administration so that the assesseees and the general public gain faith and trust in the tax measure so that voluntary tax compliance, one of the avowed objectives of the Citizens Charter, is achieved. Substantive and procedural liberalization measures, adopted over the years for this purpose, are clear manifestations of the above approach. Following are some of the measures adopted in that direction:

- (i) Under Section 67 of the Finance Act, 1994, Service Tax is levied on the gross or aggregate amount charged by the service provider on the receiver. However, in terms of Rule 6 of Service Tax Rules, 1994, the tax is permitted to be paid on the **value received**. This has been done to ensure that providers of professional services are not inconvenienced, as in many cases, the entire amount charged/billed may not be received by the service provider and calling upon him to pay the tax on the billed amount in advance would have the effect of asking him to pay from his own pocket. It would also make the levy a direct tax, which is against the very scheme of Service Tax.
- (ii) Corporate assesseees are given the liberty to pay tax on the value of taxable service, provided by them in a month, by the **25<sup>th</sup>** of the following month to enable them to finalize the accounts. Further, the individual assesseees are required to pay the levy only **once in a quarter**.
- (iii) The process of registration of assesseees has been considerably simplified.
- (iv) No separate accounts have been prescribed for the purposes of Service Tax. It has been provided that accounts being maintained by the assesseees under any other law in force would be sufficient. This has placed the Department at considerable inconvenience to itself, so as to minimize difficulties for the assesseees.
- (v) The Finance Act'2001 has introduced self assessment for service tax returns; thereby sparing the assesseees from the rigours of routine scrutiny and assessment.
- (vi) Frequency of filing the returns is minimized. Filing of Statutory return has been made half yearly and

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by the 25<sup>th</sup> of the month following the half-year. This is in replacement of the monthly/quarterly returns prescribed earlier.

- (vii) Penal provisions do exist in respect of Service Tax also. Failure to obtain registrations, failure to pay the tax, failure to furnish the prescribed returns, suppression of the correct value of the taxable services and failure to comply with notice do attract penal provisions as prescribed. But, it is specifically provided that no penalty is imposable on the assessee for any of the above failures, if the assessee proves that there was reasonable cause for the failure. This provision has been inserted to take care of the genuine difficulties of the new assessees.
- (viii) Government's liberal attitude is more evident in the case of prosecutions. Hardly will there be any tax statute with revenue implications, where prosecutions of the offenders are not provided. In the case of the Service Tax also it was thought of and sections 87 to 93 of the Finance Act, 1994, did provide for prosecution of offenders. However, these provisions were subsequently withdrawn as a noble gesture towards the assessees.
- (ix) Service Tax Credit Rules, 2002, have been replaced by the CENVAT Credit Rules, 2004, introduced by the Finance Act, 2004, where under CENVAT credit has been extended across the sectors i.e. goods and services.

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