

## Service Tax Answer sheet

Q. 1 – Explain the provision relating to registration – Payment on Service Tax and Interest on payment of delayed Service tax. (*April 2006, March 2008*)

### Registration(Service Tax):

1. Persons who must mandatory obtain registration:
  - (1) Every person liable to pay service tax
  - (2) An Input Service Distributor
  - (3) Every provider of Taxable service whose aggregate value of taxable service in a financial year exceeds Rs 9 lacs (w.e.f. 01/04/2008) as the case may be

Here every person means who are providing taxable service. Here Input Service Distributor means who is defined in Rule 2 (m) of the Cenvat Credit Rules, 2004 and registered under Service Tax (Registration of special category of persons) Rules, 2005. Here although the threshold exemption limit increased to Rs 10 lacs for the payment of service tax but registration is mandatory whenever crossing taxable turnover of Rs 9 lacs in a financial year.

2. Form ST-1-

Along with the application form ST-1 to the designated Superintendent of Central Excise in duplicate, following documents should be enclosed. (a) Proof of Residence (b) Nature of constitution of the service tax payer. (c) Xerox copy of Income Tax PAN Card or letter (d) Power of attorney in the name of person who is authorized.

3. This application is made within 30 days from the date on which levy of service tax is brought into force in respect of the relevant services. When any person commences his new business as provider of any taxable service must to make such application within 30 days from the date of commencement of business
4. Department is supposed to give Registration Certificate in the form ST-2 immediately (within 7 days at the most) on submission of the application in form ST1. Service Tax Registration number is typed on the ST-2 certificate. This Registration Number must always be written on any correspondence with the department or any challans, returns or service tax invoices etc.
5. Centralized Registration: Certain assesseees provide services from more than one office premises. If each individual office or premise prefers to raise bill, pay service tax and file returns individually then that office should get independent registration from his jurisdictional Superintendent.  
If services are to be provided from different offices but billing is to be done from one office centrally then there is a Rule 4(3) of Service Tax Rules. Now the centralized registration is done by Directorate General of Service Tax (DGST).

6. Registration Certificate: Department is supposed to give Registration Certificate in the form ST-2 immediately (within 7 days at the most) on submission of the application in form ST1. Service Tax Registration number is typed on the ST-2 certificate. This Registration Number must always be written on any correspondence with the department or any challans, returns or service tax invoices etc.

## **PAYMENT OF SERVICE TAX**

Section 68 (1) of the F.A. 1994 stipulates that any person who is made liable to pay service tax whether in the capacity as Service provider or in the capacity of service receiver (in certain specified services) has to pay the amount of service tax and education cess + Higher Education Cess at the rates announced from time to time.

In almost every budget the service tax rates are changing. That explains initially it was 5 % then increased to 8 % then increased to 10 % and as on 15/05/2007 it is 12%. The service tax rate is always decided and announced under Section 66.

Government also specifies the manner and due date in which the service tax and education cesses is to be paid. It is essential that in the Service Tax invoice/bill or any cenvatable documents, the actual value of taxable service, rate of service tax, rate of education cess, amount of service tax and amount of education cess is shown separately and clearly. If any goods are consumed in providing the service value of such goods also should be shown separately in that invoice. Or there should altogether separate sales invoice for the sale of goods.

**Cum Tax price:** If no service tax is shown separately and the Invoice/Bill says that it is inclusive then the assessable value for paying service should be worked out backwards as per amended section 67.

**Caution:** When the service is declared as taxable, the service provider (or such other persons who is supposed to pay the tax) must pay Service Tax irrespective of the fact whether the service receiver pays it or not to the service provider.

### **Method of Paying Service Tax:**

Service tax is payable either monthly or quarterly before 5<sup>th</sup> of following month or 5<sup>th</sup> of the month following the quarter depending upon the nature of the assessee as per relevant rules.

Amount of service tax can be paid by GAR 7 challans in the nominated bank wholly Or partly by GAR 7 and partly by debit entry in Cenvat Credit balance **lying on the last date of previous month.**

**E payment mandatory:** Now Government has introduced mandatory system of E-payment for large tax paying units (those who have paid service tax in cash more than Rs 50 lacs in a financial year). From 01/03/2007 onwards e-payment facility is available to every taxpayer. In fact other than LTU this is optional. Board has issued a circular which gives lot of information and hence it reproduced here below

**Mandatory E-Payment of Service Tax for major assesseees – reg.**

Circular No. 88/06/2006\_Dated 6th November, 2006 (F. No. 137/127/2006-CX.4)  
Addressed to all Chief Commissioners/Commissioners of Central Excise

The e-payment of service tax has been made mandatory w.e.f. 1.10.2006, for all assesseees who has paid Rs 50 lakhs or more in the preceding financial year or in the current financial year.

2. It has been brought to the notice of the Board that there are certain problems like procedural delays in opening of account in designated banks and issue of user's-id and password by banks for internet banking; delays in passing a resolution by the Board of Directors of a company to authorize any person for making e-payment ( a requirement stipulated by banks for internet banking); systems failure, particularly at bank's end, are causing some difficulties to the assessee in complying with the requirement of mandatory e-payment of service tax. Keeping in view the systemic and procedural problems during initial phase of implementation of this scheme, the field formation may take a lenient view in such case where there is reasonable cause for failure to make mandatory e-payment and penal action may not be initiated. At the same time, such assesseees should expeditiously complete the procedural formalities for availing internet banking facility from designated banks and comply with the requirement of mandatory e-payment.
3. Certain doubts have also been raised as regards the interpretation of qualifying amount of service tax of Rs 50 lakhs paid by the assessee, as discussed below.
  - 3.1 For a person providing taxable service from more than one premises, where each such premises is separately registered with the department for payment of service tax, the criterion of Rs 50 lakhs would apply to each registered premises individually, as each registered premises is separately an assessee in terms of law. Similar is the situation in the case of a person paying service tax on taxable service received by him. However, in case of a Large Taxpayer (LTU), the cumulative service tax paid by all registered premises of such Large Taxpayer will be taken into account for satisfaction of criterion of payment of service tax amount of Rs 50 lakhs.

- 3.2. If a person pays service tax from a registered premises for both the taxable services provided by him and the taxable service received by him on which he is liable to pay service tax, the cumulative service tax paid, i.e., service tax paid on taxable service provided from and service tax paid on taxable service received in such registered premises would be taken into account for the purposes of satisfaction of criterion of payment of service tax amount of Rs 50 lakhs.
- 3.3 Further, for the purposes of calculation of this amount of Rs 50 lakhs the total service tax paid by cash plus CENVAT credit would be taken into account as service tax paid amount. Therefore, if an assessee has paid service tax of Rs 50 lakhs (in preceding financial year or the current year) in cash plus CENVAT credit, such assessee, if he pays any further service tax in cash, would be required to make mandatory e-payment.

### Interest on payment of delayed payment of Service tax

1. Section 68 (1) of the F.A. 1994 stipulates that any person who is made liable to pay service tax whether in the capacity as Service provider or in the capacity of service receiver (in certain specified services) has to pay the amount of service tax and education cess + Higher Education Cess at the rates announced from time to time.
2. If the Taxable service provided by the assessee is of Proprietary or Partnership in nature then Service tax is payable before 5<sup>th</sup> of following month following the quarter [Example: For a month of April to June it should be payable before 5<sup>th</sup> of July]
3. If the Taxable service provided by the assessee is of Private Limited Or Limited in nature then Service tax is payable before 5<sup>th</sup> of following month as per relevant rules. [Example: For a month of April it should be payable before 5<sup>th</sup> of May]
4. If any person fails to pay the service tax or delayed for the payment of service tax as case may be then he is liable to pay the Interest on such delayed payment as per the specified rate.
5. **Section 75** - Interest on delayed payment of service tax: [The rate of interest is fixed at 13 %p.a. vide Notification No. 26/2004-ST dated 10/9/2004]

Q. 2 – Explain Classification of taxable Service under Service Tax (*March 2008, April 2006*)

Classification of taxable Services:

1. There are plenty of services where the statutory definitions are overlapping
2. Taxable services shall be determined according to the terms of the sub-clauses of clause (105) of section 65 as well as the definition of taxable service.
3. Composite services consist of a combination of different services which can not be classified in the manner specified in clause (a) shall be classified as if they consisted of a service which gives them their essential character, in so far as this criterion is applicable
4. When a service can not be classified in either of the manner specified in clause (a) or clause (b), it shall be classified under the sub-clause, which occurs first among the sub-clauses which equally merit consideration
5. Any service (transaction) can be taxed only once, even if it appears to fall under two or more categories. One Service provider may provide more than one taxable service. In such cases, the service provider should get only one Registration for all services. If after getting registration, he should get proper endorsements on the existing certificate from the concerned Superintendent and should pay service tax on each taxable service separately under proper heading meant for it but he can file a common ST3/ST3A return with split up of taxable services and tax paid service wise versa.
6. The guiding principle to decide the classification of a particular service should be that a service should be categorized as such which is more specific under the category. For Example A Hotel may rent out a Conference Hall for an official conference where lunch is also served. Now whether such service falls under the 'Mandap Keeper' and exempted from tax vide Notification. No. 12/2001 - Service Tax dated 20.12.2001, or it will fall under the category of 'Convention Services' and charged to service tax. Between the two competing categories, in this case, the more specific one would be 'convention service' because 'Mandap keeper' includes official, social as well as business functions whereas 'convention service' covers conventions like official functions. Therefore this service will be categorized under the 'convention' and liable to a pay Service Tax.
7. In each case where the problem of classification arises, the proper Central Excise Officer has to decide on merits as to which is more specific category and charge tax accordingly

Q. 3 – Discuss Penalty under Service Tax (*March 2008, April 2006*)

Penalty under Service Tax

1. If any person fails to make an application for registration under S 69, he shall be liable to pay penalty of Rs. 1000/- as per S.77. This penalty is mandatory and can not be avoided
2. Section 76 as amended by Finance (No.2) Act, 2004. The penalty is Rs. 200/- per day. This is very heavy
3. **Section 75** - Interest on delayed payment of service tax: [The rate of interest is fixed at 13 %p.a. vide Notification No. 26/2004-ST dated 10/9/2004]
4. **Section 75A** - Penalty for failure of registration [Comments: This section is omitted by Finance Act 2004 w.e.f. 10/9/2004 Meaning that from 10/9/2004 there shall not be any penalty for late registration under this Section but there can be levied penalty under amended Section 77 which can be up to Rs. 1000/-]
5. **Section 76** - Penalty for failure to pay service tax. - This Section is substituted with a new section 76 w.e.f. 18/4/2006 by F.A. 2006 to provide that penalty at the rate of two hundred rupees for every day of failure to pay service tax or at the rate of two per cent. of the tax per month, whichever is higher, shall be imposed for failure to pay service tax by the due date.
6. **Section 77** - Penalty for contravention of any provision for which no penalty is provided. (This penalty is maximum Rs. 1000/-). [Comment: This section is substituted by Finance Act, 2004 to read as under “Whoever contravenes any of the provisions of this Chapter or any rule made thereunder for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to an amount not exceeding one thousand rupees”]
7. **Section 78** - Penalty for suppressing value of taxable service. [Comment: This section is substituted by Finance Act, 2004 w.e.f. 10/9/2004.]
8. **Section 79** - Penalty for failure to comply with notice. [Comment: This section is omitted by Finance Act, 2004 w.e.f. 10/9/2004.]
9. **Section 80** - Penalty not to be imposed in certain cases. This is important section and reads "Notwithstanding anything contend in the provisions of Section 76, Section 77 or Section 78, no penalty shall be imposable on the assessee for any failure referred to in the said provisions, if the assessee proves that there was reasonable cause for the said failure. [Comment: This section is amended by Finance Act, 2004 w.e.f. 10/9/2004.]

10. **Section 81** - Offences by Companies. [Comment: This section is omitted by Finance Act, 2004 w.e.f. 10/9/2004.]

Q. 4 – Discuss Charge of Service Tax (*March 2008*)

### Charge of Service Tax:

**Section 66A** (Charge of service tax on services received from outside India) is a new section inserted w.e.f. 18/4/2006 by F.A. 2006, to levy service tax on taxable services provided or to be provided by a person, who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and received by a person who has his place of business, fixed establishment, permanent address or usual place of residence, in India under reverse charge method. **According to this section Service Tax is payable by Service Receiver in India.**

The taxable service provided by a person, having his place of business, fixed establishment, permanent address or usual place of residence, in a country other than India, and which is received by a hotel located in India, in relation to booking of an accommodation in the said hotel, for a customer, who has his place of business, fixed establishment, permanent address or usual place of residence, in a country other than India, from the whole of the service tax leviable thereon

*Explanation.* – The expression “hotel” means a place that provides boarding and lodging facilities to public on commercial basis.

[Inserted vide Notification No. 4/2008 – ST dated 1/3/2008]

**Section 67** (valuation of taxable services for charging service tax). This section is completely substituted with a new section 67 by F.A. 2006, effective from 18/4/2006 to provide for determination of value of taxable service in cases where the consideration for the provision of service is in money, or where the consideration is not wholly or partly consisting of money or where the consideration is not ascertainable.

[Comments: This section should be read with the new set of Rules “Services Tax (Determination of value) Rules 2006.]

Q. 5 – Explain PAYMENT OF SERVICE TAX (March 2008,)

**PAYMENT OF SERVICE TAX**

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#### Q. 6 Explain Valuation of Taxable service(2007)

##### Valuation of Taxable service

**Self Assessment system:** For Service Tax also there is Self Assessment Procedure just like Central Excise. Therefore, it is the responsibility of the assessee to determine his own service tax liability and follow other procedures. This procedure is given below - step by step.

##### **Classification of Taxable service:**

This is the first important step supposed to be taken at the time of application for Service Tax registration. Even then if after registration there are changes in the definitions of taxable service or introduction of new services in service tax net, then it always safe to check classification of your service (s) provided or the services received if you are liable to pay service tax as service receiver. Author recommends that this exercise must be done twice in a year – first when Finance Bill is presented (Budget day) and second when the Finance Bill is converted in to Finance Act which is generally in May/June if Budget day is in month of February. This classification check may perhaps help you in either saving by exemptions allowed or start paying it if it becomes taxable and exemption is withdrawn.

**Service Tax Invoice:** Refer Rule No. 4A of Service Tax Rules, 1994. This rule mentions that person **providing** taxable service **must prepare** proper **service tax invoice within 14 days from** the date of completion of the service **or from** the date of receipt of any payment towards such service. The **invoice** must be signed by authorised person and **shall be serially numbered**. It must contain following **information** (i) the name, address, and registration number of the service provider (ii) name and address of the service receiver (iii) description, classification of the service. (iv) value of taxable service (v) the amount of **service tax payable** [Comments "not mentioned in the rule but it is essential to write amount of both Education Cess payable separately]. (vi) The designation and address Divisional AC/DC. This invoice is very important because on that basis only the service receiver can take credit of service tax.

##### **Precaution to be taken**

Suggested that to prepare extra columns to record amount of payment received and date of its receipt on at least own copy. This is useful while paying service tax correctly and also the service receiver can take credit only when he makes the payment to service provider.

Maintain proper records of (i) excisable goods sold if any during providing the service because in certain services service tax liability can be saved. (ii) record of excisable goods procured and consumed. (iii) Cenvat credit register and such other records depending upon the magnitude of the organization and its volume of business.

**Determine Value of Taxable Services** - Value of taxable service is generally the gross amount charged to the customer. While doing so each assessee should see which are exemptions, inclusions and exclusions. There are a number of circulars flowing in from the Board on this issue. Better to see either CBEC Website regularly or be in touch with good consultant before filing half yearly return. Presently Service Tax Value of Determination Rules, 2006 is in existence which should be read with S.67 Finance Act, 1994 to determine the correct taxable value, because the payment of service tax is dependable on the value of taxable service

**Rate of Service Tax** - check what it is the rate of service tax at present because this rate goes on changing by separate notifications. As on 1/1/2004 rate was 8 %, from 10/9/2004 it is increased to 10 %. Also Education Cess is to be paid at 2 of 10 % w.e.f. 10/9/2004. Now from 19/04/2006, Service Tax rate is 12% plus 2% Education Cess equals to 12.24%. From 11/05/2007 (the date of assent of the Finance Act, 2007 by the President of India) overall service tax rate is 12% + 2% education cess + 1% Higher and Secondary Education cess = 12.36%. Calculate total Service Tax and education cess payable.

**Find out how much credit balance is available** in Cenvat credit register and credit balance in education cess at the end of the month or at the end of the quarter as is applicable for the assessee. Use that credit balance first to discharge service tax liability. The balance amount should be paid by GAR-7 challans (Before 1/4/2007 TR6 challan was in use and after that GAR 7 challan is to be used). This GAR-7 Challan should be filed in single copy [Old TR6 challan was to be filed in quadruplicate - Two copies were retained by the bank and two copies were given back to the assessee]. It is suggested that the single copy of GAR-7 challan should be prepared and to be submitted to the designated bank and receive the Cyber receipt thereof. [Bank issues 20 digit CIN No. on your GAR 7 copy. Please insist upon that.] Do not forget to write proper accounting codes in GAR-7 challans. These codes are also available in the file No (list of all taxable services of this folder). When TR6 challan was in use, one copy of this TR6 was required to be filed with the half yearly return and other copy to be retained by assessee and preserved for minimum five years. If the payment is made by GAR-7 challan then the Cyber receipt should be enclosed to the periodical returns.

[Suggestion – since now only single copy of GAR 7 challan is in use better to take photocopy of it and give that photo copy if demanded by any one including Excise officer]

**Use of Cenvat Credit:** Remember Cenvat Credit to be used for payment of Service Tax and Education Cess Credit should be used for payment of education cess only. Recently under notification No 27/2007 CE(NT) dt 12/05/2007 it is mentioned that primary Education Cess is to be used for the payment primary education cess and Higher and secondary education cess is to be used for the payment Higher and Secondary education cess only. If there are no sufficient credit balances then payment of Education Cess must be made in cash by GAR-7 challan.

**Also please remember** that amount of interest, fine, penalty etc. should be paid in cash by GAR-7 challan **and never by debit in CENVAT** credit account.

**What if you have detected that excess service tax has been paid by mistake or for any reasons?**

See following rules of service Tax Rules 1994 carefully –

Rule 6 is main rule. Sub-rule (1) says that service tax should be paid on the payments received (not on the bill value). The proviso under it provides the time table. Sub-rule (2A) says that the date of depositing cheque is the date of payment if the cheque is en-cashed.

Sub-rule (3) is very important in a sense that here adjustment of excess payment is allow but this is not in every case. If service tax is paid but service is not actually provided either partly or fully for any reasons then only the service tax paid becomes excess and hence adjustable on prorata basis against the service tax liability for the subsequent period. Here also important condition is that the assessee should refund the value of service and service tax to the service receiver and not otherwise.

Sub-rule (4) is another tool if you are unable to determine your correct service tax liability. Here you can pray for provisional assessment to the Jurisdictional A.C./D.C.

Sub-rule (4A) of Rule 6 is substituted from 1/3/2007. Here you are allowed to adjust the excess amount of service tax paid while discharging liability for the succeeding month or quarter. Here also conditions are prescribed in sub-rule 4B. Therefore sub-rule 4A and 4B read together.

**Filing of Returns:** Do not forget to file Returns in time to avoid penalty. Now new Rule 7C is inserted in Service Tax Rules, 1994 to impose the penalty / amount to be paid for delay in furnishing the prescribed returns.

Comment: This is introduced vide Notification NO 20/2007 – ST dt 12/05/2007, the earlier Rs 1000/- maximum penalty for irrespective of delay for furnishing the return is substituted by this notification. For details see file No 11 Returns of this folder.

**Due date of payment of Service Tax:** Remember service tax should be paid on due date only otherwise face for heavy penalty which is mandatory. (If assessee is proprietary or partnership firm then the date of payment is 5th of the month following a quarter. This facility is not available to private limited or public limited companies and others. They have to pay tax every month before 5th of next month. **In the month of March** or in the quarter ending in March the last date of service tax is 31<sup>st</sup> March.

**When Payment to be made under Protest:** If you are making any payment under force or duress or under any instructions but you are not sure that it is required to be paid or there is any doubt then **ensure to write the words**, "Service Tax is paid under protest" on GAR-7 challan itself or by separate letter immediately after such payment as well in the relevant return. Then only you can claim refund if it is decided that the service tax was not payable or paid in excess as the case may be.

[Explain the Returns of service tax](#)

### **RETURNS OF SERVICE TAX**

- **Returns under self assessment and Provisional Assessment**  
Under Section 70 of the Act, as amended by the Finance Act, 2001 every person liable to pay the service tax shall himself assess the tax due on the service provided by him. Such person shall furnish to the Superintendent of Central Excise a return in the prescribed form prepared in the prescribed manner at the prescribed intervals. The concept of 'Self Assessment' has thus been introduced for Service Tax also
- Under the self-assessment Form ST-3 is used for preparation and submission of the return Under the Provisional assessment Form ST-3A is used for preparation and submission of the return
- If there is no doubt and everything is well understood then the assessee should file the Return in the prescribed **form ST-3** in Triplicate with the Range Superintendent along with copy of TR6 challan. If there is doubt of any kind (say whether the service provided is taxable or not, what should be the value of taxable service or amount of service tax payable etc. then better to ask for provisional assessment and file the return in the **form ST-3A**. For this please refer Rule 6(4) and 6(5) of the Service Tax Rules.
- **Do not forget to take dated and stamped acknowledgment on office copy of any Return or any other document you submit to Excise department.**  
The return has to be file on half-yearly basis. I.e. from 1<sup>st</sup> April to 30<sup>th</sup> September = up to 25<sup>th</sup> October and from 1<sup>st</sup> October to 31<sup>st</sup> March = up to 25<sup>th</sup> April.
- Under rule 5(2) every assessee should furnish the list of his private accounts registers and that are enough because as such there are no statutory records under the prescribed law of Central Excise & Service Tax. This should be furnished to Superintendent

- Under section 77 of the act, if the assessee failed to furnish the return before the due date, he shall be liable to a Penalty, which may extend to an amount not exceeding one thousand rupees. Before imposing show cause notice should be issued to the defaulter. Now under notification 20/2007 ST dt 12/05/2007 the amount delay of filing the return depends upon the period of delay i.e. for first 15 days Rs 500, For 16 to 30 days Rs 1000/- and the delay beyond the 30 days Rs 1000/- + Rs 100 per day (can be maximum up to the liability of payment of service tax under S.70 of the Act). This is effective from 12/05/2007 and legal proceedings are already initiated for non filing of return can be concluded as per this new Rule 7C of Service Tax Rules, 1994.
- Amended Section 80 reads " Notwithstanding anything contained in the provisions of S 76, S77 or S 78 no penalty shall be imposable on the assessee for any failure referred to in the said provisions, if the assessee proves that there was reasonable cause for the said failure
- Provisional Assessment  
Rules 6(4), 6(5) & 6(6) of Service Tax Rules. The correct procedure is - (a) Write a letter to Jurisdictional Asst./Deputy Commissioner giving reasons as to why the assessee is praying for provisional assessment, how much service tax is paid under protest etc. (b) On TR6 challan write "Service Tax paid under protest Provisional assessment praye3d for," (c) File the Return only in the form ST-3A. No permission is required for doing this as per law. (d) Remind for final assessment order. (e) File refund claim in case the final order is in your favor indicating that you have paid duty when it was not required to do so.
- As per the CBEC Circular No 72/2/2004 - ST dated 2-1-2004, "a single return would suffice. However the details in each of the columns of the Form ST-3 has to be furnished separately for each of the taxable service rendered by the assessee". ST-3 Return format is changed from time to time. The last it is changed w.e.f. 01/03/2007. Therefore it is suggested that for every taxable service separate ST-3 return should be prepared tagged consolidately and furnish to the Excise office