
SEMINAR ON ACCOUNTING & TAXATION OF STOCK BROKERS

**Service Tax with respects to Stock
Brokers & Depository Participants
By
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On

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At

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Organised By:



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INDEX

Sr.No.	Particulars	Page No
1	Historical Background	3-4
2	Definition of Service	4-5
3	Exemptions	5
4	Place of Provisions of Service	5-7
5	Point of Taxation	7-12
6	Valuation	13-15
7	Reverse Charge Mechanism	16
8	Cenvat Credit	17
9	Issues	17-19

1. Historical Background

Service Tax was first introduced in the year 1994 with three services and that time Government of India had adopted selective/ positive list approach. Selective/ Positive list approach means only services which are specified are only liable to taxed and all other services are not taxable at all. One of the services that was made taxable in the year 1994, was Stock Broker Service.

Till 30th June, 2012 the same approach was followed. Finance Bill 2012 has ushered a new system of taxation of services; popularly known as Negative List approach. The new changes are a paradigm shift from the existing system where only services of specified descriptions are subjected to tax. In the new system all services, except those specified in the negative list, will be subject to taxation. This is a step towards GST (Goods and Service Tax).

Category-wise classification of services generally provided by Stock Brokers and DP's and date from which such services were made taxable, are tabulated below;

S.No.	Description of Service	Classification of Service	Notified Date
1	Stock Broker	Stock Broker Service	01.07.1994
2	Sub-Broker	Stock Broker Service	10.09.2004
3	Forward Contract	Forward Contract Service	10.09.2004
4	Remiser	Business Auxiliary Service	01.07.2003
5	Merchant banking	Banking & Other Financial Service	*
6	Portfolio Management	Banking & Other Financial Service	*
7	Custodial, Depository & Trust Service	Banking & Other Financial Service	*
8	Investment & Portfolio Research & Advice	Banking & Other Financial Service	*

***NOTIFIED DATE:**

1. Banking Companies and financial institutions including NBFCs 16.07.2001
2. Other Body corporate not covered above 16.08.2002
3. Foreign exchange brokers not covered above 07.07.2003
4. Commercial concern not covered above 10.09.2004
5. Any person not covered above 01.05.2006

2. **What is Service [Section 65B (44)]** – As discussed in Para 1, w.e.f. 1st July, 2012, under the Negative List approach, every service is taxable unless specifically excluded, covered under Negative list or exempted. Government has defined the term ‘Services’ for the first time which has been divided into three part i.e. the means part, the includes part and the exclusion part, for easy understanding

Services		
Means Part	Includes Part	Excludes Part
✓ Any activity ✓ by a person to another ✓ for consideration	✓ Declared Services	✓ An activity which constitute ; ▪ transfer of title in goods or immovable property, by way of sale, gift or any other manner ▪ such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366

		of the Constitution, ▪ transaction in money or actionable claim ✓ Provision of service by employee to an employer ✓ Fees taken in any Court or tribunal
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3. Exemption (Notification No. 25/2012-ST dated 20.06.2012)

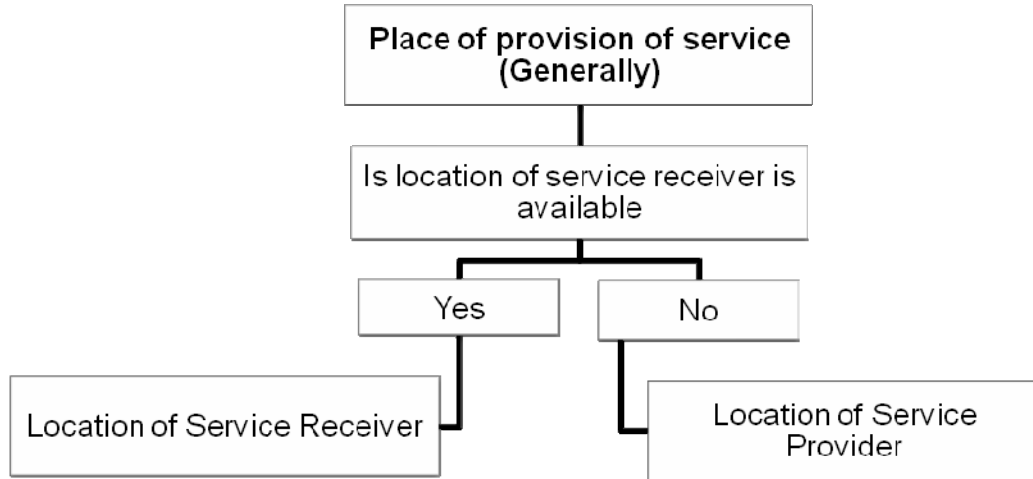
3.1. Following services related to Stock brokers/ DP's have been given exemption vide Notification No. 25/2012-ST dated 20.06.2012 [Sr. No. 29]-

- 3.1.1. a sub-broker or an authorised person to a stock broker;
- 3.1.2. an authorised person to a member of a commodity exchange;
- 3.1.3. a mutual fund agent to mutual fund or asset management company
- 3.1.4. distributor to a mutual fund or asset management company;
- Service provided by an authorised person to a member of a commodity exchange was erstwhile taxable under the category Forward Contract Services. These services have now been exempted.
- Service provided by a mutual fund agent or distributor to mutual fund or asset management company for distribution or marketing of mutual fund was erstwhile leviable to service tax and that it was to be paid under reverse charge mechanism by a mutual fund. These services are now exempt.

4. Place of Provisions of Service

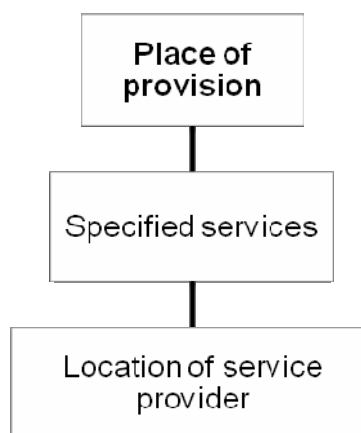
4.1. Rule 3: Place of Provision of Service generally – It determines the place of provision of service where no other specific Rule exists for any

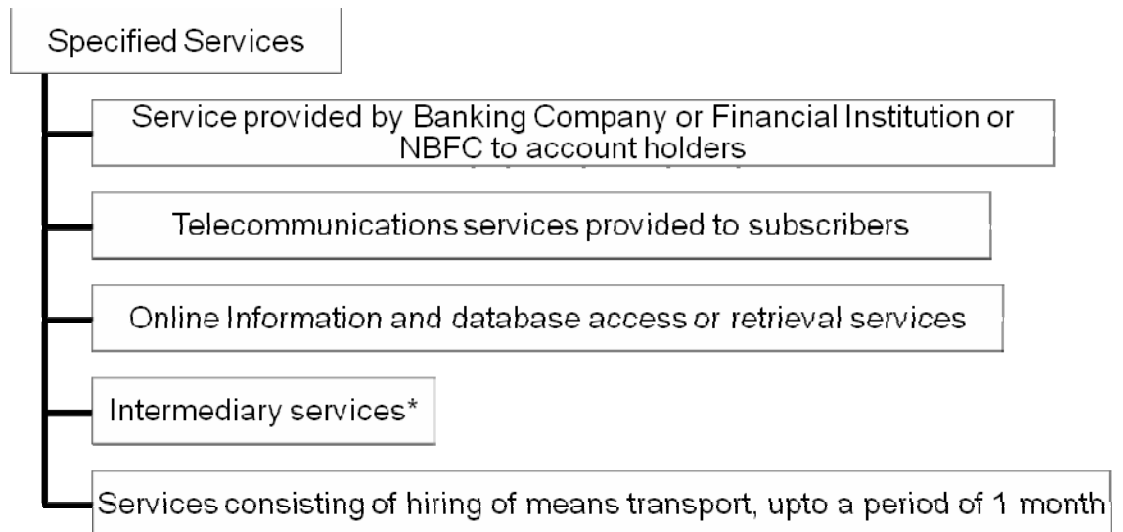
type of service. If a separate Rule exists defining the place of provision of a specific service, then this rule i.e Rule 3 shall not be applicable.



Service of Stock Brokers, DP's shall be covered under Rule 3 and place of provision of service shall generally be the location of Investor. So in case, where location of Investor is outside India (or in state of Jammu & Kashmir), service tax shall not be applicable of such service provided by Stock Broker, DP's.

4.2. Rule 9: Determination of place of provision of service in case of specified services.





* “**intermediary**” means **a broker**, an agent or any other person, by whatever name called, **who arranges or facilitates a provision of service** between two or more persons.

Service of Remiser shall be an intermediary service and accordingly Place of provision of such service shall be the location of such Remiser. Hence in case, where location of Remiser is outside India (or in state of Jammu & Kashmir), service tax shall not be applicable of such service provided by such Remiser.

5. **POINT OF TAXATION**

5.1. General rule: Earlier the payment of service tax was only when there was receipt of payments. Now, w.e.f. 1st April, 2011 or 1st July, 2011, as the case may be, point of taxation shall be:

A. Where the invoice for the service provided or agreed to be provided is issued within 30/45¹ days of the date of completion of provision

¹ Effective from 1st April, 2012 in respect of Banking and other Financial Company invoice to be issued within 45 days; in case of other assessee 30 days. Prior to 1st April 2012, invoices were required to be issued within 14 days for all assessee.

of services the Point of Taxation shall be earliest of the following dates:

- (i) Date of issue of invoice
- (ii) Date of receipt of payment

B. Where the invoice for the service provided or agreed to be provided is not issued within 30/45¹ days of the date of completion of provision of services the Point of Taxation shall be earliest of the following dates:

- (i) Date of completion of provision of services
- (ii) Date of receipt of payment.

The above provisions are tabulated in the following table.

S. No.	Date of completion of service	Date of invoice	Date on which payment recd.	Point of Taxation	Remarks
1.	20 April, 13	2 May, 13	12 May, 13	2 May, 13	Invoice issued in 30 days & before receipt of payment
2.	20 April, 13	25 May 13	30 May, 13	April 20, 13	Invoice not issued within 30 days & payment received after completion of service
3.	20 April, 13	2 May, 13	25 April, 13	25 April, 13	Invoice issued in 30 days but payment received before invoice
4.	20 April, 13	25 May 13	5 April, 13 (part) & 2 May, 13 remaining	5 April, 11 & 20 April, 13 for respective	Invoice not issued in 30 days. Part payment before completion, remaining later

				amounts	
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5.2. Completion of service: Clarification² on 'completion of service' is issued clarifying that completion of service would include not only the physical part of providing the service but also the completion of all other auxiliary activities that enable the service provider to be in a position to issue the invoice. Such auxiliary activities could include activities like measurement, quality testing, etc which may be essential pre-requisites for identification of completion of service. The test for the determination whether a service has been completed would be the completion of all the related activities that place the service provider in a situation to be able to issue an invoice. However such activities do not include flimsy or irrelevant grounds for delay in issuance of invoice.

5.3. Continuous Supply Of Services

5.3.1. 'Continuous supply of service' has been defined to mean – [Rule 2(c)]

- any service provided or to be provided **continuously or on recurrent basis** by a service provider **under a contract for a period more than 3 months**; or
- such services which the Central Government prescribes by a notification to be in the nature of continuous supply of services.

Note: Services on recurrent basis would mean services which are provided on recurring basis and are not continuous in nature. Services provided by a Courier Agency would be considered as provided on recurrent basis wherein the said courier agency collects the courier at regular intervals from their clients.

5.3.2. However, in case of 'continuous supply of service' the general rule would be applicable subject to the following modifications:

² Circular No. 144/13/2011 – ST dated 18th July, 2011

- where in terms of the contract the provision of the whole or part of the service is determined periodically on the completion of an event; and
- Such event obligates payment by the service receiver, the date of completion of each such event shall be the ***date of completion of provision of services.***

5.3.3. Illustrations:

Date of Part Completion of Service as specified in contract	Date of Receipt of Payment	Date of Bill	ST Liability arises in	Remarks
5 th July 2012	2 nd August 2012	27 th July 2012	July 2012	Since Invoice is issued within 30 days, Issue of Invoice or Receipt of payment, whichever is earlier
5 th July 2012	27 th July 2012	2 nd August 2012	July 2012	Since Invoice is issued within 30 days, Issue of Invoice or Receipt of payment, whichever is earlier
5 th July 2012	2 nd August 2012	16 th August 2012	July 2012	Since the invoice is issued after 30 days, the date of whole or part completion of service

5.4. PoT in case of excess payments received upto Rs 1000 [Proviso to Rule 3]

In case where service provider receives excess payments not exceeding Rs. 1000/- in respect of an invoice, the point of taxation for such excess amount would be the date of issue of invoice or date of completion of service if invoice is not issued within prescribed time.

5.5. DATE OF PAYMENT [RULE 2A]

Rule 2A has been inserted to explain the 'date of payment'.

5.5.1. In the normal course it shall be the earlier of the

- date of entry in the books of accounts or
- date of credit in bank account of person liable to pay tax.

5.5.2. However, when there is change in effective rate of tax or a new levy between the said two dates, the date of payment shall be the date of actual credit in the bank account, if the amount is credited in the bank more than four working days after the date of such change.

5.5.3. Say, if the payment is received on 30th March, 2012 and as w.e.f. 1st April, 2012 service tax rate is 12% then the amount should be credited in the bank account on or before 9th April, 2012 (i.e. 4 working days from 1st April, 2012 being 1st, 2nd, 5th, 6th and 8th April bank holidays) else service tax applicable shall be 12% and not 10%.

5.6. APPLICABLE RATE OF TAX IN CASE OF CHANGE IN EFFECTIVE RATE OF TAX [RULE 4]

Rule 4 of the PoT Rules provides when a service is deemed to have been provided in cases where there is a 'change of effective rate of tax' which would also include change in that portion of value on which tax is payable in terms of an exemption notification or rules made in this regard.

The rate applicable for payment of Service Tax in case of change in rate of Service Tax is tabulated as under:

Provision Of Service	Issue Of Invoice	Receipt Of Payment	Applicable Rate	Applicable Rate
Upto 31-3-2012	After 31-3-2012	After 31-3-2012	Date of Invoice or Receipt of Payment, whichever is earlier – New Rate	12.36%
Upto 31-3-2012	Upto 31-3-2012	After 31-3-2012	Date of Issue of Invoice – Old Rate	10.30%
Upto 31-3-2012	After 31-3-2012	Upto 31-3-2012	Date of Receipt of Payment - Old Rate	10.30%
After 31-3-2012	Upto 31-3-2012	Upto 31-3-2012	Date of Invoice or Receipt of Payment, whichever is earlier - Old Rate	10.30%
After 31-3-2012	Upto 31-3-2012	After 31-3-2012	Date of Receipt of Payment - New Rate	12.36%
After 31-3-2012	After 31-3-2012	Upto 31-3-2012	Date of Issue of Invoice - New Rate	12.36%

- Point of Taxation in respect of Continuous supply of Service in case of change in rate of Tax

Circular No. 162/2012 ST dated 6th July, 2012 clarified that

Point of taxation and the rate applicable in respect of continuous supply of services at the time of change in rates effective from 01.04.2012;

2.1 The issues have been examined. The continuous supply of services was governed by rule 6 until 31.03.2012. The rule started with the wordings "notwithstanding anything contained in rules 3, 4 " Therefore, the point of taxation in respect of services provided in terms of the said rule on or before 31.03.2012 would remain unaffected by rule 4.

2.2 To clarify the matter further, if the invoice had been issued or payment received in respect of such services on or before 31.03.2012, the point of taxation would stand determined under rule 6 accordingly and shall not alter due to the subsequent changes in the Point of Taxation Rules, 2011 that became effective only from 1.4.2012.

6. Valuation

6.1. Inclusion in or exclusion from value of certain expenditure or costs –

Rule 5

6.1.1. Inclusions in the value of taxable service- Rule 5(1)

All expenditure or costs incurred by service provider in the course of providing taxable service should be included.

- However Delhi High Court in case of Intercontinental Consultants And Technocrats Pvt Ltd Vs Union Of India & Anr [2012-TIOL-966-HC-DEL-ST], has been held that provisions of Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 are ultra vires to provisions of Section 66 and Section 67 of the Act in so much as they seek to levy tax twice on the same service by including costs and expenditure incurred in the value of service provided. Section 67, authorises the determination of the value of the taxable service for the purpose of charging service tax under Section 66 as the gross amount charged by the service provider for such service provided or to be provided by him, in a case where the consideration for the service is money. The underlined words i.e. “for such service” are important in the setting of Section 66 and 67. The quantification of the value of the service can therefore never exceed the gross amount charged by the service provider for the service provided by him. Thus double taxation cannot be enforced by implication.

6.1.2. Exclusion from the value of taxable service- Rule 5(2)

“Pure agent” means a person who–

- (i) *Enters into a contractual agreement* with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
- (ii) *Neither intends to hold nor holds any title to the goods or services* so procured or provided as pure agent of the recipient of service;
- (iii) *Does not use such goods or services so procured*; and
- (iv) *Receives only the actual amount* incurred to procure such goods or services.

All expenditure or costs incurred by service provider as a pure agent of the recipient of service are to be excluded if ***all the following eight conditions are satisfied:***

- (i) The service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;
- (ii) The recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;
- (iii) The recipient of service is liable to make payment to the third party;
- (iv) The recipient of service authorises the service provider to make payment on his behalf;
- (v) The recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;
- (vi) The payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;

- (vii) The service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
- (viii) The goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

The above has also been confirmed by the Service Tax department vide Circular No. 119/13/2009-ST Dated 21st December, 2009. It has also been mentioned in the circular that divergent practices of records and documentation are being followed by CHA's. However, the exclusion shall still be valid subject to the fact that the above conditions are fulfilled and the nexus between the expenses and taxable service is proved.

6.2. Cases in which the commission, costs, etc., will be included or excluded- Rule 6(1) & 6(2)

6.2.1. Rule 6 (1) includes some specific items for calculating value of taxable service which are as under

- (i) The commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock-broker to any sub-broker;
- In case of First Securities Pvt. Ltd. v. Commissioner — 2007 (7) S.T.R. 690 (Tribunal), it was held that 'handling charges towards handling of certificates or scripts' not being in nature of commission of brokerage, are not liable to service tax.
 - Similarly, in case of LSE Securities Ltd. Vs CCE., Ludhiana [2013 (29) S.T.R. 591 (Tri. - Del.)] it was held that 'turnover charges, stamp duty, BSE charges, SEBI fees, Demat Charges' although received by stock brokers, but not being in nature of commission of brokerage, are not

liable to service tax. Such amounts were recoveries from investors to make payment to respective authorities in accordance with statutory provisions.

7. Reverse Charge Mechanism

7.1. List of services generally availed by Stock Brokers/DP's which attract provisions of Reverse Charge Mechanism

S.No.	Description	SP %	SR %
1	Services provided by arbitral tribunal to any business entity located in the taxable territory.	Nil	100%
2	Services provided by an Individual advocate or a firm of advocates by way of legal services to any business entity located in the taxable territory.	Nil	100%
3	Services by way of renting any motor vehicle designed to carry passenger (to any person who is not in similar line of business) provided by any individual, HUF, or partnership firm including AOP, located in taxable territory to a business entity registered as body corporate, located in the taxable territory – (i) On abated value (ii) On non abated value	Nil 60%	100% 40%
4	Services by way of supply of man power/Security Service for any purposes provided by any individual, HUF, or partnership firm including AOP, located in taxable territory to a business entity registered as body corporate, located in the taxable territory.	25%	75%
5	Service portion in execution of Works contract provided by any individual, HUF, or partnership firm including AOP, located in taxable territory to a business entity registered as body corporate, located in the taxable territory.	50%	50%

8. Cenvat credit

8.1. Provisions of Rule 6 of Cenvat Credit Rules, 2004 are attracted to a provider of taxable service as well as exempted service taking Cenvat credit of duties paid on inputs and input services.

For the purpose of sub-rule (3) and (3A) of the said rule, the value of service in case of trading of securities shall be the **difference** between the **sale price** and the **purchase price** of the securities traded or **1% of the purchase price** of the securities traded, whichever is more;

9. ISSUES

9.1. Whether Service tax is payable, if Brokerage is not charged on (i) Pro transaction; or (ii) transaction of directors or relatives; or (iii) transaction with others?

9.2. Whether Service Tax on Arbitrage is applicable?

9.3. Whether Service Tax on various charges collected from client such as Stock exchange transaction charges, Delivery charges etc.?

9.4. Whether Service Tax on various Taxes collected from client such as Stamp duty, STT etc.?

9.5. Whether Interest earned will be treated as Service provided?

9.6. Is there any time limit for utilisation of CENVAT credit?

9.7. Stock Broker refunded excess brokerage charged to clients over the full financial year to the same clients. Can he adjust the Service tax paid on the excess brokerage refunded against his Service tax liability?

9.8. Applicability on DP AMC/ Regular charges - if clients left in between and DP refund the charges?

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