

## POT Bomb for the Dwarfs!

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As per the provisions of the Point of Taxation Rules, 2011, as introduced originally, seven categories of service providers (Chartered Accountants, Cost Accountants, Company Secretaries, Architects, Interior Decorators, Legal services, Scientific and Technical Consultancy services and Consulting Engineers), providing service as individuals, proprietary concerns or partnership concerns were excluded from the rigours of POT and can continue to pay service tax on realization. In other words, receipt of payment will be the POT for them. Later, consulting engineers were also added to the list of the blessed category. This immunity has been withdrawn with effect from 01.04.2012 and any service provider whose turnover in the preceding financial year is more than Rs. 50 lakhs would be governed by POT Rules, with effect from 01.04.2012. A new Rule 7 was substituted in the POT Rules, for this purpose. As per the existing, as well as new Rule 7, in case of reverse charge cases also, the POT will be date of payment only.

A doubt arose, as to whether those 8 categories of service providers would be liable to pay service tax in respect of all bills raised upto 31.03.2012 irrespective of realization after the new rules come into effect. The doubt was based on the fact that no express transitional provision has been provided for those service providers, who would cease to enjoy the immunity from 01.04.2012. CBEC was quick in clarifying the doubt, and issued a circular No. 154/5/2012 Dt. 28.03.2012 and clarified that the POT for the invoices raised upto 31.03.2012 will be governed by the old rules and these 8 categories of service providers are liable to pay service tax only when they receive payment, in respect of the invoices raised upto 31.03.2012.

At this stage, it is also relevant to note that the rate of service tax has been changed from 10 % to 12 % w.e.f. 01.04.2012. Rule 4 of the POT Rules, deals with determination of POT when there is a change in rate of tax. This rule lays down as to what would be the POT in different circumstances. As per the provisions of this rule, if the service has been provided before 31.03.2012 and if the invoice has also been raised before 31.03.2012, the applicable rate of service tax will only be the old rate {Rule 4 (a)(ii)}. So, if any service provider has provided the service and also issued invoice on or before 31.03.2012, the applicable service tax rate is only 10 %.

But as per Rule 7 of the POT Rules, for the special 8 categories of service providers and for the reverse charge liabilities, POT is defined as the date of payment. Further, this **Rule 7 starts with a non obstante rule**. Hence, Rule 4, dealing with the manner of determination of applicable rate of service tax, in case of any change in rate, is also not applicable to these cases. Hence, the point of taxation in case of these 8 categories of persons would continue to be the date of receiving payment and the rate applicable on the date of receipt of payment, i.e. 12 % shall apply for all invoices raised upto 31.03.2012, for which payment would be received after 01.04.2012. This has also been clarified so in CBEC's latest Circular No. 158/9/2012 Dt. 08.05.2012. While all other service providers would be liable to pay only 10 % for invoices raised upto 31.03.2012 and not realized upto 31.03.2012, only these eight categories of service providers and reverse charge cases, will be liable to pay 12 %.

Further, raising supplementary invoices in all such cases and convincing the customers for this additional liability is going to be a herculean task. Off course, complying with this requirement in case of payment of service tax under reverse charge basis would not pose any big problem.

The following exercise is required on the part of such service providers to comply with the requirements.

- Identify the invoices raised upto 31.03.2012 for which payments are not received upto 31.03.2012.
- Inform all the above service recipients about the requirement to charge 12 %.
- Raise supplementary invoice on them for this additional 2 % service tax.
- Monitor the payments received after 01.04.12 against such invoices and supplementary invoices.
- If any service recipient refuses to bear the additional burden for any reason, in such cases the service tax liability has to be calculated on cum duty basis. For example, originally if an invoice was raised for Rs.10000 plus 10.3 % Service tax, i.e. Rs.1,030, now a supplementary invoice should be raised for Rs.206 (Rs.1,236 – Rs.1,030). If the customer pays only Rs.11,030 (TDS ignored), the ST liability on cum duty basis shall be Rs.1,213.
- This exercise should be done till all pending invoices raised upto 31.03.2012 are realized.

Why not the Government which is so benevolent towards the jewellers should not also be benevolent on these dwarfs and give an one time exemption for this additional liability, considering the practical difficulties in implementing the same?