

Amendment as per Finance Act, 2011

BUDGET 2011 CHANGES: CENVAT CREDIT RULES

Notification No. 3/2011-Central Excise (N.T.) dt. 01St March 2011 has effected the following important changes (w.e.f. 01.04.2011, unless otherwise specified) in the CENVAT Credit Rules, 2004.

Sr.No.	Proposed change	Effect of the proposed change
01.	CENVAT credit shall be available on Capital Goods used outside the factory of manufacture of final products for generation of electricity for captive use within the factory of manufacture.	Industries setting up captive power facilities shall get CENVAT credit on capital goods used in such facilities.
02.	The definition of "input" has been amended and will exclude, <i>inter alia</i> , goods : a) used for construction of a building or a civil structure or part thereof; b) used for laying of foundation or making of structure for support of capital goods; c) like food items, used in guest house, residential colony, club or recreational facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee; d) having no relationship whatsoever with the manufacture of a final product.	CENVAT credit on goods used for construction of complexes, staff quarters etc will not be available. CENVAT on goods that are used for staff welfare purposes shall not be available.
03.	The definition of "input service" has been amended and will exclude, <i>inter alia</i> , services : a) classified as services of architect, port, airport authority, commercial or industrial construction, construction of complex and works contract used for construction of a building or a civil structure or part thereof or used for laying of foundation or making of structure for support of capital goods; b) insurance, rent-a-cab, repairs or servicing, leasing, in relation to motor vehicles; d) Outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, club membership, health and fitness centre, life insurance, health insurance, travel benefits to employees on vacation, when such services are used primarily for personal use or consumption of employee.	CENVAT credit on these services shall not be available. Specifically, CENVAT credit on the following commonly used services across industries shall not be available: a) Architect services; b) Civil contractor for building construction; c) insurance of motor vehicles; d) Catering services at get-togethers, parties etc; e) health treatment; f) travel-related services for employees on vacation; g) provision of food coupons; h) Mediclaim insurance of employees; i) Other insurance in respect of employees.
04.	In case the payment made to any service provider is returned, then the CENVAT credit availed on such payment should be reversed by debiting CENVAT account.	For payments that are not honoured, the CENVAT availed must first be reversed and then availed again on repayment.
05.	Under Rule 6, in case a service provider is providing both taxable as well as exempted services, he may now pay 5% of the value of the exempted services towards notional value of CENVAT credit utilized. This percentage was 6% for services. The option to make proportionate reversal of CENVAT credit, however, continues.	Integrates the notional debit rate for exempted goods and exempted services. Earlier, the percentage was 5% for goods and 6% for services.
06.	CENVAT credit on the following services will no longer be available if the output service is exempted: a) Consulting engineer; b) architect; c) interior decorator; d) business or management consultancy; e) real estate agent; f) security agency; g) scientific or technical consultancy; h) banking services; i) insurance; j) commissioning and installation; k) management, maintenance & repair; l) technical testing & analysis; m) technical inspection and certification; n) foreign exchange broking services; o) IPR services and p) commercial or industrial construction services.	Currently, when computing proportionate reversal of CENVAT for exempted services, there is no adjustment made on account of these services. That benefit is being withdrawn and the CENVAT on these services, too, will be adjusted when reversing credit. Note that the stipulation that CENVAT on input services used exclusively in the provision of exempted output services will not be available continues.

Please refer to the relevant Notification for an exhaustive list of all changes.

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SERVICE TAX- BUDGET 2011 CHANGES

Numerous changes have been proposed in Budget 2011 in respect of Service Tax. Some of the important changes are set out below.

New Services introduced (date to be notified)

1. Service provided by air-conditioned restaurants having license to serve liquor: The proposed levy is directed at services provided by high-end restaurants that are air-conditioned and have license to serve liquor. It is not necessary that the air-conditioning is available round the year. If the air-conditioning facility is available at any time during the financial year, the conditions for levy of the tax shall be met. The tax chargeable shall be 10.30% after giving abatement of 70% - in other words, effective tax of 3.10% of bill value. Home-delivery & pick-up counter are not covered by this proposed levy.
2. Short-term accommodation in hotels, inns, guest houses, clubs and camp-sites with a declared tariff of Rs.1,000/- or more per day. The tax will be levied where the continuous period of stay is less than 3 months. The tax chargeable will be 10.30% of gross value of bill after giving abatement of 50% - in other words, effective tax of 5.15% of bill value. Note that the tariff that is relevant to determine whether tax will be charged is the declared tariff and not the negotiated tariff.

Scope of existing services modified (date to be notified)

Scope of the existing services under "Authorised Service Station Services", "Life Insurance Services", "Commercial Training and Coaching Centre", "Club or Association Service", "Business Support Service", "Services provided by Legal Professionals" and "Service provided by clinical establishments" is proposed to be modified. Of special importance are the changes for the last two services:

Services provided by Legal Professionals: Representational services provided to any business entity (other than an individual) by any person before any Court, Tribunal or Authority will be taxable. Furthermore, Advisory or Consultancy services shall now include services provided to any person (and not business entity) by any business entity. Therefore, advisory services provided by a law firm to an individual will be covered whereas services provided by an individual lawyer to a business entity will not be covered. In the case of Appearance charges, any amount billed by any person (even individual) to a business entity will attract service tax.

Services provided by Clinical Establishments: The establishment should have central air-conditioning facility, at least in part. Further, there should be an in-patient facility with more than 25 beds. It also includes a diagnostic facility (with or without central air-conditioning and with no stipulation regarding beds etc). Tax will be chargeable on 50% of the bill value. Furthermore, Doctors who provide services from a clinical establishment are also now covered, provided they are not employees.

Late Fees for delayed filing of return

The late fee payable under section 70 for delay in filing of service tax returns is being increased to Rs.20,000/- from the current Rs.2,000/-.

Interest for delay in payment of service tax

Interest for delay in payment of service tax has been notified as 18% p.a. vide Notification 14/2011-Service Tax dt. 01.03.2011. Relief has been provided to service providers who have an annual taxable turnover does not exceed Rs.60 Lakhs in that the interest payable by them shall be 15%.

Penalty for failure to pay service tax

The penalty for failure to pay / delay in remittance of service tax shall attract penalty @ Rs.100/- per day of default or 1% per month for default period, whichever is higher.

Point of taxation

Vide Notification 18/2011-Service Tax dt. 01.03.2011, w.e.f. 01.04.2011, Point of Taxation Rules, 2011 shall apply. The general rule is that service tax will have to be paid on accrual basis and not on receipt basis. The date of accrual will, as a general rule, be the earliest of the following: a) Date on which service is provided; b) Date of invoice; c) Date of payment.

Changes in Rules for Export of Services and Import of Services

In the case of export and import of services rules, the services of a) credit rating agency; b) market research agency; c) technical testing and analysis; d) opinion poll services and a few more services are being reclassified so that they will be considered to be exported if the recipient of these services is located outside India and the monies are realized in convertible foreign exchange. Similarly, these will be considered as imported (under reverse charge mechanism) if the recipient of the services is in India.