

The rate of Service tax has been reduced from the existing 12% to 10% vide Notification No.8/2009-ST dated 24.02.2009. Therefore, the effective rate of Service tax including Education Cess is 10.3%.

### **Impact of rate change**

The levy of Service tax is on Taxable services defined under Section 65(105) of the Finance Act, 1994 (“the Act”). The term Taxable service is defined as “any service provided or to be provided....”

Section 66 of the Act deals with charge of Service tax and provides that there shall be levied a tax at the rate of twelve percent of the value of taxable services referred to in various subclauses of Section 65 (105) of the Act.

The Gujarat High Court in CCE vs. Schott Glass India Pvt. Ltd. [2009-TIOL-82-HC-AHM-ST] has held that the Taxable event is providing all taxable services which have been defined by Section 65(105) of the Act. The taxable event in relation to Service tax is admittedly the rendering of taxable service. The rate of tax prevailing on date of rendering services is applicable. A similar view has been taken by various decisions of the Tribunal.

However, the issue in controversy in the aforesaid decisions was for the period prior to amendment to Section 65(105). Section 65(105) has been amended post 16.06.2005 pursuant to which Service tax is also payable on advances received.

In view of the above, the below table summaries the liability to Service tax at different points in time:

Sr. No.	Billing	Receipt	Status of Rendition of service	Applicable Rate	Remarks
1	Prior	Prior	Rendered	12	The transaction is complete and the services have been already provided, billed and amount collected.
2	Prior	Post	Rendered	12	The services have already been rendered prior to change of rate.
3	Prior	Prior (Advance receipt)	To be rendered	12	The value of taxable services is received in advance and the liability to Service tax has been triggered prior to the amendment to the rate of tax. Also, it is likely that the Service Provider has recovered Service tax @12% from the client. This is likely to be contentious.
4	Prior	Post	To be rendered	10	The Service Provider may have to change the Bill already raised
5	Post	Post	Partly rendered partly to be rendered (continuous services)	10% / 12%	Service tax will be payable at 10% or 12% on proportionate basis.
6	Post	Post	To be rendered	10	The transaction will occur after the change of rate of tax

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