

CORPORATE OFFICE TAXATION SECTION 1 ST FLOOR, BHARAT SANCHAR BHAWAN JANPATH, NEW DELHI-1	 BHARAT SANCHAR NIGAM LTD	BHARAT SANCHAR NIGAM LIMITED [A Government of India Enterprise]
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No: 1002-68/2010-11/Taxation/ BSNL circular / 019 Dated: 17-01-2012

To
CGM of Telecom circles/ Metro Districts/ Maintenance Regions/ Project
Circles/ Task Force/Data Network / NCES/ ALTTC/ BRBRAITT/ NATFM/
Q&A/ T&D / Telecom stores/Telecom Factories/CPAO (ITI Bills)/IT Circle
Pune.

Sub: - Clarification on certain issues relating to Service Tax consequent upon enactment of "Point of Taxation Rules, 2011:-reg.

Ref:- This office (1) letter of even no.13 dated 07-04- 2011 (copy enclosed) &
(2) Circular CA- 264 issued vide letter no. 500-31/2011-
12/CAI/BSNL /POT Rule Dated 01-07-2011.

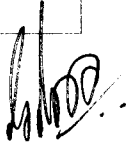
Kindly refer to this office letter cited above at (1) whereby queries relating to the Point of Taxation Rules, 2011 and their implication on applicability of Service tax was clarified and also refer to letter cited above at (2) whereby accounting instructions was issued in accordance with Point of Taxation Rules, 2011.

This office has received queries from circles regarding bad debt and adjustment of service tax matters. On observation it is found that these matters were already clarified. However, it is once again clarified for information and taking necessary action.

Sl. no	Queries	Clarifications of the Queries.
1.	Service Tax on Bad debt.	Since Service Tax is now payable on earlier of the following three activities as per POT Rules, 2011 ➤ Invoice date ➤ Date of completion of provision of service, if invoice is not within 14 days of the completion of service ➤ Receipt of consideration/advance Accordingly, Service Tax on Bad debt is also payable.
2.	Credit of excess service tax paid in previous months.	As per Rule 6(3) of Service Tax Rules, 1994 adjustment of excess Service Tax paid in previous months can be made against the Service Tax payable on output service to the Service Tax department in subsequent months on account of following.

		1. Amount received towards service to be provided is refunded to the customer due to non provision or partial provision of service or 2. Amount of invoice is renegotiated due to deficient provision of service or any terms contained in the contract if a credit note has been issued for the same.
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This issues with the approval of competent authority.



(K. Jothi)

DGM (Taxation)

Copy for information and necessary action to:

1. IFAs of all circles.
2. GM(F-CFA)/GM(F-CM)/GM(F-EB)/GM(F-NB) BSNL CO New Delhi-110001
3. GM(CA) BSNL CO New Delhi-110001.
4. GM(F) ITPC) Pune.

CORPORATE OFFICE
TAXATION SECTION
1ST FLOOR,
BHARAT SANCHAR BHAWAN
JANPATH, NEW DELHI 1



BHARAT SANCHAR NIGAM LIMITED
[A Government of India Enterprise]

No: 1002-68/2010-11/Taxation/ BSNL/ Circular/ 13

Dated: 7-04-2011

To
GM (F)
O/O CGM ITPC, BSNL
Chinchwad Pune-411019

Sub: - Amendment in Service Tax effective from 01.04.2011-reg.

Ref: - Your office letter no. ITPC/CDR/Corr./10-11/ Dated 23-03-2011.

With reference to your query asked vide above referred letter, reply to your queries is being given in accordance with this office letter of no. 752 dated 09-03-11 and also even no. 8 dated 01-04-2011 vide which Point of Taxation Rules, 2011 and Service Tax (Amendment) Rules, 2011, 1994, Point of Taxation(Amendment) Rules, 2011 and Service Tax(Second Amendment) Rules, 2011, were circulated.

A. Changes have been made in the Service Tax Rules, 1994 altering the payment of service tax from receipt of payment to provision of service. Provision of service will be the earliest of the following dates:

- (i) Date on which service is provided or to be provided.
- (ii) Date of invoice.
- (iii) Date of payment.

Sl.	Clarification required	Clarification
1.	Does it imply that the service provider is bound to remit the service tax based on invoicing irrespective of whether it is realized or not?	Yes. Service Tax has to be paid on invoicing irrespective of whether it is realized or not.
2.	If so, is there any provision to adjust the tax which could not be realized and written off subsequently?	No. There are no such provisions.
3.	Is there any provision to adjust the excess payment of tax arising out of excess/erroneous billing subsequently?	Yes. Adjustment of excess payment of service tax arising out of excess/erroneous billing may be made subsequently in accordance with Rule 6(3) of the Service Tax Rules, 1994. In this connection this office letter of even no. 752 dated 19-03-2011 may kindly be referred to.
4.	In CDR system customers can make payment in excess of the invoice amount which will be adjusted automatically in subsequent billing. Are we liable to calculate & remit tax on this excess payment?	Yes. Service tax has to be paid on excess of the invoice amount, if received.

- B. Clause 6 of Point of Taxation Rule explains that wherever any advance, by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.

Sl. 1.	Clarification required Does it imply that we have to collect and remit service tax on all the Demand Note payments collected towards provision of service and for collection of Deposits?	Clarification 1) Service Tax is required to be collected and paid on all demand notes payments collected towards the provision of service. 2) Service tax need not be collected and paid on initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuits in accordance with clause (i) of rule 6(2) of Service Tax (Determination of Value) Rules, 2006.
2.	Whether refundable deposits collected from the subscribers will also attract service tax?	Refundable deposits collected from the subscribers will not attract service tax. The said deposits shall be taxable only when an adjustment is made from the said deposits made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuits. Clause (ii) of rule 6(1) of the Service Tax (Determination of Value) Rules, 2006 may kindly be referred to in this regard.
3.	Voluntary Deposits are collected through Demand Note which are purely advance in nature and are adjusted against subsequent bills. Does it attract service tax?	In accordance with Point of Taxation Rules, 2011 and Point of Taxation (Amendment) Rules, 2011, the point of taxation shall be the date of receipt of advance towards the provision of service. If voluntary deposits is in the nature of advance towards the provision of service, service tax shall be payable. In case of surrender before complete adjustment of voluntary deposits received from subscriber, adjustment of excess payment of service tax arising out of surrender may be made subsequently in accordance with Rule 6(3) of the Service Tax Rules, 1994. In this connection this office letter of even no. 752 dated 19-03-2011 may kindly be referred to.
4.	We collect 10 months FMC (Fixed Monthly Charges) from annual plan customers in advance and adjust this against future invoices. Do we need to collect this with service tax also in advance?	Yes. Service tax is required to be collected along with advance and the same is to be paid to Govt.

- C. The service tax on the service deemed to be provided in the month of March, or the quarter ending in March, as the case maybe, shall be paid to the credit of the Central Government by the 31st of March of the calendar year.

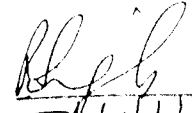
Sl.	Clarification required	Clarification
1.	If service tax settlement is invoice, then naturally it will be based on the ABF accounted for in the books for the respective months. We are considering the accrued income in our accounts as at 31 st March in the same financial year on the analogy of deemed service (and it is also taken in ABF for March). Whether tax is payable on this accrued income of March even though invoicing will take place subsequent to March for this accrued income?	Determination of Point of Taxation has no relation ship with ABF booked in the books. Point of Taxation shall be the determined based on the events occurring earlier of the following (a) the date when the invoice for the service provided or to be provided is issued, where the invoice is issued within fourteen days of the completion of the provision of the service, or (b) date of completion of continuous supply of service, where the invoice is not issued within fourteen days of the completion of the provision of the service, or (c) date on which payment is received, where the service provider received a payment before the date specified in (a) above to the extent of such payment, or (d) date of receipt of advance, when any advance by whatever name known is received by the service provider towards the provision of taxable service. In this connection clause no. 4 of the notification no. 25/2011-service tax dated 31.03.2011 circulated vide this office letter of even no. 8 dated 01-04-2011 may kindly be referred to.

- D. An explanation has been added after rule 5 (1) of the Service Tax (Determination of Value) Rules, 2006 clarifying that for the purpose of Telecommunications service (Section 65 (105) (zzzx) the value shall be the gross amount paid by the person to whom the service is provided by the Telegraph authority. Thus in case of service provided by the way of recharge coupons or prepaid cards or the like, the value shall be the gross amount charged from the subscriber or the ultimate user of the service and not the amount paid by the distributor or any such intermediary to the telegraph authority. This amendment shall come into force on 01.03.2011.

Sl.	Clarification required	Clarification
1.	At present billing of Public Telephones are done at some defined rate (0.73, 0.68, 0.63, 0.60) including service tax. The PCO retailer is	This issue is being examined and the clarification in this regard will be issued later on.

permitted to charge a MRP of Re.1.00 per usage unit.

In view of the explanation and amendment given now, whether we have to revisit the method of PT billing and redefine the rate as Re.1 inclusive of service tax?


(Rajeev Singh)
GM (Taxation)