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12 to 10. How to be done?



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In its nearly 15 years of existence, it is for the first time that the Government has effected an across the board reduction in the rate of service tax, i.e. from 12 % to 10 %, vide Notification No. 8/2009 ST Dated 24.02.2009, which is effective from 24.02.2009. It may be observed that service tax is payable upon realization of value of taxable service, or on receipt of advances for the services to be provided. Though the taxable event for the levy of service tax is the rendering of service, the liability arises on receipt of value of such taxable service. To further elaborate, if a service tax not taxable when rendered, there will be no service tax liability, even if the value for such service is realized after introduction of levy of service tax on such services. But, if the service is already taxable, even when the service was rendered in the past, the rate of service tax applicable would be the rate prevalent on the date of realizing the value of taxable service.

In line with the above, the implication of reduction in service tax rate from 12 % to 10 %, in different situations are tabulated below:

S.No.	Situation	Implication
1	An Invoice is going to be raised on or after 24.04.2009, for the services already rendered.	Service tax has to be charged @ 10 % plus Education CESS / SHE CESS thereon.
2	An Invoice was raised prior to 24.02.2009, with 12 % service tax. The party is yet to make payment.	The service recipient may be advised to pay only 10 % towards Service tax plus Education CESS / SHE CESS thereon and for the differential, a credit note may be issued on the service recipient. Service tax is payable @ 10 % in such cases. As the value of taxable service is going to be received after 24.02.2009, the applicable rate of service tax would be only 10 %.
3	An Invoice was raised prior to 24.02.2009, with 12 % service tax. The party has made the payment in February 2009. But, service tax is yet to be paid to the Government.	Service tax has to be paid @ 12 % plus Education CESS / SHE CESS thereon, as the same has already been collected. Moreover, the amount has been collected when the rate of tax was 12 % and the service tax was accordingly assessed @ 12 %, which has to be paid.
4	Advance has been received prior to 24.02.2009 and 12 % Service tax plus Education CESS / SHE CESS thereon has been collected and the same is yet to be paid to the Government.	Service tax has to be paid @ 12 % plus Education CESS / SHE CESS thereon, as the same has already been collected. Moreover, the amount has been collected when the rate of tax was 12 % and the service tax was accordingly assessed @ 12 %, which has to be paid.
5	Advance has been received prior to 24.02.2009 and 12 % Service	Services to be provided is also a taxable service and the same has

	tax plus Education CESS / SHE CESS thereon has been collected	been assessed and the value of such taxable service received in advance
	and the same is yet to be paid to the Government. Service recipient claims refund of 2 % services tax, on the ground that service is yet to be rendered.	has been subjected to the levy of service tax already. So, the claim for refund is not tenable.
6	Service is being continuously rendered. Billing has to be done from January 2009. Whether separate billing has to be done for the period prior to 24.02.2009 @ 12 % and for the period after 24.02.2009, @ 10 %.	Service tax has to be charged @ 10 % plus Education CESS / SHE CESS, for the billing to be made for the entire period from January 2009.
7	Without being aware of the reduction in rate an invoice was raised on 24.02.2009 with 12 % service tax and the party has also made payment of the same, which is yet to be remitted to the Government.	As the effective rate of service tax on 24.02.2009 was only 10 %, the excess amount collected may be refunded to the party and service tax @ 12 % plus Education CESS / SHE CESS thereon may be paid to the Government.

