Tax Talk
The Monthly Service Tax Bulletin

Issue No. 5/2012 August 2012

Editorial

At the outset three cheers for our very own Pranab Da, he has been elected as the 13th President of our country and our PC Sir has once again been honored with the post of FM. We are aware of his working style. So, no new changes in the policy of Government on the finance front are expected.

The collection of service tax is increasing leaps and bounds and at same time we are expecting a very tough time for the agriculture because of short fall in rain. Let us pray for more rain, for welfare of the agriculture dependent population of our country.

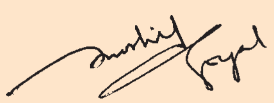
New codes for payment of service tax liability have been introduced. These codes are to be used for discharging of liability of service tax arising in and from the month of July 2012, i.e. to say for liabilities of earlier months till June 2012, the old codes will prevail. This amendment is done in light of the negative list concept introduced w.e.f. 1st July 2012. In absence of a positive list of services, services specific code system has become defunct. The new tax code shall be used for all taxable services in regard to which payment is to be made including services under reverse charge mechanism. Hence, all service tax liabilities shall be discharged by making payment in one single code as given in the table below irrespective of the fact that the liability is discharged as a provider or receiver under full or partial reverse charge.

In light of new changes made w.e.f. 1st July 2012, all sectors of economy are under confusion. The realty sector is one of the most hitted sectors. There is a lot of speculation about the definition, exemption, abatement, Cenvat credit availability and above all reverse charge applicability. Deletion of Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 and Notification No. 1/2006-ST, also amendment of Service Tax (Determination of Value) Rules, 2006 has all the more added to the confusion. We have tried to help the Construction industry by providing a brief write up on some of the relevant issues for benefit of all.

Reverse charge on supply of manpower has created ripples of confusion among India Inc. It's a common practice to deploy the employees to work for subsidiary companies, sister concerns simultaneously along with the main employer. The cost of such companies is likely to go up as reverse charge mechanism works irrespective of the Small Service Provider Exemption of Rs. 10 lakh. The department has released a draft circular to clarify such issues and has welcomed views of all on the same. Last date for sending views and suggestion on the above is 24th August 2012.

We by this newsletter aim to benefit all section of professionals and business entities. To further facilitate the process we are posting FAQs in all our issues. In order to help us serve you better we request you to forward your queries to the email-id office@goyalstax.com. We endeavor to solve your queries in the subsequent issues.

If any of your friend and well wisher wants to receive this newsletter, please feel free to contact us through e-mail at servicetaxgoyal @gmail.com.



CA Sushil Kr Goyal

DUE DATES

Case	Form	Due Date
Payment for Month of July, 2012 (assessees other than individuals, proprietorship firm, partnership firm and LLP)	Cash/Cheque	6th August 2012*
	E-Payment	6th August 2012

* 5th being Sunday so next working day

New Accounting Codes for Services w.e.f. 1st July, 2012 (All Services)

Head	Code
Service Tax	00441089
Edu Cess	00440298
SHE Cess	00440426
Interest on Service Tax	00441090
Interest on Edu Cess	00440299
Interest on SHE Cess	00440427
Penalty	00441093

Director Remuneration under Reverse Charge

New notification has introduced reverse charge on the services of Directors, i.e. the company which receives the services of the Director shall be liable to pay service tax on the director's remuneration paid by it. It is now confirmed that the Director's Remuneration of a Company are liable to pay Service Tax, but the tax will be paid by the company. Government has amended Notification No. 30/2012-ST dated 20.06.2012, to notify the service provided by a director to the Company as a service for which Service Tax has to be paid by the Compnay as recipient as per provision stipulated in Section 68(2) of the Finance Act 1994. The tax payable by the recipient is also notified as 100%.

Although the new notification amended Notification No. 30/2012 - ST with effect from 07.08.2012. The service by director is taxable in the hands of Director from 1st July 2012 and till 6th August 2012, there was no reverse charge mechanism. So, for the payment received by the Director one month six days, he has to pay the tax. From 7th August, the recipient of service have to pay tax i.e. company. All the directors have to obtain registration for payment of service tax for one month 6 days, file ST 3 and then surrender the registration.

The notification has raised many doubts in the mind of general public, few of which we tried to answers, as follows:

a) Are the services rendered by a director covered in the exclusion part of definition of 'Service' or not?

A single company can have different contracts with the different directors depending on the nature of work executed by them. There can be executive directors, non executive directors, nominee directors etc.

Usually, the executive directors have overall primary management and leadership role in management. They are primarily responsible for the day to day working of the organization and act like employees of the company, only difference being directors are entrusted with managerial powers to carry out their roles effectively. The executive directors are usually paid salary and other benefits. These should not form part of the taxable service because we understand the exclusion provided in the definition of service (Clause 44 of section 65B of the Finance Act 1994) amply covers this service, *"a provision of service by an employee to the employer in the course of or in relation to his employment"*.

Apart from above, Profit linked incentives by name of commission or any other name can also be awarded to executive directors. Such type of payments will not form part of payments arising in relation to employment. Also non executive directors use their expertise to provide independent advice and objectivity, and they usually have a role in monitoring executive management. A non-executive director might be appointed to carry out a specialist role on a part-time basis or for their expertise in specific activities. The nominee directors also form part of this category. These kinds of directors are paid sitting fees and commission based on various factors depending on Company's policy.

Moreover, we can understand by referring section 194J of the Income Tax Act 1961 as amended w.e.f. 1st July 2012 that the payment to directors which is not covered in section 192 of the Income Tax Act 1961, will be covered in section 194J.

Hence, it can be concluded by saying that executive director's salary and remuneration other than profit linked commission (on which TDS is being deductable in section 192 of Income Tax Act 1961), are covered in the exclusion provided in definition of service for the payments received by directors in course of employment shall remain outside the scope of service.

Other remuneration, commission like profit linked commission (on which TDS is liable to be deducted under section 194J of Income Tax Act 1961), are not covered in the exclusion, similarly the services of non executive director shall be taxable under the service tax provisions contained in the Finance Act, 1994 and rules made there under.

b) What are the reverse charge provisions in respect of services rendered by a director?

The new notification has introduced 100% reverse charge on the services provided by a director of a company, i.e. the company receiving such services shall be liable to pay service tax on such services.

c) Since when has the reverse charge become activated?

The Notification No. 45/2012-ST dated 07.08.2012 introducing reverse charge on director's service amending Notification No. 30/2012-ST dated 20.06.2012 w.e.f. 07.08.2012. Hence the services of director will come under the reverse charge method from 07.08.2012. That is to say that the directors shall be liable to pay service tax on the services rendered by them from 01.07.2012 to 06.08.2012 and thereafter the company shall pay service tax on the services received by them.

d) Whether the directors are required to take registration in their name for discharging their liability for the period 01.07.2012 to 06.08.2012?

Yes, the directors are required to take registration in their name to discharge their liability for the period 01.07.2012 to 06.08.2012, except in cases where the Director is not rendering any other taxable service and subject to conditions mentioned in Notification No. 33/2012-ST dated 20.06.2012, exemption of Rs. 10 lakh can be availed by them.

Hence, the Director might not be required to apply for registration and pay tax for this fraction period, if they are eligible for 10 lakh exemption and wish to avail the same as provided in Notification No.33/2012.

(Notification No. 45/2012-ST and 46/2012-ST dated 07.08.2012)

Latest Notifications

Security Services under Reverse Charge

New notification further amended the Notification No. 30/2012-ST to provide that the reverse charge mechanism on Manpower Supply shall stand extended to Security Services also.

Hence, wherever the service receiver is a *Body Corporate*, they have to pay service tax on the security services received by it from a service provider, who is any *Individual, HUF, Partnership Firm, LLP or AOP* w.e.f. 07.08.2012. Till before this service tax was payable by the security service providers on the service rendered by them. All other restrictions and conditions applicable for reverse charge to manpower supply shall equally apply to security services. The definition of security service is now provided in rule 2(1)(fa) of Service Tax Rules 1994 as under:

"security services" means services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity"

(Notification No. 45/2012-ST and 46/2012-ST dated 07.08.2012)

Slaughtering of Animal

New notification enlarges the scope of exemption provided in the item no.33 of notification 25/2012-ST dated 20.06.2012 by removing the word 'bovine'. Hence slaughtering of bovine animals only was exempted till 06.08.2012 and post that slaughtering of all animals is exempted.

(Notification No. 44/2012-ST dated 07.08.2012)

Exemptions to Exporter of Goods

Notification No. 18/2009-ST dated 07.07.2009 provides exemption of service tax on Transportation of goods by road service and Business Auxiliary Service (Commission agent services located outside India) used in Export of goods. The above exemptions have been divided into two part as mentioned below:-

1. **31/2012-ST dated 20.06.2012**

   Provides exemption to GTA services used to transport the export goods from container freight station or ICD to Port or Airport or from the Place of Removal to ICD, container freight station, port, and airport.

2. **42/2012-ST dated 29.06.2012**

   Provides exemption from services provided by a commission agent located outside India under an agreement to act on behalf of exporter in course of sale of goods.

With regard to Forms earlier, Form EXP1 was required to be filed with the DC/AC of CE/ST before export of material. Now exporters have to file 2 forms EXP1 and EXP3. Similarly EXP2 which was a half yearly information regarding export carried out is replaced with EXP2 and EXP4 should be filed within 15 days of half year ended.

(Notification No. 31/2012-ST dated 20.06.2012 & 42/2012-ST dated 29.06.2012)

Rebate (Refund) to Exporter of Goods

The New Notification rescinding the earlier Notification No 52/2011 related with rebate/refund of service tax paid on service used in course of export of goods, which continue to provide two options for refund of service tax paid on services used in course of export of goods with some restriction and some relaxations.

1) The first option is by means of electronic shipping bill or bill of export. The refund is to be granted in an ad-hoc manner depending on the rate prescribed against the goods exported in the schedule, to be computed as a percentage of FOB value. Earlier notification has provided a list of 288 items against which certain rates are prescribed. The corresponding rate will be multiplied with the F.O.B. of the exported goods. This is continuing in the current scheme of rebate also. The amount so derived will be the amount of service tax to be refunded directly into the bank account of the exporter registered with the customs.
2) The second option is by filing a refund claim of the actual service tax paid on the basis of supporting documents, invoices etc. The services for which refund can be sought are those which are used post production process in case of excisable goods and used for export of goods. In case the goods are not excisable then services used in export of goods shall be eligible for refund.

The restriction imposed is that in case the difference in rebate under option 1 and 2 exceed the amount of rebate under option 1, then option 2 cannot be proceeded with.

Under the positive list regime, the various services prescribed as eligible for refund were associated with extra conditions to be fulfilled for getting refund on such input services. Under the negative list regime the services have no identity and all the service specific conditions have been removed.

Also earlier where the refund sought was greater than 0.25% of F.O.B. value of export goods then Form A-1 along with relevant invoice, bill or challans shall be certified by the Chartered Accountants who audits the accounts of exporter under Companies Act, 1956 or Income Tax Act, 1961 as the case may be. The requirement of such certification has now been prescribed when the refund claim is greater than 0.50% of F.O.B. Value of export goods.

Further the prescribed forms have been modified slightly in light of the new provisions.

(Notification No. 41/2012-ST dated 29.06.2012)

1. Construction also part of Declared Service

1. **Construction of a complex,** building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion certificate by the competent authority. *[Clause (b) of section 66E of the Finance Act, 1994].*
2. **Competent Authority** means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:-
   A) architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
   B) chartered engineer registered with the Institution of Engineers (India); or
   C) licensed surveyor of the respective local body of the city or town or village or development or planning authority.

   [*Explanation-I to clause (b) of Section 66E of the Finance Act,1994*].
3. **Construction includes** additions, alterations, replacements or remodelling of any existing civil structure. *[Explanation-II to clause (b) of Section 66E of the Finance Act, 1994].*
4. **Residential Complex** means any complex comprising of a building or buildings, having more than one single residential unit *[Notification No 25/2012 dated 20.06.2012].*
5. **Single Residential Unit** means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family *[Notification No 25/2012 dated 20.06.2012]*.
6. **Works Contract** means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property *[Section 65B (54) of the Finance Act, 1994].*
7. **Original Works** means-
   i) all new constructions;
   ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
   iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise *[Rule 2A of Service Tax (Determination of value Rules), 2006].*
8. **Supply of Manpower** means any service of manpower, temporarily or otherwise, to other person to work under his superintendence or control *[Rule 2(g) of the Service Tax Rules, 1994.]*
9. **Input Service** means any service ....
   ....
   but excludes
   (A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified service s) in so far as they are used for –
   a) construction or execution of works contract of a building or a civil structure or a part thereof; or
   b) laying of foundation or making of structures for support of capital goods,

   except for the provision of one or more of the specified services; or ....

   [Rule 2 (l) of Cenvat Credit Rules, 2004].

2. Rate of Tax

Taxable Services	Tax-able (%)	CENVAT Credit Allowed		
		Input	Input Services	Capital Goods
Construction of complex service (If value of land included in amount charged)**	25	x	✓*	✓
Works Contracts				
Option 1. Gross amount charges less the value of material transferred in execution of works contract.	100	x	✓*	✓
Option 2. If value has not be determined as above:-				
a) Execution of Original works	40	x	✓*	✓
b) Maintenance or repair or reconditioning or restoration or servicing of any goods	70	x	✓*	✓
c) All other cases.	60	x	✓*	✓
(Rule 2A of Valuation Rule)				

* CENVAT credit of Input Services which are specifically excluded from the definition of Input Service is not allowed. Refer definition of Input Service as dealt in definition above.

** If value of land is not included in the amount charged then one can go for Option 2 of Work Contract Service.

3. Car Parking or Special Service Provided by the Builders

If car parking or other service provided by the Builders are part of sale deed, with or without any specific bifurcation of amount, then applicable effective rate of tax 3.09% including Education Cess and SHE Cess (after taking the abatement benefit of 75%). However, if these are not part of sale deed service tax is payable at full rate of 12.36%.

4. Reverse Charges relevant for Construction Service:

W.e.f. 01.07.2012 following new services have been brought under reverse charge method some of them are partially on reverse charge where specific percentage of tax will be paid by the service recipient:-

1. **Work contract Service** : If the provider is individual, HUF, Partnership Firm, LLP or AOP and recipient is body corporate located in the taxable territory - service provider - 50% and service recipient- 50%.
2. **Supply of Manpower** : If the provider is individual, HUF, Partnership Firm, LLP or AOP and recipient is body corporate located in the taxable territory - service provider - 25% and service recipient- 75%.

Note:

* Service recipient is require to pay service tax even if service provider is availing SSP exemption.

* Service recipient can avail the cenvat credit of the entire service tax paid (by receiver and by provider) on the services received by the recipient.

* Point of Taxation for Service Recipients required to pay tax on reverse charge mechanism is the date on which payment of invoice is made, provided the payment is made within a period of six months from the date of invoice. Otherwise the Point of taxation shall shift to the date of invoice.

5. Joint Development Agreement

Construction service provided by the builder/developer is taxable in case any part of the payment/development rights of the land was received by the builder/ developer before the issuance of completion certificate and the service tax would be required to be paid by builder/developers even for the flats given to the land owner.

The value of flats given to land owner would be equal to the value of similar flats, as are sold nearer to the date on which land is being made available for construction, charged by the builder or developer from the other buyers and service tax shall be payable at the time when the possession or right in the property are transferred to the land owner by entering into a conveyance deed or similar instrument (e.g. allotment letter).

6. Exemption under Construction Service

Entries 12, 13, 14 of Mega Exemption Notification 25/2012-ST dated 20.06.2012 provides exemption to Construction Services in relation to structures mentioned therein.

12. Services provided to the **Government, a local authority or a governmental authority** by way of construction**,** erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958;

c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

d) canal, dam or other irrigation works;

e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;

13. Services provided by way of construction**,** erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

c) a building owned by an entity registered under section 12AA of the Income tax Act, 1961and meant predominantly for religious use by general public;

d) a pollution control or effluent treatment plant, except located as a part of a factory; or

e) a structure meant for funeral, burial or cremation of deceased;

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to, **(Not include repair, maintenance, renovation, or alteration)-**

a) an airport, port or railways, including monorail or metro;

b) a single residential unit otherwise than as a part of a residential complex;

c) low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

d) post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or

e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

Manpower Supply, Directors Service or Employer to the Employees Service

The Company has come out with a draft circular on manpower supply, director's service and service by employer to employee with the objective to invite comments, suggestions and views of public at large. The same has to be sent by the 24th of August to Dr. Shobhjit Jain, OSD TRU,CBEC through email at shobhjit.jain@nic.in.

Scope of Manpower Supply

1. The manpower supply is understood to mean when one person provides another person with the use of one or more individuals who are **contractually employed** or otherwise **engaged by the first person**. The essence of the employment should be that the individuals **should be employed by the provider of the service and not by the recipient of the service**. Moreover, as long as the manpower is not placed operationally under the control of the service receiver, it will not constitute a manpower supply service. Hence, if a provider of output service engages his own manpower in the process of providing such output service, then it shall not be a case of manpower supply since the control of manpower remains in the hands of the Service provider.
2. In cases of secondments, where the parent companies place their staffs at the disposal of their subsidiaries or other associated companies, the definition of manpower supply will hold good as the **contractual employment** continues to be with the parent company.

Joint Employment

1. Services provided by the staffs, who are jointly employed by one or more employers, **sharing the cost of such employment** shall not be covered by the supply of manpower service. But in case such staff is employed by one employer and is only made available to other **for a consideration**, then it shall not be a case of joint employment and hence, shall be taxable under manpower supply service.
2. There can also be cases where one of the joint employers makes payment to the manpower on behalf of the other Joint employers, which is later on recouped from the other employers on an agreed basis on actuals. Such an arrangement shall not come under the levy of service tax, as it is merely a case of Cost reimbursement.

Services of Directors

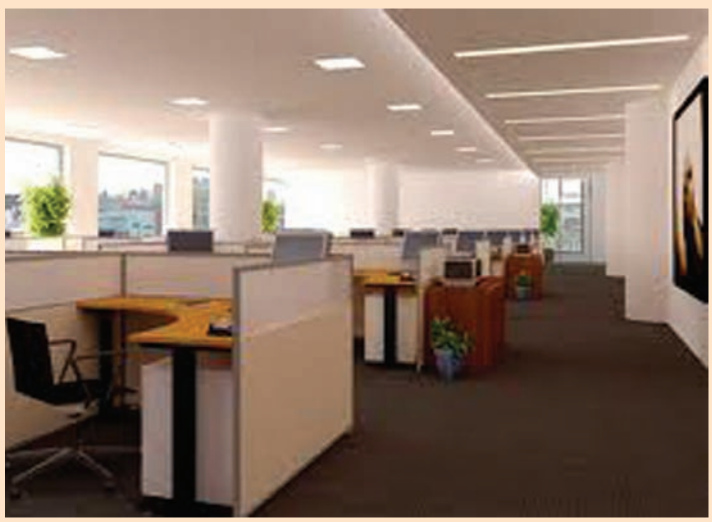
A director may be appointed in a company either in individual capacity or as a nominee director, representing any other entity or may be appointed by the government. Where a director receives payment in his personal capacity, then the same shall be taxable in his hands. But, where the fees is charged by the entity (including Government) appointing the directors, then the service shall be deemed to be supplied by the entity. Hence, in case of Govt. nominees the service shall deemed to be supplied by the Govt. and as such shall be taxable as Support service provided by the govt. to business. Such services shall be subject to Reverse Charge.

Supplies made by Employer to Employee

1. A number of activities are carried out by the employers for the employees **for a consideration**. Such activities fall within the definition of "service" and are liable to be taxed. Such consideration may be in the form of amount deducted from the salary of the employee, amount of salary forgone by the employee, etc. The valuation of the service so provided by the employer to the employee shall be determined and Cenvat credit for inputs and input services used to provide such services will be eligible, as per extant rules.
2. If any service is provided by employers free of cost to employees then no service tax shall be attracted in absence of consideration.
3. It must be noted that the supplies made by the employer to the ex-employees or pensioners will be of same status as those to an employee and thus would accordingly attract taxability as discussed above.
4. Moreover, at the time of determining the tax implication of the services rendered by the employer to the employee, it is also important to check if the same is covered by the list of Negative services or Mega Exemptions.

Services of employee

1. Provision of service by an employee to the employer in the course of or in relation to his employment is excluded from the definition of the "service". Thus reimbursements of expenditure incurred on behalf of the employer in course of employment would not amount to a "service" per se and hence are non-taxable.
2. It must also be noted that reimbursements to pensioners will also be treated at par with those of current employees when such reimbursements arise out of the initial employment contract or are in relation to that employment.



Regular Column - Recent Circulars

New Accounting Code

New accounting codes have been introduced via quoted circular. All the payments whose liability arises on and after 1st July 2012 shall be made under the new code 00441089. Education Cess and Secondary and Higher Education Cess shall continue to be paid under 00440298 and 00440426 respectively. Interest arising due to delayed payment of service tax shall alone be paid under the code 00441090. Penalty shall be payable under the code 00441093. A new head called Deduct/Refunds have been provided for use by Revenue/Commissionerates for granting refund of tax.

The old service specific codes shall continue to exist side by side for payments pertaining to the period before 1st July 2012 i.e. till the time positive list of services were in effect.

First time in the history of Service Tax different accounting codes have been prescribed for payment of interest and penalty

[Circular No.161/12/2012 -ST date 06.07.2012].

Point of Taxation

The following issues are aimed to be resolved with the help of quoted circular:

(a) Point of taxation and the rate applicable in respect of continuous supply of services at the time of change in rates effective from 01.04.2012;

(b) Applicability of the revised rule 2A of the Service Tax (Determination of Value) Rules, 2006 to ongoing works contracts for determination of value when the value was being determined under the erstwhile Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007; and

(c) Applicability of partial reverse charge provisions in respect of specified services.

In respect of continuous services (Prescribed services under continuous supply were Commercial Construction service, Construction of residential complex service, Telecommunication service, Internet telecommunication service and Works contract service) whose invoices were already raised or payment already received then the point of taxation shall be determined as per Rule 6 of Point of taxation rules, 2012. Rule 6 envisaged Point of taxation to be earlier of the following :

a) Date on which invoice is issued (provided the invoice is issued within 14 days (30 days w.e.f. 01.04.2012) of provision of service i.e. dates on which payment becomes due as provided in the agreement on completion of any event, if any);

b) Date on which payment corresponding to (a) is received.

In respect of above service who's Point of taxation could not be determined by 01.04.2012, new amended Rule 3 and Rule 4 will come into play. Rule 3 provides the same Point of Taxation in case of continuous supply of services as provided by Rule 6. The need to amend Rule 3 and omit Rule 6 was that the provisions for determining Point of Taxation in case of change in effective rate of tax as contained in Rule 4 were not applicable to Rule 6, hence the change.

Further w.e.f. 01.04.2012 change in effective rate of tax would include changes where the effective rate has undergone a change due to change in abatement values or due to withdrawal of Composition Scheme under works contract (w.e.f. 01.07.2012), services which were earlier exempt and now taxable or vice versa. However where the effective rate of service tax is same or services have become taxable for the first time Rule 5 would be applicable.

For applicability of Rule 4 please refer the table provided in Taxtalk 1st issue, page 2 under the heading "10.3% or 12.36%????"

Hence in case of projects which were not taxable at all and have now become taxable by virtue of introduction of the negative list w.e.f. 01.07.2012, for example residential complexes with less than 12 units, will be liable to service tax in case the payment was received at the time when service was not taxable and invoices which were not raised within 14 days of such payment. Also tax shall be leviable on those invoices issued before 01.07.2012 and whose payment was due as on 01.07.2012. After 01.07.2012 all the transactions will be governed by Rule 3 for determination of Point of Taxation.

In respect of partial reverse charge only those transactions who's Point of taxation is yet to be determined shall attract the provisions of partial reverse charge *[Circular No. 162/13 / 2012 –ST dated 10.07.2012].*

Remittance of Foreign Currency

The circular clarifies that foreign currency remitted to India from overseas is not a service per se as it has been specifically excluded from the definition of service. Moreover in case any fee is charged then in light of Place of Provision of Services Rules, 2012 such services are deemed to be provided outside India, hence no tax.

Further in case the Indian Bank charges any fee for the service rendered then also service tax shall not be liable in light of Rule 3 of Place of Provision of services Rules, 2012 as the service is once again deemed to be provided outside India *[Circular No. 163/14/2012 –ST dated 10.07.2012].*

Corrigendum to Notification No 36/2012-ST [F.No. 334/ 01/2012-TRU] Dated 02.07.2012

In rule 6A (1) (f) for "Explanation 2", read "Explanation 3".

Corrigendum to Notification No 42/2012-ST [F.No. 334/ 01/2012-TRU] Dated 11.07.2012

In para 1 the words "in excess of the service tax" shall be omitted.

Frequently Asked Question

Qus. Whether it is possible for small business entities with turnover of more than Rs.10 Lakh, those who are availing advocate / arbitral tribunal services and are not liable to pay service tax for any other services received or provided, thus liable to pay service tax under reverse charge mechanism on stated advocate / arbitral tribunal services and liable to take service tax registration and liable to file service tax returns on regular basis, to cut cost on service tax compliance?

Ans. Small business entities with turnover of more than Rs.10 Lakh, who are availing the advocate/arbitral tribunal services, are now covered by the recently introduced reverse charge mechanism. It is to be noted that the reverse charge mechanism made applicable for advocate / arbitral tribunal services, makes the provisions of service tax laws widely applicable, since such provision of reverse charge mechanism for advocate / arbitral tribunal services are made applicable to "Business Entity" and the use of the word as "Business Entity" means inclusion of all the forms of business organization, namely, Body Corporate, Partnership Firms, Proprietary Business etc. and such word as "Business Entity" has been used only in the case of advocate/arbitral tribunal services in contrast to use of word, say for example, as "Body Corporate" used for the other services covered by reverse charge mechanism.

Thus small business entities with turnover of more than Rs.10 Lakh, and who are not liable to pay service tax for any other services received or provided and thus are otherwise not required to get registered under the service tax laws, now shall have to get registered under service tax laws and file returns and comply with all procedural formalities on availing services of an advocate/arbitral tribunal, since covered by the above stated reverse charge mechanism.

The small business entities with turnover of more than Rs.10 Lakh, may plan to dispense with the formality to get registered under the service tax laws and not file returns, by availing the services through a practicing Chartered Accountant, who on behalf of the said small business entity, will approach the advocate/arbitral tribunal and thus will pay the service tax on the bills raised by the advocate / arbitral tribunal and pass on such bill amount to the said small business entity and since practicing chartered accountants are not covered by reverse charge mechanism with respect to its clients, the said small business entity will not be required to pay service tax under reverse charge mechanism to the advocate / arbitral tribunal and consequently dispenses with the of the formality to get registered under the service tax laws and not file service tax returns.

Moreover in case of a practicing Chartered Accountant, with turnover less than Rs.10 Lakh, such practicing Chartered Accountant will be exempted from reverse charge mechanism with respect the receipt of services of advocate / arbitral tribunal and further will not add service tax to the bill it raises upon the service receiver 'Small Business Entity'.

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