Notes on Service tax of Construction Industries w.e.f 1st July, 2012.

Preface

The following notes have been complied and brought up together to point out the latest changes in Service tax wef to 1-7-12.

All described herein are with best of my knowledge. If there is any mistake of fact or interpretation of the Law, I would be please to know it and would rectify the same. Also further it will help me also to absorb the topic far better.

Thank you,
Avinash Sunchu
avinash_sunchu@hotmail.com

There is no tax on helping each others.
All which is not given is lost eventually.
If you light a lamp for somebody, it will also brighten your path.

INDEX

Background:

Recommendations made in early 1990s by the Committee recommended imposition of tax on selected services were done by Professor Dr.Raja J. Chelliah Tax Reforms Committee head.

The amendments vide constitution (95th amendment) Act, 2003 was made. Consequently, new article 268 A was inserted for levy by Union Govt., collected and appropriated by the Union Govt., and amendment of seventh schedule to the constitution, in list I-Union list after entry 92B, entry 92C was inserted for taxes on services. All the above amendments were brought in to make service tax liable under constitution.

The provisions relating to Service Tax were brought into force with effect from 1st July 1994. It extends to the whole of India except the state of Jammu & Kashmir. The services, brought under the tax net in the year 1994-95 were:

- Telephone
- Stockbroker
- General Insurance

Thereafter the Finance Acts of the forthcoming years extended the scope of service tax and covered a large number of services. By 2012, there were about 128 taxable services. The tax collections have also grown manifold since 1994-95 i.e. from Rs.410 crores in 1994-95 to Rs. 97,389 crore in 2011-12.

Definition of Service:

For the first time since the introduction of service tax law, term ‘service’ has been defined under the Negative list regime to mean ***“any activity carried out by a person for another for consideration, and includes a declared service”***

Also in the case of Magus Construction Pvt. Ltd. V/s. Union of India 2008 (11) S.T.R. 225 (Gau), the Assam High Court defined service as follows –

“*an act of helpful activity, an act of doing something useful, rendering assistance or help. Service does not involve supply of goods; “service” rather connotes transformation of use/user of goods as a result of voluntary intervention of “service provider” and is an intangible commodity in the form of human effort. To have “service”, there must be a “service provider” rendering services to some other person (s), who shall be recipient of such 'service'*”.

Services exclude sales of goods or immovable property or deemed sales. But the service portions of all such activites are declared as Services.

Taxable service provided only in the Taxable Territory shall be taxed. In this context, Taxable Territory has been defined to mean whole of India excluding state of J&K.

Following have been clarified <u>to be out</u> of the term ‘service’:-

- By an employee to an employer in the course of or in relation to the employment of the person;
- That amounts to manufacture of excisable goods or is chargeable as part of the

Value of goods to a duty in terms of the provisions of Central Excise Act, 1944;

- Any transaction in money or actionable claim;
- Transfer of title in **goods** or **immovable property** (i.e. sale, gift etc.) or deemed sale.

According to the Sale of Goods Act, 1930:

"Goods" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

The expression 'Immovable property' as defined in clause 26 of section 3 of the General Clauses Act, 1897 can be borrowed to support the proposed scheme:

"Immovable property" shall include land, benefits arising out of land and things attached to the earth, or permanently fastened to anything attached to the earth."

A transfer of title in goods would be excluded from the definition of service by operation of the said exclusion clause while the service portion would be included in the definition of service. For example a builder carrying out an activity for a client wherein a flat is constructed by the builder for the client for which payments are received in installments and on completion of the construction the title in the flat is transferred to the client involves two elements namely provision of construction service and transfer of title in immovable property. The two activities are discernibly separate. The activity of construction carried out by the builder would, therefore, be a service and the activity of transfer of title in the flat would be outside the ambit of service.

A transaction takes place between two persons. Therefore self-supplies will not constitute a service.

By a person for another

The term 'provided by one person to another' means that services provided by a person to self are outside the ambit of taxable service. For example - service provided by one branch of a company to another or to its head office or vice-versa. But there are two exceptions to this rule namely –

- an establishment of a person located in taxable territory and another establishment of such person located in non-taxable territory are treated as establishments of distinct persons (Sec.66A(2))

- an unincorporated association or body of persons and members thereof are also treated as distinct persons (explanation to Sec.65)

For example, services provided by a club to its members and services provided by the branch office of a multinational company to the headquarters of the multi-national company located outside India would be taxable provided other conditions relating to taxability of service are satisfied.

Provision of service by an employee to the employer

Provision of service by an employee to the employer is outside the ambit of service. Only services that are provided by the employee to the employer in the course of employment are outside the ambit of services. Services provided outside the ambit of employment for a consideration would be a service. For example, if an employee provides his services on contract basis to an associate company of the employer, then this would be treated as provision of service. Services provided on contract basis i.e. principal-to-principal basis are not services provided in the course of employment. Amounts paid by the employer to the employee for premature termination of a contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment. Hence, amounts so paid would not be chargeable to service tax. However any amount paid for not joining a competing business would be liable to be taxed being paid for providing the service of forbearance to act.

The service tax before 1.7.2012 had a positive list approach but from the said date it has been shifted to negative list.

What is a negative list?

A negative list of services implies two things:

- A list of services which will not be subject to service tax.
- Other than the services mentioned in the negative list, all other services will become taxable which fall within the definition of the 'supply of services'

Negative vs. Positive list:-

The issue that which of the two lists is more desirable can be argued both ways with each having its own pros and cons. Positive list has the advantage of definitiveness, which is an essential pre-requisite for a good taxation law. However this very advantage starts getting eroded as the number of services increase. The possibilities of overlaps amongst definitions lead to innumerable administrative issues resulting in litigation and higher compliance costs. Some of the definitions could be so wide that they lead to unintended taxation requiring either clarifications or exemptions.

The fact that many services are outside the tax net invariably leads to unintended exemptions, thus keeping the tax base narrow with all the accompanying consequences. Such unintended exemptions at intermediate stages lead to breakage of the input tax chain adding costs for the tax-payers and end-users. This will be clear from the following illustration:

Negative list (Where exemption is limited)						
	Taxable Inputs	Output	Input tax credit		Output tax@ 10%	Net liability
Origin Suppliers A	0	100	0		10	10
Service provider B	100	200	10		20	10
Service provider C	200	400	20		40	20
TOTAL						**40**

Positive list (Where unintended exemption)					
	Taxable Inputs	Output	Input tax credit	Output tax@ 10%	Net liability
Origin Suppliers A	0	100	0	10	10
Service provider B	100	200	10	Exempt	0
Service provider C	200	400	0	40	40
TOTAL					**50**

It is evident from the illustration that when the Service Provider B is kept outside the tax chain the effective tax on the total supply goes up from 40 to 50 as the taxes paid at the previous stages are not available as tax credit at the subsequent stage.

As the untaxed supplies are treated exempt for the purpose of input tax credit rules, taxes paid on the inputs used in their supplies are required to be reversed under the prescribed rules. This further adds complexities both for the tax-payers and the administrators.

Point of taxation -

Earlier service tax was payable on receipt of payment in respect of taxable services provided. But with the introduction of Point of Taxation Rules, 2011, Service tax will be paid on accrual basis except in certain specified cases.

Point of taxation - means the point in time when a ***service shall be deemed to have been provided.***

These rules came into force from 1st day of April, 2011.

MEANING OF DATE OF PAYMENT –

- Rule 2A has been inserted in POT, Rules, 2011 vide NN 04/2012 ST dated 17.03.2012 and it defines the date of payment as under:

Date of payment means earlier of following:

I. Dates on which the payment is **entered in the books of accounts**

or

II. Dates on which the payment is **credited to the bank account** of the person liable to pay tax.

However date of payment shall be the date of **credited to the bank account if the following conditions are satisfied:**

i. *The credit in the bank account is **after four working days** from the date when there is change in effective rate of tax or a service is taxed for the first time; and*
ii. *The payment is made by way of an **instrument which is credited** to a bank account.*

For Service Provider

Earlier of-

1. Date of Completion or (Milestone in case of continuous Services)if invoice not raised in 30 days
2. Date of Invoice
3. Date of Payment

For Service Receiver-

Here there are 3 cases as follows –

- ✓ If Bill paid within 6 months of Receipt of Bill- **Payment Date will be POT.**
- ✓ If Bill not paid within 6 months of Receipt of Bill then**- Earlier of-Receipt date of Invoice Stage of Provision of Service.**
- ✓ If SP is from outside India and in case of Associated **Enterprizes Earlier of-Date of Credit or Payment Date**

S. No.	Completion Date	Payment Received on	Invoice Issued on	Point of Taxation	Due date for Deposit of Service Tax	Remarks
1.	31.07.2012	30.08.2012	12.08.2012	12.08.2012	05.09.2012 Or 06.09.2012 as the case may be	Invoice issued in 30 days and before receipt of payment
2.	31.08.2012	12.09.2012	14.09.2012	12.09.2012	05.10.2012 Or 06.10.2012 as the case may be	Invoice issued within 30 days and but payment received before issue of invoice

3.	30.09.2012	12.10.2012	16.11.2012	30.09.2012	05.10.2012 Or 06.10.2012 as the case may be	Invoice not issued in 30 days and payment received after completion of service
4.	31.10.2012	30.10.2012	14.11.2012	30.10.2012	05.11.2012 Or 06.11.2012 as the case may be	Invoice issued in 30 days but co received advance payment
5.	30.11.2012	25.12.2012	15.12.2012	30.11.2012	05.12.2012 Or 06.12.2012 as the case may be	Same as point no 3 above

Reverse CHARGE –

Normally the liability of payment of service tax to the government is on service provider but in some certain areas the liability partial or completely is on the service receiver this concept is known as Reverse charge.

The Central government has issued notification no. 30/2012 dated 20.6.2012 notifying the description of specified services when provided in the manner so specified where part of the service tax has to be paid by the service receiver. The extent to which tax liability has to be discharged by the service receiver has also been specified in the said notification.

In terms of serial nos. 7(b), 8 and 9 of the table in notification no. 30/2012 dated 20.6.12, the new partial reverse charge mechanism is applicable to services provided or agreed to be provided by way of

(a) renting of a motor vehicle designed to carry passengers on non-abated value to any person who is not engaged in a similar business, or

(b) supply of manpower for any purpose, or

(c) service portion in execution of a works contract;

by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as a body corporate located in the taxable territory. Thus the nature of the service and the status of both the service provider and service receiver are important to determine the applicability of partial reverse charge provisions

The point of taxation (liability to pay tax) under reverse charge will be the date of payment to the service provider. The company cannot utilise Cenvat credit to discharge liability under reverse charge. Further, if the payment to the service provider is not made within six months from the date of invoice, then the point of taxation will be the date of invoice and the service-tax will be payable with interest. In case under reverse charge, the service provider is associated Enterprise then the Service tax is payable on the accrual of the expenditure in the books of account. The Cenvat credit on such reverse charge will be eligible only after the payment of Service-tax and payment of value of invoice to be Input vendor and not before that (Rule 4(7) of Cenvat Credit Rules)

Further a chart division of reverse charge among the service provider and service receiver.

	Particulars	*Service provider*	*Service receiver*
1	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	Nil	100%
			{Registered
		(Goods Transport Agency)	(i)Factory (ii)Society
			(iii)Co Op Soc(iv)Dealer in Excise
			(v)Body corporate

2	(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business	NIL	100%
	(b) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business	60%	40%
3	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose	25%	75%
		(Individual, Partnership,	(Registered Companies)
		HUF ,AOP)	
4	in respect of services provided or agreed to be provided in service portion in execution of works contract	50%	50%
		(Individual HUF,	(Registered Companies)
		Partnership Firm AOP)	

Reverse charge mechanism in case the turnover of the service provider is less than Rs.10 lakhs

The liability of the service provider and service recipient are different and independent of each other. Thus in case the service provider is availing exemption owing to turnover being less than Rs 10 lakhs; he shall not be obliged to pay any tax. However, the service recipient will have to pay service tax which he is obliged to pay under the partial reverse charge mechanism.

Construction Industries changes after 1/7/12:

With effect from 01-07-2012 all activities related to construction fall within the purview of following “Declared Services” under Section 66E of the Act:

66E(b) 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.

66E (h) Service portion in the execution of a works contract

Exemption to certain Construction Activities

Certain construction activities have been exempted by virtue of entry no. 12, 13 & 14 of Notification No. **25/2012 dated 20-06-2012** with effect from 01-07-2012.

Entry No. 12, inter alia, grants exemption to 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 civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession, a historical monument, archaeological site, a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment. Services covered by this entry are exempted only if these services are provided to the Government or Local Authority or Governmental Authority.

se services are provided to the Government or Local Authority or Governmental Authority.

Entry No. 13, inter alia, grants exemption to services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a road, bridge, tunnel, or terminal for road transportation for use by general public, a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana. In order to avail exemption under entry no. 13 the status of service recipient is insignificant-be it Government, a Local Authority or a Governmental Authority or any other person.

Entry No. 14 inter alia, grants exemption to Services by way of construction, erection, commissioning, or installation of original works pertaining to an airport, port or railways, including monorail or metro, a single residential unit otherwise than as a part of a residential complex, Low-cost houses upto a carpet area of 60 square meters 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. The scope of exemption granted vide entry no. 14 is restricted because it does not cover completion, fitting out, repair, maintenance, renovation or alternation of original works pertaining to any of the specified structures, immovable properties, machineries or equipments.

Exemption to sub -contractor :In addition, exemption has also been provided with effect from 01-07-2012 vide Entry No. 29(h) of Notification No. 25/2012 to sub-contractor providing services by way of works contractor to another contractor providing works contract services which are exempt. This exemption was also available until 30-06-2012 *vide Circular No. 147/16/2011 dated 21-10-2011.*

Illustrative list of services in relation to Construction Activities which have become taxable with effect from 01-07-2012 onwards

- Construction of Boundary Wall.
- Construction of Parking Area.

- Services in respect of Cutting of Plots and Development of colonies received by builders.

- Construction of Residential Complex of units ranging between 2-12 units (more than one unit), the exemption given for building with 12 or less units has been excluded.

- Construction of Private Roads.
- Construction Services provided to Non– Commercial Organization in respect of buildings which are used for other than Religious Purpose.

- Services provided in respect of Construction of hospitals to any person other than Government or Governmental Authority or Local Authorities.

- Services provided in respect of Construction of buildings to be used for the purpose of Education to any person other than Government or Governmental Authority or Local authorities.

- Construction for residential units even for personnel purpose will attract service tax, Earlier there was also an exemption of construction of complex for personnel use i.e. if a developer builds any complex for its personnel or for employees but the same will not be accounted from 1/7/12.

Work contracts:

With effect from 01-07-2012, the following definition of "*Works Contract*" as given in Section 65B (54) of the Act is applicable:

*"**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;*

Transfer of property in goods involved in the execution of such contract:

First part of the definition is that there must be transfer of property in goods in the contract while executing the contract. If no transfer of property is involved then it is not covered under works contract.

Contract with consumables are not works contract:

Service provider is providing consumables like oiling and lubricating the machinery then it is not covered in works contract as property of goods is not transferred **but goods are consumed.**

Pure Labor contract are not works contract:

As pure labor only involve services and no transfer of good in the execution of the work.

Transfer of Property in good is leviable to tax as sale of goods:

Second important part is that Transfer of property in goods is taxable under sales tax. If such transfer is not taxable under sales tax then contract is not covered under works contract.

Any movable or immovable property:

Now works contract covers movable property also. Like repair of vehicle, Movable machinery is also covered under works contract if material property of goods gets transferred while executing repair contract.

Typically every works contract involves an element of sale of goods and provision of service. In terms of Article 366 (29A) of the Constitution of India transfer of property in goods involved in execution of works contract is deemed to be a sale of such goods. It is a well settled position of law, declared by the Supreme Court in *BSNL's case [2006(2) STR 161 (SC)]*, that a works contract can be segregated into a ***contract of sale of goods and contract of provision of service***.

Contracts for painting of a building, repair of a building, renovation of a building, wall tiling and flooring will be covered under works contract if such contracts involve provision of materials as well.

Valuation of service portion in execution of a works contract with effect from 01-07-2012

The value of service portion in the execution of a works contract is the gross amount charged for *the works contract less the value of transfer of property in goods involved in the execution of the said works contract. The balance will be the service portion in the work contracts.* The value of property in goods includes

- ✓ Cost of material,
- ✓ Cost of consumable such as water, electricity fuel etc,
- ✓ Machinery and other tools used, Etc

  Involved in the execution of the work contact

If the goods and service portion can be ascertain in the work contract then the service tax will be liable only on the service portion. Also the goods ascertained in a work contract as per Vat returns can be taken to derived at the value of goods involved.

We can bifurcate as follows

Contact Value	10000
Less - Value of goods involved in the work	5000
Less - Vat charged	625
Taxable value	4375

And if the portion of goods involved in the contract cannot be ascertain then can go for a simpler scheme –

Sr no	**Nature of Work**	**% to be deemed as service portion in the work contracts.**
(A)	Original Work Contract	40% of Total Amt.
(B)	Maintenance or Repair or Reconditioning or restoration or servicing of any goods (this rule is not applicable if these services are provided for immovable property).	70% of Total Amt.
(C)	Any purpose other than (A) & (B) above, including Maintenance, Repair, Completion and Finishing Services [such as Glazing, Plastering, Floor and Wall Tiling, Installation of Electrical Fittings] of an immovable property	60% of Total Amt.

“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;

"Total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services, if any; and

(ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

The manner of arriving at the 'total amount charged' can be explained as follow –

	Gross amount received by the service receiver excluding taxes	98000
add	Fair market value of goods supplied by the service receiver excluding taxes	10000
less	Amount charged by service receiver for 2	8000
	Total amount charged (1+2-3)	100000
	Value of service portion(40% of 4 in case of original works)	40000

Supply of man power –

Definition "Manpower Recruitment or Supply Agency services", under Section 65(105) (k) of the Finance Act, 1994 *means any service provided or to be provided to any person, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner.*

Supply of Manpower means supply of "*manpower, temporarily or otherwise, to another person to work under his superintendence or control*"

Joint Employment

There can also be cases where staff is employed by one or more employers who normally share the cost of such employment. The services provided by such employee will be covered by the exclusion provided in the definition of service. However, if the staff has been engaged by one employer and only made available to other for a consideration, it shall not be a case of joint employment.

Another arrangement could be where one entity pays the salary and other expenses of the staff on behalf of other joint employers which are later recouped from the other employers on an agreed basis on actuals. Such recoveries will not be liable to service tax as it is merely a case of cost reimbursement.

Directors

Services of a director on the board of a company have now become taxable. A director may be appointed either in an individual capacity or to represent an entity (including government) who has either invested in the company or is otherwise authorized to nominate a director. When a director receives payment in his personal capacity, the same is liable to be taxed in the hands of the director. However, where the fee is charged by the entity appointing the director and is paid to such entity, the services shall be deemed to be supplied by such an entity and not by the individual director. Thus in the case of Govt. nominees, the services shall be deemed to be provided by the Govt. and liable to be taxed under the exclusion sub- (iv) of clause (a) of section 66D of the Finance Act, 1994 i.e. support services by Government to business. Such services are liable to be taxed on reverse charge basis.

Treatment of supplies made by the employer to employees

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 unless specified in the Negative List or otherwise exempted.

One of the ingredients for the taxation is that such activity should be provided for consideration. Where the employees pays for such services or where the amount is deducted from the salary, there does not seem to be any doubt. However, in certain situations, such services may be provided against a portion of the salary foregone by the employee. Such activities will also be considered as having been made for a consideration and thus liable to tax. Cenvat credit for inputs and input services used to provide such services will be eligible under extant rules. The said goods or services would now not be construed to be for personal use or consumption of an employee per se and rather shall be a constituent to the taxable service provided to an employee. The status of the employee would be as a service recipient rather than as a mere employee when consuming such output service. The valuation of the service so provided by the employer to the employee shall be determined as per the extant rules in this regard.

However, any activity available to all the employees free of charge without any reduction from the emoluments shall not be considered as an activity for consideration and will thus remain outside the purview of the service tax liability (facilities like crèche, gymnasium or a health club which all employees may use without any charge or reduction from the salary will be outside the tax net). However the Cenvat credit for such inputs and input services will be guided by the extant rules.

Moreover, it would need to be seen whether the services provided by the employer are otherwise covered by the Negative List or exempt. For example, the services of food and catering provided by the employer in a canteen would normally fall outside the tax net unless such canteen has both the facility of air-conditioning as well as license to serve liquor (S. No. 19 of the Mega exemption). Likewise, services provided by way of guest house will also not be liable to tax if the tariff for such unit of accommodation is below Rs.1000 per day or equivalent (S. No. 18 of the Mega exemption). Similarly, services of telephone and motorcar for personal use will be covered by the service tax.

Treatment of reimbursements made by the employer to the employee.

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.

Treatment of supplies and reimbursements made by the employer to ex-employees/ pensioners.

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 per discussion in D above. The 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.

1. Does service tax applicable for all directors of a Company?

Whole time directors and Managing Directors of the companies are considered as employees of the company in which they are directors. The definition of service itself excludes services provided by the employees to employers. Hence, there is no service tax in respect of such employee directors. Service tax will apply only in case of non employee directors.

2. Does reverse charge applicable for all service recipients?

In respect of services provided by directors, obviously, the service recipient should be a company established under the Companies Act, like Private Limited Company, Public Limited Company, Government Company. In case of security agency services, the service recipient should be a business entity registered as a body corporate. Only in such cases reverse charge will apply.

3. If the service recipient is a partnership firm, whether reverse charge will apply for security services received by it?

No. Partnership firm is not a body corporate. Similar would be the case in case of other reverse charge liabilities, viz., manpower supply, works contract service and renting of vehicle services. But in case of support services provided by Government, Advocates, reverse charge will apply if the service recipient is "business entity" and they need not be body corporates.

4. What about the liability for the period 1st July 2012 to 7th August 2012?

It may be noted that the services of Directors to the companies and security agency services are normally continuously provided for more than a period of 3 months. Hence, they would be "continuous supply of service" as defined in Point of Taxation Rules, 2011. As per first proviso under Rule 4 of the said Rules, the point of taxation in case of continuous supply of services has been defined as "in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service".

For example, if the security agency has already raised their invoice for the services provided by them during July 2012, before 7th August 2012, the service recipient's liability to make the payment is recognized on the date of invoice and hence the point of taxation shall be the date of such invoice. Hence, if invoice has been raised by the security agency before 7th August 2012, reverse charge will not apply, even if the payment is made by the service recipient after 7th August 2012. But, if the invoice for the services provided from 1st August to 31st August 2012 is raised on 31st August 2012, the date of invoice, i.e. 31st August 2012 would be the point of taxation and hence the service recipient would be liable to make the payment of his portion of service tax liability under reverse charge, though part of the service has been provided before 7th August 2012. In other words, there is no need to split up the liability into pre / post 7th August 2012.

Similar would be the case in respect of services provided by the Directors to the Companies. If the liability to make the payment to the Director is recognized after 7th August 2012,reverse charge will apply and if such liability is recognized by the company before 7th August 2012, reverse charge will not apply.

If the services provided by the directors and security agencies does not qualify as continuous supply of service, then the point of taxation shall first be determined for the services provided. If the point of taxation is on or after 7th August 2012, reverse charge will apply and if the point of taxation is before 7th August 2012, reverse charge will not apply.

5. Whether the Directors have to obtain registration and pay service tax for the month of July 2012?

Yes. But, till 1st July 2012, the service provided by them was not a taxable service. Hence, if the value of other taxable services rendered by them, if any, during the financial year 2011-12 is less than Rs. 10 lakhs, they can claim exemption up to Rs.10 lakhs, during 2012-13 if the value of services provided by them to the companies and other taxable services, if any provided by them, is upto less than Rs.10 lakhs. This exemption is contained in notification 33/2012 ST Dated 20.06.2012 and subject to the conditions prescribed therein.

6. What is the portion of service tax payable under reverse charge?

In case of directors, the entire service tax liability has to be paid by the company. In case of security agencies, 75 % of the service tax liability (9%) shall be paid by the service recipient and 25 % of the service tax liability (3%) shall be paid by the security agencies.

7. Whether the security agencies can pay 3 % service tax in all cases?

No. Reverse charge will apply only if the service recipient is a business entity registered as a body corporate. In case of the services of security agencies are provided to other than business entities or to business entities who are not registered as body corporate, the entire service tax has to be paid by the security agency and no reverse charge will apply.

8. Whether the service tax thus paid under reverse charge can be availed as cenvat credit?

Entitlement to cenvat credit of service tax is to be decided with reference to the definition of input service under the Cenvat Credit Rules, 2004. Normally, the services of Directors and security agencies would be an eligible input service for a manufacturer and a service provider. Further, security service is specifically covered in the definition of input service.

Hence, cenvat credit would normally be entitled subject to other conditions under the Cenvat Credit Rules, 2004.

9. What is the document based on which cenvat credit can be taken?

In case of service tax paid directly by the service recipient under reverse charge, the challan evidencing payment of service tax by the service recipient would be the relevant document to avail cenvat credit. In respect of the portion of service tax paid by the security agency, the invoice issued by the security would be the relevant document.

10.Whether the directors have to issue an invoice?

As per the provisions of the Service Tax Rules, 1994 every service provider must raise an invoice within 30 days of completion of the service.

11. Under what code this services Tax on these services are to be deposited by services recipient?

From 01.07.2012, one Accounting code head for all the services has been notified. So these accounting code is to be used to deposit service tax for all type of services whether deposited under reverse charge by service recipient or by service provider.(read details here)

Some Important notifications issued by the Central Government:

The Central Government has issued a total of sixteen new notifications numbering from 25/2012-ST to 40/2012-ST on 20th June, 2012. These notifications along with two further important notification issued on 29th Jun12 will assist in implementation of new regime of Service Tax based on negative list of services.

Note: All these notifications (dt. 20.06.2012 in particular) shall come into force on the 1st day of July, 2012.

1) 25/2012-ST 20.06.2012 Mega exemption notification

2) 26/2012-ST 20.06.2012 Abatement Notification ... to be suitably read with 30/2012 ST 20.06.2012 for reverse charge mechanism

3) 27/2012-ST 20.06.2012 Exemption to services for the official use of foreign Diplomatic Mission

4) 28/2012-ST 20.06.2012 Place of Provision of Services Rules,2012

5) 29/2012-ST 20.06.2012 Exemption on property tax paid on immovable property

6) 30/2012-ST 20.06.2012 REVERSE CHARGE MECHANISM under sub-section (2) of Section 68 of Finance Act to be suitably read with 26/2012 ST 20.06.2012

7) 31/2012-ST 20.06.2012 Exemption to specified services received by exporter of goods

8) 32/2012-ST 20.06.2012 Exemption of services provided by TBI/ST 20.06.2012EP

9) 33/2012-ST 20.06.2012 Exemption to Small Service Providers

10) 34/2012-ST 20.06.2012 rescinding of certain notifications

11) 35/2012-ST 20.06.2012 Rescinding of notification 32/2007-ST 20.06.2012

12) 36/2012-ST 20.06.2012 Amendment in Service Tax Rules, 1994

13) 37/2012-ST 20.06.2012 Seeks to amend Point of Taxation Rules, 2011

14) 38/2012-ST 20.06.2012 Amendment of Notification 28/2011-ST 20.06.2012

15) 39/2012-ST 20.06.2012 Notification under Rule 6A of Service Tax Rules

16) 40/2012-ST 20.06.2012 Special Economic Zones

17) 41/2012-ST dt. 29.06.2012 à grants rebate of service tax paid on the taxable services which are received by an exporter of goods and used for export of goods

18) 42/2012-ST dt. 29.06.2012 exempts Service provided by the Foreign Commission Agent to Indian Exporters for procuring order subject to fulfillment of certain conditions specified therein

19) 43/2012-ST dt. 02.07.2012 exempts the taxable services provided by the Indian Railways from the whole of service tax leviable thereon, w.e.f. 02.07.2012 up to and including the 30th day of Sep 2012 i.e., for 3 mths (July12 to Sep12)