Reverse Charge under Service Tax (Post Union Budget 2012 Scenario)

Section 66B is the charging section for purpose of levy of service tax. Notification 30/2012-ST dated 20th June, 2012 has been issued which supersedes Notification 36/2004-ST dated 31st December, 2004 for the purpose of determining the service tax payable by recipient of service and in some specific cases by both the provider and recipient of the service. In the case of certain services notified as specified service, including Insurance Agent's services, Goods Transport Agency (Transportation by Road), Sponsorship Service, etc. the service recipient becomes the person liable to pay service tax to the Government. The services including Hiring or renting of motor vehicle designed to carry passengers, Manpower supply, and Works contract, when provided by individual or firm or partnership or Hindu Undivided Family (HUF) or proprietary or partnership firm including (Association of Persons) AOP, both service provider and service recipient are made liable to pay service tax to the extent specified. The reverse charge provisions will come into force w.e.f 1st July, 2012. Read on…

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Existing Provisions

"Reverse charge" of service tax as it is called was encapsulated under Rule 2(1)(d) of the Service Tax Rules, 1994 read with Section 68(2) of the Finance Act, 1994.

The following services were notified as specified services, where the service recipient was made the person liable to pay service tax to the Government:

a. Telecommunication service
b. General insurance business
c. Insurance Auxiliary Service
d. Service received by a person in India (Section 66A)
e. Goods Transport Agency Service (person who pays the freight)
f. Distribution of Mutual Funds
g. Sponsorship Service

New Provisions

Section 66B is the charging section for purpose of levy of service tax. Notification 30/2012-ST dated 20th June, 2012 has been issued which supersedes Notification 36/2004-ST dated 31st December, 2004 for the purpose of determining the service tax payable by recipient of service and in some specific cases by both the provider and recipient of the service. In the case of the following services notified as specified services, the service recipient becomes the person liable to pay service tax to the Government

o Insurance Agent's services
o Goods Transport Agency (Transportation by Road)
o Sponsorship Service

- o Services by Arbitral Tribunal to Business Entity
- o Legal services by Individual Advocate or firm of Advocates to Business Entity
- o Support Services(excluding Renting of immovable property ; and services by the department of Posts; in relation to Aircraft or vessel inside or outside the precincts of a port or airport; transport of goods or passengers specified in sub-clauses (i) to (iii) of clause (a) of Section 66D of the Finance Act, 1994), by Government or local authority to Business Entity
- o Service received by person located in taxable territory from person located in a non-taxable territory

The following services when provided by individual or firm or partnership or Hindu Undivided Family (HUF) or proprietary or partnership firm including (Association of Persons) AOP, both service provider and service recipient are made liable to pay service tax to the extent specified:

- o Hiring or renting of motor vehicle designed to carry passengers
- o Manpower supply
- o Works contract

The reverse charge provisions will come into force w.e.f. 1st July, 2012 and the individual detail in respect of each of the aforementioned categories will be as follows:

I. Reverse Charge

A. Insurance Agent

	Description of Service	% of service tax payable by Service Provider	% of service tax payable by Service Recipient
1	Service by an insurance agent to a person carrying on insurance business	Nil	100%

B. Sponsorship Service

	Description of Service	% of service tax payable by Service Provider	% of service tax payable by Service Recipient
1	Sponsorship Services	Nil	100%

C. Services by Arbitral Tribunal or Advocate

	Description of Service	% of service tax payable by Service Provider	% of service tax payable by Service Recipient (Business Entity)
1	Services by Arbitral Tribunal or Individual Advocate or firm of Advocates by way of legal services	Nil	100%

Note: *Services by Arbitral Tribunal or Individual Advocate provided to any person other than business entity or a business entity with a turnover up to ₹10 lakh in the preceding financial year are exempted by way of Notification No. 25/2012-ST dated 20th June, 2012.*

Section 65 B (17) defines "business entity" to mean any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession.

D. Goods Transport Agency

	Description of Service	% of service tax payable by Service Provider	% of service tax payable by Service Recipient
1	Services in respect of transportation of goods	Nil	100%

Note 1: Provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,—

(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(c) any co-operative society established by or under any law;

(d) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(e) any body corporate established, by or under any law; or
(f) any partnership firm whether registered or not under any law including association of persons;

Note 2: Person who pays or is liable to pay for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

Note 3: Furthermore, vide Notification No. 25/2012-ST, dated 20th June, 2012, service tax has been exempted, in relation to services provided by a goods transport agency, for the transportation of fruits, vegetables, eggs, milk, food grains or pulses. Besides, goods where the gross amount charged on a consignment in a single goods carriage does not exceed ₹1,500 or goods for a single consignee does not exceed ₹750 are also exempt.

It is clarified as per Notification 26/2012, ST that service tax is payable only on 25 % of freight. Such liability on 25 % of freight amount shall be discharged in full by the service recipient.

E. Support Services provided by Government or Local Authority

	Description of Service	% of service tax payable by Service Provider	% of service tax payable by Service Recipient (Business Entity)
1	Support Services by Government or Local Authority excluding Renting of immovable property and services by department of posts; in relation to Aircraft or vessel, transportation of goods or passengers as specified in clause (a) Section 67D (i) to (iii) of the Finance Act, 1994,	Nil	100%

Local Authority – Section 65(B) (31)

- a Panchayat as referred to in clause (d) of Article 243 of the Constitution;
- a Municipality as referred to in clause (e) of Article 243P of the Constitution;
- a Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund; (41 of 2006.)
- a Cantonment Board as defined in Section 3 of the Cantonments Act, 2006;
- a regional council or a district council constituted under the Sixth Schedule to the Constitution;
- a development board constituted under Article 371 of the Constitution; or
- a regional council constituted under Article 371A of the Constitution;

Support Services – Section 65(B) (49)

(49) "support services" means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis;

Examples of Support Services provided by Local Authority/Government/Development Board — Marketing Support by Silk Board, Coir Board, Coffee Boards

F. Service recipient located in Taxable Territory, service provider located outside Taxable Territory (formerly 66A)

	Description of Service	% of service tax payable by Service Provider	% of service tax payable by Service Recipient
1	Import of Services by service recipient in taxable territory	Nil	100%

Taxable Territory [Section 65(B) (52)]

"Taxable territory" means the territory to which the provisions of this Chapter apply;

India [Section 65(B) (27)]

"India" means,-

(a) the territory of the Union as referred to in clauses (2) and (3) of article 1 of the Constitution;

(b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976; (80 of 1976.)

(c) the seabed and the subsoil underlying the territorial waters;

(d) the air space above its territory and territorial waters; and

(e) the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

II. Joint Charge of Service Tax (partial reverse charge)

Joint charge is applicable to specified services where the service provider is an individual, HUF or a partnership firm, whether registered or not, including association of persons and the recipient is an entity registered as a body corporate. The three services and the portion of tax payable are as follows:

G. Hiring or Renting of Motor Vehicle

	Description of Service	% of service tax payable by Service Provider	% of service tax payable by Service Recipient
1	Hiring of motor vehicle		
	(i) With Abatement (60% - Notification No. 26/2012-ST dated June 20, 2012)	NIL	100%
	(ii) Without Abatement	60%	40%

Note: In case, the aforesaid services are provided by a Company, to any person, who is not engaged in the similar line of business, the person responsible to pay tax shall be the service provider.

Illustration

Case – 1 (Abated value): A (an individual) provides services to PQR Private Ltd. , in relation to renting of motor vehicles, designed to carry passengers and charges ₹100 .

Service tax liability on abated value: ₹5* = (100*40%*12.36%)

In this case, PQR Private Ltd would be required to deposit ₹5*, as service recipient.

Case – 2 (Total value): A (an individual) provides services to PQR Private Ltd , in relation to the renting of motor vehicles, designed to carry passengers and charges ₹100 for the same. Further, the service provider also charges ₹7* = (100*60%*12.36%), as service tax on the face of the invoice**.

In this case, PQR Private Ltd would be required to discharge ₹5* = (100*40%*12.36%), as service recipient

* (Rounding off as per Section 37D of the Central Excise Act)

** It has been clarified that as per clause (iv) of sub-rule (1) of rule 4A of the Service Tax Rules, 1994 “the service tax payable thereon has to be indicated. The service tax payable would include service tax payable by the service provider”.

H. Supply of Manpower in any manner

	Description of Service	% of service tax payable by Service Provider	% of service tax payable by Service Recipient
1	Supply of manpower in any manner	25%	75%

Note: The above concept is not applicable in case, the aforesaid service is provided by a Company i.e., Company would have to pay entire tax of 100% and recipient would not be required to pay...

Illustration

A (an individual) provides services to PQR Private Ltd, in relation to supply of manpower and charges ₹100.

Liability to be discharged by the service provider: ₹3* = (100*25%*12.36%).

Liability to be discharged by the service recipient: ₹9* = (100*75%*12.36%).

(Rounding off as per Section 37D of the Central Excise Act)

I. Works Contract

	Description of Service	% of service tax payable by Service Provider	% of service tax payable by Service Recipient
1	Services in execution of works contract	50%	50%

Note: **The above concept is not applicable in** case, the aforesaid service is provided by a Company i.e., Company would have to pay entire tax of 100% and recipient would not be required to pay.

Illustration

A (an individual) provides services to PQR Private Ltd , in relation to works contract (original) and charges ₹200 .

Service tax liability: ₹10* = (200*40% *12.36%) (Alternate Rule)

Liability to be discharged by the service provider: ₹5* = (50% of 10)

Liability to be discharged by the service recipient: ₹5* = (50% of 10)

* (Rounding off as per Section 37D of the Central Excise Act)

Valuation of Works Contract [Notification 24/2012-ST dated 6th June, 2012]

Alternate Rule

Description of Service	% of service tax payable on total amount charged for contract
Original Works	40%
Maintenance or repair or reconditioning or servicing of any goods	70%
Other works contract – Completion and Finishing Services	60%

III. Some points pertaining to Reverse Charge mechanism:

1. **Specifically with respect to Jammu and Kashmir the following may arise with regard to taxability under the Finance Act, 1994:**
   a. Services Provided in J&K?
   b. Services Provided from J&K?
   c. Service Provider and Service Recipient in J&K, while movable property or immovable property located in taxable territory.
   d. Services provider located outside taxable territory and service recipient located in taxable territory

   The TRU of the Ministry of Finance, Department of Revenue letter of 16th March, 2012 at para C.2 states that the place of supply rules will determine whether a service is being provided in J&K. Moreover, where the service provider is located in J&K but the service is being provided in taxable territory in terms of the rules, the tax will be collected from the service receiver.

2. **Payment of Service Tax**

   Point of Taxation Rules, 2011 (Rule 7) as amended with effect from 17th March, 2012 states that:
   i. Point of taxation shall be when payment is made to service provider
   ii. In case of Associated Enterprises as defined in Section 92C of the Income Tax Act, 1961 it shall be the date of debit in the books of account or the date of making the payment whichever is earlier
   iii. If payment is not made within six months, point of taxation to be date of invoice
      (a) Whether interest is payable for the six months when payment is not made?
      (b) Whether service tax has to be discharged by cash or can CENVAT Credit be utilised to pay service tax on reverse charge?

   It appears that in a case where payment is not made as stipulated interest will have to be paid under Rule 14 of the Cenvat Credit Rules (CCR) read with Section 75 of the Finance Act. As regards use of cenvat credit in respect of reverse charge in terms of Rule 9(1) (e) of the CCR, the Challan evidencing such payment is the appropriate document. Explanation below sub-rule (4) of Rule 3 of CCR specifically bars use of cenvat credit where the person liable

to pay tax is the service recipient. Also Rule 2(p) of the CCR excludes from the definition of output service, the service where the whole of the service tax is liable to be paid by the recipient of service. Hence, it is not possible to utilise the CENVAT credit for reverse charge payments and the same has to be made by way of cash payment if input credit has to be taken in respect of the same for use in payment of tax or duty on output services or excise duty for clearance of excisable goods.

3. **Is there a requirement to have in place a provision similar to erstwhile Section 66A of the Finance Act in relation to taxable service provided by a person in a non-taxable territory and received by a person located in taxable territory?**

   Under the new scheme of taxation of services, service tax has to be paid by the person so charged but the levy is with respect to the place where the service is performed. In this connection, the expression "taxable territory" has been introduced and services are taxable only if the same are provided in the taxable territory. At the same time place of service is with reference to the location of the service receiver. If the location of the receiver is in the taxable territory then the same is taxable. While the consideration for the service could flow from a third party as well, what has to be established is as to who is liable to pay the consideration. Therefore, the services performed outside India for a client or customer in India including an establishment etc. as defined under Section 65B(44) will be taxable and the tax will have to be paid by the recipient.

4. **ST Notification No. 33/2012- dated 20th June, 2012 exempts taxable services of aggregate value not exceeding ₹10 lakh in any financial year from the whole of the service tax leviable thereon under Section 66B of the said Finance Act. The question arises whether the small service provider could avail the benefit of the exemption in relation to payment of tax on joint charge basis.**

   The above notification incorporates a non obstante clause as follows:-

   Noting contained in this notification shall apply to:

   (i) ....

   (ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of Section 68 of the said Finance Act read with Service Tax Rules, 1994

   Section 68(2) has a Proviso which states as under:

   Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider

   It has been clarified that the liability of the service provider and the service recipient are different and independent of each other. In the case of small service provider claiming exemption he shall not be obliged to pay tax. However, the service recipient shall have to pay service tax which he is required to pay under the partial reverse charge mechanism.

5. **When should the payment of tax under partial reverse charge be made?**

   This will be governed by the Point of taxation Rules, 2011. For the service provider it shall be the invoice or date of receipt of payment. For the service recipient in terms of the said rules, it shall be the date when payment is made for the service.

6. **Refund of cenvat credit to service providers taxed on reverse charge basis**

   Rule 5B has been introduced in the Cenvat Credit Rules to provide for refund upon the service provider being unable to utilise the cenvat credit availed on inputs and input services for payment of service tax on such output services subject to certain safeguards that are to be prescribed. ■