Service Tax – Partial Reverse Charge Mechanism – FAQs

Under the Reverse Charge Mechanism the Service recipient is liable to pay service tax in cash, directly to the Government Treasury on notified services as per **Notification No. 30/2012- ST** dated 20-06-2012 and as amended by **Notification No. 45/2012- ST** dated 07-08-2012.

With effect from 1 July, 2012, there are certain services on which 100% service tax needs to be paid by Service Recipient and there is partial reverse charge wherein both service provider and service recipient needs to pay service tax as per defined percentage as mentioned in the table below:-

S. No.	**Description of Service**	**% payable by Service provider**	**% payable by Service Receiver**
1.	Services provided or agreed to be provide to any person carrying on insurance business	Nil	100%
2.	Goods transport Agency (Applicable to transport by road)	Nil	100%
3.	Sponshorship services, where service receiver is a body corporate or a partnership firm	Nil	100%
4.	Arbitral Tribunal, where service receiver is a business entity having turnover more than 10 lakhs in preceding financial year	Nil	100%
5.	Individual advocate or a firm of advocates, where service receiver is a business entity having turnover more than 10 lakhs in preceding financial year	Nil	100%
6.	services provided or agreed to be provided by Government or local authority by way of support services to any business entity located in the taxable territory, excluding,- (1) renting of immovable property, and (2) services specified in sub clauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994.	Nil	100%
7.	Hiring of motor vehicles to carry passengers on abated value (Where service provider – individual/Proprietorship/HUF/Partnership and service recipient – Body Corporate)	Nil	100%
8.	Hiring of motor vehicles to carry passengers on non-abated value (Where service provider – individual/Proprietorship/HUF/Partnership and service recipient – Body Corporate)	60%	40%
9.	Supply of manpower or security services (vide N.N. 45/2012- ST dated 07-08-2012), Where service provider – individual/Proprietorship/HUF/Partnership and service recipient – Body Corporate	25%	75%
10.	Works Contract -((Where s ervice provider – individual/Proprietorship/HUF/Partnership and service recipient – Body Corporate)	50%	50%
11.	Service provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory	Nil	100%

12.	Service provided by a Director to Company (vide N.N. 45/2012- ST dated 07-08-2012)	Nil	100%

We have further summarised frequently asked questions in respect of partial reverse charge mechanism for your easy understanding:

1. Does partial reverse charge applicable for all service providers and recipients?

No. Only specified Services falling under partial reverse charge mechanism viz., Manpower Supply, Security Services, Works contract service and Renting of motor vehicle services.

Further, the service provider shall be either any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory.

Furthermore, the service recipient shall be business entity registered as body corporate located in the taxable territory.

2. What does a Service Provider need to indicate on the invoice when he is liable to pay service tax under the partial Reverse Charge Mechanism?

The Service Provider shall issue an invoice complying with Rule 4A of the Service Tax Rules,1994.The invoice shall indicate the name, address and the registration number of the service provider; Name and Address of Service Recipient receiving taxable service; the description and value of taxable service provided or agreed to be provided; and the service tax payable thereon. As per clause (iv) of sub-rule (i) of the said rule 4A "the service tax payable thereon" has to be indicated.

3. If the Service Provider is exempted being a SSI (Turnover less than Rs. 10 Lakhs), how will the Reverse Charge Mechanism operate?

In case the service provider is availing exemption owing to turnover b eing less than Rs. 10 lakhs then he shall not be obliged to pay any tax. However, Service Recipient shall have to pay service tax to the extent of his service tax liability under the partial Reverse Charge Mechanism.

4. Whether Service receiver can avail SSI exemption limit?

No, the service recipient cannot avail SSI exemption while discharging servcie tax liability under reverse charge in terms of Notification No. 33/2012- ST dated 20-06-2012.

5. How is the Service Recipient required to calculate his tax liability under Partial Reverse Charge Mechanism? How will the Service Recipient know which abatement or valuation option has been exercised by the service provider?

It is being provided by way of Explanation in the Notification referred above that Service tax liability of the Service Provider and Service Recipient are different and independent of each other. The Service Recipient can independently avail or forgo abatement or choose a valuation option, which is independent of Service Provider.

6. What is the Point of Taxation for service tax liability under Reverse Charge Mechanism?

Usually, Point of Taxation (POT) for service provider would be earliest of following i.e. Date of Invoice or Date of receipt of payment. In case invoice is not issued within stipulated 30 days from the date of receipt of payment or date of completion of service, whichever is earlier then Point of Taxation would be earliest of following i.e . Date of receipt of payment or Date of completion of service.

However for the service recipient, in terms of Rule 7 of the POT Rules, point of taxation is date of payment i.e. the invoice is issued, say in July 2012 and the service recipient pays for the same in August 2012 then point of taxation for the service provider will be the date of issue of invoice in July 2012 and the point of taxation for the service recipient shall be the date of payment in August 2012.

Further, Rule 7 of POT Rules states that POT under reverse charge would be date of Payment provided payment is made within 6 months from the date of invoice otherwise POT would be date of invoice.

7. Is Cenvat Credit allowed to be taken of the service tax partially billed by the Servic e Provider and partially paid by a Service Recipient under the Partial Reverse Charge Mechanism?

Yes, CENVAT Credit can be availed of the service tax amount paid to the Service Provider as well as paid by the Service Recipient in cash, directly into the Government Treasury under the Partial Reverse Charge Mechanism provided the same is Input Service for the Service Recipient

The credit of service tax paid to the service provider would be available on the basis of the invoice issued provided the payment of the value of input service and the service tax made within three months from date of invoice otherwise service recipient shall pay/reverse equal to the CENVAT cerdit availed on such input service and take credit whenever subsequent payment made of value of input service and the service tax by the Servi ce Recipient.

The credit of service tax paid by service receiver under partial reverse charge would be available on the basis of tax payment challan as per Rule 9(1)(e) of Cenvat Credit Rules, 2004 on or after the day on which payment is made of the value of input service and the service tax as indicated in invoice, bill or, as the case may be, challan referred to in Rule 9 of Cenvat Credit Rules, 2004.

8. Whether Service Receiver can pay Service Tax by utilising CENVAT Credit?

No. Explanation to Rule 3(4) of Cenvat Credit Rules, 2004 specifically provide that *"Cenvat Credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient."* Ther efore, Service Receiver has no option but to make payment of Service tax in cash.

9. Whether Service Recipient paying Service tax under reverse charge needs to get registered under Service Tax?

Yes, Service Recipient will have to get registered under Service tax, even if he is not providing any service. He will have to file the return as well even if it is a nil return.

As per Section 69 of Finance Act, 1994, "every person liable to pay the service tax under this Chapter or the rules made there under shall within such time and in such manner and in such form as may be prescribed , make an application for registration to the Superintendent of Central Excise"