Impact of Service Tax on Trading Concerns 10 Questions and Answers

By CA Tarun Kr. Gupta[1]
tarunkrgupta@yahoo.com

1. **I am a trading concern and do not provide any services other than selling goods. Am I liable for service tax?**

   Yes, even when you are a trading concern, there are provisions in the Service Tax law that brings you under the Service Tax net.

2. **How is it possible that even when I am not providing any service, I am still covered under the service tax regime?**

   Under the Service Tax law, business entities that are not providing any services and are purely trading concerns, are also covered under the Service Tax net. This is due to the reverse charge mechanism that has been introduced w.e.f. July 1, 2012.

3. **What is reverse charge?**

   Reverse charge is a mechanism wherein the liability of payment and compliance has been shifted from the service provider to the service recipient. This is not a new concept under service tax. Earlier Goods Transport Agency (GTA) services were covered under this. Now this has been streamlined and apart from GTA services (now reworded as Transportation of Goods by Road), there are another 10 more services under the reverse charges mechanism.

4. **Is reverse charge applicable on all type of persons?**

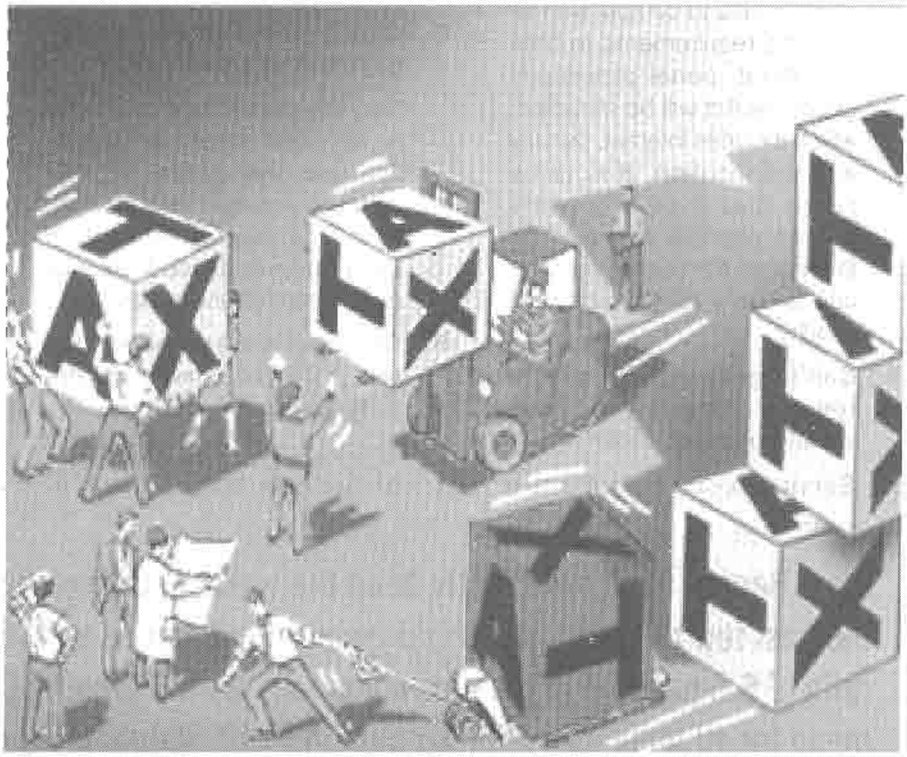
   No, liability under the reverse charge mechanism is applicable only if service receivers are business entities and they receive services from individuals, HUF, proprietary or partnership firms.

5. **So, what services are under reverse charge?**

   The Government has identified certain services to be under the reverse charge/ joint charge mechanism. These are as follows:

   1) Manpower supply service including payments to security services

   2) Payments to Directors (e.g. sitting fees, commission, etc.)



[1] Views expressed are personal and does not constitute professional advice. Users of this information are encouraged to seek professional advice for their specific cases. The author can be contacted at tarunkrgupta@yahoo.com or +919830124482

We must care for each other more, and tax each other less. ~Bill Archer

3) Import of service (service received from non-taxable territory)
4) Service portion in Works contract
5) Renting or hiring of motor vehicles to carry passengers, except metered taxis
6) Support services provided by Government, except renting of immovable property
7) Services of Advocates
8) Arbitral Tribunal services
9) Sponsorship service
10) Goods Transport Agency Service (GTA)
11) Insurance agent

6. Is it necessary for me to pay service tax on these services?

Yes, the responsibility of payment and all other compliances is cast upon the service receiver. The service receiver has to comply with all statutory requirements. In case of default, penal provisions under the Act will be attracted, which includes interest, penalty and prosecution. It is to be noted that even when the service provider has paid off the liability, the service receiver can be held liable to pay his liability.

7. Can't I get exemption from reverse charge since I am a small business unit?

Service providers who are small and whose taxable services are below Rs. 10 Lakhs are exempt from payment of service tax. However under the reverse charge mechanism, since the liability is upon the service receiver, no general exemption is available. Payment of even Rs. 1000/- for availing services which are under reverse charge is covered under the reverse charge mechanism. However in case of services from an Advocate or Arbitral services, reverse charge is applicable only if the turnover is over 10 lakhs of the service receiver.

you can adjust your liability of service tax paid under reverse charge with any excise duty or service tax payable (except exempted goods or services) that might be applicable. This is allowed as per the CENVAT Credit Rules.

8. Can I get abatement for payment of service tax?

Yes, the percentage of liability is reduced in certain cases wherein the entire activity cannot be termed as a service. In these cases, a certain percentage is defined which is applicable for abatement.

9. Can I get a credit of service tax paid from any excise duty/ service tax liability?

Yes, you can adjust your liability of service tax paid under reverse charge with any excise duty or service tax payable (except exempted goods or services) that might be applicable. This is allowed as per the CENVAT Credit Rules. However in case of trading concerns, excise duty or service tax is hardly applicable. Thus CENVAT may not be applicable to these concerns. However please note that the liability under reverse charge needs to be paid in cash. The liability cannot be set-off against any available Cenvat credit.

10. What are the compliances which I need to do?

Compliances fall under three major categories :

1) One time - One time activity is the registration that needs to be done with the Department. This is a simple process as it has to be done online.
2) Monthly - Payment for service tax by a company needs to be made on a monthly basis and by others on a quarterly basis. This has to be done by the 6th of next month through e payment, except for the last Qtr/ month when payment has to be made by 31 March. Payment of tax has to be made when payment is made by the service receiver (within 3 months of bill date).
3) Half Yearly - Returns to the Department have to be filed on a Half yearly basis.

West Bengal has consistently been the worst performer in tax revenue collection for the past few decades. A Central government source said the state can easily reach a ratio of 6.5 per cent in the next couple of years. Planning Commission data shows the mean for all India was 7.35 per cent in FY12. Neighboring states like Bihar and Orissa are at 5.5 per cent and 6.3 per cent.

Be wary of strong drink. It can make you shoot at tax collectors... and miss. ~Robert Heinlein