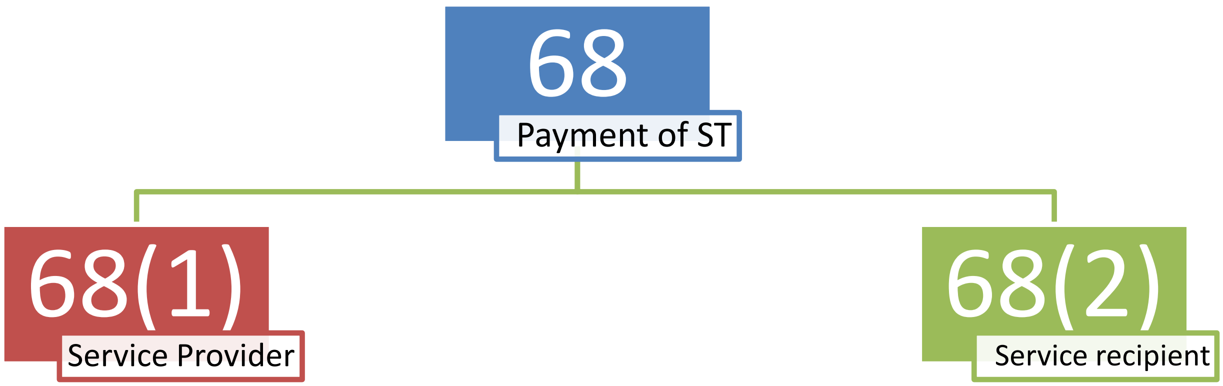
Reverse Charge U/s 68(2)

Introduction:

Section 68 of Finance Act 1994 elaborates on Payment of Service Tax. It has 2 parts:



Section 68(1) puts the onus on service provider to discharge the service tax liability.

Section 68(2) empowers the government to issue a notification specifying the other person liable to discharge duty instead of the service receiver. This is popularly referred to as Reverse Charge.

In exercise of powers in Section 68(2) the government has issued **Notification No 30/2012 on 20.06.2012**

It has been amended subsequently by Notification 45/2012 dated 07.08.2012.

The notification mentions the following taxable services:

- Services of Insurance Agent
- Goods transport agency services
- Sponsorship services
- Arbitral Tribunal Services
- Legal services
- ~~Support Services~~ “Any Services” by Government to business entities (FA 2015)
- Directors
- Renting a motor vehicle to a person who is not in a similar line of business
- Supply of manpower for any purpose
- Security contract
- Service portion of Works Contract
- Services provided by a person in non-taxable territory
- Services provided by any person including aggregator
- Services provided by mutual fund agents and mutual fund distributors to MFs
- Services provided by agents of lottery distributors to distributor.

Service- Description	Status of Service Provider	Status of Service Receiver	Specific Remarks
1. Services provided by Insurance Agent to any person carrying on Insurance Business	Insurance Agent – Any person	Insurance Business- Any agent	
2. Goods Transport Agency Services	Goods Transport Agency – Any person	Person Liable to pay freight is: a) Registered Factory b) Registered Society c) Co-operative Society d) Registered Dealer of Exciseable Goods e) Body Corporate f) Firm incl. AOP	
3. Sponsorship Services	Any person	a) Body Corporate b) Firm	
4. Arbitral Tribunal Services	Arbitral Tribunal	Business Entity- Any person	
5. Legal Services	a) Individual b) Firm of Advocates	Business Entity- Any person	Including representation services
6. ~~Support Services~~ "Any services" given by Government (FA 2015)	a) Government b) Local Authority	Business Entity- Any person	Excluding: a) Renting Immovable property b) Taxable Services of India Post c) Services in relation to Aircraft/Vessel d) Transport of Goods/Passengers
7. Renting motor vehicles to carry passengers to any person not in similar line of business	a) Individual b) HUF c) Firm d) AOP	Body Corporate	
8. Supply of Manpower for any purpose			
9. Security Services			
10. Service portion in execution of Works Contract			
11. Services provided by the Director	Director	Company	Services of MD/Whole Time Director excluded
12. Services provided by person outside Taxable Territory	Any person outside Taxable Territory	Any person in Taxable territory	Depends on Place of Provision of Services Rules 2012
13. Services provided by any	Aggregator	Any business entity	Aggregator is made

person including aggregator			liable(FA 2015)
14. Services provided by mutual fund agents and mutual fund distributors to MFs	Mutual Fund Agents	Mutual Funds	(FA 2015)
15. Services provided by agents of lottery distributors to distributor.	Agents of Lottery Distributors	Lottery Distributors	(FA 2015)

Relevant Definitions & Issues:

1. The person who pays or is liable to pay freight 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.
2. **Works Contract:** A contract wherein transfer of property involved in execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out
    - Construction
    - Erection
    - Installation
    - Completion
    - Fitting out
    - Repair
    - Maintenance
    - Renovation
    - Alteration

    of Movable or immovable property.

    The notable change from 01 July 2012 was inclusion of movable property also within service of scope of Works Contract

3. ~~**Business Support Services:** As per Section 65B(49) support services means:~~
    - ~~infrastructural~~
    - ~~operational~~
    - ~~administrative~~
    - ~~logistic~~
    - ~~marketing~~
    - ~~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;~~

  The word “support services” has been substituted with any services by FA 2015. Hence the definition is no longer relevant.

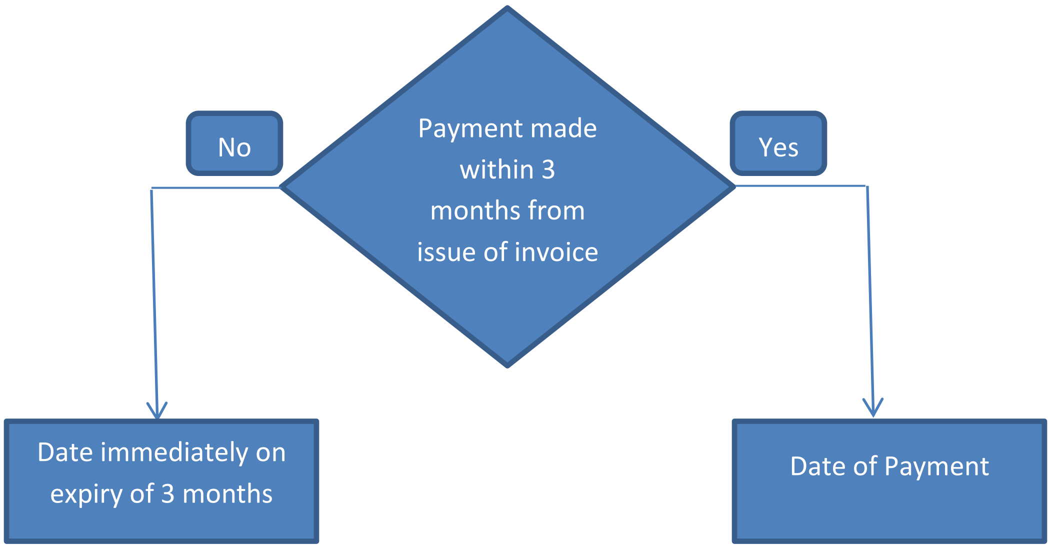
4. In works contract services, where both service provider and service recipient is the persons liable to pay tax, the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the provider of service.
5. Aggregator services: Earlier based on strict interpretation of law, the aggregators were not under the Service Tax net. FA 2015 specifically defines the aggregator which can be summed as:
   - Be a person as defined in section 65B (37) of Finance Act, 1994
   - Should own and manage a web based software application
   - Enables a potential customer to connect with persons providing service of a particular kind
   - Such connecting shall be by means of the web application and a communication device
   - Services should be provided under the brand name or trade name of the aggregator
6. For an aggregator, the person liable to pay tax is:
   a. Aggregator himself
   b. Authorized representative of Aggregator in taxable territory
   c. Person appointed for the purpose.

Sl.	Description of a service	Service provider’s Liability	Service receiver’s Liability
1	services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	Nil	100%
1A	Services provided by mutual fund agents and mutual fund distributors to MFs	Nil	100%
1B	Services provided by agents of lottery distributors to distributor.	Nil	100%
2	services provided or agreed to be provided by a goods transport agency transportation of goods by road	Nil	100%
3	services provided or agreed to be provided by way of sponsorship	Nil	100%
4	services provided or agreed to be provided by an arbitral tribunal	Nil	100%
5	services provided or agreed to be provided by individual advocate or a firm of	Nil	100%

	advocates by way of legal services		
5A	services provided or agreed to be provided by a director of a company to the said company {NT 45/2012 07.08.2012}	Nil	100%
6	services provided or agreed to be provided by Government or local authority by way of ~~support services~~ "any services" 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	(a) 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 (b) 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	Nil 60%	100 % 40%
8.	services provided or agreed to be provided by way of supply of manpower for any purpose or security services {NT 45/2012 07.08.2012} (FA 2015)	~~25%~~ Nil	~~75 %~~ 100%
9.	services provided or agreed to be provided in service portion in execution of works contract	50%	50%
10.	any taxable services 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%
11.	Services provided by any person involving aggregator in any manner	Nil	100%

Point of Taxation for Discharge of Liability:

Rule 7 of Point of Taxation Rules, 2011 (amended) states that *date on which payment is made if within 3 months else the first day after 3 months* is point of taxation.



If Service Provider is an SSI, how shall reverse charge apply?

Vide Notification 33/2012 value of taxable services up to 10 lakhs is exempted. The proviso to the said section clearly states that the limit is not applicable for service recipient under Section 68(2) The Service provider need not discharge his liability if his turnover is less than 10 lakhs. Still, service recipient needs to discharge his liability.

Should service receiver also register for service tax?

Yes, if Service recipient receives any services and falls under specified category of persons, registration is mandatory. Subsequently, return should also be filed.

If the service recipient is already registered then, the specific service needs to be added to the registration certificate.

How to compute the liability of Service receiver in Partial Reverse Charge?

The liability of service receiver and service provider are different and independent of each other. The service receiver can apply any method to compute his liability. He can choose to avail or forgo the abatement or chose another method of valuation. It generally depends on ease and data available. The service provider shall disclose his method of valuation in invoice. The department would necessitate disclosing the nature of abatement availed in the invoice to grant abatement.

Can Service Receiver utilize CENVAT Credit to pay?

No, Explanation to Rule 3(4) of CENVAT Credit Rules clearly provides that CENVAT credit cannot be utilized for that purpose. Hence, service recipient has to pay ONLY in cash. However, there are some divergent views by the Tribunal.

Can Service Recipient get credit of tax paid?

Yes, CENVAT credit will be available on the basis of GAR 7 challan. The credit can be used to set off liability on output services/goods, provided it qualifies as input service

Can service provider covered under Reverse Charge scheme get refund of CENVAT on inputs?

A service provider engaged in providing services covered under Section 68(2) and hence unable to utilize the tax credit on input goods and services shall be allowed refund of the same, subject to certain restrictions, conditions and safeguards under Rule 5A of CENVAT Credit Rules.

Tax planning measures to shift Reverse charge liability:

1. When procuring services for manpower supply or works contract, preference might be given to entities incorporated as Body corporates.
2. For Freight outward the liability to pay might be shifted on the customers. Then the supplier would not be liable for reverse charge. For exigency cases, the supplier would be paying on the behalf of the customer and customer alone is ultimately liable. Similar planning may be adopted for ensuring Freight inward also doesn't attract any compliance.
3. Convert works contract into pure labour contract like painting ,erection, construction etc
4. Do not provide sponsorship, explore alternatives like advertising or other promotions
5. Cut down on imported services look for indigenous service providers
6. Convert pure manpower supplier into higher value adding services like housekeeping, cleaning services, other composite services.
7. In the case of legal services, avail them from body corporates instead of individuals or look for similar services provided by other professionals like CA/CWA/CS.
8. When a business is set up, amongst all the modes, Individual might be preferred as compliances could be reduced significantly.
9. While planning due regard should be given to assigning employers versus outsourcing the contract. Cost benefit analysis should duly consider compliance costs for each alternative.

CONCLUSION:

Reverse charge is a unique feature of Indian Service tax regime. Proper understanding would enable young professionals to provide invaluable business advisory services to clients. A focused effort to assimilate is required because the applicability of Joint charge is based on 3 factors:

1. Nature of Service
2. Status of Service provider
3. Status of Service receiver