

**11. REVERSE CHARGE IN SPECIFIED SERVICES**

- Works contract - 50% tax by service receiver if service provider of works contract service is individual, HUF, proprietary or partnership firm or AOP and service receiver is business entity incorporated as body corporate. Balance 50% by service provider.
- Works contract is a composite contract of supply of goods and services of movable or immovable property. Construction, erection or commissioning with material, Job work with material, AMC, repairs covered under works contract.
- Manpower supply and security services - 75% tax by service receiver if service provider of manpower supply is individual, HUF, proprietary or partnership firm or AOP and service receiver is company or business entity incorporated as body corporate. Balance 25% by service provider.
- "Supply of manpower" means supply of manpower, temporarily or otherwise, to another person to work under his 'superintendence or control.' [Rule 2(g) of Service Tax Rules, inserted w.e.f. 1-7-2012], "Security services" means services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity [Rule 2(1)(fa) of Service Tax Rules, inserted w.e.f. 7-8-2012].
- Cleaning service, piece basis or job basis contract can be 'manpower supply service' only if the labour work under superintendence or control of Principal Employer. Persons sent on deputation is manpower supply service.
- Service tax payable on salary plus PF, ESI plus commission of labour contractor.
- **Renting or hire of motor vehicle designed to carry passengers** - Reverse charge when renting to a person who *is not in similar line of business*. Service Provider should be HUF, Individual, firm and Service receiver is Business entity registered as body corporate. Tax on 40%, if Cenvat credit is not availed by the service provider - No Cenvat credit in most of the cases - hence cost to company.
- If motor vehicle is taken on hire (operating lease) without driver, it is 'transfer of right to goods'. Then it is deemed sale of goods and Vat will apply - not service tax.
- **Goods transport Agency** - Tax when consignment note issued. Simple transport of goods service (without issue of consignment note) is not a GTA service:
- Person liable to freight is liable to pay service tax on GTA if he is body corporate, factory, registered dealer under Central excise, society, cooperative society, partnership firm (registered or not).
- Tax on 25% if GTA does not avail Cenvat credit - Hence service receiver should get certificate from him that he has not availed Cenvat credit. Otherwise tax on 100% value.
- GTA is liable to pay service tax if (a) Person liable to pay freight is individual or HUF (b) Person liable to pay freight is outside taxable territory (like J&K, Nepal, Bhutan, Bangladesh, Pakistan etc.).
- **Support Services of Government or Local Authority** - Sovereign and statutory activities not subject to service tax In case of support services like testing, police protection, Advertisement, construction, outsourcing type services provided by Government to business entity, Business Entity liable for entire service tax. However, no reverse charge in case of renting of immovable property, port, airport, railways, speed post services.
- **Import of Service** - Service tax is payable only if Place of Provision of Service is in taxable territory (i.e. India plus 200 nautical miles inside the sea minus J&K). Reverse

charge if Service provider is located outside taxable territory and service receiver is located in taxable territory.

- Service tax is payable on gross amount including TDS.
- **Insurance Agent service** - The Insurance company is liable for 100% tax.
- Services of Advocate or Advocate Firms or Arbitral Tribunal to Business Entity having turnover over ₹ 10 lakhs - the Business Entity receiving the service is liable to pay entire service tax.
- Sponsorship by Body corporate or Partnership Firm. The sponsor is liable to pay entire service tax if he is in taxable territory.
- Services of non-executive and independent directors - The company is liable to pay entire service tax. (In case of executive and whole time directors, if there is employer-employee relation, then no service tax).

## **7. IMPORTANT EXEMPTIONS**

- Services by UN and international organisations .
- Health care and veterinary services.
- Services by Charitable Organisations in respect of specified charitable activities only and construction of building for religious purposes for Charitable Organisation registered under section 12AA of Income Tax Act. Services imported by Charitable Organisations are also exempt from service.
- Religious ceremony and renting of religious places.
- Advocate or Advocate firm to non-business entity or business entity with turnover upto ₹ 10 lakhs. If Advocate or firm of Advocates provides service to business entity, the business entity is liable to pay service tax under reverse charge.
- Person on Arbitral Tribunal.
- Technical testing of new drugs.
- Recreation relating to arts, culture, sports.
- Services to recognised educational institution for auxiliary educational services and renting of Immovable Property (but not placement services). Auxiliary educational Services means - Outsourced activities, Mid-day meals, admission and examination related services, mid-day meals, transport of students, staff, faculty.
- Services to recognised sports body (but brand ambassadors not exempt). Sports sponsorship to recognised bodies (not IPL).
- Services provided to Government or local authority or governmental authority for erection, construction, maintenance, repairs of non-commercial or non-industrial use, educational purpose, sewage, residential colony etc.
- Infrastructure related civil construction services.
- Temporary transfer or permitting use of Copyright (except sound recording).
- Services of performing artists, Services of journalists.
- Hotels, guest houses with less than ` 1,000 per day tariff.
- Restaurants, eating joints or mess without AC/central heating and without bar (Thus, canteens will not be subject to service tax).
- Goods transport upto ₹750 per consignee and ₹1,500 per vehicle and specified agricultural commodities.
- Renting of motor vehicle to state transport or GTA.

- Transport of passengers and goods (in specified cases only).
- Housing Society or RWA to its members upto ₹ 5,000 p.m.
- Sub-brokers on stock exchange, Services of mutual fund agents or distributors of mutual fund, marketing agents of lottery.
- Selling agents or distributor of SIM card.
- Sub-contractor under works contract providing service to main contractor (who is also under works contract), when service of main contractor is exempt.
- Job work of agriculture, textile processing, diamonds and gemstones, parts of cycles and sewing machine.
- Job work exempt where principal manufacturer is paying excise duty - when material sent under rule 4(5)(a) of Cenvat Credit Rules.
- Business Exhibition held outside India (Really not taxable at all).
- Public telephones.
- Services of slaughtering of animals.
- Services from outside India to Government or Charitable Organisations.
- Public Libraries, Services by ESIC
- Slump sale, sale of business, demergers.
- Public conveniences like toilets, bathrooms etc.
- Services by Governmental authority.

#### **8. SMALL SERVICE PROVIDER EXEMPTION**

- Exemption if value of taxable services rendered in previous financial year did not exceed ₹ 10 lakhs - Notification No 33/2012-ST, dated 20-6-2012.
- Exempted turnover not to be considered for 10 lakh limit.
- Turnover of sale or manufacture of goods is not to be considered for calculating the ten lakh limit.
- If turnover crosses ₹10 lakhs in any financial year, tax payable after ₹ 10 lakhs in that financial year. However, no exemption will be available in next financial year.
- He is required to register when his turnover crosses ₹ 9 lakhs.
- No Cenvat credit should be availed.
- Clubbing provisions applicable.
- Service should not be under brand name of other. Thus, franchisees cannot avail exemption. Mere authorised person does not mean that he is providing service under brand name of other person'
- Once assessee starts payment of service tax, option cannot be changed during financial year.
- Exemption limit not available when service receiver liable to pay service tax under reverse charge.
- GTA not required to register if value of services on which he is required to pay service tax is less than ₹10 lakhs.

#### **9. NEGATIVE LIST OF SERVICES WHICH ARE NOT TAXABLE**

- Section 66D contains list of 17 services under negative list. Further definition of 'service' under section 65B(44) itse excludes some activities from definition of 'service'.
- As per section 66F(1); reference to a service (i.e. main service) shall not include reference to a service which is used for providing main service.

- Services by Government or local authority are in negative list, except support service (In case of support services, service receiver is liable to pay service tax, except in case of renting).
- Services by RBI, foreign diplomatic missions are in negative list.
- Agriculture and agricultural produce related services are in negative list.
- Trading of goods is not taxable service (goods include securities).
- Process that results in 'manufacture' of goods is not 'service' (since then excise law provisions become applicable),
- Advertisement **other than** advertisement and sale of time slot on TV and radio are in negative list. (Services of advertisement agents and services of advertisement design will be subject to service tax. Advertisements on TV and radio will be subject to service tax).
- Toll charges are in negative list (but service for collection of toll is taxable).
- Entertainment, amusement, gambling, betting, lottery are in negative list, (as this is covered in List II i.e. State List).
- Transmission and Distribution of Electricity by authorised bodies is in negative list, (however, no service tax even on private basis as tax on consumption and sale of electricity is State subject i.e. List II).
- Educational services (recognised) are in negative list, no tax on training in arts, culture, sports - no-tax on mid-day meal and bus services to students and staff (Commercial coaching and training will be subject to service tax).
- Renting for residential purposes is in negative list.
- Interest or discount on deposits, loans, advances is in negative list (need not be by Bank or FI).
- Inter se sale or purchase of foreign currency among Banks and authorised dealers is in negative list (However, commission on sale and purchase by authorised dealers and Banks to others will be subject to service tax).
- Passenger transport in stage carriage, metro, inland waterways, metered taxis, auto-rickshaws is in negative list. However, transport in tourist vehicles and tour operators and transport for tourism, conducted tour charter or hire in contract carriages will be subject to service tax.
- Tax on rail transport of passengers on 30% value on AC and first class.
- Passenger transport in inland waterways is in negative list. Public transport in vessel between places in India is in negative list except for tourism purposes.
- Transport of goods by road is in negative list [except Goods Transport Agency (GTA) and Courier].
- Transport of goods air or vessel (from outside India upto customs station of clearance in India) is in negative list.
- Funeral, burial, crematorium or mortuary related services are in negative list and also transportation of deceased (Ambulance Service) is exempt.
- Trading of goods has been included in Negative List. However, 'transfer of title in goods or immovable property, by way of sale, gift or in any other manner' has been excluded from definition of 'service' itself vide section 66F(44)(a)(i). Goods include securities. Hence, trading in securities will also be in negative list. Trading is 'exempted service' for purpose of rule 6 of Cenvat Credit Rules and provisions relating to reversal of Cenvat or payment of 6% 'amount' will apply.

**10. REVERSE CHARGE IN SERVICE TAX (TAX SHIFT)**

- Normally, service tax is payable by person providing the service. However, section 68(2) makes provision for reverse charge in specified cases i.e. making person receiving the service liable to pay tax (partly or fully). Provisions relating to reverse charge are contained in Notification No. 30/2012-ST, dated 20-6-2012.
- The small service provider exemption of ₹10 lakhs not available when tax is payable under reverse charge.
- Cenvat credit cannot be used to pay tax by service receiver. Service tax as to be paid by cash only i.e. GAR-7 challan. Once service tax is paid, Cenvat credit can be taken if otherwise it is his eligible 'input service'.
- Tax should be paid under service tax registration number of service receiver and included in his return as he is liable to pay service tax.
- "Service tax is payable by service receiver when actual payment is made to service provider and not on receipt of Invoice from service provider. However, if payment is not made to service provider within 6 months, service tax is anyway payable. Interest is also payable. Exception is that when service provider is outside India is Associated Enterprise (group company with at least 25% common interest), the service receiver is liable to pay service tax as soon as the account of service provider is credited in books of account of service receiver.
- Service provider should charge only his part of service tax. Service receiver liable for only his part and not entire amount, even if service provider does not charge his portion of service tax. A statutory liability cannot be shifted by mutual agreement. If statutory liability is of service receiver, he alone is liable.
- In some services (e.g. GTA, renting or hire of motor vehicle designed to carry passengers), the abatement is subject to condition of non-availment of Cenvat credit by service provider (not by service receiver). A certificate should be obtained from the service provider about non-availment of Cenvat credit. Such certificate is not required in case of hire or renting of motor vehicle, but still advisable to get it.
- In some cases, reverse charge is applicable only when service receiver is business entity registered as 'body corporate'.
- "Business entity" means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession. Thus, Government, charitable organisation is not 'business entity'.
- Body Corporate - Company, LLP, is Body Corporate - Firm, HUF, Trust, Registered Cooperative Society, Society registered under Societies Act is not 'Body Corporate'.