

AK NAIR & CO

A Presentation
on
Service Tax
Overview
and
Reverse Charge Mechanism

GROWTH OF SERVICE TAX

YEAR	NO. OF NEW SERVICES	TOTAL NO. OF SERVICES	Total collection (Rs. in crore)
1994	3	3	407
2001	-	26	2612
2005	13	72	14199
2008	7	103	51301
2010	3	112	58000
2012	0	119	97509
2013		All	132518
2014		All	180141

Service Tax in India (The Past)

- Introduced in India in 1994 as a simple, modest tax with just three services.
- Service tax – an indirect tax.
- Approach to Service Tax – Selective as against comprehensive one.
- Desirable from revenue, equity and economic view point.
- Governed by Finance Act, 1994 and a dozen of rules.
- Legislative dependence on over 25 other laws.
- Scattered and heterogeneous large mass of service providers as well as wide spectrum of services.
- Jurisdictional application.

Service Tax – The Present

Shift to Comprehensive Approach

- W.e.f. 1st July, 2012
- Finance Act, 2012 – A land mark Act to shift from selective positive approach to negative approach.
- It took 18 years to shift from selective approach (positive) to comprehensive approach (negative) to tax services
- All services to be taxed other than services specified in the negative list and exempted services – Section 66B.

Present Taxation of Services



New Provisions in Service Tax under Negative List

- Section 66 B Deals with charge of service tax on or after Finance Act, 2012.
- Section 66 C Provides for determination of place of provision of service.
- Section 66 D Comprises of negative list of services
- Section 66 E Comprises of the services which constitute declared services
- Section 66 F Provide principles of interpretation of specified description of services or bundled services

MAJOR CHANGES IN SERVICE TAX IN 2012-13 AT A GLANCE

- *Definition of 'service'* finds place in statutory provisions
- *Place of provision of service rules* determine the location of service and become be basis of taxation.
- Concept of *taxable territory and non- taxable territory* introduced
- Classification of service criteria replaced by new section 66F on interpretation principles of specified description of services or *bundled services*.

MAJOR CHANGES IN SERVICE TAX IN 2012-13 AT A GLANCE

- Under new ***reverse charge mechanism***, onus of paying Service Tax will be ***shared by service provider and service receiver*** in case of specified services.
- ***Payment of Service Tax on receipt basis for all service providers being individuals / firms / LLPs, if aggregate value of taxable services in previous year does not exceed Rs. 50 lakh.***
- ***Time limit for appeal*** by assesseees to Commissioner (Appeals) reduced from 3 months to 2 months
- ***Special Audit of Service tax assesses by CAs /CWAs***

What is Service

'Service' has been defined in clause (44) of the section 65B and means –

- any activity
- For a consideration
- carried out by a person for another
- and includes a declared service (66E)

What is Service

- Activity must be for a consideration
- Activity – includes both activity as well as non-activity
- Consideration – includes both monetary and non monetary consideration.
- Two persons are involved –
 - Service provider
 - Service receiver
- Only services provided by one person to another are taxable

What is Service : Exclusions

'Service' does not include -

- any activity that constitutes only a transfer in title of goods or immovable property by way of sale, gift or in any other manner.

Sale of developed plots is a service (*Narne Constructions Pvt. Ltd. v UOI 2013 (29)STR 3 (SC)*)

- a transfer, delivery or supply of goods which is deemed to be a sale of goods within the meaning of clause (29A) of article 366 of the Constitution
- a transaction only in money or actionable claim
- a service provided by an employee to an employer in the course of the employment.
- fees payable to a court or a tribunal set up under a law for the time being in force

Introduction and Background

- Normally, service tax is payable by person providing the service.
- Section 68(2) makes provision for reverse charge i.e. making person receiving the service liable to pay tax.
- Provision can be made that part of tax will be paid by service receiver and part by service provider (Partial Reverse Charge).
- Applicable : Notification No. 30/2012-ST, dated June 20, 2012 (Further, amended by Notification No. 45/2012-ST dated. July 8, 2012, & Notification. No. 7/2015-ST dated March 1, 2015) Services notified U/s 68(2) for reverse charge purposes
- Point of Taxation : Date of payment, if within 3 months - from the date of invoice otherwise date immediately following the period of 3 months.
- The small service provider exemption of Rs.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.
- Once paid, Cenvat credit can be taken if it is his eligible 'input service'.
- Service receiver to pay service tax of his part by GAR-7 challan
- A certificate should be obtained from the service provider about non-availment of Cenvat credit.

Liability to pay tax under Reverse Charge by Service Receiver

Under Partial Reverse Charge (Proportional)

- Renting of motor vehicles
- Works contracts

Under Full Reverse Charge (100%)

- Insurance related services by agents
- goods transportation by road
- sponsorship
- arbitral tribunals
- legal services
- company director's services
- services provided by Government / local authority excluding specified services
- Supplying of Manpower
- services provided by persons located in non-taxable territory to persons located in taxable territory.
- Aggregator

Important Points in Reverse Charge Mechanism

- Governed by Notification No. 30/2012-ST dated 20.06.2012 w.e.f. 1.7.2012
- Liabilities of both the service provider and service receiver are independent of each other
- Reverse charge will not apply where the service receiver is located in non-taxable territory
- For three specified services provided by business entities being company, society, cooperative society, trust etc, reverse charge will not apply.
- Reverse charge will also not apply where the service recipient is any person or business entity not being a body corporate in case of three specified services
- Small scale benefit is available only to service provider (not to service receiver), if entitled

Important Points in Reverse Charge Mechanism

- Service receiver under reverse charge cannot avail exemption of Rs. 10 lakh under Notification No. 33/2012-ST dated 20.06.2012
- Valuation of services by services provider and service receiver can be on different principles, if permitted by law (e.g. works contract - Refer Notification No. 30/2012-ST, explanation II)
- Liability to pay Service Tax for ongoing contracts will be as per Point of Taxation Rules, 2011
- Reverse charge shall not be applicable if provider of service was liable before 1.7.2012
- Service Tax will not be payable by service receiver under reverse charge, if service was provided prior to 1.7.2012, even if payment is made after 30.06.2012.

List of services under RCM

S. No.	Services	Provided by	Provided to	ST payable by Provider	ST payable by Receiver
1.	Insurance Agents services	Insurance Agent	Any person carrying on insurance business	NIL	100%
2.	Goods Transport agency services (GTA)	Goods Transport Agency (Any Person)	Factory, Society, Cooperative Society, Excise Dealer, Company, Firm	NIL	100%
3.	Sponsorship Services	Any Person	Body Corporate or Partnership Firm	NIL	100%
4.	Legal Services	Arbitral Tribunal, individual advocate or a firm of advocates,	Any person	NIL	100%
5.	Support Service by Government excluding Renting of Immoveable Property, Postal Services, transport of goods or passenger & Air craft & Vessel	Government or local authority	Any person	NIL	100%

List of services under RCM

S. No.	Nature of services	Provided by	Provided to	ST payable by Provider	ST payable by Receiver
6.	Renting of Motor Vehicle (Abatement Claimed)	Individual, HUF, Firm, AOP	Body Corporate (Reg. as business entity)	Nil	100%
6A.	Renting of Motor Vehicle (Abatement not claimed)	Individual, HUF, Firm, AOP	Body Corporate (Reg. as business entity)	50%	50%
7.	Supply of Manpower	Individual, HUF, Firm, AOP	Body Corporate (Reg. as business entity)	NIL	100%
8.	Works Contract(Service Portion)	Individual, HUF, Firm, AOP	Body Corporate (Reg. as business entity)	50%	50%

List of services under RCM

S. No.	Nature of services	Provided by	Provided to	ST payable by Provider	ST payable by Receiver
9.	Import of Services	Person in Non Taxable Territory	Person in Taxable Territory	Nil	100%
10.	Directorship	Director (Other than Whole Time Director)	Company	Nil	100%
11.	Mutual Fund Agent	Mutual Fund Agent or distributor	Mutual fund or Asset Management Company	Nil	100%
12.	Lottery Selling Agent	Selling or marketing agent of lottery tickets	Lottery distributor or selling agent	Nil	100%
13.	Service involving an aggregator in any manner	Any person	Aggregator or his agent	Nil	100%
14.	Recovery	Recovery Agent	Banking Company, Financial Institution & NBFC	Nil	100%

Exemptions & Abatements in Service Tax

- Over and above full exemption to 40 categories of services vide Notification No. 25/2012-ST dated 20.06.2012
- Earlier there were a number of exemption notifications that prescribed the abatements for various categories of services (including 1/2006)
- Abatements merged into a single Notification No 26/2012 - ST dated 20/6/12
- Valuation rules contain abatement for Works Contract and Supply of Food Services

THANK YOU
FOR
YOUR
PRECIOUS TIME
AND
ATTENTION

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