

# A Presentation on Reverse Charge & Joint Charge

Updated till 31-03-2013

# Section 68 of Finance Act, 1994

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- Sec 68 (2) provides legal backing for the levying of Service Tax under reverse charge mechanism. Sec 68 (2) is worded as follows:-
  - *“In respect of such taxable services as may be notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in section 66B and all the provisions of this chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.*

*Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider.”*

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# Brief History of Reverse Charge

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- ▶ The Reverse Charge was introduced in Service Tax vide Budget of the year 2005-2006. At that point of time there was only one service which was covered under Reverse Charge. However, with the passage of time this list has been expanded and at present this list contains 11 services into it which covers both Reverse Charge and Partial Reverse Charge.



# Notification No. 30/2012-ST, dated 20th June, 2012

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- ▶ In order to charge service tax under reverse charge mechanism the Central Government is required to provide the list of taxable service by the way of notification. The notification no. 30/2012-ST provides for the list of service that will be taxable under reverse charge mechanism.



# List of Services under RCM

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<b>S. No.</b>	<b>Description of Services</b>	<b>Provided By</b>	<b>Provided To</b>	<b>% of ST payable by Provider</b>	<b>% of ST payable by Receiver</b>
1	Insurance Auxiliary Service	Insurance Agent	Person carrying on Insurance business	NIL	100%
2	Sponsorship Service	By any service provider	Body Corporate or Partnership firm	NIL	100%
3	Transport of goods by Road	Good Transport Agency	Consignor or consignee in organized sector	NIL	100%



# List of Services under RCM

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4	Legal Service	Arbitral Tribunal	Business Entity	NIL	100%
5	Legal Service	Individual advocate or firm of advocates	Business Entity	NIL	100%
6	Support Service by Government or local authority	Government or Local Authority	Business Entity	NIL	100%
7	Any Service	Person in Non Taxable territory	Person in Taxable Territory	NIL	100%

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# List of Services under RCM

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8	Any Taxable Service	Director of the company	Company	NIL	100%
9	Renting or hiring of motor vehicle to carry passenger on abated value. <b>(60% abatement)</b>	Individual, HUF, Firm, AOP, BOI	Business Entity registered as body corporate	NIL	100% (i.e. 40% of liability)
10	Renting or hiring of motor vehicle to carry passenger on non abated value	Individual, HUF, Firm, AOP, BOI	Business Entity registered as body corporate	60%	40%

# List of Services under RCM

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<b>S. No.</b>	<b>Description of Services</b>	<b>Provided By</b>	<b>Provided To</b>	<b>% of ST payable by Provider</b>	<b>% of ST payable by Receiver</b>
11	Supply of Manpower	Individual, HUF, Firm, AOP, BOI	Business Entity registered as body corporate	25%	75%
12	Security Service	Individual, HUF, Firm, AOP, BOI	Business Entity registered as body corporate	25%	75%
13	Work Contract Service	Individual, HUF, Firm, AOP, BOI	Business Entity registered as body corporate	50%	50%





# Other Relevant Aspects

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## ▶ Business Entity and Body Corporate

- Business Entity – means any **person** ordinarily carrying out any activity relating to industry, commerce or any other business or profession.

[Government, charitable organization is not a “business entity”].

- Body Corporate – Company is a Body Corporate – Firm, HUF, Trust is not a body corporate.

[Society registered under Societies Act is legally not ‘a body corporate’].



# Other Relevant Aspects

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- ▶ Partial RC on Renting or Hire of Motor Vehicle designed to carry passengers
  - Reverse charge when renting to a person **who is not engaged in similar line of business**
  - Service Provider should be HUF, Individual, firm.
  - Service Receiver – Business entity registered as body corporate
  - If motor vehicle is taken on hire without driver it is ‘transfer of right in goods’. It is deemed sale of goods VAT will apply – Service Tax will not be charged.



# Other Relevant Aspects

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## ▶ Partial RC on Manpower Supply Service

- “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 01.07.2012].

- 75% of ST shall be paid by service receiver, if service provider is an individual, HUF, proprietary or partnership firm or AOP. Balance 25% of ST shall be paid by service provider.

- *Security Service, 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.

- Service tax in such cases shall be payable on – SALARY + PF + ESI + Commission of labour contractor.

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# Other Relevant Aspects

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## ▶ Partial RC in Work Contract Service

- 50% of ST shall be paid by the service receiver, if service provider is an individual, HUF, proprietary or partnership firm or AOP. Balance 50% shall be paid by service provider.
  
- Service Receiver is a business entity incorporated as body corporate.



# Utilization of CENVAT credit by Service Provider

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## Under Full Reverse Charge

CENVAT Credit available with the service provider will remain unutilized since the liability to pay service tax has been shifted to service receiver .

The Service provider have the option – **either to take refund of unutilized credit as per Rule 5 B or make it the part of cost and increase the price.**

## Under Partial Reverse Charge

Service Provider can utilize 100% of CENVAT credit available, as per rules, despite the fact that liability to pay service tax has been reduced.



# Utilization of CENVAT credit by Service Receiver

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## Under Full Reverse Charge

Service tax on input services can be availed/utilized only after making the payment of **value of service & service tax.**

## Under Partial Reverse Charge

Part amount of Service tax on input services can be availed/utilized after making the payment of **value of service & service tax.**

Part amount of Service tax on input services can be availed/utilized as and when the invoice is received.

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# Accounting Entries

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- ▶ In the following example, the service recipient should pay 25% to the service provider and should pay remaining 75% to the service tax authorities directly.
- ▶ Accounting entry in the books of Service Provider:-

Particular	Debit	Credit
Service Receiver a/c	1,03,090.00	-
Sales	-	1,00,000.00
Service tax payable (1,00,000 X 12.36% X 25%)	-	3,090.00



# Accounting Entries

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- ▶ Accounting entry in the books of Service Receiver:-

Particular	Debit	Credit
Service Received a/c	1,00,000.00	-
Service Tax Credit (25%)	3,000.00	
E-Cess Credit a/c	60.00	
SHEC Credit a/c	30.00	
Service tax recoverable a/c (75%)	9,000.00	
E-Cess Recoverable a/c	180.00	
SHEC Recoverable a/c	90.00	
Service Provider a/c		1,03,090.00
Service Tax Payable		9,000.00
E-Cess Payable		180.00
SHEC payable		90.00





# RCM in relation to Point of Taxation Rules, 2011

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- Rule 7 of POT Rules provides for the Payment under Reverse Charge Mechanism.
- As per Rule 7, where the service tax is payable by the recipient of service like GTA service, POT would be the date of payment of value of service, if made within 6 months from the date of invoice. In case, value of service is not paid within prescribed 6 months period, service tax would become payable as per rule 3 of POT rule.
- Illustration:- Mr. X provided services to Mr. Y under RCM. The date of invoice is 01.01.2013.



# RCM in relation to Point of Taxation Rules, 2011

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- **Situation 1: Mr. Y made payment to Mr. X on 01.04.2013** – Since the payment is made within 6 months from the date of invoice i.e. payment made before 01.07.2013. Therefore, the liability to pay service tax on part of Mr. Y will arise from the date of payment to Mr. X i.e. from 01.04.2013. Mr. Y is liable to pay service tax by 06.05.2013 (if he pays electronically another wise 05.05.2013 is the due date)
- **Situation 2: Mr. Y made payment to Mr. X on 01.08.2013** – Since the payment is NOT made within 6 months from the date of invoice i.e. before 01.07.2013. Therefore, the liability to pay service tax will arise from 01.01.2013. Mr. Y will now be liable to pay interest @ 18% along with service tax to the department.



# Issues

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- ▶ Do SSI Exemption is available to Service Receiver?

**Notification No. 33/2012-ST** which provides that whereby the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under [section 66B](#) of the said Finance Act:

*Provided that nothing contained in this notification shall apply to,-*

- (i) taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or*
  - (ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under [sub-section \(2\) of section 68](#) of the said Finance Act read with [Service Tax Rules, 1994](#).*
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# Issues

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- ▶ Can the Service Receiver use CENVAT to pay tax under reverse charge?

**Explanation to Rule 3(4)** - Service Receiver cannot use the CENVAT credit to dispose off his liability. He is required to pay the amount in cash only.



# Issues

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- ▶ Under Partial RCM, what amount do service provider is required to show on the invoice?

The service provider is required to charge only that on the invoice for which he is liable to pay. For e.g. If the service providers liability is of 25% and the remaining liability is of service receiver. Then the service provider is required to charge only 25% of the service tax amount in the invoice.



# Issues

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- ▶ If service provider has agreed to pay entire payment of service tax liability. He is willing to give an undertaking in that regard. In that case, do service receiver is liable to pay service tax?

Only person who is liable to pay service tax should pay the same.



# THANK YOU

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