

## **Reverse Charge and Joint Charge - ST**

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### **Introduction:**

Section 68(2) enables service tax to be collected other than the provider of service. Goods Transport Agency was the first reverse charge made applicable w.e.f. 1<sup>st</sup> January 2005. In case of payments made to service providers outside India ( Import of Services) it was applicable from 16.4.2006. Joint Charge was enabled as part of the negative list based taxation. (W.e.f. 1<sup>st</sup> of July 2012)

The reverse charge cause some problems and joint charge enormous problems. This article discusses the concepts, common issues and possible planning to optimize the tax.

The paper writers have also examined the GTA services vs GTO and manpower supply services-models and its implications on joint charge also.

### **What is reverse charge?**

Every person providing a taxable service is required to pay a service tax at the prescribed rate. However in certain cases the service recipient is made liable to pay service tax on the services received. Since the person receiving is paying service tax, the mechanism is called as reverse charge.

This concept was in place even before the new scheme of negative based taxation was introduced. However in addition to the concept of reverse charge a new concept of joint charge is also introduced.

### **Applicability of service tax under reverse charge**

The service tax is payable by receiver of services as specified in the following cases under reverse charge:

- (i) Services provided by an insurance agent to any person carrying on the insurance business-100% to be paid by receiver;
- (ii) Services provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is any of the specified persons-100% to be paid by receiver.
- (iii) Services provided by way of sponsorship to any body corporate or firm located in the taxable territory-100% to be paid by receiver;
- (iv) Services provided by,-
  - (A) an arbitral tribunal, or
  - (B) an individual advocate or a firm of advocates by way of legal services, or
  - (C) Government or local authority by way of support 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, namely

- i. renting of immovable property; and
- ii. speed post, express parcel post, life insurance and agency services provided by department of post
- iii. Service in relation to aircraft or a vessel, inside or outside the precincts of a port or airport by Government;
- iv. Transport of goods or passengers by Government

Provided by Government or local authority by way of support services to any Business Entity located in taxable territory

to any business entity located in the taxable territory-100% to be paid by receiver;

(v) Services provided by any person located in a non-taxable territory and received by any person located in the taxable territory-100% to be paid by receiver.

### **What is Joint Charge Mechanism?**

Under the concept of joint charge, for the same service both the service provider as well as service receiver is made liable for payment of service tax to the extent notified. This liability is independent of the other person's liability. In other words the failure to comply with the provisions of one person on his part would not impact the compliance requirement of other person or visa versa.

### **What is scope of Joint charge mechanism?**

#### **Specified service providers and specified services under Joint Charge Mechanism**

At the same time the joint charge mechanism is applicable to a body corporate business entity only on following services provided by individual, sole proprietor, partnership, association to it by way of

- (a) renting of a motor cab designed to carry passengers on non-abated value to any person who is not engaged in a similar business, or
- (b) supply of manpower for any purpose or security services, or
- (c) service portion in execution of a works contract;

The service tax liability under joint charge to be borne by recipient body corporate business entity as follows-

- a. to extent of 40% of total service tax is payable by service recipient in respect of services of renting of motor cab designed to carry passengers.[50% where the service provider is not under abatement wef 1.10.2014]

- b. 75% of total service tax payable on manpower supply and security services(for security services joint charge applies from 7.8.2012).
- c. 50% of total service tax payable on works contract services.

The service tax rate is 12.36%.

### **Cenvat Credit Impact**

The **service provider is eligible** for Cenvat credits used for providing the following services:  
**Renting of motor cab designed to carry passengers:** When abatement option is opted and service tax paid on 40% of amount charged. The cenvat credits **cannot** be availed on the inputs, input services and capital goods used for providing such taxable services except on rent a cab wef 1.10.14.

**Supply of manpower / security service.** ST liability can only be paid out of the eligible cenvat credits on inputs such as uniform, input services and capital goods.

**Works contract:** ST liability can only be paid out of the eligible cenvat credits on input services and capital goods. The credits on the inputs cannot be set off due to specific restriction.

The **service receiver is only eligible** for

**Renting of motor cab:** Capital goods credit can only be availed of motor cab.

**Manpower Supply& security services:** Available if Eligible

**Work Contract Services:** Such credits cannot be availed to extent it is related to construction service of the receiver. However other works contractors can avail.

### **GTA service**

As per Section 65B(26) goods transport agency means any person who provides service in relation to transport of goods by road and issues a consignment note by whatever name called.

The basic scheme of taxable service category of Goods Transport Agency (GTA service) is that the GTA would be preparing the consignment note and invoice containing details as required. Service tax would also be shown on the invoice / bill / challan prepared by the Goods Transport agency. The service tax is to be paid by the person liable to pay freight being specified persons including company.

The consignment note is generally issued as an acknowledgement for the receipt of goods and underwriting to deliver the goods for the person who produces such document. This is in fact considered to be a negotiable instrument also. Therefore this document is

coupled with certain obligation and when such obligations are absent there is no requirement of issuing such a document. When such document is not issued, the **person may not be considered as goods transport agency** in terms of the statute.

In case of GTA services the specified persons liable to pay service tax, in relation to service provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight as follows: any factory under Factories Act, any society under the Societies Registration Act, any co-operative society established by or under any law; any dealer of excisable goods, who is registered under Central Excise Act, any body corporate established, by or under any law; or any partnership firm whether registered or not under any law including association of persons.

**Difference between GTO and GTA:** It is clear that the service tax to be paid under reverse charge on transport booking agents (including the owners who are acting as such agent) are brought into service tax net and not the truck owners or truck operators, who just provide the service of transportation in direct contract with the service receiver.

In other words, when services are being provided by way of transportation of goods by road using individual trucks, issuing trip sheets, there is no need not discharge service tax liability on same. This was held in Lakshminarayana Mining Co. Vs CST., - 2009 (16) S.T.R. 691 (Tri. - Bang.) and affirmed in 2012 (26) STR 517 (Karnataka High Court).

The paperwriters view has found support in a number of decisions it is decided that the freight amount paid to Goods Transport Operators / Individual Truck Operators are not liable under Goods Transport Operators. Some of the decisions are as follows.

- a. Shanti Fortune (I) Pvt Ltd Vs Commissioner of Central Excise, Coimbatore 2010(19) STR 883(Tri-Chennai)
- b. CCE & C, Guntur Vs Kanaka Durga Agro Oil Products Pvt Ltd 2009 (15) STR 399 (Tri-Bang)
- c. SICGIL India Ltd Vs Commissioner of Central Excise, Customs & Service Tax, Vishakapatnam 2010 (19) STR 747 (Tri-Bang).

It is therefore clear from the above that the transport booking agents (including the owners who are acting as such agent) are brought into service tax net and not the truck owners or truck operators, who just provide the service of transportation in direct contract with the service receiver.

**Manpower supply service:**

As per draft circular No.F.No.354/127/2012-TRU dated 27.7.2012 in this regards manpower supply is understood to mean when **one person supplies to another person one or more individuals who are contractually employed or otherwise engaged by the first person.**

For example, a person may agree to carry out jobs/works for another in which certain manpower may be required. As long as such manpower is not placed under the superintendence or control of the recipient business entity body corporate, it would not be a case of manpower supply.

The pure labour contracts for carrying out certain jobs, such as masonry work, plastering work, loading and unloading work etc could be done by contractors for the company. When the essential nature of engagement is for providing various services it is distinct from man power supply where **one person supplies to another person one or more individuals who are contractually employed or otherwise engaged by the first person.**

The responsibility for the execution of the work with contractors, where they could also be penalized for shortfall in work done as a pure labour job could lead to a conclusion that the same is not a manpower supply. Accordingly contractors doing pure labour jobs as masonry work, plastering work, loading and unloading work may not be a case of manpower supply. The joint charge shall not be applicable to service receiver Company in respect of such services by such contractors.

#### **Changes made by Finance Act (no.2) 2014**

##### **Time limit for availing credits**

- A manufacturer or a service provider shall take credit on inputs and input services within a period of six months from the date of issue of invoice, bill or challan w.e.f. 1st September,2014

##### **Comment:**

- We can advise our clients to avail credits wherever not done for past as later it could cause litigation or consequent denial of credits.

##### **Credits availment of ST paid under reverse charge:**

- In case of service tax paid under full reverse charge, the condition of payment of invoice value to the service provider for availing credit of input services would not be there. The service tax portion can be paid and credits can be availed now.
- For partial reverse charge, both invoice value+ ST would need to be paid to avail credits. [Refer amended proviso to rule 4(7)].

##### **Changes in Service Tax Rules: [with immediate effect]:**

##### **Reverse charge:**

- a. Service provided by a Director to a body corporate:** Earlier restricted to services provided to company alone. This could cover services to LLP or body corporate as defined in Companies Act 2013.

**b. Services provided by Recovery Agents to Banks,** Financial Institutions and NBFC is being brought under the reverse charge mechanism; Banks would now need to bear tax and tax cannot be recovered from agent.

Refer Notifications 9 and 10/2014-ST.

**Common FAQ/Issues:**

***We are amending the ST registration to include the services where we are liable as a service recipient, but, the form only indicates services as a provider. Should we include the services as a receiver under the service provider column?***

The service has to be included under service receiver column.

***Whether Indian company is liable to discharge service tax under reverse charge on advertising services received from Jammu & Kashmir ad-agency?***

The service tax law is applicable to whole of India other than Jammu and Kashmir. Yes, as it is services received by Indian company from J&K, liability arises to receiver under reverse charge mechanism.

***The company is paying legal fees to Individual advocates / Firm of advocates. Whether company is required to pay service tax under reverse charge?***

Yes, if company had a turnover exceeding Rs 10 Lakhs during preceding year needed to pay service tax liability on legal services.

***Whether company is liable to pay service tax under reverse charge mechanism on transportation of goods by individual truck owners?***

Reverse charge mechanism would be applicable if and only if amount is paid to an Goods Transport Agency (GTA). Goods transport agency means any person who provides service in relation to transport of goods by road and issues consignment note. It is not applicable for transport of goods by goods transport operators (GTO).

***Whether company is liable to pay service tax under reverse charge on the rentals paid on premises rented out to company by director?***

The service tax is payable on the services provided by a director of a company to the said company. There is no clarity presently whether service tax liability arises under reverse charge on the services provided by the director in his personal capacity to company.

***Whether company is liable under joint charge mechanism for consultancy services by individual tax consultants?***

The service tax liability under joint charge does not arise to company in respect of pure consultancy services.

***The company supplies fire and security equipment and installs the same. The installation is done on subcontract basis by individual contractors. Is company liable under joint charge mechanism?***

The service tax is payable under joint charge mechanism on comprehensive material and

labour contracts of nature of works contract executed by sub-contractor to company. As the sub-contractors are executing pure labour jobs, company is not liable under joint charge mechanism.

***Whether the company liable under joint charge when it is supplying steel and cement, other construction materials and individual contractor merely provides construction services?***

If contracts are presently being given as material plus labour, a possible way could be for company to bring in materials and contractor to merely execute labour jobs. As it is merely construction services done by contractor. In such case there is no joint charge mechanism applicable to company.

***The company receives manpower supply services from firm having a turnover of less than Rs 10 Lakhs? Whether company is exempted from joint charge as firm is small service provider?***

The service recipient is liable to pay service tax irrespective of the fact whether the service provider was exempted or not by virtue of small service provider exemption under Notification No. 33/2012-ST dated 20.06.2012. In other words even if the total value of service provider services is less than 10 lakhs the service recipient wherever liable to pay service tax has to pay tax.

***Whether company needs to pay service tax if the works contract executed by individual contractor is for construction of public road to be used by public?***

No, then service recipient need not pay service tax.

***The company has not deposited the service tax under the reverse and joint charge mechanism till date. Should it calculate the monthly liability and pay it with the interest @18% for the actual days of delay or monthly @ 1.5%?***

The service tax liability under joint charge and reverse charge to be paid with interest at 18% for number of days of delay. There is change in interest rate wef 1.10.14 as follows- Interest rates per annum payable on delayed payments under section 75, are prescribed as follows: wef 1.10.14

Extent of delay

- Up to six months 18%
- More than six months & upto one year 18% for first six months, and 24% for the period of delay beyond six months
- More than one year 18% for first six months, 24% for second six months, and 30% for the period of delay beyond one year

***Whether service recipient company can avail cenvat credits of the service tax paid under joint charge and reverse charge mechanism?***

The service recipient is eligible to claim CENVAT Credit of service tax paid by both the

service provider if any and also recipient by himself, subject to eligibility of such credits under Cenvat Credit Rules.

**Conclusion:**

In some respects, the new scheme of taxation under reverse charge and joint charge mechanism is to enable the wider coverage of especially unorganized sector and bring them into service tax net. However practically there may be challenges which the businessmen have to face to align the existing practices to the new scheme considering variations in business models.

In this article the paper writer has sought to examine implications under joint charge and reverse charge. For any further queries kindly post your queries on [pdicai.org](http://pdicai.org) or send queries to [mhiregange@gmail.com](mailto:mhiregange@gmail.com) or [roopa@hiregange.com](mailto:roopa@hiregange.com).