

## **“Services to Aggregator” under Service Tax – Reverse Charge**

### **Introduction**

Service tax is leviable on the taxable services provided in territory of India, other than those in negative list or a subject matter of exemption. As per Place of Provision Rules, if determined that the taxable services are provided outside India, then there is no ST liability.

In this backdrop we attempt to examine the levy of service tax on the aggregator and service providers to the aggregator. At present there is not much information and with some clarification matter may in future be clear.

### **Who is an Aggregator?**

The term aggregator in ST Rules at Rule 2(1)(aa)- means

- a person,
- who owns and manages a web based software application,
- and by means of the application and a communication device,
- enables a potential customer to connect with persons providing service of a particular kind under the brand name or trade name of the aggregator;

Let us understand the concept of the aggregator with an example, in this transaction there are three persons, viz, Service Provider, Service Receiver and the Aggregator. The Aggregator enables/facilitates the provision of the service between the service provider and the service receiver, which is a similar scope that of the intermediary or a broker, however the difference between the intermediary and aggregator is a under

- a. In case of the Aggregator, the service provider provides the service under the brand name of the aggregator, whereas in the case of regular intermediary, the service is provided by the service provider on his own brand.
- b. In case of the Aggregator, it is mandatory that he manages the web application, whereas for regular intermediary there is no such requirement.

The term “brand name or trade name” means, a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as an invented word or writing, or a symbol, monogram, logo, label, signature, which is used for the purpose of indicating, or so as to indicate a connection, in the course of trade, between a service and some person using the name or mark with or without any indication of the identity of that person

The present definition is only covering aggregator in respect of **services** and **not covering aggregator in respect of goods**. A very good example of Aggregator is Uber and OLA, where the company manages the Mobile App and connect to the owner/operator of radio cab with the passengers.

When the amounts get credited directly into account of the aggregator such as Uber, it is liable as a service provider on its own account. It is also liable on the commission receipts from the operator. When the operator collects charges from passengers directly working under aggregator's brand name, ST liability arises under reverse charge on the aggregator.

### **Liability of Aggregator to pay service tax**

As per the provision where the taxable services **liable for service tax** are provided under aggregator model, service tax payment has to be made by the aggregator as follows:

- If aggregator is located in India, aggregator himself has to pay;
- If aggregator is not located in India but has a representative office located in India, then such representative office located in India has to pay;
- If an aggregator does not have any presence, including that by way of a representative, in such a case any agent appointed by the aggregator shall pay the tax on behalf of the aggregator.

### **Issues and Challenges:**

In the changed legal position some of the issues and challenges can be listed out as follows:

- a. How do the aggregators determine the taxability of each transaction considering the place of provision of service.
- b. How do the aggregator ascertain the applicable exemptions and abatements in each transactions.
- c. The service provider has to segregate the services provided directly and services provided through aggregators. The first one will be liable for service tax and the second one is not liable for service tax.
- d. For the service provider the services provided involving aggregator will become exempted services as defined in CENVAT Credit Rules, 2004, whereby the service provider is not eligible for CENVAT Credit relatable to that and if other services are there the provisions of Rule 6 will become applicable.
- e. If the aggregator who do not have presence in India and also does not appoint agent, then what happens and how does the administration happens to make such aggregator liable to pay the tax.

**Conclusion**

The levy is to come into immediate effect. [1<sup>st</sup> March 2015] Such aggregators may seek clarity and also make representation. However not paying the service tax may lead to demands with interest and penalty and therefore payment of ST under protest is advisable.