

Levy of service tax under RCM on “online information and database access or retrieval services” – Exemption withdrawn

Earlier vide notification no. 30/2012 dated 20.06.2012, service recipient has been made liable for the payment of service tax, where taxable services were provided by a person located in non-taxable territory to a person located in taxable territory.

Whereas, levy of service tax would have been attracted only in cases where place of provision of service (POPS) is in India (Sec 66B). Hence the services whose Place of Provision of Services (POPS) is in India were only be levied service tax under RCM on the basis of aforesaid notification. Due to such provisions service tax was not leviable on the “online information and database access or retrieval services” as POPS of such service was the location of service provider (Rule 9(b) of POPS).

Now vide aforementioned notifications, CBEC has changed the POPS of such services from the location of service provider to the location to service receiver by omitting the rule 9(b) of POPS rules. Further service tax on such service under RCM was made applicable to all the persons other than non-assessee online recipient (Government, local authority and an individual receiving service for other than business purposes). Thus vide above notifications **“Online information and database access or retrieval services”** were made liable to service tax under reverse charge in the hands of service recipient other than government, local authority and an individual receiving service for other than business purposes.

Further service provider located in non taxable territory shall be made liable for service tax if such services are provided directly to government, local authority and an individual receiving service for other than business purposes (non-assessee online recipient) where if the same has been received through any intermediary, agent or brokerage including an electronic platform then such persons shall be deemed to be receiving such service.

Further it is provided that in case service provider does not have a physical presence or does not have a representative for any purpose in the taxable territory, the service provider may appoint a person in the taxable territory for the purpose of paying service tax and such person shall be liable for paying service tax:

In this regard “non-assessee online recipient” and “online access and database access or retrieval services” are legally defined under service tax Rules, 1994, which reads as follows:

“non-assessee online recipient” means Government, a local authority, a governmental authority or an individual receiving online information and database access or

retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory; Explanation.- For the purposes of this clause, “governmental authority” means an authority or a board or any other body: (i) set up by an Act of Parliament or a State legislature; or (ii) established by Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;”

Provided also that in case of online information and database access or retrieval services provided or agreed to be provided by any person located in a non-taxable territory and received by non-assesse online recipient, a person receiving such services shall be deemed to be a non-assesse online recipient, if such person does not have service tax registration under these rules.”

“online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology and includes electronic services such as,- (i) advertising on the internet; (ii) providing cloud services; (iii) provision of e-books, movie, music, software and other intangibles via telecommunication networks or internet; (iv) providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network; (v) online supplies of digital content (movies, television shows, music, etc.); (vi) digital data storage; and (vii) online gaming.”

[Notification No. 46/2016 to 49/2016-ST dated 09.11.2016 w.e.f 01.12.2016]