SERVICE TAX
REVERSE CHARGE MECHANISM

Jigar Shah
Advocate
Reverse charge mechanism first sought to be introduced in 1997 by inserting Section 68 (1A) in the Act.

*(1A)* Notwithstanding anything contained in sub-section (1) of Section 68, in respect of the taxable service referred to in items (g) to (r) of sub-clause (41) of Section 65, the service tax for such service shall be collected from such person and in such manner as may be prescribed at the rate specified in Section 66 and all the provisions of this chapter shall apply to such person as if he is the person responsible for collecting service tax in relation to such service.

Rule 2(d)(xii) and Rule 2(d)(xvii) inserted in Service Tax Rules, 1994

Service Recipients of GTA service and Clearing & Forwarding Services sought to be included
Hon’ble Supreme Court in Laghu Udyog Bharati (2006) (2) STR 276 (SC) observed as under:

- Amendment in Service Tax Rules, 1994 making person liable to collect tax as recipient of service is ultra vires the Act
- Section 65 (defining “Assessee”) and Section 66 (charging section) not amended
- Section 66 and Section 70 (filing of return) does not provide any mechanism to collect tax by recipient of Service
- Section 66 used the words “there shall be charged a tax ....... By the person responsible for collecting the service tax”
- Section 70 used the words “every person responsible for collecting the service tax”
HISTORY OF REVERSE CHARGE MECHANISM

- Effect of amendments in Year 2000 and Year 2003
- Charging Section 66 itself amended
- Section 70 is also amended
- Legislative competency of the parliament to make recipient of services liable for payment of tax is upheld in Supreme Court in case of Gujarat Ambuja Cement Ltd. 2006 (3) STR 608 (SC)
REVERSE CHARGE MECHANISM

- Generally the liability to pay the service tax for provision of services is on service provider.

- In some specified services the responsibility of paying the service tax has been casted on the Service Receiver, this legal jargon is called “Reverse Charge Mechanism”

- Notification No.30/2012-ST replaces Notification No.36/2004-ST for specifying ‘Person liable to pay Service tax’
REVERSE CHARGE MECHANISM

- Earlier the Reverse Charge Mechanism was applicable on the following services only:
  a) Goods Transport Agency
  b) Sponsorship Services
  c) Insurance Services
  d) Import of Services

- The scope of Reverse Charge Mechanism has been enlarged and now some more services has been added to this category with effect from 01.07.2012.
Reverse Charge Mechanism on following services

<table>
<thead>
<tr>
<th>S. N.</th>
<th>Nature of Service</th>
<th>Service Provider</th>
<th>Service Recipient</th>
<th>Rate (Provider)</th>
<th>Rate (Recipient)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Insurance agent Services</td>
<td>Any</td>
<td>Any</td>
<td>Nil</td>
<td>12.36%</td>
</tr>
<tr>
<td>2</td>
<td>Transportation of goods by road</td>
<td>GTA</td>
<td>6 Categories specified</td>
<td>Nil</td>
<td>3.09%</td>
</tr>
<tr>
<td>3</td>
<td>Sponsorship Service (in Taxable territory)</td>
<td>Any</td>
<td>Firm or Company</td>
<td>Nil</td>
<td>12.36%</td>
</tr>
<tr>
<td>4</td>
<td>Import of Service</td>
<td>Any</td>
<td>Any</td>
<td>Nil</td>
<td>12.36%</td>
</tr>
<tr>
<td>5</td>
<td>Advocate Service</td>
<td>Individual/Firm/LLP</td>
<td>Any (Business entity)</td>
<td>Nil</td>
<td>12.36%</td>
</tr>
<tr>
<td>6</td>
<td>Svs. by an Arbit. Tribunal</td>
<td>Tribunal</td>
<td>Any</td>
<td>Nil</td>
<td>12.36%</td>
</tr>
<tr>
<td>7</td>
<td>Support Service by Govt. or Local Authority</td>
<td>Govt. or Local Authority</td>
<td>Any (Business entity)</td>
<td>Nil</td>
<td>12.36%</td>
</tr>
<tr>
<td>8 a</td>
<td>Renting of M.Vehicle for Passenger (non abated)</td>
<td>Individual/HUF/Firm/AOP</td>
<td>Company</td>
<td>7.416%</td>
<td>4.944%</td>
</tr>
<tr>
<td>8 b</td>
<td>Renting of M.Vehicle for Passenger (Abated)</td>
<td>Individual/HUF/Firm/AOP</td>
<td>Company</td>
<td>Nil</td>
<td>4.944%</td>
</tr>
</tbody>
</table>
**Reverse Charge Mechanism on following services**

<table>
<thead>
<tr>
<th>S. N.</th>
<th>Nature of Service</th>
<th>Service Provider</th>
<th>Service Recipient</th>
<th>Rate (Provider)</th>
<th>Rate (Recipient)</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Supply of Man Power</td>
<td>Individual/HUF/Firm/AOP</td>
<td>Company</td>
<td>3.09%</td>
<td>9.27%</td>
</tr>
<tr>
<td>10 a</td>
<td>Works Contract (New construction)</td>
<td>Individual/HUF/Firm/AOP</td>
<td>Company</td>
<td>2.472%</td>
<td>2.472%</td>
</tr>
<tr>
<td>10 b</td>
<td>Works Contract (Repair/Maint - Goods)</td>
<td>Individual/HUF/Firm/AOP</td>
<td>Company</td>
<td>4.326%</td>
<td>4.326%</td>
</tr>
<tr>
<td>10 c</td>
<td>Works Contract (For Immovable Property)</td>
<td>Individual/HUF/Firm/AOP</td>
<td>Company</td>
<td>3.708%</td>
<td>3.708%</td>
</tr>
<tr>
<td>10 d</td>
<td>Works Contract (Tax on Labour portion)</td>
<td>Individual/HUF/Firm/AOP</td>
<td>Company</td>
<td>6.18%</td>
<td>6.18%</td>
</tr>
<tr>
<td>11</td>
<td>Security Services</td>
<td>Individual/HUF/Firm/AOP</td>
<td>Company</td>
<td>3.09%</td>
<td>9.27%</td>
</tr>
<tr>
<td>12</td>
<td>Services by Director</td>
<td>Individual</td>
<td>Company</td>
<td>Nil</td>
<td>12.36%</td>
</tr>
</tbody>
</table>
Steps to ascertain taxability under reverse charge

1. Is service listed in Reverse Charge?
   - Yes: Status of the Service Provider is as per the Circular
     - Yes: Check the Rate applicable against the Service
       - Then: Pay the Tax vide challan (Don’t pay tax to Vendor)
     - No: Reverse Charge Doesn’t apply
   - No: Reverse Charge Doesn’t apply

2. If the service is listed in Reverse Charge, check the status of the service provider as per the Circular.
   - If the status is as per the Circular, proceed to check the applicable rate.
   - If not, reverse charge does not apply.

3. If the status is as per the Circular, check the applicable rate against the service.
   - If the rate is applicable, pay the tax via challan (do not pay tax to the vendor).
   - If the rate is not applicable, reverse charge does not apply.
Steps to ascertain taxability under reverse charge?

- We can ascertain the same from the PAN of the party. Normally Service Tax registration number starts from the PAN. Check the 4th digit of PAN. It denotes Status of Party. **4th digit Status**

<table>
<thead>
<tr>
<th>4th digit</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>P</td>
<td>Individual</td>
</tr>
<tr>
<td>F</td>
<td>Firm</td>
</tr>
<tr>
<td>H</td>
<td>HUF</td>
</tr>
<tr>
<td>B</td>
<td>Body of Individual</td>
</tr>
<tr>
<td>A</td>
<td>Association of Person (AOP)</td>
</tr>
<tr>
<td>L</td>
<td>Local Authority</td>
</tr>
<tr>
<td>C</td>
<td>Company</td>
</tr>
<tr>
<td>T</td>
<td>Trust</td>
</tr>
<tr>
<td>J</td>
<td>Artificial Judicial Person</td>
</tr>
</tbody>
</table>
Some important tips to identify Services Covered under RCM

- **Transport / Carting service by Road**: It is nothing but the erstwhile GTA Service – no change here. Any freight above Rs.1500 for 1 consignment 1 truck will only be taxable.

- **Renting of Motor Vehicle for Passengers**: Service tax as per above chart is payable only when Motor Vehicle is designed to carry passengers. Motor vehicle means car, jeep, bus etc. and not Trucks. The CENVAT Credit on Service tax paid on Rent a Cab Service will not be available.

- **Supply of Manpower services**: Supply of manpower, temporarily or otherwise, to another person to work under his *superintendence or control*. 
Some important tips to identify Services Covered under RCM

- **Advocates**:
  - In case of a legal consultant please check whether he is an advocate or not as provision of RCM apply only to **Legal Services** provided by an Advocate or firm of Advocates.
  
  - "Legal service" means "any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority;"
  
  - As per the Advocate Act, 1961, “**Advocate means an advocate entered in any roll under the provisions of this Act.**”
  
  - “Roll” as per the Advocate Act means, “**a roll of advocates prepared and maintained under this Act.**”
Some important tips to identify Services Covered under RCM

- **Sponsorship Service:**
  There is no change with regard to previous and current reverse charge mechanism. If we pay for sponsoring an event, tax on the same will also have to be paid by us.
  
  Sponsorship means naming an event after the company or sponsoring prizes for an event but does not include financial or other support in the form of donations without any benefit in return.

- **Import of services:**
  If any services are imported into India, than the tax on the same has to be paid by the Indian company receiving those services. Eg. Processing charges paid to a Singapore bank for taking an ECB.
Some important tips to identify Services Covered under RCM

- **Works contract services**
  
  Works Contract Service means a contract wherein following ingredients are there:

  - VAT is applicable to the contract and
    
    (Transfer of property in goods involved in the execution of such contract is leviable to tax as *sale of goods*)
  
  - such contract is for the purpose of carrying out *construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration*
  
  - *of any moveable or immovable property*

  In other words all contracts which have an *element of goods and labour* and which involves construction, repair, maintenance etc of immovable property or movable goods shall be considered as Works Contract Service.
Reverse Charge Mechanism: Declaration if possible

- Declaration in the Invoice of the Service Provider:
  Every Service Provider have to be asked to give a clear Declaration in his invoice as under:

  “Service Provided:
  Manpower Supply/Advocate/Works Contract/Renting of Vehicle
RCM : Support Services by Government

- In case where support services are provided by the Government or Local authority the tax thereon shall be payable by the Company under RCM.

- **What is support Service?**
  Support service means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis.

Para 4.1.6 and 4.1.7 of Education Guide
RCM : Support Services by Government

- In case of following support services provided by the Government or local authority the Reverse Charge Mechanism will not be applicable:
  - Renting of Immovable Property
  - Services by the Department of Posts
  - Services in relation to an aircraft or a vessel
  - Transport of goods or passenger
Definitions:

- **GOVERNMENT:**
  
  Government shall include all departments, boards or institutions formed by the Central or State Governments.

  *Please note that companies or corporations formed by the government shall not be included here.*

- **LOCAL AUTHORITY:**
  
  i. Panchayat;
  
  ii. Municipality;
  
  iii. Municipal Committee and a District Board;
  
  iv. Cantonment Board;
  
  v. Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
  
  vi. Development board
## ILLUSTRATIONS

### Service provided prior to 1.7.2012

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Invoice</th>
<th>Payment received before 1(^{st}) July, 2012</th>
<th>Point of Taxation</th>
<th>Reverse Charge applicable (Yes/ No)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 (a)</td>
<td>Raised within 30 days on or after 1(^{st}) July, 2012.</td>
<td>Yes</td>
<td>Date of payment or date of invoice, whichever is earlier</td>
<td>No</td>
</tr>
<tr>
<td>(b)</td>
<td></td>
<td>No</td>
<td>Date of invoice</td>
<td>Yes</td>
</tr>
<tr>
<td>2 (a)</td>
<td>Raised within 30 days but before 1(^{st}) July, 2012</td>
<td>Yes</td>
<td>Date of invoice or date of payment whichever is earlier</td>
<td>No</td>
</tr>
<tr>
<td>(b)</td>
<td></td>
<td>No</td>
<td>Date of invoice</td>
<td>No</td>
</tr>
<tr>
<td>S. No.</td>
<td>Invoice</td>
<td>Payment received before 1\textsuperscript{st} July, 2012 (Yes/ No)</td>
<td>Point of Taxation</td>
<td>Reverse Charge applicable (Yes/ No)</td>
</tr>
<tr>
<td>--------</td>
<td>---------</td>
<td>---------------------------------------------------------------</td>
<td>-------------------</td>
<td>------------------------------------</td>
</tr>
<tr>
<td>3 (a)</td>
<td>Raised after 30 days on or after 1\textsuperscript{st} July, 2012</td>
<td>Yes</td>
<td>Date of payment or date of completion of service, whichever is earlier</td>
<td>No</td>
</tr>
<tr>
<td>(b)</td>
<td>2012</td>
<td>No</td>
<td>Date of completion of provision of service</td>
<td>No</td>
</tr>
<tr>
<td>4 (a)</td>
<td>Raised after 30 days but before 1\textsuperscript{st} July, 2012</td>
<td>Yes</td>
<td>Date of completion of provision of service. However, when payment is made before completion of service, then it will be date of payment</td>
<td>No</td>
</tr>
<tr>
<td>(b)</td>
<td></td>
<td>No</td>
<td>Date of completion of provision of service</td>
<td>No</td>
</tr>
</tbody>
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<th>Point of Taxation</th>
<th>Reverse Charge applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Raised before 1st July, 2012</td>
<td>No</td>
<td>Date of invoice</td>
<td>No</td>
</tr>
<tr>
<td>2</td>
<td>Raised on or after 1st July, 2012</td>
<td>Yes</td>
<td>Date of payment</td>
<td>No</td>
</tr>
<tr>
<td>3</td>
<td>Raised before 1st July, 2012</td>
<td>Yes</td>
<td>Date of invoice or payment which ever is earlier</td>
<td>No</td>
</tr>
<tr>
<td>4</td>
<td>In all cases, other than 1, 2 &amp; 3 above</td>
<td></td>
<td>Point of taxation to be determined under the Point of Taxation Rules, 2011 which will be post 1.7.2012.</td>
<td>Yes</td>
</tr>
</tbody>
</table>
ISSUES UNDER REVERSE CHARGE

- Small scale exemption to service provider – liability of recipient?
- Service tax charged/paid by provider – recipient absolved?
- Other requirements –
  - Documents to avail credit
  - Timing of payment
ISSUES UNDER REVERSE CHARGE

- What is the meaning of the term supply of manpower?
- Does it includes labour supplied for-
  - Security
  - House keeping
  - Gardner
  - Record keeping
- Whether recruitment service covered under reverse charge?
Questions, if any?