

Negative Blues – VIII

Checklist for Service Tax compliance after 1st July 2012

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With the introduction of negative list based levy of service tax, all organisations have to revisit their transactions and decide on the applicability of service tax to their transactions. A checklist in this regard is appended below.

Services tax implications:

1.0 The various revenue streams should be studied to see if any revenue is arising from provision of any "service" which is liable to service tax.

1.1 All activities carried out for any non monetary consideration should be studied to see if the same is liable to service tax.

2.0 Transactions which are currently treated as export of service have to be revisited and ensured that the same will continue to be export of service, under Rule 6 A of the Service Tax Rules, 1994. In some cases, no service tax may be payable if the service is provided outside the taxable territory. But still, it may not qualify as export of service and get other benefits (rule 6 CCR protection, etc), if it does not satisfy all other conditions of Rule 6 A.

2.1 Transactions which currently do not qualify as export of service and service tax is being paid, have to be re-visited to see if the same would qualify as export of service as per Rule 6 A of the Service Tax Rules, 1994.

Reverse Charge.

3.0 Wherever service tax is currently being paid in respect of services received from abroad, such cases have to be revisited to see the applicability of service tax under reverse charge after 01.07.2012.

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4.0 If you are a "business entity" and if you have availed legal services provided by advocates / firm of advocates, service tax thereon has to be paid by you, unless your turnover is less than Rs.10 lakhs during the preceding financial year.

5.0 If you are a "business entity" and if you have availed support services provided by Government or Local authority (except renting of immovable property), service tax thereon has to be paid by you.

6.0 If you are a "business entity" registered as a "body corporate" and if you have availed "works contract" services provided by individuals, partnership firms, HUFs or AOPs, you have to pay 50 % of the service tax liability.

6.1 If you are a "business entity" registered as a "body corporate" and if you have availed "renting of passenger vehicles" services provided by individuals, partnership firms, HUFs or AOPs, you have to pay 40 % of the service tax liability.

6.2 If you are a "business entity" registered as a "body corporate" and if you have availed "manpower supply" services provided by individuals, partnership firms, HUFs or AOPs, you have to pay 75 % of the service tax liability.

7.0 The following definitions are relevant to apply the above provisions.

7.1 Section 65 B (17): "**business entity**" means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession.

7.2 Section 65 B (31) "**local authority**" means-

- (a) a Panchayat as referred to in clause (d) of article 243 of the Constitution;
- (b) a Municipality as referred to in clause (e) of article 243P of the Constitution;
- (c) a Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund;
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
- (e) a regional council or a district council constituted under the Sixth Schedule to the Constitution;
- (f) a development board constituted under article 371 of the Constitution; or
- (g) a regional council constituted under article 371A of the Constitution.

7.3 Section 65 B (49): "**support services**" 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.

7.4 Section 65 B (54): "**works contract**" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.

7.5 The term "**body corporate**" is defined under Rule 2(bc) of the Service Tax Rules, which read as follows:

"body corporate" has the meaning assigned to it in clause (7) of section 2 of the Companies Act, 1956 (1 of 1956);

Section 2(7) of the Companies Act, 1956, defines body corporate as under:

"body corporate" or "corporation" includes a company incorporated outside India but does not include -

(a) a corporation sole ;

(b) a co-operative society registered under any law relating to co-operative societies ; and

(c) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf ;

The term body corporate includes a company. As per Section 3 of the Companies Act, 1956, (i) "company" means a company formed and registered under this Act or an existing company as defined in clause (ii);

(ii) "existing company" means a company formed and registered under any of the previous companies laws specified below : -

(a) any Act or Acts relating to companies in force before the Indian Companies Act, 1866 (10 of 1866), and repealed by that Act ;

(b) the Indian Companies Act, 1866 (10 of 1866) ;

(c) the Indian Companies Act, 1882 (6 of 1882) ;

(d) the Indian Companies Act, 1913 (7 of 1913) ;

(e) the Registration of Transferred Companies Ordinance, 1942 (54 of 1942) ; and

(f) any law corresponding to any of the Acts or the Ordinance aforesaid and in force - (1) in the merged territories or in a Part B States (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913 (7 of 1913) ; or

(2) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956 (62 of 1956), insofar as banking, insurance and financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu & Kashmir) Act, 1968 (25 of 1968), insofar as other corporations are concerned ; and

7.6 Rule 2 (g) of Service Tax Rules, 1994 : **"supply of manpower"** means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control.

8.0 The service liability under reverse charge mechanism should be discharged only by paying it in cash and Cenvat credit shall not utilized for such payment. This is made very clear by inserting an **Explanation to Rule 3(4) of the Cenvat Credit Rules, 2004 vide Notification No. 28/2012 – CE NT dated 20.06.2012.** The relevant portion is reproduced below for easy reference:

"Explanation. - CENVAT credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient"

9.0 Input Service Distributor:

9.1 Certain changes have also been made in the scheme of distribution of cenvat credit by Input Service Distributor. As per Rule 7 of the Cenvat Credit Rules inserted vide Notification Nos. 18/2012 CE N.T. dated 17.03.2012 and amended by notification 28/2012 CE N.T dated 20.06.2012 (which will come into force from 01.07.2012), the input service distributor shall distribute the credit, subject to the following conditions:

1. The credit distributed against the document should not exceed the amount of service tax paid;
2. Credit of service tax attributable to the unit engaged exclusively in the manufacture of exempted goods or engaged in providing exempted service shall not be distributed;
3. Credit of service tax attributable from any services used in the specific unit shall be distributed only to that unit;
4. Credit of service tax attributable from services used in more than one unit shall be distributed on pro-rata basis of the turnover during the relevant period. For example, if the credit availed by ISD in July 2012 is to be distributed, the pro rata turnover of the units during July 2012 shall be the basis.