

Negative Blues – XIII

Reverse charge for directors & security services – FAQ.

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Vide notifications 45 & 46/2012 ST Dated 07.08.2012, services provided by non employee directors to the Companies and security agencies have also been subjected to the levy of service tax. In this connection, the following questions are often raised.

1. Does service tax applicable for all directors of a Company?

Whole time directors and Managing Directors of the companies are considered as employees of the company in which they are directors. The definition of service itself excludes services provided by the employees to employers. Hence, there is no service tax in respect of such employee directors. Service tax will apply only in case of non employee directors.

2. Does reverse charge applicable for all service recipients?

In respect of services provided by directors, obviously, the service recipient should be a company established under the Companies Act, like Private Limited Company, Public Limited Company, Government Company. In case of security agency services, the service recipient should be a business entity registered as a body corporate. Only in such cases reverse charge will apply.

3. If the service recipient is a partnership firm, whether reverse charge will apply for security services received by it?

No. Partnership firm is not a body corporate. Similar would be the case in case of other reverse charge liabilities, viz., manpower supply, works contract service and renting of vehicle services. But in case of support services provided by Government, Advocates, reverse charge will apply if the service recipient is "business entity" and they need not be body corporates.

4. What about the liability for the period 1st July 2012 to 7th August 2012?

It may be noted that the services of Directors to the companies and security agency services are normally continuously provided for more than a period of 3 months. Hence, they would be "continuous supply of service" as defined in Point of Taxation Rules, 2011. As per first proviso under Rule 4 of the said Rules, the point of taxation in case of continuous supply of services has been defined as "in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service".

For example, if the security agency has already raised their invoice for the services provided by them during July 2012, before 7th August 2012, the service recipient's liability to make the payment is recognized on the date of invoice and hence the point of taxation shall be the date of such invoice. Hence, if invoice has been raised by the security agency before 7th August 2012, reverse charge will not apply, even if the payment is made by the service recipient after 7th August 2012. But, if the invoice for the services provided from 1st August to 31st August 2012 is raised on 31st August 2012, the date of invoice, i.e. 31st August 2012 would be the point of taxation and hence the service recipient would be liable to make the payment of his portion of service tax liability under reverse charge, though part of the service has been provided before 7th August 2012. In other words, there is no need to split up the liability into pre / post 7th August 2012.

Similar would be the case in respect of services provided by the Directors to the Companies. If the liability to make the payment to the Director is recognized after 7th August 2012, reverse charge will apply and if such liability is recognized by the company before 7th August 2012, reverse charge will not apply.

If the services provided by the directors and security agencies does not qualify as continuous supply of service, then the point of taxation shall first be determined for the services provided. If the point of taxation is on or after 7th August 2012, reverse charge will apply and if the point of taxation is before 7th August 2012, reverse charge will not apply.

5. Whether the Directors have to obtain registration and pay service tax for the month of July 2012?

Yes. But, till 1st July 2012, the services provided by them was not a taxable service. Hence, if the value of other taxable services rendered by them, if any, during the financial year 2011-12 is less than Rs. 10 lakhs, they can claim exemption upto Rs.10 lakhs, during 2012-13 if the value of services provided by them to the companies and other taxable services, if any provided by them, is upto less than Rs.10 lakhs. This exemption is contained in notification 33/2012 ST Dated 20.06.2012 and subject to the conditions prescribed therein.

6. What is the portion of service tax payable under reverse charge?

In case of directors, the entire service tax liability has to be paid by the company. In case of security agencies, 75 % of the service tax liability (9%) shall be paid by the service recipient and 25 % of the service tax liability (3%) shall be paid by the security agencies.

7. Whether the security agencies can pay 3 % service tax in all cases?

No. Reverse charge will apply only if the service recipient is a business entity registered as a body corporate. In case of the services of security agencies are provided to other than business entities or to business entities who are not registered as body corporates, the entire service tax has to be paid by the security agency and no reverse charge will apply.

8. Whether the service tax thus paid under reverse charge can be availed as cenvat credit?

Entitlement to cenvat credit of service tax is to be decided with reference to the definition of input service under the Cenvat Credit Rules, 2004. Normally, the services of Directors and security agencies would be an eligible input service for a manufacturer and a service provider. Further, security service is specifically covered in the definition of input service. Hence, cenvat credit would normally be entitled subject to other conditions under the Cenvat Credit Rules, 2004.

9. What is the document based on which cenvat credit can be taken?

In case of service tax paid directly by the service recipient under reverse charge, the challan evidencing payment of service tax by the service recipient would be the relevant document to avail cenvat credit. In respect of the portion of service tax paid by the security agency, the invoice issued by the security would be the relevant document.

10. Whether the directors have to issue an invoice?

As per the provisions of the Service Tax Rules, 1994 every service provider must raise an invoice within 30 days of completion of the service.