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# *Service Tax under Reverse Charge*

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## Section 65B(44) Definition of Service

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- ▶ "service" means any activity carried out by a person for another for consideration, and includes a declared service (9), but shall not include—
  - (a) an activity which constitutes merely,—
    - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
    - (ii) a transaction in money or actionable claim;
  - (b) a provision of service by an employee to the employer in the course of or in relation to his employment;
  - (c) fees taken in any Court or tribunal established under any law for the time being in force.

## Declared Service-Sec. 66E

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- ▶ In the definition of 'service' contained in clause (44) of section 65B of the Act it has been stated that service includes a declared service. The phrase 'declared service' is also defined in the said section as an activity carried out by a person for another for consideration and specified in section 66E of the Act. The following **nine** activities have been specified in section 66E:

# Declared Service.....

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- ▶ 1. **Renting** of immovable property;
- ▶ 2. **construction** of a complex, building, civil structure or a part thereof, including a complex or **building** intended for sale to a buyer, wholly or partly, **except** where the **entire consideration** is received after issuance of certificate of **completion** by a competent authority;
- ▶ 3. **temporary transfer** or permitting the use or enjoyment of any **intellectual property right**;
- ▶ 4. development, design, programming, **customization**, adaptation, upgradation, enhancement, implementation of **information technology** software;

# Declared Service.....

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- ▶ 5. agreeing to the obligation to refrain from **an act**, or to tolerate an act or a situation, or to do an act;
  - ▶ 6. transfer of goods by way of hiring, leasing, licensing or any such manner **without transfer** of **right to use** such goods;
  - ▶ 7. activities in relation to delivery of goods on hire purchase or any system of payment by instalments **(HP)**;
  - ▶ 8. service portion in execution of a works contract **(WC)**
  - ▶ 9. service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any
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- ▶ <sup>5</sup>manner as part of the activity (Restaurant) .

# Negative List-Sec. 66D with **17 Services**

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- ▶ Post July 1, 2012, there is change in the way services are taxed. Taxation is based on what is popularly known as “*Negative List of Services*”. This is a comprehensive method of taxation normally adopted by advanced/developed countries. This method does not differentiate between the organized and unorganized sector and covers all the service providers.
- ▶ The charging section-section 66B of the Finance Act, 1994, inter alia, provides that service tax shall be levied on all services, except the services specified in the negative list.
- ▶ In a comprehensive tax regime, this 'Negative List' is of paramount importance because every activity not covered under this list is chargeable to service tax.

# Services under Negative List 19-1=18

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- ▶ **Services Provided by Government or Local Authority**
- ▶ **Services Provided by Reserve Bank of India (RBI)**
- ▶ **Services by a Foreign Diplomatic Mission Located in India**
- ▶ **Services Relating to Agriculture or Agriculture Produce**
- ▶ **Trading of Goods**
- ▶ **Processes amounting to Manufacture or Production of Goods** (not to include liquor related process)
- ▶ **Selling of Space for Advertisements in print media**
- ▶ **Access to a Road or a Bridge on Payment of Toll**
- ▶ <sup>7</sup> **Charges**

# Cont.... Services under Negative List

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- ▶ **Betting, Gambling or Lottery**
- ▶ ~~**Entry to Entertainment Events and Access to Amusement Facilities**~~
- ▶ **Transmission or Distribution of Electricity**
- ▶ **Specified Services Relating to Education**
- ▶ **Services by way of Renting of Residential Dwelling for use as Residence**
- ▶ **Financial Sector**
- ▶ **Service Relating to Transportation of Passengers**
- ▶ **Service Relating to Transportation of Goods**
- ▶ **Funeral, Burial, Crematorium or Mortuary Services Including Transportation of the Deceased**



# 42 Exempted Services under N.N. 25/2012

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- ▶ 1. Services provided to the United Nations or a specified international organization;
- ▶ 2. Health care services by a clinical establishment, an authorised medical practitioner or para-medics;
- ▶ 2A. Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation;”;
- ▶ 2B. Services provided by operators of the Common Bio-medical Waste Treatment Facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto. (w.e.f. 11.07.2014)

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- ▶ 3. Services by a veterinary clinic in relation to health care of animals or birds;
  - ▶ 4. Services by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) by way of charitable activities;
  - ▶ 5. Services by a person by way of -
    - ▶ (a) renting of precincts of a religious place meant for general public; or
    - ▶ (b) conduct of any religious ceremony;

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- ▶ 6. Services provided by-
  - ▶ (a) an arbitral tribunal to -
    - ▶ (i) any person other than a business entity; or
    - ▶ (ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;
  - ▶ (b) an individual as an advocate or a partnership firm of advocates by way of legal services to:
    - ▶ (i) an advocate or partnership firm of advocates providing legal services ;
    - ▶ (ii) any person other than a business entity; or
    - ▶ (iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year; or
  - ▶ 1(c) a person represented on an arbitral tribunal to an arbitral tribunal:

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- ▶ 7. Services by way of technical testing or analysis of newly developed drugs, including vaccines and herbal remedies, on human participants by a clinical research organisation approved to conduct clinical trials by the Drug Controller General of India; (deleted w.e.f. 11.07.2014)
  - ▶ 8. Services by way of training or coaching in recreational activities relating to arts, culture or sports;

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- ▶ 9. Services provided,-
  - ▶ (a) by an educational institution to its students, faculty and staff;
  - ▶ (b) to an educational institution, by way of,-
  - ▶ (i) transportation of students, faculty and staff;
  - ▶ (ii) catering, including any mid-day meals scheme sponsored by the
  - ▶ Government;
  - ▶ (iii) security or cleaning or house-keeping services performed in such
  - ▶ educational institution; (iv) services relating to admission to, or conduct of examination by, such institution;”;

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- ▶ 9A. Any services provided by, \_
  - ▶ (i) the National Skill Development Corporation set up by the Government of India;
  - ▶ (ii) a Sector Skill Council approved by the National Skill Development Corporation;
  - ▶ (iii) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation;
  - ▶ (iv) a training partner approved by the National Skill Development Corporation or the Sector Skill Council
  - ▶ in relation to (a) the National Skill Development Programme implemented by the National Skill Development Corporation; or (b) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or (c) any other Scheme implemented by the National Skill Development Corporation.”
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- ▶ 10. Services provided to a recognised sports body by-
    - ▶ (a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body;
    - ▶ (b) another recognised sports body;
  - ▶ 11. Services by way of sponsorship of sporting events organised,-
    - ▶ (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state, zone or country;
    - ▶ (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
    - ▶ (c) by Central Civil Services Cultural and Sports Board;
    - ▶ (d) as part of national games, by Indian Olympic Association; or
    - ▶ (e) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme;

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- ▶ 12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -
    - ▶ (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
    - ▶ (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
    - ▶ (c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
    - ▶ (d) canal, dam or other irrigation works;
    - ▶ (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
    - ▶ (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation I to clause 44 of section 65B of the said Act;



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- ▶ 13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-
    - ▶ (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;
    - ▶ (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;
    - ▶ (c) a building owned by an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) and meant predominantly for religious use by general public;
    - ▶ (d) a pollution control or effluent treatment plant, except located as a part of a factory; or
    - ▶ a structure meant for funeral, burial or cremation of deceased;

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- ▶ 14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-
    - ▶ (a) an airport, port or railways, including monorail or metro;
    - ▶ (b) a single residential unit otherwise than as a part of a residential complex;
    - ▶ (c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
    - ▶ (d) post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or
    - ▶ (e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

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- ▶ 15. Services provided by way of temporary transfer or permitting the use or enjoyment of a copyright,-
  - ▶ (a) covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 (14 of 1957), relating to original literary, dramatic, musical or artistic works; or
  - ▶ (b) of cinematograph films for exhibition in a cinema hall or cinema theatre;”.
  - ▶ 16. Services by a performing artist in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, excluding services provided by such artist as a brand ambassador;

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- ▶ 17. Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India;
  - ▶ 18. Services by way of renting of a hotel, inn, guest house, club or campsite by whatever name called for residential or lodging purposes, having declared tariff of a unit of accommodation below rupees one thousand per day or equivalent;
  - ▶ 19. Services provided in relation to serving of food or beverages by a restaurant, eating joint or a mess, other than those having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year;”;

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- ▶ “19A. Services provided in relation to serving of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 (63 of 1948), having the facility of air-conditioning or central air-heating at any time during the year.”.
  - ▶
  - ▶ 20. Services by way of transportation by rail or a vessel from one place in India to another of the following goods -
    - ▶ (a), (d), (e) Omitted
    - ▶ (b) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
    - ▶ (c) defence or military equipments;
    - ▶ (f) newspaper or magazines registered with the Registrar of Newspapers;
    - ▶ (g) railway equipments or materials;
    - ▶ (h) agricultural produce;
    - ▶ (i) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt, milk and edible oil, excluding alcoholic beverages; or
    - ▶ (j) chemical fertilizer, organic manure and oilcakes;
    - ▶ (k) cotton, ginned or baled.

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- ▶ 21. Services provided by a goods transport agency, by way of transport in a goods carriage of,-
    - ▶ (a) agricultural produce;
    - ▶ (b) goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;
    - ▶ (c) goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred fifty;
    - ▶ (d) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages;
    - ▶ (e) chemical fertilizer, organic manure and oilcakes;
    - ▶ (f) newspaper or magazines registered with the Registrar of Newspapers;
    - ▶ (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
    - ▶ (h) defence or military equipments;
    - ▶ (i) cotton, ginned or baled.

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- ▶ 22. Services by way of giving on hire -
    - ▶ (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
    - ▶ (b) to a goods transport agency, a means of transportation of goods;
  - ▶ 23. Transport of passengers, with or without accompanied belongings, by -
    - ▶ (a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;
    - ▶ (b) non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or
    - ▶ (c) ropeway, cable car or aerial tramway;
  - ▶ 24. Omitted



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- ▶ 25. Services provided to Government, a local authority or a governmental authority by way of -
  - ▶ (a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or
  - ▶ (b) repair or maintenance of a vessel;

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- ▶ 26. Services of general insurance business provided under following schemes -
  - ▶ (a) Hut Insurance Scheme;
  - ▶ (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);
  - ▶ (c) Scheme for Insurance of Tribals and life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees.”;
  - ▶ ;
  - ▶ (d) Janata Personal Accident Policy and Gramin Accident Policy;
  - ▶ (e) Group Personal Accident Policy for Self-Employed Women;
  - ▶ (f) Agricultural Pumpset and Failed Well Insurance;
  - ▶ (g) premia collected on export credit insurance;
  - ▶ (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture;
  - ▶ (i) Jan Arogya Bima Policy;
  - ▶ (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);
  - ▶ (k) Pilot Scheme on Seed Crop Insurance;
  - ▶ (l) Central Sector Scheme on Cattle Insurance;
  - ▶ (m) Universal Health Insurance Scheme;
  - ▶ (n) Rashtriya Swasthya Bima Yojana; or
  - ▶ (o) Coconut Palm Insurance Scheme;

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- ▶ 26A. Services of life insurance business provided under following schemes -
    - ▶ (a) Janashree Bima Yojana (JBY); or
    - ▶ (b) Aam Aadmi Bima Yojana (AABY);”.
    - ▶ (c) Varishtha Pension Bima Yojna (1-4-15)
  - ▶ 27. Services provided by an incubatee up to a total turnover of fifty lakh rupees in a financial year subject to the following conditions, namely :-
    - ▶ (a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and
    - ▶ (b) a period of three years has not been elapsed from the date of entering into an agreement as an incubatee;

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- ▶ 28. Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution -
    - ▶ (a) as a trade union;
    - ▶ (b) for the provision of carrying out any activity which is exempt from the levy of service tax; or
    - ▶ (c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex;

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- ▶ 29. Services by the following persons in respective capacities -
  - ▶ (a) sub-broker or an authorised person to a stock broker;
  - ▶ (b) authorised person to a member of a commodity exchange;
  - ▶ (c) mutual fund agent to a mutual fund or asset management company;
  - ▶ (d) distributor to a mutual fund or asset management company;
  - ▶ (e) selling or marketing agent of lottery tickets to a distributor or a selling agent;
  - ▶ (f) selling agent or a distributor of SIM cards or recharge coupon vouchers;
  - ▶ (g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or
  - ▶ (h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

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- ▶ 30. Carrying out an intermediate production process as job work in relation to -
    - ▶ (a) agriculture, printing or textile processing and includes Milling of paddy into rice;
    - ▶ (b) cut and polished diamonds and gemstones; or plain and studded jewellery of gold and other precious metals, falling under Chapter 71 of the Central Excise Tariff Act, 1985 (5 of 1986);
    - ▶ (c) any goods on which appropriate duty is payable by the principal manufacturer; or
    - ▶ (d) processes of electroplating, zinc plating, anodizing, heat treatment, powder coating, painting including spray painting or auto black, during the course of manufacture of parts of cycles or sewing machines upto an aggregate value of taxable service of the specified processes of one hundred and fifty lakh rupees in a financial year subject to the condition that such aggregate value had not exceeded one hundred and fifty lakh rupees during the preceding financial year;

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- ▶ 31. Services by an organiser to any person in respect of a business exhibition held outside India;
  - ▶ 32. Services by way of making telephone calls from -
    - ▶ (a) ~~departmentally run public telephone;~~
    - ▶ (b) guaranteed public telephone operating only for local calls; or
    - ▶ (c) free telephone at airport and hospital where no bills are being issued;
  - ▶ 33. Services by way of slaughtering of animals;

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- ▶ 34. Services received from a provider of service located in a non- taxable territory by-
    - ▶ (a) Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;
    - ▶ (b) an entity registered under section 12AA of the Income tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or
    - ▶ (c) a person located in a non-taxable territory;
  - ▶ 35. Services of public libraries by way of lending of books, publications or any other knowledge - enhancing content or material;
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- ▶ 36. Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948 (34 of 1948);
  - ▶ 37. Services by way of transfer of a going concern, as a whole or an independent part thereof;
  - ▶ 38. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets;
  - ▶ 39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

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- ▶ “40. Services by way of loading, unloading, packing, storage or warehousing of rice cotton, ginned or baled;”
  - ▶
  - ▶ 41. Services received by the Reserve Bank of India, from outside India in
    - ▶ relation to management of foreign exchange reserves;
    - ▶
  - ▶ 42. Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.”.

# New Exemption wef 01-04-2015

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- ▶ 43. Service provided by a Common Effluent Treatment Plant operator for treatment of effluent is being exempted.
  - ▶ 44. Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labeling of fruits and vegetables is being exempted.
  - ▶ 45. Service provided by way of admission to a museum, zoo, national park, wild life sanctuary, and a tiger reserve is being exempted.
  - ▶ 46. Service provided by way of exhibition of movie by the exhibitor (theatre owner) to the distributor or association of persons consisting of such exhibitor as one
- 
- ▶ <sup>35</sup> of it's members is being exempted.

# Reverse Charge – Service Tax

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- The reverse charge was introduced in service tax w.e.f 1-1-2005. At the point of time there were only services Insurance and GTA which were covered under reverse charge..

## Applicable Notifications:

- **Notification No. 30/2012-ST, dated 20.06.2012 (Further, amended by Notification No. 45/2012-ST dated. 7-8-2012, & N. No. 7/2015-ST dated 01-03-2015) Services notified U/s 68(2) for reverse charge purposes**

# List of Services under Reverse Charge

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- ▶ Insurance Agent Service
- ▶ MF Agent/ Distributor Service (w.e.f. 1-4-15)
- ▶ Lottery Ticket Agent Service (w.e.f. 1-4-15)
- ▶ Recovery Agent Service (w.e.f. 1-4-15)
- ▶ Aggregator (w.e.f. 1-4-15)
- ▶ Goods Transport Agency Service
- ▶ Sponsorship Service
- ▶ Legal Service
- ▶ Arbitral Tribunal Services
- ▶ Support Services Provided by Government/Local Authority
- ▶ Rent-a-cab Services
- ▶ Manpower Supply Service
- ▶ Security Services
- ▶ Services by Directors
- ▶ Service Portion in Execution of Works Contract

# Reverse Charge –Partial -FAQ

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- What does a service provider need to indicate on the invoice when he is liable to pay only a part of the liability under the partial reverse charge mechanism?

***Service Provider → 100 + 6.18 (i.e. 75% of 12.36% - for Works Contract)  
& SR → 6.18***

- If the **service provider** is exempted being a SSI (turnover less than Rs. 10 lakhs), how will the reverse charge mechanism work?

***SSI Exemption available to Service Provider but not available to Service Recipient***

# Reverse Charge –Partial -FAQ

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- If the **service recipient** is exempted being a SSI (turnover less than Rs. 10 lakhs), how will the reverse charge mechanism work?

***SSI Exemption not available to Service Recipient, SR are required to pay tax for his part always***

- What shall be the point of taxation for the service recipient? When will he need to pay the service tax in respect of his liability?

***POT for Service Recipient – Date of Payment provided payment made within 3 months (before 01-10-2014 6 months) from date of Invoice otherwise liability gets pre-poned from date of invoice***

# Reverse Charge –Partial -FAQ

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- What shall be the point of taxation for the service recipient? When he need to pay Advance to SP?

## ***POT for Service Recipient – Date of Advance Payment***

- Will the credit of such tax paid be available to the service recipient?

***Yes, Cenvat Credit available to Service Recipient provided the same is Input Service U/R 2(I) of CCR, 2004***



# Reverse Charge –Partial -FAQ

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- How is the service recipient required to calculate his tax liability under partial reverse charge mechanism? How will the service recipient know which abatement or valuation option has been exercised by the service provider?

***Service Recipient will pay as per specified rate & valuation method - can be independent of Service Provider***

- Can the receiver use CENVAT to pay tax under reverse charge?

***No***

# Insurance Agent

- ▶ **Services of an insurance agent to any person carrying on insurance business**

Service Provider- Insurance agent

Service Receiver- Insurance Company

- ▶ 100% liability to pay service tax on Insurance Company

- ▶ Insurance agents provides services to the insurance company in relation to marketing of Insurance Policies. Insurance Agent advice to policy holder on behalf of the company. Consideration for such service is paid to them by the Insurance Company usually in the form of commission.

# MF Agent

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- ▶ **Services of MF Agent** or distributor, to a mutual fund or asset management company

Service Provider- MF Agent or MF Distributor

Service Receiver- MF or AMC

- ▶ 100% liability to pay service tax on SR.
- ▶ MF agents provides services to the MF company in relation to selling MF. MF Agent advice to MF holder on behalf of the MF company. Consideration for his services is paid by the MF Company usually in the form of commission.

# MF Agent

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- ▶ **Services of** selling or marketing **agent of lottery** tickets to a lottery distributor or selling agent

Service Provider- Lottery ticket agent

Service Receiver- Lottery distributor or selling agent

- ▶ 100% liability to pay service tax on SR.
- ▶ MF agents provides services to the MF company in relation to selling MF. MF Agent advice to MF holder on behalf of the MF company. Consideration for his services is paid by the MF Company usually in the form of commission.

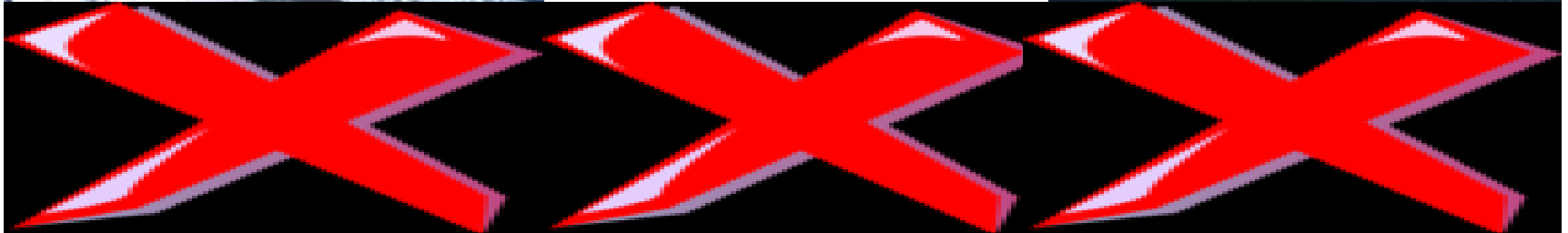
# Goods Transport Agency (GTA)

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Transportation Service by GTA to a specified person

- ▶ Service Provider - Goods Transporter by Road
- ▶ Service Recipient (specified person) –
  - ▶ Any Company,
  - ▶ Any Partnership Firm/ AOP ,
  - ▶ Any Co-operative Society,
  - ▶ A Factory
  - ▶ Excisable Dealer
- ▶ Key Point:
  - ▶ Proprietorship Firm or Individual will be only liable if the GTA services has been received for **Factory** or is a **Registered Dealer under Excise**)

# GTA...**Only by Road**.....Cont.



# GTA.....**Definition**.....Cont.

- Sec. 65B(26) “**Goods transport agency**“: any person who provides service in relation to transport of goods by road and issues **consignment note**, by whatever name called.
- ▶ In the above definition of GTA **issue of consignment note** is very important .
- ▶ Explanation to Rule 4B of Service Tax Rules, 1994 provides that-  
“*Consignment note*” means **a document**, issued by a goods transport agency against the receipt of goods for the purpose of **transport** of goods **by road** in a **good carriage**, which is **serially numbered**, and **contain the name** of the consigner and consignee, **registration number** of the goods carriage in which the goods transported, **details of the goods** transported, **details of the place** of origin and destination, **person liable for paying service tax** whether consigner, consignee or the goods transport agency.
- ▶ Consigner or Consignee is liable to pay service tax either himself or through his Agent.

## GTA.....Cont.

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- ▶ Goods Transport Agency as a service provider may be liable to pay service tax himself, if the service provides other than specified person, e.g.
  - ▶ transportation of goods for a proprietorship firm who is doing trading and not a excisable dealer,
  - ▶ transportation of material for personal use.
- ▶ As per Notification No. 26/2012-ST dated 20-06-2012, the tax is to be paid on 25% value (75% abatement) of service tax with the condition that No CENVAT Credit on input, capital goods and input services, used for providing the taxable services, has not been taken under the provision of the CENVAT Credit Rules, 1994.
- ▶ 100% Service tax will be payable by Service Recipient @ 3.09%



# Sponsorship Services

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Sponsorship Services provided by any person to Body Corporate or Partnership Firm

- ▶ Service Provider-
  - ▶ Any Person (Company, Trust, Board, Individual,.....)
- ▶ Service Recipient
  - ▶ Company
  - ▶ Partnership Firm
- ▶ Key Point
  - ▶ 100% Service tax will be payable by Service Recipient.
  - ▶ If the service receiver is other than Body Corporate or Partnership Firm in that case 100% liability to pay Service Tax is on the Service Provider.

## Sponsorship Services.....**Definition**.....Cont...

- ▶ The expression ‘ sponsorship ’ has not be defined by new service tax regime applicable from 01-07-2012.
- ▶ It ’ s a understanding between two parties where both parties benefit from arrangement; **Service provider look for finance**, equipment or resources and; **Service receiver (sponsor) expects** to enhances their **name and brand**.
- ▶ As per old regime definition is as follows:- “Sponsorship ” include naming an event after the sponsor (DLF- IPL), displaying the sponsor ’ s company logo or trading name, giving the sponsor exclusive or priority booking right, sponsoring prizes or trophies for competition (Honda Cup) ; **but does not include any financial or other support in the form of donations or gifts; given by the donors subject to the condition that the service provider is under no obligation to provide anything in return to such donors.**

# Legal Services

## Legal Services provided by Individual Advocate or Firm of Advocates to any Business Entity

- ▶ Service Provider
  - ▶ Individual Advocate
  - ▶ Firm of Advocates
- ▶ Service Recipient
  - ▶ Any Business Entity (Company, Trust, Proprietorship Firm, .....
  - ▶ Turnover of Business Entity Should be more than 10L.
  - ▶ Turnover includes any turnover, goods or service
  - ▶ Its not include Individual Advocate or Firm of Advocates
- ▶ Delhi HC vide order dated 21-09-2012, stays Service tax on Legal Services under Reverse Charge Mechanism.

# Legal Services.....cont

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- ▶ **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.
- ▶ Business entity is defined in section 65B of the Finance Act, 1994 as 'any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession'. Thus it includes sole proprietors as well.
- ▶ Advocates can provide services either as individuals or as firms.
- ▶ Services provided in nature of real estate agent or others by an advocate is not cover under reverse charge

# Arbitral Tribunal

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## Services provided by Arbitral Tribunal to any Business Entity

- ▶ Service Provider
  - ▶ Arbitral Tribunal
  - ▶ It include sole arbitrator or a panel of arbitrators
- ▶ Service Recipient
  - ▶ Any Business Entity (Company, Trust, Proprietorship Firm, .....)
  - ▶ Turnover of Business Entity Should be more then 10L
  - ▶ Turnover includes any turnover, goods or service
  - ▶ Its not include a person represented on an arbitral tribunal to an arbitral tribunal (Mega Notification 6(c))
- ▶ 100% Service Tax will be payable by Service Recipient.

# Support Services by Government

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Support—Services Provided by Government or Local Authority to Business Entity

excluding Renting & services specified in sub-clauses (i), (ii) and (iii) of clause (a) of section 66D of the FA, 1994

▶ Service Provider

- ▶ Government/Local Authority

▶ Service Recipient

- ▶ Any Business Entity (Company, Trust, Proprietorship Firm, .....

~~Support services Sec. 65B(49): 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.~~

# Services by Government

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- ▶ Taxable Services provided by the Govt.
  - ▶ (a) services provided by the Department of Posts by way of **speed post**, express parcel post, life insurance, and agency services carried out on payment of commission on non government business;
  - ▶ (b) services in relation to a **vessel or an aircraft** inside or outside the precincts of a port or an airport;
  - ▶ (c) **transport** of goods and/or passengers;
  - ▶ (d) ~~support~~ **any services**, other than those covered by clauses (a) to (c) above, to business entities:

# Services by Govt.

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## ▶ Services not covered under Reverse Charge

- ▶ **Renting** of immovable property
- ▶ **speed post**, express parcel post, life insurance, and **agency services** carried out on payment of commission on non government business;
- ▶ **vessel or an aircraft service** inside or outside of a port or an airport;
- ▶ **transport** of goods and/or passengers;

## ▶ Services Covered under Reverse Charge

- ▶ **All services Provided by Govt. (other than above) to Business Entity**



# Case Study –Support Service by Govt.

- ▶ **Will the services provided by Police or security agencies to PSUs or corporate entities or sports events held by private entities be taxable?**
- ▶ Yes. As per guidance note 4.1.8 services provided by government security agencies are covered by the main portion of the definition of support service as similar services can be provided by private entities. In any case it is also covered by the inclusive portion of the definition. However the tax will be actually payable on reverse charge by the recipient.
- ▶ **Would agency or intermediary services on commission basis (distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills), which are provided by the Department of Posts to non-government entities be liable to service tax?**
- ▶ Yes. Agency services carried out on payment of commission on non government business are excluded from the negative list entry relating to services provided by Government or a local authority. **But the same would not be covered under reverse charge.**

# Services by Directors

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Services provided by director to company and **Body Corporate**

Service Provider

- ▶ Director of **its Company /Body Corporate**
- ▶ Service Recipient
  - ▶ Company
- ▶ Director as per Sec. 2(13) of Companies Act, 1956: *“Director” includes any person occupying the position of director, by whatever name called.*
- ▶ Services provided by an employee to his employer is not a service. Thus no service tax on employer-employee relationship.

## Services by Directors.....Cont.

- ▶ In view of employer - employee relationship, when a Managing, Whole Time or Executive Director who has a relationship of an employee with the company receives any remuneration from the company, service tax is not chargeable thereon, and consequently there is no position of reverse charge also.
  
- ▶ In this context reference is made to the CBEC Instruction Letter (324/Comm (Service Tax)/2008), dated 01-12-2008 issued in the past regime in different contexts but touching upon the same point-
  
- ▶ .....

## Services by Directors.....Cont.

.....“ the matter regarding levy of service tax under the head “Business Auxiliary Service ” on the “commission ” received by the directors of the company has been examined. The Board is of the view that **some companies make payment to their officials, such as Managing Director/Directors**, terming the same as “Commissions ”. This payment may be over and above the salary and other remunerations Such commissions may be either performance linked or linked to the financial results of the company, **but the fact is that it is nothing but remuneration paid to an employee by the employer. The relationship between an employee and the employer is distinct from the relationship between a service receiver and service provider.** Thus action taken by an employee for the benefit of an employer cannot be in the nature of service. Therefore so long as the activities performed are duties within the framework of the terms of employment, **the amount paid by an employer to an employee, even if it is termed as commission, would not be treated as “commission ”** mentioned under the definition of business auxiliary service and service tax would not be leviable on such amount. ”

## Services by Directors.....Cont.

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- ▶ In view of above, even if **remuneration is paid to wholetime director or executive director by way of commission, stock options, performance related bonus etc. and not through monthly salary**, service tax would not be payable in such case because the remuneration has paid because of employer employee relationship.

# AGGREGATOR'S SERVICES

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- ▶ The services provided by the aggregator have now been brought under Service Tax net. By virtue of amendments in Service Tax Rules, 1994, in respect of any service provided under the aggregator model, the aggregator is being made liable to pay Service Tax if the service is provided using the **brand name of aggregator** in any manner. (wef 01-03-15).

# Meaning of Aggregator

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- ▶ The word ‘aggregate’ literally means a whole formed by combining several elements; formed by the combination of many separate items or units. The aggregator is one, who therefore aggregates or causes aggregation of units, items, things or services.
- ▶ Rule 2(aa) of STRAs inserted by the ST (Amendment) Rules, 2015 vide Notification No. 5/2015-ST dated 1.3.2015 defines ‘aggregator’ as under –
- ▶ “(aa) ‘aggregator’ 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”

# Service from Non Company to Company

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Works  
Contract

Rent-a  
Cab

Security

Manpower  
Supply



# Service Provider and Service Receiver for WC, Manpower Supply, Security and Motorcab

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## ▶ **Service Provider:**

1. Individual
2. HUF
3. Partnership Firm
4. AOP

## ▶ **Service Receiver:**

1. Body Corporate
- ▶<sub>2-65</sub> Company

# Rent-a-Cab

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Services provided by a motor vehicle designed to carry passenger

- ▶ Service Provider
  - ▶ Individual, HUF, Partnership Firm, AOA
  - ▶ (Other than a Company)
- ▶ Service Recipient
  - ▶ Business Entity registered as a body coporate
  - ▶ Company
- ▶ Cab operator to Cab operator not covered
- ▶ Service Recipient are required to pay @ 40% i.e. 4.944%
- ▶ ***Is reimbursement to employee will cover under reverse charge?***

# Manpower Supply & Security Service

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## Service by way of Supply of Manpower or Security Service

- ▶ Service Provider
  - ▶ Other than a Company (Individual, HUF, Partnership Firm, AOA)
- ▶ Service Recipient
  - ▶ Company, BC
- ▶ Service Recipient is liable to pay service tax under reverse charge @ ~~75% i.e. 9.27%~~ @ 100%
- ▶ Supply of Manpower R.2(1)(g): Supply of manpower, temporarily or otherwise, to another person **to work under his superintendence or control.**



# Manpower Supply/ Security Service

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- ▶ **Security Services** ST Rule 2(fa) : “Security Services ” means services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of **investigation, detection or verification, of any fact or activity.**
- ▶ Services not Covered - ***Manpower Recruitment/ Piece Rate/ Hourly Rate basis/ Cleaning Services/ Joint employment, outsourcing the activity/service itself e.g. outsourcing house-keeping work to an outside agency instead of getting the manpower supplied by an agent for house-keeping work.***

# Works Contract Service

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- ▶ Service Provider
  - ▶ Other than a Company Individual, HUF, Partnership Firm, AOA
- ▶ Service Recipient
  - ▶ Company,BC
- ▶ Works Contract Sec. 65B(54) : 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 moveable or immovable property** or for carrying out any other **similar activity** or a part thereof in relation to such property.

# Works Contract - Valuation

- ▶ Service tax is applicable on Service portion in execution of Works Contract.
- ▶ **Valuation under Service Tax for Works Contract Services – Rule 2A** → Notification no. 24/2012-ST dt. 6-6-2012 ( W.e.f 1/7/2012):-
- ▶ **Rule 2A(i)** → Pay service tax on **Actual Service portion**:- Gross Consideration **LESS** Value of Property **LESS** VAT/ Sales tax, if any, **ADD** Value of other services;
- ▶ **Rule 2A(ii)** → **Composition** → Pay ST at composite rate
  - Pay ST on 40% value of original works
  - Pay ST on 60% value of all other works contract
  - Pay ST on 70% value of maintenance or repair or reconditioning or restoration or servicing of any moveable property.

# Works Contract - Valuation

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- ▶ Service Recipient may adopt different valuation mechanism: However since the liability of service provider and service recipient are different and independent of each other, the service recipient can independently avail or forego an abatement or choose a valuation option depending upon the ease, data available and economics.
- ▶ Work contract service provided by Govt. or local authority will be considered as support services. Hence as per Entry No. 6 of Notification No. 30/2012-ST, dated 26-06-2012 entire service tax (100%) is payable service recipient.

# Partial Reverse Charge

Sl. No	Description of Service	Service (Business Entity Corporate)	Recipient as Body	Service (Individual, AOP)	Provider (Firm, HUF,
1	Renting or Hiring of Motor vehicles designed to carry passenger to any person who is not in the similar line of business				
	(a)with abatement – CC not availed by SP		100%		NIL
	(b)without abatement – CC availed by SP		50%		50%
2	Supply of Manpower for any purpose or Security Services (1-4-2015)		100%		NIL
3	Works Contract Service		50%		50%



# Reverse Charge – Service Tax

Description of a service	Service Provider	Service Receiver	Percentage of service tax payable by Service Provider	Percentage of service tax payable by Service Receiver
Services of an insurance agent to any person carrying on insurance business	Insurance agent	Any Person carrying on insurance business	Nil	100
Services of MF agent or distributor to MF or AMC	MF Agent Distributor	MF & AMC	Nil	100
Services by Lottery Selling Agent to Lottery Operator or Selling Agent	Lottery Selling Agent	Lottery Operator	Nil	100
Services by Aggregator to potential SR	Actual SP	Aggregator	Nil	100
Services of GTA in respect of transportation of goods by road	Goods Transport Agency Issues consignment Note)	Any Business Entity Except Trader	Nil	100
Sponsorship services by way of sponsorship	Any person	Body corporate or Partnership firm located in Taxable Territory	Nil	100

# Reverse Charge – Service Tax

<b>Services of Arbitral Tribunal</b>	Arbitral Tribunal	Business entity having Turnover > Rs. 10L PA, located in Taxable Territory	Nil	100
<b>Legal Services of Advocate or Firm of Advocate</b>	Individual advocate or Firm of Advocate	Business entity having Turnover > Rs. 10L PA, located in Taxable Territory	Nil	100
<b>Any Service by Government or local authority excluding renting of immovable properties, postal, port, airport, and railway services</b>	Government or Local Authority	Business entity located in Taxable Territory	Nil	100

# Reverse Charge – Service Tax

<b>Service received from Non-Taxable Territory to Taxable Territory (Import of Services)</b>	Any person located in Non-Taxable Territory	Any person located in Taxable Territory	Nil	100
<b>Services of Director To Company (w.e.f: 7-8-2012)</b>	Director (Not under employment)	Company	NIL	100



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*Thank You*