

NEGATIVE LIST BASED TAXATION OF SERVICES

CORPORATE GURUKUL

PERSON LIABLE TO PAY

CORPORATE GURUKUL

Forward/Reverse Charge Mechanisms

- **General Principle (Forward Charge Mechanism)**
 - ▣ Service Provider to collect from Service Recipient and pay tax to the Government
 - ▣ Service Recipient is not accountable to the Government directly

- **Reverse Charge Mechanism**
 - ▣ Service Recipient called upon to directly pay tax to the Government

Reverse Charge Mechanism : Background

- Need for Reverse Charge Mechanism
- Legal Provisions – Section 68
 - ▣ Independent Liability of Service Provider and Service Recipient
 - ▣ Not Similar to Tax Deduction at Source
- Variations
 - ▣ Full / Partial Reverse Charge Mechanism
 - ▣ Comprehensive / Selective Reverse Charge Mechanism
- Too Onerous a Responsibility?

RCM: Implementation Issues

- Service Tax to be paid as a service recipient
- Service Recipient may account for the service either as
 - ▣ Expenses
 - ▣ Capital Asset/ CWIP
 - ▣ Asset/Liability (specially reimbursement of expenses)
- Invoicing Issues:
 - ▣ What should the service provider's invoice contain?
 - ▣ How to account in books?
 - ▣ What are the Income Tax TDS obligations
- CENVAT Credit Related Issues
 - ▣ Whether CENVAT can be utilised for paying this tax?
 - ▣ Having paid this tax, whether CENVAT can be claimed?

Person Liable to pay Service Tax...

Description of Service	Liability of Service Provider		Liability of Service Recipient	
	Component	Effective Rate	Component	Effective Rate
Only Non Corporate Service Providers and Corporate Service Recipients				
Rent-a-Cab on abated value	NIL	NIL	100%	4.944%
Rent –a-Cab on non abated value	60%	7.416%	40%	4.944%
Supply of Manpower	25%	3.09%	75%	9.27%

Rent – A – Cab : Issues

- Net Impact on Service Recipient is the same 4.944%
- What is covered?
 - ▣ Taxis
 - ▣ Radio Cabs
 - ▣ Employee Leased Cars
 - ▣ Long Term Car Leases
 - ▣ General Tourist Cars taken on lease
 - ▣ Reimbursement claimed by employees
- No CENVAT Credit is available

Supply of Manpower

- Definition
 - “supply of manpower” means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control
- Controversy between a manpower supply service and the basic service (matter in Supreme Court)
 - Labour Contractor
 - Labour Supplier
 - Housekeeping Agency
 - Security Agency
 - Data Entry Operators
 - Accounts Outsourcing
 - Industrial Labourers
- Impact of Valuation where salaries/ESIC/PF paid by the company

...Person Liable to pay Service Tax...

Description of Service			Liability of Service Provider		Liability of Service Recipient	
			Component	Effective Rate	Component	Effective Rate
Works Contract Services						
Only Non Corporate Service Providers and Corporate Service Recipients						
Nature of Works Contract	Presumptive Value of Service	Effective Tax Rate				
Original Works (Construction of new immovable property)	40%	4.944%	50%	2.472%	50%	2.472%
Works Contracts relating to moveable assets	70%	8.652%	50%	4.326%	50%	4.326%
Other Works Contracts	60%	7.416%	50%	3.708%	50%	3.708%

Works Contract Services

- Need to revisit the following
 - ▣ Concept of Works Contract under Service Tax Law
 - ▣ Valuation of Works Contracts

- Choice of Valuation Option independent of each other

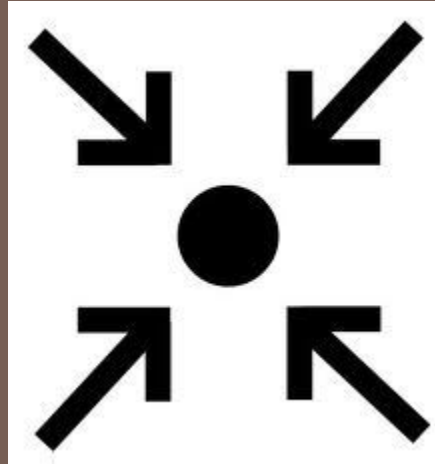
- Debates will increase on account of
 - ▣ Free issue materials and services
 - ▣ Interpretation of works contract vs. labour contracts

...Person Liable to pay Service Tax

General				
Description of Service	Liability of Service Provider		Liability of Service Recipient	
	Component	Effective Rate	Component	Effective Rate
Sponsorships	NIL	NIL	100%	12.36%
Arbitral Tribunal	NIL	NIL	100%	12.36%
Individual Advocates or Firm of Advocates	NIL	NIL	100%	12.36%
Support Service (Other than renting) by Government or Local Authority	NIL	NIL	100%	12.36%
Import of Services	NIL	NIL	100%	12.36%
Goods Transport Agency Services	NIL	NIL	100%	3.09%

RCM : Summing Up

- Onerous Obligation
- How to handle implementation
 - ▣ Manual
 - ▣ ERP/System Driven
- Possibility of Mistakes very common
- Will the Department provide an HUG in case of such mistakes?



POINT OF TAXATION



Point of Taxation : Background

Charge of Service Tax

Section 66 of the Act (upto 30.06.2012)

Section 66B of the Act (from 01.07.2012)



Assessment of Service Tax (Section 67A) – provided or agreed to be provided

Rate of Service Tax

Value of Taxable Service

Rate of Exchange



Collection of Service Tax [Section 94(2)(a) – Collection & (hhh) - Rate]

Payment of Service Tax
(Section 68)

Service Tax Rules (Rule 6)
– Deemed to be provided

**POINT OF TAXATION
RULES, 2011**

Conceptual Issues :

- Can compliance or non compliance of PoT Rules result in tax liability or does it merely define the time when the tax has to be paid?
 - ▣ New Services – Rule 5
- Is the situation same for change in the rate of tax? – Section 94(2)(hhh)
- Can there be multiple points of taxation for the same transaction?

PoT Rules - Snapshot

	From 01.04.2011 till 31.03.2012	From 01.04.2012 onwards
General Rule (Rule3)	Invoice or Receipt whichever is earlier	Invoice or Receipt whichever is earlier
Case where PoT = Completion of Service (Proviso to Rule 3(a))	If Invoice not raised within 14 days of completion of service	If Invoice not raised within Rule 4A timelines (30 days of completion of service)
Continuous Supply of Service	Service deemed to be completed at each milestone (Independent Rule 6)	Service deemed to be completed at each milestone (Proviso to General Rule)
Reverse Charge Cases (Rule 7)	Payment Basis (For Imports from AE – Entry in Books of Accounts) – if payment made within 6 months	Payment Basis (For Imports from AE – Entry in Books of Accounts) – if payment made within 6 months

PoT Rules – Snapshot (Contd.)

	From 01.04.2011 till 31.03.2012	From 01.04.2012 onwards
Export of Services	On Receipt Basis within RBI Stipulated Time (Rule 7)	Upto 30.06.2012 – Proviso to Rule 6 of Service Tax Rules, 1994 Not Relevant thereafter
PoT = Receipts	For Specified Professionals (Rule 7)	Individuals/Partnerships with VTS < 50 lakhs - Proviso to Rule 6 of Service Tax Rules, 1994
Copyrights (Rule 8)	Invoice or Receipt whichever is earlier	Invoice or Receipt whichever is earlier

Connecting the Points

Point...	Reference and Remarks
Invoice Date	Generally Relevant – Any document containing the information may constitute an invoice
Payment Date	Generally Relevant – Entry in Books relevant only if amount realised within 4 working days
Date of Completion of Service	Relevant only in cases where invoice is not issued within grace period - means completion of all the related activities that place the service provider in a situation to be able to issue an invoice
Entry in Books of Accounts	Generally not relevant – Relevant only for Import transactions with AE

Transition

- *Nothing contained in this rule shall be applicable where:*
 - Provision of service is complete prior to 1 April 2011 or
 - Invoice is issued prior to 1 April 2011

- Option to pay service tax on receipt basis where
 - ▣ Provision is complete on or before 30 June 2011 or
 - ▣ Invoice is issued on or before 30 June 2011



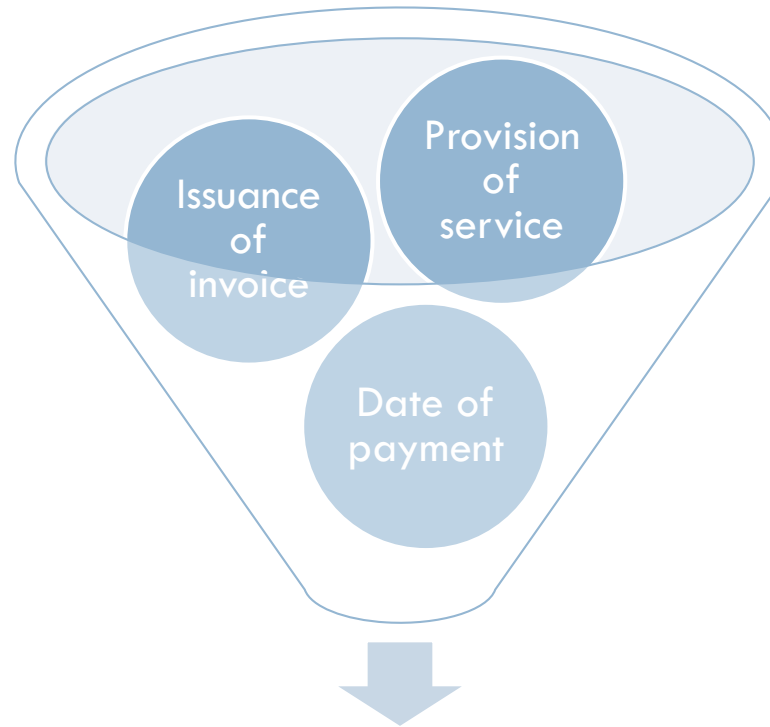
Till now (Income)

Description	Amt.	Linkage with Accounts
Invoices Raised during the month		Sales Register
Services Completed but invoices not raised within 30 days		Unbilled Revenue /MIS
Advances Received during the month		Debtors' Ledger
Services deemed to be completed on achievement of milestone but invoices not raised within 30 days		Project Teams & Client Communications
Non AE Related Foreign Remittances made during the month		Foreign Currency Remittances
Non AE Related Expenditure for which no foreign remittances are made within 6 months	Revise old working	Ageing Analysis
AE Related Foreign Currency Expenditure booked in books of accounts		Provisions
Invoices raised under older provisions but realised during the current period		Debtors Reconciliation Statement
<u>LESS</u> Invoices Raised during the month but taxed earlier		Contra from earlier workings

POT – IMPACT OF RATE CHANGE (01.04.2012)



Change in effective rate – Rule 4



Applicable ST rate \rightarrow 2/3

Change in Rate: Permutations & Combinations

<i>Provision of Service</i>	<i>Raising of Invoice</i>	<i>Receipt of Money</i>	<i>Effective Rate</i>	<i>Reference to the Rules</i>	<i>Point of Taxation</i>
Prior to 01.04.2012	Prior to 01.04.2012	Prior to 01.04.2012	10.30%	No Need to refer to the Rules	Invoicing or Receipt whichever is earlier
Prior to 01.04.2012	Prior to 01.04.2012	After 01.04.2012	10.30%	Rule 4(a)(ii)	Invoicing
Prior to 01.04.2012	After 01.04.2012	Prior to 01.04.2012	10.30%	Rule 4(a)(iii)	Receipt
Prior to 01.04.2012	After 01.04.2012	After 01.04.2012	12.36%	Rule 4(a)(i)	Invoicing or Receipt whichever is earlier
After 01.04.2012	Prior to 01.04.2012	Prior to 01.04.2012	10.30%	Rule 4(b)(ii)	Invoicing or Receipt whichever is earlier
After 01.04.2012	Prior to 01.04.2012	After 01.04.2012	12.36%	Rule 4(b)(i)	Receipt (even though it is subsequent to invoicing)
After 01.04.2012	After 01.04.2012	Prior to 01.04.2012	12.36%	Rule 4(b)(iii)	Invoicing (even though it is subsequent to receipt)
After 01.04.2012	After 01.04.2012	After 01.04.2012	12.36%	No Need to refer to the Rules	Invoicing or Receipt whichever is earlier

Change in rate : Action Points

- Identify the cases where
 - ▣ Services were rendered before 01.04.2012 but neither billed nor received (unbilled revenue)
 - ▣ Invoice raised before 01.04.2012 but services not provided nor realised (Advance Billing)
 - ▣ Amounts received before 01.04.2012 but the services not provided or invoiced (Advances)
- In all the above cases,
 - ▣ Liability to discharge the Tax at New Rate (12.36%)
 - ▣ In view of POT, Tax would have been discharged at Old Rate earlier (10.30%)
 - ▣ So Pay the Differential based on POT

Change in Rate – Import of Services

- Normal Cases
 - ▣ Date of Payment
 - 12.36% (PoT was never determined earlier)
- Late Transactions
 - ▣ General Rule
 - 10.30% (PoT was determined earlier)
- AE Transactions
 - ▣ Date of Booking
 - 10.30% (PoT was determined earlier)

Rate Change : Continuous Services

- Scenario in April 2012
 - ▣ Rule relating to rate change did not apply to rule relating to continuous services
 - ▣ Generally invoice and deemed completion would coincide
 - ▣ Generally no need to revisit tax liability
- Scenario in July 2012
 - ▣ Rule relating to rate change applies to rule relating to continuous services therefore 2/3 criteria important
 - ▣ But, generally invoice and deemed completion would coincide
 - ▣ Therefore, generally no need to revisit tax liability

POT – IMPACT OF NEW LAW (01.07.2012)



New Law – Transition Issues

Issue	Example	To be treated as	Impact
Withdrawal of Exemption	Site Formation for Dam	Change in Rate of Tax	2/3 Criteria
Fresh Exemption Granted	Outdoor Hoardings	Change in Rate of Tax	2/3 Criteria
New Service introduced	Services rendered by actors	New Service	See next slide
Change in Value for Works Contracts	Repairs of Immoveable Properties	Change in Rate of Tax	2/3 Criteria

New service

- Where a service not being a CSS, is taxed first time then, no ST payable if
 - ▣ Invoice and Receipt are before date of introduction
 - ▣ Receipt is before date of introduction and invoice is issued within 14 days from collection (not amended consequent to the amendment in Rule 4A)

- What happens to invoice raised before the introduction but receipt after the introduction?



New Law – Transition Issues

Issue	Example	Clarification
Change in Place of Provision of Service	Online Information and Data Access	None
Change in Person Liable to Pay – Partial Reverse Charge	Manpower Supply Agency Services	Look at service provider's POT / Change in Tax Rate
Change in Person Liable to Pay – Full Reverse Charge	Advocates	Look at service provider's POT

New Law – Transition Issues - Impact

- Will Section 67A be more important
 - ▣ Services provided or to be provided

- How to establish provision of services without documentary trail?

- Invoice therefore may be a more authentic basis

- This is subject to exceptions

OTHER RULES – RELEVANT ASPECTS



Service Tax Rules

- Service Tax to be paid as and when services are deemed to be provided

- Subsequent Adjustment Permitted
 - in the following cases:
 - Non Provision of Service, wholly or partially
 - Deficiency in Provision of Service
 - Renegotiation of Invoice as per the terms of the contract
 - Subject to the following conditions
 - Amount Refunded
 - Credit Note Issued



Adjustment – Some Examples

Non Provision of Service

- Cancellation after advance
- Mistakes in Invoices

Deficiency in Provision of Service

- Quality Discount

Renegotiation of Invoice Amount due to terms in contract

- Volume Discount
- Performance Driven Waivers

Adjustment – whether permitted?

- Bad Debts
- Cash Discounts
- Ad Hoc Discounts
- Deduction on account of Penalties
- Deduction on account of material quality



**TIME FOR QUESTIONS
AND REFRESHMENTS...**

