

## Service Tax changes w.e.f. 01-Apr-2016

### Services provided by Government – Reverse Charge implications

#### Salient Feature

Liability to pay service tax on services **received from** government/ Local authority

- W.e.f. **01-Apr-2016**
- Service tax on **any activity** [mandatory / statutory under law or otherwise]
- Consideration** paid for such activity
- Service Provider** : Government / local authority
- Service Receiver** : **Business entity** (turnover>10 lacs in last year)
- Service tax **Payable by business entity**
- All services** covered eg. **All fees** collected by government, but **not tax and duty**

#### Service by Government

Sec 66D (**Negative list**) provides for **non-taxability** of services provided by government / local authority to any person **subject to certain exceptions**:

<b>Non Taxable service</b>	All Service Provided by Government or local authority <b>-Not taxable</b>
<b>Exceptions- (taxable services)</b>	Service by Postal department- speed post etc.
	Certain services in relation to an aircraft or a vessel
	Transport of goods or passengers
	w.e.f. 01-04-16 [Any Service] <sup>old</sup> [support services] provided to Business entities

#### Definitions

- **Business Entity** u/s 65(17) means any person ordinarily carrying out any activity relating to industry, commerce or any other business
- **Government** u/s 65(26A) means the Departments of the Central Government, a State Government and its Departments and a Union territory and its Departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required

to be kept in accordance with article 150 of the Constitution or the rules made thereunder

○ **Support Services 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,
- Obtained as services by **outsourcing from others** for any reason
- Include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis.

### Reverse Charge

- Service Provider- Government/ local authority
- Service receiver – Business Entity liable to pay tax

Period	Nature of Service	Person Liable
01-Jul-12 to 31-Mar-16	Support Service	Any business Entity
01-Apr-16 onwards	Any Service	Business entity turnover > 10 lacs in previous Financial year

### When to Pay Tax

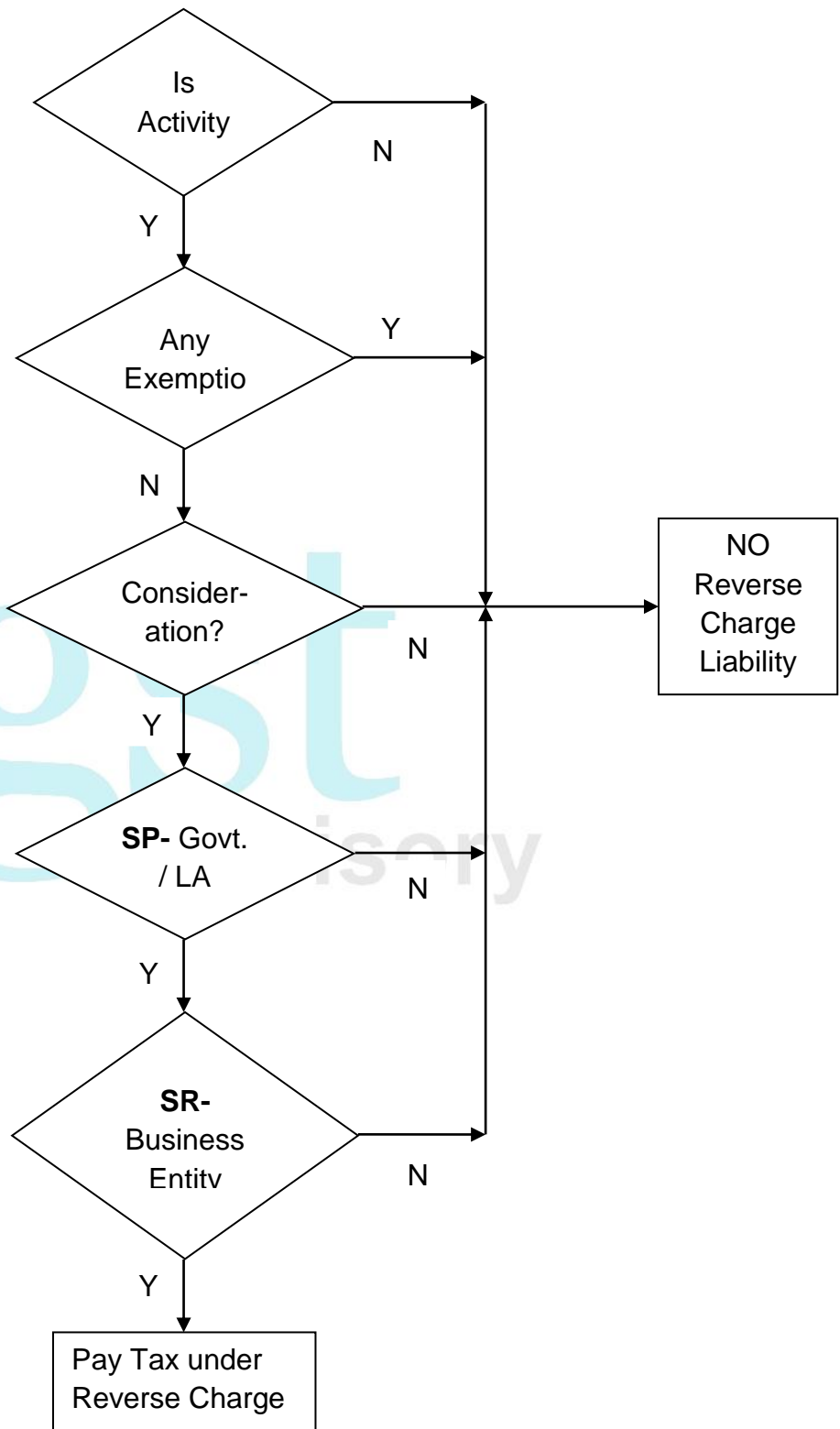
Amended Point of Taxation Rules, 2011 provide for tax payment on **earlier of** following:

- When the Payment becomes **Due**
- Making of **Payment**

### CENVAT

Cenvat of tax paid is allowed subject to provisions of Cenvat Credit Rules, 2004 on the basis of challan evidencing payment of service tax.

**FLOW CHART for determining taxability**



## Activities provided by Govt.– eg.

Nature of Service	Reverse Charge?	Remarks
Services provided by Government or a local authority to a business entity	Yes	Exempted if turnover of business entity is <= Rs. 10 lacs in Previous Year
Registration under any law	No	U/n 25/2012 (w.e.f. 13-04-16) eg. Registration of title deeds etc will be exempted
Service where amount <=5,000	No	U/n 25/2012 (w.e.f. 13-04-16) except , Negative list exemptions
ROC Filing fees	Yes/No	If documents are to be registered then exempted u/n 25/2012 else taxable
Regulation of Land use, construction of Buildings, etc	No	Services listed in XII Schedule to Art.243W are exempted
Right to Information fees	No	As provided to individual
Fees to Tribunal / Court fees	No	No service as specifically excluded
Application Fees EPCG / DEPB etc.	Yes	No specific Exemption
Water Charges	No	Charges towards cost of water is not service
<b>Tax payment-</b> Excise, Service Tax, VAT, Income Tax, Municipal Tax, Stamp Duty	No	No service as government is required to enforce and collect tax from persons are liable to pay it and tax is not a consideration- Refer Circular dated 13-4-16
Fines and Penalties	No	Levied for Violation of statute/ rules
Passport, Visa, Driving license, Birth certificate or Death certificate	No	U/n 25/2012 (w.e.f. 13-04-16). Otherwise also exempted as related to individual
Tolerating non -performance of a contract eg. Forfeiture of security deposit	No	U/n 25/2012 (w.e.f. 13-04-16) Tolerating poor construction (by Govt.) is a declared service by Govt. to contractor and amount deducted becomes consideration for such service (to Govt.) Contractor liable under reverse charge

Testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large under any law	No	Exempted U/n 25/2012 (w.e.f. 13-04-16)
Assignment of right to use natural resources a) to an individual farmer for agriculture b) any right assigned before 01-Apr-16	No	- do -
Service related to functions entrusted to a Panchayat under article 243G of the Constitution;	No	- do -
Telecom service provider for frequency usage subject to conditions laid	No	- do -
Merchant Overtime charges (MOT) for deputing officers other than working hours for inspection etc. of import export cargo	No	- do -

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Advisory

## Some other amendments

### Construction

Construction of a Complex {Value of land is included in the amount charged}	Till 31-03-16		W.e.f. 01-04-16
	<i>Abatement</i>	<i>Effective Rate</i>	<i>Eff. Rate</i>
<b>Residential Unit</b> : Carpet area <= 2000 sq ft. and amt charged < 100 lacs	25%	3.625%	4.350% (abatement 30%)
<b>Others (incl. commercial)</b>	30%	4.350%	

### Goods Transport Agency

Transport of	Effective Rate
Household goods- 40% taxable	5.800%
Other Goods-30% taxable	4.350%

### Legal Consultancy Services

Service by	Taxability	Criteria	Remarks
Legal Service by Individual advocate/ Partnership firm of advocates  (other than Sr. Adv.-w.e.f. 01-Apr-16)	Exempted	To an Ind. Adv or Partnership firm of Adv. providing legal services	
		To <u>Non-Business Entity</u>	
	To Business entity with a turnover <= 10 lac in Previous year		
	Taxable	Business entity with a turnover >10 lac in Previous year	Liability under reverse charge of Service

			Recipient
Sr. Advocate <b>(w.e.f.01-Apr-16)</b>	Exempted	To a person other than carrying activity relating to industry/commerce/business/profession	No Reverse Charge

### Reversal of Credit

<b>Manufacturer-Dutiable (DG) and Exempted Goods (EG) OR Provider-Taxable (TS) and Exempted Services (ES) (Options w.e.f. 01-Apr-16)</b>		
<b>Option-1</b>		
Inputs/Input services used for both classes (taxable and exempted)	6% of Value of Exempted Goods 7% of Exempted Services	Credit reversal s.t. maximum of total credit of Inputs/ Input services taken and Op. Bal of Inputs/ Input services
<b>Option-2</b>		
Inputs/Input services used exclusively for	Exempted goods/services	No Credit
	Taxable goods/services	Full Credit
Common Credit	Monthly Reversal	EG+ES / Total Turnover (EG+ES+DG+TS)
Adjustment till 30-Jun on basis of yearly details		

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