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## Joint & Reverse charge, Declared Service

### Declared Service

Clause (44) of section 65B of the Act defines 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.

### Section 66E

The following nine activities have been specified in section 66E:

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, up gradation, enhancement, implementation of information technology software;
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;
8. service portion in execution of a works contract;
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 manner as part of the activity.

### Definition of service

'Service' has been defined in clause (44) of the section 65B and means –  
any activity

for consideration  
carried out by a person for another  
and includes a declared service.

Some services are specifically declared as a service in section 66E and have been included in the definition of service. Why?

They are amply covered by the definition of service but have been declared with a view to remove any ambiguity for the purpose of uniform application of law all over the country.

## **Renting of Immovable Property**

Renting has been defined in section 65B as “allowing, permitting or granting access, entry, occupation, usage or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property’.

A person is providing service if he collects or charge rent from another person for allowing the other person to use immovable property in any manner. Renting of immovable property is not chargeable to tax if listed on Negative or exempted list.

### Negative list

Renting of vacant land, with or without a structure incidental to its use, relating to agriculture.

Renting of residential dwelling for use as residence

Renting out of any property by the Reserve Bank of India

Renting out of any property by a Government or a local authority to a non-business entity.

### Exemption List

Renting of precincts of a religious place meant for general public.

Renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a room below rupees one thousand per day or equivalent.

Renting to an exempt educational institution

**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**

Competent Authority to issue CC

1. Municipal Corporation/ Municipality/ local body/Gram Panchayat/ Cantonment Board/ any other authority authorized to sanction building plan.
2. Architect/Chartered engineer/ Licensed surveyor of the respective local Body/ Development or planning authority

Taxability of Activities

Activities	Taxable or Non- Taxable
Entire consideration is received after issuance of CC	Not Taxable
Entire or part consideration is received before issuance of CC	Taxable
Sale of Land by Landowners to Builders/Developer	Not Taxable
Flats given to Landowners by builders/developers where Land/Development rights given by Landowners to Builders/Developers	Taxable
Landowners sold flats to customers and received part or entire consideration before issuance of CC	Taxable
Buyer sold/transferred flat to another buyer after paying some consideration	Taxable: Builders shall charge the first buyer on consideration received from him and shall charge the second buyer on consideration received from second buyer. Amount paid by second buyer to first buyer is not taxable.

**Transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods;**

We need to understand the legality and definition of the above phrases before proceed further. The above phrase is divided into two parts:

1. Transfer of goods by way of hiring, leasing, licensing or any such manner,
2. Transfer of right to use such goods

Under both points there is transfer. First part transfer only goods for use by another person. Second part transfer right on goods to use such goods.

At first impression we understand that there is no difference under both points. Under both points i) there is a goods, ii) there is a transfer, iii) there is a permission to use the goods, and iv) goods is in the custody of another person.

But there is a big legal difference. Let us understand the difference:

- a) Under Point no 1.goods is transferred for use to another person as agreed between owner and user. In this case there is transfer of custody only with a permission to use such goods.
- b) Under point no 2 there is transfer of possession and effective control over such goods. User is not only custodian but also have legal rights on such goods to use for the period. The owner can not again transfer the same rights to others during such period.

Therefore, if goods is transferred with the right to use then the activities is out of the service tax net.

### **Service portion in execution of a works contract**

Section 65B of the Act defines Works Contract as under:

1. a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods
- 2 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 Contracts always involves two set of activities: 1) Sale of Goods in execution of contract, and (2) Provision of service in execution of contract.

The value of works contract needs to be segregated and value of both the activities as aforesaid have to be determined as per decision of Supreme Court in the BSNL case

#### Valuation of service portion in works contract

Value of services= Gross amount of Works Contract- value of transfer of property in goods on which VAT or sales tax is paid or payable.

However, the value of services should include the followings:

- Labour charges for execution of the works .
- Amount paid to a sub-contractor for labour
- Charges for planning, designing and architect's fees
- Charges for obtaining on hire or otherwise, machinery and tools used for the execution works contract.
- Cost of consumables such as water, electricity, fuel, used in the execution of the works contract
- Cost of establishment of the contractor relating to supply of labour and services and other similar expenses relating to supply of labour and services
- Profit earned by the service provider relating to supply of labour and services

### Simplified scheme for determining the value of service

Where the value of service portion has not been determined as per above method then the value of service portion shall be determined as under:

Where works contract is for	Value of service portion
1. Execution of original works	40% of amount of works contract
2. maintenance or repair or reconditioning or restoration or servicing of any goods	70% of amount of works contract
3. other Works Contract	60% of amount of works contract

### Reverse Charge Mechanism

w.e.f. 1.7.2012 liability to pay service tax shall be on both i.e. service provider and receiver on some services and on service receiver only on some services. Accordingly reverse charges mechanism has been divided into two parts:

1. Joint reverse charge or Partial reverse charge
2. Full reverse charge

#### 1. Joint reverse charge or Partial reverse charge

Under joint reverse charge mechanism liability to pay service tax shall be on service provider as well as on service receiver as per % and on services as detailed hereinunder:

services	payable by service provider	Payable by service receiver
renting of a motor vehicle designed to carry passengers on non-abated value to any person who is not engaged in a similar business	60%	40%
service portion in execution of a works contract;	50%	50%
supply of manpower for any purpose	25%	75%

Under joint reverse charge mechanism service receiver should be a business entity registered as a body corporate and service provider should be Individual or HUF or AOP or Partnership firm.

Credit of Tax paid can be availed by the service receiver

1. For the amount of tax paid by service provider on the basis of invoice
2. For the amount of tax paid by service receiver on the basis of tax paid challan

#### 2. Full reverse charge

Under full reverse charge mechanism liability to pay service tax shall be 100% on service receiver on services as detailed hereinunder:

Services	Payable by service provider	Payable by service receiver
Service provided by an insurance agents to any person carrying on insurance business	Nil	100%
Services provided by Goods transport agency in respect of transportation of goods by road	Nil	100%
Service provided by way of sponsorship	Nil	100%
Service provided by an Arbitral Tribunal	Nil	100%
Service provided by individual advocate or firm of advocates by way of legal services	Nil	100%
Service provided by Govt. or local authority by way of support services	Nil	100%
renting of a motor vehicle designed to carry passengers on non-abated value to any person who is not engaged in a similar business	Nil	100%
Service provided by any person in		