

CORPORATE OFFICE, TAXATION SECTION  
1ST FLOOR, BHARAT SANCHAR BHAWAN  
JANPATH, NEW DELHI-110 001



BHARAT SANCHAR NIGAM LIMITED  
[A Government of India Enterprise]

No.1002-15/2011-12/Taxation/BSNL/648

Dated: /07/2013

21.08.2013

To

The Chief General Managers,

1. All Telecom Circles/ Metro Telephone Districts/Maintenance Regions/ Project Circles
2. Task Force/ Data Network/ NCES/QA/T&D/ Telecom Stores/ Telecom Factories/ CPAO (ITI Bills)/ IT Circle, Pune
3. ALTTC/BRBRAITT/NATFM
4. All PGMs/Sr.GMs/GMs, BSNL Corporate Office.

**Sub.: Clarification on certain issues relating to Service Tax (under reverse charge mechanism) consequent to Budget 2012 - reg.**

Ref: - This Office letter (1) No. 1002-15/2011-12/Taxation/BSNL/301 Dated 17/08/2012 and (2) even no. /399 dated 21/11/2012.

Some doubts & queries have been raised by BSNL Telecom Circles/field units in relation to Notification No. 30/2012-ST Dated 20/06/2012 issued by Department of Revenue, Ministry of Finance, Government of India pursuant to enactment of Finance Act, 2012 which was circulated by BSNL corporate office for its implementation vide letter under reference mentioned at sl no. (1) and (2) above.

The queries received in this office have been examined in consultation with the Tax Consultant viz. M/s Ernst & Young India Pvt. Ltd. and following clarifications are issued for implementation by all concerned:-

Sl.No.	Query	Clarification
1.	Whether Service Tax under Reverse Charge (Works contracts) is applicable on services received from Man Power Supply on BTS UP Keep Service, Annual Maintenance Contracts, and Data feeding Services?	➤ In this regard, kindly refer to Sl. No.8 of Table under Para II of Notification No. 30/2012-ST Dated 20-06-2012 wherein it provides that supply of manpower for any purpose comes under the partial reverse charge mechanism wherein liability of service recipient and service provider is 25% and 75% respectively.
2.	Whether Reverse charge of Service tax is applicable on services received from Government security guards (PRD) even not having PAN?	➤ As per sl.no. 6 of Table under Para II of Notification No. 30/2012-ST dated 20.06.2012, the service recipient would be required to pay 100% Service tax under reverse charge on the support services received from Government or Local authority excluding some specified services. Support services have been defined under clause (49) of Section 65B of the Finance Act, 1994 as follows:  "Support services means infrastructural,

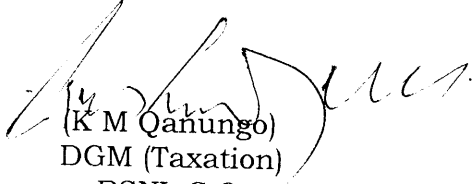
		<p>operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis;"</p> <p>➤ In the given case, since the support services are received from a Government Authority, BSNL would be required to pay 100% Service Tax under reverse charge mechanism as prescribed under Notification No. 30/2012-ST dated 20.06.2012 (Sl.No. 6 of Table under Para II).</p>
3.	<p>Whether Annual Maintenance Contracts (AMC), wherein both replacement of parts /accessories and services are involved, is covered in the work contract as mentioned in sl. no. 9 of Table under Para (II) of NN-30/2012-ST dated 20.06.2012?</p>	<p>➤ A contract for maintenance and repair is covered under the ambit of a works contract, provided the property in goods so replaced in the course of such AMC is being transferred to the service recipient.</p> <p>➤ In the given case, the AMC contract involves the replacement of parts/accessories along with the maintenance services. Contracts of such nature would qualify as works contract.</p> <p>➤ In case, where such contracts are entered with the specified person i.e. an Individual, HUF, a partnership firm or an AOP, BSNL would be required to pay Service tax on such services to the extent of percentage specified in the Sl. No. 9 of Table under Para II of Notification 30/2012-ST dated 20.06. 2012.</p> <p>➤ Applicability of VAT in the respective states is to be seen as the contract involves transfer of property in goods.</p>
4.	<p>Whether Repair &amp; Maintenance service is covered in the work contract as mentioned in sl. no. 9 of Table under Para (II) of NN-30/2012-ST dated 20.06.2012?</p>	<p>➤ A contract for repairs and/ or maintenance is covered within the scope of works contract, provided the same involves transfer of property along with such service.</p> <p>➤ As long as a transfer of property is involved in the course of provision of repair and maintenance service, such repair and maintenance would qualify as works contract in terms of Sl. No. 9 of Table under Para II of NN -30/2012-ST dated 20.06.2012 and BSNL would be liable to deposit Service tax to the extent of 50% on such services procured from specified persons.</p>

*Handwritten signature*

		<p>➤ Further, where the services of repair and maintenance do not involve the transfer of property in goods, the transaction would not qualify as works contract. Consequently, BSNL would not be required to pay Service tax under reverse charge mechanism.</p>
5.	Whether reverse charge of Service tax is not applicable, if service provider is a registered Company?	<p>➤ Reverse charge of Service tax would be applicable on the service recipient only when the specified services are procured from an individual, HUF, Partnership firm or an AOP.</p> <p>➤ Accordingly, if works contract services are procured from a person who is registered as a Company, then the service recipient would not be required to pay Service Tax under reverse charge mechanism.</p>

It is requested to kindly go through the above clarifications and same may be circulated to all subordinate formations under your control for information, guidance and necessary action.

This issues with the approval of GM (Taxation), BSNL CO.

  
 (K M Qanungo)  
 DGM (Taxation)  
 BSNL C.O.