



PMC Cell – MM

## Oil and Natural Gas Corporation Ltd

### Corporate Materials Management

Pandit Deen Dayal Upadhyay Urja Bhawan,  
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New Delhi - 110070

**Circular No.63/2017**

No: MAT/PMC/13(117)Ser.Tax/2017

Dated: 13.02.2017

**Sub: Provisions related to Service Tax on Works Contracts**

Reference is invited to Annexure-C of circular No. 20/2012(Revised) dated 09.08.2012, wherein provisions on determination of Service Tax on the service portion involved in the execution of the contract have been notified.

Consequent to the enactment of Union Budget for the year 2014-15, Indirect Taxation Cell, New Delhi vide circular no. DLH/Indirect Tax/Circulars/1/2014 dated 25.07.2014 (copy enclosed), has notified the impact of Union Budget on various provisions of Service Tax in Work Contracts.

In accordance with the modifications notified by Indirect Taxation Cell, the provisions on applicability of Service Tax in LSTK Contracts notified vide Circular No. 20/2012 dtd. 09.08.2012, stand modified as per Annexure-A.

Above guidelines should be meticulously followed by all concerned.

*Ashwini Nagia*  
13/02/17

(Ashwini Nagia)  
ED-Chief MM Services

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3. CVO, ONGC, New Delhi.



**Annexure-A**


**Annexure - C - (applicable for Annexure-B) (Work Center should provide suitable Appendix No. for enclosing with the bid document)**

<b>Modified Provisions</b>			
Service Tax on the service portion involved in the execution of the contract shall be determined in the following manner:			
Sl. No	Particulars	Value for service tax	Remarks
(A)	In case Works contract entered into for execution of Original Works. Original works means all works relating to: i. new constructions; ii. additions and alterations to abandoned / damaged structure on land to make them workable; iii. erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.	40% of the total amount charged for works contract	LSTK contracts of construction viz. Platforms, GGS/ CTF/ EPS/ laying of Pipeline, etc. Contracts for dismantling and reconstruction of plant / facilities including laying of pipeline, etc.
(B)	In case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods. AND In case of other works contracts, not covered under sub-clauses (A) including maintenance, repair, and completion & finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of	70% of the total amount charged for works contract	Contract for repair & maintenance relating to any movable property such as Dry docking of Rig/Vessel; Refurbishment of Rig, equipments such as Turbines, compressors, etc. AMC of equipments, etc. and residual category items.

<b>Existing Provisions</b>			
Service Tax on the service portion involved in the execution of the contract shall be determined in the following manner:			
Sl. No	Particulars	Value for service tax	Remarks
(A)	In case Works contract entered into for execution of Original Works. Original works means all works relating to: i. new constructions; ii. additions and alterations to abandoned / damaged structure on land to make them workable; iii. erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.	40% of the total amount charged for works contract	LSTK contracts of construction viz. Platforms, GGS/ CTF/ EPS/ laying of Pipeline, etc. Contracts for dismantling and reconstruction of plant / facilities including laying of pipeline, etc.
(B)	In case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods.	70% of the total amount charged for works contract	Contract for repair & maintenance relating to any movable property such as Dry docking of Rig/Vessel; Refurbishment of Rig, equipments such as Turbines, compressors, etc. AMC of equipments, etc.

Existing Provisions		Modified Provisions		
<p>(C) In case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, and completion &amp; finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property.</p>	<p>60% of the total amount charged for works contract</p>	<p>This is a residual category, wherein works contract other than original works, repair/maintenance of movable property shall be covered, such as repair of</p> <ul style="list-style-type: none"> <li>- Platform,</li> <li>- Pipeline/subsea pipeline,</li> <li>- Building etc</li> </ul>	<p>an immovable property.</p>	<p>wherein works contract other than original works, repair/maintenance of movable property shall be covered, such as repair of</p> <ul style="list-style-type: none"> <li>-Platform,</li> <li>-Pipeline/subsea pipeline,</li> <li>-Building etc</li> </ul>
<p><b>Note-2 :</b> Total amount shall mean, sum total of gross amount charged for the works contract(contract value) plus Fair Market Value of all goods supplied and used for execution of works contract, less</p> <p>(i) the amount charged for such goods or services provided by the service receiver (ONGC); and</p> <p>(ii) the value added tax or sales tax included in gross price.</p>		<p><b>Note-2 :</b> Total amount shall mean, sum total of gross amount charged for the works contract(contract value) plus Fair Market Value of all goods supplied and used for execution of works contract, less</p> <p>(i) the amount charged for such goods or services provided by the service receiver (ONGC); and</p> <p>(ii) the value added tax or sales tax included in gross price.</p>		

	<b>OIL AND NATURAL GAS CORPORATION LTD.</b> <b>OFFICE OF EXECUTIVE DIRECTOR - CHIEF CORPORATE FINANCE</b> <b>(INDIRECT TAXATION CELL) KAILASH BUILDING</b> <b>NEW DELHI</b>	
	DLH/Indirect Tax/Circulars/01/2014	Date: 25 <sup>th</sup> July, 2014
<b>From</b>	: Executive Director – Chief Corporate Finance, ONGC, New Delhi	
<b>To</b>	: Key Executives and Finance Heads of Asset/Basins/Plants/Services /Institutes of ONGC	
<b>CC</b>	: EO to Director (Finance), Jeevan Bharti Tower-II, New Delhi	
<b>Sub</b>	: <b>Changes by Union Budget – 2014 pertaining to Indirect Taxes relevant for ONGC operations</b>	

Union Budget for the year 2014-15 was presented in the Parliament on 10<sup>th</sup> July, 2014 wherein various changes under Indirect Tax Laws viz. Customs, Central Excise and Service Tax, have been proposed/made.

Such changes and its effective date relevant for ONGC operations have been summarized below:

#### A. Customs:

- (i) There is no change in peak rate of Basic Customs Duty which is 10%. [Effective rate of Customs Duty 28.852%]
- (ii) Basic Customs Duty on propane (C3) is reduced from 5% to 2.5% **[Changes effective from 11<sup>th</sup> July, 2014]**
- (iii) **Custom Duty on production of Crude Oil/ Natural Gas is not payable for the period prior to extension of provisions of Custom Act in EEZ & CS of India:**

Section 25 is being amended to provide that, the customs duties on mineral oils including petroleum & natural gas extracted or produced in the continental shelf (CS) of India or the exclusive economic zone (EEZ) of India prior to 7<sup>th</sup> February, 2002 shall always be deemed to have been exempted from the whole of the duties of customs leviable. **Hence, Custom Duty demands raised earlier shall be treated as settled after enactment of Finance Bill, 2014.**

#### B. Central Excise:

- (i) **Excise Duty Exemption available to Sub-Contractor/Manufacturer supplying Goods to Main Contractor where contract awarded on ICB.**

The scope of Excise Duty exemption to 'all goods supplied against International Competitive Bidding' has been clarified to the effect that, the said exemption (under Sl. No. 336 of Exemption Notification No. 12/2012-CE) is also available to sub-contractors for manufacture and supply of goods to the main-contractor (who has won the bid for the project through ICB) for execution of the said

project. This has been provided vide a circular and therefore, it is clarificatory in nature which may resolve all pending cases.

(ii) **Mandatory Penalty of 1% (one percent) on delayed payment of Excise Duty [Under Rule-8 (3A) of Central Excise Rules, 2002]:**

'If the assessee fails to pay the duty declared as payable by him in the monthly return within a period of one month from the due date, then assessee is liable to pay the penalty at the rate of one per cent on such amount of the duty amount not paid, for each month or part thereof calculated from the due date, for the period during which such failure continues.

**Explanation-** For the purposes of this sub-rule, 'month' means the period between two consecutive due dates for payment of duty...'

[Effective from 11<sup>th</sup> July, 2014].

(iii) **Continuation of concessional duty of excise on specified goods:**

In the Interim Budget 2014, the rate of excise duty on specified goods covered under chapter 84 & 85 were reduced from 12% to 10% vide Notification No. 4/2014-CE dated 17<sup>th</sup> February, 2014 and the same was valid upto 30<sup>th</sup> June, 2014. Now, this exemption has been extended upto 31<sup>st</sup> December, 2014 vide Notification No. 06/2014 dated 25<sup>th</sup> June, 2014. Accordingly, the effective rate of Customs Duty on import of such specified goods shall be as under:

S. No.	Particulars	Effective Customs Duty upto 16.02.2014 (%)	Effective Customs Duty w.e.f. 17.02.2014 (%) till 31 <sup>st</sup> December 2014
1	Machinery & Equipments having basic customs duty @ 10%	28.852	26.495
2	Machinery & Equipments having basic customs duty @ 7.50%	25.852	23.549

**C. CENVAT Credit [Changes effective from 1<sup>st</sup>September, 2014]:**

(i) **Time limit for availing CENVAT Credit fixed as 6 (six) months from date of Invoice:**

Presently, there is no specified time limit for availing CENVAT Credit on **Input and Input Services**. However, w.e.f. 1<sup>st</sup> September, 2014, the time limit for availing CENVAT Credit on input and input services has been specified as within 6 months from the date of invoice or other specified document under Rule 9(1). The position can be summarized as under:

Date of invoice/challan	Time limit for availing Credit
01.03.2014 or earlier	Upto 31.8.2014
02.03.2014 or later	Within 6 months from the date of issue of invoice/other specified documents

Therefore, the 6 months criteria for availing Credit are to be seen from 1<sup>st</sup> September, 2014.

The necessary amendments under Rule-4(7) of CENVAT Credit Rules, 2004 have also been made, whereby, the conditions for availing CENVAT Credit on input services would be as under:

Nature of charge	Existing Conditions	Revised Condition	Practice which may be followed for availing CENVAT Credit
<b>Direct Charge</b> i.e. where Service provider is liable to pay entire service tax	Credit is available on receipt of invoice.  In case, payment of value of input service and service tax is not made within 3 months of the date of invoice, there is a requirement to reverse the credit availed and can be availed after payment to contractor.	Provision remains to be the same with an additional <b>condition that credit has to be taken within 6 months from the date of issue of invoice.</b>	After payment of value of service and service tax to service provider/contractor in terms of contract, avail CENVAT credit within 6 months of the date of invoice.  However, if payment of value of service and service tax is not made within a period of 6 months from date of invoice, benefit of CENVAT credit shall not be available.
<b>Full Reverse Charge</b> i.e. where Service receiver (ONGC) is liable to pay entire tax	Credit is available on payment of both <b>value of input service</b> and service tax as indicated in invoice.	Credit shall be allowed after <b>the service tax amount is paid to Govt. Exchequer.</b>  Further, there is an additional condition which requires that	After payment of value of service to service provider/contractor in terms of contract, pay service tax to the Govt. by specified due date and avail CENVAT

		<p>credit should be taken within 6 months from the date of challan evidencing payment of service tax.</p> <p>It may be noted that Rule 7 of the Point of Taxation has also been amended to provide that <b>in case of reverse charge, if the payment is not made within 3 months of the date of invoice, the point of taxation shall be the date immediately following the said period of 3 months. Thereafter, the interest will be leviable for the period of delay.</b></p>	<p>credit within 6 months of the date of challan.</p> <p>If payment to contractor is not made within 3 months of the date of invoice, pay service Tax to <b>Govt Exchequer by specified due date on completion of 3 months</b> from the date of invoice and take credit thereon on the basis of challan.</p> <p>Delay in deposit of service tax would attract penal interest.</p>
<p><b>Partial Reverse Charge</b> i.e. where Service provider and service receiver both are liable to pay Service tax</p>	<p>Credit of service tax paid by service provider can be availed on receipt of invoice and credit of service tax paid by ONGC can be availed after payment of service tax.</p>	<p>Credit of service tax is available only after payment of entire amount of service and service tax i.e. Service provider as well as service recipient's share of tax along with value of service.</p> <p>Further, there is an additional condition which requires that credit should be taken within 6 months from the date of invoice.</p>	<p>After payment of value of service and service tax (contractor's portion) to service provider/ contractor in terms of contract, pay service tax (ONGC's portion) to Govt by specified due date and avail CENVAT Credit within 6 months of the date of invoice/challan.</p> <p>If payment to contractor is not</p>



		<p>It may be noted that Rule 7 of the Point of Taxation has also been amended to provide that in case of reverse charge (partial also), if the payment is not made within 3 months of the date of invoice, the point of taxation shall be the date immediately following the said period of 3 months. Thereafter, the interest will be leviable for the period of delay.</p>	<p>made within 3 months, pay ONGC's service tax portion to Govt Exchequer by specified due date on completion of 3 months from date of invoice. However, for availing CENVAT Credit within 6 months from the date of invoice, payment for value of service along with service tax portion should be made to the contractor.</p> <p>Delay in deposit of service tax would attract penal interest.</p>
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**D. Service Tax:**

- (i) There is no change in the rate of Service Tax. Effective Rate of Service Tax continues to be 12.36%.
- (ii) **Under Reverse Charge, ONGC to discharge Service Tax liability within 3 (Three) months of date of Invoice.**

Time limit for discharging Service Tax liability by recipient of service (ONGC) under reverse charge mechanism (Partial as well as full reverse charge) is reduced from 6 (six) to 3 (three) months from date of invoice. Accordingly, under Rule-7 of Point of Taxation Rules, where the payment is not made within the period of **3 months** of the date of invoice, the point of taxation shall be the date immediately following the said period of 3 months. **New provision is effective from 1<sup>st</sup> October, 2014.**

However, for invoices issued prior to 1<sup>st</sup> October 2014, payment of service tax can be discharged by ONGC under the existing provisions i.e. within the period of 6 (six) months of date of invoice. In case of delay beyond 6 (six) months, the

pre-revised Rule-7 shall apply and the interest will be applicable for period of delay.

(iii) As per the Budget proposal, Rule for determination of rate of exchange for levy of service tax shall be notified separately. Once it is notified, same will be circulated to all units of ONGC.

(iv) Taxable value for levy of service tax on transportation of goods in a vessel has been reduced from 50% to 40%. [Changes effective from 01<sup>st</sup> October, 2014]

(v) Abatement for renting of Passenger Motor cab [effective from 01<sup>st</sup> October 2014]

Notification Sl. No.	Particular	Taxable portion (for ONGC)	Condition
9	Renting of motor cab (upto six passenger excluding Driver)	40%	Contractor's invoice to indicate that CENVAT credit on inputs, capital goods and input services, used for providing this taxable service has not been availed by him under the provisions of CENVAT Credit Rule, 2004.

**Discharging Service Tax Liability: [Effective from 01<sup>st</sup> October, 2014]**

- Renting of motor vehicle designed to carry not more than six passengers excluding the driver from individual, HUF, AOP and Partnership Firm (whether registered or not):

If contractor is providing services by way of renting of a motor vehicle designed to carry passengers and is not availing any CENVAT Credit, ONGC (recipient of Service) has to discharge service tax on 40% of invoice value alone under reverse charge and contractor need not to pay any service tax. However, if contractor is availing CENVAT Credit, ONGC (recipient of Service) as well as such contractor has to discharge service tax on 50% of invoice value each.

- Renting of motor vehicle designed to carry more than six passengers (like buses etc.) from individual, HUF, AOP and Partnership Firm (whether registered or not):

ONGC to pay 50% service Tax under reverse charge. It may be noted that, there is no abatement available on renting of motor vehicle designed to carry more than six passengers.

In cases of renting of motor vehicle from a person other than individual, HUF, AOP and Partnership Firm, entire service tax shall be payable by the provider of service.

(vi) **Works Contract Service: [Effective from 1.10.2014]**

Under Rule 2A of the Service Tax (Determination of Value) Rules, 2006 pertaining to valuation of works contract service, the existing category 'B' (70% category for works contract w.r.t. movable property) and 'C' (60% category for works contract w.r.t. immovable property) have been merged into single category with service portion as 70%. Therefore, the valuation under revised clause (ii) of Rule-2A of Service Tax (Determination of Value) Rules, 2006 shall be as under:

Sl. No.	Particular	Value for Service Tax
(A)	In case of works contracts entered into for execution of <b>Original Works</b> .  <b>'Original works'</b> means:  (i) all new constructions; (ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable; (iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.	40% of the total amount charged for the works contract.
(B)	In case of works contract, not covered under sub-clause (A), including works contract entered into for:  (i) maintenance or repair or reconditioning or restoration or servicing of <b>any goods</b> ; or (ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of <b>immovable property</b> .	70% of the total amount charged for the works contract.
<p><b>Note:</b> This new provision will be applicable for invoices issued after 30<sup>th</sup> September, 2014 even if works were completed before 30<sup>th</sup> September, 2014, if such invoice is issued within 30 days of completion of service.</p>		

(vii) **Increase in rate of Interest for delay in payment of Service Tax [Effective from 1.10.2014]:**

The rate of interest on delay payment of service tax u/s 75 of Finance Act, 1994 has been revised as under:

Sl. No.	Extent of Delay	Simple interest rate p.a.
1	Upto 6 Months	18%
2	More than 6 Months and upto 1 Year	18 % for the first 6 months of delay and 24% for the delay beyond 6 months.
3	More than 1 Year	18% for the first 6 months of delay; 24% for the period beyond 6 months up to 1 year and 30% for any delay beyond 1 year.

It may be noted that for the period of delay upto 30.9.2014, applicable interest rate will be 18% and for a period of delay thereafter, first determine whether it falls under "delay upto 6 months" or "more than 6 months and upto 1 Year" or "more than 1 Year" and accordingly the rate of interest will vary between 18%, 24% and 30%, as applicable. For example, if the payment was due on 6.2.2012, and payment is being made on 15.9.2015, the applicable rate of interest would be as under:

- (1) From 6.2.2012 to 30.9.2014 - 18%
- (2) From 1.10.2014 to 14.9.2015 - 30% (as this delay falls under Sl. No.-3 i.e. delay beyond 1 year).

**E. Mandatory payment of Pre-deposit of 7.5%/10% of disputed amount and/or penalty for filling appeal before Commissioner ( Appeal)/ CESTAT:**

- Provisions of Excise, Customs and Service tax have been amended to provide for a mandatory pre-deposit of 7.5% of the duty demanded or penalty imposed or both for filing appeal with the Commissioner (Appeal) or the Tribunal at the first stage and 10% of the duty demanded or penalty imposed or both for filing second stage appeal before the Tribunal. The amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crore.
- However, all pending appeals/stay applications would be governed by the statutory provisions prevailing at the time of filling such stay application/appeals. **[Changes effective from date of enactment]**

  
(A.K. Srinivasan)