

**Information Return by RBI and Electricity Companies: Precaution to be taken by
Manufacturers and Service Providers/Receivers**

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Background

Taxes are an important source of revenue to any Government. The government devises mechanism aimed at detecting cases of revenue leakage. It has been witnessed over last few years that there is increased emphasis on making interaction with taxpayers and requiring them to submit various information/records through online or electronic mode. This assists in cross verification of information furnished by assessee before various departments.

One of such recent provision introduced in Indirect Taxation was insertion of section 15A under Central Excise Act, 1944 vide Finance Act, 2014. This amendment had provided for imposition of liability on specified persons/authorities like Income Tax, Registrar, Stock Exchange, Banks, Electricity board etc to file Information return with Central Excise Dept regarding transactions of other persons. The information so furnished is intended to be used to identify cases of revenue leakage. Further, this section has also been made applicable for Service Tax Law by virtue of Section 83 of Finance Act, 1994.

Notification No. 04/2016 and its salient features

To implement said provisions, Notification No. 04/2016-ST dated 15/2/2016 has been issued. nomenclated as "Service Tax and Central Excise (Furnishing of Annual Information Return) Rules, 2016". The salient features of Notification are as follows:

- The Information return is to be furnished by the RBI in form AIRA-I and by Electricity company in form AIRA-III
- Information return needs to be furnished from the beginning of financial year 2015-16.
- Return is to be furnished annually on or before 31st Dec of the financial year following the end of pertinent financial year.
- All the information furnished in the returns is to be verified by the authorized officer of RBI and Electricity Company.
- RBI shall file information return in respect of details of foreign remittance for the receipt of services declared under various purpose codes. The nature of services along with purpose code is given in Annexure 1.

- Information shall be furnished for the entities whose aggregate value of remittances is more than 50 lakhs rupees in a financial year.
- Electricity company shall furnish Information return for details of electricity consumed by the manufacturer of goods falling under section XV of the CETA, 1985. This section covers articles falling under chapter heading 72 to 83 of CETA which are in the nature of base metals and articles of base metals i.e. Article of Iron, Steel, Coppers, Nickel, Aluminium, Zinc etc.
- Information shall be furnished in respect of the manufacturer for which intimation has been received from chief commissioner/commissioner and whose aggregate value of clearances exceeds 150 lakh rupees in the financial year.

The information so furnished would be used by department to cross verify the information submitted by assessee. There could be instances where an assessee may receive notice for return scrutiny, audit or summon if there are substantial gap between information submitted by them with that furnished under this notification.

Aspects to be considered by person making remittance

The purpose of issuing this notification from the perspective of service tax assessee could be to capture the transactions entered into with Foreign Service provider which could be liable to service tax in the hands of remitter of foreign currency under RCM. To avoid surprise intimation from department based on information furnished by RBI, following precautions could be taken

- a. **Proper Disclosure of purpose of remittance to bank:** It should be ensured that correct code is mentioned while making foreign remittance as wrong classification could result in department classifying services incorrectly. This could have bearing on taxability, place of provision, abatement etc. of the services under consideration.
- b. **Proper Disclosure in the return:** Assessee should match the payment made with the information furnished in the returns. There should be proper disclosure in the return as to classification of service and payment of service tax under reverse charge. In case of genuine difference, proper reconciliation statement should be maintained reconciling differences between information furnished in the return and details of remittance.
- c. **Correct point of taxation:** There could be liability under reverse charge in case of foreign remittance. Proper care should be taken regarding point of taxation under reverse charge. Payment needs to be made within 3 months from the date of invoice and in case payment is not made within 3 months than next day immediate to the expiry of such period would be point of taxation.

- d. **Exchange rate:** There could be difference between exchange rate for remittance and the rate used for accounting purpose. For payment of service tax, exchange rate prevailing on the date of point of taxation as per books of account needs to be taken.
- e. **TDS:** Proper care should be taken as to whether TDS needs to be included for payment of service tax under reverse charge. If TDS is borne by the assessee which is over and above invoice value, then there may be no requirement to treat such TDS as part of service value for payment of service tax. On the other hand, if net amount is paid after deducting TDS, ST needs to be paid on gross amount.
- f. **Transaction with associated enterprises:** It could be possible that the remittance has been made to associated enterprises (holding/subsidiary company etc.). In case of such transactions, service tax needs to be paid at the time of booking of expenses in the books of account irrespective of date of payment. To that extent, there may be need to maintain reconciliation statement between date of remittance and date of payment of tax based on booking of expenditure.
- g. **Remittance to branch office/head office:** For the purpose of service tax law, branch office and head office located in different taxable territory are considered as distinct person. Where remittance is made by assessee in India to his foreign office, nature should be correctly ascertained as there could be liability under reverse charge. Incorrect intimation of purpose of remittance to bank could lead to requirement to pay tax.
- h. **Research and Development Cess:** Import of technology may be liable to Research & Development cess also. There is no need to pay service tax to the extent of payment of R&D cess.

Aspects to be considered by manufacturer: The purpose of collecting information from electricity companies could be evaluated by department if there are any clandestine removal of goods by manufacturer. The department could work out average production based on the standard consumption of electricity and actual electricity consumed as reported by electricity company. Substantial gap between average production based on electricity consumption and actual production as reported by assessee could lead to an indication of clandestine removal. It is suggested that correct details should be furnished by manufacturer in periodical excise return (i.e. ER-1, ER-4 and ER-7) pertaining to production of excisable goods, power consumption and power expenses.

Conclusion:

Assessee has to be aware of such changes taking place in the law as it may not be possible to deny the genuineness of information furnished by these authorities. If there are differences in the information, proper documentary evidence and reconciliation statement should be maintained so that unnecessary demands could be avoided.

Annexure: Following Purpose Codes have been notified in this notification for furnishing of information by RBI-

SI No.	Purpose Code	Description/Classification
1	S0017	Purchase of intangible assets like patents, copyrights, trademarks etc.
2	S0205	Operational leasing (with crew) –Shipping Companies
3	S0207	Payments for surplus freight/passenger fare by foreign Airlines companies operating in India.
4	S0211	Operational leasing (with crew) – Airlines companies
5	S0213	Payments on account of stevedoring, demurrage, port handling charges etc.
6	S0402	Courier services
7	S0403	Telecommunication services
8	S0404	Satellite services
9	S0502	Payments for cost of construction etc. of projects executed by foreign companies in India.
10	S0602	Freight insurance – relating to import & export of goods
11	S0603	Other general insurance premium
12	S0604	Reinsurance premium
13	S0701	Financial intermediation except investment banking – Bank charges, collection charges, LC charges, cancellation of forward contracts, commission on financial leasing etc.
14	S0702	Investment banking – brokerage, under writing commission etc.
15	S0703	Auxiliary services – charges on operation & regulatory fees, custodial services, depository services etc.
16	S0801	Hardware consultancy
17	S0802	Software implementation (other than those covered in SOFTEX)

		form)
18	S0803,	Data base, data processing charges
19	S0804	Repair and maintenance of computer and software
20	S0901	Franchises services – patents, copyrights, trade mark, industrial processes, franchises etc.
21	S1002	Trade related services – commission on exports / imports
22	S1003	Operational leasing services (other than financial leasing) without operating crew, including charter hire
23	S1005	Accounting, auditing, book keeping and tax consulting services
24	S1006	Business and management consultancy and public relations services
25	S1007	Advertising, trade fair, market research and public opinion polling service
26	S1008	Research & Development services
27	S1009	Architectural, engineering and other technical services
28	S1101	Audio-visual and related services – services and associated fees related to production of motion pictures, rentals, fees received by actors, directors, producers and fees for distribution rights