

***POINT OF TAXATION
RULES, 2011***

FLOW OF PRESENTATION

- Background
- Introduction
- Benefits
- Date of Payment
- Determination of Point of Taxation and Analysis thereof
- Date of Completion of provision of service in case of continuous supply of service
- Payment of Service Tax (Deposit with Central Government)
- Determination of Point of Taxation in case of change in Effective Rate of Tax
- Payment of Service Tax in case of new services
- Point of Taxation in case of Reverse Charge Mechanism
- Point of Taxation in case of Intellectual Property Rights

BACKGROUND

- The Service Tax was payable on cash basis i.e. at the time of payments actually received by the service provider.
- The service provider was required to pay/deposit the amount of Service Tax to the Central Government by the 6th (if paid electronically)/5th of the month immediately following the calendar month/quarter(if assessee is an individual or proprietary firm or partnership firm) in which the **payment were received** towards the value of taxable services. (Rule 6 of Service Tax Rules, 1994)

Note: The liability of Service Tax on the value of taxable services during the month of **March**, or the **quarter ending in March** was required to be discharged by **31st March** of the calendar year.

- ***E.g.*** services rendered on 5th of January and payment received on 20th April, the service provider(other than individual or partnership firm) was required to discharge its liability by paying Service Tax on 6th(if paid electronically)/5th May.

INTRODUCTION

- *Vide* Notification No. 18/2011-Service Tax dated 1st March 2011, the Point of Taxation Rules, 2011 were notified.
- *Vide* Notification No. 25/2011-Service Tax dated 31st March 2011, some amendments were made in the Point of Taxation Rules, 2011.
- The Point of Taxation Rules were applicable from 1st April 2011, however, cooling period of three months were given to the service providers. In other words, from the period 1st April 2011 to 30th June 2011-Optional, ***1st July 2011 onwards- Mandatory***
- Regime of payment of Service Tax changed from *cash basis* to an *accrual basis*

BENEFITS

- Point of Taxation is defined as the point in time when a service shall be deemed to have been provided. [Rule 2(e)]
- The Point of Taxation determines Rate of Service Tax and due date of payment of Service Tax.
- The service receiver can take the CENVAT Credit on the basis of invoice raised by the service provider irrespective of the fact that the payment has been made to the provider or not (not apply in case of reverse charge mechanism).

***Note:** If the payment is not made within the three months of the date of invoice, the service receiver has to reverse the Cenvat Credit from his books. (second proviso of sub-rule (7) to Rule 4 of Cenvat Credit Rules, 2004.*

DATE OF PAYMENT (RULE 2A)

➤ General Rule

Date of payment means the dates on which the payment is entered in the *books of accounts* or is credited to the *bank of account* of person liable to pay tax, *whichever is earlier*

➤ *Exception*

The date of payment shall be the date of credit in the *bank account* when-

- there is a change in effective rate of tax
- a service is taxed for the first time
- credit in bank account after four working days from the date when there is a change in effective rate of tax or service is taxed for the first time
- the payment is made by way of an instrument

DETERMINATION OF POINT OF TAXATION (RULE 3)

Point of Taxation

Invoices is issued within the time period specified in Rule 4A of Service Tax Rules

Earlier of the following two dates:

1. Date of invoices for the services provided or agreed to be provided, OR
2. Date of payment to the extent it is received

Point of Taxation

Invoices is not issued within the time period specified in Rule 4A of Service Tax Rules

Earlier of the following two dates:

1. Date of completion of provision of the service, OR
2. Date of payment to the extent it is received

RULE 4A OF SERVICE TAX RULES

- Every person providing taxable services is required to issue invoice/bill-
 - *within a period of 30 days*
 - *within a period of 45 days (in case of banking company, financial institution including non-banking financial company)*

- Bill/invoice should contain-
 - *Name, address and the registration number of such service provider*
 - *Name and address of the service receiver*
 - *Description and value of taxable service*
 - *Service tax payable thereon*
 - *Signed by authorised person*
 - *Serially numbered*

ANALYSIS OF RULE 3

Service Completed on 30th June

Last date by which Invoice is to be Issued- 29th July

Invoice is issued before 29th July

POT will be date on which the invoice is issued

Invoice is issued after 29th July

POT will be 30th June as the date of completion of service

DATE OF COMPLETION OF SERVICE IN CASE OF CONTINUOUS SUPPLY OF SERVICE

Rule 2 (c) defines '*Continuous supply of service*' means any service which is provided or agreed to be provided continuously or on recurrent basis, *under a contract* for a period *exceeding three months* with the obligation for payment periodically or from time to time, or where the *Central Government*, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition

- The provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the services receiver to make any payment to service provider, the date of completion of each event as specified in the contract shall be *deemed to be date of completion of provision of service.*

DATE OF COMPLETION OF SERVICE IN CASE OF CONTINUOUS SUPPLY OF SERVICE (Contd...)

- In case of advances upto Rupees one thousand in excess of the amount indicated in the invoices, the point of taxation to the excess of such excess amount, at the option of the provider of taxable service, shall be determined in accordance of date of issue of invoice.

Note:

Central Government has notified *vide* Notification No. 38/2012 dated 20th June 2012 following services as continuous supply of service with effect from 1st July 2012:

(i) Telecommunication Services;

(ii) Service portion in execution of a works contract

OPTIONAL BENEFIT–RULE 3 INCONJUNCTION WITH RULE 6 OF SERVICE TAX RULES, 1994

- Following are the Service Provider(s) can avail the benefit as mentioned under the proviso of Rule 6 of Service Tax Rules, 1994 and pay Service Tax on receipt basis upto a limit of ***Rupees Fifty Lakhs*** in the current financial year:

***Individuals; or
Partnership firms***

Provided that the aggregate value of taxable services provided from one or more premises is fifty lakh rupees or less in the previous financial year.

PAYMENT OF SERVICE TAX (RULE 6 OF THE SERVICE TAX RULES, 1994)

➤ The Service Tax shall be paid-

- By the 6th day of months, if the duty is deposited electronically through interned banking; and
- By the 5th day of the month, in any other case.

Note: In case assessee is an *individual or proprietary firm or partnership firm*, Service Tax shall be deposited by the above mentioned dates, *immediately following the quarter* in which the service is deemed to be provided

POINT OF TAXATION IN CASE OF CHANGE IN EFFECTIVE RATE OF TAX (RULE 4)

Rule 3 will not apply in case of change in effective rate of tax, the Point of Taxation will be determined as follows:

Situation	Services provided before the change in effective rate of tax	Services provided after the change in effective rate of tax
Invoice issued and payment received after change in rate	Date of payment or issuing of invoice whichever is earlier.	Date of payment or issuing of invoice whichever is earlier.
Invoice issued before change and payment received after change	Date of issuing of invoice	Date of payment

RULE 4 (Contd...)

Situation	Services provided before the change in effective rate of tax	Services provided after the change in effective rate of tax
Invoice issued after change and payment received before change	Date of payment	Date of issuing of invoice
Invoice issued and payment received before change in rate	Date of payment or issuing of invoice whichever is earlier.	Date of payment or issuing of invoice whichever is earlier.

NO LIABILITY OF SERVICE TAX IN CASE OF NEW SERVICES (Rule 5)

No Tax shall be payable provided that

- The invoice has been issued ***And***
- The payment received against such invoices before such service became taxable

In case the payment has been received before the services becomes taxable, however, the invoices was not issued before such services become taxable

- No Service Tax shall be payable if the service provider issues invoice within fourteen days of the date when the service is taxed for the first time

POINT OF TAXATION IN CASE OF REVERSE CHARGE MECHANISM (Rule 7)

- Point of Taxation shall be the date on which payment is made.

Provided that the payment shall be made within a period of six months of the date of invoice.

- In case of Associated Enterprises, the Point of Taxation shall earlier of the below date:

Debit in the books of account of the person receiving the service;

or

Making the payment

Point of Taxation in Reverse Charge Mechanism

If payment is made within 6 months of the date of invoice

Date of payments

If payment is *not* made within 6 months of the date of invoice

The Point of Taxation will be as if this rule does not exist

In case of Associated Enterprises, where person providing service is located outside India

Date of debit in books of Service Receiver

Date of making payments

Earlier

POINT OF TAXATION IN CASE OF COPY RIGHTS ETC. (RULE 8)

- In case of ***Intellectual Property***, where the whole amount of the consideration for the provision of service is not ***ascertainable at the time when service was performed*** and in such case value of service gets determined by the person who is not a service provider, and makes payment, the service deemed to have been performed

Point of Taxation (each and every time) will be earlier of the following events occur:

- ***Payment is received by the provider; or***
- ***Invoice is issued by the provider***

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