

The Point of Taxation

The rules were made applicable from 1.7.2011. The introduction of these rules has shifted the liability to pay tax from cash basis to accrual basis . Input credit can be availed on the basis of invoice when such invoice has been received.

1.Basic Concept

A] Associated Enterprises : As per clause 13 of Section 65B of the Act, the “associated enterprises” shall have the meaning assigned to it in section 92A of the income tax Act, 1961.

B] Change in effective rate of tax : change in the effective rate of tax includes change in the portion of value on which tax is payable in terms of a notification issued in the official gazette.

C] Continuous supply of services : definition has been amended vide notification no. 37 dt. 20.6.2012 effective from 1.7.2012 has added the word ‘agreed’. Continuous supply of services means “ any service which is provided or agreed to be provided continuously or on recurrent basis, under a contract , for a period exceeding exceeding three Months with the obligation for payment periodically or from time to time”.

THE notified services – Notification no.28 dated 1.4.2011, the following service have been spelt out in section 65[105] were notified as continuous supply of services without any condition.

- ❑ Commercial or industrial construction
- ❑ Construction of complex
- ❑ Telecommunication services
- ❑ Internet telecommunication service
- ❑ Work contract services

D] Invoice : as per rule 2[d] of the POT rules ‘ invoice’ means the invoice referred to in Rule 4A of the Service Tax Rule,1994.

E] Date of Payment: As per rule 2A inserted w..f. 1.4.2012 , date of payment shall be the earlier of the following :

1. date of credit in the books of account
2. date of credit in the bank.

Date of credit in the bank account is after four working days from the date when there is change in the effective rate of tax or service is taxed for the first time .

Determination of Point of Taxation – Rule3

A] at the time when invoice for service provided or to be provided is issued.

B] at the time of receiving the advance payment.

For the purpose of A and B above ;

- Provided that where the invoice is not issued within the time period as specified in Rule 4A of the Service Tax Rules,1994, the point of taxation shall be the date of completion of provision of services.
- in case of continuous supply of service ,at the time of completion of event in terms of the contract, which requires the receiver of services to make the payment to provider of services , the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of services.
- Where any excess payment is received by provider of taxable services up to Rs.1000 over and above the invoice , point of taxation to the extent of such excess amount ,at the option of the service provider, shall be determined as per the provision of clause [A].

Pont of taxation applicable from 1.4.2012 is provided as follows:

S.N.	SITUATION	POINT OF TAXATION
1	Advances received towards the provision of services	Date of receipt of each such advances.
2	Invoice issued within stipulated time a] no payment received before the invoice is issued b] payment is received before issuance of invoice c] payment is received or not after the issue of invoice	Date of invoice Date of payment Date of invoice
3	Invoice not issued within stipulated time a] no payment received before issue of invoice b] payment is received before completion of service	Completion/ provision of services Date of payment

c] payment received or not after completion of services	Date of completion or provision of services.
d] payment is received before issuance of invoice	Date of provision of service or date of payment which ever is earlier.

Completion of Services

As per circular No.144/13/2011 dated 18.7.2011 , the service shall be considered to be completed when all the auxiliary activities related to the main services are completed. Accordingly , the stipulated period for issuance of invoice would start when all the auxiliary activities related to the main services are successfully completed.

Change of Tax Rate – Rule 4

'Point of taxation' in cases where there is change in the effective rate of tax in respect of services shall be determined as follows:

Situation	POT
a] Taxable services has been provided before the change in the effective rate of tax; i] where invoice has been raised and payment has been received after the change in tax rate. ii] where the invoice has been issued before the change of tax rate and payment has been received after the change of tax rate iii] where the payment has been received before change of tax rate and invoice has been raised after the change in tax rate	POT shall be date of issue of invoice or payment which is earlier. POT shall be date of issue of invoice. POT shall be date of payment.
b] Taxable service has been provided after the change in the effective rate of tax; i] where invoice has been raised and payment has been received before the	POT shall be date of issue of invoice or

change in tax rate.	payment which is earlier.
ii] where the invoice has been issued before the change of tax rate and payment has been received after the change of tax rate	POT shall be date of payment.
iii] where the payment has been received before change of tax rate and invoice has been raised after the change in tax rate	POT shall be date of issue of invoice

Point of Taxation of New Services – Rule-5

Taxability in case of new- service that has been made taxable for the first time.

Under Rule 5 there are two situation where no tax is payable if a service is taxed for the first time. These are as follows:

1. The invoice is issued before such services became taxable and payment has received against such invoice before such service became taxable.
2. The payment has been received before the service has been taxable and the invoice has been issued within 14 days .

From 1.4.2012 this rules applies to continuous supply of services also.

Rule -6 has been omitted.

Point of Taxation in specified cases – Rule-7

As per Rule 7of the POT : notwithstanding anything contained in these Rules the point of taxation in respect of persons required to pay taxes as recipient of services under the rule made in this regard in respect of services notified under sub section 2 of section 68 of the Act, shall be the date on which is the payment is made:

Provided that , where the payment is not made within period of six months of the date of invoice, the point of taxation Shall be determined as if this rule does not exist.

Provided further that in case of “Associated Enterprises” where the person providing the services is located outside India, the point of taxation shall be the date of debit in books of accounts of the person receiving the services or date of making the payment which ever is earlier.”

Rule 7 covers only the situations pertaining to reverse charge transaction and Associated enterprises transaction. Rule 7 does not cover transaction of export and service rendered by specified person w.e.f.01.4.2012.

Circular no.158/9/2012 dated 8/5/2012 . As per the circular, POT for transaction under the reverse charge mechanism is the date of payment. Consequently, if the service is rendered on or before 31.3.2012 but the payment is made on or after 1.4.2012 , the rate will be 12% . the circular suggest to raise supplementary invoices in case the lower rate has been applied to recover the differential tax amount.

Rule 7 will be applicable to associated enterprises only when the service provider is outside India.

The second proviso of Rule 7 provides that , in the case of 'associated enterprises' where the person providing the service located outside India , the POT shall be earlier of the following :

- i] date of debit in the books of accounts of the receiver.
- ii] date of making payment.

Rule 7[a][b][c] has been omitted from 1.4.2012.

SPECIAL PROVISION FOR INDIVIDUAL , PARTNERSHIP FIRMS/ LLP'S FROM 01.04.2012

Benefit enjoyed by the specified professionals without any limit on turnover has been modified from 1.4.2012.

The fourth proviso to Rule 6[1] of Service Tax Rules,1994 inserted with effect from 1.4.2012, provides that in case of individual and partnership firms(including LLP's) whose aggregate value of taxable services provided from one or more premises is Rs.50 lacs or less in the previous financial year, service provider has option to pay tax on taxable services provided or agreed to be provided by him up to total of Rs. 50 lacs in the current financial year , by the dates specified in Rule 6[1] with respect to the month or quarter, as the case may be , in which the payment is received. POT in this case shall be payment received.

Point of Taxation in case of copyrights etc. – Rule 8



As per Rule 8 of the POT “ in respect of royalties and payment relating to copyright, trademark, designs or patents, where the whole amount of consideration for provision of services is not ascertainable at the time of when service was performed , and subsequently

the use or the benefit of these service by a person other than the provider gives rise to any payment of consideration, the service shall be treated as having been provided each time when a payment in respect of such use or the benefit is received by the provider in respect thereof, or an invoice is issued by the provider , which ever is earlier.

Means thereby, when the consideration is not ascertainable at the time of performance of services and accordingly the point of taxation would be earlier of the following :

- a. Date of issue of invoice [when ever raised] or
- b. Date of receipt of payment.

Residual provision – Rule 8A , inserted w.e.f 1.4.2012 where the POT can not be determined As per these rules ,as the date of invoice or payment or both are not available, Central Excise Officer may ask to produce such accounts or documents or evidence as he may deem necessary , decide the effective rate of tax, by order in writing, after giving opportunity of being heard, determine the POT to the best of his judgment.

Transitory Provisions – Rule 9



Rule 9 provides, at the outset , that nothing contained in these rules shall be applicable,

- a] where the provision is completed, or
- b] where invoices are issued , prior to the date on which the rules come in to force viz,1.4.2011

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