

Point of taxation

Changes by
Finance Bill, 2011
Changes in Finance Act, 1994

INTRODUCTION

Government of India proposed to issue Point of Taxation (for Services Provided or Received in India) Rules, 2010 in exercise of the powers conferred on it under Sec. 94 (2)(hhh) of the Finance Act, 1994. The purpose of these rules is to introduce clarity and certainty in the matter of levy and collection of Service Tax particularly in situations of change of rate of service tax or imposition of service tax on new services. Central Government on 1 March, 2011 vide notification no. 18/2011-Service Tax notified Point of Taxation Rules, 2011

INTRODUCTION

Under GST regime payment of taxes to government would on the earliest of:

- Provision of service; or*
- Issuing invoice; or*
- Receipt of payment.*

The change in the point of payment of tax will also simplify accounting for the taxpayers.

These rules give us some hint about taxability under GST regime. Beyond this point we will discuss these rules in detail together with notes and analysis.

Rule 1 – Title of Rules

(1) These rules shall be called the Point of Taxation Rules, 2011.

(2) They shall come into force on the 1st day of April, 2011.

Rule 2 – Definitions.

(A) "Act" means the Finance Act, 1994 (32 of 1994);

(B) "Associated enterprises" shall have the meaning assigned to it in section 92A of the Income Tax Act, 1961.

(C) "continuous supply of service" means any service which is provided, or to be provided continuously, under a contract, for a period exceeding three months, 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;

Rule 2 – Definitions

(D) "invoice" means the invoice referred to in rule 4A of the Service Tax Rules, 1994 and shall include any document as referred to in the said rule;

(E) "point of taxation" means the point in time when a service shall be deemed to have been provided;

Rule 2 – Definitions

(F) taxable service” means a service which is subjected to service tax, whether or not the same is fully exempt by the Central Government under Section 93 of the Act;

Comments:

Taxable service is defined in Section 65(105) of Finance Act, 1994 from sub clause (a) to (zzzzj). This definition under Finance Act, 1994 is pretty explanatory and exhaustive. This definition would give rise to a lot of confusion and complexities to laymen. In order to avoid future litigation both the definitions shall be aligned to each other.

RULE 3 - Determination of point of taxation.

For the purposes of these rules, unless otherwise stated, "Point of taxation" shall be determined in the following manner, namely: -

(a) a provision of service shall be treated as having taken place at the time when service is provided or to be provided; and

(b) if, before the time specified in clause (a), the person providing the service issues an invoice or receives a payment, the service shall, to the extent covered by the invoice or the payment made thereof, be deemed to have been provided at the time the invoice was issued or the payment was received, as the case may be, whichever is earlier.

RULE 3 - Determination of point of taxation.

Explanation 1: - For the purposes of this rule, wherever any advance, by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.

Explanation 2: - For the purposes of this rule, in respect of services taxable under section 66A of the Act, the point of taxation under clause (b) shall be the date on which the invoice is received, or the payment is made, as the case may be, whichever is earlier.

Comments

Point of taxation shall be rendering of services. However in case any advance has been received or invoice has been issued then to the extent of amount received or invoice raised services shall be deemed to be rendered.

For the purposes Section 66A(reverse charge) point of taxation would be rendering of services, however in case advance has been received or invoice is received then to extent of amount received or invoice received services shall be deemed to be rendered.

RULE 4 - Determination of point of taxation in case of change of rate of tax.-

Notwithstanding anything contained in rule 3, the point of taxation in cases where there is a change of rate of tax in respect of a service, shall be determined in the following manner, namely: -

RULE 4 - Determination of point of taxation in case of change of rate of tax.

(A) in case a taxable service has been provided before the change of rate,-

(I) where the invoice for the same has been issued and the payment received after the change of rate, the point of taxation shall be date of payment or issuing of invoice, whichever is earlier; or

RULE 4 - Determination of point of taxation in case of change of rate of tax.

(II) where the invoice has also been issued prior to change in tax rate but the payment is received after the change of rate, the point of taxation shall be the date of issuing of invoice; or

(III) where the payment is also received before the change of rate, but the invoice for the same has been issued after the change of rate, the point of taxation shall be the date of payment;

RULE 4 - Determination of point of taxation in case of change of rate of tax.

(B) in case a taxable service has been provided after the change of rate,-

(I) where the payment for the invoice is also made after the change in tax rate but the invoice has been issued prior to the change of tax rate, the point of taxation shall be the date of payment; or

RULE 4 - Determination of point of taxation in case of change of rate of tax.

II) where the invoice has been issued and the payment for the invoice received before the change of tax rate, the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier; or

III) where the invoice has also been raised after the change of rate but the payment has been received before the change of rate, the point of taxation shall be date of issuing of invoice.

Comments

This rule determines the point of taxation where there is a change in rate of tax. In other words, it prescribes the applicable of rate of tax in the cases where the tax rate changes between the occurrence of different events, viz., provision of service, issuance of invoice, and receipt of payment. The provisions of this rule can be summarized in tabular form as shown below

Rule 5- Payment of tax in cases of new services.

Where a service, not being a service covered by rule 6, is taxed for the first time, then,—

(I) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;

(II) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within the period referred to in rule 4A of the Service Tax Rules, 1994.

Comment-

Rule 6 is specifically provided for conditions where a service (which is not a continuous supply of service) is charged to tax for the first time i.e. becomes taxable for the first time. The rule provides that:-

Comment-

(a) If an invoice has been issued and payment received before a service becomes taxable, no tax would be charged even if the service is provided after the same has become taxable. This provision is consistent with the other similar provisions in these rules, and ensures that a financial transaction which has achieved finality before a service was taxable shall not be reopened for collection of tax.

Comment-

(b) If any payment has been received prior to a service being chargeable to tax, no tax shall be chargeable if an invoice has been issued within 14 days of receipt of payment. The period of 14 days is the period also prescribed in Rule 4A of Service Tax Rules, 1994 and ensures that a payment is not shown as having been made earlier than it was actually made.

Rule 6 - Determination of point of taxation in case of continuous supply of service:

(1) In case of continuous supply of service, the whole or part of which is determined or payable periodically or from time to time, shall be treated as separately provided at the date on which the payment is liable to be made by the service receiver, if such date is specified in the contract.

(2) If, before the time specified in sub-rule (1), the person providing the service issues an invoice or receives a payment, the service shall, to the extent covered by the invoice or the payment made thereof, be deemed to have been provided at the time the invoice was issued or the payment was received, as the case may be, whichever is earlier.

Rule 7- Determination of point of taxation in case of associated enterprises: -

The point of taxation in respect of associated enterprises shall be the date on which the payment has been made, or invoice under rule 4A of the Service Tax Rules, 1994 has been issued, or the date of debit or credit in books of accounts of the person liable to pay service tax, whichever is earlier

Comments

As per this rule point of taxation in respect of associated enterprises is earlier of the following:

- the date on which the payment has been made; or**
- the date on which the invoice under rule 4A of the Service Tax Rules, 1994 has been issued; or**

the date of debit or credit in books of accounts of the person liable to pay service tax.

Rule 8- Determination of point of taxation in case of copyrights, etc.

In respect of royalties and payments pertaining to copyrights, trademarks, designs ,patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services 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, whichever is earlier

Rule 9- Savings: -.

Nothing contained in these rules shall be applicable in case of invoices issued prior to the date from which these rules become effective

Comment

For invoices issued prior to 1st April 2011, these rules would not be applicable.

THANK YOU

Your comments and suggestions are of utmost importance and are always welcomed.

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