

# **POINT OF TAXATION RULES**

**-CA.J. Balasubramanian, B.Com.,ACA.,ACMA.,MBA.,LCS.,**

## **Backdrop in introduction of Point of Taxation Rules (POT):**

In any fiscal laws, the concept of levy, collection and payment of tax to the Government are the fundamental aspects. Levy of tax is directly linked with the taxable event. Once the event has become taxable, then comes the question of collection of tax. The governing Statute of such taxable event will provide for the time period or the occurring of such event on which tax will be paid. For instance, in case of Central Excise, the taxable event is manufacture or production of goods and point of taxation is the time of removal of goods from factory or warehouse. Actual payment of duty is governed by the Excise Rules which is generally the 5th or 6th date of the month following the month in which goods are removed. Similarly, in case of VAT the taxable event is the transfer of property in goods and collection will be on 20<sup>th</sup> of the next month.

Since the levy is with respect to manufacture or sale of goods which are tangible, it is comparatively easy to identify and determine the specified events. In case of Services due to the intangible nature identification of point in time at which the service was provided or completed is always subject to the legal wrangle. Hence, the Finance Act 1994, since 1<sup>st</sup> July 1994 has assessed and collected tax on Services Service tax only on Cash basis (i.e.) Service tax has to be discharged to the Government only on the receipt of the consideration. The event of receipt of consideration, being easily identifiable, did not raise any issue. However, it is in deviation to the principles applied in the case of CE and VAT. Since all the taxes levied under indirect taxation viz. Central Excise, VAT and Service Tax are proposed to be brought under single umbrella of Goods and Service Tax (GST), it has become necessary to have the common base for levy and collection of tax in respect of all the cases. Therefore, Point of taxation Rules, 2011 has been introduced in Service Tax law to bring Uniformity in levy and collection of all these taxes.

### **Purpose of POT Rules :**

- 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.
- to link the payment of tax to provision of service, raising of the invoice or payment for service provided or to be provided, whichever is the earliest.
- on lines of best international practices.

### **Significance of Point of Taxation :**

The point of taxation is significant for determining the following :

- Applicability of rate of service tax:** The service tax rate shall be the rate prevailing on the date on which the service is deemed to be provided as per the Point of Taxation Rules, 2011. Earlier the rate prevailing at the time of raising the invoice was considered for charging service tax, irrespective of date of realization.
- Payment of Service Tax:** The service tax has to be paid to the credit of Central Government within due dates immediately the following month in which the services are deemed to be provided as per the Point of Taxation Rules, 2011.
- Adjustment for non-provision of service:** In case of assessee who has issued an invoice/ received payment towards a service to be provided and has not provided service (in full or part), he is eligible to take the credit of excess ST paid by him if he:
  - a. Refunded the payment along with the ST to the receiver of service or
  - b. Issued a credit note for the value of service not so provided to the person to whom he has issued invoice.

### **Statutory Background :**

- The Point of Taxation Rules, 2011 have been introduced by *Notification No. 18/2011-ST dated 01-03-2011.*
- The Rules have come into effect from 01-04-2011 and later amended by the following Notifications :
- *Notification No. 41/2011-ST dated 27.06.2011* effective from 27-06-2011
- *Notification No. 4/2012-ST dated 17.03.2012* effective from 01-04-2012
- *Notification No. 37/2012-ST dated 20-06-2012* effective from 01-7-2012
- *Notification No. 13/2014-ST dated 11-07-2014* effective from 01-10-2014

### **Structure of the Rules :**

Rule 2	Definitions
Rule 3	Determination of PoT
Rule 3(a)	Determination of PoT where invoice has been issued for service provided or to be provided
Rule 3(b)	Determination of PoT where payment has been received before the time provided in Rule 3(a)
Rule 4(a)	Determination of PoT where service has been provided <i>before</i> the change in effective rate of tax
Rule 4(b)	Determination of PoT where service has been provided <i>after</i> the change in effective rate of tax
Rule 5:	Determination of PoT where tax is being <i>levied on the service for the first time</i>
Rule 6:	Omitted from 01-04-2012
Rule 7:	Determination of PoT in case of <i>specified services or persons</i>
Rule 8:	Determination of PoT where service in the case of <i>copyright, trademarks, designs or patents</i>
Rule 9:	Transitional Provisions

### **Important Definitions :**

#### **Point of Taxation : [Rule 2(e)]**

“ *Point of Taxation* “ mean the point in time when a service shall be deemed to have been provided.

#### **Invoice : [Rule 2(d)]**

“*Invoice*” means the Invoice referred to in Rule 4A of the Service Tax Rules, 1994 and shall include any documents as referred to in the said Rule. Thus, the term ‘Invoice’ includes bill and challan also.

#### **Continuous Supply of Service :[Rule 2(c)]**

“*Continuous Supply of Service*” means –

- ❖ Any service which is provided or agreed to be provided continuously on recurrent basis, under a contract, for a period exceeding 3 months with the obligation for payment periodically or from time to time, *or*
- ❖ Any service notified by the Central Government as a continuous supply of service irrespective of its duration with or without any condition.

#### **Notified Continuous Supply of Services :**

The following services have been notified by the Central Government as Continuous Supply of Service without any conditions:

- i. Telecommunication Service
- ii. Service portion in execution of Works Contract

### **Date of Payment :[Rule 2A]**

***“Date of Payment”***, shall be the earlier of the dates on which the ***payment is entered in the books of account or credited to the bank account*** of the person liable to pay tax.

However, the date of payment shall be the ***date of credit in the bank account*** when –

- I. there is a **change in effective rate of tax or when a service is taxed for the first time** during the period between such entry in books of accounts and its credit in the bank account; and
- II. the credit in the bank account is after **four working days** from the date when there is change in effective rate of tax or a service is taxed for the first time; and
- III. the payment is made by way of an **instrument** which is credited to a bank account,

### **Change in effective rate of tax:[Rule 2(ba)]**

***“Change in effective rate of tax”*** shall include a change in the portion of value on which tax is payable in terms of a notification issued in the Official Gazette under the provisions of the Act, or rules made thereunder. Thus it includes the notifications involving the following changes :

- Change in effective rate of tax
- Exemptions from tax
- Abatement from tax

### **Rate of Exchange :[Rule 11 of Service Tax Rules]**

Effective from 1<sup>st</sup> October 2014, as per Rule 11 of Service Tax Rules inserted vide Notification No. 19/2014-ST dated 25.08.2014, the ***rate of exchange shall be the applicable rate of exchange as per the generally accepted accounting principles on the date when the point of taxation arises***. Thus, the rate of exchanges shall be determined as per the ***Accounting Standard 11 of ICAI***.

### **DETERMINATION OF POINT OF TAXATION (Rule 3) :**

As per Rule 3, the Point of Taxation for any Service in general shall be –

- Date of **invoice or payment**, whichever is earlier, if the invoice is issued within **30 days or 45 days** in case of Banking and other Financial Services, from the date of completion of the provision of Service.

- Date of **completion / provision** of service or **payment**, whichever is earlier, if the invoice is not issued within the prescribed period as above.

Similarly, any **advance** is received then the POT shall be the **date of receipt** of such advance.

This is a default or residuary Rule as it starts with the word '*unless otherwise stated..*' and hence for a service if any other Rule in POT Rule does not apply, this Rule 3 applies generally.

**Illustration :**

S. No.	Date of completion of service	Date of invoice	Date on which payment recd.	Point of Taxation	Remarks
1.	July 10, 2014	July 31, 2014	July 30, 2014	July 20, 2014	Invoice issued within 30 days and before receipt of payment.
2.	July 10, 2014	August 15, 2014	July 30, 2014	July 10, 2014	Invoice not issued within 30 days and payment received after completion of service
3.	July 10, 2014	August 2, 2014	July 15, 2014	July 15, 2014	Invoice issued within 30 days but payment received before invoice.
4.	July 10, 2014	July 26, 2014	July 5, 2014 (part) and July 25, 2014 (remaining)	July 5, 2014 and July 10, 2014 for respective amounts	Invoice not issued within 30 days. Part payment before completion, remaining later.

**Significance of Rule 3 –**

The following points have to be considered :

- Time of issue of invoice is relevant only if it is within the stipulated period of 30 days from the date of completion of event as specified in the contract.
- Payments actually received are relevant only in respect of payments received before the time of issue of invoice, and that too only in cases where invoice is issued in time.
- The date of completion of an event and time schedule for intermediate payment as specified in the contract must be considered, and the actual date of completion of event and the actual date and quantum of payment received have no relevance.

### **When a Service is completed:**

The Ministry has clarified vide *Circular No. 13/2011-ST, dated 18-7-2011* that ‘the test for the determination whether a service has completed would be the completion of all the **‘related’** activities that place the provider in a situation to be able to **issue an invoice** and that ‘however such activity does not include flimsy or irrelevant grounds for delay in issuance of invoice’.

### **Determination of POT in case of Continuous Supply of Service :**

From 01.04.2012, Rule 6 governing the provisions relating to Continuous Supply of Service was **omitted** and merged with **Rule 3**. Hence, as per **Explanation to Rule 3** it is provided that in case of continuous supply of service where the provision of whole or part of the service is determined periodically in terms of a contract, which requires the receiver of the service to make payment to service provider, **the date of completion of such events** as specified in the contract shall be **deemed to be the date of completion of provision of service**.

### **Illustration :**

XYZ Ltd is a bulding contractor and has agreed to provide works contract services by way of constructions. Determine the POT if the terms of payment of total Rs.200 Lacs are finalized as below :

Instalment	Amount	Event on which consideration payable	Date of completion of such event	Date of Invoice (DoI)	Date of Payment (DoP)
1	10%	Signing of Agreement	1 Apr 13	5 Apr 13	4 Apr 13
2	40%	Construction upto Plinth level	1 Jul 13	10 Jul 13	15 Jul 13
3	40%	Completion of Finishing	1 Sep 14	5 Oct14	10 Oct 14
4	10%	Handing over of Possession	5 Nov 14	10 Nov 14	10 Nov 14

### **Solution :**

As per the explanation to Rule 3, in case of continuous supply of services, the date of completion of service means the date of completion of each such event specified in the agreement on which service tax becomes payable. Hence the POT is determined as below :

Instalment	Date of Completion of Service	Date of Invoice	Date of Payment	POT
1	1 Apr 13	5 Apr 13	4 Apr 13	<b>Date of Payment - 4 Apr 13</b>
2	1 Jul 13	10 Jul 13	15 Jul 13	<b>Date of Invoice – 10 Jul 13</b>
3	1 Sep 14	5 Oct14	10 Oct 14	<b>Date of Service – 1 Sep 14</b>
4	5 Nov 14	10 Nov 14	10 Nov 14	<b>Date of Invoice – 10 Nov 14</b>

### **Small Advances upto Rs. 1000/- :**

As per *Explanation to Rule 3*, wherever the provider of the taxable service receives a payment upto **Rs. 1000/-** in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount at the **option** of the provider of taxable service shall be the **date of invoice**. This is applicable to the Telecom Service provider, and also to the Banks especially in respect of Credit card services, etc.

### **DETERMINATION OF POINT OF TAXATION IN CASE OF CHANGE IN EFFECTIVE RATE OF TAX (Rule 4) :**

**Rule 4** is an overriding Rule and only this Rule is applicable for a situation when any of the following activities are done where there is a change in effective rate of tax :

- Completion or provision of Service
- Issue of Invoice for a service provided or to be provided
- Payment received for the service provided or to be provided

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

**Where Taxable Service has been provided before the change in effective rate of tax**

Scenario	Issue of Invoice	Receipt of Payment	Point of Taxation
Taxable Service provided <i>before</i> in effective rate of tax	After the change in effective rate of tax	After the change in effective rate of tax	Date of Payment or Date of Invoice whichever is earlier [Rule 4(a)(i)]
	Before the change in effective rate of tax	After the change in effective rate of tax	Date of Invoice [Rule 4(a)(ii)]
	After the change in effective rate of tax	Before the change in effective rate of tax	Date of Payment [Rule 4(a)(iii)]

**Where Taxable Service has been provided after the change in effective rate of tax**

Scenario	Issue of Invoice	Receipt of Payment	Point of Taxation
Taxable Service provided <i>after</i> in effective rate of tax	Before the change in effective rate of tax	After the change in effective rate of tax	Date of Payment [Rule 4(b)(i)]
	Before the change in effective rate of tax	Before the change in effective rate of tax	Date of Payment or Date of Invoice whichever is earlier [Rule 4(b)(ii)]
	After the change in effective rate of tax	Before the change in effective rate of tax	Date of Invoice [Rule 4(b)(iii)]

**Illustration :**

Prevailing Rate of Tax is 12%. 100% exemption granted vide Mega exemption Notification No. 25/2012 was withdrawn w.e.f. 01.10.2014. Since change in effective



rate of tax includes the changes in exemption also, the applicable Rate of tax will be determined using Rule 4 :

Rule	Date of Service	Date of Invoice	Date of Payment	POT	Applicable Rate of tax
4(a)(i)	30.09.14	05.10.14	06.10.14	POT = DOP or DOI whichever is earlier → 05.10.14	12.36%
4(a)(ii)	30.09.14	30.09.14	06.10.14	POT = DOI → 30.09.2014	NIL
4(a)(iii)	30.09.14	06.08.14	30.09.14	POT = DOP → 30.09.2014	NIL
4(b)(i)	05.10.14	30.09.14	06.10.14	POT = DOP → 06.10.2014	12.36%
4(b)(ii)	05.10.14	28.09.14	30.09.14	POT = DOI or DOP whichever is earlier → 28.09.14	NIL
4(b)(iii)	05.10.14	06.10.14	30.09.14	POT = DOI → 06.10.2014	12.36%

**DETERMINATION OF POINT OF TAXATION WHERE SERVICE IS TAXED FOR THE FIRST TIME (Rule 5) :**

In case of new service which was hitherto not covered due to negative list or exemption notification and is taxed for the first time then –

- a) **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**.
- b) **no tax** shall be payable if the **payment has been received before the service becomes taxable** and invoice for the said payment has been issued **within 14 days** of the date when the service is taxed for the first time.

Under this clause if the payment has been received in the first step but invoice has been issued after the service became taxable and service has been provided subsequent thereto, no tax will be payable provided invoice has been issued within 14 days of date when the service is taxed for the first time.

**Contraversion of Rule 5 Vs. Sec 67A read with Sec 66B :**

There is a misconception that Rule 5 stands contrary to Section 67A.

As per **Section 67A of the Finance Act**, the **rate of service tax, value of a taxable service and rate of exchange**, if any shall be the rate of service tax or value of a taxable service or rate of exchange **in force on the date on which the service is provided or agreed to be provided**.

It must be noted that if service is already provided before charge of service tax for the first time, there cannot be any levy of service tax under section 66B read with Section 67A.

Thus, this Rule is not applicable where both date of completion of service and date of issue of invoice are prior to the date from which the service becomes taxable, but payment is received after the service becomes taxable. Similarly, no tax is payable if the date of issue of invoice is earlier than the date of receipt of payment, and on the date of issue of invoice, the service is not a taxable service.

**Illustration :**

Assuming a Service is taxable for the first time on 01-10-2014, ascertain the taxability in the following situations :

Date of Service	Date of Invoice	Date of Payment	Taxability
05.10.14	30.09.14	29.09.14	No as per <b>Rule 5(a)</b>
05.10.14	14.10.14	29.09.14	No, as per <b>Rule 5(b)</b>
05.10.14	16.10.14	29.10.14	Yes as per <b>Rule 5(b)</b>
30.09.14	29.09.14	05.07.14	No, Rule 5 is not applicable as per Sec 67A read with Sec 66B

**DETERMINATION OF POINT OF TAXATION IN CASE OF SPECIFIED PERSONS (Rule 7) :**

**Reverse Charge Mechanism :**

Effective from **1<sup>st</sup> Oct 2014**, in terms of *Rule 7*, where the recipient of service is liable to pay service tax as a Service Recipient under Sec 68(2) of the Finance Act, the POT in respect of such persons, the Point of taxation shall be –

- the **date on which payment is made** to the service provider **OR**
- the **first day** that occurs **immediately after a period of 3 months** from the date of invoice whichever is **earlier**.

**Illustration :**

If a Service bill dated 02<sup>nd</sup> July attracting Reverse Charge mechanism is received, payment for the same if made on or before 01<sup>st</sup> October then point of taxation is date of payment. However if payment is made after 01<sup>st</sup> October, say on 02<sup>nd</sup> December,

then point of taxation shall be 02<sup>nd</sup> October. Service tax is to be paid on or before 05<sup>th</sup> November.

### **Notified services liable under Reverse Charge Mechanism :**

By virtue of *Sec 68(2)* read with the *Notification No. 30/2012*, the persons who are receiving the following Services are liable to pay service tax as Service Recipient :

- ❖ Insurance related services by agents
- ❖ Goods Transportation By Road
- ❖ Sponsorship
- ❖ Arbitral tribunals
- ❖ Legal services
- ❖ Company director's services
- ❖ Services provided by Government / local authority excluding specified services
- ❖ Services provided by persons located in non-taxable territory to persons located in taxable territory.
- ❖ Renting of motor vehicles
- ❖ Manpower supply & security services
- ❖ Works contracts

### **Associated Enterprises :**

As per *third proviso to Rule 7*, in case of “*associated enterprises*”, where the person providing the service is located outside India, the point of taxation shall be –

- the **date of debit in the books of account** of the person receiving the service
- the **date of making the payment** whichever is earlier

The expression ‘*associated enterprises*’ as per *Sec 65B (13)* of the Finance Act, *shall have the meaning assigned in Sec 92A of the Income Tax Act*. Thus, an enterprise which, participates, either directly or indirectly, through one or more intermediaries, in the management, or control or capital, the other enterprise is considered as an associated enterprise.

### **Illustration :**

XYZ Ltd. is located in India holding 55% of shares of PQR Ltd, a UK based company, XYZ Ltd provides Business Support Service to XYZ and the agreed consideration for this Service is £ 100000. Date on which service was provided by PQR Ltd is 16-01-2014 and invoice was raised on 19-01-2014. XYZ Ltd debited PQR Ltd in their books of account on 30-01-2014. Payment made by XYZ Ltd was on 23-04-2014. Ascertain the POT.

### **Solution :**

As per Sec 65B(13), XYZ Ltd and PQR Ltd are associated enterprises and hence as per 2<sup>nd</sup> Proviso to Rule 7, POT is –

- ⇒ Date of debit in books of account (i.e) 30-01-2014 (**or**)
- ⇒ Date of making payment (i.e.) 23-04-2014, whichever is earlier.
- ⇒ Thus, POT is on 30-01-2014.

### **SPECIAL PROVISIONS FOR INDIVIDUALS/PARTNERSHIP FIRMS / LLPs:**

As per the *fourth proviso to Rule 6(1) of the Service Tax Rules*, in case of individuals and partnership firms whose aggregate value of taxable services provided from one or more premises is **Rs. 50 Lacs or less** in the previous financial year, then the service provider shall have the option to pay tax on taxable services provided or to be provided by him upto a total of Rs.50 Lacs, in the current financial year, by the **date on which the actual payment** is received. As per sub-clause (cd) of Rule 2 to Service tax Rules, partnership firms includes a limited liability partnership (LLP).

### **DETERMINATION OF POINT OF TAXATION IN CASE OF COPYRIGHTS, ETC.: [RULE 8]:**

In respect of **royalties and payments pertaining to copyrights, trademarks, designs or 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.*

A typical nature of such service is that at the time of entering into the contract value of service is not ascertainable. Secondly, value of service gets determined by the act of a person who is not SP. For such cases, two events have been provided for as follow:

- a) **Payment in respect of such IPR**
- b) **Issue of invoice by the service provider**

### **Illustration :**

Company X is the owner of a trademark ‘Supreme’. Company ‘X’ allows Company ‘Y’ which is manufacturing health drink to use trademark ‘Supreme’ on its products, on the condition that ‘Y’ pays 5% of the sale proceeds realized by it to ‘X’. In this

case, the consideration is dependent on the use or benefit received by ‘Y’ and it is not ascertainable at the time of performance of service (i.e.) at the time of manufacture of health drink, but becomes ascertainable only at the end of the sale of health drinks. Meanwhile, Company ‘X’ will also issues invoices for some intermediate payments on estimate or actual basis. In such cases, the **point of taxation** will be determined as **earlier** of the following 2 events :-

- ⇒ **Date of issue of invoice (whenever raised) or**
- ⇒ **Date of receipt of payment.**

**DETERMINATION OF POINT OF TAXATION IN OTHER CASES:**  
**[RULE 8A] (Best Judgement Assessment of POT)**

Where the point of taxation cannot be determined as per these rules as the date of invoice or date of payment or both are not available, the **Central Excise Officer**, may determine the point of taxation to the best of his judgement, after giving an opportunity of being heard to the assessee.

**TRANSITIONAL PROVISIONS : [RULE 9]**

Nothing contained in these rules shall be applicable,-

- (i) where the provision of service is completed; or
- (ii) where invoices are issued prior to the date on which these rules come into force.

Provided that services for which provision is completed on or before 30<sup>th</sup> day of June, 2011 or where the invoices are issued upto the 30<sup>th</sup> day of June, 2011, the point of taxation shall, at the option of the taxpayer, be the date on which the payment is received or made as the case may be.

**Conclusion :**

The Point of Taxation Rules has brought significant changes in the tax legislation. The Rule will require ongoing changes in accounting systems, invoicing, input and output service records, credit registers, tax payment records, tax computation reports etc. These changes will require businesses to reengineer their entire processes and systems pertaining to tax payment and compliances. Moreover, though the POT Rules, 2011 comprises of some 5 Rules [(i.e) Rule 3, 4, 5. 7 & 8] for all the Services taxable under Sec 66B of the Finance Act, each Service is having different characteristics, these Rules will have different implications for each of them.

