
A. Point of taxation

A.1 Introduction

- Point of taxation means the point in time when a service shall be deemed to have been provided. It defines the date from where the Government is authorized to collect service tax from provider of services. The point of taxation enables us to determine the rate of tax, value of taxable service, rate of exchange and due date for payment of service tax.
- One major change made in service tax effective from 01/04/2011 is that the payment of service tax by the service provider from 01/04/2011 will be on **Accrual Basis** (instead of earlier provision of payment of service tax on receipt basis). For this purpose **POINT OF TAXATION RULES, 2011(POTR)** have been enacted. These rules have been realigned w.e.f. 01/04/2012.
- In simple words, the point of taxation shall be the **earlier** of issuance of invoice or receipt of payment and will not solely depend on receipt of consideration. Further, the determination of the taxable event will be subject to the condition that **where the invoice is not issued within the stipulated time period** (which has been increased from 14 days to 30 days for all service providers / 45 days in case of banks) of the completion of the provision of the service, the point of taxation shall be the **date of such completion**.
- The method of accounting (whether accrual basis or cash basis) is irrelevant for making payment of service tax. Service Tax is payable as per Point of Taxation Rules, 2011.

Date of Payment: As per Rule 2A of the Rules inserted with effect from 1-4-2012, "date of payment" shall be the earlier of the following dates:

- the date on which the payment is entered in the books of account or
- is credited to the bank account of the person liable to pay tax.

In case of rate change or first time taxation of a service, the date of credit in the bank account will have relevance over the entry in the books of account, if there is a time gap of more than 4 days in the date of entry and date of credit in bank account. Accordingly, the taxpayers should ensure that the money is credited in the bank account within 4 days from the date when there is change in effective rate of tax.

For example, since rate of service tax has been changed from 10% to 12% w.e.f. 1-Apr-2012, if service was provided before 1-Apr-2012, and the cheque was received and entered in the books upto 31-Mar-2012, applicable rate of tax would be 10%, provided the amount is credit in the bank account by 5-Apr-2012. If amount is credited in bank account, say on 9-Apr-2012, new rate of 12% would be applicable.

A.2 Determination of Point of Taxation: General Rule

[Rule 3]

Rule 3 is the general provision in respect of 'point of taxation'. Provisions of rule 3 apply only when any of rules 4 to 9 are not applicable.

As per this rule, 'point of taxation' shall be -

- (a) the time when the invoice for the service **provided/ agreed to be provided** is issued.

However, in case the invoice is not issued **within the time period specified in rule 4A of the Service Tax Rules, 1994 (30 or 45 days*, as the case may be)** of the completion of the provision of the service, the point of taxation shall be date of such completion.

- (b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

*Note: Time limit for issue of invoice for banking companies and financial institutions is 45 days.

Point of Taxation: General Rule	
If Invoice raised within 30/45 days of completion of service ↓ (i) Date of Issue of Invoice or (ii) Date of Receipt of payment, whichever is earlier	If Invoice not raised within 30/45 days of completion of service ↓ (i) Date of Completion of Service or (ii) Date of Receipt of payment, whichever is earlier

Date of Completion of Service

Invoice has to be issued within 30/45 days of completion of service. This would include not only the physical part of providing the service but also the completion of all other auxiliary activities that enable the service provider to be in a position to issue the invoice. Such auxiliary activities could include activities like measurement, quality testing etc. which may be essential pre-requisites for identification of completion of service. However, it has been clarified that such activities do not include flimsy or irrelevant grounds for delay in issuance of invoice.

(i) Continuous Supply of Services

[Proviso (i) to Rule 3]

In case of **continuous supply of service** where 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 receiver of service to make any payment to service provider, 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 service;

Continuous supply of service means

- (a) 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
- (b) 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 following services have been notified by the Central Government:

- Telecommunication Services
- Works Contract Services

(ii) Amount up to Rs. 1,000 received in excess of invoice amount

[Proviso (ii) to Rule 3]

wherever the provider of taxable service receives a payment up to Rs. 1,000 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 determined in accordance with the provisions of clause (a).

In other words, there is an option to determine POT in accordance with date of issue of invoice or completion of service, instead of date of receipt of such payment. Where such option is exercised, no invoice is required to be issued to that extent with reference to date of receipt of payment. The invoice shall be issued within 30 days or 45 days from date of completion of service. (*Refer Para C.13.1*)

Why this provision: Such provision is expected to address the accounting problems faced by service providers in telecommunications, credit card businesses who regularly receive minor excess payments from their customers.

Point of taxation in case of advance received by service provider

(Explanation to Rule 3)

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.

Illustration: Applicability of Rule 3 of POT Rules, 2011

Sr. No.	Date of completion of service	Date of invoice	Date on which payment received	Point of Taxation	Remarks
1.	10-Sep-2014	20-Sep-2014	30-Sep-2014	20-Sep-2014 (date of invoice)	Invoice issued in 30 days and before receipt of payment
2.	10-Sep-2014	26-Oct-2014	30-Oct-2014	10-Sep-2014 (date of completion of service)	Invoice not issued within 30 days and payment received after completion of service
3.	10-Sep-2014	20-Sep-2014	15-Sep-2014	15-Sep-2014 (date of payment)	Invoice issued in 30 days but payment received before invoice.
4.	10-Sep-2014	26-Oct-2014	05-Sep-2014	05-Sep-2014 (date of payment)	Invoice not issued in 30 days and payment received before completion of service.
5.	10-Sep-2014	26-Oct-2014	05-Sep-2014 (part) and 20-Oct-2014 (remaining)	05-Sep-2014 and 10-Sep-2014 for respective amounts	Invoice not issued in 30 days. Part payment before completion, remaining later.
6.	10-Sep-2014	20-Sep-2014	05-Sep-2014	05-Sep-2014	Invoice issued in 30 days but payment received before invoice.
7.	10-Sep-2014	20-Sep-2014	05-Sep-2014 (part) and 15-Sep-2014 (remaining)	05-Sep-2014 and 15-Sep-2014 for respective amounts	Invoice issued in 30 days. Each advance payment received before invoice.
8.	10-Sep-2014	20-Sep-2014	05-Sep-2014 (part) and 25-Sep-2014 (remaining)	05-Sep-2014 and 20-Sep-2014 for respective amounts	Invoice issued in 30 days. Part payment received before invoice, remaining later.
9.	10-Sep-2014	26-Oct-2014	01-Sep-2014 (part) and 05-Sep-2014 (remaining)	01-Sep-2014 and 05-Sep-2014 for respective amounts	Invoice not issued in 30 days. Each advance payment received before completion of service.

Step 1: Compare date of completion of service and date of issue of invoice.

Step 2(a): If date of issue of invoice is within 30 days of completion of service, then compare date of invoice and date of payment. POT will be earlier of the two.

Step 2(b): If date of issue of invoice is not within 30 days of completion of service, then compare date of completion of service and date of payment. POT will be earlier of the two.

A.3 Threshold Limit for Applicability of Rule 3 to Individuals / Partnership Firm / LLPs from 1-4-2012

In case of individuals / firms / LLPs whose aggregate value of taxable services provided from one or more premises is 50 lakh rupees or less in the **previous financial year**, the service provider shall have the option to pay tax on taxable services provided or to be provided by him up to a total of rupees 50 lakh in the current financial year as per the due dates w.r.t. the quarter, in which payment is received.

Thus, these entities will have the **option** to pay tax on payment basis and not on billing basis. The facility will be available upto a turnover of Rs. 50 lakh in a financial year provided the taxable turnover did not exceed this limit in the previous financial year.

Type of Assessee		Individual/Firm/LLP		Other
Taxable Turnover in Previous Financial Year		< 50,00,000	> 50,00,000	Any Amount
		↓	↓	↓
Taxability in Current Year	Upto 50,00,000	Option to pay tax on Receipt Basis	As per Rule 3 of POT Rules	As per Rule 3 of POT Rules
	Beyond 50,00,000	As per Rule 3 of POT Rules	As per Rule 3 of POT Rules	As per Rule 3 of POT Rules

A.4 Point of taxation in case of change in effective rate of tax

[Rule 4]

If there is a change in effective rate of tax at any date, point of taxation shall be determined in the manner as explained in the table below.

The essence of the rule is if out of the 3 events of provision of service, issue of invoice and receipt of payment, at least 2 events take place before the change of rate, then old rate will be applicable. On the other hand, if at least 2 events take place after the change of rate, then new rate will be applicable.

Sr. No.	Provision of Service	Issue of Invoice	Receipt of Payment	Point of Taxation	Rate of Tax
	(Date w.r.t. date of change of rate of tax)				
1	Before	After	After	Date of receipt of payment or date of invoice whichever is earlier	New Rate
2	Before	Before	After	Date of Issue of Invoice	Old Rate
3	Before	After	Before	Date of receipt of payment	Old Rate
4	After	Before	Before	Date of receipt of payment or date of invoice whichever is earlier	Old Rate
5	After	Before	After	Date of receipt of payment	New Rate
6	After	After	Before	Date of Issue of Invoice	New Rate

Note: Change in effective rate of tax includes a change in the portion of value on which tax is payable.

A.5 Payment of tax in cases of new services

[Rule 5]

When a service is taxed for the first time, as it was earlier covered under negative list or exemption notification, in such a situation, no tax shall be payable to the extent mentioned below:

Case	Treatment
Invoice Raised and Payment received before such service become taxable	No tax
Payment received before such service become taxable but Invoice raised after such service become taxable but within 14 days of the date when the service is taxed for the first time.	No tax
Any other circumstances	Taxable

Hence if payment is received after service becomes taxable, even though the provision of service and billing was done earlier, the amount would be liable to service tax.

A.6 POT for reverse charge transactions

[Rule 7: Amended w.e.f. 1.10.2014]

Notwithstanding anything contained in *Rules 3, 4 or 8*, the taxable event for the transaction subject to tax under the reverse charge mechanism shall be the date on which **payment** is made to the service provider. However, where the payment is not made within a period of three months of the date of invoice, the point of taxation shall be *the date immediately following the period of three months*.

Thus, the Point of taxation is, the payment date or the first date that occurs immediately after a period of three months from the date of invoice, whichever is earlier. (Applicable to invoices issued after 1.10.2014)

Further, In case of “**associated enterprises**”, where the person providing the service is located outside India, the point of taxation shall be:-

- (a) the date of debit in the books of account of the person receiving the service, or
- (b) date of making the payment

whichever is earlier.

Transition Rule for amendment in Rule 7 w.e.f. 1.10.2014

[Rule 10]

If the invoice in respect of a service, for which point of taxation is determinable under rule 7 has been issued before 1.10.2014 but payment has not been made as on the said day, the point of taxation shall,—

- (a) if payment is made within a period of 6 months of the date of invoice, be the date on which payment is made;
- (b) if payment is not made within a period of 6 months of the date of invoice, be determined as if rule 7 and this rule do not exist. (i.e. POT would be determined as per the general or specific rules and the benefit under Rule 7 would not be available. Interest will be charged for delayed payment.)

A.7 Point of taxation in case of copyrights, trademark, design and patent

[Rule 8]

Where in case of royalties and payments pertaining to copyrights, trademarks, designs or patents, the whole amount of the consideration for the provision of service is not ascertainable at the time of performance of service, the point of taxation would be the earlier of:

- (a) Date of issue of invoice (whenever raised) or
- (b) Date of receipt of payment

A.8 Residual provisions

[Rule 8A]

Rule 8A, inserted w.e.f. 1-4-2012 provides that where the point of taxation cannot be determined as per these rules as the date of invoice or the date of payment or both are not available, the Central Excise Officer, may require the concerned person to produce such accounts, documents and other evidence as he may deem necessary and after taking into account such material and the effective rate of tax prevalent at different points of time, shall, by an order in writing, after giving an opportunity of being heard, determine the point of taxation to the best of his judgement.

B. Place of Provision

- As per the charging section 66B, only those services which are provided in the taxable territory would be liable to service tax and the services provided in the non-taxable territory would not be taxed.
- It becomes important to determine the place of provision of the services. The Place of Provision rules have been notified vide Notification No. 28/2012-S.T. dated 20.06.2012 and they would determine the place where the service shall be deemed to be provided.
- Applicable with effect from 01.04.2012, the Place of Provisions Rules, 2012 have replaced the 'Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 and the Export of Services, Rules, 2005.

Place of Provision of Service Rules, 2012

Rule	Applicability	Place of provision of service shall be
3	General rule	Location of the recipient of service
4	In case where services are provided in respect of goods that are required to be made physically available to the service provider In case of services which require the physical presence of the receiver or the person acting on behalf of the receiver, with service provider	Location where the services are actually performed
5	In case of services provided directly in relation to an immovable property	place where the immovable property is located or intended to be located.
6	In case of services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission	the place where the event is actually held.
7	Where any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory	location in the taxable territory where the greatest proportion of the service is provided
8	Where the location of the service provider well as that of service receiver is in the taxable territory	location of the recipient of service
9	In case of (a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders; (b) Online information and database access or retrieval services; (c) Intermediary services; (d) Services consisting of hiring of all means of transport other	location of the service provider

	than (i) aircraft and (ii) vessels except yachts upto a period of one month	
10	In case of services of transportation of goods, other than by way of mail or courier	place of destination of the goods
11	In respect of a passenger transportation service	place where the passenger embarks on the conveyance for a continuous journey
12	In case of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board	the first scheduled point of departure of that conveyance for the journey
13	In order to prevent double taxation or non-taxation of the provision of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service.	
14	Notwithstanding anything stated in any rule, where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration.	

The following amendments have been made in the Place of Provision of Services Rules, 2012 (effective from 1st October 2014):

a) The term 'intermediary' will include a person who arranges or facilitates supply of goods or services (currently, the same was only applicable for services), and hence the place of provision of the same would be the place of the service provider; **[Rule 9(c)]**

b) The place of provision for services of hiring of aircraft and vessels (other than yachts) up to a period of one month would be based on location of recipient (currently, the same is based on location of service provider); **[Rule 9(d)]**

c) Provision for prescribing conditions for determination of place of provision of repair service carried out on temporarily imported goods is being omitted. The second proviso to [rule 4\(a\)](#) is being amended to prescribe that it would suffice for the purpose of exclusion of repair service from applicability of [rule 4\(a\)](#) that the goods imported for repair are exported after repair without being put to any use other than that which is required for such repair. It may be noted that this exclusion does not apply to goods that arrive in the taxable territory in the usual course of business and are subject to repair while such goods remain in the taxable territory, e.g., any repair provided in the taxable territory to containers arriving in India in the course of international trade in goods will be governed by [rule 4](#).

Hence, the place of provision of repair services for goods imported and exported after repair without being put to any use (other than which is required for such repair) would be based on location of service recipient. **[Rule 4(a)]**