

# Service Tax Implications on International Transactions, particularly reverse charge mechanism

# TAXABLE TERRITORY

- Defined as *“the territory to which the Act applies”*.
- **Section 64 : The Act extends to whole of India except State of Jammu & Kashmir**
- **Jammu & Kashmir considered as non-taxable territory**
- **‘India’ defined.**
- **Whether services provided in taxable territory: to be determined according to the Place of Provision of Service Rules, 2012**

# SERVICE-DEFINED

- Section 65B(44) defines 'Service' as:
  - any activity carried out by a person for another for consideration
  - and includes Declared Services

## Explanation 2:

- **Unincorporated association or a body of persons and a member thereof, to be treated as distinct persons**
- **Establishment of a person in a taxable territory and a non-taxable territory to be treated as distinct persons**

## Explanation 3:

- **A person carrying business through a branch or agency in any territory shall be treated as having an establishment in that territory.**

# PLACE OF PROVISION OF SERVICE

# PLACE OF PROVISION OF SERVICE RULES

- Intent :
  - To determine the place where service is deemed to be provided
  - To deal with cross border services
  - To deal with supplier and customer based in J & K
- Replaces Export of Services Rules, 2005 and Import of Services Rules, 2006
- Pre-cursor for roll-out of nation-wide GST

# Rule 3: General Rule

- General rule: Location of the service recipient
- Who is the service recipient?: Follow the contract
- Exception to general rule: Location of service provider when location of service recipient cannot be ascertained
  - Business to Consumer transactions

# Rule 3: Location of the service recipient

- Defined in Rule 2(i) as follows:
- (a) where the recipient of service is registered (single or centralized)
- (b) where the recipient of service is not covered under sub-clause (a) :
  - (i) the location of his business establishment; or
  - (ii) where services are used at a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or
  - (iii) where services are used at more than one establishment, whether business or fixed, the establishment most directly concerned with the use of the service; and
  - (iv) in the absence of such places, the usual place of residence of the recipient of service.

# Rule 3: Issues

- An Indian company – - foreign branch - Indian service provider
- An Insurance Company - Jammu & Kashmir branch(J&K) - agents are located in the State of J&K as well as rest of India



# Rule 4: Performance based services

- Place of supply is where the service is physically performed
- 2 types
- Type 1: Performed physically on goods made available by the recipient
  - Repair and maintenance, cargo handling, storage and warehousing
  - Exception: goods that are temporarily imported into India for repairs and are exported after the repairs without being put to any use in the taxable territory, other than that which is required for such repair

# Rule 4: Performance based services

- Type 2: Services provided in physical presence of the service recipient
  - Beauty treatment, health and fitness service  
classroom teaching
  - Telecommunication service?

# Rule 4: Issues

- A foreign supplier - Indian customer – Indian sub-contractor - Erection, Installation and Commissioning service

# Rule 5: Relating to immovable property

- Location of services in relation to immovable property: where the immovable property is located
- Services in relation to immovable property: Meaning?
  - Advice - investment in a real estate company

# Rule 6: Related to events

- Services in relation to organisation of or admission to an event: place of supply is where the event is held.

# Rule 7: Provided at more than one location

- Service provided in more than one location including India: place of supply is India
- **Rule 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, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided.||

# Rule 7: Provided at more than one location

- **Illustration in Guidance paper:** An Indian firm provides a ‘technical inspection and certification service’ for a newly developed product of an overseas firm (say, for a newly launched motorbike which has to meet emission standards in different states or countries). Say, the testing is carried out in Maharashtra (20%), Kerala (25%), and an international location (say, Colombo 55%).  
Notwithstanding the fact that the greatest proportion of service is outside the taxable territory, the place of provision will be the place in the taxable territory where the greatest proportion of service is provided, in this case Kerala.

# Rule 8: Both provider and recipient in India

- Both provider and recipient in India: Place of supply is in India irrespective of actual performance
- Overrides Rules 4,5, and 6.
- Disadvantageous to Indian service providers or earlier position continues?



# Rule 9: Specified services

- Place of supply is location of service provider in case of specified services:
  - Provided by banking company, financial institution, NBFC to account holders.
  - Online information and database access or retrieval service
  - Intermediary service:
    - –intermediary|| means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the ‘\_main’ service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;]
  - Hiring of means of transport for a period upto one month other than aircrafts and vessels except yachts

# Rule 9: Issues

- Market information and procurement of order
- Money Transfer – foreign principal - Indian agent
- Cloud computing facilities.

# Rule 10: Goods Transportation services

- Place of supply in case of transportation of goods is the **destination of the goods**.
  - This read with negative list means that in case of international transport by air and sea both import and export cargo are not taxable
- Exclusion: mail and courier
- Place of supply in case of GTA is location of person liable to pay service tax

# Rule 11: Passenger Transportation services

- Place of supply in case of transportation of passengers is the place where the passenger embarks on a **continuous journey**
  - –continuous journey|| means a journey for which a single or more than one ticket or invoice is issued at the same time, either by one service provider or through one agent acting on behalf of more than one service provider, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued;

## Rules 12 and 13:

- Rule 12 - Place of supply of services provided on board a conveyance : First scheduled point of departure of the conveyance
- Rule 13 – Power to notify place of supply in case of certain services as the place of effective use and enjoyment

# Rule 14: Order of application of the Rules

- In case more than one rule merit equal classification the later rule shall prevail
- –Merit equal consideration||: Meaning?
- **Illustration:** An architect based in Mumbai provides his service to an Indian Hotel Chain (which has business establishment in New Delhi) for its newly acquired property in Dubai.
  - Rule 8 or Rule 5
  - According to Guidance paper Rule 8 shall prevail
  - But do rule 5 and 8 merit -equal consideration|| or Rule 5 is more specific than rule 8
- Time Charter of vessel for transportation of goods

# Point of Taxation Rules: Rule 7

- **Point of taxation in cases of services where tax payable on reverse charge:**
  - Date of payment
  - Payment not made within 6 months of the date of invoice then point of taxation shall be the date immediately following the said period of three months.
- **Associated enterprise: where service provider is located outside India**
  - Date of debit in the books of account of the person receiving the service or
  - Date of making the payment whichever is earlier

## **Rule 6A of Service tax Rules, 1994**

- **RULE [6A. Export of services.** — (1) The provision of any service provided or agreed to be provided shall be treated as export of service when,-
  - (a) the provider of service is located in the taxable territory,
  - (b) the recipient of service is located outside India,
  - (c) the service is not a service specified in the section 66D of the Act,
  - (d) the place of provision of the service is outside India,
  - (e) the payment for such service has been received by the provider of service in convertible foreign exchange, and
  - (f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of [Explanation 3] of clause (44) of section 65B of the Act.
- Indian company – Indian service provider – further service to foreign branch.