

Western Region of Institute of Chartered Accountants of India

Welcome all participants to Seminar on Service Tax on Cross Border Transactions

Subject : Territorial Jurisdiction and Place of Provision of Service Rules, 2012.

Day & Date : Saturday, 17th August, 2013.

Venue : J.S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade, Colaba, Mumbai – 400 005.

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Preamble

- Presentation covers following Rules amended till Finance Act, 2013 :
 - Place of Provision of Service Rules, 2012
- Reference to following in presentation would mean:
 - POPS – Place of Provision of Service Rules, 2012
 - Act – Finance Act, 1994
 - STR – Service Tax Rules, 1994

Charging Provision [Section 66B]

- There shall be levied a tax (Service Tax)
- At the rate of 12%
- On the value of
- All Services
- Other than those specified in negative list
- Provided or to be provided
- By one person to another person
- **In the taxable territory**
- Collected in such manner as may be prescribed

Territorial Jurisdiction and Tax Obligation

- “Taxable territory” means whole of India except Jammu & Kashmir [65B(52)]
- “Non-taxable territory” means a territory other than taxable territory [65B(35)]
- Term “India” is defined in Section 65B(27) to mean:
 - Territory of Union of India (clause 2 & 3 of Article 1 of Constitution)
 - Territorial waters
 - Continental shelf
 - Exclusive economic zone
 - Other maritime zone
 - Sea-bed and subsoil underlying the territorial waters
 - Air space above its territory and territorial water
 - Installations, structures and vessels located in continental shelf of India and exclusive Economic Zone of India for the purposes of prospecting or extraction or production or supply of mineral oil / natural gas
- Services provided in taxable territories are taxable
- Services provided in non-taxable territory are not taxable

Territorial Jurisdiction and POPS

- Taxability of service is determined on location of its provision
- Under Section 66C of Act, Central Government prescribed “**Place of Provision of Service**” Rules (POPS)
- POPS is applicable even either or both of service provider and service recipient are located outside taxable territory [Section 66C(2)]
- POPS replaces Export / Import of Service Rules from 01.07.2012
- Transaction between person in Jammu & Kashmir and person in India is subject to Place of Provision Rules
- Onus of discharging service tax liability:

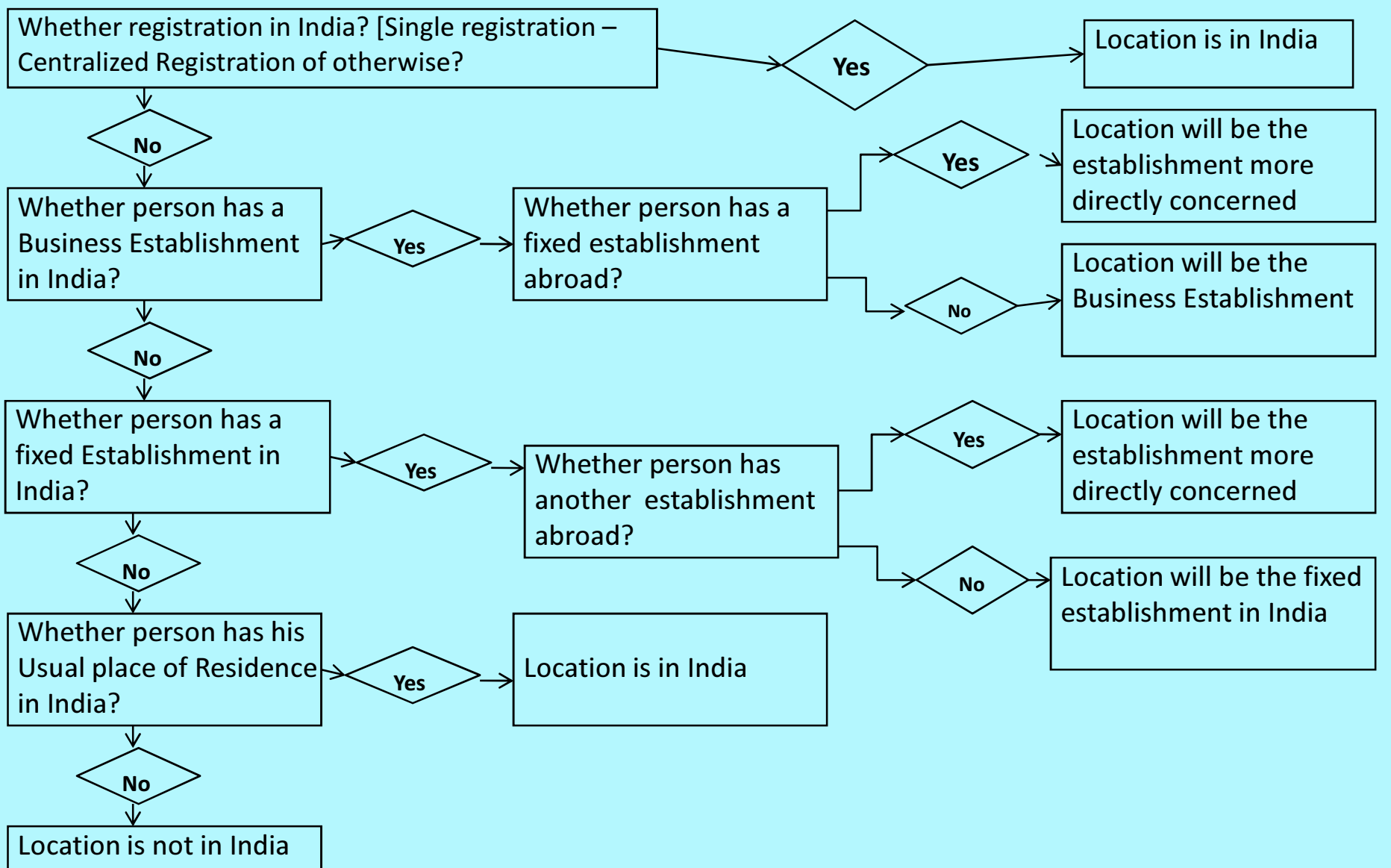
No	Service provider (SP)	Service Recipient (SR)	Onus
1	In taxable territory	In taxable territory	SP
2	In taxable territory	In non - taxable territory	SP
3	In non - taxable territory	In taxable territory	SR*
4	In non - taxable territory	In non - taxable territory	????

* Provided service are received for business or commerce

Who is service recipient?

- Issue of identifying service recipient where following are different:
 - Person mandating the service
 - Person paying for the service
 - Person receiving the service
 - Person consuming the service

Determination of Location of service provider / recipient



Place of Provision of Services (POPS) – Some Basics

- POPS is effective from 01.07.2012
- POPS prescribes the place of provision of service
- POPS is framed on the principle that service tax is destination based consumption tax and service should be taxed in the jurisdiction of its consumption
- POPS tries to harmonize with **international tax** practice to ensure :
 - Avoidance of double taxation
 - Avoidance of double non-taxation
- POPS is useful for determining:
 - Tax implications of cross broader service transaction
 - Tax implications of transaction with person based in Jammu & Kashmir
 - Tax jurisdiction in case of multiple locations
 - Whether services are consumed wholly within SEZ
- Determination of location of service provider / recipient is crucial for applicability of this Rule (**Refer Slide 7**)

Place of Provision of Services (POPS) – Basic Framework

- Rule 3 – Recipient based services [General / Residuary Rule applicable to those services which are not falling in any of the following rules]
- Rule 4 – Performance based services
- Rule 5 – Property based services
- Rule 6 – Event related services
- Rule 8 – Service receiver & service provider located in taxable territory
- Rule 9 – Service provider based services
- Rule 10 – Goods Transportation services
- Rule 11 – Passenger services
- Rule 12 – Services provided on board conveyance
- Rule 14 – In case of prima facie applicability of more than one rule, the rule that occurs later will prevail

Place of Provision of Services (POPS) – Rule 4(a)

Nature / Service Description	Probable coverage	Place of Provision
<ul style="list-style-type: none"> • Services provided in respect of goods • That are made physically available by service receiver to service provider • In order to provide the service • Goods temporarily come in physical possession of service provider • It will not cover services where supply of goods by service receiver is not crucial for rendering of services: <ul style="list-style-type: none"> ○ Market research given sample products ○ Pen drive / CD supplied to consultant 	Repairs & Maintenance of goods Technical Testing & Analyses Dry Cleaning Courier Storage Warehousing <u>Debatable:</u> Cargo handling Brokerage of goods Brokerage of shares	Location where services are actually performed. - Subject to applicability of Rule 7

Place of Provision of Services (POPS) – Rule 4(a)

Nature / Service Description	Probable coverage	Place of Provision
<p>When such services are provided from a remote location by way of electronic means</p> <p>- Proviso 1 to Rule 4(a)</p>	<p>Management of software</p> <p>Maintenance of software</p> <p>Repair of sophisticated machine electronically</p>	<p>Location of goods at the time of provision of service</p> <p>-Subject to applicability of Rule 7</p>
<p>Service provided in respect of goods that are temporarily imported into India for repairs, reconditioning or re-engineering for re-export</p> <p>- Proviso 2 to Rule 4(a)</p>	<p>Repair / reconditioning / re-engineering of following in India:</p> <p>Foreign Ship</p> <p>Foreign Aircraft</p> <p>Machinery from abroad</p> <p>- Provided they are re-exported.</p>	<p>Place of provision as per Rule 3</p> <p>General / Residuary Rule – Recipient based</p>

Place of Provision of Services (POPS) – Rule 4(b)

Nature / Service Description	Probable coverage	Place of Provision
<ul style="list-style-type: none"> • Services provided to an individual: <ul style="list-style-type: none"> ▪ As service receiver; or ▪ As representative of service receiver • Where provision of such service require the physical presence of service receiver and service provider simultaneously • For providing or availing such service 	Beauty Treatment Cosmetics Surgery Plastic Surgery Photography Service Health & Fitness Coaching Classes Personal Security Services Internet café services Rent –a-cab	Location where the services are provided -Subject to applicability of Rule 7

Place of Provision of Services (POPS) – Rule 5

Nature / Service Description	Probable coverage	Place of Provision
<p>Services <u>directly</u> in relation to immovable property</p> <p>Immovable property U/s 3(26) of General Clauses Act includes: Land Benefits arising out of land Anything attached to the earth or Permanently fasten to the earth</p>	<p><u>Specifically included in Rule:</u> Real Estate Agent Hotel Accommodation Renting / Leasing Works Contract Construction Architect Interior decorator</p> <p><u>Others by Implication:</u> Repair, Maintenance and Management of property House keeping services Engineering service</p>	<p>Location of immovable property</p> <p>- Subject to applicability of Rule 7</p>

Place of Provision of Services (POPS) – Rule 5

Nature / Service Description	Probable coverage	Place of Provision
	Surveying Mining Exploration Service <u>Debatable:</u> Security services Legal services House Keeping Warehousing	

Place of Provision of Services (POPS) – Rule 6

Nature / Service Description	Probable coverage	Place of Provision
<ul style="list-style-type: none"> • Services provided by way of: <ul style="list-style-type: none"> ○ Admission to an event ○ Organization of event ○ Services ancillary to admission of event • Services ancillary to organizing event is not specified in the rule 	Event such as: Cultural Artistic Sporting Scientific Educational Entertainment Celebration Conference Trade Fare Exhibition	Place where the event is actually held -Subject to applicability of Rule 7

- Section 66F – reference to a service (referred to a main service) shall not include reference to service which is used for providing main service

Place of Provision of Services (POPS) – Rule 7

- If service is actually provided at more than one location including a **location in taxable territory**, the place of provision shall be **location of taxable territory** where the greatest portion of service is provided
- Rule applies to services falling in following Rules:
 - Rule 4 – Performance based services
 - Rule 5 – Property based services
 - Rule 6 – Event related services
- This Rule does not apply to services falling under:
 - Rule 3 – Recipient based services
 - Rule 8 – Service receiver & service provider located in taxable territory
 - Rule 9 – Service provider based services
 - Rule 10 – Goods Transportation services
 - Rule 11 – Passenger services
 - Rule 12 – Services provided on board conveyance

Place of Provision of Services (POPS) – Rule 8

Nature / Service Description	Probable coverage	Place of Provision
When Service Provider and Service Receiver are located in taxable territory	<p>Due to Rule 14, this will override:</p> <ul style="list-style-type: none"> Rule 3 Rule 4 Rule 5 Rule 6 Rule 7 <p>This rule will <u>not</u> override:</p> <ul style="list-style-type: none"> Rule 9 Rule 10 Rule 11 Rule 12 	Location of service receiver

Place of Provision of Services (POPS) – Rule 9

Nature / Service Description	Probable coverage	Place of Provision
<p>Specified services:</p> <p>a) Banking & Financial Services to <u>account holder</u></p> <p>b) Online Information and Database access or retrieval services</p> <p>c) Intermediary Services</p> <p>d) Hiring of means of transport up to 1 month</p>	<p>Correspondent charges Leasing charges Charges for issue advisory, Merchant banking and ECB</p> <p>Travel agent Hotel agent Finance broker</p> <p>Charter for hiring of ships, aircrafts etc for a less than one month</p>	<p>Location of Service Provider</p>

Place of Provision of Services (POPS) – Rule 9

- Intermediary services does not include [Rule 2(f) of POPSR]:
 - Goods intermediary
 - Person providing main services on his account
- Area of dispute could be:
 - Tour operator
 - Stock / security broker
 - Mutual fund
 - CHA agent
 - Advertising agency
 - Clearing and forwarding agent
 - Forex broker
 - Recovery agent

Place of Provision of Services (POPS) – Rule 10

Nature / Service Description	Probable coverage	Place of Provision
Transportation of Goods by : <ul style="list-style-type: none"> • Air • Water • Rail • Any other means Other than by courier or mail	All types of freight	Destination of Goods

- **Proviso** – In case of GTA services, the Place of Provision would be location of **person liable to pay service tax**:
 - Rule 2(1)(d) of Rules – Person liable to pay freight is liable to pay tax
 - If person liable to pay freight is located in non-taxable territory, service provider is liable to pay tax
- Cargo handling and logistic services (multi modal) is a bundled services where transportation could be pre-dominant activity. Whether such service fall under this Rule?

Place of Provision of Services (POPS) – Rule 11, 12 & 3

➤ Rule 11

Nature / Service Description	Probable coverage	Place of Provision
Passenger Transportation	Air Travel, Road Travel, Water Travel, Rail Travel	Place of embarkation for continuous journey

➤ Rule 12

Nature / Service Description	Probable coverage	Place of Provision
On Board a conveyance	Beauty treatment on board Entertainment on board	First point of departure of conveyance

➤ Rule 3

Nature / Service Description	Probable coverage	Place of Provision
General Rule	All services which are not falling in the exception rules from 4 to 12	Location of Service Receiver. Where location of the service receiver is not available in ordinary course of business, then Location of service provider

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