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Compiled By: CA Ashok Kumar Jain,
FCA, DISA
9810103799
akjainca@vsnl.net

POINT OF TAXATION RULES, 2011 – AN OVERVIEW

The Hon'ble Finance Minister for the year 2011-12 has brought a new Rule called as 'Point of Taxation Rules, 2011' ('Rule' for short) for adoption of point of taxation rules which would shift the basis for tax collection from 'cash' towards 'accrual' basis as with Central Excise Duty, vide [Notification No. 18/2011-Service Tax](#), dated 01.03.2011. The object of the said Rules is for the purpose of collection of service tax and determination of rate of service tax. The Rule shall come into force with effect from 01.04.2011. Nothing contained in these Rules shall be applicable in case of invoices issued prior to the date from which these rules become effective.

While the rules shall come into force from 01.04.2011, an option has been given in rule 9 to pay tax on payment basis, as at present, till 30.06.2011.

DETERMINATION OF POINT OF TAXATION:

As a general rule, Service tax Liability is be discharged with reference to the point of time earliest of the following three-

- ◆ The time of issue of invoice if invoice is issued within 14 days of completion of service.
- ◆ The time of completion of service if invoice is not issued within 14 days of completion of service.
- ◆ The time of receipt of payment of service.

Also , 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.

The applicability of the rule will be clear from the illustrations in the following table:

S. No.	Date of completion of service	Date of invoice	Date on which payment recd.	Point of Taxation	Remarks
1.	April 10, 2011	April 20, 2011	April 30, 2011	April 20, 2011	Invoice issued in 14 days and before receipt of payment
2.	April 10, 2011	April 26, 2011	April 30, 2011	April 10, 2011	Invoice not issued within 14 days and payment received after completion of service
3.	April 10, 2011	April 20, 2011	April 15, 2011	April 15, 2011	Invoice issued in 14 days but payment received before invoice
4.	April 10, 2011	April 26, 2011	April 5, 2011 (part) and April 25, 2011 (remaining)	April 5, 2011 and April 10, 2011 for respective amounts	Invoice not issued in 14 days. Part payment before completion, remaining later

DETERMINATION OF POINT OF TAXATION IN CASE OF CHANGE OF RATE OF TAX:

Rule 4 deals with the 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 circumstances:

- a) In case a taxable service has been provided before the change of rate;
- b) In case a taxable service has been provided after the change of rate.

In case a taxable service has been provided before the change of rate the point of taxation is determined as follows:

- Where the invoice for the same has been issued and the payment received after the change of rate, the point of taxation shall be the date of payment or issuing of invoices, whichever is earlier; or
- 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
- 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.

In case a taxable service has been provided after the change of rate the point of taxation is determined as follows:

- 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
- 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 date of receipt of payment or date of issuance of invoice, whichever is earlier; or
- 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.

DETERMINATION OF POINT OF TAXATION IN CASE OF CONTINUOUS SUPPLY OF SERVICE:

As per Rule 2© defines the terms 'continuous supply of service' as

- i) any service which is provided or to be provided continuously under a contract, for a period exceeding 3 months, or
- ii) 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.

This date shall be the date of completion of the specified event stated in the contract which obligates payment in part or whole for the contract. For example, in the case of construction services if the payments are linked to stage-by-stage completion of construction, the provision of service shall be deemed to be completed in part when each such stage of construction is completed. Moreover, it has been provided that this rule will have primacy over rules 3, 4 and 8.

Moreover, the following services have been notified as "continuous supply of services" in terms of clause 2(c) of the rules vide notification No. 28/ST-2011 dated 01.04.2011:

- (a) Telecommunication service [65(105)(zzzx)]
- (b) Commercial or industrial construction [65(105)(zzq)]
- (c) Construction of residential complex [65(105)(zzzh)]
- (d) Internet Telecommunication Service [65(105)(zzzu)]
- (e) Works contract service [65(105)(zzzza)]

Thus these services will constitute “continuous supply of services” irrespective of the period for which they are provided or agreed to be provided. Other services will be considered continuous supply only if they are provided or agreed to be provided continuously for a period exceeding three months.

The explanation 1 to this Rule provides that 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. The explanation 2 to this Rule provides that in respect of services taxable under Section 66A of the Act, the point of taxation shall be the date on which the invoice is received, or the payment is made, as the case may be, whichever is earlier.

POINT OF TAXATION IN SPECIFIED CASES:

In the following cases, the point of taxation shall be the date of **making or receiving the payment**, as the case may be. This provision shall apply to the following:

- (i) Export of services;
- (ii) Persons, where the obligation to pay tax is on the service recipient in terms of rule 2(1)(d) of the Service Tax Rules, 1994 in respect of services notified under section 68(2) of the Finance Act, 1994.
- (iii) Individuals, proprietorships and partnership firms providing specified services (Chartered Accountant, Cost Accountant, Company Secretary, Architect, Interior Decorator, Legal, Scientific and Technical consultancy services). The benefit shall not be available in case of any other service also supplied by the person concerned along with the specified services.

Export of services is exempt subject, inter alia, to the condition that the payment should be received in convertible foreign exchange. Until the payment is received, the provision of service, even if all other conditions are met, would not constitute export. In order to remove the hardship that will be caused due to accrual method, the point of taxation has been changed to the date of payment. However, if the payment is not received within the period prescribed by RBI, the point of taxation shall be determined in the absence of this rule.

In the case of services where the recipient is obligated to pay service tax under rule 2 (1)(d) of Service Tax Rules i.e. on reverse charge basis, the point of taxation shall be the date of making the payment. However, if the payment is not made within six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist. Moreover, in the case of associated enterprises, when the service provider is outside India, the point of taxation will be the earlier of the date of credit in the books of account of the service receiver or the date of making the payment.

CHANGES IN SERVICE TAX RULES:

Changes have also been made in the Service Tax Rules, 1994 vide notification No. 26/2011-ST dated 31.03.2011 and have a close relationship with the Point of Taxation Rules as follows:

- (i) The obligation to issue invoice shall be within 14 days of completion of service and not provision of service.
- (ii) If the amount of invoice is renegotiated due to deficient provision or in any other way changed in terms of conditions of the contract (e.g. contingent on the happening or non-happening of a future event), the tax will be payable on the revised amount provided the excess amount is either refunded or a suitable credit note is issued to the service receiver. However, concession is not available for bad debts.

CHANGES IN CENVAT CREDIT RULES.

The credit of input services under rule 4 (7) of the Cenvat Credit Rules has also been liberalized vide notification No. 13/2011-CE (NT) dated 31.03.2011 and the same shall be available on receipt of invoice (except in cases of reverse charge) as long as the payment is made within three months. Even specified persons required to pay tax on cash basis will be able to avail credit on receipt of invoice. Suitable changes have also been made for reversal of credit or payment when the value of service is renegotiated or altered for any reason by refund or issue of a credit note by the service provider. Amendment has also been made in Rule 9 of Cenvat Credit Rules, 2004 by allowing credit on supplementary invoice, except in non-bonafide cases, which may become necessary in certain situations e.g. where the point of tax is the date of payment while the invoice had already been issued e.g. rule 4(b)(i) of Point of Taxation Rules.

TRANSITIONAL PERIOD.

The transitional provisions will apply to all invoices issued before 31.03.2011 in so far as taxpayers who switch over to the new rules on 01.04.2011. Those assesseees who like to shift to the new rules on 01.07.2011 would have similar protection in respect of invoices issued before the date they switch over to the new rules. The benefit has also been extended to services when provision has been completed before 01.04.2011 or 01.07.2011, as the case may be. It is also clarified that the payments received before the new rules come into force do not require any transitional provisions as they are already required to pay tax on payment basis.

