

POINT OF TAXATION RULES, 2011

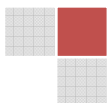
{Introduced vide Notification No 18/2011-ST [GSR 175(E)] dated 01.03.2011}

1. Effective Date:

These Rules shall come in force from 01st April, 2011 (*However, assessee is given an option to opt for these rules on/after 01st July, 2011, as per **Rule 9** of the Point of Taxation Rules, 2011*).

2. Interpretation of Important terms defined in the said Rules:

- a. 'Point of Taxation' means the point in time when a service is deemed to have been provided;
- b. 'Associated Enterprises' shall have the meaning assigned to it in Section 92A of the Income Tax Act, 1961 (43 of 1961);
- c. 'continuous supply of service' means any service which is provided, or to be provided continuously, under a contract, for a period exceeding 3 months, or those services which the Central Government vide a Notification deems as being of continuous supply in nature;
 - Eg of continuous supply of service: Supply of machinery on hire under a contract exceeding 3 months which will be taxable under the category 'Supply of Tangible Goods for Use Service'.
 - Continuous supply services notified by the Government vide Notification No 28/2011-ST dated 01.04.2011 are as follows:
 - i. Telecommunication
 - ii. Internet Telecommunication
 - iii. Commercial or Industrial Construction



- iv. Construction of Complex
- v. Works Contract

3. **Determination of Point of Taxation (Rule 3):**

Point of Taxation of Service Tax shall be earliest of (a) or (b) given below:

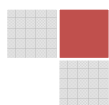
- a. **Date of issue of invoice;** or

Date of completion of service; (In case, where the invoice has not been issued within 14 days of the date of completion of service).

- b. **Date of receipt of payment towards the service;**

Illustration:

Case	Date of Completion of Service	Date of Issue of Invoice	Eligible Date	Date of Receipt of Payment	Point of Taxation
	<i>A</i>	<i>B</i>	<i>C = A or B</i>	<i>D</i>	<i>C or D whichever is earlier</i>
1.	30.04.2011	07.05.2011	07.05.2011	08.05.2011	07.05.2011
2.	30.04.2011	07.05.2011	07.05.2011	03.05.2011	03.05.2011
3.	30.04.2011	07.05.2011	07.05.2011	28.04.2011 (Part) 18.05.2011(Balance)	28.04.2011 for first payment and 07.05.2011 for balance amount
4.	30.04.2011	15.05.2011	30.04.2011	08.05.2011	30.04.2011
5.	30.04.2011	15.05.2011	30.04.2011	03.05.2011	30.04.2011
6.	30.04.2011	15.05.2011	30.04.2011	28.04.2011	28.04.2011



- As is noticed in Cases 4, 5 & 6 above, the invoices were issued 14 days after the date of completion of service. Hence, in these cases, the eligible date is the date of completion of service i.e 30.04.2011.
- Further, in case the taxable service gets covered in the definition of continuous supply of service and the terms of the contract recognizes the completion of service in stages, then each such stage is deemed to be the date of completion of service **(Rule 6)**.

Eg: Running bills provided by the service provider under a construction contract.

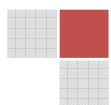
4. Determination of Point of Taxation in case of change in effective rate of tax

(Rule 4):

- Once, Rule 4 gets attracted, the provisions contained in Rule 3 will not be applicable.
- Change in effective rate of tax includes any changes in the value on which service tax is paid.

Eg of changes in the value: An abatement of 67% is granted for arriving the taxable value for Commercial Construction service. In case, this abatement value is decreased to 60%, then Rule 4 would get attracted as there is change in the value on which service tax is paid.

- For Simplicity, the date of change in effective rate of tax is referred to as 'eligible date'.



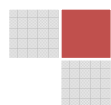
- a. In cases, where the service has been provided before the eligible date and;
- i. Raising of invoice and receipt of payment is after the eligible date, then in such cases, the point of taxation shall be the earliest of date of raising the invoice or date of receipt of payment; **or**
 - ii. Raising of invoice is before the eligible date and payment is received after the eligible date, then in such cases, the point of taxation shall be the date of raising of invoice; **or**
 - iii. Payment is received before the eligible date and invoice is raised after the eligible date, then in such cases, the point of taxation shall be the date of receipt of payment;

Illustration:

Presumptions:

- The rate of service tax has been increased from 10.30% to 12.36% with effect from 01.05.2011.
- The date of completion of service is 30.04.2011.

<i>Case</i>	<i>Date of Completion of Service</i>	<i>Date of Issue of Invoice</i>	<i>Date of Receipt of Payment</i>	<i>Point of Taxation</i>	<i>Rate of Tax</i>
	<i>A</i>	<i>B</i>	<i>C</i>		
<i>i.</i>	<i>30.04.2011</i>	<i>07.05.2011</i>	<i>03.05.2011</i>	<i>03.05.2011</i>	<i>12.36%</i>
<i>ii.</i>	<i>30.04.2011</i>	<i>30.04.2011</i>	<i>03.05.2011</i>	<i>30.04.2011</i>	<i>10.30%</i>
<i>iii.</i>	<i>30.04.2011</i>	<i>03.05.2011</i>	<i>30.04.2011</i>	<i>30.04.2011</i>	<i>10.30%</i>



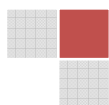
- b. In cases, where the service has been provided after the eligible date and;*
- i. Raising of invoice and receipt of payment is before the eligible date, then in such cases, the point of taxation shall be the earliest of date of raising the invoice or date of receipt of payment; **or**
 - ii. Raising of invoice is before the eligible date and payment is received after the eligible date, then in such cases, the point of taxation shall be the date of receipt of payment; **or**
 - iii. Payment is received before the eligible date and invoice is raised after the eligible date, then in such cases, the point of taxation shall be the date of raising of invoice;

Illustration:

Presumptions:

- The rate of service tax has been increased from 10.30% to 12.36% with effect from 01.05.2011.
- The date of completion of service is 02.05.2011.

<i>Case</i>	<i>Date of Completion of Service</i>	<i>Date of Issue of Invoice</i>	<i>Date of Receipt of Payment</i>	<i>Point of Taxation</i>	<i>Rate of Tax</i>
	<i>A</i>	<i>B</i>	<i>C</i>		
<i>i.</i>	<i>02.05.2011</i>	<i>30.04.2011</i>	<i>28.04.2011</i>	<i>28.04.2011</i>	<i>10.30%</i>
<i>ii.</i>	<i>02.05.2011</i>	<i>30.04.2011</i>	<i>03.05.2011</i>	<i>03.05.2011</i>	<i>12.36%</i>
<i>iii.</i>	<i>02.05.2011</i>	<i>03.05.2011</i>	<i>30.04.2011</i>	<i>03.05.2011</i>	<i>12.36%</i>



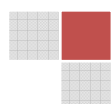
5. Payment of Tax in case of new services (Rule 5):

- Where a service is taxed for the first time, with effect from a particular date, then no service tax shall be payable in cases where the invoice has been raised and payment has been received, prior to such date.
- So also, no tax is payable if payment is received prior to such date and the invoice is raised within 14 days of the date of completion of service, even though the date of invoice falls after the effective date of levy of service tax on such new service.

Illustration:

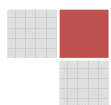
- New Service is chargeable to Service Tax with effect from 01.05.2011

<i>Case</i>	<i>Date of Completion of Service</i>	<i>Date of Issue of Invoice</i>	<i>Date of Receipt of Payment</i>	<i>Taxability</i>
	<i>A</i>	<i>B</i>	<i>C</i>	
<i>i.</i>	<i>30.04.2011</i>	<i>30.04.2011</i>	<i>30.04.2011</i>	<i>Not Taxable</i>
<i>ii.</i>	<i>30.04.2011</i>	<i>10.05.2011</i>	<i>30.04.2011</i>	<i>Not Taxable</i>
<i>iii.</i>	<i>30.04.2011</i>	<i>15.05.2011</i>	<i>30.04.2011</i>	<i>Taxable</i>
<i>iv.</i>	<i>02.05.2011</i>	<i>10.05.2011</i>	<i>30.04.2011</i>	<i>Not Taxable</i>
<i>v.</i>	<i>02.05.2011</i>	<i>17.05.2011</i>	<i>30.04.2011</i>	<i>Taxable</i>



6. Determination of point of taxation in case of specified services or persons (Rule 7):

- Point of taxation of service tax in respect of the following persons shall continue to be the date on which payments are received/ made as the case may be:
 - a. Export services eligible as per Rule 3(1) of Export of Services Rules,2005;
 - b. Service Receivers liable to pay tax as recipients. (Eg: GTA, Import of Service)
 - c. Individuals/proprietary firms/partnership firms providing the services of Architect, Interior Decorator, Chartered Accountant, Cost Accountant, Company Secretary, Scientific and Technical Consultancy, Legal Services.
- Pre-Conditions:
 - In case of export services enumerated above, the payment needs to be received within the period specified by the RBI.
 - In case of service receivers, the payment needs to be made to the service provider within 6 months of the date of invoice.
 - In case of associated enterprises, where the service provider is located outside India, the point of taxation shall be the date of credit in the books of account of the service receiver or date of making the payment whichever is earlier.
- In case the above mentioned pre-conditions are not complied with, the other provisions of Point of Taxation Rules, 2011 shall apply presuming Rule 7 is absent. Accordingly, interest costs may arise in case of such defaults as the point of taxation will shift to a much earlier date.



7. Determination of point of taxation in case of copyrights, etc (Rule 8):

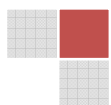
- In respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, when the exact amount is not ascertainable at the time of performing the service and there exists a possibility of recurring receipts in future, then in such cases, the service shall be treated as having provided each time when such payments are received or invoices are raised, whichever is earlier.

8. CENVAT Credit relating to Input Services can be availed on the basis of invoice:

- Rule 4 (7) of the CENVAT Credit Rules has been amended with effect from 01.04.2011 to maintain consistency with the Point of Taxation Rules, 2011.
- As per this amended rule, CENVAT Credit of service tax can be availed by the service receiver on the basis of invoice/bill/challan issued by the service provider. Whereas, prior to this amendment, CENVAT credit of service tax could have been availed only if payment was made to the service provider.

Pre-Conditions:

- Value of service and the service tax needs to be paid by the service receiver to the service provider within 3 months of the date of such invoice. Otherwise the CENVAT credit availed needs to be reversed and availed again when the said payment is made.
- In case of persons liable to pay service tax in the capacity of service receivers, CENVAT credit can be availed only on payment of the value of service to the service provider and the tax to the exchequer and not merely on receipt of bill/invoice/challan etc.



- So also, any reduction in the value of input service either in the form of refund or credit note, proportionate CENVAT credit of service tax relating to such reduction needs to be reversed by the service provider.

9. Amendment in Rule 6(3) of Service Tax Rules, 1994 w.e.f 01.04.2011:

- In cases where the service is not provided fully/partly for any reason or the amount of invoice is renegotiated due to deficient provision of service or as per the terms mentioned in the contract, then the excess amount (Value of Service + Service Tax) collected by the service provider can be refunded back to the service receiver or a credit note can be raised accordingly.
- Thereafter, the excess service tax already deposited by the service provider to the exchequer can be adjusted against his subsequent service tax payments.
- However, no concession is available for bad debts, simple discounts etc.

Note: *All Notifications and Circulars relating to Point of Taxation Rules, 2011, issued by the Service Tax Department can be viewed on the following URL – www.servicetax.gov.in*

