



The Government of India proposes to issue the Point of Taxation (for Services Provided or Received in India) Rules, 2010 ("The Rules") and has sought suggestions from all stakeholders before finalization of these Rules. It appears that these Rules have been issued as a possible precursor to similar provisions that would certainly form part of the forthcoming GST.

Ostensibly however, the purpose of introducing the Rules is to bring about clarity and certainty in the matter of levy and collection of service tax in the following situations:

- Where there is a change in the rate of service tax
- Imposition of the tax on new services
- Continuous supply of services

The key principle that is sought to be established through Rule 3 is to link the point of taxation to any of the following:

- Provision of services
- Raising of invoice for the services
- Payment for services provided or to be provided,

whichever occurs the earliest in point of time.

The following are the other highlights of the draft Rules:

Tax treatment of advances (Rule 4)

The Rule prescribes that in case of advances received for services to be provided at a future date, the point of taxation is the date on which such advance is received and hence the rate of tax is that applicable at the time of receipt of advance.

However, interest free refundable deposits would not be covered within the ambit of this Rule.

Point of taxation in cases of change in the rate of service tax (Rule 5)

- This Rule addresses the point of taxation where there is a change in the rate of tax with regard to taxable services, whether exempt or otherwise, between the time of occurrence of different events, i.e. the provision of service, the issuance of invoice or the receipt of payment.
- These events may occur either before the change in the rate of tax (Before) or after the change in the rate of tax (After). The point of taxation in the different scenarios will be as depicted in the Table below:

Provision of service	Issuance of invoice	Payment for service	Point of taxation
Before	After	After	Date of invoice or payment, whichever is earlier. Hence, the revised rate will apply.
Before	Before	- Within 30 days of invoice - Beyond 30 days of invoice	-Date of invoice. Hence, the erstwhile rate will apply. - Date of payment. Hence, the revised rate will apply.
After	Before	After	Date of payment. Hence, the revised rate will apply.
After	Before	Before	Date of payment or invoice, whichever is earlier. Hence, erstwhile rate will apply

Point of Taxation in case of new services which are not continuously provided (Rule 6)

This Rule addresses the point of taxation with regard to services brought to tax for the first time.



The point of taxation in the different scenarios is depicted below:

Provision of service	Issuance of invoice	Payment for service	Point of taxation
Before	After	After	Provision of service and hence not taxable
Before	Before	After	Provision of service and hence not taxable
After	Within 14 days of payment	Before	Date of payment and hence not taxable.
After	Before	Before	Date of invoice or payment and hence not taxable

Point of Taxation in case of Continuous Supply of Service (Rule 7)

A continuous supply of service refers to services that are supplied continuously for a period exceeding six months.

The point of taxation in such cases would be determined in the following manner:

- if the date of payment is mentioned in the contract, the point of taxation would be the date when the payment becomes due
- if the payment is linked to completion of a certain event, the point of taxation would be the time when such event is completed
- If neither of the above two conditions is specified, the point of taxation would be the issuance of the invoice or the receipt of payment, whichever is earlier.

The Rule also states that if any payment has been received in respect of a service before it becomes taxable, no tax would be charged even if the service is provided subsequently on a continuous basis.

Point of Taxation in case of Associated Enterprises (Rule 8)

This Rule relates to transactions between Associated Enterprises, as already defined, and states that the point of taxation would be

- the payment of service or
- the debit/credit entry in the books of accounts or
- the issuance of debit/credit notes, whichever occurs earliest in point of time.

Point of Taxation in case of royalties and similar payments (Rule 9)

This Rule states that where

- the whole consideration for the provision of service is not ascertainable at the time of its performance, and
- the use or the benefit of such a service by a person other than the supplier gives rise to a subsequent payment of consideration, the point of taxation will be
 - each time the payment in respect of such use or benefit is made or
 - the issuance of invoice,

whichever is earlier in point of time.

The Government has requested that responses and suggestions on the draft Rules be sent by no later than 1st September, in order to be considered.



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