Point of Taxation to determine rate of service tax and due date of payment of service tax

One major change made in service tax effective from 1-4-2011 is the introduction of Point of Service of Taxation Rules, 2011. So far, the provision was that service tax is payable on receipt basis i.e. on receipt of payment of the invoice or bill from customer or receipt of advance, whichever is earlier. Now, w.e.f. 1-4-2011, service tax will be payable on billing basis and *not* on 'receipt of payment' basis i.e. on accrual basis and not cash basis.

As per rule 5B of Service Tax Rules (as inserted w.e.f. 1-4-2011), the rate of tax in case of service provided or to be provided shall be the rate prevailing at the time when the service is deemed to have been provided as per Rules.

Rule 6(1) [as amended w.e.f. 1-4-2011] provides that service is payable when service is deemed to be provided within 5days of end of month/quarter (within 6 days in case of e-payment] as per rules framed in this regard.

'Point of Service of Taxation Rules, 2011' make provision in respect of date when a service shall be deemed to have been provided.

In MF(DR) DO F No. 334/3/2011-TRU dated 28-2-2011, it has been clarified as follows, 'The general rule will be hat the time of provision of service will be the earliest of the following dates – (i) Date of which service is provided or to be provided (ii) Date of invoice (iii) Date of payment.

Meaning of 'point of taxation' – Point of taxation means the point in time when a service shall be deemed to have been provided [Rule 2(e) of Point of Service of Taxation Rules, 2011]

1. General provision relating to Point of taxation in case of existing services where there is no change in rate of service tax

In case of existing taxable services where there is no change of rate of service tax (i.e. except cases covered under rules 4 to 8 as discussed below), provision of service shall be treated as having taken place at the time when service is provided or to be provided [Rule 3(a) of Point of Service of Taxation Rules, 2011]. [**Note** – By strict interpretation, just entering into a contract for providing service would be 'service to be provided'. This is certainly not the intention].

If, even before provision of service, the service provider issues an invoice or receives payment, then to the extent of invoice or its payment (or advance), the service will be deemed to have been provided at the time of issue of invoice or receipt of payment, *whichever is earlier*. [Rule 3(b) of Point of Service of Taxation Rules, 2011].

2. Point of taxation in case of import of service

In case of import of service, the point of taxation is the date on which invoice (of foreign party) is received or payment is made to foreign party, whichever is earlier (except in case of associated enterprises) [*Explanation* 2 to Rule 3 of Point of Service of Taxation Rules, 2011].

3. Point of taxation in case of change of rate of service tax, if service was provided before change of rate

If there is change in rate of service tax after provision of service, the point of taxation will be as follows – (i) If invoice is issued and payment is received after change of rate, point of taxation will be date of receipt of payment or issue of invoice, *whichever is earlier* (ii) If invoice was issued prior to change of tax rate but payment was received after change of rate, point of taxation shall be date of issuance of invoice (iii) If payment is received prior to date of change of rate but invoice is issued after change of rate, point of taxation shall be date of receipt of payment [Rule 4(a) of Point of Service of Taxation Rules, 2011].

4. Point of taxation in case of change of rate of service tax, if service was provided after change of rate

If there is change in rate of service tax and service is provided after that, the point of taxation will be as follows – (i) If invoice is issued prior to change of tax rate *but* payment is received after change of rate, point of taxation will be date of payment (ii) If invoice was issued earlier and payment was also received before change of rate, point of taxation shall be date of issuing of invoice or date of receipt of payment, whichever is earlier (iii) If invoice was raised after charge of rate but payment was received before the date of change of rate, point of taxation will be date of issuing an invoice [Rule 4(b) of Point of Service of Taxation Rules, 2011] [point (iii) seems rather unfair]

5. Payment of service tax in case of new services

In case of new services, tax is not payable if invoice issued and payment is received before such service became taxable. Similarly, even if invoice is issued after the imposition of service tax, tax will not be payable if invoice is issued within 14 days from provision of service, as provided in rule 4A of Service Tax Rules i.e. within 14 days from provision of service [Rule 5 of Point of Service of Taxation Rules, 2011]

6. Point of taxation in case of continuous supply of service

'Continuous supply of service' means any service provided or to be provided for a period exceeding three months [Rule 2(c) of Point of Service of Taxation Rules, 2011]. [e.g. telephone, insurance, construction, rent].

In case of such services, if periodical payment is to be made as per contract, each service will be treated as a service separately provided on the date on which service receiver is liable to make payment as per contract [Rule 6(1) of Point of Service of Taxation Rules, 2011]

If person providing the service issues an invoice or receives payment before the due date specified as per the contract, the service shall be deemed to have been provided at the time of issue of invoice or receipt of payment, whichever is earlier, only to the extent covered by the invoice or payment made [Rule 6(2) of Point of Service of Taxation Rules, 2011]

If the service receiver pays advance towards service, point of taxation will be date of receipt of advance [*Explanation* 1 to Rule 6(2) of Point of Service of Taxation Rules, 2011]

Import of continuous service - In case of import of such continuous service, point of taxation shall be date on which invoice is received or payment is made, whichever is earlier. [*Explanation* 2 to Rule 6(2) of Point of Service of Taxation Rules, 2011]

7. Point of taxation in case of associated enterprises

In case of associated enterprises, point of taxation shall be (a) date on which payment has been made or (b) date on which invoice has been issued or (c) date of debit or credit in books of account of the person liable to pay service tax, *whichever is earlier* [Rule 7 of Point of Service of Taxation Rules, 2011].

8. Point of taxation in case of IPR services

In respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount is not ascertainable at the time of provision of service, service shall be deemed to have been provided each time payment in respect of such service is received or invoice is issued by service provider, whichever is earlier [Rule 8 of Point of Service of Taxation Rules, 2011].

9 Point of Taxation Rules, 2011 – at a glance

S No.	Scenario	Rule ref.	First Event	Subsequent Events	Point of Taxation
1a.	Existing Service with no change in rate of tax	3	Service Provided or to be provided	Issue of Invoice & Receipt of Payment	Date of when service is provided or to be provided
			Issue of Invoice	Service Provided &Receipt of Payment	Date of Issue of Invoice

			Receipt of Payment	Service Provided & Issue of Invoice	Date of Receipt of Advance
1b.	**Import of Service**	Expl. 2 to rule 3			Date of payment or issue of Invoice, whichever is earlier
2a.	**Change of rate of tax - Service provided prior to change of rate**	4(a)(i)	Issue of Invoice & Receipt of Payment		Date of payment or issue of Invoice, whichever is earlier
		4(a)(ii)	Invoice raised prior to change of rate	Amount received subsequent to change of rate	Date of issue of Invoice
		4(a)(iii)	Amount received prior to change of rate	Invoice raised subsequent to change of rate	Date of payment
2b.	**Change of rate of tax - Service provided after the change of rate**	4(b)(i)	Invoice raised prior to change of rate	Amount received subsequent to change of rate	Date of payment
		4(b)(ii)	Invoice raised prior to change of rate	Amount received prior to change of rate	Date of payment or issue of Invoice, whichever is earlier
		4(b)(iii)	Amount received prior to change of rate	Invoice raised subsequent to change of rate	Date of issue of Invoice
3a.	**New services being taxed for the first time**	5(a)	Invoice raised prior to levy of new tax	Payment received against such invoice prior to levy of new tax	No tax shall be payable

		5(b)	Payment received prior to levy of new tax	invoice has been issued within the period referred to in rule 4A of the Service Tax Rules, 1994 (i.e. within 14 days)	No tax shall be payable
4.	**Continuous supply of service**	6(1)	If date of periodic payment is specifically provided.		Such specified date
		6(2)	Invoice is raised or Payment received with respect to such service		Date of payment or issue of Invoice, whichever is earlier
5.	**Case of associated enterprises**	7			Receipt of Payment or issue of Invoice (under rule 4A) or the date of debit or credit in books of accounts of the person liable to pay service tax, whichever is earlier.
6.	**IPR Services**	8			Each receipt of Payment in respect of such use or the benefit, or issue of Invoice, whichever is earlier.