Very Important Changes in Service Tax Rules

- Notification No. 3/2011 dt. 1-3-2011 has made following changes in Service tax Rules

Existing Provision of Service Tax Rules (STR)	**Proposed Amendments in ST Rules**
Payment of service tax 6. (1) The service tax shall be paid to the credit of the Central Government,— (*i*) by the 6th day of the month, if the duty is deposited electronically through internet banking; and (*ii*) by the 5th day of the month, in any other case, immediately following the calendar month in which the **payments are received, towards the value of taxable services** Provided that where the assessee is an individual or proprietary firm or partnership firm, the service tax shall be paid to the credit of the Central Government by the 6th day of the month if the duty is deposited electronically through internet banking, or, in any other case, the 5th day of the month, as the case may be, immediately following the quarter in which the **payments are received, towards the value of taxable services**. Provided also that the service tax on the **value *of taxable services received*** during the month of March, or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by the 31st day of March of the calendar year.	Payment of service tax 6. (1) The service tax shall be paid to the credit of the Central Government,— (*i*) by the 6th day of the month, if the duty is deposited electronically through internet banking; and *ii*) by the 5th day of the month, in any other case, immediately following the calendar month in which **the *service is deemed to be provided as per the rules framed in this regard*** Provided that where the assessee is an individual or proprietary firm or partnership firm, the service tax shall be paid to the credit of the Central Government by the 6th day of the month if the duty is deposited electronically through internet banking, or, in any other case, the 5th day of the month, as the case may be, immediately following the quarter in which the **service is deemed to be provided as per the rules framed in this regard.** Provided also that the service tax on the **services deemed to be provided** in the month of March, or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by the 31st day of March of the calendar year.

- Notification No. 18/2011 dt. 1-3-2011 has introduced New Service Tax "Point of Taxation Rules, 2011" has been introduced w.e.f 01.04.2011.

Instead of current taxable event "only on receipt basis", this rules have identified three events that will identify taxable event for any transaction.

a) Provision of Service
b) Issue of Invoice
c) Receipt of Payment

Glossary that will be used
PoT = Point of taxation
CSoS = Continuous Supply of Service
Highlighted ones are summary ones

List of New Rules Applicable

Rule 3 Determination of point of taxation

For the purposes of these rules, unless otherwise stated, 'point of taxation' shall be determined in the following manner, namely:-
(a) a provision of service shall be treated as having taken place at the time when service is provided or to be provided; and
(b) if, before the time specified in clause (a), the person providing the service issues an invoice or receives a payment, the service shall, to the extent covered by the invoice or the payment made thereof, be deemed to have been provided at the time the invoice was issued or the payment was received, as the case may be, whichever is earlier.
Explanation. – For the purposes of this rule, 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.
Explanation 2. – For the purposes of this rule, in respect of services taxable under section 66A of the Act, the point of taxation under clause (b) shall be the date on which the invoice is received, or the payment is made, as the case may be, whichever is earlier.

In short, this can be summarized as below

	Event	**Taxable at the point of**
1	Services is provided	Provision of service
2	Point of time when the service ***should have been*** provided	time when service should have been provided
3	Issue of Invoice ***before*** provision of service	Issue of invoice
4	Receipt of payment ***before*** provision of service	Receipt of payment
5	Issue of invoice ***before*** the time agreed upon for provision of service	Issue of invoice
6	Receipt of payment ***before*** the time agreed upon for provision of service	Receipt of payment

Rule 4 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 manner, namely:–

(a) *in case a taxable service has been provided before the change of rate,–*
*(*i*) where the invoice for the same has been issued and the payment received after the change of rate, the point of taxation shall be date of payment or issuing of invoice, whichever is earlier; or*
*(*ii*) 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*
(iii*) 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;*

*(*b*) in case a taxable service has been provided after the change of rate,-*
*(*i*) 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*
*(*ii*) 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 the date of receipt of payment or date of issuance of invoice, whichever is earlier; or*
*(*iii*) 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.*

In short, this can be summarized as below

Situations	**Provision of Service**	**Issue of Invoice**	**Payment**	**Point of taxation**
1	Before Change in Rate	After Change of Rate	After Change of Rate	Date of issue of invoice or payment, whichever is earlier
2	Before Change in Rate	Before Change in Rate	After Change of Rate	Date of issue of invoice
3	Before Change in Rate	After Change of Rate	Before Change in Rate	Date of Payment
4	After Change in Rate	Before Change of Rate	After Change of Rate	Date of Payment
5	After Change in Rate	Before Change in Rate	Before Change of Rate	Date of receipt of Payment or issue of invoice whichever is earlier
6	After Change in Rate	After Change of Rate	Before Change in Rate	Date of Issue of Invoice

Rule 5 Payment of tax in cases of new services

Where a service, not being a service covered by rule 6, is taxed for the first time, then,–
(a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;
(b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within the period referred to in rule 4A of the Service Tax Rules, 1994.

This can be summarized as below

Issue of Invoice	**Payment**	**Point of Taxation**
Before – Introduction of New Service	Before – Introduction of New Service	No tax to the extent of invoice issued and payment received
Within the period provided in Rule 4A – 5(b) (issue of Invoice within 14 days from the date of providing service)	Before - Introduction of New Service	No tax payable

Rule 6 Determination of point of taxation in case of continuous supply of service

(1) In case of continuous supply of service, the whole or part of which is determined or payable periodically or from time to time, shall be treated as separately provided at the date on which the payment is liable to be made by the service receiver, if such date is specified in the contract.
(2) If, before the time specified in sub-rule (1), the person providing the service issues an invoice or receives a payment, the service shall, to the extent covered by the invoice or the payment made thereof, be deemed to have been provided at the time the invoice was issued or the payment was received, as the case may be, whichever is earlier.
Explanation. – For the purposes of this rule, 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.
Explanation 2. – For the purposes of this rule, in respect of services taxable under section 66A of the Act, the point of taxation under sub-rule (2) shall be the date on which the invoice is received, or the payment is made, as the case may be, whichever is earlier.

This can be summarized as below

The proposed rule essentially prescribes that the rate of tax will be the rate applicable on the date the payment becomes due as per the contract, or, if the payment is linked to completion of certain events (milestones), when those milestones are completed. If none of the above two conditions is specified in a long term contract, then the service provider is required to pay the service tax at the time of raising of invoice, or receipt of payment, whichever is earlier.

Thus, if there is a date of payment prescribed in the contract, the tax becomes due on that day irrespective of the fact if the payment has been received or not. In case, the date of payment is not prescribed in the contract, but payment is linked to achievement of milestones, then the tax becomes payable even if no payment has been received by the service provider. However, if no date of payment is prescribed in the contract, or if the payment is not linked to achievement of any milestones, then the tax would be payable whenever the service provider issues an invoice, or receives a payment (whichever is earlier).

Rule 7 Determination of point of taxation in case of associated enterprises

The point of taxation in respect of associated enterprises shall be the date on which the payment has been made, or invoice under rule 4A of the Service Tax Rules, 1994 has been issued, or the date of debit or credit in books of account of the person liable to pay service tax, whichever is earlier.

This can be summarized as below

Levy of service tax earliest of following:

1. Date of payment or
2. Date of debit or credit entry or
3. Date of issue of debit or credit note

Rule 8 Determination of point of taxation in case of copyrights, etc.

In respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration, the service shall be treated as having been provided each time when a payment in respect of such use or the benefit is received by the provider in respect thereof, or an invoice is issued by the provider, whichever is earlier.

This can be summarized as below

A typical nature of such service is that at the time of entering into the contract value of service is not ascertainable. Secondly, value of service gets determined by the act of a person who is not SP. For such cases, two events have been provided for as follow:

a) Payment in respect of IPR
b) Issue of invoice by the service provider