TAXATION OF SERVICES RECEIVED FROM OUTSIDE TAXABLE TERRITORY

1. ***What is the statutory provision regarding taxation of services received from outside Taxable Territory?***

   Earlier it was provided in section 66A of Chapter V of finance Act 1994 that if service is received from outside India, the service recipient shall be liable to pay service tax However after recent amendment w.e.f 01.07.12, the new charging section, section 66B, enables taxation of such services as are provided in taxable territory and whether the services are provided in taxable territory will be decided with the on the basis of "Place of Provision of Services Rules, 2012"

2. ***What is Taxable territory?***

   Taxable territory has been defined in sub-section 52 of section 65B. It means the territory to which the provisions of Chapter V of the Finance Act, 1994 apply i.e. whole of India excluding the state of Jammu and Kashmir. "Non-taxable territory" is defined in sub-section 35 ibid accordingly as the territory other than the taxable territory.

3. ***What is the place of provision under normal situation?***

   Rule 3 of Place of Provision of Services Rules, 2012shall apply in normal situation which states that the place of provision of a service shall be the location of the recipient of service. Provided that in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

4. ***What is performance based services and what is the Place of Provision in case of performance based services?***

   As per Place of Provision Rules, Performance based service is divided in two types –One which requires the goods to be physically present by service provider to service recipient. The other which require the service receiver and service provider to be physically present at the time of provision of service.

   (i) In case of services provided in respect of goods that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service:
   The place of provision of following services will be the location where the services are actually performed,

   However, when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service:

In the case of a service provided in respect of goods that are temporarily imported into India for repairs, reconditioning or reengineering for re-export, subject to conditions as may be specified in this regard, This sub rule shall not apply.

(ii) In case of services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for the provision of the service

The place of provision of following services will be the location where the services are actually performed. ***[Rule 4 of Place of Provision Rules 2012]***

5. ***What are the services included in services related to immovable property? What is the Place of provision of services relating to immovable property?***

The services provided directly in relation to an immovable property, includes services provided in this regard by experts and estate agents, provision of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever, name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including architects or interior decorator.

The place of provision in case of all such services shall be the place where the immovable property is located or intended to be located. ***[Rule 5 of Place of Provision Rules 2012]***

6. ***What is "immovable property"?***

"Immovable Property" has not been defined in the Finance Act, 1994. However, in terms of section 4 of the General Clauses Act, 1897, the definition of immovable property provided in sub-section 3(26) of the General Clauses Act will apply, which states as under:

"Immovable Property' shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth."

It may be noted that the definition is inclusive and thus properties such as buildings and fixed structures on land would be covered by the definition of immovable property. The property must be attached to some part of earth even if underwater.

7. ***What is the Place of provision of services relating to events?***

The place of provision of services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission shall be the place where the event is actually held. ***[Rule 6 of Place of Provision Rules 2012]***

8. ***What is a service ancillary organization or admission to an event?***

Provision of sound engineering for an artistic event is a prerequisite for staging of that event and should be regarded as a service ancillary to its organization. A service of hiring a specific equipment to enjoy the event at the venue (against a charge that is not included in the price of entry ticket) is an example of a service that is ancillary to admission.

9. ***What are event-related services that would be treated as not ancillary to admission to an event?***

This could be explained with the help of an example. For e.g, a service of courier agency used for distribution of entry tickets for an event is a service that is not ancillary to admission to the event.

10. ***What is the Place of provision of services provided at more than one location?***

Where any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided. ***[Rule 7 of Place of Provision Rules 2012]***

11. ***What will be the Place of provision of services where provider and recipient are located in taxable territory?***

Place of provision of a service, where the location of the provider of service as well as that of the recipient of service is in the taxable territory, shall be the location of the recipient of service. ***[Rule 8 of Place of Provision Rules 2012]***

12. ***What are Specified services and what will be Place of provision in case of specified services?***

Following services are the specified services:-

(a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(b) Online information and database access or retrieval services;

(c) Intermediary services;

(d) Service consisting of hiring of means of transport upto a period of one month.

The place of provision in case of all the above specified services shall be the location of the service provider. ***[Rule 9 of Place of Provision Rules 2012]***

13. ***What will be the place of provision of goods transportation services?***

The place of provision of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of the goods:

Provided that the place of provision of services of goods transport agency shall be the location of the person liable to pay tax. ***[Rule 10 of Place of Provision Rules 2012]***

14. ***What will be the place of provision of passenger transportation service?***

The place of provision in respect of a passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey. ***[Rule 11 of Place of Provision Rules 2012]***

15. What will be the place of provision of services provided on board a conveyance?

Place of provision in case of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey. ***[Rule 12 of Place of Provision Rules 2012]***

16. Whether Central Government has the power to notify description of services or circumstances for certain purposes?

Application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service. ***[Rule 13 of Place of Provision Rules 2012]***

17. How will one determine place of provision of service if two or more rules are applicable in case of a service?

*In order to prevent double taxation or non-taxation of the provision of a service, or for the uniform Not withstanding anything stated in any rule, where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration.****[Rule 14 of Place of Provision Rules 2012]***

18. What is the meaning of "business establishment" for purpose of these rules?

'Business establishment' is the place where the essential decisions concerning the general management of the business are adopted, and where the functions of its central administration are carried out. This could be the head office, or a factory, or a workshop, or shop/retail outlet. Most significantly, there is only one business establishment that a service provider or receiver can have.

19. What is the meaning of a "fixed establishment" for purpose of these rules?

A "fixed establishment" is a place(other than the business establishment) which is characterized by a sufficient degree of permanence and suitable structure in terms of human and technical resources to provide the services that are to be supplied by it, or to enable it to receive and use the services supplied to it for its own needs.

20. What does "usual place of residence" mean for purpose of these rules??

The usual place of residence, in case of a body corporate, has been specified as the place where it is incorporated or otherwise legally constituted.

The usual place of residence of an individual is the place (country, state etc) where the individual spends most of his time for the period in question. It is likely to be the place where the individual has set up his home, or where he lives with his family or is in full time employment. Individuals are not treated as belonging in a country if they are short term, transitory visitors (for example if they are visiting as tourists, or to receive medical treatment or for a short term language/other course). An individual cannot have more than one place of usual residence.

21. Who is liable to pay in case of Service received from outside taxable territory?

As per Rule 2(1)(d) in relation to any taxable service provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory, the recipient of such service shall be liable to pay service tax.

22. What will be the point of taxation in case of Service received from outside taxable territory?

As per Rule 7 Point of Taxation Rules 2011 ," Notwithstanding anything contained in these rules, the point of taxation in respect of the persons required to pay tax as recipients of service shall be the date on which payment is made:

Provided that, where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist:

Provided further that in case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier."