PLACE OF PROVISION OF SERVICE RULES, 2012

PRESENTATION BY CA VINOD KAUSHIK

CELL: +91-9953236278
Email : cavinodkumar67@gmail.com
www.servicetaxsolution.in

Place of Provision of Service Rules, 2012
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➢ Introduction of the 'Place of Provision of Service Rules, 2012

- The wordings of Charging section 66B are " A Service is taxable only when it is provided or agreed to be provided in the **taxable territory**".
- As per Section 65B(52) **taxable territory** means the territory to which the provisions of Chapter V of the Finance Act , 1994 apply.
- As per Section 64(1), Chapter V of the Finance Act , 1994 extends to the whole of India except the State of **Jammu and Kashmir.**
- The essence of indirect taxation is that a service should be taxed in the jurisdiction of its consumption. This principle is more or less universally applied.
- The 'Place of Provision of Services Rules, 2012' will replace the 'Export of Services, Rules, 2005' and 'Taxation of Services (Provided from outside India and received in India) Rules, 2006.

- **TAXABLE TERRITORY = INDIA (200 N.M INSIDE THE SEA) - JAMMU & KASHMIR**

All States and Union Territories

(Except Jammu & Kashmir)

Air Space above territory and territorial water

Territorial Waters & Seabed and Subsoil under lying it

Continental Shelf, EEZ & Other Maritime Zone

Installation, Structure & Vessels located in Continental Shelf or EEZ

(for extraction of mineral oil & natural gas)

Place of Provision of Service Rules, 2012

- **For whom POPS Rules, 2012 meant ?**

- **These rules are primarily meant for persons who deal in cross-border services.**
  (Export and Import of service)

- **Those who have operations with suppliers or customers in the state of Jammu and Kashmir .**

- **service providers operating within India from multiple locations, without having centralized registration**
  (Determining the precise taxable jurisdiction applicable to their operations)

- **The rules will be equally relevant for determining services that are wholly consumed within a SEZ, to avail the outright exemption.**

Place of Provision of Service Rules, 2012

- **Rule 6A -Export of services.**

- **The provision of any service provided or agreed to be provided shall be treated as export of service when-**
- **All the conditions are mandatory to satisfy given in Rule 6A :-**

- **(a) the provider of service is located in the taxable territory,**
- **(b) the recipient of service is located outside India,**
- **(c) the service is not a service specified in section 66D of the Act,**
- **(d) the place of provision of the service is outside India,**
- **(e) the payment for such service has been received by the provider of service in convertible foreign exchange, and**
- **(f) the provider of service and recipient of service are not merely establishments of a distinct person (Foreign Branch)**

Place of Provision of Service Rules, 2012

- **Rule 14- Order of application of Rules ?**

- 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

- **Illustration :**

- An architect based in Mumbai provides his service to an Indian Hotel Chain (which has business establishment in New Delhi) for its newly acquired property in Dubai.

- Place of Provision in terms of Rule 5 : Place where Immovable property is situated

- Place of Provision in terms of Rules 8 : Location of the Service Recipient, since both are located in the Taxable territory

- **Conclusion:** As per Rule 14 , Rule 8 will apply and Place of provision will be New Delhi.

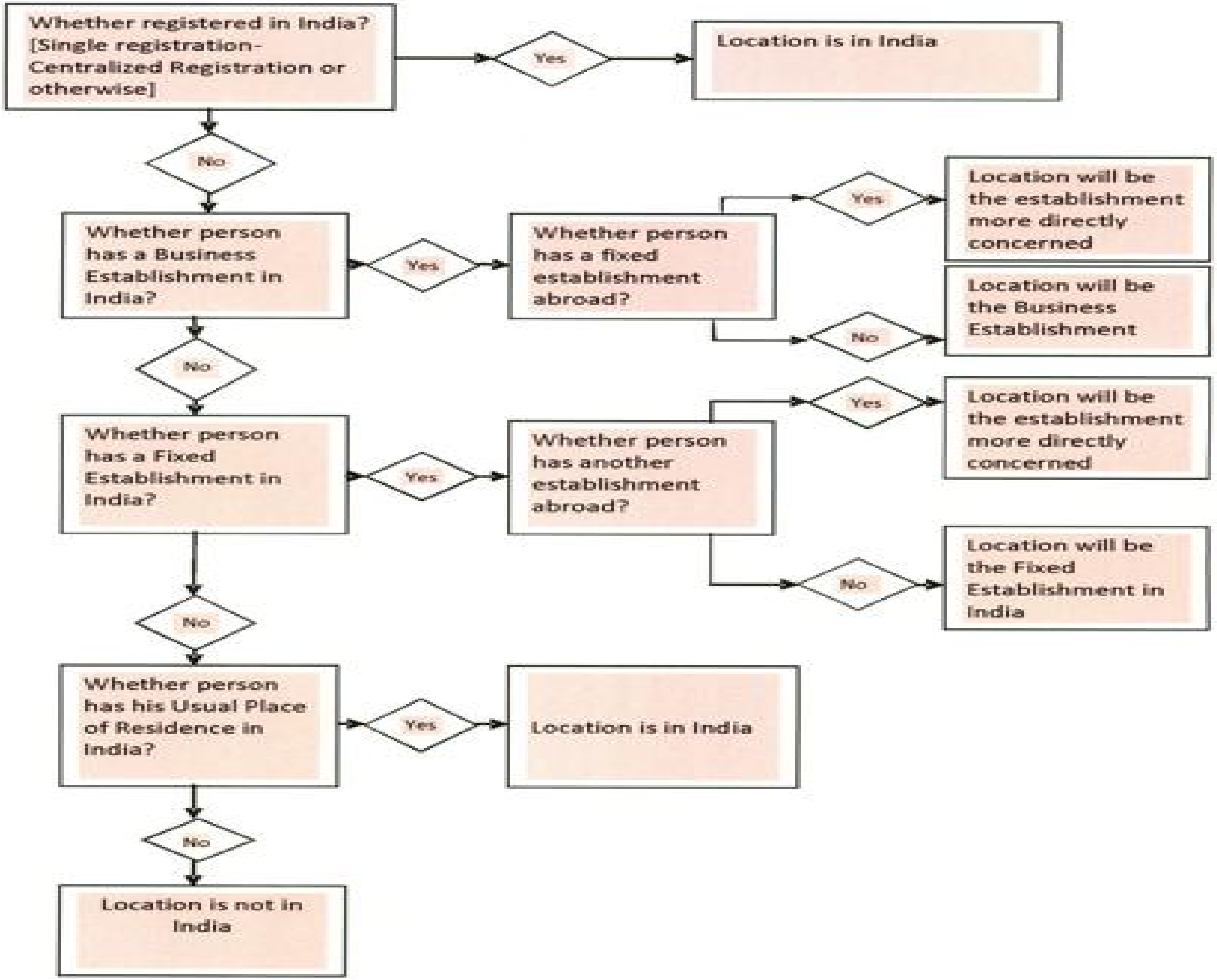
Place of Provision of Service Rules, 2012

- **Main Rule - Rule 3 - Location of the Receiver**
- The main rule or the default rule provides that a service shall be deemed to be provided where the receiver of service is located.
- The main rule is applied when none of the other later rules apply (Residuary Rule).

- **Location of Service Recipient Rule 2(i) of POPS Rules, 2012**

- **STEP-1: Where the service receiver has obtained registration, whether centralized or otherwise, the premises for which such registration**

- **STEP-2: where the service provider or receiver is not covered by Step-1:**
- Location of his business establishment; or
- Location of fixed establishment
- Where services are provided or received at more than one establishment, the establishment most directly concerned with the provision or use of the service; and
- In the absence of such places, the usual place of residence of the service provider or receiver.


Whether registered in India? [Single registration- Centralized Registration or otherwise]
Yes
Location is in India
No
Whether person has a Business Establishment in India?
Yes
Whether person has a fixed establishment abroad?
Yes
Location will be the establishment more directly concerned
No
Location will be the Business Establishment
No
Whether person has a Fixed Establishment in India?
Yes
Whether person has another establishment abroad?
Yes
Location will be the establishment more directly concerned
No
Location will be the Fixed Establishment in India
No
Whether person has his Usual Place of Residence in India?
Yes
Location is in India
No
Location is not in India

Place of Provision of Service Rules, 2012

Rule 3 Continued...

- 'Business establishment' is the place where the functions of its central administration are carried out like Head Office, Factory or Workshop.

- A "fixed establishment" is a place where sufficient degree of permanence and suitable structure in terms of human and technical resources are available to provide or receive the service.

- **Illustration:**
  - A company with a business establishment abroad buys a property in India which it leases to a tenant. The property by itself does not create a fixed establishment. If the company sets up an office in India to carry on its business by managing the property, this will create a fixed establishment in India.
- **Illustration:**
  - A company is incorporated in India, but provides its services entirely from Singapore. The location of this service provider is Singapore, being the place where the establishment most directly concerned with the supply is located.

Place of Provision of Service Rules, 2012

- **Rule 4 - Performance based Services (Ist part)**
- This Rule is applicable where the services that are provided "in respect of goods that are made physically available, by the receiver to the service provider, in order to provide the service“ Rule 4 (a)

- The place of provision of following services shall be the location where the services are actually performed.

- The essential characteristic of a service to be covered under this rule is that the goods temporarily come into the physical possession or control of the service provider, and without this happening, the service cannot be rendered.

- **Examples of Services in Rule 4(a)**
- Repair, Reconditioning.
- Any other work on goods (not amounting to manufacture).
- Storage and Warehousing, Courier service.

Place of Provision of Service Rules, 2012

- **Rule 4 (b)**
- 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. Rule 4 (b)

- **Examples of Services :**
  - Cosmetic or plastic surgery clinic services
  - Beauty parlor services
  - Health and fitness centre, or internet café

- **Illustration :-**
  - A modelling agency contracts with a beauty parlour for beauty treatment of say, 20 models. Here again is a situation where the modelling agency is the receiver of the service, but the service is rendered to the models, who are receiving the beauty treatment service on behalf of the modelling agency

Place of Provision of Service Rules, 2012

- **Proviso to Rule 4(a)**
- **What is the implication of the proviso to sub-rule (1)?**
- "Provided further that where 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.“
- Provided further that this sub-rule shall not apply 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.

- **Illustration:**
- Maintenance of Computer Server located in the Mumbai from Japan through electronics means .

- **Conclusion :**
- As per Proviso to Rule 4 the Place of Provision would be the location of Server located in Mumbai .

Place of Provision of Service Rules, 2012

- **Rule 5- Location of Immovable Property**
- In the case of a service that is **'directly in relation to immovable property'**, the place of provision is where the immovable property (land or building) is located.
- Location where the provider or receiver is located is not material as per this Rule .

- **Examples of Such Services :-**
- Maintenance, Construction.
- Engineering, Architectural services, Surveying and Sub-dividing, Management services, Security services.
- Real estate services in relation to the actual or proposed acquisition.
- Lease or rental of property.
- Legal services rendered to the owner or beneficiary or potential owner or beneficiary of property as a result of a will or testament.

Place of Provision of Service Rules, 2012

- **Rule 6- Services relating to Events**
- Place of provision of services relating to events shall be the place where the event is held.

- **Services provided by way of admission to, or organization of :-**
- Cultural, artistic, sporting, scientific, educational, entertainment event.
- A celebration, conference, fair, exhibition.
- Any other similar event and of services ancillary to such admission.

- **Illustration :**
- A management school located in USA intends to organize a road show in Mumbai and New Delhi for prospective students. Any service provided by an event manager, or the right to entry (participation fee for prospective students, say) will be taxable in India.

- **Illustration :**
- An Indian fashion design firm hosts a show at Toronto, Canada. The firm receives the services of a Canadian event organizer. The place of provision of this service is the location of the event, which is outside the taxable territory. Any service provided in relation to this event, including the right to entry, will be non-taxable.

Place of Provision of Service Rules, 2012

- **Rule 7- Part performance of a service at different locations**
- "Where any service stated in **Rule 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".

- **Dangerous Implication :**
- Even part of the services to which rule 4 to 6 apply is rendered in taxable territory and major part is rendered outside India , as per this rule entire service shall be deemed to be rendered in India.

- **Illustration :**
- Say 5 % of the Services are performed in respect of a property located in the Mumbai and 95% of the Services are rendered for the property located in Dubai , hence as per Rule 7 Service tax is payable on entire 100 % amount in India .

Place of Provision of Service Rules, 2012

- **Rule 8- Services where the Provider as well as Receiver is located in Taxable Territory**
- The implication of this Rule is that in all such cases, the place of provision will be deemed to be in the taxable territory, notwithstanding the earlier rules 4 to 6.

- **Illustration :**
- A helicopter of Pawan Hans Ltd. (India based) develops a technical snag in Nepal. Say, engineers are deputed by Hindustan Aeronautics Ltd., Bangalore, to undertake repairs at the site in Nepal. But for this rule, Rule 4, sub-rule (1) would apply in this case, and the place of provision would be Nepal i.e. outside the taxable territory.

- **Conclusion :**
- Since the service provider, as well as the receiver, are located in the taxable territory, the place of provision of this service will be within the taxable territory.

Place of Provision of Service Rules, 2012

- **Rule 9- Specified services- Place of provision is location of the service provider**.

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

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

  (iii) Intermediary services;

  (iv) Service consisting of hiring of means of transport, up to a period of one month

- **"Account"** has been defined in the rules to mean an account which bears an interest to the depositor.

- **Examples of services that are provided to an "account holder", in the ordinary course of business:-**

- (i) services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc;
- (ii) transfer of money including telegraphic transfer, mail transfer, electronic transfer etc.

Place of Provision of Service Rules, 2012

Rule 9 Continued…

- **"Online information and database access or retrieval services"**
  - Web-based services providing trade statistics,
  - Legal and financial data, matrimonial services
  - Social networking sites;
  - Download of digital content
- **"Intermediary Services"**
  - "Intermediary" is a person who **arranges or facilitates**
  - Supply of goods, or a provision of service, or both,
  - Between two persons,
  - Without material alteration or further processing.
- For the purpose of this rule, an intermediary in respect of goods is excluded by definition (A buying or selling agent, or a stockbroker)

Place of Provision of Service Rules, 2012

- **What is the service of "hiring of means of transport"?**
- The services of providing a hire or lease, without the transfer of right to use :-
- (i) Land vehicles such as motorcars, buses, trucks;
- (ii) Vessels;
- (iii) Aircraft;
- (iv) Vehicles designed specifically for the transport of sick or injured persons;
- (v) Mechanically or electronically propelled invalid carriages;
- (vi) Trailers, semi-trailers and railway wagons.

- **Rule 10- Place of Provision of a service of transportation of goods**
- Any service of transportation of goods,
- By any mode of transport (air, vessel, rail or by a goods transportation agency)
- Transportation of goods by courier or mail is not covered here.

Place of Provision of Service Rules, 2012

- **Rule 10 Continued…**
- Place of provision of a service of transportation of goods is the place of destination of goods.
- In case of GTA Place of provision is the location of the person liable to pay tax

- **Illustration :**
- A GTA ABC located in Delhi transport bikes from the factory of XYZ in Haryana, to the premises of a dealer in Jammu (non-taxable territory). As per agreed terms between ABC and XYZ , the dealer in Jammu is the person liable to pay freight.

- **Conclusion :**
- Since the person liable to pay freight is located in non-taxable territory, the person liable to pay tax will be ABC. Accordingly, the place of provision of the service of transportation of goods will be the location of ABC i.e. Delhi, in terms of amended provisions of rule 2(1)(d).

Place of Provision of Service Rules, 2012

- **Rule 11- Passenger Transportation Services**
- The place of provision of a passenger transportation service is the place where the passenger embarks on the conveyance for a continuous journey.

- **Rule 12- Services provided on board conveyances**
- The place of provision of services provided on board a conveyance during the course of a passenger transport operation is the first scheduled point of departure of that conveyance for the journey.
- Movies/software games on demand, beauty treatment etc.

- Although only when provided against a specific charge, and not supplied as part of the fare.