

Place of Provision of Service Rule, 2012

The Rules would have applicability in the following instances.

- Person who deals in cross border services.
- Person who have operations with suppliers or customers in the state of Jammu and Kashmir.
- Service provider operating within India from multiple location , without having centralized registration , will find them useful in determining the precise taxable jurisdiction applicable to their operations.
- Determines weather services are wholly consumed in SEZ to avail the outright exemption.

1.Basic provision and concept



Summary of the Rules

Details	Place of Provision	Rule
General rule for place of provision	Location of the recipient of service	Rule -3
Performance based services for goods and physical presence of individual	Location where the services are actually performed	Rule-4
Service relating to immovable property	Place where immovable property is located or intended to be located	Rule-5
Service relating to events	Where the vent is actually held	Rule- 6
Service providing at more than one location	Location the taxable territory where greatest proportion of the service is provided	Rule- 7
Provider and receiver are located in the taxable territory	Location of the recipient of the service	Rule- 8
Specified services	Location of the service provider	Rule- 9
Goods transport services otherwise than by way of mail or courier	Pace of destination of the goods	Rule-10
Goods transport agency	Location of person liable to pay tax	Rule-10

Passenger transportation services	Place where the passenger embarks on the conveyance for a continuous journey	Rule-11
Service provided on board a conveyance during the course of passenger transport operation	First schedule point of departure of that conveyance for the journey	Rule -12

Location of recipient of services – Rule 3



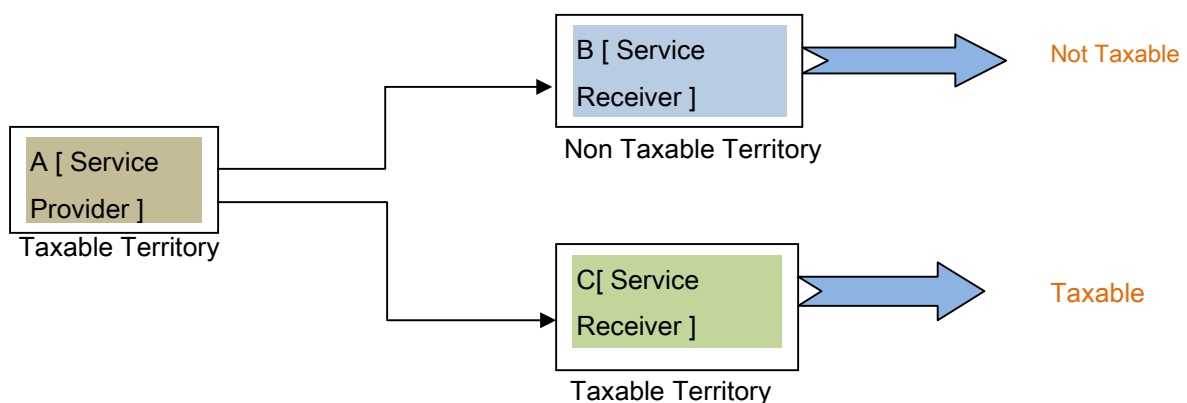
Rule 3 is the main rule or the default rule and will be applicable when none of the specific rule applies.

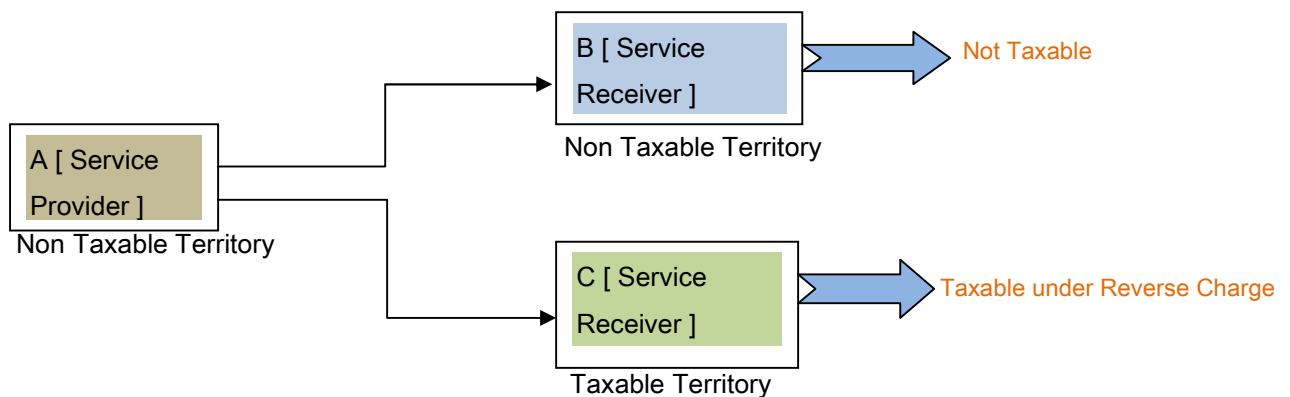
Provided that in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of services.

Place of provision generally the – place of provision of service shall be the location of service recipient of service.

Where the service is provided in the taxable territory means that recipient of service is located in the taxable territory then the service tax will be payable. However if the recipient of service is located outside the taxable territory, no service tax will be payable on the said service

Case – 1 [Service provider in Taxable Territory]



Case – 2 [Service provider in Non Taxable Territory]**Performance based Services – Rule 4**

Place of provision of services in the following cases shall be the location where the services are performed.

A] service provided in respect of goods that is made available by receiver to provider of services in order to provide service. If the service are provided by electronic means from remote location where the goods are situated at the time of provision of service. Provided further that this rule shall not be applied , if goods are temporarily imported into India for repair, recondition or re-engineering for a re-export.

B] Service provided to an individual which requires the physical presence of receiver with the provider for provision of services.

Rule 4(a)

Services in respect of goods provided by recipient of service.

Illustration : if Indian company deutes its employees to repair goods in UK the POP shall be UK i.e. outside taxable territory.

Technical testing/ inspection/certification/analysis of goods, dry cleaning.

Services from remote location

Illustration : Repair of Software ; IT firm located in New Delhi provide services to Firm in UK . in this case POP shall be UK.

Rule 4(b)

This rule will apply where place of provision of service are provided entirely or predominantly in the presence of service receiver will be the place of actual performance of those services. The following service will fall under this rule

- ✚ Costmetic or plastic surgery
- ✚ Beauty treatment services
- ✚ Personal security services
- ✚ Health and fitness services
- ✚ Photography services
- ✚ Internet café services
- ✚ Classroom teaching

Immovable Property related Services – Rule 5



Service those are directly related to immovable property is the location of the immovable property. i.e. land or building. The services may include lease or right of use, occupation or exploitation of immovable property. IP has not been defined in the Act, reference may be made to General Clauses Act, 1987.

Some of the illustration of services falls under this rules are as follows , if these are provided in relation to land and building:

- ✚ Maintenance or repair of immovable property including painting and decorating.
- ✚ Property management services such as rent collection, arranging repair and maintenance of financial accounts.
- ✚ Supply of hotel accommodation or warehouse space.
- ✚ Service by air-conditioned restaurants.
- ✚ Mandap keeper services

- ✚ Commercial or industrial construction
- ✚ Works contract service
- ✚ Civil engineering work ,
- ✚ Architectural services
- ✚ General insurance services
- ✚ Security services
- ✚ Services of auctioneer
- ✚ Legal services to owner
- ✚ Agent who arranges finance of the property

Some of the example of services does not fall under this rule;

- ✚ Repair and maintenance of machinery
- ✚ Advise or information relating to land prices or property because they do not relate to specific sites
- ✚ Land or real estate feasibility study since it does not relate to specific property

Services relating to events – Rule 6



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 any other similar events, and of services ancillary to such admission, shall be the place where the event is actually held.

For example , an UK company wants to organize event in Delhi for enhancement of communication skill will be taxable service.

Any Indian fashion designing firm host a show in London. The Firm receive the services of foreign company[event organizer] . POP of this service is the location which is outside taxable territory . Any services provided to this event , including the right to entry will be non taxable.

Illustrative list of services under this rule ;

- ✚ Convention services
- ✚ Conference

-  Event management services
-  Business exhibition services
-  Fairs, seminars and workshops
-  weddings
-  sport and cultural events.

Part performance at different location – Rule 7



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

Illustration

Indian Firm provide 'Technical inspection and certification service' of Sport cars develop by Overseas Firm. Which has to meet emission norms at different Indian states and countries. If the testing is conducted at Madhya Pradesh- 20% , Orissa -25% and international location UAE - 55% then notwithstanding the fact that the greatest proportion of service is outside the taxable territory, the POP will be place in the taxable territory where the greatest portion of service is provided. In this case shall be 'Orissa' .

Both receipt and provider in taxable category – Rule 8



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

Illustration ;

Aircraft of Air India , Indian company develop technical snag in UK and Mumbai based company send engineers to repair the craft in UK. In the absence of Rule 8 , as per Rule 4[a] since the service has been provided in UK outside the taxable territory, it is not taxable. But since the provider and recipient of service both are located in taxable territory, POP shall be Mumbai.

In a situation where both the provider and receiver of services are in UK and service is provided in Delhi. In such situation as per Rule 8, POP shall be UK, hence not taxable .

Specified services – Rule 9



The place of provision of following services shall be the location of the service provider:-

- (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, up to a period of one month.

‘Banking Company’ means a banking company as defined in section 5 of the Banking Regulation Act, 1949.

Financial Institution Means as defined in clause C of Section 45[I] of the Reserve Bank of India Act , 1934.

Such services should be provided to account holder.

Instances of Rule 9 (b) services;

-  Online information generated automatically from the software from specific data input by the customer, such as web based services providing legal and financial data, matrimonial services, social networking sites.
-  Web based services providing access or download of digital contents.

Following services will not be treated as ‘online information and database access or retrieval services’

-  Sale or purchase of goods , article etc. over the internet
-  Telecommunication services provided over the internet
-  Service rendered over the internet like Architectural drawings , management consultancy.
-  Repair of software, hardware through the internet from remote location.

Intermediary Services

Intermediary has been defined in the rules as a person who arranges or facilitates a supply of goods , or provision of services or both, between two persons without material alteration or further processing. Thus intermediary is involved with two supplies at one time;

-  The supply between principal and the third party ; and
-  The supply of his own services (agency services) to his principal , for which a fees or commission is charged.

For the purpose of this rule, an intermediary in respect of goods (commission agent i.e. a buying and selling agent) is excluded by the definition.

The following factor needs to be considered to determine the person as intermediary;

-  Nature and Value ; intermediary can not change the nature and value of the services.
-  Separation of value ; generally price charged from principal is called as commission.
-  Identity and title

Illustration of services ;

-  Travel agent
-  Commission agent
-  Tour operator
-  Recovery agent

Hiring of means of transport

The services of providing a hire or ease , without the transfer of right to use of any of the following will constitute a service consist of hiring f means of transport;

- ✚ Land vehicle such as motor cars, buses, trucks
- ✚ Vessels
- ✚ Aircraft
- ✚ Mechanically or electrically propelled invalid carriage
- ✚ Trailers , semi trailers and railway wagons.

The following are not means of transport;

- ✚ Racing cars
- ✚ Containers used to store goods while being transported
- ✚ Dredgers or the like

This rule cover a situation where the hiring is for a period of up to one month.

Transportation of Goods – Rule 10



Any service of transportation of goods by any mode of transport (Air, vessels, rail or by goods transport agency) is covered under the rule. However transport of goods by courier or mail has been excluded from Rule -10. Place of provision of service of transportation of goods is the place of destination of goods.

Goods transport Agency

In case service is provided by GTA for transportation of goods by road, POP is the location of the person liable to pay tax as determined in terms of Rule 2(1)(d) of Service Tax Rules, 1994.

The proviso to Rule-10 state as under;

“Provided that the place of provision of service of transport of goods by goods transport agency shall be the location of the person liable to pay tax”.

Rule 2(1)(d) of the Service Tax Rules,1994 provides that where the service is provided by GTA , the person liable to pay tax shall be person who makes the payment either himself or through agent. If such person located in Non taxable territory, then the person providing the service shall be liable to make the payment.

Transportation of passengers – Rule 11



‘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’.

A ‘Continuous journey’ means;

- ✚ Single ticket has been issued for the entire journey; or
- ✚ More than one ticket or invoice has been issued for journey , by one service provider or by agent on behalf of more than one service provider, at the same time and there is no stop over in the journey.

‘Stopover’ means where a passenger dis-embarks from the conveyance.

Service provided on board conveyance – Rule 12



‘Place of provision 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,

Illustration :

Movie, Music, Video , Software , games on demand, food, Beauty treatment etc.

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