

Point of Taxation

Question 1

Nikhil Ltd. provides Management Consultancy Services to its client Aggarwal Properties Ltd. for agreed consideration of ₹ 1,50,000. Aggarwal Properties Ltd. makes the payment on 25th April, 2012. However, the date of completion of service is 15th April, 2012. The relevant invoice for ₹ 1,50,000 is raised by Nikhil Ltd. as per following table:

CASE I	30 th April, 2012
CASE II	16 th May, 2012
CASE III	20 th April, 2012

Determine Point of Taxation in each of the above three cases.

Answer

As per Rule 3 of the Point of Taxation Rules, point of taxation would be determined as follows:-

1. Date of invoice or payment, whichever is earlier, if the invoice is issued within 30 days from the date of completion of service.
2. Date of completion of provision of service or payment, if the invoice is not issued within 30 days.

Point of Taxation in each of the above three cases will be as under:

CASE I-The point of taxation is date of payment [25th April,2012] as date of payment [25.04.2012] falls before date of issuance of invoice[30.04.2012] and invoice has been issued within 30 days of completion of service.[15.04.2012].

CASE II- The point of taxation is date of completion of service [15th April,2012] as date of completion of service [15.04.2012] falls before date of payment [25.04.2012] and invoice [16.05.2012] has not been issued within 30 days of completion of service [15.04.2012].

CASE III- The point of taxation is 20th April, 2012 as date of invoice [20.04.2012] falls before date of payment [25.04.2012] and invoice has been issued within 30 days of completion of service [15.04.2012].

Question 2

Briefly answer the following questions:-

- (a) Where a service provider maintains books of accounts on mercantile basis relating to taxable services provided by him, will service tax be payable on accrual basis?
- (b) A particular service has been brought into the service tax net with effect from 1.7.2012. Mr. Vignesh has provided this service on 20.6.2012 and issued the invoice on 2.07.2012, the payment for the same was received on 10.7.2012. Is service tax payable on the same?

Answer

- (a) Service tax is payable as per Point of Taxation Rules, 2011 and the method of accounting is irrelevant for making payment of service tax.
- (b) Payment of tax in cases of new services [Rule 5 of Point of Taxation Rules 2011] -

Where a service 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 14 days of the date when the service is taxed for the first time.**

The facts given in the question does not fall under any of the above two clauses. Hence service tax is payable on the same.

Question 3

Ajay Ltd. has agreed to render services to Mr. Guru. The following are the chronological events:

Particulars	₹
Contract for services entered into on 31.8.2012	
Advance received in September, 2012 towards all services	60,000
Total value of services, billed in February, 2013	2,10,000
Above includes non-taxable services of	70,000
Balance amount is received in March, 2013	

When does the liability to pay service tax arise and for what amount? Contract contains clear details of services; consideration and service tax are charged separately, as mutually agreed upon.

2.3 Service Tax & VAT

Answer

As per Rule 3 of point of taxation Rules, 2011,

The point of taxation shall be -

- (a) the time when the invoice for the service provided/ agreed to be provided is issued.

However, in case the invoice is not issued within 30 days of the completion of the provision of the service, the point of taxation shall be date of such completion.

- (b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

For the purpose 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.

Advance portion

Particulars	₹
Advance received towards all services in September, 2012	= 60,000
Amount billed for taxable services	= 2,10,000 – 70,000 = 1,40,000
Advance received towards taxable services	= $\left[60,000 \times \frac{1,40,000}{2,10,000} \right]$ = 40,000
Service tax @ 12% (since, service tax is charged separately)	= 40,000 x 12% = 4,800
Education cess @ 2%	= 96
Secondary and higher education cess @ 1%	= 48
Total service tax liability	= 4,944

In this case, the due date for payment of service tax will be 5th October, 2012.

Balance portion

Particulars	₹
Amount billed for taxable services	= ₹ 1,40,000
Advance received towards taxable services	= 40,000
Amount billed but not received towards taxable services	= ₹ (1,40,000-40,000)

Service tax @ 12%	= 1,00,000
	= 1,00,000 x 12%
	= 12,000
Education cess @ 2%	= 240
Secondary and higher education cess @ 1%	= 120
Total service tax liability	= <u>12,360</u>

In this case, the due date for payment of service tax will be 5th March, 2013.

Question 4

Determine the Point of Taxation in each of following independent cases in accordance with **Point of Taxation Rules, 2011**:

S. No.	Date of completion of service	Time[Date] of Invoice	Date on which payment received
1.	10.04.2012	05.05.2012	20.05.2012
2.	10.04.2012	05.05.2012	25.04.2012
3.	10.04.2012	05.05.2012	25.04.2012 (Part) and 20.05.2012 (remaining)
4.	10.04.2012	05.05.2012	06.04.2012(Part) and 09.04.2012 (remaining)
5.	10.04.2012	05.05.2012	06.04.2012(Part) and 01.05.2012 (remaining)
6.	10.04.2012	16.05.2012	20.05.2012
7.	10.04.2012	16.05.2012	05.04.2012(Part) and 14.05.2012 (remaining)

Answer

The provisions of Rule 3 of Point of Taxation Rules are given below in Tabular Format for easy recap:

Relevant Clause and Rule	Time of Issue of Invoice	Point of Taxation unless otherwise specified
Clause (a) of Rule 3	Within the time period specified in Rule 4A of the Service Tax Rules, 1994 i.e. thirty days (or forty five days for banks and financial institutions) from the date of completion of the service	Time of issuance of invoice

2.5 Service Tax & VAT

Relevant Clause and Rule	Time of Issue of Invoice	Point of Taxation unless otherwise specified
	According to substituted proviso to Rule 3(a) with effect from 01.04.2012 if invoice is Not issued within [i.e. After] thirty days (or forty five days for banks and financial institutions)from the date of completion of the service	Date of Completion of provision of service
Clause (b) of Rule 3	If, service provider receives any payment before time specified in clause (a) above i.e. before the issuance of invoice	Time [Date] of Payment to the extent it is received.

Note in respect of receipt of advance: According to Explanation appended to this Rule 3 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

Point of Taxation in each of above cases has been given in following table:

S. No.	Date of Completion of service	Time [Date] of Invoice, Bill or Challan as the case may be	Date on which payment received	Point of Taxation	Remarks
1.	10.04. 2012	5.05.2012	20.05.2012	5.05.2012	Invoice issued within 30 days and before receipt of payment.
2.	10.04.2012	5.05.2012	25.04.2012	25.04.2012	Invoice issued within 30 days but payment received before invoice.
3.	10.04. 2012	5.05.2012	Part payment on 25.04.2012 remaining on 20.05.2012	25.04.2012 for the part payment and 5.05.2012 for the remaining amount	Invoice issued within 30 days. Part payment received before invoice and remaining payment after invoice.
4.	10.04. 2012	5.05.2012	Part payment on 6.04.2012 and remaining	06.04.2012 and 09.04.2012 for	Invoice issued within 30 days. However, the

S. No.	Date of Completion of service	Time [Date] of Invoice, Bill or Challan as the case may be	Date on which payment received	Point of Taxation	Remarks
			on 09.04.2012	the respective amount	advance has been received in two installments before the date of completion of service. Thus, date of receipt of each such advance shall be treated as point of taxation.
5.	10.04. 2012	5.05.2012	Part payment on 06.04.2012 and remaining on 1.05.2012	06.04.2012 and 1.05.2012 for the respective amount	Invoice issued within 30 days. Part payment [in the form of advance] received before issue of invoice and remaining payment received before issuance of Invoice.
6.	10.04. 2012	16.05.2012	20.05.2012	10.04.2012	Invoice not issued within 30 days and payment received after completion of service. Thus. Point of Taxation is Date of completion of service.
7.	10.04. 2012	16.05.2012	Part payment on 05.04.2012 and remaining on 14.05.2012	05.04.2012 and 10.04.2012 for respective amounts	Invoice not issued within 30 days. Part payment received as advance before completion of service and remaining payment received after completion of

2.7 Service Tax & VAT

Question 5

A service becomes taxable with effect from **01.07.2012**. Determine in each of the following independent cases whether service tax is leviable in accordance with Point of Taxation Rules, 2011?

Case	Date of Issuance of Invoice	Date of receipt of payment
I	25.06.2012 for ₹1,00,000	26.06.2012 for ₹1,00,000
II	25.06.2012 for ₹1,00,000	26.06.2012 for ₹60,000
III	25.06.2012 for ₹60,000	26.06.2012 for ₹1,00,000
IV	24.06.2012 for 1,00,000	20.06.2012 for ₹1,00,000
V	03.07.2012 for ₹1,00,000	30.06.2012 for ₹1,00,000
VI	24.07.2012 for ₹1,00,000	20.06.2012 for ₹1,00,000

Answer

According to substituted Rule 5 of Point of Taxation Rules, 2011 with effect from 01.04.2012, where a service is taxed for the **first time**, then Point of Taxation will be determined in the following manner:

Relevant Rule of POT Rules, 2011	Time of Issue of Invoice	Time of receipt of payment	Position of Taxability
Rule 5(a)	Before the date such service becomes taxable for the first time	Before the date such service becomes taxable for the first time	Not-Taxable to the extent of issue of invoice and receipt of payment against such invoice.
Rule 5(b)	Issue of invoice within fourteen days of the date when the service is taxed for the first time.	Before the date such service becomes taxable for the first time	Not Taxable if the payment has been received before the service become taxable and invoice has been issued within fourteen days of the date when the service is taxed for the first time.

In the light of above provisions of Rule 5 of POT Rules, 2011 the position of taxability in each of cases given in the question will be as under:

Date of Issuance of Invoice	Date of receipt of payment	Position of Taxability		
25.06.2012 for ₹ 1,00,000	26.06.2012 for ₹ 1,00,000	Not-Taxable to the extent of issue of invoice and receipt of payment against such invoice before such service becomes taxable i.e. entire amount of ₹1,00,000 in this case.		
25.06.2012 for ₹ 1,00,000	26.06.2012 for ₹ 60,000	Not-taxable to the extent of ₹60,000 because against the invoice of ₹1,00,000 only part payment to the extent of ₹60,000 has been received before such service becomes taxable for the first time. In other words, ₹40,000 received after such service become taxable [i.e. after 01.07.2012] will be subject to service tax.		
25.06.2012 for ₹ 60,000	26.06.2012 for ₹ 1,00,000	Not-taxable to the extent of ₹ 60,000 because of Rule 5(a) of this Rule i.e. to the extent of issue of invoice and receipt of payment against such invoice before such service becomes taxable. The taxability of remaining ₹ 40,000/- will be determined in the following manner :		
		Time of Issuance of Invoice	Time of Receipt of Payment	Position of Taxability
		If invoice for ₹ 40,000 is issued within 14 days [i.e. latest by 14.07.2012 in the present case] from the date such service becomes taxable.	Before the date such service becomes taxable for the first time	Not Taxable because the situation will be squarely covered by Rule 5(a).
		If invoice for ₹ 40,000/- is not issued within 14 days [i.e. after 14.07.2012 in the present case] from the date such service becomes taxable.	Before the date such service becomes taxable for the first time	Taxable because neither the requirement of Rule 5(a) nor Rule 5(b) is met.
24.06.2012 for 1,00,000	20.06.2012 for ₹ 1,00,000	Not Taxable as the payment has been received before the service became taxable and invoice has also been issued before such service became taxable.		
03.07.2012 for	30.06.2012 for	No Tax shall be payable because payment has been		

2.9 Service Tax & VAT

Date of Issuance of Invoice	Date of receipt of payment	Position of Taxability
₹ 1,00,000	₹ 1,00,000	received before the service becomes taxable and invoice has been issued within 14 days of the date when the service is taxed for the first time.
24.07.2012 for ₹ 1,00,000	20.06.2012 for ₹ 1,00,000	Taxable because essential requirement of issue of invoice within 14 days of the date when service is taxed for the first time is not met.

Question 6

Kirti Ltd is the owner of a coal-mine in Bihar. It obtained a patent from the concerned competent authorities in relation of foregoing coal-mine in February, 2011. Further, the company has entered into an agreement with ABC Ltd in **April, 2011** for allowing the latter party to extract coals for the next three years. The consideration payable by ABC Ltd. for using the coal-mine has been fixed @ ₹1000 per tonne. The quantum of coal extracted by ABC Ltd and other relevant details are given in the following table:

Relevant Year	Relevant Output (in Tonnes]	Consideration for using the coal-mine @ ₹1000/- per tonne	Date of Issuance of Invoice	Date of Receipt of Payment
2011-12	2,000	20,00,000	05.07.2012	26.08.2012
2012-13	3,000	30,00,000	13.04.2013	03.04.2013
2013-14	4,000	40,00,000	11.04.2014	20.07.2014

Answer

It is pertinent to clarify here that in the present question, Kirti Ltd. is the service provider and ABC Ltd. is the service recipient. Since whole amount of the consideration for the provision of patent is not ascertainable at the time when service was performed and subsequently the use of these services by a person other than the provider gives right to any payment of consideration, both the conditions specified in Rule 8 of POT Rules, 2011 get satisfied. The Point of Taxation of Kirti Ltd. for the various Financial Years has been exhibited in the following table:

Point of Taxation For Various Financial Years As Per Rule 8

Earlier of the following two:

- Date of Issuance of Invoice;
- Date of receipt of payment.

It is worth highlighting that Point of Taxation is to be determined in the above manner **each time** on the occurrence of earlier of the above two events.

Point of Taxation	Reason/Remarks
05.07.2012	Date of Issuance of Invoice[05.07.2012] falls before Date of Payment[26.08.2012]
03.04.2013	Date of Payment [03.04.2013]precedes Date of Issuance of Invoice[13.04.2013]
11.04.2014	Date of Issuance of Invoice[11.04.2014]falls before Date of Payment[20.07.2014]

EXERCISES

1. The value of a taxable service is ₹ 10,000. Service tax payable on it is:
 - (a) ₹ 1236
 - (b) ₹ 1200
 - (c) ₹ 1030
 - (d) ₹ 1020
2. The charge of service tax is on the:
 - (a) service provided
 - (b) service provided or to be provided
 - (c) service to be provided
 - (d) none of the above

Answers

1.(a); 2.(b)