

Place of Provision of Services Rules, 2012

Question 1

Give summary of Place of Provision of Services Rules, 2012 in a tabular form.

Answer

Rule	Nature of Services Covered	Place of Provision
Rule 3	<u>Place of Provision generally</u> Services not Covered under any of the Rules specified below i.e. Rule 4 to Rule 12	Location of Service Recipient
	Services not Covered under any of the Rules specified below i.e. Rule 4 to Rule 12 and Location of the service receiver is not available in the ordinary course of business	Location of Service Provider
Rule 4	<u>Performance Based Services</u> 1. Services provided in relation to goods that are required to be made physically available. For instance: • Repair, Reconditioning or any other work on goods (not amounting to manufacture) • Storage and Warehousing • Courier Service • Cargo Handling Service • Technical Testing/ Inspection / Certification / Analysis of goods • Dry Cleaning etc. - Services provided from a remote location by way of electronic means - Services provided in respect of goods temporarily transported into India for repairs, reconditioning etc.	Location where services are performed Location where goods are situated at the time of provision of service. Rule shall not be applicable

2.2 Indirect Tax Laws

	2. Services which require physical presence of receiver or person acting on behalf of receiver. For Instance: • Cosmetic or Plastic Surgery • Beauty Treatment Services • Personal Security Services • Health and Fitness Services • Photography Service (to individuals) • Internet Café Service • Classroom Teaching etc.	Location where Services are performed
Rule 5	<u>Services relating to Immovable property</u> Services provided directly in relation to Immovable Property. For instance: • construction, reconstruction, alteration, demolition, repair or maintenance (including painting and decorating) of any building or civil engineering work; • Renting of immovable property • Services of real estate agents, auctioneers, architects, engineers and similar experts or professional people, relating to land, buildings or civil engineering works. This includes the management, survey or valuation of property by a solicitor, surveyor or loss adjuster. • Services connected with oil/gas/mineral exploration or exploitation relating to specific sites of land or the seabed. • Surveying (such as seismic, geological or geomagnetic) of land or seabed. • Legal services such as dealing with applications for planning permission. • Packages of property management services which may include rent collection, arranging repairs and the maintenance of financial accounts. • The supply of hotel accommodation by a hotel, inn, guest house, club or campsite or supply of warehouse space	Location where Immovable Property is located or intended to be located
Rule 6	<u>Services relating to events</u> Services provided by way of admission to, or	The place where the

	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. For Instance: - A management School located in USA intends to organize road show in Delhi. Mr. A, provides services in relation to such Road Show Place of Provision of Services of Mr. A:- New Delhi - An Indian Fashion Designing firm hosts a show at Toronto, Canada. The firm receives services of Canadian Event Manager. Place of Provision of Services of Canadian Event Manager :- Canada	event is held
Rule 7	<u>Services provided at more than one location</u> Service specified under aforesaid Rules i.e. Rule 4, 5 or 6 if provided at more than one location. For Instance: - An Indian firm provides a 'technical inspection and certification service' for a newly developed product of an overseas firm (say, for a newly launched motorbike which has to meet emission standards in different states or countries). Say, the testing is carried out in Maharashtra (20%), Kerala (25%), and an international location (say, Colombo 55%). Place of Provision: - Kerala notwithstanding the fact that the greatest proportion of a service rendered is outside the taxable territory. This Rule is, however, not intended to capture insignificant portion of a service rendered in any part of the taxable territory. For example - Mere issue of invoice, - Mere processing of purchase order - Mere recovery because above services are not by way of services actually performed on goods.	The location in the Taxable Territory where greatest proportion of service is provided.
Rule 8	<u>Service Provider and Service receiver located in taxable territory</u>	

2.4 Indirect Tax Laws

	This Rule covers situations where the place of provision of a service provided in the taxable territory may be determinable to be outside the taxable territory by applying one of earlier Rules i.e. Rule 4 to 6 but the Service Provider and Service Recipient are located in the taxable territory. For Instance: 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. Place of Provision: - Within the Taxable Territory. But for this Rule, Rule 4(1) would apply in this case and the place of provision would have been Nepal i.e. outside the taxable territory.	The location of Recipient of Services.
Rule 9	<u>Specified Services</u> Following Services are covered under this: (a) Services by a banking company, or a financial institution, or a non-banking financial company, to account holders. For instance: - Services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc. - Transfer of money including telegraphic transfer, mail transfer, electronic transfer etc. (b) Online information and database access or retrieval services. For instance: - Online information generated automatically by software from specific data input by the customer, such as web-based services providing trade statistics, legal and financial data, matrimonial services, social networking sites; - digitized content of books and other electronic publications, subscription of online newspapers and journals, online news, flight information and weather reports; - Web-based services providing access or download of digital content.	The location of Service Provider

	However, following services will not fall within the purview of these services: • Sale or purchase of goods, articles etc. over the internet. • Telecommunication services provided over the internet including fax, telephony, audio conferencing and videoconferencing. • A service which is rendered over the internet such as architectural drawing or management consultancy through e-mail. • Repair of software or of hardware, through the internet, from a remote location. • Internet backbone services and internet access services. (c) Intermediary services; (Note 1) (d) Service consisting of hiring of Means of Transport, up to a period of one month. Means of Transport include the following: • Land vehicles such as motor cars, buses, trucks. • Vessels. • Aircraft. • Vehicles designed specifically for the transport of sick or injured persons. • Mechanically or electronically propelled invalid carriages. • Trailers, semi-trailers and railway wagons. However, following are not 'Means of Transport: • Racing Cars • Containers used to store or carry goods while being transported. • Dredgers or the like. Note 1: Intermediaries include following: ➤ Travel Agent (any mode of travel) ➤ Tour Operator ➤ Commission agent for a service [an agent for buying or selling of goods is excluded] ➤ Recovery Agent	
--	--	--

2.6 Indirect Tax Laws

Rule 10	<u>Goods Transportation Services</u> 1) Services of transportation of goods, other than by way of mail or courier. For Instance: - If a consignment of cut flowers is consigned from Chennai to Amsterdam. Place of Provision:- Amsterdam - If a consignment of crystal ware is consigned from Paris to New Delhi. Place of Provision:- New Delhi	Place of destination of goods
	2) Services provided by Goods Transport Agency	Location of person liable to pay Tax.
Rule 11	Services in respect of <u>Passenger Transportation</u> Note 2: A “continuous journey” means a journey for which: - A single ticket has been issued for the entire journey; or - More than one ticket or invoice has been issued for the journey, by one service provider, or by an agent on behalf of more than one service providers, at the same time, and there is no scheduled stopover[a place where a passengers disembarks from the conveyance] in the journey.	Place where passenger embarks for Continuous Journey (Note 2)
Rule 12	<u>Services provided on board a conveyance</u> 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. For Instance: - A video game or a movie-on-demand is provided as on-board entertainment during the Kolkata-Delhi leg of a Bangkok-Kolkata-Delhi flight. Place of Provision :- Bangkok - A video game or a movie-on-demand is provided on a Delhi-Kolkata-Bangkok-Jakarta flight during the Bangkok-Jakarta leg Place of Provision :- Delhi	First scheduled point of departure of that conveyance for the journey
Rule 14	<u>Order of Application of Rules</u> Where the provision of a service is, prima facie,	In accordance with the rule that occurs

	determinable in terms of more than one rule. For Example: (i) 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. If Rule 5(Property Rule) were to be applied, the place of provision would be the location of the property i.e. Dubai (outside the taxable territory). With this result, the service would not be taxable in India. Whereas, by application of Rule 8, since both the provider and the receiver are located in taxable territory, the place of provision would be the location of the service receiver i.e. New Delhi. Consequently, service would be taxable in India. By application of Rule 14, the latter of the Rules i.e. Rule 8 would be applied to determine the place of provision. (ii) For the Ms Universe Contest planned to be held in South Africa, the Indian pageant (say located in Mumbai) avails the services of Indian beauticians, fashion designers, videographers and photographers. The service providers travel as part of the Indian pageant's entourage to South Africa. Some of these services are in the nature of personalized services, for which the place of provision would normally be the location where performed (Performance Rule-Rule 4), while for other, under the main Rule (Receiver location), the place of provision would be the location of receiver. Whereas, by application of Rule 8, since both the provider and the receiver are located in taxable territory, the place of provision would be the location of the service receiver i.e. New Delhi. Place of provision being in the taxable territory, the services would be taxable in India. By application of Rule 14, the latter of the Rules i.e. Rule 8 would be applied to determine the place of provision.	latter among the rules that merit equal consideration
--	--	--

Question 2

Determine the place of provision of services as well as their taxability in each of the following independent cases:

- (i) Mr. A, the owner of an immovable Property located in New Delhi gives on Rent the said property to Mr. B of U.P. for Commercial Purposes.*
- (ii) Mr. Rahul, a Delhi based Interior Decorator provides his professional services in respect of property which is intended to be located in Punjab.*
- (iii) A U.S.A. based company possessing specialization in mineral exploration has been awarded a contract for mineral exploration in respect of specific sites in Canada by Mumbai based Mr. Ram Kapoor.*
- (iv) ABC Ltd. agrees to provide [by virtue of single agreement for consolidated consideration] services connected with oil exploration to XYZ Ltd. in respect of specific sites located in Assam, Gujarat and Maharashtra. The proportion of services provided by ABC Ltd. in relation of above states worked out to be 25%, 60% and 15%.*
- (v) Rohit, a Consulting Engineer provides his professional consultancy services to a U.K. based company in respect of its three properties located in U.K., USA and Dubai.*
- (vi) Yogesh, Chennai based Professional valuer provides his professional services of valuation of immovable properties [vide a single contract for a consolidated consideration] to Mumbai based Reliance Industries Ltd. in respect of its four properties located in Delhi, Kashmir, Kolkata and London. It is assumed that Yogesh performed 20%, 30%, 15% and 35% of his total services in foregoing four cities respectively.*
- (vii) A Delhi based Builder provides Construction Services to Punjab based company in respect of construction of its new building in Bangladesh.*

Answer

- (i)** In this case, since the immovable property in question is located in New Delhi, Place of Provision of Services will be New Delhi which falls within the ambit of 'Taxable Territory' and resultantly these services will be taxable.
- (ii)** In this case, place of Provision of Services will be Punjab as the concerned property is intended to be located in Punjab which also falls within the ambit of 'Taxable Territory' and resultantly these services will be taxable.
- (iii)** In this case, since specific sites in respect of which mineral exploration is to be carried out are located in Canada, the Place of Provision of Services will be Canada which does not fall within the ambit of 'Taxable Territory' and resultantly these services will not be taxable. The fact that service providing company is located in U.S.A. and service recipient is located in Mumbai (India) is wholly insignificant.

- (iv) In this case, Place of Provision of Service shall be Gujarat because greatest proportion of taxable service [60%] is provided there. The students may tempt to draw conclusion here that as all the locations given in this example fall within the taxable territory, Place of Provision of Services Rules have no applicability. However, students must keep in mind that POPS, Rules, 2012 are useful for those service providers who operate from multiple locations within India without having Centralised Registration for the purpose of determining the precise taxable jurisdiction applicable to their operations. Therefore, in the present case if it is assumed that ABC Ltd. has Decentralized Registration, it will pay applicable service tax in respect of services provided to XYZ Ltd. in Gujarat
- (v) Since, in this case Consulting Engineer's Services provided by Rohit are in respect of locations which fall within non-taxable territory, no service tax is chargeable by Mr. Rohit.
- (vi) In this case, percentage of services performed in London will be ignored for determining Place of Provision of Services because London falls in non-taxable territory. Amongst the remaining three cities located in India, percentage of services performed in Kashmir will also be ignored because provisions of Chapter V of Finance Act, 1994 extend to whole of India except the State of Jammu and Kashmir by virtue of Section 64(1) of Finance Act, 1994. Thus, comparison has to be made between location of Delhi and Kolkata. Since in the present context, the greater proportion [20%] of services is performed in Delhi, Place of provision of services will be Delhi. As a result, such services will be subject to tax.
- (vii) In this situation, if Rule 5 of POPS Rules, 2012 is applied, then Place of Provision would be location of property which is Bangladesh in the present context. Since Bangladesh falls within non-taxable territory, foregoing Construction Services will not be taxable. However, if latter Rule 8 of POPS Rules, 2012 is applied, the place of provision will be the location of the service receiver i.e. Punjab [which falls within the taxable territory] and resultantly, Construction Services will be taxable.

Question 3

What essential conditions are to be satisfied for treating the provision of any service as Export of Service with effect from 01.07.2012?

Answer

In order to treat the provision of any service as Export of Service with effect from 01.07.2012, following essential conditions are required to be satisfied cumulatively as per **Rule 6A (1)** of Service Tax Rules, 1994:

- (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[which deals with Negative List of Services] of the Act;

2.10 Indirect Tax Laws

- (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 establishment of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Act.

Question 4

What are the advantages derived by Exporters of Taxable Services with effect from 01.07.2012?

Answer

The following advantages are derived by Exporters of Taxable Services:

- (i) Claiming rebate [in terms of Rule 6A(2) of Service Tax Rules, 1994] of service tax or duty paid on input services or inputs, as the case may be, used in providing such service.
- (ii) Claiming refund of CENVAT Credit under Rule 5 of CENVAT Credit Rules, 2004

Question 5

Can there be an export of services between an establishment of a person in a taxable territory [say Infosys Ltd.(India)] and another establishment of same person in a non-taxable territory [say Infosys Ltd.(USA)] ?

Answer

No. Even though such persons have been specified as distinct persons under Explanation 3 to Section 65B (44), yet the transaction between such establishments have not been recognised as Export of Service in terms of Rule 6A (1)(f) of Service Tax Rules, 1994. As a consequence, there can not be any export of services between Infosys Ltd.(India)and Infosys Ltd.(USA).