

Place of Provision of Service

Question 1

Mrs. Neelam Goel, an interior designer based in Delhi provides her service to an Indian Hotel Chain (which has business establishment in Mumbai) for its newly acquired property in London. State whether the service would be taxable in India on the basis of Place of Provision of Service Rules, 2012 (PoPS Rules).

Answer

As per rule 5 of the PoPS Rules, in case of a service that is 'directly in relation to immovable property', the place of provision is where the immovable property is located, irrespective of where the provider or receiver is located. Thus, on application of rule 5 in the instant case, place of provision of service is London and consequently, the service would not be taxable in India.

However, as per rule 8 of the PoPS Rules, where the location of the provider of service as well as that of the recipient of service is in the taxable territory, the place of provision of service would be the location of the recipient of service. Since in the given case, both the provider and the receiver are located in taxable territory, on application of rule 8 in the instant case, the place of provision would be the location of the service receiver i.e. Mumbai and consequently, the service would be taxable in India.

As per rule 14 of the PoPS Rules, if the place of provision of service is determinable in terms of more than one rule, the same is determined as per the rule that occurs later. Therefore, the place of provision in this case will be Mumbai and the service will be taxable in India (as per rule 8).

Question 2

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

- (i) *Mr. A, the owner of an immovable property located in New Delhi gives the said property to Mr. B of London on rent, 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 San Diego, U.S.A.*

2.2 Service Tax

- (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 services connected with oil exploration [by virtue of single agreement for consolidated consideration] 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%. ABC Ltd. does not have a centralized registration.*
- (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) *ABC Testings Ltd., an Indian firm provides a 'technical inspection and certification service' for a newly developed product of an overseas firm (for a newly launched car which has to meet emission standards in different States or countries). The testing is carried out in Gujarat (10%), Kerala (30%), and Canada (60%).*

Answer

- (i) As per rule 5 of the PoPS Rules, in case of a service that is 'directly in relation to immovable property', the place of provision is where the immovable property is located, irrespective of where the provider or receiver is located.

Since in the given case, the immovable property in question is located in New Delhi, the place of provision of service is New Delhi and resultantly, the service would be taxable in India.

- (ii) Since in the given case, the immovable property in question is located in San Diego, the place of provision of service is San Diego, U.S.A. and resultantly, the service would not be taxable in India [Rule 5 of the PoPS Rules].
- (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 as per rule 5 of the PoPS Rules will be Canada which does not fall within the ambit of 'taxable territory' and resultantly, these services will not be taxable in India. The fact that service providing company is located in USA and service recipient is located in Mumbai (India) is not significant.
- (iv) Although all the locations given in this case fall within the taxable territory, PoPS Rules are still applicable as these rules are also 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.

Where any immovable property related service referred to in rule 5 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 the PoPS Rules].

Therefore, in the present case, ABC Ltd. is liable to pay service tax and the place of provision of services would be Gujarat because greatest proportion of taxable service [i.e. 60%] is provided there.

- (v) Since in this case, consulting engineer's services provided by Rohit are in respect of locations which fall within non-taxable territory, place of provision of the services provided is U.K., USA and Dubai for the respective services and hence, no service tax is chargeable by Mr. Rohit [Rule 5 of the PoPS Rules].
- (vi) Where any immovable property related service referred to in rule 5 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 the PoPS Rules].

In the given case, notwithstanding the fact that the greatest proportion of service is outside the taxable territory, the place of provision will be the place in the taxable territory where the greatest proportion of service is provided, which in this case is Kerala. Thus, testing services provided in this case will be taxable in India.

Question 3

List any two advantages derived by exporters of taxable services.

Answer

The following two advantages are derived by exporters of taxable services:

- (i) Claiming rebate [in terms of rule 6A(2) of the 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 the CENVAT Credit Rules, 2004.

Question 4

ABC Ltd., an Indian company, provides a taxable service to its other establishment in USA. Can the services provided by an establishment of a person in a taxable territory to another establishment of the same person in a non-taxable territory be considered as export of service?

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 the Service Tax Rules, 1994. As a consequence, there cannot be any export of services between ABC Ltd. and its other establishment in U.S.A.

Exercise

Determine the place of provision of service in each of the following independent cases:-

- (i) ABC School of Business, a management school located in USA, intends to organize road show in Delhi. Mr. A, provides event management services in relation to such road show.*
- (ii) An Indian Fashion Designing firm hosts a show at Toronto, Canada. The firm receives services of Canadian Event Manager.*
- (iii) A helicopter of Pawan Hans Ltd (India based) develops a technical snag in Nepal. In case the engineers are deputed by Hindustan Aeronautics Ltd., Bangalore, to undertake repairs at the site in Nepal.*
- (iv) A consignment of cut flowers is consigned from Chennai to Amsterdam.*
- (v) A consignment of crystal ware is consigned from Paris to New Delhi.*
- (vi) 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.*
- (vii) A video game or a movie-on-demand is provided on a Delhi-Kolkata-Bangkok-Jakarta flight during the Bangkok-Jakarta leg.*