

Point of Taxation

Question 1

Determine the point of taxation in each of following independent cases in accordance with the Point of Taxation Rules, 2011 (POTR):

S. No.	Date of completion of service	Date of invoice	Date on which payment is received
1.	10.04.2013	05.05.2013	20.05.2013
2.	10.04.2013	05.05.2013	25.04.2013
3.	10.04.2013	05.05.2013	25.04.2013 (Part) and 20.05.2013 (remaining)
4.	10.04.2013	05.05.2013	06.04.2013(Part) and 09.04.2013 (remaining)
5.	10.04.2013	05.05.2013	06.04.2013(Part) and 01.05.2013 (remaining)
6.	10.04.2013	16.05.2013	20.05.2013
7.	10.04.2013	16.05.2013	05.04.2013(Part) and 14.05.2013 (remaining)

Answer

As per rule 3 of the POTR, in case the invoice is issued within the prescribed period of 30 days from the date of completion of provision of service, point of taxation is:-

(i) date of invoice

or

(ii) date of payment

whichever is earlier.

However, in case the invoice is not issued within 30 days of the completion of the provision of the service, point of taxation is:-

(i) date of completion of service

or

(ii) date of payment

3.2 Service Tax

whichever is earlier.

Accordingly, the point of taxation in each of the given cases is as follows:

S. No.	Date of completion of service	Date of invoice	Date on which payment is received	Point of taxation
1.	10.04.2013	5.05.2013	20.05.2013	5.05.2013
2.	10.04.013	5.05.2013	25.04.2013	25.04.2013
3.	10.04.2013	5.05.2013	Part payment on 25.04.2013 remaining on 20.05.2013	25.04.2013 for the part payment and 5.05.2013 for the remaining amount
4.	10.04.2013	5.05.2013	Part payment on 6.04.2013 and remaining on 09.04.2013	06.04.2013 for the part payment and 09.04.2013 for the remaining amount
5.	10.04.2013	5.05.2013	Part payment on 06.04.2013 and remaining on 1.05.2013	06.04.2013 for the part payment and 1.05.2013 for the remaining amount
6.	10.04.2013	16.05.2013	20.05.2013	10.04.2013
7.	10.04.2013	16.05.2013	Part payment on 05.04.2013 and remaining on 14.05.2013	05.04.2013 for the part payment and 10.04.2013 for the remaining amount

Question 2

Mr. X is engaged in providing a service which becomes taxable with effect from 01.07.2013. Determine whether service tax is payable by Mr. X in each of the following independent cases, in accordance with POTR?

Case	Date of issuance of invoice	Date of receipt of payment
I	25.06.2013 for ₹1,00,000	26.06.2013 for ₹1,00,000
II	25.06.2013 for ₹1,00,000	26.06.2013 for ₹60,000 10.07.2013 for ₹40,000
III	24.06.2013 for ₹60,000	20.06.2013 for ₹60,000

Case	Date of issuance of invoice	Date of receipt of payment
	07.07.2013 for ₹ 40,000	29.06.2013 for ₹ 40,000
IV	23.07.2013 for ₹ 1,00,000	30.06.2013 for ₹ 1,00,000

Answer

Rule 5 of the POTR stipulates the provisions relating to payment of service tax where a service is taxed for the first time. The taxability of services determined as per rule 5 is as under:-

Case	Taxability
I	No tax shall be payable on entire ₹ 1,00,000 as the invoice for ₹ 1,00,000 has been issued (on 25.06.2013) and the payment against such invoice has also been received (on 26.06.2013) before such service became taxable (on 01.07.2013).
II	No tax shall be payable on ₹ 60,000 as the invoice for ₹ 60,000 has been issued (on 25.06.2013) and the payment against such invoice has also been received (on 26.06.2013) before such service became taxable (on 01.07.2013). Service tax is payable on ₹ 40,000 as the invoice for ₹ 40,000 has been issued (on 25.06.2013) before such service became taxable (on 01.07.2013), but the payment against such invoice has been received on 10.07.2013.
III	No tax shall be payable on ₹ 60,000 as the advance of ₹ 60,000 has been received (on 20.06.2013) and the invoice for the same has also been issued (on 24.06.2013) before such service became taxable (on 01.07.2013). No tax shall be payable on ₹ 40,000 as the payment of ₹ 40,000 has been received (on 29.06.2013) before the service becomes taxable (on 01.07.2013) and invoice has been issued (on 07.07.2013) i.e. within 14 days of the date when the service is taxed for the first time.
IV	Service tax is payable on entire ₹ 1,00,000 as although payment has been received (on 30.06.2013) before the service becomes taxable (on 01.07.2013), invoice has been issued (on 23.07.2013) i.e. after 14 days of the date when the service is taxed for the first time.

Question 3

Renu Ltd. enters into a contract with XYZ Ltd. for construction of a new building to be used primarily for commercial purposes for a total consideration of ₹150 lakh on 02.07.2012. The relevant details are given as under:

Stage	Date	Date of issuance of invoice	Date of payment	Amount paid (₹)
Initial booking	02.07.2012	02.07.2012	02.07.2012	15 lakh

3.4 Service Tax

50% completion of building	15.03.2013	22.03.2013	29.03.2013	60 lakh
75% completion of building	20.06.2013	24.07.2013	25.07.2013	35 lakh
100% completion of building	30.09.2013	21.10.2013	20.10.2013	40 lakh

Note: A certificate from a Chartered Engineer registered with the Institution of Engineers (India) has been obtained with respect to each stage of compaction of building.

Answer

Since in the present case, the construction services are provided by Renu Ltd. to XYZ Ltd. under a contract for a period exceeding three months with the obligation for payment periodically, such services would fall within the ambit of term "continuous supply of service" as per rule 2(c) of the POTR. The point of taxation in case of continuous supply of services is determined in accordance with provisions of rule 3 of POTR.

Further, it is important to note that in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires service receiver to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

Accordingly, the point of taxation with respect to each of the stages of completion is as follows:

Stage of Completion	Point of taxation
Initial booking	02.07.2012 as the date of completion of service, date of issuance of invoice and date of payment are the same.
50%	Since invoice has been issued within 30 days of completion of service, point of taxation is date of invoice (22.03.2013) or date of payment (29.03.2013) whichever is earlier, i.e. 22.03.2013
75%	Since invoice has not been issued within 30 days of completion of service, point of taxation is date of completion of service (20.06.2013) or date of payment (25.07.2013) whichever is earlier, i.e. 20.06.2013
100%	Since invoice has been issued within 30 days of completion of service, point of taxation is date of invoice (21.10.2013) or date of payment (20.10.2013) whichever is earlier, i.e. 20.10.2013

Question 4

Manoj Ltd. imports business support services from Green Ltd. of USA on 13.07.2013. The relevant invoice for \$ 1,20,000 is raised by Green Ltd. on 18.08.2013. Manoj Ltd. makes the payment against the said invoice as follows:

Case I	22.11.2013
Case II	27.05.2014

Answer

In case of taxable services provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory, person liable to pay service tax is the recipient of such service [Notification No. 30/2012 dated 20.06.2012]. Hence, in the given case, since the business support service has been provided by Green Ltd. (located in non-taxable territory) and has been received by Manoj Ltd. (located in the taxable territory), Manoj Ltd. is liable to pay service tax (i.e. under reverse charge mechanism).

The point of taxation in respect of persons required to pay tax under the reverse charge mechanism, is the date on which payment is made. However, where the payment is not made within a period of 6 months of the date of invoice, the point of taxation shall be determined as if this rule does not exist [Rule 7 of the POTR].

In view of the aforesaid provisions, the point of taxation in each of the given cases will be as under:

CASE	Point of taxation
CASE I	Since the importing company i.e. Manoj Ltd makes the payment within the six months from the date of invoice, the point of taxation will be date of payment i.e. 22.11.2013.
CASE II	As Manoj Ltd. makes the payment after six months from the date of invoice, point of taxation will be determined on the basis of rule 3 i.e.:- (i) Date of completion of provision of service [13.07.2013]; or (ii) Date of payment [27.05.2014] whichever is earlier. Thus, point of taxation is the date of completion of service i.e. 13.07.2013

Question 5

Apte & Apte Ltd. is located in India and holding 51% of shares of Wilson Ltd, a USA based company. Wilson Ltd. provides business auxiliary services to Apte & Apte Ltd. From the following details, determine the point of taxation for Apte & Apte Ltd:

Agreed consideration	US \$1,00,000
Date on which services are provided by Wilson Ltd.	16-9-2013
Date on which invoice is sent by Wilson Ltd.	19-9-2013

3.6 Service Tax

Date of debit in the books of account of Apte & Apte Ltd.	30-9-2013
Date on which payment is made by Apte & Apte Ltd.	23-12-2013

Answer

Since, Apte & Apte Ltd. holds 51% shares of Wilson Ltd., Apte & Apte Ltd. and Wilson Ltd. will be 'associated enterprises' as per section 92A of the Income-tax Act, 1961. As per rule 7 of the POTR, in case of associated enterprises, where the person providing the service is located outside India, the point of taxation is the earlier of the following two dates:

Date of debit in the books of account of person receiving the service 30.09.2013
[which is Apte & Apte Ltd. in the present case]

or

Date of making the payment [by Apte & Apte Ltd. in the present case] 23.12.2013

Thus, point of taxation will be 30.09.2013.

Question 6

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

Financial Year	Output [in tonnes]	Date of issuance of invoice	Date of receipt of payment
2011-12	2,000	05.07.2012	26.08.2012
2012-13	3,000	13.04.2013	03.04.2013
2013-14	4,000	11.04.2014	20.05.2014

Answer

Rule 8 of the POTR, inter alia, applies in respect of payments pertaining to patents, where the **whole amount of the consideration** for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration. The service shall be treated as provided each time when a payment in respect of such use or the benefit is received by the provider in respect thereof, or an invoice is issued by the provider, whichever is earlier.

Since in the given case, 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 Arti Ltd. gives right to any payment of consideration, both the conditions specified in rule 8 get satisfied. Therefore, the point of taxation of Prabhu Ltd. for various financial years, determined as per rule 8, is as under:

Financial Year	Point of Taxation	Reason
2011-12	05.07.2012	Date of issuance of invoice [05.07.2012] falls before date of payment [26.08.2012]
2012-13	03.04.2013	Date of payment [03.04.2013] precedes date of issuance of invoice [13.04.2013]
2013-14	11.04.2014	Date of issuance of invoice [11.04.2014] falls before date of payment [20.05.2014]

Question 7

HMV Ltd. obtains the copyright of classic songs of a famous singer recorded in a Compact Disk [CD]. It sold the copyright to Babar Cassettes Industries Ltd. [hereinafter abbreviated as "BCI Ltd."] on 20.04.2011 at a consideration fixed @ ₹10/- per CD sold by BCI Ltd. The no. of CDs sold by BCI Ltd. during different financial years as well as other relevant details is given in the following table:

Relevant Year	No. of CDs sold	Date of issuance of invoice by HMV Ltd.	Date of receipt of payment from BCI Ltd.
2011-12	4,00,000	29.07.2012	16.08.2012
2012-13	6,00,000	03.06.2013	23.05.2013
2013-14	7,00,000	16.05.2014	16.05.2014

Answer

Since in the given case, 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, the service shall be treated as provided each time when a payment in respect of such use or the benefit is received by the provider in respect thereof, or an invoice is issued by the provider, whichever is earlier [Rule 8 of the POTR]. The point of taxation of HMV Ltd. for various financial years, determined as per rule 8, is as under:

Financial Year	Point of taxation	Reason
2011-12	29.07.2012	Date of issuance of invoice [29.07.2012] falls before date of payment [16.08.2012]

3.8 Service Tax

2012-13	23.05.2013	Date of payment [23.05.2013] precedes date of issuance of invoice [03.06.2013]
2013-14	16.05.2014	Date of issuance of invoice [16.05.2014] as well as date of receipt of payment [16.05.2014] is same.

Question 8

Mr. A is the author and copyright-owner of a book. He enters into an agreement with ABC Publishers on 15.07.2013. As per the terms of agreement, Mr. A transfers the copyright to said publishers for a lump sum consideration of ₹ 10,00,000/-. The other relevant details are as under:

Date	Particulars
15.07.2013	Issue of invoice by Mr. A
27.11.2013	Receipt of lump sum consideration of ₹10,00,000/-

Determine point of taxation in the above case.

Answer

Since in the present case the whole amount of consideration i.e. ₹10,00,000/- is ascertained at the time of entering into agreement itself, one of the essential requirements of rule 8 does not get satisfied. Resultantly, rule 8 becomes inapplicable in the present case. Thus, point of taxation will be determined in accordance with rule 3 of the POTR in the following manner:

Since invoice has been issued within 30 days from the date of completion of provision of service [which in the present case is the date of entering into agreement], earlier of the following dates will be the Point of Taxation:

Date of invoice 15.07.2013

Date of payment 27.11.2013

Thus, point of taxation is 15.07.2013.

Question 9

The effective rate of service tax was 10.30% up to 31.03.2012. However, with effect from 01.04.2012, the effective rate of service tax has been increased to 12.36%. Determine the point of taxation as well as the applicable rate of service tax in each of the following independent cases.

Case	Date of provision of service	Date of issue of invoice	Date of receipt of payment
I	28.03.2012	02.04.2012	08.04.2012
II	28.03.2012	29.03.2012	08.04.2012
III	28.03.2012	04.04.2012	30.03.2012

Case	Date of provision of service	Date of issue of invoice	Date of receipt of payment
IV	03.04.2012	31.03.2012	06.04.2012
V	03.04.2012	29.03.2012	30.03.2012
VI	03.04.2012	07.04.2012	31.03.2012

Answer

Rule 4 of the POTR determines the point of taxation in case of change in effective rate of tax. Further, the rate of service tax is the rate of service tax as applicable at the time when the taxable service has been provided.

The point of taxation as well as applicable rate of tax in the present case as per rule 4, will be determined as under:

Case	Date of provision of service	Date of issue of invoice	Date of receipt of payment	Point of taxation	Applicable rate of tax
I	28.03.2012	02.04.2012	08.04.2012	02.04.2012, being earlier of date of issuance of invoice [i.e. 02.04.2012] or receipt of payment [08.04.2012.]	12.36%
II	28.03.2012	29.03.2012	08.04.2012	29.03.2012, being date of issuance of Invoice	10.30%
III	28.03.2012	04.04.2012	30.03.2012	30.03.2012, being date of receipt of payment	10.30%
IV	03.04.2012	31.03.2012	06.04.2012	06.04.2012, being date of receipt of payment	12.36%
V	03.04.2012	29.03.2012	30.03.2012	29.03.2012, being earlier of date of issuance of invoice [29.03.2012] or receipt of payment [30.03.2012]	10.30%

3.10 Service Tax

Case	Date of provision of service	Date of issue of invoice	Date of receipt of payment	Point of taxation	Applicable rate of tax
VI	03.04.2012	07.04.2012	31.03.2012	07.04.2012, being date of insurance of invoice	12.36%