Place of Provision of Services Rules, 2012

Notification No. 28/2012 - Service Tax dt 20.06.2012

1. Short title, extent and commencement. - (1) These rules may be called the Place of Provision of Services Rules, 2012.

(2) They shall come into force on 1st day of July, 2012.

2. Definitions.- In these rules, unless the context otherwise requires,-

(a) "Act" means the Finance Act, 1994 (32 of 1994);

(b) "account" means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;

(c) "banking company" has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934);

(d) "continuous journey" means a journey for which a single or more than one ticket or invoice is issued at the same time, either by one service provider or through one agent acting on behalf of more than one service provider, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued;

(e) "financial institution" has the meaning assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act,1934 (2 of 1934);

(f) **"intermediary** means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the 'main' service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;';**(01.10.2014)**

(g) "leg of journey" means a part of the journey that begins where passengers embark or disembark the conveyance, or where it is stopped to allow for its servicing or refueling, and ends where it is next stopped for any of those purposes;

(h) "location of the service provider" means-

(a). where the service provider has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;

(b). where the service provider is not covered under sub-clause (a):

(i) the location of his **business establishment**; or

Example:-

Head office of M/s ABC Enterprises is in India, and its branches are in Malaysia, Singapore and London. The business establishment of M/s ABC Enterprises is in India

(ii) where the services are provided from a place other than the business establishment, that is to say, a **fixed establishment** elsewhere, the location of such establishment; or

Example:-

George Telecoms of USA sets up an office with staff in India to provide services to Indian customers. Fixed establishment of George Telecoms is in India.

It may be noted that in case the staff is temporarily available by way of a short visit to a place, such place cannot be termed as fixed establishment.

(iii) where services are provided from more than one establishment, whether business or fixed, the **establishment most directly concerned** with the provision of the service; and

Example:-

Shubham Ltd. is incorporated in India. However, it provides its services entirely from London. In the instant case, the location of Shubham Ltd. is London, being the place where the establishment most directly concerned with the supply is located

(iv) in the absence of such places, the **usual place of residence** of the service provider.

(i) "location of the service receiver" means:-

(a). where the recipient of service has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;

(b). where the recipient of service is not covered under sub-clause (a):

(i) the location of his business establishment; or

Example:-

Head office of M/s ABC Enterprises is in India, and its branches are in Malaysia, Singapore and London. The business establishment of M/s ABC Enterprises is in India

(ii) where services are used at a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or

Example:-

George Telecoms of USA sets up an office with staff in India to provide services to Indian customers. Fixed establishment of George Telecoms is in India.

It may be noted that in case the staff is temporarily available by way of a short visit to a place, such place cannot be termed as fixed establishment.

(iii) where services are used at more than one establishment, whether business or fixed, the **establishment most directly concerned** with the use of the service; and

Example:-

GTPL. is incorporated in India. However, it provides its services entirely from London. In the instant case, the location of GTPL. is London, being the place where the establishment most directly concerned with the supply is located

(iv) in the absence of such places, the **usual place of residence** of the recipient of service.

Explanation:-. For the purposes of clauses (h) and (i), "usual place of residence" in case of a body corporate means the place where it is incorporated or otherwise legally constituted.

Explanation 2:-. For the purpose of clause (i), in the case of telecommunication service, the usual place of residence shall be the billing address.

(j) "means of transport" means any conveyance designed to transport goods or persons from one place to another;

(k) "non-banking financial company" means-

(i) a financial institution which is a company; or

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or

(iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette specify;

(l) "online information and database access or retrieval services" means providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;

(m) "person liable to pay tax" shall mean the person liable to pay service tax under section 68 of the Act or under sub-clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994;

(n) "provided" includes the expression "to be provided";

(o) "received" includes the expression "to be received";

(p) "registration" means the registration under rule 4 of the Service Tax Rules, 1994;

(q) "telecommunication service" means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means but shall not include broadcasting services.

(r) words and expressions used in these rules and not defined, but defined in the Act, shall have the meanings respectively assigned to them in the Act.

3. Place of provision generally.- The place of provision of a service shall be the location of the recipient of service:

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 service.

4. Place of provision of performance based services.- The place of provision of following services shall be the location where the services are actually performed, namely:-

(a) services provided in respect of goods that are required to be made physically available by the recipient of service to the provider of service, or to a person acting on behalf of the provider of service, in order to provide the service:

Provided that when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service:

~~Provided further that this sub-rule shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs, reconditioning or reengineering for re-export, subject to conditions as may be specified in this regard.~~

Provided further that this clause shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs and are exported after the repairs without being put to any use in the taxable territory, other than that which is required for such repair ; **(01.10.2014)**

Example:

(ii) OP Fabricators of Andhra Pradesh has temporarily imported certain goods from its customer located in Hong Kong for repairs. The said goods have been re-exported to Hong Kong after carrying out the necessary repairs without being put to any use in Andhra Pradesh.

Answer

However, with effect from 01.10.2014, second proviso to rule 4(a) has been substituted to lay down that clause (a) of rule 4 will not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs and are exported after the repairs without being put to any use in the taxable territory, other than that which is required for such repair. Consequently, such a case will be covered under rule 3 of POPS Rules (general rule) and the place of provision of service will be the location of service receiver.

In the given case, goods have been temporarily imported by OP Fabricators and have been re-exported after the repairs without being put to any use in Andhra Pradesh(taxable territory). Therefore, place of provision of repair services carried out by OP Fabricators will be determined by rule 3 of POPS Rules. Consequently, the place of provision of service will be the location of service receiver i.e. Hongkong.

(b) services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for the provision of the service.

- **Examples** of such services are:-
  - cosmetic or plastic surgery
  - personal security service
  - health and fitness services
  - photography service (to individuals)
  - internet café service,
  - Class room Teaching

For **Example**, a film producer contracts with a make-up expert for make-up of the lead actors of his film. In the given case, the film producer is the receiver of the service, but the service is rendered to the actors, who are receiving the make-up service on behalf of the film producer. Hence, notwithstanding that film producer does not qualify as the individual receiver in whose presence the service is rendered, the nature of the service is such as can be rendered only to an individual, thereby qualifying to be covered under this rule.

5. Place of provision of services relating to immovable property.- The place of provision of services provided directly in relation to an immovable property, including

- services provided in this regard by experts and estate agents,
- provision of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever, name called,
- grant of rights to use immovable property,
- services for carrying out or co-ordination of construction work, including architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

6. Place of provision of services relating to events.- 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 similar events, and of services ancillary to such admission, shall be the place **where the event is actually held.**

For instance, a well-known singer from New Zealand intends to organize a Concert in Delhi and

Andhra Pradesh. Any service provided by an event manager, or the right to entry will be taxable in India.

7. Place of provision of services provided at more than one location.-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**.

For instance, an Indian firm provides a 'technical inspection and certification service' for a newly developed product of an overseas firm (for a newly launched motorbike which has to meet emission standards in different States or countries). The testing is carried out in Maharashtra (20%), Kerala (25%), and Colombo (55%).
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.

8. Place of provision of services where provider and recipient are located in taxable territory.- 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**.

For instance, a machinery of Bahara India Ltd of Bangalore develops a technical problem in London. Bharat Machineries of Delhi deputes some engineers to undertake repairs at the site in London. But for this rule, rule 4(1) would apply in this case, and the place of provision would be London i.e. outside the taxable territory.
However, by application of rule 7, since the service provider, as well as the receiver, are located in the taxable territory, the place of provision of this service will be within the taxable territory.

9. Place of provision of specified services.- 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;

Banking services provided to persons other than account holders will be covered under the main rule-rule 3.
Example of services provided by a banking company/financial institution etc. to account holders in the normal course of business:-
(i) Services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc.
(ii) Transfer of money including telegraphic transfer, mail transfer, electronic transfer etc.

(b) Online information and database access or retrieval services;

- ❖ Examples of these services are:-
  - ✓ Web-based services providing access or download of digital content
  - ✓ digitized content of books and other electronic publications
  - ✓ online news, flight information and weather reports.

(c) Intermediary services;

Example:

(i) MN Trade Links of New Delhi are appointed as commission agent by a foreign company for sale of its goods to Indian customers. In lieu of their services, MN Trade Links receive a fixed percentage of commission from the concerned foreign company.?

As per rule 9(c) of Place of Provision of Services Rules, 2012 (POPS Rule provision of intermediary services is the location of service provider.

W.e.f 01.10.2014, definition of term **"intermediary"** as provided under rule 2(f) of POPS Rules has been substituted to include the intermediary of goods in its scope. The substituted definition provides that "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the main 'service) or **a supply of goods,** between two or more persons, but does not include a person who provides the main service or supplies the goods on his account.

Accordingly, commission agent of goods will be covered under rule 9(c) of POPS Rules. Thus, the place of provision of services provided or agreed to be provided by MN Trade Links (as commission agent of goods) to foreign company will be the location of service provider i.e., New Delhi.

~~(d) Service consisting of hiring of means of transport, upto a period of one month.~~

(d) Service consisting of hiring of all means of transport other than,-

(i) aircrafts, and

(ii) vessels except yachts, up to a period of one month.**(01.10.2014)**

The above amendment can also be understood with the help of the following example:

Service consisting of hiring of -		Place of provision of service	
		Location of service provider	Location of service receiver
(i)	Aircraft up to a period of 20 days		✓
(ii)	Aircraft up to a period of 90 days		✓
(iii)	Vessels up to a period of 20 days		✓
(iv)	Vessels up to a period of 90 days		✓
(v)	Yachts up to a period of 20 days	✓	
(vi)	Yachts up to a period of 90 days		✓
(vii)	Trucks up to a period of 20 days	✓	
(viii)	Trucks up to a period of 90 days		✓

Therefore, hiring of vessels or aircraft, whether for upto one month or more, will be covered by the general rule 3, i.e., the location of the service receiver.

Hiring of yachts would, however, continue to be governed by rule 9(d) i.e., in case of hiring of yachts upto one month, the place of provisions of service would be the location of service provider.

- Following will constitute means of transport:-
  - ✓ Land vehicles such as motorcars, buses, trucks;
  - ✓ Vehicles designed specifically for the transport of sick or injured persons;
  - ✓ Mechanically or electronically propelled invalid carriages;
  - ✓ Trailers, semi-trailers and railway wagons.

- The following are not 'means of transport' for the purpose of clause (d) of this rule:-
  - ✓ ***Aircrafts***
  - ✓ ***Vessels***
  - ✓ Racing cars;
  - ✓ Containers used to store or carry goods while being transported;
  - ✓ Dredgers, or the like.

10. Place of provision of goods transportation services.- The place of provision of services of transportation of goods, other than by way of mail or courier, shall be the **place of destination of the goods:**

Provided that the place of provision of services of goods transportation agency shall be the location of the person liable to pay tax.

For **Example,** a consignment of polished diamonds is consigned from Andhra Pradesh to New Jersey. The place of provision of goods transportation service will be New Jersey (outside India, hence not liable to service tax).
Conversely, if a consignment of glassware is consigned from New York to Chennai, the place of provision will be Chennai.

For Example: - Person liable to pay tax shall mean the person liable to pay service tax under section 68 of the Act or under rule 2(1)(d) of the Service Tax Rules, 1994 [Rule 2(m)].For instance, a goods transportation agency ABC located in Delhi transports a consignment of new motorcycles from the factory of XYZ in Gurgaon (Haryana), to the premises of a dealer in Bhopal, Madhya Pradesh. XYZ is a registered assessee and is also the person liable to pay freight and hence person liable to pay tax, in this case. Here, the place of provision of the service of transportation of goods will be the location of XYZ i.e. Haryana.

11. Place of provision of passenger transportation service.- 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.**

For **Example,** a travel on Delhi-Australia -New Zealand-Australia-Delhi on a single ticket with a halt at London on either side, or even both, will be covered by the definition of continuous journey. However if a separate ticket is issued, say New Zealand-Australia -New Zealand, the same will be outside the scope of a continuous journey.

12. Place of provision of services provided on board a conveyance.- 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.**

For **Example**, 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. The place of provision of this service will be Bangkok (outside taxable territory, hence not liable to tax).
If the above service is provided on a Delhi-Kolkata-Bangkok-Jakarta(Indonesia) flight during the

Bangkok-Jakarta leg, then the place of provision will be Delhi (in the taxable territory, hence liable to tax).

13. Powers to notify description of services or circumstances for certain purposes. - In order to prevent double taxation or non-taxation of the provision of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service.

14. Order of application of rules.- Notwithstanding anything stated in any rule, where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration.

For **Example**, 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. Place of provision being in the taxable territory, the service would be taxable in India.

By application of Rule 14, the later of the Rules i.e. Rule 8 would be applied to determine the place of provision.

Circular No. 180/06/2014 – ST dt 14.10.2014

foreign money transfer service operator (MTSO), conducting remittances to beneficiaries in India, have appointed Indian Banks/financial entities as their agents in India who provide agency /representation service to such MTSO for furtherance of their service to a beneficiary in India. The agents are paid a commission or fee by the MTSO for their services.

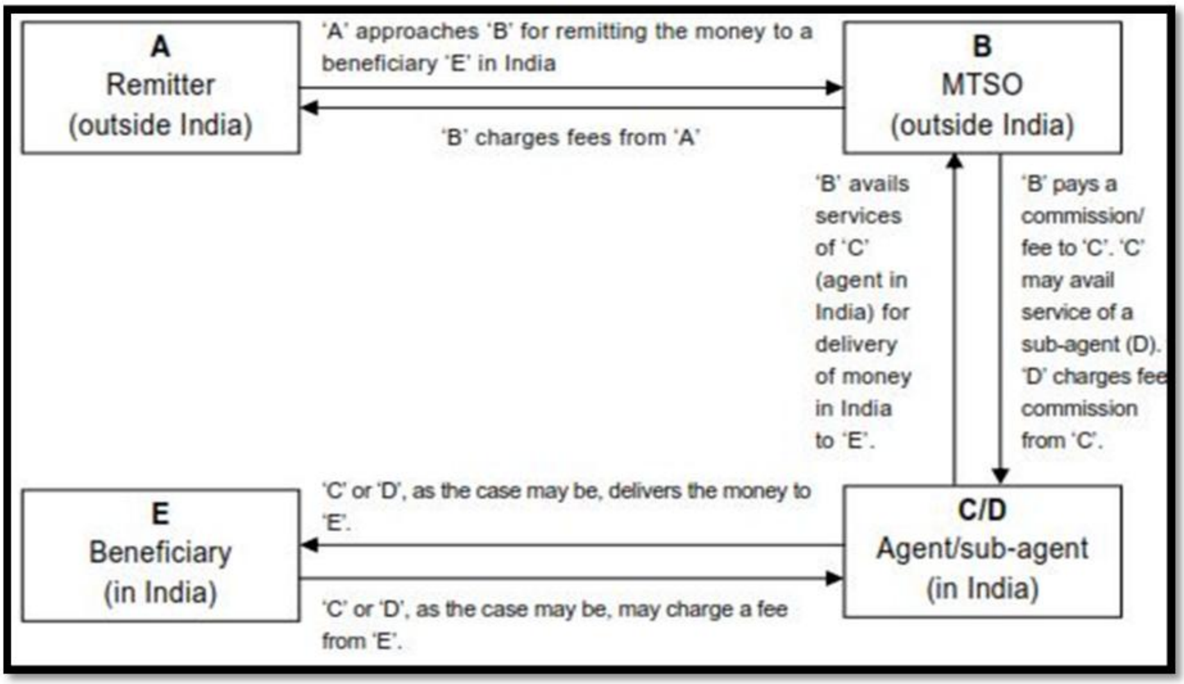
The entire sequence of transactions in remittances of money from overseas through the MTSO route is as under:

Step 1: Remitter located outside India (say 'A') approaches a Money Transfer Service Operator (**MTSO**)/bank (say B) located outside India for remitting the money to a beneficiary in India; 'B' charges a fee from 'A'.

Step 2: 'B' avails the services of an Indian entity (**agent**) (say 'C') for delivery of money to the ultimate recipient of money in India (say 'E'); 'C' is paid a commission/fee by 'B'.

Step 3: 'C' may avail service of a **sub-agent** (D). 'D' charges fee/commission from 'C'.

Step 4: 'C' or 'D', as the case may be, delivers the money to 'E' and may charge a fee from 'E'.



Clarifications have been sought as to whether such agents (referred in Step 2 above) would fall in the category of intermediary, and if so, whether service tax would be leviable on the commission/fee amount charged by such agents. Clarifications have also been sought as to whether the services provided by sub agent (referred in step 3 & 4 above) are leviable to service tax and on certain other related issues.

The issues discussed above have been examined and it is clarified as follows,-

S. No.	Issues	Clarification
1	Whether service tax is payable on remittance received in India from abroad?	No service tax is payable *per s*e on the amount of foreign currency remitted to India from overseas. As the remittance comprises money, it does not in itself constitute any service in terms of the definition of 'service' as contained in clause (44) of section 65B of the Finance Act 1994.
2	Whether the service of an agent or the representation service provided by an Indian entity/ bank to a foreign money transfer service operator (MTSO) in relation to money transfer falls in the category of intermediary service?	Yes. The Indian bank or other entity acting as an agent to MTSO in relation to money transfer, facilitates in the delivery of the remittance to the beneficiary in India. In performing this service, the Indian Bank/entity facilitates the provision of Money transfer Service by the MTSO to a beneficiary in India. For their service, agent receives commission or fee. Hence, the agent falls in the category of intermediary as defined in rule 2(f) of the Place of Provision of Service Rules, 2012.

3	Whether service tax is leviable on the service provided, as mentioned in point 2 above, by an intermediary/agent located in India (in taxable territory) to MTSOs located outside India?	Service provided by an intermediary is covered by rule 9 (c) of the Place of Provision of Service Rules, 2012. As per this rule, the place of provision of service is the location of service provider. Hence, service provided by an agent, located in India (in taxable territory), to MTSO is liable to service tax. The value of intermediary service provided by the agent to MTSO is the commission or fee or any similar amount, by whatever name called, received by it from MTSO and service tax is payable on such commission or fee.
4.	Whether service tax would apply on the amount charged separately, if any, by the Indian bank/entity/agent/sub-agent from the person who receives remittance in the taxable territory, for the service provided by such Indian bank/entity/agent/sub-agent	Yes. As the service is provided by Indian bank/entity/agent/sub-agent to a person located in taxable territory, the Place of Provision is in the taxable territory. Therefore, service tax is payable on amount charged separately, if any.
5.	Whether service tax would apply on the services provided by way of currency conversion by a bank /entity located in India (in the taxable territory) to the recipient of remittance in India?	Any activity of money changing comprises an independent taxable activity. Therefore, service tax applies on currency conversion in such cases in terms of the Service Tax (Determination of Value) Rules. Service provider has an option to pay service tax at prescribed rates in terms of Rule 6(7B) of the Service Tax Rules 1994.
6.	Whether services provided by sub-agents to such Indian Bank/entity located in the taxable territory in relation to money transfer is leviable to service tax?	Sub-agents also fall in the category of intermediary. Therefore, service tax is payable on commission received by sub-agents from Indian bank/entity.