PLACE OF PROVISION OF SERVICES

PLACE OF PROVISION OF SERVICES RULES, 2012

DETERMINATION OF PLACE OF PROVISION OF SERVICE - Section 66C, Finance Act 1994

The Central Government may, having regard to the nature and description of various services, by Rules made in this regard, determine the place where such services are provided or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided.

Any such Rule made shall not be invalid merely on the ground that either the service provider or the service receiver or both are located at a place being outside the taxable territory.

PLACE OF PROVISION OF SERVICE: Place of provision of service means the place where services are provided or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided.

The essence of indirect taxation is that a service should be taxed in the jurisdiction of its consumption. This principle is more or less universally applied where exports are not charged to tax, as the consumption is elsewhere, and services are taxed on their importation into the taxable territory.

Place of Provision of Services Rules, 2012 provides mechanism to determine such the taxing jurisdiction for the service. Place of provision of service so determined shall not be invalid merely on the ground that either the service provider or the service receiver or both are located outside the taxable territory.

QUICK NOTE	Place of provision of service is relevant to determine taxability of the service. If the place of provision of service as per Place of Provision of Services Rules, 2012 is in taxable territories, such service shall be deemed to have been or deemed to be provided in India and would be subject to levy of Service Tax.

PLACE OF PROVISION OF SERVICES

FRAMEWORK TO DETERMINE TAXABILITY IN TERMS OF PLACE OF PROVISION OF SERVICES RILES

Services provided in taxable territory	Taxable
Services provided in non-taxable territory (other than Jammu & Kashmir)	Non-taxable / export
Services provided in Jammu & Kashmir	Non-taxable
Services provided in Special Economic Zone	Exempt

QUICK REFERENCE	MEGA EXEMPTION NOTIFICATION

Services received from a provider of service located in a non-taxable territory, by a person located in a non-taxable territory, are exempt.

In fact such services will be outside the jurisdiction of the Indian tax laws if both the service provider and service receiver are located outside taxable territories. However, this exemption notification intents to exempt services, place of provision of service of which is determined as per these Rules in taxable territory, while service provider and service receiver are located outside taxable territories.

APPLICABILITY OF THE RULES

These Rules are primarily meant to determine taxable jurisdiction for the persons dealing in cross-border services or else for those who have operations with suppliers or customers in the State of Jammu and Kashmir.

These Rules also determine taxable jurisdiction applicable to the operations of service providers operating from multiple locations within India without having centralized registration and for the services that are wholly consumed within Special Economic Zones, to avail the outright exemption.

BASIC FRAMEWORK TO DETERMINE TAXABILITY OF SERVICE IN TERMS OF PLACE OF PROVISION OF SERVICE RULES: Taxability of a service will be determined based on the place of its provision on following basis.

STEPS FOR INTERPRETING THE RULES

Place of Provision of Service Rules, 2012 shall be used to determine taxing jurisdiction for the service. In case more than one Rule applies equally, the Rule that comes later shall be applicable.

If the taxing jurisdiction i.e. the place of provision of service as per the Rules is located in taxable territory, service tax will be payable

If taxing jurisdiction is outside taxable territory, service tax will not be payable

If service provider is located in taxable territory, then such service provider will be liable to pay service tax.

If service provider is not located in taxable territory, service receiver may be liable to pay service tax under reverse charge.

Services received by an individual or government for a non-business purpose, or a charity receiving services for charitable purpose are exempt

SIGNIFICANCE OF LOCATION OF A SERVICE PROVIDER OR RECEIVER FOR DETERMINING TAXING JURISDICTION: An establishment of a person outside the taxable territory is an establishment distinct from an establishment in a taxable territory. Thus, services provided from overseas are to be judged, to determine the place of provision, whether they are being rendered by the establishment outside the taxable territory or within.

LOCATION OF SERVICE PROVIDER AND SERVICE RECEIVER
The location of service provider or service receiver (as the case maybe) shall be the premises for which single registration, whether centralized or otherwise, has been obtained.
In other cases, i.e. unregistered service providers / receivers or service providers / receivers having multiple registrations - the location of the business establishment; or - where services are provided or received (consumed) at a place other than the business establishment i.e. a fixed establishment elsewhere, the location of such establishment; - where services are provided or received (consumed) at more than one establishment, whether business or fixed establishment, the establishment most directly concerned with the provision or use of the service; and - in the absence of such places, the usual place of residence (or place where it is incorporated or legally constituted, in case of body corporate) of the service provider or receiver.

Business establishment is the place where the essential decisions concerning the general management of the business are adopted, and where the functions of its central administration are carried out. This could be the head office, or a factory, or a workshop, or shop/ retail outlet. There can be only one location that can be considered as business establishment of service provider or receiver.

ILLUSTRATION: A business has its headquarters in India, and branches in London, Dubai, Singapore and New York. Its business establishment will be its headquarters is in India.

Fixed establishment is a place (other than the business establishment) characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to provide the services that are to be supplied by it, or to enable it to receive and use the services supplied to it for its own needs. Temporary presence of staff by way of a short visit at a place cannot be called a fixed establishment.

ILLUSTRATION: An overseas business house sets up offices with staff in India to provide services to Indian customers. Its fixed establishment will be its offices is in India.

ILLUSTRATION: A company with a business establishment abroad buys a property in India which it leases to a tenant. The property by itself does not create a fixed establishment. If the company sets up an office in India to carry on its business by managing the property, this will create a fixed establishment in India.

Establishment most directly concerned with provision or use of service, in the case of multiple establishments, shall be the establishment that actually provides or is directly concerned with the provision of service or receives (i.e. effectively uses or consumes) a service, notwithstanding the contractual position, or invoicing or payment.

QUICK NOTE	The location of the service provider or receiver in case of services received or provided at more than location, shall be the establishment most directly connected with the use or provision of the service.

ILLUSTRATION: A company is incorporated in India, but provides its services entirely from Singapore. The location of service provider will be Singapore, being the place where the establishment most directly concerned with the provision of service is located.

ILLUSTRATION: A firm of Chartered Accountants appointed by the head office carried out audit of a branch located in Mumbai and a factory managed by Mumbai branch. The audit report is issued to head office located in Delhi and the fees are paid by the head office.

In this case, the branch at Mumbai is an establishment most directly concerned with the provision of service. Hence place of provision of service will be Mumbai, even if auditors are appointed and paid by head office located in Delhi.

USUAL PLACE OF RESIDENCE

A body corporate	Usual place of residence of a body corporate will be the place where it is incorporated or otherwise legally constituted
An individual	Usual place of residence of an individual will be the country / state where the individual spends most of the time. An individual cannot have more than one usual place of residence
Telecommunication services	Usual place of residence of service receiver will be the billing address

PLACE OF PROVISION OF SERVICES RULES, 2012 AT A GLANCE

It is largely a common practice to tax services provided by business to other business entities, based on the location of business entity that receives service and services from business to consumers based on the location of the service provider.

Services are taxed based on the place of their consumption, especially

a. Services provided by business to other business entities shall be taxed based on location of the customers i.e. other business entity,
b. Services provided by business to consumers shall be taxed based on location of service provider.

RULE AND APPLICABILITY	PLACE OF PROVISION OF SERVICE
Rule 3: General Rule	Location of the recipient of service
Rule 4: Services provided in respect of goods that are required to be made physically available to the service provider or personalised services which require physical presence of the receiver or person acting on behalf of receiver Services provided from remote location by way of electronic means	Location where services are actually performed Place where goods are situated at the time of provision of service
Rule 5: Services provided directly in relation to immovable property	Place where such property is located or intended to be located
Rule 6: Services provided by way if admission to, or organisation 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	Place where such event is actually held
Rule 7: Services provided at more than one location, including a location in taxable territory	Location in taxable territory where greatest proportion of service is provided
Rule 8: When the location of both service provider and service receiver is in taxable territory (even if service is provided outside taxable territory)	Location of the recipient of the service
Rule 9: Specified services - Services provided by banking company, financial institutions or NBFC to account holders, - online information and data access / retrieval services, - intermediary services, and - services consisting of hiring of means of transport upto period of one month	Location of service provider
Rule 10: Transportation of goods, other than by way of mail or courier Services provided by goods transportation agency	Destination of such goods Location of person liable to pay tax
Rule 11: Services in respect of transportation of passengers	Place where passenger embarks on the conveyance for a continuous journey
Rule 12: Services provided on board a conveyance during the course of passenger transport operation, including services to be wholly or substantially consumed while on board	First scheduled point of departure of the conveyance

Rule 14: Notwithstanding anything stated in any of these Rules, 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.

IMPLICATION AND ANALYSIS OF THE PLACE OF PROVISION OF SERVICES RULES, 2012

RULE 3	**PLACE OF PROVISION** - GENERALLY **The place of provision of a service shall be the location of the recipient of service**, and in case the location of the service receiver is not available or ascertainable in the ordinary course of business, the place of provision shall be the location of the service provider.

PLACE OF PROVISION	Location of service receiver

This general Rule provides that, if a service is not covered by exceptions under one of the later Rules, such service will consequently be covered under this Rule and shall be deemed to be provided where the service receiver is located.

The principal effect of the Rule 3 is that

a. Where the location of receiver of a service is in the taxable territory, such service will be deemed to be provided in the taxable territory and hence shall be subject to service tax.
b. However, if the receiver of service is located outside the taxable territory, place of provision for such service shall be outside taxable territory and hence service shall not be taxable.

LOCATION OF SERVICE RECEIVER	Taxable territory	Non-taxable territory
PLACE OF PROVISION OF SERVICE	Location of service receiver	Location of service receiver
TAXABILITY	Taxable	Non-taxable

If the location of the recipient of the service is not available or ascertainable in ordinary course of business, such as services provided to individual customers who come to the premises of service provider for availing services, service provider will not be obliged to make any extra efforts to trace the location service receiver. Place of provision of service in such cases will be the location of service provider since location of receiver of the service is not ascertainable in ordinary course of business.

Service tax is normally required to be paid by the provider of a service, except where service provider is located outside the taxable territory and the place of provision of service is in the taxable territory. In such case, the person liable to pay service tax is the receiver of the service in the taxable territory, under reverse charge, unless the service is otherwise exempted.

LOCATION OF SERVICE PROVIDER - Taxable territory - Non-taxable territory	Person liable to pay service tax - Service Provider If service provider is located outside taxable territory and place of provision of service is in taxable territory, service receiver will be liable to pay service tax under reverse charge

QUICK NOTE	Service tax will be payable by service receiver under reverse charge if service is taxable in India and service provider is located either outside India or in the State of Jammu and Kashmir.

PLACE OF PROVISION OF SERVICE IN CASE OF IMPORT AND EXPORT OF SERVICES

IMPORT OF SERVICES	Assuming no other Rule applies, in case of import of services, the place of provision of service would be the location of service receiver in India in terms of Rule 3. However, service tax would have to be paid by the service receiver under reverse charge as service provider is located outside India.

EXPORT OF SERVICES	In case of export of services, the location of service receiver will be outside taxable territories. The place of provision in such case will be outside India and service would not be taxable in India. Thus, if service receiver is located outside India or in State of Jammu and Kashmir, service would not be taxable.

LOCATION OF SERVICE PROVIDER	LOCATION OF SERVICE RECEIVER	TAXABILITY
Taxable territory	Taxable territory	Since location of service receiver is in taxable territory, service is subject to service tax and liability will have to be discharged by service provider since it is located in taxable territory.
Taxable territory	Non-taxable territory	The provision of service is not taxable since service receiver is located outside the taxable territory.
Non-taxable territory	Taxable territory	The service would be subject to levy of service tax since the recipient is located in the taxable territory. However, since the service provider is located outside the taxable territory, service tax liability would have to be discharged by service receiver under reverse charge mechanism.
Taxable territory	Not ascertainable	If the location of the service receiver is not ascertainable, the place of provision shall be the location of service provider. Since the service provider is located in taxable territory, service tax will have to be paid by the service provider.
Non-taxable territory	Not ascertainable	If the location of the service receiver is not ascertainable, the place of provision shall be the location of service provider. Since the service provider is located in non-taxable territory, service tax cannot be levied in India.

SITUATION WHERE THE PAYMENT FOR A SERVICE IS MADE AT ONE LOCATION (SAY BY THE HEADQUARTERS OF A BUSINESS) **BUT THE ACTUAL SERVICES ARE RENDERED ELSEWHERE:** The location of the receiver shall be the establishment most directly concerned with the use of service in case where the services are used at more than one establishment or over a larger geographical territory, falling in more than one taxable jurisdiction.

The establishments in a taxable and non-taxable territory are to be treated as distinct persons (establishments). Thus, the taxing jurisdiction of service, which is provided under a *global framework agreement* between two multinational companies with the business establishment located outside the taxable territory, but which is used or consumed by a fixed establishment located in the taxable territory, will be the taxable territory.

JUDICIAL UPDATE	Tribunal had held that services provided by overseas service providers and received by overseas branches, though funded by the Indian head office, could not be held to be received/ provided in India. Accordingly, the liability under reverse charge did not arise in the hands of head office in India - Infosys Ltd *vs* Commissioner of Service Tax (CESTAT)

ILLUSTRATION: Service provider located in non-taxable territory, provides service to subsidiary of an Indian company located outside India and payment is made by the Indian holding company.

The recipient of the service is located in non-taxable territory and hence place of provision of service shall be such non-taxable territory as per Rule 3. Ultimate use of service by the subsidiary company located outside India, and not the payment by Indian company, is relevant for determining location of service receiver.

Besides, service provided by a person located in non-taxable territory to a person located in non-taxable territory is also exempted under Mega Exemption notification.

LEVY OF SERVICE TAX UNDER REVERSE CHARGE ON SERVICES RECEIVED AND CONSUMED ABROAD
CASE STUDY

One of the issues involved in this case was taxability of services received by the overseas branch offices of the taxpayer from sub-contractors located outside India under the reverse charge mechanism. The overseas branch offices of the taxpayer had availed services from sub-contractors located outside India (the contract was between overseas branch offices and the sub-contractors) for rendering services to overseas clients of the overseas branch offices.

Out of the export earnings of the taxpayer (in EEFC account), the taxpayer had allocated certain earnings to overseas branches for payments to subcontractors abroad. Based on the aforesaid transaction and also, considering that the branch office (situated outside India) and head office (based in India) were separate taxable persons for the purposes of the reverse charge mechanism under service tax legislation, the Bangalore Tribunal in the case of Infosys Ltd *vs* Commissioner of Service Tax held that since the service was not being received in India but received outside India by overseas branches there would not be any service tax liability on the Indian head office.

JUDICIAL UPDATE	**THE PLACE OF PROVISION OF MARKETING AND SALES SUPPORT SERVICES WILL BE DETERMINED IN TERMS OF RULE 3 OF THE PLACE OF PROVISION OF SERVICES RULES, 2012** The applicant intended to enter marketing and sales support agreements with its overseas group companies for promotion of sale of their products in India. It was held by the Authority for Advance Rulings that place of provision of services rendered by the applicant shall be location of service recipient, which was outside India - Tandus Flooring India (P) Ltd *vs* Commissioner of Service taxT (AAR)

RULE 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. 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 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. 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.

PLACE OF PROVISION	Location where services are actually performed

RULE 4(a) - **SERVICES RELATED TO GOODS**: Services related to goods which require them to be made available to the service provider or a person acting on behalf of the service provider so that the service can be rendered shall be deemed to be provided at the place where such services are actually performed.

The essential characteristic of a service to be covered under this Rule is that the goods temporarily come into the physical possession or control of the service provider, and without this happening, the service cannot be rendered.

Examples of such services are
- 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.

Rule 4, however, does not cover services where the supply of goods by the receiver is not material to the rendering of the service e.g. where a consultancy report commissioned by a person is given on a pen drive belonging to the customer. Similarly, provision of a market research service for a consumer product will not fall in this category, even if the manufacturer has given its product to market research agency to carry out door-to-door surveys.

SERVICES IN RESPECT OF GOODS TEMPORARILY IMPORTED INTO INDIA FOR REPAIRS: This Rule, does not apply to services provided in respect of goods temporarily imported in India for repairs and are re-exported without being put to any use, other than for the purpose of repairs. Hence, in such case, Rule 3 will apply and if service receiver is out of taxable territory, place of provision of service will be outside the taxable territory and service will not be taxable.

ANALYSIS

Machinery is temporarily imported and re-exported after repairs	Place of provision of service shall be location of service recipient under Rule 3, hence such service will not be taxable in India
Machinery is temporarily imported for repairs and used in India before re-export	Place of provision of service shall be place of actual performance under Rule 4(a)
Machinery is temporarily imported for repairs and used in India for the purpose of testing before re-export	Place of provision of service shall be location of service recipient under Rule 3, hence such service will not be taxable in India

This proviso does not apply to the goods that arrive in taxable territory in the usual course of business and are subject to repairs while they are in Indian territories such as repairs provided to containers arriving in India in the course of international trade. Such goods will be governed by Rule 4

SERVICES PROVIDED BY ELECTRONIC MEANS: The place of provision of services that are provided by electronic means in relation to tangible goods from a remote location, will be the place where such goods are situated at the time of provision of service and not the place of performance of service.

Services provided in respect of goods temporarily imported for re-export after repairs	Place of provision of service shall be determined under Rule 3 i.e. location of service receiver
Services provided by electronic means from remote location in relation to tangible goods	Place of provision of service shall be location where goods are situated at the time of provision of service

QUICK NOTE	In case of veterinary services, place of provision will be determined under Rule 4(a) i.e. the place where services are performed on goods (since for the purpose of this law, animals and birds are considered as goods). Place of provision of health care services provided to individuals will be determined under Rule 4(b) where place of provision will be place where services are actually provided to individuals.

RULE 4(b) - **SERVICES PROVIDED TO INDIVIDUALS**: The place of provision of services rendered in person and in the presence of the service receiver i.e. an individual shall be the location where the services are actually performed.

Certain services like surgery or clinical services, personal security service, health and fitness services require the presence of the individual receiver for their provision. In other cases it may be possible that services are rendered to person acting on behalf of the service receiver in terms of the contractual arrangement between the provider and the receiver.

ILLUSTRATION: A company contracts with a health and fitness centre for health services to its employees. In the given case, the company is the receiver of the service, but the actual services are rendered to the employees of the company. Hence, notwithstanding that the company does not qualify as an individual receiver in whose presence the service is rendered, the nature of service is such as can be rendered only to an individual, thereby qualifying to be covered under this Rule.

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.

PLACE OF PROVISION	Place where immovable property is located or intended to be located

In case of a service that is directly in relation to immovable property located in taxable territory, the place of provision of service will be the place where the immovable property is located or intended to be located, irrespective of the place where the service provider or recipient of service is located.

Generally, the following criteria will be used to determine if a service is directly in relation to immovable property located in the taxable territory:

- the service consists of lease, or a right of use, occupation, enjoyment or exploitation of an immovable property;
- the service is physically performed or agreed to be performed on an immovable property (e.g. maintenance) or property to come into existence (e.g. construction);
- the direct object of the service is the immovable property in the sense that the service enhances the value of the property, affects the nature of the property, relates to preparing the property for development or redevelopment or the environment within the limits of the property (e.g. engineering, architectural services, surveying and sub-dividing, management services, security services etc.);
- the purpose of the service is:
    - the transfer or conveyance of the property or the proposed transfer or conveyance of the property (e.g., real estate services in relation to the actual or proposed acquisition, lease or

rental of property, legal services rendered to the owner or beneficiary or potential owner or beneficiary of property as a result of a will or testament);
- determination of the title to the property.

There must be more than a mere indirect or incidental connection between a service provided in relation to an immovable property, and the underlying immovable property.

ILLUSTRATION: A legal firm's general opinion with respect to the capital gain's tax liability arising from the sale of a commercial property in India is basically advice on tax legislation in general even though it relates to the subject of an immovable property. This will not be treated as a service in respect of the immovable property.

The place of provision of services Rule applies only to services which relate directly to specific sites of land or property. In other words, the immovable property must be clearly identifiable to be the one from where, or in respect of which, a service is being provided. Thus, there needs to be a very close link or association between the service and the immovable property.

This Rule will not apply if a provision of service has only an indirect connection with the immovable property, or if the service is only an incidental component of a more comprehensive supply of services.

ILLUSTRATION: The services of an architect / interior decorator under a contract to design landscape of a particular place will be services relating to immovable property. However, services of such person engaged by a retail chain to design a common décor for all its stores cannot be considered as services related to immovable property or land related services and hence such services will be covered under Rule 3.

QUICK NOTE	**SERVICES SPECIFICALLY COVERED IN RULE 5** - Services provided by experts and estate agents in relation to immovable properties, - Provision of hotel accommodation by a hotel, inn, guest house, club or campsite, etc. - Grant of right to use immovable properties, - Services for carrying out or co-ordination of construction work, - Services provided by architects and interior decorators for a particular immovable properties.

EXAMPLES OF LAND-RELATED SERVICES
- Services supplied in the course of 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.
- The 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 or warehouse space.

EXAMPLES OF SERVICES WHICH ARE NOT LAND-RELATED

- Repair and maintenance of machinery which is not permanently installed. This is a service related to goods.
- Advice or information relating to land prices or property markets because they do not relate to specific sites.
- Land or Real Estate Feasibility studies, say in respect of the investment potential of a developing suburb, since this service does not relate to a specific property or site.
- Services of a Tax Return Preparer in simply calculating a tax return from figures provided by a business in respect of rental income from commercial property.
- Services of an agent who arranges finance for the purchase of a property.
- A legal firm's general opinion with respect to the capital gain's tax liability arising from the sale of commercial property in India.

QUICK REFERENCE	MEGA EXEMPTION NOTIFICATION

Services provided and received by persons located in non-taxable territories (such as services in respect of immovable property located in taxable territory, place of provision of service for which is determinable within taxable territory) will be exempt.

RULE 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.

PLACE OF PROVISION	Place where event is held

Place of provision of services in relation to organising events, admission and services ancillary to such admission, shall be the place where the event is held.

ILLUSTRATION: A management school located in USA intends to organize a road show in Mumbai and New Delhi for prospective students. Any service provided by an event manager, or the right to entry (participation fee for prospective students, say) will be taxable in India.

ILLUSTRATION: An Indian fashion design firm hosts a show at Toronto, Canada. The firm receives the services of a Canadian event organizer. The place of provision of this service is the location of the event, which is outside the taxable territory. Any service provided in relation to this event, including the right to entry, will be non-taxable.

Services ancillary to services in relation to admission to events will also be covered under this Rule, however services ancillary to organising such events will not be covered.

Services ancillary to organisation of events	Not covered under Rule 6
Services ancillary to admission to events	Covered under Rule 6

Example of service ancillary to organisation of an event: Provision of sound engineering for an artistic event is a prerequisite for staging of the event and should be regarded as a service ancillary to its organization.

Example of service ancillary to admission to an event: A service of hiring a specific equipment to enjoy the event at the venue (against a charge that is not included in the price of entry ticket) is an example of a service that is ancillary to admission.

Event related services that would not be treated as ancillary to admission to an event: A service of courier agency used for distribution of entry tickets for an event is a service that is not ancillary to admission to the event.

QUICK REFERENCE	MEGA EXEMPTION NOTIFICATION
Services by an organizer to any person in respect of a business exhibition held outside India are exempt.	

RULE 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.

PLACE OF PROVISION	Location in the taxable territory where greatest proportion of service is provided

This Rule covers situations where the actual performance of a service is at more than one location, and occasionally one (or more) such locations may be outside the taxable territory. In such case, place of provision of service shall be the place in taxable territory where greatest proportion of service is provided, notwithstanding the fact that greatest proportion of service might have been provided outside taxable territory.

Rule 7 applies only in respect of services is provided at more than one location, including a location in taxable territory and are covered under the Rules 4, 5 and 6.

Services covered under Rule 3 - General Rule	Rule 7 will not apply
Services covered under Rule 4 - Performance bases services Rule 5 - Services related to immovable properties Rule 6 - Services relating to events	Rule 7 will apply

ILLUSTRATION: An Indian firm provides technical inspection and certification service to a foreign company for its newly developed product to meet quality standards in different states and countries in Indian subcontinent. Testing is carried out in Kerala (15%), Maharashtra (20%), State of Jammu & Kashmir (30%) and outside India (say, Colombo to the extent of 35%).

Notwithstanding the fact that the greatest proportion of service is provided outside the taxable territory, the place of provision will be the place in the taxable territory where the greatest proportion of service is provided, in this case Maharashtra.

Kerala (15%)	Maharashtra (20%)	Jammu & Kashmir (30%)	Colombo (35%)

Place of provision shall be place within taxable territory where greatest proportion of service has been provided.

Service tax laws does not extend to State of Jammu and Kashmir and hence for the purpose of the Service Tax, State of Jammu and Kashmir is non-taxable territory.

This Rule is applicable in case of performance based services (such as event linked services) and location specific services (such as those related to immovable property). This Rule is, however, not intended to capture insignificant portion of a service rendered in any part of the taxable territory such as mere issuance of invoice, processing of purchase order or recovery, which are not by way of service actually performed on goods.

Normally, performance-based services or location-specific services when provided in a non-taxable territory would require the presence of separate establishments in such territories and they would constitute distinct persons and thus it would be legitimate to invoice the services rendered individually in the two territories.

RULE 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.

PLACE OF PROVISION	Location of service receiver

This Rule covers situations where the place of provision of a service may be determinable to be outside the taxable territory, in terms of the application of one of the earlier Rules i.e. Rule 4 to 7, but the service provider, as well as service receiver, is located in the taxable territory.

The presence of both service provider and service receiver in taxable territory indicates that place of consumption of service is in taxable territory. In such cases, the place of provision of service will be deemed to be the location of service receiver in the taxable territory, notwithstanding the fact that services have been rendered outside taxable territories and notwithstanding the provisions in earlier Rules.

ILLUSTRATION: A helicopter of Pawan Hans Ltd (Delhi) develops a technical snag in Nepal and engineers are deputed by Hindustan Aeronautics Ltd, Bangalore, to undertake repairs at the site in Nepal. But for this Rule, Rule 4(a) would apply in this case, and the place of provision would be Nepal i.e. outside the taxable territory. However, since the service provider, as well as the receiver, is located in the taxable territory, by application of Rule 8, place of provision of this service will be location of service receiver within the taxable territory.

RULE 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; b. Online information and database access or retrieval services; c. Intermediary services; d. Service consisting of hiring of means of transport other than aircrafts, and vessels except yachts, **upto a period of one month**.

PLACE OF PROVISION	Location of service provider

SERVICES PROVIDED BY A BANKING COMPANY TO AN ACCOUNT HOLDER

Banking services provide to account holders will be covered under Rule 9. Following are examples of services that are provided by a banking company or financial institution to an account holder, in the ordinary course of business:

- services provided to account holders of demand deposits, term deposits, NRE / NRO accounts,
- 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.

QUICK NOTE	Account, for the purpose of these Rules, means an account bearing interest to the depositor, and includes a Non-Resident External (NRE) account and Non-Resident Ordinary (NRO) account. Services provided in relation to other accounts such as current account or to persons other than account holders, shall not be covered here. Consequently, place of provision of service will be determined under Rule 3.

In case of banking and financial services which does not qualify as services provided to an account holder, in the ordinary course of business, will consequently not be covered under this Rule and the place of provision will be determined under the Rule 3. Thus, in such case, place of provision will be the location of the service receiver where it is ascertainable in the ordinary course of business, or else the location of the service provider.

Services provided to account holders in ordinary course of business	Place of provision of service shall be location of banking or financial institution, under Rule 9

Services provided to account holders other than in ordinary course of business	Place of provision of service shall be determined under Rule 3

Following are examples of services that are generally not provided by a banking company or financial institution to an account holder (holder of a deposit account bearing interest), in the ordinary course of business. Place of provision of service in such cases will be determined under Rule 3.

- Financial leasing services including equipment leasing and hire-purchase;
- Merchant banking services;
- Securities and foreign exchange (FOREX) broking, and purchase or sale of foreign currency, including money changing;
- Asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services;
- Advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy;
- Banker to an issue service.

ONLINE INFORMATION AND DATABASE ACCESS OR RETRIEVAL SERVICES means providing data or information and database access or retrieval or both, in electronic form through computer network, to any person. These services are automated and essentially delivered over the internet or an electronic network which relies on the internet or similar network for their provision and require minimal human intervention.

Examples of such services are:

- 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 following services will not be treated as online information and database access or retrieval 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 an 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.

JUDICIAL UPDATE	E-commerce transaction services provided through a website which facilitated sale and purchase of goods over the internet would be classified as Business Auxiliary Services and not under online data access and/or retrieval services - Commissioner of Central Excise *vs* Ebay India (P) Ltd (CESTAT)

INTERMEDIARY SERVICES

Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a 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.

Guiding principles to determine if a person can be considered as an intermediary:

- Nature and value: An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. The principal must know the exact value at which the service is supplied (or obtained) on his behalf, and any discounts that the intermediary obtains must be passed back to the principal.
- Separation of value: The value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging.
- Identity and title: The service provided by the intermediary on behalf of the principal is clearly identifiable.

In accordance with the above guiding principles, following are the examples of services that will qualify as intermediary services:

- Travel Agent (any mode of travel)
- Tour Operator
- Commission agent for a service
- Consignment agent for goods
- Recovery Agent

Even in other cases, wherever a provider of any service acts as an intermediary for another person, as identified by the guiding principles outlined above, this rule will apply. Normally, it is expected that the intermediary or agent would have documentary evidence authorizing him to act on behalf of the provider of the main service.

ILLUSTRATION: Call centres that provides services to their clients by dealing with the customers of their client on client's behalf, but actually provides these services on their own account, will not be categorised as intermediaries.

ILLUSTRATION: A freight forwarder arranges for export and import shipments. There could be two possible situation - one when he acts on his own account, and the other, when he acts as an intermediary.

WHEN THE FREIGHT FORWARDER ACTS ON HIS OWN ACCOUNT: Suppose a freight forwarder provides domestic transportation within taxable territory as well as international freight service, under a single contract, on his own account (i.e. he buys-in and sells freight transport as a principal), and charges a consolidated amount to the exporter.

This is a service of transportation of goods for which the place of provision of service, under Rule 10, is the destination of goods, outside taxable territory and hence this service will not be subject to service tax. Here, it is presumed that ancillary freight services (i.e. services ancillary to transportation, loading, unloading, handling etc.) are bundled with the principal service owing to a single contract or a single price (consideration).

On an import shipment with similar conditions, the place of provision of service, under Rule 10, will be in the taxable territory, and so the service tax will be attracted.

WHEN THE FREIGHT FORWARDER ACTS AS AN INTERMEDIARY: Where the freight forwarder acts as an intermediary, the place of provision will be his location under Rule 9 and service tax will be payable on such services.

HIRING OF MEANS OF TRANSPORT

The services of providing any conveyance designed to transport goods or persons from one place to another, on hire or lease, up to a period of one month, without the transfer of right to use is covered under this Rule.

SCOPE OF ENTRY: The entry covers hiring of all means of transport other than aircrafts and vessels, but includes yachts.

MEANS OF TRANSPORT	NOT A MEANS OF TRANSPORT
- Land vehicles such as motorcars, buses, trucks; - Vessels and Aircrafts; - Vehicles designed specifically for the transport of sick or injured persons; - Mechanically or electronically propelled invalid carriages; - Trailers, semi-trailers and railway wagons.	- Racing cars; - Containers used to store or carry goods while being transported; - Dredgers.

1 MONTH	This Rule covers situations where the hiring is for a period of up to one month. When the hiring period is more than one month, or there is annual contract for hiring means of transport, Rule 9 would not apply and the place of provision of such service will be location of service receiver in terms of Rule 3.

Hiring means of transport for a period up to one month	Covered under Rule 9
Hiring means of transport for a period of more than one month	Covered under Rule 3
Hiring means of transport under an annual contract	Covered under Rule 3

RULE 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.

PLACE OF PROVISION	Destination of goods and location of person liable to pay tax in case of GTA

Service of transportation of goods by any mode of transport (air, vessel, rail or by a goods transportation agency) other than transportation by courier or mail, is covered here.

Place of provision of a service of transportation of goods shall be the place of destination of goods, except in the case of services provided by a Goods Transportation Agency in respect of transportation of goods by road, in which case the place of provision shall be location of the person liable to pay service tax on the transportation charges.

Place of provision of transportation of goods, other than by way of mail or courier	Place of destination of goods
Goods transportation agency	Location of the person liable to pay tax

TRANSPORTATION OF GOODS BY ANY MODE OTHER THAN GTA SERVICES	PLACE OF PROVISION OF SERVICE	TAXABILITY
Freight for Export of goods from India	Foreign territory where goods are exported	Not taxable
Freight for Import of goods to India	India	Not taxable

QUICK REFERENCE	NEGATIVE LIST
Services by way of transportation of goods by way of by an aircraft or a vessel from a place outside India up to the customs station of clearance in India is included in Negative List, hence it shall not be liable to tax.	

QUICK NOTE	Rule 10 is not applicable in case of transportation by courier or mail. Place of provision in such case shall be place of performance determined under Rule 4. **PLACE OF PROVISION OF SERVICES FOR TRANSPORTATION OF GOODS BY COURIER AGENCY OR EXPRESS CARGO SERVICE**: a. GOODS: The place of provision in respect of goods which are required to be made physically available by the recipient of service (sender of goods) to the service

	provider (courier agency), shall be location where services are actually performed, under Rule 4. b. DOCUMENTS: The documents sent by any person cannot be considered goods as they are not capable of being bought or sold in the market. Therefore, place of provision of service cannot be determined under Rule 4, and the place of provision of service will be the location of recipient of service, i.e. the sender, under Rule 3.

ILLUSTRATION: A consignment of cut flowers is consigned from Chennai to Amsterdam. The place of provision of goods transportation service will be Amsterdam (outside taxable territories, hence not liable to service tax). Conversely, if a consignment of crystal ware is consigned from Paris to New Delhi, the place of provision will be New Delhi.

SCHEME OF IMPOSITION OF SERVICE TAX ON GTA: In case where service of transportation of goods is provided by Goods transportation Agency, the person receiving service is liable to pay service tax in most of the cases, subject to certain exceptions.

Any person who pays or is liable to pay freight, either on their own as consignor or consignee or through agent, for transportation of goods by road in a goods carriage shall be liable to pay service tax under reverse charge, if such person is covered in any of the following categories:

- factory, society, co-operative society and body corporate - either registered or established by law in India,
- dealer of excisable goods registered under Central Excise Act, 1944 or Rules made there under,
- partnership firms whether registered or not under any law, including association of persons.

In case where freight is payable by person located in non-taxable territory, the service provider i.e. GTA shall be liable to pay service tax.

EXCEPTION: In case where either individuals, Hindu Undivided Family (HUF) or Body of Individuals (BOI) pays or is liable to pay freight, service tax shall be payable by GTA (i.e. by the service provider and not service receiver).

QUICK REFERENCE	SERVICE TAX RULES, 1994

Service Tax Rules, 1994 provides that where a service of transportation of goods is provided by a goods transportation agency, and the consignor or consignee is covered under any of the specified categories prescribed therein, the person liable to tax is the person who pays, or is liable to pay freight (either himself or through his agent) for the transportation of goods by road in a goods carriage.

If such person is located in non-taxable territory, then the person liable to pay tax shall be the service provider.

ILLUSTRATION: A goods transportation agency ABC located in Delhi transports a consignment of new motorcycles from the factory of XYZ in Haryana, to the premises of a dealer in 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.

ILLUSTRATION: 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 Jammu.

As per mutually agreed terms between ABC and XYZ, the dealer in Jammu is the person liable to pay freight. Since the person liable to pay freight is located in non-taxable territory, the person liable to pay tax will be ABC. Accordingly, the place of provision of the service of transportation of goods will be the location of ABC i.e. Delhi.

RULE 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.

PLACE OF PROVISION	Place where passenger embarks on a conveyance for a continuous journey

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.

Continuous journey means a journey for which either a single ticket or invoice is issued for the entire journey; or more than one ticket or invoice is issued at the same time, either by one service provider, or by an agent acting on behalf of more than one service providers, and there is no scheduled stopover between legs of the journey for which one or more separate tickets or invoices are issued.

Stopover means a place where a passenger can disembark either to transfer to another conveyance or break their journey for a certain period in order to resume it at a later point of time. All stopovers do not cause a break in continuous journey. Only such stopovers will be relevant for which one or more separate tickets are issued.

ILLUSTRATION: Travel on Delhi-London-New York-London-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 York-Boston-New York, the same will be outside the scope of a continuous journey.

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 refuelling, and ends where it is next stopped for any of those purpose.

Travel on a single ticket with a halt on either side, or even both, will be covered by the definition of continuous journey if a single ticket or multiple tickets are issued by at the same time by service provider or person acting on behalf of service provider. However if a separate tickets are issued, with scheduled stopover, each journey shall be treated as separate journey rather than a continuous journey.

ILLUSTRATION: SINGLE TICKET (NO STOPOVER)

JOURNEY	PLACE OF PROVISION	TAXABILITY
Mumbai - Delhi	Mumbai	Taxable - Mumbai being place of embarkation
Mumbai - Delhi - Jammu	Mumbai	Taxable - Mumbai being place of embarkation of a continuous journey
Mumbai - Delhi - London - Delhi - London	Mumbai	
Delhi - London - New York - London - New York	Delhi	Taxable - Delhi being place of provision of continuous journey with single return ticket
Delhi - London - New York	Delhi	
Ney York - London - Delhi	New York	Not taxable - New York being place of provision of continuous journey with single return ticket
New York - London - Delhi - Mumbai - Delhi - London - New York	New York	
Delhi - Jammu - Delhi	Delhi	Taxable - Delhi being place of provision of continuous journey
Jammu - Delhi - Jammu	Jammu	Not taxable - Jammu being place of provision of continuous journey with single return ticket

JOURNEY	PLACE OF PROVISION	TAXABILITY
Guwahati - Kolkata - Bangkok - Kolkata - Guwahati Guwahati - Kolkata - Mumbai Kolkata - Guwahati - Kolkata	Guwahati (Assam) Guwahati (Assam) Kolkata (the onward and return legs of journey terminate and originate in exempted territory respectively)	Place of provision of continuous journey being in taxable territory, service is taxable, but no service tax is payable owing to the exemption and journey is deemed continuous. Here it is relevant to note that the journey is against a single, return ticket. Journey commencing or termination at airports in north eastern states is exempt.

ILLUSTRATION: Multiple tickets for a journey, without any scheduled stopover, issued by a single service provider or an agent acting on behalf of more than one service provider

JOURNEY	PLACE OF PROVISION AND TAXABILITY
Delhi - Bangkok - Delhi Delhi - Jammu - Delhi	Place of provision of service (Delhi) is in taxable territory and hence service will be taxable in India

JOURNEY	PLACE OF PROVISION AND TAXABILITY
Bangkok - Bali - Bangkok London - Delhi - London Jammu - Delhi - Jammu	Place of provision of service (Bangkok. London, Jammu) is outside taxable territory and hence service will not be taxable in India

JOURNEY	PLACE OF PROVISION	TAXABILITY
a. Guwahati - Kolkata b. Kolkata - Delhi	Guwahati Kolkata	In these cases, generally, the passenger would be required to change aircraft after exiting the airport, and is required to obtain a fresh boarding pass for the next leg. This is deemed to be a stopover. Thus, journey from Kolkata to Delhi is taxable, and service tax is payable on Kolkata - Delhi leg.
a. Guwahati - Kolkata - Guwahati b. Kolkata - Bangkok - Kolkata	Guwahati Kolkata Each journey is deemed continuous based on the assumption that two single return tickets are purchased.	Generally, in such cases, since separate return tickets have been purchased for the two journeys, after completing journey A, the passenger will be required to disembark from the aircraft and complete check-in formalities for journey B. Thus, the journey will not be deemed to be continuous and place of provision for journey B, being in taxable territory, it will be taxable.

QUICK REFERENCE	MEGA EXEMPTION NOTIFICATION

AIR TRANSPORT IN NORTH EAST IS EXEMPT: Transport of passengers, by air, embarking or terminating in an airport located in the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura or at Baghdogra (in West Bengal) are exempt from the levy of service tax.

ILLUSTRATION: More than one ticket is issued for a journey with scheduled stopovers

In case of a journey from Delhi - London - Delhi, if two tickets are issued and there is a stopover at London, journey would not be considered as a continuous journey and shall be taxed as under.

Delhi - London	Place of provision of service - Delhi	Taxable
London - Delhi	Place of provision of service - London	Non-taxable

RULE 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.

PLACE OF PROVISION	First scheduled point of departure of the conveyance

Place of provision of services provided on board a conveyance (aircraft, vessel, rail, or roadways bus) against a specific charge, other than those supplied as part of the fare, intended to be wholly or substantially consumed while on board shall be the first scheduled point of departure of the conveyance.

Thus, in effect, services provided on board a conveyance, with first scheduled point of departure in taxable territory, shall be subject to service tax in India even if such services are actually provided outside taxable territories.

Services provided on board against a specific charge	Place of provision will be determined under Rule 12
Services provided on board as a part of fare	Not covered under Rule 12

QUICK NOTE	Services provided on board for which charges are included as part of fare and no extra amount is charged will not be covered under Rule 12. Such services will be considered as bundled services and their taxability will be determined accordingly.

First scheduled point of departure of the conveyance for the journey will be the place of provision of services provided on chargeable basis even if such services are actually provided on board a conveyance within or after crossing the taxable territories.

ILLUSTRATION: A video game or a movie-on-demand is provided as on-board entertainment during the Kolkata - Delhi leg of Bangkok - Kolkata - Delhi flight. The place of provision of this service will be Bangkok since it is point of departure of the journey.

Bangkok - - ✈ - Kolkata - - ✈ - - - - - service provided - - - - - - Delhi

Place of provision of service - point of departure for the journey
i.e. outside taxable territory and hence not taxable

If the service is provided on a Delhi - Kolkata - Bangkok - Jakarta flight during the Bangkok - Jakarta leg, the place of provision of service will be Delhi since flight commenced journey from Delhi.

Delhi - - ✈ - - - - - - - - - Kolkata - - ✈ - - - - - - - - - Bangkok - - ✈ - - - - service provided - - - - - Jakarta

Place of provision of service - point of departure for the journey
i.e. within taxable territory and hence service will be taxable

RULE 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.

No service has yet been notified under this Rule

The Rule is an enabling power to correct any injustice being met due to the applicability of Rules in a foreign territory in a manner which is inconsistent with these Rules leading to double taxation. Due to the cross border nature of many services it is also possible in certain situations to set up businesses in a non-taxable territory while the effective enjoyment, or in other words consumption, may be in taxable territory.

This Rule is also meant as an anti-avoidance measure where the intent of the law is sought to be defeated through ingenious practices unknown to the ordinary ways of conducting business.

RULE 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.

This Rule covers situations where the nature of a service, or the business activities of the service provider, may be such that two or more Rules may appear equally applicable and in such cases, the later Rule would prevail.

QUICK REFERENCE	SECTION 66F(2) HAS OVERRIDING EFFECT OVER RULE 14

Section 66F(2) of the Finance Act provides that where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a general description.

Thus, two Rules may not be considered as Rules that merit equal consideration if one Rule specifically covers the service while other covers general description. In such case, Rule 14 (later the better) may not always apply if the Rule covering general description occurs latter over a Rule covering specific description.

EXAMPLE: Rule 5 covers estate agents while Rule 9 covers intermediaries generally. The services of estate agents relating to immovable properties are specifically covered under Rule 5 and hence even if Rule 5 occurs before Rule 9, it shall be applicable.

ILLUSTRATION: An architect based in Mumbai provides service to an Indian Hotel Chain (with business establishment in New Delhi) for its newly acquired property in Dubai. As per Rule 5, the place of provision would be the location of the property i.e. Dubai (outside the taxable territory) and service would not be taxable in India.

Whereas, by application of Rule 8, since both the provider and the receiver of service are located in taxable territory, the place of provision would be the location of the service receiver i.e. New Delhi. Since the Place of provision is 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.

ILLUSTRATION: For the Miss Universe Contest planned to be held in South Africa, the Indian pageant 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, under Rule 4, while for other services, the place of provision would be the location of receiver, under Rule 3.

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. Place of provision being 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 apply to determine the place of provision.