

Place of Provision Rules: Brief Overview

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Introduction

- ***Source of the Rules:***

- Charging Section 66B of the Finance Act 1994, (“**Act**”) makes the provision of ‘service’ in the ***taxable territory as*** one of the determinative factors for imposition of Service Tax

- ***Rationale:***

- Service should be taxed in the jurisdiction of its consumption
- The Supreme Court in ***All India Fedn of Tax Practitioners v. Union of India 2007 (7) S.T.R. 625 (S.C.)*** categorically explained that all other indirect taxes which are related to ‘goods’ are consumption specific in the sense that they do not constitute a charge on the business but on the client, similarly Service Tax is also a *destination based consumption tax*, leviable only on consumption of ‘services’ provided within the country

Introduction (Contd.)

- The Place of Provision of Service Rules, 2012 [PoP Rules] - notified *vide* Notification no. 28/2012-ST dated 20.6.2012 under Section 66 C of the Act and came into effect from 1.7.2012
- ***Replaced:***
 - Export of Services Rules, 2005
 - Taxation of Services (Provided from outside India and received in India) Rules, 2006

Relevance of PoP Rules

- Presently PoP Rules are relevant for the following purposes:
 - Whether the services has been provided in the taxable territory
 - Export of service for exemption
 - Import of service for liability of Service Tax on reverse charge basis
 - Service provided to and from Special Economic Zone
 - Services provided to and from Jammu & Kashmir
 - Assesses providing combination of services from different locations

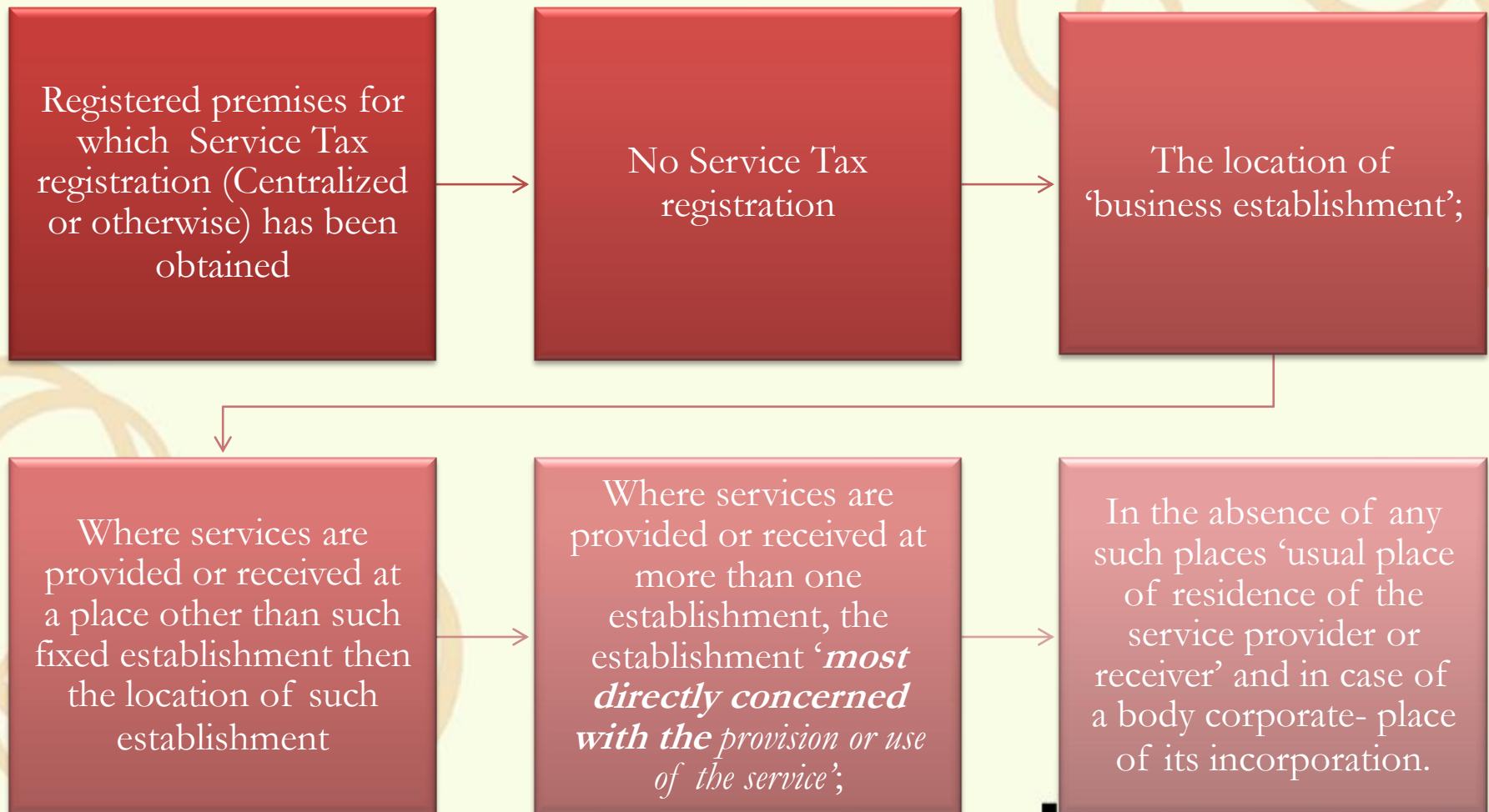
General Framework of PoP Rules

- There are total 14 Rules under PoP Rules, where Rule 14 lays down that the place of provision shall be '*determined in accordance with the rule that occurs later among the rules that merit equal consideration*'
- Rule Numbers 3 to 12 divides services into 10 types for the purpose of determining the place of provision of service. These are:
 - General Rule: (Rule 3)
 - Performance based services.(Rule No. 4)
 - Services relating to immovable property.(Rule No.5)
 - Services relating to events (Rule No.6)

General Framework of PoP Rules(Contd.)

- Services provided at more than one location(Rule No.7)
- Services where provider and recipient are located in taxable territory(Rule No.8)
- Certain specified services: (Rule No. 9)
 - a) Services to account holders by a banking company, or a financial institution, or a non-banking financial company,
 - b) Online information and database access or retrieval services;
 - c) Intermediary services;
 - d) Service consisting of hiring of means of transport, up to a period of one month.
- Goods transportation services. (Rule No.10)
- Passenger transportation service (Rule No.11)
- Services provided on board a conveyance (Rule No.12)

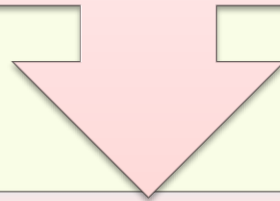
Location of Service Provider/Receiver: In Order of Preference



Rule 3: POP Generally

Related to all Services and apply when no other specific rule is applicable

The Place of Provision of Service shall be the '*location of the recipient of Service*'.



Illustrative list of services where Rule 3 may apply (Except where both the service provider and service receiver are located within the taxable territory)

Consultancy Services, Services of Marketing/Sales Promotion of Goods, Manpower Recruitment or Supply Services, Development of Information Technology Software, Transaction/Back office Processing Services

Rule 4: Performance based Services

PoP –Place where ‘Services’ actually Performed

In General

- **Type 1:** Services performed on goods made physically available by the recipient to service provider/person acting on his behalf. Example: repair & maintenance, cargo handling, courier service etc.
- **Type 2:** Services capable of being provided in physical presence of the service recipient /person acting on his behalf. Example: beauty treatment services, personal security services, health and fitness services, photography services, classroom teaching etc..

Exception

- Services provided from a remote location by way of electronic means- PoP shall be the location where goods are situated at the time of provision of service.
- Service provided in respect of goods that are temporarily imported into India for repairs, reconditioning or reengineering for re-export outside the purview of Rule 4(a)

Rule 5: Services related to Immovable Property

- **PoP shall be the place where Immovable property is located or intended to be Located**
 - Departmental Clarification - 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

Examples:

- Services supplied in course of construction, reconstruction, alteration, repair or maintenance, painting or decorating etc. of any building or any civil engineering work
- Renting of immovable property
- Services of real estate agents, auctioneers, architects and similar experts or professional people

Examples of services deemed not land-related

- i. Repair and maintenance of machinery which is not permanently installed. This is a service related to goods.
- i. Advice or information relating to land prices or property markets since they do not relate to specific sites.
- i. 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.
- i. 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.
- i. Services of an agent who arranges finance for the purchase of a property.

Rule 6: PoP of Event Based Services

- **Place of provision of service shall be the place of event for the following:**
 - Services by way of admission to or organizing of cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar event; and of services ancillary to admission of an event
- **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.

Rule 6: PoP of Event Based Services (Contd.)

- **Example of Services ancillary to organization or admission to an event**
 - Provision of sound engineering for an artistic 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)

Rule 7: Specified Services Provided at More Than One Location

- Where a mix of any Performance Based services, services related to Immovable Property and Event Based services are provided at more than one location then place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided
- **Department's Illustration**
 - An Indian firm provides a 'technical inspection and certification service' for a newly developed product of an overseas firm (say, for a newly launched motorbike which has to meet emission standards in different states or countries). **Say, the testing is carried out in Maharashtra (20%), Kerala (25%), and an international location (say, Colombo 55%).**

Rule 8: Where both Provider and Recipient located in Taxable Territory

- This Rule expressly mandates, that in case the location of Service Provider and Recipient is a taxable territory then irrespective of any foregoing Rule i.e. Rule 4-6, the PoP shall be **location of Service Recipient**
- **Example:**
 - If both, Service Recipient A and Service Provider B are registered with the Service Tax Department and A rents its flat located in London to B, then such rent shall be leviable to Service Tax in India irrespective of the fact that the immovable property is located in London

Rule 9: PoP for Specific Services

The place of provision for following services shall be the location of the service provider:-

- a) **Services provided to accounts holders by a banking company** [Section 45(A) of RBI Act], or a **financial institution** [Section 45-I(c) of the RBI Act], or a **non-banking financial company** (as defined under Rule 2(k) of POP Rules]
- a) **Online information and database access or retrieval services**- providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network
- a) **Intermediary services**- A broker, an agent or any other person who arranges or facilitates provision of services between two or more persons
- a) **Service consisting of hiring of means of transport** (conveyance designed to carry goods or passengers one place to another)

Rule 10 : Goods Transportation Service

Description of Service	Place of Provision of Services as per Rule
Transportation of Goods	
1. By Road i.e. GTA	Location of Person liable to Pay Tax
2. By other modes except mail or courier	Destination of goods

PoP Rules: Rule 11 & 12

Rule	Related to	Place of Provision of Services as per the Rule
Rule 11	Passenger transportation Services	Place where the passenger embarks on the conveyance for a continuous journey.
Rule 12	Services provided on board a conveyance	First scheduled point of departure of that conveyance of a journey

Thank you