

SERVICE TAX

LETTER

Service Tax : Amendments in Point of Taxation Rules, 2011 and other related provisions

LETTER [F.NO.341/34/2010-TRU], DATED 31-3-2011

As you are aware, the Point of Taxation Rules (PTR) were formulated vide Notification No.18/2011-ST dated 01.03.2011. Based on the feedback, certain amendments are being carried out in these rules vide Notification No. 25/2011-ST dated 31.03.2011. The highlights of the changes are discussed in the following paragraphs.

2. While the rules shall come into force from 01.04.2011, an option has been given in rule 9 to pay tax on payment basis, as at present, till 30.06.2011.

3. Rule 3 has been amended to provide that the point of taxation shall be as follows:

- (a) Date of invoice or payment, whichever is earlier, if the invoice is issued within the prescribed period of 14 days from the date of completion of the provision of service.
- (b) Date of completion of the provision of service or payment, if the invoice is not issued within the prescribed period as above.

The applicability of the rule will be clear from the illustrations in the following table:

<i>S. No.</i>	<i>Date of completion of service</i>	<i>Date of invoice</i>	<i>Date on which payment recd.</i>	<i>Point of Taxation</i>	<i>Remarks</i>
1.	April 10, 2011	April 20, 2011	April 30, 2011	April 20, 2011	Invoice issued in 14 days and before receipt of payment
2.	April 10, 2011	April 26, 2011	April 30, 2011	April 10, 2011	Invoice not issued within 14 days and payment received after completion of service
3.	April 10, 2011	April 20, 2011	April 15, 2011	April 15, 2011	Invoice issued in 14 days but payment received before invoice
4.	April 10, 2011	April 26, 2011	April 5, 2011 (part) and April 25, 2011 (remaining)	April 5, 2011 and April 10, 2011 for respective amounts	Invoice not issued in 14 days. Part payment before completion, remaining later

4. Rule 4 has been amended to clarify that change in the effective rate of tax shall also include change in that portion of value on which tax is payable in terms of an exemption notification or rules made in this regard. It may be noted that an exemption has been granted in value for various services vide Notification No. 1/2006-ST dated 01.03.2006 which has the effect of payment of tax only on a part of the value. Similarly either the values or the rates at which tax is payable are provided under rule 6(7, 7A, 7B or 7C) of

the Service Tax Rules, 1994 as well as the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. Thus, whenever these values or the composition rates are changed, it would have the same effect as the change in the rate of duty. It is hereby further clarified that the rate of tax shall also include any other notification which is issued, rescinded or amended and has the effect of altering the taxability of any service.

5. Rule 6 relating to continuous supply of service has been aligned with the revised rule 3 and the date of completion of continuous service has been defined within the rule. This date shall be the date of completion of the specified event stated in the contract which obligates payment in part or whole for the contract. For example, in the case of construction services if the payments are linked to stage-by-stage completion of construction, the provision of service shall be deemed to be completed in part when each such stage of construction is completed. Moreover, it has been provided that this rule will have primacy over rules 3, 4 and 8.

6. Moreover, the following services have been notified as "continuous supply of services" in terms of clause 2(c) of the rules vide notification No. 28/ST-2011 dated 01.04.2011:

- (a) Telecommunication service [65(105)(zzzx)]
- (b) Commercial or industrial construction [65(105)(zzq)]
- (c) Construction of residential complex [65(105)(zzzh)]
- (d) Internet Telecommunication Service [65(105)(zzzu)]
- (e) Works contract service [65(105)(zzza)]

Thus these services will constitute "continuous supply of services" irrespective of the period for which they are provided or agreed to be provided. Other services will be considered continuous supply only if they are provided or agreed to be provided continuously for a period exceeding three months.

7. Rule 7 relating to associated enterprises has been deleted. Now that the date of completion of the provision of service is an important criterion in the determination of point of taxation, it shall take care of most of the dealings between the associated enterprises. Thus in case of failure to issue the invoice within the prescribed period, the date of completion of provision of service shall come into effect even if payment is not made.

8. Rule 7 has thus been replaced by a new provision whereby the point of taxation shall be the date of making or receiving the payment, as the case may be. This provision shall apply to the following:

- (i) Export of services;
- (ii) Persons, where the obligation to pay tax is on the service recipient in terms of rule 2(1)(d) of the Service Tax Rules, 1994 in respect of services notified under section 68(2) of the Finance Act, 1994.
- (iii) Individuals, proprietorships and partnership firms providing specified services (Chartered Accountant, Cost Accountant, Company Secretary, Architect, Interior Decorator, Legal, Scientific and Technical consultancy services). The benefit shall not be available in case of any other service also supplied by the person concerned along with the specified services.

9. Export of services is exempt subject, inter alia, to the condition that the payment should be received in convertible foreign exchange. Until the payment is received, the provision of service, even if all other conditions are met, would not constitute export. In order to remove the hardship that will be caused due to accrual method, the point of taxation has been changed to the date of payment. However, if the payment is not received within the period prescribed by RBI, the point of taxation shall be determined in the absence of this rule.

10. In the case of services where the recipient is obligated to pay service tax under rule 2 (1)(d) of Service Tax Rules i.e. on reverse charge basis, the point of taxation shall be the date of making the payment. However, if the payment is not made within six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist. Moreover, in the case of associated enterprises, when the service provider is outside India, the point of taxation will be the earlier of the date of credit in the books of account of the service receiver or the date of making the payment.

11. Changes have also been made in the Service Tax Rules, 1994 vide notification No. 26/2011-ST dated 31.03.2011 and have a close relationship with the Point of Taxation Rules as follows:

- (i) The obligation to issue invoice shall be within 14 days of completion of service and not provision of service.
- (ii) If the amount of invoice is renegotiated due to deficient provision or in any other way changed in terms of conditions of the contract (e.g. contingent on the happening or non-happening of a future event), the tax will be payable on the revised amount provided the excess amount is either refunded or a suitable credit note is issued to the service receiver. However, concession is not available for bad debts.

12. The credit of input services under rule 4 (7) of the Cenvat Credit Rules has also been liberalized vide notification No. 13/2011-CE (NT) dated 31.03.2011 and the same shall be available on receipt of invoice (except in cases of reverse charge) as long as the payment is made within three months. Even specified persons required to pay tax on cash basis will be able to avail credit on receipt of invoice. Suitable changes have also been made for reversal of credit or payment when the value of service is renegotiated or altered for any reason by refund or issue of a credit note by the service provider. Amendment has also been made in Rule 9 of Cenvat Credit Rules, 2004 by allowing credit on supplementary invoice, except in non-bonafide cases, which may become necessary in certain situations e.g. where the point of tax is the date of payment while the invoice had already been issued e.g. rule 4(b)(i) of Point of Taxation Rules.

13. It is further clarified that the transitional provisions will apply to all invoices issued before 31.03.2011 in so far as taxpayers who switch over to the new rules on 01.04.2011. Those assesseees who like to shift to the new rules on 01.07.2011 would have similar protection in respect of invoices issued before the date they switch over to the new rules. The benefit has also been extended to services when provision has been completed before 01.04.2011 or 01.07.2011, as the case may be. It is also clarified that the payments received before the new rules come into force do not require any transitional provisions as they are already required to pay tax on payment basis.

14. It is hoped that with these changes and clarifications all representations on the subject have been dealt with. It is requested that all officers may be advised to explain and clarify the new provisions to taxpayers and assist them in every possible manner in transition to revised rules. Any difficulty experienced in this regard may be brought to the notice of undersigned as soon as possible.