

**Service Tax : Point of Taxation Rules, 2011**

**NOTIFICATION NO. 18/2011 - SERVICE TAX, DATED 1-3-2011**

In exercise of the powers conferred under clause (a) and clause (hhh) of sub-section (2) of section 94 of the Finance Act, 1994, the Central Government hereby makes the following rules for the purpose of collection of service tax and determination of rate of service tax, namely,—

**Short title and commencement**

1. (1) These rules shall be called the Point of Taxation Rules, 2011.
- (2) They shall come into force on the 1st day of April, 2011.

**Definitions**

2. In these rules, unless the context otherwise requires,—

- (a) “Act” means the Finance Act, 1994 (32 of 1994);
- (b) “associated enterprises” shall have the meaning assigned to it in section 92A of the Income-tax Act, 1961 (43 of 1961);
- (c) “continuous supply of service” means any service which is provided, or to be provided continuously, under a contract, for a period exceeding three months, or where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition;
- (d) “invoice” means the invoice referred to in rule 4A of the Service Tax Rules, 1994 and shall include any document as referred to in the said rule;
- (e) “point of taxation” means the point in time when a service shall be deemed to have been provided;
- (f) “taxable service” means a service which is subjected to service tax, whether or not the same is fully exempt by the Central Government under Section 93 of the Act.

**Determination of point of taxation**

3. For the purposes of these rules, unless otherwise stated, ‘point of taxation’ shall be determined in the following manner, namely:—

- (a) a provision of service shall be treated as having taken place at the time when service is provided or to be provided; and
- (b) if, before the time specified in clause (a), the person providing the service issues an invoice or receives a payment, the service shall, to the extent covered by the invoice or the payment made thereof, be deemed to have been provided at the time the invoice was issued or the payment was received, as the case may be, whichever is earlier.

*Explanation.* – For the purposes of this rule, wherever any advance, by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.

*Explanation 2.* – For the purposes of this rule, in respect of services taxable under section 66A of the Act, the point of taxation under clause (b) shall be the date on which the invoice is received, or the payment is made, as the case may be, whichever is earlier.

#### **Determination of point of taxation in case of change of rate of tax**

**4.** Notwithstanding anything contained in rule 3, the point of taxation in cases where there is a change of rate of tax in respect of a service, shall be determined in the following manner, namely:–

- (a) in case a taxable service has been provided before the change of rate,–
  - (i) where the invoice for the same has been issued and the payment received after the change of rate, the point of taxation shall be date of payment or issuing of invoice, whichever is earlier; or
  - (ii) where the invoice has also been issued prior to change in tax rate but the payment is received after the change of rate, the point of taxation shall be the date of issuing of invoice; or
  - (iii) where the payment is also received before the change of rate, but the invoice for the same has been issued after the change of rate, the point of taxation shall be the date of payment;
- (b) in case a taxable service has been provided after the change of rate,–
  - (i) where the payment for the invoice is also made after the change in tax rate but the invoice has been issued prior to the change of tax rate, the point of taxation shall be the date of payment; or
  - (ii) where the invoice has been issued and the payment for the invoice received before the change of tax rate, the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier; or
  - (iii) where the invoice has also been raised after the change of rate but the payment has been received before the change of rate, the point of taxation shall be date of issuing of invoice.

#### **Payment of tax in cases of new services**

**5.** Where a service, not being a service covered by rule 6, is taxed for the first time, then,–

- (a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;
- (b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within the period referred to in rule 4A of the Service Tax Rules, 1994.

#### **Determination of point of taxation in case of continuous supply of service**

**6.** (1) In case of continuous supply of service, the whole or part of which is determined or payable periodically or from time to time, shall be treated as separately provided at the date on which the payment is liable to be made by the service receiver, if such date is specified in the contract.

(2) If, before the time specified in sub-rule (1), the person providing the service issues an invoice or receives a payment, the service shall, to the extent covered by the invoice or the payment made thereof, be deemed to have been provided at the time the invoice was issued or the payment was received, as the case may be, whichever is earlier.

*Explanation.* – For the purposes of this rule, wherever any advance, by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.

*Explanation 2.* – For the purposes of this rule, in respect of services taxable under section 66A of the Act, the point of taxation under sub-rule (2) shall be the date on which the invoice is received, or the payment is made, as the case may be, whichever is earlier.

#### **Determination of point of taxation in case of associated enterprises**

7. The point of taxation in respect of associated enterprises shall be the date on which the payment has been made, or invoice under rule 4A of the Service Tax Rules, 1994 has been issued, or the date of debit or credit in books of account of the person liable to pay service tax, whichever is earlier.

#### **Determination of point of taxation in case of copyrights, etc.**

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

#### **Savings**

9. Nothing contained in these rules shall be applicable in case of invoices issued prior to the date from which these rules become effective.