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➤ PLACE OF  
PROVISION OF  
SERVICE RULES,  
2012

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By CA RAJIV LUTHIA

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Organised By – PUNE BRANCH OF  
WIRC OF ICAI

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At  
MES- Balshikshan School  
Auditorium, Mayur Colony,  
Kothrud ,  
Pune – 411 038.

## TAXABLE TERRITORY

- **What is the significance of taxable territory?**

- (i) Charge of Service tax on & after Finance Act, 2012**

- ☞ There shall be levied a tax (hereinafter referred to as service tax) at the rate of twelve percent on the value of all services , other than those services specified in the negative list, **provided or agreed to be provided in the taxable territory** by one person to another and collected in such manner as may be prescribed
- ☞ The new charging section, **Section 66B**, levies service tax only on services as are provided in taxable territory. Thus services that are provided in a non taxable territory are not chargeable to service tax.
- ☞ For determining the place where the services are provided/agreed to be provided or deemed to have been provided/agreed to be provided, "**Place of Provision of Service Rules, 2012**" are made applicable vide section 66C.
- ☞ As per section 66C(2), "Place of Provision of Service Rules, 2012" 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.**

- (ii) Establishments in taxable as well as non-taxable territory**

- ☞ An establishment of a person in the taxable territory and any of his other establishment in a non taxable territory shall be treated as establishments of distinct persons. [Explanation 3 to section 65B (44)<sup>1</sup>]
- ☞ A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory. [Explanation 4 to section 65B (44)<sup>2</sup>]
- ☞ However as per Rule 6A (which provides conditions for treating service as export) of the Service Tax Rules, 1994, one of the condition for treating services as export is that "the provider of service & recipient of service are **not** merely establishments of a distinct person in accordance with explanation to section 65B(44) "

- **"Taxable territory"** means the territory **to which the provisions of this chapter<sup>2</sup> apply** [Section 65B (52)].

- (i)** Chapter-V extends to the whole of India except the state of Jammu & Kashmir

- (ii)** "India" means-

- ☞ The territory of the Union as referred to in clause (2) and (3) of article 1 of the Constitution
- ☞ Its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 ( 80 of 1976);

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<sup>1</sup> 65B (44)-Interprets "**Service**"

<sup>2</sup> This Chapter- Chapter V of the Finance Act, 1994 (Service tax)

- ⌚ The seabed and the subsoil underlying the territorial waters;
  - ⌚ The airspace above its territory and territorial waters; and
  - ⌚ The installations, structures and vessels located in the continental shelf in India and the exclusive economic zone of India , for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof; [Section 65B (27)].
- **“Non taxable territory”** means the territory which is outside the taxable territory [Section 65B (35)].

### PLACE OF PROVISION OF SERVICE RULES, 2012

- Central Government vide Notification No.28/2012-ST dated 20th June,2012 has introduced “Place of Provision of Service Rules, 2012”
- To replace Export of Service Rules, 2005 & Taxation of Services (Provided from Outside India & Received In India) Rules, 2006.

- **Few Important definitions**

- Rule 2(b)-“account” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;
- Rule 2(d)- “continuous journey” means a journey for which a single or more than one ticket or invoice is issued at the same time, either by one service provider or through one agent acting on behalf of more than one service provider, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued
- Rule 2(f)- “intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of service between two or more persons;
- Rule 2(g)-“leg of journey” means a part of the journey that begins where passengers embark or disembark the conveyance, or where it is stopped to allow for its servicing or refueling, and ends where it is next stopped for any of those purposes.
- **Rule 2 (h) and Rule 2(i)- Location of the Service Provider/Receiver**

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

(B) where the service provider / recipient of service is not covered under sub-clause (A):

i) the location of his business establishment; or

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

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

In the absence of such places, the usual place of residence of the service provider or service recipient

- For the purpose of location of Service Provider/Receiver.....“Usual place of residence” in case of a body corporate means the place where it is incorporated or otherwise legally constituted
  - For the purpose of location of Service Receiver.....in case of telecommunication service, the usual place of residence shall be the billing address
  - 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. Most significantly, there is only one business establishment that a service provider or receiver can have **(Refer Para 5.2.5 of the Educational Guide)**
  - A fixed establishment is a place which is characterized by a sufficient degree of permanence and suitable structure in terms of human and technical resources to provide the services that are required to be supplied by it , or to enable it to receive and use the services supplied to it for its own needs **(Refer Para 5.2.6 of the Educational Guide)**
- **General Rule**-The place of provision of a service shall be the location of the service receiver. In case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the service provider. **(Rule 3)**
  - Specific Rules

Rule No.	Nature of Services	Determination of place of provision	Types of Services
4	Performance based service	Place of performance	<p>i) services provided in respect of goods that are required to be made physically available by the service receiver to the service provider, in order to provide the service.</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• This sub rule shall not apply in case service provided in respect of goods that are temporarily imported into India for repairs, reconditioning or reengineering for re export</li> </ul> <p>ii) services provided entirely or predominantly, in the ordinary course of business, in the physical presence of an individual, represented either as the service receiver or a person acting on behalf of the receiver</p> <p>Example: Services like cosmetic or plastic surgery, beauty treatment services, personal security service, classroom teaching etc</p>
5	Related to immovable	Place where the immovable property	<ul style="list-style-type: none"> <li>• Applies only to services which relate directly to specific sites of land or</li> </ul>

	property	is located or intended to be located	<p>property. There needs to be very close link between the service and the immovable property (<b>Para 5.5.4 of Education Guide</b>)</p> <ul style="list-style-type: none"> <li>• Example: 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 provided by experts and estate agents, provision of hotel accommodation or warehouse space, legal services dealing with applications for planning permission, services of an architect contracted to design the landscaping of a particular resort.</li> <li>• However, services provided by an interior decorator to design common décor for all its stores in India, repair and maintenance of machinery which is not permanently installed, advice or information relating to land prices or property markets, services of an agent who arranges finance for the purchase of property <b>would not be considered</b> as services which are land related</li> </ul>
6	Related to events	The place where the event is actually held	<ul style="list-style-type: none"> <li>• 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 <b>shall be the place where the event is held</b></li> <li>• Provision of sound engineering for an artistic event which is a prerequisite for staging of that event would be considered as a service ancillary to its organization</li> <li>• Services of courier agency used for distribution of entry tickets for an event is not a service ancillary to its organization</li> </ul>
7	Services provided at more than one location	The location in the taxable territory where the greatest portion of the service is provided	Any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory
8	Service provider & receiver both	Location of service receiver	Any service other than listed in negative list or specifically excluded

	are located in Taxable Territory		
9	Specified services	Location of service provider	<p>a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;</p> <p>b) Telecommunication services provided to subscribers;</p> <p>c) Online information and database access or retrieval services;</p> <p>d) Intermediary services;</p> <p>e) Service consisting of hiring of means of transport, upto a period of one month.</p>
10	Goods transport services <b>other than by way of mail or courier</b>	Place of destination of goods	<ul style="list-style-type: none"> <li>• The place of provision of services of transportation of goods shall be the place of destination of goods.</li> <li>• Provided place of provision of service of GTA shall be location of the person liable to pay tax</li> </ul>
11	Passenger transportation services	Place where the passenger embarks on the conveyance for a continuous journey	
12	Services provided on board a conveyance	The first scheduled point of departure of that conveyance for the journey	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

- Power to notify description of service 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. **(Rule 13)**
- Order of application of 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. (Rule 14)**

## **IMPORTANT EUROPEAN CASE LAWS:**

### **1. Fixed Establishment (Rule 2(h)(b)(ii) of PPSR, 2012**

**In the case of M/s. Faarborg-Gelting Linien A/S (2012) 22 Taxmann.com 177 (ECJ)**

#### **Facts of the case & issue:-**

- M/s. FGL & Co. established in Denmark was operating ferry ship between Denmark & Germany. They were also engaged in restaurant operations on board such as ships or ferry.
- German authorities treated restaurant operations as “Supply of Goods” & contended that place of supply is place of “location of good” at the time of their supply.
- Therefore, restaurant transaction taking place on ferry or boat when it was within the territory of Germany were liable to VAT in Germany.
- Assessee contended restaurant transaction amounts to “Supply of Service” & place of supply of service was the place where supplier has its business establishment which is Denmark & hence not liable to tax in Germany.
- Whether restaurant transaction on board is “Supply of goods” or “Supply of Service”?
- How to determine “place of Supply”?

#### **Provisions & observations of court:-**

- As per article 8, in case of goods not dispatched or transported the place of supply of goods shall be the place where the goods are when the supply takes place.
- As per article 9, the place of supply of service shall be the place where the supplier has established his business or place of establishment from which the services are supplied or in absence of such business or fixed establishment, the place where assessee has his permanent address.

#### **Held:-**

- Restaurant transaction is supply of service transaction as service element is pre-dominant. In restaurant transaction the food is supplied after series of services like cooking, advising customer, providing infrastructural facilities, cleaning table, serving food etc. hence it is pre-dominantly service transaction. However only take away food does not involve any service & hence it is supply of goods.
- In the instant case, the assessee has established his business in Denmark where he has fixed establishment. The “Fixed Establishment” implies that establishment should be of minimum size & having necessary technical & human resources for providing services. The ferry/boat/ship cannot be regarded as FE. Hence in this case, the place of supply is Denmark

#### **Indian context:-**

- In India, there is specific Rule 12 of PPSR, 2012 which governs POP wherein 1<sup>st</sup> schedule point of departure of conveyance for journey will be POP in case of service provided on board or conveyance to a passenger during the course of transport.
- Since the word place of establishment is not defined, analogy can be drawn from the this decision.

### **2. Rule 3 (General Rule) of PPSR, 2012**

**In the case of Mr. Bernd-Von Hoffmann (2012) 26 Taxmann.com 114 (ECJ)**

#### **Facts of the case:-**

- Assessee Mr. Von, resident of Germany acted as arbitrator for client based in Paris.
- Assessee was member of international arbitral tribunal. He received fees from client of Paris for rendering service in Germany.
- The government recovered tax on the fees in Germany from Mr. Von

**Held:-**

- For the purposes of Arbitral services, there are no specific rules & general rule to be followed.
- General Rule 3 shall be applicable & POP shall be location of service receiver.

**Indian context:-**

- If the receiver of service is located in India in such case, the service tax will be payable in reverse charge mechanism.

**3. Rule 3 (General Rule) of PPSR, 2012**

**In the case of M/s. Federal Republic of Germany (2012) 26 Taxmann.com 131 (ECJ)**

**Facts of the case & issue:-**

- As per German law, executors services were treated as being provided at the place where he carries out his activities.
- What is the POP for service provided by executor of will?
  - There are no specific rules for executor's services under POP hence general rule 3 will be applicable.
  - The POP will be the place of location of service receiver.

**4. Rule 3 & 4 of PPSR, 2012**

**In the case of M/s. Maatschap M.J.M Linthorsy (2012) 22 Taxmann.com 198 (ECJ)**

**Facts of the case:-**

- Assessee, a firm was providing services of veterinary surgery.
- Service does not include mere supply of medicines but it was medical treatment of animal.

**Issue:-**

- What is POP for service provided by the assessee?
  - The specific rule 4 which is based on place of performance is applicable only when services are provided in respect of goods.
  - In the instant case, it was held that animals are not goods & rule 4 will not be applicable but general rule 3 will be applicable i.e location of the service receiver.
  - The POP will be the place of location of service receiver.



- Under clause No.3 of mega exemption notification no. 25/2012-ST dated 20<sup>th</sup> June, 2012, veterinary services are exempted from service tax.

## 5. Rule 5 of PPSR, 2012

### In the case of M/s. Heger Rudi GMBH (2012) 22 Taxmann.com 183 (ECJ)

#### Facts of the case:-

- Assessee, M/s. Heger established in Germany & has no premises in Austria.
- Assessee bought fishing permit for a river in Austria from M/s Fly on payment of 20% VAT.
- Assessee sold permits to various clients in different countries & applied for VAT refund in relation to acquisition of fishing permit contending that they are not located in Austria.

#### Issue:-

- Does the transmission of right to fish constitute a supply of service connected with Immovable property?
  - Transfer of fishing rights is not supply of goods but supply of service.
  - As per general clause Act, 1987 (Section 3(26)) "Immovable Property" defined to also include benefit arising out of land & things attached to earth.
  - Applying Indian law, one can conclude that fishing right not related to water but associated to the river which is immovable property.
  - The definition of renting U/s 65B(44) is very wide to cover permits relating to occupation, use or any such facility in immovable property including licensing. Thus granting of fishing right in river amounts to renting.
  - The POP will be governed by rule 5, where the immovable property is located.

## 6. Rule 5 of PPSR, 2012

### In the case of M/s. RCI Europe (2012) 24 Taxmann.com 7 (ECJ)

#### Facts of the case:-

- Assessee, M/s. RCI Europe established in UK engaged in business of facilitating & organizing the exchange of time share usage right of its member in holiday accommodation.
- The member can approach & apply to RCI for exchange of their holiday package with other on payment of exchange fees.
- Most of the members were located in UK & the holiday properties were located in Spain.
- The tax was demanded by UK authorities on exchange fees received by RCI from its member.

#### Issue:-

- What is POP for the exchange fees received by RCI for exchange of resort located outside UK?

**Held:-**

- Rule 5 of PPSR, 2012 is in relation to immovable property.
- In India, the definition of immovable property includes the granting of right to use immovable property.
- The POP will be governed by Rule 5, where the immovable property in respect of which member held holiday rights was situated.
- As a result, whenever the exchange fees are recovered by RCI in relation to holiday home located in India will be taxable.

**7. Rule 9 of PPSR, 2012****In the case of Cookies World Vertriebsgesellschaft MBHIL – (2013) 38 STT 561 ECJ****Facts of the case:-**

- Assessee Cookies World established in Austria operated commercial undertaking.
- It leased car from German undertaking which it used in Austria for business.
- The Austrian VAT department sought to levy VAT on such lease.

**Issue:-**

- Whether lease charges are liable for VAT in Austria??

**Held:-**

- Relevant Rule is Rule 9 of PPSR.
- The PPSR is the fixed establishment of supplier of service and not the place where goods are hired or used.
- In absence of any fixed establishment of supplier in Austria, service could not be charged to VAT in Austria. However, VAT will be leviable in Germany