

POINT OF TAXATION RULES & VALUATION OF SERVICES

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POT RULES

POT Background

- ✓ Effective from 1st April, 2011, the Government introduced Point of Taxation Rules, 2011.
- ✓ POT means the point in time when a service shall be deemed to have been provided
- ✓ The objective of the Rules is –
 - to appropriately define the 'Point of Taxation' or ('POT') in a transaction – is it taxable event ?
 - so that the liability for payment of service tax can be ascertained with reference to such POT.



What is POT

“Point of Taxation” or POT means the point of time when service shall be **deemed to have been provided**

- Service being intangible – difficult to ascertain the precise time of provision of service.
- Deeming fiction introduced to define the POT when a service shall be “deemed to be provided”.
- Different rules for determining POT w.r.t different categories of transactions/events/persons.
- New Section 67 A says that rate of service tax shall be the rate applicable at the time when the taxable service has been provided or agreed to be provided

Summary Table of POT Rules

Rule 2	Definitions
Rule 2A	Date of Payment
Rule 3	Determination of Point of Taxation as a general rule
Rule 4	Determination of POT in case of change in effective rate of tax
Rule 5	Determination of POT where tax is being levied on the new service
Rule 7	Determination of POT in case of specified services – where recipient is liable to pay service tax
Rule 8	Determination of POT where service in the case of copyright, trademarks, designs or patents
Rule 8A	Determination of POT on Best Judgment Basis ... New Rule from 01-04-2012
Rule 9	Transitional Provisions
Rule 10	Transitional Provisions... New Rule from 01-10-2014

Rule 3 – General Rule

Rules - 'Point of taxation' shall be:

(a) the time when the invoice for the service provided or agreed to be provided is issued:

- Provided that where the invoice is not issued within 30 days or 45 days in case of banks and FIs of the **completion of the provision of the service**, the point of taxation shall be date of such completion.

(b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such **payment**.

✓Explanation.- For the purpose 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**.



Rule 3 – General Rule

Analysis –

✓ As a **general rule**, service tax liability would arise at the **earliest of the following three**:

- The time of issue of invoice if invoice is **issued within 30 days of completion* of service**
- The time of completion of service if invoice is not issued within 30 days of completion* of service
- The time of receipt of value of service by way of advance or otherwise.

** Date of completion of services explained in the next slide*



Rule 3 – General Rule

✓Date of completion of service:

- In case of stand alone service - It is presumed that the date of completion of service can be identified.
- In case of continuous supply of service* - date/time of completion of service is time of completion of an event as per the contract of service which requires service receiver to make payment.
- CBEC Circular No. 144/13/2011, dated 18-07-2011 provides that –
 - date of completion of services would be the completion of **all the related activities** that place the service provider in a situation to be able to issue invoice .
 - the related activities would also include activities other than physical part of the service.
 - some of the example of the such related activities are measurement, quality testing etc.

The documentary evidence to record the date of completion of service is usually not maintained/ not feasible

Rule 2 – What is Continuous Supply of Service

- ✓ As per the definition provided in Rule 2 –
 - ❑ Any service provided or to be provided continuously or on recurrent basis under a contract for a period exceeding three months
Amendment made to capture the concept in wholesome manner
 - ❑ Any service notified by the Government in this regard
From 01-07-2012, following are notified services –
 - Telecommunication Services
 - Service Portion in a works contract

Rule 3 – General Rule

Rule 3 of POT Rules read with Rule 4A of ST Rules–

- ✓ For excess amount upto Rs. 1,000, POT may be determined as per clause (a) of rule 3 in accordance with the issue of invoice w.r.t. which excess payment is made
- ✓ Invoice not required to be issued if amount received is upto Rs. 1,000 in excess of the amount indicated in the Invoice.

POT in case of Specified Services

Services received under RCM
Services of copyright etc.

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Rule 7 – POT in case of Services Received under Reverse Charge Mechanism

- ✓ For the Services received where recipient is liable to pay service tax under reverse charge mechanism, **POT would be the date of payment of value of services** if the payment was/is made for the services within 6 months/3 months from the date of invoice.
- ✓ **Prior to 01-10-2014 : If the payment for the services was not made within 6 months from the date of invoice, the POT was determined as per general rule i.e. Rule 3**
- ✓ In case of import of service POT has been defined differently for associated entities
 - ❑ **Associated entities – POT is the date of debit in the books of accounts or date of making the payment whichever is earlier.**



Rule 7 prior to 01-10-2014	Rule 7 from 01-10-2014 for the invoices issued from 01-10-2014
POT in case of import of service from non-associate entity or other services where recipient is liable to pay service tax	
If payment made with in 6 months from the date of invoice- the date of payment	If payment made with in 3 months from the date of invoice- the date of payment
If not – the date of invoice	If not – the next day from the end of 3 months
POT in case of import of services from associate entity	
Date of debit in the books of account of service recipient or date of making payment whichever is earlier	Date of debit in the books of account of service recipient or date of making payment whichever is earlier

Rule 10 –Transitional provision for Rule 7

10. Notwithstanding anything contained in the first proviso to rule 7, if the invoice in respect of a service, for which point of taxation is determinable under rule 7 has been issued before the 1st day of October, 2014 but payment has not been made as on the said day, the point of taxation shall,—

(a) if the payment is made within a period of six months of the date of invoice, be the date on which payment is made;

(b) if payment is not made within a period of six months of the date of invoice, be determined as if rule 7 and this rule do not exist.



Rule 8 – POT in case of Copyright or IPR Services

✓As per Rule 8 of POT Rules, in case of royalties and payments pertaining to copyright, trademarks, designs or patent, where –

- the amount of consideration not ascertainable at the time when service performed
- Subsequently use or benefit of services by a person other than the provider gives rise to any payment of consideration

✓POT would be earlier of –

- Payment in respect of such use or benefit is received or,
- Invoice is issued

POT in case of Specified Events

Change in effective rate of tax

New Service introduced to tax net



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Event: Change in Effective Rate of Service Tax

Change in effective rate of tax shall include a change in the portion of value on which tax is payable in terms of a notification issued in the Official Gazette under the provisions of the Act, or rules made there under.



Rule 4 : POT in case of change in effective rate of tax

For the services provided before change of rate.

Conditions	Point of Taxation
Where the invoice issued and the payment received after the change of rate	Date of payment received or issuing of invoice, whichever is earlier
Where the invoice issued prior to change in tax rate but the payment is received after the change of rate	Date of issuing of invoice
Where payment received before the change of rate but the invoice issued after the change of rate	Date of payment received

Rule 4 – POT in case of change in effective rate of tax

For the service received after change of Rate (Change in effective rate includes change in portion of value on which ST payable)

Conditions	Point of Taxation
Where the payment received after the change of rate but the invoice issue prior to the change of tax rate	Date of payment received
Where the invoice issued and payment received before the change of tax rate	Date of payment or issue of invoice, whichever is earlier
Where payment received before the change of rate but the invoice issued after the change of rate	Date of issuing of invoice

Rule 4 – POT in case of change in effective rate of tax

The effect of the rule is summarised as under:

Relevant Rules	Date - Before change in rate (assume 10%)	Date – after change in rate (assume 12%)	Effect
4(a)(i)	Service provided	Raised Invoice Payment received [WEE]	12%
4(a)(ii)	Service provided Invoice issued	Payment received	10%
4(a)(iii)	Service provided Payment received	Invoice raised	10%
4(b)(i)	invoice raised	Service provided payment received	12%
4(b)(ii)	Raised Invoice Payment received [WEE]	Service provided	10%
4(b)(iii)	Payment received	Service provided Invoice raised	12%



Rule 2A - Date of payment when effective rate changed or service is taxed for first time

2A. Date of payment.— For the purposes of these rules, “date of payment” shall be the earlier of the dates on which the payment is entered in the books of accounts or is credited to the bank account of the person liable to pay tax:

Provided that —

the date of payment shall be the date of credit in the bank account when —

(i) there is a change in effective rate of tax or when a service is taxed for the first time during the period between such entry in books of accounts and its credit in the bank account; and

(ii) the credit in the bank account is after four working days from the date when there is change in effective rate of tax or a service is taxed for the first time; and

(iii) the payment is made by way of an instrument which is credited to a bank account.

Rule 5 – POT in case of New Service

POT in case of New Services Introduced to tax net

- Invoice issued and the payment received before such service became taxable – **No tax payable**
- Payment received before the service becomes taxable and invoice issued within the period referred to in rule 4A of the Service Tax Rules, 1994 – **No tax shall be payable**

Issue of Invoice	Payment	Point of Taxation
Before such service became taxable	Before such service became taxable	No tax payable to the extent of invoice issued and payment received
Within the period provided in Rule 4A of Service Tax Rules	Before such service became taxable	No tax payable



Rule 5 – POT in case of New Service

Illustration

SN	Date of new Service become taxable	Date of Invoice	Date on which Payment Recd.	Taxability	Remarks
1.	May 01, 2011	April 20, 2011	April 25, 2011	No Tax Payable	As the issuing of invoice and receipt of payment done before taxable date
2.	May 01, 2011	May 04, 2011	April 20, 2011	No Tax Payable	As the invoice issued within 14 days of receipt of payment
3.	May 01, 2011	May 10, 2011	April 20, 2011	Tax Payable	As the invoice issued after 14 days of receipt of payment
4.	May 01, 2011	April 20, 2011	May 05, 2011	Tax Payable	As the payment received after the new service became taxable

Rule 8A – Best Judgment Assessment

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Rule 8A – Best Judgment

- ✓ Where the point of taxation cannot be determined as per POT rules as the date of invoice or the date of payment or both are not available, the Central Excise officer, may, require the concerned person to produce such accounts, documents or other evidence as he may deem necessary and after taking into account such material and the effective rate of tax prevalent at different points of time, shall, by an order in writing, after giving an opportunity of being heard, determine the point of taxation to the best of his judgment.

Valuation of Services



Agenda

- Scheme of Valuation of Taxable Service
- Works Contract
- Supply of Foods & Drinks
- Abatements



Scheme of Valuation of Taxable Service

1



Section 67

Value of taxable service is gross amount charged by the service provider for the service.

- Consideration in money – gross amount charged by service provider
- Consideration not wholly or partly consisting of money – such amount in money, with the addition of service tax charged, as is equivalent to the consideration
 - Manner prescribed in the Valuation Rules
- Consideration not ascertainable – the amount as may be determined in the prescribed manner
 - Manner prescribed in the Valuation Rules

Section 67A - Date of determination of rate of tax, value of taxable service and rate of exchange.

Rate of Tax : the rate of service tax, value of a taxable service and rate of exchange, if any, shall be the rate of service tax or value of a taxable service or rate of exchange, as the case may be, in force or as applicable at the time when the taxable service has been provided or agreed to be provided – indirect reference is being made to the POT Rules

Rate of Exchange : The rate of exchange for determination of value of taxable service shall be the applicable rate of exchange as per GAAP on the date when POT arises (w.e.f. 01-10-2014) - STR



Valuation Rules – Manner to determine value when consideration not wholly in money form

- Rule 3(a) of Valuation Rules - Value of service is the
 - gross amount charged by the service provider for a similar service rendered to any other person
 - in the ordinary course of trade and where the gross amount charged is the sole consideration
 - the same should be based on the normal transaction between two independent persons at arm's length prices

- Rule 3(b) of Valuation Rules - If value cannot be determined as above, the basis is the
 - equivalent money value of such consideration
 - which is not less than the cost of provision of such service

Valuation Rules – Inclusions and exclusions from the value

- All reimbursements including out of pocket expenses form part of value of service

In Intercontinental Consultants & Technocrats Private Ltd. vs. Union of India & Another (2012-TIOL-966-HC-DEL-ST), the Court held that Rule 5(1) goes far beyond the charging provisions (i.e. section 66 an 67 of the Act) and cannot be upheld.

The court thus said that the gross value charged for a service as mentioned in section 67 of the Act refers to the value charged for ‘such service’ only and cannot be said to include the value charged for out of pocket expenses.

- Expenses incurred as pure agent deductible from value
- A list of specified inclusions and exclusions from value is appended in the ensuing slides



Rule 5(1) - Specified Inclusion or exclusion

- **Inclusions**

- commission or brokerage charged by Broker
- the adjustments made by telegraph authority (??) from the deposits by subscriber
- premium charged by insurer
- commission received by air-travel agent
- commission / fee received by an actuary or intermediary from insurer
- reimbursement received by authorised service station from manufacturer
- commission etc. received by rail travel agent from railways or customer
- the fee charged by C & F agent
- fee paid to an agent by the insurer
- **demurrage for provision of service beyond the period originally**

contract



Rule 5(1) - Specified Inclusion or exclusion

- **Exclusions**

- Initial deposit made by the subscriber of telecom service
- The air fare collected by air travel agent
- Rail fare collected by rail travel agent
- Interest on delayed payment of any consideration for provision of service or **sale of movable or immovable property**
- Tax levied by government on passenger traveling by air
- **Accidental damages due to unforeseen actions not relatable to the provision of service**
- **Subsidies and grants disbursed by the government not directly affecting the value of service.**

Works Contract

2

Valuation - Works Contract

“works contract” means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any moveable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.

- Sale of goods involved in execution of service leviable to tax as sale of goods
- Contracts for specified activities + any similar activity
- In relation to movable or immovable property



Works Contract- Virtual Categories

- **Original Works** – It means
 - New construction,
 - Addition or alteration to abandoned or damaged structures on land required to make them workable
 - Erection, Commissioning or Installation of Plant, Machinery/ Equipment/ Structures, pre-fabricated or otherwise

The above definition includes all new constructions.

As per the Declared List of services, Construction includes

- Additions, alterations, replacements or remodelling of any existing civil structure
- Construction of complex etc. intended for sale to a buyer

- **Specified Works Contracts** relating to moveable property
- **Residuary Works contract** not covered under the above categories

Valuation – Works Contract Services

- Rule 2A (i) of the Valuation Rules provides the method of determination of value of service portion in works contract as follows:-
 - The taxable value is equivalent to the Gross Amount Charged *Less* the value of the property of goods transferred in the execution of subject Works Contract
 - Gross Amount Charged shall not include the VAT/ Sales Tax charged on the transfer of property of goods.
 - If the VAT / Sales Tax has been paid or payable on actual Value of Property of Goods , then value for deduction shall be taken as similar to be taken for the purpose of charging VAT / Sales Tax, for determination of the value of service portion in the contract.



Valuation –Works Contract Services

Value of Works Contract Shall include:-

- Labour charges for execution of the works
- amount paid to a sub-contractor for labour and service
- charges for planning, designing and architect's fees
- charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract
- cost of consumables such as water, electricity, fuel, used in the execution of the works contract
- cost of establishment of the contractor relatable to supply of labour and services
- other similar expenses relatable to supply of labour and services
- profit earned by the service provider relatable to supply of labour and services

Valuation – rule 2A contd..

1. Original Works – tax payable on 40% of total amount
2. Works Contracts entered into for maintenance or repair or reconditioning or restoration or servicing of any goods – tax payable on 70% of total amount (from 01-07-2012 to 30-09-2014)
3. Works contract not covered under the above two, including maintenance, repair, completion and finishing services such as glazing, plastering, floor, and wall tiling, installation of electrical fittings of an immovable property – tax payable on 60% of total amount (from 01-07-2012 to 30-09-2014)

Rule 2A(ii) prior to 01-10-2014	Taxable amount
Contracts for maintenance or repair or reconditioning or restoration or servicing of any goods	70% of total amount
Contracts other than original works and above contracts including contracts for maintenance repair completion etc.	60% of total amount
Rule 2A(ii) from 01-10-2014	Taxable amount
Contracts for maintenance or repair or reconditioning or restoration or servicing of any goods or contracts other than original works including contracts for maintenance repair completion etc.	70% of total amount

Valuation – Works Contract Services

‘Total amount’ means

- Sum total of the gross amount charged, and
- Fair Market value (FMV) of all goods and services supplied in or in relation to execution of works contract by service recipient **(whether or not supplied under the same contract or any other contract???)**
- After deducting
 - amount charged for such goods or services and
 - VAT/sales tax levied thereon
- FMV to be determined in accordance GAAP.
- CENVAT credit on inputs not available – as a corollary credit on capital goods and input services is available

Works contract – Illustration

- ABC (Service Provider/SP) is executing a taxable Works Contract for M/s. XYZ (Service Recipient/SR). SP is not able to determine the value as per Rule 2A (i) of Valuation Rules (i.e. can't segregate value of goods and service). Details of the various values are on the following slide.
 - What will be the valuation for the service tax?
 - Will it make any difference if separate contracts for each such activity are executed?

Sr.	Details	Rupees	Amount Includible in “total amount”
1	Total Value of the Contract including Goods, services and Profit of the SP.	10,00,000	10,00,000
2	Supply of Material by SP to SR (in relation to same WC)		
	-Cost / Fair Market Value	1,50,000	
	- Amount Charged by SP to SR	1,75,000	1,75,000
3	Supply of Material by SR to SP		
	<u>Free of Cost given by SR to SP</u>		
	-Cost / Fair Market Value	2,00,000	2,00,000
	- Amount Charged by SR to SP	-	
	<u>Charged by SR to SP</u>		
	-Cost / Fair Market Value	1,00,000	1,00,000
	- Amount Charged by SR to SP	80,000	(80,000)
	Total Amount for computation of abatement		13,95,000
	Amount chargeable to tax (40% of 13.95 L)		5,58,000

Supply of Foods & Drinks

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Valuation –Supply of Foods & Drinks

Rule 2C of the Valuation Rules provides the method of determination of value of service portion involved in supply of food or any other Article of human consumption or drink in a restaurant or as outdoor catering

Description	Taxable amount
Service portion in an activity wherein goods, being food or any other article of human consumption or any drink(whether or not intoxicating) is supplied in any manner as a part of the activity, at a restaurant	40%
Service portion in outdoor catering wherein goods, being food or any other article of human consumption or any drink(whether or not intoxicating) is supplied in any manner as a part of such outdoor catering	60%

Valuation –Supply of Foods & Drinks

- The definition of '**Total amount**' is same as was there in context of Works contract service.
- CENVAT credit is available on input services and goods except the goods covered under chapter 1 to 22 of the central excise tariff act.
 - Chapter 1 – 5 : Live animals; animal products,
 - Chapter 6 - 14 : Vegetable products
 - Chapter 15 : Animal and Vegetable fats & oil etc
 - Chapter 16-22 : prepared food stuffs, beverages, spirits and vinegar

*Abatement under NN.
26/2012-ST
and
under the Valuation Rules*

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Valuation under New Scheme -Abatements

Service Description	Taxable Value (% of consideration)
Financial leasing	10% (no conditions)
Transfer of goods by Rail	30% (no conditions)
Transport of passengers by Rail	30% (no conditions)
Supply of food/drinks as outdoor catering	60% (credit not available on specified goods – available on input services and other goods)
Supply of food/drinks at a restaurant	40% (credit position same as above)

Value of Taxable Service-Abatements

Service Description	Taxable Value (% of consideration)
Supply of food/drinks in a premises including hotel/club/pandal or any place specially arranged for organizing function	70% (credit position same as above)
Transport of passengers by Air	40% (credit available only on input services)
Renting of hotels etc. for residential/lodging purposes	60% (credit available only on input services)
Transport of goods by GTA	25% (No credit available)
Services in relation to chit (entry quashed by Delhi High Court)	70% (No credit available)




Value of Taxable Service-Abatements

Service Description	Taxable Value (% of consideration)
Renting of motor vehicle for passengers (upto 30-09-2014)	40% (No cenvat credit)
Renting of motor Cab for passengers (upto 30-09-2014)	40% (Cenvat credit on input service of renting of motor cab is allowed subject to condition)
Transport of passengers by - Contract Carriage other than Motor Cab - Radio Taxi	40% (No cenvat credit)
Transport of goods in vessel in India – port to port (up to 30-09-2014)	50% (No cenvat credit)
Transport of goods in vessel in India – port to port (from to 01-10-2014)	40% (No cenvat credit)

Value of Taxable Service-Abatements

Service Description	Taxable Value (% of consideration)
Tour Operator (upto 30-09-2014)	25%/10%/ 40% (No cenvat credit)
Tour Operator (from 01-10-2014)	25%/10%/ 40% (CENVAT credit on input service of Tour operator used for providing the services has been allowed)
Construction of complex, building, civil structure for Residential units - Carpet area > 2000 square feet - Amount charged > Rs. 1.00 Crore	25% (value of land to be included for computation and credit is available on input services and capital goods)
Construction of complex, building, civil structure other than above	30% (value of land to be included for computation and credit is available on input services and capital goods)

Thank You



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