
Place of Provision of Services Rules, Export and Import of services

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Charging section - 66B

- There shall be levied a tax (hereinafter referred to as the service tax)
- at the rate of twelve per cent
- on the value (section 67) – no change
- of all **services**, [section 65B(44) read with 66E]
- other than those services specified in the negative list, - (Section 66D)
- provided or agreed to be provided in the taxable territory [section 65B(51)]
- by one person to another, and [Section 65B(37)]
- Collected in such manner as may be prescribed

Taxable territory

- "taxable territory" means the territory to which the provisions of this Chapter apply [65B(51)];
- The chapter extends to whole of India except the state of J&K [64(1)]
- "India" means,—
 - (a) *the territory of the Union as referred to in clauses (2) and (3) of article 1 of the Constitution;*
 - (b) *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;*
 - (c) *the seabed and the subsoil underlying the territorial waters;*
 - (d) *the air space above its territory and territorial waters; and*
 - (e) *the installations, structures and vessels located in the continental shelf of 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 66C

- The Central Govt
- Having regard to nature and description of various services
- By rules made in this regard
- Determine the place where such services are provided or deemed to have been provided or agreed to be provided or deemed to have agreed to be provided

Place of Provision of Services Rules, 2012 (POP Rules)

Purpose

- To determine the place where a service shall be deemed to be provided so as to ascertain the taxing jurisdiction for a service
- To avoid double taxation and also to ensure that no service is left untaxed

These rules would replace the existing rules:

- Export of Services Rules, 2005
- Taxation of Services (Provided from outside India and received in India) Rules, 2006

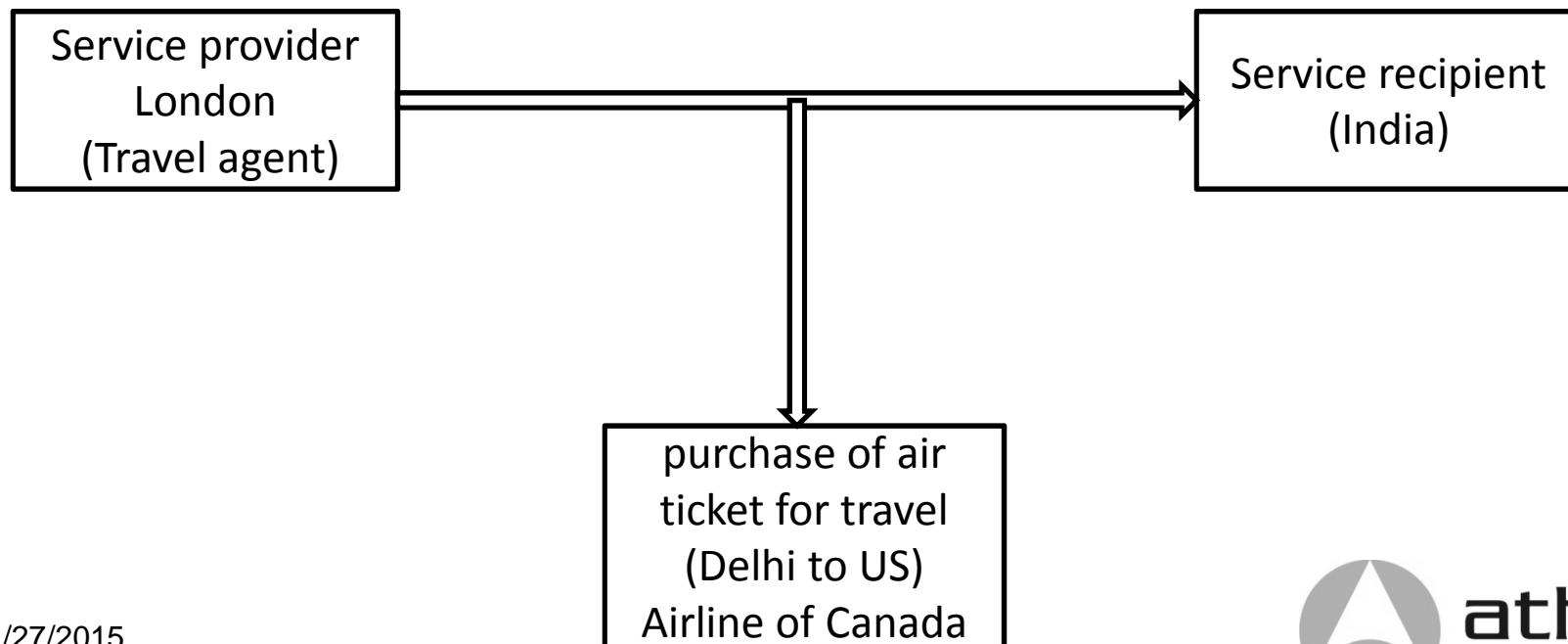
These Rules are meant for....

- Persons who deal in cross border services.
- Persons having operations with suppliers or customers in the state of Jammu and Kashmir.
- Service providers operating within India from multiple locations, without having centralized registration
- To determine the services that are wholly consumed within SEZ to avail the outright exemption
- Proposed GST regime - the new rules are also expected to help in identifying various issues that may arise in the taxation of inter-state services.

Illustration

Services provided from one location, delivered to a person located at another and yet be actually consumed at a third location or over a larger geographical territory, falling in more than one taxable jurisdiction

Eg: For example a person located in Mumbai may buy a ticket on internet from a service provider located outside India for a journey from Delhi to London.



Destination based consumption tax

- Credit chain to be maintained
- Economic reasons not legal
 - Customs duty generally charged by the importing state not the exporting state
 - Exporting state get various other benefits
- However, services are of peculiar nature – In some cases –
 - POP is dominant,
 - Place of provider is dominant
 - Other factors have to be taken in consideration
 - Place of receiver is dominant

Philosophy of Rules

- B-B transaction – place of service receiver
- B-C transaction – place of service provider

Basis of classification

- Location of service receiver [R. 3]
- Performance of service/ Location of immovable property (also include multiple locations of performance) [R.4,5,6,7]
- Both provider and receiver in India [R. 8]
- Location of service provider [R.9]
- Service of transportation of goods and services [R. 10,11]
- Services provided on board conveyance [R.12]

Order of Application or Rules (Rule 14)

- 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.
- Illustration which will show the relevance of the rule:
 - *An architect based in Mumbai provides his service to an Indian Hotel Chain (which has business establishment in New Delhi) for its property in Dubai.*
 - *If Rule 5 (Property rule) were to be applied, the POP would be the location of the property i.e Dubai (outside the taxable territory).*
 - *Whereas, by application of Rule 8, since both the provider and the receiver are located in taxable territory, the POP would be the location of the service receiver i.e New Delhi.*

Certain notified services (Rule 13)

- 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 POP shall be the place of effective use and enjoyment of a service.

Example

- UK charge tax on passenger transportation on the basis of performance
- Indian charge on basis of place of embarkation
- Ticket - India for London
- Fully taxable in India
- Part taxable in UK
- CG may notify the said service to avoid double taxation

Services provided on board a conveyance (Rule 12)

- Services provided on board a conveyance during the course of a passenger transport operation - first scheduled point of departure of that conveyance for the journey
- movies/ music/ video/ software games/ beauty treatment
- Must be provided against a specific charge (not supplied as part of the fare)
- Would not be applicable where services are provided at Airport, railway station, bus terminal, etc

Rule 12 Cont.....

-
- IRCTC (DEL High Court) – food loaded on to trains in Delhi but actually supplied in various states, by stretched interpretation, held that sale in Delhi. No such problem in proposed rules.

- Example

A video game is provided as on-board entertainment during the Kolkata-Delhi leg of a Bangkok-Kolkata-Delhi flight. The POP of this service will be Bangkok (outside taxable territory, hence not liable to tax).

If the above service is provided on a Delhi-Kolkata-Bangkok-Jakarta flight during the Bangkok-Jakarta leg, then the POP will be Delhi (in the taxable territory, hence liable to tax).

Rule 12 Cont.....

Under VAT UK

- There are no special place of supply rules for the treatment of on- board services, and when considering place of supply the normal rules should be applied i.e. the POP is where the supplier belongs.
- There are two exceptions, for catering and gaming machines. They both are consider when provided on passenger ship/ aircraft which is leaving the UK for a foreign destination (a foreign-going vessel) the supply of services is regarded as being made outside the UK, and therefore outside the scope of UK VAT.

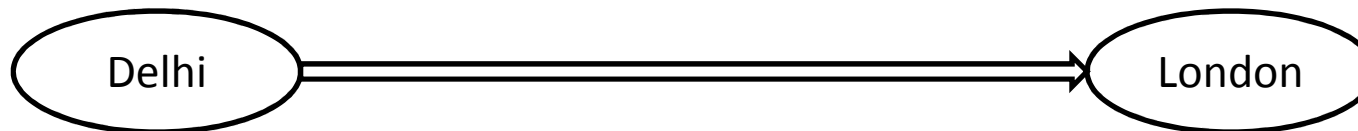
Provision of passenger transportation services (Rule 11)

- The POP in respect of a passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.
- Embark definition as per Collins Cobuild : ‘Go on board before start of journey’
- R 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;
- Would the condition of stopover apply to single ticket case also – Guidance note says ‘NO’
- Ambulance and cruise??

Rule 11 Cont....

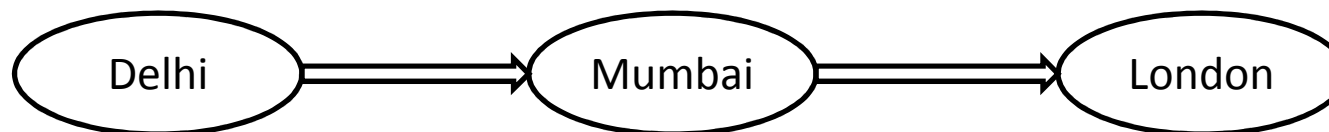
Following are different situations which may be possible:

A. Journey from one place to another (Direct + one side)



In the said example POP would be Delhi

B. Journey from one place to another with a halt



In the above example place of provision would be Delhi

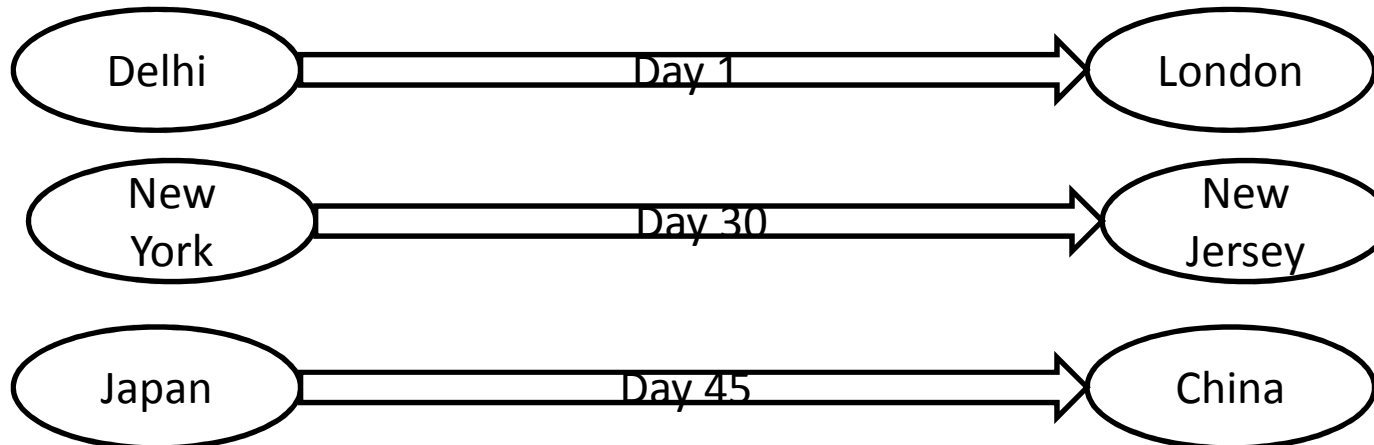
Rule 11 Cont....

- A. Journey from one place to another and return ticket



In the said example POP would be Delhi

- B. Various tickets from same travel agent:



Provision of passenger transportation services (Rule 11)

Under UK VAT,

- The POP of passenger transport services is determined according to where the transport physically takes place. If it takes place:
 - inside the UK the services are all within the scope of UK VAT
 - both inside and outside the UK, the element that takes place within the UK is within the scope of UK VAT
 - or outside the UK the supplies are outside the scope of UK VAT

- **Exception**

If ship, aircraft or vehicle does not put in, land or stop (except in an emergency or involuntarily) in any other country, journeys which begin and end in the same country, but take place partly outside that country, are treated as taking place wholly within that country. This applies even if the journey is part of a longer journey involving travel to or from another country.

Provision of goods transportation services (Rule 10)

- Place of provision of:
 - (i) Services of transport of goods other than mail/courier/GTA – Destination of goods
 - (ii) GTA – location of person liable to pay tax:
 - Paid by receiver - where the receiver is located
 - Paid by transporter- where the transporter is located.
- GTA is defined as person providing service in relation to transport of goods by road and also issues consignment note

Issue:

- The value of freight paid on imported goods is already included in the taxable value for charging Customs duty

Freight Forwarder

Own account

- A freight forwarder provides domestic transportation within taxable territory as well as international freight service **under a single contract**,
- on his **own account** and charges a consolidated amount to the exporter.
- POP is the destination of goods.

ILLUSTRATION

- A freight forwarder, located in Delhi, provides freight service from the exporter's factory located in **Pune to Mumbai port and from there to London, under a single contract**, on his **own account** (i.e. he buys-in and sells freight transport as a principal), and charges a consolidated amount to the exporter. POP is **London**.
- Since the destination of goods is outside taxable territory, this service will not attract service tax.
- Here, it is presumed that ancillary freight services (i.e. services ancillary to transportation- loading, unloading, handling etc) are “bundled” with the principal service owing to a single contract or a single price (consideration).
- On an import shipment with similar conditions, the place of supply will be in the taxable territory, and so the service tax will be attracted.

Freight Forwarder

As an intermediary

POP-Freight forwarder's location. (Rule 9)

Service tax will be payable on the services provided by him. However, when he provides a service to an exporter of goods, the exporter can claim refund of service tax paid under notification for this purpose.

Provision of goods transportation services (Rule 10)

- ILLUSTRATION

- A goods transportation agency (GTA) ABC located in Delhi transports a consignment of new motorcycles from the factory of XYZ in Gurgaon to Jammu (non-taxable territory).
- As per mutually agreed terms the dealer in Jammu is the person liable to pay freight.
- The person liable to pay freight is located in non-taxable territory so ABC will be liable to pay tax.
- Accordingly, the POP of the service of transportation of goods will be the location of ABC i.e. Delhi.

Provision of goods transportation services (Rule 10)

Goods transportation - UK

- In UK goods transport include courier
- **In B2C is:-**
 - from the EC to a third country takes place where the transportation is performed in proportion to the distances covered
 - Intra-EC transportation takes place wholly where the transportation begins, and
 - the place of supply of related services takes place where physically performed.
- **In B2B is :-**
 - that the POP is made where the customer belongs for the purposes of receiving your supply.
 - It does not matter where the goods being transported move from or to, or where any related service physically takes place.

Provision of goods transportation services (Rule 10)

Goods transportation - UK

- **ILLUSTRATION 1**

Customer is in United Kingdom and the goods move from Canada to China POP is Canada, China and any other country transited as the goods are for Customer's private use.

- **ILLUSTRATION 2**

Customer is in-business in United Kingdom and the goods move from Canada to China POP is United Kingdom as the goods are for business purpose.

Provision of specified services (Rule 9)

- The POP of following services shall be the location of the service provider:-
 - a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;
 - b) Online information and database access or retrieval services;
 - c) Intermediary services;
 - d) Service consisting of hiring of means of transport other than, -
 - (i) aircrafts, and
 - (ii) vessels except yachts,upto a period of one month.

Service provided by banking Company – account holder

- The Service by banking company, financial institution or a non banking financial company is covered in this rule only when the services are provided to the account holder.
- “account” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account; - Rule 2 (b)
- Services to account holders refers to services which are provided to account holder, in the ordinary course of business:-
 - i) services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc;
 - ii) transfer of money including telegraphic transfer, mail transfer, electronic transfer etc.

Service provided by banking Company – account holder

- Following are the services which are not provided by a banking company to an account holder in the ordinary course of business
 - i) financial leasing services including equipment leasing and hire-purchase;
 - ii) merchant banking services;
 - iii) Securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;
 - iv) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services;
 - v) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy;
 - vi) banker to an issue service.

Online information and database access or retrieval services

- Rule 2(I) - “online information and database access or retrieval services” means
 - providing data or information,
 - retrievable or otherwise,
 - to any person,
 - in electronic form
 - through a computer network
- Thus, these services are essentially delivered over the internet or an electronic network which relies on the internet or similar network for their provision.
- These services are completely automated, and require minimal human intervention.

Online information and database access or retrieval services

Examples of such services are:-

- Providing access to trade statistics, legal and financial data, matrimonial services, social networking sites;
- Ebooks/ electronic publications, online newspapers/ journals, online news, flight information and weather reports;
- Web-based services providing access or download of digital content.

Online information and database access or retrieval services

- The following services will not be treated as “online information and database access or retrieval services”:-
 - i) Sale or purchase of goods, articles etc over the internet;
 - ii) Telecommunication services provided over the internet, including fax, telephony, audio conferencing, and videoconferencing;
 - iii) A service which is rendered over the internet, such as an architectural drawing, or management consultancy through e-mail;
 - iv) Repair of software, or of hardware, through the internet, from a remote location;
 - v) Internet backbone services, and internet access services.

Intermediary Services

- “intermediary” under **Rule 2 (f)** means
 - a broker, an agent or any other person, by whatever name called,
 - who arranges or facilitates a provision of service or a supply of goods between two or more persons,
 - but does not include a person who provides the main service or supplies the goods on his account.;
- In order to determine whether a person is acting as an intermediary or not, the following factors need to be considered:-
- Nature and value: An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal,
- Separation of value: The value of an intermediary’s service is invariably identifiable from the main supply of service that he is arranging. It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as “commission”.
- Identity and title: The service provided by the intermediary on behalf of the principal are clearly identifiable.

Intermediary Services

- following are few examples of 'intermediary services':-
 - i) Travel Agent (any mode of travel)
 - ii) Tour Operator
 - iii) Stockbroker
 - iv) Commission agent [an agent for buying or selling of goods is excluded]
 - v) Recovery Agent
- The above examples are only an illustrative and any person who acts as agent would be covered under this rule
- Serial no 29 of Notification No. 25/2012- sub intermediary exempt

Intermediary Services

ILLUSTRATION 1

- A Travel agent in Delhi books a ticket for a person in USA (in the person's name) from Amritsar to Delhi. The POP is Delhi.
- **Proviso** to this is that the intermediary must act as an agent and not on his own account. If he acts on his own account this rule shall not apply.

ILLUSTRATION 2

- A freight forwarder provides;
- domestic transportation (from Pune to Mumbai port) And,
- International freight service (from Mumbai port to London)
- under a single contract, on his own account (i.e. he buys-in and sells freight transport as a principal), and
- charges a consolidated amount to the exporter.

Freight forwarder is not providing intermediary service but he is working on his own account

This would be a service of transportation of goods for which the place of supply is the destination of goods (i.e. London).

Intermediary Services

Under UK VAT

- An intermediary is a third party in arranging, or even simply facilitating, the making of supplies. An intermediary arranges supplies between two other parties; a supplier and that supplier's customer.
- You will be acting as an intermediary if:
 - both you and your principal have **agreed** that you will act as their intermediary (agent) and you must **routinely fully disclose** the name of the principal you are acting for (for example on all tickets you issue or in your booking terms and conditions);
 - You must be able to **demonstrate** this by holding **commercial documentary evidence** (for example an agreement or contract)
 - and you are **not** taking any **significant commercial risk** in relation to the services you are arranging.

Intermediary Services

Under UK VAT

E.g.

- brokers
 - buying or selling agents,
 - go-betweens,
 - commissionaires or agents acting in their own name (undisclosed agents).
-
- Intermediary services- Where the arranged supply is being made in respect of which the Intermediary service is being provided is the POP.

Service consisting of “hiring of means of transport”

- The services of providing a hire or lease, without the transfer of right to use
- following will constitute a service consisting of hiring of means of transport:-
 - i) Land vehicles such as motorcars, buses, trucks;
 - ii) Vessels;
 - iii) Aircraft;
 - iv) Vehicles designed specifically for the transport of sick or injured persons;
 - v) Mechanically or electronically propelled invalid carriages;
 - vi) Trailers, semi-trailers and railway wagons.
- The following are not ‘means of transport’:-
 - i) Racing cars;
 - ii) Containers used to store or carry goods while being transported;
 - iii) Dredgers, or the like.

Provision of specified services (Rule 9)

Under VAT law UK, POP of:-

- Means of transport for short period- where it comes in physical control of the hiree.

ILLUSTRATION

Mr. A hires a SUV for 15 days from a transport agency in London from Scotland to Wales. He has the physical control in Scotland. The POP is Scotland.

Service provider and receiver both located in taxable territory (Rule 8)

- Where the location of the service provider as well as that of the service receiver is in the taxable territory –POP is location of the service receiver
- Example
 - A helicopter of Pawan Hans Ltd (India based) develops a technical snag in Nepal.
 - engineers are deputed by Hindustan Aeronautics Ltd, Bangalore, to undertake repairs at the site in Nepal.
 - by application of Rule 8, since the service provider, as well as the receiver, are located in the taxable territory, the POP of this service will be within the taxable territory.
 - But for this rule, Rule 4, sub-rule (1) would apply in this case, and the POP would be Nepal i.e outside the taxable territory.

Service provider and receiver both located in taxable territory (Rule 8)

Implication of the Rule

- POP of service may be determined in terms of rule 4 to 6 to be out of the taxable territory but Service receiver and provider located in taxable territory- POP in India
- The presence of both the service provider and the service receiver in the taxable territory indicates that the place of consumption of the service is in the taxable territory.
- Moreover, it is not possible for any other taxing jurisdiction to be able to tax the provision of such services in the ordinary course.

Both outside India

- Both the provider and receiver of the service are located outside the taxable territory –
 - there is no mechanism to collect tax-
 - Exemption granted under SL No 34(c) of NN 25/2012- ST

Service provider and receiver both located in taxable territory (Rule 8)

Exception

- Under Notification No 25/2012 Central Government has exempted Services by an organizer to any person in respect of a business exhibition held outside India.
- If a service is provided in respect of a business exhibition held outside India. Both service provider and receiver being in India the service would not be taxed as it is coming in Negative list.
- **ILLUSTRATION**
An event organizer in Delhi organizes a business exhibition in London for a Company in Mumbai would not be liable to pay Service tax on the same in India.

Location of service receiver/provider Rule 2(h)/2(i)

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

(B) where the service receiver is not covered under sub-clause (A):

(i) the location of his business establishment; or

(ii) where services are received at 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 received at more than one establishment, whether business or fixed, the establishment most directly concerned with the use of the service; and

(iv) in the absence of such places, the usual place of residence of the service receiver.

Issue

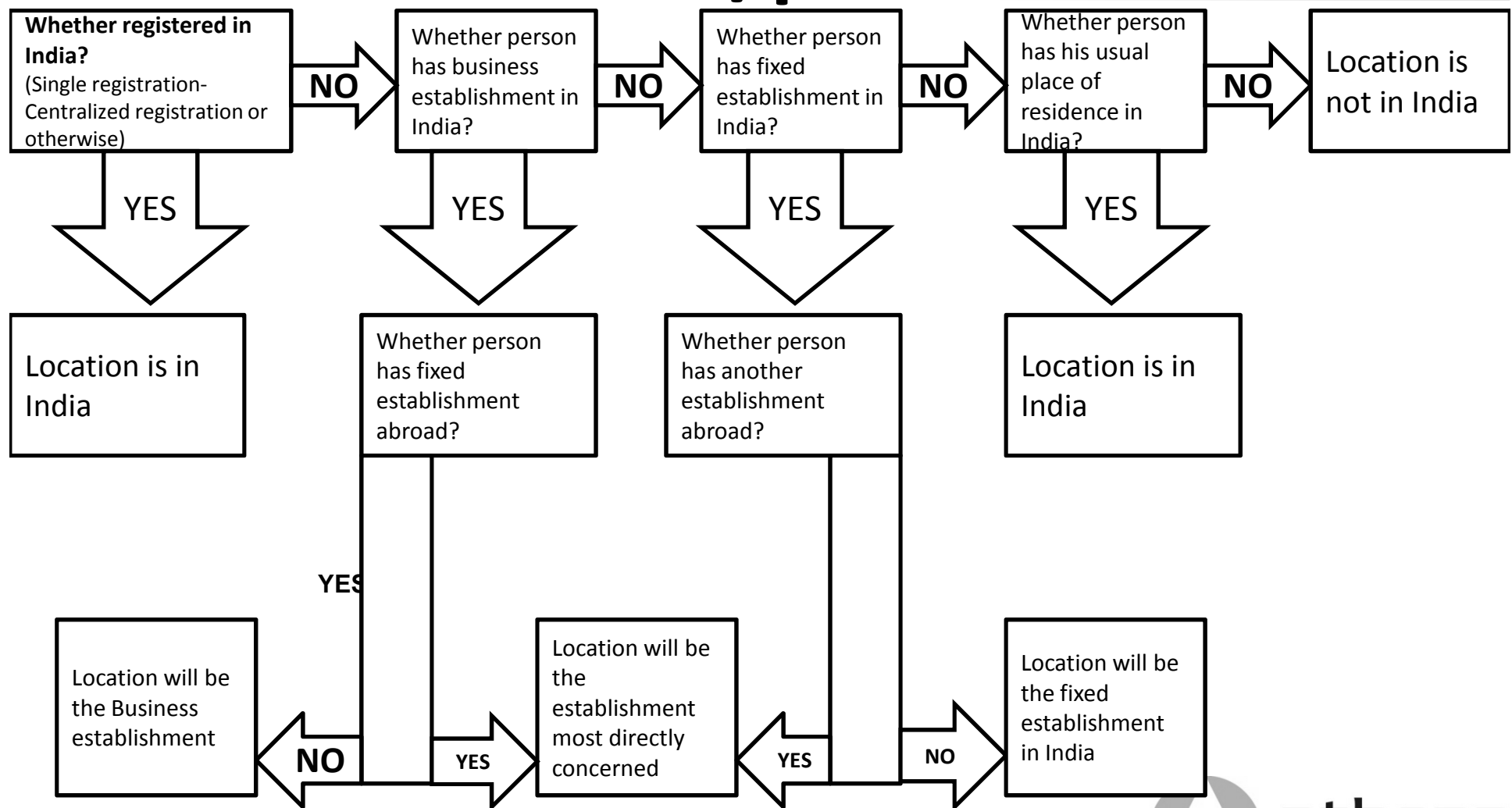
— If Registration obtained in India, would POP for all transactions be in India

S. 66B

Explanation 3

(b) 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.

Location of service receiver/provider



“Business Establishment”

- ‘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

“Fixed Establishment”

- A “fixed establishment” is a place (other than the business establishment) which has the permanent presence of human and technical resources to provide or receive a service. Temporary presence of a staff by way of a short visit at a place cannot be called a fixed establishment.

“most directly concerned with the supply”

- This will depend on the facts and supporting documentation, specific to each case.
- Illustration
 1. A business has its headquarters in India, and branches in London, Dubai, Singapore and New York. Its business establishment is in India.
 2. An overseas business house sets up offices with staff in India to provide services to Indian customers. Its fixed establishment is in India.
 3. A company with a business establishment abroad buys a property in India which it leases to a tenant. The property by itself does not create a fixed establishment. If the company sets up an office in India to carry on its business by managing the property, this will create a fixed establishment in India.

“usual place of residence”

- **Body Corporate** - place where it is incorporated or otherwise legally constituted.
- **Individual** - is the place (country, state etc) where the individual spends most of his time for the period in question. Ex- where the individual has set up his home, or where he lives with his family and is in full time employment.
- Individuals are not treated as belonging in a country if they are short term, transitory visitors (for example if they are visiting as tourists, or to receive medical treatment or for a short term language/other course).
- An individual cannot have more than one place of usual residence.
- **Telecommunication services**- is the billing address. The place would be the address registered with the service provider for billing of individual customers. Eg If a SIM card is purchased by a person in Mumbai from a service provider in Bangalore and the address registered is of Delhi. The place of usual residence is Delhi.

Service provided at more than one location (Rule 7)

- Where any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory- POP is the location in the taxable territory where the greatest proportion of the service is provided.
- This rule covers the situation where:
 1. The service is provided from various location and
 2. One of the location is in the taxable territory

Service provided at more than one location (Rule 7)

- Illustration

An Indian firm provides a 'technical inspection and certification service' for a newly developed motorbike of an overseas firm –

- Maharashtra (20%),
- Kerala (25%), and
- Colombo (55%).

POP – Kerala

Service provided at more than one location (Rule 7)

- Under VAT, UK- The establishment most directly connected with that particular supply is located is regarded as the POP. Normally 'most directly connected with the supply' is the establishment actually providing or receiving the supply of services.
- **Illustration**
 - A UK supplier contracts to supply advertising services.
 - Its customer has its business establishment in- Austria
 - and fixed establishment in - UK.
 - Day-to-day contact on administrative matters is with UK branch
 - The Austrian establishment takes all artistic and other decisions about the advertising.
 - The POP overseas establishment.

Service provided at more than one location (Rule 7)

- **Illustration 2**

A UK accountant supplies accountancy services to a UK incorporated company which has its business establishment abroad. However, the services are received in connection with the company's UK tax obligations and therefore the UK fixed establishment, created by the registered office, receives the supply.

- **Illustration 3**

- A customer has a business establishment in the UK and a fixed establishment in the USA created by its branch. The UK establishment contracts a UK company to provide staff to the USA branch. The supplier invoices the UK establishment and is paid by them. The services are most directly used by the USA branch and therefore are received at the overseas establishment.

Service relating to event (Rule 6)

- The POP of 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,
 - shall be the place where the event is actually held.

Issue

Sponsorship of events

Rule 6 cont.....

- This rule would cover the following services

- Admission
- Organizing
- Activities ancillary to such admission

In relation to an event

- Service ancillary to admission
 - 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) is an example of a service that is ancillary to admission.
 - For example, the service of providing facility of golf carts (with attendant/driver) to elderly persons, to facilitate their movement within the golf course, during a golf tournament.
 - A service of courier agency used for distribution of entry tickets for an event is a service that is not ancillary to admission to the event
- Services relating/ancillary to organising the event are not covered

Rule 6 cont.....

➤ Illustration 1

- An Indian fashion design firm hosts a show at Toronto, Canada.
- The firm receives the services of a Canadian event organizer.
- The POP of this service is the location of the event is in Canada
- Any service provided in relation to this event, including the right to entry, will be non-taxable.

➤ Illustration 2

A management school in USA intend to organizes 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 cont.....

Under UK VAT law the POP for :-

- Admission- where event actually take place.
- Ancillary to such admission- where event actually take place.
- Organizing- where customer belongs.

In relation to an event

Services relating to immovable property (Rule 5)

- Services provided directly in relation to an immovable property,
 - including services provided in this regard by experts and estate agents,
 - provision of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever, name called,
 - grant of rights to use immovable property,
 - services for carrying out or coordination of construction work, including architects or interior decorators,
- POP of these services shall be the place where the immovable property is located or intended to be located.

Services directly related to immovable property

- This rule covers services directly in relation to immovable property such as:
 - i) Services supplied in the course of construction, reconstruction, alteration, demolition, repair or maintenance of any building or civil engineering work;
 - ii) Renting of immovable property;
 - iii) Services of real estate agents, auctioneers, architects, engineers and similar experts or professional people, relating to land, buildings or civil engineering works. This includes the management, survey or valuation of property by a solicitor, surveyor or loss adjuster.
 - iv) Services connected with oil/gas/mineral exploration or exploitation relating to specific sites of land or the seabed.
 - v) The surveying (such as seismic, geological or geomagnetic) of land or seabed.
 - vi) Packages of property management services which may include rent collection, arranging repairs and the maintenance of financial accounts.
 - vii) The supply of hotel accommodation or warehouse space.

Services not directly related to immovable property

- Examples of service which are not land related:
 - i) Repair and maintenance of machinery which is not permanently installed. This is a service related to goods.
 - ii) Advice or information relating to land prices or property markets because they do not relate to specific sites.
 - iii) 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.
 - iv) 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.
 - v) Tax consultants determining capital gains

Issue

- Situation
 - Service provider outside India
 - Service receiver outside India
 - Immovable property in India
- POP in India
- Who is liable to pay tax?
- SL No 34 (c) of NN 25/2012-ST

Services relating to immovable property (Rule 5)

- **Under VAT, UK** If you supply services that relate to land or property, the POP of those services is where the land itself is located.

Performance based service (Rule 4)

- The POP of following services shall be the location where the services are actually performed, namely:-

(a) services provided in respect of goods that are required to be made physically available by the service receiver to the service provider, or to a person acting on behalf of the provider of service, in order to provide the service:

- Provided that when such services are provided from a remote location by way of electronic means the POP shall be the location where goods are situated at the time of provision of service:
- Provided further that this sub-rule shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs, reconditioning or reengineering for re-export, subject to conditions as may be specified in this regard;

(b) services provided to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the receiver, with the provider for the provision of the service.

Sub Rule (a) of Rule 4

-
- Services provided in respect of goods that are required to be made physically available by Service receiver would include:
 - Repair/maintenance of goods
 - storage and warehousing,
 - courier service/mail service, cargo handling service
 - technical testing/inspection/certification/ analysis of goods,
 - dry cleaning etc.

- Illustration1

A foreign music troupe, undertaking a tour in four Indian cities, obtains the services of an Indian cargo handling firm to move its sound and music equipment between the four cities. The POP of this service is in the taxable territory, notwithstanding the location of the receiver.

Sub Rule (a) of Rule 4

- Illustration 2

IT firm located in Bangalore-to a company at Singapore-provides repair service in respect of software, by electronic means. **The POP of this service will be Singapore.**

- Illustration3

A resident of USA sends his 40 inch LCD for repair and reconditioning to a firm based in Bangalore which re-exports the LCD after providing the service. The POP is USA.

Sub rule (b) of rule 4

- **Examples of Service under this rule**

cosmetic or plastic surgery, beauty treatment services, personal security service, health and fitness services, photography service (to individuals), internet café service, classroom teaching,

- **“..in the physical presence of an individual, whether represented either as the service receiver or a person acting on behalf of the receiver”**

This implies that while a service in this category is capable of being rendered only in the presence of an individual,

it will not matter if the service is actually rendered by the provider to a person other than the receiver, who is acting on behalf of the receiver.

- the nature of services covered here is such as are rendered in person and in the receiver's physical presence.
- Though these are generally rendered at the service provider's premises (at a cosmetic or plastic surgery clinic, or beauty parlor, or health and fitness centre, or internet café), they
- could also be provided at the customer's premises, or occasionally while the receiver is on the move (say, a personal security service; or a beauty treatment on board an aircraft).

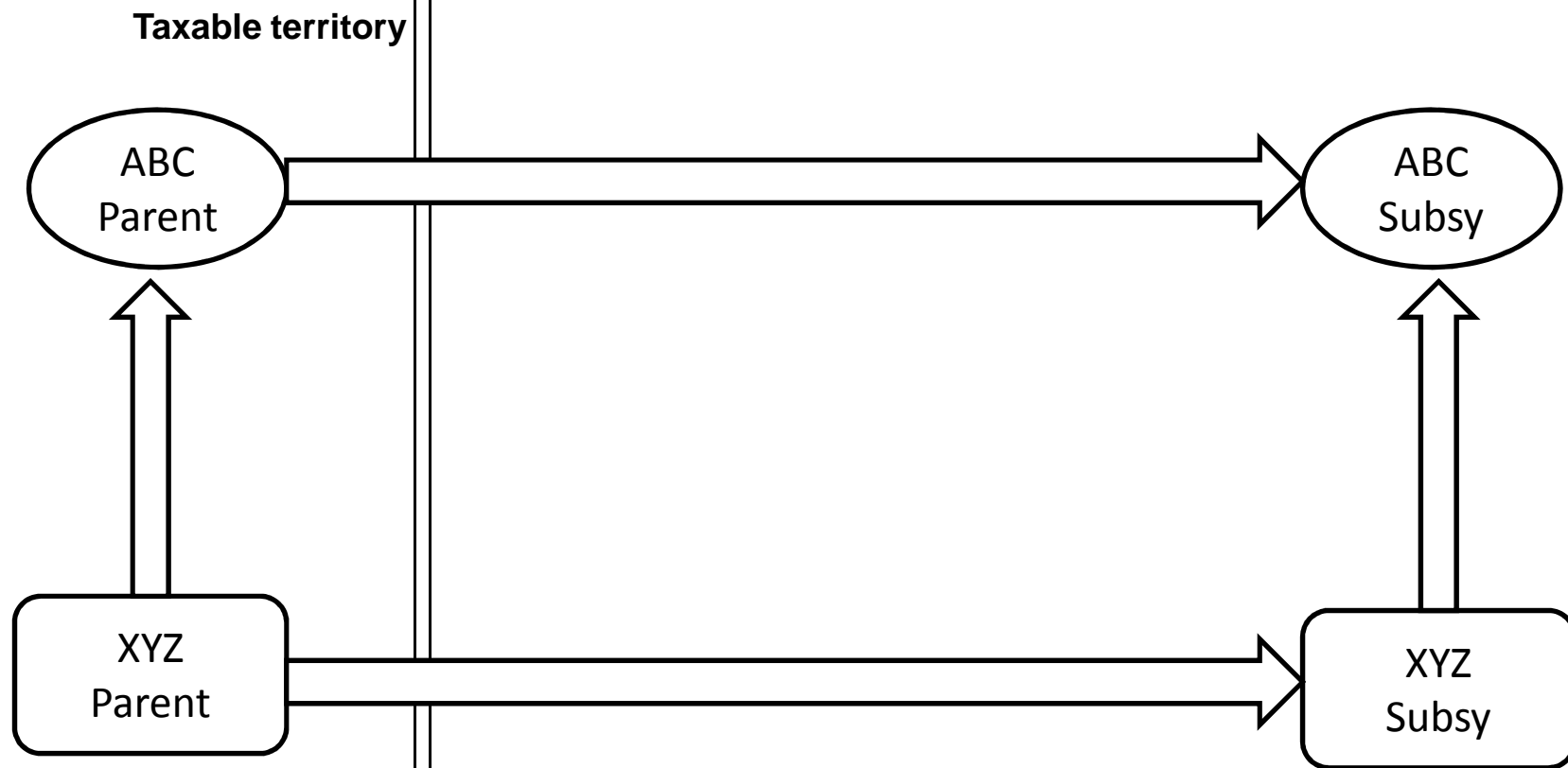
General Rule (Rule 3)

- POP - location of the **Service receiver**
- In case the location of the service receiver is not available in the ordinary course of business - POP is the location of **Service provider**
- “The POP of a service shall be the location of the service receiver;
- Provided that in case the location of the service receiver is not available in the ordinary course of business, the POP shall be the location of Service provider “
- Under UK VAT law:-
 - If the services are being provided to a ‘business’ then the POP shall be the location of the service receiver.
 - If the services are being provided to a ‘consumer’ (has no business activities) then the POP shall be the location of the service supplier

Global agreement v global framework agreement

Global agreement

Country X

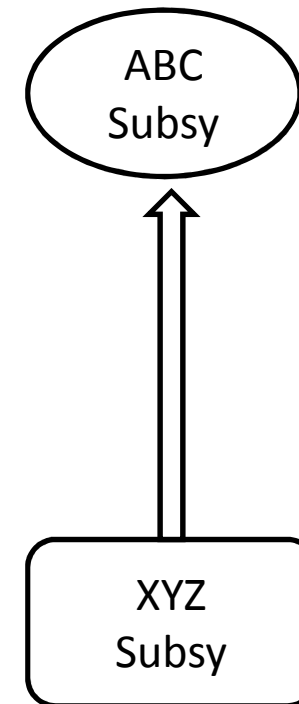
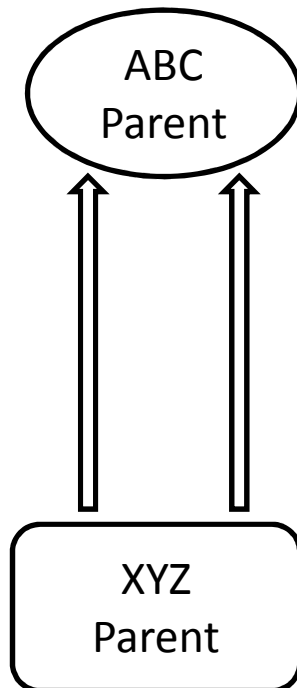


Global agreement v global framework agreement

Global Framework

Country X

Taxable territory



Intermediary for goods

- Intermediary for goods-
 - Covered in rule 4 if goods made available for sale by the service receiver for selling
 - Covered in rule 3 if the goods are not required to be handled – mere order procurement or identification of prospective buyers

Process of determining taxability

- Is the service covered in negative list/exempted vide notification
- If not, then-
 - Which rule of POP of Service Rules apply, and in case more than one rule apply equally, which of them comes later
 - What is the POP as per above rule
 - If it is outside taxable territory, no tax
 - If inside taxable territory, and the service provider is located outside Taxable territory, the service receiver to pay tax [notification No. 15/2012-ST]
 - No tax payable if service receiver is [S.No 34 of N.N. 12/2012-ST]–
 - Govt/local authority/Govt authority/ individual – in relation to any purpose other than industry, business or commerce
 - By an entity regd u/s 12AA of the IT Act for charitable activities
 - Person located in non taxable territory

Export of service (Rule 6A of ST Rules)

Any service provided or agreed to be provided shall be treated as export of service when,-

- (a) the provider of service is located in the taxable territory ,
- (b) the recipient of service is located outside India,
- (c) the service is not a service specified in the section 66D of the Act,
- (d) the POP of the service is outside India,
- (e) the payment for such service has been received by the provider of service in convertible foreign exchange, and
- (f) the provider of service and recipient of service are not merely establishments of a distinct person in accordance with item (b) of Explanation 2 of clause (44) of section 65B of the Act

Impact of export

- (2) Where any service is exported, the Central Government may, by notification, grant rebate of service tax or duty paid on input services or inputs, as the case may be, used in providing such service and the rebate shall be allowed subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification.”

Refund of Cenvat Credit- Rule 5

- Available to –
 - A manufacturer who clears final/ intermediate product for export without payment of duty
 - A service provider who export output service without payment of duty
- Maximum amount of refund:
 - $\text{Net Cenvat credit}^* (\text{Export turnover of goods} + \text{Export turnover of services}) / \text{Total turnover}$
 - Net Cenvat credit means total cenvat credit availed on input and input services by the manufacturer or the output service provider reduced by the amount reversed in terms of sub rule (5C) of Rule 3, during the relevant period;

Refund of Cenvat Credit- Rule 5

- “Export turnover of goods” means the value of final products and intermediate products cleared during the relevant period and exported without payment of Central Excise duty under bond or letter of undertaking;
- “Export turnover of services” means the value of the export service calculated in the following manner namely:-
payment received during the relevant period for export services

+

Export services whose provision has been completed for which payment has been received in advance in any period prior to relevant period

-

Advances received for export service for which the provision of service has not been completed during the relevant period

Refund of Cenvat Credit- Rule 5

- “Total turnover” means sum total of the value of -
 - (a) all excisable goods cleared during the relevant period including exempted goods, dutiable goods and excisable goods exported;
 - (b) export turnover of services determined in terms of clause (D) of sub-rule (1) above and the value of all other services, during the relevant period; and
 - (c) all inputs removed as such under sub-rule (5) of rule 3 against an invoice, during the period for which the claim is filed.
- With regards to procedure, safeguards, conditions, limitations refer to Notification No 27/2012 CE (NT)

Rebate-Notification No. 39/2012-ST

Conditions:

- Service has been exported in terms of rule 6A;
- duty on the inputs, for which rebate claimed has been paid to the supplier;
- that the service tax and cess, for which rebate claimed have been paid on the input services to the provider of service;
- If the person is himself is liable to pay for any input services; he should have paid the service tax and cess to the Central Government.
- No CENVAT credit has been availed of on inputs and input services on which rebate has been claimed

Rebate-Notification No. 39/2012-ST

Procedure

- Filing of Declaration - prior to date of export of service3.2
- Verification of declaration
- Presentation of claim for rebate accompanied by, –
 - invoices for inputs issued under the Central Excise Rules, 2002 and invoice for input services issued under the Service Tax Rules, 1994,
 - documentary evidence of receipt of payment against service exported
 - a declaration that such service, has been exported in terms of rule 6A of the said rules

Refund V Rebate

- In case of rebate declaration prior to export is required to be filled with the specified authority but there is no such declaration for refund
- Rebate is allowed on actual amount of tax paid but refund is allowed in proportion of export turnover to total turnover – much less in case company is doing taxable activity and exempted activity

Service exempted for exporter

- Service provided by a commission agent located outside India and engaged under a contract or agreement
- Subject to certain condition

Services provided to SEZ

Notification No 40/ 2012- ST

- Service received by units or developer of SEZ which is used for authorized operation would be exempt from ST and cess
- Conditions
- Exemption shall be provided by way of refund except where service wholly consumed within the SEZ
- Maximum refund - ratio of export turnover of goods and services multiplied by the service tax paid on services other than wholly consumed services to the total turnover for the given period to which the claim relates
- Declaration that the specified services have been used for the authorised operations;
- Unit of a SEZ or developer should have paid the amount indicated in the invoice to the person liable to pay the said tax or the amount of service tax payable under reverse charge, as the case may be,

Services provided to SEZ

Notification No 40/ 2012- ST

- No CENVAT credit of service tax paid on the specified services
- Unit of a SEZ or developer, who intends to avail exemption and or refund under this notification, shall maintain proper account of receipt and use of the specified services
- The benefit under the said notification is to be availed by filling a claim for refund of Service tax paid

Import of Service

Two Condition:

- POP of taxable Service is India
- The said taxable service is provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory
- In case of import of service, Service tax to be paid by service recipient (Point 10 of Notification No 30/ 2012 - ST)
- The said notification is issued under Section 68 (2)

THANK YOU

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