

# E - Handbook on Point of Taxation Rules, 2011

Service



**The Institute of Chartered Accountants of India**  
(Set up by an Act of Parliament)

# E-Handbook on Point of Taxation Rules, 2011



**The Institute of Chartered Accountants of India**  
*(Set up by an Act of Parliament)*  
**New Delhi**

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*Edition : February, 2013*

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## Foreword

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*Service tax, which made a modest beginning in the year 1994, has metamorphosed into a full fledged indirect tax making its presence felt in the economy as it has been the dominant sector in terms of the contribution to gross domestic production of the country.*

*Receipt of payment for the services provided/to be provided used to be the trigger point for the service tax liability till 31<sup>st</sup> March, 2011. However, the well settled position was given a go by with the advent of the Point of Taxation Rules, 2011 which shifted the point of taxation from realization basis to accrual basis. This move was seen as a precursor to the much awaited tax reform, Goods and Service Tax. The paradigm shift in the taxation of services viz., from positive approach to negative list based approach is yet another step taken by the Central Government in the same direction.*

*With the introduction of Point of Taxation Rules, 2011, the responsibility of a Chartered Accountant has increased manifold, which requires him to continually update his knowledge to enhance his professional skills. Appreciating the needs of the members, an attempt has been made by the Indirect Taxes Committee of the Institute of Chartered Accountants of India to provide handy information on the Point of Taxation Rules, 2011 to them. I compliment CA. Madhukar N Hiregange, Chairman and entire team of the Indirect Taxes Committee for their untiring efforts in bringing out this *e-Handbook on Point of Taxation Rules, 2011* for the members.*

*I am sure that this e-Handbook will be very useful for the members while discharging their professional duties.*

*I am hopeful that the Indirect Taxes Committee would keep up the good work of providing assistance to the members in the field of indirect taxation.*

*Date: 6<sup>th</sup> February, 2013  
Place: New Delhi*

*CA. Jaydeep Narendra Shah  
President, ICAI*



## Preface

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*Service tax law has witnessed sea changes in its provisions since its inception in 1994. Prior to April 1, 2011, the payment of service tax was associated with receipt of payment for the service. However, under central excise laws and the State VAT laws, the tax was required to be paid on accrual basis – upon manufacture and clearance of goods in the former and issue of invoice in the latter.*

*With a view to ensure smooth transition to impending Goods and Services Tax regime, the Central Government, with effect from 1<sup>st</sup> April, 2011, introduced the Point of Taxation Rules, 2011 which shifted the tax incidence from receipt of payment to earlier of issuance of invoice or receipt of payment. Such rules for the first time defined the taxable event in a transaction relating to taxable services so that liability for payment of the service tax can be ascertained with reference to such taxable event, i.e., point of time when a service shall be deemed to have been provided.*

*Keeping abreast with the latest developments is of paramount importance for the members. Only when we would be updated and equipped with the latest knowledge, would we be able to provide efficient and value additive services to our clients. This has increased our responsibility towards our clients who rely upon us for providing these services.*

*In view of the same, the Indirect Taxes Committee of ICAI has launched an e-Handbook on **Point of Taxation Rules, 2011**. This e-Handbook would act as a ready referencer for our members. The law stated in this book is updated with the amendments/ changes made till 5th February, 2013.*

*I am extremely thankful to CA. Jaydeep N. Shah, President, ICAI and CA. Subodh K. Agrawal, Vice-President, ICAI for supporting this initiative and CA. G. Ramaswamy, Past President, ICAI who has been the guiding force behind this e-Handbook. I am also thankful to all the members of the Committee, in particular, to CA. Rajiv Jaichand Luthia and CA. Vasant Bhat for developing this e-Handbook. Also, I acknowledge with thanks the contribution made by CA. K. Balasubramanian and CA. Gaurav Gupta in giving a final shape to this e-Handbook. I also compliment and appreciate the*

*assistance provided by the Officers of Indirect Taxes Committee Secretariat in bringing out this e-Handbook.*

*I look forward to suggestions/feedback for further improvements in this e-Handbook at [idtc@icai.org](mailto:idtc@icai.org).*

*Date : 06<sup>th</sup> February, 2013  
Place : New Delhi*

*CA. Madhukar N. Hiregange  
Chairman  
Indirect Taxes Committee*

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# Introduction

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## Background

*Point of taxation means the point in time when a service is deemed to have been provided. The point of taxation enables determination of the rate of tax, value of taxable service, rate of exchange and due date for payment of service tax. Payment of service tax, since its inception in the year 1994, had been linked with the receipt of consideration of the services. However, Point of Taxation Rules, 2011 introduced with effect from 01.04.2011, have brought a paradigm shift in the point of taxation of services.*

*Further, with a view to simplify and streamline the taxation of services, the Government vide Finance Act, 2012 has brought a sea change in the levy of service tax by introducing a “comprehensive approach” (negative list) for taxation of services w.e.f. 1<sup>st</sup> July, 2012. This approach is followed in most of the developed countries. Under this approach, every service is liable to service tax unless the same is specifically excluded / exempted from levy. India, while implementing service tax in the year 1994 had adopted “selective approach” (positive list) for levy of service tax thereby only select services were made liable to service tax.*

*The Point of Taxation Rules, 2011 and introduction of negative list will ensure a certain degree of preparedness among the trade and industry and will facilitate in smooth transition to the most ambitious tax reform of India namely, Goods and Services Tax.*

## Payment of Service Tax

### Position upto 31<sup>st</sup> March, 2011

- *As per Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, the liability of service tax is to be discharged by the service provider by 5<sup>th</sup> of the month immediately following the calendar month/quarter in which the payments are received towards the value of taxable services. However, in case of associated enterprise, such payment received includes any amount credited or*

*debited to any account be it 'suspense account' or any other name, in the books of accounts of a person liable to pay service tax.*

- *In case the service tax is paid electronically through internet banking, the due date shall be 6<sup>th</sup> of the month following month/quarter.*
- *In respect of payments towards taxable services received in the month/quarter of March, the due date for payment of service tax is 31<sup>st</sup> March.*
- *In nutshell, no service tax is required to be paid in case the service provider has not received any payment towards taxable services except in case of transaction with associated enterprises.*

#### **Amendments w.e.f. 1st April, 2011**

- *Vide Notification No.3/2011-ST dated 1<sup>st</sup> March, 2011, Rule 6 of the Service Tax Rules, 1994 was amended w.e.f. 1<sup>st</sup> April, 2011 whereby the service tax liability was required to be discharged by the service provider by 5<sup>th</sup> of the month (except for the month/quarter ended on 31<sup>st</sup> March) immediately following the calendar month/quarter in which the service was deemed to be provided as per the Point of Taxation Rules, 2011.*
- *In case the service tax is paid electronically through internet banking, the due date shall be 6<sup>th</sup> of the following month/quarter.*
- *In respect of payments towards taxable services received in the month/quarter of March, the due date for payment of service tax shall be 31<sup>st</sup> March.*

# Point of Taxation Rules, 2011

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*The Point of Taxation Rules (POTR), 2011 have been notified w.e.f. 1<sup>st</sup> April, 2011 vide Notification No.18/2011-ST dated 1<sup>st</sup> March, 2011 as amended by Notification No.25/2011-ST dated 31<sup>st</sup> March, 2011,. CBEC, in Para 6.1 of Letter DOF No.334/3/2011-TRU dated 28<sup>th</sup> February, 2011, has clarified that these Rules determine the point in time when the services shall be deemed to be provided. The Point of Taxation Rules, 2011 were optional for the service providers till 30<sup>th</sup> June, 2011. The POTR, 2011 were made mandatory w.e.f. 1<sup>st</sup> July, 2011 to determine the point of time at which the service is provided or deemed to have been provided and the service tax liability is required to be discharged based on POTR, 2011. Certain important terms such as “continuous supply of service”, “point of taxation”, “date of payment”, “change in effective rate of tax” etc. are very relevant which the reader may refer to in the relevant Notifications which are annexed herewith.*

## **Determination of Point of Taxation (Rule 3)**

*Point of taxation shall be the time when invoice for service provided or agreed to be provided is issued. In case the invoice is not issued within the time period specified in Rule 4A of the Service Tax Rules, 1994, point of taxation shall be the date of the completion of such service. In case service provider receives payment before issuance of invoice or completion of service, the point of taxation shall be the receipt of payment to the extent of such payment.*

*CBEC vide Circular No.144/13/2011-ST dated 18<sup>th</sup> July, 2011 has clarified the term “Completion of Service” to mean that all the other auxiliary activities such as measurement, quality testing etc. besides the physical part of providing prime service also to be completed, which enable the service provider to be in a position to issue an invoice. However, such auxiliary activities shall not be flimsy or irrelevant grounds for delay in issuance of invoice.*

*In case of “Continuous Supply of Service” where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of contract, which requires the receiver of service to make any*

*payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.*

*Rule 2(c) of POTR defines “Continuous supply of service” to mean any service which is provided, or agreed to be provided continuously or on recurrent basis, under a contract, for a period exceeding 3 months with the obligation for payment periodically or from time to time or where the Central Government, by a notification in the official gazette prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition.*

*CBEC vide Notification No. 38/2012-ST dated 20<sup>th</sup> June, 2012 has amended Notification No.28/2011-ST dated 1<sup>st</sup> April, 2011 and substituted following services as “continuous supply of service” for the purpose of Point of Taxation Rules, 2011 w.e.f. 1<sup>st</sup> July, 2012:*

- (i) Telecommunication services*
- (ii) Service portion in the execution of works contract*

*Rule 3 further provides that wherever the provider of taxable service receives a payment upto Rs 1,000/- in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined in accordance with the provisions of Rule 3(a) of POTR, 2011.*

*In case the service provider receives any advance towards provision of taxable service, the point of taxation shall be the date of receipt of each such advance.*

*Ministry of Finance, Government of India in Letter F.No.341/34/2010-TRU dated 31<sup>st</sup> March, 2011 has clarified the point of taxation by way of illustrations which is reproduced here below:*

Point of Taxation Rules, 2011

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

Note: w.e.f 1<sup>st</sup> April, 2012, the time period for issuance of an invoice specified in Rule 4A of the Service Tax Rules, 1994 has been *increased from 14 days to 30 days* from the date of completion of service or receipt of any payment towards the value of such taxable service, whichever is earlier. In case service provider is banking company or a financial institution including NBFC, the time period has to be read as *45 days*.

For the purpose of POTR, 2011, “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.

The “date of payment” shall be the date of credit in bank account when:

- *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 & its credit in the bank account; and*
- *the credit in the bank account is after four working days from the date when there is a change in effective rate of tax or when a service is taxed for the first time; and*
- *the payment is made by way of an instrument which is credited to a bank account.*

If any rule requires determination of the time or date of payment received, the term “date of payment” shall be construed to mean such date on which the payment is received.

### In Case of Change in Rate of Tax (Rule 4)

Rule 2(ba) of POTR, 2011 defines “change in effective rate of tax” to include a change in portion of value on which tax is payable in terms of a notification issued under the provisions of Finance Act, 1994 or rules made there under.

Notwithstanding anything contained in Rule 3 of POTR, 2011, Rule 4 of POTR, 2011 provides that in case of a change of rate of tax in respect of service, point of taxation will be determined in the following manner:

Provision of Service	Issuance of Invoice	Payment	Point of Taxation	Applicable Rate of Service Tax
<i>Before change of rate</i>	<i>After change of rate</i>	<i>After change of rate</i>	<i>Date of invoice or payment, whichever is earlier</i>	12%
	<i>Before change of</i>	<i>After change of</i>	<i>Date of invoice</i>	10%

Point of Taxation Rules, 2011

Provision of Service	Issuance of Invoice	Payment	Point of Taxation	Applicable Rate of Service Tax
	<i>rate</i>	<i>rate</i>		
	<i>After change of rate</i>	<i>Before change of rate</i>	<i>Date of payment</i>	10%
<i>After change of rate</i>	<i>Before change of rate</i>	<i>After change of rate</i>	<i>Date of payment</i>	12%
	<i>Before change of rate</i>	<i>Before change of rate</i>	<i>Date of invoice or payment, whichever is earlier</i>	10%
	<i>After change of rate</i>	<i>Before change of rate</i>	<i>Date of invoice</i>	12%

*Note: For the purpose of above illustrations, the rate of service tax is presumed at 10% before change of rate & the same is presumed at 12% after change of rate.*

*CBEC vide Circular No 162/13/2012-ST dated 6<sup>th</sup> July, 2012 has clarified that point of taxation in respect of taxable works contract in progress on 1<sup>st</sup> July, 2012 would be determined as per the provisions of Rule 4 as if there is change in effective rate of tax. It is clarified that following would be considered as “change in effective rate of tax” in respect of a works contract:*

- (i) The change in the portion of total value liable to tax in respect of works contract other than original works [The Works Contract Composition Scheme, 2007 has been omitted w.e.f. 1<sup>st</sup> July, 2012 thereby service tax payable under Composition Scheme @ 4.8% on the total value of contract till 30<sup>th</sup> June, 2012 is now required to be discharged @ effective rate of 7.2 % of the value of works contracts (12% of 60% of value of total amount charged for works contract)].*
- (ii) Exemption granted to certain works contracts w.e.f. 1<sup>st</sup> July, 2012 which were earlier taxable.*



- (iii) *Taxability of certain works contracts which were hitherto exempted.*
- (iv) *Change in the manner of payment of tax from composition scheme under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 to payment on actual value under clause (i) of rule 2A of the Service Tax (Determination of Value) Rules, 2006.*

*It is also clarified that following would not be considered as “change in effective rate of tax” in respect of a works contract:*

- (i) *Works contracts earlier paying service tax @ 4.8% under composition scheme and now required to pay service tax @12% on 40% of the total amount charged, keeping the effective rate again same at 4.8% (as only the manner of expression has been altered).*
- (ii) *Works contracts which were outside the scope of taxation (and not merely exempted) but have become now taxable e.g. construction of residential complex comprising of 2 to 12 residential units, construction of buildings meant for use by NGOs etc. (Rule 5 of the Point of Taxation Rules, 2011 shall apply to such services.)*

*It has been clarified by the CBEC vide their Letter F.No. 341 /34/2010-TRU dated 31<sup>st</sup> March, 2011 that change in rate of abatement or any other notification issued, altered, or amended and which has the effect of change in taxability, if any, of the service will also be construed as change in effective rate of tax.*

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

*The rate of service tax, value of taxable service and rate of exchange shall be the rate of service tax, value of taxable service and rate of exchange as applicable when the taxable service has been provided or agreed to be provided. “Rate of exchange” means the rate of exchange referred to in Section 14 of Customs Act, 1962*

## In Case of Service Taxed for the First Time (Rule 5)

*When a service is taxed for the first time, no service tax is payable:*

- *in case invoice as well as payment are received against such invoice before such service became taxable;*
- *in case payment is received before such service became taxable & the service provider has issued invoice within the period of 14 days of the date when such service is taxed for the first time. The time limit of issuing bill, invoice is raised to 30/45 days in Rule 4A of The Service Tax Rules, 1994, however there is no corresponding amendment thereto in POT Rules. The provisions of Rule 5 are explained with an example here below.*

*The services of cricket commentators are made liable to service tax w.e.f. 1<sup>st</sup> July, 2012. In a case where payment is made to the commentator on or before 30<sup>th</sup> June, 2012 for which invoice is raised on or before 14<sup>th</sup> July, 2012, no service tax would be payable in view of Rule 5 of POTR, 2011 in spite of the fact that the match for which the commentator is giving his services is scheduled on or after 1<sup>st</sup> July, 2012 i.e., at the time when the services are liable for service tax.*

*Rule 5 covers only two issues which are specifically mentioned above. Any other situation shall be covered under the general rule, i.e., rule 3. For example, in case where the date of invoice and the date of completion of service is before the service became taxable but the payment has been received after the date the service became taxable then as per rule 3, the POT shall be the date of issuance of invoice or receipt of payment, whichever is earlier.*

## In Case of Continuous Supply of Service (Rule 6)<sup>1</sup>

*Rule 2(c) defines “continuous supply of service” to mean any service which is provided, or agreed to be provided continuously or on recurrent basis, under a contract, for a period exceeding 3 months with the obligation for payment periodically or from time to time or where the Central Government, by a*

*notification in the official gazette prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition.*

*Central Government vide Notification No. 28/2011-ST dated 1<sup>st</sup> April, 2011 had notified following services as “continuous supply of service” for the purpose of Point of Taxation Rules, 2011.*

- *Commercial or Industrial Construction [Section 65(105)(zzq)]*
- *Construction of Residential Complex [Section 65(105)(zzzh)]*
- *Internet Telecommunication Services [Section 65(105)(zzzu)]*
- *Telecommunication Services [Section 65(105)(zzzx)]*
- *Works Contract Service [Section 65(105)(zzzza)]*

*The provisions for determining the POT in case of continuous supply of service till 31<sup>st</sup> March, 2012 (Rule 6)<sup>1</sup> are:*

- *Point of taxation shall be the time when invoice for service provided or agreed to be provided is issued.*
- *In case the invoice is not issued within 14 days of completion of service, point of taxation shall be the date of the completion of such service.*
- *In case service provider receives payment before issuance of invoice or completion of service, the point of taxation shall be the receipt of payment to the extent of such payment.*
- *Where provision of service is determined periodically on the completion of an event in terms of a contract, which requires the service receiver to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.*

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<sup>1</sup> Rule 6 has been omitted w.e.f 1<sup>st</sup> April, 2012. For determining POT in case of continuous supply of services, Rule 3,4,5 as the case may be will be applicable with effect from 1<sup>st</sup> April, 2012

- *In case the service provider receives any advance towards provision of taxable service, the point of taxation shall be the date of receipt of each such advance.*

### **In Case of Specified Services (Rule 7)**

*Rule 7 provides that notwithstanding anything contained in these Rules, POT shall be the date on which payment is received or made, as the case may be, in respect of persons required to pay tax as recipients of service in respect of services notified under section 68(2) for reverse charge mechanism (Rule 7)<sup>2</sup>*

*In respect of services notified under section 68(2) where payment is not made within a period of 6 months of the date of invoice, the point of taxation shall be the*

- *Time when invoice for service provided or agreed to be provided is issued.*
- *In case the invoice is not issued within the time period specified in Rule 4A of the Service Tax Rules, 1994, point of taxation shall be the date of the completion of such service.*

*In case of associated enterprises where the person providing the service is located outside India, the point of taxation shall be the date of credit in the books of account of the person receiving the service or date of making the payment whichever is earlier.*

*CBEC vide Circular No.154/5/2012-ST dated 28<sup>th</sup> March, 2012 has clarified that in respect of invoices issued on or before 31<sup>st</sup> March, 2012, the point of taxation in respect of specified taxable services rendered by individuals/proprietary firms/partnership firms shall be the date of receipt of payment as provided by erstwhile Rule 7 of the Point of Taxation Rules, 2011. The specified taxable services are:*

- i) *Architects [Section 65(105)(p)]*
- ii) *Interior Decorators [Section 65(105)(q)]*

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<sup>2</sup> Substituted by Notification No. 4/2012- ST dated 17<sup>th</sup> March, 2012 w.e.f. 1<sup>st</sup> April, 2012

- iii) *Practising Chartered Accountants [Section 65(105)(s)]*
- iv) *Practising Cost & Works Accountants [Section 65(105)(t)]*
- v) *Practising Company Secretaries [Section 65(105)(u)]*
- vi) *Scientific & Technical Consultancy [Section 65(105)(za)]*
- vii) *Legal Services [Section 65(105)(zzzzm)]*
- viii) *Consulting Engineer Services [Section 65(105)(g)]*

*CBEC vide Circular No.158/9/2012-ST dated 8<sup>th</sup> May, 2012 has clarified that since the point of taxation in respect of 8 specified taxable services rendered by individuals/proprietary firms/partnership firms shall be the date of receipt of payment, service tax is required to be paid @12.36% in respect of invoices raised before 1<sup>st</sup> April, 2012 for which payment is received after 1<sup>st</sup> April, 2012. The service provider may issue supplementary invoice to recover the differential amount of service tax which would be eligible as CENVAT credit to service recipient subject to fulfillment of various conditions prescribed under the CENVAT Credit Rules, 2004.*

*The above circular has been quashed as being contrary to the Finance Act, 1994 and the Point of Taxation Rules, 2011 by the Delhi High Court in the case of Delhi Chartered Accountants Society (Regd) v. Union of India and ors. W.P. (C) 4456/2012 & C.M. No. 9237/201. The Delhi High Court has held that the Point of Taxation Rules, 2011 have the force of law and the circulars have to be in conformity with the Act and the Rules and if they are not, they cannot be allowed to govern the controversy. It is well-settled that a Circular which is contrary to the Act and the Rules cannot be enforced.*

### **In Case of Royalties (Rule 8)**

*In respect of royalties & payments pertaining to copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration, the service shall be deemed to have been provided each time when a*

*payment in respect of such use or the benefit is received by the provider or an invoice is issued by the provider, whichever is earlier.*

### **Point of Taxation to the Best of Judgment (Rule 8A)**

*Rule 8A gives powers to the Central Excise Officer to determine the point of taxation to the best of his judgment in cases where the point of taxation cannot be determined as per POT Rules, 2011 as the date of invoice or the date of payment or both are not available. In such cases, the Central Excise Officer is required to give the concerned person opportunity of being heard before passing such order in writing.*

### **Transitional Provisions (Rule 9)**

*The provisions of these rules are not applicable in case where provision of services is completed or invoices are issued prior to 1<sup>st</sup> April, 2011. In case where provision of services is completed or the invoices are issued prior to 30<sup>th</sup> June, 2011, the point of taxation, at the option of taxpayer, shall be the date on which the payment is received or made, as the case may.*



# APPENDICES





## Notification No. 18/2011- ST dated March 01, 2011

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

1. *Short title and commencement.*-(1) *These rules shall be called the Point of Taxation Rules, 2011.*

(2) *They shall come into force on the 1st day of April, 2011.*

2. *Definitions.*- *In these rules, unless the context otherwise requires, -*

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

3. **Determination of point of taxation.**- *For the purposes of these rules, unless otherwise stated, point of taxation shall be determined in the following manner, namely:*

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

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

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

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

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

- (iii) *where the payment is also received before the change of rate, but the invoice for the same has been issued after the change of rate, the point of taxation shall be the date of payment;*
  - (b) *in case a taxable service has been provided after the change of rate,-*
    - (i) *where the payment for the invoice is also made after the change in tax rate but the invoice has been issued prior to the change of tax rate, the point of taxation shall be the date of payment; or*
    - (ii) *where the invoice has been issued and the payment for the invoice received before the change of tax rate, the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier; or*
    - (iii) *where the invoice has also been raised after the change of rate but the payment has been received before the change of rate, the point of taxation shall be date of issuing of invoice.*
5. **Payment of tax in cases of new services.-** *Where a service, not being a service covered by rule 6, is taxed for the first time, then,*
- (a) *no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;*
  - (b) *no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within the period referred to in rule 4A of the Service Tax Rules, 1994.*
6. **Determination of point of taxation in case of continuous supply of service.**
- (1) *In case of continuous supply of service, the whole or part of which is determined or payable periodically or from time to time, shall be treated as separately provided at the date on which the payment is liable to be made by the service receiver, if such date is specified in the contract.*

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

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

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

**7. Determination of point of taxation in case of associated enterprises.**

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

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

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

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

[F.No.334/3/2011-TRU]

SAMAR NANDA  
Under Secretary of the Government of India

## Notification No. 25/2011–ST dated March 31, 2011

*In exercise of the powers conferred by clause (a) and clause (hhh) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994) the Central Government hereby makes the following rules further to amend the Point of Taxation Rules, 2011, namely:-*

1. (1) *These rules may be called the Point of Taxation (Amendment) Rules, 2011.*

(2) *They shall come into force on the 1st day of April, 2011.*

2. *In the Point of Taxation Rules, 2011 (hereinafter referred to as the “said rules”), for rule 3, the following rule shall be substituted, namely:-*

“3. *Determination of point of taxation.- For the purposes of these rules, unless otherwise provided, 'point of taxation' shall be,-*

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

*Provided that where the invoice is not issued within fourteen days 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.”*

3. *In rule 4 of the said rules,-*

(i) *for the words “change of rate”, wherever they occur, the words “change in effective rate of tax” shall be substituted;*

- (ii) for the words “change of rate of tax” or “change in tax rate” or “change of tax rate”, respectively at both the places where they occur, the words “change in effective rate of tax” shall be substituted;
- (iii) after sub-clause (iii) of clause (b), the following Explanation shall be inserted, namely:-

*“Explanation.- For the purposes of this rule, “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 under the provisions of Finance Act, 1994 or rules made thereunder.”.*

4. For rule 6 of the said rules, the following rule shall be substituted, namely:-

*“6. Determination of point of taxation in case of continuous supply of service.-Notwithstanding anything contained in rules 3,4 or 8, in case of continuous supply of service, the 'point of taxation' shall be,-*

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

*Provided that where the invoice is not issued within fourteen days 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 1. – For the purpose of this rule, where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the service receiver to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.*

*Explanation 2.- 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.”*

5. *For rule 7, the following rule shall be substituted, namely:-*

*“7. Determination of point of taxation in case of specified services or persons.-Notwithstanding anything contained in these rules, the point of taxation in respect of,-*

- (a) the services covered by sub-rule (1) of rule 3 of Export of Services Rules, 2005;*
- (b) the persons required to pay tax as recipients under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Finance Act, 1994;*
- (c) individuals or proprietary firms or partnership firms providing taxable services referred to in sub-clauses (p), (q), (s), (t), (u), (za), (zzzzm) of clause (105) of section 65 of the Finance Act, 1994, shall be the date on which payment is received or made, as the case may be:*

*Provided that in case of services referred to in clause (a), where payment is not received within the period specified by the Reserve Bank of India, the point of taxation shall be determined, as if this rule does not exist.*

*Provided further that in case of services referred to in clause (b) where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist.*

*Provided also that in case of “associated enterprises”, where the person providing the service is located outside India, the point of taxation shall be the date of credit in the books of account of the person receiving the service or date of making the payment whichever is earlier.*

6. For rule 9, the following rule shall be substituted, namely:-

“9. *Transitional Provisions.*- Nothing contained in this rule shall be applicable,-

- (i) where the provision of service is completed; or
- (ii) where invoices are issued prior to the date on which these rules come into force.

*Provided that services for which provision is completed on or before 30th day of June, 2011 or where the invoices are issued upto the 30th day of June, 2011, the point of taxation shall, at the option of the taxpayer, be the date on which the payment is received or made as the case may be.”*

F.No. 334/3/2011-TRU

(SAMAR NANDA)

Under Secretary to the Government of India

**Note :** - *The principal notification No. 18/2011-Service Tax, dated the 1st March 2011, published in the Gazette of India, Extraordinary, vide number G.S.R.175(E), dated the 1st March, 2011.*

### Notification No. 28/2011-ST dated April 1, 2011

*In exercise of the powers conferred under clause (a) and clause (hhh) of sub-section (2) of section 94 the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), read with clause (c) of rule (2) of the Point of Taxation Rules, 2011 (hereinafter referred to as the said rules), the Central Government hereby notifies that the provision of taxable services referred to in clauses (zzq), (zzzh), (zzzx), (zzzu) and (zzzza) of section 65(105) of the Finance Act, shall be treated as continuous supply of service, for the purpose of the said rules.*

F. No. 334/3/ 2011 – TRU

(SAMAR NANDA)  
Under Secretary to the Government of India

### Notification No. 41/2011-ST dated June 27, 2011

*In exercise of the powers conferred by clause (a) and clause (hhh) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following rules further to amend the Point of Taxation Rules, 2011, namely:-*

1. (1) *These rules may be called the Point of Taxation (Second Amendment) Rules, 2011.*

(2) *They shall come into force on the 1 st day of July, 2011.*

2. *In the Point of Taxation Rules, 2011, in Rule 7, in sub-rule (c),-*

*before the bracket and letter “ (p)”, the bracket and letter “(g)” shall be inserted,*

[F. No. 334/3/2011-TRU]

(Samar Nanda)

Under Secretary to the Government of India

**Note .-** *The principal rules were notified vide notification no. 18/2011-Service Tax, dated the 1st March, 2011, published in the Gazette of India, Extraordinary vide Number G.S.R. 175(E), dated the 1st March, 2011 and last amended vide notification No.25/2011-Service Tax, dated the 31st March, 2011, published on the Gazette of India vide Number G.S.R. 283(E), dated the 31st March, 2011.*

## Notification No. 04/2012-ST dated March 17, 2012

*In exercise of the powers conferred by clause (a) and clause (hhh) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Point of Taxation Rules, 2011, namely:-*

1. (1) *These rules may be called the Point of Taxation (Amendment) Rules, 2012.*

(2) *They shall come into force on the 1st day of April, 2012.*

2. *In the Point of Taxation Rules, 2011 (hereinafter referred to as the said rules), in rule 2, -*

(a) *after clause (b), the following clause shall be inserted, namely:-*

(ba) *“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 thereunder;*

(b) *in clause (c), for the words “or to be provided continuously, under a contract, for a period exceeding three months,” , the words “or to be provided continuously or on recurrent basis, under a contract, for a period exceeding three months with the obligation for payment periodically or from time to time,” shall be substituted.*

3. *After rule 2 of the said rules, the following rule shall be inserted, namely:—*

*"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 —*

- (A) *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,*
- (B) *if any rule requires determination of the time or date of payment received, the expression “date of payment” shall be construed to mean such date on which the payment is received;”*

4. *In rule 3 of the said rules,-*

- (a) *in clause (a), for the proviso, the following proviso shall be substituted, namely:-*

*“Provided that where the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules,1994, the point of taxation shall be the date of completion of provision of the service”;*

- (b) *after clause (b), the following proviso shall be inserted, namely:—*

*“Provided that for the purposes of clauses (a) and (b), —*

- (i) *in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as*

*specified in the contract shall be deemed to be the date of completion of provision of service;*

- (ii) *wherever the provider of taxable service receives a payment up to rupees one thousand in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined in accordance with the provisions of clause (a)."*

5. *In rule 4 of the said rules, the Explanation shall be omitted.*

6. *For rule 5 of the said rules, the following shall be substituted, namely:—*

*"5. Payment of tax in case of new services.— Where a service is taxed for the first time, then,—*

(a) *no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;*

(b) *no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within fourteen days of the date when the service is taxed for the first time."*

7. *Rule 6 of the said rules shall be omitted.*

8. *For rule 7 of the said rules, the following rule shall be substituted, namely:—*

*"7. Determination of point of taxation in case of specified services or persons.—*

*notwithstanding anything contained in these rules, the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made.*

*Provided that, where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist:*

*Provided further that in case of “associated enterprises”, where the person providing the service is located outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier.”*

9. After rule 8 of the said rules, the following rule shall be inserted, namely:—

*“8A. Determination of point of taxation in other cases.- Where the point of taxation cannot be determined as per these 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.”*

[F. No. 334 /1 /2012- TRU]

(Samar Nanda)

Under Secretary to the Government of India

*Note. The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide notification number 18/2011 - Service Tax, dated the 1st March, 2011, G.S.R. 175 (E), dated the 1st March, 2011 and was last amended by notification number 41/2011-Service Tax, dated the 27th June, 2011 vide number G.S.R. 490 (E), dated the 27th June, 2011.*



## Notification No. 37/2012-ST dated June 20, 2012

G.S.R. (E). In exercise of the powers conferred by clause (a) and clause (hhh) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the Point of Taxation Rules, 2011, namely:

1. (a) These rules may be called the Point of Taxation (Amendment) Rules, 2012.

(b) They shall come into force on the 1st day of July, 2012.

2. In the Point of Taxation Rules, 2011,-

(a) in rule 2, sub-rules (b) and (f) shall be omitted.

(b) for the words, provided or to be provided wherever they occur, the words provided or agreed to be provided shall be substituted.

[F. No.334/1/2012 -TRU]

(Rajkumar Digvijay)  
Under Secretary to the Government of India

*Note: The principal notification was published in the Gazette of India, Extraordinary, vide notification No. 18/2011 - Service Tax, dated 1-3-2011 vide number G.S.R. 175 (E), dated the 1st March, 2011 and was last amended by notification No. 4/2012-Service Tax, dated the 17th March, 2012[G.S.R.202 (E), dated the 17th March, 2012].*

**F.No.341/34/2010-TRU**

Government of India  
Ministry of Finance  
Department of Revenue  
(Tax Research Unit)

New Delhi dated the 31st March, 2011.

*Subject: Amendments in Point of Taxation Rules, 2011 and other related provisions*

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

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

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

*(a) Date of invoice or payment, whichever is earlier, if the invoice is issued within the prescribed period of 14 days from the date of completion of the provision of service.*

*(b) Date of completion of the provision of service or payment, if the invoice is not issued within the prescribed period as above.*

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

E-Handbook on Point of Taxation Rules, 2011

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

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

7B or 7C) of the Service Tax Rules, 1994 as well as the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. Thus, whenever these values or the composition rates are changed, it would have the same effect as the change in the rate of duty. It is hereby further clarified that the rate of tax shall also include any other notification which is issued, rescinded or amended and has the effect of altering the taxability of any service.

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

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

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

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

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

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

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

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

10. *In the case of services where the recipient is obligated to pay service tax under rule 2 (1)(d) of Service Tax Rules i.e. on reverse charge basis, the point of taxation shall be the date of making the payment. However, if the payment is not made within six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist. Moreover, in the*

*case of associated enterprises, when the service provider is outside India, the point of taxation will be the earlier of the date of credit in the books of account of the service receiver or the date of making the payment.*

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

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

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

13. *It is further clarified that the transitional provisions will apply to all invoices issued before 31.03.2011 in so far as taxpayers who switch over to the new rules on 01.04.2011. Those assesseees who like to shift to the new rules on 01.07.2011 would have similar protection in respect of invoices issued before the date they switch over to the new rules. The benefit has*

*also been extended to services when provision has been completed before 01.04.2011 or 01.07.2011, as the case may be. It is also clarified that the payments received before the new rules come into force do not require any transitional provisions as they are already required to pay tax on payment basis.*

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

(V.K. Garg)  
Joint Secretary (TRU-II)

## Circular No. 144/13/2011-ST dated July 18, 2011

**Subject:** - Clarification on "Completion of service"- regarding.

*Representations requesting clarification on "completion of service" as provided under the Point of Taxation Rules, 2011 and Service Tax Rules, 1994 have been received from certain sections of service providers that in many situations it is not possible to issue invoices within 14 days of the completion of the service since the exact date of completion of service is difficult to identify. Instances have been given where after the task of providing the service may be physically accomplished, but certain other formalities are required to be completed from the client's end before an invoice can be issued.*

2. *These representations have been examined. The Service Tax Rules, 1994 require that invoice should be issued within a period of 14 days from the completion of the taxable service. The invoice needs to indicate inter alia the value of service so completed. Thus it is important to identify the service so completed. This would include not only the physical part of providing the service but also the completion of all other auxiliary activities that enable the service provider to be in a position to issue the invoice. Such auxiliary activities could include activities like measurement, quality testing etc. which may be essential pre-requisites for identification of completion of service. The test for the determination whether a service has been completed would be the completion of all the related activities that place the service provider in a situation to be able to issue an invoice. However, such activities do not include flimsy or irrelevant grounds for delay in issuance of invoice.*

*The above interpretation also applies to determination of the date of completion of provision of service in case of "continuous supply of service".*

3. *Trade Notice/Public Notice may be issued to the field formations accordingly.*

4. *Please acknowledge the receipt of this circular. Hindi version to follow.*

F.No.354/93/2011-TRU

(Samar Nanda)  
Under Secretary, TRU



**Circular No. 154/5/ 2012 – ST dated March 28, 2012**

*F.No. 334/1/2012- TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs  
Tax Research Unit  
Room No 146, North Block, New Delhi*

*To*

*Chief Commissioner of Customs and Central Excise (All)  
Chief Commissioner of Central Excise & Service Tax (All)  
Director General of Service Tax  
Director General of Central Excise Intelligence  
Director General of Audit  
Commissioner of Customs and Central Excise (All)  
Commissioner of Central Excise and Service Tax (All)  
Commissioner of Service Tax (All)*

*Madam/Sir,*

**Subject: - Clarification on Point of Taxation Rules - regarding.**

1. *Notification No.4/2012 - ST dated 17<sup>th</sup> March 2012 has amended the Point of Taxation Rules, 2011 w.e.f. 1<sup>st</sup> April, 2012, inter-alia, amending Rule 7 which applied to individuals or proprietary firms or partnership firms providing taxable services referred to in sub-clauses (g), (p), (q), (s), (t), (u), (za) and (zzzzm) of clause (105) of section 65 of the Finance Act, 1994. Rule 7 determined the point of taxation in such cases as the date of receipt of payment. The provisions have been amended both in the Point of Taxation Rules, 2011 and the Service Tax Rules, 1994 such that from 1<sup>st</sup> April, 2012 the payment of tax shall be allowed to be deferred till the receipt of payment upto a value of Rs 50 lakhs of taxable services. The facility has been granted to all individuals and partnership firms, irrespective of the description of*

*service, whose turnover of taxable services is fifty lakh rupees or less in the previous financial year.*

*2. Representations have been received, in respect of the specified eight services, requesting clarification on determination of point of taxation in respect of invoices issued on or before 31<sup>st</sup> March, 2012 where the payment has not been received before 1<sup>st</sup> April, 2012.*

*3. The issue has been examined. For invoices issued on or before 31<sup>st</sup> March, 2012, the point of taxation shall continue to be governed by the Rule 7 as it stands till the said date. Thus in respect of invoices issued on or before 31<sup>st</sup> March, 2012 the point of taxation shall be the date of payment.*

*4. Trade Notice/Public Notice may be issued to the field formations accordingly.*

*5. Please acknowledge the receipt of this circular. Hindi version to follow.*

(Shobhit Jain)  
OSD, TRU

## Circular No. 155/6/ 2012–ST dated April 9, 2012

**Subject :** *Clarification on Point of Taxation Rules - regarding.*

1. Notification No. 2/2012-ST dated 17th March, 2012 has rescinded Notification No. 8/2009–ST dated 24th February, 2009, thus restoring the effective rate of service tax to 12% wef 1<sup>st</sup> April, 2012. Further the Notification No. 26/2010-ST dated 22nd June, 2010 has been superseded by Notification No. 6/2012-ST dated 17th March, 2012, wef 1st April, 2012.

2. It has been brought to the attention of the Board that some airlines are collecting differential service tax on tickets issued before 1st April, 2012 for journey after 1st April, 2012, causing inconvenience to passengers. Representations have also been received in this regard. The position of law in the above respect is clear and is detailed below.

3. Rule 4 of the Point of Taxation Rules, 2011 deals with the situations of change in effective rate of tax. In case of airline industry, the ticket so issued in any form is recognised as an invoice by virtue of proviso to Rule 4A of Service Tax Rules, 1994. Usually in case of online ticketing and counter sales by the airlines, the payment for the ticket is received before the issuance of the ticket. Rule 4(b)(ii) of the Point of Taxation Rules, 2011 addresses such situations and accordingly the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier. Thus the service tax shall be charged @10% subject to applicable exemptions plus cesses in case of tickets issued before 1st April, 2012 when the payment is received before 1st April, 2012.

4. In case of sales through agents (IATA or otherwise including online sales and sales through GSA) the payment is received by the agent and remitted to airlines after some time. When the relationship between the airlines and such agents is that of principal and agent in terms of the Indian Contract Act, 1872, the payment to the agent is considered as payment to the principal. Accordingly as per Rule 4(b)(ii), the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier. Thus the service tax shall be charged @10% subject to applicable exemptions plus cesses in case of tickets issued before 1st April, 2012 when the payment is received before 1st April, 2012 by the agent.

5. *However, to the extent airlines have already collected extra amount as service tax and do not refund the same to the customers, such amount will be required to be paid to the credit of the Central Government under Section 73A of the Finance Act 1994 (as amended).*

6. *Trade Notice/Public Notice may be issued to the field formations accordingly.*

7. *Please acknowledge the receipt of this circular. Hindi version to follow.*

F. No 334/1/2012- TRU

(Shobhit Jain)  
OSD, TRU

## Circular No. 158/9/2012-ST dated May 8, 2012

**Subject :** *Clarification on Rate of Tax - regarding.*

1. *The rate of service tax has been restored to 12% wef 1st April, 2012. Representations have been received requesting clarification on the rate of tax applicable wherein invoices were raised before 1st April, 2012 and the payments shall be after 1st April, 2012. Clarification has been requested in case of the 8 specified services provided by individuals or proprietary firms or partnership firms, to which Rule 7 of Point of Taxation Rules, 2011 was applicable and services on which tax is paid under reverse charge.*

2. *The rate of service tax prevalent on the date when the point of taxation occurs is rate of service tax applicable on any taxable service. In case of the 8 specified services and services wherein tax is required to be paid on reverse charge by the service receiver the point of taxation is the date of payment. Circular No. 154/5/2012-ST dated 28th March, 2012 has also clarified the same. Thus in case of such 8 specified services provided by individuals or proprietary firms or partnership firms and in case of services wherein tax is required to be paid on reverse charge by the service receiver, if the payment is received or made, as the case maybe, on or after 1st April 2012, the service tax needs to be paid @12%.*

3. *The invoices issued before 1st April, 2012 may reflect the previous rate of tax (10% and cess). In case of need, supplementary invoices may be issued to reflect the new rate of tax (12% and cess) and recover the differential amount. In case of reverse charge the service receiver pays the tax and takes the credit on the basis of the tax payment challan. Cenvat credit can be availed on such supplementary invoices and tax payment challans, subject to other restrictions and conditions as provided in the Cenvat Credit Rules, 2004.*

4. *Trade Notice/Public Notice may be issued to the field formations accordingly.*

5. *Please acknowledge the receipt of this circular. Hindi version to follow.*

F.No 354/69/2012- TRU

(Dr Shobhit Jain)  
OSD, TRU

## Circular No.162/13/2012-ST dated July 6, 2012

Subject: Clarification on Point of Taxation Rules - regarding.

*Consequent to the changes introduced at the time of Budget 2012 in the Point of Taxation Rules, 2011, together with revision of the service tax rate from 10% to 12% and the subsequent changes that have been made effective from 01.07.2012, the following clarifications have been desired:*

- (a) *Point of taxation and the rate applicable in respect of continuous supply of services at the time of change in rates effective from 01.04.2012;*
- (b) *Applicability of the revised rule 2A of the Service Tax (Determination of Value) Rules, 2006 to ongoing works contracts for determination of value when the value was being determined under the erstwhile Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007; and*
- (c) *Applicability of partial reverse charge provisions in respect of specified services.*

2.1 *The issues have been examined. The continuous supply of services was governed by rule 6 until 31.03.2012. The rule started with the wordings "notwithstanding anything contained in rules 3, 4 ..." Therefore, the point of taxation in respect of services provided in terms of the said rule on or before 31.03.2012 would remain unaffected by rule 4.*

2.2 *To clarify the matter further, if the invoice had been issued or payment received in respect of such services on or before 31.03.2012, the point of taxation would stand determined under rule 6 accordingly and shall not alter due to the subsequent changes in the Point of Taxation Rules, 2011 that became effective only from 1.4.2012.*

3.1 *However the position has undergone a change at the time of transition towards the Negative List and the introduction of other accompanying changes in Service Tax (Determination of Value) Rules, 2006 and partial reverse charge. At the said time rule 6 stood omitted and the*

*point of taxation was required to be determined ordinarily in such cases under the main rule i.e. rule 3. This rule is, however, overridden by rule 4 when there is a change in effective rate of tax. The "change in effective rate of tax" has been defined in clause (ba) of rule 2 to include a change in the portion of value on which tax is payable.*

3.2 *To illustrate, the following would be changes in effective rate of tax:-*

- (i) the change in the portion of total value liable to tax in respect of works contract other than original works (from @ 4.8% earlier to @ 12% on 60% of the total amount charged, or effectively @ 7.2% now).*
- (ii) exemption granted to certain works contracts w.e.f. 1st July, 2012 which were earlier taxable.*
- (iii) taxability of certain works contracts which were hitherto exempted.*
- (iv) change in the manner of payment of tax from composition scheme under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 to payment on actual value under clause (i) of rule 2A of the Service Tax (Determination of Value) Rules, 2006.*

3.3 *However, the following will not be a change in effective rate of tax:-*

- (i) works contracts earlier paying service tax @ 4.8% under Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 and now required to pay service tax @12% on 40% of the total amount charged, keeping the effective rate again at 4.8% (as only the manner of expression has been altered).*
- (ii) works contracts which were outside the scope of taxation (and not merely exempted) but have become now taxable e.g. construction of residential complex comprising of 2 to 12 residential units, construction of buildings meant for use by NGOs etc. (Rule 5 of the Point of Taxation Rules, 2011 shall apply to such services.)*

3.4 *Thus the point of taxation for services provided in respect of taxable works contracts in progress on 01.07.2012 would need to be determined*

*under rule 4 of the Point of Taxation Rules unless there is no change in effective rate of tax.*

*4. It is further clarified that the provisions of partial reverse charge would also be applicable in respect of such services where point of taxation is on or after 01.07.2012 under the applicable rule in respect of the service provider.*

*5. This Circular may be communicated to the field formations and service tax assesseees, through Public Notice/ Trade Notice. Hindi version to follow.*

F. No. 354/111/2012-TRU

(Dr. Shobhit Jain)  
O.S.D. (TRU)



THE HIGH COURT OF DELHI AT NEW DELHI

*Judgment delivered on: 01.02.2013*

W.P.(C) 4456/2012 & C.M.No.9237/2012( for stay)

DELHI CHARTERED ACCOUNTANTS SOCIETY (REGD.) ...Petitioner

versus

UNION OF INDIA AND ORS. ...Respondent

Advocates who appeared in this case:

*For the Appellant* : Mr Ruchir Bhatia, Adv.

*For the Respondent* : Mr Sumeet Pushkarna,  
CGSC with Mr Varun Dubey, Adv.  
for R-1/ UOI.

Mr Anshuman Chowdhury,  
Sr. Standing Counsel for Comm/  
S.Tax

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE R.V.EASWAR

JUDGMENT

R.V.EASWAR, J

*The petitioner is an association of Chartered Accountants, registered as a society in Delhi. The matter arises under the service tax provisions which were brought into force by the Finance Act, 1994. The prayer in this petition is for (a) quashing of the circular No.158/9/2012- ST dated 08.05.2012 and circular No.154/5/2012-ST dated 28.03.2012 as null and void and ultra vires the Constitution of India and/ or the provisions of the Finance Act, 1994; (b) issuance of a writ or order or direction in the nature of a writ declaring that under the provisions of the Finance Act, 1994, the taxable event is the*

*rendition of the service and accordingly the rate of tax payable is the rate in force on the date of providing the service.*

2. *The petition came to be filed in this manner. The Finance Act, 1994 introduced the levy of service tax for the first time in India. Section 66 provided for the charge of service tax. Section 66A provided for the charge of service tax on services received from outside India. Section 67 provided for the valuation of taxable services for the purpose of charging service tax. This section underwent certain changes under the Finance Act, 2006 w. e. f. 18.04.2006 but we are not concerned with them. Section 68 provided for the payment of service tax. There are other procedural provisions to give effect to the levy and collection of service tax with which we are not concerned. Section 93 conferred power upon the Central Government to grant exemption from the levy of service tax. Section 94 conferred power upon the Central Government to make rules for carrying out the provisions of Chapter V of the Finance Act, 1994.*

3. *A question arose as to what is the taxable event for the purpose of levy of service tax. In Association of Leasing and Financial Service Companies Vs. UOI & Ors. : (2011) 2 SCC 352 the Supreme Court held that the taxable event was the rendition of the service. However, w.e.f. 01.04.2011 the Point of Taxation Rules, 2011 were notified. Rule 2(e) of the said Rules defines –point of taxation as the point in time when a service shall be deemed to have been provided.*

4. *Rule 4 provided as follows: -*

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

- (a) in case a taxable service has been provided before the change in effective rate of tax,-*
  - (i) where the invoice for the same has been issued and the payment received after the change in effective rate*

*of tax, the point of taxation shall be date of payment or issuing of invoice, whichever is earlier; or*

*(ii) where the invoice has also been issued prior to change in effective rate of tax but the payment is received after the change in effective rate of tax, the point of taxation shall be the date of issuing of invoice; or*

*(iii) where the payment is also received before the change in effective rate of tax, but the invoice for the same has been issued after the change in effective rate of tax, the point of taxation shall be the date of payment;*

*(b) in case a taxable service has been provided after the change in effective rate of tax,-*

*(i) where the payment for the invoice is also made after the change in effective rate of tax but the invoice has been issued prior to the change in effective rate of tax, the point of taxation shall be the date of payment; or*

*(ii) where the invoice has been issued and the payment for the invoice received before the change in effective rate of tax, the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier; or*

*(iii) where the invoice has also been raised after the change in effective rate of tax but the payment has been received before the change in effective rate of tax , the point of taxation shall be date of issuing of invoice.*

5. Rule 7 provided for determination of the point of taxation in case of specified services or persons. This rule was substituted by a new rule w.e.f. 01.04.2012. The old rule which existed prior to that date was as below:

*“7. Determination of point of taxation in case of specified services or persons. - Notwithstanding anything contained in these rules, the point of taxation in respect of,-*

*(a) the services covered by sub-rule (1) of rule 3 of Export of Services Rules, 2005;*

*(b) the persons required to pay tax as recipients under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Finance Act, 1994;*

*(c) individuals or proprietary firms or partnership firms providing taxable services referred to in sub-clauses (g), (p), (q), (s), (t), (u), (za), (zzzzm) of clause (105) of section 65 of the Finance Act, 1994, shall be the date on which payment is received or made, as the case may be:*

*Provided that in case of services referred to in clause (a), where payment is not received within the period specified by the Reserve Bank of India, the point of taxation shall be determined, as if this rule does not exist.*

*Provided further that in case of services referred to in clause (b) where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist.*

*Provided also that in case of –associated enterprises<sup>1</sup>, where the person providing the service is located outside India, the point of taxation shall be the date of credit in the books of account of the person receiving the service or date of making the payment whichever is earlier.<sup>2</sup>*

6. The petitioner is an association of chartered accountants; services rendered by chartered accountants are taxable services u/s 65(105)(s) of the Act. Accordingly, sub-rule (c) of Rule 7 would apply, with the result that the

*date on which the payment for the services of the chartered accountants is made or received will be deemed to be the date on which the services were provided or rendered.*

7. *It is not in dispute that consequent to the insertion of Sec 66B into the Act, the rate of service tax was enhanced from 10% to 12%. The question before us is what would be the rate of tax where (a) the service is provided by the chartered accountants prior to 01.04.2012; (b) the invoice is issued by the chartered accountants prior to 01.04.2012 but (c) the payment is received after 01.04.2012.*

8. *In the present case there is no dispute that all the services were rendered before 01.04.2012 and even the invoices were raised before that date and it was only that the payment was received after the said date. In such a case, according to the petitioner, Rule 4(a)(ii) of the Point of Taxation Rules, 2011, applies and the point of taxation shall be the date of issuance of the invoice. The service tax authorities however rely on two circulars issued by the Tax Research Unit of the CBEC –*

*Circular No.154 dated 28.03.2012 and Circular No.158 dated 08.05.2012 which are annexed to the writ petition. They are as follows: -*

*“Circular No.154/5/ 2012 – ST  
FNo 334/1/2012- TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs  
Tax Research Unit  
Room No 146, North Block, New Delhi  
Dated: 28th March 2012*

To

*Chief Commissioner of Customs and Central Excise  
(All)  
Chief Commissioner of Central Excise & Service Tax  
(All)*

*Director General of Service Tax  
Director General of Central Excise Intelligence  
Director General of Audit  
Commissioner of Customs and Central Excise (All)  
Commissioner of Central Excise and Service Tax (All)  
Commissioner of Service Tax (All)*

*Madam/Sir,*

**Subject: - Clarification on Point of Taxation Rules - regarding.**

1. *Notification No.4/2012 - Service Tax dated the 17th*

*March 2012 has amended the Point of Taxation Rules 2011 w.e.f. 1st April 2012, inter- alia, amending Rule 7 which applied to individuals or proprietary firms or partnership firms providing taxable services referred to in sub-clauses (g), (p), (q), (s), (t), (u), (za) and (zzzzm) of clause (105) of section 65 of the Finance Act, 1994. Rule 7 determined the point of taxation in such cases as the date of receipt of payment. The provisions have been amended both in the Point of Taxation Rules 2011 and the Service Tax Rules 1994 such that from 1st April 2012 the payment of tax shall be allowed to be deferred till the receipt of payment upto a value of Rs 50 lakhs of taxable services. The facility has been granted to all individuals and partnership firms, irrespective of the description of service, whose turnover of taxable services is fifty lakh rupees or less in the previous financial year.*

2. *Representations have been received, in respect of the specified eight services, requesting clarification on determination of point of taxation in respect of invoices issued on or before 31st March 2012 where the payment has not been received before 1st April 2012.*

3. *The issue has been examined. For invoices issued on or before 31st March 2012, the point of taxation shall continue to be governed by the Rule 7 as it stands till the said date. Thus in respect of invoices issued on or before 31st March 2012 the point of taxation shall be the date of payment.*

4. *Trade Notice/Public Notice may be issued to the field formations accordingly.*

5. *Please acknowledge the receipt of this circular. Hindi version to follow.*

*(Shobhit Jain)*  
*OSD, TRU*  
*Fax: 011-23092037*

"Circular No. 158/9/ 2012 – ST

F.No 354/69/2012- TRU  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs  
Tax Research Unit  
Room No 146, North Block, New Delhi  
Dated : 8th May 2012

To

Chief Commissioner of Customs and Central Excise  
(All)  
Chief Commissioner of Central Excise & Service Tax  
(All)  
Director General of Service Tax  
Director General of Central Excise Intelligence  
Director General of Audit  
Commissioner of Customs and Central Excise (All)  
Commissioner of Central Excise and Service Tax (All)  
Commissioner of Service Tax (All)

Madam/Sir,

**Subject: - Clarification on Rate of Tax - regarding.**

1. The rate of service tax has been restored to 12% w.e.f. 1st April 2012. Representations have been received requesting clarification on the rate of tax applicable wherein invoices were raised before 1st April 2012 and the payments shall be after 1st April 2012. Clarification has been requested in case of the 8 specified services provided by individuals or proprietary firms or partnership firms, to which Rule 7 of Point of Taxation Rules 2011 was applicable and services on which tax is paid under reverse charge.

2. The rate of service tax prevalent on the date when the point of taxation occurs is rate of service tax applicable on any taxable service. In case of the 8 specified services and services wherein tax



*is required to be paid on reverse charge by the service receiver the point of taxation is the date of payment. Circular No 154/5/2012 – ST dated 28th March 2012 has also clarified the same. Thus in case of such 8 specified services provided by individuals or proprietary firms or partnership firms and in case of services wherein tax is required to be paid on reverse charge by the service receiver, if the payment is received or made, as the case maybe, on or after 1st April 2012, the service tax needs to be paid @12%.*

3. *The invoices issued before 1st April 2012 may reflect the previous rate of tax (10% and cess). In case of need, supplementary invoices may be issued to reflect the new rate of tax (12% and cess) and recover the differential amount. In case of reverse charge the service receiver pays the tax and takes the credit on the basis of the tax payment challan. Cenvat credit can be availed on such supplementary invoices and tax payment challans, subject to other restrictions and conditions as provided in the Cenvat Credit Rules 2004.*

4. *Trade Notice/Public Notice may be issued to the field formations accordingly.*

5. *Please acknowledge the receipt of this circular. Hindi version to follow.*

*(Dr. Shobhit Jain)  
OSD, TRU  
Fax: 011-23093037*

9. *The grievance of the petitioner is that the circulars cannot override the provisions of the Finance Act, 1994 or the rules made thereunder and in so far as they seek to levy the enhanced rate of service tax of 12% in respect of the 8 specified services, though the services were rendered and the invoices were issued but payments were received after 01.04.2012, are ultra vires the Act/ Rules.*

10. *Before dealing with the grievance of the petitioner, it would be necessary to note that Rule 7 of the Point of Taxation Rules, 2011 was*

substituted by a new Rule w.e.f. 01.04.2012. The new Rule notified on 17.3.2012 by notification No.4/12-ST is as under :-

*"7. Determination of point of taxation in case of specified services or persons.—Notwithstanding anything contained in these rules, the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub- section (2) of section 68 of the Act, shall be the date on which payment is made:*

*Provided that, where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist:*

*Provided further that in case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier."*

11. A comparison of Rule 7 as it existed both before and from 01.4.2012 shows two significant changes. The first change is that while the old Rule referred to recipients of service only in respect of services notified under Section 68(2) and did not make any reference to the recipients of the service in either Clause (a) or Clause (c), the new Rule covers only the recipients of service in respect of services notified under Section 68(2). The second significant change is that the reference to services covered by sub-rule (1) of Rule 3 of Export of Services Rules, 2005 in Clause (a) of the old Rule and the reference to individuals or proprietary firms or partnership firms providing taxable services referred to in sub-clauses (g), (p), (q), (s), (t), (u), (za) and (zzzzm) of clause 105 of Section 65 of the Finance Act, 1994 in Clause (c) of the old Rule does not find any mention in the new Rule. The result is that the new Rule 7 inserted w.e.f. 01.04.2012 was not applicable to services rendered by chartered accountants under Section 65(105)(s) of the Act. Thus the position is that the new Rule 7 with effect from 01.04.2012 does not provide for the determination of point of taxation in respect of services rendered by chartered accountants. Both the circulars which are impugned in the present writ petition proceed on the erroneous basis that Rule 7 inserted w.e.f. 01.04.2012 covers the services rendered by chartered accountants.

*Circular No.154 when it states that invoices issued on or before 31.3.2012 shall continue to be governed by Rule 7 as it stood before 01.04.2012 is erroneous because on and from 01.04.2012, the old Rule 7 was no longer in existence, having been replaced by new Rule 7. Circular No.158, insofar as it states that in the case of the eight specified services (which includes the services of chartered accountants), if the payment is received or made, as the case may be, on or after 01.04.2012, the service tax needs to be paid at 12% is again without any statutory basis. The new Rule 7 does not cover the services which were earlier referred to in Clause (c) of Rule 7 (including services of chartered accountants) as it existed up to 31.3.2012. The circular seems to have overlooked this crucial aspect.*

12. *We still have to reckon with Section 66B of the Finance Act, 1994 inserted by the Finance Act, 2012 w.e.f. 1.7.2012 vide notification No.19/2012-ST, dated 5.6.2012. This Section is as follows :-*

**“66B.Charge of service tax on and after Finance Act, 2012 –**  
*There shall be levied a tax (hereinafter referred to as the service tax) at the rate of twelve per cent, 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.*

13. *Rule 4 of the Point of Taxation Rules, 2011 which has continued even after 01.04.2012 is clearly the answer. We have already extracted the Rule hereinabove. It provides for a specific situation namely determination of the point of taxation in case of change in effective rate of tax. The words earlier used in the Rule were –change of rate. In the place of these words, the words –change in effective rate of tax were inserted w.e.f. 01.04.2011. This was done by the Point of Taxation (Amendment) Rules, 2011 vide notification No.25/11-ST dated 31.3.2011. The petitioner has pointed out to sub-clause (ii) of Clause (a) of Rule 4. This Rule applies notwithstanding anything contained in Rule 3 which provides for the determination of point of taxation. As per Rule 4, whenever there is a change in the effective rate of tax in respect of a service, the point of taxation shall be determined in the manner set out in the Rule. Clause (a) provides for a case of taxable service which was provided before the change in effective rate of tax has taken place. Clause (b), in contrast provides for a case of a taxable service which has*

been rendered after the change in the effective rate of tax has taken place. W.e.f. 01.07.2012, there has been a change in the effective rate of tax from the earlier 10% to 12%. In the petitioner's case, the dispute is only with reference to the services provided by the chartered accountants before 01.04.2012. Clause (a) of Rule 4 would therefore govern its case. This clause provides for three further situations. Clause (i) covers a case where an invoice for the service was issued and the payment was also received after the change in the effective rate of tax. In such a case, the date of payment or the issuance of the invoice, whichever is earlier, will be deemed to be the date on which the service was rendered and that will be the point of taxation. The present case is not governed by this sub- clause. Sub-clause (iii) takes care of a case where the payment is also received before the change in the effective rate of tax, but the invoice for the same was issued after the change. In such case the point of taxation shall be the date of payment which will be deemed to be the date on which the service was provided. The petitioner's case is not governed by this sub-clause either.

14. The case of the petitioner is governed by sub-clause (ii). Under this clause where the taxable service has been provided before 01.04.2012 and the invoice was also issued before 01.04.2012, but the payment is received after 01.04.2012, then the date of issuance of invoice shall be deemed to be the date on which the service was rendered and, consequently, the point of taxation.

15. The result of the discussion will be that where the services of the chartered accountants were actually rendered before 01.04.2012 and the invoices were also issued before that date, but the payment was received after the said date, the rate of tax will be 10% and not 12%. The circulars in question have not taken note of this aspect, and as noted earlier have proceeded on the erroneous assumption that the old Rule 7 continued to govern the case notwithstanding the introduction of the new Rule 7 which does not provide for the contingency that has arisen in the present case.

16. In view of the foregoing discussion the circulars are quashed as being contrary to the Finance Act, 1994 and the Point of Taxation Rules, 2011. The Point of Taxation Rules, 2011 have been notified in exercise of the powers conferred upon the Central Government under Clause (a) and Clause (hhh) of sub-section (2) of Section 94 of the Finance Act, 1994 and they are also

*required to be placed before both the Houses of Parliament under subsection (4) of Section 94. They thus have the force of law. The circulars have to be in conformity with the Act and the Rules and if they are not, they cannot be allowed to govern the controversy.*

17. *It is well-settled that a Circular which is contrary to the Act and the Rules cannot be enforced. In Commissioner of Central Excise, Bolpur vs Ratan Melting & Wire Industries 2008(13)SCC(1) a Constitution Bench of Supreme Court held as under:-*

*“7. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the court to declare what the particular provision of statute says and it is not for the executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.*

18. *The writ petitions are accordingly allowed but in the circumstances, with no order as to costs. Since we have quashed the Circulars, prayer (b) in the writ petition becomes infructuous.*

R.V.EASWAR, J

BADAR DURREZ AHMED, J

FEBRUARY 01, 2013

hs/vld



# **The Institute of Chartered Accountants of India**

(Set up by an Act of Parliament)

ICAI Bhawan, Indraprastha Marg, New Delhi - 110 002 INDIA

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