

PLACE OF PROVISION OF SERVICE RULES, 2012

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It replaces the 'Export of Services, Rules, 2005' and 'Taxation of Services (Provided from outside India and received in India) Rules, 2006.

These rules are relevant

- for persons who deal in cross-border services.
- For persons who have operations with suppliers or customers in the state of Jammu and Kashmir.
- For service providers operating within India from multiple locations, to determine the precise taxable jurisdiction applicable to their operations.
- For determining services that are wholly consumed within a SEZ, to avail the outright exemption.

Total number of Rules 14

Rule Numbers 3 to 12 divides services into 10 types for the purpose of determining the place of provision of service. These are

1. General Rule (Rule No 3)
2. Performance based services.(Rule No. 4)
3. Services relating to immovable property.(Rule No5)
4. Services relating to events (Rule No.6)
5. Services provided at more than one location(Rule No. 7)
6. services where provider and recipient are located in taxable territory(Rule No.8)
7. Certain specified services: (Rule No. 9)
 - (a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;
 - (b) Online information and database access or retrieval services;
 - (c) Intermediary services;

- (d) Service consisting of hiring of means of transport, upto a period of one month.
8. goods transportation services. (Rule No.10)
 9. passenger transportation service (Rule No.11)
 10. services provided on board a conveyance (Rule No.12)

Where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration.

Meaning of Taxable territory and Non Taxable Territory and its significance

Taxable territory has been defined in sub-section 52 of section 65B.

It means the territory to which the provisions of Chapter V of the Finance Act, 1994 apply. i.e. **whole of India** excluding the state of Jammu and Kashmir.

“Non-taxable territory” is defined in sub-section 35 ibid accordingly as the territory other than the taxable territory.

“India” is defined in sub-section 27 of section 65 B, as follows:

“India” means—

- (a) the territory of the Union of India as referred to in clauses (2) and (3) of article 1 of the Constitution;
- (b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976;
- (c) the sea-bed and the subsoil underlying the territorial waters;
- (d) the air space above its territory and territorial waters; and

(e) the installations structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

The new charging section, section 66B, enables taxation of only such services as are provided in taxable territory. Thus services that are provided in a non-taxable territory are not chargeable to service tax.

Determination of location of service provider/receiver:

Rule 2(h) : Location of service provider

Rule 2(i) : Location of service receiver

The location of a service provider or receiver is to be determined by applying the following steps sequentially:

A. where the service provider or receiver has obtained only one registration, whether centralized or otherwise, the premises for which such registration has been obtained;

B. where the service provider or receiver is not covered by A above:

i. the location of his business establishment; or

ii. where services are provided or received at a place other than the establishment i.e. a fixed establishment elsewhere, the location of such establishment;

iii. where services are provided or received at more than one establishment, the establishment most directly concerned with the provision or use of the service; and

iv. in the absence of such places, the **usual place of residence** of the service provider or receiver.

Meaning of “usual place of residence” :

The usual place of residence, in case of a body corporate, has been specified as the place where it is incorporated or otherwise legally constituted.

The usual place of residence of an individual is the place (country, state etc) where the individual spends most of his time for the period in question. It is likely to be the place where the individual has set up his home, or where he lives with his family or is in full time employment. Individuals are not treated as belonging in a country if they are short term, transitory visitors (for example if they are visiting as tourists, or to receive medical treatment or for a short term educational course).

in the case of telecommunication services, it has been prescribed that the usual place of residence of the receiver shall be the billing address.

The meaning of “business establishment”

‘Business establishment’ is the place where the essential decisions concerning the general management of the business are adopted, and where the functions of its central administration are carried out. This could be the head office, or a factory, or a workshop, or shop/ retail outlet. Most significantly, there is only one business establishment that a service provider or receiver can have.

The meaning of a “fixed establishment”

A “fixed establishment” is a place (other than the business establishment) which is characterized by a sufficient degree of permanence and suitable structure in terms of human and technical resources to provide the services that are to be supplied by it, or to enable it to receive and use the services supplied to it for its own needs.

Temporary presence of staff by way of a short visit at a place cannot be called a fixed establishment. Also, the number of staff at a location is not important. What is relevant is the adequacy of the arrangement of human and technical resources, to carry out an activity for a consideration, or to receive and use a service supplied. Similarly, it will be important to evaluate the permanence of the arrangement i.e. whether it is capable of executing the task.

Determination of the establishment “most directly concerned with the supply”

This will depend on the facts and supporting documentation, specific to each case. The documentation will include the following:-

- the contract(s) between the service provider and receiver;
- where there are no written contracts, any written account (documents, correspondence/e-mail etc) between parties which sets out in detail their understanding of the oral contract;
- in particular, for suppliers, from which establishment the services are actually provided;
- in particular, for receivers, at which establishment the services are actually consumed, effectively used or enjoyed;
- details of how the business fits into any larger corporate structure;
- the establishment whose staff is actually involved in the execution of the job;
- performance agreements (which may be indicative both of the substance and actual nature of work performed at a particular establishment);

Thus , normally in the case of multiple establishments of a person, it will be the establishment that actually provides, or receives (i. e. uses or consumes), a service that would be treated as ‘directly concerned’ with the provision of service, notwithstanding the contractual position, or invoicing or payment.

Usual place of residence - Meaning

The usual place of residence, in case of a body corporate, has been specified as the place where it is incorporated or otherwise legally constituted.

The usual place of residence of an individual is the place (country, state etc) where the individual spends most of his time for the period in question. Individuals are not treated as belonging in a country if they are short term, transitory visitors (for example if they are visiting as tourists, or to receive medical treatment or for a short term educational course). An individual cannot have more than one usual place of residence.

In addition, in the case of telecommunication services, it has been prescribed that the usual place of residence of the receiver shall be the billing address.

The following Flow Diagram illustrates the manner of determination of location.

Rule 3. Place of provision generally.- The place of provision of a service shall be the location of the recipient of service:

Provided that in case the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

The main rule or the default rule provides that a service shall be deemed to be provided where the receiver is located. i.e

A. Where the location of receiver of a service is in the taxable territory, such service will be deemed to be provided in the taxable territory and service tax will be payable.

B. However if the receiver is located outside the taxable territory, no service tax will be payable on the said service.

Service tax is normally required to be paid by the provider of a service, except where he is located outside the taxable territory and the place of provision of service is in the taxable territory.

Where the provider of a service is located outside the taxable territory, the person liable to pay service tax is the receiver of the service in the taxable territory, unless of course, the service is otherwise exempted.

Who is the service receiver?

Normally, the person who is legally entitled to receive a service and, therefore, obliged to make payment, is the receiver of a service, whether or not he actually makes the payment or someone else makes the payment on his behalf.

Illustration

A person leaves his car at a service station for the purpose of servicing. He asks his chauffeur to collect the car from the service station later in the day, after the servicing is over. The chauffeur makes the payment on behalf of the owner and collects the car. Here the owner is the 'person obliged to make the payment' towards servicing charges, and therefore, he is the receiver of the service.

What would be the situation where the payment for a service is made at one location (say by the headquarters of a business) but the actual rendering of the service is elsewhere (i.e. a fixed establishment)?

The taxing jurisdiction of service, which is provided under a 'global framework agreement' between two multinational companies with the business establishment located outside the taxable territory, but which is used or consumed by a fixed establishment located in the taxable territory, will be the taxable territory.

The place of provision of service where the location of receiver is not ascertainable in the ordinary course of business

Generally, in case of a service provided to a person who is in business, the provider of the service will have the location of the recipient's registered location, or his business establishment, or his fixed establishment etc, as the case may be. However, in case of certain services (which are not covered by the exceptions to the main rule), the service provider may not have the location of the service receiver, in the ordinary course of his business. This will also be the case where a service is provided to an individual customer who comes to the premises of the service provider for availing the service and the provider has to, more often than not, rely on the declared location of the customer. In such cases the place of provision will be the location of the service provider. It may be noted that the service provider is not required to make any extraordinary efforts to trace the address of the service receiver. The address should be available in the ordinary course of business.

Rule 4- Performance based Services

4. Place of provision of performance based services.- The place of provision of following services shall be the location where the services are actually performed, namely:-

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

Provided that when such services are provided from a remote location by way of electronic means the place of provision shall be the location where goods are situated at the time of provision of service:

Provided further that this sub-rule shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs, reconditioning or reengineering for re-export, subject to conditions as may be specified in this regard.

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

What are the services that are provided “in respect of goods that are made physically available, by the receiver to the service provider, in order to provide the service”?-

Services that are related to goods, and which require such goods to be made available to the service provider or a person acting on behalf of the service provider so that the service can be rendered, are covered here. The essential characteristic of a service to be covered under this rule is that the goods temporarily come into the physical possession or control of the service provider, and without this happening, the service cannot be rendered. Thus, the service involves movable objects or things that can be touched, felt or possessed.

Examples of such services are repair, reconditioning, or any other work on goods (not amounting to manufacture), storage and warehousing, courier service, cargo handling service (loading, unloading, packing or unpacking of cargo), technical testing/inspection/certification/ analysis of goods, dry cleaning etc.

It will not cover services where the supply of goods by the receiver is not material to the rendering of the service e.g. where a consultancy report commissioned by a person is given on a pen drive belonging to the customer.

Similarly, provision of a market research service to a manufacturing firm for a consumer product (say, a new detergent) will not fall in this category, even if the market research firm is given say, 1000 nos. of 1 kilogram packets of the product by the manufacturer, to carry for door-to-door surveys.

The proviso to this rule states as follows:-

“Provided further that where such services are provided from a remote location by way of electronic means, the place of provision shall be the location where goods are situated at the time of provision of service.”

In the field of information technology, it is not uncommon to provide services in relation to tangible goods located distantly from a remote location. Thus the actual place of performance of the service could be quite different from the actual location of the tangible goods. This proviso requires that the place of provision shall be the actual location of the goods and not the place of performance, which in normal situations is one and the same.

What are the services that are provided “to an individual ... which require the physical presence of the receiver ... with the provider for provision of the service.”?-

Certain services like cosmetic or plastic surgery, beauty treatment services, personal security service, health and fitness services, photography service (to individuals), internet café service, classroom teaching, are examples of services that require the presence of the individual receiver for their provision. As would be evident from these examples, the nature of services covered here is such as are rendered in person and in the receiver’s physical presence.

Though these are generally rendered at the service provider’s premises (at a cosmetic or plastic surgery clinic, or beauty parlor, or health and fitness centre, or internet café), they could also be provided at the customer’s premises, or occasionally while the receiver is on the move (say, a personal security service; or a beauty treatment on board an aircraft).

What is the significance of “..in the physical presence of an individual, whether represented either as the service receiver or a person acting on behalf of the receiver” in this rule?

This implies that while a service in this category is capable of being rendered only in the presence of an individual, it will not matter if, in terms of the contractual arrangement between the provider and the receiver (formal or informal, written or oral), the service is actually rendered by the provider to a person other than the receiver, who is acting on behalf of the receiver.

Illustration

A modelling agency contracts with a beauty parlour for beauty treatment of say, 20 models. Here again is a situation where the modelling agency is the receiver of the service, but the service is rendered to the models, who are receiving the beauty treatment service on behalf of the modelling agency. Hence, notwithstanding that the modelling agency does not qualify as the individual receiver in whose presence the service is rendered, the nature of the service is such as can be rendered only to an individual, thereby qualifying to be covered under this rule.

Rule 5- Location of Immovable Property

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

In the case of a service that is 'directly in relation to immovable property', the place of provision is where the immovable property (land or building) is located, irrespective of where the provider or receiver is located.

What is "immovable property"?

"Immovable Property" has not been defined in the Finance Act, 1994. However, in terms of section 4 of the General Clauses Act, 1897, the definition of immovable property provided in sub-section 3 (26) of the General Clauses Act will apply, which states as under:

"Immovable Property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth."

It may be noted that the definition is inclusive and thus properties such as buildings and fixed structures on land would be covered by the definition of immovable property. The property must be attached to some part of earth even if underwater.

What are the criteria to determine if a service is 'directly in relation to' immovable property located in taxable territory?

Generally, the following criteria will be used to determine if a service is in respect of immovable property located in the taxable territory:

- i) The service consists of lease, or a right of use, occupation, enjoyment or exploitation of an immovable property;
- ii) the service is physically performed or agreed to be performed on an immovable property (e.g. maintenance) or property to come into existence (e.g. construction);

iii) the direct object of the service is the immovable property in the sense that the service enhances the value of the property, affects the nature of the property, relates to preparing the property for development or redevelopment or the environment within the limits of the property (e.g. engineering, architectural services, surveying and sub-dividing, management services, security services etc);

iv) the purpose of the service is:

a) the transfer or conveyance of the property or the proposed transfer or conveyance of the property (e.g., real estate services in relation to the actual or proposed acquisition, lease or rental of property, legal services rendered to the owner or beneficiary or potential owner or beneficiary of property as a result of a will or testament);

b) the determination of the title to the property.

There must be more than a mere indirect or incidental connection between a service provided in relation to an immovable property, and the underlying immovable property. For example, a legal firm's general opinion with respect to the capital gains tax liability arising from the sale of a commercial property in India is basically advice on taxation legislation in general even though it relates to the subject of an immovable property. This will not be treated as a service in respect of the immovable property.

Examples of land-related services

i) Services supplied in the course of construction, reconstruction, alteration, demolition, repair or maintenance (including painting and decorating) of any building or civil engineering work;

ii) Renting of immovable property;

iii) Services of real estate agents, auctioneers, architects, engineers and similar experts or professional people, relating to land, buildings or civil engineering works. This includes the management, survey or valuation of property by a solicitor, surveyor or loss adjuster.

iv) Services connected with oil/gas/mineral exploration or exploitation relating to specific sites of land or the seabed.

v) The surveying (such as seismic, geological or geomagnetic) of land or seabed.

vi) Legal services such as dealing with applications for planning permission.

vii) Packages of property management services which may include rent collection, arranging repairs and the maintenance of financial accounts.

viii) The supply of hotel accommodation or warehouse space.

What if a service is not directly related to immovable property?

The place of provision of services rule applies only to services which relate directly to specific sites of land or property. In other words, the immovable property must be clearly identifiable to be the one from where, or in respect of which, a service is being provided. Thus, there needs to be a very close link or association between the service and the immovable property.

Needless to say, this rule does not apply if a provision of service has only an indirect connection with the immovable property, or if the service is only an incidental component of a more comprehensive supply of services.

For example, the services of an architect contracted to design the landscaping of a particular resort hotel in Goa would be land-related. However, if an interior decorator is engaged by a retail chain to design a common décor for all its stores in India, this service would not be land related. The default rule i.e. Rule 3 will apply in this case.

Examples of services which are not land-related

- i) Repair and maintenance of machinery which is not permanently installed. This is a service related to goods.

- ii) Advice or information relating to land prices or property markets because they do not relate to specific sites.

- iii) Land or Real Estate Feasibility studies, say in respect of the investment potential of a developing suburb, since this service does not relate to a specific property or site.

- iv) Services of a Tax Return Preparer in simply calculating a tax return from figures provided by a business in respect of rental income from commercial property.

- v) Services of an agent who arranges finance for the purchase of a property.

Services relating to Events

6. *Place of provision of services relating to events.- The place of provision of services provided by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission, shall be the place where the event is actually held.*

Illustration 1

A management school located in USA intends to organize a road show in Mumbai and New Delhi for prospective students. Any service provided by an event manager, or the right to entry (participation fee for prospective students, say) will be taxable in India.

Illustration 2

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

Service ancillary to organization or admission to an event

Provision of sound engineering for an artistic event is a prerequisite for staging of that event and should be regarded as a service ancillary to its organization. A service of hiring a specific equipment to enjoy the event at the venue (against a charge that is not included in the price of entry ticket) is an example of a service that is ancillary to admission.

Event-related services that are not ancillary to admission to an event?

A service of courier agency used for distribution of entry tickets for an event is a service that is not ancillary to admission to the event.

Rule 7- Place of provision of services provided at more than one location.-Where any service referred to in rules 4, 5, or 6 is provided at more than one location, including a location in the taxable territory, its place of provision shall be the location in the taxable territory where the greatest proportion of the service is provided.

The following example illustrates the application of this Rule:-

Illustration 1

An Indian firm provides a 'technical inspection and certification service' for a newly developed product of an overseas firm (say, for a newly launched motorbike which has to meet emission standards in different states or countries). Say, the testing is carried out in Maharashtra (20%), Kerala (25%), and an international location (say, Colombo 55%).

Notwithstanding the fact that the greatest proportion of service is outside the taxable territory, the place of provision will be the place in the taxable territory where the greatest proportion of service is provided, in this case Kerala.

This rule is, however, not intended to capture insignificant portion of a service rendered in any part of the taxable territory like mere issue of invoice, processing of purchase order or recovery, which are not by way of service actually performed on goods.

It is clarified that this rule is applicable in performance-based services or location-specific services (immovable property related or event-linked). Normally, such services when provided in a non-taxable territory would require the presence of separate establishments in such territories.

By virtue of an explanation of sub-clause (44) of section 65B, they would constitute distinct persons and thus it would be legitimate to invoice the services rendered individually in the two territories.

8. Place of provision of services where provider and recipient are located in taxable territory.- Place of provision of a service, where the location of the provider of service as well as that of the recipient of service is in the taxable territory, shall be the location of the recipient of service.

This Rule covers situations where the place of provision of a service provided in the taxable territory may be determinable to be outside the taxable territory, in terms of the application of one of the earlier Rules i.e. Rule 4 to 6, but the service provider, as well as the service receiver, are located in the taxable territory. The implication of this Rule is that in all such cases, the place of provision will be deemed to be in the taxable territory, notwithstanding the earlier rules.

Services rendered, where both the provider and receiver of the service are located outside the taxable territory, are now covered by the mega exemption.

Illustration

A helicopter of Pawan Hans Ltd (India based) develops a technical snag in Nepal. Say, engineers are deputed by Hindustan Aeronautics Ltd, Bangalore, to undertake repairs at the site in Nepal. But for this rule, Rule 4, sub-rule (1) would apply in this case, and the place of provision would be Nepal i.e. outside the taxable territory. However, by application of Rule 7, since the service provider, as well as the receiver, are located in the taxable territory, the place of provision of this service will be within the taxable territory.

Rule 9- lace of provision of specified services. - The place of provision of following services shall be the location of the service provider:-

- (a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders;***
- (b) Online information and database access or retrieval services;***
- (c) Intermediary services;***
- (d) Service consisting of hiring of means of transport, upto a period of one month.***

Rule 2(c) “banking company” has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934);

Rule 2(e) “financial institution” has the meaning assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

Rule 2(k) “non-banking financial company” means-

- (i) a financial institution which is a company; or
- (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or
- (iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette specify;

Meaning of “account holder

Rule 2(b) “account” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;

Following are examples of services that are provided by a banking company or financial institution to an “account holder”, in the ordinary course of business:-

- i) services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc;
- ii) transfer of money including telegraphic transfer, mail transfer, electronic transfer etc.

Types of services that are not provided by a banking company or financial institution to an account holder, in the ordinary course of business, and will consequently be covered under another Rule

- i) financial leasing services including equipment leasing and hire-purchase;
- ii) merchant banking services;
- ii) Securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;
- iv) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services;
- v) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy;
- vi) banker to an issue service.

In the case of any service which does not qualify as a service provided to an account holder, the place of provision will be determined under the default rule i.e. the Main Rule 3. Thus, it will be the location of the service receiver where it is

known (ascertainable in the ordinary course of business), and the location of the service provider otherwise.

Online information and database access or retrieval services

Rule 2(l) “online information and database access or retrieval services” means providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;

Thus, these services are essentially delivered over the internet or an electronic network which relies on the internet or similar network for their provision.

The other important feature of these services is that they are completely automated, and require minimal human intervention.

Examples of such services are:-

- i) online information generated automatically by software from specific data input by the customer, such as web-based services providing trade statistics, legal and financial data, matrimonial services, social networking sites;
- ii) digitized content of books and other electronic publications, subscription of online newspapers and journals, online news, flight information and weather reports;
- iii) Web-based services providing access or download of digital content.

The following services will not be treated as “online information and database access or retrieval services”:-

- i) Sale or purchase of goods, articles etc over the internet;
- ii) Telecommunication services provided over the internet, including fax, telephony, audio conferencing, and videoconferencing;

- iii) A service which is rendered over the internet, such as an architectural drawing, or management consultancy through e-mail;
- iv) Repair of software, or of hardware, through the internet, from a remote location;
- v) Internet backbone services and internet access services.

Intermediary Services

Rule 2(f) *“intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the ‘main’ service) between two or more persons, but does not include a person who provides the main service on his account.;*

Generally, an “intermediary” is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without material alteration or further processing. Thus, an intermediary is involved with two supplies at any one time:

- i) the supply between the principal and the third party; and
- ii) the supply of his own service (agency service) to his principal, for which a fee or commission is usually charged.

For the purpose of this rule, an intermediary in respect of goods (such as a commission agent i.e. a buying or selling agent, or a stockbroker) is excluded by definition.

In order to determine whether a person is acting as an intermediary or not, the following factors need to be considered:-

Nature and value: An intermediary cannot alter the nature or value of the service, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the principal must know the exact value at which the service is supplied (or obtained) on his behalf, and any discounts that the intermediary obtains must be passed back to the principal.

Separation of value: The value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging. It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as "commission".

Identity and title: The service provided by the intermediary on behalf of the principal is clearly identifiable.

In accordance with the above guiding principles, services provided by the following persons will qualify as 'intermediary services':-

- i) Travel Agent (any mode of travel)
- ii) Tour Operator
- iii) Commission agent for a service [an agent for buying or selling of goods is excluded]
- iv) Recovery Agent

Even in other cases, wherever a provider of any service acts as an intermediary for another person, as identified by the guiding principles outlined above, this rule will apply. Normally, it is expected that the intermediary or agent would have documentary evidence authorizing him to act on behalf of the provider of the 'main service'.

Illustration

A freight forwarder arranges for export and import shipments. There could be two possible situations here- one when he acts on his own account, and the other, when he acts as an intermediary.

When the freight forwarder acts on his own account (say, for an export shipment)

A freight forwarder provides domestic transportation within taxable territory (say, from the exporter's factory located in Pune to Mumbai port) as well as international freight service (say, from Mumbai port to the international

destination), under a single contract, on his own account (i.e. he buys-in and sells freight transport as a principal), and charges a consolidated amount to the exporter. This is a service of transportation of goods for which the place of supply is the destination of goods. Since the destination of goods is outside taxable territory, this service will not attract service tax. Here, it is presumed that ancillary freight services (i.e. services ancillary to transportation- loading, unloading, handling etc) are “bundled” with the principal service owing to a single contract or a single price (consideration).

On an import shipment with similar conditions, the place of supply will be in the taxable territory, and so the service tax will be attracted.

When the freight forwarder acts as an intermediary

Where the freight forwarder acts as an intermediary, the place of provision will be his location.

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

Similarly, persons such as call centres, who provide services to their clients by dealing with the customers of the client on the client’s behalf, but actually provided these services on their own account, will not be categorized as intermediaries.

Service of “hiring of means of transport:

2(j) “means of transport” means any conveyance designed to transport goods or persons from one place to another;

The services of providing a hire or lease, without the transfer of right to use are covered by this rule.

Normally the following will constitute means of transport:-

- i) Land vehicles such as motorcars, buses, trucks;
- ii) Vessels;
- iii) Aircraft;
- iv) Vehicles designed specifically for the transport of sick or injured persons;
- v) Mechanically or electronically propelled invalid carriages;
- vi) Trailers, semi-trailers and railway wagons.

The following are not 'means of transport':-

- i) Racing cars;
- ii) Containers used to store or carry goods while being transported;
- iii) Dredgers, or the like.

Rule 10. Place of provision of goods transportation services.- The place of provision of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of the goods:

Provided that the place of provision of services of goods transportation agency shall be the location of the person liable to pay tax.

Types of services covered under this Rule:

Any service of transportation of goods, by any mode of transport (air, vessel, rail or by a goods transportation agency), is covered here. However, transportation of goods by courier or mail is not covered here.

The place of provision of a service of transportation of goods:

Place of provision of a service of transportation of goods is the place of destination of goods, except in the case of services provided by a Goods Transportation Agency in respect of transportation of goods by road, in which case the place of provision is the location of the person liable to pay tax (as determined in terms of rule 2(1)(d) of Service Tax Rules, 1994 (since amended)).

Illustration

A consignment of cut flowers is consigned from Chennai to Amsterdam. The place of provision of goods transportation service will be Amsterdam (outside India, hence not liable to service tax).

Conversely, if a consignment of crystal ware is consigned from Paris to New Delhi, the place of provision will be New Delhi.

The proviso to this Rule states as under:-

“Provided that the place of provision of services of transportation of goods by goods transportation agency shall be the location of the person liable to pay tax.”

Sub-rule 2(1)(d) of Service Tax Rules, 1994 provides that where a service of transportation of goods is provided by a ‘goods transportation agency’, and the consignor or consignee is covered under any of the specified categories prescribed therein, the person liable to tax is the person who pays, or is liable to pay freight (either himself or through his agent) for the transportation of goods by road in a goods carriage. If such person is located in non-taxable territory, then the person liable to pay tax shall be the service provider.

Illustration 1

A goods transportation agency ABC located in Delhi transports a consignment of new motorcycles from the factory of XYZ in Gurgaon (Haryana), to the premises of a dealer in Bhopal, Madhya Pradesh. Say, XYZ is a registered assessee and is also the person liable to pay freight and hence person liable to pay tax, in this case. Here, the place of provision of the service of transportation of goods will be the location of XYZ i.e. Haryana.

Illustration 2

A goods transportation agency ABC located in Delhi transports a consignment of new motorcycles from the factory of XYZ in Gurgaon (Haryana), to the premises of a dealer in Jammu (non-taxable territory). Say, as per mutually agreed terms

between ABC and XYZ, the dealer in Jammu is the person liable to pay freight. Here, in terms of amended provisions of rule 2(1)(d), since the person liable to pay freight is located in non-taxable territory, the person liable to pay tax will be ABC. Accordingly, the place of provision of the service of transportation of goods will be the location of ABC i.e. Delhi.

Rule 11. Place of provision of passenger transportation service.- The place of provision in respect of a passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.

Meaning of “continuous journey”

Rule 2(d) *“continuous journey” means a journey for which a single or more than one ticket or invoice is issued at the same time, either by one service provider or through one agent acting on behalf of more than one service provider, and which involves **no stopover** between any of the **legs of the journey** for which one or more separate tickets or invoices are issued;*

A “continuous journey” means a journey for which:-

- (i) a single ticket has been issued for the entire journey; or
- (ii) more than one ticket or invoice has been issued for the journey, by one service provider, or by an agent on behalf of more than one service providers, at the same time, and there is no scheduled stopover in the journey

Meaning of a stopover - Do all stopovers break a continuous journey?

“Stopover” means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time.

All stopovers do not cause a break in continuous journey. Only such stopovers will be relevant for which one or more separate tickets are issued. Thus a travel on Delhi-London- New York-London-Delhi on a single ticket with a halt at London

on either side, or even both, will be covered by the definition of continuous journey. However if a separate ticket is issued, say New York-Boston-New York, the same will be outside the scope of a continuous journey.

The Table below contains illustrations which explain the principle enunciated in this Rule.

Illustrations

S. No.	Journey	Place of Provision	Taxability
Single Ticket (No stopover)			
1	Mumbai-Delhi	Mumbai	Yes, Mumbai being the place of embarkation.
2	Mumbai-Delhi-Jaipur	Mumbai	Yes, Mumbai, being the place of embarkation for the continuous journey.
3	Mumbai-Delhi-London- Delhi-London	Mumbai	-do-
4	Delhi-London-New York- London-New York	Delhi	Yes, New Delhi, being the place of provision for continuous journey with single return ticket.
5	Delhi-London-New York	Delhi	-do-
6	New York-London-Delhi	New York	No, New York is place of provision for continuous journey with single return ticket.
7	New York-London-Delhi- Mumbai-Delhi-London- New York	New York	-do-
8	Delhi-Jammu-Delhi	Delhi	Yes, Delhi is the place of provision for continuous journey.

9 Jammu-Delhi-Jammu Jammu No, Jammu is the place of provision for continuous journey with single return ticket

More than one ticket for a journey (issued by a single service provider, or by a single agent, for more than one service providers)

S. No	Journey	Place of Provision	Taxability
1	a.Delhi-Bangkok - Delhi b.Bangkok-Bali- Bangkok	Delhi is place of provision for journey (a); Bangkok is place of provision for journey (b)	Journey (a) is taxable since place of provision is in taxable territory; Journey (b) is not taxable since place of provision is outside taxable territory.
2	(a)Delhi –New York-Delhi (b) New York- Boston-New York	Delhi is place of provision of journey (a); New York is place of provision for journey (b)	Journey (a) is taxable since place of provision is in taxable territory; Journey (b) is not taxable since place of provision is not in taxable territory
3	(a)London – Delhi-London (b)Delhi- Chandigarh (c)Chandigarh- Amritsar (d)Amritsar- Delhi	London is place of provision of journey (a); Delhi is place of provision of journey (b); Chandigarh is place of provision of journey(c); Amritsar is place of provision of journey (d)	Journey (a) is not taxable since place of provision is outside taxable territory; Journeys (b)and (c) and (d) are taxable since place of provision is in taxable territory.
4	(a)Delhi-Jammu (b)Jammu-Delhi	Delhi is place of provision of journey (a) Jammu is place of	Journey (a) is taxable since place of provision is in taxable territory. Journey (b) is not taxable

		provision of journey (b)	since place of provision is outside taxable territory.
5	(a)Jammu-Delhi-Jammu (b)Delhi-Bangkok-Delhi	Jammu is place of provision for journey (a); Delhi is place of provision for journey (b)	Journey (a) is not taxable since place of provision is outside taxable territory for the continuous journey with single, return ticket. Journey (b) is taxable, since place of provision is in taxable territory for the journey with single, return ticket.
6	(a)Jammu-Delhi (b)Delhi-Bangkok-Delhi (c)Delhi-Lucknow (d)Lucknow-Jammu	Jammu is place of provision for journey (a); Delhi is place of provision for journey (b); Delhi is place of provision for journey (c); Lucknow is place of provision for journey (d)	Journey (a) is not taxable since place of provision is not in taxable territory; Journeys(b) , (c) and (d) are taxable since place of provision is in taxable territory for each of these.

It may also be pertinent to mention that for flights originating from, or terminating in, the northeast region, though the place of provision will be determined in terms of this rule, there is an exemption for air transportation of passengers, embarking from, or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal.

The examples in the table below illustrate some situations.

Single ticket (No stopover)

S. No	Journey	Place of Provision	Taxability
1	Dibrugarh-Kolkata-Mumbai	Dibrugarh is the place of provision	Journey is taxable, but no service tax is payable owing to the exemption.
2	Dibrugarh-Kolkata-Mumbai-Kolkata-Dibrugrah	Dibrugarh is the place of provision	Journey is taxable, but no service tax is payable owing to the exemption. Here it is relevant to note that the journey is against a single, return ticket.
3	Guwahati-Kolkata-Bangkok-Kolkata-Guwahati	Guwahati is the place of provision for the continuous journey	Place of provision being in the taxable territory, the service is taxable, but no service tax is payable owing to the exemption and journey is deemed continuous.
4	Kolkata-Guwahati-kolkata	Kolkata is the place of provision for the continuous journey.	Place of provision being in the taxable territory, the service is taxable, but no service tax is payable owing to the exemption (the onward and return legs of journey terminate and originate in exempted territory respectively).
More than one ticket for a journey (issued by a single service provider, or by a single agent, for more than one service providers)			
S. No	Journey	Place of Provision	Taxability
1	(a)Bagdogra-	Place of provision for	In these cases, generally, the

	Kolkata (b)Kolkata Delhi	-	journey (a) is Bagdogra. Place of provision for journey (b) is Kolkata.	passenger would be required to change aircraft after exiting the airport, and is required to obtain a fresh boarding pass for the next leg. This is deemed to be a stopover. Thus, journey (b) is taxable, and service tax is payable on leg (b).
2	(a)Guwahati- Kolkata- Guwahati (b) Kolkata- Bangkok- Kolkata		Each journey is deemed continuous based on the assumption that two single return tickets are purchased. For journey (a) place of provision is Guwahati, and for journey (b) Place of provision is Kolkata.	Generally, in such cases, since separate return tickets have been purchased for the tow journeys, after completing journey (a) the passenger will be required to disembark from the aircraft and complete check-in formalities for journey (b). Thus, the journey will not be deemed to be continuous and place of provision for journey (b) will be Kolkata.

Rule 12. Place of provision of services provided on board a conveyance.- Place of provision of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

Any service provided on board a conveyance (aircraft, vessel, rail, or roadways bus) will be covered here. Some examples are on-board service of movies/music/video/ software games on demand, beauty treatment etc, albeit only when provided against a specific charge, and not supplied as part of the fare.

The place of provision of services provided on board conveyances

The place of provision of services provided on board a conveyance during the course of a passenger transport operation is the first scheduled point of departure of that conveyance for the journey.

Illustration

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

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

Rule 13. Powers to notify description of services or circumstances for certain purposes.- In order to prevent double taxation or non-taxation of the provision of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service.

The rule is an enabling power to correct any injustice being met due to the applicability of rules in a foreign territory in a manner which is inconsistent with these rules leading to double taxation. Due to the cross border nature of many services it is also possible in certain situations to set up businesses in a non-taxable territory while the effective enjoyment, or in other words consumption, may be in taxable territory. This rule is also meant as an anti-avoidance measure

where the intent of the law is sought to be defeated through ingenious practices unknown to the ordinary ways of conducting business.

Rule 14. Order of application of rules.- Notwithstanding anything stated in any rule, where the provision of a service is, prima facie, determinable in terms of more than one rule, it shall be determined in accordance with the rule that occurs later among the rules that merit equal consideration.

This Rule covers situations where the nature of a service, or the business activities of the service provider, may be such that two or more rules may appear equally applicable.

Following illustrations will make the implications of this Rule clear:-

Illustration 1

An architect based in Mumbai provides his service to an Indian Hotel Chain (which has business establishment in New Delhi) for its newly acquired property in Dubai. If Rule 5 (Property rule) were to be applied, the place of provision would be the location of the property i.e. Dubai (outside the taxable territory). With this result, the service would not be taxable in India. Whereas, by application of Rule 8, since both the provider and the receiver are located in taxable territory, the place of provision would be the location of the service receiver i.e. New Delhi, Place of provision being in the taxable territory, the service would be taxable in India.

By application of Rule 14, the later of the Rules i.e. Rule 8 would be applied to determine the place of provision.

Illustration 2

For the Ms Universe Contest planned to be held in South Africa, the Indian pageant (say, located in Mumbai) avails the services of Indian beauticians, fashion designers, videographers, and photographers. The service providers travel as part of the Indian pageant's entourage to South Africa. Some of these services are in the nature of personalized services, for which the place of provision would normally be the location where performed (Performance rule-Rule 4), while for others, under the main rule (Receiver location) the place of provision would be the location of receiver.

Whereas, by application of Rule 8, since both the provider and the receiver are located in taxable territory, the place of provision would be the location of the service receiver i.e. New Delhi. Place of provision being in the taxable territory, the service would be taxable in India.

By application of Rule 15, the later of the Rules i.e. Rule 8 would be applied to determine the place of provision.

How will a person determine the taxability of a service in terms of these rules?

For determining the taxability of a service, one needs to ask the following questions sequentially:-

1. Which rule applies to the service provided specifically? In case more than one rules apply equally, which of these come later in the order given in the rules?
2. What is the place of provision of the service in terms of the above rule?
3. Is the place of provision in taxable territory? If yes, tax will be payable. If not, tax will not be payable.
4. Is the provider 'located' in the taxable territory? If yes, he will pay the tax.

5. If not, is the service receiver located in taxable territory? If yes, he may be liable to pay tax on reverse charge basis.

6. Is the service receiver an individual or government receiving services for a nonbusiness purpose, or a charity receiving services for a charitable activity? If yes, the same is exempted.

7. If not, he is liable to pay tax.