

PLACE OF PROVISION **RULES**, 2012 (AMENDED)

‘POPS Rules, 2012’

Along with the commencement of the Negative List regime, significant changes have been introduced in the Service Tax law with respect to services liable to taxation. Changes have also been introduced in point of taxation, place of provision and service tax applicability under reverse charge mechanism. Consequently, with effect from July 1, 2012, the collection of service tax has given a new challenge both to the department as well to the assessee.



In today's scenario, any service, to be chargeable to service tax, must be a 'service' covered by the definition in Section 65B of the Finance Act, 1994, and which does not find an entry either in Negative or Mega Exemption List. Further, it is important to note that the place of provision should be in taxable territory. The impact of changes from the Positive List to the current Negative List has made many services earlier classified as non-taxable services to taxable services and vice versa.

In the earlier "Positive List" regime until June 30, 2012, services were taxed by way of verifying the nature of services with any of the 119 specified categories of services. If services could not be identified with any of the specified category of services, such services were not liable to be taxed. With the introduction of the Negative List regime made effective from July 1, 2012, such categories of services were made irrelevant/non-existent. However, the categories were retained for the limited purpose of determination of accounting code for statistical requirements of the department.

In furtherance of the movement to the Negative List regime, the earlier Import Rules, 2006 and Export Rules, 2005 were deleted and significant changes were brought about into the 'Place of Provision Rules (POP)'

The boundaries of place of provision have been clearly spelt out by way of defining the taxing jurisdiction i.e. 'Taxable Territory' under section 65B(52) and means every place in whole of India excluding Jammu and Kashmir.

The POP rules are the key to understand taxing jurisdiction of the government since the charging section 66B cannot be made applicable on the services where place of provision of services are not in taxable territory. This acquires larger significance in the case of cross border services.

As per the new POP Rules, 2012, with effect from July 1, 2012, the following requirements and/or conditions must be necessarily fulfilled.

- a. There must be a service which satisfies the definition under section 65B and is neither listed in Negative nor in Mega Exemption list. That is to say, the service provided is taxable if provided in the taxable territory.
- b. At least one person's location (either service provider or service recipient) must have been in the taxable territory.

On being satisfied of the above conditions, the next step would be to understand how the rules apply to the service actually provided.

Rule 3: Location of Receiver

Popularly known as main or default or residual rule, would be applied when no later rule could be made applicable for ascertaining location of recipient of service i.e. location of receiver of a service is in the taxable territory, such service will be deemed to be provided in the taxable territory.

Rule 4: Performance Based Services

There must be physical presence of goods on which services in the form of repair, reconditioning, or any other work on goods (not amounting to manufacture), technical testing/inspection/certification/ analysis of goods are provided and the service provider is situated in taxable territory.

Rule 5: Location of Immovable Property

Place of Provision will be in a taxable territory for the Services provided from anywhere either from taxable or non-taxable territory for which immovable property situated in taxable territory.

Rule 6: Services relating to Events

Place of Provision will be in a taxable territory for the Services provided from anywhere either from taxable or non- taxable territory for which Events or Exhibition will be held in taxable territory.

Rule 7: Part Performance of a Service at different locations

Where any service stated 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. For ex: emission clearance test before for any new vehicle is launched.

Rule 8: Services where Provider as well as Receiver Located in a Taxable Territory

Place of Provision will be in a taxable territory for the Services provided from taxable territory for which recipient of service is also situated in in taxable territory. For ex: Service Provided by a person located in taxable territory to a person located in taxable territory with respect to immovable property which is situated outside India.

Rule 9: Certain Specified Services - Place shall be the location of the Service Provider

- a. Services provided by a banking company, or a financial company, or a non-banking financial company to account holders – Place Provision will be the place where the Bank is situated.
- b. Online information and database access or retrieval services - Place of Provision will be the place where Database Server is placed.
- c. Intermediary services - Place of Provision will be the place where Intermediary is situated.
- d. Service consisting of hiring of means of transport, up to a period of one month.

Rule 10: 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.

Rule 11: Passenger Transportation Services

The place of provision of a passenger transportation service is the place where the passenger embarks on the conveyance for a continuous journey.

Rule 12: Services Provided on board conveyances

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 a conveyance during the course of a passenger transport operation is the first scheduled point of departure of that conveyance for the journey.

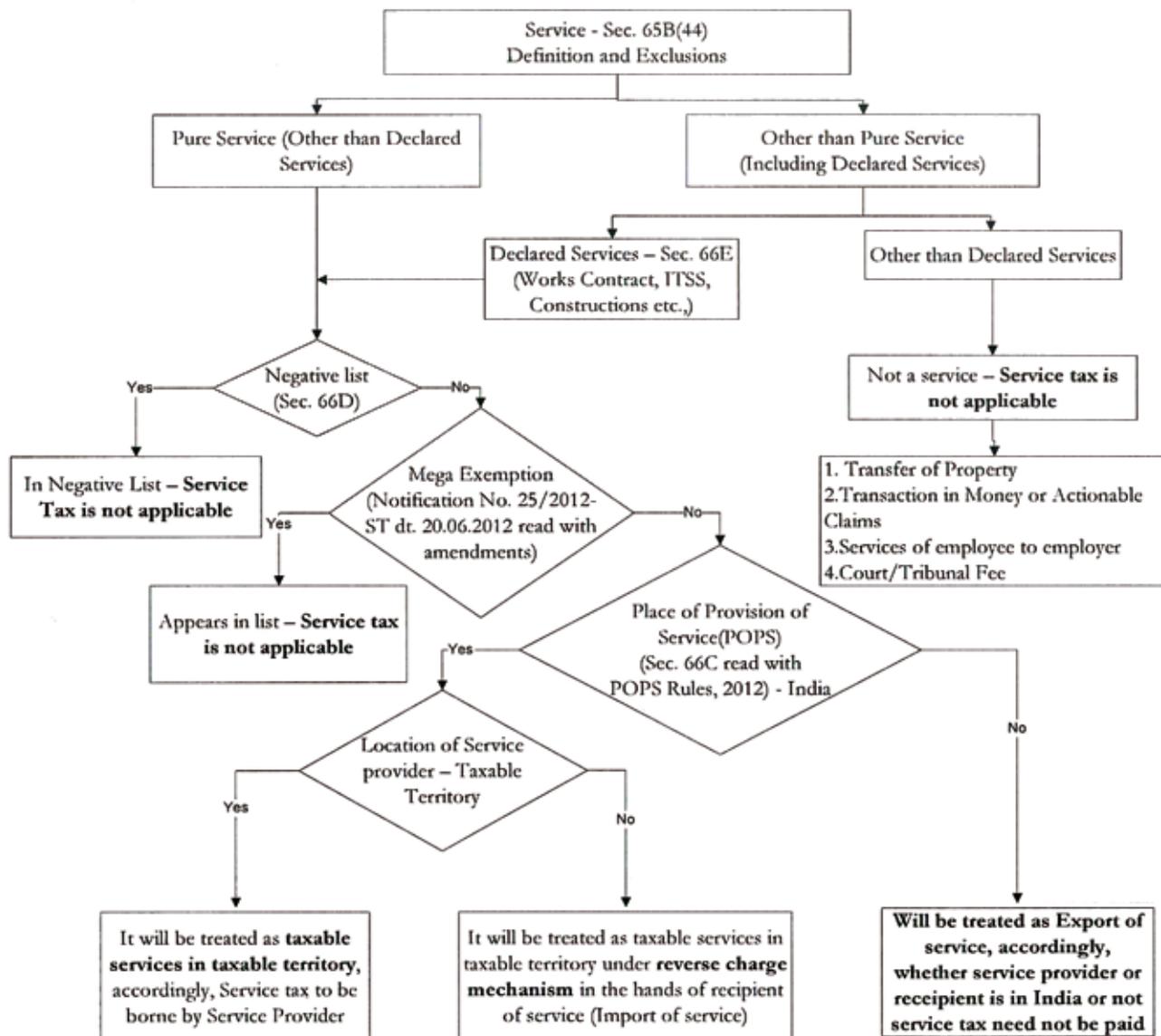
Rule 13: Administrative Rules are also not relevant for identifying place of provision of services.

Rule 14: Order of application of Rules provides that 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 rules that merit equal consideration.

The impact from new law i.e. POPS Rules, 2012 (amended) have made many ways for treating place of provision of services to be in taxable territory as against place of provision understood from earlier Export Rules, 2005 or Import Rules, 2006 and vice versa.

Below Flow chart is prepared to provide insight into the understanding of POPS Rules, 2012 from the origin point of service until its last treatment for service tax charge.

Applicability of service Tax - Steps to follow



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