

PLACE OF PROVISION OF SERVICE RULES, 2012 – A Nutshell

Background:

As per the **Charging Section 66B** of the Finance Act, 2004, Service Tax shall be levied on the value of all the services, **only if they are PROVIDED OR AGREED TO BE PROVIDED IN THE TAXABLE TERRITORY.**

As per **Section 65B(52)**, the term “**Taxable Territory**” means the territory to which the provisions of the Chapter apply. This Chapter is applicable to India except Jammu and Kashmir.

Non Taxable Territories: Hence, the services rendered in the following places are outside the scope of the service tax provisions:

- (a) Jammu and Kashmir
- (b) Any Other Country
- (c) Waters, Installations, Structures beyond 200 Nautical Miles from the Base Line

Objective of these rules: There could be services which could be rendered across multiple locations. Some locations may be in the Taxable Territory while other locations may not fall in the Taxable Territory. In such case, it becomes essential to identify the precise location of provision of such service to decide the following issues –

- (a) Whether the particular service is rendered in Taxable Territory or not? – To determine **levy**
- (b) What is the Jurisdiction of a particular service? – To **determine the appropriate authority** for Registration, Assessment, Appeals etc.
- (c) Whether a particular service is eligible for location-based exemption? – For eg. Exemption as applicable for Special Economic Zone, North Eastern States etc.

The Place of Provision Rules, 2012 answers the above questions (*though in a complicated way!!!*)... These Rules are summarized in a Nutshell as follows:

Nature of Service	Place of Provision
(a) General Rule – If Service Receiver's Location is known	Location of Service Receiver
(b) General Provision – If Service Receiver's Location is not known	Location of Service Provider
(c) Service Provider and Service Receiver is located in the Taxable Territory (overrides all other rules)	Location of Service Receiver
(d) Performance Based Services (Note 1)	Place where the services are actually performed
(e) Service relating to Immovable Property	Place where Immovable Property is located / intended to be located
(f) Services relating to events	Place where the event is actually held.
(g) Services as mentioned in Points (d) to (f), if provided at more than one location including taxable territory	Location in the Taxable Territory where the greatest proportion of the service is provided
(h) Services provided by Banking Co. /Financial Institution or a NBFC	Location of Service Provider
(i) Online Information and Database Access or Retrieval Services	
(j) Intermediary Services	
(k) Hiring or Means of transport upto a period of 1 Month	
(l) Transportation of goods (except by Mail / Courier)	Place of Destination of Goods
(m) Services of a GTA	Location of the Person liable to pay tax
(n) Passenger Transportation Service	Place where the passenger first embarks on the conveyance for a Continuous Journey.
(o) Services provided on board a conveyance	Place of First Scheduled point of departure of that conveyance for the journey.
Where the place of provision of service can be determined by more than one Rule, the place of provision shall be determined based on the Rule that occurs later.	

1. **Performance based services:** Services in which –

- (a) If the Service Receiver has to make the goods physically available to the Service Provider or his Agent for the service.
- (b) If the Service is provided to an Individual who has to be physically present with the Service Provider for the provision of the service. Such individual may be the Service Receiver or his Agent.

2. **Location of Service Provider and Service Receiver –**

Particulars	Location
(a) Service Provider / Single Receiver has Single Registration	Premises for which such registration has been obtained
(b) Service Provider / Single Receiver does not possess Single Registration	The Location of his Business Establishment
(c) Services are provided from / received in a place other than the Business Establishment	The Location of such Other Establishment
(d) Services are provided from / received in more than one Establishment	The Establishment that is most directly concerned with the Provision of Service
(e) In the Absence of such places	The Usual place of Residence of the Service Provider / Service Receiver

Note: Illustrations and FAQs will follow in the next newsletter ... Till then, signing off
