

J.B. Nagar CPE Study Circle of WIRC

Issues in Cross Border Transaction in Service Tax

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Direct I Plex,

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Old Nagardas Road,

Andheri (East), Mumbai – 69

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Prepared by

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ISSUES

1. Dubash& Co., a Firm of Advocates located at Mumbai enters into a contract with Aryan Technologies Ltd. (located in Dubai) to provide assistance in respect of legal matter of it's subsidiary Aryan Softwares Pvt. Ltd. in Mumbai.

Dubash& Co. provides legal services to subsidiary and raises invoice to Aryan Softwares in INR.

Dubash& Co. seek your advice if they are liable to charge service tax on its Invoice in respect of service provided to Aryan Softwares.

Would the answer change if the Invoice is raised on Aryan Technologies Ltd. in USD?

2. Mr. Roy is a Foreign National and a famous Singer. He performs in a musical event in India for which he has received Rs. 15 Lacs. After he receives his fees, he approaches M/s Tax & Co. (Chartered Accountants) to take an oral opinion regarding applicability of Service Tax on the event performed by him.

After he takes the opinion, he pays the CA the fees towards consultancy/ opinion in cash.

M/s Tax & Co. wish to take your advice, whether they are liable to pay service tax on the service of Consultancy/Opinion given to Mr. Roy.

3. Mr. Javed (located in Jammu & Kashmir) wants to go on holy pilgrimage of Haj. He contacts M/s Z Pvt. Ltd, a tour operator based in Mumbai, who organizes Tour packages for Haj. Mr. Javed purchased tickets for J& K to Mumbai and then from Mumbai to Jeddah (and return) from M/s Sasta Travels.

The remaining Haj package was booked by Mr. Javed from M/s Z Pvt. Ltd. The actual tour service of M/s Z Pvt Ltd. shall start from Jeddah Airport and culminate at Jeddah Airport. Mr. Javed also asked M/s Z Pvt. Ltd. to obtain Visa for him, which was done by M/s Z in Mumbai. The entire tour package including Visa Service (excl. Air Fare) cost Rs. 5 Lacs to Mr. Javed.

M/s Z Pvt Ltd. wish to know whether they are required to pay service tax on the service provided to Mr. Javed?

4. Ayush is an Architect (located in India). He is engaged by Mr. Sheikh (U.A.E.) to design standard structure for all Hotels intended to be located all over the world including India.

Whether Mr. Ayush is required to pay service tax on his services provided to Mr. Sheikh?

5. J. B Nagar Circle is organizing a RRC on International Taxation, which shall be held at Mumbai, Thailand and Malaysia for an all-inclusive cost of Rs. 35,000/-. It is scheduled to take such RRC at Mumbai for a period of 2 days, Thailand for 3 days and Malaysia for 3 days. In such case they need your advice that service tax shall be leviable or not? If tax shall be leviable than on what amount?

6. Green Chillies Pvt Ltd. An Indian Co. appointed a Mr. Nakaab, a makeup artist from Mumbai to do make up of actors in forthcoming film. The film shooting will done entirely in Europe over a period of 40 days. Green Chillies Pvt. Ltd. paid Mr. Nakaab in INR for his services. Whether service tax is leviable on this transaction? Please advice.

Would your answer be different if Mr. Nakaab was a foreigner?

7. Mr. Nadaan is a Commission agent for goods, based in Delhi. He entered into agreement with M/s Quality Steel Inc. (USA) for promotion and sale of its goods in India. As per terms of contract, Mr. Nadaam shall be eligible for his commission after M/s Quality receives payment for goods.

Mr. Nadaan shall be eligible for commission accruing on the last day of the month and Invoice for Commission amount shall be done immediately on/after month end.

For the month of August 2014, the invoice was raised by Mr. Nadaan in September 2014 and payment was received on 15th October 2014. He seeks your advice whether service tax shall be liable on such transaction?

Also for the month of September 2014, the invoice was raised on 15th October 2014 and payment received on 31st October 2014. Whether service tax shall be liable on such transaction as well?

8. Mr. Boat Wala residing in Goa is owner of a luxurious yacht. Mr. Alexander from Greece hires the yacht from Mr. Boat Wala for period of 15 days. Whether Service Tax be applicable on such transaction?

What would be your answer if Alexzander has took yatch on hire for 2 months?

9. Karuna Jewelers hire Top Score Transportation Pvt. Ltd. to transport its high valued Jewellery stock from Dubai workshop to Mumbai store. Top Score transports the jewellery from workshop to airport in Security Van and from Dubai airport - Mumbai airport by plane and then again from Mumbai airport - store by Van. What is the place of provision of such service?

10. ABC is a Goods transportation agency located in Jammu & Kashmir. Arunlal (in Himachal Pradesh) has given them the consignment to transport goods to Dhaka. ABC has to route its trucks via India. Freight Payable by consignee in Dhaka. What is the place of provision of such service? Whether answer will change if consignor will make the payment of freight?

What would be your answer if ABC is situated in Himachal Pradesh?

11. Mr. Kumar, a business tycoon takes a British Airways flight from Delhi to Mumbai. While on board, he bought in-flight meal and paid for the same. Whether Service Tax be applicable on meal sold in flight? Flight originated from Heathrow Airport (London)

Place of Provision of Services Rules, 2012

[Notification No. 28/2012-S.T., dated 20-6-2012]

In exercise of the powers conferred by sub-section (1) of section 66C and clause (hhh) of sub-section (2) of section 94 of the Finance Act, 1994 and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue, number 9/2005-ST, dated the 3rd March, 2005 published in the Gazette of India Extraordinary, Part II, Section 3, Sub-Section (i) vide number G.S.R. 151(E) dated the 3rd March, 2005 and the notification of the Government of India in the Ministry of Finance, Department of Revenue, number 11/2006-S.T., dated the 19th May, 2006 published in the Gazette of India Extraordinary, Part II, Section 3, Sub-Section (i) vide number G.S.R. 227 (E) dated the 19th May, 2006, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules for the purpose of determination of the place of provision of services, namely :-

RULE 1. Short title, extent and commencement. — (1) These rules may be called the Place of Provision of Services Rules, 2012.

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

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

- (a) “Act” means the Finance Act, 1994 (32 of 1994);
- (b) “account” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;
- (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);
- (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;
- (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);

- [(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) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;]
- (g) “leg of journey” means a part of the journey that begins where passengers embark or disembark the conveyance, or where it is stopped to allow for its servicing or refueling, and ends where it is next stopped for any of those purposes;
- (h) “location of the service provider” means-
- (a) where the service provider has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;
 - (b) where the service provider is not covered under sub-clause (a) :
 - (i) the location of his business establishment; or
 - (ii) where the services are provided from a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or
 - (iii) where services are provided from more than one establishment, whether business or fixed, the establishment most directly concerned with the provision of the service; and
 - (iv) in the absence of such places, the usual place of residence of the service provider.
- (i) “location of the service receiver” means :-
- (a) where the recipient of service has obtained a single registration, whether centralized or otherwise, the premises for which such registration has been obtained;
 - (b) where the recipient of service is not covered under sub-clause (a) :
 - (i) the location of his business establishment; or

- (ii) where services are used at a place other than the business establishment, that is to say, a fixed establishment elsewhere, the location of such establishment; or
- (iii) where services are used at more than one establishment, whether business or fixed, the establishment most directly concerned with the use of the service; and
- (iv) in the absence of such places, the usual place of residence of the recipient of service.

Explanation:-For the purposes of clauses (h) and (i), “usual place of residence” in case of a body corporate means the place where it is incorporated or otherwise legally constituted.

Explanation 2 :- For the purpose of clause (i), in the case of telecommunication service, the usual place of residence shall be the billing address.

- (j) “means of transport” means any conveyance designed to transport goods or persons from one place to another;
- (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;
- (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;
- (m) “person liable to pay tax” shall mean the person liable to pay service tax under section 68 of the Act or under sub-clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994;
- (n) “provided” includes the expression “to be provided”;

- (o) “received” includes the expression “to be received”;
- (p) “registration” means the registration under rule 4 of the Service Tax Rules, 1994;
- (q) “telecommunication service” means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means but shall not include broadcasting services.
- (r) words and expressions used in these rules and not defined, but defined in the Act, shall have the meanings respectively assigned to them in the Act.

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.

RULE 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 clause shall not apply in the case of a service provided in respect of goods that are temporarily imported into India for repairs and are exported after the repairs without being put to any use in the taxable territory, other than that which is required for such repair;

- (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.

RULE 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.

RULE 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.

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.

RULE 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.

RULE 9. Place 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 all means of transport other than,-
- (i) aircrafts, and
 - (ii) vessels except yachts,
- upto a period of one month.]

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.

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.

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.

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.

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.