



# GN LAW ASSOCIATES

ARTICLES 2011

---

[www.gnlawassociates.com](http://www.gnlawassociates.com)

# Point of Taxation – Unravelling.

**Author: G. Natarajan**

Vide Notification 18/2001 ST Dated 01.03.2001, a new Point of Taxation Rules, 2011 has been notified, which shall be effective from 1<sup>st</sup> April 2011. This rule is going to be the magna carta to decide when service tax has to be paid and how the change in service tax rates have to be applied. An attempt is made here to understand the said rules.

Hitherto, service tax is payable on realisation basis, except in cases of transactions between associated enterprises. This has been given a go by in the new Rules. References in Rule 6 of Service Tax Rules, 1994 requiring payment of service tax on receipt of payments have been replaced with the requirement that service tax has to be paid when the service is deemed to be provided as per the Point of Taxation Rules. Such amendments in Rule 6 have been carried out vide Notification 3/2011 ST Dated 01.03.2011.

The term “point of taxation” is defined in Rule 2 (e) *ibid* as point of taxation means the time when a service shall be deemed to have been provided.

## **When the service is deemed to be provided?**

In a normal situation as per Rule 3 (a) *ibid*, the provision of service shall be treated as having taken place at the time when service is provided or to be provided. But, before such actual provision takes place, if any invoice is raised by the service provider or payment is received by the service provider, the time of issue of such invoice or time of receipt of such payment, whichever is earlier shall be the “point of taxation”. It has been further explained receipt of advance shall be taxable upon receipt of such advance. Further, for the purposes of Section 66 A (reverse charge) issue of invoice and receipt of payment would mean receipt of invoice and making of payment respectively. The following table would further explain the above provisions. (As these rules are effective from 1<sup>st</sup> April 2011, future dates are taken up for example)

S.No.	Date on which service was provided	Date on which invoice was issued	Date on which payment was received	Point of Taxation
1	10 <sup>th</sup> July 2011	15 <sup>th</sup> July 2011	15 <sup>th</sup> August 2011	10 <sup>th</sup> July 2011
2	10 <sup>th</sup> July 2011	15 <sup>th</sup> August 2011	15 <sup>th</sup> September 2011	10 <sup>th</sup> July 2011
3	10 <sup>th</sup> July 2011	5 <sup>th</sup> April 2011	15 <sup>th</sup> August 2011	5 <sup>th</sup> April 2011
4	10 <sup>th</sup> July 2011	5 <sup>th</sup> May 2011	5 <sup>th</sup> April 2011	5 <sup>th</sup> April 2011
5	10 <sup>th</sup> July 2011	5 <sup>th</sup> April 2011	10 <sup>th</sup> April 2011	5 <sup>th</sup> April 2011

**How Point of taxation to be determined in case of change in rates of service tax?**

**When taxable service has been provided before the change of rate.**

Let us assume that rate undergoes a change on 1<sup>st</sup> July 2011. Let us see different situations. Service has already been provided before 1<sup>st</sup> July 2011. But by application of the Point of taxation, service tax has not yet been paid.

Even though the service has been provided before the change of rate, i.e. before 1<sup>st</sup> July 2011, if no invoice has been raised or no payment is received before 1<sup>st</sup> July 2011, the point of taxation shall be the date of raising of invoice or date of receipt of payment, whichever is earlier.

If invoice has been raised before the change of rate, i.e. before 1<sup>st</sup> July 2011 but the payment is received after the said date, the point of taxation shall be the date of issue of invoice.

If the payment has been received before the change of rate, i.e. before 1<sup>st</sup> July 2011 but the invoice is raised after the said date, the point of taxation shall be the date of payment.

The above can be tabulated as below: (Date of change in tax rate is 1<sup>st</sup> July 2011)

<b>Date of provision of service</b>	<b>Date of Invoice</b>	<b>Date of receipt of payment</b>	<b>Point of taxation and applicable rate.</b>
June 2011	1 <sup>st</sup> July 2011	1 <sup>st</sup> August 2011	1 <sup>st</sup> July 2011 – New rate
June 2011	1 <sup>st</sup> August 2011	1 <sup>st</sup> July 2011	1 <sup>st</sup> July 2011 – New rate
June 2011	30 <sup>th</sup> June 2011	15 <sup>th</sup> July 2011	30 <sup>th</sup> June 2011 – Old Rate
June 2011	15 <sup>th</sup> July 2011	30 <sup>th</sup> June 2011	30 <sup>th</sup> June 2011 – Old Rate

In other words, for the services provided before the change of rate, if any one of the event (issue of invoice or receipt of payment) has happened before the change of rate, old rates will apply. If both the events occur after the change of rate, the new rates will apply. Whichever event out of the two, happens first, will be the point of taxation.

#### **When taxable service has been provided after the change of rate.**

If the payment is received after the change of rate, though invoice is raised prior to change of rate, point of taxation shall be the date of payment.

If the invoice has been raised and the payment has also been received before the change of rate, the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier.

If the invoice is raised after the change of rate, but payment has been received before the change, the point of taxation shall be the date of issue of invoice.

The above can be tabulated as below: (Date of change in tax rate is 1<sup>st</sup> July 2011)

Date of provision of service	Date of Invoice	Date of receipt of payment	Point of taxation and applicable rate.
July 2011	30 <sup>t</sup> June 2011	1 <sup>st</sup> August 2011	1 <sup>st</sup> August 2011 – New rate
July 2011	1 <sup>st</sup> May 2011	30 <sup>th</sup> June 2011	1 <sup>st</sup> May 2011 – Old rate
July 2011	30 <sup>th</sup> June 2011	1 <sup>st</sup> May 2011	1 <sup>st</sup> May 2011 – Old Rate
July 2011	15 <sup>th</sup> July 2011	30 <sup>th</sup> June 2011	15 <sup>th</sup> July 2011 – New Rate

In other words, if the services are provided after the change of rate, the old rates will apply only if both the events (issue of invoice and receipt of payment) have occurred before the change of rate. If any one of these events occur after the change, only the new rates will apply.

As per Rule 5 *ibid*, no service tax is payable in case of new taxable services taxed for the first time, in respect of the invoices issued prior to the date on which the service tax made taxable or invoices issued within the time limit under Rule 4 A of the Service Tax Rules, 1994 (though such date may fall after the service was made taxable) and the payments are also received before the service was taxable.

#### **Continuous supply of service.**

The point of taxation is the date on which the payment is liable to be made as per the contract. But if any of the two events (issue of invoice or receipt of payment) happens before such date, such date would be the point of taxation.

#### **Associated enterprises.**

In case of transactions between associated enterprises the point of taxation shall be the date on which is payment is received or invoice is issued or the date of debit or credit in books of accounts of the person liable to pay service tax is made, whichever is earlier.

