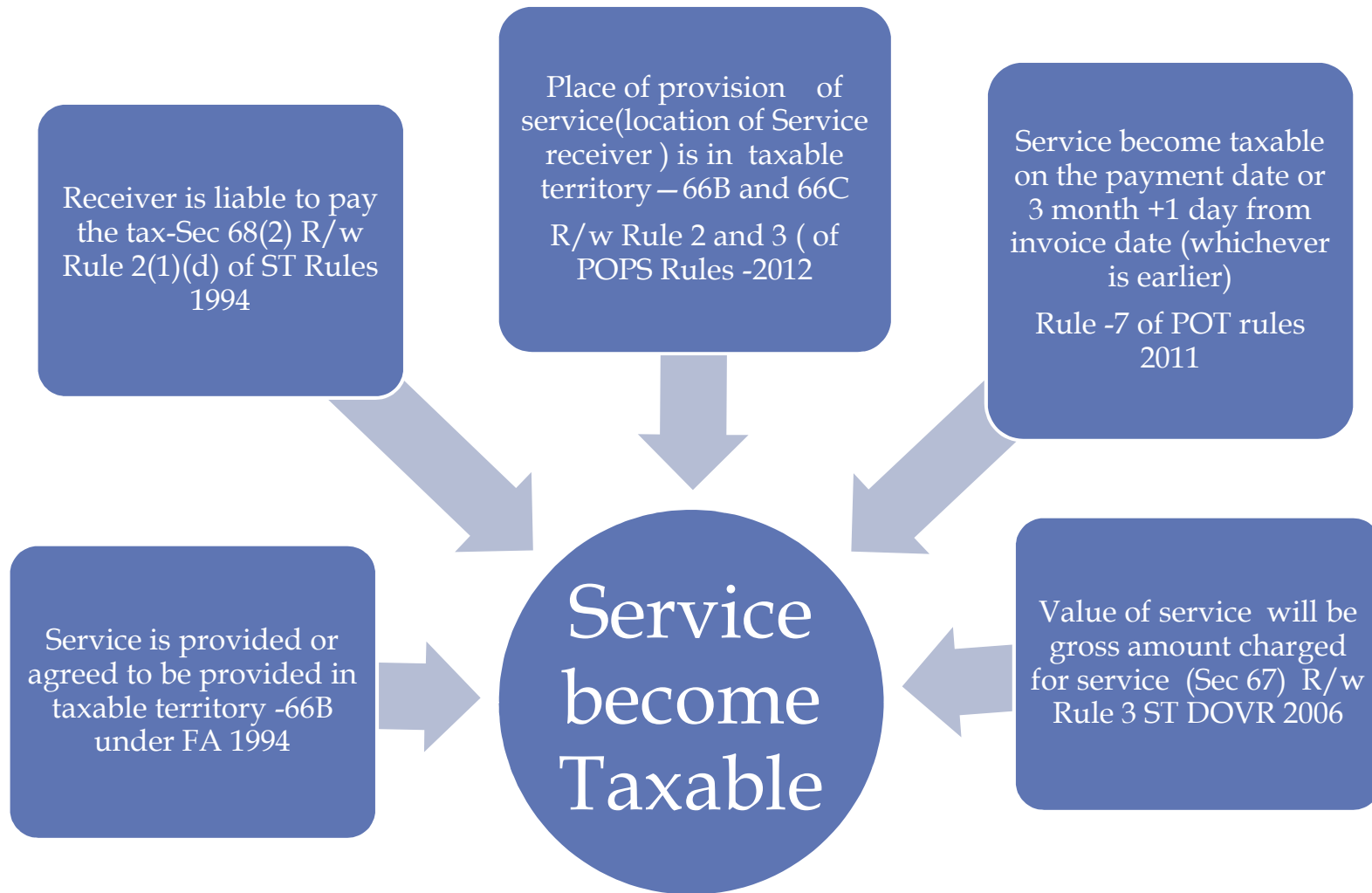


Import of services under Service Tax Act 1994

A Presentation by CA. Preeti Goyal
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Taxability of Import of service



Taxability of service

☞ In terms of section 66B, a service is taxable only when, inter alia, it is provided (or agreed to be provided) in the taxable territory¹. Thus, the taxability of a service will be determined based on the place of its provision. For determining the taxability of a service, therefore, 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? Is the place of provision in taxable territory? If yes, tax will be payable. If not, tax will not be payable.
3. Is the provider and receiver is located ' in the taxable territory? If yes, he will pay the tax except the cases covered under reverse charge . In this case place of provision of service will be the location of service recipient under Rule -8 of POPS rule 2012.
4. Is the provider is not located in the taxable territory, and service receiver located in taxable territory? If yes, service receiver will be **liable to pay tax** as Import of services under rule 2(1) (d) of service tax rules 1994.
5. Is the provider ' is located in the taxable territory, and service receiver is not located in taxable territory? If yes, service provider **may not be liable** to pay tax being Export of services.
6. Is the provider and receiver is located ' in the non taxable territory and place of provision for service is in India? Yes if Service receiver has a establishment in India, otherwise its exempt.

Definition-Finance Act 1994

☞ **Section 65 B (27) India** : "India" means,--

- (a) the territory of the Union 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 (80 of 1976);
- (c) the seabed 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;

☞ **Section 65 B (44) "service"** means any activity carried out by a person for another for consideration, and includes a declared service.

Explanation 2.- For the purposes of this Chapter,-

- (a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons ;
- (b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Continued.....

- ❧ **Section 65 B (51) "taxable service"** means any service on which service tax is leviable under section 66B.
- ❧ **Section 65 B (52) "taxable territory"** means the territory to which the provisions of this Chapter apply.
- ❧ **Section 66B- "Charge of Service tax"** There shall be levied a tax (hereinafter referred to as the service tax) at the rate of 14%, on the value of all services, **other than those services specified in the negative list**, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed. A service is taxable only when, inter alia, it is provided (or agreed to be provided) in the taxable territory. **Thus, the taxability of a service will be determined based on the —place of its provision.**
- ❧ **Section 66C- Determination of place of provision of service**
 - (1) The Central Government may, having regard to the nature and description of various services, by rules made in this regard, determine the place where such services are provided or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided.
 - (2) Any rule made under sub-section (1) shall not be invalid merely on the ground that either the service provider or the service receiver **or both are located at a place being outside the taxable territory.**

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SECTION 67. Valuation of taxable services for charging service tax. —

(1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall,

(i) in a case where the provision of service is for a **consideration in money**, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a **consideration not wholly or partly consisting of money**, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is **not ascertainable**, be the amount as may be determined in the prescribed manner (Rule 3 of Valuation Rules)

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Continued.....

SECTION 68. Payment of service Tax. – (Payment under RC principle)

(1) Every person providing taxable service to any person shall pay service tax at the rate specified in section 66B in such manner and within such period as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), in respect of such taxable services as may be notified by the Central Government in the Official Gazette, the **service tax thereon shall be paid by such person** and in such manner as may be prescribed at the rate specified in section 66B and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service.

(Joint Charge Mechanism) -Provided that the Central Government may notify the service and the extent of service tax which shall be payable by such person and the provisions of this Chapter shall apply to such person to the extent so specified and the remaining part of the service tax shall be paid by the service provider.

Notification No. 30/2012 - NN 30/2012 has been notified by CG. Under empowerment of section 68(2). In this notification clause **(4) says that for Import of Services**, Any person in a non-Taxable territory providing services to Any person in a Taxable territory , then the Service receiver shall be the person liable to pay Service Tax at the **@15%**. (Full reverse charge)

The following services have been notified under Sec.68(2) of Finance Act,1994:

A. the services,-

- (i) in relation to telecommunication service;
- (ii) in relation to general insurance business;
- (iii) in relation to insurance auxiliary service by an insurance agent; and
- (iv) in relation to transport of goods by road in a goods carriage, where the consignor or consignee of goods-
 - (a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
 - (b) any company established by or under the Companies Act, 1956 (1 of 1956);
 - (c) any corporation established by or under any law;
 - (d) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India;
 - (e) any co-operative society established by or under any law;
 - (f) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder; or
 - (g) anybody corporate established, or a partnership firm registered, by or under any
- (v) In relation to Business Auxiliary Service of distribution of mutual fund by a mutual fund distributor or an agent, as the case may be;
- (vi) in relation to sponsorship service provided to any body corporate or firm located in India;
- (vii) **Any taxable service provided or to be provided from a country other than India and received in India, under Sec.66a of the Finance Act,1994.**

(Sec. 68(2) of Finance Act,1994, Notification 36/2004-S.T. dated 31.12.2004 as am

SERVICE TAX RULES, 1994

☞ Rule 2 (1) (D) -Person liable for paying service tax, -

Clause G-in relation to any taxable service provided or agreed to be provided by any person which is located in a non-taxable territory and **received by any person located in the taxable territory**, the recipient of such service;

☞ Rule 4- Registration

The recipient of taxable services provided from outside India and received in India shall make an application for registration and for this purpose, the provisions of section 69 of the Act and the rules made thereunder shall apply.

☞ Rule 7- Return

(1) Every Assessee shall submit a half-yearly return in Form ST-3' or ST-3A', as the case may be, along with a copy of the Form G.A.R.-7, in triplicate for the months covered in the half-yearly return.

(2) Every Assessee shall submit the half - yearly return by the 25th of the month following the particular half-year.

(2) Every Assessee shall submit one annual return by the 30th November of the subsequent financial year.

Place of Provision of Services Rules, 2012

- ❧ The new rules will, on the other hand, determine the place where a service shall be deemed to be provided, in terms of section 66C of the Finance Act, 2012, read with section 94 (hhh) of Chapter V of the Finance Act, 1994.
- ❧ Under Section 66B, a service is taxable only when, inter alia, it is —provided (or agreed to be provided) in the taxable territory. Thus, the taxability of a service will be determined based on the **place of its provision**.
- ❧ The Place of Provision of Services Rules, 2012' will replace the Export of Services, Rules, 2005' and Taxation of Services (Provided from outside India and received in India) Rules, 2006.

☞ Rule 2- Definition

Clause (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.

Rule 2- Definition

Clause (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.

Note: Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted.

Provider of service in India

As per clause b of explanation 2 of section 65 B (44) :an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons. And

As per Section 66B-service is taxable only when, inter alia, it is provided (or agreed to be provided) in the taxable territory. Thus, the taxability of a service will be determined based on the place of its provision.

Rule 3 Place of provision generally of 'Place of provisions rules 2012' provides that 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.

Therefore, to make a service chargeable to tax **as import of service** under section 66B, the person providing such service must be either: -

- has established a business in a country **other than India**; or
- has a fixed establishment in a country other than India; or
- has establishment most directly concerned with the use/ supply of the service in a country other than India; or
- has usual place or residence, in a country other than India.

Receiver of services in India (Person liable to pay service tax)

Rule 3 Place of provision generally of 'Place of provisions rules 2012' provides that The place of provision of a service (**Service shall be deemed to be provided**) 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.

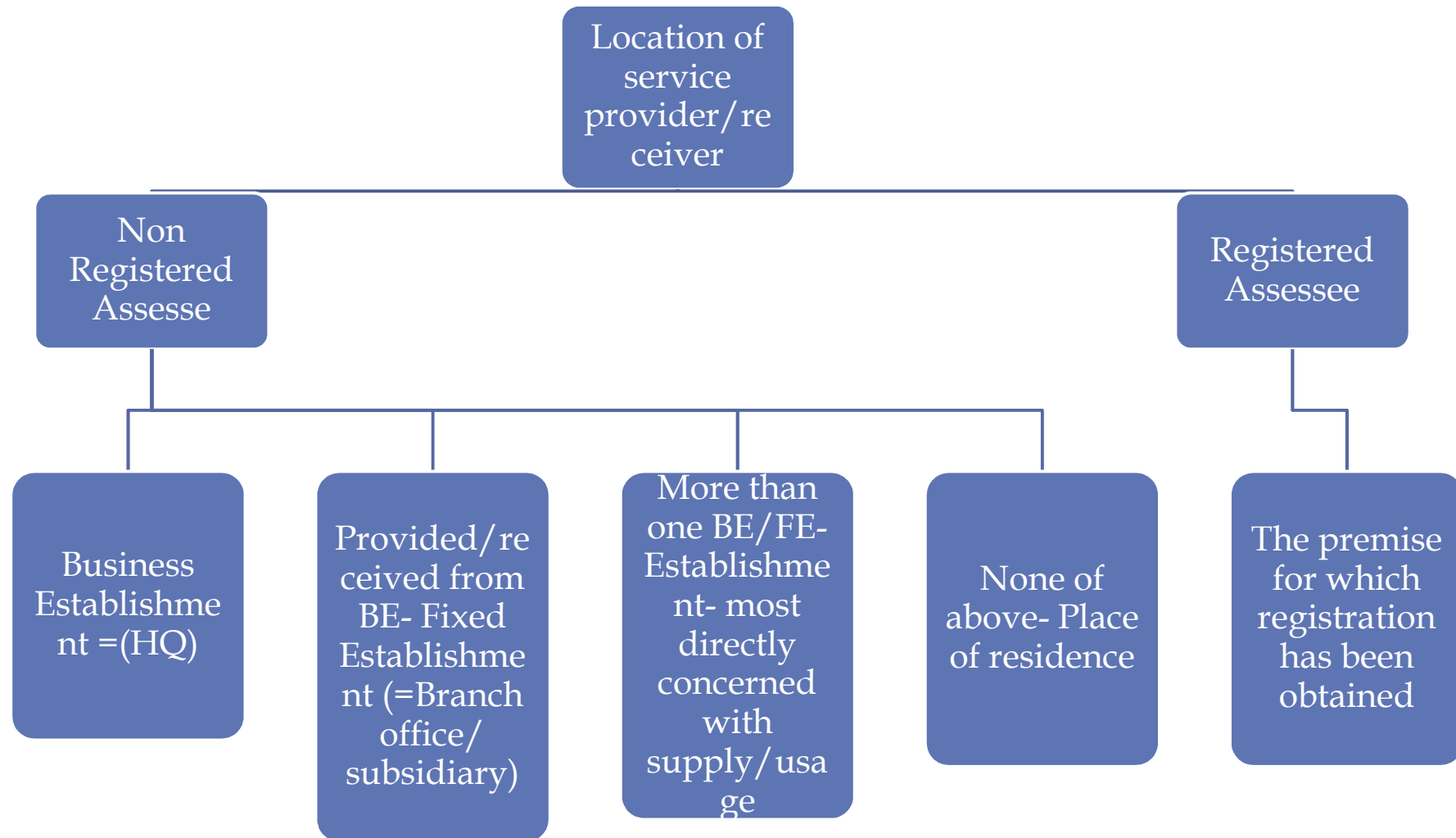
Example - A person located in Mumbai may buy a ticket on internet from a service provider located outside India for a journey from Delhi to London. In this case place of provision of service will be India and service will be taxable.

Therefore the recipient of services in India shall be liable to pay tax who:-

- has his place of business **in India**; or
- has fixed establishment in India; or
- has establishment most directly concerned with the use of the service in in India; or
- has usual place of residence in India,

For the purpose of service tax the person in India (as above) shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this Chapter shall apply.

Location of service provider/receiver



Business Establishment

Meaning: 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.

Section 65B(44): Where a person is carrying on a business through a business establishment from a country other than India to provide or receive services to/from India, such business establishments shall be treated as separate persons.

Example:

If M/s ABC Ltd. has business establishment in USA and providing services to M/s PQR Ltd in India ,than

1. By virtue of section 66B “which states that service provided or agreed to be provided in the taxable territory by one person to another will be taxed at the rate of 15%” therefore in this case services will taxed in India.
2. By applying the Rule -3 of POPS Rules 2012, place of provision for services will be location of service recipient , i.e in India.
3. Liability to pay the tax would lie upon the service receiver under Rule 2(1)(d) of service tax rules 1994 i.e. On reverse charge principle.

Therefore , if office situated in USA provides the services to M/s PQR in India, the same shall be treated as import of services by applying section 66B and Rule -3 of POPS Rules 2012.

Fixed Establishment

Meaning: 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. For further guidance on when a fixed establishment of a service receiver would be treated as location.

A person carrying on a business through a branch or agency in any country shall be treated as having a fixed establishment in that country.

- ☞ **Transactions between head office and branch within India are not subject to Service Tax.** However, cross-border transactions between head office and branch/project office/liaison office where one of them imports services into India could be subject to Service Tax depending upon the nature of transactions.
- ☞ Further, under the Negative List Regime, for cross-border transactions between head office and branch/project office/liaison office where the place of provision of such services would be construed to be provided within the taxable territory, would be subject to Service Tax.

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Example of overseas transaction

Example : if M/s ABC Ltd a business establishment in USA and has fixed establishment in India then for the purpose of section 65B(44) , both shall be treated as independent to each other.

- ☞ **Service by BE to its FE in India**→ If the office situated in USA provides services to its office situated in India (Not registered in India) , will be treated as import of Services under explanation given in section 65 B (44) and shall be chargeable to tax. In this case location of the service provider will be USA as BE is situated out of India , and by applying the Rule -3 of POPS **Rules** 2012, place of provision for services will be location of service recipient , i.e in India.

- ☞ **Service by FE in India to other person in India**→ On the other side, if the fixed establishment of USA which is situated in India, provides some services to M/S PRQ limited , will not be treated as import of Services under section 65 B (44) . In this case location of the service provider will be India (Fixed establishment-registered/not registered).Since service provider and service recipient both are located in taxable territory **therefore Rule -8** will come into effect and place of provision of service will be the location of service recipient.

- ☞ **Service by FE out of India to other person in India**→ : If M/s ABC Ltd a business establishment in USA and has fixed establishment in Dubai, , provides some services to M/S PRQ limited in India than By virtue of section 66B being a service provided in taxable territory out of taxable territory, it will be taxed in India. Here the location of service provider will be Dubai (Services provided from FE) and by applying the Rule -3 of POPS **Rules** 2012, place of provision for services will be location of service recipient , i.e in India.

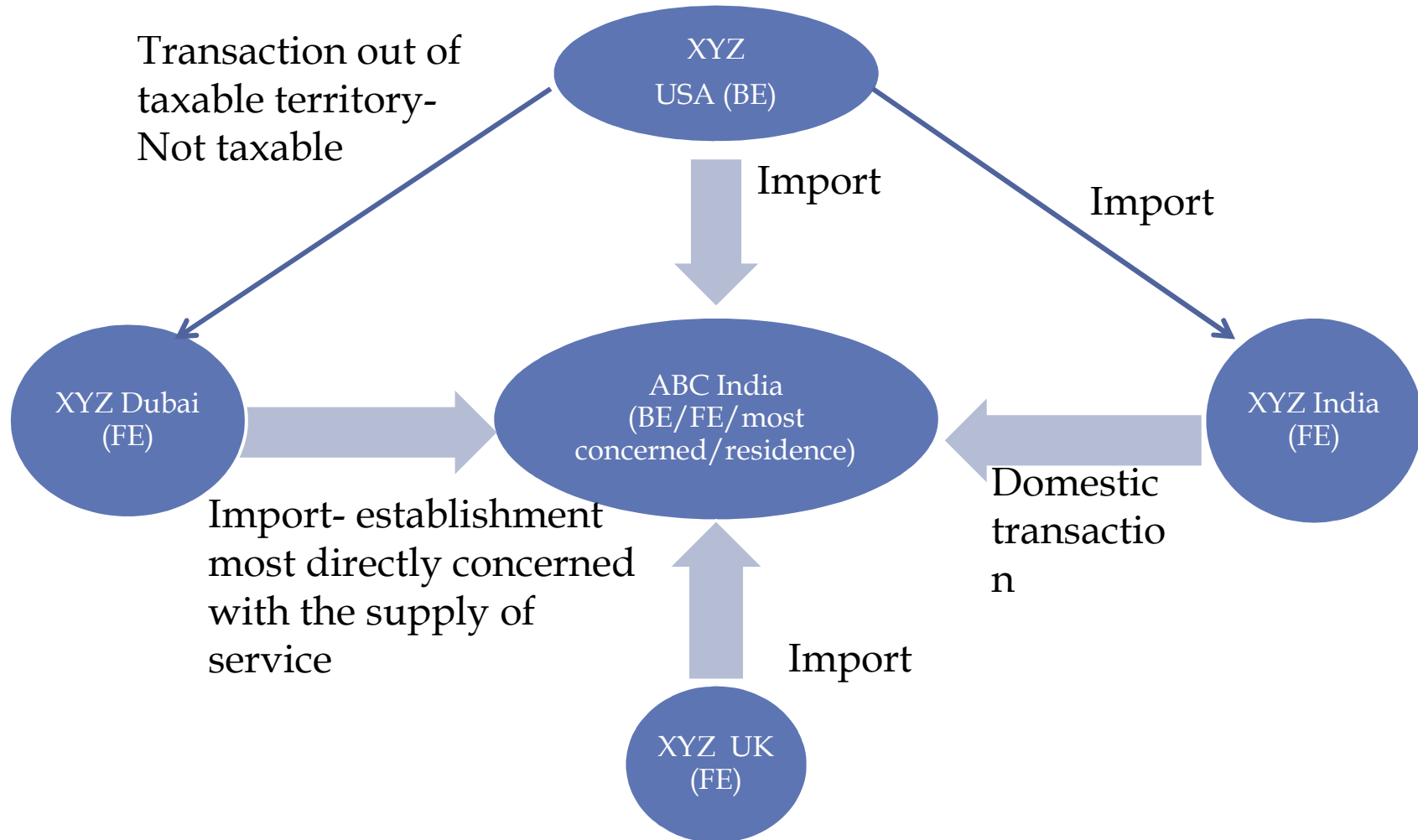
Establishment most directly concerned with the supply/consumption of service

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;

Example: if the M/s PQR having office at two places in different countries, than the country from where the services are provided, shall be treated as the country from which the service is provided or to be provided.

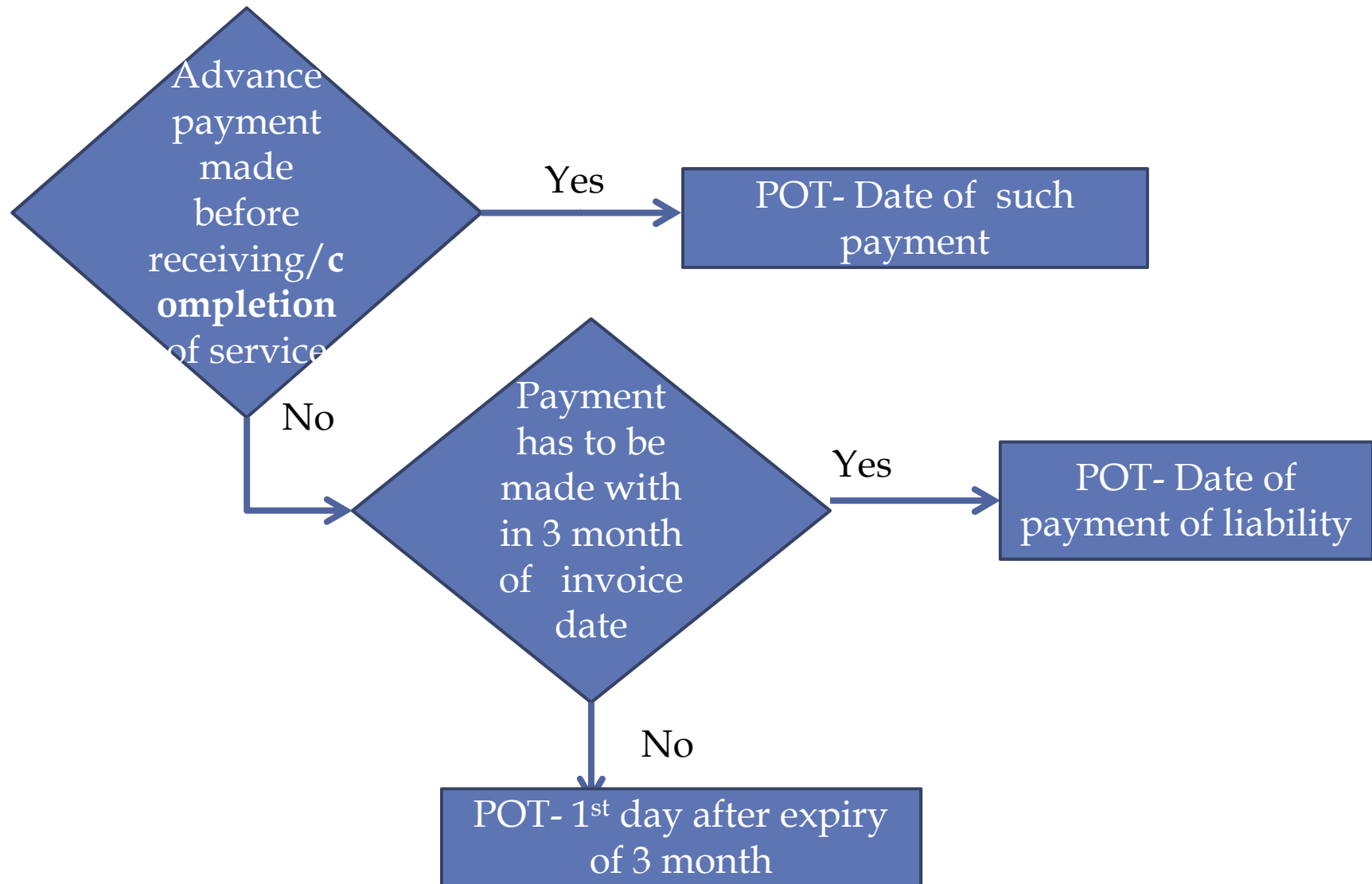
Import Transaction



POT rules 2011-Point of levy/Taxation

- ☞ **Rule 2(e)- 'Point of taxation'** means the point in time when a service shall be deemed to have been provided; because as per **Section 66B** tax liability arise only when the service is provided or agreed to be provided.
- ☞ **Rule 2A Date of payment** - in terms of the Point of Taxation Rules, Service Tax is liable to be paid on accrual basis (except in certain cases such as, advances where Service Tax is payable as soon as the advance is received, etc.).
- ☞ Moreover, in the case of associated enterprises, when the service provider is outside India, the point of taxation will be the earlier of the date of credit in the books of account of the service receiver or the date of making the payment.
- ☞ **Rule 7**-Notwithstanding anything contained in these rules rule 3,4 and 8176, the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under subsection (2) of section 68 of the Act, shall be the date on which payment is made, Provided that where the payment is not made within a period of three months of the date of invoice, the point of taxation shall be the date immediately following the said period of three months.

**POT for services where person required to pay tax as recipients
(Applicable for Importer as well) of service Rule 7**



Import of services by individuals & Exemption

☞ Since Section 66A has been made inapplicable with effect from 1st July 2012, hence exemption to Individuals for importing services for personal use will no longer be applicable. Example:

1. Highly popular portals like Google, Yahoo, etc. provide additional mail capacity to individual users for a small fee. These payments would also attract service tax, under the new law.
2. Downloading of tunes for i-pads, ring tones for mobile phones, etc. which typically involve payment of a few dollars, would all have to suffer service tax, under the reverse charge mechanism, with effect from 1-7-2012.

☞ Also the exemption limit of Rs. 10 Lacs is not applicable under reverse charge mechanism. So this could end up in bringing a large number of individuals under the service tax net.

Cenvat Credit Rules 2004

☞ **Rule 2(p)** of Cenvat Credit Rules, 2004 (as amended by NN 28/2012-CE (NT) dt. 20-06-2012, the **term output service** means any service provided by SP located in taxable territory but shall not include a service;

(a) Specified in section 66D of the Finance Act, 1994, or

(b) Where whole of ST liability is of SR i.e recipient of service.

- As a result, In case of Service Providers (SP) rendering the services (who is also importer of services) **some of which** are falling under full RCM , will not be able to take Cenvat Credit of ED & ST in respect of 'input'/'capital goods' and 'input services' respectively for such services.
- In case of Service Providers (SP) rendering the services **all of which** falls within the ambit of complete reverse charge mechanism; he cannot avail Cenvat credit of input or input services.
- Service Receiver is liable to pay service tax under this mechanism from very first invoice received under this category. It means SR is liable to pay ST even when SP is within the ambit exemption limit under NN 33/2012-ST.

☞ **Rule 3-**

Explanation. - CENVAT credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient.

- In other words, whole of the service tax shall be paid through GAR7 challan only ,on the import of service.

☞ Rule 4. Conditions for allowing CENVAT credit

- The CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or challan, as the case may be, referred to in rule 9 is received .Provided that in respect of input service where **whole of the service tax is liable to be paid by the recipient of service**, credit shall be allowed after the service tax is paid.
- Provided further that the CENVAT credit in respect of inputs /capital goods may be taken by the provider of output service when the inputs are delivered to such provider, subject to maintenance of documentary evidence of delivery and location of the inputs.
- Provided also that the manufacturer or the provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub- rule (1) of rule 9.
- However, this rule does not put restriction on availing Cenvat Credit of service tax paid by the person as recipient of services. If the imported services are input services and used to provide output services which are taxable in the normal course of section 66 of the service tax, the person paying service tax on import of service can avail the same as Cenvat Credit on the basis of Challan (on Service tax paid as service recipient) referred in Rule 9 of the Cenvat Credit Rules, 2004.

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Thanks



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