Framework

Statutory provisions

Section 66C read with section 94(2)(hhh) of Finance Act, 1994

Replacing Rules under erstwhile regime

- Export of Services Rules, 2005
- Taxation of Services (Provided from outside India and received in India) Rules, 2006

Relevance of the Rules

- To determine the place where a service shall be deemed to be provided so as to ascertain the taxing jurisdiction for a service
- If a service does not fall in taxing jurisdiction, service is tax free
- A Step towards GST
To determine when services provided in

- Taxable territory: Taxable
- Non-taxable territory (except J&K): Non-taxable/exports
- Jammu & Kashmir: Non-taxable
- SEZ: Exempt
Snapshot

Generic Rule
- B2B transactions: Location of recipient
- B2C transactions: Location of provider

Specific Rules
- Performance based services
- Services relating to immovable property
- Services relating to event
- Banking, online, intermediary, transport hiring (up to 1 month) services
- Goods transportation services
- Passenger transportation services
- Services provided on board of conveyance

Other aspects
- Services provided at more than one location
- Services provided in non-taxable territory and service provider and recipient located in taxable territory
- Services falling under more than one rule
## Rule 3

<table>
<thead>
<tr>
<th>Related to</th>
<th>Place of provision of services as per the Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>All services</td>
<td>• Place of location of service receiver;</td>
</tr>
<tr>
<td></td>
<td>• where the location of service receiver not available, location of service provider (e.g. restaurant, palmist)</td>
</tr>
</tbody>
</table>

### Illustrative list of services where Rule 3 may apply (except where both the service provider and service receiver are located within the taxable territory)

<table>
<thead>
<tr>
<th>S. No</th>
<th>Description of service</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Consultancy services</td>
</tr>
<tr>
<td>2</td>
<td>Transaction / back office processing services</td>
</tr>
<tr>
<td>3</td>
<td>Services of marketing / sales promotion of goods</td>
</tr>
<tr>
<td>4</td>
<td>Manpower recruitment or supply services</td>
</tr>
<tr>
<td>5</td>
<td>Development of information technology software</td>
</tr>
<tr>
<td>6</td>
<td>Temporary transfer or permitting the use or enjoyment of IPR</td>
</tr>
</tbody>
</table>

Annexure 1
Rule 3 (contd.)

Issue 1 – Meaning of service recipient

A

Provision of service

B

Contractual arrangement

Pays consideration in Forex

India

Outside India

Service recipient – Contractual (C) or Beneficial (A)?
Rule 3 (contd.)

Issue 2 – Status of HO and its establishment

Clarification on harmonious interpretation of both these provisions

<table>
<thead>
<tr>
<th>Definition of ‘service’</th>
<th>POPS Rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>HO and BO are treated as distinct persons</td>
<td>Establishment of same person – establishment directly related treated as recipient</td>
</tr>
</tbody>
</table>

India

Outside India

Branch office (BO)

Head office (HO)

Provision of service

Payment for service

© 2012 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved.
Rule 4

<table>
<thead>
<tr>
<th>Related to</th>
<th>Place of provision of services as per the Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Performance based services</td>
<td>Location where services are actually performed</td>
</tr>
</tbody>
</table>

**Framework**

Following cases covered:
- **Type 1**: Services performed on goods made physically available by the recipient to service provider/person acting on his behalf—repair & maintenance, cargo handling, courier service etc.
- **Type 2**: Services provided in physical presence of the service recipient/person acting on his behalf—beauty treatment services, personal security services, health and fitness services, internet café services, photography services, classroom teaching etc.

**Proviso to the Rule**

Where 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.
Rule 4 (contd.)

Issue 1 – Where goods are merely inputs

Seeds

Performs research

A

Made available by B

India

Outside India

Provides research report and receives payment

B

Relevant POPS – Rule 3 or Rule 4?
Issue 2 – Goods made available by a person other than the contractual recipient

Service provider

Provides free maintenance services

Customer

Equipment supplier

Payment for maintenance services

India

Outside India

Equipment purchased with 1 year free maintenance

Relevant POPS – Rule 3 or Rule 4?
### Rule 5

<table>
<thead>
<tr>
<th>Related to</th>
<th>Place of provision of services as per the Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Immovable property</td>
<td>Place where <strong>immovable property is located</strong> or intended to be located</td>
</tr>
</tbody>
</table>

**Some examples**

- Services supplied in course of construction, reconstruction, alteration, repair or maintenance, painting or decorating etc of any building or any civil engineering work
- Renting of immovable property
- Services of real estate agents, auctioneers, architects and similar experts or professional people
- Property management services which may include rent collection, arranging repairs etc
Rule 5 (contd.)

Old regime | New Regime
---|---
Exports | Taxable

India

Outside India

Refinery

L&T Engineering

Florida Inc.

Provides designing/engineering services and receives consideration in Forex

Contractual arrangement to provide designing/engineering services
Rule 6

<table>
<thead>
<tr>
<th>Related to</th>
<th>Place of provision of services as per the Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Event</td>
<td>Place where <strong>event is actually held</strong></td>
</tr>
</tbody>
</table>

**Coverage**

**Services:**
- in relation to admission;
- by way of organizing cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar event;
- ancillary to admission of an event
**Rule 6 (contd.)**

**Prospective students**
- Attend road show
- Pays participation fee

**Road show in Delhi**
- Plans and organizes road show

**India**
- Organizer

**Outside India**
- Management school
  - Pays for planning and organizing

<table>
<thead>
<tr>
<th>Description</th>
<th>Old regime</th>
<th>New regime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participation fee to attend the road show</td>
<td>Not taxable</td>
<td>Taxable</td>
</tr>
<tr>
<td>Payment to organizer</td>
<td>Taxable (performance based)</td>
<td>Taxable (location of event)</td>
</tr>
</tbody>
</table>
# Rule 7

<table>
<thead>
<tr>
<th>Related to</th>
<th>Place of provision of services as per the Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Services provided at more than one location (overrides Rules 4, 5 &amp; 6)</td>
<td>Location in the <strong>taxable territory where the greatest proportion of the service is provided</strong></td>
</tr>
</tbody>
</table>

**Proportion of maintenance services provided at various locations by person located in India to person located outside India**

- **55%** Outside India
- **25%** Maharashtra
- **20%** Karnataka

<table>
<thead>
<tr>
<th>Old Regime</th>
<th>New Regime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Export</td>
<td>Taxable</td>
</tr>
</tbody>
</table>
Rule 8

<table>
<thead>
<tr>
<th>Related to</th>
<th>Place of provision of services as per the Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Situations where place of provision of service outside the taxable territory, however service provider and recipient located in taxable territory</td>
<td>Place of service receiver</td>
</tr>
</tbody>
</table>

**Contractual arrangement**

- **A**: Provides services in relation to setting up of laboratory
- **B**: Laboratory of B provides services in relation to setting up of laboratory

<table>
<thead>
<tr>
<th>Old Regime</th>
<th>New Regime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-taxable</td>
<td>Taxable</td>
</tr>
</tbody>
</table>
## Rule 9

<table>
<thead>
<tr>
<th>Related to</th>
<th>Place of provision of services as per the Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specified services such as: • Intermediary services • Online information &amp; database access or retrieval services • Banking • Hiring of means of transport (up to 1 month)</td>
<td>Location of service provider</td>
</tr>
</tbody>
</table>
Intermediary services

**Meaning**

- A broker, an agent or any other person who arranges or facilitates provision of services between two or more persons
- Involved with two or more supplies at any one time:
  - supply between the principal and the third party
  - supply of his own service (agency service) to his principal

**Few examples**

- Travel Agent
- Tour Operator
- Stock Broker
- Commission Agent
- Recovery Agent?

**Scenarios**

<table>
<thead>
<tr>
<th>Scenarios</th>
<th>Whether an intermediary</th>
</tr>
</thead>
<tbody>
<tr>
<td>A commission agent (buying or selling agent) in respect of services</td>
<td>Yes</td>
</tr>
<tr>
<td>A commission agent (buying or selling agent) in respect of goods</td>
<td>No</td>
</tr>
</tbody>
</table>
Intermediary services (contd.)

Issue 1 – Intermediary for goods & services – Bundled services

Customer

Facilitates sale of printers and after sales support related thereto

Agent

India

Sells printers and provides maintenance services

Outside India

India

Raises invoice on cost plus mark-up basis

A

Whether agent providing bundled services qualify as ‘intermediary’ under Rule 9?
Intermediary services (contd.)

Issue 2 – Services of sub-contractor

ABC

Markets and facilitates insurance services

Sub contracts marketing and facilitation

XYZ

Engages XYZ to market and facilitate insurance services

India

Outside India

Customer

Provides insurance

India

Insurance Company

Whether ‘intermediary’ definition applies to ABC?
Online information & database access or retrieval services

<table>
<thead>
<tr>
<th>Old regime</th>
<th>New Regime</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxable under reverse charge mechanism</td>
<td>Not taxable</td>
</tr>
</tbody>
</table>

India

Pays subscription charges to access the website

Outside India

Reuters
## Rule 10

### Related to
- Transportation of goods
  - By road i.e. GTA
  - By other modes except mail or courier

### Place of provision of services as per the Rule
- Location of person liable to pay tax
- Destination of goods

### Case study - GTA

<table>
<thead>
<tr>
<th>S. No</th>
<th>Location of service provider - GTA</th>
<th>Location of service receiver – Person liable to pay freight</th>
<th>Destination of goods</th>
<th>POPS</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>J &amp; K</td>
<td>Delhi</td>
<td>Mumbai</td>
<td>Delhi</td>
</tr>
<tr>
<td>B</td>
<td>J &amp; K</td>
<td>Delhi</td>
<td>J &amp; K</td>
<td>Delhi</td>
</tr>
<tr>
<td>D</td>
<td>Delhi</td>
<td>Mumbai</td>
<td>J &amp; K</td>
<td>Mumbai</td>
</tr>
<tr>
<td>E</td>
<td>J &amp; K</td>
<td>J &amp; K</td>
<td>Delhi</td>
<td>J&amp;K (not taxable)</td>
</tr>
<tr>
<td>F</td>
<td>Delhi</td>
<td>J &amp; K</td>
<td>J &amp; K</td>
<td>Delhi</td>
</tr>
</tbody>
</table>
### Rule 10 (contd.)

<table>
<thead>
<tr>
<th>Scenarios</th>
<th>Ocean/ Air</th>
<th>Rail</th>
<th>GTA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transportation of goods from India to outside India</td>
<td>No (exports)</td>
<td>No (exports)</td>
<td>Yes</td>
</tr>
<tr>
<td>No (as covered under the negative list)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transportation of goods from outside India to India</td>
<td></td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Transportation of goods within India (From J&amp;K to a taxable territory)</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>Transportation of goods within India (from taxable territory to J&amp;K)</td>
<td>No, since the destination of goods shall be a non taxable territory</td>
<td>No, since the destination of goods shall be a non taxable territory</td>
<td></td>
</tr>
<tr>
<td>Transportation of goods within India (where movement of goods is within J&amp;K)</td>
<td>No</td>
<td>No</td>
<td>No, Provided that both service recipient and GTA are located in J&amp;K</td>
</tr>
<tr>
<td>Rule</td>
<td>Related to</td>
<td>Place of provision of services as per the Rule</td>
<td></td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Rule 11</td>
<td>Passenger transportation services</td>
<td>Place where the passenger embarks on the conveyance for a continuous journey</td>
<td></td>
</tr>
<tr>
<td>Rule 12</td>
<td>Services provided on board a conveyance</td>
<td>First scheduled point of departure of that conveyance of a journey</td>
<td></td>
</tr>
<tr>
<td>Rule 14</td>
<td>Where a service falls under more than one rule then the rule which appears later shall be applicable</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Way forward

• Review business transactions
  ✓ undertaken outside India
  ✓ with establishments located outside India
  ✓ in the State of J&K
  ✓ with HO or BO
to determine place of provision

• Make necessary changes in contract and other documentation

• Identify points for clarification/representation
Thank You

Information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of particular situation.

© 2012 KPMG, an Indian Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved.

The KPMG name, logo and "cutting through complexity" are registered trademarks or trademarks of KPMG International Cooperative (“KPMG International”).

Bangalore
Solitaire, 139/26, 3rd Floor, Inner Ring Road, Koramangala, Bangalore 560071
Tel +91 80 3980 6000
Fax +91 80 3980 6999

Kochi
4/F, Palal Towers, M. G. Road, Ravipuram, Kochi 682016
Tel +91 (484) 302 7000
Fax +91 (484) 302 7001

Chandigarh
SCO 22-23 1st floor. Sector 8 C Madhya Marg Chandigarh 160019
Tel : 0172 3935778
Fax 0172 3935780

Kolkata
Infinity Benchmark, Plot No.G-1, 10th floor, Block - EP & GP, Sector - V, Salt Lake City Kolkata 700091
Tel: +91 33 44034066
Fax: +91 33 4403 4199

Chennai
No. 10, Mahatma Gandhi Road, Nungambakam, Chennai 600 034
Tel +91 40 3914 5000
Fax +91 40 3914 5999

Mumbai
Lodha Excelus, 1st Floor, Apollo Mills Compound, N.M. Joshi Marg, Mahalakshmi, Mumbai 400 011
Tel +9122 39896000
Fax +9122 39836000

Delhi
Building No.10, Tower B, 8th Floor, DLF Cyber City, Phase – II Gurgaon 122002 Haryana
Tel +91 124 3074000
Fax +91 124 2549101

Pune
703, Godrej Castlemaine Bund Garden Pune 411 001
Tel: +91 20 3058 5764/ 65
Fax: +91 20 30585775

Hyderabad
8-2-618/2 Reliance Humsafar, 4th Floor Road No. 11, Banjara Hills Hyderabad 500 034
Tel +91 40 6630 5000
Fax +91 40 6630 5299
Key terms

- In case of only one service tax registration (either single premise or centralized), premises where such registration has been obtained
- In other cases:
  - Location of **business establishment**
  - Where services are provided/used from/at a place other than business establishment, **fixed establishment** where such services are provided or received
  - Where services are provided/used from/at more than one establishment, establishment most directly concerned with the provision or use of the service
  - In the absence of such places, the **usual place of residence**

- Place where essential decisions concerning the general management of the business are adopted and where the functions of its central administration are carried out
  - For instance, head office; factory; workshop; shop/retail outlet
  - There is only one **business establishment** that a service provider or receiver can have

- Place (other than the business establishment) which has the permanent presence of human and technical resources to provide/receive a service
  - Temporary presence of staff by way of a short visit at a place cannot be called a fixed establishment
Key terms (contd.)

- In case of a body corporate - the place where it is incorporated or otherwise legally constituted
- In case of individual – the place (country, state etc) where the individual spends most of his time for the period in question, such as, the place where the individual has set up his home, or where he lives with his family and is in full time employment