

Time of Supply of Services - Present Vs GST

(Updated based on revised model GST law)

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In the previous article, we discussed about various events which determine the point at which goods are deemed to be supplied for the purpose of GST levy. Now we move on to time of supply of services.

Time of supply of services means the time at which any services are deemed to be provided from a taxable person to another taxable /non – taxable person in course or furtherance of business. The liability to pay GST on the services shall arise at the time of supply as determined in terms of provisions of section 13 of the GST Act.

Presently, provisions of the Point of Taxation Rules 2011 are applied to determine the point at which services are subject to payment of service tax. Time of supply of services set out in proposed GST Act is more or less similar to that of existing Point of Taxation Rules.

The time of supply of Services shall be the earliest of the following dates, namely –

- The date of issue of invoice by supplier or the last date on which such supplier is required to issue invoice in terms of section 28 (Provisions on tax invoice).
- The date on which the supplier receives the payment.

Section 28 provides that a registered taxable person supplying taxable services shall issue a tax invoice before or after the provision of service but within the prescribed period.

It is expected that a certain time period would be prescribed by way of rules within which invoice for supply of services must be generated ('Prescribed Period').

Time of supply of service could be better understood by following example:

Situation	Date of completion of service	Date of invoice	Date of payment	Time of supply of service
Invoice issued within prescribed period (Say	15.7.2017	19.7.2017	29.07.2017	19.07.2017

30 days) of completion of service				
Invoice issued after the Prescribed period (Say 30 days) of completion of service	26.7.2017	26.12.2017	18.08.2017	18.08.2017
Invoice issued after the Prescribed period (say 30 days) of completion of service	05.8.2017	05.10.2017	30.09.2017	05.09.2017

It is further provided that, the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment. This seems to go against spirit of levy which is attracted on provision or supply of services. The date of receipt of payment shall be the date on which the payment is entered in the supplier's books of accounts or the date on which the payment is credited to his bank account, whichever is earlier.

In case of continuous supply of services, say annual maintenance contract services, criteria to determine the time of supply shall remain same whereas, -

- Where the due date of payment is ascertainable from the contract, the invoice shall be issued before or the payment is liable to be made by the service receiver, whether or not any payment has been received by the supplier of service;
- Where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or after each time when the supplier of service receives the payment, or a period prescribed in this behalf, whichever is earlier;
- Where the payment is linked to the completion of an event, the invoice shall be issued before or after the time of completion of that event subject to period prescribed in this behalf;

'Continuous supply of service' is defined in model GST law which means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations. Further Central/State Government may specify certain services to be deemed as continuous supply of services.

Example: a) Where the due date of monthly payment towards renting of factory building is fixed to be 5th of each month in agreement: The date on which the payment is liable to be made by the service receiver i.e 5th of succeeding month is treated as due date for issue of invoice and Time of supply shall be determined accordingly.

b) Where the due date of payment is not mentioned in renting agreement: For July 2017, the payment received on 15th August 2017. Due date to issue invoice would be 15th August and Time of supply of shall be determined accordingly.

c) When payment linked to completion of each floor of the commercial building in case of construction services, the due date to issue invoice would be the date of completion of first floor and time of supply shall be construed accordingly.

In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when such supply ceases, to the extent of supply effected before such cessation.

In case of supplies in respect of which tax is paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely-

- The date on which payment is made,
- The date immediately following 60 days from the date of issue of invoice by the supplier.

Where it is not possible to determine time of supply as above, the date of entry in the books of account of the recipient of supply would be the time of supply.

Date on which payment is made shall be earliest of:

- the date on which the payment is entered in the books of accounts of the recipient
- the date on which the payment is debited in his bank account

In case of supply of vouchers, the date of issue of the voucher would be the time of supply when such supply is identifiable at that point. In all other cases, the date of redemption of voucher would be the time of supply.

If the time of supply of service cannot be determined during the normal course of business then time of supply will be determined as follows:

- a) in a case where a periodical return has to be filed, be the date on which such returns to be filed; or
- b) in any other case, be the date on which the CGST/SGST is paid.

The above stated residual provision is not practical as to determine either of the above criteria one shall first identify the time of supply based on earlier provisions.

Sec 14 provides for mechanism to arrive time of supply in cases where there is a change in the effective rate of tax in respect of services. These provisions are taken from the existing point of taxation rules.

When the taxable service has been provided before the change in effective rate of tax, the time of supply would be determined as follows:

- (a). Where the invoice for the same has been issued and the payment is also received after the change in effective rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier;
- (b). Where the invoice has been issued prior to change in effective rate of tax but the payment is received after the change in effective rate of tax, the time of supply shall be the date of issue of invoice;
- (c). Where the payment is received before the change in effective rate of tax, but the invoice for the same has been issued after the change in effective rate of tax, the time of supply shall be the date of receipt of payment;

When the taxable service has been provided after the change in effective rate of tax, time of supply of services would be determined as follows:

- (a). Where the payment is received after the change in effective rate of tax but the invoice has been issued prior to the change in effective rate of tax, the time of supply shall be the date of receipt of payment;
- (b). Where the invoice has been issued and the payment is received before the change in effective rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier;

- (c). Where the invoice has been issued after the change in effective rate of tax but the payment is received before the change in effective rate of tax, the time of supply shall be the date of issue of invoice.

In simple terms the rate applicable in respect of supply of service would be the rate which is prevalent when two out of the following three events has taken place:

- a. Date of invoice or
- b. Date of provision of service or
- c. Date of receipt of payment.

Discussion on Revenue recognition Principle:

Accounting Standard on revenue recognition (AS-9) provides fair idea on when to recognize the revenue in the books of accounts. Though the revenue recognition is more relevant from accounting and income tax aspects, we could relate the same to time of supply.

AS- 9 provides for recognition of revenue on rendering of services in either of the two methods namely proportionate completion method and completed service method. Even under GST, revenue recognition principle would hold good to certain extent. Though there are multiple events prescribed to determine the time of supply of services, date of completion of service and date of various milestones prescribed under a contract would certainly influence the time of supply. The understanding of the difference between AS-9 and Time of supply would help the assessee in maintaining reconciliation between books and statutory returns.

Important decisions under Indirect tax laws:

- CCE Vs Vazir Sultan Tobacco Co. Ltd [1996 (83) ELT 3 (SC): There cannot be any tax liability if the taxable event (provision of service) happened before the introduction of levy. *Decision could be relied even in GST regime as regards to tax liability on the supplies taxed for the first time/newly introduced taxes.*
- General Motors (I) Pvt Ltd Vs CCE Pune [2015 (40)STR 962 (Tri): In case of associated enterprise there is no difference between provisional entry & Final entry and service tax became due in accordance with the date of provisional entry made by time in their books of accounts. *Specific provision in this regard to determine time of supply in case of associated enterprises is expected in GST rules.*

- Reliance Infratel Ltd Vs CCE [2015-TIOL-2160-CESTAT-MUM]: Amount of lease rent equalisation shown in Balance sheet is not an 'income' for the purpose of computing income tax resultantly; it is also not a 'payment' actually received or receivable. *Though income tax act cannot be relied for each case to determine the consideration/payment, wherever there is lack of clarity in GST law, other taxation laws shall come handy.*

- Larsen and Turbo Ltd Vs CST [2015-TIOL-2921-CESTAT-Del]: Service tax was payable as and when mobilisation advance was received with reference to the mobilisation of advance whereas contrarily held in case of Thermax Instrumentation Ltd Vs CCE [2015-TIOL-2736-CESTAT-Mum]: Mobilization advance is backed up by bank guarantee to be treated as loan/deposit and not consideration. *In paper writer's view, any refundable advances shall be treated as loan/deposit and not consideration as far as they are not adjusted towards payables from the recipient of service. Specific clause in this regard awaited in GST law.*

Conclusion

The provisions provided in Section 13 and 14 of the Act are more or less inspired from the present point of taxation rules. Hence, various currently existing issues like time limit for issue of invoices, question of liability on debtors in case of newly introduced taxes etc would continue to exist in GST regime unless Government address these issues either proactively or based on representations from various stakeholders of GST.

We value your feedback which may be send to

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