

## Place of Supply Vs Place of Provision of Service

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### **Background**

Section 66B of finance Act provides for levy of service tax on value of all services provided or agreed to be provided in the taxable territory by one person to another unless they are covered in negative list.

Services being intangible, it would have been difficult to identify when services are said to be provided in taxable territory especially in case of transactions with foreign parties say export or import of services. The Place of Provision of Services Rules (POPS) 2012, has been introduced post negative list to determine the location of services provided in case of various categories of services with certain deeming fictions.

Similarly, under GST regime, chapter IV of IGST Act provides for provisions relating to Place of Supply (POS) of goods and /or services where in Sec 9 and 10 specifically address the provisions for place of supply of services.

Internationally the place of supply for a B2B transaction is normally the place of recipient. This is to ensure that tax cascading does not happen. Also that taxes do not stick to the export of services making such service uncompetitive.

In India the entries which are similar to service tax in GST would have had a number of clarifications and case law development which would be useful as reference material. Where the definition is not similar, one may tend to ignore them.

### **General Rule:**

Service tax: Unless anything specifically provided in the rules, the location of service recipient would be considered as place of provision of such services. However, where the recipient location is unavailable, then the place of provisions of services would be the location of service provider.

GST: The principle is kept similar to that of present service tax provisions where in location of recipient would be the location of service in default cases generally in B2B transactions. (i.e. the cases where no specific provision is provided under Model GST law to determine POS). However, following differences could be observed:

- a) Where both supplier and recipient are located in India, the place of supply of service would be:

- The location of registered person when the service supplied to persons registered under the GST. *Ex: Tax Consultancy services by a CA to a company registered under GST,*
  - The location of recipient of supply where supply is made to un-registered persons and the address exists on records of the supplier of service. *Ex: Renting of furniture services provided to individuals Reg. under GST,*
  - The location of supplier of service in all other cases (i.e. in case where the supply made to persons not registered under GST and also their address does not exist on the records) *Ex: mobile repair services provided to individuals.*
- b) Where either of the supplier or recipient located outside India, the place of supply of services would be:
- The location of recipient of services. *Ex: Management consultancy services provided by a person located in India to a person located in US.*
  - In cases where recipient location is not available in the ordinary course of business, then the location of the supplier. *Ex: Tour operator services provided to a foreigner from India, the POPS would be India.*

**Services based on performance:**

Service tax: In case of following services, the place of provision of service would be deemed to be the location where such services are performed/held:

- a) Services provided in respect of goods that are required to be made physically available to the provider of services in order to provide such service.
- b) Services provided to individuals which requires the physical presence (of recipient /on behalf) for provision of services.

GST: The provision is similar in GST where in it further covers below specific list of services where the POS would be the location of performance.

- a) Restaurant and catering services, personal grooming, fitness, beauty treatment, health services including cosmetic and plastic surgery.
- b) Training and appraisal to a person other than a registered person.

Where both supplier and recipient are in India, the services provided in respect of goods that shall be physically made available to service provider (Ex: Motor car repair services), are not covered in GST under performance based services. Therefore, the place of supply in case of such services would be under general rule as discussed earlier.

However, where either of the supplier or recipient located outside India, the place of supply of services would be same as in case of present service tax provisions for performance based services.

### **Services relating to immovable property:**

Service tax: In case of services provided directly in relation to an immovable property, the POPS shall be the place where the immovable property is located or intended to be located. The services provided by experts, real estate agents, hotel accommodation services, grant of rights to use immovable property, services for carrying out construction work, services of architects and interior decorators, etc. are covered in this provision.

GST: In addition to the services covered under existing service tax provisions, GST Model law provides that the location of immovable property as POS in case of accommodation in any immovable property/boat/vessel for organizing any marriage or reception etc., official, social, cultural, religious or business function including services provided in relation to such function at such property.

*Ex: Catering services provided along with letting out a banquet hall shall also be considered as provided in the location of such banquet hall.*

Further, in case of all the services ancillary to the above listed services relating to immovable property/boat/vessel, location of such immovable property/boat/vessel would be the POS.

However, when the immovable property or boat or vessel is located outside India, the place of supply shall be the location of the recipient. This proviso expands the levy to even properties located outside India when both recipient and provider of service are located in India.

In case the immovable property is located in more than one state, the POS would be based on proportionate value as per terms of the contract.

### **Services relating to events:**

Service tax: In case of services provided by way of admission to/ organising of cultural, artistic, sporting, scientific, educational or entertainment event or a celebration, conference, fair, exhibition or similar event, and in case of services to ancillary to such admission, the POPS would be where the event is actually held.

GST: Very similar to that of current ST provisions for the service by way of admission in to such events in case of B2C transactions. Whereas in case of organization of an event and its ancillary services, the POS would be location of recipient when such services are provided to persons registered under GST. If not, the place where events are actually held shall be the POS.

*Ex: Organising a seminar on GST for a company who is registered under GST, the POS would be the location of company and not the place where seminar is held.*

In case if the event is held outside India, the POS shall be the location of recipient if neither of provider nor recipient are located outside India.

In case the event is held in more than one state, the POS would be based on proportionate value as per terms of the contract.

**Services by way of transportation of goods:**

Service tax: Place of destination of goods shall be the POPS. Mail and courier services are excluded from this limb. Further, in case of goods transportation agency services, the location of person liable to pay tax would be the place of provision of service.

GST: The POS provision for transportation of goods shall include even mail and courier services and there is no separate provision for GTA provided in Sec 13.

When services by way transportation of goods provided to a person registered under GST, then the location of such recipient shall be the place of supply. If such services are provided to unregistered person, then the POS would be the place where goods are handed over for transportation.

*Ex: Courier services provided by Blue Dart to Infosys, the location of Infosys would be the POS. If same is provided to a person not registered under GST, then the POS shall be the location where goods are handed over to blue dart.*

If the same service is provided to individual who is not registered, then the location where the goods are given to blue dart by such individual would be the POS.

Further, when either a supplier or recipient is located outside India, the Place of supply would be the place of destination of goods.

**Services by way of transportation of passengers:**

Service tax: The place where the passenger boards on the conveyance for a continuous journey would be the POPS.

GST: under GST regime also the place of supply would be the boarding point of passenger who is not registered under GST. As far as service provided to registered persons are concerned the POS would be the location of such recipient.

Further, where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in the manner specified in general rule.

*Ex: Monthly pass issued by a travel agency with no restriction on boarding point in the city.*

**Services provided on board a conveyance:**

Service tax: In case of services provided on board a conveyance during passenger transport operation, the place of provision of services shall be the location of the first scheduled point of departure of that conveyance for the journey.

GST: The place of supply of services on board a conveyance such as vessel, aircraft, train or motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

*Ex: Foods/movie /games services provided on Bangalore – Mumbai - Bangkok flight, the POS would be Bangalore i.e. services deemed to be provided in taxable territory.*

**Telecommunication services:**

Service tax: The place of provision is not specifically provided for the telecommunication services in POPS Rules and hence the default rule being location of recipient of service would be the Place of provision.

GST: The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall be as follows:

S. No	Nature of telecommunication Service	Place of Supply
1	Services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna.	location where the telecommunication line, leased circuit or cable connection or dish antenna is installed.
2	Mobile connection for telecommunication and internet services provided on post-paid basis	the location of billing address of the recipient of services on record of the supplier of services
3	mobile connection for telecommunication, internet service and direct to home television services are provided on prepayment through a voucher or any other means	<p>i) Through selling agent or a re-seller or a distributor of SIM card or re-charge voucher - <u>address of the selling agent as per the record of the supplier</u></p> <p>ii) by any person to the final subscriber - <u>the location where such pre-payment is received or such vouchers are sold</u></p> <p><u>Note</u>: If such pre-paid service is availed through electronic mode, POS would be the location of the recipient as per the supplier's records.</p>
4	in other cases not covered in (2) and (3) above	Address of the recipient as per records of the supplier of the service

However, where address of the recipient is not available in the supplier record, the place of supply shall be the supplier's location. Further, where the leased circuit is installed in more than one State, the POS would be based on proportionate value arrived as per contract terms.

**Banking and other financial services:**

Service tax: In case of services provided banking company, or a financial institute, or a NBFC, to its account holders, the POPS would be the location of service provider.

GST: In case of banking and other financial services including stock broking services to any person, POS shall be the location of the recipient (need not be account holder) of services on the records of the supplier of services. However, if the location of the recipient is not on the records, the place of supply shall be location of the supplier.

*Ex: merchant banking services, financial leasing services, net banking services etc.*

**Online information and database access or retrieval services:**

Service tax: Online information and database access or retrieval services were initially covered under Rule 9 where in the location of service provider be the Place of provision of service. The Rules were amended w.e.f 01.12.2016 to exclude such services from rule 9 there by making the general rule being the location of service recipient be the POPS.

GST: No specific provision as far as both supplier and recipient are located in India and hence, general provision would be applicable.

When either of the supplier or recipient is located outside India, the place of supply would be the location of service recipient. Further deeming fiction is inserted to determine the location of service recipient in order to expand the scope of GST.

*Ex: Subscriptions to online books/journals, download of digital content etc.*

**Insurance services:**

Service tax: No specific rule for insurance services – General rule being the location of service receiver.

**GST:** When the insurance services are provided to registered person, the POS would be the location of such registered person, or else, the location of recipient as per the supplier's records would be the place of supply.

**Advertisement services to Govt.:**

Service tax: No specific rule for insurance services – General rule being the location of service receiver.

GST: In case of advertisement services to the Central Govt, a State Govt, a statutory body or a local authority meant for identifiable states, the place of supply of shall be taken as located in each of such States on proportionate basis in terms of contract.

**Order of application of rules:**

The Place of provision of service rules provides order of application of rules when a service could be fit into more than one rule. However, the place of supply provisions under GST does not provide any such methodology which could lead to different interpretation by industry and departments in their own interest.

**Miscellaneous provisions where either of the supplier or recipient is located outside India:**

- a) In case services based on performance, immovable property or the services relating to events, is supplied at more than one location, including a location in taxable territory, its place of supply shall be the location in the taxable territory where the greatest proportion of the service is provided.
- b) Further, when the above-mentioned services are provided in more than one state, the place of supply shall be in proportion to the value of services provided as per the terms of the contract.
- c) In case of services provided by financial institutions, intermediary services and services consisting of hiring of means of transports up to a period of one month, the place of supply would be the location of supplier of service.
- d) The Central Government shall have the power to notify any description of service in which the place of supply shall be the place of effective use and enjoyment of a service in order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules.

**Location of service provider and recipient:**

The definition of location of recipient of service and location of supplier of service provided under draft GST law is similar to that of existing service tax provisions. i.e. when the registration is obtained, then the location of such registered premise or else the fixed establishment. In absence of those, the location of usual place of residence shall be considered as location of service provider/ receiver as the case may be.

**Conclusion:**

The scope and applicability of any law depends majorly on its charging section also called as levy. Though the other provisions set out in the act cannot override the charging section, but certainly could elaborate the meaning and scope of levy.

Similarly in case of GST, though the levy is on supply, the place of supply provisions would influence the levy to a larger extent especially in case of import and export of goods and/or services. Even in case of domestic transactions, the POS would be the backbone while determining whether supply is an interstate or intra state supply. Hence, logical interpretation, contracts which are clear on the services being provided and timely representations to Govt in case of unfairness would be critical.

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