

Understanding Model GST Law - Place of supply of services- Part 11

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This is the eleventh in the series of articles to understand the GST Model Law. The purpose is mainly to create awareness and enable one to look at the unintended impact on his her sector. It would aid in making representations to make this law tax payer friendly, simple and transparent.

The GST Model Law has been put in public domain to get the feedback for amendments. This law requires in the opinion of the paper writers amendment to see that all the best practices across the globe are integrated and double taxation avoided as under GST no treaties are in place. .

Background

Under the existing service tax law, service tax is applicable on taxable services provided in taxable territory of India. The determination of place of provision of service, whether within or outside India, is done by applying Provision of Services Rules (POPS), 2012 at present

Under GST, tax would be levied based on services based on place where the supply of service takes place which would generally be as per the destination based principle. The tax would accrue to the State of destination.

The place of supply of service is outside India, it would not be liable to GST. Such service could said to be an export where the further conditions are complied.

In this backdrop, the paper writers have examined the provisions relating to the place of supply of services under model GST law.

Definition of terms

First we need to understand the definitions of the terms location of the supplier and location of the recipient before we proceed to understand the place of supply of services

Section 2(64) “Location of recipient of service” means

- (i) where a supply is received at a registered place of business, **the location of such place of business.**
- (ii) where a supply is received at a place other than the registered place of business, that is a fixed establishment elsewhere, **the location of such fixed establishment.**
- (iii) where a supply is received at more than one establishment, whether the place of business or fixed establishment, **the location of the establishment most directly concerned with the receipt of the supply and**

(iv) in absence of such places, **the location of the usual place of residence of the recipient.**

Section 2(65) “Location of supplier of service” means:

(i) where a supply is made from a place of business for which registration has been obtained, **the location of such place of business.**

(ii) where a supply is made from a place other than the registered place of business namely a fixed establishment elsewhere, **the location of such fixed establishment;**

(iii) where a supply is made from more than one establishment, whether the place of business or fixed establishment, **the location of the establishment most directly concerned with the provision of the supply;** and

(iv) in absence of such places, **the location of the usual place of residence of the supplier;**

Section 2(46) “Fixed establishment” means a place (other than the place of business) which is characterized by a **sufficient degree of permanence** and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs;

Section 2(75) “Place of business” includes (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, provides or receives goods and/or services; or (b) a place where a taxable person maintains his books of account; or (c) a place where a taxable person is engaged in business through an agent;

The Place of supply of services – Section 6 of IGST Act, 2016

The Place of supply of service in relation to:

(i) **Services in relation to immovable property**

a. including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work, shall be **the location at which the immovable property is located.**

***Example:** Mr. A of Chennai rents out a building in Chandigarh (India). The place of supply of service is Chandigarh.*

- b. Lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, and including a house boat or any other vessel or
- c. Accommodation in any immovable property for organizing any marriage or reception or matters related therewith, official, social, cultural, religious or business function including services provided in relation to such function at such property.
- d. Services ancillary to above such as the maintenance for building.

Place of supply of above services is **location at which the immovable property, boat or vessel is located or intended to be located**. This is comparable to Rule 5 of the POPS.

Example: *Mr. B, director of PQ Ltd of India goes for a business tour to London and stayed in hotel there. As the hotel is located in London, the place of supply of service shall be London i.e. in non-taxable territory.*

- (ii) Restaurant and catering, personal grooming, fitness, beauty treatment, health services including cosmetic and plastic surgery shall be the **location where the services are actually performed**. This is comparable to Rule 4 b of the POPS.

Example: *Ms. A of Mumbai had a plastic surgery in Bangalore. The place of supply of service shall be the location where the services are performed i.e. Bangalore.*

- (iii) Services in relation to training and performance appraisal shall be –
in case of registered person – **location of such person**.

other than registered person - **location where the services are actually performed**.

Example:

(i) *ABC Ltd conducts a training to the employees of PQR Ltd, a company registered under GST, in Mumbai. The place of supply of service shall be the location of PQR Ltd, in Mumbai.*

(ii) *ABC Ltd conducts a training program in Chennai to Mr.B, a resident of Bangalore who is not registered under GST. The place of supply of service shall be the location where the services are actually performed i.e. Chennai.*

- (iv) Admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park or any other place and services ancillary thereto shall be the **place**

where the event is held or where park or other place is located. This is similar to Rule 6 of POPS.

Example: *Entry to film award function in Dubai. The place of supply of service is the location of the event held i.e. Dubai.*

- (v) Services provided by way of organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of service in relation to a conference, fair, exhibition, celebration or similar events and services ancillary to organization of above events or services or assigning of sponsorship thereto shall be –
- When provided to a registered person – **location of such person.** This is to enable credit for services in furtherance of business to be available to the receiver.
- When provided to other than registered person - **location where the events are actually held.**

Example:

- (i) *Services provided by an event organizer of Mumbai to company **registered under GST**, located in Bangalore for holding the beauty pageant. The place of supply of service is the location of the registered person i.e. Bangalore.*
- (ii) *Continuing the above example, in case the event organizer provides the services to Ms X of Bangalore **who is not registered under GST**, for holding her wedding celebration in Kolkata, the place of supply of service shall be the location where the service is actually performed i.e. Kolkata.*

- (vi) Transportation of goods including mail or courier shall be –

When provided to a registered person – **location of such person.** This is to enable credit for services in furtherance of business to be available to the receiver.

When provided to other than registered person - **location at which the goods are handed over for their transportation.**

Example:

- (i) *A company located in Delhi **which is registered under GST**, engages a courier agency for transportation of the company documents to ABC Ltd located in Bangalore. The place of supply of service is the location of the registered person i.e. Delhi.*
- (ii) *A consignment of garments should be delivered by Mr.A of Bangalore **who is not registered under GST** to Mr.B residing in Gurgaon. Mr.A hands over the*

consignment to a courier agency in Bangalore. The place of supply of service is the location at which the goods are handed over for their transportation i.e. Bangalore.

(vii) Passenger transportation service shall be –

When provided to registered person – **location of such person.** This is to enable credit for services in furtherance of business to be available to the receiver.

When provided to other than registered person -**place where the passenger embarks on the conveyance for the continuous journey.**

other than above – **as specified.**

“Continuous journey” means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stop over between any of the legs of the journey for which one or more separate tickets or invoices are issued;

Example:

(i) *A passenger Mr ABC residing in Delhi, **registered under GST**, booked an air ticket from Mumbai to Kolkata and from Kolkata to Mumbai. In this case, a single ticket has been issued for the entire journey. The place of supply of service shall be the location of the registered person, i.e. Delhi.*

(ii) *A passenger residing in Delhi, **not registered under GST**, booked an air ticket from Mumbai to Kolkata and from Kolkata to Mumbai. In this case, a single ticket has been issued for the entire journey. The place of embarkation where the continuous journey begins is Mumbai, hence the place of supply of service shall be place where the passenger embarks on the conveyance for the continuous journey. i.e. Mumbai.*

(viii) Service 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.** This is similar to Rule 11 of the POPS.

Example: *A caterer is providing catering services on-board a train during Mumbai-Goa-Mangalore which is not included in fare charges. The place of supply of service shall be the location of the first scheduled point of departure of that conveyance for the journey i.e., Mumbai.*

(ix) Telecommunication services including data transfer, broadcasting, cable and direct to home television services:

- Services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna shall be the **location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of service.**
- Mobile connection for telecommunication and internet services provided on post-paid basis shall be **the location of billing address of the service receiver on record of the service provider.**
- Mobile connection for telecommunication and internet services are provided on pre-payment through a voucher or any other means shall be the **location where such pre payment is received or such vouchers are sold.**
- If prepaid service is availed or recharge made through **internet banking or other e-payment – the location of the service recipient as per the record of the service provider.**

(x) Banking or other financial services including stock broking shall be the **location of the service receiver on the record of the service provider.** This could be to enable credit for services in furtherance of business to be available to the receiver.

Where the service is not linked to the account of the recipient of services, the place of supply **shall be location of the supplier of services.**

***Example:** Mr.S has an SB account in State Bank of India in Mumbai. During his visit to Kolkata, banking services for issue of DD were availed from SBI Kolkata Branch. The place of supply of service shall be location of the supplier of service i.e. Kolkata.*

(xi) Insurance services shall be -

In case of registered person – **location of such person.** This is to enable credit for services in furtherance of business to be available to the receiver.

other than registered person - **location of the service receiver available on the records of the service provider**

Example:

- (i) *Mr.A residing in Kolkata, **registered under GST**, avails medical insurance services from an insurance company having its head office in Bangalore. The place of supply of service is the location of the registered person i.e. Kolkata.*

(ii) Mr.K residing in Jaipur, **not registered under GST**, avails insurance services from an insurance company having its head office in Bangalore. The place of supply of service is the location of the service receiver available on the records of the service provider i.e. Jaipur.

(xii) Advertisement services to the Central Government, State Government, a statutory body or a local authority meant for identifiable states shall be **each such State**.

Example: ABC Ltd, an advertising agency provides advertisement services to Karnataka Government tourism dept, for advertising in Bangalore. The place of supply of service shall be Karnataka state.

(xiii) Services not covered above shall be –

When provided to registered person – **location of such person**. This is to enable credit for services in furtherance of business to be available to the receiver.

When provided to other than registered person -**location of the service receiver available on the records of the service provider or location of the service provider**.

Example:

(i) Market research service provided to ABC Ltd, Mumbai, **a company registered under GST**. The place of supply of service shall be the location of the registered person i.e. Mumbai.

(ii) Market research service provided by PQR Ltd of Chennai to Mr.A, **a non-registered person** residing in Mumbai but having permanent residence at Bangalore, the address of which is available on records of PQR Ltd, the place of supply of service shall be the location of the service receiver available on the records of the service provider ie Chennai or location of the service provider i.e. Bangalore.

The present POPS Rules for easy reference applicable in the reverse order is as under:

- **Rule 12:** Services provided on a board a conveyance- First scheduled point of departure of that conveyance for the journey.
- **Rule 11:** Passenger Transport Services- Place where the passenger embarks on the conveyance for a continuous journey.

- **Rule 10:** Goods Transport Services- Place of destination of goods. However, for goods transport agency, the place of provision of service shall be the location of the person liable to pay tax.
- **Rule 9:** For Specified services- Services provided by a Banking Company, Financial Institution, Non Banking Financial Company, Telecommunication services, Online information and database access or retrieval services, Intermediary services, Services consisting of hiring of means of transport, upto a period of one month- Location of the service provider
- **Rule 8:** Where service provider and receiver are located in the taxable territory- Location of the service receiver.
- **Rule 7:** Multiple location based services- Location of taxable territory where the greatest proportion of service is provided.
- **Rule 6:** Event-based services- Location where the event is actually held.
- **Rule 5:** Immovable property based services- Location of the immovable property located or intended to be located.
- **Rule 4:**
 - Services provided in respect of goods that are required to be made physically available by the service receiver to the service provider- Location at which services are actually performed by service provider
 - Services provided in the physical presence of an individual, represented either as the service receiver or a person acting on behalf of the receiver- Location at which services are actually performed by service provider
- **Rule 3:** Default rule- Location of service recipient.

Decision on place of provision of services:

- a. If the service is received within taxable territory of India, then place of provision of service is within taxable territory. The service is leviable to tax in the taxable territory of India. The Delhi High Court observed in Orient Craft Ltd. {2006 (4) STR 81 (Del)}, which reads as follows:

“4. *The contention of the learned counsel for the Petitioner based on the interpretation of Section 66A of the Act, is that any Service that is obtained by a person who has a fixed place of business or fixed establishment or permanent address in India is liable to tax for services availed by him in a foreign country. By way of an example, learned counsel for the Petitioner has cited that **if such a***

person in India goes abroad, and has a hair cut, he would be liable to pay service tax in India on the basis of Section 66A of the Act.

5. *We are not at all convinced by this argument of learned counsel for the Petitioner. The Rules that have been framed by the Central Government make it absolutely clear that taxable service provided from outside India and received in India is liable to Service Tax. **In the example given by the learned counsel for the Petitioner, there is no question on the service of a haircut having been received in India.***” (emphasis supplied)

- b. In C.C.Ex. vs Tech Mahindra Ltd (2015 (37) S.T.R. 180 (Bom.) onsite services abroad qualified for being termed as export of service. If payment for such service was received by service provider in convertible foreign exchange, then, refund claims could not be rejected.

Recommendations:

- Services which are B2B [business to business] to be specifically covered in recipient based category, in line with international practices. Clarification to be issued in this regard to avoid double taxation – one in country of export and one in India.

Conclusion:

In the article paper writers have examined the concept of place of supply of services under GST law. The model law could be referred for further details. The erstwhile POPS where similar could provide clarity on the interpretation of the provisions under GST.

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