

CBIC clarification: Applicability of Place of Provision of Services Rules, 2012 for software development and related services

Summary

The Central Board of Indirect Taxes and Customs (CBIC) has issued a circular¹ clarifying the applicability of Place of Provision of Services Rules, 2012 (POPS) in relation to the development of software and various services related to software. The circular has clarified that by applying POPS for the above-mentioned services, the place of provision of service shall be 'the location of the recipient of the service'.

Background

- Software being intangible in nature does not have a unique existence and can exist on different servers at the same point in time. The servers can also be of various types such as web servers, remote servers, proxy servers and dedicated servers. The server administrator can divide one physical server into multiple isolated virtual environments.
- In such a scenario, the exact location of the server may not be known to the service provider, which leads to the complexity and challenge in determining the place of provision of such software-related services.
- To put an end to ambiguity in such cases, CBIC has issued the said circular clarifying the place of provision of such services.

¹ Circular No. 209/1/2018-Service Tax dated 4 May 2018

CBIC clarification

Discussing the peculiarity of transaction and the technical aspects, CBIC has clarified the applicability of POPS as under:

Nature of services	Place of provision of service
In case of services where data, instructions etc. are provided for software development	The location of the recipient of the service
In case of services on software involving testing, debugging, modification etc.	The location of the recipient of the service

CBIC reached these conclusions by combining the reading of the definition² of 'declared services' under the Finance Act, 1994 and the provisions of POPS. The clarification applies to the specific cases of services related to the development, design, programming, customisation, adaptation, enhancement and implementation of information technology software.

Our comments

Though this clarification pertains to the Service Tax regime, i.e., prior to the implementation of GST, it can help resolve various open proceedings involving issues of POPS relating to software services.

The clarification will also be useful under the GST regime in determining the 'place of supply' in case of supplies made by the taxpayers in relation to software development as well as software-related supplies.

² As defined in section 66E(d) of the Finance Act, 1994



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