1. Short title and commencement.-
(1) These rules shall be called the Point of Taxation Rules, 2011.

(2) They shall come into force on the 1st day of April, 2011.

2. Definitions.- In these rules, unless the context otherwise requires,-
(a) “Act” means the Finance Act, 1994 (32 of 1994);

(b) “associated enterprises” shall have the meaning assigned to it in section 92A of the Income Tax Act, 1961 (43 of 1961);

(c) “continuous supply of service” means any service which is provided, or to be provided continuously, under a contract, for a period exceeding three months, or where the Central Government, by a notification in the Official Gazette, prescribes provision of a particular service to be a continuous supply of service, whether or not subject to any condition;

(d) “invoice” means the invoice referred to in rule 4A of the Service Tax Rules, 1994 and shall include any document as referred to in the said rule;

(e) “point of taxation” means the point in time when a service shall be deemed to have been provided;

(f) “taxable service” means a service which is subjected to service tax, whether or not the same is fully exempt by the Central Government under Section 93 of the Act;

3. Determination of point of taxation.- For the purposes of these rules, unless otherwise provided, ‘point of taxation’ shall be,-
(a) the time when the invoice for the service provided or to be provided is issued:

Provided that where the invoice is not issued within fourteen days of the completion of the provision of the service, the point of taxation shall be date of such completion.

(a) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

Explanation.- For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.”.

4. Determination of point of taxation in case of change in effective rate of tax.- Notwithstanding anything contained in rule 3, the point of taxation in cases where there is a change in effective rate of tax in respect of a service, shall be determined in the following manner, namely:—

(a) in case a taxable service has been provided before the change in effective rate of tax,
(i) where the invoice for the same has been issued and the payment received after the change in effective rate of tax, the point of taxation shall be date of payment or issuing of invoice, whichever is earlier; or

(ii) where the invoice has also been issued prior to change in effective rate of tax but the payment is received after the change in effective rate of tax, the point of taxation shall be the date of issuing of invoice; or

(iii) where the payment is also 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 point of taxation shall be the date of payment;

(b) in case a taxable service has been provided after the change in effective rate of tax,-

(i) where the payment for the invoice is also made after the change in effective rate of tax but the invoice has been issued prior to the change in effective rate of tax, the point of taxation shall be the date of payment; or

(ii) where the invoice has been issued and the payment for the invoice received before the change in effective rate of tax, the point of taxation shall be the date of receipt of payment or date of issuance of invoice, whichever is earlier; or

(iii) where the invoice has also been raised after the change in effective rate of tax but the payment has been received before the change in effective rate of tax, the point of taxation shall be date of issuing of invoice.

Explanation.- For the purposes of this rule, “change in effective rate of tax” shall include a change in the portion of value on which tax is payable in terms of a notification issued under the provisions of Finance Act, 1994 or rules made thereunder.

5. Payment of tax in cases of new services.- Where a service, not being a service covered by rule 6, is taxed for the first time, then, –

(a) no tax shall be payable to the extent the invoice has been issued and the payment received against such invoice before such service became taxable;

(b) no tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within the period referred to in rule 4A of the Service Tax Rules, 1994.

6. Determination of point of taxation in case of continuous supply of service.- Notwithstanding anything contained in rules 3, 4 or 8, in case of continuous supply of service, the ‘point of taxation’ shall be,-

(a) the time when the invoice for the service provided or to be provided is issued:

Provided that where the invoice is not issued within fourteen days of the completion of the provision of the service, the point of taxation shall be date of such completion.

(b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

Explanation 1. – For the purpose of this rule, where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the service receiver
to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service.

**Explanation 2.** For the purpose of this rule, wherever any advance, by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.

7. Determination of point of taxation in case of associated enterprises.- Notwithstanding anything contained in these rules, the point of taxation in respect of,-

(a) the services covered by sub-rule (1) of rule 3 of Export of Services Rules, 2005;

(b) the persons required to pay tax as recipients under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Finance Act, 1994;

(c) individuals or proprietary firms or partnership firms providing taxable services referred to in sub-clauses (p), (q), (s), (l), (u), (za), (zzzm) of clause (105) of section 65 of the Finance Act, 1994, shall be the date on which payment is received or made, as the case may be:

Provided that in case of services referred to in clause (a), where payment is not received within the period specified by the Reserve Bank of India, the point of taxation shall be determined, as if this rule does not exist.

Provided further that in case of services referred to in clause (b) where the payment is not made within a period of six months of the date of invoice, the point of taxation shall be determined as if this rule does not exist.

Provided also that in case of “associated enterprises”, where the person providing the service is located outside India, the point of taxation shall be the date of credit in the books of account of the person receiving the service or date of making the payment whichever is earlier.

8. Determination of point of taxation in case of copyrights, etc. .- In respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertifiable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration, the service shall be treated as having been provided each time when a payment in respect of such use or the benefit is received by the provider in respect thereof, or an invoice is issued by the provider, whichever is earlier.

9. Savings.- Nothing contained in these rules shall be applicable,;- 
   (i) where the provision of service is completed; or 
   (ii) where invoices are issued prior to the date on which these rules come into force.

Provided that services for which provision is completed on or before 30th day of June, 2011 or here the invoices are issued upto the 30th day of June, 2011, the point of taxation shall, at the option of the taxpayer, be the date on which the payment is received or made as the case may be.