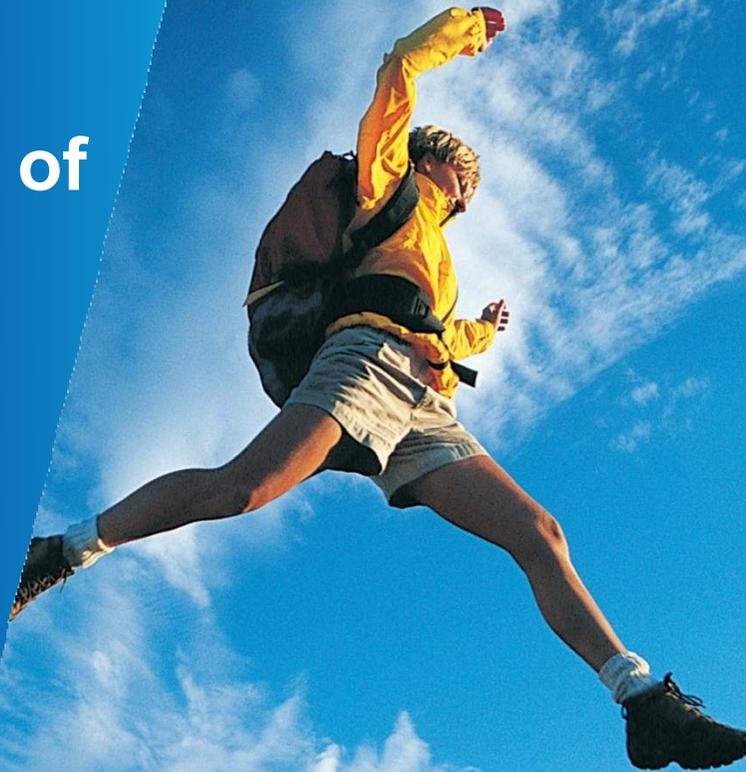


Place of Provision of Service Rules

October 2012

Pratik Jain
Partner, KPMG



Framework

Statutory provisions

Section 66C read with section 94(2)(hhh) of Finance Act, 1994

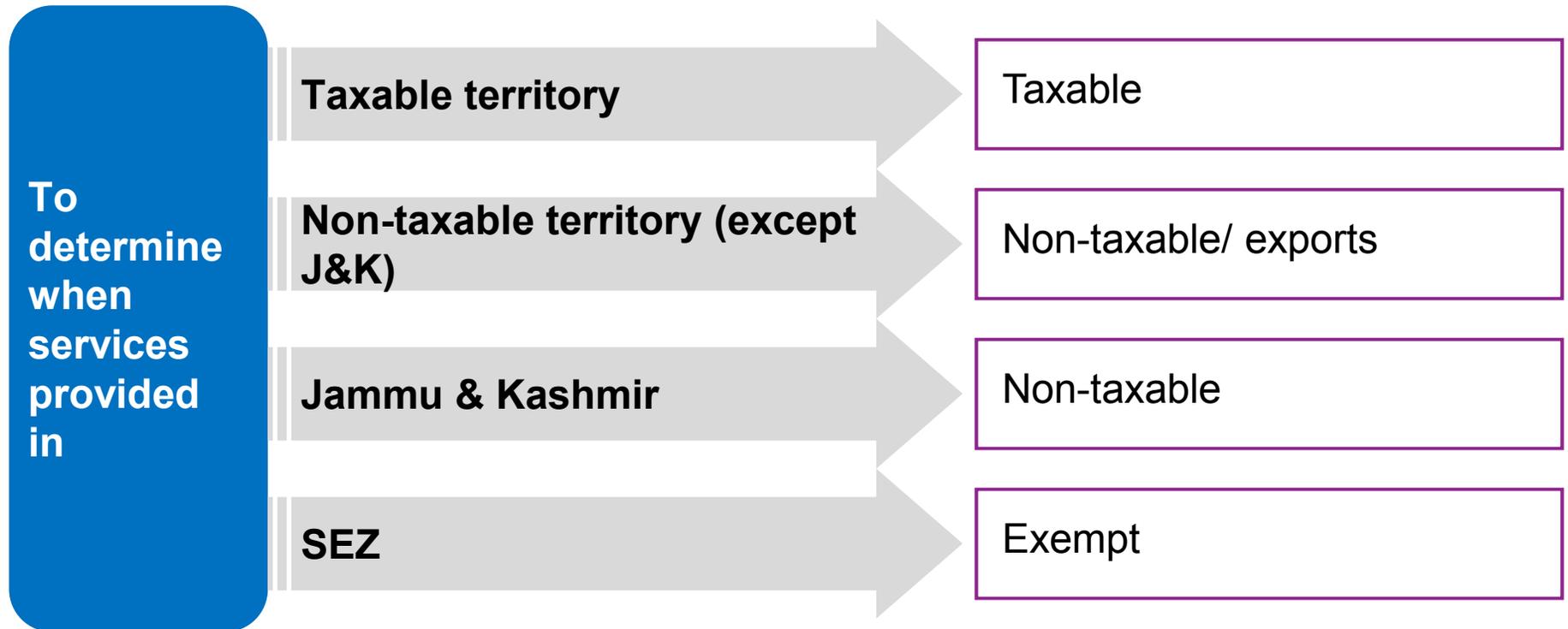
Replacing Rules under erstwhile regime

- Export of Services Rules, 2005
- Taxation of Services (Provided from outside India and received in India) Rules, 2006

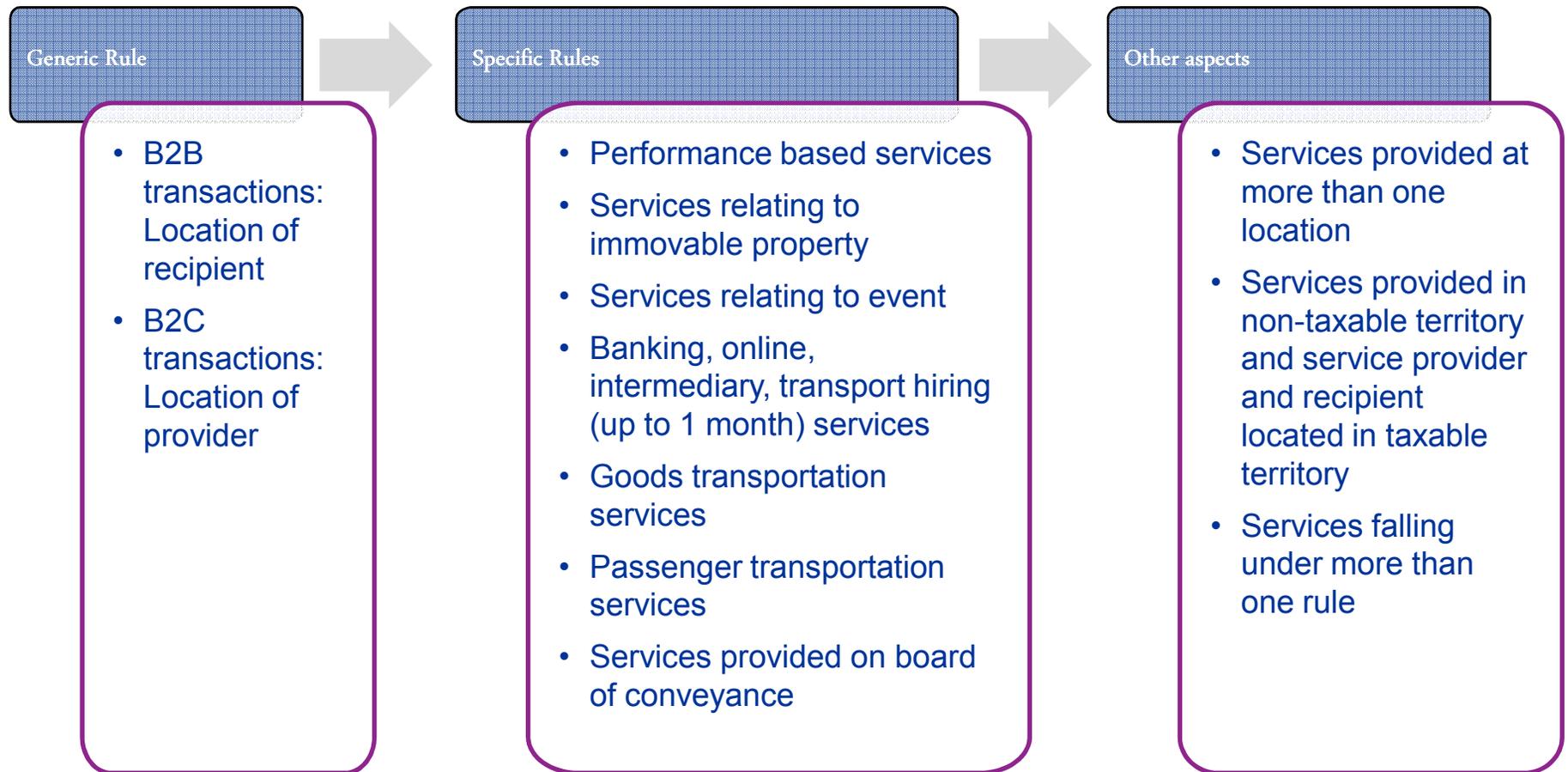
Relevance of the Rules

- To determine the place where a service shall be deemed to be provided so as to ascertain the taxing jurisdiction for a service
- If a service does not fall in taxing jurisdiction, service is tax free
- A Step towards GST

Implications



Snapshot



Rule 3

Related to	Place of provision of services as per the Rule
All services	<ul style="list-style-type: none"> Place of location of service receiver; where the location of service receiver not available, location of service provider (e.g. restaurant, palmist) 

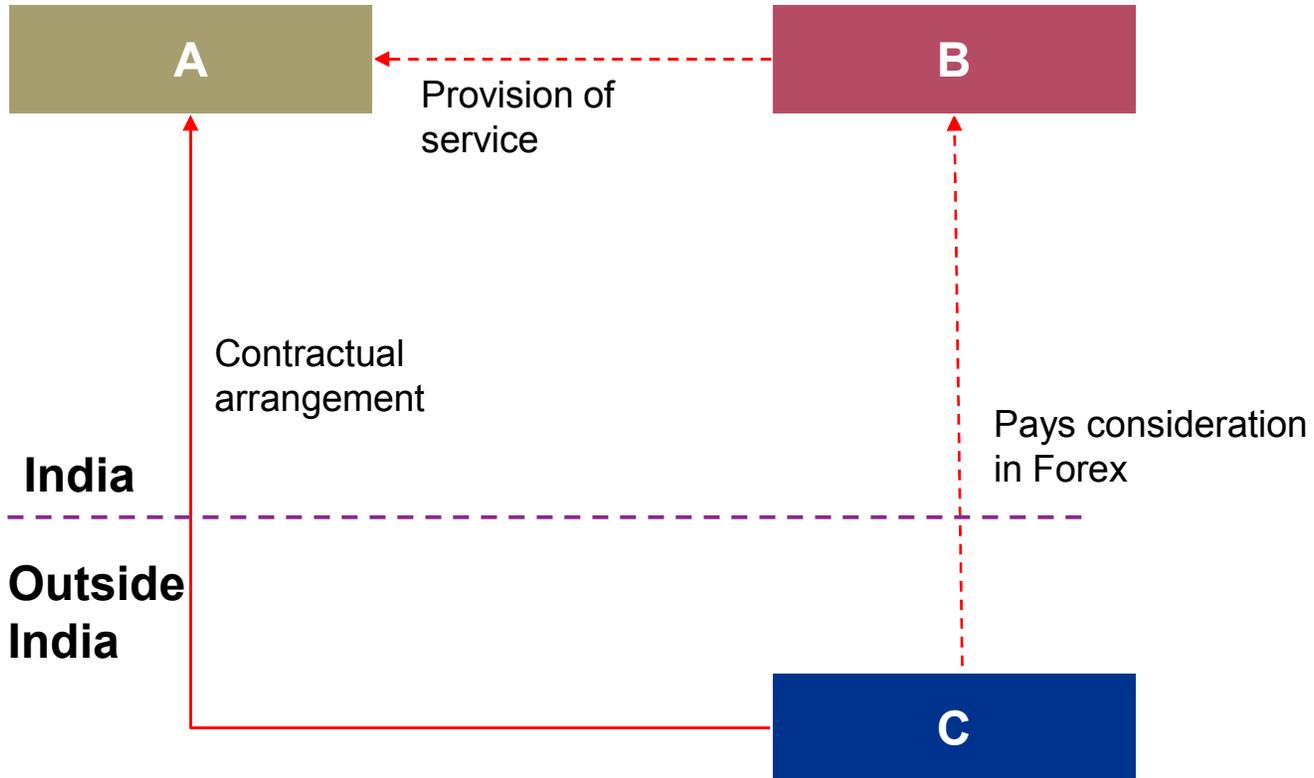
Illustrative list of services where Rule 3 may apply (except where both the service provider and service receiver are located within the taxable territory)



S. No	Description of service
1	Consultancy services
2	Transaction / back office processing services
3	Services of marketing / sales promotion of goods
4	Manpower recruitment or supply services
5	Development of information technology software
6	Temporary transfer or permitting the use or enjoyment of IPR

Rule 3 (contd.)

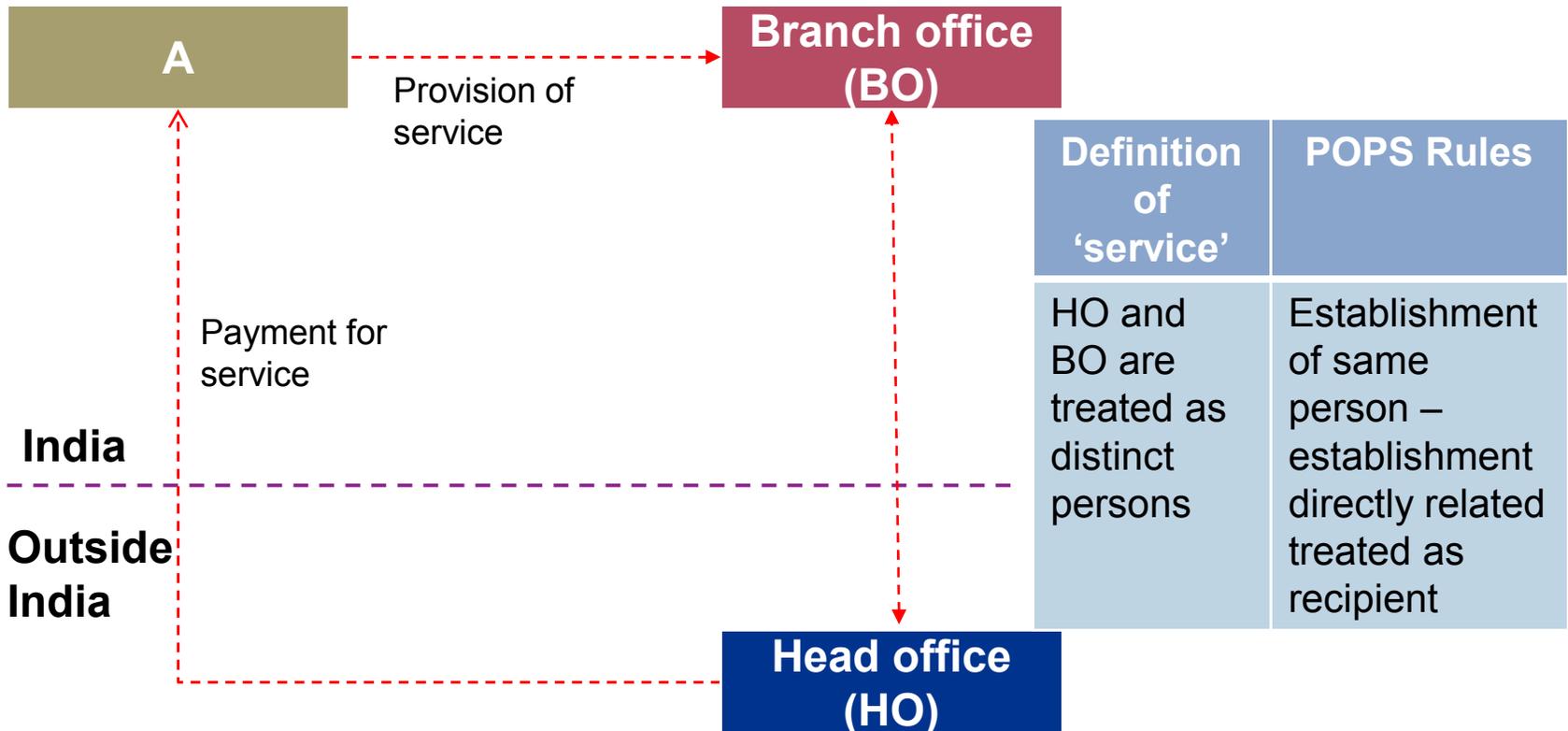
Issue 1 – Meaning of service recipient



Service recipient – Contractual (C) or Beneficial (A) ?

Rule 3 (contd.)

Issue 2 – Status of HO and its establishment



Clarification on harmonious interpretation of both these provisions

Rule 4

Related to	Place of provision of services as per the Rule
Performance based services	Location where services are actually performed

Framework

Following cases covered:

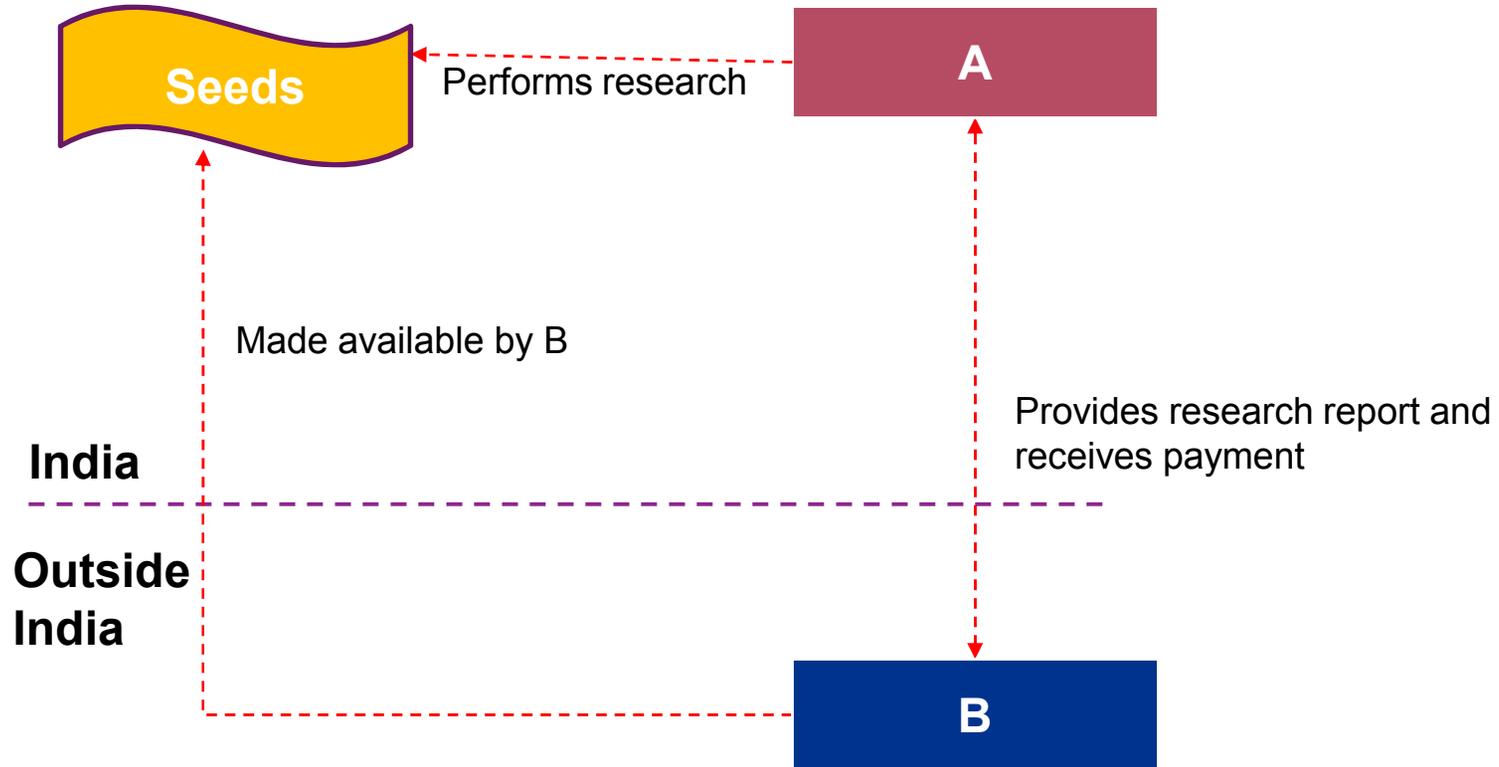
- Type 1: Services performed on goods made physically available by the recipient to service provider/ person acting on his behalf– repair & maintenance, cargo handling, courier service etc.
- Type 2: Services provided in physical presence of the service recipient / person acting on his behalf – beauty treatment services, personal security services, health and fitness services, internet café services, photography services, classroom teaching etc.

Proviso to the Rule

Where services are provided from a remote location by way of electronic means, the place of provision shall be the location where goods are situated at the time of provision of service

Rule 4 (contd.)

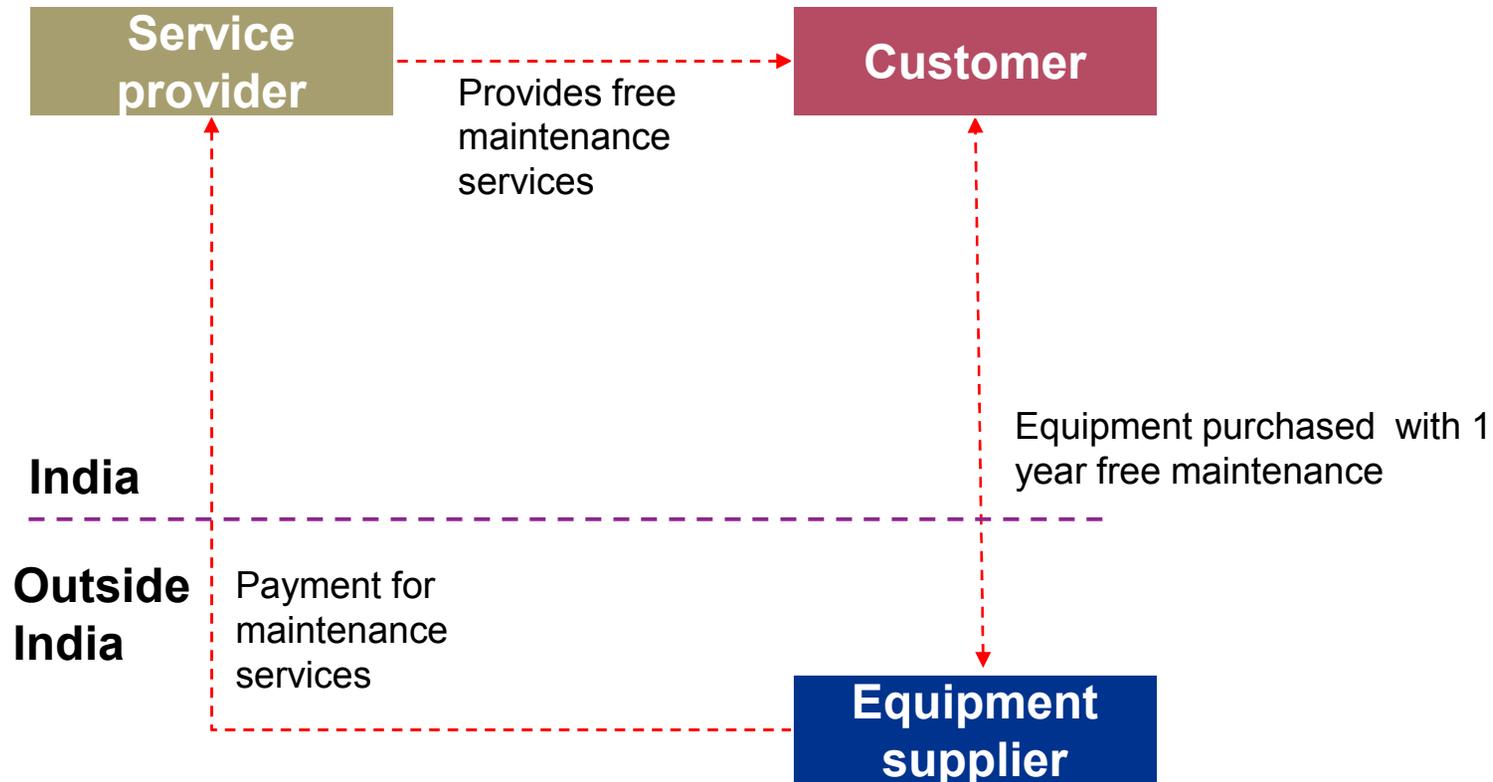
Issue 1 – Where goods are merely inputs



Relevant POPS – Rule 3 or Rule 4 ?

Rule 4 (contd.)

Issue 2 – Goods made available by a person other than the contractual recipient



Relevant POPS – Rule 3 or Rule 4 ?

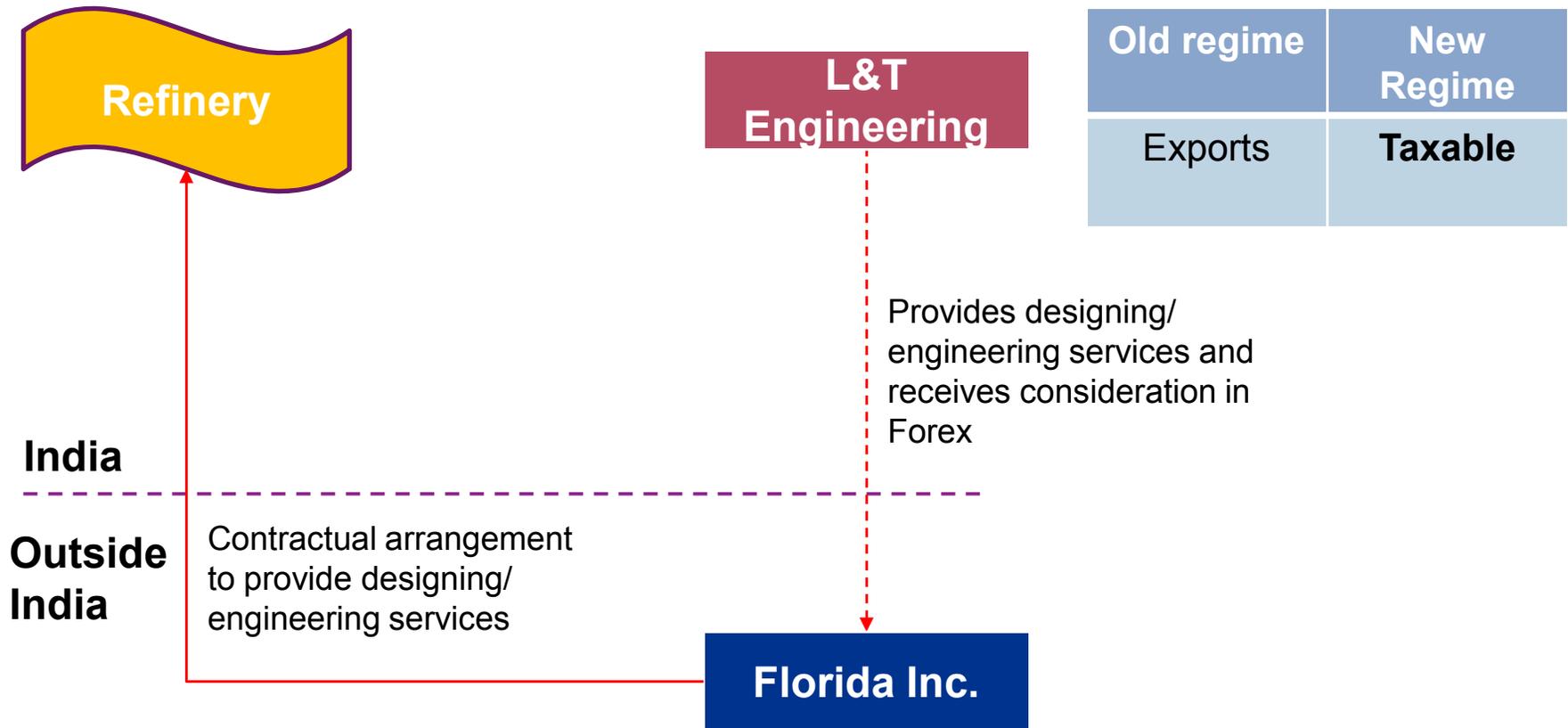
Rule 5

Related to	Place of provision of services as per the Rule
Immovable property	Place where immovable property is located or intended to be located

Some examples

- Services supplied in course of construction, reconstruction, alteration, repair or maintenance, painting or decorating etc of any building or any civil engineering work
- Renting of immovable property
- Services of real estate agents, auctioneers, architects and similar experts or professional people
- Property management services which may include rent collection, arranging repairs etc

Rule 5 (contd.)



Rule 6

Related to	Place of provision of services as per the Rule
Event	Place where event is actually held



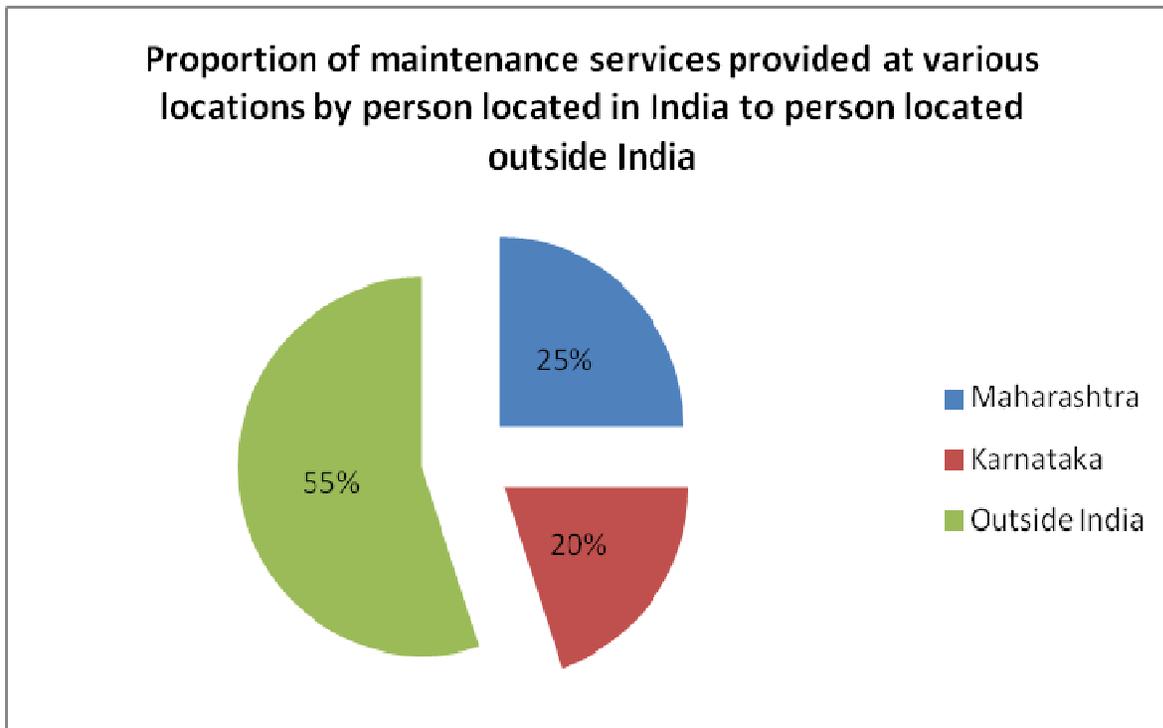
Rule 6 (contd.)



Description	Old regime	New regime
Participation fee to attend the road show	Not taxable	Taxable
Payment to organizer	Taxable (performance based)	Taxable (location of event)

Rule 7

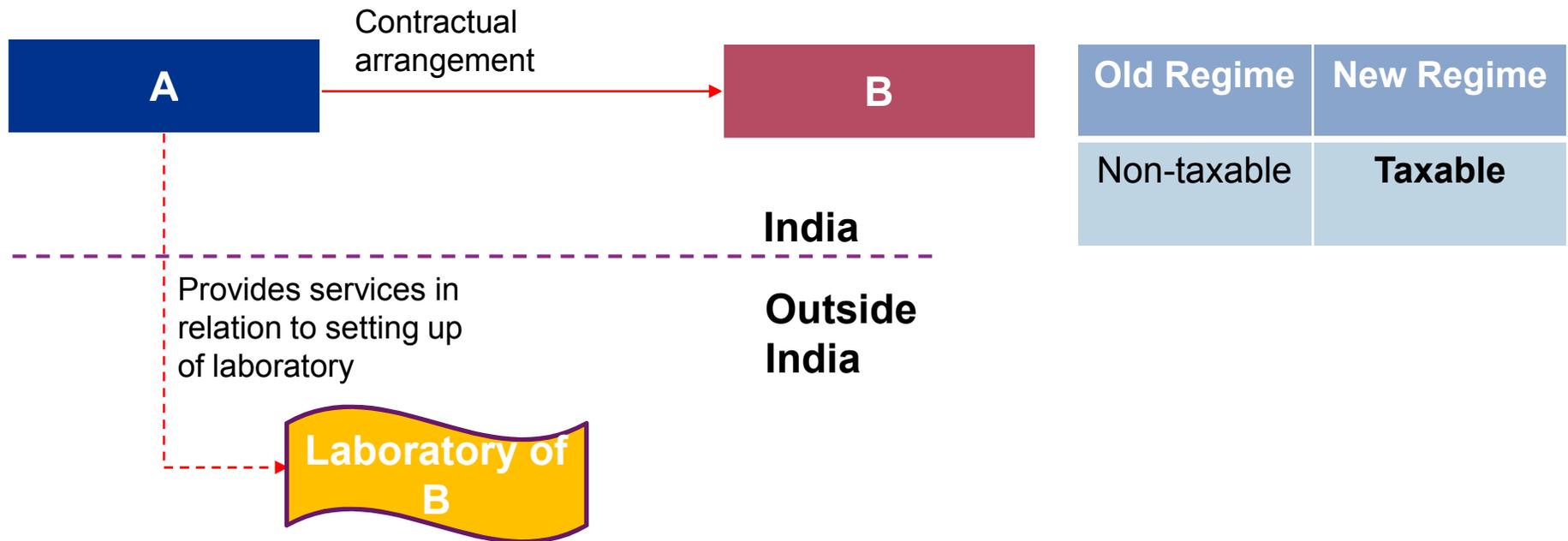
Related to	Place of provision of services as per the Rule
Services provided at more than one location (overrides Rules 4,5 & 6)	Location in the taxable territory where the greatest proportion of the service is provided



Old Regime	New Regime
Export	Taxable

Rule 8

Related to	Place of provision of services as per the Rule
Situations where place of provision of service outside the taxable territory, however service provider and recipient located in taxable territory	Place of service receiver



Rule 9

Related to	Place of provision of services as per the Rule
Specified services such as: <ul style="list-style-type: none">• Intermediary services• Online information & database access or retrieval services• Banking• Hiring of means of transport (up to 1 month)	Location of service provider

Intermediary services

Meaning

- A broker, an agent or any other person who arranges or facilitates provision of services between two or more persons
- Involved with two or more supplies at any one time:
 - supply between the principal and the third party
 - supply of his own service (agency service) to his principal

Few examples

Travel Agent

Tour Operator

Stock Broker

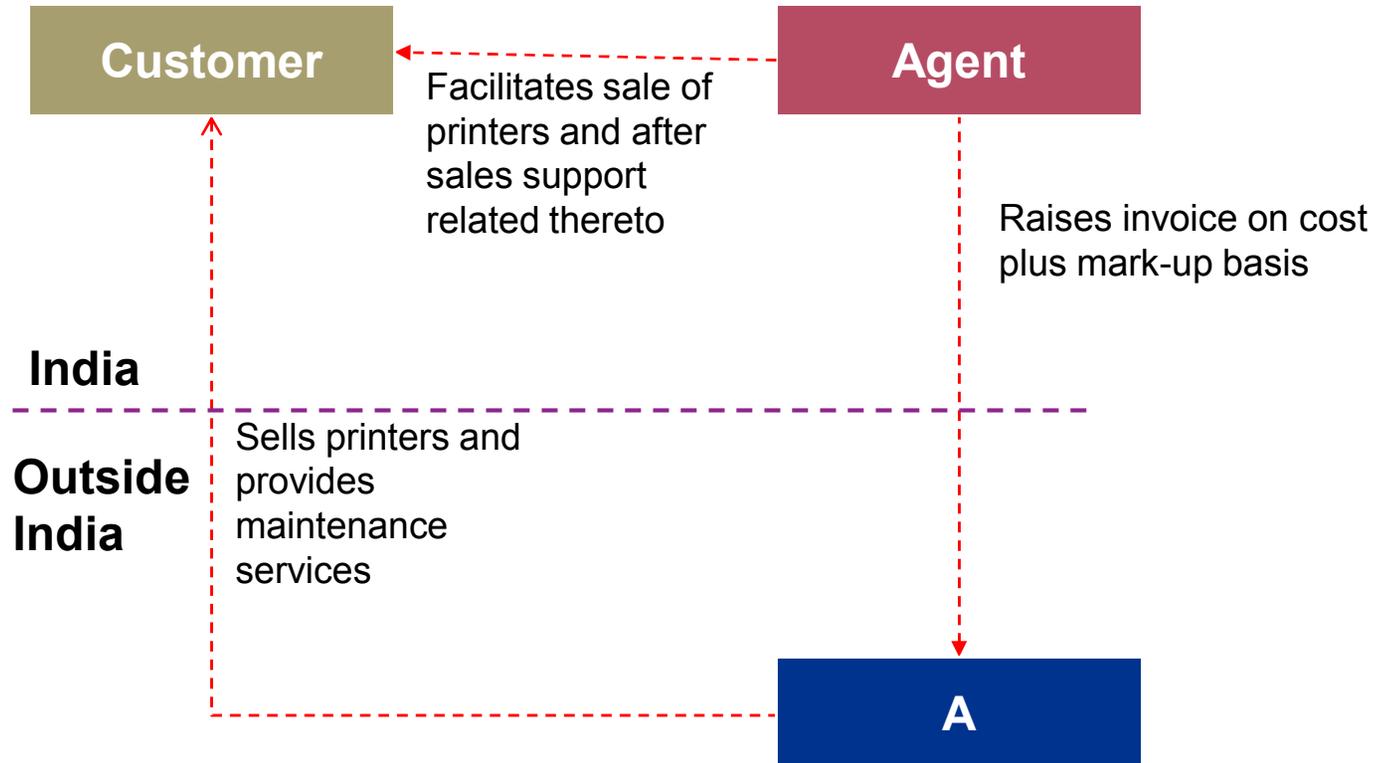
Commission Agent

Recovery Agent?

Scenarios	Whether an intermediary
A commission agent (buying or selling agent) in respect of services	Yes
A commission agent (buying or selling agent) in respect of goods	No

Intermediary services (contd.)

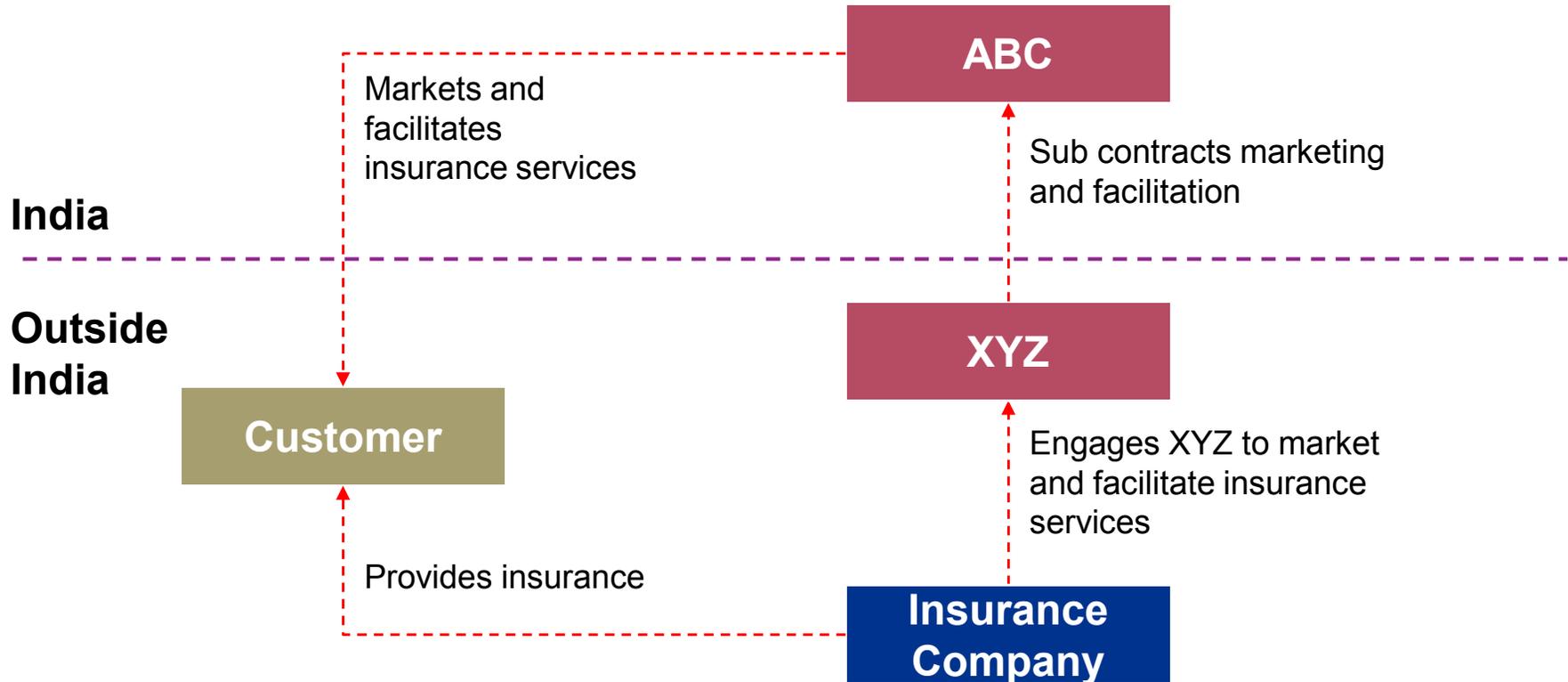
Issue 1 – Intermediary for goods & services – Bundled services



Whether agent providing bundled services qualify as 'intermediary' under Rule 9 ?

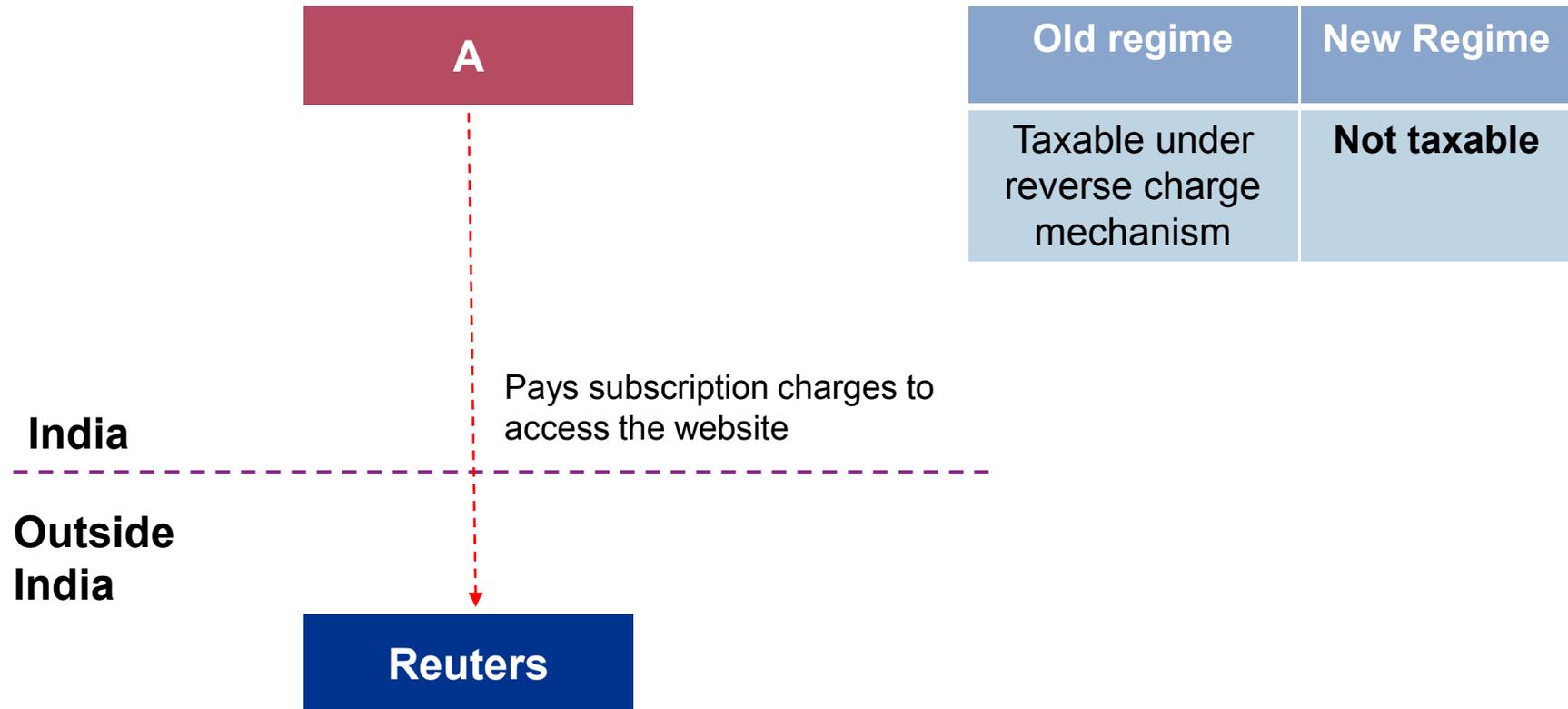
Intermediary services (contd.)

Issue 2 – Services of sub-contractor



Whether 'intermediary' definition applies to ABC?

Online information & database access or retrieval services



Rule 10

Related to	Place of provision of services as per the Rule
<ul style="list-style-type: none"> Transportation of goods <ul style="list-style-type: none"> By road i.e. GTA By other modes except mail or courier 	<p>Location of person liable to pay tax</p> <p>Destination of goods</p>

Case study - GTA

S. No	Location of service provider - GTA	Location of service receiver – Person liable to pay freight	Destination of goods	POPS
A	J & K	Delhi	Mumbai	Delhi
B	J & K	Delhi	J & K	Delhi
D	Delhi	Mumbai	J & K	Mumbai
E	J & K	J & K	Delhi	J&K (not taxable)
F	Delhi	J & K	J & K	Delhi

Rule 10 (contd.)

Scenarios	Service tax liability		
	Ocean/ Air	Rail	GTA
Transportation of goods from India to outside India	No (exports)	No (exports)	Yes Tax would be paid by the specified person. However, if the specified person is located in non-taxable territory, GTA would be liable to pay tax
Transportation of goods from outside India to India	No (as covered under the negative list)	Yes	
Transportation of goods within India (From J&K to a taxable territory)	Yes	Yes	
Transportation of goods within India (from taxable territory to J&K)	No , since the destination of goods shall be a non taxable territory	No , since the destination of goods shall be a non taxable territory	
Transportation of goods within India (where movement of goods is within J&K)	No	No	
			No, Provided that both service recipient and GTA are located in J&K

Other Rules

Rule	Related to	Place of provision of services as per the Rule
Rule 11	Passenger transportation services	Place where the passenger embarks on the conveyance for a continuous journey
Rule 12	Services provided on board a conveyance	First scheduled point of departure of that conveyance of a journey
Rule 14	Where a service falls under more than one rule then the rule which appears later shall be applicable	

Key terms

Location of service provider/ receiver

- In case of only one service tax registration (either single premise or centralized), premises where such registration has been obtained
- In other cases:
 - Location of business establishment
 - Where services are provided/used from/at a place other than business establishment, fixed establishment where such services are provided or received
 - Where services are provided/used from/at more than one establishment, establishment most directly concerned with the provision or use of the service
 - In the absence of such places, the usual place of residence

Business Establishment

- Place where essential decisions concerning the general management of the business are adopted and where the functions of its central administration are carried out
- For instance, head office; factory; workshop; shop/ retail outlet
- There is only one business establishment that a service provider or receiver can have

Fixed Establishment

- Place (other than the business establishment) which has the permanent presence of human and technical resources to provide/ receive a service
- Temporary presence of staff by way of a short visit at a place cannot be called a fixed establishment

Key terms (contd.)

Usual Place of Residence

- In case of a body corporate - the place where it is incorporated or otherwise legally constituted
- In case of individual – the place (country, state etc) where the individual spends most of his time for the period in question, such as, the place where the individual has set up his home, or where he lives with his family and is in full time employment





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Thank You

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