

Comparative analysis of two notifications

Scenario	Rate upto 12.10.2017	Rate between 13.10.2017 to 24.01.2018	Rate after 24.01.2018
Car purchased in pre-GST regime and supplied in post GST regime (No credit availed)	28%+ applicable CESS	18.2% + 65% of applicable CESS	18%
Car purchased in pre-GST regime and lease continued in post GST regime also (No credit availed)	28%+ applicable CESS	18.2% + 65% of applicable CESS	18.2% + 65% of applicable CESS
Car purchased in pre-GST regime and supplied in post GST regime (credit availed)	28%+ applicable CESS	28%+ applicable CESS	28%+ applicable CESS
Car purchased in pre-GST regime and lease continued in post GST regime also (credit availed)	28%+ applicable CESS	28%+ applicable CESS	28%+ applicable CESS
Car purchased and supplied in post GST regime, but no ITC availed	28%+ applicable CESS	28%+ applicable CESS	18%
Car purchased and leased in post-GST regime, but no credit availed	28%+ applicable CESS	28%+ applicable CESS	28%+ applicable CESS
Car purchased and supplied in post GST regime, ITC availed	Determine as per Sec 18 of the CGST Act and Rule 44 of CGST Rules	Determine as per Sec 18 of the CGST Act and Rule 44 of CGST Rules	Determine as per Sec 18 of the CGST Act and Rule 44 of CGST Rules
Car purchased and leased in post-GST regime, ITC availed	28%+ applicable CESS	28%+ applicable CESS	28%+ applicable CESS

Note: In the above cases, it is assumed that supply doesn't include lease.

Conclusion:

Initially, before issue Notification 37/2017-Central Tax (Rate), second hand cars were subjected to high rate of tax at 28%+applicable CESS and even after the issue of the said notification, tax is payable on the transaction value and not on the margin (difference between sale price and book value). This will lead to taxing the same motor vehicle on more than one occasion though there was no value addition thereby paving way to double taxation and cascading effect. Because of these reasons, Notification 9/2018-Central Tax (Rate) has been issued to provide that the value of second-hand motor vehicles shall be the margin and the rate of tax also reduced. However, there was no mention in the notification whether the amendment is retrospective or prospective alone. In view of this reason, the issue whether the tax is payable on the gross amount received for supply of second-hand motor vehicle or on the margin during the period 01.07.2017 to 24.01.2018 is still left to one's own interpretation and is prone to litigation.

This article is contributed by B. Sukanya, Intern of SBS and Company LLP. The author can be reached at interns@sbsandco.com

GST**VALUATION IN CASE OF STOCK TRANSFER**

Contributed by S. Bharadwaja & Vetted by CA Manindar |

Introduction:

It has been a year since GST has rolled out. Though the trade is familiar with the concept of supply and valuation under GST law, yet few of them are facing certain practical difficulties in aligning their business to GST. In this article, we are going to touch up on the GST aspects relating to establishment of a branch, agent or any other related entity.

The Concept of Related Persons, Distinct Persons & Agents under GST Law:

- Related persons mean a person who is a member of family, officer, director of another business, partners, employer and employee, a person or an entity who holds 25% or more voting stocks or shares in a company and they can either directly or indirectly controls the others. Related persons also include legal persons, and sole agent or sole distributor or sole concessionaire.
- Distinct persons are the offices or establishments of a single entity which are located in different states for which more than one registration under GST is required to be obtained in each of the states in which such offices or establishments are located. Each such offices or establishments located in different states having separate registration shall be treated as distinct persons for GST law.
- Agent means a person who acts in a way of representative character to supply or to receive goods or services or both on behalf of principal. Agent includes a factor, broker, commission agent and del credere agent etc.,

Schedule I of CGST Law:

To become a supply, presence of consideration is a pre-requisite. However, certain activities are listed under Schedule I of Central Goods and Services Tax Act, 2017, are deemed to be supply even if they are undertaken without consideration. These include;

- Permanent transfer or disposal of business assets where input tax credit has been availed on such assets;
- Supply of goods or services or both between the related persons and distinct persons made in the course or furtherance of business and
- Supply of goods by a principal to his agent or an agent to a principal, where agent should undertake to supply or receive the goods on behalf of principal and where the condition of undertakes and further supply should satisfy to become a supply.

Destination Based Consumption Tax:

GST is called a consumption-based tax as it was payable to a state in which goods or services are actually consumed. Here the tax is levied, and revenue is collected by the consuming state where the goods or services or both are actually consumed. In a case where the goods or services or both procured and consumed in a same state then tax is levied (i.e., Intra-state supply) by the same state and revenue is also called by the same state. In order to satisfy this principle of destination-based consumption tax, whenever goods are moved to branches or agents located in other states, such movement is considered as supply in order to move the taxes involved in the said goods from origin state to destination state as origin state loses the right to retain or recover any taxes on the goods that are transferred to other states for consumption in those states.

Valuation in Case of Related Persons and Distinct Persons:

Rule 28 of the Central Goods and Service Tax Rules, 2017 provide for valuation with respect to a supply which takes place between the distinct persons and related persons. Accordingly, the value of supply shall be the open market value or price charged for goods or services of like kind and quality, if the open market value is not available. If value of the supply cannot be determined in terms of open market value or on the basis of price charged for goods or services of like kind and quality, then it should be determined by applying cost plus 10% mark-up or by residual method as prescribed in Rule 30 and Rule 31 respectively. The residual method means applying the valuation by reasonable means consistent with general provisions relating to valuation of supply.

Two provisos are provided for the Rule 28, whereas the first proviso provides an option to the supplier either valuing the supply at open market value or ninety percent of the price charged for goods or services of like kind and quality. This option is available only in case of stock transfer of those goods which the recipient is intended for further supply to an unrelated customer.

Whereas second proviso provides that in cases where recipient of goods is eligible to take full input credit of those goods that are stock transferred, then whatever the value adopted by the supplier shall be deemed to be the open market value.

Both the conditions laid down in the above discussed provisos, do not restrict the recipient of supply to claim ITC but the first proviso requires the recipient to further supply such goods to an unrelated supplier while the second proviso does not require so. Therefore, stock transfers for further supply can be valued on the basis of open market value which could be any value as declared by supplier in the invoice (second proviso) or on the basis of 90% of the price charged for goods of like kind and quality (first proviso).

For example, ABC Ltd. is incorporated in Telangana with their Head Office(HO) also in same State. ABC Ltd. has branches in different states like Karnataka, Tamil Nadu and Kerala. Here HO has transferred the goods at a cost of Rs. 2,00,000 to its branch located in Karnataka for further supply and it also transferred the capital goods costing 2,00,000 (as available in the open market) to a branch located in Kerala.

In the first instance, where the goods are transferred for the further supply then HO has an option of valuing the goods at a cost of Rs. 2,00,000 or 1,80,000 (90% of OMV). Since, the receiving branch is entitled to full ITC, HO can even transfer the goods at a value less than Rs. 1,80,000/- to their liking by mentioning the same in the invoice issued for this purpose.

For the second instance, he can transfer the goods at Rs 2,00,000(OMV) or any value less than Rs.2,00,000 (as he can declare the same in the invoice), as second proviso provides for an option of valuing the goods at whatever price if the recipient is entitled to full ITC. This rule is not applicable for valuing stock transfers to agents as separate rule by way of Rule 29 has been prescribed for this purpose.

Valuation in Case of Stock Transfers between Principal and Agent:

By virtue of Rule 29, principal or agent has an option of valuing the goods for supply either at open market value of the goods or at ninety percent of the price charged for the supply of goods of like kind and quality by recipient to his customer not being a related person. Whereas, the option of ninety percent. of price charged for like kind and quality can only be applied when the principal or agents intended it to further supply. Where the value of a supply is not determinable under OMV or 90% of price charged for like kind and quality, then the value of supply shall be determined by the application of cost plus 10% mark-up or residual method under rule 31. (determining by way of reasonable mean).

For example,

1. The principal supplies tyres and tubes to his agent. Agent, supplies tyres and tubes of similar type and quality in consequent supplies at a price of Rs 3,500 per set on the day of supply. Another independent agent is also supplying tyres and tubes of similar type and quality to the said agent at the price of Rs 3,000 per set. Hence, the value of the supply made by the principal can be valued either at Rs 3,000 per set (the open market value of tyres and tube) or he can exercise the option of valuing the tyres and tubes at 90% of INR 3,500 (goods like kind and quality) per set i.e. INR 3,150.

Comparative Analysis of Tax Implications on Supplies between Related person, Distinct person and Agent

Let us understand the comparative analysis of tax implications on supplies between related persons, distinct persons and agents with an illustration.

Example

Prefix Limited manufactures a chipset at cost of Rs.100 and it distribute the same to their branches and agents located within the states and other states. Prefix has a distributor, which is a partnership firm and the partners in the partnership firm are the directors of the Prefix. Here, Prefix transfer the chipset to their distributors at a cost of Rs. 70. Where a cost of similar chipset which manufactures by the others cost Rs. 90 (OMV). Can Prefix transfer the chipset at a cost of Rs. 70 or not to the distributors?

We will analyse the example by case to case, in case where –

Stock Transfers Takes Place Between Branches

Prefix has an option of valuing the goods by applying the first proviso (i.e. 90% of the price charged for the goods of like kind and quality) or Second proviso (i.e. value declared in the invoice shall be the open market value). In this case Prefix can apply second proviso for valuing the same at Rs. 70/- while it is distributing the same to their branches.

Here, Prefix has a branches within the state and another states. It has benefit of supplying the goods without payment of tax while supplying to branch located in the same state as it is does not become a separate distinct person unless the same obtains separate registrations in the same State.

Stock Transfers Takes Place Between Related Persons

By applying the second proviso, Prefix can value the goods at cost of Rs. 70, where it is supplying the goods to their Related persons i.e. Partnership firm. In case of Related Person, the benefit of supplying the goods without payment of tax even if the related persons are located in the same state is not available as supplies between related persons located in same state also amounts to deemed supply under schedule I.

Stock Transfers Takes Place Between Principal and Agent

Prefix cannot value the goods at a cost of Rs. 70, when the transfers takes place between the agent. In this case, Rule 28 does not apply in case of agents where a separate rule (Rule 29) has been prescribed for valuing the goods when supply takes place between the Principal and Agent. Prefix has to value the goods at Rs. 100 or 81 ($90 \times 90 / 100 = 81$) by applying the rule 29. There is no such benefit available like branches, even though the agents are located within the state or another state.

For easy comprehensive of rules, we will understand the same by below table.

Stock Transfers to	Taxability of Supply within the State	Benefit of Second Proviso
Distinct person	No	Yes
Related Person	Yes	Yes
Agent	Yes	No

In view of the valuation problems between related persons, distinct persons or agents. In cases where there is a time lag between the manufacturing and supply of goods to customers, it is advisable for manufacturing entity to have a branch office i.e. Distinct Persons as it has a liberty of valuing the goods at their choice by applying the second proviso to rule 28. In cases where there is no such time lag between manufacturing and supply of such goods to customers, then they can choose to set up either a branch or appoint an agent or a related distributor considering other business factors.

In case of principal and agent, majority of a transactions takes place without consideration. By considering the term supply and valuation mechanism specified in valuing such supply, principal supplier may require with additional tax compliance and requirement of additional working capital for paying such taxes even for agents located in same state as that of principal. Hence, this rule may have serious implications on the principal-agent relationship.

Conclusion:

Summing up, GST implications will vary depending upon the type of supply chain that a particular entity wishes to establish. If the time lag for supply to ultimate customer is more, it is advisable to set-up a branch as this will have less tax impact compared to setting up of consignment agent or a related distributor. This is purely from GST perspective. If the other factors relating to business demand for set up of consignment agent or distributor, one should take into consideration the GST tax proposition also into consideration and accordingly take the decision.

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FEMA

FEMA UPDATES FOR THE MONTH OF NOVEMBER 2018

Contributed by Sunil .S & Vetted by CA Murali krishna

External Commercial Borrowings (ECB) Policy:

I. Review of Minimum Average Maturity and Hedging Provisions:

Master Direction No.5 dated 1st January, 2016 on “External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers”, has been amended from time to time, in terms of which certain eligible borrowers raising foreign currency denominated ECBs under Track I, having a minimum average maturity requirement of 5 years, are mandatorily required to hedge their ECB exposure fully.

The extant provisions of Minimum Average Maturity Period, Eligible Borrowers and Hedging requirements provisions have been reviewed and it has been decided in consultation with the Government of India, to amend the above referred provisions of the ECB framework.

- i. **Minimum average maturity:** Reduce the minimum average maturity requirement for ECBs in the infrastructure space raised by eligible borrowers from 5 years to 3 years.
- ii. **Hedging requirements:** Reduce the average maturity requirement from extant 10 years to 5 years for exemption from mandatory hedging provision applicable to ECBs raised by above referred eligible borrowers. Accordingly, the ECBs with minimum average maturity period of 3 to 5 years in the infrastructure space will have to meet 100% mandatory hedging requirement. Further, it is also clarified that ECBs falling under the aforesaid revised provision but raised prior to the date of this circular will not be required to mandatorily roll-over their existing hedges.

For more details, refer Notification No.RBI/2018-19/71, A.P. (DIR Series) Circular No.11 dated 6thNovember, 2018.

II. Foreign Exchange Management (Deposit) (Amendment) Regulations, 2018:

RBI vide Notification No. FEMA 5 (R)(1)/2018-RB dated 9thNovember, 2018 has notified the amended Deposit Regulations named as “Foreign Exchange Management (Deposit) (Amendment) Regulations, 2018” by making an amendment to “Foreign Exchange Management (Deposit) Regulations, 2016, Notification No. FEMA 5(R)/2016-RB dated 1stApril, 2016.”

The major amendments are related to Regulation-7, Schedule-3, 4 and 5.

Markable amendments with regard to FDI:

1. An Authorized Dealer in India may allow a Foreign Portfolio Investor (FPI) and a Foreign Venture Capital Investor (FVCI), both registered with the Securities and Exchange Board of India (SEBI) under the relevant SEBI regulations to open and maintain a non-interest bearing foreign currency account for the purpose of making investment in accordance with FEMA (Transfer or issue of security by a person resident outside India) Regulations, 2017, as amended from time to time.
2. For the purposes of reporting of FDI, date of transfer of funds into the bank account of the issuer or transferor of capital instruments/convertible notes, as the case may be, shall be the relevant ***“date of remittance”***.

For more details, refer gazette notification dated 9th November, 2018.

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GST

GST UPDATES FOR THE MONTH OF NOVEMBER 2018

Compiled by Indirect Tax Division |

1. CLARIFICATIONS ON GST APPLICABILITY FOR DELCREDERE AGENT:

Circular No. 57/3/2018-GST dated 04.09.2018 has been issued to provide that the movement of goods between Principal and Agent would be considered as deemed supply under Schedule I of CGST Act, 2017 to attract GST, only when Agent undertakes to issue invoice in his own name. In cases, where Principal undertakes to issue invoice to customer, then supply of goods by Principal to Agent will not be considered as deemed supply and accordingly, no GST is payable.

In view of this clarification, certain representations were made with respect to GST implications in case of Del-Credere Agent (DCA) who guarantees the payment to Principal even if there is a default by Customer. DCA effectively extends loan to Customer or charges interest for delay in payment for the goods supplied to him.

It is clarified that in cases where the Principal undertakes to issue invoice in his own name, then the movement of goods by Principal to DCA will not be a deemed supply and no GST is applicable. GST is applicable on the value at which goods are sold by Principal to Customer using the services of DCA. With respect to loan extended by DCA to Customer, it shall be treated as a separate supply of service by DCA to Customer. The interest charged by DCA for delay in payment by Customer will be exempt under Sl.No 27 of Notification 12/2017-Central Tax(Rate) dated 28.06.2018.

It is also clarified that in cases where DCA undertakes to issue invoice in his own name, then the movement of goods from Principal to DCA will be deemed to be a supply and GST is payable by Principal. The subsequent movement of goods from DCA to Customer will also be deemed to be a supply and DCA is required to collect and pay GST on the value of such goods supplied to Customer. In such cases, the interest charged by DCA towards the loan extended to Customer shall be includable in the value of goods supplied in terms of Section 15(2)(d) of CGST Act, 2017.

{CIRCULAR NO. 73/47/2018 – GST DATED 05.11.2018}

2. PROCEDURE PRESCRIBED FOR RECOVERY OF DUES UNDER EXISTING LAWS:

A new rule 142A has been inserted to prescribe the procedure for recovery of dues under the existing laws. Any dues towards the demand of tax, interest, penalty, fee or any other dues which becomes recoverable consequent to proceedings launched under the existing law before, on or after the appointed day shall be recovered under GST Law by way of upload of said details in Form GST DRC-07A electronically on the common portal. Further, the amounts demanded shall be posted in Part II of Electronic Liability Register in Form GST PMT-01.

Where the demand of an order uploaded under GST DRC-07A is rectified or modified or quashed in any proceedings, including in appeal, review or revision, or the recovery is made under the existing laws, a summary thereof shall be uploaded on the common portal in FORM GST DRC-08A and Part II of Electronic Liability Register in FORM GST PMT-01 shall be updated accordingly

{NOTIFICATION NO. 60/2018 – CENTRAL TAX DATED 30.10.2018}

3. TEA BOARD SHALL BE REQUIRED TO COLLECT TAX FROM SELLERS AND AUCTIONEERS

Sec 52 of the CGST Act, 2017 provides for obligation to collect tax at source by the e-commerce operators from the tax payment made by the customers to the sellers registered on their e-commerce portal. Tea Board of India carry out e-auction for trading in tea across India wherein the buyers participated in auction make payment to an escrow account maintained by Tea Board. The said consolidated amount is subsequently disbursed to sellers (tea producers) towards the value of tea supplied by them and to auctioneers towards their brokerage for conduct of auction. It is clarified that the Tea Board shall be required to collect tax on the net value of supply payable to sellers (tea producers) and on the brokerage paid to auctioneers.

{CIRCULAR NO. 74/48/2018 – GST DATED 05.11.2018}

4. RELAXATION FROM THE REQUIREMENT OF TDS WHEN SUPPLY IS FROM ONE PSU TO ANOTHER:

Sec 51 of the CGST Act, 2017 provides for obligation to deduct tax at source by Government Departments and Agencies including Public Sector Undertakings (PSU) and the said requirement was brought into force w.e.f 1st October 2018. The present notification is issued to grant relaxation from the requirement of tax deduction in cases where the goods or services are supplied from a PSU to another PSU. The said relaxation is retrospective and is effective from 01st October 2018.

{NOTIFICATION NO. 61/2018 – CENTRAL TAX DATED 05.11.2018}

This article is contributed by Indirect Tax Division, Intern of SBS and Company LLP. The author can be reached at interns@sbsandco.com

COMPANIES ACT, 2013**RULES, CIRCULARS, NOTIFICATIONS AND ORDERS ISSUED DURING THE MONTH OF NOVEMBER, 2018****RULES**

- ❖ **Companies (Registered Valuers and Valuation) Fourth Amendment Rules, 2018, Dated: 13.11.2018.**

Vide the said amendment rules, the Central Government has made some amendments/insertions to the Principal rules, in relation to the applicability of the valuation rules in relation to the types of valuations; giving relaxation to the qualifications for a person to become a Registered valuer, and the experience/qualification required for undertaking valuation in respect of the various asset classes.

http://www.mca.gov.in/Ministry/pdf/CompaniesRegisteredValuers4AmdtRules_13112018.pdf

- ❖ **National Financial Reporting Authority Rules, 2018, Dt: 13.11.2018:**

Consequent upon constitution of the National Financial Reporting Authority, effective from 01.10.2018, the Central Government vide the National Financial Reporting Authority Rules, 2018, has framed the guidelines, for operations of the Authority and procedural compliances by a Company/Body Corporate to which the Rules will apply.

http://www.mca.gov.in/Ministry/pdf/NFRARules2018_13112018.pdf

NOTIFICATIONS

- ❖ **The Companies (Amendment) Ordinance, Dt: 02.11.2018:**

The Central Government was of the opinion that the Companies Act, 2013 requires some amendments, and as the Parliament is not in session, in exercise of the powers conferred by Clause (1) of Article 123 of the Constitution, the Hon'ble President had promulgated the Ordinance, amending/inserting (as may be applicable) 31 Sections in the Companies Act, 2013. The Ordinance is in effect from 02.11.2018.

[http://www.mca.gov.in/Ministry/pdf/NotificationCompanies\(Amendment\)Ordinance_05112018.pdf](http://www.mca.gov.in/Ministry/pdf/NotificationCompanies(Amendment)Ordinance_05112018.pdf)

CIRCULARS

No Circulars were issued during the month.

ORDERS

No Orders were issued during the month.

*These updates are contributed by CS D V K Phanindra of SBS and Company LLP, Chartered Accountants.
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SATURDAY SESSIONS

S.No.	Event	Date	Speaker	Venue
1	GSA 520 - Analytical Procedures	05/01/2019	Prudhvi	SBS - Hyd
2	Overview of Section 78 & 79 of Income Tax Act,1961		Varshita	SBS - Hyd
3	Premanent Establishment	12/01/2019	Sai Laasya	SBS - Hyd
4	Taxability of High Sea Sales		Divyasree	SBS - Hyd
5	Outsourcing in a Manufacturing company - Risks and controls associated with it	19/01/2019	Adithya	SBS - Hyd
6	Section 13A - Special provisions relating to Incomes of Political parties		Sai Varun	SBS - Hyd
7	Audit of Bank Guarantees	02/02/2019	Monika	SBS - Hyd
8	Advance Ruling under GST		Sukanya	SBS - Hyd

SESSION TIMINGS: 2:30 to 4:30 PM

"ICDS VI- Effects of changes in foreign exchange rates" - Indu



Introduction to Standards on Internal Audit and SIA 220 - Sarvani



ICDS V - Tangible fixed assets - Sai Varun



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