

GST on Directors' Remuneration and Other Updates

Snapshot

Director's remuneration accounted as salaries in books and TDS deducted under Section 192 of IT Act, 1961, not liable to GST

Director's remuneration accounted as other than salaries separately in the books and TDS deducted under Section 194J of IT Act, 1961, liable to GST under RCM

Matching of ITC availed on Imports, ISD invoices and tax paid under RCM with GSTR 2A not required in case of refunds

Extension in respect of time limit for issuance of refund order, validity of E-Way bills and due date for migration of taxpayers of UT of Daman and Diu to the new UT

Facility for filing Nil GSTR 3B through SMS now activated

GST council in its 40th Meeting has recommended reduction in late fee for the periods July 2017 to January 2020, reduction in interest for small taxpayers for the period February to June 2020, opportunity for revocation of cancellation of registration and effective date for certain clauses of Finance Act, 2020 to be notified from June 30, 2020.

GST on Directors' Remuneration

The Central Board of Indirect Taxes and Customs ('CBIC') has issued a circular to bring the much-needed clarity on applicability of GST on remuneration paid to directors.

Background & Controversy

The Authority of Advance Ruling ('AAR'), Rajasthan in case of M/s. Clay Craft India Pvt. Ltd. (Advance Ruling No. Raj/AAR/2019-20/33) had observed that services provided by the Directors are not covered under Clause I of Schedule III of the Central Goods and Services Tax Act, 2017 ('CGST Act'). Accordingly, the AAR held that consideration in form of salary and commission paid to Directors by the Company is against the services provided by them to the Company and is liable to GST under Reverse Charge Mechanism ('RCM'). A similar advance ruling was also pronounced in the case of M/s. Alcon Consulting Engineers (India) Pvt. Ltd. (AR No. KAR ADG 83/2019) by AAR, Karnataka.

It is also to be noted that the AAR, Karnataka in case of Anil Kumar Agrawal (Advance Ruling No. KAR ADRG 30/2020) made a contradictory observation that the income earned by way of salary by a person being an Executive Director would not be liable to GST, however, the AAR did not give any finding on this aspect, citing non-availability of documentation.

Schedule III of the CGST Act provides that the transaction mentioned therein shall be treated as neither supply of goods nor supply of services. Entry no. 1 of the said Schedule covers that services by an employee to the employer in the course of or in relation

to his employment considered as neither supply of goods nor supply of services.

Notification no. 13/2017 – Central Tax (Rate) dated June 28, 2017 ('RCM Notification') covers those transactions on which tax is to be paid by the recipient of the services under RCM. Serial number 6 of the Table annexed to the notification covers 'Services supplied by a Director of a Company or the body Corporate' to such Company or Body corporate which is located in taxable territory.

The observations of the AAR, Rajasthan and Karnataka (supra.) that remuneration paid to the directors of the Company even as salary would be liable to GST under RCM without considering the fact that the directors of a Company can be employees of the Company as well, led to a lot of hue and cry in the industry and there was a strong need for the government to clarify the applicability of GST on remuneration paid to Directors.

Clarifications provided in the Circular

The CBIC has referred the relevant provisions of the Companies Act, 2013 ('Cos. Act') as well as the Income Tax Act ('IT Act') to analyse as to under what circumstances would a director qualify as an employee of the Company, and has clarified as under:

GST on remuneration to Directors, who are also an employee of the Company

- A director may be functioning in dual capacities, namely, one as a director of the company and the other as an employee on the basis of the contractual relationship of employment service entered into with the company.
- Under the IT Act, while salaries paid to directors are subject to Tax Deducted at Source ('TDS')

under Section 192, in cases where the remuneration is in the nature of professional fees and not salary, the same is liable TDS under Section 194J.

- Director's remuneration which is **declared as "Salaries" in the books of a company and subjected to TDS under Section 192 of the IT Act**, are not taxable in terms of Schedule III of the CGST Act, 2017.
- Director's remuneration which is declared separately other than "Salaries" in the Company's accounts and subjected to TDS under Section 194J of the IT Act as Fees for professional or technical services shall be treated as consideration for providing services and therefore, will be taxable where tax is to be paid by the Company under RCM.

GST on remuneration paid to Independent Directors or those Directors who are not the employee of the Company

Remuneration paid to independent directors, or any other directors, who are not employees of the said company, is taxable in hands of the company, on reverse charge basis.

KCM Note

This is a welcome circular as it rightly clarifies that salaries paid to directors would remain outside the purview of GST.

Sl. No. 6 of the RCM notification states that services provided by a director would be liable to GST under RCM. Whether the said entry would cover all the services provided by a Director even when such services are provided in the individual capacity by the person and not as a Director of the Company will

get covered under the said entry of RCM Notification, is still a question to ponder upon.

The Circular states that any remuneration paid to a Director which is other than Salaries and which is declared separately in the Company's accounts and subjected to TDS under Section 194J of the IT Act as fees for professional or technical services, shall be liable to GST under RCM.

There may be cases where the Director of a Company earns professional or technical fees from the said Company which may be attributable to the skills and qualifications of the Director and therefore, such payment would not be in his capacity as a director but would be in his individual capacity. Such payments would also be subject to TDS under Section 194J of the IT Act and the literal interpretation of the circular seems to cover such payments also under RCM even where such services are rendered by the Director in his individual capacity.

Further, payments made to directors (whether employee directors or otherwise) such as rent (liable to TDS under Section 194I of the IT Act) or commission (liable to TDS under Section 194H of the IT Act) have not been discussed in the circular. A view may be taken that such services not being covered under Section 192 (salary payment) or 194J (fees for professional or technical services) of the IT Act would continue to be liable to GST under forward charge. Similarly, for payments liable to TDS under 194J of the IT Act, a view is also possible that the circular covers only those payments to a Director which are for his services in his capacity as a Director for e.g. Sitting fees and only such payments would be liable to GST under RCM.

Circular No: 140/10/2020 – GST dated the June 10, 2020

Matching of ITC of Imports, ISD and RCM not required for refunds

Background & Clarification

Circular No.135/05/2020 dated March 31, 2020 was issued by the CBIC seeking to restrict the refund of Input Tax Credit ("ITC") to the extent the details of the invoices are reflected FORM GSTR - 2A. It was brought to the notice of the CBIC that sanctioning authorities are rejecting the refund of accumulated ITC pertaining to Imports, ISD invoices, RCM etc. citing the Circular No.135/05/2020.

The CBIC has now clarified that Circular No.135 /05/2020 does not in any way impact the refund of ITC availed on Imports, ISD invoices, inward supplies liable to supplies etc. on the basis of relevant invoices / documents.

KCM Note

It is to be noted that, Circular 135/05/2020 only restricted refund to the extent of invoice which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. While ISD invoices are not uploaded in Form GSTR 1, Imports transactions and inward supplies liable to RCM do not get reflected in FORM GSTR 2A of the recipient and the stand taken by the authorities rejecting refund of such ITC was absurd. Thankfully, the same now stands clarified.

Circular No. 139/09/2020-GST dated June 10, 2020

Filing of GSTR 3B through SMS

The rule facility for filing of NIL returns in FORM GSTR 3B through short messaging service (SMS) using the registered mobile number of the taxpayer notified and made effective from June 8, 2020

Notification: 44/2020- Central Tax dated June 8, 2020

Extensions in certain Timelines

Union Territory ('UT') of Daman and Diu and Union Territory of Dadra and Nagar Haveli have been merged with effect from January 26, 2020 under the UT of Daman and Diu and Dadra and Nagar Haveli. Consequent to the merger, the old UTs cease to exist from January 26, 2020 and therefore, all the taxpayers situated in such UT were required to take registration under newly formed UT

The date for transition of existing registrations under GST in the erstwhile of Daman and Diu or Dadra and Nagar Haveli to the new UT of Daman and Diu and Dadra and Nagar Haveli which was earlier May 31, 2020 has now been extended up to July 31, 2020

Notification: 45/2020 - Central Tax dated June 9, 2020

In cases where a notice has been issued for rejection of refund claim, in full or in part and where the time limit for issuance of order falls during the period March 20, 2020 to June 29, 2020, the time limit for issuance of the said order shall be extended to 15 days from the date of receipt of reply from the taxpayer or June 30, 2020 whichever is later.

Notification: 46/2020 - Central Tax dated June 9, 2020

Where E waybills are generated on or before March 24, 2020 and the validity has expired on or after March 20, 2020, the validity of such E waybills shall be deemed to be extended up to June 30, 2020.

Notification: 47/2020 - Central Tax dated June 9, 2020

KCM Note

Due to the ongoing business disruptions in business in view of COVID -19, the Government has, vide the above mentioned notifications provided relaxations to taxpayers either by further extending due dates for various compliances under the GST Act or by providing relaxations to certain procedures to be followed

40th GST Council meeting updates

Reduction in late fee for filing of FORM GSTR 3B for the tax period from July 2017 to January 2020, if furnished between July 1, 2020 to September 30, 2020

- NIL late fee if there is no tax liability
- Maximum of Rs. 500/- per return, if there is any tax liability

Reduction in interest applicable on late furnishing of returns for the tax periods February, March and April 2020 for taxpayers having turnover up to Rs. 5 Cr.

- No Interest applicable for filing of GSTR 3B return within the date specified under Notification 31/2020
- 9% interest applicable if GSTR 3B return filed beyond such date but till September 30, 2020
- 18% interest if GSTR 3B return filed post September 30, 2020

- Waiver of interest and late fees for the taxpayers having aggregate turnover up to Rs. 5 crores for tax periods May to July 2020 if the GSTR 3B return is filed by the September 2020 (staggered dates to be notified separately)
- An opportunity for filing an application for revocation of cancellation of registration will be provided up to September 30, 2020 to Taxpayer whose registration is cancelled up to June 12, 2020
- Effective date for certain clauses of the Finance Act, 2020 amending CGST Act 2017 and IGST Act, 2017 will be notified from June 30, 2020

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For further analysis and discussion, you may please reach out to us.

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