

**Agenda Item 6(iv): Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons**

Various representations have been received seeking clarification on the taxability of activities performed by an office of an organization in one State to the office of that organization in another State, which are regarded as distinct persons under section 25 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act') and of the supply of services between such distinct persons.

2. The Law Committee has proposed to clarify the issues regarding distribution of input tax credit in respect of input services procured by the Head Office but attributable to the Head Office and /or various Branch Offices, treatment of expenses incurred by the Head Office on the procurement, distribution and management of common input services, treatment of services provided by the Head Office such as common administration or common IT maintenance to its Branch Offices and its valuation thereof, etc.
3. A draft Circular is annexed to this Agenda Note (Annexure-A) clarifying the doubts on the above subject. Similar Circular would be issued by all the States also.
4. Accordingly, the approval of the GST Council is sought for the issuance of the proposed Circular.

F.No.  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Indirect Taxes and Customs  
GST Policy Wing  
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North Block, New Delhi

Dated June, 2019

To,

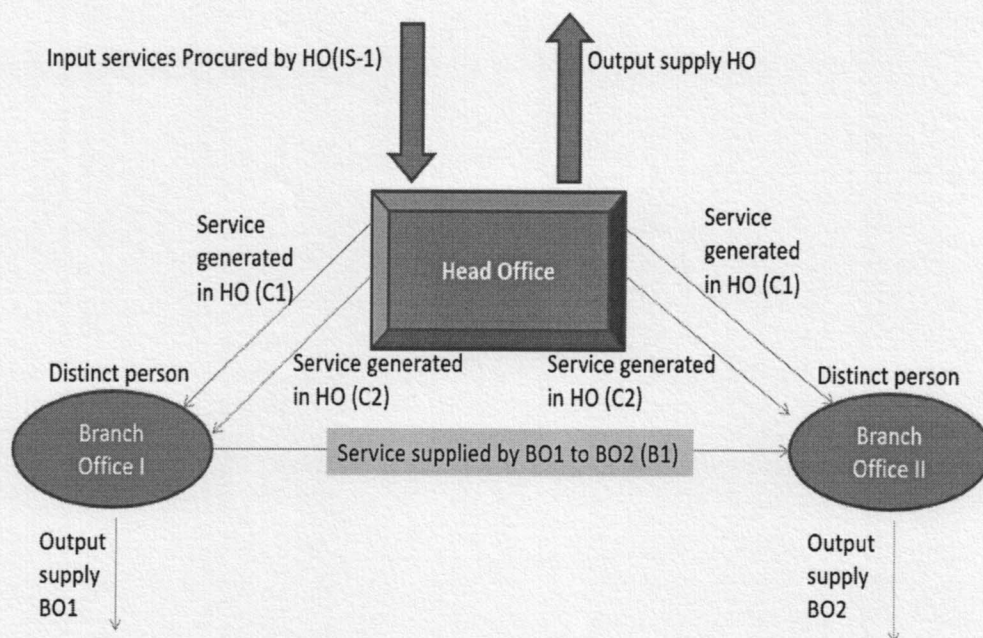
The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /  
Commissioners of Central Tax (All) / The Principal Directors General / Directors General (All)

Madam/Sir,

**Subject: Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons– reg.**

Various representation have been received seeking clarification on the taxability of activities performed by an office of an organisation in one State to the office of that organisation in another State, which are regarded as distinct persons under section 25 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act') and of the supply of services between such distinct persons. The issues raised in the said representations have been examined and to ensure uniformity in the implementation of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies the issue in succeeding paras.

2. For better understanding the issues involved, let us take the following example: -



2.1. Let us assume that there is a business entity which has Head Office (HO) at Mumbai (HO) and two branch offices at Kolkata (BO-1) and Chennai (BO-2), as shown in the matrix above. The HO procures security service (IS – 1) for the entire organisation from a security agency located in Delhi, which deploys 10 security guards at HO and 5 each at BO-1 and BO-2.

2.2. The HO has a Personnel Department which looks after the personnel administration such as maintenance of leave record, performance evaluation, and promotion of all the employees posted at HO, BO-1 and BO-2. The activity performed by the personnel department of HO is marked as C-1. The Technical Maintenance Department of the HO does the maintenance of all the machines installed at HO, BO-1 and BO-2. The activity performed by the Technical Maintenance Department of the HO is marked as C-2.

2.3. Head Office as well as branch offices undertake software development projects for their clients. In a software development project undertaken for a client by BO-2, two engineers posted at BO-1 assisted BO-2. The activity performed by the two engineers of BO-1 for the software development project undertaken by BO-2 is marked as B-1 in the matrix above, depicting the flow of the above services within the three distinct persons of the same organisation.

3. The issues that may arise with regard to taxability of supply of services between distinct persons in terms of sub-section (4) of section 25 of the CGST Act as shown in the above matrix are being clarified in the form of questions and answers as detailed below: -

3.1. **Question**– Is it mandatory to distribute input tax credit (hereinafter referred to as ‘ITC’) in respect of input services (IS-1), procured by HO but attributable to both HO and BOs, following the Input Service Distributor (ISD) procedure?

**Answer** -Yes, it is mandatory to follow ISD procedure laid down in Section 20 of CGST Act read with rule 39 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules') for distribution of ITC in respect of input services procured by HO from a third party but attributable to both HO and BO or exclusively to one or more BOs.

3.2. **Question**—Will the input service (IS-1) procured by HO from a third party for use by the BOs, the ITC of which is distributed in accordance with the ISD procedure, be treated as a supply by HO to the BOs and will it be taxable in the hands of HO.

**Answer** – No, the services procured by HO from a third party for use at HO and BOs, or exclusively for use by BOs, the ITC of which is distributed in accordance with the ISD procedure laid down in Section 20 of the CGST Act read with rule 39 of the CGST Rules, would not be separately treated as supply by the HO to the BOs.

3.3. **Question**– If HO considers that procurement, distribution and management of common input services for use by HO and BOs as per ISD provisions leads to an expense, how can it apportion these expenses to the BOs?

**Answer**—HO may incur certain expenses on procurement, distribution and management of common input services. The HO may or may not apportion and recover such expenses from BOs. Nevertheless, such procurement, distribution and management of services by the HO for the BOs is a separate service provided by the HO to the BOs. It should be invoiced by the HO to the BOs to the extent of expense incurred by the HO. It is a service distinct from those services the ITC in respect of which has been distributed through the ISD procedure. It is for the HO to value the service as per the principles laid down in para 3.6 below.

3.4. **Question**– If the HO generates some services internally such as common administration by maintaining common administration team for BOs and HO (C1 in the matrix above), or common IT maintenance through a maintenance team at HO (C2 in the matrix above), where the team members are the employee of the HO, are these employees providing any service to the BOs?

**Answer** –

3.4.1. The offices or establishments of an organisation in different States are establishments of distinct persons under sub-section (4) of section 25 of the CGST Act and Explanation 1 of section 8 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as 'the IGST Act'). GST law envisages these distinct registered persons to be independent entities, though part of one legal entity, and they can be providing services to each other.

3.4.2. Whether employees posted in HO, who look after administration of HO and BOs or maintenance of machines installed in the HO and BOs or perform similar other functions for the organization as a whole or for a particular BO which is a distinct person, are providing service to BOs is not the correct perspective to be determined here. The correct perspective for examining the issue at hand would be to determine whether the HO and BOs are providing services to each other and not whether the employee of HO is providing services to the BOs. In this case, it is the HO which is providing services to BOs.

3.5. **Question**– What is the legal basis for concluding that HO is providing services to the BOs in the above example?

**Answer** –HO and BOs are distinct persons in terms of sub-section (4) of section 25 of the CGST Act. They are also related persons as defined in Explanation (a) to section 15 of the CGST Act. It may be noted that the supply of goods or services or both between related persons or between distinct persons, when made in the course or furtherance of business is a supply even if it is made without consideration in terms of para 2 of Schedule I to the CGST Act. Thus, services produced or generated in HO by its employees and used by or supplied to BOs, with or without consideration, are supplies liable to GST. The HO should invoice such supplies to the BOs, whether HO charges any consideration for such supplies from BOs or not is immaterial. The same principle would apply for supply of services by a BO to another BO (B1 in the above matrix) or by a BO to the HO.

3.6. **Question**– How would these services provided by one entity to another of a body corporate, registered as distinct entities (C1 and C2 in the above matrix) be valued?

**Answer-**

3.6.1. As regards valuation of such supplies, since HO and BOs located in different States are related persons, value of such supplies cannot be determined under sub- section (1) of section 15 of CGST Act. The same has to be determined under sub- section (4) of Section 15 of CGST Act read with the rules made thereunder. According to rule 28 of the CGST Rules, the value of supply of goods or services between distinct persons or related persons shall,

- a) be the open market value of such supply;
- b) if the open market value is not available, be the value of supply of goods or service of like kind and quality;
- c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31 of the CGST Rules, in that order.

3.6.2. The rule further provides that where the recipient is eligible for full ITC, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

3.6.3. **Illustration** -HO has sent an annual expense budget of Rs 10 lakh for the administrative division looking after the personnel administration of the employees in HO as well as two BOs located in two different States. The value of services supplied by the HO to BO-I may be determined under rule 31 of the CGST Rules using any reasonable means consistent with the principles of valuation contained in the CGST ACT. For example, value “V” of service provided by HO to BO-1 for managing administration of staff can be determined as follows:

$$\text{Value "V"} = (Y/N) \times \text{Rs.10,00,000/-}$$

Where, Y is the number of employees in BO-1;

And N is the total number of employees posted in the HO and two BOs.

3.7. **Question**– If there is an input service, clearly attributable to a BO, can it be contracted by the HO and paid for by the HO. How would this credit be transferred to the BO?

**Answer** – HO can distribute ITC in respect of input services procured on behalf of BO following the ISD procedure laid down in section 20 of CGST Act read with rule 39 of the CGST Rules. There is no restriction on HO acting as common procurement centre for all the services required by a business. If a service is specifically attributable to a BO, it shall be distributed to that BO only in terms of clause (c) of sub-section (2) of section 20 of the CGST Act.

**3.8. Question**– There are some services internally generated which are clearly identifiable as those pertaining to another distinct person, how would these be taxed? For example, if two persons in BO1 do work related to IT development for a project contracted by BO-2 (service B1 in the above matrix), how would it be taxed?

**Answer-**

**3.8.1.** In this case, BO-1 is providing service to BO-2 by way of assistance in the IT development work undertaken by BO-2. BO-1 should invoice this service to BO-2 and pay GST on it. Value of the service may be determined by using any reasonable means as illustrated below:

**3.8.2. Illustration** - Assuming that each of the two engineers of BO-1, who assisted in the software development project undertaken by BO-2 as shown in the above matrix, draws salary and emoluments on cost to the company (CTC) basis of Rs. 1.00 lakh per month and puts in, on an average, 200 hours of work per month, and devoted 50 hours each for the project undertaken by BO-2, the value of service (B1) supplied by BO-1 to BO-2, by way of assistance in a project belonging to BO-2, may be determined using reasonable means under rule 31 of the CGST Rules as under:

Value of service B1= Employee cost + Establishment cost of supplying 100 man-hours.

Employee cost of 100 man-hours supplied by BO-1 to BO-2 may be calculated in this example as under:

$$= (100000/200)*50*2$$

To this may be added the establishment cost of supplying 100 man-hours following any reasonable method consistent with the generally accepted accounting principles as illustrated in para 3.6.3 above.

**3.8.3.** It may be noted that the question pertains to clearly identifiable service for which BO maintains record. This does not warrant that activities and services of individual employees are required to be monitored in terms of its usage by various BOs and HO. Where such accounting is not done in the normal course of business, answer as given for question 3.6 shall apply.

**4.** Accordingly, it is reiterated that where a taxpayer, registrant in different States, is a distinct person, then –

(i) An employee of a HO (registered as a separate entity) does not provide any services to a BO, rather it is the HO which provides service to the BO.

(ii) There is a need to apportion expenses incurred by one office for provision of output services to another office by any reasonable means consistent with the principles of valuation in the GST law and the generally accepted accounting principles.

(iii) Such apportionment/valuation of supply shall be done on the basis of information maintained by a company in its normal course of working. There is no need to maintain additional records of activities undertaken by individual employees.

(iv) The only exception to this principle would be distribution of ITC in respect of input services procured by one office and distributed to the others for which ISD provisions apply as the taxpayer is expected to mandatorily obtain ISD registration if he has to distribute ITC on input services.

5. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

6. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board. Hindi version would follow.

Principal Commissioner (GST)