

---

# GOODS & SERVICES TAX

## GST ISSUES - COOPERATIVE BANKS

SANDEEP SACHDEVA, PARTNER

7 JULY 2019

---

# GST

## CROSS CHARGE



Lakshmi Kumaran  
& Sridharan  
attorneys

# CROSS-CHARGE

## Background

- In GST regime, even FOC services between distinct persons (i.e. transactions between head office and branch office) would attract GST (refer Section 7 (I) (c) read with Schedule I to CGST Act).
- Providing usage of **Trade-name** by Head office
- Head office is engaged in centralized functions such as legal, audit, HR, payroll, etc.
- Branch office is engaged in various banking activities.

## Issue

- Whether Head office is providing services to sales offices ?
- Whether Branch offices are providing services to head office in respect of which final approval is taken by Head office ?
- How to value the FOC services for Cross-charge, where full ITC is not available ?

# CROSS-CHARGE

## Background

- Employees are working at the Head Office for various Branch offices.
- Advance Ruling in the case of **Columbia Asia Hospitals Pvt. Ltd.** [2018-VIL-30-AAAR].
- As per the said ruling, there is no employer-employee relationship between HO employees and Branch offices and cross-charge is required.

## Issue

- Whether Employee cost at Head office is also required to be cross-charged ?
- Whether Columbia Asia depicts the correct legal position ?

# CROSS-CHARGE

## Background

- ITC is availed at HO for various goods/ services which are consumed at Branch office also.
- ITC can be distributed through ISD mechanism.
- ITC can also be distributed in one way through Cross-charge mechanism.

## Issue

- Whether Cross-charge is mandatory or ISD is mandatory ?
- Whether Cross-charge and ISD can function parallely ?

# CROSS CHARGE - VALUATION

## Background

- Rule 28 of the CGST Act, 2017 provides for the valuation rules in case supply of service or goods take place between Distinct and Related person.

## Issue

- How to value FOC services ?
- **FAQ on Banking sector:**
  - As per Rule 28, estimated cost should be determined and CA certificate should be obtained for the backing of the same.
- Whether the above clarification to obtain CA certificate is mandatory ?

---

# GST

## REGISTRATION

# REGISTRATION

## Issue

- Whether ATM premises should be added as additional place of business ?
- As per RBI guidelines, Banks can use third party ATMs, Business Correspondents (BC), Customer Service Points (CSP) or third party warehouses. Whether such location should be included as additional place of business ?
- **FAQ on Banking Sector:**
  - ATM is not a place of business
  - Third party places are not fixed establishment/ place of business for banks



---

# GST

## INVESTMENT IN SECURITIES

# INVESTMENT IN SECURITIES

## Provision

- 1% sale value of investment in securities would be added in the exempted turnover for ITC reversal. Explanation 2 to Chapter V of CGST Rules read with Section 17 of CGST Act.
- As per RBI circular RBI/2016-17/83 DBR.No.Ret.BC.15/12.02.001/2016-17, a banking company can maintain **central government and state government securities** to maintain the statutory liquidator ratio.

## Issue

- Whether investment by bank due to statutory obligation would attract ITC reversal ?
- Similar issue exist in Insurance companies
- **Sriram Life Insurance Company Limited vs. CCCE & ST, Hyderabad-IV MANU/CH/0025/2019**

---

# GST

## PENAL INTEREST

# PENAL INTEREST

## Provision

- Section 15 (2) (d) provides that value shall include “**interest** or late fee or penalty **for delayed payment** of any consideration for any supply”.
- SI No. 27 of Notification No. 12/2017- Central Tax (Rate), exempts services by way of extending deposits, loans or advances when consideration is represented by way of interest or discount (other than interest involved in credit card services).
- Advance Ruling -**Bajaj Finance** (2018-TIOL-264-AAR-GST)

## Issue

- Whether penal interest charged by the bank would be included in taxable value ?
- Whether exemption can be claimed towards penal interest ?
- **Circular 102 dt. 28.06.19 on Penal Interest:**
  - If Penal interest is charged on late payment of EMI for supply of goods, then the same would be included in the value of the product.
  - If Penal interest is charged for the delay in payment of EMI/ loan taken to buy a particular product, then GST is exempt.

---

# GST

## FORFEITURE OF GOODS

# FORFEITURE OF GOODS

## Issue

- Whether forfeiture of goods for default in paying loans would be supply ?
- What will be the implications if the value of the forfeited asset is higher than the outstanding amount ?

---

# GST

## INPUT TAX CREDIT

# INPUT TAX CREDIT

## Provision

- Section 17 (4) of CGST Act: Banking company has the options to reverse 50% of eligible ITC, rather than turnover based reversal.
- 50% credit reversal option once exercised cannot be withdrawn for the remaining part of the financial year.

## Issue

- Where 50% reversal would be required in case of GST charged by HO to branch office and vice-versa ?
- Second proviso to Section 17 (4): Full ITC would be available for service provided from one branch to another or HO to branch and vice versa.



---

# GST

## PLACE OF SUPPLY

# POS – INDIAN CUSTOMER

## Provision

- Section 12 (12) of the IGST Act: POS for Banking and other financial services to **any person in India** shall be:
  - location of the **recipient** on the records of the supplier
  - In case address on record is not available, the POS shall be the location of the **supplier**.

## Issue

- Banks maintain KYC details of customers. Whether such details would constitute availability of record of recipient with the Bank ?
- POS for walk-in customers such as for preparing DD, conversion of foreign exchange, etc.

## POS – FOREIGN CUSTOMER

### Provision

- Section 13 (8) (a) of the IGST Act: POS for Banking and other financial services to **account holder outside India** shall be:
  - location of the **supplier**
- Explanation provides that “**account**” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account.

### Issue

- Whether Banking service provided to foreign customers would be liable GST ?
- Whether the services would qualify as export of service to avail export benefits ?

---

# GST

## INVOICING

# INVOICING

## Provision

- Rule 47 of the CGST Rules provides that a banking company can issue invoice within 45 days from the date of supply of service.
- Further invoice for supply between distinct persons shall be issued :
  - when such supplier records the same in his books of account; or
  - before the expiry of the quarter during which the supply was made.

## Issue

- Whether it is mandatory for Banks to issue a single tax invoice for each transaction Or Bank can issue a consolidated invoice for the service rendered during the tax period/ every month ?
- **FAQ on Banking Sector:**
  - Bank may issue a consolidated statement/ invoice/ advice to the customer at the end of the month, with the details of all the charges levied during such month and GST payable thereon.

---

# GST

## SERVICES TO AND FROM RBI

# SERVICE TO AND FROM RBI

## Provision

- As per Sl no. 26 of Notification No. 12/2017 – Central Tax (Rate) - Service by the Reserve Bank of India to Banks is exempt.

## Issue

- Whether services provided by Banks to RBI is also exempt ?
- **FAQ on Banking Sector:**
  - Services provided by Banks to RBI is not specifically exempted and hence, would attract GST.

---

# GST

## EMPLOYEE TRANSACTIONS



# EMPLOYEE FACILITY & RECOVERY

## Background

- Employer & employee are related person.
- Supply between related person even without consideration (i.e. FOC supply) would also attract GST, as per Schedule-I to CGST Act.
- Supply of service :“Obligation to Tolerate an Act”
- Press Release dated 10th July 2017 by CBIC states that supply by employer to its employee in terms of contractual agreement between the employer and employee as a part and parcel of Cost-To-Company (CTC) will not be subjected to GST.

## Issue

- Whether FOC facility by employer to employee would amount to supply ?
- How to value FOC supply – OMV ?
- Different recoveries:
  - Canteen recovery
  - Transportation recovery
  - Insurance recovery
  - Notice Pay recovery
  - Employee fines for damage/ loss of property
  - Loan recovery
  - Joining bonus recovery

---

# GST

## CESS CARRIED FORWARD IN GST

# CESS CARRIED FORWARD IN GST

## Background

- CENVAT Credit carried forward in excise/ service tax return allowed to be transitioned in GST regime under 140 (1) through TRAN-01
- Department disputing the credit of cesses carried forward
- CGST Amendment Act 2018: Retrospective amendment w.e.f. 01.07.2017 w.r.t. Section 140 (1).

## Issue

- Revenue demanding reversal of Cess along with interest and penalty
- Whether Interest and Penalty is also applicable on retrospective amendment ?
- Matter already settled in case of **Star India Pvt. Ltd.** 2006 (1) S.T.R. 73 (S.C.).

---

# GST

## RCM TRANSACTIONS

# RCM TRANSACTIONS

## Provision

- As per Section 9 (4) of the CGST Act, procurement of goods/ services from Unregistered Dealer would attract GST under RCM.
- Exemption w.e.f. 13 October 2017
- Time-limit to avail ITC for FY 2017-18 was till 31 March 2019.
- As per Section 9 (3) of the CGST Act, procurement of certain services would attract GST under RCM.
  - Legal services
  - Security services provided by non-body corporate

## Issue

- Whether such procurement identified and GST paid ?
- Eg. Tea, stationery, office maintenance, manpower support services, etc.
- Whether tax paid for FY 2017-18 can be claimed as ITC now on the basis of self-invoice ?

---

# GST

## SALE OF CAPITAL GOODS



Lakshmi Kumaran  
& Sridharan  
attorneys

# SALE OF CAPITAL GOODS

## Provision

- Section 18 (6): In case of supply of capital goods on which input tax credit has been taken, tax would be applicable on higher of :
  - Amount equal to the ITC reduced by 5% per quarter; or
  - Tax on the transaction value of such capital goods.
- Capital goods means goods which are capitalized in books of accounts.

## Issue

- Sale of capital goods such as computers, printers, furniture and fixture, etc. need attention when such goods are sold.

Thank You



# OUR OFFICES

## INTERNATIONAL

GENEVA

[lsgeneva@lakshmisri.com](mailto:lsgeneva@lakshmisri.com)

LONDON

[lslondon@lakshmisri.com](mailto:lslondon@lakshmisri.com)

Committed to International Standards  
in Quality and Information Security



[www.lakshmisri.com](http://www.lakshmisri.com)

If you wish to subscribe to GST updates, please send an e-mail to [gst@lakshmisri.com](mailto:gst@lakshmisri.com)

## INDIA

NEW DELHI

[lsdel@lakshmisri.com](mailto:lsdel@lakshmisri.com)

GURGAON

[lsgurgaon@lakshmisri.com](mailto:lsgurgaon@lakshmisri.com)

MUMBAI

[lsbom@lakshmisri.com](mailto:lsbom@lakshmisri.com)

CHANDIGARH

[lschd@lakshmisri.com](mailto:lschd@lakshmisri.com)

BENGALURU

[lsblr@lakshmisri.com](mailto:lsblr@lakshmisri.com)

PUNE

[lspune@lakshmisri.com](mailto:lspune@lakshmisri.com)

CHENNAI

[lsmds@lakshmisri.com](mailto:lsmds@lakshmisri.com)

KOLKATA

[lskolkata@lakshmisri.com](mailto:lskolkata@lakshmisri.com)

HYDERABAD

[lshyd@lakshmisri.com](mailto:lshyd@lakshmisri.com)

AHMEDABAD

[lsahd@lakshmisri.com](mailto:lsahd@lakshmisri.com)