

## A) Deemed Dividend 2(22)(2)

We understand that the reference is made to the provisions of section 2(22) (e) of the Income tax Act, 1961. This situation envisages there is loan given by the company to the director.

In this situation as per the provisions of the Income tax act 1961 the certain amount would be treated as Deemed Dividend and accordingly other provisions of the Income tax act would be made applicable.

This is deeming provision. Apparently there is no payment made to director for rendering any kind of services to the company. There is obligation on the part of Director to repay such loan advanced by the company.

As such to our belief it would be out of the ambit of Section 7 of Goods & Services Tax Act, 2017, which provides the definition of Supply. Relevant portion is reproduced as below:-

*“7. (1) For the purposes of this Act, the expression “supply” includes—  
all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;  
(b) import of services for a consideration whether or not in the course or furtherance of business;  
(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and  
(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.”*

Even after going through Schedule I or Schedule II it would be difficult to say that deemed dividend would fall within the definition of supply. To our knowledge it is out of the ambit of the Goods and Services Tax Act, 2017.

## B) If any director, who is beneficial owner of the entire shares (99%), get paid advisory fees

In this situation it is accepted by the company that director is paid remuneration may be by whatever name and form. In the instant case it is in the form of Advisory Fees. This would be covered by the definition of Supply under section 7 of Goods and Services Tax Act 2017.

However the payment made to director is covered by the Section 9(3) of Goods and Services Tax Act, 2017. Relevant provisions are reproduced

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*“9 (3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.”*

Accordingly there is. Notification No. 13/2017- Central Tax (Rate) dated 28<sup>th</sup> June 2018 issued under Section 9(3) of Central Goods and Services Tax Act, 2017. (Copy enclosed)

At Sr No. No 6 following services are covered

**Services supplied by a director of a company or a body corporate to the said company or the body corporate**

Since the services of directors of a company are covered by the Reverse Charge Mechanism (RCM) company would be required to pay the GST on such payments made to directors.

As far as Credit of GST is concerned company would be eligible to claim the ITC of such tax paid on the payment made to director.

Prepared on 19<sup>th</sup> July-18

**Disclaimer:** - Above note is prepared based on our understanding and are our views based on understanding of the law/ Notifications/ Circulars. We have made best effort to analyze the various provisions of the act but it should not be treated as professional opinion. You are advised to refer to the provisions of the act and relevant rules before structuring any transactions based on this note.

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