

# Note on Employer-Employee Transaction under GST

## **Services by Employee to Employer,**

Schedule III of CGST Act, 2017 states that Services by Employee to the employer in course of or in relation to his employment is to be treated as neither supply of Goods nor a supply of Services. As such it can be understood that the services rendered by Employee to Employer in the course of employment are out of the ambit of CGST Act, 2017.

## **Services by Employer to Employee,**

Now the question remains to be answered about the taxability of Goods/Services supplied by Employer to Employee. Whether such supply of goods either at subsidized price or free of cost are liable for tax under the CGST Act, 2017?

We would try to analyse the relevant provisions of the act.

Schedule II of CGST Act, 2017 proviso to Sr.No.2 states that Gift not exceeding fifty thousand rupees in value in a financial year by an employer to employee shall not be treated as supply of goods or services or both.

However the term/word gift has not been defined under the CGST Act,2017.

As such there is no exemption granted for the services provided by Employer to Employee except to the extent of Rs.50,000/- per financial year per employee. Conversely it can be inferred that if the value of goods or services provided by employer to employee exceeds the limit stated above is liable to be considered as Supply under the CGST Act, 2017. It would be treated as Supply by Employer to Employee under the CGST Act, 2017.

In order to tax such Supply from employer to employee let us consider following instances and what should be the taxable value of Supply.

As per the provisions of Sec15 of CGST Act, 2017 employer and employee are to be treated as related party. It means in order to ascertain the transaction value liable for tax reference has to be made to the valuation rules issued for the related party.

Chapter No.IV of the Rules of CGST Act, 2017 deals with the Determination of Value of Supply.

Rule No.28 deals with such valuation and it lays down the methods of such valuation.

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Broadly it provided four methods of valuation

**Open Market Value** of such supply, i.e. Full value in money of transaction between two unrelated parties where transaction value is sole consideration.

**Value of Supply of Like Kind or quality**, if the open market value is not available be the value of supply of goods or services of like kind and quality.

**Cost Plus Method** Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services .(Rule 30)

**Residual Method** Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter..(Rule 31)

In the case of supply of services, the supplier may opt for this rule, ignoring rule 30 i.e. Cost plus 10% rule.

As such, the methods as stated above needs to referred to ascertain the value of taxable supply or transaction value of Supply from Employer to Employee.

After following the valuation rules following propositions can be put forth

- Where the total value of gifts during the financial year per employee exceeds Rs.50000/- then over above Rs.50000/- GST needs to paid
- However if in a single gift the value exceeds Rs.50000/- then GST would be required to be paid on the entire value. In short basic exemption of Rs.50000/- would not be available in case of single gift exceeding Rs.50000/- in value.

It is common practice of the companies to various facilities to its employee in the form of reimbursement of expenses, or facilities like Personal Accident Insurance, Medical Insurance etc. Let us examine the nature of various allowances and faculties granted by the employee to employer and taxability of the same under the CGST Act, 2017.

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Before examining each allowance separately we can lay down certain propositions

## **Broadly out of Ambit of GST**

We can say following transactions would be out of ambit of the GST

- Use of common facilities like providing free tea, coffee in the office or factory, provision of Health Check up facility within the premises of company, Free Gym/Crèches Facilities, where there is no identification of employee as well as there is no recovery of any amount from employee. Since it is provision of common facility it would be out of ambit of GST.
- Facilities provided for official usage by employee like Laptops, mobile phones etc. Since these are provided by employer in the course of employment it should be out of ambit of GST.
- Reimbursement of expenses like telephone/mobile bills, electricity bills etc. Since it amounts to the reimbursement of expenses there cannot be any element of supply as such it would be out of ambit of GST.
- Relocation Benefits in the form of transportation of household goods, transportation etc. Since these are provided in the course of employment and for the official use it should not attract GST liability.
- Recovery made from the Employee for the loss of assets of company like mobile phone, laptops, ID cards, Entry passes issued etc. Since these are charges recovered for the loss of asset owned by the company it would be difficult to say that this could be treated as supply under the GST.
- Personal Accident Insurance for employees and family members/Personal Accident Insurance. If there are no recoveries made from the employees or no charges are recovered from employee on this account then it should not attract the GST. However it should be made clear in the contract with the Insurance company that company is making payment on behalf of employees.
- Free Cab or subsidized facility if it is covered in the employment contract or there is obligation to provide such services under the law.
- Company car/Car Lease schemes if these are covered by the employment contract

# Note on Employer-Employee Transaction under GST

## Could be Considered as Supply under GST

In the following cases/facilities provided by Employer to Employee there would be element of Supply and would be liable for GST.

- Company's product or Sale of old laptops, cars etc. (booked as asset in the books of company) at a discounted prices
- Employee referral program, where the employer pays consideration for such services and same is being subject to taxed in the hands of employee.
- Gifts on the occasion of Festival exceeding limit of Rs.50000/- per employee per FY.
- Free Cab or subsidized facility if it is not covered in the employment contract
- Provision for free food/snacks at the event with or without partial recovery of the same from employee.
- Company car/Car Lease schemes not covered by the employment contract

Notice pay remains still a matter of debate since the same was issue under the Service tax.

Updated on 12<sup>th</sup> July 2017

### Disclaimer:-

Above note is prepared based on our understanding and are our views based on understanding of the law. 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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