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GST

SECTORAL SERIES

IT/ITES



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FAQ: IT/ITES

Question 1: Whether software is regarded as goods or services in GST?

Answer: In terms of Schedule II of the CGST Act 2017, development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software and temporary transfer or permitting the use or enjoyment of any intellectual property right are treated as services.

But, if a pre-developed or pre-designed software is supplied in any medium/storage (commonly bought off-the-shelf) or made available through the use of encryption keys, the same is treated as a supply of goods classifiable under heading 8523.

Question 2: What are the implications of recognising the development, design, programming, customisation, adaptation, upgradation, enhancement, and implementation of information technology software as a service?

Answer: The primary implication is that the place of supply rules applicable to services would apply in determining taxability of the supply of software services. The same would be applicable in situations of supply of services involving a temporary transfer or permitting the use or enjoyment of any intellectual property right. The other implication is that the supplier of software services would not be eligible for the composition scheme.

Question 3: 'A' is a dealer in Computers and Computer parts having turnover of Rs. 8 lakh in a year; does 'A' have to register under GST?

Answer: Every supplier located in a State or Union territory, whose "aggregate turnover" in a financial year exceeds twenty lakh rupees, is liable to be registered under GST. This limit of turnover for a special category State is ten lakh rupees. 'A', whose aggregate turnover is only Rs. 8 lakh in a year, is therefore not liable to registration.

Question 4: The registered person 'B' receives small portions of software code from individuals which he then integrates and supply as a package to clients. These individuals are having small turnover of Rs 5 to 10 lakh, and therefore are not registered in GST. Whether there is any liability on 'B' in respect of services provided by such individuals?

Answer: If the supplies are made by unregistered suppliers, GST is liable to be paid by the recipient, who is a registered person, under section 9(4) of the CGST Act, 2017. Therefore, in this case 'B' is liable to pay GST on services provided by these individuals. 'B' can claim credit of this tax paid by him on reverse charge.

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Question 5: What is the rate of tax on IT services?

Answer: The rate of GST on IT services is 18%.

Question 6: Whether exports of software services attract GST?

Answer: Exports and supplies to SEZ units and SEZ developers are zero-rated in GST. Zero-rating effectively means that no tax is payable on exports but the exporter/supplier is entitled to the input tax credit on inputs/input services used in relation to exports. The exporters have two options for zero rating, which are as follows:

- (1) To pay integrated tax on supplies meant to be exported and get refund of tax so paid after the supply is exported.
- (2) To make export supplies under a bond or letter of undertaking and claim refund of taxes suffered on inputs and input services in relation to such exports.

Question 7: How do I determine whether IT services provided by me constitute export of service?

Answer: The supply of any service is considered an export of service, where the following conditions are met:

- (1) the supplier of service is located in India;
- (2) the recipient of service is located outside India;
- (3) the place of supply of service is outside India;
- (4) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (5) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 8 of the IGST Act, 2017.

Question 8: How do I determine the place of supply of IT/ITES services?

Answer: Place of supply of IT/ITES services is the location of the recipient in terms of section 12 and 13 of the IGST Act, 2017. However, if the recipient is not registered and his address is not available on the records of the supplier, the place of supply would be the location of the supplier.

Question 9: How to determine the location of the recipient?

Answer: Location of the recipient of service is defined in section 2(14) of the IGST Act. A recipient of services is treated as located outside India if his place of business where he receives services is outside India or, if he does not have a place of business, his usual place of residence is outside India.

Question 27: What is the format for invoices to be issued in the case of reverse charge payment of GST?

Answer: No separate format for any type of invoicing including self-invoicing has been prescribed. The contents of the invoice have been prescribed in Rule 46 of the CGST Rules, 2017.

Question 28: I am a software provider, registered at Mumbai. I supply software to my clients in Bangalore - would I be required to take a registration in Karnataka?

Answer: No. The supplies would be treated as inter -State supplies and IGST is chargeable on the same.

Question 29: I am an exporter of services. Would I be entitled to refund after the 1st of July (appointed day)?

Answer: For exports upto 30th June, 2017 refund may be claimed under the provisions of the Chapter V of the Finance Act, 1994. Exports made on and after 1st July would be eligible for refund under the GST law.

Note: Reference to CGST Act, 2017 includes reference to SGST Act, 2017 and UTGST Act, 2017 also.

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Question 22: How will the defective parts be sent to the mother warehouse/repairing centre for repair by the downstream repairing centres? What is the tax liability?

Answer: The defective parts shall be sent for repair on a delivery challan accompanied by such e-way bill as may be prescribed. GST shall be chargeable on the repair amount, including the cost of parts, charged by the repairing centre.

Question 23: What is the tax liability in a scenario where supplies are made from multiple locations (in different States) of the supplier to the recipient under a single contract?

Answer: Delivering services from various locations and integrated pricing for the contract as a whole is the norm in IT/ITES industry. Normally the contract or agreement with the recipient is entered into by one of the branches (let us say “Main Branch”). Therefore, in such cases of service delivery from multiple locations of the supplier to the recipient, the supply could be visualized as consisting of two distinct supplies. First supply- the different branches of the supplier located across different States are making the supply to the main branch which entered into a contract or an agreement with the recipient for the supply of such service. Second supply- main branch is making a supply to the customer. GST is to be levied accordingly. In such a scenario, the main branch would get input tax credit of GST paid by the other branches on supplies made by them to the main branch.

Question 24: In the scenario envisaged in previous question, the main branch is said to be entitled to ITC of the GST paid by the other branches. Thus, it is a revenue neutral situation. What are the valuation guidelines for such services?

Answer: The second proviso to rule 28 of the CGST Rules, 2017 provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods and services.

Question 25: Can payment of IGST on reverse charge basis on import of goods/services be done through book entry or ITC?

Answer: No. GST payable on reverse charge basis is to be discharged through cash only. Rule 85(4) of the CGST Rules, 2017 refers.

Question 26: Is the requirement of transferring of credit through ISD mechanism mandatory?

Answer: The ISD provision under the CGST Act, 2017 is not mandatory. It only provides the manner of distribution of ITC wherever the business entity wishes to distribute the ITC as an Input Service Distributor.

Question 10: Would I be liable to pay GST on reverse charge even if the foreign supplier of software from whom I buy for use in my firm registered under GST was to accept the payment in Indian Rupees?

Answer: Yes, you would be liable to pay GST. A supply is treated as an import of service if the following conditions are satisfied:

- (1) the supplier of service is located outside India;
- (2) the recipient of service is located in India; and
- (3) the place of supply of service is in India.

The place of such supply would be taken to be the location where the firm is registered (in GST) and the supplies would attract integrated tax (IGST). The factum of which currency was used to pay the consideration is immaterial.

Question 11: I am an Indian Company who makes software and sells it outside the country. I have hired a firm (not a related party) ‘C’ located abroad to facilitate the supply of software in Europe and the USA; would I be liable to pay GST on the payments that I make to this entity abroad?

Answer: No. In this case, ‘C’ is covered by the definition of ‘intermediary’ [section 2(13) of the IGST Act, 2017]. The place of supply of such intermediary service is location of the supplier in terms of section 13(8) of the IGST Act, 2017. As ‘C’ is located outside India, GST is not payable in this case.

Question 12: What factors determine the location of ‘C’ (in question 11) as being outside India?

Answer: In terms of section 2 (15) of the IGST Act, 2017, the location of a service provider is to be determined by applying the following steps sequentially:

- (1) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
- (2) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (3) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
- (4) in absence of such places, the location of the usual place of residence of the supplier.

The location of ‘C’ is to be determined by applying the criterion from (2), or (3), or as the case may be, (4).

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Question 13: I am an agent in India of a foreign IT/ITES provider (principal located outside India). For agency services, I bill the principal in convertible foreign exchange. Whether GST liability arises in this case?

Answer: You are an intermediary and the place of supply of the service provided by you to the principal is in India irrespective of the mode of payment. Hence, GST is payable on the services provided by you as an intermediary to the principal.

Question 14: I have more than one SEZ unit in different States; do I need to take separate registrations? Also, I have two SEZ units in one State. Can I take a single registration?

Answer:

- (1) Yes. Under GST, every entity shall take GST registration in each State from which it makes taxable supplies. However, a single registration can be taken for all your SEZ units within a State, whether located in one SEZ or more than one SEZ.
- (2) A person having unit(s) in a Special Economic Zone as well as outside the SEZ in a State shall make a separate application for registration for SEZ unit(s) as a business vertical distinct from his other units located outside the Special Economic Zone in that State (Refer Rule 8(1) of CGST Rules, 2017).

Question 15: I have a unit in the DTA and another in the SEZ; can I take a common registration?

Answer: No. A person having unit(s) in a Special Economic Zone as well as outside the SEZ in a State, shall make a separate application for registration for SEZ unit(s) as a business vertical distinct from his other units located outside the Special Economic Zone in that State (Refer Rule 8(1) of CGST Rules, 2017).

Question 16: If I supply a laptop bag along with the laptop to my customer, what would be the rate of tax leviable?

Answer: If the laptop bag is supplied along with the laptop in the ordinary course of business, the principal supply is that of the laptop and the bag is an ancillary. Therefore, it is a composite supply and the rate of tax would that as applicable to the laptop.

Question 17: I am obtaining online database access services from a company abroad over the net, would I have to pay tax on reverse charge?

Answer: The recipient, if registered, has to pay the applicable IGST on reverse charge basis. If the recipient is not registered, the matter is treated as an online information and database access or retrieval service (OIDAR) and the OIDAR service provider is liable to take registration and pay tax.

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Question 18: When would it be construed that I have made a supply of services involving temporary transfer or permitting the use or enjoyment of any intellectual property right?

Answer: Generally, the **End User Licence Agreement (EULA)** is the legal contract between a software application author or publisher and the user of that application governing the usage. The agreement is renewable and/or can be amended from time to time. To find out as to whether there is an element of supply involved when software is delivered to its customer, the terms and conditions of EULA are material.

The contract for supply therefore assumes significance in this test to decide whether or not there has been '*temporary transfer or permitting the use or enjoyment of any intellectual property right*'.

Question 19: What special provisions are attracted in GST with regard to associated enterprises?

Answer: An enterprise which participates, either directly or indirectly, through one or more intermediaries, in the management, or control or capital of the other enterprise is an associated enterprise. In the context of GST, associated enterprise is particularly relevant in the case of supply of services, where the supplier is located outside India. In such cases, the time of supply will be the earlier of date of entry in the books of account of the recipient of supply or the date of payment – thus, within 'associated enterprises', the levy under GST is attracted once such book entries are made even if no actual payment takes place or no invoice is issued.

Question 20: What would be the tax liability on replacement of parts (no consideration is charged from a customer) under a warranty and whether the supplier is required to reverse the input tax credit?

Answer: As parts are provided to the customer without a consideration under warranty, no GST is chargeable on such replacement. The value of supply made earlier includes the charges to be incurred during the warranty period. Therefore, the supplier who has undertaken the warranty replacement is not required to reverse the input tax credit on the parts/components replaced.

Question 21: An Original Equipment Manufacturer (OEM) has an obligation to provide repair services to their customers in the warranty period. This activity is outsourced by OEM to 'D', who bills the OEM for the services he provides to the customer. What is the tax liability of 'D'?

Answer: 'D' is providing service to the OEM. GST is payable on the value of any supplies made by 'D' to OEM i.e. in respect of bills raised by 'D' on the OEM.

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