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L&S Update

an e-update to clients from
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Model GST Law - Taxable Event: Supply

Taxable Event: Supply

Overview

- The taxable event for levy of Goods and Services Tax (GST) is 'supply'. Section 3 of the Model GST Act covers the meaning and scope of 'supply'. Supply is defined in inclusive manner.
- So we also need to see ordinary or natural meaning of supply besides these inclusions for determining the scope of the levy.
- The specific inclusions under the term 'supply' are as under:

  1. All forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

Overview (contd.)

2. Supplies made or agreed to be made without a consideration as specified in Schedule I. Schedule I lists 5 items namely, permanent transfer/disposal of business assets; temporary application of business assets to a private or non-business use; services put to a private or non-business use; assets retained after deregistration; and supply of goods and / or services by a taxable person to another taxable or non-taxable person in the course or furtherance of business.
3. This implies that stock transfers and supply of goods/services between two separately registered units/branches whether in the same State or not, will be deemed as supply.
4. However, supply of goods by a registered taxable person to a job-worker in terms of section 43A shall not be treated as supply of goods.

Overview (contd.)

5. Importation of service with or without consideration: Import of services is defined under the Model GST Act on lines broadly similar to the one in current service tax regime.
6. Where a person acting as an agent who, for an agreed commission or brokerage, either supplies or receives any goods and/or services on behalf of any principal, the transaction between such principal and agent shall be deemed to be a supply.
7. Supply of any branded service by an aggregator, as defined in section 43B, under a brand name or trade name owned by him shall be deemed to be a supply of the said service by the said aggregator.

Overview (contd.)

- The Supply can be in the nature of intra-State or inter-State. Provisions for determination of whether a supply is inter-State or intra-State are in sections 3 and 3A of the Model Integrated Goods and Services Tax (IGST) Act, 2016 respectively. Supply of goods/services shall be inter-State if location of supplier and place of supply are in different States. Otherwise the supply will be intra-State.
- Central GST (CGST) and State GST (SGST) will be leviable on intra-State supplies and Integrated GST (IGST) will be leviable on inter-State supplies. Imports of both goods and services have been deemed as inter-State supplies leviable to IGST. Export is zero-rated.
- Separate provisions have been made in sections 5 and 6 of the Model GST Act for determination of place of supply of goods and services respectively.

Place of Supply for Services

- Place of supply of services are different for B2B and B2C Supplies. However, in respect of certain services, it is same. Snapshot of POS of services are as under:

Type of services	POS for B2B Supplies	POS for B2C Supplies
General Services	Location of recipient registered person	Location of the recipient where the address on record exists, and the location of the supplier of services in other cases.
Supply of services in relation to immovable property	Location at which the immovable property	Location at which the immovable property
Supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery	Location where the services are actually performed.	Location where the services are actually performed.
Supply of services in relation to training and performance appraisal	Location of registered person receiving the service	Location where the services are actually performed.

Place of Supply for Services (contd.)

Supply of services related to admission to event or amusement park or any other place	**Place where the event is actually held**	**Place where the event is actually held**
Supply of Services by way of organization of event	Location of registered person receiving the service	Place where the event is actually held
Supply of services by way of transportation of goods, including by mail or courier	Location of registered person receiving the service	Location at which such goods are handed over for their transportation.
Supply of passenger transportation service	Location of registered person receiving the service	Place where the passenger embarks on the conveyance for a continuous journey
Supply of banking and other financial services	Location of the recipient of services on the records of the supplier of services:	location of the recipient of services on the records of the supplier of services:
Supply of insurance services	Location of registered person receiving the service	Location of the recipient of services on the records of the supplier of services.

Place of Supply for Goods

- Where the supply involves movement of goods, the place of supply of goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.
- Where the goods are delivered by the supplier to a recipient or any other person, on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the third person has received the goods and the place of supply of such goods shall be the principal place of business of such person.

Place of Supply for Goods (contd.)

- The above provision has been brought specifically for Bill to Ship to supplies and in transit sale.
- Where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient.
- Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.

Some Emerging Issues

- Whether Captive Consumption is a deemed supply?
- Whether allocation of expenses and cross-charges by head office or branches will be treated as supply?
- Whether supplies by way of charitable activities, gift, inheritance etc. are covered under the meaning of the term ‘Supply’.
- Whether the provision for deeming the supply between the principal-agent will make them act on Principal to Principal for GST purposes?
- Whether import of goods without consideration will be a supply for IGST levy?

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