Lakshmikumaran & Sridharan attorneys

L&S Update

an e-update to clients from
Lakshmikumaran & **Sridharan**

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Model GST Law – Valuation for levy of GST

Valuation for levy of GST

Transaction value

- The value of a supply of goods and/or services for the purposes of the levy of CGST / SGST or IGST, as the case may be, shall be the transaction value, that is the price actually paid or payable for the said supply of goods and/or services where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

- Section 15(2) of the Model GST Law provisions for certain inclusions and exclusions while determining the value. The expenditure incurred by the recipient of supply on behalf of supplier shall be included in the transaction value. Free issue/discounted supplies by recipient, royalties, license fees are included in the transaction value. All the incidental expenses like packing, commission incurred by the supplier at the time of or before the delivery of the goods. CGST / SGST and IGST has to be paid on any taxes duties, fees and charges levied under any other statute. Subsidies linked to the supply shall be includable in the transaction value. However, CGST / SGST and IGST is not applicable on discounts agreed between the parties at or before the time of supply.

- Where transaction value is not available resort has to be taken to the GST Valuation (Determination of the Value of supply of Goods and Services) Rules, 2016 [‘**GST Valuation Rules**’] for determination of the value of supply. As per Rule 7 of the said Rules, where the proper officer has reason to doubt the truth or accuracy of the value declared, he may ask the supplier to furnish further information, including documents or other evidence. But if he still has reasonable doubt about the truth or accuracy of the value declared, it shall be deemed that the transaction value cannot be determined.

Consideration for a Supply

- Consideration includes any payment, or any act or forbearance if it is ‘in respect of, ‘in response to’, ‘for the inducement of’ a supply. It may include payments made voluntarily, and payments made by persons other than the recipient of a supply. It is very comprehensive. The consideration shall be in relation to the supply. The definition of consideration is very similar in the UK, New Zealand and Australian GST/VAT Acts.

- The definition of 'consideration' has two elements to it. Both elements must be satisfied. The first is the payment of something by one entity to another. The second element is the nexus between the payment and the supply. Thus, there must be a sufficient nexus between a particular supply and a particular payment, which is provided for that supply, for there to be a supply for consideration.

GST Valuation Rules

- These Valuation Rules provide for a hierarchy of methods namely, transaction value of goods and/or services of a like kind and quality, computation value method and the residual method, with the next method to apply when the value cannot be determined as per the earlier method. These Valuation Rules will have be relevant in cases such as free supply of goods and/or services, supply of goods and/or services to related parties, captive consumption of goods and /or services, transaction between branch and head office, stock transfer between factory and warehouse, cost allocation of shared services, etc.

- <u>Value of Supply by comparison</u>: The value of supply shall be determined on basis of the transaction value of goods and/or services of like kind and quality Supplied at or about the same time to other customers. In determining the value, proper officer shall make adjustments for difference in dates of supply, commercial levels and quantity levels, freight and insurance charges, composition, quality and design.

- Computed Value method: The computed value method is based on cost of production/ manufacture of goods or provision of services. The value shall be determined based on profit and general expenses for same class or kind of supply by other suppliers.
- Residual method: Here the value shall be determined using reasonable means consistent with the principles and provisions of the GST Valuation Rules.
- Pure agent: Expenditure or costs incurred by a service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if specified conditions are fulfilled.

No MRP based levy

- MRP based valuation is not provided in the Model GST Law. GST being a multi-stage tax on transaction value.

Emerging Issues

1. The circumstances to reject a transaction value between two unrelated parties
2. Valuation for captive consumption
3. Valuation of services between branch and head office.
4. Valuation in case of cost allocation of common services.
5. Trade / volume discount and business practices
6. Nature of Subsidy.

Lakshmikumaran & Sridharan attorneys

NEW DELHI
5 Link Road, Jangpura Extension,
Opp. Jangpura Metro Station,
New Delhi 110014
Phone : +91-11-4129 9800

B-6/10, Safdarjung Enclave
New Delhi - 110 029
Phone : +91-11-4129 9900
E-mail : lsdel@lakshmisri.com

MUMBAI
2nd floor, B&C Wing,
Cnergy IT Park,
Appa Saheb Marathe Marg, (Near Century Bazar)
Prabhadevi, Mumbai - 400025.
Phone : +91-22-2439 2500
E-mail : lsbom@lakshmisri.com

CHENNAI
2, Wallace Garden, 2nd Street
Chennai - 600 006
Phone : +91-44-2833 4700
E-mail : lsmds@lakshmisri.com

BENGALURU
4th floor, World Trade Center
Brigade Gateway Campus
26/1, Dr. Rajkumar Road,
Malleswaram West,
Bangalore-560 055.
Ph: +91-80-4933 1800
E-mail : lsblr@lakshmisri.com

HYDERABAD
'Hastigiri', 5-9-163, Chapel Road
Opp. Methodist Church, Nampally
Hyderabad - 500 001
Phone : +91-40-2323 4924
E-mail : lshyd@lakshmisri.com

AHMEDABAD
B-334, SAKAR-VII,
Nehru Bridge Corner,
Ashram Road,
Ahmedabad - 380 009
Phone : +91-79-4001 4500
E-mail : lsahd@lakshmisri.com

PUNE
607-609, Nucleus, 1 Church Road,
Camp, Pune – 411 001
Phone : +91-20-6680 1900
E-mail : lspune@lakshmisri.com

KOLKATA
2ND Floor, Kanak Building
41, Chowringhee Road,
Kolkatta-700071
Phone : +91-33-4005 5570
E-mail : lskolkata@lakshmisri.com

CHANDIGARH
1st Floor, SCO No. 59,
Sector 26,
Chandigarh - 160026
Phone : +91-172-492 1700
E-mail : lschd@lakshmisri.com

GURGAON
OS2 & OS3, 5th Floor, Corporate Office Tower, AMBIENCE Island, Sector 25-A,
Gurgaon - 122001
Phone : +91-124-477 1300
E-mail :lsgurgaon@lakshmisri.com

International Offices

LONDON
Lakshmikumaran & Sridharan (UK) LLP
Octagon Point,
St. Paul's,
London EC2V 6AA
Phone : +44 20 3823 2165
E-mail : lslondon@lakshmisri.com

GENEVA
Lakshmikumaran & Sridharan SARL
35-37, Giuseppe Motta
1202 Geneva
Phone : +41-22-919-04-30
Fax: +41-22-919-04-31
E-mail : lsgeneva@lakshmisri.com

www.lakshmisri.com
www.lakshmisri.cn
www.lakshmisri.ch
www.addb.lakshmisri.com