L&S Update

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

L&S GST Update No.18
6th November, 2018

- **Del-credere agent - Scope of principal and agent relationship clarified**
- **Supplies between PSUs exempted from TDS**
- **TCS obligation of specified body**

Scope of principal and agent relationship in the context of del-credere agent

- CBIC has issued Circular No. 73/47/2018-Central Tax dated 5th November, 2018 to clarify scope of principal and agent relationship under Schedule I of CGST Act, 2017 in the context of del-credere agent ('**DCA**'). The circular addresses the following three issues:

Issue 1: Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act (Deemed supply)?

Clarification: The circular clarifies that whether DCA will fall under ambit of agent as per above provision will depend on the following:

- DCA will not be covered under the said provision as agent if invoice for supply of goods is issued by the supplier to the customer, either himself or through DCA.

- DCA will be covered under the said provision if invoice for supply of goods is issued by the DCA in his own name.

Issue 2: DCA is not an agent under Para 3 of Schedule I of the CGST Act.

Whether loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods supplied by the supplier (principal)?

Clarification:

- Short-term transaction based loan provided by DCA to the buyer is a supply of service by the DCA to the recipient on principal to principal basis and is an independent supply.
- Therefore, interest charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier.

Issue 3: DCA is an agent under Para 3 of Schedule I of the CGST Act and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied.

Whether interest will form a part of the value of supply of goods also?

Clarification:

- In cases where the DCA is an agent as per the above provision, temporary short-term transaction based credit provided by DCA is not an independent supply and is part of supply of the goods by the DCA to the recipient.

- Value of interest charged for such credit will be includible in the value of supply of goods by DCA.

Supplies between PSUs exempted from TDS

- CBIC has issued Notification No. 61/2018-Central Tax dated 5th November, 2018 to amend Notification No. 50/2018-Central Tax, dated the 13th September, 2018.

- As per this notification, TDS requirement under CGST Act will not be applicable to supply of goods or services or both from a public sector undertaking (PSU) to another public sector undertaking, whether or not a distinct person.

- This exemption from TDS provisions for supplies between PSUs is effective retrospectively from the 1st day of October, 2018.

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Tea Board of India is required to collect tax at source (TCS) while making payment to tea producers and auctioneers

- CBIC has issued Circular No. 74/48/2018-Cetral Tax dated 5th November, 2018 to clarify that Tea Board of India is required to collect tax at source (TCS) under Section 52 of CGST Act from:

  i. sellers (i.e. tea producers) on the net value of supply of goods i.e. tea; and
  ii. auctioneers on the net value of supply of services (i.e. brokerage).

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