

The Chamber of Tax Consultants
Indirect Tax Study Circle Meeting on 04.09.2018

Sector specific issues in Place of Supply for Services under GST

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Case Studies:

- 1) Big Advertising Private Limited is registered in Mumbai. It takes hoarding sites on lease or rent from Government, Municipal authorities or private property owners in various parts of Maharashtra and Gujarat. Hoardings are located at highway, on commercial and residential buildings in cities, at railway stations and at bus stands. It gives hoardings for display of advertisement to clients located in Maharashtra, Gujarat and also in other states. It bills all its clients from Mumbai Office.

Big Advertising is requested by its Gujarat based client to bill for Gujarat hoarding sites from Gujarat office. Big Advertising is thinking of setting up office in Ahmedabad and take registration thereof. The probable scenario thereafter would be as under:

| Sr. no. | Billing from | Location of client | Location of hoarding |
|----------------|---------------------|---------------------------|-----------------------------|
| 1 | Mumbai | Maharashtra | Maharashtra |
| 2 | Mumbai | Maharashtra | Gujarat |
| 3 | Mumbai | Gujarat | Maharashtra |
| 4 | Ahmedabad | Gujarat | Gujarat |
| 5 | Ahmedabad | Gujarat | Maharashtra |
| 6 | Ahmedabad | Maharashtra | Gujarat |

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| 7 | Mumbai | Madhya Pradesh | Maharashtra |
| 8 | Mumbai | Madhya Pradesh | Gujarat |
| 9 | Ahmedabad | Madhya Pradesh | Gujarat |
| 10 | Ahmedabad | Madhya Pradesh | Maharashtra |

Big Advertising Private Limited seeks your advice as to place of supply and applicable levy on various scenario above.

2) A Film Production House (FP) registered in Mumbai is producing a movie for which they have to visit different locations outside Maharashtra. They incur following expenses:

- a) Outdoor caterer for providing food to staff and others at different locations.
- b) Services of beauticians from Maharashtra, local places and also from abroad.
- c) Dietician services for monitoring diet of his lead actor and actress.
- d) Insurance for film sets located outside Maharashtra by local insurance company.
- f) Services of local and foreign choreographer.
- g) Line production charges paid to foreign line producer and also local line producer of other states.

FP approaches you for place of supply in above cases as it affects its input tax credit eligibility.

3) Mr. Dalal is an indenting agent located in Mumbai.

(a) He receives commission in convertible foreign exchange from principals located outside India. Mr. Dalal is paying IGST on indenting commission.

Is this a legally correct proposition?

(b) Mr. Dalal had dispute with one of its foreign principal. He has filed a law suit in foreign court for which he remitted foreign lawyer's fees and also reimbursement of court fees. Pursuant to favourable court order, Mr. Dalal received compensation from the foreign principal.

Mr. Dalal is seeking your advice as to also place of supply and also taxability of such compensation.

Further he needs your advice whether he is liable to pay GST under reverse charge on professional fees and court fees remitted to foreign lawyer.

4) M/s Educare is a representative of foreign universities in India. It promotes the courses of foreign universities amongst prospective students in India. It assists prospective students in obtaining admission in foreign universities as per the procedure prescribed by said universities.

Some universities pay Educare fixed retainership fees. Other universities pay it success based commission as percentage of admission and term fees received by universities.

M/s Educare seeks your guidance on place of supply and also the tax implications of retainership fees and commission received from foreign universities.

5) ABC Private Limited ('ABC') is a company located in SEZ, Gujarat. It is organising 3 days conference for its employees at 5 star hotel in Mumbai. It has instructed hotel to bill them on their SEZ registration number.

Hotel is adamant on charging CGST and SGST. However, ABC is insisting on levying IGST in terms of section 7(5)(b) of IGST Act.

Please advise both the parties.

Whether your answer will differ if ABC is located in Maharashtra SEZ?

- 6) M/s LMN Printers are registered in Mumbai. It has entered into centralised contract with BBC Bank having corporate office in Mumbai for printing of cheque books. BBC bank has branches all over India. The purchase order is raised by corporate office. LMN is mandated to supply printed chequebooks to respective branches in different states and also raise separate invoices to respective branches.

LMN is mandated to send a consolidated statement of invoices to the corporate office of bank for receiving the payment.

LMN is seeking your advice whether it is liable to pay CGST & SGST or IGST of different states?

- 7) M/s Comfort Tour is a renowned tour operator based in Mumbai. It exclusively caters to the foreign nationals visiting India. It arranges package tour comprising of airport transfers, domestic air fare, rail fare (palace on wheels), road travel by luxurious car, hotel accommodation in 5 star hotels, tourist guide, etc. It receives its package fare in convertible foreign exchange from its foreign clients.

M/s Comfort tour is of the view that it is engaged in export of services not liable to GST. Whether this contention is legally tenable?

Relevant provisions of Integrated Goods and Services Tax Act, 2017:

| Section | Provisions |
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| 1 | (1) This Act may be called the Integrated Goods and Services Tax Act, 2017. (2) It shall extend to the whole of India except the State of Jammu and Kashmir |
| 2(6) | “export of services” means the supply of any service when, (i) the supplier of service is located in India; (ii) the recipient of service is located outside India; (iii) the place of supply of service is outside India; (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8; |
| 2(7) | “fixed establishment” means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs |
| 2(13) | “intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account |
| 2(14) | “location of the recipient of services” means,— (a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business; (b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment; (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and (d) in absence of such places, the location of the usual place of residence of the recipient; |
| 2(15) | “location of the supplier of services” means,— (a) where a supply is made from a place of business for which the |

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| | <p>registration has been obtained, the location of such place of business;</p> <p>(b) 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;</p> <p>(c) 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</p> <p>(d) in absence of such places, the location of the usual place of residence of the supplier;</p> |
| 2(19) | <p>“Special Economic Zone” shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005;</p> <p>[2(za) of Special Economic Zone Act 2005:</p> <p>"Special Economic Zone" means each Special Economic Zone notified under the proviso to sub-section (4) of section 3 and sub-section (1) of section 4 (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone;]</p> |
| 2(20) | <p>“Special Economic Zone developer” shall have the same meaning as assigned to it in clause (g) of section 2 of the Special Economic Zones Act, 2005 and includes an Authority as defined in clause (d) and a Co-Developer as defined in clause (f) of section 2 of the said Act</p> <p>[2(g) of Special Economic Zone Act 2005:</p> <p>(g) “Developer” means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (10) of section 3 and includes an Authority and a Co-Developer;]</p> |
| 2(22) | <p>“taxable territory” means the territory to which the provisions of this Act apply;</p> |
| 2(23) | <p>“zero-rated supply” shall have the meaning assigned to it in section 16</p> |
| 5(1) | <p>Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding</p> |

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| | <p>forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:</p> |
| 7(3) | <p>Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in—</p> <p>(a) two different States;</p> <p>(b) two different Union territories; or</p> <p>(c) a State and a Union territory,</p> <p>shall be treated as a supply of services in the course of inter-State trade or commerce.</p> |
| 7(5) | <p>(5) Supply of goods or services or both,—</p> <p>(a) when the supplier is located in India and the place of supply is outside India;</p> <p>(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or</p> <p>(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,</p> <p>shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.</p> |
| 8(2) | <p>Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply:</p> |
| Expl. 1 to section 8 | <p>For the purposes of this Act, where a person has,—</p> <p>(i) an establishment in India and any other establishment outside India;</p> <p>(ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or</p> <p>(iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.</p> |
| Expl. 2 to section 8 | <p>A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory</p> |

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| 12(1) | The provisions of this section shall apply to determine the place of supply of services where the location of supplier of services and the location of the recipient of services is in India. |
| 12(2) | The place of supply of services, except the services specified in sub-sections (3) to (14),— (a) made to a registered person shall be the location of such person; (b) made to any person other than a registered person shall be,— (i) the location of the recipient where the address on record exists; and (ii) the location of the supplier of services in other cases |
| 12(3) | The place of supply of services,— (a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or (b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or (c) by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or (d) any services ancillary to the services referred to in clauses (a), (b) and (c), shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located: Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient |
| 12(4) | The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed |
| 12(5) | The place of supply of services in relation to training and performance appraisal to,— (a) a registered person, shall be the location of such person; |

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| | (b) a person other than a registered person, shall be the location where the services are actually performed. |
| 12(8) | The place of supply of services by way of transportation of goods, including by mail or courier to,— (a) a registered person, shall be the location of such person; (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation. |
| 13(1) | The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India |
| 13(2) | The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services: Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services. |
| 13(3)(b) | The place of supply of the following services shall be the location where the services are actually performed, namely:— (b) services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services |
| 13(4) | The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located. |
| 13(8) | The place of supply of the following services shall be the location of the supplier of services, namely:— (a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders; (b) intermediary services; (c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month. |
| 16(1) | “zero rated supply” means any of the following supplies of goods or services or both, namely:— (a) export of goods or services or both; or |

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| | (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit. |
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