

GST implications on IPR other than copyrights

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3 June 2020

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Objective

The objective of the discussion is to develop understanding of taxability of IPR (other than copyrights) under GST regulations

The presentation is based on Case Studies, and is focussed on Trademark/ brand as a proxy

Views expressed are personal

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Case Study 1

- > Sky India Ltd is currently negotiating a possible deal with Space India Limited for assignment (sale) of its brand "Shooting Star".
- > The tax team of SIL has reviewed the GST provisions and is confused as to whether this transaction of supply of goods or supply of services.
- > Goods Rate Notification –
 - > In terms of Sr. No. 243 of Schedule II of Central Tax rate Notification No. 01/2017-CT(R) dated 28.06.2017 as amended by Notification no. 41/2017-CT(R) dated 14.11.2017,

permanent transfer of Intellectual Property Right (IPR) other than Information Technology Software attracts GST @12%

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Case Study 1

- > Service Rate Notification –
 - > Notification No. 11/2017-CT(R) dated 28.06.2017 as amended, prescribes rate notification for services. It provides as under:

17	Heading (Leasing or rental services, with or without operator)	9973	<i>'Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods other than Information and Technology software'</i>	6%
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- > Sky India has approached you for your expert guidance to help determine whether this supply should be regarded as supply of goods or supply of services
- > Also, what should be the applicable rate of tax for the supply

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Case Study 2



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Case Study 2

- > Moon India Ltd is a subsidiary of Earth UK Ltd.
- > Moon Ltd is engaged in two activities in India
 - > Import and resale of Earth's products
 - > Import of parts, manufacture of products using Earth's IP and sale in India market
- > 20% of the products sold are exempt from GST
- > Moon Ltd currently pays royalty of 2% on the sale value of manufactured and sold products and does not pay any royalty on import/ resale model. This royalty is accepted under transfer pricing provisions of Income tax Act
- > Tax team of Moon has analysed the provisions of Schedule I of the CGST Act which pertains to "Activities to be treated as supply even if made without consideration", and are concerned with the following entry:

4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

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Case Study 2

- > There is no doubt that the parties are related and Moon Ltd's import/ resale is a "business activity"
- > They have also examined Rule 28 of the CGST Rules as under:

28. Value of supply of goods or services or both between distinct or related persons, other than through an agent.-The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further 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 the goods or services.

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Case Study 2

- > They have the following questions:
 - > Whether the 2% royalty currently being paid can be challenged by GST authorities under the Rules
 - > Whether they would be required to self impute royalty for import and resell model
- > For both the above questions, can they take benefit of the proviso to Rule 28

Case Study 3



Case Study 3

- > In case study 2, what if Moon & Earth were both in India, and domestic transfer pricing was inapplicable
- > How should it be determined that 2% is appropriate charge for the intangibles involved

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For discussion purposes only. This is not a tax advice

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Case Study 4



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Case Study 4

- > Saturn US Ltd is a global conglomerate operating in 100+ countries around the world. It was established in 1920 and is considered as one of the top financial services houses in the world
- > It has three subsidiaries in India since the year 2000
 - > S Captive Back Office India Ltd (SCBO)
 - > S Investment Banking India Ltd (SIB)
 - > S Proprietary Trading India Ltd (SPT)
- > Saturn does not charge any brand royalty to any of its subsidiaries across the globe for use of its name and logo

Case Study 4

- > In case of SCBO, the operations are captive and services are entirely provided back to Saturn US Ltd
- > In case of SIB, the business involves two types of activities
 - > ECM/ DCM
 - > IB
- > Most of these activities of SIB are likely to be market facing, dealing with third parties as clients
- > SPT does trading in permitted securities on its own account
- > SCBO, SIB and SPT have approached us to understand whether deeming provision under Sch I will apply in the present case



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Case Study 5

- > Neptune Singapore Ltd is the owner of the brand “Pluto” which is a very successful foods trade name
- > Uranus India Ltd is the exclusive distributor of Pluto products in India. The products are very successful in India and globally
- > Uranus India Ltd is in discussions with Neptune Singapore to acquire the brand “Pluto” for INR 500 Crores
- > The acquisition will be based on a Deed of Assignment entered into between the two parties signed in Singapore
- > Uranus is based in Maharashtra
- > Tax team of Uranus has approached us to understand whether they should pay GST under reverse charge for this acquisition
- > **Case study 5A:** Would it make a difference if Neptune India (Tamil Nadu) was the owner of the brand instead of Neptune Singapore
- > **Case study 5B:** Would it make a difference if the acquisition was made by Uranus Netherlands instead of Uranus India

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Thank You

