

Export of Services

Q 30. What is supply of services in the GST?

Ans. As in the earlier service tax regime, five conditions have been prescribed for a service to be treated as exports in GST. The five conditions comprised in the definition of the term “Export of Services” are cumulative and are to be fulfilled in totality in order to consider a transaction of supply of service as an export supply. They are as under:

- (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 or in Indian rupees wherever permitted by the Reserve Bank of India; 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;

[Section 2 (6) of IGST Act read with IGST (Amendment) Act, 2018]

Q 31. What is location of supplier of service?

Ans. The location of supplier of service has been defined in section 2(15) of the IGST Act, 2017 and is to be determined by applying the sequential test given in the definition which is reproduced hereunder:

- (a) Where a supply is made from place of business for which the registration has been obtained, the location of such place of business
- (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.
- (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.
- (d) In absence of such places, the location of the usual place of residence of the supplier.

A “place of business” is defined in section 2(85) of the CGST Act, 2017 and includes—

- (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
- (b) a place where a taxable person maintains his books of account; or
- (c) a place where a taxable person is engaged in business through an agent, by whatever name called;

A fixed establishment is defined in section 2(50) of the CGST Act, 2017 and “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.

Q 32. How is condition 5 viz 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 of the IGST Act, 2017 impacts the taxability?

Ans. Explanation I in section 8(2) of the IGST Act, 2017 states that where a person has an establishment in India and any other establishment outside India then such establishments shall be treated as establishment of distinct persons. Where the Indian arm is set up as a liaison office or a branch they would be treated as establishments of the same entity and hence the supply inter se shall not qualify as export of services.

However, if the Indian arm is set up as a wholly owned subsidiary company incorporated under the Indian laws, the foreign company and the Indian subsidiary would not be governed by the provisions of distinct person or related person as both are separate legal entities.

Q 33. Whether supply of services to Nepal and Bhutan in Indian rupees are liable to GST?

Ans. No. Supply of services where place of supply is Nepal & Bhutan against payment in Indian Rupees are exempted from GST vide Sr. No.10D of notification no.09/2017-Integrated Tax (Rate) dated 28.06.2017 as amended by Notification 42/2017-Integrated Tax (Rate) dated 27.10.2017.

Further, requirement of remittance in foreign exchange has been relaxed by amendment in the definition of “export of services” in section 2(6) of the IGST Act, 2017 vide the IGST (Amendment) Act, 2018. The payment for such service can now be received by the supplier of service in Indian rupees wherever permitted by the Reserve Bank of India.

Q 34. Whether services supplied by an establishment of a person in India to any establishment of that person outside India, which are treated as establishments of distinct persons in accordance with Explanation 1 in section 8 of the Integrated Goods and Services Tax Act, 2017 taxable?

Ans. No. Such services are exempted with a condition that the place of supply should be outside India as per section 13 of the IGST Act, 2017 (Notification No. 15/2018-Integrated Tax (Rate) dated 26th July, 2018)