

**GST impact on Intermediaries and Commission Agent- Exports?**

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**Background**

Ease of doing business, leg up for exporters of services and goods achieved by proposing to the “intermediary” from performance based to recipient based as is the international best practice.

Under earlier service tax regime, wef 1.7.2012, commission agent for services provided to foreign principal were under intermediary services and taxed to service tax. Similarly wef 1.10.2014, the commission agent for goods where such services provided to foreign principal were covered under intermediary services and taxed to ST under Rule 9 of Place of Provision of service Rules (POPS). This change had led to service tax being demanded on commission agent services though booking of orders for goods with Indian customers was done for foreign principal and commission received in convertible foreign exchange. Under GST regime intermediary services to foreign principals were taxed to GST.

In several countries, including in the European Union, the intermediary service whether for goods or services has been ( 2001 Onwards) based on the place of the customer/ recipient. Representations were done by industry/consultants that in line with international best practices all services which are B to B could be based on location of customer in 2014/15 and again in 2016/17 in GST. There was no relief given and the only option for commission agents was to factor the tax into costing.

Now it appears that the diligent representations done by professional bodies and trade has borne fruit whereby the intermediary services could once again be covered in exported services by satisfaction of conditions in that regard.

In the 139th Report on Impact of Goods and Service Tax by Dept related Parliamentary Standing Committee on Commerce, one of the main recommendations done by the Committee is that the Govt may cause amendment to section 13(8) of IGST Act to exclude intermediary services and make it subject to default section 13(2) so that the benefit of export of services would be available.

The paper writer has examined concept of intermediary, GST applicability on intermediaries/commission agents in light of changes proposed to be made in Section 13 of IGST Act and impact of change.

**What is the definition of intermediary under GST?**

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The term "**intermediary**" has been defined under Section 2(13) of the IGST Act to mean (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.

### **What is place of supply of services by intermediary at present?**

For determining the place of supply of services by intermediary we need to go to IGST law. GST is applicable only on the supply of goods and or services in the taxable territory of India. Taxable territory is the territory of India to which the provisions of GST law apply.

The place of supply of service, whether within or outside India is determined by applying Section 13 of IGST. Section 13(1) 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.

Section 13(8) of IGST Act, 2017 provides that the place of supply of following services shall be the **location of the supplier of service**:

- (a) ...
- (b) intermediary services,
- (c) .....

Default Section 13(2) states that the place of supply of service except the services specified in sub-sections (3) to (13) shall be the **location of recipient of service**.

At present, the intermediary service is covered in Section 13(8), whereby the place of supply of intermediary services is location of service provider agent in India and liable to GST.

### **What is the proposed change?**

The proposed amendment to section 13(8) of IGST Act would exclude intermediary services and make it subject to default section 13(2) so that the benefit of export of services would be available.

In other words, when Indian commission agent for goods/services provides services to a foreign principal, place of supply of services would be the location of service recipient outside India.

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Further if all the conditions set out in section 2(6) of IGST Act as extracted below is fulfilled by supplier of service, then he can avail eligible credits related to such exported services. Alternately go for refund.

- i. The supplier of Service is located in India – Yes supplier of service is located in India;
- ii. The recipient of Service is located outside India - Yes recipient of Service foreign client is located outside India
- iii. The place of supply of Service is outside India- Yes, the place of supply of service is location of foreign client outside India.
- iv. The payment for such service has been received by the supplier of Services in convertible foreign exchange-Yes that the payment for such services has been received by the supplier of services in CFE; and
- v. The supplier of service and the recipient of service are not merely establishments of a distinct person -Yes, supplier and foreign client are distinct persons.

**When bond/LUT is not executed by supplier in respect of exported services, then has to pay IGST 18% on such exported services.**

### **Impact of this proposed amendment on export sector:**

- A. Non- payment of GST by commission agents.
- B. Relief from payment of GST of 18% to the foreign buyers towards GST on agency commission.
- C. Further when this tax burden is lifted from the exporters, India's exports become competitive in international market.
- D. Ultimate benefit is that the buyer would shift sourcing his orders from countries like Dubai, Singapore for support services back to India, where no liability exists.
- E. Additionally the orders placed to India may increase as those were shifted out after 2014 to countries like Bangladesh, Pakistan and Sri Lanka, Thailand, Singapore, Honk Kong, UAE etc.
- F. The valuable foreign exchange earned by our country will increase. Not to forget that the income tax collections could also be increased.

### **What is impact on the services supplied by intermediary prior to the proposed change?**

It is relevant to note that prior to effective date of the proposed change, there would be levy of GST on the intermediary services supplied by supplier of service. Therefore there may be a question whether services supplied prior to that date but payment is received later or invoice raised later whether tax is applicable?

Section 14 of GST Act sets out that when two out of three of the following events takes place prior to rate change, the old rate applies. Otherwise new tax rate would apply.

The events are as follows:

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- a. Date of supply of services or
- b. Date of issue of invoice or
- c. Date when payment has been received.

In this regard it is relevant to note that taxable event for GST is providing of service or agreeing to provide service. It is settled position by number of judicial precedents. This is also in line with philosophy in CCE vs Vazir Sulthan Tobacco Co Ltd(1996 (83) ELT 3(SC) that tax rate prevailing on the date of providing service has to be adopted. Accordingly GST may be demanded for the services supplied prior to date of proposed change, though it may be invoiced within next 30 days [after rate change] and paid thereafter.

### **Conclusion**

This proposed change is an example of representation done to the legislature /GST Council prompting changes as an assessee friendly measure following all the basic tenets of taxation one of which is that activities earning CFE for India are to be kept out of tax levy. This would be in line with the “best practices” across the world. The direction of the Government moving in the right direction is indeed encouraging. Trade is awaiting the notification.

For any further clarifications do get back to [Madhukar@hiregange.com](mailto:Madhukar@hiregange.com) or [roopa@hiregange.com](mailto:roopa@hiregange.com)

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