

GST on Employee Recoveries

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In GST law, there are few activities which would be treated as supply liable for GST even in the absence of consideration. These activities are listed in Schedule I to CGST Act 2017 with few entries finding place in Schedule II as well. One such activity listed in Schedule I is supply of goods or services between employee and employer when such supply is made in course or furtherance of business. There would be various payment transactions between employee and employer having impact in GST law. In this article, we have analysed few types of payments having GST impact.

GST on employment services

Services by an employee to the employer in the course of or in relation to his employment would not be treated as either supply of goods or supply of services in terms of Schedule III to CGST Act 2017. Therefore, any payments made by an employer to employee in terms of employment contract should not suffer GST. The issue would arise when any supplies are made to employees outside the terms of employment.

Supply of goods or services between employer and employee in the course or furtherance of business is liable for GST. It is important to note that services by an employee to employer is exempted and not vice versa. Any services provided by employer to employee would be liable for GST. However, gifts not exceeding Rs.50,000/- in a financial year by an employer to an employee would not be treated as supply of goods or services or both. The word 'gift' has not been defined in GST law. According to oxford dictionary, a gift is 'a thing given willingly to someone without payment' or 'an act of giving something as present'. CBEC press release dated 10th July 2017 has stated that gift is made without consideration which is voluntary in nature and made occasionally. Any supply made willingly to employees outside the terms of employment without any payment could be treated as gift to claim the benefit of Rs. 50,000/-. However, if the value is crossing Rs. 50,000/-, then the entire value would have GST impact.

Recovery from employees

Any supplies made by employer to employee in terms of contractual agreement would not be subject to GST as discussed earlier. CBEC press release dated 10th July 2017 further goes on to clarify that if services are provided free of charge to all the employees by the employer then the same would not be subjected to GST. Therefore, common facilities such as telephone, canteen and travelling etc. provided commonly to employees would not be subject to GST when there is no separate consideration.

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It may so happen that for some of the facilities provided, employers recover amounts from the employees. Such recoveries could be concessional. For example, Rs.5 recovered from employee for a meal actually costing Rs.50. Question which arises here is if Rs.5 recovered is subject to GST or not. Transportation and housing facilities provided at concessional rates could be other examples.

GST law being new in India, there are many issues for which finding actual solution may not be an easy task. Referring to European VAT laws which was also referred while framing Indian GST law could give us some idea on interpreting few provisions. The judgment of European Court of Justice (ECJ) delivered its judgment in *Astra Zeneca UK Limited v HMRC (Case C-40/09)* could be of relevance here. In this case, the court held that partial salary sacrifices by employee towards the vouchers issued by employer is consideration giving rise to VAT.

When there is recovery of any amount from employees towards any supplies which are liable for GST, then revenue could treat the same as supply for levy of GST. The transaction between employee and employer are treated as related party transaction, transaction value would not be applicable for levy of GST. Rule 28 of CGST Rules 2017 would be applied for valuation of supply when the transaction is between related parties. According to Rule 27, the value of supply which should be considered by employer should be as below:

- a) open market value
- b) if open market value not available, value of like kind or quality
- c) if value is not determinable according to a) or b) above, then cost of services + 10% or residual method should be adopted.

Open market value could be adopted which could be value paid to the original supplier. Considering earlier example, the value on which GST payable by employer would be Rs.50 though only Rs.5 being recovered from employees. Section 17(5) of CGST Act 2017 has restriction on claim of input tax credit on food and beverages, outdoor catering. However, such restriction is not applicable when such services are used for making an outward supply of same category of services. Similar restriction and eligibility is there even for rent-a-cab services. It would be prudent for the employer to claim credit on total value of expenses and pay GST according to valuation rules to avoid any complications or litigations in future.

Conclusion

With introduction of GST, there is a need to review all employment contracts, benefits given such as reimbursement of expenses, concessional facilities. Professionals could highlight these aspects to clients and help them in GST compliance. A GST compliance review could be taken up for the clients

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which could throw out these issues. This could help the clients in avoiding additional costs in future in form of interest and penalties in addition to tax.

A clarification from CBEC on GST impact when partial recovery of amount from employees exist, gifts upto (Rs.50K) by amending the law would help large section of tax payers and ease doing business in India.

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