



# THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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*Organised by : GST & Indirect Taxes Committee*

*Hosted by : SIRC of ICAI*

TOPIC: Cross Charge & Secondment in GST

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**CROSS**

**CHARGE**

**Is Cross Charge defined in GST Laws?**

**CONTENT:**

- Factors leading to the development of cross charge.
- How to recognize cross charge transactions?
- Defining the taxable value for cross charge transaction.
- Understanding the concept of ISD.
- Distinguishing ISD from cross charge.



# **FACTORS LEADING TO THE DEVELOPMENT OF CROSS CHARGE**



# FACTORS LEADING TO THE DEVELOPMENT OF CROSS CHARGE

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## Section 7 read with Schedule I

*(Clause 2. supply between related or distinct persons)*

(50) "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;

## Commercial necessity of businesses to be multi-locational

- Place of Business [Sec. 2 (85)]
- Fixed establishment [Sec. 2 (50)]

## Deeming fiction of Distinct Persons

*(Sec 25 (4) & (5) of CGST Act, 2017)*

*When a business with multiple units, each having a separate GST registration, **provides goods or services** to another unit. Despite being part of the same business, these transactions are subject to taxability.*



# FACTORS LEADING TO THE DEVELOPMENT OF CROSS CHARGE

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Supply of Services

Supply of Goods

Cross Charge

*How to Identify the Cross Charge Transactions?*



# HOW TO RECOGNIZE CROSS CHARGE TRANSACTIONS



# A GUIDE TO IDENTIFY THE CROSS CHARGE TRANSACTIONS

- Empathise the Org. structure.
- Understanding the dependability of each units.



- Review transactions that involve cost allocations.
- Look for entries that have debit and credit allocations between different cost centres or departments.

- Engage with the finance or accounting teams to understand how cross-charging is handled within the organization.

- Service level agreements.
- Cost allocation policies.



# DEFINING THE TAXABLE VALUE FOR CROSS CHARGE TRANSACTIONS





# DEFINING THE TAXABLE VALUE FOR CROSS CHARGE

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*Goods can be identified, including their quantity and quality.*



## Supply of Goods

Value of supply of Service =

- **Open Market Value**
- ~~Value of like kind and quality.~~
- value declared in the invoice.
- Circular No. **199/11/2023 – GST** dated 17.07.2023

## section 15 (4) read with rule 28

Value of supply of Goods =

- **Open Market Value**
- Value of like kind and quality.
- 90% of like kind and quality.
- value declared in the invoice.

## Supply of Services



*Services can't be identified and varies.*



# CIRCULAR NO. 199/11/2023 – GST Dated 17.07.2023

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**TAXABLE VALUE FOR** the internally generated services - when full Input tax credit is available to the concerned Bos

- The second proviso to rule 28 of CGST Rules read with sub section (4) of Section 15 of CGST Act provides that the value declared in the invoice shall be deemed to be the open market value of the goods or services.

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- HO avail the ITC in respect of inward supply attributable to both HO and BOs or exclusively to one or more Bos.
- ***HO issue tax Invoices under section 31 to the said BO/Bos.***

- can issue tax invoice only if the said services have actually been provided to the concerned BOs.

02

**TAXABLE VALUE FOR** the internally generated services (with respect to cost of salary) - when full Input tax credit is not available to the concerned Bos

03

- It is not mandatory to include the cost of salary of employees while computing the taxable value of the supply of such services.



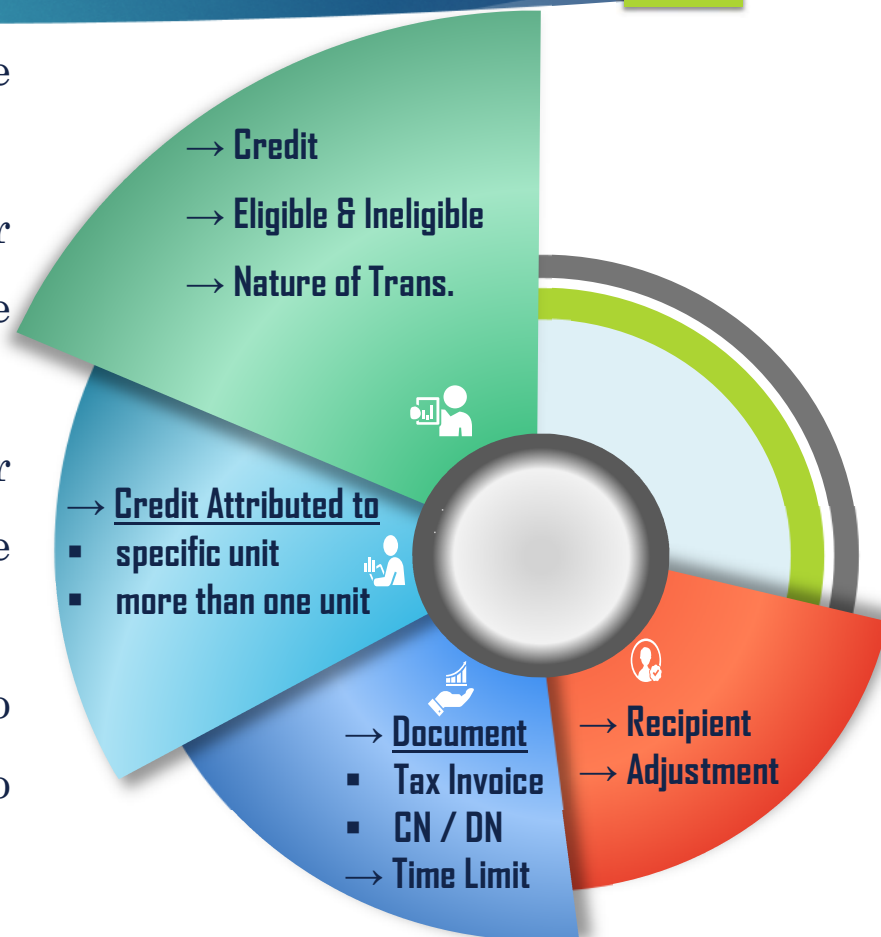
# UNDERSTANDING THE CONCEPT OF INPUT SERVICE DISTRIBUTOR (ISD)



# CONCEPT OF ISD COMPLIANCE & PROCEDURES

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- Credit specifically attributable to a recipient to be distributed only to such recipient
- Credit to be distributed pro rata on basis of turnover in a State/ UT to aggregate turnover of attributable recipients
- Turnover for preceding financial year or quarter preceding month of distribution of credit to be adopted for such valuation
- Credit reduction on account of credit note issued to ISD to be apportioned to recipients in the same ratio of original allocation





## CROSS CHARGE VIS-À-VIS ISD

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- Supply = N
- Distinguished by law U/s. 20
- Distribute Input Service

**Input  
Service  
Distributor**

**V/s.**

**Cross  
Charge**

- Supply = Y
- Deeming fiction of distinct persons and Schedule I
- Tax pay-out = Ecl.



**CROSS CHARGE TRANSACTIONS**

**INPUT SERVICE DISTRIBUTOR (ISD)**

**Both ISD & Cross Charge are not inter-changeable concepts but both are completely independent.**



## CONTENT:

- Understanding the concept of Secondment of employees.
- International Secondment:
  - Jurisprudence Concerning Cross-Border Secondment.
  - Key Take-away
  - GST Implications.



# UNDERSTANDING THE CONCEPT OF SECONDMENT OF EMPLOYEES





## UNDERSTANDING THE CONCEPT OF SECONDMENT

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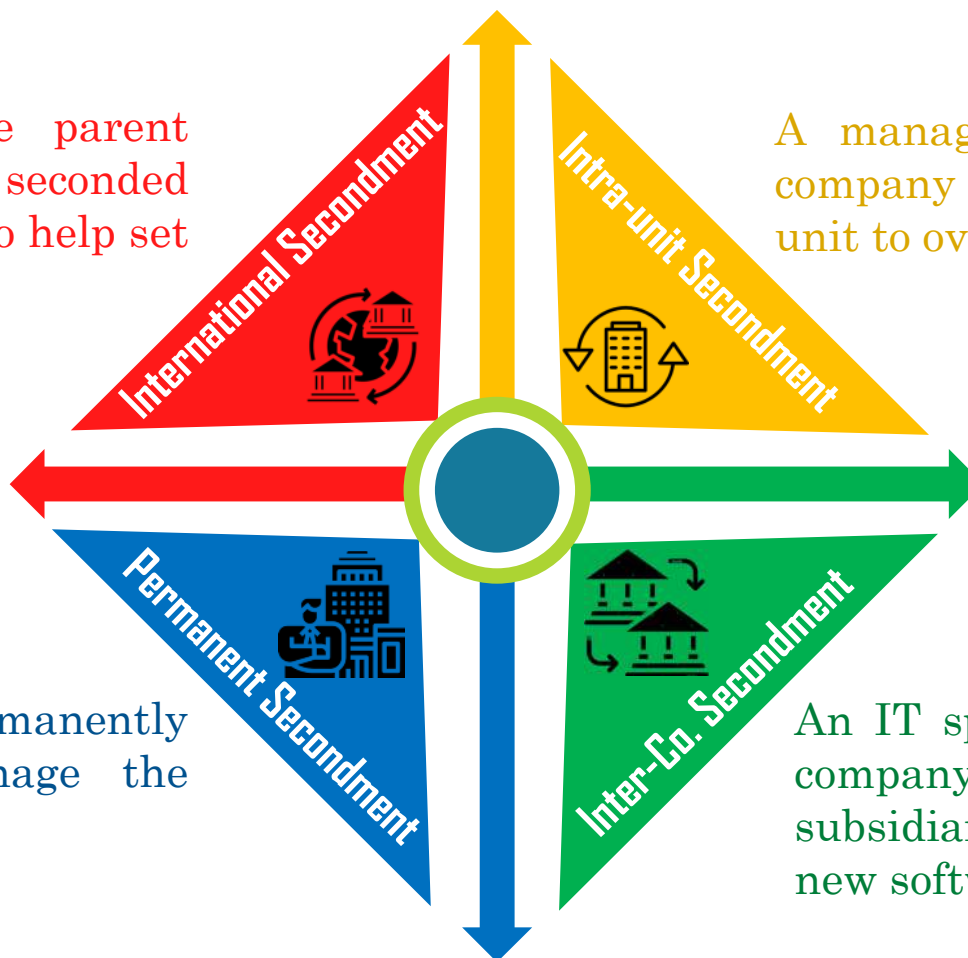
- The group companies assign temporarily an employee for the managerial and technical assistant.
- Such seconded employees devote their entire time and act in accordance with the instructions and directions of transferee.
- The seconded employees would continue to be on the payroll of the group company for purpose of continuation of social security/retirement benefits, but for all practical purposes, transferee is the employer.
- The seconded employees would receive the salary, bonus, social benefits, out of pocket expenses and other expenses from group company and the group company raises a debit note on transferee with/without any mark-up.



# UNDERSTANDING THE CONCEPT OF SECONDMENT

An employee from the parent company in the U.S. is seconded to a subsidiary in India to help set up a new branch.

A manager from one unit of a company is seconded to another unit to oversee a new project.



A senior executive is permanently seconded to help manage the subsidiary's operations.

An IT specialist from the parent company is seconded to the subsidiary to help implement a new software system.



## INTERNATIONAL SECONDMENT

### CONTRACT FOR SERVICE

(an arrangement in which the secondees would remain under the employment of the foreign entity during the period of secondment)

### CONTRACT OF SERVICE

(in which the secondees would become employees of the Indian entity)

**No specific guidelines under Indian tax laws to determine the above.**



# JURISPRUDENCE CONCERNING CROSS-BORDER SECONDMENT



### *OECD in its commentary on model convention on Article 159*

→ stated that the term 'employer' was not defined in the convention but it is understood that *the employer is the person having rights on the work produced and bearing the relative responsibility and risks.*

→ The *commentary further stated apart from the above test,* the contracting states have to refer to number of circumstances enabling them to establish that the real employer is the user of labour, like:

- ◆ *The hirer does not bear the responsibility or risk for the results produced by employee's work.*
- ◆ *The authority to instruct the worker lies with the user.*
- ◆ *The work is performed at a place which is under the control and responsibility of user.*
- ◆ *The number and qualifications of employees are not solely determined by hirer.*



## JURISPRUDENCE FOR CROSS-BORDER SECONDMENT

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*Supreme Court Judgment in Northern Operating Systems* – overseas employer for whatever reason, pays them *their salaries and their terms of employment* even during the secondment are in accord with policy of overseas company, who is their employer and upon the end of period of secondment, they return to their original places, to await deployment or extension of secondment. Accordingly, the Court concluded that the overseas entity will continue to be the employer of the seconded employee and not the Indian entity.

*Delhi High Court Judgment in Centrica India Offshore* – *employment relationship of secondees remained independent and beyond the Indian entity's control* (overseas entities borne the direct cost, Indian entity was empowered to terminate the secondment arrangement, but count not terminate the employment in overseas entity and secondees doesn't have the right to sue).



### *Karnataka High Court in Abbey Considered the Functional and Managerial Control Determine the Employment Relationship –*

- The Secondees were under the control, direction and supervision of the Indian entity and acted in accordance with the policy, rules and guidelines applicable to the regular employees of the Indian entity.
- The Secondees were assigned supervisory positions.
- The Secondees were expected to control and supervise independent third parties in the capacity of employees of the Indian entity, the Indian entity had to be treated as the employer of the secondees.



# KEY TAKEAWAYS

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## BASED ON TAX JURISPRUDENCE





## *The Key Takeaways Based on Tax Jurisprudence Concerning Cross-Border Secondment of Employes –*

- The Indian entity should consider playing an active role in the recruitment and selection of secondees.
- The secondment agreement may also acknowledge the existence of clearly demarcated dual employment of secondees with the foreign entity and the Indian entity.
- The associate entity to enter into separate employment agreements with secondees, wherein, in addition to exercising the right of control and management.
- The associates entity should have the right to terminate such an agreement with the secondees.
- Secondees should be provided with the option to legally receive their salaries from the Indian entities and the right to sue the Indian entity in case of any nonpayment.



# GST IMPLICATIONS ON CROSS-BORDER SECONDMENT



## GST IMPLICATIONS ON CROSS-BORDER SECONDMENT

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- In terms of Section 13 (1) and 13 (2) of IGST Act, 2017 read with Entry 1 of Notification No 10/2017 – I.T. (Rate), the tax is required to be paid by the service recipient under reverse charge.
- Entry 2 of Schedule I to Section 7 of CGST Act, 2017 - states that the activity of supply of services when made in course or furtherance of business between related person shall be treated as supply even when there is **no consideration**. [**Circular No, 210/04/2024 – GST dated 26.06.2024**]
- The overseas entity and Indian entity falls under the definition of 'related person' as laid down vide Explanation (a) to Section 15, then the activity shall be treated as supply dehorn the fact there is no consideration. The value of supply has to be determined by the rules which deal with valuation.
- **if the employer is treated as Indian entity being the economic employer, then the services provided by seconded employee would not be subjected to tax.**



# Thank You

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