

# **GST impact on related party transactions**

**CA VEENAA VENKATESH**

# **AGENDA**

- ☐ Who are related persons?**
- ☐ Supply between related persons**
- ☐ Valuation**
- ☐ Recent clarifications**
- ☐ Relevant case laws**

# Related persons

Persons who are officers or directors of one another's businesses

Persons who are legally recognised partners in business

Employer and employee

Any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them

One of them directly or indirectly controls the other

Both of them are directly or indirectly controlled by a third person

Together they directly or indirectly control a third person

Members of the same family

# Schedule I

**Activities to be treated as supply even if made without consideration**

- ✓ Supply of goods/services between related persons or between distinct persons, when made in the course or furtherance of business

Provided that gifts not exceeding Rs.50,000/- in value in a FY by an employer to an employee shall not be treated as supply of goods/services.

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

# Time of supply

## Recent changes to Section 13

In case of supplies liable to tax under RCM, TOS shall be earlier of

- Date of payment (DOP)
- Date immediately following 60 days from the date of invoice issued by supplier
- **Date of issue of invoice by recipient (wef 1-11-2024)**

Residuary prov. – date of entry in books of recipient (DOE)

**Proviso** – In case of supply by AE, where supplier is outside India, TOS shall be earlier of DOP or DOE

# Time limit for availing ITC

## Circular 211/5/2024 – GST dated 26-06-2024

2.6 .....as ITC can be availed by the recipient only on the basis of invoice or debit note or other duty paying document, and as in case of RCM supplies received by the recipient from unregistered supplier, invoice has to be issued by the recipient himself, **the relevant FY, for the purpose of time limit for availment of ITC under section 16(4) in such cases shall be the FY of issuance of such invoice only.** In cases, where the recipient issues the said invoice after the TOS, he will be required to pay interest on such delayed payment of tax. Further, he may also be liable to penal action under the provisions of Section 122 of CGST Act.

**[Section 122(3)(e) – 25,000]**

# Valuation

**Rule 28 - Value of supply of goods/ services between related persons shall be**

- Open market value (OMV)
- If OMV not available, value of supply of goods or services of like kind and quality
- If value not determinable as above, 110% of cost of production/ manufacture/ acquisition of goods or cost of provision of service
- Residual method - reasonable means

# Open Market Value

“OMV” of a supply of goods or services means the full value in money, excluding the IGST/ CGST/ SGST/ UTGST and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;

“supply of goods or services or both of like kind and quality” means any other supply of goods/ services made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods/ services first mentioned, is the same as, or closely or substantially resembles, that supply of goods/ services.



## Exception – Provsio to Rule 28

- If 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 90% 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
- Where the recipient is eligible for full ITC, the value declared in the invoice shall be deemed to be the OMV

# Insertion of Rule 28(2)

**Valuation in case of corporate guarantee (CG) issued on behalf of related person**

**Conditions:**

**Nature of supply** - Providing CG to any banking company or financial institution on behalf of the recipient

**Recipient** - related person **located in India**

**With effect from 26-10-2023**

**Value of supply** - 1% of the amount of such guarantee offered **p.a.**, or the actual consideration, whichever is higher.

**If recipient eligible for full ITC, value declared in the invoice deemed to be value of supply**

# **Circular No. 204/16/2023-GST dated 27-10-2023**

- Rule 28(2) not applicable to personal guarantee given by directors
- RBI's Circular No. RBI/2021-22/121 dated 9-11-2021
  - No commission/ brokerage shall be paid by the company to director
  - OMW = ZERO, No tax payable

# Circular No. 225/19/2024-GST dated 11-07-2024

Prior to  
26.10.2023 also,  
supply of service  
of providing CG  
between related  
persons was  
taxable.

Value of  
supply not  
dependent  
on amount  
of loan

Valuation as  
per Rule  
28(2) not  
applicable in  
case of  
export viz  
recipient is  
outside India

In respect of CG  
issued or  
renewed before  
26.10.2023, the  
valuation is to be  
done in  
accordance  
with Rule 28, as it  
existed during  
that time.

If  
guarantor  
is domestic  
company,  
tax is  
payable  
under  
forward  
charge by  
supplier



# M/s. Green Infra Wind Farm Assets Limited – Raj AAR

## **Facts:**

- ❑ Applicant is a company incorporated in India involved in development and operation of power projects
- ❑ As a part of the shareholder activity, the overseas group companies provide CG to banks and FIs in respect of loans taken by Applicant
- ❑ The foreign group company does not charge any consideration for providing the CG

# M/s. Green Infra Wind Farm Assets Limited – Raj AAR

## Issues Involved:

1. Whether GST under RCM on issuance of CG is payable one-time or on a periodical basis?
2. Determination of value of supply for GST

## Ruling:

- GST is payable at the time of execution considering the CG is issued only once and is valid for a specified period without requirement of periodic renewal
- Value as per Rule 28(2) would be 1% of the total amount guaranteed

# **Valuation for import by related person**

- **Circular No. 210/4/2024-GST dated 26-06-2024**

**In case of import of services by a registered person in India from a related person outside India, the tax is required to be paid by the registered person under RCM.**

Recipient to issue a self-invoice

If eligible for full ITC,

- value in invoice deemed to be OMV
- if no invoice issued, value deemed to be NIL

# Loan extended between related persons

- **Circular No. 218/12/2024-GST dated 26-06-2024**

- Supply of services of granting loans/ credit/ advances, where consideration is interest or discount, is fully exempt under GST [entry 27 of Notification No. 12/2017-Central Tax (Rate)]

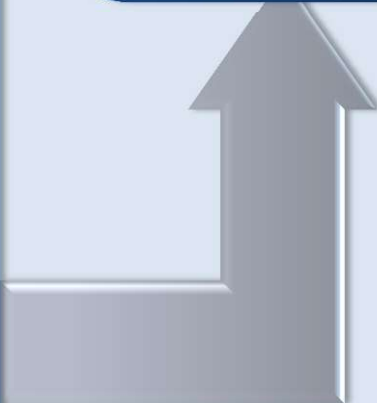
- In case of no additional consideration charged other than interest/ discount – **no deemed supply**

- Wherever any fee such as processing/ service fee/ administrative charges/ loan granting charges etc. is charged, over and above interest/ discount, the same may be considered to be the consideration for the supply of services, which will be liable to GST



# Schedule III

Activities or transactions which shall be treated neither as a supply of goods nor a supply of services



Services by an employee to the employer in the course of or in relation to his employment.

# Circular 172/04/2022 – GST dated 06-07-2022

## Perquisites provided by employer to the employees as per contractual agreement

5. Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?

1. [Schedule III](#) to the [CGST Act](#) provides that “services by employee to the employer in the course of or in relation to his employment” will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.

2. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that **perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST** when the same are provided in terms of the contract between the employer and employee.

# Car lease to employees

**M/s. Faiveley Transport Rail Technologies India Private Limited  
– TNAAAR**

## **Facts :**

- Company provides facility of car lease to employees as per policy
- Company pays the lease premium directly to car leasing company
- Expense incurred by Company deducted from salary of employee

## **Question before Authority:**

Whether GST is applicable on facility of car extended to the employees in the course of employment?

# Car lease to employees

## **Ruling:**

Supply not covered under Schedule III - GST payable

## **Observations:**

Only the actual value in monetary terms extended to the employee concerned in the course of or in relation to employment, qualifies as a 'perquisite', and it squarely falls within the ambit of entry No. 1 of Schedule III.

# Subsidized canteen service

**M/s. Federal Mogul Goetze India Ltd – Kar AAR**

## **Facts:**

- Applicant mandated to provide canteen facility under the Factories Act.
- Applicant operates the canteen and all the equipment and items such as grocery, utensils, cooking equipment etc., are arranged by them.
- Manpower to manage the canteen is sourced from outside.
- Applicant recovers nominal amount from employees

# Subsidized canteen service

## Issues Involved:

1. Applicability of GST on subsidized deductions made from employees' salaries for canteen services
2. Eligibility of ITC on GST paid for manpower supply services used in the canteen

## Ruling:

Provision of canteen services by the applicant to the employees constitutes a supply under Section 7(1)(a) of the CGST Act and is liable to GST.

The output supply is taxable at the rate of 5% without ITC as per Rate Notification. Hence, ITC cannot be availed.

**THANK YOU**

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