

### **Important clarifications on GST for broker and agent community**

Since the implementation of GST, share broking community and many other service industries where agency concept is in vogue like to Mutual fund and insurance were seeking some very important clarification on levy of GST. Ministry of Finance (Government of India) has albeit late but chosen to respond to the representations made and has given written clarification to Association of National Exchanges Members of India (ANMI) vide Letter dated 13.09.2017 – F. No. 1/11/SM/2017 [Internal office memorandum dated 5.09.2017 – F. No. 349/40/2017-GST of MoF GST Policy Wing]

Issues clarified by the Ministry and our comments thereon are as under:

#### **1. What are registration requirement of Sub-Brokers and authorized persons under GST Law**

##### **Clarification given:**

*As per Sec 2(5) of CGST Act "agent means a person' including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another"*

*In the current scenario the relation between the broker, sub-broker and client has to be understood. As per the PUC "sub brokers/authorized persons do not raise any bill to the client and bills and contract notes are issued by the main broker itself". Thus in the given case, sub broker is providing service to broker and not providing service of purchasing and selling of shares to the client directly, he is providing supply of services to broker on behalf of another, rather he is providing this service as an independent entity. Thus, will be liable to get registered only if his turnover is above Rs. 20 Lacs.*

##### **Our Comment**

Section 24 (vii) of the CGST Act prescribes that persons who make taxable supply of goods or services on behalf of other taxable persons whether as an agent or otherwise will have to take mandatory registration. This clarification unequivocally lays down a very important principal that if an agent/broker is selling goods or services directly to the customer on behalf of the principal person than only he will have to take registration on compulsory basis. In the give case sub brokers are providing services to the main broker and do not provide any service of

buying or selling of shares to the client directly hence they can opt to get registration on voluntary basis or if they go beyond 20 lacs turnover.

It may however be noted that if the main broker (principal) and sub broker/ agent are located in different states then agent will have to take mandatory registration.

## 2. Applicability of GST on Securities Transaction Tax (STT) and Stamp duty

### Clarification given:

*The Central Board of Excise and customs (CBEC) had earlier issued clarification F. No. 187/107/2010 -CX 4 dated 17th September 2010 clarifying that in the case of stock broking services, the liability for stamp duty and the securities transaction tax (STT) is that of the purchaser or seller of the securities and not of the stock broker. The stock broker collects and deposits the same on behalf of the purchaser and seller. That is in the capacity of a pure agent. Therefore, Service tax is not payable on STT and Stamp Duty. In the light of the fact that even under the GST regime the rationale for excluding the Stamp Duty and STT component recovered by stock broker from the client (seller/ buyer) from the levy of GST remains valid. GST is not payable by the Stock Broker on these recoveries as long as the conditions of pure agent as provided in Rule 33 of the CGST Rules are met.*

### Our Comments:

We fully agree with the above clarification. It is based on a very important concept, whereby if the provider merely collects and pays any amount which the customer was liable to pay then the provider is not liable to pay GST on the same. It is also to be ensured that such charges are collected on actuals without including any mark up.

## 3. Applicability of GST on interest earned by broker on temporary funding extended to clients towards pays obligations

### Clarification given:

*Section 15(2) (d) states that value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply. If the facility of temporary funding extended to clients forms part of contract between the broker and client then interest earned on such an activity should be included under value of supply and chargeable to GST. But if this service is provided as a loan to client then interest on such service is nil as per Notification No. 12/2017- Central Tax (Rate)*

### Our Comments:

Section 15(2) (d) of CGST Act provides that if any late fee or interest is charged for any delayed payment of any consideration for any supply then such charges shall be included in the value of supply of the main brokerage service. In case of a share broker there are 2 amounts that he has to collect from the customer, one is the value of the securities transacted by the customer and the other is the brokerage fee of the share broker. Section 15 shall apply only for valuation of the brokerage services provided by the share broker and not to the value of the securities. Therefore, interest charged for delay in payment on the total value (including value of securities) shall not be liable to GST, only interest pertaining to delay in payment of brokerage fee would be subjected to GST.

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