

GST

Clarification on

Cross Charge and ISD



ISSUE 1

- A. Whether Head Office (HO) can avail the ITC in respect of common input services procured from a third party which are attributable to both HO and BOs (Branch Office) or exclusively to one or more Bos?
- B. Whether HO can issue tax invoices to the said BOs for the said input services and the BOs can then avail the ITC for the same OR whether is it mandatory for the HO to follow the Input Service Distributor (ISD) mechanism for distribution of ITC?

CLARIFICATION

For common input services procured by the HO from a third party but attributable to both HO and BOs or exclusively to one or more BOs, HO has following options

- a. Distribute ITC in respect of such common input services by following ISD mechanism. However, as per the present provisions of the CGST Act and CGST Rules, it is not mandatory to follow ISD mechanism.
- b. HO can also issue tax invoices to the concerned BOs in respect of common input services and the BOs can then avail ITC on the same. One needs to note, the HO can issue tax invoices to the concerned BOs, only if the said services have actually been provided to the concerned BOs.

ISSUE 2

In respect of internally generated services, there may be cases where HO is providing certain services to the BOs for **which full ITC is available to the concerned BOs**. However, HO may not be issuing tax invoice to the concerned BOs, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services.

- a. Whether the HO is mandatorily required to issue invoice to BOs for such internally generated services,
- b. Whether the cost of all components including salary cost of HO employees involved in providing the services has to be included in the computation of value of services provided by HO to BOs **when full input tax credit is available to the concerned BOs**.

CLARIFICATION

In cases where the BO is eligible to avail Full Input Tax Credit:

- A. The value of supply of services made between distinct persons needs to be determined as per rule 28 of CGST Rules. The value of supply of goods or services between distinct persons shall be the open market value of such supply. Further the rule provides that where the recipient is eligible for full ITC, the value declared in the invoice shall be deemed to be the open market value of the services. Accordingly, the value declared in the invoice by HO shall be deemed to be open market value of such services.
- B. Further, the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice shall not make any difference.
- C. Further, if HO has not issued a tax invoice to the BO, the value of such services **may be deemed to be declared as Nil** and may be deemed as open market value in terms of second proviso to rule 28.

ISSUE 3

In respect of internally generated services provided by the HO to BOs, in cases **where full ITC is NOT available** to the concerned BOs, whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to BOs.

CLARIFICATION

In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases **where full input tax credit is not available to the concerned BO**.



PARTNERS



Nitesh Jain

Founder & Managing Partner



Gaurav Khetan

Partner, GST, VAT and CST



Praveen Maheshwari

Partner, GST, Central Excise & Service Tax



Jay Dalwadi

Partner, GST & Service Tax

ABOUT US

N J Jain and Associates was founded in 2004 in Ahmedabad by CA Nitesh Jain, with the core objective of offering specialized services in the field of Indirect Taxes. In time, the firm redirected its focus to providing premium expertise in all fields of Indirect Taxes. This unique focus helped the firm progress in providing similar expert services in Goods and Services Tax (GST) realm. Since the inception of GST, N J Jain and Associates has created a niche in the pan-Indian market that it caters to by offering a wide array of services.

Subject matter expertise is what continues to set NJ Jain apart from other firms. Since its establishment, NJ Jain has inducted several partners, equipping the firm with broader expertise. The partners integrate their expert know-how with the firm's services, help the client navigate indirect taxes, and safeguard statutory risks.

Creating value for the clients and making them tax compliant is the primary focus of NJ Jain.

Partners at NJ Jain continually strive to keep themselves updated on the newer developments and offer a rare combination of professionalism with highly personalized services to its clients. One of the few organizations in India that focuses its energies solely on Indirect Tax Advisory Services, NJ Jain ensures that it walks the extra mile to offer the best assistance in our core expertise, often exceeding expectations.

The exceptional clientele that the firm takes pride in is the validation of the unparalleled services that the firm provides and the commendable work ethic that the firm adheres to.

N J JAIN & ASSOCIATES

CHARTERED ACCOUNTANTS

B 1301 - 1305, Ratnaakar Nine Square, Opp. ITC Narmada, Nr. Keshavbag Party Plot, Satellite, Ahmedabad - 380015. Gujarat, India.

+91-79-400 22 628 / 29 / 30 www.njjain.com info@niteshjain.co.in @associates_nj @njjainandassociates niteshjain