



# **Taxability of Fee received from overseas based colleges and universities for providing admission related services to students from India under GST law**

**By CA Nitesh Jain  
N J Jain & Associates  
Chartered Accountants  
[www.njjain.com](http://www.njjain.com)**

## **I. Facts in brief**

Companies in India have tie-ups with various foreign universities/colleges for marketing their courses in India and get students admitted to them. They do following activities:

- a. When a student approaches them, they counsel him and explain which course and which university suits him best
- b. Once the student agrees for admission in a particular university, he is given guidance of what is the entire admission process
- c. He is given guidance on visa formalities
- d. Student then pays the first installment of fees for the university directly from his account
- e. Once the university gets the entire fees – the consultancy company gets its admission consultancy fees in foreign currency as per pre-decided norms

These consultancy companies provide admission related services to many universities and colleges across many countries. Their main business is to counsel the student and guide him to a better education and better prospects in life, accordingly this is their main service.



## **II. Legal analysis**

### **Under GST from 1.07.2017 to till Date**

GST was implemented in India from 1.07.2017. Under GST law, services provided by companies whereby student is referred to a foreign college will not be taxable and will be considered as Export of Services on following grounds:

As per section 16 of the IGST Act, one is not required to pay GST in case of export of services

**16. (1)** "zero rated supply" means any of the following supplies of goods or services or both, namely:--

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:--

(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on

*payment of integrated tax and claim refund of such tax paid on goods or services or both supplied,*

*in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.*

Term Export of Services (EoS) is defined in section 2 (6) of the IGST Act as under:

*(6) "export of services" means the supply of any service when,--*

*(i) the supplier of service is located in India;*

*(ii) the recipient of service is located outside India;*

*(iii) the place of supply of service is outside India;*

*(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and*

*(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;*

All the above conditions are fulfilled by the Indian consultant firm.



**To understand whether the services are provided inside India or not – government has prescribed detailed provision in section 13 of the IGST Act**

Section 13 (2) of the IGST Act says that in general cases the place of supply (PoS) shall be the location of the recipient of the service.

*13 (2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:*

*Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.*

Section 13 (2) shall apply only if any of the other sub sections of section 13 do not apply. Lets analyse Section 13 (8) (b) in this regards – it reads as under:

*(8) The place of supply of the following services shall be the location of the supplier of services, namely:--*

*(b) intermediary services;*

Term “Intermediary” is defines as under

*2 (13) “intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;*

### **III. View for defence:**

#### **1. Service provided by Indian Consultant is qualifying as "Export of Service"**

As per the above definition of the term "intermediary" – for being one it is mandatory for a person to either arrange or facilitate supply of a service between 2 or more persons. In the case of a foreign education consultant – he does not arrange or facilitate education service to any other person – rather he provides the service as an admission consultant on his own terms to the university. **The contract between the foreign university and the Indian consultant is to get student admission and not to arrange services provided by the university to the student hence it cannot be said that these companies are intermediaries.**

Law as espoused in the order of **M/s Sunrise Immigration Consultants Private Limited Vs. CCE & ST, Chandigarh (Chandigarh Tribunal)**, wherein the tribunal has clearly held that the consultant is not an Intermediary and that his services are export of services, will stand good in GST as well because the underlying law remains the same.

All the required conditions are getting fulfilled hence services provided by Indian Consultants are "Export of Services and therefore they are not required to pay any tax.

#### **2. Services provided by Indian Consultant are exempt in GST**

##### **A. Applicability of GST – from 1.07.2017 to 24.01.2018**

##### **Sr. No 66 of notification 12/2017 – CTR dated 28.06.2017 provides for exemption for certain education related services**

For argument sake also if it is agreed upon that these consultancy companies fall under section 13 (8) and therefore their services are deemed to be provided in India, under Sr. No. 66 of notification 12/2017

- CTR dated 28.06.2017 exemption is sought to be granted to certain education related services. The timeline of this entry with various amendments is reproduced below for better understanding.

**From 1.07.2017 to 24.01.2018**

*Services provided -*

*(b) to an educational institution, by way of,-*

*(iv) services relating to admission to, or conduct of examination by, such institution; **upto higher secondary:***

***Provided that nothing contained in entry (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.***

As can be witnessed, services in relation to admission provided for any course above higher secondary is not eligible for exemption, all admissions done by Indian Consultant are for courses above higher secondary and therefore this exemption was not available to them for the period 1.07.2017 to 23.01.2018, if a safe view is to be taken then they must pay tax in this intervening period.

**B. Applicability of GST – from 25.01.2018 till today**

Entry 66 of notification 12/2017 as discussed above was amended vide notification 2/2018 – CTR dated 25.01.2018 as under:

*Services provided -*

*(a) by an educational institution to its students, faculty and staff;*

*"(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;"*

***(b) to an educational institution, by way of,-***

*(i) transportation of students, faculty and staff;*

*(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;*

*(iii) security or cleaning or house-keeping services performed in such educational institution;*

***(iv) services relating to admission to, or conduct of examination by, such institution;***

*"(v) supply of online educational journals or periodicals:"*

Above entry was amended and restrictions placed earlier with regards to admission to higher education courses was removed, hence from 25.01.2018 services in relation admission to higher education courses recognized by Indian Law were exempted summarily.



#### **IV. Conclusion:**

In view of the above, on both the counts, **Indian Consultants are not required to pay any GST** on the amounts received by them from foreign universities.



*Authored by*

**CA Nitesh Jain**

**N J Jain & Associates**

**Chartered Accountants**

[www.njjain.com](http://www.njjain.com)