

## **GST: Dealing in international trade? You may not be classified as exporter**

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One of the important decisions taken in the 37th GST Council meeting held on September 20, 2019 was that GST will not apply to intermediaries dealing with certain kinds of international transactions. Due to this change, GST will not apply to intermediaries providing services where both the person they supply to and the recipient of the goods are outside India. The decision has not been notified yet.

As per the existing law, all intermediaries including the ones supplying services to outside India were subject to GST at the rate of 18%. 'Intermediaries' are specifically defined under the GST Act. An intermediary refers to a broker, an agent or any other person who arranges or facilitates the supply of goods or securities or services between two or more persons. The definition excludes a person who supplies such goods or services or both or securities on his own account.

Currently, the GST law applies to the transactions mentioned above, where either the supplier or the recipient is in India. Therefore, such transactions attract GST levy. To decide whether IGST, CGST or SGST apply, we will have to look at the place of supply rules.

The place of supply of intermediary service is usually the location of the supplier. This situation includes the export of intermediary services as well. However, as per the general rule, the place of supply of export is outside India and therefore exports are zero-rated. Since there is a specific rule, it will prevail over the general rule, and accordingly, in case of export of intermediary services, the place of supply will be within India.

Now, when we apply the above provision to intermediary service where both the seller of goods and buyer is outside India, the location of the supplier, i.e. the location of the intermediary becomes the place of supply. This transaction gets covered under GST, despite the fact that the origin and the consumption of goods are occurring outside India.

With the decision of GST Council, these services will now be kept out of the scope of GST. Although the decision is a welcome move and gives clarity, yet there are some gaps to be addressed.

From the conclusion made about the place of supply of service rule, the intermediaries will not be classified as 'exporters'. They will not stand to receive the refund benefits of an

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exporter. Currently, an exporter can claim a refund of taxes paid on exports or the refund of unutilised tax credits on inward supplies.

On the other hand, in case an outward supply is exempt, it requires the reversal of the input tax credit claimed if any, on all the inward supplies. Once this exemption is notified, the intermediary services will not be subject to GST. Consequently, the intermediary service providers must reverse the ITC if any claimed on their inward supplies to export such intermediary services. Such intermediary service providers may have incurred huge rental expense on commercial premises and may also have ITC on other expenses like legal expenses. The tax credits on these input goods/services must be forgone and eventually added to cost.

Another issue that persists is the subjectivity involved in classifying the nature of intermediary service. An intermediary service defined under the GST law means a broker or agent or any other person who facilitates the supply of goods and services between two or more persons. However, it excludes the supply of such goods or services on one's own account. For instance, a person who is buying from one party and selling it to another cannot be termed as an intermediary as he is responsible for affecting the supply of goods and will ultimately bear the profit or loss of such supply. Whether a person is supplying service on his own account or not is subjective and often causes disputes; one of the most popular services that led to the confusion is the ITeS which has been recently clarified. Likewise, there are several other services pending clarification.

The decision is likely to have a ripple effect on how the intermediary service providers do business. It can not only affect their cash flows due to the disallowance of the input tax credit, but can also increase the price of such services. CBIC is yet to notify this exemption. We can expect that CBIC will come out with more circulars to clarify the applicability and scope of the exemption, to avoid any potential disputes.