

DESAI SAKSENA & ASSOCIATES

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Friday Tax Alert

From:

Tax Team of Desai Saksena and Associates
Chartered Accountants

CA Varsha Nanwani (Senior Manager - Taxation)
Vikas Jogle (Manager - International Taxation)
CA Neelu Dusseja (Senior Manager – Indirect Taxation)
CA Neha Patel (Manager - Taxation)
CA Ajay Sachani (Manager - Taxation)
Digvijay Hirwani (Assistant Manager - Taxation)

Contacts:

If you have any Q.s or would like to have additional information on the topics covered in this alert, please email one of the following DSA professionals:

- ✓ CA Varsha Nanwani (Senior Manager - Taxation)
varsha@dsaca.co.in
- ✓ Vikas Jogle (Manager – International Taxation)
vikas@dsaca.co.in
- ✓ CA Neelu Dusseja (Senior Manager – Indirect Taxation)
neelu@dsaca.co.in
- ✓ CA Neha Patel (Manager - Taxation)
neha@dsaca.co.in
- ✓ CA Ajay Sachani (Manager - Taxation)
ajay@dsaca.co.in
- ✓ Digvijay Hirwani (Assistant Manager - Taxation)
digvijay@dsaca.co.in
- ✓ Alok Sharma (Deputy Manager – Indirect Taxation)
sharma.alok12@gmail.com

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Circular No. 218/12/2024-GST- Clarification regarding taxability of the transaction of providing loan by an overseas affiliate to its Indian affiliate or by a person to a related person

In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in the exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under: —

Whether the activity of providing loans by an overseas affiliate to its Indian affiliate or by a person to a related person, where there is no consideration in the nature of processing fee/administrative charges/loan granting charges etc., and the consideration is represented only by way of interest or discount, will be treated as a taxable supply of service under GST or not.

- 1) As per clause (c) of sub-section (1) of section 7 of the CGST Act, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply, even if made without consideration. Therefore, it is evident that the service of granting loans/credit/advances by an entity to its related entity is a supply under GST.
- 2) Services by way of extending deposits, loans, or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) are exempted under sub-entry (a) of entry 27 of Notification No. 12/2017-Central Tax (Rate). Therefore, it is clear that the supply of services of granting loans/ credit/ advances, in so far as the consideration is represented by way of interest or discount, is fully exempt under GST.
- 3) It is mentioned that overseas affiliates or domestic-related persons are generally charging no consideration in the form of processing fee/service fee, other than the consideration by way of interest or discount on the loan amount. Doubts are being raised regarding the taxability of the services of processing/ administering/ facilitating the loan in such cases, by deeming the same as supply as per clause (c) of sub-section (1) of section 7 of the CGST Act, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act.
- 4) The processing fee/service fee is generally a one-time charge that lenders levy on applicants when they apply for a loan. This fee is generally non-refundable and is used to cover the administrative cost of processing the loan application. Charges of any other nature in respect of a loan, other than by way of interest or discount, would represent taxable consideration for providing the facilitation/processing/administration services for the loan and hence would be liable to GST.
- 5) It is significant to note that the processing/service fee is generally charged by the bank/financial institution from the recipient of the loan to cover the administrative cost of processing the loan application. An independent lender may carry out a thorough credit assessment of the potential borrower to identify and evaluate the risks involved and to consider methods of monitoring and managing these risks.
- 6) Such credit assessment may include understanding the business of the applicant, as well as the purpose of the loan, the financial standing and credibility of the applicant, how it is to be structured and the source of its repayment which may include analysis of the borrower's cashflow forecasts, the strength of the borrower's balance sheet, and where any collateral is offered, due diligence on the collateral offered may also be required to be carried out. To cover such costs, the independent lender generally collects a fee that is in the nature of processing fees/administrative charges/ service fees/ loan granting charges, which is leviable to GST.

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- 7) However, when an entity is extending a loan to a related entity, it may not be required to follow such processes as are followed by an independent lender. For example, it may not need to go through the same process of information gather about the borrower's business, his financial standing and credibility, and other details, as the required information may already be readily available within the group, or between related persons. The lender may not also take any collateral from the borrower. Accordingly, in the case of loans provided between related parties, there may not be the activity of 'processing' the loan, and no administrative cost may be involved in granting such a loan. Therefore, it may not be desirable to place the services being provided for processing the loans by banks or independent lenders *vis-a-vis* the loans provided by a related party, on equal footing.
- 8) Even in the case of loans provided between unrelated parties, there may not be any processing fee/administrative charges/loan granting charges, etc., based on the relationship between the bank/independent lender and the person taking the loan. The lender might waive off the administrative charges in full, based on the nature and amount of loan granted, as well as based on the relationship between the lender and the concerned person taking the loan.
- 9) Accordingly, in the cases, where no consideration is charged by the person from the related person, or by an overseas affiliate from its Indian party, for extending a loan or credit, other than by way of interest or discount, it cannot be said that any supply of service is being provided between the said related persons in the form of processing/facilitating/administering the loan, by deeming the same as the supply of services as per clause (c) of sub-section (1) of section 7 of the CGST Act, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act. Accordingly, there is no question of levy of GST on the same by resorting to open market value for valuation of the same as per rule 28 of Central Goods and Services Tax Rules, 2017.

However, in cases of loans provided between related parties, wherever any fee in the nature of processing fee/administrative charges/service fee/loan granting charges, etc. is charged, over and above the amount charged by way of interest or discount, the same may be considered to be the consideration for the supply of services of processing/facilitating/administering of the loan, which will be liable to GST as a supply of services by the lender to the related person availing the loan.

Conclusion

- ❖ No deemed supply of services related to processing, facilitating or administering the loan where no separate consideration is charged.
- ❖ Any fee or consideration charged over and above interest or discount, in the nature of processing fees/administrative charges/service fees/loan granting charges, etc. will be chargeable to GST

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