

EY Tax Alert

CBEC clarifies on the applicability of GST on service transactions between a Joint Venture and its members

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Executive summary

This Tax Alert summarizes a recent Circular^[1] issued by the Central Board of Excise and Customs, clarifying the applicability of the Goods and Services Tax on service transactions between Joint Venture (JV) and its members and inter se between the members of the JV.

The Circular clarifies with the help of an illustration the “circumstances” under which “cash calls” could be treated as supply of service and taxed accordingly.

It further emphasizes that a comprehensive examination of the various JV agreements is required for determining the taxability of transactions involving taxable services between a JV and its members.

^[1] Circular No. 35/9/2018-GST dated 5 March 2018

Background

- ▶ Under erstwhile service tax regime, Central Board of Excise and Customs (CBEC) had issued a circular¹ clarifying that Service tax was applicable on taxable services provided:
 - ▶ by the members of the Joint Venture (JV) to the JV and vice versa; and
 - ▶ *inter se* between the members of the JV.
- ▶ In addition, the Circular also clarified that if cash calls were merely in the nature of capital contribution then they could be treated as transaction in money and thus excluded from the definition of service.
- ▶ In some cases, cash calls could be in the nature of advance payments made by the members for taxable services provided by JV to them.
- ▶ Further, payments could be made by JV, out of the pooled cash calls, for taxable services received from a member such as administrative services.
- ▶ In both cases, such payments were in the nature of consideration and hence attracted tax.
- ▶ The field formations were accordingly advised to carefully examine the applicability of Service tax with reference to the specific terms / clauses of each JV agreement.
- ▶ Since, Goods and Services Tax (GST) has replaced Service tax, CBEC has issued a similar circular under GST law reiterating its clarifications on GST implication in such types of transactions.

Summary of the Circular

- ▶ The present Circular states that the clarification given in the earlier circular in the context of Service tax is also applicable for the purpose of levy of GST.
- ▶ The Circular directs a conjoint reading of the definitions of certain expressions such as 'supply', 'business', 'person' as per the Central Goods and Services Tax Act 2017 (CGST Act) along with para 7 of Schedule II of CGST Act which enumerates activities which are to be treated as supply of goods or supply of services.
- ▶ Basis the above, it concludes that supply of services between unincorporated association or body of persons and its members or between the members of JV, for cash, deferred payment or other valuable consideration shall be treated as supply of services.
- ▶ 'Cash calls' are raised by an operating member of the JV on other members in proportion to their participating interests in the unincorporated JV to meet the expenditure on the operations to be carried out as per the approved work programme and budget.
- ▶ The Circular reiterates that the taxability of 'cash calls' will entirely depend on the facts and circumstances of each case and aims to clarify further with the help of illustration as follows:

- ▶ There are 4 members (including operating member) in a JV where each member contributes Rs. 100 as part of their share. The operating member purchases machinery for Rs 400 for the JV to be used in oil production.
 - ▶ In this scenario, tax is not applicable as the operating member is not carrying out an activity for another for consideration. The money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.
- ▶ In another case, after the contribution of Rs. 100 each by 4 members, instead of purchasing the machine, the operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV.
 - ▶ In this case, the operating member is providing 'service' within the scope of supply of CGST Act. This is because the operating member is receiving consideration as it is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio.

Comments

The Circular reaffirms the settled legal position that services provided by an unincorporated association or body of persons to its members and vice versa are within the ambit of GST.

Careful drafting of the terms of the JV agreement would be critical to document the intention of the parties correctly, particularly where capital contributions are made for funding the JV activities.

¹ Circular No. 179/5/2014 - ST dated 24 September 2014

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