

# EY Tax Alert

## CBIC amends IGST Rules to provide for valuation of certain services attributable to different states

Tax Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

### Executive summary

This Tax Alert summarizes a recent notification<sup>[1]</sup> issued by Central Board of Indirect Taxes and Customs (CBIC) amending IGST (Integrated Goods and Services Tax) Rules, 2017.

The amendment prescribes the method for determining value of supply in case the supply of services is attributable to different states or union territories and such value cannot be determined as per contract.

Method of determination of value of supply for certain services is as follows:

| Service  | Method   |
|--|--|
| Lodging accommodation services                       | In proportion to the number of nights stayed in such property                              |
| All other services in relation to immovable property | In proportion to the area of the immovable property lying in each state or union territory |
| Organization of events                               | As per generally accepted accounting principles  |
| Services in relation to a leased circuit             | In proportion to the number of points lying in the state or union territory                |

The notification will come into force from 1 January 2019.

<sup>[1]</sup> Notification No. 4/2018-Integrated tax dated 31 December 2018

## Background

- ▶ As per Explanation to sub section (3), (7) and (11) of section 12 and sub section (7) of section 13 of Integrated Goods and Services Tax (IGST) Act 2017, if the services are supplied in more than one state<sup>2</sup>, the place of supply of such services shall be treated as made in each of the respective states.
- ▶ The value of such supplies specific to each state shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.
- ▶ The Government had earlier prescribed the basis of determining value of supply of advertisement services provided to the Government.
- ▶ The Government has now prescribed the basis of determining value of supply of certain other services vide Notification No. 4/2018-Integrated tax dated 31 December 2018.

## Amendment to IGST Rules

- ▶ Rule 3 has been amended to provide that in case of supply of advertisement services over internet to the Central Government, it shall be deemed that the services have been provided all over India and accordingly, the amount attributable to the value of advertisement service disseminated in a state shall be calculated on the basis of the internet subscribers in such state.
- ▶ Rule 4 has been inserted to determine the value of supply of services (under section 12(3) of IGST Act) which are in relation to immovable property.
  - ▶ In case of services provided by way of lodging accommodation by a hotel, inn, guest house, club or campsite (except cases where such property is a single property located in two or more contiguous states) and services ancillary to such services, the supply of services shall be treated as made in each of the respective states, in proportion to the number of nights stayed in such property.

Illustration: A hotel chain X charges a consolidated sum of INR30,000/- for stay in its two establishments in Delhi and Agra, where the stay in Delhi is for 2 nights and the stay in Agra is for 1 night. The place of supply in this case is both in Delhi and Uttar Pradesh and the service shall be deemed to have been provided in Delhi and Uttar Pradesh in the ratio 2:1 respectively. The value of services provided will thus be apportioned as INR20,000/- in Delhi and INR10,000/- in Uttar Pradesh.

- ▶ In case of all other services in relation to immovable property including services by way of accommodation

in any immovable property for organizing any marriage or reception etc., and in cases of supply of accommodation by a hotel, inn, guest house, club or campsite where such property is a single property located in two or more contiguous states, and services ancillary to such services, the supply of services shall be treated as made in each of the respective states, in proportion to the area of the immovable property lying in each state.

Illustration: There is a piece of land of area 20,000 square feet which is partly in state S1 say 12,000 square feet and partly in state S2, say 8,000 square feet. Site preparation work has been entrusted to T. The place of supply is in both S1 and S2. The service shall be deemed to have been provided in the ratio of 3:2 in the states S1 and S2 respectively.

- ▶ In case of services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services, the supply of services shall be treated as made in each of the respective states, in proportion to the time spent by the boat or vessel in each such state, which shall be determined on the basis of a declaration made by the service provider.

Illustration: Company C provides the service of 24 hours accommodation in a houseboat. The guests board the house boat in Kerala and stay there for 22 hours but it also moves into Karnataka for 2 hours (as declared by the service provider). The place of supply of this service is in the states of Kerala and Karnataka. The service shall be deemed to have been provided in the ratio of 11:1 in the states of Kerala and Karnataka, respectively.

- ▶ Rule 5 has been inserted to determine value of supply of services (under section 12(7) of IGST Act) which are in relation to organizing or sponsoring an event where the recipient is an unregistered person.

In such case, the value shall be determined by application of the generally accepted accounting principles.

Illustration: An event management company E has to organize some promotional events in states S1 and S2 for a recipient R. 3 events are to be organized in S1 and 2 in S2. They charge a consolidated amount of INR10,00,000 from R. The place of supply of this service is in both the states S1 and S2. Say the proportion arrived at by the application of generally accepted accounting principles is 3:2. The service shall be deemed to have been provided in the ratio 3:2 in S1 and S2 respectively.

- ▶ Rule 6 has been inserted to determine the value of supply of services (under section 12(11) of IGST Act), which are in relation to a leased circuit.

In such case, the supply of services shall be treated as made in each of the respective states, in proportion to

<sup>1</sup> For the purpose of this alert, state means state or union territory

the number of points lying in the state.

The number of points in a circuit shall be determined in the following manner:

- ▶ In the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points;
- ▶ Any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point.

Illustration: Company T installs a leased circuit between Kolkata, Patna and Guwahati offices of a company C. There are 3 points in this circuit in Kolkata, Patna and Guwahati. The place of supply of this service is in the states of West Bengal, Bihar and Assam. The service shall be deemed to have been provided in the ratio of 1:1:1 in the states of West Bengal, Bihar and Assam, respectively.

- ▶ Rule 7 has been inserted to determine the value of supply of the following services (under section 13(7) read with section 13(3) of IGST Act), where the location of the supplier of services or the location of the recipient of services is outside India:
  - (i) Services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services,
  - (ii) services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf,

The value of supply for the said services shall be determined in the following manner:

- ▶ In the case of services supplied on the same goods, by equally dividing the value of the service in each of the states where the service is performed;

Illustration: Company C which is located in Kolkata is providing the services of testing of a dredging machine and the testing service on the machine is carried out in Orissa and Andhra Pradesh. The place of supply is in Orissa and Andhra Pradesh and the value of the service in Orissa and Andhra Pradesh will be ascertained by dividing the value of the service equally between these two states.

- ▶ In the case of services supplied on different goods, by taking the ratio of the invoice value of goods in each of the states, on which service is performed, as the ratio of the value of the service performed in each state or union territory;

Illustration: Company C which is located in Delhi is providing the service of servicing of two cars belonging to Mr. X. One car is of manufacturer J and is located in Delhi and is serviced by its Delhi workshop. The other

car is of manufacturer A and is located in Gurugram and is serviced by its Gurugram workshop. The value of service attributable to Delhi and Haryana respectively shall be calculated by applying the ratio of the invoice value of car J and the invoice value of car A, to the total value of the service.

- ▶ In case of services supplied to individuals, the value of supply shall be determined by applying the generally accepted accounting principles.

Illustration: A makeup artist M has to provide make up services to an actor A. A is shooting some scenes in Mumbai and some scenes in Goa. M provides the makeup services in Mumbai and Goa. The services are provided in Maharashtra and Goa and the value of the service in Maharashtra and Goa will be ascertained by applying the generally accepted accounting principles.

- ▶ Rule 8 has been inserted to determine the value of supply of services (under section 13(7) read with section 13(4) of IGST Act) which are in relation to immovable property. The value of such services shall be determined by applying the provisions of rule 4 (above), *mutatis mutandis*.
- ▶ Rule 9 has been inserted to determine value of supply of services (under section 13(7) read with section 13(5) of IGST Act) which are in relation to admission or organization of an event. The value of such services shall be determined by applying the provisions of rule 5 (above), *mutatis mutandis*.

## Comments:

The amendment providing mechanism for determining value of supply in each state may help the taxpayers in discharging state-wise correct tax liability and thereby eliminate unwarranted litigation.

The taxpayers need to be mindful that if they do not want to apportion the value as per the method prescribed by the rules, the contract should provide the segregation of value in each state either in absolute numbers or in percentage terms.

As the rules are prospective in nature, if the taxpayer has adopted a different methodology for apportioning the value of supply, the same may not be disputed by the adjudicating authority.

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