



Welcome Circular ☆ relating to *GST Implications on* **Various Services by Head Office to Branches**

[In common parlance, called as “*Cross Charge*”]

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❖ BACKGROUND:

Since inception of GST, matter of HO services to Branches was very much discussed and concern were raised on its taxability. This was widely applicable issue but there was no clear solution or litigation free GST opinion on it.

This is due to reason that, Head Office and Branch Offices are distinct persons as per Sec 25(4) of CGST Act 2017. As per Sr. No. 2 of Schedule I of CGST Act 2017, supply of goods or services or

both between related persons or between distinct persons, when made in the course or furtherance of business is a supply even if it is made without consideration. Thus, services HO by branch, even if without consideration are taxable under GST.

AAR: This issue got more seriousness and grabbed the attention of industry, when below Authority of Advance Ruling and Appellate Authority of Advance Ruling has held that support services by HO to branch is taxable under GST:

- **Appellate Authority of Advance Ruling of Karnataka in case of Columbia Asia Hospitals Pvt. Ltd.** [Order No. KAR/AAAR/05/2018-19, dated 12-12-2018]
- **Appellate Authority of Advance Ruling of Maharashtra in case of Cummins India Limited.** [Order No. MAH/AAAR/AM-RM/01/2021-22, dated 21-12-2021]
- **Authority of Advance Ruling of Tamil Nadu in case of Profisolution Pvt Ltd** [Order No. 07/ARA/2023, dated 31-03-2023]

35th GST Council Meeting: In between, said issue of taxable of services by HO to branch is considered in 35th GST Council meeting, held on 21st June 2019. However, it was not concluded that time and it was differed for next meeting.

❖ CLARIFICATION BY 50TH GST COUNCIL MEETING:

Recently, in order to clarify above mentioned issue faced by taxpayer, government has issued **Circular No. 199/11/2023-GST dated 17th July 2023**, with respect to “Taxability of services provided by HO to Branches”. In common parlance, this is also been called and discussed as Cross Charge. Said circular has settled long discussed and litigated issue of Cross Charge to Great Extent.

Synopsis of clarification issued by above referred circular is as under:



PROCUREMENT OF COMMON SERVICES BY HO, WHICH ARE USED BY HO AND BRANCH OFFICE (BO) OR BO'S ONLY

[It means, Common Services for whole company such as ERP Services / Internal Audit / Consultant for whole company etc]

In such case, HO has two options (as of now) for compliances of GST provisions.

✚ **OPTION I:** HO can either obtain ISD Registration and distribute common ITC as per ISD provisions given in GST Law. OR,

✚ **OPTION II:** In such case, HO can issue Tax Invoice to BO in respect of common input services procured from a third party by HO but attributable to the said Bos. Here, the Bos can then avail ITC on the same subject to the provisions of section 16 and 17 of CGST Act.

✚ **NOTE** – As per Press Release to 50th GST Council meeting dated 11th July 2023, soon amendment will be made in GST Law to make ISD Registration Mandatory. In such case, after amendment in GST Law in future, Option II will not be available. Recommendation by GST Council in this regard is as under:

“The Council has also recommended that amendment may be made in GST law to make ISD mechanism mandatory prospectively for distribution of input tax credit of such common input services procured from third parties”



INTERNALLY GENERATED SERVICES BY HO TO BO'S

[SUCH AS ADMINISTRATION / HR / ACCOUNTING ETC SUPPORT BY HO TO BO]

Here, there was doubt as to whether cost of salary of said staff/employee to be charged by HO to BO along with GST. Few AAR has ruled that, HO is required to pay GST on it. This circular has clarified and settled this issue. For said activity, two scenario is provided in circular.

✚ **SENARIO I:** WHERE FULL ITC IS AVAILABLE TO THE CONCERNED BO's –

- ✓ If Tax Invoice is issued by HO to Bo for said purpose: In such case, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services as per Second proviso to Rule 28 of CGST Rules 2017.

This is irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice.

It means, whatever invoice value is mentioned for internal services of HO to BO's (where BO is eligible for Full ITC), same will be accepted and it will be deemed to be market value.

- ✓ If Tax Invoice is NOT issued by HO to Bo for said purpose: It means, HO has not made cross charge to BO for its services. In such case, the value of such services may be deemed to be declared as Nil by HO to BO as per second proviso to Rule 28 of CGST Rules 2017.

✚ SENARIO II: WHERE FULL ITC IS 'NOT' AVAILABLE TO THE CONCERNED BO'S –

- ✓ In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, **is not mandatorily required** to be included while computing the taxable value of the supply of such services, even in cases where full input tax credit is not available to the concerned BO.
- ✓ It means, HO is not required to raise invoice to BO for said internal service and not required to pay GST.

With this welcome circular 😊. Government has tried to settle down long discussed disputed subject of Cross Charge to large extent.

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