



## Taxability of gifts and perquisites provided by employer to employee

The Ministry of Finance issued a Press Note on 10 July 2017 clarifying issues around applicability of Goods and Services Tax (GST) on transactions between an employer and employee, as detailed below:

### Taxability of Gifts

- Gifts of value more than Rs. 50,000/- made without consideration are subject to GST, when made in the course or furtherance of business. Gifts have not been defined under the GST law. It has been clarified in the press note that gifts will mean "*gift is made without consideration, is voluntary in nature and is made occasionally. It cannot be demanded as a matter of right by the employee and the employee cannot move a court of law for obtaining a gift*"

### Taxability of perquisites

- Services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services). It follows therefrom that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST. Further, the Input Tax Credit (ITC) Scheme under GST does not allow ITC of membership of a club, health and fitness centre [section 17 (5) (b) (ii)]. It follows, therefore, that if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer. The same would hold true for free housing to the employees, when the same



is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to-company (CTC).

### **Dhruva Comments**

It appears that there are three parts to the Press note:

- (a) Supplies by employer to employee in terms of contractual arrangement will not be liable to GST.
- (b) Free of charge supplies such as membership of a club, health and fitness centre are not liable to GST. It may be noted that employer and employee are related parties under the GST law and on a strict reading, even if supplies are made without any consideration, they will be subject to GST in terms of Schedule I read with explanation to Section 15 of the GST Law. However, the clarification goes on a logic that appropriate GST has been paid by the employer, credit is not available and supplies are provided to all employees. It is not clear as to how this could be determinative factors for considering the transaction as not being a supply under GST. Also, the press note indicates that if credit is available with respect to a supply provided to an employee free of cost or if it is not given to all employees (such as parking), the same would be considered as a supply, liable to GST.
- (c) Free housing to an employee not liable to GST, when the same is provided in terms of the contract between the employer and employee and is part of CTC. This appears to be a derivation of point (a) above.

The Press note does not provide clarification on reimbursement of expenses to employee and whether they are liable to GST as URD. It may be possible to argue that such reimbursements are in the course of employment and hence, not liable to GST, however, the position may be litigative. Thus, issuance of a specific exemption notification/clarification is awaited to avoid any litigation in the future. Also, a point to ponder upon is the binding value of the press note upon the department.



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