

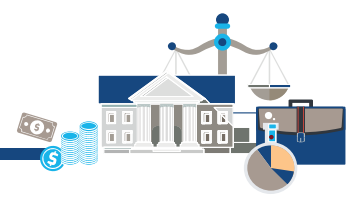
# Clarifications Post the 52<sup>nd</sup> GST Council Meeting

Pursuant to the recommendations given in the 52<sup>nd</sup> GST Council Meeting, the Central Board of Indirect Taxes and Customs ('CBIC') issued Circulars on October 27, 2023 and October 31, 2023 clarifying the tax positions relating to personal guarantee, corporate guarantee, place of supply for advertising services, reimbursement of electricity charges etc.

These clarifications are summarised as under:

Issue	Clarification
<p><b>Personal guarantee by the director to the bank/ financial institution<sup>1</sup></b></p>	<ul style="list-style-type: none"> <li>In terms of explanation to Section 15 of Central Goods and Services Tax Act, 2017 ('CGST Act') read with Schedule I of the CGST Act, the director and a company are related persons. Accordingly, the activity of supply of goods or services or both between related persons, shall be treated as taxable supply even if made without consideration. The taxable value in such cases shall be the open market value of such supply.</li> <li>As a result, provision of personal guarantee by the director to the banks/ financial institutions for securing credit facilities for their company shall be a supply of service, even if made without a consideration.</li> <li>RBI Circular No. RBI/2021-22/121 dated November 9, 2021, provides for guidelines for obtaining personal guarantee of promoters, directors, and other managerial persons. In terms of the said Circular, no consideration should be payable by the company in lieu of the personal guarantee provided by such personnel to banks/financial institutions.</li> <li>As no consideration is involved, the open market value of such supplies can be treated as zero and no tax is payable on such supply of personal guarantee services.</li> </ul>

<sup>1</sup> Circular No. 204/16/2023-GST dated October 27, 2023

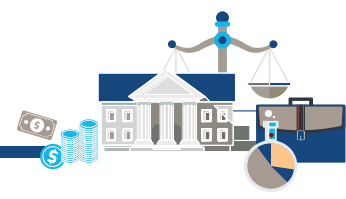


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	<ul style="list-style-type: none"> <li>In case where the director, who had provided the guarantee, is no longer connected with the company (and the guarantee continues to operate) or in exceptional cases where a remuneration/consideration is paid directly or indirectly, value of supply of such services shall be the consideration so paid.</li> </ul> <p><b>Dhruva Comments:</b></p> <p><i>The Circular settles the issues of taxability of personal guarantee, even if no consideration is involved. Considering the regulatory aspects, zero value shall be adopted even if the recipient company is not eligible for full input tax credit.</i></p>
<p><b>Corporate Guarantee by a person on behalf of another related person<sup>2</sup></b></p>	<ul style="list-style-type: none"> <li>The activity of providing corporate guarantee by a company to the bank/financial institution for providing credit facilities on behalf of its related person, even without consideration, shall qualify as a supply of services between the related persons.</li> <li>For determining the taxable value for such supply of corporate guarantee, sub-rule (2) has been inserted<sup>3</sup> in Rule 28 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules'). In terms of this newly inserted rule, the value of corporate guarantee shall be the higher of amount charged or 1% of the guaranteed amount.</li> <li>The taxable value shall henceforth be determined as per Rule 28(2) of the CGST Rules, irrespective of whether full input tax credit is available to the recipient or not.</li> <li>Notably, Rule 28(2) shall be inapplicable in case of personal guarantee transactions.</li> </ul> <p><b>Dhruva Comments:</b></p> <p><i>Guarantees could have different forms such as standby letter of credit, letter of comfort, fund-based/ non-fund-based guarantees etc. The Circular does not amplify whether all such arrangements should be taxed. There could be situations wherein pursuant to the guarantee, the recipient entity does not take credit facilities (funds) from the bank/financial institution. The clarification does not specify whether such transactions are liable and the applicability of Rule 28(2) to such cases.</i></p>
<p><b>Place of supply in case of various services<sup>4</sup></b></p>	<p><b>Place of supply in case of supply of services of transportation of goods, including through mail and courier, where location of supplier or location of recipient is outside India:</b></p> <ul style="list-style-type: none"> <li>Pursuant to the omission of Section 13(9) of the Integrated Goods and Services Tax Act, 2017 ('IGST Act') vide Finance Act 2023 effective from October 1, 2023, the place of supply of such transportation services shall be determined by the default provision under Section 13(2) of IGST Act (i.e., location of recipient of services).</li> </ul>

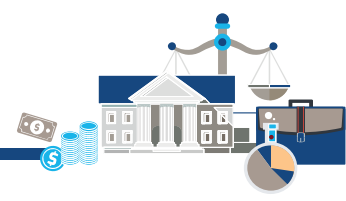
<sup>2</sup> Circular No. 204/16/2023-GST, dated October 27, 2023

<sup>3</sup> Vide Notification No. 52/2023, dated October 26, 2023

<sup>4</sup> Circular No. 203/15/2023-GST, dated October 27, 2023



Issue	Clarification
	<ul style="list-style-type: none"> <li>Accordingly, where location of recipient of services is available, the place of supply of such services shall be such location and in cases where location of recipient of services is not available, the place of supply shall be the location of supplier of services.</li> </ul> <p><b>Place of supply in case of supply of services in respect of advertising sector:</b></p> <ul style="list-style-type: none"> <li>As per Section 12(3)(a) of IGST Act, the place of supply of services directly in relation to an immovable property shall be the location at which such immovable property is located. Hoarding/ structure erected on the land shall be considered as immovable structure or fixture as it has been embedded in earth.</li> <li>Hence, the place of supply in respect of services by way of supply of space or of rights to use the space on the hoarding/structure (immovable property) for advertisement purposes, shall be the location where such hoarding/ structure is located.</li> <li>In cases where advertising companies directly avail services of a vendor who is responsible for display of advertisement on a hoarding/ billboard/ structure etc., then the arrangement shall not be supply of space or right to use the space, but of advertisement services. The place of supply of such services shall be determined as per Section 12(2) of the IGST Act (i.e., location of the registered person / recipient of service).</li> </ul> <p><b>Place of supply in case of supply of the co-location services:</b></p> <ul style="list-style-type: none"> <li>Co-location is a data centre facility in which a business/ company can rent space for its own servers and other computing hardware along with various other bundled services related to hosting information technology (IT) infrastructure.</li> <li>The supply of such co-location services is not limited to renting/ leasing of physical space for servers/ network hardware but also involves various other services related to hosting, backup facility, fire wall services etc. Thus, the place of supply of such services shall be determined as per Section 12(2) of the IGST Act (i.e., location of recipient).</li> <li>Where the agreement is restricted to provide physical space, while the responsibility of monitoring the servers with related hardware is of recipient only, then the supply shall squarely fall within the purview of supply of service of renting of immovable property and place of supply of services shall be determined as per Section 12(3)(a) of the IGST Act (i.e., location of immovable property).</li> </ul>



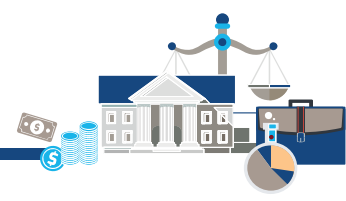
Issue	Clarification
<b>Export remittance in Indian Rupees<sup>5</sup></b>	<ul style="list-style-type: none"> <li>Export remittances received in Special Vostro account, as permitted by the RBI, shall qualify for and satisfy the condition of “payment for export of services shall be received in convertible foreign exchange or in Indian rupees wherever permitted by the RBI” which is a requirement of the definition of export of services in Section 2(6) of the IGST Act.</li> </ul>
<b>Reimbursement of electricity charges<sup>6</sup></b>	<ul style="list-style-type: none"> <li>Electricity supplied along-with the renting of immovable property and/or maintenance services qualifies to be a part of composite supply of renting/ maintenance services, with principal supply being that of renting/ maintenance service. This tax implication would remain the same even if electricity charges are recovered separately.</li> <li>Where real estate owners, developers, resident welfare associations (RWAs) charge for electricity from the user on actual basis, they shall be deemed to be acting as pure agent and such recovery shall not form a part of their supply.</li> </ul>
<b>GST Exemptions to DMFTs<sup>7</sup></b>	<ul style="list-style-type: none"> <li>District Mineral Foundation Trusts (DMFTs) work free of charge for the interest and benefit of persons and areas affected by mining related operations related to drinking water supply, health care facilities etc. Such activities are enlisted in Eleventh Schedule and Twelfth Schedule of the Constitution of India.</li> <li>Thus, DMFT set up by the State Governments are Governmental Authorities and eligible for the same exemptions from GST as available to any other Governmental Authority.</li> </ul> <p><b>Dhruva Comments:</b></p> <p><i>There are other funds such as NMET that are formed under the mining regulations. The clarification may apply to the payments made to these bodies.</i></p>
<b>Input tax credit availability for same line of business<sup>8</sup></b>	<ul style="list-style-type: none"> <li>In terms of Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017, supply of service of transport of passengers by any motor vehicle where the cost of fuel is included in the consideration (SAC 9964) and services by way of renting of motor vehicle (with operator) where the cost of fuel is included in the consideration (SAC 9966) attracts GST at 5% with input tax credit availability only of services in the same line of business.</li> <li>Same line of business includes service of transport of passengers or renting of motor vehicle with operator but does not include leasing of motor vehicles without operator.</li> </ul>

<sup>5</sup> Circular No. 202/14/2023-GST dated October 27, 2023

<sup>6</sup> Circular No. 206/18/2023-GST dated October 31, 2023

<sup>7</sup> Circular No. 206/18/2023-GST dated October 31, 2023

<sup>8</sup> Circular No. 206/18/2023-GST dated October 31, 2023



## ADDRESSES

### Mumbai

1101, One World Center,  
11th floor, Tower 2B,  
841 Senapati Bapat Marg,  
Elphinstone Road (West),  
Mumbai 400 013  
Tel: +91 22 6108 1000 / 1900

### Ahmedabad

402, 4th Floor, Venus Atlantis,  
100 Feet Road,  
Prahladnagar,  
Ahmedabad 380015  
Tel: +91-79-6134 3434

### Delhi / NCR

101 & 102, 1st Floor, Tower 4B  
DLF Corporate Park  
M G Road, Gurgaon  
Haryana - 122 002  
Tel: +91-124-668 7000

### Pune

305, Pride Gateway,  
Near D-Mart, Baner,  
Pune - 411 045  
Tel: +91-20-6730 1000

### Kolkata

4th Floor, Unit No 403, Camac Square,  
24 Camac Street, Kolkata  
West Bengal – 700016  
Tel: +91-33-66371000

### Abu Dhabi

Dhruva Consultants  
1905 Addax Tower, City of Lights,  
Al Reem Island,  
Abu Dhabi, UAE  
Tel: +971 26780054

### Dubai

Dhruva Consultants  
Emaar Square Building 4, 2nd Floor,  
Office 207, Downtown,  
Dubai, UAE  
Tel: +971 4 240 8477

## KEY CONTACTS

### Dinesh Kanabar

Chief Executive Officer  
dinesh.kanabar@dhruvaadvisors.com

### Niraj Bagri

niraj.bagri@dhruvaadvisors.com

### Ranjeet Mahtani

ranjeet.mahtani@dhruvaadvisors.com

### Kulraj Ashpni

kulraj.ashpni@dhruvaadvisors.com



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