

Indirect Taxes

Clarification in respect of levy of GST on Director's remuneration

The Central Board of Indirect Taxes and Customs (CBIC) on 11th June, 2020 issued the clarification in respect of levy of GST on the remuneration of directors.

This is in light of recent ruling of AAR where the benches interpreted the issue from a different perspective.

Recently, the Karnataka branch of the AAR held that the salary of a director is not subject to GST. The ruling is contradictory to the Rajasthan bench where the authority ruled that all the payments to directors are liable to GST.

The Board received several references from trade and industry seeking clarification on the issue whether the GST is leviable on Director's remuneration paid by the companies to their directors.

The issues of remuneration to directors has been examined under following two categories:

(a) Leviability of GST on remuneration paid by companies to the independent directors or those directors who are not the employee of the said company

As per the definition of '*independent director*' under section 149(6) of the Companies Act, 2013 read with Rule 12 of Companies (Share Capital and Debentures) Rules, 2014 makes it amply clear that **such director should not have been an employee** or proprietor or a partner of the said company, in any of the three financial years

immediately preceding the financial year in which he is proposed to be appointed in the said company.

Therefore the Board clarified that in respect of the such directors who are not the employees of the said company, the services provided by them to the company, in lieu of remuneration as the consideration for the said services, are clearly outside the scope of Schedule III of the CGST Act and are therefore taxable. The recipient of the said service (company), is liable to discharge the applicable GST on it on reverse charge basis.

(b) Leviability of GST on remuneration paid by companies to the directors, who are also an employee of the said company

It is clarified that the part of Director's remuneration which are declared as 'Salaries' in the books of a company and subjected to TDS under Section 192 of the Income Tax Act, are not chargeable to GST for a simple reason that to is a consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.

Further the Board clarified that the part of employee Director's remuneration which is declared separately other than 'salaries' in the company's accounts and subjected to TDS under section 194J of the Income tax Act as "*Fee for professional and Technical Services*" shall be treated as consideration for providing services which

are outside the scope of Schedule III of the CGST Act, and is therefore, taxable. The recipient of said services(company) is liable to discharge the applicable GST on it on reverse charge basis.

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