

Tax Alert | Delivering clarity

19 July 2019

CBIC issues circular clarifying applicability of GST on supply of IT enabled services to overseas entities

Clarification on supply of IT enabled services as intermediary services under GST

The CBIC has issued circular no. 107/26/2019-GST dated 18 July 2019 clarifying issues related to supply of information technology enabled services (ITeS services) to overseas entities. The circular also clarifies whether ITeS services under various scenarios qualify to be export of services under GST.

The circular refers to the Income Tax Rules, 1962, which defines ITeS to mean services provided with the assistance or use of information technology, namely, back office operations, call centres or contact centre services, payroll, remote assistance, revenue accounting, etc. However, these services exclude research and development services whether or not in the nature of contract research and development services.

The scenarios and the taxability discussed in the circular are as follows:

Scenario	Nature of supply	Clarification
Scenario I	Supply of ITeS services by the supplier on his own account to the client or customer of the client on clients' behalf.	Such services would not be treated as intermediary services.
Scenario II	Supplier of backend services arranges or facilitates the supply of goods or services or both by the client located outside India to the customers of the client. Such backend services may include support services, during pre-delivery, delivery and post-delivery of supply (such as order placement and delivery and logistical support, obtaining relevant Government clearances, transportation of goods, post-sales support and other services, etc.).	Such backend services of arranging or facilitating supply of goods or services or both between the client and its customer would be intermediary services.
Scenario III	Supply of ITeS services by the supplier on his own account along with arranging or facilitating the supply of various support services during pre-delivery, delivery and post-delivery of supply for and on behalf of the client located outside India.	Treatment of such supply as intermediary services would be dependent on the determination of principal supply in a set of services.

Comments:

- An analysis of the circular suggests that the department may initiate enquiry on the ITeS services supplied to overseas entities
- The circular appears to cover services which are not ITeS services as per the definition adopted from Income Tax Rules in the definition of intermediary.
- Litigation could arise on determination of principal supply as mentioned in scenario III.

- Industry needs to reassess the position adopted with regard to ITeS services as well as outsourced services supplied to overseas entities.



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

This material and the information contained herein prepared by Deloitte Touche Tohmatsu India LLP (DTTI LLP) is intended to provide general information on a particular subject or subjects and is not an exhaustive treatment of such subject(s). This material contains information sourced from third party sites (external sites).

DTTI LLP is not responsible for any loss whatsoever caused due to reliance placed on information sourced from such external sites. None of DTTI LLP, Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this material, rendering professional advice or services. This information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this material.

©2019 Deloitte Touche Tohmatsu India LLP. Member of Deloitte Touche Tohmatsu Limited