

GST RELEARN REFRESHER SERIES

Organised by:

The Institute of Chartered
Accountants of India

Subject:

“Banking/ NBFC/ Stock
Broking/ Insurance”

TIME

6:30 p.m. to 08.00 p.m.
on 14.04.2023

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CHARTERED ACCOUNTANT

□ The various services which will be discussed in seminar can be categorised as follows.

The services provided by;

- **Banking Companies**
- **Asset Management Company**
- **Insurance Company (Both Life and General)**
- **Stockbrokers**

I. BANKING COMPANY.

The banking company provides different types of services such as granting of loan, providing of bank guarantee, credit card, debit card, issuance of RBI bonds, Custodial or depository services, etc.

a) Registration:

- The banking companies have head office or corporate office at one place and branches generally all over India. They provide facilities of withdrawal of cash through Any Time Money (ATM) either owned by third parties or owned by them. It has been clarified in FAQ for banking sector that ATMs are not required to be registered. Similarly, third party ATMs are also not required to be registered.

- The banks are required to obtain registration for their head office as Input Service Distributor (ISD) and also obtain registration at each state where they have branches. One of the branches shall be declared as principal place of business in each state. All the information relating to output supply, availment of input tax credit, etc. shall be available at the principal place of business.
- It has been clarified in the FAQ of the bank that bank can take separate registration for separate business vertical like bullion business. The second proviso also provides that the restriction of 50 % shall not apply to tax paid on supplies made by unregistered person to another registered person having same PAN number.

b) Place of Supply

- The place of supply will be determined by Section 12(12) of IGST Act, 2017 for customers located in India which reads as follows:

(12) The place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services:

Provided that if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.

- However, the place of supply for customers located outside India will be determined by Section 13(8)(a) of the GST Act. The place of supply for account holder is the place where location of the supplier of service. The account has been defined in clause (a) of Explanation-A as follows:

(8) The place of supply of the following services shall be the location of the supplier of services, namely:-

(a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(b)

(c)

Explanation . - For the purposes of this sub-section, the expression,-

(a) "account" means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;

CBIC Clarification: -

5.9.3 What are the services that are provided by a banking company to an account holder (holder of an account bearing interest to the depositor)?

Following are examples of services that are provided by a banking company or financial institution to an "account holder", in the ordinary course of business:-

- (i) services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc;
- (ii) transfer of money including telegraphic transfer, mail transfer, electronic transfer etc.

5.9.4 What are the services that are not provided by a banking company or financial institution to an account holder, in the ordinary course of business, and will consequently be covered under another Rule?

Following are examples of services that are generally NOT provided by a banking company or financial institution to an account holder (holder of a deposit account bearing interest), in the ordinary course of business:-

- i. financial leasing services including equipment leasing and hire-purchase;

- ii. merchant banking services;
- iii. Securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;
- iv. asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services;
- v. advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy;
- vi. banker to an issue service.

In the case of any service which does not qualify as a service provided to an account holder, the place of provision will be determined under the default rule i.e. the Main Rule 3. Thus, it will be the location of the service receiver where it is known (ascertainable in the ordinary course of business), and the location of the service provider otherwise.

c) Invoicing

- As per first proviso to Rule 47 of the GST Rules, banks have been provided period of 45 days for purpose of invoice from the date of supply. Further, for supply of services between the distinct person, the second proviso provides that the bank or NBFC may issue the invoice before or at the time of such supplier records the same in the books of accounts or before the expiry of quarter during which the supply was made.

d) Input Tax Credit

- The section 17(4) of GST Act reads as follows:

17(4) *A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of subsection (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:*

Provided that *the option once exercised shall not be withdrawn during the remaining part of the financial year:*

Provided further that *the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.*

- If bank opts for availment of credit of only 50% of tax amount, no further reversal will be made under rule 42 & 43 of the GST Rules.

e) Valuation

It has been clarified vide Circular No. 190/02/2023-GST dated 13.01.2023 that the incentives provided by MeitY to acquiring bank under incentive scheme for promotion of RuPay Debit Card, and low value BHIM-UPI transactions is subsidy.

This amount is provided to banks as Payments and Settlements Systems Act, 2007 prohibits banks and system provider from charging any amount from person making or receiving the payment through RuPay Debit Card or BHIM-UPI. Since the said amount is subsidy, no GST is payable by the bank.

f) Other Issues

- The bank also assign various debt to Asset Reconstruction Companies. No GST is payable on assignment of debt.
- The Services provided by RBI was exempt from payment of tax till 17.07.2022 under Sr. No. 26 of Notification No. 12/2017-CT (Rate). Further, The services provided by RBI was only exempt and not the service provided by subsidiary of RBI.
- Payment of tax on bank charges levied by foreign bank.

g) Reverse Charge Mechanism

The tax in respect of recovery agent for services provided to banking company and NBFC is payable by the banks or NBFC.

II. Asset Management Company

- The mutual funds are created by forming trust. The Asset Management Company (AMC) manages the entire business of mutual fund. They undertake the activity of raising of fund, appointment of mutual fund agent, Advertise the fund, disbursing amount to agent, investigating the fund in different schemes and looking after day-to-day compliance. The AMC charges GST at the rate of 18% on amount recovered from Fund.
- The Security Exchange Board of India has issued circular dated 22.10.2018 clarifying that commission to the mutual fund agent will be paid by the fund directly and not by the AMC. The department has interpreted that the said circular has retrospective effect and recipient of services provided by the mutual fund agent were always the fund and not AMC. Therefore, credit of GST availed by AMC on GST paid by Mutual Fund Agent was proposed to be disallowed.

a) Security Lending

- The fund is also in the business of security lending business. After 01.10.2019 the tax on the security lending is payable by the recipient as it is specified in Notification No. 13/2017-CT (Rate)

b) Place of Supply

- The place of supply will be determined by Section 12(2) of IGST Act as no other sub-section of Section 12 of IGST Act makes provision for determination of place of supply for services provided by AMC.

c) Reversal of credit under Rule-42 of GST Rules.

The funds raised by mutual fund are invested as per guidance of AMC in the name of fund. All the transactions take place in the name of fund. It does not take place in the name of AMC. Therefore, generally AMC does not deal in securities. Hence, the question of reversal of credit does not arise.

III. Insurance Company (Both Life and General)

a) Definition

Section 2(11) of The Insurance Act, 1938 defines 'Life Insurance Business' as follows:

(11) "Life insurance business" means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include—

- a) the granting of disability and double or triple indemnity accident benefits, if so, provided in the contract of insurance,*
- b) the granting of annuities upon human life, and*
- c) the granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such person."*

- The clause (zb) of Notification No. 12/2017 – CT (Rate) defines ‘general insurance business’ as follows:

(zb) “General Insurance Business’ has the same meaning as assigned to it in clause (g) of Section 3 of the General Insurance Business (Nationalization) Act, 1972 (57 of 1972).

- The clause (g) of Section 3 of The General Insurance Business (Nationalization) Act, 1972 defines ‘general insurance business’ as fire, marine or miscellaneous insurance business, whether carried on singly or in combination with one or more of them.

b) Registration

- Most of the insurance companies have branches all over India. they are registered in different states, and they are also registered as Input Service Distributor (ISD) in their head office or corporate office.

c) Place of Supply

The place of supply for insurance service specified in Section 12(13) of the IGST Act, 2017. The provisions reads as follows:

(13) The place of supply of insurance services shall,-

- (a) to a registered person, be the location of such person;*
- (b) to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.*

There is no sub-section which provides for determination of place of supply for insurance when provider or recipient is located outside India. Therefore, the place of supply will be determined by Section 13(2) of IGST, As per this provision place of supply is location of recipient.

d) Input Tax Credit

Unlike bank, there is no special provision availing Input Tax Credit by companies engaged in providing Insurance Services. However, Sr. No. 35 and 36 of Notification No. 12/2017-CT (Rate) exempts various services provided by general insurance company or life insurance company respectively. The reversal of credit under Rule 42 and Rule 43 of the GST Act is big problem in both type of company. The allocation of input services used for taxable supply is creating problems.

e) Valuation

The value of service in general insurance service is payable under Section 15 of the GST Act. However, for life insurance service Rule 32(4) of GST Rules makes special provision for determination of value. The said rule reads as follows:

(4) The value of supply of services in relation to life insurance business shall be,-

(a) the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service;

(b) in case of single premium annuity policies other than (a), ten per cent. of single premium charged from the policy holder; or

(c) in all other cases, twenty five per cent. of the premium charged from the policy holder in the first year and twelve and a half per cent. of the premium charged from the policy holder in subsequent years:

Provided that nothing contained in this sub-rule shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance.

- The department has been considering in case of Life Insurance, the balance amount as exempted supply and asking for reversal of credit. However, this issue of considering the investment portion as exempted supply has been settled by Tribunal in the following cases under Service Tax.
 - i) ICICI Prudential Life Insurance Co. Ltd. (Order pronounced by Commissioner of CGST & C.Ex., Mumbai Central)
 - ii) SBI Life Insurance Co. Ltd. 2019 (12) TMI 1127 – Tribunal Mumbai.
 - iii) Life Insurance Corporation of India 2020 (10) TMI 580 – Tribunal Mumbai.
 - iv) HDFC Standard Life Insurance Co. Ltd. 2020 (10) TMI 578 – Tribunal Mumbai.
 - v) Max New York Life Insurance Co. Ltd. 2018-VIL-126 – Tribunal Delhi.
 - vi) Shriram Life Insurance Company 2019 (2) TMI 688 – Tribunal Hyderabad

- The ratio of these judgement will equally apply for present facts. The exempt supply and non-taxable supply have been defined as follows:

(47) "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes nontaxable supply;

(78) "non-taxable supply" means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

f) GST on RCM.

As per Sr. No. 7 of Notification No. 13/2017-CT (Rate) services supplied by insurance agent to any person carrying on insurance business, the tax is payable by person carrying on insurance business. Thus, the tax in respect of insurance agent is payable by insurance company.

g) Other Issue.

- i. Many insurance companies provide loan against policy. The interest received on loan is considered by the department as exempt supply. As per department Explanation to clause (b) provided below Rule-43(5) of GST Rules does not apply to insurance companies which is reproduced below:

(b) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and

ii. As mentioned above the GST for services provided by insurance agent is payable by the insurance companies and not by the agent as these services are specified in Sr. No. 7 of the Notification No. 13/2017-CT (Rate). Many companies have been recovering part of the amount of tax payable from the commission. As per department, the tax payable under RCM cannot be recovered from the commission of the agent. Therefore, this amount shall be paid under section 76 of the GST Act by the insurance companies. This issue has been settled by Tribunal in following cases under service tax:

a. HDFC Standard Life Insurance Company Ltd. 2017 (49) S.T.R. 301 (Tri.)

b. Bajaj Allianz Life Insurance Co. Ltd. 2019 (6) TMI 104 (Tri.)

h) Lead Insurer

General insurance companies have co-insurance agreement where premium is collected by lead insurer and shared between various insurance companies as per agreement. It is the case of providing service of insurance jointly. The lead insurer collects premium from the insured and pays GST. The premium amount is distributed to various insurance companies as per the agreement. The department has been demanding GST from all the co-insurers. The issue regarding levy of Service Tax on the share of premium received by the other insurer (other than lead insurer) was decided by tribunal in the case of National Insurance Companies Ltd. v/s Commissioner of Service Tax Kolkata 2017 (47) STR 183. The ratio of the said judgment will equally apply in GST.

IV. Stockbroker.

The stockbrokers are engaged in arranging the purchase and sale of securities through stock exchange. They earn brokerage on which GST is paid by them. The place of supply is determined as per provision of sub-section (12) of Section 12 which has been reproduced above. The place of supply is the location of the recipient of service on record of the supplier. The broker receives different type of services from exchange like VSAT, software, data on movement of various shares, terminal, etc. They pay substantial amount to the sub-broker as well as Exchange. The services provided by exchange or sub-broker is input service for the brokers. The credit of the same will be available.