

CBIC issues clarification on applicability of GST on director's remuneration

The Central Board of Indirect Taxes and Customs (CBIC) has issued a clarification on applicability of goods and services tax (GST) on director's remuneration paid by companies.

GST on remuneration paid by companies to the independent directors or non-executive directors:

In respect of such directors, the services provided by them to the company shall be liable to GST. Remuneration paid to them shall be treated as consideration of their services. Accordingly, in such cases, the company is liable to discharge the applicable GST on a reverse charge basis (RCM).

GST on remuneration paid by companies to executive directors:

- **Treated as salary in books of the company:** The part of director's remuneration, which has been declared as salary in the books of a company and on which tax has been deducted at source, shall not be liable to GST. This is because the same represents consideration of services by an employee to the employer in course of or in relation to his employment.
- **Treated as professional or technical fees in books of the company:** The part of director's remuneration, which is declared separately, other than salaries, in the company's accounts and subjected to tax at source as fees for professional or technical services shall be treated as consideration for providing services and is therefore liable to GST. Further, in such cases, the company shall be liable to discharge the applicable GST on RCM.

Our comments

The Rajasthan Authority for Advance Rulings (AAR) had, in a recent case, held that the directors cannot be regarded as employees of the company. Therefore, the salary or remuneration paid to them shall be liable to GST under RCM. Contrary to this, the Karnataka AAR had held that salary or remuneration received by an executive director would be outside the purview of GST. Though this was a welcome ruling for businesses, existence of such divergent rulings creates confusion among taxpayers especially those who have business presence in more than one state.

The clarification by the CBIC is a welcome move and much awaited relief, which will not only provide clarity but also help mitigate undue litigation on this aspect.

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