

Tax alert: CBIC clarification on issues related to supply of IT enabled services to overseas entity

Issued on: 23 July 2019



Summary

The government had received various representations from trade and industry seeking clarification under the GST laws on issues related to supply of IT enabled services (ITeS) such as call centre, business process outsourcing services and intermediary services to overseas entities, and whether they qualify as 'export of service'.

Pursuant to the same, the Central Board of Indirect Taxes and Customs (CBIC) has recently issued a circular clarifying important aspects as regards the taxability/export eligibility, etc., related to the supply of such ITeS. This alert summarises the key clarifications from the circular.

Key clarifications by the CBIC¹

- There may be various possible scenarios when a supplier of ITeS services located in India supplies services for and on behalf of a client located abroad.
- These scenarios have been examined and are discussed in detail as under:

Scenarios	Treatment
Scenario I Supplier of ITeS supplying backend services on his own account	<ul style="list-style-type: none"> • The supplier will not fall under the definition of intermediary² as these services are provided on his own account. • Even where a supplier supplies ITeS to his client's customers, but where the supplies of services are on his own account, the supplier will not be categorised as an intermediary.

Scenarios	Treatment
Scenario II Supplier of backend services located in India arranges or facilitates the supply of goods or services or both on behalf of an overseas client to the customers of the client	<ul style="list-style-type: none"> • The supplier will fall under the definition of intermediary as these services are merely for arranging or facilitating the supply of goods or services or both between two or more persons.
Scenario III Supplier of ITeS services supplies backend services on his own account along with arranging or facilitating the supply of goods or services or both for and on behalf of the overseas client	<ul style="list-style-type: none"> • The supplier is supplying two sets of services, namely ITeS and various support services, to his client or to the client's customers. • Whether the supplier falls under the ambit of an intermediary would be determined based on the facts and circumstances of each case and

¹ Circular No. 107/26/2019-GST dated 18 July 2019

² Section 2(13) of the IGST Act, 2017

Scenarios	Treatment
	would be determined keeping in view which set of services is the principal/main supply.

- The CBIC has further clarified that the supplier of ITeS who is not an intermediary can avail the benefit of export of services if he satisfies the prescribed conditions³ under the GST law.

Our comments

Taxability of supply of ITeS and support services to an overseas entity has been a matter of extensive litigation. The present clarifications by the CBIC has provided much-awaited relief to the taxpayers. The CBIC has clarified that the provision of backend services (such as back office operations, call centre services, support centres, payroll, revenue accounting, data processing services, etc.) on its own account would not be covered within the ambit of 'intermediary'. This clarification is line with the advance rulings pronounced by the Maharashtra Advance Ruling Authority (AAR) in the case of M/s NES Global and M/s Asahi Kasei. However, by clarifying that support services such as responding to customer queries, post-sales support services, etc., shall be treated as intermediary services, the circular has confirmed the view taken by the Appellate AAR in the case of Vserve Global. A detailed analysis/re-examination of contracts entered with overseas entities will be required by business concerns to avoid future litigations.

³Section 2(6) of the IGST Act, 2017

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