

GST ON BROKERAGE & SALES COMMISSION TO AGENT IN OUTSIDE INDIA



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In this regard applicable rules and provisions under various GST laws as follows:

Section 2 sub-section (5) of the CGST Act, 2017 - Agent

As per Section 2 sub-section (5) of the CGST Act 2017, “**agent**” means a person, including a factor, **broker, commission agent**, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.

Section 2 sub-section (11) of the IGST Act 2017 - Import of services

As per Section 2 sub-section (11) of the IGST Act 2017, “**import of services**” means the supply of any service, where–

1. the supplier of service is located outside India;
2. the recipient of service is located in India; and
3. the place of **supply of service is in India**

Section 2 sub-section (13) of the IGST Act 2017 - Intermediary

As per Section 2 sub-section (13) of the IGST Act 2017, “**intermediary**” means a **broker, an agent** or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but **does not**

include a person who supplies such goods or services or both or securities on **his own account**.

Section 13 sub-section (8) (b) of the IGST Act 2017 - The place of supply

Place of supply of services where location of supplier or location of recipient is outside India: As per Section 13 sub-section (8) (b) of the IGST Act 2017, The place of supply of the following services shall be the **location of the supplier of services**, namely:

(b) intermediary services

Section 5 sub-section (4) of the IGST Act 2017 – RCM

The integrated tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Notification No. 10/2017- Integrated Tax (Rate) New Delhi, the 28th June, 2017

Notification No. 10/2017- Integrated Tax (Rate)

New Delhi, the 28th June, 2017

GSR.....(E).-In exercise of the powers conferred by sub-section (3) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government



on the recommendations of the Council hereby notifies that on categories of supply of services mentioned in column (2) of the Table below, supplied by a person as specified in column (3) of the said Table, the whole of integrated tax

leviable under section 5 of the said Integrated Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services as specified in column (4) of the said Table:-

Table

Sl.No	Category of Supply of Services	Supplier of Service	Recipient of Service
(1)	(2)	(3)	(4)
1	Any service supplied by any person who is located in a non-taxable to any person other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in a taxable territory other than non-taxable online recipient.

Facts of the case

As per the GST definition, the liability to pay taxes arises at the time and place of supply. It is very important to understand the term ‘**place of supply**’ for determining the right tax to be charged on the invoice.

Hence, The Agent Services are in the nature of Intermediary Services, therefore the Place of Supply provisions as per Section 13(8)(b) of IGST Act, 2017 is applicable which states that Place of Supply shall be the Location of the Supplier and accordingly in this case the Location of the Commission Agent which is Outside India.

That means the Location of the Supplier is Outside India (Non-Taxable Territory) the Location of the Recipient is in India (Taxable Territory) but the Place of Supply is also Outside India, therefore the Transaction is Not Treated as Import of Services.

FAQ on GST Chapter 21 Q No. 25 issued by CBI&C on 15-12-2018

Q25. An exporter gets an order from a Selling agent to whom he pays commission. Will it be taxable under GST?

Ans. Situation II- Selling agent is located outside India:

The **foreign agent**, who facilitates the supply of goods, is covered within the definition of **intermediary**. Since the supplier is outside India and recipient is in India, place of supply would be as per section 13 of IGST Act, 2017. **The place of supply of service for services provided by intermediary would be the location of service provider, i.e. the place where he is registered. Since a foreign agent is located outside India and not registered in India, the commission paid to him will not be taxable.**

