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## INTERMEDIARY SERVICES AND ITS TAXATION UNDER THE GOODS & SERVICE TAX REGIME

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**W**ith the continuous evolvement of trade both global and national, the gradual broad based emergence of intermediary service providers has gained big momentum. These intermediary service providers make significant contribution to economic growth by way of bringing suppliers and recipients of goods and services into contact with each other for the execution of an economic transaction. Although the concept of “intermediary services” was well defined and clarified as well under the service tax regime that got carried forward in the GST regime, there have been divergent advance rulings as to what would constitute an ‘intermediary service’ so as to come within the ambit of indirect taxation. This is primarily for the reason that in terms of section 13 of the IGST Act, 2017, the place of supply of services, where location of supplier or location of recipient is outside India, is the location of the intermediary. The actual challenge in the taxation of ‘intermediary services’ lies in the fact as to whether a service provided by an intermediary would be taxable or not being an export of service in as much as for intermediary services supplied and received within India, the services are liable to GST.

The issue is critically relevant in the context of cross border transactions in as much as if such intermediary services are subject to GST, then the services become costlier to the extent of the GST element contained therein and consequently become competitive in international market. Here it would also be relevant to take note of Notification 9/2017(IGST) (R) dated 28<sup>th</sup> June 2017 as amended. In terms of serial number 12AA of the said notification, where the supplier and recipient of goods are both located outside India then the intermediary services supplied are exempt from the levy of GST subject to fulfilment of certain conditions.

As far as advance rulings are concerned, reference is made to the following rulings:

- ❖ In VservGlobal (P.) Ltd, where back office administrative and accounting support services including payroll processing were provided to the overseas client by the applicant, It was ruled by the Authority for Advance Ruling and upheld by the Appellate Authority that the services were “Intermediary services” and place of supply of services was considered to be India and GST payable.
- ❖ On the contrary, in Nes Global Specialist Engineering Services P Ltd, it was ruled by the Authority for Advance Ruling that administrative and support services supplied to a foreign client, where payment is received in foreign exchange is export of service.

- ❖ Similarly in Go Daddy India Web services P Ltd. , where the assessee was providing marketing and promotion services and in addition were also providing services of supervision of call center services and payment processing services to its foreign principal. It was ruled that the place of supply of service is outside India and tax is not payable.

In the background of the different sets of conflicting advance rulings as cited herein above, the Central Board of Indirect Tax & Customs (CBIC) vide circular dated 20<sup>th</sup> September 2021 has sought to clarify as to what would constitute ‘intermediary service’ under the GST statute.

‘Intermediary’ has been defined in the sub-section (13) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST” Act) as under–

“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.”

It has clarified therein that to qualify as ‘intermediary services’, the following requirements are to be fulfilled:

- By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties cannot therefore be considered as an intermediary service. An intermediary essentially “arranges or facilitates” another supply (the “main supply”) between two or more other persons and, does not himself provide the main supply.
- There are two distinct supplies in case of provision of intermediary services;(1) Main supply, between the two principals, which can be a supply of goods or services or securities;(2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply. A person involved in supply of main supply on principal to principal basis to another person cannot be considered as supplier of intermediary service.
- Intermediary service provider to have the character of an agent, broker or any other similar person. The definition of “intermediary” itself provides that intermediary service provider means a broker, an agent or any other person, by whatever name called....” This part of the definition is not inclusive but uses the expression “means” and does not expand the definition by any known expression of expansion such as “and includes”. The use of the expression “arranges or facilitates” in the definition of “intermediary” suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provide the main supply. Thus, the role of intermediary is only supportive.
- Intermediary does not include a person who supplies such goods or services or both or securities on his own account. It implies that in cases where in the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of “intermediary”.

- Sub-contracting for a service is not an intermediary service. The supplier of main service may decide to outsource the supply of the main service, either fully or partly, to one or more sub-contractors. Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers and therefore, clearly is not an intermediary.

The aforesaid clarification of the CBIC has been illustrated with instances of transactions and is expected to settle the anomalies that are occurring in the interpretation of intermediary services in the process reducing litigation and not depriving the suppliers of services the benefit of export of services where eligible.