



## GOODS AND SERVICE TAX (GST) ON NON-PROFIT ORGANISATIONS

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### **Introduction:**

**T**axation of activities of Non-profit organisations has been carried over from erstwhile Service tax legislative provisions. In whole, all services provided by such entities are not exempt. There are many activities which will fall under the ambit of Goods and Service tax Act that are provided by Non Profit Entities (NPO's). There are so many charitable and religious institutions in India with the objective of promoting Education, Orphanages, Child and Women protection, religious activities and social welfare. These organisations are not aimed at generating revenue but incidentally to the main object, they will be earning revenue directly or indirectly. Taxability of Non-profit making entities has to be decided based on from the view point of services, such entity undertakes. In the following paragraphs explains detailed view of provisions relating to taxability of such services under GST.

Taxable event under GST arises when a person undertakes **Supply of goods or services**. To consider the activity as Supply, it has to satisfy business test specified under Section 2(17) of the CGST Act and also definition of Supply provided under Section 7 of the CGST Act. Under Section 2(17) of CGST Act clearly states that for an activity to be considered as business, profit making is not a required condition. So any activity without profit motive will also be considered as business transaction.

As per section 7(1) of the CGST Act, supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. To constitute supply conditions like Consideration, during the course or Furtherance of business and Taxable activity has to be satisfied. Activities enumerated in Schedule I & II will qualify as supply even if made without consideration and not in the course of business. In these situations if Non-Profit organisation acts as implementing agency for donor, then grant utilised for the benefit of beneficiaries is liable to GST.

For example if donor donates goods in kind (School bags) to an NPO to be distributed by the NPO in its educational programmes, as these be treated as supply and become subject to GST. But activities of an entity registered under Section 12AA of the Income Tax Act, 1961 is exempted vide Notification no.12/2017-Central Tax dated 28.06.2017.

### **Transactions by NPO from Tax view:**

Various activities performed by Institutions without profit motive will be analysed from GST view which has been discussed below:

#### **a) Educational Services (including services rendered by charitable trusts):**

Educational services with certain conditions has been exempted in CGST Notification No. 12/ 2017 (Rate), dated 28/6/2017 as amended via CGST Notification No. 2/ 2018 (Rate), dated 25/01/2018. This exemption consists of various services provided and received by Non-profit making entities. Entry 66 of Mega Exemption Notification contains the following exempted activities provided by institution to:

- a) its students, faculty and staff,
- b) Students entrance examination against consideration in the form of entrance fee,

- c) an educational institution, by way of:
- Transportation of students, faculty and staff;
  - Catering, including any mid-day meals scheme sponsored by the Central Government, State Government, Union Territory;
  - Security or cleaning or house-keeping services performed in such educational institution;
  - Services relating to admission to, or conduct of examination by, such institution;
  - Supply of online educational journals or periodicals;

Educational Institution has been defined as an organisation providing educational services of Pre-school, Higher education and Institutions recognised by law.

#### **b) Importation Services:**

As per the entry no. 10 of Notification no. 9/2017 - Integrated Tax (Rate) dated 28.06.2017, in case of charitable trusts registered under Section 12AA of Income-tax Act receives any services from provider of services located in non-taxable territory, for charitable purposes, then such services received by trust are not chargeable to GST under the reverse charge mechanism.

#### **c) Various Services of Charitable Trusts:**

In case if trusts are providing residential or non-residential yoga camps by receiving donation or other charges from the participants, these will not be considered charitable activities (as it is different from advancement of religion, spirituality or yoga). Since donation is received for participation, it will be considered commercial activity and it will be covered under the ambit of GST.

No GST will be applicable if charitable trusts are running public libraries and lend books or other publications or knowledge enhancing material from their libraries. This activity is specifically excluded by way of entry No. 50 of Notification No. 12/2017- Central Tax Rate (and is applicable for everyone, including charitable trusts); but services of private libraries are not exempt from GST.

Supply of any goods by such charitable/religious trusts for consideration to any person shall be liable to GST. So, Sale of goods are also covered under GST scope.

Health care services<sup>1</sup> provided by clinical establishment, an authorised medical professional or paramedics including services by way of transportation of the patient to and from a clinical establishment. Public health will be considered at top priority and government cannot tax such services. Veterinary hospitals engaged in health care of animal and birds also been exempted through notification by government.

#### **d) Donations Received:**

Donations received by Non-Profit organisations does not constitute taxable event under GST. As receipt of donations will not satisfy business definition under GST Act and there is no element of supply of services embedded in it. These donations will not be considered in the calculation of Turnover.

#### **e) Interest Income:**

Receipt of income by way of extending deposits, loans or advances other than interest involved in credit card services has been exempted vide Notification no. 12/2017 dated 28/06/2017. In these case if income received by organisation under Savings/Recurring/Fixed Deposits will be exclusively exempted under GST. But these amounts will be considered while calculating the total turnover of the firm. These provisions make all non-profit making entities to register under the act and become liable for payment of taxes in case if they

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<sup>1</sup> Serial No. 74 of Notification No. 12/ 2017-Central Tax (Rate), dated 28/06/2017, specifically provides for exemption on healthcare services

supply small value taxable items. Subsequently all the provision has to comply are required to follow like normal Business taxable person.

#### **f) Renting Services:**

Exemption has been provided through vide CGST Notification No. 12/ 2017(Rate), dated 28/06/2017, Serial No. 12 Services by way of renting of residential dwelling for use as residence. However, for renting service, there is another exemption entry at Serial No. 13 for Non- profit organisations, which reads as follows:

Services<sup>2</sup> by a person by way of:

- conduct of any religious ceremony;
- renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 or a trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income-tax Act or a body or an authority covered under clause (23BBA) of section 10 of the said Income-tax Act:
- Provided that nothing contained in entry (b) of this exemption shall apply to,-
  - Renting of rooms where charges are one thousand rupees or more per day;
  - Renting of premises, community halls, kalyan mandapam or open area, and the like where charges are ten thousand rupees or more per day;
  - Renting of shops or other spaces for business or commerce where charges are ten thousand rupees or more per month.

#### **g) Training or Coaching in recreational activities:**

Training or coaching provided by institutions in dance, music, art, literature, theatres, drama etc. or any kind of the sports will be exempted from payment of GST. One more exemption to Non Profit making Entities are services by way of training or coaching in recreational activities relating to arts or culture, or sports by charitable entities registered under section 12AA of the Income-tax Act 1961<sup>3</sup>

#### **h) Participation in activities:**

Many institutions involved in exhibition, dramas, and sporting events etc. which have token fees for entry. These services also liable for GST but government has provided exemption to all such organisations which will come within the ambit of GST.

<sup>4</sup>Services by way of right to admission to circus, dance, or theatrical performance including drama or ballet; award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event; recognised sporting event; planetarium, where the consideration for right to admission to the events or places as referred to in items above is not more than Rs. 500 per person.

#### **i) Publication Sales:**

Sale of publications by trusts will come under the definition of business. Also, this being sale for a consideration will attract the provisions of Supply under section 7. Therefore, it will come under the ambit of GST. However, Books covered under HSN Code 4901 and Newspapers, periodicals and monthly journals covered under HSN Code 4902 attract "Nil" rate of Tax. But yearly printed Calendars covered under HSN Code 4910 attract 12% GST Rate. So, publication sales will be taxable and leads to applicability of all provisions to Non-profit making entities.

<sup>2</sup> As per CGST Notification No. 12/ 2017(Rate), dated 28/06/2017, Serial No. 13 exempted Renting Services.

<sup>3</sup> Exempted as per Serial No. 80 of Notification No. 12/ 2017-Central Tax (Rate), dated 27-Jun-2017,

<sup>4</sup> So, in the Notification No. 12/ 2017-Central Tax (Rate), dated 28/06/2017, Serial No. 81 as amended by Notification No. 2/2018-Central Tax (Rate), dated 25/01/2018

#### **j) Sale of small goods:**

At present many religious organisations charge token money for sale of Prasadam. So, this being sale for a consideration will attract the provisions of Supply under section 7. Government has provided exemption in these regard which covers Prasadam supplied by all religious institutions. Notifications are as follows:

<sup>5</sup>Prasadam supplied by religious places like temples, mosques, churches, gurudwaras, dargahs, etc., Also, Puja Samagri has been exempted. Puja Samagri namely, - Rudraksha, rudraksha mala, tulsikanthi mala, panchgavya (mixture of cowdung, desi ghee, milk and curd); Sacred thread (commonly known as yagnopavit); Wooden khadau; Panchamrit; Vibhuti; Unbranded honey; Wick for diya; Roli; Kalava (Raksha sutra) & Chandantika.

#### **Conclusion:**

All activities of Non Profit Organisations are generally exempted. However, there may be some activities that can attract GST provisions. At most attention should be taken while involving in any income-generating transactions, as such activities may or may not be taxed under GST Law. Also, activities mentioned above are some of the services provided by profit-making entities, nowadays. Like, there are many private schools and hospitals which are working on commercial basis. Activities relating to public enhancement, education, general health and infrastructure facilities has been exempted to all such entities also.

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<sup>5</sup> Serial No. 98 & 148 of Notification No. 2/2017-Central Tax (Rate), dated 28/06/2017.