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Newsflash : Applicability of GST on Payments made to Directors

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1.0 Background

Under the GST laws, the clarity of applicability of GST on payments made to directors is not crystal clear. Many corporates have a practice of paying their directors remuneration or sitting fees. Levy of GST on these payments have been a contentious issue under GST. A recent advance ruling by the Advance Ruling Authority of Karnataka State has posed additional ambiguity on the legal position to be taken on the applicability of GST on director payments. In this newsflash, we explore the recent rulings on this subject.

2.0 Legal position under GST

The services of director can be either looked as 'employee service' or 'professional service' depending upon the underlying contract or scope of work.

Considered as employee service	Considered as professional service
Clause 1 of Schedule I of Central GST Act, 2017 state that services by an employee to the employer in the course or in relation to his employment shall not be treated as supply.	Notification No.13/2017-Central Tax (Rate) dated 28 June 2017 state that services supplied by a director of a company or a body corporate to the said company or body corporate, located in taxable territory shall be covered by reverse charge provision.
No GST is applicable on amount paid to director where services are provided by the Director as an "employee" in the course of employment	Recipient (company) need to pay GST on reverse charge basis.

Based on prevalent practice in the trade and industry, a director, drawing monthly remuneration/ salary where TDS is being deducted under the head salary, is considered as employee and no GST is paid on the amount paid to them whereas in other cases, GST is paid by the company on reverse charge basis treating it as professional service.

2.1 *In Re: Alcon Consulting Engineers (India) Private Limited 2019 (10) TMI 793- Authority for Advance Ruling, Karnataka dated 25 September 2019*

The Authority for Advance Ruling of Karnataka in case of M/s Alcon Consulting Engineers (India) Private Limited, while addressing other matters, held that director is not the employee of the company and his service is covered by reverse charge provision.

2.2 *In Re: M/s Clay Craft India Private Limited 2020 (4) TMI 228- Authority for Advance Ruling, Rajasthan dated 20 February 2020*

The applicant raised specific question before the authority as whether GST is payable under reverse charge on salary paid to directors who are working at different level of the company as an employee under employment contract in addition to acting in capacity of director. The authority held that consideration paid to director will attract GST under reverse charge in terms of Notification No.13/2017- Central Tax (Rate) dated 28 June 2017 by observing that director is not the employee of the company.

2.3 *In Re: M/s Anil Kumar Agrawal 2020 (5) TMI 221- Authority for Advance Ruling, Karnataka dated 4 May 2020*

Recently, the Authority for Advance Ruling of Karnataka in case of M/s Anil Kumar Agrawal, while addressing issue as whether the given sources of income of applicant shall be considered for aggregate turnover for registration, observed that executive director shall be an employee of the company, depending upon underlying contract, and his service would not be treated as supply by virtue of Schedule I. Further, service of non-executive director against remuneration would be covered by reverse charge provision. This ruling, prima facie, seems to be contrary to what has been held in case of M/s Alcon Consulting Engineers (India) Private Limited and M/s Clay Craft India Private Limited which is leading to ambiguity.

On going through the advance ruling as mentioned above, it may be construed that no GST is payable on salary paid to the Director during the course of employment considering employer and employee relationship.

Further, an advance ruling is not applicable to similarly placed other taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

However, the nature of each transaction and payment is to be ascertained before taking the final call on payment of GST. GST is to be paid under Reverse Charge Mechanism for payments made to directors on sitting fees, or payments made to independent directors or payments made for services rendered for professional or technical nature.

Considering the contradictory Advance Rulings, the same may lead to confusion on legal principles and thus it is recommended to analyse the terms and nature of Directors Remuneration for determining the applicability of tax to avoid future litigations.

For further information please contact:

RSM Astute Consulting Pvt. Ltd. |

13th Floor, Bakhtawar, 229, Nariman Point, Mumbai - 400021.

T: (91-22) 6108 5555/ 6121 4444

F: (91-22) 6108 5556/ 2287 5771

E: emails@rsmindia.in

W: www.rsmindia.in

Offices: Mumbai, New Delhi - NCR, Chennai, Kolkata, Bengaluru, Surat, Hyderabad, Ahmedabad, Pune, Gandhidham, and Jaipur.



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This newsflash has summarized on the applicability of GST on Payments made to the Directors. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said notification and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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