



Various Circulars have been issued by CBIC on 27.10.2023 clarifying various matters. A brief summary of all the said Circulars are as follows:

Circular No.	Changes
202/14/2023- GST dated. 27.10.2023	<p>⇒ This circular clarifies that to qualify as zero rated supply, one of the condition mentioned in Section 2(6)(iv) if the IGST Act,2017 is that the payment for such service has been received by the supplier of service in convertible foreign exchange <u>or in Indian rupees wherever permitted by the Reserve Bank of India.</u></p> <p>⇒ Further, also clarified that to promote growth of global trade with emphasis on exports from India and to support the increasing interest of global trading community in INR, it has been decided to put in place an additional arrangement for invoicing, payment, and settlement of exports / imports in INR.</p> <p>⇒ They also added that before putting in place this mechanism, AD banks shall require prior approval from the Foreign Exchange Department of Reserve Bank of India, Central Office at Mumbai.</p> <p>⇒ <u>Reference is also made to Para 2.52(d) of chapter related to General provisions regarding Imports and Exports of the FTP,2023 which come into force 01.04.2023, which specified that invoicing, payment and settlement of exports and imports is also permissible in INR subject to compliances as under RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022. Accordingly, settlement of trade transactions in INR shall take place through the Special Rupee Vostro Accounts opened by AD banks in India as permitted under Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016 and also provide procedures for it.</u></p> <p>⇒ Therefore, it is clarified that when the Indian exporters, undertaking export of services, are paid the export proceeds in INR from the Special Rupee Vostro Accounts of correspondent bank(s) of the partner trading country, opened by AD banks, the same shall be considered to be fulfilling the conditions of sub-clause (iv) of clause (6) of section 2 of IGST Act, 2017, subject to the conditions/ restrictions mentioned in Foreign Trade Policy,2023 &amp; extant RBI</p>



	<p>Circulars and without prejudice to the permissions / approvals, if any, required under any other law.</p>
<p>203/15/2023- GST dated. 27.10.2023</p>	<p>⇒ This Circular clarified how to determined place of supply in various cases.</p> <p>a. <u>supply of service of transportation of goods, including through mail and courier:-</u></p> <p>⇒ That the Sub-Section 9 of Section 13 of IGST Act,2017 has been omitted vide Section 162 of Finance Act,2023 which come into effect from 01.10.2023 and after the said amendment the place of supply of Service of transportation of goods, other than through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined by the default rule under section 13(2) of IGST Act and not as performance based services under sub-section (3) of section 13 of IGST Act.</p> <p>⇒ where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services.</p> <p>⇒ Before the amendment of the said Section, the same principal as mentioned above, the place of supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule under section 13(2) of IGST Act</p> <p>b. <u>supply of services in respect of advertising sector:-</u></p> <p>⇒ Case I:- supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure.</p> <ul style="list-style-type: none"><li>▪ The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Further, place of supply of any service provided by way of supply (sale) of space on an</li></ul>



immovable property or grant of rights to use an immovable property shall be governed by the provisions of section 12(3)(a) of IGST Act.

- Therefore, the place of supply by way of supply of sale of space on hoarding/ structure for advertising or for grant of rights to use the hoarding/ structure for advertising in this case would be the location where such hoarding/ structure is located.

⇒ Case II:- The advertising company wants to display its advertisement on hoardings/ bill boards at a specific location availing the services of a vendor. The responsibility of arranging the hoardings/ bill boards lies with the vendor who may himself own such structure or may be taking it on rent or rights to use basis from another person. The vendor is responsible for display of the advertisement of the advertising company at the said location. During this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure.

- In this case there is no sale of space on holdings and structure by the vendor to the advertising company for display of their advertisement on the said display board/structure, the said Service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property.

- Accordingly, the place of supply of the same shall not be covered under section 12(3)(a) of IGST Act. Vendor is in fact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed/taken on rent by him at the specified location. Therefore, such services provided by the Vendor to advertising company are purely in the nature of advertisement services in respect of which Place of Supply shall be determined in terms of Section 12(2) of IGST Act.



c. supply of the “co-location services”:-

⇒ whether supply of co-location services are renting of immovable property service (as it involves renting of space for keeping/storing company’s hardware/servers) and hence the place of supply of such services is to be determined in terms of provision of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located;

- In such cases, supply of colocation services cannot be considered as the services of supply of renting of immovable property. Therefore, the place of supply of the colocation services shall not be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act but the same shall be determined by the default place of supply provision under sub-section (2) of Section 12 of the IGST Act i.e. location of recipient of co-location service

⇒ whether the place of supply of such services is to be determined by the default place of supply provision under sub-section (2) of section 12 of the IGST Act as the supply of service is Hosting and Information Technology (IT) Infrastructure Provisioning services involving providing services of hosting the servers and related hardware, security of the said hardware, air conditioning, uninterrupted power supply, fire protection system, network connectivity, backup facility, firewall services, 24 hrs. monitoring and surveillance service for ensuring continuous operations of the servers and related hardware

- In cases where the agreement between the supplier and the recipients restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the supply of the service of renting of immovable property. Accordingly, the place of supply of these



	<p>services shall be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located</p>
204/16/2023- GST dated. 27.10.23	<p>⇒ Whether the activity of providing personal guarantee by the Director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service or not and whether the same will attract GST or not.</p> <ul style="list-style-type: none"><li>▪ As per Explanation (a) to section 15 of CGST Act, the director and the company are to be treated as related persons.</li><li>▪ As per clause (c) of sub-section (1) of section 7 of the CGST Act, 2017, read with S. No. 2 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply even if made without consideration. Accordingly, the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration.</li><li>▪ Rule 28 prescribed method for determining the value of supply of good or Service between the related person and RBI provided guidelines for obtaining guarantees of director and promoters.</li><li>▪ The director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases where the promoters, existing directors, other managerial personnel, and shareholders of borrowing concerns are paid remuneration/ consideration in any manner, directly or indirectly. In all these cases, the taxable value of such supply of service shall be the remuneration/ consideration provided to such a person/ guarantor by the company, directly or indirectly.</li></ul>



	<p>⇒ Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/ financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services.</p> <ul style="list-style-type: none"><li>▪ Where both the companies are related, the activity is to be treated as a supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration.</li><li>▪ Where the corporate guarantee is provided by a holding company, for its subsidiary company, those two entities also fall under the category of ‘related persons’. Hence the activity of providing corporate guarantee by a holding company to the bank/financial institutions for securing credit facilities for its subsidiary company, even when made without any consideration, is also to be treated as a supply of service by holding company to the subsidiary company, being a related person, as per provisions of Schedule I of CGST Act.</li><li>▪ Considering different practices being followed by the field formations and taxpayers in determining such taxable value, in order to provide uniformity in practices and ease of implementation, sub-rule (2) has been inserted in rule 28 of CGST Rules vide Notification No. 52/2023 dated 26.10.2023 for determining the taxable value of such supply of services between related persons in respect of providing corporate guarantee.</li><li>▪ The sub-rule (2) of Rule 28 shall not apply in respect of the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies and the same shall be valued in the manner provided in S. No. (1) above.</li></ul>
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