

GOODS & SERVICES TAX / IDT UPDATE – 48

Clarification on taxability of “tenancy rights “under GST

Doubts have been raised as to whether tenancy premium shall attract GST when stamp duty and registration charges is levied on the said premium. Further, in case of transfer of tenancy rights, a part of the consideration which accrues to the outgoing tenant is liable to GST or not.

In this regard Central Government vide circular no. 44/18/2018 dated 2nd May, 2018 has provided that merely because a transaction or a supply of tenancy rights involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the scope of supply of goods and services and from the payment of GST on tenancy premium.

Further, it has been clarified that transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable. However, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt [Sl. No.12 of notification no. 12/2017-Central tax (rate)].

Comment: Remarkable circular for it not only addresses the taxability of tenancy premium, it lays down that there is no mutual exclusivity between GST and Stamp duty. In other words, GST and Stamp duty can co-exist in a single transaction where GST is leviable on the supply aspect and Stamp duty on the instrument executed. Another aspect is that the circular extends the applicability of exemption of ‘residential dwelling’ to ‘tenancy premium relating to residential dwelling’. This stretching of the analogy appears to give ground for examining possible non-taxability of an inferior transaction if the superior is exempt. For eg. Sale of land is not liable to GST but forfeiture premium for termination of agreement to sell land appears to get some support from this extended exemption in this circular. Caution is advised while applying this extension of the exemption appearing in the circular.

Two Group of Ministers Constituted to consider the issues relating to “Incentivizing digital payments in the GST regime” & “Imposition of Cess on Sugar under GST”.

Subsequent to the decisions taken in the 27th GST Council meeting, two Group of Ministers (GoMs) have been constituted.

The first GoM shall consider the issues relating to “Incentivizing digital payments in the GST regime”. Shri Sushil Kumar Modi, Deputy Chief Minister, Bihar is convenor and other members of this GoM are Shri Nitinbhai Patel, Dy. Chief Minister, Gujarat; Capt. Abhimanyu, Excise & Taxation Minister, Haryana; Dr. Amit Mitra, Finance Minister, West Bengal and Shri Manpreet Singh Badal, Finance Minister, Punjab.

The Second GoM shall consider issues relating to “Imposition of Cess on Sugar under GST”. Shri Himanta Biswa Sarma, Finance Minister of Assam is convenor and other members of this GoM are Shri Rajesh Agrawal, Finance Minister, Uttar Pradesh; Shri Sudhir Mungatiwar, Finance Minister, Maharashtra; Shri D. Jayakumar, Minister for Fisheries and Personnel &

Administrative Reforms, Tamil Nadu and Dr. T.M. Thomas Isaac, Finance Minister, Kerala.

Both the GoMs shall submit their reports within a period of 15 days.

Comment: Mixing incentives into taxation system is the very bane of the erstwhile tax regime that GST sought to eliminate. And now this move seems to revisit old practices. It will be interesting to see the nature of this incentive that will be implemented and its effects on tax rate inversion and other issues. Cess has a limited life (of 5 years) under the Compensation Act. Long-term strategy to impose cess will attract cascading effects in the overall GST framework. This would also be watched attentively by trade as a new avenue is being opened up that can easily be extended to other sectors by successive Governments.

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