

GOODS & SERVICES TAX / IDT UPDATE-134

1. Clarification on doubts related to scope of “intermediary”

An intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons wherein two of them transact in the supply of goods or services or securities (the main supply) and one in arranging or facilitating (the ancillary supply) the said main supply. There are two distinct supplies in case of provision of intermediary services-main supply between the two principals and ancillary supply of facilitating or arranging the main supply and which is clearly identifiable and distinguished from the main supply. This ancillary supply is supply of intermediary service.

The definition of intermediary is exhaustive and not inclusive. The use of the expression “arranges or facilitates” in the definition of “intermediary” suggests a subsidiary/ supportive role for the intermediary i.e., he must not be providing the main supply. In cases wherein, 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-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 above has been further clarified with the help of few illustrations give below. Such illustrations are only indicative and not exhaustive. Whether or not, a specific service would fall under intermediary services within the meaning of sub-section (13) of section 2 of the IGST Act, would depend upon the facts of the specific case. The specific provision of place of supply of ‘intermediary services’ under section 13 of the IGST Act can be invoked only when either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.

Illustration

‘A’ is a software company which develops software for the clients as per their requirement. ‘A’ has a contract with ‘B’ for providing some customized software for its business operations. ‘A’ outsources the task of design and development of a particular module of the software to ‘C’, for which “C” may have to interact with ‘B’, to know their specific requirements. In this case, ‘C’ is providing main supply of service of design and development of software to ‘A’, and thus, ‘C’ is not an intermediary in this case.

Illustration

An insurance company ‘P’, located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by ‘P’ to the clients. For processing insurance claims, ‘P’ decides to outsource this work to some other firm. For this purpose, he approaches ‘Q’, located in India, for arranging insurance claims processing service from other service providers in India. ‘Q’ contacts ‘R’, who is in business of providing such insurance claims processing service, and arranges supply of insurance claims processing service by ‘R’ to ‘P’. ‘Q’ charges P a commission or service charge of 1% of the contract value of insurance

claims processing service provided by 'R' to 'P'. In such a case, main supply of insurance claims processing service is between 'P' and 'R', while 'Q' is merely arranging or facilitating the supply of services between 'P' and 'R', and not himself providing the main supply of services. Accordingly, in this case, 'Q' acts as an intermediary as per definition of sub-section (13) of section 2 of the IGST Act.

Illustration

'A' is a manufacturer and supplier of computers based in USA and supplies its goods all over the world. As a part of this supply, 'A' is also required to provide customer care service to its customers to address their queries and complains related to the said supply of computers. 'A' decides to outsource the task of providing customer care services to a BPO firm, 'B'. 'B' provides customer care service to 'A' by interacting with the customers of 'A' and addressing / processing their queries / complains. 'B' charges 'A' for this service. 'B' is involved in supply of main service 'customer care service' to 'A', and therefore, "B' is not an intermediary.

[Circular No. 159/15/2021-GST dated 20th September, 2021](#)

2. Clarifications in respect of certain GST related issues

- (i) W.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the CGST Act, 2017.
- (ii) The availment of ITC on debit notes in respect of amended provision shall be applicable from 01.01.2021. Accordingly, for availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4) of the CGST Act, 2017, whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment on 01.01.2021.
- (iii) There is no need to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier under rule 48(4) of the CGST Rules, 2017 and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.
- (iv) Only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) of the CGST Act, 2017 for availment of refund of accumulated ITC. Goods, which are not subject to any export duty and in respect of which either NIL rate is specified, or which are fully exempted from payment of export duty would not get covered by the said restriction.

[Circular No. 160/16/2021-GST dated 20th September, 2021](#)

3. Clarification relating to export of services-condition (v) of section 2(6) of the IGST Act, 2017

It has been clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India (also referred to as foreign company under Companies Act), are separate persons under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as "merely establishments of a distinct person in accordance with

Explanation 1 in section 8”. Therefore, supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would qualify as ‘export of services’, subject to fulfilment of other conditions as provided under sub-section (6) of section 2 of IGST Act.

[Circular No. 161/17/2021-GST dated 20th September, 2021](#)

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