

SKKA IDT ALERT

2023-2024/19

Circular No. 199/11/2023-GST Dated the 17th July, 2023

In line with the recommendations of the 50th GST Council Meeting dated 11.07.2023, the CBIC has issued certain clarifications regarding distribution of Common Input Services Credit between Head Office and Branch Offices either by way of Input Service Distribution (ISD) Mechanism or Cross Charge method.

Clarification regarding ISD Mechanism –

Under ISD mechanism, separate registration is taken by the Head Office (generally) who receives the invoices of the common input services and further distributes the credits of such invoices to the respective branch offices by issuing document under Rule 54 of CGST Rules 2017 and disclosing the same in FORM GSTR-6.

Queries were raised by the industry regarding whether it is mandatory to take a separate ISD registration for distribution of Common services ITC or HO can distribute the same by firstly availing the ITC of such services and then issue tax invoice to respective branch offices through its regular registration only. In this regard, following clarifications has been provided by CBIC vide captioned circular –

- **ISD registration is not mandatory as per current provisions of CGST Act.**
- **HO distribute the ITC of common services availed from third party through its regular registration also.**
- **HO should avail the ITC and then distribute the same by issuing tax invoice under section 31.**
- **Distribution of Credit should be done only to the Branch office who has actually received the services.**

Our Comments -

The clarification comes as a relief to many taxpayers who have not taken separate ISD registration for the purpose of distributing the ITC of common input services during the initial years of GST. The circular further clarifies that ITC of such common services cannot be retained by the HO rather same needs to be distributed either through ISD route or by raising tax invoice to respective branches. No relief can be claimed in cases where HO has retained and not further transferred the ITC of common service received.

Clarification regarding Internally Generated Service (Cross Charge) -

Head Office and Branch Offices of same entity (SAME PAN) located in different states are considered as deemed distinct persons under GST (Section 25). Further, Schedule I of the CGST Act provides that services provided by deemed distinct person shall be treated as Supply even if provided without consideration. Thus various services provided by a HO like management services, HR services, IT services etc to its branch offices comes within the ambit of Schedule I and GST is leviable on same.

CBIC vide above circular has issued following clarifications for transferring ITC of internally generated Service

- **Where BO is eligible to avail full ITC** of internally generated invoices, then the value declared in the invoice raised by HO to BO shall be deemed to be open market value (2nd proviso to Rule 28). Valuation in such cases shall not be disputed by department.
- Further, in above case, if HO has not issued invoice to BO, then open market value shall not be deemed to be NIL and provision of law shall be deemed to be complied with.
- **Where BO is NOT eligible to avail full ITC** of internally generated invoices, then it is mandatory to compute the value of such services and invoices should be raised for such value on BO. Valuation Rules needs to be applied in such cases as circular did not provide any valuation method.
- **It has been further clarified that in both the above cases, the cost of salary of employees of the HO,** involved in providing the said services to the BOs, is **not mandatorily required to be included** while computing the taxable value of the supply of such services.

Our Comments –

The Circular seems to provide one time relief to taxpayers who have not issued cross charge invoices. The circular exempts the person “who has not issued” cross charge invoices in past and not the persons “who does not / will not issue” such invoices in future. Thus, it is very much important for every taxpayers having multiple branch offices in different states to issue cross charge invoices for internally generated services. The Circular also clarifies that ISD is not mandatory as per law as of now and hence one need not take ISD registration to distribute the ITC of common services.

Compiled by Adv Muskan Balasaria under the guidance of CA Piyush Sharma



CONNECT WITH US

39A, Jorapukur Square Lane (Behind Girish Park),
Room # 202, Kolkata- 700006, WB, INDIA
T | 033-7960-9924
E | info@skkassociates.com
W | www.skkassociates.com

Advocate Ankit Kanodia

LLM, LLB, FCA, CS, B.Com(H), CIDT- ICAI
Indirect Tax Litigation & Consultancy
39A, Jorapukur Square Lane (Behind Girish Park),
Room # 205, Kolkata- 700006, WB, INDIA.
T | 098315 43580
E | ankit@advocateak.com
W | www.advocateak.com