F. No. 354/136/2019-TRU
Government of India
Ministry of Finance
Department of Revenue
Tax research Unit
****

Room No. 156, North Block,
New Delhi, the 11th October 2019

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

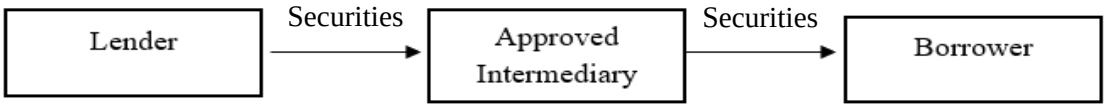
Subject: Clarification regarding taxability of supply of securities under Securities Lending Scheme, 1997 – reg.

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Trade has requested clarification on whether the supply of securities under Securities Lending Scheme, 1997 ("Scheme") by the lender is taxable under GST.

2. Securities and Exchange Board of India (SEBI) has prescribed the Securities Lending Scheme, 1997 for the purpose of facilitating lending and borrowing of securities. Under the Scheme, lender of securities lends to a borrower through an approved intermediary to a borrower under an agreement for a specified period with the condition that the borrower will return equivalent securities of the same type or class at the end of the specified period along with the corporate benefits accruing on the securities borrowed. The transaction takes place through an electronic screen-based order matching mechanism provided by the recognised stock exchange in India. There is anonymity between the lender and borrower since there is no direct agreement between them.

2.1 The lenders earn lending fee for lending their securities to the borrowers. The security lending mechanism is depicted in the diagram below: -



2.2 In the above chart:

(i) Lender is a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the scheme.

(ii) Borrower is a person who borrows the securities under the scheme through an approved intermediary.

(iii) Approved intermediary is a person duly registered by the SEBI under the guidelines/scheme through whom the lender will deposit the securities for lending and the borrower will borrow the securities;

3. It may be noted for the purpose of GST Act, "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 [Section 2(101) of CGST Act]. The definition of services as per Section 2(102) of the CGST Act, is extracted as below: -

> *"services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;*
>
> *Explanation.—For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;*

4. Securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 are not covered in the definition of goods under section 2(52) and services under section 2(102) of the CGST Act. Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.

4.1 The explanation added to the definition of services w.e.f. 01.02.2019 i.e." includes facilitating or arranging transactions in securities" is only clarificatory in nature and does not have any bearing on the taxability of the services under discussion (lending of securities) in past since 01.07.2017 but relates to facilitating or arranging transactions in securities.

4.2 The activity of lending of securities is not a transaction in securities as it does not involve disposal of securities. The clause 4 of para 4 relating to the Scheme under the Securities Lending Scheme, 1997 doesn't treat lending of securities as disposal of securities and therefore is not excluded from the definition of services.

4.3 The lender temporarily lends the securities held by him to a borrower and charges lending fee for the same from the borrower. The borrower of securities can further sell or buy these securities and is required to return the lended securities after stipulated period of time. The lending fee charged from the borrowers of securities has the character of consideration and this activity is taxable in GST since 01.07.2017.

4.4 Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately.

5 The supply of lending of securities under the scheme is classifiable under heading 997119 and is leviable to GST@18% under Sl. No. 15(vii) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended from time to time.

5.1 For the past period i.e. from 01.07.2017 to 30.09.2019, GST is payable under forward charge by the lender and request may be made by the lender (supplier) to SEBI to disclose the information about borrower for discharging GST under forward charge. The nature of tax payable shall be IGST. However, if the service provider has already paid CGST / SGST / UTGST treating the supply as an intra-state supply, such lenders shall not be required to pay IGST again in lieu of such GST payments already made.

5.2 With effect from 1st October, 2019, the borrower of securities shall be liable to discharge GST as per Sl. No 16 of Notification No. 22/2019-Central Tax (Rate) dated 30.09.2019 under reverse charge mechanism (RCM). The nature of GST to be paid shall be IGST under RCM.

6. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Yours Faithfully,

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