CBEC-20/06/03/2019-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
****

New Delhi, Dated the 18th July, 2019

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners/ Commissioners of Central Tax (All) /

The Principal Director Generals / Director Generals (All)

Madam/Sir,

Subject: Clarification on doubts related to supply of Information Technology enabled Services (ITeS services) - reg.

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Various representations have been received seeking clarification on issues related to supply of Information Technology enabled Services (hereinafter referred to as "ITeS services") such as call center, business process outsourcing services, etc. and "Intermediaries" to overseas entities under GST law and whether they qualify to be "export of services" or otherwise.

2. The matter has been examined. In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues in succeeding paragraphs.

3. Intermediary has been defined in the sub-section (13) of section 2 of the Integrated Goods and Service Tax Act, 2017 (hereinafter referred to as "IGST" Act) as under -

> *"Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account."*

3.1 The definition of intermediary *inter alia* provides specific exclusion of a person i.e. that of *a person who supplies such goods or services or both or securities on his own account*. Therefore, the supplier of services would not be treated as 'intermediary' even where the supplier of services qualifies to be 'an agent/ broker or any other person' if he is involved in the supply of services on his own account.

4. Information Technology enabled Services (ITeS services), though not defined under the GST law, have been defined under the sub-rule (e) of rule 10 TA of the Income-tax Rules, 1962 which pertains to Safe Harbour Rules for international transactions. It defines ITeS services as-

> *"information technology enabled services" means the following business process outsourcing services provided mainly with the assistance or use of information technology, namely:—*
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> *(*i*) back office operations;*
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> *(*ii*) call centres or contact centre services;*
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> *(*iii*) data processing and data mining;*
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> *(*iv*) insurance claim processing;*
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> *(*v*) legal databases;*
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> *(*vi*) creation and maintenance of medical transcription excluding medical advice;*
>
> *(*vii*) translation services;*
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> *(*viii*) payroll;*
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> *(*ix*) remote maintenance;*
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> *(*x*) revenue accounting;*
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> *(*xi*) support centres;*
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> *(*xii*) website services;*
>
> *(*xiii*) data search integration and analysis;*
>
> *(*xiv*) remote education excluding education content development; or*
>
> *(*xv*) clinical database management services excluding clinical trials,*
>
> *but does not include any research and development services whether or not in the nature of contract research and development services".*

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5. There may be various possible scenarios when a supplier of ITeS services located in India supplies services for and on behalf of a client located abroad. These scenarios have been examined and are being discussed in detail hereunder:

5.1 Scenario -I:

The supplier of ITeS services supplies back end services as listed in para 4 above. In such a scenario, the supplier will not fall under the ambit of intermediary under sub-section (13) of section 2 of the IGST Act where these services are provided on his own account by such supplier. Even where a supplier supplies ITeS services to customers of his clients on clients' behalf, but actually supplies these services on his own account, the supplier will not be categorized as intermediary. In other words, a supplier "A" supplying services, listed in para 4 above, on his own account to his client "B" or to the customer "C" of his client would not be intermediary in terms of sub-section (13) of section 2 of the IGST Act.

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5.2 Scenario -II:

The supplier of backend services located in India arranges or facilitates the supply of goods or services or both by the client located abroad to the customers of client. Such backend services may include support services, during pre-delivery, delivery and post-delivery of supply (such as order placement and delivery and logistical support, obtaining relevant Government clearances, transportation of goods, post-sales support and other services, etc.). The supplier of such services will fall under the ambit of intermediary under sub-section (13) of section 2 of the IGST Act as these services are merely for arranging or facilitating the supply of goods or services or both between two or more persons. In other words, a supplier "A" supplying backend services as mentioned in this scenario to the customer "C" of his client "B" would be intermediary in terms of sub-section (13) of section 2 of the IGST Act.

5.3 Scenario –III:

The supplier of ITeS services supplies back end services, as listed in para 4 above, on his own account along with arranging or facilitating the supply of various support services during pre-delivery, delivery and post-delivery of supply for and on behalf of the client located abroad. In this case, the supplier is supplying two set of services, namely ITeS services and various support services to his client or to the customer of the client. Whether the supplier of such services would fall under the ambit of intermediary under sub-section

(13) of section 2 of the IGST Act will depend on the facts and circumstances of each case. In other words, whether a supplier "A" supplying services listed in para 4 above as well as support services listed in Scenario -II above to his client "B" and / or to the customer "C" of his client is intermediary or not in terms of sub-section (13) of section 2 of the IGST Act would have to be determined in facts and circumstances of each case and would be determined keeping in view which set of services is the principal / main supply.

6. It is also clarified that supplier of ITeS services, who is not an intermediary in terms of sub-section (13) of section 2 of the IGST Act, can avail benefits of export of services if he satisfies the criteria mentioned in sub-section (6) of section 2 of the IGST Act, which reads as under –

> *"export of services" means the supply of any service when,—*
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> *(i) the supplier of service is located in India;*
>
> *(ii) the recipient of service is located outside India;*
>
> *(iii) the place of supply of service is outside India;*
>
> *(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and*
>
> *(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8".*

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7. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

8. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Upender Gupta)
Principal Commissioner (GST)