



कार्यालय प्रधान आयुक्त : केन्द्रीय वस्तु एवं सेवाकर,
OFFICE OF THE PR. COMMISSIONER : CGST & CENTRAL EXCISE,
35-C, जीएसटी भवन, अरेरा हिल्स, होशंगाबाद रोड, भोपाल (म.प्र.)
35-C, GST BHAWAN, ARERA HILLS, HOSHANGABAD ROAD, BHOPAL (M.P.)



F.No. IV(16)01/Trade Notice /Tech/BPL/2020-21, 1842

Bhopal dated 26.06.2020

व्यापार सूचना क्रमांक 06/2020-21 [जीएसटी]
दिनांक 26.06.2020

विषय :- Clarification in respect of levy of GST on Director's remuneration – regarding

व्यापार एवं उद्योग जगत, क्षेत्रीय सलाहकार समिति के सदस्यों का ध्यान केन्द्रीय अप्रत्यक्ष कर बोर्ड, नई दिल्ली के जीएसटी0 पॉलिसी विंग द्वारा फा0सं0 CBEC-20/06/05-2020-GST के अधीन जारी परिपत्र संख्या 140/10/2020-GST दिनांक 10.06.2020 [प्रति संलग्न] की तरफ आकृष्ट किया जाता है, जो कि **Clarification in respect of levy of GST on Director's remuneration** के बारे में जारी किया गया है। कृपया उपरोक्त परिपत्र की विषय वस्तु को विशेष रूप से अपने संघ के सभी सदस्यों और आम जनता के ध्यान में लाने का कष्ट करें जिससे कि उपरोक्त परिपत्र के निर्देशों का अनुपालन हो सकें।

01 उपरोक्त परिपत्र CBIC की अधिकारिक वेबसाइट www.cbic.gov.in पर भी उपलब्ध है।

02 उपरोक्त व्यापार सूचना विभागीय वेबसाइट www.cexbhupal.gov.in पर भी उपलब्ध है।

संलग्न उक्तानुसार

{ डॉ. संदीप श्रीवास्तव }
प्रधान आयुक्त

प्रतिलिपी:-

01. मुख्य आयुक्त, सीमाशुल्क, सीजीएसटी एवं केन्द्रीय उत्पाद शुल्क, भोपाल जोन भोपाल।
02. प्रधान आयुक्त/आयुक्त सीजीएसटी एवं केन्द्रीय उत्पाद शुल्क इंदौर/जबलपुर/उज्जैन/रायपुर।
03. आयुक्त सीमाशुल्क इन्दौर।
04. प्रधान आयुक्त/आयुक्त [लेखा परीक्षा], सीजीएसटी एवं केन्द्रीय उत्पाद शुल्क भोपाल/रायपुर
05. प्रधान आयुक्त/आयुक्त [अपील], सीजीएसटी एवं केन्द्रीय उत्पाद शुल्क भोपाल/रायपुर
06. उप/सहायक आयुक्त सीजीएसटी एवं केन्द्रीय उत्पाद शुल्क प्रभाग - भोपाल/सागर/ग्वालियर-1/ग्वालियर-11।
07. भोपाल आयुक्तालय के सभी रैंज कार्यालय।
08. भोपाल आयुक्तालय के सभी कार्यालय के सूचना पटल।
09. व्यापार समूह [ईमेल सूची के अनुसार]-ईमेल द्वारा।
- ✓ 10. वेबमास्टर, सीजीएसटी एवं केन्द्रीय उत्पाद शुल्क भोपाल।
11. गार्ड फाईल।

[Signature]
Deputy Commissioner (Tech)



कार्यालय प्रधानआयुक्त:केन्द्रीय वस्तु एवंसेवाकर,
OFFICE OF THE PR. COMMISSIONER : CGST & CENTRAL EXCISE,
35-C,जीएसटी भवन,अरेराहिल्स, होशंगाबादरोड, भोपाल(म.प्र.)
35-C, GST BHAWAN, ARERA HILLS, HOSHANGABAD ROAD, BHOPAL (M.P.)



F.No. IV(16)01/Trade Notice /Tech/BPL/2020-21,

Bhopal dated 26.06.2020

TRADE NOTICE NO. 06/2020 (GST)
DATED 26.06.2020

Subject : Clarification in respect of levy of GST on Director's remuneration - regarding

Attention of Trade and Industry, Members of RAC is invited towards Circular No. 140/10/2020-GST dated 10.06.2020 issued vide F.No. CBEC-20/06/05-2020-GST (Copy enclosed) by the Principal Commissioner, GST Policy Wing , Central Board Of Indirect Taxes and Customs, New Delhi in respect **Clarification in respect of levy of GST on Director's remuneration** under the new portal www.cbic.gov.in.

02. Contents of the aforesaid clarification may please be brought into the notice of Members of your Association in particular and public in general.
03. The aforesaid clarification is available on the official website of CBIC.
04. The Trade Notice is also available on our website i.e. www.cexbhupal.gov.in.

Encls. As above

(Dr. Sandeep Srivastava)
Pr. Commissioner

Copy to :

01. The Chief Commissioner, CGST & Central Excise (BZ) Bhopal
02. The Principal Commissioner/Commissioner, CGST & Central Excise, Indore/Raipur/Jabalpur/Ujjain
03. The Commissioner of Customs, Indore.
04. The Commissioner (Audit), CGST, & Central Excise Bhopal/Raipur
05. The Commissioner ("Appeals), CGST & Central Excise, Bhopal/Raipur
06. The Deputy/Assistant Commissioner, CGST & Central Excise Division-I, Bhopal/ II, Bhopal/III, Bhopal/IV, Bhopal/Sagar/Gwalior-I/Gwalior-II.
07. All Range Officers of Bhopal Commissionerate.
08. All Trade Association of/RAC Member of Bhopal Commissionerate.
09. Webmaster, CGST & Central Excise Hqrs., Bhopal for information and n/a.
10. Notice Board of Bhopal Commissionerate.

Heb
Supdt (Tech.)
Deputy Commissioner (Tech)

CBEC-20/10/05/2020 -GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, dated the 10th June, 2020

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 in respect of levy of GST on Director's remuneration - Reg.

Various references have been received from trade and industry seeking clarification whether the GST is leviable on Director's remuneration paid by companies to their directors. Doubts have been raised as to whether the remuneration paid by companies to their directors falls under the ambit of entry in Schedule III of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) i.e. "services by an employee to the employer in the course of or in relation to his employment" or whether the same are liable to be taxed in terms of notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017 (entry no.6).

2. The issue of remuneration to directors has been examined under following two different categories:

- (i) leviability of GST on remuneration paid by companies to the independent directors defined in terms of section 149(6) of the Companies Act, 2013 or those directors who are not the employees of the said company; and
- (ii) leviability of GST on remuneration paid by companies to the whole-time directors including managing director who are employees of the said company.

3. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies the issue as below:

Leviability of GST on remuneration paid by companies to the independent directors or those directors who are not the employee of the said company

4.1 The primary issue to be decided is whether or not a 'Director' is an employee of the company. In this regard, from the perusal of the relevant provisions of the Companies Act, 2013, it can be inferred that:

- a. the definition of a whole time-director under section 2(94) of the Companies Act, 2013 is an inclusive definition, and thus he **may be a person who is not an employee** of the company.
- b. the definition of 'independent directors' under section 149(6) of the Companies Act, 2013, read with Rule 12 of Companies (Share Capital and Debentures) Rules, 2014 makes it amply clear that **such director should not have been an employee** or proprietor or a partner of the said company, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed in the said company.

4.2 Therefore, in respect of such directors who are not the employees of the said company, the services provided by them to the Company, in lieu of remuneration as the consideration for the said services, are clearly outside the scope of Schedule III of the CGST Act and are therefore taxable. In terms of entry at Sl. No. 6 of the Table annexed to notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

4.3 Accordingly, it is hereby clarified that the remuneration paid to such independent directors, or those directors, by whatever name called, who are not employees of the said company, is taxable in hands of the company, on reverse charge basis.

Leviability of GST on remuneration paid by companies to the directors, who are also an employee of the said company

5.1 Once, it has been ascertained whether a director, irrespective of name and designation, is an employee, it would be pertinent to examine whether all the activities performed by the director are in the course of employer-employee relation (i.e. a "contract of service") or is there any element of "contract for service". The issue has been deliberated by various courts and it has been held that a director who has also taken an employment in the

company may be functioning in dual capacities, namely, one as a director of the company and the other on the basis of the contractual relationship of master and servant with the company, i.e. under a contract of service (employment) entered into with the company.

5.2 It is also pertinent to note that similar identification (to that in Para 5.1 above) and treatment of the Director's remuneration is also present in the Income Tax Act, 1961 wherein the salaries paid to directors are subject to Tax Deducted at Source ('TDS') under Section 192 of the Income Tax Act, 1961 ('IT Act'). However, in cases where the remuneration is in the nature of professional fees and not salary, the same is liable for deduction under Section 194J of the IT Act.

5.3. Accordingly, it is clarified that the part of Director's remuneration which are declared as 'Salaries' in the books of a company and subjected to TDS under Section 192 of the IT Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.

5.4 It is further clarified that the part of employee Director's remuneration which is declared separately other than 'salaries' in the Company's accounts and subjected to TDS under Section 194J of the IT Act as *Fees for professional or Technical Services* shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable. Further, in terms of notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

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

7. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Yogendra Garg)
Principal Commissioner
y.garg@nic.in