Foreign cos get GST relief on loans to Indian arms

18% GST on additional fees, other considerations on providing loans

ILLUSTRATION: BINAY SINHA

EASING THE NORMS

- CBIC issued **16 circular** on Wednesday
- It **clarified tax implications on range of issues** following recommendations of GST Council
- This includes– **loan transactions between related parties,** warranty service, ESOPs to employees of Indian arm by foreign holdcos

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In a relief for foreign firms giving loans to Indian subsidiaries, tax authorities have said goods and services tax (GST) will not be imposed on them, subject to some caveats.

Additional fees, commissions, or related payments — over and above the amount charged as interest — on these loans will attract GST at 18 per cent, the Central Board of Indirect Taxes and Customs (CBIC) has said.

The move is expected to end uncertainties on taxing loans/credit among group companies — a matter plaguing foreign entities.

The issue arose during GST audits and resulted in tax notices being served.

In taxation terms, the matter involved valuing services of foreign affiliates when the Indian recipient can claim full input tax credit (ITC).

The CBIC has said the open market value of such services can be the invoiced amount by the Indian company, assuming full ITC is available.

If no invoice exists, the service value can be considered nil.

"This clarification was needed to end litigation on taxing loans among group companies. The principles upheld in the CBIC circular can aid substantially in evaluating the taxability of various free-of-cost transactions among related parties," said Abhishek Jain, indirect tax head and partner, KPMG.

If a foreign company seeks additional fees or charges on issuing employee stock option plans (ESOPs), employee stock-purchase plans or the restricted stock unit scheme to employees of domestic firms, GST will apply.

The issue was in the context of reimbursements among Indian subsidiaries and their holding entities where options provide allotment of shares/securities of a holding company directly to the employee. It said reimbursements on a cost-to-cost basis did not trigger GST, affirming that such transactions did not constitute a taxable service.

"This development underscores the importance of structuring ESOP transactions for both compliance and optimal tax planning. Moreover, it sparks a wider debate on taxing cost-to-cost reimbursements across different business scenarios, potentially influencing interpretations of GST applicability in similar contexts," said Saurabh Agarwal, tax partner, EY. The CBIC has issued circulars following the recommendations of the GST Council at its meeting on June 22.

These include clarification on the issue of place of supply for custodial services provided by banks to foreign portfolio investors; allotting spectrum to telecom services; entitlement of ITC by insurance companies on expenses on repairing motor vehicle; and setting monetary limits for filing appeals by the GST Appellate Tribunal, high courts, and the Supreme Court.

Among the 16 circulars issued, one of them addresses warranty transactions and extended warranties.

GST suppliers giving post-sale discount need undertaking from clients

Suppliers giving post-sale discounts through credit notes under GST will have to ensure that the client gives an undertaking or a CA certificate stating that the ITC availed on the discount value has been reversed, the CBIC has said.

Currently, there is no mechanism to track whether the Input Tax Credit (ITC) on such discounts has been reversed or not. **PTI**