

# TAXTIME

## NEWSLETTER

### INTERNATIONAL TAX NEWS

## INDONESIA TAXES CRYPTO ASSET TRANSACTIONS



Through the authority of the Minister of Finance, Government of Indonesia has issued regulations to taxing crypto assets transactions. Although the legal position is still ambiguous, the Minister of Finance chose to go one step further by issuing tax regulations on crypto-asset transactions by applying value added tax (VAT) and withholding tax (WHT) starting in April 2022.

In this regulation, the Registered Trading Organizer through electronic system (Trading Platform) must collect VAT and withhold tax (WHT) from the transactions which they facilitated. Crypto-asset-mining service providers are also not exempt from the provisions to collect VAT and WHT.

Crypto-asset transactions are subject to VAT 0.11% of the value of the sale and purchase if traded by crypto assets physical traders. If traded by non-physical traders, they are subject to 0.22% of the value of the sale and purchase. The acquisition of crypto-asset value from miners is subject to VAT of 1.1%, while crypto asset mining services are still subject to 11% VAT (only to the amount of services, exclude crypto assets value).

Crypto-asset sales transactions are also subject to withholding income tax of 0.1% if carried out by crypto-asset physical traders and 0.2% if carried out by non-physical traders.

The Minister of Finance Regulation defines that physical crypto-asset traders are service companies that have been legalized and verified by the state. They are permitted to conduct crypto-assets trading activities and are obligated to report such trading activities to the designated authorities.



# MEDICINES AND CONSUMABLES PROVIDED TO INPATIENTS NOT TO ATTRACT GST: TNAAR



Supply of medicines and consumables along with other services provided to an inpatient from admission until discharge is to be treated as 'composite supply' and no GST is to be applicable. However, medicines supplied to an outpatient will attract GST, the Tamil Nadu Authority for Advance Rulings (TNAAR) has said. This ruling was given after the GST Council recommended GST to be levied on non-ICU room rent above ₹5,000, but before the notification specifying the date as July 18 was issued.

Applicant, the Chennai-based Be Well Hospitals, moved the TNAAR seeking advance ruling on the applicability of GST on medicines and consumables supplied to inpatients and outpatients by its pharmacy unit for diagnosis or treatment during the patient's admission in hospital, whether it would be considered as 'composite supply' of healthcare service, and consequently, whether exemption can be availed.

Under GST, when goods/services supplied in a bundle, they could either be composite or mixed supplies. Composite supply means supply of two or more goods or services or both. These are bundled and supplied in conjunction with each other in the ordinary course of business and one of which is called principal supply. Rate for principal supply will be the rate for entire supply, and if it is exempted, the entire supply will be exempted.

At the same time, mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price. Here, the GST will be applicable at the rate which is highest among all goods and services. For example, supply of hosiery goods and split airconditioners would qualify as supply of split airconditioners, which attracts a tax rate of 28 per cent.

After going through all the facts and arguments, the TNAAR observed that in the case of in-patients, the hospital is expected to provide lodging care, medicine and food as part of treatment under supervision till discharge. But, in the case of outpatients, there is no such expectation on the hospital and such patients just walk in for consultation and advice.

"It is clear that the service of supply of medicine and consumables and consultation of outpatients is not inextricably linked and not naturally bundles," the bench said.

Further, a pharmacy run by a hospital dispensing medicine to outpatient or bystanders or others can be considered making individual supply of medicines, and therefore, not covered under healthcare services. This means it is liable to pay GST.



### HC DIRECTS GST DEPT TO REFUND TAX ON OCEAN FREIGHT WITHIN 6 WEEKS



Following a Supreme Court verdict, the Gujarat High Court has directed the GST department to grant refund of tax paid on ocean freight within six weeks. Experts say this ruling is beneficial on two counts- first, defines a time-bound refund settlement process for GST on ocean freight and, second, provides clarity on sectors that are outside GST or under the inverted duty structure.

In May this year, dismissing an appeal by the Centre in the matter of Mohit Minerals, the Supreme Court upheld a ruling by a division bench of the same High Court and said: "Having paid IGST (Integrated Goods & Service Tax) on the amount of freight which is included in the value of imported goods, the impugned notifications levying tax again as a supply of service, without any express sanction by the statute, are illegal and liable to be struck down."

Relying on this, a division bench of the High Court said in view of the decision in Mohit Minerals since the impugned notifications have already been declared as ultra vires, the petition deserves to be allowed.

"It is directed that if any IGST amount is collected, the same shall be refunded within six weeks, along with a statutory rate of interest," it said, while disposing a petition by Lousi Dreyfus Company.

### FOREIGN TOURISTS MAY SOON GET GST REFUND FOR LOCAL SHOPPING



The government will soon begin a pilot to refund goods and services tax (GST) paid by foreign tourists visiting India as part of a move to implement a measure that is there in the statute. The Integrated GST Act, enacted five years ago, provides for refund on goods, which are to be taken out of the country by a tourist, a person who is normally not a resident of India, and is in the country for not more than six months for non-immigrant purposes.

Several countries follow a system of GST or VAT refund for tourists for consumption outside the country as taxes are typically not exported, a principle that is followed in duty-free shops at airports as well. In these countries products above a threshold are eligible for refund of taxes, which can be claimed at the airport and the payment can be received there or often it is transferred to the buyer's bank account

Government sources said with the GST regime settling down, the Centre is discussing the possibility of a pilot, which will involve outlets such as the Cottage Industries Emporium and, based on the experience, it will be expanded.

Tax experts said that several changes are required to implement the plan and it will take time. To begin with, even for a pilot, the rules to operationalise the provision need to be put in place. The invoicing system will also need to be updated, which an official said is sought to be addressed when the pilot is run. This will require a tweak to the GST Network architecture.

"GST refund to international tourists is in line with global best practices as the 'consumption' of the product is not happening in India. It will be a boost to the tourism sector and items such as handicraft, textiles, etc. The government will have to come up with the rules and procedure for this refund, including the mechanism of verification to ensure that GST has been paid as B2C transactions are not separately reported as part of GST filings currently," said an expert



# FROM CANTEEN TO MEDICAL INSURANCE, GST COUNCIL PROVIDES MUCH-AWAITED RELIEF ON EMPLOYEE PERKS



In the last meeting, the GST Council promised to issue clarifications relating to various Input Tax Credit (ITC) issues under GST. Keeping its promise, the CBIC has issued a circular clarifying various ITC-related issues in respect of prerequisites provided by employers to its employees and leasing of assets.

The GST law was amended on 1 February 2019 to allow ITC on goods & services which were mandatorily provided under any law by an employer to its employees. Typically, an employer provides various services to an employee such as canteen service, medical insurance, transportation service, concessional travel, etc. These services are provided either free of charge or at a nominal price. Also, most of these services are provided as a mandatory obligation by an employer. The Appellant Authority for Advance Ruling in the case of Musashi Auto Parts Pvt. Ltd. held that amendment will only have limited applicability and ITC on travel benefits extended to an employee shall only be allowed.

Basis this ruling, ITC on canteen service was disallowed even when it was provided as a mandatory obligation by an employer. The analogy of this ruling would also result in the denial of ITC on medical insurance, transportation service, etc. This was never the intent of the legislation. CBIC has now clarified that the amendment has wider applicability and ITC is available on canteen service, medical insurance, transportation service, and other services where the same is mandatorily provided under any law. This is a welcome clarification and will reduce tax costs of the industry as well as employees (where GST was separately recovered from employees).

Perquisites provided by an employer to its employees always attract the attention of the tax authorities. Service provided by an employee to an employer is exempted from GST. The legislature never intended to cover tax benefits given to an employee like free food, transportation, medical insurance, etc. when the same was given as part of contractual obligation. An employee is covered under the definition of 'related person' under GST. The law levies GST on 'fair market value' when there is a supply between related persons even if no consideration is charged. There is an industry-wide dispute about whether GST applies to free supply from an employer to an employee being a related party. To aggravate the issue, the Authority for Advance Ruling in the case of MFAR Hotel & Resorts Pvt. Ltd. held that the supply of free food to an employee is a supply of service attracting GST as consideration is not necessarily due to related party transaction. Thus, there was confusion in law due to overlapping provisions relating to supplies made to employees.

The recent circular now clarifies that any perquisite provided by an employer to its employees under a contractual agreement is in lieu of employment and would not attract GST. Thus, any benefit provided to an employee as part of HR policy, or customary practice under an employment contract would be outside the GST ambit when no consideration is charged. This shall cover the supply of free food, transportation, medical insurance, etc. This clarification will put rest to the dispute about the GST levy on any free supply of goods & services by an employer to an employee. This will also reduce tax costs on the industry as well on employees (where GST was separately recovered)



# TODAY'S QUOTE

*Always make a total effort, even when  
the odds are against you*

*- Arnold Palmer*

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