

GST leviable on services provided by Club or Association to its members retrospectively w.e.f. July 01, 2017

Background:

The Hon'ble Finance Minister, in Union Budget 2021-22, proposed changes vide the Finance Bill, 2021, that amends the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") to levy GST on services provided by Club or Association to its members. Accordingly, amended Bill was passed in Rajya Sabha, the upper house, and it received presidential assent vide Finance Act, 2021.

Notification:

The CBIC vide **Notification No. 39/2021–Central Tax dated December 21, 2021** notified the below mentioned amendments made vide Section 108 and 122 of the Finance Act, 2021 w.e.f. January 01, 2022 to be effective from July 01, 2017 retrospectively:

Current provisions	Notified provisions
Section 7(1) - Scope of supply – Section 108 of the Finance Act, 2021	
-----	After Section 7(1)(a): New clause to be inserted w.e.f. July 01, 2017 <i>“(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration.</i> <i>Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any</i>

	<p><i>other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another”</i></p>
<p>Retrospectively Deletion of Paragraph 7 of Schedule II – Activities or Transactions to be Treated as Supply of Goods or Supply of Services- Section 122 of the Finance Act, 2021</p>	
<p>Paragraph 7:</p> <p>“Supply of Goods:</p> <p><i>The following shall be treated as supply of goods, namely:-</i></p> <p><i>Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.”</i></p>	<p>Paragraph 7 shall be omitted and shall be deemed to have been omitted with effect from the July 01, 2017.</p> <p>“Supply of Goods:</p> <p><i>The following shall be treated as supply of goods, namely:-</i></p> <p><i>Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.”</i></p>

Our comments:

Expanded the scope of ‘supply’ to levy GST on supplies between the club/association and its members, to overcome the principle of mutuality:

A retrospective amendment (w.e.f. July 1, 2017) was proposed by inserting a new clause '(aa)' after clause (a), in Section 7(1) of the CGST Act to widen the scope of term 'supply' by including therein activities or transactions of supply of goods or services or both between any person (other than individual) to its members or constituents or vice versa for cash, deferred payment or other valuable consideration.

Further, an explanation is added to say that the person and its members or constituents shall be deemed to be two separate persons and overriding effect has been given to the said explanation over anything contained in any other law for the time being in force and even to the judgements of any Court, Tribunal or any other authority.

Consequently, Para 7 of Schedule II of the CGST Act has been proposed to be deleted retrospectively (w.e.f. July 1, 2017) which is related to 'supply of goods by unincorporated associations or body of persons to a member thereof for cash, deferred payment or other valuable consideration' being activity/ transaction treated as supply of goods.

There has been dispute regarding the taxability of transactions between clubs, associations, etc. and its members. In this regard, the Hon'ble Supreme Court in ***State of West Bengal & Ors. v. Calcutta Club Limited [2019 (29) G.S.T.L. 545 (S.C.)]*** for erstwhile Service tax regime has held that there cannot be sale of goods or provision of services between the incorporated private clubs/ associations and its members owing to the principle of mutuality which treats such clubs/ associations and its members as the same person. It is to be noted here that while the Explanation 3 to Section 65B(44) of the Finance Act, 1994 created a deeming fiction to treat activities between an unincorporated association and its members as deemed supply.

Now, the amendment is doing away with the principle of mutuality and has unsettled the settled jurisprudence (with specific overriding effect over judgments) with retrospective

date to ensure the levy of GST on supply of goods and services by clubs or association to its members irrespective of whether or not the entity is incorporated.

Though the above amendment is made applicable retrospectively, but the validity of such retrospective amendment may still be debated and subjected to litigation.

To know more, kindly see our video “Whether GST leviable on Services provided by Club or Association to its members” by CA Bimal Jain-
<https://www.youtube.com/watch?v=FST04loIWOM>

The Notification can be accessed at: <https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-39-central-tax-english-2021.pdf>

(Author can be reached at info@a2ztaxcorp.com)

DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose and for the reader's personal non-commercial use. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon. Further, no portion of our article or newsletter should be used for any purpose(s) unless authorized in writing and we reserve a legal right for any infringement on usage of our article or newsletter without prior permission.