

Model GST: Transactions between Related 'Establishments'

Intra-company transactions or transactions between divisions have become an inevitable feature of modern businesses - more so for businesses with significant operational and geographical scale. Model GST Law ('MGL') contains specific provisions on treatment of transactions between different 'establishments' of the same 'person'. These transactions are also specifically dealt with under the current indirect tax regime for both goods and services.

This alert briefly examines provisions of model GST Law on tax treatment of intra-company/inter-establishment transactions contrasting the same with analogous provisions of the current indirect tax regime.

At the outset, MGL does not provide for any exhaustive definition of the term 'establishment'. Black's Law Dictionary defines an 'establishment' as an 'institution' or 'place of business'. MGL does clarify that any branch, agency or representational office set up for carrying on business shall be treated as an 'establishment'¹.

The most important deeming fiction of MGL in this regard is that different 'establishments' of the same person shall be treated as 'establishments' of 'distinct' persons². This deeming fiction applies to all 'establishments' whether located within India (but in different States) or outside. However, interestingly, for the levy of GST MGL applies an asymmetrical treatment to import and export transactions between different establishments. While, import transactions between two 'establishments' are subject to GST, the export of goods/ services by one establishment to another is not treated at par with other 'export transactions' that are normally considered as zero rated supplies. Such asymmetrical treatment is in continuation of the current service tax regime which also adopts a differential approach to taxation of imports and export transactions between different 'establishments'.

Further, as regards domestic transactions between different 'establishments' another facet deserves specific mention. MGL takes within its fold both – transactions between establishments with and without consideration (whether for goods or for services). This is a clear departure from Current Service Tax regime wherein consideration is sine-qua-non for taxability. The stated position in MGL raises a host of planning issues for businesses that must now also value and calibrate inter-divisional service transactions undertaken without consideration. Shared or common services are a classic case in point.

The extension of MGL to transactions without consideration emphasizes the need to have separate Valuation/Transfer Pricing rules to ascertain transaction values for levy of GST. It would augur well to have a unified set of Transfer Pricing Rules for Direct Tax and GST especially since the country has had significant domestic and international Transfer Pricing experience.

¹Explanation 2 of Section 5 of Model IGST Law r/w section 10(3) of Model GST Law, November, 2016

²Explanation 1 of Section 5 of Model IGST Law, November, 2016

Amicus Tax Team

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