

## GOODS AND SERVICES TAX

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**CBIC vide notification 60/2020-CT dated 30th July, 2020** has amended CGST Rules, 2017 so as to substitute FORM GST INV – I (Format/Schema for e-Invoice) with new form.

**CBIC vide notification 61/2020-CT dated 30th July, 2020** exempt Special economic zone (SEZ) unit from preparation of E-Invoice. Further, the turnover for registered person for purpose of E-invoice is increased to Rs. 500 crore from existing Rs.100 crore.

**CBIC vide circular no. 139/09/2020-GST dated 10th June, 2020** has clarified that before the issuance of Circular No. 135/05/2020- GST dated 31st March, 2020, refund was being granted even in respect of credit availed on the strength of missing invoices (not reflected in

FORM GSTR-2A) which were uploaded by the applicant along with the refund application on the common portal. However, vide Circular No.135/05/2020 – GST dated the 31st March, 2020, the refund related to these missing invoices has been restricted. Now, the refund of accumulated ITC shall be restricted to the ITC available on those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant.

It is clarified that the aforesaid circular does not in any way impact the refund of ITC availed on the invoices / documents relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) etc. It is hereby clarified that the treatment of refund of such ITC relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) will continue to be same as it was before the issuance of Circular No. 135/05/2020- GST dated 31st March, 2020.

**CBIC vide circular no. 140/10/2020-GST dated 10th June, 2020** has provided clarification in respect of levy on GST on Director remuneration as follows

### **LEVIABILITY OF GST ON REMUNERATION PAID BY COMPANIES TO THE INDEPENDENT DIRECTORS OR THOSE DIRECTORS WHO ARE NOT THE EMPLOYEE OF THE SAID COMPANY**

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:

- i) 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.
- ii) 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.

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.

### **LEVIABILITY OF GST ON REMUNERATION PAID BY COMPANIES TO THE DIRECTORS, WHO ARE ALSO AN EMPLOYEE OF THE SAID COMPANY**

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”.

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.

It is further clarified that the part of employee Directors 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.