



Applicability of GST on payments made to Company Directors

Clay Craft India Private Limited – Rajasthan Authority for Advance Ruling¹

The Rajasthan Advance Ruling Authority has issued a ruling upholding the levy of Goods and Services Tax ('GST') on salaries paid to Directors in response to the application filed by **Clay Craft India Private Limited** ('CCIPL').

Our alert provides analysis of the advance ruling and our comments on the subject.

Summary of the Advance Ruling

- In the application, the following two questions came up for consideration:
 - Whether GST is payable under Reverse Charge Mechanism ("RCM") on the salary paid to Directors of the Company?
 - Whether the view would change if the Director is a part time Director in another Company as well?
- The Advance Ruling concludes that the consideration paid to the Directors is against the supply of services provided by the Directors to the

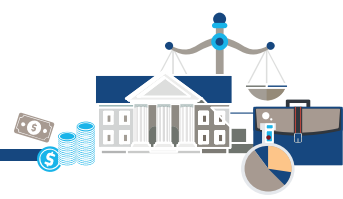
applicant, and are not covered under para 1² of the Schedule III to the Central Goods and Service Tax Act, 2017 ('CGST Act'); as the Directors are not the employees of the Company. The Advance Ruling concludes that the services rendered by the Director to the Company, for which a consideration is paid [under any head] by the Company, would attract GST under RCM under sl. no. 6 of notification no. 13/2017-Central Tax (Rate) dated June 28, 2017 ('Reverse Charge Notification').

Analysis of the Advance Ruling

- In the case of CCIPL, it appears that the Company had Directors [both salaried as well as independent] who were paid commission as well as salary for the various operational and managerial functions performed by them for the Company. The Company has been discharging GST on the commission paid to the Directors; however, pursuant to the determination of a similar issue in another advance ruling pronounced by the Advance Ruling Authority of Karnataka, the Company sought clarity on whether the salary component would also be subject to GST. The Advance Ruling Authority of

¹ 2020-VIL-86-AAR

² Schedule -III Activities or transactions which shall be treated neither as a supply of goods nor a supply of services: - 1. Services by an employee to the employer in the course of or in relation to his employment



Karnataka took a view that GST is applicable under the RCM notification as the Directors were not employees of the Company. The Company submitted that the salary paid by them to the Directors were booked as “Income from Salary” by the said Directors and that such Directors are treated at par with the other employees of the Company. The Company submitted that such full time Directors are de facto employees and hence would be excluded from the levy of GST by virtue of the exclusion created under Schedule III, para 1 - Services by an employee to the employer in the course of or in relation to his employment. The Company relied on the various definitions under the Companies Act 1956 and the Employee’s Provident Fund and Miscellaneous Provisions Act, 1952 to buttress the argument that whole-time Directors are akin to employees of a Company.

- On the other hand, the jurisdictional officer submitted that a Director cannot be an employee of a Company and the remuneration paid to Directors is in relation to the services provided by such Directors and hence such remuneration would become subject to GST.
- The ruling has also proceeded on a general premise [without any justification or basis] that the Directors are not the employees of the Company and any remuneration paid to the Directors whether under the garb of salary or fee would be liable to GST under RCM.

Dhruva Comments

The Advance Ruling pronounced in the case of CCIPL does not bring out the facts clearly and lacks reasoning for upholding the applicability of GST.

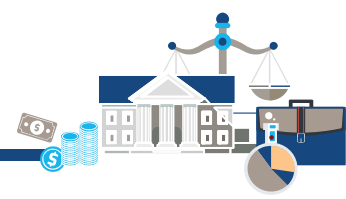
Under GST, the reverse charge notification levies GST on the Company or body corporate located in India for the services received from a Director. The question for determination of taxability has always been on whether the Director is an independent Director or an employee of the Company, i.e. whether the Director is an Executive Director or a non-executive Director.

Typically, Executive Directors are full time Directors who are involved in the day to day working of an organization. Such Directors are normally under the full-time employment of the Company. Such Directors are treated as employees both under the Companies law as well as the Income-tax Act, 1961 [for the purposes of deduction of TDS].

Services by an employee to the employer in the course of employment is excluded from applicability of GST on account of being a transaction which is neither a supply of goods nor services. Thus, a Director who is an employee of the Company and draws a salary would be covered under the exclusion. This position has been settled in favour of the taxpayers by the judicial fora under the erstwhile regime³.

The takeaway for companies is that, they should have a clear distinction between salaried Directors and others. This should also match the disclosures made by the Company and the Directors with respect to the employment for the Income Tax and Companies Act purposes.

³ [2019] 101 taxmann.com 462 (Mumbai – CESTAT)





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