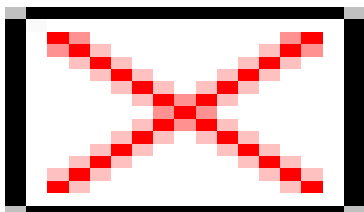


GST and Professional Tax - Marry policy with protocol ?

NOVEMBER 21, 2022

By Krithika Jaganathan, Joint Partner & Sahana Rajkumar, Principal Associate, Lakshmikumaran and Sridharan Attorneys



THE

introduction of the Goods and Services Tax (GST) regime has brought to the fore several fundamental inconsistencies between the relatively new GST law and other existing legislations. This has provided the Government with unique opportunities to course correct such anomalies. For instance, the process of revamping the laws relating to Special Economic Zones (SEZ) to align the same with GST has already commenced.

Another area of law which is presenting several practical difficulties for taxpayer's concerns 'Professional Tax'. This tax is levied on the involvement of a person in a profession, trade, calling and employments. The power to levy this tax has been vested with the States in terms of Article 246 read with Entry 60 of List II of Schedule XVII to the Constitution of India. Resultantly, 'Professional Tax' is governed by state specific legislations some of which have been codified way back in 1919 [The Chennai City Municipal Corporation Act 1919, for instance]. GST on the other hand, being a tax simultaneously levied by Union and the States, was introduced only in 2017 and has been subject to many changes with the contemporaneous economic realities including unique challenges posed by the Covid 19 pandemic.

Speaking about the Covid 19 pandemic, 'work from home/home offices' has become part and parcel of most of our lives. Several business entities now prefer this option as a permanent solution to mitigate operational costs. Industries have evolved to suit this requirement more specifically in service sectors such as IT/ITES etc. Employees are now able to easily operate from their home and visit supplier/customer premises as and when requirements arise. This model assists companies in employing personnel on a pan India basis without having any physical office space in such locations.

Regulatory regimes for remote working

From a GST perspective, a question which arises is whether the business entity is required to obtain a registration in all such locations where the employee is working remotely from their homes. Under GST, while an entity is required to register in every State from where a taxable supply is rendered [Section 22 of the Central Goods and Services Tax [Act, 2017](#) (CGST Act)], any services rendered by an employee to an employer is not leviable to GST. ¹

This brings us to the fundamental question which this Article tries to highlight. Can the homes of the employees be considered as the place from where services are rendered by the business entity? For a business entity to render supplies from a particular State, a place of business/fixed establishment is a pre-requisite ²

. For an establishment to come into existence in a State, the taxpayer should have a designated space with some permanence along with human and technical resources and such locations should be capable of receiving services for its own needs. It can be reasonably inferred that a company does not have control or permanence in the homes of their employees or at their customer locations where the employees are required to temporarily visit.

Accordingly, business entities may not be required to register under GST in all such locations where their employees merely work from home.

That said, from the Professional Tax perspective, remote working was conceptually unheard of and so none of the laws contemplated such a working model. The professional tax enactments require employers to pay professional tax to the corporation where the professional is engaged in employment or calling or vocation. Employers seeking to switch to a remote or hybrid model of working will now face the question

of where to pay professional tax - to the local authorities at the head office (if any) or to the local authorities in the precinct where the personnel are remotely engaged.

Streamlining supervision and easy compliance

While the GST laws contemplated e-filing of returns, payment of taxes, etc., to improve supervision, the administration of taxes outside the GST net remained conventional and employers were remitting professional taxes physically with the local authorities. Yet, there were plans underway to digitalize these transactions and the pandemic only popularized the bid to migrate from a paper-based compliance regime to an electronic ecosystem.

The Department for Promotion of Industry and Internal Trade (DPIIT), under the aegis of the Ministry of Commerce, has been partnering with States to evolve easier regimes for regulatory compliances. Faced with an increasingly digital way of life, the Business Reforms Action Plan, 2020 (BRAP-2020) recommended that States/Union Territories design a National Single Window System for registration, e-filing of returns and payment of professional taxes without physical visits to departments. These recommendations were implemented by States such as Maharashtra, Odisha, Andhra Pradesh, Telangana so much so that professional tax is now administered entirely online. In fact, in Maharashtra, registration of a company is now integrated with registration for payment of professional tax in Maharashtra.

While the move was aimed at enhancing compliance, entities with remote working models found themselves unable to pay professional tax online without a GST registration held with the concerned State(s). With the taxman as the common administrator for local taxes (including SGST and professional tax), the national single window system had been designed such that an employer-entity could only register online for professional tax upon furnishing details of GST or sales tax registrations. Some clarity is awaited on how the authorities will de-link the requirement for GST registrations in respect of professional tax. Until then, employers with a remote workforce face fewer options, each less palatable than the other - must they abandon the remote model and risk attrition as well as cost escalation? Or must the company obtain a tax registration even if only to pay professional tax and incur operational costs?

Working around compliance woes

Today, the traditional workplace is undergoing a facelift. With the internet positioned as a major stakeholder and also the primary platform on which businesses are built, measures to digitize the compliances are laudable for fostering transparency and reducing paperwork. At the same time, any confusion over procedural aspects can arrest the most progressive of policies and urgent steps are necessary to keep pace with the times. Hence, there is a need to marry policy with protocol for a truly cohesive reform to take root.

(The Views expressed in this article are entirely personal.)

¹Schedule III to the CGST Act

² Refer to definition of "***location of the supplier of services***" - Section 2(71) of the CGST Act

(DISCLAIMER : The views expressed are strictly of the author and Taxindiaonline.com doesn't necessarily subscribe to the same. Taxindiaonline.com Pvt. Ltd. is not responsible or liable for any loss or damage caused to anyone due to any interpretation, error, omission in the articles being hosted on the site)