

3. GST exemption on services supplied by an educational institution would be available, if it fulfils the criteria that the education is provided as part of a curriculum for obtaining a qualification/ degree recognized by law.
4. Section 76 of the Merchant Shipping Act, 1958 (44 of 1958) provides for the certificates of competency to be held by the officers of ships. It states that every Indian ship, when going to sea from any port or place, shall be provided with officers duly certificated under this Act in accordance with such manning scales as may be prescribed. Section 78 of the Act provides for several Grades of certificates of competency. Further, Section 79 provides that the Central Government or a person duly authorised by it shall appoint persons for the purpose of examining the qualifications of persons desirous of obtaining certificate of competency under section 78 of the Act.
5. In order to streamline and monitor the maritime education and trainings by maritime institutes and to administer the assessment agencies, the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014 has been notified. Under Rule 9 of the said Rules, the Director General of Shipping is empowered to designate assessment centres. Further the provisions of sub- rules (6), (7) and (8) of the Rule 4 of the said Rules, empowers the Director General of Shipping, to approve (i) the training course, (ii) training, examination and assessment programme, and (iii) approved training institute etc.
6. From the above discussion, it is seen that the Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognised under the provisions of the Merchant Shipping Act, 1958 read with the Merchant Shipping (standards of training, certification and watch-keeping for Seafarers) Rules, 2014. Therefore, the Maritime Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST. The exemption is subject to meeting the conditions specified at Sl. No. 66 of the notification No. 12/ 2017- Central Tax (Rate) dated 28.06.2017.
7. This clarification applies, *mutatis mutandis*, to corresponding entries of respective IGST, UTGST, SGST exemption notifications. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

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Circular No. 118/37/2019-GST

Clarification regarding determination of place of supply in case of software/design services related to Electronics Semiconductor and Design Manufacturing (ESDM) industry.

11th October 2019

Various representations have been received from trade and industry seeking clarification on determination of place of supply in case of supply of software/design services by a supplier located in taxable territory to a service recipient located in non-taxable territory by using the sample hardware kits provided by the service recipient.

2. It is stated that a number of companies that are part of the growing Electronics Semiconductor and Design Manufacturing (ESDM) industry in India are engaged in the process of developing software and designing integrated circuits electronically for

customers located overseas. The client/customer electronically provides Indian development and design companies with design requirements and Intellectual Property blocks ("IP blocks", reusable units of software logic and design layouts that can be combined to form newer designs). Based on these, the Indian company digitally integrates the various IP blocks to develop the software and the silicon or hardware design. These designs are communicated abroad (in industry standard electronic formats) either to the customer or (on behest of the customer) a manufacturing facility for the manufacture of hardware based on such designs.

- 2.1 In addition, the software developed is also integrated upon or customized to this hardware. On some occasions, samples of such prototype hardware are then provided back to the Indian development and design companies to test and validate the software and design that has been developed to ensure that it is error free.
- 2.2 The trade has requested clarification on whether provision of hardware prototypes and samples and testing thereon lends these services the character of performance-based services in respect of "goods required to be made physically available by the recipient to the provider".
3. The provisions relating to determination of place of supply as contained in the Integrated Goods & Services Tax Act, 2017 (hereinafter referred to as "the IGST Act") have been examined. In order to ensure uniformity in the implementation of the provisions of the law, the Board, in exercise of its powers conferred by sub-section (1) of section 168 of the Central Goods & Services Tax Act, 2017 (hereinafter referred to as "the CGST Act") clarifies the same as below.
4. In contracts where service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, whereas, chip design/software development is the principal supply of the service provider. The service provider is not involved in software testing alone as a separate service. The testing of software/design is aimed at improving the quality of software/design and is an ancillary activity. The entire activity needs to be viewed as one supply and accordingly treated for the purposes of taxation. Artificial vivisection of the contract of a composite supply is not provided in law. These cases are fact based and each case should be examined for the nature of supply contracted.
- 4.1 Therefore, it is **clarified** that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per Section 13(2) of the IGST Act. Provisions of Section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases.

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**Circular No. 119/38/2019-GST Clarification
regarding taxability of supply of
securities under Securities Lending Scheme, 1997.**

11th October 2019