

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.

## **119**

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

**11th October 2019**



Trade has requested clarification on whether the supply of securities under Securities Lending Scheme, 1997 ("Scheme") by the lender is taxable under GST.

2. Securities and Exchange Board of India (SEBI) has prescribed the Securities Lending Scheme, 1997 for the purpose of facilitating lending and borrowing of securities. Under the Scheme, lender of securities lends to a borrower through an approved intermediary to a borrower under an agreement for a specified period with the condition that the borrower will return equivalent securities of the same type or class at the end of the specified period along with the corporate benefits accruing on the securities borrowed. The transaction takes place through an electronic screen-based order matching mechanism provided by the recognised stock exchange in India. There is anonymity between the lender and borrower since there is no direct agreement between them.

- 2.1 The lenders earn lending fee for lending their securities to the borrowers. The security lending mechanism is depicted in the diagram below: -

Lender	Securities	Approved Intermediary	Securities

- 2.2 In the above chart:

- (i) Lender is a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the scheme.
  - (ii) Borrower is a person who borrows the securities under the scheme through an approved intermediary.
  - (iii) Approved intermediary is a person duly registered by the SEBI under the guidelines/scheme through whom the lender will deposit the securities for lending and the borrower will borrow the securities;
3. It may be noted for the purpose of GST Act, "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 [Section 2(101) of CGST Act]. The definition of services as per Section 2(102) of the CGST Act, is extracted as below: -

*"services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;*

*Explanation.--For the removal of doubts, it is hereby **clarified** that the expression "services" includes facilitating or arranging transactions in securities;*

4. Securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 are not covered in the definition of goods under section 2(52) and services under section 2(102) of the CGST Act. Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.
- 4.1 The explanation added to the definition of services w.e.f. 01.02.2019 i.e. "includes facilitating or arranging transactions in securities" is only clarificatory in nature and does not have any bearing on the taxability of the services under discussion



(lending of securities) in past since 01.07.2017 but relates to facilitating or arranging transactions in securities.

- 4.2 The activity of lending of securities is not a transaction in securities as it does not involve disposal of securities. The clause 4 of para 4 relating to the Scheme under the Securities Lending Scheme, 1997 doesn't treat lending of securities as disposal of securities and therefore is not excluded from the definition of services.
- 4.3 The lender temporarily lends the securities held by him to a borrower and charges lending fee for the same from the borrower. The borrower of securities can further sell or buy these securities and is required to return the lent securities after stipulated period of time. The lending fee charged from the borrowers of securities has the character of consideration and this activity is taxable in GST since 01.07.2017.
- 4.4 Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately.
- 5 The supply of lending of securities under the scheme is classifiable under heading 997119 and is leviable to GST@18% under Sl. No. 15(vii) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended from time to time.
- 5.1 For the past period i.e. from 01.07.2017 to 30.09.2019, GST is payable under forward charge by the lender and request may be made by the lender (supplier) to SEBI to disclose the information about borrower for discharging GST under forward charge. The nature of tax payable shall be IGST. However, if the service provider has already paid CGST / SGST / UTGST treating the supply as an intra-state supply, such lenders shall not be required to pay IGST again in lieu of such GST payments already made.
- 5.2 With effect from 1<sup>st</sup> October, 2019, the borrower of securities shall be liable to discharge GST as per Sl. No 16 of Notification No. 22/2019-Central Tax (Rate) dated 30.09.2019 under reverse charge mechanism (RCM). The nature of GST to be paid shall be IGST under RCM.

## **120**

### **Circular No. 120/39/2019- GST**

#### **Clarification on the effective date of explanation inserted in notification No. 11/2017- CTR dated 28.06.2017, Sr. No. 3(vi).**

11<sup>th</sup> October 2019

Representations have been received to amend the effective date of notification No. 17/2018-CTR dated 26.07.2018 whereby explanation was inserted in notification No. 11/2017-CTR dated 28.06.2017, Sr. No. 3(vi) to the effect that for the purpose of the said entry, the activities or transactions under taken by Government and Local Authority are excluded from the term 'business'.

2. The matter has been examined. Section 11(3) of CGST Act provides that the Government may insert an explanation in any notification issued under section 11, for the purpose of clarifying its scope or applicability, at any time within one year of issue of the notification and every such explanation shall have effect as if it had always been the part of the first such notification.