

GST AMENDMENTS FOR MAY/JUNE 2025 EXAMS

~ CA BRINDAVAN GIRI SIR

List of Amendments— ToS & PoS Chapter

1) Time of Supply

- Clarification on time of supply in respect of supply of services of construction of road and maintenance thereof of NHA1 in Hybrid Annuity Mode (HAM) model
- Clarification on time of supply of services of spectrum usage services in cases where the successful bidder for spectrum allocation (i.e. Telecom operator) opts for making payments in installments



2) Place of Supply

- Clarification on Place of supply of advertising services provided to foreign client
- PoS of custodial services provided by banks to Foreign Portfolio Investors (FPIs)
- PoS of data hosting services
- Delivery vs Billing Address for E-Commerce transactions





TIME OF SUPPLY

Clarification on time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects of National Highways Authority of India (NHAI) in Hybrid Annuity Mode (HAM) model

Issue: Under HAM model of National Highways Authority of India (NHAI), the concessionaire has to construct the new road and provide Operation & Maintenance of the same which is generally over a period of 15-17 years and the payment of the same is spread over the years. What is the time of supply for the purpose of payment of tax on the said service under the HAM model?

Facts: Under the Hybrid Annuity Model (HAM) of concession agreements, the highway development projects are under Design, Build, Operate and Transfer model (DBOT), wherein the concessionaire is required to undertake new construction of Highway, as well as the Operation and Maintenance (O&M) of Highways. The payment terms for the construction portion as well as the O&M portion of the contract are provided in the agreement between National Highways Authority of India (NHAI) and the concessionaire.

A HAM contract is a single contract for construction as well as operation and maintenance of the highway. The payment terms are so staggered that the concessionaire is held accountable for the repair and maintenance of the highway as well. The contract needs to be looked at holistically based on the services to be performed by the concessionaire and cannot be artificially split into two separate contracts for construction and operation and maintenance, based on the payment terms. The concessionaire is bound contractually to complete not only the construction of the highway but also to operate and maintain the same.

Clarifications:

In HAM contract, the payment is made spread over the contract period in installments and payment for each installment is to be made after specified periods, or on completion of an event, as specified in the contract. The same appears to be covered under the 'Continuous supply of services' as defined u/s 2(33) of the CGST Act.

Accordingly, as per Sec 13(2) read with sec 31(5), **time of supply of services under HAM contract, including construction and O&M portion, should be the date of issuance of such invoice, or date of receipt of payment, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable.**

However, in cases, where the invoice is not issued on or before the specified date or the date of completion of the event specified in the contract, as per Sec 13(2)(b), **time of supply should be the date of provision of the service (i.e., the due date of payment as per the contract), or date of receipt of payment, whichever is earlier.** In case of continuous supply of services, the date of provision of service may be deemed as the due date of payment as per the contract, as the invoice is required to be issued on or before the due date of payment as per the provisions of Section 31(5) of CGST Act.

- ➔ It is also clarified that as the installments/annuity payable by NHAI to the concessionaire also includes some interest component, the amount of such interest shall also be includible in the taxable value for the purpose of payment of tax on the said annuity/installment as per Sec 15(2)(d) of the CGST Act



Clarification on time of supply of services of spectrum usage services in cases where the successful bidder for spectrum allocation (i.e. Telecom operator) opts for making payments in instalments

Issue: In cases of spectrum allocation where the successful bidder (telecom operator) opts to make payments in installments, as mentioned in the Notice Inviting Application (NIA) and Frequency Assignment Letter (FAL) issued by the Department of Telecommunications (DoT), what will be the time of supply for the purpose of GST payment on spectrum allocation services?

Clarification:

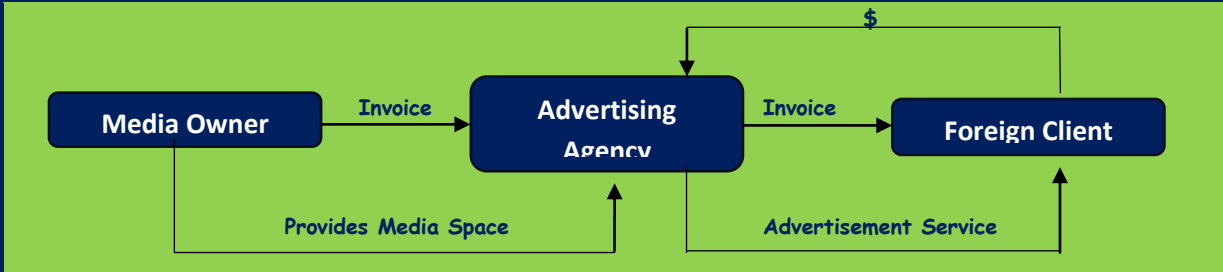
- In the spectrum allocation model by DoT, the telecom operator bids for the right to use spectrum offered by the government. The Government of India (via DoT) is the service provider, and the telecom operator is the service recipient. **GST is discharged by the telecom operator on a RCM for the spectrum allocation service (N/N 13/2017CT).**
- **If the telecom operator opts to pay in installments**, the payment is spread over the contract period, with specified payment intervals as per the FAL. Since this involves a continuous supply of services (spectrum usage) **exceeding 3 months with periodic payments.**
- **For RCM, as per Section 13(3), the time of supply is the earlier of:**
 - **Date of payment entered in the recipient's books or when the payment is debited in the bank account, whichever is earlier.**
 - **60 days after the date of the supplier's invoice or equivalent document.**
- *Some field formations consider the FAL as equivalent to an invoice and demand interest on payments made after 60 days from its issuance. However, the FAL is more of a bid acceptance document that details the auction outcome and payment schedule, not a typical invoice.*
- *According to Section 31(5)(a) of the CGST Act, in cases of continuous supply where the due date of payment is clear from the contract, an invoice must be issued on or before the payment due date. In this case, the payment due date is ascertainable from the NIA and FAL, and tax invoices should be issued accordingly.*
- **Clarification:**
 - **For upfront payments, GST is payable when the payment is made or due, whichever is earlier.**
 - **For deferred payments in installments, GST is payable when each installment is due or made, whichever is earlier.**

This treatment of time of supply applies similarly to other cases involving the allocation of natural resources by the government where payments are made either upfront or in deferred installments, constituting a continuous supply of services.



PLACE OF SUPPLY

Clarification on Place of supply of advertising services provided to foreign client



Issue 01: Whether the advertising company can be considered as an "intermediary" between the foreign client and the media owners as per section 2(13)?

Clarifications:
The agreement is in the nature of two distinct principal-to-principal supplies and no agreement of supply of services exists between the media company and the foreign client. Thus, the advertising company is not acting as an agent and hence cannot be called intermediary.

Issue 02: Whether the representative of foreign client in India or the target audience of the advertisement in India can be considered as the "recipient" of the services being supplied by the advertising company u/s 2(93) of the CGST Act, 2017?

Clarifications:
"Recipient" of the services means the person who is liable to pay consideration where a consideration is payable for the supply of goods or services or both.

- For advertising services, the foreign client is the recipient and responsible for paying the advertising co, not the consumers or target audience in India who view the advertisement.
- Even if a representative of the foreign client, such as a subsidiary or related entity based in India, interacts with the advertising company, the representative is not considered the recipient of the service. The recipient remains the foreign client if the agreement, invoicing, and payment are between the foreign client and the advertising company.

➔ Thus, the recipient of advertising services provided by the advertising company is the foreign client, not the Indian representative or the target audience.

Issue 03: Whether the advertising services provided by the advertising companies to foreign clients can be considered as performance-based services as per section 13(3)?

Clarification:
In this case, there is no requirement for goods to be physically available with the supplier of advertising services, and the presence of the recipient (foreign client or their representative) is not necessary for availing the service. Therefore, provisions u/s 13(3)(a) and 13(3)(b) of the IGST Act, which apply to goods or physical presence, do not apply.

Hence PoS u/s 13(2) = location of the recipient. Since the foreign client is located outside India, the place of supply is considered to be outside India, and the service qualifies as an export of services, subject to the conditions outlined in section 2(6) of the IGST Act

PoS where the advertising co located in India merely acts as an agent of the foreign client in engaging with the media owner for providing media space to the foreign client

In this case the advertising company would be considered an "intermediary", the place of supply for the facilitation services provided to the foreign client is determined u/s 13(8)(b), which states that the place of supply is the location of the supplier—the advertising company in India.

PoS of custodial services provided by banks to Foreign Portfolio Investors (FPIs)

<p>Meaning</p>	<p><i>Custodial Services' in relation to securities means safekeeping of securities of a client and providing services incidental thereto, and includes-</i></p> <ul style="list-style-type: none"> • <i>maintaining accounts of securities of a client;</i> • <i>collecting the benefits or rights accruing to the client in respect of securities;</i> • <i>keeping the client informed of the actions taken or to be taken by the issuer of securities,</i> • <i>having a bearing on the benefits or rights accruing to the client; and</i> • <i>maintaining and reconciling records of the services referred above</i>
<p>Clarification</p>	<p>Custodial services provided by banks or financial institutions to FPIs are not to be treated as services provided to 'account holder'. Therefore, the said services are not covered u/s 13(8)(a) and the place of supply of custodial services will not be determined u/s 13(8)(a). Therefore, the place of supply of such services is to be determined under the default provision i.e., sec 13(2)</p>



PoS of data hosting services provided by service providers located in India to cloud computing service providers located outside India

<p>Facts</p>	<p>Indian Data Hosting Service Providers (DHSPs) offer infrastructure and services for hosting data on behalf of Cloud Computing Service Providers (CCSPs) located outside India. These services involve hosting, managing, and processing large volumes of data essential for the CCSPs' operations. Services provided by DHSPs include technical infrastructure, storage, monitoring, IT management, and uninterrupted operations. There is no interaction between DHSPs and the CCSPs' end users/customers. The services are comprehensive, involving data hosting and associated operational support.</p>
<p>Clarification</p>	<ul style="list-style-type: none"> • DHSPs operate independently (on principal-to-principal basis) and are not intermediaries or brokers. • Data hosting services provided by DHSP to said CCSPs cannot be considered in relation to goods "made available" by said CCSPs to the DHSP in India. • Data hosting services are not directly related to immovable property or equipment provided by CCSPs. <p>➔ As per Sec 13(2), the place of supply is the location of the service recipient. Since the CCSPs are located outside India, the place of supply is deemed to be outside India. Such data hosting services qualify as exports, provided other conditions u/s 2(6) are met.</p>





Circular 209/3/2024: Delivery vs Billing Address for E-Commerce transactions:

Scenario: Mr. A, an unregistered person in State X, orders a mobile phone via an e-commerce platform with delivery to State Y, providing State X as the billing address

Clarification: POS u/s 10(1)(ca) will be the **delivery address recorded in the invoice** i.e, the delivery address (State Y) recorded on the invoice.

In cases where the billing and delivery addresses differ, the **supplier should accurately record the delivery address as the recipient's address on the invoice for determining the place of supply**