

GST and its impact on Salaried Employees



Garima Garg, ACS
 Manager, Aditya Birla Group
 Mumbai
garima.garg@adityabirla.com

Flip around any newspaper or business magazine and news on GST finds it home. It wouldn't be ostentatious to refer Goods & Services Tax as the *Sanjeevani* of the Indian economy. GST, also coined as Good and Simple Tax by the Hon'ble Prime Minister during the GST launch session is expected to reform the way of doing business.

The article discusses the areas of salary which will directly be impacted upon and others which will have indirect impact as the expenditure of salaried employees be impacted in the GST regime differently than the previous scenario.

GST is relevant more for businesses and not so much for salaried people. The people earning salaries will continue to pay income tax on their salary and it will continue to be deducted from their monthly pay. GST is an indirect tax and as such has nothing to do with income tax or TDS. Having said that, GST will be relevant for salaried people as this new buzz word will continue to impact every corner of their life. GST on almost all their expenses - restaurants, movies, shopping, consulting, construction, virtually everything. Depending on the rate of GST, the expenditure on these products may rise or fall. What will definitely change for salaried people is that their purchases will now be simplified and they would only look for GST on everything that they spend - better than having to deal with hundreds of other taxes on all purchase bills, like entertainment tax, luxury tax, service tax, VAT etc. Impact will be on spending like restaurant services, flying etc which will have up to 18% tax compared to current 15%. Also some goods like FMCG items may come down as will be subject to GST at 18% versus current tax of more than 27%. Almost all countries where GST is implemented have been through a small phase of inflation. INFLATION, is this the only reason why the salaried person gets affected by the GST? It is not the only case. GST will call for changes in the structuring of employer employee transactions as well. In this article we will discuss upon the areas of salary which will directly be impacted upon and others which will have impact indirectly as the expenditure of salaried employees be impacted in the GST regime differently than the previous scenario.

SEGMENT I: IMPACT ASSESSMENT ON TRANSACTIONS BETWEEN EMPLOYER- EMPLOYEE

(A) Supply by Employee to Employer

Section 7 of Central Goods and Services Tax Act 2017 provides that "supply" includes—

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- (b) import of services for a consideration whether or not in the course or furtherance of business;
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
- (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),—

- (a) activities or transactions specified in Schedule III; or
- (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.

SCHEDULE III of the CGST Act provides list of activities or transaction which shall be treated neither as a supply of goods nor supply of services. The first item in this exemption list is the Services by an employee to the employer in the course of or in relation to his employment.

Therefore, Supply from Employee to Employer would not be treated as supply provided the same is in the course of or in relation to the employment

(B) Supply by Employer to Employee

B1. Gifts to employees

Schedule I of the CSGT Act, 217 talks about Activities to be treated as supply even if made without consideration

Second proviso to Clause 2 of Schedule I provides that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

Thus, where 'gift' up to value of INR 50,000 is provided by employer to employee in a financial year, same would not qualify as 'supply'.

It is noteworthy that the term 'gift' has not been defined in the GST law

B2. Other Facilities to employees - Employee Benefits

Today the corporate houses provide a bundle of facilities clubbed together as employee benefits to their workforce in order to retain the right talent. In the GST regime, there is a need to access the scope of GST and if such benefits are taxable, who accounts for the GST: employee or employer? It is important that businesses review all the benefits they plan to provide in light of the GST provisions.

In order to ascertain the tax implications, let us first peep into the variety of such employee benefits.

Employee benefits includes any goods (food, drinks, mobile phones, computers etc.) or services (any right, privilege or facility) provided to employees.

Such benefits range from free or concessional meals, bus passes, accommodation, transport, free parking, vouchers, prizes at annual dinners etc.

It is noteworthy that employee benefits also cover benefits given by a third party on behalf of the employer to the employee: e.g. a supplier provides free goods or services to an employee on behalf of the employer.

(A) Exempted Employee Benefits:

⇒ Rent free accommodation provided to employees

- There is a specific exemption provided for services by way of renting of residential dwellings for use as residence, as per the May 19, 2017 issued Service Tax Exemptions as decided by GST Council. Hence the said services should not be liable to GST.

- Some Companies also offer house lease facility wherein Company pays rent, security deposit, brokerage, etc. to the owner and recovers rent paid from employees through payroll deduction. There will arise no GST liability for the aforementioned exemption.

- Also, it is noteworthy that where some Companies provide temporary accommodation to its employees for few weeks of joining, the same is not subject to GST as such benefit is extended by Company for official use.

⇒ Mobile/ laptop and Company Car to employees

- Where, the asset such as mobile, laptop etc are provided for official use (whereby ownership, contract, etc is with the Company) and the said asset is surrendered by the employee on the

cessation of employment, the same will not be treated as supply. Hence, such transaction should not be liable to GST.

- Companies often provide car for use to the senior management and top officials. Since such cars are owned by the Company, the same will not be treated as supply. Hence, such transaction should not be liable to GST. It is noteworthy that the credit of GST paid on purchase of such cars will not be available to the Company.

⇒ Free Meals

- Free meals/ tea/ coffee etc which are provided to all employees at large and not to identified employee/ customer are not be liable to GST.

⇒ Creche Facility

- With the Maternity Benefit (Amendment Act) 2017 getting notified in the Official Gazette on March 28, 2017, it will soon be a mandate for establishments with 50 or more employees to have facility of crèche being provided. No GST liability would arise on such facility provided by the employer. The Company, could however claim input tax credit on the goods/ services so consumed in maintaining the crèche facility.

⇒ Offsite Visits

- Many corporates organise offsite visits /excursions for employees. No GST liability would arise on such event as there is no supply *per se*. The Company, could however claim input tax credit on the goods/ services so consumed (except provisions of Section 17(5) where specifically input tax credit has been prohibited).

⇒ Insurance for employees and family members

- Corporates often provide insurance to employees without charging any premium from them. No GST liability would arise on such transaction as there is no supply. The Company would not be able to claim input tax credit on the premium so paid as the same would not be in the name of the Company and the supply of service is being made to the individual employee.

⇒ Casual /Privilege and Sick Leave

- As there is no supply of goods or services being made, there arises no question of taxability and further these are for all employees at large.

⇒ Recovery on account of loss of ID cards/ other assets

- Company sometimes recovers money from employees on account of lost ID cards, lost company laptop etc which will be treated as 'liquidated damages' and hence, should not qualify as supply liable to GST.

⇒ Employee Stock Option Plan (ESOP)

- Share allotment under ESOP shall not be subject to GST. The employees continue to be subject to perquisite tax on exercise of options into shares and capital gains as and when the sale of such shares are made.

⇒ Benefit/ concession from third party such as Education facility to Staff's Children, Medical facility to Staff & their Family will also be exempt from GST.

Applicability of GST:

1. Supply of servant, driver to top executives - for personal use,

- will be subject to chargeability of GST.
2. Recovery for club services, cable services, Gym services – On the amount charged from the employee, GST would be applicable, unless the same is specifically exempted from GST.
 3. Supplies to employees at discount: Many companies provide employee discount for their products so purchased by the Company. Say for instance, a paint company provides 30% discount on the dealer price to its employees or a garment company provides its separate shopping card wherein the employee can avail 15% off on the purchases so made from its authorised showroom. In all such cases transactions would be classified as supply and subject to GST.
 4. Sale of old assets like laptop etc to employees: Such transaction to be treated as supply and accordingly, liable to GST.
 5. Maintenance Expenditure of Vehicle for personal use could attract GST liability.

Value to be determined as per the Valuation rules as discussed in the second segment of this Article.

B3. Contributions to Provident Fund etc.

There is also a specific exemption for any contribution made to a pension, provident fund or social security fund and that the same shall not be treated as a supply of goods or services.

Service Tax Exemptions to be continued in GST as decided by GST Council release on 19 May 2017:

Services by Employees' State Insurance Corporation to persons governed under the Employees' Insurance Act, 1948 (34 of 1948);

Services provided by Employees Provident Fund Organisation (EPFO) to persons governed under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952);

Therefore contributions to EPF, SOCSO and similar organisations will not be subject to GST.

Segment II: Valuation for employer-employee transactions

Section 15 of the CGST Act provides for Valuation Rules. Explanation to Section 15 provides for Related Persons.

- (a) persons shall be deemed to be "Related persons" if—
 - (i) such persons are officers or directors of one another's businesses;
 - (ii) such persons are legally recognised partners in business;
 - (iii) such persons are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or they are members of the same family;

Since employer and employee have been deemed as 'related person' under, valuation for supplies which are taxable under GST are to be governed in terms of the Valuation Rules issued for related party transactions.

- **Open market value:** Full value in money for supply of goods at the same time of transaction between two unrelated parties where price is sole consideration.
- **Value of supply of goods of like kind and quality:** Supply of goods under similar circumstances in respect of characteristics, quality, quantity, functional components,

materials and reputation of goods.

- **Cost plus basis:** 110% of cost of production or manufacture or cost of acquisition of such goods or cost of provision of such services.
- **Residual method:** Reasonable means consistent with the principles and general provisions of Section 15 of CGST Act and the Valuation rules.

Input Tax Credit to Employers on facilities provided

As per Section 17(5) of CGST Act input tax credit (ITC) shall not be available in respect of the following:

- (a) motor vehicles and other conveyances except when they are used—
 - (i) for making the following taxable supplies, namely:—
 - (A) further supply of such vehicles or conveyances ; or
 - (B) transportation of passengers; or
 - (C) imparting training on driving, flying, navigating such vehicles or conveyances;
- (b) the following supply of goods or services or both:—
 - (i) **food and beverages**, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;
 - (ii) for transportation of goods;
 - (iii) **rent-a-cab, life insurance and health insurance** except where —
 - (A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force;
 - (iv) travel benefits extended to employees on vacation such as leave or home travel concession.

Segment III: Checklist for Corporates

Corporate houses will be required to make HR practitioners and GST Teams sit together and analyse the components of employee benefits and may recourse the following steps and procedures:

Step 1 : List all HR activities: Prepare a list of all transactions that affect employees' indirect cost and direct cost due to GST. (For Example – Medical claims can be an indirect cost and travel claim as direct cost).

Step 2: Identify and Develop Vendors Compliance List – Those registered as GST suppliers and/or those who are not. Prepare declaration form for HR suppliers and vendors who are not registered stating their price quoted or invoiced will not be revised due to GST and any increase can be reported and action to be taken under Anti-Profiteering Act.

Step 3: Develop a user friendly Business Expenses Claim Form. Employees should be instructed to provide Company's GSTIN to vendors. Employees should be asked to discuss with Vendors to issue invoice in the name of Company in case of Travel and Hotel services consumed by them for official purpose. Big corporate houses may also come up with concept of travel portal for its employees wherein central booking may be made for all employees and losing input tax credit with unregistered vendors will not be an issue. Company should preferably provide the employees list of registered vendors for hotels and accommodation and rent a cab etc.

CS