

## Lurking Shadows In GST FAQs

### Introduction

The Government has recently released Frequently Asked Questions (FAQs) on Banking, Insurance and Stock Brokers sector. While the 91 questions covered in this set of FAQs provide succor to quite a few issues plaguing the sectors covered, a few are in the nature of shadows lurking in the dark alleys of ambiguity and confusion. This article attempts to analyze such issues with which the taxpayers must exercise a cautious and well researched approach before drawing any apparent conclusions.

### The Shadows

#### **1. Taxability of Management oversight activities by Head Office (HO) in relation to branches**

The answer to question at Sr. No. 55 simply refers to Schedule – I to the CGST Act, 2017, stating supply of services between distinct entities will be a taxable supply even in absence of a consideration. Without dealing with the issue categorically as to whether the activities in question will amount to a supply of service or not, the given answer conveys the intention that they will be treated as taxable supply of service. If this be so, then the severity of the implication must be understood by all and one alike, as many organizations have operations across the length and breadth of the country, run by promoters and their team of professionals sitting at the HO. Now they will need to put a value to such supervision, or management oversight as the FAQs put it, and pay tax. The tax so paid will be allowed as input tax credit anyways. Neither the Central nor any State government lose any revenue on an overall basis. Unnecessary administrative and compliance burden, I would say, and leading to litigation.

#### **2. Taxability of additional interest in case of default of EMI**

This is dealt with in question at Sr. No. 45 and again leaves the reader befuddled. The last part of the long answer states "... and therefore would be liable to GST". Though in the earlier part of the answer, they do refer to section 15(2)(d) of the CGST Act, 2017 wherein the law covers interest or late fee or penalty for delayed payment of any consideration for any supply, it does not take into account the fact that the interest on loan, paid as component of EMI, is exempt from GST by virtue of exemption notification. Now, to a simpleton like me, if the supply value includes the interest on delay, and the supply itself is exempt, should not the interest on delay also be exempt? This assumes great significance, since it not only is a contrary stand taken as compared to erstwhile service tax laws, it also presents a contradiction within the GST law itself.

### **3. "Anywhere banking" services**

In today's world, it is commonplace for banks to provide "anywhere banking", where the account is held at one branch but the account holder can transact from any other branch in any other State in India. Though the question at Sr. No. 61 deals with the place of supply in such a situation, putting it judiciously as the place where the home branch is located, it, in the fine print, does have a shadow lurking. And that is, the service which the other branch renders to the home branch. Will that be taxed? The FAQ states that if any charges are levied by the servicing branch on the home branch that will be taxable. So if charges are not levied, it would not be taxable? Of course not. And why so, you may ask? Simply because of the mischief of Schedule I which covers supply without consideration between branches under same PAN as taxable supply. Could have been better phrased to avoid the reader being misled here.

### **4. Taxability of services supplied without consideration**

Simple enough and dealt with in an even simpler fashion, one would say. The answer to question at Sr. No. 31 gives the prima facie correct picture that this will not be taxable where such services are supplied without consideration to a recipient other than a "related party" or "distinct person". However, what it does not cover is the mischief in the phrasing of section 15 of the CGST Act, 2017 which states that the transaction value will be taxed provided price is the sole consideration for the supply. We have recently heard about the turmoil in the banking sector where various free services to customers were purported to be taxed under the erstwhile service tax regime. Though, the government was swift enough to quell the fears by coming out with suitable press releases, it may be a more onerous task this time under GST, to cover all cases which may be brought within the purview of a free supply of service but where price alone, which is zero, is not considered as the sole consideration. Each such free supply of service may have to be scrutinized in great detail to ensure there is no other consideration flowing to the bank in any other manner, other than the zero price.

### **5. "Future and forward" contracts**

Futures and forwards are derivatives by nature and have been appropriately considered under the GST laws. The FAQs cover such contracts in questions at Sr. Nos. 36 and 37, be they contracts for commodities or currencies. Now, derivatives have been defined in the CGST Act, 2017 as "securities" and securities are neither goods nor services under the Act. However, the FAQs go on to state that where such contracts have a delivery option and the settlement of the contract takes place by virtue of actual delivery of the underlying commodity or currency, such contracts would be treated as normal supply of goods and liable to GST. To my mind, the answer should have also dealt with the "time of supply" of such a supply, as the supply would take place at later date in future, and that too contingent upon the decision of the parties to take delivery or do a net settlement. And what happens if the underlying commodity is exempt from GST? Surely, that could not be taxed?

## Conclusion

Even though ambiguities exist in the FAQs, the government surely is on the right path and direction by bringing them out. What could possibly be thought of is to make the FAQs more elaborate and conclusive with all applicable scenarios, rather than being a summary answer or a one-liner. And of course, if there is a way that government can consider these legally binding, that would be just great, else they just become guiding pillars for the tax payers and quasi-instructions to the authorities leading to future litigation.



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