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CBIC issues clarifications pursuant to 54th GST Council Meeting recommendations

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Summary

In line with the recommendations of the Goods and Services Tax Council (GST Council) in its 54th Council Meeting, the Central Board of Indirect Taxes and Customs (CBIC) has issued a series of circulars to clarify key issues, ensuring consistency in GST implementation and ease of compliance across sectors. These clarifications address the availability of the input tax credit (ITC) on demo vehicles, the refund of IGST on exports, and the place of supply issues with respect to advertising and data hosting services provided by Indian companies to foreign clients.

Key clarifications

1. Availability of ITC on demo cars[1]

Issue	Clarification
ITC availability on demo vehicles, which are motor vehicles for transportation of passengers with a seating capacity of not more than 13 persons	• **ITC available:** Demo vehicles are used by authorised dealers for test drives and showcasing features to potential buyers. The primary use is to encourage customers to purchase similar vehicles; thus, it qualifies as being used to supply motor vehicles further. Accordingly, the ITC on demo vehicles is allowed, as they contribute directly to promoting and selling vehicles. • **ITC not available:** If the vehicles are used for other purposes, such as staff transportation, or if the dealer only acts as an agent for the manufacturer without selling the vehicles directly, the ITC is not available.
ITC availability and tax treatment where demo vehicles are capitalised in the dealer's books	• **ITC available:** Demo vehicles capitalised in the books of accounts qualify as 'capital goods' under the GST provisions. Further, demo vehicles are used to generate sales; they would qualify as being used in the course or furtherance of business, making the tax paid on their purchase eligible for the ITC. • **ITC not available:** In cases where depreciation is claimed on the tax component of demo vehicles, the ITC on the said tax component is not allowed. • **Tax treatment on sale of demo vehicles capitalised in books:** On subsequent sales, the dealer must pay higher of the following[2]: ➢ The ITC initially claimed on those goods, reduced by a certain percentage as specified by rule[3]. ➢ Tax calculated based on the sale price of those goods, determined as per the valuation[4] provisions.

[1] Circular No. 231/25/2024-GST dated 10 September 2024
[2] Section 18(6) of the CGST Act.
[3] Rule 44(6) of CGST Rules, 2017
[4] Section 15 of the CGST Act

Our comments:

The clarification brings much-needed relief for auto dealers who have faced challenges in claiming the ITC on demo vehicles due to conflicting rulings. In the case of ***Chowgule Industries (P) Ltd.***[5]**,** the Maharashtra AAR acknowledged the importance of demo vehicles in sales promotion and business activities and permitted the ITC on the same. The Kerala AAR[6] and West Bengal AAR[7] took a similar stance. On the contrary, the Haryana AAAR, in the case of ***BMW India Private Limited***[8]**,** had disallowed the ITC of motor cars. The AAAR decision has been challenged before the Punjab and Haryana High Court[9]. Similarly, the **Madhya Pradesh AAAR** [10] had also disallowed the ITC. The circular emphasises the distinction between demo vehicles used in the furtherance of business and those held for further supply, ensuring that the ITC is only available in the latter scenario. This clarification establishes consistency in tax treatment, easing compliance for auto dealers and reducing litigation risks.

2. Regularisation of refund of IGST availed in contravention of Rule 96(10) of CGST Rules where inputs are imported duty-free[11]:

- Rule 96(10) of the CGST rules restricts the refund of the IGST paid on exports where inputs have been imported without payment of the IGST and compensation cess by availing benefit under the Advance Authorisation scheme (AA scheme) or the Export Promotion Capital Goods scheme (EPCG scheme).
- The explanation[12] to Rule 96(10) specifically provided that the said restriction would not apply where exporters have imported inputs with payment of the IGST and compensation cess and availed the benefit under the above schemes only to the extent of non-payment of the basic customs duty (BCD).
- In accordance with the above explanation, the CBIC has regularised the refund of the IGST paid on exports in cases where the exporters had initially imported inputs without the payment of the IGST and compensation cess but subsequently, after reassessment of the bill of entry by jurisdictional customs authorities, had paid the IGST and compensation cess, along with interest.

Our comments:

The clarification regularises refunds where the IGST was paid on imports subsequently after availing the initial exemption/concession, ensuring that the refunds are not disallowed merely on account of inconsistent interpretations.

3. Place of supply (POS) related clarifications

A. **Advertising services provided to foreign clients**[13]

Issue	Clarification
Whether the advertising company qualifies as an 'intermediary'	• **An advertising company cannot be considered an 'intermediary'**: A foreign company hires an advertising agency in India to advertise its goods and services, including media planning, creating and designing content, strategising for maximum customer reach, dealing with media owners, procuring media space, etc., for displaying/broadcasting/printing of advertisements, including monitoring of the same. • The media owners raise an invoice upon the advertising agency for inventory costs. Subsequently, the advertising agency raises an invoice upon the foreign client and receives payment in foreign currency. • The relationship between an advertising agency and a foreign client is on a principal-to-principal basis with two distinct agreements (between the advertising agency and the foreign client, and another between the agency and media owners in India) because of which such advertising agency cannot be treated as an 'intermediary.'

[5] *[(2019 (7) TMI 844)]*
[6] M/s. A.M. Motors [(2018 (10) TMI 514)]
[7] Landmark Cars East (P.) Ltd.[(2024 (5) TMI 37)]
[8] (2022 (3) TMI 487)
[9] (CWP 7235/2022)
[10] Khatwani sales and services LLP [2020 (11) TMI 1066]
[11] Circular No. 233/27/2024-GST dated 10 September 2024
[12] Inserted vide Notification No. 16/2020-CT dated 23 Mach 2020 w.e.f. 23 October 2017
[13] Circular No. 230/24/2024-GST dated 10 September 2024

Whether the representative of a foreign client or the target audience in India is the 'recipient'	• **Foreign company is the recipient of the services**: Since the foreign client is liable to pay the consideration for the advertising services, they are considered as recipients of such services as the GST provisions[14]. • Further, neither the target audience nor the Indian representative of foreign clients should be considered recipients, as they do not bear the cost of advertising services.
Whether the advertising services provided to foreign clients are performance-based under Section 13(3) of the IGST Act	• **Advertising services do not qualify as performance-based services**: The supply of advertising services does not require the physical presence of the recipient in India. Accordingly, the POS cannot be the location at which the services are performed in terms of Section 13(3). • When the advertising company acts solely as an agent between the foreign client and media owners, it is considered an intermediary, and the place of supply is the location of the supplier (advertising company) as per Section 13(8)(b) of the IGST Act.
Place of supply determination for advertising services	• The place of supply shall be the location of the service recipient as per Section 13(2), which would lie outside India. This would, in turn, lead to the transaction being qualified as the export of services, subject to the fulfilment of other conditions as stipulated under Section 2(6) of the IGST Act, 2017.

B. **Data hosting services provided by Indian service providers to foreign cloud computing service providers**[15]

Issue	Clarification
Whether a data hosting service provider qualifies as an 'intermediary'	• **The data hosting service provider is not an 'intermediary' between the cloud computing service provider and their end customers:** Data hosting service providers offer data centres to cloud computing service providers, which include operating and managing infrastructure, IT systems, and maintenance on owned or leased premises. Cloud computing providers then use this infrastructure to deliver cloud-based applications to their end users. The end users access these services over the internet, with no direct interaction between the data hosting providers and the end users. • Since the data hosting services are provided on a principal-to-principal basis, without facilitating the supply between cloud providers and end users, they do not qualify as an 'intermediary' between the data hosting provider and the cloud service provider's end users.
Whether data hosting services are provided in relation to goods 'made available' by the recipient	• **Data hosting services cannot be considered in relation to goods 'made available' by cloud computing services providers to data hosting service providers**: The data hosting service providers own, maintain and manage all aspects of the data centres, including premises, hardware, and essential infrastructure and security, and charge the cloud computing companies for their services based on contractual agreements. • Since the cloud computing providers do not own or physically provide the infrastructure used for the data hosting services, the services provided to the said cloud computing service providers cannot be considered in relation to the goods 'made available' to the data hosting service provider even if the cloud computing service provider provides some of the hardware required for the data hosting services. Accordingly, the place of supply cannot be where services are performed in terms of Section 13(3)(a).
Whether data hosting services are related to 'immovable property.'	• **Data hosting services are not provided directly in relation to 'immovable property'**: Data hosting service providers use owned or leased premises to house IT infrastructure and hardware and handle various operations, such as server

[14] section 2(93) of CGST Act, 2017
[15] Circular No.232/26/2024-GST dated 10 September 2024

	monitoring, IT management, and equipment maintenance. These services include ensuring uninterrupted power, backup generators, network connectivity, security, and surveillance for cloud computing providers. • Data hosting services cannot be considered services related to immovable property; they are comprehensive services enabling cloud computing operations. Accordingly, the POS cannot be the location where the immovable property is located in terms of Section 13(4) of the IGST Act.
Place of supply determination for data hosting services provided to foreign cloud computing entities	• The place of supply for such services provided by Indian data hosting providers to overseas cloud computing companies will be the location of the recipient in terms of Section 13(2) of the IGST Act. Accordingly, where the service recipient is located outside India, the supply would qualify as export of services, subject to meeting the conditions of Section 2(6) of the IGST Act.

Our comments:

This clarification effectively resolves the long-standing issues related to advertising and data computing services provided to foreign clients by distinguishing between comprehensive advertising services and intermediary services, thereby eliminating confusion about the POS, especially in complex scenarios with multiple parties. This is a positive clarification that could notably reduce the resultant services' misclassification, leading to fewer tax disputes and enhanced compliance certainty.

Our comments

The recent clarifications issued by the CBIC focus on ensuring consistency, streamlining compliance, and reducing disputes across key sectors, such as automotive, cloud computing, and advertising. Allowing the ITC on demo vehicles used by the authorised dealers aligns with the purposive interpretation of the GST law, aiming to support business operations and improve tax efficiency. Additionally, the clarifications address disputes related to the contracts entered by advertising and data computing service providers with third parties in India and related tax implications in the case of foreign clients. The circular emphasises that the privity of the contract is crucial in determining the intermediary status, and the mere involvement of multiple parties does not necessarily make a service an intermediary. These services essentially qualify as an export of services, thereby eligible for availing export benefits.

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