

TAXABILITY OF IMPORT OF LEGAL SERVICES UNDER GST

By

Srinivas Kotni, Managing Partner & Founder and Rishabh Dixit, Associate

The present day globalised economies provide many opportunities for cross border trade in goods and services. India being a member state of World Trade Organisation and having undertaken international obligations for providing such opportunities for trade, is also duty bound to provide regulatory support to all the stakeholders, without creating unnecessary tariff or non-tariff barriers to free trade. It is also bound to provide national treatment to all the international parties involved from the signatory countries.

We all know that India brought in a path-breaking fiscal regime in the form of Goods and Services Tax (GST) in 2017. In this note we are examining the provisions concerning “import of services” in the GST regime, as applicable today, in the context of import of legal services into India.

The "taxable event" in the GST regime as mandated under Section 7 of the Central Goods & Services Tax Act, 2017 (CGST Act) is "supply". Thus the concept of "supply" is very crucial in the GST regime, as it is “supply” which determines the levy of GST. As per the CGST Act, "supply" includes all forms of supply of goods or services such as sale, transfer, barter, exchange, license, rental, lease, or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

It should be noted that the concept of “supply” under the GST law is broad and encompasses a wide range of transactions to ensure that most of the economic activities are covered under the GST net. The initial determination whether a particular transaction amounts to “supply” or not is thus significant in determining the applicable tax implications under the GST regime.

Import of service is also 'supply'

The phrase “import of services” has been defined under Section 2(11) of Integrated Goods & Services Tax Act, 2017 (IGST Act) to mean the supply of any service, where :

- The supplier of service is located outside India;
- The recipient of service is located in India; and
- The place of supply of service is in India;

As per section 7(1)(b) of the CGST Act, import of service, for a consideration whether or not in the course or furtherance of business, is 'supply' and subject to GST. Also as per entry no. 4 of Schedule 1 to Section 7 (1)(c) of CGST Act, 'supply' even if made without consideration includes import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business. In the context of Indian GST law, the concept of "import of services" plays a significant role in determining the tax implications on services provided by a supplier located outside India to a recipient in India.

It is also to be noted that in terms of Section 7(4) of the IGST Act, supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade and commerce. As a natural corollary to that, on such transactions of import of services, a consolidated IGST would be levied.

Place of Supply

Thus the definition of “import of services” is laid down under Section 2(11) and the treatment is laid down under Section 13 of the IGST Act, which pertains to the determination of the “place of supply of services” where the location of the supplier of services or location of recipient is outside India.

By determining the place of supply as the location of the recipient or the supplier in such cross-border service transactions, the IGST Act ensures clarity and coherence in applying the tax rules concerning import of services and enables the computation of IGST on such transactions.

In this context it is pertinent to refer to Section 13 of IGST Act which helps to determine the “place of supply” where the location of the supplier of service or the location of the recipient of service is outside India. Sub-section (3) of Section 13 of IGST Act determines the place of supply of services where the services are actually performed. The relevant portion of Section 13 of IGST Act, 2017 is extracted as under for ease of reference :

"Section 13. Place of supply of services where location of supplier or location of recipient is outside India.

(1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.

(2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

(3) The place of supply of the following services shall be the location where the services are actually performed, namely:—

(a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:

Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process;

(b) services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.

This provision (Section 13(3)(b) of IGST Act) *inter alia* covers the scenarios where the services supplied requires individual, represented either as the recipient of service or a person acting on behalf of the recipient,

also require/mandate the physical presence of the receiver or the person acting on behalf of the recipient, with the supplier for the supply of the services.

Example in the context of legal services provided by a foreign lawyer / law firm

Suppose a multinational corporation in Mumbai, India, needs legal assistance regarding a complex merger and acquisition (M&A) deal. They decide to engage a reputable law firm based in New York City, USA, specializing in corporate law. The legal services provided by the New York-based law firm involves detailed consultations, strategizing sessions, and contract negotiations in India, through the foreign lawyers visiting India to close such transaction. However, crucial to the provision of these legal services is the physical presence of the company's executives or their authorized representatives (recipient in India) during important meetings and discussions with the foreign lawyers visiting India to assist in the completion of the subject transaction (Supplier based outside India). **In this scenario, Section 13(3)(b) of the IGST Act applies because the legal services to the Indian multinational necessitate the physical presence of the recipient or their representative (the company's executives) with the supplier (the law firm) for the supply of services.**

Therefore, the place of supply for these legal services would be determined by the location where the company's executives or their representatives are physically present during these consultations and meetings along with the foreign lawyers, which is Mumbai, India.

Let us now consider a situation where, the transaction is supported by the lawyers of such New York-based law firm through online mode, without visiting India. We all know that in the modern times, this is quite possible and happens all the time that the legal services are offered through online mode, in view of the advanced digital technologies available these days for delivering such services.

In this case also, even though the legal services are provided by a law firm based in the United States through online mode, the place of supply is considered to be in India, in view of Section 13(2) which provides that the place of supply of services, except the services specified in sub-sections (3) to (13), shall be the location of the recipient of services, which in the present case is Mumbai, India.

Thus irrespective whether the foreign lawyers visit India to deliver such M&A related services or offer the said services through online mode, the place of supply of services would be India and the said services would qualify as “import of services” either under Section 13(3)(b) for fly in fly out legal services by the foreign lawyers / law firm, or under Section 13(2) of the IGST Act in respect of provision of online legal services for such transactions.

Reverse Charge

If services are imported into India from abroad, the recipient of such services is liable to pay GST under reverse charge mechanism. As per Notification Nos. 13/2017-CT (Rates) and 10/2017-IT (Rates) dated 28th June 2017, made effective from 1st July 2017, if the supplier of service is located in a non-taxable territory, the recipient of services located in the taxable territory (i.e. India) is liable to pay GST under reverse charge mechanism. Thus though the general rule is that the supplier pays GST and collects it from the recipient, in case of import of services into India, the responsibility to pay the GST is shifted to the recipient of service under the reverse charge mechanism. This is applicable even to legal services imported into India.

On legal services tax will be payable under reverse charge mechanism (RCM)

The aforesaid Notification No. 13/2017-C.T. (Rate), dated 28th June, 2017 also deals specifically with legal services. The relevant portion of the Reverse Charge notification qua the legal services is extracted for ease of reference :-

“The Central Government on the recommendations of the Council hereby notifies that on categories of supply of services mentioned in column (2) or the Table below supplied by a person as specified in column (3) of the said Table, the whole of Central Tax leviable under Section 9 of the said Central Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services as specified in column (4) of the said Table :-

<i>S. No.</i>	<i>Category of Supply of Services</i>	<i>Supplier of Service</i>	<i>Recipient of Service</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
.....			
2.	<p><i>Legal Services</i></p> <p><i>Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.</i></p> <p><i>Explanation. - ‘Legal service’ means any service provided in relation to advice, consultancy or assistance in any manner and includes representational services before any Court, Tribunal or Authority.</i></p>	<p><i>An individual advocate including a senior advocate or firm</i></p>	<p><i>Any business entity located in the taxable territory</i></p>

Conclusion

To conclude, in case a business entity in India imports any legal services (may it be offline or online), the same is leviable to IGST in the hands of the recipient in India, under the reverse charge mechanism, as the place of supply is in India.
