

## ERGO

*Analysing developments impacting business*

### DIRECTORS' REMUNERATION TO ATTRACT GST

9 April 2020

Recently, the Rajasthan Advance Ruling Authority (AAR) in the case of *M/s Clay Craft India Private Limited [2020 (4) TMI 228]* has held that remuneration paid to Directors would attract Goods and Services Tax (GST).

The issues for consideration before the AAR were:

- Whether GST is payable under Reverse Charge Mechanism (RCM) on the salary paid to the Director of a company; and
- Whether the situation would differ in case the Director is also a part time Director in another company.

Deciding the issue, the AAR held that the consideration paid to the Directors by the company will attract GST under RCM as it is covered under Entry 6 of Notification No 13/2017 - Central Tax (Rate) dated 28 June 2017 (RCM Notification). The AAR also observed that the consideration paid to the Directors are against the supply of services provided by the Directors to the Company and that the same was not covered under Serial No (1) of Schedule III of the Central Goods and Services Tax Act, 2017, since the Directors were not employees of the Company. It was further observed that this would also apply in cases where a Director was a part-time director in another company.

Notably, the above-mentioned ruling concurs with an earlier ruling given by the Karnataka Advance Ruling Authority in the case of *Alcon Consulting Engineers [2019 (30) G.S.T.L. 678 (GST-AAR)]*, wherein it has been held that directors are not employees of the company and remuneration paid to Directors would be liable to GST under RCM. However, the Karnataka Advance Ruling Authority has at one place also held that question before them was not to decide whether services by directors are taxable or not. Hence, said Ruling appears to be ex-facie inconsistent.

Both the advance rulings have made an overarching observation that Directors are not employees of the company, without adducing any cogent reasons.

#### Comments:

We believe that both rulings have failed to consider certain critical aspects and are hence flawed for the following reasons:

- As per the Companies Act, 2013, a Director can wear the dual hat of a 'director' as well as that of an 'employee'. The rulings do not really deal with the question

as to whether payments made to a director in the capacity of an employee were exigible to GST or not; and

- The nature of payout has not been considered in these rulings. It needs to be examined whether the remuneration paid to directors is towards his services as an independent supplier or as an employee.

The principles governing the taxability of services rendered by a Director remains the same under the Service Tax and the GST regime. The Hon'ble Central Excise and Service Tax Appellate Tribunal (CESTAT) in the case of *M/s Allied Blenders and Distilleries Private Limited v Commissioner of Central Excise and Service Tax, Aurangabad [2019 (1) TMI 433 (CESTAT Mumbai)]*, rendered under the Service Tax regime, has taken the view that payments made to whole time directors in the capacity of an employee were not liable to Service tax; and hence there seems to be no basis to arrive at a different view in the case of the GST regime. Having said that, the onus is on the Company to establish that the pay out to a Director was in the capacity of an employee basis the contract of employment.

- Arvind Baheti, Partner and Rahul Dhanuka, Principal Associate

For any queries please contact: [editors@khaitanco.com](mailto:editors@khaitanco.com)

We have updated our Privacy Policy, which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).