

Newsflash: No TDS on GST component comprised in the payments made to residents

CBDT Circular No. 23 of 2017 dated 19 July 2017



1.0 Brief Background

In the pre- GST era, the Central Board of Direct Taxes (CBDT) had issued Circular No. 1/2014 dated 13.01.2014 clarifying that tax is not required to be deducted under Chapter XVII-B of the Income-tax Act, 1961 on Service Tax component comprised in the payments made to residents wherever in terms of the agreement or contract, the Service Tax portion is shown separately.

Under the GST regime - effective 1 July 2017, issue arose as to whether payer should deduct tax at source on the amount inclusive of GST or exclusive of GST. While the inclusion of GST component would have led to a higher amount of tax being deducted, the exclusion would have meant lesser deduction of tax.

2.0 New CBDT Circular- Tax would be deducted on the payment exclusive of GST

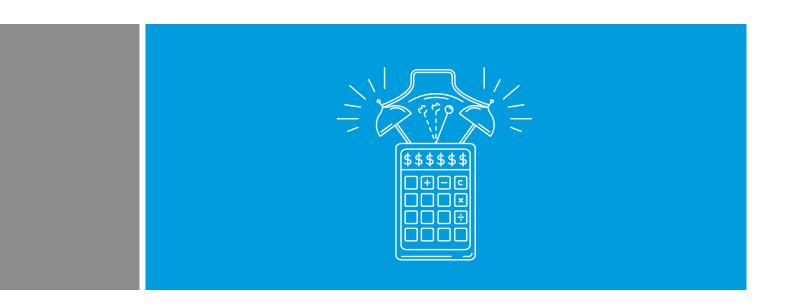
To clarify this aspect, the CBDT has recently issued a new circular stating that the payer shall deduct tax at source on the amount without including GST component, wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is shown separately.

GST for these purposes shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax.

Further, it has been clarified that any reference to 'service tax' in an existing agreement or contract which was entered prior to 01.07.2017 shall be treated as 'GST on services' with respect to the period from 1 July 2017 onward till the expiry of such agreement or contract.

3.0 Our comment

The CBDT has basically applied the spirit of earlier circular dated 13.01.2014. In this sense, it shows consistency and uniformity in the approach. However, like earlier circular, this circular is silent on the issue as to whether tax should be deducted on a GST exclusive basis while making payment to a non -resident and thus it needs to be analyzed separately.



For further information please contact:

RSM Astute Consulting Pvt. Ltd.

13th Floor, Bakhtawar, 229, Nariman Point, Mumbai - 400021.

T: (91-22) 6108 5555 / 6121 4444 F: (91-22) 6108 5556 / 2287 5771

E: emails@rsmindia.in
W: www.rsmindia.in

Offices: Mumbai, New Delhi - NCR, Chennai, Kolkata, Bengaluru, Surat, Hyderabad, Ahmedabad, Pune, Gandhidham and Jaipur.



facebook.com/RSMinIndia



twitter.com/RSM_India



linkedin.com/company/rsm-india

RSM Astute Consulting Pvt. Ltd. (Including its affiliates) is a member of the RSM network and trades as RSM. RSM is the trading name used by the members of the RSM network.

Each member of the RSM network is an independent accounting and consulting firm each of which practices in its own right. The RSM network is not itself a separate legal entity of any description in any jurisdiction.

The RSM network is administered by RSM International Limited, a company registered in England and Wales (company number 4040598) whose registered office is at 50 Cannon Street, London EC4N 6JJ .

The brand and trademark RSM and other intellectual property rights used by members of the network are owned by RSM International Association, an association governed by article 60 et seq of the Civil Code of Switzerland whose seat is in Zug.

This newsflash is general in nature. In this newsflash we have summarized CBDT circular no. 23 of 2017 dated 19 July 2017. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said notification and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

20 July 2017