NON-RESIDENT TAXABLE PERSON UNDER GST

INTRODUCTION

The concept of non-resident taxable person ('NRTP') introduced under the GST laws has led to raised eyebrows by the foreign companies doing, or intending to do, business with India. The concept applies equally to suppliers of goods, as well as services, based outside India and having customers/clients in India.

Section 2(77) of the Central Goods and Services Act, 2017 ('CGST Act') defines NRTP as:

> *"non-resident taxable person" means* **any person** *who* **occasionally** *undertakes* **transactions involving supply of goods or services or both**, *whether as principal or agent or in any other capacity,* **but who has no fixed place of business or residence** *in India;"*

The CGST Act further lays down the compliance requirement for registration, payment of taxes and related compliances under Section 24 covering NRTP under the mandatory requirement for obtaining registration, irrespective of the exemption for turnover threshold of INR 2 million (INR 1 million for specified States). Further, a person registered as NRTP is required to estimate the taxes and pay to the Government in advance. Further, NRTP is entitled to registration for a limited period of 90 days, further extendable by a period not exceeding another 90 days.

ISSUE

This, then, makes it imperative to determine whether any person situated outside India would fall under the definition of NRTP, and if so, comply with the necessary provisions of the CGST Act.

On a simple reading of the definition of NRTP, it appears that every transaction of import, of either goods or services or both, by an overseas supplier would fall under the mischief of the definition. But how can that be ? Did the lawmakers intended to do this ? Let us examine this in reference to other GST laws and a closer reading of the definition.

Import of goods into India are governed by the provisions of Integrated Goods and Services Act, 2017 ('IGST Act'), and accordingly, IGST is charged by Customs authorities on such imports. Payment of such IGST is the primary responsibility of the importer based in India. Surely, a foreign exporter would not be required to register in India as NRTP and pay taxes in advance and obtain registration for the limited period every time the import happens. At the same time, the Indian importer would be paying IGST on the import. So, obviously, double taxation cannot happen, and it can be said that in such a situation, the foreign exporter would not be considered as NRTP and provisions of the GST laws would not apply.

However, complexity arises in the case of supply of services from outside India, since in this case, Customs authorities do not come into the loop. The place of supply rules enunciated in IGST Act, do not have any mention of NRTP at all. They simply lay down the situations where any supply of services would be considered to have been supplied in India or outside India. Further, the mechanics of reverse charge provisions compel the recipient of services to pay GST if the supplier is outside India and the place of supply is determined to be in India. Again, we face an anomaly where the supplier may be considered as NRTP and pay tax in advance and, at the same time, the recipient pays tax under reverse charge.

This then brings us to the use of the word "*occasionally*" in the definition of NRTP. Since this word has not been specifically defined under the GST laws anywhere, we fall back upon the premier English language dictionaries to determine the meaning of the word "*occasionally*". The definition

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therein reveals that the word signifies the nature of the transaction as being "*casual*" or "*intermittent*". Simply put, that which is not "*regular*" in nature.

And now the complexity increases. Does this mean that a single one-off transaction of supply of service would make the overseas supplier fall under the definition of NRTP and that multiple transactions would not ? Or that a single transaction extending over more than 6 months would keep the supplier out of the mischief of NRTP and that anything for a shorter duration would ? And if by any thought, the supplier does become NRTP, then how would double taxation be avoided by the implications of reverse charge and related responsibility of the recipient of supply ?

If, by above, it is determined that in neither the supply of goods or services, the foreign supplier would not be treated as NRTP, then the mother question is – when will it be treated as NRTP ? What kind of transactions would make him liable as NRTP ? Easier dealt with for goods since it may be considered that when a foreign supplier comes to India, buys goods locally and supplies them, NRTP provisions would be invoked. But then, for services, will it be so easy ? Certainly not, since the performance based services are specifically covered in the place of supply provisions under Section 13 of the IGST Act, any consequently, reverse charge provisions will get invoked.

Maybe the intention of the lawmakers was to treat NRTP the same way as they have treated Online Information and Database Access or Retrieval services ('OIDAR'), where the burden of compliances have been shifted on the foreign supplier of OIDAR only where the supplies are being made to Government, government organisations or individuals not registered under GST and using the supplies for personal purposes. If similar analogy was applied to NRTP, it would be understandable. But the letter of the law speaks otherwise.

CONCLUSION

Frankly, there are no answers at present. The concept seems to have been picked up from that of casual taxable person which had a place in the erstwhile VAT laws and also covered under the GST laws. But extrapolating the same to a non-resident gives birth to enormous confusion and complexity. The Government should come out with a clarification or notification suitably to prevent any ambiguity or litigation in future.

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