

*Guidance note on GST for
Association of Mutual Funds in India*

June 2017

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Background

India is moving towards Goods and Services Tax (GST) regime, which would substantially transform the current Indirect Tax landscape in India. In India, due to the federal structure of the Constitution, the Central Government and the State Government have the power to levy a tax on their respective activities. Keeping the federal structure as the base, the Indian GST has also been designed in the form of Dual GST. This means that on every transaction of supply of goods and services, both the Central Government and the respective State Government would levy their respective GST.

Central Goods and Services Tax (CGST) and State Goods and Services Tax (SGST) would be applicable on intra-State supplies and Integrated Goods and Services Tax (IGST) on inter-State supplies. Where the place of supply and location of supplier are in the same State, the supply would be considered as an intra-State supply. Whereas, if the place of supply and location of supplier are in different State, then the supply would qualify as an inter-State supply.

Accordingly, CGST, SGST, IGST and Union Territory Goods and Services Tax (UTGST) would be various taxes which would get levied under the GST regime and legislation in this regard have got enacted.

GST would bring about a radical change from the existing tax regime and it would change the way businesses are carried out today. However since the law is still in its evolution stage there are various open issues, ambiguities and grey areas with respect to key aspects like taxability, location of service supplier, place of supply, etc., especially for entities having operations in multiple States.

In view of the above Association of Mutual Funds in India (AMFI) on behalf of the Mutual Fund (MF) sector, has approached PricewaterhouseCoopers Private Limited (PwC) for seeking responses to specific queries as listed below. For the ease of reference, we have categorized the queries into four sections:

<i>S.N.</i>	<i>Queries</i>
<i>I. Business structure and inter-company transactions</i>	
1	Which expenses should be included by branches while cross charging to HO
2	Which expenses should be included by HO while cross charging to branches
3	In order to avoid circular billing, can it be said that HO is not providing any service to branch
4	Is actual movement of funds required for inter-Company transactions
5	For expenses incurred at branches, is the AMC required to open separate bank accounts for each State
<i>II. Taxability under GST</i>	
6	Taxability on portfolio management services provided to clients
7	In case of portfolio management services provided by AMC to clients, which address should be considered as the location of client – communication address or KYC address
8	What would be the implication on input tax credit on account of services provided by AMC to offshore clients
9	Taxability on reimbursement of expenses by MF from the AMC (spill-over charges)
10	Taxability on reimbursement of expenses by AMC from the MF
11	Tax implications on Gold ETF schemes

III. Distributor related queries	
12	Taxability on upfront brokerage paid to distributors by AMC and trail brokerage paid to distributors by MF
13	Reverse charge implications on commission paid to unregistered distributors
14	Can a registered distributor claim the basic threshold exemption of INR 20 lakhs
15	Tax implications on commission clawed back
16	Taxability on transaction charges collected by MF and paid to distributors as per SEBI
17	Taxability on referral fees paid to distributors with respect to clients for portfolio management services
18	Transition implications on distributor's commission
IV. General queries	
19	Whether un-availed service tax under current regime can be carried forward
20	Under GST, whether AMC would be allowed to take credit of capital goods like vehicles, office equipment, IT and furniture and fixtures
21	Is GST required to be paid under reverse charge on petty cash expenses such as tea and coffee, office stationery, etc.
22	Assessment process in States. Whether State wise financial statements required to be maintained

Our comments

A. Business structure and inter-company transactions

1. MF is a mechanism for pooling the resources of a large number of investors in a Fund. The fund invests in various securities, whereas the individual investors are issued units of the fund, thereby making them indirect investors of the various securities where the fund has invested. The profits/losses of the fund are shared by the investors in the proportion of their investments.

A brief summary of the key stakeholders of a MF is provided below:

- Fund - A MF is to be set up in the form of a trust. The trust (the Fund) is established by a sponsor/s who is like a promoter of a company. The amounts invested by various investors (unitholders) in the MF are pooled in the Fund.
- AMC - The Fund is managed by an Asset Management Company (AMC) approved by SEBI. The AMC is responsible for floating the investment schemes of the Fund and managing the funds mobilized under such schemes. The AMC charges a management fee to the Fund for managing its investments. As per SEBI regulations, the AMC management fees as well as other expenses of the Fund cannot exceed a specified percentage of the net value of the assets of the Fund (as prescribed by the SEBI) plus service tax on the management fee. Therefore, in case the expenses of the Fund exceed the specified percentage, such incremental expenses are borne by the AMC.

Apart from managing the MF's investments, the AMC may also provide portfolio management services (PMS) to other customers in consideration for PMS fees and investment advisory services to other Funds, which are usually located outside India.

- MF distributors and agents – The various schemes floated by the MF are distributed by the MF distributors and agents in consideration for a commission.

Operating Structure under GST for the MF Sector

2. Section 7 of CGST Act provides for the scope of the term 'supply'. In terms of such provision, it would cover all forms of supply of goods or services made for a consideration in the course of business. Hence, it is a very wide import and would apply on all kind of activities for a consideration. Additionally, the provision also specifically provides that certain supplies mentioned in Schedule I to the Act, would be deemed to be taxable supplies liable to GST, even if made without any consideration.
3. Schedule I covers various activities, which would be treated as taxable supplies, even if made without any consideration. Clause 2 of such Schedule I, provides for supply of goods or services between distinct persons when made in the course or furtherance of business. The term 'distinct person' is not defined under the CGST Act. Sections 25 of the CGST Act, provides that if a registered person has an establishment in another State then such establishments would be treated as distinct persons.

4. An AMC operates across the country through various branches. Given the above, the AMC head office (HO) and the AMC branches located in different States would be treated as distinct persons under GST regime. Thereby, transactions between the HO and branches would be liable to GST, even if made without consideration.
5. As per the India GST design, input tax credit (ITC) would have to be availed qua each registration and utilization thereof would also have to be done for each such registration only. Hence, unlike the current service tax regime, where all the output liabilities are paid and credit is availed by the HO, availment and utilization of ITC will have to be mapped separately for the HO and each of its branches and interest adjustment of ITC is not allowed.
6. The MF ordinarily has only one place of business in the country and is generally registered at the premises of the HO. The contract is entered into between the HO and the MF. It is first imperative to understand who is the service provider i.e. whether the HO or the branches. For determining the location of supplier, we think the following factors are relevant to be considered:
 - Capability of the service provider
 - Essence of the contract as to who is required to perform the service i.e. substance of the transaction
 - Who is performing the essential functions and assuming risks
 - Procedural formalities and practical perspective
 - Location where the regulatory license has been obtained
7. Accordingly, in case of asset management services to MF and similar other services such as portfolio management services to clients and investment advisory services to other Funds, the location of supplier would be the HO, since the HO is normally undertaking these services .
8. Further, the asset management services are provided by the HO, where the Fund managers are normally located. The branches ordinarily undertake marketing activities, developing and maintaining investor relationship, developing and maintaining distributor relationship, etc. The branches undertake these activities in terms of the 'Investment Management Agreement' (IMA) entered into by the AMC with the MF. Under the common law, the HO and its branches are one and hence it would be said that the branches are also undertaking the activities in terms of the IMA, however due to the deeming fiction of 'distinct persons' created under the GST law, we are of the view that the HO would be said to be providing services to the MF and the branches would be said to be providing services to the HO.
9. It also needs to be noted that the MF Sector is unique in its set up. Due to the trust structure, the AMC has a contract with the MF and it does not have any privity of contract with the unitholders. This is different vis-à-vis the other financial services sectors like life insurance, banks, brokers, etc. where in these sectors the operating or the servicing entity has a direct contractual arrangement with the customer. Accordingly, in these sectors, it seems that in GST they may or they can seek to proceed with a model, whereby each of the branches will contract with their customer and discharge GST directly rather than through the HO. However, in the MF sector, the HO does not have any privity of contract with the unitholders and the branches are not undertaking the key functions as per the IMA, to qualify as performing services to the MF.

Activities between branches and HO and taxability thereof:

10. HO provides assistance to branches in setting up the business, administration, operation, human resource planning, information technology support, etc. These 'enterprise services' are essential for a branch to exist and operate. As HO and branches are to be treated as distinct persons under GST, these enterprise services provided by HO would be deemed to be supplies to branches and hence would be liable to GST. Thus HO would be required to cross charge to branches and pay GST (IGST). The branches would be able to avail ITC of the cross charge made by the HO.
11. As mentioned above, branches undertake marketing activities, developing and maintaining investor relationship, developing and maintaining distributor relationship, etc. For such activities, it would have to cross charge to HO and pay GST (IGST). The HO would be able to avail ITC of the cross charge by the branches.
12. Thus in view of the above, the ITC and billing process for the HO and the branches would be as under:

Sr. No.	Particulars	Branch	HO
1	Output invoice	To be raised on HO	<ul style="list-style-type: none">• To be raised on MF• To be raised on Branch for supporting the branch operations
2	Input tax credit	Expenses incurred by the branches and the allocations received from the HO	Expenses attributable / incurred for the HO State and the allocations received from the branch*.

* Since there would be only one registration for the State where the HO is located, there would be no interest billing or cross charge between the HO and the branches in the State of the HO.

Now, let us respond to the specific queries raised with respect to the operating structure in GST:

***Which expenses should be included by branches while cross charging to HO?
Which expenses should be included by HO while cross charging to branches?***

13. As per Rule 2 of the Valuation Rules, value of supplies made to distinct persons (other than supplies made through agent) will be determined in the following sequential order:
 - Open market value of such supply.
 - Value of like kind and quality of supply of goods or services or both.
 - 110% of the cost of provision of services.
 - Reasonable means consistent with the principle and general provisions of Section 15 of the CGST Act and the Rules e.g. arm's length pricing on the basis of functions, activities and risk undertaken by the supplier.

In case of services where the open market value of such supply or the value of like kind and quality of services is not available, it is not mandatory to adopt cost plus 10%. In such cases the service provider can opt for any reasonable basis and then opt for the cost plus 10% option. Additionally, proviso to Rule 2 provides that in cases where the recipient of service is eligible

for full input tax credit then the value declared on the invoice shall be deemed to be the open market value for such goods or services.

Given the above relevant Valuation provisions, the applicability to AMC for its inter-branch (within India) transactions would be as follows:

- Open market value is the first option. However open market value can only be applied when an open market price is available. Ordinarily open market value for inter-branch services would not be available. Hence option 1 can be ruled out.
- Value of like kind and quality of supply of services is the second option. Again services comparable to inter-branch services would ordinarily not be available. Hence option 2 can also be ruled out.
- The proviso to Rule 2 accepts any price declared on the invoice to be accepted as the open market value in case where the recipient is eligible for full credit. A literal reading of this suggests that a minimal value of say INR 1 may also be charged in case of cross charge by HO to branches, if the branches are not required to reverse any credit. However, billing at INR 1 could be contentious and accordingly we are of the view that a reasonable value needs to be allocated.
- Hence it is advisable that the branches cross charge the HO at cost and adds a markup of 10%. The value should include all direct and indirect costs incurred by the branches including salary. During the process of representing for GST with the CBEC, the authorities informally had mentioned that employees of a Company are employees all across and their cost should not be cross charged. Though this seems to be intention, it has not been specifically provided in the law. Further, if one peruses the structure of India GST design, it seems that one of the objective of having to tax transactions between distinct persons is to ensure that the States get their respective share of revenue and hence the intention is to tax the interest transactions as if they were between independent people. If the transaction in question would be between independent people, then in the process of computation of cost, salary would form a part of such cost calculation and hence we are of the view that salary should also be included, unless it is specifically clarified by the authorities to be excluded.
- The same process should also be adopted for the purpose of cross charge by the HO to the branches. Such cross charge shall include, the common expenses and salary of the common functions, which are incurred at the HO and are relevant for the operations of the branches eg. Finance team cost, HR team cost, etc. We understand that in the process of marketing of MF schemes, the HO undertakes various promotional measures. These measures it undertakes as one its function under the IMA and also its agreement with the distributors. Similarly in the GST regime, when the HO would be undertaking these expenses, it would be undertaking these expenses as its core function and not for other branches. Accordingly, certain expenses like marketing and advertising expenses can be said to be HO expenses only and not an expense of the branch. These expenses are incurred by the HO to facilitate its own output service provided to MF and hence such expenses should not form a part of the calculation for cross charge. However, the authorities can raise a concern on the basis of cross charge and hence it is important that a framework document is put in place, which specifies the basis and the arrangement between the HO and the branches.

- Separately, HO can consider opting for Input Service Distributor (ISD) registration to distribute credit of common third party expenses. This would require taking a separate ISD registration and undertaking ISD compliance. In such a situation, the HO will have to provide the ISD GSTIN to the vendors providing services, credit of which is to be distributed as an ISD. Notwithstanding ISD, cross charge for salary of the common functions, would still have to be undertaken. The benefit of ISD is that there would not be any requirement to apply any mark up by the HO, while distributing the credit to the branches.

We recommend that AMCs put in place an inter-company framework document, to document the activities that would be performed inter-se and how the inter-se activities would be compensated. Such a framework agreement would become a guiding principle for valuing transactions inter-se and at the same time it will also be helpful in explaining to the authorities the basis adopted for the valuation.

14. Other queries:

Sr. No.	Other Queries	Response
3	In order to avoid circular billing, can it be said that HO is not providing any service to branch	Due to the deeming fiction that activities between distinct persons would be said to be deemed supplied even if there is no consideration, we are of the view that it cannot be said that the HO is not providing any service to the branches.
4	Is actual movement of funds required for inter-Company transactions	No
5	For expenses incurred at branches, is the AMC required to open separate bank accounts for each State	No.

Action points

- State wise registration to be obtained under GST and also separate registration as an ISD to be obtained, if opted.
- AMCs to determine the cross charge value between and HO and the branches and vice versa
- Framing an intra-company (HO-Branch) policy document for monthly cross charges under GST

B. Taxability under GST

- As iterated, supply of goods/services would be liable to GST. As per Section 7(1) of the CGST Act, the term 'supply' includes all forms of supply of goods or services or both in the course or furtherance of business, such as sale, transfer, barter, exchange, license, rental, lease or disposal, import of goods or services and other deemed supplies.
- As per Section 12(2) of the CGST Act, place of supply for the aforementioned services supplied to –
Registered person – shall be location of such person
Unregistered person – shall be location of such person as per the records of the supplier, if address not available then location of supplier
- Given the above, taxability on the following transactions is as under:

S.N.	Transaction	Comments
1	Portfolio management fees/ Investment advisory services	<p>a. This is a taxable supply liable to GST. The place of supply would be the location of recipient on the records of AMC, if the client is not registered. In case of registered client, the place of supply would be his registered place of business.</p> <p>b. Ordinarily the customer would provide more than one address. The law is silent on which address to be selected. We would recommend that latest address on record should be considered. Further, the customer should also be advised that in case of change of address, the details should be informed to the AMC.</p>
2	What would be the implication on input tax credit on account of services provided by AMC to offshore clients	<p>a. As per Section 2(6) of the IGST Act, a service would qualify as an export of service subject to the following conditions:</p> <ul style="list-style-type: none"> the supplier is located in India the recipient of service is located outside India the place of supply is outside India payment is received in convertible foreign exchange the supplier and recipient are not mere establishments of a person <p>b. As per Section 16 of the IGST Act, export of services are covered under zero-rated supplies i.e. the transaction would be considered as a taxable transaction, just that the rate of tax would be zero. Since export transactions are taxable transactions, the credit of expenses attributable to zero rated supplies shall be available.</p> <p>c. As per Section 13(2) of the IGST Act, in case of services provided by AMC to clients located outside India, the place of supply would be location of the recipient which is outside India.</p>

		<p>d. Hence the services provided by AMC to clients located outside India would qualify as export of services subject to satisfaction of other conditions as well.</p>
3	<p>Reimbursement of expenses incurred by MF on behalf of AMC and recovered from AMC (spillover charges). Further whether interest cost on borrowing or commission recovered from the AMC, liable to GST</p>	<p>a. As iterated, in a MF sector the extent of expenditure that a MF is allowed to charge to the Fund is prescribed by the Securities Exchange Board of India ('SEBI') vide Regulation 52 of the SEBI Mutual Fund Regulations, 1993, wherein certain limits are prescribed. The expenses majorly constitute the AMC fees and marketing expenses. In case the expenses exceed the aforementioned prescribed limit, the spillover of expenses are borne by the AMC in its books of accounts.</p> <p>b. Under the GST Law, the spillover is an automatic function and according to us should not qualify as a 'Supply' for a consideration. Accordingly, there will not be any GST implication on the said transaction.</p> <p>c. As regards, recovery of interest, an interpretation has been formed and it has been used under the present service tax law as well that if the base activity is exempt then its recovery would also not be taxable. Interest is not liable to GST as well and accordingly its recovery shall also not be liable to GST.</p>
4	<p>Reimbursement of expenses incurred by AMC on behalf of MF and recovered from MF</p>	<p>a. As per the CGST Act, ordinarily value of a taxable supply shall include all costs and expenses incurred to perform the supply. Accordingly all expenses incurred would be liable to GST.</p> <p>b. However, the CGST Act further provides that deduction can be claimed of the expenses incurred if such expenses have been incurred in the capacity of a pure agent (please refer to Annexure II for the conditions for claiming pure agent benefit). If the AMC is satisfying all the conditions of pure agent then it can claim a deduction of the expenses.</p> <p>c. It needs to be noted that there are 7 conditions to be cumulatively satisfied for claiming the deduction. If any condition is not satisfied then the deduction can be challenged by the authorities.</p>

		<p>d. Further, from a practical standpoint, whether deduction is claimed or whether the AMC avails ITC and inturn charges GST on its recovery, the impact is neutral from MF perspective. As it is a sum-zero game, our recommendation would be to charge GST on the recovery and not claim the pure agent deduction.</p>
5	Sale of gold	<p>a. GST will be applicable on sale of gold. The place of supply of the sale would be the location of delivery of gold.</p> <p>b. Presently, eligibility of input VAT credit on gold procured under the Gold ETF scheme is under dispute on account of restrictions on credit under the State VAT Laws. However, the GST Law provides for fungibility of credits for setting off the input taxes paid on procurements against the output liabilities. Accordingly, MF will be eligible to take the input tax credit for such gold procurements made and set it off against output liabilities with respect to sale of gold. However, the MF would have to maintain separate books of accounts for gold purchase and sale so that full ITC can be availed and utilized on sale of gold.</p>
6	Exit Load	<p>a. Exit load is a charge which is levied by Mutual Funds in respect of unit holders opting for early exit / redemption of units from a MF scheme. Exit load is primarily a deterrent levy to discourage unit holders from prematurely withdrawing of funds.</p> <p>b. We understand exit load is in the nature of penalty. Ordinarily, service tax or GST applies on fees or charges and it does not apply on penalties. However, the MF industry has been paying service tax on exit load as a charge, subsequent to the clarification in the Education Guide issued in 2012. Under GST, we expect the same position shall be adopted as under the present indirect tax regime.</p> <p>c. Though there is no estoppel in taxation, if MF industry decides to adopt a position that GST is not payable on exit load, then the industry would have to prove the penal nature of exit load.</p>

C. Distributor related Queries

1. Presently, brokerage earned by distributors are liable to service tax under the forward charge mechanism wherein the distributor is liable to pay service tax to the government. Under the GST regime, the said mechanism will continue and the distributor will be liable to charge GST on the commission earned and deposit the tax with the government. Further, in case of distribution service, the place of supply will be the location of the registered person (i.e. service recipient). The proposed rate for the said distribution services is expected to be 18%.
2. The said levy of GST by the distributor will function as under:
 - In case the distributor has provided services to AMC located in the same State, then the distributor will levy a CGST and SGST as per the rates prescribed by the said State
 - In case the distributor has provided services to AMC located in a different State, then the distributor will levy IGST basis the State of the AMC
3. Valuation for distributor commission

In case the distributor is unregistered, AMC/MF will be liable to pay GST under reverse charge mechanism and also need to determine the value of supply. Section 7 of the CGST Act provides that supply means supply of any goods or services for a 'consideration'. As per Section 2(31) of the CGST Act, the term 'consideration' includes monetary value of any act done in respect of or for inducement of supply. Hence, gifts or any such incentives provided by the AMC/MF to the distributors would form part of the consideration and liable to GST. The value of supply in such case will be as per Rule 1 of the Determination of Value of Supply Rules. As per the said Rule, value of such supply where consideration is not wholly in money would be as follows (in the same order):

- Open market value
- Sum total of money and money value of consideration not paid in money
- Supply of goods/services/both of like kind and quality
- Cost plus 10 percent
- Value determined by applying suitable transfer pricing principles

Further, it can be said that in case of supplies made to distributors, which are not linked to performance or not contractual or not committed would not form part of the consideration and hence not liable to GST i.e. voluntary marketing expenses incurred e.g., trainings, notepads, pens, etc. given to distributors, in a training would not qualify as commission. Such expenses are in the nature of normal business expenditure incurred by the AMC/MF.

4. Recipient of Distributor's services

Section 2(93) of the CGST Act defines recipient of service as the person liable to make payment for supply of goods/services. In case of services, the liability of a person to pay consideration arises out of the contractual arrangement with the supplier. Accordingly, the recipient of service provided by a distributor would be the person with whom the distributor has executed the contract i.e. either AMC HO, AMC branch or MF. In case where distributor contracts with MF/AMC HO or individual AMC branch in the State where the distributor is located, then distributor's output supply would be intra-State and hence distributor would levy CSGT+SGST. In case where the contract is entered into

with MF/AMC HO or AMC branch in a state other than location of distributor, then it would be an inter-State supply and IGST would be levied on such supply.

5. Registration of Distributors

Every supplier who makes a taxable supply of goods and/or services which is leviable to tax under GST law, and whose pan-India turnover in a financial year exceeds INR 20 lakh (10 lakh in case of special category states) shall be liable to register himself. However persons making inter-State supplies are required to obtain registration irrespective of their turnover. Thereby, in case where the distributor engages with the AMC HO or branch/MF of a different State, he will have to be registered mandatorily under GST and the basic exemption would not be available to him.

6. Given the above, comments with respect to queries related to distributor commission are as follows:

S.N.	Transaction	Comments
1	Upfront and trail brokerage	<p>a. Upfront brokerage refers to the front-end brokerage paid at the time of procuring a MF investment while trail brokerage is an annualized commission paid every month on a pro-rata basis on live units. All upfront brokerage are subject to clawback in case the investments are redeemed by the investor prior to a specified period.</p> <p>b. This is a taxable supply liable to GST. The place of supply would be the AMC / MF, as the case maybe.</p>
2	Commission paid to overseas distributor	<p>a. As per section 2(13) of the IGST Act, the definition of intermediary covers a person who arranges for supply of securities between two or more persons. Mutual funds get covered under securities and hence the distributor can be construed as intermediary providing service of supply of securities.</p> <p>b. As per section 13(8) of the IGST Act, the place of supply of the intermediary services shall be the location of intermediary.</p> <p>c. In view of the above, the services provided by the overseas MF distributors will be outside the purview of GST as the place of supply of such service is outside the taxable territory. Accordingly, the AMC HO or MF shall not be liable to pay GST under reverse charge.</p>
3	Commission paid to unregistered distributors	<p>a. As per Section 9(4) of the CGST Act and Section 5(4) of the IGST Act, the registered recipient is liable to pay tax on procurements from unregistered suppliers under reverse charge mechanism. Accordingly, AMC/MF will be liable to pay GST under reverse charge on commission paid to</p>

		<p>unregistered distributors. Further, AMC/MF will be required to:</p> <ul style="list-style-type: none"> • issue invoice on receipt of service as per Section 31(2)(f) of the CGST Act; • issue payment voucher while making payment to unregistered distributor as per Section 31(2)(g) of the CGST Act; • make the payments under reverse charge within the due dates; and • report such reverse charge payments in Form GSTR 1 returns. <p>b. The input tax credit cannot be utilized for payment of tax under reverse charge. AMC/MF would be allowed to claim input tax credit of GST paid under reverse charge.</p>
4	Can a registered distributor claim the credit of basic exemption threshold of INR 20 lacs	<p>a. As per Section 25(3) of the CGST Act, all the provisions of the law are applicable to the person getting himself registered voluntarily, as if he is a registered person. Further, every registered person would be required to pay GST. Hence, the distributors cannot claim the benefit of basic threshold, if they opt for registration.</p> <p>b. Further it needs to be noted that there is no threshold exemption for undertaking inter-state supplies i.e. if a distributor is supplying on an inter-state basis then such a distributor has to mandatorily take registration under the GST law and charge GST.</p>
5	Commission paid to unregistered distributor in current regime, clawed back in GST regime	Since no tax was paid in the service tax regime, there would not be any tax implication under GST regime.
6	Commission paid to unregistered distributor in GST regime and clawed back in GST regime	<p>a. AMC/MF would be required to pay tax on commission under reverse charge and all the provisions of GST law as applicable to a supplier would be applicable to AMC/MF being the recipient, with respect to such commission paid under reverse charge.</p> <p>b. As per section 34 of the CGST Act, if value of invoice is found to be in excess of actual value of taxable supply, a credit note need to be issued by supplier before end of September of the following financial year to which supply pertains or before filing of annual return whichever is earlier. As per the invoice rules, credit note must bear reference to corresponding tax invoice.</p>

		<p>c. The commission paid to distributors are reversed or '<i>clawed back</i>' on account of reasons like non-fulfilment of prescribed conditions, expiry of distributor licence, redemption of the investment by the investor before the pre-agreed time, etc. In respect of such claw back of commission, taking a cue from section 34 of the CGST Act, AMC/MF would be required to raise credit note in respect of amount clawed back, reverse input tax credit to that extent and pay any output tax liability after reducing the tax on clawed back amount. The credit note process is clear from the output liability perspective, however from a reverse charge perspective, this particular process is not clear and more details are awaited in this regard.</p>
7	Commission paid to registered distributor in GST regime and even clawed back in GST regime	<p>a. As per section 34 of the CGST Act, the distributors would be required to raise credit note in respect of amount clawed back and pay any output tax liability after reducing the tax on clawed back amount.</p> <p>b. AMC/MF would be required to reverse input tax credit to the extent covered by the credit notes issued by distributors.</p> <p>c. As per the invoice rules, credit note must bear reference to corresponding tax invoice</p>
8	Commission paid to registered distributor in current regime, clawed back in GST regime	<p>a. As per Section 142(2)(b) of the CGST Act, in case of any downward revision in price of goods/services in the GST regime, pursuant to a contract entered into prior to the go-live day, the supplier would be required to issue a credit note within thirty days of such price revision.</p> <p>b. In case of claw back of commission paid to a registered distributor, the distributor has to issue a credit note within 30 days of price revision. Further, distributor shall be allowed to reduce tax liability on account of issue of credit note, only if AMC/MF has reduced input tax credit corresponding to such reduction of tax liability</p> <p>c. As service tax rate under current regime and GST rate under GST regime would be different, the commission amount and claw back cannot be netted off while computing GST liability. GST payable on commission under GST regime and service tax reversible on amount clawed back, need to be calculated separately.</p>

		<p>d. For example, if INR 100 is the commission for the month of August 2017 and INR 10 is clawed back in August with respect to commission paid in May, AMC/MF would be required to pay INR 90 to the distributor and the tax calculation would be as follows:</p> <p style="padding-left: 40px;">Tax for the month of August – INR 18 (18% * 100) Less: commission clawed back – INR 1.5 (15% * 10) Net tax payable – INR 16.5 (18 – 1.5)</p>
9	Transaction charges paid by Mutual fund to distributors	<p>Transaction charges are collected from investors and paid to the distributors. For example, if INR 100 are collected from investors, INR 10 is paid to the distributors and INR 90 is invested in the fund. From MF perspective, the said deduction is a regulatory compliance under the SEBI Laws. The said amount is collected as a deduction in the NAV of the unitholder. There would be no GST implication on the MF. However, the distributor would be required to pay GST on such transaction charges. Where the distributor is unregistered, MF has to discharge the GST on such transaction charges under reverse charge.</p>
10	Referral fees paid to distributors	<p>All kinds of supplies are taxable under GST. Referral fees paid to distributors is in the nature of consideration paid by AMC/MF to the distributor for their services. Hence it would be liable to GST.</p>
11	Transition implications on distribution commission	<p>a. As per Section 142(11)(b) of the CGST Act, where the point of taxation of the commission arises before the go-live date as per the service tax law, GST will not be applicable on such services.</p> <p>b. Further, as per Section 142 (10) of the CGST Act, services supplied after the go-live date pursuant to a contract entered prior to the go-live date would be liable to GST.</p> <p>c. Hence commission already subjected to services tax would not be liable to GST.</p> <p>d. Implication of claw back in GST regime, of commission paid in the current regime, is covered above.</p>

D. General queries

1. Treatment of unutilized credit under service tax

- a. As per Section 140(2) of the CGST Act, the CENVAT credit disclosed in the closing balance of the last return will be allowed as input tax credit under the GST regime subject to following conditions:

- The credit should be available under GST regime
- All returns required under the existing law for the period of six months preceding the go-live date should be furnished

In this regard, AMCs would be required to revisit their CENVAT register and evaluate the eligibility of credits from GST perspective. This is since credit of expenses which is allowed in existing regime, but ineligible in GST regime, would not be allowed to carry forward. For example, if the credit pertains to outdoor catering then such credit would be required to be removed as credit of outdoor catering is specifically excluded under GST.

- b. Details of credits to be carried forward needs to be filled in Form GST TRAN 1 within 90 days from the go-live date.
- c. As per Section 140(8) of the CGST Act, in case where AMC has obtained centralized registration, it can claim credit in the CENVAT credit disclosed in the closing balance of the last return subject to following conditions:

- The credit should be available under GST regime
- Original/revised return to be filed within three months from the go-live date. However, upward revision of credit balance would not be allowed in the revised return.

Further, such credit may be transferred to any of the branches which were included as place of business in the existing registration. Thereby, AMCs can plan to transfer depending upon its requirement. The HO would be required to issue a distribution document/invoice evidencing the amount of credit distributed to a particular State.

- d. Section 140(5) provide that with respect to inputs and input services received post go-live date and tax on which is paid by the supplier before go-live date, credit of such expenses can be availed if the corresponding invoices are recorded in the books within 30 days from the go-live date. Thereby, AMCs need to procure invoices from vendors where the consideration is already paid in advance but invoice is not received. Further, AMCs to record all such expenses in its books up to 30 July 2017.

With respect to the above credit, AMCs would be required to disclose the details of the invoice and the date of entry in the books in Form GST TRAN 1. However, the prescribed format for Form GST TRAN 1, does not contain the tab or the said disclosure.

- e. Further, as per Section 140(9) where CENVAT credit has been reversed on account of non-payment to the vendor within three months, such credit can reclaimed provided that the payment to the vendor is made within three months from the go-live date.

Action points:

1. AMC to determine the amount of accumulated credit under current centralized registration to be distributed amongst branches
2. To follow up with vendors where payment has been made and invoice not issued and record the same within 30 days of the go-live date

2. Would the AMC be eligible to claim credit of capital goods like vehicles, office equipment, IT, furniture and fixture

- a. As per Section 2(19) of the CGST Act, capital goods are defined as goods that are capitalized in the books and which are intended to be used in the course or furtherance of business. Hence credit of tax paid on all goods which are capitalized in the books would be allowed as input tax credit under GST.
- b. The credit of GST paid on capital goods would be allowed provided that depreciation has not been claimed for such tax component under the Income-tax Act, 1961.
- c. The credit can be claimed on fulfilment of the following conditions:
 - possession of tax invoice
 - received goods
 - tax paid by supplier to Government
 - monthly returns filed by recipient
 - payment made to vendor within 180 days
- d. Tax reversed on account of non-payment within 180 days can be reclaimed on payment to the supplier. However, the interest will be required to be paid and it will be a cost. Therefore, to save on the interest cost it would be advisable for the AMC/MF to claim credit post payment to the supplier. In any case, the availment of input tax credit should not go beyond due date of filing of return for the month of September or date of filing of relevant annual return whichever is earlier.
- e. Credit with respect to the following would not be allowed:
 - Motor vehicles and other conveyances
 - Works contracts for construction of an immovable property (allowed only when the goods in question are plant or machinery)

Plant or machinery excludes land and building or any other civil structures
- f. Further, where the capital goods are used for both taxable and non-taxable/exempt output supplies (for e.g. income from trading in securities), then credit would be required to be reversed on a monthly basis, considering the useful life of the asset to be 5 years.

- g. Unavailed credit of capital goods not carried forward in the returns can be claimed provided the credit is eligible under GST. The details of credit already availed and credit not availed would be required to be disclosed in Form GST TRAN 1.

3. *Would reverse charge be applicable on petty cash expenses like stationery, tea and coffee expenses*

Under GST, the recipient is required to discharge GST on procurements made from unregistered vendors under reverse charge mechanism. The GST law does not prescribe for any limit with respect to such procurements. Thereby, AMC/MF would be required to pay GST in case of petty cash expenses incurred with unregistered vendors.

4. *How would the assessment process in the States function? Would State-wise separate profit and loss account and balance sheet be required*

- a. As per Section 35(1) of the CGST Act, AMC/MF would be required to keep and maintain the following records at each place of business:
- Inward and outward supply of goods or services or both;
 - Input tax credit availed;
 - Output tax payable and paid; and
 - Goods or services or both imported or exported or received from unregistered dealers.

If there is more than one place of business in the registration certificate than accounts related to such place shall be kept at each such place of business. Thereby, AMCs would be required to maintain the aforementioned records at each branch in each State. The records can be maintained in electronic form.

- b. Section 35(5) of the CGST Act provides that a registered person for every financial year is required to have its accounts audited by a chartered accountant or cost accountant and shall submit a copy of annual audited accounts along with the reconciliation of the amount of supplies made during the year as stated in books of accounts vis-à-vis amount reflected in returns filed and any other document as may be prescribed. However, the threshold limit for such audit is yet to be prescribed.
- c. As per Section 71(1) of the CGST Act, the authorities may ask for records maintained, audited financial statements, trail balance, cost audit report, income tax report and other records for the purpose of inspection/verification/audit/scrutiny/checks.
- d. Accordingly, it is advisable to maintain profit and loss account and balance sheet for each State to avoid any inconvenience while reconciling the amount of supplies made during the year as stated in books of accounts vis-à-vis amount reflected in returns filed. Further such profit and loss account and balance sheet is being suggested merely for GST and assessment purposes.
- e. Assessment: It is anticipated that the assessment for a particular year would be carried out either by the officers appointed under the SGST/UTGST Act or under CGST Act. As per Section 6(2)(b) of the CGST Act, if any proceedings are initiated by the SGST/UTGST officers then the

CGST officers cannot initiate the proceedings on the same subject matter. However, clarity on this aspect is awaited.

Annexures

Annexure I – Input Service Distributor

- i. An input service distributor can distribute credit to a supplier of goods/services/both having the same Permanent Account Number (PAN). It is to be noted that the recipient of credit distributed by an ISD should qualify as a 'supplier', i.e. should be supplying output goods/services. Hence, the bank would not be able to distribute credit to any of its branch having no output supplies.
- ii. Following conditions are to be satisfied to distribute credit:
 - A document containing details of credit distributed to be issued to recipient of credit (recipient of credit defined to be a supplier having same PAN as the ISD)
 - Credit distributed should not exceed credit available for distribution
 - Credit specific to a recipient to be distributed to that recipient only
 - If credit attributable to more than one recipients or all recipients then credit to be divided based on turnover of the preceding financial year
 - In case no turnover during the preceding financial year then turnover as per the last quarter
- iii. An ISD to distribute credit monthly and furnish Form GSTR-6 within 13 days of the next month giving details of all invoices/debit notes/credit notes issued for the purpose of distribution of credit.
- iv. An ISD shall issue invoices/debit notes to the relevant recipients based on the proportion of turnover of such recipients. In case of reduction in the value of credit for any reason, ISD to issue credit note based on the same proportion on which original invoice was issued. Further, if in a month, the amount transferred is negative (amount to be distributed being less than credit note amount), the same shall be added to the output tax liability of the recipient.
- v. Ineligible and eligible credit shall be distributed separately.
- vi. The credit of IGST to be distributed as IGST.
The credit of CGST and SGST/UTGST if distributed to recipient in same State then to be distributed as CGST and SGST/UTGST, otherwise as IGST.

Annexure II – Pure agent provisions

Rule 7 of the Determination of Value of supply Rules provide that the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied:

- i. *the supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party on authorization by such recipient;*
- ii. *the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and*
- iii. *the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.*

Explanation. - For the purposes of this rule, “pure agent” means a person who -

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

(d) Receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Illustration. Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to Registrar of the Companies. The fees charged by the Registrar of the companies registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A’s recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

Scope Limitations

This document is prepared on the basis of the GST Laws including any Schedules, GST Rules, etc. related to GST released by the Government.

The conclusions reached and views expressed in the document are matters of opinion. Our opinion is based on our understanding of the law and regulations prevailing as of the date of this presentation and our past experience with the tax and/or regulatory authorities. However, there can be no assurance that the tax authorities or regulators may not take a position contrary to our views.

This document is based on the understanding of the law and regulations prevailing as of the date of this document, our past experience with the tax and/or regulatory authorities.

Legislation, its judicial interpretation and the policies of the tax and/or regulatory authorities are also subject to change from time to time, and these may have a bearing on the advice that we have given. Accordingly, any change or amendment in the law or relevant regulations would necessitate a review of our comments and recommendations contained in this document.

The tax authorities or regulators may take a position contrary to the views mentioned in this document.

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