TRILEGAL

CBIC's Clarification regarding levy of GST on director's remuneration

11 June 2020

In our update dated 18 May 2020 (accessible *here*), we had analysed a ruling of the Karnataka Authority for Advance Ruling (AAR) on the issue of applicability of the Goods and Services Tax (GST) on remuneration paid to directors of a company. The AAR had distinguished between different types of directors and held that GST would not be applicable on remuneration paid to executive directors as they are employees of the company. In the case of non-executive or independent directors, remuneration would be subject to GST on a reverse charge basis[1].

The CBIC on 10 June 2020, clarified that remuneration paid to a director which is in the nature of salary will not be subject to GST.

This ruling acknowledged the distinction between different types of directors and laid down the correct guiding principles regarding the taxability of remuneration paid to directors. However, due to the inherent limitation of AAR rulings being binding on the specific applicant only and the presence of other contrary rulings, this issue was not settled.

The Central Board of Indirect Taxes and Customs (CBIC) has now addressed this issue through its circular[2] dated 10 June 2020 (Circular). The Circular clarifies that:

a. Remuneration paid to independent directors or other directors, who are not employees of the company, would be subject to GST on a reverse charge basis.

b. Remuneration declared as 'salary' in the books of a company and subject to Tax Deduction at Source (TDS) under Income Tax Act, 1961 would not be subject to GST, being consideration for services by an employee to the employer in the course of or in relation to employment. However, remuneration paid to such 'employee-director', not in the nature of salary would be subject to GST on a reverse charge basis.

The Circular is a welcome move by the CBIC as it brings certainty to the issue. Further, compliance burden on directors would be eased as GST would be paid by companies under a reverse charge basis.

[1] Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017 (Notification)

[2] Circular No 140/10/2020 - GST