

E-NEWSLETTER

INSIGHT INTO GST AND ITS IMPACT ON EDUCATIONAL INSTITUTIONS

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Education Sector is not only one of the most important and major sectors of Indian economy but with increased awareness it has also become one of the fastest growing sectors in the country. Under various articles of the Indian Constitution, free and compulsory education is provided as a fundamental right for children upto the age of 14. However, taxing the education sector has always been a sensitive issue, as it is looked upon more as a social activity than a business one. But gradually with the commercialisation of education, the distinction between the core and ancillary education is blurring and it is becoming more of an organized industry with huge revenues. Thus, keeping in mind, both the scenarios, the GST has been made applicable to the education sector by maintaining a fine balance whereby the core educational services have been exempted but other services are sought to be taxed as per the rates prescribed. Education Services are classified in heading 9992 (as per the Notification No. 11/2017) and are further sub-divided into six groups comprising of pre-primary, primary, secondary, higher, specialised and other educational support services.

APPLICABILITY OF GST ON RUNNING OF EDUCATIONAL INSTITUTIONS

CRITERIA FOR EXEMPTION TO EDUCATIONAL INSTITUTIONS

Services provided by educational institutions to students, faculty and staff are exempt from GST. However, it is pertinent to note that only those institutions whose operations conform to the specifics covered by the term "Educational Institution" as defined in clause (y) of the Notification No. 12/2017 are entitled to avail the such exemptions provided by the law.

Interpreting the law and our view

From the above, it can be interpreted that private coaching centres or other unrecognized institutions, though self-styled as educational institutions, would not be treated as educational institutions under the GST and thus shall not be entitled to avail various exemptions available to such institutions.

DEFINITION OF EDUCATIONAL INSTITUTION UNDER GST

Educational Institution means an institution providing services by way of:

- (i) pre-school education and education upto higher secondary school or equivalent;
- (ii) education as a part of the curriculum for obtaining a qualification recognised by any law for the time being in force; or
- (iii) education as a part of an approved vocational education course.

From the above definition, it is clear that only those educational services which are delivered as part of the curriculum and grant a qualification recognized by law. Such as degree courses conducted by colleges, universities etc.. shall be exempt.

Similarly, the institutions providing only approved vocational courses shall be exempt which means:

- a) A course run by an Industrial Training Institute or centre affiliated to National or State Council for Vocational Training offering the courses in designated trade notified under the Apprentices Act, 1951 or
- b) A modular employable skill course, run by a person registered with Directorate General of Training, Ministry of Skill Development and Entrepreneurship and also approved by National Council for Vocational Training.

DISCUSSION ON TAXABILITY/EXEMPTION OF CERTAIN SERVICES PROVIDED BY EDUCATIONAL INSTITUTIONS



1. BOARDING/LODGING SERVICES

The services of boarding/lodging provided by the institutions covered by the definition of educational institution as given above shall be fully exempt as any services given by such institutions to its students have been granted exemption as per the Entry No. 66 of the Notification No. 12/2017- Central Tax (Rate). Therefore, annual subscription/fees charged towards boarding/accommodation by such educational institutions from its students shall not attract GST.

However, boarding schools providing educational services coupled with other services such as providing accommodation, fooding etc..falls under the concept of composite supply in GST regime and their taxability is determined in terms of principles laid down u/s 2(30) read with Section 8 of CGST Act, 2017.

SOME KEY RELATABLE DEFINITIONS ON THE TOPIC:

i) **Composite Supply**– As per Section 2(30), a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods & services or both or any combination thereof, which are naturally blended and supplied in conjunction with each other in ordinary course of business, on which is a principal supply.

ii) **Principal Supply**– As per Section 2(90), the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

Interpreting the law and our view:

From the above, it can be interpreted that since services of boarding/lodging, fooding etc.. are naturally bundled in case of boarding schools and is supplied in ordinary course of business, it will be considered as composite supply. As education is the predominant element of such supply, the other services will not be considered for the purpose of determining the tax liability and accordingly, the entire consideration (including boarding charges) shall be exempt.

2. COURSES OFFERED BY INDIAN INSTITUTE OF MANAGEMENT

The education services are classified under the heading 9992, where the services provided by IIMs to their students are also covered. However, only the following specific educational programs offered by such institutes except Executive Development Programme have been exempt from GST as per Serial No. 67 of the Notification 12/2017 – Central Tax (Rate):

- a) Two Year full time Post Graduation Programs in Management for the post graduate diploma in management to which admissions are made on the basis of Common Admission Test (CAT).
- b) Fellow Programme in Management
- c) Five Year Integrated Programme in Management

Interpreting the law and our view

In our view, only those courses offered by IIMs as specified above have been kept outside the purview of GST. Since, executive development programme run by IIMs have been specifically excluded, such courses along with others which are not covered above, shall be liable to GST.

DISCUSSION ON TAXABILITY/EXEMPTION OF CERTAIN SERVICES PROVIDED BY EDUCATIONAL INSTITUTION



3. RENTING OF PREMISES

If the property owned by such educational institution is given on rent to others, no exemption will be available for such services and the rental income shall be liable to GST at the rates specified.

4. OTHER COURSES OFFERED ALONG WITH EXEMPTED ONES

If an artificial bundle of services is created by clubbing two courses together, only one of which leads to qualification recognized by law, then it will be considered as mixed supply and the taxability is determined in terms of principles laid down u/s 2(74) read with Section 8 of CGST Act, 2017, thereby attracting the highest rate of GST.

5. INCIDENTAL AUXILIARY EDUCATION SERVICES

Sometimes, such educational institutions provide certain incidental auxiliary courses by way of hobby classes or extra-curricular activities furtherance of overall well-being will be considered as naturally bundled courses and therefore be treated as composite supply as explained above. Accordingly, the predominant element i.e. the main course shall be considered for the purpose of taxability and shall be exempt if it meets the criteria specified in the definition of "educational institution".

However, one relevant consideration in such cases will be the amount of extra billing done for the unrecognized component viz-a-viz the recognized course. If extra billing is being done, it might be considered to be the case of artificial bundling of two different services, not supplied together ordinary course of business, and in that case, it will be treated as mixed supply, thereby attracting the rate of higher taxed component for the entire consideration.

EXEMPTION OF SERVICES PROVIDED TO EDUCATIONAL INSTITUTION

Entry No. 66 of the Notification No. 12/2017 – Central Tax (Rate), specifically exempts certain services provided to educational institutions by other service providers, by way of:

- i) Transportation of students, faculty and staff;
- ii) Catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union Territory;
- iii) Security or cleaning or housekeeping services performed in such educational institutions
- iv) Services relating to admission to, or conduct of examination by, such institution; up to higher secondary

However, the above exemptions come with a rider that such services are exempt only for those educational institutions which provide services by way of education upto higher secondary or equivalent.

Interpreting the law and our view

From the above, it can be interpreted that auxiliary education services other than those specified above would not be eligible for exemption and shall be liable to GST. Even if the above services are provided to educational institutions offering courses providing a qualification recognized by law (which very well falls within the definition of educational institution), exemption shall not be granted as "educational institutions upto higher secondary or equivalent" has been specifically mentioned.