

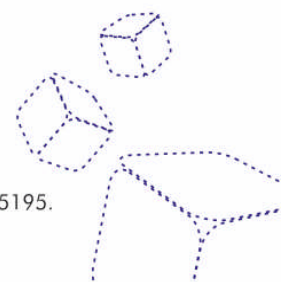
REMUNERATION TO EXECUTIVE DIRECTORS UNDER STRESS

Globally, directors are more often than not also an employee of the companies. Frequently, an employee also rises in hierarchy and later becomes a director solely based on his performance who continues to engage himself with the company as an employee with same attention on the operations of the company. Such a director is employee first and then only a director.

Other directors may not be in employment of the company but may provide certain services to the company in lieu of additional consideration.

Therefore, the directors can be executive directors or non-executive directors based on their engagement with the company. Further, the companies pay salary to the executive directors and also pay contributions towards gratuity, provident fund, ESI, etc. Such contributions of the companies if not paid, will also attract actions from the relevant authorities against the company. Whereas, there is no such obligation on the company in case of considerations paid for availing services from any source be it non-executive director or any other service provider.

In the light of above, the recent rulings of Authority of Advance Rulings, Karnataka in the matter of *M/s Alcon Consulting Engineers (India) Pvt. Ltd* in its ruling by AR No. KAR ADRB 83/2019 dated 25.09.2019 and the Rajasthan Authority for Advance Rulings in the matter of *M/s Clay Craft*



India Pvt. Ltd, by Advance Ruling No. RAJ/AAR/2019-20/33 dated 05.02.2020 become highly relevant.

Recent Rulings

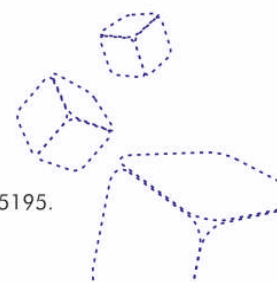
In the matter of *M/s Clay Craft India Pvt. Ltd*, the Rajasthan Authority for Advance Ruling, Goods and Services Tax by way of *Advance Ruling No. RAJ/AAR/2019-20/33 dated 05.02.2020* has held that salaries and commission paid to wholetime directors fall within the ambit of “*Services supplied by a Director of a company or a body corporate to the said company or the body corporate*” under Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017. Accordingly, the company shall pay remit GST on such consideration on reverse charge basis (hereinafter **RCM**).

The Rationale of the Authority for Advance Ruling

The Rajasthan Authority for Advance Ruling has stated its rationale in para 5.3. 5.7 and 5.8 of the Ruling.

In para 5.3 the Authority has opined that consideration in the form of salary and commission paid to the Directors by the company is against the services provided by them to the company and the company is recipient of such service and directors are the supplier.

It further substantiated in para 5.7 that the consideration paid to director for supply of services to the company is specifically covered under Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017 which states that on categories of supply of services mentioned in column (2)

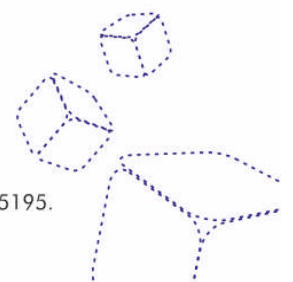


of the Table below, supplied by a person as specified in column (3) of the said Table, the whole of central tax leviable under section 9 of the said Central Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of such services as specified in column (4).

SN	Category of Supply of Services	Supplier of Service	Recipient of Service
1	2	3	4
6	Services supplied by a Director of a company or a body corporate to the said company or the body corporate	A director of a company or a body corporate	The company or a body corporate located in the taxable territory

The Authority has further observed in para 5.8 of the Ruling that consideration paid to the directors is against the supply of services provided by them to the applicant company and are not covered under clause (1) of Schedule III to the CGST Act, 2017 as the directors are not the employee of the company. It stated that in the instant case director is the supplier of services and the applicant company is the recipient of the services. It opined that it is very clear that the services rendered by the director to the company for which consideration is paid to them in any head is liable to pay GST under reverse charge mechanism.

Similar views were expressed by the Authority of Advance Rulings, Karnataka in the matter of *M/s Alcon Consulting Engineers (India) Pvt. Ltd* in its ruling AR No. KAR ADRB 83/2019 dated 25.09.2019.



Impact of the rulings

The rulings of the Authority of Advance Rulings are applicable only to the specific applicant. Such rulings are not considered as precedence. However, the GST officers are likely to take similar position basing the rationale on the above discussed ruling. It is not known yet that whether the applicant has preferred appeal against the ruling or not.

Conclusion

It may be noted that section 7(2) of the CGST Act, 2017 provides the activities and transactions specified in Schedule III do not fall within the meaning of “Supply”. Schedule III includes “services by an employee to the employer in the course of or in relation to his employment”. Therefore, services by an employee rendered to the employer cannot be considered as supply so as to be leviable to GST.

It is recognised that directors can have dual relationship with the company – one of employer & employee and another of service provider for non-employment related matters. There is no confusion regarding application of RCM for non-employment related matters, but the rulings discussed hereinabove have created unwarranted confusion with respect to those services of the director which have been provided under employer-employee relationship. In these circumstances, the industry will look forward to the government for clarifications.

8th April 2020

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