

# TAXWISE

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## **ARE EDUCATIONAL INSTITUTION'S ACTUALLY EXEMPTED FROM GST OR IS IT JUST A MYTH**

Education has always been one of the major and challenging sectors of any economy. The education of country's youth is not only the decisive factor of country's economy rather it is one of the most powerful weapon you can use to change the world. For India being a young nation with around 28% of the population in the 0 to 14 age group it has always been a matter of concern for Indian Government to ensure that this young population proves to be our future demographic dividend. It is because of this reason it has always been the priority of our Government in extending the tax benefits and other concessions to boost education sector in India.

### **GOODS AND SERVICES TAX (GST) AS TAX REFORM**

Earlier GST Act was launched with the objective of expanding the tax base through wide coverage of economic activities, mitigating cascading effects, reduction of exemption thereby resulting into formation of common national market for goods and services. However, the Act has seen drastic changes ever since its inception. With continuous developments in GST it becomes obligatory on our part to re-visit the taxation regime to check the constant changes in tax rates or any extended benefits via amendments through Notifications/Circulars or through Advance Rulings.

### **ARE EDUCATIONAL SERVICES CONSIDERED AS SUPPLY IN GST?**

In order to find an answer to the aforesaid query, it is relevant to determine as to what amounts to supply, who is the supplier and what are taxable supplies in GST. The definition of all the stated connotations has been defined under Section 7, Section 2(105) and Section 2(108) of the CGST Act 2017 respectively.

On perusal of Section 7(1)(a) reveals that the term 'supply' is of very wide amplitude and to constitute supply under Section 7(1)(a) the following conditions must be fulfilled:

- (i) All forms of supply are included.
- (ii) As an illustrative measure certain forms of supply have been enumerated such as sale, transfer, barter, exchange, licence, rental, lease or disposal made.
- (iii) The supply must be for a consideration
- (iv) The supply must be by a person
- (v) The supply should be in the course of or furtherance of business.

Thus, in nutshell any educational institution providing services to any person for consideration in the course or furtherance of business shall constitute supply.

**Now the next question that needs to be determined is whether all the supplies by education institutions are exempt or taxable?**

The Central Government in exercise of powers under section 11 of the CGST Act has exempted certain services from levy of GST and for this purpose Notification No.12/2017-CT(Rate) dated 28<sup>th</sup> June, 2017 was notified. The said Notification has been amended from time to time. The relevant entry for the purpose of present article is Entry No.1, Entry No.66 and Entry No.67 of the said Notification. The said entries read as under:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
1	Chapter 99	Services by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) by way of charitable Activities.	Nil	Nil
66	21[Heading 9992 or Heading 9963]  old[Heading 9992]	Services provided –  (a) by an educational institution to its students, faculty and staff;  13[(aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;]  (b) to an educational institution, 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 house-keeping services performed in such educational institution;	Nil	Nil

		<p>(iv) services relating to admission to, or conduct of examination by, such institution;  <b>14 omit[upto higher secondary]</b></p> <p><b>13</b>[(v) supply of online educational journals or periodicals:]</p> <p>Provided that nothing contained in <b>12</b>[sub-items (i), (ii) and (iii) of item (b)] <b>old [entry (b)]</b> shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.</p> <p><b>13</b>[Provided further that nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,-  (i) pre-school education and education up to higher secondary school or equivalent;  or  (ii) education as a part of an approved vocational education course.]</p>		
* <b>22</b> <b>omit</b> [67	Heading 9992	<p>Services provided by the Indian Institutes of Management, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme: –</p> <p>(a) two year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management;</p> <p>(b) fellow programme in Management;</p> <p>(c) five year integrated programme in Management.</p>	NIL	NIL

12. Substituted Vide: Notification No. 02/2018-Central Tax(Rate), dt. 25/01/2018 [Para (c), (g), (o)(ii)(C), (p), (q)]

13. Inserted Vide: Notification No. 02/2018-Central Tax(Rate), dt. 25/01/2018 [Para (a), (b), (d), (e), (f), (h), (i), (j)(i), (j)(ii), (j)(iii), (k), (l), (n), (o)(i) (o)(ii)(B), (o)(ii)(D).]

14. Omitted Vide: Notification No. 02/2018-Central Tax (Rate), dt. 25/01/2018 [Pa(m), (o)(ii)(A)]

21. Substituted Vide: Notification No. 28/2018-Central Tax(Rate), dt. 31/12/2018 [para i (d)]

22. Omitted Vide: Notification No. 28/2018-Central Tax(Rate), dt. 31/12/2018 [para i (e)]

## **MEANING OF EDUCATIONAL INSTITUTION**

For the purposes of exemption under GST the term “educational institution” has been defined in 2(y) of Notification No.12/2017-CT (Rate) and the same reads as under:

**2(y)** “educational institution” means an institution providing services by way of,-

(i) pre-school education and education up to higher secondary school or equivalent;

(ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;

(iii) education as a part of an approved vocational education course;

This Notification also defines “approved vocational education course” in 2(h) and the same reads as under:

**2(h)** “approved vocational education course” means,-

(i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961 (52 of 1961); or

(ii) Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship;

This Notification also defines the term “charitable activities” in 2(r) and the same reads as under:

(a) charitable activities” means activities relating to -

(i) public health by way of,-

(A) care or counseling of

(I) terminally ill persons or persons with severe physical or mental disability;

(II) persons afflicted with HIV or AIDS

(III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(B) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) advancement of religion , spirituality or yoga;

(iii) advancement of educational programmes or skill development relating to,-

(A) abandoned, orphaned or homeless children;

(B) physically or mentally abused and traumatized persons;

(C) prisoners; or

(D) persons over the age of 65 years residing in a rural area;

(iv) preservation of environment including watershed, forests and wildlife;

It is pertinent to mention here that w.e.f. 26<sup>th</sup> July, 2018 vide Notification No.14-CT(Rate), for a limited purpose the Central and State Educational Boards have also been deemed to be Education Institutes. Explanation 3(iv) of the said Notification No.12/2017-CT(Rate) states as under:

**26.07.2018 onwards**

*(iv) For removal of doubts, it is clarified that the Central and State Educational Boards shall be treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students.*

Thus, in view of the above

- ❖ Conduct of degree courses by colleges, universities or institutions which lead grant of qualifications recognized by law would be exempted from GST. However the Training given by private coaching institutes or other unrecognized institution or self styled educational institution would not be exempted.
- ❖ Services provided by way of education as a part of a prescribed curriculum for obtaining a qualification recognized by a law of a foreign country are also not exempted because the course / degree not recognized by Indian Law.

**EDUCATIONAL INSTITUTIONS – WHETHER REQUIRE GST REGISTRATION?**

The perusal of the said Notification reveals as far as an entity registered under Section 12AA of the Income-Tax Act, 1961 is concerned all its activities are not exempt from GST. Only specified activities as mentioned in definition of '**charitable activities**' would be exempt. Thus although most of the educational institutions are run by an entity registered under Section 12AA of the Income Tax Act, still the activities of such Education Institutions would not be exempt under Entry No.1 of the Notification No.12/2017-CT(Rate).

Now we proceed to look at Entry No. 66 of Notification No. 12/2017-Central Tax (Rate) and examine if all the activities of the educational institution fall under this entry or not. It can be seen from an examination of the said entry that only services provided by an educational institution *to its students, faculty and staff are exempt from tax*. Other services rendered by an educational institution have been subjected to tax. Now in this backdrop if we examine the host of services rendered by an educational institution it can be culled that prima facie there are few activities/ services that are not to students, faculty or staff. To illustrate services like franchisee services, services of conducting examination for AIIMS, UGC etc., selling of admission forms and old vehicles, scrap, sponsorship services for annual function, fete etc., would be exigible to tax. Although we shall examine the exact taxability of each of services in detail, for the purposes of registration it would suffice to note that certain activities of the educational institutions are liable to tax. From a perusal of the aforesaid discussion it can be clearly seen that certain supplies like 'Sale of forms', Sale of old assets by the educational institutions, conducting of fete by schools, running of cricket/tennis or dance academy etc. would definitely not qualify as 'exempt' supplies.

In accordance with Section 2(6) of the CGST Act the term aggregate turn over includes both taxable as well as exempt supply. In this backdrop the aggregate turnover of almost all the educational institutes would definitely cross Rs. 20 lacs.

*Hence it can be safely concluded that the educational institution would be required to take a registration.*

## **EDUCATIONAL INSTITUTES - WHETHER ALL SERVICES REALLY EXEMPT**

The perusal of Notification No.12/2017-CT (Rate) shows that only limited services received by an Educational Institute are exempt from tax by way of Entry No.66 of the said Notification. Thus prima facie the services provided by an Educational Institutes to its students, faculty and staff have been exempted from GST but it cannot be said that all the services rendered by Educational Institutions are exempt. There can be many instances where the services rendered by Educational Institutes would be taxable. Say for example:

- 1) Education Institutions run various kinds of academies in their premises like Cricket academy, Tennis academy, Dance academy etc. and such academies rendered services to its own students as well as to students of other Educational Institutions. The said Academy can be run by the educational institutions itself or many a times it is outsourced and is being run by a third party. The services received as well as the services rendered by the educational institutions under this head would always need to be examined.
- 2) Certain Education Institutions give franchise of their brand name to other educational institutions. Taxability of franchise fee received by educational institutions would always be taxable.
- 3) Educational Institutions hold Carnivals, Annual Fetes and receive amount towards sponsorship services from various business entities. Besides this the educational institutions also sell the tickets for entry to these Fetes/Carnivals. The sponsorship services would be rendered by Educational Institutions is definitely taxable transaction.
- 4) Sale of Newspaper, Magazines, Furniture, Computers, old School Buses or any other fixed assets sell by Educational Institutions would be a taxable transaction.
- 5) Any inter-branch supply of services from one branch of the educational institution to other also needs to be examined.
- 6) Sale of Forms at the time of admission would also constitute a taxable supply, (in the opinion of the author).

It is pertinent to mention here that these are illustrations only and besides this there are many instances and a host of transactions / services rendered by Educations Institutions which can fall in the ambit of taxable supply.

## **WHETHER INPUT TAX CREDIT WILL BE AVAILABLE TO THE EDUCATIONAL INSTITUTIONS**

The availability of input tax credit to any person under GST is governed by Section 16 of the CGST Act. Accordingly like any other person even Education Institutions would also be entitled to take credit of input tax credit charged on supply of goods and services or both to them. However, the said credit is subject to the 'blocked credits' enumerated in Section 17(5) of the CGST Act. Thus the Educational Institutions would not be entitled to claim any credit of goods and services used for construction of its immovable property. It is also relevant to mention here that the credit, if any, available with the Educational Institutions would be subject to apportionment as per Section 17(2) and Section 17(3) of the CGST Act, 2017 and would be required to reverse their ITC as per Rule 42 and Rule 43 of the CGST Rules, 2017.

It would not be out of place to mention here that educational institution would not be entitled to too much of credit, since majority of supplies made by such institutions would be exempt supply. In the opinion of the author it is advised that educational institutions should not claim ITC or claim only that ITC which is directly in relation to a taxable supply.

### **WHETHER GST AUDIT IS REQUIRED FOR EDUCATION INSTITUTIONS**

In order to understand the gamut of GST audit and its requirement it is relevant for us to know the legal provisions related to GST audit. Two important sections which are relevant in this context are Sections 35(5) and Section 44(2) of CGST Act, 2017.

In terms of Section 35(5)

*Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed.*

In term of Section 44(2)

*Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.*

It is pertinent to mention here that Section 35(5) begins with “every registered person whose turnover during a financial year exceeds the prescribed limit” however Rule 80(3) uses the expression “every registered person whose aggregate turnover during the financial year exceeds rupees 2 crores”. It must be noted here that the word turnover has not been defined whereas the expression aggregate turnover has been defined under the CGST Act, 2017. In this backdrop following understanding shall be relevant:

1. Aggregate turnover is PAN based while turnover in a State / UT is limited only to a state.
2. It is therefore reasonable to interpret the word turnover used under Section 35(5) ought to be understood as aggregate turnover defined under Rule 80(3) of CGST Rules, 2017.

Thus, it would be reasonable here to conclude that any educational institution whose aggregate turnover during the financial year 2017-18 exceeds rupees 2 crores would be liable for audit under GST.

### **CONSEQUENCES OF NON COMPLIANCE OF STATUTORY PROVISIONS UNDER GST**

Provisions related to penalties and prosecutions under GST Act are covered for deterrence so that deliberate tax evasion can be avoided and due tax revenue can be obtained to compensate the Government from loss due to non-compliance. Thus it is important to understand the implications for not getting registered under GST / non-filing of returns under GST and failure to submit the annual return and not getting the accounts audited on timely basis.

In case educational institution liable to get registered under GST fails to obtain proper registration within the specified time limit the same shall be liable for penalty up to 100% of tax due or Rs.10,000/- whichever is higher. The equivalent penalty shall be drawn on the assessee for non-filing of GST returns. Also he shall be divested to claim input tax credit for the period he was liable to obtain registration.

Section 47(2) of the CGST Act, 2017 provides that in case of failure to submit annual return within the specified time period a late fee equal to Rs.100/- per day shall be levied up to the period for such failure continues subject to a maximum of quarter percent of the turnover of the State/UT. There would be equal amount of late fee under respective state / UT GST law.

However, there is no specific penalty prescribed in the GST law for not getting the accounts audited. Thus in terms of Section 125 of CGST Act, it shall be construed that a general penalty of Rs.25,000/- shall be levied on such defaulters. However, there is another school of thought which state that since the return is to be accompanied with report, therefore non-filing of audited report may amount to non-filing of return and late fee may be levied. Thus, general penalty in terms of Section 25 shall not be levied.

HAPPY READING

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