

TAX INFO

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Latest update on GST Law: Information regarding Clarification relating to export of services as provided in **Circular No. 161/17/2021-GST dated 20.09.2021.**

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Circular No. 161/17/2021-GST

The “export of services” as per Section 2(6) of IGST Act means the supply of any service when:-

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person.

If a foreign company is conducting business in India through **a branch or an agency or a representational office**, then the said branch or agency or representational office of the foreign company, located in India, **shall be treated as establishment** of the said foreign company in India. Similarly, if any company incorporated in India, is operating through a branch or an agency or a representational office in any country outside India, then that branch or agency or representational office shall be treated as the establishment of the said company in the said country.

Supply of services between establishments of distinct persons cannot be treated as “export of services” in view of condition (v) of Section 2(6) of IGST Act.

This means that the **supply of services made by a branch or an agency or representational office** of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated **as supply between establishments of distinct persons and shall not be considered as export of services.**

Similarly, any supply of service by a company incorporated in India to its branch or agency or representational office, located in any other country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of services.

However, any company incorporated in India and a foreign company incorporated outside India, are separate “person” under the provisions of CGST Act and accordingly, are separate legal entities. Thus, **a subsidiary/ sister concern/ group concern of any foreign company which is incorporated in India**, then the said company incorporated in India will be considered as a separate “person” under the provisions of CGST Act and accordingly, would be considered **as a separate legal entity** than the foreign company.

Therefore, **supply of services by a subsidiary/ sister concern/ group concern**, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 to foreign company located outside India (incorporated outside India), would be considered as **“export of services”**, as it would not be treated as supply between merely establishments of distinct persons.

Similarly, the supply of services from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person and would qualify as export of services.

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