

**GOVERNMENT OF TAMIL NADU
COMMERCIAL TAXES DEPARTMENT
OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM, CHENNAI- 600 005**

PRESENT: Dr. D.JAGANNATHAN I.A.S,

COMMISSIONER OF STATE TAX

**Circular No. 12/2024
(PP6/GST-160/2024)**

Dated: 12.07.2024

Sub: Clarification regarding taxability of the transaction of providing loan by an overseas affiliate to its Indian affiliate or by a person to a related person -
-Regarding.

Ref: Circular No. 218/12/2024-GST, dated 26.06.2024, issued by Government of India, Ministry of Finance, Department of Revenue, CBIC, GST Policy Wing.

In the reference cited, the Government of India, Ministry of Finance, Department of Revenue CBIC, GST Policy Wing, has issued Circular No 218/12/2024-GST, dated 26.06.2024 based on the recommendations of the GST Council. Hence, following *pari-materia* circular is issued.

Representations have been received from trade and industry by the GST Council, seeking clarity on whether there is any supply involved in the transaction of granting of loan by a person to a related person or by an overseas affiliate to its Indian entity, where the consideration being paid is only by way of interest or discount, and whether any GST is applicable on the same.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Commissioner, in exercise of powers conferred by section 168 of the Tamilnadu Goods and Services Tax Act, 2017 (hereinafter referred to as "TNGST Act"), hereby clarifies the issues as under:

S. No.	Issue	Clarification
Clarification regarding taxability of the transaction of providing loan by an overseas entity to its Indian related entity or by a person in India to a related person		
1	Whether the activity of providing loans by an overseas affiliate to its Indian affiliate or by a person to a related person, where there is no consideration in the nature of processing fee/ administrative charges/ loan granting charges etc., and the consideration is represented only by way of interest or discount, will be treated as a taxable supply of service under GST or not.	<p>1. As per clause (c) of sub-section (1) of section 7 of the TNGST Act, read with S. No. 2 and S. No. 4 of Schedule I of TNGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply, even if made without consideration. Therefore, it is evident that the service of granting loan/ credit/ advances by an entity to its related entity is a supply under GST.</p> <p>2. Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) are exempted under sub entry (a) of entry 27 of G.O. (Ms) No. 73 Commercial Taxes & Registration (B1) Department dated 29.06.2017 published in Tamilnadu Government Extra ordinary Gazette Notification No.II(2)/CTR/532(d-15)/2017 dated 29.06.2017. Therefore, it is clear that the supply of services of granting loans/ credit/ advances, in so far as the consideration is represented by way of interest or discount, is fully exempt under GST.</p> <p>3. It is mentioned that overseas affiliates or domestic related persons are generally charging no consideration in the form of processing fee/ service fee, other than the consideration by way of interest or discount on the loan amount. Doubts are being</p>

		<p>raised regarding the taxability of the services of processing/ administering/ facilitating the loan in such cases, by deeming the same as supply as per clause (c) of sub-section (1) of section 7 of the TNGST Act, read with S. No. 2 and S. No. 4 of Schedule I of TNGST Act. The processing fee/ service fee is generally a one-time charge that lenders levy on applicants when they apply for a loan. This fee is generally non-refundable and is used to cover the administrative cost of processing the loan application. Charges of any other nature in respect of loan, other than by way of interest or discount, would represent taxable consideration for providing the facilitation/ processing/ administration services for the loan and hence would be liable to GST. This has been clarified at serial number 42 in the <u>Sectoral FAQ on Banking, Insurance and Stock Brokers Sector</u> issued by CBIC.</p> <p>4. It is significant to note that the processing/ service fee is generally charged by the bank/ financial institution from the recipient of the loan in order to cover the administrative cost of processing the loan application. An independent lender may carry out a thorough credit assessment of the potential borrower to identify and evaluate the risks involved and to consider methods of monitoring and managing these risks. Such credit assessment may include understanding the business of the applicant, as well as the purpose of the loan, financial standing and credibility of the applicant, how it is to be structured and the source of its repayment which may include analysis of the borrower's cash flow forecasts, the strength of the borrower's</p>
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		<p>balance sheet, and where any collateral is offered, due diligence on the collateral offered may also be required to be carried out. To cover such costs, the independent lender generally collects a fee that is in the nature of processing fee/ administrative charges/ service fee/ loan granting charges, which is leviable to GST.</p> <p>5. However, when an entity is extending a loan to a related entity, it may not require to follow such processes as are followed by an independent lender. For example, it may not need to go through the same process of information gathering about the borrower's business, his financial standing and credibility and other details, as the required information may already be readily available within the group, or between related persons. The lender may not also take any collateral from the borrower. Accordingly, in case of loans provided between related parties, there may not be the activity of 'processing' the loan, and no administrative cost may be involved in granting such a loan. Therefore, it may not be desirable to place the services being provided for processing the loans by banks or independent lenders vis-a-vis the loans provided by a related party, on equal footing.</p> <p>6. Even in case of loans provided between unrelated parties, there may not be any processing fee/ administrative charges/ loan granting charges etc., based on the relationship between the bank/ independent lender and the person taking the loan. The lender might waive off the administrative charges in full, based on the nature and amount of loan granted, as well as based on the relationship between the</p>
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		<p>lender and the concerned person taking the loan.</p> <p>7. Accordingly, in the cases, where no consideration is charged by the person from the related person, or by an overseas affiliate from its Indian party, for extending loan or credit, other than by way of interest or discount, it cannot be said that any supply of service is being provided between the said related persons in the form of processing/ facilitating/ administering the loan, by deeming the same as supply of services as per clause (c) of sub-section (1) of section 7 of the TNGST Act, read with S. No. 2 and S. No. 4 of Schedule I of TNGST Act. Accordingly, there is no question of levy of GST on the same by resorting to open market value for valuation of the same as per rule 28 of Tamilnadu Goods and Services Tax Rules, 2017.</p> <p>8. However, in cases of loans provided between related parties, wherever any fee in the nature of processing fee/ administrative charges/ service fee/ loan granting charges etc. is charged, over and above the amount charged by way of interest or discount, the same may be considered to be the consideration for the supply of services of processing/ facilitating/ administering of the loan, which will be liable to GST as supply of services by the lender to the related person availing the loan.</p>
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Sd/- D.Jagannathan
Commissioner of State Tax

To
Additional Commissioner(LTU) and all the Joint Commissioners (Territorial)
All the Head of Assessment Circles in the State

Copy to

1. All the Additional Commissioners in the Office of the CCT, Chennai-5
2. All the Joint Commissioners (Intelligence)
3. Director/Additional Commissioner, Commercial Taxes Staff Training Institute, Chennai -35.
4. Appellate Joint Commissioner (GST) Chennai.
5. All the Deputy Commissioners (Territorial and Intelligence)
6. All the Appellate Deputy Commissioner (GST) in the State.
7. The Joint Commissioner (CS), Chennai 35, to upload the same in the internet website.
8. Stock file / Spare.

/Forwarded by order/

Indus
12/07/24
Deputy Commissioner (P&P)

12/7/2024