

Association of Mutual Funds in India Goods and Services Tax - FAQs for Distributors

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Introduction to GST

1. What is GST? When is GST expected to be implemented?

Goods and Services Tax Act (GST), pegged as a major tax reform post-independence, has already been introduced by the Government of India and is likely to be implemented from 1 July 2017. This will subsume most of the indirect taxes (such as VAT, excise, service tax etc.) levied by the Centre and State governments. GST is applicable on all goods and services except for supply of alcohol, petrol, electricity, etc. The new tax regime aims to bring efficiency in the procurement process and create a 'single market' to enable free flow of goods and services across the country with minimum intervention of the government machinery. Going forward, there will be no separate sales tax on goods and service tax on services.

2. Who is required to pay GST?

GST is payable by any person making taxable supplies of goods/ services and whose turnover [on a pan-India basis of all offices having the same Permanent Account Number (PAN)] exceeds INR 20 lakhs. Additionally, on certain goods and services specified by the Government, tax is to be paid by the recipient, under reverse charge instead of the supplier¹.

3. What are the types of taxes under GST?

The new GST regime will comprise of the following taxes -

- Central Goods and Services Tax (CGST) – This tax will be levied on intra-state (within same state) supply of goods and services
- State Goods and Services Tax (SGST)- This tax will also be levied on intra-state (within same state) supply of goods and services
- Union Territory Goods and Services Tax (UTGST) – This tax will be levied on the supply of goods and services within the same Union Territory
- Integrated Goods and Services Tax (IGST) – This tax will be levied on inter-state (among different states and union territories) supply of goods and services

Please note, all these taxes will be levied basis location of distributor as a supplier of services and the location of the Asset Management Company (AMC)/Mutual Fund (MF) as a receiver of services.

4. What is HSN and what are the various GST rates?

HSN, acronym of Harmonized System of Nomenclature, is an eight digit service/goods specific code. Under GST, goods and services have been categorized under the five major prescribed tax rates (0%, 5%, 12%, 18%, 28%). *For services provided by distributors, GST rate will be 18% and HSN would be 997159.* To facilitate automation and transparency, each of the goods and services have been given a separate HSN.

¹Inter-state and Intra-state supply of goods or services made by unregistered person to a registered person is exempted from payment of GST under reverse charge mechanism till 31 March 2018 as per notifications 32/2017 Integrated tax (Rate) and 38/2017 Central tax (Rate)

Registration

5. How can one determine whether he is required to obtain registration under GST? Would reverse charge be applicable for unregistered distributors and if so which section governs the same?

Every supplier (including through his agent) who makes a taxable supply of goods and / or services which is leviable to tax under GST law, and whose pan-India turnover in a financial year exceeds INR 20 lakh (10 lakh in case of special category states) shall be liable to register himself.

Special category States comprise of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand.

Registration under the GST law will not be required if the person is engaged in providing goods or services that are not liable to tax or wholly exempt from tax or an agriculturist.

The following category of persons are required to obtain registration irrespective of their turnover:

- Casual taxable person making taxable supplies
- Persons who are required to pay tax under reverse charge
- Non-resident persons making a taxable supply
- Persons who are required to deduct tax as prescribed
- Persons who make taxable supplies of goods or services on behalf of other taxable persons, whether as an agent or otherwise
- Input Service Distributor
- Electronic commerce operator
- Persons required to pay tax for electronic commerce operator under Section 9(5) of the CGST Act
- Persons supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person
- Persons required to collect tax at source

Section 7 of the CGST Act provides the scope of the term 'supply'. In terms of such provision, it would cover all forms of supply of goods or services made for a consideration in the course of business.

As per Section 9(4) of the CGST Act and Section 5(4) of the IGST Act, the registered recipient is liable to pay tax on procurements from unregistered suppliers under reverse charge mechanism. Accordingly, AMC/MF will be liable to pay GST under reverse charge on commission paid to unregistered distributors. It may be noted that ¹Inter-state and Intra-state supply of goods or services made by unregistered person to a registered person is exempted from payment of GST under reverse charge mechanism till 31 March 2018 as per notifications 32/2017 Integrated tax (Rate) and 38/2017 Central tax (Rate).

The brokerage contracts with distributors are generally inclusive of all taxes. The case was the same even when reverse charge was applicable under the earlier service tax era.

6. Can a person take registration under GST, even if his turnover does not exceed INR 20 lakhs?

Yes. A person can opt for registering voluntarily under GST (i.e. seek registration even if not required by Law). However, every registered person would be required to pay GST and threshold of INR 20 lakhs will not be available to such registered person.

7. If a person has crossed the INR 20 lakhs turnover in other States except one, is registration mandatory in that State?

Yes. If the supplier has crossed the threshold of INR 20 lakhs on a pan-India basis, registration will have to be obtained for each place of business across the country from where supplies are made.

8. Can a person operate in various states with a centralized registration?

No. Every person who is liable to take a registration will have to get registered separately for each of the States where he has a place of business.

9. Can a person collect tax without GST registration and claim Input Tax Credit (ITC)?

No, a person without GST registration can neither collect GST from his customers nor can claim any ITC of GST paid by him.

10. At the time of registration will a person have to declare all the places of business in a State?

Yes. All the additional places of business need to be declared while registering under GST. Again one premise in each state needs to be declared as principal place of business for that state.

11. As an existing taxpayer, is it mandatory to migrate tax registrations under the enrolment program on the GST common portal?

Yes, it is required that the existing tax registrations be migrated to the GST registration on the GST common portal. All existing taxpayers currently registered under any State or Central laws like Value Added Tax Act, Central Excise Act, Service Tax, Entry Tax, Luxury Tax, Entertainment Tax (except levied by local bodies) are required to enroll under GST. This is essential from a business continuity perspective and will facilitate the availment of transitional credits.

Place of Supply & Levy of GST

12. What is the place of supply for services provided by distributors

The place of supply for services provided by distributors would be the location of service recipient. Recipient is the person who is liable to pay the consideration. Accordingly, the recipient of service provided by a distributor would be the person with whom the distributor has executed the contract.

13. When does the liability to pay tax on supply of services arise?

The liability to pay tax on supply of services shall arise at the time of supply of services, which is earlier of:

- Date of supply of service, if invoice not issued within 30 days of supply of service
- Date of invoice, if invoice issued within 30 days of supply of service
- Date of receipt of payment in bank account
- Date of receipt of payment recorded in books

14. Does the distributor have to pay tax where his turnover is less than INR 20 lakhs and if such a distributor is unregistered?

No.

15. What would be the taxable value on which GST is to be charged?

The taxable value for supply between unrelated parties would be the transaction value, i.e. the amount actually paid or payable for the supply.

However, where the consideration is not wholly in money, the taxable value will be the sum total of money and monetary value of consideration in kind. *Hence apart from commission received, value of performance linked incentives, gifts, free trips sponsored by the AMC/HO would be includible in the taxable value of services and GST will be applicable on value so derived.*

16. Would NRI distributors be liable to pay GST?

No, as NRI distributors are outside purview of GST.

17. Would GST be applicable on referral fees received by distributors from MF/AMC for referring portfolio management service (PMS) clients?

Yes.

18. Would GST be applicable to investment advisors for services provided to investors and what would be the relevant place of supply?

Yes, GST would be applicable on the fees charged to investors. The place of supply in this case would be the location of the investor.

Input tax credit

19. Would a recipient be required to reverse input tax credit claimed in case of non-payment of value of services along with tax thereon?

Where a recipient fails to pay to the supplier, the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon.

However, the recipient shall be entitled to avail credit of input tax on payment of the amount towards the value of supply along with the tax.

20. Is there any time limit for claiming input tax credit?

Yes, one can take credit of an invoice or debit note only till the date of filing of consolidated return (Form GSTR 3) for the month of September of the following financial year or the date of filing of annual return, whichever is earlier.

21. Can input tax credit be claimed for all the procurements?

No, input tax credit cannot be claimed for following procurements:

- Inputs used for non-business use
- Inputs used from providing exempt supplies
- Motor vehicles and other conveyances except when used for providing transportation of goods
- Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, rent-a-cab, life insurance and health insurance except where such services are to be provided by employer to its employee under any law for the time being in force.
- Travel benefits to employees on leave
- Works contract service for immovable property
- Goods and services used for construction of immovable property
- Goods/ services from composition dealer, used for personal consumption, goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

22. What are the documentary requirements for claiming input tax credits?

Input tax credit can be availed on the basis of following documents:

- an invoice;
- a debit note;
- a bill of entry;
- an invoice issued by a person on account of procuring services from an unregistered person;
- a document issued by an Input Service Distributor.

23. Can a supplier avail ITC, if the GST on his activity is paid under reverse charge by the recipient of supply

In terms of the provisions of GST Law, a transaction in which the recipient is liable to pay tax under reverse charge, would be treated as an exempt supply in the hands of the supplier. Accordingly, if in the case GST is paid by the recipient under the reverse charge, the supplier shall not be eligible to avail ITC benefit.

Invoicing

24. What are the important things to be included in an invoice?

An invoice must contain the following -

- Type of invoice – tax invoice or export invoice
- GSTIN of the AMC/MF or GSTIN of ISD of AMC, as the case may be
- SAC – correct SAC along with the service description
- Correct type of GST – CGST, SGST/UTGST or IGST
- Signature of the issuer

These invoices will be issued in duplicate as per the below format -

- The original copy being marked as ORIGINAL FOR RECIPIENT, to be sent to AMC/MF
- The duplicate copy being marked as DUPLICATE FOR SUPPLIER

25. Is it compulsory to issue tax invoice?

As per the GST Law, every registered person providing taxable services to another registered person is required to issue a tax invoice and carry out reporting at a transaction level for the recipient to avail the input tax credit. Presently, there is no clarification issued by the Government with regard to RTA statement being accepted as an invoice for services provided by distributor and hence, registered distributors will have to issue the prescribed invoices.

26. Within what time should an invoice be issued?

An invoice is to be issued within 30 days of the provision of service.

27. What will be the process to cancel/reverse an invoice issued under GST regime?

Under the GST regime, an invoice once raised cannot be reversed. However, if there is a need to reverse the invoice, a credit note will have to be issued.

28. What are other situations in which a credit note is required to be issued?

Credit notes will have to be issued for reduction in value of services, for example, renegotiation of price, claw back, etc.

29. What would happen if there is a mismatch between credit claimed by recipient in his GSTR 2 and output tax disclosed by the supplier in his GSTR 1?

If the credit claimed by recipient (AMC/MF) is in excess of the output supply declared by the supplier (distributor) or if the supplier has not disclosed such supply then such discrepancy will be communicated to both parties.

If the discrepancy is not rectified by the supplier, the recipient will have to reverse the credit availed in the next month and pay interest for such month. The credit will be available if the supplier rectifies the discrepancy by the due date for furnishing of return for the month of September or the actual date of furnishing the annual return of the said financial year, whichever is earlier.

30. What would happen if reduction in output tax by the supplier mismatches with corresponding reduction in input tax credit by the recipient, pursuant to credit note issued by the supplier?

If the reduction in output liability (by distributor, on account of say claw back of commission) exceeds the reduction in input credit or the credit note is not declared by the recipient (by AMC/MF) in his returns then the discrepancy will be communicated to both parties.

If the discrepancy is not rectified by the recipient, the discrepancy will be added to the output liability of the supplier in his return for the month for which such contravention takes place, along with interest. Reduction in liability will be possible if the recipient rectifies the discrepancy by the due date for furnishing of return for the month of September or the actual date of furnishing the annual return of the said financial year, whichever is earlier. In such a case, the interest paid will be refunded.

Transitional provisions

31. How to cancel/reverse an invoice under the GST regime which was previously issued under the service tax regime?

It is mandatory to issue a credit note within 30 days of price revision. If the credit note is not issued within 30 days, then the benefit of tax reduction will not be available.

In case of credit notes raised in GST regime against the invoices raised in service tax regime with the applicable service tax at 15%, the credit notes will contain the differential amount of tax displayed as CGST at 15%. Clarity is still awaited in this regard.

32. Can credit be availed on for services received after the transition date but the tax in respect of which has been paid under the existing law?

Yes credit can be availed by the customer under the GST law, if the customer records the invoice in his books of accounts within 30 days of the transition date. The GST law is silent with regard to tax implication on services provided prior to the transition date in respect of which invoice from distributor is not yet received. Hence it is advisable that the distributor immediately raises all the outstanding invoices in respect of which services are provided and the customer records them before 30 June 2017.

33. What would be the GST implication on commission clawed back in GST regime with respect to services provided, commission and tax is paid in service tax regime?

- If the distributor is registered – A credit note will have to be issued by the distributor within 30 days of claw back. Further, distributor shall be allowed to reduce tax liability on account of issue of credit note, only if AMC/MF has reduced input tax credit corresponding to reduction of such tax liability.
- If the distributor is unregistered - Since no tax was paid in the service tax regime, there would not be any tax implication under GST regime.

34. What would be the GST implication on commission paid in GST regime and even clawed back in GST regime?

- If the distributor is registered – A credit note will have to be issued by the distributor in respect of amount clawed back. AMC/MF would be required to reverse input tax credit to the extent covered by credit notes issued by distributors.
- If the distributor is unregistered – AMC/MF need to raise credit note in respect of amount clawed back and reverse input tax credit to that extent.