

FAQ on GOVERNMENT SERVICES under GST

Question 1: Are all services provided by the Government or local authority exempted from payment of tax?

Answer: No, all services provided by the Government or a local authority are not exempt from tax. As for instance, services, namely, (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of an airport or a port; (iii) transport of goods or passengers; or (iv) any service, other than services covered under (i) to (iii) above, provided to business entities are not exempt and that these services are liable to tax.

That said, most of the services provided by the Central Government, State Government, Union Territory or local authority are exempt from tax. These include services provided by government or a local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution and services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.

Question 2: Are Government or local authority or governmental authority liable to pay tax?

Answer: Yes. The Government or a local authority or a governmental authority is liable to pay tax on supply of services other than the services notified as exempt or notified as neither a supply of goods nor a supply of services under clause (b) of sub-section (2) of section 7 of the CGST Act, 2017. In respect of services **other than** – (i) renting of immovable property; (ii) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government; and (iii) services in relation to an aircraft or a vessel, inside or outside the precincts of an airport or a port, the service recipients are required to pay the tax under reverse charge mechanism.

Question 3: What is the meaning of 'Government'?

Answer: As per section 2(53) of the CGST Act, 2017, 'Government' means the Central Government. As per clause (23) of section 3 of the General Clauses Act, 1897 the 'Government' includes both the Central Government and any State Government. As per clause (8) of section 3 of the said Act, the 'Central Government', in relation to anything done or to be done after the commencement of the Constitution, means the President. As per Article 53 of the Constitution, the executive power of the Union shall be vested in the President and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, in terms of Article 77 of the Constitution, all executive actions of the Government of India shall be expressed to be taken in the name of the President. Therefore, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President. Similarly, as per clause (60) of section 3 of the General Clauses Act, 1897, the 'State Government', as respects anything done after the commencement of the Constitution, shall be in a State the Governor, and in a Union Territory the Central Government. As per Article 154 of the Constitution, the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or indirectly through officers subordinate to him in accordance with the Constitution. Further, as per article 166 of the Constitution, all executive actions of the Government of State shall be expressed to be taken in the name of Governor. Therefore, State Government means the Governor or the officers subordinate to him who exercise the executive powers of the State vested in the Governor and in the name of the Governor.

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Question 4: Who is a local authority?

Answer: Local authority is defined in clause (69) of section 2 of the CGST Act, 2017 and means the following:

- a "Panchayat" as defined in clause (d) of article 243 of the Constitution;
- a "Municipality" as defined in clause (e) of article 243P of the Constitution;
- a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
- a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- a Development Board constituted under article 371 of the Constitution; or
- a Regional Council constituted under article 371A of the Constitution;

Question 5: Are all local bodies constituted by a State or Central Law regarded as local authorities for the purposes of the GST Acts?

Answer: No. The definition of 'local authority' is very specific and means only those bodies which are mentioned as 'local authorities' in clause (69) of section 2 of the CGST Act, 2017. It would not include other bodies which are merely described as a 'local body' by virtue of a local law.

For example, State Governments have setup local developmental authorities to undertake developmental works like infrastructure, housing, residential & commercial development, construction of houses, etc. The Governments setup these authorities under the Town and Planning Act. Examples of such developmental authorities are Delhi Development Authority, Ahmedabad Development Authority, Bangalore Development Authority, Chennai Metropolitan Development Authority, Bihar Industrial Area Development Authority, etc. Such developmental authorities formed under the Town and Planning Act are not qualified as local authorities for the purposes of the GST Acts.

Question 6: Would a statutory body, corporation or an authority constituted under an Act passed by the Parliament or any of the State Legislatures be regarded as 'Government' or "local authority" for the purposes of the GST Acts?

Answer: A statutory body, corporation or an authority created by the Parliament or a State Legislature is neither 'Government' nor a 'local authority'. Such statutory bodies, corporations or authorities are normally created by the Parliament or a State Legislature in exercise of the powers conferred under article 53(3)(b) and article 154(2)(b) of the Constitution respectively. It is a settled position of law (Agarwal Vs. Hindustan Steel AIR 1970 Supreme Court 1150) that the manpower of such statutory authorities or bodies do not become officers subordinate to the President under article 53(1) of the Constitution and similarly to the Governor under article 154(1). Such a statutory body, corporation or an authority as a juridical entity is separate from the State and cannot be regarded as the Central or a State Government and also do not fall in the definition of 'local authority'. Thus, regulatory bodies and other autonomous entities would not be regarded as the government or local authorities for the purposes of the GST Acts.

Question 7: Would services provided by one department of the Government to another Department of the Government be taxable?

Answer: Services provided by one department of the Central Government/State Government to another department of the Central Government/ State Government are exempt under notification No. 12/2017-Central Tax (Rate), dated 28.06.2017 [S No 8 of the Table]. However, this exemption is not applicable to:

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- (a) services provided by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, the State Government and Union Territory;
- (b) services in relation to a vessel or an aircraft inside or outside the precincts of a port or an airport;
- (c) services of transport of goods and/or passengers.

Question 8: What are the transport services provided by the Government or local authorities exempt from tax?

Answer: Transport services provided by the Government to passengers by — (i) railways in a class other than— (a) first class; or (b) an air-conditioned coach; (ii) metro, monorail or tramway; (iii) inland waterways; (iv) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and (v) metered cabs or auto rickshaws (including E-rickshaws) are exempt from tax.

Question 9: Are various corporations formed under the Central Acts or State Acts or various government companies registered under the Companies Act, 1956/2013 or autonomous institutions set up by special Acts covered under the definition of 'Government'?

Answer: No. The corporations formed under the Central or a State Act or various companies registered under the Companies Act, 1956/2013 or autonomous institutions set up by the State Acts will not be covered under the definition of 'Government' and therefore, services provided by them will be taxable unless exempted by a notification.

Question 10: Are various regulatory bodies formed by the Government covered under the definition of 'Government'?

Answer: No. A regulatory body, also called regulatory agency, is a public authority or a governmental body which exercises functions assigned to them in a regulatory or supervisory capacity. These bodies do not fall under the definition of Government.

Examples of regulatory bodies are - Competition Commission of India, Press Council of India, Directorate General of Civil Aviation, Forward Market Commission, Inland Water Supply Authority of India, Central Pollution Control Board, Securities and Exchange Board of India.

Question 11: Will the services provided by Police or security agencies of Government to PSUs or corporate entities or sports events held by private entities be taxable?

Answer: Yes. Services provided by Police or security agencies of Government to PSU/private business entities are not exempt from GST. Such services are taxable supplies and the recipients are required to pay the tax under reverse charge mechanism on the amount of consideration paid to Government for such supply of services.

Illustration: The Karnataka Cricket Association, Bangalore requests the Commissioner of Police, Bangalore to provide security in and around the Cricket Stadium for the purpose of conducting the cricket match. The Commissioner of Police arranges the required security for a consideration. In this case, services of providing security by the police personnel are not exempt. As the services are provided by Government, Karnataka Cricket Association is liable to pay the tax on the amount of consideration paid under reverse charge mechanism.

Question 12: The Department of Posts provides a number of services. What is the status of those services for the purpose of levy of tax?

Answer: The services by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Government or Union territory are not exempt. In

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respect of these services the Department of Posts is liable to pay tax without application of reverse charge.

However, the following services provided by the Department of Posts are not liable to tax.

(a) Basic mail services known as postal services such as post card, inland letter, book post, registered post provided exclusively by the Department of Posts to meet the universal postal obligations.

(b) Transfer of money through money orders, operation of savings accounts, issue of postal orders, pension payments and other such services.

Question 13: What is the scope of agency services provided by the Department of Posts mentioned in the Notification No. 12/2017-Central Tax(Rate) dated 28.06.2017?

Answer: The Department of Posts also provides services like distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills on commission basis. These services are in the nature of intermediary and generally called agency services. In these cases, the Department of Posts is liable to pay tax without application of reverse charge.

Question 14: Would services received by Government, a local authority, a governmental authority from a provider of service located outside India be taxable?

Answer: No tax is payable on the services received by the Government / local authority/ governmental authority from a provider of service located outside India. However, the exemption is applicable to only those services which are received for the purpose other than commerce, industry or any other business or profession. In other words, if the Government receives such services for the purpose of business or commerce, then tax would apply on the same.

Question 15: Whether the exemption is applicable to online information and database access or retrieval services received by Government or local authorities from provider of service located in non-taxable territory?

Answer: No. Online information and database access or retrieval services received by Government or local authorities from non-taxable territory for any purpose including furtherance of business or commerce are liable to tax.

Question 16: What are the functions entrusted to a municipality under Article 243W of the Constitution

Answer: The functions entrusted to a municipality under the Twelfth Schedule to Article 243W of the Constitution are as under:

- (a) Urban planning including town planning.
- (b) Regulation of land-use and construction of buildings.
- (c) Planning for economic and social development.
- (d) Roads and bridges.
- (e) Water supply for domestic, industrial and commercial purposes.
- (f) Public health, sanitation conservancy and solid waste management.
- (g) Fire services.
- (h) Urban forestry, protection of the environment and promotion of ecological aspects.
- (i) Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
- (j) Slum improvement and upgradation.
- (k) Urban poverty alleviation.
- (l) Provision of urban amenities and facilities such as parks, gardens, playgrounds.
- (m) Promotion of cultural, educational and aesthetic aspects.

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- (n) Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.
- (o) Cattle pounds; prevention of cruelty to animals.
- (p) Vital statistics including registration of births and deaths.
- (q) Public amenities including street lighting, parking lots, bus stops and public conveniences.
- (r) Regulation of slaughter houses and tanneries.

Question 17: What are the functions entrusted to a Panchayat under Article 243G of the Constitution?

Answer: The functions entrusted to a Panchayat under the Eleventh Schedule to Article 243G of the Constitution are as under:

(i) Agriculture, including agricultural extension. (ii) Land improvement, implementation of land reforms, land consolidation and soil conservation. (iii) Minor irrigation, water management and watershed development. (iv) Animal husbandry, dairying and poultry. (v) Fisheries. (vi) Social forestry and farm forestry. (vii) Minor forest produce. (viii) Small scale industries, including food processing industries. (ix) Khadi, village and cottage industries. (x) Rural housing. (xi) Drinking water. (xii) Fuel and fodder. (xiii) Roads, culverts, bridges, ferries, waterways and other means of communication. (xiv) Rural electrification, including distribution of electricity. (xv) Non-conventional energy sources. (xvi) Poverty alleviation programme. (xvii) Education, including primary and secondary schools. (xviii) Technical training and vocational education. (xix) Adult and non-formal education. (xx) Libraries. (xxi) Cultural activities. (xxii) Markets and fairs. (xxiii) Health and sanitation, including hospitals, primary health centres and dispensaries. (xxiv) Family welfare. (xxv) Women and child development. (xxvi) Social welfare, including welfare of the handicapped and mentally retarded. (xxvii) Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes. (xxviii) Public distribution system. (xxix) Maintenance of community assets.

Question 18: What is the significance of services provided by Government or a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority?

Answer: Non-performance of a contract or breach of contract is one of the conditions normally stipulated in the Government contracts for supply of goods or services. The agreement entered into between the parties stipulates that both the service provider and service recipient abide by the terms and conditions of the contract. In case any of the parties breach the contract for any reason including non-performance of the contract, then such person is liable to pay damages in the form of fines or penalty to the other party. Non-performance of a contract is an activity or transaction which is treated as a supply of service and the person is deemed to have received the consideration in the form of fines or penalty and is, accordingly, required to pay tax on such amount.

However, non-performance of contract by the supplier of service in case of supplies to Government is covered under the exemption from payment of tax. Thus, any consideration received by the Government from any person or supplier for non-performance of contract is exempted from tax.

Illustration: Public Works Department of Karnataka entered into an agreement with M/s. ABC, a construction company for construction of office complex for certain amount of consideration. In the agreement dated 10.7.2017, it was agreed by both the parties that M/s. ABC shall complete the construction work and handover the project on or before 31.12.2017. It was further agreed that any breach of the terms of contract by either party would give right to the other party to claim for damages or penalty. Assuming that M/s. ABC does not complete the construction and handover the project by the specified date i.e., on or before 31.12.2017. As per the contract, the department asks for damages/penalty from M/s. ABC and threatened

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to go to the court if not paid. Assuming that M/s ABC has paid an amount of Rs. 10,00,000/- to the department for non-performance of contract. Such amount paid to department is exempted from payment of tax.

Question 19: Whether services in the nature of change of land use, commercial building approval, utility services provided by a governmental authority are taxable?

Answer: Regulation of land-use, construction of buildings and other services listed in the Twelfth Schedule to the Constitution which have been entrusted to Municipalities under Article 243W of the Constitution, when provided by governmental authority are exempt from payment of tax.

Question 20: Whether fines and penalty imposed by Government or a local authority for violation of a statute, bye-laws, rules or regulations liable to tax?

Answer: No. This gets covered under the exemption by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority.

Question 21: Whether services provided by Government or a local authority to a business entity located in a special category State are subject to tax?

Answer: The expression "special category States" provided in Explanation (iii) to section 22 of the CGST Act, shall mean the States as specified in sub-clause (g) of clause (4) of Article 279A of the Constitution. As per the said clause, the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand have been given the status of special category States for the purpose of GST Acts. Notification No. 12/2017-Central Tax(Rate), dated 28.06.2017 (Sl. No. 7 of the Table) provides for exemption from payment of tax in respect of services provided to a business entity located in a special category State with a turnover up to Rs. 10 lakh rupees. However, this exemption is not be applicable to (a) services - (i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government; (ii) in relation to an aircraft or a vessel, inside or outside the precincts of an airport or a port; (iii) of transport of goods or passengers and (iv) services by way of renting of immovable property.

Question 22: A small business entity is carrying on a business relating to consulting engineer services in Delhi. Does it need to pay tax on the services received from Government or a local authority?

Answer: If turnover of the entity is less than the limit of Rs. 20 lakhs in a financial year, no tax would be payable. The exemption from payment of tax is applicable to services provided to a business entity having a turnover up to Rs. 20 lakh rupees. However, this exemption is not applicable to (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of an airport or a port; (iii) services of transport of goods or passengers and (iv) services by way of renting of immovable property.

Question 23: What is reverse charge in GST?

Answer: As per 2(98) of the CGST Act, 2017, "reverse charge" means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9 of the CGST Act, 2017, or under sub-section (3) or subsection (4) of section 5 of the IGST Act, 2017.

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Question 24: Whether reverse charge is applicable to services provided by Government or local authorities?

Answer: Yes, reverse charge is applicable in respect of services provided by Government or local authorities to any person whose turnover exceeds Rs.20 lakhs (Rs.10 lakhs for Special Category States) excluding the following services:

- (i) renting of immovable property;
- (ii) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government;
- (iii) services in relation to an aircraft or a vessel, inside or outside the precincts of an airport or a port;
- (iv) transport of goods or passengers.

Thus, the recipient of supply of goods or services is liable to pay the entire amount of tax involved in such supply of services or goods or both.

Question 25: What is the scope of 'pure services' mentioned in the exemption notification No. 12/2017-Central Tax (Rate), dated 28.06.2017?

Answer: In the context of the language used in the notification, supply of services without involving any supply of goods would be treated as supply of 'pure services'. For example, supply of man power for cleanliness of roads, public places, architect services, consulting engineer services, advisory services, and like services provided by business entities not involving any supply of goods would be treated as supply of pure services. On the other hand, let us take the example of a governmental authority awarding the work of maintenance of street lights in a Municipal area to an agency which involves apart from maintenance, replacement of defunct lights and other spares. In this case, the scope of the service involves maintenance work and supply of goods, which falls under the works contract services. The exemption is provided to services involves only supply of services and not for works contract services.

Question 26: Would services in relation to supply of motor vehicles to Government be taxable?

Answer: Supply of a motor vehicle meant to carry more than twelve passengers by way of giving on hire to a state transport undertaking is exempted from tax. The exemption is applicable to services provided to state transport undertaking and not to other departments of Government or local authority. Generally, such State transport undertakings/corporations are established by law with a view to providing public transport facility to the commuters. In some cases, transport undertakings hire the buses on lease basis from private persons on payment of consideration. The services by way of supply of motor vehicles to such state transport undertaking are exempt from payment of tax. However, supplies of motor vehicles to Government Departments other than the state transport undertakings are taxable.

Question 27: Can the supplier of services claim the tax paid under reverse charger mechanism as input tax credit?

Answer: Yes. The supplier of services may claim the input tax credit on the amount of tax paid under reverse charge mechanism subject to the provisions of Chapter V of CGST Act, 2017 read with Chapter V of the CGST Rules, 2017.

Question 28: What is the concept called 'tax deduction at source'?

Answer: As per section 51 of the CGST Act, 2017, the Government may mandate (a) a department or establishment of the Central Government or State Government; or (b) local authority; or (c) Governmental agencies; or (d) such persons or category of persons as may be notified by the Government on the recommendations of the Council, to deduct tax at the rate of one per cent on account of CGST and one percent on account of SGST from the

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payment made or credited to the supplier where the total value of the supply under a contract exceeds two lakh and fifty thousand rupees (excluding tax payable under the GST Acts). The deductor shall remit the deducted amount to the Government and is also required to furnish a certificate to the deductee by mentioning the details of the amount deducted and payment of such deducted amount.

Illustration: ABC Ltd supplies the service valued at Rs. 3,00,000/- excluding tax to Government department. The department while making the payment of Rs. 3,00,000/- should deduct Rs. 3000/- on account of CGST and Rs. 3000/- on account of SGST and make a net payment of Rs. 2,94,000/- to ABC Ltd. Thereafter, the department shall pay the amount of Rs. 3,000/- to the Central Government and Rs. 3,000/- to the State Government and furnish a certificate to the deductee, containing the details of such deduction including the details of such deductee.

Question 29: Whether the deductee can claim the input tax credit on the deduction of tax at source amount?

Answer: No. The tax deducted at source is not input tax credit. However, the amount deducted shall be credited to the electronic cash ledger (upon being accepted by the deductee in his Form GSTR-2A) of the deductee and can be utilized for payment of output tax.

Question 30: Whether an amount in the form of royalty or any other form paid/payable to the Government for assigning the rights to use of natural resources is taxable?

Answer: The Government provides license to various companies including Public Sector Undertakings for exploration of natural resources like oil, hydrocarbons, iron ore, manganese, etc. For having assigned the rights to use the natural resources, the licensee companies are required to pay consideration in the form of annual license fee, lease charges, royalty, etc to the Government. The activity of assignment of rights to use natural resources is treated as supply of services and the licensee is required to pay tax on the amount of consideration paid in the form of royalty or any other form under reverse charge mechanism.

Question 31: Whether a Government Department, required to deduct tax at source, is liable to take registration as a normal taxpayer?

Answer: The Government Department is required to take registration as a normal taxpayer only if it makes a taxable supply of goods and/or services and in such cases, the registration shall be obtained on the basis of PAN but Bank account is not mandatory. However, if it is not making any taxable supply of goods and/or services, it is required to register only as a deductor of tax at source on the basis of TAN/PAN.

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