

GST UPDATE



Issuance of Invoice in case of Continuous Supply of Services

A person need to revisit Contracts in light of COVID-19 outbreak

As per Section 2(33) of CGST Act, “Continuous supply of services” means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding 3 months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify.

Essentially following are present to classify a service as “Continuous”:

- Period exceeds 3 months,
- Periodic payment obligation.

Illustration: Management consultancy services/security services/warranty services/repair and maintenance services under a (commercial) contract for a financial year for which payment is due on 1st of every month/quarter and is not dependent on rendering of services qualifies to be continuous supply of services.

Issuance of invoice in case of continuous supply of services (Section 31(5)):

In case of continuous supply of services,—

- **Where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;**
- Where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;
- Where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

For the purpose of this article, clause (a) is only relevant for discussion.

No relaxation for issuance of tax invoice for aforesaid services:

CBIC issued **notification no. 35/2020- Central Tax dated 03.04.2020** as per which date of various compliances, filings are being extended. However, no relaxation is being provided in time period for issuance of invoice and more specifically in cases where invoice is to be issued before due date of payment.

This implies that invoice for cases falling under clause (a) of Section 31(5) has to be issued as per normal practice even if the due date of invoice issuance falls in the pandemic period (lockdown period).

Therefore, in the above illustration tax invoice has to be raised on or before 1st of every month or quarter. In case, invoice is to be raised by 1st April, 2020, GST needs to be paid by 4th June in case of registered person whose turnover exceeds Rs.5 Crores to avoid interest implications. This prevails even if tax invoice is not raised by 1st of every month or quarter due to any reason whatsoever such as no payment is to be received from recipient of service, etc., since no exception has been carved out.

Way forward- An Alternate mechanism:

As per Section 63 of the Contract Act, “Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.”

As per above, promisee can also extend the time of performance or can remit the whole or part of the performance. Remission inter alia implies **acceptance of a lesser performance than what was actually due under the contract.**

This implies in the context of this article that, wherever due date of payment as per contract falls within the pandemic period, promisor (i.e. service provider) can approach promisee (i.e. service receiver) and can renegotiate the terms of payment (revised contractual terms). Once due date of payment is mutually extended, requirement to issue tax invoice as per **Section 31(5)(a)** automatically gets extended and can be raised as per revised contractual terms. This will ensure that there is no requirement to issue invoice as per regular timelines, and to discharge GST thereafter. This can certainly save undue interest implications!

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