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# **TAX TREATMENT OF INCOME EARNED FROM SOCIAL MEDIA UNDER GST**

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Raghvi Gupta, Ajeenkya DY Patil University, Pune

## **1. REGISTRATION OF THE SOCIAL MEDIA BUSINESS ENTITY**

A business conducted through social media can be done as a proprietor or could take other business forms such as a company or a partnership firm. As a proprietary business, it would be suggested to get the business registered as a MSME & evaluate whether you are required to register under GST, which is explained below.

### **1.1 DO YOU NEED A GST REGISTRATION FOR SELLING THROUGH SOCIAL MEDIA?**

Since you are selling through social media networks, there isn't really any regulator to ensure the requirements for effecting sales through these networks. Having said that, you are essentially making sales like any other business, which brings us to the most important question:

Do you need GST registration for selling goods or services through social media?

Let's look at the requirement- GST law requires every business to take the GST registration if they are engaged in making taxable supply of goods or services. Further, it provides a threshold annual turnover exemption of Rs 40 lakhs/20 lakhs\*.

\*40 lakhs for Supply of goods/ 20 lakhs for supply of services

The above turnover exemption does not apply to a business, if they are making interstate supplies. Now, it would be pretty practical to say that a business running on Social media network would be selling all over the country or even outside the country. So, GST registration is required by all the people selling their goods through their social media networks.

Given below are some reliefs provided on the registration of a business entity :-

1. Those persons who are engaged exclusively in the supply of services, do not require GST registration even if they are providing services outside of the state. This exemption is provided only to those persons, who are just providing services & sell no goods to their customers whatsoever.

2. Person selling notified goods made by the craftsmen mainly by hand even though some machinery may also be used in the process are exempt from registration if aggregate turnover does not exceed Rs. 20 lakhs even if they engage in interstate supply, provided such persons have obtained a PAN and have generated e-way bill.

So, it can be concluded that except for the above 2 cases, GST registration is required by every person selling through social media networks.

Once a business is registered with GST, it needs to comply with the filing requirements under the GST law. So, you would also be required to comply with these requirements & file the applicable periodic returns. Currently, a registered person is required to file monthly/quarterly returns depending upon the turnover.

The GST return filing essentially requires the business to have a record of Sales & Purchase transaction made by the business. Since, a business running through social media account do not mostly have an automated database which could provide these information for meeting the filing requirements. One needs to place a recording mechanism in order to record the business transactions so as to make the data accessible to file the applicable returns accurately & in time.

Without filing the returns, one would could not take the input tax credit of the GST paid by them while procuring goods & services, consequently GST paid by you becomes your cost & you end up making lesser profits.

## **2. LEVY OF TAX ON INCOME EARNED THROUGH SOCIAL MEDIA**

### **2.1 INDIRECT TAX: GST–**

Yes, different supplies of goods or services might attract GST. For obtaining registration one need not to have a commercial property, it can be the address of the residence also.

As per section 24 of CGST Act, every electronic operator who is required to collect tax at source under section 52 ;(**CGST (amendment) Act, 2018** w.e.f. 01/02/2019) is required to get

compulsory GST registration. The definition of electronic commerce operator under section 2(45) of CGST Act is wide enough to cover every digital platform. Therefore any social media which falls under such definition requires to get registered under such Act. And this has nothing to do with the supplier supplying through such social media until they fall in the definition of e-commerce operator. Therefore, no compulsory registration for suppliers under this section.

Now suppose a person is selling product through his own website then also he/ she is not covered in this section, they are also exempt from registration .

For example, Mr. A is selling handmade cards through his own website then he is not bound to get himself compulsorily registered under GST.

Persons who supply goods or services or both, other than supplies specified under section 9(5), through such e-commerce operator who is required to collect tax at source under section 52 has to get compulsorily registration under GST; (Exemption- Person who are supplier of services and supplying services through e-commerce operator are not required to register under GST if their aggregate turnover is less than Rs.20 lakhs p.a. (Rs.10 lakhs in case of specified States)- **Notification No. 65/2017-CT dated 15/11/2017**);

In case of suppliers over social media they directly contact the buyer and collect payments directly without having social media as mediator in all this respect except for the fact that seller is introduced with the buyer on such social media. Hence there is no deduction of TCS by social media therefore such supplier does not fall in this category as well for compulsory GST registration. Now such supplier will follow the criteria covered in section 22 and section 23 of the Act which is otherwise applicable for all suppliers.

### **2.1.1 INTER-STATE SUPPLIES-**

Here comes a twist which many a times supplier neglect e. if they sell their taxable goods inter-state then they will have to get compulsory registration under GST irrespective of their turnover. If supplier is of taxable services inter-state then Central Government has granted exemption from registration to person making interstate supplies of taxable services having aggregate turnover not exceeding Rs.20 lakhs/ Rs. 10 lakhs as the case may be (**Notification No. 10/2017-IT dated 13/10/2017 w.e.f. 13/10/2017**).

Persons supplying handicraft goods inter-state (notified under **Notification No. 21/2018 CT dated 26/07/2018**) are exempt from registration if aggregate turnover does not exceed Rs. 20 lakhs/RS. 10 lakhs as the case may be and such persons have obtained a PAN and generated e-way bill. (**Notification No. 3/2018-IT dated 22/10/2018**)

Person supplying taxable notified products inter-state, when made by the craftsmen mainly by hand even though some machinery may also be used in the process are exempt from registration if aggregate turnover does not exceed Rs. 20lakhs/RS. 10lakhs as the case may be and such persons have obtained a PAN and have generated e-way bill. (**Notification No. 3/2018-IT dated 22/10/2018** w.e.f. 22/10/2018)

Job workers with aggregate turnover does not exceed Rs. 20 lakhs/Rs.10 lakhs as the case may be even if he makes inter-state supplies to registered person are exempt from registration (except for jewellery, goldsmith and silversmith wares and other articles manufactured on job work basis- (**Notification No. 7/2017-IT dated 14/9/2017**).

For example, Mr. A sold handmade paper mache non electric bell hanging to a person of another state worth Rs.10000/- since he sold a good is he liable to get registration under GST? No, he is not liable as the good is eligible for exemption stated above subject to threshold limit for the year taken into account

For example, Mr. A owns a small readymade garment shop in a small town but he is very active on social media promoting his product, seeing one of his dress Mr. B of another state placed an order of Rs.5000 with him. Is Mr. A liable to get GST registration if he accepts the order? Yes, Mr. A is liable to get GST registration as the item is neither handicraft nor notified product and sale is inter-state and as per above notification he is not covered under such notification.

For example, Mr. B of Bombay places an order with Mr. A of Rajasthan for delivery of leather purses and leather flip-flops total worth of Rs. 200000/- which are very famous craftsmen's work in Rajasthan. Since these are notified goods and does not exceed threshold limit, Mr. A is not liable for compulsory registration under GST.

### **2.1.2 AGENT– (AS PER THE CGST ACT)**

When a person is acting as an agent as defined under section 2(5) of CGST Act then he has to compulsorily get himself registered under GST irrespective of his turnover as per section

24(vii) of **CGST Act**. This is the most ignored aspect. Many people have tied up with wholesalers and retailers for selling their product to consumers by promoting it on social media. But if they fall under this definition of agent then they have to get compulsory registration under GST.

For example, Mr. A is appointed by a artificial jewellery shop owner to sell his product on percentage basis of the turnover. Mr. A puts pictures of the jewellery on his social media account and attracts buyers. Mr. A's job is to only get buyers to the jewellery shop. Payment and billing is done directly by the jewellery shop owner to the customer and Mr. A is only procurement agent and hence not covered in section 2(5) of CGST Act.

For example, Mr. A is agent of Mr. B for selling his artificial jewellery. Mr. A puts pictures of the jewellery on his social media account and attracts buyers. Here Mr. A takes the delivery from Mr. B and sells it to end consumer under his name. Mr. A bills the consumer under himself and collect the payment from consumer then Mr. A is covered under section 2(5) of CGST Act.

### **2.1.3 COURIER SERVICES – (AS PER THE CGST ACT)**

Supplier of goods send their goods via courier and they fear of falling under compulsory registration on the basis of RCM applicability in case of GTA. Here is a brief to this confusion as well. Services by way of transportation of goods by road (except the services of GTA (Goods Transportation Agency); a courier agency) or by inland waterways are exempt (Entry 18 of **Notification No. 12/2017-CT (Rate)**). GTA services to unregistered person is also exempt (**Notification no. 32/2017- Central Tax (Rate) dated 13/10/2017**). Hence no RCM no registration. This notification on 31/12/2018 was however cancelled and RCM has to be paid on unregistered purchase on list which is yet to be notified).

### **2.1.4 EXPORT OF GOODS AND SERVICES- (AS PER IGST ACT)**

Section 2(5) and section 2(6) of **IGST Act, 2017** defines export goods and services respectively. Export is treated as inter-state supply in the course of GST. By any chance supplier of India comes in contact with a buyer who is located outside India(recipient) , place of supply is outside India, payment for such has been received in convertible foreign exchange and supplier and recipient are not merely establishments of a distinct person then such supply

will be regarded as export. Exports are zero rated but eligible for input tax credits. Exporter can claim refund under following situation:

1. He may export the goods upon payment of IGST and claim refund of such tax paid or
2. He may export under a Letter of Undertaking, without payment of IGST and claim refund. Refund is not eligible if goods exported are subjected to export duty or if the supplier avails of drawback in respect of central tax.

Thus, supplier of goods or services covered under export have to get themselves registered under GST only if supplier is of taxable services then Central Government has granted exemption from registration to person making such supplies of taxable services having aggregate turnover not exceeding Rs.20 lakhs/ Rs. 10 lakhs in special category states.

## **2.2 ONLINE INFORMATION DATABASE ACCESS AND RETRIEVAL SERVICES (OIDAR)–**

If any services fall under section 2(17) of IGST Act,2017 then such suppliers of services are required to pay IGST and get themselves compulsorily registered under GST. The inclusive part of the definition of OIDAR services are only indicative not exhaustive. To determine if a particular service is an OIDAR, following two conditions must fulfill:

1. Whether provisions of service mediated by information technology over the internet or an electronic network.
2. Whether it is automated and impossible to ensure in the absence of information technology.

Non OIDAR services ( which are often confused with OIDAR and such services are provided usually through social media) are:

- Supplies of goods, where order is taken online
- Online advisory services through emails -Teaching where the content is provided over the internet
- Booking services or tickets etc.

## **2.3 CONSEQUENCES OF NON REGISTRATION UNDER GST**

- No ITC will be available for the purchase of material used in making of the final product (GST paid on items used to bake cake, sheets, coloring items, fancy items used for making personalized gifts etc)
- Supply of goods will be limited to intra-state and services also subject to the conditions mentioned earlier.
- Difficulty in registering to the business columns over social media without GSTIN. As nowadays social medias have business groups and pages.

### **3. LEVY OF GST ON BLOGGERS**

In order to understand the tax implication under GST, first we need to find out answers to some of the basic questions such as whether blogging is supply of goods or services, what is the exact nature of the transaction, what is the place of supply, etc.

According to section 7 of CGST Act 2017, all forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business are treated as supply under GST. Bloggers supply services by providing a platform to the advertisers to display their advertisement. Hence, a blogger is considered as a supplier of services.

Nature of services provided by blogger can be categorised as online information and database access or retrieval services.

The place of supply will be determined in accordance with section 13(12) of the IGST Act. In accordance with the provision of section 13(12) of IGST Act, the place of supply of online information and database access or retrieval services shall be the location of the recipient of services.

Hence, if we take the example of income source from Google AdSense, where the location of the supplier (i.e. Blogger) of services is in India and the location of the recipient (i.e. Google AdSense) of service is outside India. Then in such situation the place of supply will be outside India.

The next question which arises is whether the service provided to say Google AdSense will be considered as export of service or not?

In order to answer the above question, we need to check five basic rules. If these five rules are satisfied, then that service will qualify as export of service. These rules are as under:

- 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 in convertible foreign exchange
- v. The supplier of service and the recipient of service are not merely establishments of a distinct person

All the above mentioned five rules are satisfied in case of services provided to Google AdSense. Hence such service is qualified as export of service under GST.

Now the next important question is that what is the rate of GST that will be applicable on the services provided by the bloggers?

Place of supply plays the most significant role for determination of rate of GST for the blogger.

If the blogger is providing services to Google Ad Sense, etc whose place of supply is located outside India or located in an SEZ in India, then that service shall be considered as export/deemed export of service. And, according to the provisions of Section 16(1)(a) of IGST Act, export of goods and/or services is considered as Zero Rated Supply. This means GST at 0% will be charged for such services provided by the blogger.

Such registered person making zero rated supply can claim Refund of GST under either of the following options, in accordance with the provisions of section 54 of CGST Act:

- a) Supplies without payment of IGST under Bond/Letter of Undertaking– claim refund of unutilised input tax credit
- b) Supplies with payment of IGST on supply of goods and/or services – claim refund of IGST paid

If the person providing export service, and wants to claim refund by opting for any one option then he should register under GST irrespective of turnover.



In case the blogger is providing services to an Indian organisation to run their promotional advertisement on its website, then in such case the location of the recipient will be in India and hence such supply of services shall be liable to 18% GST.

Another important question is that pertaining to Reverse Charge Mechanism (RCM) under GST regime and whether every blogger is required to compulsorily get registered under GST in order to comply with RCM?

Generally, the supplier of goods or services is liable to pay GST. However, in specified cases like imports and other notified supplies, the liability may be cast on the recipient under the reverse charge mechanism. Reverse Charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply.

There are two type of reverse charge scenarios provided in law. First is dependent on the nature of supply and/or nature of supplier. This scenario is covered by section 9 (3) of the CGST/SGST (UTGST) Act and section 5 (3) of the IGST Act. Second scenario is covered by section 9 (4) of the CGST/SGST (UTGST) Act and section 5 (4) of the IGST Act where taxable supplies by any unregistered person to a registered person is covered.

A person who is required to pay tax under reverse charge has to compulsorily register under GST and the threshold limit of Rs. 20 lakhs (Rs 10 lakhs for North Eastern and hilly states flagged as special category states) in case of service provider, is not applicable to them.

Any amount payable under reverse charge shall be paid by debiting the electronic cash ledger. In other words, reverse charge liability cannot be discharged by using input tax credit. However, after discharging reverse charge liability, credit of the same can be taken by the recipient, if he is otherwise eligible.

Invoice level information in respect of all supplies attracting reverse charge, rate wise, are to be furnished separately in the table 4B of GSTR-1.

Advance paid for reverse charge supplies is also leviable to GST. The person making advance payment has to pay tax on reverse charge basis.

#### **4. CONCLUSION**

While framing an interpretation of the definitions given under GST Act it can be concluded that any act or action which is sort of a supply, delivery, contribution, tendering, furnishing or any other act by whatever name called or known as similar in nature, if has been under taken or has been promised to be undertaken for a consideration or in lieu of something in return or having an identity of quid pro quo, either in course of a business or in furtherance or perpetual run of a business then such an act or action has significant potential to be termed as Supply.

If any of the element among these four elements is missing then such an act cannot be tantamount to Supply. For constituting 'Supply' occurrence of all these four elements is an exigency and thus an act cannot be construed as supply unless all these four elements not been conjured together.

So when a content owner uploads its content on online Social Media Portal then it means handing over and delivery of the content to Social Media. And when the same content is been monetized after opening an AdSense account with Google followed by agreeing to the terms & conditions of the agreement in place then it implies commercial intention on the part of Content wner, which is a order of furtherance of Business.

As earning form Social Media starts after reaching a certain amount of viewership so at the moment content surpasses the stipulated viewership, revenue starts generating in hands of Social Mediar. As soon as revenue in hands of Social Mediar starts accruing then all four components as discussed above eventually coalesces and brings Supply in legal terms into existence, as all these four factors like Making Supply under the cover of Agreement, in Furtherance of Business and for a Consideration gets over at the very moment when revenue in hands of Person had accrued.

Therefore at the point where Person starts generating revenue from Social Media post after monetization process of content at the same very point 'Supply' of content said to be accomplished and henceforth GST would be levied on the income earned through Social Media.