

GST Council may issue clarification on expat salary taxation a controversy

The clarification will be presented to the GST Council for approval once the law committee reaches a consensus

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The **Goods and Services Tax** (<https://www.moneycontrol.com/news/business/economy/exclusive-gst-council-likely-to-disc-reinsurance-issues-at-next-meet-12246871.html>) (GST) Council may issue a circular to address the controversy surrounding notices sent to Indian arms of foreign companies seeking to tax salaries paid to expatriates by the local unit.

The circular may clarify that input tax credit should not be held back for the period 2017-2022, as the practice of sending exp unit, known as secondment, amounts to exports of services, people familiar with the development said on condition of anonymity.

The proposal may be placed before the GST Council once the law committee arrives at a consensus on the issue, they said. The Committee, comprising officials from states and the Centre, advises the Council on laws, rules, and procedures.

Some of the law committee members are of the view that **input tax credit** (<https://www.moneycontrol.com/news/business/exclusive-gst-council-likely-to-disc-reinsurance-issues-at-next-meet-12246871.html>) should not be held back for 2017-22, invoking Section 74, as GST is being recovered late because of acts of suppression by the MNCs. Section 74 of the

to the determination of tax evasion and the imposition of penalties in cases where the tax authority finds that a taxpayer has i taxes under GST regulations.

“Centre is keen on issuing a circular in this regard to resolve the issue. The circular may clarify that Section 74 should not be ir It will resolve the issue to a great extent as the MNCs will get ITC for 2017-2022 and will only have to pay the additional inter members of the law committee, however, are not keen to pursue this approach. The issue may be deferred to the next GST Co law committee arrives at a consensus,” the person told Moneycontrol.

In the context of taxation, the act of suppression refers to actions taken by a taxpayer to conceal income, assets, or transactio Suppression may include under-reporting income, overstating deductions, concealing assets or transactions and misrepresen

The revenue neutral issue

MNCs regularly send executives to India, where they work for a certain period. These employees are paid in rupees by the Ind the entire cost is reimbursed by the overseas company. Thus, when secondment salaries are paid by the Indian employers, the expense.

The local arms of MNCs are of the view that the salaries paid by them are outside the scope of GST and only part of the pay pa social security—that’s because these expats are usually eligible for social security in their home country—should be under the

However, the GST authorities believe that the entire salary comes under the scope of GST after a Supreme Court ruling of 20: secondment services are taxable. Thus, from 2022 onwards, MNCs pay GST on expat salaries and take credit for it as it is the Thus, it is revenue-neutral for the companies and the GST authorities.

But for 2017-2022, interest and penalty have been sought by the GST department. According to reports, the GST authorities recovered Rs 2,500 crore of the tax for this period from the MNCs.

Expert speak

According to experts, these notices originated from a 2022 judgment by the Supreme Court, popularly called Northern Oper: Ltd (NOS). The court ruled that when a foreign company supplies manpower to its Indian affiliate, it is to be termed as ‘service receiving employees on secondment from their foreign affiliates became liable to pay service tax for availing ‘services.’ Since C the service tax law, these companies started receiving notices under the GST law in 2024.

“These notices are issued consequent to the Supreme Court ruling in Northern Operating Systems holding that secondment c overseas entities to Indian firms would fall under the category of manpower supply attracting service tax. Thus, judgement wa: factual context involving reimbursement of expat salary and other allowances by the Indian firms to the overseas entity, and t that it amounts to supply of manpower and therefore liable to service tax,” said Deloitte Senior Advisor Nagendra Kumar.

Rupender Sinhmar, a partner at BSM Legal, said, “Show cause notice now issued to these MNCs takes the lead from the judgm blindly applies it on each and every expat transaction for the period 2017 onwards.”

Interestingly, in December 2023, the Central Board of Indirect Taxes and Customs (CBIC) issued a circular to the GST departr NOS judgment to every case of secondment and send notices. CBIC had also indicated that each secondment agreement mus factually before applying the judgment and issuing a notice.

“These notices have been issued despite the CBIC instructions that in each arrangement, the tax implications may be differen the specific nature of the contract and other terms and conditions attached to it,” said Rahul Khurana, partner at Economic La

A few high courts have granted interim stay against the GST demands.

Effect of Bombay HC stay

Carmaker Mercedes-Benz, which received one such notice, approached the Bombay High Court last week and obtained an interim stay against the adverse action by the GST department. The HC has asked GST to file a response to Benz's plea; the case is now likely to be heard by February 20.

Experts noted that while the Bombay High Court is the latest to issue such a stay, earlier, the Punjab and Haryana, and Karnataka High Courts had stayed similar notices issued to BMW and Alstom Transport. "I will not be surprised to see more such interim orders by different High Courts in the near future, or since this is a pan-India issue, there is the possibility of even a transfer petition being filed by the Central Government to the Supreme Court to take this dispute to its logical end at the earliest," Sinhmar said.

However, considering the case is yet to be heard on merits, the interim stays cannot be considered the final word on this issue. Nishith Desai, leader of international tax practice at Nishith Desai Associates, said, "The court has granted time to the tax department to file a response to the Petition filed by Mercedes Benz and until such time has stayed the operation of the assessment order passed by the tax department."

According to experts, fighting the GST demand in High Courts is the best option available to MNCs now. Sinhmar said, "Considering that the GST Tribunals are not in place, it is advisable to approach the High Court challenging the very basis of issuance of show cause notices, especially in the light of the fact that most of these show-cause notices are mechanical," he added.

However, some experts said these companies could also opt to adjudicate this issue at the GST department. "Depending on the facts of the case, it is open for the MNCs to either participate in adjudication proceedings and distinguish their facts from that of Northern Opco. The department should emphasise the instructions issued by the CBIC," said lawyer Kunal Kishore.

Kishore said there have been instances before the NOS judgment when the GST department dropped such demands on being satisfied with the nature of the relationship between the seconded employee and the company.

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