

AccountAble™

151: GST Exemption for NGOs

Mar'18

IN THIS ISSUE

Exemption for NGOs pg1

Applicability for NGOs pg3

As discussed in AccountAble 150, if an NGO registers for GST, it has to pay tax on all taxable transactions. In this issue, we discuss what kind of transactions and activities are exempt from GST.

EXEMPTION FOR NGOS

In many cases, GST registration is not required even if an NGO's fees, sales, etc., cross Rs. 20 lakh per year.¹ This is discussed in more detail below:

1. Specified Activities

Some activities are totally exempt from GST. These include education in schools and colleges as also approved vocational courses. Medical treatment of

humans and animals is exempt. There is no GST on religious activity either.

2. 'Charitable Activities'

A special exemption is provided in GST for NGOs registered under sec. 12AA. They need not pay any GST on 'charitable activities'. Similarly, they need not pay GST even if they charge fees for training or coaching in arts, culture or sports.

However, there is a catch. 'Charitable Activity' is defined in a very narrow manner under GST.² This means that almost 95% of NGO activities would not be treated as 'charitable' under GST.

¹ Rs. 10 lakh per year for Arunachal, Assam, Himachal, J&K, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Uttarakhand. (Explanation 3 of Section 22 of CGST Act 2017)

² "charitable activities" means activities relating to:

(i) public health by way of:

(A) care or counselling of

(I) terminally ill persons or persons with severe physical or mental disability;

(II) persons afflicted with HIV or AIDS;

(III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or

(B) public awareness of preventive health, family planning or prevention of HIV infection;

(ii) advancement of religion, spirituality or yoga;

(iii) advancement of educational programmes or skill development relating to:

(A) abandoned, orphaned or homeless children;

(B) physically or mentally abused and traumatized persons;

(C) prisoners; or

(D) persons over the age of 65 years residing in a rural area;

(iv) preservation of environment including watershed, forests and wildlife.

(Notification No. 12/2017 CT-Rate dtd. 28-Jun-17)

AccountAble™

151: GST Exemption for NGOs

Mar'18



3. Reverse Charge on Imports

GST is chargeable on services imported from outside India. These could include payments for consultancy, for software subscription or database / internet services. This is payable if the user is registered for GST, but the foreign supplier is not registered under GST. For NGOs, reverse charge on import is a little tricky:

| | GST-registered NGO | Other NGO |
|---------------------------------------------|--------------------|-------------|
| Online services for 'charitable activities' | Exempt | Not payable |
| Online services for other activities | Payable | Not payable |
| Other services for 'charitable activities' | Exempt | Exempt |
| Other services for other activities | Payable | Payable |

4. Zero-rated Activities

Some activities are charged to GST at zero rate. These include export of goods or services, where the payment is received in foreign exchange.

Why a zero rate? This allows the vendor to claim credit for GST paid on inputs.

³ This charge is not attracted if services are received online for non-business activities. (Sec. 2(16),(17) of IGST Act 2017 read with Notification No. 10/2017 IT - Rate dtd. 28-Jun-17)

⁴ Nepalese and Bhutanese currency is not treated as foreign exchange. (Notification No. 42/2017 IT- Rate dtd. 27-Oct-17)

5. Working without Consideration

The biggest exemption is not mentioned specifically in the GST Act. These are activities completely outside the scope of GST. This exemption is also the most relevant for NGOs.

GST applies primarily to supplies made during business against a consideration.⁵ If you give something totally free to a person, without any strings attached,⁶ no GST is attracted. When NGOs distribute goods or provide services free of charge to a community or to the general society, no GST is attracted.

This general principle applies to programs supported with donations, as well as with project grants. It also remains valid when an NGO is registered for GST on some of its products or services. Therefore, NGOs are not required to pay GST just because they get a grant from a company or a donor agency for a project proposal.

APPLICABILITY FOR NGOS

What kind of NGO activities might attract GST? Most activities⁷ where the benefit is received by the payer would attract GST. Thus, if you charge even a nominal price for the goods or services from the beneficiaries, then GST is likely to be attracted.

GST will also be attracted where the benefit is received by an employee, grantee or nominee of the payer. In some cases, a transaction may be documented or structured improperly - this can create GST problems.⁸

On the other hand, if you camouflage a transaction as a grant, but it is really a taxable transaction, then GST will still be applicable. Some examples are discussed below.

1. Benefit to Donor

If a donor pays you money for services or products for its own use, then the transaction is taxable to GST. The

products or services could be used by the organisation, its staff or persons nominated by the organisation. Examples include training, use of campus facilities, etc.

Similarly, where a donor receives gifts or benefits against the donation, GST is likely to apply. Examples are lucky dips, auctions of paintings, collectibles, sponsored vacations, etc. during fund-raising events.

2. Services for Donor

If a donor asks you to provide training or other facilities for its nominated grantees, or to its SHG groups, GST is likely to be attracted. This may become applicable if the NGO is acting merely as a program contractor for the donor agency (Principal - Agent relationship).⁹

3. Membership Dues

Fees collected from NGO members are not chargeable to GST. However, if the members receive services against the dues (e.g. in a club), then GST will apply.

4. Contract Work

Sometimes NGOs take on construction or service contracts. For example, an NGO agrees to build toilets or low-cost houses through a works contract. Would GST be attracted? If the donor is using the NGO merely as a contractor, GST will be attracted. On the other hand, if the NGO is a program partner / grantee, and has program discretion in choosing the beneficiaries, designing the buildings, etc., then GST will not apply.

5. CSR Work

Many CSR grants are very poorly designed. The grant agreement reads like a service contract (may refer to 'services') against a grant ('consideration'). Sometimes the agreement also asks the NGO to display a corporate logo.¹⁰ The company may also ask for invoices as pay-

⁵ Services or goods distributed free of charge by an NGO are not a business transaction or provided against a consideration. Hence these cannot be treated as 'supplies'. (Sec. 7 of CGST Act, read with Sec. 2(17), 2(31) and Sch. I)

⁶ Like 'buy one, get one free'

⁷ Unless specifically exempt, such as education or medical treatment

⁸ For example, if you raise invoices for receiving instalments of a CSR grant

⁹ Sometimes NGOs do not show project grants in their Income & Expenditure Account. This can create an impression that NGO is acting merely as a project contractor.

¹⁰ Displaying logo of a charitable foundation is not a problem, if it is not the same as a corporate logo

AccountAble™

151: GST Exemption for NGOs

Mar'18



ment requests. The NGO may be referred as a vendor. Tax is often deducted at source. All these factors create a situation where a CSR grant for charitable activities becomes a paid service taxable to GST.

This is not a problem for the donor company. The company might even be claiming Input Tax Credit for the GST charged by the NGO. However, the NGO may face serious difficulties (including loss of income tax exemption) if it registers for GST.

6. Logos / Sponsored Events

Sometimes public events, such as celebrations, marathons, etc., are sponsored by corporate groups, who ask the NGOs to display their logos or use the event for promoting their corporate image. In such cases, GST is attracted on any payments received from corporate sponsors. If individual participants are asked to pay a registration fee and are eligible to receive a prize, then GST may again be attracted.

Some companies use an NGO's logo to promote their products in the market. In return the NGO gets a small donation each time a product is purchased. If these donations are not optional (for the buyer), but are a part of the price, then the NGO may have to pay GST on the amount received as part of the campaign.

7. Renting Out Property

If you are charging rent from anyone for non-resi-

dential use, then GST is attracted.¹¹ This also applies to hiring out rooms, halls, premises, etc. for events, trainings, etc. to third parties.

8. Internal Recoveries

Many NGOs pass entries in project books for use of internal facilities for their programs. In such a case, GST is not likely to be attracted. This applies to interstate transactions between HO and branches also. However, you should make sure that:

- A. The charge is restricted to actual proportional costs. Rates should not be based on current or subsidised market rates.
- B. The amount is recovered only through an accounting entry and is not treated as income.
- C. A debit note or invoice is not raised for internal recoveries.

9. Commissions / Royalty

An NGO may receive royalty payments for use of its intellectual property (brand, logo, goodwill). Sometimes the commissions are related to number of customers referred or introduced to a financial services company. All these are taxable to GST.

¹¹ Residential property rented for residential use is not chargeable to GST. (Entry No. 12 of Notification No. 12/2017- UT- Rate dtd. 28-Jun-17)

What is AccountAble: Each issue of 'AccountAble' covers a different topic related to NPO regulation or accounting and is posted/ emailed to about 3,000 persons in NPOs, Agencies, CSR Departments, Corporate Foundations and audit firms. AccountAid encourages re-production or re-distribution of 'AccountAble' in workshops or NPO newsletters for non-commercial use, provided the source is acknowledged.

AccountAble through e-mail: AccountAble is available through e-mail, without any charge. To subscribe, use the Signup Form at www.AccountAid.net

AccountAble on the Web: All the past issues of 'AccountAble' are available on our web-site www.AccountAid.net.

AccountAid Capsules: Short items of information on NPO accounting and regulation. To subscribe, use the Signup Form at www.AccountAid.net

Interpretation of law: Law discussed here is valid as of 23-Mar-18. However, the interpretation is of general nature. Please consult your advisors before taking any important decision.

Questions and doubts? AccountAid provides complimentary advice to implementing NPOs and NPO auditors on matters related to accounting or financial regulation. You can send your questions by e-mail at query@accountaid.net or by letter. You can also discuss these over the phone.

Comments: AccountAid India, 55-B, Pocket C, Siddharth Extension, New Delhi-110 014; Phone: 011-2634 3128; e-mail: query@accountaid.net

Text © AccountAid™ India: विक्रम संवत् 2074 चैत्र कृष्ण, March 2018 CE

Published for private circulation only by Ms. Renu Agarwal for AccountAid India, New Delhi (Ph. 26343128) and printed at PRINTWORKS, C-94, Okhla Industrial Area, Phase I, New Delhi 110 020

Content: Shri Sanjay Agarwal

Design: Ms. Moushumi De

query@accountaid.net