

# TAX FLASH NEWS

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## Circular update – Clarification of supply of ITeS vis-à-vis intermediary services

CBIC<sup>1</sup> has issued a circular<sup>2</sup> to provide a clarification on whether the supply of ITeS<sup>3</sup> on behalf of clients would qualify as intermediary services and also to clarify whether these services would qualify as exports.

**Gist of the clarification is summarised as under:**

### 1. Intermediary and ITeS–

- a) The definition<sup>4</sup> of intermediary as provided in the IGST Act<sup>5</sup> specifically excludes a person who supplies goods or services or both or securities on his own account.
- b) ITeS has not been defined under the GST Act and accordingly the same has been borrowed from the Income-tax Rules, 1962.

ITeS has been defined<sup>6</sup> to mean certain prescribed business process outsourcing services provided mainly with the assistance or use of information technology but shall not include any research and development services whether or not in the nature of contract research and development services.

### 2. Treatment of supply of ITeS on behalf of clients located outside India

The circular has listed down certain scenarios where ITeS service provider is located in India and provides services for or on behalf of its client located outside India. Summary of the scenarios is as under-

Scenario	Nature of supply	Whether the supply would qualify as intermediary services	Remark
1	ITeS as listed in the definition	No	Even though ITeS has been provided by the Indian supplier to the customers of their clients, the same would not be treated as 'intermediary services', as these supplies would qualify as services provided 'on his own account'

<sup>1</sup> Central Board of Indirect Taxes and Customs

<sup>2</sup> Circular no. 107/26/2019-GST dated 18 July 2019

<sup>3</sup> Information Technology enabled Services

<sup>4</sup> Section 2(13)

<sup>5</sup> Integrated Goods and Services Tax Act, 2017

<sup>6</sup> Rule 10 TA (e)

2	Backend services (refer note)	Yes	As the services are in the nature of arranging and facilitating the supply of goods or services or both between two or more persons.
3	ITeS along with arranging or facilitating the supply of various support services	Dependent upon facts of each case	In the instant case the supplier is providing two sets of services i.e. ITeS and support services, the treatment would be dependent upon facts of each case.

**Note –**

Backend services may include support services, during pre-delivery, delivery and post-delivery of supply (such as order placement and delivery and logistical support, obtaining relevant government clearances, transportation of goods, post-sales support and other services, etc.).

**3. Whether ITeS would qualify as export of services?**

The circular has clarified that supplier of services who is not an intermediary can avail the benefits of export of services provided it satisfies the conditions<sup>7</sup> prescribed in section 2(6) of the IGST Act.

<sup>7</sup> "export of services" means the supply of any service when,—

- (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 by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

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