

PRASAR BHARATI
(India's Public Service Broadcaster)
Prasar Bharati Secretariat
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GST CIRCULAR NO. 3

F.No.PB-7(14){1}/2016-Fin/ GST-970-75

Dated 18.07.2017

Sub: Review of existing contracts and agreements –reg.

Under the GST regime, various concepts as compared to old laws and rules made thereunder have been changed by the Government. GST may have an impact on the agreed terms and conditions of the existing contracts and agreements. Some of the reasons due to which contracts and agreements need to be reviewed are mentioned below:

1. Reduction in rate of tax on supply of any goods/ service: No person can make undue profit due to implementation of GST. Any reduction in tax due to introduction of GST has to be passed on to the recipient of the goods or services or both by way of proportionate reduction in prices.
2. Mandatory disclosure of recipient GSTIN on invoice for claiming ITC: Since no Input Tax Credit (ITC) can be allowed under GST if GSTIN of the recipient of the supply is not mentioned on the face of Invoice issued by registered person, hence specific clause should be inserted for disclosure of GSTIN of the concerned unit on the face of invoice and, in GSTR-1 filed by the supplier. Specific clause should be there for withholding/ recovery of amount to the extent of ITC amount not claimed from future payments due to such non-disclosure.
3. Discontinuation of major indirect taxes: More than 17 taxes and cesses have been subsumed under GST, hence name of subsumed taxes have to be replaced with GST so that there should be no ambiguity at the time of passing of the bill/ invoice.
4. Penal Clause: There should be specific provision in contracts and agreements that in case, any credit, refund or benefit is denied or delayed to the Buyer due to non-compliance by the Seller (ex: non-payment of GST on supplies, non-disclosure or incorrect disclosure in GST returns), the Seller would reimburse an amount equivalent to the loss including, but not limited to, the tax loss, interest and penalty to Prasar Bharati.
5. Transition and Spill Over: In the event of any change in law post signing of the contract, it is better that the Buyer and Seller would discuss and agree upon a transition plan which would allow for minimization of undue additional tax burden under the contract on the buyer and seller.
6. There are some charges on which no indirect tax was applicable prior to 01.07.2017 such as late fee or interest charged for delayed payments, charges paid by supplier on behalf of buyer etc., however, now these would attract GST.

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7. There is possibility that some items which were taxable under applicable subsumed tax laws are now exempt under GST and vice-versa.
8. Issue of Debit and Credit note: Under GST, any revision in invoice amount has to be done by issue of debit / credit note. The specific provision defining so should be made of the agreement. For ex. liquidated damages (LD) should be deducted from the invoice amount by way of issue of debit note.
9. Since in Prasar Bharati under the GST regime, each registered person is a separate entity even under the same organisation/ business vertical, hence to avoid unnecessary issue of invoice to other units of Prasar Bharati and thereby blocking working capital of the organisation by making payment of GST by one unit and claiming of ITC by another unit, the clauses regarding place of supply/ delivery need to be reviewed and modified, if necessary in the light of GST provisions. Accordingly, invoice should be raised in the name of end-user and the delivery should also be made directly to the end-user. Similarly, invoice for output supply shall be issued by that unit which ultimately supplies goods and / or services to the client/ recipient.
10. Under the GST regime, in case the goods are received in lots or instalments, ITC can be availed only after receipt of all lots or instalments of goods even if the invoice has been issued before the delivery of goods. However, in case of continuous supply where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or each such payment is received.

Besides the reasons mentioned above, there may be numerous other reasons also where a need may arise for review of existing contracts or agreements. Therefore, in the current scenario, all existing contracts and agreements need to be reviewed so that these would be in sync with the provisions of GST. Further, it is necessary to ensure that all prospective contracts are framed and finalised keeping in view the provisions of GST.

In view of above, it is requested to kindly issue the necessary instructions to your field units to make the existing as well as new contracts compliant with GST provisions.

18/7/2017
(C. K. Jain)

Dy. Director General (Fin)

1. DG:DD
2. DG:AIR
3. ADG(E&A), PB Sectt.

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