

FAQ ON GST- LEGAL SERVICES

1. Who is an Advocate and Senior Advocate?

As per Sec 2 (a) of Advocates Act 1961, “Advocate” means an advocate entered in any roll under the provisions of Advocate Act.

As per Sec 2 (k) of Advocates Act 1961, “Roll” means a roll of advocates prepared and maintained under Advocate Act.

So in general, Advocate on roll in India means advocate whose name is entered in register of advocate prepared by Bar Councils. In case of foreign lawyers, they are not to be treated as an advocate in India as they are not on roll of advocates of any bar councils in India.

As per Section 16 of the Advocates Act, 1961, “Senior Advocate” means an advocate who may be designated as senior advocate if Supreme Court or High court is of the opinion that by virtue of his ability or standing at Bar or special knowledge or experience in law and he is deserving of such distinction.

(Refer - Notification No. 12/2017 - Central Tax (Rate) - Para 2(b) for Advocates and Para (zzd) for Senior Advocates)

2. What is difference between Advocate and Lawyer?

Advocates are lawyers who are registered in Bar Council of India of any State. They can represent a client in the court of law, speak on behalf of a client, Plead their case, etc

Lawyers are law graduates but unlike advocates lawyers are not registered under Bar Council of India of any state. Lawyers can give legal advice but are not eligible to stand in court of law on behalf of their clients.

3. What are legal Service

As per Notification 12/2017 - Central Tax (Rate) dated 28th June,2017 - “legal service means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority;”

4. Which are exempt legal service

As per Entry no 45 of Notification No. 12/2017 - Central Tax (Rate) dated 28th June, 2017

Service Provider	Service Recipient
A partnership firm of advocates or an individual as an advocate other than a senior advocate,	<ol style="list-style-type: none">1. an advocate or partnership firm of advocates providing legal services;2. any person other than a business entity; or3. a business entity with an aggregate turnover up to twenty lakh rupees (ten lakh rupees in the case of special category states) in the preceding financial year;
A senior advocate	<ol style="list-style-type: none">1. any person other than a business entity; or2. a business entity with an aggregate turnover up to twenty lakh rupees (ten lakh rupees in the case of special category states) in the preceding financial year.

5. Which services are covered under reverse charge mechanism?

Advocate services bring into ambit of Reverse Charge Mechanism vide Notification No. 13/2017 - Central Tax (Rate) dated 28th June, 2017. Entry No. 2 of the notification

“Services supplied by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.”

6. Export of Legal Service under GST

As per Notification No. 13/2017 - Central Tax (Rate), RCM is applicable on legal services provided to Business Entity. In case services are provided outside India, then RCM is not applicable as the Business Entity is located outside taxable territory.

In case of legal services, services provided outside India qualifies as Export of Services provided all conditions are fulfilled. Hence, RCM is not applicable. Notification No. 5/2017 - Central Tax dated 19th June, 2017, will not be applicable, in full since the Export of Services are not under the ambit of RCM. Export of Services is considered as inter-state transactions; therefore, Section 24 of CGST Act will be applicable and registration is mandatory.

For Export of services, Export procedures under GST must be followed. Export can be done in two ways either on payment of IGST on export supplies or file Letter of Undertaking.

As per rule 96A of CGST Rules, 2017, the foreign inward remittances must be received within one year from the date of invoice. In case remittance is not received within the prescribed time then exporter has to deposit IGST from his own pocket, which is 18% of such supplies.

7. Import of Legal Service

Usually advocates engages foreign advocates to serve their client located abroad. Foreign advocate bills to Indian advocates / advocate firm. Services supplied by foreign advocate cannot enjoy exemption of notification 12/2017-CGST(Rate) as the foreign advocate is not on roll of bar council of India and hence their supplies are taxable under RCM in the hands of service receiver.

8. Reimbursement under Legal Service

Tax ability of reimbursement of expenses depends on nature of expenses incurred for provision of services by advocates. If these kind of expenses are in nature of Pure Agent than tax need not to be paid otherwise these are taxable.

9. Registration under GST

As per Notification No. 5/2017 - Central Tax, registration requirement is exempt if supplies are wholly covered under Reverse Charge Mechanism (RCM). However, if the advocate or advocate firm has any other taxable income and aggregate turnover exceeds Rs. 20 lakhs than it is required to take registration in GST.

10. Input Tax Credit for Legal Service

If an advocate is registered under GST but all his services are covered in RCM then in such cases there will be situation of Excess credit. Refund on such ITC is not available. However, if there is export then there exists an opportunity to claim refund provided conditions laid down in relevant act and rules is satisfied.

11. Place of Supply for legal service

Case I - When service provider and service recipient are in India

As per Sec 12(2) of IGST Act,2017

- (a) made to a registered person shall be the location of such person;
- (b) made to any person other than a registered person shall be, --
 - (i) the location of the recipient where the address on record exists; and
 - (ii) the location of the supplier of services in other cases.

Case II- When either Service provider or Service recipient are outside India

As per Sec 13(2) of IGST Act,2017

(a) Place of Supply shall be location of recipient of service

(b) Where location of recipient of service is not available it shall be location of supplier of services

12. Rate of Tax

Tax Rate on Advocate Services is 18%.

13. SAC Code

Legal and Accounting services - 9982x

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