

Introduction

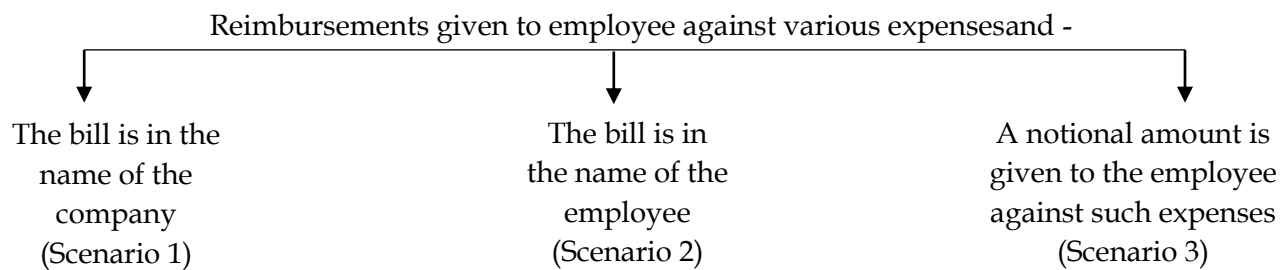
1. GST is applicable on all supply unless it is specifically exempt. Therefore, it is important to understand coverage of supply, as the definition of supply is inclusive one. As per Schedule III to the CGST Act, 2017 the services by the employee to the employer in the course of or in relation to employment is neither a supply of goods nor a supply of service. Hence, the employee service to the employer is outside the purview of GST.
2. It is pertinent to note that the entry of Schedule III mentioned above does not cover any transactions between employer and employee. Certain transactions between employer and employee may attract GST. especially when supply is made by employer to employees.
3. Generally the remuneration or compensation to employee will be in cash, kind (goods) or facilities (service).

Implication of GST on Reimbursements

4. Giving cash is neither supply of goods nor supply of service since definition of both goods and service under GST Act excludes transaction in money. Therefore, remuneration paid in cash is outside the purview of GST.
5. However, the employee may incur various expenses against which the employee is reimbursed. The question arises that whether the company is liable for any tax to be paid under reverse charge on such expenses (liability of reverse charge could arise where the supplier is unregistered) under section 9 (4) of the CGST Act/5 (4) of the IGST Act.
6. The expenses incurred by employees could be of two kind for which the employee is reimbursed – one where the expenses are incurred and are consumed by the employee himself like hotel expenses, conveyance expenses etc. and one where the expenses are

incurred by an employee as a representative of the company, like stationary expenses, where the employee is merely facilitating the supply between the supplier and the company.

7. Further it could be possible that -



8. Treatment for expenses for which reimbursements are given to employees where expenses incurred by the employee are consumed by the employee himself could be analyzed as follows -

A. Hotel expenses (accommodation only)-

- a. Under GST, services by a hotel, inn, guest house, club meant for residential or lodging purposes and having a declared tariff of a unit of accommodation below Rs 1000 per day or equivalent has been exempted from GST (Entry 14 of CGST Rate Notification 12/2017). Hence, if service has been availed by employee from such hotel, it shall not be subject to GST as the supply *per se* being covered under exempted category of supplies.
- b. In scenario 1, where the bill is in the name of the company, the recipient of such supply becomes the company. When the company books such expenditure, the company shall be liable to claim the input tax credit of the same (provided the company is otherwise eligible to claim such credits). In case the supplier is unregistered, the company is liable to pay tax under reverse charge mechanism and the liability of GST shall arise on the inward supply of goods/services.
- c. In case of Scenario 2, the company shall not be eligible to take the credit as the bill is in the name of the employee. With regards to reverse charge, there could

be a possibility of saying that such supply was made from an unregistered person (hotel) to an unregistered person (employee). However, since the company is booking such expenditure in its books of accounts, it could also be said that the recipient of such supply is ultimately the company and the company is liable to pay tax under reverse charge.

Note: In our view, when such expense is incurred by employee in the course of his employment and recovered from the company, it could be said to be supply between two unregistered persons (vendor and employee) and hence not subject to GST. The fact that expense is incurred in the course of employment should be established by incorporating it in the employment/offer letter or if it is not possible, in the HR policy of the company. However, at times, it could be difficult to keep track of expenses as to whether incurred in the course of employment or otherwise. Hence, if ITC is eligible, employer could opt to pay GST on all expenses and avail the credit so that there neither it increases in cost to company nor any objection raised by department in future.

- d. In case of Scenario 3, where notional amount is given to employee irrespective of expenses incurred by it, it could be said to be in the nature of cash allowance and outside the purview of GST.

B. Conveyance expenses

a. Type of conveyances and taxability in GST –

- i. Exempted – 2 wheelers, auto rickshaws, metered cabs, Non air-conditioned buses, railways other than first class or air-conditioned coaches.: Supplies received from such suppliers would be exempted from levy of GST under RCM also as the supply *per se* is exempted.
- ii. Taxable – Radio taxi, other cabs, air-conditioned buses, railways (first class or air-conditioned coaches), flights.: There is no question of applicability of RCM as the tax would be always be charged by supplier.
It is relevant to note that out of all above mode of transportations, services received from unregistered motor cab service providers could only be subject to GST under RCM.

- b. In case of scenario 1, treatment to be the same as in case of hotels. However, as rent-a-cab facilities have been covered in the list of ineligible credits (Sec 17(5)(b)) and effectively, credit of the same shall not be eligible
- c. In case of scenario 2, treatment to be the same as in case of hotels.
- d. In case of scenario 3, where the company is giving a notional amount to the employee regardless of his expenditure, the same shall be in the nature of a perquisite given to the employee and shall have no GST implications.

C. Food expenses – treatment to be the same as mentioned in hotel expenses.

D. Other expenses – in case of any other such expenses, the principals laid down in the case of hotel expenses and conveyance expenses hold good and needs to be applied on case to case basis.

9. Treatment for expenses for which reimbursements are given to employees the employee is merely facilitating a supply (expenditure not incurred in the course of employment - acting as agent of the employer while dealing with third parties) could be analyzed as follows –

GST areas	Scenario 1 - bill in the name of the company	Scenario 2 - bill in the name of the employee
Recipient for such supply	The company shall be the recipient for such supply in all cases as the employee is merely a facilitator in the transaction acting as a representative of the company. Such expenses are to be consumed by the company and not in the individual capacity of an employee. For example – office boy gets stationary for the company.	
Tax liability under reverse charge	The company shall be liable to pay tax under reverse charge on such expenses, wherever applicable.	Even if the bill is in the name of the employee, it could not be said to be recipient of such supply as such expenses have not been incurred in his personal capacity by the employee. The company shall be

		liable to pay tax under reverse charge on such expenses, wherever applicable. Needless to mention that if the supplier has charged tax, there is no question of RCM applicability.
Input tax credits	As the bill is in the name of the company, the company shall be eligible to avail the benefit of Input tax credit, wherever it is otherwise eligible. Credit shall be available based on consolidated reverse charge invoice or payment voucher, as the case may be.	As the bill is in the name of the employee, the company shall not be eligible to avail the benefit of Input tax credit on tax charged by supplier under forward charge, wherever it is otherwise eligible. Note - in case the company pays under reverse charge, then the company shall be eligible to claim the credit of the same, where credit on such expenses is otherwise eligible.

Note -

1. it is unlikely that an instance as per scenario 3 shall occur and the same has not been discussed.
2. While evaluating the taxability as per above, one should always keep in mind the exemption limit of Rs. 5,000/- per registered person for all inward supply received from unregistered persons in that day from all the suppliers. In limit of Rs. 5,000/-, exempted supplies need not be included.
3. It is suggested to develop proper employee claim/reimbursement from so that all information could be collated in proper manner at the point of inception of transactions. Necessary changes, if any, should also be made in the employment letter/HR policy.

Implication of GST on supplies made by employer to employee

10. As discussed above, reimbursements given to the employees shall be out of the purview of GST as such reimbursements are given in the nature of money which has been excluded from the definition of goods and services.
11. What about any compensation given to employee in the nature of kind (goods) or facilities (service)? Such compensation could be in the nature of the following categories -
 - A. Facilities covered in the employment agreement - if any facilities are covered under the employment contract and provided as per the terms defined in the contract then such facilities could be said to be consideration given to employee for his services to employer in the course of employment and would not amount to supply and hence not be subjected to GST. For example, as per the contractual terms of the employment agreement, the employer shall provide the facility of housing to its employee free of charge. Such facility is provided as consideration for the services of the employee to the employer in the course of his employment. As the services by an employee to an employer have been treated as neither supply of goods and nor supply of services, the consideration for the same i.e. the facility of house shall not be treated as a supply from employer to employee.
 - B. Facilities provided free of charge to all employees - the employer may provide some facilities, such as tea or food, free of cost to all its employees. Such facilities shall not be liable to GST provided such facilities are extended to the employees as common facilities and there is no identified employee to whom such services were meant for. Such facilities are usually mentioned in the HR policy of the company. It is relevant to note that press release issued by government requires that exclusion from levy of tax can be claimed only if the appropriate tax has been paid by the employer on procurement of such supply. But the view may not be subscribed as the receipt of supply by company is distinct from making further supply to employees.

C. Goods or facilities provided to employees in the normal course of the employment – such supplies are meant for official purpose, such as uniforms or laptops or even air conditioner installed in the official premises. They cannot be said to be a supply from the employer to an employee as many of them are prerequisites for the employees to provide their services of employment and many of them are a prerequisite of the employer itself. There is no element of gift and hence providing such facility is not subject to GST.

D. Any supply made by the employer to the employee not covered in above cases – such supplies would be supplies where there is no contractual obligation of the employer nor he is required to provide for such facilities in the normal course of business. Such supplies could be termed as gifts. In the press release of the government, the gifts have been explained as per common parlance as “gift is made without any consideration, is voluntary in nature and is made occasionally. It cannot be demanded as a matter of right by the employee and employee cannot move a court of law for obtaining a gift”. For example, cell phones given on the occasion of Diwali to the employees shall be considered to be a gift.

If any supply constitutes as a gift, such gifts shall be taxable. However, gift value upto Rs 50000 per employee per financial year shall not constitute to be a supply for the purpose of GST and shall not be taxed. If the value of gift exceeds the given limit, entire amount shall be constituted as a supply.

It is to be noted that gift shall constitute to be a supply only when the gift given is either a good or a service. Cash gifts given shall not be a supply as money has been specifically excluded from the definition of goods and services.

12. What shall happen if the employer is providing some facility to the employee and at the same time, charging something from the employee against such facilities? Such recovery could be partial or full, varying from company to company. Where full recovery is being made, such facilities could not be said to be gifts. Such facilities shall amount to be a supply from an employer to employee and shall be leviable to GST. Where partial recovery is being made, the same could be said to be supply to the extent of the recovery made, and the remaining could constitute to be a gift or a facility provided to all the

employee (covered in point B above) and shall not be liable to GST. The employee could claim the ITC corresponding to the supply made by it (provided that the credit of the same is otherwise eligible).

For example, where the employer is providing catering facilities to its employees, say of Rs 5000 each month to each employee and recovering Rs 3000 per employee per month, then the extent to which recovery is made i.e. Rs 3000 shall amount to a supply and the company needs to discharge GST on the same. Rs 2000 could be covered as a facility provided to all employees (as per point B).

The credit of catering could be taken by the company to the extent of the recovery made from its employees (credit of food and beverages, outdoor catering shall be eligible where such inward supplies have been incurred for making the outward supply of the same category).

In another example, an employer takes employees to picnic where cost incurred per employee is Rs. 1,00,000/- Employer recovers Rs. 75,000/- from employees and balance 25,000/- is incurred as cost by employer. To the extent of money received i.e. Rs. 75,000/- it shall be treated as supply and subject to GST. Balance Rs. 25,000/-, not in the nature of facility under contractual terms, could be said to be gift by employer and would be considered for exemption limit of Rs. 50,000/- p.a. per employee.

13. To conclude, the applicability of GST on a activity carried out by the employer needs to be analysed on case to case basis considering various factors like terms of employment, general industry practice, personal usage element, the structure of carrying out the transactions, the ultimate beneficiary of the transactions or the recipient of supply etc to evaluate the taxability as RCM as well as in the hands of employer as gift.