

GST on financial services: Frequently Asked Questions



VINOD KOTHARI CONSULTANTS
Kolkata | Delhi | Mumbai

GST on financial services

Straight answers to nagging questions

GST happens to be one of the biggest tax reforms since Independence and is expected to have far reaching impact on the economy across various sectors. Several business models may have to be realigned in line with the new regime, while several businesses may be just erased as having lost relevance. While businesses are grappling with the grasping the humongous change, understanding the nuances of GST, adapting to the change and making the transition is a challenge before all. In an attempt to understand the law as it pertains to financial services entities, its various facets and simplify the provisions, we have tried to put together this guide in the form of Frequently Asked Questions and their answers.

The guide is an academic work, and is not intended to be a professional advice. The answers to the questions are generic in nature, and have not been framed with any particular facts or background of research. The intent of the guide is to generate discussion and awareness; the guide is not intended to be relied for making any business decisions. Please do consult your own professional advisers before taking any decision on any question or issue, even if covered in these FAQs.

Structure of the FAQs

The guide starts with a brief overview of GST in general, but is largely focussed on addressing issues relevant for non-banking financial services sector and leasing sector in India. There has been a lot of literature published on GST in general, and therefore, the objective is to focus on specific questions pertaining to financial services sector.

Accordingly, the FAQs have been divided into two sections:

- A. General Section
- B. Financial Services Section (FS)

There are 3 components to the Financial Services Section:

- a. Overview of financial services sector
- b. NBFCs
- c. Leasing

Table of Contents

A. General Section

Introduction to Goods and Services Tax Act, 2017 (GST/ GST Act)

Brief overview

1. What will be the structure if GST in India?
2. GST repeals and combines several existing tax structures. What are the major benefits envisaged?

Registration Requirements

3. Who is liable to take registration under GST?
4. Who is exempt from the registration requirements under GST?
5. Is the registration requirement applicable only if the turnover threshold is breached as provided in Section 22 of the CGST Act?
6. Who is a supplier?
7. What does taxable supply of goods and services mean?
8. What does the term aggregate turnover mean?
9. If a person is operating in different states, with the same PAN number, can he opt for a single Registration?
10. A company wants to register as different business verticals in one state and take a single registration in other. Can it do so? 17

Scope and value of Supply

11. Is the term Supply different from the term Sale as used under the VAT Acts?
12. Is it necessary to distinguish whether a particular supply involves supply of goods or services or both?
13. What is composite supply?
14. What is a mixed supply?
15. Is there any difference between mixed supply and composite supply?
16. How would the tax liability be determined in case of composite supply?
17. Is the rate of tax prescribed under GST the only rate? Or there is additionally cess/ charges levied over and above the GST rate of tax, as was the case under existing tax regime?

Input Tax Credit

18. What are the conditions for claiming input tax credit?
19. What are the conditions for claiming input tax credit for NBFCs?
20. Is input tax credit available in case of all taxable supplies?

21. Is the concept of input tax credit same as was under the existing tax regime?
22. Whether credit is available on tax paid on reverse charge basis?
23. What are the set off provisions for CGST, SGST, IGST within the same state and outside the state?
24. Can input credit be claimed in respect of any compensation cess paid for supplies notified by the GST council?
25. What is the consequence if the entity mistakenly charges CGST/SGST in place of IGST or vice versa?
26. If a company takes the wrong credit for setting off any tax liability, what will be the consequences?
27. Will the company pay interest on the above delay as well?
28. What is the time limit within which the recipient of supply is liable to pay the value of supply with taxes to the supplier of service to avail the input tax credit?
29. Can a registered person avail the benefits of input tax credit and also depreciation on the tax component of same goods?

Reverse Charge

30. What is the concept of reverse charge mechanism and how will it affect the company?
31. Is reverse charge applicable in case of supply of goods as well?
32. Who is an unregistered dealer?
33. Whether ITC would be available if payment to the supplier is not made within 180 days of time of supply, in a case covered by reverse charge?
34. Suppose a company purchases pens & stationary worth Rs 100 from a nearby vendor whose monthly sales are only Rs 25000, will it attract reverse charge?
35. What all services of director are covered under reverse charge?
36. Whether guarantee given by director for any loan taken by the company fall in reverse charge?
37. Will there be tax applicable, even if there is no consideration for the guarantee provided?
38. What would be the value at which the above supply would be taxable?

Related Person

39. Who is a related person according to Act?
40. Whether supply of goods/services to a related person liable to GST?
41. What are the valuation rules for computing GST to be levied on transactions made between related persons?

Tax invoice

42. What are the fields prescribed in a tax invoice under GST?

43. What is the relevance of an Invoice in the GST system?
44. The existing laws required for a Tax Invoice for claiming ITC. Is the concept still relevant under the GST Act?
45. Whether all the items of invoices have to be compulsorily filled in the GST return?

Inter-State supply

46. When is a particular supply considered inter-state supply?
47. Can we discretionally shift the incidence/location of tax by selecting the place from where the order is placed?
48. What is “bill to” “ship to” model?
49. Is it permissible to buy goods from State B to State A, even though one has the registration in State B? How is GST charged in this case?

B. Financial Sector

Overview of financial sector

50. What is the meaning of financial services?
51. Are loan transactions subject to GST?
52. Are securitisation/ assignment of receivables transactions subject to GST?
53. Is GST applicable on factoring as well?
54. Is acquisition/ sale of securities subject to GST?
55. What kind of transactions fall in the ambit of “securities”?

Lending activities

Fee charged by lenders

56. Will processing fees charged by banks/ financial institutions be subject to GST?
57. Whether charges in nature of documentation, upfront charges etc chargeable to GST?
58. Is GST applicable on delayed payment charges, overdue interest, etc in case of loan transactions?
59. Can charges such as check bouncing charges be subject to GST on accrual basis, even though the chance of recovery thereof is bleak?
60. At present, most lenders maintain dual records, to reflect accrual in case of accounts which are NPAs. The regulatory accrual of any income on an NPA is on cash basis, whereas, for contractual purposes, an accrual happens when it is to happen as per contract. Whether GST law makes any difference to this system of accrual?

Sale of repossessed goods

61. Whether sale of repossessed goods by bank/financial institution is subject to GST?
62. Why does the law need a special provision in case of repo sales?
63. How does the law resolve the difficulty of cascading tax in case of repo sales?

64. What should be the treatment in case of repossession from a registered supplier?
65. In case the actual value at which the goods are repossessed are different from depreciated value as laid down by valuation rules, how will the company account for the same for GST?
66. Whether temporary repossession of goods attract GST?
67. What will the value be at which the GST is charged when sale of repossessed goods is done after six months from its repossession? That is to say, does the value of the repossessed stock continue to depreciate while in stock of the lender?
68. What is the GST implication if the goods taken in repossession are transferred by the lender to the lender's stock yard (a) in the same state; and (b) in a different state?
69. What will be the taxability of goods when they are sold through different modes or distribution channels?

Services of Recovery agents

70. How will services provided by the recovery agents taxed under GST regime?
71. How would be the SEP commission payable to unregistered agents taxed under GST. Would GST be paid on reverse charge basis?

Input Tax Credit

72. Can ITC be claimed against inputs acquired for providing financial services?
73. What are the conditions necessary for obtaining ITC?
74. Does input tax includes tax (CGST/IGST/SGST) paid on input goods, input services and capital goods?
75. What will happen to the unabsorbed ITC benefit as on the date of migration?
76. In case of change in the constitution of a registered person whether input tax credit shall be allowed to be transferred?
77. Is there any time limit by which reversal of GST will be allowed for cancellation of a contract or cancellation of a supply?
78. If a reversal of a contract happens beyond the time period specified in sec. 34 (2), what is the treatment?
79. Can input tax credit be claimed when a motor car is purchased for use in business?
80. From the perspective of eligibility to input tax credit, what is the difference between a passenger motor vehicle and a goods vehicle?

Leasing sector

General overview

81. Are lease transactions subject to GST?
82. At what rates shall GST be charged on lease transactions?
83. Is it the rate or the base which is same as that of the supply of goods?

84. What is the taxable base in case of lease transactions?
85. Does GST law make any specific provision for lease transactions?
86. Is GST applicable on the following, and if so, at what rate?
87. Is GST applicable on security deposit?
88. Is GST applicable on additional lease rental, that is, variation in lease rentals based on a change in the reference interest rates?

Supply of goods vs. Supply of services

89. Whether a lease is a supply of goods or supply of services?
90. What is the ambit of GST in respect of leasing transactions?
91. Does the GST law make any distinction between financial lease and operating lease?

Impact of GST on lease transactions

92. What is the impact of GST on the economics of lease transactions?
93. What are the factors that affect the post-GST IRR?

Accounting Standards (AS and IND AS)

94. Lease rental accruals accounting is done on straight line basis as per AS -19 irrespective of the lease rental due from the customer during the tenure of the lease. GST is to be paid on accrual or receipt basis?
95. As per IND AS provisions, fees are to be amortised during the full loan / lease tenure. GST is to be paid on accrual or receipt basis?

Cross Border supply

96. How will cross border GST transactions occur?
97. Is hire purchase finance transaction subject to GST?
98. At what rate will hire purchase transactions be taxed?
99. Is it the asset purchase price on which the GST would be levied on hiring such asset?
100. Are conditional sale transactions subject to GST?

Registration

101. If a leasing entity has offices in more than one states, is it necessary to register in each of the states or one centralized registration will do?
102. Can leasing be regarded as a separate business vertical within a non-banking financial entity?
103. If a supply is made from one business vertical to other of a company located in same state will it attract GST?

Inter-state and Intra-state Supply

104. What is the meaning of inter-state lease and what are the rules for determining whether the lease is an inter-state supply or intra-state supply?
105. How will intra-state lease transactions be charged under GST regime?

106. How will inter-state lease transactions be charged under GST regime?
107. Is there any implication in terms of tax incidence or tax efficiency on account of the lease being inter-state or intra-state?
108. What is the treatment for leases in course of import or so-called high seas lease transactions?

Point of taxation

109. What will be the point of taxation for lease transactions?
110. In case of those transactions where the lease has commenced, prior to the effective date of GST implementation, will the transaction be subjected to GST? If so, how?

Input Tax credit

111. What if the supplier of services already have unutilised input tax credit for the taxes paid for purchase of assets under lease?
112. What happens to the unutilized ITC where the constitution of the supplier is changed? Will it be transferred to the newly formed entity?
113. What happens to the unutilised ITC if the supplier enters into a business combination?
114. In what ways can a bank/ financial institution engaged in leasing business claim ITC?
115. Can a supplier claim credit for taxes paid under earlier law, which was not eligible for ITC?
116. Under the VAT laws, some of states allowed the tax payers to claim ITC on a staggered manner. Can such registered persons claim ITC at one go under the GST regime or do they have to claim it on a staggered manner even under the new law?

Composite and Mixed Supply

117. Can services of AMC provided along with the car lease be considered as composite supply?

Contact us

In order to get the full version of the FAQs, please drop an email at:

- Kanishka Jain – kanishka@vinodkothari.com
- Ankit Bhalotia – ankit@vinodkothari.com

Alternatively, you can drop us an email at:

gst@vinodkothari.com or finserv@vinodkothari.com

Our other write ups in the topic can be viewed at:

<http://vinodkothari.com/goods-and-services-tax/>

Vinod Kothari Consultants P. Ltd

Kolkata

1006-1009, Krishna
224 AJC Bose Road
Kolkata – 700 017
Phone: 033 4001 0157/ 033 2281
3742/7715

Email: info@vinodkothari.com

Mumbai

403-406, Shreyas Chambers,
175 D.N. Road, Fort,
Mumbai – 400 001
Phone: 022 22614021/ 022
30447498

Email: Bombay@vinodkothari.com

Website: www.vinodkothari.com

New Delhi

A/11 Hauz Khas
New Delhi – 110016
Phone: 011-65515340/ 011-
41315340

Email: delhi@vinodkothari.com