

Advisory on GST

In the backdrop of Goods and Services tax (GST), its implication and the various oral advisories taken by our affiliates from their respective CAs, some affiliates informed that their CAs also advised them to not to register their cooperatives for any action and they will address it through litigation. Here Sahulat feels necessary to provide a comprehensive advisory in this regard.

The opinions taken by Sahulat affiliates provide the only ground of section 80(P) of Income Tax act that discusses exemption from income tax only on 'the concept of mutuality'. While on the other hand GST is not the provision of income tax neither it recognizes any sort of institution, it is simply applied on the transactions of goods and services. So it is different from income tax act/provisions.

Sahulat already informed in its advisory dated 13th December 2017 the GST makes it compulsory to register the organization under GST once the aggregate turnover reaches 20lakhs.

(Under Chapter VI of CGST 22 (1) 'Every Supplier shall be liable to be registered under this Act in the State or Union Territory, other than special category States, from where he makes a taxable supply of Goods or Services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees)

So if societies have reached to the criteria of aggregate turnover, they must register themselves under GST as soon as possible and should start collecting GST on service charge based loans (you are also aware that Murabaha and Ijara also come under the GST regime). Because if it is not done, the societies may get in trouble on any GST related scrutiny. The societies have to understand that even though they are not charging GST from their members but the obligation of GST is accumulating @ 18% on them with every transaction happening in the society. So if the GST is not collected, its obligations and penalty together will affect the financial prudence of the society. The societies may have to pay these GST implications either from their institutional capital or from share capital when summoned which may also affect the deposits as consequence of it. Moreover the asset of cooperative is prone to be realized in future date and the liability will be still accumulating at the same time and as result the prudence of cooperative will be compromised and it may also lead to the closure of the society. As a whole any mishappening with any cooperative in such case will affect the Interest free credit cooperative movement in the country and will be the infamy for the whole sector.

Additionally noncompliance of GST may attract monetary penalty, criminal prosecution as well as imprisonment of upto 5 years, according to GST offence and penalty provisions. ***The same is attached for your kind perusal.***

The financial activities in India in the name Interest free/Islamic financial services have not earned good name over the years. Many of them were involved in alleged scandalous activities. You may also have heard about the recent arrest in Hyderabad

of a lady entrepreneur for scandalous financial activity. It may affect the whole movement in India and then gaining trust of public, policy makers and the sector would become near to impossible for the Interest Free Cooperative Movement.

Recently one of our affiliate Al-Khair Patna has applied for advance ruling in Bihar Advance Ruling Authority for the exemption of GST on service charge/borrowing cost charged on cash loans. The authority has pondered over the application and argument made by the party and ruled that, ***'Services of providing loan against service charge or any other charge is not listed in the Circular No. 12/2017 Tax (rate) serial no. 27. Therefore, such services are liable to pay tax as per the GST rule'. The order of Advance ruling authority is attached for your kind perusal.***

Al-Khair has registered itself under GST and started charging the GST on loan, recently they have also filed return for second quarter.

Hence Sahulat strongly advises its affiliates to register themselves under GST and to start collecting the GST as per its rule for their cash loan transactions. As of now it is the only way out in regard to GST implications.

Sahulat also advises its affiliates to take any opinion on GST from their respective CAs in their official capacity invoking relevant sections of the law and rules; it should be on the letterhead of their respective firms and appropriately sealed and signed. This should be acquired on payment basis.

Furthermore Sahulat has also prepared an advocacy note for GST with the help of its Board member and CA Mr S S Quadri. Sahulat advises all of its affiliates to meet the Finance Ministers of their respective states and to make them understand the operations of Interest Free Cooperative, difference of Interest and Service Charge and benefit of the Interest free microfinance activities to its beneficiaries in the light of the said advocacy note. Once it is communicated in all the states Sahulat will work to consolidate the opinion with the GST council in this regard.

Please let us know when your meeting with your respective state finance minister is done.

Lets hope for the best and hopefully we may be able to convince the GST council for the exemption of Service Charge/Borrowing cost in Interest Free credit cooperative societies.