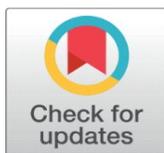


DECODING THE COMPLEXITIES OF ADVERTISING SERVICES UNDER INDIA GST REGIME: A COMPREHENSIVE GUIDE

Pushpendra Kumar ¹, Dr. Pradeep ²

¹ Research Scholar, Mewar University, Rajasthan, India

² Research Supervisor, Mewar University, Rajasthan, India



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ABSTRACT

The introduction of the Goods and Services Tax ('GST') in India significantly impacted the advertising industry, necessitating a thorough understanding of its implications. This article delved into the intricacies of advertising services under the GST regime, covering various types of advertising, regulatory considerations, and challenges faced by industry players.

The article began by outlining the diverse landscape of advertising services, including traditional and digital mediums, and the involvement of industry constituents such as media agencies and intermediaries. It then traced the taxability of advertising services under both the previous Service Tax Law and the current GST Law, highlighting the transition and implications for businesses.

Further, the article explored the complexities surrounding advertising arrangements involving advertising agencies, distinguishing between transactions conducted in the principal's capacity and the agent's capacity. It discussed the nuances of GST compliance, including registration requirements, input tax credit, and the reverse charge mechanism. The article also addressed the critical aspect of determining the place of supply for advertising services, crucial for tax jurisdiction and compliance. Case studies were presented to illustrate the practical challenges and implications of GST on advertising transactions.

Despite challenges such as complexity in determining the place of supply and compliance burden, the article highlighted the positive outlook for the advertising sector under GST. As businesses adapted and leveraged technology for compliance, GST was expected to bring transparency and efficiency to India's advertising ecosystem.

Keywords: GST, Advertising Services, Place of Supply, CBIC Circular

1. INTRODUCTION

The advent of the GST in India heralded a new era in taxation, impacting virtually every sector of the economy. Among the industries significantly affected by this tax regime is advertising, a cornerstone of modern business strategies and brand promotion. As businesses grappled with the complexities of GST compliance, the implications for advertising services became increasingly pronounced, necessitating a comprehensive understanding of the intersection between advertising and taxation.

Against this backdrop, this article endeavors to explore the intricate relationship between advertising and taxation under the GST regime in India. By delving into the nuances of advertising services within the context of GST, this article aims to shed light on the challenges, opportunities, and regulatory considerations faced by stakeholders in the advertising ecosystem.

The significance of this article lies in its unique perspective on the convergence of two seemingly disparate domains: advertising and taxation. The integration of taxation principles into advertising practices represents a novel approach that offers valuable insights for businesses, policymakers, and industry professionals alike. By examining the impact of

GST on various facets of advertising, from taxability and regulatory compliance to the determination of place of supply, this article provides a holistic understanding of the evolving landscape of advertising services in India.

Moreover, this article seeks to elucidate the benefits and drawbacks of advertising allied with taxation in the Indian context. On one hand, GST has streamlined taxation processes, offering businesses greater transparency, efficiency, and compliance. However, it has simultaneously introduced complexities for example, the circular issued by CBIC has artificially created distinction for determination of place of supply of advertising space and time. By critically evaluating these implications, this article aims to provide insights necessary to navigate the dynamic intersection of advertising and taxation in India.

2. WHAT QUALIFIES AS ADVERTISING SERVICES?

The GST law does not define what encompasses advertising services. Accordingly, reference can be drawn from service tax law to understand meaning of advertising services.

Service tax law defined 'advertisement' to include any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas.¹

Further, 'advertising agency' means any person engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant.²

However, with the advent of negative tax regime, the definition of advertisement was replaced to keep up with changes in advertisement industry. Accordingly, the definition of 'Advertisement' means any form of presentation for promotion of, or bringing awareness about, any event, idea, immovable property, person, service, goods or actionable claim through newspaper, television, radio or any other means but does not include any presentation made in person.³

3. TYPES OF ADVERTISING SERVICES

Advertising services encompass a diverse range of activities aimed at promoting goods, brands, or services. Understanding the various types of advertising is crucial for determining their tax treatment under GST regime:

1) Traditional Advertising

Traditional advertising channels have long been the backbone of marketing strategies, offering tangible and widespread visibility.

- **Print Media:** This includes advertisements published in newspapers, magazines, brochures, pamphlets, and other printed materials. Print Media provides a tangible medium for conveying messages to audiences. It allows businesses to target specific demographics and geographic regions, offering a reliable and credible platform for brand promotion.
- **Outdoor Advertising:** Billboards, hoardings, posters, banners, and signage displayed in public spaces fall under this category. Utilizing physical spaces in public areas enables businesses to reach a broad audience. Outdoor advertising leverages high-traffic locations to maximize visibility and exposure, making it an effective tool for building brand awareness and generating leads.
- **Broadcast Media:** Television and radio advertisements are prominent examples of broadcast advertising. Television commercials allow businesses to showcase products or services through audiovisual storytelling, while radio advertisements offer a cost-effective way to target specific demographics and geographic regions.

2) Digital Advertising

With the rise of digital technologies, advertising has expanded to encompass a diverse array of online platforms and strategies.

¹Section 65(2) of the Finance Act, 1994.

²Section 65(3) of the Finance Act, 1994.

³Section 65B(2) of the Finance Act, 1994.

- **Online Display Ads:** Banner ads, pop-up ads, and rich media ads displayed on websites and mobile applications. It enables businesses to target audiences based on interests, demographics, and online behavior. Online display advertising offers precise targeting capabilities and measurable results, making it a preferred choice for many advertisers.
- **Social Media Advertising:** Promotional content on platforms like Facebook, Instagram, Twitter, LinkedIn, etc. Social media advertising offers advanced targeting options, interactive ad formats, and detailed analytics, enabling businesses to optimize campaigns and drive meaningful engagement.
- **Search Engine Marketing (SEM):** Paid advertisements appearing on search engine result pages (SERPs). These appear alongside organic search results, providing businesses with prominent visibility and targeted traffic. Search engine marketing allows businesses to bid on keywords relevant to their products or services, ensuring their ads are displayed to users actively searching for related information.

In addition to the abovementioned categories that explain mode of advertising, the industry constituents include media agencies, creative agencies, brokers & intermediaries etc. These entities play pivotal roles in facilitating advertising campaigns, managing creative assets, negotiating contracts, and optimizing advertising strategies to achieve desired outcomes.

By comprehensively understanding the diverse landscape of advertising services, businesses can navigate the complexities of the GST regime and ensure compliance with tax regulations. Moreover, recognizing the evolving dynamics of advertising modes and industry constituents empowers businesses to adapt their marketing strategies effectively and capitalize on emerging opportunities in the ever-changing advertising landscape.

4. TAXABILITY OF ADVERTISEMENT UNDER SERVICE TAX LAW

With the introduction of Service Tax on all services (other than those covered under negative list⁴) w.e.f July 1, 2012, service tax was applicable on all the aspects of advertising services except the sale of space or time for advertisement in some instances. Accordingly, the sale of time slots in between programs which are being telecasted on television, the sale of space on hoardings, etc. were not liable to tax. However, w.e.f **October 1, 2014**, the negative list was amended to restrict the non-taxability to the sale of space in print media and all the other sale of space/time arrangements were brought under the net of service tax. For reference, provisions of the Finance Act 1994 are extracted below:

“Section 66D - Negative list of services.

The negative list shall comprise of the following services, namely:--

...

(g) selling of space or time slots for advertisements other than advertisements broadcast by radio or television (applicable from July 1, 2012 till September 30, 2014)

Finance Act, 2014, substituted the sub-section (g) and the amended section read as under:

(g) selling of space for advertisements in print media; (applicable from October 1, 2014 to June 30, 2017)

5. TAXABILITY UNDER GST LAW

Following the implementation of GST on **July 1, 2017**, all services, without exception, fall under its purview. Advertising services, being considered as the supply of services under the GST regime, are thus subject to GST regulations, irrespective of whether one operates as a creative agency, media agency, or any other entity involved in advertising.

Under GST, advertising services across various mediums, including the sale of space in print media, are subject to taxation. While this may lead to increased cash outflow for businesses, the seamless flow of input tax credit on the procurement side results in an overall reduction in the cost of advertising. Have the overall costs gone up or down, is a subject matter for analysis but changing trends and tenors of advertising over years pose a significant challenge on

⁴Section 66D of the Finance Act, 1994.

drawing attendant conclusion. Consider the following base case scenarios for a bird's eye view of taxability of advertising services:

- 1) **GST on advertising through digital media:** It involves transactions between two parties, the advertiser and the publisher. The advertiser seeks to promote a product, idea, website, mobile application, etc., while the publisher disseminates these advertisements through various digital platforms such as websites, emails, or SMS. Advertisement services on digital media are liable to GST at the rate of 18%. For instance, if a website owner sells space on their platform to a business entity for Rs 500,000, the GST payable on this transaction amounts to Rs 90,000 (calculated as $500,000 \times 18\%$).
- 2) **GST on advertisements in print media:** It pertains to advertisements published in mediums like newspapers magazines etc. Advertising services by selling space in print media is liable to GST at the rate of 5%. For example, a leading newspaper publishing company sells space on the front page of its newspaper to a business entity for Rs 50,000. In such a scenario, the GST payable on this transaction totals Rs 2,500 (calculated as $50,000 \times 5\%$).

In summary, under the GST regime, advertising services are subject to taxation regardless of the medium used for dissemination. It is imperative for businesses involved in advertising services to understand and comply with the GST regulations applicable to their operations.

A logical question strikes our mind as to what happens when the advertisement is placed in the digital copy of a successful print player i.e. say in e-copy or online addition of leading newspapers. Would it really constitute print medium thereafter too? This complexity is averted where a separate charge is recovered for either form. However, when a bulk deal is done with media where advertorials in the print edition is also showcased in the e-copy, the tide may turn significantly. Would this be a composite supply or a mixed supply? In either form the taxation, tax rate in particular, could vary significantly.

6. OTHER FORMS OF ADVERTISEMENT SERVICES ARRANGEMENT

There exist diverse avenues through which an advertiser may choose to promote a business. Engaging an advertising agency stands as one such avenue, wherein businesses opt to approach an agency rather than directly liaising with advertisers for promotional endeavors.

Within this framework, **two distinct** scenarios can unfold:

1) *Advertising in Principal's Capacity:*

Here, the advertiser solicits the services of an advertising agency to promote its business. The advertising agency procures the advertisement from the advertising company under its own name and subsequently resells it to the advertiser. For instance, a Newspaper Publishing Company offers space on the front page of its publication to an Advertising Agency. If the company quotes Rs 100,000 for the space, the GST payable on this transaction amounts to Rs 5,000 (calculated as $100,000 \times 5\%$). Subsequently, when the advertising agency resells the same space to a business entity for, say, Rs 150,000, the GST payable totals Rs 7,500 (calculated as $150,000 \times 5\%$).

2) *Advertising in Agent's Capacity:*

Alternatively, a business, rather than directly approaching the advertiser, may engage the services of an agent for promotional activities. In this scenario, the advertising agency procures the advertising space on behalf of the advertiser but charges a commission for its services. In such instances, GST would be levied at 5% for advertisements in print media and 18% for digital media advertisements respectively. However, in either scenario the advertising agency imposes GST at an 18% rate on the commission charges.

Here it is pertinent to mention that the involvement of advertising agencies introduces nuanced dynamics into the realm of advertising, with GST implications varying based on the nature of the transaction and the capacities in which the parties engage. Understanding these intricacies is of paramount importance and crucial for businesses navigating the advertising landscape under the new GST regime.

A significant aspect that the GST regime addressed in models involving agent was about businesses availing indirect tax credit of cost of media space/ time, which was challenging in the Service Tax regime, where most agencies recovered it from customers in name of pure agent recoveries and hence, posing a challenge on creditability of same for reasons of (a) document not being in name of the end user or the amount not being disclosed for hiding margins. For example, during the service tax regime, the returns were filed manually and in case of any discrepancy, the input credit was denied.

However, with introduction of GST, the process of filing return has been streamlined by way of introduction of online filing of tax returns with the help of GSTN portal and thus facilitating a smoother process for claiming ITC.

7. ADVERTISEMENT THROUGH REGISTERED PERSON OUTSIDE INDIA

As a general rule, the supplier of a service is responsible for paying GST on the service provided. However, the GST regime also incorporates the concept of the reverse charge mechanism, borrowed from the service tax regime. Under this mechanism, the recipient of the service becomes liable to pay GST instead of the supplier. It's important to note that this liability falls on the recipient only when the government specifically notifies it.

In the case of services provided by an individual or entity located in a non-taxable territory to someone in a taxable territory, except for non-taxable online recipients, the recipient in India bears the responsibility of paying GST under the reverse charge mechanism. For instance, if Mr. A avails advertisement services from M/s. XYZ, located in a non-taxable territory, Mr. A would be required to discharge the GST liability to the Government as a recipient of service.

8. PLACE OF SUPPLY

GST is a destination based tax, therefore, determining the place of supply is very crucial under GST law as it not only helps in determining the applicable type of tax to be levied and its jurisdiction. The place of supply for advertising services is determined based on various important factors such as the nature of the service, the location of the supplier, and the location of recipient:

1) *Print Media and Outdoor Advertising:*

If the recipient of advertising services is a registered person (business) located in India, the place of supply is the location of the recipient. If the recipient is not a registered person or is located outside India, the place of supply is the location of the supplier.

2) *Broadcast Media:*

The place of supply is determined based on whether the recipient is a registered person or an unregistered person. In case the recipient is a registered person, the place of supply is the location of the recipient. Whereas, if the recipient is not a registered person or is located outside India, the place of supply is the location of the supplier.

3) *Digital Advertising:*

The place of supply for digital advertising services is determined based on whether the recipient is a registered person (B2B) or a consumer (B2C). For B2B transactions, the place of supply is the location of the recipient if the recipient is registered in India. If the recipient is outside India, the place of supply is the location of the supplier. For B2C transactions, the place of supply is the location of the recipient.

4) *Supply of advertising services to the Government*

In the case of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority shall be the state(s) or union territory (ies) identified in such contract.

Recently, the Central Board of Indirect Taxes and Customs ('CBIC') has issued a Circular⁵ providing clarification regarding *inter alia* determination of place of supply in respect of advertising services involving hoardings/ bill boards erected and mounted on buildings/land.

The Circular deals with two scenarios which are discussed below:

- In cases where **space or the right to use space** on the hoarding/ structure (an immovable property) is supplied for displaying advertisements, the place of supply is where the hoarding is located.
- In cases where the **vendor provides advertisement services without supplying space or rights to use immovable property** (i.e., where the responsibility of arranging the hoardings/ billboards lies with the vendor who may himself own such structure or may be taking it on rent or rights to use basis from another person), the place of supply is the location of the recipient if the recipient is registered. If the recipient is not a registered person, the place of supply is the location of the supplier.

⁵ Circular No. 203/15/2023 - GST, dated October 27, 2023.

9. GST REGULATORY CONSIDERATIONS

In addition to understanding the place of supply, advertisers and businesses engaged in providing advertising services must also adhere to various regulatory requirements under the GST regime:

- **GST Registration:** Advertisers and service providers whose aggregate turnover exceeds the prescribed threshold limit of Rs 20 lakhs are required to register under GST and comply with filing requirements.
- **Input Tax Credit (ITC):** Businesses can claim ITC on GST paid on inputs, input services, and capital goods used in providing advertising services, subject to compliance with relevant provisions.
- **Reverse Charge Mechanism (RCM):** In some cases, advertising activities are undertaken **by way of sponsorship** which is liable to tax under RCM⁶. Under RCM, the recipient of advertising services is liable to pay GST instead of the supplier. Accordingly, like advertisement services procured from persons located outside India, businesses undertaking advertisement services through sponsorship, need to be comply with RCM provisions.
- **Compliance and Record-keeping:** Advertisers must maintain proper books of accounts, invoices, and records to ensure compliance with GST regulations and facilitate audits by tax authorities.

CASE STUDIES

To better understand the practical challenges and intricacies including implications of GST on advertising services, let's explore a below mentioned case studies:

Sr no	Case Study	Whereabouts & Remarks	Reference
1	Print Media Advertisement for a National Brand	A national brand engages a print media agency to run advertisements in newspapers across India.	Section 12(2) of the IGST Act
		The place of supply will be determined based on the location of the recipient. If the recipient is a registered business, the place of supply will be the location of the recipient. If the recipient is not a registered business or is located outside India, the place of supply will be the location of the supplier.	
2	Digital Advertising for an E-commerce Platform	An e-commerce platform engages a digital marketing agency to run online display ads and social media campaigns targeting customers in India and abroad. The place of supply for B2B transactions will be the location of the recipient if the recipient is registered in India. For B2C transactions, the place of supply will be the location of the recipient.	Section 12(2) of the IGST Act

10. CHALLENGES AND FUTURE OUTLOOK

While GST has streamlined taxation to a large extent, the advertising sector faces certain challenges such as:

1) Complexity in Determining Place of Supply:

The digital nature of advertising services often makes it challenging to determine the place of supply, especially in cross-border transactions.

2) Compliance Burden:

Advertisers need to ensure compliance with GST regulations, which involves maintaining detailed records, timely filing of returns, and understanding complex provisions such as reverse charge mechanism.

Despite these challenges, the future outlook for the advertising sector under GST remains positive. As businesses adapt to the new tax regime and leverage technology for compliance, GST is expected to bring greater transparency and efficiency to the advertising ecosystem in India.

11. ADVANTAGES OF ADHERING TO COMPLIANCE WITH GST LAW

Adopting compliant practices of GST on advertising services yields numerous advantages for businesses, encompassing:

⁶Sr No 4, Notification No.13/2017 – CT (Rate) dated June 28, 2017.

- **Reduced tax liability:** Compliant practices of GST on advertising services allow businesses to take advantage of ITC, effectively reducing their overall GST liability. This financial benefit contributes to cost-effectiveness and improved profit margins.
- **Improved Financial Management:** Ensuring compliance with GST on advertising services goes hand in hand with proper accounting and tax management. Businesses can maintain transparent financial records, facilitating accurate reporting and strategic financial planning.
- **Enhanced brand reputation:** Adherence with GST law mitigates the risk of penalties and legal compliances. Further, by adherence, businesses can avoid regulatory fines and safeguard their financial standing. This preserves financial resources and prevents potential damage to the company's reputation.

The benefits of compliant practices of GST on advertising services extend beyond mere regulatory adherence. They encompass financial advantages, improved brand perception, and risk mitigation. By integrating these practices into their operation, businesses in the advertising sector position themselves for sustained growth and positive relationship with stakeholders.

12. BEST PRACTICES FOR BUSINESSES TO ENSURE COMPLIANCE

As discussed above, compliance with GST law is crucial for ensuring the ongoing operations and long-term viability of a business. Below are some recommended best practices to maintain compliance:

- **Classification of services under correct code:** Accurate classification of service under the appropriate Harmonized System of Nomenclature Code ('HSN code') for determination of appropriate rate of tax.
- **Compliance with thresholds limit:** GST law prescribes the threshold limit for obtaining registration. As soon as the threshold is reached, the company should obtain GST registration and comply with GST law.
- **Maintenance of proper records:** The Company shall maintain proper records of all the transactions undertaken by it at its place of business. It substantiates veracity of the transaction during the investigation/ audit proceedings initiated by the department.
- **Timely filing of returns:** Filing of returns on time will ensure smooth availment of input tax credit, non-imposition of fines & penalties and continuity of the business as the department has cancelled registration of many tax payers on the ground of non-filing of returns.
- **Accurate & timely invoicing:** The Company shall timely file return to be able to avail input tax credit within the prescribed timelines. Further, accurate filing of returns would ensure that the department does not dispute tax liability on a later date.
- **Reconciliation of Input Tax Credit register:** Since the provisions for matching have been implemented by the Government, it would be essential for the businesses to reconcile the returns before availment of input tax credit and accordingly, avail the amount of credit as is reflecting in Form GSTR - 2B to avoid any litigation. Further, the businesses shall avail input tax credit within the time prescribed under the GST law⁷ to avoid disallowance of credit by the tax authorities.
- **Compliance with Place of supply provisions:** The place of supply provision is crucial for determining the nature of tax applicable on a transaction and thereafter, discharge of tax correctly. Further, as discussed above, the department has issued clarification for determination of place of supply. Accordingly, it is pertinent to consider all such clarifications before determination of place of supply and discharge of tax correctly.
- **Adapt with changes in GST law:** Due to the recent implementation of the GST law, government, department, and judicial & quasi-judicial bodies are consistently refining and updating it to address any inconsistencies or issues. Accordingly, it becomes very important to stay abreast of recent changes with the law to be able to implement it immediately and accordingly, avoid being penalized by the authorities.

⁷Section 16(4) of the CGST Act.

13. CONCLUSIONS

Vide the Circular, CBIC has created a distinction between services where there actually exists none. As per residuary rule of place of supply provisions,⁸ the place of supply of advertising space or time, which are classified under the same HSN code, was location of the recipient. However, the circular has artificially created a distinction for supply of advertising services space by treating it as supply related to immovable property and accordingly, the place of supply would be the place where such hoarding/ structure is located.

The said clarification does not seem to be in line with the general principles of determination of place of supply under GST law. However, the said Circular would remain binding on the department till it is struck down.

Accordingly, navigating the complexities of advertising services under the Indian GST regime requires a thorough understanding of facts specific to each industry in respect of various types of advertising, place of supply rules, regulatory considerations, and potential challenges. By adhering to GST regulations and leveraging technology for better compliance, advertisers can ensure seamless operations and contribute to the growth of India's vibrant advertising industry in the digital age.

14. AUTHOR'S CONTRIBUTION

The author confirms sole responsibility for the following: study conception and design, data collection, analysis and interpretation of results, and manuscript preparation.

CONFLICT OF INTERESTS

The author has no conflicts of interest to declare. The author has seen and agrees with the contents of the manuscript and there is no financial interest to report. I certify that the submission is original work and is not under review at any other publication.

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⁸Section 12(2) of the IGST Act, 2017.