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Taxman targets banks for free logo use by subsidiaries

BY JOEL REBELLO & SACHIN DAVE, ET BUREAU | JAN 30, 2019, 07:07 AM IST

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MUMBAI: The tax department has started issuing notices to banks that allow subsidiaries, such as mutual fund and insurance units, to use their logos for free. The tax department wants the banks to pay 18% GST on the “deemed” value of such transactions and has even calculated how much these are worth, said people with knowledge of the matter.

State Bank of India, Citibank, [ICICI Bank](#), Bank of Baroda, [Kotak Mahindra Bank](#) and others have received show-cause notices or are being scrutinised and could soon be getting them, said people with direct knowledge of the matter. Subsidiaries use logos for the promotion of related products with the understanding — sometimes included in a contract — that no fees have to be paid. The tax department says these are “related party transactions” and hence should be subjected to valuation regulations as per the GST framework.

This follows banks being asked last year to cough up taxes on services provided free to customers.

The department has arrived at a value for such transactions and imposed GST on that.

Citibank declined to comment. SBI, ICICI, [HDFC Bank](#), Kotak Mahindra Bank and Bank of Baroda did not respond to queries. [Axis Bank](#) and [Yes Bank](#) denied having received any such notice.

The banks that have got the notices have to reply by March end. None of them has done so yet, according to the people cited above.

Tax experts said nothing under the GST framework is considered free. Everything has a value and hence tax has to be paid on the amount.

Under GST, a “supply of brand” is deemed to have taken place from the bank to the subsidiary, which are related parties, an expert said. Logos and trademarks are licensed by the bank that holds them to its subsidiaries. This didn’t attract attention previously because there were no regulations that dealt with free supply of services between related parties, experts said.

“The critical aspect to be considered is whether there is a supply and if there is a supply — only then — consider the valuation of the supply,” said Uday Pimprikar, partner, tax and regulatory services, EY India. “Having said this, it needs to be appreciated that neither service tax legislation or state VAT (value added tax) legislation contained conditions that mandated an arm’s length pricing of supplies between related parties — this was on account of the extreme difficulty in complying with such provisions as also administrating the same.”

The incremental revenue on this count would be nominal in the overall scheme of things, he said, adding that the government should consider simplifying the valuation rules.

“As receipt of consideration was a prerequisite for an activity to qualify as a service, taxability of free-of-cost services was not an issue in the erstwhile service tax regime,” said Mekhla Anand, partner, [Cyril Amarchand Mangaldas](#). “However, the GST regime contemplates tax on free supplies between related parties.”

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Banks may not be able to claim input tax credit on this count.

“Where the GST paid is available as a pass-through, there are no concerns. However, this may create disruptions where credit cannot be offset in its entirety by the recipient,” said Anand.

This is the second big issue banks are facing with the indirect tax department. In notices served in April last year, all banks were asked to pay service tax, penalties and interest on free services offered to customers. The demand was retrospective with a 12% service tax claimed since 2012, 18% interest on the amount and a 100% penalty. This issue could also come to haunt the banks again under the GST regime, say tax experts.

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