



**REMUNERATION  
PAID TO  
DIRECTORS:  
GST PAYABLE OR  
NOT?**

## Remuneration Paid to Directors: GST Payable or Not?

This issue has been growing debate in the recent past few months as different AAR benches has pronounced different opinion on the same topic. To understand both the judgements & to give gist of both the judgements, we have prepared the following table:

	AAR Karnataka Branch	AAR Rajasthan Branch
Issue	<p>The applicant has sought advance ruling that out of his given sources of Income/Revenue which all revenue income shall be considered for aggregate turnover for Registration and When the Supply, even if exempted, needs to be considered.</p> <p>The income received towards salary as director from a Private Limited are not includable in the aggregate Turnover for the reason that any type of <b>Salary is not in the purview of GST</b> as the same needs to be treated neither as supply of Goods nor as supply of Services.</p>	<p>a) Whether GST is payable under <b>Reverse Charge Mechanism (RCM)</b> the salary paid to Director of the Company; and</p> <p>b) Whether the situation would change from above if Director is also a <b>Part time Director</b> in other Company also.</p>





	AAR Karnataka Branch	AAR Rajasthan Branch
Facts	<p>The Applicant, <b>Amit Kumar Agrawaal</b> is an unregistered person and is in receipt of various types of Income/ Revenue including <b>Salary as Director from Private Limited Company.</b></p>	<p>The issue raised by <i>'M/s Clay Craft India Pvt. Ltd'</i> as they are already paying GST under reverse charge mechanism on any commission paid to Director and also submitted that further salary paid to their Directors is being booked under "Income from Salary". As, Directors are the <i>defacto</i> employees of the company and thus payments made to them as <b>Salary plus benefits are not liable to GST.</b></p>
Law	<p>According to Section 2(6) of CGST Act 2017, <b>"Aggregate Turnover"</b> means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess.</p>	<p>Section 7 of the GST Act, 2017 states as under:            7.(1)            ".....            ".....            ".....            ".....            ".....            (2) Notwithstanding anything contained in sub-section (1),-            (a) activities or transactions specified in <b>Schedule III;</b>            ".....            ".....            ".....            ".....</p>

AAR Karnataka Branch	AAR Rajasthan Branch
<p>It is clearly evident from the above definition that any income to be included in the aggregate turnover needs to be related to any transaction that amounts to “supply” in terms of <b>Section 7(1) (a)</b> of CGST Act 2017.</p> <p>To get qualify as ‘Supply’, any transaction must consist the following three components</p> <ol style="list-style-type: none"> <li>1) The transaction must involve a supply of goods or services or both, such as Sale, transfer, barter, Exchange, License, rental, Lease or disposal made or agreed to be made.</li> <li>2) The transaction must be for a consideration by a Person.</li> <li>3) The transaction must be in the course or furtherance of business.</li> </ol> <p>Further entry no. 1 of <b>Schedule III</b> clearly excludes services by an employee from the purview of the GST</p>	<p>Further, <b>Section 2(94)</b> of Companies Act: “Director” includes a director in the Employment of the Company.</p> <p><b>However</b>, entry no. 6 of Notification No.13/2017- Central Tax (Rate) states that tax would be paid under RCM by a company or body corporate located under taxable territory on the services supplied by a Director of a company or a body corporate to the said company or the body corporate.</p>




	AAR Karnataka Branch	AAR Rajasthan Branch
Conclusion	<p>If Applicant is an employee of the Company (Executive Director), in which the services of the applicant as an Employee are neither treated as supply of goods nor as supply of services, in terms of <b>Schedule-III</b> of CGST Act 2017. Hence, GST does not arise in case of remuneration paid to full-time directors who essentially are key managerial personnel of the company. But, if applicant is the nominated Director of the company and provides services to the said company and remuneration is being paid by the company is eligible to GST in hands of Company under Reverse Charge Mechanism under <b>Section 9(3)</b> of the CGST Act 2017, under Entry no. 6 of <b>Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017</b>. Thus, Value of the said services being a Non-Executive Director are includable in the aggregate turnover and eligible to pay GST.</p>	<p>The salary paid to the Director by the Company for the services provided by the Directors to the Company are not covered under clause (1) of <b>Schedule III</b> to CGST Act, 2017 as Director is not the employee of the company. Consideration in form of Salary and Commission paid to the Directors by the Company is against the Services provided by them. Director is the supplier of services and the applicant of the company is the recipient of the services. So, it is very clear that the services rendered by the Director to the Company for which consideration is paid to them in any head is liable to pay GST under RCM as provided under <b>Notification No.13/2017-Central Tax (Rate) dated 28.06.2017</b> issued under Section 9(3) of the CGST Act, 2017</p>

	AAR Karnataka Branch	AAR Rajasthan Branch
	<p>In the instant Case, in the absence of documentary evidence, it is not possible to decide whether the amount received by the applicant is towards his services as an Executive Director or a Non-Executive Director.</p>	

### Our view on above judgements:

-  Both the judgements are conflicting with each other while the topic is same. Further, there is no deviation in the facts of both the cases.
-  The decision of Rajasthan AAR is based on the interpretation that Director is not the employee of the company, whereas, it is being normal scenario where Directors are employee of the company and working full time for the company.
-  The Companies Act also defines Employee to include the Director whether a whole time director or not but excluding an Independent Director.
-  Further, there were many cases during Service Tax regime, which were in the favour of treating Directors as employees. We opined that the salary paid to at least Whole Time Directors should be treated as salary paid to employees. However, Rajasthan AAR judgement has opened up a Pandora's Box and given a tool to GST officers to cover Directors salary under RCM.

To give our more **practical view**, we are presenting the 3 possible options available to assessee in the below table:

Options	Immunity
Not to pay GST under RCM and continue treating Directors salary under entry 1 of Schedule III	
Not to pay GST under RCM and continue treating Directors salary under entry 1 of Schedule III, however, pay some sitting fees to Directors to attend Board Meeting and pay GST under RCM on the same	
Pay GST under RCM on Directors salary and avail ITC in next month	

It is important to note that AAR's ruling are binding on **applicant only**, however, same may set a trend. Assesseees are advised to take decisions accordingly.

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