

## **Taxman demands GST on brands, logos**

By Sachin Dave ET Bureau | Oct 10, 2019, 07.57 AM IST

### **The taxman has reportedly asked the companies and banks to value brands and logos and charge fees from subsidiaries.**

Some Indian conglomerates and foreign banks are among those under the scanner for allowing subsidiaries or Indian entities to use brand names and logos they own for free. The indirect tax department wants these entities to put a valuation on the brand names and logos, charge fees from the subsidiary or group company and pay 18% goods and services tax (GST) on that, according to people with direct knowledge of the matter.

The conglomerates are said to include the Tata and Mahindra groups along with banks such as ICICI, HSBC and Citi. The tax department has sent written inquiry orders to some companies and issued preliminary notices to some foreign banks, said the people cited above. HSBC and Tata declined to comment. Others didn't respond to queries.

The 18% GST levy would likely result in thousands of crores in taxation for companies and banks, said experts. However, if the subsidiary is a manufacturing unit, the cost could be offset in some way, they said.

### **Issue Raised Before**

Tax experts said that under GST law, a transaction between related parties — a company and its subsidiary or an Indian arm and its parent overseas — is liable even if there is no consideration. This has resulted in the indirect tax department raising demands on the brands and logos that are owned by a holding company or conglomerate but used by subsidiaries and group companies without any payment.

“Companies that have allowed use of brand, product licences, logos etc. would have to determine the open-market value of these and pay GST on the same,” said Ritesh Kanodia, partner, Dhruva Advisors, a tax advisory firm. “While shelter may be taken under the ‘deemed to be open-market value’ provisions where full credit is available, the same has not yet been tested in courts.”

Experts said the conglomerates and banks will have to first ascertain the value of their brands or logos, an exercise that many haven't done.

“Charging of GST could be an entirely revenue-neutral exercise as credit may be available to the recipient,” said Kanodia. But “if not done, (this) could result in unnecessary litigation.”

The situation is different for banks and other financial companies as input tax credit is not fully available to them under the GST framework. The tax department wants the banks to

## **Making Corporate India Comply**

pay 18% GST on the 'deemed' value of the brand transactions and pay tax on the fees charged.

The genesis of the ambiguity is the "unnecessary complication" in the GST legislation prescribing that supplies between related parties or between branches of the same entity should be at arm's length, said Uday Pimprikar, partner and national leader, indirect tax, EY India.

"The questions are several conceptually whether there is any supply of any brand, logo, etc. from a foreign HO (head office), parent etc. to the Indian recipient," Pimprikar said. "If so, how does one value the supply for usage, etc? This requirement is relaxed where the recipient is eligible to claim credit of the tax charges on supplies."

This is not the first time that the indirect tax department has raised this issue. ET first reported on January 30 that the tax department had started issuing notices to banks that allowed subsidiaries, such as mutual funds and insurance units, to use their logos for free. Banks including State Bank of India, Bank of Baroda and Kotak Mahindra Bank among others were under the taxman's lens.

For the banks, a large part of the GST would become pure cost as they would not be able to set it off against future tax liabilities, experts said. Tax on logos and brands hadn't been an issue under the erstwhile tax regime but in the GST framework nothing is entirely free of cost, they said. There were no regulations that dealt with the free supply of services between related parties. Now, such items have an assigned value and hence tax has to be paid on that amount.

Under GST law, the "supply of brand" is deemed to have taken place from the parent company to the subsidiary, which is a related party. Logos and trademarks are licensed by the parent company that holds them to subsidiaries.