









ECONOMIC
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TAXATION & THE HOSPITALITY SECTOR

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Query	Response
 <p>What are the tax implications on various incidental/ ancillary services provided by hotels?</p>	<ul style="list-style-type: none"> Hotels supplying accommodation service often supply incidental services to its resident guests, including restaurant services, transportation services, sight-seeing, concierge etc. It would be prudent to determine if such incidental/ancillary supply qualifies as independent supply, composite supply or mixed supply under GST. Further, there are various type of packages offered by hotels such as AP, MAP, CP etc. The applicability of rate of GST depends upon the categorization of supply undertaken by the hotel. GST treatment of such supplies will vary depending upon factors such as advertisements by hotel/online travel agents, booking confirmations, invoicing and accounting in the books of account. This must be determined on a case-to-case basis.
 <p>What is the taxability under GST on supply of Cigarettes, Aerated Beverages and Alcohol?</p>	<ul style="list-style-type: none"> Certain products such as cigarettes and aerated beverages are supplied by hotels to their guests. In such cases, evaluating whether the supply shall be treated as a composite or mixed supply is fundamental for discharging tax at appropriate rates. Supply of aerated beverages and supply of services by the restaurant are treated to be naturally bundled as supplied in conjunction to each other. This is therefore a composite supply of service classifiable under SAC 996331 chargeable at the applicable rates for restaurant services. Sale of cigarettes is not treated as naturally bundled together with restaurant services. The services of the restaurant mainly involve serving of food and beverages alone in the normal course. Hence, supply of cigarette products is not a composite supply but a mixed supply chargeable at 28% and a compensation cess at the rate applicable to cigarettes. Under GST, a mixed supply will have the tax rate of the item which has the highest rate of tax and thus cigarette will be treated as principal supply and 28% will apply on supply of restaurant services as well. The view is supported by ruling pronounced by AAR in the case of Mfar Hotels & Resorts (P.) Ltd. [2020] 120 taxmann.com 442 (AAR –TAMIL NADU) [May 12, 2020]. Therefore, classification for supply of goods and services is quite essential to discharge appropriate tax. Any incorrect classification will result in short payment of GST thereby exposing the business to liability in the form of tax, interest and penalty. Supply of alcohol for human consumption is outside the purview of GST, being a non-taxable supply. However, input tax credit in proportion to such supply of alcohol will be required to be reversed.
 <p>How will the advances from customer be treated under GST?</p>	<ul style="list-style-type: none"> In terms of GST law, liability to discharge is typically either on advance or on issuance of invoice. Hotels often receive advance at the time of booking where in the services are provided at a future date. The invoice is issued at the time of check-out after completion of the event. Reporting of advance and treatment to be provided in GST returns need to

	be adhered to avoid paying tax twice - i.e on receipt of advance and issuance of invoice.
 <p>In case of cancellation/no show charges levied by the hotel what shall be the applicable rate of GST?</p>	<ul style="list-style-type: none"> ▪ Cancellation/no show charges may attract GST at the rate of 18% - being classified as services of 'tolerating an act' - as per a residuary entry of 18% in the absence of a specific entry. However, a view can be explored whether the cancellation charges are in the same nature of services i.e hotel accommodation - and if the rate applicable on the value of services is applicable.
 <p>How will the TCS provision under GST impact Hotel players?</p>	<ul style="list-style-type: none"> ▪ Online platforms (aggregators) which act as a conduit between the customer and the service provider i.e., hotels or accommodation providers, will be recognized as electronic commerce operators (ECOs). ECO are obligated to collect tax at source (TCS) and remit to the government. Hotels need to ensure that the appropriate credit of the same is availed in the GST returns. Appropriate records need to be maintained in order to reconcile the sale made through ECO in order to avoid leakage of tax credit.
 <p>What is the future of SEIS benefits to hotel industry?</p>	<ul style="list-style-type: none"> ▪ The benefits under the SEIS scheme were curtailed to 3% from earlier 5% for the FY 19-20 with a capping of INR 5 crore. For FY 20-21, the notification is yet to be made available. In order to make the SEIS benefits available for FY 20-21 it would be essential to extend the FTP beyond March 31, 2022. One may challenge/represent before an appropriate authority to provide for benefits for FY 20-21. Representation may also be field to ensure that the benefits to a service exporter are available in India's new foreign trade policy (FTP) as and when implemented.
<p>We hope you have found the information helpful. For further details please reach out to the author:</p> <p>Nishant Shah, Partner – Tax, Economic Laws Practice – NishantShah@elp-in.com Varun Parmar, Associate Partner – Tax, Economic Laws Practice – VarunParmar@elp-in.com</p>	



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