



CONCEPT OF PRINCIPAL AND AGENT UNDER GST

- Akash Bansal | AMRG & Associates



Introduction

Relay Race where an athlete of a team starts the race and at the checkpoint transfers the reel to another athlete of a team who crosses the finish line. The same concept can be observed under GST between the relationship of Principal and Agent where the goods are received by an agent on behalf of the principal for further supply to the customer. This article aims to understand when the principal-agent relationship exists under GST including other aspects such as levy of tax, registration and joint liability of principal and agent.

ORIGIN OF THE TERM AGENT UNDER GST

Under GST entire jurisprudence of the agent is borrowed from the Indian Contract Act as clarified by the department. Accordingly, **“agent” is a person employed to do any act for another, or to represent another in dealings with a third person**. As delineated, an agent can be appointed for performing any act on behalf of the principal which may or may not have the **potential for representation on behalf of the principal**.

Though the GST law states, **“agent” means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.**

RELATIONSHIP BETWEEN AN AGENT AND PRINCIPAL

On reading the definition of agent and principal it can be concluded that the agent-principal relationship can be used in terms of both goods and services, where the agent carries on the business of supply or receipt of goods or services or both on behalf of a principal, and vis-à-vis, a principal is a person on whose behalf an agent carries such activities.

The law uses the term 'principal' in the context of two relationships i.e., principal and job worker, and principal and agent. Therefore, one must understand the meaning of the term 'principal' wherever the term finds a mention, as a reference to the principal-agent relationship.





WHEN PRINCIPAL AND AGENT CONSTITUTE A SUPPLY

The GST law concluded that the supply of goods or services or both agreed to be made for consideration is liable for tax. Though, now the question arises what if the supply of goods or services are made without any consideration. The question is valid in the sense that the definition of agent defined here appears to illustrate the principle of agency, where an agency is a relationship that can be formed valid even without consideration and the agent can work purely on a commission basis. Thereby, the gap of consideration is filled by para 3 of Schedule 1 of the CGST Act, 2017 which extended the scope of supply without consideration, and accordingly,

Supply of goods—

- (a) by a principal to his agent where the **agent undertakes** to supply such goods on behalf of the principal; or
- (b) by an agent to his principal where the **agent undertakes** to receive such goods on behalf of the principal,

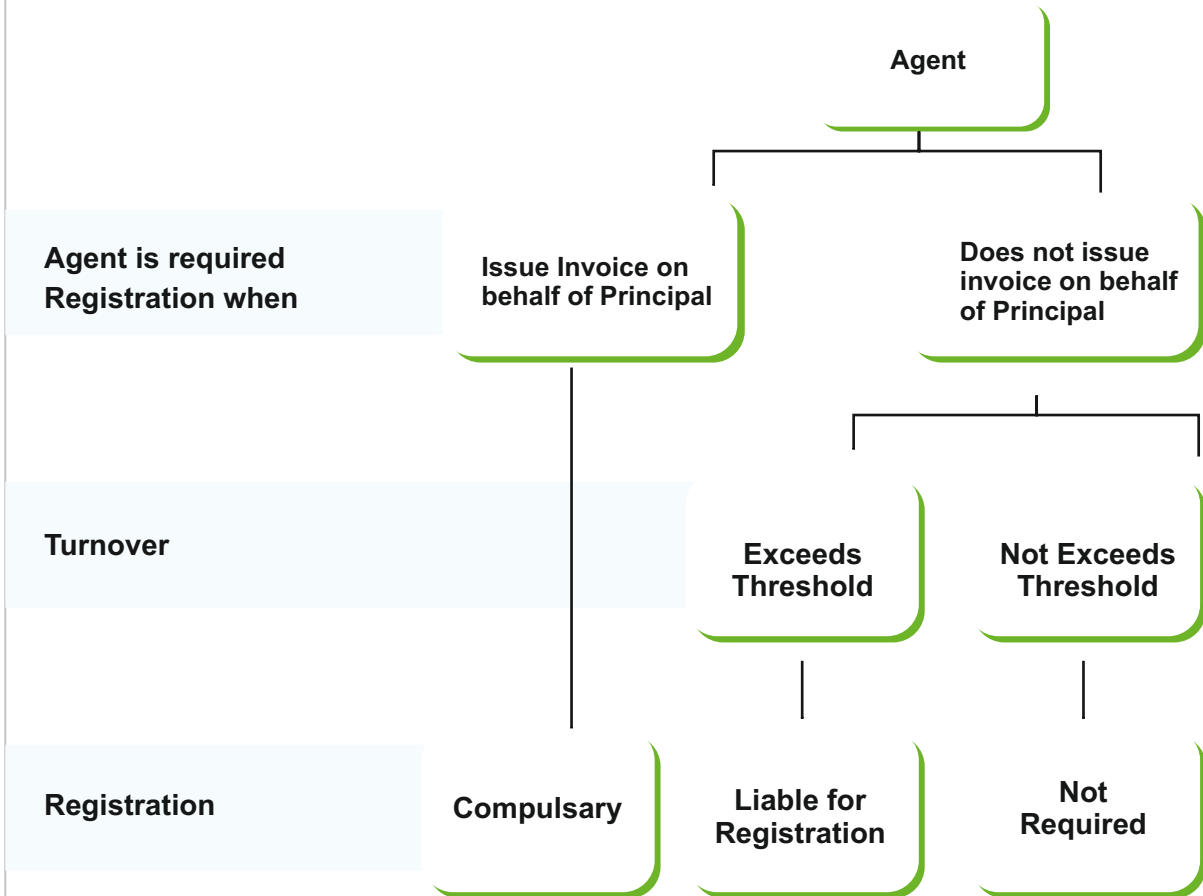
From this, it can be deduced that the crucial component for materializing the term “agent” under the GST Law is analogous to the **representative character** which enables him to carry out activities on behalf of the principal. Therefore, now it's time to emphasize, how to determine the character 'representative'. Since in the common trade practice, variegated factors influence this, thereby bringing out the hindrance the government clarified, where the invoice for further supply is being issued by the agent in his name then the agent would fall within the fold of the said entry.

Moreover, it is worth noticing that the supply of services is outside the scope of this entry and thereby the same shall be made for consideration for making a supply.

STATUTORY REQUIREMENT FOR REGISTRATION BY AN AGENT

A person who makes a taxable supply of goods or services or both on **behalf of other taxable persons** whether as an agent or otherwise shall compulsorily be required to obtain registration irrespective of the limit of the aggregate turnover threshold. The term “agent” here refers to who supplies goods or services on behalf of the principal under his invoice to the customers as defined under Para 3 of Schedule I of the CGST Act. Thereby, the said clause does not cover all types of an agent like who act as intermediary or sales commission agent or security brokers who not authorized to issue an invoice on his name under its ambit.





PRINCIPAL AND AGENT TO HAVE JOINT LIABILITY

The GST law states about the joint liability of agent and principal, accordingly; *“Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.”*

By the virtue of the above provision, the liability of the principal who encourages the supplies through an agent or receives supplies through an agent, does not conclude as soon as he pays tax on the supply made by him to the agent; instead, the liability in the hands of the principal continues till the time tax is duly discharged by an agent on the said supply. Thereby the principal needs to keep informed himself on the compliance followed by an agent apart from the compliance requirements to be followed by him, which added more burden on the principal.





CONCLUSION

The principal-agent relationship under GST is not limited to the representative character of an agent for levy tax but also depends on whether the invoice is issued by the agent under his name to the recipient on behalf of the principal or not, irrespective of the facts of involvement of consideration, while the supply of services can only be concluded to a supply when there is a quid-pro-quo. Further, the requirement of compulsory registration attracts when the agent undertakes to supply the goods or services on behalf of the principal. Moreover, the compliance for the principal is not just limited to the supply made to an agent, but it ends when there is a duly discharge of tax liability on the part of the agent as well.



NEW DELHI
18A, 11nd Floor,
North Avenue Road,
West Punjabi Bagh,
New Delhi - 110026.

Rajat Mohan
Senior Partner
rajat@amrg.in

Priyanka Sachdeva
Partner - GST
priyanka@amrg.in



INTERNATIONAL BRANCH - AUSTRALIA
Unit 9, 14-15 Junia Avenue,
Toongabbie NSW 2146,
Sydney, Australia

Megha Gandhi
Director- Australia
amrg@amrg.in



MUMBAI
Shop No-14, Adarsh
Nagar Building No:4,
Kolbad, Thane West,
Thane-400601

Madhu Mohan
Founding Partner
amrg@amrg.in

Kiran Awasthi Raghavendra
Partner - Assurance and Compliance
amrg@amrg.in



INTERNATIONAL DESK - USA
Wiener & Garg LLC,
6000 Executive Boulevard,
Suite 520 | Rockville,
MD 20852T: 301.881.4244
D: 240.833.4002

Subhash Garg
Wiener & Garg LLC
amrg@amrg.in



DEHRADUN
Villa No. 12, Upper Crest Avenue,
Jakhan, Rajpur Road, Dehradun,
Uttarakhand, India, 248001

Swati Ghoshal
Partner - Risk Advisory and compliance
swati@amrg.in



INTERNATIONAL BRANCH HONG KONG
Hong Kong Address - Flat B,
Floor 1, Tower - 7, Yee Mei Court,
South Horizons, ap lei chau,
Hongkong

Divya Malhotra
Director - Hong Kong
amrg@amrg.in



GURUGRAM,
204, 2nd Flilor, Time Center, Golf
Course Road, Sector 54, Gurugram,
Haryana 122002

Gaurav Mohan
CEO
gaurav@amrg.in

