



## BRUNT OF GST ON PAYMENT IN LIEU OF NOTICE

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Recently, on the recommendation of 47th GST Council Meeting, Tax Research Unit via Circular 178/10/2022-GST dated August 3, 2022 stated that bond amount recovered from an employee leaving the employment before the agreed period is '**Not Taxable**' to GST since the employee receives nothing in return from the employer in lieu of payment of such amounts.

In the hopes that the hired employee would stay with the company for a set minimum period of time, the employer goes through a rigorous selection process, spends money on recruiting him, invests in his training, and makes him a part of the organization with access to its procedures and company secrets.

The employer-employee relationship has been exempted from the GST purview under Clause 1, Schedule III of the CGST Act, 2017.

Premature termination of an employment induces a disruption in work and creates a poor scenario. To deter insincere candidates from accepting the job, the employment contract has clauses which states that salary would be forfeited or bond money will be recovered if an employee quits their job before the minimum period of time agreed upon.

Usually, before resigning, an employee must fulfil the predetermined notice period. However, the majority of employee contracts have a condition stating that if an employee wants to quit the organization before serving the appropriate duration of notice, he must pay an amount equal to the notice period that was not served. **This fee is referred to as notice pay recovery.**





The stated amounts are collected by the employer in order to discourage and deter situations like this from occurring rather than as compensation for tolerating the act of such premature termination of employment. Moreover, the employee receives nothing from the employer in exchange for making such payments. Therefore, the employer's recovered payments are not taxable in exchange for the act of consenting to tolerate a conduct or condition.

In the ruling of Amneal Pharmaceuticals, GAAR held that notice pay recovery is liable to GST. This circular, however, serves as a precursor to such rulings.

In a nutshell, the circular applies a single test in contexts where such amounts do not constitute consideration for tolerating an act but as penalties to discourage and deter such a situation.





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