

GST and Full Fledged Money Changers



Goods and Services Tax (GST), the re-model of Indirect Tax structure of India that was being thoughtfully processed for almost 14 years, turned into a reality on 1st July, 2017. This historic day is equally important to our fraternity as it is the day when our prestigious Institute was established. On this day, at midnight last year, our Honourable President and Prime Minister pressed the button for this reform and a new era of Indirect Tax, Economies and One Nation, One Tax, One Market was born. With the Government and our fraternity working round the clock to ease the implementation of this biggest indirect tax reform in our country, we are already well past the stage of understanding the basics of GST. In this article, the authors put forward their views on implications of GST on the Full Fledged Money Changer (FFMCs) Sector, including different school of thoughts on the opinion regarding calculation of “Aggregate Turnover”, which is the first step for FFMCs at the time of determining their GST liability. Read on...

Introduction to FFMCs

In this era of globalisation, no nation can survive in isolation, and therefore, flow of foreign currency in and out of India is a part and parcel of normal trade. India, through its Foreign Exchange Management Act, 1999 (FEMA), administers the foreign exchange transactions of India and the Reserve Bank of India (RBI) acts as the nodal authority. RBI, under Section 10 of FEMA, grants licenses to organisations for dealing in foreign currency notes, coins and travellers cheques. These license-holders are generally known as ‘authorised money changers’. They fall under two

categories – Full Fledged Money Changers, persons authorised to undertake both purchase and sale transactions and Restricted Money Changers, persons authorised only for making purchases, subject to the condition that all such collects are surrendered by them to an authorised dealer in foreign exchange/ full fledged money changer.

This article focuses on full fledged money changers.

Can Their Transactions be Termed as a ‘Supply of Goods’ or a ‘Supply of Services’?

FFMCs deal in foreign currency, which is ‘money’ as per Section 2(75) of CGST Act, 2017. The definition is reproduced hereunder for ease of reference:

“(75) “money” means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with



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Indian legal tender of another denomination but shall not include any currency that is held for numismatic value,”

Now, one must look at the definition of goods and services to determine the nature of the transaction. The term ‘Goods’ is defined in Section 2(52) of CGST Act as under:

“(52) ‘goods’ means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;” (emphasis supplied)

Therefore, it is quite evident that purchase and sale of currency will be considered as goods.

The term ‘Services’ is defined in Section 2(102) of CGST Act, 2017 as under:

“(102) ‘services’ means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged;” (emphasis supplied)

Therefore, while money is excluded from the definition of service, the inclusion of activity of conversion of money from one currency to another for which separate consideration is charged squarely covers the business of FFMCs. Therefore, transaction of buying and selling of foreign currencies undertaken by FFMCs is a service.

Now, since FFMCs are engaged in the activity of providing service to another person for a consideration in the course or furtherance of its business, it is a ‘supply’ as per Section 7 of CGST Act, 2017, chargeable to tax.

It is pertinent to note that Section 65B(33) of erstwhile Finance Act, 1994, did not include the words ‘or any foreign currency’ in its definition of money.

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Valuation under GST

While the value of the service can be determined based on the transaction value, which is readily available to FFMC, it may be difficult for FFMCs to keep a detailed record of each transaction and therefore, on the recommendation of GST Council, the Central Government has under Rule 32 prescribed a method of valuation of such services.

Therefore, FFMCs have the following three options for

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valuation of their supplies:

- 1) Transaction Value i.e. price actually paid or payable for supply of services
- 2) For a currency when exchanged from, or to, Indian Rupees, the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India reference rate for that currency at that time, multiplied by the total units of currency.

If Reserve Bank reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received by the person changing the money.

In case where neither of the currencies exchanged is Indian Rupees, the value shall be equal to 1% of lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by the Reserve Bank of India.

- 3) Deemed value of:
 - a. 1% of the gross amount of currency exchanged for an amount up to ₹ 1 lakhs subject to a minimum amount of ₹ 250
 - b. ₹ 1000 plus 0.50% of the gross amount of currency exchanged for an amount exceeding ₹ 1 lakhs and up to ₹ 10 lakhs
 - c. ₹ 5500 and 0.10% of the gross amount of currency exchanged for an amount exceeding ₹ 10 lakhs, subject to a maximum amount of ₹ 60,000.

It is pertinent to note that these options are to be exercised once at the commencement of the financial year and are to be followed during the whole year.

The relevant portion of CGST Act, 2017 and CGST Rules are reproduced hereunder for ease of reference:

“Section 15 - Value of taxable supply

- (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.
- (5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such

supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Rule 32. Determination of value in respect of certain supplies. -

- (1) Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall, at the option of the supplier, be determined in the manner provided hereinafter.
- (2) The value of supply of services in relation to the purchase or sale of foreign currency, including money changing, shall be determined by the supplier of services in the following manner, namely:-

(a) for a currency, when exchanged from, or to, Indian Rupees, the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India reference rate for that currency at that time, multiplied by the total units of currency:

Provided that in case where the Reserve Bank of India reference rate for a currency is not available, the value shall be one per cent. of the gross amount of Indian Rupees provided or received by the person changing the money:

Provided further that in case where neither of the currencies exchanged is Indian Rupees, the value shall be equal to one per cent. of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by the Reserve Bank of India.

Provided also that a person supplying the services may exercise the option to ascertain the value in terms of clause (b) for a financial year and such option shall not be withdrawn during the remaining part of that financial year.

(b) at the option of the supplier of services, the value in relation to the supply of foreign currency, including money changing, shall be deemed to be -

- (i) one per cent. of the gross amount of currency exchanged for an amount up to one lakh rupees, subject to a minimum amount of two hundred and fifty rupees;
- (ii) one thousand rupees and half of a per cent. of the gross amount of currency exchanged for an amount exceeding one lakh rupees and up to ten lakh rupees; and
- (iii) five thousand and five hundred rupees and one tenth of a per cent. of the gross amount of currency exchanged for an amount exceeding ten lakh rupees, subject to a maximum amount of sixty thousand rupees”

Liability to Register

Under the CGST Act, Section 22(1) decides the liability to register under GST. As per Section 22(1), a person is liable to register in a State from where he makes a taxable supply, if his aggregate turnover exceeds Rs. 20 lakhs in that financial year. Therefore, one has to look at the definition of ‘aggregate turnover’ to determine the liability to register.

As per Section 2(6) of the CGST Act, “aggregate turnover means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable 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;” (emphasis supplied)

Based on the above provisions of the GST Law, there prevail two schools of thoughts regarding the calculation of ‘aggregate turnover’ for such FFMCs, which are explained hereunder:

<p>The definition of Section 2(6) of CGST Act, 2017, uses the term ‘value of taxable supplies’ and value of a supply is the value determined under Section 15 of CGST Act, which is as explained in earlier paragraph.</p> <p>Further, to substantiate this argument, one must look at the substance over form of the supplies made by FFMCs. There are akin to a collection agent and the value of purchase or sale of foreign currency, excluding their commission, is deposited with the RBI and they merely act as license holders dealing in such transactions. Even in the erstwhile Service Tax regime, the calculation of turnover was done on the ‘value’ as per the Valuation Rules and has yet not been challenged by the Department.</p>	<p>Aggregate turnover looks at the value of supply but the term ‘value’ cannot be equated to transaction value as per Section 15 or notional value calculation prescribed in the Rules.</p>
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On the second page of the Guidance Note issued by ICAI, it has made a clear disclaimer as under:

“The views expressed in this book are those of author(s). The Institute of Chartered Accountants of India may not necessarily subscribe to the views expressed by the author(s).” (emphasis supplied)

Therefore, it cannot be said that the paragraphs re-produced here should be considered to be the views of ICAI.

One might argue that the second school of thought should not be followed as the said transaction is not ‘goods’ in any case and for the GST law, for recording or valuing a transaction, there is no necessity for risks and rewards or title to be passed from one person to another.

Further, merely imposing conditions on the money changers and power to revoke the license does not mean that FFMCS are not ‘agents’. In fact, all agency agreements have clauses that require the agent to follow certain conditions enumerated by the Principal and in case of failure to abide by the terms, provides for power to cancel the arrangement. FFMCS are acting on behalf of RBI and dealing with foreign currencies.

Having placed both the school of thoughts before our fellow mates, in our opinion, the second school of thought should be considered, while determining the value of supply. However, in such cases, FFMCS may be burdened with increased compliances. On the other hand, if the first school of thought is followed, the Department may disagree and litigations along with penal consequences may ensue.

In our considered opinion, to avoid any disputes with the Department, it is advisable to take

One must look at the calculation of turnover, as understood by FFMCS in normal accounting sense. To that effect, the Institute of Chartered Accountants of India had issued a Guidance Note titled ‘Full Fledged Money Changer (FFMC) – A Practitioners’ Perspective’ in February 2013, wherein on Page 21 and 22, the Institute has put forward its views as under:

“A question may arise as to whether the sales by a money changer forms part of the turnover?”

The Money Changer purchases the foreign currency at the price quoted for purchase of foreign currency and/or sale of foreign currency at price quoted for sale of foreign currency. The difference between the two represents the gross profit / Gross Income of the money changer. The sale price or purchase price (i.e. quoted selling rate x foreign currency sold / quoted purchase rate x foreign currency purchased) are mentioned in the certificate of encashment documents given to the seller/purchaser of foreign currency and the profit is not shown separately.

It will also be necessary to find out, whether the property in the goods or all significant risks, rewards of ownership of goods gets transferred?

In my view, Money Changers are licensed by the Reserve Bank of India in terms of Section 10 of FEMA Act, 1999 for the purpose of understanding activities covered under the said section and their activity of dealing in foreign currency is subject to the conditions imposed by RBI. RBI may revoke the license if failed to comply with any of the condition.

Thus, it is clear that the money changers are dealing in foreign currency as licenses of RBI but not as agents. And the property in the goods or all significant risk and rewards of ownership of goods continue to belong to the FFMCS, therefore the relevant sale price shall form part of the sales/turnover of the money changer and not the total amount of the difference between the buying rate and selling rate to consider the prescribed limits under Section 44AB of the Income Tax Act. It will be subject to the Tax audit.”

a voluntary registration and comply with the requirements of the GST Laws. While compliance burden of the FFMCS may increase, the benefits of ITC are available and in all, it is a conservative stand.

Compliances under GST

All other general provisions of filing of Returns, payment of taxes, availment of Input Tax Credit, etc. apply to FFMCS as they apply to any other registered taxable person. ■