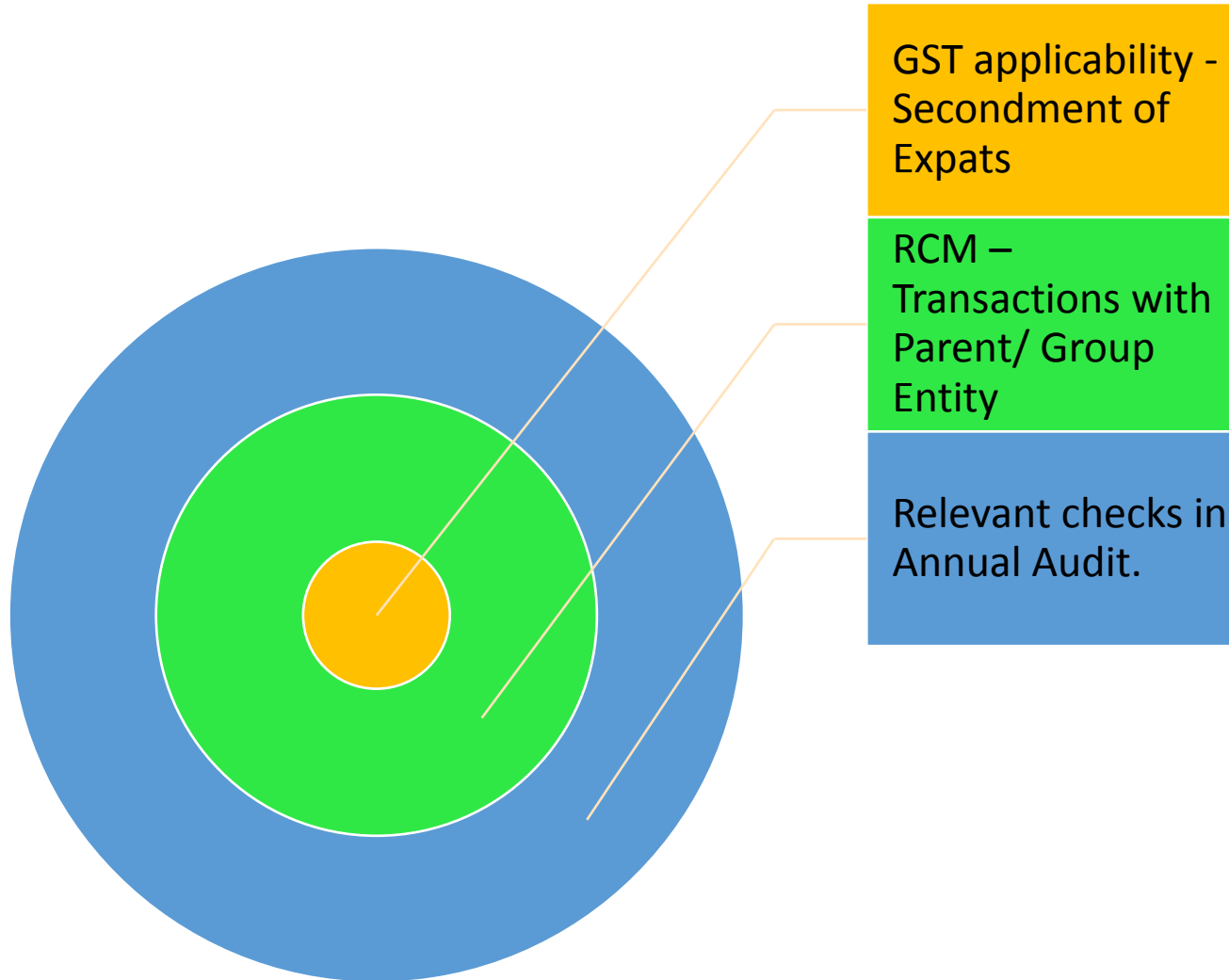




# **GST on Secondment of Expats and Key Check Points Annual Audit.**

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# **Secondment of Expats – GST**

## What is Secondment of Employee / Expats ?

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It means letting of person by foreign entity to its Indian entity for temporary duration For e.g. engineer of group company lien to Indian subsidiary for hydro projects or in other words secondment means temp assign to work for another branch, loan of employee to other company

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Question before Authorities is Secondment Vis-a –  
Vis Manpower Supply?

What differentiate secondment with manpower supply ? As on manpower supply GST applied under RCM on above same e.g.

We will have to refer International taxation prospective whether it is secondment or manpower supply depending upon lien and control of employee by Indian organization. Indian co. does have to right to fire or retire.

## (Contd.)

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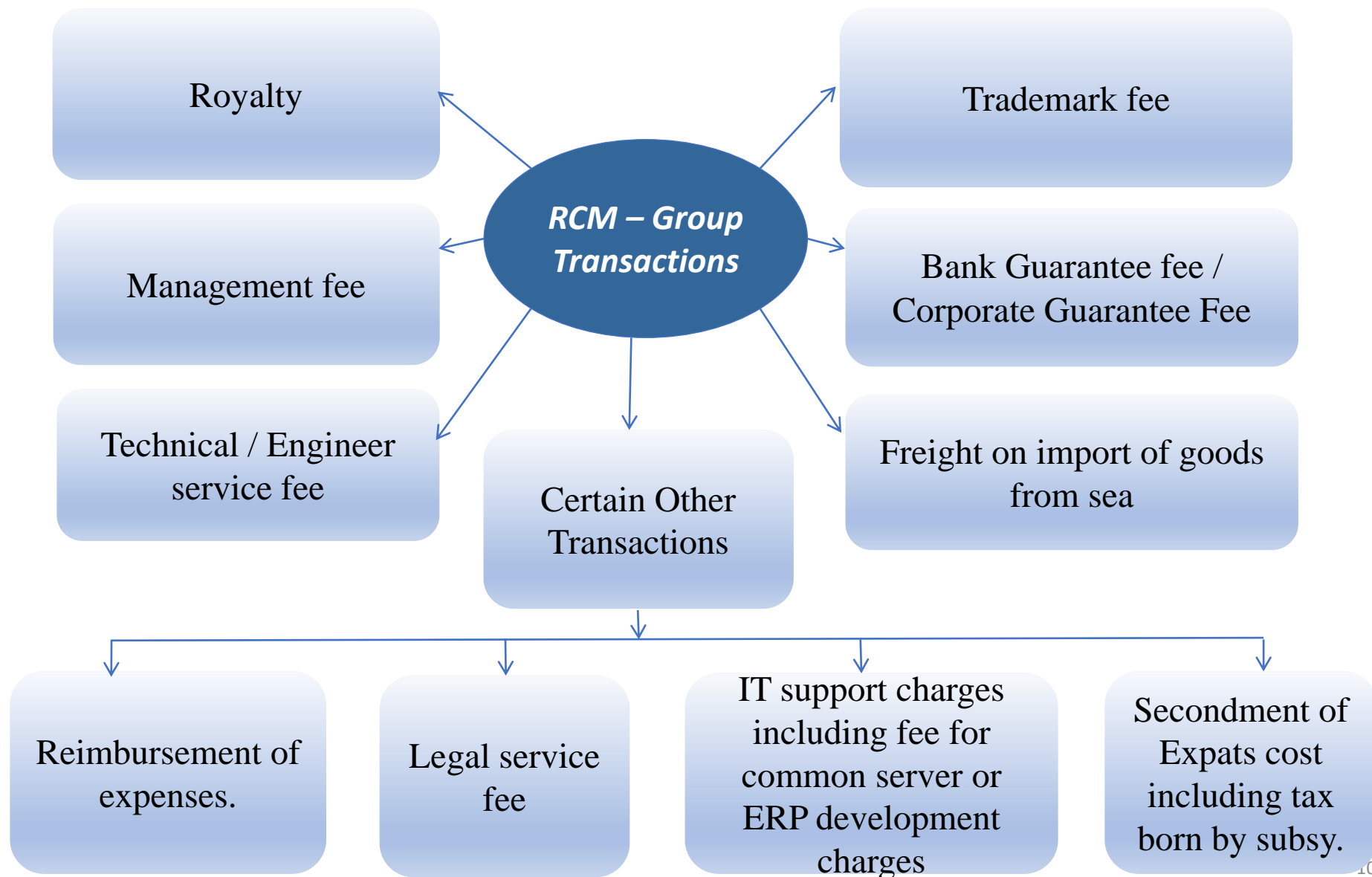
### ➤ **OECD (Organization for Economic Co-operation and Development) guidelines – Model tax convention 2010.**

- Contract outsource not covered under secondment and hence should be classified as manpower service,
- Authority to instruct i.e. who is the person instructing that employee,
- Control and responsibility of that particular person remains with original employer then it will be manpower supply not secondment of employee.
- Remuneration and social security liability of that particular period remains with principal employer then it will be classified as manpower supply not secondment.
- Provision of any mechanical tool or any other tools to execute the work is very determinative whether it is secondment or contract execution.
- Determination of holidays or leave policy i.e. whose leave policy is applicable on that person or HR policy is applicable on that particular person, if he follows that of principal employer than no secondment.
- Right to particular work or terminate the employment is with which employer if with principal employer during the term of secondment than it is no secondment.



# **RCM – Transactions with Parent/ Group Entity**

# Key Transactions with Parent / Group Company.





# Case Study-Use of Trademark owned by Foreign Related Company

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## FACTS OF THE CASE

An Indian subsidiary company is using a Trademark owned by its Foreign Holding Company and no consideration for such usage rights charged by Foreign Holding Company from its Indian subsidiary.

# (Contd.)

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Issue – 1 : What is the GST implication in the above transaction?

*The transaction is leviable to GST, even though made without consideration, as per Entry 2 or 4 of Schedule 1, CGST Act, 2017.*

Issue – 2 : What precautions that can be taken to avoid any valuation issues?

- *If the Indian Company is eligible for full input tax credit, it is advisable to separate the non-taxable activity which has no relation with the Trademark of the Company. e.g. Transaction in securities. In such case, value mentioned on the Invoice shall be considered as Open Market value as per proviso to Rule 28 of the CGST Rules, 2017.*
- *Raise the invoice to get covered under proviso.*
- *In case where Indian Company is not eligible for availing the credit, all valuation aspects need to be analysed in depth as it is a recurring transaction*

## (Contd.)

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Issue – 3 : What is the implication if the Foreign Holding Company permanently transfers the usage rights of Trademark in India to its Indian Subsidiary?

- *It is a laid down principle that Intangibles (Trademarks) are Goods. Definition of goods under GST also supports the same i.e. it includes intangible goods as well. As per Schedule II of the CGST Act, 2017-Temporary transfer or permitting the use or enjoyment of any intellectual property right is supply of Service. Therefore, Permanent transfer of Trademarks by the Foreign Holding Company to Indian Subsidiary would be covered under supply of goods under GST.*
- *The situs of the sale of Trademark (Goods), being outside India, there is sale of Trademark to the Indian Company, located in India i.e. bringing the Goods (Trademark) into India from outside. Therefore, this transaction falls under the definition of “import”.*
- *In absence of mechanism for collection of tax on import of intangibles, the Customs Act, 1962 cannot levy and collect import duty including Integrated tax on import of Trademark by the Indian Subsidiary.*



## **Relevant checks in Annual Audit.**

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- Submission of LUT for FY 2018-2019 in case of export of service or goods ;
  - Outward supplies as per books of account and GST returns (Books vs GSTR-1 vs GSTR-3B) ;
  - Reconciliation of balance of credit and cash as per GST portal with balance appearing in books ;
  - Check the requirement for any ITC reversal or ITC to be reclaimed;
  - Rule 37 – Any ITC reversal required on account of non-payment within 180 days ;
  - Rule 42 or 43 – Impact of annualized ITC reversal in case of exempted as well as taxable supplies to be considered ;
  - Check if any reversal required against purchased goods rejected and returned ;
  - Cross charge to distinct person and related parties for supply of common services ;

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- Ensure if the liability is being paid in respect of all input supplies notified for reverse charge and all the amendments have been taken care of ;
  - Check if the tax paid under RCM matches with ITC under RCM. RCM liability should be more than or equal to ITC under RCM ;
  - Ensure timely payment of RCM liability, interest liability need to be discharged in respect of any delay in tax payment ;
  - The taxpayer may issue credit note for excess value and/or tax charged, short supply or goods returns. Issue credit note and account in the books of account ;
  - Issue debit note where lesser value and/or tax was charged and pay the tax along with interest ;
  - Ensure tax liability against receipt of advances and adjustment thereof to derive at unadjusted advances at the year end ;
  - Track status of goods sent on job work or goods sent on approval whether all the goods have been received back within the due time period ;

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- Reconciliation of E-way Bill issued during the year viz a viz tax invoices/delivery challans generated ;
  - In case of reconciliation of books inventory with physical inventory, assess if ITC reversal to be required ;
  - In case of continuous supply of services, ensure whether invoice is raised on milestone ;
  - Invoicing for goods sent on approval ;
  - Review of notes to accounts specially with regard to expenditure in foreign currency and earning of foreign currency.

***Thank You***