

F.No.357/350/2017-TRU
Government of India
Ministry of Finance
Department of Revenue
Tax Research Unit

Sl. No. 4761
Dt. 13.12.17
RTI No. 357/350/2017

Room No. 146E, North Block
New Delhi, 28th November, 2017

To,

Shri Sharad Mishra, Social Safeguard expert,
R/o- 25/22, A-1 First Floor,
Madan Mohan Malviya Marg,
Lucknow- 226001

1957/2017


Subject: Request for providing Information under RTI Act, 2005 -reg.

Please refer to your RTI application dated 27.09.2017 received in this office on 13.11.2017 from CPIO/ Nodal Officer, TRU-I, Department of Revenue, Ministry of Finance, New Delhi. to provide information to your application.

2. In this regard, it is informed that this office deals with Service Tax and GST issues pertaining to supply of services rate. The information requested by you in the point no 1 pertains to this office. All the exemptions under GST are published information. You are requested kindly to look into the details 12/2017- Central tax (Rate) dated 28.06.2017 (as amended from time to time). Similar exemptions are issued under IGST, UTGST Acts also. Other information is not held by this CPIO. It may be available with Ministry of External Affairs. Accordingly, a copy of RTI application is transferred to CPIO, Ministry of External Affairs to furnish information directly to the applicant.

3. In case an appeal is proposed to be filed by you against this reply, the name and address of the 1st appellate authority is as below:

**Shri. Parmod Kumar,
OSD (TRU-II), Room No.146,
North Block, Department of Revenue,
Ministry of Finance, New Delhi.**


28/11/17.
Susanta Kumar Mishra
CPIO & Technical Officer (TRU-II)
susanta.mishra87@gov.in

Copy to:

✓ The CPIO, Ministry of External Affairs, Room No. 2021, 'A' Wing, Jawaharlal Nehru Bhawan, 23-D, Janpath, New Delhi - 110 011 to provide information if available directly to the applicant.

Point ③ may be related to this Ministry
M. forward to L&T
& UNP DOW.

13/12

on 13/12

12/04 - 01/10/17

12/04/2017

SharadMisra Social Safeguard Expert	R/o -25/22, A-1 First Floor
	Madan Mohan Malviya Marg
	Lucknow-226001
	Mo-09415017558 Ph-(0522) 2207661
	Email:-sharadmisra06@gmail.com

Date:27.09.2017

From, Sharad Misra
Social Safeguard Expert

To, Secretary to the Government of India,
Prime Minister Office (PMO)
New Delhi-110001 (India)

PRIME MINISTER'S OFFICE
29 SEP 2017
DAK SECTION

Sub: Information under RTI act,2005- Clarification & Compliance for Goods and Services Tax (GST) on Consultancy Assignment for TA 42267-027 IND.

- Ref:
1. Prescribed Fees via Postal Order No.-37F 796304 dated 02.06.2017 payable to the Accounts Officer, Prime Minister Office Government of India.
 2. Asian Development Bank OPERATIONS MANUAL OPERATIONAL PROCEDURES (OP) Section J6/OP Issued on 04 May 2012 point 22 (ADB does not finance taxes and duties)

Sir,

With reference to the subject cited above, and Asian Development Bank OPERATIONS MANUAL OPERATIONAL PROCEDURES (OP) Section J6/OP Issued on 04 May 2012 point 22 (ADB does not finance taxes and duties) In this regard, we request you to please submit the information on following 05 points under RTI Act, 2005.

1. Whether Projects financed by the Asian Development Bank are currently exempted?
2. Whether, any list has been circulated for exemption on bilateral funding for infrastructure development projects pertaining to Consultancy Assignment?
3. Whether, India is a signatory to the Convention on the Privileges and Immunities of the United Nations, and privileges given to multilateral agencies should continue even after GST is implemented?
4. If the Project cost estimated before GST implementation & GST cost has not been included then Projects financed by the Asian Development Bank under TA will be exempted from Consultancy Assignment?
5. In above case, If not exempted then who will bear the cost of GST, either Government of India (GoI) or State Government as per Asian Development Bank OPERATIONS MANUAL OPERATIONAL PROCEDURES (OP) Section J6/OP Issued on 04 May 2012 point 22 (ADB does not finance taxes and duties).

With regards,

Yours Sincerely,

(SharadMisra)

- Copy to:
- (1) The Secretary, Ministry of Finance, Government of India, and New Delhi for information & further necessary action.
 - (2) The Secretary, Ministry of External Affairs, Government of India, and New Delhi for information & further necessary action.

IPONo-37F796304/01

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OPERATIONS MANUAL BANK POLICIES (BP)

These policies were prepared for use by ADB staff and are not necessarily a complete treatment of the subject.

DISBURSEMENT

A. Definitions

"Closing date"	The date the Asian Development Bank (ADB) may terminate the right of the recipient or borrower to make withdrawals from a grant or loan account.
"Disbursement"	The withdrawal of proceeds from an ADB-financed ¹ grant or loan account.
"Eligible expenditures"	Project expenditures that can be financed under an ADB-financed grant or loan.
"Expenditures incurred"	The recipient of a grant or borrower's obligation to pay either as a result of contractual terms or after goods and services have been provided.
"Financing agreement"	A grant agreement, loan agreement, or combined grant and loan agreement, as appropriate; the related counterparty is referred to as the "recipient" for a grant and the "borrower" for a loan.
"Grant account" or "loan account"	The account opened or to be opened by ADB on its books in the name of the recipient or borrower, and to which the amount of the grant or loan has been or will be credited.

B. Introduction

1. Articles 13 and 14(ix), (x), and (xi) of the *Agreement Establishing the Asian Development Bank* (the Charter) stipulate conditions for the use of loan proceeds financed by the Asian Development Bank (ADB). ADB's policy on disbursement is a key element in meeting these conditions of the Charter. The Regulations² further set out conditions for the use of loan or grant proceeds financed by ADB, or proceeds administered by ADB.³

¹ In this *Operations Manual* section J6/BP, the term "ADB-financed" or "ADB financing" includes ADB-administered grants or loans, unless the context requires otherwise. This *Operations Manual* section J6 does not cover technical assistance grants.

² Includes Ordinary Operations Loan Regulations, Special Operations Loan Regulations, Special Operations Grant Regulations, and Externally Financed Grant Regulations.

³ ADB in practice applies similar principles to those set out in Articles 13 and 14 (ix), (x), and (xi) of the Charter to grants or loans from external funding sources that are administered by ADB, except when ADB and the relevant cofinancier agree otherwise.

OPERATIONS MANUAL OPERATIONAL PROCEDURES (OP)

5. The recipient or borrower may use any of the following disbursement procedures for payment of expenditures related to projects⁴ financed by ADB, subject to ADB's prior approval in the case of procedure (iv):

- (i) **Direct Payment.** This procedure provides for ADB to make the payment directly to the supplier, contractor, or consultant on the basis of a withdrawal application submitted by the recipient or the borrower.
- (ii) **Commitment.** This procedure involves a commercial letter of credit to pay a supplier. The letter of credit is usually established by a commercial bank (issuing bank) and is advised and paid usually by another commercial bank (advising, negotiating, or paying bank depending on the actual arrangements) in accordance with the terms of the letter of credit. ADB does not open the letter of credit nor does it become a party to it, but ADB, on behalf of the recipient or the borrower, assures payment from the related grant or loan proceeds to the paying bank.
- (iii) **Reimbursement.** This procedure, wherein the recipient or the borrower effects payments and then requests reimbursement from ADB, is generally suitable when the recipient or the borrower has sufficient funds to pay for project expenditures first.
- (iv) **Imprest Fund.** Under this procedure, ADB provides the executing and/or implementing agency with funds in advance (replenished from time to time as necessary) for financing eligible expenditures to help the borrower reduce cash flow difficulties thereby facilitating project implementation. Any advance not liquidated by eligible expenditures shall be refunded to ADB. The procedure may be allowed if the executing and/or implementing agency (i) needs to make numerous payments for small expenditures, (ii) has sufficient administrative and accounting capabilities, and (iii) can arrange for periodic independent audits. Imprest accounts may be in any currency, including the borrower's local currency, so long as the currency is freely convertible and stable. The currency of the imprest account should be indicated in the Project Administration Manual (PAM),⁵ or other appropriate loan or grant document.

6. To facilitate efficient disbursement operations, the following simplified documentation procedures may be used under the Reimbursement and the Imprest Fund procedures, subject to ADB's prior approval.

- (i) **Statement of Expenditures.** This procedure, which involves submission by the executing and/or implementing agency of a statement of expenditures (SOE) in lieu of the usually required supporting documentation (such as invoices, bills, and receipts), is used when applying for reimbursement or liquidation and/or

⁴ Disbursement procedures for policy-based loans are set out in *Operations Manual* section D4 (Policy-Based Lending).

⁵ In this *Operations Manual* section J6/OP, the term PAM also refers to Facility Administration Manual (FAM) prepared for Multitranche Financing Facility (MFF) unless the context requires otherwise. See *Operations Manual* section D14.

OPERATIONS MANUAL OPERATIONAL PROCEDURES (OP)

replenishment under the imprest fund procedure. The SOE procedure is available when (a) it is impractical or unduly burdensome for the executing and/or implementing agency to submit full documentation of small expenditures below the approved ceiling to ADB in support of applications for withdrawal of grant or loan proceeds; (b) the executing and implementing agency has sufficient administrative and accounting capabilities; and (c) the executing and implementing agency is able to arrange periodic audits.

- (ii) **Force Account Works.** This procedure is used when ADB and the recipient or the borrower consider it appropriate for the executing and/or implementing agency to employ its own work-force, equipment, and other resources to carry out civil works required for the project. As the supporting documentation usually required (such as invoices, bills, and receipts) is not available, the executing and/or implementing agency is required to submit periodic certification of progress or completion of such civil works in support of applications for withdrawal of funds.

7. To use the imprest fund, SOE, or force account works procedures, the Controller's Department and the regional department, or the resident or regional mission responsible for project administration, have to be satisfied with the capacity of the executing and/or implementing agency, the nature of project expenditures, and other matters considered. ADB staff and the recipient or the borrower should identify the need for the appropriate procedures early in project processing and specify arrangements in the applicable PAM.

3. Financing Plan, Financing Percentage and Detailed Cost Estimate by Financier

8. **Financing Plan.** The financing plan will identify the different sources of financing for the project, the amounts to be provided by each financier, and the overall percentage of total project cost that each financier will finance. The financing plan is included in the Report and Recommendation of the President (RRP).

9. Based on the financing plan, the detailed cost estimate by financier may be prepared in a variety of ways, including the following three options:

(i) **Option 1.** ADB finances eligible expenditures on a pro rata basis with the cofinanciers, i.e., the eligible expenditures will be financed only up to an amount equivalent to ADB's financing ratio for the entire project. For example, if ADB finances 60% of the project, only 60% of the eligible expenditures under each claim will be financed.

(ii) **Option 2.** ADB finances eligible expenditures up to 100% of every claim it receives, as long as sufficient undisbursed grant or loan amounts remain.⁶ If the remaining amount is not sufficient to cover 100% of the claim, only the remaining amount will be disbursed.

⁶ Under such an arrangement, allocation of amounts by expenditure category may not be determined.

OPERATIONS MANUAL OPERATIONAL PROCEDURES (OP)

(iii) **Option 3.** ADB finances eligible expenditures in accordance with different ratios specified for each cost category and/or subcategory. For example, the financing ratio for civil works may be 20% and for equipment 90%.

10. The RRP and PAM will explain the manner in which the eligible expenditures will be financed. Moreover, for all financing plans other than the options 1 and 3, the RRP and PAM will indicate the risks associated with it and the control mechanisms, if any, that will be put in place to address them. Such a plan and the control mechanisms will be raised at the management review meeting or the staff review meeting for endorsement.

11. **Financing Percentage.** ADB's financing percentage is (i) the overall share of ADB's financing for the project, as presented in the financing plan; and (ii) the share of ADB's financing for expenditure categories, as presented in the detailed cost estimate by financier.

12. **Detailed Cost Estimate by Financier.** The detailed cost estimate by financier should exhibit (i) the expenditure category, (ii) the amounts allocated to each expenditure category by financier, and (iii) the financing percentage for each category by financier.⁷ This table must be included in the PAM.

4. Expenditure Categories, Allocation of Amounts and Disbursement Percentage

13. As a basis for disbursement operations during project implementation, the following are summarized in a table as an attachment to one of the schedules in the financing agreement (hereinafter referred to as the "attachment to schedule") for all ADB-financed projects:⁸ (i) expenditure categories,⁹ (ii) their corresponding allocation of amounts, (iii) disbursement percentages, and (iv) other applicable conditions.

14. The amount of ADB financing and disbursement percentage for each expenditure category is derived from the detailed cost estimates by financier.

15. The project team leader is responsible for ensuring that the attachment to schedule is accurately prepared, in consultation with the project counsel and financial control specialist.¹⁰

a. Expenditure Categories

16. The project expenditures to be financed by ADB are grouped into expenditure categories.

⁷ Such as ADB ordinary capital resources loan, Asian Development Fund (ADF) loan, ADF grant, a co-financier's loan, co-financier's grant, a trust fund and/or the government contribution.

⁸ The attachment to schedule must be completed and inserted for all types of loan, grant and financing agreements (including sector loans, unless the information necessary to complete the attachment is not available at the time of Board approval). For financial intermediation grants or loans, the attachment to schedule may or may not be attached to the financing agreement.

⁹ In this *Operations Manual*, the expenditure category also refers to expenditure subcategory, unless otherwise specified.

¹⁰ The accuracy is ensured through the peer review process during processing of loans. In case any changes are proposed to the attachment to the schedule during the loan negotiation, the financial control specialist should be consulted before the loan negotiation is completed.

OPERATIONS MANUAL OPERATIONAL PROCEDURES (OP)

17. Each expenditure category is given in the attachment to schedule. The Office of General Counsel must furnish to the Controller's Department a copy of the financing agreement, including the attachment to schedule, as soon as it is signed by the recipient or the borrower.

b. Allocation of Amounts

18. The attachment to schedule specifies the amount allocated to each expenditure category. A part of the grant or loan may be shown as unallocated. From this category, reallocation may be made to other specified categories to cover cost increases. Amounts no longer required for disbursement in an expenditure category may also be reallocated to another category.

c. Disbursement Percentage

19. The disbursement percentage is the ratio or proportion of ADB financing which is applied to expenditures claimed under a particular expenditure category as specified in the attachment to schedule¹¹. The disbursement percentage is derived from the detailed cost estimate by financier, in consideration of the financing options, treatment of local taxes and duties, and other project specific requirements.

d. Treatment of Local Taxes and Duties

20. ADB's standard practice is to include local taxes and duties in the total project expenditure amount, in the detailed cost estimate by financier.

21. **Where ADB finances taxes and duties.** ADB may finance the local taxes and duties, subject to the criteria¹² described in the policy related to eligibility of expenditures under ADB financing.

22. **Where ADB does not finance taxes and duties.** When ADB does not finance local taxes and duties, those to be excluded from ADB financing are value-added tax (VAT), gross sales taxes (GST), and other similar types of taxes and duties¹³ that are identifiable and determinable as the final tax amount at the time of transaction. On the other hand, income tax¹⁴ and other taxes and duties that are not identifiable and determinable as a final tax amount at the time of transaction are not excluded from the amount to be financed by ADB. If a country has a particular type of tax that requires clarification on its nature and treatment under an ADB project, the RRP and PAM should describe that tax and indicate whether ADB will finance it, or not.

¹¹ This is presented in the financing agreement as "Basis for Withdrawal from Loan/Grant Account".

¹² The criteria include a threshold identified in the Country Partnership Strategy (CPS). See *Operations Manual* section H3/OP, for detailed requirements.

¹³ VAT or GST-type taxes and duties are levied by borrowing countries on specific goods, works, and services, by adding the relevant taxes to the costs.

¹⁴ Income tax is a tax levied by tax authorities on the total income of all business activities of the contractor during a fiscal year, including ADB-financed activities. Income tax withheld by the executing agency from a contractor's invoice is temporary, subject to adjustments at the time of declaring annual income tax returns. Actual income tax cannot be determined at the time of payment of individual invoices.

OPERATIONS MANUAL OPERATIONAL PROCEDURES (OP)

23. When ADB does not finance local taxes and duties, particular attention should be paid in determining the financing percentage for each expenditure category and disbursement percentage. In such cases, one of the following two methods should be used:

(i) **Gross basis.** ADB's financing percentage and disbursement percentage must be set at levels that will exclude local taxes and duties. For example, if the estimated local tax is 10% for a category, ADB's financing percentage and disbursement percentage for the category must not exceed 91% (= 1/1.1). The gross basis presentation is generally preferred as (a) it does not require the Government's particular tax exemption, and (b) it is helpful in streamlining disbursement processing. The local taxes and duties must be broken down further into the expenditure categories in the detailed cost estimate by financier included in the PAM.

(ii) **Net-of-tax basis.** If ADB intends to finance 100% or part of the cost under a certain category except the local taxes and duties, then ADB's disbursement percentage can be presented on a net-of-tax basis, i.e., "100% excluding local taxes and duties." An asterisk [*] that indicates "exclusive of taxes and duties imposed within the territory of the Borrower" must be placed on the expenditure category in the attachment to schedule.¹⁵ If all expenditure categories are financed on a net-of-tax basis, the detailed cost estimate by financier may indicate estimated taxes and duties amount in one line item, and all individual cost amounts excluding taxes and duties. Typically, the net-of-tax basis presentation is appropriate when the government's counterpart funding for an expenditure category is in the form of tax exemption.¹⁶ If the government does not provide tax exemption and requires disbursement by 100% excluding local taxes and duties, supporting documents of each withdrawal application should indicate the amount of the local taxes and duties that should be excluded from disbursement. As these additional considerations in disbursement operations are required, the net-of-tax basis presentation should be used only when the circumstances require.

5. Grant and Loan Closing

24. The borrower may make withdrawals from the grant or loan account only for the expenditures incurred on or before the grant or loan closing date. Expenditures incurred after the grant or loan closing date will not be financed under the grant or loan. If a review of the disbursement and project implementation status of a project suggests that an extension of the closing date is necessary, justified, and will help to attain the project objectives within a reasonable time, ADB may extend the closing date.

¹⁵ Different expenditure categories within the same attachment to schedule may be presented on a gross or net-of-tax basis, if appropriate.

¹⁶ If taxes are exempted, each invoice or claim will not indicate the amount of taxes, but shows only the amount of costs; therefore, the net-of-tax basis disbursement percentages should be used, in order for ADB to finance the project costs as envisaged.

**OPERATIONS MANUAL
OPERATIONAL PROCEDURES (OP)**

Basis: This OM section is based on OM Section J6/BP and the documents cited therein.

Other background information and references:

This OM section is to be read with *Project Administration Instructions* and the documents cited therein; and ADB. 2007. *Loan Disbursement Handbook*. Manila (amended from time to time).

Compliance: This OM section is subject to compliance review.

For inquiries: Questions may be directed to the Assistant Controller, Loan Administration Division, Controller's Department.

04 May 2012

Prepared by the Controller's Department

This supersedes OM Section J6/OP and issued by the Controller's Department on 22 October 2008, with the approval of the President.

Government of India
Ministry of External Affairs
(United Nations Political Division)

No. U.II/551/46/2017
MOEAF/R/2017/01845

Dated: 26th December, 2017

To,

Sh. Sharad Mishra, Social Safeguard Expert,
R/o- 25/22, A-1 First Floor,
Madan Mohan Malviya Marg,
Lucknow- 226001

Sir,

Please refer to your RTI application received in this Division on 10.12.2017 from CPIO & Technical Officer (TRU-II), Department of Revenue, Ministry of Finance, New Delhi to provide information to your application. The response to your RTI application is as follows:

2. The information sought vide query No. 3 is not available in the records of this division.
3. If you are aggrieved with this reply, you may file an appeal with Shri Vidhu P. Nair, Director(UNP) and Appellate Authority, UNP Division, Ministry of External Affairs, Room No. 2018, 'A' Wing, Jawaharlal Nehru Bhawan, 23-D, Janpath, New Delhi-110011, Ph.: 011-49018413 within 30 days of receipt of this letter.



(Basir Ahmed)

Under Secretary to Govt. of India
Room No. 2029, 'A' Wing,
Jawaharlal Nehru Bhawan,
23-D, Janpath, New Delhi-110011.
Ph.: 011-49018411

CC to:

1. Under Secretary (RTI), MEA, New Delhi
2. CPIO, L&T Div.

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