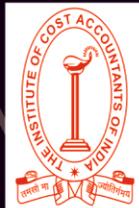




Handbook on
**GST ON
SERVICE SECTOR**
(BANKING & INSURANCE, HOTEL,
UTILITY, TRANSPORT & TOURISM)



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

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"The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally."

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Introductory Edition - December 2019

First Revised Edition - July 2021

Published by

The President

The Institute of Cost Accountants of India

CMA Bhawan

12, Sudder Street, Kolkata - 700016

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3, Institutional Area, Lodhi Road, New Delhi – 110003

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President's Message

The services sector in India is not only the dominant sector in its GDP, but has contributed significantly to export, attracted significant foreign investment and has provided large-scale employment. India's services sector covers a wide variety of activities such as trade, hotel and restaurants, transport, storage and communication, financing, insurance, real estate, business services, community, social and personal services, and services associated with construction. The services sector is a key driver of India's economic growth.

The Government of India recognises the importance of promoting growth in services sector and provides several incentives across a wide variety of sectors like health care, tourism, education, engineering, communications, transportation, information technology, banking, finance and management among others.

The implementation of the Goods and Services Tax (GST) has created a common national market and reduced the overall tax burden on goods. It is expected to reduce costs in the long run on account of availability of GST input credit, which will result in the reduction in prices of services.

This publication of the Tax Research Department deals with the imposition and the importance of GST and its evolution in the service sector. I believe that this would surely be a thoughtful publication and a good read. Congratulations to Tax Research Department for bringing out such a valuable publication.

A handwritten signature in black ink that reads "Biswarup Basu". The signature is written in a cursive style and is positioned above a thin horizontal line.

CMA Biswarup Basu

President

Date 01.07.2021



Vice President's Message

Over the years' service sector is gaining more and more importance gradually with regards to revenue collection, contribution to GDP and employment. Service sector constitutes for more than 50% of Nation's GDP. Service sector in India not only provides large scale employment to both skilled and unskilled personnel but also significantly contributes towards foreign exchange collection. Telecom, Insurance, banking, Information Technology are the major contributors in service sector industry.

GST, the biggest tax reform of the era has an immense impact on the service sector in our country and most of it is positive. The major impacts being avoidance of double taxation and thus mitigating the cascading effects of tax on tax, more clarities have been brought in software industries with clearer segregations between products and services, the service providers that provide repair and maintenance services to companies will be able to claim both the credit of input and credit of input services as provided by the GST system thus they can offer their repair and maintenance services at lower prices and thereby attracting more clients and many more...

This publication of the Tax Research Department, 'Impact of GST on Service Sector' is meant to highlight the impact of GST in service sector and its various intricacies. I appreciate the efforts of Team – Tax Research and the Taxation Committee and the Resource Contributors.

A handwritten signature in blue ink, appearing to read 'P. Raju Iyer', with a stylized flourish at the end.

CMA P Raju Iyer

Vice President

Date 01.07.2021



Chairman's Message

The Service sector is an important part of Indian economy that contributes about sixty percent to the country's GDP. Hence while changing over to the GST regime, it was necessary to in build in the GST mechanism the tax on services that was already being levied prior to its introduction as service tax. The GST law has been appropriately enacted to bring out what would constitute service as distinguished from goods so that there is no overlapping in this regard and thereby avoiding protracted litigation on this account. This has provided the much needed clarity in taxation of services by bringing out a clear distinction between goods and services; streamlining of taxation for intra-state service providers; input credit facility; filing of returns. The digital platform that entails filing of online returns and matching of input tax credit will enable the government to tap the undetected revenue in the service sector which is more difficult to monitor as compared to the goods sector. This in turn will result in a major boost in the contribution of the Service sector to the GDP. Even various sectors have very different impact on the imposition of GST.

Currently the service industry is heavily impacted with the onset of corona-virus in India. The Covid 19 has taken a huge toll on some of the industries in service sector like the tourism industry along with the aviation, hotel industry as the government has restricted the inflow of tourists from other countries. Complying with the government regulations coupled with the curtailment face to face interaction while providing services has been a huge hindrance.

In this crisis and the Tax Research Department has come up with this publication on the service sector addressing the various avenues and facets of impact of GST in service sector and how the global or domestic scenario has changed over the years. Congratulations Team – Tax Research, the Resource Pool and the mentors for their invaluable contributions in the publication of this handbook.

A handwritten signature in blue ink, appearing to read 'CMA Chittaranjan Chattopadhyay'.

CMA Chittaranjan Chattopadhyay

Chairman – Indirect Taxation Committee

Date 01.07.2021



Chairman's Message

I had to start by understanding that the imposition of GST on Service Sector which has complex issues as there are wide variety of services offers and hairline difference persist between one and the other. Though imposition of GST would have positive impacts like avoidance of double taxation, more clarity on taxation is required in case of some specific industries, the benefits of repairs and maintenance and various others. The industry specific issues have to be addressed. I am pleased to note that the Tax Research Department has thought of a publication in this regard and addresses the issues faced by some of the industries.

India is a strong services-led economy with the sector generating a significant chunk of employment opportunities and contributing to the GDP. It contributed around 66.1% of India's Gross Value Added (GVA) growth in 2015-16, is the biggest magnet for Foreign Direct Investment (FDI), and an important net foreign exchange earner. Some of the core areas of service are IT and ITES, banking and financial services, outsourcing, research and development, transportation, telecommunications, real estate and professional services.

I am happy to read this publication and is optimistic that this would surely be a good read for the knowledge seekers as well. I acknowledge the efforts of Team – Tax Research and the Taxation Committee and the Resource Contributors and wish them the success they are well deserving of.

Jain Hind

A handwritten signature in black ink, appearing to read 'Rakesh Bhalla'. Below the signature, the name '(Rakesh Bhalla)' is printed in a small font.

CMA Rakesh Bhalla

Chairman – Direct Taxation Committee

Date 01.07.2021

Preface

Indirect taxes, be it GST or Excise or service tax, have always been contributing majorly to the Government's Revenue. Services solely contribute a major part of the whole Gross Domestic Product (GDP), subsequently; it shows the major contribution of Services in taxes also. Service sector does not only dominate the GDP contribution but attracts the foreign investment towards the Indian Economy. Service Sector contributes significantly in export as well as provides a large scale employment. India's services sector covers a wide variety of activities such as trade, hotel and restaurants, transport, storage and communication, financing, insurance, real estate, business services, community, social and personal services, and services associated with construction.

This publication of the Tax Research Department would surely help a reader to deal and understand the impact of GST on service sectors, its evolution over the years and also the changes that have been made in this crisis situation of the global pandemic. We are thankful to **CMA Rohit Kumar Singh** for his thoughtfulness and directions which us helped us in bringing about this new and revised edition of this handbook.

Thank You.

Tax Research Department

Date 01.07.2021

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INTRODUCTION**1. Introduction to applicability of GST on Service Sector:**

The introduction of GST is truly a game changer for Indian economy as it has replaced multi-layered, complex indirect tax structure with a simple, transparent and technology-driven tax regime. It has integrated India into a single, common market by breaking barriers to inter-State trade and commerce. By eliminating cascading of taxes and reducing transaction costs, it has enhanced ease of doing business (India's ease of doing business ranking has improved several notches in last 2 years) in the country and provided an impetus to —“Make in India” campaign. GST will result in —“**ONE NATION, ONE TAX, ONE MARKET**”.

Service sector is the most dynamic sector in the economy and has remained the key driver of economic growth along with being a major contributor to Gross Value Added (GVA) and export basket of the Indian Economy. Service exports has become one of the mainstay of India's total exports increasing manifold, from Rs. 0.746 lakh crore in 2000-01 to Rs. 14.389 lakh crore in 2018-19, raising its share in total exports from 26.8 per cent to 38.4 per cent. Share of India in world service exports has also increased from 2 per cent in 2005 to 3.5 per cent in 2017. This share is much higher than that of manufacturing exports which stands at 1.8 per cent in 2017.

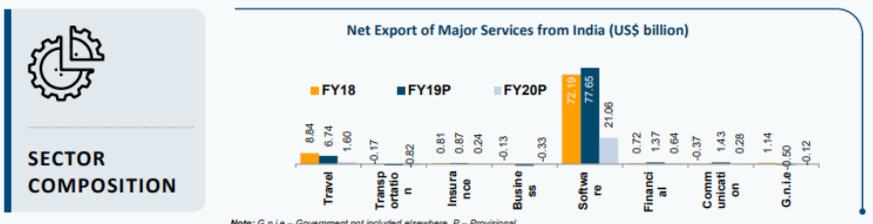
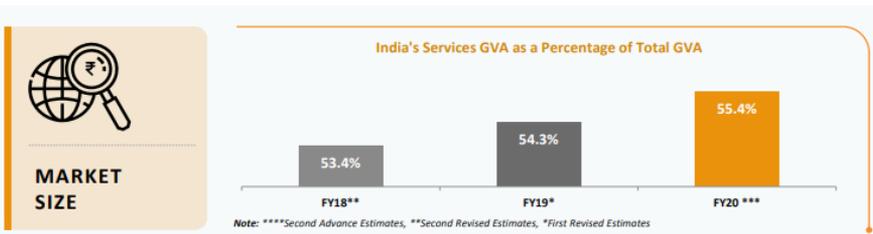
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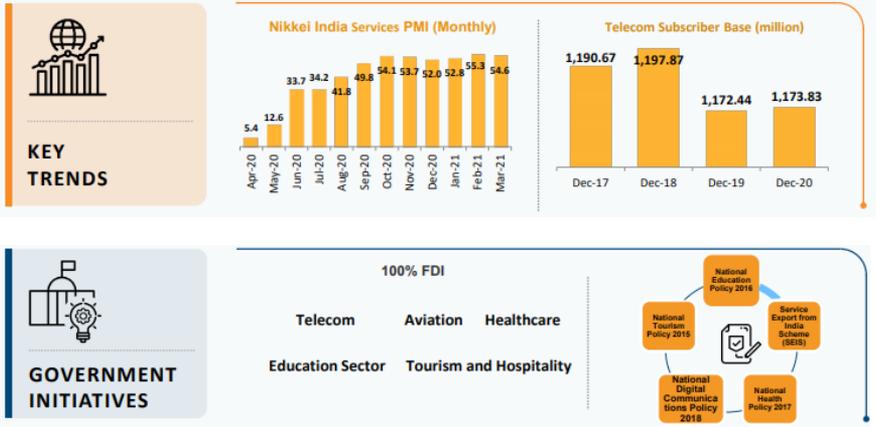
The COVID-19 pandemic, the subsequent lockdown and social distancing measures have had a significant impact on the contact-intensive services sector. During the first half of the financial year 2020-21, the services sector contracted by almost 16 per cent. Air passenger traffic, rail freight traffic, port traffic, foreign tourist arrivals, and foreign exchange earnings all contracted sharply following the first lockdown which was announced in March, 2020. As the economy gradually entered the unlock phase, most

of these indicators showed signs of recovery. Services purchasing managers' index, rail freight traffic, and port traffic have bottomed out and are rising steadily now, showing a V-shaped recovery. Domestic passenger air traffic is also increasing gradually on a monthly basis, although travel remains muted as compared to last year. Interestingly, in spite of the global disruptions, FDI inflows into the services sector increased by 34 per cent YoY during April-September 2020 to reach US\$ 23.61 billion. The year 2020-21 witnessed many significant structural reforms. The space sector was opened up, telecom related regulations were removed from the IT-BPO sector, and consumer protection regulations were introduced for e-commerce.

Services sector's significance in the Indian economy has been steady, with the sector now accounting for over 54 per cent of the economy and almost four-fifths of total FDI inflows. Meanwhile, the shipping turnaround time at ports has almost halved from 4.67 days in 2010-11 to 2.62 days in 2019-20. India is home to 38 unicorns, adding a record number of 12 start-ups to the unicorn list last year. With the ongoing vaccination drive, the contact intensive service sectors can expect to witness revival.

(Ref-https://www.indiabudget.gov.in/economicsurvey/doc/vol2chapter/echap09_vol2.pdf)







tax on services, the Constitution has been amended in 2004 to introduce Entry 92C in the Union List in Schedule VII. Despite all this progress, service tax continues to reside in Chapter V (Chapters V-A and VI) of Finance Act, 1994.

Service tax was understood as a tax on an active form of service being performed by a service provider to a service receiver. Upon introduction of the negative tax regime from July 2012, the entire concept of "service" underwent a change where the law provided that tax would apply on any activity performed by one person for another for a consideration.

For an activity to remain beyond the reach of service tax under the law effective from July 2012, it was required to be found in any one of the following three :

- Covered under Exclusion list of the definition of service; or
- Negative list of services; or
- Mega exemption notification.

Some Critical aspects of Taxation of Services:

1. Dual Taxation of Services: There are certain services, where the nature of the definition contained in the statutes brought the incidence of VAT as well as service tax to be imposed on the same transaction. For example – sale of software along with license to use, Sale of food by restaurants, etc.

2. Tax on overlapping value of services: Where the value of taxable portion of the contract sum was unevenly bifurcated by the respective tax laws – VAT and service tax – such that the tax was computed on a taxable base that extended beyond 100% of the contract sum. For example supply of food and beverage is liable to VAT on the entire value paid by customer, and at the same time, service tax is leviable on 40% of the same value. Another example could be works contracts that are liable to VAT on 65% to 75% of the contract sum and service tax is liable on 40 to 60% of the said contract sum.

GST PROVISIONS APPLICABLE TO SERVICES SECTOR

1. Important Definitions and Key Terms:

Services:

Under the CGST Act, 2017, services is defined by section 2(102) as under :

“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;

Explanation.–For the removal of doubts, it is hereby clarified that the expression “services” includes facilitating or arranging transactions in securities.

(Inserted vide the Central Goods and Services Tax (Amendment) Act, 2018 read with Notification No. 02/2019- Central Tax dated 29.01.2019 – w.e.f. 01-02-2019.)

The definition can be interpreted as under -

- o Services include transactions in money but does not include money and securities;
- o Services do not include transaction in money other than an activity 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.
- The definition has two parts to it, that is:
 - o What services “means”; and
 - o What services “excludes”.

- As stated earlier, express exclusion of 'something' presupposes its inclusion of that thing. Now, in this definition:
 - o The word "service" is defined with the use of the word 'means'. In doing so, the GST Law seeks to be restrictive. It also denies to any person, an opportunity to entertain any other meaning even if it is well known and well understood in trade or in preceding tax legislations;
 - o secondly, service means 'anything'. Anything includes 'everything' and excludes 'nothing'. If that is what service means, then everything is a service. For something not to be a service it must come within the express exclusion provided by the same definition section or elsewhere in the statute;
 - o thirdly, when the words in the definition 'anything other than goods', are read together, the scope of 'anything' is curtailed by 'all things' that fit in the definition of goods.

The Central Goods and Services Tax (Amendment) Act, 2018 read with Notification No. 02/2019- Central Tax dated 29.01.2019 has inserted an Explanation in the definition of service –For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities. The amendment has been made with effect from 1st February 2019.

The definition of services is to be read along with the definition of "goods" which is defined as per Sec 2(52) of the Central Goods and Services Act, 2017. It is pertinent to examine the definition of 'Goods' which is as under:

"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 the contract of supply;

The above definition of "goods" is well understood in trade parlance as well as in taxation regime. Having said that 'every kind of movable property' is goods, to state that "other than money and securities" makes it very clear that securities are movable property but deliberately excluded from being regarded



as goods. In other words, certain things which are admittedly goods, for the limited purpose of GST, will be treated as if they are services. However, the definition of service very precisely excludes money and securities from its ambit. Hence, money and securities are neither 'goods' nor 'services' for the purpose of GST Law.

Therefore, according to the GST law, **services are of three kinds:**

- Those services that are commonly understood as services;
- Those that are goods but are to be treated as services;
- Transaction in money in the nature of an activity relating to the use of money or its conversion for which a separate consideration is charged. E.g. Conversion of Rupees to US dollars

Meaning and scope of supply – Sec 7 of the CGST Act, 2017

(1) Supply includes

.....

(d) Schedule II, in respect of matters mentioned therein, shall apply for determining what is, or is to be treated as a supply of goods or a supply of services.

(2)

Schedule II of the CGST Act determines two things:

- What is – supply of goods or supply of services; and
- What is to be treated as – supply of goods or supply of services.

'supplies', 'goods' and 'services' cannot be read as individual terms with their meanings available in sections 7, 2(52) and 2(102), respectively.

Schedule II describes 18 types of transactions and declares them to be treated as either supply of goods; or as supply of services. On a careful consideration of each of the seven Entries in this Schedule, the following key inferences can be made:

5 classes of transactions will be treated as supply of goods and the balance 13 transactions will be treated as supply of services and none of these 5 transactions are supply of goods’;

Supply of Services:

1. The phrase "**supply of services**" has been earlier discussed, whereas, certain aspects in the definition of supply in relation to services may be discussed for the following reasons:
 - o Firstly, services include transactions involving goods and treated as services, for the purposes of GST.
 - o Secondly, when transactions involve both goods and services (composite) uniformity in application of the rules of supply maybe in doubt.
 - o Thirdly, transactions involving goods which are tangible and are more easily verifiable during their supply, whereas, transactions involving services lack this element of verifiability.
 - o Lastly, the words used to define supply such as sale, disposal, transfer, rental, lease, etc. appear to originate in relation to goods, but extended to apply to services also.
2. Services being defined as 'anything other than goods', but are not opposite of goods. In fact, it implies that 'goods' are but a sub-sect carved out of the super-sect that is 'services'. In relation to services, supply refers to 'services treated as services', as well as 'goods treated as services'. While it is easy to relate to services that are treated as services, it requires a certain degree of mental alertness when considering goods that are treated as services.
3. Section 7(1) of the CGST Act, 2017 states that:

"For the purposes of this Act, the expression "Supply" includes:

 - (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;



- (b) import of services for a consideration whether or not in the course or furtherance of business;
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
- ~~(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.~~ **(effective date yet to be notified)**

Of the 8 words used in section 7(1)(a) to describe the various forms of supply, one needs to examine as to whether they are exhaustive or illustrative, and whether there is any order or method in their enumeration.

1. sale,
2. transfer,
3. barter,
4. exchange,
5. license,
6. rental,
7. lease; or
8. disposal

The use of the phrase “such as” in section 7(1)(a) of the CGST Act, 2017 indicates that they are not exhaustive. As regards the order or method, ‘sale’ at the one end and ‘disposal’ at the far end, appear to represent a continuum of various forms of supply in between and that too in a descending order. The descending order is with respect to completeness of the ingredients required to constitute supply. Hence, the word ‘sale’ appears to be used in its widest form and embodies all ingredients involved in constituting an **absolute** sale. Supply, therefore, must be given a very wide meaning covering all transactions of transfer of property in them. The phrase “in the course or furtherance of business” is the measure of purpose behind such supply.

4. Tabular depiction of the words used & their ingredients of completeness:

Form of	Inter		Willing	Willing	Permanent	Valid
Supply	vivos	Consideration in terms of money	buyer	seller	nature	object
Sale	Y	Y	Y	Y	Y	Y
Transfer	Y	Y	Y	Y/N	Y	Y
Barter	Y	N	Y	Y	Y	Y
Exchange	Y	N	Y	Y	Y	Y
License	Y	Y	Y	Y	N	Y
Rental	Y	Y	Y	Y	N	Y
Lease	Y	Y	Y	Y	N	Y
Disposal	Y	Y	N	Y	Y	Y/N

5. Sale of goods is well understood and in GST, and stands further expanded by the inclusion of 'barter' and 'exchange' in the definition of supply. In other words, transactions that fail to satisfy the test of sale for want of money-consideration do not escape being taxed under GST.
8. Section 8 of the CGST Act, 2017 provides that the tax liability on a composite or a mixed supply shall be determined in the following manner, namely:
- A **composite supply** comprises of two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
 - A **mixed supply** comprises of two or more supplies which shall be treated as a supply of that particular supply which attracts the highest rate of tax.
9. A composite supply is defined under section 2(30) of CGST Act, 2017: "Composite Supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.



10. In Section 2(90) of the CGST Act, 2017, “principal supply” has been defined as supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.
11. In terms of Section 2(74) of the CGST Act, 2017, “mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.
12. The concept of ‘naturally bundled services’ under section 66F of the Finance Act, 1994 is similar to the definition of composite supply under CGST Act. So, in order to understand composite supply, one may go back and evaluate the concept of “naturally bundled services” under section 66F of the Finance Act 1994.
13. The following guiding principles could be adopted to determine as to whether a supply would be a composite supply or a mixed supply.

However, every supply should be independently analysed as follows:

Description	Composite Supply	Mixed Supply
Naturally bundled	Yes	No
Taxable supplies	Yes	Yes / No
Supplied together	Yes	Yes
Bundling in the ordinary course of business	Yes	No
Can be supplied separately	No	Yes
One is predominant supply for recipient	Yes	No
Other supply is not ‘aim in itself’ of recipient	Yes	No
Each supply priced separately	Yes	No
Combinations:		
• All supplies are goods	Yes	Yes
• All supplies are services	Yes	Yes
• One supply is of goods and other supply is Services	Yes	Yes



14. As regards verifiability of service performance or completion, one may refer to section 13 of the CGST Act, 2017. It is an admitted fact that performance or completion of service is not open to verification. It is for this reason, that in respect of services, from a careful reading of section 13(2)(a) read with section 31(2), it can be inferred that the Government, through the CGST Rules, 2017, has prescribed a time limit of 30 days within which the invoice is required to be issued in respect of supply of services and 45 days for banking and financial institutions. Note the phrase "*..... if the invoice is issued within the prescribed period*" in section 13(2)(a) of the CGST Act, 2017. When the invoice is issued within such 'prescribed period', the actual performance or completion of the service is immaterial.
15. It is important to mention that the word 'supply' includes import of a service, made for a consideration (as defined in Section 2(31)) of the CGST Act and ***whether or not in the course or furtherance of business***. This implies that import of services even for personal consumption would qualify as 'supply' and therefore would be liable to tax. This would not be subject to the threshold limit as tax is expected to be payable on reverse charge basis, and the threshold limits do not apply in case of supplies attracting tax on reverse charge basis.

2. Levy and Composition

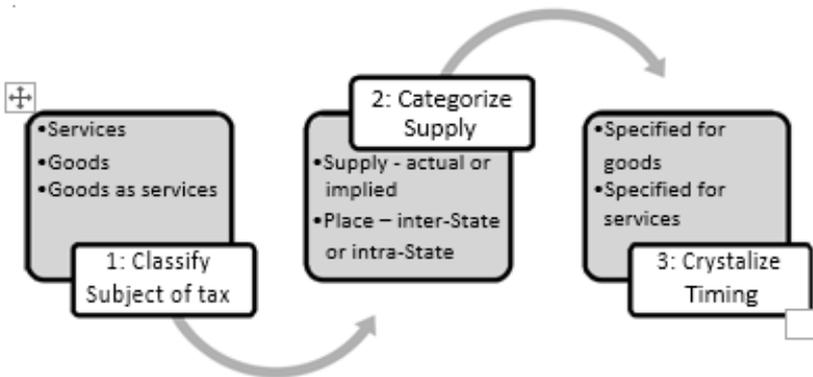
1. Section 9 of the CGST Act deals with levy of tax and the language appears clear and unambiguous. The ingredients for incidence of tax are:
 - o Supply of goods and / or services (except on the supply of alcoholic liquor for human consumption),
 - o Tax will be levied on supply of petroleum crude, high speed diesel, motor spirit (petrol), natural gas and aviation turbine fuel only with effect from such date as may be notified by the Government after recommendation of the Council;
 - o In an intra-State transaction;
 - o Value determined as per Section 15;



- o At a rate specified by Notification, but not exceeding 40% (20% for State and 20% for Centre);

The collection of this tax would be in a manner 'as may be prescribed'.

2. Taxable event is that event, upon the happening or occurrence of which the incidence of tax gets attached to the subject-matter of tax. Only upon release of this encumbrance, can any further use or appropriation be permitted.
3. The CGST Act poses a challenge to identify the subject-matter of the incidence. The difficulty is not in knowing 'when' the intra-State supply occurred but in identifying on 'what' this encumbrance attaches to. Levy of tax is when the taxing ingredients prescribed in the law are found in the facts of a transaction.
4. Levy of tax is not over a period of time but at a point in time when the 'taxable event' occurs which is supply of good or services. The levy of CGST-SGST or IGST may be decided by applying the following steps



COMPOSITION LEVY FOR SERVICE PROVIDERS:

1. Section 10 of the CGST Act provides for the payment of taxes under a composition scheme, that is, payment of tax by a taxable person at a lower rate on the value of taxable supplies without the benefit of availing input tax credit, but with certain restrictions as under:



- a. the taxable person is not engaged in supply of services (other than a restaurateur);
 - b. the taxable person does not make any supply which are not liable to tax under the Act;
 - c. the taxable person does not make any inter-State outward supplies of goods;
 - d. the taxable person does not make any supply of goods through an e-commerce operator required to collect tax at source (TCS) under section 52;
 - e. the taxable person is not a manufacturer of notified goods.
2. Composition scheme would become applicable for all the business verticals having separate registrations within the State and all other registrations outside the State which are held by the person with same PAN.
 3. Taxable person opting to pay tax under the composition scheme is prohibited from collecting tax on the outward supplies
 4. This facility is not applicable to casual taxable persons or non-resident taxable persons.
 5. This facility is available up to the limit of aggregate turnover of Rs 75 lacs [vide Notification No. 8/2017-Central Tax dated June 27,2017 & Notification No. 2/2017-Union Territory Tax dated June 27,2017]. But as stated above, a service provider (other than a restaurateur) cannot avail the benefit of Composition tax, and has to compulsorily operate under regular tax compliance.

It is pertinent to mention that the Central Government *vide Notification No. 46/2017-Central Tax dated October 13,2017* has revised the turnover limit for Composition Levy from Rs 75 lakhs to Rs 1 crore. And Further *vide Notification No 14/2019 – Central Tax dated March 7, 2019* the said limit is further enhanced to Rs 1.50 crores. For the States of **Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Uttarakhand**. For these States the threshold for opting for composition scheme shall be Rs 75 lakhs. The said change is effective from 1st April 2019.



Thus, an eligible registered person, whose aggregate turnover in the preceding financial year did not exceed Rs 1 crore, may opt to pay tax under composition levy at prescribed rates i.e. 1%, 2.5%, 0.5% as the case may be under respective Acts.

6. It is important to note that for any tax payable under reverse charge mechanism, the option of payment under Composition scheme will not be available. In other words, a taxable person opting for composition scheme will be required to pay tax on supplies taxable under RCM at regular rates and not the composition rate. Further, such person shall not be eligible to claim Input tax credit of tax so paid under reverse charge mechanism.

3. NATURE OF SUPPLY

1. Intra-State Supply are liable to CGST/SGST while Inter State Supply is liable for IGST. Therefore, it is pertinent to understand what is Inter/Intra State supply.
2. A supply shall be intra-State (liable to CGST, SGST) where the location of the supplier and place of supply are in the same State (or Union Territory) except to SEZ units/ developers. In any other case, the supply would be treated as an inter-State supply, liable to IGST.
3. Where the supply is 'to' or 'by' an SEZ developer or unit, then such supply will always be treated as inter-State supply.
4. Section 7 and 8 of IGST Act provides the definition of Inter and Intra State supplies. Same meaning is assigned to Intra State supplies of goods and services in the CGST Act, 2017 vide Section 2 (64) and (65) of the CGST Act respectively.

The relevant extract of Section 7 and 8 of IGST Act, 2017 in respect of Intra/ Intra State supplies of services respectively are as under:

"Inter-State Supplies – Section 7 of the IGST Act, 2017:

Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in--



- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory,

shall be treated as a supply of services in the course of inter-State trade or commerce.

- (4) Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.
- (5) Supply of goods or services or both, --
 - (a) when the supplier is located in India and the place of supply is outside India;
 - (b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or
 - (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.”

Intra-State Supplies – Sec 8 of the IGST Act, 2017 -

Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

Explanation 1. For the purposes of this Act, where a person has, --

- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- (iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory,



then such establishments shall be treated as establishments of distinct persons.

Explanation 2. A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.”

4. Payer of Tax

1. Tax is levied on the subject matter – supply – and not on the payer of the tax. In fact, if the incidence were to be on the payer of the tax, then it would not be a tax on supply. The manner in which the tax levied is to be collected is entirely left to the administrative convenience of the Executive. Tax being made payable by persons who are not service providers has become so common that the name has been coined to refer to such administrative measures – **reverse charge**.
2. Under the GST law, the levy of tax is as follows:
 - (a) In the hands of the supplier - on the supply of goods and/or services (referred to as tax under **forward charge mechanism**);
 - (b) In the hands of the recipient – on receipt of goods and/or services (referred to as tax under **reverse charge mechanism**)
3. It is imperative to mention here, that there is no concept of partial reverse charge under GST as was there in erstwhile service tax.
4. Import of service under GST will be taxable in the hands of the recipient (importer).
5. Another concept to consider is the requirement of two persons for undertaking a transaction before tax can be imposed. In the case of an association comprising of members where the object of such association is to collect monies from its members and expending it for their common welfare, no tax can be imposed on such transactions because the members and the association are not distinct persons. For example, monies contributed by members of an apartment owners’ association is not liable to income tax. Similarly, goods transferred from the factory of an entity located in one State to a sales outlet

located in another State of the same entity were not liable to VAT. This principle is called the principle of mutuality. In other words, there is a requirement of two persons to be present to undertake a transaction that can attract the incidence of tax. Money contributed by members of the association is not income of the association and goods transferred from the factory to sales outlet of the same legal entity is not a sale because one cannot sell to oneself. In both these examples, two persons are required to constitute a taxable transaction. This principle of mutuality being a necessary concomitant for taxation, has been agitated in service tax laws with moderate amount of success compared to acceptance of this principle as salutary under VAT and Income Tax Laws.

6. However, the GST law overrides this legal requirement of mutuality and as a result, transactions between members of an association and the association of such members is also treated to be a service *inter se* and liable to tax unless it is goods which would also be treated as supply of goods by virtue of Paragraph 7 of Schedule II. Further transactions between the head office and a branch office are also liable to tax when the service provider is located outside the taxable territory as defined in service tax. In such cases, so long as it is established that the service provider operating within the taxable territory for purposes of service tax is a “fixed establishment” or a mere representational and non-functional office, it is to be treated as if it has the requirements of a distinct person capable of entering into such a transaction with the head office and become liable to tax.
9. The provisions of section 9(3) of the CGST Act, 2017 make it clear that the Government has armed itself with adequate powers to notify certain categories of persons to pay taxes on reverse charge basis on supply of goods or services or both. In this scenario, all the provisions of the Act, shall apply to the *recipient* as if he were the supplier.
10. Apart from the above provision, the Government, in section 9(4) of the CGST Act, 2017, makes it clear that tax would become payable by a recipient of goods or services or both when supplies are effected by a supplier **who is not registered**. It must be noted that the phrase supplier **who is not registered** would mean and include –(a) a person who is



not registered, but not in the State from where he is making the taxable supply;

(b) a person who is not required to register; and (c) a person liable to register but not registered. The point for discussion would be – whether there can be a reverse charge in cases of persons not required to register? The moot point is whether tax can be imposed under reverse charge, when the forward charge itself fails.

11. In this regard, the Central Government *vide Notification No. 8/2017 – Central Tax (Rate) dated June 28, 2017* has exempted intra-State supplies of goods or services or both received by a registered person from any supplier, who is not registered, from the whole of the central tax leviable thereon under section 9 (4) of the CGST Act.

However, the said exemption shall not be applicable where the aggregate value of such supplies of goods or service or both received by a registered person from any or all the suppliers, who is or are not registered, exceeds Rs 5000/- in a day.

The Central Government *vide Notification No. 38/2017 – Central Tax (Rate) dated October 13, 2017*, has amended Notification No. 8/2017 – Central Tax (Rate) dated 28th June, 2017 by omitting the proviso under Paragraph 1 which deals with the exemption limit of Rs 5,000 per day available to the registered person on procurement of goods or services from any or all unregistered suppliers. Now, the exemption shall be available to all the registered persons till March 31, 2018 without any limit in case of supplies procured from unregistered supplier. Further the same was extended to 30th September 2018.

Later on the said section 9(4) of the CGST Act, 2017 has been amended to carry following text

“The Government may, on the recommendations of the Council, by notification, specify a **class of registered persons** who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both”

Hence, instead of taxing taxable supplies from unregistered person to a registered taxpayer, the provision has been amended to tax **“certain class of registered persons”**.

12. In GST, where any supply of services is effected through e-commerce operators (commonly known as services provided by aggregators), the law provides that the Central / State Government may on recommendation of the Council specify (notify) that the e-commerce operator will be liable to discharge the tax on such supplies. It is important to note that, in such supplies, the e-commerce operator is neither the supplier of services nor the service recipient. The Levy has been shifted to the third party who is aggregator of services as E-commerce operator such as Ola, Uber, etc. It is important to note that this exception is carved out only in respect of supply of services through an e-commerce operator and will not be applicable / relevant to supply of any goods through an e-commerce operator which is covered under section 52 of CGST Act, 2017 wherein E-commerce operator such as Flipkart, Amazon is liable to deduct TCS.

Furthermore, where the e-commerce operator does not have a physical presence in the taxable territory, the representative (being agent / any other person) of the operator (if any) shall be the person liable to pay tax. Where such representative also does not have presence in such territory, the operator should appoint a person specifically for this purpose.

5. Person and Taxable Person

1. The term ‘Person’ has been defined in section 2(84) of the CGST Act to include natural persons and juridical entities being one with capacity to contract and perform such contract.

2(84) “person” includes—

- (a) an individual;
- (b) a Hindu Undivided Family;
- (c) a company;
- (d) a firm;



- (e) a Limited Liability Partnership;
- (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
- (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;
- (h) any body corporate incorporated by or under the laws of a country outside India;
- (i) a co-operative society registered under any law relating to co-operative societies;
- (j) a local authority;
- (k) Central Government or a State Government;
- (l) society as defined under the Societies Registration Act, 1860;
- (m) trust; and
- (n) every artificial juridical person, not falling within any of the above;

'Taxable person' is defined in section 2(107) to be a person who is registered or liable to be registered under section 22 or section 24".

By paraphrasing, the ingredients can be identified are:

- ◇ Person (section 2(84));
 - ◇ Registration:
 - Requiring Compulsory registration (section 22 or 24);
 - Voluntary registration (section 22).
2. On a plain reading of the various definitions listed above, the following inferences can be drawn:
- o A taxable person is always a natural or juridical entity first;
 - o A natural or juridical entity becomes a taxable person when two facts are present

- carrying on business and requiring registration;
 - o Requirement to be registered alone does not constitute a taxable person which requires the twin tests to be fulfilled (refer above) as registration is required even when no business is carried on;
 - o A natural or juridical entity constituting a taxable person is to be administered separately in each State;
 - o A single natural or juridical entity can constitute more than one taxable person in India; and
 - o A single natural or juridical entity cannot constitute multiple taxable persons in one State as registration within a State is permitted only on the condition of differentiation based on activities being distinct business verticals.
 - o Further, the CGST Act lists down persons who are deemed to be taxable persons under the Law, even though they belong to one single person / entity:
 - (a) A person who has obtained or is required to obtain more than one registration, whether in one State or more than one State – is treated as distinct person in respect of each such registration for the purposes of this Act;
 - (b) An establishment of a person who has obtained or is required to obtain registration in a State, and any if his other establishments in another State are treated as establishments of distinct persons for the purposes of this Act.
3. Thus, any transaction between branches/units/corporate offices would be deemed as a supply under Section 7 and hence would be taxable.

6. Input Service Distributor

1. Earlier, when goods in respect of which creditable taxes were paid, but were procured (by way of import or from a manufacturer) by a 'dealer', the available credit could not be availed due to the interjection of the dealer in the supply chain. There may be several reasons for the supply



of such goods to a dealer, which are not directly to the manufacturer. For example:

- There may be a minimum order quantity for procurement that is beyond the average requirement or storage capacity of each manufacturer; or
 - That the goods may be of specialized nature that storage, transportation and handling requires sophisticated equipment that are not available with manufacturers; or
 - There could be economies in consolidated procurement which manufacturers are not able to leverage.
2. Since the introduction of MODVAT in the year 1986, dealer's registration has come to occupy an important place in Central Excise Laws where the dealer is permitted to issue a special document – Dealer's invoice – which disaggregates the total creditable duties paid in proportion to the quantity delivered to each manufacturer, that loss of credit (and hence cascading effects) were successfully avoided. Such dealers neither claimed credit of duties paid, nor charged duty to manufacturers.
 3. Total creditable duties paid and the quantity of goods in respect of which the duties are paid provides the 'credit per unit' that can be passed on. A manufacturer-purchaser is entitled to claim this 'credit per unit' for the quantity received from such dealer as evidenced by the Dealer's invoice. Any goods sold by the dealer to a non-manufacturer, is not retained and carried forward by the dealer, but lapses to the extent of such sales to non-manufacturers.
 4. Based on the experience under the erstwhile central excise laws, the service tax law, in the year 2004, introduced the concept of input service distributor ("**ISD**"), within the CENVAT Credit Rules, 2004 on similar lines, except that the receipt and distribution of credit was within the same legal entity and not to third parties. That is, if one office receives the invoice (or other duty paying documents) in respect of costs, where creditable taxes are paid, but another office (or factory) where output

taxes are payable, uses services involved in these costs, then the office registers as an 'input service distributor' and issues an ISD-invoice of the office (or factory) which utilizes the underlying services. ISD is free to distribute all creditable taxes paid, but the recipient of the ISD-invoice is responsible to demonstrate eligibility to avail such credit based on the credit entitlement provisions. While in central excise, the procedure of Dealer's invoice is related to excisable goods, in service tax, the procedure of ISD is limited to input services.

5. Under GST Laws, the concept of ISD (as under the service tax law) is continued. That is, where invoice or other documents evidencing creditable taxes are received at a location, from where no taxable supplies are made or provided, the law provides for a system of permitting the location receiving such documents to be registered as an input service distributor. Location receiving the benefit of the underlying **services** may claim credit based on the invoice issued by such input service distributor, being the office or location of the same person (not same 'taxable person') that has received the document containing creditable taxes paid. There is one exception in ISD scheme under the GST Laws compared to that in the service tax regime. That is, ISD under the service tax regime is not responsible to examine eligibility of the recipient to the credit. In the GST regime, the ISD is permitted to distribute credit only to the extent the underlying service is 'attributable' to such recipient. So, the ISD is now required to inquire into the extent to which credit can be distributed to the recipient. Where, there are more than one recipient, the rule of proportion operates.. The ISD is also required to distribute the taxes ineligible for input tax credit, as ineligible credits, in order to enable the actual recipient-taxable-persons to disclose such amount of taxes ineligible for credits.
6. Distribution of credit by ISD is permitted in GST only in respect of tax paid on input services. Note that 'services' include certain supply of goods 'treated as' supply of services under Schedule II.



Illustration: The Corporate office of ABC Pvt Ltd., is at Hyderabad, having its business locations of selling and servicing of goods at Kolkata, Bangalore, Indore and Mumbai. If the software license and maintenance is used at all the locations, invoice indicating CGST and SGST is received at Corporate Office. Since the software is used at all the four locations, the input tax credit of entire services cannot be claimed at Hyderabad.

The same has to be distributed to all four locations. For that reason, the Hyderabad Corporate office has to act as ISD to distribute the credit.

7. Registration

Persons liable for registration [Section 22]

- Every supplier shall be liable to be registered under the Act in the State from which he makes a taxable supply of Goods or Services or both. Registration is required if his aggregate turnover in a financial year exceeds Rupees Twenty Lakhs. This threshold limit will be Rupees Ten Lakhs if a taxable person conducts his business in any of the special category States as specified in sub-clause (g) of clause (4) of Article 279A of the Constitution i.e. Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand.

How the Aggregate Turnover is calculated?

- XYZ Pvt. Ltd. is a manufacturing unit in Hyderabad, Telangana along with a unit at Assam. Turnover details of all the units are as follows:

Hyderabad Factory: Rs 8 Lakhs

Assam Factory: Rs 11 Lakhs

Assam Unit is in a special category State wherein the registration limit is Rs 10 lakhs. Hence, in the given case XYZ Pvt. Ltd would be required to take registration in Assam due to aggregate turnover being Rs 11 Lakhs. Now it needs to be analyzed whether the Hyderabad unit is also required to get registered even though the aggregate turnover of all the units is less than Rs 20 lakhs.

Even though the aggregate turnover is less than Rs 20 Lakhs, registration would be mandatory in Hyderabad also by virtue of the mandatory registration in Assam

- It means that for each State, the supplier liable for registration will have to take a separate registration even though such supplier may be supplying goods or services or both from more than one State as a single entity. The application for registration shall be made within 30 days from the date when he becomes liable for registration.
- Casual taxable person or a non-resident taxable person shall apply for registration at least 5 days prior to the commencement of business.
- A person having multiple business verticals [as defined in Section 2(18)] in one State may obtain separate registration for each of the business vertical, subject to the prescribed conditions.
 - ◇ For calculating the threshold limit, the turnover shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals. Further, supply of goods by a registered Job-worker, after completion of job work, shall be treated as the supply of goods by the “principal” referred to in section 143 (i.e. Job work procedure) of this Act. The value of such goods shall not be included in the aggregate turnover of the registered job worker.
- Every person who, on the day immediately preceding the appointed day, is registered or holds a license under an earlier law, shall be liable to be registered under this Act with effect from the appointed day.
- Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer can proceed to register such person in the manner as may be prescribed.
- A person, though not liable to be registered under Section 22, may get himself registered voluntarily, and once registered all provisions of this Act, shall apply to such person.
- **Transfer of Business and Registration** - If the registered taxable person transfers business on account of succession



or otherwise, to another person as a going concern, the transferee, or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession. This means that the Registration Certificate issued under Section 22 of the Act is not transferable to any other person. In case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, de-merger of two or more companies by an order of a High Court, the transferee shall be liable to be registered with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court.

Persons not liable for registration [Section 23]

In terms of section 23 of the CGST Act, following persons shall not be liable for registration

- (a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the IGST Act;
- (b) an agriculturist, to the extent of supply of produce out of cultivation of land- an agriculturist is not liable for registration only to the extent of supply of produce out of cultivation of land. If an agriculturist undertakes supplies which are not linked to the cultivation of land, he will fall within the provisions of Section 22 and may have to take registration in respect of such supplies
- (c) Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

In this regard, Central Government *vide Notification No. 05/2017-Central Tax, dated June 19, 2017* has w.e.f June 22, 2017 amended section 23 of the CGST Act, 2017 to include the persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient of such goods or services or both under section 9(3) of the CGST Act, 2017 in the category of persons exempted from obtaining registration under the aforesaid Act.

Compulsory registration in certain cases

As per Section 22 there are certain conditions subject to fulfilment of which registration must be taken. However, Section 24 enlists following eleven types of persons who shall compulsorily obtain registration even though these persons do not trigger the provisions prescribed under Section 22:

(i) Persons making any inter-State taxable supply;

It is imperative to mention here that, with effect from October 13, 2017, the Central Government *vide Notification No. 10/2017 – Integrated Tax dated October 13, 2017*, has exempted the persons making inter-State supplies of taxable services and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of Rs 20 lakhs in a financial year from obtaining registration. Further, the aggregate turnover limit should not exceed Rs 10 lakhs for availing exemption from registration for the States specified in Article 279A (4) (g) of the Constitution, other than the State of Jammu and Kashmir

However, **persons making any inter-State taxable supply of goods has to compulsory register under GST irrespective of aggregate turnover.**

- (ii) Casual taxable persons making taxable supply;
- (iii) Persons who are required to pay tax under reverse charge;
- (iv) Persons who are required to pay tax under sub-section (5) of section 9;
- (v) Non-resident taxable persons making taxable supply;
- (vi) Persons who are required to deduct tax under section 51, whether or not separately registered under this Act;

It is important to mention here that, Press Release for 22nd GST meeting on October 6, 2017 inter alia states that: after assessing the readiness of the trade, industry and Government departments, it has been decided that registration and operationalization of TDS/TCS provisions shall be postponed till 31.03.2018.

[http://www.cbec.gov.in/resources//htdocs-cbec/gst/20171006_PressRelease_22nd GSTCMeeting.pdf]

- (vii) Persons who make taxable supply of goods or services or



both on behalf of other taxable persons whether as an agent or otherwise;

(viii) Input Service Distributor, whether or not separately registered under this Act;

(ix) Persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;

It is pertinent to mention that Press release dated June 26, 2017 inter alia provides thus:

“3. The persons who were liable to be registered under clause (ix) of Section 24 of the CGST / SGST Act, 2017 (as they were supplying goods or services through electronic commerce operator who is required to collect tax at source under Section 52) will not be liable to register till the provision of Tax Collection at Source is brought under force. In other words, persons supplying goods or services through electronic commerce operator liable to collect tax at source would not be required to obtain registration immediately, unless they are so liable under Section 22 or any other category specified under Section 24 of the CGST / SGST Act, 2017.”

[<http://pib.nic.in/newsite/PrintRelease.aspx?relid=166896>]

(x) Every electronic commerce operator;

(xi) Every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person.

Further, the Government on the recommendations of the Council may notify such other person or class of persons who are required to compulsorily obtain the registration.

Deemed registration

The grant/ rejection of registration or the UIN under the SGST Act or the UTGST Act shall be deemed to be a grant/rejection of registration or the UIN under CGST Act.

Provided such application of grant of registration has not been rejected under CGST Act within the time specified in section 25 (10).

A. Changes in GST Registration Process –

With effect from 21st August, 2020 several changes were brought into GST Registration process including Aadhar Authentication, time limits were fixed for granting of registration and grant of deemed registration on expiry of period for issuance of SCN by department (You may download the notification **-62/2020 – Central Tax dated 20th August 2020**)

The said process is again modified and additional checks has been implemented in GST Registration process - **Notification No 94/2020 – Central Tax Dated 22nd December, 2020**

i. Grant of Registration (Rule 8) -

Category of person seeking registration	Opting for Aadhar Authentication	Not Opting for Aadhar Authentication
Individual or Karta, MD, whole time Director, Partners, Members of Managing Committee of Association, Board of Trustees, authorised representative or authorised signatory	Biometric based Aadhar authentication and taking photo	Biometric information, photograph and verification of other KYC documents

Category of person seeking registration	Process of Registration
Other than individual	<ul style="list-style-type: none"> - Apply for registration on GST Portal - Upload documents in support of registration - Get the uploaded documents verified with original at one of the facilitation centres <p>Grant of registration only after following aforesaid process</p>



ii. Verification of Application and Approval (Rule 9) - Time limit for Grant of Registration -

Sl. No.	Category	Proposed time for grant of registration	Remarks
1	On Successful Authentication of Aadhar	Approval in 7 days	Earlier, the said time limit was 3 working days
2	On not opting for Authentication of Aadhar or failure to get Aadhar Authenticated	Approval in 30 days of submission of application after conducting physical verification of premises	Verification of premises if the officer deems fit to carry out physical verification

Time limit for issuance of SCN –

Tax Officer can issue SCN within the period specified for grant of registration

- (i) In case of successful Aadhar authentication - 07 working days (Earlier 3 working days)
- (ii) In cases when taxpayer do not opt or Aadhar authentication fails – 30days (Earlier 21 days)

Deemed approval of GST registration -

Application shall be deemed to have been approved in below cases on expiry of timelines –

Cases where physical verification is not to be conducted	Cases where physical verification is conducted	On receipt of clarification, information or documents
7 workings days	30 days	7 workings days

Amendment of Registration [Section 28 read with Rule 19]

- Every registered person and a person to whom a unique identity number has been assigned shall inform the proper officer of any changes in the information furnished at the time

of registration or subsequent thereto, in accordance with Rule 19 of CGST Rules, 2017 (within 15 days of change).

- Proper officer may approve or reject amendments in the registration. Before rejecting such application a reasonable opportunity of being heard is provided.
- Any rejection or, approval of amendments under the SGST Act or UTGST Act shall be deemed to be a rejection or approval of amendments under the CGST Act.

Cancellation of registration [Section 29 read with Rule 20-22]

- Any Registration granted under the CGST Act may be cancelled by the proper officer either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person.
- A registered person, other than a person to whom a unique identification number has been granted under Rule 17 or a person to whom registration has been granted on the basis of TAN under Rule 12, can seek cancellation of his registration.
- In respect of a taxable person who has obtained voluntary registration, the application for cancellation of registration would not be entertained before expiry of 1 year from effective date of registration.
- A registration granted can be cancelled when –
 - o The business is discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, de-merged or otherwise disposed of; or
 - o There is any change in the constitution of the business; or
 - o The taxable person, other than the person registered under Section 25(3), is no longer liable to be registered under Section 22 or Section 24; or
 - o The registered person does not conduct any business from the declared place of business [Rule 21]; or
 - o The registered person issues bill or invoice without supply of goods and/or services in violation of the provisions of



the Act or the Rules made thereunder. [Rule 21]

- o Where registered taxable person has contravened the provisions of the Act as may be prescribed
- o A composition supplier has not furnished returns for 3 consecutive tax periods/any other person has not furnished returns for a continuous period of 6 months
- o Non-commencement of business within 6 months from date of registration by a person who has registered voluntarily.
- o The registered person violates provisions of Section 171 of the Act or rules
 - ◇ Proper officer may cancel the registration of a person from such date, including retrospective date, as he may deem fit only after affording an opportunity of being heard, when –
 - a registered taxable person has contravened such provisions of the Act or the rules made there under as may be prescribed; or
 - a person paying tax under Composition Scheme has not furnished returns for three consecutive tax periods; or
 - any registered person, other than the person paying tax under composition scheme, has not furnished returns for a continuous period of six months; or
 - any person who has taken voluntary registration and has not commenced business within 6 months from the date of registration; or
 - where registration has been obtained by means of fraud, willful misstatement or suppression of facts.
 - ◇ Cancellation of registration, shall not affect the liability of the taxable person to pay tax and other dues under the Act for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.
 - ◇ Cancellation of registration under SGST or UTGST Act

shall be deemed to be a cancellation of registration under the CGST Act or vice versa

- ◇ Notice of hearing and opportunity of being heard is a **MUST** before cancellation
- ◇ Where the registration is cancelled, the registered taxable person shall pay an amount equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher. The payment can be made by way of debit in the electronic credit or electronic cash ledger.

Changes in GST Law with respect to Cancellation or suspension of Registration -

B. Cancellation or suspension of Registration-

I. Additional clauses for cancellation of GST Registration (Rule 21) -

Three (3) additional clause has been inserted for reasons for cancellation of Registration.

1. Availment of ITC in violation of Sec 16 of CGST Act, 2017 or Rules thereunder;
2. Furnishes the details in **FORM GSTR-1** for one or more tax periods which is in excess of the outward supplies declared by him in his valid return in **Form GSTR 3B** for the said tax periods;
3. Violates the provision of rule 86B – Restriction on use of ITC in Credit Ledger in excess of 99% (details in subsequent para)

Hence, mismatch of outward supplies reported in returns as well as excess availment of ITC over and above prescribed limit may lead to cancellation of registration.

II. Suspension of Registration (Rule 21A Sub Rule 2) -

i. Suspension of GST Registration without providing opportunity of being heard -



Omission of the words – **“after affording the said person a reasonable opportunity of being heard”**

Now the proper officer may suspend the registration **without providing an opportunity of being heard** to the taxpayer on grounds mentioned in Section 29 of CGST Act, 2017 or CGST Rules, 2017

Grounds for cancellation **under Section 29** of CGST Act, 2017

- a. Business has been discontinued
- b. transferred fully on death of proprietor
- c. Amalgamated, demerged or disposed of
- d. Change in constitution of business
- e. Person no longer liable to be registered
- f. Contravention of provisions of the Act or the Rules
- g. Non furnishing of returns
- h. Obtained voluntary registration and not commenced business within 6 months
- i. Registration obtained by fraud, wilful misstatement or suppression of facts

Grounds for cancellation **under Rule 21** of CGST Rules, 2017

- a. Does not conduct any business from declared place of business
- b. issues invoice or bill without supply of goods or services of both in violation of the provisions of this Act, or the rules made thereunder
- c. violates the provisions of section 171 of the Act (Anti profiteering provisions)
- d. Violates the provision of rule 10A Contravention of provisions of the (furnishing of details of bank account on GST Portal)
- e. Availment of ITC in violation of Sec 16 of CGST Act, 2017 or Rules thereunder;
- f. Furnishes the details in **FORM GSTR-1** for one or more tax periods which is in excess of the outward supplies declared by him in his valid return in **Form GSTR 3B** for the said tax periods;



- g. Violates the provision of rule 86B – Restriction on use of ITC in Credit Ledger in excess of 99%

ii. Suspension of GST Registration on Comparison of returns or Significant differences or anomalies indicating contravention of provisions (Sub Rule 2A in Rule 21A of CGST Rules, 2017) -

- a. On comparison of Outward supplies reported by Taxpayer in Form GSTR 1 and GSTR 3B; or
b. Details populated in GSTR 2A and ITC availed in GSTR 3B; or
c. such other analysis, as may be carried out

which show significant differences or anomalies indicating contravention of the GST provisions, leading to cancellation of registration of the said person, his registration shall be suspended

The person shall be intimated in FORM GST REG-31, or by sending a communication to his e-mail address, highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled

III. No Refund during period of Suspension of GST Registration (Sub Rule 3A in Rule 21A of CGST Rules, 2017)

A registered person, whose registration has been suspended shall not be granted any refund during the period of suspension of his registration.

IV. Revocation of suspension (Proviso to Rule 4 in Rule 21A of CGST Rules, 2017)

Suspension of registration may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, **if he deems fit.**

8. Exemption

STATUTORY PROVISION [Section 11 of CGST /UTGST Act]

Section 11 of the CGST Act, 2017 states that **Power to grant exemption from tax**



- (1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.
- (2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.
- (3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Explanation. – For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.”

Introduction

Section 11 of the CGST Act, 2017 confers powers on the Central Government to exempt either absolutely or conditionally goods or services or both of any specified description from whole or part of the central tax/ integrated, on the recommendations of the Council. It also confers power on the Central Government to exempt from payment of tax any goods or services or both, by special order, on recommendation of the Council.

Comments -

The Central or the State Governments are empowered to grant exemptions from tax, subject to the following conditions:

- (i) Exemption should be in public interest
- (ii) By way of issue of notification
- (iii) On the recommendation from the Council
- (iv) Absolute / conditional exemption may be for any goods and/or services
- (v) Exemption by way of special order (and not notification) may be granted by citing the circumstances which are of exceptional nature.

The Central Government vide *Notification No. 09/2017-Central Tax (Rate) dated 28.06.2017* has exempted intra-State supplies of goods or services or both received by a deductor under section 51 of the said Act, from any supplier, who is not registered, from the whole of the central tax leviable thereon under sub-section (4) of section 9 of the said Act, subject to the condition that the deductor is not liable to be registered otherwise than under sub-clause (vi) of section 24 of the said Act.

Further, Central Government vide *Notification No. 10/2017-Central Tax (Rate) dated 28.06.2017* has exempted intra-State supplies of second hand goods received by a registered person, dealing in buying and selling of second hand goods and who pays the central tax on the value of outward supply of such second hand goods as determined under sub-rule (5) of rule 32 of the Central Goods and Services tax Rules, 2017, from any supplier, who is not registered, from the whole of the central tax leviable thereon under sub-section (4) of section 9 of the Central Good and Services Tax Act, 2017

(vi) The registered person supplying the goods or services or both shall not collect the tax more than the effective rate as exempted by the Government.

With specific reference to the fourth condition indicated above, it is important to note that the exemption would be in respect of goods or services or both, and not specifically for any classes of persons. E.g.: An absolute exemption could be granted in respect



of supply of water. A conditional exemption could be supply of goods to canteen stores department.

From the explanation provided, there is one school of thought wherein it is opined / understood that in case of conditional exemptions, there is an option available to the taxable person to pay the tax (by which, there would be no requirement for input tax credit reversals). However, an absolute exemption is required to be followed mandatorily. The other view is that neither of the exemptions are optional but are mandatory when the conditions relating to the exemption are satisfied.

In terms of sub-section (2), the Government may issue a special order on a case- to-case basis exempting from payment of tax. The circumstances of exceptional nature would also have to be specified in the special order.

To provide more clarity to explain the exemption notification or the special order, it is provided that the Government may issue an "Explanation" at any time within a period of 1 year from the date of notification or special order. The effect of this "Explanation" would be retrospective, viz., from the effective date of the relevant notification or special order.

Effective date of the notification or special order

The effective date of the notification or the special order would be the date which is so mentioned in the notification or special order. However, if no date is mentioned therein, it would be the:

- date of its issue for publication in the official gazette;
- date on which it is made available on the official website of the Government Department

Illustrations for Absolute Exemptions

1. The Central Government has exempt the tax payable under the CGST / UTGST / IGST Acts by any taxable person on supply of "salt" with effect from 01.07.2017.
2. Transmission or distribution of electricity by an electricity transmission or distribution utility.



Illustrations for Conditional Exemptions

1. The Central Government has exempt the tax payable under the CGST/ UTGST/ IGST Acts by any taxable person on supply of "Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation less than Rs 1000/- per day".

Sec. 11 – Illustration

Notification issued under section 11(1): Absolute exemption

Exemption to following taxable services from tax leviable thereon:

- Services by way of renting of residential dwelling for use as residence.
- Services by Reserve Bank of India.
- Services by a veterinary clinic in relation to health care of animals or birds.
- This notification has come into force on the 1st day of July 2017 [*Notification No. 12/2017 - Central Tax (Rate) dt.28.06.2017*]

Exemptions issued under IGST Act

Some exemptions have been issued under IGST Act:

- o Notification No. 07/2017-Integrated Tax (Rate), dt. 28-06-2017: Exemption from IGST supplies by CSD to Unit Run Canteens and supplies by CSD / Unit Run Canteens to authorised customers under section 6 (1)
- o Notification No. 9/2017-Integrated Tax (Rate): Mega exemption list for supply of service. The exemption notification covers 84 entries where services supplied by supplier of service has been exempted from levy of GST.
- o Notification No. 18/2017 -Integrated Tax (Rate) : IGST exemption to SEZs on import of Services by a unit/developer in an SEZ



Exemptions to Services

Exemption has been given to Intra State Supplies of certain Services vide Notification No. 12/2017-Central Tax (Rate), dt. 28-06-2017 and Inter State Supplies of Goods vide 09/2017-Integrated Tax (Rate), dt. 28-06-2017. Exemption under UTGST Act to Intra State Supplies has been given vide Notification No. 12/2017-Union Territory Tax (Rate), dt. 28-06-2017. Respective States have also issued their exemption Notifications to notify exempted services.

9. Place of Supply

Place of Supply of Services where Location of Supplier and Recipient is in India

1. Place of supply of services has been dealt with in sections i.e., section 12 to 14 of the IGST Act, 2017

Location of Service Receiver	Place of supply	Nature of Supply	GST Applicable
Maharashtra	Maharashtra	Intra-state	CGST + SGST
Maharashtra	Kerala	Inter-state	IGST

2. **Location of supplier and recipient are both, in India (Sec 12)** - Section 12 of the IGST Act lays down the 'place of supply' that is to apply to supply of services where the location of supplier and the location of the recipient are both, in India.
3. Section 12 uses two terms, namely:
 - o Place of supply; and
 - o Location of the supplier of services.

Sl. No.	Nature of Service	Place of Supply
1.	Immovable property related to services, including hotel accommodation	Location at which the immovable property or boat or vessel is located or intended to be located if located outside India: location of the recipient

2.	Restaurant and catering services, personal grooming, fitness, beauty treatment and health service	Location where the services are actually performed
3.	Training and performance appraisal	B2B: location of such Registered person B2C: location where the services are actually performed
4.	Admission to an event or amusement park	Place where the event is actually held or where the park or the other place is located
5.	Organisation of an event	B2B: location of such Registered person B2C: location where the event is actually held if the event is held outside India: location of the recipient
6.	Transportation of goods, including mails	B2B: location of such Registered person B2C: location at which such goods are handed over for their transportation
7.	Passenger transportation	B2B: location of such Registered person B2C: place where the passenger embarks on the conveyance for a continuous journey
8.	Services on board a conveyance	Location of the first scheduled point of departure of that conveyance for the journey
9.	Banking and other financial services	If Address is available on records of supplier - Location of the recipient of services on the records of the supplier If Address is not available on records of supplier - Location of the supplier of services if the location of the recipient of services is not available



10.	Insurance services	B2B: location of such Registered person B2C: location of the recipient of services on the records of the supplier
11.	Advertisement services to the Government	The place of supply shall be taken as located in each of such States proportionate value in case of multiple States
12.	Telecommunication services	Services involving fixed line, circuits, dish etc., and place of supply is the location of such fixed equipment. In case of mobile/Internet post-paid services, it is the location of billing address of the recipient. In case of sale of prepaid voucher, the place of supply is the place of sale of such vouchers. In other cases, it is the address of the recipient in records

4. After the place of supply is determined as above, the location of the supplier needs to be examined. Location of supplier of service is defined in section 2(15) of IGST Act as:

(15) “location of supplier of service” means:

- (i) where a supply is made from a place of business for which registration has been obtained, the location of such place of business;
- (ii) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (iii) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
- (iv) in absence of such places, the location of the usual place of residence of the supplier;

The above definition can be tabulated as follows:

Supplier Location	Location Type	Possible Scenarios - Example	Not Possible – Scenarios - Examples
Place of business from where supply is made and registered under GST	Nature of services is such that it can be supplied from the place of business of supplier	Architect's Service (Services supplied from the place of business of Architect, where the supplies are ordinarily made from)	Civil Construction (Services supplied at each project site and services cannot be supplied from place of business of supplier)
Fixed Establishment From where supply is made but not the location which is registered under GST	Nature of services is such that it must be supplied from the fixed establishment of supplier	Authorised Service Station (Service is supplied at the location of each service station where necessary infrastructure is held with sufficient degree of permanence at each of service station)	Food/drinks supplied on board a conveyance (Services is not provided from any fixed establishment)
Either of the above (not any third location)	Nature of services is such that it can be supplied from more than one such places	Chartered Accountant – Audit Services (Service is undertaken at client's premises or at the head office or branch office)	Commission Agent (Service is supplied wherever the deal is struck and not confined to any office or location. Any such location or office is to meet the customer or for administrative purposes and not necessary a place to supply services)



None of the above	Nature of services is such that it can be supplied any place	Abstain from doing something or non-compete fees paid (Service is not provided from any specific location in Particular)	Beauty Salon (Services cannot be supplied from anywhere but from a parlor or client place)
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* Place of business is defined in section 2(85) of the CGST Act

fixed establishment is defined in section 2(50) of the CGST Act

5. Location of recipient of services is defined in section 2(14) of IGST Act as:

(14) "location of recipient of service" means:

(i) where a supply is received at a place of business for which registration has been obtained, the location of such place of business;

(ii) where a supply is received at a place other than the place of business for which registration has been obtained, (a fixed establishment elsewhere), the location of such fixed establishment;

(iii) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and

(iv) in absence of such places, the location of the usual place of residence of the recipient;

7. The above definition can be tabulated as follows:

Supplier Location	Location Type	Possible Scenarios - Example	Not Possible – Scenarios - Examples
Place of business from where supply is received and registered under GST	Nature of services is such that it is meant to receive services supplied	Government Services (Services is received at the place of business which is the recognised location of the recipient in respect of this service)	Goods Transport Services (Services is received at any place where transport is to be arranged and not exclusively at the place of business of the recipient)
Fixed Establishment From where supply is received which is registered under GST	Nature of services is such that it must be supplied at the fixed establishment of recipient	Renting of Immovable Property (Services is received either at the fixed establishment of the recipient through the place of registration may be at other location)	Event Management Services (Services is received where-ever event is actually conducted by the organiser and not at the fixed establishment or place of business of the recipient)
Either of the above (not any third location)	Nature of services is such that it can be received at any one or more of the above such places	Manpower Supply Service (Service is to be received only at the place of business or of fixed establishment of the recipient)	Air Travel (Services is always received at a place of business not being fixed establishment or place of business of the recipient)
None of the above	Nature of services is such that it can be received anywhere	Maintenance or repair of equipment (Services is received where equipment is installed)	Banking Service (Services is received where the supplier supplies and not where recipient is located)



When the location of supplier of service and the appointed place of supply are in two different States then, it would be an inter-State supply and if not, it would be an intra-State supply. Based on place of supply of services provisions as discussed above, wherever the place of supply is different from the place of recipient, there are chances of ITC getting blocked unless the receiver has a registration in that State.

8. Location of supplier or recipient is outside India Sec

13) - Section 13 of the IGST Act lays down the 'place of supply' that is to apply - to supply of services where the location of supplier or recipient is outside India. Considering the language employed in section 13 of the IGST Act, 'place of supply' is not a phrase of common understanding. It is a legally specified phrase. Therefore, any common understanding of this phrase must not be resorted to here. Similar to section 10, section 13 uses two terms, namely:

- Place of supply; and
- Location of the supplier or location of recipient of services.

Place of Supply of Services Where Location of Supplier or Location of Recipient is Outside India

9. Section 13 of the IGST Law would stand attracted when the location of any one person either the Supplier or the Recipient is outside India.

Sl. No.	Nature of Service	Place of Supply
1.	Services supplied for goods that are required to be made physically available from a remote location by way of electronic means (Not applicable in case of goods that are temporarily imported into India for repairs and exported)	The location where the services are actually performed, The location where the goods are situated
2.	Services supplied to an individual and requiring the physical presence of the receiver	The location where the services are actually performed
3.	Immovable property-related services, including hotel accommodation	Location at which the immovable property is located

4.	Admission to or organisation of an event	The place where the event is actually held
5.	If the said three services are supplied at more than one locations <i>i.e.</i> , (i) Goods & individual related (ii) Immovable property-related (iii) event related	
5.1	At more than one location, including a location in the taxable territory	Its place of supply shall be the location in the taxable territory where the greatest proportion of the service is provided
5.2	In more than one State	Its place of supply shall be each such State in proportion to the value of services provided in each State
6.	Banking, financial institutions, NBFC Intermediary services, hiring of vehicles' services etc.	Location of the supplier of service
7.	Transportation of goods	The place of destination of the goods
8.	Passenger transportation	place where the passenger embarks on the conveyance for a continuous journey
9.	Services on-board a conveyance	The first scheduled point of departure of that conveyance for the journey

SPECIAL POVISION FOR PAYMENT OF TAX BY A SUPPLIER OF ONLINE INFORMATION AND DATABASE ACCESS OR RETRIEVAL SERVICES (OIDAR) – Sec 14 -

10. Section 14 of the IGST Act, 2017 lays down the principles of taxation relating to OIDAR services. These transactions are a separate class and the place of supply and taxable person are to be determined based on this section alone. Every transaction over the internet is not e-commerce; similarly, everything delivered online is not an OIDAR service. One has to keep in mind that the internet connectivity must always be active for a continuous supply of the underlying service. Mere use of internet for delivery of services that can otherwise be provided offline though some



media like CD, pen-drive, etc., although less-securely, will not be OIDAR. The use of file-transfer-protocol (FTP) for delivery of software or music or games is only to ensure integrity in the delivery of these high-volume files and the use of internet for FTP does not become OIDAR.

11. To summarise, the following table depicts the ingredients prescribed in this section:

Supplier	Supplier of Services in Non-Taxable Territory		
Supplier	B2C	Intermediary* Recipient	B2B#
Recipient	Non Taxable Online Recipient – NTOR	Deemed to be recipient supply- ing to NTOR	All Others
Tax Payer	Overseas sup- plier	Recipient being the intermediary	Recipient
Tax payment	Forward Charge	Reverse Charge	Reverse Charge

* issues invoice, authorizes charge for services, responsible to collect payment, authorizes delivery and controls terms and conditions of supply. Else, not an intermediary liable to pay

B2B may be registered person for any outward supply

10. Time of Supply

1. As stated earlier, levy of tax under section 9 of CGST Act operates together with section 13 (in the case of services) to fasten the incidence of tax. Time of supply, in the case of services, is determined as follows:

Requirement	Compliance	Time of Supply
Forward Charge	Invoice issued within due date	Earlier of - Date of Invoice; or - Date of receipt of payment
	Invoice not issued within due date	Earlier of - Date of completion of Ser- vice; or - Date of receipt of payment



Continuous supply of service	Due date ascertainable from contract	Earlier of - Date when payment is liable to be made by recipient (being due date for issue of invoice); or - Date of receipt of payment
	Due date not ascertainable from contract	Earlier of - Date of Invoice; or - Date of receipt of payment
Reverse Charge		Earlier of - Date of payment; or - Date immediately following 60 days from the date of supplier's invoice/ any other document; Note: If (a) or (b) above is not ascertainable then date of – a. date of entry in recipient's books; b. In case of associated enterprises, earlier of – - Date of entry in the books; or - Date of payment
Vouchers		- Date of issue of voucher if supply is identifiable at that point; - Otherwise Date of redemption
Interest, etc for delayed payment of consideration, collected by supplier		Date of receipt of payment
Unable to determine as above		- Due date of filing return; or - Date of payment of tax

**Note:**

A. As per Section 31 (2) read with Rule 47 of CGST Rules (Rules on Tax Invoice, Credit and Debit Notes) Due date in case of taxable supply of services is

- o 30 days from date of supply of service or
- o 45 days from date of supply of service in case supplier of services is an Insurer or Banking Company or a financial institution including a non-banking financial company (NBFC)

B. With effect from October, 2017, any registered person procuring taxable goods/services from unregistered suppliers, shall not be required to pay CGST under reverse charge mechanism U/s 9(4) of CGST Act, 2017 till March 31, 2018 *vide Notification No. 38/2017 – Central Tax (Rate) dated October 13, 2017.* (Similar provision has been provided under IGST w.e.f October 13, 2017)

Therefore, in case of services, where tax is payable on reverse charge basis, the time of supply shall be the earliest of the following:

- o Date of payment to unregistered supplier
- o Immediately following 60 days from the date of issue of invoice or any other document

2. Where supply of services ceases, then time of supply will be date of receipt of payment in respect of the supplies completed up to the date of such cessation.

3. It is important to note that at the time of applying the above tests for determining time of supply, services include supply of goods treated as supply of services, as also composite supplies where the principal supply is a service, and mixed supplies where the service component of the mixed supply attracts the higher rate of tax.

4. Under the GST Laws, advances are subject to tax irrespective of whether the service is supplied or not, since the time of supply as determined above considers earliest of the events listed therein. It is pertinent to note that deposits are not considered as “advances” for the purpose of this test. That is to say that any



deposit, whether refundable or not, given in respect of supply of service shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply. Consequently, accepting of deposits (such as rental deposits) would not attract GST.

11. Tax Invoice

As per Section 31 of the CGST Act, 2017 supplier of services is required to issue a tax invoice:

- Before provision of the services or
- After provision of the services but within a specified time.

A. In terms of Rule 46 of CGST Rules, 2017, a tax invoice referred to in this section shall be issued by the registered person containing the following: -

(a) name, address and GSTIN of the supplier;

(b) a consecutive serial number, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year;

(c) date of its issue;

(d) name, address and GSTIN or UIN, if registered, of the recipient;

(e) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered and where the value of taxable supply is fifty thousand rupees or more;

(f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice;

(g) Harmonised System of Nomenclature code for goods or services;



A. Quoting of HSN Classification on Invoices (With effect from April 1, 2021) -

Notif. No	Date	Summary of Notification
78/2020 – Central Tax and 6/2020 – Integrated Tax	15-10-2020	<p>HSN classification on Invoices (with effect from 01/04/2021)</p> <p>a. HSN at 6 digits for B2B supplies for taxpayers with aggregate annual turnover above Rs. 5 crores</p> <p>b. HSN at 4 digits for B2B supplies for taxpayers with aggregate annual turnover up to Rs. 5 crores</p> <p>If the supplies by registered person having aggregate turnover up to five crores rupees in the previous FY, HSN reporting on tax invoice for supplies made to unregistered persons (B2C) may not be required.</p>

B. Table for HSN/SAC reporting based on Turnover and Nature of Supplies -

S. No	Aggregate Annual Turnover	Supplies made to	Nature of Supply	HSN	SAC
1	Above Rs 5 Crores	B2B	Domestic (Inter/Intra)	6 Digits	6 Digits
2	Upto Rs 5 Crores	B2B	Domestic (Inter/Intra)	4 Digits	6 Digits
3	Upto Rs 5 Crores in Previous FY	B2C	Domestic (Inter/Intra)	Not Required	6 Digits
4	Turnover of any value	Exports	Exports	8 Digits	6 Digits

(h) Description of goods or services;

(i) quantity in case of goods and unit or Unique Quantity Code thereof;

(j) total value of supply of goods or services or both;

(k) taxable value of supply of goods or services or both considering discount or abatement, if any;



- (l) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- (m) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
- (n) place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce;
- (o) address of delivery where the same is different from the place of supply;
- (p) whether the tax is payable on reverse charge basis; and
- (q) signature or digital signature of the supplier or his authorized representative:

In respect of the particulars relating to HSN code cited in point (f) supra on the recommendations of the Council the Commissioner may, by notification for a specified period and class of registered persons who will be required to specify the number of digits of HSN code for goods or the Accounting Codes for services; The Commissioner is also empowered to specify by way of notification (on the recommendations of the Council the class of registered persons that would not be required to mention the HSN code for goods or the Accounting Codes for services, for such period as may be specified in the said notification:

B. TAX INVOICES IN CASES OF SPECIAL SERVICES

Sl. No.	Class of supplier of taxable services	Nature of Document	Optional	Mandatory
1	Insurance, Banking Company, Financial Institution and NBFC	Tax Invoice or any other similar document	a. Serial Number b. Address of recipient of services	All other particulars cited in Clause A supra

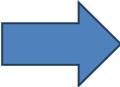
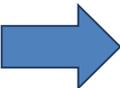


2	Goods Transport Agency	Tax Invoice or any other similar document	None	<ul style="list-style-type: none"> a. All other particulars cited in Clause A supra b. Gross Weight of the consignment c. Consignor or consignee name d. Regn. No of the vehicle e. Details of goods transported f. Destination Details g. GSTIN of person liable to pay tax whether as consignor/ consignee or a GTA
3	Passenger Transport Agency	Tax Invoice or Ticket	<ul style="list-style-type: none"> a. Serial Number b. Address of recipient of services 	All other particulars cited in Clause A supra

12. Change in Tax Rates under GST:

1. Time of supply of services being determined by section 13 of the CGST Act, presents some difficulty where there is a change in the rate of tax while the key events – performance of service, issuance of invoice and receipt of payment – are taking place. To address this situation, section 14 is provided in the CGST Act with overriding effect on section 13. Without disturbing the principle of destination based tax, the effect of change in rate of tax is given effect in an expeditious manner.

2. From a reading of section 14, the following position emerges considering the base fact of time of provision of service and the secondary fact of issuance of invoice and receipt of payment:

Base fact (A)	Case	Service provided BEFORE change		
Additional facts	1		CHANGE IN TAX RATE 	Earlier of: Date of invoice; or Or Date of receipt of Payment
	2	-Date of invoice		Date of payment
	3	-Date of payment		Date of invoice
Base fact (B)	Case	Service provided AFTER change		
Additional facts	4	Earlier of: Date of invoice or Date of receipt of payment	CHANGE IN TAX RATE 	
	5	Date of invoice		Date of payment
	6	Date of payment		Date of invoice

13. Valuation

1. Consideration is the *quid pro quo* in a contract and price is the money value of that consideration. But, value is the price at which the transaction would take place under certain specified or controlled circumstances. 'Valuation' in tax laws is the study of those circumstances into which every transaction should pass through to determine whether the declared value is acceptable or not.

2. Section 15 states that it is the "*.....price actually paid or payable for the said supply of goods and / or services where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply*". Some of the important



circumstances to be examined for the purpose of determination of valuation in GST laws are as follows:

- Price – being money value of consideration;
- Between unrelated parties – existence of relationship recognized under the GST Law (Explanation to section 15 of the CGST Act, 2017) is a disqualification, bona fides notwithstanding;
- Sole consideration – presence of extraneous consideration also a disqualification.

3. While arriving at the transaction value, the following shall be included:

(a) any taxes, duties, cesses, fees and charges levied under any statute, other than the GST Laws;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods and/or services;

(c) incidental expenses, such as, commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or, as the case may be, supply of the services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central and State Governments.

4. While arriving at the transaction value, deduction is allowed for any discount that is given:

(a) before or at the time of the supply provided such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, provided that:

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit has been reversed by the recipient of the supply as is attributable to the discount on the basis of document issued by the supplier.

5. In case the supply does not fulfill the conditions stipulated in sub-section (1), then the value will have to be determined based on valuation rules.

6. Recourse to rules is a must in situations where value cannot be determined under section 15(1), i.e., when:

1. Price is not the sole consideration;

2. Supplier-recipient are related persons (i.e., whether supplier is related to the recipient, or vice versa).

7. The following table broadly summarises the valuation rules to the extent applicable to services:

Rule	Description of nature of Services/ Situation	Pri- ority	Determination of Value
27	Services where consid- eration is not wholly in money	1	Open Market Value of such supply
		2	Money in consideration + any further money equivalent of non-monetary consideration (if such amount is known at the time of supply)
		3	Value of supply of services of like kind and quality
		4	Money in consideration + any further money equivalent of non-monetary consideration determined as: i. 110% of cost; or ii. in a reasonable manner consistent with the principles of law [(i) or (ii) at the option of the service providers]



28	<p>Value of supply of services between distinct or related persons even if supplier – recipient relationship:</p> <p>a. Did not influence price;</p> <p>b. Precedes agreement to supply;</p> <p>c. Has no bearing on pricing;</p> <p>d. Has no bearing on agreement to supply;</p> <p>e. Has no relevance to supply;</p> <p>f. Was to meet different criteria/ Purpose</p>	1	<p>Open Market Value of such supply</p> <p>Note: Invoice Value deemed to be open market value where recipient is entitled to full credit</p>
		2	Value of supply of services of like kind and quality
		3	<p>Money in consideration + any further money equivalent of non-monetary consideration determined as:</p> <p>i. 110% of cost; or</p> <p>ii. in a reasonable manner consistent with the principles of law</p> <p>[(i) or (ii) at the option of the service providers]</p>
29	Value of supply of goods made or received through an agent	<p>The value of supply of goods between the principal and his agent shall-</p> <p>a) be the open market value of the goods being supplied, or at the option of the supplier, be ninety per cent. of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient.</p> <p>b) where the value of a supply is not determinable under clause (a), the same shall be determined by the application of rule 30 or rule 31 in that order.</p>	



31A	Value of supply in case of lottery, betting, gambling and horse racing	<p>(a) The value of supply of lottery run by State Governments shall be deemed to be 100/112 of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher.</p> <p>(b) The value of supply of lottery authorised by State Governments shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher.</p> <p>Explanation:- For the purposes of this sub-rule, the expressions-</p> <p>(a) "lottery run by State Governments" means a lottery not allowed to be sold in any State other than the organizing State;</p> <p>(b) "lottery authorised by State Governments" means a lottery which is authorised to be sold in State(s) other than the organising State also; and</p> <p>(c) "Organising State" has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.</p>
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<p>32 (2)</p>	<p>purchase or sale of foreign currency, including money changing</p>	<p>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:</p> <p>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:</p> <p>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.</p> <p>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.</p> <p>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-</p> <p>i. 1% 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;</p> <p>ii. Rs. 1000 and 0.5% of the gross amount of currency exchanged for an amount exceeding one lakh rupees and up to ten lakh rupees; and</p>
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		<p>iii. Rs.5500 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 Rs.60,000.</p>
32 (3)	<p>Booking of tickets for travel by air provided by an air travel agent</p>	<p>Domestic Bookings - Amount calculated at the rate of five per cent. of the basic fare in the case of domestic bookings;</p> <p>International Bookings – Amount calculated at the rate of ten per cent. of the basic fare in the case of international bookings of passage for travel by air.</p> <p>Explanation.- For the purposes of this sub-rule, the expression “basic fare” means that part of the air fare on which commission is normally paid to the air travel agent by the airlines.</p>
32 (4)	<p>Insurance Business</p>	<p>a) the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service;</p> <p>b) in case of single premium annuity policies other than (a), ten per cent. of single premium charged from the policy holder; or</p> <p>c) in all other cases, twenty five per cent. of the premium charged from the policy holder in the first year and twelve and a half per cent. of the premium charged from the policy holder in subsequent years:</p> <p>Provided that nothing contained in this sub-rule shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance.</p>



32 (5)	Buying and selling of second hand goods	<p>Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored:</p> <p>For goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.</p>
32 (6)	Valuation of a token, or a voucher, or a coupon, or a stamp (other than postage stamp)	The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.

8. Concept of Pure Agent

The expenditure or costs incurred by a service provider as a *pure agent* of the recipient shall be excluded from the value of supply, subject to certain conditions. For this purpose, a “pure agent” means a person who:

(a) Enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;



- (b) Neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) Does not use for his own interest such goods or services so procured; and
- (d) Receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Where a service provider qualifies as a pure agent as above, the expenses claimed as a reimbursement from the recipient would not be included in the transaction value subject to the following conditions, to be satisfied cumulatively:

- (i) the service provider acts as a pure agent when he makes the payment to the third party on authorisation by such recipient;
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

14. Input Tax Credit

1. It is important at this point to refer to certain significant differences in the two key terms 'input service' and 'input tax':

2. Definitions

In the CGST Act, 2017 unless the context otherwise requires,-

.....

(60) "input service" means any service used or intended to be used by a supplier in the course or furtherance of business;

.....

(62) "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—



- (a) the integrated goods and services tax charged on import of goods;
- (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
- (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
- (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
- (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy; ;

(63) "input tax credit" means the credit of input tax;

3. The sole test for claim of credit is "*used, or are intended to be used, in the course or furtherance of his business*". Therefore, in order to claim credit, a taxable person is required to demonstrate how the service (in respect of which applicable GST is paid) furthers his business.

4. But, if we note the definition of 'input service', it appears to make two exceptions to the above understanding. Firstly, it is understandable that there may be certain services which may be generally or in certain cases be categorised as 'ineligible'. It is a different matter that this is not desirable or that this causes cascading effect.

5. To explain this further, the sequence of steps to be examined before claiming eligibility to credit are:

- o Firstly, services are received along with valid invoice, the creditable tax having been deposited with the appropriate Government on the inward supplies by the supplier and a valid return has been filed;
- o Secondly, this service must pass the 'furtherance of his business' test by the claimant of credit;

6. Few ITC restrictions have been carried forward from the

erstwhile laws like employee related services (viz., outdoor catering, beauty treatment, health services, life insurance, health insurance etc.,) and goods and/or services in the execution of works contract.

7. Time restriction has been imposed for availing the ITC on both inputs and input services. The same must be availed before filing of returns for the month of September of the following year. Theoretically maximum and minimum period available to avail an ITC is 18 months and 6 months respectively.

8. In summary, among others, the following facts are crucial for availment of Input tax credit:

- o The services must be used "by him" in the course or furtherance "of his" business.
- o Possession of Output Invoice/Supplementary Invoice/ Debit or Credit note/ ISD invoice/ Bill of Entry and other related documents is a must.
- o The document must contain all the prescribed particulars specified in the Invoice Rules. It may be noted that Invoice or such other document can contain additional details other than those prescribed but NO LESS.
- o Supplier of services must upload the details of such documents in the GST common portal.
- o Vesting condition for clearing input tax credit is the return under section 39 and not the supply per se.
- o Input tax credit in case of supplies in instalment would be receipt of last instalment of goods.
- o The law casts an obligation on the recipient of services, who has availed credit, to effect payment to the supplier within a period of 180 days from the date of invoice. If such payment is not effected by the recipient to the supplier, he is obligated to reverse the input tax credit so availed leading to consequential levy of tax, interest and penalty.
- o Claim of income tax depreciation on the GST component disqualifies a recipient of capital goods from availment of input tax credit.
- o ITC cannot be availed after the due date of filing the return for



September month of the next financial year, or on furnishing the Annual Return whichever is earlier.

- o No registered person is permitted to avail any input tax credit pursuant to an order of demand on account of fraud, willful misstatement, or suppression of fact.

Restriction in availment of GST input tax credit under CGST Rules, 2017 -

The Central Board of Indirect Taxes and Customs (CBIC) has issued **Circular No. 123/42/2019- GST dated 11th November 2019 (F. No. CBEC - 20/06/14/2019 - GST)** clarifying Restriction in availment of input tax credit in terms of sub-rule (4) of rule 36 of CGST Rules, 2017.

The key summary of the circular has been given below for easy understanding:

1. This is a clarification to the Notification No 49/2019-Central Tax dated 9th October 2019 and should be read in consonance with the said Circular.
2. The restriction does not apply to the following category of Input Tax Credits
 - a. IGST Paid on Imports
 - b. ITC availed for documents issued under RCM
 - c. Credits received from Input Service Distributor (ISD)
3. The restriction is only against ITC availed on invoices/debit notes after 9th October 2019 and not before that period.
4. The GSTN Common Portal shall not put any system restriction based on the above circular. The restriction is to be computed on self-assessment basis.
5. All other conditions and eligibility for availing ITC shall be governed by CGST Act, 2017 (Chapter - V) and Rules made thereunder. This being an additional condition for availment of credit.
6. Restriction shall not apply for each supplier but shall be on consolidated value of invoices (i.e. total value of invoices not on count of suppliers)

7. ITC shall not get lapsed if ITC is not availed in Current month/period but same may be availed in subsequent month/period. However, care must be taken to avail the same within the time period specified as per CGST Act, 2017 and Rules made thereunder.

8. The taxpayer may have to ascertain the eligible ITC based on auto populated FORM GSTR 2A as available on the **due date of filing of FORM GSTR-1** under sub-section (1) of section 37. Hence, if supplier delays in filing GSTR 1 beyond due date, ITC may not be available and same may have to be restricted at 20% of the eligible ITC available as per GSTR 2A.

9. GSTR 2A being a dynamic document, taxpayers have to download GSTR 2A on due date of filing GSTR 1 by suppliers (i.e. 11th of subsequent month for suppliers who file monthly return and 31st January 2020 (for Oct to Dec 2019) & 30th April 2020 (for Jan to Mar 2020)).

10. At any time the total ITC availed (Auto Populated as per GSTR 2A and 20% of those auto populated one) should not exceed total eligible ITC of the taxpayer (Refer to illustrations).

What should taxpayers do to align with the changes?

- A. Categorize suppliers in monthly or quarterly filing
- B. Request all suppliers to file the returns within due date
- C. Download GSTR 2A on expiry of due date of filing GSTR 1 of suppliers
- D. Ascertain eligible invoices (do not consider ITC on invoices which are not eligible for availing ITC i.e. ineligible ITC invoices, Invoices for suppliers used for making exempt supplies, invoices which is not reported by suppliers in their GSTR 1)
- E. Reconcile the ITC as per books and GSTR 2A monthly/Quarterly for complying with the amended conditions

Illustration to explain the restriction and how it works –

- A taxpayer “R” receives **100 invoices** (for inward supply of goods or services) involving ITC of **Rs. 10 lakhs**, from various suppliers during the month of Oct, 2019 and has to



claim ITC in his FORM GSTR-3B of October, to be filed by 20th Nov, 2019.

Scenario	Details of suppliers' invoices for which recipient is eligible to take ITC	20% of eligible credit where invoices are uploaded	Eligible ITC to be taken in GSTR3B to be filed by 20th Nov.
Case 1	Suppliers have furnished in FORM GSTR-1 80 invoices involving ITC of Rs. 6 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.	Rs 1,20,000 (20% of Rs 6 Lakhs)	Rs. 6,00,000 (i.e. amount of eligible ITC available, as per details uploaded by the suppliers) + Rs.1,20,000 (i.e. 20% of amount of eligible ITC available, as per details uploaded by the suppliers) = Rs. 7,20,000/-
Case 2	Suppliers have furnished in FORM GSTR-1 80 invoices involving ITC of Rs. 7 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.	Rs 1,40,000 (20% of Rs 7 Lakhs)	Rs 7,00,000 + Rs. 1,40,000 = Rs. 8,40,000/-
Case 3	Suppliers have furnished in FORM GSTR-1 75 invoices having ITC of Rs. 8.5 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers	Rs 1,70,000 (20% of Rs 8.50 Lakhs)	Rs. 8,50,000/- + Rs.1,50,000/-* = Rs. 10,00,000 * The additional amount of ITC availed shall be limited to ensure that the total ITC availed does not exceed the total eligible ITC.

Amendment in manner and extent of utilization of Input Tax Credit

I. Changes in Rule 36(4) of the CGST Rules, 2017 with effect from 1st January, 2021-

a. ITC only on invoices for which return has been filed and not uploaded (the word "uploaded" replaced by the word "furnished").



b. Invoices reported through Invoice Furnishing Facility (IFF) – to accommodate the mechanism of availment of ITC for invoices reported through Invoice Furnishing Facility (IFF) this amendment has been made.

c. Reduction of margin of availment of ITC from 10% to 5% - Now, ITC in excess of 5% in addition to ITC appearing in GSTR 2A can only be availed w.e.f. 1st January 2021. The restriction has been gradually reduced from 20% to 10% and now 5%.

II. Extent of Utilization of Electronic Credit Ledger - Rule 86B with effect from 1st January 2021-

Restriction has been placed on usage of amounts available in electronic credit ledger(ECL) to discharge liability towards output tax in excess of **ninety-nine per cent. (99%)** of such tax liability, where the value of taxable supply (other than exempt supply and zero-rated supply), in a month **exceeds fifty lakh rupees (Rs 50 Lakhs)**

Aforesaid restriction of usage shall not apply in below cases -

1. Value of Taxable supply (other than exempt supply and zero-rated supply), in a month **does not exceed** fifty lakh rupees (Rs 50 Lakhs)
2. Payment of more than One Lakh rupees as Income tax in in each of the last two financial years by the Registered person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees.
3. Receipt of Refund amount of more than one lakh rupees in the preceding FY on account of unutilised input tax credit for ZERO rated supplies without payment of tax or under Inverted Duty Structure.
4. Discharge liability through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current FY
5. Registered person is
 - a. Government Department; or



- b. a Public Sector Undertaking; or
- c. a local authority; or
- d. a statutory body

15. Returns and Due Dates

1. Chapter IX of the CGST Act, 2017 relates to filing of returns and the following tabulation highlights some key conclusions:

Return Form	Particulars	Frequency	Due Date
GSTR-1	Details of outward supplies of taxable goods and/or services affected	Monthly	11th* of the next month with effect from October 2018 *Previously, the due date was 10 th
GSTR-2 Suspended	Details of inward supplies of taxable goods and/or services affected claiming the input tax credit.	Monthly	15th of the next month
GSTR-3 Suspended	Monthly return on the basis of finalization of details of outward supplies and inward supplies along with the payment of tax.	Monthly	20th of the next month
GSTR-3B	Simple Return in which summary of outward supplies along with Input Tax Credit is declared and payment of tax is affected by taxpayer	Monthly	20th of the next month
CMP-08**	Return for a taxpayer registered under the composition levy	Quarterly	18th of the month succeeding quarter

GSTR-5	Return for a Non-Resident foreign taxable person	Monthly	20th of the next month
GSTR-6	Return for an Input Service Distributor	Monthly	13th of the next month
GSTR-7	Return for authorities deducting tax at source.	Monthly	10th of the next month
GSTR-8	Details of supplies effected through e-commerce operator and the amount of tax collected	Monthly	10th of the next month
GSTR-9	Annual Return for a Normal Taxpayer	Annually	31st December of next financial year*
GSTR-9A	Annual Return a taxpayer registered under the composition levy anytime during the year	Annually	31st December of next financial year*
GSTR-10	Final Return	Once, when GST Registration is cancelled or surrendered	Within three months of the date of cancellation or date of cancellation order, whichever is later.
GSTR-11	Details of inward supplies to be furnished by a person having UIN and claiming a refund	Monthly	28th of the month following the month for which statement is filed

16. Tax Collection at Source

1. While the concepts of forward charge and reverse charge are well-understood, the GST Law introduces yet another mechanism whereby neither the supplier nor the recipient is cast with the responsibility of remitting the tax applicable on a supply. Through the powers conferred by section 9(5) or the CGST Act, 2017, or section 5(5) of the IGST Act, 2017, e-commerce operators are



responsible for remitting the entire amount of tax in respect of certain notified services. Consequently, the suppliers providing such services would not be liable for registration, if their turnover does not exceed the specified threshold limit.

2. "Electronic commerce operators" means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

Where taxable supplies are made through an electronic commerce operator, by other suppliers, and the consideration with respect to such supplies is to be collected by the e-commerce operator, such e-commerce operator is liable to collect tax at source at a rate to be notified (not exceeding 1% CGST plus 1% SGST). Due to this reason, all e-commerce operators are liable for registration, regardless of their turnover in a financial year.

3. Such tax to be collected at source ("TCS") would be applicable on the net value of taxable supplies, that is, the aggregate value of taxable supplies of goods or services or both, other than services notified under section 9(5) of the CGST Act, 2017, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

It is pertinent to mention that in exercise of the powers conferred by Section 9(5) of the CGST Act/ Section 5(5) of the IGST Act, the Central Government *vide Notification No.17/2017-Central Tax (Rate) dated June 28, 2017 / Notification No. 14/2017-Integrated Tax (Rate) dated June 28,2017* has notified the following categories of services, tax on intra /inter State supplies of which shall be paid by e-commerce operator: -

(i) Services by way of transportation of passengers by radio taxi, motorcab, maxicab& motor cycle;

(ii) Services by way of providing accommodation in hotels, inns, guest houses, clubs, camp-sites or other commercial places meant for residential or lodging purposes, except where the person supplying such service is liable to be registered under Section 22(1) of the CGST Act.

4. TCS provisions would stand attracted only where the e-commerce operator collects the consideration for and on behalf of the supplier, in respect of supplies made through it,



and would not include cases where the recipient of supply makes the payment directly to the supplier.

5. The TCS shall be deposited within 10 days from the end of the month in which such collection is made and the credit of such taxes will be made available in the electronic cash ledger of the supplier, since related monthly return is filed by E-Commerce Operator.

6. E-Commerce operator shall furnish details of outward supplies of goods or services or both made through it, including the supplies returned through it and the amount collected by it under section 52(1), in Form GSTR-8 within 10 days after end of the month in which supplies are made.

7. The details of TCS furnished by an e-commerce operator under section 52 in Form GSTR-8 shall be made available to the supplier in Part D of FORM GSTR - 2A electronically through the Common Portal and such taxable person may include the same in FORM GSTR-2.

8. Any mismatch between the data submitted by the e-commerce operator in his monthly returns and that of suppliers making supplies through him shall cause due 'mismatch enquiry' from the proper officer; and either party may rectify the erroneous data. If rectification is not carried out by supplier his offence gets confirmed. Short remittance, if any, identified thus will have to be paid by erring supplier (who under reported the turnover) with interest calculated as per Section 50.

9. Any authority, of the rank of Dy. Commissioner or above, can issue a notice during, or before a proceeding under this Act - to e-commerce Operator seeking information on -

(a) supplies of goods or services or both effected through such operator during any period; or

(b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

This notice needs to be responded within 15 days from the date of receipt by the e-commerce Operator. Failure to submit the



required details will attract penalty under Section 52 (14) of the Act which may extend to Rs 25,000.

10. Section 52 (5) of the CGST Act, 2017, requires filing of Annual Statement by e-commerce operator on or before 31st December following the year end (31st March of relevant year).

11. In case e-commerce operator fails to collect tax under section 52(1) or collects an amount which is less than the amount required to be collected under said sub-section or where he fails to pay to the government the amount collected as tax under section 52(3), he shall be liable to penalty under section 122(1) (vi) of the CGST Act,. The penalty would be Rs .10,000 or the amount of TCS involved, whichever is higher.

12. UTGST Act 2017, subject to its own provisions, adopts the provisions in CGST Act in respect of Tax Collection at Source *mutatis mutandis* (Ref: Sec 21 of UTGST Act).

13. It is imperative to mention that section 52 of the CGST Act,2017 is yet to be notified by Government

17. Tax Deduction at Source

1. Deduction of tax at source is provided in section 51 of the CGST Act and this is not the same as collection of tax at source under section 52 of the said Act. This section applies to the following four categories of persons when they are making payment in respect of supplies under a contract where the total value of supply of good or services (excluding the GST element in the invoice) exceeds Rs 2.5 lakhs, namely:

- o A department or establishment of the appropriate Government – being a functioning arm of the Government;
- o Local authorities – the form in which a local authority may be organized or established may be less relevant compared to its functions being in relation to governance;
- o Governmental agencies – the functions of this agency are less relevant compared to the interests of the Sovereign that it represents;
- o Notified persons or category of persons – not only will certain persons be notified to comply with this section, but a further sub-sect may be carved out of the same kind of persons and required to comply with the requirements.



2. Considering that provisions similar to section 51 of the CGST are there in the SGST Acts, it would be interesting to note that deduction of tax at source will apply in respect of payment towards supplies by persons coming within the operation of this section under both the legislations, i.e., when section 51 is contained in two legislations, then reading it *mutatis mutandis* leads to the only conclusion that it would be 1% plus 1% and not 1% in total

3. TDS provisions would stand attracted only where the location of the supplier, the place of supply as well as the registration location of the recipient are in the same State / Union Territory.

4. Taxes deducted are required to be deposited within 10 days from the end of the month to which the deduction relates and the tax deducted will be credited in the electronic cash ledger of the deductee. Additionally, a certificate is to be issued within five days of payment to the Government, failing which a late fee of Rs 100/- per day would be payable (subject to a maximum of Rs 5,000/-).

5. Central Government *vide* Notification No. 33/2017-Central Tax, dated September 15, 2017 has provided that section 51 of the CGST Act, 2017 will be effective from September 18, 2017 with respect to the persons specified below:

- (a) an authority or a board or any other body, -
 - (i) set up by an Act of Parliament or a State Legislature; or
 - (ii) established by any Government, with fifty-one percent or more participation by way of equity or control, to carry out any function;
- (b) society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);
- (c) public sector undertakings

However, the date from which the tax needs to be deducted from the payment made or credited to the supplier of taxable goods or services or both will be notified separately.

Further, *vide* Press Release of the 22nd GST meeting on October 6, 2017, it has been stated that after assessing the readiness of the trade, industry and Government departments, it has been



decided that registration and operationalization of TDS/TCS provisions shall be postponed till March 31, 2018.

6. Supplies to a tax deductor by an unregistered supplier exempt-Section 51 of the CGST Act, 2017 requires a department or establishment of the Central Government or State Government, local authority, Governmental agencies or such persons or category of persons as may be notified by the Government on the recommendations of the Council to deduct tax @ 1% from the payment made or credited to the supplier of taxable goods or services or both, where the total value of such supply, under a contract, exceeds Rs 2,50,000.

Further section 9(4) of the CGST Act, 2017 requires a registered person to pay taxes under reverse charge upon purchases made from unregistered suppliers. In this regard, Central Government vide *Notification No. 09/2017-Central Tax (Rate), dated June 28, 2017* has w.e.f 1st July 2017 exempted intra-State supplies of goods or services or both received by a tax deductor under section 51 from an unregistered supplier. This is subject to the condition that the tax deductor is not liable to be registered otherwise than by way of Compulsory registration under CGST Act, 2017.

18. Assessment and Audit

1. All assessments of GST will be on '**self-assessment**' basis. In specified circumstances, the officer of GST is authorized to carry out assessment.
2. **Scrutiny of returns filed** – where information will be called for with respect to disclosures contained in the returns filed. No visit to the premises of the taxable person is permitted.
3. **Assessment of Non-filers** – in the case of non-filers of returns, a form of protective assessment is permitted where based on information gathered, the officer may pass an order of assessment determining the tax payable. Before any such assessment is made, a notice is required to be issued which remains unattended to by the notice.
4. **Assessment of unregistered persons** – where persons found to have undertaken taxable supplies but remain unregistered may be assessed to tax by the officer within 5 years from due date of annual return.



5. **Summary assessment** – where any new information not available in the returns filed comes to the knowledge of the officer, then with the permission of the Commissioner, summary assessment is permitted in the interests of the Revenue.
6. GST permits audit of the books and records of the taxable persons at the business premises. Not only are the returns filed available but the entire books and records are at large before the audit officers. This audit is required to be completed in a time-bound manner by the officers and full-cooperation is expected from the taxable person. The audit will conclude with a report issued regarding the findings from this exercise.
7. A Chartered Accountant or Cost Accountant may be commissioned to carry out a special audit of the books and records of a taxable person at the directions of the officer of GST. This special audit can be directed when there is doubt about the value of taxable supplies reported or the credit availed.
8. Comptroller and Auditor General's office is also vested with powers to audit the books and records of a taxable person.

19. Transitional Provisions

1. Service providers qualify for limited transition benefit. This is an important aspect to be borne in mind. Supplies involving goods that are treated as 'supply of services' in terms of Schedule II are eligible for transition benefits.
2. Credit available in the last returns filed under the old law will get transitioned under section 140 into GST. It is important to ensure that the closing balance of credit is properly sanitized to ensure that the right amount of credit is carried over. Under rule 14 of the CENVAT Credit Rules, there is no interest liability for improper availment of credit. As such, very often, credit may be generously availed but left unutilized. Under GST, improperly availed credit attracts interest liability.
3. Apart from improperly availed credit, large credit balance may even indicate improper compliance with Rule 6 of the CENVAT Credit Rules in respect of reversal of ineligible credit



not on account of nexus with output supplies but output supplies being exempt. It needs to be noted that with effect from April 1, 2016 the definition of 'exempt services' has been broadened to even include transactions that are not only exempt from service tax but even those that are not included in the definition of service under section 65B(44).

4. Supplies involving goods even though treated as supply of services, namely, works contracts, are eligible for credit in respect of inputs lying in stock. The language of section 140 places a condition that works contractors who opt for payment of service tax under notification 26/2012-ST dated June 20, 2012 alone are eligible for such credit. With the amendment of rule 2A of the Service Tax (Determination of Value) Rules vide section 128 of Finance Act, 2017 payment of service tax either under rule 2A or under Notification No. 26/2012 have been unified. Care must be taken to ensure that the qualifying conditions are met. The ST-3 returns filed need to reflect that the works contractor has opted for Notification No. 26/2012 in order to meet the conditions of section 140 for claiming transition credit. Inputs in stock and those contained in semi-finished or finished goods in stock appears to limit the credit to 'unused' goods (for example, cement and steel) and not 'used but unsold' WIP (for example, unfinished apartment).
5. The facility of claiming credit under section 170 is important in respect of CENVAT credit that may have been reversed under rule 6 of the CENVAT Credit Rules on inputs held in stock subject to compliance with the requirements of section 140.
6. Inputs and input services 'in transit' are allowed transition credit under section 140 provided the invoice is accounted for within 30 days (extendable by a further period of 30 days).
7. Composition tax payers under the current law (for example, opting abatement under Notification No 26/2012 or under the Valuation Rules) are also entitled to avail credit but only in respect of inputs held in stock.
8. Contracts entered into prior to introduction of GST but supplies made after its introduction may be taxed based on the GST

law in force on the date of actual supply. However, if the current tax applicable has been paid before the introduction of GST, then no further tax is payable under GST even if the actual supply is undertaken later. This facility provided by section 142 must be utilized particularly in contracts that are nearly complete and renegotiating tax reimbursements can prove onerous.

9. Services whose supply is taxable based on Point of Taxation Rules and accordingly subject to service tax will not again be subject to GST even if any of the events taking place is enabled in section 142.
10. ISD credit, under CENVAT Credit Rules, is permitted to be distributed even after the introduction of GST if the services are received prior to its introduction as per section 142.
11. Persons enjoying centralized registration may allocate and distribute closing balance of credit to any of their locations that become liable to GST as distinct persons subject to eligibility to credit in such locations as provided by section 142.

20. Important Issues in relation to Services

In relation to supply of services, few important issues have been identified which is discussed as under:

1. **Stock transfer of services (or cross charge in respect of services):** As concluded earlier, implied supplies do not require the presence of two persons to attract the incidence of tax. Accordingly, tax incidence on stock transfer or branch transfer would arise not only with respect to goods but also with respect to services (services and goods treated as services). Tax incidence on implied supply of services (para 2 to schedule I) would arise in case of inter-State supply and intra-State supply involving two distinct business verticals of the same person. Further, such transactions will be valued based on section 15 of the CGST Act read with the Valuation Rules.
2. **Barter of services** – is an unfamiliar transaction that could emerge in GST, either involving two services that are bartered or a combination of goods and services. Firstly, there is very



poor understanding about the distinction between barter and exchange and whether valuation of one leg of the transaction would automatically be accepted as the appropriate value for the other leg of such transactions is an issue. Concerns revolve around the definition and valuation particularly regarding adequacy of consideration.

3. **Transactions covered by Schedule I** require testing of transaction value and this would be critical. Having identified the transaction, applying valuation methods on those services would be a challenge. Comparing one service to another will be a Herculean task. If the Valuation Rules are not amended to ease the methods, then the taxable person supplying service will have a major task cut out to convince the GST officer the arms' length nature of the transaction.
4. **Composite supply** – is defined in section 2(30) of the CGST Act to mean a supply made by a taxable person to a recipient comprising two or more taxable supplies of goods or services, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply. This is very similar to "Bundled Services" which are naturally bundled as defined under Service Tax Law.
5. **Mixed Supply** – is defined in section 2(74) of the CGST Act to mean two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply. This is similar to bundled services which are not naturally bundled, as defined under Service Tax Law.
6. **New tax payers** – considering the wide scope of the word supply- there are various new tax payers from sectors like education, healthcare, betting-gambling, entertainment, etc. Concerns are with respect to classification of these sectors as supply of goods or supply of services. Further concerns are with respect to the nature and extent of exemptions that may be available in this regard. And in case exemptions are allowed, then the need for clearly articulating the supply to be exempted and its extent is crucial.

Examples:

- (a) **Non-sovereign functions by the sovereign** – the government undertakes various activities that are commercial pursuits with perhaps the intention to develop by pioneering new industries, regulate competition or equitably distribute natural resources. Nevertheless, activities undertaken by the sovereign do not ipso facto become sovereign functions. Services performed by the sovereign which are non-sovereign in nature would be liable to GST.
 - (b) **Commercial activities by non-commercial forms of organization** – education and healthcare are two examples of activities that have now come to be undertaken in commercial proportions and at commercial levels of charges but these are undertaken by organisations which are established in the form of trust or other non-commercial forms. The law on trust may permit deployment of endowments received by them to undertake commercial activities in the course of service to the population of beneficiaries. However, the taxes charged on the costs incurred by in these commercial activities will result in cascading of taxes if exemption were to be given based on the form of the organisation. Accordingly, it is expected that commercial activities even if undertaken by non-commercial forms of organisations may be liable to GST. Exemptions however, would continue in respect of certain categories of services provided in these sectors based on the wisdom of the government and as mentioned in the RNR report.
 - (c) **Betting and gambling** – these activities are liable for a tax of a kind that they have so far been unfamiliar with.
7. Ensuring your supplier has paid the relevant taxes to the credit of the Government would be of utmost preference. It has direct bearing on the taxable persons' bottom line profits. The taxable person has to put systems in place or renegotiate the payment terms with the vendors considering all these concerns.
 8. **Job Work:** It is important to understand the term 'job work' as defined under section 2(68) which is as under:



“job work means undertaking any treatment or process by a person on goods belonging to another registered taxable person and the expression “job worker” shall be construed accordingly”.

It is pertinent to note here that the activity of working on another persons’ goods alone tantamount to job work. What if the job worker adds his own materials during the treatment / process on goods belonging to the principal? Does that vitiate the nature of activity of job work? It may not be so. The activity may still be construed to be one of job work as defined above. However, any goods where the title is transferred during the course of job work activity may be treated as supply of goods. It may be treated as a composite contract of goods and services.

9. **Transactions involving goods particularly what is understood as deemed sales as per Article 366(29A) of the Constitution of India**, will now be liable to tax as if they were services. This requires a major shift in the understanding and a departure from the experience is brought forward from the existing laws in respect of these transactions. Accordingly, it is required to leave behind past experience and look at transactions involving goods liable to tax as services afresh. Provisions regarding time and place of supply as applicable to goods will not apply to these transactions and provisions with respect to time and place of supply of services will now have to be applied to them. What, if any, is the effect of a transaction involving supply of goods (being tangible movable property) when treated as being supply of services? To answer this, we can take following transactions and compare the implications under both scenarios, namely:
- o Works contract;
 - o Leasing; and
 - o Supply of food and beverages.
10. **Electronic commerce operator** with the use of an internet technology company facilitates suppliers to offer goods and/ or services to potential customers in an ‘online market’. Responsibility accepted by the e-commerce operator may



consist of providing IT-solution, acting as custodian of payment, assistance in product showcasing, assistance in logistics and warehouse support and even buy-stock-sell. Except in case of buy-stock-sell, customers know that the fulfilment is not by the e-commerce operator. Internet business involving an e-commerce operator is not only in respect of supply of goods but also supply of services. Here, the underlying supply (of goods or services) is fulfilled by a third party but the 'privity of contract' is between such third party and the customers. Even when the payment is made by the customer to the e-commerce operator, it is well understood to be in fiduciary capacity. E-commerce operator will be liable to collect tax at source at the rate of 1 per cent of the net value of taxable supplies made through it, where the consideration with respect to such supplies is to be collected by the operator.

**APPLICABILITY OF GST ON BANKING
& INSURANCE SECTOR****1. Introduction**

GST is applicable on Banking and Insurance Sector services as far as it qualifies the taxable event i.e Supply of Services. However, following Supplies made without consideration as specified in Schedule I of the CGST Act, 2017 are subject to tax, which is a paradigm shift from the earlier regime :

- Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
- **Inter Unit Supply:** Supply of goods/ services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business.

Therefore, any supply of goods or services or both supplied or received by one branch bank to another or by Head office bank to branch bank or *vice versa* without consideration, shall be considered as supply under GST for payment of tax.

- Activity performed by employer to employee without consideration will be taxable under GST, except where the value such supply does not exceed Rs50,000 in a financial year.

Although no consideration is involved yet, payment of tax needs to be done on value determined in terms of section 15 of the CGST Act read with Rule 28 of the CGST Rules.

Since, such transactions are generally not captured in books of accounts therefore, auditor should apply substantial audit procedure to check compliances.

2. Tax Framework for Banking and Insurance Sector:

Service Tax under earlier regime was levied and collected by the Central Government, however, with the implementation

of GST, CGST/SGST is levied by Central / State Government respectively on all Intra state supply and IGST is levied by the Central Government on all inter-state supplies Central Government.

3. Relevant Exemptions under GST

GST is applicable on all services provided by the banks except followings:

- Services by the Reserve Bank of India;
- Services by way of—
 - (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services)
 - (ii) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.
- Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY). [inserted w.e.f. 01-01-2019 vide Notification No. 28/2018- Central Tax (Rate), dated 31-12-2018 in CGST and vide Notification No. 29/2018-Integrated Tax (Rate), dated 31-12-2018 in IGST.]
- Services by an acquiring bank, to any person in relation to settlement of an amount upto two thousand rupees in a single transaction transacted through credit card, debit card, charge card or other payment card service.

Explanation. — For the purposes of this entry, “acquiring bank” means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.

- Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions. [Initially this exemption was inserted w.e.f. 27-07-2018 vide Notification No. 14/2018-Central Tax (Rate), dated 26-07-2018 in CGST and vide Notification No.



15/2018- Integrated Tax (Rate), dated 26-07-2018 in IGST. Later, the words "banking companies and" were inserted w.e.f. 01-01-2019 vide Notification No. 28/2018-Central Tax (Rate), dated 31-12-2018 in CGST and vide Notification No. 29/2018-Integrated Tax(Rate),dt.31-12-2018.]

- Services by way of collection of contribution under the Atal Pension Yojana
- Services by way of collection of contribution under any pension scheme of the State Governments
- Services by the following persons in respective capacities—
 - (a) business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch;
 - (b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or
 - (c) business facilitator or a business correspondent to an insurance company in a rural area.

4. RATE OF GST ON BANKING & OTHER FINANCIAL SERVICES

There is an increase in the tax rate from 15% in service tax (erstwhile indirect tax) to 18% under GST on the transaction charges levied on the financial services provided by the banks in relation to credit card, fund transfer, ATM transactions, processing fees on loans etc.

Note- It is essential to note that Service Tax was applicable in India excluding the State of Jammu & Kashmir. While GST is applicable in India w.e.f 01.07.2017 including sea water upto 12 nautical miles and in Jammu & Kashmir w.e.f. 08.07.2017.

5. TIME OF SUPPLY UNDER GST

The time of supply of services provided by the banks shall be determined in reference to section 13 of the CGST Act, 2017 shall be the earliest of the following dates, namely: —

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under ~~sub-section (2)~~ of



1 section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under ~~sub-section (2) of 2~~ section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply

Explanation:

- The date of receipt of payment: The date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier
- Date of issue of invoice: If the supplier of services is an insurer or banking company or financial institution including NBFC, invoice is to be issued within 45 days from the date of supply of service.

1 Omitted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01.02.2019

2 Omitted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01.02.2019

It is pertinent to note that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

6. Time of supply in case of reverse charge

1. In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be, earlier of the following dates, namely:-

(a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or



- (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier;

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

7. VALUE OF TAXABLE SUPPLY UNDER GST

The value of a supply of goods or services or both shall be: 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

Where Explanation to Section 15 of the CGST Act deems the persons below to be "related persons":

- Officers / Directors of one another's business
- Partners in business
- Employer –employee
- A person directly / indirectly owns / controls / holds 25% of shares of both the persons
- One directly / indirectly controls the other
- Both are directly/indirectly controlled by a third person
- Together, they directly/indirectly control a third person
- Members of the same family
- Sole agent / distributor / concessionaire of the other

S-15(2) Transaction Value INCLUDES:	Transaction Value EXCLUDES discount
<p>(i) Amounts charged by supplier to recipient in respect of any taxes, duties, cesses, fees and charges levied under any statute, other than taxes paid under GST regime;</p> <p>(ii) Amount incurred by Recipient which is liable to be paid by the Supplier;</p> <p>(iii) Charges by Supplier to Recipient being:</p> <p>Incidental expenses (e.g.: packing, commission)</p> <p>Charges for anything done by the Supplier at the time or before the supply, in respect thereof</p> <p>Interest/ late fee/ penalty for delayed payment of consideration</p> <p>Subsidies directly linked to price – for supplier receiving the subsidy (excluding Central and State Govt subsidies; i.e., Government subsidies will not be included in transaction value)</p>	<p>(iv) Before / at the time of supply</p> <p>Single condition: Such discount is duly recorded in the invoice</p> <ul style="list-style-type: none"> ▪ After the supply: Cumulative conditions: <ul style="list-style-type: none"> Agreement establishing discount entered into before / at the time of supply Discount specifically linked to relevant invoices ITC reversed by the recipient to the extent of tax on discount

To determine value of certain specific transactions, Determination of Value of Supply rules have been prescribed in CGST Rules, 2017 (Rule 27-35). The Rules pertaining to banking Sector are:

Banking sector provides services of purchase and sale of foreign currency to its customers, the value of which can be ascertained in terms of Rule 32(2) of the CGST Rules as:



OPTION -I	OPTION -II	
When exchanged from or/ to INR:	Where Amount of currency exchanged	
(v) Difference of Buying rate/ Selling rate and RBI reference rate X Total units of currency (If RBI reference rate is not available, value shall be 1% of gross amount of INR received or provided)	Upto Rs 1 lakh	1% of the gross amount of currency exchanged or Rs 250/-, whichever is higher
(vi) If neither of two currencies exchanged in INR, (vii) the value shall be equal to 1% of the lesser of the two amounts	Rs 1 lakh and up to Rs 10 lakhs	Rs 1,000/- plus 0.5% of the gross amount of currency exchanged above Rs 100,000/-
(viii) the person changing the money would have received by converting any of the two currencies into INR (ix) on that day at the reference rate provided by RBI.	exceeding Rs 10 lakhs	Rs 5,500/- plus 0.10% of the gross amount of currency exchanged above Rs 10 lakhs or Rs 60,000/-, whichever is lower

Further, it is pertinent to mention here Rule 34 of the CGST Rules which provides the Rate of exchange of currency, other than Indian rupees, for determination of Value as under:

Transactions undertaken in foreign currency must be translated into Indian Rupees. The rate of exchange for the determination of the value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 and for the determination of the value of taxable services shall be the applicable rate of exchange determined

as per the generally accepted accounting principles for the date of time of supply in respect of such supply in terms of section 12 or, as the case may be, section 13 of the Act.

Valuation of services between the distinct and related persons (excluding agents)

Generally, banks would have lot of common/ shared services being supported from Head Office such as call centre, security software etc. Further, many times one branch would internally provide service to other branches for example: resolving issue of a customer having PAN India accounts, providing local information etc. to other branches, etc.

The value will be determined in terms of Rule 28 of the CGST Rules, 2017

(a) The open market value of such supply

(b) If open market value is not available

Value of supply of goods or services of like kind and quality

(c) If value of supply is not determinable under clause (a) or (b)

Value as determined by application of Rule 30 or Rule 31, in that order

Provided that where goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person

Where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods or services

Value of supply based on cost i.e. cost of supply plus 10% mark-up. (Rule 30 of the CGST Rules 2017)

Value of supply determined by using reasonable means should consistent with principles and general provisions of GST law. (Rule 31 of the CGST Rules 2017)



8. PLACE OF SUPPLY

WHERE THE LOCATION OF SUPPLIER OF SERVICES AND THE LOCATION OF THE RECIPIENT OF SERVICES IS IN INDIA		
Default Rule for the services other than the 12 specified services		
S. No.	Description of Supply	Place of Supply
(1)	B2B	Location of such Registered Person
(2)	B2C	(i) Location of the recipient where the address on record exists, and (ii) Location of the supplier of services in other cases
Rule for the 12 specified services		
1.	Immovable property related to services, including hotel accommodation	Location at which the immovable property or boat or vessel is located or intended to be located If located outside India: Location of the recipient.
2.	Restaurant and catering services, personal grooming, fitness, beauty treatment and health service	Location where the services are actually performed.
3.	Training and performance appraisal	B2B: Location of such Registered Person B2C: Location where the services are actually performed
4.	Admission to an event or amusement park	Place where the event is actually held or where the park or the other place is located
5.	Organisation of an event	B2B: Location of such Registered person B2C: Location where the event is actually held If the event is held outside India: Location of the recipient



6.	Transportation of goods, including mails	B2B: Location of such Registered Person B2C: Location at which such goods are handed over for their transportation Further, (where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods)
7.	Passenger transportation	B2B: Location of such Registered Person B2C: Place where the passenger embarks on the conveyance for a continuous journey
8.	Services on board a conveyance	Location of the first scheduled point of departure of that conveyance for the journey
9.	Banking and other financial services including stock broking services	Location of the recipient of services on the records of the supplier Location of the supplier of services if the location of the recipient of services is not available
10.	Insurance services	B2B: Location of such Registered Person B2C: Location of the recipient of services on the records of the supplier
11.	Advertisement services to the Government	The place of supply shall be taken as located in each of such States Proportionate value in case of multiple States.
12.	Telecommunication services	



WHERE THE LOCATION OF THE SUPPLIER OF SERVICES OR THE LOCATION OF THE RECIPIENT OF SERVICES IS OUTSIDE INDIA

Default Rule for the cross-border supply of services other than nine specified services

S. No.	Description of Supply	Place of Supply
(1)	Any	Location of the recipient of service; If not available in the ordinary course of business, the location of the supplier of service

Rule for the 9 specified services

1.	Services supplied for goods that are required to be made physically available from a remote location by way of electronic means (Not applicable in case of goods that are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.) ⁴	The location where the services are actually performed. The location where the goods are situated
2.	Services supplied to an individual and requiring the physical presence of the receiver	
3.	Immovable property-related services, including hotel accommodation	
4.	Admission to or organisation of an event	
5.	If the said three services are supplied at more than one location. i.e. (i) Goods & individual related (ii) Immovable property-related (iii) Event related	
5.1	At more than one location, including a location in the taxable-territory	

5.2	In more than one State
6.	Services of transportation of goods, other than by way of mail or courier
7.	Passenger transportation services
8.	Online information and database access or retrieval services

9. Place of supply for banking sector

- In case, where the location of the banks or location of the recipient of service is in India, section 12(12) of the IGST Act, 2017, provides for the place of supply of services-
- The place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services.
- Provided that, if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services
- In case, where the location of the banks or location of the recipient of service is outside India, section 13(8) of the IGST Act, 2017, provides that-

The place of supply of the following services shall be the location of the supplier of services, namely: --

- (a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;
- (b) intermediary services;
- (c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, upto a period of one month

Explanation - For the purposes of this sub-section, the expression, —

- (a) “account” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;



- (b) "banking company" shall have the same meaning as assigned to it 2 of 1934. under clause (a) of section 45A of the Reserve Bank of India Act,1934;
- (c) "financial institution" shall have the same meaning as assigned to it 2 of 1934. in clause (c) of section 45-I of the Reserve Bank of India Act,1934
- (d) "non-banking financial company" means,
 - (i) a financial institution which is a company;
 - (ii) a non-banking institution which is a company, and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;or
 - (iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

Incomes earned by banks

Incomes are earned by banks from various sources other than interest. The interest income forms the major part of the incomes but in recent years the banking sector has involved themselves into numerous activities resulting into variety of incomes. All such incomes are recorded in the books of accounts under various heads which we have to analyse and decide taxability on the same. The income so earned, and their taxability are as under:

1. Interest income

The income earned by way of grant of loans, deposits etc is a taxable supply. However, by virtue of entry 27(a) of Notification 12/2017 dated 28.06.2017 and entry 28(a) of Notification No. 09/2017-Integrated Tax (Rate) dated 28.06.2017, no GST is payable on income earned by way of interest **except interest income earned through credit card**. The relevant extract of the said entry is as under:

SI No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of services	Rate (%)	Condition
27	Heading 9971	(a) Services by way of— (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services);	NIL	NIL

2. Commission income

The instant income is classified as a supply of service transaction and accordingly would be classified in terms of chapter heading as specified in the relevant notifications issued under GST.

Commission earned (on accrual) is liable to Service tax/GST. For e.g.:

- (a) M/s. A Ltd. wants to invest in fixed securities / bonds which can be only routed through SBI as they have exclusive rights for subscribing the same. SBI bank gets 2% commission on the amounts so subscribed. For the period 2017-18, the bank earns Rs250 crores of commission from such subscription which is recorded as 'Other Income'. The auditor has to check whether service tax/GST is appropriately disbursed on the said amount. Whether payments are made by complying with the due date for payment of service tax/GST. Also, verify returns filed reveals the correct amount of liability. If the tax is not discharge, then appropriate disclosure would be required. Discrepancy in the returns filed (after any revision) and liability as determined may be disclosed. Interest being mandatory may be suitably included in the disclosure. Suitable disclosure as to whether any contingency exists in respect of applicable penalty may also be provided.

Further, review of agreements where commission is earned must be carried out thoroughly and if any milestone incentives, performance bonus, time bonus etc is provided



then appropriate tax treatment should be suggested.

- (b) SBI bank gets 1% commission from private companies for providing them investment exposure in foreign markets. The same is liable for payment of service tax \ GST and appropriate tax treatment should be followed and suggested. Disclosures as discussed above may be considered, if any tax liability is found to be unpaid

3. Brokerage income

The instant income is classified as a supply of service transaction and accordingly would be classified in terms of chapter heading as specified in the relevant notifications issued under GST.

4. Agency charges

Generally, such income is earned by way of being appointed as an agency either by RBI, State Governments, Central Governments or by some corporates. Under such arrangements, banks act as a facilitator/collection centre and in lieu of provision of such services such banks collect certain fees as "Agency charges". Such charges are liable for payment of GST. Very often, the underlying arrangement will be of agency, but it may be described in a contemporary terminology like 'enablement charge' or 'facilitation fee' or simple 'management fee' which may appear misleading.

The auditor needs to analyse the relevant agreements entered and has to study the flow of consideration and thereafter decide taxability and the amount on which GST is applicable. The same has to be communicated to the management if no GST is being paid till date.

5. Portfolio management service

Generally, the said services are being provided by different entities within the banking sector. Due to stiff competition and one-stop window for priority customer's (i.e. customers who are depositing amount beyond a certain limits) only one person provides all such services and thereafter relevant commissions are split between entities or costs are shared. In fact, inter-branch sharing of portfolio management services in lieu of the skill set available in selected branches between different states is taxable and a fair value has to be assigned to such transaction

and applicable GST is payable on such transaction. Further, appropriate classification has to be made for such supply of services under relevant chapter heading as per the notifications issued under GST.

6. Account maintenance charges:

It is a common practice that in most of the banks certain charges are recovered towards maintenance. The said charges are nominal but the same is liable for payment of service tax.

Further, even locker charges are being recovered from the customers on an annual basis which is liable for payment of GST. There can be different modes of arrangement for availing such income, but such income is taxable under GST. The provisions relating to place of supply will become imperative while determining the correct nature of the transaction and thereafter taxability has to be decided. Further, appropriate classification has to be made for such supply of services under relevant chapter heading as per the notifications issued under GST.

For e.g.: Mr A wants to open a locker at SBI wherein the bank has provided. Mr. A (the Customer) following options for opening a locker:

- A. Make an FD of Rs 25,000/- and pay an annual charge of Rs 5000/-.
- B. Make an FD of Rs 50,000/- and pay an annual charge of Rs 2500/-.
- C. Make an FD of Rs 1,50,000/- and do not pay any annual charge

In case A, Service tax/GST will be on annual charges of Rs 5,000/-

However, in other cases, depending upon the documents the auditor has to analyse the tax position and thereafter decide taxability on the same i.e. under all the options whether GST is payable on annual charge or there is some different mechanism of determining taxability for the said transactions. If the documents substantiate or established clear barter against the waiver of annual fees, then GST is payable at a value either Rs 5,000/- or the interest portion.



7. Credit/Debit card charges

Income earned by way of issuing and maintaining such transactions were liable for payment of GST. Therefore, auditor should carefully examine such transactions and appropriate disclosures be made in case of non-compliance with relevant tax provisions.

8. Digital payment facilities

Banks charges some convenience fees from the person who accepts payment through debit card, credit card or through other some other card service. The charges earned by the bank are chargeable under GST. And no GST will be payable in respect to services provided by bank, to any person in relation to settlement of an amount up to Rs 2000 in a single transaction transacted through credit card, debit card or charge card or other payment card service.

9. Sale and purchase of foreign currency

Banking companies receiving consideration for providing services by way of securities and foreign exchange broking and purchase or sale of foreign currency, including money changing is chargeable to GST on special value calculated as per option availed in terms of Rule 32 of CGST Rules, 2017.

However, pursuant to entry no. 27(b) of Notification No. 12/2017-Central tax (Rate) and entry no.28(b) of Notification no 9/2017-Integrated Tax (Rate) both dated 28.06.2018, inter-bank transactions of sale or purchase of foreign currency or transactions with authorized dealers of money changing are exemption under GST regime.

10. Other income

- Income earned by banks by way of **penalties, retention charges, etc** are liable for payment of GST.

For e.g.:

- (a) SBI charges Rs 2500/- to all those customers who maintains an average quarterly balance below Rs 25000/-. Accordingly, the total collection of income from such source is Rs. 5,00,00,000/- and thereafter SBI has to discharge GST on the same at appropriate rate.

- (b) SBI penalises Rs 500/- to all such customers whose cheques are bounced and the income collection for the period 2020-21 is Rs 50,00,000/-. SBI has to discharge GST on the same at appropriate rate.
 - (c) SBI charges Rs 50/- for issuing DD. Such income is liable for payment of GST and the auditor has to carefully scrutinise whether appropriate tax rate has been disbursed.
- **Realisation of payment (NPA) by way of disposal of NPA to an asset reconstruction company [ARC]** or to any other buyer is a debatable issue. GST will not apply as definition of supply [Clause 6 Schedule III read with Section 7] under CGST Act exclude actionable claim. When there is outright sale of the service tax/GST applicability will depend on the nature of underlying asset sold and is to be paid by borrower. e.g. SBI sells one of its NPA as a going concern to Company ABC then the instant transaction is taxable under GST but the same is classified as a supply of service and accordingly the rate of tax payable is NIL in terms of Entry 2 classified under Chapter 99 as specified under Exemption Notification 12/2017 dated 28.06.2017.

Expenses Incurred by Banks

Generally, obligation to discharge GST lies on the supplier of supply. But there exist certain cases on which Reverse charge is applicable. Even various expenses incurred by the banks are exigible to tax under on Reverse Charge Mechanism ("**RCM**").

Under RCM, the duty to discharge tax is casted on recipient of supply. RCM under GST depends on the nature of supply and/or nature of supplier. All taxpayers required to pay tax under reverse charge have to mandatorily obtain registration and the threshold exemption is not applicable on them. Payment of taxes under Reverse Charge cannot be made with utilization of Input Tax Credit and has to be made in Cash. Unlike, service tax where both full and partial reverse charge exists, in GST only full charge subsists.

Section 9(3) of CGST/ Section 5(3) of the IGST Act specify categories of supply of goods or services or both as notified by Government on recommendations of the Council on which RCM



is applicable. In this regard, Govt. vide Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017/ Notification No. 10/2017-Integrated Tax (Rate) dated 28.06.2017 as amended from time to time specify the category of services on which RCM is applicable.

[Till 1.02.2019 Notification No. 13/2017-Central Tax (Rate), dated 28.06.2017, 2017 has been amended vide

- Corrigendum dated 25-09-2017 issued in F. No.336/20/2017-TRU
- Notification No. 22/2017-Central Tax (Rate), dated 22-08-2017
- NotificationNo.33/2017-CentralTax(Rate),dated13-10-2017
- Notification No. 3/2018-Central Tax (Rate), dated 25-01-2018
- NotificationNo.15/2018-CentralTax(Rate),dated26-07-2018
- Notification No. 29/2018-Central Tax (Rate), dated 31-12-2018
- Notification No. 05/2019-Central Tax (Rate), dated 29-03-2019]

[Till 1.02.2019 Notification No. 10/2017-Integrated Tax (Rate), dated 28.06.2017 has been amended vide

- Notification No. 22/2017-Integrated Tax (Rate), dated 22-08-2017
- Notification No. 34/2017-Integrated Tax (Rate), dated 13-10-2017
- Notification No. 03/2018-Integrated Tax (Rate), dated 25-01-2018
- Notification No. 16/2018-Integrated Tax (Rate), dated 26-07-2018
- Notification No. 30/2018-Integrated Tax (Rate), dated 31-12-2018
- Notification No. 05/2019-Integrated Tax (Rate), dated 29-03-2019

The list of such services where reverse charge mechanism under Notification 13/2017- Central Tax (Rate) dated 28.06.2018

("Notification 13/2017") is applicable is as under:

S. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
1.	Supply of Services by a goods transport agency (GTA) [, who has not paid central tax at the rate of 6%,] ⁵ in respect of transportation of goods by road to- (a) any factory registered under or governed by the Factories Act, 1948(63 of 1948);or (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;or (c) any co-operative society established by or under any law;or (d) any person registered under the Central-Goods and Services Tax Act or the	Goods Transport Agency (GTA)	(a) Any factory registered under or governed by the Factories Act, 1948 (63 of 1948);or (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;or (c) any co-operative society established by or under any law; or (d) any person registered under the Central Goods and Services Tax Act or the Integrated

⁵ The words and figure ", who has not paid central tax at the rate of 6%," were inserted

w.e.f. 22-08-2017 vide Notification No. 22/2017-Central Tax (Rate), dated 2-08-2017.



<p>Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or</p> <p>(e) any body corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person.⁶ [Provided that nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to, -</p> <p>(a) a Department or Establishment of the Central Government or State Government or Union territory; or</p> <p>(b) local authority; or</p> <p>(c) Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.]</p>	<p>Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or</p> <p>(e) any body corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person;</p> <p>located in the taxable-territory.</p>
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⁶ Proviso was inserted w.e.f. 01-01-2019 vide Notification No. 29/2018-Central Tax (Rate), dated 31-12-2018.



2.	<p>Z[Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.</p> <p>Explanation. - "legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.]</p>	An individual advocate including a senior advocate or firm of advocates.	Any business entity located in the taxable territory.
3.	Services supplied by an arbitral tribunal to a business entity.	An arbitral tribunal.	Any business entity located in the taxable territory.
4.	Services provided by way of sponsorship to any body corporate or partnership firm.	Any person	Any body corporate or partnership firm located in the taxable territory.
5.	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, - (1) renting of immovable property, and (2) services specified below- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.

7 Column (2) against Sl.No. 2 was corrected vide Corrigendum dated 25-09-2017 issued in F.No. 336/20/2017-TRU. Before



correction, it read as -

“Services supplied by an individual advocate including a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, or by a firm of advocates, by way of legal services, to a business entity.”

	Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.		
[5A]	Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017).	Central Government, State Government, Union territory or local authority	Any person registered under the Central Goods and Services Tax Act, 2017. ⁸
[5B]	Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.	Any person	Promoter.
5C	Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter.	Any person	Promoter. ⁹



6.	Services supplied by a director of a company or a body corporate to the said company or the body corporate.	A director of a company or a body corporate	The company or a body corporate located in the taxable territory.
7.	Services supplied by an insurance agent to any person carrying on insurance business.	An insurance agent	Any person carrying on insurance business, located in the taxable territory.

8 Sl.No. 5A was inserted w.e.f. 25-01-2018 vide Notification No. 3/2018-Central Tax (Rate), dated 25-01-2018.

9 Sl.No. 5B and C was inserted w.e.f. 01-04-2019 vide Notification No. 05/2019- Central Tax (Rate), dated 29-03-2019.

8.	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory.
9.	Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like.	Author or music composer, photographer, artist, or the like	Publisher, music company, producer or the like, located in the taxable territory.



10.	Supply of services by the members of Overseeing Committee to Reserve Bank of India	Members of Overseeing Committee constituted by the Reserve Bank of India	Reserve Bank of India.] <u>10</u>
11.	Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs).	Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm.	A banking company or a non-banking financial company, located in the taxable territory.] <u>11</u>
12.	Services provided by business facilitator (BF) to a banking company	Business facilitator (BF)	A banking company, located in the taxable territory

10 Sl.No. 10 was inserted w.e.f. 13-10-2017 vide Notification No. 33/2017-Central Tax (Rate), dated 13-10-2017.

11 Sl.No. 11 was inserted w.e.f. 27-07-2018 vide Notification No. 15/2018-Central Tax (Rate), dated 26-07-2018.

13.	Services provided by an agent of business correspondent (BC) to business correspondent (BC).	An agent of business correspondent (BC)	A business correspondent, located in the taxable territory.
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14.	Security services (services provided by way of supply of security personnel) provided to a registered person: Provided that nothing contained in this entry shall apply to, - (i) (a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies; which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or (ii) a registered person paying tax under section 10 of the said Act.	Any person other than a body corporate	A registered person, located in the taxable territory.] ¹²
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In addition to the above list given under Central Tax- Rate, following additional category of supply of services is listed under Notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017 on which GST shall be paid by the recipient on reverse charge basis:-

12 Sl.Nos. 12, 13 and 14 the entries relating thereto were inserted w.e.f. 01-01-2019 vide Notification No. 29/2018-Central Tax (Rate), dt. 31-12-2018.



Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
1	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.
2	Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962 (52 of 1962), located in the taxable territory.

RCM as per section 9(4) of the CGST Act or section 5(4) of the IGST Act

Prior to 1.02.2019, RCM as per section 9(4) of the CGST Act or section 5(4) of the IGST Act would include supply of taxable goods or services or both by an unregistered supplier to a registered person.

To avoid leakage of tax and to encourage the business community to pay GST, RCM under section 9(4) was introduced on any expenditure incurred by the registered person over Rs 5000/- per day [vide Notification No.8/2017-Central Tax (Rate) dated 28.06.2017], under the situation where the supplier does not pay tax. However, this limit of Rs 5,000/- vide Notification no. 38/2017- Central Tax (Rate) dated 13.10.2017 has been withdrawn and hence, payment of tax under section 9(4) of the CGST Act, 2017 was exempted till 31.03.2018. Moreover, payment of tax under section 5(4) of the CGST Act, 2017 was exempted till 31.03.2018 vide Notification No. 32/2017 – Integrated Tax (Rate) dated 13.10.2017. Thereafter, this provision of reverse charge was deferred till 30.09.2019, the relevant notification numbers are:



Exempted From	Notification under CGST	Notification under IGST
From 1.04.2018 to 30.06.2018	Notification No. 10/2018 – Central Tax (Rate) dated 23.03.2018	Notification No. 11/2018 – Integrated Tax (Rate) dated 23.03.2018
From 1.07.2018 to 30.09.2018	Notification No. 12/2018 – Central Tax (Rate) dated 29.06.2018	Notification No. 13/2018 – Integrated Tax (Rate) dated 29.06.2018
From 01.10.2018 to 30.09.2019	Notification No. 22/2018 – Central Tax (Rate) dated 06.08.2018	Notification No. 23/2018 – Integrated Tax (Rate) dated 06.08.2018

Subsequently, in view of bringing into effect the amendments (regarding RCM on supplies by unregistered persons) in the GST Acts, reverse charge exemption Notification No.8/2017-Central Tax (Rate) dated 28.06.2017 and Notification No. 32/2017 – Integrated Tax (Rate) dated 13.10.2017 has been rescinded with effect from 1.02.2019 vide Notification No 01/2019-Central/Integrated Tax (Rate), dated 29-01-2019.

Further, with effect from 1st February 2019, The Central Goods and Services Tax (Amendment) Act, 2018 has substituted section 9(4) of the CGST Act, as:

“(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.”

Hence, it is required for reverse charge on inward supplies from unregistered persons to be applicable, 'categories of registered persons' and 'categories of goods or services' are to be notified. However, no such notification has been issued (yet) making banking companies liable to reverse charge.



Some of the **services which are relevant with respect to the Banking sector** are explained in detailed below:

1. Services provided by recovery agent

Generally, loans are the areas wherein the banks earn major portion of their income. It is the most organized form of extending credit to customers and interest is earned as an income in respect of such credits extended. Majority of banks spend great time and effort in recovering credits so granted.

Further, many banks sell their loans to third parties or hire third party agents to initiate recovery on their behalf.

Loans sold to factoring agents are not liable for payment of GST. Please examine that these transactions would be '*exempt supply*' depending on whether these are with or without recourse.

Further, another type of transaction third parties is hired to initiate recovery on behalf of the banks which is purely a service transaction and liable to payment of GST. Further, RCM is applicable on such transactions and therefore the banks who hire such third-party agents are liable for payment of GST on the fees so paid to these recovery agents/third party agents. Banks also provide infrastructure, phone facilities and such other benefits to these third-party agents in order to perform their services. Even such value is required to be taken into consideration while determining the value of supply for the purpose of payment of GST.

As an auditor, one should check the agreements between the bank and the recovery agent. Under GST regime, the bank should raise a self-invoice and thereafter appropriate GST @ 18% should be paid on the same. The income so earned should be disclosed in the relevant chapter heading as classified under the GST regime.

2. Services provided by insurance agent

If the banks are also engaged in business of insurance, then the services provided by such insurance agent who sell insurance products of the banks is liable for payment of GST. Further, the amount on which tax is payable is commission so paid to the insurance agent. Such commission also includes reimbursement by any mode.



The insurance division of the banks so receiving the services from those insurance agents are liable for payment of GST under reverse charge mechanism.

As an auditor, one should check the agreements between the bank and the insurance agent. Under GST regime, the bank should raise a self-invoice and thereafter appropriate GST @ 18% should be paid on the same. The income so earned should be disclosed in the relevant chapter heading as classified under the GST regime.

3. Services provided by goods transport agency service:

W.e.f. July 1, 2017 vide Entry No.1 of Notification 13/2017 Central Tax (Rate) date 28.06.2017, if any services in respect of transportation of goods by road are provided by goods transport agency (GTA) to the following recipient located in the taxable territory then recipient of service is liable to pay tax under reverse charge:

- (a) Any factory registered under or governed by the Factories Act, 1948 (63 of 1948); or
- (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or
- (c) any co-operative society established by or under any law; or
- (d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or
- (e) any body corporate established, by or under any law; or
- (f) any partnership firm whether registered or not under any law including association of persons; or
- (g) any casual taxable person.

However, w.e.f. from August 22, 2017 vide Notification No. 22/2017 dated August 22, 2017 which amended Notification 13/2017, the GTA was given an option to pay to GST @ 5% (2.5 CGST+2.5 SGST/ 5% IGST) if no input tax credit is availed subject to RCM. Further, if GTA has availed ITC, GST is to be paid by GTA @ 12%.



Further, w.e.f. 01-01-2019 vide Notification No. 29/2018-Central Tax (Rate), dated 31-12-2018, nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to,-

(a) a Department or Establishment of the Central Government or State Government or Union territory; or

(b) local authority; or

(c) Governmental agencies,

which has taken registration under the CGST Goods and Services Tax Act, 2017 (only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services).

Therefore, auditor has to check that correct ITC is taken, and appropriate person has discharged the tax. Carriage of Goods by Road Act, 2007 requires that no motor vehicle undertake transport of goods by road except with a proper registration of such motor vehicle. And every consignment be accompanied by a forward note or receiving note. Merely because goods are not of substantial value or not involving supply or involving inter-branch movement, it is not appropriate to avoid issuing such a 'note'. When such

'note' is issued, the transporter will be a GTA. Under the GST notification, GTA is now issues a consignment note 'by whatever name called'.

4. Services provided by advocates:

W.e.f July 1, 2017 In terms of entry no. 2 of vide Notification 13/2017, RCM was applicable on Services supplied by an individual advocate including a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, or by a firm of advocates, by way of legal services, to a business entity

Thereafter a *Corrigendum to Notification No. 13/2017* was issued [M.F. (D.R.) *Corrigendum F. No. 336/20/2017-TRU, dated 25-9-2017*], subsequently RCM is applicable on Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.

Where - “*legal service*” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.

Very often, legal services are availed banks ‘on account of’ their customers. Here, auditors to ensure that banks do not withhold themselves from payment of RCM on legal fee paid on the premise that these services are availed ‘on account of’ their customers, especially when the legal fee is debited to customer’s account. It is more appropriate that banks discharge RCM as fee from advocate will be issued to bank. Very often, it is observed that where expenses are incurred but debited to customer’s account, RCM liability thereon, is somehow omitted. Customer’s being unaware of the various components of costs that are embedded in the amounts debited to the account, RCM liability cannot possibly be discharged by them. Hence, banks may be advised to suitably ensure RCM is complied with.

5. Service provided by way of import of services

Many banks do spend a lot of funds on procuring services from abroad. Where the supply of goods or services or both are taxable in nature, GST is payable by the recipient bank.

Some important areas are summarized as under:

1. Bond floating expenditure:

Generally, bond floating expenditure is an expenditure which though

appropriately recorded in the books of accounts, skips the attention and the applicable taxes are not discharged often in respect of the same. Therefore, the concerned auditor should thoroughly inspect the books of accounts and identify all payments in foreign currency for compliance with these provisions.

For e.g.: IVY Bank wants to issue bonds in NYSE and for the said purpose has appointed WYE bank a leading bank of America for floating the said bonds and acting as a lead merchant banker. The fee for the same is generally some fixed % of the ticket size which is recorded appropriately in the books of accounts. The instant transaction is taxable in terms of Section 13 (2) of the IGST Act, 2017.



Under the GST regime, the same requires through analysis of the transaction, these are generally taxable as per Section 13 of the IGST Act, 2017. However, the actual answer may vary depending upon the structuring of the transaction.

2. Under writing charges:

If underwriting charges are paid in foreign currency to an underwriter who is located outside India, then GST is payable on such transactions. Appropriate ledgers, contracts etc should be scrutinised in great detail and thereafter relevant disclosures should be made regarding taxability on the same.

3. I.T infrastructure cost:

Generally, I.T infrastructure is a common cost which the banks bears on all-India basis and executes one common contract for the same. If the vendor is based outside India or the technicians are outside India and payment is being disbursed in foreign currency. Though, such cost requires careful apportionment in terms of appropriate provisions including rules and depending upon the nature of the transaction appropriate GST (generally @ 18%) is payable on such transaction. Further, credit for the GST so paid is available.

NOTE-It is pertinent to mention here that, the certain services exigible to service tax under RCM has been discontinued under GST like rent-a-cab, Manpower Supply, Security services, works contract service etc.

4. Input Tax Credit

Under the GST regime, a banking company or a financial institution including a non-banking financial company engaged in supplying services by way of accepting deposits, extending loans or advances shall have following two options to avail Input tax credit in terms of Section 17(4) of the CGST Act 2017. And the option once exercised shall not be withdrawn during the remaining part of the financial year.

OPTION I

Reverse the credit pertaining to exempted services as per the method stated in Section 17(2) of the CGST Act, 2017 read with the relevant State Act and Rules thereof



OR

OPTION II

Avail 50% of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse. And accordingly follow the following procedure in accordance with Rule 38 of the CGST Rules, 2017:

1. Such banking company or financial institution shall not avail credit of:

- the tax paid on inputs and input services that are used for non-business purposes and
- the credit attributable to the supplies specified in Section 17(5), in FORMGSTR-2

2. Further, the condition of 50% restriction would not be applicable in case of the tax paid on supplies made by one registered person to another registered person having the same PAN. Hence, banking company or financial institution shall avail the credit of tax paid on inputs and input services in case of supplies made to its own branches i.e. inter branch i.e., by one registered person to another registered person having different GSTIN.

3. 50% of the remaining amount of input tax shall be admissible and shall be furnished in FORMGSTR-2

4. The amount referred in point 2. and 3 above shall subject to the provisions of Section 41, 42 and 43, be credited to the electronic credit ledger of the said banking company or financial institution.

Clarification on reversal of credits for banks and financial institutions including NBFCs:

Relevant provisions have been amended to exclude banks and financial institutions including NBFCs engaged in providing services by way of extending deposits, loans or advances from its ambit. It has been provided in the said explanation that value for reversal of common input tax credit taken on inputs and input services used in providing taxable and exempted services, shall not include the value of service by way of extending deposits, loans or advances against consideration in the form of interest or discount.



Apportionment of credit

Section 17 (2) of the CGST Act stipulates that, where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the IGST Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Credit attributable to exempt supplies is not available to a registered person. Exempt Supplies' for this purpose mean all supplies other than taxable and zero-rated supplies and specifically include the following:

- Supplies liable to tax under reverse charge mechanism;
- Transactions insecurities;
- Sale of land; and
- Subject to Para 5(b) of Schedule II, sale of building.

Moreover, vide CGST Amendment Act, 2018 w.e.f 1-02-2019, the "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule i.e. Sale of Land (S-III) / building (S-II).

Hence, they will not entail any reversal of credit. Further, vide CGST Amendment Act, 2018 w.e.f 1-02-2019, a couple of clauses has been inserted within Schedule III of the CGST Act:

"7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

8. (a) Supply of warehoused goods to any person before clearance for home consumption; (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption"

From the above, it can be gathered that excluding of supplies covered under Schedule III has resulted in lower reversal of credit particularly in case of high sea sales and merchant trade transactions.

Rule 42 of the CGST Rules, 2017: Manner of determination of ITC in respect of inputs or input services and reversal thereof via illustration:

Sl. No	Particulars	Reference	CGST	SGST/UTGST	IGST
1	Total input tax on inputs and input services for the tax period April 2021	T	1,00,000	1,00,000	50,000
	Out of the total input tax (T):				
2	Input tax used exclusively for non-business purposes (Note 1)	T1	10,000	10,000	5,000
3	Input tax used exclusively for effecting exempt supplies (Note 1)	T2	10,000	10,000	5,000
4	Input tax ineligible under Section 17(5) (Note 1)	T3	5,000	5,000	2,500
	Total		25,000	25,000	12,500

	ITC credited to Electronic Credit Ledger (Note 1)	$C1 = T - (T1 + T2 + T3)$	75,000	75,000	37,500
	Input tax credit used exclusively for taxable supplies (including zero-rated supplies) [Note 4]	T4	50,000	50,000	25,000
	Common credit	$C2 = C1 - T4$	25,000	25,000	12,500



Aggregate value of exempt supplies for the tax period April 2021 (Note 2 & 3)	E	25,00,000	25,00,000	25,00,000
Total Turnover of the registered person for the tax period April 2021 (Note2)	F	1,00,00,000	1,00,00,000	1,00,00,000
Credit attributable to exempt supplies (Note 5)	$D1 = \frac{E}{F} * C2$	6,250	6,250	3,125
Credit attributable to non-business purposes	$D2 = C2 * 5\%$	1,250	1,250	625
Net eligible common credit [Note 6]	$C3 = C2 - (D1 + D2)$	17,500	17,500	8,750
Total credit eligible (Exclusive Common)	G = T4 + C3	67,500	67,500	33,750

Note 1: T1, T2, T3 and T4 shall be DETERMINED AS ABOVE and declared in Form GSTR-2 and at summary level in FORMGSTR-3B

Note 2: If the registered person does not have any turnover for May 2018, then the value of E and F shall be considered for the last tax period for which such details are available

Note 3: Aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 and entry 92A of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule.

Note 4: In case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, value of T4 shall be zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.

Note 5: In case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of 'E/F' for a tax period shall be calculated



for each project separately, taking value of E and F as under:-

E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F = aggregate carpet area of the apartments in the project;

Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of 'E' in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended.

Remarks: Note 4 and 5 may only be applicable in case of apartment construction project-promoter and not a banking company.

Note 6: Amount of 'C3', 'D1' and 'D2' shall be computed separately for ITC of CGST, SGST, UTGST and IGST declared in FORM GSTR-3B or through FORM GST DRC-03.

And the amount equal to aggregate of 'D1' and 'D2' shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03.

Note 7: The registered person is expected to make such computation for each tax period and reverse the same in the periodic returns being filed by such registered person. However,



on completion of the financial year, input tax credit shall be determined accurately based on actuals, in the same manner as provided in Rule 42. A reconciliation is required to be done on an annual basis (between the amounts reversed for each tax period during the year and the amount determined at the end of the financial year) and any excess credit availed needs to be reversed with interest while short credit, if any, need to be availed within 6 months from end of the financial year.

It is to be noted that the registered person would be required to remit excess ITC claimed (as determined in Note 7 above) with interest calculated at for the period starting from the first day of April of the succeeding financial year till the date of payment. However, no interest can be claimed if, at the end of the financial year, it is found that short credit was availed.

Please Note that Input tax credit by a Registered Taxable Person can only be availed subject to the fulfilment of following conditions:

Basis - **tax invoice / debit note issued by a registered supplier**, or other prescribed taxpaying document

Goods and/or services have been received*

Tax actually paid by the supplier to the credit of the appropriate Government, either in cash or by utilization of ITC

Monthly return in Form GSTR-3 u/s 39 is furnished

Credit only upon receipt of the last lot/ instalment in case of goods received in lots / instalments.

Goods deemed to be received by a taxable person when the supplier delivers the goods to the recipient/ any other person, on the direction provided by the taxable person to the supplier.

Exception in case of goods being directly sent to job worker

If the recipient of services fails to pay (value + tax) within 180 days from date of invoice, (ITC availed + interest @ 18%) shall be added to his output tax liability. ITC available when amount discharged later

Documents required for availing credit (Sec 36 of the CGST Act)

Invoice issued by a supplier of goods or services or both as per S-31	Invoice issued as per S-31(2) (f) by recipient along with proof of payment of tax	A debit note issued by supplier u/s 34
Bill of entry or similar document prescribed under Customs Act, 1962	Revised invoice	Document issued by Input Service Distributor.

No ITC allowed to be availed

- Beyond September of the following FY to which invoice pertains or date of filing of annual return, whichever is earlier
- If all applicable particulars as specified in the provisions of Chapter VI

are contained in the said document, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2

- In respect of any tax paid, where any demand has been confirmed on accounts of any fraud, wilful misstatement or suppression of facts

No ITC can be availed in terms of Sec 17(5) of CGST Act, 2017 – No ITC shall be available in respect of the following namely:

(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:—

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles; (aa) vessels and aircraft except when they are used—

(i) for making the following taxable supplies, namely:—



- (A) further supply of such vessels or aircraft; or
- (B) transportation of passengers; or
- (C) imparting training on navigating such vessels; or
- (D) imparting training on flying such aircraft;
- (ii) for transportation of goods;
- (ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available—

- (i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;
- (ii) where received by a taxable person engaged—

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession.

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an



employer to provide to its employees under any law for the time being in force.]¹³

13Substituted vide CGST Amendment Act, 2018 w.e.f. 1-02-2019 & earlier it was:

(a) *motor vehicles and other conveyances except when they are used—*

(i) for making the following taxable supplies, namely:—

(A) further supply of such vehicles or conveyances; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods;

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre;

(iii) rent-a-cab, life insurance and health insurance except where—

(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

(B) such inward supply of goods or services or both of a particular

(C) works contract services when supplied for construction of immovable property, (other than plant and machinery), except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account, including when such goods or services or both are used in the course or furtherance of business;



Explanation. - For the purpose of clause (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

Explanation. For the purposes of Chapter V and Chapter VI of the CGST Act, the expression 'plant and machinery' means apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes:

(i) land, building or any other civil structures,

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises

category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and

(iv) travel benefits extended to employees on vacation such as leave or home travel concession;

Credit utilization [Sec 49(5)]

Credit of:	Allowed for Payment of		
	IGST	CGST	SGST /UTGST
IGST	✓ (1)	✓ (2)	✓ (2)
CGST	✓ (2)	✓ (1)	
SGST / UTGST	✓ (3)		✓ (1)

*The numbers represent the order of utilization of credit

Further, in terms of section 49(5)(e) and (f), CGST shall not be utilized towards payment of SGST/ UTGST and vice versa respectively

With effect 1-02-2019, *vide the CGST Amendment Act 2018 read with Notification No. 02/2019-Central Tax, dated 29-01-2019*, Section 49A and 49B has been inserted.

Section 49A of the CGST Act, 2017 provides for manner of ITC utilisation, wherein, the Credit of IGST has to be utilized first and only after which, credits of CGST and SGST/UTGST can be utilized.

"49A. Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment."

The full utilization of IGST credit by taxpayer facilitates the Government the following;

- Reduction of transactions of inter -settlement between the Centre & States
- Self-utilization of IGST deposited in Consolidated Fund of India through payment route of taxpayer instead of post return calculation

Further, Section 49B of the CGST Act, 2017 stipulates that notwithstanding anything contained in ITC Chapter V of the



CGST Act and subject to section 49(5)(e) and (f) of the CGST, the Government may, on the recommendations of the Council, prescribe the order and manner of utilization of the ITC on account of IGST, CGST, SGST or UTGST, as the case may be, towards payment of any such tax.

In this regard, w.e.f. 29-03-2019 *vide Notification No. 16/2019 – Central Tax dated 29.03.2019*, Rule 88A of the CGST Rules has been inserted which provides order of utilization of ITC.as:

*"Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax **and** State tax or Union territory tax, as the case may be, in any order:*

Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully."

Credit of:	Liability of ↓		
	IGST	CGST	SGST / UTGST
IGST	✓ (1)	✓ (1)	✓ (1)
CGST	✓ (2)	✓ (2)	
SGST /UTGST	✓ (3)		✓ (2)

Routine Procedural Checks under GST Regime

1. Payment dates

GST should be disbursed by following the due dates mentioned below: — 20th of the next month

FORM GST PMT-6 Challan for deposit of GST — valid for 15 days from the date of generation of challan

Further, interest under Section 50, to be paid in case of failure to pay tax or part thereof to the Government within period prescribed is 18% from the due date of payment to the actual date of payment of tax



And 24% in case Excess claim of Input Tax Credit or excess reduction in output tax liability

2. Time limitation for issuance of invoice

Invoice shall be issued before or after the provision of service, but within 45 days from the date of supply of services.

Further, an insurer or a banking company or a financial institution, including a NBFC, or a telecom operator, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council, making taxable supplies of services between distinct persons as specified in section 25, may issue the invoice before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made.

A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, the tax charged thereon, and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which—

- (a) any other document issued in relation to the supply shall be deemed to be a tax invoice; or
- (b) tax invoice may not be issued

A. In terms of Rule 46 of the CGST Rules, 2017, a tax invoice referred to in this section shall be issued by the registered person containing the following:—

- (a) name, address and GSTIN of the supplier;
- (b) a consecutive serial number, not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year;
- (c) date of its issue;
- (d) name, address and GSTIN or UIN, if registered, of the recipient;



(e) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered and where the value of taxable supply is fifty thousand rupees or more;

(f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is less than Rs 50,000/- and the recipient requests that such details be recorded in the tax invoice;

(g) Harmonised System of Nomenclature code for goods or services;

[As regards the requirement to quote the HSN of the supplies, the annual turnover of the registered person for the previous year shall be referred. In case of suppliers having annual turnover in the previous year:-

C. Quoting of HSN Classification on Invoices (With effect from April 1, 2021) -

Notif. No		Date	Summary of Notification
78/2020 - Central Tax and 6/2020 - Integrat- ed Tax	15 - 10 - 2020	HSN classification on Invoices (with effect from 01/04/2021) a. HSN at 6 digits for B2B supplies for taxpayers with aggregate annual turnover above Rs. 5 crores b. HSN at 4 digits for B2B supplies for taxpayers with aggregate annual turnover up to Rs. 5 crores If the supplies by registered person having aggregate turnover up to five crores rupees in the previous FY, HSN reporting on tax invoice for supplies made to unregistered persons (B2C) may not be required.	

D. Table for HSN/SAC reporting based on Turnover and Nature of Supplies -

S. No	Aggregate Annual Turnover	Supplies made to	Nature of Supply	HSN	SAC
1	Above Rs 5 Crores	B2B	Domestic (Inter/Intra)	6 Digits	6 Digits
2	Upto Rs 5 Crores	B2B	Domestic (Inter/Intra)	4 Digits	6 Digits
3	Upto Rs 5 Crores in Previous FY	B2C	Domestic (Inter/Intra)	Not Required	6 Digits
4	Turnover of any value	Exports	Exports	8 Digits	6 Digits

Please note that the term 'annual turnover' has not been defined. Therefore, it may be understood, to be the Turnover in the State as defined in Section 2(112) of the Act, computed for the preceding financial year.

It is also relevant to note that there has been no notification issued in respect of services, separately. However, considering that the term 'HSN' has been used commonly in respect of both goods and services, the aforesaid order can be applied even in respect of services, while quoting the code from the scheme of Classification of Services, as provided in *Notification No. 11/2017-Central Tax (Rate) dt.28.06.2017.*]

(h) description of goods or services;

(i) quantity in case of goods and unit or Unique Quantity Code thereof;

(j) total value of supply of goods or services or both;

(k) taxable value of supply of goods or services or both considering discount or abatement, if any;

(l) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);

(m) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

(n) place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce;



(o) address of delivery where the same is different from the place of supply;

(p) whether the tax is payable on reverse charge basis; and

(q) signature or digital signature of the supplier or his authorized representative:

B. Tax Invoices in cases of special services

Sl. No.	Class of supplier of taxable services	Nature of Document	Optional	Mandatory
1	Insurance, Banking Company, Financial Institution and NBFC	Tax Invoice or any other similar document	a. Serial Number b. Address of recipient of services	All other particulars cited in Clause A supra
2	Goods Transport Agency	Tax Invoice or any other similar document	None	a. All other particulars cited in Clause A supra b. Gross Weight of the consignment c. Consignor or consignee name d. Regn. No of the vehicle e. Details of goods transported f. Destination Details g. GSTIN of person liable to pay tax whether as consignor/ consignee or a GTA

3	Passenger Transport Agency	Tax Invoice or Ticket	a. Serial Number b. Address of recipient of services	All other particulars cited in Clause A supra
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C. In case of export of goods or services, the invoice shall carry an endorsement-Supply meant for export/supply to SEZ unit or SEZ developer for authorised operations, the invoice shall carry an endorsement as follows:

1. Where the supply is effected on payment of IGST: "Supply meant for export/supply to SEZ unit or SEZ developer for authorised operations on payment of integrated tax" or
2. Where the supply is effected without payment of IGST: "Supply meant for export/supply to SEZ unit or SEZ developer for authorised operations under bond or letter of undertaking without payment of integrated tax".

Further, for the details of invoice Rule 46 will apply and, in lieu of the details specified in *clause (e) cited supra*, contain the following details:

- (i) name and address of the recipient;
- (ii) address of delivery; and
- (iii) name of the country of destination.

D. Supplies not exceeding Rs200/-

A registered person is not required to issue a tax invoice in accordance section 31(3)(b) of the CGST Act, 2017 i.e. in respect of supply of goods or services or both where the value therein does not exceed a sum of ` 200/- subject to the following conditions, namely:-

- (a) the recipient is not a registered person; and
- (b) the recipient does not require such invoice,

However, in respect of such supplies, the supplier shall issue a consolidated tax invoice for such supplies at the close of each day in respect of all such supplies.

Therefore, **Banking companies**

- may issue tax invoice or any other document, whether serially



numbered or not and issue an invoice even without containing the address of the recipient of service but contains the other information as provided by Rule 46 of the CGSTRules.

have the option to issue a consolidated tax invoice or any other document in lieu of tax invoice for the supply of services made during a month, at the end of the month, either in physical form or electronically.

NOTE

A registered person supplying exempted goods or service or both or paying tax u/s 10 shall issue Bill of supply. However, registered person may not issue Bill of supply if such supply is less than Rs. 200/-

A registered person shall on receipt of advance payment with respect to any supply shall issue Receipt voucher.

Further, where at the time of receipt of advance,

o the rate of tax is not determinable, the tax shall be paid at the rate of 18%

o the nature of supply is not determinable, the same shall be treated as inter-State supply.

Where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a receipt voucher against such payment;

A registered person who is liable to pay tax u/s 9(3) or (4) shall issue a payment voucher at the time of making payment to the supplier.

Notwithstanding anything contained in Rule 46 or Rule 49 or Rule 54, where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single "**invoice- cum-bill of supply**" may be issued for all such supplies.

Returns

It is pertinent to mention here that for smooth implementation

of GST and remove/elimination of difficulties in above, that Govt. has extended due date of filling return has been extended by Government by issuing Various Notifications

Return Form	Particulars	Frequency	Due Date
GSTR-1	Details of outward supplies of taxable goods and/or services affected	Monthly	11th* of the next month with effect from October 2018 *Previously, the due date was 10th
GSTR-2 Sus- pended	Details of inward supplies of taxable goods and/or services affected claiming the input tax credit.	Monthly	15th of the next month
GSTR-3 Sus- pended	Monthly return on the basis of finalization of details of outward supplies and inward supplies along with the payment of tax.	Monthly	20th of the next month
GSTR-3B	Simple Return in which summary of outward supplies along with Input Tax Credit is declared and payment of tax is affected by taxpayer	Monthly	20th of the next month
CMP-08**	Return for a taxpayer registered under the composition levy	Quarterly	18th of the month succeeding quarter
GSTR-5	Return for a Non-Resident foreign taxable person	Monthly	20th of the next month
GSTR-6	Return for an Input Service Distributor	Monthly	13th of the next month
GSTR-7	Return for authorities deducting tax at source.	Monthly	10th of the next month
GSTR-8	Details of supplies effected through e-commerce operator and the amount of tax collected	Monthly	10th of the next month



GSTR-9	Annual Return for a Normal Taxpayer	Annually	31st December of next financial year*
GSTR-9A	Annual Return a taxpayer registered under the composition levy anytime during the year	Annually	31st December of next financial year*
GSTR-10	Final Return	Once, when GST Registration is cancelled or surrendered	Within three months of the date of cancellation or date of cancellation order, whichever is later.
GSTR-11	Details of inward supplies to be furnished by a person having UIN and claiming a refund	Monthly	28th of the month following the month for which statement is filed

Every registered banking and/or financial institution including non-banking financial company is liable **GSTR1, (deferred GSTR 2, GSTR3) GSTR 3B, GSTR3B GSTR6, GSTR9, GSTR-9C**

(A) Obligation to furnish information return

2. Any person, being a banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934, who is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods or services or both or transactions related to a bank account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property under any law for the time being in force, shall furnish an information return of the same in respect of such periods, within such time, in such form and manner and to such authority or agency as may be prescribed. [Section 150(1)(e) of the CGST Act]



3. Registration

Unlike concept Centralized registration available under erstwhile Service tax, under GST every supplier effecting taxable supplies, subject to a threshold limit and hence no concept of Centralized registration exists. So, a person having multiple business verticals [as defined in Section 2(18)] in one State may obtain separate registrations for each of the business vertical, subject to prescribed conditions.

In terms of section 22 of the CGST Act, every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States [as specified in sub-clause (g) of clause (4) of Article 279A of the Constitution], from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds Rs 20 lakh and in case of special category state where in the registration limit is Rs 10 lakhs.

However, *vide CGST, (Amendment) Act, 2018 effect from w.e.f. 1-02-2019*, second proviso to section 22(1) has been inserted to provide that Government may, at the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ` 10 lakhs to such amount, not exceeding Rs 20 lakhs and subject to such conditions and limitations, as may be so notified. Accordingly, threshold limit remains ` 20 lakhs for the States of Jammu and Kashmir, Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand w.e.f. 1-02-2019 and ` 10 lakhs for the States of Manipur, Mizoram, Nagaland and Tripura.

Therefore, now except 4 State namely, Manipur, Mizoram, Nagaland and Tripura, threshold limit for registration is Rs.20 lakhs for rest all States.

Please note that the proviso to section 22(1) appearing in CGST Act also appears in SGST Act(s). As a result, for a taxable person in a non-Special Category State, who has a branch in Special Category State, the threshold becomes Rs 10 lacs and not Rs 20 lacs.

From above it is important to understand the term aggregate turnover. Where, aggregate turnover means the aggregate



value of all taxable supplies, exempt supplies, export of goods or services or both and inter- State supplies of persons having the same PAN, to be computed on all India basis and excludes CGST/SGST, IGST, UTGST and cess.

Aggregate turnover does not include value of inward supplies on which tax is payable on reverse charge basis.

For calculating the threshold limit, the turnover shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals. Further, supply of goods by a registered job worker, after completion of job work, shall be treated as the supply of goods by the "principal" referred to in section 143 (i.e. Job work procedure) of this Act. The value of such goods shall not be included in the aggregate turnover of the registered jobworker.

Now, it is important to mention that section 23 provides relaxation from the requirement of obtaining registration to two categories of persons

- Agriculturist;
- Persons engaged exclusively in the supply of exempted goods or services or both.

The term exclusive indicates engaging in only those supplies which are exempted. Therefore, if a supplier is supplying both exempted and non- exempted goods and/or services, then this provision is not applicable, and he is required to obtain registration under section 22.

Further, this section also permits any person whose 'entire' supply consists of 'exempt supplies', then such person is excluded from obtaining registration

(a) Notified persons may also be granted an exemption from registration. In this regard, the Government has exempted the following persons from obtaining registration: Persons engaged in rendering taxable services which are liable to GST under reverse charges are not required to take registration - (*Notification No. 5/2017-Central Tax, dated 19.06.2017*)

(b) Job-workers engaged in making inter-State supply of services to a registered person except those who are liable to be registered under section 22(1) of the CGST Act, 2017 or



persons opting for voluntary registration or persons engaged in making supply of services in relation to jewellery, goldsmiths' and silversmiths' wares and other articles (w.e.f. 14.09.2017) - *Notification No. 7/2017-Integrated Tax, dated 14.09.2017* as amended vide *Notification No. 2/2019-Integrated Tax, dated 29-Jan-2019, w.e.f.1-Feb-2019.*

(c) Persons effecting inter-State supplies of taxable services – where the aggregate value of supplies on PAN-India basis does not exceed Rs 20 Lakhs in a year (Rs 10 Lakhs for special category States- Manipur, Mizoram, Nagaland and Tripura) (w.e.f. 13.10.2017) - *Notification No. 10/2017-Integrated Tax, dated 13.10.2017* as amended vide *Notification No. 3/2019-Integrated Tax, dated 29-01-2019, w.e.f. 1-02-2019.*

(d) Categories of persons effecting inter-State taxable supplies of handicraft goods – where the aggregate value of supplies on PAN- India basis does not exceed Rs 20 Lakhs in a year (Rs 10 Lakhs for special category States- Manipur, Mizoram, Nagaland and Tripura) - (w.e.f. 22.10.2018) - *Notification No. 3/2018-Integrated Tax dated 22.10.2018.* This notification has superseded *Notification No.8/ 2017-*

Integrated Tax, dated 14.09.2017

(e) Persons providing services through an e-commerce who is required to collect tax at source, provided their aggregate turnover does not exceed Rs 20 lakh (Rs 10 lakh in special category States- Manipur, Mizoram, Nagaland and Tripura) (w.e.f. 15.11.2017). - *Notification No. 65/2017-Central Tax, dated 15.11.2017* as amended vide *Notification No. 6/2019-Central Tax, dated 29-Jan-2019, w.e.f.1-Feb-2019*

(f) Categories of casual taxable persons making taxable supplies of handicraft goods- where the aggregate value of supplies on PAN-India basis does not exceed Rs 20 Lakhs in a year (Rs 10 Lakhs for special category States-Manipur, Mizoram, Nagaland and Tripura) - (w.e.f. 23.10.2018) – *Notification No. 56/2018-Central Tax, dated 23.10.2018.* This notification has superseded *Notification No. 32/ 2017-Central Tax, dated15.09.2017.*

(g) **W.e.f. 01.04.2019** -the basic limit beyond which obtaining registration becomes mandatory is increased from ` 20 lakhs to Rs.40 lakhs for certain categories of persons *vide notification*



No. 10/2019-Central Tax, dated 07.03.2019. This notification, *inter-alia* provides that any person, who is engaged in **exclusive supply of goods** and whose aggregate turnover in the financial year does not exceed Rs.40 lakhs, except,-

- (a) persons required to take compulsory registration under section 24 of the CGST Act;
- (b) persons engaged in making supplies of the following goods;

Sl. No.	Tariff item, sub heading, heading or Chapter	Description
1	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2	2106 90 20	Pan masala
3	24	All goods, i.e. Tobacco and manufactured tobacco substitutes

persons engaged in making intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand; and

(c) persons exercising option under the provisions of sub-section (3) of section 25 [voluntary registration], or such registered persons who intend to continue with their registration under the said Act.

COMPULSORY REGISTRATION under GST

Section 24 of the CGST Act provides the categories of persons who shall be required to be registered under this Act irrespective of the threshold. Two such Categories of Compulsory registration, the persons who are required to pay tax under reverse charge and input service distributor is relevant to Banking sector.

(a) persons making any inter-State taxable supply; [Please Note *vide Notification 10/ 2017-Integrated Tax, dated 13.10.2017*, persons making inter-States supply of services and having turnover not exceeding Rs 20 lakhs have been exempted u/s. 23 from obtaining registration. Accordingly, only persons who make inter-State supply of goods have to compulsorily obtain registration irrespective of the all-India turnover. However, the



aggregate value of supply of services should not exceed Rs 10 lakhs in respect of special category States except the States of Jammu and Kashmir, Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand.

- (a) casual taxable persons making taxable supply;
- (b) persons who are required to pay tax under reverse charge;
- (c) non-resident taxable persons making taxable supply;
- (d) an electronic commerce operator for whom the provision of section 9(5) of GST Act apply an electronic commerce operator for whom the provision of section 9(5) of GST Act apply.
- (e) persons who are required to deduct tax under section 51;
- (f) person who are required to pay tax under section 95;
- (g) persons who supply goods or services or both on behalf of other taxable persons whether as an agent or otherwise;
- (h) input service distributor;
- (i) persons who supply goods or services or both, other than supplies specified under section 9(5), through such electronic commerce operator who is required to collect tax at source under section 52;
- (j) every electronic commerce operator who is required to collect tax at source under section 52(4);
- (k) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered

Effective date of Registration

Where the application for registration has been submitted within thirty days from the date on which the person becomes liable to registration, the effective date of registration shall be date on which he become liable for registration.

Where an application for registration has been submitted by the applicant after thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of grant of registration.

In case of suo-moto registration, i.e. registration pursuant to any



survey, enquiry, inspection, search or any other proceedings, the effective date of registration shall be the date of order of registration.

Section 25 read with Rule 8 to 26 of the CGST Rules, 2017 related to registration provides a detailed road map on the procedural aspects of the registration. The time limit for application is within 30 days (for persons other than casual taxable person or a non-resident taxable person) and casual taxable person or a non-resident taxable person shall have to obtain the registration at least 5 days prior to the commencement

14 Inserted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01.02.2019

Summary of Rulings in GST Regime applicable to Banking Sector:

Forum Name – Authority for Advance Ruling - Telangana

Citation: TSAAR Order No. 10/2018 dated 26-07-2018

Name of the Applicant: *K L Hi-tech Secure Print Ltd, Hyderabad*

Query in Brief: Classification of supply - Levy of GST - Supply of service - exempted supply or not? - printing of various items - Whether, in the facts and circumstances as explained in Annexure II, supply of service of: (i) Printing of Pre examination items like question papers, OMR sheets (Optical Mark Reading), Answer booklets for conducting of an examination by the educational boards be treated as exempted supply of service by virtue of the notifications cited supra in Annexure I?; (ii) Printing of Post examination items like marks card, grade card, certificates to educational boards (up to higher secondary) after scanning of OMR Sheets and processing of data in relation to conduct of an examination be treated as exempted supply of service by virtue of the notifications cited supra in Annexure I?; (iii) Scanning and processing of results of examinations be treated as exempted supply of service by virtue of the notifications cited supra in Annexure I? - Held that:- Exemption from payment of GST in respect of certain supplies of Services has been provided under Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 as amended by Notification No.02/2018-Central Tax (Rate) dated 25.01.2018 - the services provided to 'educational institutions'

for conducting of examinations are eligible for exemption under entry No.66 of Notification No. 12/2017- Central Tax (Rate) dt. 28.6.2017.

Brief Introduction: What would be the classification and the GST rate, for the supply of services in the nature of printing of cheque books in the below mentioned two situations where the physical inputs of paper belongs to (i) the customer banks; (ii) the applicant? - Held that:- In this case, assessee is undertaking two types of supplies. (i) In respect of paper supplied by the banks, they print the cheque format of respective banks and (ii) physical inputs including paper and ink would be borne by the company and the cheques after printing as per the bank's specifications, would be supplied to them. In both the cases, the unit prints the cheque and then supplies the cheque book to the bank after completion of the printing work - In respect of the situation, where the paper is being supplied by the banks, and the applicants are undertaking job work of printing the cheque and converting them as cheque books, the predominant supply in the instant case is supply of service. As the "services by way of any treatment or process on goods belonging to another person, in relation to- printing of all goods falling under chapter 48 or 49, which attract CGST @ 2.5% or Nil" are covered under sub-item (c) of item (ii) at Serial No.26 of the Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 as amended, and the "cheques, loose or in book form" being an exempted supply in terms of S.No. 118 to the Notification No. 02/2017- Central Tax (Rate) dated 28.06.2017, the supply of service by the applicant attracts GST @ 5% (2.5% CGST + 2.5% SGST).

In respect of supply of cheque books where the printing paper and inks are being borne by the applicants, the impugned goods merit classification under Tariff heading 4907 as goods and they are an exempted supply in terms of Serial No 118 to the Notification No.02/2017-Central Tax (Rate) dated 28.06.2017. Hence, cheques or cheque books would not attract any GST and are an exempted supply in terms of the Notification.

Ruling: The supply of service to 'educational institutions' for conducting of examinations are eligible for exemption under entry No.66 of Notification No. 12/2017- Central Tax (Rate) dt. 28.6.2017.



The supply of 'Printing of cheque books'(where the paper is being supplied by the banks) are classifiable under heading 9988 and attracts GST @ 5% (2.5% CGST + 2.5% SGST).

The supply of cheque books(where the printing paper and inks are being borne by the applicants) are classifiable under heading 4907 of GST Tariff as goods and would not attract any GST as they are exempted supply in terms of Serial No 118 to the Notification No.02/2017-Central Tax (Rate) dated 28.06.2017.

The supply of Aadhaar Cards are classifiable under heading 9989 of GST Tariff and attracts GST @ 12% (6% CGST + 6% SGST) in terms of S.No.27 of Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 as amended.

The printing and supply of Polyvinyl chloride cards (PVC) are classifiable under heading 3920 of GST Tariff and attracts 18% GST (9%CGST + 9%SGST) in terms of S.No.106 of Schedule III of Notification No.1/2017Central Tax (Rate) dated 28th June, 2017.

Forum Name – Authority for Advance Ruling – West Bengal

Citation: WBAAR Order No 20/WBAAR/2018-19 dated 02-11-2018

Name of the Applicant:PREMIER VIGILANCE & SECURITY PVT. LTD.

Levy of GST – Valuation – Toll Taxes reimbursed by its clients – include – reimbursement charges – deduction under Rule 33 from the value of supply, being expenditure incurred as a pure agent – Held that:- The toll is charged for providing the service by way of access to a road or bridge (SAC 9967). The Applicant, being the owner of the vehicles, is the recipient of the service provisioned on payment of toll. The Applicant admittedly is the beneficiary and liable to pay the toll, which is compulsorily levied on the vehicles. The expenses so incurred are, therefore, cost of the service provided to the Banks – Reimbursement of such cost is no disbursement, but merely the recovery of a portion of the value of supply made to the Banks.

The Applicant is, therefore, not acting in the capacity of a 'pure agent' of the Bank while paying toll charges. Such charges are



costs incurred, so that his vehicles can access roads/bridges to provide security services to the recipient – Toll charges paid are not, therefore, to be excluded from the value of supply under Rule 33. GST shall, therefore, be payable at the applicable rate on the entire value of the supply, including toll charges paid.

Ruling: Toll charges paid are not to be excluded from the value of supply under Rule 33. GST shall, therefore, be payable at the applicable rate on the entire value of the supply, including toll charges paid.

The Applicant is not acting as a 'pure agent' of the Bank while paying toll charges, which are the cost of the service provided to the Banks so that his vehicles can access roads/bridges to provide security services to the recipient.

Forum Name – Authority for Advance Ruling – Maharashtra

Citation: MHAAR - GST-ARA-22/2018-19/B-85 dated 06-08-2018

Name of the Applicant: Bajaj Finance Limited, Mumbai

Levy of GST - Penal interest - Taxable supply or not - activity of collecting penal interest by the Applicant - default in repayment of EMI - tolerate an act or a situation of default - penal interest for the purpose of exemption under Sr. No. 27 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017, Sr. No. 27 of Maharashtra State Notification No. 12/2017-State Tax (Rate) dated 29.06.2017, and Sr. No. 28 of Notification No. 9/2017 Integrated Tax (Rate) dated 28.06.2017.

Held: The Applicant, a non-banking financial company are providing various types of loan such as auto loans, loan against the property, personal loans, consumer durable goods loans, etc, to their customers and charge interest on such loans disbursed, for which they enter into agreements with borrower/customers. The agreements provide for repayment of the loan in the form of Equated Monthly Installments (EMI) vide cheque/ Electronic Clearing System (ECS), etc. - The EMI paid by the customers is a fixed amount payable at a specified date, which includes both interest and the principal amount. In cases of delay in repayment of such EMI by the customers, the Applicant collects penal/default interest (penal interest), in terms of the agreements executed



by the customers. The same is calculated at a percentage not exceeding a fixed percentage, on the overdue loan amounts of the customer. The percentage of penal interest varies from customer to customer.

The amounts collected by the applicant from their customers are nothing but amounts towards Penalty / Penal Charges and can in no way be construed as additional interest. Such penalty/ penal charges are collected by them from their customers for the reason that the said customers have delayed the payment of EMI and the applicant has tolerated the said act of their customers of delaying payment of such EMI.

The applicant has agreed to do an act (the act of tolerating, of delayed payment of EMIs by their customers) and such act, by the applicant, squarely falls under clause 5(e) of the Schedule II mentioned above and therefore the amounts received by the applicant for having agreed to do such an act, would attract tax liability under GST laws - The receipt of penal charges on delayed payment of EMIS would be receipt of amounts for tolerating the act of their customers for having delayed/defaulted on their EMI payments within due dates In view thereof, the same would definitely be a 'supply' under the GST Act and therefore, there arises an occasion to levy tax under the GST Act on the impugned transactions.

There is a clear understanding or agreement between the parties to foresee and tolerate an act or a situation of default on the part of loanees for a monetary consideration which is actually a consideration received by the applicant, though in the agreement they may be giving this consideration, other names such as 'penal interest', penal charges, penalty, etc. as thought proper by them, but these different nomenclatures in their Agreement would in no way change the actual nature of monetary "consideration" which would clearly be taxable for the supply of services as per Sr.No. 5(e) of Schedule II of the CGST Act, 2018.

The exemption for financial transactions under GST laws is only in respect of the interest/discount earned or paid for loans, deposits or advances. If the transaction, as in the subject case deviates from the above the same fails the test of being a "loan", "deposit" or "advance", or the consideration is not an interest or discount, the exemption is not admissible - In the subject case

the amount of penal charges cannot be said to form a part of interest on "loan", "deposit or "advance". It is recovered/imposed only because the loanee has delayed the payment of EMI (which consists of the principal amount and interest amount). This recovery of penal charges is made in view of toleration of the act of the loanee by the applicant and therefore construes as 'supply' as per as per Sr. No. 5(e) of Schedule II of the CGST Act and is therefore taxable under the GST Act.

Ruling: The Penal Interest will not be treated as interest for the purpose of exemption under Sr. No. 27 of Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017, Sr, No. 27 of Maharashtra State Notification No. 12/2017-State Tax (Rate) dated 29.06.2017, and sr. No. 28 of Notification No. 9/2017 Integrated Tax (Rate) dated 28.06.2017.

The activity of collecting penal interest by the Applicant would amount to a taxable supply under the GST regime - The said activity squarely falls under clause 5(e) of the Schedule II of the GST Act, 2018 and therefore such amounts received, would attract tax liability under GST laws.

Forum Name – Authority for Advance Ruling – Maharashtra

Citation: MHAAR - GST- ARA-08/2017/B-11 dated 19-03-2018

Name of the Applicant: CMS Info Systems Limited, Mumbai

Update on the issue – The Bombay High Court has reversed the decision of Appellate Authority for Advance Ruling Mumbai in aforesaid case and allowed ITC on purchase of Motor vehicles for carry of cash for banks and financial institutions. The same was appealed vide **Writ Petition No. 5801 of 2019** and order was issued on 09/07/2019

Appeal to Appellate Authority for Advance Ruling - Maharashtra– The below order was appealed by CMS Info Systems Ltd in Appellate Authority for Advance Ruling Mumbai and it was held that Input Tax Credit is not available to CMS Info Systems Limited on purchase of motor vehicles i.e. cash carry vans, which are purchased and used for cash management business and supplied post usage as scrap.

(Citation – MAH/AAAR/SS-RJ/04/2018-19 dated 06-08-



2018)

Scope of Supply - supply of such motor vehicles as scrap after its usage - Whether supply of such motor vehicles as scrap after its usage can be treated as 'supply' in the course or furtherance of business and whether such transaction would attract GST? - rate of GST and/or Compensation Cess.

Held: The disposal of the scrap vehicles for consideration is a sale and section 7 explaining the expression 'supply' covers supply of goods such as sale or disposal made for a consideration. Section 7, further, says that the supply has to be in the course or furtherance of business - The disposal of the cash carrying vans is a transaction in connection with or incidental or ancillary to the business of having a cash management network. As and when the vehicles become scrap, they have to be disposed off and the proceeds therefrom to be identified as income for the business which is reflected in the Profit & Loss Account of the business. Buying new assets and discarding the old and unusable assets is an activity in the course of carrying on of the business.

There is a supply of cash vans, which are goods', for a consideration and the transaction is in the natural course of business. The transaction and the provisions are obvious - supply of such motor vehicles as scrap after its usage is an activity of 'supply' in the course or furtherance of business and such transaction would attract GST.

Rate of GST and Compensation Cess – Held: whether the vehicles are sold as scrap and unusable OR sold as old vehicles is not found confirmed from any document. It is generally seen that there is surrender of the RTO Registration Book when the vehicles are disposed off as scrap. Hence, it needs to be ascertained as to whether the vehicles are sold as scrap. For vehicles sold as scrap which does not amount to sale of a vehicle as such, the rate of the material sold as scrap would apply - In absence of the requisite details, the applicant are directed to go through the N/N. 1/2017-CentraI/State Tax (Rate) and N/N. 1/2017-Compensation Cess (Rate), as amended from time to time.

Ruling: The question is answered in the affirmative. As regards rate of GST and/or Compensation Cess, the details being inadequate,

the applicant may refer to the Notification No. 1/2017-CentraI/ State Tax (Rate) and Notification No. 1/2017Compensation Cess (Rate), as amended from time to time.

Input tax credit - whether Input tax Credit is available to CMS Info Systems Ltd. on purchase of motor vehicles i.e. cash carry vans which are purchased, used for cash management business and supplied post usage as scrap? - Difference of opinion - Held that: - As the Members of the Advance Ruling Authority differ in respect of this question as raised by the applicant, appropriate reference is made to the Appellate Authority for Advance Ruling for hearing and decision on this question - matter referred to Appellate Authority for Advance Ruling.

GST Impact on Insurance Sector

I. Introduction:

The insurance sector witnessed significant growth due to increased joining of private insurers, product innovation, and introduction of multiple distribution channels. This was further buoyant by the increase in the foreign direct investment (FDI) limit, from 26% to 49%. Since then, insurance companies, along with the Insurance Regulatory and Development Authority of India (IRDAI), have been making continuous efforts in developing the insurance sector in India. As a result, there is a significant increase in the number of private players operating in the market today, with a lot of product innovation catering to specific consumer needs. In spite of all the progress in the sector, India is still a massively under-penetrated market. India is world's second most populous nation, and yet it accounts for less than 1.5% of the world's total insurance premiums and about 2% of the world's life insurance premiums. Given the scenario, it is to be seen that how will the goods and services tax (GST) impact the growth momentum of this industry? Of the four GST slabs—5%, 12%, 18%, 28%—insurance is under the 18% slab, as against the previous service tax of 15%. The increase in indirect taxation is opposite to the positive measures that have been taken over the last few years to develop this sector. Governments across the world, even in the more mature markets, are known to create conditions favourable for insurance protection. In many countries, life insurance is outside the purview of GST. In the Asia-Pacific, where some



countries account for the world's highest insurance penetration, GST and value-added tax (VAT) are not levied on insurance products. Exceptions would be in China, where policies of less than one year attract a 6% tax and Taiwan and the Philippines, where tax of 2-5% is charged outside GST framework. GST is a tax on value addition and net premium after deduction of claim is the net value addition. It is very difficult to demarcate the "savings" component and find a "value" that could be considered as the proper base for tax, particularly for every premium transaction during the life-cycle of an insurance policy.

GST is going to impact the insurance sector through the premium adversely and the latest GST is expected to freeze at 18 percent under the GST update. This is a bad news for all the policyholders, as this hike will impact adversely on the insurance sector, typically in terms of insurance premiums. Life insurance reach in India has reduced from 4.6 percent in the year 2009 to 2.6 percent in the year 2016. It reflects a no growth at all in the last a few years. The hike in the GST from 15 percent to 18 percent would increase the premium of purchasing a new as well as renewing an existing insurance policy.

II. The Relationship between the GST Rule and Insurance Business

The insurance policies' premium represents two components - savings and risk coverage. The service tax is levied specified only on the premium component.

According to the GST rules, the value of service on which the GST is levied regarding the life insurance sector shall be accordingly.

- The gross premium would be reduced by the amount allocated for or savings or investment on policyholders' behalf.
- When it comes to the single premium annual policies, ten percent of the single premium would be charged from the policyholder.
- In other cases, 25 percent of the premium for the first year and 12.5 percent of the premium in the upcoming years will be charged. For example, if an endowment plan's premium is Rs. 100, then the 18 percent GST would be levied on the 25 percent of premium (which would be Rs. 25) the GST would

be Rs. 4.50.

- In case the total premium paid by the policyholder is towards the life insurance's risk cover, only the 18 percent GST would be levied on the total premium.

Because of the increased GST percentage that awaits the implementation. The overall impact of the GST would be the increased expenditure (premium and the increased GST), when it comes to term insurance and endowment plans.

The policyholders stand a chance to be benefited if the insurance providers get a green signal on the input tax credit benefit. Unfortunately, as of yet, it is still unclear since the Centre/State GST structure is very complex. It might create confusions and conformity for the insurance buyers and increase the administrative expenses for the insurance providers. If the insurance buyers remain confused about the GST update, then irrespective of the increase or decrease in the prices, the solvency of the market along with the financial strength will be adversely affected.

The general insurance sector will be equally impacted. The overall outgo for health, car, and various non-life plans would be increased by 3 percent.

Post GST implementation, the existing and new insurance buyers would have to bear the updated prices. For example, the current insurance premium of a term plan is Rs. 10,000, (without the 15 percent service tax) the updated GST will increase the premium comprising taxes by Rs. 300. It means from Rs. 11,500, it will be changed to Rs. 11,800.

When you compare insurance premiums, especially for the term plans ensure that you look out for the premiums including or excluding GST by the various insurance Providers. There should be no changes in the selection process, as the GST impact is the same for all the insurance providers. Follow a proper selection process in order to get the right insurance plan that offers you maximum coverage and fulfills your insurance expectations.

III. The Premium Deciding Factor:

Basically, the premium deciding factor of an insurance plan is subject to the insurance plan type you want to purchase. Based



on that, we have two major categories of insurance policies.

1. Life Insurance
2. General Insurance

Life Insurance - Introduction

A Contract between and individual and an insurer, a life insurance policy provides an assured sum of money to a designated nominee upon the death of the policyholder, which is in exchange for a premium. Life insurance policies are subdivided into four categories, i.e. Term plans, Pension plans, ULIPs, and Endowment plans. The service tax levied on these different insurance instruments is also different. A Term plan offers death benefit and is defined as a risk-free plan. The nominee gets the sum assured if the insured person dies during the policy term. The policyholder doesn't get any maturity benefit in a basic term plan. There are some term plans that offer the return of premium (TROP) benefit. The premium element of a term plan mainly includes the risk component in order to provide an insured person with a risk cover as long as the policy is active. ULIPs and endowment plans provide coverage benefit and death maturity whatever instance occurs first. These plans compute investment and risk in the premium element and it makes these plans expensive in the comparison with a term plan.

The Impact of GST on Life Insurance-Premium

A policyholder pays service tax only on the risk factor of the premium element, whereas the investment component of the insurance plans usually isn't included in the service tax umbrella. After the GST is implemented, insurance plans, including life, motor, and health would become more expensive, as taxes would be hiked.

a. Term Plans

Earlier, 15 percent service tax was levied on the premium of term plans. After the updated is implemented, the tax would be hiked by 3 percent and it will be 18 percent. The individuals buying insurance plans for the first time or renewing their existing insurance policies would have to pay 18 percent GST. It means that that for the payment of every 100 rupees (towards the premium), a service tax of Rs. 15 was levied, which now it is going to be Rs. 18 as per the updated tax plan. To be precise,

the premium will be increased by 3 percent.

b. Endowment Plans

Endowment plans are considered as one of the traditional insurance saving plans. Previously, these plans used to attract a service tax of 3.75 percent on the insurance premium while buying an insurance plan. Now, it would be increased to 4.5 percent as per the updated tax regime. Now, the policyholders are supposed to pay 1.88 percent service tax on the premium payment of their endowment plan(s) if they are renewing it for the second time

General Insurance

A General Insurance policy also refers to a contract between and insurer and an individual, which provides an assured sum of money as compensation for loss caused by a natural or manmade scenario. The policy could be issued for healthcare, home, travel, automobile etc. Health Plans As of now, the health insurance policies (standalone as well as a family health plan) charge 15 percent as the service tax on the premium. After the updated GST is implemented, the medical insurance plans would be costlier such as mediclaim policy for senior citizens. It would attract an increase of 3 percent in its tax regime, making it 18 percent that will be charged on the premium from 1st July 2017.

a. Travel Insurance

Those who are looking forward to traveling abroad anytime soon will also have to pay an additional tax of 3% as the new GST will be in effect from July 1. The customer will now have to pay 18% GST instead of 15% service tax earlier in effect. So, if you don't want to pay more money than buy or renew travel insurance before 1st July 2017.

b. Automobile Insurance

Automobile insurance premium includes 15 percent as the service tax. It will be hiked to 18 percent when the tax rate is frozen up to this particular percentage. If you are lover of your car & two wheeler then it's best time to renew your policy with insurance companies so that you can save your money & plan to travel somewhere with your family.



IV. GST Rates: Before and After and New Insurance Rates after GST

(Service tax showed in terms of Percentage)

Type of Policy	GST Rate of Tax	Service Tax Rates	Applicability
Term Insurance Premium	18	15	On entire premium amount
Unit Linked Insurance Premium	18	15	On premium amount minus investment amount
Health Insurance Premium	18	15	On entire premium amount
Add-on Riders Premium	18	15	On entire premium amount
Periodicity - Single Premium	18	15	On 10 percent of the total premium.
Endowment Plan Premium (First Year)	18	15	On 3.75 percent of the total premium
Endowment Plan Premium (Renewal)	18	15	On 1.875 percent of the total premium
Vehicle Insurance	18	15	On entire premium amount

V. Value of supply for Insurance Business:

• The value of supply of services in relation to life insurance business shall be:

a) The gross premium minus the amount allocated for investment, or savings on behalf of the policyholder, if such amount is informed to the policyholder.

(Amounts in INR)

Particulars	Under Service Tax	Under GST
Gross Premium	1000	1000
Investment Portion	600	600
Life Insurance portion	400	400
Service tax @ 15% on 400	60	—
GST @18% on 400	—	72

• GST Impact on multiple premium Annuity Plans:

GST shall be @ 25% for 1st year and 12.5% for 2nd year onwards on the premium charged.

Gross Premium p.a. Rs 1000

1st Year

25% of value 250

GST @18% on 250 62.50

2nd year

12.5% of value 125

GST @18% on 125 22.50

VI. Place of supply for Insurance Services:

As per Sec 12(13) of the IGST ACT 2017 -

Place of supply for Insurance services, if provided to -

- a. a registered person – then location of the recipient i.e. location of such person
- b. a person other than a registered person - then location of the recipient of service on the records of the supplier of services.

VII. General Insurance Policies Exempted under GST -

Services of general insurance business provided under following schemes is exempted under GST -

1. JanashreeBima Yojana
2. AamAadmiBima Yojana
3. Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of two lakh rupees
4. Varishtha Pension BimaYojana
5. Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY)
6. Pradhan Mantri Jan Dhan Yojana (PMJDY)
7. Pradhan Mantri VayaVandan Yojana (PMVVY)



8. Hut Insurance Scheme

9. Cattle Insurance under Swarnajaynti Gram SwarozgarYojna (earlier known as Integrated Rural Development Programme)

10. Scheme for Insurance of Tribals

11. Janata Personal Accident Policy and Gramin Accident Policy

12. Group Personal Accident Policy for Self-Employed Women

13. Agricultural Pumpset and Failed Well Insurance

14. premia collected on export credit insurance

15. Restructured Weather Based Crop Insurance Scheme (RWCIS), approved by the Government of India and implemented by the Ministry of Agriculture

16. Jan Arogya Bima Policy

17. Pradhan Mantri FasalBima Yojana (PMFBY)

18. Pilot Scheme on Seed Crop Insurance

19. Central Sector Scheme on Cattle Insurance

20. Universal Health Insurance Scheme

21. RashtriyaSwasthyaBima Yojana

22. Coconut Palm Insurance Scheme

23. Pradhan Mantri Suraksha Bima Yojana

24. Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999).

25. Bangla ShasyaBima (BSB) crop insurance scheme of West Bengal Government.

26. Life insurance business provided or agreed to be provided by the Central Armed Paramilitary Forces (under Ministry of Home Affairs) Group Insurance Funds to their members

FAQ issued by CBIC Banking, Insurance and Stock Brokers Sector
Banking Sector

Question		Answer
1	Whether Banks are required to capture the details of ATMs in registration certificate as a 'place of business'?	No. Banks are not required to provide the details of ATMs while applying for registration. For the purposes of registration, ATM on its own does not constitute a place of business, as defined in the CGST Act, 2017.
2	As per RBI guidelines, Banks can use third party ATMs, Business Correspondents (BC), Customer Service Points (CSP) or third party warehouses. Are Banks required to include these third party places also in their GST registration?	No. Third party places are neither places of business nor fixed establishments from where Banks ordinarily carry on their business. These are independent service providers to the Bank which are subject to GST. Thus, these places are not required to be declared as place of business by the Bank.
3	What will be the time of supply in respect of services rendered upto 30th June, 2017 where the invoices are raised or payments are received after 30th June, 2017?	<p>Where the services are rendered upto 30th June, 2017 and invoices in respect thereof are also raised on or before 30th June, 2017, the point of taxation would be as per the earlier service tax law and the services will be subject to service tax.</p> <p>Where the services are rendered upto 30th June, 2017 and the services are liable to be taxed under the reverse charge mechanism, the point of tax for such services as per the Point of Taxation Rules, 2011 shall be the date of payment. If the payment is made on or after 1st July, 2017, the supply of services shall be liable to GST.</p>



4	Which tax is to be applied by the service provider on invoice issued on or after 1st July 2017 for services rendered up to 30th June 2017?	The time of supply being issuance of invoice under the CGST Act, 2017, the supplier of services must charge GST in this case. However, where the payment for such supplies has been made (prior to issuance of invoice) as advance before the 1st of July, 2017, the tax would be payable under the law prevalent prior to 1st July, 2017, as the point of taxation had arisen before this date to the extent of advance.
5	Is it necessary for Banks / insurers to report the details of exempt and non-GST supplies in Table 8 of GSTR-1?	Yes. In the absence of any specific exemption to the Banks / insurers, the information is required to be provided in the said table.
6	Is it necessary for Banks / insurers to report the details of invoices in Table 13 of GSTR-1?	Rule 54(2) of the CGST Rules, 2017 provides that in case of an insurer or a banking company or a financial institution, including a non-banking financial company, the tax invoice or any other document in lieu thereof, may not be serially numbered. But this does not mean that such document will not have any identification number which is required for the purpose of matching. The said entities are, therefore, required to provide the details in column 5 to 7 (but not in column 3 & 4) of the table 13 of FORM GSTR-1.



7	It is envisaged that many customers may not provide the GSTIN to the Banks in time. In such cases the Banks / insurers would report the supply as B-to-C transactions in the returns filed by it. Later, in case the customer reverts with the GSTIN, how should this amendment be reflected?	A transaction once reported as B2C cannot be amended later to add GSTIN and convert the transaction as B2B.
8	How should the turnover during the period from July 2017 to March 2018 be determined for the purposes of distribution of ISD credit?	As per the Explanation to Section 20 of the CGST Act, 2017, the relevant period on the basis of which the ratio of aggregate turnover for distribution of ISD credit will be determined has been defined to mean the last quarter, preceding the period for which credit is to be distributed, during which turnover for all recipients is available in cases where the turnover in States/Union Territories for the previous financial year is not available. Therefore, in such cases, for the quarters after July 2017 to September 2017, the State/UT-wise turnover for the purposes of ISD can be determined based on the turnovers for the quarter of July 2017 to September 2017. For the months of July, August and September, 2017, the turnover for the month of July, 2017 may be considered for the purposes of distribution of credit.



9	<p>Is the condition to make payment for the value of supply plus the GST thereon required to be complied with by the recipient to claim the input tax credit where supplies for services are made between distinct persons?</p>	<p>No, this condition is not required to be complied with by the recipient. As per the proviso to sub rule (1) of Rule 37 of the CGST Rules, 2017 the value of supplies made without consideration as specified in paragraph 2 of Schedule I of the CGST Act, 2017 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of Section 16 of the CGST Act, 2017.</p>
10	<p>A customer may avail numerous services from the Bank / insurer in a given taxable period. Is it mandatory for Banks to issue a tax invoice for each transaction or can the Bank issue a consolidated invoice for the service rendered during the tax period?</p>	<p>As per the provisions contained in the first proviso to Rule 47 of the CGST Rules, 2017 an insurer, a banking company or a financial institution, including a NBFC may issue invoices within 45 days from the date of supply of service. Further, sub-rule (2) of rule 54 of CGST Rules, 2017 provides that such entities may issue any other document in lieu of the tax invoice. Accordingly, such entities may issue a consolidated statement/ invoice/ advice to the customer at the end of the month, with the details of all the charges levied during such month and GST payable thereon.</p>



11	When a banking company is not required to serially number its invoices / document for supply of its services, how will the service recipient get credit for GST on the services provided by the bank?	Under Rule 54(2) of the CGST Rules, 2017 a banking company or a financial institution including a NBFC or an insurer can issue an invoice or any other document in lieu thereof whether or not serially numbered and whether or not containing the address of the recipient but containing other information as mentioned under Rule 46. There is no restriction on the invoice/document being a consolidated invoice/document but it must bear an identification number, which need not necessarily be serially numbered. The recipient of service will get the credit for GST so long as the bank, etc. uploads the details of the invoice / document under that number with GSTIN of the recipient in its statement if FORM GSTR-1.
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12	<p>Is the registered person procuring goods or services from a supplier outside India required to raise a self-invoice, debit note or credit note in respect of the price or value of services and adjustments thereto? When should the details of such transactions be reported in the GSTR returns?</p>	<p>As per clause (f) of sub-section (3) of Section 31 of the CGST Act, 2017 read with section 20 of the IGST Act, 2017 a registered person liable to pay tax under subsection (3) or sub-section (4) of Section 9 of the CGST Act, 2017 (or sub-section (3) or (4) of section 5 of the IGST Act, 2017) shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both. Therefore, in case of goods or services, the registered person procuring goods or services from an unregistered person located in India or services from a person located outside India is required to raise a self-invoice on the date of receipt of such supplies. Banks / insurers may raise a self-invoice, debit note or credit note for each such supply. This invoice, debit note or credit note for each such supply should be reported in the GST return of the month in which the supply takes place as per the provisions of section 12(3) or 13(3) of the CGST Act, 2017. As the import of goods would be under the cover of a bill of entry, there is no need to raise a self-invoice.</p> <p>It may, however, be noted that section 9(4) of the CGST Act, 2017 / section 5(4) of the IGST Act, 2017 has been suspended vide notification No. 38/2017-Central Tax, as amended from time to time.</p>
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13	For supply of taxable services, can a digitally signed invoice be issued in duplicate, with the original being marked as "Original" and the duplicate copy being marked as "Duplicate"?	In the context of digitally signed documents, the requirement of issuing original and duplicate invoices does not arise. A digitally signed invoice can be retained by the supplier and also be made available to the recipient.
14	Is there a requirement to issue a 'payment voucher' at the time of making payment to the foreign supplier? When should the details of such transactions be reported in the GSTR returns?	Section 31(3)(g) of the CGST Act, 2017 mandates issuance of a payment voucher in such cases and the same is therefore required to be issued at the time of making payment to the foreign supplier of services. It would be reflected in the GSTR return of the tax period in which the supply takes place as per the provisions of section 13(3) of the CGST Act, 2017
15	Banks deploy various equipment such as Point of Sale machines or ATMs at various locations. At times, the equipment is required to be moved between locations for the purpose of repairs, encryption, etc. Will such movement constitute a supply for the purpose of the GST law?	Procedure prescribed under Section 143 of the CGST Act, 2017 and Rule 55 of the CGST Rules, 2017 may be followed in such cases. Movement of equipment for the purpose of repairs, etc. does not constitute a supply. The equipment may be moved by the Banks to the location of the third party service providers and after repairs, the equipment may be moved to a central / regional location for the purpose of programming, encryption, reconfiguration, etc. and thereafter to that place of business from where the equipment had been sent earlier. The equipment can be moved between such locations on the basis of a 'delivery challan'.



16	<p>Is a “Bill of Supply” to be issued by a bank for exempt services like interest on loans and advances, inter-se sale or purchase of foreign currency amongst banks?</p>	<p>As per clause (c) of sub-section (3) of section 31 of the CGST Act, 2017 read with Rule 49 of the CGST Rules, 2017, there is a requirement for issuance of bill of supply for supply of exempt services by Banks. It may be noted, however, that there is no need to issue a separate bill of supply in case any invoice or document has already been issued in accordance with the provisions of any other law. Further, in view of the provisions contained in sub-rule (5) of rule 54 of the CGST Rules, 2017, banks may issue any other document in lieu of bill of supply.</p>
17	<p>Would Input Tax Credit (ITC) be available to a GST registrant though the services procured from third party vendor are also directly used by various ‘distinct persons’? In such cases, is distribution of ITC required to be done mandatorily through Input Service Distributor mechanism?</p>	<p>Yes. Input Tax Credit (ITC) can be availed by a GST registrant in respect of the services procured in a consolidated manner from third party vendor which are directly used in the course or furtherance of business in more than one State, e.g. statutory audit fees, advertisement and marketing expenses, consultancy fees etc. The same needs to be appropriately invoiced or distributed through the ISD mechanism to the “distinct persons” who have actually used such services.</p>

18	Where a Bank takes a separate registration for a separate business vertical, say for Bullion business, whether the requirement for reversal of 50 percent will also apply to bullion purchased by the Bank?	In terms of Section 2(94) read with Section 25(4)&(5) of the CGST Act, 2017, a person required to obtain more than one registration within a State or more than one State shall be treated as a distinct person for each such registration. Section 17(4) of the CGST Act, 2017 is applicable qua each registration and not for the Bank as a whole, provided each of the business verticals is separately registered. Therefore, a bank engaged in trading in bullion may not opt for 50 percent reversal in respect of its purchases of bullion, where it is separately registered as a business vertical.
19	Where there is a supply of goods or services between registered branches of a banking company on which GST is paid, will the recipient branch/ office be eligible for 100% credit of the GST charged on such supply where the bank elects the 50% option to avail input tax credit on inputs, capital goods and input services?	Yes, the recipient branch / office will be eligible for 100% credit. The second proviso to section 17(4) of the CGST Act, 2017, expressly provides that the restriction of 50% shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.



20	Whether for the services received from a related person / distinct person outside India, the recipient of services would be eligible for full input tax credit?	In terms of the second proviso to section 17(4) of the CGST Act, 2017, the restriction of reversal of 50% credit would not apply to the tax paid on supplies made by one registered person to another registered person having the same PAN. The non-applicability of 50% reversal is only to the extent of inter-branch services between registered branches having the same PAN in India. Thus, tax paid on services received from a related person / distinct person located outside India would be liable to 50% reversal.
21	Whether the provision of section 18(6) for reversal of input tax credit availed on capital goods be applicable to banks only to the extent of the input tax credit availed?	Yes. The provisions of section 18(6) of the CGST Act, 2017 for reversal of input tax credit availed on capital goods would be applicable to banks only to the extent of the input tax credit availed by it. In case the Bank opts to avail input tax credit to the extent of 50% in terms of the second proviso to Section 17(4) of the CGST Act, 2017, reversal of credit would be in proportion to the actual credit availed by the Bank i.e. only with reference to 50% of the input tax credit availed by it on capital goods.
22	Can a Bank / insurer defer the availment of input tax credit for a month or quarter and avail of the same in subsequent months?	Yes. As per section 16(4) of the CGST Act, 2017, availment of input tax credit can be deferred and availed upto the due date of furnishing of return for the month of September following the end of financial year to which relevant invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

23	Which address should be considered for determining the 'place of supply' in the case of banking / insurance services?	<p>As per Section 12(12) of the IGST Act, 2017, the place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services. Address available on the records of the Bank or Financial Institution or stock broker, which is ordinarily used for communication with the customer, may be considered as the 'Place of Supply'.</p> <p>As per Section 12(13) of the IGST Act, 2017 the place of supply of insurance services shall be the location of registered person if services are provided to a registered person and the location of the recipient of services on the records of the supplier of services if services are provided to an unregistered person. Address available on records of the insurance company, which is ordinarily used for communication with the customer, may be considered as the 'Place of Supply'.</p>
24	With respect to registered customers, whether the Bank / insurance company is required to ascertain the place of consumption of service or whether the Bank can rely upon the GSTIN provided by the Customer?	<p>The Bank / insurance company can rely upon the GSTIN provided by the customer.</p>



25	Would intermediary services provided to an offshore client and services provided by a banking company to its offshore account holders be treated as an intra-State supply or an inter-State supply for payment of GST?	Under clause (b) of section 13(8) of the IGST Act, 2017 the place of supply of such services is the location of the provider of services. As the location of supplier and place of supply are in same State, such supplies will be treated as intra-State supply and Central tax and State tax or Union territory tax, as the case may be, will be payable.
26	Who is the 'supplier' of service of purchase or sale of foreign currency?	The 'supplier' of service of purchase or sale of foreign currency is the Authorised Dealer or authorized moneychangers who are getting the commission. For example, in case of a purchase or sale of foreign currency between a Bank and a Corporate, the bank is the 'supplier' of the service.
27	Would services provided by banks to RBI be also taxable?	Yes. Services provided by banks to RBI would be taxable as these are not covered by any of the exemptions or excluded from the purview of GST under the CGST Act, 2017 or under the IGST Act, 2017.



28	Whether a Bank / insurer is required to charge GST on the taxable services provided to United Nations or a specified international organization or, services provided for official use of a foreign diplomatic mission or consular post in India or for personal use or for the use of the family members of diplomatic agents or career consular officers posted therein?	Yes, the bank / insurer is required to charge GST in such cases. However, as per section 55 of the CGST Act, 2017, subject to such conditions and restrictions as may be prescribed, such service recipients would be entitled to claim a refund of taxes paid on the notified supplies of services received by them.
29	Who is liable to comply with GST on charges levied by Overseas Correspondent Banks facilitating trade and other cross border transactions?	In this case, there are two supplies namely, from bank in India to the importer/exporter and one from the overseas correspondent banks to the bank in India. So the liability to discharge GST on such supplies will be required to be determined accordingly.



30	<p>Will the second proviso to Rule 28 apply in the case of a banking company that selects the 50% option to avail input tax credit set out in section 17(4) of the CGST Act, 2017?</p>	<p>The second proviso to Rule 28 of the CGST Rules, 2017 states that where the recipient is eligible for full input tax credit, the value as declared in the Invoice shall be deemed to be the Open Market Value of the goods or services. In view of the second proviso to section 17(4) of CGST Act, 2017, Banks claiming input tax credit under the 50% option will be covered under the scope of the second proviso to Rule 28 relating to valuation, where services are provided between the branches of the bank.</p>
31	<p>Are services supplied without consideration to a recipient other than 'related party' / 'distinct person' taxable?</p>	<p>Section 7 of the CGST Act, 2017 read with Schedule I thereto provides that services supplied without consideration to related persons or distinct persons only would qualify as 'supply'. Also import of services by bank from a related person or from any of its establishments outside India in the course or furtherance of business will be supply even if imported without consideration. Therefore, where the services are supplied by a supplier without consideration to an unrelated recipient or a person other than a related or distinct person, the same would not amount to supply and not liable to GST.</p>

32	Can value of services be enhanced by invoking the CGST Rules in case of services provided by banks at a concessional / differential rate to a recipient other than 'related party' / 'distinct person'?	<p>Banks provide various services to customers for a charge. However, at times, account holders / customers are provided services free or at a concessional / differential rate. The free or concessional / differential rate is offered considering factors such as credit rating and stability of the customer, size of relationship, expected future business or the opportunity presented in the market elsewhere etc. As a result, the charges for the same service may differ from customer to customer.</p> <p>Such services provided to persons who are not related persons will be taxable on the transaction value, that is, the value of the services charged or recovered from the customers or account holders as per section 15 of the CGST Act, 2017. Thus, in case of services provided at a concessional / differential rate to a recipient other than 'related party' / 'distinct person', there is no requirement for enhancing the value of services by invoking the CGST Rules, 2017.</p>
33	In the case of Banks which are not availing the reversal of ITC at 50%, how should inter-branch services be valued where open market value of services of like kind and quality is not available?	<p>In such cases, banks can adopt any reasonable basis consistent with Rule 30 and 31 of the CGST Rules, 2017.</p>



34	<p>Whether 'derivative' is included within the meaning of 'securities' in Section 2(101) of CGST Act, 2017 and whether derivatives are liable to GST?</p>	<p>Section 2(101) of the CGST Act, 2017 provides that 'securities' shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (SCRA). 'Derivatives' are included in the definition of 'securities' under section 2(h)(ia) of the SCRA. In terms of section 2(ac) of SCRA, "derivative" includes— (A) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security; (B) a contract which derives its value from the prices, or index of prices, of underlying securities. The definition of 'derivatives' in SCRA is an inclusive definition. As 'derivatives' fall in the definition of securities, they are not liable to GST. However, if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be a consideration for provision of service and chargeable to GST.</p>
35	<p>What is the nature of income / expenditure on Collateralized Borrowing and Lending Obligations (CBLO) transactions?</p>	<p>In CBLO transaction, the borrowing bank pays an amount as consideration to the lending bank for funds provided by it for a short term. Such amount would qualify as 'consideration represented by way of interest or discount' and hence, would not be subject to GST [serial no. 27 of the table of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017, as amended]. However, if any charges or fees are levied for such transactions, the same would be a consideration and would be chargeable to GST.</p>

36	Would 'future contracts' be chargeable to GST?	<p>Future contracts are in the nature of financial derivatives, the price of which is dependent on the value of underlying stocks or index of stocks or certain approved currencies and the settlement happens normally by way of net settlement with no actual delivery.</p> <p>Since future contracts are in the nature of derivatives these qualify as 'securities' as defined in Section 2(101) of the CGST Act, 2017. As securities are neither 'goods' nor 'services' as defined in the CGST Act, 2017, future contracts are not chargeable to GST. But where the future contracts have a delivery option and the settlement of contract takes place by way of actual delivery of underlying commodity/currency, then such forward contracts would be treated as normal supply of goods and liable to GST.</p> <p>Further, if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be a consideration for supply of service and chargeable to GST.</p>
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37	<p>Would forward contracts in commodities or currencies be within the ambit of definition of 'supply'?</p>	<p>A forward contract is an agreement, executed, to purchase or sell a predetermined amount of a commodity or currency at a pre-determined future date at a pre-determined price. The settlement could be by way of actual delivery of underlying commodity/currency or by way of net settlement of differential of the forward rate over the prevailing market rate on the settlement date.</p> <p>Where the settlement takes place by way of actual delivery of underlying commodity/currency, then such forward contracts would be treated as normal supply of goods and liable to GST.</p> <p>Where the settlement takes place by way of net settlement of differential of the forward rate over the prevailing market rate on the settlement date, the same would be falling within the purview of 'securities' as defined in Section 2(101) of the CGST Act, 2017. As securities are neither 'goods' nor 'services' as defined in the CGST Act, 2017, future contracts are not chargeable to GST. However, if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be a consideration for supply of service and chargeable to GST.</p>
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38	What is the nature of income earned / expended in instruments like repos and reverse repos and is such income taxable under GST?	<p>Section 45U(c) of the RBI Act, 1934 defines 'repos' as an instrument for borrowing funds by selling securities with an agreement to repurchase the securities on a mutually agreed future date at an agreed price which includes interest for the funds borrowed. Section 45U (d) of the RBI Act, 1934 defines 'reverse repos' as an instrument for lending funds by buying securities with an agreement to re-sell the securities on a mutually agreed future date at an agreed price which includes interest for the funds lent. Repos and reverse repos are financial instruments of short term call money market that are normally used by banks to borrow from or lend money to RBI.</p> <p>The margins, called the repo rate or reverse repo rate, in such transactions are nothing but interest charged for lending or borrowing of money. Thus they have the characteristics of loans and deposits for interest and are accordingly exempt from GST [serial no. 27 of the table of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017, as amended].</p>
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39	<p>Would income from Commercial Paper (CP) or Certificates of Deposit (CD) be taxable under GST?</p>	<p>Commercial Paper ('CP') and Certificate of Deposit ('CD') are unsecured money market instruments which are issued in the form of a promissory note or in a dematerialized form through any of the depositories approved by and registered with SEBI. CPs are normally issued by highly rated companies, primary dealers and financial institutions at a discount to the face value. CDs can be issued by Scheduled Commercial Banks (excluding Regional Rural Banks and Local Area Banks) and All - India Financial Institutions (FIs) permitted by RBI.</p> <p>Since these are instruments for lending or borrowing money wherein consideration is represented by way of a discount or subscription to CPs or CDs, the same would be covered by the entry relating to 'services by way of extending deposits, loans or advances in so far as consideration is represented by way of interest or discount' and is not liable to GST [serial no. 27 of the table of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017, as amended].</p> <p>Further, promissory note is included in the definition of 'money' as given in clause (75) of Section 2 of the CGST Act, 2017 and hence not liable to GST. However, if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be a consideration for supply of services and chargeable to GST.</p>
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40	W h e t h e r assignment or sale of secured or unsecured debts is liable to GST?	Section 2(52) of the CGST Act, 2017 defines 'goods' to mean every kind of movable property other than money and securities but includes actionable claim. Schedule III of the CGST Act, 2017 lists activities or transactions which shall be treated neither as a supply of goods nor a supply of services and actionable claims other than lottery, betting and gambling are included in the said Schedule. Thus, only actionable claims in respect of lottery, betting and gambling would be taxable under GST. Further, where sale, transfer or assignment of debts falls within the purview of actionable claims, the same would not be subject to GST. Further, any charges collected in the course of transfer or assignment of a debt would be chargeable to GST, being in the nature of consideration for supply of services.
41	Would sale, purchase, acquisition or assignment of a secured debt constitute a transaction in money?	Sale, purchase, acquisition or assignment of a secured debt does not constitute a transaction in money; it is in the nature of a derivative and hence a security.
42	If any service charges or administrative charges or entry charges are recovered in addition to interest on a loan, advance or a deposit, would such charges be also a part of the exemption?	No. The services of loans, advances or deposits are exempt in so far as the consideration is represented by way of interest or discount. Any charges or amounts collected over and above the interest or discount would represent taxable consideration and hence liable to GST.



43	To what extent is invoice discounting or cheque discounting or any other similar form of discounting exempt under GST?	<p>Discounting of invoices or cheques falls within the meaning of "services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount". Such discounting is exempt from payment of GST, as such discounting is nothing but a manner of extending a credit facility or a loan.</p> <p>However, if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be a consideration for supply of service and chargeable to GST.</p>
44	Is interest on debt instruments exempt from GST?	Yes. As debt instruments such as debentures, bonds etc. are in the nature of loans, interest thereon will be exempt from GST.
45	Is GST required to be paid on additional interest charged in case of default in instalment payment by the customer?	As per Section 15(2) of CGST Act, 2017, the value of supply includes, inter alia, interest for delayed payment of any consideration for any supply. Additional Interest charged for default in payment of instalment in respect of any supply, which is subject to GST, will be includible in the value of such supply and therefore would be liable to GST.
46	Would charges for late payment of dues on credit card outstanding be chargeable to GST?	Yes. The exemption from levy of GST on interest specifically excludes interest charged on outstanding credit card balances as per serial no. 27 of the table of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017, as amended.

47	Whether interest on a finance lease transaction is taxable under GST?	A finance lease is a method of borrowing against the asset. The interest represents the time value of the money expended by the Bank in financing the asset. Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) is exempt. But, in a financial lease the ownership of the asset is with the bank. In essence, it is a 'purchase the asset and lend it further' transaction for bank. Therefore, neither the services are purely in the nature of extending loans nor the consideration for a financial lease is purely in the nature of interest. Thus, interest on finance lease transactions will be taxable under GST.
48	Where GST is charged on a supply of service and the amounts due from the customer become irrecoverable as a bad debt in commercial practice, would such GST paid on accrual basis be refundable to the service provider by the Government?	The adjustment of GST already paid is allowed only by way of issuance of credit /debit note in terms of Section 34 of the CGST Act, 2017. The proviso to section 34(2) of the CGST Act, 2017 provides that no reduction in liability would be allowed if the incidence of tax has been passed on to another person. If bad debts are on account of deficiency in supply of services, or tax charged being greater than actual tax liability, or goods returned, GST paid on the same is refundable subject to fulfilment of the prescribed conditions. Therefore, GST already paid on bad debts, as used in the trade parlance, cannot be adjusted.
49	Would imposition of a fine or penalty for violation of a provision of law be a consideration for the activity of breaking the law, making such activity as service?	No. Fines and penalties are imposed for breaking the law by a person. They are not in the nature of a consideration for an activity and hence, would not constitute a supply of service.



50	<p>Which services will qualify as services provided to 'account holder' as per Section 13(8) of the IGST Act, 2017?</p>	<p>The place of supply of services supplied by a banking company located in India to account holders located outside India is the location of the service provider i.e. banking company.</p> <p>"Account" has been defined in Explanation (a) to section 13(8) of the IGST Act, 2017 to mean an account which bears interest to the depositor, and includes a non-resident external (NRE) account and a non-resident ordinary (NRO) account. Services provided to holders of demand deposits, term deposits, NRE account and NRO account outside India will be covered by the definition of account referred to above. Examples of such services are:</p> <ul style="list-style-type: none"> (i) services linked to or requiring opening and operation of bank accounts, such as, lending and deposits; (ii) transfer of money including telegraphic transfer, mail transfer, electronic transfer etc.
51	<p>Which services do not qualify as services provided to 'account holder' as per Section 13(8) of the IGST Act, 2017 and thus the place of supply will be the location of the recipient of services?</p>	<p>Following are examples of services that are generally not provided by a banking company or financial institution to an account holder (holder of a deposit account bearing interest to the depositor including NRE and NRO account holders) in the ordinary course of business:</p> <ul style="list-style-type: none"> (i) financial leasing services including equipment leasing and hire-purchase; (ii) merchant banking services; (iii) securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing; (iv) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services; (v) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy; (vi) banker to an issue service. <p>In case of any service which does not qualify as service provided to an account holder, the place of supply for such services shall be the location of the recipient of services.</p>

52	What is the location of the supplier in case of banking and other financial services where multiple locations are involved in providing the services to a customer?	Banking services emanate from the bank account opened by a customer with the branch of a bank or through a contractual relationship between the branch of a bank and the customer. The branch holding the customer's account is referred to as the 'Account Branch' or the 'Home Branch'. An account would include all types of accounts – viz. interest bearing, non- interest bearing, loan account, deposit account, etc. In the present day of “anywhere banking”, the customer avails banking services through mobile/ internet banking or by visiting any branch of the bank. At times the services are provided through branches / locations other than the 'Account Branch' or the 'Home Branch'. It is clarified that the services provided by the other branches are actually services provided to the 'Home branch' and are ultimately billed to the home branch. Thus, the location of supplier in such cases is the Home Branch/Account Branch.
53	What is the manner of dealing with various services provided by banks and other financial institutions?	Banks and financial institutions provide a bouquet of financial services relating to lending or borrowing of money or investments in money and other related services. For such services invariably a variety of instruments are used in the financial markets. Transactions in such instruments have to be examined on the touchstone of definition of 'supply' given in Section 7(1) of the CGST Act, 2017 to see whether such transactions would be chargeable to GST. Broadly, the following legal provisions would have a bearing on determining the taxability of such transactions.



		<p>The definition of 'goods' and 'services' in Section 2(52) and Section 2(102) of the CGST Act, 2017 specifically excludes money and securities respectively. 'Money' has been defined in Section 2(75) of the CGST Act, 2017 to include instruments like cheques, drafts, pay orders, promissory notes, letters of credit, etc.</p> <p>Therefore, activities that are only transactions in such instruments would be outside the definition of service. This would include transactions in Commercial Paper ('CP') and Certificate of Deposit ('CD') (as they are in the nature of promissory notes), issuance of drafts or letters of credit, etc. While these transactions would be outside the ambit of supply, the related activity, for which a separate consideration is charged, would be chargeable to GST if other elements of taxability are present. Therefore, GST would be levied on service charges normally charged for various transactions in money including charges for making drafts, issuance charges for letter of credit etc. Definition of 'securities' includes 'derivatives'. Transactions in instruments like interest rate swaps, and foreign exchange swaps would be excluded from the definition of 'supply' since such instruments are derivatives, being securities, based on contracts of difference. However, any attendant service charges or fees would be chargeable to GST.</p> <p>Further, services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount is exempt from the levy of GST.</p>
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54	Are services supplied by a Bank to its branch / head-office outside India, which are neither intermediary services nor services to account holders, taxable under GST?	GST is a destination based consumption tax. Such services provided by a Bank or the branch of a foreign Bank in India to its offshore branch / head-office, which are neither intermediary services nor services to account holders, are inter-State supply of services between distinct establishments (as per section 7(5)(a) read with Explanation to section 8 of the IGST Act, 2017), and will be taxable in India, as the location of the supplier is in India and the place of supply is outside India. Such services will not be treated as exports in view of the sub-clause (v) of section 2(6) of the IGST Act, 2017 read with Explanation 1 to section 8 of the IGST Act, 2017.
55	Will the management oversight or stewardship activities performed in relation to business operations by the Head Office of a Bank to a Branch in India be considered as a supply of services by the Head Office even when there is no consideration charged by the Head Office, nor any expenditure recorded in the books of account of the Branches?	As per Schedule – I to the CGST Act, 2017, supply of services between distinct entities will be a taxable supply even in absence of a consideration.



56	<p>If tax is payable on provision of management oversight or stewardship services by a related person, what shall be the value of supply when no invoice is raised, no payment is made by recipient or no entry is made in the books of accounts of the recipient of service? What will be the time of supply?</p>	<p>As per Rule 28 of the CGST Rules, 2017, the Bank may obtain a certificate from the Branch or Office providing the estimated cost of rendering the support. It may be backed by a certificate issued by a chartered accountant or cost accountant.</p> <p>In such cases, the time of supply shall be the date when such costs are determined or certificate is received and the GST liability on the said costs shall be discharged accordingly. This can be done before the expiry of the quarter during which such supply was made as provided in 2nd proviso to Rule 47 of the CGST Rules, 2017. For this purpose a document may be issued by the entity supplying such services.</p>
57	<p>Is the Nominated Bank, receiving gold on consignment basis, required to pay IGST on import of gold from the overseas supplier?</p>	<p>The dispatch of gold by the principal from a place outside India to the Bank in India is deemed to be a supply in terms of para 3 of Schedule I to the CGST Act, 2017. Accordingly, IGST will be payable on such import of gold by the Nominated Bank at the time of clearance of gold by the Customs.</p>
58	<p>Will there be another liability for payment of GST when the gold (metal) is appropriated or drawn from the consignment stock by the Nominated Bank?</p>	<p>The supply of gold (metal) is already deemed to have taken place in terms of para 3 of Schedule I of the CGST Act, 2017 when the same was despatched by the overseas supplier to the Nominated Bank. Since the supply has already taken place, there will not be another supply when the gold is drawn or appropriated by the Nominated Bank from the stock. There will, therefore, not be another levy of GST.</p>

59	<p>In the case of gold (metal) loan, whether the supply of gold (metal) to the jeweller will be deemed to take place at the time of delivery of gold (metal) or at the time when the price of gold (metal) is fixed by the jeweller?</p>	<p>The Gold (Metal) Loan Scheme approved by the Reserve Bank of India is a means of financing. The Banks deliver gold (metal) to the jewellers who appropriate and use the same in the course of their business. The gold (metal) is seldom returned and the jeweller fixes the price of gold (metal) within the stipulated period of 180 to 270 days.</p> <p>Considering the nature of transaction, the supply of gold (metal) will take place on the date of delivery of gold (metal) to the jeweller. The Banks should raise the invoice at the time of delivery of gold (metal) in terms of section 12 of the CGST Act, 2017. Since the price of gold (metal) is not fixed, banks may issue an invoice wherein the value of the supply may be indicated on the basis of the metal rate in the international or domestic market. As and when the price is finally fixed by the jeweller, the Bank should issue debit or credit notes for the difference in the price as per the original invoice and the price finally fixed, along with applicable GST.</p>
60	<p>Whether tax is payable on interest charged by the Banks on the outstanding amount of gold (metal) loan?</p>	<p>The Gold (Metal) Loan Scheme is a means of financing. The jewellers can purchase gold (metal) from the Banks on outright basis on payment of the price. The gold (metal) loan only provides an option to the jeweller to avail a loan and pay for gold (metal) at a future date. For this facility, the jeweller pays interest to the Bank. The grant of loan and levy of interest is dependent on the purchase of gold, and therefore, part of the same transaction or facility; therefore the interest, which is the consideration, will not be exempt as per provisions of section 15(2)(d) of the CGST Act, 2017.</p>



61	What will be the place of supply in cases where the account is held in a bank in one State but some services are availed in a different branch of the same bank in another State.	As per the provisions of Section 12(12) of the IGST Act, 2017, the place of supply of services for a bank is the location of the recipient of the services on the records of the supplier of services. In general, this will be the State in which the account exists. For example, if the account is held in Delhi, and some services are obtained by the account holder in Maharashtra, the place of supply of services will be Delhi (and hence Central tax / State tax or Union territory tax will be chargeable). In such transactions, the branch in Maharashtra will only be a facilitator for providing these services. If the branch in Maharashtra levies any charges on the branch in Delhi for providing this facility, that will be a separate supply between the two branches, it will be chargeable to Integrated tax.
62	Will GST be charged in transactions, where loan of one bank is taken over by another bank?	GST will be chargeable on any transaction processing fees levied for such takeover of loans, but not on the interest component (as interest is exempted).
63	Whether GST will be levied on sale of re-possessed asset?	Sale of repossessed asset falls within the scope of supply and will be chargeable to GST.
64	Whether GST will be levied on interchange fees on card settlement fees paid/shared by banks?	Fees charged for card settlement is a consideration which is part of a separate transaction between the banks which are parties to this transaction and shall be liable to GST. This is a B2B supply and credit of this transaction is available.

65	What is the leviability of GST on securitization transactions undertaken by banks?	Securitized assets are in the nature of securities and hence not liable to GST. However, if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be a consideration for provision of services related to securitization and chargeable to GST.
INSURANCE SECTOR		
66	What is the location of the supplier of service for fund management charges in ULIP policies?	The fund management charges are charges towards managing and administering the fund. These funds are managed by the Fund Management team. The location of the supplier of service for fund management charges shall be the location / office which manages the fund.
67	Whether commission paid to insurance agents shall be construed as supplies received under Section 9(3) of CGST Act, 2017? If yes, whether the Life Insurance Company can raise a consolidated invoice for such commission payments?	Sr. No. 7 of notification No. 13/2017-Central Tax (Rate), dated 28th June, 2017 as amended covers supplies received from Insurance Agents and provides for the Insurance Company to pay GST on such supplies under Section 9(3) of the CGST Act, 2017. In such cases, the insurance company may issue agent-wise consolidated invoice at the end of the month for the supply of services received during the month.



68	<p>Whether insurance policies issued to Non-Resident Indians, where the premium is paid through the NonResident External Bank account, will be 'export of services'? Would the insurance premiums be taxable in cases where the same is not received in convertible foreign exchange or from the NRE Accounts?</p>	<p>No. The amounts paid from the Non-Resident External Accounts are paid in Indian Rupees and are not received in convertible foreign exchange. Therefore, the conditions for export of services as provided under section 2(6) of IGST Act, 2017 are not satisfied. Life Insurance services in such cases would be treated as inter-State supplies and subject to GST.</p>
69	<p>Will the requirements of Letter of Undertaking or Bond be required to be complied with in the case of Life Insurance Premium where the conditions of export of services are satisfied before or at the time of supply of the Life Insurance Service?</p>	<p>Yes. As per Section 16(3) of the IGST Act, 2017, read with Rule 96A of the CGST Rules, 2017, an exporter is required to submit a Letter of Undertaking or Bond in case the export of service is made without payment of integrated tax.</p>

70	What would be the time of supply of life insurance services?	<p>Insurance policies are contracts for indemnifying any loss suffered by the policyholder. The policyholder is required to pay a premium at the time of inception of the policy. Renewal premiums are required to be paid on periodical basis during the tenure of the policy. For renewal of the policies the policyholders are allowed grace period ranging from 15 days to 30 days in accordance with the IRDA (Protection of Policyholders' Interests) Regulation, 2002.</p> <p>The time of supply of life insurance services to the policy holders would be as under:-</p> <p>(a) New Policy – At the time of issuance of the policy;</p> <p>(b) Renewal of Policy – The time of issuance of renewal notice for insurance premium;</p> <p>(c) Other charges including ULIP charges – At the time of levy or recovery of the charges from the policyholder.</p>
71	When service tax was paid on or before 30th June, 2017 for the services to be provided, but subsequently not provided, whether refund claim can be made under Section 142(5) of the CGST Act?	<p>Section 142(5) of the CGST Act, 2017 specifically provides for refund of tax paid under the Finance Act, 1994 in respect of services not provided. The same shall be disposed off in accordance with the provisions of the Chapter V of the Finance Act, 1994.</p>
72	Can the input tax credit of Krishi Kalyan Cess be carried forward?	<p>No. It is not permitted in terms of section 140(1) of the CGST Act, 2017 read with Rule 117(1) of the CGST Rules, 2017.</p>



73	<p>In the case of group insurance policies, a Master Policy is issued; the beneficiaries of the Master Policy may be located in more than one State. In such cases, what will be the place of supply of services?</p>	<p>In the case of issuance of Master / Group Policy to a registered person where the premium charged is a single premium and not segregated based on the beneficiaries of the insurance policies, the place of supply for such policy will be the location of the registered person paying the premium.</p>
74	<p>What is the time of supply of services for deposits and advances in cases of the recipient issuing a bank guarantee or making a deposit before assumption of risk and issuance of a policy?</p>	<p>As per the proviso to Section 2(31) of the CGST Act, 2017, a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply. In case of advances, however, the time of supply is the time of receipt of advance as provided in section 13(2)(a) of the CGST Act, 2017.</p>
75	<p>Whether ITC will be allowed on motor garage services used by insurance company for claim settlement?</p>	<p>Yes, ITC will be allowed on services of motor garage used by an insurance company for claim settlement.</p>
76	<p>Whether the service provided by the re-insurance company to an insurer will be treated as a supply?</p>	<p>The service of re-insurance falls within the scope of supply, and is chargeable to GST.</p>



Note: Reference to CGST Act, 2017 includes reference to SGST Act, 2017 and UTGST Act, 2017 also. Further reference to CGST Rules, 2017 includes reference to SGST Rules, 2017 / UTGST Rules, 2017 also.

Source: FAQ issued by CBIC – Source - http://cbic.gov.in/resources//htdocs-cbec/gst/27122018-UPDATED_FAQs%20ON%20BANKING,%20INSURANCE%20AND%20STOCK%20BROKERS.pdf

GST IMPACT ON HOTEL AND RESTAURANT SECTOR

1. Introduction:

As per the Ministry of Tourism statistics, there has been a growth rate of 75.71% in number of approved Hotels to 1,961 as on December 2018 from 1,116 as on December 2014.

Similarly there was a growth rate of 43.85% in number of approved Hotel Rooms in India to 1,02,490 as on December 2018 from 71,244 as on December 2014. Of course, this is only a subset of the hotel market which has grown sharply due to entry of online-based service providers.

Number of Approved Hotels and Hotel Rooms for Major categories as on 31.12.2018:

Sl. No.	Category of Hotels	No. of Hotels	No. of Rooms
1	One Star	9	348
2	Two Star	37	990
3	Three Star	535	18,889
4	Four Star	322	16,451
5	Five Star	181	22,673
6	Five Star Deluxe	170	37,955
7	Apartment Hotels	3	252
8	Guest House	7	106
9	Heritage Hotels	58	1,843
10	B&B Establishment	639	2,983
	Total	1,961	1,02,490

(Source – Ministry of Tourism)

Tourism Sector represents world's third largest export avenue in terms of global earnings after fuel and chemicals. Modern tourism

is closely linked to socio- economic development. Tourism is responsible for one out of 11 jobs and 10% of the world's economic output. Apart from providing employment, income and foreign exchange for the country, the trade in the tourism sector has an economically positive impact on other associated industries such as food manufacturing, services, construction, agriculture, handicrafts etc.

The hospitality and tourism industry is one such sector in the economy that is deliberating over the new tax regime. Hospitality is one of the most competitive and steadily growing industries in the country. The tourism industry contributes nearly \$136 billion to India's GDP and is expected to further grow to US\$ 280.5 billion by 2026. Hospitality and tourism are also among the highest employment generating sectors and among the top 10 sectors in the country with the highest volume of foreign direct investment. In addition to being one of the top sources of foreign exchange, tourism is also among the highest tax generating sectors in the country.

There has been confusion among the owners of Hotels and Restaurants with regard to the liability of tax under GST Laws.

II. Taxability of Hotel Industry under Pre-GST Regime:

a. Constitutional Validity of Service Tax on Accommodation Services:

The Constitutional validity of service tax on provision of Short-Term accommodation service by a hotel, guest house, etc. ,and service provide by restaurants was again challenged before the Hon. Delhi High Court in **Federation of Hotel and Restaurant Association of India v. UOI in WP (C) No.6482 of 2011, dated 12.08.2016 [2016(44)S.T.R.3(Del.)]**. The Hon'ble High Court of Delhi in this case upheld the constitutional validity of levy of Service Tax on restaurant services but, struck down the validity of Service Tax on Short-Term Accommodation Services. Entry 62, List –II, i.e., State List, which empowers only the State Legislatures to levy tax on Accommodation services. The said Entry reads as follows-

62 "taxes on luxuries including taxes on entertainments, amusements , betting and gambling."

Parliament has no power to levy service Tax on Accommodation



services under residuary entry in the Seventh Schedule to the Constitution. The same principle has been upheld by the Hon'ble Apex Court in **Godfrey Philips India Limited v. State of UP –(2005) 2SCC 515.**

Article 246 A introduced through the Constitution (One Hundred and First Amendment Act) empowers Parliaments and the Legislatures every States to tax accommodation services.

b. Tax Liability of Hotels and Restaurants under Service Tax:

1. Service Tax was not applicable on services provided in aHotel.
2. Service Tax @15% was levied on services provided by Air Conditioned Restaurants with an abatement of 30%.

c. Composition Scheme under VAT schemes for various States:

1. The dealer opting for composition State VAT Laws was liable to pay composition money at fixed rate on the turnover of cooked food manufactured without the facility of input taxrebate.
2. No input tax rebate was available to composition holders.
3. The manufacturers had the benefit of buying goods taxable at fixed VAT from unregistered dealers without the liability of payment of purchasetax.
4. Composition under VAT regime is available to the dealers whose turnover per annum is upto a threshold limit mostly Rs 50 lakhs to Rs.1 crore per annum.
5. Similar provisions exit in different States in respect of composition provisions torestaurants.
6. There is also provision in some States to grant licence to restaurantsat nominal rates on advance payment of licence fee.

d. Applicability of VAT on sale of food items – Regular Scheme:

1. VAT was leviabale at a fixed rate of VAT on cooked foods and snacks provided by arestaurant.



2. VAT was leviable on sale of Cold drinks/aerated drinks and on other non food items.
3. Entry Tax was also payable in few States on raw material and incidental goods used in the manufacture of cooked food.
4. Luxury Tax is also payable by outdoor caterers various State Luxury tax Acts with the deduction of sale price on which tax is liable to be paid under VAT Act with the exception of Hospitals and Educational Institutions.
5. Tax on sale of alcoholic liquor to customers is levied at fixed VAT under Various State VAT Acts.

e. Service Tax Liability on Mandap keeper, Hotels and convention Services, providing full catering services

1. Mandap keeper, Hotels and convention Services, providing full catering services paid service tax on 60% of the gross amount charged, under abatement scheme.
2. Outdoor caterers who availed abatement scheme were charged service tax on 50% of the amount where he provided full and substantial meal.
3. Similarly, under the abatement Scheme, the Pandal and Shamyana Service providers were liable to pay tax on 70% of gross amount charged if full catering service was provided.
4. The rate of service tax on above services was 15%.
5. Simultaneously, the states also levied tax on the services provided by Marriage hall, Mandap Keepers etc with a general rate of 10% The same receipts were being subjected tax both by the Central Govt. and the State Govt., resulting in double taxation without any grant of credit for Input Tax on goods and services.

III. Composite Supply and Mixed Supply for Hotel Industry:

a. **Composite Supply** - Section 2(30) of the Central Goods and Services Tax Act, 2017: composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;



b. Mixed Supply -Section 2(74) of the Central Goods and Services Tax Act, 2017:

“Mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

c. Taxability of Composite and Mixed Supply:

Section 8 of the Central Goods and Services Tax Act, 2017 states that;

The tax liability on a composite or a mixed supply shall be determined in the following

manner, namely:—

- (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
- (b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

If supply involves more than one goods and / or services which are naturally bundled together and supplied in conjunction with each other in the ordinary course of business and one such supply would be a principal supply, these are referred to as composite supply of goods and / or services For e.g. stay with breakfast is naturally bundled in the hotel industry, while the supply of lunch and dinner, even if they form part of the same invoice, may not be considered as naturally bundled supplies along with room rent.

Illustration 1:

A hotel provides a 5 days-4 nights package with the facility of breakfast. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as service of providing hotel accommodation.

Illustration 2:

Example: A 5 star hotel is booked for a conference of 100

delegates on a lump sum package with the following facilities:

- Accommodation for the delegates
- Breakfast for the delegates,
- Tea and coffee during conference
- Access to fitness room for the delegates
- Availability of conference room
- Business centre

This would be treated as a composite supply of Convention center services.

Contentious Issue

In case of a specified service of “Buffet – Alcohol inclusive” which is generally seen at every five – star hotel, such buffet service cannot be treated as a composite supply as alcohol has been kept outside the purview of GST, thereby the same would not form part of a composite supply. Thus, restaurants which give buffet offers inclusive of alcohol might have to issue a separate invoice for liquor and separate invoice for buffet service.

IV. Benefits of GST on Hotel and Restaurant Sector –

i. Uniformity in Taxes

The multiple taxes has been replaced by one single tax, the rate of which varies from 5% to 18% depending on the room rent. This sector may benefit in the form of lower tax rates which should help in attracting more tourists in India.

ii. Increased Revenue for State Government

Under GST the place of supply is shifted to the place where immovable property is situated in case of Hotels, Restaurant & Monuments for sightseeing. This will increase the revenue of such states where immovable property is located. Currently, on such income, States charges local Luxury Tax on hotel stay and VAT on food supplied. While Union Government gets revenue from Service Tax on such services. Because of GST, the States having maximum tourist places, hotels or restaurants for tourist shall earn the maximum revenue by way of SGST which will be equivalent to CGST.



iii. Saving in Food and Beverage operations

Companies specializing in food and beverages operations to be the biggest beneficiaries of GST within the hospitality sector. Food and beverages bills have multiple components which inflate the bills by 30- 35%. With the onset of GST, there has been a savings of more than 15-20% on the overall bill.

V. Demerits of GST on Hotel and Restaurant Sector –

i. Multiple Registration

Earlier Service providers were having centralized registration but in GST Regime one has to get registered in each state from where they provide services.

ii. Increased Compliance Burden

The procedure for reporting of invoice level data for B2B supplies and multiple returns on monthly basis for each registration has become cumbersome as each one of them will have to be registered. The concept of credit matching under GST has been a pain point and has led to increase in working capital requirements.

The frequency and number of returns to be filed has gone up. In place of a half yearly service tax return, under GST law, one is required to file State wise monthly GST returns along with an annual return also required to be filed.

iii. No Credit on Work Contract Services

The hotel industry spends a lot of money on construction and renovation. The money paid as taxes on the works contract services when supplied for construction of an immovable property is not allowed as eligible credit for this sector when such services are not used for the further supply of works contract service.

iv. Exclusion of Liquor from GST net:

Liquor has not been included in GST and this has led to reversal of common Input Tax Credit on proportionate basis. Also the state levies paid on Liquor is not creditable under GST regime. Exclusion of liquor from GST regime defeats the very purpose of bringing in a uniform tax structure across the nation.

VI. Important GST Provisions applicable to Hotels and Restaurants:

Sr. No.	Particulars	Place of Supply	Applicable Taxes	Input tax Credit Allowed
1	Room Rental	Location of Hotel, Guest House, Club, Resort, boat, vessel	CGST & SGST	Inputs, equipment, furniture, consumables etc.
2	Restaurant Services	Location of Restaurant	CGST & SGST	Inputs, equipment's, furniture, crockery, consumables etc.
3	Exhibition Services/Entertainment Parks & sports activity/ Entry fees paid for access to monuments and public place	Location of Exhibition, Celebration or similar events	CGST & SGST	Inputs, equipment's, furniture, crockery, consumables, structure for exhibition, etc
4	Money changing Services/ Visa Service/ Tour Operator	Location of Service Recipient	CGST & SGST (If location of supplier and place of supply are in same state or union territory) IGST (If location of supplier and place of supply are in different states or Union territories)	Input Services consumed and goods like Furniture, fixtures, computers, office equipment, etc



5	Rent a Cab Services / Air Tickets/ Train Tickets/ Cruise & Ship Services/State Transport Service	<p>Location of Service Recipient if recipient is registered</p> <p>If services provided to un-registered person, place of supply is where passenger embarks on the conveyance is place of supply</p>	<p>CGST & SGST (If location of supplier and place of supply are in same state or union territory)</p> <p>IGST (If location of supplier and place of supply are in different states or Union territories)</p>	Aircrafts, Vehicles, Train, Inputs and Consumables used for providing services, lubricants etc.
6	Services on Board an aircraft/Train/ Ship/ Motor Vehicle	Location of first point of departure of that conveyance for the journey	<p>CGST & SGST (If location of supplier and place of supply are in same state or union territory)</p> <p>IGST (If location of supplier and place of supply are in different states or Union territories)</p>	Inputs, equipment's, furniture, crockery, consumables, etc

VII. Time of Supply of Services for Hotel Sector:

Section 13 of the Central Goods and Services Tax Act, 2017 states that:

- The time of supply of services shall be:

If the invoice is issued within thirty days from the date of supply of service:

- the date of issue of invoice by the supplier or
- the date of receipt of payment, whichever is earlier.

If the invoice is not issued within thirty days from the date of supply of service:

- the date of provision of service or
- the date of receipt of payment, whichever is earlier.

Illustration

X hotel provides hotel accommodation services to Mr. Y worth INR 1,00,000:

08.04.2018 – An advance of INR 20,000 is received from Mr. Y

10.04.2018 – The services are provided

16.05.2018 – Mr. X receives balance payment of INR 80,000 and records it in his books.

What will be the time of supply assuming X hotel issues the invoice on:

Situation 1 -15.04.2018

Situation 2 -15.05.2018

Answer:

Situation 1:

If invoice is issued within the prescribed time period, time of supply will be the date of receipt of payment or date of issue of invoice whichever is earlier. In the given case, the invoice is issued on 15.04.2018 which is within 30 days of the supply of services which is within the prescribed period. So, for INR 20,000, the time of supply will be 08.04.2018 which is the date of receipt of advance payment. For the balance amount, time of supply will be 15.04.2018 which is earlier of 15.04.2018 (date of invoice) and 16.05.2018 (date of receipt of payment).

**Situation 2:**

If invoice is not issued within the prescribed time period, time of supply will be the earlier of the date of completion of service and the date of receipt of payment. Here, invoice is issued on 15.05.2018 which is after the prescribed time period. So, for INR 20,000, the time of supply will be 08.04.2018 which is the date of receipt of advance payment. For the balance amount, time of supply will be 10.04.2018 which is earlier of 10.04.2018 (date of completion of service) and 16.05.2018 (date of receipt of payment).

VIII. Input Tax Credit for Hotel & Restaurant Sector:**a. Eligibility and conditions for taking input tax credit:**

Section 16 of the Central Goods and Services Tax Act, 2017 states that:

Every registered person shall, subject to such conditions and restrictions, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

b. Basic conditions for availment of ITC

No registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

- (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act.
- (b) he has received the goods or services or both. However where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:
- (c) the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible; and
- (d) he has furnished the return under section 39:

c. 'used by him' & 'in his business'

The words 'used by him' and 'in his business' as appearing in section 16(1) refer to the registered taxable person in question and not the legal entity. So, input tax paid in a State must not be in relation to the business of a taxable person in another State, albeit belonging to the same person.

d. Payment in 180 days:

Where a recipient fails to pay to the supplier, the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon.

However, the recipient would be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

e. Apportionment of ITC:

Section 17 of the Central Goods and Services Tax Act, 2017 states that:

- Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.
- Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.
- The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.



f. **Reversal of ITC in case of exempted supply:**

- As per section 17(2) of CGST Act, 2017, ITC shall be reversed in case a company is effecting taxable supplies as well as exempt supplies
- Notification no. 3/2018-Central Tax, dated 23rd January, 2018, Interest on fixed deposits will not be considered as exempt supplies for the purpose of reversal of ITC as per Rule 42 and 43 of CGST Rules, 2017.

g. **Blocked credits**

Section 17(5) of the Central Goods and Service Tax Act, 2017 states that:

Input tax credit shall not be available in respect of the followingsupply of goods or services or both—

- food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of a particular category is used by a registered person for making an outward taxable supply of the same category or as an element of a taxable composite or mixed supply;
- membership of a club, health and fitness centre;
- rent-a-cab, life insurance and health insurance except where—

.....

.....

- goods or services or both used for personal consumption;

Thereby no credit would be available to customers of hotel industry of following services:

Food & beverages

Outdoor catering

Membership of club, health and fitness centre in hotel.

Spa treatments in hotel as they are in the nature of personal consumption.

IX. Composition Scheme for Restaurant Sector:

Section 10 of Central Goods and Services Tax Act 2017 states that,

Category of registered persons	Rate of tax
Suppliers making supplies by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.	5% (2.5% CGST+ 2.5% SGST) of the turnover in the State/UT

Eligibility to pay tax under composition scheme:

The conditions for eligibility to opt for payment of tax under the composition scheme is as follows:

Registered persons having an 'aggregate turnover' across all States under the same PAN, including exempt supplies, supplies specified under Schedule I, etc. does not exceed the prescribed limit in the preceding financial year will be eligible to opt for payment of tax under the composition scheme.

In this regard, the following may be noted:

- The prescribed threshold limit is Rs. 1 crore (and Rs. 75 lacs in case of Special Category States being Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Himachal Pradesh);
- The aggregate turnover of the registered person should not exceed the said prescribed limit during the financial year in which the scheme has been availed;
- The scheme cannot be opted for during the middle of a financial year, except in the case where the person obtains registration, and opts for composition scheme at the time of applying for registration under the GST Law.
- The registered person would not be eligible to effect any supply of nontaxable goods, i.e., alcoholic liquor for human



consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

- All the registrations obtained under a single PAN are also mandated to opt for payment under the composition scheme.

X. Value of Taxable Supply -

Section 15 of the Central Goods and Services Tax Act, 2017 states that;

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, where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply

Inclusions & exclusions

Section 15(2) and Section 15(3) of the Central Goods and Services Tax Act, 2017 states that value of supply shall include –

- (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, if charged separately by the supplier;
- (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;
- (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply.
- (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and
- (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

The value of the supply shall not include any discount which is given--

- (a) before or at the time of the supply if
 - such discount has been duly recorded in the invoice issued in respect of such supply; and
- (b) after the supply has been effected, if
 - such discount is established in terms of an agreement entered into at or before the time of such supply and
- (d) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

XI. GST Rates applicable to Hotel Accommodation, Catering Services and Restaurant Services (as amended by Notf No 20/2019 – Central Tax (Rate) dated 30th September 2019:

1. GST Rates on Hotels:

Transaction Value per Unit (in Rs) per Day	GST Rate (%)
Rs. 1000 and less	Nil
Rs. 1001 to Rs. 7500	12%
Rs. 7501 and above	18%

Note – Earlier the GST rate was charged on Declared Tariff instead of Transaction Value.

2. GST Rates on Catering Services:

Type of Catering Service	Daily Tariff of Unit of Accommodation	Changes in GST
Outdoor Catering Services other than in premises	Rs. 7501	From current 18% GST with ITC to 5% without ITC. (this rate is mandatory for all kinds of catering)
Catering in premises	Rs. 7501 and above	Remains same at 18% GST with ITC



3. GST Rates on Restaurant Services:

Type of Service	GST Rate
Standalone restaurants whether air conditioned or otherwise	5% GST without ITC
Food parcels or takeaways	5% GST without ITC
Restaurants in hotel premises with room tariff of less than Rs. 7,500 per unit per day	5% GST without ITC
Restaurants in hotel premises with room tariff of Rs. 7,500 and above per unit per day	18% GST with full ITC

GST Rates for hotels on Implementation of GST vide Notf No.11/2017- Central Tax (Rate), dated the 28th June, 2017:

Room Tariff per night (INR)	GST Applicable
< INR1000	0% (no tax)
INR >=1000 but < 2500	12%
INR >=2500 but <7500	18%
>= INR 7500	28%

Earlier the rate was applicable was on Declared Tariff. Later on the same was modified to Transaction Value.

XII. Damages recovered by Hotels:

Hotels have a policy of recovery for damages to property like kettle, carpets, upholstery etc. from customers. All such charges may be chargeable to GST which is still a debated issue.

Authority for Advance Rulings, Maharashtra in ruling number GST-ARA-15/2017-18/B-30, dated May 8, 2018 in case of Maharashtra State Power Generation Company Ltd. has ruled that GST would be applicable in case of Liquidated damages.

XIII. Loyalty Programs by Hotels –

The Authority for Advance Rulings, Haryana in case of Loyalty Solutions & Research Pvt. Ltd. has issued Ruling number HAR/HAAR/R/2017/18/4, dated 11th April, 2018



Issue was whether the value of points forfeited by the operator on which money had been paid by the issuer of points on account of failure of the end customers to redeem the payback points within their validity period would amount to consideration for 'actionable claim' or it would qualify as a "supply" and be chargeable to GST?

It was ruled by the Authority that the value of points forfeited of the applicant on which money had been paid by the issuer of points on account of failure of the end customers to redeem the payback points within their validity period would amount to consideration received in lieu of services being provided by applicant to its clients and thus would be outside the scope of 'actionable claim' and therefore would qualify as "supply of services".

Thereby GST would be chargeable on such money forfeited by the operator.

XIV. Cab booked on behalf of guests:

If a company books cab on behalf of their customer and receives the cab charges along with their commission from them, then GST shall be charged on the cab facility to guests.

In many cases it has been seen that Hotels does not have any mark-up on these payments and generally the transactions are settled outside the books.

GST law per se is chargeable on all such transactions.

XV. Hotel accommodation & restaurant services provided to SEZ units to be treated as supply to SEZ units?

Authority of Advance Ruling – Karnataka in its order in case of M/s Gogte Infrastructure Development Corporation Ltd. dated 21st March, 2018 vide Advance Ruling No. KAR ADRG 2/2018 held that, accommodation and restaurant services provided by applicant engaged in hotel business within premises of hotel, to employees and guests of SEZ units cannot be treated as supply of goods and/or services to SEZ units. Thereby such supplies would be treated as 'Intra-State' supplies and are taxable accordingly.

Post this decision by AAR GST policy wing came out with Circular No.48/22/2018: As per section 7(5) (b) of the IGST Act, 2017,



the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply of goods or services or both in the course of 'Inter-State' trade or commerce. Services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an 'Inter-State' supply.

XVI. Whether Credit is available on new construction of Hotels?

According to Section 17(5)(c) of CGST Act 2017, works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service, input tax credit shall not be available.

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT) Mumbai in its order no. A/85880 / 2018, dated 3rd April, 2018 in case of Lemon Tree Hotels Ltd versus Commissioner of Central Excise, Customs & Service Tax Aurangabad held that Cenvat Credit is allowable on building constructed for the hotel which is used for renting of services of the hotel. The overall hotel business is rendered within the common hotel building and the construction service received in respect of construction of any part of the hotel is a common input service which has nexus with overall hotel business. Therefore, even though some part of the hotel business is not taxable, but it cannot be said that the construction service was used exclusively for non-taxable service.

XVII. No input tax credit available if hotel and recipient are located in different states.

The fact that place of business of accommodation in hotels is the place of location of immovable property (hotels) is responsible for the woes of the industry as the recipient located in another State is not able to utilise ITC of CGST & SGST paid by him, which becomes a cost for him.

For example, a company has Branch-R which is a registered taxable person in Rajasthan conducts conference in a hotel in Mumbai (Maharashtra) where CGST + SGST is charged by

the hotel. This company also has Branch-M which is registered taxable person in Maharashtra. CGST-SGST has been charged by the hotel, input tax credit would not be available to Branch-R as tax paid in Maharashtra is not a creditable tax in Rajasthan.

XVIII. FAQ on Hotel and Restaurant Industry:

1. Will GST be charged on actual tariff or declared tariff for accommodation services?

Ans: Declared or published tariff is relevant only for determination of the tax rate slab. GST will be payable on the actual amount charged (transaction value).

2. What will be GST rate if cost goes up (more than declared tariff) owing to additional bed?

Ans: GST rate would be determined according to declared tariff for the room, and GST at the rate so determined would be levied on the entire amount charged from the customer. For example, if the declared tariff is Rs. 7000 per unit per day but the amount charged from the customer on account of extra bed is Rs. 8000, GST shall be charged at 18% on Rs. 8000.

3. Where will the declared tariff be published?

Ans: Tariff declared anywhere, say on the websites through which business is being procured or printed on tariff card or displayed at the reception will be the declared tariff. In case different tariff is declared at different places, highest of such declared tariffs shall be the declared tariff for the purpose of levy of GST.

4. Same room may have different tariff at different times depending on season or flow of tourists as per dynamic pricing. Which rate to be used then?

Ans: In case different tariff is declared for different seasons or periods of the year, the tariff declared for the season in which the service of accommodation is provided shall apply

5. If tariff changes between booking and actual usage, which rate will be used?

Ans: Declared tariff at the time of supply would apply.



6. GST at what rate would be levied if an upgrade is provided to the customer at a lower rate?

Ans: If declared tariff of the accommodation provided by way of upgrade is Rs 10000, but amount charged is Rs 7000, then GST would be levied @ 28% on Rs 7000/-

Summary of Rulings in GST Regime applicable to Hotel & Restaurant Sector:

Forum Name – Authority for Advance Ruling - Gujarat

Citation: GUJ/GAAR/ RULING/2018/14 dated 30-07-2018

Name of the Applicant: Sapthagiri Hospitality Pvt Ltd, Gujarat

Levy of GST - hospitality services - The hotel being located in non-processing zone of Dahez Special Economic Zone whether liable to pay GST on all the services provided by it to the clients located in SEZ which inter-alia included supply of services by way of providing accommodation services, supplying food and beverages and supplying services ancillary to providing accommodation services?

Under extreme circumstances, if the hotel is required to provide accommodation services to a visitor other than a visitor located in SEZ, whether GST is required to be paid?

Held: The provisions of Section 7 and Section 8 of IGST Act, 2017 read with the definition of SEZ developer given at Section 2(20) of IGST Act, mandate that all the supply of goods or services made by or to SEZ Co-developer would be considered as interstate supply and the levy of IGST is attracted at the applicable rate. But the IGST law allows the benefit of zero rating to supplies made to an SEZ unit. As per Section 16(1) of IGST Act 'zero rated supply' means any of the following supply of goods or services or both namely (a) export of goods or services or both ; or (b) supply of goods or services or both to a SEZ developer or SEZ Unit. Section 2(m)(iii) of SEZ Act, 2005 defines export means supplying goods, or providing services, from one unit to another unit or developer, in the same or different special economic zone. A combined reading of Section 16(1) of IGST Act and Section 2(m)(iii) of SEZ Act indicate that supply of services

made by the applicant to other units or developers of SEZ would be zero rated supply.

Rendering of services from SEZ to DTA does not qualify as Zero rated supply in terms of Section 16 of IGST Act, 2017. Therefore, SEZ Unit/developer making interstate supply to DTA would be liable to pay IGST under IGST Act. Therefore, supply of services by the SEZ unit or Developer from SEZ to DTA would be covered under the normal course of supply. Accordingly the applicant will be liable to pay GST at the prescribed rates for supplies made to the clients located outside the territory of SEZ.

Ruling: The supplies made by M/s. Sapthagiri Hospitality Private Limited, 17-18, Sapthagiri Complex, Opp. The Gateway Hotel, Near Akota Garden, Akota, Vadodara-390 002, a SEZ Co-developer, from their hotel located in non-processing zone of Dahez Special Economic Zone to the clients located in Special Economic Zone for authorized operations will be treated as zero rated supplies under the provisions of Section 16(1) of Integrated Goods and Service Tax Act, 2017 read with Section 2(m) of SEZ Act, 2005.

The applicant is liable to pay GST on the services from their hotel located in non-processing zone of Dahez Special Economic Zone to the clients located outside the territory of Special Economic Zone under the provisions of Section 5(1) of Integrated Goods and Service Tax Act, 2017.

Forum Name – Authority for Advance Ruling - Karnataka

Citation: KAR ADRG 2/2018dated 21-03-2018

Name of the Applicant: GOGTE INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED, Karnataka

Supply of goods & services to SEZ or not - intra-state supply - Place of Provision Rules - Whether the Hotel Accommodation & Restaurant services provided by them, within the premises of the Hotel, to the employees & guests of SEZ units, be treated as supply of goods & services to SEZ units in Karnataka or not?

Held: On reading Section 16(1)(b) of IGST Act' 2017 & Rule 46 of CGST Rules 2017 together it is clearly evident that the



supplies of goods or services or both towards the authorised operations only shall be treated as Supplies to SEZ Developer /SEZ Unit. Since place of provision of services in case of Hotel has been prescribed under the Act 'location of the Hotel' the rendition of services of restaurant, short term accommodation and Banqueting/conferencing cannot be said to have been 'imported or procured' into SEZ Unit/ Developer. Hence, by no stretch of imagination and therefore, in the instant case, the supply is intra state supply.

Ruling: The Hotel Accommodation & Restaurant services being provided by the Applicant, within the premises of the Hotel, to the employees & guests of SEZ units, can not be treated as supply of goods & services to SEZ units in Karnataka & hence the intra state supply and are taxable accordingly.

Forum Name – Authority for Advance Ruling - Maharashtra

Citation: GST-ARA- 22/2017-B-29 dated 05-05-2018

Name of the Applicant: MERIT HOSPITALITY SERVICES PVT. LTD., Maharashtra

Levy of GST - supply of food or drinks or any articles for human consumption - food supplied to SEZ area to employees of company - Zero rated supply or not - rate of GST - running a restaurant in the SEZ area

Held: The supply made by the appellant to the employees of the unit located in SEZ cannot be construed as zero rated supply by any stretch of imagination, as the employees can neither be treated as SEZ developer nor as SEZ unit. Accordingly, GST will be applicable as per the classification of the services determined in terms of the scheme of the classification of services as provided under Annexure A to the N/N. 11/2017-C.T. (Rate) dated 28.06.2017 as amended by the N/N. 46/2017-C.T. (Rate) dated 14.11.2017. Running a restaurant in the SEZ area - rate of GST @ 5% or not - Held that:- The food is being cooked at one place and being distributed to the various different locations of the companies with whom they have entered into contract. Thus, this event is not covered under the definition of the "Restaurant services" - the appellant claim that it is running Restaurant

Services in the SEZ area is not tenable and hence the GST rate of 5% as envisaged by the appellant is not correct.

Ruling: The services of supplying food by the appellant to the employees of the unit located in the Special Economic Zone is not covered under the zero rated supplies in terms of Section 16(1)(b) of the IGST Act, 2017 and the services of the appellant are also not in the nature of restaurant services as claimed by the appellant.

Forum Name – Authority for Advance Ruling – Maharashtra

Citation: ORDER No.GST-ARA- 05/2018-19/B-61 dated 09.07.2018

Name of the Applicant: ISMAIL AHAMAD SOOFI, Maharashtra

Update on the Ruling (Notification issued by CBIC) : CBIC vide its Notification No 11/2017-Central Tax (Rate) dated 30th September 2019 has reduced the rate of outdoor catering services to 5% without ITC.

(i) Rate of GST on outdoor catering services other than in premises having daily tariff of unit of accommodation of Rs 7501 reduced from present 18% with ITC to 5% without ITC. The rate shall be mandatory for all kinds of catering.

(ii) Catering in premises with daily tariff of unit of accommodation is Rs 7501 and above shall remain at 18% with ITC.

The notification has come into effect from **01-10-2019**

Classification of services - catering services provided by the Applicant under B2B Model and B2C Model - whether classified as canteen/restaurant services or under the head outdoor catering services? - rate of tax - whether the activities of the applicant would fall under Sr. No. 7, Headings 9963 (iv) or (v) of the N/N. 11 /2017-Central Tax (Rate) dated 28th June, 2017?

Held: The services supplied by the applicant in normal course does not appear to be covered under clause (v) of the N/N. 11 /2017-Central Tax (Rate) dated 28th June, 2017. From a reading of clause (v) before and after the amendment it is seen that the word 'outdoor catering' does not find a mention post the amendment. Hence it can be inferred that the said clause post



the amendment made considers outdoor catering as a Supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, at Exhibition Halls, Events, Conferences, Marriage Halls and other outdoor or indoor functions that are event based and occasional in nature.

The applicant has clearly stated that they are providing services only to industries and corporates and for their employees - the clients of the applicant are providing space, etc. to the applicant for supply of catering services and the services are supplied by the applicant at the clients' premises.

The service being provided by the applicant would be covered under Serial No. 7 Heading 9963(i) or (iv) of Notification No. 11/2017 dated 28.06.2017 as the applicant can be said to be providing the services of a canteen, but as to the applicant falls under Sr. No.(i) or (iv) of the said Notification would depend on whether the canteen has the facility of is air conditioning or central air-heating in any part of the establishment, at any time during the year, as the applicant has not clarified the same anywhere. The said clause (i) has been amended by Notification No. 16/2017 - The amendment has also done away with the condition of "Supply, provided by a restaurant, eating joint including mess, canteen, neither having the facility of air-conditioning or central air-heating in any part of the establishment, at any time during the year and therefore the services of the applicant, in view of amendment vide Notification No. 46/2017 dated 14.11 2017 would fall under Serial no. 7(i) of this amended Notification.

Thus, the activity of the applicant would fall under clause (i) of Notification No. 11/2017 as amended and with effect from 14.11.2017 i.e the date on which Notification No. 46/2017- Central Tax(Rate) came into effect.

Ruling: The activity undertaken by the applicant in the subject case would be classified as canteen services under Entry. No 7(i) or (iv) of Notification No. 11/2017 dated 28th June 2017 depending on whether their canteen has the facility of air air-conditioning or central air-heating in any part of the establishment, at any time during the year. However as per amended Notification No. 46/2017- Central Tax (Rate) dated-14th November 2017, their service would fall under Sr. No. 7(i) of this amended Notification.

**Forum Name – Authority for Advance Ruling – Gujarat****Citation:** ORDER No.GUJ/GAAR/R/2018/8 dated 21-03-2018**Name of the Applicant:** Rashmi Hospitality Services Private Limited, Gujarat**Update on the Ruling (Notification issued by CBIC) :** CBIC vide its Notification No 11/2017-Central Tax (Rate) dated 30th September 2019 has reduced the rate of outdoor catering services to 5% without ITC.

(i) Rate of GST on outdoor catering services other than in premises having daily tariff of unit of accommodation of Rs 7501 reduced from present 18% with ITC to 5% without ITC. The rate shall be mandatory for all kinds of catering.

(ii) Catering in premises with daily tariff of unit of accommodation is Rs 7501 and above shall remain at 18% with ITC.

The notification has come into effect from **01-10-2019**

The below order of AAR, Gujarat was challenged in Gujarat Appellate Authority for Advance Ruling and the decision of ARR was confirmed by the Appellate Authority vide Order No GUJ/GAAAR/APPEAL/2018/3 dated 31-07-2018.

Rate of GST - applicant is having business of caterers and supply food, beverages and other eatables (non-alcoholic drinks) complete services at various places of their customers who have in house canteens at their factories - whether rate of tax on their supplies made to the recipient would be 12% or 18%? - applicability of Circular No. 28/02/2018GST dated 08.1.2018.**Held:** the service recipient has engaged the applicant for running of the canteen for their workers / employees. The rates for the meal, snacks, tea have been fixed and payable by the recipient. Menu is required to be decided by the canteen committee of the recipient. It is, therefore evident that the applicant, who is caterer, is providing service from other than his own premises to the recipient. Therefore, the nature of service provided by the applicant is that of outdoor catering service.

Even though the meal, snacks, teas are provided to and consumed by the workers/ employees of the recipient, it is clear from the



foregoing discussion that the applicant is providing service to the recipient and not to workers / employees of the recipient. From the nature of service provided by the applicant, as is evident from the copy of agreement, it is clear that it is not in the nature of service provided by a restaurant, eating joint including mess, canteen. Therefore, the clarification issued vide Circular No. 28/02/2018GST dated 08.1.2018 is not applicable.

The service of catering is provided by the applicant to the recipient and the fact that the meal, snacks, tea etc. are consumed by the workers / employees of the recipient would not alter the nature of service provided by the applicant.

Ruling: The supply of services by M/s. Rashmi Hospitality Services Private Limited (GSTIN 24AACCR5234QIZ2) is covered under Sr. 70) of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, as amended, issued under the Central Goods and Services Tax Act, 2017 and Notification No. 11/2017-State Tax (Rate) dated 30.06.2017, as amended, issued under the Gujarat Goods and Services Tax Act, 2017, attracting Goods and Service Tax @ 18% (CGST 9% + SGST 9%).

Forum Name – Authority for Advance Ruling – Uttarakhand

Citation: ORDER No. 09/2018-19 dated 22-10-2018

Name of the Applicant: Kundan MishthanBhandar, Gujarat

The below order of AAR, Uttarakhand was challenged in Gujarat Appellate Authority for Advance Ruling and the decision of ARR was set aside by the Appellate Authority vide Order No 04/2018-19 dated 27-02-2019 and following was held by the Appellate Authority –

- (i) The ruling no. 08/2018-19 –dated 22.10.2018 made-by-the-Authority-on Advance-. Rulings for the State of Uttarakhand is set aside.
- (ii) Sale of sweets, namkeens, cold drinks and other edible items through restaurant will be treated as 'composite supply' with restaurant supply being the principal service. Existing GST rates on restaurant service will also be applicable on all such sales and no input credit will be allowed.

- (iii) Sale of sweets, namkeens, cold drinks and other edible items from sweetshop counter will be treated as supply of goods with applicable GST rates of the items being sold and input credit will be allowed on such supply.
- (iv) The applicant should maintain separate records for restaurant and sweetshop with respect to input and output and billings as well as other accounting records should also be separately maintained.

whether supply of pure food items such as sweetmeats, namkeens, cold drink and other edible items from a sweetshop which also runs a restaurant is a transaction of supply of goods or a supply of service;

what is the nature and rate of tax applicable to the following items supplied from ground floor of a sweetshop in which restaurant is also located on the first floor and whether the applicant is entitled to claim benefit of input tax credit with respect to the same;

sweetmeats, namkeens, dhokla etc commonly known as snacks, cold drinks, ice creams and other edible items;

Ready to eat (partially or fully pre-cooked/packed) items supplied from live counters such as jalebi , cholabhatara and other edible items;

Takeaway order of sweetmeats or namkeens by a person sitting in the restaurant of a sweetshop when such products are not consumed within the premises of the applicant but are takeaway.

Held: (i) The supply shall be treated as supply of service and sweet shop shall be treated as extension of restaurant;

(ii) The rate of GST on aforesaid activity will be 5% as on date, on the condition that credit of input tax charged on goods and services used in supplying the said service has not been taken;

(iii) All the items including takeaway items from the said premises shall attract GST of 5% as on date subject to the condition of non-availment of credit of input tax charged on goods and services used in supplying the said service.

GST ON TOURISM SECTOR

I. Introduction:

Tourism represents world's third largest export avenue in terms of global earnings after fuel and chemicals according to a representative from the UN World Tourism Organization (UNWTO). Tourism is responsible for one out of 11 jobs and 10% of the world's economic output.

In addition, tourism's value-added to an economy can also be increased by attracting a more diverse mix of tourist arrivals, using e-commerce to broaden the reach of local tourism businesses, and broadening the offer to include cultural, wildlife, and heritage tourism.

II. Tourism Sector in India

The travel and tourism sector holds great strategic importance in the Indian economy providing several socio-economic benefits. Apart from providing employment, income and foreign exchange for the country, the trade in the tourism sector has an economically positive impact on other associated industries such as food manufacturing, services, construction, agriculture, handicrafts etc. In addition, investments in infrastructural facilities such as transportation, accommodation and other tourism related services lead to an overall development of infrastructure in the economy.

Despite that the Tourism Sector, including Inbound Tourism pay a plethora of taxes and do not get any significant benefits as compared to other Export sectors. There are multiple taxes charged on the same Service/ Product offering by the Central as well as State Governments. It is an understanding that the Taxes levied on Inbound Tourism is amongst the highest in the country, and this is one of the major reasons for India losing Foreign Tourists to competing South East Asian Countries. Tourism sector in some of the key competing destinations in South Asian countries attract much lesser taxes thereby making the products more competitive.

III. Tourism and Hospitality Sector Segments:

1. **Accommodation and Catering** – such as Hotels, Motels, Apartments, camps, guest houses, Lodge, bed and breakfast, house boats, resorts, cabins & Hostels. In addition, catering facility is also required.
2. **Transportation** -Comprises of Airlines, cruise, railway, car rentals, etc.
3. **Attractions and Site Seeing** –Attraction includes admission to theme parks, scenic locations, cultural and educational attractions, monuments, events, medical, social and professional causes.
4. **Travel Agents** – Travel Agents provide assistance to tourists for accommodation, travel and site seeing. They also arrange products like Insurance, car hire and currency exchange.
5. **Tour Operators** – Offering customized tours, including travel, accommodation and site seeing.

(Source: IBEF Presentation on tourismindustry)

IV. Key Issues facing the Tourism Sector on various fronts are as under:

- High Multitude and Incidence of Taxes on account of taxation at multiple levels and absence of seamless input creditflow.
- Lot of business in this sector gets generated through online mediums. Significant amount of clarity is required in the existing laws to deal with e-commerce players and aggregators.
- Lack of Proper Infrastructure in terms of access, connectivity and services and many unorganised players in the industry.
- Non-availability of skilled & Semi skilled man power required for the industry to attract foreign tourist as well as promote local tourism specially Eco Tourism & Rural Tourism which lacks professional approach towards service and customer satisfaction
- Lack of Marketing, Branding & Promotion efforts for the rural, cultural and Eco friendly remote locations and their conservations



V. Business Model followed in Tourism Sector –

Tourism sector follows various business models, which is discussed as under –

Model Sl. No.	Model Name	Brief synopsis
Model 1	Total Tour Package	Total booking is done by the tour operator and the total fees charged shall include his margin. So the Tour Operator become service provider and in turn he receives services from various other counterparts like Airline Companies, Hotel, Local Taxi Operators, Restaurants, Embassy issuing visas etc.
Model 2	Front end commission for tour related services	All the bookings are done directly by the person travelling. The tour operator only facilitates the transaction and helps traveller to identify various suppliers as per their requirements and arrange for its booking. Payment flow goes straight away from actual traveller to end service provider and tour operator only charges for its service portion from traveller.
Model 3	Back end Commission	Tour operator does not charge any fees from the customer. He only facilitates the transaction and help traveller to identify various suppliers as per their requirements and arrange for its bookings. In turn the ultimate supplier pays commission for promotion and generating sales for them. It is mainly used in Hotel Booking & FlightBooking
Model 4	Block Purchase and Sale	There are parties who take bulk booking from the existing end suppliers like flight operators, hotels, for time being at very low cost and then sell to the tour operator or corporate clients or others. They are working as intermediary only dealing in specific segment of the tourism industry like Oyo Room.

Model 5	Travel Aggregator	Company provides platform to various end suppliers to showcase their listing and in turn it charges commission from them, along with nominal fees from the customer on their booking so it is two-side revenue model for the aggregator in certain cases. (Eg: Goibibo, Trivago, makemytrip, etc.)
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VI. Services Covered under Tourism and pre-GST taxes thereon:

Service Tax	VAT	Customs and Excise	Other Taxes
<ul style="list-style-type: none"> - Room Rentals - Restaurant-Services - Banquet-Services - Convention Services - Rent a Cab-Services - Dry Cleaning Services - Health Club / SPA/ Beauty Parlour Services - Internet Services - Money Changing Services - Air and Train Tickets 	<ul style="list-style-type: none"> - Sale of Food and Beverages in Restaurants - Sale of goods from retail shops - In room sale of food (such as in room dining, mini bar etc.) - Alcohol 	<ul style="list-style-type: none"> - Customs duty payable on import of capital goods, motor cars, etc. - Central Excise on manufacture of Bakery products - State Excise on Alcohol 	<ul style="list-style-type: none"> - Luxury Tax on room rentals - Entertainment Tax on casinos, discos, videos - State Entry Taxes - Permit Taxes - Road Tolls - Motor Vehicle Tax - UDF & PSF at the Airports



VII. Tax Rate Structure under Pre-GST regime:

Sl. No.	Particulars	Service Tax	State VAT	Other Taxes	Remarks
1	Room Rental	9% (40% abatement)	Not Applicable	Luxury Tax applicable	No Service Tax if tariff for room per day is less than Rs. 1,000/- Abatement only if no Cenvat credit availed on Input & Capital Goods
2	Restaurant Services	6% (60% Abatement)	Vat - full rate / composition with no Vat ITC	Not Applicable	No Service Tax if Non- AC Restaurant is Serving Food or on Take Away. Abatement only if No Cenvat Credit on Input & Capital Goods
3	Exhibition Services	15%	Not Applicable	Not Applicable	No Service Tax if place of exhibition is out of India
4	Rent a Cab Services	6% (60% Abatement)	Not Applicable	Not Applicable	Abatement only if No Cenvat Credit on Input, Input Service & capital goods taken

5	Air Tickets	6% (60% Abatement in case of Economy Class) 9% (40% Abatement in case of Other Class)	Not Applicable	Not Applicable	No Service Tax if journey started or terminated in the state of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Bagdogra in WB. Abatement only if No Cenvat Credit on Input & Capital Goods
6	Train Tickets	4.5% (70% abatement)	Not Applicable	Not Applicable	Abatement only if No Cenvat Credit of Input, Capital Goods if abated rate is charged
7	Bundle Services by Hotel, Resorts	10.5% (30% abatement)	Vat - full rate / composition with no Vat ITC	Luxury Tax Applicable	Abatement only if no Cenvat Credit of Inputs under excise chapter 1 to 22 of CETA, 1985
8	Money changing Services	Slab wise Service Tax	Not Applicable	Not Applicable	
9	Cruise & Ship Transportation Services	15%	Not Applicable	Not Applicable	
10	Entertainment Parks & Sports Activity	15%	Not Applicable	Entertainment Tax applicable in specified cases	No service tax in case the entry fee is less than Rs. 500



11	Entry fees to monuments, Public Place, Shows and sight-seeing places	15%	Not Applicable	Entertainment Tax applicable in specified cases	No service tax for entry to Museum, National Park, Wild Life sanctuary, Tiger Reserve, Zoo, Circus, Dance Club, Drama, Cinema Hall or theater
12	Visa Services	15%	Not applicable	Not applicable	No Service Tax on Fees by embassy only on service charges of agent
13	State Transport Services	15% (In case of AC Service)	Not Applicable	Not Applicable	No Service Tax if Non- AC Vehicle
14	Tour Operator	9% (40% abatement)	Not Applicable	Not Applicable	No Service Tax in case service is provided to foreign tourist for tour conducted wholly outside India Abatement only if no Cenvat Credit of Input, Capital Goods taken. Abatement only if cost of tickets, accommodation is also included along with the tour operator charges
15	Sale of Retail Packed Food & Beverages	Not Applicable	VAT at applicable rates	Not Applicable	

VIII. Taxability under GST regime:

According to the CGST Law which neither contains the exemptions nor the rates of taxation, and most of the services in relation to Tourism is subject to levy of GST as the same is to be treated as 'supply'. Since taxable event is supply, it is necessary to understand certain terms like Location of Supplier of Service, Location of Recipient of Service and Place of Supply. Tourism industry supplies bundle of services and hence definition of Composite Supply and Mixed supply also needs to be understood.

a. Location of Supplier of Services

As per Section 2(71) of CGST Law, 'location of the supplier of services' means,—

- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply; and
- (d) in absence of such places, the location of the usual place of residence of the supplier;

b. Location of Recipient of Services

As per Section 2(70) of CGST Law. 'location of the recipient of services' means,—

- (a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;



- (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
- (d) in absence of such places, the location of the usual place of residence of therecipient;

c. Place of Supply

As per Section 2(86) of CGST Law, 'place of supply' means,—

Place of supply as referred to in Chapter V of the Integrated Goods and Services Tax Act;

d. Mixed Supply

As per Section 2(74) of CGST Law, 'mixed supply' means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Illustration: A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.

e. Composite Supply

As per Section 2(30) of CGST Law, 'composite supply; means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.

Also the key factors in GST is ease of availing input tax credit and therefore it is necessary to understand definition of Input Tax,



input, Input Service and Capital Goods to understand allowability of various taxes paid on inward supplies.

f. Input Tax

As per Section 2(62) of CGST Law, 'input tax' in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

- (a) the integrated goods and services tax charged on import of goods;
- (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
- (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
- (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
- (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy;

g. Input

As per Section 2(59) of CGST Law, 'input' means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

h. Input Service

As per Section 2(60) of CGST Law, 'input service' means any service used or intended to be used by a supplier in the course or furtherance of business;

i. Capital Goods

As per Section 2(19) of CGST Law, 'capital goods' means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;



IX. Key components under GST Regime for Tourism Sector-

Sr. No.	Particulars	Place of Supply	Applicable Taxes	Input tax Credit Allowed
1	Room Rental	Location of Hotel, Guest House, Club, Resort, boat, vessel	CGST & SGST	Inputs, equipment, furniture, consumables etc.
2	Restaurant Services	Location of Restaurant	CGST & SGST	Inputs, equipment's, furniture, crockery, consumables etc.
3	Exhibition Services/Entertainment Parks & sports activity/ Entry fees paid for access to monuments and public place	Location of Exhibition, Celebration or similar events	CGST & SGST	Inputs, equipment's, furniture, crockery, consumables, structure for exhibition, etc
4	Money changing Services/ Visa Service/ Tour Operator	Location of Service Recipient	CGST & SGST (If location of supplier and place of supply are in same state or union territory) IGST (If location of supplier and place of supply are in different states or Union territories)	Input Services consumed and goods like Furniture, fixtures, computers, office equipment, etc



5	Rent a Cab Services / Air Tickets/ Train Tickets/ Cruise & Ship Services/State Transport Service	Location of Service Recipient if recipient is registered If services provided to un-registered person, place of supply is where passenger embarks on the conveyance is place of supply	CGST & SGST (If location of supplier and place of supply are in same state or union territory) IGST (If location of supplier and place of supply are in different states or Union territories)	Aircrafts, Vehicles, Train, Inputs and Consumables used for providing services, lubricants etc.
6	Services on Board an aircraft/Train/ Ship/ Motor Vehicle	Location of first point of departure of that conveyance for the journey	CGST & SGST (If location of supplier and place of supply are in same state or union territory) IGST (If location of supplier and place of supply are in different states or Union territories)	Inputs, equipment's, furniture, crockery, consumables, etc

X. SAC Codes for Tour Operators

Nature of Service	SAC
Reservation services for accommodation, cruises and package tours	998552
Reservation services for convention centres, congress centres and exhibition halls	998553



Reservation services for event tickets, cinema halls, entertainment and recreational services and other reservation services	998554
Reservation services for transportation	998551
Tour operator services	998555
Other travel arrangement and related services n.e.c	998559
Freight insurance services & Travel insurance services	997136
Tourist Guide Service	998556
Tourism promotion and visitor information services	998557
Services provided for a fee/commission or contract basis on wholesale trade Explanation	996111
Services provided for a fee/commission or contract basis on retail trade Explanation	996211

XI. GST applicability on Income to Travel Agents and Tour Operator Services:

An Air Travel Agent earns below types of income:

1. Commission from Airline's & Segment pay-out from CRS Companies.
2. Sale Tour Packages, both inbound and outbound
3. Travel Related Services like Visa, Passport etc.
4. Hotel Bookings
5. Car Rental Services, Travel Insurance
6. Railway Reservations

1. Commission from Airlines & Segment Payout from CRS Companies:

Option A

GST @ 18% on Commission /PLA upload incentive / any other form of incentive on Issue of invoice on Airline/ Consolidator.

Service Fees @ 18% on Issue invoice on Passenger .

Option B

Rule 32 of CGST Rules-The value of supply of services in relation to booking of tickets for travel by air provided by an air travel

agent, shall be deemed to be an amount calculated at the rate of –

- a. 5%. of the basic fare in the case of domestic bookings, and
- b. 10% of the basic fare in the case of international bookings of passage for travel by air.

Explanation – For the purposes of this sub-rule, the expression “basic fare” means that part of the air fare on which commission is normally paid to the air travel agent by the airline.

Accordingly – GST on basic fare- For domestic booking 0.9% of Basis Fare and For International Booking 1.8% of basis fare.

2. Sale of Packaged Tours – Inbound and Outbound:

Tours organized by the Tour Operator, within India for the tourist coming from abroad is generally known as inbound tours.

Tours organized by the Tour Operator, outside India, for the tourist going abroad is generally known as outbound tour.

Tour operator receives commission i.e. it has booked the tour on commission basis or second on principal basis i.e. on its own account has done the various bookings and then raises bill on the client.

If the tour is on principal basis then the place of supply of service shall be the location of performance of service i.e. in India and Taxable @ 5% without ITC.

The bill issued for supply of this service indicates that it is inclusive of charges of accommodation and transportation required for such a tour and the amount charged in the bill is the gross amount charged for such a tour including the charges of accommodation and transportation required for such a tour.

However if the tour is on commission basis then the tour operator will be acting as an intermediary and the place of supply shall be the location of service provider i.e. in India and hence the services will now become taxable and Taxable @ 18%.

Outbound Tour –

The place of supply in case of principal to principal transaction shall be location of recipient if the receiver is registered under the GST, however If he is not registered but his address is available



in the records then also that place of supply shall be the location of the service receiver and if the address is not available in the records then the location shall be the location of the service provider.

The Place of supply in case where the tour operator receives commission from another tour operator situated outside India, shall be the place of the tour operator i.e. India .

Outbound tour sold to a foreigner for visiting another foreign country and the payment is received by convertible foreign exchange is exempt from GST.

3. Travel Related Services like Visa, Passport etc:

All government fees and consular charges paid on behalf of the consumer/client is outside the purview of GST

Service Charges on the above services should be subject to GST which can be collected from the end consumer.

If the services are outsourced from another service provider (For example a travel agent from Chennai has to outsource a Delhi Agent to get the Visa for Uzbekistan), GST paid on the Delhi Agents Invoice can be claimed as ITC and only the difference can be paid to the Government.

GST will be applicable @18% for this service.

4. Commission on Hotel Booking:

In case of hotel bookings the tour operator is acting as an intermediary for the purpose of booking tours for his clients. Hence in case it is domestic hotel booking then the place of supply shall be as per the general rule i.e. location of hotel In case it is international hotel booking then the place of supply shall be location of Agent.

Where the location of Tour operator is in India and the location of the recipient is out of India , the place of supply in this case shall be the Location where the services are actually performed

GST will be 5% with No ITC Benefit

5. Car Rental Services, Travel Insurance

The place of supply where an agent is booking a car on hire (with

or without driver) to be further provided to any Pax or any Agent for Service charges/ Mark-up

If the services are provided to a person located in India then the place of supply shall be the location of service recipient if the recipient is registered under the GST law . If the recipient is not registered under the law however his address is available in the records then the also the place of supply shall be the location of the service recipient. However if the address of the person is not available on records then the place of supply shall be the location of the service provider.

Renting of motor cab (If fuel cost is borne by the service recipient, then 18% GST will apply)

Travel Agents issues medi-claim policies and travel insurance for clients through various providers and gets commission on cut and pay basis or at the end of the month (for overseas policies). Travel Agents must be registered Insurance agent to issue medi-claim policies and travel insurance in India . The agents are required to register with IRDA as per Insurance Act, 1938.

Place of Supply If the services are provided to a person located in India then the place of supply shall be the location of service recipient if the recipient is registered under the GST law .

If the recipient is not registered under the law however his address is available in the records then the also the place of supply shall be the location of the service recipient. However if the address of the person is not available on records then the place of supply shall be the location of the service provider.

If the medi-claim policies or travel insurance services are provided to a person who is not located in India then the services would fall in the category of 'Intermediary' services and hence the place of supply shall be the location of service provider

GST will be applicable @ 18% for this service

6. Commission on Railway Reservation:

Agent is receiving commission from a foreign railway company which has its registered office out of India, the place of supply shall be determined in accordance with Section 13(9), i.e. Location of supplier of Service (INTERMEDIARY) i.e. the agent.



Agent is receiving commission from a foreign railway company which has its registered office in India, the place of supply shall be determined in accordance with Section 12(2), i.e. Location of recipient of service if such recipient is a registered person .

If the recipient is not registered, be the location of recipient where address on record exist location of supplier of Service in any other case

Where the agent is receiving Service charges from the Pax, the place of supply shall be determined in accordance with Section 12(2), i.e. Location of recipient of service if such recipient is registered person If the recipient is not registered

- be the location of recipient where address on record exist
- location of supplier of Service in any other case

GST for booking for railway is @ 18%

XII. Place of Supply for an Air Travel Agent

I. For booking tickets on behalf of passengers:

When an Air Travel Agent provides services to a person who is:

- a. Located in India and the person is registered under the GST law then, the place of Supply shall be the location of service receiver;
- b. Located in India but not registered under the GST Law but his address is available on records then the place of Supply shall be the location of the service receiver;
- c. Located in India but not registered under the GST Law and his address is not available on records then the place of Supply shall be the location of the service provider;
- d. If in case of the Air Travel Agent who is located in India but the Origin and Location of Airlines is not from India and the destination as well as location of passenger is not in India.

Then in the given case neither the Airlines nor the passenger will be registered under GST and nor will their address be available from the records, hence in the given case the place of supply shall be the location of service provider i.e. the location of the Air Travel Agent which is in India and hence this transaction would be liable to Tax.

Location of Air Travel Agent	Location of the recipient (Pax)	Supply for the Air Travel Agent	Tax to be charged by the Air Travel Agent
Kolkata (W.B.)	Kolkata (W.B.)	West Bengal	CGST / SGST
Hyderabad (Telangana)	Delhi	Delhi	IGST
Examples for place of supply incase of an Air Travel where ATA receives Commission from the Airlines:			
Location of Air Travel Agent	Location of the recipient (Pax)	Supply for the Air Travel Agent	Tax to be charged by the Air Travel Agent
Kolkata (W.B.)	Kolkata (W.B.)	West Bengal	CGST / SGST
Hyderabad (Telangana)	Delhi	Delhi	IGST
West Bengal	Tokyo (Japan)	West Bengal	CGST / SGST

II. Segment Pay-outs / commission/ incentives from CRS/GDS

Air Travel Agent also earns Segment Payouts / commission/ incentives from CRS/GDS like Ameadus, Worldspan, Galileo, Abacus for using their software for making booking in Airlines reservations systems which also would be liable for taxation under GST Law

Place of supply of services

- In case the services are provided by the Air Travel Agents to Indian software companies, then the place of supply of services shall be the location of services receiver i.e. place of registration of Indian Software Company.
- In case the services are provided by the Air Travel Agents to foreign software companies, then the agent would fall within the definition of "intermediary" AND the place of supply of services shall be the location of services provider i.e. place of Air Travel Agent.



Summary of Rulings in GST Regime applicable to Tourism Sector:

Forum Name – Authority of Advance Ruling, Delhi

Citation: 01/DAAR/2018 dt 27.03.2018

Name of the Applicant: Rod Retails Pvt. Ltd.

Zero rated supply or not - supply from the shop located in the Security Hold Area of the IGI International Airport - supply to an International outbound passengers holding international boarding pass – applicable rate of 28% or otherwise–

Held: The goods can be said to be exported only when they cross the territorial waters of India and the goods cannot be called to be exported, merely on crossing the Customs Frontiers of India.

“Export of goods” has been defined under Section 2(5) of the IGST Act, 2017 as taking goods out of India to a place outside India. The India is defined under Section 2(56) of the CGST Act as “India”.

Hence, when goods are exported by Air, the export will be completed only when goods crosses airspace limits of its territory or territorial waters of India.

Decision of Supreme Court in the case of **Collector of Customs, Calcutta V/s Sun Industries [1988 (4) TMI 49 - SUPREME COURT OF INDIA]** followed. Though, this case was against the revenue allowing duty drawback to the exporter, but since the term “taking out to a place outside India” has been discussed by the apex court in this case, the same has been followed.

Further, the decision of the Supreme Court in the case of **Hotel Ashoka (INDIAN TOURISM DEVELOPMENT CORPN. LTD.) [2012 (2) TMI 62 - Supreme Court of India]** distinguished on the ground that - the Hon’ble Supreme Court had interpreted the scope of Section 2(11) of the Customs Act, 1962 under which “Customs area” were defined. No doubt, the duty free shops may be established beyond the Customs Frontiers of India. However, the issue in the present case is whether the said duty free shops are outside India i.e. whether they are “beyond airspace on territorial waters of India”.



Held: The applicant is not taking goods out of India and hence their supply cannot be called “export” under Section 2(5) of the IGST Act, 2017 or “zero rated supply” under Section 2(23) and Section 16(1) of the IGST Act, 2017. Accordingly, the applicant is required to pay GST at the applicable rates.

Forum Name – Authority of Advance Ruling, West Bengal

Citation:26/WBAAR/2019-20 dated 23-09-2019

Name of the Applicant:Golden Vacations Tours and Travels

What is the classification of the standalone service of arranging accommodation in a hotel and is input tax credit admissible?

Held: The Applicant is admittedly a tour operator. But the question on which the advance ruling is sought is whether it should continue to be classified as a tour operator when it merely arranges the client’s accommodation in hotels. It is not unusual for tour operators to bulk book rooms in hotels and release a few of them to clients who either do not book for the tour or prefer to reach by own arrangement and pay only for the accommodation. Arranging accommodation may also be a standalone business. Such a service cannot be classified as tour operating. According to Explanation to SI No. 23(i) of the Rate Notification, tour operator means any person engaged in the planning, scheduling, organising, and arranging tours by any mode of transport. Arranging accommodation might be provided as add-ons, but that is not the essence of the tour operating service. The Applicant’s service under focus in the Application is not, therefore, to be treated as that of a tour operator.

Neither is it the accommodation service as classified under SAC 996311. Accommodation service under SAC 996311 is limited to the one provided by the hotels, guest house etc. SI No. 7 of the Rate Notification refers to the accommodation service as classified under SAC 996311, and, therefore, leaves no room for the suppliers like the Applicant who arrange such accommodation in hotels.

The support services covered under SI No. 23(iii) of the Rate Notification include services classified under SAC 998552. Services covered under SAC 998552 include arranging reservations



for accommodation services for domestic accommodation, accommodation abroad etc. The Applicant's supply is specifically covered and, therefore, classifiable under SAC 998552. It is, therefore, taxable under SI No. 23(iii) of the Rate Notification, and the Applicant is eligible to claim the input tax credit as admissible under the law.

Since the Applicant's supply is specifically covered under SAC 998552, we find no need to discuss on SAC 9997.

RULING: The Applicant, if arranges for clients only accommodation in hotels, is supplying a service classifiable under SAC 998552. It is taxable under SI No. 23(iii) of the Rate Notification, and the Applicant is eligible to claim the input tax credit as admissible under the law.

Forum Name – Authority of Advance Ruling, Delhi

Citation:09/DAM/2018 dated 28-06-2019

Name of the Applicant:TUI India Private Limited

Levy of GST – Accommodation services – GST on Service Fee / Convenience Fee charged by the applicant – pure agent – Tour Operator Services – Is there any option available to a 'Tour Operator' to either charge GST@ 5% (with no ITC) or charge GST @ 18% (with full ITC)?

Whether the applicant is acting as an "agent" defined under Section 2(5) of the CGST Act, 2017 while booking hotel accommodation in foreign countries for its clients in India? – HELD THAT:- From the combined reading of Sections 2(5), 2(105), 2(107), 22 and 24 of the CGST Act, 2017, it is clear that the applicant is covered in the definitions of "Agent", "Supplier" and "Taxable Person". Further, the applicant is falling under the categories of persons under Section 22 and also under Section 24 requiring compulsory registration while booking Hotel Accommodation in foreign countries for its clients in India.

Pure Agent – Whether in the case of above mentioned booking of 'Accommodation only' Services, the applicant is acting as a "pure agent" in respect of amount received for hotel room, while supplying the main taxable service of booking of hotel rooms, for which it gets service fee / convenience fee from Indian B2B or B2C clients?

HELD: as far as service of hotel accommodation is concerned, the same are supplied by the applicant to their clients on behalf of foreign hotels / hotel aggregators as their agent. Since, the applicant is charging the same amount from their client as is paid by them to the hotel aggregators and all other conditions of "pure agent" are also satisfied, the value of hotel accommodation cannot be added to value of their main service which is booking of hotel accommodation.

Rate of tax on booking of hotel accommodation

HELD: The consideration for rendering such services is partly received from the Indian clients as service fee / convenience fee and partly received from the foreign Hotel aggregator as target based sales commission. The applicant has not disputed their liability to pay GST @ 18% on all such amounts whether received from the clients or from the Hotel Aggregators.

Who is liable to discharge GST liability – whether GST is payable on the amount received by the applicant from the clients as pure agent and is paid by them to the foreign hotel / hotel aggregator –

HELD: in respect of such services, the applicant is covered in the definition of "Agent", 'supplier' and Taxable Person' under sections 2(5), 2(105) and 2(107) respectively of CGST Act, 2017. Hence, any liability to pay GST on such amount has to be discharged by the applicant.

Rate of Tax on tour operators services – Whether any option is available to the 'Tour operators' to either pay GST @ 5% (with no ITC) or to pay GST @ (with full ITC)?

HELD: The 'tour operators services' are covered under entry (i) of S. No. 23 of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 and they are required to pay GST @ 5% (2.5% CGST + SGST) (without ITC) subject to fulfilment of conditions and they are not covered under entry (ii) of the S. No. 23 of the said Notification before 25.01.2018 and entry (iii) of S. No. 23 of the said Notification from 25.01.2018 and hence option to pay GST @ 18% (9% CGST + 9% SGST) (with ITC) is not available to them.

Forum Name – Authority of Advance Ruling, Kerala

Citation: KER/33/2019 dated 01-03-2019



Name of the Applicant: Kerala Forest Development Corporation Ltd

Tax liability under GST for the tour packages, which are providing to guests by way of separate services like accommodation, serving food and beverages, service of authorized guides, trekking accessories etc. against separate invoices.

In case where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.

Kerala Forest Development Corporation has been established with an unique commitment to preserve the culture and beauty of forest and for the development of Eco-Tourism in the State of Kerala. Accordingly, the applicant is conducting Eco-tourism activities in the reserve forest at Munnar, Gavi, Nelliampathy and Arippa. The objective of Eco-Tourism programs is to provide the guests the experience of the wild life in natural habitat and to create awareness for conservation as well as protection of forest wild life. The applicant offers tour packages at Munnar, Gavi, Nelliampathy and Arippa. The charges for tour package depends upon the type of accommodation choose by the customers. Now the applicant intends to change the modus operandi by issuing separate invoices to customers/guests for the services availed by them, instead of giving as packages. The services offered under different category are;

- (a) providing accommodation;
- (b) preparing and serving food and beverages;
- (c) providing service of authorized guides;
- (d) providing trekking accessories;

It is pointed out that these services are individually available to the guests, as such the guests have right to those any one other services. If the guests choose all the services, they will provide separate invoice. Accordingly, the applicant requested advance ruling on the following:

Tax liability under GST for tile tour packages, which are providing to guests by way of separate services like accommodation, serving food and beverages, service of authorized guides, trekking accessories etc against separate invoices.

It is stated that food and beverages are prepared in each of the destinations, and are served to the guests as per their request and separate invoices are to be issued. As per Notification No. 13/2018-Central Tax (Rate), dtd.26-07-2018, "supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses, dubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent is taxable @ 5% GST without input tax credit. The applicant is providing service of authorized guide which attract 18% GST. As per Circular No.47/21/2018-GST dtd.08-06-2018, it has been clarified that the taxability of supply would have to be determined on a case to case basis looking at the facts and circumstances of each case. Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.

Held: Tax liability under GST for the tour packages, which are providing to guests by way of separate services like accommodation, serving food and beverages, service of authorized guides, trekking accessories etc. against separate invoices.

In case where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.

GST ON UTILITY SERVICES**I. Introduction:**

India is the world's third-largest producer and fourth-largest consumer of electricity. In the last couple of years, the power sector witnessed record capacity addition taking the installed generation capacity to more than 330 GW. Considering its role in developing the economy and in achieving universal electrification, the Central and State Governments have always given special tax treatment to the power sector in the past. But post-GST, that trend may not continue.

The GST Act has kept electricity out of its ambit while keeping the capital goods and services consumed by the sector under its coverage. Power generating companies will hence not be able to claim input tax credit — that is, they cannot pass on the tax they paid for inputs to the consumers.

There is also no benefit of input tax credit in respect of state VAT on inputs used in the process of power generation and distribution. So, the cost of power will come embedded with taxes on power generation equipment and other inputs. A marginal rise in the power tariff is therefore inevitable at least in short to medium term.

Though the Engineering, Procurement and Construction (EPC) contracts could see a reasonable decrease as works contract gets subsumed into service tax, they cannot avail Input Tax Credit on contracts for the same reason that electricity is outside the GST regime.

As for the renewable sector, there will be an increase in the cost of generation to the extent of 5-10%, due to the increased tax incidence on many of the components that go into the manufacturing of solar PV systems and wind generation systems.

According to an estimate by the Ministry of New and Renewable energy, the cost of setting up solar off-grid projects will rise by

16-20%, after GST. There will be an about 16% increase in solar PV grid installations and a 11-15% jump in the cost of setting up of wind energy projects. As far as biomass and hydro projects are concerned, the increase in project cost will be about 11-14% and 11% respectively.

II. Important Key Provisions under GST:

Section 8: Tax liability on composite and mixed supplies

(a) **composite supply** comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply;

Section 2 (30) : “composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Section 2 (90) : “principal supply” means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

III. Sources of Income and their taxability under GST for Utility Companies:

1. Sale of Power
2. Income from renting of meters
3. Rent of Land, Building, etc
4. Income from Storage, etc
5. Sale of fly ash/scrap
6. Sale of carbon credits/ renewable energy certificates
7. Dividend and Interest Income
8. Exchange gain Income
9. Delayed payment charges/ Penal Charges

Now let us discuss the implication of GST on each head of Income:



1. Sale of Power –

As per the notification No. 12/2017 (Central Rates) Dt: 28th June, 2017 as per the entry no.25 – 'Transmission or distribution of electricity by an electricity transmission or distribution utility' are taxable under GST @ 'NIL'.

2. Other Income -

As per Circular No. 34/8/2018-GST dated 1st March 2018 issued by CBIC Service by way of transmission or distribution of electricity by an electricity transmission or distribution utility is exempt from GST under notification No. 12/2017- CT (R), Sl. No. 25.

The other services such as, –

- i. Application fee for releasing connection of electricity;
- ii. Rental Charges against metering equipment;
- iii. Testing fee for meters/ transformers, capacitors etc.;
- iv. Labour charges from customers for shifting of meters or shifting of service lines;
- v. charges for duplicate bill;

provided by DISCOMS to consumer are taxable.

3. Sale of Fly Ash/ Scrap –

Any scrap generated and sold by Utility Companies are taxable under GST.

4. Sale of carbon credits/ renewable energy certificates:

As per Circular No 46/20/2018-GST dated 6th June 2018 various certificates like RECs, PSLCs etc are classified under heading 4907 and will accordingly attract GST @ 12 %.

Accordingly, in modification of S.No. 3 of Circular No. 34/8/2018-GST dated 01.03.2018, it has been clarified that Renewable Energy Certificates (RECs) and Priority Sector Lending Certificates (PSLCs) and other similar documents are classifiable under heading 4907 and attract 12% GST.

5. Delayed payment Charges/ Penal Charges –

Same is taxable under GST.

IV. Time of Supply of Services for Utility Sector:

Section 13 of the Central Goods and Services Tax Act, 2017 states that:

- The time of supply of services shall be:

If the invoice is issued within thirty days from the date of supply of service:

- the date of issue of invoice by the supplier or
- the date of receipt of payment, whichever is earlier.

If the invoice is not issued within thirty days from the date of supply of service:

- the date of provision of service or
- the date of receipt of payment, whichever is earlier.

V. Input Tax Credit for Utility Sector:

h. Eligibility and conditions for taking input tax credit:

Section 16 of the Central Goods and Services Tax Act, 2017 states that:

Every registered person shall, subject to such conditions and restrictions, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

i. Basic conditions for availment of ITC

No registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

- (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act.
- (b) he has received the goods or services or both. However where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:
- (c) the tax charged in respect of such supply has been actually



paid to the Government, either in cash or through utilisation of input tax credit admissible; and

(d) he has furnished the return under section 39:

j. 'used by him' & 'in his business'

The words 'used by him' and 'in his business' as appearing in section 16(1) refer to the registered taxable person in question and not the legal entity. So, input tax paid in a State must not be in relation to the business of a taxable person in another State, albeit belonging to the same person.

k. Payment in 180 days:

Where a recipient fails to pay to the supplier, the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon.

However, the recipient would be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

l. Apportionment of ITC:

Section 17 of the Central Goods and Services Tax Act, 2017 states that:

- Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.
- **Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.**
- **The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on**

reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

m. Reversal of ITC in case of exempted supply:

- As per section 17(2) of CGST Act, 2017, ITC shall be reversed in case a company is effecting taxable supplies as well as exempt supplies
- Notification no. 3/2018-Central Tax, dated 23rd January, 2018, Interest on fixed deposits will not be considered as exempt supplies for the purpose of reversal of ITC as per Rule 42 and 43 of CGST Rules, 2017.

VI. Value of Taxable Supply -

Section 15 of the Central Goods and Services Tax Act, 2017 states that;

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, where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply

Inclusions & exclusions

Section 15(2) and Section 15(3) of the Central Goods and Services Tax Act, 2017 states that value of supply shall include---

- (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, if charged separately by the supplier;
- (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;
- (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply.
- (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and
- (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.



Explanation.--For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

The value of the supply shall not include any discount which is given--

(b) before or at the time of the supply if

- such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if

- such discount is established in terms of an agreement entered into at or before the time of such supply and

(d) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

VII. FAQ on Utility Sector:

1. Whether the Electricity Charges are taxable under GST?

Ans: As per the **notification No. 12/2017 (Central Rates) Dt: 28th June, 2017** as per the entry no.25 - 'Transmission or distribution of electricity by an electricity transmission or distribution utility' are taxable under GST @ 'NIL'.

2. Is the other services rendered by the DISCOMS are taxable?

Ans: Yes. Ancillary services rendered by be DISCOMS are taxable as per the Circular No. 34/8/2018-GST Dt: 1st March 2018. The following services are taxable under GST @ 18%.

- i. Application fee for releasing connection of electricity,
- ii. Rental Charges against metering equipment,
- iii. Testing fee for meters/ transformers, capacitors etc,
- iv. Labour charges from customers for shifting of meters or shifting of service lines,
- v. Charges for duplicate bill.



3. Is the LT/HT application for new Service Connection Taxable under GST?

Ans: Yes. It is Taxable under GST @ 18%.

4. Is the LT/HT Category Change/Load Change/ Name Changes/ Meter Testing Charges are Taxable under GST?

Ans: Yes. It is taxable under GST @ 18%.

5. Is the Reconnection charges collected by the DISCOMS Taxable under GST?

Ans: NO. Reconnection charges are not collecting for giving the separate service it is a part of principal supply. Hence, as per the sec 8 of CGST Act it is a composite supply hence, the GST on Reconnection fee is NIL.

6. Is the Developmental Chagres are Taxable under GST?

Ans: Yes. DISCOMs are collecting 1200/- per Kw towards the DC Charges and as per the Advance Ruling Authorities No.RAJ/AAR/2018-19/2 Dt: 05.112018 Other than "Transmission and Distribution Services by a Distribution utility" are Taxable Under GST @ 18%. As the developmental Charges are not part of Distribution of Electricity. Hence Developmental Charges are Taxable under GST @18%.

7. Is the Agricultural consumers Development charges are taxable under GST?

Ans: Yes. For agriculture consumers development charges from 01.07.2017 to 30.11.2018 will be collected through demand notice and if not paid within the notice period will be added in the CC bill with applicable interest and collected accordingly. For other category of consumers like LT & HT, the GST amount along with applicable interest will be added to the CC bill under the "GST on Development Charges (DC)" and collected accordingly.

8. Are the DISCOMs required to provide the Tax invoice against the GST collections?

Ans: Yes. The DISCOM will provide the system generated Tax Invoice. If the amount is paid at Customer Service Centre (CSC) tax invoice will be issued at CSC's . If the GST



amount is paid at ERO's, concerned AAO/ ERO will issue the Tax invoice. If the GST amount is paid through the payment gateways, GST invoice will be available for download in PDF format on successfully completion of transactions along with auto generated payment receipt (PR). For all the above mentioned transactions, GSTIN number of the consumer has to be provided by the consumer. Failing which no Input Tax Credit (ITC) can be availed by the consumer (LT&HT) against the Tax invoice generated.

9. Do the consumer need to provide the GSTIN number?

Ans: Yes. If the GSTIN number is not provided, GSTR1 will be filed under unregistered category.

10. Are the Cheque bounce charges subject to GST?

Ans: Yes. The cheque bounce charges are subject to GST @18%.

11. Is the Supervision Charges collected by the DISCOMs on Depository Contributed Works / Turnkey Works Estimations are Taxable under GST?

Ans: Yes. The Supervision Charges are Taxable under GST @ 18%.

GST Impact on Logistics Sector:

I. Introduction:

Transportation is associated with shifting of goods, passengers, etc from one place to another using different modes like roadways, railways, airways or through water. Transportation is an activity which connects different business with suppliers and customers. Transportation has an major impact on Indian economy.

After GST was introduced it had an positive impact in the transport sector. It has helped to ease the movement of consignment, goods via roads, rails, air and sea. 20% increase in transport efficiency was noted due to the dismantling of various checkpoints. The e-way bill has also helped drivers as it reduced the burden of enduring the procedures at various checkpoints.

The Planned GST system has replaced several state and federal tariffs for a single tax. Previous complicated tax structure in India referred that logistics decision, choice of setting up warehouses and distribution center, were taken on the basis of tax regime which included central sales tax and state value added tax rates.

GST unleashed an new era of developing logistics infrastructure, taking investments to new level and transportation. Transport vehicles used to waste about five to seven hours daily at interstate checkpoints. As per the estimation by World Bank, simply having delays due to roadblocks, tolls and other stoppages could cut freight times by 20% – 30% and cost logistics by 30% – 40%.

II. Benefits of GST to Transport Service:

1. **Simplified Tax** – The implementation of taxes removed 15 different state and federal taxes and tariffs. This removal of various rates of taxes eliminated the complexity in the transportation of goods and the cascading effect of indirect taxes.
2. **Warehouse/Logistics Costs Reduced** – The previous tax structure led to higher logistics costs, which has been reduced by over 20% since the implementation of GST. Additionally, since each state had a different tax slab rate previously, companies housed warehouses in various states, instead of at strategic points, which led to increased warehouse costs. By removing multiple warehouses, logistics is improved, and optimization in the supply chain.
3. **More Efficient** – One central tax rate makes for seamless transportation across the country through all the states, with the removal of multiple checkpoints, entry permits, complicated paperwork etc. By removing the complexities in transporting through the states, it reduces transportation time, operational costs and more efficient logistics.
4. **Technology Driven** – In addition to GST being technology driven, the e-way bill has helped the players in the industry remove the confusion by creating uniformity in the industry. The consensus among the industry is that GST has improved things for the better, but as this is only the beginning, the real benefits are yet to be realized.



5. **Reduced Paperwork and Consolidation in GST** - Under GST lot of taxes like entry tax, OCTROI has been removed. Removal of this kind of taxes had ease the paperwork procedure for the logistics service providers

III. Comparison of Compliances in GST and earlier regime:

Sl. No.	Head	Earlier Regime	GST Regime
1	Registration	<ul style="list-style-type: none"> • No requirement for obtaining State wise registration • Option of obtaining single or centralized registration for multiple places of business • Online registration through Automation of Central Excise and Service Tax (ACES) website • No provision for separate registrations of each business vertical in a State 	<ul style="list-style-type: none"> • Separate registration required in each state for each legal entity • Concept of single/centralized registration for multiple places of business not provided • Registration to be done through GST common Portal i.e. Goods and Services Tax Network ('GSTN') • Separate registrations may be obtained for each business vertical in a State (optional) • Registration is mandatory for collecting and claiming GST credit • Provision for migration of existing registrants – no clarity on migration of centralized registration

2	Filing of Returns	<ul style="list-style-type: none"> • Centralized registration – one return for multiple places of business; • Decentralized registration – separate return for each place of business • Half-yearly periodic return for service tax • Separate return for input service distributor ('ISD') to be filed half-yearly • Revision of return can be made within 90 days 	<ul style="list-style-type: none"> • Statement towards outward and inward supplies to be filed by 10 and 15th of the succeeding month respectively • Monthly periodic return including details of inward and outward supplies, CENVAT credit, tax paid to be filed by 20th of succeeding month • Businesses have been filing GSTR 1 and GSTR 3B. • Returns are either monthly or quarterly based on turnover. • Common return for CGST,SGST, IGST • Separate return for ISD to be filed monthly • Annual return reconciling value of supplies with Financial Statements to be filed per registration • No specific provision for revision of returns; Corrections/ adjustments for past period to be made in subsequent/ future return(s)
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3	Payment of Tax	<ul style="list-style-type: none"> • Service tax payments required to be made on a monthly basis, i.e. by 6th of succeeding month • One tax payment each month per registration. 	<ul style="list-style-type: none"> • Tax payments to be made before last date of filing monthly periodic return • Three tax payments per registration for CGST, SGST, IGST
4	Debit/ Credit Notes	<ul style="list-style-type: none"> • No provision for issue of credit/ debit notes under service tax law. Under VAT legislation, credit/ debit notes may be issued in situations where goods are returned post sales 	<ul style="list-style-type: none"> • Corrections/ adjustments can be made through credit/debit notes linked with original invoice
5	Invoicing	<ul style="list-style-type: none"> • No requirement of State wise issuance of invoice • Details in invoice – registration number, recipient's name and address, description of service, taxable value, service tax payable • Requirement to issue consignment note 	<ul style="list-style-type: none"> • State wise issuance of invoice for each supply (to the extent such supplies are made from such state) • Details in invoice – invoice number, date, taxable value, registration number, buyer's address, place of supply, tax amount, tax rate, HSN codes for goods/ Service Accounting code for services • Requirement to issue consignment note

6	Record Keeping	<ul style="list-style-type: none"> • If records maintained under any other law, that would suffice for service tax purpose as well • No requirement to maintain separate records for each State/ business vertical 	<ul style="list-style-type: none"> • Books of accounts to include – record of manufactured goods, inward or outward supply, stock of goods, input tax credit availed, output tax payable • Separate accounts for each states / verticals registered under GST bearing unique registration number
7	Audit	<ul style="list-style-type: none"> • No requirement for assessee to get his accounts audited • Commissioner may carry out scrutiny, verification, checks of records at any registered premises • Special audit may be ordered by Commissioner in case specified defaults by assessee to be conducted by Chartered Accountant or Cost Accountant 	<ul style="list-style-type: none"> • Assessee whose turnover exceeds prescribed limit to get accounts audited by Chartered Accountant or Cost Accountant • Commissioner may undertake audit of business transactions at any place of business • Separate audit for each registration



IV. Different modes of Transportation of Goods in India

- a. Transportation by Road
- b. Transportation by Rail
- c. Transportation by Air
- d. Transportation by Waterways
- e. Transportation by multi modal transport

V. Goods Transport Agency Service

Goods Transport Agency (GTA) means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.

It is to be noted here that, only those issuing a consignment note are considered as a GTA. Thus, a consignment note is an essential condition to be considered as a GTA.

Consignment Note:

- Serial Number
- Names of the consignor and consignee
- Registration number of the carriage used for transport of goods
- Details of the goods transported
- Place of origin and destination
- Person liable for paying tax

VI. GST Rate on Transport Charges:

Sl. No.	Services by GTA	Rate of GST
1	Carrying- <ul style="list-style-type: none"> • agricultural produce • milk, salt and food grain including flour, pulses and rice • organic manure • newspaper or magazines registered with the Registrar of Newspapers • relief materials meant for victims of natural or man-made disasters • Defence or military equipment 	0%

2	Supplies, where consideration charged for the transportation of goods on a consignment transported in a single carriage is less than Rs. 1,500	0%
3	Supplies, where consideration charged for transportation of all such goods for a single consignee does not exceed Rs. 750	0%
4	<ul style="list-style-type: none"> • Any other goods • Used household goods for personal use • goods of unregistered persons • goods of unregistered casual taxable persons 	5% (No ITC) or 12% with ITC 0% 0% 0%
5	Transporting goods (GST paid by GTA)	5% (No ITC) or 12% with ITC
6	Hiring out vehicle to a GTA	0%

VII. Taxability of Goods Transport Agency Services (GTA) for Specified or non-Specified Category of Persons:

a. Specified Category persons

When a Goods Transport Agency (GTA), whether registered or unregistered, provides taxable transportation or related services to any of the specified persons, the recipient of the service is liable to pay tax on reverse charge basis. These specified persons are :

- A person registered under GST
- A factory registered under or governed by the Factories Act, 1948
- A Society registered under Societies Registration Act, 1860 or under any other law for the time being in force in any part of India
- A co-operative society established by or under any law
- A body corporate established by or under any law
- A partnership firm, whether registered or not under any law, including association of persons
- A casual taxable person



Note 1: All the persons specified above are mandatorily required to register under GST, irrespective of their turnover, as they are liable to pay tax on reverse charge basis.

Note 2: Any person in the above list of specified persons who pays tax on reverse charge basis on transportation service received from a GTA, is eligible for full input credit of the tax paid.

b. Non- specified Category persons

These are :

- Unregistered Sole Proprietor
- Unregistered HUF (Hindu Undivided Family)
- Unregistered BOI (Body of Individuals)

Note:

- When a registered GTA provides transportation service to any of these persons, the GTA is liable to pay tax on the supply
- This is applicable only when the GTA is registered
- If the GTA is also unregistered, there will be no tax liability on the GTA or the recipient
- In such cases, where a registered GTA is liable to pay tax @ 5% on transportation service, 2 options have been given to them:
 - o Pay tax @ 5% with no input tax credit
 - o Pay tax @ 12% with full input tax credit

VIII. GST rate on Transportation by Rail

As per the recent amendment, transport of goods via Indian railways is taxed at 5% with the availability of ITC, which makes rail transport competitive with road transport. For transport via railways other than Indian railways, GST is charged at 12% with the availability of input tax credit.

IX. Transportation by Air

Transport of goods is taxed at 18% for within India, out of India and into India with input tax credit available.

X. Transportation by Waterways

GST on movement of goods by waterways is 5% with the availability of ITC.

XI. Transportation by multi modal transport

Multimodal transport is the process of goods being transferred between locations using more than one method of transportation, such as road and rail. For example, the first step in multi-modal transport begins when the consignment leaves the warehouse by road and reaches its next transport destination either by rail, within the country or in cases of exports by air or sea. From here the final leg of the transport may go by road to reach the market for consumption. So, if a supplier is transferring goods, he/she does not have to own all the methods of transport. They can use an intermediary, known as a multimodal transporter, who takes up the responsibility of ensuring the goods are delivered utilizing more than one means of transport.

Since the implementation of GST, the government has committed to developing multi-modal logistics parks, such as the one undertaken in Varanasi, that will serve as a gateway connecting North to East with terminals for waterway, rail and road, with storage and warehouse facilities as well. As mentioned, GST has improved logistics furthered aided by the introduction of the e-way bill. However, as the industry is only just beginning to see the benefits, more can be done, especially for multimodal transportation.

The automotive industry, specifically, has requested for a single rate of GST as the present scenario applies various GST rates. By having one single rate, it would make for seamless transaction from the factory to end consumer. Moreover, in the present system, in cases of multimodal transport, the rules and various rates for the different modes of transport, allows for interpretation of various players such as consultants or tax experts, leading to confusion. The implementation of GST has organized this unorganized structure, which is in its next stage of becoming more organized by creating a more effective multimodal transportation, which will reduce logistics costs and improve imports and exports in the country, enabling global competitiveness.



Multimodal transport of goods will be charged at the rate of 12% with full ITC under forward charge vide notification no. 13/2018- Central Tax dated 26.07.2018.

XII. Place of Supply for Transportation of Goods:

Service type	Recipient Type	Place of Supply	Example
Transportation of Goods	Registered Person	Location of recipient	<p>LCL Logistics, a goods transportation company based in Hyderabad, provides transportation services to Sigma Pvt. Ltd., an automobile manufacturer, registered in Telangana.</p> <p>Location of supplier: Telangana</p> <p>Place of supply: Telangana</p> <p>It is an intrastate supply and the applicable taxes are CGST and SGST.</p>
Transportation of Goods	Unregistered Person	Location at which the goods are handed over for transportation	<p>Vishaka Industries, a courier agency registered in Maharashtra, provides courier services to an unregistered customer, Aswin, in Karnataka, to deliver documents from Maharashtra to Karnataka.</p> <p>Location of supplier: Maharashtra</p> <p>Place of supply: Maharashtra</p> <p>It is an intrastate supply and the applicable taxes are CGST and SGST</p>

XIII. FAQ on Transport Services Sector:

Question 1: I am a single truck owner-operator and I ply my truck mostly between States, carrying the goods booked for my truck by an agent; aggregate value of service which I provided exceeded twenty lakh rupees during last year. Am I supposed to take registration?

Answer: You are not liable to registration, as services provided by way of transportation of goods by road are exempt. Notification number 12/2017-Central Tax (Rate), dated 28th June, 2017 refers.

Question 2: I own a single truck and I rent it to a major player, who provides GTA service; should I take a registration? Does my monthly rental/lease income attract GST?

Answer: Registration is not required since services by way of giving on hire, a means of transportation of goods to a GTA are exempt from tax vide entry no. 22 of Notification number 12/2017-Central Tax (Rate) dated 28th June, 2017.

Question 3: In my truck, I only carry fruits and vegetables, in relation to whose transportation service GST is exempt; should I take registration?

Answer: Services by way of transportation of goods by road other than by a GTA or a courier agency are exempt from tax under entry no. 18 of notification No. 12/2017-Central Tax (Rate) dated the 28th June, 2017 and thus you are not liable for registration.

Question 4: I am a truck supplier/broker. My job is to get orders for truck owners. I quote the rate for transportation to GTA on behalf of truck owners and I get a small amount as commission out of the truck hire fixed with the GTA. This brokerage is paid by the truck owners. As the services provided by way of transportation of goods by road are exempt from tax, am I liable to registration?

Answer: You are liable to registration if the aggregate amount of commission received by you in a financial year exceeds Rs. 20 lakhs (Rs. 10 lakhs in special category States except J & K).

**Question 5: As a transporter, am I required to maintain any records of my services of transportation?**

Answer: Yes, in terms of section 35(2) of the CGST Act, 2017 you are required to maintain records of the consigner, consignee and other relevant details of the goods. Further, in terms of rule 56 of the CGST Rules, 2017 you are required to maintain records of goods transported, delivered and goods stored in transit by you along with the GSTIN of the registered consigner and consignee for each of your branches.

Question 6: Are intermediary and ancillary services, such as, loading/unloading, packing/unpacking, transshipment and temporary warehousing, provided in relation to transportation of goods by road to be treated as part of the GTA service, being a composite supply, or these services are to be treated as separate supplies.

Answer: The GTA provides service to a person in relation to transportation of goods by road in a goods carriage, which is a composite service. The composite service may include various intermediary and ancillary services, such as, loading/unloading, packing/unpacking, transshipment and temporary warehousing, which are provided in the course of transport of goods by road. These services are not provided as independent services but as ancillary to the principal service, namely, transportation of goods by road. The invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services.

In view of this, if any intermediary and ancillary service is provided in relation to transportation of goods by road, and charges, if any, for such services are included in the invoice issued by the GTA, such service would form part of the GTA service and would not be treated as a separate supply. In fact, any service provided along with the GTA service that is part of the composite service of GTA shall be taxed along with GTA service and not as separate supplies.

However, if such incidental services are provided as separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies.

Question 7: As per Notification number 05/2017-Central Tax dated 19th June, 2017, the persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient of such goods or services or both under sub-section (3) of section 9 of the CGST Act, 2017 are exempted from obtaining registration under the said Act. Please clarify whether a GTA providing service in relation to transportation of goods by road under reverse charge mechanism (RCM) can avail of the benefit of this exemption.

Answer: Yes, a GTA providing service in relation to transportation of goods by road under RCM can avail of the benefit of this exemption.

Question 8: Can a GTA obtain registration for one vertical (Rail, Cargo, Renting, Warehousing etc.) for which tax needs to be paid while not obtaining registration for another vertical (GTA under RCM) on which there is no tax liability.

Answer: No, because the business entity is not engaged exclusively in the supply of services liable to tax under reverse charge mechanism.

Question 9: In transport industry, old vehicles, old tyres, scrap material etc, on which no input tax credit (ITC) has been taken, are disposed of after completion of their useful life. As a truck owner disposing of these goods, am I required to pay GST considering that no ITC has been taken at the time of their initial purchases? Would levy of tax in such cases not amount to double taxation, as tax has already been paid at the time of initial purchases?

Answer: Under section 7 of the CGST Act, 2017 supply includes all forms of supply of goods such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Sale or disposal of old vehicles, old tyres and scrap material for a consideration would therefore attract GST regardless of whether ITC has been availed or not.



Question 10: Please clarify whether input tax credit is available to the recipient of service, when the GST paid by him is at a concessional rate of 5% under RCM.

Answer: Yes, input tax credit is available in such cases.

Question 11: When a GTA hires a truck (with driver) from another GST registered entity for the purpose of providing goods transport service to a registered recipient, whether tax credit is available to the GTA on the GST paid by him to the owner of the truck registered under GST.

Answer: Services by way of giving on hire to a GTA, a means of transportation of goods are exempt from GST under Notification number 12/2017-Central Tax (Rate) dated 28th June 2017. When the tax is not payable, the question of taking any tax credit does not arise.

Question 12: In terms of section 12(9) of the IGST Act, 2017 the place of supply of passenger transportation service to a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey.

In section 2 (3) of the IGST Act, 2017, the term “continuous journey” has been defined to mean a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

Do all stopovers cause a break in continuous journey? Does the definition of “continuous journey” include instances whereby the stopover is for any period of time?

Answer: The term “stopover” has been explained in section 2(3) of the IGST Act, 2017 to mean a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time. However, all stopovers do not cause a break in continuous journey. Thus a travel on Delhi-London-New York on a single ticket with a halt at London will be covered by the definition of continuous journey. However, the return journey of

New York-London-Delhi will be treated as a separate journey and will be outside the scope of a continuous journey.

Question 13: How GST is to be charged on a multi-leg international journey, say Delhi- Dubai-Boston-Dubai-Delhi? Is GST chargeable for the entire journey and discharged at Delhi, or the GST is to be charged for Delhi-Dubai sector alone and discharged at Delhi, or GST is to be charged up to the farthest point of return, i.e. Delhi-Dubai-Boston at Delhi?

Answer: In this case if a single ticket or invoice has been issued for the Delhi-Dubai-Boston then it is a continuous journey even if there is a stopover at Dubai and the tax (CGST + SGST) would be charged at Delhi. The return journey of Boston-Dubai-Delhi would not be a continuous journey. The return journey not being a continuous journey and its place of supply being outside India, the said journey, would be liable to tax if the location of the supplier is in India.

Question 14: Is the electronic ticket receipt acceptable as a tax invoice for the purpose of GST? Is there any requirement for the Airlines to issue a proper tax invoice?

Answer: Yes, the electronic ticket in the global standard format (and without further modifications) is acceptable as a tax compliant invoice for GST purposes, regardless of the value of the transaction. Rule 54 (4) of the CGST Rules, 2017 refers. However, for B2B supplies, a tax invoice may be provided to enable the registered business customer to claim input tax credits.

Question 15: Is there any requirement for electronic ticket receipts issued to be signed or digitally signed for GST purposes?

Answer: No. In terms of Rule 54 (4) of the CGST Rules, 2017 in the case of passenger transportation service, a tax invoice shall include ticket in any form, whether or not serially numbered, and whether or not containing the address of the recipient of service but containing other information as mentioned under Rule 46 of the Rules *ibid*. As the electronic tickets issued by the Airlines are in the global standard format, such electronic ticket receipts are not required to be signed or digitally signed.



Question 16: Whether the Airlines are required to issue invoice to the customers transaction-wise, (i.e. Airway Bill-wise, Ticket Journey-wise) or a consolidated invoice, capturing the details of all individual invoices for a particular entity, can be issued on a monthly or fortnightly basis?

Answer: A single invoice incorporating the details of all the supplies for a particular entity can be issued subject to provisions of section 31 of the CGST Act, 2017. In such a case the ticket issued by the Airlines would not take the character of an invoice.

Question 17: Would GST be applicable on air travel undertaken on or after 1st July 2017 on tickets issued prior to 1st July 2017 on which service tax was collected and discharged.

Answer: As service tax has already been collected and discharged by the Airlines on tickets issued prior to 1st July, 2017, there shall be no GST on such tickets even though the travel date is on or after 1st July 2017.

Question 18: Does the GST treatment on fees for ancillary services in relation to air transport follow that of the underlying air transport service?

Answer: Yes, ancillary services are part of the service of transporting a passenger by air and do not constitute a separate supply of service. In this respect, ancillary services include services that are incidental to the transport of passengers by air (e.g., excess baggage charges, date change charges, un-accompanied minor fees, preferred seat charges, cancellation fees etc.).

Consequently, ancillary services shall be treated within the same category of service as "transport of passengers by air" and shall attract the same rate of GST as applicable to the transport of passengers by air.

Question 19: Will Airlines be entitled to input tax credits under the GST transitional rules if the liability to pay service tax arises, due to resolution of litigation or disputes, after implementation of GST?

Answer: Yes, Section 142 6 (a) of the CGST Act, 2017 provides



that every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of the existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of the existing law other than the provisions of section 11B (2) of the Central Excise Act, 1944.

Note: Reference to CGST Act, 2017 / CGST Rules, 2017 includes reference to SGST Act, 2017 / SGST Rules, 2017 and UTGST Act, 2017 / UTGST Rules, 2017 also.

Summary of Rulings in GST Regime applicable to Transport Sector:

Forum Name – Authority for Advance Ruling - Tamilnadu

Citation: 36/ARA/2019 dated 26-07-2019

Name of the Applicant: Thirumangalam Sengodan Kumarasamy, Proprietor of Christy Fried Gram Industry

whether it will be still a composite supply even if the invoices are raised separately for supply of food and delivery of the food. It is seen from the bid document that payment will be made only after delivery of the food at the centers specified.

Based on this and the fact that it is a composite supply, it is for the applicant and the recipient to appropriately raise invoices. This forum cannot specify how the invoices are to be raised.

The supply of 'Complementary Weaning Food Containing Amylase Activity' at the specified destinations as per the bid/agreement is a composite supply which is a taxable supply liable to GST.

The applicable rate is 2.5% CGST and 2.5% SGST subject to fulfillment of the conditions of Notification No. 39/2017-Central Tax (Rate) dt 18.10.2017 and Notification No. II(2)/CTR/8689f-1/2017 vide Go Ms. 140 Commercial Tax and registration Department (B1) dt 17.10.2017.

As the entire supply of the food and delivery together is a composite supply, the transportation/ delivery alone is not a "Goods Transport Agency service.



Held:

1. The supply of 'Complementary Weaning Food Containing Amylase Activity' at the specified destinations as per the bid/ agreement is a composite supply which is a taxable supply liable to GST.
2. The applicable rate is 2.5% CGST and 2.5% SGST subject to fulfillment of the conditions of Notification No. 39/2017-Central Tax (Rate) dt 18.10.2017 and Notification No. II(2)/CTR/8689f-1/2017 vide Go Ms. 140 Commercial Tax and registration Department (B1) dt 17.10.2017.
3. As the entire supply of the food and delivery together is a composite supply, the transportation/ delivery alone is not a "Goods Transport Agency service.
4. This Authority cannot specify how the invoices are to be raised for this composite supply.

Forum Name – Authority for Advance Ruling - Maharashtra

Citation: GST-ARA-36/2017-18/B-43 dated 04-06-2018

Name of the Applicant: Dinesh Kumar Agarwal, Maharashtra

"Whether transportation charges received by the applicant are liable to GST, especially when the applicant is not a goods transport agency (GTA)"?

Transportation -The Contractor shall at its own risk and expense, be fully responsible for loading, transportation, delivery to the Project Site and unloading of the Equipment. The cost of transit insurance, if any, should be borne by the Contractor.

Composite supply

As per Section 2(30) of the Act, "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Applicant understand that where a single price is charged for supply of goods, packing materials, transport and insurance, it

would be considered as composite supply and tax will be payable at the rate applicable to principal supply.

However, there is ambiguity on taxability when the Applicant charges separate price for transport and insurance. The customer is at liberty to take delivery of goods and transport the same in his own carriage or in a hired one. And therefore, such arrangement should not fall within the mischief of section 2(30) of the Act.

Taxability

If such transporter is considered as GTA, tax would be payable by the customer and if such transporter is not a GTA, no tax would be payable as same is exempt under entry 18 of Notification No. 12/2017-Central Tax (Rate).

The Applicant understand that separate price for the goods and transportation signifies two distinct contract, first part for supply of goods and the second part for transportation of goods. There is no prohibition in entering into multiple contracts in a single form. Although a single form is used, in substance, each part is a separate contract making it a divisible contract. In this regards, the Applicant has placed its reliance on Builders Association of India vs Union of India [1989 SCALE (2) 768]

In as much as supply of goods is concerned, the rate would be depend on the classification of the goods. However, in as much as transportation charges are concerned, the Applicant submits that:

- (i) Tax is payable on transportation of goods only if Goods Transport Agency (GTA) is involve in the transportation;
- (ii) In the present case, the Applicant don't issue any consignment note and therefore, he cannot be treated as GTA;
- (iii) Service by way of transportation of goods by road except by GTA is exempt;
- (iv) Thus, as the Applicant is not a GTA, no tax should be payable on the transportation charge received from the customer.

Held: Answered in the affirmative and same is liable to tax as a works contract as per provisions of section 2(119) of the GST Act.

ROLE OF CMA IN GST REGIME

The introduction of Goods and Services Tax (GST) has brought a very significant change in the Indian arena of indirect tax reforms. By integrating a large number of Central and State taxes into a single tax, it has mitigated cascading or double taxation effect in a major way and paved the way for a common national market.

CMA with his academic knowledge and professional expertise can play a crucial role as a consultant and a catalyst for due compliances of law relating to goods and services tax to the general business community and spread tax-literacy and GST awareness

Let us discuss in brief few avenues where a CMA can play a pivotal role:

1. Partner In Transition:

The legacy issues has carried forward with the introduction of GST. There has been numerous transitional issues going into the new law such as treatment of existing stock, existing litigation and credit issues. Services are required in preparing Standard Operating Process ('SOP') for businesses under the new regime.

Review of pre-GST cenvat credit and set -off balances to be carried forward, analysis of inventory lying at different locations on transition/Cenvat Refund /VAT Refund /Rebates /Drawbacks already filed or to be filed, projects in hand /WIP – normal business model and works contract model, audit under Old Regime & New Regime, de-registration, registration & Compliances under existing Laws, Pending adjudications &litigations.

2. Compliance Partner:

With the introduction of GST the Compliance requirement has transitioned to a paperless regime. The entire compliance is being handled on GSTN portal. Various forms, returns and refund applications are filed on portal. A CMA can provide support in

obtaining registration, making amendment in registration, providing support in maintenance of accounts & records, assisting in payment of tax, providing support in filing of returns. The effective management of indirect taxes is crucial in today's global market place.

A CMA is well equipped to assist the business entities in providing assistance towards GST Registration, Claiming tax credits, ensuring all the necessary legal compliances, procedural formalities and other administrative follow ups.

3. Systems Audit and Development of various processes for GST Compliance:

A systems audit involves a detailed analysis and evaluation of a complete system, often the accounts payable or accounts receivable system. There has been a sea-change required in the ERP or Accounting systems established. Those systems are to be made GST-compliant. CMAs would be the facilitator to conduct the systems audit rigorously and guide in systems development.

Each change in form in the GST regime may require enterprises to bring in changes in front end or back end in their ERP systems.

4. Accounting and IT Infrastructure Change:

Today's businesses use software (ERP, SAP, Tally) both by the industry and service providing tax professionals. With the advent of GST, drastic revamping of existing IT infrastructure would be required.

Further, the entire current accounting codes / treatment may undergo a change under the new legislation. With the knowledge of GST, cost accountant would be best suited to aid technicians in designing the software modules.

5. GST Training and Handholding of entities –

A CMA being a professional has a critical role to play in training

- (a) for the industry
- (b) tax professionals.

A multifold training structure is to be followed and training must be imparted to all involved stakeholders handling GST. Few of them are –



1. Government Departmental Officers
2. Training the trainers
3. Members of the profession
4. Industry stakeholders
5. Business owners
6. Process owners

Training would be required in first educating the business owners and higher management on the likely impact of GST on their business and thereafter updating the company personnel with nuances of GST along with regular update sessions.

6. GST Audit and Assurance:

A Cost Accountant in Practice has been recognised for conduct of GST Audit as per the provisions of the CGST Act, 2017.

Various other audit functions can be undertaken post GST like review of record & procedural aspects, suggesting changes in registrations, verification of returns, reconciliation between submissions to various authorities, analysis of benefits & incentives, statutory compliances & audit, Internal Audit & System improvement.

Further, Department may engage a Cost Accountant to conduct special audit (sec 50 of the CGST Act, 2017) which he is specialised to handle.

7. Representation and Dispute Resolution Services:

In GST regime, there has been various disparities between the Centre and the States on account of various issues with reference to cross-border transactions, issues arise in respect of levy and administering of Destination State's share of revenue, dealing with inter-state movement of goods and services.

Hence, for the resolution of the various issues in GST regime, there is a need to have dispute settlement mechanism in order to have smooth flow of structure. CMAs are recognized to make representations before the Appellate Tribunals under the Indirect Taxation statutes in India. They would continue to represent even in post-implementation of GST for Dispute Resolution.



Further, a CMA may also represent client in Authority for Advance Ruling and Appeal therefrom on various issues

8. Business Advisory Services:

Managing a business in today's world is very complex and presents many confrontations to the corporate houses. CMAs are qualified, proficient and knowledgeable professionals, who can interpret the proposed GST law and may provide required guidance and advisory services to eradicate bottlenecks in finance, production, taxation, administration, supply chain management, etc.

GST requires proper record keeping and accounting. Systematic records of credit of input/output service and its proper utilization is necessary for the success of GST. CMAs are well equipped to perform such tasks too.

Assessing impact on business with the introduction of GST, crafting business plans in the changed environment, Contract review for Cost Reduction /Price Revisions, transaction Structuring by mapping existing business model.

Providing Opinion and other advisory services on application of various provisions of law like Input tax Credit, Valuation, assessment of taxability, determining place of supply, maintenance of records, consultancy on various issues involving inter-state supply, input tax, returns, registration, etc.

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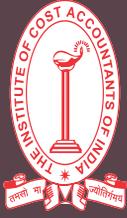
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