

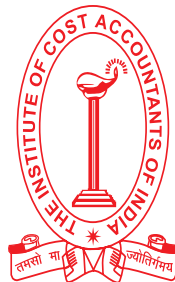
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February, 2023

TAX Bulletin

Volume - 130
17.02.2023



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters: CMA Bhawan, 12, Sudder Street, Kolkata - 700016

Ph: 091-33-2252 1031/34/35/1602/1492

Delhi Office: CMA Bhawan, 3, Institutional Area, Lodhi Road, New Delhi - 110003

Ph: 091-11-24666100

“

VISION STATEMENT

“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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MISSION STATEMENT

“The CMA Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting.”

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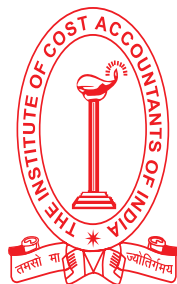
Objectives of Taxation Committees:

1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners and stake holders and also Crash Courses on GST for Colleges and Universities.

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Certificate Courses Offered by the Tax Research Department

1. Certificate Course on GST (CCGST)
2. Advanced Certificate Course on GST (ACCGST)
3. Advanced Certificate Course on GST Audit and Assessment Procedure (ACGAA)
4. Certificate Course on TDS (CCTDS)
5. Certificate Course on Filing of Returns (CCFOF)
6. Advanced Course on Income Tax Assessment and Appeals (ACIAA)
7. Certificate Course on International Trade (CCIT)

Admission Link - <https://eicmai.in/advsc/DelegatesApplicationForm-new.aspx>

Modalities

Description	Course Name						
	CCGST	ACCGST	ACGAA	CCTDS	CCFOF	ACIAA	CCIT
Hours	72	40	30	30	30	30	50
Mode of Class	Offline/ Online	Online					
Course Fee* (₹)	10,000	14,000	12,000	10,000	10,000	12,000	10,000
Exam Fee* (₹)	1,000 per attempt						
Discounts	20% Discount for CMA Members, CMA Qualified and CMA Final Pursuing Students						

*18% GST is applicable on both Course fee and Exam fee

Eligibility Criteria for Admission

- ▲ Members of the Institute of Cost Accountants of India
- ▲ Other Professionals (CA, CS, MBA, M.Com, Lawyers)
- ▲ Executives from Industries and Tax Practitioners
- ▲ Students including CMA Qualified and CMA Pursuing

On passing the examination with 50% marks a Certificate would be awarded to the participant with the signature of the President of the Institute

Course Details

<https://icmai.in/TaxationPortal/OnlineCourses/index.php>

Courses for Colleges & Universities by the Tax Research Department

Modalities

Eligibility

- ▲ B.Com/ BBA pursuing or completed
- ▲ M.Com/ MBA pursuing or completed

Description	Courses for Colleges and Universities	
	GST Course	Income Tax
Batch Size	Minimum 50 Students per Batch per course	
Course Fee* (₹)	1,000	1,500
Exam Fee* (₹)	200	500
Duration (Hrs)	32	32

For enquiry about courses, mail at: trd@icmai.in

*18% GST is applicable on both Course fee and Exam fee

Behind every successful business decision, there is always a **CMA**



CMA Chittaranjan Chattopadhyay
Chairman
Indirect Taxation Committee

FROM THE DESK OF CHAIRMAN

Dear Sir / Madam,

Continuing with the Budget flare the Tax Research Department organized on the **16th of February, 2023, Topic: "GST – Budget and other Recent changes"**, faculty for the session was CMA M Saravana Prabhu.

- **Composition Levy** – Suppliers of goods through E-commerce operators will now be eligible to opt for the composition scheme- Now Unregistered suppliers and composition taxpayers can now opt for the composition scheme to make intra -state supply of goods through e-commerce operators.
- **Eligibility and conditions for taking input tax credit** – Proposed Amendment says , in case recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, 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 paid by him along with interest payable under section 50, in such manner as may be prescribed: Also recipient would be entitled to re-avail the ITC on payment made by him to supplier towards value of supply along with tax thereon.
- **Apportionment of credit and blocked credit Proposed Amendment-** Restrict availment of ITC in respect of certain transactions specified in Para 8(a) of Schedule III – Supply of custom bonded warehouse goods before clearance for home consumption. Above stated supply will be included in exempt supply. But whether this amendment will be prospective or retrospective is still under consideration.
- **Blocked ITC** – ITC on CSR expenses (Corporate social responsibility) referred to in Section 135 of the companies act 2013 now blocked.
- **Persons who are required to take compulsory registration u/s 24 of CGST ACT 2017** need not to register themselves if they are not liable for registration /exempted u/s 23(1) of CGST ACT 2017. Notable amendment- A person engaged in exempted supply of goods or services need not required to take compulsory registration even if required to do so as per section 24 of CGST ACT 2017.
- **Filing of belated GSTR-1, GSTR-3B, GSTR-9/9A & GSTR-8 not beyond three years of the due date** - Now three years' time limit have been allowed from due date of filing GSTR-1/GSTR-3B /GSTR-9/GSTR-9A/ GSTR-8 for furnishing these returns.

- **Refund of tax-** Provisional refund of 90 % of total amount claimed in case of zero rated supplies is being amended to remove the reference to provisionally accepted input tax credit to align with present scheme of availment of self-assessed input tax credit as per sec 41 (1) of the CGST ACT.
- **Interest on delayed refunds-** In case refund is delayed beyond the period of 60 days then Interest will be calculated from the date of receipt of application till the date of refund.
- **Penalty on E-commerce operators** - Penal provisions applicable to e-commerce operators in case of contravention of provisions relating to supplies of goods made through them by unregistered persons or composition taxpayers. So they need to build a system so that composition taxpayers need not make inter-state supplies.
- **Decriminalization of certain offenses** - Following offenses were decriminalized- Clause (g) – obstruct or prevents any officer in the discharge of his duties. clause (j) tampers with or destroys any material evidence or documents clause (k) fails to supply any information. Further, Monetary threshold for launching prosecution for offenses under the Act increased from 1 crore to 2 crores except in case of fake invoices.
- **Compounding of offenses-** Following persons were excluded from compounding of offenses – Issue of invoice without the supply of goods or services or both (Fake Invoices Further, amount of compounding of offenses reduced except offense of fake invoices. Existing compounding amount- Rs 20000 or 50 % to 150% of tax amount involved. Proposed compounding amount – Rs 20000 or 25 % to 100 % of tax amount involved.
- **Retrospective amendment of changes in Schedule III Certain activities such as** - Supply of goods from place outside the taxable territory to another place outside taxable territory High Sea Sales Supply of warehouse goods before their home consumption Treated as neither supply of goods nor supply of services w.e.f 01.07.2017 It is also clarified that in case tax has been paid on above stated supplies, no refund of such tax shall be available.
- **Amendment in definition of OIDAR services** – Widened the scope of services by excluding the condition of “essentially automated and involving minimal human intervention” from the said definition.
- **Proviso to sub-section (8) of section 12 of the IGST Act is being omitted** so as to specify the place of supply, irrespective of destination of the goods, in cases where the supplier of services and recipient of services are located in India.

The webinar ended with doubt clearing session where in members clarified certain doubts on the budget changes and positive reply for more such detailed session in near future.

GST Course for College and University students commenced at

- S A College of Arts & Science, Chennai on 15th February

Exam for GST Course for College and University students completed at

- Malappuram District Panchyath Student Exam on 4th February
- The New College (Autonomous), 2nd batch on 8th February and
- Government Arts and Science College, Kondotty on 9th February

GST Crash Course Certificate distribution ceremony was organised in Malappuram District Panchayat & Institute on 11th February 2023 in a grand manner. I feel privileged to attend the function and to address an odd number of 300 participants. The occasion was graced by dignitaries like: **Shri.V Abdu**

Rahman (Minister for Railways-Govt. of Kerala), **Shri. P. Ubaidulla** MLA GoK, **Smt. M K Rafeekha**, President, Malappuram Distric Panchayat, **Mr.Ismail Muthedam**, Vice President, Malappuram Distric Panchayat, **Smt. Naseeba Mayyeri**, Chairperson, Standing Committee-Malappuram District Panchayat, and **CMA H Padmanabhan**, Central Council Member , Chairman , CAT & AAT Board of the Institute of Cost Accountants of India. I, on behalf of Indirect Tax Committee convey my heartfelt thanks and gratitude to CMA Padmanabhan for being present with us to encourage the students for pursuing the CMA Course. I also congratulate CMA Anas, the Chairman of Kozhikode - Mallapuram Chapter for holding such amazing function.

Exams are held on **12th of February, 2023**. The classes for the upcoming batches all the Taxation Courses has also commenced. Quiz has been conducted for the members every Friday in the month.

Suggestions/observations are solicited from our esteemed readers for furtherance of the objective of the Department.

Warm Regards

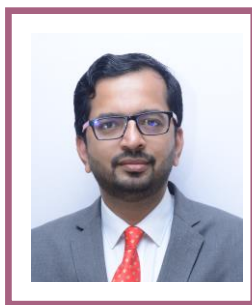


CMA Chittaranjan Chattopadhyay

Chairman

Indirect Taxation Committee

17.02.2023



CMA (Dr.) Ashish P. Thatte
Chairman
Direct Taxation Committee

FROM THE DESK OF CHAIRMAN

Dear Sir / Madam,

The most important announcement that has been made by the CBDT for this fortnight is the notification of the Income Tax Return Forms for Assessment Year 2023-24 well in advance.

The Central Board of Direct Taxes (CBDT) has notified Income-tax Return Forms (ITR Forms) for the Assessment Year 2023-24 vide Notifications No. 04 & 05 of 2023 dated 10.02.2023 and 14.02.2023. These ITR forms will come into effect from 1st April, 2023 and have been notified well in advance in order to enable filing of returns from the beginning of the ensuing Assessment Year.

In order to facilitate the taxpayers and to improve ease of filing, no significant changes have been made to the ITR Forms in comparison to last year's ITR Forms. Only the bare minimum changes necessitated due to amendments in the Income-tax Act, 1961 (the 'Act') have been made.

ITR Form 1 (Sahaj) and ITR Form 4 (Sugam) are simpler Forms that cater to a large number of small and medium taxpayers. Sahaj can be filed by a resident individual having income upto Rs. 50 lakh and who receives income from salary, one house property, other sources (interest etc.) and agricultural income upto Rs. 5 thousand. Sugam can be filed by individuals, Hindu Undivided Families (HUFs) and firms (other than Limited Liability Partnerships (LLPs)) being a resident having total income upto Rs. 50 lakh and income from business and profession computed under sections 44AD, 44ADA or 44AE.

Individuals and HUFs not having income from business or profession (and not eligible for filing Sahaj) can file ITR Form 2 while those having income from business or profession can file ITR Form 3. Persons other than individuals, HUFs and companies i.e. partnership firms, LLPs etc. can file ITR Form 5. Companies other than companies claiming exemption under section 11 can file ITR Form 6. Trusts, political parties, charitable institutions, etc. claiming exempt income under the Act can file ITR Form 7.

In order to further streamline the ITR filing process, not only have all the ITR forms been notified well in time this year, no changes have been made in the manner of filing of ITR Forms as compared to last year.

The notified ITR Forms will be available on the Department's website at www.incometaxindia.gov.in. I sincerely believe this to be quite a positive move.

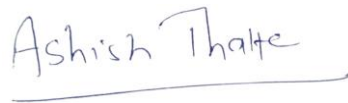
The other important announcements made by CBDT are:

1. India's Direct Tax collections, between April 1, 2022, and February 10, 2023, rose 24.09% to Rs. 15.67 lakh crore, according to the Finance Ministry.
2. The Central Board of Direct Taxes (CBDT) has notified ITR forms 1-6, ITR-V (verification form) and ITR acknowledgement form.
3. For individual taxpayers between the age of 18 to 35 years, 2,09,06,829 ITRs filed, and Rs. 93,318 crore paid in gross taxes, before claim of refund, during FY 2022-23 till 31st January 2023.

The Classes for upcoming batches of the Taxation courses has commenced and Exams were conducted on 12th of February, 2023.

Further suggestions/observations are solicited from the esteemed readers for furtherance of the objective of the Department.

Warm Regards



CMA (Dr.) Ashish P. Thatte

Chairman

Direct Taxation Committee

17.02.2023

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Indirect Taxation Committee

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Articles on the Topics of Direct and Indirect Taxation are invited from readers and authors. Along with the article please share a recent passport-sized photograph, a brief profile and the contact details. The articles should be the author's own original.

Please send the articles to

trd@icmai.in /trd.ad1@icmai.in

CLAUSE WISE ANALYSIS - GST AMENDMENTS (FINANCE BILL 2023)



*CMA Vishwanath Bhat
Practicing Cost Accountant*

CGST ACT		
	Section	Insertion/Omission/Substitution
Sec 10(2)	Composition levy	Omission in clause (c)
Sec 10(2A)	Composition levy	Omission in clause (c)
Sec 16(2)	Eligibility and conditions for taking input tax credit	Substitution in second proviso.
		Substitution in third proviso.
Sec 17(3)	Apportionment of credit and blocked	Substitution in Explanation.
Sec 17(5)	credits	Insertion of Clause (fa)
Sec 23	Person not liable for registration	Substitution of new section for section 23.
Sec 37(5)	Furnishing details of outward supply	Insertion of new sub-section (5)
Sec 39(11)	Furnishing of return	Insertion of new sub-section (11)
Sec 44(1)	Annual Return	Re-numbered as sub-section (1)
Sec 44(2)		Insertion of new sub-section (2)
Sec 52(14)	Collection of tax at source	Insertion of new sub-section (15)
Sec 54(6)	Refund of Tax	Omission of sub- section (6)
Sec 56	Interest on delayed refund	Substitution in section 56
Sec122(1B)	Penalty for certain offence	Insertion of new sub-section (1B)
Sec 132 (1)	Punishments for certain offence	Insertion, Omission and Substitution in sub-section 1 of section
Sec 138 (1)		Insertion, Omission and Substitution in sub-section 1 of section
Sec 138 (2)		Substitution in sub-section (2)

Sec 158A	Consent based sharing of Information furnished by taxable person	Insertion of new section 158A
Sch III	Activities or Transactions which shall be treated neither as a Supply of Goods nor a Supply of Services	Date notified with retrospective effect for Paragraphs 7 and 8 and explanation 2
IGST ACT		
	Section	Insertion/Omission/Substitution
Sec 2(16)	Definition (Non-taxable online recipient)	Substitution in clause (16)
Sec 2(17)	Definition(online information and database access or retrieval services)	Omission in clause (17)
Sec 12(8)	Place of supply of services where location of supplier and recipient is in India	Omission in sub-section (8)

Clause wise Analysis - GST Amendments (Finance Bill 2023)

Central Goods and Services Tax

SL No	Section	Clause	Existing	Proposed	Effect of the Amendment/ Explanation
1.	Sec 10	128	Composition Levy		
	Sec 10 (2) (d)		(2) The registered person shall be eligible to opt under sub-section (1), if— (d) he is not engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;	(2) The registered person shall be eligible to opt under sub-section (1), if— (d) he is not engaged in making any supply of services through an electronic commerce operator who is required to collect tax at source under section 52;	This amendment removes the restriction imposed on registered persons engaged in supplying goods through electronic commerce operators from opting to pay tax under the composition levy. Now, it is proposed that such persons would be allowed to opt for the composition scheme.
	Sec 10 (2A) (c)		(c) engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;	(c) engaged in making any supply of services through an electronic commerce operator who is required to collect tax at source under section 52;	



2	Sec 16	129	Eligibility and conditions for taking input tax credit		
	Sec 16(2)(d)		<p>(d) he has furnished the return under section 39:</p> <p>Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty 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, in such manner as may be prescribed:</p> <p>Provided also that the recipient shall 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.</p>	<p>(d) he has furnished the return under section 39:</p> <p>Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty 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 paid by him along with interest payable under section 50, along with interest thereon, in such manner as may be prescribed:</p> <p>Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him to the supplier of the amount towards the value of supply of goods or services or both along with tax payable thereon.</p>	<p>As per the current provisions, if a recipient does not make the payment of the value of supply to the supplier within 180 days, he would be required to add the ITC availed on it to his output tax liability.</p> <p>To align with the return filing system, the Act provides for ITC reversal along with interest u/s 50 in such cases. Further, upon making payment of such amount thereafter, one can re-avail the credit without any time limit. To clarify further, it has been provided that reavailment would only be allowed if the said value of supply has been paid to the supplier.</p>



3.	Sec 17	130	Apportionment of credit and blocked credits.		
	Sec 17(3)		<p>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.</p> <p>Explanation.— For the purposes of this sub-section, the expression “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.</p>	<p>(3) 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.</p> <p>Explanation.— For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, “except,— (i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and (ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule”;</p>	<p>Due to this amendment</p> <p>As per Section 17(3) read with Rules 42 and 43, certain activities or transactions are to be treated as exempt supplies for proportionate ITC reversal. In this, the supply of goods kept in customs bonded warehouse before clearance for home consumption has now been included in exempt supply for the purpose of ITC reversal. However, high sea sales (i.e. goods sold after dispatch from the port of origin outside India before clearance for home consumption) would not be treated as an exempt supply for the purpose of ITC reversal</p>
	Sec 17(5)			<p>(fa) goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013</p>	<p>It has always been a matter of debate whether ITC would be eligible to companies in respect of goods or services used for meeting the obligations of Corporate Social Responsibility.</p> <p>Due to this amendment it has been provided that such obligations met by eligible companies as part of their CSR would not be eligible to avail ITC</p>



4	Sec 23 Sec 23(1)	131	<p>Persons not liable for registration</p> <p>The following persons shall not be liable to registration, namely:— (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 Integrated Goods and Services Tax Act; (b) an agriculturist, to the extent of supply of produce out of cultivation of land.</p> <p>(2) The 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.</p>	<p>Notwithstanding anything to the contrary contained in sub-section (1) of section 22 or section 24,—</p> <p>(a) the following persons shall not be liable to registration, namely:—</p> <p>(i) 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 Integrated Goods and Services Tax Act, 2017; 13 of 2017.</p> <p>(ii) an agriculturist, to the extent of supply of produce out of cultivation of land;</p> <p>(b) the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act.</p>	<p>Due to this amended, with retrospective effect from 01st July, 2017, so as to provide that persons for compulsory registration in terms of sub section (1) of section and section 22 of the Act need not register if exempt under sub section (1) of section 23.</p>
5	Sec 37	132	<p>Furnishing details of outward supplies</p>	<p>Sub Sec (5) A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period after the expiry of a period of three years from the due date of furnishing the said details:</p> <p>Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies for a tax period under sub-section (1), even after the expiry of the said period of three years from the due date of furnishing the said details</p>	<p>Due to this amendment CBIC has fixed the upper limit of three years from due date for filing of outward supplies.</p>



6	Sec 39	133	Furnishing of returns	<p>“(11) A registered person shall not be allowed to furnish a return for a tax period after the expiry of a period of three years from the due date of furnishing the said return:</p> <p>Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return for a tax period, even after the expiry of the said period of three years from the due date of furnishing the said return.”.</p>	<p>Due to this amendment CBIC has fixed the upper limit of three years from due date for filing of returns.</p>
7.	Sec 44	134	Annual return	<p>(2) A registered person shall not be allowed to furnish an annual return under sub-section (1) for a financial year after the expiry of a period of three years from the due date of furnishing the said annual return:</p> <p>Provided that the Government may, on the recommendations of the Council, by notification, and subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish an annual return for a financial year under</p> <p>sub-section (1), even after the expiry of the said period of three years from the due date of furnishing the said annual return.</p>	<p>Due to this amendment CBIC has fixed the upper limit of three years from due date for filing of Annual returns.</p>



8	Sec 52	135	Collection of tax at source	<p>“(15) The operator shall not be allowed to furnish a statement under sub-section (4) after the expiry of a period of three years from the due date of furnishing the said statement: Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow an operator or a class of operators to furnish a statement under sub-section (4), even after the expiry of the said period of three years from the due date of furnishing the said statement.”.</p>	<p>Due to this amendment CBIC has fixed the upper limit of three years from due date for filing of Annual returns.</p>
9	Sec 54 Sec 54(6)	136	Refund of tax	<p>Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.</p>	<p>Intention to remove word Excluding the amount of input tax credit provisionally accepted after the amendment above word, they are supposed to remove.</p>



10	Sec 56	137	<p>Interest on delayed refunds</p> <p>If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under subsection (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:</p>	<p>If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under subsection (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund for the period of delay beyond sixty days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed.</p>	<p>Section 56 of the CGST Act is being amended so as to provide for an enabling provision to prescribe manner of computation of period of delay for calculation of interest on delayed refunds.</p>
11	Sec 122 122(1B)	138	<p>Penalty for certain offences</p>	<p>Any electronic commerce operator who— (i) allows a supply of goods or services or both through it by an unregistered person other than a person Exempted from registration by a notification issued under this Act to make such supply; (ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or (iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act, shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.”.</p>	<p>Section 122 deals with penalties for certain offences. Section 122(1B) of the CGST Act, 2017 has been newly inserted. It prescribes the penalty on the E-Commerce Operator (ECO).</p>



12	Sec 132	139	Punishment for certain offences		
	<p>Sec 132(1) Sec 132(1) (l)(iii)</p> <p>Sec(132)(1) (l) (iv)</p>		<p>(g) obstructs or prevents any officer in the discharge of his duties under this Act;</p> <p>(j) tampers with or destroys any material evidence or documents;</p> <p>(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or</p> <p>(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section</p> <p>(iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;</p> <p>(iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.</p>	<p>(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (f) and clauses (h) and (i) of this section</p> <p>(iii) in the case of an offence specified in clause (b) where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;</p>	<p>Section 132(1) of the CGST Act is being amended so as to decriminalize offences specified in clause (g), (j) and (k) of the said sub-section and to increase the monetary threshold for launching prosecution for the offences under the said Act from one hundred lakh rupees to two hundred lakh rupees, except for the offences related to issuance of invoices without supply of goods or services or both.</p>

13	Sec 138	140	Compounding of offences		
	Sec 138(1)		<p>(a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;</p> <p>(b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;</p> <p>(c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;</p> <p>(e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132; and</p>	<p>(a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of sub-section (1) of section 132;</p> <p>“(c) a person who has been accused of committing an offence under clause (b) of sub-section (1) of section 132;”</p>	<p>Due to amendment</p> <ol style="list-style-type: none"> 1. Sec 138(1)(a) has been rationalized to remove the relevant part of Sec 132. 2. Sec 138(1)(b) & Sec 138(1)(e) have now been omitted as it was majorly covering compounding relating to sec 132(1)(g) / 132(1)(j) / 132(1)(k) and the ones which were not covered earlier are now covered in Sec 138(1)(a) itself. 3. The benefit of compounding is not available to crimes covered under section clauses (a) to (f), (h), (i) and (l) of section 132(1) MORE THAN ONCE. 4. The benefit of compounding is not available to crimes covered under section 132(1)(b) MORE THAN ONCE.
	Sec 138(2)		<p>The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ten thousand rupees or fifty per cent. of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher.</p>	<p>The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than twenty-five per cent. of the tax involved and the maximum amount not being more than one hundred per cent. of the tax involved</p>	<ol style="list-style-type: none"> 5. The amount under compounding is now further reduced to 25%. Thus the compounding bracket now is 25% - 100%



14	Sec 158A	141	Consent based sharing of information furnished by taxable person	
				<p>(1) Notwithstanding anything contained in sections 133, 152 and 158, the following details furnished by a registered person may, subject to the provisions of subsection (2), and on the recommendations of the Council, be shared by the common portal with such other systems as may be notified by the Government, in such manner and subject to such conditions as may be prescribed, namely:—</p> <p>(a) particulars furnished in the application for registration under section 25 or in the return filed under section 39 or under section 44;</p> <p>(b) the particulars uploaded on the common portal for preparation of invoice, the details of outward supplies furnished under section 37 and the particulars uploaded on the common portal for generation of documents under section 68;</p> <p>(c) such other details as may be prescribed</p> <p>After obtaining prior approval from the person whose information is being shared, the information may be shared with other Government-notified systems.</p>
	Sec 158(2)			<p>(2) For the purposes of sharing details under sub-section (1), the consent shall be obtained, of —</p> <p>(a) the supplier, in respect of details furnished under clauses (a), (b) and (c) of sub-section (1); and</p> <p>(b) the recipient, in respect of details furnished under clause (b) of sub-section (1), and under clause (c) of sub-section (1) only where such details include identity information of the recipient, in such form and manner as may be prescribed.</p>



	Sec 158(3)			<p>(3) Notwithstanding anything contained in any law for the time being in force, no action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section and there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return</p>	
15	Schedule III	142	Retrospective exemption to certain activities and transactions in Schedule III to the Central Goods and Services Tax Act.	<p>(1) In Schedule III to the Central Goods and Services Tax Act, paragraphs 7 and 8 and the Explanation 2 thereof (as inserted vide section 32 of Act 31 of 2018) shall be deemed to have been inserted therein with effect from the 1st day of July, 2017.</p> <p>(2) No refund shall be made of all the tax which has been collected, but which would not have been so collected, had subsection (1) been in force at all material times.</p>	<p>Due to this amendment these activities Are treated NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES.</p> <p>THE SAID SHALL BE DEEMED TO BE IN EFFECT FROM 01/07/2017. HOWEVER, NO REFUND SHALL BE GRANTED OF THE TAXES ALREADY PAID.</p>

Integrated Goods and Services Tax

SL No	Section	Clause	Existing	Proposed	Effect of the Amendment/ Explanation
1	Sec 2	143			
	Sec 2(16)		(16) “non-taxable online recipient” means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.	(16) “non-taxable online recipient” means any unregistered person receiving online information and database access or retrieval services located in taxable territory. Explanation. —For the purposes of this clause, the expression “unregistered person” includes a person registered solely in terms of clause (vi) of section 24 of the Central Goods and Services Tax Act, 2017’;	The term “ESSENTIALLY AUTOMATED AND INVOLVING MINIMAL HUMAN INTERVENTION AND” is now removed from the definition.
	Sec 2 (17)		(17) “online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services	(17) “online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology and includes electronic services	
2	Sec 12	144	Place of supply of services where location of supplier and recipient is in India		
	Sec 12(8)		(8) The place of supply of services by way of transportation of goods, including by mail or courier to,— (a) a registered person, shall be the location of such person; (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation. Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.	(8) The place of supply of services by way of transportation of goods, including by mail or courier to,— (a) a registered person, shall be the location of such person; (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.	Section 12(8) of the IGST Act deals with place of supply with respect to transportation of goods. It is amended so as to delete the proviso to Sec 12(8). Thus, Circular No 184 issued after the 48th GST Council Meeting becomes redundant or to say is no longer required. Hence, suppliers of transportation of goods will have to follow the specified section IRRESPECTIVE of the DESTINATION of the goods

APPLICABILITY OF GOODS AND SERVICES TAX ON RENTING OF RESIDENTIAL DWELLING

1. Background:

Taxability of the amount received for renting of Residential Dwelling in GST Regime are identical to as it was in 2012 (Negative Regime of Taxation in Service Tax). and exempted under respective laws. Hon'ble Finance Minister Mr. Arun Jaitley while deciding the rate and exemption on services on 19 May 2017 at the GST Council Meeting have said that they are following grandfather approach in deciding taxability of services in GST regime

2. Relevant provisions under GST Laws up to 17th July 2022 and amendments made and effective from 18th July 2012.

2.1 GST is levied and payable under section on supply of goods or services as provided in section 7 of Central Goods and Services Tax Act, 2017 ("CGST Act") unless it is exempted vide any notification issued under section 11 of CGST Act 2017. The term supply as defined in Section 7 (1) is inclusive manner to include, 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.

2.2 Section 7(1A) provides that where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II i.e. it only differentiates a supply either as a supply of goods or a supply of services to invoke only if an activity is qualified as a supply u/s Section 7(1).



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2.3 Entry – 2. Land and Building of Schedule II of Section 7(1) provides as follows.

- (a) Any lease, tenancy, easement, licence to occupy land is a supply of services [The lease of tenancy of land can be of any period - even 99 or 999 years].
- (b) Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services [This covers renting or leasing of building. Even renting of part of residential complex for business or commerce will be subject to GST.

2.4. However, the Liability to pay GST did not arise as it was specifically exempted vide Entry 12 of the **CGST (Rate) Notification no. 12/2017 dated 28.06.2017** which is reproduced below for reference

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (%)	Condition
(1)	(2)	(3)	(4)	(5)
12	Heading 9963 or Heading 9972	Services by way of renting of residential dwelling for use as residence.	Nil	Nil

A similar exemption was also Notified vide Notification No. 9/2017 - Integrated Tax (Rate) dated 28-6-2017

3. What is the residential dwelling:

3.1 To get exemption from services by way of renting of residential dwelling as notified above, the burden is of course on the owner to show that his case comes within the parameters of the exemption notification.

3.2 The expression ‘residential dwelling’ has not been defined under GST Laws. It is pertinent to note that under the erstwhile service tax law, the expression ‘residential dwelling’ was defined in paragraph 4.13.1 of Taxation of Services: An Education Guide dated 20-6-2012 which was issued by Central Board of Indirect taxes and Customs which is reproduced below for the facility of reference:

4.13.1 What is a ‘residential dwelling’? Since the phrase ‘residential dwelling’ has not been defined in the Act. It has therefore to be interpreted in terms of the normal trade parlance as per which it is any residential accommodation, but does not include hotel, motel, inn, guest house, camp - site, lodge, house boat, or like places meant for temporary stay. Thus, in the aforesaid education guide issued by Central Board of Indirect Taxes and Customs which contains clarifications, it is provided that in normal trade parlance residential dwelling means any residential accommodation and is different from hotel, motel, inn, guest house etc. which is meant for temporary stay. The aforesaid clarification which is issued by the Board, in the absence of anything to the contrary in the Act, binds to the department and the service provider may referred it in its case.

3.3.The **Supreme Court in Kishore Chandra Singh v. Babu Ganesh Prasad Bhagat AIR 1954 SC 316** has held that expression residence only connotes that a person eats, drinks and sleeps at that place and it is not necessary that he should own it. The aforesaid decision was referred to by Bombay High Court in **Bandu Ravji Nikam v. Acharyaratna Deshbhushan Shikshan Prasara Mandal [2003] 3 Mhulj 470 (para 7.)**

3.4. It is well settled that when the word is not defined in the Act itself, it is permissible to refer to the dictionaries to find out the general sense in which the word is understood in common parlance. (Refer: **Mohinder Singh v. State of Haryana AIR 1989 SC 1367** and **CCE v. Allied Air - Conditioning Corpn. (Regd.) [2006] 7**

SCC 735). Therefore, it may also be referred to the meaning of the expression 'residence' and 'dwelling' as defined in **Concise Oxford English Dictionary 2013 Edition** as well as **Blacks Law Dictionary 6th Edition** to ascertain its meaning in common parlance and in popular sense which read as under:

3.4.1. The Concise Oxford Dictionary:

Domicile: 1. the country in which a person has permanent residence. 2. the place at which a company or other body is registered.

Residence: 1. the fact of residing somewhere. 2. a person's home. 3. the official house of a government minister or other official figure.

3.4.2. Blacks Law Dictionary: Residence- Place where one actually lives or has his home; a person's dwelling place or place of habitation; an abode; house where one's home is; a dwelling house.

3.4.3. Dwelling- The house or other structure in which a person or persons live; a residence; abode; habitation; the apartment or building, or a group of buildings, occupied by a family as a place of residence. Structure used a place of habitation.

3.5. Thus, it is evident that the expression 'residence' and 'dwelling' have more or less the connotation in common parlance and therefore, no different meaning can be assigned to the expression 'residential dwelling' and it cannot be held that the same does not include hostel which is used for residential purposes by students or working women.

3.6. From above provisions of law, the renting of residential dwelling for residential use is exempt from GST. It is a fact that in many transactions wherein the owner / co-owners who let out / lease out their residential property to a business entity and the same in turn provided such premises on its employees

as accommodation and contractors working for them, professionals, banks, Post Office etc who have housed their business premises in factory area and used for residential use for the employees. The arrangement between owner and business entity is generally of P2P basis. The question was whether such lease transaction was exempted from GST or not.

3.7. Appellate Authority of Advance Ruling, Karnatak in case of Taghar Vasudeva Ambrish ,2020 (41) G.S.T.L. 47 (App. A.A.R. - GST - Kar.) have held that

Appellant co-owners of multi-story building permitted by local authority to construct said building for purpose of hostel, jointly leasing same to a lessee for sub-letting to students/single woman - In terms of Entry No. 13 of Notification No. 9/2017-I.T. (Rate) exemption is available to services falling, inter alia, under Heading 9972 11 by way of renting of residential dwelling for use as residence - Said heading covers rental or leasing services of residential properties only - Term 'residential dwelling' has not been defined in GST law and accordingly taking normal trade parlance, it cannot include a hostel premises for which building was constructed - It is a socialable accommodation and not a residential accommodation - Even, otherwise, assuming but not admitting that said building is a residential dwelling in view of longer duration of sub-lease, still second condition is not fulfilled inasmuch as it is not being used by recipient of services, i.e., lessee as residence - Lessee is using this building for business of subletting for providing hostel/ paying guest accommodation to students - Accordingly, exemption not admissible to appellant lessor - Impugned AAR ruling sustainable. [paras 9, 10, 11, 12, 13]

3.8. Against above Ruling the Appellant have filed a Writ before Karnataka High Court (**Taghar Vasudeva Ambrish v. Appellate Authority for Advance Ruling, [2022] 135 taxmann.com 287 (Karnataka)**) while disposing the said Writ, it is held that



Expression 'residential dwelling' to be understood in popular sense/common parlance - Residential dwelling in normal trade parlance means any residential accommodation and is different from hotel, motel, inn, guest house etc. which is meant for temporary stay as per service tax education guide issued by CBIC and same is binding on department - Residential dwelling is being rented as hostel to students and working professionals fall within purview of residential dwelling as same is used by such persons as residence - Benefit of exemption notification cannot be denied on ground that lessee is not using premises as no requirement that lessee itself should use premises - Finding recorded by Appellate Authority for Advance Rulings (AAAR) that hostel accommodation is more akin to sociable accommodation is unintelligible and not relevant - Petitioner is entitled to benefit of exemption notification - Ruling delivered by AAAR of Karnataka quashed [Section 6 of Integrated Goods and Services Tax Act, 2017]

3.9. The ARR, Maharashtra, in case of M/s Kasturi & Sons Ltd. [2022] 140 taxmann.com 256 (AAR – Maharashtra) held that

Letting out of residential building is in nature of supply of real estate service and classifiable under SAC 997211 - Language used in exemption entry makes it clear that exemption is given on nature of property and its usage and not by status of recipient - Exemption is available as residential properties will be used only as residences by staff of recipient-company - Residential property let out for commercial purposes can be classified as supply of services and GST is payable on same - Property is given on commercial rent or residential rent shall be based on nature of end use and not nature of property - Exemption would be admissible [Maharashtra Goods and Services Tax Act, 2017] [Paras 5.5 and 5.7]

3.10. From above it may be concluded that the exemption would also be extended to the

owners who are giving the property on lease to business entity provided the end of residential dwelling is for residential use. However, the GST Council in its 47th meeting have recommended the withdrawal of the given exemption when these services are provided to a registered person i.e. GST would be applicable when a residential dwelling is rented to a registered person. Further, the notification of reverse charge on services has also been amended to provide that the service by way of renting a residential dwelling to a registered person would be subject to GST under reverse charge. Thus, the registered person receiving the above service would be liable to pay GST under reverse charge. On above amendment, with effect from 18 July 2022 the GST on renting a residential dwelling to a registered person would be subject to GST under reverse charge. The recommendation to withdraw the exemption seems to override the impact of the above Karnataka High Court Judgment. Karnataka in case of **Taghar Vasudeva Ambrish v. Appellate Authority for Advance Ruling**, [2022] 135 taxmann.com 287 (Karnataka).

4. Issue of Notifications related to amendments:

To implement the decisions of GST Council as above two notifications issued which are reproduced below for reference.

Notification no. 04/2022-Central Tax (Rate) dated 13th July 2022	Service exemption notification no. 12/2017- Central Tax (Rate) dated 28th June 2017 is amended.
Notification no. 05/2022-Central Tax (Rate) dated 13th July 2022	Reverse charge notification no. 13/2017- Central Tax (Rate) dated 28th June 2017 is amended.

Entry 12 of notification no. 12/2017- Central Tax (Rate) dated 28th June 2017 is amended vide Notification no. 04/2022-Central Tax (Rate) dated 13th July 2022 as follows.

Sr. No.	Description of service	Rate	Condition
12	Services by way of renting of residential dwelling for use as a residence except where the residential dwelling is rented to a registered person.	NIL	NIL

4.1. Accordingly, with effect from 18th July 2022, GST exemption is available only if all the following conditions are satisfied –

Condition 1 – Service provider is engaged in providing service or renting of residential dwelling; and Condition 2 – The residential dwelling is used for the purpose of residence by the service receiver; and Condition 3 – The residential dwelling is rented to an

unregistered person. First two conditions are same as earlier. However, addition of the condition 3 has changed the scenario. Now, the exemption is available only if the service receiver is a person not registered under GST. The following table briefly summarizes the position under GST on rent of residential property for use as residence post issuance of notification no. 04/2022- Central Tax (Rate) dated 13th July 2022 –

Service provider	Service receiver	Taxable/ exempt	Effective date
Registered	Registered	Exempt	From 1st July 2017 till 17th July 2022
Registered	Unregistered	Exempt	From 1st July 2017 till date [Such services provided to unregistered person are exempt even after 18th July 2022]
Registered	Registered	Taxable	From 18th July 2022
Unregistered	Registered	Taxable	From 18th July 2022
Unregistered	Unregistered	Not Applicable	Not Applicable

4.2. Applicability of GST applicable on rent under RCM:

Notification no. 05/2022- Central Tax (Rate) dated 13th July 2022 has amended basic reverse charge notification no. 13/2017- Central Tax (Rate) dated 28th June 2017. As per the notification, sr. no. 5AA is inserted which is tabulated hereunder –

Sr. No.	Description of service	Rate	Condition
5AA	Services by way of renting of a residential dwelling to a registered person.	Any person	Any registered person

4.3. Summary of the exemption and applicability of GST on renting of residential dwelling as effective from 18th July 2022 –

Particulars	Service provider	Service receiver	Taxable/ exempt
Service by way of renting of residential dwelling for use as a residence	Registered	Registered	Taxable [GST is payable by the service receiver under reverse charge]
Service by way of renting of residential dwelling for use as a residence	Unregistered	Registered	Taxable [GST is payable by the service receiver under reverse charge]
Service by way of renting of residential dwelling for use as a residence	Registered	Unregistered	Exempted [as per notification no. 04/2022- Central Tax (Rate) dated 13th July 2022]
Service by way of renting of residential dwelling for use other than residence	Registered	Registered/ Unregistered	Taxable as forward charge

5. Press release by PIB on dated.12th August 2022 & 30th December 2022 vis a vis Notification No. 15/2022- Central Tax (Rate) dated.30th December 2022:

(i) The Union government has clarified in a tweet, press information bureau (PIB) dated.12th August 2022 that “renting of residential unit taxable only when it is rented to business entity.” It further clarified that



“no GST when it is rented to private person for personal use; no GST even if proprietor or partner of firm rents residence for personal use.”

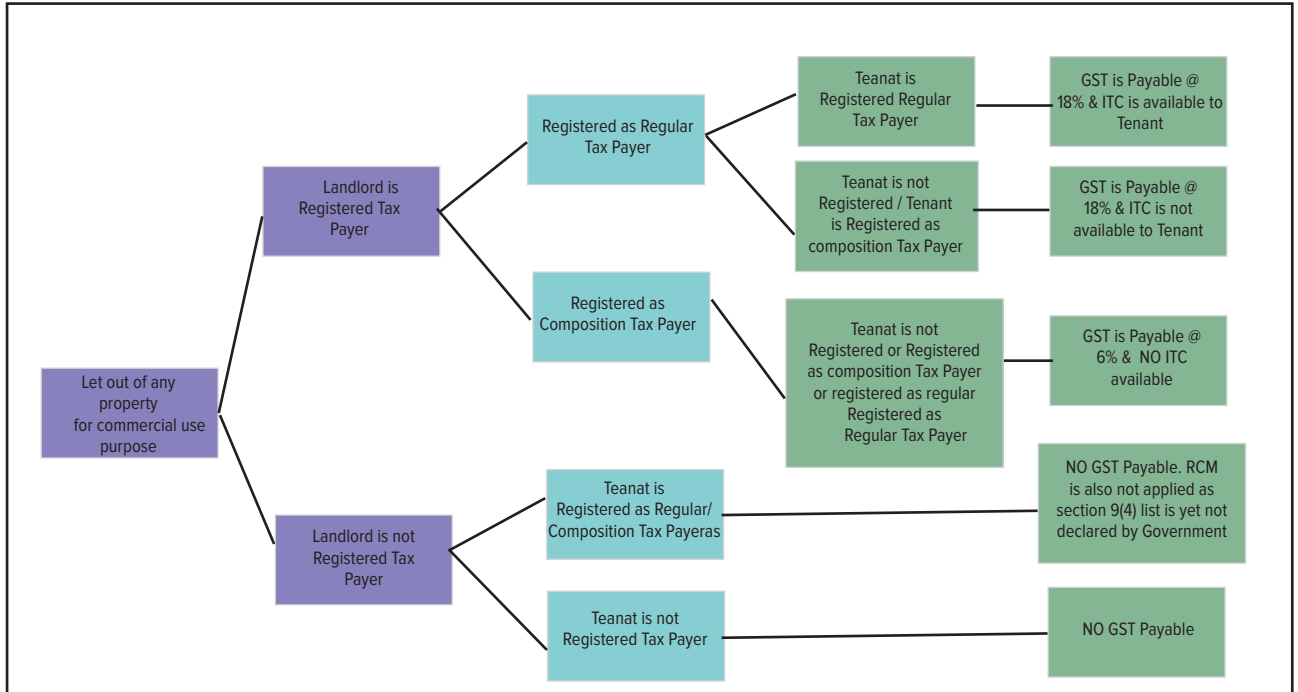
- (ii) Subsequently a writ petition was filed before the Delhi High Court challenging the Notification No.04/2022-Central Tax (Rate) dated 13th July, 2022 whereby the exemption which was earlier granted for renting of residential accommodation is no longer available to the GST registered tenants. The petitioner challenged the relevant entry of Notification No. 04/2022-Central Tax (Rate), dated 13-07-2022 being ultra vires Article 14 of the Constitution of India.

The High Court held that where the residential dwelling is rented by the proprietor of a proprietorship firm in his personal capacity for use as his own residential dwelling and such renting is not on the account of his business but is rented on his personal account, then the exemption would continue to be available. Further, it was also held that where the residential dwelling is rented by a partner of a partnership firm in his personal capacity for his own residential use and not accounted for in the accounts of the partnership firm, the exemption would be available. Similar position would be valid in the case of other forms of businesses. Ref: Seema Gupta vs Union of India in case of W.P.(C) 10986/2022 & CM APPL. 32131/2022 (Delhi High Court) :

- (iii) CBIC have issued Notification No. 15/2022-Central Tax (Rate) dated 30th December 2022 effective from 1st January 2023 in line with the Delhi High Court that the exemption will cover “services by way of renting of a residential dwelling to a registered person where – (i) the registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and (ii) such renting is on his own account and not that of the proprietorship concern.” This notification aims to implement the recommendation of the GST Council. In its meeting on December 17, it recommended that no GST is payable where the residential dwelling is rented to a registered person if it is rented in their personal capacity for use as their residence and on his own account and not on account of his business.

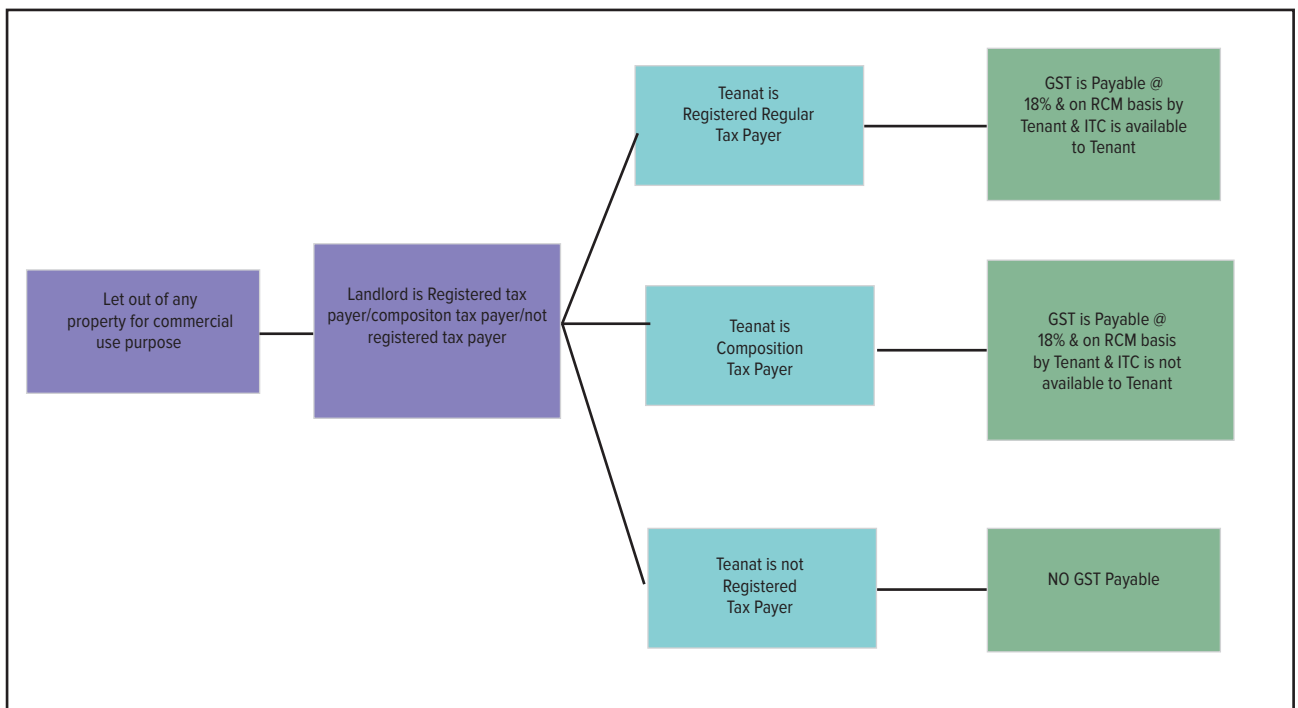
6. Abstract and Pictorial Presentation of the taxability of resident dwelling from 18th July 2022.

- (a) **Any Property to be used for Commercial purpose (Forward Charge):** Any registered person let out any property for Business purpose will be treated as Taxable supply and Rent received for such let out by registered Person will be taxable as forward charge basis @18% with availability of ITC. If Registered person is Composition Tax payer (threshold limit of turnover Rs.50 lakhs) then GST rate will be 6% without ITC.



b. Any Property to be used for Residential purpose (Reverse Charge):

Any Registered person take property on Rent for Residential purpose from any person have to pay GST on RCM basis as per Central GST Rate notification 05/2022 dated.13th July 2022 which is 18%. If Registered person is Composition Tax payer (threshold limit of Rs.50 lakhs) than RCM GST rate will be 18% without ITC



7. ITC claim under GST on rent paid.

GST charged by the landlord / owner on rent charged under forward charge is available for ITC by the recipient of service / tenant. When a tenant is registered and takes a residential property on rent from any person



(registered or unregistered person) GST will be applicable under RCM. Liability to pay GST @ 18% will be of the recipient (tenant/lessee) of service. The recipient will also be able to claim the ITC of the GST paid under reverse charge as the payment of rent will be a business expenditure and the same is not included in the list of blocked ITC u/s 17(5). A registered tenant will have to pay GST on rent under the reverse charge mechanism and then, claim input tax credit (ITC) on the payment made. However, Section 17(5)(g) of the Central Goods and Services Tax Act, 2017 does not allow for input tax credit of GST paid for any services for 'personal consumption'. It is only applicable in case on supplies for 'business purposes'.

8. Taxability in the hands of different recipients:

- (a) **Situation – 1: When a company, LLP, Firm, AOP, BOI, etc** takes a residential dwelling for the purpose of residence on rent for employees it will be considered as an item of business expenditure. GST will be paid under RCM and the ITC of the GST paid under reverse charge can be claimed.
- (b) **Situation – 2:** When a **composition dealer** who is registered under GST takes a residential dwelling for the purpose of residence on rent then it will be considered as an item of business expenditure. GST will be paid under RCM but the ITC of the GST paid under reverse charge cannot be claimed as per section 10(4) of CGS Act 2017 by a composition dealer.
- (c) **Situation – 3:** When an individual who is registered under GST as a **proprietorship concern** takes a residential dwelling for the purpose of residence on rent for himself/herself / family then it will be considered as an item of personal expenditure and not the business expenditure of a proprietorship concern. GST will be paid under RCM but the ITC of the GST paid under reverse charge cannot be claimed as it is blocked per section 17(1) 2017 of CGST Act. It is advisable for individuals to not take residential property on rent in the name of the business (proprietorship concern) to avoid

GST liability.

- (d) **Situation – 4:** When a residential dwelling is taken by a registered person on rent for **commercial purposes** it will be treated at par with the commercial unit. If the landlord is unregistered then GST shall not be levied and paid by either the landlord or the tenant. If the landlord is registered GST will be charged on a forward charge basis and the recipient can take the ITC of the same.

9. Renting Service supplied jointly by co-owners:

- 9.1. In case of a property is co-owned by two or more persons, the exemption limit of Rs. 20 lakhs or Rs.10 lakhs (as applicable to few North Eastern States, to be referred) as the case may be is available separately to each co-owner. The Authority of Advance Ruling in case of Elambrancheri **Khaldoon, 2018 (18) G.S.T.L. 152 (A.A.R. - GST)** it is ruled that

“SSI Exemption under GST (Threshold Limit) - Rent of jointly owned immovable property - Clubbing of Co-owner's share - Although rent of such immovable property is collected by one co-owner for administrative convenience, same is equally shared by each of co-owner and such share of each co-owner is below Rs.20 lakhs - Each co-owner is distinct legal entity and merely by joining with co-owners in sharing rent, does not make them another different entity, unless there was any such intention - There is no such intention in this case - Even under Income Tax law, such co-owners are assessed separately - Accordingly, SSI/threshold exemption of Rs.20 lakhs available to each of co-owner separately - Section 22 of Central Goods and Services Tax Act, 2017. - [A precedent decision under Service Tax law as reported at 2017 (51) S.T.R. 38 (Tri.-Chan.) referred]. [paras 3, 4, 5, 6]

Registration - Threshold limit - Rent of jointly owned immovable property - Co-owner's eligibility for registration - Since each co-owner is a distinct and different entity, each entitled for threshold exemption of Rs.20

lakhs - In instant case, share of each being below this limit, registration under GST not required - Section 22 of Central Goods and Services Tax Act, 2017. [paras 3, 4, 5, 6]

9.2. Authority of Advance Ruling, West Bengal in case of Rabi Sankar Tah, 2019 (31) G.S.T.L. 154 (A.A.R. - GST) ruled that

*Registration under GST - Threshold limit - Clubbing of co-owner's share of rented property - Association of Persons - Applicant, one of three co-owners of rented property seeking to know as to whether they would be treated as Association of Persons (AOP) for purpose of threshold limit for registration - HELD : In instant case while entire rental amount for the year on account services of renting of immovable property exceeds threshold limit of ` 20 lakh, share of each of three co-owners is below aforesaid threshold limit - Since co-owners are having definite and ascertainable share of consideration for services, they will have to be treated separately for purpose of registration under GST law and not as Association of Persons - Even under Income Tax law, such co-owners are assessed separately - Catena of judgments under erstwhile Service Tax laws, including one Ruling under GST in **Elambrancheri Khaldoon, 2018 (18) G.S.T.L. 152 (A.A.R. - GST) supporting this view - In view of above, AOP cannot be treated as a person and share of each co-owner cannot be clubbed for determining threshold limit for registration under GST - Gross turnover, separately of each co-owner is determining factor of threshold for registration for each person - Section 22 of Central Goods and Services Tax Act, 2017. [paras 3.10, 3.13, 3.14, 3.15]***

10. Place Of Supply Registered Person:

The recipient (registered person) needs to start paying GST under reverse charge mechanism. Since the notification is effective from 18/07/2022, GST would be due on rent accruing from such date. As per Section 2(94) of the Act, 2017, 'registered person' means a person who is registered under section 25.

10.1. The notification(s) does not qualify the word "registered". Therefore, if any recipient holds a registration under GST Laws anywhere in India and has taken a 'residential dwelling' on rent, then the recipient would be required to pay GST under reverse charge basis, in that state where such 'residential dwelling' is located. For this purpose, a fresh registration in that State may be required and ITC of SGST paid on expenses incurred for the resident dwelling may be taken. This is because as per provisions of section 12(3) of the IGST Act 2017, the 'Place of supply' in case of services in relation to immovable property will be the 'location of such immovable property'.

10.2. However, there is no bar to continue with registration taken in the state other than the state where immovable property situated. Since the 'Place of supply' in case of services in relation to immovable property will be the 'location of such immovable property', and the owner of the property located in a state other than the state where immovable property situated, may not require to take separate registration. If the property is situated in Bhubaneswar, then place of supply will be in Bhubaneswar and if the landlord is also registered in Odisha, then it is an intra-state transaction and CGST + SGST should be charged on the invoice value. But if the landlord is registered in West Bengal, then it will be an inter-state transaction and IGST should be livable because place of supply is the location of the property which is in Odisha.

11. Invoice For GST On Rent:

If the landlord is required to levy GST on rent as forward charge, then the landlord has to issue Tax Invoice in accordance with the provisions of GST Invoice Rules. The invoice should contain Invoice Number, Invoice date, rent charged, place of supply, Rate of GST, etc. as required by GST laws. The Invoice must be serially numbered and clearly show the place of the immovable property. However, when GST payable under RCM, the recipient business entity will raise. Issue the tax invoice. It may be noted that the SAC (Service Accounting Code) for rental & leasing falls under heading 9972. For rental or leasing services involving own or leased residential property fall under SAC code 997211.



12. Concluding Remarks:

12.1. From 18th July 2022, after these amendments, a registered person, be it individual or a company or a firm is liable to pay GST under RCM despite such residential dwelling is used as a residence. The registered persons / corporates entities who will use residential dwellings for their employees / directors and they are entitled to consider rentals paid as business expense are entitled to claim such rentals as a business expense and be entitled to avail input tax credit of GST paid under the reverse charge mechanism taking a view that such expenses are in furtherance of business.

12.2. The registered persons, who have been using residential dwelling for use as residence and not claiming such rentals as business expenses would not be entitled for input tax credit of GST paid under reverse charge mechanism as it is not in furtherance of business.

12.3. On amendment the Government intended to levy tax on such residential dwelling, which are given to corporates / registered person even if such residential dwelling are used for the residential purposes (up to 17th July 2018 such exemption was available). These amendments have created discrimination amongst various scenarios, for instances renting of residential dwelling by a registered person to an un-registered person for use as residence is not leviable to GST, however, on the other hand when such services are provided to registered person be it individual not claiming such rentals as business expense, who is using for residence purposes, is liable to pay GST under reverse charge mechanism.

12.4. Further, the nature of the end-use was

residential should be considered i.e. GST applicability is not decided by the nature of the property or agreement made by the business entity but by the purpose for which it is used that is resident dwelling which is exempted from GST.

12.5. Under these circumstances, Department should issue necessary clarification regarding leviability of tax under RCM when such services are used by those registered persons, who are not claiming such rentals as business expenses. In other words, reverse charge should be applicable only for those registered persons who are entitled to claim such rentals as business expenses and eligible to avail input tax credit of GST paid under reverse charge mechanism, otherwise, it would be an additional burden on the tenants (individual registered persons), who enter into rent agreement / lease deeds with the landlords for using residential dwelling as residence and do not claim such rentals as business expense.

12.6. The amendment made and effective from 18th July 2022 shows that, the GST Council has no interest in simplifying the tax system and enlarging scope of the tax net and no consultation made with the stake holders. In amendment the Government may not be benefited when tax is paid under reverse charge as it is given from one hand and taken back from another hand nothing actually goes into Government's kitty as GST Paid will be taken as ITC. However the GST paid on inputs services if used for provided for exempted output services will not available for ITC and it will increase the cost.

13

NOTIFICATIONS & CIRCULARS

Indirect Tax

Notifications Customs

Notification No. 02/2023-CUSTOMS Dated 1st February 2023.

The Central Government Seeks to further amend notification No. 50/2017-Customs, dated the 30th June, 2017, so as to revise/provide exemption(s) on the specified goods

G.S.R. (E). —In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3 of the Customs Tariff Act, 1975 (51 of 1975), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 50/2017-Customs, dated the 30th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 785(E), dated the 30th June, 2017.

Some of the specified goods are as follows

Pecan nuts, Fish lipid oil for use in manufacture of aquatic feed, Crude glycerin for use in manufacture of Epichlorohydrin, Algal Prime (flour) for use in manufacture of aquatic feed, Denatured ethyl alcohol for use in manufacture of industrial chemicals, Fish meal for use in manufacture of aquatic feed, Krill meal for use in manufacture of aquatic feed, Mineral and Vitamin Premixes for use in manufacture of aquatic feed, Acid grade fluorspar containing by weight more than 97% of calcium fluoride, All goods other than goods covered under S. Nos. 279 and 280 etc.

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009620/ENG/Notifications>

Notifications Customs

Notification No. 03/2023-CUSTOMS Dated 1st February 2023.

The Central Government Seeks to further amend notification No. 11/2021-Customs dated 1st February, 2021, so as to levy/exempt Agriculture and Infrastructure Development Cess (AIDC) on certain items

G.S.R.(E). -In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) read with section 124 of the Finance Act, 2021 (13 of 2021), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 11/2021-Customs, dated the 1st February, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 69(E), dated the 1st February, 2021.

Some of the specified goods are as follows

All goods covered under S. No. 280A of the of the Table in Notification No. 50/2017-Customs dated the 30th June, 2017, published in the Gazette of India vide number G.S.R. 785(E) dated the 30th June, 2017 etc.

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009621/ENG/NotificationsNotifications>

Customs

Notification No. 04/2023-CUSTOMS Dated 1st February 2023.

The Central Government Seeks to further amend notification No. 11/2018-Customs, dated 2nd February, 2018, to revise/provide Social Welfare Surcharge (SWS) exemption(s) on specified goods



G.S.R.(E). -In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) read with section 110 of the Finance Act, 2018 (13 of 2018), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 11/2018-Customs, dated the 2nd February, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 114(E), dated the 2nd February, 2018, namely.

In the said notification, -

(I).in the proviso, for the word and figure “and 52”, the figures and word “52, 54, 55, 56 and 59” shall be substituted;

(II).in the TABLE, -

(1) against Sl. No. 1, in column (2), -

(i) for the figures “0802 99 00”, the figures, brackets and words “0802 99 00 (other than Pecan nuts)” shall be substituted;

(ii) after the figures “6802 92 00”, the figures “7106, 7108, 7117, 8712 00 10” shall be inserted

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009622/ENG/NotificationsNotifications>

**Customs
Notification No. 05/2023-CUSTOMS
Dated 1st February 2023.**

The Central Government Seeks to rescind notification Nos. 13/2021-Customs and 34/2022-Customs, related to Social Welfare Surcharge (SWS)

G.S.R....(E).-In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) read with section 110 of the Finance Act, 2018 (13 of 2018), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby rescinds the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), as mentioned in the following Table, except as respects things done or omitted to be done before such rescission, namely:-

TABLE

Sl.No	Notifications
1	No. 13/2021-Customs, dated the 1st February, 2021, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide number G.S.R. 71(E), dated the 1 st February, 2021
2	No. 34/2022-Customs, dated the 30th June, 2022, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide number G.S.R. 487(E), dated the 30th June, 2022.

2.This notification shall come into force on the 2nd day of February, 2023.

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009623/ENG/Notifications>

**Notifications
Customs
Notification No. 07/2023-CUSTOMS
Dated 1st February 2023.**

The Central Government Seeks to rescind notification Nos. 13/2021-Customs and 34/2022-Customs, related to Social Welfare Surcharge (SWS)

G.S.R.....(E). -In exercise of the powers conferred by section 157 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes and Customs hereby makes the following regulations further to amend the Project Imports Regulations, 1986, namely:

1.(1) These regulations may be called the Project Imports (Amendment) Regulations, 2023.

(2) They shall come into force on the 2nd day of February, 2023.

2.In the Project Imports Regulations, 1986, in the TABLE, against Sr. No. 4, in column 2, for the words “Any other Plant and Project”, the words “Any other Plant and Project, other than solar power plant or solar power project” shall be substituted.

For more details, please visit

<https://taxinformation.cbic.gov.in/view-pdf/1009625/ENG/Notifications>

Notifications
Customs
Notification No. 08/2023-CUSTOMS
Dated 1st February 2023.

The Central Government Seeks to further amend notification No. 22/2022-Customs regarding India-UAE Comprehensive Economic Partnership Agreement

G.S.R.... (E). -In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 22/2022-Customs, dated the 30th April, 2022, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide number G.S.R. 328(E), dated the 30th April, 2022, namely:

In the said notification, in Table III, against S. No. 12, for the entries under columns (5) and (6), the entries, “10” and “4” shall respectively be substituted.

2. This notification shall come into force on the 2nd day of February, 2023.

For more details, please visit

<https://taxinformation.cbic.gov.in/view-pdf/1009626/ENG/Notifications>

Notifications
Customs
Notification No. 09/2023-CUSTOMS
Dated 1st February 2023.

The Central Government Seeks to further amend notification No. 22/2022-Customs regarding India-UAE Comprehensive Economic Partnership Agreement

G.S.R....(E).-In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 57/2000-Customs, dated the 8th May, 2000, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide number G.S.R. 413(E), dated the 8th May, 2000, namely

In the said notification, in the TABLE, against Sl. No. 1, in column (4), for the entries “11.85%” and “6.1%”, the entry, “9.35%”, at both the places, shall be substituted.

2. This notification shall come into force on the 2nd day of February, 2023

For more details, please visit

<https://taxinformation.cbic.gov.in/view-pdf/1009627/ENG/Notifications>

Customs
Notification No. 10/2023-CUSTOMS
Dated 1st February 2023.

The Central Government Seeks to further amend notification No. 146/94-Customs, dated the 13th July, 1994 to extend the exemption benefit to Warm blood horse for equestrian sports and extend the validity of said notification up to the 31st March, 2028

G.S.R. (E). —In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 146/94-Customs, dated the 13th July, 1994, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 575 (E), dated the 13th July, 1994, namely: -

In the said notification, -

(i) in the TABLE, against S. No. 2, in column (2), in item XXIII. EQUESTRIAN, after sub-item (6), the following sub-item shall be inserted, namely: -“(7) Warm Blood horse”;

(ii) the Explanation, occurring after the TABLE, shall be omitted;

(iii) the following paragraph shall be inserted at the end, namely: -

“2. Nothing contained in this notification shall have effect after the 31st March, 2028.”.

2. This notification shall come into force on the 2nd day of February, 2023

For more details, please visit

<https://taxinformation.cbic.gov.in/view-pdf/1009628/ENG/Notifications>

Customs Notification No. 11/2023-CUSTOMS Dated 1st February 2023.

The Central Government Seeks to amend the notification Nos. 90/2009-Customs, dated the 7th September, 2009, 33/2017-Customs, dated the 30th June, 2017, and 41/2017-Customs, dated the 30th June, 2017 to extend the validity of said notifications up to the 31st March, 2028.

G.S.R.(E). -In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3 of Customs Tariff Act, 1975 (51 of 1975), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby amends the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below, to the extent specified in the corresponding entry in column (3) of the said Table, namely:

SL. No	Notification Number	Amendment
(1)	(2)	(3)
1	Notification No. 90/2009-Customs, dated the 7 th September, 2009 vide number G.S.R. 644 (E), dated the 7 th September, 2009	In the said notification, the following paragraph shall be inserted at the end, namely: - "2. Nothing contained in this notification shall have effect after the 31stMarch, 2028."
2	Notification No. 33/2017-Customs, dated the 30 th June, 2017 vide-number G.S.R. 768 (E), dated the 30 th June, 2017.	In the said notification, after second proviso, following proviso shall be inserted, namely: - "Provided also that nothing contained in this notification shall have effect after the 31stMarch, 2028."

3	Notification No. 41/2017-Customs, dated the 30 th June, 2017 vide number G.S.R. 776(E), dated the 30 th June, 2017	In the said notification, after the table, following proviso shall be inserted, namely: -"Provided that nothing contained in this notification shall have effect after the 31stMarch, 2028.
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2.This notification shall come into force on the 2nd day of February, 2023

For more details, please visit

<https://taxinformation.cbic.gov.in/view-pdf/1009629/ENG/Notifications>

Customs Notification No. 12/2023-CUSTOMS Dated 1st February 2023.

The Central Government Seeks to amend 32 notifications in order to provide a specific end date for these notifications

G.S.R.(E). -In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby amends the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below, to the extent specified in the corresponding entry in column (3) of the said Table, namely: -

Few of the notifications are –

Notification No. 16-Cus, dated the 23rdJanuary, 1965, published vide number G.S.R. 126 (E), dated the 23rd January, 1965,

Notification No. 80-Cus, dated the 29thAugust,1970, published vide number G.S.R. 1246 (E), dated the 29thAugust, 1970,

Notification No. 46/74-Cus, dated the 25th May, 1974, published vide number G.S.R. 503 (E), dated the 25th May,1974, etc.

For more details, please visit

<https://taxinformation.cbic.gov.in/view-pdf/1009630/ENG/Notifications>



Notifications
Customs
Notification No. 08/2023-CUSTOMS (N.T)
Dated 2nd February 2023

The Central Government Fixes Exchange rate vide
Notification No. 08/2023 dated 2.2.2023

In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification No. 05/2023-Customs(N.T.), dated 19th

January, 2023 except as respects things done or omitted to be done before such supersession, the Central Board of Indirect Taxes and Customs hereby determines that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, shall, with effect from 3rd February, 2023, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

Schedule I

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(a)	(b)
1	2	3	
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	59.75	57.35
2.	Bahraini Dinar	224.10	210.70
3.	Canadian Dollar	62.70	60.65
4.	Chinese Yuan	12.40	12.00
5.	Danish Kroner	12.35	11.90
6.	EURO	91.80	88.65
7.	Hong Kong Dollar	10.65	10.25
8.	Kuwaiti Dinar	277.25	260.65
9.	New Zealand Dollar	54.90	52.45
10.	Norwegian Kroner	08.40	08.15
11.	Pound Sterling	103.20	99.75
12.	Qatari Riyal	23.15	21.80
13.	Saudi Arabian Riyal	22.50	21.15
14.	Singapore Dollar	63.85	61.75
15.	South African Rand	04.95	04.65
16.	Swedish Kroner	08.05	07.80
17.	Swiss Franc	92.00	88.55
18.	Turkish Lira	04.50	04.20
19.	UAE Dirham	23.00	21.65
20.	US Dollar	82.75	81.05

Schedule II

Sl. No.	Foreign Currency	Rate of exchange of 100 unit of foreign currency equivalent to Indian rupees	
		(a)	(b)
1	2	3	
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	64.80	62.65
2.	Korean Won	06.95	06.50

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009632/ENG/Notifications>

Notifications

Customs

Notification No. 09/2023-CUSTOMS (N.T)

Dated 15th February, 2023.

The Central Government fixes of Tariff Value of Edible Oils, Brass Scrap, Areca Nut, Gold and Silver- Reg.

S.O. ... (E).– In exercise of the powers conferred by sub-section (2) of section 14 of the Customs Act, 1962 (52 of 1962), the Central Board of Indirect Taxes & Customs,

being satisfied that it is necessary and expedient to do so, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2001-Customs (N.T.), dated the 3rd August, 2001, published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii), vide number S. O. 748 (E), dated the 3rd August, 2001, namely:

In the said notification, for TABLE-1, TABLE-2, and TABLE-3 the following Tables shall be substituted, namely: -

TABLE - I

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	980
2	1511 90 10	RBD Palm Oil	998
3	1511 90 90	Others – Palm Oil	989
4	1511 10 00	Crude Palmolein	1003
5	1511 90 20	RBD Palmolein	1006
6	1511 90 90	Others – Palmolein	1005
7	1507 10 00	Crude Soya bean Oil	1219
8	7404 00 22	Brass Scrap (all grades)	5339

2. This notification shall come into force with effect from the 16th February 2023.

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009637/ENG/NotificationsNotifications>



Customs
Notification No. 10/2023-CUSTOMS (N.T)
Dated 16th February 2023

The Central Government Fixes Exchange rate vide
Notification No. 10/2023 dated 16.2.2023

In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the Notification No. 08/2023-Customs(N.T.), dated 2nd February, 2023 except as respects things done or omitted

to be done before such supersession, the Central Board of Indirect Taxes and Customs hereby determines that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, shall, with effect from 17th February, 2023, be the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to imported and export goods.

Schedule I

Sl. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(a)	(b)
1	2	3	
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	58.50	56.05
2.	Bahraini Dinar	226.50	213.00
3.	Canadian Dollar	62.90	60.85
4.	Chinese Yuan	12.25	11.90
5.	Danish Kroner	12.10	11.70
6.	EURO	90.25	87.10
7.	Hong Kong Dollar	10.75	10.35
8.	Kuwaiti Dinar	278.75	262.10
9.	New Zealand Dollar	53.50	51.10
10.	Norwegian Kroner	08.25	08.00
11.	Pound Sterling	101.45	98.10
12.	Qatari Riyal	23.45	21.95
13.	Saudi Arabian Riyal	22.75	21.40
14.	Singapore Dollar	63.05	61.05
15.	South African Rand	04.75	04.45
16.	Swedish Kroner	08.10	07.85
17.	Swiss Franc	91.50	88.05
18.	Turkish Lira	04.50	04.25
19.	UAE Dirham	23.25	21.85
20.	US Dollar	83.65	81.90

Schedule II

Sl. No.	Foreign Currency	Rate of exchange of 100 unit of foreign currency equivalent to Indian rupees	
1	2	3	
		(a)	(b)
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	62.95	60.90
2.	Korean Won	06.65	06.25

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009640/ENG/NotificationsCircular>

Customs
Circular No. 03/2023-Customs
Dated 07th Feb 2023

The Central Government makes amendment in Circular No. 29/2020-Customs dated 22.06.2020 for allowing transshipment of Bangladesh export cargo to third countries through Delhi Air Cargo – reg.

Representations have been received from stakeholders for permitting transshipment of Bangladesh export cargo to third countries through Delhi Air Cargo by amending Circular 29/2020-Customs dated 22.06.2020.

The aforesaid Circular allows inter alia transshipment of Bangladesh export cargo through Kolkata Air Cargo. The goods loaded on containers/ closed bodied trucks enter India from LCS Petrapole, move by road to Kolkata Air Cargo, from where they are airlifted and transported to third countries. It has been represented to allow this movement through Delhi Air Cargo also, for better cargo evacuation and improved logistics efficiency.

2. In view of above and considering recommendations of concerned Ministries of the Government of India, it has been decided to amend Circular No. 29/2020-Customs by inserting a new paragraph, i.e. Para 3A, after subparagraph 3.2 of the said Circular:

“3A. Transshipment of goods by road from LCS Petrapole to Air Cargo Complex, Delhi is also allowed with effect from 15.02.2023 following the procedure prescribed in the aforesaid Circular, until further direction from the Board.”

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1003145/ENG/Circulars>

Notifications
Central Excise
Notification No. 06/2023- Central Excise
Dated 3rd February 2023

The Central Government Seeks to amend No. 18/2022-Central Excise, dated the 19th July, 2022 to increase the Special Additional Excise Duty on production of Petroleum Crude and export of Aviation Turbine Fuel

G.S.R. (E). -In exercise of the powers conferred by section 5A of the Central Excise Act, 1944 (1 of 1944) read with section 147 of Finance Act, 2002 (20 of 2002), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 18/2022-Central Excise, dated the 19th July, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 584 (E), dated the 19th July, 2022, namely:-

In the said notification, in the Table, -

(I) against S. No. 1, for the entry in column (4), the entry “Rs. 5,050 per tonne” shall be substituted;

(II) against S.No.2, for the entry in column (4), the entry “Rs. 6 per litre” shall be substituted.

2. This notification shall come into force on the 4th day of January 2023.

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009634/ENG/Notifications>



**Notifications
Central Excise
Notification No. 07/2023- Central Excise
Dated 3rd February 2023**

The Central Government Seeks to further amend No. 04/2022-Central Excise, dated the 30th June, 2022, to reduce Special Additional Excise Duty on Diesel

G.S.R.....(E).-In exercise of the powers conferred by section 5A of the Central Excise Act,1944 (1 of 1944) read with section 147 of Finance Act, 2002 (20 of 2002), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.04/2022 – Central Excise, dated the 30th June, 2022, published in the Gazette of India, Extraordinary, Part II, Section3, Sub-section(i), vide number G.S.R.492 (E), dated the 30th June, 2022, namely

In the said notification, in the Table, -

- (l) against S. No. 2, for the entry in column (4), the entry “Rs. 6 per litre” shall be substituted;
2. This notification shall come into force on the 4th day of February 2023.

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009635/ENG/Notifications>

**Notifications
Central Excise
Notification No. 08/2023- Central Excise
Dated 15th February 2023**

The Central Government Seeks to amend No. 18/2022-Central Excise, dated the 19th July, 2022 to increase the Special Additional Excise Duty on production of Petroleum Crude and export of Aviation Turbine Fuel

G.S.R. (E).-In exercise of the powers conferred by section 5A of the Central Excise Act, 1944 (1 of 1944) read with section 147 of Finance Act, 2002 (20 of 2002), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 18/2022-Central Excise, dated the 19th July, 2022, published in the Gazette of

India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 584 (E), dated the 19th July, 2022, namely:-

In the said notification, in the Table, -

- (i) against S. No. 1, for the entry in column (4), the entry “Rs. 4,350 per tonne” shall be substituted;
- (ii) against S.No.2, for the entry in column (4), the entry “Rs. 1.50 per litre” shall be substituted.

2. This notification shall come into force on the 16th day of February 2023.

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009638/ENG/Notifications>

**Notifications
Central Excise
Notification No. 09/2023- Central Excise
Dated 15th February 2023**

The Central Government Seeks to further amend No. 04/2022-Central Excise, dated the 30th June, 2022, to reduce Special Additional Excise Duty on Diesel

G.S.R.....(E).-In exercise of the powers conferred by section 5A of the Central Excise Act,1944 (1 of 1944) read with section 147 of Finance Act, 2002 (20 of 2002), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.04/2022 – Central Excise, dated the 30th June, 2022, published in the Gazette of India, Extraordinary, Part II, Section3, Sub-section(i), vide number G.S.R.492 (E), dated the 30th June, 2022, namely

In the said notification, in the Table, -

- (i) against S. No. 2, for the entry in column (4), the entry “Rs. 1 per litre” shall be substituted;
2. This notification shall come into force on the 16th day of February 2023.

For more details, please follow

<https://taxinformation.cbic.gov.in/view-pdf/1009639/ENG/Notifications>

PRESS RELEASE

Indirect Tax

49th Meeting of the GST Council 18th February, 2023

The 49th meeting of the GST Council was held on 18th February, 2023 at Vigyan Bhawan, New Delhi under the chairpersonship of the Union Finance & Corporate Affairs Minister Smt. Nirmala Sitharaman.

I. Government of India has decided to clear the entire pending balance GST compensation of Rs. 16982 crore for June'2022 as shown in the table below. Since, there is no amount in the GST compensation Fund, Centre decided to release this amount from its own resources and the same will be recouped from the future compensation cess collection. With this release, Centre would clear the entire provisionally admissible compensation due for five years as envisaged in the GST (Compensation to States) Act'2017. In addition, Centre would also clear the admissible final GST compensation to those States who has provided the revenue figures as certified by the Accountant General of the States amounting to Rs. 16,524 crores.

S. No.	Name of State/UT	Balance GST compensation pending for June'2022 (Rs. In crore)
1	Andhra Pradesh	689
2	Bihar	92
3	Chhattisgarh	505
4	Delhi	1212
5	Goa	120
6	Gujarat	865
7	Haryana	629
8	Himachal Pradesh	229
9	Jammu and Kashmir	210

10	Jharkhand	342
11	Karnataka	1934
12	Kerala	780
13	Madhya Pradesh	730
14	Maharashtra	2102
15	Odisha	529
16	Puducherry	73
17	Punjab	995
18	Rajasthan	815
19	Tamil Nadu	1201
20	Telangana	548
21	Uttar Pradesh	1215
22	Uttarakhand	345
23	West Bengal	823
Total		16982

II. GST Appellate Tribunal

The Council adopted the report of Group of Ministers with certain modifications. The final draft amendments to the GST laws shall be circulated to Members for their comments. The Chairperson has been authorised to finalise the same.

III. Approval of the Report of GoM on Capacity Based Taxation and Special Composition Scheme in certain Sectors on GST:

With a view to plug the leakages and improve the revenue collection from the commodities like pan masala, gutkha, chewing tobacco, the Council approved the recommendations of the GoM including, inter alia, that

- the capacity based levy not to be prescribed;
- compliance and tracking measures to be taken to plug leakages/evasions;
- exports of such commodities to be allowed only against LUT with consequential refund of accumulated ITC;
- compensation cess levied on such commodities to be changed from ad valorem to specific tax based levy to boost the first stage collection of the revenue

IV. Recommendations relating to GST rates on Goods and Services

1. Changes in GST rates of Goods and Services

Sr. No.	Description	From	To
Goods			
1.			5% - if sold Nil - if sold otherwise

Other changes relating to Goods and Services

1. It has been decided to regularize payment of GST on 'rab' during the past period on "as is basis" on account of genuine doubts over its classification and applicable GST rate.
2. It was decided to suitably amend notification No. 104/94-Customs dated 16.03.1994 so that if a device like tag- tracking device or data logger is already affixed on a container, no separate IGST shall be levied on such affixed device and the 'nil' IGST treatment
3. available for the containers under notification No. 104/94-Customs shall also be available to the such affixed device subject to the existing conditions.
4. It has been decided to amend entry at Sl. No. 41A of notification No. 1/2017- Compensation Cess (Rate) so that exemption benefit covers both coal rejects

supplied to and by a coal washery, arising out of coal on which compensation cess has been paid and no input tax credit thereof has been availed by any person.

5. It has been decided to extend the exemption available to educational institutions and Central and State educational boards for conduct of entrance examination to any authority, board or a body set up by the Central Government or State Government including National Testing Agency for conduct of entrance examination for admission to educational institutions.
6. It has been decided to extend the dispensation available to Central Government, State Governments, Parliament and State Legislatures with regard to payment of GST under reverse charge mechanism (RCM) to the Courts and Tribunals also in respect of taxable services supplied by them such as renting of premises to telecommunication companies for installation of towers, renting of chamber to lawyers etc.

V. Measures for facilitation of trade:

1. **Extension of time limit for application for revocation of cancellation of registration and one time amnesty for past cases:** The Council has recommended amendment in section 30 of CGST Act, 2017 and rule 23 of CGST Rules, 2017 so as to provide that -
 - the time limit for making an application for revocation of cancellation of registration be increased from 30 days to 90 days;
 - where the registered person fails to apply for such revocation within 90 days, the said time period may be extended by the Commissioner or an officer authorised by him in this behalf for a further period not exceeding 180 days.

The Council has also recommended that an amnesty may be provided in the past cases, where registration has been cancelled on account of non-filing of the returns, but application for revocation of cancellation of registration could not be filed within the time specified in section 30 of CGST Act, by allowing such persons to file such application for

revocation by a specified date, subject to certain conditions.

2. **Amendment to Section 62 of CGST Act, 2017 to extend timelines under sub-section (2) thereof and one time amnesty for past cases:** As per sub-section (2) of section 62 of CGST Act, 2017, the best judgment assessment order issued under sub-section (1) of the said section is deemed to be withdrawn if the relevant return is filed within 30 days of service of the said assessment order. The Council recommended to amend section 62 so as to increase the time period for filing of return for enabling deemed withdrawal of such best judgment assessment order, from the present 30 days to 60 days, extendable by another 60 days, subject to certain conditions.

The Council has also recommended to provide an amnesty scheme for conditional deemed withdrawal of assessment orders in past cases where the concerned return could not be filed within 30 days of the assessment order but has been filed along with due interest and late fee upto a specified date, irrespective of whether appeal has been filed or not against the assessment order, or whether the said appeal has been decided or not.

3. **Rationalisation of Late fee for Annual Return:** Presently, late fee of Rs 200 per day (Rs 100 CGST + Rs 100 SGST), subject to a maximum of 0.5% of the turnover in the State or UT (0.25% CGST + 0.25% SGST), is payable in case of delayed filing of annual return in FORM GSTR-9. The Council recommended to rationalise this late fee for delayed filing of annual return in FORM GSTR-9 for FY 2022-23 onwards, for registered persons having aggregate turnover in a financial year upto Rs 20 crore, as below:

- Registered persons having an aggregate turnover of up to Rs. 5 crores in the said financial year: Rs 50 per day (Rs 25 CGST + Rs 25 SGST), subject to a maximum of an amount calculated at 0.04 per cent. of his turnover in the State or Union territory (0.02% CGST + 0.02% SGST).
- Registered persons having an aggregate turnover of more than Rs. 5 crores and up to Rs. 20 crores

in the said financial year: Rs 100 per day (Rs 50 CGST + Rs 50 SGST), subject to a maximum of an amount calculated at 0.04 per cent. of his turnover in the State or Union territory (0.02% CGST + 0.02% SGST).

4. **Amnesty in respect of pending returns in FORM GSTR-4, FORM GSTR-9 and FORM GSTR-10:** To provide relief to a large number of taxpayers, the Council recommended amnesty schemes in respect of pending returns in FORM GSTR-4, FORM GSTR-9 and FORM GSTR-10 by way of conditional waiver/ reduction of late fee.
5. **Rationalization of provision of place of supply of services of transportation of goods:** Council recommended to rationalize the provision of place of supply for services of transportation of goods by deletion of section 13(9) of IGST Act, 2017 so as to provide that the place of supply of services of transportation of goods, in cases where location of supplier of services or location of recipient of services is outside India, shall be the location of the recipient of services.

Note: The recommendations of the GST Council have been presented in this release containing major item of decisions in simple language for information of the stakeholders. The same would be given effect through the relevant circulars/ notifications/ law amendments which alone shall have the force of law.

18

PRESS RELEASE

Direct Tax

For individual taxpayers between the age of 18 to 35 years, 2,09,06,829 ITRs filed, and Rs 93,318 crore paid in gross taxes, before claim of refund, during FY 2022-23 till 31st January 2023

For individual taxpayers below age of 18 years, 4,861 ITRs filed and paid Rs 6.31 crore gross taxes, before claim of refund, during FY 2022-23 till 31st January 2023

Posted On: 06 FEB 2023 6:34PM by PIB Delhi

2,09,06,829 number of Income tax Returns (ITRs) filed by individuals (between age of 18 to 35 years) during FY 2022-23 till 31st January 2023. This was stated by the Union Minister of State for Finance, Shri Pankaj Chaudhary, in a written reply to a question in Lok Sabha today.

As per Income-tax Act, 1961, tax is calculated and collected based on total income returned in ITR. Total Income includes income from different heads of income such as income from salary, income from house property, income from profit and gains from business or profession, income from capital gains and income from other sources. Tax is not collected separately under different heads. Rs 93,318 crore is the gross taxes paid as per ITRs filed, before claim of refund, the Minister stated.

For below the age of 18 years, the Minister further stated that 4,861 number of ITR filed were by individuals during FY 2022-23 till 31st January 2023. The Minister stated that this category taxpayers paid Rs 6.31 crore gross taxes as per ITRs filed, before claim of refund. As per Income-tax Act, 1961, tax is calculated and collected based on total income returned in ITR. Total Income includes income from different heads of income such as income from salary, income from house property, income from profit and gains from business or profession, income from capital gains and income from other sources. Tax is not collected separately under different heads.

Direct Tax Collections for F.Y. 2022-23 at

Rs.15.67 lakh crore - 24.09% higher than gross collections for corresponding period of last year as on 10.02.2023

Direct Tax collection, net of refunds, stands at Rs 12.98 lakh crore - 18.40% higher than net collections for corresponding period of last year

Posted On: 11 FEB 2023 12:34PM by PIB Delhi

The provisional figures of Direct Tax collections up to 10th February, 2023 continue to register steady growth. Direct Tax collections up to 10th February, 2023 show that gross collections are at Rs. 15.67 lakh crore which is 24.09% higher than the gross collections for the corresponding period of last year. Direct Tax collection, net of refunds, stands at Rs. 12.98 lakh crore which is 18.40% higher than the net collections for the corresponding period of last year. This collection is 91.39% of the total Budget Estimates of Direct Taxes for F.Y. 2022-23 and 78.65% of the Revised Estimates of Direct Taxes for F.Y. 2022-23.

So far as the growth rate for Corporate Income Tax (CIT) and Personal Income Tax (PIT) in terms of gross revenue collections is concerned, the growth rate for CIT is 19.33% while that for PIT (including STT) is 29.63%. After adjustment of refunds, the net growth in CIT collections is 15.84% and that in PIT collections is 21.93% (PIT only)/ 21.23% (PIT including STT).

Refunds amounting to Rs. 2.69 lakh crore have been issued during 1st April, 2022 to 10th February 2023, which are 61.58% higher than refunds issued during the same period in the preceding year.

CBDT notifies Income Tax Return Forms for Assessment Year 2023-24 well in advance

Posted On: 15 FEB 2023 12:57PM by PIB Delhi

The Central Board of Direct Taxes (CBDT) has notified Income-tax Return Forms (ITR Forms) for the Assessment Year 2023-24 vide Notifications No. 04 & 05 of 2023 dated 10.02.2023 and 14.02.2023. These ITR forms will come into effect from 1st April, 2023 and have been notified well



in advance in order to enable filing of returns from the beginning of the ensuing Assessment Year.

In order to facilitate the taxpayers and to improve ease of filing, no significant changes have been made to the ITR Forms in comparison to last year's ITR Forms. Only the bare minimum changes necessitated due to amendments in the Income-tax Act, 1961 (the 'Act') have been made.

ITR Form 1 (Sahaj) and ITR Form 4 (Sugam) are simpler Forms that cater to a large number of small and medium taxpayers. Sahaj can be filed by a resident individual having income upto Rs. 50 lakh and who receives income from salary, one house property, other sources (interest etc.) and agricultural income upto Rs. 5 thousand. Sugam can be filed by individuals, Hindu Undivided Families (HUFs) and firms (other than Limited Liability Partnerships (LLPs)) being a resident having total income upto Rs. 50 lakh and income from business and profession computed

under sections 44AD, 44ADA or 44AE.

Individuals and HUFs not having income from business or profession (and not eligible for filing Sahaj) can file ITR Form 2 while those having income from business or profession can file ITR Form 3. Persons other than individuals, HUFs and companies i.e. partnership firms, LLPs etc. can file ITR Form 5. Companies other than companies claiming exemption under section 11 can file ITR Form 6. Trusts, political parties, charitable institutions, etc. claiming exempt income under the Act can file ITR Form 7.

In order to further streamline the ITR filing process, not only have all the ITR forms been notified well in time this year, no changes have been made in the manner of filing of ITR Forms as compared to last year. The notified ITR Forms will be available on the Department's website at www.incometaxindia.gov.in.

18

JUDGEMENT INDIRECT TAX

Notice must be served on taxpayer if the power of filing cross appeal to be invoked: HC

Facts of the case :

Radiant Enterprises (P.) Ltd. v. Joint Commissioner, CGST & CX (Appeal I) - [2023] (Calcutta)

The appellant filed refund application which was rejected and a statutory appeal was filed before the Appellate Authority. The Appellate Authority passed order also on issues which was neither case before original authority nor emanated from order passed by adjudicating authority. The appellant filed writ petition before the High Court challenging that portion of the order passed by the Appellate Authority, which was never the case before the original authority. But the learned Single Bench held that it is not inclined to interfere with the order. Thereafter, the appellant filed intra-Court appeal.

Decision of the case :

The Honorable High Court noted that the GST law does not provide for filing cross appeal by department in statutory appeal filed before Appellate Authority under Section 107 of CGST Act. In case power to file cross appeal had to be invoked, notice was to be served on taxpayer. Even assuming that Appellate Authority had such jurisdiction, in absence of any notice it would be in violation of principles of natural justice and therefore, the Appellate Authority could not have taken a decision on issue which did not emanate from order passed by original authority. Thus, it was held that order passed by Appellate Authority on those issues would be set aside.

GST dept. can't direct Customs authority to withhold refund & detain goods for entering wrong address in export document: HC

Facts of the case :

Mobile Shoppe v. Union of India [2023] (Gujarat)

The petitioner was engaged in export of mobile phones on payment of IGST. It filed application for refund and refund was processed by the Customs Authorities. The GST department conducted search in the premises of petitioner

and refund of IGST was contended as erroneous on ground of deficiency of documents. Thereafter, the department issued summons to the petitioner and requested Customs Authorities to detain the cargo of the petitioner which was pending clearance for export at the airport.

The petitioner filed writ petition and contended that proceedings for scrutiny of refund of IGST paid on export made were initiated by CGST officers even though proper officer for grant of refund would be Customs Authority. The department contended that at time of search by GST officers, e-way bill was not produced and address in e-way bill was different.

Decision of the case :

The Honorable High Court noted that no ambiguity was found in respect of export except wrong declaration of address in few export invoices/shipping bills. Moreover, the Court also noted that Customs authority is proper authority for taking up the issue in case of doubt regarding export goods and export cannot be disputed once e-way bill would be generated. In the instant case, show cause notice was not issued by the department so far. Therefore, it was held that the petitioner was entitled to refund along with interest when export has been permitted. The Court also directed department to finalise investigation within eight weeks.

HC orders lifting of provisional attachment of bank account as power can't be used as a tool to harass assessee: HC

Facts of the case :

Smita and Sons Coal (P.) Ltd. v. State of Gujarat - [2023] (Gujarat)

The petitioner was engaged in the business of trading in coal. The department issued summons for recording of statement and production of sales and purchase registers. The director of petitioner was unable to attend and requested for adjournment. However, the department has issued order for provisional attachment of bank account. The request was made to authority to release bank



account however same was not released and it filed writ petition against the same.

The department submitted before the High Court that Summon was issued to petitioner to give statements and to produce documents on ground that ITC was availed on bogus and fake invoices by the seller. In order to protect interest of revenue, the bank account was attached because petitioner did not have any freehold property and there was nothing it could have offered. The petitioner contended that it had purchased goods from seller and its GST registration was also in tact when purchase had been made and GST was paid at time of purchase.

Decision of the case :

The Honorable High Court noted that the power under Section 83 is serious and harsh in nature. It should not be used as a tool to harass the assessee nor should be used in any manner that it may have irresistible detrimental effect on business. The Authority must ensure that action should not affect business activities of taxable person. However, the instant case, the department didn't follow proper procedure before issuing order of provisional attachment prescribed by CBIC.

Therefore, the Court set aside the impugned order and directed bank to not permit petitioner to operate account to extent of tax amount and release attachment on furnishing of bond for balance amount.

High Court dismissed writ petition against adjudication order as issue involved is classification of goods

Facts of the case :

Harsh Polyfabric (P.) Ltd. v. Union of India - [2023] (Calcutta)

The petitioner was of the view that PPSB bed sheet manufactured by it would be classifiable under Tariff Item 6304 19 30 and shall be taxable at 5% under GST. However, the contention of department was that item would fall under Chapter 56 to 62 and was not covered under Chapter 63. The Appellate authority also held that "Non-woven Fabric" and "PSB Bed Sheet" manufactured from non-woven fabric were same textile fabric and

impugned goods should be classified under heading 5603 at par with "Non-woven Fabric" and to be taxed at rate of 12%. It filed writ petition and challenged the findings of the Appellate Authority.

Decision of the case :

The Honorable High Court noted that the writ court should not scrutinise an adjudicating authority's decision by acting as an appellate authority over such order. The Court was of the view that only scientific and technical expert can give opinion as to composition and method of manufacture. Therefore, in the instant case, the principles of natural justice had not been violated and no procedural irregularity had been committed by authority. Therefore, the Court held that the writ jurisdiction would not be exercisable by High Court and the petition was liable to be dismissed.

GST is not leviable on vouchers being in the nature of instruments: Karnataka HC

Facts of the case :

Premier Sales Promotion (P.) Ltd. v. Union of India - [2023] (Karnataka)

The assessee was engaged in the transactions of procuring Pre-paid Payment Instruments of Gift Vouchers, Cash Back Vouchers and E-Vouchers from the issuers and supplying them to its clients for specified face value. It filed application for advance ruling to determine taxability of vouchers. The Authority for Advance Ruling (AAR) held that supply of vouchers would be taxable as goods. The Appellate Authority affirmed the order passed by the AAR and it filed writ petition against the same.

Decision of the case :

The Honorable High Court noted that vouchers are mere instruments accepted as consideration for supply of goods or services and do not have any inherent value of their own. Since vouchers qualify as instruments, they would be covered under definition of 'money' and money is excluded from definition of goods and service. Therefore, the tax would not be payable on vouchers as transaction shall be restricted to procurement of printed form and delivering the same to clients.

11

JUDGEMENT DIRECT TAX

AO can't disregard TRC as same is sufficient evidence to claim treaty eligibility: Delhi HC

Facts of the case -

Blackstone capital partners (singapore) vi fdi three pte. Ltd v. ACIT - [2023] (Delhi)[30-01-2023]

Assessee was a company incorporated in Singapore, holding a valid Tax Residency Certificate (TRC) issued by the Inland Revenue Authorities of Singapore (IRAS). The assessee claimed the benefits under Article 13(4) of the India-Singapore DTAA, which merely allocates the taxing rights vis-à-vis capital gains to Singapore.

The Assessing Officer (AO) issued a notice of reassessment contending that the assessee was a shell/conduit company with little to no business activity in Singapore and no real and ongoing business operations.

AO strongly argued that the taxpayer was a US-based company as its management was located there and the investment funds for India originated from the United States. Since India and USA DTAA do not provide for capital gains tax exemption, AO denied the capital gain exemption to the assessee.

Decision of the case :

- The Delhi High Court held that TRC is statutorily the only evidence required to be eligible for the benefit under the DTAA. AO cannot question it as the same would be wholly contrary to the Government of India's consistent policy and repeated assurances to Foreign Investors.
- Further, even the clarificatory press release dated 01-03-2013 issued by the Finance Ministry pursuant to the 2013 amendment makes it clear that a TRC is to be accepted and tax authorities cannot go behind it.
- IRAS issued TRC to the assessee after a detailed analysis of the documents, and the Indian Revenue authorities cannot disregard the same. AO cannot go behind the TRC issued by the other tax jurisdiction

as the same is sufficient evidence to claim treaty eligibility, residence status, and legal ownership.

- Therefore, AO was not right in issuing reassessment notice to deny the benefit of India-Singapore DTAA to assessee.

AO can't deny sec. 11 benefits to trust in case of capitation fee violation as long as Sec. 12A certificate is in force: HC

Facts of the case -

Kammavari Sangham v. DDIT (Exemptions) - [2023] (Karnataka)

Assessee, a trust, was running an educational institute. During the relevant assessment year, assessee received money as capitation fees (donation) and disclosed the same in the Income and Expenditure account. The assessee claimed exemption under section 11 with respect to the capitation income while filing return of income.

During the assessment proceedings, the Assessing Officer (AO) proclaimed that the said capitation fees were received by the assessee in violation of the Karnataka Educational Institution Act, 1984, and denied the exemption under section 11.

On appeal, CIT(A) upheld AO's order which was subsequently ratified by the Tribunal. The matter then reached the Karnataka High Court.

Decision of the case :

- The Court held that the person giving voluntary donation can make such contribution either with specific direction or otherwise. Section 11 deals with the donations made with specific directions. The section specifies that the donations made with any specific direction shall form part of the corpus. However, no such provision has been prescribed for the donations made without any specific direction.
- In this particular instance, the exemption under



section 11 was denied on the fact that the donations received are not voluntary in nature and thus in the violation of Karnataka Educational Institution Act, 1984.

- The Court held that the AO cannot deny the benefit under section 11 until the registration certificate is cancelled. This benefit can be claimed by the assessee as long as the registration is in force. The contention that the capitation fees received violates other Act cannot be a basis for disallowance under the Income Tax Act. It is a matter of consideration under the above-mentioned Act which needs to be considered by the appropriate authority under that Act.
- Since the registration certificate was in force, exemption under section 11 cannot be denied to assessee-trust.

Transfer of PAN jurisdiction follows jurisdiction transfer order; AO can't claim jurisdiction if PAN transferred later: HC

Facts of the case :

PCIT v. Capstone Securities Analysis (P.) Ltd. - [2023] (Bombay)

Assessee-company filed its return of income for the relevant assessment year. The return was processed under section 143(1). Afterward, the case was selected for scrutiny proceedings. Since assessee was involved in international transactions, the assessee's case was referred to Transfer Pricing Officer (TPO) for determination of the Arm's Length Price.

Based on the order passed by the TPO, the Assessing Officer (AO) issued draft assessment order incorporating additions to the total income of the assessee. Aggrieved by the order, the assessee filed objections with the Dispute Resolution Panel. Meanwhile, the assessee shifted its head office from Mumbai to Pune to which the Registrar of Companies, Maharashtra issued a certificate of transfer.

Such certificate of transfer was then furnished to the concerned Income Tax Officer and a request was made to CIT, Mumbai for transferring the jurisdiction to Pune. The request was subsequently approved by CIT. Despite the transfer of jurisdiction, AO passed the final assessment order.

Aggrieved assessee preferred an appeal to the Tribunal pertaining to the jurisdiction of AO, Mumbai even after the transfer order passed by CIT. The Tribunal allowed the assessee's appeal. The matter reached the Bombay High Court.

Decision of the case :

- The Court held that CIT, Mumbai passed the order for transferring the jurisdiction. AO had no jurisdiction over the file of the assessee after such transfer. AO's argument that he possesses jurisdiction over the assessee's case till the PAN jurisdiction gets transferred is not maintainable.
- Transfer of PAN jurisdiction is consequential to the order of transfer of jurisdiction. It is a PAN that follows jurisdiction and not vice-versa.
- Therefore, assessee's appeal was allowed and AO, Mumbai cannot continue to exercise jurisdiction even if the PAN was transferred at a later stage.

Exp. incurred on development of a new product is revenue in nature if product was abandoned: HC

Facts of the case -

Principal Commissioner of Income-tax-5 v. Trigent Software Ltd. - [2023] (Bombay)

Assessee-company engaged in the business of software development solutions and management. During the previous assessment years, the assessee incurred expenditure for developing new software and treated it as capital work in progress. Since new software development was abandoned in the relevant assessment year, the assessee claimed the entire expenditure as revenue expenditure under "Exceptional Items". During the assessment proceedings, the Assessing Officer (AO) disallowed such a claim and made additions to income accordingly.

On appeal, CIT (A) deleted the additions made by the AO, which the Tribunal further upheld. The matter then reached the Bombay High Court.

Decision of the case :

- The Court held that there could not be any determinative factor to classify any expense as

capital or revenue in nature. Such classification depends upon the facts of the case. However, the “enduring benefit test” can be a conclusive test in the given circumstances. If the benefit arising from any expenditure is only on account of trading operations or enabling the management and conducting the business more efficiently, leaving the fixed capital untouched. In that case, such expenditure is considered revenue in nature.

- Further, if the expenses are incurred for establishing a new business, irrespective of the fact that the expenses are materialised, such expenses are considered capital expenditures. If the expenses are incurred for the expansion of the same business, already carried on by the assessee, and results in creation of new assets. In that case, it will be tantamount to capital expenditures. However, if the expenses do not result in the creation of new assets, such expenses are considered revenue expenditures.
- In the instant case, the assessee was engaged in the business of the development of software. The attempt to develop new software was merely an expenditure for the expansion of the same line of business. Since the product did not materialise, no new asset enduring any benefit to the assessee was generated.
- Therefore, the said expenditure will be considered as revenue expenditure and consequently allowed as a deduction from the taxable income.

Exp. incurred to obtain legally enforceable agreement with Ministry of Civil Aviation is to be capitalised: HC

Facts of the case :

Bangalore International Airport Ltd. v. DCIT - [2023] (Karnataka)

Assessee was an airport company, executed various

agreements with Central Government, and State Government etc. for acquisition of certain rights and incurred certain expenditures.

Assessee claimed depreciation on such expenditure by treating it as capital expense. During the assessment proceedings, the Assessing Officer (AO) discovered that the payment was made towards legal, technical and management fees and denied to treat such expense as capital expenditure.

On appeal, the CIT(A) confirmed AO's order which was subsequently ratified by the Tribunal. Aggrieved by the order, assessee preferred an appeal to the Karnataka High Court.

Decision of the case :

- The Court held that the assessee acquired business & commercial rights and licenses rendering it to be in the nature of intangible assets. Under these agreements, assessee was required to pay a fixed percentage i.e., 4% of the Gross Revenue as a concession fee every year to the Central Government. The lower authorities recorded that the said amount payable every year was a revenue expenditure. To this extent, CIT(A) was correct.
- However, the assessee's claim of depreciation is to be allowed on expenditure incurred to get the Concession Agreement and respective expenditure to obtain other agreements. These expenses were mostly legal in nature and were incurred only to obtain legally enforceable agreements.
- A concession or benefit that arises over a period of time as per the agreement will constitute an intangible asset and the assessee is entitled to claim depreciation on it. This finding had not been challenged by revenue before Tribunal and thus the assessee was entitled for the benefit.

TR

Tax Calendar

Indirect tax

Returns	Due Date
GSTR-3B (Jan, 2023)	Feb 20th, 2023
GSTR-5A (Jan, 2023)	Feb 20th, 2023
RFD-10	18 Months after the end of quarter for which refund is to be claimed

E-PUBLICATIONS OF TAX RESEARCH DEPARTMENT

Impact of GST on Real Estate	Handbook on GST on Service Sector
Insight into Customs - Procedure & Practice	Handbook on Works Contract
Input Tax Credit & In depth Discussion	Handbook on Impact of GST on MSME Sector
Exemptions under the Income Tax Act, 1961	Insight into Assessment including E-Assessment
Taxation on Co-operative Sector	Impact on GST on Education Sector
Guidance Note on GST Annual Return & Audit	Addendum_Guidance Note on GST Annual Return & Audit
Sabka Vishwas-Legacy Dispute Resolution Scheme 2019	An insight to the Direct Tax- Vivad se Vishwas Scheme 2020
Guidance Note on Anti Profiteering	International Taxation and Transfer Pricing
Advance Rulings in GST	Handbook on E-Way Bill
Handbook on Special Economic Zone and Export Oriented Units	Taxation on Works Contract

For E-Publications, Please visit Taxation Portal -
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"GST Course for College and Universities Convocation in Malappuram District Panchayat & Institute on 11th February 2023 "



The Institute of Cost Accountants of India honored by Sri.V Abdu Rahman (Minister for Railways-Govt. of Kerala) in the presence of Sri. P. Ubaidulla MLA GoK, Smt. M K Rafeekha, President, Mr.Ismail Muthedam, Vice President received by CMA Chittaranjan Chattopadhyay, Chairman IDT Committee of the Institute, CMA Anas K and CMA H Padmanabhan Central Council Member of the Institute.

Sri.V Abdu Rahman (Minister for Railways-Govt. of Kerala), Sri. P. Ubaidulla MLA GoK, Smt. M K Rafeekha, President Mr.Ismail Muthedam, Vice President, Smt.Naseeba Mayyeri, Chairperson, Standing Committee-Malappuram District Panchayat are distributing certification along with CMA Chittaranjan Chattopadhyay Chairman IDT Committee of the Institute, CMA Anas K and CMA H Padmanabhan Central Council Member of the Institute.



GST Course for College and Universities Convocation in Malappuram District Panchayat & the Institute an initiative by the Tax Research Department of The Institute of Cost Accountants of India and ICMS ROCC of the Institute. The successful students with President Malappuram District Panchayat and leaders and CMA Chittaranjan Chattopadhyay Chairman IDT Committee of the Institute, CMA Anas K and CMA H Padmanabhan Central Council Member of the Institute.

Notes

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TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

1. Successfully conduct all Taxation Courses.
2. Publication and Circulation of Tax bulletin (both in electronic and printed formats) for the awareness and knowledge updation of stakeholders, members, traders, Chambers of Commerce, Universities.
3. Publication of Handbooks on Taxation related topics helping stakeholders in their job deliberations.
4. Carry out webinars for the Capacity building of Members - Trainers in the locality to facilitate the traders/registered dealers.
5. Conducting Seminars and workshops on industry specific issues, in association with the Trade associations/ Traders/ Chamber of commerce in different location on practical issues/aspects associated with GST.
6. Tendering representation to the Government on practical difficulties faced by the stakeholders in Taxation related matters.
7. Updating Government about the steps taken by the Institute in removing the practical difficulties in implementing various Tax Laws including GST.
8. Facilitating general public other than members through GST Help-Desk opened at Head quarter of the Institute and other places of country.
9. Introducing advance level courses for the professionals on GST and Income Tax.
10. Extending Crash Courses on Taxation to Corporates, Universities, Trade Associations etc.

Disclaimer:

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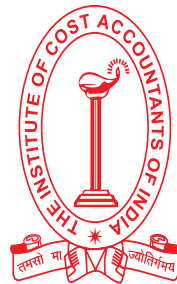
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