



CHAPTER - 10

TDS & TCS

Sec 51 : Tax Deducted at Source

Provisions related to deductor

- 4 **Failure to give TDS Certificate :** If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government,
the deductor shall pay, by way of a *late fee, a sum of ₹100 per day from the day after the expiry of such five days period until the failure is rectified, subject to a maximum amount of five thousand rupees*

Rule 66 : Form and manner of submission of return by a person required to deduct tax at source.-

- | | |
|-----|--|
| (1) | Every registered person required to deduct tax at source under section 51 (hereafter in this rule referred to as deductor) shall furnish a return in FORM GSTR-7 electronically through the common portal either directly or from a Facilitation Centre notified by the Commissioner. |
| (2) | The details furnished by the deductor under sub-rule (1) shall be made available electronically to each of the deductee suppliers in Part C of FORM GSTR-2A and FORM GSTR-4A on the common portal after the due date of filing of FORM GSTR-7. Omitted |
| (3) | The certificate referred to in sub-section (3) of section 51 shall be made available electronically to the deductee on the common portal in FORM GSTR-7A on the basis of the return furnished under sub-rule (1). |

Sec 52 : Tax Collection at Source

- 4 **Monthly Statement :** Every operator who collects the amount specified in sub-section (1) *shall furnish a statement, electronically,* containing
- the details of outward supplies of goods or services or both effected through it,
 - including the supplies of goods or services or both returned through it, and
 - the amount collected under sub-section (1) during a month,
- in such form and manner as may be prescribed (**GSTR-8**), *within ten days after the end of such month*

Rule 67 : Form and manner of submission of statement of supplies through an e-commerce operator.-

- (1) Every electronic commerce operator required to collect tax at source under section 52 shall furnish a statement in **FORM GSTR-8** electronically on the common portal, either directly or from a Facilitation Centre notified by the Commissioner, containing details of supplies effected through such operator and the amount of tax collected as required under Sec 52(1)
- (2) The details furnished by the operator under sub-rule (1) shall be made available electronically to each of the suppliers in **Part C of FORM GSTR-2A** on the common portal after the due date of filing of **FORM GSTR-8** *for claiming the amount of tax collected in his electronic cash ledger after validation.* **Newly inserted by N/N 31/2019 CT dt 28/06/2019**

Manner of furnishing the details of State/UT in application for registration by a TCS collector in a State where he doesn't have a physical presence [Rule 12(1A) of the CGST Rules][Notification No. 74/2018 CT dated 31.12.2018]

When a person is applying for registration to collect TCS in a State/UT where he does not have a physical presence, he shall mention name of said State/UT in Part A of prescribed application form for registration. Further, the name of the State/UT in which his principal place of business is located is to be mentioned in Part B of the application form. States/UTs mentioned in Part A and Part B of the application form may be different.

Manner of furnishing the details of State/UT in application for registration by TDS deductor / a TCS collector in a State where he doesn't have a physical presence [Rule 12(1A) of the CGST Rules][Notification No. 74/2018 CT dated 31.12.2018] [Notification No. 33/2019 CT dated 18.07.2019]

When a person is applying for registration to deduct or collect tax in accordance with provisions of **sec 51 (TDS) or as the case may be**, sec 52 (TCS) in a State/UT where he does not have a physical presence, he shall mention name of said State/UT in Part A of prescribed application form for registration. Further, the name of the State/UT in which his principal place of business is located is to be mentioned in Part B of the application form. States/UTs mentioned in Part A and Part B of the application form may be different.



CHAPTER - 11

REGISTRATION

Sec 24 : Compulsary Registration in Certain cases

- (x) every electronic commerce operator, who is required to collect tax at source under sec 52 Amended



Prior Amendment:- every electronic commerce operator was required to take compulsory registration irrespective of his turnover limit

Amendment :- every electronic commerce operator, who is required to collect tax at source under **sec 52** of the CGST Act would only be required to take compulsory registration

Impact:- Small e-commerce operators who are not required to collect tax at source under **sec 52** would now be eligible for availing the threshold exemption limit benefit for registration purposes.

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

Exemption from registration (N/n 65/2017- CT date 15-11-2017) :

Person making supply of services, other than supplies specified under sec 9(5) of the said Act through E-commerce operator who is required to collect TCS under Sec 52 of the said Act, and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of ₹ 20 lakhs **first proviso to sec 22(1) of CGST Act read with clause (iii) explanation to the sec 22** in F.Y. as the category of person exempted from obtaining registration under the said Act.

Newly Inserted via N/N 6/2019-CT dt 29/01/2019

New Rules Inserted

Rule 10A -Furnishing of Bank Account Details

Newly Inserted by N/N
31/2019 CT dt 28/06/2019

Any registered person other than person registered under rule 12 or rule 16 as the case may be within 45 days from the date of grant of certificate of registration in FORM GST REG-06 or the date on which the return required under section 39 is due to be furnished, whichever is earlier, furnish information with respect to details of bank account, or any other information, as may be required on the common portal in order to comply with any other provision.

Rule 41A (CGST Rules, 2017) - Transfer of unutilised ITC

Newly Inserted

How to transfer unutilised ITC to any or newly registered place of business within a state?

Solution:- As per rule 41A inserted via N/N 3/2019-CT dt 29/01/2019

A registered person who has obtained separate registration for multiple places of business in accordance with the provisions of rule 11 **and**

who intends to transfer, either *wholly or partly, the unutilized input tax credit* lying in his electronic credit ledger to any or all of the newly registered place of business, shall furnish **within a period of thirty days** from obtaining such separate registrations,



the details in **FORM GST ITC-02A** electronically on the common portal, either directly or through a Facilitation Centre notified in this behalf by the Commissioner:

Provided that the input tax credit shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration.

Explanation.-

- (1) 'value of assets' means the value of the entire assets of the business whether or not input tax credit has been availed thereon.
- (2) The newly registered person (transferee) shall, on the common portal, accept the details so furnished by the registered person (transferor) and, upon such acceptance, the unutilized input tax credit specified in FORM GST ITC-02A shall be credited to his electronic credit ledger.”

Cancellation of Registration

Cancellation of Proper Officer

1. Following contraventions done by the registered person:

- (i) He does not conduct any business from the declared place of business, or
- (ii) He issues invoice/bill without supply of goods/ services in violation of the provisions of this Act, or the rules made thereunder.
- (iii) If he violates the provisions of section 171 of the CGST Act.*

(iv) Violates the provision of Rule 10A

Newly Inserted by N/N
31/2019 CT dt 28/06/2019

* Section 171 of the CGST Act, 2017 contains provisions relating to antiprofeetering measure.

2. Not filing of Return :

- ⇒ A registered person has not filed returns for continuous 6 months.

Note : 3 consecutive tax periods in case of a person who opted for composition levy

3. Voluntarily registered person has not commenced the business within 6 months from the date of registration

4. Registration by fraud etc. : Registration was obtained by means of fraud, wilful misstatement or suppression of facts

As per proviso sec 29(2), provided that during pendency of proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period in such manner as may be prescribed.

Newly Inserted

Suspension by Proper Officer

Rule 21A (CGST Rules, 2017): Suspension of registration – (Rule 21A inserted via N/N 3/2019 – CT dt 29/1/2019)

1. Where a registered person applies for cancellation of registration under rule 20, the registration shall be deemed to be suspended from the date of submission of the application or the **date from which the cancellation is sought, whichever is later**, pending the completion of proceedings for cancellation of registration
2. In case of proceeding for cancellation initiated by dept, the proper officer, may, after giving hearing, suspend the registration w.e.f date to be determined by him
3. Such Person shall not make any taxable supply during the period of suspension & shall not be required to file any returns under Sec 39 of CGST Act

Newly Inserted

Explanation.-For the purposes of this sub-rule, the expression “shall not make any taxable supply” shall mean that the registered person shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension

Newly Inserted by N/N
49/2019 CT dt 09/10/2019

4. The suspension of registration under sub-rule (1) or sub-rule (2) shall be deemed to be revoked upon completion of the proceedings by the proper officer under rule 22 and such revocation shall be effective from the date on which the suspension had come into effect

5. Where any order having the effect of revocation of suspension of registration has been passed, the provisions of section 31(3)(a) and section 40 in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.

Newly Inserted by N/N
49/2019 CT dt 09/10/2019

Significant Notifications/ Circulars/ Orders

Pending returns to be filed before revocation of cancellation of registration [Rule 23 of the CGST Rules] [Notification No. 20/2019 CT dated 23.04.2019 read with Circular No. 99/18/2019 GST dated 23.04.2019]

Rule 23 of the CGST Rules provides the procedure for revocation of cancellation of registration. First proviso to section 23(1) provided that if the registration has been cancelled on account of failure of the registered person to furnish returns, no application for revocation of cancellation of registration shall be filed, unless such returns are furnished and any amount in terms of such returns is paid.

Two newly inserted provisos provide as follows:

All returns due for the period from the *date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of 30 days* from the date of order of revocation of cancellation of registration.

However, where the registration has been **cancelled with retrospective** effect, the registered person shall furnish all returns relating to period from the *effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of 30 days* from the date of order of revocation of cancellation of registration.

From the combined reading of aforesaid provisions, it can be inferred that where the registration has been cancelled with effect from the date of order of cancellation of registration,

- (i) all returns due till the date of such cancellation are required to be furnished before the application for revocation can be filed and
- (ii) all returns required to be furnished in respect of the period from the date of order of cancellation till the date of order of revocation of cancellation of registration have to be furnished within a period of 30 days from the date of the order of revocation.

However, where the registration has been cancelled with retrospective effect, the application for revocation of cancellation of registration can be filed,

subject to the condition that all returns relating to the period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration shall be filed within a period of 30 days from the date of order of such revocation of cancellation of registration.

Issue:- Whether transfer/change in the ownership of business to include the transfer /change in the ownership of business due to death of the sole proprietor [Circular No. 96/15/2019 GST dated 28.03.2019]

Clarification -

1. Section 29(1)(a) of the CGST Act provides that reason of transfer of business includes "death of the proprietor".
2. Similarly, for uniformity and for the purpose of section 22(3) of the said Act, it is clarified that transfer or change in the ownership of business under said section will include transfer/change in the ownership of business due to death of the sole proprietor.

Registration of SEZ Unit

As per proviso to sec 25 (1) *Provided further that a person having a unit, as defined in the Special Economic Zones Act, 2005, in a Special Economic Zone developer*

shall have to apply for separate registration, as distinct from his place of business located outside the Special Economic Zone in the same State or Union territory.

Newly Inserted by CGST Amendment Act, 2018

Author's Note: - Earlier the said provision was contained only in CGST rules in order to rationalise such provision, the empowering provision is now given in the act, As per the CGST Amendment act, 2018

Application for registration by Special Economic Zone (SEZ) [Proviso to rule 8(1) of the CGST Rules, 2017]:

A person having unit in SEZ/SEZ developer will make a separate application for registration as a business vertical distinct from his other units located outside SEZ.

Omitted by N/N 3/2019
CT dt 29/01/2019



Chapter - 12

Return & E-Way Bill

Filing of annual return under section 44(1) of the CGST Act for F.Y. 2017-18 and 2018-19 made optional for small taxpayers whose aggregate turnover is less than Rs 2 crores and who have not filed the said return before the due date [Notification No. 47/2019 CT dated 09.10.2019] **Newly Inserted**

Filing of annual return (GSTR- 9) under section 44(1) of CGST Act read with rule 80(1) of CGST Rules, in respect of financial years 2017-18 and 2018-19, has been made voluntary for the registered persons whose turnover is less than Rs. 2 crore and who have not furnished the said annual return before the due date.

The annual return shall be deemed to be furnished on the due date if it has not been furnished before the due date.

Form GSTR-3B to be treated as a return furnished under section 39 of the CGST Act [Rule 61(5) of the CGST Rules] [Notification No. 49/2019 CT dated 09.10.2019]

Section 39(1) of the CGST Act prescribes a monthly return in Form GSTR-3 for every registered person, other than input service distributor, a non-resident taxable person, a composition taxpayer, person deducting tax at source, person collecting tax at source i.e., an electronic commerce operator and supplier of OIDAR services. However, filing of GSTR-3 has been deferred by the GST Council.

Rule 61(5) of CGST Rules provided that where the time limit for furnishing of details in Form GSTR -1 under section 37 has been extended and the circumstances so warrant, the Commissioner may , by notification, specify the manner and conditions subject to which the return shall be furnished in Form GSTR-3B.

The said rule has been amended retrospectively with effect from 01.07.2017, to specify that the return in Form GSTR-3B is the return under section 39(1) and that where a return in GSTR-3B is furnished by a person then such person shall not be required to furnish the return in Form GSTR-3.

Examination of GSTP (GST Practitioner)

Rule 83-A	Examination of GSTP (GST Practitioner)
(1)	Every person referred to in rule 83(1)(b) and who is enrolled as a GSTP under sub-rule (2) of the said rule, shall pass an examination as per sub rule (3) of the said rule.
(6)	<p>A person enrolled as a GSTP in terms of rule 83(2) is required to pass the examination within two years of enrollment.</p> <p>Every person referred to in rule 83 (1)(b) (<i>Sales Tax Practitioner or Tax Return preparer</i>) and who is enrolled as a GSTP under sub-rule (2) of the said rule is required to pass the examination within the period as specified in the second proviso of sub-rule (3) of the said rule. (i.e. 30 months)</p>

E-Way Bill

Validity of E-Way Bill

As per rule 138(10), an e-way bill shall be valid for a period as given in table below from the relevant date, for the distance specified in table below

Type of Cargo	Distance	Validity period
Cargo other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship	Upto 100 km	One day
Cargo other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship	For every 100 km or part thereof thereafter .	One additional day
Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship	Upto 20 km	One day
Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship	For every 20 km part thereof thereafter	One additional day

Provided also that validity of E-way bill may be extended within 8 hours from the time of its expiry [N/N 31/2019 CT dt 28/06/2019]

Note:-

- For the purposes of this rule, the —"relevant date" shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as the period expiring at midnight of the day immediately following the date of generation of eway bill.
- For the purposes of this rule, the expression —"Over Dimensional Cargo" shall mean a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in rule 93 of the Central Motor Vehicle Rules, 1989, made under the Motor Vehicles Act, 1988.





CHAPTER - 13

IGST ACT 2017 INCLUDES PLACE OF SUPPLY

SEC 13 : DETERMINATION OF POS FOR CROSS BORDER TRANSACTION OUTSIDE INDIA

SEC 13(13) : GOVERNMENT POWER TO NOTIFY SERVICE TO AVOID DOUBLE TAXATION

In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

Central Government has notified following services u/s 13(13)

Research and Development related to Pharmaceutical Sector Newly Inserted N/N 04/2019 -IT dt 30/09/2019

Description	The place of supply of Services
Supply of research and development services related to pharmaceutical sector as specified below in the Table by a person located in taxable territory to a person located in the non-taxable territory.	Location of recipient of service subject to the fulfillment of condition

Condition:-

- (I) Supply of services from the taxable territory are provided as per a contract between the service provider located in taxable territory and service recipient located in non-taxable territory.
- (ii) Such supply of services fulfills all other conditions in the definition of export of services, except provided at Section 2 (6)(III) (*i.e. place of supply of service is outside India*) of Integrated Goods and Services Tax Act, 2017

Table:-

Sr. No.	Nature of Supply	General Description of supply
1.	Integrated discovery and development	This process involves discovery and development of molecules by pharmaceutical sector for medicinal use.
2.	Integrated development	The steps include designing of compound, evaluation of the drug metabolism, biological activity, manufacture of target compounds, stability study and long-term toxicology impact.
3.	Evaluation of the efficacy of new chemical/ biological entities in animal models of disease	This is in vivo research (i.e. within the animal) and involves development of customized animal model diseases and administration of novel chemical in doses to animals to evaluate the gene and protein expression in response to disease. In nutshell, this process tries to discover if a novel chemical entity that can reduce or modify the severity of diseases. The novel chemical is supplied by the service recipient located in non-taxable territory.
4.	Evaluation of biological activity of novel chemical/ biological entities in in-vitro assays	This is in vitro research (i.e. outside the animal). An assay is first developed and then the novel chemical is supplied by the service recipient located in non-taxable territory and is evaluated in the assay under optimized conditions
5.	Drug metabolism and pharmacokinetics of new chemical entities	This process involves investigation whether a new compound synthesized by supplier can be developed as new drug to treat human diseases in respect of solubility, stability in body fluids, stability in liver tissue and its toxic effect on body tissues. Promising compounds are further evaluated in animal experiments using rat and mice
6.	Safety Assessment/ Toxicology	Safety assessment involves evaluation of new chemical entities in laboratory research animal models to support filing of investigational new drug and new drug application. Toxicology team analyses the potential toxicity of a drug to enable fast and effective drug development
7.	Stability Studies	Stability studies are conducted to support formulation, development, safety and efficacy of a new drug. It is also done to ascertain the quality and shelf life of the drug in their intended packaging configuration

8.	Bio-equivalence and Bio-availability Studies	Bio-equivalence is a term in pharma-cokinetics used to assess the expected in vivo biological equivalence of two proprietary preparations of a drug. If two products are said to be bioequivalent it means that they would be expected to be, for all intents and purposes, the same. Bioavailability is a measurement of the rate and extent to which a therapeutically active chemical is absorbed from a drug product into the systemic circulation and becomes available at the site of action
9.	Clinical trials	The drugs that are developed for human consumption would undergo human testing to confirm its utility and safety before being registered for marketing. The clinical trials help in collection of information related to drugs profile in human body such as absorption, distribution, metabolism, excretion and interaction. It allows choice of safe dosage.
10.	Bio analytical studies	Bio analysis is a sub-discipline of analytical chemistry covering the quantitative measurement of drugs and their metabolites, and biological molecules in unnatural locations or concentrations and macromolecules, proteins, DNA, large molecule drugs and metabolites in biological systems.

Further analysis of IGST Act, 2017

Payment

~~Supplier of **OIDAR Services** : can make payment through **Easiest (old payment system) (Rule 87)**~~

Provided further that a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the IGST Act, 2017 may also do so through the Boards payment system namely, Electronic Accounting System in Excise and Service Tax from the date to be notified by the Board.

Omitted

Supplier of **OIDAR Services : can make payment through International Money Transfer through Society for Worldwide Interbank Financial Telecommunication payment network (N/N 22/2017)**

Provided further that a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated goods and Services Tax Act, 2017 may also make the deposit under sub-rule (2) through International Money Transfer through Society for Worldwide Interbank Financial Telecommunication payment network, from the date to be notified by the Board

Return

Newly Inserted N/N 30/2019
-CT dt 28/06/2019

Annual Return :- Supplying online information and data base access or retrieval services from a place outside India to a person in India, other than a registered person as the class of registered persons who shall follow the special procedure as mentioned below.
The said persons **shall not be required to furnish an annual return in FORM GSTR-9** under section 44(1) of the said Act read with rule 80(1) of the said rules.
The said persons **shall not be required to furnish reconciliation statement in FORM GSTR-9C** under section 44(2) of the said Act read with rule 80(3) of the said rules.

Sec 15 : REFUND OF INTEGRATED TAX TO INTERNATIONAL TOURIST

15	The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.
Explanation	For the purposes of this section, the term “tourist” means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

Rule 95A: Refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist.-

Newly Inserted N/N 31/2019
-CT dt 28/06/2019

(1) Retail outlet established in departure area of an international airport, *beyond the immigration counters, supplying indigenous goods to an outgoing international tourist* who is leaving India shall be eligible to claim refund of tax paid by it on inward supply of such goods.

(2) Retail outlet claiming refund of the taxes paid on his inward supplies, shall *furnish the application for refund claim in FORM GST RFD- 10B* on a monthly or quarterly basis, through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

(3) The self-certified compiled information of invoices issued for the supply made during the month or the quarter, along with concerned purchase invoice shall be submitted .

(4) **The refund of tax paid by the said retail outlet shall be available if-**

- (a) the *inward supplies of goods* were received by the said retail outlet *from a registered person against a tax invoice;*
- (b) the said goods were supplied by the said retail outlet to an outgoing *international tourist against foreign exchange without charging any tax;*
- (c) name and *Goods and Services Tax Identification Number* of the retail outlet is *mentioned in the tax invoice for the inward supply;* and
- (d) such other restrictions or conditions, as may be specified, are satisfied.

(5) The provisions of rule 92 shall, mutatis mutandis, apply for the sanction and payment of refund under this rule.

Explanation.- For the purposes of this rule, the expression “outgoing international tourist” shall mean a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.”.

Important Clarification

Clarification on export of services under GST via Circular no .78/52/2018

Issue:- In case an exporter of services outsources a portion of the services contract to another person located outside India, what would be the tax treatment of the said portion of the contract at the hands of the exporter?

There may be instances where the full consideration for the outsourced services is not received by the exporter in India.

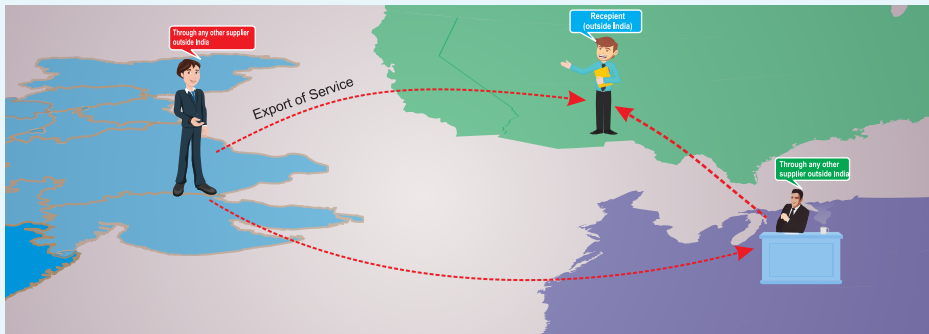
Type of supply: Where an exporter of services located in India is supplying certain services to a recipient located outside India, either wholly or partly through any other supplier of services located outside India, the following two supplies are taking place:-

1. Supply of services from the exporter of services located in India to the recipient of services located outside India for the full contract value.
2. Import of services by the exporter of services located in India from the supplier of services located outside India with respect to the outsourced portion of the contract.

(I) Where full consideration for the service as per contract value is received in convertible foreign exchange by the exporter of service located in India

Clarification:

- a. **What should be the value of Export:** The total value of services as agreed to in the contract between the exporter of services located in India and the recipient of services located outside India will be considered as export of services if all the conditions laid down in section 2(6) of the IGST Act, 2017 read with section 13(2) of the IGST Act are satisfied.
- b. **Payment method:** Full contract value received by exporter located in India
- c. **Import of services & RCM:** It is clarified that the supplier of services located in India would be **liable to pay integrated tax on reverse charge basis on the import of services on that portion of services which has been provided by the supplier located outside India to the recipient of services located outside India.**
- d. **ITC:** the said supplier of services located in India would be eligible for taking input tax credit of the integrated tax so paid
- e. **Export Benefits:** All benefit of export is available



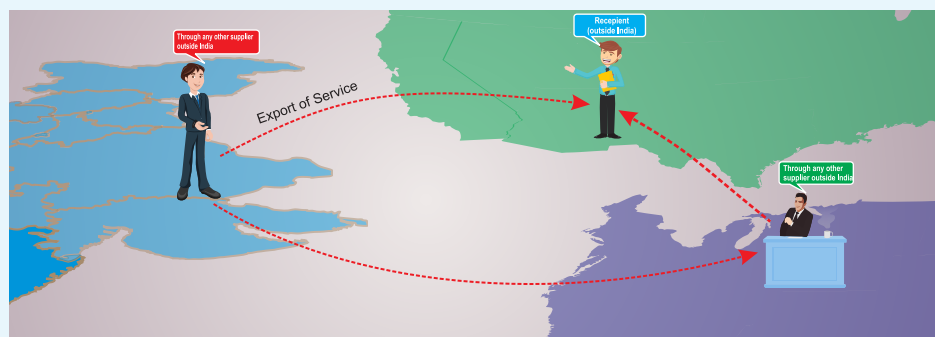
(II) Where full consideration for the service as per contract value is not received in convertible foreign exchange by the exporter of service located in India and amount directly paid to the supplier located outside India for outsource portion

Clarification:

- a. **What should be the value of Export:** The total value of services as agreed to in the contract (include outsource portion) between the exporter of services located in India and the recipient of services located outside India will be considered as export of services if all the conditions laid down in section 2(6) of the IGST Act, 2017 read with section 13(2) of the IGST Act are satisfied.
- b. **Payment method:** as per contract value **except** the part of portion outsourced and the recipient of services located outside India has directly paid to the supplier of services located outside India **(for the outsourced part of the services),**
- c. **Import of services & RCM:** integrated tax has been paid by supplier located in India for import of services on that portion of the services which has been directly provided by the supplier located outside India to the recipient of services located outside India;

d. ITC: the said supplier of services located in India would be eligible for taking input tax credit of the integrated tax so paid

e. Export Benefits: Out source portion of the consideration shall also be treated as receipt of consideration for export of services in terms of section 2(6)(iv) of the IGST Act, provided the: RBI by general instruction or by specific approval has allowed that a part of the consideration for such exports can be retained outside India.



Example:- ABC Ltd. India has received an order for supply of services amounting to \$ 5,00,000/- to a US based client. ABC Ltd. India is unable to supply the entire services from India and asks XYZ Ltd. Mexico (who is not merely an establishment of a distinct person viz. ABC Ltd. India, in accordance with the Explanation 1 in Section 8 of the IGST Act) to supply a part of the services (say 40% of the total contract value). ABC Ltd. India shall be the exporter of services for the entire value if the invoice for the entire amount is raised by ABC Ltd. India. Determine the value of export.

Would your answer will be differ if consideration for supply of service only 60% of the consideration is received in India and the remaining amount(i.e. 40%) is directly paid by the US based client to XYZ Ltd. Mexico ?

Solution:-

Important Clarification

Clarification in determination of place of supply in certain cases (Circular No. 103/22/2019- Dt. 28/06/2019)

1) Services provided by Ports

Fact:- Various services are being provided by the port authorities to its clients in relation to cargo handling.

Some of such services are in respect of arrival of wagons at port, haulage of wagons inside port area up-to place of unloading, siding of wagons inside the port, unloading of wagons, movement of unloaded cargo to plot and staking hereof, movement of unloaded cargo to berth, shipment/loading on vessel etc.

Issue:- Whether the place of supply for such services would be determined in terms of the provisions contained in **Section 12(2) or Section 13(2)** of the IGST Act, as the case may be **or** the same shall be determined as per **Section 12(3)** of the IGST Act.

Clarification:- *services are ancillary to or related to cargo handling services and are not related to immovable property.*

Accordingly, the *place of supply of such services* will be determined as per the provisions contained *in Section 12(2) or Section 13(2)* of the IGST Act, as the case may be, depending upon the terms of the contract between the supplier and recipient of such services



2) Services rendered on goods (unpolished Diamonds) temporarily imported in India

Issue:- What is the place of supply in case of services rendered on unpolished diamonds received from abroad, which are exported after cutting, polishing etc

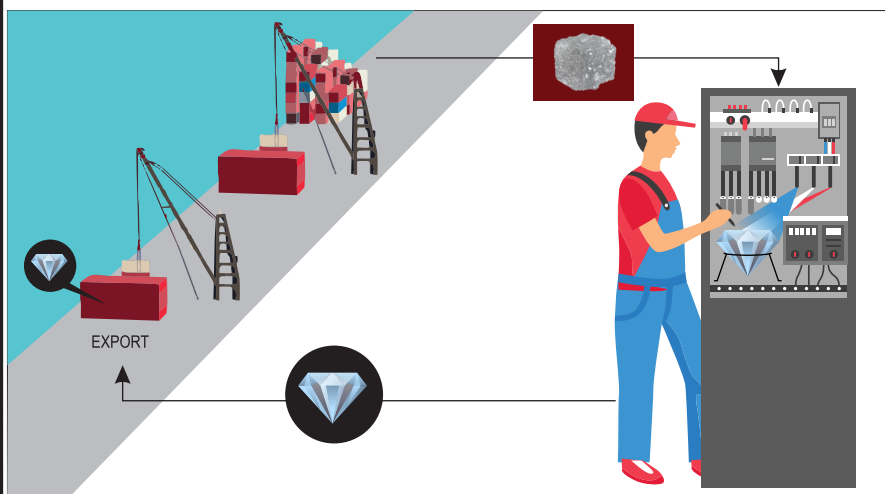
Legal provision:-

Place of supply *in case of performance based services* is to be determined as per the provisions contained in Section 13(3)(a) of the IGST Act and generally the *place of services is where the services are actually performed*.

But there is exception in case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process. *So, in this cases place of supply would be as per section 13(2).*

Clarification:-

In case of *cutting and polishing activity on unpolished diamonds* which are temporarily imported into India are not put to any use in India, the *place of supply would be determined as per the provisions contained in Section 13(2) of the IGST Act*.



Clarification on doubts related to supply of Information Technology enabled Services (ITeS services) (Circular No. 107/22/2019- Dt. 18/07/2019)

- Issue:-** clarification on issues related to supply of
- 1.Information Technology enabled Services (“ITeS services”) such as call center, business process outsourcing services, etc. **and**
 - 2. “Intermediaries” to overseas entities under GST law **and**
Whether they qualify to be “export of services” or otherwise.

Legal provision:-

- 1. **As per section 2(13) – Intermediary means** a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.
- 2. **The definition of intermediary inter alia provides specific exclusion of a person i.e. that of a person who supplies such goods or services or both or securities on his own account.**
Therefore, the supplier of services would not be treated as “intermediary” even where the supplier of services qualifies to be „an agent/ broker or any other person” if he is involved in the supply of services on his own account.
- 3. **ITeS services , though not defined under the GST law BUT AS PER Income Tax Rules, 1962,** which defines ITeS to mean services provided with the assistance or use of information technology, namely, back office operations, call centres or contact centre services, payroll, remote assistance, revenue accounting, etc.
However, these services exclude research and development services whether or not in the nature of contract research and development services.

Clarification:- 1. The scenarios and the taxability discussed in the circular are as follows:

Scenario	Nature of supply	Clarification
Scenario I	Supply of ITeS services by the supplier on his own account to the client or customer of the client on clients' behalf	Such services would not be treated as intermediary services
Example:- supplier “A” supplying services, on his own account to his client “B” or to the customer “C” of his client would not be intermediary in terms of section 2(13) of the IGST Act		
Scenario II	Supplier of backend services arranges or facilitates the supply of goods or services or both by the client located outside India to the customers of the client. Such backend services may include support services, during pre-delivery, delivery and postdelivery of supply (such as order placement and delivery and logistical support, obtaining relevant Government clearances, transportation of goods, post-sales support and other services, etc.).	Such backend services of arranging or facilitating supply of goods or services or both between the client and its customer would be intermediary services.
Example:- supplier “A” supplying backend services to the customer “C” of his client “B” would be intermediary in terms of section 2(13) of the IGST Act.		
Scenario III	Supply of ITeS services by the supplier on his own account along with arranging or facilitating the supply of various support services during predelivery, delivery and post-delivery of supply for and on behalf of the client located outside India	Treatment of such supply as intermediary services would be dependent on the determination of facts and circumstances of each case and principal supply in a set of services.

- 2. It is also clarified that supplier of ITeS services, who is not an intermediary in terms of section 2(13) of the IGST Act, can avail benefits of export of services if he satisfies the criteria mentioned in section 2(6) of the IGST Act,.(i.e. export of services).

Clarification regarding determination of place of supply in case of software/design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry Circular No. 118/37/2019- Dt. 11/10/2019)

Fact:- It is stated that a number of companies that are part of the growing Electronics Semiconductor and Design Manufacturing (ESDM) industry in India are engaged in the process of developing software and designing integrated circuits electronically for customers located overseas.

The client/customer electronically provides Indian development and design companies with design requirements and Intellectual Property blocks (“IP blocks”, reusable units of software logic and design layouts that can be combined to form newer designs).

Based on these, the Indian company digitally integrates the various IP blocks to develop the software and the silicon or hardware design. These designs are communicated abroad (in industry standard electronic formats) either to the customer or (on behest of the customer) a manufacturing facility for the manufacture of hardware based on such designs.

In addition, the software developed is also integrated upon or customized to this hardware. On some occasions, samples of such prototype hardware are then provided back to the Indian development and design companies to test and validate the software and design that has been developed to ensure that it is error free.

Issue:- whether provision of hardware prototypes and samples and testing thereon lends these services the character of performance-based services in respect of “goods required to be made physically available by the recipient to the provider

Situation	Clarification
<p>Service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, <i>whereas, chip design/software development is the principal supply of the service provider.</i></p> <p><i>The service provider is not involved in software testing alone as a separate service.</i></p> <p>The testing of software/design is aimed at improving the quality of software/design and is an ancillary activity. The <i>entire activity needs to be viewed as one supply and accordingly treated for the purposes of taxation.</i></p> <p>Artificial vivisection of the contract of a composite supply is not provided in law. These cases are fact based and each case should be examined for the nature of supply contracted.</p>	<p>Therefore, it is clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits in a composite supply,</p> <p><i>where such testing is an ancillary supply, Place of supply is the location of the service recipient as per Section 13(2) of the IGST Act.</i></p> <p><i>Provisions of Section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases.</i></p>

Clarification on Taxability of satellite launch services via Circular No. 2/1/2017 IGST dated 27.09.2017

It has been clarified that place of supply of satellite launch services supplied by ANTRIX Corporation Limited, a wholly owned Government of India Company, to international customers would be outside India in terms of section 13(9) and such supply which meets the requirements of section 2(6), will constitute export of service and shall be zero rated in accordance with section 16.

Where satellite launch service is provided to a person located in India, the place of supply of satellite launch service would be governed by section 12(8) and would be taxable under CGST Act, UTGST Act or IGST Act, as the case may be.





CHAPTER - 14

EXEMPTION FROM GST

Amended in Existing Entries

Exemption in Legal Sector

Sl.No. 45
of notification

Legal Services (Heading 9982 or 9991)



a) Services provided by an *arbitral tribunal* to -

- i) Any person other than a business entity; or
- ii) A business entity with an aggregate turnover up to ~~20 lakh rupees (ten lakh rupees in the case of special category states) in the preceding financial year~~

“such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017

Newly Inserted N/N 21/2019
-CT(R) dt 30/09/2019

- iii) The Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.

(b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to-

- (i) an advocate or partnership firm of advocates providing legal services;
- (ii) any person other than a business entity; or
- (iii) A business entity with an aggregate turnover up to ~~20 lakh rupees (ten lakh rupees in the case of special category states) in the preceding financial year~~

“such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017

Newly Inserted N/N 21/2019
-CT(R) dt 30/09/2019

- iv) The Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.

Individual Advocates



Partnership Firm



(c) a senior advocate by way of legal services to -

- (i) Any person other than a business entity or
- (ii) A business entity with an aggregate turnover up to ~~20 lakh rupees~~ (ten lakh rupees in the case of special category states) in the preceding financial year

“such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017 Newly Inserted N/N 21/2019 -CT(R) dt 30/09/2019

- (iii) The Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.

Government related Service Sector

Sl. No.7
of notification

Service provided by Govt to Business Entity

Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an **aggregate turnover of up to twenty lakh rupees** (ten lakh rupees in case of a special category state) in the preceding financial year. **Omitted**

such amount in the preceeding financial year as makes it eligible for exemption from registration under the CGST Act 2017

Explanation.- For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to- (i.e. this exemption is not applicable in following cases)

(a) services,-

(i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;

(ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;

(iii) of transport of goods or passengers; and

(b) services by way of renting of immovable property.

Renting of Motor vehicle

Sl. No.22

Services by way of Hire by road

Services by way of giving on hire –

(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or

(aa) to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers; Newly Inserted N/N 13/2019 -CT(R) dt 31/07/2019

(b) to a goods transport agency, a means of transportation of goods

(c) Motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.

Note 2:-EOV means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 which is run solely on electrical energy derived from an external source or from one/more electrical batteries fitted to such road vehicle.

Transport Sector

SL No.19A
of notification

Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India.

Note : Nothing contained in this serial number shall apply after the 30th day of September, 2019-2020.

Newly Inserted N/N 21/2019
-CT(R) dt 30/09/2019

Omitted

SL No.19B
of notification

Transportation of Goods by an Vessels (Heading 9965)

Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.

Note : Nothing contained in this serial number shall apply after the 30th day of September, 2019-2020.

Newly Inserted N/N 21/2019
-CT(R) dt 30/09/2019

Omitted

Renting of Immovable property Sector

SL No.14
of notification

Renting of Hotel, Inn, etc. (Heading 9963)

Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having **declared tariff Value of Supply** (substituted) of a unit of accommodation below **or equal to ₹1000** per day or equivalent.

Newly Inserted N/N 21/2019
-CT(R) dt 30/09/2019

Newly Inserted [Newly Inserted N/N 21/2019-CT(R) dt 30/09/2019]

Agriculture Sector

SL No.24B
of notification

Storage or Warehousing of Pulses, Fruits, Nuts etc. (Heading 9967 or 9985)

Services by way of storage or warehousing of

➤ cereals, pulses,

➤ fruits, nuts and vegetables,

➤ spices, copra,

➤ sugarcane, jaggery,

➤ raw vegetable fibres such as cotton, flax, jute etc.,

➤ indigo, unmanufactured tobacco,

➤ betel leaves, tendu leaves,

➤ coffee and tea.

Circular No 16/16/2017- Dt 15/11/2017

Subject	Clarification by 16/16/2017	Exemption under Sr. No. 24B of N/N 12/2017
Warehousing of Tea	Thus, Such black tea, green tea, white tea etc. is not an agriculture produce & warehouse will be taxable	Exempt (current Status)
Warehousing of jaggery	Thus, jaggery is not an agricultural produce such activities warehousing will be taxable	Exempt (current Status)
Warehousing of Pulses	Therefore pulses (dehusked or split) are also not agricultural produce & Warehousing will be taxable . However whole pulse grains such as whole gram, rajma etc. are covered in the definition of agricultural produce & Warehousing will be Exempt	Exempt (current Status)

Sports Sector

SL No. 9AA
of notification

Service provided by and To FIFA

Services provided by and to Federation Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the events under **FIFA U-17 Women's World Cup 2020** to be hosted in India.

Provided that Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020

SL No.82A
of notification

FIFA U-17 Women World Cup 2020 (chapter 9996)

Services by way of right to admission to the events organised under FIFA U-17 Women's World Cup 2020

Life / General Insurance Sector

Sl. No.29B
of notification

Services of Life Insurance (Heading 9971 OR 9991)

Services of life insurance provided or agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force.

Exemption in IGST (Newly Inserted)

Sl. No.12AA
of notification

Service Provided by intermediary

Newly Inserted N/N 21/2019
-CT(R) dt 30/09/2019

Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory.

Conditions:- Following documents shall be maintained for a minimum duration of five years:

- 1) Copy of Bill of Lading
- 2) Copy of executed contract between Supplier/Seller and Receiver/Buyer of goods
- 3) Copy of commission debit note raised by an intermediary service provider in taxable territory from service recipient located in nontaxable territory
- 4) Copy of certificate of origin issued by service recipient located in nontaxable territory
- 5) Declaration letter from an intermediary service provider in taxable territory on company letter head confirming that commission debit note raised relates to contract when both supplier and receiver of goods are outside the taxable territory

Construction Sector

Sl.No. 41A/41B
of notification

Supply of TDR, FSI, long term lease (premium)

Newly Inserted N/N 28/2018
-CT(R) dt 31/12/2018

Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer have been exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.

Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses.

This will achieve a fair degree of taxation parity between under construction and ready to move property [Effective from 01.04.2019]

Section 11 - Power to grant exemption from tax (Sec 6 of IGST Act)

3	Explanation to Exemption
	<p>The Government may, if it considers necessary or expedient so to do</p> <ul style="list-style-type: none">➤ for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2),➤ insert an explanation in such notification or order, as the case may be, by notification➤ at any time within one year of issue of the notification under subsection (1) or order under sub-section (2), and➤ every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Analysis of Section 11(3)

Section 11(3) of CGST Act provides that the Government may insert an explanation in any notification issued under section 11, for the purpose of clarifying its scope or applicability, at any time within 1 year of issue of the notification and every such explanation shall have effect as if it had always been the part of the first such notification.

Clarification

It is hereby clarified that the explanation having been inserted under section 11(3) of the CGST Act, is effective from the inception of the entry in notification and not from the date from which the notification (that inserted said explanation) becomes effective.

For example, the principal Notification No. 11/2017 CT (R) dated 28.06.2017 came into force with effect from 1.07.2017. Thereafter, a new entry - Entry no. 3(vi) is inserted w.e.f. 21.09.2017. Subsequently, an explanation is also inserted with respect to entry no. 3(vi) on 26.07.2018. Although the effective date mentioned in the notification which inserted said explanation is 27.07.2018, said explanation will be effective from the inception of entry in notification i.e. 21.09.2017 and not 27.07.2018.

For Reference :- “Explanation to Entry 3(vi). - For the purposes of this item, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.” *(This explanation was inserted by Notification No. 17/2018- Central Tax (Rate) dated, 26th July, 2018)*

Summary :-

Particulars	Notification No.	Date of Notification	Enforcement Date
Principal Notification	11/ 2017	28.06.2017	01.07.2017
Entry No. 3(vi)	24/ 2017	21.09.2017	21.09.2017
Explanation	17/ 2018	26.07.2018	21.09.2017

Clarification on whether GST on monthly subscription / contribution charged by a Resident Welfare Association (RWA) from its members (Circular no. 109/28/2019-GST dt 22/07/2019)

Issue 1:-

- 1) Are the maintenance charges paid by residents to the Resident Welfare Association (RWA) in a housing society exempt from GST and
- 2) if yes, is there an upper limit on the amount of such charges for the exemption to be available?

Clarification:-

Supply of service by RWA (unincorporated body or a non- profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of *Rs. 7500 per month per member* for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST.

Issue 2:-

State whether a RWA is required to take registration and pay GST on maintenance charges where the amount of such charges is more than Rs. 7500/- per month per member but the aggregate turnover of such RWA is Rs.20 lakh or less in a financial year.

Clarification:-

Scenario No.	Aggregate turnover society	Monthly maintenance per member	Exemption from registration	Remarks
1.	Less than ₹ 20 Lakhs	₹ 7,500 or less	Exempt	
2.		₹ 7,500 or more	Exempt	
3.	More than ₹ 20 Lakhs	₹ 7,500 or less	Exempt	
4.		₹ 7,500 or more	Not Exempt	

Issue 3:-

- 1) Whether RWA entitled to take input tax credit of GST paid inward supply of capital goods, input and input services used by it for making outward supplies to its members and
- 2) use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than Rs. 7,500/- per month per member?

Clarification:-

RWAs are entitled to take ITC of GST paid by them on
capital goods such as generators, water pumps, lawn furniture etc.,
goods such as taps, pipes, other sanitary/hardware fillings etc. and
input services such as repair and maintenance services.

Issue 4:-

Where a person owns two or more flats in the housing society or residential complex, whether the ceiling of Rs. 7500/- per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or per person?

Clarification:-

As per general business sense, a person who owns two or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential apartment owned by him separately.
The ceiling of Rs. 7500/- per month per member shall be applied separately for each residential apartment owned by him.